

RESOLUTION NO. 371-81

RESOLUTION OF THE CITY OF SUNNYVALE ESTABLISHING
PROCEDURES AND SETTING A FEE FOR PROCESSING
DEVELOPMENT AGREEMENTS

WHEREAS, the California Legislature by statutes commencing with Section 65864 of the Government Code, has authorized cities to enter into binding development agreements for the development of real property; and

WHEREAS, said statutes authorize cities, by resolution or ordinance, to establish procedures and requirements for the consideration of development agreements; and

WHEREAS, the adoption of said procedures is necessary for the orderly and equitable administration of such agreements;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES RESOLVE AS FOLLOWS:

The following procedures and fee shall apply to the City's processing of "development agreements" filed pursuant to Section 65865 of the Government Code:

SECTION 1. FORMS AND INFORMATION.

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

(b) The Director of Community Development may require an applicant to submit such information and supporting data as he considers necessary to processing the application.

SECTION 2. FILING FEE. In order to recover costs incurred by the City in the administration and processing of development agreements, a nonrefundable filing fee of \$500.00 shall be paid to the City prior to or concurrently with each application.

SECTION 3. QUALIFICATION AS AN APPLICANT. Only a qualified applicant may file an application to enter into a development agreement. Applicant includes an authorized agent. Each applicant shall submit written consent of all owners of the real property for which a development agreement is proposed, from which consent to be bound is required in order to produce a valid agreement. The Director of Community Development in addition may require proof of the authority of an agent to act for an applicant. No application will be accepted for any development project except those which due to financing or other contingencies will be unable to commence construction of all phases thereof within two (2) years of the date of application.

SECTION 4. PROPOSED FORM OF AGREEMENT. Each application shall be accompanied by a form of development agreement proposed by the applicant. This requirement may be met by designating the City's standard form of development agreement, including specific proposals for changes or additions to the language of the standard form.

SECTION 5. REVIEW OF APPLICATION. The Director of Community Development or his designee shall endorse on the application the date that it is received. He shall review the application and may reject it if incomplete or inaccurate. If the application is complete, it shall be accepted for filing. In addition, he shall determine any additional terms, deletions, or amendments to proposed terms necessary to complete the agreement. After receiving all required information, he shall negotiate terms on behalf of the City, and prepare a staff report and recommendation, stating therein to what extent the agreement proposed or as amended would implement the City's general plan and any applicable specific plan.

SECTION 6. NOTICE. The Director of Community Development shall give notice of intention to consider adoption of a development agreement and of any other public hearing required by law or these regulations.

SECTION 7. REQUIREMENTS FOR FORM AND TIME OF NOTICE.

(a) Form of Notice. The form of notice of intention to consider adoption of a development agreement shall contain:

- (1) The time and place of the the hearing;
- (2) A general explanation of the matter to be considered, including a general description of the area affected; and
- (3) Other information required by law or specific provisions of these regulations, or which the Director of Community Development considers necessary.

(b) Time and Manner of Notice. The time and manner of giving notice shall be in the manner required by Government Code Section 65867, as amended.

SECTION 8. FAILURE TO RECEIVE NOTICE. The failure of any person entitled to notice required by law or these regulations to receive such notice shall not affect the authority of the the City to enter into a binding development agreement.

SECTION 9. CONTENTS. Each development agreement shall specify, by reference to approved use permits, special development permits and tentative map approvals or otherwise, the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum heights and sizes of proposed buildings, and 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 of 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 shall be completed within specified times. The agreement may include as well any terms, conditions, and required improvements determined by the City to be necessary to preserve and enhance the public welfare. Each development agreement shall provide an expiration schedule. Each such schedule shall require expiration of the agreement's provisions as they pertain to any phase of development no later than the date of issuance of a final occupancy permit for such phase.

SECTION 10. ENFORCEMENT. Unless amended or canceled pursuant to this resolution, the terms of a development agreement shall be enforceable by any party thereto notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City of Sunnyvale which alters or amends the rules, regulations or policies applicable to the development, excepting such changes as may be permitted by these regulations.

SECTION 11. APPLICATION OF EXISTING RULES, REGULATIONS AND POLICIES. Unless otherwise provided by the development agreement the rules, regulations and official policies governing permitted uses of the land, density, 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 City, in subsequent actions applicable to the property, from applying new rules, regulations,

and policies which do not conflict with those applicable to the property as set forth in such an agreement, nor shall a development agreement prevent the City from denying or conditionally approving any discretionary or ministerial permit application reserved for future determination by the agreement's terms, on the basis of existing or new rules, regulations, and policies, including those regulating availability of utility services. Similarly, any subsequent development application not specifically referred to in an original development agreement may be considered in view of those regulations in effect at the time of consideration. The purpose of any development agreement shall be to provide for the orderly development of major projects within the City, and to provide continuity of development regulations. The terms of such agreements shall not be construed so as to limit or restrict the ability of the City of Sunnyvale to respond by emergency ordinance to immediate threats to the public health, safety, or welfare. Any such emergency ordinance intended to prevail over inconsistent terms of development agreements shall so specify.

SECTION 12. DETERMINATION BY PLANNING COMMISSION. After a public hearing by the Planning Commission, the Commission shall make its recommendation in writing to the City Council. The recommendation shall include the Commission's reasons therefor and its determination of whether the development as described in the development agreement will be:

- (1) Consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
- (2) Compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;

(3) In conformity with public convenience and good land use practice;

(4) Not detrimental to the public health, safety and general welfare;

(5) Of a beneficial effect on the orderly development of property and the preservation of property values;

(6) Consistent with the requirements of this resolution.

SECTION 13. DECISION BY CITY COUNCIL.

(a) After a public hearing by the City Council, the Council may accept, modify or disapprove the recommendation of the Planning Commission. It may but need not refer matters not previously considered by the Planning Commission back to the Planning Commission for report and recommendation. The Planning Commission may, but need not, hold a public hearing on matters referred back to it by the City Council.

(b) The City Council shall not approve any development agreement unless it finds that the development as described in the development agreement will satisfy the criteria stated in Section 12, above, and will be in the public interest. The City Council shall not be obligated to approve any application regardless of satisfaction of the foregoing criteria.

SECTION 14. APPROVAL OF DEVELOPMENT AGREEMENT. If the City Council approves the development agreement, it shall do so by the adoption of an ordinance, upon the effective date of which the development agreement shall take effect. Said ordinance shall be subject to referendum by the people.

SECTION 15. INITIATION OF AMENDMENT OR CANCELLATION. Either party may propose an amendment to or cancellation in whole or in part of a development agreement previously entered into. The procedure for proposing and adoption of an amendment to or cancellation in whole or in part of the development agreement shall be the same as the procedure for entering into an agreement in the first instance.

When the City initiates the proposed amendment to or cancellation in whole or in part of the development agreement, however, it shall first give written notice to the property owner of its intention to initiate such proceedings at least 30 days in advance of giving the public notice of intention to consider an amendment or cancellation required by this resolution.

SECTION 16. RECORDATION. Within 10 days after the City enters into a development agreement, the City Clerk shall cause the agreement to be recorded with the County Recorder.

If the parties to an agreement or their successors in interest amend or cancel the agreement as provided in Government Code §65868, or if the City terminates or modifies the agreement as provided in Government Code §6585.1 for failure of the applicant to comply in good faith with the terms or conditions of the agreement, the City Clerk shall cause notice of such action to be recorded with the County Recorder.

SECTION 17. ANNUAL COMPLIANCE REVIEW. Each approved development agreement shall be reviewed by the City every 12 months, at which time the applicant or his successor in interest shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the City finds and determines on the basis of substantial evidence that the applicant or successor in interest has not complied in good faith with terms or conditions of the agreement, the City by ordinance may terminate or modify the agreement.

SECTION 18. NOTICE OF ANNUAL REVIEW. The Director of Community Development shall give notice to the property owner that the City

intends to undertake a review of the development agreement, at least 30 days in advance of the time at which the matter will be considered by the Planning Commission.

SECTION 19. PUBLIC HEARING FOR REVIEW. The Planning Commission shall conduct a public hearing to consider whether the property owner has demonstrated good faith compliance with the terms of the agreement, and shall determine, upon the basis of substantial evidence, whether the property owner has so complied for the period reviewed. The Commission's determination that the development agreement has been complied with shall be final. Upon finding that compliance has not been shown, the Commission may require remedial actions of the owner, and/or may recommend to the City Council that the agreement be modified or canceled in whole or in part.

SECTION 20. CONFLICTING REGULATIONS. In the event that applicable 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 deemed modified or suspended as may be necessary to comply with such state or federal laws or regulations.

PASSED AND ADOPTED by the City Council of the City of Sunnyvale at a regular meeting held on the 15th day of December, 1981 by the following called vote:

AYES: Briody, Wulfhorst, Cude, McKenna, Stone, Mercer and Gonzales

NOES: None

ABSENT: None

ATTEST:
City Clerk

By Carol Ann Butler
Deputy City Clerk

APPROVED:

Ron Gonzales
Mayor

THIS IS TO CERTIFY that the attached Resolution
NO. 371-81 is the original resolution passed and
adopted by the City Council of the City of Sunnyvale at
a regular meeting thereof held on the 15th day
of December 1981.

WITNESS MY signature and the official Seal of said
City of Sunnyvale this 5th day of January 1982.

THOMAS F. LEWCOCK, City Clerk

By: Carol Ann Butler
Deputy City Clerk