

13-R-048

RESOLUTION AMENDING THE 2026 CHESAPEAKE COMPREHENSIVE PLAN TO REVISE THE CASH PROFFER POLICY TO INCORPORATE STATE LAW CHANGES ENACTED BY THE 2013 SESSION OF THE GENERAL ASSEMBLY.

WHEREAS, the 2026 Chesapeake Comprehensive Plan ("Comprehensive Plan") includes a Proffer Policy, which provides guidelines for the acceptance of cash proffers voluntarily offered by residential conditional rezoning applicants; and

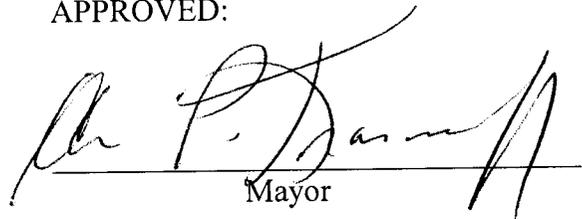
WHEREAS, the 2013 Session of the General Assembly enacted an amendment to the Code of Virginia, specifically § 15.2-2303.2, entitled "Proffered cash payments and expenditures," providing that cash proffers shall not be used for any capital improvement to an existing facility that does not expand facility capacity or for any operating expense of an existing facility such as ordinary maintenance or repair.

BE IT FURTHER RESOLVED by the Council of the City of Chesapeake, Virginia, that the amendments to the Proffer Policy contained in the attached policy document are hereby adopted as part of the Comprehensive Plan and shall become effective immediately.

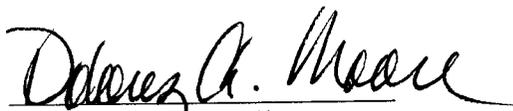
An emergency is deemed to exist and this resolution shall be effective retroactively to July 1, 2013.

ADOPTED by the Council of the City of Chesapeake, Virginia on this 13th day of August, 2013.

APPROVED:


Mayor

ATTEST:


Clerk of the Council

**CHESAPEAKE COMPREHENSIVE PLAN
REZONING PROFFER POLICY FOR PUBLIC SCHOOLS,
TRANSPORTATION FACILITIES, LIBRARIES AND EMERGENCY SERVICE
FACILITIES**

As amended by the Chesapeake City Council on ~~November 13, 2012~~ August 13, 2013.

A. Application and Effect

1. This Proffer Policy, and all amendments hereto, shall become effective immediately upon adoption by City Council and shall apply to all pending and future rezoning applications for residential use of land, with the exception that cash proffers for public school improvements are not anticipated for rezonings exclusively for group housing for the elderly and proffered housing for older persons where the rezoning will not generate any school-aged children. In all other cases, however, this Proffer Policy will apply without limitation to conventional and conditional rezonings and modifications to Planned Unit Developments that i) allow dwelling units where none are permitted under current zoning; ii) increase the number of dwelling units above the number permitted under current zoning; iii) increase residential density above the density permitted under current zoning; iv) add land to the residential component of land use classifications; v) change the type of housing (e.g., single-family to condominium) permitted under current zoning; or vi) change the timing or phasing of the residential development by proffer.
2. This Proffer Policy shall be construed and applied in accordance with governing state and local law. In addition, this Proffer Policy shall be applied in a fair, uniform and reasonable manner to meet the governmental objective of mitigating the impact of residential development on public

schools, transportation improvements, libraries and emergency service (fire and medical) facilities. Among the primary purposes of this Policy is to ensure quality education, safe and convenient transportation, adequate libraries, and responsive emergency services, all for the benefit of the citizens of Chesapeake.

3. This Proffer Policy shall be applied in harmony with other components of the Comprehensive Plan, including without limitation, the Planning and Land Use Policies. In no event shall cash proffers made pursuant to this Proffer Policy change the recommendation of the Planning Department for denial of a rezoning under the Level of Service tests where any public school serving the property has an enrollment exceeding 120% of rated capacity.
4. This Proffer Policy shall not be deemed binding on City Council but rather, as with other components of the Comprehensive Plan, shall be used as a guide in evaluating the merits of a proposed rezoning. Consideration of this Proffer Policy shall be in addition to all other relevant land use factors set out in Section 15.2-2280 et seq. of the Code of Virginia and Article 16 of the Chesapeake Zoning Ordinance. No decision rendered on a rezoning application involving proffers for dedication of property, monetary contributions, or improvements to public infrastructure shall be made solely on the adequacy of voluntary contributions under this Proffer Policy or otherwise. Any denial of a rezoning application is a legislative action which shall carry a presumption of validity and an inherent finding that the existing zoning of the property in question is reasonable.

B. General Guiding Principles

1. The adoption and implementation of this Proffer Policy is based on findings by City Council that revenues derived from residential development (e.g., residential real estate tax, recordation taxes, fees and associated revenue sources) typically are not sufficient to fund the capital impact of such developments on public facilities.
2. Cash proffers shall be voluntary and consistent with the Comprehensive Plan. Unless otherwise specified herein, the voluntary proffer amount shall be utilized as allowed by state law. ~~used for one or more of the following purposes:~~

- ~~i) land acquisition,~~
- ~~ii) construction or expansion of public facilities, and~~
- ~~iii) purchase of capital assets improvements,~~
- ~~iv) major repairs and renovations of public facilities, including upgrades in technology,~~
- ~~v) maintenance, other than routine maintenance, necessary to preserve the functionality of public facilities, and~~
- ~~vi) payment of debt service incurred in the financing of i) - v) above.~~

~~In no event shall proffers be expended on any project unless included in a capital improvement program approved by the City (or be of a nature not normally included in a capital improvement program). For purposes of this Proffer Policy, the capital improvement program shall include funded and unfunded projects listed in the City's approved~~

~~capital improvement budget. In addition, cash proffers shall only be expended on public facilities and capital assets impacted by the rezoning. Beginning in the fiscal year 2007, the City shall include in its capital improvement plan the amount of cash payments received during the most recent fiscal year in which cash contributions were made and shall include in its annual capital budget the amount of cash proffers projected to be used or appropriated for capital improvements in the ensuing fiscal year, as required by Section 15.2-2303.2(B) of the Code of Virginia.~~

3. In all cases, there must be a reasonable relationship between the rezoning and the need for the proffer. Thus, in order to ensure that cash proffers are used to fund public facilities necessitated or impacted by the proposed development, service districts shall be established for public schools and public transportation improvements. Proffers collected for schools and transportation improvements shall be used to improve and benefit the service district(s) impacted by the proposed rezoning, ~~as set out below in greater detail.~~ Proffers collected for libraries and emergency service facilities will be applied on a city-wide basis due to general public usage of such facilities.
4. The City Manager is directed to review the service districts for public schools and transportation improvements no less than once every two years to ensure that the public facilities located in the service district are being directly impacted by the residential development of land also located in the service district. The City Manager is further directed to make changes to the service

districts for public schools as necessary to reflect changes in school planning areas, or attendance zones, approved by the Chesapeake School Board. The City Manager shall also make changes to the service districts for transportation improvements as necessary to achieve a reasonable relationship between proposed transportation improvements and the impact of rezonings, based on written recommendations by the Director of Public Works.

5. The maximum cash proffers anticipated for public schools, ~~roads~~ transportation improvements, libraries and emergency service facilities are set out in Exhibit A, attached hereto and incorporated herein. In addition to the voluntarily offering of maximum amounts, cash proffers may, but are not required to, identify an appropriate inflation index, not to exceed the annual limits imposed by Section 15.2-2303.3 of the Code of Virginia.
6. If at any time the annual growth rate of the City is 2% or greater, the City Council may initiate a review of this Proffer Policy to determine whether the anticipated maximum cash proffer amounts are sufficient in light of the increase in population.
7. In acting upon rezoning applications, City Council may consider any mitigating circumstance of the rezoning request that: (i) reduces the development's projected impact on public schools, transportation improvements, libraries and emergency service facilities; (ii) creates a demonstrable reduction in capital facility needs; or (iii) serves an essential public purpose. Mitigating circumstances may include, but are not limited to, one or more of the following conditions existing at the time the rezoning

application is to be considered by City Council:

- i) location of the property in an area in which the development thresholds under the Planning and Land Use (Level of Service) Policy are deemed adequate;
- ii) location of the property in a revitalization district or in an economically stressed area that will benefit by an increase in population;
- iii) mixed-use projects that will generate a positive fiscal impact using the City's fiscal impact analysis model;
- iv) affordable housing project;
- v) proffered physical improvements; and
- vi) proffered restrictions on the type, timing or extent of development.

Either City staff or the applicant may identify mitigating circumstances and present them to City Council for consideration.

- 8. Nothing herein shall preclude an applicant from voluntarily offering additional cash proffers beyond the maximum contributions anticipated under this Proffer Policy for impacted public schools, transportation improvements, libraries and emergency service facilities or for other impacts not considered in the maximum proffer amounts.
- 9. Nothing herein shall preclude a rezoning applicant from seeking to diminish or mitigate the development's impact on public schools, transportation improvements, libraries or emergency service facilities by dedicating real property or performing in kind improvements in addition to, or in lieu of all or a portion of the anticipated maximum cash proffer. Acceptance of such

dedication or in kind improvement shall lie solely in the discretion of City Council. In the event City Council elects to give credit toward the anticipated maximum cash proffer amount, the following guidelines will apply:

- i) Any and all land to be conveyed to the City or the School Board for public use shall first be tested to ensure that the land is usable and free of environmental concerns. This requirement may be modified or waived by the Director of the Department of Public Works or designee for land dedicated exclusively for public transportation improvements.
- ii) Any and all land to be conveyed to the City or the School Board must first be deemed by the City Council as suitable in location, size, and configuration, and fit for its intended use. In the case of property for public schools, the School Board shall provide comments regarding the suitability of the proposed site to City Council prior to final action on the rezoning.
- iii) No credit shall be given for land dedications, construction and/or improvements required by the City Code, the Public Facilities Manual or any state, federal or local laws.
- iv) If accepted by City Council, real property shall be dedicated to the City or its designee (e.g. School Board) by a deed referencing a recorded subdivision plat. The dedication shall be made prior to, or simultaneously with, approval of the final site plan or recordation of a final subdivision plat for any portion of the proposed development.
- v) For purposes of assigning credit, the value of donated land will be

- calculated using the assessed value of the raw land after the rezoning.
- vi) Credit for improvements constructed or donated in lieu of cash proffers shall be the estimated cost as if constructed or purchased by the City or in the case of schools, by the School Board.
 - vii) Proffers for construction of facilities or purchase of capital assets shall include a deadline for completion of the improvements and shall also provide that design and construction shall be in accordance with specifications imposed by the City or in the case of schools, by the School Board.
 - viii) In the event City Council determines that a proffered dedication of land or in kind improvement fails to meet the development's calculated impact on public schools, libraries, transportation improvements or emergency service facilities, the value of such land and/or public improvements may be applied as a credit against the development's calculated impact on the particular type of public facility for which the credit is sought. In no case shall the credit given exceed the development's calculated impact on the selected public facility.

C. Voluntary Cash Proffers for Public Schools

1. Maximum cash proffers as set out in Exhibit A, attached hereto and incorporated herein, may be anticipated and accepted to mitigate the impact of residential rezonings on public schools.
2. ~~In clarification of the requisite demonstration of a reasonable relationship between the rezoning and the need for the proffer, the amount proffered and~~

collected shall be used for one or more of the following school improvement purposes:

- ~~i) Expansion of classroom space in one or more of the public schools to be attended by the students generated by the rezoning. Additional classroom space may be created by land acquisition construction of a new school, or expansion of an existing school in the impacted school planning district.~~
- ~~ii) Expansion of classroom space through construction of a new public school or additions to existing public schools in another school planning district, provided that the improvement reduces enrollment in one or more overcrowded public schools to be attended by the students generated by the rezoning. As used in this provision, "overcrowded public schools" shall mean only those schools having an enrollment at the beginning of the school year over 100% of rated capacity. The reduced enrollment must be provided by approved reassignment (rezoning) of students in the impacted school planning district to the new or expanded public school.~~
- ~~iii) Capital improvement projects involving maintenance, major repairs, or renovation of public schools located in the school planning district in which the rezoning occurred. As used herein, the term "maintenance" shall not include routine maintenance but shall refer only to those projects which have been approved as part of the capital improvement plan and which are necessary to preserve the functionality of a public~~

facility impacted by the rezoning. The term "renovation" may include capital improvement expenditures for technology upgrades.

~~iv) Construction or expansion of public schools that will serve students on a city-wide basis.~~

~~v) Payment of debt service for one or more of the capital improvement projects described in i) - iv) above.~~

D. Voluntary Cash Proffers for Transportation Improvements.

1. Maximum cash proffers, as set out in Exhibit A may be anticipated and accepted to mitigate the impact of residential rezonings on public transportation improvements.
2. ~~In clarification of the requisite demonstration of a reasonable relationship between a rezoning and the need for the voluntary road proffer for transportation improvements, the amount proffered and collected shall be used for transportation improvements within the impacted traffic shed identified by the Department of Public Works. Transportation improvements shall consist of right-of-way acquisition, and construction for arterial and collector streets only, including but not limited to, related improvements such as paving, marking, curb and gutter, traffic control devices, roadway drainage systems, ditch and shoulder improvements, and installation of turn lanes, acceleration lanes and deceleration lanes. The amount proffered and collected may also be used to fund or partially fund non-vehicular transportation improvements such as sidewalks, multi-use trails and mass transit facilities. For traffic sheds established on the basis of more than one transportation improvement project,~~

the Director of Public Works may give first priority to improving the most congested corridors through intersection improvements and road street widening.

E. Voluntary Cash Proffers for Public Libraries:

1. Maximum cash proffers, as set out in Exhibit A, may be anticipated and accepted to mitigate the impact of residential rezonings on public libraries.
2. ~~In clarification of the requisite demonstration of a reasonable relationship between the rezoning and the need for the proffer, the amount proffered and collected shall be used for land acquisition, construction of new libraries or expansion of existing libraries, or for the acquisition of capital assets essential to the operation of public libraries throughout the City. Capital assets shall be determined on the basis of City policy and must be included in the capital improvement program. Cash proffers may also be used for major repairs, renovation and maintenance of public library facilities, provided that any such project is an approved capital improvement project and further provided that any maintenance shall be other than routine maintenance and shall be necessary to preserve the functionality of the public facility.~~

F. Voluntary Cash Proffers for Emergency Service Facilities:

1. Maximum cash proffers, as set out in Exhibit A, may be anticipated and accepted to mitigate the impact of residential rezonings on public emergency service facilities, ~~which shall include capital improvements used in connection with fire prevention and fire suppression services and in connection with emergency medical response services.~~ The amount of the maximum cash

proffer, as set out in Exhibit A, is determined for i) housing for older persons ("senior housing"), and ii) all other residential rezonings. Studies show, and the City Council hereby finds, that senior housing units typically have a greater impact on emergency service facilities due to greater demand and usage

~~2. Cash proffers voluntarily offered and accepted by the City for emergency service facilities may be used for capital improvement projects throughout the City for i) real estate acquisition, ii) construction or expansion of buildings and structures, iii) major repairs and renovations of public facilities, iv) maintenance, other than routine maintenance, of public facilities necessary to preserve the functionality of the public facility, or v) purchase of capital assets used to serve City residents in emergency circumstances, and vi) payment of debt service incurred in financing any of the capital improvements projects listed in i) through v) above.~~

G. Collection, Expenditure and Enforcement:

1. For cash proffers made and accepted prior to July 1, 2005, payment shall be made prior to final site plan or final subdivision plan approval for the rezoned property. Where a final site plan or final subdivision plan depicts only a portion of the proposed residential development, the amount due and payable prior to approval shall be calculated on the number of lots or residential dwelling units depicted on the site plan. For cash proffers made and accepted on or after July 1, 2005, payment prior to final site plan or subdivision plan approval is preferred and encouraged; however, in accordance with Section 15.2-2303.3 of the Code of Virginia, payment shall not be made any later than

prior to the issuance of a building permit for construction on the rezoned property. Notwithstanding the foregoing, for the period of July 1, 2010 through December 31, 2014, any cash proffers offered or accepted on a per-dwelling unit basis shall be collected or accepted only after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the residential dwelling unit for which the cash proffer was made. Beginning January 1, 2015, cash proffers shall be collected no later than the issuance of a building permit; however, in cases where a building permit has been issued before January 1, 2015, the cash proffer will be collected prior to the issuance of the certificate of occupancy.

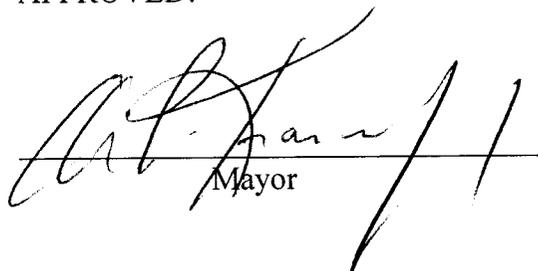
2. All cash proffers collected by the City shall be placed in specified accounts at the direction of the City Council or the City Manager, as the case may be, to ensure expenditure of principal, and all interest earned thereon, on public facilities necessitated or impacted by the rezoning. The expenditure of proffers accepted after July 1, 2005, shall be subject to the procedures and time constraints set out in Section 15.2-2303.2 of the Code of Virginia. All proffer expenditures must be approved by the City Council by appropriation.
3. Any City department, board, commission or agency which desires to expend cash proffers shall be required to file a request for expenditure with the City Attorney's Office. The request for expenditure shall include a report with the City Manager, the Zoning Administrator and the Director of the Department of Planning providing details concerning the expenditure, including a description of the project, the capital improvement project number, if

applicable, and the amount of the cash proffer used to fund the project. The City Attorney's Office will review the request and provide an opinion regarding the legality of the proposed request. The opinion and report will then be forwarded to the City Manager for further disposition.

4. All proffers shall constitute a part of the approved rezoning application. As such, a proffer is to be interpreted and enforced in the same manner as other zoning regulations. A violation of a cash proffer, and any other proffer, shall be deemed a violation of the Zoning Ordinance and shall be subject to all available means of enforcement and collection, including but not limited to, criminal charges, injunctive relief, and denial of project approvals and permits.

ADOPTED by the Council of the City of Chesapeake, Virginia on this 13th day of August, 2013.

APPROVED:



Mayor

ATTEST:



Clerk of the Council