

Chapter 33

DEVELOPMENT AGREEMENTS

Articles:

1. General Provisions

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Sec. 33-1.1 Definitions--Execution.

- (a) The following terms when used in this chapter shall have the following respective meanings:
- "Council" means the city council of the City and County of Honolulu.
- "Designated agency" means the department of land utilization.
- "Development" includes but is not be limited to the subdivision of land or change in the intensity of the use of the land or the construction of permanent structures thereon.
- "Developer" means a person who has a legal or equitable right to effect the development of the subject real property.
- "Discretionary permit" includes any permit issuable by the council, including special management area use permits; any permit issuable by the designated agency, including conditional use permits and site plan review permits; or any permit issuable as a matter of discretion by any federal, state or county agency. "Discretionary permit" does not include grading permits, construction permits, or any permits issuable under the city building, plumbing, fire or electrical codes.
- "Lessee with standing" means any person having current lease rights in the property and from, or through which, directly or indirectly, the developer has leased the property or has obtained development rights in the property.
- "Person" means an individual, group, partnership, firm, association, corporation, trust, governmental agency, governmental official, administrative body or tribunal or any other legal form of business or legal entity.
- "State" means the State of Hawaii.
- (b) For the purposes of this chapter, a development agreement shall be deemed to have been "executed" when it has been signed by all parties thereto.

(Added by Ord. 96-09)

Sec. 33-1.2 General authorization.

- (a) Pursuant to HRS Chapter 46, Part VII, the city may enter into a development agreement with a developer. The agreement may be requested by either the city or by a developer, pursuant to Section 33-1.7.
- (b) Pursuant to HRS Section 46-131, each development agreement shall be deemed an administrative act of the government body made party to the agreement.
- (c) The designated agency is authorized to negotiate, prepare, and administer a development agreement, in accordance with this chapter, with any developer.
- (d) If subsequent to March 29, 1996,* a statute is enacted by the state that provides that development agreements shall be subject to the exercise of county initiative power, either direct or indirect, or to county referendum, any development agreement entered into after such enactment shall be subject thereto.

(Added by Ord. 96-09)

[*Editor's Note: "March 29, 1996" is substituted for "the effective date of this ordinance."]

Sec. 33-1.3 Negotiation, approval and execution of development agreements.

- (a) A proposed development agreement may be negotiated upon request by a developer, by the city or, for state developments, by the state, by submitting an application in accordance with Section 33-1.7. Negotiations by and among all parties may be pursued, provided that the development agreement shall not be executed by the mayor until the developer has obtained the approval of the council and all development plan land use map and zoning district designations necessary for the proposed development have been enacted and become effective. The mayor shall not execute the development agreement until all nongovernmental parties thereto have executed the development agreement. The council may, as a condition to its approval of a development agreement, require the prior execution thereof by all nongovernmental parties thereto. If a development agreement approved in connection with a rezoning ordinance is not executed by all parties within 30 days after the effective date of the ordinance, the director of land utilization shall immediately initiate action to rezone the affected property to the zoning that existed prior to the effective date of the rezoning ordinance.

- (b) The designated agency shall submit any proposed development agreement to the council for its approval, modification and approval as modified, or rejection, by resolution adopted by a majority of the council.
(Added by Ord. 96-09)

Sec. 33-1.4 Periodic review--Termination of agreement.

- (a) In accordance with this section, the designated agency shall conduct periodic reviews of all development agreements to determine compliance with the terms and conditions thereof by the parties thereto.
- (b) Each development agreement shall specify requirements for periodic review thereof by the designated agency for compliance with the provisions of the agreement; provided that such reviews shall be conducted at least once a year. The designated agency may conduct reviews at more frequent intervals, as specified in the development agreement, or if the designated agency has reason to believe the agreement is being or has been violated.
- (c) If the designated agency finds that any party has committed a material breach of the terms or conditions of a development agreement, the following procedure shall be followed:
- (1) The designated agency shall, within 15 days of its making such finding, notify such party in writing, setting forth the specific breach found and the evidence supporting the finding, and provide the party a reasonable time within which to cure the breach.
 - (2) The designated agency shall give the party the opportunity to request a hearing before the director of land utilization or the director's designee to rebut the findings of the designated agency, or if the designated agency finds that an amendment to the agreement would meet its concerns, an opportunity to consent to such amendment.
 - (3) If the party fails successfully to rebut the findings at the hearing or to cure the breach within the time provided, or if the designated agency, after obtaining the consent of the party found to be in breach, wishes to propose an amendment to the development agreement to meet the designated agency's concerns, it shall notify the council.
 - (4) The council thereafter may, but need not, take one of the following actions:
 - (A) Unilaterally terminate the agreement and impose any other penalties which are stated in the agreement.
 - (B) Amend the agreement pursuant to Section 33-1.9, so that the party is no longer in material breach thereof.
- (d) The designated agency shall establish rules of procedure for any party found to be in material breach to rebut the finding. The hearing procedures shall conform to the requirements of HRS Chapter 91, relating to contested case hearings.
- (e) Nothing in this article shall preclude the council, following termination of a development agreement, from taking action with respect to the subject land, including rezoning thereof, independent of the agreement.

(Added by Ord. 96-09)

Sec. 33-1.5 Development agreement--Provisions.

- (a) A development agreement shall contain the following, when applicable:
- (1) A description of the land that is the subject of the development agreement;
 - (2) Specifications of the permitted uses of the property, the density or intensity of use, and the design and the maximum height and size of proposed buildings permitted as of the date the development agreement is effective;
 - (3) If required by the council, a master plan of the property subject to the development agreement, designating the permitted locations of uses or categories of uses and designating areas of the property that will be subject to the various specifications on density, intensity, building design, building height and building size referred to in subdivision (2);
 - (4) A description of which city laws, ordinances, resolutions, rules, regulations and policies governing the use of the land that is the subject of the development agreement shall apply to the development in accordance with Section 33-1.6;
 - (5) Provisions, where appropriate, for reservation or dedication of land for public purposes as may be required or permitted pursuant to laws, ordinances, resolutions, rules or policies in effect on the date the development agreement is effective; and
 - (6) A termination date, not to exceed ten years from the effective date of the agreement; provided that the parties to the agreement shall not be precluded from extending the termination date by mutual agreement pursuant to Section 33-1.9 for a period or periods not to exceed two years per extension, or from entering into subsequent development agreements.
- (b) A development agreement shall provide commencement dates and completion dates for any proposed development, including dates for commencement and completion of phases, if any, of the development; provided that such dates as may be set forth in the development agreement may be extended at the discretion of the city at the request of the developer upon good cause shown, subject to subsection (a)(6).
- (c) A development agreement may include any other terms consistent with this chapter not prohibited by law. Such additional terms may, as appropriate, include maps, site plans, narrative and any other documents or materials.
- (d) In addition to the city and the developers, any federal, state, or local governmental agency or body may be included as a party to a development agreement. If more than one governmental body is made a party to a development agreement, the agreement shall specify that the designated agency shall be responsible for the overall administration of the agreement.
- (e) Consent to the development agreement by the fee owner or owners and all lessees with standing shall be a part of each agreement.
- (f) A development agreement shall include conditions imposed by the city on the proposed development; provided that further conditions may be imposed pursuant to any discretionary permit that is required for the proposed development as of the effective day of the agreement.
- (g) No development agreement can preempt the need for a future discretionary permit, issued by the city, where such discretionary permit is required by law in effect as of the effective date of the agreement.

- (h) The city may require a developer to obtain a bond, establish a letter of credit, provide collateral, or use any other adequate means to ensure compliance with a development agreement.

(Added by Ord. 96-09; Am. Ord. 96-58)

Sec. 33-1.5A Development Agreements--Fees.

Applications for development agreements shall be accompanied by a fee of \$10,000.00, plus \$1,000.00 per acre involved or any major fraction thereof, up to a maximum fee of \$30,000.00. Fees shall not be refundable.

(Added by Ord. 14-4)

Sec. 33-1.6 Enforceability--Applicability.

- (a) Unless terminated pursuant to Section 33-1.5(a)(6) or unless cancelled pursuant to Section 33-1.4(c), a development agreement, amended development agreement, or modified development agreement, once entered into, shall be enforceable by any party thereto, or their heirs, successors in interest or permitted assigns.
- (b) All city laws, ordinances, resolutions, rules, regulations, and policies governing uses of the land that is the subject of a development agreement, including, but not limited to those governing permitted uses, density, design, height, parking requirements, setbacks, size, and building specification of proposed buildings, construction standards and specifications, and water utilization requirements applicable to the development of the property subject to the development agreement, shall be those city laws, ordinances, resolutions, rules, regulations, and policies applicable to the development and in force at the time of the execution of the development agreement, notwithstanding any subsequent change adopted by the city which alters or amends the laws, ordinances, resolutions, rules, regulations, or policies specified in this section. Such subsequent change shall be void as applied to property subject to the development agreement to the extent that it changes any city law, ordinance, resolution, rule, regulation, or policy which the development agreement provides shall be maintained in force as written at the time of the development agreement's execution; provided, however, that a development agreement shall not prevent the city from requiring any party or any party's heirs, successors and permitted assigns to comply with city laws, ordinances, resolutions, rules, regulations and policies of general applicability enacted subsequent to the execution date of the development agreement if the city finds it necessary to impose such requirement because a failure to do so would place the residents of the development or of the immediate community, or both, in a condition perilous to the residents' health or safety, or both.
- (c) (1) If the state is a party to a development agreement, the development agreement may contain provisions relating to:
- (A) The applicability of state statutes, resolutions, rules, regulations and policies governing uses of the land that is the subject of the development agreement and amendments thereto; and
- (B) Obligations of the developer to the state or of the state to the developer,
- provided that the inclusion of such provisions is permitted by law.
- (2) Except as may be provided in a development agreement pursuant to subdivision (1), state statutes, resolutions, rules, regulations and policies, and any amendments thereto, shall apply to the development.
- (d) The development agreement shall not affect the applicability of federal statutes, resolutions, rules, regulations and policies, and any amendments thereto, to the development.
- (e) For the purposes of this section, improvement district, maintenance district, tax increment financing district and community facilities district laws, ordinances, resolutions, rules, regulations and policies are laws, ordinances, resolutions, rules, regulations and policies governing the financing of infrastructure construction and maintenance and not governing the uses of land.

(Added by Ord. 96-09; Am. Ord. 96-58)

Sec. 33-1.7 Administrative procedure.

- (a) A request for a development agreement may be initiated by a developer, by the city or, for state developments, by the state, by submitting an application and a preliminary proposal of the substance of the agreement to the designated agency. Within 30 days after receipt of the application, the designated agency shall publish notice of the substance of the proposed development agreement at least once in a newspaper of general circulation in the city and forward copies of the application to all affected agencies and neighborhood boards. As used in this section, "affected neighborhood board" means a neighborhood board whose geographic area contains all or any portion of the proposed development. Any affected agency, affected neighborhood board or interested person shall make any comments on the application to the designated agency within 45 days of the date of the public notice.
- (b) The designated agency shall review all comments and hold a public hearing within 30 days of the expiration of the public comment period provided for in subsection (a). At the public hearing, the designated agency shall afford all interested persons an opportunity to testify on the proposed development agreement and shall recommend appropriate action to the council within 10 days of the completion of the public hearing. The public hearing may be held at the same time as public hearings held for related purposes. The designated agency may conduct more than one public hearing, if the agency deems it warranted. If more than one public hearing is deemed warranted by the designated agency, the 30-day limit may be extended by the designated agency for up to 30 days for each additional hearing conducted. The designated agency may adopt rules relating to its procedures for the processing of development agreement applications.
- (c) The council shall review the proposed development agreement and the recommendations thereon from the designated agency, hold a public hearing, and, by resolution, accept, modify and accept as modified, or reject the development agreement. The council's public hearing may be held at the same time as other public hearings of the council. In addition to other notice requirements prescribed by law for the public hearing, notice of such public hearing shall be given to any affected neighborhood board, and may, but need not, be given to any other affected community organization.
- (d) When appropriate, a development agreement may be processed in conjunction with a proposal for the rezoning of or the issuance of a discretionary permit for all or a portion of the land that is the subject of the development agreement. The processing of the development agreement shall not preclude the imposition of conditions in connection with the rezoning pursuant to Section 21-2.80.

(Added by Ord. 96-09)

Sec. 33-1.8 Effective date--Laws and rules applicable--Effect on zoning and permit requirements.

- (a) Upon completion of the negotiations and administrative process as provided in Section 33-1.3 and Section 33-1.7, the council may adopt a resolution authorizing the city to enter into a development agreement and said agreement shall be effective immediately upon its execution by the mayor on behalf of the city and by all other parties to the agreement.
- (b) No development agreement shall be approved by the council unless the council finds that the provisions of the proposed development agreement are consistent with:
 - (1) The city's general plan;
 - (2) Any applicable development plans; and
 - (3) The applicable zoning district designation or designations,effective as of the date of execution of the development agreement. This subsection shall not preclude the council from finding that the provisions of a proposed development agreement are consistent with the applicable zoning district designation or designations if the council has passed on third reading a zoning district amendment ordinance with which the provisions of the development agreement would be consistent and the time period for the override of a mayoral veto has not lapsed as of the time of the finding.
- (c) The authorization or execution of a development agreement shall not be construed as a granting of any necessary discretionary permit.

(Added by Ord. 96-09)

Sec. 33-1.9 Amendment or cancellation.

A request for amendment or cancellation of a development agreement may be initiated by any party to the agreement. A development agreement may be amended or cancelled, in whole or in part, by mutual consent of all the parties to the agreement; provided that such amendment or cancellation shall be approved by resolution of the council; provided further that a public hearing shall be held by the council prior to any amendment that the council determines would substantially alter the development agreement or any cancellation of a development agreement. (Added by Ord. 96-09)

Sec. 33-1.10 Filing and recordation.

The city shall be responsible for filing or recording the development agreement or any amendment to the development agreement in the office of the assistant registrar of the land court or in the bureau of conveyances of the State of Hawaii, whichever is appropriate, or both if both are appropriate, within 20 days after the city enters into a development agreement or an amendment to the development agreement. The burdens of the development agreement shall be binding upon, and the benefits of the development agreement shall inure to all successors in interest or permitted assigns of the parties to the development agreement. (Added by Ord. 96-09)