

**2014 UPDATED
YOLO COUNTY CODE**

Title 8 LAND DEVELOPMENT

CHAPTER 5: DEVELOPMENT AGREEMENTS

Article 1: Applications

Sec. 8-5.101 Purpose and findings

- (a) The purpose of this Chapter is to establish the procedures and requirements mandated by Article 2.5 of Chapter 4 of the Government Code for the consideration of development agreements.
- (b) Notwithstanding anything herein to the contrary, the Planning Commission shall not consider the adoption of, nor shall the Board of Supervisors approve, any development agreement if the project to which the development agreement pertains is located within a sphere of influence established or under consideration by the Local Agency Formation Commission at the time the development agreement is to be considered by the Planning Commission pursuant to Section 8-5.201 et seq.
- (c) The County takes notice that the Legislature, in passing the State Development Agreement Law, found and declared that:
 - (1) The lack of certainty in the approval of development 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.
 - (2) 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.
 - (3) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, 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.

Sec. 8-5.102 Forms and information

- (a) The Planning Director shall prescribe the form for each application, notice and document provided for or required under these regulations for the preparation, review and implementation of development agreements.

- (b) The Planning Director may require an applicant to submit such information and supporting data as the Planning Director considers necessary to process the application.

Sec. 8-5.103 Qualification as an applicant

Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person who has legal or equitable interest in the real property which is the subject of the development agreement. Applicant includes authorized agent. The Planning Director shall require an applicant to submit proof of this interest in the real property and of the authority of the agent to act for the applicant. Such proof may include a preliminary title report issued by a title company licensed to do business in the State evidencing the requisite interest of the applicant in the real property. Before processing the application, the Planning Director may obtain the opinion of County Counsel as to the sufficiency of the applicant's interest in the real property to enter into the development agreement.

Sec. 8-5.104 Eligibility for Development Agreement

- (a) Development proposals which are eligible for consideration for such an agreement shall be limited to projects in which the developer makes a significant contribution to infrastructure, open space, affordable housing, or other public improvements and amenities of benefit to the County that would not otherwise be obtained through other applicable development approval processes.
- (b) An application for a development agreement shall be considered only under the following circumstances:
 - (1) The application is submitted in conjunction with an application for rezoning, a specific plan, subdivision map, a Use Permit, or other discretionary land use entitlement authorizing the development which is the subject of the proposed development agreement; or
 - (2) The application pertains to an area governed by a specific plan previously adopted by the County.

Sec. 8-5.105 Filing of application

- (a) The application for a development agreement shall be submitted together with the applications needed for other required entitlements of the project. The application must be filed in time for the request to be considered in the environmental analysis of the project. In no event shall the application be filed later than the release of the final environmental document in order to allow staff time to analyze the merits of entering into such an agreement, prior to preparation of the staff report and staff recommendation.
- (b) An application for a development agreement may be submitted on any eligible project that has not received a final approval as of the date the ordinance codified in this chapter becomes effective provided that such application for such project has been deemed complete by the Planning Director prior to such date.
- (c) Each application shall be accompanied by the form of development agreement proposed by the applicant, if the Community Development Director has approved a standard form

of development agreement, this requirement shall be met by utilizing such standard form and including specific proposals for changes in or additions to the language or the standard form.

Sec. 8-5.106 Review of application

The Planning Director shall endorse on the application the date of receipt, shall review the application, and may reject it if incomplete or inaccurate. If the application is complete, the Planning Director shall accept it for filing. The Planning Director shall determine any additional requirements necessary to complete the development agreement on the basis of the application as filed. After receiving all required information, the Planning Director shall prepare a report and recommendation as to whether or not the development agreement as proposed, or in amended form, is consistent with the general plan, any applicable specific plan, and the provisions of these regulations.

Article 2: Requirements

Sec. 8-5.201 Contents

A proposed development agreement shall include the following:

- (a) A legal description of the property subject to the development agreement.
- (b) The duration of the development 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.
- (c) Conditions, terms, restrictions, and requirements for subsequent County 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 development agreement.
- (d) The estimated time when construction and/or any other approved activity on the property will be commenced and completed, including, if appropriate, a phasing plan.
- (e) Public benefits proposed as part of the project in accordance with Section 8-5.202.

Sec. 8-5.202 Public benefits

- (a) In consideration for entering into a development agreement, the County shall gain public benefits beyond those already forthcoming through conditions and mitigations on project approval. Public benefits may include, but are not limited to, contributions to infrastructure, open space, affordable housing, increased energy efficiency in existing development, or other public improvements and amenities of benefit to the County, including reservation, dedication, and improvement of land for public purposes.

- (b) Any fees required pursuant to subsection (a) shall be adjusted during the term of the development agreement to match any adjustments of such fees by the Board of Supervisors.
- (c) A development agreement shall not exempt a project from any subsequently adopted regulatory provisions which may include the use of a fee, for example, air quality mitigation fee, except to the extent that such subsequently adopted fee fulfills the same purposes as the fees required pursuant to this Section.

Sec. 8-5.203 Term

- (a) The maximum term of a development agreement shall be negotiated between the parties, and shall commence from the date of the approval of the project to which it pertains. A development agreement may, upon request of the property owner and at the sole discretion of the Board of Supervisors, be extended for an additional period. Any request for extension shall be noticed and processed in the same manner as an application for a development agreement.
- (b) Notwithstanding subsection (a), the Board of Supervisors may extend the initial term of a development agreement upon making the findings in Section 8-5.401, in support thereof.
- (c) At the end of the term of the development agreement, the development agreement shall terminate for all purposes except any enforcement action by the County for nonconformance with the terms of the agreement or condition of the permit, and the project that was the subject of the development agreement shall be subject to all laws, rules and regulations applicable to such projects and/or uses.

Sec. 8-5.204 Reservation of rights

- (a) 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.
- (b) Notwithstanding Section 8-5.204(a), a development agreement shall not prevent the County, in subsequent actions applicable to the property that were not encompassed by the original permitted activities, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent the County from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.
- (c) A development agreement shall not prevent the County from modifying or suspending the provisions of the development agreement if the Board of Supervisors finds that the failure of the County to do so would place residents, businesses, and/or property owners of the County in a condition dangerous to their health or safety or both.

- (d) A development agreement shall apply only to a project as that project is described in an environmental analysis certified, adopted or approved by the County at or before the time the County enters into the development agreement. A development agreement shall not apply to a project or portions of a project not encompassed by the project description in the County's environmental analysis.

Sec. 8-5.205 Construction codes

A development agreement shall contain the acknowledgement of the possibility of changes in the Uniform Building, Plumbing, Mechanical, Electrical, Fire and Grading Codes, as implemented by the County, during the term of the agreement and shall provide that any amendments to these codes, shall apply to the project subject to the development agreement.

Sec. 8-5.206 Parties

All owners of all property included within a development agreement shall be considered a party to the agreement and shall be a signatory.

Article 3: Hearings, Standards of Review, Findings and Decision

Sec. 8-5.301 Hearing and recommendation by Planning Commission

- (a) All development agreements shall be considered at a public hearing before the Planning Commission, which meeting shall be noticed in accordance with the requirements of Article 2, Chapter 2, Section 8-2.211 of this Title, and Section 65090 *et seq.*, of the California Government Code. The notices required by this Section are in addition to any other notices required by law for other actions to be considered concurrently with the development agreement. At the conclusion of the hearing the Planning Commission shall make recommendation in writing to the Board of Supervisors. This recommendation shall include the Commission's determinations as to whether the proposed project:
- (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 zoning district in which the real property is or will be located;
 - (3) Is in conformity with and will promote public convenience, general welfare and good land use practice;
 - (4) Will not be detrimental to the health, safety and general welfare;
 - (5) Will not adversely affect the orderly development of property or the preservation of property values; and
 - (6) Will meet the intent of Section 8-5.202(a).
- (b) This recommendation shall also include the Commission's reasons for its recommendation.

Sec. 8-5.302 Hearing and decision by the Board of Supervisors

Upon receipt of the recommendation of the Planning Commission, the Clerk of the Board shall set the proposed development agreement for hearing by the Board of Supervisors, which meeting shall be noticed in accordance with the requirements of Article 2, Chapter 2, Section 8-2.211 of this Title, and Section 65090 *et seq.*, of the California Government Code. The notices required by this Section are in addition to any other notices required by law for other actions to be considered concurrently with the development agreement. After the Board of Supervisors completes its public hearing it may approve, modify or disapprove the recommendation of the Planning Commission. A development agreement shall not be approved unless the Board finds that the provisions of the agreement are consistent with the findings listed in Section 8-10.301 of these regulations. The decision of the Board shall be final.

Sec. 8-5.303 Approval of development agreement

A development agreement is a legislative act which shall be approved by ordinance and is subject to referendum. The ordinance shall refer to and incorporate by reference the text of the development agreement.

Sec. 8-5.304 Recordation of development agreement

- (a) Within ten (10) days after the County executes a development agreement, the Clerk of the Board shall record with the County Clerk/Recorder a copy of the agreement, which shall describe the land subject thereto.
- (b) If the parties to the development agreement or their successors in interest amend or cancel the development agreement as provided in Article 4 of these regulations and Government Code Section 65868, or if the County terminates or modifies the development agreement as provided in Article 6 of these regulations and Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of the development agreement, the Clerk of the Board shall have notice of such action recorded with the County Clerk/Recorder.
- (c) From and after the time of the recordation required by this Section, notice shall be imparted as provided by the recording laws of the 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.

Article 4: Amendment or Cancellation

Sec. 8-5.401 Amendment or cancellation by mutual consent

Any party, or successor in interest, to a development agreement may propose an amendment or cancellation, in whole or in part, of the development agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided under Article 6 of this chapter and Government Code Section 65865.1.

Sec. 8-5.402 Procedure

The procedure for proposing and adoption of an amendment or cancellation, in whole or in part, of a development agreement shall be the same as for entering into the development agreement in the first instance. However, if the County initiates a proposed amendment or cancellation of the development agreement, it shall first give written notice by mail to the property owner of its intention to initiate such proceedings not less than thirty (30) days prior to the giving of public notice of hearing to consider the amendment or cancellation.

Article 5: Review

Sec. 8-5.501 Periodic review

The Planning Director shall review each development agreement annually, on or before the anniversary date of the recordation of the development agreement, in order to ascertain the good faith compliance by the property owner with the terms of the development agreement. The property owner shall submit an annual monitoring report, in a form acceptable to the Planning Director, within thirty (30) days after written notice from the Planning Director. The annual monitoring report shall be accompanied by an annual review and administration fee sufficient to defray the estimated costs of review and administration of the development agreement during the succeeding year. The amount of the annual review and administration fee shall be set annually by resolution of the Board of Supervisors.

Sec. 8-5.502 Special review

The Board of Supervisors may order a special review of compliance with a development agreement at any time. The Planning Director shall conduct such special reviews.

Sec. 8-5.503 Procedure

- (a) During either a periodic review or a special review, the property owner shall be required to demonstrate good faith compliance with the terms of the development agreement.
- (b) Upon completion of a periodic review or a special review, the Planning Director shall submit a report to the Board of Supervisors setting forth the evidence concerning good faith compliance by the property owner with the terms of the development agreement and his recommended finding on that issue.

- (c) If the staff finds on the basis of substantial evidence that the property owner has complied with the terms and conditions of the development agreement, the review shall be concluded.
- (d) If the Board finds on the basis of substantial evidence that the property owner has not complied in good faith with the terms and conditions of the development agreement, the Board may set a hearing for the purpose of modifying or terminating the development agreement as provided in Article 6 of this Chapter.

Article 6: Modifications or Termination

Sec. 8-5.601 Proceedings upon modification or termination

If, upon a finding under Section 8-5.503(d), the County determines to proceed with modification or termination of a development agreement, the County shall give written notice to the property owner of its intention to do so. The notice shall contain:

- (a) The time and place of the hearing;
- (b) A statement as to whether or not the County proposes to terminate or to modify the development agreement; and,
- (c) Such other information as the County considers necessary to inform the property owner of the nature of the proceeding including the grounds upon which the proceedings are based.

Sec. 8-5.602 Hearing on modification or termination

At the time and place set for the hearing on modification or termination, the property owner shall be given an opportunity to be heard. The property owner shall be required to substantiate compliance with the terms and conditions of the development agreement. The burden of proof on this issue shall be on the property owner. If the Board finds, based upon substantial evidence, that the property owner has not substantially complied with the terms or conditions of the agreement, the Board may terminate or modify the development agreement and impose such conditions as it deems necessary to protect the interests of the County and the public. The decision of the Board of Supervisors is final.

Sec. 8-5.603 Enforcement

Unless amended, canceled, modified, suspended or terminated pursuant to this chapter, or unless otherwise allowed by this chapter, a development agreement shall be enforceable by any party thereto notwithstanding any change in any applicable or specific plan, zoning, subdivision, or building regulation adopted by the County which alters or amends the rules, regulations or policies specified in effect at the time the development agreement is executed by the County.

Sec. 8-5.604 Appeal by party other than County

- (a) Any party to a development agreement, other than the County, seeking to bring an action to enforce the development agreement pursuant to Section 8-5.603 shall first appeal all matters to be raised in the action to the Board of Supervisors. The appeal shall be commenced by the filing of a written statement of issues by the Party appealing setting out in detail the basis for the appeal. The statement shall be filed with the clerk of the Board and Planning Director. The Board of Supervisors shall hold a hearing on the issues raised in the statement no later than forty-five (45) days after the statement has been filed with the Clerk of the Board and Planning Director.
- (b) The Board of Supervisors shall make findings on all matters raised in the appeal. The party shall not commence an action to enforce the development agreement until after the Board of Supervisors has issued its findings. The Board of Supervisors shall issue its findings no later than fifteen (15) days after the hearing.

Article 7: State or Federal Law

Sec. 8-5.701 Modification or suspension by State or Federal law

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 development agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations.