

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MENLO PARK ADOPTING REGULATIONS ESTABLISHING  
PROCEDURES AND REQUIREMENTS FOR DEVELOPMENT  
AGREEMENTS (attached hereto as Exhibit "A")

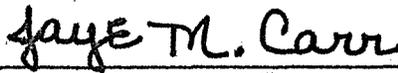
The City of Menlo Park, acting by and through its City Council, having considered the Regulations Establishing Procedures and Requirements for Consideration of Development Agreements; and the City Council having been fully advised in the matter and being satisfied that said Regulations are fair and reasonable and are in the best interests of said City, and good cause appearing therefor;

BE IT AND IT IS HEREBY RESOLVED by the City Council of the City of Menlo Park, that the public interest requires the adoption of said Regulations and therefor the above Regulations Establishing Procedures and Requirements for Consideration of Development Agreements be and the same are hereby approved; that the City Manager of said City is hereby authorized to execute said Regulations on behalf of said City.

I, JAYE M. CARR, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing Resolution was duly and regularly passed and adopted at a meeting by said Council on the 9th day of January, 1990, by the following vote:

AYES: Councilmembers: GRANT, JONES, LA FETRA,  
MORRIS, and SORENSEN  
NOES: Councilmembers: NONE.  
ABSENT: Councilmembers: NONE.  
ABSTAIN: Councilmembers: NONE.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City this 9th day of January, 1990.

  
\_\_\_\_\_  
Jaye M. Carr  
City Clerk

---EXHIBIT "A"---  
(Resol.No. 4159)

REGULATIONS ESTABLISHING  
PROCEDURES AND REQUIREMENTS FOR CONSIDERATION  
OF DEVELOPMENT AGREEMENTS

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Article 1. Applications

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

Section 102. Forms and Information.

(a) The Director of Community Development shall prescribe the form for each application, notice and documents provided for or required under these regulations.

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

Section 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.

Section 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. Director of Community Development may require an applicant to submit proof of his interest in the real property and of the authority of the agent to act for the applicant. Before processing the application, the Director of Community Development shall obtain the opinion of the City Attorney as to the sufficiency of the applicant's interest in the real property.

Section 105. Proposed form of agreement. Each applicant shall be accompanied by the form of development agreement proposed by the applicant.

Section 106. Review of application. The Director of Community Development shall endorse on the application the date it is received. He shall review the application and may reject it if it is incomplete or inaccurate for processing. If he finds that the application is complete, he shall accept it for filing. The director shall review the application and determine the additional requirements necessary to complete the agreement. After receiving the required information, he 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.

- Section 201 Duty to give notice
- Section 202 Requirements for form and time of notice
- Section 203 Failure to receive notice
- Section 204 Rules governing conduct of hearing
- Section 205 Irregularity in proceedings

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

Section 202. Requirements for form and time of notice.

(a) Form of notice. The form of notice 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 of Community Development considers necessary or desirable.

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

(1) Publication or posting. Publication at least once in a newspaper of general circulation, published and circulated in the City or if there is none, posting in at least 3 public places in the City.

(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 of Community Development may as an alternative provide notice in the manner set forth in Section 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 Section 65807 and Sections 65854, 65854.5 and 65856 as incorporated by reference). If state law prescribes a different notice requirement, notice shall be given in that manner.

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

Section 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 Section 65804 for the conduct of the 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.

Section 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 no presumption that error is prejudicial or that injury was done if error is shown.

### Article 3. Standards of Review, Findings and Decision

- Section 301      Determination by Planning Commission
- Section 302      Decision by City Council
- Section 303      Approval of development agreement

Section 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.

Section 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 of the development agreement unless it finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.

Section 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.

Section 401      Initiation of amendment or cancellation by mutual consent

Section 402      Procedure

Section 401. Initiation of amendment or cancellation.

Either party may propose an amendment to or cancellation in whole or in part by mutual consent of a development agreement previously entered into.

Section 402. Procedure. The procedure for proposing and adopting such amendment or cancellation by mutual consent is the same as the procedure for entering into a development agreement except that the City may initiate the proposed amendment or cancellation.

Article 5. Recordation.

Section 501 Recordation of development agreement, amendment or cancellation.

Section 501. Recordation of development agreement, amendment or cancellation.

(a) Within 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 Section 65868, or if the City terminates or modifies the agreement as provided in Section 65865.1 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 City Recorder.

Article 6. Periodic Review.

Section 601 Time for initiation and review  
Section 602 Notice for periodic review  
Section 603 Public hearing  
Section 604 Procedure

Section 601. Time for initiation and review. The City shall review the development agreement at least once every 12 months from the date the agreement is entered into. The time for review may be established by agreement between the parties, provided that an earlier review may be initiated by the recommendation of the Director of Community Development or majority vote of the Planning Commission or City Council.

Section 602. Notice of Periodic Review. The Director of Community Development 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. He shall give the notice to the property owner at least 30 days in advance of the time at which the matter will be considered by the Planning Commission.

Section 603. Public Hearing. The Planning Commission 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.

Section 604. Procedure.

(a) The Planning Commission shall find and 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 the agreement.

(b) The decision of the Planning Commission may be appealed to the City Council in accordance with the City's rules regarding review of Planning Commission decisions.

(c) If the City 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 may modify or terminate the agreement in accordance with Article 7.

Article 7. Modification or Termination.

Section 701 Proceedings upon modification or termination

Section 702 Hearing on modification or termination

Section 701. Proceedings upon modification or termination. If, upon a proper finding under Article 6, the City determines to proceed with modification or termination of the agreement, the City Council shall conduct a hearing to consider such modification or termination after having given notice to the property owner at least 15 days before such hearing. Notice to the property shall contain:

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

Section 702. Hearing on Modification or termination. At the time and place set for the 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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