

ORDINANCE NO. 27877

AN ORDINANCE relating to the Land Use Regulatory Code; amending Chapter 13.05, Land Use Permit Procedures; Chapter 13.06, Zoning; Chapter 13.06A, Downtown Tacoma; and Chapter 13.11, Critical Areas Preservation, of the Tacoma Municipal Code to establish procedures, requirements, and review criteria regarding the use of Development Regulation Agreements, pursuant to the State Growth Management Act (RCW 36.70B.170 through RCW 36.70B.210).

WHEREAS the Washington State Legislature (“State Legislature”) has found that the lack of certainty in the approval of development projects can result in a waste of public and private resources, escalate housing costs for consumers, and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public (hereinafter "Finding"), and

WHEREAS the State Legislature has concluded that assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and regulations and, subject to conditions of approval, all as set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development (hereinafter "Conclusion"), and

WHEREAS, in 1995, the State Legislature followed up on this Finding and Conclusion by amending the State Growth Management Act by adding RCW 36.70B.170 through 36.70B.210 in order to allow local governments and owners and developers of real property to enter into development agreements (hereinafter "Development Regulation Agreements" or “DRA”), and

WHEREAS the 2008 amendments to the Downtown Element of the City's Comprehensive Plan included, as a near term action (1 to 3 years), the development of a process for considering DRAs, and

WHEREAS the City's Comprehensive Plan contains policies that favor working cooperatively with other public agencies in order to address land use and service issues of mutual concern, issues that include *inter alia* urban aesthetics, mixed-use centers, and historic preservation, and

WHEREAS a DRA proposal to amend the Land Use Regulatory Code has been developed that is not only consistent with the City's Comprehensive Plan but also advances its goals, policies, and actions, and

WHEREAS the proposed amendment authorizes an alternative project review process for (1) large projects or historic preservation projects of any size in the City's downtown area and (2) institutional projects on sites over five acres in size anywhere in the City, and

WHEREAS the use of this process to comply with the City's development regulations will be entirely optional on the part of both the City and the developer; however, if this process is used, it does allow for site specific, negotiated public benefits in exchange for certainty on the regulations that will cover a particular project over an agreed upon period of years, and

WHEREAS the Planning Commission ("Commission") conducted a public outreach effort, held a public hearing on October 21, 2009, and recommended to the City Council the adoption of the proposed DRA amendment, and

WHEREAS the Commission's recommended amendment was discussed by the Economic Development Committee on January 26, 2010, and received a "do pass" contingent on the addition of two revisions (1) to provide notice to the City Council upon receipt of a complete application for a DRA and (2) to increase the level of energy conservation standards required for submittal and approval, and

WHEREAS, on February 9, 2010, after providing public notice, the City Council held a public hearing on the recommended DRA amendment, and

WHEREAS the City Council generally concurs with the Commission's Findings and Recommendations, and

WHEREAS the City Council concurs with the recommended revisions approved by the Economic Development Committee on January 26, 2010; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That the City Council adopts the Findings and Recommendations of the Planning Commission, dated November 18, 2009, as modified by the recommended revisions of the Economic Development Committee.

Section 2. That Chapters 13.05, 13.06, 13.06A, and 13.11 of the Tacoma Municipal Code are hereby amended, as set forth in the attached Exhibit "A."

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

EXHIBIT "A"

Development Regulation Agreements

(See Attached)

Development Regulation Agreements
Proposed Revisions to Tacoma Municipal Code
January 26, 2010

CHAPTER 13.05 – LAND USE PERMIT PROCEDURES

*Note – The proposed amendments to Chapter 13.05 reflect the addition of a *new* code section. All of the proposed text shown below is new.

13.05.095 Development Regulation Agreements

A. Purpose. Pursuant to RCW 36.70B.170-210, the purpose of this section is to create an optional application procedure that could authorize certain major projects in key locations to be reviewed, rated, approved, and conditioned according to the extent to which they advance the Comprehensive Plan's goals and policies. In addition to demonstrating precisely how it significantly advances the goals and policies of the Comprehensive Plan by achieving the threshold set forth in subsection 13.05.095(D) TMC, a threshold established based on the Comprehensive Plan goals and policies, a project located within the areas described in B(1) or B(2) must document specific compliance with the policies and standards set forth in the Downtown Element of the Comprehensive Plan.

It is anticipated that there will be a degree of flexibility in the application of the City's development regulations so that any conditions are tailored to the specifics of the proposed project and community vision in such a manner as to ensure that significant public benefits are secured. Project approval is embodied in a contract designed to assure that anticipated public benefits are realized according to agreed upon terms and conditions that may include, but are not limited to, project vesting, timing, and funding of on- and off-site improvements.

The City is authorized, but not required, to accept, review, and/or approve the proposed Development Regulation Agreements. This process is voluntary on the part of both the applicant and the City.

B. Applicability. Development Regulation Agreements shall only be allowed for one of the following project types:

1. Proposed projects located within the International Financial Services Area (IFSA), as defined in the City's Amended Ordinance No. 27825, with a building footprint of at least 15,000 square feet and a proposed height of at least 75 feet;
2. Proposed projects located within the "Working Definition of Downtown," as set forth in Figure 1 in the Downtown Element of the City Comprehensive Plan, provided that the real property involved is subject to a significant measure of public ownership or control, and provided that the project includes a building footprint of at least 15,000 square feet and a proposed height of at least 75 feet;

3. Proposed projects located within the IFSA or the Working Definition of Downtown where the City Landmarks Commission formally certifies that the proposed project is either a historic structure or is directly associated with and supports the preservation of an adjacent historic structure;

4. Proposed projects located on a public facility site, as defined in subsection 13.06.700.P TMC, that are at least five acres in size and are not a public utility site.

C. Application process. An application for a Development Regulation Agreement may only be made by a person or entity having ownership or control of real property within one of the qualifying areas identified in subsection B above. Applications for a Development Regulation Agreement shall be made with the Community and Economic Development Department, solely and exclusively on the current form approved by said Department, together with the filing fee set forth in the current edition of the City's Fee Schedule, as adopted by resolution of the City Council. The City Council shall be notified once a complete application has been received. The City shall give notice under Sections 13.02.057 and 13.02.045.H TMC as if the application were for a land use intensity change.

D. Review criteria. The City Manager, and such designee or designees as may be appointed for the purpose, shall negotiate acceptable terms and conditions of the proposed Development Regulation Agreement based on the following criteria:

1. The Development Regulation Agreement conforms to the existing Comprehensive Plan. Except for projects on a public facility site of at least five acres in size, conformance must be demonstrated by the project, as described in the Development Regulation Agreement, scoring 800 points out of a possible 1000 points, according to the following scoring system (based on the Downtown Element of the City Comprehensive Plan):

a. Balanced healthy economy. In any project where more than 60 percent of the floorspace is Class A office space, one point shall be awarded for every 200 square feet of gross floorspace (excluding parking) up to a maximum of 290 points.

b. Achieving vitality downtown. Up to 40 points shall be awarded for each of the following categories: (i) CPTED design ("Crime Prevention Through Environmental Design"), (ii) sunlight access to priority public use areas, (iii) view maximization, (iv) connectivity, (v) quality materials and design, (vi) remarkable features, (vii) access to open space, and (viii) street edge activation and building ground orientation.

c. Sustainability. Up to 50 points shall be awarded for each of the following categories: (i) complete streets, (ii) transit connections, and (iii) energy conservation design to a L.E.E.D. (Leadership in Energy and Environmental Design) certification to a platinum level or certified under another well-recognized rating system to a level equivalent to certification to a platinum level.

d. Quality Urban Design. Up to 60 points shall be awarded for each of the following categories: (i) walk ability, (ii) public environment, (iii) neighborly outlook, and (iv) support for public art.

2. Appropriate project or proposal elements, such as permitted uses, residential densities, nonresidential densities and intensities, or structure sizes, are adequately provided to include evidence that the site is adequate in size and shape for the proposed project or use, conforms to the general character of the neighborhood, and would be compatible with adjacent land uses.

3. Appropriate provisions are made for the amount and payment of fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, and other financial contributions by the property owner, inspection fees, or dedications.

4. Adequate mitigation measures including development conditions under chapter 43.21C RCW are provided.

5. Adequate and appropriate development standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features are provided.

6. If applicable, targets and requirements regarding affordable housing are addressed.

7. Provisions are sufficient to assure requirements of parks and open space preservation.

8. Best available science and best management practices shall be used to address critical areas within the property covered by a Development Regulation Agreement adopted pursuant to this section. Review of a development activity's critical area impacts that go beyond those exempted activities identified in Section 13.11.140 TMC shall occur during the Development Regulation Agreement review process, and a separate critical areas permit is not required. Any Development Regulation Agreement approval(s) shall, to the maximum extent feasible, avoid potential impacts to critical areas, and any unavoidable impacts to critical areas shall be fully mitigated, either on- or off-site.

9. Interim uses and phasing of development and construction is appropriately provided. In the case of an interim use of a property or portion of a property, deferments or departures from development regulations may be allowed without providing a demonstrated benefit to the City; provided, that any departures or deferments to the Code requested for a final use of the property shall comply with criterion No. 10 below. The agreement shall clearly state the conditions under which the interim use shall be converted to a permanent use within a stated time period and the penalties for noncompliance if the interim use is not converted to the permanent use in the stated period of time.

10. Where a phased Development Regulation Agreement is proposed, a site plan shall be provided and shall clearly show the proposed interim and final use subject to the agreement.

11. In the case of a Development Regulation Agreement where the proposed use would be the final use of the property, it shall be clearly documented that any departures from the standards of the Code, requested by the applicant, are in the judgment of the City, off-set by providing a benefit to the City of equal or greater value relative to the departure requested. In no case shall a departure from the Code be granted if no benefit to the City is proposed in turn by the applicant.

12. Conditions are set forth providing for review procedures and standards for implementing decisions, together with conditions explicitly addressing enforceability of Development Regulation Agreement terms and conditions and applicable remedies.

13. Thresholds and procedures for modifications to the provisions of the Development Regulation Agreement are provided.

14. A build-out or vesting period for applicable standards is provided.

15. Any other appropriate development requirements or procedures necessary to the specific project or proposal are adequately addressed.

16. If appropriate and if the applicant is to fund or provide public facilities, the Development Regulation Agreement shall contain appropriate provisions for reimbursement, over time, to the applicant.

17. Appropriate statutory authority exists for any involuntary obligation of the applicant to fund or provide services, infrastructure, impact fees, inspection fees, dedications, or other service or financial contributions.

18. Penalties for noncompliance with the terms of the Development Regulation Agreement are provided.

19. The building(s) shall be L.E.E.D. certified to a gold level or certified under another well-recognized rating system to be comparable to a building that is L.E.E.D. certified to a gold level.

E. Other standards and requirements.

1. Compliance with the provisions of subsection D above will ensure that the terms of the Development Regulation Agreement are consistent with the development regulations of the City then in effect, except that in the case of Shoreline Management Districts (Chapter 13.10 TMC) and Landmarks and Historic Special Review Districts (Chapter 13.07 TMC), specific compliance with the regulations and procedures of these codes is required.

2. The Development Regulation Agreement shall specify any and all development standards to which its terms and provisions apply. All other applicable standards and requirements of the City or other agencies shall remain in effect for the project.

F. Public hearing and approval process.

1. If the City Manager deems that an acceptable Development Regulation Agreement has been negotiated and recommends the same for consideration, the City Council shall hold a public hearing and then may take final action, by

resolution, to authorize entry into the Development Regulation Agreement. In addition, the City Council may continue the hearing for the purpose of clarifying issues or obtaining additional information, facts, or documentary evidence; advice may be sought from the Planning Commission.

2. Because a Development Regulation Agreement is not necessary to any given project or use of real property under the existing Comprehensive Plan and development regulations in effect at the time of making application, approval of a Development Regulation Agreement is wholly discretionary, and any action taken by the City Council is legislative only and not quasi-judicial.

3. The decision of the City Council shall be final immediately upon adoption of a resolution authorizing or rejecting the Development Regulation Agreement.

4. Following approval of a Development Regulation Agreement by the City Council, and execution of the same, the Development Regulation Agreement shall be recorded with the Pierce County Auditor.

G. Modifications. Once a Development Regulation Agreement is approved, no variances or discretionary permits may be applied for. Changes to standards may only be secured by amendment to the Development Regulation Agreement pursuant to amendment thresholds and process set forth in the Development Regulation Agreement.

H. Enforcement. Unless amended pursuant to this section and the terms of the agreement, or terminated, a Development Regulation Agreement is enforceable during its term by a party to the Development Regulation Agreement. A Development Regulation Agreement and the development standards in the Development Regulation Agreement govern during the term of the agreement or for all or that part of the specified build-out period. The Agreement will not be subject to a new or amended zoning ordinance or development standard adopted after the effective date of the Agreement, unless otherwise provided in the Agreement or unless amended pursuant to this section. Any permit or approval issued by the City after the execution of the Agreement must be consistent with the Development Regulation Agreement.

CHAPTER 13.06 – ZONING

*Note – The proposed amendments to Chapter 13.06 reflect the addition of a *new* code section. All of the proposed text shown below is new.

13.06.601 Public Facility Sites – Development Regulation Agreements Authorized.

For a Public Facility Site, as defined in subsection 13.06.700.P TMC, that is at least five acres in size, the regulations set forth in Chapter 13.06 TMC shall not apply if a Development Regulation Agreement, pursuant to the provisions of Section 13.05.095 TMC, has been approved for the site and is complied with.

CHAPTER 13.06A – DOWNTOWN TACOMA

*Note – The proposed amendments to Chapter 13.06A reflect changes to *existing* code language. The proposed new text is underlined.

13.06A.020 Applicability.

The provisions of this chapter shall apply to all uses and development in those areas in Downtown Tacoma classified in the districts described in Section 13.06A.040 TMC and shall modify the regulations and other provisions of Chapter 13.06 TMC; provided, that the regulations and provisions of Chapter 13.06 TMC shall apply when not specifically covered by this chapter; and further provided, that where Chapter 13.06 TMC and this chapter are found to be in conflict, the provisions of this chapter shall apply; and further provided, that neither the regulations set forth in Chapter 13.06 nor subchapter 13.06A TMC shall apply if a Development Regulation Agreement, pursuant to the provisions of Section 13.05.095 TMC, has been approved for the site and is complied with.

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CHAPTER 13.11 – CRITICAL AREAS PRESERVATION

*Note – The proposed amendments to Chapter 13.11 reflect the addition of a *new* code subsection. All of the proposed text shown below is new.

13.11.130 Scope and Applicability.

D. Critical areas outside a shoreline district that involve a development activity that is reviewed, pursuant to Section 13.05.095 TMC (Development Regulation Agreements), except for projects identified in subsection 13.05.095(B)4 TMC, shall be considered during the Development Regulation Agreement review process; a separate critical areas permit is not required. Any approval(s) pursuant to Section 13.05.095 TMC shall, to the maximum extent feasible, avoid potential impacts to critical areas, and any unavoidable impacts to critical areas shall be fully mitigated, either on- or off-site.

