

ORDINANCE NO. 2021 – 299 TC 457
TC-9-21 Development Agreements

AN ORDINANCE TO AMEND THE PART 10
RALEIGH UNIFIED DEVELOPMENT ORDINANCE REGARDING
DEVELOPMENT AGREEMENTS

WHEREAS, the City of Raleigh strives to maintain the Unified Development Ordinance; and

WHEREAS, certain amendments to State Law require updates to language that relates to process; and

WHEREAS, the City Council has requested amendments that would clarify procedures, improve language and align with State Law; and

WHEREAS, the purpose of the development agreement review process is to ensure compliance with the standards and provisions of this UDO and state law, while encouraging quality development in the City reflective of the goals, policies, and strategies found in the Comprehensive Plan. Certain developments occur in multiple phases over many years requiring long-term commitments of public and private resources, requiring careful coordination of public capital facilities planning, financing, and construction schedules and phasing of private development. Development agreements allow for the flexibility needed to better structure and manage development approvals for such developments and ensure their proper integration into capital facilities programs.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH THAT:

Section 1. Section 10.1.8 of the Part 10 Raleigh Unified Development Ordinance, Summary of Review Authority, is hereby amended as follows:

Below the row titled “Vested Rights”, insert a row titled “Development Agreements” and in the column titled “X-ref” insert “*Sec. 10.2.20.*”, in the column titled “City Official” insert “R”, in the column titled “City Council” insert “D-PH”, in column titled “Web”, insert “Y”, in the column titled “Site Posted”, insert “Y” and in the column titled “Mailed” insert “Y”.

Section 2. Article 10.2. of the Part 10 Raleigh Unified Development Ordinance, Review Procedures, is hereby amended by adding the following new Section 10.2.20. Development Agreements:

Sec. 10.2.20. Development Agreements

A. Definitions and Applicability

1. Definitions. The following definitions apply in this Sec. 10.2.20:
 - a. Development - The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development. Reference to a 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 item.

- b. Public facilities – 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.
2. Applicability. The City may enter into a development agreement with a developer for the development of property as provided in this section for developable property of any size. Development agreements shall be for a reasonable term specified in the agreement.

B. Pre-Application Conference

Before submitting a draft development agreement, an applicant should schedule a pre-application conference with the Planning Director to discuss the scope of the proposed development agreement.

C. Development Agreement Provisions and Requirements

1. The development agreement shall, at a minimum, include the following:
 - a. A description of the property subject to the agreement and the names of its legal and equitable property owners.
 - b. The duration of the agreement. 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 serve 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. In the event that the development agreement provides that the City shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards.
 - e. A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceed existing laws related to protection of environmentally sensitive property.
 - f. A description, where appropriate, of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare.
 - g. A description, where appropriate, of any provisions for the preservation and restoration of historic structures.
 - h. A specified term of years governing the duration and expiration of the agreement.
 - i. Identify the adopted plan or adopted CIP project included in the proposed development agreement.
2. A development agreement may also provide that the entire development or any phase of it be commenced or completed within a specified period of time. If required otherwise in this UDO, or in the agreement, the development agreement shall provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals. The developer may request a modification in the dates as set forth in the agreement.
3. If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement. A local or regional utility authority may also be made a party to the development agreement.
4. The development agreement also may cover any other matter, including defined performance standards, not inconsistent with this this UDO or state law. The development agreement may include mutually acceptable terms regarding provision of public facilities and other amenities and the allocation of financial responsibility for their provision, provided any impact

mitigation measures offered by the developer beyond those that could be required by the City pursuant to G.S. 160D-804 shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law.

5. The development agreement may, by ordinance, be incorporated, in whole or in part, into any development regulation adopted by the City. A development agreement may be considered concurrently with a rezoning or TCZ affecting the property and development subject to the development agreement. A development agreement may be concurrently considered with and incorporated by reference with a preliminary plat required under a subdivision regulation or a site plan or other development approval required under this UDO. If incorporated into a conditional district, the provisions of the development agreement shall be treated the same as UDO requirements in the event of the developer's bankruptcy.
6. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement. What changes constitute a major modification may be determined by *Sec. 10.2.4.H.1., 2., and 3.* or as provided for in the development agreement.
7. Any performance guarantees under the development agreement shall comply with *Art. 8.1.* of this UDO.

D. Approval Process

1. Planning Director Action

- a. The Planning Director shall review the proposed development agreement in light of the considerations for Planning Director Review in *Sec. 10.2.4.F.* In reviewing the proposed development agreement, the Planning Director shall consult with the heads of the departments of Public Utilities, Transportation, Engineering Services, Parks and Cultural Resources, Development Services, Fire and the City Attorney to check the proposed development agreement against the requirements of the UDO, state law and other applicable technical requirements of the City.
- b. Following review, the Planning Director shall prepare a report and forward the proposed development agreement to the City Council for setting the legislative hearing.

2. Legislative Hearing by City Council

- a. Following the review and report from the Planning Director, the City Council shall conduct a legislative hearing on the proposed development agreement. Notice of the hearing shall be given in accordance with *Sec. 10.1.8.* and must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.
- b. The presiding officer shall open the legislative hearing. Those in favor of the development agreement will be allowed a total of 8 minutes to explain their support and those against the development agreement will be allowed a total of 8 minutes to explain their opposition. Additional time may be allowed by the City Council, but must be the same amount of time for those in support and against.

3. City Council Action

- a. During and following, the legislative hearing, revisions may be made to the proposed development agreement within 30 days following the public hearing date, provided that any change to the development agreement is submitted to City Planning at least 10 calendar days before the date of the meeting at which the City Council's final vote.
- b. If the development agreement is being considered concurrently with and incorporated into a conditional district ordinance or TCZ, then the procedures set forth in Section

10.2.4 shall be followed, in addition to those required by this section, including, but not limited to, Planning Commission review.

F. Recordation

The developer shall record the agreement with the register of deeds in the county where the property is located within 14 days after the City and developer execute an approved development agreement. No development approvals may be issued until the development agreement has been recorded. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

G. Vesting

1. Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws (including this UDO) applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.
2. Except for grounds specified in G.S. 160D-108(c) or G.S. 160D-108.1(f), the City shall not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.
3. In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the City may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement.

H. Expiration

An approved development agreement shall expire as provided in the agreement, including any extension thereof, approved in writing consistent with this section.

Section 3. This text change has been reviewed by the Raleigh Planning Commission.

Section 4. This ordinance has been adopted following a duly advertised legislative hearing of the Raleigh City Council.

Section 5. This ordinance has been provided to the North Carolina Capital Planning Commission as required by law.

Section 6. This ordinance shall be enforced as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code. All criminal sanctions shall be the maximum allowed by law notwithstanding the fifty-dollar limit in N.C.G.S. 14-4(a) or similar limitations.

Section 7. This ordinance is effective thirty (30) days after adoption.

Adopted: October 19, 2021

Effective: November 18, 2021

Distribution: Management Team, Puccini, Taylor, Planning DL