

Ordinance No. 10-19

ORDINANCE:

To enact a new Chapter 7.5
in the Rockville City Code
entitled "Development Rights
and Responsibilities
Agreements"

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE,
MARYLAND, as follows:

That a new Chapter 7.5 of the Rockville City Code entitled "Development Rights and Responsibilities Agreements" is enacted to read as follows:

CITY OF ROCKVILLE

CHAPTER 7.5

DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENTS

Sec. 7.5-1 Definitions

In this Chapter the following words have the meanings indicated:

Agreement means a development rights and responsibilities agreement.

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

Champion Project has the same meaning as set forth in Section 25.03.02 of the Zoning Ordinance for the City of Rockville.

Chief of Zoning the individual holding the position of Chief of Zoning within the City's Department of Community Planning and Development Services or such individual's designee.

Comprehensive Plan means the current City of Rockville Comprehensive Plan as adopted by the City under the provisions of Title 3 of the Land Use Article of the Annotated Code of Maryland. For the purposes of this definition, "comprehensive plan" includes the general plan, master plan, neighborhood plans, and the like as adopted in accordance with the applicable provisions of State law.

Enhanced Public Benefit means a public infrastructure improvement or other public benefit, to be provided at the Applicant's expense, that benefits the public and is in excess of the public infrastructure improvements and other public benefits that an Applicant would otherwise be required to provide under the applicable law during the course of development of the property. An enhanced public benefit includes, but is not limited to, providing:

- (i) More than the required amount of open space, parkland, or afforestation;
- (ii) More than the required amount of multimodal transportation facilities;

- (iii) Traffic safety and capacity improvements that allows-allow for additional-more traffic capacity than what is otherwise projected after full buildout of the development in excess of the capacity required for the development of the proeprty;
- (iv) Infrastructure improvements that allows for additional water and sewer capacity in excess of the capacity required for the development of the property;
- (v)(iv) More than the required amount of stream restoration;
- (vi)(v) More than the required amount of affordable housing;
- (vii)(vi) Recreational facilities; and
- (viii)(vii) Public safety facilities; and
- (viii) Off-site water or sewer infrastructure improvements that an Applicant is required to provide (i) that are constructed and operational at an earlier time than would otherwise be required or reasonably expected in considering the nexus of the improvement to the project and the project buildout and (ii) which alleviates an otherwise existing deficiency that would prevent other development from being approved.

Parties means the Mayor and Council and the applicant.

Planning Commission means the City of Rockville Planning Commission.

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

Sec. 7.5-2 Purpose.

The purpose of this Chapter is to provide an additional technique for land development that is consistent with the Comprehensive Plan and is authorized by Title 7, Subtitle 3 of the Land Use Article of the Annotated Code of Maryland. It is a purpose of this Chapter to provide certainty and stability to developers, whose projects may take many years to complete, while allowing the City to negotiate enhanced public benefits. This Chapter is intended to enhance development flexibility, innovation, and quality while ensuring protection of the public interest, health, safety, and welfare.

Sec. 7.5-3. Authority; Public Principal.

The Mayor and Council may exercise the authority granted by Title 7, Subtitle 3 of the Land Use Article of the Annotated Code of Maryland to enter into agreements and shall act as the public principal.

Sec. 7.5-4. Petition.

(A) Any person having a legal or equitable interest in real property in the City of Rockville may petition the Mayor and Council to enter into an agreement.

(B) The petition must be filed with the Chief of Zoning on forms provided by the City and must be accompanied by a fee as determined by resolution of the Mayor and Council.

(C) The petition must include a copy of the proposed agreement.

(D) All persons having a legal or equitable interest in the property, including, but not limited to, all owners, contract purchasers, and lienholders, must authorize the petition.

Sec. 7.5-5. Contents of Development Rights and Responsibilities Agreement.

(A) At a minimum, an agreement must contain the following:

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

(2) The names of all persons having a legal or equitable interest in the property, including, but not limited to, owners, contract purchasers, and lien holders;

(3) A legal description of the property that is 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 City development regulations;

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

(11) For a development that has been designated as a Champion Project or is seeking designation as a Champion Project, a statement as to how the development meets the Champion Project criteria; and for all other projects Aa description of the enhanced public benefit that is consideration for the agreement;

(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; and

(d) Construction or financing of public facilities;

(13) Provisions to the effect that the applicant will be responsible for attorney's fees, costs, and expenses incurred by the City in the event an agreement is abandoned or breached by the applicant; and

(14) Provisions stating that an agreement is not intended to create third-party beneficiary status in the public or any other person not a party to the agreement.

(B) An agreement may:

(1) Contain other terms, provisions, requirements, and agreements concerning the property which may be agreed upon by the Mayor and Council and the applicant.

(2) Set the time frame and terms for development and construction on the property, which may include, but not be limited to, the phasing of the development and the timing of public improvements and public benefits being provided.

(3) Provide for other matters consistent with the Rockville City Code.

(C) Subject to the requirements of subsection (A), the Mayor and Council may negotiate the final terms of an agreement with the applicant.

Sec. 7.5-6. Referral to Planning Commission.

Upon receipt of a petition, the Mayor and Council must refer the petition to the Planning Commission for a determination on whether the proposed agreement is consistent with the Comprehensive Plan. The Mayor and Council may not enter into an agreement until the Planning Commission determines whether the proposed agreement is consistent with the Comprehensive Plan.

Sec. 7.5-7. Public Hearing; Approval of Agreement.

(A) Before an agreement may be executed, the Mayor and Council must conduct a public hearing on the proposed agreement. Notice of the hearing must be published in a newspaper of general circulation in the City once each week for 2 consecutive weeks, with the first such publication of notice appearing at least 14 days prior to the hearing.

(B) After the public hearing, the Mayor and Council may (i) enter into the proposed agreement as submitted; (ii) enter into the proposed agreement with amendments; or (iii) decline to enter into an agreement. If the Mayor and Council choose to enter into an agreement, the Mayor and Council must adopt a resolution that approves the agreement and authorizes the City Manager to execute the agreement on behalf of the Mayor and Council.

Sec. 7.5-8. 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 the Planning Commission determines whether the proposed amendment is consistent with the Comprehensive Plan.

Sec. 7.5-9. Termination of Agreement; Suspension.

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

(B) If the Mayor and Council determines that suspension or termination of an agreement is essential to ensure the public health, safety, or welfare, the Mayor and Council may unilaterally suspend or terminate an agreement after a public hearing.

Sec. 7.5-10. Applicable Laws, Regulations, and Policies.

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

(B) An agreement may not prevent compliance with the local laws, rules, regulations, and policies enacted after the date of the agreement if the City determines that compliance with such local laws, rules, regulations, and policies is essential to ensure the public health, safety, or welfare.

Sec. 7.5-11. Recording.

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

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

Sec. 7.5-12. Enforcement.

Unless an agreement is suspended or terminated pursuant to Section 7.5-9, only the parties or their successors in interest may enforce the agreement. Neither this Chapter nor any agreement is intended to create third-party beneficiary status in the public or any other person not a party to an agreement.

Sec. 7.5-13. Duration of Agreements.

An agreement is void 5 years after the day on which the parties execute the agreement unless the agreement specifies a different duration or unless extended by an amendment under Section 7.5-8.

NOTE: Underlining indicates material added
 Double Underling indicates material added after introduction
 ~~Strikethrough~~ indicates material deleted after introduction

I hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Mayor and Council at its meeting of April 8, 2019.


Sara Taylor-Ferrell, City Clerk /Director of Council Operations