

ORDINANCE NO. 597 N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
 ADDING CHAPTER 9.45 TO THE
 MUNICIPAL CODE ESTABLISHING REGULATIONS
 FOR "FILMING ACTIVITIES"

WHEREAS, State legislation has pre-empted local government from regulating film activities unless a local film ordinance was adopted by July 1, 1989; and

WHEREAS, local government shall utilize the California Film Commission's model ordinance and permitting process until such time as the local jurisdiction adopts its own process consistent with the State model; and

WHEREAS, each California community is unique and requires regulatory procedures that are consistent with its identified needs; and

WHEREAS, the adoption of this film ordinance is found to be necessary for the City's public peace, health and safety, and to protect and preserve the public interest, health, safety, welfare, comfort and convenience;

NOW, THEREFORE, the City Council of the City of El Paso de Robles DOES ORDAIN that the Municipal Code of the City of El Paso de Robles Municipal Code is hereby amended by adding Chapter 9.45, "FILMING ACTIVITIES", Section 9.45.010 through 9.45.170 et. seq. as follows:

CHAPTER 9.45 - FILMING ACTIVITIES

Sec. 9.45.010. Purpose of Chapter. It is the purpose of this Chapter to provide rules governing the issuance of permits for filming activities on location within the City. The intent of this Chapter is to ensure that still photographers and motion picture, television, commercial and non-theatrical filming companies will be encouraged to use locations for filming activities within the City so long as those activities are consistent with the public safety and the protection of property.

Sec. 9.45.020. Definitions As Used In This Chapter. (A) "Applicant" shall mean the person, organization, corporation, association or other entity applying for a permit to film in the City of El Paso de Robles.

(B) "City" shall mean the City of El Paso de Robles as a municipal corporation and existing pursuant to the laws of the State of California.

(C) "Filming Activity" shall mean the staging, shooting, filming, videotaping, photographing, or other similar process conducted for the making of still photographs, motion pictures, television programs, commercial and non-theatrical film productions.

(D) "Film Development Office" shall mean the office designated by the Council to coordinate filming and issue film permits in the City of El Paso de Robles.

(E) "Film Permit" shall mean written authorization from the City's representative designated by the Council to conduct the filming activity described in the permit.

(F) "Master Fee Schedule" shall mean those fees, taxes, and reimbursements for costs and administrative policies adopted by the Council.

(G) "News Purposes" shall mean a filming activity conducted for the purpose of reporting on persons, events, or scenes which are in the news for newspapers, television news, and other news media.

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following its first reading, the City shall enter into the development agreement by the execution thereof by the City Manager.

b. No ordinance shall be finally adopted via a second reading and the City Manager shall not execute a development agreement until it has been executed by the applicant and all other parties to the agreement. If the applicant has not executed the agreement or agreement as modified by the City Council, and returned the executed agreement to the City Clerk within sixty days following the ordinance's first reading, the approval shall be deemed withdrawn, and the City Council shall not give a second reading to such ordinance, nor shall the City Manager execute the agreement.

c. Such sixty-day time period may be extended upon approval of the City Council.

21.45.150 Recordation of Executed Agreement. Following the execution of a development agreement by the City Manager, the City Clerk shall record the executed agreement with the County Recorder.

21.45.160 Ordinances, Regulations, and Requirements Applicable to Development. Development projects covered by a development agreement shall comply with the general plan, zoning and subdivision regulations, and other applicable codes, ordinances, rules, regulations and official policies in effect on the date of execution of the development agreement by the City Manager; provided, however, that a development agreement shall not:

a. Be construed to prevent the application of later adopted or amended ordinances, rules, regulations and policies which do not conflict with such existing ordinances, rules, regulations and policies under the development agreement;

b. Prevent the approval, conditional approval or denial of subsequent development applications pursuant to such existing or later adopted or amended ordinances, rules, regulations and policies; or

c. Preclude the City from adopting and implementing emergency measures regarding water or sewer deficiencies when the City Council determines that such action is necessary to protect public health and safety. If such action becomes necessary, the council reserves the right to suspend water and sewer service on an equitable basis until such deficiencies are corrected.

21.45.170 Subsequently Enacted State and Federal Laws.

In the event that state and federal laws or regulations enacted after execution of a development agreement prevent or preclude compliance with one or more provisions of such agreement, the provisions of such agreement shall be deemed modified or suspended to the extent necessary to comply with such laws or regulations.

21.45.180 Enforcement - Continuing Validity.

a. Unless and until amended or canceled in whole or in part as provided in Sections 21.45.190 or 21.45.210, a development agreement shall be enforceable by any party to the agreement, regardless of any change in regulations which alters or amends the regulations applicable to the project covered by a development agreement, except as specified in Sections 21.45.160 and 21.45.170.

b. The development agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

21.45.190 Amendment - Time Extension - Cancellation.

A development agreement may be amended, extended or canceled in whole or in part, by mutual consent of all parties to the agreement or their successors in interest. Procedures for amendment, time extensions or cancellation of the development agreement by mutual consent shall be the same as provided for initiation and consideration of such agreement.

21.45.200 Review for Compliance - Community Development Director's Authority.

a. Every development agreement entered into by the City Council shall provide for Community Development Director review of compliance with the development agreement at time intervals as specified in the agreement, but not less than once every twelve months.

b. The Community Development Director shall determine whether the applicant or his successor in interest has or has not complied with the agreement. If the Community Development Director determines that the terms or conditions of the agreement are not met, all parties to the agreement shall be notified by registered or certified mail, also indicating that failure to comply within a period specified may result in legal action to enforce compliance, termination or modification of the agreement.

c. It is the duty of the applicant or his successor in interest to provide evidence of good-faith compliance with the agreement to the Community Development Director's satisfaction at the time of the Community Development Director's review. Refusal by the applicant or his successor in interest to provide the required information shall be prima facie evidence of violation of such agreement.

d. If at the end of the time period established by the Community Development Director, the applicant or his successor in interest has failed to comply with the terms of the agreement or has not submitted evidence substantiating such compliance, the Community Development Director shall notify the City Council of his findings, recommending such action as he deems appropriate, including legal action to enforce compliance or to terminate or modify the agreement.

21.45.210 Violation of Agreement - City Council Review and Action.

a. When the Community Development Director notifies the City Council that a development agreement is being violated, a public hearing shall be scheduled before the council to consider the matter. Procedures for conduct of such hearing shall be the same as provided for initiation and consideration of a development agreement.

b. If the City Council determines that the applicant or his successor in interest is in violation of a development agreement, it may take one of the following actions:

(1) Schedule the matter for City Council hearing for modification or possible termination of the agreement. Procedures for hearing notice shall be the same as provided in Section 21.23A.040A; or

(2) Continue the matter for further consideration.

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21.45.220 Modification or Termination for Violations.

A. After the hearing required by section 21.45.210A, the City Council may terminate or modify the agreement upon finding that:

1. Terms, conditions and obligations of any party to the development agreement have not been met;
2. The scope, design, intensity or environmental effects of a project were represented inaccurately;
3. The project has been or is being built, operated or used in a manner that differs significantly from approved plans, permits or other entitlements; or
4. Parties to the agreement have engaged in unlawful activity, or have used bad faith in the performance of or the failure to perform their obligations under the agreement.

B. Modifications. Such remedial action may include, but is not limited to, changes to project design or uses, operating characteristics, or necessary on-site or off-site improvements which are determined to be reasonably necessary to protect public health, safety or welfare, and to correct problems caused by or related to noncompliance with terms of the agreement.

21.45.230 Consequences of Termination. Upon termination of the development agreement, the owner shall otherwise comply with city codes, regulations, development standards and other applicable laws in effect at the time of termination of the agreement.

21.45.240 Irregularity in Proceedings. No action, inaction or recommendation regarding the proposed development agreement shall be held void or invalid, or be set aside by a court by reason of any error, irregularity, informality, neglect or omission as to any matter pertaining to the application, notice, finding, record, hearing, report, recommendation, or any other matters of procedure whatsoever unless, after an examination of the entire record, the court is of the opinion that the error was prejudicial and that a different result would have been probable if the error had not occurred or existed.

21.45.250 Coordination of Approvals.

a. Public Hearings. Where an application for a development agreement is concurrently filed with an application for a specific plan, rezone, planned development, conditional use permit, variance, minor subdivision or tract map, or annexation and the applications may be feasibly processed together, public hearings may be concurrently held.

b. Zoning or Subdivision Exceptions. Yards, building height, coverage, parking requirements, density, and other design standards may be modified or relaxed during consideration of a development agreement. The City Council may modify or relax development or subdivision standards when:

- (1) Such modification or relaxation is otherwise allowed by this municipal code;
- (2) The City Council makes findings as required by zoning and subdivision regulations; and
- (3) The City Council determines that such modification or relaxation of standards is consistent with the general plan, and reasonably necessary to allow the safe, efficient or attractive development of the subject property.

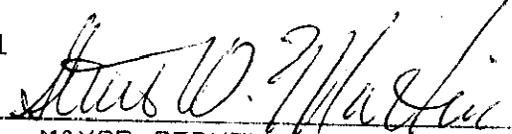
(B) Appeals of the City Manager's decisions may be made to the Council by filing a written notice of appeal setting forth the reasons for such appeal with the City Clerk within ten (10) days of the date of the decision(s) being appealed. The Council shall hear the appeal at the next available public meeting and render its decision.

PASSED AND ADOPTED THIS 5th day of June 1990 by the following roll call votes:

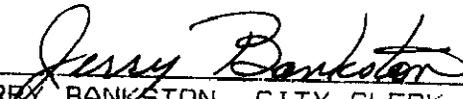
AYES: Cousins, Conway and Martin

NOES: None

ABSENT: Reneau and Russell


MAYOR STEVEN W. MARTIN

ATTEST:


JERRY BANKSTON, CITY CLERK

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(H) "Permittee" shall mean the person, organization, corporation, association or other entity issued a film permit under this policy.

(I) "Public Street" shall mean any street, right-of-way, public trail, bikeway or road maintained by the City and located within the City limits.

(J) "Still Photography" shall mean and include all activity attendant to staging or shooting commercial still photographs.

(K) "Student Filming Activity" shall mean filming activity conducted to fulfill a course requirement by a student enrolled at a public or private school.

(L) "Studio" shall mean a fixed place of business, where filming activities are regularly conducted upon the premises.

Sec. 9.45.030. Permit Required. It is unlawful to conduct a filming activity as defined in Section 9.45.020 within the City without first obtaining a film permit from the Film Development Office.

A permit is issued by the Film Development Office for the purpose of filming on City-owned, leased or controlled real property or City streets. This permit does not constitute or grant permission to use or occupy property not owned, leased or controlled by the City of El Paso de Robles. This permit must be in the possession of the permittee at all times while on location in the City.

An applicant shall obtain the private property owner's permission, consent, and/or lease for use of property not owned or controlled by the City.

Sec. 9.45.040. Permit Exemptions. The provisions of this Chapter shall not apply to any of the following activities provided that the activity will not require the closure of a public street, or substantially impede pedestrian or vehicular traffic thereon:

(A) Filming activities conducted for news purposes as defined in Section 9.45.020(G).

(B) Filming activities conducted at studios as defined in Section 9.45.020(L).

(C) Filming activities conducted for use in a criminal investigation or civil or criminal court proceeding.

(D) Non-commercial filming activities conducted on private property solely for private or family use.

(E) Commercial still photography or staging thereof, when conducted to the exclusion of any other filming activity as defined in Section 9.45.020(J) when the following conditions apply:

(1) The still photography, or staging thereof, will not be conducted on City property.

(2) The still photography, or staging thereof, will not require the parking of more than two (2) motor vehicles on any public street within the City.

(F) Filming activities conducted by or for the City.

Sec. 9.45.050. Deadline for Filing Applications. Applications for a film permit must be filed with the Film Development Office a minimum of two (2) business days in advance of the date the film activity is to begin; except that an application for a permit which includes traffic controls exceeding 3 minutes, minor stunts, minor special effects, shall require a minimum of four (4) working days notice; and those which include street closures, major stunts, or pyrotechnics must be filed a minimum of ten (10) business days in advance of the first day of filming.

No late applications will be processed by the City unless the Film Development Office determines that special circumstances exist relative to the application which would have precluded its application on a timely basis.

Applicants are encouraged to submit applications at the earliest advance date possible in order to facilitate coordination between City departments.

Upon showing of good cause, the Film Development Office shall consider applications which are filed after the filing

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deadline if there is sufficient time to process and investigate the application, and for City Staff to prepare for the filming activity.

Sec. 9.45.060. Application Form. The permit application shall be on a form furnished by the Film Development Office signed by the applicant or agent thereof. Such application shall include, but not be limited to, the following information:

- (A) Name, address, and telephone number of applicant.
- (B) Name, address, and 24-hour telephone(s) of person in charge of filming on location.
- (C) Filming location(s), dates and approximate daily call times of proposed filming activities.
- (D) Description of scenes to be filmed including details of any hazardous filming activity employing firearms, explosives, the use of open flame, other pyrotechnical effects, animals, stunts, filming of moving motor vehicles, watercraft or aircraft.
- (E) Description of the types and number of motor vehicles which will be parked on public streets, and description of any equipment to be placed on public property.
- (F) Evidence of adequate insurance certification as may be required.
- (G) Such other information, descriptions, diagrams, and technical information as the Film Development Office may require.

Sec. 9.45.070. Permit Approval/Denial. (A) The application shall be approved or denied within two (2) business days of receipt of the application unless the proposed filming activity requires extensive review by other City departments or other affected agencies due to public health or welfare concerns or fire or traffic safety. The film permit shall be approved by the Film Development Office unless determined from consideration of the application or other pertinent information, that any of the following conditions exist:

- (1) The filming activity will substantially disrupt the use of a public right-of-way or street at a time when it is usually subject to traffic congestion, or interfere with the operation of emergency vehicles in the proposed permit area.
 - (2) The location of the filming activity will substantially interfere with a right-of-way or street maintenance work, or a previously authorized excavation permit.
 - (3) The proposed permit location is on City property and the filming activity will substantially interfere with other previously authorized activities, contracts or safety of the public or employees while on City property.
 - (4) The proposed permit location is on City property and the filming activity will substantially interfere with municipal functions or the scheduled maintenance of City buildings or grounds.
 - (5) The filming activity creates a substantial risk of injury to persons or damage to property.
 - (6) The applicant failed to complete the application after being requested to do so, or the information contained in the application is found to be false in any material detail.
 - (7) The particular filming activity would violate federal, state, or local law including licensing or permit requirements.
 - (8) Any other set of specific facts, circumstances and conditions which, in the discretion of the Film Development Office, are determined to present or result in a situation incompatible or inconsistent with the proposed filming activity.
- (B) When the grounds for permit denial can be corrected by imposing reasonable permit conditions, the Film Development Office may impose such conditions rather than denying the permit.

Sec. 9.45.080. Permit Conditions. The Film Development Office may condition the issuance of a film permit by imposing reasonable terms, conditions and requirements concerning the time, place, manner and duration of filming activities as referenced on the "Terms and Conditions" attached to the Film Permit, including but not limited to, the following:

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(A) Requirements for the presence of employees of the City at the applicant's expense, when required for the particular filming activity. 405

(B) Requirements concerning posting of no parking signs, placement of traffic control devices, and employment of traffic and crowd control monitors at the applicant's expense.

(C) Requirements concerning posting of the outer boundaries of the filming activity and providing advance notice to affected property owner's businesses and tenants.

(D) Requirements concerning the cleanup and restoration of public streets and City property employed in the filming activity.

(E) Restrictions concerning the use of City or other public agency employee services, vehicles and other equipment in the filming activity.

(F) Requirements that the applicant pay all fees, and obtain all permits and licenses required for the filming activity under local, state and federal laws.

(G) Restrictions on the use of firearms, explosions, and other noise-creating or hazardous devices which disturb the peace.

(H) Restrictions on the use of stunts involving pyrotechnics, open flame, vehicle crashes or other hazardous materials.

(I) Requirements concerning cover-up of police, fire and other official uniforms worn by actors, when the actors are not on camera.

(J) Restrictions concerning the use of City and other public agencies' logos, insignias, badges or decals for filming purposes.

(K) Restrictions on the locations and/or daily hours the filming activity may be conducted within the City.

(L) Requirements concerning the City's or other public agencies' receipt of proper acknowledgment for any assistance provided in making feature, television or commercial productions.

(M) Requirements concerning affirmative action and non-discriminatory practices for employment.

Sec. 9.45.085. Rules and Regulations. The Film Development Office is authorized and directed to promulgate additional rules and regulations governing issuance of film permits and film permit riders.

Sec. 9.45.090. Fees. (A) A schedule of fees for City services and use of City property shall be in an amount as established by resolution of the City Council and/or in accordance with the Master Fee Schedule.

(B) The applicant shall pay all costs incurred by the City in providing City employees to be present during filming activity.

(C) The City may require that a bond, cash advance, or other security approved by the City Attorney be posted in advance of the issuance of any permit to guarantee and as security for payment covering City's anticipated costs or expenses.

Sec. 9.45.100. Change of Filming Activity Date. Upon reasonable written notice by the permittee in advance of the filming activity, the Film Development Office is authorized to change the date for which the film permit has been issued without requiring a new application or permit.

Sec. 9.45.110. Insurance Required. The applicant for a film permit shall procure and maintain for the duration of the film activity insurance in the forms, types and amount prescribed by the City Manager and as approved by the City Attorney.

Sec. 9.45.120. Liability and Indemnification. Prior to the issuance of the film permit, the permit applicant must agree in writing to comply with the "Filming Permit Terms and Conditions".

Sec. 9.45.130. Duties of Permittee. The permittee, and all agents, employees, and contractors of the permittee at the

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filming activity site within the City, shall comply with the following requirements:

(A) The permittee shall comply with all "Terms and Conditions" of the film permit.

(B) The permittee shall not conduct a filming activity within the City not authorized by the filming permit.

(C) The permittee shall meet with and brief City Staff as necessary to ensure that the personnel assigned have a full understanding of the hazards and City resources involved.

(D) The permittee shall be responsible for ascertaining the full purpose(s) of the permit conditions and ensuring that all film personnel are in compliance.

(E) The permittee shall comply with instruction made by the City's Police and Fire Department Officer(s) assigned to police and ensure safety at the filming activity site.

(F) The permittee shall comply with instructions made by City employees assigned to regulate the filming activity site.

(G) The permittee shall clean and restore all City-owned property utilized during the filming activity to the same condition as existed prior to the filming activity.

(H) The permittee shall comply with these regulations and all other policies and laws of the City and state and federal law.

Sec. 9.45.140. Street Closure. The applicant for a film permit may request that the City authorize a street closure on the film permit application. A short-term encroachment permit may be granted by the City Manager, his designee, or by the Chief of Police, provided that the public health, welfare or safety would not be endangered or affected.

Sec. 9.45.150. Pyrotechnics. During the filming of any special effect or stunt requiring the use of pyrotechnics or any material deemed hazardous, including but not limited to fireworks, open flames, or explosives, the applicant must obtain all relevant and required permits from the City Fire Department.

Sec. 9.45.160. Permit Revocation or Suspension. (A) Permit Revocation -- The Film Development Office may revoke the film permit if the permittee, or any agents, employees or contractors of the permittee fail to comply with the requirements set forth in Section 9.45.130, or if the Film Development Office determines after the permit is issued that the permit application was false in any material detail.

(1) Notice of the grounds for revocation of the film permit shall be provided in writing by the Film Development Office to the permit applicant or person in charge at the location of the filming activity.

(2) Appeals of the permit revocation shall be conducted in the manner specified in Section 9.45.160.

(B) Permit Suspension. -- The City of El Paso de Robles Police Department and/or Fire Department Officer assigned to police the filming activity site may suspend the film permit when the filming activity poses an immediate hazard to persons or property and the location manager will not, or cannot, prevent the hazard after being instructed to do so by the officer.

(1) The grounds for the permit suspension shall be provided in writing by the Film Development Office to the permittee within one (1) business day of the suspension.

(2) Appeals of the permit suspension shall be conducted in the manner specified in Section 9.45.170.

Sec. 9.45.170. Appeals. (A) The permit applicant or permittee may appeal a permit denial, revocation, or suspension, permit condition, insurance/fees requirement or the Film Development Office's decision not to waive a deadline set forth in the Policy. Such appeal shall be filed with the City Manager's Office not later than five (5) business days after the date written notice of the decision is made. Failure to timely file an appeal shall result in a waiver to the right to appeal. The appeal shall be heard by the City Manager or his/her designee.

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EXHIBIT A

CHAPTER 21.45

DEVELOPMENT AGREEMENTS

21.45.010 Purpose and Scope. Development agreements specify the rights and responsibilities of the City and developers. Used in conjunction with annexation, general plan amendments, specific plans, rezoning, planned development approval, subdivision approval, conditional use permit approval, variance approval, or architectural review approval, development agreements establish the terms and conditions under which development projects may proceed. Development agreements are best used for large, complex, or phased projects which require extended construction time and which involve numerous public improvements such as streets, utilities, flood improvements, schools, parks, and open space, and other improvements of community-wide benefit. Under a development agreement, projects may proceed under the rules, standards, policies, and regulations in effect at the time of original project approval.

21.45.020 Authority. This chapter establishes procedures and requirements for development agreements for the purposes specified in and as authorized by Article 2.5, Chapter 4, Title 7 of the Government Code, Sections 65864 et seq. The Planning Commission may recommend and the City Council may enter into a development agreement for the development of real property with any person having legal or equitable interest in such property, as provided below. At its sole discretion, the City Council may, but is not required to, approve a development agreement where a clear public benefit or public purpose can be demonstrated.

21.45.030 Initiation of Hearings. Hearings on a development agreement may be initiated:

- a. Upon the filing of an application as provided below; or
- b. By the City Council by a simple majority vote.

21.45.040 Applications - Legal Interest. Any person having legal or equitable interest in real property may apply for a development agreement, except that a person may not file, and the Community Development Director shall not accept, an application which is the same as, or substantially the same as, an application which was denied within the previous year, unless the application is initiated by the City Council.

21.45.050 Fees. The City Council shall establish, and from time to time may amend, a schedule of fees to cover the city's costs of processing applications for development agreements.

21.45.060 Preapplication Review. Before submitting an application and support materials, applicants shall discuss the proposal with the Community Development Director and the Director of Public Works/City Engineer. At such review, the applicant should present a preliminary site plan and show basic features of the proposed project, including its public purposes and/or benefits. The applicant or the Community Development Director may request the City Council to authorize processing of an application. The City Council shall, upon request, determine whether or not to direct staff to accept a filed application for future consideration. Such a review shall be at the City Council's sole discretion.

21.45.070 Application - Contents.

A. A development agreement application shall include the following information:

1. A planning application form and processing fee;
2. The names and addresses of the applicant and of all persons having a legal or equitable interest in all or part of the property proposed to be used;
3. Evidence that the applicant:
 - a. Has a legal or equitable interest in the property involved, or
 - b. Has written permission from a person having a legal or equitable interest to make such application;
4. Location of the subject property by address and vicinity map;
5. Legal description of the property, including a statement of total area involved;
6. A plan showing the location of all property included in the request for action, existing and proposed land uses, property lines and dimensions, topography, significant natural features, setbacks, the location of all highways, streets and alleys, and the location and dimensions of all lots or parcels of land within a distance of three hundred feet from the exterior boundaries of the property described in the application;
7. Mailing list including addresses of all owners of adjacent properties within 300 feet from the subject property boundaries, as shown on the County Assessor's latest available assessment roll;

B. The proposed development agreement, together with all explanatory text, plans, maps, drawings, pictures and other information as may be required to evaluate such proposal, and as further described in Section 21.45.130;

9. Such other information as the Community Development Director and Director of Public Works/City Engineer may require.

B. The Community Development Director may waive the filing of one or more of the above items where the required information is filed with or subsequent to an application for specific plan, rezoning, planned development, conditional use permit, variance, subdivision approval or other development entitlement to be considered concurrently with the development agreement.

1. The Community Development Director may reject any application that does not supply the required information, or may reject incomplete applications.

2. The accuracy of all information, maps and lists submitted shall be the responsibility of the applicant.

21.45.080 Public Notice. When the Community Development Director certifies that the application is complete, the item shall be scheduled for Planning Commission hearing; and notice of the public hearing, shall be given in the manner prescribed by Section 21.23A.040A.

21.45.090 Failure to Receive Notice. The failure to receive notice by any person entitled thereto by law or this chapter does not affect the authority of the City to enter into a development agreement.

21.45.100 Planning Commission Hearing and Recommendation. The Planning Commission shall consider the proposed development agreement and shall make its recommendation to the City Council. The recommendation shall include whether or not the proposed development agreement meets the following findings:

a. The proposed development agreement is consistent with the general plan and any applicable specific plan;

b. The proposed development agreement complies with zoning, subdivision and other applicable ordinances and regulations;

c. The proposed development agreement promotes the general welfare, allows more comprehensive land use planning, and provides substantial public benefits or necessary public improvements, making it in the City's interest to enter into the development agreement with the applicant; and

d. The proposed project and development agreement:

(1) Will not adversely affect the health, safety or welfare of persons living or working in the surrounding area;

(2) Will be appropriate at the proposed location and will be compatible with adjacent land uses; or

(3) Will not have a significant adverse impact on the environment.

21.45.110 City Council Hearing. After the recommendation of the Planning Commission, notice of a public hearing before the City Council shall be given in the manner provided for in Section 21.23A.040A.

21.45.120 City Council Action.

a. Referral. After it completes the public hearing and considers the Planning Commission's recommendation, the City Council may approve, conditionally approve, modify or disapprove the proposed development agreement. The City Council may refer matters not previously considered by the Planning Commission during its hearing back to the Planning Commission for review and recommendation.

b. Approval. The development agreement may be approved if the City Council makes the findings for approval listed in Section 21.45.100.

21.45.130 Development Agreement - Contents.

A. Development agreements shall include the following:

1. The duration of the agreement, including a specified termination date if appropriate;

2. The land uses to be permitted on the property;

3. The density or intensity of land use to be permitted;

4. The maximum height, size and location of buildings to be permitted;

5. The reservation or dedication of land for public purposes to be secured, including, but not limited to, rights-of-way, open space preservation, and public access easements;

6. Proposed exceptions from zoning regulations or other development standards, and findings where required;

7. The time schedule established for periodic review as required by Section 21.45.200.

B. Development agreements may also include additional terms, conditions and restrictions in addition to those listed in subsection A of this section. These additional terms may include, but are not limited to:

1. Development schedules providing that construction of the proposed development as a total project or in phases be initiated and/or completed within specified time periods;

2. The construction of public facilities required in conjunction with such development, including but not limited to vehicular and pedestrian rights-of-way, public art and other landscape amenities, drainage and flood-control facilities parks and other recreational facilities, sewers and sewage treatment facilities, sewer lift stations, and water well and treatment facilities;

3. Method of financing such improvements and, where applicable, reimbursement to developer or City;

4. Prohibition of one or more uses normally listed as permitted, accessory, subject to review or subject to conditional use permit in the zone normally allowed by right;

5. Limitations on future development or special terms or conditions under which subsequent development approvals not included in the agreement may occur;

6. The requirement of a faithful performance bond where deemed necessary to and in an amount deemed sufficient to guarantee the faithful performance of specified terms, conditions, restrictions and/or requirements of the agreement. In lieu of a bond, the applicant may deposit with the City Clerk certificates of deposit or other security acceptable to the Director of Administrative Services;

7. Specific design criteria for the exteriors of buildings and other structures, including colors and materials, landscaping and signs;

8. Special yards, open spaces, trails, staging areas, buffer areas, fences and walls, public art, landscaping and parking facilities, including vehicular and pedestrian ingress and egress;

9. Performance standards regulating such items as noise, vibration, smoke, dust, dirt, odors, gases, garbage, heat and the prevention of glare or direct illumination of adjacent properties;

10. Limitations on operating hours and other characteristics of operation which the council determines could adversely affect the reasonable use and enjoyment of surrounding properties.

21.45.140 Development Agreement - Adoption by Ordinance - Execution of Contract.

a. The development agreement shall be approved by the adoption of an ordinance. Upon the approval of the ordinance