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RESOLUTION # 08-76
CITY OF ALBANY
PROCEDURES FOR CONSIDERATION OF
DEVELOPMENT AGREEMENTS

WHEREAS, a Development Agreement is a detailed contract between a property owner and a local agency that spells out the rules of development for a particular project in very specific terms.

WHEREAS, the purpose of Development Agreements is to provide a property owner substantial assurance that its project can be completed in accordance with existing policies, rules, regulations, and conditions of approval.

WHEREAS, development agreements are adopted as a result of voluntary negotiation between the City and a property owner, and thus are not subject to state law and municipal code restrictions on the amount of required dedications of property and imposition of development fees.

WHEREAS, the Planning and Zoning Commission reviewed the proposed procedures at its meeting of November 25, 2008 and recommended to the City Council adoption of the proposed procedures.

NOW THEREFORE, BE IT RESOLVED, the City of Albany adopts the following procedures for consideration of development agreements:

1. Purpose. These Procedures are adopted in compliance with the provisions of California Government Code Sections 65864 through 65869.5.

2. Eligibility to Apply. Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person who has legal or equitable interest in the real property that is the subject of the development agreement. The Community Development Director may require an applicant to submit proof of the applicant's interest in the real property and of the authority of any agent to act for the applicant. Before processing the application, the Community Development Director may obtain the opinion of the City Attorney as to the sufficiency of the applicant's interest in the real property to enter into the agreement.

3. Application Content. The Community Development Director shall prescribe the form for each application, including with information, and data necessary to process the application, along with a processing fee as adopted by the City Council.

1 **4. Form of Agreement.** Each application shall be accompanied by the
2 form of standard development agreement established by the city and approved
3 by the council with any additional alternatives, modifications or changes
4 proposed by the applicant. Content of the development agreement may include:

- 5 a. The duration of the agreement;
- 6 b. The permitted uses of the property;
- 7 c. Development regulations applicable to the property
- 8 d. Provisions for reservation or dedication of land for public use.
- 9 e. Conditions, terms, restrictions and requirements for subsequent
10 discretionary approvals consistent with the agreement.
- 11 f. Project Start up and completion dates;
- 12 g. Fees for the cost of processing the application;
- 13 h. Provisions for amendment or cancellation of the agreement;
- 14 i. Reimbursement to the City for the costs of City services provided by
15 the City and required by the development for the term of the agreement; and
- 16 j. Any other matters that the City determines are necessary.

17
18 **5. Hearing Notice.** The Community Development Director shall give
19 notice of the city’s intention to consider adoption of a development agreement
20 in conjunction with any other public hearing required by law or the Planning
21 and Zoning Code, at least 10 days before the hearing date. The form, content,
22 and method of providing notice shall be consistent with the requirements of the
23 Planning and Zoning Code.

24
25 **6. Review by Planning and Zoning Commission.** After a hearing by the
26 Planning and Zoning Commission, which may be held in conjunction with
27 other required hearings for the project including amendments to the general
28 plan, rezoning, subdivision maps, design review, parking exceptions, planned
29 unit development, variances, or conditional use permits, the Planning and
30 Zoning Commission shall make its recommendation in writing to the council.

31
32 **7. City Council Public Hearing.** Following notice as provided by
33 Planning and Zoning Code, the council shall hold a public hearing. It may
34 accept, modify or disapprove the recommendation of the Planning and Zoning
35 Commission. The council shall not approve the development agreement unless
36 it makes all of the following findings:

- 37 a. The proposed project is in the interest of public health, safety and
38 general welfare;
- 39 b. The proposed project is consistent with the objectives, policies, general
40 land uses and programs specified in the general plan, any applicable specific
41 plans, and applicable design guidelines adopted by the City of Albany, and all
42 applicable provisions of the Planning and Zoning Code.
- 43 c. The proposed project is consistent with the provisions of these
44 procedures;
- 45 d. The proposed agreement ensures the orderly development of property
46 or the preservation of property values; and

1 e. The proposed agreement provides sufficient benefit to the city to justify
2 entering into the agreement.

3
4 **8. Approval by Ordinance.** If the council approves the development
5 agreement, it shall do so by the adoption of an ordinance. After the ordinance
6 approving the development agreement takes effect, the city may enter into the
7 agreement.

8
9 **9. Amendment or Cancellation.** Either party may propose an amendment
10 to, or cancellation in whole or in part, of an executed development agreement.
11 If proposed by the developer, the procedure for proposing and adoption of an
12 amendment to or cancellation in whole or in part of the development agreement
13 shall be the same as the procedure for entering into an agreement in the first
14 instance, including public notice as required by the Planning and Zoning Code.
15 However, where the city initiates the proposed amendment to or cancellation of
16 the development agreement, it shall first give at least 30 days notice to the
17 property owner of its intention to initiate such proceedings in advance of the
18 giving of public notice of hearing.

19
20 **10. Recordation of Agreement, Amendment or Cancellation.** Within 10
21 days after the city enters into the development agreement, the city clerk shall
22 have the agreement recorded with the county recorder. If the parties to the
23 agreement or their successors in interest amend or cancel the agreement as
24 provided in Government Code Section 65865.1 for failure of the application to
25 comply in good faith with the terms or conditions of the agreement, the city
26 clerk shall likewise have record notice of such action with the county recorder.

27
28 **11. Periodic Review.** The city shall review the development agreement
29 every 12 months from the date the agreement is entered into.

30
31 a. The Community Development Director shall begin the review
32 proceeding by giving notice that the city intends to undertake a periodic review
33 of the development agreement to the property owner. The Community
34 Development Director shall give the notice at least 30 days before the date
35 when the council shall consider the matter.

36 b. The council shall receive the Community Development Director's
37 report at a regularly scheduled city council meeting. A public hearing may be
38 held but is not required. At the meeting, the property owner must demonstrate
39 good faith compliance with the terms of the agreement. The burden of proof on
40 this issue is upon the property owner. If a public hearing is held, notice of the
41 hearing shall be given as provided by Planning and Zoning Code.

42 c. The council shall determine whether the property owner has, for the
43 period under review, complied in good faith with the terms and conditions of
44 the agreement.

45 d. If the council finds and determines that the property owner has
46 complied in good faith with the terms and conditions of the agreement during

1 the period under review, the review for that period is concluded. If the council
2 finds and determines that the property owner has not complied in good faith
3 with the terms and conditions of the agreement during the period under review,
4 the council shall order the property owner to cure the default within 60 days. If
5 the property owner fails to do so, the council may modify or terminate the
6 agreement.

7
8 **PASSED AND ADOPTED** by the City Council of the City of Albany at its
9 meeting on the ___ day of _____, 2008, by the following vote:

10
11 AYES:

12 NOES:

13 ABSENT:

14 ABSTAIN:

15

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17

18

Mayor