

CHAPTER 30

DEVELOPMENT AGREEMENTS

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CHAPTER 30**DEVELOPMENT AGREEMENTS****Section 30-1. Title.**

This chapter may be cited as the development agreement code.
(1993, ord 93-37, sec 2.)

Section 30-2. Purpose.

The purpose of this chapter is to authorize the executive branch of the County of Hawai'i to enter into a development agreement with any person having a legal or equitable interest in real property, for the development of such property in accordance with chapter 46, part VII, Hawai'i Revised Statutes, relating to development agreements, and as amended from time to time, and to provide assurances to the parties to the development agreement of the following:

- (a) That the developer for that particular project may proceed in accordance with all applicable statutes, ordinances, rules, resolutions or policies in effect at the effective date of the development agreement;
- (b) That the project will not be restricted or prohibited by the subsequent enactment or adoption of more restrictive statutes, ordinances, rules, resolutions or policies;
- (c) That the County of Hawai'i may contract with the developer to ensure commitments for on-site and off-site development requirements necessary to preserve the public health, safety and welfare; and
- (d) That the project will be prosecuted and completed in a timely manner and that the public interest will be protected.

(1993, ord 93-37, sec 2.)

Section 30-3. Definitions.

Whenever used in this chapter, the following words and phrases shall be defined as follows:

- (1) "County" means the County of Hawai'i, a municipal corporation, acting through its mayor.
- (2) "Designated agency" means the County executive agency designated by the mayor to specify, assemble, review, and coordinate information required by governmental agencies, and to administer development agreements after such agreements become effective.
- (3) "Development agreement" means a written agreement for specified periods of time between the County, any governmental entity or agency made a party thereto, and any person having a legal or equitable interest in real property for the purpose of vesting the right to develop such property in accordance with laws, ordinances, resolutions, rules, and policies of any governmental entity or agency made party to the agreement in effect at the time such agreement is executed, and for the purpose of delineating development

requirements that may include, but are not limited to, affordable housing, design standards, water allocations, dedications of real or personal property, on-site and off-site infrastructure and other development related improvements and government services which shall be approved by resolution of the County council and executed by the mayor on behalf of the County.

- (4) "Governmental entity or agency" means and includes, without limitation, the County of Hawai'i and its County council, the State of Hawai'i, the United States of America and their officers, agencies, boards and commissions.
- (5) "Person" means an individual, group, partnership, firm, association, corporation, trust, governmental official, administrative body, tribunal or any form of business or legal entity.
- (6) "Principal" means any person and its successors in interest or assigns who has entered into a development agreement pursuant to this chapter, and who has a legal or equitable interest in the real property which is the subject of the development agreement.

(1993, ord 93-37, sec 2.)

Section 30-4. General authorization.

- (a) The office of the mayor is authorized to negotiate, prepare, and administer a development agreement, in accordance with this chapter, with any principal.
- (b) The mayor may enter into development agreements on behalf of the County, upon approval by the County council by resolution, in accordance with the terms, conditions, and requirements of this chapter, pursuant to section 46-123, Hawai'i Revised Statutes.
- (c) The office of the mayor shall make such rules and regulations as necessary to implement this chapter pursuant to chapter 91, Hawai'i Revised Statutes.
- (d) Negotiation of and the decision to participate in a development agreement shall be entirely voluntary on the County and the principal. Once entered into, the parties to a development agreement shall be bound by the terms of the development agreement, the development agreement code and chapter 46, part VII, Hawai'i Revised Statutes, relating to development agreements, and as amended from time to time.

(1993, ord 93-37, sec 2.)

Section 30-5. Negotiating development agreements.

- (a) A proposed development agreement may be negotiated at the request of a principal or the County by submitting an application to the office of the mayor.
- (b) The application for the development agreement shall as a minimum contain:
 - (1) The name and business address of the principal;
 - (2) A description of the subject land;
 - (3) Specification by written narrative including maps, site plans, and any other documents or materials as may be appropriate, of the proposed uses of the property;

- (4) Information concerning the location of any trails, easements or other ways on the subject property, public or private, the rights, if any, of adjoining or other landowners in and to the subject property, burial sites and historic property subject to the provisions of chapter 6E, Hawai'i Revised Statutes, and an assessment of the impact of the proposed project on the subject real property, surrounding community and public resources;
 - (5) Other information which the County or its designated agency may determine to be necessary for the proper review and evaluation of the subject application and the preparation of any development agreement; and
 - (6) Proposed terms of the development agreement.
- (c) Copies of the development agreement application shall be sent to appropriate governmental agencies for review and comment.
 - (d) The office of the mayor shall submit the final draft of every proposed development agreement and amended development agreement, pursuant to section 30-9 of this chapter, to the County council for its action by resolution to either approve as submitted, modify and approve as modified, or reject.
 - (e) County council approval by resolution shall be a precondition for execution of a development agreement by the mayor.
 - (f) No development agreement shall be entered into unless the County council shall have held a public hearing on the proposed development agreement in the council district where the subject property and development requirements are located. In the event that the location of either the subject property or the proposed development requirements set forth in the development agreement are located in more than one council district, the public hearing shall be held in the council district most affected by the proposed development as determined by the County.
 - (g) Every development agreement shall describe the real and personal property and services to be given by the principal, the County and/or other parties thereto as consideration for such agreement together with the terms of payment, conveyance or provision thereof.
- (1993, ord 93-37, sec 2.)

Section 30-6. Material breach; termination of agreement.

- (a) If, at any time, the office of the mayor finds and determines that the principal has committed a material breach of the terms or conditions of the agreement, the office of the mayor shall serve notice in writing, within thirty days after the finding of a material breach, upon the principal setting forth with reasonable particularity the nature of the breach and evidence supporting the finding and determination, and providing the principal a reasonable time period in which to cure such material breach.
- (b) If the principal fails to cure the material breach within the time period given, then the County unilaterally may terminate or modify the agreement, provided that the office of the mayor has first given the principal the opportunity: (1) to rebut the

finding and determination of the material breach; or (2) to agree to amend the agreement as the office of the mayor may elect to propose in order to cure the material breach pursuant to section 30-9 of this chapter.

- (c) In the event that (1) the principal does not agree to such amendments proposed by the office of the mayor or as subsequently modified by the County council, pursuant to section 30-9 of this chapter, or (2) the County council rejects the amendments proposed by the office of the mayor, the County may terminate the development agreement by County council resolution.

(1993, ord 93-37, sec 2.)

Section 30-7. Development agreement provisions.

- (a) A development agreement shall, as a minimum:

- (1) Describe the land subject to the development agreement;
- (2) Specify the permitted uses of the property, the density or intensity of use, and the maximum height and size of proposed buildings;
- (3) Provide, where appropriate, for reservation or dedication of land or easements for public purposes to include but not limited to roads, water, drainage, waste disposal, public utilities, public safety facilities, and open space as may be required or permitted pursuant to laws, ordinances, resolutions, rules, or policies in effect at the effective date of the development agreement; and
- (4) The development agreement shall provide commencement dates and completion dates for the requirements set forth therein; provided that:
 - (A) Such dates as may be set forth in the agreement may be extended upon the request of the principal for good cause shown, subject to, however, the approval of the County wherein such approval shall be at the sole discretion of the County and the cumulative total of extensions shall not exceed one year in any five year period;
 - (B) In the event a party to the development agreement requests an extension of a specified duration as a result of any delay in the performance of any of the obligations of the parties to the agreement hereunder and which occurs as a result of unforeseeable causes beyond the control and without the fault or negligence of any party to the development agreement, including, but not limited to, acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes or walkouts, freight embargoes, or unusually severe weather, a reasonable extension of time for the commencement, completion, or termination dates shall be granted by the other parties thereto for the performance of the terms of the development agreement notwithstanding any time limitations otherwise applicable in this section; and
 - (C) The parties shall not be precluded from further extending such dates by mutual agreement or from entering into subsequent agreements subject to the approval of the County council as provided herein.

- (5) Provide a termination date; provided that the parties shall not be precluded from amending the development agreement pursuant to section 30-9 of this chapter to extend the termination date by mutual agreement or from entering into subsequent development agreements.
- (b) The development agreement also may cover any other matter not inconsistent with this chapter, nor prohibited by law.
- (c) In addition to the County and principal, any Federal, State, or local government agency or body may be included as a party to the development agreement. If more than one government body is made party to any agreement, the agreement shall specify which agency shall be responsible for the overall administration of the agreement.
- (d) The development agreement shall provide that the principal shall submit an annual report of compliance with the terms and conditions of the development agreement to the office of the mayor or its designated agency. That office or agency shall review such report for adequacy and accuracy and shall forward a copy of the annual report together with its findings and any other comments to the County council within a reasonable time thereafter.

(1993, ord 93-37, sec 2.)

Section 30-8. County general plan and community development plans.

No development agreement shall be entered into unless the County council finds that the provisions of the proposed development agreement are consistent with the County's general plan and any applicable community development plans adopted by the County council as of the effective date of the development agreement. In the event of any inconsistency between the general plan and the applicable community development plan, the County general plan shall prevail. Nothing in this chapter shall be construed to prohibit concurrent processing of a development agreement and any other land use application for that subject property, including but not limited to an amendment to governmental land use designation, district, zoning, or any special or use permits.

(1993, ord 93-37, sec 2.)

Section 30-9. Amendment, cancellation or satisfaction.

- (a) A development agreement may be amended or canceled, in whole or in part by County council resolution, by mutual consent of the parties to the agreement, or their successors in interest; provided that if the County determines that the proposed amendment would substantially alter the original development agreement, a public hearing on the amendment shall be held by the County council before it approves any proposed amendments. Nonsubstantive or technical amendments, as may be defined in a development agreement, shall only require the approval of the office of the mayor without action by the County council.
- (b) Upon the satisfaction of the requirements and terms of the development agreement and upon the request of the office of the mayor, the County shall declare by County council resolution that the development agreement is satisfied.

(1993, ord 93-37, sec 2.)

Section 30-10. Enforceability; applicability.

- (a) Unless terminated pursuant to section 30-6, or canceled pursuant to section 30-9, a development agreement, amended development agreement, or modified development agreement, once entered into, shall be enforceable by any party thereto, or their successors in interest or assigns, notwithstanding any subsequent change in any applicable law adopted by the County of Hawai'i or any party thereto, which alters or amends the laws, ordinances, resolutions, rules, or policies specified in this chapter.
- (b) All laws, ordinances, resolutions, rules, and policies governing permitted uses of the land that is the subject of the development agreement, including but not limited to uses, density, design, height, size, and building specification of proposed buildings, construction standards and specifications, affordable housing, community benefit assessments, water utilization and impact fee/assessment requirements applicable to the development of the property subject to a development agreement, shall be those laws, ordinances, resolutions, rules, regulations, and policies made applicable and in force at the time of execution of the agreement. The development agreement shall specify whether any subsequent change in any applicable law adopted by the County or any other governmental entity or agency entering into such agreement, which alter or amend the laws, ordinances, resolutions, rules, or policies specified in this part and such subsequent change shall be void as applied to property subject to any such agreement to the extent that it changes any law, ordinance, resolution, rule, or policy which any party to the agreement has agreed to maintain in force as written at the time of execution. The development agreement shall not prevent a government body from requiring the principal to comply with laws, ordinances, resolutions, rules, and policies of general applicability enacted subsequent to the date of the development agreement if under prior law they could have been lawfully applied to the subject property or any uses thereof at the time of execution of the agreement and if the County, County council or any other governmental entity or agency entering into such agreement finds it necessary to impose the requirements because a failure to do so would place the residents of the affected community in a condition perilous to the residents' health or safety, or both.
- (1993, ord 93-37, sec 2.)

Section 30-11. Administrative act.

Pursuant to section 46-131, Hawai'i Revised Statutes, each development agreement shall be deemed an administrative act of the governmental entity or agency made party to the agreement.

(1993, ord 93-37, sec 2.)

Section 30-12. Filing or recordation.

The designated agency shall be responsible to file or record copies of the development agreement or any amendment thereto in the office of the assistant registrar of the land court of the State of Hawai'i or in the bureau of conveyances, or both, whichever is appropriate, within twenty days after the effective date of the development agreement or any amendment thereto. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

(1993, ord 93-37, sec 2.)

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