

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

ORDINANCE NUMBER ____

AN ORDINANCE OF MARTIN COUNTY, FLORIDA, AMENDING ARTICLE 7, DEVELOPMENT AGREEMENTS, LAND DEVELOPMENT REGULATIONS, MARTIN COUNTY CODE; PROVIDING FOR APPLICABILITY, CONFLICTING PROVISIONS, SEVERABILITY, FILING WITH THE DEPARTMENT OF STATE, CODIFICATION AND AN EFFECTIVE DATE

WHEREAS, Article 7 is based, in part, on Sections 163.3220 – 163.3243, Florida Statutes, the Florida Local Government Development Agreement Act; and

WHEREAS, Article 7 is not consistent with the current Florida Local Government Development Agreement Act and other portions of the Land Development Regulations; and

WHEREAS, it is therefore necessary to amend Article 7; and

WHEREAS, the Local Planning Agency has found and recommended that the Board find the proposed revisions to the Land Development Regulations consistent with the Comprehensive Growth Management Plan; and

WHEREAS, the Board finds the proposed amendment consistent with the goals, objectives, and policies of the Comprehensive Growth Management Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, FLORIDA, THAT:

PART 1. AMENDMENT OF ARTICLE 7, LAND DEVELOPMENT REGULATIONS, MARTIN COUNTY CODE.

Article 7 is amended as set forth below:

Article 7 - DEVELOPMENT AGREEMENTS

Sec. 7.1. - Short title, authority, and application.

7.1.A. *Short title.* This article shall be known as the "Martin County Development Agreement Ordinance."

7.1.B. *Authority.* The Board of County Commissioners of Martin County has the authority to adopt this article pursuant to article VIII, section 1, Florida Constitution, F.S. § 125.01 et seq., F.S. § 163.3161 et seq., and F.S. § 163.3220 et seq.

7.1.C. *Application.* This article shall apply to all development in the total unincorporated area of Martin County.

Sec. 7.2. - Statement of intent and purpose.

7.2.A. *Implementation of Comprehensive Growth Management Plan.* This article is intended to implement and be consistent with the Martin County Comprehensive Growth Management Plan.

7.2.B. *Development agreement to ensure compliance with Comprehensive Growth Management Plan.* The objective of this article is accomplished by authorizing development ~~and~~ agreements to be entered into between a developer and Martin County pursuant to the terms of this article to ensure the adequacy of public facilities and sound capital improvement planning, while providing certainty in the process of obtaining development approval and reducing the economic costs of development by providing greater regulatory certainty.

7.2.C. *Minimum requirements.* The provisions of this article, in their interpretation and application, are declared to be the minimum requirements necessary to accomplish the stated intent, purposes, and objectives of this article. Nothing in this article shall be interpreted as characterizing a development agreement as anything other than a discretionary, bilateral contract between the County and the developer ~~owner~~ with consideration given by both parties to the contract.

Sec. 7.3. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aggrieved or adversely affected person means any person or local government which will suffer an adverse effect to an interest protected or furthered by the Martin County Comprehensive Growth Management Plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, or environmental or natural resources. The alleged adverse interest effect may be shared in common with other members of the community at large, but must ~~shall~~ exceed in degree the general interest in common good shared by all persons. The term includes the owner, developer, or applicant for a development order.

CIE facility commitment development agreement means a development agreement approved pursuant to the provisions of this article which reserves capacity for category A and C public facilities and is required pursuant to the APFO reservation standards of either section 5.32.D.3.a(1)(e), a(3)(e), a(5)(b), b(1)(e), b(3)(e), c(1)(e), d(1)(e), e(1)(e) and/or f(1)(e). The agreement incorporates the standard certificate of public facilities reservation, and contains a contractual commitment by Martin County, subject to conditions noted therein, to timely fund and construct a CIE improvement consistent with section 5.32.D.6 of the Martin County Adequate Public Facilities Ordinance.

CIE ordinance update development agreement means a development agreement approved pursuant to the provisions of this article which reserves capacity for all category A and C public facilities and is required pursuant to the APFO reservation standards of either section 5.32.D.3.a(1)(f), a(3)(f), b(1)(f), b(3)(f), d(1)(f), e(1)(f) and/or f(1)(f). The agreement incorporates the standard certificate of public facilities reservation and provides financial security for one or more category A or C public facilities to be provided by the applicant. The facilities secured by a CIE ordinance update development agreement are currently included in the CIE but are being modified as to facility timing, cost, or funding source. Such an agreement shall be processed concurrent with an ordinance amending the CIE and shall not be effective until an ordinance amending the CIE is adopted which modifies the facility, cost, and timing and shows the facility as developer funded. A development agreement is not required when a developer is providing an operation improvement.

CIE plan amendment development agreement means a development agreement approved pursuant to the provisions of this article which reserves capacity for all category A and C public facilities and is required pursuant to the APFO reservation standards of either section 5.32.D.3.a(1)(f), a(3)(f), b(1)(f), b(3)(f), d(1)(f), e(1)(f) and/or f(1)(f). The agreement incorporates the standard certificate of public facilities reservation and provides financial security for one or more category A or C public facilities to be provided by the applicant. The facilities secured by a CIE plan amendment development agreement are not currently in the CIE, and the agreement must be accompanied by a concurrent plan amendment. The agreement shall not be effective until the plan amendment which shows the facility as developer funded is effective. A development agreement is not required when a developer is providing an operational improvement.

Comprehensive Growth Management Plan means the Martin County Comprehensive Growth Management Plan, as amended, when referenced in this article.

~~Strikethrough~~ passages are deleted; underline passages are added.

Developer means any person, including a governmental agency undertaking any development.

Development means the carrying out of any building activity or mining operation, the making of any material change in the redevelopment or modification of an existing use or appearance of any structure or land which creates additional impacts, and the dividing of land into three or more lots, tracts or parcels (including planned unit developments). ~~has the meaning given it in F.S. § 380.04.~~

Development agreement means an agreement entered into between Martin County and a person associated with the development of land pursuant to the terms to this article.

Development order means any order granting, denying, or granting with conditions, an application for a building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance or any other official action of the County having the effect of permitting the development of land. ~~any order granting or granting with conditions an application for development permit.~~

~~*Development permit* includes any rezoning, planned unit development, conditional use, site plan, subdivision plat, building permit, variance, or any other official action of Martin County having the effect of permitting the development of land.~~

Land means the earth, water, and air, above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

~~*Land Development Regulations* means ordinances enacted by Martin County for the regulation of any aspect of development and includes any zoning, rezoning, subdivision, environmental, building construction, or sign regulations controlling the development of land.~~

Leap-frog developments are developments located beyond the fringe of the urban development where the planned provision of urban services cannot be assured in a cost-effective manner and where community planning goals would be adversely affected.

~~*Local Planning Agency* means the Martin County Planning and Zoning Commission.~~

Operational improvement means a capital cost that does not create additional mandatory public facility capacity or maintain existing capacity of mandatory public facilities. An operational improvement is an improvement that would not be considered a capital improvement under definition of capital improvement in the Martin County Comprehensive Growth Management Plan.

~~*Party* means Martin County or a developer who has entered into a development agreement with Martin County.~~

Public facilities means the capital improvements and systems of each of the following: airport, coastal, corrections, police and law enforcement, fire rescue, emergency shelters, golf courses, libraries, mass transit, miscellaneous, open space/conservation lands, parks and recreation, pedestrian/bicycle and other multimodal pathways, public buildings, public health, roads, schools, solid waste, water management and utilities, ~~stormwater management facilities, publicly owned park and recreation facilities, publicly and privately owned potable water facilities, road facilities, sanitary sewer facilities, solid waste facilities, and mass transit facilities that provide services to the public.~~

Urban sprawl is a development pattern requiring the extension of public facilities and services in an inefficient manner, and failing to provide a clear separation between urban and rural uses, continuous, uncoordinated development that does not provide or properly plan for concentration of more intense uses and the efficient and economical provision of public services.

Sec. 7.4. ~~Rules of construction.~~ Reserved

~~In the construction of this article, the rules set out in this section shall be observed unless such construction is inconsistent with the manifest intent of the Board of County Commissioners of Martin County as expressed in the Comprehensive Growth Management Plan. The rules of construction and definitions set forth herein shall not be applied to any provisions which expressly exclude such construction, or where the subject matter, content or context of such provision would make such construction internally inconsistent or inconsistent with other provisions of this article.~~

~~7.4.A. *Generally.* All provisions, terms, phrases and expressions contained in this article shall be liberally construed in order that the true intent and meaning of Martin County may be fully carried out. Terms used in this article, unless otherwise specifically provided, shall have the meanings prescribed by the statutes of this State for the same terms. In the interpretation and application of any provision of this article it shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of this article imposes greater restrictions upon the subject matter than a general provision imposed by the Martin County Comprehensive Growth Management Plan or another provision of this article, the provision imposing the greater restriction or regulation shall be deemed to be controlling.~~

~~7.4.B. *Text.* In case of any difference of meaning or implication between the text of this article and any figure, the text shall control.~~

~~7.4.C. *Computation of time.* The time within which an act is to be done shall be computed by excluding the first and including the last day; if the last day is Saturday, Sunday or a legal holiday, that day shall be excluded.~~

~~7.4.D. *Delegation of authority.* Whenever a provision appears requiring the head of a department or some other County officer or employee to do some act or perform some duty, it is to be construed to authorize the head of the department or some other County officer or employee to designate, delegate and authorize professional level subordinates to perform the required act or duty unless the terms of the provision or section specify otherwise.~~

~~7.4.E. *Gender.* Words importing the masculine gender shall be construed to include the feminine and neuter.~~

~~7.4.F. *Month.* The word "month" shall mean a calendar month.~~

~~7.4.G. *Nontechnical and technical words.* Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.~~

~~7.4.H. *Number.* A word importing the singular number only, may extend and be applied to several persons and things as well as to one person and thing. The use of the plural number shall be deemed to include any single person or thing.~~

~~7.4.I. *Shall, may.* The word "shall" is mandatory; "may" is permissive.~~

~~7.4.J. *Tense.* Words used in the past or present tense include the future as well as the past or present~~

~~7.4.K. *Week.* The word "week" shall mean seven calendar days.~~

~~7.4.L. *Year.* The word "year" shall mean a calendar year, unless a fiscal year is indicated or 365 calendar days is indicated.~~

Sec. 7.5. - Procedure for review of development agreement.

~~7.5.A. *Application initiation.* An application for a development agreement shall be filed with the County Administrator by the owner or other person having a power of attorney from the owner to make the application. The development review procedures set forth in Article 10, Land Development Regulations, shall be applicable to applications for development agreements except as set forth below.~~

~~Unless otherwise specified, an application for a development agreement and proposed development agreement pursuant to this article may be filed by the owner of the property or~~

~~other person or entity having a contractual interest in subject property or an agent of the owner or person having a contractual interest, when specifically authorized by the owner or person having a contractual interest, when specifically authorized by the owner to file such an application.~~

7.5.B. Submission, timing, and review of application.

1. ~~An application for a development agreement shall pursuant to this article will not be processed unless (1) the application relates to (4) a previously approved development order, (2) the application is concurrent with a request for a development order, or (3) an the application is concurrent with a request for an amendment to the Comprehensive Growth Management Plan, or (4) a development agreement is required by the Comprehensive Growth Management Plan. All applications pursuant to this article shall be filed with the Director of the Growth Management Department.~~
2. ~~An application for a CIE ordinance update development agreement or CIE facility commitment development agreement pursuant to this article will be received for processing on any working day. An application for a CIE plan amendment development agreement shall be submitted concurrent with a private Comprehensive Plan amendment application for a change to the CIE pursuant to section 1.11 of the Comprehensive Growth Management Plan and article Article 10, of the Land Development Regulations and shall be processed concurrent with said amendment in accordance with the timeframes and procedures for plan amendments or the provisions of this article whichever provides for a longer period.~~
3. ~~Where a development agreement is sought in conjunction with a development order or the amendment to the Comprehensive Growth Management Plan, and this article provides for longer review times, then the development order or the amendment to the Comprehensive Growth Management Plan shall be processed concurrent with the development agreement such that the longer review period shall be used for both applications.~~

7.5.C. Contents of application and fees.

1. ~~Unless otherwise specified, an application and development agreement shall be submitted in a form adopted by resolution of the Board of County Commissioners and made available to the public.~~
2. ~~Applications shall be accompanied by certifications from the attorney or other professionals who prepared the application, that the application, agreement or contract is in the standard form, or that any changes, additions or deletions from the standard form are indicated in the proposed draft document(s).~~
3. ~~Each application shall be accompanied by a nonrefundable fee established by resolution of the Board of County Commissioners to defray the actual cost of processing the application.~~

7.5.D. Completeness determination.

1. ~~Within seven calendar days after the receipt of an application, the Growth Management Director shall determine if the application is complete. No application shall be processed until the director has determined that the application is complete and sufficient for processing. The form and content requirements of the board approved application shall be the basis for the director's determination of application completeness. The director may consider an application complete for processing without submitting all of the information otherwise required if the director determines that the information is not material or relevant to a decision on the application. In addition to the provisions of this article, in order for an application for a CIE plan amendment development agreement to be reviewed that year, the application must be submitted by October 8 and determined complete by October 15.~~
2. ~~When the application is determined complete, the Growth Management Director shall notify the applicant, in writing, of the application's completeness and that the application~~

~~is ready for review pursuant to the procedures and standards of this section. A determination of completeness shall not be interpreted as a determination of compliance with the requirements of this article.~~

- ~~3. If the Growth Management Director determines the application is not complete for processing, a written notice shall be mailed to the applicant specifying the application's deficiencies. No further action shall be taken on the application until the deficiencies are remedied or the applicant prevails on an appeal of the determination. If the deficiencies have not been remedied within 30 days of receipt of notice of deficiencies, or the applicant has not filed an appeal pursuant to paragraph 4 below, within ten days of notice, the application is automatically voided; and the director shall return the application and fee, less an administrative charge, to the applicant.~~

- ~~4. *Appeal.* An applicant may appeal any completeness determination of the Growth Management Director by filing a petition to the County Administrator within ten days of receipt of notice of deficiencies pursuant to paragraph 3 above. The County Administrator shall consider the appeal within 20 days of receipt of the petition and render a written order upholding or overturning the decision of the Growth Management Director with reasons clearly stated. An appeal of a completeness determination shall be based upon the form and content requirements of the board-approved application, the provisions and requirements of this article, and whether the information is material or relevant to the application.~~

~~7.5.E. *Application distribution.* Unless otherwise specified, the Director of the Growth Management Department shall forward copies of applications to the members of the Development Review Committee for their review.~~

~~7.5.F. *Review and analysis by County departments.*~~

- ~~1. Within 30 calendar days after the application and proposed development agreement is determined complete or concurrent with the original departmental analysis when the application is accompanied by a development order or Comprehensive Plan amendment, whichever timeframe is greater, the Development Review Committee members shall review the application and forward their comments and analysis to the Growth Management Department Director.~~
- ~~2. The Development Review Committee members' comments shall identify the applicable law, and present specific findings with reference to the supporting documentation as to whether the request is consistent with the standards applicable to the type of application. If the application is inconsistent with the requirements or fails to demonstrate consistency, the report shall indicate this failure with particularity and recommend denial. If the application is consistent with all applicable requirements, the report shall indicate such consistency. Nothing herein shall be interpreted as limiting the DRC members' discretion to recommend denial of an application for reasons clearly stated. All development agreements include the exercise of legislative discretion.~~

~~7.5.G. *Report and recommendation of the Growth Management Director.*~~

- ~~1. Within 45 calendar days after the application is determined complete, or concurrent with the initial Growth Management staff report when the application is accompanied by a development order whichever timeframe is greater, the Growth Management Director shall review the application, the reports and analysis received from the County departments, prepare a report, recommend approval or denial and schedule the agreement for the DRC for review and recommendation. The Growth Management Director shall mail a copy of the report to the applicant.~~
- ~~2. When the application is accompanied by a request for a development order, the Growth Management Director's report on the agreement shall be incorporated into the staff analysis; and any decision on the development order shall be conditioned on approval of the development agreement.~~
- ~~3. The Growth Management Department staff report shall be in a form consistent with subsection F.2 above and shall also consolidate and incorporate the reports and recommendations of the DRC members.~~

~~7.5.H. C. *Decision by Board of County Commissioners.*~~

- ~~1. *Two public hearings.* After the Growth Management Director has made a~~
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~~recommendation on the application and proposed development agreement, the application and proposed development agreement shall be considered at two public hearings.~~

- a. If the proposed development agreement is being considered in conjunction with an application for a development order permit which requires review by the Local Planning Agency Planning and Zoning Commission, the first public hearing shall be held before the Local Planning Agency Planning and Zoning Commission, who shall review the application, and proposed development agreement and recommendation by the Growth Management Director and recommend its approval, approval with conditions, or denial. The second public hearing shall be before the Board of County Commissioners, who, ~~after review and consideration of the application, the proposed development agreement, the recommendations of the Growth Management Director and the Planning and Zoning Commission, and public testimony,~~ shall approve, approve with conditions, or deny ~~disapprove~~ the development agreement. The second public hearing shall be a minimum of seven days after the first public hearing. The day, time, and place of the second public hearing shall be announced at the first public hearing.
- b. In all other instances, both public hearings ~~shall~~ may be held by the Board of County Commissioners. The second public hearing shall be a minimum of seven days after the first public hearing. The day, time, and place of the second public hearing shall be announced at the first public hearing. At the conclusion of the second public hearing, the Board of County Commissioners shall, ~~after review and consideration of the application, the proposed development agreement, the recommendations of the Growth Management Director and the Planning and Zoning Commission, and public testimony,~~ approve, approve with conditions, or disapprove the development agreement.

2. *Notice.*

- a. *General requirement.* Notice of public hearings regarding development agreements shall be published at least 7 days prior to the date of the public hearing in a newspaper of general circulation in Martin County, as defined in F.S. ch. 50 and consistent with the provisions of F.S. chs. 125, 163 and 286. The notice of a public hearing regarding development agreements shall be mailed at least 14 calendar days prior to the public hearings by the applicant to all owners of real property located within a distance of 500 feet of the boundaries of the affected property. For development parcels which lie outside of or border the primary urban service district, the notification distance shall be increased to 1000 feet. In addition, notice shall be mailed to all homeowner associations, property owners associations, condominium associations and the owners of each condominium unit within the notice area.

~~Notice of intent to consider the application and proposed development agreement shall be advertised by the County publishing an advertisement approximately seven days from each public hearing on the application in a newspaper of general circulation and readership in Martin County. Notice of intent to consider the application and proposed development agreement shall also be mailed by the applicant at least 15 days prior to the first public hearing on the application by certified mail, return receipt requested, to all owners of property, as reflected on the current year's tax roll, lying within 300 feet of the property directly affected by the application and proposed development agreement. An application for a development agreement in an area designated for rural density or agricultural ranchette development by the future land use map of the Comprehensive Growth Management Plan shall require certified mail notice to all owners of property, as reflected on the current year's tax rolls, lying within 600 feet of the property directly affected by the application. The applicant shall provide proof of advertisement and the return receipts from the mailing to the Growth Management Director a minimum of five working days before the first public hearing.~~

- b. *Form.* The form of the notices of intention to consider adoption of a development agreement shall specify:
 - (1) *Time and place.* The time and place of each hearing on the application;

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- (2) *Location*. The location and acreage of the land subject to the proposed development agreement;
 - (3) *Uses and intensities*. The development uses proposed on the property, ~~including the property size, total units and/or square footage, gross and net residential density and height;~~
 - (4) *Where copy can be obtained*. Instructions for obtaining further information regarding the application and proposed development agreement, including where a copy of the proposed development agreement can be obtained.
3. ~~*Decision*. At the conclusion of the second public hearing, and based upon consideration of the application and the proposed development agreement, the recommendation of the Growth Management Director, and public testimony received during the public hearing, the Board of County Commissioners shall approve, approve with conditions, or deny the proposed development agreement based upon whether it complies with the standards in section 7.H~~

Sec. 7.6. - Standards.

A development agreement shall, at a minimum, include the following provisions:

- 7.6.A. *Legal description, acreage and owner*. A legal description of the land subject to the development agreement ,acreage and the names of the legal and equitable owners.
- 7.6.B. *Duration and development timing*. The duration of the development agreement shall not exceed thirty ~~ten~~ years; provided, however, that no development agreement may reserve capacity for category A and C public facilities for more than five years at a time. ~~The timetable of development for the duration of the agreement, including dates for final development plan approval, construction plan approval, building permit issuance, project construction commencement, and project build-out, must also be included. In the event the project has not complied with the construction commencement date, the development agreement shall cease to be effective and the development shall cease to be authorized. In the event an extension of the commencement date or the termination date of the development agreement is sought, the amendment can be approved only if there is demonstrated compliance with all current laws and regulations.~~
- 7.6.C. *Uses, densities, intensities and height*. The development uses permitted on the land, ~~including property size, total units and/or square footage, gross residential density and height. When the proposed development agreement is approved concurrent with or following the approval of a preliminary development order, or concurrent with a final development order, a reduced copy of the preliminary or final development~~ order plan shall be attached as an exhibit to the development agreement.
- 7.6.D. *Land use designation*. The land use designation of the property under the Future Land Use Element of the Comprehensive Growth Management Plan.
- 7.6.E. *Zoning district designation*. The current zoning district designation of the land subject to the development agreement.
- 7.6.F. *Public facility adequacy*. A description of public facilities that will service the development, including who shall provide such facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impact of the development. ~~Any public facilities to be designed and/or constructed by the developer shall be in compliance with all applicable federal, State and County standards to ensure the quality of the public facilities. The standards shall include, but not be limited to, guarantees of performance and quality, and project controls (including scheduling, quality controls, and quality assurances). It is the purpose of this subsection to ensure that no development order is issued unless there are adequate public facilities available to serve the development concurrent with the impact of development on the public facilities, and that future development will pay the full cost of the new public facilities needed to address the impact of that development.~~
- 7.6.G. ~~*Public facility capacity reservation or deferral*~~. Reserved
- 1. ~~A finding that the proposed development subject to the development agreement complies with the Martin County Adequate Public Facilities Ordinance [article 5 of the~~

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- ~~Land Development Regulations], and has reserved public facility capacity needed to accommodate the development proposed in the development agreement.~~
2. ~~If relevant and appropriate, a finding that the proposed preliminary development order subject to the development agreement has not reserved capacity for discrete phases beyond the initial reserving phases pursuant to the Martin County Adequate Public Facilities Ordinance [article 5 of the Land Development Regulations] and has passed a concurrency evaluation and deferred public facility capacity reservation. If the development agreement accompanied by a preliminary development order does not reserve capacity for a phase or phases, the agreement shall contain a timetable for the submission of final development orders and contain the affidavit language as prescribed by section 14.4.A.3.d(2) of the Growth Management Plan and section 5.32.C of the Adequate Public Facilities Ordinance.~~

7.6.H. *Reservation or dedication of land.* A description of any reservation or dedications of land for public purposes.

7.6.I. *Local development permits.* A description of all local development permits approved or needed to be approved for development of the land, specifically, to include at least the following:

1. Any required amendments to the Comprehensive Growth Management Plan.
2. Any required amendments to the ~~County~~ Land Development Regulations.
3. Any required ~~other~~ amendments to the official zoning atlas.
4. Any ~~other~~ development permits required by the ~~under the~~ County's Land Development Regulations.
5. Any ~~other required permissions~~ permits or approvals from regional, State or federal governments.

7.6.J. ~~*Reserved Local development permits obtained by applicant/property owner.* The development agreement shall specifically provide that all local development permits identified in this section shall be obtained at the sole cost of the applicant/property owner and, that in the event that any such local development permits are not received, no further development of the property shall be allowed until such time as the Board of County Commissioners has reviewed the matter and determined whether or not to terminate the development agreement, or to modify it in a manner consistent with the public interest and the Comprehensive Growth Management Plan.~~

7.6.K. *Consistency with Comprehensive Growth Management Plan.* A finding that the development permitted or proposed in the development agreement is consistent with the Comprehensive Growth Management Plan.

7.6.L. *Consistency with Land Development Code.* A finding that the development permitted or proposed in the development agreement is consistent with County's Land Development Regulations.

7.6.M. *Compliance with laws not identified in development agreement.* A statement indicating that failure of the development agreement to address a particular permit, condition, term or restriction shall not relieve the developer ~~applicant~~ of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions, and that any matter or thing required to be done under existing ordinances of Martin County shall not be otherwise amended, modified or waived unless such modification, amendment or waiver is expressly provided for in the development agreement with specific reference to the provisions so waived, modified or amended. In no event shall delay in obtaining permits from other agencies be deemed as automatically requiring an extension of time to obtain Martin County development orders or a development agreement with Martin County, nor shall such delay be interpreted as requiring an extension of time to any existing development order or development agreement.

7.6.N. *Financial assurance and refund.* If relevant and appropriate, the necessary bonds and sureties for the construction of public facilities, impact fees or other contributions to ensure any public facilities are provided pursuant to the terms of the development agreement and Article 5, Land Development Regulations. ~~the Adequate Public Facilities Ordinance [article 5 of the Land Development Regulations].~~ Additionally, if relevant and appropriate, any provision governing the refund of financial assurances consistent with if the development agreement is modified or revoked.

7.6.O. *Breach.* The terms and conditions that govern a breach of the development agreement. All costs incurred by the County for breach proceedings shall be paid by the ~~developer~~ property owner. If such costs are not paid, the County is empowered to place a lien against the property in the amount of the unpaid costs. A development agreement approved pursuant to this article shall include a breach section in substantially the following form:

Upon the ~~developer's~~ owner's material breach of the terms and conditions of this agreement, the County may serve written notice on the ~~developer~~ owner of the date and place of a public meeting to allow the ~~developer~~ owner an opportunity to explain the reasons for the breach and to propose a method of fulfilling the agreement's terms and conditions. The County may, in its sole discretion, allow the ~~developer~~ owner an opportunity to negotiate an amendment to this agreement to cure the breach. After notice as set forth above, all further development approvals shall be withheld for the project until such time as the obligations of this agreement are fulfilled or until such time as the County has pursued to completion all remedies available to it in the event of a breach.

The following events are considered a material breach of this agreement: A failure to complete all development specified in the agreement by the termination date; a failure to strictly comply with all conditions of this agreement; failure to provide or maintain financial assurances required under this agreement; failure to make required dedications; ~~proceeding with development under the guise of single family lot sale development status when the project or phase of the project is in fact proceeding as a builder type development~~; or any other material violation of any of the terms and conditions contained in, incorporated in, or referenced in this agreement.

~~If at the public meeting described above the County finds, based on substantial competent evidence, that the owner is in material breach of this agreement and an amendment to this agreement to cure the breach is not authorized by the Board of County Commissioners, the owner's capacity reservation shall immediately be forfeited and this agreement shall be revoked in accordance with section 7.13.E. In the event of a revocation prior to the first final development order for the project, the project shall lose all capacity reservation and, if a valid preliminary remains, be subject to the disclaimer in section 14.4.A.3.d(2), Martin County Comprehensive Growth Management Plan, and section VII.D of the Martin County Adequate Public Facilities Ordinance [sic]. In the event such revocation occurs after a final development order has been issued for any phase of the project, the project shall lose all capacity reservation for those phases which have not received a final development order, and at the public hearing the Board of County Commissioners shall determine whether there has been a material breach of the development order, in accordance with applicable law. The "breach" hearing on the development order shall be held concurrent with the development agreement revocation hearings. Refund of financial assurances shall be as described in the Martin County Adequate Public Facilities Ordinance. In lieu of revoking this agreement, and forfeiting owner's capacity reservation, the County may agree, in its sole discretion, to modify this agreement upon a finding that such modification is in the best interests of the County.~~

~~It is further agreed by the owner and the County that all costs incurred by the County for the breach proceedings shall be paid by the property owner. If such costs are not paid, the County is empowered pursuant to section 7.6.O of the Martin County Land Development Regulations to place a lien against the property in the amount of the unpaid costs.~~

Except as provided in section 7.16, this provision shall not be interpreted to provide an exclusive remedy, and either party may pursue any appropriate remedy at law or equity in the event the other party or its successors in interest fail to abide by the provisions of this agreement.

7.6.P. *Conditions necessary to ensure compliance with Code and plan.* Such conditions, terms, restrictions or other requirements determined to be necessary by the Board of County Commissioners to ensure compliance with the County's Land Development Regulations and consistency with the Comprehensive Growth ~~Strikethrough~~ passages are deleted; underline passages are added.

Management Plan.

Sec. 7.7. - CIE plan amendment and CIE ordinance update and CIE facility commitment development agreements.

7.7.A. *Description.* A decision to enter into a CIE plan amendment development agreement or a CIE ordinance update development agreement is a decision to amend the County's CIE and show one or more category A or C public facilities as developer funded. A decision to enter into a CIE facility commitment development agreement is a decision to make a contractual commitment with a developer to fund an improvement shown in the CIE and not to remove or delay the facility except in specified situations. Because a decision to amend the CIE or to contractually commit to a CIE improvement is a broad decision about when and where the County is directing its resources to address the orderly and cost-effective development of the urban service districts and concurrency on a County-wide basis, the focus of the decision to enter into a development agreement is broader than simply whether the agreement provides a means for a specific project to address concurrency. Accordingly, when deciding whether to enter into a CIE facility commitment development agreement, CIE plan amendment development agreement or CIE ordinance update development agreement, the following CIE concerns shall be addressed.

7.7.B. *Principles for approval or disapproval of a CIE facility commitment, CIE plan amendment development agreement or CIE ordinance update development agreement.* In addition to satisfying the requirements for the issuance of a certificate of public facilities reservation in section 5.32.D, a development agreement approved by the Board of County Commissioners or a resolution denying a proposed development agreement shall at a minimum address the following areas with specific findings included in the staff report prepared by the Growth Management Department.

1. An analysis of all mandatory public facilities, including whether the agreement relies on a facility or facilities planned in the CIE to pass the reservation tests in section 5.32.D.3.
2. An analysis of the improvement to be added into the CIE or expedited in the CIE and secured by the development agreement or contractual commitment to an improvement in the CIE, in relation to the CIE priority listed in section 14.4.A.1.j, Martin County Comprehensive Growth Management Plan. The priority list reads as follows:

Policy: Capital improvements within a type of public facility are to be evaluated on the following criteria and considered in the order of priority listed below. Any revenue source that cannot be used for a high priority facility will be used beginning with the highest priority for which the revenue can legally be expended.

- (1) Repair, remodeling, renovation, or replacement of obsolete or worn-out facilities that contribute to achieving or maintaining standards for levels of service adopted in this Comprehensive Growth Management Plan.
- (2) New or expanded facilities that reduce or eliminate deficiencies in levels of service for existing demand.
- (3) New public facilities, and improvements to existing public facilities, that eliminate public hazards not otherwise eliminated by improvements prioritized according to subsections (1) through (3) above.
- (4) New or expanded facilities that provide the adopted levels of service for new development and redevelopment during the next five fiscal years, as updated by the annual review of this Capital Improvements Element. The County may acquire land or right-of-way in advance of the need to develop a facility for new development. The location of facilities constructed pursuant to this subsection shall conform to the Future Land Use Element, and specific project locations shall serve projected growth areas within the allowable land use categories.

In the event that the planned capacity of public facilities is insufficient to serve all applicants for development orders, the capital improvements will be scheduled in the following priority order to serve:

- (a) Previously approved orders permitting redevelopment;
- (b) Previously approved orders permitting new development;
- (c) New orders permitting redevelopment; and
- (d) New orders permitting new development.
- (5) Improvements to existing facilities, and new facilities that significantly reduce the operating cost of providing a service or facility, or otherwise mitigate impacts of

~~Strikethrough~~ passages are deleted; underline passages are added.

- public facilities on future operating budgets.
- (6) New facilities that exceed the adopted levels of service for new growth during the next five fiscal years by either:
 - (a) Providing excess public facility capacity that is needed by future growth beyond the next five fiscal years; or
 - (b) Providing higher quality public facilities than are contemplated in the County's normal design criteria for such facilities.
 - (7) Facilities not described in subsections (1) through (6) above, but which the County is obligated to complete, provided that such obligation is evidenced by a written agreement the County executed prior to November 1, 1989.
 - (8) All facilities scheduled for construction or improvement in accordance with this policy shall be evaluated to identify any plans of State agencies or the South Florida Water Management District that affect, or will be affected by, the proposed County capital improvement.
 - (9) Project evaluation may also involve additional criteria that are unique to each type of public facility, as described in other elements of this Comprehensive Growth Management Plan.
3. An analysis of the improvement to be added into the CIE or expedited in the CIE and secured by the development agreement or contractual commitment to an improvement in the CIE, relative to whether it serves other properties and projects, in addition to the development order which accompanies the agreement, in the general area of the improvement.
 4. An analysis of all mandatory public facilities (category A and C public facilities) necessary to accommodate increased growth in the general area of the facility to be added into the CIE or expedited in the CIE, or contractual commitment to an improvement in the CIE, relative to whether the facilities are available, programmed or planned in the CIE. The examination is not whether the impacts of the proposed development order accompanying the development agreement are addressed, but rather whether the growth impacts on the area surrounding the facility to be added into the CIE, or expedited in the CIE and secured by the development agreement have been considered such that the full complement of mandatory public facilities are available, programmed or planned to accommodate the growth caused by the secured improvement.
 5. No improvement shall be added to the CIE or expedited in the CIE or committed to in the CIE if the effect of the facility will be to cause prohibited urban sprawl or leap-frog development.
 6. No improvement shall be added to the CIE or expedited in the CIE or committed to in the CIE if the effect will be to cause an inefficient provision of public facilities.
- 7.7.C. *Additional minimum requirements.* A CIE plan amendment development agreement and CIE ordinance update development agreement shall, at a minimum, include the following provisions:
1. A development agreement is required by the APFO reservation standards of sections 5.32.D.3.a(1)(e), (f), a(3)(e), (f), a(5)(b), b(1)(e), (f), b(3)(e), (f), c(1)(e), d(1)(e), (f), e(1)(e), (f), and f(1)(e), (f). Therefore, a CIE plan amendment, CIE ordinance update development agreement does not simply secure a public facility to be provided by the applicant, it reserves capacity for all category A and C public facilities with appropriate financial assurances for all facilities in accordance with the APFO. A development agreement cannot not [sic] be used solely for the purpose of passing the concurrency evaluation test of section 5.32.C.
 2. A contract for construction of required concurrency improvements shall be an exhibit to the agreement. The contract shall address the technical and engineering standards to which the required category A and C public facility shall be built.
 3. The financial security for the improvement to be provided by the applicant must meet the following standards:
 - a. Security must be submitted in the standard form approved by resolution of the Board of County Commissioners pursuant to this article.
 - b. The issuing financial institution must be an approved depository as listed by the State of Florida.

- c. Security must represent no less than 110 percent of a certified engineer's cost estimate for each of the required category A or C improvement(s).
 - d. For each year beyond the first year the improvement is secured an additional ten percent security shall be provided.
 - e. The expiration date for the security shall be no less than three months beyond the date the facility is to be completed.
 - f. If provided for security, letters of credit must be clean, standby, and irrevocable.
 - g. Separate security must be provided for each facility to be provided by the applicant.
 - h. Security shall be callable if the project fails to meet the timetable for the construction of the improvement or in the event a timetable of the development is extended and the County or others have relied on the improvement being constructed as set forth in the original approval.
 - i. Credits or cost reimbursement shall be governed by the appropriate impact fee ordinance, utility agreements, and APFO in effect at the time the credit is requested.
 - j. An administrative fee, based on the cost of County contract and security administration, shall be paid by all applicants using this option. The Board of County Commissioners may establish this fee by resolution.
4. If the development agreement reserves capacity for more than one phase, or less than the entire project has reserved capacity, the phases of the project must be geographically discrete and independent such that each phase can stand on its own and does not require the approval of a subsequent phase.

7.7.D. Additional minimum requirements, CIE facility commitment development agreement.

- 1. A CIE facility commitment development agreement shall reserve capacity for all category A and C public facilities with appropriate financial assurances for all facilities in accordance with the APFO.
- 2. If the development agreement reserves capacity for more than one phase, or less than the entire project has reserved capacity, the phases of the project must be geographically discrete and independent such that each phase can stand on its own and does not require the approval of a subsequent phase.

~~Sec. 7.8. Reserved - Adoption of standard development agreement forms by resolution and certification of attorney.~~

~~7.8.A. The Board of County Commissioners is hereby authorized to adopt by resolution standard forms for development agreements and security referenced in this article.~~

~~7.8.B. Development agreements submitted to the County for review shall be in the approved standard form and shall be accompanied by a certification from an attorney that the agreement is in the standard form, or that any changes, additions or deletions from the standard form are shaded or redlined in the proposed draft agreement. Additions shall be underlined; deletions shall be cross-hatched or struck through.~~

~~Sec. 7.9. Reserved - Execution.~~

~~A development agreement shall be executed by all persons having legal or equitable title in the land subject to the development agreement, including the fee simple owner and any mortgagees. The CIE facility commitment development agreement, with all appropriate assurances, shall be executed by the developer and provided to the County Administrator within 60 calendar days of the Board of County Commissioners approval of the development agreement at a public hearing. Upon a determination by the County Attorney that the executed agreement and all required financial assurances are acceptable in form and amount, the development agreement shall be scheduled for execution by the Board of County Commissioners at the next available Board of County Commissioners meeting. The second public hearing approving a CIE plan amendment development agreement shall be concurrent with the transmittal hearing for the plan amendment adding the facility to the CIE, and the execution of or "entering into" the development agreement shall occur concurrent with the adoption hearing for said plan amendment. Execution of and "entering into" a CIE ordinance update development agreement shall occur concurrent with the adoption of an ordinance amending the County's CIE to expedite the improvement and show the facility as developer funded. The development agreement shall be considered "entered into" by Martin County and the developer upon the final execution by the Board of County Commissioners pursuant to this section. Financial assurances for CIE plan amendment and CIE ordinance update development agreements must be submitted and approved by the County prior to the County "entering into" the development agreements (i.e., prior to plan amendment adoption and prior to~~

~~ordinance adoption).~~

Sec. 7.10. ~~Reserved~~ - Legislative act.

~~A development agreement is determined to be a legislative act of Martin County in the furtherance of its powers to plan and regulate agreement and, as such, shall be superior to the rights of existing mortgagees, lienholders or other persons with a legal or equitable interest in the land subject to the development agreement, and the obligations and responsibilities arising thereunder on the property owner shall be superior to the rights of such mortgagees or lienholders and shall not be subject to foreclosure under the terms of mortgages or liens entered into or recorded prior to the execution and recordation of the development agreement.~~

Sec. 7.11. - Recordation and effectiveness.

7.11.A. ~~Within 14 calendar days after the County enters into a development agreement, pursuant to section 7.9, the Clerk to the Board of County Commissioners shall record the executed development agreement shall be recorded in the public records of Martin County. A copy of the recorded and executed development agreement shall be submitted to the Department of Community Affairs (DCA) within 14 calendar days after the development agreement is recorded. If the development agreement is amended, canceled, modified, extended, or revoked, the clerk shall have notice of such action recorded in the public records; and such recorded notice shall be submitted to DCA.~~

7.11.B. A development agreement shall not be effective until it is properly recorded in the public records of the County ~~and until 30 days after having been received by the DCA pursuant to this section.~~ In addition, no development agreement shall be effective or implemented by Martin County unless the Comprehensive Growth Management Plan amendment implementing or relating to the agreement is found in compliance ~~by the DCA~~ in accordance with F.S. § 163.3184, 163.3187, or 163.3189, as amended.

Sec. 7.12. - Local laws and policies governing development agreement.

7.12.A. Martin County's laws and policies set down in the development agreement as governing the development of the land at the time of the execution of the development agreement shall govern the development of the land for the duration of the development agreement, except that Martin County may apply subsequently adopted laws and policies to a development that is subject to a development agreement if the Board of County Commissioners holds a public hearing pursuant to the requirements of this article and determines any one of the following:

1. The laws and policies are not in conflict with the laws and policies governing the development agreement and do not prevent development of the land uses, intensities or densities in the development agreement;
2. The laws and policies are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement;
3. The laws and policies are specifically anticipated and provided for in the development agreement;
4. Martin County demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the development agreement; or
5. It is demonstrated that the development agreement is based on substantially inaccurate information supplied by the developer.

7.12.B. ~~Any impact fee or capital facility charge refund requested by a party to a development agreement shall be governed by the refund provisions of the adopted Martin County Adequate Public Facilities Ordinance [article 5 of the Land Development Regulations].~~

Sec. 7.13. - Periodic review.

7.13.A. *Annual review.* The Board of County Commissioners shall review the development subject to the development agreement every 12 months, commencing 12 months after the Board of County Commissioners' approval date of the development agreement.

7.13.B. ~~*Annual review years six through ten.* Each annual review conducted during years six through ten of a development agreement shall be evidenced in a written report concerning good-faith compliance with the terms of the development agreement. The report must follow Department of Community Affairs minimum standards for such reports and must be transmitted to the parties to the agreement and the Department of Community Affairs.~~

- 7.13.~~B.C.~~*Initiation.* The annual review shall be initiated by the developer ~~subject to the development agreement~~ submitting an annual report to the County Administrator ~~Growth Management Director~~. The initial annual report shall be submitted by the developer 11 months after the effective date of the development agreement, and every 12 months thereafter.
- 7.13.~~C.D.~~ *Compliance.* If the County Administrator ~~Growth Management Director~~ finds and determines that the developer has complied in good faith with the terms and conditions of the development agreement during the period under review, the review for that period is concluded.
- 7.13.~~D.E.~~ *Failure to comply.* If the County Administrator ~~Growth Management Director~~ makes a preliminary finding that there has been a failure to comply with the terms of the development agreement, the Board of County Commissioners shall consider the matter at a public meeting conducted pursuant to Section 7.6.O. ~~the development agreement shall be referenced to the Board of County Commissioners, who shall conduct two public hearings pursuant to the requirements of section 7.5.H, at which the developer may demonstrate good faith compliance with the terms of the development agreement. If the Board of County Commissioners finds and determines during the public hearings, on the basis of substantial competent evidence, that the developer has not complied in good faith with the terms and conditions of the development agreement during the period under review, the Board of County Commissioners may modify or revoke the development agreement.~~

Sec. 7.14. - Amendment or cancellation of development agreement by mutual consent.

A development agreement may be amended or canceled by mutual consent of the parties to the development agreement, or by their successors in interest. Prior to amending a development agreement, the Board of County Commissioners shall hold two public hearings on the proposed amendment, consistent with the requirements of section 7.5.H.

Sec. 7.15. - Effect of contrary State or federal laws.

In the event that State and federal laws are enacted after the execution of a development agreement which are applicable to and preclude the parties compliance with the terms of the development agreement, such development agreement shall be modified or revoked as is necessary to comply with the relevant State or federal laws. Such modification or revocation shall occur only after the notice and public hearing pursuant to Section 7.5.H.

Sec. 7.16. - Enforcement.

- 7.16.A. Any party or any aggrieved or adversely affected person may file an action for injunctive relief in the Circuit Court for Martin County to enforce the terms of a development agreement or to challenge compliance of the development agreement with the provisions of this article and the Florida Local Government Development Agreement Act (F.S. § 163.3220 et seq.).
- 7.16.B. In addition, any person who violates this article shall be subject to the enforcement provisions set out in chapter 1, article 4, ~~and chapter 67, article 2,~~ of the Martin County Code of Ordinances as amended from time to time, and the penalties set forth therein.
- 7.16.C. Nothing herein shall constitute an exclusive remedy, and the County reserves the right to pursue any and all legal and equitable remedies in order to abate a violation of this article.

PART 2. APPLICABILITY OF ORDINANCE.

This ordinance shall be applicable in the unincorporated area of Martin County.

PART 3. CONFLICTING PROVISIONS.

Special acts of the Florida Legislature applicable only to unincorporated areas of Martin County, County ordinances and County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict except for ordinances concerning the adoption or amendment of the Comprehensive Plan.

PART 4. SEVERABILITY.

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void, by a court of competent jurisdiction, such holding shall not affect the remaining portions of this ordinance. If this ordinance or any provision thereof shall be

held to be inapplicable to any person, property or circumstances by a court of competent jurisdiction, such holding shall not affect its applicability to any other person, property or circumstances.

PART 5. FILING WITH DEPARTMENT OF STATE.

The Clerk shall be and is hereby directed forthwith to scan this ordinance in accordance with Rule 1B-26.003, Florida Administrative Code, and file same with the Florida Department of State via electronic transmission.

PART 6. CODIFICATION.

Provisions of this ordinance shall be incorporated in the County Code, except parts 2 through 7 shall not be codified. The word "ordinance" may be changed to "section," "article" or other word, and the sections of this ordinance may be renumbered or re-lettered.

PART 7. EFFECTIVE DATE.

This ordinance shall take effect upon filing with the Secretary of State

DULY PASSED AND ADOPTED THIS ____ DAY OF _____, 2019.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

CAROLYN TIMMANN, CLERK
OF THE CIRCUIT COURT AND
COMPTROLLER

EDWARD V. CIAMPI, CHAIRMAN

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

KRISTA A. STOREY, ACTING COUNTY
ATTORNEY

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