



Tom Dolan
Mayor

Byron Jorgenson
Chief Administrative Officer

Michael G. Coulam
Director

MEMORANDUM

September 26, 2016

To: City Council via Planning Commission
From: Community Development Department
Subject: Development Agreements and Water Drainage– CODE-9-16-5131
Amend Title 15A, Chapter 02, General Provisions,
Land Use Development Code, Revised Ordinances of
Sandy City, 2008

HEARING NOTICE: This Code Amendment was noticed in the paper at least 10 days prior to the first Planning Commission meeting.

BACKGROUND

As requested by the Sandy City Council, the Sandy City Community Development Department has filed a request to amend Title 15A, Chapter 02, General Provisions, Land Use Development Code, Revised Ordinances of Sandy City, 2008. The purpose of the Code Amendment is to consider adding provisions that would allow the City to enter into development agreements. Another change to this Chapter would be to clarify that water drainage is not allowed to flow upon adjacent properties without an appropriate easement.

ANALYSIS

Development agreements have been used in other cities for a number of years. Up until now, development agreements have not been a tool the City has used. In the past and under special circumstances, Sandy City has used Special Development (SD) Zones, where specific details and unique standards have been approved as a new zoning district.

The City Council and the Sandy City Attorney's Office have held a number of discussion meetings regarding the concept of using development agreements for new projects. The last meeting was September 6, 2016. At this meeting the City Attorney passed out a handout titled "Pros and Cons of Development Agreements" (enclosed). Concluding this discussion, the City Council directed staff to initiate the process of a code amendment to allow Sandy City to enter into development agreements.

A second part of this code amendment is to add some language in the General Provisions regarding water drainage. It has always been the practice to ensure water does not drain from one property to another without a proper easement. Water drainage is regulated in our

commercial development standards but is also applicable in residential development. Staff is recommending that we add this in the General Provisions so that it is applied city wide.

NON-CONFORMING USES

This Code Amendment would not create any non-conforming situations.

LAND DEVELOPMENT CODE PURPOSE COMPLIANCE

The Sandy City Land Development Code in §15A-01-03 lists the criteria explaining the intent and purpose of the Ordinance. The purpose is:

15A-01-03 Purpose

This Code is adopted to implement Sandy City's General Plan and to promote: public health, safety, convenience, aesthetics, welfare; efficient use of land; sustainable land use and building practices; transportation options and accessibility; crime prevention; timely citizen involvement in land use decision making; and efficiency in development review and land use administration. Specifically, this Code is established to promote the following purposes:

1. General

- a. To facilitate the orderly growth and development of Sandy City.
- b. To facilitate adequate provision for transportation, water, sewage, schools, parks, and other public requirements.
- c. To stabilize property values.
- d. To enhance the economic well being of Sandy City and its inhabitants.

2. Implementation of General Plan

To coordinate and ensure the implementation of the City's General Plan through effective execution of development review requirements, adequate facility and services review and other goals, policies, or programs contained in the General Plan.

3. Comprehensive, Consistent and Equitable Regulations

To establish a system of fair, comprehensive, consistent and equitable regulations, standards and procedures for review and approval of all proposed land development within the City.

4. Efficiently and Effectively Managed Procedures

- a. To promote fair procedures that are efficient and effective in terms of time and expense.
- b. To be effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed, and elected officials.
- c. To foster a positive customer service attitude and to respect the rights of all applicants and affected citizens.

The proposed Code Amendment will create consistency and equitable standards and procedures for all new commercial and residential developments within Sandy City. This will also promote fair procedures that are efficient and effective in terms of time and expense as well as being effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed, and elected officials.

GENERAL PLAN COMPLIANCE

The General Plan encourages appropriate development standards for all uses and zoning categories within Sandy City.

OTHER

Besides the purposes set out in the ordinances cited above, one of the stated purposes of the City's land use ordinances is to facilitate the orderly growth and development of Sandy City (Rev. Ord. of Sandy City 2008, Section 15A-01-03(A)(1)). Some of the general purposes of the City's Development Code are to implement Sandy City's General Plan, and to promote the following public policies: public health, safety, convenience, aesthetics, welfare; efficient use of land; sustainable land use and building practices; transportation options and accessibility; crime prevention; timely citizen involvement in land use decision making; and efficiency in development review and land use administration (R.O.S.C. Sec. 15A-01-03(A)).

STAFF RECOMMENDATION

The Community Development Department requests that the Planning Commission forward a positive recommendation to the City Council to adopt the proposed ordinance amendment as shown in exhibit "A", attached, for the following reasons:

1. Compliance with the Purpose of the Land Development Code by creating consistency and equitable standards and for all new commercial and residential developments within Sandy City. This will also promote fair procedures that are efficient and effective in terms of time and expense as well as being effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed, and elected officials.
2. Compliance with the Goals and Policies of the General Plan by establishing appropriate development standards for all uses and zoning categories within Sandy City.

Planner:



Brian McCuiston
Zoning Administrator

Reviewed by:



Exhibit "A"

15A-02-23 Development Agreements

- A. The City may enter into a real estate development agreement with an applicant to set forth requirements for the development that are in the best interest of the City.
- B. The development agreement shall be executed prior to any zone change, or other development approvals.
- C. The City zoning map shall be revised to reflect the development agreement as a condition of the zone in which the applicant's property is included.
- D. All development agreements, upon proper execution, shall be recorded with the Salt Lake County Recorder's Office, shall run with the land, and shall be binding on all successors in the interest of the affected property.
- E. Remedies sought under the development agreement against the City shall not include monetary damages but may only include specific performance and injunctive relief.
- F. Such other terms as may be proposed and agreed to between the city, property owner(s) and developer may be included within the development agreement.

15A-02-24 Water Drainage

Drainage shall not be allowed to flow onto adjoining lots unless an easement for such purpose has been granted by the owner of the lot on which the water flows.

Pros and Cons of Development Agreements

Sandy City Council Discussion - 9.6.16

"DA's are neither a 'panacea' nor should they be feared"

1. *Adds another tool to the tool kit.*
 - a. Advantage – This tool may work in situations that others do not.
 - b. Disadvantage – It may be used instead of others that are more/equally effective;
Comment: Development staff must "speak up" to offer alternatives if they exist; SD zone suggested by CD Director in Council Meeting as example; City Council should seriously consider not using DA if staff identifies another method; City Council should give staff time to consider alternatives – don't draft DA in Council meeting.

2. *Negotiated/flexible/creative.*
 - a. Advantage – The parties are forced to discuss and understand the project and respective positions.
 - b. Disadvantage – Potential politicizing of the project. More time, funds and effort up front
Comment: Time up front can prevent confusion/conflict over time.

3. *Definitive, certainty, predictability.* (Note: To be legally sufficient, the development agreement must be consistent with the Code existing at the time of executing the agreement)
 - a. Advantage – This should reduce the potential for misunderstandings
 - b. Disadvantage – Potential conflict with the Code, which may already be definitive as to some, many or all of the topics that the parties would like to cover
Comment: Traditional zone may also leave unanswered questions – one size never fits every unique development; Terms of well drafted agreement will can address, mitigate, or avoid conflicts.

4. *Broader vesting possibilities.*
 - a. Advantage – Vesting can be consideration for things City wants and things applicant want.
 - b. Disadvantage – Whether vesting is or is not beneficial to the City is not always apparent up front
Comment: Current Utah Vesting doctrine creates same disadvantage with traditional Euclidean zoning; City is bound by vested right at time of completed application.

5. *Expires.*
 - a. Advantage – The vesting ends with the expiration unless otherwise provided by the agreement.
 - b. Disadvantage – After expiration, the parties will know what the project is not, but will they know what the project is/can be? May be difficult to track.
Comment: Designate "DA" on zoning map; reversion or other clause may clarify what project can be if agreement expires

6. *Recorded and binding upon future owners.*
 - a. Advantage – The City is assured that transfer will not affect the City's bargained-for consideration.
 - b. Disadvantage – The City may not want to be contractually bound to a successor;
Comment: same concern exists with Euclidean zoning – future owners are entitled to vested zone.

7. *Can address phasing, timing of public facilities with build-out of the development.*
 - a. Advantage – The development can balance revenue with costs. Dates certain can be discussed to support predictability.
 - b. Disadvantage – The build-out is sometimes market driven with unpredictable timing.
Comment: Same concern exists with traditional Euclidean zoning approach

8. *Council retains more discretion.*
 - a. Advantage – Legislative decisions receive more deference. Negotiated agreements also receive more deference to the negotiated terms
 - b. Disadvantage – Potential for referendum
Comment: assuming terms are clear and unambiguous, this is an advantage. If unclear or ambiguous, heightened probability of litigation; split among land use practitioners as to whether DA is legislative or administrative - probably legislative zone change subject to referendum also, irrespective of DA.

9. *It's a contract.*
 - a. Advantage – Both the City and Developer are bound to the terms and conditions expressly set forth in the Development Agreement. City may pursue compliance (and enforce non-compliance) through a breach of contract action. Can include terms and conditions (i.e. "no damages") that could not be unilaterally adopted by the City.
 - b. Disadvantage – Contracts have a longer statute of limitations. No matter how well drafted, there is potential for a third party (i.e. judge) to read it differently; "Deference" standard to legislative acts: how will that apply to DA interpretation/enforcement?
Comment: current thinking is that if DA considered a legislative act, subject to referendum, then deference should be given to City: challenge should be 30-days, arbitrary, capricious, illegal should be standard used by court to judge enforceability of provisions; judges also routinely misunderstand Euclidean zoning and misinterpret zoning ordinances;

10. *Terms and conditions can add to or clarify Code requirements.*
 - a. Advantage – Additional clarity and flexibility may be desirable. IF clearly drafted, shields developer from shifting municipal landscape and City from lost memory and "developer recollection" of transaction.
 - b. Disadvantage – May be difficult to track. If laws change, development agreement may not be affected (very narrow exception);
Comment: Current Utah Vesting doctrine creates same disadvantage for City relative to zoning ordinance generally once developer "vests" in given zone; DA may actually give City more flexibility in delineating what rights will or will not change if Code changes

11. *Cannot be changed without mutual consent.*
 - a. Advantage – Certainty, predictability, and beneficial when no change is desired.
 - b. Disadvantage – If City does want the change;
Comment: can't change a vested right of any zone without mutual consent

12. *Treats a large project as a whole.*
 - a. Advantage – Integrated projects and phasing.
 - b. Disadvantage – Potential change of vision as time passes
Comment: occurs with general plan also

This document is for discussion only. It is not intended as a comprehensive summary of the advantages/disadvantages of development agreements; neither does it represent the policy or position of the Sandy City Administration or the Sandy City Council, nor does it constitute legal advice from the Sandy City Attorney

Conditions:

If the Planning Commission does approve the sign theme, staff recommends the following conditions:

1. That installed signage match the location and design of the submitted renderings.
2. A Sign permit is obtained from the Community Development Department for the proposed sign theme, with any future themes to be reviewed by the Planning Commission.

Scott Sabey moved that the Planning Commission approve the consent calendar.

Nancy Day seconded the motion. The vote was as follows: Scott Sabey, yes; Nancy Day, yes; Monica Collard, yes; Ron Mortimer, yes; Lisa Hartman, yes; Joe Baker, yes; Jared Clayton, yes. The vote was unanimous in favor.

**2. Development Agreements and Water Drainage – Title 15A-
Chapter 2, General Provisions, Land Development Code,
Revised Ordinances of Sandy City, 2008 **CODE-9-16-5131****

As requested by the Sandy City Council, the Sandy City Community Development Department requested to amend Title 15A, Chapter 02, General Provisions, Land Use Development Code, Revised Ordinances of Sandy City, 2008. The purpose of the Code Amendment is to consider adding provisions that would allow the City to enter into development agreements. Another change to this Chapter would be to clarify that water drainage is not allowed to flow upon adjacent properties without an appropriate easement.

The Community Development Department requests that the Planning Commission forward a positive recommendation to the City Council to adopt the proposed ordinance amendment as shown in exhibit "A", attached, for the following reasons:

1. Compliance with the Purpose of the Land Development Code by creating consistency and equitable standards and for all new commercial and residential developments within Sandy City. This will also promote fair procedures that are efficient and effective in terms of time and expense as well as being effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed, and elected officials.
2. Compliance with the Goals and Policies of the General Plan by establishing appropriate development standards for all uses and zoning categories within Sandy City.

Chairman Jared Clayton opened this item to public comment and there was none.

Scott Sabey moved that the Planning Commission forward a positive recommendation to the City Council, based on the two reasons in the Staff Report, that Exhibit A be amended as follows:

15A-02-23 Water Drainage

Drainage shall not be allowed to flow onto adjoining lots unless an easement for such purpose has been granted by the owner of the lot on which the water flows.

15A-02-24 Development Agreements

- A. The City may enter into a real estate development agreement with an applicant to set forth requirements for the development that are in the best interest of the City.**
- B. The development agreement shall be executed prior to any zone change, or other development approvals.**
- C. The City zoning map shall be revised to reflect the development agreement as a condition of the zone in which the applicant's property is located.**
- D. All development agreements, upon proper execution, shall be recorded with the Salt Lake County Recorder's Office, shall run with the land, and shall be binding on all successors in the interest of the affected property.**
- E. Remedies sought under the development agreement against the City shall not include monetary damages, but may only include specific performance and injunctive relief.**
- F. Such other terms as may be proposed and agreed to between the city, property owner(s) and developer may be included within the development agreement.**

Ron Mortimer seconded the motion. The vote was as follows: Scott Sabey, yes; Ron Mortimer, yes; Monica Collard, no; Nancy Day, yes; Lisa Hartman, yes; Joe Baker, yes; Jared Clayton, yes. The vote was 6 to 1 in favor of the motion.

**3. Public Utilities Director Authority - Title 15A-Chapter 23,
Commercial, Office, Industrial, & Transit Corridor
Development Standards, Land Development Code, Revised
Ordinances of Sandy City, 2008**

CODE-9-16-5132

The Sandy City Community Development Department requested to amend Title 15A, Chapter 23, Commercial, Office, Industrial, and Transit Corridor Development Standards, Land Development Code, Revised Ordinances of Sandy City, 2008. The purpose of the Code