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## Sec. 94-43. - Developer agreements.

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- a. *Definitions.* The following definitions shall be used in the administration of the provision of this section.

**Comprehensive plan** means the comprehensive plan of the city adopted pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act.

**Developer** means any person, including a governmental agency, undertaking any development.

**Development** means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

1. The following activities or uses shall be taken for the purposes of this section to involve development:
  - a. A reconstruction, alteration of the size, or material change in the external appearance of a structure or on land.
  - b. A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices or, dwelling units in a structure or on land.
  - c. Alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal, including any coastal construction as defined in F.S. § 161.021.
  - d. Commencement of drilling, except to obtain soil samples, mining, or excavation on a parcel of land.
  - e. Demolition of a structure.
  - f. Clearing of land as an adjunct of construction.
  - g. Deposit of refuse, solid or liquid waste, or fill on a parcel of land.
2. The following operations or uses shall not be taken for the purpose of this act to involve development:
  - a. Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.
  - b. Work by any utility and other persons engaged in the distribution or transmission of gas or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.
  - c. Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.
  - d. The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.
  - e. The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.
  - f. A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.
  - g. A change in the ownership or form of ownership of any parcel or structure.
  - h. The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.
3. As designated in an ordinance, rule, or development permit, the term "development" includes all other activities customarily associated with it unless otherwise specified. When appropriate to the context, the term "development" refers to the act of developing or the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this subsection.

**Development permit** means any building permit, zoning permit, suboval, rezoning, certification, special exception, variance, or any other official action of the city having the effect of permitting the development of land.

**Governing body** means the city commission of the City of West Palm Beach.

**Land** means the earth, water, and air, above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

**Land development regulations** means ordinances enacted by the governing body of the city for the regulation of any aspect of development and includes any zoning, rezoning, subdivision, building construction, or sign regulations controlling the development of land.

**Laws** means all ordinances, resolution, comprehensive plans, land development regulations, and rules adopted by the governing body affecting the development of land.

**Local government** means the city or any special district or other entity established pursuant to law which exercises regulatory authority over, and grants development permits for, land development.

**Local planning agency** means the agency designated to prepare a comprehensive plan pursuant to the Florida Local Government Comprehensive Planning and Land Development Regulation Act.

**Person** means any individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, state agency, or any legal entity.

**Public facilities** means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

**State land planning agency** means the state department of community affairs.

b. *Procedures for consideration, approval, review and amendment.*

1. *Required provisions.* All development agreements shall contain at least the following provisions:

- a. A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- b. The duration of the agreement;
- c. The development uses permitted on the land, including population densities, and building intensities and height;
- d. A description of public facilities that will serve the development, including who shall provide such facilities; the date of any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development;
- e. A description of any reservation or dedication of land for public purposes;
- f. A description of all local development permits approved or needed to be approved for the development of the land;
- g. A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
- h. A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- i. A statement indicating that the failure of the agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing such permitting requirements, conditions, terms, or restrictions.

2. *Optional provisions.* A development agreement may provide that the entire development or any phase thereof be commenced or completed within a specific period of time.

3. *Public hearings.*

- a. Before entering into, amending, or revoking a development agreement, at least two public hearings shall be conducted by the city. One of the public hearings may be held by the local planning agency, the other shall be held by the city commission.
  1. Notice of intent to consider a development agreement shall be advertised approximately seven days before each public hearing in a newspaper of general circulation and readership in the county. Notice of intent to consider a development agreement shall also be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.
  2. The notice shall specify the location of the land subject to the development agreement, the development uses, proposed population densities, and the proposed building intensities and height and shall specify a place where a copy of the proposed agreement can be obtained.

4. *Recording.* Within 14 days after the city commission has approved a development agreement, the developer shall cause the agreement to be recorded 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. The burdens of the development agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest or to the parties to the agreement.
5. *Periodic review.* The city shall review land subject to a development agreement at least once every 12 months to determine if there has been demonstrated good faith compliance with the terms of the development agreement. If the city 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 in accordance with the procedures for original adoption.
6. *Amendment or cancellation of a development agreement.* A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

c. *Effect of approval.*

1. The city's laws and policies governing the development of the land in effect at the time of the execution of the development agreement shall govern the development of the land for the duration of the development agreement.
2. The city may apply subsequently adopted laws and policies to the development that is subject to a development agreement only if the city has held a public hearing and determined:
  - a. They are not in conflict with the laws and policies governing the development agreement and do not prevent development of the land uses, intensities, or densities in the development agreement;
  - b. They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement;
  - c. They are specifically anticipated and provided for in the development agreement;
  - d. The local government demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the development agreement; or
  - e. The development agreement is based on substantially inaccurate information supplied by the developer.
3. This section does not abrogate any rights that may vest pursuant to common law.
4. If state or federal laws are enacted after the execution of a development agreement which are applicable to an preclude the parties' compliance with the terms of a development agreement, such agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws.
- d. *Duration of a development agreement.* The duration of a development agreement shall not exceed five years. It may be extended by mutual consent of the city commission and the developer, subject to the procedures set forth in this section required for its original approval.
- e. *Enforcement.* Any party, any aggrieved or adversely affected person as defined in F.S. § 163.3215(2), or any state land planning agency may file an action for injunctive relief in the circuit court for the county to enforce the terms of a development agreement or to challenge compliance of the agreement with the provisions of F.S. §§ 163.3220 through 163.3243.

(Code 1979, § 33-23)