

SAUSALITO PLANNING COMMISSION RESOLUTION NO. 2021-03

**RECOMMENDATION OF CITY COUNCIL APPROVAL OF
MUNICIPAL CODE AMENDMENTS OF TITLE 10
TO ESTABLISH PROCEDURES AND REQUIREMENTS FOR THE
CONSIDERATION OF DEVELOPMENT AGREEMENTS**

WHEREAS, California Government Code Sections 65864 et seq. authorize cities to enter into development agreements (the "Development Agreement Statute"); and

WHEREAS, the Development Agreement Statute requires that the City, upon request by an applicant, adopt a resolution or ordinance specifying procedures and requirements for consideration of development agreements; and

WHEREAS, the City of Sausalito does not currently have a procedure for processing development agreement applications; and

WHEREAS, the Planning Commission conducted a duly-noticed public hearing on December 2, 2020, December 16, 2020, January 6, 2021, and January 20, 2021 at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Planning Commission has considered all oral and written testimony on the proposed amendments; and

WHEREAS, the Planning Commission has reviewed and considered the information contained in the staff reports dated December 2, 2020 and January 20, 2021 for the project; and

WHEREAS, the project is categorically exempt from California Environmental Quality Act (CEQA) pursuant to 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines since there would be no possibility of a significant effect on the environment; and

WHEREAS, the Planning Commission finds the proposed amendments are consistent with the General Plan as described in the staff reports dated December 2, 2020 and January 20, 2021.

NOW, THEREFORE, THE PLANNING COMMISSION HEREBY RESOLVES:

The Planning Commission recommends City Council approval of Municipal Code amendments to add a new Chapter 10.80 to Title 10 of the Sausalito Municipal Code to establish procedures and requirements for the consideration of development agreements, with a specific recommendation to make a pre-application Planning Commission study session a mandatory part of the process.

RESOLUTION PASSED AND ADOPTED, at the regular meeting of the Planning Commission on the 20th day of January, 2021, by the following vote:

AYES: Saad, Luxenberg, Pierce, Graef, Chair Feller
NOES: None
ABSENT: None
ABSTAIN: None

Lilly Whalen

Lilly Whalen

Secretary to the Planning Commission

ATTACHMENT

1- Draft Recommended Ordinance

**SAUSALITO PLANNING COMMISSION
RESOLUTION NO. 2021-03
January 20, 2021**

ATTACHMENT 1: DRAFT RECOMMENDED ORDINANCE

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAUSALITO AMENDING CHAPTER 10 OF THE SAUSALITO MUNICIPAL CODE TO ADD A NEW CHAPTER 10.80 REGARDING DEVELOPMENT AGREEMENTS

WHEREAS, California Government Code Sections 65864 et seq. authorize cities to enter into development agreements (the "Development Agreement Statute"); and

WHEREAS, the Development Agreement Statute requires that the City, upon request by an applicant, adopt a resolution or ordinance specifying procedures and requirements for consideration of development agreements; and,

WHEREAS, the City of Sausalito does not currently have a procedure for processing development agreement applications.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAUSALITO DOES ORDAIN AS FOLLOWS:

SECTION 1.

Chapter 10 of the Sausalito Municipal Code is hereby amended to add a new Chapter 10.80 to read as follows:

CHAPTER 10.80

DEVELOPMENT AGREEMENTS

Sections:

- 10.80.010 Citation and authority.
- 10.80.020 Purpose.
- 10.80.030 Applicability.
- 10.80.040 Forms, information and fees.
- 10.80.050 Review of application.
- 10.80.060 Notice of public hearing.
- 10.80.070 Review by planning commission.
- 10.80.080 Decision by city council.
- 10.80.090 Approval of development agreement.
- 10.80.100 Amendment or cancellation.
- 10.80.110 Recordation.
- 10.80.120 Periodic review.
- 10.80.130 Modification or termination.

10.80.010 Citation and authority.

This Chapter is adopted in accordance with Government Code Title 7, Division 1, Chapter 4, Article 2.5, Section 65864 et seq. and may be cited as the Development Agreement Ordinance of the City of Sausalito.

10.80.020 Purpose.

The purpose of this Section is to strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development by providing an option to both the city and developers to enter into development agreements.

10.80.030 Applicability.

The procedures and requirements set forth in this Chapter shall apply to all development agreements proposed by developers and entered into by the city council.

10.80.040 Pre-Application Study Session

Prior to formal application submittal a pre-application Planning Commission study session shall be required.

- A. A person having a legal or equitable interest in real property may apply for a pre-application development agreement study session. The community development director shall prescribe the pre-application form for development agreements. The applicant shall pay the fee for a study session set by City Council resolution and updated from time-to-time.
- B. The city may require an applicant to submit such information and supporting data as the community development director considers necessary for a pre-application development agreement study session application, and as provided in a submittal checklist updated from time-to-time.
- C. Following the staff review, a Planning Commission pre-application study session for the development agreement shall be agendized. Staff and the applicant will present the project to the Planning Commission. Following the project presentation, the Planning Commission will be invited to make individual comments on various aspects of the proposal. Such comments shall confer no vested rights upon the applicant to proceed and the City may thereafter reject the formal application even though it complies with the approved pre-application request. In conformance with State Law, no formal direction or decision-making will take place until a project has undergone appropriate environmental review, public hearings, and evaluation for consistency with adopted City codes and plans.

10.80.050 Forms, information and fees.

- A. A person having a legal or equitable interest in real property may apply for a development agreement. The community development director shall prescribe the application form for development agreements.
- B. The city may require an applicant to submit such information and supporting data as the community development director considers necessary to process the application.
- C. Each application shall be accompanied by the development agreement proposed by the applicant.
- D. The applicant shall reimburse the city for all its reasonable and actual costs, fees, and expenses, including legal counsel and special counsel fees, for preparation and review of an

application for a development agreement. The city council may by resolution fix the schedule of fees and charges imposed for the filing and processing of each development agreement application and for the annual review.

10.80.060 Review of application.

The community development director shall review the application and determine any additional information necessary to process the application. After the required information is received, a staff report and recommendation shall be prepared and shall state whether or not the agreement, as proposed or in an amended form, would be consistent with the general plan and any applicable specific plan and shall describe the public benefits provided by the proposed agreement. The community development director shall have the discretion to require a planning commission a public workshop and/or another public vetting opportunity after to the study session but prior to the public hearings on the development application.

10.80.070 Notice of public hearing.

A. The timing and manner of giving notice of public hearings on the development agreement shall be as prescribed in Government Code Section 65867.

B. The notice to consider adoption of the development agreement shall contain:

1. The time and place of the hearing;
2. A general explanation of the matter to be considered, including a general description of the area to be affected; and
3. Other information required by law or which the community development director considers necessary or desirable.

10.80.080 Review by planning commission.

A. The planning commission shall hold a public hearing on the development agreement and shall make a written recommendation to the city council.

B. The planning commission's recommendation shall include a determination whether or not the proposed development agreement:

1. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
2. Is consistent with the zoning and other land use regulations applicable to the property.

10.80.090 Decision by city council.

A. The city council shall hold a public hearing, after which it may accept, modify or disapprove the recommendation of the planning commission.

B. The city council may not approve the development agreement unless it finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan

and are consistent with the zoning and other land use regulations applicable to the property.

10.80.100 Approval of development agreement.

If the city council approves the development agreement, it shall do so by the adoption of an ordinance. The agreement takes effect upon the effective date of the ordinance.

10.80.110 Amendment or cancellation.

A. The parties may mutually agree to amend or cancel in whole or in part the development agreement previously entered into.

B. The procedure for proposing and adopting an amendment to or cancellation in whole or in part of the development agreement is the same as the procedure for entering into an agreement.

10.80.120 Recordation.

A. Within ten days after the city enters into the development agreement, the city clerk shall have the agreement recorded with the county recorder.

B. If the parties to the agreement amend or cancel the agreement as provided in Section 10.80.100 or modify or terminate the agreement as prescribed in Section 10.80.130 for failure of the applicant to comply in good faith with the terms or conditions of the agreement, the city clerk shall have notice of such action recorded with the county recorder.

10.80.130 Periodic review.

A. The city shall review the development agreement every twelve months from the date the agreement is entered into. It is the developer's responsibility to apply in a timely fashion for the annual review and pay any applicable review fees. The property owner responsible for submitting substantial evidence of good faith compliance with the development agreement with the application for annual review. The date for the annual review may be modified either by agreement between the parties or at the city's initiation, upon recommendation of the community development director, and by an affirmative vote of a majority of the planning commission.

B. The community development director shall give notice to the property owner that the city intends to undertake the review of the development agreement. Notice shall be given at least ten days in advance of the time at which the matter will be considered by the planning commission.

C. The planning commission shall conduct a public hearing determine whether the property owner is in good faith compliance with the terms of the agreement. The burden of proof, by substantial evidence, of good faith compliance shall be upon the property owner.

D. The planning commission shall determine based on substantial evidence whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of the agreement.

E. If the planning commission determines based on substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement during the period under review, the review for that period is concluded.

F. If the planning commission determines based on substantial evidence that the property owner has not complied in good faith with the terms and conditions of the agreement during the period under review, the planning commission shall forward its recommendation to the city council, and the city council may modify or terminate the agreement.

10.80.140 Modification or termination.

A. If the city council determines based on substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement, the review for that period is concluded.

B. If the city council determines, based upon substantial evidence, that the property owner has not complied in good faith with the terms and conditions of the agreement during the period under review, the city council may terminate or modify the agreement as provided in this subsection.

1. Before modifying or terminating the agreement, the city shall give notice to the property owner containing:
 - a. The time and place of the hearing;
 - b. A statement as to whether the city proposes to terminate or to modify the development agreement; and,
 - c. Other information which the city considers necessary to inform the property owner of the nature of the proceedings.
2. At the time and place set for the hearing on modification or termination, the property owner shall be given an opportunity to be heard.
3. The city council may refer the matter back to the planning commission for further proceedings or for report and recommendation.
4. The city council may impose those conditions to the action it takes as it considers necessary to protect the public health, safety, or welfare.
5. The decision of the city council is final.

SECTION 2. CEQA EXEMPTION

The City Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that a Notice of Exemption be filed with the Marin County Clerk in accordance with the CEQA guidelines.

SECTION 3. EFFECTIVE DATE.

This Ordinance shall take effect and will be enforced thirty (30) days after its adoption.

SECTION 4. PUBLICATION AND POSTING

The City Clerk has caused to be published a summary of this ordinance, prepared by the City Attorney under Government Code Section 36933, subdivision (c) of the, once, in a newspaper of general circulation printed and published in Marin County and circulated in the City of Sausalito, at least five days before the date of adoption. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause the summary of this ordinance to be published again with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

* * *

AS RECOMMENDED BY THE PLANNING COMMISSION ON 1/20/21

The City Council of the City of Sausalito, California introduced the foregoing ordinance, on _____ and adopted the ordinance at a regular meeting held on _____, 20__ by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney