



# CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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To: Planning Commission  
From: Department of Community Development  
Date: October 9, 2024 (Regular Meeting)  
Re: Zoning Ordinance Amendment – To allow the acceptance of cash proffers

## **Summary:**

Zoning Ordinance Sections	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	Table the request
Planning Commission	October 9, 2024 (Public Hearing)
City Council	Anticipated November 26, 2024 (First Reading/Public Hearing) Anticipated December 10, 2024 (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 Section 10-3-123 to allow the acceptance of cash proffers. City Council referred the Zoning Ordinance 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>.

## **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 by the ordinance within Section 10-3-123 of the ZO. Attached herein is the entirety of the proposed ZO amendments that if approved would allow the City to accept cash proffers.

As noted in the Albemarle County Land Use Law Handbook,<sup>1</sup> a respected resource guide for land use matters in Virginia,

*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.

In addition to transportation and schools, cash proffers can also address the impact of a development's rezoning on public safety facilities and public parks.

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 Government<sup>2</sup> 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 new 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.

In other words, localities cannot accept cash proffers to support operational costs for roads, schools, public safety, or parks and recreation. The 2016 legislation refers to Virginia Code Section 15.2-2303.4.

While calculating transportation improvement costs for a cash proffer may be relatively straightforward, there may be situations in which City staff would recommend that City Council not accept a cash proffer for a transportation improvement because the development is by itself giving full rise to the need(s), and where the City should not take on responsibility in managing a project to design and construct such a transportation improvement. Today, a developer would proffer that they would complete the transportation improvements as part of their development project.

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

<sup>2</sup> 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>

At this time, staff is researching how other Virginia localities have demonstrated that a cash proffer amount proposed by a developer reasonably addresses the impact of the development's rezoning. Generally, staff believes that calculating the cost of needed transportation improvements could be relatively easy; however, the City does not yet have an established methodology to calculate cash proffers for things such as, but not limited to, impacts to schools, public safety, and public parks. Some Virginia localities have hired consultants to evaluate needs and develop methodology to calculate cash proffers, and to create a cash proffer policy.

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

- Within 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.

Staff is actively contacting Virginia localities to ask questions such as:

- How long has your locality accepted cash proffers?
- Has the adoption of Virginia Code Section 15.2-2203.4 in 2016 and amendments in 2019 changed how your locality has accepted cash proffers?
- How do developers and/or the locality demonstrate that accepted cash proffers are used to address impacts caused by a specific development?
- Does your locality have a cash proffer policy? And how does the developer and/or your locality demonstrate reasonableness of the dollar amount of cash proffer offered?
- What staff member/s (position/s) manage the cash proffer system?
- What internal documentation, recording, and reporting practices and procedures are used?
- Have you had any problems or delays in using the proffered funds? Has the 12-year timeline to begin construction been consistently met? Have there been concerns about meeting the timeline requirements?
- How has accepting cash proffers benefited your community?
- How has accepting cash proffers harmed, complicated, or in any way damaged the community?

Staff believes that more time is needed to thoroughly evaluate the practice of accepting cash proffers in order to be able to offer a reasonable recommendation as to whether the City should amend this section of the ZO. Therefore, at this time, staff recommends tabling of this request until staff can fully vet and understand the implications of such an impactful program.

**Environmental Impact:**

N/A

**Fiscal Impact:**

N/A

**Prior Actions:**

N/A

**Alternatives:**

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

**Attachments:**

- Current Ordinance Reflecting Recommended Amendments
- 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