

**City of Piedmont**  
**COUNCIL AGENDA REPORT**

---

DATE: April 4, 2005

FROM: Kate Black, City Planner, and George S. Peyton, Jr., City Attorney

SUBJECT: **First Reading of Ord. 655 N.S. - Development Agreement Ordinance**

---

RECOMMENDED ACTION:

Approve a first reading of the attached Ordinance providing for Development Agreements.

BACKGROUND:

Under the provisions of California Government Code, cities are supposed to adopt regulations relating to development agreements, which would be agreements that would apply particularly to larger development projects. Because it is almost entirely single-family residential, the City of Piedmont does not have the situations arise that would normally call for development agreements between the City and the developer. However, a development proposal that will be forthcoming for the Pacific Gas & Electric property will undoubtedly fit into the category that might require a development agreement. It is common in large developments, that the developer will desire to obtain his/her development rights in a vested agreement. For example, the term of the approval may be granted longer than the term that would typically be permitted under a standard approval. In exchange, the City is able to obtain some benefit from the developer that is in the interest of the City, such as a dedication of land or money for public purposes.

While it is theoretically possible to adopt the regulations by Council resolution, most cities do this by Ordinance to provide a basic framework of how the Development Agreement will be arrived at and what its contents will be.

DEVELOPMENT AGREEMENT ORDINANCE:

Attached as Exhibit A is the proposed Development Agreement Ordinance that has been adapted from the current Development Agreement Ordinance provisions of the Livermore Planning and Zoning Code. This basic ordinance was developed by Piedmont Deputy City Attorney, Judy Robbins, and ties in directly with the provisions of the California Government Code. In fact, you will see references to the related Government Code Sections throughout the Ordinance, which make it very easy to have specific cross-references to the basic enabling legislation.

FORMAT FOR DEVELOPMENT AGREEMENT:

Attached as Exhibit B is a sample form Development Agreement that has been adapted from one used by the City of Livermore, just to give you an idea of what might be included within the Agreement itself. Judy Robbins has included explanatory text in italics following certain provisions in the sample. Obviously, specific terms of the Agreement will vary, depending upon the project that is involved, including language recommended by the City Attorney that might be added to a future Agreement.

SUMMARY:

After review of the attached Ordinance, should the Council wish to approve a first reading of the Ordinance at the April 4, 2005 meeting, a second reading will follow on April 18, 2005, so that this Ordinance can be in place 30 days later on May 18, 2005, to assist whenever the development plans are filed by the Developer on the Pacific Gas & Electric property.

EXHIBITS:

Exhibit A	Proposed Development Agreement Ordinance
Exhibit B	Sample Form Development Agreement

ORDINANCE NO. 655 N.S.

AN ORDINANCE OF THE CITY OF PIEDMONT  
ADDING NEW CHAPTER 17E TO THE PIEDMONT MUNICIPAL CODE  
REGARDING DEVELOPMENT AGREEMENTS

---

The City of Piedmont does hereby ordain:

SECTION 1.

The intent of the City Council in enacting this Ordinance is to create a new chapter of the municipal code requiring development agreements consistent with state law.

SECTION 2.

Chapter 17E is hereby added as follows:

**“Chapter 17E  
DEVELOPMENT AGREEMENTS**

- §17E.1 Purpose and scope.
- §17E.2 Application.
- §17E.3 Contents of development agreements.
- §17E.4 Initial review.
- §17E.5 Consideration and decision.
- §17E.6 Amendment and cancellation.
- §17E.7 Annual review.
- §17E.8 Effect of development agreement.

SEC. 17E.1 PURPOSE AND SCOPE

The purpose of this chapter is to implement the development agreement provisions of the state planning and zoning law. All development agreements shall be processed in accordance with this chapter.

A development agreement provides assurance to a developer that he or she may proceed with a project in accordance with existing policies, rules and regulations and subject to certain conditions of approval. Such assurance will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce economic costs of development. Also, by requiring some public benefit, this process assures some additional benefit to the public in exchange for the vested rights granted under a development agreement. [Government Code

Sections 65864-65869.5]. Bracketed references throughout this Chapter are to the California Government Code.

SEC. 17E.2 APPLICATION

17E.2.1 Filing by Owner. An application for a development agreement may only be filed by a person having a legal or equitable interest in real property.

17E.2.2 Form of Application. An application for a development agreement shall be on a form approved by the Director of Public Works

17E.2.3 Application Fees. The applicant shall pay fees for the filing and processing of an application as established by resolution of the City Council. [G.C. 65865 and 66006].

SEC. 17E.3 CONTENTS OF DEVELOPMENT AGREEMENTS.

17E.3.1 Required Provisions. A development agreement shall include the following:

- a. The duration of the agreement;
- b. The permitted uses of the property;
- c. The density or intensity of the use;
- d. The maximum height and size of the proposed buildings;
- e. Provisions for the dedication of land for public purposes;
- f. The public benefit offered by the applicant as consideration for entering into the agreement;
- g. The provisions set forth in 17E.8.1

17E.3.2 Optional Provisions. A development agreement may include the following:

- a. Conditions, terms, restrictions, and requirements for subsequent discretionary actions; provided, that such conditions, terms, restrictions and requirements shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement;

- b. Provisions providing that construction shall begin within a specified time and that the project or any phase be completed with a specified time;
- c. Terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time;
- d. Provisions requiring compliance with specific plans previously approved through Design Review.

17E3.3      Provisions Not Allowed. A development agreement shall not include the following:

- a. Requirements for the city to provide public facilities, improvements or services;
- b. Requirements for the city to exercise its legislative or quasi-judicial powers in a particular way;
- c. Waivers or modifications of any city fees or requirements. [G.C. 65865.2].

SEC. 17E.4    INITIAL REVIEW.

The Director of Public Works shall determine whether the application is complete and shall schedule a public hearing by the City Council. At the hearing, the Council shall determine whether it wishes to enter into such an agreement and, if so, the general subject areas the staff is authorized to negotiate. Notice of the hearing shall be given as provided in Government Code Sections 65090 and 65091.

SEC. 17E.5    CONSIDERATION AND DECISION.

The Director of Public Works shall direct the negotiations with the developer regarding terms of the development agreement. The Director of Public Works shall determine what environmental review is appropriate under the California Environmental Quality Act (CEQA). Once negotiations are completed, the Director of Public Works shall schedule the proposed development agreement for the required hearings under this section.

17E.5.1      Planning Commission Hearing and Recommendation. The Planning Commission shall hold a public hearing to consider whether the development agreement should be approved. Notice of the hearing shall be given as provided under Government Code Sections 65090 and 65091. The Commission may recommend to the City Council approval, approval subject to conditions, or denial of the application.

17E.5.2      City Council Determination. The City Council shall hold a public hearing to consider whether the development agreement should be approved. Notice of the hearing shall be given as provided under Government Code Sections 65090 and 65091. Approval, authorizing the City Administrator to sign the development agreement, shall be by City Council resolution.

17E.5.3 Findings. The Planning Commission may recommend approval and the City Council may approve the development agreement only after finding that the development is consistent with the general plan, applicable city codes and policies and this chapter.

17E.5.4 Recordation. Within 10 days after the city enters into a development agreement, the City Clerk shall record a copy of the agreement with the county recorder.

#### SEC. 17E.6 AMENDMENT AND CANCELLATION.

A development agreement may be amended or cancelled using the same procedure for entering into the agreement under 17E.4 and 17E.5. [G.C. 65868].

#### SEC. 17E.7 ANNUAL REVIEW.

The Planning Commission shall hold a public hearing to review each development agreement at least every 12 months from the date it is entered into, and shall forward their recommendations to the City Council. Additionally, the Planning Commission or City Council, or both, may hold public hearings to conduct more frequent reviews of a development agreement. The City Council may impose a reasonable fee to cover the costs of this review.

17E.7.1 Notice. The Director of Public Works shall give notice of the intention to conduct a review under this section as provided in Government Code Sections 65090 and 65091. In addition, at least 10 days before the hearing, the Director of Public Works shall give notice to all persons having a legal or equitable interest in the real property subject to the agreement. The notice shall include the following:

- a. A statement that the applicant, or the successor-in-interest to the agreement, has the burden of demonstrating good faith compliance with the terms of the agreement; and
- b. A statement that if, as a result of such review, the Planning Commission or City Council finds on the basis of substantial evidence that the applicant or successor to the agreement has not complied in good faith with the terms and conditions of the agreement, the City may modify or terminate the agreement.

17E.7.2 Determination. If the Planning Commission finds, on the basis of substantial evidence, that the applicant or successor-in-interest has not complied in good faith with the terms or conditions of the agreement, it may recommend modification or termination to the City Council. Based on substantial evidence that the applicant or successor has not complied in good faith with the terms or conditions of the agreement, the City Council may modify or terminate the agreement. [G.C. 65866].

SEC. 17E.8    EFFECT OF DEVELOPMENT AGREEMENT.

The development of the property shall be governed by those rules, regulations and official policies in effect at the time of execution of the agreement, regarding permitted uses of the land, density, design, improvement and construction standards and specifications, except as otherwise provided by the development agreement or as provided in subsection 17E.8.1 below:

17E.8.1        Limitations. Notwithstanding the vested rights set forth above, the property owner shall:

- a.     Pay the processing and development impact fees in effect at the time those fees are paid;
- b.     Comply with building code requirements in effect on a city-wide basis at the time of construction;
- c.     Comply with construction and technical design standards or specifications for public improvements which are applicable city-wide;
- d.     Comply with changes in city laws, regulations, plans or policies applicable city-wide, the terms of which are found by the City Council, based on substantial evidence, to be necessary to protect members of the public from a condition dangerous to their health or safety;
- e.     Comply with a change in City law, regulations, plans or policies which is:
  - (1)    Specifically mandated by state or federal law, or by any regional governmental agency that has legal authority over the City under state law or a joint powers agreement; or
  - (2)    A result of or in response to state or federal law, or regional agency action, made necessary in order for the City to avoid losing or not receiving substantial funding or other substantial public benefits or facilities that would be available to the City only if it makes such a change; or
  - (3)    Specifically mandated by, or necessary for compliance with or implementation of, the terms of any permit, entitlement or other authorization necessary for the development of the property issued or granted to the City, county and/or property owners by any federal, state or regional agency; and
- f.     Following any subsequent environmental review, comply with required mitigation measures.

17E.8.2        City's Rights. A development agreement does not prevent the City in subsequent actions applicable to the property from:

- a. Applying new rules, regulations and policies which do not conflict with those set forth in the development agreement; or
- b. From denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies. [G.C. 65866].”

SECTION 3.

This ordinance shall be posted at City Hall after its second reading by the City Council for at least thirty (30) days and shall become effective thirty (30) days after the second reading.

*[Sample form based on a simplified use of development agreement  
in Livermore for certain planned developments. March, 2005]*

Recorded by and When Recorded Return to:  
City Clerk, City of Piedmont

\_\_\_\_\_  
Piedmont, California \_\_\_\_\_/

**DEVELOPMENT AGREEMENT  
PROJECT**

This Development Agreement is entered into on \_\_\_\_\_, 2005 between the City of Piedmont, a municipal corporation, (City) and \_\_\_\_\_, (Property Owner) regarding the \_\_\_\_\_ Project (Project).

Recitals

This Development Agreement is based on the following facts:

A. City has the authority to enter into a development agreement under Government Code section 65864 and following (Development Agreement Statute) and the City's Development Agreement Procedures (Piedmont Municipal Code \_\_\_\_).

B. The Property Owner is the owner of approximately \_\_\_ acres of property located on \_\_\_\_\_ in the City of Piedmont, County of Alameda, described more specifically in Exhibit A, attached (Property). The Developer of the Property is \_\_\_\_\_.

C. The Property Owner has applied to the City for a \_\_\_\_\_ [type of application] (City file # \_\_\_\_\_), a \_\_\_\_\_, and this Development Agreement (City file # \_\_\_\_\_). The Property Owner proposes to develop the Property into \_\_\_\_\_ lots for use as \_\_\_\_\_.

D. This Development Agreement was adopted by resolution of the City Council, after notice and public hearings before the Planning Commission and City Council and after City Council adoption/approval of a \_\_\_\_\_ [EIR or negative declaration] in accordance with the California Environmental Quality Act, Public Resources Code section 21000 and following.

NOW, THEREFORE, the parties agree as follows:

1. The Property. The Property which is the subject of this Development Agreement is described in paragraph B above.

2. The Project. The Property Owner is authorized to develop and use the Property for \_\_\_\_\_, approved by the City Council on \_\_\_\_\_, 2005. The Project approval contains the required terms regarding the permitted uses of the property, the intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of dedication of land for public purposes. (Government Code section 65865.2.)

3. Effective Date; Term.

a. The effective date of this Development Agreement is the latest date of signature by Property Owner or the City Manager. The term of this Development Agreement is \_\_\_\_\_ years, beginning on the effective date.

b. If any litigation affecting this Development Agreement, the Property or the Project is filed, the Property Owner may apply to the City for a stay of the time period, using the same procedures established for tentative maps under Government Code section 66452.6(c).

4. Property Owner Obligations. The Property Owner shall comply with the requirements set forth in the following Exhibits attached to this Development Agreement:

*[Here, the parties describe the obligations of the property owner. It is not necessary to include here the normal conditions of approval for the land use entitlement (subdivision map, use permit, variance, etc.). Rather, what is included here might simply be a reference to those documents AND a description of other, additional incentives the Property Owner has offered along with the project. These are things which the City might or would not be able to require under the normal process, but which the developer has agreed to. Examples from other cities include: contributions to parks, senior centers, or community centers; the building of extra amenities in the project; dedication of land to the city which might not otherwise be required, etc.]*

5. Vested Development Rights. Subject to this Development Agreement and during the life of this Development Agreement, the Property Owner has the right to develop and use the Property in accordance with:

a. the City's General Plan and Planning and Zoning Code in effect on the effective date;

b. all other City policies, ordinances, resolutions, rules, regulations and standards applicable to development or use of the Property on the effective date, except that Property Owner shall:

1) pay the processing and development impact fees in effect at the time those fees are paid;

2) comply with Building Code requirements in effect on a city-wide basis at the time of construction;

- 3) comply with construction and technical design standards or specifications for public improvements which are applicable city-wide;
- 4) comply with changes in City laws, regulations, plans or policies applicable city-wide, the terms of which are found by the City Council, based on substantial evidence, to be necessary to protect members of the public from a condition dangerous to their health or safety;
- 5) comply with a change in City law, regulations, plans or policies which is:
  - (a) specifically mandated by state or federal law, or by any regional governmental agency that has legal authority over the City under state law or a joint powers agreement; or
  - (b) a result of or in response to state or federal law, or regional agency action, made necessary in order for the City to avoid losing or not receiving substantial funding or other substantial public benefits or facilities that would be available to the City only if it makes such a change; or
  - (c) specifically mandated by, or necessary for compliance with or implementation of, the terms of any permit, entitlement or other authorization necessary for the development of the Property issued or granted to the City, County and/or Property Owner by any federal, state or regional agency;
- 6) following any subsequent environmental review, comply with required mitigation measures; and

c. all subsequent Project approvals which are consistent with this Development Agreement.

6. Periodic Review. Periodic review of the Development Agreement shall be made, consistent with Section \_\_\_ of the City's Development Agreement Procedures. *[A cross-reference to the Municipal Code, and/or additional implementing development agreement procedures.]*

7. Amendments. The Development Agreement may be amended by the parties consistent with the procedures set forth in Section \_\_\_ of the City's Development Agreement Procedures, including any amendments to it.

8. Remedies for Default. If a party is in default under this Development Agreement, the non-defaulting party may pursue one or more of the following courses of action, after 30 days' written notice to the other party: (a) waive the default; (b) in the City's case, pursue administrative remedies including denial or otherwise withholding issuance of building permits,

certificates of occupancy or other approvals; (c) pursue judicial remedies; or (d) terminate this Development Agreement.

9. Recordation; Binding Effect. This Development Agreement shall be recorded in the office of the County Recorder and shall be binding upon and inure to the benefit of successors in interest to the parties. Where there is more than one Property Owner, the obligations are joint and several.

10. Legal Action; Attorney's Fees. If the City chooses to defend any third party claim or suit challenging any action taken by the City with regard to any procedure or aspect of the City's approval of the development of the Project, including the environmental review process, the Property Owner agrees to reimburse the City for attorneys fees, expert witness fees, and related costs as the City may incur in connection with its retention of outside counsel, and for any award of court costs or fees against the City. City has the right to choose and retain such legal counsel as the City deems appropriate. After expenses reach \$100,000, and each \$100,000 thereafter, the parties will confer to review the status of the litigation and their options for proceeding or settling, and they will negotiate in good faith about how the expenses will be allocated.

If legal action is brought by one of the parties to enforce a provision of this Development Agreement, the prevailing party is entitled to reasonable attorney's fees, expert witness fees, and court costs.

IN WITNESS WHEREOF, the parties have signed this Development Agreement on the dates indicated below.

**PROPERTY OWNER**

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_ \* Date: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF PIEDMONT**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Geoff L. Grote, City Administrator

Authorized by City Council Resolution No. \_\_\_\_\_

Attest:

\_\_\_\_\_

City Clerk

Approved as to form:

---

City Attorney

\* Notary acknowledgment required

**Exhibits:**

**A      Property Description**