

## **CHAPTER 10– DEVELOPMENT AGREEMENT AND/OR AGREEMENT STANDARDS AND REQUIREMENTS**

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### **Section 7-10-1: Purpose:**

The purpose of this Chapter is to provide for the application, creation and administration of development agreements and/or agreements, as provided in Idaho Statute § 67-6511A.

### **Section 7-10-2: Applicability:**

- A. Applications for zoning ordinance map amendments shall require a submission of a development agreement application as determined by the Director, Commission and/or Board.
- B. Applications for Planned Communities, Planned Unit Developments and Planned Unit Development Districts map amendments shall require a concurrent submission of a development agreement.
- C. Agreement may be required as a condition of approval by the Commission and/or Board.

### **Section 7-10-3: Process:**

- A. When required by this Ordinance or by a condition of approval, an application and fees, shall be submitted to the Director on forms provided by the Department. The application shall include the following materials:
  - 1. An affidavit by the property owner(s) agreeing to the submission of the development agreement; and
  - 2. A listing of any proposed modifications to the standards imposed by other regulations of this Ordinance; and

3. A legal description for the proposed map amendment boundary subject of the development agreement. The legal description shall be in presented in meets and bounds or PLSS, documenting the exterior boundary only of the proposed map amendment. This document shall be submitted to the Department with the following:
    - a. An 8 ½ x 11 map of the subject property.
    - b. A printed copy of the legal description.
    - c. A digital copy of the legal description.
  4. A project description of the uses proposed for the property subject to the development agreement describing the following:
    - a. The specific uses proposed for the property.
    - b. The form, and name if available, of the organization proposed to own and maintain any dedicated open space.
    - c. The proposed systems for water supply, sewage systems, and storm water management.
    - d. The substance of the covenants, grants, easements, or other restrictions proposed to be imposed upon the use of property and structures including any proposed easements for public utilities.
    - e. A project schedule and phasing plan showing the proposed times when all other applications subject to the development agreement are intended to be filed, or in the case of a plan which provides for a development over a period of years, the periods within which application for final approval of each phase is intended to be filed.
    - f. Proposed financing of necessary public facilities with or without subsequent reimbursement over time.
    - g. Other terms and conditions related to the proposed project.
  5. A draft development agreement or agreement prepared by the applicant in conformance with a model agreement provided by the Director.
- B. When required, the Director shall forward the draft development agreement or agreement to the Prosecuting Attorney or their representative for review.

- C. The Commission and/or Board shall review the development agreement or agreement and make a recommendation and/or ruling upon the draft development agreement or agreement, which has been initially reviewed by the Director, and the Prosecuting Attorney, with any attached conditions of approval as deemed necessary.
- D. The applicant or owner shall sign the development agreement or agreement prior to the Board action on the final development agreement.
- E. Upon approval by the Board, the development agreement or agreement shall be recorded with the Elmore County Recorder. If the development agreement or agreement is in connection with a PC, a PUD or a PUDD, Conceptual Densities and Intensities Map, Development Standards, and Development Plan shall be included as addenda to the Development Agreement.

**Section 7-10-4: General Regulations:**

- A. The Board is authorized to adopt, by Ordinance, rules governing the creation, form, recording, modification, enforcement, and termination of development agreements or agreement.
- B. A development agreement or agreement shall not prevent the Board, in subsequent actions applicable to the property, from adopting new ordinances, resolutions, and regulations that conflict with those ordinances, resolutions and regulations in effect at the time the agreement is made, except that any subsequent action by the Board shall not prevent the development of the property as set forth in the approved development agreement.
- C. The Board may suspend the issuance of any permits after a noticed public hearing if it finds that a clear and imminent danger to the public health, safety, or welfare requires the suspension or as otherwise directed by this Ordinance.
- D. In the event that State or Federal laws or regulations, enacted after a development agreement or agreement has been entered into, prevent or preclude compliance with one or more regulations of the development agreement, such agreement may be amended or terminated pursuant to this Ordinance, as may be necessary to comply with the new State or Federal laws or regulations.

**Section 7-10-5: Required Finding:**

In order to approve the application, the Board shall find that the proposed development agreement or agreement complies with the regulations of this Ordinance.

**Section 7-10-6: Periodic Review:**

- A. The Director shall monitor the terms and conditions of the final development agreement or agreement. A more frequent review may be undertaken at the Director's discretion or at the direction of the Board.
- B. As part of the review, the applicant, owner, or successor in interest shall be required to demonstrate good faith compliance with the recorded development agreement or agreement.
- C. If the Director finds that the applicant or owner has failed to perform or comply with the terms of this agreement, the Director shall notify the applicant or owner of the failure of performance or compliance. If after ninety (90) days, the applicant or owner has not made a good faith effort toward compliance with the terms of this agreement, the Director shall forward the development agreement to the Board for review and action.
- D. If the Board finds and determines, on the basis of substantial evidence, that the applicant, owner, or successor in interest has not complied in good faith with the terms and/or conditions of the final development agreement, action may be taken to terminate the agreement by the Board.

**Section 7-10-7: Amendment or Termination of Final Development Agreement:**

- A. A final development agreement or agreement may be amended or terminated in whole or in part, by either a request of the parties to the agreement, or their successors in interest, with approval by the Board or by action initiated by the Board as set forth in this Ordinance.
- B. Notice of intention to amend or terminate any portion of the final development agreement or agreement shall be in accordance with this Ordinance.
- C. To amend a development agreement or agreement, the Board shall make the required finding as specified in this Ordinance for approval of an amendment to the recorded development agreement.
- D. The Board may terminate a development agreement or agreement if one of the following applies:
  - 1. The termination is requested by the parties to the agreement or their successors in interest, and the Board determines that the termination would not be materially detrimental to the general public, health, safety, and welfare of the County.
  - 2. The Board determines that the parties to the agreement, or their successors in interest, have failed to comply with the terms of the development agreement

and the Board determines that termination serves the interests of the general public, health, safety and welfare of the county.

- E. The termination of a development agreement or agreement shall result in the reversal of the zoning ordinance map amendment approval and applicable development approval for any undeveloped portion of property subject to the development agreement. The undeveloped property subject to the development agreement shall be rezoned to the base zone classification in effect prior to approval of the development agreement.
- F. Any action by the Board to amend or terminate a previously recorded development agreement or agreement shall result in the recordation of the amended development agreement or agreement or termination thereof in the office of the Elmore County Recorder.
- G. Recordation: Upon approval by the board, the development agreement or agreement shall be recorded in the Elmore County Clerk's office in compliance with this Ordinance.
- H. Final Approval: Approval of the zoning ordinance map amendment by the Board shall be contingent upon and recordation of the development agreement.

