



Staff Report

TO: Clark County Planning Commission
FROM: Oliver Orjiako, Director
PREPARED BY: Matt Hermen, Planner III
DATE: August 15, 2019
SUBJECT: CPZ2019-00029 Development Agreement Procedures (TITLE 40)

PROPOSED ACTION

Clark County Community Planning is requesting an amendment to Clark County Unified Development Code Title 40 as follows:

Add new Section 40.550.030 to create a consistent process and criteria for review of proposed development agreements.

The proposed amendments are attached in Exhibit 1.

BACKGROUND

A development agreement (DA) is a voluntary contract between a local jurisdiction and a person who owns or controls property within the jurisdiction, detailing the obligations of both parties and specifying the standards and conditions that will govern development of the property. Although the agreements are voluntary, once made they are binding on the parties and their successors.

A DA provides assurances to the developer that the development regulations that apply to the project will not change during the term of the agreement. The city or county may require conditions to mitigate project impacts, as well as clarification about project phasing and timing of public improvements. RCW 36.70B.170 describes the type of development standards that may be addressed in a DA.

Clark County typically processes and approves DAs for large complex land development, rezones, or plan redesignations. In most situations, DAs are initiated by the developer, rather than the county. The agreements provide certainty in the development process. The certainty in the DA reduces the financial risk to the developer, and provides benefits to the County. However, Clark County lacks a formal process or criteria for reviewing, negotiating and approving DA's. The absence of codified procedures introduces uncertainty into the establishment of DA's.

For example, the County departments responsible to take the lead and provide assistance in negotiating a DA are not now identified. Developers' representatives currently are able to "forum shop" by submitting a proposed DA to any one or more of Public Works, Community Development, Community Planning, the Prosecuting Attorney's Office, or individual Councilors. After submittal, there is no formal schedule for review. The Council currently lacks an explicit role in authorizing the negotiation of a DA. Finally, after a DA is approved, no department is now assigned responsibility to manage the implementation of the DA.

Staff identified the need to create new code for negotiating, adopting, and administering proposed development agreements. The purposes of the new code include:

1. Creating 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, providing certainty to a developer that a project may proceed to be developed consistent with the development standards, zoning ordinances, regulations, and other code provisions in effect at the time of the approval.
3. Providing assurance that currently allowed uses for a property may be maintained for a specified period of time in exchange for specific consideration in the form of a developer's commitment that benefits the County and advances the Comprehensive Plan's goals and policies.
4. Providing a consistent process and criteria for review of proposed development agreements.

SUMMARY OF PUBLIC INVOLVEMENT PROCESS

The council approved proceeding with adoption of development agreement procedures at a council work session on May 29, 2019. On June 6, 2019 the Washington State Department of Commerce received the 60-day Notice of Intent to Adopt Amendment as required under RCW 36.70A.106. The 60-day notice period ended on August 5, 2019. On July 18, 2019, the proposed amendments were posted on the Clark County website. On July 23, 2019, a Notice of Determination of Non-Significance and SEPA Environmental Checklist were published in the Columbian newspaper. On July 31, 2019, a legal notice was published in the Columbian newspaper notifying the public of the Planning Commission's public hearing to be held on August 15, 2019. The proposed amendments were reviewed by the Development Engineering Advisory Board (DEAB) on August 1, 2019. The DEAB will submit a separate recommendation from the Planning Commission to the Clark County Council. The council will hold a second work session on October 2, 2019, to discuss the proposed amendments and will hold a council hearing on November 5, 2019 to consider an adopting ordinance on the proposed amendments.

Public comments are included in the Planning Commission Hearing binder.

APPLICABLE CRITERIA, EVALUATION AND FINDINGS

The Clark County Unified Development Code, Title 40 (CCC), consolidates all development-related regulations, land use zoning, critical areas, and environmental protection.

CCC is required to be consistent with the 20-year Comprehensive Growth Management Plan. Amendments to CCC respond to a substantial change in policy, better implements applicable comprehensive plan policies, or reflect changes in federal/state law. The proposed amendment is provided in Exhibits 1.

Growth Management Act (GMA)

The GMA goals set the general direction for the county in adopting its framework plan and comprehensive plan policies. The GMA lists thirteen overall goals in RCW 36.70A.020 plus the shoreline goal added in RCW 36.70A.480(1). The goals are not listed in order of priority. The GMA goal that applies to the proposed action is Goal 11.

Goal 11: Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

Finding: The proposed code changes clarify processes, timelines, submittal requirements, and criteria for the submittal, public authorization of negotiation, review, approval and administration of development agreements in Clark County. The proposed changes ensure consistency and compliance

with RCWs and WACs, the Home Rule Charter, and the 2016 Comprehensive Growth Management Plan. The proposed changes better implement the GMA goal.

The process of taking the proposed Title 40 amendments through the Type IV legislative process encouraged citizen participation by: 1) posting the proposed amendments on the county web page early in the process, 2) circulating the proposed amendments to the Department of Commerce, 3) posting legal notice of the SEPA checklist and planning commission public hearing in the paper of record; 4) holding council work sessions, one planning commission work session, and one work session with the Development Engineering and Advisory Board, and 5) holding two public hearings (one with the Planning Commission and one with the council).

In addition, the proposed code complies with RCW 36.70B.170-.210, which authorize local jurisdictions to enter into development agreements.

NEXT STEPS

The County Council will hold a work session on August 21, 2019, and a public hearing on November 5, 2019, to discuss these proposed changes to Title 40.

RECOMMENDATION AND CONCLUSIONS

Based on the information presented in this report, staff recommends that the Planning Commission forward a recommendation of **APPROVAL** to Clark County Councilors.