

**ORDINANCE NO. 2024-**

**WHEREAS**, the Board of Commissioners of Carroll County, Maryland (“the Board”), has enacted and codified the "Code of Public Local Laws and Ordinances of Carroll County, Maryland"; and

**WHEREAS**, the Board is charged under State law with the duty and responsibility for establishing comprehensive policies and programs to promote the health, safety, and general welfare of the inhabitants of the County and accordingly deems the subject amendment necessary to accomplish these duties and responsibilities; and

**WHEREAS**, the Carroll County Planning and Zoning Commission recommended the proposed new Chapter in the Carroll County Code at its meeting on August 22, 2024

**NOW, THEREFORE, BE IT ENACTED** by the Board of County Commissioners of Carroll County, Maryland:

**ARTICLE I. AMENDMENT**

**161.001. DEFINITIONS.**

The words or phrases used in this chapter shall have the meaning prescribed in the current County Code except as otherwise indicated herein:

***AGREEMENT.*** A development rights and responsibilities agreement, including any amendment.

***APPLICANT.*** Any individual, firm, corporation, partnership, association, society, syndication, trust, or other legal entity that files a petition to enter into an agreement.

***MASTER PLAN.*** The current Carroll County Master Plan, or Comprehensive or Functional Plans, as adopted by the county under the provisions of the Land Use Article of the Maryland Annotated Code.

***COUNTY.*** Carroll County, Maryland.

***COUNTY GOVERNING BODY.*** Board of County Commissioners of Carroll County, Maryland.

***DEVELOPMENT.*** The subdivision of land and those divisions of land referred to as off conveyances, and/or any change to improved or unimproved real estate; including but not limited to: construction; reconstruction; structural alterations; relocation or enlargement of any structure, road, driveway, or appurtenance; grading; dredging; filling; paving; clearing; excavation; dumping; extraction or storage of soil or minerals; the storage of equipment or material.

***COUNTY ADMINISTRATOR.*** The Carroll County Administrator or any successor(s) or designee(s) to the duties and responsibilities of the Administrator.

**ENHANCED PUBLIC BENEFITS.** Public infrastructure improvements or other public benefit features to be provided at the applicant's expense, above and beyond those that the applicant would otherwise be required to provide under applicable law, including but not limited to adequate public facilities and rezoning ordinance requirements during the course of the development of the Property.

**PLANNING COMMISSION.** The Carroll County Planning and Zoning Commission.

**PROPERTY.** The real property to be developed which is the subject of an agreement.

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

### **161.002. AUTHORITY/PUBLIC PRINCIPAL.**

The County may exercise the authority granted by Md. Ann. Code, Land Use Article, § 7-302(b), to enter into development rights and responsibility agreements and shall exercise the authority of the Public Principal to negotiate, execute and enforce Agreements.

### **161.003. PETITION.**

- A. Any Applicant having a legal or equitable interest in real property in Carroll County may petition the County to enter into an Agreement.
- B. The petition shall be filed with the County Administrator or his/her designee and must include the processing fee in accordance with a fee schedule adopted by Resolution of the County Governing Body.
- C. If comprised solely of a residential development, the Property must contain at least 125 dwelling units to be eligible for a development rights and responsibilities agreement.
- D. If comprised in whole or in part of a nonresidential development, the Property must be at least 25 acres in size to be eligible for a development rights and responsibilities agreement.
- E. The petition shall include a copy of the proposed Agreement.
- F. All persons with a lien interest in the Property must authorize the petition.
- G. The County Governing Body shall first review the petition and determine whether to accept the petition and initiate this process.
- H. If the County Governing Body accepts the petition, a filing fee for each petition shall be paid in accordance with a fee schedule adopted by Resolution of the County Governing Body.
- I. Following submittal of a petition and prior to referral to the Planning Commission, the Applicant shall conduct a community meeting for the developer/petitioner to provide information to the community regarding the proposed Agreement and to allow community residents to ask questions and make comments. The meeting shall be held at a location within the community of the proposed development, in a public or

institutional building proximate to the Property. Notification of the date, time, and location of the meeting shall be posted conspicuously on the Property at a location(s) visible from public roadways at least 14 days prior to the meeting. A record of comments received at the meeting shall be maintained by the developer and made available upon request.

#### **161.004. CONTENTS OF DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT.**

- (A) At a minimum, a development rights and responsibilities agreement shall contain the following:
- (1) A lawyer's certification that applicant has either a legal or equitable interest in the Property;
  - (2) The names of all persons having an equitable or legal interest in the Property, including lien holders;
  - (3) A legal description of the Property subject to the Agreement;
  - (4) The duration of the Agreement;
  - (5) The permissible uses of the Property;
  - (6) The density or intensity of use of the Property, which shall not be greater than the density or intensity allowed in Chapters 158 and 155 of the County Code;
  - (7) The maximum height and size of structures to be located on the Property;
  - (8) A description of permits required or already approved for the development of the Property;
  - (9) A statement that the proposed development plan is consistent with the Master Plan and all applicable county regulations;
  - (10) A description of the conditions, terms, restrictions, or other requirements determined by the County to be necessary to ensure the public health, safety, or welfare;
  - (11) A description of the Enhanced Public Benefits to be provided by the applicant to the County in exchange for the benefits received by the Applicant in the Agreement;
  - (12) An estimated cost or value of the Enhanced Public Benefits provided by the Applicant to the County in exchange for the benefits received by the applicant, and the timeframe within which the Applicant will provide the Enhanced Public Benefits in accordance with the following:
    - (a) If an Enhanced Public Benefit involves the grant of land, the land shall be transferred to the County prior to the expiration date of the Agreement; and
    - (b) If an Enhanced Public Benefit is to be provided in the form of construction of or improvement to a public facility, it shall be assured by the Applicant submitting a financial

guarantee (e.g., a letter of credit or a performance bond), and such guarantee shall be provided prior to the expiration date of the Agreement;

(13) To the extent applicable, provisions for the:

(a) Dedication of a portion of the Property for public use;

(b) Protection of sensitive areas;

(c) Preservation and restoration of historic structures;

(d) Construction or financing of public facilities; and

(e) Responsibility for attorney's fees, costs, and expenses incurred by the County in the event an Agreement is abandoned or breached by the Applicant.

(B) An Agreement may contain other terms, provisions, requirements, and agreements concerning the Property which may be agreed upon by the County and the Applicant.

(C) An Agreement may fix the time frame and terms for development and construction on the Property.

(D) An Agreement may provide for other matters consistent with this chapter, the County Code, and the Land Use Article of the Maryland Annotated Code.

(E) All persons with a lien interest in the Property must execute the Agreement.

(F) Any superior interest with a power of sale must be subordinated to the position of the County.

#### **161.005. REFERRAL TO PLANNING COMMISSION.**

(A) If the County Governing Body accepts the petition, the County Administrator shall refer the petition to the Planning Commission for determination of whether the proposed Agreement is consistent with the Master or Comprehensive Plan. The Planning Commission may make recommendations to the County Governing Body regarding the terms of the Agreement.

(B) The County may not enter an Agreement unless the Planning Commission determines that the proposed Agreement is consistent with the Master or Comprehensive Plan.

#### **161.006. PUBLIC HEARING.**

(A) Before entering into an Agreement, the County Governing Body shall conduct a Public Hearing on the Agreement.

(B) Notice of the hearing shall be published in a newspaper of general circulation in the County once each week for two consecutive weeks, with the first such publication of notice appearing at least 14 calendar days prior to the hearing.

(C) Property upon which the Agreement is concerned shall be posted conspicuously by a notice at least 14 calendar days prior to the date of the hearing.

(D) Notice of the hearing shall be sent by first-class mail to property owners in proximity to the Property in accordance with the site plan notification procedures utilized by the County Bureau of Development Review or its successor.

#### **161.007. AMENDMENT OF AGREEMENT.**

(A) Subject to paragraph (B) of this section and after a Public Hearing, the parties to an Agreement may amend the Agreement by mutual consent.

(B) The parties may not amend an Agreement unless:

(1) The Planning Commission considers and recommends whether an amendment should require compliance with the current County Code provisions, rules, and regulations, including but not limited to those relating to adequate public facilities, school capacity, stormwater management and forest conservation; and

(2) The Planning Commission determines that the proposed amendment is consistent with the Master Plan.

#### **161.008. TERMINATION OF AGREEMENT; SUSPENSION.**

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

(B) If the County Governing Body determines that suspension or termination is essential to ensure the public health, safety, or welfare, the County Governing Body may suspend or terminate an Agreement after a Public Hearing.

#### **161.009. APPLICABLE LAWS, REGULATIONS AND POLICIES.**

(A) Except as provided in Subsection B of this section, the local laws, rules, regulations, and policies governing the use, density, or intensity of the Property subject to the Agreement shall be the local zoning and development laws, rules, regulations, and policies in force at the time the County and the Applicant execute the Agreement.

(B) An Agreement may not prevent the application to a development of the local zoning laws, rules, regulations, and policies enacted after the date of the Agreement, if the County determines that compliance with the local zoning laws, rules, regulations, and policies is essential to ensure the health, safety, or welfare of residents of all or part of Carroll County.

(C) An Agreement may not alter the applicant's obligation to pay the fees in effect at the time the fee payment is due.

#### **161.010. RECORDING.**

(A) An Agreement not recorded in the Land Records of Carroll County within 20 days after the day on which the County and the Applicant execute the Agreement is void. Either the Applicant or the County may record the Agreement.

#### **161.011. TIME LIMITS**

The term of an Agreement shall be at least five years from the date of execution of the Agreement.

(A) An Agreement may be amended once to extend the term of the Agreement, in accordance with Section 161.007 of this chapter.

(B) The Applicant must file a written request for an extension of the agreement with the County not less than 90 days prior to the termination date of the Agreement.

#### **161.012. OPEN SESSIONS.**

Any negotiations between a member of the County Governing Body and the applicant or the applicant's agents concerning an Agreement shall be conducted in open session.

#### **ARTICLE II. SEVERABILITY.**

Should any provision, section, paragraph, or subparagraph of this ordinance, including any code, or text adopted hereby, be declared null and void, illegal, unconstitutional, or otherwise determined to be unenforceable by a court having jurisdiction; the same shall not affect the validity, legality, or enforceability of any other provision, section, paragraph or subparagraph hereof, including any code or text adopted hereby. Each such provision, section, paragraph, or subparagraph is expressly declared to be and is deemed severable.

#### **ARTICLE III. EFFECTIVE DATE.**

This Ordinance shall become effective \_\_\_\_\_, 2024.

ADOPTED \_\_\_\_\_

THE COUNTY COMMISSIONERS OF  
CARROLL COUNTY, MARYLAND,  
a body corporate and politic  
of the State of Maryland

ATTEST:

\_\_\_\_\_  
Vivian Daly, County Clerk

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Kenneth A. Kiler, President (SEAL)

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Joseph A. Vigliotti, Vice-President (SEAL)

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Thomas S. Gordon III, Commissioner (SEAL)

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Michael R. Guerin, Commissioner (SEAL)

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Edward C. Rothstein, Commissioner (SEAL)

Approved for legal sufficiency:

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Timothy C. Burke, County Attorney

Notice of Public Hearing published: 09/12/24 and 09/19/24  
Public Hearing held: 09/26/24  
Public Meeting to adopt Ordinance:  
Notice of Adoption of Ordinance published:  
Ordinance filed with Clerk of Court:

I hereby certify that the actions described above took place on the dates referred to above and that this Ordinance is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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Timothy C. Burke, County Attorney

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