

**CITY OF ST. PETE BEACH, FLORIDA**

**ORDINANCE NO. 2008-31**

**AN ORDINANCE OF THE CITY OF ST. PETE BEACH, FLORIDA PROVIDING FOR AMENDMENT OF THE LAND DEVELOPMENT CODE; PROVIDING FOR ESTABLISHMENT OF PROCEDURES FOR THE CREATION, EXECUTION AND ENFORCEMENT OF DEVELOPMENT AGREEMENTS AS DEFINED IN FLORIDA STATUTES 163.3220; PROVIDING FOR THE REPEAL OF ORDINANCES, OR PARTS OF ORDINANCES, IN CONFLICT HEREWITH, TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City wishes to ensure a mix of land uses which are in keeping with the development policy objectives of the City and which are reasonable and beneficial given the circumstances of an individual development; and

**WHEREAS**, this objective may, from time to time, provide standards to enable the City to enter into agreements with private property owners establishing conditions and limitations on the use of private property; and

**WHEREAS**, the City's Planning Board, as the City's local planning agency, has reviewed this ordinance, found it to be consistent with the City's adopted comprehensive plan and has recommended approval thereof; and

**WHEREAS**, the City Commission has found this ordinance to be in the best interest of the health, safety and welfare of the citizens of the city; and

**WHEREAS**, notice of this ordinance has been provided in accordance with applicable law;

**NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF ST. PETE BEACH, FLORIDA HEREBY ORDAINS:**

**Section 1.** Division 45 of the City of St. Pete Beach Land Development Code is hereby established in accordance with the following:

**Division 45**

**PROCEDURAL REQUIREMENTS FOR ENTERING INTO DEVELOPMENT AGREEMENTS**

**45.1. Statutory definitions.**

For the purposes of this division, the definitions set forth in F.S. § 163.3221 shall apply and control all development agreements entered into by the City.

**45.2. Legislative intent and findings of fact.**

The City Commission (the "Commission") finds and declares that each of the following statements are true and correct, and hereby adopts these statements as the legislative findings of the Commission, which shall be considered as further justification and authority for the adoption of this division.

- (1) The provisions of F.S. §§ 163.3220--163.3243 set forth the local government development agreement act (the "act").
- (2) The provisions of F.S. § 163.3223 provide that local governments may, by ordinance, establish procedures and requirements, as provided by the act, to consider and enter into development agreements with any person having a legal or equitable interest in real property within its jurisdiction.
- (3) The act recognizes that the lack of certainty in the approval of development can result in waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.
- (4) The act recognizes that assurance to a developer that upon receipt of his development permit he may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning, and reduces the economic costs of development.
- (5) In conformity with, in furtherance of, and in order to implement the local government comprehensive planning and land development regulation act (F.S. § 163.3161 et seq.) and the state comprehensive planning act of 1972 (F.S. § 186.001 et seq.) it was the intent of the state legislature in adopting the act to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.
- (6) The act authorizes local governments to enter into development agreement with developers, subject to the procedures and requirements of the act.
- (7) The act provides that the act shall be regarded as supplemental and additional to the powers conferred upon local governments by other laws and shall not be regarded as in derogation of any powers now existing.
- (8) The provisions of F.S. § 125.01(1)(t), (1)(w), provide authority for the City to adopt ordinances which are in the common interest of the people of the City and not specifically prohibited by law.
- (9) It is the intent of this division to encourage a strong commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development concurrent with the impacts of development, encourage the efficient use of resources, and reduce the economic cost of development.
- (10) It is the intent of this division to encourage comprehensive planning by developers by affording greater predictability and reducing risks in order to lessen the costs of providing major infrastructure and public benefits.

### **45.3. Authority.**

(a) This division sets forth the procedural requirements that the City shall consider and implement in order to enter into development agreements. Specific authority for adoption of this division is found in F.S. § 163.3223. In general, the provisions of this division comply with and are authorized by the provisions set forth in the local government development agreement act.

(b) In approving a development agreement, the Commission shall have the authority to grant, without limitation, variances, special exceptions, conditional uses or other forms of approvals otherwise delegated to other authorities in the ordinary course of approvals outside of the development agreement process.

### **45.4. Development agreement requirements.**

(a) All development agreements shall, at a minimum, include the following:

- (1) A legal description of the land subject to the agreement;
  - (2) The duration of the agreement, which shall meet the terms set forth in section 45.5;
  - (3) The development uses permitted on the land, including population densities, and building intensities and height;
  - (4) The land use designation under the future land use plan element of the comprehensive plan for all property included within the terms of the proposed agreement;
  - (5) The current zoning classification of the property;
  - (6) A description of public facilities that will service the development, including who shall provide such facilities;
  - (7) The date any new facilities, if needed, will be constructed;
  - (8) A schedule to assure public facilities are available concurrent with impacts of the development;
  - (9) A description of any reservations or dedications of land for public purposes;
  - (10) A description of all local development permits approved or needed to be approved for the development of the land;
  - (11) A finding that the development permitted or proposed is consistent with the comprehensive plan and land development regulation, as required by F.S. § 163.3231;
  - (12) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the city for the public health, safety, or welfare of its citizens;
  - (13) A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the developer of the necessity of complying with the law governing such permitting requirements, condition, term, or restriction; and
  - (14) A statement identifying the legal and equitable interest of all persons having any interest in the property described in subsection (a)(1), above. The statement of ownership interests of any joint ventures, partnerships or corporations shall reveal all principals or directors and officers, as appropriate. Such statements shall be certified by a title company or an attorney-at-law licensed to practice in the state.
- (b) A development agreement may provide that the entire development or any phase thereof be commenced or concluded within a specific period of time.

#### **45.5. Duration of development agreements.**

The term of a development agreement shall not exceed ten years or such time as the act may provide. A development agreement may only be extended by mutual consent of the Commission and the developer, subject to required public hearings in accordance with section 45.6. No extension shall exceed ten years or such time as the act may provide.

#### **45.6. General requirements for notices and hearings.**

- (a) Before entering into, amending, modifying, canceling, or revoking a development agreement, the city shall conduct at least two public hearings, one of which shall be held by the land planning agency prior to a final public hearing before the Commission.
- (b) The day, time and place at which the next scheduled public hearing under this division will be held shall be announced at the prior public hearing.
- (c) Notice of intent to consider a development agreement at a scheduled public hearing under this division shall be provided:
  - (1) By advertising the required notice in a newspaper of general circulation and readership in the city approximately seven days before each public hearing on the application;
  - (2) By mailing the required notice, by certified mail, return receipt requested, to all property owners of record as of no greater than two weeks prior to mailing, as listed in the Pinellas County Property Appraiser's office records as abutting or lying within 200 feet of the subject property; these notices shall be mailed at least 14 calendar days prior to the first scheduled public hearing; and
  - (3) In writing, to adjacent or affected local governments or their agencies.
- (d) Required notice of intent to consider a development agreement shall specify:
  - (1) The time, place, and location of the scheduled hearing(s);
  - (2) The location of the land subject to the development agreement;
  - (3) The development uses proposed on the property, including the proposed population densities and proposed building intensities and height; and
  - (4) Instructions for obtaining further information, including the place(s) where a copy of the proposed agreement can be obtained.

#### **45.7. Development agreement procedures.**

- (a) *Submission of development agreement packages; fees.*
  - (1) Applications requesting consideration by the city of a developer's proposed or amended development agreement shall be submitted on such forms as may be provided by the city. In addition to the information required by section 45.4, the city may require an applicant to submit such information as is reasonably necessary to process and fully consider the application.
  - (2) Application packages shall be accompanied by such fees and charges as may be imposed by the Commission, or its designee, for proper filing and processing.
  - (3) Payment of application fees, submission of applications, engineering plans, surveys, or any other expenditures shall not vest any rights to complete development or to obtain any requested zoning or land use classification amendments.
- (b) *Negotiation of development agreements.*

(1) The City Manager and staff personnel shall review the developer's application package and negotiate such further terms and conditions as the City Manager shall deem to be appropriate and necessary to protect the public's interest, safety, health or welfare.

(2) Once a tentative agreement has been reached as to the terms and conditions of a development agreement, or further negotiations are not anticipated or will not reach a consensus on the development agreement's terms or conditions, the City Manager and staff personnel shall draft a report, including any recommendations, for consideration of the Commission along with the tentative development agreement.

(3) The existence of a tentative agreement, staff report or recommendation shall not be sufficient governmental acts upon which reliance may be placed, such that further expenditures by a developer would vest any right to continue development; nor shall such actions constitute partial performance entitling the owner to a continuation or extension of the development agreement.

(c) *Adoption, amendment, extension, modification, revocation and cancellation procedures.*

(1) Following such notice and public hearings as may be otherwise required, the City Commission, by majority vote, may act to adopt, amend, extend, modify, revoke, or cancel any proposed or existing development agreement.

(2) Where mutual consent is required by law, the Commission may act to authorize such consent prior to all other parties so doing only upon the condition that the act is not complete or official until a binding agreement is contemporaneously signed by the Mayor and the representatives of all other parties.

#### **45.8. Recordation.**

(a) Within 14 days after the city enters into, extends, amends, modifies, revokes, or cancels a development agreement, the City Clerk shall have the agreement or the action on the agreement recorded with the Clerk of the Circuit Court and in the official records of the City of St. Pete Beach.

(b) A copy of the recorded development agreement and any recorded action on the agreement shall be submitted to the Florida Department of Community Affairs within 14 days after the agreement is recorded.

#### **45.9. Periodic review.**

(a) The city shall review the land and development subject to the development agreement at least once every 12 months.

(b) If, as part of its review, the city finds that the developer has, in good faith, complied with the terms and conditions of the agreement during the period under review, the agreement shall continue in force as is, pending the next review.

(c) If as part of its review the city makes a finding on the basis of substantial competent evidence that there has been a failure to comply with the terms of the development agreement, the Commission, following required notice and hearing provisions of section 45.6, may:

(1) Modify the agreement as necessary to obtain and ensure compliance with the terms of the agreement; or

(2) Revoke the agreement in order to protect the public's interest, health, safety or welfare.

**45.10. Amendment, modification, extension, revocation and cancellation of agreements.**

- (a) In addition to being extended pursuant to 45.5, development agreements may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest upon proper notice and hearing as set forth in section 45.6.
- (b) If state or federal laws are enacted after the execution of a development agreement which are applicable to and preclude the parties' compliance with the terms or conditions of a development agreement, then such agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws upon proper notice and hearing set forth in section 45.6.

**45.11. Legal status of development agreements.**

- (a) The burdens of a development agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.
- (b) The city's laws and policies governing the development of land in effect at the time of execution of a development agreement, including but not limited to, this division of the City of St. Pete Beach Land Development Code, and all other ordinances comprising land development regulations under F.S. § 163.3202, as amended, shall govern the development of all land specified in the development agreement for its stated duration.
- (c) The city may only apply subsequently adopted laws and policies to then existing development agreements if, after a duly noticed public hearing, the Commission:
  - (1) Determines that such laws and policies are specifically anticipated and provided for in a development agreement;
  - (2) Determines that such laws and policies are not in conflict with the prior laws and policies governing existing development agreements; and do not prevent development of the land uses, intensities, or densities set forth in existing development agreements;
  - (3) Determines that such laws and policies are essential to the public health, safety or welfare, and expressly state that they shall apply to existing development agreements;
  - (4) Determines and demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of certain development agreement; or
  - (5) Determines that certain development agreements were based upon substantially inaccurate information supplied by the owner/developer.
- (d) The provisions set forth in subsections (b) and (c) of this section do not abrogate any development rights that may vest pursuant to common law.

**45.12. Enforcement.**

The following may file an action for injunctive relief in the Circuit Court of Pinellas County to enforce the terms of a development agreement, or to challenge compliance of the agreement with the provisions of F.S. §§ 163.3220--163.3243:

- (1) Any aggrieved or adversely affected person as defined in F.S. § 163.3215(2);
- (2) Any party to the agreement; or
- (3) The state land planning agency.

**Section 2.** All ordinances or parts of ordinances, in conflict herewith are hereby repealed to the extent of any conflict with this Ordinance.

**Section 3.** If any portion or part of this Ordinance is declared invalid by a court of competent jurisdiction, the valid remainder hereof shall remain in full force and effect.

**Section 4.** This Ordinance shall become effective immediately upon adoption.

  
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Michael Finnerty, MAYOR

FIRST READING : 8-26-08  
PUBLISHED : 8-30-08  
SECOND READING : 9-10-08  
PUBLIC HEARING : 9-10-08

I, Theresa B. McMaster, City Clerk of the City of St. Pete Beach, Florida, do hereby certify that the foregoing Ordinance was duly adopted in accordance with the provisions of applicable law this 10th day of September 2008.

  
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Theresa B. McMaster, City Clerk