

Resolution



City Council
City of Wilmington
North Carolina
R-2018-46

Introduced By: Sterling B. Cheatham, City Manager

Date: 4/3/2018

Resolution Adopting a Policy on Development Agreements pursuant to Chapter 160A, Article 19, Part 3D

LEGISLATIVE INTENT/PURPOSE:

N.C. Gen. Stat. §160A-400.20 recognizes that certain development projects have both potential community impacts and potential opportunities that may be difficult to accommodate within traditional zoning processes.

In order to more efficiently structure and manage development approvals for such developments, municipalities are authorized to enter into development agreements, subject to the procedures and requirements of Part 3D of Chapter 160A, Article 19.

Development agreements of this nature allow developers a measure of certainty regarding development standards for the duration of an extended development period. Additionally, they allow for more effectual planning between public capital facilities planning, financing, and construction schedules, and the phasing of the private development.

N.C. Gen. Stat. §160A-400.22 permits cities to establish procedures and requirements to consider and enter into development agreements with developers.

THEREFORE, BE IT RESOLVED:

THAT, the proposed "Development Agreement Process", attached as Exhibit "A" and incorporated herein as if fully set forth, is hereby adopted as the City of Wilmington's Development Agreement Process; and

Further, that any Development Agreement currently in process, having previously been approved by the City Council, shall continue under the terms of that specific development agreement and shall not be required to resubmit under this new Development Agreement Process. Any complete submittals for proposed Development Agreements received on or before the date of the adoption of this Resolution, shall not have to resubmit an application, but shall follow the intent of the process as closely as possible, depending on where the application is in the approval process; and

Further, that the City Manager, as soon as practical, shall bring forward any necessary text amendments, including changes to the City Fee Schedule, in order to effectuate this process.

CITY CLERK
CERIFIED TO BE A TRUE COPY
Stephanie Silberman

Adopted at a regular meeting
on April 3, 2018

Bill Saffo
Bill Saffo, Mayor

ATTEST:
Penelope Spicer-Sidbury
Penelope Spicer-Sidbury, City Clerk

APPROVED AS TO FORM:
[Signature]
City Attorney



EXHIBIT A



City of Wilmington Policy

EFFECTIVE DATE: <i>Upon Adoption</i>	APPROVED BY: City Council
SUBJECT: Development Agreement Process	

PURPOSE

North Carolina General Statutes §§160A-400.20 through 160A-400.32 permit municipalities to enter into Development Agreements. A Development Agreement is a unique tool that may be useful for large projects that will be built over a period of years. A Development Agreement provides the developer a level of certainty about what it can build and what mitigation measures will be required, if agreement is reached. It also provides the City with the opportunity to look at the long-term horizon and make sure the proposed development fits with the City's comprehensive planning efforts and local policies.

Development Agreements allow greater latitude and more creative solutions to addressing development impacts. They allow greater flexibility to the City in determining conditions and requirements for the project. They allow the developer greater assurances that the project can be built over a long time period once it is approved without fear that later changes in regulations will significantly affect the later phases of development.

1.0 Project Phases

(Concept Review, Project Evaluation, Agreement Negotiation, and Public Hearings)

1.1 Concept Review Phase

- a) Applicants shall have a conceptual technical review committee (TRC) review prior to submitting an application.
- b) Staff will notify the City Manager of all concept reviews for potential Development Agreements.
- c) The City Manager or designee will notify City Council of all concept reviews for potential Development Agreements.

1.2 Project Evaluation Phase

- a) Application and fee are submitted. No application fees will be refunded due to project's termination during any phase of this process, except at the discretion of City Council.
- b) Review by Staff for completeness of application.
- c) Staff review of application and proposed terms, including but not limited to those set forth below in Section 2.0.
- d) The City Manager or designee will notify City Council of submitted application and proposed terms.

- e) Community Meeting
 - i) At least one (1) community meeting shall be held as set forth below in Section 3.0. The Developer will be responsible for organizing and running the community meeting.. At least one (1) city staff member shall be present.
 - ii) If a traffic impact analysis (TIA) is required for the project, it must be available for review at the community meeting.
- f) A written report and presentation shall be provided to City Council at a public meeting in order to share community comments and to give City Council an opportunity to provide direction to City staff.

1.3 Agreement Negotiation Phase

- a) Meeting between City staff and Developer will be held to discuss any modifications to the proposed Development Agreement based on input from the public during the required community meeting and from City Council.
- b) A second concept TRC review may be held, if necessary, to review any major changes made due to the community meeting and/or City Council input.
- c) During this phase, City Council may also require additional community meetings, or any other additional steps it deems necessary in order to ensure sufficient public input, particularly based on changes made to the original project submittal.
- d) City staff will keep City Council apprised of the progress made during this phase.

1.4 Public Hearings Phase

- a) A draft of the complete Agreement must be available for public review as required by law.
- b) Planning Commission shall hold a public hearing if so directed by City Council or otherwise required by law.
- c) City Council shall hold a public hearing as required under N.C. Gen. Stat. §160A-400.24.
- d) Any other or additional public hearings as required by City Council.

2.0 Plans and other information to accompany application

Property may be eligible for a Development Agreement only in response to and consistent with an application submitted by the owners of all of the property to be included in the Development Agreement. An application for a Development Agreement must include a site plan, drawn to scale, and supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property.

The following information is to be provided with the application:

2.1 Statutory Requirements

- a) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.

- b) The duration of the agreement as required by statute. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.
- c) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.
- d) A description of public facilities that will service the development, including who provides the facilities, the date any new public 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, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.
- f) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.
- g) 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.
- h) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

2.2 Submittal requirements—master plan

The master plan shall consist of the following:

- a) A boundary survey and vicinity map showing the property's total acreage, its zoning classification(s), the general location in relation to major streets, railroads, and/or waterways, the date, and north arrow.
- b) A conceptual land area plan showing the location of all major land use types and the proposed maximum square footage for each use.
- c) Maximum building heights shall be delineated on the conceptual land area plan.
- d) The plan shall indicate all external access points.
- e) Conceptual internal traffic circulation plan.
- f) The plan shall indicate proposed buffers.
- g) Generalized open space areas and stormwater facilities shall be indicated.
- h) The applicant shall submit a text narrative indicating how the proposed plan conforms to conditions of any adopted area plan, corridor plan, or other long-range plan, including the comprehensive plan.
- i) If required by the current City Code provisions, a traffic impact analysis shall be submitted based on the generalized land uses proposed.
- j) Maximum trip generation impacts shall be established as part of the plan.

2.3 Additional information

At any time during this process, the City Manager or City Council may request additional information from the petitioner. This information may include, but is not limited to the following:

- a) Proposed screening, buffers and landscaping over and above that required by these regulations, as well as proposed treatment of any existing natural features;
- b) Existing and general proposed topography, at four-foot contour intervals or less;
- c) The location of significant trees on the subject property;
- d) Scale of buildings relative to abutting property;
- e) Building elevations and exterior features of proposed development;
- f) Any other information needed to demonstrate compliance with this chapter; and
- g) Proposed number and location of signs.

2.4 Existing plans

Conditions from any adopted district, corridor, or area plan, including the comprehensive plan shall be adopted as part of the approval where appropriate. The site plan shall be approved by the technical review committee.

3.0 Community Meeting(s) Requirements

At least one (1) community meeting shall be held before the written report evaluating the proposed project is presented to City Council during the Project Evaluation Phase. All community meetings will be held at a time and place that reasonably facilitates the attendance of those to whom written notice must be given.

Written notice of the community meeting shall be given as follows:

- to the property owners and organizations entitled to notice consistent with the City Code regarding re-zoning notice
- to all property owners within five hundred (500) feet of the parcels to be covered by the proposed Development Agreement
- if the applicant owns property that is contiguous, but not included in the proposed Development Agreement, additional notice must be given to all property owners within five hundred (500) feet of the contiguous parcel's property lines

Following the community meeting, and before any public hearing may be held on an application for a Development Agreement, the petitioner must file in the office of the city clerk a written report of at least one (1) community meeting held by the petitioner.

The report shall include, among other things, a listing of those persons and organizations contacted about the meeting and the manner and date of contact, the date, time and location of the meeting, a roster of the persons in attendance at the meeting, a summary of issues discussed at the meeting, and a description of any changes to the project made by the petitioner as a result of the meeting. In the event the petitioner has not held at least one (1) meeting pursuant to this subsection, the petitioner shall file a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held. The adequacy of a meeting held or report filed pursuant to this section shall

be considered by the City Council but shall not be subject to judicial review. At least one (1) member of the City staff shall attend the community meeting.

4.0 Approval of Development Agreement

Development Agreement decisions are a legislative process subject to judicial review using the same procedures and standard of review applicable to general use district zoning decisions. In considering any application for a Development Agreement, the City Council shall act in accordance with N.G. Gen. Stat §160A-400.24 for public hearings.

5.0 Effect of Approval

5.1 If an application for a Development Agreement is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the property's zoning district classification, the approved master plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the terms of the Development Agreement and are binding on the property.

5.2 The approved Development Agreement shall comply with all City of Wilmington Code provisions and technical standards unless specifically addressed in the approved Development Agreement.

6.0 Alterations to approval

6.1 Except as provided below, changes to an approved Development Agreement or to the conditions attached to the approved petition shall be treated the same as amendments to the zoning maps and shall be processed in accordance with the procedures in the Wilmington City Code. Any changes that would be considered major changes are defined as follows:

- a. Change in use;
- b. Increase in intensity of the development; such as, increase in density of units, whether residential, office, commercial or industrial; an increase in number of off-street parking or loading spaces; or, an increase in impervious surface area;
- c. An increase in overall ground coverage by structures;
- d. A change in any site dimension by more than ten (10) percent;
- e. A reduction in approved open space or screening;
- f. A reduction in size of public utilities;
- g. A change in the soil erosion and sedimentation controls unless approved by the city engineer;
- h. A change in access and internal circulation design
- i. Any change or changes, that when taken as a whole, would be expected to result in a 10% or greater increase to traffic in the immediate area.

6.2 The city manager shall have the delegated authority to approve an administrative amendment to an approved site plan. The city manager shall have no authority to amend the conditions of approval of a Development Agreement. The standard for approving or

denying such a requested change shall be that the change does not significantly alter the site plan and that the change does not have a significant impact upon abutting properties. Any decision must be in writing stating the grounds for approval or denial.

6.3 The city manager, however, shall always have the discretion to decline to exercise the delegated authority. If the city manager declines to exercise this authority, then the applicant can only file a Development Agreement Application for a public hearing and decision.

6.4 Any request for an administrative amendment shall be pursuant to a written letter, signed by the property owner, detailing the requested change. Upon request, the applicant must provide any additional information that is requested. Upon an approval of an administrative amendment, the applicant must file a sufficient number of copies of a revised site plan as deemed necessary by the city manager.

7.0 Fees

R-20,R-15,R-10,R-7,R-5,R-3,HD,HD-O,HD-R,HD-MU,CEM, RO: \$400+\$50/acre

CBD, MSMU, UMX: \$500+\$50/acre

MHP, MF-L, MF-M, MF-H, O & I-1, O & 1-2, MF-MH, NB: \$600+\$50/acre

CB, RB, and CS, PD, A1, LI, IND, MX, RFMU: \$800+\$50/acre

Note: Acreage will be rounded to the nearest ¼ acre to determine the fees. For example, a 1.68-acre proposal to rezone to CB would cost an applicant \$887.50 at $\$800 + (1.75 \times 50) = \887.50 .