ORDINANCE NO. 019-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING PROCEDURES FOR THE EXECUTION OF DEVELOPMENT AGREEMENTS WITH PROPERTY OWNERS, REQUIRING CONSISTENCY BETWEEN EXISTING DEVELOPMENT REGULATIONS AND DEVELOPMENT AGREEMENTS, IDENTIFYING THE ELEMENTS OF AN APPLICATION FOR A DEVELOPMENT AGREEMENT, DESCRIBING THE PROCEDURE FOR PROCESSING DEVELOPMENT AGREEMENTS, CLARIFYING THE EFFECT, FORMAT, REQUIREMENTS FOR PUBLIC NOTICE, PUBLIC HEARING, RECORDING AND APPEALS; ADOPTING A NEW CHAPTER 16.90 TO THE PORT ORCHARD MUNICIPAL CODE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orchard has no procedures to allow the City to enter into development agreements with property owners, as described in RCW 36.70B.170 through RCW 36.70B.200; and

WHEREAS the SEPA Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, the City Council held a public hearing to consider this Ordinance, together with public testimony during its regular City Council meeting on December 9, 2014; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, ORDAINS AS FOLLOWS:
Section 1. A new Chapter 16.90 is hereby added to the Port Orchard Municipal Code, which shall read as follows:

Chapter 16.90
DEVELOPMENT AGREEMENTS

Sections:

16.90.010 Intent and Discretionary Nature.
16.90.030 Application Requirements.
16.90.040 Phasing.
16.90.050 Processing Procedures and Appeals.

16.90.010 Intent and Discretionary Nature.

The purpose of this chapter is to authorize the use of development agreements, consistent with RCW 36.70B.170 through RCW 36.70B.210. The City may, but under no circumstances is required to, enter into a development agreement with a person having ownership or control of real property within the City. The development agreement may address such project elements as those set forth in RCW 36.70B.170B(3). The development agreement shall be consistent with the applicable development regulations of the City. The consideration provided by the property owner for the City's decision to enter into the development agreement may vary, depending on the benefit the development agreement will provide to the City and/or the public in general.


A. Form. All development agreements shall be on the standard form approved in advance by the City Attorney for this purpose.

B. Effect. Development agreements are not project permit applications and are not subject to the permit processing procedures in Chapter 36.70B RCW and Title 16 of the POMC. A development agreement shall constitute a binding contract between the City and the property owner and the subsequent owners of any later-acquired interests in the property identified in the development agreement. A development agreement governs the project identified in the development agreement during the term of the development agreement, or for all or that part of the build-out period specified in the development agreement, and may not be subject to an amendment to a zoning ordinance or development standard adopted after the effective date of the agreement. A permit or approval issued/granted by the City after execution of a valid development agreement must be consistent with the development agreement.
C. **Limitations.** Any provision of the development agreement which requires the City to: (1) refrain from exercising any authority; (2) forego adoption of any development regulations affecting the property identified in the agreement; (3) allow vesting beyond the applicable deadlines for a phased development; shall be limited to a period of 20 years. The development agreement shall also contain a proviso that the City may, without incurring any liability, engage in action that would otherwise be a breach if the City makes a determination on the record that the action is necessary to avoid a serious threat to public health and safety, or if the action is required by federal or state law.

D. **Developer's Compliance.** The development agreement shall include a clause stating that the City's duties under the agreement are expressly conditioned upon the property owner's substantial compliance with each and every term, condition, provision and/or covenant in the development agreement, all applicable federal, state and local laws and regulations and the property owner's obligations as identified in any approval or project permit for the property identified in the development agreement.

E. **No Third Party Rights.** Except as otherwise provided in the development agreement, the development agreement shall create no rights enforceable by any party who/which is not a party to the development agreement.

F. **Liability.** The development agreement shall include clause providing that any breach of the development agreement by the City shall give right only to damages under state contract law and shall not give rise to any liability under chapter 64.40 RCW, the Fifth and Fourteenth Amendments to the U.S. Constitution or similar state constitutional provisions.

G. **Termination and Modification.** Every development agreement shall have an identified, specific termination date. Upon termination, any further development of the property shall conform to the development regulations applicable to the property. The City shall not modify any development agreement by extending the termination date. Any request for a modification shall be consistent with the City's development regulations applicable to the property at the time of the request, not the original execution date of the development agreement.

**16.90.030 Application Requirements.** A complete application for a development agreement shall consist of the following:

A. Name, address, telephone number and e-mail address (if any) of the property owner. If the applicant is not the property owner, the applicant
must submit a verified statement from the property owner that the applicant has the property owner's permission to submit the application;

B. Address, parcel number and legal description of the property proposed to be subject to the development agreement;

C. Recent title report confirming that the property identified in the application is owned by the applicant/property owner;

D. Identification of any application (project permit application, comprehensive plan amendment application, development regulation amendment application) that is related to the proposed development agreement;

E. SEPA Checklist;

F. A completed application form and the application fee established by the City for this purpose; and

G. Any other information requested by the Community Development Director relevant to the processing of the development agreement.

16.90.040. Phasing.

A. In order to phase a project to extend the vested rights associated with an underlying project permit application, a development agreement is required. This ensures the availability of public facilities and services to all of the property in the identified individual phases, allows tracking of the available capacity of public facilities and utilities during each phase of construction, and with the extension of the vested rights associated with the project, provides certainty to the developer in the subsequent development approval process.

B. The deadlines in the City's code relating to each type of project permit application must be consulted to establish the baseline vesting period. The City is not required to extend the vesting period. If the City decides to do so through a development agreement, it must be in exchange for the property owner's provision of corresponding benefits to the City in the form of, for example, contributions to public facilities and amenities over and above what would normally be required. In any event, the City shall not allow vesting to extend beyond the established 20 year period after approval of the project permit application.

C. A development agreement for a phased development (such as a subdivision) shall include (in addition to all of the information in Section 16.90.030), all of the following:
1. identification of the phasing schedule;
2. identification of the number of phases and all lots included in each phase;
3. identification of the approximate dates for construction of public streets, public utilities and other improvements in each phase;
4. identification of the approximate dates for commencement of development of each lot, lot sales and building occupancy;
5. identification of the benefits that the property owner will provide to the City in exchange for permission to phase the development according to the proposed schedule;
6. establishment of the deadline for the property owner to submit development applications, including building permit applications, for each phase;
7. a description of the manner in which each phase is designed such that all site requirements are satisfied independently of phases yet to be given final approval and constructed;
8. a description of the manner in which the property owner will ensure that adequate public facilities are available when the impact of development occurs. The property owner shall acknowledge in the development agreement that if the demand for public facilities or services needed to accommodate a subsequent development phase increases following the issuance of a development permit for a prior phase in the approval process, or if public facilities or services included in a concurrency or SEPA determination are not constructed as scheduled in the City's capital facilities plan, final development approval may have to be delayed for future phases pending the achievement of the adopted levels of service.

16.90.050 Processing Procedures and Appeals.

A. Consolidation. Whenever possible, the development agreement shall be consolidated for processing with an underlying project permit application or other application for approval. If the development agreement is consolidated with a project permit application, the property owner must agree to waive the deadline in RCW 36.70B.080 and POMC Section 16.06.070 for issuance of a final decision on the underlying application, as well as the prohibition on no more than one open record hearing and one closed record hearing on the underlying project permit application in RCW 36.70B.060(3) and Section 16.06.110 POMC.

B. Public Notice and Public Hearing.

1. At a minimum, notice of the public hearing on the development agreement shall be given as follows:

   a. Notice shall be published not less than ten (10) days prior to the public hearing in a newspaper of general circulation within
Kitsap County and a newspaper of general circulation in the area where the subject real property is located;

b. Special notice of the public hearing shall be given to adjacent landowners by any other reasonable method the City deems necessary. Adjacent landowners are the owners of real property, as shown by the records of the County Assessor, located within three hundred (300) feet of any portion of the boundary of the subject property. If the owner of the real property which is the subject of the development agreement owns another parcel or parcels of real property which lie adjacent to the real property included in the development agreement, notice under this subsection 1(b) shall be given to owners of real property located within three hundred (300) feet of any portion of the boundaries of such adjacently located parcels of real property owned by the owner of the real property included in the development agreement.

c. All hearing notices shall include a description of the location of the property included in the development agreement. A description may be in the form of either a vicinity location sketch or a written description other than a legal description.

2. The hearing on the development agreement shall be public. While the Director or Hearing Examiner may provide a recommendation on a development agreement (even if the Director or Hearing Examiner makes the final decision on the underlying project permit application), the City Council shall make the final decision whether to approve a development agreement by ordinance or resolution after the public hearing.

3. Modifications to a development agreement shall be in writing, signed by the duly authorized representatives of the parties, be consistent with this chapter and follow the same procedures set forth in this chapter.

C. Appeal. A development agreement associated with an underlying project permit application may be appealed in the same manner and within the same deadline as the underlying project permit application. A development agreement associated with a legislative approval, such as a comprehensive plan amendment, may be appealed in the same manner and within the same deadline as the legislative approval.

4. Recording Against the Property. The City shall record the development agreement against the property with the real property records of the Kitsap County Auditor. During the term of the agreement, it is binding upon the owners of the property and any successors in interest to such property.
Section 2. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional 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 4. Effective Date. This Ordinance shall become effective five days after publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Port Orchard, this 9th day of December, 2014.

Timothy C. Matthes, Mayor

Brandy Rinearson, City Clerk

Carol Morris, City Attorney

John Clauson, Councilmember
NOTICE OF CITY OF PORT ORCHARD
ORDINANCE

The following is a summary of an Ordinance approved by the Port Orchard City Council at their regular Council meeting held December 9, 2014.

ORDINANCE NO. 019-14

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Copies of Ordinance No. 019-14 are available for review at the office of the City Clerk of the City of Port Orchard. Upon written request a statement of the full text of the Ordinance will be mailed to any interested person without charge. Thirty days after publication, copies of Ordinance No. 019-14 will be provided at a nominal charge.

City of Port Orchard

Brandy Rinearson
City Clerk

Publish: Port Orchard Independent
December 19, 2014