

## **ARTICLE IX. DEVELOPMENT AGREEMENTS\***

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\***Cross references:** Planning and development, ch. 108.

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### **Sec. 90-676. Authorization to enter into agreements.**

(a) The city commission, in its sole and exclusive discretion, may enter into development agreements with the legal and equitable owners of real property within or to be annexed to the city limits as is authorized in F.S. § 163.3220 and as is further set forth under the terms of this article.

(b) The state legislature has found that:

(1) The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.

(2) Assurance to a developer that, upon receipt of a development permit, the applicant may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in ensuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development.

(3) The comprehensive planning process should be furthered by authorizing local governments to enter into development agreements with developers. The intent is to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

(Ord. No. 97-10, § 1(1-3.1), 7-3-1997)

### **Sec. 90-677. Applicability.**

(a) The city may, by ordinance, establish procedures and requirements, as provided in F.S. §§ 163.3220--163.3243, to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.

(b) The entry into a development agreement by the city shall in no way whatsoever limit or modify any legislative power of the city to adopt ordinances, resolutions or regulations or to make executive or legislative decisions of any kind which it had the power to make prior to the entry into such development agreement, except to the degree that the development agreement, by its express terms and not by implication, gives vested rights to the property owner as to certain development permissions, required improvements and similar matters. No development agreement shall, by its express terms or by implication, limit the right of the city commission to adopt ordinances or regulations or to adopt policies that are of general application in the city, except as is expressly provided by F.S. §§ 163.3220--163.3243.

(Ord. No. 97-10, § 1(1-3.2), 7-3-1997)

**Sec. 90-678. Initiation of process by applicant.**

A property owner desiring to enter into a development agreement with the city shall make a written request for such development agreement to the city administrative official and pay the fee as is established by resolution of the city commission. Such written request shall identify the lands which are desired to be subject to the development agreement and shall identify all legal and equitable owners having any interest in such property. Such ownership interest shall be certified by a title company or an attorney at law licensed to practice law in the state. If any partnership, joint venture or other entity, other than an individual, owns a legal or equitable interest in the subject property, all principals and other persons with interest in such partnership or joint venture shall be revealed. If any corporation owns a legal or equitable interest in the subject property, the officers and directors and any shareholder owning more than ten percent of the interest in the corporation shall be revealed.

(Ord. No. 97-10, § 1(1-3.3), 7-3-1997)

**Sec. 90-679. Preliminary actions by city commission.**

Upon receipt of a request to enter into a development agreement with the city, the city administrative official shall place the matter on the agenda of the city commission. The city commission, after considering staff comments, shall, in its sole and absolute discretion, determine whether or not to enter into a development agreement and to pursue negotiations with the property owner.

(Ord. No. 97-10, § 1(1-3.4), 7-3-1997)

**Sec. 90-680. Required information for application.**

An applicant for a development agreement shall meet the requirements for development plan review set forth in article II of chapter 108.

(Ord. No. 97-10, § 1(1-3.5), 7-3-1997)

**Sec. 90-681. Review and negotiations.**

An applicant for a development agreement shall meet the requirements for development plan review set forth in article II of chapter 108. If approved or approved with conditions under either the minor or the major development plan review process, the applicant may request a development agreement with the city.

(Ord. No. 97-10, § 1(1-3.6), 7-3-1997)

**Sec. 90-682. Content.**

(a) Any development agreement approved under this article shall contain not less than the following requirements as provided in F.S. § 163.3227:

- (1) A legal description of the land subject to the development agreement and the identification of all persons having legal or equitable ownership therein.
- (2) The duration of the development agreement, which duration shall not exceed five years, but which may be extended by mutual consent of the city and the developer. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of the development agreement.

- (3) The development uses permitted on the land, including population densities, building intensities and building heights.
- (4) All documents required to comply with criteria cited in the land development regulations applicable to the subject project.
- (5) A description of the public facilities that will service the development, including designation of the entity that will be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed shall be provided. A schedule to ensure that public facilities shall be available concurrent with the impacts of the development shall also be provided. Such schedule, relating the provision of public facilities or services to events or thresholds in the development, may be substituted for the certain dates required under this subsection.
- (6) The applicant may be required to provide for a performance bond, letter of credit, or similar instrument, to be deposited with the city, to secure the construction of any new facilities that are required to be constructed as part of the proposed development agreement. Alternatively, such construction may be a condition precedent to the issuance of any building permits or other development permissions. If the new public facilities are in place and operating at the time development permits are requested, no such performance bond or letter of credit shall be necessary unless such facilities are not adequate for the project.
- (7) A description of any reservation or dedication of land for public purposes. The development agreement shall provide specifically how all impact fees and other funding requirements for the project are to be met.
- (8) If land is to be conveyed to the city in discharge of the obligation of any impact fee or other similar obligation, the development agreement shall provide that such conveyance will be by warranty deed and will be accompanied by an environmental audit and a title insurance policy which shall be in an amount not less than the assessed value of the land. The applicant shall bear the cost of these requirements.
- (9) A description of all development permits approved or needed to be approved for the development of the land, which description shall specifically include but not be limited to the following:
  - a. Any required comprehensive plan amendments or rezonings.
  - b. Any required submissions to or approvals from the county; the South Florida Regional Planning Council; the state departments of community affairs (DCA), environmental protection (DEP), transportation (DOT), health and rehabilitative services (DHRS); the United State Army Corps of Engineers; the South Florida Water Management District; the United States Environmental Protection Agency; or any other departments with competent jurisdiction over any aspect of the proposed development.
  - c. If development requirements are not satisfied, action in reliance on the development agreement or expenditures in pursuance of its terms shall not vest any development rights to the applicant/property owner. Failure to perform as specified in the development agreement shall not constitute partial performance and shall not entitle the applicant or property owner to a continuation of the development agreement.
- (10) A specific finding in the development agreement that the development permitted or proposed is consistent with the city's comprehensive plan and with the land development regulations. However, if amendments are required to the comprehensive plan or land development regulations, such amendments shall be specifically identified in the

development agreement, and the agreement shall be contingent upon those amendments being made and approved by the appropriate governmental agencies.

(11) The city commission may provide for any conditions, terms, restrictions or other requirements determined to be reasonably necessary for the public health, safety or welfare of city residents and property owners.

(12) A statement indicating that failure of the development agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

(13) At the city commission's discretion, the development agreement may provide that the entire development, or any phase thereof, be commenced or completed within a specific period of time.

(b) At such time as the city administrative official has reduced the terms of the proposed development agreement to written contractual form, the administrative official shall transmit such development agreement to the planning board and the city commission with a written recommendation from the development review committee.

(c) Prior to the first public hearing, the proposed development agreement shall have been reviewed by the planning board, and its recommendation along with the development review committee's recommendation shall be provided to the city commission.

(Ord. No. 97-10, § 1(1-3.7), 7-3-1997)

#### **Sec. 90-683. Public hearings and notice.**

Pursuant to F.S. § 163.3225, before entering into, amending, or revoking a development agreement, the city shall conduct at least two public hearings. One of the public hearings shall be held by the planning board. The following procedures shall be applied in advertising for the public hearings:

(1) Each public hearing shall be advertised in a newspaper of general circulation in the city, and such advertisement shall be placed approximately seven days before each public hearing pursuant to requirements of F.S. ch. 163.

(2) Notice of intent to consider the development agreement shall also be mailed to all property owners abutting the subject land and/or owners of property lying within 500 feet of the subject land. The applicant for the development agreement shall furnish the city administrative official with an updated listing of the complete names and addresses of the affected owners.

(3) The day, time and place at which the second public hearing will be held shall be announced at the first public hearing.

(4) All notices of public hearings shall specify the location of the land subject to the proposed development agreement; the development uses proposed on the property; the proposed population densities, building intensities and heights; and shall further specify where a copy of the proposed development agreement can be obtained.

(Ord. No. 97-10, § 1(1-3.8), 7-3-1997)

#### **Sec. 90-684. Duration.**

Pursuant to F.S. § 163.3229, the duration of a development agreement shall not exceed ten years. It may be extended by mutual consent of the city commission and the developer, subject to a public hearing in accordance with F.S. § 163.3225. (Ord. No. 97-10, § 1(1-3.9), 7-3-1997)

**Sec. 90-685. Consistency with comprehensive plan and land development regulations.**

Pursuant to F.S. § 163.3231, a development agreement and authorized development shall be consistent with the city comprehensive plan and land development regulations. The city comprehensive plan, land development regulations, and other city laws and policies governing the development of the land at the time of the execution of the development agreement shall govern the development of the land for the duration of the development agreement.

(Ord. No. 97-10, § 1(1-3.10), 7-3-1997)

**Sec. 90-686. Execution.**

All development agreements shall be executed by all persons having legal or equitable interest in the subject land. However, the city administrative official may approve the execution of the development agreement without the necessity of such joinder or subordination upon a determination that the substantial interests of the city will not be adversely affected.

(Ord. No. 97-10, § 1(1-3.11), 7-3-1997)

**Sec. 90-687. Effect of subsequently adopted laws and ordinances.**

(a) *Local laws and ordinances.* The city may apply subsequently adopted laws and policies to a development that is subject to a development agreement only if the city commission has held a public hearing and determined that such new or amended laws and policies are, as provided in F.S. § 163.3233:

- (1) Not in conflict with laws and policies governing the development agreement and do not prevent development of land uses, intensities or densities allowed under the terms of the development agreement.
- (2) Essential to the public health, safety and welfare and expressly state that they shall apply to a development that is subject to a development agreement.
- (3) Specifically anticipated and provided for in the development agreement.

The city must further demonstrate that substantial changes have occurred in pertinent conditions existing at the time of the approval of the development agreement, or that the development agreement is based on substantially inaccurate information supplied by the developer. Consistent with F.S. § 163.3233(2), the intent is that all development agreements shall specifically provide that subsequently adopted laws and policies having general application throughout the city shall be applicable to the lands subject to the development agreement so long as conditions identified in this subsection are not abridged. The applicant must abide by such laws of general application which are adopted after the development agreement is executed. Such laws and policies shall apply equally to the subject property as to other properties developed prior to the adoption of such new laws or policies. This section does not abrogate any rights that may vest pursuant to common law.

(b) *State or federal laws.* If state or federal laws are enacted after the execution of a development agreement, which laws are applicable to and preclude either party's compliance with the terms and conditions of the development agreement, the agreement shall be modified or terminated as is necessary to comply with the relevant state or federal laws (refer to F.S. § 163.3241). For each annual review conducted during years six through ten of a development agreement, the review shall be incorporated into a written report which shall be submitted to the parties to the agreement and the state land planning agency.

(Ord. No. 97-10, § 1(1-3.12), 7-3-1997)

**Sec. 90-688. Periodic review.**

(a) Pursuant to F.S. § 163.3235, the city shall review land subject to a development agreement at least once every 12 months. Such review shall determine if there has been demonstrated good faith compliance with the terms of the development agreement. The city administrative official shall present the city commission with a report on the status of all activities and achievements pursuant to the development agreement.

(b) Prior to the city's review of the status of a development agreement, the developer or property owner shall, within 14 days of the city commission's review of the development agreement, submit to the city a progress report indicating all activities and achievements since the execution of the development agreement and, if applicable, since the previous periodic report.

(c) If the city no longer has a record of the present property owner and/or developer, any requests or notices required by this subpart B shall be made to the property owner of record as shown on the records of the county property appraiser.

(Ord. No. 97-10, § 1(1-3.13), 7-3-1997)

**Sec. 90-689. Modification or revocation.**

Pursuant to F.S. § 163.3235, if the city commission finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the development agreement, the agreement may be revoked or modified by the city commission. In addition, pursuant to F.S. § 163.3237, a development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest. Prior to modifying, revoking or terminating a development agreement, the city commission shall hold public hearings pursuant to 90-683 and give notice as required for the adoption of a development agreement as provided in F.S. § 163.3225.

(Ord. No. 97-10, § 1(1-3.14), 7-3-1997)

**Sec. 90-690. Recording and transmittal.**

Not later than 14 days after the execution of a development agreement, the city clerk shall record the agreement with the clerk of the circuit court in the county. A copy of the recorded development agreement shall be submitted to the state land planning agency within 14 days after the agreement is recorded as provided in F.S. § 163.3239. A development agreement shall not be effective until it is properly recorded in the public records of the county and until 30 days after having been received by the state land planning agency pursuant to F.S. § 163.3239.

(Ord. No. 97-10, § 1(1-3.15), 7-3-1997)

**Sec. 90-691. Effect on successors.**

The burdens of the development agreement shall be binding upon and the benefits of the agreement shall inure to all successors in interest to the parties to the agreement as provided in F.S. § 163.3239.

(Ord. No. 97-10, § 1(1-3.16), 7-3-1997)

**Sec. 90-692. Enforcement.**

Such persons as are defined by state law shall have standing to enforce the development agreement as provided in F.S. § 163.3243.

(Ord. No. 97-10, § 1(1-3.17), 7-3-1997)