

DEVELOPMENT AGREEMENT

A Development Agreement is a voluntary legal agreement between the City Council and a developer involving a development project. Generally, Development Agreements involve negotiations in which developers obtain increased certainty in return for providing more considerations of public benefit than would normally be required. They may also be used to allow development to proceed in advance of the preparation of a Subarea Facility Plan. Each Development Agreement must be initiated by the City Council and be negotiated separately. Development Agreements cannot waive development standards, and they must be consistent with the General Plan.

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 which is the subject of the Development Agreement. The term "applicant" includes authorized agent.

The proposed agreement shall contain all the elements required by Government Code **Section 65865.2** and may include any other provisions permitted by law, including requirements that the applicant provide sufficient security approved by the City Attorney, to ensure provision of public facilities.

Development Agreements are reviewed by the City Council upon recommendation of the Planning Commission.

Prior to the submittal of a Development Agreement application, a pre-application meeting with a member of the Planning staff is necessary to answer any questions, and to ensure that the application will be completed as required. Appointments for a pre-application meeting can be made by contacting the Planning Division at (760) 839-4671.

Submittal Requirements

The following shall be required in order to accept an application as complete. As determined by the Director of Community Development, additional information not listed below may be required to make a complete application. This will be determined on a case-by-case basis.

1. Completed and signed [Discretionary Permit General Application Form](#) (a letter of permission, signed by the owner, may be substituted for owner's signature on the application form).
2. Proof of interest in the real property which is the subject of the Development Agreement. Proof of interest includes Grant Deed and/or other document deemed necessary by the Attorney's Office and the Planning Division.
3. Proof of the authority of the agent to act for the applicant.
4. Form of the proposed Development Agreement.
5. Any other applications related to the project (such as Planned Development, Rezone, Tract Map, etc.) which may be filed concurrently.
6. [Fees](#).

Procedure

Development Agreements are administered pursuant to [Article 58](#) of the Zoning Code.

The Director of Community Development shall review the application and may reject it if it is incomplete or inaccurate for processing. If it is found that the application is complete, it will be accepted for filing. Prior to the processing of the application, the Director shall 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. The application will then be routed to other City departments or outside agencies, as required.

Once the application and agreement have been reviewed, staff will prepare a report and recommendation to the Planning Commission on the agreement. A copy of the application and agreement will be forwarded to the City Attorney for review. Once all necessary reports and recommendations are completed, the application will be transmitted to the Planning Commission for a public hearing pursuant to [Section 33-1300](#) of the Zoning Code.

The Planning Commission will vote whether to recommend approval or denial of the agreement based upon the findings stated in [Section 33-1138\(b\)](#) of the Zoning Code. The application will then be reviewed by the City Council at a public hearing. The Council may approve, modify or disapprove the Development Agreement. The Council will not approve the Development Agreement unless it finds that the agreement meets all findings in [Section 33-1138\(b\)](#) of the Zoning Code. If the agreement is approved the Council will adopt an ordinance directing the mayor to execute the agreement after the effective date of the ordinance. Each agreement shall be approved as to form by the City Attorney prior to execution.

Within ten (10) days after the City enters into the Development Agreement, the Agreement shall be recorded with the County Recorder, pursuant to [Section 33-1143](#) of the Zoning Code.

The City Council shall review the Development Agreement every twelve months from the date the agreement is entered into, pursuant to [Section 33-1144](#) of the Zoning Code. The Director of Community Development shall begin the review proceeding by giving written notice that the City Council intends to undertake a periodic review of the Development Agreement to the property owner. Notice will be given at least ten (10) days in advance of the time at which the matter will be considered by Council. The City Council may refer the matter to the Planning Commission for review and recommendation. The property owner must demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue is upon the property owner. If the Council finds and determines on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement during the period under review, no other action will be necessary.

If the Council finds and determines on the basis of substantial evidence that the applicant has not complied in good faith with the terms and conditions of the agreement during the period under review, the Council may initiate proceedings to modify or terminate the Agreement, pursuant to [Section 33-1146](#) of the Zoning Code.

Signatures. Applicant and property owner signature lines must be signed, even if the applicant and property owner are the same. The signature of the architect and/or engineer is also required if drawings are submitted by professional architects and/or engineers.

Applicant

As part of this application the applicant hereby agrees to defend, indemnify and hold harmless the City of Escondido, its Council, boards and commissions, officers, employees, volunteers, and agents from any claim, action, or proceeding against the City of Escondido, its Council, boards and commissions, officers, employees, volunteers and agents, to attack, set aside, void or annul an approval of the application or related decision, including environmental documents, or to challenge a denial of the application or related decisions. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth herein. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed.

By signing below, I hereby certify that the application I am submitting, including all additional required information, is complete and accurate to the best of my knowledge. I understand that any misstatement or omission of the requested information or of any information subsequently requested may be grounds for rejecting the application, deeming the application incomplete, denying the application, suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper by the City of Escondido.

Applicant: _____

Date: _____

Property Owner

By signing below, I hereby certify under penalty of perjury, that I am the owner of record of the property described herein and that I consent to the action requested herein. All other owners, lenders or other affected parties on the title to the property have been notified of the filing of this application. Further, I hereby authorize City of Escondido employees and officers to enter upon the subject property, as necessary to inspect the premises and process this application.

In order to facilitate the public review process, the City requires that property owners agree to allow any plans or drawings submitted as part of the application to be copied for members of the public. Property owner(s) hereby agree to allow the City to copy the plans or drawings for the limited purpose of facilitating the public review process.

Property Owner: _____

Date: _____

Architect/Engineer

In order to facilitate the public review process, the City requires that architects and engineers agree to allow any plans, drawings, studies or reports submitted as part of the application to be copied for members of the public. Architect/Engineer hereby agrees to allow the City to copy the plans, drawings, studies or reports for the limited purpose of facilitating the public review process.

Architect: _____

Date: _____

Engineer: _____

Date: _____