

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

ORDINANCE NO. 05-16-2022

AN ORDINANCE ESTABLISHING PROCEDURES AND REQUIREMENTS FOR ENTERING INTO DEVELOPMENT AGREEMENTS IN NEWBERRY COUNTY

WHEREAS, Newberry County Council is aware of the South Carolina Local Government Development Agreement Act (“the Act”) passed by the South Carolina General Assembly as Act No. 150 in 1993 and codified in Chapter 31 of Title 6 of the Code of Laes 1976 as amended; and

WHEREAS, that Act established requirements and authorization for local governments that wish to avail themselves of the ability to enter into development agreements in certain circumstances; and

WHEREAS, the development approval process involves the expenditure of considerable sums of money, predictability encourages the maximum efficient utilization of resources at the least economic cost to the public; and

WHEREAS, public benefits derived from development agreements include design standards, and on and off-site infrastructure and other improvements; and

WHEREAS, development agreements will provide vesting of development rights for a specified period thereby encouraging private sector investments in Newberry County; and

WHEREAS, Newberry County Council desires to adopt the following standards and requirements to permit opportunities to enter into such agreements.

NOW, THEREFORE BE IT ORDAINED THAT:

Newberry County Council hereby adopts the following provisions and as follows:

The Newberry County Zoning Ordinance is hereby amended by inserting the following Land Development agreements ordinance as Section 153.076.

Land Development agreements

(a) *Findings.* County Council finds that the General Assembly of the State of South Carolina has enacted legislation known as the "South Carolina Local Government Development Agreement Act", State Act codified in Section 6-31-10, et seq. of the Code of Laws of South Carolina, (Supp. 1993), which legislation authorizes, in certain circumstances, the execution of land development agreements to encourage comprehensive and capital facilities

planning, to ensure the provision of adequate public facilities for development, to encourage the efficient use of resources, and to reduce the economic cost of development. County council finds and determines that land development agreements may be useful to both the private and public sector by providing certainty in zoning, by setting forth a reasonable schedule of development and by enhancing the opportunity for comprehensive, planned development, and enacts this ordinance in furtherance of the authority evolved upon it by the South Carolina Local Development Agreement Act.

(b) *Definitions.* As used herein:

(1) *Developer* means a person, including a governmental agency, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

(2) *Development* means the planning for or carrying out of a building activity or mining operation, the making of a material change in the use or appearance of any structure or property, or the dividing of land into three (3) or more parcels. "Development" as designated in a law or development permit includes the planning for and all other activity customarily associated with it unless otherwise specified.

(3) *Development permit* includes a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, or any other official action of local government having the effect of permitting the development of property.

(4) *Governing body* means the county council of Newberry County.

(5) *Land development regulations* means ordinances and regulations enacted by the governing body for the regulation of any aspect of development and includes a local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulation controlling the development of property.

(6) *Laws* means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies and rules adopted by the governing body or its affiliate committees, boards or commissions, affecting the development of property and includes laws governing permitted use of property, governing density, and governing design, improvement and construction standards and specifications.

(7) *Property* means all real property subject to land use regulation by the governing body, and includes any improvements or structures customarily regarded as part of real property.

(8) *Person* means an individual, corporation, business or land trust, estate, partnership, association, two or more persons having a joint or common interest, state agency or any legal entity.

(9) *Public facilities* means major capital improvements including, but not limited to transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

(10) *Zoning administrator* means the person charged by the governing body with overseeing the implementation and interpretation of land development regulations pertaining to the development of property.

(c) *Application.* Any person seeking a land development agreement with the county shall make application to the zoning administrator or to such other person as the governing body may designate. The application shall incorporate a statement setting forth the objectives of the development and the benefits that will inure to the public as a result. The application shall include a legal description of the property subject to the agreement, which property must contain a minimum of twenty-five (25) acres of highland (wetlands excluded), and the names of its legal

and equitable owners; the proposed duration of the agreement, which must be consistent with South Carolina Local Government Development Agreement Act Section 6-31-40; the development uses permitted on the property, including population densities and building intensities and height; a description of public facilities that will service the property, including the identity of who is to construct and/or provide the facilities, the date that any new public facilities, if needed, will be constructed, and a schedule to verify that public facilities will be available concurrent with the impacts of the development; a description, where appropriate, of any reservation or dedication of land for public purposes; any provisions to protect environmentally sensitive property as may be required or permitted pursuant to laws in effect at the time of application; a description, where appropriate, of any provisions for the preservation and restoration of historic structures. The application shall also include the current, and if applicable requested, zoning of the property and a site analysis, prepared by a registered engineer or surveyor, showing the location of existing manmade features where major circulation systems are proposed; general topographic information from topographic maps or other suitable maps using a contour interval not exceeding two (2) feet; and the location and description of identified cultural resources. A land use plan shall be part of the application, which shall show the location, net acreage, and gross acreage for each type of residential, office or commercial development proposed for the property, open space areas, water bodies and major circulation systems and existing land uses adjacent to the property. The plan must also identify the type of dwelling units proposed, the minimum of lot size per dwelling unit, and minimum lot frontage requirements, and minimum set back requirements for principal buildings.

With the application, any fee as county council may from time to time establish must also be remitted.

The zoning administrator shall review land development agreement applications, and if necessary for a more coherent understanding of the proposed development, may request additional information.

Furthermore, the zoning administrator shall consult with the Newberry County School District and report to the Planning Commission the findings and recommendations of the school district Superintendent.

(d) *Proposed agreement.* Simultaneously, with the submission of the application, or within a reasonable time thereafter, a proposed land development agreement shall be submitted by the applicant to the zoning administrator. The zoning administrator shall review the same and consult with such other county officials or personnel he deems appropriate. Prior to the agreement being presented to the planning commission, as herein provided, said agreement must be approved as to form by the County Attorney. In the event the proposed land development agreement provides that the local governing body shall provide certain public facilities, the agreement must provide that the delivery date of such public facilities be tied to defined completion percentages or defined performance standards to be met by the developer.

(e) *Planning commission.* After the review as set forth in subsection (d), the application and proposed agreement shall be forwarded to the planning commission. Should any issues pertaining to the agreement be unresolved, such shall be identified by the zoning administrator in his/her report to the planning commission. The planning commission shall conduct a public hearing on the application, giving at least fifteen days' notice in a publication of general circulation in the county that a land development agreement is to be considered. The public notice must specify the location of the property subject to the land development agreement, the

use(s) proposed for the property and the location where a copy of the proposed land development agreement can be obtained.

At the conclusion of its public hearing, the planning commission shall make a recommendation to county council as to the propriety of the agreement. Such recommendation may include suggested amendments or modifications to the agreement. At the conclusion of its public hearing, the chairman of the planning commission shall announce the time, date, and place when county council is to consider the proposed development agreement. Nothing herein shall be construed to preclude the planning commission from deferring action on a proposed land development agreement for the purpose of receiving clarifying information.

(f) *County council.* Prior to authorizing the execution of a land development agreement, county council shall conduct a public hearing, notice of which shall be advertised in a publication of general circulation in the county at least thirty (30) days prior to the date of said hearing. No land development agreement shall be executed until it has been accepted and approved by the governing body and an ordinance authorizing the same has been ratified.

(g) *Effective date.* No land development agreement shall be effective until such time as an ordinance authorizing its execution has been ratified by county council, and the same has been executed on behalf of the county by the council chairman.

(h) *Recording.* It shall be the responsibility of the applicant, within fourteen (14) days of the land development agreement having been executed, to record the agreement with the register of mesne conveyance or clerk of court in the county where the property is located.

(i) *Effect of land development agreement.* A land development agreement must specify which laws in force at the time of the execution of the agreement shall apply for the term of the agreement. Subsequently enacted laws shall be applicable to property subject to a land development agreement, unless the agreement specifies otherwise, or unless, after a public hearing, county council determines that the application of such laws would materially alter or disrupt the development of the property as contemplated by the agreement, or as otherwise provided by the South Carolina Local Government Development Agreement Act, S. C. Code, Ann; Sec. 6-31-80(b)(1), (2), (3), (4) and (5) (Supp. 1993).

(j) *Periodic review.* During the term of a land development agreement, a periodic review of the progress made thereunder shall be had by the zoning administrator, on at least an annual basis. At such review, the parties subject to the agreement must demonstrate good faith compliance with the terms and provisions of the development agreement and must provide such information as the zoning administrator may request, and as may be otherwise provided in the agreement. If as a result of any periodic review, it appears that a person subject thereto has committed a material breach of the terms or conditions of the agreement, such circumstance shall be reported to county council by the zoning administrator. Upon receipt of such report, county council, or such committee to which the matter may be referred by council, if it concurs with the zoning administrator's report, shall serve written notice to the applicable party, setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination of breach, and providing the applicable party a reasonable time in which to cure the breach.

If such party fails to cure the material breach within the cure period, county council or the committee to which the matter has been referred, may unilaterally terminate or modify the land development agreement, provided that council or the committee, as appropriate, has first given the applicable party an opportunity to either rebut the finding and determination or to consent to

an amended development agreement to address the concerns of county council or the committee with respect to its findings and determination, and has otherwise complied with the provisions of the development agreement pertaining to a material breach.

(k) *Amendments/cancellation.* Any land development agreement may be amended or cancelled by mutual consent of the parties to the agreement, or by their successors in interest.

(l) *Burden/benefits.* All burdens of the land development agreement are binding upon, and the benefits of the land development agreement shall inure to, all successors in interest to the parties to the land development agreement.

(m) *State or federal laws or regulations.* In the event state or federal laws or regulations, enacted after a land development agreement has been executed, prevent, or preclude compliance with one or more provisions of the development agreement, the provisions of the agreement shall be modified or suspended, as necessary, to comply with the state or federal laws or regulations.

(n) *Technical codes.* Notwithstanding anything herein to the contrary, any and all building, housing, electrical, plumbing and gas codes, now in effect or hereafter adopted by county council, shall apply to any properties subject to a land development agreement.

(o) *Enabling legislation.* In the event that a court of competent jurisdiction shall determine that the state act, or any part thereof, invalid or unenforceable, or in the event that the South Carolina General Assembly shall amend or repeal the state act, in whole or in part, each development agreement shall be reviewed to determine if such change in the state act results in a substantial impairment of the rights or obligations of any of the parties to such development agreement. Any part whose rights or obligations under a development agreement have been substantially impaired by a change in the state act shall have the right to immediately terminate the agreement as to all parties thereto by written notice to the parties to the development agreement.

AND IT IS SO ORDAINED by Newberry County Council this 17th day of

August, 2022 in meeting duly assembled at Newberry, South Carolina.

(SEAL)

NEWBERRY COUNTY COUNCIL

By: Todd Johnson
Todd Johnson, Chairman

Attest:
Jackie Lawrence
Jackie Lawrence, Clerk to Council

Reviewed and approved as to form:

Christopher Ingles
Christopher Ingles, County Administrator

1st reading: July 6, 2022
2nd reading: July 20, 2022
Public Hearing: August 17, 2022
3rd reading: August 17, 2022