

PLANNING COMMISSION STAFF REPORT

MEETING DATE: July 14, 2015

SUBJECT: Ordinance Establishing Procedures for Approval of Development Agreements

PRESENTER: Adrian R. Guerra, Assistant City Attorney

BY: Adrian R. Guerra, Assistant City Attorney

REQUESTED ACTION: Adopt a Resolution Recommend that the City Council adopt the Ordinance Entitled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA CAÑADA FLINTRIDGE ADDING CHAPTER 11.80 TO TITLE 11 OF THE LA CAÑADA FLINTRIDGE MUNICIPAL CODE ESTABLISHING PROCEDURES AND REQUIREMENTS FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS"

ENVIRONMENTAL REVIEW: Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15061(b) (3) of the CEQA Guidelines.

Summary: State law authorizes cities to enter into development agreements with private developers subject to the city having an ordinance in place that establishes procedures and requirements for consideration of development agreements. The proposed ordinance satisfies this requirement so that the City of La Cañada Flintridge may entertain the use of development agreements for future projects.

This matter was initially heard by the Planning Commission at its regular meeting of May 26, 2015, during which the Planning Commission heard staff's report, opened the public hearing, and continued the public hearing to July 14, 2015. The staff report from the May 26th meeting is attached as Attachment 1. As part of this continuance, Commissioner Smith suggested revisions to the proposed ordinance and presented questions about development agreements in general. The revisions and questions presented are discussed below.

Revisions to Ordinance: Most of the revisions have been incorporated into the updated draft ordinance, which is presented to the Planning Commission this evening for its consideration. A clean version of the ordinance is attached as Attachment 2 (as the attachment to the proposed resolution) and a redline version of the ordinance is attached as Attachment 3.

Revisions to the proposed ordinance were primarily made for clarification purposes only. Substantive revisions included the following:

- The ordinance clarifies that the development agreement applies to all land use regulations affecting the development, including zoning, subdivision, and building standards (height, size, etc.). Specifically, in the recitals, the ordinance now states: "WHEREAS, a development agreement benefits the developer because, unless otherwise provided by the development agreement, the rules, regulations, and official policies governing permitted uses of the subject property, 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 development agreement."
- "Development Agreement" is now defined as an agreement authorized by Government Code Title 7, Division 1, Chapter 4, Article 2.5, Section 65864 et seq., as amended, and this ordinance. This is now a defined term throughout the ordinance.
- In Section 11.80.060.A, the ordinance now provides that, if an application for a development Agreement is being submitted by an agent for an Applicant, the Applicant must provide proof satisfactory to the City Attorney that the agent is authorized to represent the Applicant.
- In Section 11.80.060.K, the ordinance adds that *if the Director of Community Development provides the conditions*, a draft development agreement may be required to include conditions to be imposed by the City with respect to the development project including those conditions required as a result of any environmental impact report prepared under the California Environmental Quality Act and the City's environmental review process to eliminate or mitigate environmental impacts caused by or aggravated as a result of the development project. Accordingly, if an Applicant does not have the proposed conditions, he or she will not be required to include the conditions in the proposed draft.
- The findings required for Planning Commission recommendation have been reduced to one finding. Pursuant to Government Code section 65867.5, "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." This is the sole finding required by state law. While cities have the option of including additional findings in their local procedures, staff has ultimately concluded that these additional findings are not necessary and may only serve as potential areas of challenge when a development agreement is approved. Accordingly, staff recommends that the sole finding be that development agreement is consistent with the general plan and any applicable specific plan.

Questions Presented:

- Can the City impose a condition that the public benefit be performed up front or bonded for? Yes, to the extent that the parties can reach agreement on that point. Ultimately, a development agreement is a contract that is voluntarily entered into by the City and

property owner. The parties negotiate the terms like any contract. Traditionally, the public benefits and time of performance will be negotiated as part of the agreement.

- Does a development agreement only apply to zoning laws? No. Pursuant to Government Code section 65865.4, 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 in place at the time of execution.
- May the conditions in a development agreement go beyond those that the Planning Commission can impose as part of a land use approval? Yes. When imposing conditions as part of a land use approval, the condition must be reasonably related to the impacts of the project, i.e. the proverbial nexus. The terms of a development agreement, however, are part of an arms-length negotiation in which the City attempts to obtain public benefits for the City as consideration for vesting the project at the time the agreement is executed. The City is not bound to the "nexus" limitation.

ENVIRONMENTAL REVIEW: The adoption of the proposed ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b) (3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that this Ordinance, by itself, may have a significant adverse effect on the environment. This Ordinance would only establish procedures and regulations for development agreements. Projects that are subject to a development agreement would require separate environmental review.

RECOMMENDATION: Staff recommends that the Planning Commission take the following action(s):

1. Adopt the proposed resolution recommending that the City Council adopt the ordinance entitled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA CAÑADA FLINTRIDGE ADDING CHAPTER 11.80 TO TITLE 11 OF THE LA CAÑADA FLINTRIDGE MUNICIPAL CODE ESTABLISHING PROCEDURES AND REQUIREMENTS FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS"

ATTACHMENTS:

1. May 26, 2015 Staff Report
2. Proposed Resolution with Ordinance
3. Redline Version of Ordinance

PLANNING COMMISSION STAFF REPORT

MEETING DATE: May 26, 2015

SUBJECT: Zone Change 15-01, Ordinance Establishing Procedures for Approval of Development Agreements

PRESENTER: Robert Stanley, Director of Community Development

BY: Robert Stanley, Director of Community Development
Adrian R. Guerra, Assistant City Attorney

REQUESTED ACTION: Adopt a Resolution Recommend that the City Council adopt the Ordinance Entitled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA CAÑADA FLINTRIDGE ADDING CHAPTER 11.80 TO TITLE 11 OF THE LA CAÑADA FLINTRIDGE MUNICIPAL CODE ESTABLISHING PROCEDURES AND REQUIREMENTS FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS"

ENVIRONMENTAL REVIEW: Exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b) (3) of the CEQA Guidelines.

SUMMARY: State law authorizes cities to enter into development agreements with private developers subject to the city having an ordinance in place that establishes procedures and requirements for consideration of development agreements. The proposed ordinance satisfies this requirement so that the City may entertain the use of development agreements for future projects.

DISCUSSION: A development agreement is an agreement between a city and a private developer that sets forth the standards and conditions that govern the development of the property. The development agreement benefits the developer because the laws, regulations, and land use approvals become vested (locked in) at the time the development agreement is executed. Accordingly, the developer has future certainty in the laws that will govern the project, i.e. the project will not be affected from changes in zoning laws during the course of development.

A development agreement also benefits the city. In many cases, the development agreement requires the developer to provide public benefits, such as infrastructure improvements, public open space, or monetary payment into funds, such as "in lieu" fees, in exchange for vesting the development.

In order for the City to enter into a development agreement, however, the City must adopt procedures and requirements for consideration of development agreements in accordance with

California Government Code Sections 65864 *et seq.* Staff is now recommending the addition of Chapter 11.80 in Title 11 of the La Cañada Flintridge Municipal Code for this purpose.

The proposed ordinance:

- Sets forth the application requirements for a development agreement, which include proof that the applicant has a legal or equitable interest in the real property that will be subject to the development agreement, a draft of the proposed development agreement, and such information and supporting data as the Director considers necessary to process the application.
- Requires that the Planning Commission, following a noticed public hearing, make a recommendation to the City Council as to whether the City Council should approve the development agreement. To make the recommendation, the Planning Commission must find that the development agreement:
 - Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
 - Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district where the site is located;
 - Is in conformity with public convenience, general welfare and good land use practice;
 - Will not be detrimental to the health, safety and general welfare;
 - Will not adversely affect the orderly development of property or the preservation of property values.
 - Will promote and encourage the development of the proposed project by providing a greater degree of requisite certainty.
- Requires the City Council, following a duly noticed public hearing, to consider the Planning Commission's recommendation together with any additional public testimony, and approve, approve with modification, or disapprove the development agreement. In order to approve a development agreement, the City Council must find that the provisions of the agreement are consistent with the general plan and any applicable specific plan.
- Requires approval of an ordinance to approve the development agreement because, by law, a development agreement is a legislative act.
- Provides that, unless otherwise provided by the development agreement, the City's rules, regulations and official policies governing permitted uses of the land, density and design, improvement and construction standards and specifications applicable to development of the property shall be those City rules, regulations and official policies in force at the time of the approval of the development agreement by the City Council.
- Establishes procedures for a 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 City 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 City may terminate or modify the agreement.

- Provides that the Applicant shall reimburse the City for all its reasonable and actual costs, fees, and expenses, including legal counsel and special counsel fees, for review, processing, negotiation, approval, and recordation of the Development Agreement.

The development agreement could be used for any project. However, it will most likely be used for large-scale projects to ensure that the project will not be affected from changes in zoning laws during the course of development.

ENVIRONMENTAL REVIEW: The adoption of the proposed ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b) (3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that this Ordinance may have a significant adverse effect on the environment. This Ordinance would only establish procedures and regulations for development agreements. Projects that are subject to a development agreement would require separate environmental review.

RECOMMENDATION: Staff recommends that the Planning Commission take the following action(s):

1. Adopt the proposed resolution recommending that the City Council adopt the ordinance entitled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA CAÑADA FLINTRIDGE ADDING CHAPTER 11.80 TO TITLE 11 OF THE LA CAÑADA FLINTRIDGE MUNICIPAL CODE ESTABLISHING PROCEDURES AND REQUIREMENTS FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS"

ATTACHMENTS: Proposed Resolution with Subject Ordinance

RESOLUTION NO. 15-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LA CAÑADA FLINTRIDGE RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONE CHANGE 15-01 TO ADD CHAPTER 11.80 TO TITLE 11 OF THE LA CAÑADA FLINTRIDGE MUNICIPAL CODE ESTABLISHING PROCEDURES AND REQUIREMENTS FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS

WHEREAS, a development agreement is an agreement between a city or county and a developer that sets forth the standards and conditions that govern the development of the property; and

WHEREAS, a development agreement benefits the developer because, unless otherwise provided by the development agreement, the rules, regulations, and official policies governing permitted uses of the subject property, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, will be those rules, regulations, and official policies in force at the time of execution of the development agreement; and

WHEREAS, a development agreement benefits the city or county because, in many cases, it requires the developer to provide public benefits, such as infrastructure improvements, public open space, or monetary payment into funds, such as "in lieu" fees, in exchange for vesting the development; and

WHEREAS, in order for a city or county to enter into a development agreement, a city must adopt procedures and requirements for consideration of development agreements in accordance with California Government Code Sections 65864 *et seq.*; and

WHEREAS, the Planning Commission of the City of La Cañada Flintridge believes that the City should have an ordinance that sets forth procedures and requirements for consideration of development agreements; and

WHEREAS, the Planning Commission desires to recommend that the City Council add Chapter 11.80 to Title 11 of the La Cañada Flintridge Municipal Code to adopt procedures and requirements for consideration of development agreements ("Ordinance"); and

WHEREAS, the Planning Commission hereby states that it can be seen with certainty that there is no possibility that this Ordinance, by itself, may have a significant adverse effect on the environment. This Ordinance would only establish procedures and regulations for Development Agreements. Projects that are subject to a Development Agreement would require separate environmental review. Thus, the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b) (3) of the CEQA Guidelines. Staff is directed to file a Notice of Exemption with the Los Angeles County Clerk's office within five (5) working days of project approval; and

WHEREAS, on May 26, 2015, the Planning Commission held a duly-noticed public hearing on the Ordinance and considered the staff report dated May 26, 2015, along with public testimony thereon.

WHEREAS, following said public hearing, the Planning Commission continued the public hearing to a date certain of July 14, 2015, on which date the Planning Commission held a duly-noticed public hearing on the Ordinance and considered the staff report dated July 14, 2015, along with public testimony thereon.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF LA CAÑADA FLINTRIDGE DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Planning Commission finds and determines that the recitals above are true and correct.

Section 2. The Planning Commission finds that the Ordinance is warranted to promote and protect the public convenience by establishing a land-use mechanism whereby a developer can provide public benefits, such as infrastructure improvements, public open space, or monetary payment into funds, such as "in lieu" fees, in exchange for vesting the development rights.

Section 3. The Planning Commission finds that the Ordinance is justified to implement good zoning practices because the Ordinance establishes a new land use tool that may attract developers to the City by ensuring them that their project will not be affected from changes in the jurisdiction's zoning laws over the course of development. Additionally, the Ordinance provides a land-use mechanism whereby a developer can provide public benefits, such as infrastructure improvements, public open space, or monetary payment into funds, such as "in lieu" fees, in exchange for vesting the development rights.

Section 4. The Planning Commission does hereby recommend that the City Council find and determine that the project is exempt from CEQA pursuant to Section 15061(b) (3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that this Ordinance, by itself, may have a significant adverse effect on the environment.

Section 5. The Planning Commission does hereby recommend that the City Council adopt the Ordinance, a true and correct copy of which is attached as Exhibit A, to establish procedures and requirements for consideration of development agreements.

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

Chair, Planning Commission

ATTEST:

Secretary to the Planning Commission

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA CAÑADA FLINTRIDGE ADDING CHAPTER 11.80 TO TITLE 11 OF THE LA CAÑADA FLINTRIDGE MUNICIPAL CODE ESTABLISHING PROCEDURES AND REQUIREMENTS FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS

WHEREAS, a development agreement is an agreement between a city or county and a developer that's sets forth the standards and conditions that govern the development of the property; and

WHEREAS, a development agreement benefits the developer because, unless otherwise provided by the development agreement, the rules, regulations, and official policies governing permitted uses of the subject property, 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 development agreement.

WHEREAS, a development agreements benefits the city or county because, in many cases, it requires the developer to provide public benefits, such as infrastructure improvements, public open space, or monetary payment into funds, such as "in lieu" fees, in exchange for vesting the development; and

WHEREAS, in order for a city or county to enter into a development agreement, a city must adopt procedures and requirements for consideration of development agreements in accordance with California Government Code Sections 65864 *et seq.*; and

WHEREAS, the City of La Cañada Flintridge now desires to add Chapter 11.80 in Title 11 of the La Cañada Flintridge Municipal Code to adopt procedures and requirements for consideration of development agreements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LA CAÑADA FLINTRIDGE DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 11.80 of Title 11 of the La Cañada Flintridge Municipal Code is hereby added and shall read as follows:

**Chapter 11.80
DEVELOPMENT AGREEMENTS**

- 11.80.010 Authority.**
- 11.80.020 Purpose.**
- 11.80.030 Applicability.**
- 11.80.040 Definitions.**
- 11.80.050 Parties to Development Agreements.**
- 11.80.060 Application for Development Agreement.**
- 11.80.070 Review of Application for Development Agreement.**
- 11.80.080 Notice of Public Hearing.**

- 11.80.090 Review by Planning Commission.
- 11.80.100 Review by City Council.
- 11.80.110 Execution and Recordation of Development Agreement.
- 11.80.120 Effect of Development Agreement.
- 11.80.130 Irregularity in Proceeding.
- 11.80.140 Rules Affecting Development Agreements.
- 11.80.150 Periodic Review.
- 11.80.160 Modification or Cancellation by Mutual Consent.
- 11.80.170 Cancellation by City.
- 11.80.180 Rights of the Parties After Cancellation.
- 11.80.190 Fees.

Section 11.80.010 Authority.

This Chapter is adopted in accordance with Government Code Title 7, Division 1, Chapter 4, Article 2.5, Section 65864 *et seq.*, as amended.

Section 11.80.020 Purpose.

The purpose of this Chapter is to establish rules and regulations for the processing, review and approval of Development Agreements.

Section 11.80.030 Applicability.

The procedures and requirements set forth in this Chapter shall apply to all Development Agreements proposed by developers of projects in the City of La Cañada Flintridge and considered by the City Council of La Cañada Flintridge.

Section 11.80.040 Definitions.

"Applicant" means any Person having a legal or equitable interest in real property who completes and submits an application for a Development Agreement, including any successor-in-interest thereto.

"City" means the City of La Cañada Flintridge.

"City Council" means the City Council of the City.

"City Clerk" means the City Clerk of the City.

"Development Agreement" means an agreement authorized by Government Code Title 7, Division 1, Chapter 4, Article 2.5, Section 65864 *et seq.*, as amended, and this Chapter.

"Director" means the City's Director of Community Development, or his/her designee.

"Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, the state of California, any

county, city and county, municipality, district or other political subdivision, or any other group combination acting as a unit.

Section 11.80.050 Parties to Development Agreements.

A. An Applicant shall possess a legal or equitable interest in the real property which is to be the subject of the Development Agreement. As set forth in Section 11.80.060.A below, an application for a Development Agreement may be submitted by an authorized agent of the Applicant.

B. In addition to the City and the Applicant, any federal, state or local governmental agency may be included as a party to a Development Agreement. Any such additional party may be made a party to a Development Agreement pursuant to the provisions of the Joint Exercise of Powers Act, set forth in sections 6500 *et seq.* of the California Government Code, as amended, providing for joint powers agreements, or provisions of other applicable federal, state or local law, in order to create a legally binding agreement among such parties.

Section 11.80.060 Application for Development Agreement and Processing.

A. Application. An Applicant, or his/her authorized agent, shall submit a completed application for Development Agreement to the Director. The application shall be on a form approved by the Director and shall include such information and supporting data as the Director considers necessary to process the application, including, but not limited to, the following:

1. Proof that the Applicant has a legal or equitable interest in the real property that will be subject to the Development Agreement. Such proof may include a preliminary report issued by a title company licensed to do business in the state of California; and
2. If an application for a Development Agreement is being submitted by an agent for an Applicant, proof satisfactory to the City Attorney that the agent is authorized to represent the Applicant.
3. A draft of the Development Agreement proposed by the Applicant, which may include, but not be limited to, the following:
 - a. The parties to the Development Agreement;
 - b. Written evidence of the nature of the Applicant's interest in the real property, demonstrating to the satisfaction of the Director and the City Attorney, the Applicant's legal or equitable interest in the property which is the subject of the Development Agreement;
 - c. A description of the development project sufficient to permit the Development Agreement to be reviewed under the applicable criteria of this Chapter.
 - d. The proposed project as it relates to 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.

- e. The proposed project as it relates to anticipated traffic impacts from the project.
- f. An identification of the approvals and permits for the Development Agreement to be issued or contemplated by the Development Agreement .
- g. The proposed duration of the Development Agreement.
- h. A program and standards for periodic review under this Chapter.
- i. Appropriate provisions, acceptable to the City Attorney, providing security for the performance of the Applicant under the Development Agreement.
- j. Conditions and requirements for subsequent discretionary actions, provided that such conditions 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 Development Agreement.
- k. If provided by the Director, conditions to be imposed by the City with respect to the development project including those conditions required as a result of any environmental impact report prepared under the California Environmental Quality Act and the City's environmental review process to eliminate or mitigate environmental impacts caused by or aggravated as a result of the development project.
- l. An indemnity and insurance clause, in form and substance acceptable to the City Attorney, requiring the applicant to defend and indemnify the City against any claims arising out of the Development Agreement process.
- m. A provision that provides Development Agreements, or any part of a Development Agreement, may be subject to subsequent condemnation proceedings by the City.
- n. Any other relevant provisions which may be deemed necessary by the City.

B. The Applicant shall reimburse the City for all its reasonable and actual costs, fees, and expenses, including legal counsel and special counsel fees, for review, processing, negotiation, approval, of the Development Agreement.

Section 11.80.070 Review of Application for Development Agreement.

A. After receipt of a completed application, including such information and supporting data as the Director considers necessary to process the application, the Director shall prepare a staff report and recommendation to the Planning Commission as to whether or not the agreement, as proposed or in an amended form (specifying the nature of the amendments), would be consistent with the City's General Plan and any applicable specific plan, and shall describe the public benefits provided by the proposed agreement.

B. Development Agreements shall not take the place of any requirements in the City's General Plan, any applicable specific plan, or the City's zoning code, including, but not limited to, any land use entitlements required for development on the subject property. To ensure consistency between a Development Agreement and any related land use approvals required for the development project, including conditions of approval imposed therein, and to the extent practicable, public hearings on a proposed Development Agreement may be held concurrently with the public hearings on all related land use approvals and all such approvals shall be made concurrently with the approval of the Development Agreement.

Section 11.80.080 Notice of Public Hearing.

A. All Development Agreements shall be considered at public hearings before both the Planning Commission and City Council.

B. The form of notice to consider adoption of a Development Agreement before the Planning Commission or City Council shall contain:

1. The time and place of the public hearing;
2. A general explanation of the matter to be considered including a general description of the area and/or property affected;
3. The location or locations where a copy of the proposed Development Agreement may be reviewed;
4. Other information required by specific provisions of this Chapter or which the Director considers necessary or desirable.

C. The time and manner of giving notice is by:

1. Publication at least once and at least ten (10) days prior to the hearing in a newspaper of general circulation, circulated in the city.
2. Mailing of the notice at least ten (10) days prior to the hearing to the Applicant, to the owner of the property subject to the Development Agreement, to each local agency expected to provide fire, police, water, sewage, streets, roads, schools, or other essential facilities or services to the project whose ability to provide those facilities and services may be significantly affected, to any person who has filed a written request for notice with either the city clerk, and to all persons shown on the last

equalized assessment roll as owning real property within three hundred feet (300') of the property which is the subject of the proposed Development Agreement; provided, the Director may direct that notice be given over a wider area to adequately inform interested persons. 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 65091 of the California Government Code, which includes posting a public hearing notice at the subject property and publishing a public hearing notice in a newspaper of general circulation in the City of La Cañada Flintridge.

D. The Planning Commission or City Council, as the case may be, may direct that notice of the public hearing to be held before it shall be given in a manner that exceeds the notice requirements prescribed by state law, but failure to comply with such procedure shall not invalidate a Development Agreement.

E. The notice requirements referred to in this Chapter are declaratory of existing law (Government Code sections 65867, 65090 and 65091). If and when state law prescribes any different notice requirement, notice shall be given in that manner.

F. The failure to receive notice by any person entitled to notice by law or this Section does not affect the authority of the City to enter into a Development Agreement.

Section 11.80.090 Review by Planning Commission.

Following a public hearing duly noticed in accordance with Section 11.80.080, the Planning Commission shall determine whether the proposed Development Agreement is consistent with the City's General plan and any applicable specific plan. Said determination shall be forwarded to the City Council for its consideration and action.

Section 11.80.100 Review by City Council.

A. Following a public hearing duly noticed in accordance with Section 11.80.080 above, the City Council shall consider the proposed Development Agreement. In order to approve a Development Agreement, the City Council shall be required to find that the provisions of the Development Agreement are consistent with the City's General Plan and any applicable specific plan.

B. City Council approval of a Development Agreement shall be by the adoption of an ordinance because a Development Agreement is a legislative act.

Section 11.80.110 Execution and Recordation of Development Agreement.

No later than ten (10) days after the ordinance approving a Development Agreement takes effect, the City's mayor or other authorized City official shall execute the Development Agreement, and the City Clerk shall have the Development Agreement recorded in the official records of the County of Los Angeles.

Section 11.80.120 Effect of Development Agreement.

A. When approved, a Development Agreement and any development control maps and all notations, references and regulations which are a part of the Development Agreement shall be considered part of this code. Development control maps include, but are not limited to, regulations intended to carry out any plan with respect to location or type of activities; height, bulk, siding or design of structures; location or design of open areas; and landscaping and other comparable regulations. In the case of any conflict with any other provisions of this code, such Development Agreement provisions shall take precedence.

B. Unless otherwise provided by the Development Agreement, the rules, regulations, and official policies governing permitted uses of the subject property, 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 Development Agreement.

C. A Development Agreement shall not prevent the City, 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 the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

D. 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 Development Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations

Section 11.80.130 Irregularity in Proceeding.

Formal rules of evidence or procedure which must be followed in a court of law shall not apply to the consideration of a proposed Development Agreement. No action, inaction or recommendation regarding a Development Agreement shall be held void or invalid on the ground of the improper admission or rejection of evidence or by reason of any error or informality, as to any procedural matter whatsoever unless, after an examination of the entire case, including the evidence, a court of law finds 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.

Section 11.80.140 Rules Affecting Development Agreements.

All Development Agreements shall be subject to the regulation and requirements of the laws of the state of California, the constitution of the United States and any codes, statutes and any court decisions, state or federal. In the event that any law, code, statute or decision made or enacted after a Development Agreement has been entered into prevents or precludes compliance with one or more provisions of the Development Agreement, then such provisions of the Development Agreement shall be modified or suspended in the manner and pursuant to the procedures specified in the Development Agreement, as may be necessary to comply with that law, code, statute or decision.

Section 11.80.150 Periodic Review.

A. The City shall review Development Agreements which have been approved by the City Council at least once every twelve (12) months from the date of their approval. Pursuant to Government Code section 65865.1, the Applicant shall have the duty to demonstrate its good faith compliance with the terms of the Development Agreement at the time of such periodic review. The City's cost for such periodic review shall be paid by the Applicant to the City prior to the time of such review.

B. Not less than thirty (30), nor more than sixty (60), days prior to the anniversary date of a Development Agreement, and each anniversary date thereafter, the Applicant shall submit to the Director a letter setting forth the Applicant's good faith compliance with the terms and conditions of the Development Agreement. Such letter shall be accompanied by documents and other information as may be necessary and available to enable the City to undertake its annual review of good faith compliance under the terms of the Development Agreement, and shall also state that such letter is submitted to the City pursuant to the requirements of Government Code section 65865.1, as amended, and this chapter. Not less than thirty (30), nor more than sixty (60), days prior to the anniversary date of a Development Agreement, the Director shall provide notice to the City Council, at a regularly scheduled meeting of the City Council, that a Development Agreement will be subject to annual review in accordance with this Chapter.

C. The Director shall review the Applicant's submission to ascertain whether Applicant has complied in good faith with the terms of the Development Agreement. Upon request of Director, the Applicant shall furnish such additional documents or information as may be reasonably required and available to the Applicant to enable Director to make and complete its review hereunder. If the Director finds good faith compliance by the Applicant with the terms of the Development Agreement, it shall issue a certificate of compliance, certifying the Applicant's good faith compliance with the terms of the agreement through the period of the applicable annual review. Such certificate of compliance shall be in recordable form and shall contain such information as may be necessary in order to impart constructive record notice of the finding of good faith compliance hereunder. The Applicant shall have the right to record the certificate of compliance, at the Applicant's sole cost, in the official records of the County of Los Angeles. At least ten (10) days prior to making its determination, the Director shall provide to the Applicant copies of all staff reports and other information concerning the Applicant's compliance with the terms of the Development Agreement and the determination made by the Director.

D. If the Director finds that the Applicant has not complied in good faith with the terms of the Development Agreement, it shall specify to the Applicant in writing the respects in which the Applicant has failed to comply. The Director shall also specify a reasonable time for the Applicant to comply with such terms for compliance, which shall not be less than thirty (30) days, and shall be reasonably related to the time necessary to adequately bring the Applicant's performance into good faith compliance with the Development Agreement. If the areas of noncompliance specified by the Director are not perfected within such reasonable time limits prescribed by the Director, then the Development Agreement shall be subject to modification or cancellation pursuant to this Chapter and the provisions of Government Code section 65865.1.

E. The Director may refer any review to be conducted hereunder to the City Council. Such referral shall be made by the Director, together with a staff report on the Director's preliminary findings. Upon such referral, the City Council shall conduct a noticed public hearing on the Applicant's compliance with the terms of the Development Agreement in accordance with the provisions of this Chapter and Government Code section 65865.1. If, after considering all the evidence at such public hearing, the City Council finds and determines on the basis of substantial evidence that the Applicant has not complied in good faith to the terms and conditions of the Development Agreement, then the City Council shall specify to the Applicant the respects in which the Applicant has failed to comply and shall also specify a reasonable time for the Applicant to comply with such terms which shall not be less than thirty (30) days, and shall be reasonably related to the time necessary to adequately bring the Applicant's performance into good faith compliance with the terms of the Development Agreement. If the areas of noncompliance specified by the City Council are not perfected within such reasonable time limits, then the City Council, by noticed hearing in accordance with Section 11.80.080, may terminate, modify or take such other action with regard to the Development Agreement.

F. The Director's determination of either compliance or non-compliance shall be made within thirty (30) days after the submission by the Applicant of the required material hereunder, and, if the Director refers the matter to the City Council, then the determination by the City Council shall be made within thirty (30) days after such referral. The issuance of the certificate of compliance by the Director (or the City Council on referral) shall conclude the review for the applicable period, and such determination shall be final and conclusive up to and including the date of the annual review hereunder.

G. All costs incurred by City for the annual review conducted under this Chapter shall be borne by the Applicant, including, but not limited to, the City's retention of professionals.

Section 11.80.160 Amendment or Cancellation by Mutual Consent.

A. Any Development Agreement may be cancelled or modified by mutual consent of the parties, but only in the manner provided for by California Government Code section 65868, as amended. Any proposal to cancel or modify a Development Agreement shall be heard and determined in accordance with the same procedures specified by this Chapter for approval of a Development Agreement.

B. If the parties to a Development Agreement, or their successors in interest, mutually agree to amend or cancel the Development Agreement as provided for in Government Code section 65868 and this Chapter, the City Clerk shall, after such action takes effect, have notice of such action recorded in the official records of the County of Los Angeles.

Section 11.80.170 Cancellation by City.

A. If, at any time during the term of a Development Agreement the Director determines that the Applicant has not complied with the terms and conditions of the Development Agreement, the Director shall provide the Applicant thirty (30) days to cure any deficiency following notice to the Applicant. Should the Applicant fail to cure said deficiency, the Director shall, pursuant to the notice provisions of Section 11.80.080, request that the Planning Commission conduct a public hearing at which the Applicant must demonstrate good faith compliance with the terms of the Development Agreement. The burden of proof by substantial evidence of compliance by the Applicant is upon the

Applicant. If such compliance cannot be shown, the Planning Commission shall recommend to the City Council that it either commence proceedings to cancel the Development Agreement or recommend new terms and conditions intended to remedy the noncompliance.

B. The City Council shall conduct a noticed hearing, as provided in Section 11.80.080, on the recommendations of the Planning Commission at which the Applicant and any other interested person shall be entitled to submit such evidence and testimony as may be germane to the issue of the Applicant's good faith compliance with the terms of the Development Agreement. If the City Council finds, based on substantial evidence, noncompliance with the terms and conditions of the Development Agreement and failure to cure the deficiency during the cure period provided in Section 11.80.170.A above, it may either cancel the Development Agreement upon giving sixty (60) days' notice to the Applicant, or in its discretion, may allow the Development Agreement to be continued by imposition of new terms and conditions intended to remedy such noncompliance. The City Council may impose such conditions to the action it takes as it considers necessary to protect the interests of the city. The decision of the City Council shall be final.

C. Any cancellation or imposition of new terms and conditions pursuant to this section shall be noticed in accordance with the procedures specified in Section 11.80.080.

D. If the City Council cancels or modifies a Development Agreement as provided for in Government Code section 65865.1 and this chapter for failure of the Applicant to comply in good faith with the terms or conditions of the Development Agreement, the City Clerk shall, after such action takes effect, have notice of such action recorded in the official records of the County of Los Angeles.

Section 11.80.180 Rights of the Parties After Cancellation.

In the event a Development Agreement is cancelled, unless otherwise agreed, all rights of the Applicant under the Development Agreement, shall terminate. Any and all benefits, including money or land, received by the City shall be retained by the City. Notwithstanding the above provision, the termination of a Development Agreement shall not prevent an Applicant from completing a building or other improvements authorized pursuant to a valid building permit previously approved by the City or under construction at the time of termination, but the City may take any action permitted by law to prevent, stop, or correct any violation of law occurring during and after construction, and the Applicant or any tenant shall not occupy any portion of the project or any building not authorized by a previously issued building permit. As used herein, "construction" shall mean work performed in good faith in reliance upon a valid building permit, and "completing" shall mean completion for beneficial occupancy for an Applicant's use, or if a portion of the project is intended for use by a lessee or tenant, then for such portion "completing" shall mean completion except for interior improvements such as partitions, duct and electrical run outs, floor covering, wall coverings, lighting, furniture, trade fixtures, finished ceilings and other improvements typically constructed by or for tenants of similar buildings. All such uses shall, to the extent applicable, be deemed nonconforming uses and shall be subject to the nonconforming use provisions of this code.

Section 11.80.190 Fees.

The Applicant shall reimburse the City for all its reasonable and actual costs, fees, and expenses, including legal counsel and special counsel fees, for review, processing, negotiation, approval, and recordation of the Development Agreement. The City Council may, by resolution, fix the

schedule of fees and charges imposed for the filing and processing of each Development Agreement application and for the annual review.

Section 2. The City Council hereby finds and determines that it can be seen with certainty that there is no possibility that this Ordinance, by itself, may have a significant adverse effect on the environment. This Ordinance would only establish procedures and regulations for Development Agreements. Projects that are subject to a Development Agreement would require separate environmental review. Thus, the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b) (3) of the CEQA Guidelines. Staff is directed to file a Notice of Exemption with the Los Angeles County Clerk's office within five (5) working days of project approval.

Section 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any Person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other Person or circumstance. The City Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 4. This Ordinance shall take effect thirty (30) days after its adoption in accordance with California Government Code Section 36937.

Section 5. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and/or posted in accordance with applicable law.

PASSED, APPROVED AND ADOPTED this ____ day of _____ 2015.

David A. Spence, Mayor

ATTEST:

Tania Moreno, City Clerk

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA CAÑADA FLINTRIDGE
ADDING CHAPTER 11.80 TO TITLE 11 OF THE LA CAÑADA FLINTRIDGE MUNICIPAL
CODE ESTABLISHING PROCEDURES AND REQUIREMENTS FOR CONSIDERATION
OF DEVELOPMENT AGREEMENTS

WHEREAS, a development agreement is an agreement between a city or county and a developer that’s sets forth the standards and conditions that govern the development of the property; and

WHEREAS, a development agreement benefits the developer because ~~the laws, regulations, and land use approvals become vested at the time the development agreement is executed, thereby providing certainty to the developer that its project will not be affected from changes in the jurisdiction’s zoning laws over the course of development; and, unless otherwise provided by the development agreement, the rules, regulations, and official policies governing permitted uses of the subject property, 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 development agreement.~~

WHEREAS, a development agreements benefits the city or county because, in many cases, it requires the developer to provide public benefits, such as infrastructure improvements, public open space, or monetary payment into funds, such as “in lieu” fees, in exchange for vesting the development; and

WHEREAS, in order for a city or county to enter into a development agreement, a city must adopt procedures and requirements for consideration of development agreements in accordance with California Government Code Sections 65864 *et seq.*; and

WHEREAS, the City of La Cañada Flintridge now desires to add Chapter 11.80 in Title 11 of the La Cañada Flintridge Municipal Code to adopt procedures and requirements for consideration of development agreements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LA CAÑADA FLINTRIDGE DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 11.80 of Title 11 of the La Cañada Flintridge Municipal Code is hereby added and shall read as follows:

**Chapter 11.80
DEVELOPMENT AGREEMENTS**

- 11.80.010 Authority.**
- 11.80.020 Purpose.**
- 11.80.030 Applicability.**
- 11.80.040 Definitions.**
- 11.80.050 Parties to Development Agreements.**
- 11.80.060 Application for Development Agreement.**
- 11.80.070 Review of Application for Development Agreement.**
- 11.80.080 Notice of Public Hearing.**
- 11.80.090 Review by Planning Commission.**
- 11.80.100 Review by City Council.**

- 11.80.110 Execution and Recordation of Development Agreement.
- 11.80.120 Effect of Development Agreement.
- 11.80.130 Irregularity in Proceeding.
- 11.80.140 Rules Affecting Development Agreements.
- 11.80.150 Periodic Review.
- ~~11.80.150~~11.80.160 Modification or Cancellation by Mutual Consent.
- ~~11.80.160~~11.80.170 Cancellation by City.
- ~~11.80.170~~11.80.180 Rights of the Parties After Cancellation.
- ~~11.80.180~~11.80.190 Fees.

Section 11.80.010 Authority.

This Chapter is adopted in accordance with Government Code Title 7, Division 1, Chapter 4, Article 2.5, Section 65864 *et seq.*, as amended.

Section 11.80.020 Purpose.

The purpose of this Chapter is to establish rules and regulations for the processing ~~and~~ review ~~of development agreements~~ and approval of Development Agreements.

Section 11.80.030 Applicability.

The procedures and requirements set forth in this Chapter shall apply to all ~~development agreements~~ Development Agreements proposed by developers of projects in the City of La Cañada Flintridge and considered by the City Council of La Cañada Flintridge.

Section 11.80.040 Definitions.

“**Applicant**” means any Person having a legal or equitable interest in real property who completes and submits an application for a ~~development agreement~~ Development Agreement, including any successor-in-interest thereto.

"**City**" means the City of La Cañada Flintridge.

“**City Council**” means the City Council of the City.

“**City Clerk**” means the City Clerk of the City.

“**Development Agreement**” means an agreement authorized by Government Code Title 7, Division 1, Chapter 4, Article 2.5, Section 65864 et seq., as amended, and this Chapter.

"**Director**" means the City's Director of Community Development, or his/her designee.

“**Person**” means any individual, firm, partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, the state of California, any county, city and county, municipality, district or other political subdivision, or any other group combination acting as a unit.

Section 11.80.050 Parties to Development Agreements.

A. An Applicant shall possess a legal or equitable interest in the real property which is to be the subject of the ~~development agreement~~Development Agreement. As set forth in Section 11.80.060.A below, an application for a Development Agreement may be submitted by an authorized agent of the Applicant.

B. In addition to the City and the Applicant, any federal, state or local governmental agency may be included as a party to a ~~development agreement~~Development Agreement. Any such additional party may be made a party to a ~~development agreement~~Development Agreement pursuant to the provisions of the ~~joint exercise of powers act~~Joint Exercise of Powers Act, set forth in sections 6500 et seq. of the California Government Code, as amended, providing for joint powers agreements, or provisions of other applicable federal, state or local law, in order to create a legally binding agreement among such parties.

Section 11.80.060 Application for Development Agreement and Processing.

A. Application. An Applicant, ~~or his/her authorized agent~~, shall submit a completed application for ~~development agreement~~Development Agreement to the Director. The application shall be on a form approved by the Director and shall include such information and supporting data as the Director considers necessary to process the application, including, but not limited to, the following:

1. Proof that the Applicant has a legal or equitable interest in the real property that will be subject to the ~~development agreement~~Development Agreement. Such proof may include a preliminary report issued by a title company licensed to do business in the state of California; and
2. If an application for a Development Agreement is being submitted by an agent for an Applicant, proof satisfactory to the City Attorney that the agent is authorized to represent the Applicant.
3. A draft of the ~~development agreement~~Development Agreement proposed by the Applicant, which may include, but not be limited to, the following:
 - a. The parties to the ~~development agreement~~Development Agreement;
 - b. Written evidence of the nature of the Applicant's interest in the real property, demonstrating to the satisfaction of the Director and the City Attorney, the Applicant's legal or equitable interest in the property which is the subject of the ~~development agreement~~Development Agreement;
 - c. A description of the development project sufficient to permit the ~~development agreement~~Development Agreement to be reviewed under the applicable criteria of this Chapter.
 - d. The proposed project as it relates to 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.
 - e. The proposed project as it relates to anticipated traffic impacts from the project.

- f. ~~e.~~An identification of the approvals and permits for the ~~development project~~ Development Agreement to be issued or contemplated by the ~~development agreement~~Development Agreement .
- g. ~~f.~~The proposed duration of the ~~development—agreement~~Development Agreement.
- h. ~~g.~~A program and standards for periodic review under this Chapter.
- i. ~~h.~~Appropriate provisions, acceptable to the City Attorney, providing security for the performance of the Applicant under the ~~development agreement~~Development Agreement.
- j. ~~i.~~Conditions and requirements for subsequent discretionary actions, provided that such conditions 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 ~~development agreement~~Development Agreement.
- k. ~~j.~~Conditions-If provided by the Director, conditions to be imposed by the City with respect to the development project including those conditions required as a result of any environmental impact report prepared under the California Environmental Quality Act and the City's environmental review process to eliminate or mitigate environmental impacts caused by or aggravated as a result of the development project.
- l. ~~k.~~An indemnity and insurance clause, in form and substance acceptable to the City Attorney, requiring the applicant to defend and indemnify the City against any claims arising out of the ~~development agreement~~Development Agreement process.
- m. ~~l.~~A provision that provides ~~development—agreements~~Development Agreements, or any part of a ~~development—agreement~~Development Agreement, may be subject to subsequent condemnation proceedings by the City.
- n. ~~m.~~Any other relevant provisions which may be deemed necessary by the City.

B. The Applicant shall reimburse the City for all its reasonable and actual costs, fees, and expenses, including legal counsel and special counsel fees, for review, processing, negotiation, approval, of the Development Agreement.

Section 11.80.070 Review of Application for Development Agreement.

A. After receipt of a completed application, including such information and supporting data as the Director considers necessary to process the application, the Director shall prepare a staff report and recommendation to the Planning Commission as to whether or not the agreement, as proposed or in an amended form (specifying the nature of the amendments), would be consistent with the City’s General Plan and any applicable specific plan, and shall describe the public benefits provided by the proposed agreement.

B. Development ~~agreements~~Agreements shall not take the place of ~~zoning ordinances, the general plan, conditional use permits, subdivision approvals, building permits or any other city planning functions. To any requirements in the City's General Plan, any applicable specific plan, or the City's zoning code, including, but not limited to, any land use entitlements required for development on the subject property. To ensure consistency between a Development Agreement and any related land use approvals required for the development project, including conditions of approval imposed therein, and to~~ the extent practicable, public hearings on a proposed ~~development agreement~~Development Agreement may be held concurrently with the public hearings on all related land use approvals and all such approvals shall be made concurrently with the approval of the ~~development agreement~~Development Agreement.

Section 11.80.080 Notice of Public Hearing.

A. All ~~development agreements~~Development Agreements shall be considered at public hearings before both the Planning Commission and City Council.

B. The form of notice to consider adoption of a ~~development agreement~~Development Agreement before the Planning Commission or City Council shall contain:

1. The time and place of the public hearing;
2. A general explanation of the matter to be considered including a general description of the area and/or property affected;
3. The location or locations where a copy of the proposed ~~development agreement~~Development Agreement may be reviewed;
4. Other information required by specific provisions of this Chapter or which the Director considers necessary or desirable.

C. The time and manner of giving notice is by:

1. Publication at least once and at least ten (10) days prior to the hearing in a newspaper of general circulation, circulated in the city.
2. Mailing of the notice at least ten (10) days prior to the hearing to the Applicant, to the owner of the property subject to the ~~development agreement~~Development Agreement, to each local agency expected to provide fire, police, water, sewage, streets, roads, schools, or other essential facilities or services to the project whose ability to provide those facilities and services may be significantly affected, to any person who has filed a written request for notice with either the city clerk, and to all persons shown on the last equalized assessment roll as owning real property within three hundred feet (300') of the property which is the subject of the proposed ~~development agreement~~Development Agreement; provided, the Director may direct that notice be given over a wider area to adequately inform interested persons. 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 ~~65901-65091~~ of the California Government Code, which includes posting a public hearing notice at the subject property and publishing a public hearing notice in a newspaper of general circulation in the City of La Cañada Flintridge.

D. The Planning Commission or City Council, as the case may be, may direct that notice of the public hearing to be held before it shall be given in a manner that exceeds the notice requirements prescribed by state law, but failure to comply with such procedure shall not invalidate a ~~development agreement~~Development Agreement.

~~EE.~~ The notice requirements referred to in this Chapter are declaratory of existing law (Government Code sections 65867, 65090 and 65091). If and when state law prescribes any different notice requirement, notice shall be given in that manner.

F. The failure to receive notice by any person entitled to notice by law or this Section does not affect the authority of the City to enter into a ~~development agreement~~Development Agreement.

Section 11.80.090 Review by Planning Commission.

~~A.~~ Following a public hearing duly noticed in accordance with Section 11.80.080, the Planning Commission shall ~~make its recommendation to the City Council by resolution. The resolution shall include the Planning Commission's findings as to determine~~ whether the proposed ~~development agreement~~: 1. — Is Development Agreement is consistent with the ~~objectives, policies, general land uses and programs specified in the general City's General plan and any applicable specific plan;~~ Said determination shall be forwarded to the City Council for its consideration and action

- ~~2. — Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district where the site is located;~~
- ~~3. — Is in conformity with public convenience, general welfare and good land use practice;~~
- ~~4. — Will not be detrimental to the health, safety and general welfare;~~
- ~~5. — Will not adversely affect the orderly development of property or the preservation of property values.~~
- ~~6. — Will promote and encourage the development of the proposed project by providing a greater degree of requisite certainty.~~

~~B.~~ If the Planning Commission recommends against adoption of a development agreement, the development agreement shall be forwarded to the City Council with that recommendation

Section 11.80.100 Review by City Council.

A. Following a public hearing duly noticed in accordance with Section 11.80.080 above, the City Council shall consider the ~~Planning Commission's recommendation together with any additional public testimony, and, subject to the findings set forth in Section 11.80.100.B below, may approve, approve with modification, or disapprove the development agreement.~~ proposed Development Agreement. In order to approve a ~~development agreement~~Development Agreement, the City Council ~~must~~ shall be required to find that the provisions of the ~~agreement~~Development Agreement are consistent with the ~~general plan~~City's General Plan and any applicable specific plan.

~~EB.~~ City Council approval of a ~~development agreement~~Development Agreement shall be by the adoption of an ordinance because a ~~development agreement~~Development Agreement is a legislative act.

Section 11.80.110 Execution and Recordation of Development Agreement.

No later than ten (10) days after the ordinance approving a ~~development agreement~~ Development Agreement takes effect, the City's mayor or other authorized City official shall execute the ~~development agreement~~ Development Agreement, and the City Clerk shall have the ~~development agreement~~ Development Agreement recorded in the official records of the County of Los Angeles.

Section 11.80.120 Effect of Development Agreement.

A. When approved, a ~~development agreement~~ Development Agreement and any development control maps and all notations, references and regulations which are a part of the ~~development agreement~~ Development Agreement shall be considered part of this code. Development control maps include, but are not limited to, regulations intended to carry out any plan ~~respecting with respect to~~ location or type of activities; height, bulk, siding or design of structures; location or design of open areas; and landscaping and other comparable regulations. In the case of any conflict with any other provisions of this code, such ~~development agreement~~ Development Agreement provisions shall take precedence.

B. Unless otherwise provided by the ~~development agreement~~ Development Agreement, the City's rules, regulations, and official policies governing permitted uses of the ~~land~~ subject property, ~~governing~~ density, and ~~governing~~ design, improvement, and construction standards and specifications, applicable to development of the property subject to a ~~development agreement~~ Development Agreement, shall be those City rules, regulations, and official policies in force at the time of ~~the approval of the development agreement by the City Council~~ execution of the Development Agreement.

C. A ~~development agreement~~ Development Agreement shall not prevent the City, 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~~ Development Agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

D. 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 Development Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations

Section ~~11.80.120~~ 11.80.130 Irregularity in Proceeding.

Formal rules of evidence or procedure which must be followed in a court of law shall not apply to the consideration of a proposed ~~development agreement~~ Development Agreement. No action, inaction or recommendation regarding a ~~development agreement~~ Development Agreement shall be held void or invalid on the ground of the improper admission or rejection of evidence or by reason of any error or informality, as to any procedural matter ~~procedure~~ whatsoever unless, after an examination of the entire case, including the evidence, a court of law finds 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.

Section ~~11.80.130~~ 11.80.140 Rules Affecting Development Agreements.

All ~~development agreements~~ Development Agreements shall be subject to the regulation and requirements of the laws of the state of California, the constitution of the United States and any codes, statutes and any court decisions, state or federal. In the event that any law, code, statute or decision made or enacted after a ~~development agreement~~ Development Agreement has been entered into prevents or precludes compliance with one or more

provisions of the ~~development agreement~~Development Agreement, then such provisions of the ~~development agreement~~Development Agreement shall be modified or suspended in the manner and pursuant to the procedures specified in the ~~development agreement~~Development Agreement, as may be necessary to comply with that law, code, statute or decision.

Section 11.80.14011.80.150 Periodic Review.

A. The City shall review ~~development agreements~~Development Agreements which have been approved by the City Council at least once every twelve (12) months from the date of their approval. Pursuant to Government Code section 65865.1, the Applicant shall have the duty to demonstrate its good faith compliance with the terms of the ~~development agreement~~Development Agreement at the time of such periodic review. The City's cost for such periodic review shall be paid by the Applicant to the City prior to the time of such review.

B. Not less than thirty (30), nor more than sixty (60), days prior to the anniversary date of a ~~development agreement~~Development Agreement, and each anniversary date thereafter, the Applicant shall submit to the Director a letter setting forth the Applicant's good faith compliance with the terms and conditions of the ~~development agreement~~Development Agreement. Such letter shall be accompanied by documents and other information as may be necessary and available to enable the City to undertake its annual review of good faith compliance under the terms of the ~~development agreement~~Development Agreement, and shall also state that such letter is submitted to the City pursuant to the requirements of Government Code section 65865.1, as amended, and this chapter. Not less than thirty (30), nor more than sixty (60), days prior to the anniversary date of a ~~development agreement~~Development Agreement, the Director shall provide notice to the City Council, at a regularly scheduled meeting of the City Council, that a ~~development agreement~~Development Agreement will be subject to annual review in accordance with this Chapter.

C. The Director shall review the Applicant's submission to ascertain whether Applicant has complied in good faith with the terms of the ~~development agreement~~Development Agreement. Upon request of Director, the Applicant shall furnish such additional documents or information as may be reasonably required and available to the Applicant to enable Director to make and complete its review hereunder. If the Director finds good faith compliance by the Applicant with the terms of the ~~development agreement~~Development Agreement, it shall issue a certificate of compliance, certifying the Applicant's good faith compliance with the terms of the agreement through the period of the applicable annual review. Such certificate of compliance shall be in recordable form and shall contain such information as may be necessary in order to impart constructive record notice of the finding of good faith compliance hereunder. The Applicant shall have the right to record the certificate of compliance, at the Applicant's sole cost, in the official records of the County of Los Angeles. At least ten (10) days prior to making its determination, the Director shall provide to the Applicant copies of all staff reports and other information concerning the Applicant's compliance with the terms of the ~~development agreement~~Development Agreement and the determination made by the Director.

D. If the Director finds that the Applicant has not complied in good faith with the terms of the ~~development agreement~~Development Agreement, it shall specify to the Applicant in writing the respects in which the Applicant has failed to comply. The Director shall also specify a reasonable time for the Applicant to comply with such terms for compliance, which shall not be less than thirty (30) days, and shall be reasonably related to the time necessary to adequately bring the Applicant's performance into good faith compliance with the ~~development agreement~~Development Agreement. If the areas of noncompliance specified by the Director are not perfected within such reasonable time limits prescribed by the Director, then the ~~development agreement~~Development Agreement shall be subject to modification or cancellation pursuant to this Chapter and the provisions of Government Code section 65865.1.

E. The Director may refer any review to be conducted hereunder to the City Council. Such referral shall be made by the Director, together with a staff report on the Director's preliminary findings. Upon such

referral, the City Council shall conduct a noticed public hearing on the Applicant's compliance with the terms of the ~~development agreement~~ Development Agreement in accordance with the provisions of this Chapter and Government Code section 65865.1. If, after considering all the evidence at such public hearing, the City Council finds and determines on the basis of substantial evidence that the Applicant has not complied in good faith to the terms and conditions of the ~~development agreement~~ Development Agreement, then the City Council shall specify to the Applicant the respects in which the Applicant has failed to comply and shall also specify a reasonable time for the Applicant to comply with such terms which shall not be less than thirty (30) days, and shall be reasonably related to the time necessary to adequately bring the Applicant's performance into good faith compliance with the terms of the ~~development agreement~~ Development Agreement. If the areas of noncompliance specified by the City Council are not perfected within such reasonable time limits, then the City Council, by noticed hearing in accordance with Section 11.80.080, may terminate, modify or take such other action with regard to the ~~development agreement~~ Development Agreement.

F. The Director's determination of either compliance or non-compliance shall be made within thirty (30) days after the submission by the Applicant of the required material hereunder, and, if the Director refers the matter to the City Council, then the determination by the City Council shall be made within thirty (30) days after such referral. The issuance of the certificate of compliance by the Director (or the City Council on referral) shall conclude the review for the applicable period, and such determination shall be final and conclusive up to and including the date of the annual review hereunder.

G. All costs incurred by City for the annual review conducted under this Chapter shall be borne by the Applicant, including, but not limited to, the City's retention of professionals.

Section 11.80.150 11.80.160 Amendment or Cancellation by Mutual Consent.

A. Any ~~development agreement~~ Development Agreement may be cancelled or modified by mutual consent of the parties, but only in the manner provided for by California Government Code section 65868, as amended. Any proposal to cancel or modify a ~~development agreement~~ Development Agreement shall be heard and determined in accordance with the same procedures specified by this Chapter for approval of a ~~development agreement~~ Development Agreement.

B. If the parties to a ~~development agreement~~ Development Agreement, or their successors in interest, mutually agree to amend or cancel the ~~development agreement~~ Development Agreement as provided for in Government Code section 65868 and this Chapter, the City Clerk shall, after such action takes effect, have notice of such action recorded in the official records of the County of Los Angeles.

Section 11.80.160 11.80.170 Cancellation by City.

A. If, at any time during the term of a ~~development agreement~~ Development Agreement the Director determines that the Applicant has not complied ~~in good faith~~ with the terms and conditions of the ~~development agreement~~ Development Agreement, the Director shall provide the Applicant thirty (30) days to cure any deficiency following notice to the Applicant. Should the Applicant fail to cure said deficiency, the Director shall, pursuant to the notice provisions of Section 11.80.080, request that the Planning Commission conduct a public hearing at which the Applicant must demonstrate good faith compliance with the terms of the ~~development agreement~~ Development Agreement. The burden of proof by substantial evidence of compliance by the Applicant is upon the Applicant. If such compliance cannot be shown, the Planning Commission shall recommend to the City Council that it either commence proceedings to cancel the ~~development agreement~~ Development Agreement or recommend new terms and conditions intended to remedy the noncompliance.

B. The City Council shall conduct a noticed hearing, as provided in Section 11.80.080, on the recommendations of the Planning Commission at which the Applicant and any other interested person shall be

entitled to submit such evidence and testimony as may be germane to the issue of the Applicant's good faith compliance with the terms of the ~~development agreement~~Development Agreement. If the City Council finds, based on substantial evidence, noncompliance with the terms and conditions of the ~~development agreement~~Development Agreement and failure to cure the deficiency during the cure period provided in Section ~~11.80.170.A~~11.80.170.A above, it may either cancel the ~~development agreement~~Development Agreement upon giving sixty (60) days' notice to the Applicant, or in its discretion, may allow the ~~development agreement~~Development Agreement to be continued by imposition of new terms and conditions intended to remedy such noncompliance. The City Council may impose such conditions to the action it takes as it considers necessary to protect the interests of the city. The decision of the City Council shall be final.

C. Any cancellation or imposition of new terms and conditions pursuant to this section shall be noticed in accordance with the procedures specified in Section 11.80.080.

D. If the City Council cancels or modifies a ~~development agreement~~Development Agreement as provided for in Government Code section 65865.1 and this chapter for failure of the Applicant to comply in good faith with the terms or conditions of the ~~development agreement~~Development Agreement, the City Clerk shall, after such action takes effect, have notice of such action recorded in the official records of the County of Los Angeles.

Section ~~11.80.170~~11.80.180 Rights of the Parties After Cancellation.

In the event a ~~development agreement~~Development Agreement is cancelled, unless otherwise agreed, all rights of the Applicant under the ~~development agreement~~Development Agreement, shall terminate. Any and all benefits, including money or land, received by the City shall be retained by the City. Notwithstanding the above provision, the termination of a ~~development agreement~~Development Agreement shall not prevent an Applicant from completing a building or other improvements authorized pursuant to a valid building permit previously approved by the City or under construction at the time of termination, but the City may take any action permitted by law to prevent, stop, or correct any violation of law occurring during and after construction, and the Applicant or any tenant shall not occupy any portion of the project or any building not authorized by a previously issued building permit. As used herein, "construction" shall mean work performed in good faith in reliance upon a valid building permit, and "completing" shall mean completion for beneficial occupancy for an Applicant's use, or if a portion of the project is intended for use by a lessee or tenant, then for such portion "completing" shall mean completion except for interior improvements such as partitions, duct and electrical run outs, floor covering, wall coverings, lighting, furniture, trade fixtures, finished ceilings and other improvements typically constructed by or for tenants of similar buildings. All such uses shall, to the extent applicable, be deemed nonconforming uses and shall be subject to the nonconforming use provisions of this code.

Section ~~11.80.180~~11.80.190 Fees.

The Applicant shall reimburse the City for all its reasonable and actual costs, fees, and expenses, including legal counsel and special counsel fees, for review, processing, negotiation, approval, and recordation of the Development Agreement. The City Council may, by resolution, fix the schedule of fees and charges imposed for the filing and processing of each ~~development agreement~~Development Agreement application and for the annual review.

Section 2. The City Council hereby finds and determines that it can be seen with certainty that there is no possibility that this Ordinance-, by itself, may have a significant adverse effect on the environment. This Ordinance would only establish procedures and regulations for ~~development agreements~~Development Agreements. Projects that are subject to a ~~development agreement~~Development Agreement would require separate environmental review. Thus, the adoption of this Ordinance is exempt from the requirements of the

California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b) (3) of the CEQA Guidelines. Staff is directed to file a Notice of Exemption with the Los Angeles County Clerk’s office within five (5) working days of project approval.

Section 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any Person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other Person or circumstance. The City Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 4. This Ordinance shall take effect thirty (30) days after its adoption in accordance with California Government Code Section 36937.

Section 5. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and/or posted in accordance with applicable law.

PASSED, APPROVED AND ADOPTED this ____ day of _____ 2015.

David A. Spence, Mayor

ATTEST:

Tania Moreno, City Clerk