

**Section 40.550.030  
DEVELOPMENT AGREEMENTS**

**40.550.030 Development Agreements**

- A. Purpose.** The purposes of this Section include one or more of the following, as appropriate in the circumstances:
1. Create a procedure for application, review, consideration, and conditioning of certain development projects according to the extent to which they advance the Comprehensive Plan's goals and policies.
  2. Subject to the provisions of CCC 40.550.030.D.1.c, provide certainty to a developer that a project may proceed to be developed per the development standards, zoning ordinances, regulations, and other code provisions in effect at the time of the approval.
  3. Provide assurance that currently allowed uses for a property may be maintained for a specified period of time in exchange for specific consideration which advances the Comprehensive Plan's goals and policies.
  4. Provide a consistent process and criteria for review of proposed development agreements.
- B. Applicability.**
1. This Section applies to development agreements authorized pursuant to RCW 36.70B.170 through 36.70B.210 between Clark County and any person having ownership or control of real property located within Clark County's jurisdiction.
  2. The provisions of this Section do not apply to or affect the validity of any contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on or before the effective date of this Section, or adopted under separate authority, even though such agreements may also relate to development standards, mitigation and other regulatory requirements.
  3. The county is authorized, but not required, to accept, review and approve a proposed development agreement. This process is voluntary on the part of both the applicant and the County. The decision to approve a development agreement is discretionary with the Clark County Council.
  4. Neither application nor approval of a development agreement vests a project to development standards, zoning ordinances, regulations, and other code provisions, except as specified in the development agreement.
  5. Development agreements shall terminate 10 years from the date of recordation, ~~or earlier~~ unless otherwise specified, if specified in the terms of the development agreement.

6. Development agreements provide flexibility and creativity to some or all of the development standards set forth in CCC Title 40, such as, permitted uses, residential densities, nonresidential densities, building sizes, payment of impact fees, affordable housing, parks and open space provisions, phasing, review procedures, vesting of applicable standards, and any other appropriate development requirement.

**C. Types of Development Agreements.**

1. **Project Development Agreement.** A project development agreement shall relate to a specific development proposal that is or would be subject to a Type II or III process defined in Chapter 40.510 CCC. The applicant shall submit a detailed site design with the identification of specific uses and activity. The level of detail shall be such that the project can be reviewed to determine the appropriate level of mitigation related to, but not limited to, transportation, stormwater and critical areas.
2. **Non-Project Development Agreement.** A non-project development agreement shall address a conceptual development that involves a legislative decision associated with a Type IV process defined in Chapter 40.510 CCC.

**D. Development Standards.**

1. Project Development Agreement.
  - a. A development agreement may set forth the development standards, zoning ordinances, regulations, code provisions that shall apply to and govern the project, for the duration specified in the agreement.
  - b. In order to encourage innovative land use management and provide flexibility to achieve public benefits, a development agreement adopted pursuant to this Section may impose development standards that differ from, but are consistent with, the development standards of the Clark County Code that would otherwise apply to a proposed development. Development standards imposed by the development agreement must be consistent with the comprehensive plan, and adequately address public health, safety, welfare and environmental requirements.
  - c. Subsequently adopted standards which differ from those in the development agreement shall apply to the subject site only if necessary to address a serious threat to public health and safety or if the development agreement specifies a time period or phase after which certain identified standards may be modified. Building permit applications shall be subject to the building codes in effect when the building permit application is deemed complete.

2. Non-Project Development Agreement. Unless otherwise specified, a non-project development agreement may only allow permitted land use types associated with the zoning or existing legally established uses in effect at the time the agreement is approved.

**E Development Agreement Application.**

1. The applicant shall submit a form provided by the County to initiate a development agreement. The application form for proceeding with a development agreement may include a draft development agreement, but must include a narrative that details:
  - a. The proposed development or Type IV non-project proposal;
  - b. The need to deviate from the Clark County Code;
  - c. The specific consideration that the applicant will provide to the County pursuant to the DA; and
  - d. How the development agreement would be consistent with state law, development standards, zoning ordinances, regulations and other code provisions and would comply with the Clark County Comprehensive Plan's Goals and Policies.

**F Contents of a Development Agreement.**

1. A project development agreement shall include the following:
  - a. A site plan depicting boundaries and project elements, such as: location, acreage and range of densities for residential development, if applicable; location and range of types of uses of nonresidential development; if applicable; location and size of critical areas and buffers, if any; perimeter buffers, if any; location and acreage of active and passive recreational areas, if any; and motorized and non-motorized circulation routes, including route connections to streets and pedestrian and bicycle routes servicing and/or abutting the site;
  - b. The identification of consideration provided by the developer that furthers the goals and policies of the Clark County 20-year Comprehensive Growth Management Plan in exchange for implementing the agreement;
  - c. The expected build-out period and, if applicable, the phasing of development;
  - d. The duration of the agreement, which must comply with CCC 40.550.030.B.5;
  - e. Provisions for the termination of the development agreement, which must comply with CCC 40.550.030.B.5;
  - f. If environmental review is required under the State Environmental Policy Act, measures to mitigate significant adverse impacts including, but not limited to any impacts to public services and facilities;

- g. A traffic impact study consistent with the requirements of CCC 40.350.020.D;
  - h. A title report containing proof of ownership;
  - i. If the applicant is not the owner of the property, a written and notarized statement by the owner authorizing the applicant to submit and negotiate the application on the owner's behalf, and for the County to process, review, negotiate, and consider the application for approval;
  - j. Identification of whether the development agreement runs with the land;
  - k. Provisions acknowledging that at the time a specific development application is submitted, all development regulations in effect at the time of submittal shall be applicable; and
  - l. Cost recovery provisions and timelines for processing, administering, and monitoring compliance with any required permits and approvals.
2. A non-project development agreement shall include the following:
- a. A map depicting boundaries of the area subject to the development agreement;
  - b. The identification of consideration provided by the developer that furthers the goals and policies of the Clark County 20-year Comprehensive Growth Management Plan in exchange for implementing the agreement;
  - c. The listing of use types or specific uses that shall be permitted or prohibited pursuant to the development agreement, and their phasing, if applicable, and build-out periods;
  - d. The duration of the agreement, which must comply with CCC 40.550.030.B.5;
  - e. Provisions for the termination of the agreement, which must comply with CCC 40.550.030.B.5;
  - f. A map depicting the location of specific public amenities, infrastructure improvements or other public benefits that shall be provided through implementation of the agreement;
  - g. A traffic impact study consistent with the requirements of CCC 40.350.020.D;
  - h. A title report containing proof of ownership;
  - i. If the applicant is not the owner of the property, a written and notarized statement by the owner authorizing the applicant to submit and negotiate the application on the owner's behalf, and for the County to process, review, negotiate, and consider the application for approval;
  - j. Identification of whether the development agreement runs with the land; and
  - k. Provisions acknowledging that at the time a specific development application is submitted, all development regulations in effect at the time of submittal shall be applicable.

**G Review Criteria.**

1. The County Manager or designee(s) shall negotiate acceptable terms and conditions of the proposed development agreement, subject to initial authorization by the Clark County Council and to final approval of the development agreement by the Clark County Council.
2. A development agreement must conform to the existing Clark County 20-year Comprehensive Growth Management Plan. The agreement must not allow for use types or densities currently not permitted by the existing zoning ordinance or existing legally established uses.
3. A development agreement must advance the goals and policies of the existing Clark County 20-year Comprehensive Growth Management Plan. Examples of compliance with this requirement include, but are not limited to, demonstration of one or more of the following:
  - a. Promoting vitality of an area designated as a Regional, Countywide or Local Center;
  - b. Preserving resource lands;
  - c. Promoting community sustainability through complete, compact and connected communities;
  - d. Dedicating lands for public facilities or services; and
  - e. Constructing of public improvements.

**H. Procedures.**

1. Preliminary Review.
  - a. Preliminary review is required for all development agreement applications. To initiate preliminary review, an applicant shall submit a completed development agreement application, pursuant to CCC 40.550.030.E, to the Permit Center, along with the required preliminary review fee. The required preliminary review fee shall be twenty percent of the total fee cost established in CCC 6.110A.010. The Land Use Division of the Community Development Department shall determine whether the application is fully complete.
  - b. Within twenty-one (21) calendar days after acceptance of a fully complete development agreement application, the County Manager or designee(s) shall collect a cursory assessment from each of the Departments of Community Development, Community Planning, and Public Works.
  - c. Upon receipt of the cursory assessments, or no later than seven (7) days after receipt of the cursory assessments the County Manager or designee(s) shall schedule a public meeting with the Council to occur no less than ten (10) days after the deadline for collection of the cursory assessments. The County Manager or designee(s) shall provide all materials contemporaneously with scheduling the public meeting.

d. The preliminary review procedures, required by this section, may be waived by Clark County Council when the County requests a development agreement to be executed.

2. Initial Authorization by the Clark County Council.
  - a. The Clark County Council shall hold a public meeting in accordance with the rules and procedures adopted by the Council. The County Manager shall present the preliminary departmental assessments and a recommendation whether the County should proceed to negotiate the proposed development agreement.
  - b. The Clark County Council may direct the County Manager to proceed with negotiating the terms of the draft development agreement, or it may deny the development agreement application.
3. Negotiation and Recommendation.
  - a. The applicant shall submit all the materials required by Section 40.550.030.F, along with a final review fee, to initiate negotiations. The required final review fee shall be the total fee established in CCC 6.110A.010, less the fee paid at preliminary review.
  - b. The County Manager may appoint a designee to conduct negotiations on behalf of the County and provide a recommendation to the County Manager.
  - c. The draft development agreement shall be forwarded to each affected department which shall review and comment to the County Manager regarding the policy and financial implication of the proposal.
  - d. After negotiating the terms of a proposed project development agreement, the County Manager shall forward the proposed development agreement with a recommendation to the Clark County Council for its review and approval.
  - e. After negotiating the terms of a proposed non-project development agreement, the County Manager shall forward the proposed development agreement with a recommendation to the Planning Commission.
4. Final Consideration by Clark County Council..
  - a. The Clark County Council shall consider a proposed development agreement in a public hearing and the Council shall either adopt an ordinance or resolution authorizing the County Manager to enter into the development agreement or may deny the proposed development agreement.
  - b. The County Manager will designate in writing the department responsible for administering and monitoring compliance with the approved Development Agreement.

**I. Effect.**

1. A development agreement pursuant to Chapter 36.70B RCW and this Section shall:

Bind the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property subject to the development agreement;

2. Upon approval of a development agreement pursuant to CCC 40.550.030.H and its execution by all the parties to the agreement, the County shall record the agreement with the Clark County Auditor. On the date of recordation, or any later date specified in the agreement, the development agreement will take effect.

**J. Amendment.** Any revision to an approved development agreement must be by written amendment, made during the term of the development agreement, duly authorized by the Council pursuant to the procedures set forth in Section 40.550.030.H.2-4, and signed by the parties.

**Comment [HM1]:** DEAB questioned how DA's that have been previously approved would get extended in the new procedures (if approved). Specifically, DEAB was interested in DA's that had vested transportation trips and how those trips may carry forward if the DA was set to expire.