

CLARK COUNTY BOARD OF COMMISSIONERS
ZONING / SUBDIVISIONS / LAND USE
AGENDA ITEM

Petitioner: Clark County District Attorney's Office

Recommendation: ORD-21-900639: Introduce an ordinance to consider the adoption of the Fourth Amendment to the Mountain's Edge Development Agreement pursuant to NRS 278.0205(1). JJ/sr (For possible action)

FISCAL IMPACT:

None by this action.

BACKGROUND:

BACKGROUND: The Third Amendment to the Mountain's Edge Development Agreement required the developer to construct a 10-acre park within the Mountain's Edge master-planned community once the Residential Tax Fund ("RCT Fund") reached the threshold amount of \$1.6 million dollars. The RCT Fund is derived from residential construction taxes collected when building permits are issued for residential construction within the Mountain's Edge community. After consulting with County staff and the developer, it has become apparent that the \$1.6 million dollar threshold to trigger the construction of park under the Development Agreement will never be reached due to the limited number of homes remaining to be built within Mountain's Edge.

In light of the foregoing, the Mountain's Edge Master Association ("MEMA") approached Clark County with a proposal that will enable MEMA to utilize the funds deposited into the RCT Fund to construct the park in lieu of the developer thereby satisfying the purposes of the Third Amended Development Agreement. Although the developer has indicated that it agrees to the proposed amendment, the developer has not signed the proposed amendment after a significant passage of time. The Board of County Commissioners may amend a development agreement pursuant to NRS 278.0205(1) without the consent of the other parties to an agreement when "[a]ny event has occurred which demonstrates that a party to the agreement or a successor in interest is unable to perform his or her duties set forth in the agreement." Approval of the Fourth Amendment to the Development Agreement is appropriate under NRS 278.0205(1) since the developer will never be obligated to construct the park because the threshold amount to trigger the developer's obligation under the terms of the Third Amended Development Agreement will never be achieved.

The District Attorney's Office recommends that the Board introduce the ordinance and set a public hearing.

BILL NO. _____

SUMMARY - An ordinance to adopt the Fourth Amendment to the Mountain's Edge Development Agreement, between Clark County and Mountain's Edge, LLC, pursuant to NRS 278.0205(1) for the planned community (Mountain's Edge) on approximately 2,600 acres, generally located south of Blue Diamond Road and east of Rainbow Boulevard within Enterprise.

ORDINANCE NO. _____
(of Clark County, Nevada)

AN ORDINANCE TO ADOPT THE FOURTH AMENDMENT TO THE MOUNTAIN'S EDGE DEVELOPMENT AGREEMENT, BETWEEN CLARK COUNTY AND MOUNTAIN'S EDGE, LLC, PURSUANT TO NRS 278.0205(1) FOR THE PLANNED COMMUNITY (MOUNTAIN'S EDGE) ON APPROXIMATELY 2,600 ACRES GENERALLY LOCATED SOUTH OF BLUE DIAMOND ROAD AND EAST OF RAINBOW BOULEVARD WITHIN ENTERPRISE AND PROVIDING FOR OTHER MATTERS PROPERLY RELATED THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In accordance with the provisions of Sections 278.0203 and 278.0205(1) of the Nevada Revised Statutes and Chapter 30.20 of the Clark County Code, the Fourth Amendment of the Development Agreement with Mountain's Edge LLC for the planned community (Mountain's Edge) on approximately 2,600 acres, generally located south of Blue Diamond Road and east of Rainbow Boulevard within Enterprise, is hereby adopted.

SECTION 2. If any section of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

SECTION 3. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION 4. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks and shall be effective on and from the fifteenth day after passage.

PROPOSED on the _____ day of _____, 2021

INTRODUCED by: _____

PASSED on the _____ day of _____, 2021

VOTE:

AYES: _____

NAYS: _____

ABSTAINING:

ABSENT:

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

By: _____
Marilyn K. Kirkpatrick, Chair

ATTEST:

Lynn Marie Goya, County Clerk

This ordinance shall be in force and effect from and after the _____ day
of _____ 2021.

**FOURTH AMENDMENT TO THE DEVELOPMENT AGREEMENT
BETWEEN THE COUNTY OF CLARK AND MOUNTAINS EDGE, LLC
FOR MOUNTAIN'S EDGE MASTER PLANNED COMMUNITY**

THIS, THE FOURTH AMENDMENT TO THE MOUNTAINS EDGE, LLC MASTER DEVELOPMENT AGREEMENT ("Fourth Amendment") is effective on the 1st day of December, 2021. The County of Clark, State of Nevada (hereinafter referred to as the "County") has adopted this Fourth Amendment pursuant to NRS 278.0205. Mountains Edge, LLC, a Nevada limited liability company (hereinafter referred to as the "Owner") is the master developer of Mountain's Edge Master Planned Community which includes the real property described in the original Development Agreement and the real property which has been added through Amended and supplemental development agreements approved by the County, executed by the Owner and recorded against such real property.

The original DEVELOPMENT AGREEMENT ("Original Agreement") was made and entered into on the 18th day of December, 2002 by and between the County and the Owner and was amended by the First Amendment recorded on the 19th day of August, 2004. A Second Amendment was made and entered into on the 20th day of December, 2006 and recorded on February 6, 2007. The Third Amendment was entered into on the 28th day September, 2010 and recorded thereafter. This Fourth Amendment amends, incorporates, restates, and supersedes Section 4.02 of the Original Agreement, and the First, Second and Third Amendments previously made between the parties. The prior Agreements between the parties remain unchanged and in full force and effect to the extent they are not amended as set forth below.

SECTIONS 1, 2 and 3

All portions of Section 1, 2 and 3 remain unchanged and in full force and effect.

SECTION 4

PUBLIC FACILITIES

4.01 General Provisions.

All of Subsection 4.01 remains unchanged and in full force and effect.

Subsection 4.02 is replaced and hereby amended to read as follows:

4.02 (A) Section 4.02(B)(3)(b)(v) of the Third Amended Development Agreement contemplated the construction of Helen Stewart Park (Park 228), a 10-acre park to be located within and for the benefit of the Mountain's Edge master planned community, once the Residential Construction Tax Fund ("RCT Fund"), derived from residential construction taxes collected from building permits issued for residential construction within Mountain's Edge, reached the threshold amount of \$1.6 million (following the construction of Paiute Park (Park 125)). The \$1.6 million-dollar threshold to trigger planning and construction of Helen Stewart Park under the Development Agreement will not be reached due to the limited scope of development remaining within the Mountain's Edge community. In light of the foregoing, Owner shall be and is hereby released from its obligation to construct, complete or maintain Helen Stewart Park

(Park 228). Any and all funds paid by Owner to County or collected by County for parks, facilities and amenities pursuant to Section 4.02 of the original Development Agreement or any amendment thereto may be used by County at its discretion for park construction or improvement within the Mountain's Edge Community; this includes, without limitation, the County's authority to enter into an agreement with the Mountain's Edge Master Association to allow the Mountain's Edge Master Association to utilize the funds for new park construction or improvements within the Mountain's Edge community, including construction of Helen Stewart Park. Owner shall not have the use of funds available in the RCT Fund for construction of the Parks, Paseos or other improvements or amenities or for any other purpose. If applicable, Owner is obligated to design and develop the corresponding improvement plans for amenity improvements in the Paseos at its own cost and expense without the use of RCT Funds or Park Funds.

(B) Residential Construction Tax – Chapter 19.05 of the Code imposes a fee upon the privilege of constructing residential units (hereinafter “Residential Construction Tax”). Upon adoption of this Amendment, County shall collect the Residential Construction Tax in the amount and manner specified in Chapter 19.05 of the Clark County Code on all residential units constructed within the Planned Community. The County shall deposit all amounts it collects into a fund (hereinafter “Residential Construction Tax Fund” or “RCT Fund” or Mountains Edge Park Account or “ME Park Account”). Owner may no longer seek the use of funds for construction of Parks, Paseos or for any other purpose. County may use the Tax collected from the RCT Fund or ME Park Account for construction of Park improvements at its sole discretion.

All other portions of Section 4, namely subsections 4.03 through 4.12, remain unchanged and in full force and effect.

SECTIONS 5 and 6

Sections 5 and 6 of the Agreement remain unchanged and in full force and effect.

SECTION 7

Section 7 remains unchanged and in full force and effect.

[SIGNATURE ON NEXT PAGE]

IN WITNESS WHEREOF, this Fourth Amendment to the Development Agreement executed by the County's duly authorized representative on the day and the year indicated.

COUNTY:

BOARD OF COUNTY COMMISSIONERS,
COUNTY OF CLARK, STATE OF NEVADA

On this ____ day of _____, 2021

Attest:

By: _____
Marilyn Kirkpatrick, Chair

Lynn Marie Goya, County Clerk