



**CITY COUNCIL STAFF REPORT – CONSENT AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
GEORGE RODERICKS CITY MANAGER**

**FROM: LISA COSTA SANDERS, TOWN PLANNER**

**DATE: SEPTEMBER 19, 2018**

**SUBJECT: 2<sup>nd</sup> READING AND ADOPTION OF AN ORDINANCE ESTABLISHING THE  
DEVELOPMENT AGREEMENT ADOPTION PROCEDURE UNDER  
CHAPTER 17.07 OF THE ATHERTON MUNICIPAL CODE**

**RECOMMENDATION**

Adopt an establishing the Development Agreement Adoption Procedure under Chapter 17.07 of the Atherton Municipal Code.

**BACKGROUND**

Many communities have a useful planning tool in the form of Development Agreements. While more common in agencies with commercially zoned areas, it is useful in agencies such as Atherton. Development Agreements provide opportunities for greater flexibility in governing land uses, while still remaining consistent with local land use policies within a community's General Plan.

Development Agreements are basically negotiated contracts between project proponents and public agencies that govern land uses that may be allowed for a particular project. Development agreements are commonly utilized to memorialize public benefits resulting from a project to a jurisdiction in exchange for development rights and/or impact fee waivers. A Development Agreement could be beneficial to the Town in the future for use with a subdivision or in conjunction with private development for which the Town desires a public benefit. Although typically utilized in larger commercial or multi-family developments, given the substantial size and value of Atherton's single-family properties and private schools, there may be an occasion in the future to utilize a Development Agreement and it represents another tool for the Town's consideration.

The Planning Commission, at its June 27, 2018 meeting voted 3-0 to recommend the City Council approve the Zoning Ordinance amendment establishing the Development Agreement Adoption Procedure. The City Council introduced the Ordinance at its July 18, 2018 meeting.

**ANALYSIS**

The draft Ordinance has been prepared by the City Attorney for the City Council's consideration.

The Ordinance establishes the adoption procedures for Development Agreements. Entering into a Development Agreement would be voluntary process agreed upon by the Town and private property owner. The Ordinance requires the Planning Commission consider whether the Development Agreement conforms to the Town's General Plan, and shall consider the impacts of the development with the project's public purpose, economic benefit, meeting housing needs or other relevant factors as determined by the Planning Commission and/or City Council. The Planning Commission has the authority to recommend approval or disapproval or changes to the Development Agreement to the City Council. Upon adoption by the City Council, the Development Agreement will be recorded with the County Recorder. The Ordinance requires annual review of executed Development Agreements and a revocation process if the property owner fails to comply with the terms of the Agreement.

The Ordinance adds a new Chapter 17.07 to Atherton Zoning Code. The authority for agencies to enter into Development Agreements is provided in State Planning and Zoning Law, Article 2.5, section 65864, et seq.

### **POLICY ISSUES**

The added Chapter to the Zoning Code provides the opportunity for the Town to enter into Development Agreements with private property owners. Neither the Town nor the applicant is required to enter into a Development Agreement and it does not circumvent the traditional development approval process. It can be used in conjunction with a development application to the benefit of the Town.

### **FISCAL IMPACT**

The cost associated with the preparation of the draft ordinance amendment is included within the City Attorney and Planning Department budgets. The cost to implement the ordinance will be paid for by the applicants for development projects.

### **ENVIRONMENTAL IMPACT**

The project is Categorically Exemption per Section 15305 of the CEQA Guidelines. Section 15305 relates to Minor Alterations in Land Use Limitations as the ordinance amendment would not result in any changes to land use or density.

### **PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power and sewer), and regional elected officials.

Notice was also provided pursuant to the Town's Public Hearing provisions, which includes posting at Town bulletin boards and publication in a newspaper (The Almanac).

**COMMISSION/COMMITTEE FEEDBACK/REFERRAL**

This item   X   has or    has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- Civic Center Advisory Committee (meets as needed)
- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- X   Planning Commission (meets each month)
- Rail Committee (meets every other month)
- Transportation Committee (meets every other month)

**ATTACHMENT**

1. Ordinance

## Chapter 17.07

### DEVELOPMENT AGREEMENT ADOPTION PROCEDURE

#### Sections:

- 17.07.010 Title, purposes and applicability.**
- 17.07.020 Application.**
- 17.07.030 Planning Commission action.**
- 17.07.040 City Council action.**
- 17.07.050 Criterion.**
- 17.07.060 Factors for consideration.**
- 17.07.070 Recordation.**
- 17.07.080 Adherence to Development Agreement and amendment or cancellation by mutual consent.**
- 17.07.090 Periodic review and revocation.**
- 17.07.100 Development Agreement related to other zoning approval or subdivision.**

#### **17.07.010 Title, purpose and applicability.**

The provisions of this Chapter shall be known as the Development Agreement adoption procedure. The purposes of this Chapter are to prescribe the procedures for consideration of Development Agreements and, by encouraging appropriate projects, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development. This procedure shall apply to projects within all Zoning Districts within the Town.

#### **17.07.020 Application.**

An application for a Development Agreement shall be made by a person, or the authorized agent of a person, having a legal or equitable interest in the affected property and written authorization, if not the legal owner, from the legal owner of the subject property. The application shall be made on a form prescribed by the Planning Department and shall be filed with and processed by such Department in the same manner as provided for in Section 17.07.030 The application shall be accompanied by a fee established by Resolution of the City Council, from time to time amended, and by the proposed Development Agreement and any supporting material which shall include, among other matters, the following:

- A. The proposed duration of the Agreement;
- B. The permitted uses of the property;
- C. The density or intensity of use;
- D. The maximum height and size of proposed buildings;
- E. Any provisions for reservation or dedication of land for public purposes;
- F. For any project proposing housing, the number, type, affordability level of such housing units, and the duration of any deed restrictions enforcing such affordability levels, if any.

**17.07.030 Planning Commission action.** The Planning Commission shall review the application for the Development Agreement at the next available duly noticed public hearing

following a determination by the Planning Department that the application is complete. The applicant shall be given advance notice of the time, date and place of any hearing by the Planning Commission during which the applicant's application will be considered. The Commission shall determine whether the proposal conforms to the criterion set forth in Section 17.07.050, and may recommend approval or disapproval of the application, or recommend its approval subject to changes in the proposed Development Agreement or conditions of approval, giving consideration to the factors set forth in Section 17.07.060.

**17.07.040 City Council action.**

Upon receiving a recommendation on the application from the Planning Commission, the City Council shall consider the application at its next available meeting, at a duly noticed public hearing. The applicant shall be given advance notice of the time, date and place of any hearing by the City Council during which the applicant's application will be considered. The Council shall review the recommendation of the Planning Commission and shall determine whether the proposal conforms to the criterion set forth in Section 17.07.050, and may approve or disapprove the proposed Development Agreement, or approve it subject to changes therein or conditions of approval, giving consideration to the factors set forth in Section 17.07.060. If the Council approves the Development Agreement or approves it subject to changes or conditions, it shall do so by Ordinance and the Agreement shall be effective upon the effective date of the Ordinance.

**17.07.050 Criterion.**

A Development Agreement may be approved only if it is found that the proposed project is consistent with the Town's General Plan, Zoning Ordinance and any other applicable land use controls or development policies that have been adopted by the City Council.

**17.07.060 Factors for consideration.**

In reviewing an application for a Development Agreement, the Planning Commission and the City Council shall give consideration to the status and adequacy of pertinent Town-adopted plans, including but not limited to the General Plan and Zoning Ordinance; any uncertainty or issues about the affected area which may suggest the necessity of retaining flexibility over future development; the traffic, parking, public service, visual, and other impacts of the proposed development project upon abutting properties and the surrounding area; the provisions, if any, for reservation, dedication, or improvement of land for public purposes; the type and magnitude of the project's economic benefits to the Town, and of its contribution, if any, toward meeting of housing needs; and to any other comparable, relevant factor as determined by the Planning Commission and/or City Council.

**17.07.070 Recordation.**

Within ten (10) days following the effective date of the Development Agreement, the City Clerk shall record with the County Recorder a copy of the fully executed agreement. If the agreement is amended, canceled, or revoked pursuant to Section 17.07.080 or 17.07.090, the City Clerk shall record notice of such action with the Recorder.

**17.07.080 Adherence to Development Agreement and amendment or cancellation by mutual consent.**

A Development Agreement shall be enforceable by any party thereto. The interests of the applicant may not be transferred or assigned to a new person without the written consent of the Town. In any case, the burdens of such agreement shall also bind, and its benefits shall also inure to, all successors in interest. A Development Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. Such amendments and cancellations shall be processed in the same manner as an original application and shall be subject to the same procedural requirements.

**17.07.090 Periodic review and revocation.**

A. Periodic Review. Each Development Agreement shall be reviewed at least once every twelve (12) months, and the review period shall be specified in the Agreement. Application for periodic review shall be made on a form prescribed by the Planning Department and shall be filed with such department. The application shall be accompanied by a fee prescribed by Resolution of the City Council. Failure to file for such review within the time limits specified in the Agreement shall render the agreement null and void at the discretion of Town. The applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the Agreement. If the Town Planner finds that such compliance has been deficient, he or she shall forward this finding and his or her recommendation to the City Council, for consideration in accordance with Subsection B of this section.

B. Revocation. At any time the Council may, at a public hearing, consider whether there are grounds for revocation of any Development Agreement. The applicant shall be given advance notice of the time, date and place of any hearing by the City Council during which the Development Agreement will be considered. At the hearing, the applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the Agreement. If as a result of such review, the Council finds and determines, on the basis of substantial evidence, that the applicant or successor thereto has not complied in good faith with the terms or conditions of the Agreement, the Council may revoke or modify the Agreement in whole or in part.

**17.07.100 Development Agreement related to other special zoning approval or subdivision.**

Whenever a Development Agreement is proposed for a project which requires zoning approval, or subdivision approval, the application for the Development Agreement may be included with the application(s) for said approval(s), but shall nonetheless be subject to all the separate procedures and criterion pertaining to review of Development Agreements.

**ORDINANCE \_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
ADOPTING A ZONING ORDINANCE AMENDMENT ESTABLISHING THE  
DEVELOPMENT AGREEMENT ADOPTION PROCEDURE UNDER CHAPTER  
17.07 OF THE ATHERTON MUNICIPAL CODE**

**WHEREAS**, on June 27, 2018, the Planning Commission conducted a duly noticed public hearing on the proposed Zoning Ordinance Amendment and recommended the City Council adopt Chapter 17.07 establishing the Development Agreement Adoption Procedure; and

**WHEREAS**, on July 18, 2018, the City Council conducted a duly noticed public hearing on the proposed Zoning Ordinance Amendment; and

**WHEREAS**, the Zoning Ordinance Amendment has been determined to be Categorically Exempt per Section 15305 of the California Environmental Quality Act guidelines; allowing minor alterations in land use limitations that does not result in any changes in land use or density; and

**NOW, THEREFORE, BE IT RESOLVED THE CITY COUNCIL OF THE TOWN OF ATHERTON DOES ORDAIN AS FOLLOWS:**

**Section 1.** Based on the facts in the staff report, written and oral testimony, and evidence presented, the City Council finds that the Zoning Ordinance Amendment to be in the public interest and in conformance with the General Plan and the goals and objectives of the Zoning Ordinance.

**Section 2.** The City Council of the Town of Atherton hereby amends the Zoning Ordinance, as set forth in Exhibit A.

**Section 3:** That the City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provision in the Ordinance severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

**Section 3:** this Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced on the 18th day of July, 2018.

Passed and adopted as an ordinance of the City Council of the Town of Atherton at a regular meeting thereof held on the 19th day of September, 2018 by the following vote:

AYES COUNCILMEMBERS: NOES COUNCILMEMBERS: ABSENT  
COUNCILMEMBERS: ABSTAIN COUNCILMEMBERS:

ATTEST: CTY CLERK

MAYOR



## **EXHIBIT A**