ORDINANCE NO. 17-0497

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGWOOD, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING PROCEDURES FOR THE EXECUTION OF DEVELOPMENT AGREEMENTS WITH PROPERTY OWNERS, REQUIRING CONSISTENCY WITH EXISTING DEVELOPMENT REGULATIONS AS REQUIRED BY RCW 36.70B.170, IDENTIFYING THE ELEMENTS OF A COMPLETE APPLICATION FOR A DEVELOPMENT AGREEMENT, DESCRIBING THE PROCEDURE FOR PROCESSING DEVELOPMENT AGREEMENTS, CLARIFYING THE EFFECT, FORMAT, REQUIREMENTS FOR PUBLIC HEARING ON DEVELOPMENT AGREEMENTS, RECORDING, APPEALS AND REVISIONS TO APPROVED DEVELOPMENT AGREEMENTS; ADOPTING A NEW CHAPTER 18.55 TO THE EDGWOOD MUNICIPAL CODE, REPEALING SECTIONS 18.50.090 AND 18.90.015 OF THE EDGWOOD MUNICIPAL CODE, AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Edgewood desires to amend its procedures allowing the City to enter into development agreements with property owners, so that such procedures are consistent with RCW 36.70B.170 through RCW 36.70B.200; and

WHEREAS, the City’s existing code provisions are incomplete and inconsistent with law, and in addition, they allow modifications of development regulations through a development agreement; and

WHEREAS, the City desires to add provisions in its code relating to development agreements that will add provisions better enabling the City to evaluate and approve development agreements, such as a list of materials needed to process a development agreement; and

WHEREAS the SEPA Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, after providing the requisite public notice, the Planning Commission held a public hearing on March 20, 2017, to consider this Ordinance, together with public testimony, and forwarded its recommendation to the City Council; and

WHEREAS, the City Council held an additional public hearing on April 25, 2017 to consider and gather additional public testimony; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting on April 25, 2017;
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEOOED, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Section 18.50.090 of the Edgewood Municipal Code is hereby repealed.

Section 2. Section 18.90.015 of the Edgewood Municipal Code is hereby repealed.

Section 3. A new Chapter 18.55 is hereby added to the Edgewood Municipal Code, which shall read as follows:

Chapter 18.55
DEVELOPMENT AGREEMENTS

Sections:

18.55.010  Intent and Purpose.
18.55.030  Application Requirements.
18.55.040  Public Notice of Public Hearing.
18.55.050  SEPA.
18.55.060  Phasing.
18.55.070  Processing Procedures and Appeals.
18.55.080  Revisions to Approved Development Agreements.

18.55.010  Intent and Purpose.

The purpose of this chapter is to authorize the use of development agreements, consistent with RCW 36.70B.170 through RCW 36.70B.210. The City may, but under no circumstances is required to, enter into a development agreement with a person having ownership or control of real property within the City (or real property lying outside the City limits but within the urban growth area). The development agreement may address such project elements as those set forth in RCW 36.70B.170B(3). The development agreement shall be consistent with the applicable portions of the comprehensive plan as well as the development regulations of the City. The consideration provided by the property owner for the City’s decision to enter into the development agreement may vary, depending on the benefit the development agreement will provide to the City and/or the public in general.


A. Form. All development agreements shall be on the standard form approved in advance by the City Attorney for this purpose.

B. Effect. Development agreements are not project permit applications and are not subject to the permit processing procedures in Chapter 36.70B RCW and
Title 18.40 of the Edgewood Municipal Code. A development agreement shall constitute a binding contract between the City and the property owner and the subsequent owners of any later-acquired interests in the property identified in the development agreement. A development agreement governs the project identified in the development agreement during the term of the development agreement, or for all or that part of the build-out period specified in the development agreement, and may not be subject to an amendment to a zoning ordinance or development standard adopted after the effective date of the agreement. A permit or approval issued/granted by the City after execution of a valid development agreement must be consistent with the development agreement.

C. Limitations. Any provision of the development agreement which requires the City to: (1) forego adoption of any development regulations affecting the property identified in the agreement; and/or (2) allow vesting beyond the applicable deadlines for a phased development; shall be limited to a period of five (5) years.¹ The development agreement shall also reserve authority to impose new or different regulations during the term of the development agreement, to the extent required by a serious threat to public health and safety. This proviso shall clearly state that the City may, without incurring any liability, engage in action that would otherwise be a breach if the City adopts findings of fact to support a determination on the record that the action is necessary to avoid a serious threat to public health and safety, or if the action is required by federal or state law.

D. Developer’s Compliance. The development agreement shall include a clause stating that the City’s duties under the agreement are expressly conditioned upon the property owner’s substantial compliance with each and every term, condition, provision and/or covenant in the development agreement, all applicable federal, state and local laws and regulations and the property owner’s obligations as identified in any approval or project permit for the property identified in the development agreement.

E. No Third Party Rights. Except as otherwise provided in the development agreement, the development agreement shall create no rights enforceable by any party who/which is not a party to the development agreement.

F. Liability. The development agreement shall include clause providing that any breach of the development agreement by the City shall give rise only to damages under state contract law and shall not give rise to any liability under chapter 64.40 RCW, the Fifth and Fourteenth Amendments to the U.S. Constitution or similar state constitutional provisions.

G. Termination. Every development agreement shall have an identified, specific termination date. Upon termination, any further development of the property shall conform to the development regulations applicable to the property.
18.55.030 Application Requirements. A complete application for a development agreement shall consist of the following:

A. Name, address, telephone number and e-mail address of the property owner. If the applicant is not the property owner, the applicant must submit a verified statement from the property owner that the applicant has the property owner’s permission to submit the application. Only the property owner has authority to sign the development agreement;

B. Address, parcel number and legal description of the property proposed to be subject to the development agreement;

C. Recent title report confirming that the property identified in the application is owned by the applicant-property owner;

D. Identification of any application (project permit application, comprehensive plan amendment application, development regulation amendment application) that is related to the proposed development agreement;

E. SEPA Checklist;

F. A completed application form and the application fee established by the City for this purpose;

G. Description of the purpose of the development agreement, or the proposed language to be included in the development agreement, and how it complies with both the City’s comprehensive plan and development regulations; and

H. Any other information requested by the Community Development Director relevant to the processing of the development agreement.²

18.55.040 Public Notice of the Public Hearing.

A. Project Permit Applications. Public notice of the public hearing on a development agreement associated with an underlying project permit application shall be provided consistent with Section 18.40.190 EMC.

B. Legislative Action. Public notice of the public hearing on development agreements associated with an underlying legislative action or application shall be provided consistent with Section 18.40.190 EMC.

C. No Underlying Application or Action. Public notice of the public hearing on development agreements for which there is no underlying application or action, such as revisions to development agreements, shall be provided consistent with both Chapter 18.55 and Section 18.40.190 EMC.
18.55.050   SEPA. The City shall comply with SEPA, chapter 20.05 EMC, in order to process a development agreement to a final decision. Appeals of the City's SEPA threshold decision shall be consolidated with the public hearing on the underlying project permit application or legislative application/action and addressed as set forth in chapter 20.05 EMC (SEPA).

18.55.060.   Phasing.

A.   In order to phase a development, and to extend the vested rights associated with an underlying project permit application, a development agreement is required. This ensures the availability of public facilities and services to all of the property in the identified individual phases, allows tracking of the available capacity of public facilities and utilities during each phase of construction, and with the extension of the vested rights associated with the project, provides certainty to the developer in the subsequent development approval process.

B.   The deadlines in the City’s code relating to each type of project permit application must be consulted to establish the baseline vesting period. The City is not required to extend the vesting period, and the City shall not extend any vested rights to regulations relating to stormwater. If the City decides to do so through a development agreement, it must be in exchange for the property owner’s provision of corresponding benefits to the City in the form of, for example, contributions to public facilities and amenities over and above what would normally be required. In any event, the City shall not allow vesting to extend beyond the established five (5) year period in Section 18.55.020(C) after approval of the project permit application.

C.   A development agreement for a phased development (such as a subdivision) shall include (in addition to all of the information in Section 18.55.030), all of the following:

1.   identification of the phasing schedule;
2.   identification of the number of phases and all lots included in each phase;
3.   identification of the approximate dates for construction of public streets, public utilities and other improvements in each phase;
4.   identification of the approximate dates for commencement of development of each lot, lot sales and building occupancy;
5.   identification of the benefits that the property owner will provide to the City in exchange for permission to phase the development according to the proposed schedule;
6.   establishment of the deadline for the property owner to submit development applications, including building permit applications, for each phase;
7. a description of the manner in which each phase is designed such that all site requirements are satisfied independently of phases yet to be given final approval and constructed;

8. a description of the manner in which the property owner will ensure that adequate public facilities are available when the impact of development occurs. The property owner shall acknowledge in the development agreement that if the demand for public facilities or services needed to accommodate a subsequent development phase increases following the issuance of a development permit for a prior phase in the approval process, or if public facilities or services included in a concurrency or SEPA determination are not constructed as scheduled in the City’s capital facilities plan, final development approval may have to be delayed for future phases pending the achievement of the adopted levels of service.

18.55.070 Processing Procedures and Appeals. Development agreements are not defined as “project permit applications,” in RCW 36.70B.020 and are not subject to the permit processing procedures in chapter 36.70B RCW.

A. Project Permit Applications. Development agreements associated with project permit applications shall be processed as follows.

1. Consolidation. Whenever possible, the development agreement shall be consolidated for processing with an underlying project permit application or other application for approval. If the development agreement is consolidated with a project permit application, the property owner must agree to waive the deadline in RCW 36.70B.080 for issuance of a final decision on the underlying application, as well as the prohibition on no more than one open record hearing and one closed record hearing on the underlying project permit application in RCW 36.70B.060(3).


a. Hearing Examiner makes final decision. If the final decision on the underlying project permit application is made by the hearing examiner, then he/she shall consider both the project permit application and the proposed development agreement together, during the public hearing. The hearing examiner shall make a recommendation to the council on the development agreement, and his/her decision on the underlying permit application shall be held in abeyance until the city council considers the proposed development agreement in a public hearing. If the city council approves the development agreement, the council shall, by resolution or ordinance, authorize the mayor to execute the development agreement on behalf of the city. At this point, the hearing examiner may issue his/her final decision on the underlying project permit application. Nothing in this section obligates the hearing examiner to forward a recommendation to the city council on the development agreement if the hearing examiner denies the underlying project permit application.
b. **Staff makes final decision.** If the final decision on the underlying project permit application is made by the city administrative staff, then the city staff shall consider both the project permit application and the proposed development agreement together. The city staff shall make a recommendation to the city council on the development agreement, and the city staff’s decision on the underlying project permit application shall be held in abeyance until the city council considers the proposed development agreement in a public hearing. If the city council approves the development agreement, the council shall, by resolution or ordinance, authorize the mayor to execute the development agreement on behalf of the city. At this point, the city staff may then issue its final decision on the underlying project permit application. Nothing in this section obligates the city staff to forward a recommendation to the city council on the development agreement if the city staff denies the underlying project permit application.

B. **Legislative Applications.** A development agreement associated with a legislative action such as a comprehensive plan amendment or area-wide rezone shall be processed in accordance with the procedures established for legislative actions. The planning commission shall make its recommendation to the city council on any development agreement relating to legislative action. A public hearing shall be held on the development agreement (and underlying legislative action) and if consistent with this chapter, the council may pass a resolution or ordinance authorizing the mayor to execute the development agreement on behalf of the city.

C. **Appeal.**

1. A development agreement associated with an underlying project permit application may be judicially appealed in the same manner and within the same deadline as the underlying project permit application.

2. A development agreement associated with a legislative approval, such as a comprehensive plan amendment, may be appealed in the same manner and within the same deadline as the legislative approval. Appeals may be directed to the Growth Management Hearings Board, the Shoreline Hearings Board or to the Superior Court, but there is no further administrative appeal before the City.

D. **Recording Against the Property.** The City shall record the development agreement against the property (at the property owner’s cost) in the real property records of the Pierce County Auditor.

**18.55.080 Revisions to Approved Development Agreements.** All of the provisions of EMC Section 18.55.020 shall apply to revisions to approved development agreements. A complete application for a revision to an approved development agreement shall consist of the materials described in EMC Section 18.55.030.
A. Criteria for Approval. The proposed revision to the Development Agreement must be consistent with: (1) the applicable portions of the Comprehensive Plan in effect at the time the revision application is submitted; (2) the applicable portions of the development regulations at the time the revision application is submitted; (3) the decision in the underlying project permit application or the underlying legislative decision. If the revision involves an extension of the termination date, the City Council must make findings and conclusions after evaluation of all of the information in subsection (B) below. The City Council shall not approve any revision of an approved development agreement involving an extension of the termination date for purposes of extension of the applicant’s vested rights, unless the Council makes a finding that the extension is in the public interest.

B. Extension of Termination Date. If the applicant requests an extension of the termination date in order to extend his/her vested rights with regard to phasing of the development, the application materials submitted by the applicant shall provide the following additional information for the Council to review:

1. A list of the development regulations that have been amended by the City since the development agreement was originally approved;

2. A comparison of the effect of the amended development regulations (identified in subsection B(1) above) with the development regulations used to approve the original development agreement; and

3. An up-to-date concurrency evaluation of the City’s water rights, sewer capacity and transportation system as applied to the proposed revision, and the effect that approval of the proposed revisions to the development agreement would have on the City’s water availability, sewer capacity and transportation concurrency.

C. Public Hearing. In order to revise an approved development agreement, the City must follow the procedures associated with approval of the original development agreement. See, EMC Section 18.55.050(A).

D. Recording Against the Property and Appeals. Appeals of a revised development agreement shall follow the procedures in EMC Section 18.55.050(C). The development agreement shall be recorded against the property as set forth in EMC Section 18.55.070(D).

Section 4. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or
unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. Effective Date. This Ordinance shall become effective five days after publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Edgewood, this 25th day of April, 2017.

CITY OF EDGEWOOD

Daryl Eidinger, Mayor

ATTEST/AUTHENTICATED:

Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

Carol Morris, City Attorney

PASSED BY THE CITY COUNCIL: 04/25/17
PUBLISHED: 04/27/17
EFFECTIVE DATE: 05/02/17
ORDINANCE NO: 17-0497