



**FREDERICK COUNTY, MARYLAND  
STAFF REPORT CONCURRENCE FORM**

To: Office of the County Executive Date: 10/03/2017

Through (Name of Div. Dir.): \_\_\_\_\_

From (Name & Division): Janice Spiegel, County Executive's Office **RECEIVED**  
OCT - 3 2017

Phone #: 301-600-1622

**Staff Report Topic:**  
Proposed Bill - Development Rights and Responsibilities Agreements

Office of  
Administrative Officer

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Time Sensitive? Yes  (if yes, deadline for approval: 10/03/2017) No

**Action Requested by County Executive:**

Signature Approval  **OR** Information Only

**Staff Report Review:**

This staff report has been thoroughly reviewed first by the appropriate divisions/agencies noted on Page 2 followed by those outlined below:

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(Page 2)</u>
<input checked="" type="checkbox"/> Budget Office	<u>RD</u>	<u>10/3/17</u>	<u>N</u>
<input checked="" type="checkbox"/> Finance Division	<u>ld</u>	<u>10/3/17</u>	<u>N</u>
<input checked="" type="checkbox"/> County Attorney's Office	<u>Kaem</u>	<u>10/3/17</u>	<u>N</u>
Refer to County Council? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	(To be completed by the Co. Attorney's office.)		
<input checked="" type="checkbox"/> Chief Administrative Officer	<u>[Signature]</u>	<u>10-3-17</u>	<u>W</u>
*****			
<input checked="" type="checkbox"/> County Executive	<u>[Signature]</u>	<u>10-3-17</u>	
Approval to forward to Council? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			

**For Office Use Only**

Council Meeting Date: \_\_\_\_\_ Presenter: \_\_\_\_\_

Public Hearing? Yes \_\_\_\_\_ No \_\_\_\_\_

Requires Council President's Signature? Yes \_\_\_\_\_ No \_\_\_\_\_

**Other Reviewing Divisions/Agencies:**

(Click to place a check mark in the following appropriate spaces.)

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(noted below)</u>
<input type="checkbox"/> Animal Control	_____	_____	_____
<input type="checkbox"/> Citizens Services	_____	_____	_____
<input type="checkbox"/> Economic Development	_____	_____	_____
<input type="checkbox"/> Emergency Management	_____	_____	_____
<input type="checkbox"/> Fire & Rescue Services	_____	_____	_____
<input type="checkbox"/> Health Services	_____	_____	_____
<input type="checkbox"/> Human Resources	_____	_____	_____
<input type="checkbox"/> Interagency Information Technologies	_____	_____	_____
<input type="checkbox"/> Parks & Recreation	_____	_____	_____
<input checked="" type="checkbox"/> Planning & Permitting	<u>SCF</u>	<u>10-3-17</u>	<u>NO</u>
<input type="checkbox"/> Public Works	_____	_____	_____
<input type="checkbox"/> Sustainability & Environmental Resources	_____	_____	_____
<input type="checkbox"/> Transit Services	_____	_____	_____
<input type="checkbox"/> Utilities & Solid Waste Management	_____	_____	_____
<input type="checkbox"/> Volunteer Fire & Rescue Services	_____	_____	_____
<input type="checkbox"/> Other: _____	_____	_____	_____
<input type="checkbox"/> Other: _____	_____	_____	_____
<input type="checkbox"/> Other: _____	_____	_____	_____

**Elected Officials or Independent Agencies:**

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(noted below)</u>
<input type="checkbox"/> Board of Education	_____	_____	_____
<input type="checkbox"/> Board of Elections	_____	_____	_____
<input type="checkbox"/> Board of License Commissioners	_____	_____	_____
<input type="checkbox"/> Frederick Community College	_____	_____	_____
<input type="checkbox"/> Frederick County Public Libraries	_____	_____	_____
<input type="checkbox"/> Internal Audit	_____	_____	_____
<input type="checkbox"/> Sheriff's Office	_____	_____	_____
<input type="checkbox"/> Social Services	_____	_____	_____
<input type="checkbox"/> State's Attorney's Office	_____	_____	_____

**Comments:**

1. From: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

2. From: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

3. From: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

4. From: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_



## FREDERICK COUNTY GOVERNMENT

Jan H. Gardner  
County Executive

OFFICE OF THE COUNTY EXECUTIVE *Raymond V. Barnes, Jr., Acting Chief Administrative Officer*

To: County Council

Thru: County Executive Jan Gardner

From: Education Liaison Janice Spiegel

Date: October 3, 2017

Subject: Developments Rights and Responsibilities Agreements

### **ISSUE:**

Should the County Council consider proposed legislation to Amend Chapter 1-25 of the Frederick County Code (Development Rights and Responsibilities Agreements – DRRAs) to do the following?

- (1) Limit DRRAs to residential developments of 1500 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; and
- (4) Limit the term of DRRAs to no more than 5 years, with one possible extension of up to 5 years.
- (5) Make minor corrections to section 1-25-1 DEFINITIONS.

### **BACKGROUND:**

Under the authority granted in Article 66B, §13.01 of the Maryland Annotated Code, the County may establish procedures and regulations for the consideration and execution of Development Rights and Responsibilities Agreements (DRRAs). The County adopted Ordinance No. 07-33-

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473, effective November 16, 2007, creating Chapter 1-25 of the Frederick County Code authorizing Development Rights and Responsibilities Agreements.

The intent of a DRRA is for the County to provide some certainty and predictability of the zoning for a defined time period in exchange for benefit to the County and its citizens beyond what could normally be obtained through the rezoning and development process. While the state law and the County Code provide that a DRRA “shall be void 5 years after the date on which the parties execute the agreement...”, both State law and the Code allow the DRRA to be shorter or longer as specified in the agreement itself.

Between 2011 and 2014, the County entered into 14 Development Rights and Responsibilities Agreements for residential developments with fewer than 100 housing units to more than 3,000 housing units. The majority of these agreements are for a time period of 20 years or longer, offer little or no additional benefit to the County citizens beyond what could normally be obtained through the rezoning and land-use development process, and in some cases froze fees such as the building excise tax for transportation as well as other laws.

As an outcome of these DRRAs, legislation adopted by current and future County Councils does not apply to many of these residential housing projects for 20 years or longer, effectively tying the hands of the County Council to address issues that may arise over time. Relevant examples include the legislation the current County Council passed for stricter waterbody buffers and changes to the moderately priced dwelling unit (MPDU) ordinance. These two ordinances do not apply to

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the development projects with DRRAs unless they are not constructed during the 20 year or longer time period during which the DRRA is valid. The building excise tax traditionally collected from new development for regional transportation improvements was also set at zero for 20 years or longer, limiting the ability of the County to collect needed monies to advance and leverage State dollars for regional road improvements for two decades or longer.

Few other counties have utilized Development Rights and Responsibility Agreements and no other county has extended the time period for 20 years or longer.

The draft bill, if adopted, would amend Chapter 1-25 to clearly outline the conditions under which a DRRA would be executed for a residential development in Frederick County by:

- (1) Limiting DRRAs to residential developments of 1500 or more dwelling units;
- (2) Defining and requiring enhanced public benefits;
- (3) Specifying the laws and fees that will apply to land developed under a DRRA;
- (4) Limiting the term of DRRAs to no more than 5 years, with one possible extension of up to 5 years; and
- (5) Making minor corrections to section 1-25-1 DEFINITIONS.

The proponent of the legislation believes that the County should only exchange its authority to legislate and provide certainty for zoning for: (1) large projects over 1,500 housing units that are complex, reasonably will take 10 years to construct, and require the provision and coordination of needed infrastructure; and (2) development projects that provide “enhanced public benefits” such

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as regional road improvements, the actual construction of new schools or school additions, or other major infrastructure projects not normally obtained through zoning. The proposed Bill also prohibits the freezing of fees; and limits the validity period of DRRAs to 5 years with one possible 5 year extension to allow a review of the circumstances that may have changed after 5 years.

These amendments would only apply to DRRAs for residential developments that are executed after the adoption of this Bill.

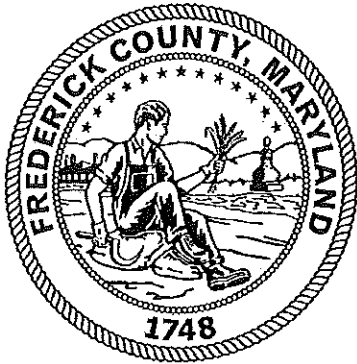
**RECOMMENDATION:**

The County Executive recommends the County Council initiate a public hearing process to consider the proposed legislation to amend Chapter 1-25 of the Frederick County Code (Development Rights and Responsibilities Agreements – DRRAs).

**FUNDING IMPLICATION:**      No

**ATTACHMENTS:**

Attachment 1 – Proposed Bill



Bill No. \_\_\_\_\_

Concerning: Development Rights and Responsibilities Agreements

\_\_\_\_\_  
\_\_\_\_\_

Introduced: \_\_\_\_\_

Revised: \_\_\_\_\_ Draft No. \_\_\_\_\_

Enacted: \_\_\_\_\_

Effective: \_\_\_\_\_

Expires: \_\_\_\_\_

Frederick County Code, Chapter 1-25

Section(s) 1, 3, 4, 9 and 12

## COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council President Otis 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 1500 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; and (5) makes 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, 9 and 12

Other: \_\_\_\_\_

**Boldface**  
Underlining  
[Single boldface brackets]  
\* \* \*

*Heading or defined term.*  
*Added to existing law.*  
*Deleted from existing law.*  
*Existing law unaffected by bill.*

Bill No. \_\_\_\_\_

The County Council of Frederick County, Maryland, finds it necessary and appropriate to amend the Frederick County Code to amend Chapter 1-25 Development Rights and Responsibilities Agreements (DRRAs) to: (1) limit the use of DRRAs for residential developments of 1500 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; and (5) makes 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.

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Harold F. (Bud) Otis, 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.

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

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Underlining and **CAPTIALS** indicates matter added to existing law.  
[Single boldface brackets] indicates matter deleted from existing law.  
\*\*\* indicates existing law unaffected by bill.

**§ 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;

(8) A description of permits required or already approved for the development of the property;

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(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 IN EXCHANGE FOR THE BENEFITS PROVIDED TO THE APPLICANT IN THE AGREEMENT; and

[(11)](12) 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.

#### **§ 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.

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(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 determines whether the proposed amendment is consistent with the Comprehensive Plan and

(2) 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, the local ZONING 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 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 COMPLIANCE WITH LOCAL LAWS, RULES, REGULATIONS, AND POLICIES THAT ARE NOT PART OF THE ZONING ORDINANCE.

(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.

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**§ 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 EXTENDED ONCE FOR A PERIOD OF TIME 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 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.

(C) If the effect of the decision of the Circuit Court revises the 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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