

Model Development Agreement Bylaw

Background

This model bylaw/ordinance was prepared by the Cape Cod Commission to assist Cape Cod Towns that wish to incorporate development agreement authority into their local regulations. This model was prepared in conformance with the Cape Cod Commission Act and the Code of Cape Cod Commission Regulations of General Application, as revised.

A development agreement is a voluntary, binding contract. It is a tool that may be used by the Cape Cod Commission, municipalities, state agencies and developers to define the scope and substance of proposed developments. As empowered by the Cape Cod Commission Act, the Cape Cod Commission has the opportunity to enter into development agreements with the private sector. In addition, and provided that their Local Comprehensive Plans have been certified by the Cape Cod Commission, the Cape's fifteen towns are authorized to execute development agreements directly with a land owner or with a land owner, the Cape Cod Commission and other governmental agencies, including abutting Cape towns.

In addition to having their Local Comprehensive Plans certified by the Cape Cod Commission, towns wishing to execute development agreements must adopt this bylaw, or a reasonably related substitute, as a general or zoning bylaw or ordinance. Once adopted, Towns are free to execute development agreements in accordance with the regulations noted below.

Finally, as with the execution of any contract, it is strongly recommended that no development agreement be pursued and executed without advice from counsel.

01.0 Purpose and Intent: This bylaw/ordinance enables the Town of ____ to enter into development agreements consistent with the provisions of the Cape Cod Commission Act and Chapter D - Code of Cape Cod Commission Regulations of General Application.

02.0 Definitions: In this bylaw, the following terms shall have the following meanings:

02.1 Act: An Act Establishing the Cape Cod Commission, Chapter 716 of the Acts of 1989, as amended.

02.2 Local Building Official: The local building inspector or building commissioner for the municipality(ies) in which the proposed development is located.

02.3 Commission: The Cape Cod Commission.

02.4 Executive Director: The Executive Director of the Cape Cod Commission.

02.5 Lead Community: When the Commission is not a party and a proposed development agreement involves more than one municipality, the Lead Community shall be the municipality that the involved municipalities agree shall be the Lead Community. Where all involved municipalities cannot agree upon a

Lead Community, the Lead Community shall be the municipality having the largest area encompassed by the proposed development.

02.6 Qualified Applicant: A person who has a majority legal or equitable interest in the real property which is the subject of the development agreement. A Qualified Applicant may be represented by an authorized agent.

02.7 Participating Parties: Those entities who have been selected by a Qualified Applicant to consider a particular Development Agreement, including the Qualified Applicant, and a municipality(ies), and/or a state agency(ies). Unless otherwise provided in a Town's bylaws, a municipality through its Board of Selectmen/ or for the town of Barnstable through its Town Manager, may appoint a negotiating board composed of members of its municipal boards and commissions as the Selectmen/Town Manager believe may best represent their town's interests.

03.0 Authority: Notwithstanding provisions to the contrary, the Town of _____ is hereby authorized to enter into a development agreement with a Qualified Applicant provided the following conditions are met:

03.1 The Town's Local Comprehensive Plan has been certified by the Cape Cod Commission as consistent with the Regional Policy Plan and said certification has not been revoked;

03.2 The Town has adopted, either through an amendment to its zoning bylaw/ordinance or as a general Town bylaw, the enabling regulation contained in Sections 01.0 through Section 10.0, herein.

04.0 Who may participate in a Development Agreement

04.1 The Commission, municipality(ies), state agency(ies), and Qualified Applicants may enter into a development agreement.

04.2 A Qualified Applicant may choose to participate with:

(a) the Commission; or

(b) the Commission and a municipality or municipalities within which the development is proposed; or

(c) the Commission and a municipality or municipalities within which the development is proposed and with a state agency or agencies; or a municipality or municipalities within which the development is proposed; or

(d) a municipality or municipalities within which the development is proposed and a state agency or agencies.

04.3 Those parties selected to participate are referred to within this bylaw as "Participating Parties".

05.0 Negotiation and Execution of Development Agreements:

05.1 Negotiation of the elements of a development agreement between Participating Parties (Section 04.0) and a Qualified Applicant shall follow all pertinent rules of due process currently required for public meetings, public hearings, and ratification of board/council decisions.

05.2 Negotiation of the elements of a development agreement between Participating Parties (Section 04.0) and a Qualified Applicant shall be led by the Planning Board or its designee, and may include representatives from other municipal boards, departments and commissions where said joint participation will assist the negotiation process.

05.3 No development agreement may be executed by the Board of Selectmen/ Town Manager prior to an affirmative, majority vote by the Planning Board recommending the execution of the development agreement.

05.4 The Board of Selectmen/Town Manager may make minor amendments to the development agreement recommended by the Planning Board and execute said development agreement as amended, provided that such amendments do not alter the use, intensity or mitigation stipulations of the development agreement. However, in no instance may the Board of Selectmen/ Town Manager make substantial amendments to the development agreement recommended by the Planning Board without first receiving written concurrence from the Planning Board and Qualified Applicant that said substantial amendments are agreed to.

05.5 The Board of Selectmen/Town Manager or their designee shall be authorized to execute, on behalf of the town, a development agreement. Prior to executing said development agreement, the Board of Selectmen shall, at a public meeting, vote to authorize said execution. The Board of Selectmen/Town Manager shall, within seven (7) days of the vote authorizing the execution of the development agreement, cause said development agreement to be so executed and forward the same to the Qualified Applicant by certified, return receipt mail. Within twenty-one (21) days of the date said development agreement has been mailed by the Board of Selectmen/Town Manager, the Qualified Applicant shall execute the agreement and return either by certified mail or hand delivery, the fully executed development agreement.

06.0 Elements of Development Agreements:

06.1 Proffers by a Qualified Applicant: A development agreement may include, but is not limited to, the provisions whereby a Qualified Applicant agrees to provide certain benefits which contribute to one or more of the following:

- (a) infrastructure;

- (b) public capital facilities;
- (c) land dedication or preservation;
- (d) fair, affordable housing, either on-site or off-site;
- (e) employment opportunities;
- (f) community facilities;
- (g) recreational uses;
- (h) other benefits intended to serve the proposed development, municipality, and county, including site design standards to ensure preservation of community character and natural resources.

06.2 Proffers by a Lead Community: A development agreement may include the provisions whereby a Lead Community and other municipality agree to provide certain protection from future changes in applicable local regulations and assistance in streamlining the local regulatory approval process. Streamlining may include, where not in conflict with existing local, state or federal law, holding of joint hearings, coordination of permit applications and, where possible, accelerated review of permit approvals. A development agreement may also provide for extensions of time within which development approvals under state, regional and local laws may be extended to coincide with the expiration of the development agreement established in Section 09.0, below. When the Cape Cod Commission is not a party to the development agreement, no land use development rights shall vest with respect to Cape Cod Commission regulations and decisions and the property shall be subject to current as well as subsequent changes in the Commission's regulations and decisions.

07.0 Procedural Requirements for Development Agreements Where the Cape Cod Commission is a Party to the Agreement:

07.1 Where the Cape Cod Commission is to be a party to a development agreement, the procedural requirements established in Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised, shall be followed and no such development agreement shall be valid unless and until the requirements of said Section 5 of Chapter D have been complied with in full.

08.0 Procedural Requirements for Development Agreements Where the Cape Cod Commission is Not a Party to the Agreement:

08.1 Where the Cape Cod Commission is not to be a party to a development agreement a Qualified Applicant shall complete a Development Agreement Application Form. The Development Agreement Application Form shall include:

- (a) A fully completed Development Agreement Application Form or a substantially equivalent form, including a certified list of abutters prepared by the Assessors in the town or towns where the abutters are located;
- (b) A legal description and a survey of the land subject to the agreement and the names of its legal and equitable owners;
- (c) The proposed duration of the agreement;
- (d) The development uses currently permitted on the land, and development uses proposed on the land including residential/population densities, and building densities and height;
- (e) A description of public facilities that will service the development, including who shall provide such facilities, the date any new facilities will be constructed, and a schedule to assure public facilities adequate to serve the development are available concurrent with the impacts of the development;
- (f) A description of any reservation or dedication of land for public recreation, conservation, agricultural, aquacultural, or historic purposes;
- (g) A description of all local development permits needed for the development of the land;
- (h) A statement acknowledging that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the Qualified Applicant or Participating Parties of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions;
- (i) A Final Environmental Impact Report, certified as adequate by the Secretary of Environmental Affairs, if required under sections 61-62h of Chapter 30 of the General Laws;
- (j) Additional data and analysis necessary to assess the impact of the proposed development, as determined by the Municipality or Lead Community.

08.2 All Qualified Applicants seeking to enter into a development agreement without the Commission as a party shall submit the proposed development to the Local Building Official for a determination of whether the proposed development qualifies as a Development of Regional Impact. If the Local Building Official determines that the proposed development is not a Development of Regional Impact, the Local Building Official shall forward his or her determination, together with the reasons for such determination and a copy of the development agreement application, to the Commission Clerk within five (5) business days. If the Chief Regulatory Officer or his/her designee determines that the proposed development exceeds a DRI review threshold pursuant to the Act and the Enabling Regulations, then the project shall be subject to DRI review or the Qualified Applicant should follow the Procedure for adopting Development Agreements as outlined in Section 7 of this bylaw. The Chief Regulatory Officer or his/her designee

shall notify in writing the Qualified Applicant, the Local Building Official, and the Town Clerk(s) of the municipality(ies) in which the development is located of his/her decision within ten (10) days of receipt of the Local Building Official's determination. If the proposed development is not a Development of Regional Impact, then the Qualified Applicant may pursue a development agreement without the Commission as a party pursuant to Section 8 of this bylaw.

08.3 The municipality which is a party, or when more than one municipality is a party, then the Lead Community shall oversee the development agreement process. The Municipality or Lead Community shall hold a public hearing after receipt of a fully completed application from a Qualified Applicant for consideration of a proposed development agreement. At least one public hearing shall be held in at least one of the municipality(ies) in which the proposed development is located. The public hearing regarding review of a development agreement shall not exceed ninety (90) days, unless extended by mutual agreement of the parties. Failure to close the public hearing within ninety (90) days shall not result in a constructive grant of the proposed development.

08.4 When more than one municipality is a party to the agreement, the Lead Community shall oversee the development agreement process as specified in this bylaw. Conflicts between the Lead Community and other municipality(ies) which are a party to the agreement shall be resolved through negotiation by the relevant parties. Because a development agreement is a voluntary process, unresolved disputes may result in one or more parties making a determination not to remain a party to the proposed negotiation of the development agreement.

08.5 The municipality or Lead Community shall provide notice of the public hearing to consider a development agreement by publication as required by Sections 5(d)(1-3) of the Cape Cod Commission Act. The municipality or Lead Community shall also provide notice to the Commission at least fourteen (14) days prior to such hearing.

08.6 The qualified applicant shall pay the cost of providing notice of the public hearing to consider the proposed development agreement.

08.7 The municipality or Lead Community shall review proposed development agreements for their consistency with local zoning and Local Comprehensive Plans. A development agreement that is inconsistent with local zoning shall require either a zoning amendment or shall be subject to the grant of such zoning relief as may be needed under the zoning bylaws of the Town as may be needed to resolve the inconsistency, unless the development agreement is approved by the same entity and the same quantum of votes as would be required to amend the zoning bylaws/ordinances of the Town. Thereupon, any departure from zoning expressly and specifically authorized by the development agreement shall be deemed effective.

08.8 The municipality or Lead Community shall file its development agreement with the Clerk of the Cape Cod Commission and with the town clerk(s) of the municipality(ies) in which the development is located. Notices of development agreements shall be published in a newspaper of general circulation in the municipality(ies) in which the development is located, including a brief summary of the

contents of the development agreement and a statement that copies of the development agreement are available for public inspection at the town clerk's office during normal business hours of any municipality which is a party to the agreement. In addition, the Lead Community shall provide the Cape Cod Commission with a summary of the development agreement, which the Cape Cod Commission shall publish in its official publication pursuant to section 5(i) of the Cape Cod Commission Act.

08.9 The town clerks of the contracting town or towns shall issue a certificate, which certifies the effective date of the development agreement. The certificate shall be issued in a form suitable for recording in the Barnstable County Registry of Deeds. The municipality or Lead Community shall record the certificate, to which the development agreement shall be attached as an exhibit in the Barnstable County Registry of Deeds and shall submit proof of such recording to the Commission Clerk within 14 days of such recording. The Qualified Applicant shall bear the expense of recording.

08.10 The municipality or Lead Community may, by separate resolution, establish the fees and charges imposed for the filing and processing of each application and document provided for or required under these regulations. Any other municipality or state agency which is also a party to the development agreement may, by separate resolution, establish additional fees and charges to be imposed for the filing and processing of each application and document provided for under these regulations.

09.0 Duration of the Development Agreement:

09.1 Nothing in this bylaw/ordinance may be construed to permit a municipality to require a Qualified Applicant to enter into a development agreement.

09.2. A development agreement will commence and terminate as agreed by the parties, in writing, except as otherwise provided in this section and section 5(q) of Chapter D, of the Code of the Cape Cod Commission Regulations of General Application, as revised. When the Commission is not a party, a development agreement shall not exceed ten (10) years, however, provisions in the development agreement pertaining to the preservation of open space and park areas, and agreement to pay for maintenance of utilities and other infrastructure may exceed such ten-year limitation. When the Commission is a party, a development agreement may be adopted for a longer period of time, in accordance with Section 7 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised.

09.3 A development agreement may not be used to prevent a Lead Community or other governmental agency from requiring a Qualified Applicant or Participating Party to comply with the laws, rules and regulations and policies enacted after the date of the development agreement, if the Lead Community or governmental agency determines that the imposition and compliance with the newly effective laws and regulations is essential to ensure the public health, safety or welfare of the residents of all or part of the jurisdiction.

10.0 Amendment and Rescission:

10.1 A development agreement may be amended or rescinded as provided below. Requirements for hearings, notice, costs and filing and recording of the amendments and rescissions of development agreements shall be followed as provided in sections 7 and 8 above.

10.2 Modification categories

(a) Minor Modification:

Amendments that are de minimus changes or technical corrections, as determined by both the Commission and/or the Lead Community, may be made without following the notice and public hearing requirements provided in Sections 7 and 8 above. Such changes may be authorized by the Regulatory Committee of the Commission, a majority vote of the Board of Selectmen or for the Town of Barnstable by signature of its Town Manager, and endorsement of the Head of a State Agency.

(b) Major Modification:

When the Commission is a party to the development agreement, any party to the development agreement may petition to amend the development agreement. The Participating Parties may petition to rescind the development agreement; the Commission may petition to rescind the development agreement only in the event of failure of consideration. Such petition shall be made in writing and shall state, in specific detail, the petitioner's reasons for amendment or rescission. The petitioning party shall provide notice to all parties to the development agreement

When the Commission is not a party to the development agreement, any other party to the development agreement may petition the municipality or Lead Community to amend or rescind the development agreement. The petitioning party shall provide notice to all parties to the development agreement and to the Commission of its intention to amend or rescind the agreement by providing such parties and the Commission with a copy of the petition seeking such amendment or rescission. When the municipality or Lead Community initiates an amendment or rescission, it shall provide notice, in writing, to all other parties to the agreement and to the Commission.

10.3 Amendments and rescissions must be ratified by all parties to the original development agreement. Any development agreement may contain provisions further regulating the amendment and/or rescission of a development agreement.

11.0 Enforcement:

11.1 A development agreement is a binding contract, which is enforceable in law or equity by the contracting parties only and their successors and assigns in the appropriate Massachusetts courts.

12.0 Severability:

12.1 If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the town's zoning bylaw.