



AGENDA

REGULAR PLANNING COMMISSION MEETING COUNCIL CHAMBERS, 380 CIVIC DRIVE, GALT THURSDAY, JANUARY 10, 2013, 6:30 P.M.

NOTE: Speaker Request Sheets are provided inside the Council Chambers. If you wish to address the Commission during the meeting, complete a Speaker Sheet and give to the Secretary of the Commission. A maximum of three (3) minutes is allowed for each speaker.

NOTE: If you need disability-related modifications or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the Community Development Dept., 209-366-7230, 495 Industrial Drive, at least two days prior to the meeting.

CALL MEETING TO ORDER

ROLL CALL: COMMISSIONERS: Dees, Erickson, Morris, Sandhu, Rodriguez

PUBLIC COMMENTS: Under Government Code §54954.3 members of the audience may address the Commission on any item of interest to the public or on any agenda item before or during the Commission's consideration of the item.

ELECTION OF OFFICERS: Pursuant to Galt Municipal Code, Chapter 2.70, Section 2.70.060, election of a Planning Commission Chairman and Vice Chairman shall be conducted at the first regular meeting of the following year after a general municipal election.

INFORMATION/CONSENT CALENDAR

(1)1. **SUBJECT:** Minutes of the November 8, 2012 meeting.

RECOMMENDATION: That the Planning Commission approve the minutes of the Nov. 8, 2012 meeting.

PUBLIC HEARING

(6) 1. **SUBJECT:** ADOPTION OF ORDINANCE ESTABLISHING DEVELOPMENT AGREEMENT PROCEDURES

RECOMMENDATION: That the Planning Commission:

1. Recommend that City Council adopt Ordinance 2013-___, amending Title 17 of the Galt Municipal Code (Subdivision Ordinance) to establish procedures for the execution of Development Agreements.

DEPARTMENT REPORTS -

The 2013 Planning Commissioners Academy is scheduled for February 27th – March 1st in Pasadena. The Commission's travel budget is \$6,000 and the estimated cost for each attendee is approximately \$1,400± (which includes registration, airfare, 2-night hotel stay, mileage and meals); therefore, the Commission needs to designate which commissioners (up to 4) would like to attend. Registration deadline is Feb. 6th, however the Planning Commission secretary would need to know by Jan. 18th in order to make the necessary arrangements.

ADJOURN

CATHY KULM, PLANNING COMMISSION SECRETARY: Agenda Report. The agenda for this Galt Planning Commission Meeting was posted in the following listed sites before the close of business at 5:00 p.m. on the Monday preceding the meeting:

1. City Hall Lobby, 380 Civic Drive
2. U. S. Post Office, 600 N. Lincoln Way
3. Marian O. Lawrence Library, 1000 Caroline Avenue

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MINUTES
Planning Commission Regular Meeting
Council Chambers, 380 Civic Drive, Galt, California
Thursday, November 8, 2012, 6:30 p.m.

The meeting was called to order at 6:30 p.m. by Chairperson McFaddin. Commissioners present: Dees, Morris, McFaddin, Pellandini, and Rodriguez.

Staff members present: Community Development Director Kiriou, Senior Planner Erias, City Attorney Rudolph, City Manager Behrmann, Development Services Engineer Forrest, and PC Secretary Kulm.

INFORMATION/CONSENT CALENDAR

1. **SUBJECT:** Minutes of the October 11, 2012 special meeting.

ACTION: Rodriguez moved to approve the minutes of the October 11, 2012 meeting; second by Pellandini. A roll call vote was taken by those commissioners present: Dees – Yes; Pellandini – Yes; Morris – Yes; Rodriguez – Yes; McFaddin - Yes. **Motion was unanimously carried.**

PUBLIC COMMENTS – None

PUBLIC HEARING:

Chairperson McFaddin opened the public hearing.

1. **SUBJECT:** **ADOPTION OF THE GALT DEVELOPMENT AGREEMENT PROCEDURES ORDINANCE –**

Agenda item was continued to the Dec. 13, 2012 regular meeting.

Chairperson McFaddin closed the public hearing.

2. **SUBJECT:** **ADOPTION OF FLOOD CONTROL ORDINANCE**

RECOMMENDATION

- 1) Receive information regarding proposed ordinance going to City Council on Nov. 20, 2012.

Forrest gave staff report indicating that the new ordinance moves the appeal process to the Planning Commission rather than the City Council.

3. **SUBJECT:** **2030 GENERAL PLAN AMENDMENT TO REVISE THE LOCAL INVENTORY OF HISTORIC STRUCTURES AND FEATURES SET FORTH IN TABLE 9.1 OF THE EXISTING CONDITIONS REPORT OF THE GENERAL PLAN**

RECOMMENDATION

- 1) Recommend that City Council adopt Resolution 2012-___ certifying the Addendum to the 2030 Galt General Plan Final Environmental Impact Report (EIR) and adopting proposed amendments to the Galt Historic Structures and Features Inventory (Table 9.1) in the 2030 Galt General Plan Existing Conditions Report.

Kiriu gave the staff report. Rodriguez asked if there are any formal projects which have been designated for the buildings. Kiriu said there is discussion between the City and a developer regarding a potential Entertainment Complex.

Chairperson McFaddin opened the public hearing. No comments from the public.
Chairperson McFaddin closed the public hearing.

ACTION: Rodriguez moved to adopt staff's recommendation as presented; second by Pellandini. A roll call vote was taken by those commissioners present: Dees – Yes; Pellandini – Yes; Morris – Yes; Rodriguez – Yes; McFaddin - Yes. **Motion was unanimously carried.**

4. SUBJECT: 1021 MEADOWVIEW DRIVE SETBACK VARIANCE FOR SIDE AND REAR YARD SETBACKS

RECOMMENDATION

That the Planning Commission adopt Resolution 2012-___(PC) approving a variance at 1021 Meadowview Drive modifying the required setbacks in the side yard from 5 feet to approximately 4.5 feet and in the rear yard from 10 feet to 4.5 feet.

Erias gave the staff report noting that staff made changes to the Conditions of Approval (COA) originally presented in the Agenda Packet. The changes are noted below:

COA #3 now allows the property owner 90 days from adoption of this Resolution to obtain all applicable permits for all unpermitted structures on the property and pay all necessary fees. *The original condition allowed 60 days to submit permits.*

A new COA #6 was added which reads "The grant of this variance is contingent upon complying with Conditions 1, 2, 3, and 5 within 90 days and Condition 4 within 30 days. If not, variance does not become effective and the unpermitted structures will be considered a public nuisance subject to abatement as set forth in Title 21 of the Galt Municipal Code." *The original COA #6 was moved to COA #7.*

Staff also modified the language in the last condition (now COA #7) to read "Failure to obtain final Permits for the unpermitted structures by November 8, 2013 shall result in revocation proceedings in accordance with Section 18.84.050 of the Galt Municipal Code." *The original language read – Failure to comply with the aforementioned conditions by November 8, 2013 (including, but not limited to, a final building permit) shall result in revocation proceedings in accordance with Section 18.84.050 of the Galt Municipal Code.*

McFaddin asked the applicant if he was in agreement with all Conditions of Approval as discussed tonight. Mr. Hobbs said absolutely.

ACTION: Dees moved to adopt staff's recommendation with the changes to the Conditions of Approval as presented above; second by Rodriguez. A roll call vote was taken by those commissioners present: Dees – Yes; Pellandini – Yes; Morris – Yes; Rodriguez – Yes; McFaddin - Yes. **Motion was unanimously carried.**

5. SUBJECT: FAIRWAY OAKS VESTING TENTATIVE SUBDIVISION MAP PROJECT— This item was continued from the October 11, 2012 regular meeting.

RECOMMENDATION

Approve Resolution 2012-___PC adopting the Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and conditionally approving the Vesting Tentative Subdivision Map for the Fairway Oaks Project.

Commissioner Rodriguez left the meeting due to a conflict. Rudolph noted that the commissioner is recusing himself because he owns property within 500' of the project boundaries.

Erias gave the staff report noting that this project was before the Planning Commission at the August 23, 2012 meeting. The Commission recommended that City Council adopt the environmental report and approve the project rezone. Action on the Vesting Tentative Map was continued because the Planning Commission directed staff to explore a connection to Glendale Ave. which has been provided. The City Council adopted the Initial Study/Mitigated Negative Declaration and approved the rezone from R1A-ARC and Open Space to R1C-ARC and Open Space on October 2, 2012.

Erias noted that staff made a change to the Conditions of Approval (COA) originally presented in the Agenda Packet. The following language was added to COA #39. "If the ODS has not installed the above improvements at the time the final map is filed, prior to approval of the final map, the ODS shall enter into an agreement (1) to pay all costs associated with acquiring the interests in the land which will permit the improvements to be made, including but not limited to, the costs of proceedings before other governmental bodies necessary to obtain authority for acquisition of land by eminent domain; and further (2) to complete the improvements after the acquisition of the land interests."

Chairperson McFaddin opened the public hearing.

Mike Oliver, Arcadia Homes representative, gave a brief overview of the project. Morris asked if the Glendale Ave. connection would include a one-way or two-way stop. Forrest said there would only be a stop sign exiting the subdivision. Rudolph asked the applicant if he agrees with the Conditions of Approval as presented by staff, including the change to COA #39. Mr. Oliver said yes.

Jim Templeton, 10573 Cornell Road, thanked the Commission, staff and Mike Oliver for working with the homeowners on Cornell Road, with specific regard to the Glendale connection. Mr. Templeton asked for clarification on the proposed sidewalk and/or grass path. His concern is in regards to the lack of an easement on his property. Erias explained that the sidewalk has not been abandoned at this point. Morris asked which side of the street the sidewalk would be on, Erias said the north side.

Wendy Blevins, homeowner on Cornell Road, expressed concerns regarding the traffic exiting onto Lincoln Way as well as the five foot proposed sidewalk. Ms. Blevins said she is very pleased with what Mike Oliver has done and all the work done by Chris Erias.

Dale Templeton, 10601 Cornell Road, thanked everyone for doing a great job and listening to the homeowner's concerns. Mr. Templeton expressed concern in regards to potential intrusion onto his property due to the proposed walkway, as well as parking along the side of the road.

Deborah Mergenthaler, 10617 Cornell Road, expressed concern regarding the proposed sidewalk and how that will affect the oak trees on her property. Ms. Mergenthaler also noted that she had spoken with the proposed Glendale connection property owner and he has not been approached by anyone regarding the purchase of his property.

Kiri explained that the project includes two off-site improvements that are necessary for the development of the subdivision, and neither Mr. Oliver nor the City currently has rights to the property on Glendale or Cornell. The map Conditions of Approval basically say that the developer is responsible for negotiating those off-site improvements. If he is unable to do that by the time he requests a final map, the City then has to make a determination as to whether to acquire the property on the developer's behalf or waive/modify the conditions as appropriate.

Steven Winkler, Public Works Director, City of Galt, clarified COA #39, which deals with some of the off-site improvements on both Cornell Road and Glendale Avenue. He read section b and g of that Condition – noting that all improvements must be acceptable to the Public Works Department prior to approval of a final map.

Planning Commissioners discussed briefly some concerns with the sidewalk and/or pathway, as well as traffic challenges.

Chairperson McFaddin closed the public hearing.

ACTION: Morris moved to adopt staff's recommendation with the changes to the Conditions of Approval as presented above; second by Pellandini. A roll call vote was taken by those commissioners present: Dees – No; Pellandini – Yes; Morris – Yes; Rodriguez – Yes; McFaddin - Yes. **Motion was carried.**

DEPARTMENT REPORTS – None.

Meeting adjourned at 7:45 p.m.



PLANNING COMMISSION AGENDA REPORT

Meeting Date: January 10, 2013

FROM: Steve Rudolph, City Attorney
Sandra Kiriu, Community Development Director 

SUBJECT: ADOPTION OF ORDINANCE ESTABLISHING DEVELOPMENT AGREEMENT PROCEDURES

RECOMMENDATION

Recommend that City Council adopt Ordinance 2013-___, amending Title 17 of the Galt Municipal Code (Subdivision Ordinance) to establish procedures for the execution of Development Agreements.

DISCUSSION

Background

In 1976, the California Supreme Court (*Avco Community Developers, Inc. v. South Coast Regional Com*) ruled that if a city changes its land use regulations, a property owner cannot claim a vested right to build out a project under the prior land use regulations unless the owner obtained a building permit, performed substantial work, and incurred substantial liabilities in reliance on that permit.

This ruling (the Avco Rule) preserved government's right to control land use policy and to make necessary adjustments when deemed appropriate. It prevented property owners from arguing that their right to develop was vested at the time their project was approved which would have allowed them to effectively freeze zoning regulations in place for decades until they finished construction.

While this ruling was beneficial to local governments, it created a lot of uncertainty in the development process for property owners. Consequently, legislation was passed in 1979 (Development Agreement Procedures) and again in 1984 (Vesting Tentative Map Procedures) to offer developers a way to obtain some degree of certainty.

The purpose of this staff report is to focus on the proposed Development Agreement Ordinance staff is recommending for adoption. However, recommended revisions to the current Vesting Tentative Map procedures will also be presented to the Planning Commission at an upcoming meeting. Consequently, the City Attorney will be conducting a presentation at the public hearing that discusses the similarities and differences of both tools.

What is a Development Agreement?

A Development Agreement is a planning tool to help public agencies advance their local planning policies in new and creative ways and with greater flexibility. For a property owner, a Development

Development Agreement Procedures Ordinance

Agreement allows him/her to lock in the land use regulations and development standards in place at the time the Development Agreement is approved giving them greater assurances that once his/her project is approved, it can be built without any “surprises” down the road or subsequent changes in the rules.

Development Agreements are contracts negotiated between project proponents and public agencies that govern the land uses allowed on a property. Since they are adopted as Ordinances, they can supersede existing land use regulations and development standards (e.g. setbacks, lot sizes, lot coverage etc.) as long as they are found to be consistent with the General Plan and any applicable Specific Plan. It is this feature that can help create more innovative projects that don't look like the typical style of development.

One example would be a residentially-zoned property with an allowable General Plan density of 6 units/acre, and a small oak woodland covering about 8 acres in the middle of the site. Under standard zoning, the residential lots have to meet minimum lot widths (e.g. 65 feet) and lot sizes (e.g. 6,500 s.f.) with minimum street widths (50-60 feet). Under this scenario, it would be difficult for a developer to preserve all the oak trees in the subdivision while still optimizing the project's profitability by building the maximum residential density. However, a development agreement could allow that same developer the ability to set aside the oak woodland as an open space focal point and cluster homes on smaller lots outside the oak woodland. While the maximum density in the cluster home area would probably exceed 6 units/acre, the property as a whole would still meet the density requirement.

This type of development would help advance a city's planning policy of preserving mature trees, maintaining open space, and enhancing wildlife habitat while still providing a developer with the ability to create a profitable neighborhood design---and the assurance that the City can't change any of the land use regulations and policies prior to development.

Additionally, a Development Agreement allows cities to negotiate additional land dedications, fees or other improvements than would otherwise be considered constitutional under general zoning and subdivision law. Consequently, this same project developer might be persuaded to construct an oak tree nature center at the edge of the oak woodland and dedicate the land to the City even though it might be in excess of his/her statutory park dedication requirement.

Does CEQA apply?

The adoption of this implementing Ordinance is not subject to the California Environmental Quality Act (CEQA) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment. This Ordinance simply sets forth the procedures necessary for processing any future Development Agreements. There is no development project contemplated in this action.

The approval of any subsequent Development Agreement for a specific land development project, on the other hand, would be subject to evaluation under the provisions of CEQA.

PROPOSED DEVELOPMENT AGREEMENT ORDINANCE

The California Government Code (Section 65864 et seq.) identifies the requirements for processing Development Agreements and states that local agencies must adopt implementing procedures, if so requested by an applicant. While there has been no specific request by an applicant at this point, staff anticipates upcoming development activity and wanted to get the procedures in place to streamline the process.

The attached Ordinance sets forth the required contents of Development Agreements, how they are processed and adopted, how they are monitored for compliance, and how they can be amended or cancelled.

The following is a summary of the key points:

1. Development Agreements are entered into at the sole discretion of the City and property owner. If there is not sufficient benefit to each party, there is no obligation by either party to approve the agreement.
2. Unless otherwise provided in the negotiated Development Agreement, the applicable rules, regulations and policies are those that are in force at the time the Agreement is executed.
3. Land use rules, regulations and policies can be varied in the Development Agreement as long as the legislative body can still determine that the project is consistent with the General Plan and any applicable Specific Plan.
4. The City can negotiate for extra public dedications, fees and/or improvements than otherwise would be deemed constitutional.
5. The City's decision to enter into a Development Agreement is a legislative act subject to appeal by referendum.
6. The City can enter into a Development Agreement for land outside the city limits if it is within the Sphere of Influence. However, the property must be annexed before the Agreement becomes operative.
7. The Agreement must be monitored annually to ensure compliance with the terms and conditions.

ATTACHMENTS

Ordinance 2013-___, Adopting Chapter 17.60 of the Galt Municipal Code relating to Development Agreement Procedures

ORDINANCE NO. 2013-__

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GALT ADDING
CHAPTER 17.60 OF THE GALT MUNICIPAL CODE REGARDING
DEVELOPMENT AGREEMENT PROCEDURES**

THE CITY COUNCIL OF THE CITY OF GALT hereby ordains as follows:

Section 1. **Purpose.** The purposes of this ordinance are to reduce the uncertainty in the approval of development projects that can result in a waste of resources that can escalate the cost of housing and other development; encourage the investment in and commitment to comprehensive planning in order to maximize the efficient utilization of resources at the least cost to the public; provide assurances to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with the terms and conditions of a negotiated development agreement, and subject to the conditions of approval adopted by the Planning Commission and City Council, as applicable; promote the timely financing and construction of adequate public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities prior to the development of new housing; increase the community benefit derived from new development beyond the level that can be achieved through the traditional land use regulatory process; and allow greater flexibility and creativity in advancing the City’s land use policies.

Section 2. **Authority.** The City Council enacts this ordinance under the authority granted to cities by Article 2.5, Chapter 4, Title 7 of the California Government Code, Sections 65864 et seq..

Section 3. **Addition of Chapter 17.60.** Chapter 17.60 of the Galt Municipal Code, titled “Development Agreement Procedures”, is hereby added as follows:

17.60.010 Purpose.

The purpose of this chapter is to:

- A. Reduce the uncertainty in the approval of development projects that can result in a waste of resources that can escalate the cost of housing and other development.
- B. Encourage the investment in and commitment to comprehensive planning in order to maximize the efficient utilization of resources at the least cost to the public.
- C. Provide assurances to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with the terms and conditions of a negotiated development agreement, and subject to the conditions of approval adopted by the Planning Commission and City Council, as applicable.

D. Promote the timely financing and construction of adequate public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities prior to the development of new housing.

E. Increase the community benefit derived from new development beyond the level that can be achieved through the traditional land use regulatory process.

F. Allow greater flexibility and creativity in advancing the City's land use policies.

17.60.020 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, but is not required to, enter into a development agreement for the development of real property with any person having legal or equitable interest in such property, if a clear public benefit or public purpose can be demonstrated.

17.60.030 Applications.

A. Authority for adoption. An applicant for a development project may request that the City review the application as a development agreement application in accordance with the following procedures. The City incorporates by reference the provisions of California Government Code sections 65864-65869.5. In the event of any conflict between these statutory provisions and this chapter, the state statutes shall control.

B. Forms and information. The applicant shall submit an application for a development agreement on a form prescribed by the Community Development Director. The Community Development Director shall identify submittal requirements for applications for development agreements. (S)he may require an applicant to submit such additional information and supporting data as (s)he considers necessary to process the application.

C. Fees. The applicant shall pay such fees and charges for the filing and processing of applications for development agreements and the administration of approved development agreements, including annual reviews, in amounts as may be established by resolution of the City Council.

D. Qualified applicant. A qualified applicant shall have a legal or equitable interest in the real property which is the subject of the proposed development agreement. The Community Development Director shall require an applicant to submit proof of its interest in the real property and of the authority of any agent to act for the applicant.

17.60.040 Development agreement contents.

A. Development agreements shall include terms relating the following:

1. The duration of the agreement;
2. The permitted uses of the property;
3. The density or intensity of use;
4. The maximum height, size and location of proposed buildings;
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. The time schedule established for periodic review as required by Section 17.60.200; and
7. A description of the project's benefits to the community.

B. Development agreements may include additional terms, conditions and restrictions in addition to those listed in subsection A of this section, including, 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 City Attorney;
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.

17.60.050 Negotiation of proposed development agreements.

The City Manager, and/or his/her designee(s) shall negotiate the specific components and provisions of the development agreement on behalf of the City for recommendation to the City Council. The City Council may, but need not, appoint a subcommittee of the City Council to provide direction to the City Manager during the negotiation process.

17.60.060 Hearings.

A public hearing on an application for a development agreement shall be held by the Planning Commission and by the City Council. Notice of intention to consider adoption of a development agreement shall be given as provided in Government Code sections 65090 and 65091 in addition to any other notice required by law for other actions to be considered concurrently with the development agreement.

17.60.070 Findings of consistency.

- A. A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.
- B. A development agreement shall not be approved unless the City Council finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.
- C. A development agreement that includes a subdivision, as defined in Government Code section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of section 66473.7.

17.60.080 Recordation of executed agreement.

No later than 10 days after the execution of a development agreement by the City, the City Clerk shall record with the county recorder a copy of the agreement, which shall describe the land subject thereto. The City shall not execute a development agreement until the ordinance approving the development agreement has become effective. From and after the time of such recordation, the agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this state. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

17.60.90 Regulations applicable to development.

Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications applicable to development

of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent 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.

17.60.100 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.

17.60.110 Enforceability.

Unless amended or canceled pursuant to Section 17.60.130, or modified or suspended pursuant to Section 17.60.100, 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, which alters or amends the rules, regulations, or policies specified in Section 17.60.090.

17.60.120 Annual review.

A. Time for and initiation of review.

1. The Community Development Director shall review each approved development agreement at least once a year during the term of the agreement, at which time the applicant shall be required to demonstrate good faith compliance with the provisions of the development agreement.
2. The applicant shall initiate the required annual review by submitting a written request at least sixty days prior to the review date specified in the development agreement. The applicant shall also provide evidence as determined necessary by the Community Development Director to demonstrate good faith compliance with the provisions of the development agreement. The burden of proof by substantial evidence of compliance is upon the applicant.

B. Finding of compliance. If the Community Development Director, on the basis of substantial evidence, finds compliance by the applicant with the provisions of the development agreement, the Community Development Director shall issue a written finding of compliance.

C. Finding of noncompliance.

1. If the Community Development Director finds the applicant has not complied with the provisions of the development agreement, the Community Development Director

shall issue a finding of noncompliance which shall be recorded by the City with the county recorder after it becomes final. The Community Development Director shall specify in writing to the applicant the respects in which applicant has failed to comply, and if appropriate, shall set forth terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance.

2. If applicant does not comply with any terms of compliance within the prescribed time limits, the development agreement shall be subject to termination or modification pursuant to subsection 17.60.130B of this chapter.

D. Appeal of determination. Within ten days after issuance of a finding of compliance or a finding of noncompliance, any interested person may file a written appeal of the finding with the City Council. The appellant shall pay fees and charges for the filing and processing of the appeal in amounts established by resolution of the City Council. The appellant shall specify the reasons for the appeal. The issuance of a finding of compliance or finding of noncompliance by the Community Development Director and the expiration of the appeal period without appeal, or the confirmation by the City Council of the issuance of the finding on such appeal, shall conclude the review for the applicable period and such determination shall be final.

17.60.130 Amendment or cancellation.

A. Cancellation or modification by mutual consent. Any development agreement may be canceled or modified by mutual consent of the parties following compliance with the procedures specified in subsections 17.60.060 and 17.60.070 of this chapter. A development agreement may also specify procedures for administrative approval of minor amendments by mutual consent of the applicant and the City Manager.

B. Termination or modification after finding of noncompliance. If a finding of noncompliance does not include terms of compliance, or if applicant does not comply with the terms of compliance within the prescribed time limits, the City Manager may refer the development agreement to the City Council for termination or modification. The City Council shall conduct a public hearing. After the public hearing, the City Council may terminate the development agreement, modify the finding of noncompliance, or rescind the finding of noncompliance, and issue a finding of compliance.

C. Rights of the parties after cancellation or termination. In the event that a development agreement is canceled or terminated, all rights of the applicant, property owner or successors in interest under the development agreement shall terminate.

17.60.140 Miscellaneous provisions.

A. Interpretation. This chapter governs the interpretation of any development agreement approved under this chapter.

B. Enforcement of a development agreement. The procedures for enforcement, amendment, modification, cancellation or termination of a development agreement

specified in this section and in California Government Code Section 65865.4 are non-exclusive. A development agreement may be enforced, amended, modified, canceled or terminated by any manner otherwise provided by law or by the provisions of the development agreement.

C. Severability clause. Should any provision of this chapter or a subsequent development agreement be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this chapter and the development agreement shall remain in full force and effect unimpaired by the holding, except as may otherwise be provided in the development agreement.

D. Judicial review; time limitation.

1. Any judicial review of an ordinance approving a development agreement shall be by writ of mandate pursuant to Section 1085 of the California Code of Civil Procedure; and judicial review of any City action taken by the City pursuant to this chapter, other than initial approval of a development agreement, shall be by writ of mandate pursuant to Section 1094.5 of the California Code of Civil Procedure.

2. Any action or proceeding to attack, review, set aside, void or annul any decision of the City taken pursuant to this chapter shall not be maintained by any person unless the action or proceeding is commenced within ninety days after the effective date of the decision.

E. Notice requirements. The notice requirements contained in subsection 17.60.060 of this chapter are directory and not mandatory. The failure of any person to receive notice required by law or this chapter does not affect the authority of the City to enter into a development agreement.

F. Irregularity in proceedings. No action, inaction, or recommendation regarding a 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 ("error") as to any matter pertaining to the petition, application, notice, finding, record, hearing, report, recommendation, or any matter of procedure whatever, unless the error complained 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 not a presumption that an error is prejudicial or that injury was done if an error is shown.

Section 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unlawful.

Section 5. Effective Date. This Ordinance shall take effect thirty days after its final adoption as provided by Government Code Section 36937. Within 15 days after its final passage, the City Clerk shall cause a summary of this Ordinance to be published and posted in accordance with Section 36933(c)(1) of the California Government Code.

The foregoing Ordinance was introduced and the title thereof read at a meeting of the City Council on the ___ day of ___, 2013 and by unanimous vote of the City Council members present, further reading was waived.

On motion by Council Member _____, seconded by Council Member _____, the foregoing Ordinance was duly passed and adopted by the City Council of the City of Galt at a regular meeting thereof, this ___ day of ___, 2013 by the following vote, to wit:

AYES:	Council members:
NOES:	Council members:
ABSTAIN:	Council members:
ABSENT:	Council members:

MAYOR City of Galt

ATTEST:

City Clerk, City of Galt