



DEVELOPMENT AGREEMENTS

State Authorized Development Tool

Utah Code Ann. §10-9a-102(2)

- a municipality may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that the municipality considers necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing: (a) uses; (b) density; (c) open spaces; (d) structures; (e) buildings; (f) energy efficiency; (g) light and air; (h) air quality; (i) transportation and public or alternative transportation; (j) infrastructure; (k) street and building orientation; (l) width requirements; (m) public facilities; (n) fundamental fairness in land use regulation; and (o) considerations of surrounding land uses to balance the foregoing purposes with a landowner's private property interests and associated statutory and constitutional protections.
- Development Agreement may be used in conjunction with State and local laws, ordinances, regulations and standards to specify development requirements.
- Sandy City Land Development Code (Title 21), LUDMA (U.C.A. 10-9a).

Development Agreement is a Contract

- City and Developer are bound to the terms and conditions.
- Failure to comply will be a breach of contract.
- A change to the development will require an amendment to the development agreement.
- Terms and conditions are negotiated but must meet state and local laws.
- Parties are forced to discuss and understand the project and respective positions up front and memorialize that understanding in writing.

Definitive, Predictable

- The front-end work should reduce the potential for misunderstandings.
- Clarify the parties' understanding of project features.
- Include requirements that are not otherwise defined by City Code or State law.
- Identify and “set” applicable laws, ordinances, regulations and standards.
- Bind future owners to complete the development in accordance with the agreement.
- Expiration date; obligations will end, and a reversion or other clause can clarify what happens if the agreement expires.

Project Phasing and Timing

- Integrate large projects.
- Identify required public and private facilities to serve the project.
- Include dates certain for completion.
- The build-out is sometimes market driven with unpredictable timing, but the same concern exists without a development agreement.

Potential Concerns

- If the agreement is unclear or ambiguous, there may be a heightened probability of litigation.
- The statute of limitations for a contract is six years.
- New City ordinances adopted after the agreement will generally not apply to the project. It will be “vested” in the agreed-upon laws, ordinances, regulations and standards.
- Potential conflict with other laws; must be careful to ensure it is a clarification or addition and not a conflict.

How to Proceed

- No set process dictated by State or local laws.
- Land use practitioners generally believe that development agreements, like rezones, are legislative but some feel could be administrative.
- Staff has familiarity with the Land Development Code and has experience to assist with discussing and drafting.
- As a party to the agreement, the developer will participate in discussing and drafting.
- A recommendation from the Planning Commission is not required, but ideas and input would be beneficial.