



***Development Agreements***  
***The Planning Commission's Role in Reviewing Them***

League of California Cities Planning  
Commissions Academy

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## Overview

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***What is the Planning Commission's Role  
in Reviewing Development Agreements?***

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## Background

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- Why do we have the Development Agreement statutes?  
Government Code section 65864 *et. seq.*
- Legislative attempt to soften the impact of *Avco Community Developers Inc. v. South Coast Regional Comm.* (1976) 17 Cal.3d 785

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## Avco Case

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- Leading case on “common law vested rights” for 40 years
- Facts of case
- Court’s Holding
  - Only when a property owner has a valid building permit;
  - Incurred substantial liabilities in good faith reliance on the permit;
  - Property acquires vested right to complete construction in accordance with the terms of the permit

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## Avco Case, cont.

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- Developer had Zoning, Tentative and Final Maps and grading permits
- BUT no building permit for construction
- No vested right to complete construction
- Harsh result for Developer!

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## DA Statutes Adopted 1979

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- Legislative purpose and findings:
- Lack of certainty in approval of development projects
  - Results in waste of resources
  - Escalates housing costs
  - Discourages investment/commitment in comprehensive planning
  - Results in lack of public facilities such as streets, sewers ...

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## DA Statute - Contents

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- Mandatory contents:
  - Duration of DA (10-20 years)
  - Permitted uses of property
  - Density or intensity of use
  - Maximum height and size of buildings
  - Fees frozen – unless new citywide fees
  - Dedication of land for public purposes

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## DA Contents, cont.

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- Other terms and conditions for subsequent actions – but they cannot prevent/delay development of project
- Conditions for construction of project (Milestones)
- Conditions on financing of public facilities and/or reimbursement
- *Examples*

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## DA Procedures

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- Adopted by Ordinance at a public hearing
- Planning Commission review
- City Council review
- Findings that DA is consistent with General Plan and any Specific Plan
- Adopted Procedures
  - Process
  - Costs

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## DA Procedures, cont.

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- Period review (yearly)
  - Subject to referendum (Legislative Act)
  - 30 days from Ordinance being “attested”
- 90 day statute of limitations
- Recorded within 10 days
- Binding on successors

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## Enforcement

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- DA's are enforced as contracts
  - No money damages
  - Only specific performance
- Good faith and fair dealing
- Default and cure provisions

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## Enforcement, cont.

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- Termination
- Amendments
  - Amended same ways as adoption
  - Operating Memorandum for minor amendments
- Cancellation
- Assignment

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## DA as a Contract

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- Parties
- General provisions
- "Benefits" to local agencies
- No nexus for dedications and/or exactions
- Bargained for/negotiated
- *Examples*

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## Vesting Tentative Maps

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- DA vs VTM
- Subdivision Map Act provides for Vesting Tentative Maps
- Additional way to obtain vested rights
- Processed same as Tentative/Parcel Map
- Freezes ordinances, policies and standards in effect at time map deemed complete

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## Vesting Tentative Maps, cont.

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- Vested rights expire when map expires or when Final Vesting Map issued
- DA vested rights are usually 10-20 years

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## DA Negotiations

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- City Manager, Senior Planning Staff and Developer
- City Attorney and Developer's attorney involved in drafting
- Set expectations early on with negotiations
- Set priorities
- Public benefits
- *Examples*





*THANK YOU!*