

CHAPTER FIVE: PLANNING, ZONING, USE, AND DEVELOPMENT OF LAND AND IMPROVEMENTS

Subchapter 5.18: Procedures and Requirements for Consideration of Development Agreements

5.18.010 Application For Development Agreement

(a) *Application.* Any qualified applicant may file an application to enter into a development agreement by submitting a complete application to the Planning Department on the form prescribed by the Planning Department for this purpose, accompanied by the additional contents set forth in Section (b) below, and the application fee deposit set forth in the Town's Master Fee Schedule. A qualified applicant is a person who has a legal or equitable interest in the real property that is to be subject to the development agreement, or an authorized agent of such person. The City Planner may require an applicant to submit proof satisfactory to the City Attorney of the applicant's interest in the real property and of the authority of any agent to act for the applicant.

(b) *Additional Contents.* An application for a development agreement shall be accompanied by the following information and documents:

- (1) A schematic plan of the subject property showing the size and location of all structures;
- (2) Documents, maps or diagrams showing each proposed land use, including but not limited to, parks, parkways, playgrounds, school sites and public or quasi-public buildings, the topography of the land and contour intervals, and existing natural features of the land, including trees, creeks, and wetlands;
- (3) Proposed street layout and lot design, off-street parking, circulation, and any special engineering features or traffic regulation devices needed for public safety;
- (4) A calculation of density;
- (5) Preliminary elevations or perspective drawings of all proposed structures sufficient to indicate with reasonable clarity the height and general appearance of the proposed structures;
- (6) A preliminary study of public facilities such as drainage, sewerage and utilities; and
- (7) Any additional information and supporting data the Planning Department or City Engineer considers necessary to process the application.

(c) *Proposed Form of Development Agreement.* The application shall include a proposed development agreement, using the Town's then standard form development agreement along with any specific proposals for changes in or additions to the language of the standard form, or a form development agreement prepared by the applicant containing the provisions

substantially similar to the Town's then standard form development agreement. The proposed development agreement shall include:

- (1) the proposed parties to the development agreement;
- (2) the nature of the applicant's legal or equitable interest in the real property;
- (3) a description of the development project sufficient to permit the development agreement to be reviewed under the applicable criteria of this subchapter;
- (4) an identification of the approvals and permits for the development project that have been issued as of the date of the application, or are contemplated by the development agreement;
- (5) the proposed duration of the development agreement;
- (6) proposed provisions providing security for the performance of the developer's obligations under the development agreement; and
- (7) any other relevant provisions which may be deemed necessary by the City Planner, City Engineer, or City Attorney.

(d) *Application Processing Fees.* The applicant shall pay deposits and fees for the processing of an application to enter into a development agreement in accordance with the provisions of subchapter 5.14 of the Colma Municipal Code and the Town's Master Fee Schedule. The fees charged by the Town for the filing and processing of development agreement applications shall not exceed the actual cost to the Town of performing these activities.

(e) *Additional Parties to Development Agreement.* In addition to the Town of Colma and developer, any federal, state or local government agency may be included as a party to any development agreement. Any such additional party shall be made a party to the development agreement pursuant to the provisions of the Joint Exercise of Powers Act, Government Code Section 6500 *et. seq.*

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]

5.18.020 Review

(a) *Review of Application and CEQA.* The Planning Department shall review the application and either accept it for filing if it is complete, or reject it if it is incomplete or inaccurate. If the Department rejects an application as incomplete, it shall inform the applicant of the additional requirements necessary to complete the application. After receiving a complete application, the City Planner shall prepare a staff report for consideration by the City Council that includes a recommendation on the application and states whether or not the development agreement proposed by the application, or in an amended form, would be consistent with the General Plan and any applicable specific plan. Unless the development project is categorically exempt, the Planning Department shall also, at the applicant's expense and in compliance with the state and

local procedures for implementation of CEQA, undertake environmental review. The City Planner's staff report and recommendation shall include the CEQA determination.

(b) *Negotiations.* The City Attorney or designee shall represent the Town in all negotiations of the terms of the proposed development agreement.

(c) *Entrance into Development Agreement Discretionary.* The making of a development agreement is entirely discretionary on the part of the Town of Colma. Submission of an application for a development agreement shall not guarantee approval of that application, and nothing contained in this subchapter shall indicate or be construed as obligating the Town of Colma to enter into any development agreement nor as indicating an intention on the part of the Town to do so.

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]

5.18.030 Development Agreement Required For General Plan Amendment

(a) An amendment to the General Plan for property not owned by the Town of Colma shall not be processed unless the applicant concurrently files an application for a development agreement pursuant to this subchapter, as well as applications for any other necessary and related entitlements.

(b) An amendment to the General Plan for property not owned by the Town of Colma shall be processed pursuant to procedures and requirements approved and adopted by the City Council. The amendment shall not be approved unless a development agreement is first approved by the City Council, with the City Council's approval of the development agreement contingent on the City Council's approval of the amendment.

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]

5.18.040 Contents of Development Agreement

(a) *Required Contents.* A development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement shall contain provisions satisfactory to the City Attorney providing security for performance of the developer's obligations, indemnification of the Town by the developer, and insurance;

(b) *Discretionary Contents.* The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time, and any other terms that the Town deems necessary; 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 set forth in

the agreement; and a requirement that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time.

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]

5.18.050 Term

A development agreement shall be limited in its term to a maximum of 15 years from the effective date. The agreement may include an option to extend, in the Town's discretion.

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]

5.18.060 Public Hearing on Development Agreement

(a) The Town shall give notice of the Town's intention to consider adoption of a development agreement and of any other public hearing required by law or this subchapter in accordance with Section 1.02.230 of this Code.

(b) The failure of any person to receive notice required by law or these regulations does not affect the authority of the Town to enter into a development agreement, or the validity and force and effect of any development agreement entered into pursuant to this subchapter.

(c) The City Council shall hold a public hearing to consider whether to approve or deny all development agreement applications. At the hearing, the Council shall consider the application, the presentations made by the applicant, any written or oral testimony of the public, the staff report, and any other relevant evidence.

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]

5.18.070 Findings for Approval of a Development Agreement

(a) *Findings.* To approve a development agreement, the City Council must find, in writing, that 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 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 not be detrimental to the public health, safety and general welfare; and

(5) will not adversely affect the orderly development of property or the preservation of property values.

(b) *Housing Needs.* The decision must also contain a finding that the City Council has considered the effect of the development agreement on the housing needs of the region in which the Town is situated and has balanced these needs against the public service needs of its residents and available fiscal and environmental resources.

(c) *Subdivision.* The City Council shall not approve a development agreement that includes a subdivision, as defined in Government Code Section 66473.7, unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of that Section.

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]

5.18.080 Approval Form, Withdrawal and Effective Date

(a) *Form of Approval or Amendment; Effective Date.* A development agreement may only be approved or amended by ordinance. The ordinance shall authorize the Mayor or City Manager to sign the agreement on behalf of the Town, and the agreement shall become effective 30 calendar days following the Council's adoption of the ordinance, unless a referendum is filed in compliance with state law within the that time.

(b) *Applicant's Failure to Sign Within 30 Days; Withdrawal of Application.* If the applicant has not signed and returned the approved development agreement or amendment to the City Clerk for execution by the Mayor or City Manager within 30 calendar days of the Council's approval of the agreement or amendment, the application shall be deemed withdrawn by the applicant.

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]

5.18.090 Recordation; Successors

(a) The City Clerk shall cause the development agreement, or an amended development agreement to be recorded with the County Recorder promptly after the City Council enters into the agreement. From and after the time of such recordation, the agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this state. If the agreement is terminated for any reason, the City Clerk shall have notice of such action recorded with the County Recorder promptly after the effective date of such action.

(b) The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]

5.18.100 Regulations and Policies Applicable to the Development Project

(a) Unless otherwise provided by the development agreement, the rules, regulations, and official policies applicable to the development of the property that is subject to the development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent the Town, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth in the development agreement, nor shall a development agreement prevent the Town from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]

5.18.110 Enforcement of Development Agreement.

Unless amended, canceled or suspended pursuant to this subchapter or state law, a development agreement shall be enforceable by any party thereto notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the Town, which alters or amends the rules, regulations, or policies specified in the development agreement.

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]

5.18.120 Periodic Review of Development Agreement.

(a) *Time for Review.* The City Planner shall review all development agreements at least every 12 months, or more frequently if the agreement provides, in order to determine whether the developer or successor-in-interest thereto has complied in good faith with its terms. A development agreement may prescribe a procedure for review other than that set forth in this Section in the discretion of the City Planner or City Council.

(b) *Finding of Compliance.* If the City Planner finds the developer has complied in good faith with the terms of the development agreement, the City Planner shall issue a certificate of compliance, which may be recorded by the developer. After expiration of the appeal period hereinafter specified, the review for the applicable period shall be final.

(c) *Finding of Non-compliance.* If the City Planner, on the basis of substantial evidence, finds the developer has not complied in good faith with the terms of the development agreement, the City Planner shall specify in writing to the developer the respects in which the developer has failed to comply, and a reasonable time period for the developer to meet the terms of compliance. If the developer does not take the actions required by the City Planner to achieve compliance within the prescribed time limits, the City Planner may recommend that the City Council modify or terminate the agreement as set forth below.

(d) *Appeal.* Any interested person may request appeal the City Planner's finding of non-compliance or the City Planner's decision to issue a certificate of compliance, in accordance with Section 1.02.270 of this Code.

(e) *Referral to City Council.* The City Planner may refer any review to be conducted by the Planner hereunder to the City Council. Such referral shall include a staff report describing the City Planner's preliminary findings. Upon such referral, the City Council shall conduct a noticed public hearing to determine the good faith compliance by the developer with the terms of the development agreement, and shall direct the issuance of a certificate of compliance upon a finding of good faith compliance, or make a determination of non-compliance on the basis of substantial evidence. Any such decision by the City Council shall be subject to reconsideration, as set forth in section 1.02.260 of this Code.

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]

5.18.130 Cancellation or Modification of Development Agreement.

(a) *Change in Law or Regulations.* If, at any time after a development agreement has been entered into, there is a change in state or federal laws or regulations that prevents or precludes compliance with one or more provisions of the development agreement, such provisions of the agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

(b) *By Mutual Consent.* Any development agreement may be cancelled or modified by mutual consent of the parties. Any proposal to cancel or modify a development agreement shall be heard and determined in accordance with the same procedures specified in this subchapter for approval of a development agreement.

(c) By the Town.

(1) If, at any time during the term of a development agreement, the City Planner or City Council finds, on the basis of substantial evidence, that the developer is not in compliance with the terms and conditions of the agreement and such non-compliance has not been cured despite notice by the City Planner to the developer of the manner in which the developer is out of compliance with the agreement and the required corrective measures, the City Planner shall request that the City Council conduct a public hearing at which the developer must demonstrate a good faith compliance with the terms of the development agreement.

(2) The City Council shall conduct a noticed hearing on the recommendations of the City Planner at which the developer and any other interested person shall be entitled to submit such evidence and testimony as may be relevant to the issue of the developer's good faith compliance. The burden of proof shall be on the developer. If the City Council finds, based on substantial evidence, that the developer is not in compliance with the development agreement, it may either cancel the development agreement upon giving sixty (60) days' notice to the developer, or allow the development agreement to be continued by imposition of new terms and conditions intended to remedy such non-

compliance. The City Council may impose such amended or additional conditions as it deems necessary to protect the interests of the Town. The decision of the City Council shall be final.

(d) *Effect of Cancellation or Termination.* In the event that a development agreement should be cancelled or otherwise terminated, all rights of the developer, property owner or successors in interest under the development agreement shall terminate unless otherwise provided in writing. Any and all benefits, including money or land, received by the Town pursuant to the development agreement shall be retained by the Town. The termination of a development agreement shall not, however, prevent the developer from completing a building or other improvements authorized pursuant to a valid building permit issued prior to the time of termination, but the Town may take any action permitted by law to prevent, stop, or correct any violation of law occurring during and after construction, and the developer or any tenant shall not occupy any portion of the project or any building not authorized by a previously issued building permit.

[History: Adopted by ORD 730, 11/13/13]

[Ref: Gov. Code §§ 65865; 66006.]