

## SECTION 28 – DEVELOPMENT AGREEMENTS

- 28.1. Citation and authority.
- 28.2. Purpose.
- 28.3. Applicability.
- 28.4. Forms, information and fees.
- 28.5. Review of application.
- 28.6. Notice of public hearing.
- 28.7. Review by planning commission.
- 28.8. Decision by city council.
- 28.9. Approval of development agreement.
- 28.10. Amendment or cancellation.
- 28.11. Recordation.
- 28.12. Periodic review.
- 28.13. Modification or termination.

28.1 CITATION AND AUTHORITY. This section is adopted in accordance with Government Code Title 7, Division 1, Chapter 4, Article 2.5, Section 65864 et seq. and may be cited as the Development Agreement Ordinance of the City of Belmont.

28.2 PURPOSE. The purpose of this Section is to strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development by providing an option to both the city and developers to enter into development agreements.

28.3 APPLICABILITY. The procedures and requirements set forth in this Section shall apply to all development agreements proposed by developers and entered into by the city council.

28.4 Forms, information and fees.

- (a) A person having a legal or equitable interest in real property may apply for a development agreement. The community development director shall prescribe the application form for development agreements.
- (b) The city may require an applicant to submit such information and supporting data as the community development director considers necessary to process the application.
- (c) Each application shall be accompanied by the development agreement proposed by the applicant.
- (d) The applicant shall reimburse the city for all its reasonable and actual costs, fees, and expenses, including legal counsel and special counsel fees, for preparation and review of an application for a development agreement. The city council may by resolution fix the schedule of fees and charges imposed for the filing and processing of each development agreement application and for the annual review.

28.5 REVIEW OF APPLICATION. The community development director shall review the application and determine any additional information necessary to process the application. After the required information is received, a staff report and recommendation shall be prepared and shall state whether or not the agreement, as proposed or in an amended form, would be consistent with the general plan and any applicable specific plan and shall describe the public benefits provided by the proposed agreement.

28.6 NOTICE OF PUBLIC HEARING.

- (a) The timing and manner of giving notice of public hearings on the development agreement shall be as prescribed in Government Code Section 65867.
- (b) The notice to consider adoption of 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 community development director considers necessary or desirable.

28.7 REVIEW BY PLANNING COMMISSION.

- (a) The planning commission shall hold a public hearing on the development agreement and shall make a written recommendation to the city council.
- (b) The planning commission's recommendation shall include a determination whether or not the proposed development agreement:
  - (1) Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
  - (2) Is consistent with the zoning and other land use regulations applicable to the property.

28.8 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.
- (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 and are consistent with the zoning and other land use regulations applicable to the property.

28.9 APPROVAL OF DEVELOPMENT AGREEMENT. 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.

28.10 AMENDMENT OR CANCELLATION.

- (a) The parties may mutually agree to amend or cancel in whole or in part the development agreement previously entered into.
- (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.

#### 28.11 RECORDATION.

- (a) Within ten 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 amend or cancel the agreement as provided in Section 28.10 or modify or terminate the agreement as prescribed in Section 28.13 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.

#### 28.12 PERIODIC REVIEW.

- (a) The city shall review the development agreement every twelve months from the date the agreement is entered into. It is the developer's responsibility to apply in a timely fashion for the annual review. The date for the annual review may be modified either by agreement between the parties or at the city's initiation, upon recommendation of the community development director, and by an affirmative vote of a majority of the planning commission.
- (b) The community development director shall give notice to the property owner that the city intends to undertake the review of the development agreement. He shall give the notice at least ten days in advance of the time at which the matter will be considered by the planning commission.
- (c) The planning commission shall conduct a public hearing to determine whether the property owner is in good faith compliance with the terms of the agreement. The burden of proof, by substantial evidence, of good faith compliance shall be upon the property owner.
- (d) The planning commission shall determine based on 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.
- (e) If the planning commission determines based on 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.
- (f) If the planning commission determines based on 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 planning commission shall forward its recommendation to the city council, and the city council may modify or terminate the agreement.

#### 28.13 MODIFICATION OR TERMINATION.

- (a) If the city council determines based on substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement, the review for that period is concluded.
- (b) If the city council determines, based upon 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 terminate or modify the agreement as provided in this subsection.

- (1) Before modifying or terminating the agreement, the city shall give notice to the property owner containing:
  - (A) The time and place of the hearing;
  - (B) A statement as to whether the city proposes to terminate or to modify the development agreement; and,
  - (C) Other information which the city considers necessary to inform the property owner of the nature of the proceedings.
- (2) At the time and place set for the hearing on modification or termination, the property owner shall be given an opportunity to be heard.
- (3) The city council may refer the matter back to the planning commission for further proceedings or for report and recommendation.
- (4) The city council may impose those conditions to the action it takes as it considers necessary to protect the public health, safety, or welfare.
- (5) The decision of the city council is final.