

ACT 48

S.B. NO. 234

A Bill for an Act Relating to Counties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . DEVELOPMENT AGREEMENTS

§46- Findings and purpose. The legislature finds that with land use laws taking on refinements that make the development of land complex, time consuming, and requiring advance financial commitments, the development approval process involves the expenditure of considerable sums of money.

Generally speaking, the larger the project contemplated, the greater the expenses and the more time involved in complying with the conditions precedent to filing for a building permit.

The lack of certainty in the development approval process can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning. Predictability would encourage maximum efficient utilization of resources at the least economic cost to the public.

Public benefits derived from development agreements may include, but are not limited to, affordable housing, design standards, and on- and off-site infrastructure and other improvements. Such benefits may be negotiated for in return for the vesting of development rights for a specific period.

Under appropriate circumstances, development agreements could strengthen the public planning process, encourage private and public participation in the comprehensive planning process, reduce the economic cost of development, allow for the orderly planning of public facilities and services and the allocation of cost. As an administrative act, development agreements will provide assurances to the applicant for a particular development project, that upon approval of the project, the applicant may proceed with the project in accordance with all applicable statutes, ordinances, resolutions, rules, and policies in existence at the time the development agreement is executed and that the project will not be restricted or prohibited by the county's subsequent enactment or adoption of laws, ordinances, resolutions, rules, or policies.

Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted county legislation which may conflict with any term or provision of the development agreement or in any way hinder, restrict, or prevent the development of the project. Development agreements are intended to provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enact and enforce laws which promote the public safety, health, and general welfare of the citizens of our State. The purpose of this part is to provide a means by which an individual may be assured at a specific point in time that having met or having agreed to meet all of the terms and conditions of the development agreement, the individual's rights to develop a property in a certain manner shall be vested.

§46- Definitions. The following terms when used in this chapter shall have the following respective meanings:

"County executive agency" means any department, office, board, or commission of a county.

"County legislative body" means the city council or county council of a county.

"Principal" means a person who has entered into a development agreement pursuant to the procedures specified in this chapter, including a successor in interest.

"Person" means an individual, group, partnership, firm, association, corporation, trust, governmental agency, governmental official, administrative body, or tribunal or any form of business or legal entity.

§46- General authorization. Any county by ordinance may authorize the executive branch of the county to enter into a development agreement with any person having a legal or equitable interest in real property, for the development of such property in accordance with this part; provided that such an ordinance shall:

- (1) Establish procedures and requirements for the consideration of development agreements upon application by or on behalf of persons having a legal or equitable interest in the property, in accordance with this part;
- (2) Designate a county executive agency to administer the agreements after such agreements become effective;
- (3) Include provisions to require the designated agency to conduct a review of compliance with the terms and conditions of the development agreement, on a periodic basis as established by the development agreement; and
- (4) Include provisions establishing reasonable time periods for the review and appeal of modifications of the development agreement.

§46- Negotiating development agreements. The mayor or the designated agency appointed to administer development agreements may make such arrangements as may be necessary or proper to enter into development agreements, including negotiating and drafting individual development agreements; provided that the county has adopted an ordinance pursuant to section 46- .

The final draft of each individual development agreement shall be presented to the county legislative body for approval or modification prior to execution. To be binding on the county, a development agreement must be approved by the county legislative body and executed by the mayor on behalf of the county. County legislative approval shall be by resolution adopted by a majority of the membership of the county legislative body.

§46- Periodic review; termination of agreement. (a) If, as a result of a periodic review, the designated agency finds and determines that the principal has committed a material breach of the terms or conditions of the agreement, the designated agency shall serve notice in writing, within a reasonable time period after the periodic review, upon the principal setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the principal a reasonable time period in which to cure such material breach.

(b) If the principal fails to cure the material breach within the time period given, then the county unilaterally may terminate or modify the agreement; provided that the designated agency has first given the principal the opportunity, (1) to rebut the finding and determination; or (2) to consent to amend the agreement to meet the concerns of the designated agency with respect to the finding and determination.

§46- Development agreement; provisions. (a) A development agreement shall:

- (1) Describe the land subject to the development agreement;
- (2) Specify the permitted uses of the property, the density or intensity of use, and the maximum height and size of proposed buildings;
- (3) Provide, where appropriate, for reservation or dedication of land for public purposes as may be required or permitted pursuant to laws, ordinances, resolutions, rules, or policies in effect at the time of entering into the agreement; and
- (4) Provide a termination date; provided that the parties shall not be precluded from extending the termination date by mutual agreement or from entering subsequent development agreements.

(b) The development agreement may provide commencement dates and completion dates; provided that such dates as may be set forth in the agreement

may be extended at the discretion of the county at the request of the principal upon good cause shown subject to subsection (a)(4).

(c) The development agreement also may cover any other matter not inconsistent with this chapter, nor prohibited by law.

(d) In addition to the county and principal, any federal, state, or local government agency or body may be included as a party to the development agreement. If more than one government body is made party to an agreement, the agreement shall specify which agency shall be responsible for the overall administration of the agreement.

§46- Enforceability; applicability. (a) Unless terminated pursuant to section 46- or unless canceled pursuant to section 46- , a development agreement, amended development agreement, or modified development agreement once entered into, shall be enforceable by any party thereto, or their successors in interest, notwithstanding any subsequent change in any applicable law adopted by the county entering into such agreement, which alter or amend the laws, ordinances, resolutions, rules, or policies specified in this part.

(b) All laws, ordinances, resolutions, rules, and policies governing permitted uses of the land that is the subject of the development agreement, including but not limited to uses, density, design, height, size, and building specification of proposed buildings, construction standards and specifications, and water utilization requirements applicable to the development of the property subject to a development agreement, shall be those laws, ordinances, resolutions, rules, regulations, and policies made applicable and in force at the time of execution of the agreement, notwithstanding any subsequent change in any applicable law adopted by the county entering into such agreement, which alter or amend the laws, ordinances, resolutions, rules, or policies specified in this part and such subsequent change shall be void as applied to property subject to such agreement to the extent that it changes any law, ordinance, resolution, rule, or policy which any party to the agreement has agreed to maintain in force as written at the time of execution; provided that a development agreement shall not prevent a government body from requiring the principal from complying with laws, ordinances, resolutions, rules, and policies of general applicability enacted subsequent to the date of the development agreement if they could have been lawfully applied to the property which is the subject of the development agreement at the time of execution of the agreement if the government body finds it necessary to impose the requirements because a failure to do so would place the residents of the subdivision or of the immediate community, or both, in a condition perilous to the residents' health or safety, or both.

§46- Public hearing. No development agreement shall be entered into unless a public hearing on the application therefor first shall have been held by the county legislative body.

§46- County general plan and development plans. No development agreement shall be entered into unless the county legislative body finds that the provisions of the proposed development agreement are consistent with the county's general plan and any applicable development plan, effective as of the effective date of the development agreement.

§46- Amendment or cancellation. A development agreement may be amended or canceled, in whole or in part, by mutual consent of the parties to the agreement, or their successors in interest; provided that if the county determines that a proposed amendment would substantially alter the original development agreement, a public hearing on the amendment shall be held by the county legislative body before it consents to the proposed amendment.

§46- Administrative act. Each development agreement shall be deemed an administrative act of the government body made party to the agreement.

§46- Filing or recordation. The designated agency shall be responsible to file or record a copy of the development agreement or an amendment to such agreement in the office of the assistant registrar of the land court of the State of Hawaii or in the bureau of conveyances, or both, whichever is appropriate, within twenty days after the county enters into a development agreement or an amendment to such an agreement. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.”

SECTION 2. This Act shall take effect upon its approval.

(Approved April 30, 1985.)