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HOUSE BILL 654

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Al Park

AN ACT

RELATING TO LOCAL GOVERNMENTS; PROVIDING FOR DEVELOPMENT  
AGREEMENTS BETWEEN A COUNTY OR MUNICIPALITY AND A PERSON OWNING  
OR CONTROLLING PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. DEVELOPMENT AGREEMENTS AUTHORIZED--EFFECT.--

A. As used in this section:

(1) "development agreement" means an agreement  
between a county or municipality and a person who owns or  
controls real property that establishes development standards  
that will apply to and govern the development and use of the  
real property during the term of the agreement; and

(2) "development standards" means requirements  
for the development of real property. "Development standards"  
may include:

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1 (a) project elements such as permitted  
2 uses, residential densities and nonresidential densities and  
3 intensities or building sizes;

4 (b) the amount and payment of impact  
5 fees imposed or agreed to in accordance with the Development  
6 Fees Act, any reimbursement provisions, other financial  
7 contributions by the property owner, inspection fees or  
8 dedications;

9 (c) mitigation measures and development  
10 conditions;

11 (d) design standards such as maximum  
12 heights, setbacks, drainage and water quality requirements,  
13 landscaping and other development features that may vary from  
14 general standards and may be specific to the development;

15 (e) requirements for affordable housing;

16 (f) parks and open space preservation;

17 (g) phases and timelines for the  
18 development;

19 (h) review procedures and standards for  
20 implementing decisions; and

21 (i) a build-out period before certain  
22 standards apply or expansion is allowed.

23 B. The execution of a development agreement is a  
24 proper exercise of municipal or county police power and  
25 contract authority. After a public hearing on the matter

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1 conducted by the governing body of the municipality or county  
2 or a designee of the governing body, a municipality or county,  
3 by ordinance, may enter into a development agreement with a  
4 person having ownership or control of real property within its  
5 planning and platting jurisdiction or, in the case of a  
6 municipality, real property outside its planning and platting  
7 jurisdiction if it is part of a proposed annexation or a  
8 utility service agreement.

9 C. A development agreement may obligate either  
10 party to provide services, infrastructure or other facilities.

11 D. During the term of a development agreement:

12 (1) except as provided in Paragraph (2) of  
13 this subsection, the development agreement governs and is not  
14 subject to:

15 (a) an amendment, adopted after the  
16 effective date of the agreement, to an existing zoning  
17 ordinance or other ordinance or rule affecting the development;  
18 or

19 (b) a new zoning ordinance or other  
20 ordinance or rule affecting the development adopted after the  
21 effective date of the agreement;

22 (2) amendments to ordinances or rules and new  
23 ordinances or rules affecting the development may be enacted  
24 if:

25 (a) they are required by a serious

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1 threat to public health and safety; or

2 (b) they do not conflict with  
3 development standards or other provisions of the development  
4 agreement; and

5 (3) the agreement is binding and enforceable  
6 on the parties and their successors, including a municipality  
7 that assumes jurisdiction through incorporation or annexation  
8 of the property subject to the development agreement.

9 E. Nothing in a development agreement prevents the  
10 municipality or county from denying or conditionally approving  
11 a subsequent development application on the basis of existing  
12 or new ordinances or rules that do not conflict with the  
13 ordinances or rules in place at the time of entering into the  
14 development agreement.

15 F. A development agreement shall be recorded with  
16 the county clerk for the county in which the property subject  
17 to the agreement is located.

18 G. This section shall not affect the validity of a  
19 development agreement, annexation agreement or similar  
20 agreement in existence upon the effective date of this section.

21 H. Before entering into development agreements  
22 pursuant to this section, a municipality or county shall, at a  
23 public hearing, adopt an ordinance establishing methods and  
24 procedures for implementing the provisions of this section.