

17.40 - Development agreements.

- A. Development Agreements are Discretionary. Consistent with RCW 36.70B.170, the city council may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations contained in KMC Title 17 and applicable adopted city, plans polices, and standards.
- B. Contents. Development agreements shall set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement, including master planned development proposed under the Kelso Municipal Code (KMC). Unless a variance is approved, a development agreement shall be consistent with all applicable development regulations contained in the KMC. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities.
- C. For the purposes of this section, "development standards" include, but are not limited to:
 - 1. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
 - 2. 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, inspection fees, or dedications;
 - 3. Mitigation measures, development conditions, and other requirements under KMC 17.14 (SEPA);
 - 4. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
 - 5. Affordable housing;
 - 6. Parks and open space preservation;
 - 7. Phasing;
 - 8. Review procedures and standards for implementing decisions;
 - 9. A build-out or vesting period for applicable standards; and
 - 10. Any other appropriate development requirement or procedure.
- D. Effect. 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 or a new 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. A development agreement shall reference by ordinance or code provision the land use regulations under which the project described in the development agreement is vested.
- E. Vesting. Under subsection D, a development agreement provides an alternative to vesting under RCW 36.70B.180 in advance of submission of project specific applications. In addition, a development agreement may fix the amount of impact fees and permit fees under the KMC, and any other financial contributions by the property owner, which may not be subject to later adopted fee increases. The property owner and city may agree that the project described in the development agreement will be subject to later enacted ordinances through the applicable modification procedures of the KMC.

- F. Modifications. The city and property owner may seek mutually agreeable modifications of the development agreement. The city shall reserve authority in each development agreement to unilaterally impose new or different regulations only if necessary, and to the extent necessary, to address a serious threat to public health and safety.
- G. Procedure—No Concurrent Land Use Application. If a development agreement is not proposed in conjunction with a Type II, III or IV land use application under Chapter 17.10, the development agreement shall be presented to city council at a public hearing for approval by ordinance. Prior to the public hearing before city council, the proponent of the development agreement shall complete and submit to the planning director a SEPA checklist if required under Chapter 11.10.110 KMC. A challenge of city council's decision on a development agreement that is not processed in conjunction with a Type III or IV application shall be filed with Clark County Superior Court within thirty days of issuance of a written decision by council.
- H. Procedure—Concurrent Type II, III or IV Land Use Application. If a development agreement is proposed in conjunction with a Type II, III or IV land use application under Chapter 17.10 KMC the development agreement shall be presented to city council at a public hearing for approval by ordinance, after the Type II, III or IV has been approved or recommended for approval by the appropriate reviewing body prior to city council consideration. If a Type II, III or IV land use application is exempt from SEPA, for the development agreement part of the proposal, the proponent shall comply with SEPA pursuant to Chapter 17.10.110 KMC.

The initial review body for the Type II, III or IV application shall not make a final decision on that portion of the application related to the development agreement but shall make a recommendation of approval or denial of the development agreement to city council. If no appeal is filed on the underlying land use application, the planning director shall send fourteen days' advance written notice of the public hearing before city council for consideration of the development agreement to all parties entitled to a notice of decision for the applicable application under Chapter 17.10 KMC. If an appeal is filed of a Type II, III or IV application, the city council shall not review the development agreement until the appeal is before city council or the appeal has been dismissed.

- I. Recording. Within thirty days after approval by city council, the city shall ensure that a development agreement is recorded within the real property records of Clark County. During the term of the development agreement, the agreement is binding on the parties and their successors, including successor jurisdictions. The term of the agreement shall be such length as to be reasonable and shall be agreed to by both the applicant and the city.