



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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To: Planning Commission
From: Department of Community Development
Date: December 11, 2024 (Regular Meeting)
Re: Zoning Ordinance Amendment – To allow the acceptance of cash proffers

Summary:

Zoning Ordinance Section	Amend Section 10-3-123. Conditional zoning
Purpose	To allow the acceptance of cash proffers, which is currently prohibited by the Zoning Ordinance
Applicant	City of Harrisonburg
Staff Recommendation	Approval
Planning Commission	October 9, 2024 (Public Hearing) - Tabled by Planning Commission December 11, 2024 (Public Hearing)
City Council	Anticipated January 14, 2025 (First Reading/Public Hearing) Anticipated January 28, 2025 (Second Reading)

Background:

On August 27, 2024, at the request of City Council members, City Attorney Chris Brown presented draft amendments to the Zoning Ordinance (ZO) Section 10-3-123 to allow the acceptance of cash proffers. City Council referred the ZO amendment to Planning Commission. The memorandum and minutes from the August 27, 2024, City Council meeting are available at: <https://harrisonburg-va.legistar.com/LegislationDetail.aspx?ID=6841924&GUID=BC0537E3-BBF6-46F8-8787-19A3AA13A092&Options=&Search=> and <https://www.harrisonburgva.gov/agendas>.

On October 9, 2024, City staff presented to Planning Commission a draft amendment to the ZO to allow the acceptance of cash proffers. However, staff recommended that Planning Commission table the request to give staff more time to better evaluate the practice of accepting cash proffers. The October 9th staff report and extract of the meeting minutes are attached herein.

Since the October 9, 2024, Planning Commission meeting, staff has communicated with and gathered information on cash proffers from Albemarle County, Arlington County, Goochland County, City of Fredericksburg, City of Manassas, and the Virginia Commission on Local Government.

Key Issues:

At City Council's request, staff has drafted an amendment to the Zoning Ordinance (ZO) to allow the acceptance of cash proffers. While the City has enacted an ordinance permitting conditional zoning, cash

proffers are currently prohibited per Section 10-3-123 (b)(3) of the ZO. Attached herein is the entirety of the proposed ZO amendments that if approved would allow the City to accept cash proffers.

The Albemarle County Land Use Law Handbook,¹ a respected resource guide for land use matters in Virginia, notes that:

A proffer is a condition offered by the owners of property subject to a rezoning, which may be accepted by the locality's governing body in conjunction with its approval of the rezoning. Rezonings with proffers are referred to in Virginia Code §15.2-2296 as conditional zoning... The typical proffer addresses an impact of the development resulting from the rezoning, e.g. a road improvement to address a traffic impact, or a cash proffer to address the impacts of more students attending a public school beyond the school's existing capacity.

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, if the conditions have a reasonable relation to the rezoning, and if the conditions are in conformity to the Comprehensive Plan. A 2023 report by the Virginia Commission on Local Government² describes that:

In 2016, the Virginia General Assembly passed new legislation addressing residential developments and cash proffers; stipulating that onsite or offsite proffers must be specifically attributable to a proposed new residential development and must directly address an impact to an offsite facility. A voluntary cash proffer is considered unreasonable unless the residential development created a need for one or more public facility improvements and the new development would receive a direct benefit from those improvements. Localities are only allowed to accept cash proffers for roads, schools, public safety or parks and recreation that would need improvements or a brand new facility as a direct impact of a new residential development.

The above noted 2016 legislation is referring to Virginia Code Section 15.2-2303.4, which states that for residential developments, localities are only allowed to accept cash proffers for improvements to or new public transportation facilities, public school facilities, public safety facilities, and public park facilities. This means, for residential developments, localities cannot accept cash proffers to support operational costs for transportation, schools, public safety, or parks or for other uses such as, but not limited to, water and sanitary sewer systems, stormwater management, and affordable housing.

While localities cannot accept cash proffers for residential developments for affordable housing, know that the Virginia Code authorizes localities to create affordable dwelling unit programs, which could include provisions allowing localities to accept cash contributions in lieu of affordable unit set-asides. These contributions must be awarded with similar density bonuses, and the contributions must be put

¹ Albemarle County Land Use Handbook, Chapter 11 – Conditional Zoning: Proffers (March 2022), <https://www.albemarle.org/government/county-attorney/resources/land-use-law-handbook>

² Virginia Commission on Local Government, "Report on Proffered Cash Payments and Expenditures By Virginia Counties, Cities, and Towns, 2022-2023" - <https://www.dhcd.virginia.gov/cash-proffers>

into a local Housing Trust Fund. Staff intends to study affordable housing dwelling unit ordinances in the future.

Calculating Cash Proffer Amounts

There are three primary ways that applicants and other localities have calculated and reviewed cash proffer amounts; they include: (1) the locality calculates an amount they believe is needed to address the project's impact and presents it to the applicant for consideration, (2) an applicant calculates an amount needed to address the project's impact and provides calculations and justifications for the locality to review (some localities have hired a consultant to be a third-party reviewer for cash proffers), and (3) the locality develops formulas that can be used by future applicants to guide the amounts offered by applicants as a cash proffer (some localities have hired consultants to develop the formulas).

At this time, which of the three primary ways cash proffer amounts are calculated and reviewed requires further evaluation. It is possible, for example, that staff may recommend one way to calculate public transportation facility improvements and a separate way for calculating public school facility improvements.

Additionally, for cash proffers that address transportation facility improvements, there may be situations in which City staff recommends that City Council not accept the cash proffers because the development is by itself giving full rise to the need(s), and staff believes the City should not take on the responsibility in managing a project to design and construct such a transportation improvement. As it stands today, a developer would proffer that they would complete the transportation improvements as part of their development project.

Tracking Cash Proffers and Annual Reporting

Staff believes that cash proffers can be managed using existing review and approval processes during site development and building permitting. Staff can use existing permitting software to prohibit the issuance of certificates of occupancy until cash proffers have been paid. Expenditures of cash proffers can be managed through the City's budget process.

If the City accepts cash proffers, then Virginia Code Section 15.2-2303.2 will, among other things, require the City to:

- “[w]ithin 12 years of receiving full payment of all cash proffered begin or cause to begin, (i) construction, (ii) site work, (iii) engineering, (iv) right-of-way acquisition, (v) surveying, or (vi) utility relocation on the improvements for which the cash payments were proffered.”
- Include within the Capital Improvement Program (CIP) the amount of all proffered cash payments received during the most recent fiscal year, and to include in the annual capital budget, the amount of proffered cash payments projected to be used or expenditures or appropriated for capital improvements in the ensuing year.
- Annually report to the Commission on Local Government the amount of proffered cash payments collected; amount of proffered cash payments expended; and related information.

Recommendation

Staff recommends approval of the ZO amendments.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

- (a) Recommend approval of the Zoning Ordinance amendments;
- (b) Recommend approval of the Zoning Ordinance amendments with modifications; or
- (c) Recommend denial of the Zoning Ordinance amendments.

Community Engagement:

As required, the request was published in the local newspaper twice advertising for Planning Commission’s public hearing. The advertisement was published as shown below:

Zoning Ordinance Amendment – To allow the acceptance of cash proffers

A request by the City of Harrisonburg to amend the Zoning Ordinance to allow the acceptance of cash proffers. Currently, Zoning Ordinance Section 10-3-123 prohibits cash proffers.

In addition, a notice was provided on the City’s website at <https://www.harrisonburgva.gov/public-hearings>.

Recommendation:

Staff recommends alternative (a) approval of the Zoning Ordinance amendments.

Attachments:

- Current Ordinance Reflecting Recommended Amendments
- October 9, 2024 Staff Report to Planning Commission
- October 9, 2024 Extract from Planning Commission Meeting Minutes
- August 26, 2024, Memorandum from City Attorney Chris Brown to City Manager Ande Banks
- Virginia Code Sections
 - 15.2-2296 through 2298
 - 15.2-2303 through 15.2-2303.4

Review:

N/A