



## Legislation Text

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### Resolution Authorizing the Director of Field Operations To Have Signing Authority for Environmental Deed Restrictions and Brownfield Agreements

Council Priority: Ensure Fiscal Stewardship, Transparency, & Accountability

Department: Field Operations  
Council District: All

Public Hearing: N/A  
Advertising Date/By: N/A

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#### **PURPOSE:**

City Council to allow the Director of Field Operations (or his designee) to have “signing authority” for environmental deed restrictions and Brownfield Agreements in lieu of City Council and the City Manager’s Office. Typically, these types of environmental deed restrictions and/or Brownfield Agreements (BFAs) are viewed as an encumbrance on properties with environmental concerns that would impact the value of the property or restrict its potential development. This perception of encumbrance on properties is why environmental agreements currently require City Council approval and a signature from the City Manager’s Office.

#### **BACKGROUND:**

The uses for environmentally impacted property are inherently restricted due to the contamination/impacts on the property, so one should view the deed restriction as a formalization of the property’s developmental limitations. The reality is that these agreements/restrictions on the property merely codify the existing environmental limitations on the property with respect to the identified environmental conditions. These agreements/restrictions also provide the City with some financial relief in the form of reduced or eliminated monitoring, sampling and reporting activities. In the case of Brownfield Agreements they even provide environmental liability protection.

This request is specific to two types of environmental agreements; the environmental deed restriction and the BFA.

- An environmental deed restriction is requested either by the responsible party or suggested by the NCDEQ once a site reaches a designated level of assessment/remediation as a way to close an environmental site without conducting additional remediation to existing NCDEQ standards. The Deed Restriction allows development of the site as long as the property owner or future owners comply with

the developmental limitations of the Deed Restriction. If the restrictions are violated the property owner can face regulatory action up to and including fines and re-opening of the case. It should be noted that without the deed restriction the development of the site would have the same environmental limitations imposed by NCDEQ.

- “The North Carolina Brownfields Program, authorized by the state statute known as the Brownfields Property Reuse Act, provides a mechanism to treat prospective developers of Brownfield sites differently than the parties responsible for contaminating them. Prospective developers negotiate a brownfields agreement with the program that defines activities needed to make the site suitable for reuse, rather than cleaning up the site to regulatory standards (which responsible parties are required to do).” This gives the potential developer a protection from Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as long as they comply with the conditions established in the BFA. It should be noted that a potential responsible party cannot obtain a BFA for a property, only future owners and developers can pursue a BFA.
  - If a property owner does not sign a BFA before purchasing/accepting the property or does not comply with the conditions of an executed BFA, then that entity becomes a responsible party to all current and future environmental cleanups that the NCDEQ or Environmental Protection Agency require. Therefore, if the City chooses to not sign the BFA, then the City is assuming environmental liability moving forward and will be viewed as a responsible party until the contamination is fully remediated and properly disposed of.

Currently, the Field Operations - Environmental Compliance Department oversees environmental matter on many City properties. Additionally, this department is frequently asked to review environmental deed restrictions and Brownfield agreements for properties the City owns or is in the process of acquiring. Once the internal review is completed, the environmental agreement is circulated to various departments and all comments summarized and then addressed. The completed agreements is then forwarded to the City Council for approval. Once the agreement is authorized it is signed by the City Manager’s Office. This process has taken up to several months. The standardized language of these agreements/restrictions makes the need for Council Approval an unnecessary step since the agreements are just recording the environmental impact(s) of a specific property. The current process also adds delays that could impact property purchases, development and sales.

#### **BUDGET IMPACT:**

There is no impact to the Field Operations budget since this can be viewed as part of the existing environmental support duties and responsibilities.

#### **RECOMMENDATION / ACTION REQUESTED:**

It is recommended by the Field Operations Departments that City Council authorize the Director of Field Operations or his designee have the ability to sign and/or approve Deed restrictions or Brownfield Agreements.