

RESOLUTION R2018-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NAPA, STATE OF CALIFORNIA, UPDATING
PROCEDURES AND REQUIREMENTS FOR
CONSIDERATION OF DEVELOPMENT AGREEMENTS**

WHEREAS, California Government Code Sections 65864 *et seq.* governs development agreements and requires cities to adopt procedures and requirements for the consideration of development agreements; and

WHEREAS, the City of Napa, as a charter city, is not subject to, nor required to comply with, Government Code Sections 65864 *et seq.* and may adopt its own procedures and requirements for consideration of development agreements; and

WHEREAS, on August 16, 1983, the City Council adopted Resolution No. 83-176 establishing procedures and requirements for consideration of development agreements, which are generally consistent with Government Code Sections 65864 *et seq.*; and

WHEREAS, on October 26, 1993, the City Council adopted Resolution No. 93-267 amending Resolution No. 83-176 to include procedures for extending the term of a development agreement; and

WHEREAS, the procedures in Resolution No. 83-176 (as amended by Resolution No. 93-267) for consideration of development agreements are outdated and provide for the execution of development agreements by the Mayor and annual review of approved development agreements by the Planning Commission; and

WHEREAS, the City Council desires to repeal Resolution Nos. 83-176 and 93-267, and to establish updated procedures for the consideration of development agreements, including authorizing the City Manager to execute development agreements and to conduct annual reviews of approved development agreements; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Napa, as follows:

1. The City Council hereby finds that the facts set forth in the recitals to this Resolution are true and correct, and establish the factual basis for the City Council's adoption of this Resolution.

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2. The City Council hereby repeals Resolution Nos. 83-176 and Resolution No. 93-267.

3. The City Council hereby adopts the following procedures and requirements for consideration of development agreements:

Development Agreement Procedures and Requirements

A. Definitions.

1. "CEQA" means the California Environmental Quality Act, California Public Resources Code Section 21000 *et seq.*
2. "City Manager" means the City Manager as defined in Napa Municipal Code Chapter 2.08.
3. "Director" means the Community Development Director as defined in Napa Municipal Code Chapter 2.36 or designee of the Community Development Director or City Manager.

B. Application.

1. An applicant shall initiate consideration of a development agreement with the City pursuant to Article 2.5, Chapter 4, Title 7 of the California Government Code, commencing with Section 65864 by filing an application with the Planning Division. The application shall include the following information:
 - a. A proposed form of agreement that complies with the requirements of Government Code Section 65864 *et seq.*
 - b. The consent of the property owner if the applicant is not the fee owner of the property.
 - c. Sufficient information to enable the Planning Division to conduct environmental review, at the applicant's expense, in accordance with the requirements of CEQA.
 - d. Sufficient information to establish that the project is consistent with the City's General Plan and all applicable specific plans.
 - e. The required fee.
 - f. Such other information as the Director may require by policy or to satisfy other requirements of law.

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2. The Director shall prescribe the form for applications, notices and other documents required under this resolution for the preparation and implementation of development agreements.

C. Planning Commission Action.

1. Upon receipt of the application, the results of the CEQA review, and the recommendations of Planning Division staff, the Planning Commission shall schedule a public hearing to consider the application. Notice of intention to consider adoption of a development agreement shall be given as provided in 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.
2. Following the public hearing, the Planning Commission shall submit its recommendations on the application to the City Council. The Planning Commission may recommend either conditional or unconditional approval, disapproval or modification of the proposed agreement.

D. City Council Action.

1. Upon receipt of the application, the results of the CEQA review and the Planning Commission recommendation, the City Council shall schedule a public hearing on the application. Notice of intention to consider adoption of a development agreement shall be given as provided in 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.
2. Following the public hearing, the City Council shall conditionally or unconditionally approve, disapprove or approve as modified, the agreement, and if approved or approved as modified, shall authorize the City Manager to execute the agreement on behalf of the City. Formal approval of a development agreement shall be accomplished by ordinance in accordance with Government Code Section 65867.5. A development agreement shall not be approved unless the City Council finds that the provisions of the agreement are consistent with the City's General Plan and any applicable specific plan.
3. No agreement shall be executed by the City Manager until it has been executed by the applicant. If the applicant has not executed the agreement, as approved by the City Council, and returned the executed agreement to the City Manager for his or her execution within 30 days following the effective date of the ordinance approving the agreement, the application shall be deemed withdrawn by the applicant and the City Manager shall not execute the agreement.

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4. Within 10 days after the City Manager executes a development agreement, the City Clerk shall cause a copy of the agreement to be recorded with the Napa County Recorder.
5. All agreement provisions are subject to modification or suspension as set forth in Government Code Section 65869.5.

E. Annual Review.

1. All development agreements shall be reviewed by the City Manager at least once every twelve months, unless the agreement provides for more frequent review, in which case the agreement shall prevail.
2. The purpose of the review shall be to inquire into the good faith compliance of the applicant with the terms of the agreement, and in case of an agreement which provides for more frequent review, for any other purpose which may be specified in the agreement. The burden of demonstrating good faith compliance shall rest with the applicant.
3. If following review of an agreement, it is determined that the agreement should be terminated or modified, the matter shall be referred to the City Council for proceedings for termination or modification.
4. If the City Council finds and determines, on the basis of substantial evidence, that the applicant or its successor in interest has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify the agreement.

F. Termination, Cancellation, Modification and Amendment of Development Agreements.

Any development agreement may be cancelled or amended by mutual consent of the applicant (or its successor in interest) and the City in the same manner as set forth above for initially entering into such agreement. Notwithstanding the preceding sentence, the terms of any development agreement may be extended by the City Council without review or public hearing by the Planning Commission, and without satisfying any of the other procedures and requirements set forth above for initially entering into a development agreement.

G. Irregularity in Proceedings.

No action, inaction or recommendation regarding the 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 petition, application, notice, finding, record, hearing, report, recommendation, or any matters of procedure whatever unless after

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an examination of the entire case, including the evidence, the court is of the opinion that 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 no presumption that error is prejudicial or that injury was done if error is shown.

4. This Resolution shall take effect immediately upon its adoption.

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the City Council of the City of Napa at a public meeting of said City Council held on the 13th day of November, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
Dorothy Roberts
City Clerk

Approved as to form:

Michael W. Barrett
City Attorney