

## ARTICLE 9

### DEVELOPMENT AGREEMENTS

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## ARTICLE 9

### DEVELOPMENT AGREEMENTS

SECTION 10-9.01 CITATION AND AUTHORITY. This article is enacted pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7 of the Government Code, Section 65864 et seq. This article is adopted to supplement existing provisions of the Hayward Municipal Code and the Hayward Zoning Ordinance and may be cited as the Development Agreement Ordinance of the City of Hayward. The procedure and requirements set forth in this article shall apply to all development agreement proposals.

SECTION 10-9.02 PURPOSE AND INTENT. The purpose of this article is to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the costs of development by providing an option to both the city and developers to enter into development agreements. Such agreements shall only be used for large multiphase developments, low and moderate income housing developments meeting state or federal standards, and developments involving the installation or provision of substantial public facilities or services which may require several years to complete. It is intended that a development agreement normally would be considered only after planned development approval or its equivalent is obtained.

To accomplish this purpose the procedures, requirements and other provisions of this article are determined to be necessary to promote orderly growth and development and the economic welfare of the city, and to ensure provision for adequate traffic circulation, utilities, and services.

SECTION 10-9.03 APPLICANT QUALIFICATION. The applicant for a development agreement must be a person or entity with a legal or equitable interest in the real property which is the subject of the development agreement. An authorized agent may be considered an applicant. The planning director may require an applicant to submit proof of an interest in the real property and of the authority of the agent to act for the applicant.

SECTION 10-9.04 APPLICATION, INFORMATION, AND FEES.

- a. An applicant interested in entering into a development agreement shall first inform the planning director of that interest and the planning director shall advise the City Council of the proposed development agreement application. The City Council shall then determine if the project for which a development agreement is proposed meets the standards set forth in Section 10-9.01. If the City Council determines the project does not meet the specified standards, no further processing shall occur. If the City Council determines the project does meet the specified standards, the City Council shall authorize the planning director to accept an application for a development agreement.
- b. The city may require an applicant to submit such information and supporting data as the planning director considers necessary to process the application.
- c. Each application shall be accompanied by the development agreement proposed by the applicant. At a minimum, each development agreement shall include:

- (1) A legal description of the property covered by the agreement.
  - (2) A description of the proposed uses, and the density and intensity of the uses, and copies of any approved or proposed development plans.
  - (3) The maximum height and size of proposed buildings.
  - (4) An indication of the phases of project development and a construction schedule for the phases and for the project as a whole.
  - (5) Provisions for reservation or dedication of land for public purposes.
  - (6) Public improvements, if any, to be provided pursuant to the development agreement in addition to those required because of subdivision or other approvals.
  - (7) The security instruments to guarantee the performance of obligations under the development agreement.
  - (8) The duration of the agreement, which shall not exceed an initial term of ten (10) years, and, in unusual cases an extension not to exceed five (5) years.
  - (9) Provisions that successors in interest are bound by the agreement, that the developer will notify the city in writing if it transfers its interest in the development agreement within ten (10) days of such transfer, and that the city may upon such notice conduct a review of the agreement pursuant to the provisions of Section 10-9.13.
  - (10) The rules, regulations, and official policies governing land use, density, design, improvement, and construction standards and specifications which exist at the time the development agreement is entered and which can and cannot be changed during the life of the agreement.
  - (11) Conditions, terms, and requirements for subsequent discretionary actions.
  - (12) Provisions detailing what constitutes default under the development agreement and the rights and responsibilities of all parties in the event of a default.
- d. The City Council shall by separate resolution fix the schedule of fees and charges imposed for the filing and processing of each application and document provided for or required under these regulations, and for the annual review.
- e. The City Council may, by resolution or in the development agreement itself, set a sum as compensation for the city as consideration for the development agreement.
- f. A development agreement is subject to the provisions of the California Environmental Quality Act.

**SECTION 10-9.05 REVIEW OF APPLICATION AND NEGOTIATION OF DEVELOPMENT AGREEMENT.** Upon authorization by the City Council, the planning director shall accept and review the application and may reject it if it is incomplete or inaccurate. If the

application is complete and accurate, the city manager and city attorney shall negotiate the proposed development agreement on behalf of the city. When negotiations are concluded, a staff report shall be prepared for consideration by the Planning Commission and City Council. The report shall include an analysis as to whether or not the proposed development agreement would be consistent with the general plan and any applicable specific plan and a staff recommendation on the advisability of entering into the development agreement.

SECTION 10-9.06 NOTICE.

- a. The time and manner of giving notice for the Planning Commission and City Council hearings on the proposed development agreement shall be as prescribed in Government Code Sections 65854, 65854.5 and 65856.
- b. The notice of the hearing on the development agreement shall contain:
  - (1) The time and place of the hearing.
  - (2) A general explanation of the matter to be considered, including a general description of the area to be affected; and
  - (3) Other information required by law or which the planning director considers necessary or desirable.

SECTION 10-9.07 PUBLIC HEARINGS, GENERALLY. The public hearings shall be conducted in accordance with the procedural standards prescribed in Government Code Section 65804 and the procedures detailed in the City of Hayward Zoning Ordinance for the conduct of public hearings. Each person interested in the matter shall be given an opportunity to be heard.

SECTION 10-9.08 REVIEW BY PLANNING COMMISSION. The Planning Commission shall hold a public hearing and shall make its recommendation and reasons therefore in writing to the City Council. The recommendation shall include the Planning Commission's findings and its determination whether:

- a. The proposed development agreement is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
- b. The proposed development agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;
- c. The proposed development agreement is in conformity with public convenience, general welfare and good land use practice;
- d. Existing or proposed public facilities have sufficient capacity to accommodate the proposed development;
- e. The public health, safety, and general welfare will be promoted and advanced by the proposed development;
- f. The orderly development of property or the preservation of property values will be promoted and advanced by the proposed development.

SECTION 10-9.09 DECISION BY CITY COUNCIL.

- a. The City Council shall hold a public hearing, after which it may accept, modify, or disapprove the recommendation of the Planning Commission. It may, but need not, refer matters not previously considered by the Planning Commission during its hearing back to the Planning Commission for report and recommendation. The Planning Commission may, but need not, hold a public hearing on matters referred back to it by the City Council.
- b. The City Council may not approve the development agreement unless it finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan. The City Council may adopt, in whole or in part, the findings of the Planning Commission.

SECTION 10-9.10 APPROVAL AND RECORDATION.

- a. If the City Council approves the development agreement, it shall do so by the adoption of an ordinance. The agreement takes effect upon the effective date of the ordinance.
- b. Within ten (10) days of the effective date of the adopting ordinance, the City Clerk shall have the agreement recorded with the county recorder.
- c. If the parties to the agreement or their successors in interest amend or cancel the agreement or if the agreement is modified or terminated as provided in Government Code Section 65865.1 for failure of the applicant to comply with the terms or conditions of the agreement, the city clerk shall have notice of such action recorded with the county recorder.

SECTION 10-9.11 PERIODIC REVIEW.

- a. The city shall review the development agreement every twelve (12) months from the date the agreement became effective. It is the developer's responsibility to apply in a timely fashion for the annual review. The time for review may be modified either by agreement between the parties or at the city's initiation.
- b. The Planning Director shall determine whether or not the developer has, for the period under review, complied with the terms and conditions of the agreement. Proof of compliance with the terms and conditions of the agreement shall be presented by the developer.

If the Planning Director determines that the developer has complied with the terms and conditions of the agreement during the period under review, the review for that period is concluded.

If the Planning Director determines that the developer has not complied with the terms and conditions of the agreement during the period under review, the planning director shall forward his recommendation to the Planning Commission and the Planning Commission shall review the matter at a noticed public hearing and shall either determine the developer has complied or recommend to the City Council that the agreement be modified or terminated.

SECTION 10-9.12 AMENDMENT OR CANCELLATION BY MUTUAL

CONSENT.

- a. Either party may propose an amendment to or cancellation in whole or in part of the development agreement previously entered into. Any amendment or cancellation shall be by mutual consent of the parties.
- b. The procedure for proposing and adopting an amendment to or cancellation in whole or in part of the development agreement is the same as the procedure for entering into an agreement.

However, where the city initiates the proposed amendment to or cancellation in whole or in part of the development agreement, it shall give notice to the developer of its intention to initiate proceedings at least ten (10) days in advance of the public hearing notice on the amendment or cancellation as required by Section 10-9.06 of this ordinance.

- c. Any amendment to the development agreement which does not relate to the permitted uses, density or intensity of the uses, height or size of proposed buildings, provisions for reservation or dedication of land for public purposes, or to the duration of the agreement shall not require a noticed public hearing before the parties may execute an amendment to the agreement.
- d. In the event state or federal laws or regulations enacted after a development agreement has become effective, prevent or preclude compliance with one or more provisions of the development agreement, such provisions shall be amended to comply with the state or federal regulations.

SECTION 10-9.13 MODIFICATION OR TERMINATION BY THE CITY.

- a. If the city determines the developer has not complied with the terms and conditions of the development agreement, the city may proceed with a public hearing on modification or termination of the development agreement. Notice to the developer of the city's intent to modify or terminate shall be given at least fifteen (15) days prior to the hearing. The notice shall contain:
  - (1) The time and place of the hearing;
  - (2) A statement as to whether the city proposes to terminate or to modify the development agreement;
  - (3) Other information which the city considers necessary to inform the developer of the nature of the proceedings.
- b. Notice to the public shall be given pursuant to Section 10-9.06.
- c. At the time and place set for the hearing on modification or termination, the developer shall be given an opportunity to be heard. The City Council may refer the matter back to the Planning Commission for further proceedings or for report and recommendation. The City Council may impose those conditions to the action it takes as it considers necessary to protect the interests of the city. The decision of the

City Council is final.

SECTION 10-9.14 IRREGULARITY OF PROCEEDINGS. No action, inaction or recommendation regarding the development agreement shall be held void or invalid or be set aside by the court by reason of any error, irregularity, informality, neglect or omission ('error') as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation, or any matters of procedure whatever unless after an examination of the entire case, including the evidence, the court is of the opinion that the error complained of was prejudicial and that by reason of the error the complaining party sustained and suffered substantial injury, and that a different result would have been probable if the error had not occurred or existed. There is not a presumption that error is prejudicial or that injury was done if error is shown.

SECTION 10-9.15 JUDICIAL REVIEW.

- a. Any judicial review of the initial approval of a development agreement shall be by the filing of a writ of mandate pursuant to Section 1085 of the Code of Civil Procedure.
- b. Any judicial review of City actions taken pursuant to this article except for the initial approval of the development agreement shall be by the filing of a writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure.