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RESOLUTION NO. 120 (1990)

ESTABLISHING PROCEDURES AND REQUIREMENTS
FOR THE CONSIDERATION OF
DEVELOPMENT AGREEMENTS

RESOLVED by the Council of the City of San Mateo, California.

WHEREAS, the State Legislature has found and declared that:

"(a) The lack of certainty in the approval of developmental projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development.

(c) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed over time for financing public facilities." (Government Code Section 65864); and

WHEREAS, the Legislature therefore adopted Government Code sections 65864 through 65869.5 authorizing cities to enter into development agreements; and

WHEREAS, Government Code Section 65865(c) requires that cities shall, if requested by an applicant, establish procedures and requirements for consideration of development agreements; and

WHEREAS, the City of San Mateo has received a request to establish such procedures and requirements.

NOW THEREFORE, IT IS DETERMINED and ORDERED as follows:

Section 1. Authorization for adoption. These procedures are adopted under the authority of Government Code sections 65864 - 65869.5.

Section 2. Authorization.

(a) The City may enter into a development agreement with a person having a legal or equitable interest in real property within the City for the development of the property as provided in this resolution.

(b) The City may enter into a development agreement with a person having a legal or equitable interest in real property in unincorporated territory within the City's sphere of influence for the development of the property as provided in this resolution. However, the agreement shall not become operative unless annexation proceedings annexing the property to the City are completed within the period of time specified by the agreement.

If the annexation is not completed within the time specified in the agreement or any extension of the agreement, the agreement is null and void.

Section 3. Application. Application for a development agreement shall be made to the Department of Community Development. An application for a development agreement may not be filed prior to an application for a development project on the same property. The application shall be accompanied by the fee prescribed by the City fee schedule, established pursuant to the San Mateo Municipal Code, and shall be accompanied by the form of development agreement proposed by the applicant. When the application is determined to be complete, the Director of Community Development or designee shall, at the applicant's expense, review the application and transmit it, together with staff recommendations, to the Planning Commission.

Section 4. Contents. A development agreement shall specify the land subject to the agreement, 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 may include 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. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time.

The agreement may also include terms and conditions relating to applicant financing of necessary public facilities in conjunction with the phasing of the development project.

Section 5. Rules, regulations and official policies. Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a 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 City, 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 City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

Section 6. Public hearing and notice of intention to consider adoption. A public hearing on an application for a development agreement shall be held by the Planning Commission and by the City Council. Notice of intention to consider adoption of a development agreement shall be given as provided in California Government Code sections 65090 and 65091, and San Mateo Municipal Code section 27.06.050, in addition to any other notice required by law for other actions to be considered concurrently with the development agreement.

Section 7. Legislative act. A development agreement is a legislative act which shall be approved by ordinance and is subject to referendum. This resolution only establishes procedures for consideration of development agreements; the City Council retains discretion to approve or disapprove any proposed development agreement. A development agreement shall not be approved unless the City Council finds that the provisions of the agreement:

- (a) are consistent with the City's General Plan and any applicable specific plan,
- (b) are compatible with the requirements of the Zoning Ordinance, and
- (c) provide substantial public benefits to persons residing or owning property outside the boundaries of the development project, beyond the exactions for public benefits required in the normal development review process under federal, state or local law.

Section 8. Amendment or termination.

(a) Periodic review. The Planning Commission shall review the development agreement at least every 12 months, at which time the applicant or successor in interest thereto,

shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the Planning Commission determines that, on the basis of substantial evidence, the agreement has been complied with in good faith, such decision shall be subject to appeal in accordance with procedures set forth in San Mateo Municipal Code Section 27.08.090. If, as a result of such periodic review, the Planning Commission determines that, on the basis of substantial evidence, the agreement has not been complied with in good faith, or that the failure of the City to terminate or modify the provisions of the development agreement would place the residents of the territory subject to the development agreement, or the residents of the City, or both, in a condition dangerous to their health or safety, or both, the City Council shall hold a public hearing to consider terminating or modifying the agreement. Notice of such hearing shall be given as set forth in Section 6 of this resolution. If the City Council determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with the terms or conditions of the agreement, or that the failure of the City to terminate or modify the provisions of the development agreement would place the residents of the territory subject to the development agreement, or the residents of the City, or both, in a condition dangerous to their health or safety, or both, the Council may terminate or modify the agreement.

(b) Mutual consent. A development agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. Notice of a public hearing regarding an intention to amend or cancel any portion of the agreement shall be given and held in the manner provided in Section 6 of this resolution. An amendment to a development agreement shall be subject to the provisions of Section 7 of this resolution.

(c) State or federal laws and regulations. In the event that state or federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude 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 and regulations.

Section 9. Enforcement. Unless amended or canceled pursuant to Section 8 herein, 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 City, which alters or amends the rules, regulations, or policies specified in Section 5 herein.

Section 10. Execution and Recordation.

- (a) No development shall be executed by the Mayor until it has been executed by the applicant. If the applicant has not executed the agreement, as approved by the City Council, within thirty days of the City Council approval, the application for development agreement shall be deemed withdrawn, and a Mayor shall not execute the agreement.
- (b) No later than 10 days after the City enters into a development agreement, the City shall record with the County Recorder a copy of the agreement, which shall describe the land subject thereto. 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. 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.

Section 11. Environmental Finding. The Council finds that the adoption of this resolution is not a project for the purposes of the California Environmental Quality Act, and therefore, no environmental impact assessment is necessary.


Section 12. Effective Date. This resolution shall become effective sixty days after its adoption, together with its companion resolution adopting a fee for the processing of development agreements.

Dated: October 15, 1990



Mayor

ATTEST:



City Clerk

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Resolution adopted by the City Council of
the City of San Mateo, California, at a
regular meeting held on October 15, 1990,
by the following vote of the Council
members:

AYES: Council Members POWELL, MACK,
RHOADS, BAKER and GUMBINGER

NOES: NONE

ABSENT: NONE