

CHAPTER TWELVE
DEVELOPMENT AGREEMENTS

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CHAPTER TWELVE
DEVELOPMENT AGREEMENTS

12000. GENERALLY

The Board of County Commissioners (BCC), in its sole and exclusive discretion, may enter into development agreements with any person having a legal or equitable interest in real property within the unincorporated limits of the County as is provided in F.S. Ch. 163 and as further set forth under the terms of this Chapter.

12001. SCOPE AND LIMITATIONS

The entry into a Development Agreement by the County shall in no way whatsoever limit or modify any legislative power by the County to adopt ordinances, resolutions, regulations or to make executive, administrative 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 expressed terms or by implication, limit the right of the County to adopt ordinances, regulations or policies that are of general application except as is expressly provided by F.S. Ch. 163.

12005. REQUEST; FEE

A property owner desiring to enter into a Development Agreement with the County shall make a written request for such Development agreement to the County Administrator and pay the fee as is established by resolution of the BCC. Such written requests 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, and such ownership interest shall be certified by a title company or an attorney at law licensed to practice in the state. If any partnerships, corporations, joint ventures or other entities, other than individuals, own a legal or equitable interest in the subject property, all principals and other persons with interest in such partnerships, corporations, joint ventures or other entities shall be revealed.

12010. PLACEMENT OF REQUEST ON BOARD'S AGENDA, DETERMINATION BY BOARD, REFUNDING OF FEE

Upon receipt of such a request, the County Administrator shall place the matter on the Board of County Commissioners' agenda, and the BCC shall, in its sole discretion, determine whether or not it desires to pursue negotiations with the property owner relative to the entry into a Development Agreement.

If the BCC determines not to proceed with further negotiations or discussions regarding the Development Agreement, the fee paid by the property owner shall be refunded. If the BCC instructs the County Administrator to proceed with further negotiations, the fee shall thereafter be nonrefundable, regardless of whether or not a Development Agreement is ultimately reached.

12015. DEVELOPMENT PROPOSAL, CONTENTS

Upon the BCC's determination that it desires to proceed with further negotiations relative to a Development Agreement, the property owner shall promptly submit a development proposal for the subject property to include the following information:

- A. Legal description of the land subject to the Agreement.
- B. The persons, firms or corporations having a legal or equitable interest in the land.
- C. The duration of the Development Agreement, which duration shall not exceed ten years. However, it may be extended by mutual consent of the County and the developer, subject to the public hearing process in accordance with F.S. Ch. 163.
- D. The development uses desired to be permitted on the land, including population densities and building intensities and height.
- E. A description of all existing and proposed public facilities that will service the development, including who shall provide such facilities; the date that any new facilities, if needed, will be constructed; and a schedule to ensure public facilities are available concurrent with the impacts of the development.
- F. A description of any reservation or dedication of land for public purposes.
- G. A description of all local development permits approved or needed to be approved for the development of the land.
- H. The zoning and present land use categories of all abutting property.
- I. A registered state surveyor's certified property boundary survey prepared not more than 12 months prior to the developer's written request for the Development Agreement.

- J. All lands subject to the jurisdictional regulations of the Southwest Florida Water Management District (SWFWMD), the State Department of Environmental Protection (FDEP), and the Army Corps of Engineers (ACOE) shall be shown on a survey of the property.
- K. All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development, including water, sewer, gas, electricity, CATV and sanitary effluent reuse/disposal and other utilities.
- L. A conceptual master drainage plan for the development indicating thereon the existing drainage features and land topography, along with and superimposed thereon, the proposed drainage features indicating clearly the means by which the final developed land will collect, regulate and conduct the drainage runoff from the lands developed and tributary thereto.
- M. The location, type, size and height of fencing, earth berms, retaining wall or screened planting to buffer abutting properties or as is otherwise required by zoning regulations.
- N. A grading plan, and included therewith, the elevation requirements of the National Flood Insurance Program as applicable to the property.
- O. A landscape plan and a tree survey of existing indigenous trees at least 12 inches diameter breast height.
- P. Any deed restrictions existing or being imposed upon the land for development.
- Q. Any further information that the County Administrator may require because of the particular nature or location of the development proposal, including proposed phases. The County Administrator shall have the right to waive any submission requirement that is not relevant to the particular proposal; provided, however, that if any submission requirement is initially waived, the Development Agreement shall expressly provide when such information is to be provided and that development is not to commence until such information is provided according to the Development Agreement terms.

12020. VESTING OF RIGHTS; LIMITATION ON REZONING OR LAND USE PLAN AMENDMENTS.

The submission of a request for consideration of a Development Agreement; the BCC's willingness to pursue discussions; the resultant negotiations regarding a Development Agreement; the payment of any application fees for the submission of any application; engineering plans, surveys and any other expenditures or efforts in prosecution of the Development Agreement, provided for in this article by a property owner, shall not vest any rights whatsoever in any zoning or land use designation in such property owner, nor shall it in any manner whatsoever limit the BCC from undertaking any rezoning or land use plan amendments that it would be otherwise legally entitled to undertake.

12025. REVIEW OF PROPOSAL BY ADMINISTRATOR; TENTATIVE AGREEMENT; NOTICE UPON FAILURE OF THE NEGOTIATION

- A. The County Administrator shall review the development proposal of the owner and shall meet and negotiate with the owner regarding the appropriate development of the property and the terms and condition in which such property should be developed as the County Administrator shall deem to be appropriate and necessary for the protection of the public interest.
- B. If the County Administrator and the property owners have not negotiated a mutually satisfactory Development Agreement, the County Administrator shall so notify the BCC and the Development Agreement process as to the particular land shall be concluded. No further consideration of such application shall come before the BCC. A future Development Agreement application on the same property may be submitted no sooner than 365 calendar days from the date of the County Administrator's notification to the BCC that the previous Development Agreement application negotiations were terminated.

12030. TERMS REDUCED TO CONTRACTURAL FORM; TRANSMISSION TO COUNTY COMMISSION; HEARINGS PROCEDURES; APPROVAL

- A. At such time as the County Attorney has reduced the terms of the proposed Development Agreement to written contractual form the Agreement shall be placed on the agenda of the Planning and Development Commission for a public hearing and recommendation as to entering into the Development Agreement. Such public hearing shall be advertised in a newspaper of general circulation in the County, and such notice shall be advertised approximately seven days before the public hearing. Notice of intent to consider a Development Agreement shall also be mailed to all affected property owners abutting the property boundaries

before the first public hearing by the local planning agency. The day, time and place at which the BCC public hearing will be held shall be announced at the Planning and Development Commission public hearing. The notice shall specify the location of the land subject to the Development Agreement; the development uses proposed on the property; the proposed population densities and building heights; and shall specify where a copy of the proposed agreement can be obtained.

- B. At the BCC meeting, the BCC may, by vote of not less than three members of the BCC, approve the form of a Development Agreement and authorize the Chairman to execute the agreement for the BCC.

12040. MINIMUM REQUIREMENTS

Any Development Agreement approved under the provisions of this chapter shall contain not less than the following requirements:

- A. A legal description of the land subject to the agreement and the identification of all persons having legal or equitable ownership therein.
- B. The duration of the Development Agreement, which duration shall not exceed ten years. However, it may be extended by mutual consent of the County and the developer, such extension being subject to the public hearing process necessary for the initial approval of the Development Agreement. No Development Agreement shall be effective or be implemented by a local government unless the local government's comprehensive plan and plan amendments implementing or related to the agreement are found in compliance by the state land planning agency in accordance with F.S. §§ 163.3184, 163.3187
- C. The development uses permitted on the land, including population densities, building intensities and building height.
- D. A conceptual site plan indicating phases if the property is to be phased and containing such information as may be required by the County Administrator to properly consider the development proposal. If a site plan is required in the rezoning process, all the requirements of that site plan process and submittal shall be met prior to development.
- E. A description of the public facilities that will service the development, including designation of the entity or agency that shall be providing such services. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed and a schedule to ensure that the public facilities to be available concurrent with the impacts of the development will be provided. The Development Agreement may provide for a letter of credit to be deposited with the County to secure the

construction of any new facilities that are required to be constructed. 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 letter of credit shall be necessary unless such facilities are not adequate to serve the project.

- F. A description of any reservation or dedication of land for public purposes and any impact fee credit request that may result from such dedication or reservation.
- G. A description of all local development permits approved or needed to be approved for the development of the land, specifically, to include at least the following:
 - 1. Any required rezoning.
 - 2. Any required comprehensive plan amendments.
 - 3. Any required submission to the Tampa Bay Regional Planning Council
 - 4. Any required permissions of the FDEP.
 - 5. Any required permissions of the ACOE.
 - 6. Any required permissions of the SWFWMD.
 - 7. Any required permissions of the United States Environmental Protection Agency and other governmental permissions that are required for the project.
 - 8. Any subdivision plat.
 - 9. Any final local development order authorizing construction under the concurrency provisions of the Comprehensive Plan.

The Development Agreement shall specifically provide that such development permissions will be obtained at the sole cost of the property owner and, that if any development permissions are not received, development can still proceed without such permissions in certain phases, and that no further development of the property shall be allowed until such time as the BCC has reviewed the matter and determined whether or not to terminate the Development Agreement or to modify it in a manner consistent with the public interest. Under these conditions, action and reliance on the Development Agreement or expenditures in pursuance of its terms and of any rights accruing to the property owner thereunder, shall

not vest any development rights in the property owner, nor shall it constitute partial performance entitling the property owner to a continuation of the Development agreement.

- H. A specific finding in the Development Agreement that the development permitted or proposed is consistent with the County's Comprehensive Plan and the land development regulations of the County or, that, if amendments are necessary to the zoning district designation or land use plan designations on the subject property, that such Development Agreement is contingent upon those amendments being made and approved by the appropriate governmental agencies.
- I. The BCC may provide for any conditions, terms, restrictions or other requirements determined to be necessary for the public health, safety or welfare of its citizens and such conditions, terms or restrictions may be more onerous or demanding than those otherwise specifically required by the land development standards then existing in the County, and may provide for off-site improvements, screening, buffering, setbacks, building height restrictions, land coverage restrictions and similar types of matters that would not otherwise be required of the development under the existing County ordinances and regulations; provided, however, that there exists a rational nexus between the necessity of these conditions and the projected impacts of the proposed development.
- J. A statement indicating that failure of the Development Agreement to address a particular permit, condition, term or restriction shall not relieve the property owner of the necessity of complying with the law governing such permitting requirements, conditions, terms or restrictions, and that any matter or thing required to be done under existing ordinances of the County shall not be otherwise amended, modified or waived unless such modification amendment or waiver is expressly provided for in the Development Agreement with specific reference to the code provisions so waived, modified or amended.
- K. At the BCC's discretion, the Development Agreement may provide that the entire development, or any phase of such development, be commenced or be completed within any specific period of time and may provide for penalties in the nature of monetary penalties, the denial of future building permits, the termination of the Development Agreement or the withholding of certificates of occupancy for the failure of the property owner to comply with any such requirement.

**12050. LAND DEVELOPMENT REGULATIONS OF COUNTY TO GOVERN;
EFFECT OF AMENDMENTS AND NEW ORDINANCES**

- A. The ordinances and regulations of the County governing the development of the land at the time of the execution of any Development agreement provided for under this chapter shall continue to govern the development of the land subject to the Development Agreement for the duration of the Development Agreement. At the termination of the duration of the Development Agreement, all then existing codes shall become applicable to the project, regardless of the terms of the Development Agreement, and the Development Agreement shall be modified accordingly. The application of such laws and policies governing the development of the land shall not include any fee structure, including any impact fees then in existence or thereafter imposed. The County may apply ordinances and policies adopted subsequent to the execution of the Development Agreement to the subject property only if the County has held public hearings and determined that such new ordinances and policies are:
1. Not in conflict with the laws and policies governing the Development Agreement and do not prevent development of the land uses, intensities or densities as 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 agreement; and the County demonstrates that substantial changes have occurred in pertinent conditions existing at the time of the approval of the Development Agreement, or the Development Agreement is based on substantially inaccurate information supplied by the developer.
- B. Subject to the criteria of F.S. Chapter 163, all development agreements shall specifically provide that subsequently adopted ordinances and policies of general application in the County, specifically including impact fees and concurrency management systems, shall be applicable to the lands subject to the Development Agreement, and that such modifications are specifically anticipated in the Development Agreement.

12060. ANNUAL REVIEW; REPORT ON FINDINGS; REVOCATION OR MODIFICATION PROCEDURES

The County shall review all lands within the unincorporated area subject to a Development Agreement not less than once every 12 calendar months to determine if there has been demonstrated good faith compliance with the terms of the Development Agreement. If the BCC 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 County upon 30 days' notice to the property owner as shown on the records of the County Property Appraiser. Such termination or amendment shall be accomplished only after public hearings and notice as is required in this article for the adoption of a Development Agreement. Amendment or cancellation of the Development Agreement by mutual consent of the County and the property owner may be accomplished following the notice and public hearing requirements required for initial adoption of the Development Agreement as is set forth in this chapter.

12070. RECORDING PROCEDURE

Not later than 14 days after the execution of a Development Agreement, the County shall record the agreement with the Clerk of the County Circuit Court. 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.

12080. EFFECT OF STATE AND FEDERAL LAWS ENACTED AFTER AGREEMENT

If state and federal laws are enacted after the execution of a Development Agreement which are applicable to and preclude the parties compliance with the terms of the Development Agreement, such agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws, such modification or revocation to take place only after the notice and public hearing provisions provided for the adoption of a Development Agreement have been complied with.

12090. ACTIONS FOR INJUNCTIVE RELIEF

Any party, any aggrieved or adversely affected person, as defined in F.S. Chapter 163.3215(2), or the State Land Planning Agency may file an action for injunctive relief in the County Circuit Court to enforce the terms of a Development Agreement or to challenge compliance of the agreement with the provisions of F.S. Chapter 163.3220—163.3243.

12100. EXECUTION; LEGAL STATUS

All Development Agreements shall be executed by all persons having legal or equitable title in the subject property, including the fee simple owner and any mortgagees, unless the County Attorney approves the execution of the Development Agreement without the necessity of such joinder or subordination on a determination that the substantial interests of the County will not be adversely affected thereby. A Development Agreement is determined to be a legislative act of the County in the furtherance of its powers to plan, zone and regulate development within its boundaries and, as such, shall be superior to the rights of existing mortgagees, lienholders or other persons with a legal or equitable interest in the subject property and the Development agreement, and the obligations and responsibilities arising thereunder on the property owner shall be superior to the rights of such mortgagees or lienholders and shall not be subject to foreclosure under the terms of mortgages or liens entered into or recorded prior to the execution and recordation of the Development Agreement.

(Ordinance No. 2017-A21, Section 12040.G, adopted May 9, 2017)