



Bill No. 19-05
Concerning: Development Rights and Responsibilities Agreements

Introduced: March 5, 2019
Revised: May 7, 2019 Draft No.1
Enacted:
Effective:
Expires: June 3, 2019
Frederick County Code, Chapter 1-25
Section(s) 1, 3, 4, 7, 9, 12 and 14

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council Member Steven McKay on behalf of County Executive Jan Gardner

AN ACT to: Amend Chapter 1-25 of the Frederick County Code (Development Rights and Responsibilities Agreements – DRRAs) to: (1) limit DRRAs to residential developments of 900 or more dwelling units; (2) define and require enhanced public benefits; (3) specify the laws and fees that will apply to land developed under a DRRA; (4) limit the term of DRRAs to no more than 8 years, with one possible extension of up to 5 years; (5) specify items to consider during an amendment process; and (6) make minor corrections to Section 1-25-1. DEFINITIONS.

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

By amending:

Frederick County Code, Chapter, 1-25 Section(s) 1, 3, 4, 7, 9, 12, and 14

Other: _____

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Heading or defined term.

Added to existing law.

Deleted from existing law.

Existing law unaffected by bill.

Added by Amendment

Deleted by Amendment

The County Council of Frederick County, Maryland, finds it necessary and appropriate to amend the Frederick County Code to amend Chapter 1-25 of the Frederick County Code (Development Rights and Responsibilities Agreements – DRRAAs) to: (1) limit the use of DRRAAs for residential developments of 900 or more dwelling units; (2) define and require developers to provide enhanced public benefits as part of a DRRA; (3) clarify the laws and fees that will apply to land developed under a DRRA; (4) limit the term of a DRRA to no more than 8 years, with a possible extension of up to 5 years; (5) specify items to consider during an amendment process; and (6) make minor corrections to Section 1-25-1. DEFINITIONS.

NOW, THEREFORE, BE IT ENACTED, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

M.C. Keegan-Ayer, President
County Council of Frederick County,
Maryland

CHAPTER 1-25: DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENTS

§ 1-25-1. DEFINITIONS.

The words or phrases used in this chapter shall have the meaning prescribed in the current County Code except as otherwise indicated herein:

AGREEMENT. A development rights and responsibilities agreement, **INCLUDING ANY AMENDMENT.**

APPLICANT. Any individual, firm, corporation, partnership, association, society, syndication, trust, or other legal entity that files a petition to enter into an agreement.

COMPREHENSIVE PLAN. The current Frederick County Comprehensive Plan as adopted by the county under the provisions of Division 1, Title 3 of the Land Use Article of the Md. Ann. Code.

COUNTY. Frederick County, Maryland.

COUNTY COUNCIL. County Council of Frederick County, Maryland.

COUNTY EXECUTIVE. County Executive of Frederick County, Maryland.

COUNTY GOVERNING BODY. County Council and County Executive of Frederick County, Maryland.

DEVELOPMENT. Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, dumping, extraction, dredging, grading, paving, storage of materials or equipment, land excavation, land clearing, land improvement, landfill operation, or any combination thereof; and any change in the use of a building for which a building permit/zoning certificate is required by law.

DIVISION. The Frederick County [Community Development Division] **DIVISION OF PLANNING AND PERMITTING** or any successor(s) to the duties and responsibilities of the Division.

ENHANCED PUBLIC BENEFITS. PUBLIC INFRASTRUCTURE IMPROVEMENTS OR OTHER PUBLIC BENEFIT FEATURES TO BE PROVIDED AT THE APPLICANT'S EXPENSE, ABOVE AND BEYOND THOSE THAT THE APPLICANT WOULD OTHERWISE BE REQUIRED TO PROVIDE UNDER APPLICABLE LAW, DURING THE COURSE OF THE DEVELOPMENT OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, ADEQUATE PUBLIC FACILITIES AND REZONING ORDINANCE REQUIREMENTS.

PLANNING COMMISSION. The Frederick County Planning Commission.

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PROPERTY. The parcel or parcels of real property to be developed which are the subject of an agreement.

PUBLIC PRINCIPAL. The governmental entity of the County that has been granted the authority to enter into agreements under this chapter.

§ 1-25-2. AUTHORITY/PUBLIC PRINCIPAL.

The county may exercise the authority granted by Md. Ann. Code, Land Use Article, § 7-302(b), to enter into development rights and responsibility agreements and the County Executive shall exercise the authority of the public principal to negotiate, execute and enforce agreements, except that the County Council shall act as the public principal for purposes of conducting the public hearing on a proposed agreement and either approving or rejecting an agreement or an amendment to an executed agreement. In the suspension or termination of an executed agreement, the County Executive and the County Council shall act together as the public principal.

§ 1-25-3. PETITION.

(A) Any applicant having a legal or equitable interest in real property in Frederick County may petition the county to enter into an agreement.

(B) The petition shall be filed with the Division and must include the processing fee in accordance with a fee schedule adopted by Resolution of the county governing body.

(C) A PROPOSED DEVELOPMENT WITH A RESIDENTIAL COMPONENT MUST CONTAIN AT LEAST [1,500] 900 DWELLING UNITS TO BE ELIGIBLE FOR A DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT, UNLESS THE DEVELOPMENT IS A MIXED USE DEVELOPMENT DISTRICT, IN WHICH CASE A MINIMUM OF 600 DWELLING UNITS ARE REQUIRED FOR ELIGIBILITY.

[(C)](D) The petition shall include a copy of the proposed agreement.

[(D)](E) All persons with a lien interest in the property must authorize the petition.

[(E)](F) The County Executive shall first review the petition and determine whether to accept the petition and initiate this process.

[(F)](G) If the County Executive accepts the petition, a filing fee for each petition shall be paid in accordance with a fee schedule adopted by Resolution of the county governing body.

[(F)](H) The County Executive may negotiate the terms of the development rights and responsibilities agreement with the applicant.

§ 1-25-4. CONTENTS OF DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT.

(A) At a minimum, a development rights and responsibilities agreement shall contain the following:

(1) A lawyer's certification that applicant has either a legal or equitable interest in the property;

(2) The names of all persons having an equitable or legal interest in the property, including lien holders;

(3) A legal description of the property subject to the agreement;

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- (4) The duration of the agreement;
- (5) The permissible uses of the property;
- (6) The density or intensity of use of the property;
- (7) The maximum height and size of structures to be located on the property;
- (8) A description of permits required or already approved for the development of the property;
- (9) A statement that the proposed development plan is consistent with the Comprehensive Plan and all applicable county regulations;

(10) A description of the conditions, terms, restrictions or other requirements determined by the county to be necessary to ensure the public health, safety or welfare;

(11) A DESCRIPTION OF THE ENHANCED PUBLIC BENEFITS TO BE PROVIDED BY THE APPLICANT TO THE COUNTY IN EXCHANGE FOR THE BENEFITS RECEIVED BY THE APPLICANT IN THE AGREEMENT;

[11] (12) AN ESTIMATED COST OR VALUE OF THE ENHANCED PUBLIC BENEFITS PROVIDED BY THE APPLICANT TO THE COUNTY IN EXCHANGE FOR THE BENEFITS RECEIVED BY THE APPLICANT, AND THE TIMEFRAME WITHIN WHICH THE APPLICANT WILL PROVIDE THE ENHANCED PUBLIC BENEFITS [[WILL BE PROVIDED;]] IN ACCORDANCE WITH THE FOLLOWING:

- (A) IF AN ENHANCED PUBLIC BENEFIT OF LAND IS TO BE PROVIDED, THE LAND SHALL BE TRANSFERRED TO THE COUNTY PRIOR TO THE EXPIRATION DATE OF THE AGREEMENT; AND
- (B) IF AN ENHANCED PUBLIC BENEFIT IS TO BE PROVIDED IN THE FORM OF CONSTRUCTION OF OR IMPROVEMENT TO A PUBLIC FACILITY, IT SHALL BE ASSURED BY THE APPLICANT SUBMITTING A FINANCIAL GUARANTEE (E.G., A LETTER OF CREDIT OR A PERFORMANCE BOND), AND SUCH GUARANTEE SHALL BE PROVIDED PRIOR TO THE EXPIRATION DATE OF THE AGREEMENT;

[12](13) To the extent applicable, provisions for the:

- (a) Dedication of a portion of the property for public use;
- (b) Protection of sensitive areas;
- (c) Preservation and restoration of historic structures;
- (d) Construction or financing of public facilities; and
- (e) Responsibility for attorney's fees, costs, and expenses incurred by the county in the event an agreement is abandoned or breached by the applicant.

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(B) An agreement may contain other terms, provisions, requirements and agreements concerning the property which may be agreed upon by the county and the applicant.

(C) An agreement may fix the time frame and terms for development and construction on the property.

(D) An agreement may provide for other matters consistent with this chapter.

(E) All persons with a lien interest in the property must execute the agreement.

(F) Any superior interest with a power of sale must be subordinated to the position of the county ~~[[or acceptable financial guarantees must be provided]]~~.

§ 1-25-5. REFERRAL TO PLANNING COMMISSION.

(A) If the County Executive accepts the petition as provided in § 1-25-3(F), the Division shall refer the petition to the Planning Commission for determination of whether the proposed agreement is consistent with the Comprehensive Plan.

(B) If the County Executive negotiates the terms of the development rights and responsibilities agreement with the applicant as provided in § 1-25-3(G), the Division shall refer the negotiated agreement to the Planning Commission.

(C) The county may not enter an agreement unless the Planning Commission determines whether the proposed agreement is consistent with the Comprehensive Plan.

§ 1-25-6. PUBLIC HEARING.

(A) Before entering an agreement, the County Council shall conduct a public hearing on the agreement. Notice of the hearing shall be published in a newspaper of general circulation in the county once each week for 2 consecutive weeks, with the first such publication of notice appearing at least 14 days prior to the hearing.

(B) The County Executive may not execute the development rights and responsibilities agreement unless the County Council has adopted a resolution authorizing the execution of the agreement.

§ 1-25-7. AMENDMENT OF AGREEMENT.

(A) Subject to paragraph (B) of this section and after a public hearing, the parties to an agreement may amend the agreement by mutual consent.

(B) The parties may not amend an agreement unless:

(1) THE PLANNING COMMISSION CONSIDERS AND RECOMMENDS WHETHER AN AMENDMENT SHOULD REQUIRE COMPLIANCE WITH THE CURRENT COUNTY CODE PROVISIONS, RULES, AND REGULATIONS, INCLUDING BUT NOT LIMITED TO THOSE RELATING TO ADEQUATE PUBLIC FACILITIES, SCHOOL CAPACITY, STORMWATER MANAGEMENT AND FOREST CONSERVATION; AND

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[1](2) The Planning Commission determines whether the proposed amendment is consistent with the Comprehensive Plan; and

[2](3) After a public hearing, the County Council adopts a resolution authorizing the amendment.

§ 1-25-8. TERMINATION OF AGREEMENT; SUSPENSION.

(A) The parties to an agreement may terminate the agreement by mutual consent.

(B) If the county governing body determines that suspension or termination is essential to ensure the public health, safety, or welfare, the county governing body may suspend or terminate an agreement after a public hearing.

§ 1-25-9. APPLICABLE LAWS, REGULATIONS AND POLICIES.

(A) [Except as provided in paragraph (B) of this section, t]The local laws, rules, regulations, and policies governing the use, density, or intensity of the property subject to the agreement shall be the local ZONING laws, rules, regulations and policies in force at the time the county and the applicant execute the agreement.

(B) An agreement may not prevent [compliance with] THE APPLICATION TO A DEVELOPMENT OF the local ZONING laws, rules, regulations, and policies enacted after the date of the agreement, if the county determines that compliance with THE local ZONING laws, rules, regulations and policies is essential to ensure the health, safety, or welfare of residents of all or part of Frederick County.

(C) AN AGREEMENT MAY NOT PREVENT THE APPLICATION TO A DEVELOPMENT OF LOCAL LAWS, RULES, REGULATIONS, AND POLICIES THAT ARE NOT PART OF THE LOCAL ZONING LAWS, RULES, REGULATIONS, AND POLICIES.

(D) AN AGREEMENT MAY NOT ALTER THE APPLICANT'S OBLIGATION TO PAY THE FEES IN EFFECT AT THE TIME THE FEE PAYMENT IS DUE.

§ 1-25-10. RECORDING.

(A) An agreement not recorded in the Land Records of Frederick County within 20 days after the day on which the county and the applicant execute the agreement is void. Either the applicant or the county may record the agreement.

(B) The county and the applicant, and their successors in interest, are bound to the agreement after the agreement is recorded.

§ 1-25-11. ENFORCEMENT.

Unless the agreement is terminated under § 1-25-8 of this chapter, the county and the applicant, or their successors in interest, may enforce the agreement.

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§ 1-25-12. TIME LIMITS.

THE TERM OF AN AGREEMENT SHALL NOT EXCEED [[FIVE (5)]] **EIGHT (8)** YEARS FROM THE DATE OF EXECUTION OF THE AGREEMENT.

(A) AN AGREEMENT MAY BE AMENDED ONCE TO EXTEND THE TERM FOR A PERIOD NOT TO EXCEED 5 YEARS, IN ACCORDANCE WITH § 1-25-7 OF THIS CHAPTER.

(B) THE APPLICANT MUST FILE A WRITTEN REQUEST FOR AN EXTENSION OF THE AGREEMENT WITH THE DIVISION NOT LESS THAN NINETY (90) DAYS PRIOR TO THE TERMINATION DATE OF THE AGREEMENT.

[An agreement shall be void 5 years after the day on which the parties execute the agreement unless the agreement specifies a shorter or longer duration or unless extended by an amendment under § 1-25-7 above.]

§ 1-25-13. OPEN SESSIONS.

Any negotiations between a County elected official and the applicant or the applicant's agents concerning an agreement shall be conducted in open session.

§ 1-25-14. APPEALS.

(A) Any person aggrieved by an agreement [[~~OR AN AMENDMENT TO AN AGREEMENT~~]] may file an [[~~appeal in the Circuit Court for Frederick County, Maryland~~]] **ADMINISTRATIVE APPEAL AS SET FORTH IN § 9-1005 OF THE LAND USE ARTICLE OF THE ANNOTATED CODE OF MARYLAND.**

(B) An appeal must be taken within 30 days of the day on which the parties execute the agreement OR AN AMENDMENT TO AN AGREEMENT.

(C) If the effect of the decision of the Circuit Court revises the agreement OR AN AMENDMENT TO AN AGREEMENT in any way, any party to the agreement may terminate the agreement within 30 days of the date on which the Circuit Court decision becomes final.

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