



CITY OF HARRISONBURG CITY MANAGER

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801
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TO: Ande Banks, City Manager
FROM: Chris Brown, City Attorney
DATE: 8/26/2024
RE: Amendment to Conditional Zoning Ordinance to Allow Cash Proffers

Summary: Council members asked me to draft an amendment to Harrisonburg City Code Section 10-3-123 to permit cash proffers and I have done so. The attached amendment must be referred to the Planning Commission for consideration and a recommendation before enactment by Council.

Background: Virginia Code Section 15.2-2298 authorizes the City to adopt an ordinance permitting *reasonable conditions*, including cash proffers, if the rezoning itself gives rise to the need for the conditions, the conditions have a reasonable relation to the rezoning, and the conditions are in conformity with the comprehensive plan. While the City has enacted an ordinance permitting conditional zoning, cash proffers currently are specifically prohibited by that ordinance. See Harrisonburg City Code Section 10-3-123. The attached proposed amendment to City Code Section 10-3-123 strikes the language prohibiting cash proffers, thereby allowing such proffers.

If Council decides to enact an ordinance accepting cash proffers, it can elect to use the standards set out in Virginia Code Section 15.2-2303, which arguably reduce the reasonableness standards set out in Section 15.2-2298 as described above. The proposed amendment elects to follow the procedures set forth in 15.2-2303. However, Virginia Code Section 15.2-2303.4 would still apply. That section increases the standard by which proffers must relate to impacts of a proposed residential rezoning. Under this state code section, a proffer is *unreasonable unless* it addresses an impact that is specifically attributable to the proposed rezoning, the rezoning creates a need,



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or an identifiable portion of a need, for a public facility improvement in excess of existing capacity, and is a direct and material benefit to the proposed development.

If the amendment, in some form, is eventually enacted by Council, please note that case law in Virginia prohibits cash proffers from being used as a *quid pro quo* for a rezoning. Therefore, Virginia law requires that impacts from a proposed rezoning be substantiated and documented before the planning commission and governing body in order to determine if the cash proffers have a reasonable relation to the impact of the rezoning.

Key Issues: Referral to Planning Commission an amendment to City Code Section 10-2-123 to authorize the acceptance of cash proffers.

Environmental Impact: None

Fiscal Impact: The proposed amendment may allow the City to collect from a developer some of the costs of public infrastructure and facilities associated with development.

Prior Actions: None

Alternatives: (a) Refer proposed ordinance to Planning Commission;
(b) or decline to refer the proposed ordinance.
(c)

Community Engagement: None at this time, although a public hearing on the proposed amendment by Planning Commission and by City Council will be required prior to its enactment.



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Recommendation: Staff has no recommendation on the proposed amendment at this time.

Attachments: Proposed ordinance amendment.

Review:

The initiating Department Director will place in Legistar, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The completion of review only addresses the readiness of the issue for Council consideration. This does not address the recommendation for approval or denial of the issue.

