

RESOLUTION NO. 2023-43

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELL GARDENS, CALIFORNIA, ADOPTING THE PROCEDURES AND REQUIREMENTS FOR A PROPOSED DEVELOPMENT AGREEMENT IN CONNECTION WITH A CONDITIONAL USE PERMIT FOR A CANNABIS RETAIL USE IN THE CITY OF BELL GARDENS

WHEREAS, the City of Bell Gardens ("City") is a general law city, incorporated under the laws of the State of California;

WHEREAS, pursuant to its police power, the City may enact and enforce laws within its boundaries which promote the public health, morals, safety, or general welfare of the community, and are not in conflict with general laws;

WHEREAS, on June 12, 2023, the City Council held a duly noticed public hearing regarding proposed Ordinance No. 954 - Zoning Code Amendment No. 2023-040 ("Ordinance") which would regulate commercial cannabis activities citywide;

WHEREAS, the Ordinance would conditionally permit a cannabis retail use in the City's commercial and industrial zoned properties that meet specified siting requirements and development standards upon the approval of a conditional use permit;

WHEREAS, the City Council considered all public comments received both before and during the public hearing, the presentation by City staff, the relevant staff report, and all other pertinent documents relating to the Ordinance;

WHEREAS, developers have historically found that the lack of certainty in the approval of development projects may have the effect of discouraging investment and development;

WHEREAS, development agreements are a tool that allow developers to establish some assurances and certainty with respect to what rules, regulations, and policies will apply to a project in return for public benefits to the City in the form of capital improvements, monetary contributions, and other obligations;

WHEREAS, cities are expressly granted the authorization to enter into a development agreement with a developer pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7, commencing with Section 65864 of the California Government Code ("State Development Agreement Law");

WHEREAS, a developer who seeks the approval of a conditional use permit for a cannabis retail use may also request a development agreement at the time of project application submittal;

WHEREAS, pursuant to Development Agreement Law, the City Council may establish and adopt procedures for the negotiation and execution of a development agreement through the adoption of a resolution;

WHEREAS, the establishment and adoption of the procedures and requirements for the proposed development agreements set forth in this Resolution would be consistent with or supplement the requirements set forth in State Development Agreement Law;

WHEREAS, pursuant to and in accordance with the provisions of the California Environmental Quality Act ("CEQA") (Pub. Res. Code § 21000 *et seq.*) and CEQA Guidelines (Cal. Code Regs., Title 14, § 15000 *et seq.*), the City is the Lead Agency for the level of review required for any project subject to CEQA;

WHEREAS, cannabis retail operations often take place in existing commercial or industrial buildings and are subject to the same development standards as other commercial uses including but not limited to height, setbacks, and parking; but subject to more restrictive siting requirements and it can be seen with certainty that the regulation of cannabis retail sales will not cause a direct or indirect impact on environment;

WHEREAS, the City has determined that a cannabis retail use is similar to other commercial uses and therefore, it can be seen with certainty that the establishment of procedures and requirements related to the adoption of a proposed development agreement for the vested rights of a cannabis retail use would not directly or indirectly result in a significant environmental impact.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bell Gardens as follows:

SECTION 1. The recitals set forth above are true and correct and are hereby incorporated by reference in full herein.

SECTION 2. The City hereby adopts the following procedures and requirements for any proposed development agreements for a cannabis retail use:

- A. **Request for a Development Agreement.** A developer who has a legal or equitable interest in real property for the development of the property and desires to vest their rights may do so by requesting a development agreement in conjunction with a conditional use permit for a cannabis retail use.
- B. **Public Noticing and Hearing Requirements.** A proposed development agreement shall be subject to public notice and hearing requirements pursuant to Government Code Section 65867.
- C. **Public Hearing Requirement.** In accordance with Government Code Section 65867, a proposed development agreement shall be subject to a public hearing by the Planning Commission and City Council. Notice of intention to adopt a development agreement shall be provided in accordance with Government Code Sections 65090 and 65091 in addition to any other required notice.

- D. Consideration of a Proposed Development Agreement. A proposed development agreement shall be considered by the City Planning Commission who shall make a recommendation to the City Council to approve or disapprove the development agreement through the adoption of a resolution. The City Council may accept, deny, or modify the Planning Commission's recommendation.
- E. Adoption by Ordinance. Pursuant to Government Code Section 65867.5 subdivision (a), any proposed development agreement shall be approved by the City Council through the adoption of an ordinance.
- F. Required Findings. When approving a development agreement, the City Council shall find that the proposed development agreement:
1. Is consistent with the objectives, policies, general land uses and programs specified in the General Plan.
 2. Promotes the public health, safety, and general welfare.
 3. Is just, reasonable, fair, and equitable under the circumstances.
 4. Provides sufficient benefit to the community to justify entering into the agreement.
- G. Recordation. Pursuant to Government Code Section 65868.5, the City Clerk shall record the development agreement with the County Recorder within 10 days of City Council approval.
- H. Negotiation of the Development Agreement. Development agreements shall be negotiated by the City Manager, Community Development Director, and City Attorney, but shall contain the terms provided below:
1. Term. Development Agreements shall not exceed a term of 10 years.
 2. Developer Assurances. Consistent with the requirements of Government Code Section 65865.2, development agreements shall specify what uses are permitted at the subject property, intensity of use, and applicable development standards. Pursuant to Government Code Section 65866, a proposed development agreement shall describe what zoning and land use regulations shall be "frozen" upon execution of the agreement.

3. **Public Benefits.** In exchange for assurances to a developer, the City shall receive public benefits. Public benefits may include capital improvements, facilities, and financial contributions dedicated to youth and educational programming; resources for the City's housing programs; and enforcement of the Ordinance's provisions. No less than eighty percent (80%) of the monetary value of the public benefits shall be dedicated to youth and educational programming and resources for the City's housing programs. Public benefits for youth and educational programming shall be dedicated to the City's Recreational Department and shall be utilized for but not limited to youth programs, after-school programs, sports programming, personal enrichment classes or capital improvements on City-owned properties. Resources for the City's housing programs shall be dedicated toward the Community Development Department and shall be utilized for housing programming and long-range planning, including but not limited to affordable housing, rent stabilization and tenant protection efforts and other planning efforts.
4. **Cost Recovery.** Pursuant to Government Code Section 65865 subdivision (d), development agreements shall contain provisions for full cost-recovery. Developers who wish to enter into a development agreement must make an initial deposit with the City. The City will provide accounting for staff time spent on the negotiation and preparation of the document and ultimate approval of the agreement, including contracted parties who represent the City. All development agreements shall require the developer to pay within ninety (90) days of City Council's approval of the ordinance adopting the development agreement. Failure to comply with this term shall be considered a default by the developer pursuant to the development agreement.
5. **Annual Review.** Pursuant to Government Code Section 65865.1, all development agreements shall contain a provision that requires an annual review to ensure compliance with the terms contained therein. The developer shall be required to submit a written report to the City demonstrating good faith compliance with the terms of the agreement. The City Council shall retain the right to hold a public hearing regarding the developer's good faith compliance with the terms of the development agreement. If the City Council finds, based on substantial evidence, that the

developer has failed to comply with the development agreement in good faith, the City Council may modify or terminate the agreement. If there is substantial evidence indicating that good faith compliance has not occurred, the City Council may modify or terminate the agreement.

6. Default, Cure, Modification, and/or Termination. Proposed development agreements shall also contain provisions specifying procedures for notice, opportunity to cure, and termination or modification procedures for a development agreement in the event of default by either party.
7. Indemnification. Development agreements shall contain provisions that require the developer to indemnify, defend, and hold harmless from any liability the City may incur as a result of entering into a development agreement.
8. Assignment. Development agreements shall include a provision which prohibits the assignment or transfer of the rights, obligations, or interests afforded under the development agreement without a majority vote of the City Council.
9. Future Amendments. Development agreements shall contain a procedure for future amendments. Subsequent amendments shall be executed upon mutual agreement of both parties and shall be subject to the same requirements and procedures provided for the initial execution and approval of a development agreement.
10. Attorneys' Fees and Costs. In the event of a dispute, the prevailing party shall be entitled to recoup costs and reasonable attorneys' fees.

SECTION 3. In adopting procedures and requirements set forth in this Resolution, the City Council finds that this Resolution serves the public health, safety, and welfare of the residents and businesses within the City by establishing procedures and requirements for any proposed development agreement.

SECTION 4. The City further finds that the foregoing procedures and terms will promote the community's needs and allow the City to receive greater community benefits than can otherwise be achieved through the land use regulatory process.

SECTION 5. This Resolution and the procedures and regulations contained herein shall only become effective upon the City Council's approval and adoption of Ordinance No. 934.

SECTION 6. In accordance with CEQA and CEQA Guidelines Section 15061(b)(3), it can be seen with certainty that the adoption of this Resolution would not result in a significant environmental impact and is therefore exempt from CEQA.

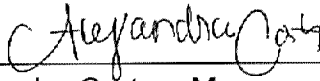
SECTION 7. The provisions of this Resolution are severable. If any provision, clause, sentence, word or part thereof is found to be illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impact any of the remaining provisions, clauses, sentences, sections, words, or parts thereof the Resolution or their applicability to other persons or circumstances.

SECTION 8. The City Clerk shall certify as to the adoption of this Resolution and that the same shall be in full force and effect.

[Signatures on the following page]

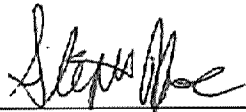
PASSED, APPROVED, and ADOPTED this 12th day of June 2023.

THE CITY OF BELL GARDENS



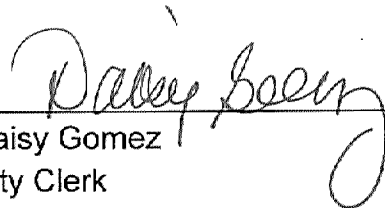
Alejandra Cortez, Mayor

APPROVED AS TO FORM:



Stephanie Vasquez
City Attorney

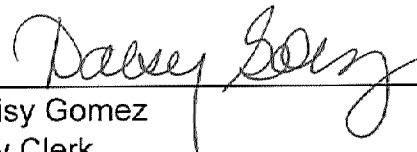
ATTEST:



Daisy Gomez
City Clerk

I, DAISY GOMEZ, City Clerk of the City of Bell Gardens, hereby CERTIFY that **City Council Resolution No. 2023-43** was adopted by the Bell Gardens City Council at a regular meeting of the City Council held on Monday, June 12, 2023, and was approved and passed by the following vote:

- AYES: Council Members Barcena, Pulido; Mayor Pro Tem De Leon Sanchez; Mayor Cortez
- NOES: Council Member Chavez
- ABSTAIN: None
- ABSENT: None



Daisy Gomez
City Clerk