

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE CITY OF CARNATION, WASHINGTON, AMENDING TITLE 15 CMC BY THE ADDITION OF A CHAPTER 15.17 DEVELOPMENT AGREEMENTS THERETO; ADOPTING STANDARDS AND PROCEDURES GOVERNING THE CITY'S USE OF DEVELOPMENT AGREEMENTS IN ACCORDANCE WITH CHAPTER 36.70B RCW; AUTHORIZING PROJECT-SPECIFIC MODIFICATIONS TO CERTAIN DEVELOPMENT STANDARDS PURSUANT TO SUCH AGREEMENTS; AMENDING CHAPTER 15.08 CMC BASIC INTERPRETATIONS AND DEFINITIONS AND CHAPTER 15.09 CMC LOCAL PROJECT REVIEW TO ESTABLISH APPROPRIATE DEFINITIONS AND PROCEDURAL REFERENCES FOR DEVELOPMENT AGREEMENTS; SETTING FORTH LEGISLATIVE FINDINGS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

---

WHEREAS, Chapter 36.70B RCW authorizes municipalities to enter into development agreements governing the use and development of property; and

WHEREAS, such agreements are advantageous to both municipalities and development applicants, as they facilitate cooperation, certainty and stability in the land use permitting process; provide flexibility in the application of local development standards; and lead to numerous public benefits, including without limitation enhanced project design and infrastructure improvements that are beneficial to the community; and

WHEREAS, the City Council desires to adopt local standards and procedures governing the City's use of development agreements as set forth in this ordinance; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF CARNATION, WASHINGTON, DO  
ORDAIN AS FOLLOWS:

Section 1. Findings. The City Council hereby adopts the above recitals, together with the content of the staff report/agenda bill dated \_\_\_\_\_, 2018, as findings in support of this ordinance. The City Council further enters the following findings:

A. The City is authorized by State law, including but not limited to Chapter 36.70B RCW, to enter into development agreement and to enact local standards and procedures therefore.

B. The Planning Board conducted a public hearing on the substance of this ordinance on August 28, 2018, and recommended adoption by the City Council. The City Council held a public hearing on this ordinance on \_\_\_\_\_, 2018.

C. The regulations set forth in this ordinance have been processed and considered by the City in material compliance with all applicable procedural requirements, including but not limited to requirements related to public notice and comment.

D. All relevant requirements of SEPA have been satisfied with respect to this ordinance.

E. The City Council has carefully considered, and the regulations set forth in this ordinance satisfy, the review criteria codified at CMC 15.100.030(E).

F. The regulations set forth in this ordinance are consistent with and will implement the City's Comprehensive Plan, and will further advance the public health, safety and welfare.

Section 2. Amendment of CMC 15.08.010. Section 15.08.010 of the Carnation Municipal Code is hereby amended by the adoption of a new definition for “development agreement” to provide in its entirety as follows:

"Development agreement" means a written agreement between and the city and a person having ownership or control of real property, setting forth the development standards and other provisions that will govern the development and use of said property, and which is processed, approved and executed in accordance with Chapter 15.17 CMC and RCW 36.70B.170 et seq.

Section 3. Amendment of Title 15 CMC—Adoption of New Chapter 15.17 CMC. Title 15 of the Carnation Municipal Code is hereby amended by the addition of a new Chapter 15.17 Development Agreements to provide in its entirety as contained in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full.

Section 4. Amendment of CMC 15.09.090. Subsection 15.09.090(A) of the Carnation Municipal Code is hereby amended to provide in its entirety as follows:

....

A. The following project permits or approvals are specifically excluded from the procedures set forth in this title:

1. Landmark designations;
2. Street vacations under Chapter 35.79 RCW;
3. Street use permits;
4. Other approvals relating to the use of public areas;
5. Development agreements, which shall be exclusively governed by the provisions of Chapter 15.17 CMC; and
6. Other project permits, whether administrative or quasi-judicial, that the city council has determined by ordinance or resolution present special circumstances that warrant a different review process.

....

Section 5. Copy of Commerce. Pursuant to RCW 36.70A.106, the Planning Director is hereby authorized and directed to provide a copy of this ordinance to the Washington State Department of Commerce within 10 days of adoption.

Section 6. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or 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 7. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

APPROVED by the Carnation City Council this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
MAYOR, KIMBERLY LISK

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY CLERK, MARY MADOLE

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY \_\_\_\_\_  
J. ZACHARY LELL

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO. \_\_\_\_\_

**Exhibit A**

**Chapter 15.17  
DEVELOPMENT AGREEMENTS**

Sections:

- 15.17.010 Authority.
- 15.17.020 General provisions.
- 15.17.030 Development standards–Flexibility.
- 15.17.040 Enforceability.
- 15.17.050 Processing procedure.
- 15.17.060 Status, recording and amendment.
- 15.17.070 Divestment.
- 15.17.080 Construction; Interpretations.

**15.17.010 Authority.**

A. The city may enter into a development agreement with the owner of real property within the city. The city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. For purposes of this chapter, the term “owner” shall include both the owner of such real property and such person having control of such property; provided, that such person provides documentation of the owner’s authorization to execute the agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use and mitigation of the development of the subject property for the duration specified in the agreement.

B. The decision of the city council to approve or deny a request for a development agreement is a proper exercise of police power and contract authority. The decision whether to approve a development agreement shall lie within the city council’s exclusive discretion.

**15.17.020 General provisions.**

A. In this chapter, the term “development regulations” shall have the meaning as set forth in RCW 36.70A.030.

B. A development agreement shall be consistent with applicable development regulations and with the applicable policies and goals of the City’s comprehensive plan.

C. Any modification of the development standards of this code authorized through a development agreement shall be offset by provision of a public benefit of equal or greater value relative to the extent of the requested modification, as determined by the city.

1. Equivalent value need not be measured monetarily, and the offsetting public benefit need not be of the same type as the existing development standard requirement. For example, the benefit of a public open space dedication may be considered against the benefit of a required street improvement.

- D. A development agreement may be approved only for properties in the Central Business District (CBD), Service Commercial (SC), Mixed Use (MU), Light Industrial/Manufacturing (LI/M), Agri-Tourism & Industries (AGI), Horticultural commercial (HC), Residential Mobile Home Park (RMHP), Residential 12 (R12), Residential 24 (R24), Residential 6 (R6), Residential 4 (R4), Residential 3 (R3), Residential 2.5 (R2.5), and any overlay zones as provided in Title 15 CMC.
- E. A development agreement does not supplant any other required land use decision, approval and/or procedure required by this code, including without limitation a rezone, a subdivision, a shoreline permit, a site plan review, or environmental review under Title 14 CMC.
- F. A development agreement shall set forth the development standards and other provisions that will govern the use and development of the subject property, including without limitation the following, as applicable:
  - 1. Project components which define and detail the permitted uses, residential densities, nonresidential densities and intensities or building sizes;
  - 2. Design standards such as architectural treatment, maximum heights, setbacks, landscaping, drainage and water quality requirements and other development features;
  - 3. Parking;
  - 4. Provisions for affordable housing;
  - 5. Parks and common open space preservation;
  - 6. Amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of State law, any reimbursement provisions, other financial contributions by the owner, inspection fees or dedications;
  - 7. Mitigation measures, development conditions and other requirements of Chapter 43.21C RCW;
  - 8. Phasing;
  - 9. Build-out or vesting periods for applicable standards; and
  - 10. Other appropriate development requirements or procedures.
- G. A development agreement may obligate a party to dedicate land or easements, or fund or provide services, infrastructure or other facilities.
- H. Subsequently adopted development standards which differ from those of an approved development agreement shall apply to the subject property only where necessary to address a serious threat to public health and safety. Subsequently adopted development standards which differ from those of an approved development agreement also shall apply following expiration of any phase or time period specified in the development agreement during which identified standards cannot be modified.

**15.17.030 Development standards–Flexibility.**

- A. A development agreement shall be consistent with applicable development regulations. Provided, however, that a development agreement may allow for modification of certain development standards otherwise required under this code in order to provide flexibility to achieve public benefits, to respond to changing community needs, and/or which provide the functional equivalent or adequately achieve the purposes of otherwise applicable development standards.
- B. The following table sets forth the types of development standards for which modifications may be approved pursuant to a development agreement, together with the corollary range of permissible modifications:

Standard	Permissible Range of Modification
Minimum lot size	25%
Minimum lot width*	10%
Maximum residential density	10% <sup>1</sup>
Maximum building height*	40% with 35' maximum <sup>2</sup>
Front setback*	33%
Side setback	25% with 5' minimum
Rear setback*	33% with 10' minimum
Parking spaces	25%
Integrated Mixture of Housing Types (Chapter 15.40 CMC, Table 1, Residential Use Note 6)	100%

\* Any measurements may be rounded up or down to the nearest whole number.

- C. A development agreement shall not authorize modifications to development standards except as expressly provided in subsection (B). Without prejudice to the foregoing, a development agreement shall not authorize modifications of the following development standards:
1. CMC Title 16, Building and Construction;
  2. CMC Title 14, Environmental Protection;
  3. CMC 15.48.070, Special design standards for the R6 zone; provided that this exclusion shall only apply to the R6 zone within the “Tolt Townsite Company Plat of Tolt” filed for

<sup>1</sup> Modifications to residential density under this section may be allowed in lieu of, and shall not be allowed in addition to any density modifications otherwise allowed in this Title.

<sup>2</sup> Modifications to maximum building height under this section shall not be allowed in single-family residential districts as defined in Section 15.36.010(B) CMC.

record January 17, 1912 in Volume 20, Page 43, Records of King County, Auditor's File No. 787268.

4. Chapter 15.88, CMC, Critical Areas;
  5. Chapter 15.64 CMC, Floodways, Floodplains, Drainage, and Erosion et seq;
  6. Chapter 15.36 CMC, Zoning map designations; or
  7. Chapter 15.40 CMC, Permissible uses.
- D. The development standards approved through a development agreement shall apply to and govern the development and use of the property subject to the development agreement in lieu of any conflicting or different standards or requirements elsewhere in this code.
- E. Except as otherwise expressly provided by this chapter, modifications approved pursuant to a development agreement shall be without prejudice to any flexibility, bonuses and/or other adjustments to development standards authorized by other provisions of this Title.

**15.17.040 Enforceability.**

- A. An approved development agreement shall be binding upon the parties and their successors. Unless amended or terminated by agreement of both parties to a development agreement, the agreement is enforceable during its term by a party to the agreement. Except as provided in CMC 15.17.020(H), a development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement. The development agreement shall not be subject to an amendment to a development regulation or a new development regulation adopted after the effective date of the agreement, except as provided in CMC 15.17.020(H).
- B. Any project permit decision issued by the city and pertaining to the property subject to an approved development agreement shall be consistent with the agreement.

**15.17.050 Processing procedure.**

- A. Application. An application for a development agreement shall be filed by the owner of the subject property on forms provided by the city.
1. The application shall be accompanied by an application fee pursuant to the city's current fee schedule and shall include a signed agreement to reimburse the city for fees of the city attorney, city engineer, and any other consultant and for staff time for work performed in relation to the development agreement. The city's execution of an approved development agreement shall be expressly conditioned upon receipt of the owner's payment of such fees.
  2. The application shall be accompanied by a waiver and release, in a form approved by the city attorney: (i) waiving all processing and decision deadlines for any separate project permit applications submitted with respect to the property subject to the proposed development agreement in accordance with subsection (F), and (ii) acknowledging and

assuming all risks that the development agreement may not be approved by the city council.

- B. **Threshold Decision.** The city council shall make a threshold decision on each application for a development agreement at a regular meeting of the city council. If a majority of the whole council votes to proceed with further review of the proposed development agreement, the agreement shall be processed as described in this section.
- C. **Recommendation.** The city manager shall prepare a recommendation to the city council on a proposed development agreement. The city manager shall provide the recommendation to the city council at least 10 calendar days prior to the public hearing on the proposed development agreement.
- D. **Public Hearing.** Before voting to approve a proposed development agreement, the city council shall hold at least one public hearing. Provided, that any development agreement which includes modifications of development standards under this code shall require a minimum of two public hearings.
- E. **Approval or Denial.** The city council shall approve a development agreement by ordinance adopted by the vote of a majority of the whole city council. Provided, that approval of any development agreement that includes modifications of development standards under this code shall require the affirmative vote of a majority plus one of the whole city council. The ordinance approving a development agreement shall authorize the city manager to execute the agreement on behalf of the City. A city council decision denying a request for a development agreement shall be made by resolution.
- F. **Concurrent Project Permit Applications.** During the pendency of a proposed development agreement, an owner may file an application for any project permit related to the subject property. The City shall accept, review and process such application, but shall not: (i) schedule any required public hearings on such application, or (ii) issue a final decision on such application, until at least thirty (30) days following the effective date of the city council's decision approving or denying the development agreement.
- G. The City shall give notice of the meeting at which the city council votes to approve or deny a proposed development agreement, or amendment thereto, and of the public hearing(s) on the proposed development agreement, or amendment thereto, as follows:
  - 1. Not less than 15 calendar days prior to the public hearing date, a notice of the public hearing shall be sent to property owners within 300 feet of the property subject to the development agreement and to others who have submitted comments and/or requested notice.
  - 2. Notice of the public hearing shall be posted on the subject property not less than 15 calendar days prior to the hearing date. Notice shall be posted in the manner required by CMC 15.09.180.

3. Notice of the city council meeting and public hearing shall be published in the City's official newspaper not less than 10 calendar days prior to the meeting or hearing date.
4. All costs associated with the public notice shall be borne by the owner.
5. All notices shall state that the city manager's recommendation on the proposed development agreement is available for review at the front desk of City Hall and on the City's website.

G. Any subsequent land use decisions shall be reviewed for compliance with the terms of the development agreement.

**15.17.060 Status, recording and amendment.**

- A. No deadline. There shall be no deadline for the processing, consideration and/or final decision approving or denying a development agreement.
- B. City Attorney Review. The city attorney shall review and approve a proposed development agreement as to form at least 30 calendar days prior to the public hearing on the development agreement.
- C. Term. The term of development agreements and extensions thereof shall be as follows:
  1. The maximum term of a development agreement shall be twenty (20) years.
  2. In determining the appropriate for a development agreement, the city council shall consider the size, location, zoning designation of the subject property, the nature and extent of the proposed development, the extent of any modification to development standards authorized under the agreement, the proposed phasing of the development, and any other relevant consideration.
- D. Recording. The city shall record an approved development agreement with the King County recorder's office, at the cost of the owner.
- E. Amendments. Amendments to an approved development agreement shall be processed as follows:
  1. Minor amendments. Minor amendments involve changes to the location, configuration, orientation of buildings, roads, parking areas, utilities and/or landscaping features. Minor amendments may be approved administratively following the procedures for Type \_\_\_ project actions without a public hearing or city council approval.
  2. Major amendments. Any amendment exceeding the definition of a minor amendment is a major amendment. Major amendments may only be approved by ordinance of the city council, and are subject to the procedures and standards set forth in CMC 15.17.050.

The city's decision to approve a minor or major amendment to a development agreement is purely discretionary. The city may impose reasonable conditions of approval upon any amendment.

**15.17.070 Divestment.**

Project permit applications that are submitted to or approved by the city during the term of an approved development agreement shall be deemed to expire immediately upon the expiration or termination of the agreement.

**15.17.080 Construction; Interpretations.**

A. Construction. This chapter shall be construed in accordance with RCW 36.70B.170 et seq., including any future amendments thereto.

B. Interpretations. The planning director may issue formal interpretations construing the provisions of an approved development agreement. Such interpretations shall be processed and appealable as Type I project permit applications.