

Chapter 20.86 - DEVELOPMENT AGREEMENTS

Sections:

20.86.010 Purpose

20.86.020 Applicability

20.86.030 Review Authority

20.86.040 Application Submittal and Review

20.86.050 Public Notice and Hearings

20.86.060 Planning Commission Action

20.86.070 City Council Action

20.86.080 Finding

20.86.090 Conditions of Approval

20.86.100 Content of the Development Agreement

20.86.110 Recordation

20.86.120 Effect of Development Agreement

20.86.130 Periodic Review

20.86.140 Amendment or Termination

20.86.150 Pre-Annexation Development Agreements

20.86.010 Purpose

A Development Agreement is a contract between the City and an applicant for a development project, in compliance with Government Code Section 65864 et seq. The purpose of a Development Agreement is to:

- A.** Facilitate development projects for which there is significant applicant contribution toward infrastructure, public facilities, open space or other amenities, or other programs of benefit to the City and its residents.
- B.** Assure the applicant that upon approval of the subject project, the project may proceed in accordance with existing City policies, rules, and regulations in place at the time of Development Agreement approval.
- C.** Encourage private participation in comprehensive planning and provision of public facilities, including, but not limited to, streets, sewage, transportation, potable water, schools and utilities.
- D.** Provide a net benefit to the City and its residents not otherwise obtainable through other processes.

20.86.020 Applicability

- A. The City may enter into a Development Agreement with any person or their authorized agent who has legal or equitable interest in real property for the development of the property.
- B. The procedures and regulations of this chapter are not meant to preclude or limit the power of the City to approve and implement Development Agreements by other means.

20.86.030 Review Authority

A Development Agreement is a legislative act. The City Council shall take action on all Development Agreement applications after considering the recommendation of the Planning Commission and City staff. Procedures for considering Development Agreements are spelled out in this chapter and in City Council Resolution No. 1995-06, adopted on February 6, 1995.

20.86.040 Application Submittal and Review

An application for a Development Agreement shall be filed and reviewed in compliance with Chapter 20.66 (Permit Application and Review). The application shall include the information and materials specified by the Development Services Department, together with all required fees.

20.86.050 Public Notice and Hearings

Public notice and hearing for an application for a Development Agreement shall be provided in compliance with Chapter 20.70 (Public Notice and Hearings).

20.86.060 Planning Commission Action

After the public hearing on a Development Agreement application, City staff shall forward a written recommendation of the Planning Commission. The recommendation shall be transmitted to the City Council within 90 calendar days after the date the hearing was closed to the public.



20.86.070 City Council Action

A. Approval or Denial.

1. Upon receipt of the Planning Commission's recommendation on a Development Agreement application, the City Council shall conduct a public hearing and take action on the application.
2. The action by the City Council shall be by a majority vote of the entire Council and shall be final and conclusive.

B. Referral to Commission.

1. If the City Council proposes to adopt a substantial modification to the Development Agreement not previously considered by the Planning Commission, the proposed modification may be first referred to the Planning Commission for its recommendation.
2. Failure of the Planning Commission to report back to the City Council within 60 calendar days following the referral or other such time set by the Council shall be deemed an approval by the Planning Commission of the proposed modification.



- #### C. Adoption by Ordinance.
- If the City Council approves the Development Agreement, it shall do so by adoption of an ordinance. The effective date of the Development Agreement shall be the effective date of the ordinance approving the Development Agreement.

20.86.080 Finding

The City Council may approve an application for a Development Agreement only if the Development Agreement is consistent with the General Plan and any applicable specific or community plan.

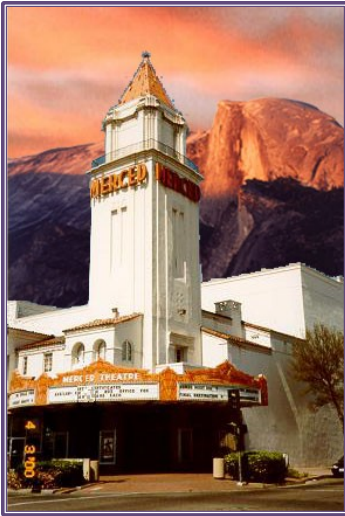
20.86.090 Conditions of Approval

The City Council may attach conditions to the approval of a Development Agreement as needed to ensure compliance with all applicable policies, standards, and regulations in the General Plan, Zoning Ordinance, and other titles of the Merced Municipal Code.

20.86.100 Content of the Development Agreement

A. Mandatory Contents. All Development Agreements shall specify all of the following:

1. The specified duration of the Development Agreement.
2. The permitted uses of the subject property.
3. The permitted density or intensity of development of the subject property.
4. The maximum permitted height and size of proposed structures.
5. Provisions for the dedication or preservation of land for public purposes, if applicable.



B. Optional Contents. Development Agreements may specify any of the following:

1. The conditions, terms, restrictions, and requirements for subsequent discretionary actions, as long as such provisions do not prevent development of the land for the uses and the density or intensity as set forth in the agreement.
2. Requirements that construction be commenced within a specified time and that the project or any phase of the project be completed within a specified time.
3. Terms and conditions related to applicant financing

of necessary public facilities and subsequent reimbursement over time.

20.86.110 Recordation

- A.** Within 10 calendar days after the City enters a Development Agreement, the City Clerk shall record the agreement with the County Recorder.
- B.** The City Clerk shall record with the County Recorder if at any time the Development Agreement is amended, cancelled, terminated, or modified.

20.86.120 Effect of Development Agreement

Unless otherwise provided by the Development Agreement, the rules, regulations, and official policies governing allowed uses of the land, density, design, improvement, and construction standards and specifications applicable to development of the property subject to a Development Agreement are the rules, regulations, and official policies in force at the time of execution of the Agreement.

20.86.130 Periodic Review

- A.** The City may perform a periodic review of the Development Agreement at any time that the City considers to be appropriate, but no more than once every 12 months, at which time the property owner shall demonstrate good faith compliance with the terms and conditions of the Development Agreement. The review shall be limited in scope to compliance with the terms and conditions of the Development Agreement.



- B.** The City Manager or the City Manager's designee shall begin the review by giving notice to the property owner that the City intends to undertake a review of the Development Agreement. The Planning Commission shall hold a noticed public hearing to assess compliance with the terms and conditions of the Development Agreement. Public notice shall be given at least 10 calendar days in advance of the day the Planning Commission will be conducting the review.
- C.** The costs of notice and related costs incurred by the City for review shall be borne by the property owner.
- D.** If the Planning Commission finds the property owner has complied in good faith with the terms and conditions of the Development Agreement during the period under review, the review for that period is concluded.
- E.** Failure of the City to conduct a periodic review shall not constitute a waiver by the City of its rights to enforce the provisions of the Development Agreement. The property owner shall not assert any defense to the enforcement of the Development Agreement by reason of the failure of the City to conduct a periodic review.

20.86.140 Amendment or Termination

- A. General.**
1. Either the property owner or the City may propose an amendment to or cancellation in whole or in part of an existing Development Agreement.
 2. Except as specified in Section B below, 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.

- B. Amendment or Termination Following Periodic Review.** If, as a result of review under Section 20.86.130 (Periodic Review), the City determines that the property owner has not complied in good faith with the terms and conditions of the Development Agreement, the City may modify or terminate the Development Agreement.

20.86.150 Pre-Annexation Development Agreements

A. Pre-Annexation Development Agreement Required.

Prior to annexation into the City of Merced, the owner of any property located in unincorporated Merced County shall enter into a Pre-Annexation Development Agreement with the City in a manner consistent with the requirements of this chapter and City Council Resolution No. 2005-101, adopted on September 6, 2005.



- B. Operative Date.** A Pre-Annexation Development Agreement established prior to annexation shall not become operative unless annexation proceedings are completed by the Local Agency Formation Commission (LAFCO) within the period of time specified by the Agreement. If the annexation is not completed within the time specified in the Agreement or any extension of the Agreement, the Agreement is null and void.

