ORDINANCE NO. 87-45

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIDGECREST MUNICIPAL CODE BY ADOPTING DEVELOPMENT AGREEMENT REGULATIONS.

THE CITY COUNCIL OF THE CITY OF RIDGECREST DOES ORDAIN AS FOLLOWS:

SECTION 1. Purpose and Scope

This ordinance amends the Ridgecrest Municipal Code by adding development agreement regulations Pursuant to Government Code §§65864 et seq.

SECTION 2. Findings

The Council finds the following:

(a) The Ridgecrest Planning Commission conducted a duly noticed public hearing to consider the Municipal Code changes listed below. The Commission concluded that: the changes promote the health, welfare, and safety of the community; the changes are consistent with the general plan and elements thereof; and the changes would not result in any significant adverse environmental impact. The Commission approved the changes on the basis of these findings.

(b) The Council conducted a duly noticed public hearing.

(c) This amendment promotes the health, welfare, and safety of the community by providing for the orderly use of signs for commercial purposes.

(d) This amendment is consistent with the general plan and elements thereof.

(e) This amendment will not result in any significant adverse environmental impact and a negative declaration is approved.

SECTION 3. Amendment

Section 20-30 is hereby added to the Ridgecrest Municipal Code to read as follows:

"Section 20-30 Development Agreements

Section 20-30.1 Application

Any person, or his authorized agent, who has legal or equitable interest in the real property which is the subject of the development agreement by submitting a proposed agreement to the Director of Community Development.

Section 20-30.2 Initial Review of Application

After receiving the required application, the Director shall prepare a report and recommendation which shall be presented to the Planning Commission for review at a duly noticed public hearing as set forth below.

Section 20-30.3 Notices

(a) The City Clerk shall give notice of intention to consider adoption of development agreement prior to consideration of the proposed agreement by the Commission.

(b) The notice of intention to consider adoption of development agreement shall contain:

(1) the time and place of the hearing;

(2) a general explanation of the matter to be considered including a general description of the area affected; and

(3) other information required by specific provision of these regulations or which the Director considers necessary or desirable.

(c) The notice shall be given by:

(1) Publication at least once in a newspaper of general circulation, published and circulated in the City or if there is none, posting in at least three public places in the City.

(2) Mailing of the notice to all persons shown on the last equalized assessment roll as owning real property within 300 feet of the property which is the subject of the proposed development agreement. If the number of owners to whom notice is to be mailed is greater than 1,000, the Director may as an alternative provide notice in the manner set forth in §65854.5(b) of the Government Code.

(d) The failure of any person entitled to receive or respond to such notice required by law or these regulations does not affect the authority of the City to enter into a development agreement.

Section 29-30.4 Conduct of Hearing

(a) The public hearing shall be conducted a nearly as may be in accordance with the procedural standards adopted under Government Code §65804 for the conduct of zoning hearings. Each person interested in the matter shall be given an opportunity to be heard. The applicant has the burden of proof at the public hearing on the proposed development agreement.

(b) 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 ("error") as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation, or any matters of procedure whatever unless after an examination of the entire case, including the evidence, the court is of the opinion that the error complained of was prejudicial and that by reason of the error the complaining party sustained and suffered substantial injury, and that a different result would have been probable if the error had not occurred or existed. There is not presumption that error is prejudicial or that injury was done if error if shown.

Section 20-30.5 Contents of Development Agreements

A development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time.

Section 20-30.6 Other Land Use Regulations

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 a city, county, or city and county, 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 a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

Section 20-30.7 Determination by Planning Commission

At the conclusion of the hearing the Planning Commission shall make its recommendation in writing to the City Council. The recommendation shall include the Planning Commission's determination whether or not the development agreement proposed is:

(a) consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;

(b) compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;

(c) in conformity with public convenience, general welfare and good land use practice;

(d) detrimental to the health, safety and general welfare; and

(e) adversely affecting the orderly development of property or the preservation of property values.

Section 20-30.8 Decision by City Council

(a) The Council shall conduct a duly noticed public hearing to consider the Planning Commission's recommendations. The hearing shall be called and conducted in the same manner as the Commission hearing is called and conducted.

(b) After the hearing, the Council may accept, modify or disapprove the recommendation of the Planning Commission. The Council may, but need not, refer matters not previously considered by the Planning Commission during its hearing back to the Planning Commission for report and recommendation. The Planning Commission may, but need not, hold a public hearing on matters referred back to it by the Council.

(c) The Council may not approve the development agreement unless it finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.

(d) If the Council approves the development agreement, it shall do so by the adoption of an ordinance. After the ordinance approving the development agreement takes effect, the City may enter into the agreement.

Section 20-30.9 Recordation of Development Agreement, Amendment of Cancellation

(a) Within 10 days after the City enters into the development agreement, the City Clerk shall have the agreement recorded with the County Recorder.

(b) If the parties to the agreement of their successors in interest amend or cancel the agreement as provided in Government Code §65868, or if the City terminates or modifies the agreement as provided in Government Code §65868, or if the City terminates or modifies the agreement as provided in Government Code 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of the agreement, the City Clerk shall have notice of such action recorded with the County Recorder.

Section 20-30.10 Periodic Review

(a) The City shall review the development agreement at least every 12 months from the date of the agreement. The time for review may be modified either by agreement between the parties or by initiation in one or more of the following ways:

(1) recommendation of the planning staff;

(2) affirmative vote of at least three members of the Planning Commission; and

(3) affirmative vote of at least three members of the Council.

(b) The City Clerk shall begin the review proceeding by giving notice that the City intends to undertake a periodic review of the development agreement to the property owner. The Clerk shall give the notice at least 30 days in advance of the time at which the matter will be considered by the Commission.

(c) The Commission shall conduct a duly noticed public hearing at which the property owner must demonstrate good faith compliance with the terms of the agreement. The burden of proof on this issue is upon the property owner. The Commission shall determine upon the basis of substantial evidence whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of the agreement.

(d) If the City 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 review for that period is concluded. If the City 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 may modify or terminate the agreement.

(e) The property owner may appeal a determination pursuant to this section to the council in accordance with the City's rules for consideration of appeals.

Section 20-30.11 Modification or Termination

(a) If the City determines to proceed with modification or termination of the agreement, the City shall give notice to the property owner of its intention so to do. The notice shall contain:

(1) the time and place of the hearing;

(2) a statement as to whether or not the City proposes to terminate or to modify the development agreement; and

(3) Other information which the City considers necessary to inform the property owner of the nature of the proceeding.

(b) At the time and place set for the hearing on modification or termination, the property owner shall be given an opportunity to be heard. The Council may refer the matter back to the Planning Commission for further proceedings or for report and recommendation. The Council may impose those conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the Council is final."

SECTION 4. Other

Except as provided herein, the Ridgecrest Municipal Code is hereby reaffirmed and readopted.

APPROVED AND ADOPTED this 2nd day of December 1987 by the following vote:

AYES: Mayor Mower, Councilmembers Wiknich, Bergens, Condos and Corlett.

NOES: None.

ABSENT: None.

ABSTAIN: None.

Michael R. Mower

Michael R. Mower, Mayor

ATTEST:

Joyce M. Taft, Deputy

Joyce M. Taft, City Clerk