

CHAPTER 1105. PROCEDURES

1105.01. Purpose.

In order to accomplish the purposes for which this Ordinance is adopted, it is essential that its regulations be soundly and consistently applied and administered. This Chapter stipulates the procedures to be followed for:

- (a) 1105.02. Certificates of building and zoning compliance
- (b) 1105.03. Zoning amendments
- (c) 1105.10. Development plan review
- (d) 1105.19. Conditional use approval
- (e) 1105.23. Appeals to the Board of Zoning Appeals
- (f) 1105.30. Variances

1105.02. Certificate of building and zoning compliance.

- (a) Applicability. Certificates of building and zoning compliance shall be required for all construction within the City as well as for businesses, prior to occupying any building or space within a building.
- (b) Applications. Certificates of building and zoning compliance shall be issued only in conformity with the provisions of this Zoning Ordinance. Applications for certificates of building and zoning compliance are available in the Department of Planning and Community Development. A completed application form accompanied by all other applicable submission requirements shall be submitted to the Director of Planning and Community Development.
- (c) Expiration of Certificate. Each application shall clearly state that the certificate of building and zoning compliance will expire and may be revoked if work has not begun within one (1) year or substantially completed within two and one-half (2½) years. If such work has not been completed within such time frames and an extension has not been granted by the Planning and Community Development Director, a new application and certificate shall be required. Construction is deemed to have begun when all necessary excavation and piers or footings of the structure included in the application have been completed.

1105.03. Zoning amendment procedures.

Amendments to this Zoning Ordinance may be initiated in one of the following ways:

- (a) By the filing of an application by an owner or designee within the area of the proposed change or affected by such amendment; or by any government official, unit, or bureau affected by such amendment filing an application with the Planning and Community Development Department.
- (b) By the adoption of a motion by the Planning Commission.
- (c) By the adoption of a resolution by City Council.

1105.04. Zoning amendments initiated by property owner(s).

An amendment initiated by an owner or designee of property, or developer with an option on such property within the area proposed to be changed or affected by said amendment, shall be submitted and reviewed according to the following:

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- (a) **Submission Requirements.** Applications for amendments to both the text and map adopted as part of this Ordinance shall contain all items set forth in the application checklist on file with the Planning and Community Development Department unless items are determined by the Director of Planning and Community Development to be inapplicable and are waived.
- (b) **Review for Completeness.** The Director of Planning and Community Development shall review the submitted application for completeness and compliance with the applicable submission requirements within ten (10) days of receipt of such application. If the application is deemed insufficient, the Director of Planning and Community Development shall notify the applicant in writing of the deficiencies and place the application on hold until complete. When the application is determined to be complete and the application fee has been paid, the Director of Planning and Community Development shall officially accept the application for consideration.
- (c) **Transmittal to Planning Commission.** After the filing of a completed application by an owner or designee of property, or developer with an option on such property, the Director of Planning and Community Development shall transmit the application to the Planning Commission to begin the adoption process set forth in 1105.06 through 1105.09 of this Chapter.

1105.05. Zoning amendments initiated by Planning Commission or Council.

After the passage of a motion by the Planning Commission or the adoption of a resolution by Council, the motion or resolution shall be reviewed and considered by the Planning Commission and Council according to the process set forth in Sections 1105.06 through 1105.09 of this Chapter.

1105.06. Public hearing and notice by Planning Commission for zoning amendments.

Upon receipt of an application or motion, the Planning Commission shall set a date for a public hearing thereon. Notice of the public hearing shall comply with the following:

- (a) Notice of the proposed amendment shall be published at least ten (10) days prior to the date of the required hearing on the City's website.
 - (1) In addition, for map amendments, the Director of Planning and Community Development or designee shall send a notice to the tax mailing addresses of all property owners whose property is located within 200 feet of the parcel(s) proposed to be rezoned.
- (b) Notices shall include the time and place of the public hearing, a summary of the proposed amendment, and a statement that the opportunity to be heard will be afforded to any person interested. Failure of delivery of such notice shall not invalidate any such amendment.
- (c) A sign notifying the public of a zoning application under review shall be posted on each public road frontage of the property(ies) in the area proposed to be rezoned, in a location visible from an adjacent public street, or if necessary, in an alternative location approved by the Planning and Community Development Department.
 - (1) Sign size and contents shall be specified by the Planning and Community Development Department.
 - (2) The sign shall be posted at least ten (10) days in advance of the public hearing and shall remain in place for the duration of the amendment process through City Council.
- (d) The Planning Commission may continue or defer its consideration and no further written notice shall be required.

1105.07. Recommendation by the Planning Commission.

- (a) Within sixty (60) days from receipt of the proposed amendment (unless the applicant requests more than the 60 days), and after the conclusion of the public hearing required in Section 1105.06 of this Chapter, the Planning Commission shall recommend one of the following to Council:

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- (1) That the amendment be granted as requested;
 - (2) That the amendment be granted as modified by the Planning Commission; or
 - (3) That the amendment be denied.
- (b) If the Planning Commission does not make a recommendation on the proposed amendment within the sixty (60) days, or an extended period as may be agreed upon by the applicant or City Council, it shall be deemed that the recommendation of the Planning Commission is that the amendment be denied.

1105.08. Public hearing and notice by Council.

Upon receipt of the recommendation from the Planning Commission, Council shall schedule a public hearing. The hearing shall be not more than thirty (30) days from the receipt of the recommendation, unless the applicant requests more than the thirty (30) days. Notice of the public hearing shall be given by Council according to the following:

- (a) Notice of the public hearing shall be published on the City's website. The notice shall be published at least ten (10) days before the date of the hearing.
- (b) Notices shall include the time and place of the public hearing, a summary of the proposed amendment, and a statement that the opportunity to be heard will be afforded to any person interested. Failure of delivery of such notice shall not invalidate any such amendment.
- (c) During the time between the recommendation of Planning Commission and prior to the public hearing, the text of the proposed amendment, maps, or plans, if applicable, and the maps, plans and reports that constitute the recommendation of the Planning Commission, shall be on file for public examination in the Department of Planning and Community Development.

1105.09. Final action by Council.

Following such hearing and after reviewing the recommendations of the Planning Commission thereon, Council shall consider such recommendations and vote on the passage of the proposed amendment to the text of the Zoning Ordinance or the Zoning Map in accordance with Charter Article XXI, Sections 104 and 106.

- (a) Upon a final decision by Council, the sign installed per 1105.06(c) of this Chapter shall be removed within five (5) business days.

1105.10. Development plan.

- (a) Applicability. The development plan review and approval procedures shall be required for all development and redevelopment within the City.
 - (1) Development in a planned overlay district that contains previously approved development text shall adhere to the approval procedures of this Chapter.
 - (2) Development in the Historic District Overlay must also adhere to all requirements of Chapter 1115.
- (b) If the redevelopment of an existing site does not involve significant alterations to the building or site and a previous development plan has not been approved, the Planning and Community Development Director may exempt an applicant from development plan approval.

1105.11. Development plan requirements.

Approval of a development plan shall be in accordance with the following requirements:

- (a) Conformity with Zoning. The development plan shall conform to the approved zoning requirements for the property on which the proposed development is located.

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- (b) **Submission Requirements.** An application for development plan review shall be required for each phase of development. The application shall include the maps, plans, designs, and supplementary documents set forth within the application checklist on file with the Department of Planning and Community Development unless items are determined by the Director of Planning and Community Development to be inapplicable and are waived. Multiple phases may be included in one set of plans.
- (c) **Review for Completeness.** The Director of Planning and Community Development shall review each submitted application to determine compliance with the submission requirements. If the application is deemed insufficient, the Director of Planning and Community Development shall notify the applicant, in writing, within ten (10) business days of receiving such application of necessary changes or additional information needed. When the application is deemed complete and the application fee has been paid, the Director of Planning and Community Development shall officially accept the application for consideration of the action(s) requested on the date such determination is made.

1105.12. Development plan review procedures.

Development plans shall be reviewed according to the following procedures:

- (a) **Review by Director of Planning and Community Development.** The Director of Planning and Community Development shall review the submitted application for completeness pursuant to Section 1105.11 of this chapter.
- (b) **Review by Administrative Staff.** After the application of a development plan has been determined to be complete, the Director of Planning and Community Development shall forward the application to appropriate City Departments. The application may also be transmitted to other appropriate professional consultants for review and comment.
- (c) **Administrative Development Plan Review and Approval by Staff.** Development not located within a PUD or planned overlay district that meets all zoning requirements for the district in which development is proposed requires staff approval only.
 - (1) The applicant shall submit all required documents set forth in 1105.11 of this chapter.
 - (2) Once the development plan is reviewed by Staff and determined to be in compliance with all requirements set forth in this Zoning Ordinance, the applicant shall apply for a certificate of building and zoning compliance prior to the start of construction.
- (d) **Review by Planning Commission.** For development within PUDs and existing planned overlay districts, the Director of Planning and Community Development shall forward the application and any City department reports, comments, and recommendations, and/or expert opinions to the Planning Commission prior to the time of the Commission's review. During its review, the Planning Commission may distribute the application to additional appropriate administrative departments for review and comment. The Commission may require additional information as the Commission deems necessary and may request the carrying out of special studies and the provisions of expert advice. Such additional administrative and/or expert review should be completed, and any reports or comments submitted to the Planning Commission prior to the time of the Commission's decision.

1105.13. Public Hearing and Notice by Planning Commission.

The Planning Commission shall hold a public hearing on the development plan application.

- (a) Notice of such public hearing shall be given on the City's website at least ten (10) days prior to said public hearing. Notices shall include the time and place of the public hearing, a summary of the proposal, and a statement that the opportunity to be heard will be afforded to any person interested. Failure of delivery of such notice shall not invalidate any such application.
- (b) A sign notifying the public of a zoning application under review shall be posted on each public road frontage of

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the property(ies) proposed for the development plan in a location visible from an adjacent public street, or if necessary, in an alternative location approved by the Planning and Community Development Department.

- (1) Sign size and content shall be specified by the Planning and Community Development Department.
- (2) The sign shall be posted at least ten (10) days in advance of the public hearing and shall remain in place for the duration of the development plan process except the sign shall be removed within five business days of a final decision by Planning Commission.

1105.14. Recommendation by Planning Commission.

The Planning Commission shall review the development plan according to the review criteria of Section 1105.16. Following its review, the Planning Commission shall either:

- (a) Recommend approval of the development plan as submitted; or
- (b) Recommend approval of the plan subject to specific conditions not included in the plan as submitted, such as, but not limited to, improvements in the yard layout, open space arrangement, on-site control of access to streets, or such features as fences, walls, and plantings to further protect and improve the proposed and surrounding developments; or
- (c) Recommend denial of the development plan. If the Commission finds that a proposed plan does not meet the purposes of these regulations, it shall deny the plan and shall submit its findings in writing to the applicant upon the applicant's request.
- (d) Failure of the Planning Commission to act within 120 days from the date the application was deemed complete, or an extended period as may be agreed upon, shall at the election of the applicant be deemed a denial of the application.
- (e) The applicant's determination of denial pursuant to this Section does not give the applicant the right to seek Council's approval of the application unless the Director of Planning and Community Development receives from the applicant notification in writing within thirty (30) days of the end of that 120-day period that a denial due to inaction occurred and that placement on a Council agenda is requested. The applicant shall be placed on a Council agenda no later than thirty (30) days after receipt of that written request by the City.

1105.15. Action by City Council.

Within thirty (30) days of action by the Planning Commission, the development plan shall be submitted to Council, unless otherwise agreed to by the applicant.

- (a) Public Hearing and Notice by City Council. The Council shall hold a public hearing on the development plan application. Notice of such public hearing shall be given on the City's website at least ten (10) days prior to said public hearing. Notices shall include the time and place of the public hearing, a summary of the proposal, and a statement that the opportunity to be heard will be afforded to any person interested. Failure of delivery of such notice shall not invalidate any such application.
- (b) Confirmation by City Council. Upon notification by the Planning Commission of their recommendation of approval or denial of development plans, Council shall by resolution accept or reject development plans or major modifications to development plans.
 - (1) Council shall, by resolution, either confirm the approval made by the Planning Commission, reject the Planning Commission's approval, or override a denial of the Planning Commission as specified in the City Charter.
 - (2) If Council rejects the Planning Commission's approval, the reason(s) shall be stated in writing and the application shall be remanded back to the Planning Commission to allow for the correction of stated deficiencies.
 - (3) Failure of Council to act after forty-five (45) days from the date Council receives notice from the Planning

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Commission that a development plan has been approved by the Commission shall be deemed a confirmation of the Planning Commission's approval and the approval of the Planning Commission shall stand.

- (4) Upon a final decision by Council, the sign installed per 1105.13(b) shall be removed within five (5) business days.

1105.16. Review criteria.

- (a) Development Plan Review Criteria. In reviewing a development plan, the appropriate reviewing body shall consider the location of buildings, parking areas, and other features with respect to the topography of the lot and existing natural features such as streams and large trees; the efficiency, adequacy and safety of the proposed layout of internal streets and driveways; the location of the green areas provided, considering the possible effects of irregularly shaped lots; the adequacy of the location, landscaping and screening of the parking lots; and such other matters as the Commission may find to have a material bearing upon the stated standards and objectives of the various district regulations. In approving a development plan, the Planning Commission shall determine that the development plan complies with the following criteria:
 - (1) The proposed plan is consistent with any plan or policy statement, including the comprehensive plan and thoroughfare plan for the orderly development of the City.
 - (2) The development plan indicates that the proposed development will result in a harmonious grouping of buildings within the proposed development and in relationship to existing and proposed uses on adjacent property.
 - (3) The development, when completed, will have adequate public service, parking, and open spaces.
 - (4) The plan, to the extent practical, will preserve and be sensitive to the natural characteristics of the site.
 - (5) Adequate provision is made for safe and efficient pedestrian and vehicular circulation within the site and to adjacent property.
 - (6) Adequate provision is made for emergency vehicle access and circulation.
 - (7) Adequate provision is made for storm drainage within and through the site so as to maintain, as far as practicable, usual and normal swales, water courses and drainage areas, and shall comply with any applicable regulation or design criteria established by the City.
 - (8) Site lighting is designed to minimize direct light, glare, and excessive glow, which unreasonably interferes with the use and enjoyment of adjacent property. If it is determined that, once the project is completed, the lighting does have unreasonable adverse impact on adjacent property, the Planning Commission may order reasonable alterations to the site lighting (such as reduced illumination, shielding, landscaping, etc.) to mitigate such unreasonable impacts.
- (b) Planned Unit Development Review Criteria. In reviewing development plans for planned unit developments, the Planning Commission shall determine that development plans comply with the criteria of this Section and the planned unit development review criteria set forth in Chapter 1114.

1105.17. Development plan modifications.

Requests to modify an approved development plan, when such requested modification does not involve a change of permitted uses for the site or property, may be approved by administrative action. Requests to modify shall be in writing and signed by the property owner(s). The Planning and Community Development Director shall determine the type and amount of any additional information necessary for consideration of the modification. Modifications shall be considered either major, minor, or incidental, and shall be approved or disapproved by administrative action in accordance with divisions (a) through (f) of this section.

- (a) Major Modifications. Major modifications to an approved development plan require resubmission of an

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application in accordance with section 1105.11 of this Chapter. At its discretion and in lieu of compliance with section 1105.11 of this Chapter, the Planning Commission may require the applicant to either submit a modified application or submit supplementary materials to accompany the original application materials. In all cases major modifications to the approved development plan shall be subject to review and approval procedures set forth in section 1105.12 through 1105.15 of this Chapter.

- (b) Major modifications are defined as modifications which do not change the permitted uses for the proposed site and do not exceed any of the limitations and conditions of the development plan approval, and which result in one or more of the following:
 - (1) An increase of greater than 5% in building coverage.
 - (2) An increase of greater than 5% in dwelling unit density.
 - (3) A significant redesign of roadways or drainage.
 - (4) A major redesign of a building which significantly alters the central architectural design or theme of the building.
 - (5) Modifications not considered to be of minor or incidental character.
- (c) Minor Modifications. Approval shall be based on a Planning Commission determination that the modifications are not in conflict with the intent and character of the approved development plan. Minor modifications do not require a public hearing and the Planning Commission's decision shall be final.
- (d) Minor modifications are defined as modifications which do not change the permitted uses of the proposed site and do not exceed any of the limitations and conditions of the development plan approval, and which result in one or more of the following:
 - (1) An increase of 5% or less in building coverage.
 - (2) An increase of 5% or less in dwelling unit density.
 - (3) Changes not exceeding 25 feet in building location not affecting front yard setbacks from streets or setbacks from exterior property lines of the property or site.
 - (4) An increase of more than five (5) feet in the height of a building or structure.
 - (5) Minor redesign of a building such as significant alterations to exterior materials, provided the redesign does not significantly alter the central architectural design or theme of the building.
 - (6) Changes not considered to be of major or incidental modification character. The Planning Commission shall, by resolution, approve or disapprove minor modifications to an approved development plan.
- (e) Incidental Modifications. The Planning and Community Development Director shall approve or disapprove incidental modifications to a development plan approval. Such approval shall be based on the Director's determination that the modifications are not in conflict with the intent and character of the approved development plan. In the alternative and at the discretion of the Planning and Community Development Director, the Director may request that incidental modifications be approved by the Planning Commission.
- (f) Incidental modifications are defined as modifications which do not change the permitted uses of the proposed site and do not exceed any of the limitations and conditions of the development plan approval, and which result in one or more of the following:
 - (1) Less building coverage due to decreasing the size of structures.
 - (2) A decrease in the number of structures; minor redesign of street layout, such as adjustments in a turning radius.
 - (3) Minor redesign, such as a realignment, of pedestrian circulation facilities or parking or loading areas.
 - (4) Changes in landscaping or screening materials that do not alter the intended function of the landscaping

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or screening.

- (5) An increase of five feet or less in the height of a building or structure.
- (6) Minor revisions of building elevations such as realignment of major building entrances, or window replacement, or alterations to exterior building materials or colors, provided the revisions do not alter the central design or architectural theme of a building.
- (7) Changes not considered to be of minor or major modification character.

1105.18 Significance of development plan approval.

An approved development plan shall become a binding commitment of the specific elements approved for development.

- (a) The approved development plan may be transferred to another person, corporation, or group of individuals or corporations prior to the issuance of a certificate of building and zoning compliance.
- (b) All construction and development under any permit shall be in accordance with the approved plan. The property owner, and successors, has a continuing obligation to comply with the approved plan. Any departure from such plan without prior approval shall be cause for revocation of the certificate of building and zoning compliance, and the property owner or other responsible parties are subject to penalties as prescribed by this Planning and Zoning Ordinance and the Codified Ordinances of the City of Delaware.
- (c) If, at the end of the twelve (12) month period, construction of the development has not begun and an extension has not been applied for in accordance with section 1105.22 of this Chapter, then approval of such development plan shall expire and shall be of no effect unless resubmitted and reapproved in accordance with the procedures set forth in this Chapter. Construction is deemed to begin when all necessary excavation and piers or footings of one or more principal buildings included in the plan have been completed.

1105.19 Conditional use approval.

The characteristics and impacts of an ever-increasing number of new and unique uses, together with the broadening of numerous conventional uses, have fostered the development of more flexible regulations designed to accommodate these activities in a reasonable and equitable manner, while safeguarding both the property rights of all individuals and the health, safety, and general welfare of the community. A conditional use approval allows for a more detailed evaluation of each use listed as a conditional use in a specific zoning district with respect to such considerations as location, design, size, method(s) of operation, intensity of use, requirements for public facilities, and traffic generation.

- (a) Nothing in these regulations shall prohibit the Planning Commission from prescribing supplementary conditions and safeguards to ensure adherence to the general criteria set forth in 1105.21 of this Chapter.
- (b) A conditional use shall conform to the regulations of the district in which it is located and to other substantive requirements of this Zoning Ordinance.

1105.20. Conditional use review procedures.

- (a) The Director of Planning and Community Development shall review each submitted application to determine compliance with the submission requirements. If the application is deemed insufficient, the Director of Planning and Community Development shall notify the applicant in writing within ten (10) business days of receiving such application of necessary changes or additional information needed. When the application is deemed complete and the application fee has been paid, the Director of Planning and Community Development shall officially accept the application for consideration of the action(s) requested on the date such determination is made.

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- (b) Public Hearing and Notice by Planning Commission. The Planning Commission shall hold a public hearing on the conditional use application. Notice of such public hearing shall be given on the City's website at least ten (10) days prior to said public hearing. Notices shall include the time and place of the public hearing, a summary of the proposal, and a statement that the opportunity to be heard will be afforded to any person interested. Failure of delivery of such notice shall not invalidate any such amendment.
- (c) Action by Planning Commission. Planning Commission shall approve, approve with conditions, or not approve the conditional use approval and such action shall be entered into in the Motion Summary of Planning Commission.
- (d) Appeal. A decision by Planning Commission regarding a conditional use application may be appealed to the Delaware County Court of Commons Pleas within thirty (30) days after the filing of the Planning Commission decision.
- (e) Re-Application Waiting Period: If a conditional use permit expires or is denied, an application for the same conditional use category may not be submitted for a period of at least six (6) months after the date of the expiration or denial.
- (f) Automatic Expiration of a Conditional Use Permit: If the approval conditions of a conditional use permit are not met or are violated, the conditional use permit shall expire automatically as of the moment that the approval conditions are not met or are violated.

1105.21. General criteria for all conditional uses.

A conditional use, and uses accessory to such conditional use, shall be permitted in a district only when specified as a conditional use in such district, and only if such use conforms to the following general criteria.

- (a) The Planning Commission shall review the particular facts and circumstances of each proposed use in terms of the following criteria and shall find adequate evidence that the use as proposed satisfies the following criteria:
 - (1) Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not essentially change the character of the same area.
 - (2) Will not be detrimental to property values in the immediate vicinity.
 - (3) Will not restrict or adversely affect the existing use of the adjacent property owners.
 - (4) Will be designed and constructed so that all access drives, access points to public streets, driveways, parking and service areas shall comply with the regulations set forth in Chapter 1123.
 - (5) Will be properly landscaped in accordance with Chapter 1121.
 - (6) That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety or general welfare.
 - (7) That the establishment of the conditional use in the proposed location will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
 - (8) That adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.
 - (9) That adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion on the surrounding public streets and to maximize public safety.
 - (10) That the establishment of the conditional use will not be detrimental to the economic welfare of the community by creating excessive additional requirements or public cost for public facilities such as police, fire and schools.
 - (11) That there is minimal potential for future hardship on the conditional use that could result from the

proposed use being surrounded by uses permitted by right that may be incompatible.

1105.22. Plan approval extensions.

- (a) Extension of development plan, conditional use, or modification approval period. Upon request by the owner, a one-time only, administrative extension of the one-year approval period for a development plan, conditional use, or modification approval may be granted by the Planning and Community Development Director. In the event such an extension is granted, the period of extension shall not exceed one year.
 - (1) The owner shall submit a written request with any additional requested information to the Planning and Community Development Director.
 - (2) Within ten (10) days from receipt, the Director shall, in writing, either deny the request, approve the request as submitted, or approve the request for extension for a lesser period of time than requested by the owner.
 - (3) Any extension of the approval period shall become effective and begin on the date of approval of such extension.
- (b) An additional one-year extension may be granted by the Planning Commission for a development plan, conditional use, modification, or an appeal to an extension denial.
 - (1) The owner or applicant shall submit a written request with any additional requested information to the Planning and Community Development Director.
 - (2) The extension request shall be presented at the next regularly scheduled Planning Commission meeting. The Planning Commission shall either deny the request for an extension, approve the request as submitted, or approve the request for a lesser period of time.
 - (3) Any extension of the approval period shall become effective and begin on the date of approval of such extension.

1105.23. Appeals to the Board of Zoning Appeals.

Appeals to the Board of Zoning Appeals may be brought by any person, or by any government officer, board, or department of the City, deeming themselves to be adversely affected by a decision of the Director of Planning and Community Development, or by any administrative officer of the City deciding matters relating to this Zoning Ordinance.

1105.24. Initiation of appeal.

Applications for appeal shall be filed with the Director of Planning and Community Development upon the forms provided, within thirty (30) days after the date of any adverse order, requirement, decision, or determination. Failure to file a notice of appeal within such thirty (30) days shall constitute a waiver of the right of appeal. The application for appeal shall include reference to the decision and the provision of this Zoning Ordinance from which the appeal is sought, and reasons for the appeal as well as all requirements set forth in the application checklist on file in the Planning and Community Development Department, unless items are determined by the Director to be inapplicable and are waived. The Director of Planning and Community Development shall transmit to the Board the record upon which the action appealed was taken from.

1105.25. Public hearing by the Board.

When an application for appeal or variance has been filed in proper form and the application fee has been paid, the Director of Planning and Community Development shall immediately place the request upon the calendar for public hearing before the Board of Zoning Appeals. The Board of Zoning Appeals shall hold such public hearing within forty-five (45) days after the receipt of an application for an appeal or variance from the Director of Planning and Community Development or applicant. The Board may recess such hearings from time to time, and, if

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the time and place of the continued hearing is publicly announced at the time of the adjournment, no further notice shall be required. Any person in interest may appear at the public hearing in person, by agent, or by attorney.

1105.26. Notice of public hearing.

- (a) The property owner requesting the appeal or variance shall submit the name(s) and address(es) of all record title holders within 200 feet of the property to which such appeal relates to the Clerk/Secretary of the Board of Zoning Appeals at the time the application for the appeal or variance is filed. "Record title holder" shall mean the title holder of such property as disclosed by the records of the County Auditor forty-five (45) days immediately prior to the date of such hearing.
- (b) Notice of the hearing shall be given by posting on the City's website for the ten-day period referenced in subsection (c).
- (c) All notices shall be mailed at least ten (10) days before the date of said public hearing. All notices shall set forth the time, place and nature of the proposed appeal or variance.
- (d) Failure of delivery of such notices shall not invalidate action taken on such application.

1105.27. Stay of proceedings.

An appeal stays all proceedings in furtherance of the action appealed from, unless the Director of Planning and Community Development from whom the appeal is taken certifies to the Board, after the notice has been filed with him or her, that by reason of facts stated in the certificate of building and zoning compliance, a stay would in his or her opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by restraining order, which may be granted by the Board or by a competent court having lawful jurisdiction.

1105.28. Review by the Board.

The Board of Zoning Appeals shall review the appeal or variance. The Board may call upon the City Manager for assistance from City departments and professional consultants in performance of its duties. Such City departments or consultants shall render such assistance to the Board as may reasonably be required.

1105.29. Decision of the Board.

- (a) Within its powers, the Board of Zoning Appeals may reverse or affirm, wholly or in part, the decision being appealed, and to that end shall have all the powers of the officers from whom the appeal is taken, and it may direct the issuance of a permit or certificate.
- (b) Within forty-five (45) days after the public hearing, unless an extended period of time is mutually agreed upon by the applicant and the Board, the Board of Zoning Appeals shall either approve, approve with supplemental conditions, or disapprove the request for appeal or variance. If the Board fails to act within such period of time, the appellant may determine the appeal or variance has been denied.
- (c) A certified copy of the Board's decision shall be transmitted to the applicant, or appellant, and a copy shall be filed with the Director of Planning and Community Development.
- (d) Any person(s) aggrieved by the decision of the Board may appeal to the Court of Common Pleas of Delaware County within thirty (30) days after the filing of the Board's decision.
- (e) Once the appellant has received the Board's decision, he/she may submit an application for a certificate of building and zoning compliance that complies with the Board's decision. A copy of the Board's decision shall be attached to the application.

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1105.30. Variances.

The Board of Zoning Appeals may authorize in specific cases such variance from the terms of this Zoning Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in practical difficulty.

- (a) Application. An application for a variance shall be filed with the Director of Planning and Community Development for review by the Board of Zoning Appeals upon the forms provided, and shall be accompanied by maps, plans, designs, and supplementary documents set forth within the application checklist on file with the Planning and Community Development Department, unless items are determined by the Director to be inapplicable and are waived.
- (b) Review for Completeness. Upon receipt of a written request for a variance, the Director of Planning and Community Development shall make a preliminary determination whether such application provides the information necessary for review and evaluation. If it is determined that such application does not provide the information necessary for such review and evaluation, the Director of Planning and Community Development shall within ten (10) days so advise the applicant in writing of the deficiencies and shall not further process the application until the deficiencies are corrected.
- (c) Review by the Board. According to the procedures established for appeals in Sections 1105.23 and 1105.24, the Board shall hold a public hearing and give notice of the same. The Board shall review each application for a variance to determine if it complies with the purpose and intent of this Ordinance and evidence demonstrates that the literal enforcement of this Ordinance will result in practical difficulty. The existence of nonconforming uses, lands, structures, or buildings in other districts shall not be grounds for issuance of a variance.
 - (1) The following factors shall be considered and weighed by the Board to determine practical difficulty:
 - A. Whether the granting of the variance would be in accord with the general purpose and intent of the regulations imposed by this Ordinance and the district in which it is located and shall not be injurious to the area or otherwise detrimental to the public welfare.
 - B. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Examples of such special conditions or circumstances are exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to non-conforming and inharmonious uses, structures, or conditions.
 - C. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance. Mere loss in value or financial disadvantage to the property owner does not constitute conclusive proof of practical difficulty, there shall be deprivation of beneficial use of land.
 - D. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance.
 - E. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, or trash pickup.
 - F. Whether the property owner purchased the property with knowledge of the zoning restrictions. Purchase without knowledge of restrictions in itself is not sufficient proof of practical difficulty.
 - G. Whether special conditions or circumstances exist as a result of actions of the owner.
 - H. Whether the property owner's predicament feasibly can be obviated through some method other than a variance.
 - I. Whether the granting of the variance is necessary for the reasonable use of the land or building, and the variance as granted is the minimum variance that will accomplish that purpose.

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- J. Whether the proposed variance would impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values of the adjacent area.
 - K. Whether the granting of the variance requested would confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.
- (d) Requests for Additional Information. The Board of Zoning Appeals may request that the applicant supply additional information that the Board deems necessary to review and evaluate the request for a variance, prior to the next regularly scheduled Board of Zoning Appeals meeting or a later date specified by the Board.
- (1) Should the applicant fail to provide the requested additional information in the specified time frame, the case shall be denied.
- (e) Supplemental Conditions and Safeguards. The Board may further prescribe any conditions and safeguards that it deems necessary to ensure that the objectives of the regulations or provisions to which the variance applies will be met. Any violation of such conditions and safeguards when they have been made a part of the terms under which the variance has been granted, shall be deemed a punishable violation of this Ordinance.
- (f) Action by the Board. The Board shall either approve, approve with supplementary conditions as specified in subsection (e) above, or disapprove the request for a variance according to the procedures established for appeals in Sections 1105.28 through 1105.29.
- (g) Term and Extension of Variance. Variances shall be non-assignable and shall expire one (1) year from the date of their enactment, unless prior thereto, the applicant commences actual construction in accordance with the granted variance or an extension of time has been granted by the Board of Zoning Appeals prior to the expiration date. Failure to file a request for extension within thirty (30) days prior to the expiration shall constitute a waiver of the right to a time extension. There shall be no modification of variances except by further consideration of the Board. Once the time limit pursuant to this Section has expired, a request for a variance shall be considered a new application for a variance and shall meet all requirements for application and review pursuant to this Section.

1105.31. Subdivisions.

If a proposed development includes the subdivision of land, the development shall be subject to the requirements of the plat approval process in accordance with Chapter 1106.

1105.32. Determination of similar uses.

Where a specific use is proposed that is not listed or provided for in a district, the Planning Commission may make a determination that the proposed use is of the same general character as the uses permitted in the district in which the use is proposed, or is similar to a particular use permitted in the district in which the use is proposed; and is determined to be consistent with the purpose statement for the district in which such use is proposed. Such additional uses shall not include uses which, in the judgment of the Commission, would likely be objectionable in the district in which such use is proposed.

- (a) The initial determination of a similar use shall be approved in accordance with the conditional use procedures set forth in Section 1105.20, including the requirement for a public hearing.
- (b) Following such a determination, the similar use shall be considered to be added to the permitted use list for the district, either as a permitted principal use or as a conditional use, as determined by the Planning Commission.

1105.33. Records.

A record of all applications and certificates issued shall be kept on file, in accordance with the City's record

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retention policy, in the Department of Planning and Community Development and shall be made available to the public.

1105.34. Fees.

The schedule of fees for review of and action on applications for zoning certificates, development plan review, conditional use permits, appeals, variances, amendments, subdivision plats, and other procedures and services pertaining to the administration and enforcement of this Zoning Ordinance shall be available at City Hall. Until all such appropriate fees, charges, and expenses have been paid in full, no action shall be taken on any application, appeal, or administrative procedure.

1105.35. Mitigation of Environmental Impacts.

It shall be the responsibility of the applicant/developer to assess and identify all environmental impacts, determine permitting requirements, and provide any required mitigation in accordance with federal, state, and local laws and regulations. Environmental resources that may require permitting and mitigation include but are not limited to stream corridors, floodways and floodplains, wetlands, species habitat, archaeological resources, and historic property resources. Agencies that may have jurisdiction over environmental impacts include but are not limited to the Federal Emergency Management Agency (FEMA), Ohio Environmental Protection Agency, United States Army Corps of Engineers, Ohio Historic Preservation Office, Ohio Department of Natural Resources, and Delaware County Historical Society.

- (a) To demonstrate compliance with applicable environmental laws and regulations, the developer shall provide to the Department of Planning and Community Development and City Engineer the following information:
 - (1) a summary of all environmental impacts caused by the development;
 - (2) a list of all environmental permits required by the project;
 - (3) copies of all permit application and permit approvals for the project;
 - (4) copies of all executed environmental covenants or easements;
 - (5) where an impact requires mitigation, information about how mitigation is being achieved;
 - (6) an exhibit showing all environmental impacts as defined by federal, state, and local laws and regulations. The exhibit shall show the existing conditions, proposed development, identified environmental resources, impacts requiring mitigation, mitigation areas provided on the site, and any other applicable information.
- (b) If a development has not identified an environmental permitting need for one or more types of impacts to environmental resources, the Director of Planning and Community Development and/or the City Engineer may require the developer to provide additional background showing that an environmental assessment was performed and evidence indicating that permitting and mitigation is not required. If no such determination was made, the developer shall be required to comply with the requirements of this section prior to construction.
- (c) All required environmental permits shall be in place prior to commencing construction activities on the development site. If a project is phased, environmental permits for impacts in a future phase need not be obtained until the future phase.
- (d) At the time of the development plan submission and approval, environmental permits are not required to be issued. However, any known information about environmental resources and impacts shall be included with the development plan submission.

1105.36. Acceptance of public improvements.

Acceptance of public improvements (including but not limited to streets, sidewalks, streetlights, bike paths,

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street trees, etc.) shall be required of all public streets, whether a part of a subdivision or not as determined by the City Engineer and set forth in Chapter 1106 of this code.

1105.37. Development agreements.

- (a) Purpose. These provisions establish uniform procedures and standards for the preparation, review, and adoption of Development Agreements to accomplish the following public purposes:
- (1) To provide more certainty to the City of Delaware that public amenities and improvements are provided concurrent with development and according to an agreed-upon schedule and at a level of quality sufficient to justify the grant of vested rights via a development agreement. Public benefits arising from a development agreement may include, but are not limited to, the provision of public facilities such as streets, sewerage, stormwater, parks and open space, transportation, schools, and utility facilities.
 - (2) To provide more certainty to a landowner and/or developer through the grant of vested property rights for an agreed-upon term of years. The establishment of vested rights through the use of a development agreement can ensure reasonable certainty, ensure stability and fairness in the land development approval process, secure the reasonable investment-backed expectations of landowners, provide for a more efficient use of resources, and foster cooperation between the public and private sectors in the area of land use planning and development.
- (b) Applicability. A Development Agreement may be submitted by any person having a legal or equitable interest in real property for the development of that property (the Applicant) to the City Manager for approval prior to all Development Plans or Preliminary Subdivision Plats and Final Plats. In addition, a Development Agreement may be submitted to the City with a petition to annex land to the corporate boundaries, provided the Agreement meets the requirements of this section as applicable. Nothing in these agreements shall conflict with the requirements of the City's Codified Ordinances.
- (c) Submission Requirements. The Development Agreement shall be submitted in document and electronic form and shall contain the following information at a minimum. If a separate Pre-Annexation Agreement was approved for the subject property(s) and is applicable to the proposed development, the Development Agreement shall be consistent with the Pre-Annexation Agreement unless otherwise agreed to in writing by all parties. Such consistency shall be noted in a statement in the Development Agreement. It shall also reference the Pre-Annexation Agreement by title and date of execution.
- (1) Parties. The Agreement shall name all parties to the Agreement including their capacities to enter into the Agreement. In the case of developers/owners, their equitable or legal interests in the property shall be stated. Names, addresses, telephone numbers, fax numbers and emails, and acreage by tract of the Owners and their representatives, and representatives of the City of Delaware shall be so stated.
 - (2) Relationship of the Parties. The relationship between the parties to the agreement should be stated clearly. The statement should specify that the relationship is contractual and that the owner/developer is an independent contractor, and not an agent of the City.
 - (3) Property. The property to be subject to the Agreement shall be clearly and thoroughly identified, including property ownership and tax identification numbers. An attachment, preferably with a map, specifically describing the property shall be provided and incorporated into the Agreement by reference.
 - (4) Authorization. The chapter and section of the Zoning Ordinance under which the parties are enabled and authorized to enter into the Agreement shall be cited. The ordinance by which the Agreement has been approved by the City Council shall be cited.
 - (5) Intent of the Parties. The intent of the parties to be bound by the terms of the Agreement shall be clearly stated.

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- (6) Recitation of Benefits and Burdens. The parties shall recite the benefits each expects to gain from entering into the Agreement, as well as the burdens each agrees to bear. Because the Agreement will be treated as a contract, the consideration each party is to receive from the other shall be stated clearly.
- (7) Notice and Hearings. The date upon which the statutorily required public hearing was held should be noted, as well as all relevant findings resulting from such hearing. All other pertinent notice and hearing requirements should be recited.
- (8) Consistency with Plans. The findings of the City Council that the Agreement is consistent with the City's plans (if applicable) must be stated. This includes the Comprehensive Plan.
- (9) Administrative Act. The Agreement shall state that it is deemed to be an administrative act of the City made party to the agreement. The relevant section of the enabling statute shall be cited.
- (10) Permitted Uses and Related Development Standards Under the Agreement. The Agreement shall specifically identify elements of development required by statutes. The Agreement must specify for the entire development and its various components: the applicable zoning categories; the permitted uses of the property; gross land area, lots by size, and the density or intensity of use (gross, net, and floor area ratio, as applicable); and the maximum height and size of proposed buildings. A map of the site shall be included indicating the above information.
 - A. In the case of annexations, the Agreement shall stipulate only general terms regarding potential use of the property and shall not specify zoning districts. A general concept of the proposed development of the site may be attached to the Agreement.
 - B. The parties to the Agreement are free to set limits and/or restrictions to permissible uses and development standards beyond those specified by the applicable zoning classification. All additional limits and requirements should be clearly stated.
- (11) Status of Applicable Land Use Regulations and Plans. The Agreement shall contain a statement based on a determination: whether or not applicable land use regulations or plans are currently under review or reconsideration, and whether or not there are legal challenges to the validity of such regulations or plans pending.
- (12) Approval and Permit Requirements. As far as possible at the time the Agreement is written, the parties shall specify all discretionary approvals and permits which will have to be obtained before the development can proceed beyond its various stages. Permits and approvals obtained prior to execution of the Agreement shall be specified. Any and all conditions precedent to the obtaining of permits and approvals shall be listed.
- (13) Project Phasing. The Agreement shall stipulate the general phasing of the development according to a schedule, indicating the commitment on the part of the owner to develop specific portions of the development (by acreage and number of lots) by phase within general timeframes.
- (14) Dedications and Reservations. The Agreement should provide, where appropriate, a statement of all reservations or dedications of land for public purposes as are required pursuant to laws, ordinances, resolutions, rules or policies in effect at the time of entering into the Agreement. The Agreement should also state all reservations or dedications which are permitted under existing laws at the time the Agreement is entered, and to which the parties have agreed.
- (15) Infrastructure and Public Services. The Agreement shall stipulate all infrastructure to be provided, including but not limited to roads, sidewalks, bike paths, water, wastewater, stormwater, parks, recreation facilities, schools, and other public buildings or facilities. The proposed timing and phasing of the construction of all infrastructure shall be indicated.
 - A. The Agreement shall stipulate the provision of transportation improvements, including commitments for right-of-way, road, intersection, sidewalk, and bike path improvements, financial contributions, and commitments to undertake traffic study(s) per City requirements,

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and/or the recommendations of a completed traffic study.

- B. The Agreement shall stipulate the provision of parkland dedications, including fee in-lieu of parkland dedication, and open space commitments.
 - C. The Agreement shall stipulate the provision of all water, sewer, and stormwater service, either to be provided by the developer or by the City and should be described in detail.
 - D. The Agreement shall stipulate the provision of other public services to include police, fire, emergency medical, parks and recreation, solid waste, snow removal, etc.
 - E. The Agreement shall stipulate the schedules of construction completion (if not existing) for all infrastructure, cost allocation (between or among developers and City and later developers) or other financing mechanisms, and hookup or connection schedules.
- (16) Environmental Considerations. The Agreement shall stipulate provisions to protect environmentally sensitive land on or adjacent to the property, and other measures to mitigate anticipated impacts from the development (such as noise, light pollution, etc.) on the general public.
- (17) Incentives. The Agreement shall stipulate any and all related economic incentives provided by the City, including amounts, duration of incentives, payback schedules, and other related details.
- (18) Duration of the Agreement. The Agreement should state a termination date. It should also specify project commencement and completion dates, either for the project on the whole, or for its various phases. The Agreement should specify that the termination date can be extended by mutual agreement, and that commencement and completion dates may also be extended.
- (19) Amendments, Cancellation or Termination. The Agreement shall recite the statutory conditions under which the Agreement can be amended, canceled, or otherwise terminated.
- (20) Periodic Review. The Agreement may provide for periodic reviews of the project in order to determine compliance with the terms of the agreement, as required by statute and ordinance, if appropriate. The City representative responsible for performing such reviews should be identified and specific times for such reviews should be stated.
- (21) Progress Reports. The Agreement shall specify that progress reports will be furnished to the City by the developer at specified intervals, or upon completion of specified phases of the project, or at whatever time periods the parties choose.
- (22) Remedies. Remedies for breach on the part of either party shall be provided. Specific remedies for specific breaches should be stated, if possible. The Agreement should include a statement clarifying whether the remedies stated in the Agreement are to be exclusive, or whether other statutory or common law remedies will also be available.
- (23) Enforcement. The Agreement shall specify that the Agreement shall be enforceable, unless lawfully terminated or canceled, by any party to the Agreement or any party's successor in interest, notwithstanding any subsequent changes in any applicable law adopted by the City that alters or amends the laws, ordinances, resolutions, rules, or policies frozen by the Agreement.
- (24) Hold Harmless Clause. The Agreement shall contain a clause whereby the developer/property owner holds the City and its agents harmless from liability for damages, injury or death which may arise from the direct or indirect operations of the owner, developer, contractors, and subcontractors, which relate to the project.
- (25) Insurance and Bonds. Any insurance coverage required and/or secured by either party to the Agreement, and affecting any aspect of the development project, should be specified. Existing performance bonds should be listed in detail, as well as bonds not yet obtained but required as conditions precedent for final approval of the development project. Applicable ordinances relating to bond requirements should be cited.

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- (26) Severability Clause. The Agreement shall include a clause specifying that the provisions of the Agreement are severable if the parties so agree. Any limitations upon the severability of any particular clause or clauses should be clearly stated.
 - (27) Merger Clause. A merger clause or other statement should be provided specifying that the terms of the Agreement as stated in the written document are both a final and complete expression of the parties' intentions.
 - (28) Statements of Incorporation by Reference. All documents related to the Agreement or otherwise attached or appended thereto shall be expressly stated to be incorporated into the Agreement by reference. These might include lists of conditions, schedules of completion for public facilities, imposition of dedications, impact fees, and development plans and specifications.
 - (29) Cooperation. The Agreement may include a statement of the extent to which the City will cooperate with the owner in its efforts to secure required permits from nonparty government agencies.
 - (30) Subsidiary or Collateral Agreements. If the owner has obtained additional agreements relating to the development project from any nonparty agencies or persons, such agreements and the parties thereto should be specified.
 - (31) Conflict of Laws. Procedures should be specified for dealing with situations in which changes in laws promulgated by nonparty government bodies (state or federal) might preempt or otherwise affect City laws frozen by the agreement.
 - (32) Signatures. Signature lines shall be provided for Owners and/or their legal representatives, and for the City Manager and City Attorney.
- (d) Vested Rights. Unless otherwise provided by the Development Agreement, the ordinances, rules, regulations, and official policies applicable to development of the subject property and governing permitted uses, density, and design, improvement, and construction standards and specifications shall be those in force at the time of the execution of the agreement.
- Ordinances, rules, regulations, and official policies applicable to development of the subject property and governing permitted uses, density, and design, improvement, and construction standards and specifications that are enacted subsequent to execution of the development agreement shall not be enforced against the subject property.
- However, an Agreement shall not prevent the City, in subsequent actions, from applying any of the following to the subject property:
- (1) New ordinances, rules, regulations, and official policies that do not conflict with those applicable to the subject property as set forth in the development agreement;
 - (2) New ordinances, rules, regulations, and official policies that are specifically anticipated and provided for in the development agreement;
 - (3) New ordinances, rules, regulations, and official policies that are necessary to address a significant and immediate threat to the public health, safety, and general welfare; or
 - (4) New ordinances, rules, regulations, and official policies when the City finds that the development agreement is based on substantially inaccurate information supplied by the Applicant.
- (e) Process. The following steps shall apply:
- (1) The Applicant shall meet with the City to discuss the proposed parameters of the Development Agreement prior to its submittal to the City. The Department of Planning and Community Development shall coordinate this process.
 - (2) The Development Agreement and Application and Fee shall be submitted by the Applicant to the City Manager's Office for review by the City Manager, Planning Director, City Attorney, City Engineer, Public

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Works Director, Parks and Parks and Recreation Director, and Public Utilities Director. Revisions shall be forwarded to the Applicant for consideration and submittal of a revised agreement.

- (3) Once the City Manager has approved the Development Agreement, the Agreement will be forwarded to the Planning Commission and City Council for consideration concurrently with the related Plan, Plat, or annexation petition. Council shall consider approval of a Development Agreement by ordinance, which shall require a public hearing at the second reading. The Council shall also consider an ordinance directing the City Manager to sign the Agreement.
 - (4) The Development Agreement cannot be approved and executed without the corresponding development approval or annexation acceptance occurring. If associated with a development approval, an Agreement must be completely consistent with such development approval including conditions of approval, otherwise the Agreement is hereby null and void.
- (f) Modification and Termination. A Development Agreement may be canceled or modified by the mutual consent of the Applicant and the City Council with a recommendation by the Planning Commission. The City Council may terminate or modify a Development Agreement based upon evidence that the Applicant, or successor in interest thereto, has not complied with the terms or conditions of the agreement.
- (1) In the event that state or federal laws or regulations are enacted after execution of the Development Agreement and prevent or preclude compliance with one or more provisions of the agreement, such provisions shall be modified or suspended to the extent necessary to comply with such state or federal laws or regulations.