



PLANNING COMMISSION

Wednesday, July 12, 2023

7:00 PM

Rockville City Hall

Mayor and Council Chambers

Meeting No. 11-2023

AGENDA

Eric Fulton, Chair

Suzan Pitman
Shayan Salahuddin
Jaime Espinosa

Sam Pearson
John Tyner, II

Jim Wasilak, Staff Liaison
Nicholas Dumais, Senior Assistant City Attorney

Virtually via WebEx

Watch LIVE on Comcast Cable Rockville Channel 11
and online at <https://www.rockvillemd.gov/>
See page 3 for more information

1. Briefing and Discussion

- A. Recommendation to Mayor and Council on Zoning Text Amendment TXT2023-00262, Proposed Parkland Dedication Requirements, and Proposed City Code Amendment to Implement a Parks Impact Fee; Mayor and Council of Rockville, Applicants**

2. Review and Action

- A. Presentation, Discussion and Approval of the 2022 Planning Commission Annual Report**

3. Commission Items

- A. Staff Liaison Report**
-

B. Old Business

1. Adoption of Revised Rules of Procedure

C. New Business

D. Minutes Approval

1. April 26, 2023

2. May 10, 2023

3. June 14, 2023

E. FYI/Correspondence

4. Adjourn

HYBRID MEETING AND PUBLIC HEARING PROCEDURE

The Planning Commission will be meeting in person in the Mayor and Council Chambers at Rockville City Hall. The public is invited to participate in person or virtually via Webex. Anyone wishing to participate virtually may do so per the instructions below.

PLANNING COMMISSION ONLINE MEETING and PUBLIC HEARING PROCEDURES**I. Pre-meeting Platform: Webex**

- A. Applicant Access: Provided by Planning and Development Services/IT
- B. Access for Oral Testimony and Comment: Provided by PDS/IT (see below)

II. Pre-Meeting Preparations/Requirements:

- A. Written Testimony and Exhibits –
Written testimony and exhibits may be submitted by email to Jim Wasilak, Staff Liaison to the Planning Commission, at jwasilak@rockvillemd.gov or by mail to:

Eric Fulton, Chair
Rockville Planning Commission
111 Maryland Avenue
Rockville, MD 20850

and must be received no later than nine (9) days in advance of the hearing in order to be distributed with the Planning Commission briefing materials.

Written testimony and exhibits received after this date until 4:00 pm on the day before the hearing will be provided to the Planning Commission by email.

- B. Webex Orientation for Applicants

Applicants must contact the planning case manager assigned to the Application no later than five (5) days in advance of the hearing in order to schedule Webex orientation, which must be completed prior to the hearing.

- C. Oral Testimony by Applicants and the Public

- i. Applicants – Applicants must provide to the planning case manager a list of presenters and witnesses who will testify on behalf of the Application. The list must be provided to the PDS Staff project manager no later than five (5) days prior to the date of the hearing.
- ii. Public Testimony/Comment on an Application – Any member of the public who wishes to comment on an application must submit their name and email address to the Staff

Liaison to the Planning Commission Jim Wasilak (jwasilak@rockvillemd.gov) no

9:00 am on the day of the hearing to be placed on the testimony list.

Members of the public who seek technical assistance from City staff must submit their name and email address to Jim Wasilak no later than two (2) days in advance of the hearing so that an orientation session may be scheduled.

If a member of the public is unable to meet the deadline to be placed on the testimony list, they can submit written testimony to the Staff Liaison to the Planning Commission by email to jwasilak@rockvillemd.gov.

III. Conduct of Online Meeting and Public Hearing:

A. Rules of Procedure –

The Meeting and Public Hearing will be held in accord with the Planning Commission Rules of Procedure, including the order of testimony and applicable time limits on testimony. The Rules may be viewed here:

<https://www.rockvillemd.gov/DocumentCenter/View/2023/Planning-Commission---Rules-of-Procedure?bidId=>

B. Oral Testimony –

During the hearing, the Chair will sequentially recognize each person on the testimony list and ask the host to allow the speaker to speak. Each speaker must wait to be specifically recognized by the Chair before speaking.

If during the hearing a party wishes to speak, or a speaker wishes to request the opportunity to engage in cross-examination following specific testimony, the party must contact the Staff Liaison/Host by email at jwasilak@rockvillemd.gov with the specific request. The Host/Staff Liaison will inform the Commission. The Chair will determine if the party may be heard.

C. Continuance of Hearing –

The Planning Commission, at its discretion, reserves the right to continue the hearing until another date.

HELPFUL INFORMATION FOR STAKEHOLDERS AND APPLICANTS**I. GENERAL ORDER OF SESSION FOR DEVELOPMENT APPLICATIONS**

1. Staff presentation
2. City Board or Commission comment
3. Applicant presentation (10 min.)
4. Public comment (3 min, or 5 min for the representative of an association)
5. Planning Commission Discussion and Deliberation
6. Decision or recommendation by vote

The Commission may ask questions of any party at any time during the proceedings.

II. PLANNING COMMISSION BROADCAST

- Watch LIVE on Comcast Cable Rockville Channel 11 and online at: www.rockvillemd.gov
- Replay on Comcast Cable Channel 11:
 - Wednesdays at 7:00 pm (if no live meeting)
 - Sundays at 7:00 pm
 - Mondays, Thursdays and Saturdays at 1:00 pm
 - Saturdays and Sundays at 12:00 am (midnight)
- Video on Demand (within 48 hours of meeting) at: www.rockvillemd.gov/VideoOnDemand.

III. NEW DEVELOPMENT APPLICATIONS

- For a complete list of all applications on file, visit: www.rockvillemd.gov/DevelopmentWatch.

VI. ADDITIONAL INFORMATION RESOURCES

- Additional resources are available to anyone who would like more information about the planning and development review process on the City's web site at: www.rockvillemd.gov/cpds.

Maryland law and the Planning Commission's Rules of Procedure regarding ex parte (extra-record) communications require all discussion, review, and consideration of the Commission's business take place only during the Commission's consideration of the item at a scheduled meeting. Telephone calls and meetings with Commission members in advance of the meeting are not permitted. Written communications will be directed to appropriate staff members for response and included in briefing materials for all members of the Commission.



Agenda Item #:	1
Meeting Date:	July 12, 2023
Responsible Staff:	Jim Wasilak

SUBJECT:

Recommendation to Mayor and Council on Zoning Text Amendment TXT2023-00262, Proposed Parkland Dedication Requirements, and Proposed City Code Amendment to Implement a Parks Impact Fee; Mayor and Council of Rockville, Applicants

RECOMMENDATION

(Include change in law or Policy if appropriate in this section):

Staff recommends that the Planning Commission review the proposed regulations to require dedication of public parkland in connection with new development, and make a recommendation on the proposed ordinance. The proposed City Code amendment to implement a Parks impact fee is also included.



Planning Commission Staff Report

MEETING DATE: July 12, 2023

REPORT DATE: July 5, 2023

RESPONSIBLE STAFF: Jim Wasilak, AICP, Chief of Zoning
240.314.8211
jwasilak@rockvillemd.gov

SUBJECT: Recommendation to Mayor and
Council on Zoning Text Amendment
TXT2023-00262, To Require
Dedication of Public Parkland for
Certain Development Projects

BACKGROUND:

Open space and recreation are highly valued in Rockville. The City has approximately 1,035 acres of parkland in 65 parks with a variety of amenities across the community. Recreation facilities range from small-scale neighborhood-based spaces for programming and meetings, to large 'specialized' facilities that serve the entire community and beyond.

Funds are allocated each year to maintain and upgrade the parks and recreation facilities in the City to ensure safe, clean, and attractive amenities for residents and visitors. The 2016

Community Survey results indicate that recreation facilities, athletic facilities, and the appearance of city parks are rated much higher than in other benchmark jurisdictions.

To ensure equitable access to park facilities citywide, the City set a goal to provide parkland within a 10-minute walk from any residence. The City's Parks, Recreation and Open Space (PROS) Plan also established a goal to maintain a ratio of 18 acres of parkland for every 1,000 residents. While some areas of the city are well served by parks within convenient walking distance, others are not. As a city with a population nearing 70,000 and 1,035 acres of parkland, the goal for acreage per 1,000 residents is not currently met.

The population is projected to grow to 82,000 by 2040, and this growth will put even more pressure on the existing parks and recreation facilities. The population growth calls for creation of new or expansion of existing parks and other recreation facilities to meet the demand that comes with additional users, especially in redeveloping and urbanizing areas along Rockville Pike and in Town Center.

The Mayor and Council authorized a study on parkland dedication and fee-in-lieu options in 2017. CPDS and Recreation and Parks staff, in consultation with consultant Duncan & Associates, developed background and options to address the issues, resulting in the *Report on Parkland Acquisition Approaches for the City of Rockville* that was presented to the Mayor and Council in February 2018 (See Attachment A). The Mayor and Council held subsequent work sessions to discuss the issues and provide direction.

The attached report describes jurisdictions in this region and nationally that are using these mechanisms and outlines the pros and cons of both options.

Overview of Options

The City does not currently have a permanent, dedicated funding source or other specific mechanism to acquire or require parkland from developers during the development review process. The goal of the parkland acquisition initiative is to create a consistent, standardized tool to use as new development occurs. The intent is to give the City an opportunity to strategically manage growing demands placed on the parks and recreation system, and to reasonably ensure that new capacity can be provided to assist in meeting those demands.

The 2018 report outlined two primary options for addressing the need to ensure that the City's parks and recreation facilities are not overburdened with the stress of an increasing population from new development. The options presented were:

- Parkland dedication, or fee-in-lieu when dedication is not feasible; and
- An impact fee for parks and recreational facilities.

These approaches could ensure that the landowner, developer, and future residents who are creating the new demand for new parks and recreation facilities bear a portion of the costs of the city providing them.

Parkland Dedication/Fee-in-lieu of Dedication

The 2018 report recommended the parkland dedication/fee-in-lieu option as the primary mechanism for achieving additional parkland in new development.

As a result of discussions with the Mayor and Council, staff of the Recreation and Parks Department, the City Attorney's Office and Community Planning and Development Services Department prepared a draft of the Zoning Text Amendment that would require parkland dedication, and related changes to City Code Chapter 14, Parks and Recreation, to implement a Parks Impact Fee, that is a hybrid approach utilizing both mechanisms.

The basic framework of the program being formulated regarding parkland dedication is as follows:

1. A new article would be added to the Zoning Ordinance regarding parkland dedication and payment in lieu of dedication.
2. The minimum development area subject to the dedication requirement is 5 acres.
3. The area of dedication is proposed to be at least 10 percent of the subject development site, less any additional area dedicated to a public entity.
4. Threshold levels of proposed development that would trigger the dedication requirement would be 20 dwelling units or 25,000 square feet of commercial or office space.
5. Dedication and/or payment-in-lieu of dedication would be achieved through approval of a project plan application by the Mayor and Council, with the result potentially being a combination of land dedication and payment in lieu of dedication.
6. Land to be dedicated could be located within a project development site or located off-site but must be reasonably near and accessible to the proposed development.
7. Staff recommends being within 1 mile of the proposed development and not separated by major roadways such as I-270.
8. Land proposed to be dedicated must consist of usable space, with limitations on features that would make the property substantially unusable for either active or passive recreation use.
9. Land to be dedicated must be consistent with the Comprehensive Plan.
10. Initial review and recommendation of proposed dedication to be accomplished by Director of Recreation and Parks, with his or her recommendation to be forwarded to Planning Commission and Mayor and Council, along with the project plan.
11. Planning Commission would provide comments and recommendations to the Mayor and Council on the proposed dedication arrangement, with the Mayor and Council having sole discretion to accept dedication or payments in lieu of dedication.
12. Payment in lieu funds may be used for the acquisition or development of parks that will

serve the proposed development.

13. Amount of payment in lieu of dedication equals 10 percent of the fair market value of the development site, less the percentage of the site proposed for dedication as parkland.
14. A refund provision would require funds received as a payment in lieu of dedication to be used or committed to a use within 10 years of deposit or refunded to the current owners of the property. However, the funds may be exempt from this refund requirement if the City makes annual findings identifying a proposed use for the funds and demonstrating a roughly proportional and reasonable relationship between the amount of the funds and the proposed use.
15. A conceptual park plan would be required to be submitted by an applicant along with the project plan application showing dedication, to be reviewed by the Recreation and Parks Director, who must then submit comments for the Mayor and Council.
16. Land to be dedicated must be free of debris and, at the discretion of the Director of the Department of Recreation and Parks may be required to be graded and stabilized.
17. Dedication or a payment in lieu of dedication would typically occur prior to building permit issuance, which is a typical requirement for such payments.
18. As currently proposed, funds received as payments in lieu of dedication must be spent on the development or acquisition of land for parks, recreation facilities, or open space, or to pay the principal, interest, or other costs associated with financing such development or acquisition.

Parkland will be dedicated on properties larger than five acres where new development occurs, which primarily means the Mixed-Use zones such as MXTD, MXCD and MXE zones, represented geographically by the Rockville Pike corridor, Town Center, and the Research Boulevard and Piccard Drive areas primarily. All these areas will require additional parkland as new residential redevelopment occurs. As the attached map shows, there are many parcels that are greater than 5 acres in the Research Boulevard/Piccard Drive/Shady Grove Road areas that could potentially redevelop, with few large parcels in the Rockville Pike corridor outside of the Twinbrook metro area. Otherwise, the Comprehensive Plan, the Parks, Recreation and Open Space (PROS) Plan, or the Recreation and Parks Strategic Plan will provide guidance on the desirability of parkland dedication in other locations. Most of the developable parcels in other zoning districts are smaller than 5 acres, except for school sites and other institutions within the single unit residential (R) zones. Redevelopment projects on the smaller parcels would not dedicate parkland but would be subject to the park impact fee instead.

Park Impact Fees

Impact fees, which would be a fee charged to the developer on a per-residential unit basis payable at the time of building permit, must relate to the park and recreation needs generated by the new development. Impact fees should be used to defray capital expenses for land acquisition or facilities that add capacity to the City's recreation and park system, but not for existing operating and maintenance costs. Park impact fees would be assessed broadly across most development in the city, but developers of property over 5 acres subject to the dedication requirement, or a payment in lieu of dedication, would have the opportunity to

credit the value of such dedication or payment against any park impact fees owed.

Based on previous discussions, the basic framework of the Parks Impact Fee is recommended to consist of items below, which are included in a draft amendment to Chapter 14 of the City Code related to recreation and parks.

- Require that new residential development pay for its share of park acquisition, development and park capital improvements that increase capacity.
- Exempt new residential development or alterations to an existing development creating 3 or fewer dwelling units; accessory buildings and structures; moderately priced dwelling units (MPDUs); and any residential development for which a building permit was submitted to the City prior to enactment of the ordinance (Claims of exemption must be made in writing to the Director of CPDS at the time of building permit).
- Give credit for land dedicated to the city as parkland, based on the fair market value of the land dedicated (credit may be given for up to the full amount of the impact fees, based on 2 appraisals of the property to be dedicated).
- Establish a proposed impact fee schedule based on residential unit type.
- Collect impact fees prior to building permit issuance and deposited into an impact fee account.
- Use impact fees for park acquisition, development and capital improvements that add capacity to the park system, and for principal and interest and costs associated with bonds or notes or similar means used to finance park acquisition or improvements.
- Provide no option for a refund process for impact fees given the broader nature of impact fees and the likelihood that they can be spent within a reasonable time frame.

The draft impact fee ordinance has been drafted in accordance with the 2018 report recommendations, given that the primary source of demand for recreation and park facilities comes from residential development.

Impact Fee Amount

Staff has developed a methodology to establish the amount of the impact fees (see Attachment), based on the cost per person of both the Recreation and Parks Capital Improvement Plan (CIP) and operating budget. To determine the amount of the impact fee for a particular type of residential unit, that cost would be multiplied by the persons per unit for each residential unit type. This results in the following proposed impact fees:

Single unit detached: \$2,386 per unit

Single unit attached: \$2,072 per unit

Multifamily unit: \$1,671 per unit

Staff also developed a methodology for projects that would include a pool, and therefore would be exempt from contributing to the swim center. Removing the swim center from the calculation results in the 28.6% discount for the CIP and a 12% discount in operating costs, or about a 20% reduction per unit.

Voluntary Contributions of Land and/or Funds for Parkland

Although a separate item, the Mayor and Council have discussed a recommendation to either allow contributions of land that could become parkland, or funds that could contribute toward acquiring or improving parkland. These contributions could come from businesses, private foundations, non-profit organizations, and/or individuals. To address this recommendation, staff confirmed that Article XII, Section 1 of the City Charter already allows the City to receive donations of real or personal property for any public purpose by, among other things, gift and bequest, as follows:

The City may acquire real, personal, or mixed property within or without the corporate limits of the City for any public purpose by purchase, gift, bequest, devise, lease, condemnation, or otherwise and may sell, lease or otherwise dispose of any property belonging to the City. All municipal property, funds, and franchises of every kind belonging to or in the possession of the City (by whatever prior name known) at the time this section becomes effective are vested in the City, subject to the terms and conditions thereof.

Presently, the public can make monetary donations via the City's recreation registration system and the City's website. On the website, there is a page for "Pay Your Water Bill or Make a Donation." Under the "Donations" header, monetary contributions can be made to the Rockville Recreation Fund, which supports recreational scholarships. Staff is exploring adding a portal under this Donations site for the public to donate to parkland acquisition. Similarly, we are looking to modify the Recreation programs registration site on the web to permit donations for parkland acquisition. Additionally, the Rockville Recreation & Parks Foundation, (a non-profit 501.c.3 organization), solicits and receives monetary donations for supporting City recreational programs, especially sports. To promote public contributions for parkland acquisition, staff will coordinate with the Public Information Office to create a campaign with consistent messaging that will publicize and promote this opportunity and to encourage these voluntary gifts. The message will focus on the impact and benefits to both the donor and the community and will provide easy instructions on how to make the contribution. Platforms will include the City and Department websites, social media, Rockville Reports, Rockville 11, and appropriate press releases that would publicize the creation of this opportunity, as well as provide regular reminders to the public moving forward. The "Life in Rockville" and "Senior Recreation" guides, and other Department channels will also be utilized to spread the word. Presentations and displays promoting seasonal campaigns at the Senior Center, Croydon Creek Nature Center and community centers could also be implemented.

Other Key Aspects

The dedication would not be required on previously approved projects, such as Twinbrook Quarter.

Whether the land to be developed is desirable as public parkland from the City's perspective is an important consideration, such that the Director of Recreation and Parks and the Recreation

and Parks Advisory Board would make the recommendation as to whether the proposed dedication is acceptable to the City, with the Mayor and Council being involved with this decision as well.

This decision as to what type of dedication and/or fee applied to the developer should be made as early in the development review process as possible so that applicants design their project to accommodate the parkland or not, as appropriate. At the pre-application stage, an applicant could be put on notice that the City will be looking for dedicated parkland in a particular project, based on the recommendations in the Comprehensive Plan, Parks, Recreation and Open Space (PROS) Plan or Strategic Plan. In addition, the Recreation and Parks Advisory Board could also provide its recommendation on the applicant's proposal to meet this requirement.

Depending on the location and nature of the proposed parkland to be dedicated, the City might prefer payment of a fee-in-lieu of dedication in certain situations. For proposed development projects that include residential units and that would otherwise be required to comply with the parkland dedication requirement, the report proposed a fee-in-lieu equal to 10% of the assessed value of the land within the project boundaries. Improvements to land are not included.

Parkland will be dedicated where new development occurs, which primarily means the Mixed-Use zones such as MXTD, MXCD and MXE zones, represented geographically by the Rockville Pike corridor, Town Center, and the Research Boulevard and Piccard Drive areas primarily. All these areas will require additional parkland as new residential redevelopment occurs. Otherwise, the Comprehensive Plan, the Parks, Recreation and Open Space (PROS) Plan, or the Recreation and Parks Strategic Plan will provide guidance on the desirability of parkland dedication in other locations. Most of the developable parcels in other zoning districts are smaller than 3 acres, so these redevelopment projects would not dedicate parkland but would be subject to the fee-in-lieu instead.

The 2018 report noted that it is important to provide a basis for what the fee-in-lieu funds may be spent on and where fee-in-lieu funds could be expended. Revenue generated through fees paid in-lieu-of dedication will be used by the City for parkland acquisition, expansion or enhancement of existing parks, to serve the new residents of the development that was assessed the fee. Fees collected under this provision will be spent in the general vicinity of the site of the development application.

The City can use the Parks, Recreation and Open Space (PROS) Plan, Recreation and Parks Strategic Plan, and the Comprehensive Plan for guidance in deciding upon which facilities, programs, and locations to spend the fees that are collected. The Mayor and Council previously supported a tiered preference system, whereby the first preference is within one-half (1/2) mile from the development site, the second preference is within the same planning area as the development site, and the third preference is within an adjacent planning area within 1 mile of the development site. This would allow the funds to contribute toward neighborhood parks,

community centers or regional facilities if the criteria are met. However, given the analysis in the Strategic Plan regarding facility and programmatic needs, the Mayor and Council should consider establishing priorities based on these identified needs, in concert with the tiered preference system.

Requirements in Other Local Jurisdictions

As background information, staff researched other jurisdictions with a parkland dedication requirement and/or parks impact fee.

City of Frederick

The City of Frederick, Maryland has established a park dedication or fee-in-lieu program for residential development similar to what is being considered for Rockville. Following is a current summary of Frederick's program:

- The program requires the dedication of parkland in connection with new residential development, with distinctions are made between new residential development and infill development. The program is applicable to any development that increases the number of units beyond what is currently on the property.
- The Planning Commission and the Recreation and Parks Commission may recommend a waiver of the parkland dedication if it is determined that there is sufficient parkland in the vicinity.
- The parkland dedication requirement may be waived for townhouse and multi-family developments if it is determined that the private open space provided can reasonably serve the development.
- The parkland dedication requirement is 1,000 square feet for each new residential unit and 500 square feet for each accessory detached dwelling unit.
- For infill development, the requirement is 500 square feet per unit and 250 square feet for each accessory detached unit.
- For retirement communities, the dedication requirement is 500 square feet per dwelling, but may be satisfied through private open space so long as that space meets the relevant park standard.

Where a park is dedicated per this regulation, 75 percent of the dwelling units must be within a quarter mile (1/4) of the park, and no unit can be more than one-half (1/2) mile from the park.

If the Planning Commission determines that park dedication is unsuitable at that location, it may require dedication at another suitable location, pay a fee-in-lieu, or a combination of both. The fee amount is determined by the Board of Aldermen based on a recent appraisal of the property.

The funds from the fee-in-lieu may be used for:

- Acquisition of parkland.
- Paying the principal, interest or other costs of financing instruments intended for the acquisition of City parkland.

In the Downtown Commercial/Residential (DB), Carroll Creek Overlay, and Historic districts within the city, a park impact fee of \$1,000.00 per new dwelling unit is assessed, the funds used to provide parkland improvements within the defined area.

The Planning Commission may approve off-site parkland dedication if it is located within a one-half (1/2) mile of the site and cannot be interrupted by a primary arterial street or freeway. Such off-site parkland must be connected to the development site by a sidewalk or pathway system.

If the development does not generate enough area to provide a 3 acre park, either by itself or in combination with adjacent developments, the Planning Commission may approve a combination of a fee and dedication of land for private, rather than public use.

At the time of site plan approval, if parkland is not being dedicated then the fee-in-lieu or the park improvement fee must be paid. In the case of dedication, no more than 50 percent of the dwellings may be built until the dedication is accepted by the City and the park improvements have been completed.

Prince George's County

Prince George's County has a parkland dedication ordinance with fee-in-lieu. It is limited to new residential subdivisions and does not apply to site plan projects. The dedication requirement ranges from 5% to 15% of the site depending on the density of development.

Montgomery County

Montgomery County has an adopted Parks, Recreation and Open Space Plan that states that recommendations for parks and recreation must be provided in all urban plans and sector plans. New parkland is added to the county park system through dedication via the land development process, direct purchase using CIP funds, or occasional donation from property owners. Dedication is not a zoning requirement but may be achieved through the optional development method, which may entail density or other incentives provided as part of a development project.

City of Gaithersburg

The City of Gaithersburg requires a minimum green area, landscaping and amenity area for new development as a percentage of the site, but there is no specific parkland requirement or impact fee.

PUBLIC OUTREACH:

Staff undertook a public notification and engagement program based on the Mayor and Council's direction. These virtual public input sessions were held on December 2 and December 7, 2021 and were widely publicized. Below is a summary of the feedback received at the meetings.

The public outreach meetings were attended by a total of 16 individuals, most if not all of whom were residents of Rockville. Most attendees were strongly in favor of the concept of a reliable way of achieving parkland in new development and applauded the Mayor and Council for considering it. Most speakers were in favor of dedication over fee-in-lieu or a parks impact fee as the best way to achieve the goal of additional parkland. Others recognized that the flexibility afforded by fee-in-lieu was a positive aspect, and some expressed support for both parkland dedication/fee-in-lieu and impact fees. Other concerns expressed include:

- Whether implementing a new requirement would dissuade developers who are providing needed housing in the City;
- Whether the minimum requirement for parkland dedication in the MX zones should be uniform or more related to the density and location of each;
- Concern that the additional costs would increase the cost of residential units in the City;
- Whether the requirements should apply to developments that are only commercial;
- Emphasis on acquisition should be for prime natural areas and areas for additional tree planting to gain the environmental benefits;
- Concerns expressed about ensuring park maintenance is adequate;
- City should explore conservation easements on land that could be used as parkland but would remain privately-owned; and
- Support for extending the period during which the City must spend the in-lieu funds or risk losing them. Others thought there should be no end date.

Staff also held an information session for the development community in the Fall of 2022. Most concerns were related to the potential for the requirements to apply to approved projects or projects in review, and whether credit toward impact fees could be given based on developer improvements to dedicated public parkland or for private amenities.

Staff also presented the draft ordinance and resolution to the Recreation and Parks Advisory Board on April 27, 2023.

Written Testimony

Written testimony have been received, including testimony of representatives of the Twinbrook Quarter project and the Shady Grove Innovation District. Some of the concerns raised include:

- Whether the proposed ZTA should apply to non-residential development;
- Whether privately-owned open space would count toward the requirement, including whether open space requirements should be reconfigured;
- Whether alternate site plans should be subject to the requirements;

- Whether there should be additional requirements for open space based on geographic areas;
- Whether “champion projects” should be exempt;
- Whether certain Project Plan approvals would be exempt.

Staff will bring a full recommendation to the Commission for the July 26 meeting.

NEXT STEPS:

The next steps would be for the Planning Commission to consider the proposed amendments and make a recommendation to the Mayor and Council.

Attachments

Attachment 1.1.a: Draft Park Dedication Ordinance 4.14.22 (PDF)
 Attachment 1.1.b: Draft Park Impact Fee Ordinance_4.14.22 (PDF)
 Attachment 1.1.c: Parkland Impact Fee Calculation Methodology (PDF)
 Attachment 1.1.d: Report on Parkland Aquisition Approaches for the City of Rockville (PDF)
 Attachment 1.1.e: Letter to Planning Commission (6-16-23) Saul Centers (PDF)
 Attachment 1.1.f: TXT2023-00262 Parkland ZTA - BXP Testimony 5.8.23 (PDF)

Jim Wasilak

Jim Wasilak, Zoning and Development Manager

7/5/2023

ORDINANCE NO. _____

ORDINANCE: To amend City Code Chapter 25, titled “Zoning Ordinance,” to establish a park dedication or in lieu payment requirement for new development on five or more acres of property generating more than twenty (20) dwelling units or 25,000 square feet of commercial or office uses, to require such development receive project plan approval, and to exempt certain of such development from a public use space requirement

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

SECTION I – That Chapter 25 of the Rockville City Code entitled “Zoning Ordinance” be amended as follows:

Chapter 25
ZONING ORDINANCE

ARTICLE 7. – PROCEDURES FOR SITE PLANS AND PROJECT PLANS, SPECIAL EXCEPTION AND OTHER PERMITS

Sec. 25.07.02. – Application procedures for site plans, project plans, and special exceptions.

b. Application procedure, in general.

1. The level of review for each application is based in part on a point system, provided in the chart below. Each application must be evaluated on the acreage of the site, the number of dwelling units proposed, the square footage of non-residential space, the residential impact area, and the traffic impact of development proposed. Each of these items is allocated a number of points which are added together to determine the complete point valuation for the project.

d. *Project plan review.* If the elements of the proposed project total sixteen (16) or more points, or if the development is subject to Article 22 of this chapter, the development is subject to project plan review. The Mayor and Council and Planning Commission will each hold a briefing session on the plan application, the Chief of Planning and Planning Commission will perform a preliminary review and make a recommendation to the Mayor and Council, and the Mayor and Council will then complete a final review of the plan in accordance with subsection 25.07.01.b.2. and section 25.07.06. The Planning Commission will thereafter review subsequent site plans implementing the approved project plan in accordance with the level 2 site plan review procedures under section 25.07.04.

ARTICLE 17. - PUBLIC USE SPACE, LANDSCAPING AND SCREENING, UTILITY PLACEMENT AND SCREENING, LIGHTING, SIDEWALKS, AND SHADOWS

Sec. 25.17.01. – Public use space.

- a. *Dedication of parkland ~~public use space~~.* Land may be dedicated to the City for public use in connection with the approval of a project plan, site plan or subdivision for the purpose of providing public parks, open areas, or recreation areas that will be owned by the City and operated as part of the City's public park system. Dedication must be made pursuant to Article 22 or consistent with the recommendations of the relevant plan indicating the locations where such public use space is desired. Land dedicated to the City for public parks, open areas, or recreation space may replace up to 50% of an application's public use space requirement.

ARTICLE 22. - PARKLAND DEDICATION

Sec. 25.22.01. – Purpose and intent.

This Article is for the purpose of requiring that new development of a certain size on sites of five (5) or more acres within the City is served by adequate, nearby parks, recreation facilities, and open space through the imposition of a dedication requirement that will ensure adequate parks, recreation facilities, and open space to serve such development.

Sec. 25.22.02. – Applicability.

This Article applies to any development encompassing a site of five (5) or more acres and generating more than twenty (20) dwelling units or 25,000 square feet of commercial or office space. This Article does not apply to an application for a project plan amendment, including an amendment to a planned development.

Sec. 25.22.03. – Dedication or in lieu payment required.

a. The Mayor and Council must not approve a project plan subject to this Article unless:

1. The application incorporates a dedication of land to the Mayor and Council of Rockville of an area equal to at least ten percent (10%) of the site subject to the application less any additional area required to be dedicated to a public entity under this chapter or other applicable law;

2. The approval is conditioned on the applicant making a payment in lieu of dedication in accordance with this Article; or

3. The approval is conditioned on a combination of a dedication of land equal to less than the minimum dedication required under subsection 1 above and a payment in lieu of dedication in accordance with this Article.

Sec. 25.22.04. – Minimum standards of dedicated land.

- a. Location. Land dedicated under this Article may be either within the site encompassed by the project plan or off-site. A dedication of off-site land must be reasonably near and accessible to the proposed development. Off-site land dedicated under this Article must not be more than one mile from any portion of the site of the proposed development, measured in a straight line, or separated from the site of the proposed development by an existing arterial street or highway.
- b. Access. Land dedicated under this Article must abut or have adequate access to a public street and must be within or connected by sidewalk to the site encompassed by the project plan.
- c. Usability. Land dedicated under this Article must consist of substantially usable space. No more than one-fourth of the land dedicated may include floodplains, wetlands, stormwater management facilities, heavy slopes, or any other feature that renders it substantially unusable for active or passive recreation activities. The Mayor and Council may consider areas in forest or proposed for afforestation or reforestation on a forest conservation plan to be substantially usable space.
- d. Plan consistency. The configuration of land dedicated under this Article must be consistent with any recommendations in the Plan.
- e. Fee simple. Land dedicated under this Article must be conveyed to the City in the form of a fee simple interest, unless the Mayor and Council finds that an easement or other ownership interest is in the best interests of the City.

Sec. 25.22.05. – Review of proposed dedication.

- a. Review by Department of Recreation and Parks. A copy of any project plan application proposing dedication under this Article must be referred to the Director of the Department of

Recreation and Parks, who must submit a recommendation to the Department of Planning and Development Services as to the suitability of the proposed area for parkland dedication. The Department of Planning and Development Services must transmit the recommendation of the Director of the Department of Recreation and Parks to the Planning Commission and the Mayor and Council no later than the Planning Commission public meeting on the project plan application under Section 25.07.07.8.

- b. Referral to Planning Commission. As part of its review of a project plan application under Section 25.07.07.8, the Planning Commission must review a proposed dedication under this Article in terms of its location, accessibility, topography, shape, size, relationship to surrounding properties, and consistency with the Plan.
- c. Planning Commission recommendation. In its comments and recommendations to the Mayor and Council on the project plan application, the Planning Commission must include any comments and recommendations on the proposed dedication to the Mayor and Council.

Sec. 25.22.06. – Acceptance of dedication or in lieu payment.

The decision of the Mayor and Council as to whether it will accept a dedication of land, a payment in lieu of dedication, or a combination thereof is at the sole discretion of the Mayor and Council.

Sec. 25.22.07. – Timing and nature of development.

The Mayor and Council has the right to accept, develop, and maintain property dedicated under this Article in accordance with its determination of public recreation and park needs.

Sec. 25.22.08. – Collection and use of payment in lieu of dedication.

- a. Payment process. If the Mayor and Council requires a payment in lieu of dedication under Section 25.22.04, the payment in lieu of dedication must be paid to the City and placed by the

City in an account used only for the acquisition or development of parks, recreation facilities, or open space that will serve the proposed development, provided that such payment may be used by the City for acquisition or development of parks, recreation facilities, or open space that serve both the proposed development and other development within the immediate area.

- b. *Amount.* The amount of the payment in lieu of dedication equals ten percent (10%) of the fair market value of the site on which the development is proposed as of the time of project plan approval, less any area required to be dedicated to a public entity under this chapter or other applicable law. If, pursuant to Section 25.22.03.a.3, the Mayor and Council approves a dedication of less than the minimum required under Section 25.22.03.a.1, the amount of the payment in lieu of dedication equals the fair market value at the time of project plan approval of ten percent (10%) of the site on which the development is proposed less the percent of the site which is being dedicated to the City and any additional area required to be dedicated to a public entity under this chapter or other applicable law.
- c. *Appraisal.* The fair market value of the site on which the development is proposed must be calculated based on the average of two appraisals of the site from two independent appraisers licensed in the State of Maryland. The appraisals must be submitted by the applicant prior to approval of the proposed project plan.
- d. *Payment due.* The payment in lieu of dedication must be made in full prior to issuance of any building permits for the proposed development.
- e. *Use of funds.* Funds paid in lieu of dedication must be used by the City for the development of or acquisition of land for parks, recreation facilities, and open space to serve such development or to pay the principal, interest, or other costs of bonds, notes, or other obligations issued or

undertaken by or on behalf of the City to finance the development of or acquisition of land for parks, recreation facilities, or open space that will serve the proposed development.

f. Payment in lieu accounts. The City must establish a separate account for each development subject to a payment in lieu of dedication under this Article, and such payment must be deposited in such account. The funds of the account must not be commingled with other funds of the City. A payment in lieu of dedication account must be interest-bearing, and the accumulated interest must become a part of the account.

g. Reduction in payment for park improvements. If the Mayor and Council approves a dedication of less than the minimum area required under Section 25.22.03.a.1, the Mayor and Council may authorize a reduction in any required payment in lieu of dedication equivalent to the cost of the developer constructing park or recreation improvements approved by the Mayor and Council within the area to be dedicated to the City.

Sec. 25.22.09. – Refund of Payment in lieu of dedication.

(a) Except as described below, upon application of the property owner, the City must refund that portion of any payment in lieu of dedication which has been on deposit for more than ten (10) years and which is unexpended or uncommitted. The refund must be made in equal shares to the then-current owners of residential lots or dwelling units within the residential development, with one share allocated to each single family or townhouse lot and one share allocated to each dwelling unit within a multifamily structure that is either built or eligible to be built under a valid project plan or site plan.

(b) If a property owner is entitled to a refund, the City must notify the property owner by first class mail. The property owner must submit a request for a refund to the Finance Department in writing within one year of the date the right to claim the refund arises or

the date the notice is given, whichever is later. Any payments in lieu of dedication that are not expended or committed within the time limitations established herein, and for which no application for a refund has been made within this one-year period, will be retained and expended in accordance with this Article.

- (c) If funds in any payment in lieu of dedication account are uncommitted for three (3) or more years after deposit, the City shall make findings, at least once each fiscal year while such condition prevails, to identify the purpose to which such funds shall be put and to show a roughly proportional and reasonable relationship between the amount and the purpose for which it was collected. If the City makes such findings, the funds are exempt from the refund requirement.
- (d) The City may refund by direct payment, or otherwise by agreement, with the owner.
- (e) An applicant who has made a payment in lieu of dedication for a development for which the necessary building permit has expired prior to construction, for which the building permit has been revoked prior to construction, or for which the building permit has been cancelled prior to construction, shall be eligible to apply for a refund. The applicant must submit a request for a refund to the Finance Department in writing within one year of the date the subject permit expired, was revoked, or was cancelled. Any payment in lieu of dedication that is expended or committed within the time limitations established herein, and for which no application for a refund has been made within this one-year period, shall be retained and expended in accordance with this Article.

Sec. 25.22.10. – Conditions of dedication.

- a. Park plan. Prior to approval of any project plan application subject to this Article, the applicant must prepare a conceptual park plan for any land proposed to be dedicated under this Article.

The conceptual park plan must be reviewed by the Director of the Department of Recreation and Parks, who must submit comments on the conceptual park plan for the Mayor and Council's consideration no later than the Mayor and Council's public hearing on the project plan.

- b. Site condition. Before any proposed park dedication is accepted by the City, the land to be dedicated must be cleared of debris, weeds, and other undesirable material. The Director of the Department of Recreation and Parks may also require the land to be graded and stabilized by grass seeding or other acceptable methods at the expense of the owner of the property.
- a. Timing of dedication. Any dedication of land under this Article must be effectuated prior to the issuance of any building permits for the proposed development, unless another deadline is established by the Mayor and Council as part of project plan approval.

ORDINANCE NO. _____

ORDINANCE: To amend City Code Chapter 14, titled “Parks and Recreation,” to establish a park impact fee for new residential development in the City

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

SECTION I – That Chapter 14 of the Rockville City Code entitled “Parks and Recreation” be amended as follows:

Chapter 14
PARKS AND RECREATION

ARTICLE III. PARK RULES

Secs. 14-55 – 14-69. Reserved.

ARTICLE IV. PARK IMPACT FEE

Sec. 14-70. - Purpose and intent.

This Article is for the purpose of requiring that new residential development pay for its share of park acquisition, development, and improvement through the imposition of a park impact fee which will be used to finance, defray, or reimburse the City for all or a portion of the costs of park acquisition, development, and capital improvements that add capacity to the City’s park system.

Sec. 14-70. - Applicability.

Except as provided in Section 14-71, any person who undertakes a residential development project must pay a park impact fee.

Sec. 14-71. - Exemptions.

(a) The following types of development are exempt from the provisions of this section.

- (1) New residential development creating three (3) or fewer dwelling units.
- (2) Alterations or expansions of an existing residential building, where three (3) or fewer dwelling units are created and where the use is not changed.
- (3) The construction of accessory buildings or structures.
- (4) The on-site replacement of a destroyed or partially destroyed structure with a new building or structure, where three (3) or fewer dwelling units are created.
- (5) The off-site replacement of a demolished structure with a new building or structure where three (3) or fewer dwelling units are created, provided the demolition and replacement are performed pursuant to a validly-approved demolition permit prior to the demolition of the structure.
- (6) Any residential development for which a building permit application was submitted to the City prior to [date of enactment of ordinance].
- (7) Moderately priced dwelling units, as defined in Chapter 13.5.

(b) Any claim of exemption must be made by the applicant, in writing, to the Director of the Department of Community Planning and Development Services no later than the time of application for a building permit. Any claim not so made is deemed to be waived.

Sec. 14-72. - Definitions.

As used in this Article:

Building permit means an official City document or certification authorizing the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, moving, or repair of a building or structure.

Dwelling unit means a building or portion thereof providing complete living facilities for not more than one (1) family, including, at a minimum, a kitchen, and facilities for sanitation and sleeping.

Park impact fee means any monetary exaction imposed by the City in connection with approval of a residential development project for the purpose of defraying all or some of the cost of or repayment of costs previously expended from other City funds for park acquisition, development, and improvement.

Residential development means any development undertaken which creates a new dwelling unit or units.

Sec. 14-73. – Impact fee schedule.

Park impact fees are hereby established and must be imposed as set forth in the following schedule:

<u>Type of Residential Development</u>	<u>Fee Per Dwelling Unit</u>
<u>Single family detached</u>	<u>TBD</u>
<u>Single family attached</u>	<u>TBD</u>
<u>Multi-family/other</u>	<u>TBD</u>

Sec. 14-74. - Imposition and collection of impact fees.

- (a) The City must impose a park impact fee on all residential development subject to this Article.
- (b) All park impact fees must be collected by the Department of Finance prior to the issuance of any building permit for the residential development subject to the park impact fee.

Sec. 14-75. – Credits.

- (a) An applicant may receive a credit towards required park impact fees in an amount equal to the appraised fair market value of any land dedicated to and accepted by the City for public park, open space, or recreational purposes as part of the residential development for which impact fees are owed.
- (b) A credit under this section may equal, but not exceed, the total amount of park impact fees required for a residential development under this Article.
- (c) An application for a credit under this section must be made, in writing, to the City Manager prior to issuance of a building permit for the applicant's development. An applicant's failure to timely apply for a credit under this section is deemed a waiver of the credit.
- (d) An application for a credit under this section must include two appraisals of the property to be dedicated from two independent appraisers licensed in the State of Maryland. The City Manager must approve a credit in an amount equal to the average of the two appraisals, up to the total amount of park impact fees required.
- (e) Unless dedication has occurred prior to the City Manager's approval of a credit under this section, the credit applicant must enter into an agreement with the City, in a form approved by the Office of the City Attorney, setting out the terms of the dedication.

The City Manager is authorized to execute such agreement on behalf of the Mayor and Council.

Sec. 14-76. - Impact fee account.

The City shall establish a park impact fee account, and impact fees collected must be deposited in such account. The funds of the account must not be commingled with other funds of the City. The impact fee account must be interest-bearing, and the accumulated interest must become a part of the account.

Sec. 14-77. - Use of impact fee proceeds.

Impact fees must be expended only for park acquisition, development, or capital improvements that add capacity to the City's park system. Impact fees may be used to pay the principal interest and other costs of bonds, notes, and other obligations issued or undertaken by or on behalf of the City to finance such acquisition, development, or capital improvements.

Sec. 14-78. - Severability.

If any section, subsection, sentence, clause, phrase, or portion of the ordinance codified in this Article is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this section.

SECTION II – This ordinance shall become effective immediately upon adoption.

NOTE: ~~Strikethrough~~ indicates material deleted.

Underlining indicates material added.

Ordinance No.

- 6 -

I hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the Mayor and Council of Rockville at its meeting of _____.

Sara Taylor-Ferrell

City Clerk/Director of Council Operation

Parkland Impact Fee by Housing Unit Type Calculation Methodology

A. Capital Improvement Fee + Recreation and Parks Operating Fee

STEP 1: Total 5 Year R&P CIP Expenditures/ Population = 5 Year Total Capital Cost Per Person

\$31,454,967 / 68,232 population = \$461 per person

STEP 2: Average 5 Year R&P Operating Budget/Population = 5 Year Average Operating Cost Per Person

\$23,027,616/ 68,232 population = \$337 per person

STEP 3: Housing Type X (Capital Cost Per Person + Operating Cost Per Person) = Park Impact Fee by Housing Type

Formula Without a Pool

Single Family – 2.99 PPH X (\$461+\$337) = **\$2,386 per unit**

Town House – 2.597 PPH X (\$461 +\$337) = **\$2072 per unit**

Multi Family – 2.095 PPH X (\$461 +\$337) = **\$1671 per unit**

Fiscal Year	Total CIP Spend	Actual Operating
FY17	\$ 5,656,732	\$22,961,387
FY18	\$ 4,567,876	\$23,587,686
FY19	\$ 10,530,779	\$24,393,146
FY20	\$ 7,892,654	\$23,834,632
FY21	\$ 2,806,926	\$20,361,230
TOTAL	\$ 31,454,967	\$23,027,616 (5 yr Avg)

Parkland Impact Fee by Housing Unit Credit of Swimming Pools

B. Capital Improvement Fee + Recreation and Parks Operating Fee - Credit

STEP 1: Swim Center 5 Year CIP Expenditure/5 Year R&P CIP Expenditures = % discount (credit) toward 5-year **Capital** Cost Per Person

\$9,000,000 / \$31,454,967 = 28.6%

\$461 x 28.6% = \$132

STEP 2: Swim Center 5 Year Operating Expenditure/ 5 Year R&P Operating Budget = % discount (credit) toward 5 Year **Operating** Cost per person
 $\$2,900,000 / \$23,027,616 = 12\%$
 $337 \times 12\% = \$40$

STEP 3: Capital Cost PP $\$461 - \$132 = \$329$
 Operation Cost PP $\$351 - \$40 = \$311$

Formula With a Pool (Approx. 20% Credit)

Single Family – $2.99 \text{ PPH} \times (\$329 + \$311) = \1913 per unit
 Town House – $2.597 \text{ PPH} \times (\$329 + \$311) = \$1,662 \text{ per unit}$
 Multi Family – $2.095 \text{ PPH} \times (\$329 + \$311) = \$1,340 \text{ per unit}$



Report on Parkland Acquisition Approaches for the City of Rockville

**Community Planning and Development Services
Recreation and Parks
City Manager's Office**

January 2018

Table of Contents

I.	Introduction	1
II.	How the City has acquired parkland in the past	2
III.	Tools used by other jurisdictions	3
IV.	Guidance from Comprehensive Master Plan & Parks, Recreation and Open Space Plan	6
V.	Options to consider	7
a.	Parkland dedication, with a fee-in-lieu provisions.....	8
b.	Impact fee for parks and recreational facilities.....	16
VI.	Examples	20
VII.	Pros and Cons of the two options	21

Attachment A - Map of Existing Parks and Recreational Facilities

Attachment B - Walkability Analysis / Access to Parks

Attachment C - Definitions (current) of Open Area and Public Use Space

I. Introduction

The parks and recreational facilities maintained and operated by the City of Rockville are often cited as a key factor in Rockville residents rating our quality of life so high. It has long been a priority of the City to provide a top-notch park and recreation system that offers enjoyable neighborhood parks, community facilities and other recreational amenities. The City's current level of service in terms of parkland per 1,000 residents is roughly 16 acres. The map at Attachment A shows the City's existing parks and recreational facilities.

While some areas of the city are well served by parks within walking distance of their neighborhoods, others are not. Also, with a growing population, there is continued pressure to create new park space, especially in redeveloping and urbanizing areas along Rockville Pike and in Town Center. The map at Attachment B describes how the City is covered in terms of walkability to parks.

The focus of this report (and work session with the Mayor and Council) is to discuss ways to go about ensuring that while new growth occurs, the City is able to plan for and provide new park space and recreational facilities. The overarching goal is to provide parks and recreational facilities, or to collect fees to create them, as new development occurs so that the new development does not overburden the existing park system, and the City continues to provide facilities that serve all residents. One of the many keys to this effort will be to create a mechanism that is fair and equitable as the City attempts to keep up with the on-going demands of a growing population.

The City currently does not specifically require parks to be provided as part of new development projects. Instead, we have standards requiring that "open area" and "public use space" be provided within new development projects. However, those standards are fairly flexible and permissive in terms of what constitutes an open area and public use space, and they do not specifically call for the creation of additional parkland. The City also has goals, policies and recommendations in the Comprehensive Master Plan and in the Parks, Recreation and Open Space Plan that speak to the need and desire to acquire parkland, but those recommendations have not been implemented through an ordinance requirement.

There are tools used in other jurisdictions that provide the means to ensure new parks and recreational facilities are provided as new development occurs. These tools will be explored further in this report.

II. How has the City acquired parks in the past?

There are a number of ways in which the City has acquired parkland over the years, including recently. These include the following.

- **Deeded to City as part of a development project** – As the King Farm, Falls Grove, Rose Hill, and Tower Oaks development projects were planned and approved, the City was able to negotiate for park and open space to be dedicated to the City for public use. These include Mattie Stepanek Park, King Farm Park, Falls Grove Park, Village Green, and the Rose Hill and Tower Oaks stream valleys.
- **Conveyed to the City** by a Homeowners Association – This involved the acquisition by the City of parcels A and B from the Chestnut Lodge Planned Development area, conveyed by their homeowners' association earlier this year.
- **Purchased from Developer**– In conjunction with the acquisition of the two donated parcels from the Chestnut Lodge HOA, parcel I of Chestnut Lodge was purchased by the City from the private owner of the parcel.
- **Purchased from the County** – The City arranged to purchase land previously owned by the county at 175 Watts Branch Parkway where the Karma Academy once stood.
- **Land Swap with County** – The City has swapped property with the county in the past, including for a portion of Upper Watts Branch (a school site) in exchange for land adjacent to Wootton Parkway.

Revenue sources that have been used for acquisition include the City's general fund appropriations, and state grants through the Program Open Space fund. This is a grant program funded through real estate transfer taxes, administered by the Maryland Department of Natural Resources, with funds being allocated annually to the counties for subsequent allocation. **The City does not currently have a permanent, dedicated funding source, nor other specific mechanisms to acquire or require parkland in the city.**

It should also be noted that there is a portion of the County property tax dedicated to advanced parkland acquisition. It is administered by the Maryland National Capital Park and Planning Commission. Although that tax is assessed on properties in the city as well as throughout the county, the City does not typically receive any of the revenue generated. The fund is used to support and expand the countywide parks system, which city residents also use. The tax rate is .001, or 1/10th of a penny per \$100 of assessed value.

Although some of these tools have served us well from time to time, they are not ones that may be used on a consistent basis as new development occurs, especially with the redevelopment nature of our recent growth patterns. **A consistent, standardized tool that can be employed regularly as new development occurs will give the City an opportunity to more carefully manage the demands placed upon our park and recreational facilities, and to reasonably ensure that new capacity is provided to meet those new demands.**

III. Tools used by other jurisdictions

Many jurisdictions across the country, as well as a few locally, use either a parkland dedication requirement through their zoning ordinance, or an impact fee that is charged to new development for parks and recreation facilities. Below are several examples researched by staff. One common feature they all share is a robust park system for their local population.

Parkland Dedication examples

Austin, TX has a dedication ordinance required for residential subdivisions, site plans that include residential units, and hotels/motels. The required amount is based on a formula of parkland acreage per 1,000 resident population to be generated by the development (to maintain 9.4 acres of parkland per 1,000 population); the amount varies by density of the project. In their “urban core,” parkland dedication cannot exceed 15% of the gross site area. The requirement is reduced for affordable housing. Under certain conditions, the land can remain as private parkland, with a recorded recreation easement, for 100% of the requirement. Austin includes a fee-in-lieu provision where dedication of land is not feasible. The fee-in-lieu amount is based on the average purchase price to the City for acquiring an acre of parkland, along with the parkland level-of-service (which is based on the total citywide acreage of neighborhood parks and greenways relative to the city’s population).

Their Recreation and Parks director makes the initial determination as to whether to accept dedication or fee-in-lieu, with final approval by their Land Use Commission. They emphasize the purpose of the fee in-lieu is not to achieve equity in terms of where parkland is provided, but rather to have development maintain the same citywide parkland level-of-service. If development occurs in deficient areas, the dedication tool may contribute to equity. Otherwise, bond funds, grants, donations or some other source would be needed to address deficiency problems. However, when deciding where to spend their fee-in-lieu, they do use a parkland deficiency map as a guide, along with other criteria in their operating procedures. Their funds must be spent within five (5) years of collection.

St. Paul, MN requires 150 square feet of parkland per residential dwelling unit, up to a maximum of 4.5% of the buildable land area, or a fee-in-lieu of dedication at \$1,200 per dwelling unit (up to 4.5% of county assessor’s value of the land). The requirement is reduced for affordable housing.

They are also one of the few jurisdictions that require parkland dedication for non-residential projects. St. Paul has documented that 90% of their demand for park space is from residential uses, and 10% from commercial/industrial. They require 28 square feet per 1,000 square feet of commercial gross floor area (GFA), 11 square feet per 1,000 square feet of industrial GFA, and 6 square feet per 1,000 square feet GFA for wholesale, warehousing and storage space. Non-residential projects that are less than 5,000 square feet are exempt.

They also have an option for private land to be maintained for public use instead of making a dedication. However, the area must be accessible to the public in a manner similar to public land, and a parkland development agreement must be executed. They specify that funds collected through fee-in-lieu shall be used within ½ mile of the project for which the funds were collected, or for the neighborhood or community park nearest to the project.

Dunedin, FL requires dedication, or a fee in-lieu, when five (5) or more residential units are constructed, via a site plan or subdivision. They require six (6) acres to be dedicated per 1,000 population to be generated (prorated for the project). The six (6) acres are split evenly between neighborhood and community park needs.

They allow credit up to 75% of the neighborhood park requirement to be private open space. Their fees collected in-lieu of dedication must be spent or obligated within 7 years of collection, and be spent in the “general vicinity” of the area where the fees were generated.

Impact Fee examples

Pasadena, CA has used their Residential Impact Fee since 1988 to help mitigate the impacts on the park system from new residential development. The fee is imposed on all new residential development, and they range from \$15,000 to over \$28,000 per unit depending on the number of bedrooms; affordable housing units are charged \$800. The fee has been the primary funding mechanism for parkland acquisition, trails and capital improvements for parks in the city’s budget. It helped fund the first new city park in over 30 years, and brought about the city dog park in the city. They can also use the fund on any school ground park which is subject to a cooperative agreement between the city and the Pasadena Unified School District.

Boulder, CO has an impact fee for parks and recreation that ranges from \$2,700 to \$7,000 per unit, depending on the size of the dwelling unit. In **Sacramento, CA**, their park development impact fee is about \$3,500 for multi-family units (but \$1,600 if in an infill area), and \$5,900 for single-family units (\$2,700 if infill).

Local/Regional examples

The City of Frederick, MD actually has both an impact fee and a parkland dedication requirement. They require 500 square feet of parkland to be dedicated for each infill residential unit and for retirement communities, and 1,000 square feet for other non-infill residential units. They have a provision where private open space may suffice to serve multi-family and townhouse development, and dedication would not be required unless the comprehensive plan calls for a park in the area. They also have a provision where, if approved by the city, the city may deem areas in forest or proposed for afforestation (or reforestation in a forest conservation easement) to be suitable as public parkland.

Fee-in-lieu is determined by the Board of Aldermen and is based on the fair market value of the property with a recent appraisal. Funds may be used to acquire city parkland, or to pay the principal, interest or other costs of bonds, notes or other obligations issued or undertaken by or on behalf of the city to finance the acquisition of city parkland. Under certain conditions, private open space may comprise 20% of the total parkland required.

In addition to their required parkland dedication, the City of Frederick also charges a park and recreation impact fee of \$868 per residential unit (but \$586 if the development has a pool to be maintained by the homeowner’s association).

Prince Georges County has had a parkland dedication ordinance with fee-in-lieu since 1981. Theirs is limited to new residential subdivisions, so it doesn't apply to site plan projects. Their dedication requirement ranges from 5% to 15% of the site depending on the density of the development project.

Fairfax County, VA has a strategic plan requiring 10% of their land mass to be held as county parks. In suburban areas, their goal is to provide at least 5 acres per 1,000 population. In urban areas, the goal is 1.5 acres per 1,000 population and 1 acre per 10,000 employees. Countywide, their goal is for a minimum of 13 acres per 1,000 population.

Montgomery County has an adopted Parks, Recreation and Open Space Plan that states that recommendations for parks and recreation must be provided in all urban plans and sector plans, with a hierarchy and typology of parks described. New parkland is added to the County park system through: dedication via the land development process, direct purchase using CIP funds, and the occasional donation of land by property owners. Dedication is not a zoning ordinance requirement, but can be achieved through their optional method of development, which provides additional density or other incentives for certain amenities provided as part of a development project. The White Flint Plan recommended several parks in the area, but according to the County, those will likely be privately owned and maintained. The plan also discusses the possibility of an amenity fund, but that has not yet been pursued.

The City of Gaithersburg requires a minimum green area, landscaping and amenity area for new development as a percentage of the site, but they don't have a specific parkland requirement nor an impact fee.

IV. Guidance from the Comprehensive Master Plan and Parks, Recreation and Open Space Plan

When considering new land use or other tools required to advance goals of the City, it is always advisable to look to the Comprehensive Master Plan for guidance to ensure consistency with the City's overall vision for the community. Fortunately, the 2002 Comprehensive Master Plan (the "Master Plan"), as well as other subsequent neighborhood plans and plan elements, provide guidance and support for possible new tools the City may want to consider.

Chapter 6 of the Master Plan addresses Recreation, Parks and Open space, and identifies parkland acquisition as a critical issue. It discusses the desire for parkland dedication and also for a payment-in-lieu fee of 5% of the total value of the land being developed. It goes on to say that this is "generally a last resort option; however, consideration should be given to adopting such a requirement to apply only in cases where dedication is not practical or feasible." The chapter concludes with a set of recommendations, which includes the following:

"Require allocation of a minimum of 20% of development area for parkland. The requirement should provide appropriate payment-in-lieu only if the allocation of parkland is not feasible or desirable." (p. 6-7)

The Rockville Pike Neighborhood Plan, adopted in 2016, builds upon the Master Plan goals by recommending that 10-acres of new parkland be created along the Rockville Pike corridor. The plan states as a goal to have parkland accessible within a 10-minute walk from any residence. It describes a minimum size of 3/10 of an acre for new parkland, and that 15% of a developable project's site should be allocated to publicly-accessible open space (or fee-in-lieu).

The Parks, Recreation and Open Space (PROS) Plan was adopted by the Mayor and Council in 2009, and although it is not technically part of the Master Plan, it certainly provides guidance for park needs throughout the city. The plan recommends obtaining funding for land acquisition, and for a focus on areas of greatest need, especially East Rockville, Twinbrook, Town Center and Rockville Pike.

V. Two Options to Consider

Two options are presented for the Mayor and Council to consider as possible approaches for the acquisition or expansion of parks and recreation facilities, with details on both described in the following section. The two options are:

1. Parkland dedication, or fee-in-lieu when dedication is not feasible (a new option supported by the Comprehensive Master Plan)
2. Impact fee for parks and recreation facilities (a new option)

Both measures provide an approach to help meet the demand for new parks and recreation facilities as new development occurs, but without overburdening existing residents with the financial impact to expand the City's park system due to increased demand caused by the new development. With this type of regulatory or "user fee" approach, the intent is that the landowner, developer and future residents who are creating the demand for new park facilities should bear at least a portion of the costs of providing new parks and recreation facilities. Historically, the City has often had to resort to using general fund reserves to pay for parkland, rather than having a ready park fund to tap.

Both approaches must also meet certain 'tests,' starting with being proportional in terms of the requirement relative to the demand generated by the new development. There must also be a relationship or a "nexus" between the dedication or use of the fees and the benefits received by the development. Finally, any fees that are generated must be spent in a timely manner so they benefit the new residents creating the demand.

Neither measure is intended to achieve equity in terms of providing park space or recreation facilities in certain areas of a city. They are not designed to make up for existing deficiencies in park space or recreation facilities. Rather they are intended to have new development reasonably pay for itself in terms of impacts they would have on the City's parks and recreation facilities. The City must remain committed to taking the lead in the creation of new parkland and recreation facilities, and also work with applicants to meet our future demands.

Public Use Space and Open Area Zoning Text Amendment

Staff will also propose updates to our current open area and public use space requirements, regardless of which of the two options described in this report might be favored by the Mayor and Council. Staff will bring forward a zoning text amendment that proposes to combine those two current zoning ordinance standards into a "common open space" standard with a clearer definition of what should be included. The current definitions of "open area" and "public use space" are included in Attachment C. The standards for this new common open space requirement should be adjusted to work in concert with any new parkland dedication requirement or impact fee that the City decides to implement. The table on page 9 provides suggestions for what a common open space requirement might be. That new draft standard will be finalized and brought forward in a zoning text amendment for consideration as direction is provided on the options described in this report.

A. Option 1 - Parkland Dedication, with a Fee-in-Lieu-of dedication

Description – This approach would be implemented as a zoning ordinance standard, requiring onsite parkland dedication for public use, or payment of a fee-in-lieu of dedication. This approach would implement the Master Plan recommendation of allocating a certain percentage of a development area for parkland, or to allow a fee-in-lieu where it is not practical or feasible to dedicate. It would apply to all new applications for development and redevelopment that result in a net increase in residential dwelling units, as described below.

As this option was drafted, staff was mindful of having an approach that is reasonable and provides some flexibility in how it could be administered. For dedication, allowing options is important – the City could require onsite dedication as a starting point, but also allow offsite dedication, or a fee-in-lieu-of dedication, or a combination of approaches. The City could also consider private open space to meet a portion of the dedication requirement, and allow onsite private amenities to be credited at least partly against the dedication requirement. Staff also proposes to allow applicants to use at least a portion of the proposed dedicated area to meet some of their forestry requirements.

Applicability – A parkland dedication requirement, or fee-in-lieu-of dedication, could apply to site plan applications and subdivision plats, with the following net increase in residential dwelling units on the project site (above the number of units that previously existed):

- 25 multi-family dwelling units
- 20 townhouse (single family attached) dwelling units
- 15 single-family detached dwelling units

Staff believes it is important to have a threshold below which this option would not apply. Development projects yielding a fewer number of units than indicated here would likely generate either very small parcels of proposed dedicated park areas which would not be desirable for the City to maintain, or would generate a modest fee-in-lieu amount that would be restricted in terms of how, where and when it could be spent. Also, the stress on the existing park system by relatively few units would likely be small.

For affordable or moderately-priced dwelling units, staff has not defined a credit or exemption since we are not proposing to apply it on a per-unit basis. The standard is based on land area, so a reduction or exemption may not apply. One exception would be if the entire development project consists of affordable units, then we could exempt the entire application (or require a lower percentage to be set aside or paid-in-lieu).

Dedication Requirement – Consistent with the Master Plan recommendation, an onsite parkland dedication requirement could be based on a percentage of the total site area. It would vary by zoning district, similar to the current open area and public use space requirements. As noted above, the current open area and public use space standards are also proposed to be amended and combined into one common open space standard, with a new definition which is described later in this report.

Possible Dedication and Open Space Requirements in Mixed Use Zones

Zone	Suggested Parkland Dedication %	Suggested Common Open Space %	Current Requirements %	
			Open Area	Public Use Space*
MXTD	10%	10%	10 % (15% if res.)	10%
MXCD	10%	10%	10% if < 20k sq ft 15% if > 20k sq ft	5%
MXE	10%	10%	20%	5%
MXB	10%	10%	10%	5% if > 20k sq ft
MXNC	10%	10%	10%	5% if > 20k sq ft
MXC	10%	10%	10%	
MXT	10%	10%	10%	

*Public use space is within required open area.

An additional consideration regarding the standards suggested here is to allow an exemption from the Common Open Space requirement if an applicant proposes to set aside a greater amount of dedicated parkland than the minimum required percentage.

Medium Density Residential Zones

For proposed development in the Residential Medium Density Zones (RMD-25, RMD-15 and RMD-10), the City currently has a standard requiring 50% open area within the overall site (section 25.11.06). This section should be amended to include a parkland dedication requirement of 20%, which could be part of an overall 50% open area standard (which would also be updated to the new common open space requirement).

Single Dwelling Unit Residential Zones

For proposed development in the Single Dwelling Unit Zones (R-400, R-200, R-150, R-90, R-75, R-60 and R-40), the same parkland dedication standard of 20% would be required. But those cases would be reviewed through the subdivision process. Section 25.21.19 would need to be updated, which currently describes the City's standards for Public Sites and Open Spaces as follows: "proposed park, playground, or other public use shown in the Plan..., the subdivider must dedicate or reserve, at the option of the Commission, adequate space for such purpose..."

When analyzing possible dedication standards to use for the mixed use and residential zones, staff considered different approaches to determine what a fair standard would be, including a calculation based on setting aside a specific amount of square footage per dwelling unit or per capita. However, staff continued to come back to the guideline recommended in the current Comprehensive Master Plan (which suggests 20% dedication of developed area). Nevertheless, the recommendation here is to consider a lower set-aside amount (10%). This standard is a reasonable one to begin with, and is also accompanied by flexibility in how it could be administered. It is roughly in line with (but lower than) the City's current level of service for parkland, but is not as impactful as a per-unit or per-capita standard might be. Many jurisdictions that require parkland dedication do so on the basis of maintaining a level

of service expressed by the number of acres per resident population. However, trying to maintain our current level of service of 16.5 acres per 1,000 in population through a dedication requirement would be too onerous to require for new development projects.

Suitability standards/criteria for dedicated land - To determine whether proposed parkland is suitable for dedication, the criteria below could be used by the City in making its determination. The use of the term “suitability” is intended to result in parkland area that can meet the park and recreation needs of new residents in the development that is triggering the need.

- Minimum size – a proposed parkland dedication shall be no less than 3/10 of an acre in the MX-TD and MX-CD zones, and no less than ½ acre in all other zones. If the ordinance standard results in an amount less than these minimum allowable parkland dedication areas, then a fee-in-lieu-of dedication would be required.
- Usability – the proposed area must be useable as park space in terms of topography, drainage and configuration of the site. It shall not be configured as a narrow strip of land without substantial demonstration of its purpose and function to serve the general public.
- Contiguous – the proposed parkland to be dedicated shall be in a contiguous area to the extent feasible. Small, scattered, individual sites will likely not be accepted, unless it is demonstrated that they would serve the needs of residents of the proposed development.
- Accessibility – the proposed dedicated site must be accessible to the general public.
- Connectivity to other parks – where existing parks, open space, or trails are present on sites adjoining the proposed development project, the proposed parkland to be dedicated should be located so it is contiguous to such areas, and provide connections to adjoining parks and open areas where feasible.
- Underserved areas – when the neighborhood where the proposed development is occurring is at a deficit in terms of park space, then parkland dedication will be preferred over payment of a fee-in-lieu. Underserved and deficit areas would be based on guidance provided in the City’s Parks, Recreation and Open Space Plan as well as the Comprehensive Master Plan.
- Sensitive and rare habitat protection – proposed dedication areas that provide for the protection of habitat for sensitive and rare plant and animal species are desired.
- Consistent with the City’s Comprehensive Master Plan – proposed parkland dedications shall be consistent with and result in implementing the City’s Parks, Recreation and Open Space Plan and/or the Comprehensive Master Plan.

Determination of parkland dedication or fee-in-lieu – It is the City’s preference to have land dedicated onsite for a public park with the development projects that trigger this requirement. However, it will also be possible for an applicant to propose to pay a fee-in-lieu-of dedication in instances where dedication is not feasible on the site, or not desired by the City. If a proposed site does not meet the minimum size requirements, or is otherwise determined to be unsuitable by the City based on the criteria described above, then a fee-in-lieu-of dedication may be provided. However, the City is also providing an opportunity for an applicant to propose an off-site parkland dedication when onsite

dedication is determined not to be feasible. Finally, a combination of options (onsite dedication, fee-in-lieu, and off-site dedication) will also be considered and may be allowed.

The process for determining whether to accept a proposed dedication, to require a fee-in-lieu-of dedication, to allow an off-site dedication, or a combination of those options, is to have the director of the Recreation and Parks Department consider the applicant's submittal, and following consultation with the City Manager, provide direction early in the development review process. The director will evaluate the proposed method of meeting this requirement based on the suitability standards described above, and will provide a determination in writing based on those standards.

This determination will occur early in the development review process in order to provide certainty and predictability for the applicant for their overall design of the project. The determination by the director of the Recreation and Parks department will be made during the pre-application stage of site plan review, or during the review of a preliminary plan for subdivision for single-family residential development. The Director of Recreation and Parks will notify the applicant in writing of this determination.

When City staff have completed their full review of an application, with a recommendation prepared for transmittal to the approving authority for action, the staff report will describe the determination made for parkland dedication, or payment of a fee-in-lieu, or a combination thereof.

Appeal - If the Director rejects a request by the developer to dedicate parkland, or to pay a fee-in-lieu-of dedication, the applicant may appeal the decision to the approving authority for the application. The approving authority will then make the final determination as to whether the dedication or fee-in-lieu-of dedication will be accepted, considering the suitability standards set forth above and the recommendation of the Director.

Offsite Parkland Dedication –The City may accept an offsite dedication of parkland upon approval of such proposal by the Director of Recreation and Parks, provided it is in the general vicinity of the development site and meets the suitability standards/criteria for dedicated land described above.

Credit for onsite amenities and private open space – The City may allow that privately-owned onsite amenities being provided with the development project could be credited against the public parkland dedication and fee-in-lieu requirement, but not to exceed 50% of the requirement. Onsite amenities that may be considered for such credit include publicly-accessible open areas, parks, playgrounds, trails and exercise areas. Credit may also be provided for indoor spaces dedicated to the provision of publicly-accessible art, and open areas or dedicated spaces open to the public such as museums, art galleries, science centers or facilities, cultural arts centers, or community rooms.

As with the approval of dedicated parkland, the Director of Recreation and Parks will make the determination as to whether credit for onsite amenities and private open space will be accepted, which will also be determined during the pre-application stage.

Land, facilities, and improvements approved under this provision must be accessible to the public in a manner similar to public parkland. The City and the owners of the development must execute a parkland development agreement insuring that specific land will be developed and maintained by the owners, and that the parkland use is a covenant that runs with the land.

This provision is consistent with other jurisdictions analyzed. St. Paul, MN, allows private land to be maintained for public use for up to 100% of the dedication requirement. Austin, TX, allows up to a 50% credit for onsite amenities provided by an applicant (for pools, exercise areas and publicly-accessible open space). Dunedin allows a credit for up to 75% of their neighborhood park requirement where private open space is being provided and will be privately maintained (but only for the neighborhood park requirement; but not the community park requirement). Frederick, MD has a provision where private open space may suffice to serve multi-family and townhouse development, and dedication would not be required unless the master plan calls for a park.

Ability to meet certain development standards/requirements on proposed parkland dedication sites –

With the approval of the Director of Recreation and Parks, the City could allow the proposed parkland dedication area to be used to meet a portion of certain development standards, provided the primary use of the proposed parkland area for public recreation is not impeded. A maintenance agreement between the City and the applicant will be required, describing maintenance responsibilities and other obligations.

The following could be acceptable on the dedicated parkland:

- Areas in forest or proposed for afforestation or reforestation in a forest conservation easement.
- Environmental site design features and related improvements required as a result of the development project. This may include publicly accessible, useable portions of a stormwater management facility.

This provision would be consistent with other jurisdictions as well. Although Frederick does not allow stormwater ponds in dedicated areas, they do allow areas in forest or proposed for afforestation or reforestation in such areas. Austin allows up to 50% of a dedicated site to be in the floodplain, and the City of San Jose allows a 50% credit for stormwater detention facilities.

Ownership, conveyance and improvement of dedicated land –Ownership of dedicated parkland will be conveyed to the City, and will be City-maintained. Conveyance of parkland will occur through subdivision plat approval and recordation prior to obtaining building permits for the project, and will be accompanied with a fee simple deed conveying ownership to the City.

If amenities or improvements to the park are being provided by the developer, those shall be completed in a manner consistent with City standards, and accepted by the City prior to issuance of occupancy permits. Otherwise the applicant will provide improvement guarantees for grading and seeding of the parkland to be dedicated. The dedicated land will be conveyed in a condition that is graded, seeded and otherwise prepared as agreed upon, and free from debris and other construction material.

Proposed Amendments Impacting Approved Parkland Dedication Areas – If an amendment to an approved site plan or subdivision is proposed that would impact an approved parkland dedication area (public or private), or would impact the required fee-in-lieu, then a recommendation from the Director of Recreation and Parks is required as part of the application. Compliance with the dedication or fee-in-lieu standards is still required.

Fee-in-lieu-of dedication

Description – When dedication of parkland (either onsite or off-site) is deemed by the City to not be feasible due to the suitability standards described, payment of a fee-in-lieu-of dedication would be required. Fee-in-lieu funds would be spent in the general vicinity of the development from which the fees were paid. The funds can be pooled with other in-lieu payments, or other City or park funds, for the acquisition of land for new parks or expansion of existing ones. However, they cannot go toward operations, recreational programs or maintenance of parkland or facilities. The funds should also not be used specifically to remedy existing park deficiencies, unless this also aligns with the needs created by the new development.

Amount Required – The amount of a required fee-in-lieu payment would be based on the assessed value of the land at the time of pre-application. The source for determining the assessed value of the land will be the State of Maryland’s Department of Assessments and Taxation (SDAT) most recent records published online.

For proposed development projects that include residential units, and would otherwise be required to comply with the parkland dedication requirement, the fee-in-lieu is equal to 10% of the assessed value of the land within the project boundaries; improvements to land are not included.

As described, a combination of onsite and/or offsite parkland dedication and fee-in-lieu is acceptable. If an applicant dedicates a portion of the required parkland and satisfies the balance of the requirement with fee-in-lieu, the amount of land dedicated will be deducted from the required fee-in-lieu payment that was otherwise required.

Administering the Fee – The fee must be paid prior to issuance of the first building permit for the development project, but at the discretion of the City, partial payments may be made that are proportional based on the number of units being developed within the phases of a multi-phase project.

Expenditure of fees collected - Revenue generated through fees paid in-lieu-of dedication will be used by the City for parkland acquisition, expansion or enhancement of existing parks, to serve the new residents of the development that was assessed the fee. Fees collected under this provision will be spent in the general vicinity of the site of the development application. The City will use the Parks, Recreation and Open Space Plan and the Comprehensive Master Plan for guidance in deciding on locations to spend fees collected.

The funds generated by fee-in-lieu will not be used for maintenance and operations, and will be used only for the following purpose:

- To acquire parkland for a public use; or
- For capital expenses for new, expanded or enhanced public parks and/or recreation facilities

The fees collected will need to be accounted for separately from other funds, including being segregated from the City's general fund money. The funds would be appropriated in the budget that is approved by the Mayor and Council, and most likely in the form of a Capital Improvement Project.

Fees collected by the City must be spent within seven (7) years from the date of receipt. This period may be extended by five (5) years if, at the end of the initial seven-year period, less than 50% of the residential units within the development project that generated the fee have been constructed.

Refund - If the City does not expend the fee payment within seven (7) years of being paid, the applicant/developer (or successor) may request a refund for the portion of the fee that was not expended. The refund request must be made in writing and filed with the Finance Department no later than 180 days after the expiration of the deadline to expend the funds. The Finance Department will refund the unspent fees to the applicant.

B. Option 2 - Impact Fee for Parks and Recreational Facilities

The other option staff is putting forth for consideration is that of an impact fee that could be charged to new development applications during the permitting process. An impact fee is a commonly accepted financing mechanism used by local jurisdictions to offset the cost of expansion of infrastructure or government facilities that would be required to be built as a result of new development. It's a way of assuring new development pays its "fair share" for providing services. It is based on maintaining the current level of service by assessing new development the proportional cost of expanding that service or facility. For parks and recreational facilities, it is typically charged for new residential development, but may also be required with new non-residential construction.

As described in a 2009 impact fee study conducted for the City, in order for an impact fee to be valid, it typically must satisfy two conditions: "rational nexus" and "rough proportionality." First, there must be a need for the additional facilities or expansion of infrastructure as a result of the new development. Second, there must be a fair and equitable connection between the fee charged to the new development and the benefit it receives. A municipality may only charge an impact fee for capital projects that will benefit the new development, and for services provided by the jurisdiction.

A Maryland Attorney General's opinion issued in 2004 addresses this concept as well. In response to a request from Taneytown, MD, the opinion supports the power of Maryland municipalities to enact reasonable impact fees as a regulatory tool. But there must be a sufficient nexus between the fee assessed and the proportional cost of providing the benefits supported by that fee to the affected property owners. It should be used to defray the costs of infrastructure and capital expenses, but not for operating costs. The Attorney General's office stated:

"Under the rational nexus test, an impact fee is permissible as a regulatory measure, so long as (1) the fee relates to the needs attributable to new development, and (2) the revenue collected is earmarked for the substantial benefit of the development charged."

2008/09 City of Rockville Impact Fee study

In 2008, the City contracted with the consulting firm Municipal Financial Services Group (MFSG) of Annapolis to evaluate, calculate and recommend possible impact fees for the City to consider. The areas studied and ultimately recommended were: public safety, recreation and parks, stormwater and general government. Other service areas were studied but not recommended. However, as the study was concluded in 2009 during the "Great Recession," none of the recommended fees were enacted. There were also concerns about the timing of spending revenue that is generated, and where it could be used.

The calculation of the fees was based on the incremental cost of replacing the current recreational and park facilities owned and operated by the City. The actual value of the land for parks was excluded from the calculation.

Facilities counted within the inventory at the time included: the swim center, the senior center, F. Scott Fitzgerald Theater, Glenview Mansion, all the community and neighborhood centers, the King Farm Farmstead, the Beall Dawson House, and other facilities, for a total of 183,319 square feet of facility space. The estimated average cost to build a new facility was \$250 per square foot, plus another \$50

per square foot to outfit the facility. At a total cost of \$300 per square foot, times 183,319 square feet total, the full cost to replace all facilities was estimated at about \$55 million. This cost was then allocated between residential and non-residential uses in the city, and then further broken down for an average cost per resident and per employee.

The following table describes the 2009 recommendation for impact fees for parks and recreational facilities that could be charged for different uses, along with a potential revenue generation forecast through fiscal year 2030.

Recreation/Parks Recommended Impact Fees (2009 study):

Residential (per unit)	Fee	Potential Revenue – FY09 to FY30
Single family detached	\$1,711	\$95,800
Single family attached	\$1,524	\$253,000
Multi-family / other	\$1,230	\$7,567,400
Non-residential (per 1000 sq ft)		
Retail / Restaurant	\$582	\$468,800
Office	\$931	\$5,224,900
Industrial	\$517	\$42,700
Other	\$466	\$453,200
		\$14,105,800

The study recommended spending the fees collected within six to eight years, and they could be used for expansion of recreational facilities operated by the City.

Updated Impact Fees

The City re-engaged with the firm MFSG to update the base assumptions and other data used in the 2009 study, so that a revised, current impact fee may be considered. They have included the land cost within the calculation as well (at about \$840,000 of assessed value per acre), and have updated the cost of improved facility area at \$400 per square feet. Below are the updated impact fee rates to consider, with those provided by the consultants, and fee levels recommended by staff (along with average fees from a 2015 national survey).

Updated Recreation/Parks Impact Fees:

	National Average (2015)*	Updated Fees from consultant study	Recommended Fees by Staff (75% of the consultant fee)
Residential (per unit)			
Single family detached	\$2,812	\$2,290	\$1,718
Single family attached		\$1,950	\$1,463
Multi-family / other	\$2,099	\$1,570	\$1,178
Non-residential (per 1000 sq ft)			
Retail / Restaurant	\$815	\$700	\$525
Office	\$881	\$1,120	\$840
Industrial	\$562	\$620	\$465
Other		\$560	\$420

*From National Impact Fee Survey: 2015; prepared by Duncan and Associates.

Staff believes an impact fee for parks and recreation facilities should be one of the options seriously considered as this discussion continues.

Staff also recommends that the impact fees be adjusted downward slightly from the fee levels determined through the updated consultant work. The rates recommended by staff in the table above are at 75% of the levels determined by the consultants to be defensible and justifiable based on the methodology used. It is customary for jurisdictions enacting new impact fees to not charge the full amount allowable, since this introduces a new financial impact to the economics of development projects. However, this is a policy decision that would ultimately be decided by the Mayor and Council.

Staff also recommends that units required under the City's Moderately Priced Dwelling Unit (MPDU) program be fully exempt from paying impact fees. Since it a long-standing City goal to promote the creation of additional affordable and moderately-priced housing options, exempting such units from this new charge would be consistent with that goal.

If the impact fee option is ultimately adopted, staff recommends that development applications that are currently in the review process should be exempt from the fee. This would include complete, accepted applications for projects plans, site plans and building permits.

An impact fee would be administered at the building permit stage of the review process, where the fee would be paid prior to issuance of a building permit. As such, it would have the effect of being phased in for a large, multi-phase development project, since the fee would only apply to those phases about to

be constructed. Staff also recommends exempting any development application where three (3) or fewer additional (net) residential dwelling units are being created on the subject site. If this is applied to new non-residential development as well, then there should also be a minimum square footage at which it is triggered (perhaps at 5,000 square feet and above).

Although Maryland does not have a specific, required timeframe for spending the funds, the revenue collected would likely need to be spent, or at least programmed, within about seven (7) years of being collected. The revenue may be used for capital expenses only, and for new capacity such as new or expanded parkland, or new or expanded recreational facilities in the City.

There are jurisdictions which also include annual adjustments to impact fees. For instance, in Maryland, Anne Arundel, Talbot and Queen Anne's counties adjust their fees each year based on the Construction Cost Index published in the Engineering News Record. In those jurisdictions, fees are automatically adjusted to account for inflationary increases in the cost of providing public facilities utilizing the most recent twenty-city annual national average data from the Engineering News Record Construction Cost Index. The City currently makes a similar adjustment using the Builder's Cost Index to the in-lieu fee in the Publicly-Accessible Art in Private Development ordinance.

VI. Examples, using the draft standards in this report, and the general characteristics of recent projects in Rockville:

Parkland Dedication / Fee-In-Lieu Examples					Impact Fee Examples										
Ex. #	Acres	Dwelling Units	Assessed Value (land)	Zone	Parkland Dedication (at 10%) in Acres	Parkland Dedication (at 10%) in Sq. Ft.	Common Open Space (10%) in Sq. Ft.	Total Open Area in Sq. Ft.	Fee-In-Lieu at 10% of Assessed Value	Residential Impact Fee (\$1,178/unit (multifamily))	Non-Res Sq. Ft.	Non-Res Use Type	Non-Res Rate per 1,000 sq ft	Non-Res Impact Fee	Total Impact Fee (Res and Non-Res)
1	3.5	360	\$8,400,000	MXTD	0.35	15,246	15,246	30,492	\$840,000	\$360,468	100,000	Retail	\$525	\$52,500	\$412,968
2	5.0	400	\$6,000,000	MXTD	0.50	21,780	21,780	43,560	\$600,000	\$400,520	6,000	Retail	\$525	\$3,150	\$403,670
3	4.0	200	\$2,700,000	MXTD	0.40	17,424	17,424	34,848	\$270,000	\$200,260	5,000	Office	\$840	\$4,200	\$204,460
4	3.5	275	\$1,700,000	MXE	0.35	15,246	15,246	30,492	\$170,000	\$283,456	15,000	Retail	\$525	\$7,875	\$291,331
5	3.2	650	\$12,400,000	MXTD	0.32	13,939	13,939	27,878	\$1,240,000	\$650,845	50,000	Retail	\$525	\$26,250	\$677,095
6	2.3	275	\$2,500,000	MXTD	0.23	9,801	9,801	19,602	\$250,000	\$275,358	10,000	Retail	\$525	\$5,250	\$280,608
7	10.0	1000	\$20,000,000	MXCD	1.00	43,560	43,560	87,120	\$2,000,000	\$1,001,300	200,000	Office (1/4)	\$840	\$120,750	\$1,122,050
Notes:															
1. For MX-TD & MX-CD, the minimum area to be dedicated (for the dedication scenario) is 3/10th of an acre (13,068 sq. ft.); therefore the minimum development site where dedication is required is 3 acres.															
2. For all other zones, the minimum area to be dedicated is 1/2 an acre (21,780 sq. ft.); therefore the minimum development site where dedication is required is 5 acres.															
3. Project examples 1, 2, 3, 5 and 7 would dedicate land onsite (under the dedication scenario), since the proposed dedicated area exceeds the minimum required size.															
4. Project examples 4 and 6 would pay fee in-lieu-of dedication, since the dedicated area would be less than the minimum size allowed.															
5. For the impact fee examples, the rates are those recommended by staff, and MPDUs are exempt from the calculation (15% of the units in the MX-TD & MX-CD zones are MPDUs, and 12.5% of the units are MPDUs in all other zones).															

VII. Pros and Cons of the Two Options

Pros of Parkland Dedication and Fee-In-Lieu:

- It's an accepted standard in the typical zoning powers of a municipality
- Has a direct, clear relationship to the application to which it is being applied
- With dedication, the land is made available at the location where the development being built is creating the need
- It is in support of Master Plan goals to create additional parkland (20% per the plan)

Cons of Parkland Dedication and Fee-In-Lieu:

- Appears to be more effective as a suburban standard, where new subdivisions are created or large development projects are built. Rockville is experiencing mostly smaller, infill, mixed use projects.
 - Will mostly result in fee-in-lieu payments, since the average size of our site plans is 2.5 acres and the same cons that are listed in the Cons of Impact Fee would be applicable.
 - Fee-in-lieu must be spent in the general vicinity of the development project, so it is limited in terms of how, where and when it must be used; and must be tracked and accounted for separately
 - It's an additional regulatory demand on top of already fairly restrictive standards
 - Dedication of land would require an applicant to go through the subdivision platting process, which doesn't always happen on a site plan application (especially redevelopment activities)
-

Pros of Impact Fee:

- Would potentially apply to more residential units than a parkland dedication standard
- We can vary the fee by residential unit type, and apply it to non-residential permits, too
- Average size of site plans is too small to be affected by parkland dedication, so most projects would pay fee-in-lieu anyway.
- We have a methodology already (by MFSG) along with the regulatory authority to do it

Cons of Impact Fee:

- Requires creation of a separate fund, to ensure it is spent in a timely manner
- Requires active CIP planning to program funds, and the discipline to spend in a timely manner and to combine it with other city revenue where necessary for project implementation
- Places the burden on the City to purchase land where necessary (dedication requirement places more of this burden on the developer)
- City must have funds available to construct park amenities (with impact fees and other revenue as needed)



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June 16, 2023

Andrea Nunez, Chair
 Planning Commission
 City of Rockville
 111 Maryland Avenue
 Rockville, Maryland 20850

Re: Saul Centers, Inc. - Written Comments to (1) Proposed Zoning Text Amendment TXT2023-00262, Parkland Dedication Requirements (the "Parkland ZTA") and (2) Proposed City Code Amendment to Implement a Parks Impact Fee (the "Parks Impact Fee Amendment")

Dear Chair Nunez and Commissioners:

On behalf of Saul Centers, Inc. ("Saul"), owner and developer, through affiliates, of Twinbrook Quarter (as hereinafter defined) on the properties located at 1500 – 1616 Rockville Pike (the "Property"), we hereby submit these written comments to the proposed Parkland ZTA and Parks Impact Fee Amendment. Saul requests revisions to the proposed legislative package, including the addition of provisions to exempt all "Champion Projects" from the Parkland ZTA and Parks Impact Fee Amendment.

Twinbrook Quarter

In accordance with Project Plan No. PJT2018-00011 (approved on April 29, 2019), Twinbrook Quarter is designated as a Champion Project with the right to develop up to 1,865 multi-family dwelling units (including 15% Moderately Priced Dwelling Units ("MPDUs")), up to 431,440 square feet of office uses, up to 472,950 square feet of retail uses, up to 9,000 square feet of entertainment uses, approximately 112,000 square feet of on-site open area (public use space), and approximately 83,000 square feet of off-site open space area in the form of public sidewalk and landscape areas at full build-out (the "Project Plan" or "Twinbrook Quarter").¹

¹ Saul is presently constructing the first phase of Twinbrook Quarter at the Property pursuant to Site Plan {00311370;8 }

Selzer Gurvitch Rabin Wertheimer & Polott, P.C.

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Champion Project Exemption

We respectfully request that the Applicability section (§25.22.02) of the Parkland ZTA and Exemptions section (§14-71) of the Parks Impact Fee Amendment be revised to exempt Champion Projects. While Packet Page 24 of the staff report from the May 10th Planning Commission meeting states that “[t]he dedication would not be required on previously approved projects, such as Twinbrook Quarter,” Saul requests that both the Parkland ZTA and Parks Impact Fee Amendment be modified to expressly exempt Champion Projects for the reasons discussed below.

Under the existing City of Rockville (“City”) Zoning Ordinance (“Zoning Ordinance”), a proposed project must undergo a very rigorous review and must commit to provide substantial public benefits in order to obtain Champion Project designation. The designation of a project as a Champion Project is an entirely discretionary determination made by the Mayor and Council upon a finding that the project includes substantial public benefits beyond what is otherwise required under the Zoning Ordinance. For example, in connection with the Project Plan approval, the City designated Twinbrook Quarter as a Champion Project because, among other things, it significantly advanced the following goals in the Zoning Ordinance: (a) provides more than the required public use space, (b) provides more than the required vehicular, bicycle and/or pedestrian safety measures, and (c) provides a significant increase in the amount of employment. Saul has committed to delivering significantly more public use space than otherwise required (along with other public amenities and infrastructure). If additional requirements were imposed on Twinbrook Quarter (including a parkland dedication pursuant to the Parkland ZTA and/or an impact fee pursuant to the Parks Impact Fee Amendment), such exactions would conflict with and detract from implementation of this Champion Project. For these reasons, we respectfully request that the proposed Parkland ZTA and Parks Impact Fee Amendment be modified to expressly exempt Champion Projects from the requirements of both.

Project Plan Approvals / Grandfathering

Saul supports the intent of the portion of Section 25.22.02 (“Applicability”) of the Parkland ZTA that would exempt project plan amendments from the proposed parkland dedication requirements, but respectfully requests that this language be clarified to expressly exempt project plan approvals that predate the effective date of the Parkland ZTA. We request that Section 25.22.02 be revised as follows (proposed changes in bold and underline):

Sec. 25.22.02. – Applicability.

This Article applies to any development encompassing a site of five (5) or more acres and generating more than twenty (20) dwelling units or 25,000 square feet of commercial or office space. This Article does not apply to **any project plan approved prior to [insert**

application No. STP2020-00401, which approved construction of up to 460 multi-family dwelling units (including 68 MPDUs), up to 121,000 square feet of retail and restaurant uses (including up to 92,000 square feet of grocery uses), and up to 270,000 square feet of office uses.

Planning Commission, City of Rockville
 June 16, 2023
 Page 3

effective date of Parkland ZTA or an application for a project plan amendment, including an amendment to a planned development.

It would be problematic to retroactively apply the Parkland ZTA's new requirements to projects that have already established a package of public benefits/improvements (including public use spaces) through project plan approval because such dedication requirements were not factored into the planning, design, and economics of projects at the time of development review and adoption by the City.

Conversely, we do not support the Parks Impact Fee Amendment as presently drafted because it does not exempt developments with project plan approval or subsequent amendments thereto. The retroactive application of the Parks Impact Fee Amendment to such projects is not appropriate or fair. For example, as noted above, Twinbrook Quarter's Project Plan requires a substantial amount of public use space and other public benefits that were planned and designed with the assumption that no park dedication or parks impact fee conditions would apply to the development of this Champion Project. Had the requirement to pay a parks impact fee existed when the Project Plan was being reviewed and approved, Saul could have factored these requirements into the overall project design and scope. To ensure that such public infrastructure can be delivered through development of Twinbrook Quarter and other projects with project plan approval, the City must clearly and explicitly include an exemption or grandfathering for approved project plans (including amendments thereto) from the Parks Impact Fee Amendment (i.e., mirror the exemption already included in the Parkland ZTA to the Parks Impact Fee Amendment).

We appreciate the opportunity to provide these written comments and plan to attend the Planning Commission meeting on June 28, 2023, to address any questions that may arise. We will continue to monitor the public review process for this legislative package and look forward to working with City staff to implement important public infrastructure and other benefits through development of Twinbrook Quarter.

Very truly yours,

**Selzer Gurvitch Rabin Wertheimer
& Polott, P.C.**

C. Robert Dalrymple

By: _____
 C. Robert Dalrymple

Matthew M. Gordon

By: _____
 Matthew M. Gordon

Planning Commission, City of Rockville
June 16, 2023
Page 4

cc: Mayor Newton and City Councilmembers
Rob DiSpirito, City Manager
Ricky Barker, Director of CPDS
Jim Wasilak, Chief of Zoning
Todd Pearson
Brian Downie
Andrew Saul
John Collich
Bettina Guevara
Christine Kearns
Vaughn Iskanian

DATE: May 8, 2023

TO: Mayor and Council
Planning Commission

FROM: C.J. Overly, Senior Project Manager – Development, BXP

CC: Jim Wasilak, Chief of Zoning

SUBJECT: Testimony on Zoning Text Amendment TXT2023-00262, Proposed Parkland Dedication Requirements, and Proposed City Code Amendment to Implement a Parks Impact Fee

Thank you for your consideration of this testimony on this important issue. The intent of this testimony is not to question the purpose of this zoning text amendment (ZTA) nor the efficacy of the careful study it has received. To the contrary, I am confident that City staff and officials have thoroughly evaluated the underpinnings of this ZTA, such as whether 784 square feet of parkland per resident is an appropriate target; what are the optimal mechanisms for achieving this target; and, how these mechanisms will impact economic development and competitiveness. Instead, the intent of this testimony is to provide one assessment of this ZTA from the perspective of someone viewing it through a development lens and who is deeply invested in the City's success.

The benchmarking of ordinances in other jurisdictions (OOJs) found in the report presented in January 2018 was very interesting. By comparison, this ZTA would align the City with only one jurisdiction surveyed (St. Paul, MN) that included non-residential development in its parkland dedication requirement and the City would stand alone in applying the same standard to both residential and non-residential development. In fact, this ZTA is agnostic to the type, nature, and intensity of the planned development, instead using only the blunt metric of overall site area to determine the applicability and extent of dedication.

It may be worth asking, at a time when the City and its partners are seeking to attract new businesses (like life science) and key employers have recently moved away, whether it is appropriate to place this additional burden on commercial development. This is especially true when the OOJs surveyed, and the City staff report, acknowledge "...that the primary source of demand for recreation and parks facilities comes from residential development" (Planning Commission Agenda, 5/10/2023, packet page 45).

In light of this, the City should strongly consider revising the applicability of this ZTA to remove commercial uses.

Another observation is that the January 2018 report elevated only two options from the analysis of the OOJs: parkland dedication and park impact fee. However, there appears to be a third, common method of compliance that should be reconsidered: privately-owned public space (POPS). This "third way" approach could have applicants propose a POPS plan that provides space of a quality and standard determined by the Mayor and Council.

While some applicants may prefer to shift the cost and responsibility for designing, constructing, and maintaining public use space onto the City (and taxpayers), there are applicants for whom retaining this control using POPS is critical to their project. This is certainly the more difficult path for the applicant and their desire to do so would demonstrate their commitment to delivering a high-quality project for the City and the community.

Finally, it is noteworthy that the public outreach yielded concerns from the 16 community members who attended that largely comport with those received from the development community and with the comments and considerations outlined in this testimony. Those concerns include:

1. “Whether implementing a new requirement would dissuade developers who are providing needed housing in the City”;
2. “Concern that the additional costs would increase the cost of residential units in the City”; and,
3. “City should explore conservation easements on the land that could be used as parkland but would remain privately-owned”.

In addition to these high-level observations, below is a complete list of detailed comments and considerations organized by zoning ordinance section:

Sec. 25.07.02. – Application procedures for site plans, project plans, and special exceptions.

- Requiring a project plan for all projects of five (5) or more acres will place additional burden on applicants and City staff; further delay their ability to deliver a project to market; increase the risk associated with the project; and, increase the project cost. These impacts are likely to result in less economic investment in the City as developers will look to other jurisdictions for opportunity and, when new development does occur, the associate rents for City residents will be higher.
- Using the acreage of a site alone as a means of qualification is problematic as the size of the site does not always correlate to the intensity of development on the site. A multi-factorial approach to evaluating the level of approval required, as is currently done with the rubric in Sec.25.07.02.b.1, is a more nuanced and fitting approach.
- **Consider creating a means by which projects requiring all levels of approval (i.e. Project Plan, Level 2 Site Plan, Level 1 Site Plan, etc.) can comply with this ZTA without a change in their required level of approval.**

Sec. 25.17.01. – Public use space.

- If the City’s goal in pursuing this ZTA is to provide residents with additional public use space, which is “intended to promote an appropriate balance between the built environment, public parks and other open spaces intended for respite from urban development...” (Sec. 25.17.01.a), then all means of providing this space should be equitably considered.
- While public ownership of these spaces is one approach, privately-owned public use space can also meet these objectives. In addition, privately-owned public use space promotes the City’s fiscal wellbeing by placing the cost burden of the creation and maintenance of these spaces on private land owners.
- **Consider whether ownership by the City is the most efficient way to meet the objective of increasing available public use space in all cases or whether some cases favor privately-owned public use space as a preferred approach.**

- Allowing the land dedication (or fee-in-lieu payment) to replace no more than 50% of an applicant's public use space requirement magnifies the burden placed on the applicant by this ZTA since the land dedication is a form of public use space contributed by the project. As shown in Attachment A (Column H), this ZTA would increase a 5-acre site's total public use space requirement anywhere from 12% to 145% depending on the zone. In some zones (MXB, MXC, and MXT), a public use space requirement is effectively being created where none exists today.
- To illustrate this using the MXE zone:
 - o Under the current zoning ordinance, a 5% minimum public use space requirement on 5 acres is 0.25 acres.
 - o With the proposed ZTA, the parkland dedication requirement on 5 acres would be 0.5 acres, or 10% of the land area. The 5% minimum public use space requirement on the remaining 4.5 acres would be 0.225 acres. Since only 50% of this requirement can be met with the parkland dedication, the remaining public use space requirement is 0.113 acres. Adding this remaining public use space requirement (0.113 acres) to the parkland dedication requirement (0.5 acres) equals a total public use space requirement of 0.613 acres.
 - o This total requirement under the ZTA (0.613) is nearly 2.5x greater (145%) than the current public use space requirement (0.25 acres).
- **Consider allowing the parkland dedication to replace 100% of the public use space requirement.**
- In addition, since the open area requirement is always greater than or equal to the public use space requirement, providing an offset to the public use space requirement does not reduce the amount of open area required. As a result, the parkland dedication is additive to the open area requirement and this further reduces the total developable area of the original 5-acre site. This increase in total "undevelopable" area can range from 40% to 90% depending on the zone as shown in Attachment A (Column M).
- To illustrate this using the MXE zone:
 - o Under the current zoning ordinance, the total "undevelopable" area of the 5-acre site is the greater of the open space required (20%) and the public use space required (5%) because we understand that public use space can be counted toward the open space requirement. Therefore, 20% of 5 acres is 1 acre of "undevelopable" area.
 - o With the proposed ZTA, the minimum open space required (20%) is calculated on 4.5 acres (net of the parkland dedication), which is 0.9 acres. This is then added to the parkland dedication of 10% on the 5 acres, or 0.5 acres, for a total "undevelopable" area of 1.4 acres. This is a 40% increase over the current zoning ordinance.
- **Consider allowing the parkland dedication to replace a portion of the open space requirement.**

Article 22 – Parkland Dedication

Sec. 25.22.01. – Purpose and intent.

- There are many valid ways to ensure that “...the City is served by adequate, nearby parks, recreation facilities, and open space...”. The presumption of the new ordinance is that “...the imposition of a dedication requirement...” is the only way to achieve this goal.
- **Consider whether alternative approaches, such as privately-owned public use space, can achieve the objective of the article.**

Sec. 25.22.02. – Applicability.

- In relation to the comment above regarding Sec. 25.07.02, this section exempts project plan amendments only because it presupposes that this article forces any site over 5 acres into a project plan approval. In tandem with Sec. 25.07.02, this section would need to be revised to exempt all amendment types.
- **Consider clarifying that applications submitted prior to the enactment of the ordinance and project plans associated with an alternate site plan under Sec. 25.07.16. are exempt.**

Sec. 25.22.03. – Dedication or in lieu payment required.

- Dedication of 10% of the site is a significant burden on the economics of any project. It will be incorporated as a cost to the project, which means that projects will likely: i) not occur due to financial infeasibility; ii) cut costs elsewhere (such as by reducing land values in the City or reducing other public benefits); or, iii) increase revenues (by raising rents on City residents or businesses). Since the market, and not the applicant, has control over the prevailing rents and the cost of construction, the most likely action by the applicant will be to pause or forgo development.
- As proposed, this ZTA contemplates two pathways for providing the desired public use space: 1) the dedication of land to be publicly-owned; and, 2) the payment of a fee to be use for public land acquisition. As noted above, there is another way – the creation of privately-owned public use space that achieves the same objectives.
- While some applicants may prefer to shift the cost and responsibility to design, construct, and maintain onto the City (and taxpayers), there are applicants for whom retaining this control is critical to their project. This is certainly the more difficult path for the applicant but doing so shows their commitment to the City and the community.
- **Consider creating a third method of compliance with this article whereby applicants propose a privately-owned public use space plan that achieves a quality and standard that is determined by the Mayor and Council. This evaluation would include both the land area and the improvements made by the applicant to the privately-owned public use space, which, taken together and at the sole discretion of the Mayor and Council, could be deemed to comply with the article.**

- It should be noted that many of the other jurisdictions studied, which have a parkland dedication requirement, provide for a waiver from this requirement for projects determined to provide sufficient private open space.
- All land area that cannot be developed into a revenue producing asset impairs the economic viability of the site/project. This “undevelopable” land area can arise from many sources, not just dedication, including forest conservation areas, stream valley buffers, natural habitats, etc. To the extent that these areas are not eligible for parkland dedication, they should be excluded from the area requirement calculation.
- **Consider revising subsection (a)(1) to expand the area excluded from the calculation to include other non-buildable areas that are deemed to be unfit for dedication under this article.**
- **Consider clarifying that residential units approved as part of a plan which is subject to this article are exempted from the park impact fee in order to avoid placing an undue burden on residential development simply because it happens to occur on a site that is 5 acres or greater.**
- For example, a single residential development comprised of garden-style, surface-parked buildings could easily require a land area in excess of 5 acres. Under this proposed ZTA, this project could be required to both dedicate 10% of its land area and pay a park impact fee for each unit. The cumulative burden of both requirements could quickly make the project economically infeasible.

Sec. 25.22.04. – Minimum standards of dedicated land.

- These standards could be equally applied to the evaluation of privately-owned public use space with the following revisions:
 - o Access to the space may be via a private street with a public access easement (PAE).
 - o The configuration of the space may not be consistent with all recommendations in the Plan but would be configured in a manner deemed by the Mayor and Council to be in the best interests of the City.
 - o The land would not be dedicated in the form of a fee simple interest but would have a PAE or other easement(s), as needed, to achieve a similar practical effect for users.

Sec. 25.22.05. – Review of proposed dedication.

- As noted above, a project plan need not be the only plan type that can be used to achieve the objectives of this article.

Sec. 25.22.06. – Acceptance of dedication or in lieu payment.

- This section would need to be revised to include the third method of compliance described above.
- **Consider revising this section as: “The decision of the Mayor and Council as to whether it will accept a dedication of land, a payment in lieu of dedication, a privately-owned public use space, or a combination thereof is at the sole discretion of the Mayor and Council.**

Sec. 25.22.07. – Timing and nature of development.

- No comment.

Sec. 25.22.08. – Collection and use of payment in lieu of dedication.

- Consider clarifying that a payment in lieu of dedication can be paid in installments at the time of building permit issuance. These installment payments would be made on a pro-rata basis given the proportion of the overall development being implemented by the building permit being issued.
- While this could be done based on site area, an applicant may find it more economically feasible if the payments were based on square footage because this more closely aligns income and costs. For example, a project or site plan that encompasses 500,000 square feet of total residential development to be constructed as 5 buildings of 100,000 square feet each would pay 20% of the total payment in lieu of dedication at the issuance of each building permit.

Sec. 25.22.09. – Refund of Payment in lieu of dedication.

- Consider revising this section to describe the refund process to: land owners (if the land remains unimproved), owners of non-residential property, and to clarify that the owner of a for-rent apartment building, and not the individual renters in each dwelling unit, is to receive any refund.
- Notice to property owners should be made by certified mail in order to mitigate disputes related to refunds.

Sec. 25.22.10. – Conditions of dedication.

- Consider revising subsection (b) of this section to allow that any costs incurred by the owner of the property in the process of getting the land to be dedicated in a condition acceptable to the City may be credited against any in lieu payment required.

Article IV. Parking Impact Fee**Sec. 14-70. – Purpose and intent.**

- No comment.

Sec. 14-70 – Applicability.

- Revise this duplicate section number/renumber sections.

Sec. 14-71. – Exemptions.

- Under subsection (a)(2), the inclusion of “and where the use is not changed” is problematic. For example, an applicant who wishes to add ground-floor retail to an existing residential building would appear to be subject to the park impact fee, potentially for all the units in the existing building, when the incremental development is not adding demand for parks and recreation. This should be clarified.

- Under subsection (a)(4), it stands to reason that any building which is destroyed in whole or in part due to no fault of the owner should be able to be replaced with an equivalent number of units to those that were destroyed without being subject to the parks impact fee.

Sec. 14-72. – Definitions

- No comment.

Sec. 14-73. – Impact fee schedule.

- This is obviously a very important item relative to securing a competitive position for the City amongst peer jurisdictions and should be carefully studied.
- The staff report references a potential fee reduction for buildings containing a swimming pool, but this is not reflected in the ZTA text.
- **Consider establishing different fee schedules for different geographical areas in order to promote residential development in underserved areas of the City or based on other City priorities, such as investments in sustainability.**

Sec. 14-74. – Imposition and collection of impact fees.

- No comment.

Sec. 14-75 – Credits.

- If a credit can be obtained for the fair market value of any land dedicated for public parks, then why not for a payment in lieu of dedication or for the fair market value of privately-owned public use space that has been approved by the Mayor and Council?
- Obtaining equal credit for all means of providing new public use space is a matter of equity and ensures that sites of 5 acres or more with residential development are not unduly burdened due to their size.
- **Consider expanding the credit to all means of compliance with the parkland dedication ZTA, including in lieu payment and approved privately-owned public use space, as contemplated in the staff report.**

Sec. 14-76. – Impact fee account.

- No comment.

Sec. 14-77. – Use of impact fee proceeds.

- No comment.

Sec. 14-78. – Severability.

- No comment.

Attachment A: Impact of TXT2023-00262 on Open Area and Public Use Space Requirements for a 5-Acre Site

Zone	Minimum Public Use Space Required by Zoning Ordinance	Minimum Public Use Space Required by Zoning Ordinance	10% Parkland Dedication Required by TXT2023-00262	Land Dedication Counted Toward Public Use Space Requirement	Net Public Use Space Requirement	Total Public Use Space Requirement	Total Public Use Space w/o ZTA	Increase in Required Public Use Space	Minimum Open Area Required by Zoning Ordinance	Total Undevelopable Area w/o ZTA	Total Undevelopable Area w/ ZTA	Total Undevelopable Area w/ ZTA	Total Undevelopable Area w/ ZTA
COLUMN	A	B	C	D	E	F	G	H	I	J	K	L	M
MXTD	10%	0.450	0.500	0.225	0.225	0.500	0.725	45%	10%	0.450	0.500	0.950	90%
MXCD	10%	0.450	0.500	0.225	0.225	0.500	0.725	45%	15%	0.675	0.750	1.175	57%
MXE	5%	0.225	0.500	0.113	0.113	0.250	0.613	145%	20%	0.900	1.000	1.400	40%
MXB	0%	0.000	0.500	0.000	0.000	0.000	0.500	**	10%	0.450	0.500	0.950	90%
MXCT	15%	0.675	0.500	0.338	0.338	0.750	0.838	12%	15%	0.675	0.750	1.175	57%
MXNC*	10%	0.450	0.500	0.225	0.225	0.500	0.725	45%	15%	0.675	0.750	1.175	57%
MXC	0%	0.000	0.500	0.000	0.000	0.000	0.500	**	10%	0.450	0.500	0.950	90%
MXT	0%	0.000	0.500	0.000	0.000	0.000	0.500	**	10%	0.450	0.500	0.950	90%

All values in acres unless otherwise noted.

*Assumes buildings are between 45 feet and 65 feet in height.

**An increase from 0 acres required to 0.5 acres required cannot be calculated as a percentage increase, but represents a material burden of undevelopable land.

*** Minimum open area and public use space calculations are based on 4.5 acres under the assumption that it is calculated on a net-of-dedication basis.



Agenda Item #:	<u>1</u>
Meeting Date:	<u>July 12, 2023</u>
Responsible Staff:	<u>Jim Wasilak</u>

SUBJECT:

Presentation, Discussion and Approval of the 2022 Planning Commission Annual Report

RECOMMENDATION

(Include change in law or Policy if appropriate in this section):

Receive a staff presentation on the 2022 Planning Commission Annual Report and approve its submission to the Maryland State Department of Planning.



Planning Commission Staff Report

MEETING DATE: July 12, 2023

REPORT DATE: July 5, 2023

FROM: Jim Wasilak, AICP, Chief of Zoning

SUBJECT: Discussion and Approval of the Planning Commission's 2022 Annual Report

SUMMARY: The State of Maryland Land Use Article requires local jurisdictions to submit an annual report to the Maryland Department of Planning, covering the previous calendar year of activity by the Planning Commission.

DISCUSSION:

The Annual Report of the Planning Commission is the document by which the Commission reviews its performance during the preceding year, with focus on its zoning and development activities during that period and the major planning projects and issues considered by the Commission. The Report is submitted to the Maryland Department of Planning, in compliance with the State's Land Use Article annual reporting requirements for local jurisdictions.

This year's Annual Report also includes a report on the City's Adequate Public Facilities Ordinance (APFO) and Standards (APFS). The requirement for a biennial APFO report was introduced in 2011; however, the Commission provides this information each year, covering significant actions and restrictions that occurred with respect to the APFO and APFS during each reporting year.

Summary of 2022 Planning Commission Actions

The 2022 Annual Report describes actions taken by the Planning Commission from development applications to zoning text amendments. Several development applications were reviewed and approved by the Planning Commission in 2022 and are described and mapped in

the full Annual Report. These applications were generally located along the city's commercial and transit corridors as significant residential or mixed-use projects on vacant and urban infill sites.

The anticipated workplan for the Planning Commission in 2023 is described as a conclusion to the Annual Report, highlighting the work staff expects the Planning Commission to accomplish by the end of the current calendar year.

Staff Recommendation:

Staff recommends that the Planning Commission review, make any edits and approve the 2022 Annual Report for submission to the Maryland Department of Planning. The Mayor and Council have asked for each of the City's boards and commissions to provide an annual report to the Mayor and Council at an upcoming meeting in the Fall.

Attachments

Attachment 2.1.a: PC annual report cover letter 2022 draft (PDF)
Attachment 2.1.b: PC annual report cover letter 2022 draft (PDF)

Jim Wasilak

Jim Wasilak, Zoning and Development Manager

7/5/2023



111 Maryland Avenue | Rockville, Maryland 20850-2364 | 240-314-5000
www.rockvillemd.gov

July 13, 2023

Office of the Secretary
 Maryland Department of Planning
 301 W. Preston Street, Suite 1101
 Baltimore, Maryland 21201-2305
 Attn: David Dahlstrom, AICP

Re: City of Rockville Planning Commission Annual Report for 2021

Dear Mr. Dahlstrom,

We are pleased to submit to you the 2022 Planning Commission Annual Report for the City of Rockville, prepared pursuant to section §1-207(b) of the Land Use Article of the Annotated Code of Maryland. It was discussed and approved by the Planning Commission on July 12, 2022 and thereafter filed with the local legislative body, the Mayor and Council of Rockville. In addition to the attached annual report, responses to the annual report short form for municipalities are included below:

1. Number of new Residential Permits Issued inside the Priority Funding Area (PFA):

Residential – Calendar Year 2020	PFA	Non - PFA	Total
# New Residential Permits Issued	X	0	X

2. Is your jurisdiction scheduled to complete and submit to Planning a 5-Year Mid-Cycle comprehensive plan implementation review report this year, as required under §1-207(c)(6) of the Land Use Article? If yes, please submit the 5-Year Report as an attachment.

Y ☐ N ☒

3. Were there any growth related changes, including Land Use Changes, Annexations, Zoning Ordinance Changes, Rezoning, New Schools, Changes in Water or Sewer Service Area, etc., pursuant to §1-207(c)(1) of the Land Use Article? If yes, please list or map.

Y ☒ N ☐

The attached annual report includes all growth-related actions taken by the Planning Commission in 2022. The Rockville Mayor and Council adopted a new Comprehensive Plan that is the blueprint for Rockville's future growth to 2040. Did your jurisdiction

David Dahlstrom, AICP
 July 28, 2021
 Page 2

identify any recommendations for improving the planning and development process within the jurisdiction? If yes, please list. Y ☒ N ☐

Rockville has continued to implement the recommended changes to the City's development review process, known as FAST (Faster, Accountable, Smarter, and Transparent). Rockville's Mayor and Council approved the project charter on October 29, 2018. The Charter includes a series of action items for which a staff team will make recommendations on implementation. These include providing a "one stop" customer service center; publishing and enforcing reliable review schedules; and clarifying, streamlining and eliminating various aspects of the development review process. The Mayor and Council adopted a text amendment to implement many of the necessary code changes in 2021. The proposed Zoning Ordinance rewrite will continue the necessary code changes needed to implement this initiative.

4. Are there any issues that Planning can assist you with in 2022? If yes, please list. Y ☒ N ☐

None noted.

5. Have all members of the Planning Commission and Board of Appeals completed an educational training course as required under §1-206(a)(2) of the Land Use Article? Y ☒ N ☐

Please feel free to contact me at 240-314-8211 or jwasilak@rockvillemd.gov if you have any questions.

Regards,



R. James Wasilak, AICP
 Chief of Zoning/Planning Commission Staff Liaison

Attachments (1): Attachment 1 – Rockville Planning Commission 2022 Annual Report



111 Maryland Avenue | Rockville, Maryland 20850-2364 | 240-314-5000
www.rockvillemd.gov

July 13, 2023

Office of the Secretary
 Maryland Department of Planning
 301 W. Preston Street, Suite 1101
 Baltimore, Maryland 21201-2305
 Attn: David Dahlstrom, AICP

Re: City of Rockville Planning Commission Annual Report for 2021

Dear Mr. Dahlstrom,

We are pleased to submit to you the 2022 Planning Commission Annual Report for the City of Rockville, prepared pursuant to section §1-207(b) of the Land Use Article of the Annotated Code of Maryland. It was discussed and approved by the Planning Commission on July 12, 2022 and thereafter filed with the local legislative body, the Mayor and Council of Rockville. In addition to the attached annual report, responses to the annual report short form for municipalities are included below:

1. Number of new Residential Permits Issued inside the Priority Funding Area (PFA):

Residential – Calendar Year 2020	PFA	Non - PFA	Total
# New Residential Permits Issued	X	0	X

2. Is your jurisdiction scheduled to complete and submit to Planning a 5-Year Mid-Cycle comprehensive plan implementation review report this year, as required under §1-207(c)(6) of the Land Use Article? If yes, please submit the 5-Year Report as an attachment.

Y ☐ N ☒

3. Were there any growth related changes, including Land Use Changes, Annexations, Zoning Ordinance Changes, Rezoning, New Schools, Changes in Water or Sewer Service Area, etc., pursuant to §1-207(c)(1) of the Land Use Article? If yes, please list or map.

Y ☒ N ☐

The attached annual report includes all growth-related actions taken by the Planning Commission in 2022. The Rockville Mayor and Council adopted a new Comprehensive Plan that is the blueprint for Rockville's future growth to 2040. Did your jurisdiction

David Dahlstrom, AICP
 July 28, 2021
 Page 2

identify any recommendations for improving the planning and development process within the jurisdiction? If yes, please list. Y ☒ N ☐

Rockville has continued to implement the recommended changes to the City's development review process, known as FAST (Faster, Accountable, Smarter, and Transparent). Rockville's Mayor and Council approved the project charter on October 29, 2018. The Charter includes a series of action items for which a staff team will make recommendations on implementation. These include providing a "one stop" customer service center; publishing and enforcing reliable review schedules; and clarifying, streamlining and eliminating various aspects of the development review process. The Mayor and Council adopted a text amendment to implement many of the necessary code changes in 2021. The proposed Zoning Ordinance rewrite will continue the necessary code changes needed to implement this initiative.

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Please feel free to contact me at 240-314-8211 or jwasilak@rockvillemd.gov if you have any questions.

Regards,



R. James Wasilak, AICP
 Chief of Zoning/Planning Commission Staff Liaison

Attachments (1): Attachment 1 – Rockville Planning Commission 2022 Annual Report

PLANNING COMMISSION
City of Rockville, Maryland

RULES OF PROCEDURE
[date]

CHAPTER I: GENERAL RULES

A. Authority

These Rules of Procedure of the Planning Commission of the City of Rockville, Maryland (the “**Rules**”) are adopted pursuant to Section 2-105(c)(1) of the Land Use Article of the Maryland Annotated Code and Section 24.04.02.d of the Rockville City Code.

B. Powers and Duties

The powers and duties of the Planning Commission (the “**Commission**”) are set forth in the Land Use Article of the Annotated Code of Maryland and the Rockville City Code, as may be amended.

C. Chair

1. *Election* – The Commission must elect a Chair from one of its appointed members to serve for a term of one calendar year, beginning on the Commission’s first meeting in January and running until the Commission’s last meeting in December. The election for the next year’s term must take place at the Commission’s first meeting in December or such other time as designated by a majority of the members. A Chair may be reelected. If a Chair resigns before his or her term expires, the Commission must elect a new Chair to complete the unexpired term.
2. *Role* – The Chair is the presiding officer at any meeting held by the Commission. The Chair may freely participate in debate and may call special meetings as needed. The Chair must designate a member of the Commission to serve in his or her absence. In the absence of such designee, a member selected by a majority of the Commission present at the meeting will preside.

D. Clerk of Commission

The Chief of Planning, as defined in Chapter 25 of the Rockville City Code (the “**Zoning Ordinance**”), will serve as the Clerk of the Commission (the “**Clerk**”). The Clerk will provide professional and clerical support to the Commission and fulfil the roles of the Clerk in these Rules and the Rockville City Code.

E. Majority Vote

Except as otherwise provided by law or in these Rules, any action of the Commission must be made by the affirmative vote of a majority of Commissioners present and voting on the motion of a Commissioner that has been properly seconded by another Commissioner. Abstentions are not counted in the total number of votes that are cast.

F. Minutes

1. *Minutes Required* – Except as otherwise provided in this section, the Commission must keep written minutes of its meetings. The Clerk will prepare minutes of each meeting of the Commission and must submit them to the Commission for approval as soon as practicable after the meeting date. The minutes must include a list of parties of record as defined in the Zoning Ordinance, a brief summary of items discussed, and an accurate recording of the motions made and actions taken. The minutes must record the outcome of each vote taken by the Commission, and where a vote is by roll call, the minutes must include the vote of each member on each question. A Commissioner voting in the minority on any question may choose to have the reason for his or her vote indicated in the minutes and must state such reason immediately after the vote.
2. *Approval of Minutes* – A quorum of the Commission is required for approval of written minutes, but such quorum does not need to be made up of the same Commissioners present for the action taken that is the subject of the minutes to be approved. Before a Commissioner votes on the minutes of a meeting he or she did not attend, the Commissioner must certify that her or she has read or reviewed an audio or video recording of the meeting.
3. *Audio or Video Recordings* – Audio or video recordings of a meeting of the Commission will not typically serve in lieu of written minutes. However, if a Clerk has not brought written minutes of a meeting to the Commission within six months of the meeting, the Commission may vote to authorize a full and complete audio or video recording of a meeting to serve as the official record of that meeting, if such recording is publicly available.

G. Committees

The Commission may appoint Commissioners to serve on committees for specific purposes, including, without limitation, to advise the full Commission on specific issues such as master planning, urban design, zoning, neighborhood planning, subdivision regulations, or other issues that a majority of the Commission feels are necessary for further study.

H. Meetings

1. *Frequency* – The Commission will typically hold two regular meetings each month, on the second and fourth Wednesday of the month. Worksessions are typically scheduled for the second Wednesday of the month, as needed. Schedule adjustments are made regularly to avoid conflict with common public holidays. The Chair, in

- consultation with the Clerk, will determine if a regular meeting will take place based on the number of applications, review items, or other business that may come before the Commission. The Chair may cancel any regular meeting if there is no business before the Planning Commission.
2. *Time* – Unless there is a lack of a quorum, regular meetings of the Commission begin promptly at 7:00 p.m, or at such other time as determined by the Commission and properly noticed. The Chair may delay the start of a meeting at which there is a quorum by up to thirty minutes to accommodate a late Commissioner or for other good cause. It is the goal of the Commission to end its meetings by 10:00 p.m. Agendas should be planned such that no scheduled agenda items will be taken up after 10:00 p.m. The Commission must vote to take up any item on that meeting's agenda after 10:00 p.m, unless the Commission is required by law to take up the item on the day of the meeting.
 3. *Location* – The Commission may hold its public meetings in person or in a partially or completely virtual mode, through video conference, teleconference, or other electronic means consistent with the requirements of the Maryland Open Meetings Act. The location and format of the public meeting will be posted on the Planning Commission website and included in any meeting notice provided by City staff.
 4. *Special Meetings* – The Chair may call a special meeting of the Commission following at least 24 hours' notice, if possible, to each member of the Commission and reasonable public notice as required by the Maryland Open Meetings Act.
 5. *Agenda* – The Clerk must, with the concurrence of the Chair, prepare an agenda for each Commission meeting. Development applications must be placed on the Commission's agenda within a reasonable time following staff review. Items may be placed on future agendas by the Chair or at the request of two or more Commissioners. The Chair may, in his or her discretion, elect to postpone an agenda item that has been publicly noticed but that has not been placed on a published agenda, unless the item is required by law to be heard at the meeting for which it is noticed. In that case, the Chair must announce the postponement at the next regular meeting of the Commission. Once an agenda item is placed on a published agenda, it may only be removed at the request of two or more Commissioners or by the vote of the Commission at the meeting for which the item is scheduled.
 6. *Public Notice* – The Commission's agenda for all regular meetings must be available in City Hall and on the City's web site at least seven days before the meeting. Individual agenda items must also be noticed as required by law. Notice of a meeting must also be posted at City Hall on the day of each meeting.
 7. *Briefing Materials* – The Clerk must furnish the Commission with briefing materials in an electronic format at least seven days before the next regular meeting. At the request of a Commissioner, the Clerk must also provide that Commissioner with printed briefing materials before the next regular meeting. Copies of staff reports for

such meetings must be available to the public at the same time. For correspondence or written testimony to be included in the Commission's briefing material, it must be received by the Clerk no later than nine days before the scheduled meeting.

8. *Quorum* – Four members of the Commission constitutes a quorum for the transaction of business.
9. *Absences* – A Commissioner who does not plan to attend a scheduled meeting of the Planning Commission must notify the Clerk and the Chair at the earliest possible opportunity.
10. *Removal of Commissioners* – Commissioners may be removed from the Planning Commission pursuant to Section 2-102 of the Land Use Article of the Annotated Code of Maryland.
11. *Voting Order* – At the discretion of the Chair, voting will be by verbal vote, show of hands, or roll call, in which case the Chair will vote last.
12. *General Order of Business* – The general order of business for a regular meeting is as follows but may vary from time to time at the discretion of the Chair.
 - Consent Agenda
 - Scheduled Matters (order may vary)
 - Public Hearings and Forums
 - Preliminary Subdivisions, Record and Ownership Plats
 - Site Plans
 - Recommendations to Board of Appeals or Mayor and Council (including project plans, special exceptions, and appeals)
 - Worksessions
 - Other Matters
 - Clerk Report
 - FYI and Correspondence
 - Old Business
 - New Business
 - Minutes
 - Adjournment
13. *Rules of Order* – Except as provided in these Rules, the Commission will adhere to the latest edition of Robert's Rules of Order.
14. *Consent Agenda* – The Clerk may place items on a consent agenda for adoption as a group with a single motion. An item may be removed from the consent agenda at the request of any Commissioner and will then be considered as a separate agenda item by the Commission. Items subject to quasi-judicial review may not be placed on the consent agenda.

15. *Open Meetings* – Meetings of the Commission must conform to the Maryland Open Meetings Act. All Commissioners must receive training on the Act and provide their training completion certificate to the City Clerk within six months of their appointment.

CHAPTER II: PUBLIC HEARINGS

A. Scope

This Chapter applies to the Commission's conduct of public proceedings and hearings on matters subject to quasi-judicial review, including, without limitation, site plans, project plans, preliminary subdivision plans, record plats, special exceptions, variances, administrative appeals, and waivers. At the Chair's discretion, this section may also be used as a guide to conduct meetings or public hearings on other matters not subject to quasi-judicial review.

B. Role of the Chair

As the presiding officer, the Chair must conduct each public hearing in a manner that permits the development of a complete record, provides a reasonable opportunity for interested parties to be heard, and ensures an efficient hearing. The Chair may call the hearing to order, rule on preliminary matters, set reasonable time limits on testimony, limit or exclude irrelevant or duplicative evidence or testimony, take actions to maintain decorum and order, close the public hearing or record, and take any other action authorized by these Rules to conduct the public hearing, subject to applicable laws and regulations.

C. Hearing Guidelines

Without limiting the authority and discretion of the Chair under these Rules, the Commission will typically conduct a public hearing consistent with the following guidelines:

1. *Staff Presentation* – City staff presents a summary of the application as proposed as well as the important issues addressed during the staff review process and the action staff recommends the Commission take. Staff should highlight any recommended conditions of approval for the application and provide any relevant information that has become available since the staff report was issued. The Commission may ask staff questions regarding the application and staff recommendation.
2. *Board or Commission Comments* – A representative of another City board or commission may present the official position or recommendation of that Commission. A representative's presentation is typically limited to five minutes. The Commission may ask the representative pertinent questions.
3. *Applicant Testimony* – The applicant or its designated representatives should present the rationale for the application, highlight important details not touched on by staff, and whether the conditions of approval are acceptable. Applicant testimony is

typically limited to fifteen minutes. If an applicant needs additional time, it should make that request to the Clerk in advance of the public hearing. The Chair may also grant the applicant additional time at the meeting. The Commission may ask the applicant team questions regarding the application and presentation.

4. *Public Testimony* – Members of the public and other parties interested in addressing the Commission may do so. A representative, speaking on behalf of an organization, including but not limited to a civic association, homeowners association, chamber of commerce, or governmental entity, is typically given five minutes to testify, while individuals and business entities are typically given three minutes. Only one person will be allowed five minutes to speak as a representative of a given organization. Speakers may cede speaking time to another speaker at the discretion of the Chair.
5. *Deliberation* – After the close of testimony, the Commission engages in discussion among its members. At this time, Commissioners may also ask questions of the applicant, interested parties, or City staff that are pertinent to the deliberation.
6. *Vote* – The Commission will conclude a public hearing with a vote on the application. At the discretion of the Chair and before a final vote, the Commission may take straw votes on certain issues. Straw votes are unofficial, and the Chair should announce them as such.

D. Evidence

A public hearing conducted under this Chapter need not conform to the rules of evidence or procedure governing judicial proceedings. The Commission may consider relevant evidence, which, based on its experience and expertise, has probative value and assists in reaching a decision. Hearsay evidence, if relevant, may be accepted. In reaching a decision, the Commission may also rely on the knowledge, experience, and observation of its members and facts in common knowledge.

E. Testimony Under Oath

Any person providing testimony to the Commission must provide his or her name and address or organizational affiliation for the record and swear or affirm that he or she is testifying truthfully. The Chair or the Clerk may administer the oath or affirmation, or a person may take the oath or affirmation in writing as part of the process of signing up to testify or submitting written testimony.

F. Cross Examination

The Chair, upon request, must permit any party of record, as defined in the Zoning Ordinance, (a “**Party of Record**”) to cross-examine a witness at the conclusion of that witness’ testimony. The questions on cross-examination must (a) be brief, (b) pertain only to the witness’ testimony, (c) be interrogatory and not argumentative, and (d) not be preceded by statement. The Chair may place additional terms and conditions on cross-examination to

ensure the orderly administration of the hearing and may reject any question as out of order or objectionable.

G. Decision

The Commission may approve or deny an application or other quasi-judicial matter over which it has final administrative authority. Failure to receive a majority vote for approval constitutes denial; failure to receive a majority vote for denial does not, however, constitute approval. An approved application may be subject to conditions the Commission deems necessary, pursuant to applicable law. Any member of the Commission who was absent during any portion of the public hearing or who was appointed after the hearing commenced may only vote if the member certifies on the record of the proceedings that the member reviewed the submitted evidence and listened to or watched a recording of the portion of the hearing for which the member was not present.

H. Notice of Decision

The Commission must provide written notice of an approval or denial of an application or other quasi-judicial matter as provided by law.

I. Recommendation

On those items which the Commission acts in an advisory capacity to another decision-making body, the Commission's recommendation will be sent to the appropriate decision-making body in the form of a memo from the Commission. The memo will report the vote of the Commission, any conditions the Commission would recommend for the approval of the application, and any discussion that the Commission deems important to explain the application or the vote. After the Commission votes on a recommendation at a public meeting, the Clerk will draft the memo, which must be signed by the Chair before transmittal to the appropriate decision-making body. At the request of any Commissioner, a draft memo must be brought back to the Commission at a public meeting for its approval before it is transmitted.

J. Withdrawal

An applicant may withdraw an application over which the Commission has final authority at any time before the Commission takes a final vote on the application.

K. Postponement and Continuance

1. *Postponement* – Before the start of a public hearing, the Chair may postpone the public hearing on any matter covered by these Rules at the Chair's discretion or at the request of any other Commissioner, City Staff, an applicant, or an interested party, unless the hearing may not be postponed by law.

2. *Continuance* – At any time after convening a public hearing, the Commission may vote to recess the hearing and continue it to another date, place, and time, unless the Commission is required by law to take immediate action on the item. Any Commissioner may move to continue a hearing on the Commissioner’s own initiative or upon the request of the City staff, the applicant, or any other interested person. If the date, time, and place of a continued hearing is announced on the record, no further notice is required.
3. *Public Notice of a Continued Hearing* – If the date, time and place of a continued hearing is not announced on the record at the public hearing when the continuance is granted, notice of the date, time and place of the rescheduled hearing must be provided in the same manner as the original notice of hearing was provided.

L. Public Ethics and *Ex Parte* Communications

1. *Public Ethics* – Commissioners must comply with Chapter 16 of the Rockville City Code, regarding public ethics.
2. *Ex Parte Communications* – Commissioners must not engage in *ex parte* communications with any person on any matter subject to quasi-judicial review that is pending before the Commission. If a Commissioner receives unsolicited communications about a pending matter outside of a public hearing, the member must disclose and describe the communications to the rest of the Commission at the earliest opportunity during the Commission’s proceedings on the matter. This subsection does not apply to a Commissioner’s communications with any member of City staff, the City’s legal counsel, or another Commissioner, subject to the requirements of the Maryland Open Meetings Act.

M. On-Site Inspection

Commissioners are encouraged to visit the sites of applications that are on the agenda. Applicants should facilitate access to the degree possible; however, Commissions must avoid any *ex parte* communications with the applicant or any other party regarding the pending application.

N. Reconsideration

1. *Petition to Reconsider* – A Party of Record may file a petition to reconsider a final administrative decision of the Commission with the Clerk no later than seven days after the date the original decision was issued in writing by the Clerk. Upon receipt, the Clerk must promptly transmit the petition to the Commission.
2. *Form of Petition* – A petition must be made in writing and must state fully all grounds for reconsideration including mistake of fact or law, inadvertence, surprise, fraud, or other good cause. The filing of a request to reconsider does not toll the period for seeking judicial review of the Planning Commission’s decision allowed under the Maryland Rules.

3. *Notice of Petition* – The party submitting a petition for reconsideration (the “**Petitioner**”) must also give written notice of the petition to all other parties of record in the matter on the same day it files the petition with the Clerk. Within five days of filing the petition with the Clerk, the Petitioner must submit to the Clerk a copy of the notice and a certification that the notice was provided to all Parties of Record.
4. *Response from Party of Record* – A Party of Record who has received notice of a petition for reconsideration may file a written response with the Clerk within seven days of the date of the notice provided by the Petitioner. Upon receipt, the Clerk must promptly transmit each response to the Commission.
5. *Consideration of Petition* – The Chair must schedule a petition for reconsideration for the Commission’s consideration as soon as practicable after the petition for reconsideration is filed. The Commission’s consideration of a petition for reconsideration: (a) does not require notice to the public or Parties of Record other than by publication as part of the Commission’s agenda; and (b) may occur without the appearance or testimony of any Parties of Record. The Commission may, however, question City staff or any Party of Record present to clarify points raised in the petition.
6. *Motion to Reconsider* – Any Commissioner in the majority of a decision subject to a petition for reconsideration may move to reconsider the decision based on the petition. Any Commissioner in the majority of a decision may also move to reconsider a decision without a petition for reconsideration, provided that such motion states the grounds for reconsideration and is made no later than the Commission’s next meeting following the date when the original decision was issued in writing by the Clerk. In considering a motion to reconsider, no public hearing is required. The Commission may grant a motion for reconsideration if it finds mistake of fact or law, inadvertence, surprise, fraud, or other good cause, and must state its reasons for such approval on the record. A motion to reconsider a decision passes if it receives the vote of a majority of the Commissioners present and voting and each Commissioner voting on the motion participated in the decision to be reconsidered or certifies on the record that they have read or reviewed the record of the proceeding.
7. *Notice of Public Hearing on Matters Reconsidered* – If the Commission approves a motion to reconsider a decision, the Chair must promptly schedule a public hearing on the matters to be reconsidered. At least fifteen days before the hearing, the Clerk must notify all Parties of Record of: (a) the Commission’s decision to reconsider its decision; (b) the date of the hearing; and (c) a reasonable summary of the reasons for reconsideration.
8. *Effect of Reconsideration* – The Commission’s approval of a motion to reconsider a decision voids the original decision. If no Commissioner moves to reconsider a decision subject to a petition for reconsideration, or if the Commission denies a motion to reconsider, the original decision remains in full force and effect.

9. *Hearing on Matters Reconsidered* – If the Commission approves a motion to reconsider, it must conduct a hearing on the matters reconsidered. The scope of the hearing must be limited to the reason the Commission cited for reconsideration of the decision and any other issues that the Commission deems to be relevant.
10. *Effect of the Commission's Decision After Hearing* – If after a hearing, the Commission determines that it will not change its original decision, the Clerk must reissue the original decision. If after a hearing, the Commission determines that it will change the original decision, the original decision must be revised based on such change and reissued. In either case, the appeal period shall run from the date of the reissuance.

O. Judicial Review

Unless another method of review is provided for by law, any Party of Record aggrieved by a final administrative decision of the Commission may seek judicial review of the decision with the Circuit Court of Montgomery County pursuant to Title 7, Chapter 200 of the Maryland Rules.

CHAPTER III: MISCELLANEOUS

A. Amending the Rules of Procedure

These Rules may be amended at any meeting of the Commission by the affirmative vote of at least four Commissioners, provided that notice of the proposed amendment is given to each member in writing at least two weeks before said meeting.

B. Time

In computing any period of time under these Rules, the day on which that period of time begins is not included.

C. Rules Not Jurisdictional

These Rules do not constitute jurisdictional requirements and do not confer rights or impose obligations not otherwise conferred or imposed by law. Failure of the Commission, its staff, or any party to comply with any provision of these Rules shall not invalidate any otherwise valid decision or action of the Commission.

D. Severability

The provisions of these Rules are severable, and if any court of competent jurisdiction holds any of their provisions invalid, the decision of such court shall not affect or impair any of the remaining provisions.

E. Conflict

Whenever any conflict occurs between these Rules, the Annotated Code of Maryland and the Rockville City Code, the Annotated Code of Maryland and the Rockville City Code shall prevail.

F. Effective Date

These Rules shall be effective after adoption by a majority of the full Commission and filing with the City Clerk and the Secretary of Planning for the State of Maryland.

Adopted June 1, 1988

Section III Amended September 26, 1990

Amended March 1997

Amended February 24, 2010

Amended July 14, 2010

Amended April 13, 2011

Amended July 27, 2011

Amended March 20, 2013

Amended May 9, 2018

Amended [date]