

ORDINANCE NO. 2018 – _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, AMENDING LAKE ELSINORE MUNICIPAL CODE (LEMC) SECTIONS 19.12.140, 19.12.150, and 19.12.160 CONCERNING PERIODIC REVIEW OF AND MODIFICATION OR TERMINATION OF DEVELOPMENT AGREEMENTS.

Whereas, Government Code Sections 65864 through 65869.5 (the "Development Agreement Act") authorizes the City to enter into an agreement with any person having a legal or equitable interest in real property regarding the future development of such property and to vest certain development rights therein; and

Whereas, Government Code section 65865.1 provides for annual review of development agreements by a local agency for the purpose of determining if the developer has complied in good faith with the terms of the agreement; and,

Whereas, pursuant to the Development Agreement Act, the City adopted Ordinance No. 996 establishing procedures and requirements for consideration of development agreements as set forth in LEMC Chapter 19.12; and

Whereas, currently LEMC sections 19.12.140 and 19.12.150 provide that the City Council shall conduct the annual review of development agreements; and,

Whereas, the City wishes to amend LEMC sections 19.12.140 and 19.12.150 to provide that the City Manager shall conduct the annual review and to amend section 19.12.160 to make it current with State law.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE DOES ORDAIN AS FOLLOWS:

Section 1. LEMC Section 19.12.140, Periodic review, is hereby amended in its entirety, as follows:

19.12.140 Periodic review.

- A. The City Manager shall review development agreements annually at which time the property owner shall be required to demonstrate good faith compliance with the terms of the agreement.
- B. The time for review may be shortened either by agreement between the parties or by initiation in one or more of the following ways:
 - 1. Recommendation of the City Manager.
 - 2. Resolution of Intention by the Planning Commission.
 - 3. Resolution of Intention by the City Council.

Section 2. LEMC Section 19.12.150, Procedure for periodic review, is amended in its entirety, as follows:

19.12.150 Procedure for periodic review.

- A. The City Manager shall conduct the periodic review. Not less than thirty (30) days prior to

the date of the periodic review, the City Manager shall provide written notice to the property owner that he intends to undertake review of the development agreement and requesting the property owner to submit documentation demonstrating good faith compliance with the terms of the agreement. The burden of proof showing good faith compliance is on the property owner. Refusal to provide the required information shall be deemed prima facie evidence of violation of such agreement.

- B. If the City Manager finds and determines on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement during the period under review, the City Manager shall let the agreement stand and review it again in the time prescribed in section 19.12.140.
- C. If the City Manager finds and determines on the basis of substantial evidence that the property owner has not complied in good faith with the terms and conditions of the agreement during the period under review, the City Manager shall refer the matter to the City Council. The City Council shall then conduct a noticed public hearing on the matter consistent with the requirements of Section 19.12.020. If the City Council determines that the property owner has complied in good faith with the terms and conditions of the agreement, it shall let the agreement stand. If the City Council determines that the property owner has not complied in good faith with the terms and conditions of the agreement, the City Council may initiate proceedings to modify or terminate the agreement or take other action as it deems appropriate.

Section 3. LEMC Section 19.12.160, Modification or termination, is amended in its entirety, as follows:

19.12.160 Modification or termination.

- A. If upon a finding under section 19.12.150 (C), the City Council determines to modify the agreement, the City Council shall refer the matter to the City Manager and City Attorney to prepare the necessary amendment(s).
- B. Procedures for modification of a development agreement shall be the same as provided in this Chapter 19.12 for initiation and consideration of such agreement, including transmittal to the Planning Commission pursuant to 19.12.060. The Planning Commission shall give notice to the property owner of the intention to modify the agreement. The notice shall be provided consistent with Section 19.12.020 and shall state:
 - 1. The time and place of the Planning Commission hearing;
 - 2. Any other information which the Planning Commission considers necessary to inform the property owner of the nature of the proceedings.
- C. After the conclusion of the Planning Commission proceedings, the matter shall then be referred to the City Council. The City Council shall give notice to the property owner of its intention to modify the agreement. The notice shall be provided consistent with Section 19.12.020 and shall state:
 - 1. The time and place of the City Council hearing;
 - 2. Any other information which the Council considers necessary to inform the property owner of the nature of the proceedings.

- D. If upon a finding under section 19.12.150 (C), the City Council determines to terminate the agreement, the City Council shall give notice to the property owner of its intention to do so consistent with the terms of the agreement.
- E. At the time and place set for any hearing in this section, the property owner shall be given an opportunity to be heard. The City Council may impose those conditions to the action it takes as it considers necessary to protect the interests of the City. Any decision of the City Council under this section 19.12.160 is final.

Section 2. CEQA. This Ordinance is exempt from the California Environmental Quality Act in accordance with Section 15061(b) (3) there is no possibility that the activity in question may have a significant effect on the environment.

Section 3. Severability. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

Section 4. Effective Date. This Ordinance shall become effective at 12:01 a.m. on the thirty-first (31st) day after the date of adoption.

Section 5. Certification. The City Clerk shall certify to the passage of this Ordinance and shall cause a synopsis of the same to be published according to law.

Passed and Adopted on this _____ day of _____, 2018.

Natasha Johnson
Mayor

Attest:

Susan M. Domen, MMC,
City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF LAKE ELSINORE)

I, Susan M. Domen, MMC, City Clerk of the City of Lake Elsinore, do hereby certify that the foregoing Ordinance No. 2018-_____ was introduced at the Regular meeting of _____, 2018, and adopted by the City Council of the City of Lake Elsinore at its Regular meeting of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Lake Elsinore, California on the _____day of _____, 2018, and on the _____day of _____, 2018.

Susan M. Domen, MMC
City Clerk