

TMC Section 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 and illustrated in Figure 1, with a building footprint of at least 15,000 square feet and a proposed height of at least 75 feet;

Figure 1: International Financial Services Area (IFSA)



2. Proposed projects located within the Downtown Regional Growth Center, as set forth in the Growth Strategy and Development Concept 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 Downtown Regional Growth Center 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 Planning and Development Services 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 30 percent of the floorspace is office, commercial, or retail, 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, deferrals or departures from development regulations may be allowed without providing a demonstrated benefit to the City; provided, that any departures or deferrals 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.

(Ord. 28109 Ex. O; passed Dec. 4, 2012; Ord. 28077 Ex. B; passed Jun. 12, 2012; Ord. 28051 Ex. A; passed Feb. 21, 2012; Ord. 27877 Ex. A; passed Mar. 2, 2010)