FREDERICK COUNTY, MARYLAND
STAFF REPORT CONCURRENCE FORM

To: Office of the County Executive **Date:** 01/31/2019

Through (Name of Div. Dir.):

From (Name & Division): County Executive Jan Gardner

Phone #: 301-600-1100

Staff Report Topic:

Proposed Bill - Development Rights and Responsibilities Agreements (DRRAs)

County Council Workshop - Tuesday, February 12, 2019

Time Sensitive? Yes ☐ (if yes, deadline for approval:) 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:

	Initials	Date	Comments Y/N (Page 2)
☑ Budget Office		1.31.19	N
☑ Finance Division		1/31/19	N
☑ County Attorney's Office		1/31/19	N

Refer to County Council? Yes X No (To be completed by the Co. Attorney's office.)

☑ Chief Administrative Officer		1/31/19	N

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☑ County Executive		1/31/19

Approval to forward to Council? Yes ✓ No

Other Reviewing Divisions/Agencies:
(Click to place a check mark in the following appropriate spaces.)

		Initials	Date	Comments Y/N *(noted below)*
_	_ Animal Control			
_	_ Citizens Services			
_	_ Economic Development			
_	_ Emergency Management			
_	_ Fire & Rescue Services			
_	_ Health Services			
_	_ Human Resources			
_	_ Interagency Information Technologies			
_	_ Parks & Recreation			
_	_ Planning & Permitting			
_	_ Public Works			
_	_ Sustainability & Environmental Resources			
_	_ Transit Services			
_	_ Utilities & Solid Waste Management			
_	_ Volunteer Fire & Rescue Services			
_	_ Other: _____			
_	_ Other: _____			
_	_ Other: _____			

Elected Officials or Independent Agencies:

		Initials	Date	Comments Y/N *(noted below)*
_	_ Board of Education			
_	_ Board of Elections			
_	_ Board of License Commissioners			
_	_ Frederick Community College			
_	_ Frederick County Public Libraries			
_	_ Internal Audit			
_	_ Sheriff's Office			
_	_ Social Services			
_	_ State's Attorney's Office			

Comments:

1. **From:** _____ **Date:** _____

2. **From:** _____ **Date:** _____

3. **From:** _____ **Date:** _____

4. **From:** _____ **Date:** _____

Jan H. Gardner
County Executive

FREDERICK COUNTY GOVERNMENT

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

TO: County Council

THROUGH: County Executive Jan Gardner

FROM: Janice Spiegel, Education Liaison

DATE: January 31, 2019

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;

(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?

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. 07-33-473, 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. In addition, 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;

(5) Specifying items to consider during an amendment process; and

(6) 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: large projects over 1,500 housing units that are complex and reasonably take up to 10 years to vest and require the provision and coordination of needed infrastructure; for development projects that provide "enhance public benefits" such as regional road improvements, the actual construction of new schools or school additions, or other major infrastructure projects not normally obtained through zoning; and that prohibit the freezing of fees, limit the length of time of the DRRAs to 5 years with one possible 5 year extension to allow a review of the circumstance that may have changed after 5 years, and specify the items to consider during an amendment process.

These amendments would only apply to DRRAs for residential developments that are executed in the future 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

ATTACHMENT(S):

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, 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	*Heading or defined term.*
Underlining	*Added to existing law.*
[Single boldface brackets]	*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 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

Exhibit 1

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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Bill No.

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;

(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.

§ 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](2) The Planning Commission determines whether the proposed amendment is consistent with the Comprehensive Plan, AND

(1) THE PLANNING COMMISSION SHALL CONSIDER AND RECOMMEND 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

[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.

(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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