

**TOWN OF NEW WINDSOR**

**ORDINANCE No. 11-20-24**

**WHEREAS**, by virtue of the authority contained in Section 7-301 *et seq* of the Land Use Article of the Annotated Code of Maryland and Chapter 35 of the Code of the Town of New Windsor, the Mayor and Council have the authority to create, and from time to time amend, regulations pertaining to the subdivision and development of land; and

**WHEREAS**, these amendments are designed to authorize the Town to enter into Development Rights and Responsibilities Agreements, subject to the provisions hereof; and

**WHEREAS**, the Mayor and Council held a public hearing on these amendments on the \_\_\_\_\_ day of \_\_\_\_\_, 2024,

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF NEW WINDSOR:**

**ARTICLE 1. That Chapter 175 of the Code of the Town of New Windsor be amended to add a new Article XI, to read as follows:**

**ARTICLE XI**

**Development Rights and Responsibilities Agreements**

**§175-32. Definitions.**

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

Agreement – A Development Rights and Responsibilities Agreement.

Applicant – Any individual, firm, corporation, partnership, association, society, syndication, trust, or other legal entity that files a petition to enter into an Agreement.

Comprehensive Plan – The current Town of New Windsor Comprehensive Plan as adopted by Mayor and Council of the Town of New Windsor under the provisions of Maryland Annotated Code, Land Use Article.

Development – Any man-made change to or expansion of improved or unimproved real estate, including but not limited to buildings or other structures, dumping, extraction, dredging, grading, paving, storage of materials or equipment, land excavation, land clearing, land improvement, landfill operation, or any combination thereof; and any change in the use of a building for which a building permit/zoning certificate is required by law.

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.

Mayor and Council – Mayor and Council of the Town of New Windsor.

Planning Commission – The Town of New Windsor Planning Commission.

Property – The parcel or parcels of real property to be developed or expanded which are the subject of an Agreement.

Public Principal – The governmental entity of the Town of New Windsor which has been granted the authority to enter into Agreements under this chapter.

**§ 175-33. Authority; public principal.**

The Mayor and Council may exercise the authority granted by Maryland Annotated Code, Land Use Article, Section 7-301 *et seq* to enter into Development Rights and Responsibilities Agreements and shall act as the public principal.

A. Any Applicant having a legal or equitable interest in real property in the Town of New Windsor may petition the Mayor and Council to enter into an Agreement.

B. The petition shall be filed with the Town Manager.

C. If comprised solely of a residential development, the Property must contain at least twenty-five (25) dwelling units to be eligible for a Development Rights and Responsibilities Agreement.

D. If comprised in whole or in part of nonresidential development, the Property may 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 Mayor and Council shall first review the petition and determine whether to accept the petition and initiate this process.

- H. If the Mayor and Council accept the petition, a filing fee for each petition shall be paid in accordance with a fee schedule adopted by resolution of the Mayor and Council.
- I. Following submittal of a petition and prior to referral to the Planning Commission, the Applicant shall conduct a community meeting 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 visible from public roadways, and at any other location as determined by the Town, at least fourteen (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.

**§175-34. Contents of Agreement.**

- A. At a minimum, a Development Rights and Responsibilities Agreement shall contain the following:
  - (1) an attorney's certification that the Applicant has either a legal or equitable interest in the Property;
  - (2) the names of all persons having a legal or equitable 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;
- (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 Comprehensive Plan and all applicable Town and County regulations;
- (10) a description of the conditions, terms, restrictions or other requirements determined by the Mayor and Council to be necessary to ensure the public health, safety or welfare; and
- (11) 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 Mayor and Council.
  
- B. An Agreement may contain other terms, provisions, requirements and agreements concerning the property that may be agreed upon by the Mayor and Council 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 Code of the Town of New Windsor 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 Mayor and Council or acceptable financial guarantees must be provided.

**§175-35. Referral to Planning Commission.**

If the Mayor and Council accept the petition as provided in §175-33, the Town Manager shall refer the petition to the Planning Commission for determination that the proposed Agreement is consistent with the Comprehensive Plan. The Mayor and Council may not enter an Agreement unless the Planning Commission determines that the proposed Agreement is consistent with the Comprehensive Plan.

**§175-36. Public hearing.**

Before entering an Agreement, the Mayor and Council shall conduct a public hearing on the agreement. Notice of the hearing shall be published in a newspaper of general circulation in the Town once each week for two (2) consecutive weeks, with the first such publication of notice appearing at least fourteen (14) days prior to the hearing. Notice shall also be provided by any other means generally used by the Town.

**§175-37. Amendment of Agreement.**

A. Subject to Subsection B of this section and after a public hearing, the parties to an Agreement may amend the Agreement by mutual consent.

B. Unless the Planning Commission determines that the proposed amendment is consistent with the Comprehensive Plan, the parties may not amend the Agreement.

**§175-38. Termination of Agreement; suspension.**

A. The parties to an Agreement may terminate the agreement by mutual consent; or

B. If the Mayor and Council determine that suspension or termination is essential to ensure the public health, safety, or welfare, the Mayor and Council may suspend or terminate an agreement after a public hearing.

C. In the event that the Agreement is terminated prior to its expiration, all laws, rules and regulations in effect at the time of termination shall thereafter apply.

**§175-39. Applicable laws, regulations and policies.**

- A. Except as provided in Subsection B of this section, the laws, rules, regulations, and policies governing the use, density, or intensity of the property subject to the Agreement shall be the laws, rules, regulations and policies in force at the time the Mayor and Council and the Applicant execute the Agreement.
- B. An Agreement may not prevent compliance with the laws, rules, regulations, and policies enacted after the date of the Agreement, if the Mayor and Council determine that compliance with laws, rules, regulations and policies is essential to ensure the health, safety, or welfare of residents of all or part of the Town of New Windsor.

**§175-40. Recording.**

- A. An Agreement not recorded in the Land Records of Carroll County within thirty (30) days after the day on which the Mayor and Council and the Applicant execute the agreement is void. Either the Applicant or the Mayor and Council may record the Agreement.
- B. The Mayor and Council and the Applicant, and their successors in interest, are bound to the Agreement after the Agreement is recorded.

**§175-41. Enforcement by interested parties.**

Unless the agreement is terminated under §175-38 of this chapter, the Mayor and Council and the Applicant, or their successors in interest, may enforce the Agreement.

**§175-42. Time limits.**

An Agreement shall be void five (5) years after the day on which the parties execute the Agreement unless the Agreement specifies a shorter or longer duration or unless extended by an amendment pursuant to Section 175-38 above.

**ARTICLE 2. Severability.**

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this chapter, it being the intent of the town that this chapter shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion thereof.

**ARTICLE 3. Section Headings, Chapter Headings, Titles.**

Section headings, chapter headings, titles, etc., are for the purpose of description or ease of use and do not form a part of the text of this Ordinance or any Code or test adopted hereby.

**ARTICLE 4. Existing Liabilities.**

This Ordinance shall not discharge, impair or release any contract, obligation, duty, liability or penalty whatever existing on the date of its enactment. All suits and actions, both civil and criminal pending or which may hereafter be instituted for causes of action now existing or offenses already committed against any law or ordinance affected by the adoption of this Ordinance shall be instituted, proceeded with and prosecuted to final determination and judgment as if this Ordinance had not become effective.

**ARTICLE 5. Applicability.**

This Ordinance shall be applicable to any preliminary subdivision or site plan, or amendment thereto, submitted to the Town on or before **December 31, 2035.**

**ARTICLE 6. Effective Date.**

This Ordinance shall take effect on the \_\_\_\_\_. day of \_\_\_\_\_, 2024.

Introduced this 20<sup>th</sup>. day of November, 2024.

Passed this \_\_\_\_ day of \_\_\_\_\_, 2024, by a vote of \_\_\_\_\_ Council members in favor and \_\_\_\_\_ Council members opposed.

**ATTEST;**

\_\_\_\_\_  
Dana Magnus, Town Clerk

\_\_\_\_\_  
Neal C. Roop, Mayor

Effective this \_\_\_\_\_. day of \_\_\_\_\_, 2024.

Approved as to form and legal  
sufficiency this \_\_\_\_\_ day of \_\_\_\_\_, 2024

By: \_\_\_\_\_

Michelle M. Ostrander, Town Attorney

-----

NOTE:       Matter in [brackets] is proposed for deletion from existing law.  
              Matter underlined is new material proposed to be added to existing law.