

Article 26 – DEVELOPMENT AGREEMENTS

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26-100-010 - Purpose.

- A. This chapter establishes procedures and requirements for processing development agreements. The appropriate use of development agreements can provide a developer greater certainty in the development approval process by vesting certain development rights and provide the County with public benefits by requiring the developer to provide certain public improvements and benefits that would not otherwise be obtained through other applicable development approval processes. Among other benefits, development agreements have the potential to strengthen the planning process, encourage comprehensive planning, reduce uncertainty in the development review process, reduce the economic costs of development, and facilitate the development and financing of infrastructure and other public improvements.
- B. This Article is adopted under the authority of, and incorporates by reference, Sections 65864 through 65869.5 of the California Government Code and any successor statute(s).

26-100-020 - Applicability.

This Article authorizes the County of Sonoma, at its sole discretion, to enter into a development agreement with any qualified applicant for the development of real property. The provisions of this Article are applicable throughout the unincorporated area of the County of Sonoma outside of the Coastal Zone.

26-100-030 - Definitions.

C. Definitions.

1. “Developer” means the party with whom the County enters a development agreement.

2. "Development Agreement" means a binding agreement entered into between the County and a qualified applicant pursuant to the requirements and procedures of state law and this Article.
3. "Legal description" means the geographical description of real property by metes and bounds, which unambiguously identifies the location, boundaries, and any existing easements on the property.
4. "Property" means real property, unless otherwise specified.
5. "Qualified applicant" means a person who has a legal or equitable interest in the real property that is the subject of the development agreement and who is applying to enter into a development agreement with the County. The term "qualified applicant" includes the plural in the case of an applicant consisting of more than one party. The term "person" includes any legal entity.

Words not defined herein shall have the same meaning as provided elsewhere in the County Code or in applicable State Law.

26-100-040 - Application for Development Agreements.

- A. Owner Authorization.** Only a qualified applicant may file an application to enter into a development agreement. An applicant shall submit written proof of its legal or equitable interest in the property that is the subject of the development agreement, and of the authority of any agent to act on its behalf.
- B. Eligibility.** Development proposals which are eligible for consideration for a development agreement shall be limited to projects in which the qualified applicant agrees to make a significant contribution to infrastructure, open space, affordable housing, or other public improvements and amenities of benefit to the County that would not be otherwise be obtained through other applicable development approval processes.
- C. Application Requirements.** The Director may prescribe the form and contents of the application for the preparation and implementation of development agreements, and amendments to development agreements, which shall be submitted with a request for a development agreement or amendment to a development agreement. The application shall contain, without limitation, the following:
 1. The name and address of the applicant and of all persons and entities having any legal or equitable interest in the property that is the subject of the proposed development agreement or amendment.
 2. Evidence demonstrating that the applicant has a legal or equitable interest in the property that is the subject of the proposed development agreement;
 3. Legal description of the property and a list of all Assessor's parcel numbers for the property, including an approximation of the total area of the property which is the subject of the proposed development agreement;

4. Information about the current use of the property proposed to be subject to the development agreement;
 5. Additional information that the Director or his or her designee may deem necessary or convenient to process the application, including but not limited to explanatory text, development plans, maps, drawings, and photos
- D. Separate Applications.** A qualified applicant shall file an application for each development project for which a development agreement is requested.
- E. Waiver.** The Director may waive the filing of one or more of the application materials required by subsection C above if the same information is filed with an application for a specific plan or land use entitlement to be considered concurrently.
- F. Fees.** The filing of an application for development agreement or amendment to a development agreement shall be accompanied by payment of such fees as are established by the Board of Supervisors by resolution.

26-100-050 - **Procedures for Processing of Development Agreements.**

- A. Initiation.** A proposal for a development agreement may be initiated only by a qualified applicant.
- B. Completeness Review.** The Director or his or her designee shall review the application for completeness and shall determine any additional requirements necessary to make the application complete. The Director may reject an application as incomplete if it is not made by a qualified applicant, if it does not contain the documentation required by the Director or his or her designee, other County departments, or other responsible agencies, or if it is unaccompanied by the required fee.
- C. Time for Commencement of Negotiation.** At such time that the Director or his or her designee has determined the application is complete, the applicant may enter into negotiations with the County regarding the terms of the development agreement. When the County and applicant have reached tentative agreement on the terms of the development agreement, the development agreement may be considered by the Planning Commission, provided that the proposed agreement shall be considered concurrently with any applications for discretionary land use entitlements authorizing the development which is the subject of the proposed development agreement.
- D. County Representative.** The Director or his or her designee, assigned in writing are authorized to negotiate the specific components and provisions of a development agreement on behalf of the County.
- E. Environmental Review.** A development agreement application submitted pursuant to this Article is a discretionary project pursuant to the California Environmental Quality Act.
- F. Review and Recommendation.** The Planning Commission shall review and provide a recommendation to the Board of Supervisors on all development agreement applications, consistent with state law and this Article.

- G. Review and Decision.** The Board of Supervisors shall be the final decision-making authority on all development agreements consistent with state law and this Article.

26-100-060 - Notice.

- A.** Notice of public hearings to consider recommendations on and adoption of a development agreement shall be given pursuant to state law as it may be periodically amended, including Government Code Sections 65867, 65090, and 65091. The notice may be combined with any other notice required by law for other actions to be considered concurrently with the development agreement.
- B.** Public hearing notices for projects processed under this Article will contain the following information:
1. The time and place of the hearing;
 2. The name of the body conducting hearing;
 3. The project location.
 4. A general project description with reference to a proposed Development Agreement;
 5. Other necessary information which the Director, or Clerk of the Board of Supervisors considers necessary or desirable.
- C.** Public notices for applications involving a Development Agreement shall be mailed to all persons shown on the last equalized assessment roll of parcels of real property within three hundred feet (300') of the project site, by publication in a newspaper of general circulation, and by posting in at least three (3) places on or near the property which is the subject of the hearing. The Director may require enlarged or enhanced signage on the project site.

26-100-070 - Development Agreement Requirements.

- A. Location.** Development agreements as defined herein may be used in any zoning district authorized by this Zoning Ordinance. Said agreements, when established, shall be considered a combining zone with the existing zoning district.
- B. Required Provisions in Development Agreements.** A development agreement shall specify the following:
1. Duration of the agreement;
 2. Allowed uses of the property;
 3. Density or intensity of specified uses on the property;
 4. The maximum height and size of proposed structures;
 5. Provisions for reservation or dedication of land for public purposes;

6. The public benefits that would exceed those required by existing ordinances and regulations.

C. Elective Provisions in Development Agreements. A development agreement may also specify the following:

1. Conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development identified in the agreement.
2. The time period for commencement of construction, and that the project or any phase of the project be completed within a specified time.
3. Terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.
4. Other terms deemed appropriate by the Director and that are consistent with the requirements of this Article and California Government Code Section 65864 et seq. and any successor statute(s).

26-100-080 - Procedure for Review; Findings, and Decision.

- A.** The Planning Commission shall hold at least one noticed public hearing to consider the proposed development agreement, and other proposed land use entitlements to be considered concurrently with the development agreement. The Planning Commission shall by resolution make its recommendation to the Board of Supervisors on the proposed development agreement. The Planning Commission shall not recommend approval of the development agreement unless it makes the all of findings under subsection E of this section.
- B.** Following receipt of the Planning Commission's recommendation, the Board of Supervisors shall hold at least one noticed public hearing to consider the proposed development agreement. The hearing shall be "de novo."
- C.** The Board of Supervisors shall consider the recommendation of the Planning Commission. The Board 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 with in the time limit set by the Board.
- D.** The Board of Supervisors, in its sole discretion, may determine whether to enter into a development agreement. The Board of Supervisors may add, modify, or delete any provision of the development agreement as a condition of approval. The Board shall not approve a development agreement unless it makes all of the findings specified in subsection E below.
- E.** The Board shall make all of the following findings when approving a development agreement:
 1. The provisions of the development agreement are consistent with the objectives, policies, and program specified in the General Plan, applicable Area Plan, Specific Plan, or any such policy to be adopted concurrently with the adoption of the Agreement;

2. If the development agreement includes a proposed subdivision as defined by Government Code Section 66473.7, the development agreement provides that any tentative map prepared for the subdivision comply with the provisions of Government Code Section 66473.7.
 3. The development agreement is in the public interest;
 4. The development agreement provides public improvements and benefits that would not otherwise be obtained through other applicable development approval processes; and
 5. The Agreement is consistent with the provisions of this Article and Government Code Sections 65864 through 65869.5 governing development agreements.
- F. If the Board approves the development agreement, it shall do so by the adoption of an ordinance. No development agreement shall be signed by the Chair of the Board of Supervisors until it has been approved as to form by County Counsel and executed by the applicant and by all persons having a legal or equitable interest in the property which is the subject of the development agreement. Owners of easements need not execute the development agreement unless the County determines that their agreement to be bound by the development agreement is necessary.

26-100-090 - Effective Date.

The effective date of the development agreement is the effective date of the ordinance adopting the agreement unless the development agreement specifies a later effective date.

26-100-100 - Recording the Agreement.

1. No later than ten (10) days after the County enters into a development agreement, the Clerk of the Board of Supervisors shall record with the County Recorder, at the expense of the qualified applicant, a fully executed copy of the development agreement, which shall include a legal description of the land subject thereto.
2. The burdens and benefits of the development agreement shall be binding and will be in effect for all successors in interest to the parties to the agreement.
3. If the parties to the development agreement or their successors in interest amend or cancel the agreement as herein provided, the Director shall cause notice of such action to be recorded with the Sonoma County Recorder, at the expense of the party initiating the amendment or cancellation.

26-100-110 - Amendment and Cancellation.

- A.** Any development agreement may be amended, or cancelled in whole or in part, by the mutual consent of the parties to the agreement or their successors in interest. Any party may initiate the amendment or cancellation of a development agreement. The procedure for amending or cancelling a development agreement shall be the same as the procedure for approval of the agreement.
- B.** Trivial changes not affecting any material term or condition of the development agreement and correction of clerical errors are not an “amendment” within the meaning of this subsection and may be approved by the Director
- C.** The issuance of any land use permit or entitlement which requires a change in any vested element of the development agreement shall require an amendment to the development agreement for such change to be vested.

26-100-120 - Periodic Compliance Review and Cancellation for Non-Compliance.

- A.** The Director shall, on an annual basis and at any other time that the Director deems appropriate during the term of the agreement, review the compliance with the terms and conditions of the development agreement. The developer or their successor shall have the burden of demonstrating good faith compliance with the terms of the development agreement and shall provide such information and documents as the Director deems reasonably necessary to ascertain compliance with the development agreement. The developer shall bear the costs of the periodic review, including without limitation the costs of notice of any public hearings held in connection with the periodic review.
- B.** If the Director determines, based on substantial evidence, that the developer has complied in good faith with the terms and conditions of the development agreement during the review period, the Director shall adopt a written resolution certifying compliance with the development agreement through the applicable period of review.
- C.** If the Director determines, based on substantial evidence, that the developer has not complied in good faith with the terms and conditions of the development agreement, the Director shall set a public hearing before the Planning Commission, noticed in accordance with the procedures for noticing a public hearing to consider approval of a development agreement as outlined in Section 26-100-050 of this Article, at which the developer shall be given an opportunity to demonstrate good faith compliance with the terms of the development agreement. The developer shall bear the burden of proving compliance.

- D.** If the Planning Commission determines on the basis of substantial evidence that the developer, or their successor has complied in good faith with the terms and conditions of the development agreement during the period under review, then the Planning Commission shall adopt a resolution determining compliance with the development agreement. If the Planning Commission finds, on the basis of substantial evidence, that the developer, or developer's successor in interest, has not complied in good faith with the terms or conditions of the development agreement, then the Planning Commission shall forward its recommended determination to the Board of Supervisors.
- E.** Following receipt of a recommendation from the Planning Commission regarding compliance with the development agreement, the Board of Supervisors shall hold a public hearing, noticed pursuant to the applicable provisions of state law, to determine whether the developer has failed to comply in good faith with the terms and conditions of the development agreement and whether to modify or cancel the agreement. The hearing before the Board of Supervisors shall be "de novo". The developer shall be given an opportunity to be heard at the hearing before the Board of Supervisors, and the developer shall bear the burden of proving compliance.
- F.** If the Board of Supervisors determines on the basis of substantial evidence that the developer has complied in good faith with the terms and conditions of the development agreement during the period under review, then the Board of Supervisors shall adopt a resolution determining compliance with the development agreement through the applicable period under review. If the Board of Supervisors finds, on the basis of substantial evidence, that the developer has not complied in good faith with all terms and conditions of the development agreement, the Board of Supervisors may cancel or modify the agreement. Any such cancellation or modification shall be approved by ordinance.
- G.** At any time the Board of Supervisors, at a public hearing, may consider whether there are grounds for revocation of any Development Agreement. The applicant shall be given advance notice of the time, date and place of any hearing by the Board during which the Development Agreement will be considered. At the hearing, the applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the Agreement. If as a result of such review, the Board finds and determines, on the basis of substantial evidence, that the applicant or successor thereto has not complied in good faith with the terms or conditions of the Agreement, the Board may revoke or amend the Agreement in whole or in part.