

DEVELOPMENT AGREEMENTS

State law authorizes development agreements between local governmental entities and developers to establish the rights and obligations of both parties with respect to a specific development project. The statutes (RCW 36.70B.170 – 210) generally outline the development agreement process, including provisions for initial authorization by ordinance, public hearing requirements, periodic review, and subsequent modification and termination of such agreements.

The statutes also provide elements of such agreements to include:

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 chapter 43.21C RCW;
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.

RCW 36.70B.170

These agreements supplement a local government's land use regulations by providing for agreement as to the specific terms and conditions of a particular development project. The build-out/vesting periods may be very valuable for developers, and the certainty of commitments by the developer may in turn be valuable for the public agency.

A public hearing is required for such agreements, per RCW 36.70B.200.

Because the projects for which development agreements may be used and differences between the local jurisdictions and their zoning and land use regulations, no single template will work without massaging and negotiating the elements of the agreements. Included herewith are several samples that may provide a starting point for creating such agreements.

Note: Per RCW 36.70B.210, the legislature stated that “[n]othing in RCW 36.70B.170 through 36.70B.200 and section 501, chapter 347, Laws of 1995 is intended to authorize local governments 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 state law.”