

ORDINANCE NO. 1395

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING THE ARCATA MUNICIPAL CODE, TITLE IX, THE LAND USE CODE BY ADDING §9.72.110—*DEVELOPMENT AGREEMENTS AS A NEW STANDARD FOR PLANNING PERMIT PROCEDURES;* AND ASSOCIATED REVISIONS TO *REVIEW AUTHORITY, TABLE 7-1.*

The City Council of the City of Arcata does hereby ordain as follows:

SECTION 1. Amendment to the 2008 City of Arcata Land Use Code

Title IX of the Arcata Municipal Code is hereby amended as follows:

1. Add §9.72.110—Development Agreements, attached as Exhibit 1
2. Revise Table 7-1: Review Authority, attached as Exhibit 2

SECTION 2. Findings of Approval

Based upon information received in the public hearing, including the Arcata Planning Commission Staff Reports and Resolution PC-09-05, the following findings are hereby adopted.

1. The proposed amendment is consistent with the General Plan in accordance with the California Government Code, Section 65860.
2. The public health, safety, and general welfare require the adoption of the proposed amendment.

SECTION 3. Categorical Exemption from CEQA

The City Council hereby determines that the project qualifies for a Categorical Exemption from the California Environmental Quality Act (CEQA) per Section 15061(b)(3) of the CEQA Guidelines. This section states, "*CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.*"

SECTION 4. Severability

If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

SECTION 5. Limitation of Actions

Any action to challenge the validity or legality of any provision of this ordinance on any grounds shall be brought by court action commenced within ninety (90) days of the date of adoption of this ordinance.

SECTION 6. Effective Date

This ordinance shall take effect thirty (30) days after its adoption by the City Council.

DATED: October 7, 2009

ATTEST:

APPROVED:

/s/ Randal J. Mendosa
Interim City Clerk, City of Arcata

/s/ Mark E. Wheatley
Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of **Ordinance No. 1395**, passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, State of California, on the 7th day of October, 2009, by the following vote:

AYES: **WHEETLEY, STILLMAN, BRINTON, ORNELAS, WINKLER**

NOES: **NONE**

ABSENT: **NONE**

ABSTENTIONS: **NONE**

/s/ Randal J. Mendosa
Interim City Clerk, City of Arcata

9.72.110 Development Agreements.**A. Purpose.**

1. The purpose of this Chapter is to establish local procedures for the consideration, implementation and administration of development agreements as authorized by Title 7, Division 1, Chapter 4, Article 2.5, commencing with Section 65864 of the California Government Code. A development agreement is a binding agreement entered into between the City and an applicant pursuant to the requirements and procedures of state law and this Chapter.
2. Development proposals which are eligible for consideration for such an agreement shall be:
 - a) used sparingly;
 - b) limited to projects in which the developer makes a substantial contribution to infrastructure, open space, affordable housing, community facilities, sustainable energy, or other public improvements and amenities of benefit to the City that would not otherwise be obtained through applicable development approval processes

B. Applicability.

1. This Chapter authorizes the City of Arcata, at its sole discretion, to enter into a development agreement with any qualified applicant for the development of real property. The provisions of this Chapter are applicable throughout the City of Arcata.
2. Only qualified applicants, persons who have legal or equitable interest in the real property which is the subject of the development agreement, may file an application to enter into a development agreement. An applicant shall submit written proof of interest in the real property and of the authority of any agent to act for the property owner(s), to the satisfaction of the Director.
3. An application for a development agreement shall only be considered if the application is submitted in conjunction with an application for rezoning, a subdivision, a planned development, or other discretionary planning permit application authorizing the development which is the subject of the proposed development agreement.
4. The use of a development agreement is solely at the discretion of the City Council upon a finding that the development agreement is appropriate under the stated intent of this Chapter and the circumstances of the project for which the agreement is sought.

C. Regulations Affecting Property Subject to a Development Agreement.

1. The development agreement may specify, consistent with State law, the development rights vested by the agreement. Except as otherwise provided by the development agreement, the regulations which apply to the development of the property subject to the agreement shall be as follows:
 - a. Pursuant to Government Code Section 65866, development of the property shall be subject to the rules, regulations, ordinances, and official policies applicable to such development on the effective date of the development agreement which is the date of recordation. To the extent any future changes in the City's general plan, certified local coastal program, municipal code, zoning ordinances, or any future rules, ordinances, regulations or policies adopted by the City purport to be applicable to the property but are inconsistent with the terms and conditions of the development agreement, the terms of the development agreement shall prevail, unless the parties thereto mutually agree to amend or modify the development agreement.

- b. 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 the terms and conditions of the development agreement; nor shall a development agreement prevent the City from denying or conditionally approving any subsequent development application on the basis of such existing or new rules, regulations, and policies.
 - c. In the event State or Federal laws or regulations enacted after the effective date of the development agreement prevent or preclude compliance with one or more provisions of the 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. Said modification or suspension shall be noticed and heard in accordance with the procedures set forth in Subsection 9.72.110.J of this Chapter. The development agreement shall not preclude the City from applying to the property which is the subject of the development agreement those changes in City plans, regulations and policies which are specifically mandated by changes in State or Federal laws or regulations.
 - d. Nothing in this Section or in the development agreement shall be construed to limit the authority of the City to impose requirements and conditions on subsequent required approvals or permits if such requirements or conditions are necessary to protect persons or property from situations which create a condition dangerous to health or safety, nor shall this Section or the development agreement be construed to limit the authority of the City to require compliance with building standards, building codes and such other codes, ordinances, and regulations as are necessary to protect against a condition dangerous to the public health or safety.
2. Nothing in this Section shall be construed to limit the authority or obligation of the City to hold necessary public hearings or to limit the discretion of the City or any of its officers or officials with regard to the rules, regulations, ordinances, laws, and entitlements of use which require the exercise of discretion by the City or any of its officers or officials, provided that subsequent discretionary actions shall not conflict with those elements vested as a result of the development agreement.

D. Application Filing. The application shall be filed in accordance with Chapter 9.70, Permit Application Filing and Processing. A development agreement application shall include all information and materials required by Section 9.70.030 (Application Preparation and Filing), and the following additional information:

- 1. The name and address of the applicant and of all persons and entities having any legal or equitable interest in the property which is the subject of the proposed development agreement.
- 2. A preliminary title report dated no more than three months prior to the application date, demonstrating that the applicant has a legal or equitable interest in the property which is the subject of the proposed development agreement.
- 3. Legal description of the real property and a listing of the Assessor's parcel numbers for the property, including an approximation of the total area of the property which is the subject of the proposed development agreement.
- 4. Information about the current use of the property proposed to be subject to the development agreement.
- 5. Any explanatory text, plans, maps, drawings, pictures, and such other documentation, information and supporting data as the Director may need to process the application.
- 6. Designation of an agent representing legal ownership of all property proposed to be subject to the development agreement.
- 7. Any additional information requested by the Community Development Department.
- 8. A separate development agreement application shall be filed for each development project for which a development agreement is requested.

9. Evidence to the satisfaction of the Director indicating the applicant's authorization to proceed on behalf of the property owner(s) with the application. In the discretion of the Director one or all of the property owners may be required to sign the application.
10. A statement as to the eligibility of the proposed project.
11. Payment of the Preliminary Review Fee and a commitment to pay the Development Agreement processing fee upon a determination of eligibility by the Director.

E. Application Review.

1. Prior to application submission, the developer shall attend a pre-application conference with the Director and other City employees or consultants as appropriate.
2. The Director shall review the application for completeness and shall determine any additional requirements necessary to make the application complete. The Director may reject the application as incomplete if it does not contain the documentation required by the Director, other City Departments or other responsible agencies.
3. The Director may reject the application as ineligible for consideration if it is not made by a qualified applicant or is not made for a development proposal which meets the eligibility standards set forth in previous subsections of this Chapter.
4. The Director shall process the development agreement and any associated proposed land use entitlements for environmental review in compliance with the California Environmental Quality Act.
5. If the Director determines that an application is incomplete or ineligible, the Director must provide this determination in writing to the applicant. The applicant may appeal said written determination by the Director pursuant to the appeal procedures set forth in Chapter 9.76.030, Appeals. A decision on appeal will not affect the City Council's discretion on whether to approve a proposed development agreement.
6. At such time that the Director has determined the application is complete and eligible for consideration, the applicant may enter into negotiations with the City regarding the terms of the development agreement. When the City and the applicant have reached tentative agreement on the terms of the development agreement, the development agreement may be considered by the Planning Commission and the City Council in accordance with the procedures set forth in subsection 9.72.110.G.
7. Negotiations on behalf of the City shall be conducted by the Director, who shall consult with the City Manager and City Attorney, and other City employees or consultants as appropriate.

F. Contents of the Development Agreement. Each development agreement shall include the following terms, conditions, restrictions, and requirements; if applicable:

1. Proposed duration of the agreement, including a specified termination date, if appropriate.
2. Permitted uses of the property.
3. The density or intensity of uses.
4. The maximum height and size of proposed buildings.
5. Provisions for contribution to infrastructure, open space, affordable housing, community facility, sustainable energy, or other public improvements and amenities of benefit to the City, including reservation, dedication, and improvement of land for public purposes.
6. Such other provisions as the Director may recommend and the City Council may deem appropriate.

G. Project Review, Notice and Hearing

1. Noticing.
 - a. A public hearing on an application for a development agreement shall be held by the Planning Commission and the City Council. Public notice of intention to consider adoption of a development agreement shall be given as provided in LUC Section 9.74.020 and California Government Code Sections 65090 and 65091, in addition to any other notice required by law for other actions to be considered concurrently with the development agreement.
 - b. The notice requirements referred to in paragraph a., above, are declaratory of existing law. If state or local law prescribes a different notice requirement, notice shall be given in that manner.
 - c. The failure of any person or entity to receive notice of a hearing shall not affect the authority of the City to enter into a development agreement.
 - d. Any public hearing conducted under this Chapter may be continued from time to time.
2. Planning Commission Review and Recommendation.
 - a. The Planning Commission shall conduct at least one public hearing on the proposed development agreement and other proposed land use entitlements to be considered concurrently with the development agreement.
 - b. The Planning Commission shall make its written recommendation concerning the proposed development agreement to the City Council. The Planning Commission shall limit its review of the development agreement to the following:
 - 1) A determination of whether the proposed public benefit is sufficient to warrant entering into a development agreement;
 - 2) A review and recommendation of the proposed findings as set forth in subsection 9.72.110.H, below; and
 - 3) A list of discussion points to be forwarded to the City Council.
3. City Council Review and Decision.
 - a. The City Council shall hold at least one noticed public hearing to consider the proposed development agreement.
 - b. The Council may approve or conditionally approve the development agreement based on the findings identified in subsection 9.72.110.H, below. The City Council may add, modify, or eliminate any provision of the development agreement as a condition of approval.
 - c. The City Council, in its sole discretion and without the necessity for making findings, may disapprove a development agreement.
 - d. If the City Council approves the development agreement, it shall do so by the adoption of an ordinance. Such approval is a legislative act and such ordinance is subject to referendum. After the ordinance approving the development agreement takes effect, the City will enter into the development agreement by signature of the Mayor to said development agreement.

H. Findings. The City Council shall not approve and enter into a development agreement unless both of the following findings are made:

1. The development agreement is consistent with the objectives and policies of the General Plan and certified local coastal program.
2. The development agreement is consistent with the objectives set out in Section 9.72.110.B.3.

I. Recordation of the Development Agreement.

1. No later than ten (10) days after the City enters into a development agreement, the City Clerk shall record with the County Clerk/Recorder, at the expense of the qualified applicant, a fully executed copy of the development agreement, which shall include a legal description of the property subject thereto.
2. If the parties to the development agreement or their successors in interest amend or cancel the development agreement as hereinafter provided, the Director shall cause notice of such action to be recorded with the County Recorder, at the expense of the canceling party.
3. A development agreement shall take effect upon the date of recordation with the County Clerk/Recorder following City Council approval.

J. Amendment or Cancellation of the Development Agreement.

1. Any 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. Any party to the agreement may initiate the amendment or cancellation of a development agreement. The procedure amending or canceling a development agreement shall be the same as the procedure for approval of the agreement, including notice of public hearings on the matter in accordance with subsection 9.72.110.G.1, above. Any amendment to or cancellation of the development agreement shall be approved by ordinance. The findings required for amendment shall be the findings specified in subsection 9.72.110.H, above.
2. Planning staff and the City Attorney are authorized to correct typographical errors, references to attachments and exhibits, statutes and ordinances, page and section numbers, and to correct maps and to make similar clerical non-substantive changes to the development agreement without processing an amendment.
3. In the event that this enabling ordinance is repealed, any existing development agreements enacted by following the procedures herein shall remain in full force and effect for their specified term and only the provisions of state law shall govern those agreements.

Table 7-1 - Review Authority

Type of Decision	Procedure is in Section:	Role of Review Authority (1)			
		Zoning Administrator	Historic & Design Review Commission	Planning Commission	City Council

Administrative and Legislative

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Hillside Development Permit	9.52.070	Decision(2)		Appeal	Appeal
Master Sign Plan	9.38.030	Recommend	Decision		Appeal
Minor Use Permit (MUP)	9.72.080	Decision (2)		Appeal	Appeal
Tree Removal Permit	9.58.050	Decision (2)		Appeal	Appeal
Planned Development Permit (PD)	9.72.070	Decision (2)		Decision	Appeal
Sign Permit	9.38.030	Decision (2)	Decision		Appeal
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Zoning Clearance	9.72.100	Issuance		Appeal	Appeal

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2. Nothing in this Section shall be construed to limit the authority or obligation of the City to hold necessary public hearings or to limit the discretion of the City or any of its officers or officials with regard to the rules, regulations, ordinances, laws, and entitlements of use which require the exercise of discretion by the City or any of its officers or officials, provided that subsequent discretionary actions shall not conflict with those elements vested as a result of the development agreement.

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2. Planning staff and the City Attorney are authorized to correct typographical errors, references to attachments and exhibits, statutes and ordinances, page and section numbers, and to correct maps and to make similar clerical non-substantive changes to the development agreement without processing an amendment.
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Sign Permit	9.38.030	Decision (2)	Decision		Appeal
Use Permit (UP)	9.72.080	Recommend		Decision	Appeal
Variance	9.72.090		Decision	Decision	Appeal
Zoning Clearance	9.72.100	Issuance		Appeal	Appeal