

RESOLUTION NO. 9-85 (CM)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF WATSONVILLE ESTABLISHING PROCEDURES AND
REQUIREMENTS FOR THE CONSIDERATION OF
DEVELOPMENT AGREEMENTS UNDER GOVERNMENT
CODE SECTIONS 65864-65869.5

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATSONVILLE,
CALIFORNIA, AS FOLLOWS:

WHEREAS, Government Code §§65864-65869.5 authorize cities and
counties to enter into binding development agreements with persons
having legal or equitable interests in real property for the
development of such property and authorizes the City to establish
procedures for consideration of applications for such agreements; and

WHEREAS, a set of procedures and requirements for consideration
of development agreements has been proposed, has been the subject of
public hearings and the Planning Commission has recommended that the
City adopt such regulations; and

WHEREAS, it is in the public interest to do so and the public
health, safety and welfare will be promoted thereby.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WATSONVILLE,
FINDS, DETERMINES AND ORDERS AS FOLLOWS:

1. The procedures and requirements for the consideration of
development agreements as set forth in Exhibit "A" attached to this
Resolution and made a part by this reference are adopted.

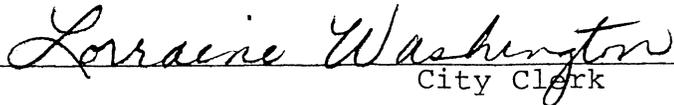
2. The Planning Director is instructed to prepare and adopt such
application forms, checklists and such other documents as he considers
necessary to implement the procedures and requirements.

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The foregoing resolution was introduced at a regular meeting of the Council of the City of Watsonville, held on the 8th day of January, 1985, by Council Member Osmer, who moved its adoption, which motion being duly seconded by Council Member Ingersoll, was upon roll call carried and the resolution adopted by the following vote:

AYES: COUNCIL MEMBERS: Clark, Deretich, Ingersoll, Marsano, Murphy, Osmer, Soldo
NOES: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None.


MAYOR

ATTEST:

City Clerk

**REGULATIONS ESTABLISHING
PROCEDURES AND REQUIREMENTS FOR CONSIDERATION OF
DEVELOPMENT AGREEMENTS**

Article 1. Applications

Sec. 101. Authority for adoption. These regulations are adopted under the authority of Government Code §§65864-65869.5.

Sec. 102. Forms and information.

(a) The Planning Director, hereafter called "Director" shall prescribe the form for each application, notice and documents provided for or required under these regulations for the preparation and implementation of development agreements.

(b) The Director may require an applicant to submit such information and supporting data as the Director considers necessary to process the application.

Sec. 103. Fees. 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.

Sec. 104. Qualification as an applicant. Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person who has legal or equitable interest in the real property which is the subject of the development agreement. Applicant includes authorized agent. The Director may require an applicant to submit written or recorded proof of interest in the real property and of the authority of the agent to act for the applicant. Before processing the application, the

Director shall obtain the opinion of the City Attorney as to the sufficiency of the applicant's interest in the real property to enter into the agreement.

Sec. 105. Proposed form of agreement. Each application shall be accompanied by the form of development agreement proposed by the applicant. This requirement may be met by designating the City's standard form of development agreement and including specific proposals for changes in or additions to the language of the standard form.

Sec. 106. Review of application. The Director shall endorse on the application the date it is received. The Director shall review the application and may reject it if it is incomplete or inaccurate for processing. If the application is complete, it shall be accepted for filing. The Director shall review the application and determine the additional requirements necessary to complete the agreement. After receiving the required information, the Director shall prepare a staff report and recommendation and shall state whether or not the agreement proposed or in an amended form would be consistent with the general plan and any applicable specific plan.

Article 2. Notices and Hearing

Sec. 201. Duty to give notice. The Director shall give notice of intention to consider adoption of development agreement and of any other public hearing required by law or these rules.

Sec. 202. Requirements for form and time of notice of intention to consider adoption of development agreement.

(a) **Form of notice.** The form of the notice of intention to consider adoption of 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 affected; and
- (3) other information required by specific provision of these regulations or which the Director considers necessary or desirable.

(b) **Time and manner of notice.** The time and manner of giving notice is by:

(1) **Publication and posting.** Publication at least once in the Watsonville Register-Pajaronian and posting on the property at least five (5) days prior to the hearing.

(2) **Mailing.** Mailing of the notice to all persons shown on the last equalized assessment roll as owning real property within 300 feet of the property which is the subject of the proposed development agreement. If the number of owners to whom notice is to be mailed is greater than 1,000 the Director may as an alternative provide notice in the manner set forth in §65854.5(b) of the Government Code.

(c) **Additional notice.** The Planning Commission or City Council, as the case may be, may direct that notice of the public hearing to be held before it shall be given in a manner that exceeds the notice requirements prescribed by state law.

(d) **Declaration of existing law.** The notice requirements referred to in subsections (a) and (b) are declaratory of existing law (Govt. Code §65867 and §§65854, 6584.5 and 65856 as incorporated by reference). If state law prescribes a different notice requirement, notice shall be given in that manner.

Sec. 203. Failure to receive notice. The failure of any person entitled to notice required by law or these regulations does not affect the authority of the City Council to enter into a development agreement.

Sec. 204. Rules governing conduct of hearing. The public hearing shall be conducted as nearly as may be in accordance with the procedural standards adopted under Government Code §658404 for the conduct of zoning hearings. Each person interested in the matter shall be given an opportunity to be heard. The applicant has the burden of proof at the public hearing on the proposed development agreement.

Sec. 205. Irregularity in proceedings. No action, inaction or recommendation regarding the proposed development agreement shall be held void or invalid or be set aside by a 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 presumption that error is prejudicial or that injury was done if error is shown.

Article 3. Standards of Review, Findings and Decision

Sec. 301. Determination by Planning Commission. After the hearing by the Planning Commission, the Planning Commission shall make its recommendation in writing to the City Council. The recommendation shall include the Planning Commission's determination whether or not the development agreement proposed:

(1) is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;

(2) is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;

(3) is in conformity with public convenience, general welfare and good land use practice,

(4) will be detrimental to the health, safety and general welfare,

(5) will adversely affect the orderly development of property or the preservation of property valued.

The recommendation shall include the reasons for the recommendation.

Sec. 302. Decision by City Council.

(a) After the City Council completes the public hearing, 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.

Sec. 303. Approval of development agreement. If the City Council approves the development agreement, it shall do so by the adoption of an ordinance.

After the ordinance approving the development agreement takes effect, the City may enter into the agreement.

**Article 4. Amendment and Cancellation of Agreement
by Mutual Consent.**

Sec. 401. Initiation of amendment or cancellation. Either party may propose an amendment to or cancellation in whole or in part of the development agreement previously entered into.

Sec. 402. Procedure. The procedure for proposing and adoption of 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 in the first instance as provided in Articles 1 through 3.

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 property owner of its intention to initiate such proceedings at least ten (10) days in advance of the giving of notice of intention to consider the amendment or cancellation required by Sec. 202.

Article 5. Recordation.

(a) Within ten (10) days after the City enters into the development agreement, the City Clerk shall have the agreement recorded with the County Recorder.

(b) If the parties to the agreement or their successors in interest amend or cancel the agreement as provided in Government Code §65868, or if the City terminates or modifies the agreement as provided in Government Code §6585.1 for failure of the applicant to comply in good faith with the terms or conditions of the agreement the City Clerk shall have notice of such action recorded with the County Recorder.

Article 6. Periodic Review.

Sec. 601. Time for and initiation of review. The City shall review the development agreement every six (6) months from the date the agreement is entered into.

The time for review may be modified either by agreement between the parties or by initiation in one or more of the following ways:

- (1) recommendation of the planning staff;
- (2) affirmative vote of at least four (4) members of the Planning Commission;
- (3) Affirmative vote of at least four (4) members of the City Council.

Sec. 602. Notice of periodic review. The Director shall begin the review proceeding by giving notice that the City intends to undertake a periodic review of the development agreement to the property owner. The Director shall give the notice at least ten (10) days in advance of the time at which the matter will be considered by the City Council.

Sec. 603. Public hearing. The City Council shall conduct a public hearing at which the property owner must demonstrate good faith compliance with the terms of the agreement. The burden of proof on this issue is upon the property owner.

Sec. 604. Findings upon public hearing. The City Council shall determine upon the basis of substantial evidence whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of this agreement.

Sec. 605. Procedure upon findings.

(a) If the City Council finds and determines on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement during the period under review, the review for that period is concluded.

(b) If the City Council finds and determines on the basis of substantial evidence that the property owner has not complied in good faith with the terms and conditions of the agreement during the period under review, the City Council may modify or terminate the agreement.

Article 7. Modification or Termination.

Sec. 701. Proceedings upon modification or termination. If, upon a finding under Section 605(b), the City Council determines to proceed with modification or termination of the agreement, the City Council shall give notice to the property owner of its intention to do so. The notice shall contain:

- (1) the time and place of the hearing;
- (2) a statement as to whether or not the City Council proposes to terminate or to modify the development agreement;
- (3) other information which the City Council considers necessary to inform the property owner of the nature of the proceeding.

Sec. 702. Hearing on modification or termination. At the time and place set for hearing on modification or termination, the property owner 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.

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DRH/vrr