

Draft Development Agreement Procedures

Section 1. Authorization for adoption.

These procedures are adopted under the authority of Government Code Sections 65864 - 65869.5.

Section 2. Authorization.

- (a) The Town may enter into a development agreement with a person having a legal or equitable interest in real property within the Town for the development of the property as provided in these Procedures.
- (b) The Town may enter into a development agreement with a person having a legal or equitable interest in real property in unincorporated territory within the Town's sphere of influence for the development of the property as provided in these Procedures. However, the agreement shall not become operative unless annexation proceedings annexing the property to the Town 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 Community Development Department. 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 Town fee schedule, established pursuant to the Los Gatos Town Code, and shall be accompanied by the form of development agreement proposed by the applicant. When the application is determined to be complete, the Community Development Director 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:

- (a) The land subject to the agreement;
- (b) The duration of the agreement;
- (c) The permitted uses of the property;
- (d) The density and intensity of use;
- (e) The maximum height and size of proposed buildings; and
- (f) 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 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.

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 Town 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 Los Gatos Town Code Sections 29.20.560 and following, 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 Town Council retains discretion to approve or disapprove any proposed development agreement. A development agreement shall not be approved unless the Town Council finds that the provisions of the agreement:

- (a) Are consistent with the Town'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, at the applicant's expense, 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 Los Gatos Town Code Section 29.20.275 and following. 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 Town 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 Town, or both, in a condition dangerous to their health or safety, or both, the Town 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 these Procedures. If the Town 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 Town 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 Town, or both, in a condition dangerous to their health or safety, or both, the Town 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 these Procedures. An amendment to a development agreement shall be subject to the provisions of Section 7 of these Procedures.
- (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 terminated pursuant to Section 8 herein, a development agreement shall be enforceable by any party thereto, notwithstanding any change in any applicable General Plan or Specific Plan, Zoning, subdivision, or building regulation adopted by the Town, which alters or amends the rules, regulations, or policies specified in Section 5 herein.

Section 10. Execution and Recordation.

- (a) No development agreement shall be executed by the Mayor until it has been executed by the applicant. If the applicant has not executed the development agreement, as approved by the Town Council, within 30 days of the Town Council approval, the application for the development agreement shall be deemed withdrawn, and the Mayor shall not execute the development agreement.
- (b) No later than 10 days after the Town enters into a development agreement, the Town shall record with the County Recorder a copy of the development agreement, which shall describe the land subject thereto. From and after the time of such recordation, the development agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this State. The burdens of the development agreement shall be binding upon, and the benefits of the development agreement shall inure to, all successors in interest to the parties to the development agreement.