




CITY OF PALM SPRINGS

DEPARTMENT OF PLANNING SERVICES

MEMORANDUM

Date: March 23, 2011

To: Planning Commission

From: Craig A. Ewing, AICP, Director of Planning Services 

Subject: Desert Fashion Plaza Revitalization – Orientation to Development Agreement

Later this year, it is anticipated that the City Council will consider a Development Agreement with the Wessman Development Company to revitalize the existing Desert Fashion Plaza and Town & Country Center properties. The City Council has already completed a number of actions to prepare for such an agreement, including four public workshops on the future of the area.

A Development Agreement is a land use planning tool recognized by the State of California. In the Government Code (Section 65864 et seq.) state law describes the purpose of Development Agreements: *"...strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."* (Section 65864.b)

In addition, the State specifically allows cities to enter into Development Agreements: *"Any city, county, or city and county, may enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property..."* (Section 65865.a)

A Development Agreement is a form of development entitlement similar to a planned development permit and allowed in Palm Springs under the provisions of Section 94.08.00 of the Palm Springs Municipal Code.

Since the State recognizes Development Agreements as land use actions, the Palm Springs Municipal Code requires such Agreements to be reviewed by the Planning Commission in a public hearing. The Commission's recommendation must be provided to the City Council before the Council may approve the Agreement. In addition, a Development Agreement is a "project" and therefore subject to the California Environmental Quality Act.

The State's findings for a Development Agreement are the basis for the Commission's recommendation and the Council's action: "A *development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.*" (Section 65867.b)

The City's findings are to determine if the development agreement:

- i. *Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;*
- ii. *Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;*
- iii. *Is in conformity with public convenience, general welfare and good land use practice;*
- iv. *Will be detrimental to the health, safety and general welfare;*
- v. *Will adversely affect the orderly development of property or the preservation of property values.* (Section 94.08.12.b.i-v)

Consequently, the Planning Commission will hold a public hearing in the next several weeks on a draft Development Agreement for the Desert Fashion Plaza.

The City Attorney will attend the meeting to provide additional information about Development Agreements in general and the Desert Fashion Plaza project, in particular.

Attachments:

- Government Code Article 2.5 – Development Agreements (Section 65864 et seq)
- Palm Springs Zoning Code Section 94.08.00 – Development agreements

**CALIFORNIA CODES
GOVERNMENT CODE**

**Article 2.5 – DEVELOPMENT AGREEMENTS
SECTION 65864-65869.5**

65864. The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.

(c) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed over time for financing public facilities.

65865. (a) Any city, county, or city and county, may enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property as provided in this article.

(b) Any city may enter into a development agreement with any person having a legal or equitable interest in real property in unincorporated territory within that city's sphere of influence for the development of the property as provided in this article. However, the agreement shall not become operative unless annexation proceedings annexing the property to the city are completed 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.

(c) Every city, county, or city and county, shall, upon request of an applicant, by resolution or ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the property owner or other person having a legal or equitable interest in the property.

(d) A city, county, or city and county may recover from applicants the direct costs associated with adopting a resolution or ordinance to establish procedures and requirements for the consideration of development agreements.

(e) For any development agreement entered into on or after January 1, 2004, a city, county, or city and county shall comply with Section 66006 with respect to any fee it receives or cost it recovers pursuant to this article.

65865.1. Procedures established pursuant to Section 65865 shall include provisions requiring periodic review at least every 12 months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement.

65865.2. A development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time.

The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

65865.3. (a) Except as otherwise provided in subdivisions (b) and (c), Section 65868, or Section 65869.5, notwithstanding any other law, if a newly incorporated city or newly annexed area comprises territory that was formerly unincorporated, any development agreement entered into by the county prior to the effective date of the incorporation or annexation shall remain valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier. The holder of the development agreement and the city may agree that the development agreement shall remain valid for more than eight years, provided that the longer period shall not exceed 15 years from the effective date of the incorporation or annexation. The holder of the development agreement and the city shall have the same rights and obligations with respect to each other as if the property had remained in the unincorporated territory of the county.

(b) The city may modify or suspend the provisions of the development agreement if the city determines that the failure of the city to do so would place the residents of the territory subject to the development agreement, or the residents of the city, or both, in a condition dangerous to their health or safety, or both.

(c) Except as otherwise provided in subdivision (d), this section applies to any development agreement which meets all of the following requirements:

(1) The application for the agreement is submitted to the county prior to the date that the first signature was affixed to the petition for incorporation or annexation pursuant to Section 56704 or the adoption of the resolution pursuant to Section 56800, whichever occurs first.

(2) The county enters into the agreement with the applicant prior to the date of the election on the question of incorporation or annexation, or, in the case of an annexation

without an election pursuant to Section 57075, prior to the date that the conducting authority orders the annexation.

(3) The annexation proposal is initiated by the city. If the annexation proposal is initiated by a petitioner other than the city, the development agreement is valid unless the city adopts written findings that implementation of the development agreement would create a condition injurious to the health, safety, or welfare of city residents.

(d) This section does not apply to any territory subject to a development agreement if that territory is incorporated and the effective date of the incorporation is prior to January 1, 1987.

65865.4. Unless amended or canceled pursuant to Section 65868, or modified or suspended pursuant to Section 65869.5, and except as otherwise provided in subdivision (b) of Section 65865.3, a development agreement shall be enforceable by any party thereto notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the city, county, or city and county entering the agreement, which alters or amends the rules, regulations, or policies specified in Section 65866.

65865.5. (a) Notwithstanding any other provision of law, after the amendments required by Sections 65302.9 and 65860.1 have become effective, the legislative body of a city or county within the Sacramento-San Joaquin Valley shall not enter into a development agreement for property that is located within a flood hazard zone unless the city or county finds, based on substantial evidence in the record, one of the following:

(1) The facilities of the State Plan of Flood Control or other flood management facilities protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(2) The city or county has imposed conditions on the development agreement that will protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(3) The local flood management agency has made adequate progress on the construction of a flood protection system that will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas for property located within a flood hazard zone, intended to be protected by the system. For urban and urbanizing areas protected by project levees, the urban level of flood protection shall be achieved by 2025.

(b) The effective date of amendments referred to in this section shall be the date upon which the statutes of limitation specified in subdivision (c) of Section 65009 have run or, if the amendments and any associated environmental documents are challenged in court, the validity of the amendments and any associated environmental documents has been upheld in a final decision.

(c) This section does not change or diminish existing requirements of local flood plain management laws, ordinances, resolutions, or regulations necessary to local agency participation in the national flood insurance program.

65866. Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent a city, county, or city and county, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

65867. A public hearing on an application for a development agreement shall be held by the planning agency and by the legislative body. Notice of intention to consider adoption of a development agreement shall be given as provided in Sections 65090 and 65091 in addition to any other notice required by law for other actions to be considered concurrently with the development agreement.

65867.5. (a) A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.

(b) A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.

(c) A development agreement that includes a subdivision, as defined in Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7.

65868. 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. Notice of intention to amend or cancel any portion of the agreement shall be given in the manner provided by Section 65867. An amendment to an agreement shall be subject to the provisions of Section 65867.5.

65868.5. No later than 10 days after a city, county, or city and county enters into a development agreement, the clerk of the legislative body shall record with the county recorder a copy of the agreement, which shall describe the land subject thereto. From and after the time of such recordation, the agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this state. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

65869. A development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000)

of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action.

65869.5. In the event that state or federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, such provisions of the agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

Palm Springs Municipal Code

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ZONING CODE

Chapter 94.00 PROCEDURES

94.08.00 Development agreements.

A. Development Agreements.

1. Authority for Adoption.

These regulations are adopted under the authority of Government Code Sections 65864 through 65869.5.

2. Forms and Information.

a. The director of community development or his authorized representative (director) shall prescribe the form of each application, notice and documents provided for or required under these regulations for the preparation and implementation of development agreements.

b. The director may require an applicant to submit such information and supporting data as the director considers necessary to process the application.

3. Fees.

The city council shall by separate resolution fix the schedule of fees and charges imposed for the filing and processing of each application and document provided for or required under these regulations.

4. Applicant and Other Parties.

a. Applicant.

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. Applicant includes an authorized agent. The director may require an applicant to submit proof of his interest in the real property of the authority of an agent to act for the applicant.

b. Other Parties.

In addition to the city of Palm Springs and the property owners, any federal, state or local governmental agency or body and any other private party may be included as a party to any development agreement.

5. Proposed Terms of Agreement.

Each application shall identify all the proposed parties and shall include the general terms and conditions proposed by the applicant to be contained in the development agreement.

6. Review of Application.

The director shall endorse on the application the date it is received. He shall review the application and may reject it if it is incomplete or inaccurate for processing. If he finds that the application is complete, he shall accept it for filing.

7. Contents of Development Agreement.

A development agreement shall specify the duration of the agreement, the proposed uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions and requirements for subsequent discretionary actions; provided that, such conditions, terms, restrictions and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be

completed within a specified time.

8. Public Hearing.

A public hearing on an application for a development agreement shall be held by the planning commission and by the city council.

9. Notice.

The director shall give notice of intention to consider adoption of development agreement and of any other public hearing required by law or these rules.

a. Form of Notice.

The form of the notice of intention to consider adoption of development agreement shall contain:

- i. The time and place of the hearing;
- ii. A general explanation of the matter to be considered, including a general description of the area affected; and
- iii. Other information required by specific provisions of these regulations or which the director considers necessary or desirable.

b. Time and Manner of Notice.

i. Publication or Posting.

The notice shall be published at least once in a newspaper of general circulation, published and circulated in the city of Palm Springs, or if there is none, posting in at least three (3) public places in the city of Palm Springs.

ii. The notice shall be mailed to all persons shown on the last equalized assessment roll as owning real property within four hundred (400) feet of the property which is the subject of the proposed development agreement. If the number of owners to whom notice is to be mailed is greater than one thousand (1,000), the director may as an alternative provide notice in the manner set forth in Section 65854.5(b) of the Government Code.

c. Declaration of Existing Law.

The notice requirements referred to in subsections (A)(9)(a) and (A)(9)(b) of this section, are declaratory of existing law (Government Code Section 65867 and Sections 65854, 65854.5 and 65856 as incorporated by reference). If state law prescribes a different notice requirement, notice shall be given in that manner.

d. Failure to Receive Notice.

The failure of any person entitled to notice required by law or these regulations to receive notice does not affect the authority of the city of Palm Springs to enter into a development agreement.

10. Rules Governing Conduct of Hearing.

The public hearing shall be conducted in accordance with the procedure for the conduct of zoning hearings as set forth in Sections 94.07.00 and 94.07.01. Each person interested in the matter shall be given an opportunity to be heard. The applicant has the burden of proof at the public hearing on the proposed development agreement. The public hearing may be held concurrently with the public hearing for consideration of any other approval.

11. Irregularity in Proceedings.

No action, inaction or recommendation regarding the proposed development agreement shall be held void or invalid or be set aside by any court by reason of any error, irregularity, informality, neglect or omission ("error") as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation, or any matters of procedure whatever, unless after an examination of the entire case,

including the evidence, the court is of the opinion that the error complained of was prejudicial and that by reason of the error the complaining party sustained and suffered substantial injury, and that a different result would have been probable if the error had not occurred or existed. There is no presumption that error is prejudicial or that injury resulted if error is shown.

12. Determination by Planning Commission.

a. Purpose and Use.

The planning commission may approve use of a development agreement as a method of implementing any discretionary approval of the planning commission including:

- i. Rezoning;
- ii. Issuance of a conditional use permit;
- iii. Conditions imposed upon approval of a permit after discretionary review;
- iv. Conditions imposed in connection with the adoption of any specific plan;
- v. Conditions imposed in any planned development district; and/or
- vi. Site-specific conditions imposed in any other district; and/or
- vii. Mitigation measures imposed upon a project after approval of an environmental impact report in which such mitigation measures have been proposed as a mechanism for eliminating or reducing environmental impacts.

b. Recommendations to City Council.

After the hearing by the planning commission, the planning commission shall make its recommendation in writing to the city council. The recommendation shall include the planning commission's determination whether or not the development agreement proposed:

- i. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
- ii. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;
- iii. Is in conformity with public convenience, general welfare and good land use practice;
- iv. Will be detrimental to the health, safety and general welfare;
- v. Will adversely affect the orderly development of property or the preservation of property values.

13. Decision by City Council.

a. Action by City Council.

After the city council completes its public hearing, it may approve or disapprove the recommendation of the planning commission. The city council shall refer matters not previously considered by the planning commission during its hearing and any proposed modifications to the development agreement back to the planning commission for report and recommendation. The planning commission may, but need not, hold a public hearing on matters referred back to it by the city council.

b. Consideration With General and Specific Plans.

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.

c. Approval of Development Agreement.

If the city council approves the development agreement, it shall do so by the adoption of an ordinance. After the ordinance approving the development agreement takes effect, the city council may enter into the agreement.

14. Amendment and Cancellation of Agreement by Mutual Consent.

The procedure for proposing and adoption of 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 in the first instance.

15. Recordation of Development Agreement, Amendment or Cancellation.

a. Within ten (10) days after the city council enters into the development agreement, the city clerk shall have the agreement recorded with the county recorder.

b. If the parties to the agreement or their successors in interest amend or cancel the agreement as provided in Government Code Section 65868, or if the city council terminates or modifies the agreement as provided in Government Code Section 65865.1 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.

16. Periodic Review.

a. Time for and Initiation of Review.

The director shall review compliance by the property owner under the development agreement every twelve (12) months from the date the agreement is entered into.

b. Public Hearing.

If the director finds substantial evidence that the property owner under the development agreement has not complied in good faith with the terms and conditions of the development agreement, the director shall request that the planning commission conduct a public hearing at which the property owner must demonstrate good faith compliance with the terms of the development agreement. The burden of proof of compliance by the property owner is upon the property owner.

c. Findings Upon Public Hearing.

The planning commission shall determine upon the basis of 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 development agreement.

17. Procedure Upon Findings.

a. Finding of Compliance.

If the director after his review or the planning commission after a hearing determines 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.

b. Finding of Failure of Compliance.

If the director after his review and the planning commission after hearing determines on the basis of 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 may modify or terminate the agreement. The property owner may appeal such determination to the city council pursuant to Chapter 2.05 of the Palm Springs Municipal Code.

18. Proceedings Upon Modification or Termination for Noncompliance.

If, upon a finding under subsection (A)(16)(b) of this section, the planning commission determines to proceed with modification or termination of the agreement, the director shall give notice to the property owner of its intention so to do. The notice shall contain:

i. The time and place of hearing;

ii. A statement as to whether or not the planning commission proposes to terminate or to modify the development agreement;

iii. Other information which the director considers necessary to inform the property owner of the nature of the proceeding.

19. Hearing on Modification or Termination for Noncompliance.

At the time and place set for the hearing on modification or termination, the property owner shall be given the opportunity to be heard. The planning commission may impose those conditions to the action it takes as it considers necessary to protect the interests of the city. The decision of the planning commission may be appealed to the city council pursuant to Chapter 2.05 of the Palm Springs Municipal Code.

(Ord. 1294 (part), 1988)