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**Negotiation of Development Agreements:
*Municipal Perspective***

Alan Bojorquez

Author Contact Information:

Alan Bojorquez
Bojorquez Law Firm, PC
Austin, TX

Alan@TexasMunicipalLawyers.com

512.250.0411

A. INTRODUCTION

Development agreements provide an opportunity for developers and municipalities to achieve the often-coveted *win / win*. Years ago, I'd describe this as a process of *Give & Take*, only to have a developer's attorney chime in, "Sure, the property owners give, and the cities take." When both parties are properly motivated, development agreements can achieve a balance. Because development agreements are negotiated instruments, they provide an alternative to the strict regulatory process.

B. OLD LAW

Prior to 2003, municipal lawyers often disagreed on the ability of municipalities to enter into development agreements. Some contracts purport to be authorized by Local Government Code Section 42.044, which authorizes contracts with landowners in ***Industrial Districts***. This statute allowed a municipality to designate an "industrial district" within "the meaning customarily given to the term but also includ[ing] any area in which tourist-related businesses and facilities are located."¹ Others may argue that cities have broad authority to contract under Local Government Code Sections 51.014, 51.053, and 51.051, and 51.072, which are general in nature. Objections were occasionally raised when this statutory mechanism was used to justify agreements covering large residential developments rather than building industrial facilities or tourist businesses.

C. CURRENT LAW

1. **Authority.** During the Spring 2003 Session, the Texas Legislature enacted House Bill 1197, which clarifies the authority of municipalities to enter into agreements with property owners in the extraterritorial jurisdiction (ETJ).
2. **Scope of Agreements.** According to the new statute agreements can be executed to:
 - a. guarantee the continuation of the extraterritorial status of the land and its immunity from annexation by the city;
 - 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;

¹ Tex. Loc. Gov't Code § 42.044(a).

- e. 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;
- f. authorize enforcement of environmental regulations;
- g. 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;
- h. specify the uses and development of the land before and after annexation, if annexation is agreed to by the parties; or
- i. include other lawful terms and considerations the parties consider appropriate.²

A sample checklist identifying the issues that might need to be addressed in a development agreement is included at the end of this document, as Section I.

3. Process for Agreement. To comply with the new statute, an agreement must:

- a. be in writing;
- b. contain an adequate legal description of the land;
- c. be approved by the city council and the landowner; and
- d. be recorded in the real property records of the county.

4. Extensions. The total duration of the original agreement and any successive renewals or extensions may not exceed forty-five (45) years.

5. Binding Nature of Agreement. The agreement between the city council and the landowner is binding on the city and the landowner and on their respective successors and assigns for the term of the agreement.

6. Vested Rights. An agreement constitutes a permit under the “Vested Rights” or “Freeze” statute.³

D. MOTIVATIONS

1. Developers. Those seeking a Development Agreement may be the property owner, future owner, developer, or developer/builder. The motivations I have seen the most often are:

- a. **Predictability:** to have the entitlements secured. They want to vest under LGC 245, and also have contractual limitations on what rules the city will impose.

² Tex. Loc. Gov’t Code § 212.172.

³ Tex. Loc. Gov’t Code Chapter 245.

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