

ORDINANCE NO. 3387
(ZOA-16-500597 – Development Code Update 2017)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, TO AMEND TITLE 19 – HENDERSON DEVELOPMENT CODE - BY AMENDING PORTIONS OF SECTIONS 19.6.10, 19.7.10, AND 19.12.4, OF THE HENDERSON MUNICIPAL CODE; TO MAKE VARIOUS REVISIONS AND CLARIFICATIONS RELATING TO DEVELOPMENT AGREEMENTS AND THE RESIDENTIAL CONSTRUCTION TAX.

WHEREAS, it is the intent of the City of Henderson to maintain a zoning ordinance for the safe and orderly development of property; and

WHEREAS, the City of Henderson adopted a new zoning ordinance on January 19, 2010; and

WHEREAS, a zoning ordinance is considered a “living document” and will invariably need amending to make minor corrections, revisions, and updates as necessary; and

NOW, THEREFORE, the City Council of the City of Henderson, Nevada, does ordain:

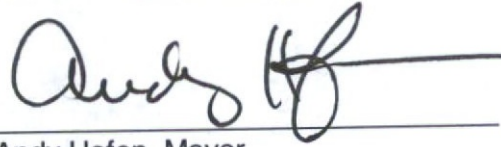
SECTION 1. Sections 19.6.10 – Other Procedures – Development Agreements, 19.7.10 – Residential Construction Tax, and 19.12.4 – Defined Terms of Title 19 - Henderson Development Code, are hereby amended as represented in Exhibit A, hereto attached consisting of eight (8) pages.

SECTION 2. If any section, subsection, sentence, clause, phrase, provision or portion of this Ordinance, or the application thereof to any person or circumstances, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or provisions of this Ordinance or their applicability to distinguishable situations or circumstances.

SECTION 3. All ordinances, or parts of ordinances, sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Henderson, Nevada, in conflict herewith are repealed and replaced as appropriate.

SECTION 4. A copy of this Ordinance shall be filed with the office of the City Clerk, and notice of such filing shall be published once by title in the Review Journal, a newspaper having general circulation in the City of Henderson, at least ten (10) days prior to the adoption of said Ordinance, and following approval shall be published by title (or in full if the Council by majority vote so orders) together with the names of the Councilmen voting for or against passage for at least one (1) publication before the Ordinance shall become effective. This Ordinance is scheduled for publication on February 24, 2017, in the Review Journal.

PASSED, ADOPTED, AND APPROVED THIS 21st DAY OF FEBRUARY, 2017.



Andy Hafen, Mayor

ATTEST:


Sabrina Mercadante, MMC, City Clerk

The above and foregoing Ordinance was first proposed and read in title to the City Council on February 7, 2017 which was a Regular Meeting, and referred to a Committee of the following Councilmen:

“COUNCIL AS A WHOLE”

Thereafter on February 21, 2017, said Committee reported favorably on the Ordinance and forwarded it to the Regular Meeting with a do-pass recommendation. At the Regular Meeting of the Henderson City Council held February 21, 2017, the Ordinance was read in title and adopted by the following roll call vote:

Those voting aye: Andy Hafen, Mayor
 Councilmembers:
 Debra March
 John F. Marz
 Gerri Schroder
 Dan H. Stewart

Those voting nay: None
Those abstaining: None
Those absent: None


Andy Hafen, Mayor

ATTEST:


Sabrina Mercadante, MMC, City Clerk

Exhibit A
Title 19 – Development Code Amendments

Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is red and enclosed in **[brackets]**, and language proposed to be added is in blue italics and underlined.

19.6.10. OTHER PROCEDURES

A. DEVELOPMENT AGREEMENTS

1. Applicability

A development agreement is appropriate for development of those parcels that should, at the discretion of the City Council, as recommended by the Development Agreement Advisory Committee (DAAC), be developed in accordance with a development agreement. Development projects that include one or more of the following are subject to development pursuant to a development agreement unless otherwise determined by the ~~[Development Agreement Advisory Committee]~~ DAAC:

- (a) A local improvement district or modification to a local improvement district pursuant to NRS Chapter 271;
- (b) A refunding agreement entered into pursuant to HMC 14.16;
- (c) A request to waive residential construction tax;
- (d) An annexation of any size;
- (e) Projects with a Sensitive Lands overlay or projects requiring a plan for environmental remediation;
- (f) A project requiring the preservation or renovation of historic structures;
- (g) A project for which a request for redevelopment funds or tax-increment financing is made;
- (h) A project that includes one or more of the following:
 - (1) 250 or more single-family dwelling units;
 - (2) 500 or more multifamily dwelling units;
 - (3) 200 or more hotel rooms;
 - (4) 40 or more acres of nonresidential development; or
 - (5) A project that generates over 3000 average daily trips (commercial/industrial only).
- (i) A project that includes one or more of the following:
 - (1) A facility that generates more than 50 megawatts of electricity;
 - (2) A natural gas storage or peak-shaving facility; or
 - (3) A gas regulator station or main that operates or is capable of operating at over 200 pounds per square inch.
- (j) Property proposed for a master plan development overlay where existing infrastructure is not of sufficient capacity to support the proposed development;
- (k) Property acquired through a Bureau of Land Management (BLM) land sale;
- (l) Property acquired through a City of Henderson sale pursuant to NRS 268.048 et seq.;

- (m) Property located within the West Henderson Land Use Plan boundary;
- (n) Property located within a public facilities needs assessment area;
- (o) Development of a property currently or previously subject to an inactive, non-compliant, or cancelled development agreement; or
- (p) Proposed amendments or development changes to property currently subject to any one or more of the above.

2. **[Requests for] Development Agreement Appropriateness Determination**

For any project described in 19.6.10.A.1, the applicant shall submit an application for a concept plan review pursuant to 19.6.3.A.3(b)(2) to the Community Development and Services Department, which shall collaborate with the Development Agreement Advisory Committee (DAAC) to ~~either~~:

- (a) ~~[(A)]~~ make a determination whether [that] a development agreement is the appropriate method for development of the project and if so, whether an standard agreement is appropriate ~~[the applicant shall submit an application for a development agreement. The Development Agreement Advisory Committee will then prepare and negotiate the development agreement; or]~~
- ~~[(b)]~~ ~~Make a determination that a development agreement is not appropriate for development of the project.~~
- b. If the DAAC determines that a development agreement is appropriate, the applicant shall submit an application for the development agreement.
- c. If the DAAC does not authorize the applicant to proceed using a standard development agreement, the City will then prepare and negotiate the development agreement with the applicant.
- d. If the DAAC determines that a standard development agreement is appropriate, the City will provide the applicant with a proposal consisting of a standard development agreement. If at any time, the applicant elects not to use the standard development agreement, the City will then prepare and negotiate the development agreement with the applicant.
- e. Entitlements related to the standard development agreement will follow the normal entitlement process. Standard development agreements will not require Planning Commission approval, but shall be executed and approved by ordinance prior to issuance of any building permits.
- f. If the development agreement includes any of items listed in 19.6.10.A.4(b)(17), Planning Commission must review the development agreement and make a recommendation to City Council regarding the appropriate action.
- g. Any entitlements related to a property or project that has been determined to be subject to development agreement will be conditioned to require the execution and approval of the development agreement prior to the issuance of any building permit. Once a development agreement has been adopted by ordinance, no building permit shall be issued unless a valid development agreement remains in effect and the Applicant is not in breach of the development agreement terms
- h. All development agreements shall be approved by ordinance in a manner consistent with NRS 278.

3. Development Agreement Terms

A development agreement shall conform to the applicable requirements of NRS 278.0201 *et seq.* and NRS 278.02591 *et seq.*, and:

(a) Must contain provisions:

- (1) Describing the land that is the subject of the development agreement;
- (2) Specifying the duration of the development agreement;
- (3) Specifying events that constitute breach of the development agreement; and
- (4) Providing periods during which any breach may be cured.

(b) May contain provisions specific to the type of development, including:

- (1) The reservation or dedication of any portion of the land for public use or for the payment of fees in lieu thereof, including, but not limited to rights-of-way, easements, or public facilities, as may be required or permitted pursuant to laws, ordinances, resolutions, rules or plans adopted by the City and in effect at the time of entering into the development agreement;
- (2) The protection of environmentally sensitive lands;
- (3) The preservation and restoration of historic structures;
- (4) The phasing or timing of construction or development on the land, including, without limitation, the dates on which all or any part of the construction or development must commence and be completed, and the terms on which any deadline may be extended. Each portion or phase of development or improvement contemplated should be able to stand alone, independent of proposed further phases or improvements. Subsequent phases of development may be added to completed phases to achieve independent status;
- (5) The conditions, terms, restrictions, and requirements for infrastructure on the land and the financing of the public infrastructure by a person having a legal or equitable interest in the land;
- (6) The conditions, terms, restrictions, and requirements for annexation of land by the city or county and the phasing or timing of annexation by the city or county;
- (7) The conditions, terms, restrictions, and requirements relating to the intent of the governing body to include the land in an improvement district created pursuant to Chapter 271 of NRS;
- (8) The conditions, terms, restrictions, and requirements relating to any applicable public needs assessment approved for the area in which the subject property is located;
- (9) A schedule of fees and charges;
- (10) A description of the laws, ordinances, codes, resolutions, rules, regulations, plans, design, and improvement standards by name and date of adoption applicable to the project. Unless specified in the development

agreement or unless directly in conflict with what is specified in the development agreement, the laws, ordinances, codes, resolutions, rules, regulations, plans, and design and improvement standards adopted by the City Council and in effect at the time of issuance of any required construction or building permit shall apply;

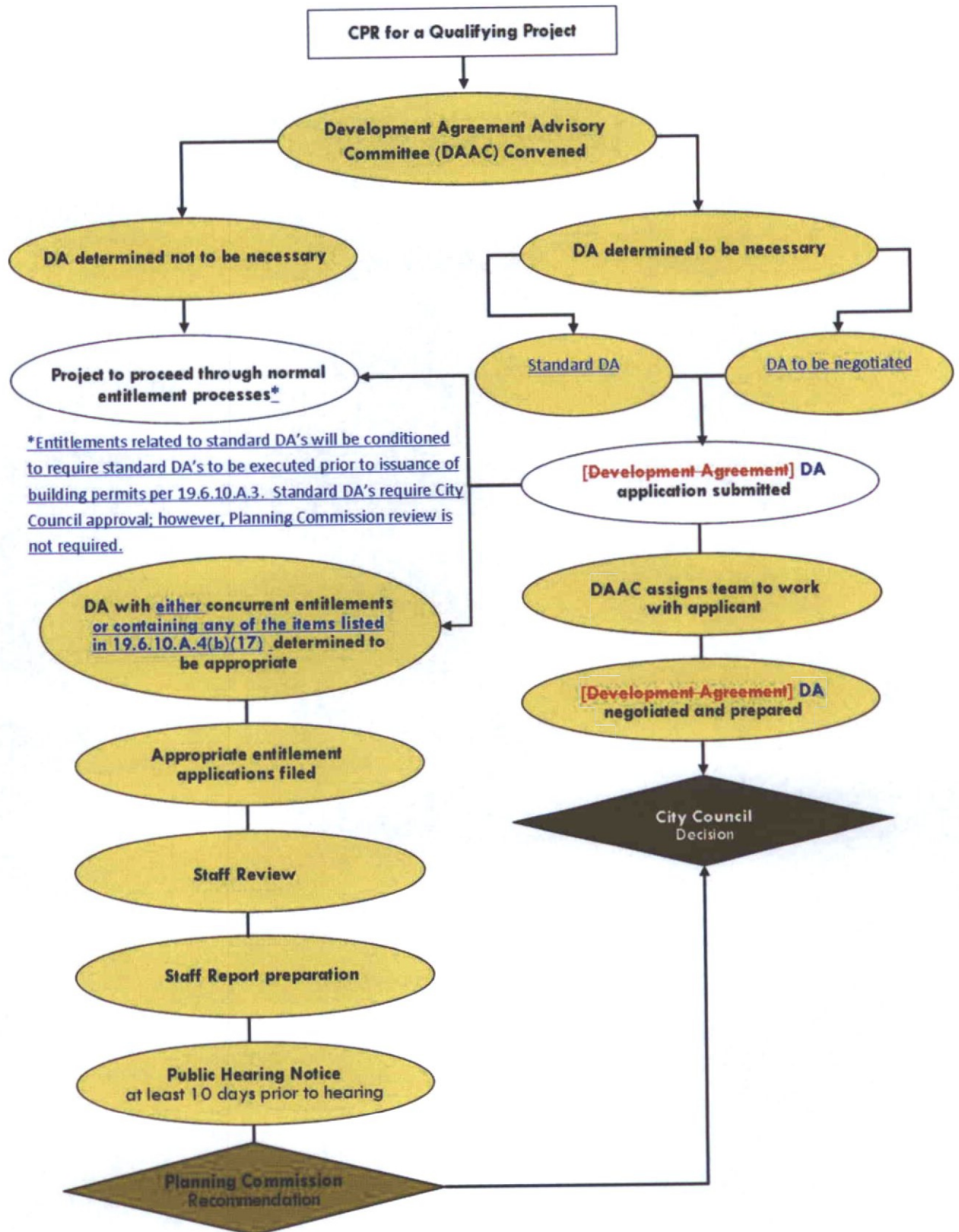
- (11) Any conditions imposed by other land use and permit approvals allowed by law as of the effective date of the development agreement;
 - (12) Security for the construction of the required common area and public improvements in an amount sufficient to complete all required improvements and to remove all rubbish, trash, debris, surplus material, and equipment from the area as determined by the ~~[Development Agreement Advisory Committee]~~ DAAC. Security shall be by such good and sufficient bond or other security as is deemed appropriate by the City Council to protect the public interest;
 - (13) An indemnity and insurance clause requiring the developer, applicant, and property owner to indemnify the City against certain claims arising out of the development;
 - (14) An allowance for the waiver of any other provision of the HMC consistent with the purpose of the development agreement;
 - (15) A review of compliance with the development agreement terms and conditions every 24 months or sooner as specified in the approved development agreement;
 - (16) Any other matters relating to the development of the land; and
 - (17) The permitted uses of the land and development regulations including:
 - i. A land use development plan;
 - ii. Subdivision design and improvement standards;
 - iii. General development standards;
 - iv. Standards for signs;
 - v. Provisions for nonconformities;
 - vi. The density or intensity of the use of the land; and
 - vii. The maximum height and size of any proposed buildings.
- (c) Nothing in Sections 19.6.10.A.3(a) or (b) shall be construed to preclude the City from concurrently utilizing any other entitlement process or processes described in this Code in conjunction with the development agreement prepared pursuant to this Chapter.

4. Amendment and Cancellation

- (a) A development agreement may be amended or cancelled in whole or in part, with or without the consent of the other parties to the development agreement or their successors in interest, for any reason set forth in NRS 278.0205 and in accordance with procedures set forth in NRS 278.0205.

- (b) If a development agreement has been cancelled in whole or in part pursuant to NRS 278.0205, and unless a new development agreement is entered into to replace the cancelled development agreement or portion thereof, the property previously the subject of the development agreement shall maintain its zoning unless otherwise specified in the development agreement. The property is then subject to a City-initiated zone change application or an applicant-initiated zone change application in conformance with the requirements set forth in Section 19.6.10.A.
- (c) Amendments to development agreements that include any of the items listed in 19.6.10.A.4(b)(17) must be reviewed by Planning Commission and referred to City Council for appropriate action

FIGURE 19.6.10-A DEVELOPMENT AGREEMENT PROCESS



19.7.10 RESIDENTIAL CONSTRUCTION TAX

B. IMPOSITION OF RATE OF RESIDENTIAL CONSTRUCTION TAX

There is hereby imposed and shall accrue and be collected a residential construction tax, as provided for in this section, upon the privilege of constructing residential dwelling units, including, without limitation, conventionally constructed houses, apartments, mobile homes, nonresidential structures remodeled for use as dwelling space, room additions, mobile home parks, and mobile home estates within the City of Henderson. The residential construction tax shall be calculated at the current legal rate for each residential dwelling unit, per NRS. The residential construction tax shall not exceed \$1000 per unit as ~~the~~ limits provided for in NRS.

19.12.4 DEFINED TERMS

DEVELOPMENT AGREEMENT

An agreement for the development of land pursuant to NRS 278.0201 et seq. and HMC 19.6.10.A.

DEVELOPMENT AGREEMENT, STANDARD

A development agreement, as defined by HMC 19.12.4, primarily intended for use within an area subject to a Public Facilities Needs Assessment, as defined by HMC 19.12.4, in a form approved by the City Attorney and on file in the Office of the City Attorney. The approved form may be changed at the discretion of the City Attorney.