

CITY OF WOODCREEK

ORDINANCE No. 06-106

DEVELOPMENT AGREEMENT ORDINANCE

AN ORDINANCE ENACTING REGULATIONS AND PROCEDURES FOR THE NEGOTIATION, CONSIDERATION AND APPROVAL OF DEVELOPMENT AGREEMENTS; PROVIDING FOR THE FOLLOWING: DEFINITIONS; PROCESS; AND ENFORCEMENT INCLUDING CIVIL PENALTIES

WHEREAS, the City Council of the City of Woodcreek (“City Council”) has the legal authority to negotiate with the owners of proposed development projects in the interest of the parties and the general public; and

WHEREAS, the City Council finds that, in some instances, Development Agreements can provide the flexibility needed to take a comprehensive approach to the regulation and development of certain tracts of land; and

WHEREAS, the City Council may find that a particular Development Agreement is beneficial to the City of Woodcreek, consistent with the Comprehensive Plan, and in the best interests of the citizenry; and

WHEREAS, drafts of the Development Agreements shall be publicly considered by the City Council and the Planning and Zoning Commission prior to approval; and

WHEREAS, the City and Owners shall provide extensive public notice during the process; and

WHEREAS, the City and Owners shall actively solicit written input on proposed Development Agreements from interested stakeholders; and

WHEREAS, the City is authorized to enter into such contracts with the owners of property located in the City’s Extraterritorial Jurisdiction (ETJ) pursuant to the City’s police powers, generally, and specifically Texas Local Government Code Section 212.172; and

WHEREAS, the power to create Planned Development Area Agreements or “industrial districts” is provided in Section 42.044 of the Texas Local Government Code; and

WHEREAS, the power to purchase, construction and operation of utility systems is provided in

Section 402.001 of the Texas Local Government Code; and

WHEREAS, the power to enter Developer Participation Agreements is provided in Section 212.071 of the Texas Local Government Code; and

WHEREAS, the general power to regulate subdivisions is provided in Sections 212.002 and 212.003 of the Texas Local Government Code; and

WHEREAS, the power of certain cities to create Planned Unit Developments is provided in Section 42.046 of the Texas Local Government Code; and

WHEREAS, the power to impose conditions for a city's approval of the creation of a special districts is provided in Section 42.202 of the Texas Local Government Code; and

WHEREAS, the power to agree not to annex areas is recognized in Section 43.033 of the Texas Local Government Code; and

WHEREAS, the basic power to enter contracts is provided in Sections 51.001, 51.014, 51.035 and 51.051(b) of the Texas Local Government Code.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Woodcreek:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. ENACTMENT

The Ordinances of the City of Woodcreek shall hereafter include a regulation that reads in accordance with *Exhibit A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

3. REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

6. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED this, the 20th day of October 2006, by a vote of 4 (*ayes*) to 0 (*nays*) to 0 (*abstentions*) of the City Council of Woodcreek, Texas.

CITY OF WOODCREEK:

by: (Signature of File)
Mayor Morris Haggerton

ATTEST:

by: (Signature on File)
Peg Wolfe, City Administrator

APPROVED AS TO FORM:
Alan J. Bojorquez, City Attorney

Exhibit “A”

DEVELOPMENT AGREEMENT ORDINANCE

SECTION 1. ENACTMENT PROVISIONS

1.1. Popular Name

This Ordinance shall be commonly cited as the “Development Agreement Ordinance.”

1.2. Purpose

This Ordinance establishes the process and standards by which the City may negotiate, formulate, consider and adopt Development Agreements

1.3. Scope

This Chapter applies to all property within the city limits and the extraterritorial jurisdiction (“ETJ”).

SECTION 2. DEFINITIONS

2.1. General

Words and phrases used in this Chapter shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinance shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

2.2. Specific

Applicant: A person or entity who submits to the City a request for a Development Agreement, as authorized by this Chapter, and Texas Local Government Code Section 212.171, et seq., as may be amended. To be qualified as an Applicant under this Chapter, the person or entity must have sufficient legal authority or proprietary interests in the land to commence and maintain proceedings under this Chapter. The term shall be restricted to include only the Property Owner(s), or a duly authorized agent and representative of the Property

Owner. In other jurisdictions, the term is sometimes referred to as the “developer”, “subdivider,” “builder,” or a similar title.

City: The City of Woodcreek, an incorporated municipality located in Hays County, Texas.

City Administrator: The chief administrative official of the City, as appointed by the City Council.

City Limits: The incorporated municipal boundary of the City of Woodcreek.

ETJ: The extraterritorial jurisdiction of the City of Woodcreek, as defined by the Texas Local Government Code, and as may be hereafter expanded.

P&Z: The Planning and Zoning Commission, an appointed advisory board of the City of Woodcreek.

SECTION 3. PROCESS

3.1. Objectives

Development Agreements executed by the City pursuant to this Chapter may:

- (a) guarantee the continuation of the extraterritorial status of the land and its immunity from annexation by the city for a period not to exceed fifteen (15) years;
- (b) extend the city’s planning authority over the land by providing for a development plan to be prepared by the landowner and approved by the municipality under which certain general uses and development of the land are authorized;
- (c) authorize enforcement by the city of certain municipal land use and development regulations (e.g., zoning and building codes) in the same manner the regulations are enforced within the municipality's boundaries;
- (d) authorize enforcement by the city of land use and development regulations other than those that apply within the municipality's boundaries, as may be agreed to by the landowner and the municipality;
- (e) provide for exceptions to certain City regulations;
- (f) provide for infrastructure for the land, including:
 - (1) streets and roads;

- (2) street and road drainage;
 - (3) land drainage; and
 - (4) water, wastewater, and other utility systems;
- (g) authorize enforcement of environmental regulations;
- (h) provide for the annexation of the land as a whole or in parts and to provide for the terms of annexation, if annexation is agreed to by the parties;
- (i) specify the uses and development of the land before and after annexation, if annexation is agreed to by the parties; or
- (j) include other lawful terms and considerations the parties consider appropriate.

3.2. Requirements for Agreement

To be eligible for approval by the City Council, an Agreement must:

- (a) be in writing;
- (b) contain an adequate legal description of the land;
- (c) include a concept plan, site plan or other graphic depiction of the applicant's intended layout of the proposed development;
- (d) be publicly considered by the P&Z;
- (e) be subject to a public hearing;
- (f) be approved by the city council and the landowner; and
- (g) be recorded in the real property records of the county.

3.3. Extensions

The parties to an agreement may renew or extend it for successive periods not to exceed fifteen (15) years each. The total duration of the original agreement and any successive renewals or extensions may not exceed forty-five (45) years.

3.4. Binding Nature of Agreement

The Agreement shall be binding on the City and the landowner and on their respective successors and assigns for the term of the Agreement. The Agreement may be considered a "permit" for purposes of compliance with Texas Local Government Code Chapter 245. Final copies of the Agreement shall be filed in and among the land records of Hays County.

3.5. Expenses

The City may require the Applicant to reimburse the City, or place a sum in escrow, for

payment of all of the City's expenses related to preparation of the Agreement, including administrative costs and professional services fees.

3.6. Notice

- 3.6.1. The Applicant must provide written notification of the first public hearing or public meeting of the P&Z at which the proposed Agreement will be considered.
- 3.6.2. General notice must be published in the form of an announcement in the City's official newspaper. Notice must be given not more than thirty (30) nor less than fifteen (15) days prior to the hearing/meeting.
- 3.6.3. Personal Notice must be provided to each property owner within three hundred (300) feet of the periphery of the land subject to the Agreement. Notice must be given not more than thirty (30) nor less than fifteen (15) days prior to the hearing/meeting. When delivering notice by mail, three (3) days shall be added to the prescribed time period. Property owners shall be those identified by the most recently approved property tax records of Hays County. Personal notice may be served by:
 - (a) Hand delivery; or
 - (b) Registered or Certified US Mail; or
 - (c) Overnight Mail; or
 - (d) Such other manner reasonably calculated to provide notice as approved in advance by the City Administrator.

Upon serving personal notice, the Applicant must provide the City with a representative copy of the personal notice and the mailing list.

3.7. Approval

- 3.7.1. Following a public hearing, the P&Z shall consider the Agreement and make a recommendation to the City Council prior to final action by the City Council.
- 3.7.2. The City Council may take final action on the Agreement only after receiving a recommendation from the P&Z. For purposes of this Chapter, the minutes of a P&Z meeting may constitute a report.
- 3.7.3. Factors to be considered by the City in approving an Agreement include, but shall not be limited to:
 - (a) Public benefits; and
 - (b) Adequate environmental protection; and

- (c) Burden on City's infrastructure; and
- (d) Consistency with the City's Comprehensive Plan; and
- (e) Conformance of the Agreement with the intent and purposes of City regulations;
and
- (f) Fiscal impact of the Agreement and resulting development on the City.

3.7.4. The City's approval of an Agreement shall take the form of an ordinance approved by the City Council authorizing and directing the Mayor to execute the Agreement on behalf of the City.

3.7.5. The City Administrator shall be instructed to publish the Agreement in and among the official records of the City.

3.7.6. The Applicant shall be instructed to file the Agreement in and among the official records of Hays County.

SECTION 4. ENFORCEMENT

- 4.1.** An Agreement must provide specific enforcement mechanisms to ensure compliance.
- 4.2.** Among other remedies, the City may withhold development approvals in accordance with an Agreement in order to ensure compliance.
- 4.3.** The City may utilize all available civil enforcement alternatives to achieve compliance with this Ordinance and any related development agreements.
- 4.4.** Among other remedies, the City is authorized to issue Stop Work Orders to halt construction in violation of an Agreement.