

Introduced _____
Public hearing _____
Council action _____
Executive action _____
Effective date _____

County Council of Howard County, Maryland

2019 Legislative Session

Legislative day # 11

BILL NO. 39 – 2019

Introduced by: Deb Jung and Christiana Mercer Rigby
Co-sponsored by: Liz Walsh

AN ACT amending the Howard County Code to repeal the Development Rights and Responsibilities Agreements provision and replace the repealed provision with provisions for amending and terminating executed agreements; and generally relating to Development Rights and Responsibilities Agreements.

Introduced and read first time _____, 2019. Ordered posted and hearing scheduled.

By order _____
Diane Schwartz Jones, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2019.

By order _____
Diane Schwartz Jones, Administrator

This Bill was read the third time on _____, 2019 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Diane Schwartz Jones, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ___ day of _____, 2019 at ___ a.m./p.m.

By order _____
Diane Schwartz Jones, Administrator

Approved/Vetoed by the County Executive _____, 2019

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be it enacted** by the County Council of Howard County, Maryland, that the Howard
2 County Code is hereby amended as follows:

3
4 *By Repealing:*

5 *Title 16. "Planning, Zoning and Subdivisions and Land Development Regulations"*

6 *Subtitle 17. "Development Rights and Responsibilities Agreements" and*

7
8 *By Adding:*

9 *Title 16. "Planning, Zoning and Subdivisions and Land Development Regulations"*

10 *Subtitle 17. "Procedures for Altering or Terminating Previously Executed Development Rights*
11 *and Responsibilities Agreements"*

12
13
14
15 **HOWARD COUNTY CODE**

16 **Title 16. Planning, Zoning and Subdivisions and Land Development Regulations**

17
18 **[[Subtitle 17. Development Rights and Responsibilities Agreements**

19
20 **Section. 16.1700. - Purpose.**

21 The purpose of this subtitle is to protect the public health, safety, and welfare by enacting
22 the authority granted by Section 13.01 of Article 66b of the Annotated Code of Maryland
23 relating to development rights and responsibilities agreements and establishing procedures for
24 such agreements in accordance with the provisions of the State Code.

25
26 **Section. 16.1701. - Definitions.**

27 In this subtitle the following words have the meanings indicated:

28 (a) *Agreement* means a development rights and responsibilities agreement.

29 (b) *Development rights and responsibilities agreement* means an agreement between a
30 governmental body of a jurisdiction and a person or legal entity having a legal or

1 equitable interest in real property for the purpose of establishing conditions under
2 which development may proceed for a specified time.

3 (c) *Development* means development as defined in the Howard County Subdivision and
4 Land Development Regulations.

5 (d) *Parties* means the County Executive on behalf of the County and the petitioner.

6 (e) *Petitioner* means a person or legal entity having a legal or equitable interest in real
7 property subject to the agreement, or the person's representative or successors in
8 interest.

9 (f) *Plan* means a general plan or master plan as defined in the State Code.

10 (g) *Planning Board* means the Howard County Planning Board.

11 (h) *State Code* means Article 66b Section 13.01 of the Annotated Code of Maryland.

12 (i) *Successors in interest* means, including but not limited to, a person's or legal entity's
13 affiliates, all successor owners or assigns, and all purchasers of equity interests or
14 assets.

15
16 **Section. 16.1702. - Applicability.**

17 Any petitioner may petition the County Executive to enter into an agreement. The County
18 Executive shall exercise the authority of the public principal granted by the State Code to
19 negotiate, execute and enforce agreements, except that the County Council shall act as the
20 public principal for purposes of conducting the public hearing on a proposed agreement and
21 either approving or rejecting an agreement or an amendment to an executed agreement. In the
22 suspension or termination of executed agreements the County Executive and County Council
23 shall act together as the public principal under State Code authority as provided herein.

24
25 **Section. 16.1703. Contents of development rights and responsibilities agreements.**

26 (a) An agreement shall include:

27 (1) A legal description of the real property subject to the agreement;

- 1 (2) The names of the persons having a legal or equitable interest in the real property
2 subject to the agreement;
- 3 (3) The duration of the agreement;
- 4 (4) The permissible uses of the real property;
- 5 (5) The density or intensity of the use of the real property;
- 6 (6) The maximum height and size of structures to be located on the real property;
- 7 (7) A description of the permits required or already approved for the development of the
8 real property;
- 9 (8) A statement that the proposed development is consistent with the Plan and
10 Development Regulations of Howard County;
- 11 (9) A description of the conditions, terms, restrictions, or other requirements determined
12 by the Governing Body of Howard County to be necessary to ensure the public health,
13 safety, or welfare; and
- 14 (10) To the extent applicable, provisions for the:
 - 15 (i) Dedication of a portion of the real property for public use;
 - 16 (ii) Protection of sensitive areas;
 - 17 (iii) Preservation and restoration of historic structures; and
 - 18 (iv) Construction or financing of public facilities.
- 19 (b) An agreement may:
 - 20 (1) Fix the time frame and terms for development and construction on the real property;
21 and
 - 22 (2) Provide for other matters consistent with this subtitle.

23
24 **Section. 16.1704. - Procedures.**

- 25 (a) The petitioner shall petition the County Executive to negotiate and execute an agreement.
26 The petition shall include key elements of the proposed agreement. Within ten days of

1 submitting a petition to the County Executive the petitioner shall provide a copy of the
2 petition to the County Council. The County Executive shall first review the petition to
3 determine whether to accept the petition and initiate the negotiation process.

4 (b) An agreement may be executed by the County Executive only after:

5 (1) A pre-submission community meeting conducted using the same procedures
6 established in subsections 16.128(b)—(g) of the Subdivision and Land Development
7 Regulations, unless within one year of the scheduled meeting a pre-submission
8 community meeting has already been held for the same development project that is all
9 or part of the property that is the subject of the proposed agreement;

10 (2) A public meeting before the Planning Board and an advisory determination by the
11 Planning Board that the proposed agreement is consistent with the plan; and

12 (3) A public hearing before the County Council and approval of a resolution authorizing
13 the execution of the agreement.

14 (c) The County Council may approve or reject the proposed agreement or may encourage the
15 parties to submit a revised version.

16
17 **Section. 16.1705. - Amendments to executed agreements.**

18 Amendments to executed agreements shall be governed by the same procedures as
19 provided in section 16.1704 for the consideration of initial agreements.

20
21 **Section. 16.1706. - Termination of agreements; suspension; time limitations.**

22 (a) The parties to an agreement may terminate the agreement by mutual consent, provided
23 the County's consent shall be expressed by a resolution of the County Council
24 recommended by the County Executive.

25 (b) If the County Executive recommends and the County Council determines by resolution
26 that suspension or termination is essential to ensure the public health, safety, or welfare,
27 the County may suspend or terminate an agreement after a public hearing.

1 (c) An agreement shall be void five years after the day on which the parties execute the
2 agreement unless the duration of the agreement is:

3 (1) Otherwise established in the agreement; or

4 (2) Extended by amendment under section 16.1705 of this subtitle.

5
6 **Section. 16.1707. - Applicable laws, regulations, and policies.**

7 (a) Except as provided in subsection (b) of this section, the laws, rules, regulations, and
8 policies governing the use, density, or intensity of the real property subject to the agreement
9 shall be the laws, rules, regulations, and policies in force at the time the parties execute the
10 agreement.

11 (b) If the County determines that compliance with laws, rules, regulations, and policies
12 enacted or adopted after the effective date of the agreement is essential to ensure the health,
13 safety, or welfare of residents of all or part of the County, an agreement may not prevent
14 Howard County from requiring a person to comply with those laws, rules, regulations, or
15 policies.

16 **Section. 16.1708. - Recording.**

17 (a) The petitioner shall record an agreement in the Land Records of Howard County within
18 20 days after the day on which the parties executed the agreement and an agreement that is
19 not recorded within 20 days is void.

20 (b) The parties to the agreement and their successors in interest are bound to the agreement
21 after the agreement is recorded.

22
23
24 **Section. 16.1709. - Enforcement by interested parties.**

25 Unless the agreement is terminated under section 16.1706 of this subtitle, the parties to an
26 agreement or their successors in interest may enforce the agreement.]]

1 THE PROPOSED AMENDMENT. WITHIN TEN DAYS OF SUBMITTING A PETITION TO AMEND TO
2 THE COUNTY EXECUTIVE, THE PETITIONER SHALL PROVIDE A COPY OF THE PETITION TO THE
3 COUNTY COUNCIL. THE COUNTY EXECUTIVE SHALL FIRST REVIEW THE PETITION TO AMEND
4 TO DETERMINE WHETHER TO ACCEPT THE PETITION AND INITIATE THE NEGOTIATION
5 PROCESS.

6 (B) AN AMENDMENT TO AN AGREEMENT MAY BE EXECUTED BY THE COUNTY EXECUTIVE ONLY
7 AFTER:

8 (1) A PRE-SUBMISSION COMMUNITY MEETING CONDUCTED USING THE SAME PROCEDURES
9 ESTABLISHED IN SUBSECTIONS 16.128(B)—(G) OF THE SUBDIVISION AND LAND
10 DEVELOPMENT REGULATIONS, UNLESS WITHIN ONE YEAR OF THE SCHEDULED MEETING
11 A PRE-SUBMISSION COMMUNITY MEETING HAS ALREADY BEEN HELD FOR THE SAME
12 DEVELOPMENT PROJECT THAT IS ALL OR PART OF THE PROPERTY THAT IS THE SUBJECT
13 OF THE PROPOSED AMENDMENT TO THE AGREEMENT;

14 (2) A PUBLIC MEETING BEFORE THE PLANNING BOARD AND AN ADVISORY
15 DETERMINATION BY THE PLANNING BOARD THAT THE PROPOSED AMENDMENT TO THE
16 AGREEMENT IS CONSISTENT WITH THE PLAN; AND

17 (3) A PUBLIC HEARING BEFORE THE COUNTY COUNCIL AND APPROVAL OF A RESOLUTION
18 AUTHORIZING THE EXECUTION OF THE AMENDMENT TO THE AGREEMENT.

19 (C) THE COUNTY COUNCIL MAY APPROVE OR REJECT THE PROPOSED AMENDMENT TO THE
20 AGREEMENT OR MAY ENCOURAGE THE PARTIES TO SUBMIT A REVISED VERSION.

21
22 **SECTION. 16.1702. - TERMINATION OF AGREEMENTS; SUSPENSION; TIME LIMITATIONS.**

23 (A) THE PARTIES TO AN AGREEMENT MAY TERMINATE THE AGREEMENT BY MUTUAL CONSENT,
24 PROVIDED THE COUNTY'S CONSENT SHALL BE EXPRESSED BY A RESOLUTION OF THE COUNTY
25 COUNCIL RECOMMENDED BY THE COUNTY EXECUTIVE.

26 (B) IF THE COUNTY EXECUTIVE RECOMMENDS AND THE COUNTY COUNCIL DETERMINES BY
27 RESOLUTION THAT SUSPENSION OR TERMINATION IS ESSENTIAL TO ENSURE THE PUBLIC
28 HEALTH, SAFETY, OR WELFARE, THE COUNTY MAY SUSPEND OR TERMINATE AN AGREEMENT
29 AFTER A PUBLIC HEARING.

1 (C) AN AGREEMENT SHALL BE VOID FIVE YEARS AFTER THE DAY ON WHICH THE PARTIES
2 EXECUTE THE AGREEMENT UNLESS THE DURATION OF THE AGREEMENT IS:

3 (1) OTHERWISE ESTABLISHED IN THE AGREEMENT; OR

4 (2) EXTENDED BY AMENDMENT UNDER SECTION 16.1700 OF THIS SUBTITLE.

5
6 **SECTION. 16.1703. - APPLICABLE LAWS, REGULATIONS, AND POLICIES.**

7 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE LAWS, RULES,
8 REGULATIONS, AND POLICIES GOVERNING THE USE, DENSITY, OR INTENSITY OF THE REAL
9 PROPERTY SUBJECT TO THE AGREEMENT SHALL BE THE LAWS, RULES, REGULATIONS, AND
10 POLICIES IN FORCE AT THE TIME THE PARTIES EXECUTE THE AGREEMENT.

11 (B) IF THE COUNTY DETERMINES THAT COMPLIANCE WITH LAWS, RULES, REGULATIONS, AND
12 POLICIES ENACTED OR ADOPTED AFTER THE EFFECTIVE DATE OF THE AGREEMENT IS
13 ESSENTIAL TO ENSURE THE HEALTH, SAFETY, OR WELFARE OF RESIDENTS OF ALL OR PART OF
14 THE COUNTY, AN AGREEMENT MAY NOT PREVENT HOWARD COUNTY FROM REQUIRING A
15 PERSON TO COMPLY WITH THOSE LAWS, RULES, REGULATIONS, OR POLICIES.

16
17 **SECTION. 16.1704. – RECORDING.**

18 (A) THE PETITIONER SHALL RECORD AN AMENDED AGREEMENT IN THE LAND RECORDS OF
19 HOWARD COUNTY WITHIN 20 DAYS AFTER THE DAY ON WHICH THE PARTIES EXECUTED THE
20 AMENDMENT TO THE AGREEMENT AND AN AMENDMENT TO AN AGREEMENT THAT IS NOT
21 RECORDED WITHIN 20 DAYS IS VOID.

22 (B) THE PARTIES TO THE AMENDED AGREEMENT AND THEIR SUCCESSORS IN INTEREST ARE
23 BOUND TO THE AMENDED AGREEMENT AFTER THE AMENDED AGREEMENT IS RECORDED.

24
25 **SECTION. 16.1705. - ENFORCEMENT BY INTERESTED PARTIES.**

26 UNLESS THE AMENDED AGREEMENT IS TERMINATED UNDER SECTION 16.1701 OF THIS
27 SUBTITLE, THE PARTIES TO AN AMENDED AGREEMENT OR THEIR SUCCESSORS IN INTEREST MAY
28 ENFORCE THE AMENDED AGREEMENT.

1

2 **Section 2. Be it further enacted** by the County Council of Howard County, Maryland, that any
3 County Council approval of a Development Rights and Responsibilities Agreement prior to
4 June 3, 2019, shall remain in effect in accordance with the terms of the agreement and continue
5 to be subject to the provisions of this bill.

6

7 **Section 3. Be it further enacted** by the County Council of Howard County, Maryland, that this
8 Act shall become effective 61 days after its enactment.

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