

ORDINANCE NO. 1471

CITY OF LACEY

AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON RELATING TO DEVELOPMENT AGREEMENTS, ADOPTING A NEW CHAPTER 16.82 OF THE LACEY MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION.

WHEREAS, predictability in the development review process can encourage development and redevelopment of property, and

WHEREAS, State law provides the authority and direction for local jurisdictions to enter into development agreements with project applicants to enhance certainty in the development process for both the City and the developer, and

WHEREAS, the authority to enter into a development agreement must be clearly set forth in a jurisdiction's development regulations, and

WHEREAS, a State Environmental Policy Act (SEPA) Determination of Non-Significance was issued and published for the City's proposed development regulations on April 27, 2015 and no public comments were received, and

WHEREAS, a 60-day Notice of Intent to adopt amendments to the City's development regulations was sent to the state Department of Commerce for agency comments and no comments were received, and

WHEREAS, the City's Planning Commission reviewed the proposed development regulations on April 7 and April 21, 2015 and held a public hearing on May 19, 2015, and

WHEREAS, the City's Planning Commission held a vote and unanimously recommends adoption of the proposed development regulations, and

WHEREAS, the City Council finds that the adoption of said development regulations will be in the public interest, NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, AS FOLLOWS:

Section 1. There is hereby added to the Lacey Municipal Code a new Chapter 16.82, to read as follows:

**16.82.005 Authority.**

A. This chapter applies to development agreements authorized pursuant to RCW Chapters 36.70B.170 – 36.70B.210, as a legislative action, between the City of Lacey and a person having ownership or control of real property within its jurisdiction. The execution of a development agreement is a proper exercise of City police power and contract authority.

B. The City may enter into a development agreement for real property outside its city limits as part of a proposed annexation, or a service agreement.

C. The provisions of this chapter do not apply to or affect the validity of any contract rezone, concomitant agreement, annexation agreement or other agreement in existence on or before the effective date of this chapter, or adopted under separate authority, even though such agreements may also relate to development standards, mitigation, and other regulatory requirements.

D. The City may enter into development agreements pursuant to this chapter. The decision whether to enter into a development agreement is discretionary with the City Council. The development agreement shall provide for the scope and timing of the project, applicable regulations and requirements, mitigation requirements and other matters relating to the development process.

**16.82.010 Purpose.**

The purpose of development agreements are as follows:

1. The lack of certainty in the approval of development projects can result in a waste of public and private resources escalate housing costs for consumers, and discourage the commitment to comprehensive planning which maximizes efficient use of resources at the least economic cost to the public.

2. Assurance in the development review process can significantly encourage development or redevelopment of real property. This certainty is especially important for large-scale or multiphase developments that take years to complete and that require substantial financial commitments at an early stage.
3. A development agreement promotes the general welfare by balancing the public and private interests, providing reasonable certainty for a development project, and addressing other matters, including funding or providing services, infrastructure, or other facilities.

#### **16.82.020 Development Standards.**

A. Any person intending to propose a development agreement shall first meet with the Director of Community Development or their designee for purposes of understanding the parameters of the proposal and applicable procedures.

B. In order to encourage innovative land use techniques and to further achieve public benefits, a development agreement adopted pursuant to this chapter may impose development standards that differ from the standards of the Lacey Municipal Code and the Lacey Development Guidelines and Public Works Standards which would otherwise be applicable to a proposed development. Examples of development standards that may differ include infrastructure requirements, street standards, performance standards, and duration of approvals. All development standards imposed must achieve public benefits, respond to changing community needs, and require modifications which provide the functional equivalent or adequately achieve the purposes of otherwise applicable City standards. Any development standard imposed by the development agreement must be consistent with and further the stated intent of the comprehensive plan.

C. The development standards as approved through a development agreement shall apply to and govern the development and implementation of the subject site in lieu of any conflicting or different standards or requirements elsewhere in the Lacey Municipal Code. A

development agreement shall reserve authority to impose new or different regulations to the extent required by serious threat to public health and safety.

D. Notwithstanding the foregoing, the International Building Code, International Fire Code, and other construction codes in effect in the State of Washington, and as adopted by the City of Lacey, on the date of filing a fully complete building permit application or other construction application for a building on the subject site shall apply; except that no changes to such codes taking effect after the date of the development agreement shall require redesign or modification of then-existing project utilities, facilities, or other infrastructure that were installed in accordance with the development agreement.

#### **16.82.030 Contents of a Development Agreement.**

A. A development agreement must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement.

B. For purposes of this chapter, the term “development standards” means and includes, but is not limited to the following items. In approving a development agreement, conditions of approval shall at a minimum establish:

1. A site plan for the entire project, showing locations of sensitive areas and buffers, required open spaces, perimeter buffers, location of residential development, and location of non-residential development;
2. Project elements such as permitted uses, residential densities and nonresidential densities; range of uses authorized for any non-residential development; intensities; and building sizes;
3. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of State law, any reimbursement provisions, other financial contributions by the property owner, or dedications;

4. Mitigation measures, development conditions, and other requirements under LMC Chapter 14.24, Environmental Policy, and RCW Chapter 43.21C;
5. Design standards such as maximum heights, setbacks, streets, drainage and water quality requirements, landscaping, and other development features;
6. Sewer, water, stormwater and other utility plans;
7. Parks and open space preservation;
8. Phasing plan, if applicable;
9. Review procedures and standards for implementing decisions;
10. Thresholds and procedures for amendments to the agreement;
11. A dispute resolution process for the failure or refusal to comply with the terms of the agreement;
12. A build-out or vesting period for applicable standards; and
13. Any other development requirement or procedure deemed appropriate by the City Council.

C. Nothing in this Chapter is intended to authorize the City to impose impact fees, inspection fees, or dedications or to require any other financial contributions or mitigation measures except as expressly authorized by other applicable provisions of law.

**16.82.040 Effect and Vesting.**

A. Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period of the project specified in the agreement, and the project may not be subject to an amendment to a zoning ordinance, or development standard, or regulation adopted after the effective date of the agreement. A permit or approval issued by the City after the execution of the development agreement must be consistent with the development agreement.

B. Under subsection (A), a development agreement provides an alternative to vesting rights provided in Section 1B.060 of the Lacey Development Guidelines and Public Works Standards.

C. The term of the approval of a development agreement shall be determined on a project specific basis. The City Council may consider modifying the term of an agreement at the request of the property owner. In order to modify the term of the agreement, the City Council shall find that the agreement is consistent with the City's Comprehensive Plan and modifying the term of the agreement is in the best interest of the City.

D. A development agreement may reserve capacity in the transportation system for the proposed developments trip generation and, in such case, the proposed development shall be deemed to have achieved transportation concurrency under the concurrency rules and regulations in effect on the effective date of the development agreement. The term for the concurrency determination shall be set forth in the development agreement.

**16.82.050 Procedure.**

A. If a development agreement is not proposed in conjunction with an action requiring 'quasi-judicial review' or 'legislative review' under Chapter 1C of the City of Lacey Development Guidelines and Public Works Standards, the development agreement shall be presented to City Council at a public hearing for approval by ordinance or resolution.

B. If the development agreement is proposed in conjunction with an action requiring "quasi-judicial review," the development agreement shall be presented to the City Council for final approval by ordinance or resolution, after a public hearing with the Hearing Examiner. The Hearing Examiner shall make a recommendation of approval or denial on the applications and the development agreement to the City Council.

C. If the development agreement is proposed in conjunction with an action requiring 'legislative review,' the development agreement shall be presented to the City Council for final approval by ordinance or resolution, after a public hearing with the Planning Commission. The Planning Commission shall make a recommendation of approval or denial on the applications and the development agreement to the City Council.

D. Prior to any required public hearing, the Director or their designee shall issue a public hearing notice in accordance with the provisions for providing such notice under Section 1C of the City of Lacey Development Guidelines and Public Works Standards.

**16.82.060 City Council Action.**

A. The City Council shall consider the proposed development at and following the public hearing. The City Council may approve and enter into a proposed development agreement if the Council finds, in its sole discretion, that a proposed agreement is consistent with the comprehensive plan and the purposes of this chapter. The decision of the City Council on a development agreement is the final decision of the City.

B. Notice of the final decision by the City Council shall be mailed to the applicant, to any person who submitted public comments, and to any other person who has specifically requested it.

C. The development agreement shall be recorded with the Thurston County Auditor prior to the effective date of any development proposal that was submitted and reviewed concurrently with the development agreement.

D. The appeal of a final decision of the City Council shall be timely filed as a judicial appeal pursuant to Section 1D.040, of the City of Lacey Development Guidelines and Public Works Standards.

**16.82.070 Terms of Agreement.**

A. A development agreement pursuant to RCW 36.70B and this chapter shall be binding on the parties and their successors during the term of the development agreement and enforceable during its term by a party to the agreement, unless the agreement is amended or terminated.

B. The City reserves the right to modify or terminate the development agreement upon the failure or refusal to comply with the terms of the agreement by the developer in accordance with the dispute resolution process contained in the agreement.

C. Amendments to the terms of the development agreement shall be done only by a written instrument executed by all parties pursuant to the procedures of this article, or as may be amended. The City will process and decide upon application of an amendment in accordance with the thresholds and procedures for amendments contained in the project specific agreement.

Section 2. SEVERABILITY. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 3. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make corrections to this ordinance including, but not limited to, the corrections of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 4. The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,  
WASHINGTON, at a regularly-called meeting thereof, held this 11<sup>th</sup> day of  
JUNE, 2015.

CITY COUNCIL

By:   
Mayor

Approved as to form:

  
City Attorney

Attest:

  
City Clerk

**SUMMARY FOR PUBLICATION  
ORDINANCE NO 1471  
CITY OF LACEY**

The City Council of the City of Lacey, Washington, passed on June 11, 2015, Ordinance No. 1471, entitled "AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON RELATING TO DEVELOPMENT AGREEMENTS, ADOPTING A NEW CHAPTER 16.82 OF THE LACEY MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION."

The main points of the Ordinance are described as follows:

1. The Ordinance adopts a new Chapter 16.82 entitled Development Agreements.
2. The Ordinance approves this Summary for Publication.

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Published: June 15, 2015.