

RESOLUTION NO. 2018-007

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA INITIATING A ZONING TEXT AMENDMENT TO CHAPTER 4, "ZONING" WITHIN TITLE 9, "PLANNING AND ZONING" OF THE PACIFICA MUNICIPAL CODE, TO ADOPT A NEW ARTICLE 50 RELATING TO THE ESTABLISHMENT OF A STANDARD PROCESS FOR REVIEW OF DEVELOPMENT AGREEMENTS, AND RECOMMENDING CITY COUNCIL APPROVAL OF TEXT AMENDMENT TA-113-18 (FILE NO. 2018-048)

Initiated by: Planning Commission

WHEREAS, the City of Pacifica, pursuant to the police powers delegated to it by Article 11 of the California Constitution, has the authority to enact laws, which promote the public health, safety and general welfare of its residents;

WHEREAS, the City has a legitimate interest in protecting the health, safety and well-being of its citizens;

WHEREAS, the City desires to create a standard process by which development agreements shall be processed by the City;

WHEREAS, 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;

WHEREAS, a development agreement provides greater latitude in advancing local planning policies and goals of the City and provides the City with assurances that a developer will proceed with a project pursuant to the negotiated terms of the agreement;

WHEREAS, this assurance strengthens the public planning process, encourages private participation in comprehensive planning, and reduces economic costs of development; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed zoning text amendment contained in File No. 2018-048 on October 1, 2018, initiated said zoning text amendment, and recommended that the City Council approve the zoning text amendment described in Text Amendment TA-113-18.

NOW, THEREFORE BE IT RESOLVED by the Planning Commission of the City of Pacifica as follows:

1. The above recitals are true and correct and material to this Resolution.
2. In making its findings, the Planning Commission relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.
3. The proposed amendments recommended by the Planning Commission are consistent with the City's General Plan and Local Coastal Land Use Plan.

4. The proposed amendments are exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to section 21065 of the Public Resource Code because they do not qualify as a "project" pursuant to Public Resource Code section 21065, and since it can be seen with certainty that there is no possibility that adoption of this ordinance would cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Pacifica does hereby recommend approval to the City Council of the City of Pacifica the zoning text amendment described in Text Amendment TA-113-18, included as Exhibit A to this Resolution.

* * * * *

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 1st day of October, 2018.

AYES, Commissioners: CAMPBELL, CLIFFORD, GORDON, KRASKE,
NIBBELIN, RUBINSTEIN

NOES, Commissioners: STEGINK

ABSENT, Commissioners: N/A

ABSTAIN, Commissioners: N/A


Richard Campbell, Chair

ATTEST:


Tina Wehrmeister, Planning Director

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

EXHIBIT A

TEXT AMENDMENT TA-113-18

ORDINANCE NO. XX-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA AMENDING CHAPTER 4, "ZONING" WITHIN TITLE 9, "PLANNING AND ZONING" OF THE PACIFICA MUNICIPAL CODE, TO ADOPT A NEW ARTICLE 50 RELATING TO THE ESTABLISHMENT OF A STANDARD PROCESS FOR REVIEW OF DEVELOPMENT AGREEMENTS.

Section 1. The City Council finds as follows:

WHEREAS, the City of Pacifica, pursuant to the police powers delegated to it by Article 11 of the California Constitution, has the authority to enact laws, which promote the public health, safety and general welfare of its residents;

WHEREAS, the City has a legitimate interest in protecting the health, safety and well-being of its citizens;

WHEREAS, the City desires to create a standard process by which development agreements shall be processed by the City;

WHEREAS, 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;

WHEREAS, a development agreement provides greater latitude in advancing local planning policies and goals of the City and provides the City with assurances that a developer will proceed with a project pursuant to the negotiated terms of the agreement;

WHEREAS, this assurance strengthens the public planning process, encourages private participation in comprehensive planning, and reduces economic costs of development;

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed zoning text amendment contained in File No. 2018-048 on October 1, 2018, initiated said zoning text amendment, and recommended that the City Council approve the zoning text amendment described in Text Amendment TA-113-18; and

WHEREAS, the City Council held a duly noticed public hearing on the proposed zoning text amendment contained in File No. 2018-048 on October 22, 2018, and thereafter introduced the proposed ordinance described in Text Amendment TA-113-18.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFICA DOES ORDAIN AS FOLLOWS:

Section 2. Recitals.

The City Council of the City of Pacifica does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

Section 3. Amendment.

Chapter 4, "Zoning" within Title 9, "Planning and Zoning" of the Pacifica Municipal Code is hereby amended to adopt a new Article 50 which shall read as follows:

"Article 50. - Development Agreements.

9-4.5001 – Short Title.

This ordinance shall be known as the "Development Agreement Procedure Ordinance."

9-4.5002 – Authority.

This article is enacted pursuant to the authority contained in Section 65864 *et seq.* of the California Government Code.

9-4.5003 – Purposes.

The purposes of this chapter are:

- (a) To prescribe the procedure for consideration of development agreements;
- (b) To encourage private participation in comprehensive planning; and
- (c) To reduce the economic costs of development.

9-4.5004 – Application.

Application for a development agreement shall be made by a person, or the authorized agent of a person, having a legal or equitable interest in the affected property. Application shall be made on a form prescribed by the Planning Director and shall be filed with the Planning Department. The application shall be accompanied by a fee prescribed by the City Council, and a project description, which may, at the discretion of the Planning Director, include the following:

- (a) A legal description of the affected property, a listing of property owners, and the proposed parties to the agreement;
- (b) A description of the development project, indicating the permitted uses of the property, floor-area ratio or density, building height and size, phasing of

development, provisions for the reservation and dedication of land for public purposes and such additional information as may be required to allow the applicable criterion and factors to be applied to the proposal. Such information may include, but is not limited to, site and building plans, elevations, relationships to adjacent properties, and operational data. Where appropriate, the description may distinguish between elements of the project that are proposed to be fixed under the agreement and those that may vary;

- (c) An identification of any planned unit development permit or other special zoning approval that has already been obtained for the development project;
- (d) The special conditions, if any, to be imposed;
- (e) The timing of the development project;
- (f) Public facilities financing plan;
- (g) A statement of the relationship to the specific plan and to the general plan; and
- (h) Other items specific to the project proposal, as determined by the City Attorney or Planning Director.

9-4.5005 – Initial Review.

The Planning Director, or his or her designee, shall review the application to determine whether it is complete and schedule a public hearing before the Planning Commission pursuant to Section 9-4.5006. If the application is not complete, the applicant shall be given an opportunity to provide additional information.

9-4.5006 – Procedure.

- (a) An application for a development agreement shall be considered by the Planning Commission, which shall hold a public hearing on the application. Notice of the hearing shall be given as provided in Sections 65090 and 65091 of the California Government Code in addition to any other notice required by law for other actions to be considered concurrently with the development agreement. The Planning Commission shall determine whether the proposal is consistent with the city's General Plan and any applicable specific plan and may recommend approval or disapproval of the application, or recommend its approval subject to changes in the development agreement or conditions of approval, giving consideration to the factors set forth in Section 9-4.5007.
- (b) After a recommendation has been rendered by the Planning Commission, the City Council shall hold a public hearing on the application. Notice of the hearing and the intention to consider adoption of a development agreement shall be given as provided in Sections 65090 and 65091 of the California Government Code, in addition to any other notice required by law for other actions to be

considered concurrently with the development agreement. The City Council shall review the recommendation of the Planning Commission and determine whether the proposal is consistent with the City's General Plan and any applicable specific plan, and may approve or disapprove the proposed development agreement, or approve it subject to changes therein or conditions of approval, giving consideration to the factors set forth in Section 9-4.5007. If the City Council approves the development agreement or approves it subject to changes or conditions, it shall do so by ordinance.

9-4.5007 – Factors for consideration.

In reviewing an application for a development agreement, the Planning Commission and City Council shall give consideration to:

- (a) Other pending applications and approved projects;
- (b) The traffic, parking, public service, visual, and other impacts of the proposed development project upon abutting properties and the community;
- (c) Ability of the applicant to address public facility needs and financing obligations;
- (d) The relationship of the project to the City's growth management program;
- (e) The provisions included, if any, for reservation, dedication, or improvement of land for public purposes or accessibility to the public;
- (f) The type and magnitude of the project's economic effects to the City of Pacifica, and of its contribution, if any, toward meeting the City's housing needs, including affordable housing; and
- (g) Any other comparable, relevant factor or factors.

9-4.5008 – California Environmental Quality Act.

Any development agreement that is considered for approval by the Planning Commission and City Council shall also be reviewed to ensure compliance with the California Environmental Quality Act (Public Resource Code § 21000 et seq.).

9-4.5009 – Periodic reviews.

Each development agreement shall be reviewed at least once every twelve months by the Planning Director, or his or her designee, and the review period shall be specified in the agreement. The applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the agreement. If the Planning Director finds that such compliance has been deficient, he or she shall forward this finding and his or her recommendation to the City Council for consideration in accordance with Section 9-4.5007.

9-4.5010 – Termination.

At any time the City Council may, at a public hearing, consider whether there are grounds for termination of any development agreement. The Planning Director shall give notice of the intention to conduct a review under this section as provided in Government Code sections 65090 and 65091. Notice of the hearing shall be given by posting notices thereof within three hundred feet of the property involved. Notice of the hearing shall also be given by mail or delivery to the holder of the development agreement, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than ten days prior to the date set for the hearing. At the hearing, the applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the agreement. If as a result of such review, the City Council finds and determines, on the basis of substantial evidence, that the applicant or successor thereto has not complied in good faith with the terms or conditions of the agreement, the City Council may terminate or modify the agreement in whole or in part.

9-4.5011 – Adherence to development agreement, and amendment or cancellation by mutual consent.

A development agreement shall not be transferred or assigned to a new person without the written consent of the City. A successor in interest shall provide proof of ability to fulfill the applicant's obligations pursuant to the development agreement. In any case, the burdens of such agreement shall also bind, and its benefits shall also inure to, all successors in interest. A development agreement may be amended, or canceled in whole or in part, by the mutual consent of the parties to the agreement or their successors in interest. Such amendments and cancellations shall be processed in the same manner as an original application and shall be subject to the same procedural requirements.

9-4.5012 – Recording.

No later than ten calendar days after the City enters into a development agreement, the City Clerk shall record with the County Recorder a copy of the agreement, which shall describe the land subject thereto. If the agreement is amended, canceled, or revoked pursuant to Sections 9-4.5010 and 9-4.5011, the City Clerk shall record notice of such action with the Recorder.

Section 4. California Environmental Quality Act (CEQA) Determination.

Adoption of this Ordinance is exempt from environmental review as the adoption of this Ordinance does not qualify as a “project” pursuant to Public Resource Code section 21065, since it can be seen with certainty that there is no possibility that adoption of this Ordinance would cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Section 5. Severability.

If any section, subsection, subdivision, paragraph, sentence clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid or unenforceable.

Section 6. Effective Date.

This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

Section 7. Publication; Certification.

The City Clerk shall attest to the adoption of this Ordinance and cause the same to be published in accordance with State law.

PASSED AND ADOPTED this ____ day of October, 2018, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

John Keener, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah Coffey, City Clerk

Michelle Marchetta Kenyon, City Attorney