



FREDERICK COUNTY PLANNING COMMISSION
April 10, 2019

TITLE: **DRRA Bill**

FILE NUMBER: **Bill 19-05**

REQUEST: Review and provide any comments to the County Council on an amendment to the Development Rights and Responsibilities Agreement (DRRA) ordinance

STAFF: Steve Horn, Division Director

RECOMMENDATION: Only for review and comment

ATTACHMENTS:
Letter from County Council
Draft Bill

MC Keegan-Ayer, District 3
President

Phil Dacey, At-Large
Jerry Donald, District 1
Jessica Fitzwater, District 4



Michael Blue, District 5
Vice President

Kai Hagen, At-Large
Steven McKay, District 2

Frederick County Council

March 26, 2019

Mr. Steve Horn
Director
Frederick County Division of Planning and Permitting
30 North Market Street
Frederick, Maryland 21701

RE: Council Bill #19-05, Development Rights and Responsibilities Agreements,
Request for Frederick County Planning Commission Review

Dear Director Horn,

On behalf of the Frederick County Council I am formally requesting a review of Council Bill #19-05, entitled, Development Rights and Responsibilities Agreements, by the Frederick County Planning Commission.

A majority of the membership of the Council has requested the Planning Commission review, discuss and provide any comments on this legislation at their earliest convenience. The County Council has this bill scheduled for a public hearing on Tuesday, April 2, 2019 at 7:00 pm, and a final vote on the bill on Tuesday, April 16, 2019.

For your convenience and information, I am attaching a copy of the bill and completed fiscal and policy note.

Should you have any questions please feel free to contact me.

Sincerely,

MC Keegan-Ayer
President

Attachments

cc: Frederick County Council Members



Bill No. 19-05

Concerning: Development Rights and
Responsibilities Agreements

Introduced: March 5, 2019

Revised: _____ Draft No. _____

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 1,500 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 5 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: _____

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law.</i>
[Single boldface brackets]	<i>Deleted from existing law.</i>
***	<i>Existing law unaffected by bill.</i>

Bill No. 19-05

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 – DRRAs) to: (1) limit the use of DRRAs for residential developments of 1,500 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 5 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.

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.

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

Underlining and CAPTIALS indicates matter added to existing law.
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*** indicates existing law unaffected by bill.

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 DWELLING UNITS TO BE ELIGIBLE FOR A DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT.

~~[(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;

(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;

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- (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 ENHANCED PUBLIC BENEFITS WILL BE PROVIDED;

[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.

(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.

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§ 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

[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.

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(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.

§ 1-25-12. TIME LIMITS.

THE TERM OF AN AGREEMENT SHALL NOT EXCEED FIVE (5) 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.

(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.

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(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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Bill No. 19-05



FREDERICK COUNTY COUNCIL

Local Government Fiscal and Policy Note

CONTACT INFORMATION AND GENERAL INSTRUCTIONS

Bill Number/Reference:	Bill No. 19-05
Bill Title:	Development Rights and Responsibilities Agreements
Local Government Agency:	Frederick County Finance Division
Prepared By:	Erin White
Title:	Deputy Director
Phone Number:	301-600-1193
E-Mail Address:	ewhite@frederickcountymd.gov
Due Date:	March 26, 2019
Date Submitted:	March 25, 2019

FREDERICK COUNTY COUNCIL

Local Government Fiscal and Policy Note

Date:						
Please respond to the questions below. If you prefer to provide responses or additional information in a separate file or document, send the file or document in a separate e-mail to rcherney@frederickcountymd.gov with the bill number/reference in the subject line.						
1.	Describe the impact of this proposed legislation on your agency (operations, revenues, expenditures, etc). If there is no impact, <u>please explain why.</u>					
<p>This legislation should have a positive fiscal impact on the County. This bill should increase County revenues as it prohibits Developers Rights and Responsibilities Agreements (DRRA) from altering applicant's obligations to pay County fees in effect at the time the fee payment is due. The legislation currently in effect allows fees to be frozen.</p> <p>This bill should also have a positive impact on County expenditures as it defines and requires enhanced public benefits to be provided by the applicant in exchange for the benefits provided to the applicant in the DRRA. This would require public infrastructure improvements or other public benefits 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. The County would no longer need to provide an appropriation for these expenditures.</p>						
2.	Please indicate whether the proposed legislation will affect small businesses in Frederick County, and if it will, please provide any information you may have which could be useful in determining the economic impact on small businesses.					
This legislation should not have a fiscal impact on small businesses in Frederick County.						
FISCAL IMPACT SUMMARY – SHOW (DECREASE) IN PARENTHESES						
<u>REVENUES</u>						
3.	Analysis of estimated increase (or decrease) in government revenues. Please estimate below any anticipated increase (or decrease) in revenues resulting from this legislation. Please be aware of any delayed effective dates in the bill or other factors that may cause revenue increases/decreases to begin in later years.					
Source		FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
TOTAL \$		\$	\$	\$	\$	\$
Please explain how the above estimated increase(s) or decrease(s) were arrived at, including any calculations and/or assumptions made. Please also explain any variation if the revenue increase(s)/decrease(s) are not constant.						
This bill should increase County revenues as it prohibits Developers Rights and Responsibilities Agreements (DRRA) from altering applicant's obligations to pay County fees in effect at the time the fee payment is due. The legislation currently in effect allows fees to be frozen. Staff are unable to quantify the increase in revenues because of the difficulty in predicting the timing of DRRA's and developer projects.						

FREDERICK COUNTY COUNCIL

Local Government Fiscal and Policy Note

<u>EXPENDITURES</u>						
4.	Analysis of estimated increase (or decrease) in government expenditures . Please estimate below any anticipated increase (or decrease) in expenditures resulting from this legislation. Please be aware of any delayed effective dates in the bill or other factors that may cause expenditure increases/decreases to begin in later years.					
A. Salaries & Wages		<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
FTE Employees - _____ # of positions						
Fringe Benefits						
TOTAL (Salaries, wages & benefits)		\$	\$	\$	\$	\$
N/A	Please provide an explanation of the need for the number and type of any personnel listed above, including (1) what specific provision(s) of the bill necessitate additional staff; (2) what the duties of each type employee will be; and (3) why existing personnel cannot absorb the additional work. Please also certify the wage/salary rate and % fringe rate (if differing rates apply) for each personnel classification.					
B. Other Operating Expenses		<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
Technical/Special Fees, Grants/Subsidies						
Communications-Phone, Postage						
Travel, Food, Auto, Fuel & Utilities						
Contractual Services						
Supplies						
Equipment-Replacement						
Equipment-Additional						
Land & Structures, Fixed Charges						
Other (Please Specify on Extra Page(s))						
TOTAL (Expenditures)		\$	\$	\$	\$	\$
	On the next page, please provide brief descriptions/breakdowns of the above "Other Operating Expenses."					
	Please explain below any additional calculations or assumptions made in estimating the "Other Operating Expenses" that will help us to understand the amounts and timing of the expenses.					
<p>This bill should have a positive impact on County expenditures as it defines and requires enhanced public benefits to be provided by the applicant in exchange for the benefits provided to the applicant in the DRRA. This would require public infrastructure improvements or other public benefits 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. The County would no longer need to provide an appropriation for these expenditures. Staff are unable to quantify the decrease in expenditures because of the difficulty in predicting the timing of DRRA's and developer projects.</p>						

FREDERICK COUNTY COUNCIL

Local Government Fiscal and Policy Note

4. (cont'd)

C. Operating Expense Descriptions/Breakdowns

Please provide below a short description of the specific purpose of each expense listed under 4B. If any amount(s) listed under 4B represent(s) a total of multiple expenses, provide a breakdown of the fiscal 2016 amount with a short description of each expense (for example, if \$2,500 is listed for Communications – Phone, Postage, a statement such as “\$1,500 for cellphone charges for two new inspectors and \$1,000 for postage for mailings to permittees to notify them of changes to inspection requirements.”)

Fiscal 2019 Expenditures

Technical/Special Fees, Grants & Subsidies description/breakdown	\$
Communications – Phone, Postage description/breakdown	\$
Travel, Food, Auto Operations, Fuel & Utilities description/breakdown	\$
Contractual Services description/breakdown	\$
Supplies description/breakdown	\$
Equipment-Replacement description/breakdown	\$
Equipment-Additional description/breakdown	\$
Land & Structures, Fixed Charges description/breakdown	\$
Other (Please Specify) description/breakdown	\$

