

City of Piedmont
CITY COUNCIL REPORT

Date: April 18, 2005

From: Ann Swift, City Clerk

Subject: 2nd Reading of Ord. 655 N.S. Adding Chapter 17E to the Piedmont
Municipal Code

RECOMMENDATION

By motion, approve a second and final reading of Ord. 655 N.S. which will add Chapter 17E to the Municipal Code to require development agreements.

BACKGROUND

On April 4, you approved without amendment a first reading of Ordinance 655 N.S. to require development agreements for large project. Since the first reading the ordinance has been posted in accordance with the municipal code and no objections have been filed with the city clerk's office.

A second and final reading is required for adoption.

ORDINANCE NO. 655 N.S.

AN ORDINANCE OF THE CITY OF PIEDMONT
ADDING NEW CHAPTER 17E TO THE PIEDMONT MUNICIPAL CODE
REGARDING DEVELOPMENT AGREEMENTS

The City of Piedmont does hereby ordain:

SECTION 1.

The intent of the City Council in enacting this Ordinance is to create a new chapter of the municipal code requiring development agreements consistent with state law.

SECTION 2.

Chapter 17E is hereby added as follows:

**“Chapter 17E
DEVELOPMENT AGREEMENTS**

§17E.1	Purpose and scope.
§17E.2	Application.
§17E.3	Contents of development agreements.
§17E.4	Initial review.
§17E.5	Consideration and decision.
§17E.6	Amendment and cancellation.
§17E.7	Annual review.
§17E.8	Effect of development agreement.

SEC. 17E.1 PURPOSE AND SCOPE

The purpose of this chapter is to implement the development agreement provisions of the state planning and zoning law. All development agreements shall be processed in accordance with this chapter.

A development agreement provides assurance to a developer that he or she may proceed with a project in accordance with existing policies, rules and regulations and subject to certain conditions of approval. Such assurance will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce economic costs of development. Also, by requiring some public benefit, this process assures some additional benefit to the public in exchange for the vested rights granted under a development agreement. [Government Code Sections 65864-65869.5]. Bracketed references throughout this Chapter are to the California Government Code.

SEC. 17E.2 APPLICATION

17E.2.1 Filing by Owner. An application for a development agreement may only be filed by a person having a legal or equitable interest in real property.

17E.2.2 Form of Application. An application for a development agreement shall be on a form approved by the Director of Public Works

17E.2.3 Application Fees. The applicant shall pay fees for the filing and processing of an application as established by resolution of the City Council. [G.C. 65865 and 66006].

SEC. 17E.3 CONTENTS OF DEVELOPMENT AGREEMENTS.

17E.3.1 Required Provisions. A development agreement shall include the following:

- a. The duration of the agreement;
- b. The permitted uses of the property;
- c. The density or intensity of the use;
- d. The maximum height and size of the proposed buildings;
- e. Provisions for the dedication of land for public purposes;
- f. The public benefit offered by the applicant as consideration for entering into the agreement;
- g. The provisions set forth in 17E.8.1

17E3.2 Optional Provisions. A development agreement may include the following:

- a. Conditions, terms, restrictions, and requirements for subsequent discretionary actions; provided, that such conditions, terms, restrictions and requirements shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement;
- b. Provisions providing that construction shall begin within a specified time and that the project or any phase be completed with a specified time;

- c. Terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time;
- d. Provisions requiring compliance with specific plans previously approved through Design Review.

17E3.3 Provisions Not Allowed. A development agreement shall not include the following:

- a. Requirements for the city to provide public facilities, improvements or services;
- b. Requirements for the city to exercise its legislative or quasi-judicial powers in a particular way;
- c. Waivers or modifications of any city fees or requirements. [G.C. 65865.2].

SEC. 17E.4 INITIAL REVIEW.

The Director of Public Works shall determine whether the application is complete and shall schedule a public hearing by the City Council. At the hearing, the Council shall determine whether it wishes to enter into such an agreement and, if so, the general subject areas the staff is authorized to negotiate. Notice of the hearing shall be given as provided in Government Code Sections 65090 and 65091.

SEC. 17E.5 CONSIDERATION AND DECISION.

The Director of Public Works shall direct the negotiations with the developer regarding terms of the development agreement. The Director of Public Works shall determine what environmental review is appropriate under the California Environmental Quality Act (CEQA). Once negotiations are completed, the Director of Public Works shall schedule the proposed development agreement for the required hearings under this section.

17E.5.1 Planning Commission Hearing and Recommendation. The Planning Commission shall hold a public hearing to consider whether the development agreement should be approved. Notice of the hearing shall be given as provided under Government Code Sections 65090 and 65091. The Commission may recommend to the City Council approval, approval subject to conditions, or denial of the application.

17E.5.2 City Council Determination. The City Council shall hold a public hearing to consider whether the development agreement should be approved. Notice of the hearing shall be given as provided under Government Code Sections 65090 and 65091. Approval, authorizing the City Administrator to sign the development agreement, shall be by City Council resolution.

17E.5.3 Findings. The Planning Commission may recommend approval and the City Council may approve the development agreement only after finding that the development is consistent with the general plan, applicable city codes and policies and this chapter.

17E.5.4 Recordation. Within 10 days after the city enters into a development agreement, the City Clerk shall record a copy of the agreement with the county recorder.

SEC. 17E.6 AMENDMENT AND CANCELLATION.

A development agreement may be amended or cancelled using the same procedure for entering into the agreement under 17E.4 and 17E.5. [G.C. 65868].

SEC. 17E.7 ANNUAL REVIEW.

The Planning Commission shall hold a public hearing to review each development agreement at least every 12 months from the date it is entered into, and shall forward their recommendations to the City Council. Additionally, the Planning Commission or City Council, or both, may hold public hearings to conduct more frequent reviews of a development agreement. The City Council may impose a reasonable fee to cover the costs of this review.

17E.7.1 Notice. The Director of Public Works shall give notice of the intention to conduct a review under this section as provided in Government Code Sections 65090 and 65091. In addition, at least 10 days before the hearing, the Director of Public Works shall give notice to all persons having a legal or equitable interest in the real property subject to the agreement. The notice shall include the following:

- a. A statement that the applicant, or the successor-in-interest to the agreement, has the burden of demonstrating good faith compliance with the terms of the agreement; and
- b. A statement that if, as a result of such review, the Planning Commission or City Council finds on the basis of substantial evidence that the applicant or successor to the agreement has not complied in good faith with the terms and conditions of the agreement, the City may modify or terminate the agreement.

17E.7.2 Determination. If the Planning Commission finds, on the basis of substantial evidence, that the applicant or successor-in-interest has not complied in good faith with the terms or conditions of the agreement, it may recommend modification or termination to the City Council. Based on substantial evidence that the applicant or

successor has not complied in good faith with the terms or conditions of the agreement, the City Council may modify or terminate the agreement. [G.C. 65866].

SEC. 17E.8 EFFECT OF DEVELOPMENT AGREEMENT.

The development of the property shall be governed by those rules, regulations and official policies in effect at the time of execution of the agreement, regarding permitted uses of the land, density, design, improvement and construction standards and specifications, except as otherwise provided by the development agreement or as provided in subsection 17E.8.1 below:

17E.8.1 Limitations. Notwithstanding the vested rights set forth above, the property owner shall:

- a. Pay the processing and development impact fees in effect at the time those fees are paid;
- b. Comply with building code requirements in effect on a city-wide basis at the time of construction;
- c. Comply with construction and technical design standards or specifications for public improvements which are applicable city-wide;
- d. Comply with changes in city laws, regulations, plans or policies applicable city-wide, the terms of which are found by the City Council, based on substantial evidence, to be necessary to protect members of the public from a condition dangerous to their health or safety;
- e. Comply with a change in City law, regulations, plans or policies which is:
 - (1) Specifically mandated by state or federal law, or by any regional governmental agency that has legal authority over the City under state law or a joint powers agreement; or
 - (2) A result of or in response to state or federal law, or regional agency action, made necessary in order for the City to avoid losing or not receiving substantial funding or other substantial public benefits or facilities that would be available to the City only if it makes such a change; or
 - (3) Specifically mandated by, or necessary for compliance with or implementation of, the terms of any permit, entitlement or other authorization necessary for the development of the property issued or granted to the City, county and/or property owners by any federal, state or regional agency; and

- f. Following any subsequent environmental review, comply with required mitigation measures.

17E.8.2 City's Rights. A development agreement does not prevent the City in subsequent actions applicable to the property from:

- a. Applying new rules, regulations and policies which do not conflict with those set forth in the development agreement; or
- b. From denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies. [G.C. 65866].”

SECTION 3.

This ordinance shall be posted at City Hall after its second reading by the City Council for at least thirty (30) days and shall become effective thirty (30) days after the second reading.