

ORDINANCE NO. 1033

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA AMENDING
TITLE 18 OF THE CAPITOLA MUNICIPAL CODE TO HOUSING AND DEVELOPMENT
ADMINISTRATION AND ADDING CHAPTER 18.04 OF THE CAPITOLA MUNICIPAL CODE
TO AUTHORIZE DEVELOPMENT AGREEMENTS BETWEEN THE CITY OF CAPITOLA AND
REAL PROPERTY OWNERS.**

WHEREAS, the State of California adopted Section 65864, et seq. of the Government Code which authorizes any city, county or city and county to enter into development agreements with an applicant for development projects, establishing certain development rights in the property which is the subject of the development project application; and

WHEREAS, the City Council of Capitola does hereby find the overarching objectives of a development agreement are to strengthen the public planning process, encourage private participation in comprehensive planning and facilitate creative approaches to development projects; and

WHEREAS, the City Council of Capitola does hereby find the purpose of a development agreement is to facilitate the development of complex multi-phase development, low-income housing developments, and developments involving public services and facilities installations which may require several years to complete, and

WHEREAS, large redevelopment and housing applications are anticipated by the Capitola General Plan, including redevelopment of the 46-acre Capitola Mall site.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS FOLLOWS:

Section 1. Title 18. Title 18 is hereby amended to read as follows:

Title 18 Housing and Development Administration

Section 2. Chapter 18.040. Section 18.040 is hereby added to read as follows:

“Chapter 18.04 – DEVELOPMENT AGREEMENTS

Sections:

- 18.04.010 Purpose
- 18.04.020 Applications
- 18.04.030 Contents of Development Agreements
- 18.04.040 Consideration of Proposed Development Agreements
- 18.04.050 Execution and Recordation of Development Agreement
- 18.04.060 Annual Review
- 18.04.070 Cancellation or Modification
- 18.04.080 Miscellaneous Provisions

18.04.010 Purpose

A. This chapter establishes procedures for the processing of Development Agreements in compliance with the Government Code Sections 65864 through 65869.5. Development Agreements are intended to:

1. Strengthen the public planning process, encourage private participation and comprehensive planning, and facilitate creative approaches to development projects;
2. Facilitate the development of complex projects, such as multi-phase developments, income-restricted housing developments, and developments involving public service and facilities installations which may require several years to complete; and
3. Promote orderly growth and development, economic welfare, and adequate circulation, utilities and services.

B. This chapter incorporates by reference the provisions of California Government Code Section 65864 et seq. and any successor statute(s). In the event of any conflict between the applicable statutory provisions and this chapter, the statutory provisions shall control.

18.04.020 Applications

An applicant for a development project may request that the City review a Development Agreement application in accordance with the following procedures.

A. **Forms and Information.** The applicant shall submit a Development Agreement application on a form prescribed by the Community Development Director. The Director shall identify submittal requirements for Development Agreement applications, and may require an applicant to submit additional information and supporting data to process the application.

B. **Fees.** At the time of initial filing of the application, the applicant shall pay fees, deposits and charges required to file and process the Development Agreement applications and to administer the approved Development Agreement, including annual reviews, in such amounts as established by resolution of the City Council. Prior to staff acting on the application, the developer must have a signed Developer Pass Through Agreement on file with the City.

C. **Authority to File Application.** An applicant shall have a legal or equitable interest in the real property which is the subject of the proposed Development Agreement. The Community Development Director may require an applicant to submit proof of interest in the real property and/or of the authority of any agent to act for the applicant. Such proof may include a title report, policy or guarantee, issued by a title company licensed to do business in the state, which demonstrates the required interest of the applicant in the real property.

18.04.030 Contents of Development Agreements

The City Manager, and/or his or her designee(s), shall negotiate specific components and provisions of the Development Agreement with the applicant. The negotiated Development Agreement shall comply with the following requirements:

A. The Development Agreement shall specify its duration; the permitted uses of the subject property; the density or intensity of uses; the maximum height and size of proposed buildings; and provisions for reservation or dedication of land for public purposes.

B. The Development Agreement shall contain an indemnity clause requiring the applicant to indemnify, defend, and hold the City, its officers, officials, agents, and employees harmless against claims arising out of or related to the actions of the applicant in connection with the application or the development process, including all legal fees and costs.

C. The Development Agreement shall outline the benefits provided to the City from entering into the Development Agreement. Such benefits may include:

1. Construction of public facilities beyond those required as a condition of approval;
2. Covenants to operate and maintain the private project at higher levels than would otherwise be required;
3. Proposals to achieve General Plan goals not directly associated with the private project; and
4. Other proposals which, in the judgment of the Planning Commission and City Council, provide public benefits sufficient to justify a Development Agreement.

D. The Development Agreement may also contain the following:

1. Requirements for construction and maintenance of onsite and off-site improvements or payment of fees in lieu of such dedications or improvements.
2. Conditions and restrictions imposed by the City with respect to the project, including conditions and restrictions proposed in the environmental review document prepared under the California Environmental Quality Act (CEQA), in order to eliminate or mitigate potential adverse environmental impacts of the project.
3. Requirements for the timing of project construction, including project phasing.
4. Conditions, terms, restrictions, and requirements for subsequent discretionary actions.
5. Terms relating to subsequent reimbursement over time for applicant financing of public facilities.
6. Other provisions necessary to guarantee performance of obligations stated in the agreement.

E. A Development Agreement is a contract that is negotiated and voluntarily entered into by City and applicant and may contain any additional or modified conditions, terms or provisions agreed upon by the parties.

18.04.040 Consideration of Proposed Development Agreements

A. Initial Review of Application. The Community Development Director, or the Director's designee, shall review the Development Agreement application to determine whether it is

complete. If the application is found to be incomplete, the Community Development Director shall inform the applicant of the items or steps necessary to complete the application.

B. Negotiations. After the application is deemed complete, the City Manager and/ or his or her designee(s) shall negotiate the specific components and provisions of the Development Agreement on behalf of the City.

C. Planning Commission Recommendation.

1. Following negotiation of the Development Agreement, the Planning Commission shall consider the Development Agreement for recommendation to the City Council.

2. The Planning Commission shall consider the proposed Development Agreement at a public hearing noticed in conformance with Zoning Code Chapter 17.148 (Public Notice and Hearing).

3. The Planning Commission hearing may be held concurrently with the public hearing on other land use approvals for the project.

4. The Planning Commission shall make a recommendation to the City Council. The recommendation shall include the Planning Commission's determination and supporting reasoning as to whether or not the findings in Section 1.06.E (Findings) can be made for the proposed Development Agreement.

D. **City Council Action.**

1. After the Planning Commission makes its recommendation, the City Council shall review and act on the proposed Development Agreement at a public hearing noticed in conformance with Zoning Code Chapter 17.148 (Public Notice and Hearing).

2. The City Council hearing may be held concurrently with the public hearing on other land use approvals for the project.

3. The proposed Development Agreement shall be executed by the applicant before it is placed before the City Council for consideration at a public hearing.

4. The City Council shall consider the Planning Commission recommendation and may accept, accept with modification, or reject the proposed Development Agreement based on the findings in Section 1.60.040.E (Required Findings).

E. Required Findings. To approve a proposed Development Agreement, the City Council must make the following findings:

1. The Development Agreement is consistent with the General Plan, any applicable specific plan, and the Local Coastal Plan if within the coastal zone. This finding may be satisfied by a determination that the Development Agreement is consistent with amendments to the General Plan and any applicable specific plan to be adopted concurrently with the Development Agreement.

2. The Development Agreement will provide Capitola with tangible benefits beyond those that may be required by the City through project conditions of approval.

3. Environmental impacts related to the development agreement have been reviewed and considered in accordance with the California Environmental Quality Act.

F. Approval of Development Agreement. The City Council has the exclusive authority to approve the Development Agreement. Approval of a Development Agreement shall be by ordinance.

G. Failure to Receive Notice. The failure of any person to receive notice required by law or this chapter shall not affect the authority of the City to enter into, modify or terminate a Development Agreement, nor invalidate a Development Agreement entered into by the City under this chapter.

18.04.050 Execution and Recordation of Development Agreement

A. Within ten days after the ordinance approving the Development Agreement takes effect, the City Manager shall execute the Development Agreement on behalf of the City, and the City Clerk shall record the Development Agreement with the Santa Cruz County Recorder.

B. If the parties to the agreement or their successors in interest amend or cancel the Development Agreement, or if the City terminates or modifies the Development Agreement for failure of the applicant to fully comply with the provisions of the Development Agreement, the City Clerk shall record notice of such action with the Santa Cruz County Recorder.

18.04.060 Annual Review

A. Time for and Initiation of Review.

1. The City Manager shall review an approved Development Agreement at least once a year, at which time the applicant shall demonstrate compliance with the Development Agreement.

2. The applicant shall initiate the required annual review by submitting a written request at least sixty days prior to the review date specified in the Development Agreement. The applicant shall provide evidence as determined necessary by the City Manager to demonstrate good faith compliance with the Development Agreement. The burden of proof by substantial evidence of compliance is upon the applicant.

B. Finding of Compliance. If the City Manager, on the basis of substantial evidence, finds compliance by the applicant with the Development Agreement, the City Manager shall issue a finding of compliance, which shall be in recordable form and may be recorded with the County Recorder after conclusion of the review.

C. Finding of Noncompliance.

1. If the City Manager finds the applicant has not complied with the Development Agreement, the City Manager may issue a finding of noncompliance which may be recorded by the City with the County Recorder after it becomes final. The City Manager shall specify in writing to the applicant the respects in which applicant has failed to comply, and shall set forth terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance.

2. If applicant does not comply with any terms of compliance within the prescribed time limits, the Development Agreement shall be subject to termination or modification pursuant to Section 1.60.070 (Cancellation or Modification).

D. Appeal of Determination. The City Manager's finding of compliance or noncompliance may be appealed in accordance with Municipal Code Chapter 2.52 (Appeals to the City Council).

18.04.070 Cancellation or Modification

A. Cancellation or Modification by Mutual Consent. A Development Agreement may be canceled or modified by mutual consent of the parties. A Development Agreement may also specify procedures for administrative approval of minor amendments by mutual consent of the applicant and the City Manager. The process to cancel or modify a Development Agreement is the same as the procedure to establish the Development Agreement.

B. Termination or Modification after Finding of Noncompliance.

1. If applicant does not comply with the terms of compliance within the prescribed time limits, the City Manager may refer the Development Agreement to the City Council for termination or modification.

2. The City Council shall conduct a public hearing to consider the finding of noncompliance and termination or modification. The burden of proof shall be on the applicant to establish at the public hearing that it has complied with the Development Agreement.

3. The City Council may terminate the Development Agreement, modify the Development Agreement, modify the finding of noncompliance, or rescind the finding of noncompliance and issue a finding of compliance.

C. Rights of the Parties after Cancellation or Termination.

1. If a Development Agreement is canceled or terminated, all rights of the applicant, property owner or successors in interest under the Development Agreement shall terminate.

2. If a Development Agreement is terminated following a finding of noncompliance, the City may, at its sole discretion, determine to return any and all benefits, including reservations or dedications of land, and payments of fees, received by the City.

18.04.080 Miscellaneous Provisions

A. Effect of Development Agreement.

1. Unless otherwise specified in the Development Agreement, the City's rules, regulations and official policies governing permitted uses of the property, density and design, and improvement standards and specifications applicable to development of the property shall be those City rules, regulations and official policies in force on the effective date of the Development Agreement. The applicant shall not be exempt from otherwise applicable City ordinances or regulations pertaining to persons contracting with the City.

2. 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. A Development Agreement shall not prevent the City from denying or conditionally approving any subsequent land use permit or authorization for the project on the basis of such existing or new rules, regulations, and policies.

3. Unless otherwise specified in the Development Agreement, a Development Agreement shall not exempt the applicant from obtaining future discretionary land use approvals.

B. Rules Affecting Development Agreement. In the event that any regulation or law of the State of California or the United States, enacted or interpreted after a Development Agreement has been entered into, prevents or precludes compliance with one or more provisions of the Development Agreement, the Development Agreement may be modified or suspended in the manner and pursuant to the procedures specified in the Development Agreement as may be necessary to comply with such regulation or law.

C. Enforcement of a Development Agreement. The procedures for enforcement, amendment, modification, cancellation or termination of a Development Agreement specified in this section and in California Government Code Section 65865.4 are non-exclusive. A Development Agreement may be enforced, amended, modified, canceled or terminated by any manner otherwise provided by law or by the provisions of the Development Agreement.

D. Judicial Review – Time Limitation.

1. Any judicial review of an ordinance approving or amending a Development Agreement shall be by writ of mandate pursuant to Section 1085 of the California Code of Civil Procedure. Judicial review of any City action taken pursuant to this chapter, other than approval or amendment of a Development Agreement, shall be by writ of mandate pursuant to Section 1094.5 of the California Code of Civil Procedure.

2. Any action or proceeding to attack, review, set aside, void or annul any decision of the City taken pursuant to this chapter shall not be maintained by any person unless the action or proceeding is commenced within 90 days after the effective date of the decision.

E. Irregularity in Proceedings. No action, inaction or recommendation regarding a proposed Development Agreement shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect or omission ("error") as to any matter pertaining to the petition, application, notice, finding, record, hearing, report, recommendation or any matter of procedure whatever, unless the error complained of was prejudicial and that by reason of the error, the complaining party sustained and suffered substantial injury, and that a different result would have been probable if the error had not occurred or existed. There is not a presumption that an error is prejudicial or that injury was done if an error is shown."

Section 3. COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

The City Council hereby finds that the action to adopt this ordinance will not result in any change in the environment and thus is not a project subject to the requirements of CEQA.

Section 4. SEVERABILITY.

The City Council hereby declares every section, paragraph, sentence, cause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall

not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

Section 5. EFFECTIVE DATE.

This Ordinance shall be in full force and effect thirty (30) days from its passage and adoption.

This ordinance was introduced on the 12th day of September, 2019, and was passed and adopted by the City Council of the City of Capitola on the 26th day of September, 2019, by the following vote:

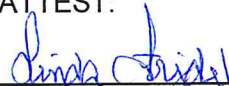
AYES: Council Members Bottorff, Brooks, Petersen and Storey and Mayor Bertrand
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:



Jacques Bertrand, Mayor

ATTEST:



Linda Fridy, City Clerk