

Regional Regulatory Review

Introduction

As part of its Work Program for FY2023, Montgomery Planning is undertaking a review of its incentive zoning point system (point system) for Commercial-Residential (CR) and Employment Zones (incentive zones). The incentive zones allow for mixed-use development and are the highest density zones in the County, allowing for a Floor Area Ratio (FAR) of up to 8.0. Developers must provide public benefits, like affordable housing or public facilities, to maximize the allowable density in these zones.

Since the policy's inception in 2010, Montgomery Planning has reviewed proposals for optional method projects and the corresponding public benefit requirements with a point system as delineated in section 59.4.5 of the zoning code and further elaborated in the Incentive Density Implementation Guidelines. As of August 2022, 67 projects in the CR and Employment Zones, accounting for 30 million square feet, have been approved by the Montgomery County Planning Board, each with a commitment to deliver specific public benefits.

This report summarizes a comparative analysis of Montgomery County's approach for reviewing optional method development and requiring public benefits in exchange for incentive density with similar practices within regional jurisdictions.

Purpose

As part of the Incentive Zoning Update study, it is important to understand how peer jurisdictions in the region regulate high-density development associated with the delivery of public benefits. Montgomery County is part of a regional economy, and it competes with other local jurisdictions for attracting growth. Development policies can have a significant effect on which jurisdictions capture such growth. Differences in regulatory policies can affect development timelines, and impact overall development costs. In addition, different jurisdictions offer varying levels and types of incentives or subsidies to promote growth. Updates to the Montgomery County's incentive zoning policy must consider this regional context so we can ensure our updated regulatory processes remain relevant and competitive.

This comparative research has three areas of focus:

1. The stages and processes for regulatory development involving "public benefits", including who reviews and approves the proposed projects.
2. The "menu" of providing public benefits and the exchange mechanism for obtaining those benefits from the applicant.
3. The review and negotiation process for evaluating proposals and the role of various stakeholders, including the public, in that process.

This research report compares Montgomery Planning's optional method development review process and public benefits point system with similar programs in the City of Alexandria, Arlington County, Fairfax County, and Washington, DC. As part of the same regional economy, these jurisdictions share similar demographics and market conditions, and compete for growth. However, these jurisdictions also

share policy goals related to Transit Oriented Development, environmental sustainability, and equitable outcomes in general. In fact, many of these shared policy goals stem from regional institutions like the Washington Metropolitan Area Transit Authority and the Metropolitan Washington Council of Governments. Nonetheless, the development context ranges significantly amongst these jurisdictions. Arlington County, the City of Alexandria, and D.C., are denser and more urban, due primarily to their small geographic size compared to Montgomery and Fairfax County, which are more suburban and similar to each other in land area and population.

This report evaluates each jurisdiction individually and includes a summary of overall themes and observations. The section for each jurisdiction contains the following elements:

- The **Development Review Process**: a baseline understanding of the local governance structure, what is considered by-right development vs an optional method, and an explanation of the stages of review.
- The **‘Menu’ of Public Benefits**: an outline of the formal programs, as well as general expectations related to public amenities that developments should deliver.
- The **Evaluation of Public Benefit Proposals**: a description of how jurisdictions negotiate or obtain public benefits.
- **Project Examples**: demonstrating the implementation of various public benefits.
- **Key Takeaways**: an evaluation of their processes in the context of Montgomery County.

Table 1: Comparison Jurisdiction Profiles, 2023

	Montgomery	Fairfax	Arlington	Alexandria	DC
Population	1,062,061	1,150,309	238,643	159,467	689,545
Land area (excluding water)	491 mi ²	391 mi ²	.26 mi ²	.15 mi ²	61 mi ²
Density (people/mile ²)	2,163	2,941	9,179	10,631	11,304
% People of Color	57%	51%	39%	48%	60%
Median Household Income	\$112,854	\$134,115	\$125, 561	\$101,162	\$90,088

*The blue bars indicate figure size relative to the other jurisdictions on a scale of 0-5.

Source: United States Census Bureau, 2023.

Methodology

This comparative analysis reviewed zoning ordinances, online materials, and past and current development project documents. Additionally, planning staff interviewed key personnel in regulatory review positions in these jurisdictions to gain an on-the-ground perspective of implementing these planning policies through development review.

Key Takeaways

- There are two main methods for obtaining public benefits in exchange for higher density development: a fixed district/county-wide menu-based approach and a project-specific negotiation process. Each method has its merits and drawbacks, and neither is correlated with greater success in getting public benefits.

- There are similarities in the types of public benefits planning departments hope to receive as a part of high-density development near transit, including promoting connectivity, pedestrian safety, economic growth, sustainable design, public art, and affordable housing.
- Each jurisdiction has a multi-step process for evaluating development proposals.
- Montgomery County has the largest menu of public benefits and the most prescriptive definitions and standards for compliance.
- Montgomery County is the only jurisdiction that bases its evaluation on a point-based proxy system after the zoning has already been mapped to individual parcels. All other jurisdictions include a FAR and/or monetary value-based negotiation for the ultimate zoning as a part of the regulatory review process.
- Other factors like geography, market, land values, and transit greatly impact the framework that will be effective in supporting development in exchange for impactful public benefits. This makes it challenging to have a singular program for a large and diverse county like Montgomery.
- Other jurisdictions have a stronger connection between high-density development review, the choice of public benefits, master plans, and infrastructure implementation initiatives than Montgomery County.

The table summarizes key points of comparison across the jurisdictions.

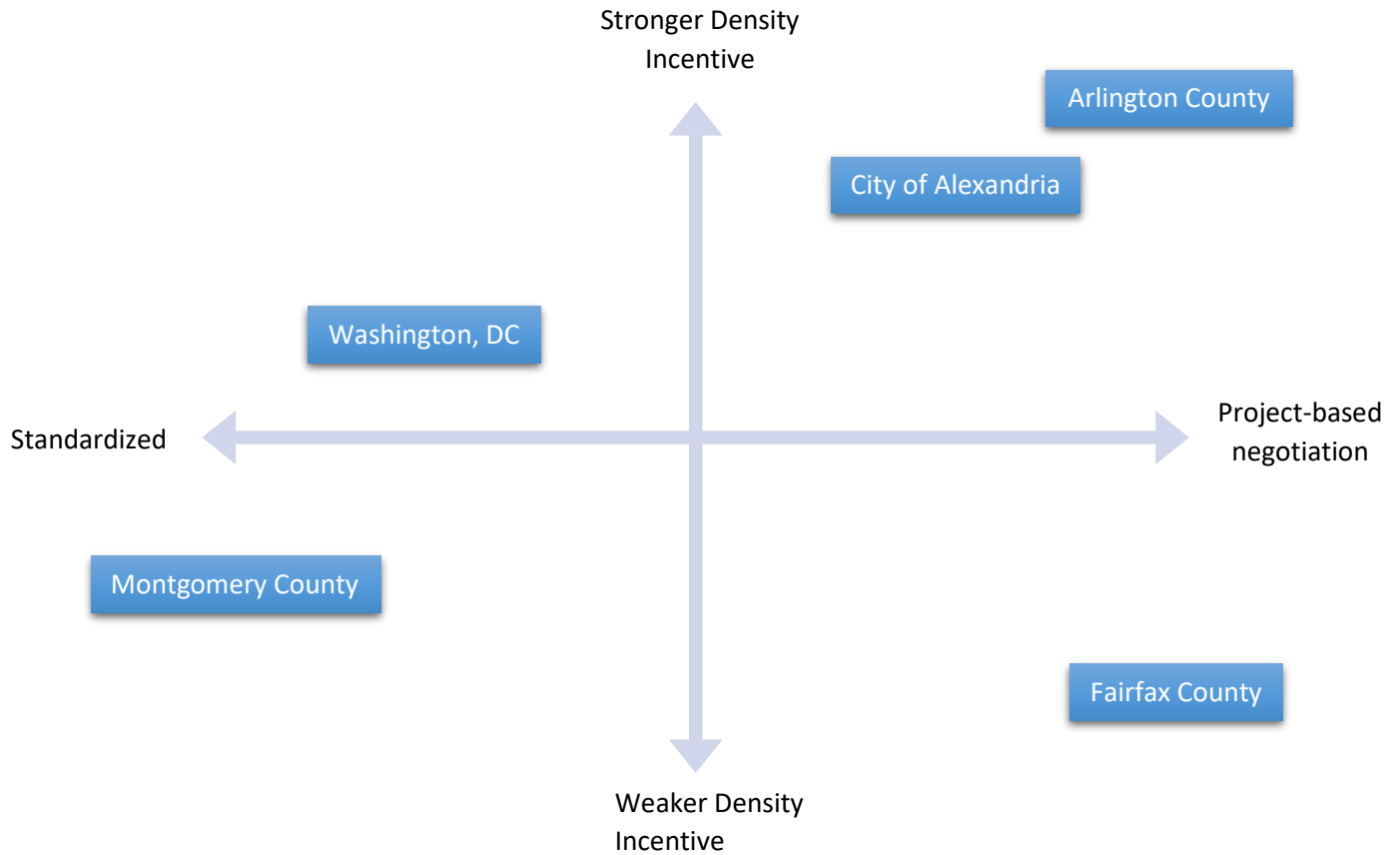
Table 2: Comparison of Approach to Public Benefits by Jurisdiction

	Montgomery	DC	Arlington	Alexandria	Fairfax
Is density approved prior to dev. review?	Yes	No	No	No	No
What system is used for obtaining public benefits?	Points system & incentive density	Planned Unit Developments (PUDs)	Community benefits package negotiation	Project-based negotiation; Zoning ordinance sections 7-700 and 6-900	Proffers
Is there a jurisdiction-wide public benefits menu?	Yes	Yes	No	No	No
Where are the public benefits listed?	Zoning Ordinance & Incentive Density Implementation Guidelines	Zoning Ordinance – PUD Public Benefits	Sector Plan	Zoning Ordinance	District Plan
How many public benefits are there?	36	24	10 (in Rosslyn Sector Plan)	2 formal; ~12 avg. total per project	~35 (as proffers for a large project)
Are public benefits directly incentivized with formulaic density?	Yes (all)	Yes (all)	No	Yes (just housing and arts anchor)	No
Are the public benefits directly aligned with policies & planning goals?	No	Yes	Yes	Yes	Yes
FAR of TOD case studies	3.24 (Pike & Rose)	5.0	9.62	3.0	0.96
Who finally approves public benefits?	Planning Board	Zoning Commission	County Board	City Council	Board of Supervisors

Source: Montgomery Planning, 2023.

The table below illustrates a comparison of approaches to Public Benefits by jurisdiction. It analyzes each jurisdiction with respect to whether it offers a strong density-based incentive and whether the negotiation process for public benefits is standardized or occurs on a project-by-project basis.

Table 3: Jurisdictions by Value of Incentive and Public Benefits Negotiating Process



Source: Montgomery Planning, 2023.

Notes on Table 3:

- Montgomery County’s public benefits system has a standardized menu-based approach, but since the zoning is set before a project is proposed, there is less incentive for applicants to offer more public benefits for the already zoned density.
- Washington, DC’s system is standardized, though less formulaic and not points based. Having rezoning at the time of application is a strong incentive for density. However, DC’s building height restrictions limit the total incentive density potential.
- Arlington County has a project based negotiation that compares the monetary value of additional density with the cost to provide specific public benefits. Even though the FAR maximums are very high, the market is so strong that developers seek to maximize the available density by providing additional public benefits.
- The City of Alexandria is largely project-based but also has two provisions for formulaic public benefits. Similar to Arlington County, the market incentive for density is strong enough to support the delivery of substantial public benefits.

- Fairfax County follows a proffer system that is unique to each project but does offer incentive density for providing affordable and workforce housing. Given the range of market conditions across the county, this incentive has been utilized to varying degrees.

Regional Jurisdiction Case Studies

This section provides a detailed description of the incentive zoning process in five jurisdictions: Montgomery County, MD, Arlington County, VA, Fairfax County, VA, the City of Alexandria, VA, and Washington, D.C.

Montgomery County, MD

Montgomery County's optional method development review process and the Public Benefits Point System are briefly described in the following paragraphs. Some projects follow the various steps sequentially while others choose to file concurrent applications to expedite the overall review timeframe.

Development Review Process

- **Concept plan:** The process begins with a voluntary and free concept Plan that allows applicants to get staff and Development Review Committee (DRC) input on various details of a proposed project. Applicants may submit any level of detail to receive feedback. Staff provide non-binding comments on the concept plan within three to five weeks.
- **Sketch plan:** Optional method projects in the incentive zones must submit a sketch plan that includes an illustrative plan or model that shows the maximum densities for residential and non-residential development, including building massing and height, locations of public use and other spaces, and the relationship to existing and proposed buildings and properties. A Sketch Plan is intended to provide circulation patterns and a draft description of the public benefits categories proposed and incentive densities requested, as well as the phasing of the development. The Planning Board must approve a sketch plan.
- **Preliminary plan:** Preliminary plans show how a property or set of properties will be subdivided or re-subdivided under zoning ordinance. At the time of Preliminary Plan, an Adequate Public Facilities (APF) finding is made to determine whether the existing transportation and school networks can handle the intensity and types of uses proposed. For preliminary plans, the applicant must hold a Planning Board hearing within four months of submission unless they file an extension request.
- **Site plan:** Site plans provide the most detail, showing the proposed development on a site in relation to immediately adjacent areas. It indicates roads, walks, parking areas, buildings, landscaping, open space, recreation facilities, lighting, etc. The choice of specific public benefits is also approved as a part of site plan approval. Site Plan review is required of all floating zones and of most overlay zones. The Planning Board must approve or deny the application within four months of submission unless the applicant files an extension request.

Public Benefits Point System

In Montgomery County, the provision of public benefits in exchange for incentive density applies to the CR and Employment zones, which comprise four zoning designations: CR (Commercial Residential), CRT (Commercial Residential - Town), LSC (Life Science Center), and EOF (Employment Office). The Commercial/Residential (C/R, or CR) Zones¹ are a family of mixed-use zones that allow a range of densities and heights. This report also refers to these zones as the ‘incentive zones’. These zones are designed to encourage a mix of commercial and residential uses, create interactive streets, provide meaningful public spaces, and foster jobs and services in live-work-play environments within a given neighborhood.

A project larger than the greater 0.5 FAR or 10,000 square feet of gross floor area in CR and LSC zones is required to include public benefits, implemented through a points system. For the CRT and EOF zones, the threshold is the greater of 1.0 FAR or 10,000 square feet of gross floor area. When public benefits are mandated, the process is known as the optional method of development.

Once a project selects the optional method, it must provide a minimum number of public benefit points from a minimum number of categories. If the proposed points are approved, a project can build up to the zoned density. In the CR Zone, the highest FAR under this optional method of development is 8.0 with a maximum height of 300 feet. The density and height on a given site is determined through the master planning process. Since the inception of the policy in 2010 through August 2022, there have been 67 optional method projects in the incentive zones accounting for over 30 million square feet of approved development.

City of Alexandria, VA

Development Review Process

Similar to Montgomery County, development review in the City of Alexandria has multiple phases.

- Concept Stage 1 and Concept Stage 2: The developer submits and receives feedback on the architectural design, development program, stormwater, and traffic management, and how the project aligns with the City’s plans and policies.
- Preliminary Plan: The applicant files either a Development Site Plan (DSP) or a Development Special Use Permit (DSUP). The DSP is for projects developing by-right, under the current zoning, whereas a DSUP is an application to rezone a property. The **DSP** is similar to Montgomery County’s standard method of development, and is required for any project that:
 - Contains three or more dwelling units
 - Is a new building or addition that is 3,000 square feet or larger
 - Provides a parking lot with five or more parking spaces
 - Is an addition that is 1/3 or more of the existing gross square feet of the building
 - Falls under other criteria listed in Section 11-400 of the Zoning Ordinance

¹ The CR Zones also include the CRN (Commercial Residential – Neighborhood) zone, although it is not an incentive zone with public benefit requirements.

The **DSUP** is similar to Montgomery County’s optional method of development and includes a public benefit negotiation process. It is required for projects that propose:

- A modification of the parking ratios
- A modification to the yard, landscape or open space requirements
- Increased building height or floor area ratio (FAR)
- Affordable housing bonus density
- Special requirements listed in the applicable zone in the Zoning Ordinance
- Final Site Plan: Once approved, the project enters the Final Site Plan stage to solidify building details before building permits are released.

Approximately 85 to 90 percent of projects within the City of Alexandria file DSUPs, suggesting strong interest in either high-density development or site-specific customizations. By comparison, approximately 34 percent of development in Montgomery County was in optional method projects within the incentive zones. However, Montgomery County is larger and has a wider range of planning and development contexts, including suburban and rural, which may explain the discrepancy in share of high-density development.

The Alexandria Planning and Zoning (P&Z) Department can ask the developer for public benefits for DSUP projects. The City has both Small Area Plans (SAP) and Coordinated Development Districts (CDDs) that call out significant area-wide public benefits improvements, like a bridge or stormwater infrastructure improvement. During the Preliminary Plan stage the proposal goes through hearings at the Planning Commission. DSUP applications must be approved by the City Council.

Types of Public Benefits

Although there have been many different types of benefits implemented and documented—ranging from design excellence to public art to stormwater mitigation, only two public benefits are formally part of the Zoning Ordinance: affordable housing and public art.

Section 7-700 outlines the city’s affordable housing density bonus, which allots a 30 percent FAR increase, and additional height up to 25 feet for including affordable housing in a residential project. The number of affordable units must total at least one-third of the amount of the bonus density and can be provided on-site or off-site. The city is currently undergoing a review of section 7-700 with the aim of increasing the incentive to provide more affordable housing, in accordance with their Housing for All initiative. An update is expected in September 2023.

Section 6-900 is a more unique and a one-off program that allows a 30% FAR increase for projects in the Old Town North District that feature an Arts Anchor, defined as a greater than 5,000 sf facility with a 30-year minimum operation agreement and a certain number of events per month (ex: 12 events/month for the Tide Lock project).

There are however some general de-facto public benefits that the planning department consistently seeks and expects to receive in DSUP projects, including green building, affordable housing, and streetscape improvements. The city’s individual Small Area Plans outline some of the recommended

public benefits that are particularly desirable in each neighborhood, and developers typically align their proposed public benefits with the applicable SAP.

Evaluation of Public Benefit Proposals

City of Alexandria planning staff utilize the recommendations in the SAPs and CCDs to negotiate for public benefits. The DSUP typically involves a rezoning of the site concurrently, providing planning staff with leverage to ensure the project contributes fairly to the public benefit needs as articulated in the SAP and CDD documents. The City does have a formal policy for additional density in exchange for providing affordable housing or public art. However, staff also negotiate with the applicant for other public benefits such as infrastructure improvements identified in SAPs, to approve the rezoning. Therefore, while there are just two public benefits formally associated with bonus density, the rezoning approval requires additional public benefits that are negotiated directly between staff and the applicant. This negotiation can include an exchange of information related to public benefits costs and land value to inform the process.

Project Example

Tide Lock (Transpotomac Plaza)



Development Summary	
Lot size	1.38 acres
Floor Area Ratio	4.0 F.A.R.
Building height	102 ft
Multifamily units	234 units
On-site affordable units	15 units
Gross floor area	240,000 sf
Retail square footage	6,500 sf
Arts anchor square footage	5,000 sf

This project in the Old Town North District and adjacent to the riverfront proposes converting three office buildings into multifamily housing with a small amount of retail and an arts anchor. The project is notable because it proposes taking advantage of both the arts anchor and affordable housing density

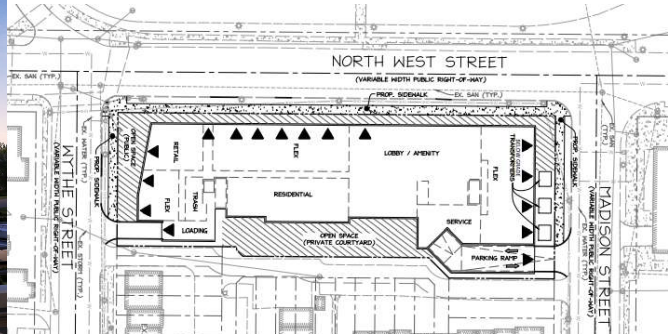
incentives, increasing the maximum allowable FAR from 2.5 to 4.0 FAR. The project also proposes converting some of the existing office space into multifamily units.

The DSUP requested changing the zoning on the site to a mixed-use zone with a maximum by-right density of 2.5 FAR. The project was seeking approval for a total FAR of 4.0, which it achieved through providing affordable housing and public art (the 'arts anchor'). Fifteen on-site affordable units (6.4 percent) generated a bonus density of 0.75 FAR, while a 5,000-square foot arts feature generated another 0.75 FAR in bonus density. The affordable housing units also allowed the project to reach a height of 102 feet, or 25 feet higher than the by-right mapped height for the zone. Furthermore, staff negotiated additional public benefits, summarized below to approve the rezoning. These other public benefits are identified in the Old Town North Small Area Plan and include streetscape improvements, high-quality building design, and public open space.

Tide Lock Public Benefits Package

- Rezoning related Public Benefits
 - Design
 - High quality building design that will enhance Old Town North and the adjacent Mount Vernon Trail
 - Through block connection to Tide Lock Park
 - Streetscape
 - Streetscape and pedestrian improvements, including a widened sidewalk and retaining of street trees along North Fairfax Street and accessible raised crosswalks along the internal private street
 - *A contribution of approximately \$562,751 (adjusted per year based on CPIU) to the Old Town North Streetscape and Implementation Fund*
 - Public Open Space
 - Publicly accessible open space areas throughout the site, including an enhanced pedestrian plaza fronting the Mount Vernon Trail and the Potomac River waterfront
 - Sustainability
 - Green building and site design, including LEED Silver (or equivalent) and the achievement of performance points consistent with the Green Building Policy, and areas of green roof
 - *An approximately \$8,840 contribution to the Urban Forestry Fund*
- Additional Bonus Density related Public Benefits
 - Arts
 - A 5,000 s.f. arts and cultural anchor with a presence on North Fairfax Street, which will support the Old Town North Arts and Cultural District
 - On-site public art (at a minimum value of \$50,222)
 - Affordable Housing
 - Fifteen (15) on-site affordable housing units, including four (4) for-sale units
 - *An additional affordable housing contribution (approximately \$217,119).*

Braddock West



Development Summary	
Lot size	0.95 acres
Floor Area Ratio	3.0 F.A.R.
Building height	85 ft
Multifamily units	174 units
On-site affordable units	14 units
Gross floor area	180,000 sf
Retail square footage	10,000 sf

The Braddock West development proposed a seven-story multifamily building adjacent to the Braddock Metro station. The project required rezoning the site for high-density mixed-use development. The project obtained bonus density for providing affordable housing and public art. It also provided a payment to the open space fund, the affordable housing fund, and on-site stormwater management as part of the rezoning approval negotiation.

Braddock West Public Benefits Package

- Design/Program
 - Construction of a mixed-use building designed with high quality architectural elements and materials that provides neighborhood-serving commercial use(s)
 - Densification of a site adjacent to the Braddock Road Metrorail Station, providing additional residents of market-rate and affordable units direct access to transit
- Sustainability
 - A building in compliance with the City's 2019 Green Building Policy (a requirement for DSPs and DSUPs which outlines performance standards)
- Public Open Space
 - Open space, including a publicly accessible plaza and ground-level and rooftop open space for tenants

- *Monetary contributions of approximately \$97,500 to the Braddock Community Amenities Fund and*
- *\$635,000 to the Braddock Open Space Fund*
- *Vacation of two public alleys, providing a monetary contribution to the City Open Space Fund*
- Streetscape & transit access
 - Streetscape improvements including widened sidewalks and new street trees and tree wells along each of the three street frontages and a mid-block crosswalk across N. West Street toward the Metrorail Station
- Stormwater
 - Improvements to mitigate stormwater and flooding impacts and provide sewer improvements consistent with the recommendations of the Braddock Metro Neighborhood Plan
- Transportation
 - *A \$20,000 contribution towards the City's Capital Bikeshare Fund*
- Affordable housing
 - 14 dedicated affordable dwelling units
 - *A voluntary contribution of \$531,927 to the affordable Housing Trust Fund*
- Arts
 - *A contribution to the public arts fund of at least \$53,985*

Key Takeaways

Virginia has the Dillon Rule, which limits the power of local governments to enact policies that are explicitly granted by the state, including requiring public benefits in exchange for approving private development. Therefore, jurisdictions like Alexandria must provide an incentive in exchange for public benefits. In Alexandria, there are just two public benefits associated a bonus density incentive: affordable housing and public art. Nonetheless, as new developments typically require rezoning, the city has leverage to require other public benefits, which are negotiated directly with an applicant and are informed by master plans and financial data.

Arlington County, VA

Development Review Process

Arlington County is similarly limited in its ability to require public benefits under the Dillon Rule. Instead, Arlington also uses bonus density to incentivize public benefits through its '4.1' process. Bonus density is especially valuable in Arlington County as a small, urban, transit-oriented area adjacent to D.C.'s employment core. Arlington also allows higher densities than nearby jurisdictions, with densities reaching 10.0 FAR.

Arlington County caps by-right development at 0.6 FAR in most of the county's commercial districts, which is significantly lower than what most applicants seek, thereby necessitating a negotiation for additional density. In some parts of the county, such as in the Rosslyn Coordinated Redevelopment

District (RCRD), by-right development is allowed up to 4.8 FAR, although even this can be lower than what applicants typically seek in this strong market. The 4.1 process allows applicants to rezone sites for higher density and additional height, which can reach up to 10.0 FAR and 300 feet, respectively.

The steps in the 4.1 development review process for Arlington County are below:

- Concept Site Plan: an optional stage where developers can receive early feedback on their designs and proposals.
- Preliminary Site Plan: plans are reviewed by planning staff.
- Active Site Plan: a three-month process of two meetings with an advisory-only Site Plan Review Committee, a committee within the Planning Commission comprised of commission members as well as a member from other county commissions relevant to a project (transportation, housing, parks and recreation etc.).
- Finally, the project goes to a Planning Commission hearing with a recommendation from the County Manager, followed by final approval from the County Board.

Notably, there is no internal timeframe for planning staff to review projects, but rather a 120-day minimum review period for site plans. The process averages six to 12 months. From the date of approval of a project in Virginia, developers have three years to build, which means developers are required to deliver public benefits soon after the approval of a project.

Negotiations for the community benefits process begin as soon as the first site plan is submitted. Negotiations began later in the process in the past, but it was advanced at the behest of applicants and planning staff.

Types of Public Benefits

In Arlington County, staff negotiate directly with the applicant for public benefits and there are no formally established thresholds of public benefits in exchange for a specific amount of bonus density. Sector and area plans include a list of public benefits that form the basis of the negotiations, ranging from specific requests for improvements to certain streets as well as undefined categories like public facilities and public art which leave much room for case-by-case negotiation. Moreover, the sector plans typically identify features and improvements that are required as part of any development. Below is an example of benefits listed in the Rosslyn Coordinated Redevelopment District (RRCD) of the Rosslyn Sector Plan.

RRCD Public Benefits:

- Provision of pedestrian and bicycle trails, such as an esplanade, the bicycle-pedestrian underpass at Lee Highway and Lynn Street, and the bicycle-pedestrian bridge from 18th Street towards the river/Mt. Vernon Trail
- Transit network improvements
- Premium improvements to new and existing public open spaces as set forth in Sector Plan (These are additional site improvements the County would recommend to ensure the space is attractive and encourages greater public use.)

- Provision of the 18th Street Corridor and the Arlington Ridge Road connection to the plaza level
- Public Facilities
- Affordable Housing*
- LEED/Community Energy Plan elements
- Public Art*
- Traffic Demand Management (TDM) and Parking measures*
- Off-site park and transportation improvements identified in the plan
- Other

Required/Standard Public Benefits in a Development Project:

- Land area reserved for planned streets/parks
- Provision of planned streets
- Basic improvements to on-site open space (site improvements property owners would make if maintained as private space)
- Streetscape improvements
- Affordable Housing*
- Public Art*
- TDM and Parking measures*
- Utility Fund/Relocations
- Other

(Items noted with an asterisk (*) are included in both lists, as site plan projects could achieve increases over the base site plan densities by providing more than the expectations typically associated with standard site plan conditions. *In essence, the starred items must exceed the typical standards to count as community benefits.*)

Evaluation of Public Benefit Proposals

Applicants typically use the sector plan recommendations for public benefits as a guide for their proposals and work with the planning department staff to create a “community benefits package” for each project. The applicant proposes an appraisal value for the incentive density requested and itemizes the benefits package, delineating how much the monetary contributions and on-site delivery of community benefits will cost. The county planners either agree and accept the appraisal or create their own appraisal. The two parties then engage in a discussion and either agree to amend one of the two appraisals or split the difference between the appraisals for the final value of the community benefit package. The amount of additional incentive density approved is directly proportional to the monetary value of community benefits provided.

Project Example

Holiday Inn - 1900 Fort Meyer Dr



Development Summary	
Lot size	1.68 acres
Floor Area Ratio	9.62 F.A.R.
Building height	327 ft
Multifamily units	502 units
Hotel rooms	327 rooms
Gross floor area	759,748 sf
Retail square footage	13,456 sf

This mixed-use project inside the Rosslyn Metro Station Area (RMSA) is taller and denser than any building in Montgomery County at nearly 10.0 FAR. Combining multiple uses including retail and a large hotel adjacent to transit, it is an example of an intensive Transit Oriented Development (TOD). Public benefits include monetary contributions towards off-site transportation and open space improvements totaling \$9,000,000. Other community benefits include transit subsidies for employees and tenants and a “four pipe hydronic system” for sustainable heating and cooling. Notably, these are not public benefits worth points available for applicants to provide in Montgomery County.

The development application rezoned the site from “C-O, S3-A” to “C-O Rosslyn” and it exceeds the by-right 4.8 FAR and 180 ft height maximums by providing community benefits.

Community benefits approved as part of the development include:

- Implementation of Rosslyn Sector Plan
- Infrastructure
 - Contribution to utility undergrounding fund
 - In-building wireless system

- Extraordinary utility improvements
- Cost of demolishing existing hotel
- Cost of demolishing existing sky bridge
- Transportation
 - Transit subsidies for employees and tenants
 - Contribution to Arlington County Commuter Services
 - Transportation performance monitoring studies
 - Public parking
 - Bicycle parking facilities
 - Transportation demand management plan
 - \$4.5M off-site transportation improvement contribution
- Streetscape
 - Pedestrian through-block
 - Sidewalk, curb, gutter improvements
- Sustainability
 - Four pipe hydronic energy system
 - LEED Gold
- Economy
 - Geometric increase in real estate, tourism and personal property tax revenue for the county
 - Increased economic activity
 - Job creation
- Affordable Housing
 - Cash contribution to benefit affordable housing
- Public art
 - \$300k Public art contribution
- Design/program
 - Distinctive, high-quality architecture and design; creating a gateway to Rosslyn
 - Creation of mixed-use site
 - Construction of large-scale public event/meeting space
- Open space
 - \$5M off-site open space improvement contribution
- Other, TBD through negotiations

Key Takeaways

Based on discussions with county staff and the project example above, Arlington County is effective at securing significant community benefits in terms of meeting financial and practical value. The large number of community benefits may be related to the large amount of density applicant are negotiating for in Arlington, which exceeds maximum densities in heights in nearby jurisdictions, including Montgomery County. Arlington is ultimately unique as a small, highly urbanized jurisdiction with a concentration of sites that can support high-density development. Nonetheless, county staff also have

an open-ended negotiation process that draws on sector plan recommendations and financial appraisals, which may enhance their ability to secure a large package of community benefits.

However, Arlington County has faced criticisms for a lack of transparency over the negotiation process. Furthermore, the open-ended negotiation can lead to uncertainty and a lack of consistency for both staff and the applicant.

Washington, DC

Development Review Process

Projects in the District of Columbia can rezone a site or seek an increase of the maximum allowable density. The level of by-right zoning varies by district and can be highly complex for certain sites. Additionally, many parcels in the district altogether lack a formal zoning designation due to their previous or current federal ownership. Projects seeking additional density above by-right density or developing on sites with unique conditions are called Planned Development Units (PUDs) and must include public benefits. PUDs are often, but not always, associated with rezoning. Minimum standards and requirements for PUDs are specific to a site. The steps in the PUD process are outlined below:

- The Office of Planning (OP) and Office of Zoning (OZ) perform an initial review of the project.
- The Zoning Commission (ZC) then deliberates on PUD cases and votes to approve or deny them.
- Advisory Neighborhood Commissions, non-partisan bodies comprised of locally elected representatives, advise the applicants, planning staff and elected officials through the PUD process, often advocating for specific features and community benefits to be included within the overall project.

Types of Public Benefits

Similar to Montgomery County, Washington, D.C., maintains a menu of public benefits. The menu listed below, provides objectives, minimum requirements, as well as dimensions where appropriate. The full menu with the requirements and standards for each public benefit is provided in an appendix to this report.

The Planned Unit Development Public Benefits menu :

- Design/program
- Public Open Space
- Public Art
- Historic Preservation
- Senior housing and Diverse Unit Mix
- Affordable housing
- Employment and training opportunities;
- Public facilities
- Sustainability
- Park maintenance or participation in the Department of Park and Recreation (DPR) “Adopt-a-Park Program” for the life of the development;

- Streetscape
- Transportation
- Uses of special value to the neighborhood or the District of Columbia as a whole; and
- Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.

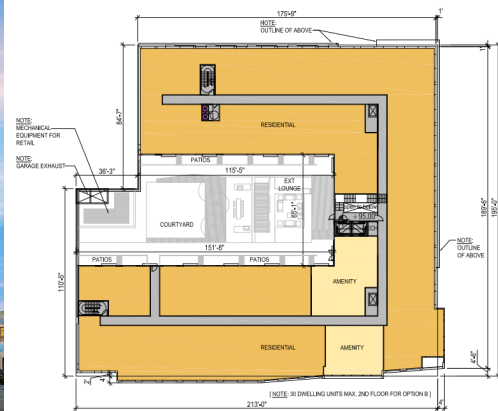
Evaluation of Public Benefit Proposals

The District of Columbia is the only other jurisdiction besides Montgomery County that has a formal set menu of public benefits that applies to development throughout the city. For providing these public benefits, applicants receive a five percent height bonus as well as a 20 percent density bonus for residential projects and 34 percent density bonus for non-residential projects. Notably, building heights in the District are capped at 130 feet, meaning the density bonus is more valuable than the height increase in most cases.

Though the menu is detailed, the approval process is less structured or strict than Montgomery County as D.C. requires fewer benefits and benefits from fewer categories. According to the city, “a project may qualify for approval by being particularly strong in only one (1) or a few of the categories in this section but must be acceptable in all proffered categories and superior in many.”

Project Example

Gateway Market Center (The Edison at Union Market)



Development Summary	
Lot size	0.88 acres
Floor Area Ratio	5.0 F.A.R. (PUD approved for up to 8.0 FAR)
Building height	79 ft (PUD approved for up to 130 ft)
Multifamily units	188 units
Gross floor area	189,036 sf (Reduced from original PUD approval)
Retail square footage	27,410 sf (Reduced from original PUD approval)

The Gateway Market Center, known also as The Edison at Union Market, was one of the first of several new mixed-use housing projects near NoMa-Gallaudet University Metro Station in Northeast DC. Originally approved in 2006, the project was amended and reapproved in 2013 and opened in 2017. Through the PUD process, the project increased its by-right density and height from 6.5 FAR and 90 feet, respectively, to 8.0 FR and 130 feet. The project was ultimately built to a lower density of 5.0 FAR and a height of 79 feet, which is below the by-right density on the site, likely to respond to market conditions dictating a lower building with Type 3 A wood construction and a reduction in the commercial uses proposed.

However, the applicant still pursued the PUD process as it can provide additional regulatory flexibility for development standards. The project provided public benefits from eight categories in the PUD public benefit menu. It is notable that some of the public benefits in this project, such as EV charging spaces, are not an option within the current incentive zone public benefits menu in Montgomery County, while others like “building a mixed-use building”, would not be considered a “public benefit” at all.

Below is a list of PUD public benefits provided in The Edison:

- Affordable housing
 - 20% affordable units, similar size and type to the market-rate units, and evenly dispersed throughout the building. For people at or below 80% Area Median Income (AMI)
- Exemplary urban design and architecture
 - Developed according to agreed and dated architectural plans
 - Mixed-use residential and retail project
 - Max building height of 80 ft
 - 215 parking spaces in below-grade garage, and loading bays
- Neighborhood serving amenities
 - Retail
 - Community meeting space
 - An ANC office
 - A Metropolitan Police Department work station
- Site planning and efficient land utilization
 - Replacing a vacant surface lot next to a Metro station.
- Sustainability
 - LEED certified, or equivalent, building
 - Cool roof
- Streetscape improvements
- Transportation
 - One car sharing parking space and subsidy for residents
 - Real-time transportation messaging board in the lobby
 - EV charging stations
 - 72 bike parking spaces
 - Traffic network improvements
 - Proper loading procedures, in coordination with DDOT
- Employment opportunities

- Aiming for 51 percent of new related jobs to be allocated for DC residents
- And 35 percent of construction be connected to small local businesses

Key Takeaways

The PUD process is most like Montgomery County's optional method with its menu of public benefits. However, the public benefits are not as strictly defined, and the menu does not exist in a comprehensive document like Montgomery County's Implementation Guidelines. These relatively loose definitions and lack of rubric create a more flexible system that can adapt to specific project needs and constraints. However, whereas all public benefits in Montgomery County are intended to be 'above and beyond' what an applicant would otherwise provide, the development itself is considered a public benefit in D.C.

Fairfax County, VA

Development Review Process

Fairfax County has similar development review tracks to other Virginia jurisdictions reviewed in this report:

- The Board of Zoning Appeals hears cases related to zoning variance and special permits. These are typically small in scale and do not include the delivery of public benefits.
- The planning commission makes recommendations on rezonings, Comprehensive Plan updates, and Zoning Ordinance amendments, among other things to the Board of Supervisors, an elected body that approves or denies the development applications. Most large-scale developments undergo a proffer review process where the applicants provide public benefits in exchange for the ability to build to higher densities than the by-right thresholds.

Types of Public benefits

There are three formal programs in the county that offer greater density or financial/regulatory incentives in exchange for public benefits:

- An Affordable Dwelling Unit (ADU) incentive that grants a 20 percent density bonus in exchange for providing 12.5 percent ADUs, or 10 percent bonus density for 6.25 percent ADUs. The policy defines ADUs as being rental or for-sale units at or below 70 percent of Area Median Income (AMI) and with a 30-year affordability period.
- A Workforce Dwelling Unit (WDU) program for units that are between 80% and 120% AMI (and as low as 60% AMI in the Tysons district) with a 30-year for-sale affordability period and a 50-year affordability period for rentals. Developments that have 12 to 20 percent WDU units can receive up to 20 percent density bonus.
- An "Economic Incentive Program" which gives applicants a ten percent reduction in site plan fees and abatement of real estate taxes on the difference between pre- and post-development value of a project, in exchange for building commercial, industrial, or residential in certain prescribed revitalization zones.

Evaluation of Public Benefit Proposals

Fairfax County uses a proffer system to request and negotiate for specific features as a part of development applications. The county's Comprehensive Plan contains a Policy Plan with several development policy priorities outlined, including housing, transportation, the environment, and public facilities, among others. District Plans—focusing on set areas within the county—outline specific recommendations for improvements in certain neighborhoods, streets, and parcels; these are based on the goals in the Policy Plan.

A development project will typically align its proffers as closely as possible to what is recommended in the applicable District Plan. Proffers range from onsite project-related features to adjacent or off-site infrastructure and road improvements. Monetary contributions in lieu of on-site features are acceptable, although on-site public benefits are preferred. District supervisors can also guide the choice of proffers as they oversee the development review process.

Proffers are the primary mechanism through which Fairfax County receives public benefits with new development. Under the Dillon Rule, Fairfax County may not request specific proffers, and therefore uses master planning to guide the choice of proffers in a project, which also helps ensure the proffers are tailored to the needs of the local community. Negotiations with planning staff are conducted on a project-by-project basis.

Project Examples

South Alex



Development Summary	
Lot size	10.45 acres
Floor Area Ratio	1.34 F.A.R.
Building height	65 ft
Multifamily units	400 units
Townhouses	41 units
Gross floor area	610,581
Retail square footage total	45,000 sf
(Grocery store anchor)	(20,000 sf)

This development project is located along Richmond Highway in Fairfax County within the Richmond Highway Commercial Revitalization District (CRD). It is a mixed-use project with a five-story multifamily building, townhouses, and 43,000 square feet of retail including a 20,000 square foot grocery store anchor. Since the project is in the revitalization district, it utilized the Economic Incentive Program, obtaining a ten percent reduction in fees. Notably, this is not a TOD project, and the public benefit is primarily the existence of the project in the revitalization district.

West Falls Church Station Redevelopment



Development Summary	
Lot size	24 acres
Floor Area Ratio	0.96 F.A.R.
Building height	120 ft
Multifamily units	810 units
Townhouses	85 units
Gross floor area	1,001,105 sf
Office square footage	110,000 sf
Retail square footage	10,000 sf

A large but relatively low-density TOD project, the West Falls Church Station redevelopment is redeveloping a large WMATA-owned surface parking adjacent to the West Falls Church Metro Station into apartments, office space, retail, and townhouses. Additionally, ten percent of apartments and 15 percent of the townhouses will be affordable dwelling units, and the project will also feature some workforce dwelling units.

The project is also providing public benefits beyond the affordable and workforce housing components, including electric vehicle charging infrastructure, bird-friendly design, and invasive species management. The applicant also agreed to plan and control construction disturbance. The full list of proffers in the project are listed below and are representative of the typical proffers approved in the county. Some of the proffers the County accepts are more general than Montgomery County's menu, such as

development phasing and community coordination, while others can be site-specific improvements that are above and beyond what the applicant may choose to provide without a proffer.

The list of proffers in the West Falls Church Station Redevelopment project are below:

- General
 - Substantial Conformance
 - Proffered Elements
 - Minor Modifications
 - Existing Development
 - Proposed development
 - Special exception/special permit uses
 - Square footage transfer
 - Development phasing
 - Development plans
 - Interim conditions
 - Declarations/owners associations
 - Community coordination
 - Construction activity plan
 - Fairfax County Public Schools contribution
- Design/program
 - Maximum and minimum building heights
 - Building architecture design
 - Multifamily activated streetscape uses
 - Live/work units
 - Recreation facilities
 - Park contribution
 - Public parks and open spaces
 - Placemaking
 - Farmers' Markets, Food Trucks, Festivals, Fairs, Kiosks, or Similar Activities
 - Signage
 - Wayfinding signage
- Infrastructure
 - Rooftop telecommunications equipment
- Streetscape
 - Streetscape elements
 - Streetscape furnishings and materials
- Art
 - Public art
- Transportation
 - Parking structure design
 - Loading and parking garage entrance locations
 - WMATA garage upgrades
 - Transportation improvements and phasing
 - Streets: new public streets, internal streets, four-way stop control

- Parking: parking ratios, phasing, on-street, loading, garage uses
- Pedestrian circulation: including during construction
- Bicycle infrastructure: circulation, parking, bikeshare
- Signal timing updates
- Various specific street improvements at and near the site
- Bus shelters
- Transportation Demand management (TDM)
- Sustainability
 - Green building certification for residential buildings
 - Green building certification for new non-residential buildings
 - Electric Vehicle Charging Infrastructure
 - Stormwater management
 - Landscape plan
 - Invasive plant species management
 - Tree preservation
 - Soil remediation
 - Noise mitigation
 - Bird-friendly design elements
- Affordable housing
 - Affordable dwelling units (ADUs)

Key Takeaways

Fairfax County relies on a voluntary proffer system, meaning public benefits are not required. Instead, Fairfax County uses its master plans to indicate the kinds of proffers that would be suitable for a project, and this serves as a starting point for negotiations. Although delivery of public benefits in a proffer system can be inconsistent, the public benefits themselves are generally tied to needs identified in a master plan, which are usually site-specific and in line with the community's preferences.

Conclusion

This analysis reveals that approval of high-density development in each of these jurisdictions does typically involve an exchange for public benefits. However, the range of public benefits, the rubric for negotiating or reviewing public benefits, and even the definition of public benefits, is different in each jurisdiction. It is therefore difficult to draw conclusions regarding the success of development review policies in peer jurisdictions in comparison to Montgomery County. Despite the challenges of a conducting a one-to-one comparison, this research did highlight key elements of Montgomery County's current policy that are noticeably different than practices followed by its regional peers.

Montgomery County is unique in the comprehensiveness of its public benefit menu. Montgomery County has by far the largest number of discrete public benefits (36) projects can include, albeit across seven categories. The menu is codified in the zoning ordinance. Therefore, while the wide range of public benefits offers flexibility, complying with the standards and definitions of the public benefits can be limiting. By contrast, Arlington and Fairfax Counties, the City of Alexandria, and Washington, D.C., have few standardized public benefits to include in a project, thereby providing flexibility in the package

of public benefits a project includes. However, this approach can lead to inconsistent packages of public benefits from project to project. It also creates difficulty in analyzing the success of the policy in terms of delivering public benefits and achieving policy goals.

One of the key differences between Montgomery County and the other jurisdiction reviewed in this report is the timing and need for rezoning. In Montgomery County, the standard method of development at 0.5 or 1.0 FAR can be too low for a feasible development, but technically development may proceed. On large sites, standard method, by-right density may be sufficient for an applicant to develop a project. This is not the case in peer jurisdictions, where, in most cases, the underlying zoning cannot support any meaningful redevelopment, incentivizing applicants to negotiate for the right to develop to higher densities. Even in Alexandria, where some sites can have by-right density of over 4.0 FAR and already zoned for mixed-use development, given its small and highly urban context, those densities are significantly lower than market potential. Unlike Alexandria and Arlington, market and development contexts vary significantly in Montgomery County, and higher densities are not valuable everywhere.

Since Alexandria and the other peer jurisdictions typically require a rezoning or significantly increased density, the negotiation is tied to the amount of density an applicant is requesting. Montgomery County incentive zones, however, require the same number of public benefits on a site regardless of the size of the proposed development. For example, a CR-zoned site would require the same public benefits whether the maximum FAR is 2.0 or 8.0. Peer jurisdictions do not necessarily tie the negotiation directly to the proposed density, but the flexibility in negotiations likely helps optimize the public benefit package. It is not clear whether Montgomery County's public benefit requirements are too onerous or too generous from an exchange perspective, especially since optimizing public benefits relative to the intensity of development within a given zone is not a feature of the current process.

Benchmarking jurisdiction in the region against one another in terms of successful receiving significant public benefits is challenging, particularly given the lack of data. However, Alexandria and Arlington allow for higher densities than Montgomery County incentive zones, likely reflecting their small, urbanized nature and correspondingly stronger market for high-density development. To the extent the developments in those jurisdictions are large and valuable, the jurisdiction has leverage over granting the bonus density, which these jurisdictions analyze in financial terms. It is unclear what balance exists between the financial analysis and the package of public benefits as the details of the negotiations are not typically public.

Fairfax County is most like Montgomery County in terms of wide-ranging market contexts. Fairfax County does not have standardized public benefit requirements and in certain places, simply incentivizes redevelopment, requiring no public benefits for approval. Regardless of the success of delivering public benefits, this nuanced approach to high density development based on location is an interesting contrast to Montgomery County. Similarly, Washington, D.C., has a wide range of public benefits, but provides a greater flexibility in how many public benefits are included in a project, meaning there is no one set of requirements for all development through the city.

Finally, the Virginia jurisdictions all rely on master plans and development district plans to help guide the choice of public benefits. While Montgomery County may not consider all public benefits approved in Virginia master plans as “true public benefits”, the master plans and development district plans are indeed a tool to codify the specific needs of an area, which can be amenities, streetscape improvement, and infrastructure projects. This establishes a connection between the community’s aspirations and the development process. Recent sector plans in Montgomery County have taken a more proactive role in prioritizing specific public benefits based on input received through the master planning process but the mechanism to actually deliver these sought-after benefits through development review could be further strengthened.

Appendix

Exhibit A – List of Public Benefits in Washington, D.C.

Washington, D.C. menu of public benefits for the Planned Development Units:

- Design/program
 - Superior urban design and architecture;
 - Site planning and efficient and economical land utilization;
- Public Open Space
 - Superior landscaping, or creation or preservation of open spaces;
- Public Art
 - Commemorative works or public art;
- Historic Preservation
 - Historic preservation of private or public structures, places, or parks;
- Housing that:
 - Exceeds the amount that would have been required through matter-of-right development under existing zoning;
 - Includes senior housing; or
 - Provides units with three or more bedrooms (unit mix);
- Affordable housing; except that:
 - Affordable housing provided in compliance with the Inclusionary Zoning requirements of Subtitle C, Chapter 10, shall not be considered a public benefit except **to the extent it exceeds what would have been required through matter-of-right development** under existing zoning. In determining whether this standard has been met, the Zoning Commission shall balance any net gain in gross floor area against any loss of gross floor area that would have been set-aside for Inclusionary Units in compliance with the Inclusionary Zoning requirements of Subtitle C, Chapter 10; and
 - A PUD application proposing Inclusionary Units with deeper affordability than what would be required by IZ for the existing zone, or for the proposed zone if a map amendment is sought, shall propose only a household income level published in the Rent and Price Schedule established by the IZ Act that is in effect as of the date the PUD application was filed;
- Employment and training opportunities;
- Public facilities
 - Social services and facilities for the duration of the PUD, including, but not limited to, space dedicated for a **day care or elderly care facility**. The day care must be available to the general public and open during normal business hours at least five (5) days each week and fifty (50) weeks each calendar year. The space for each child shall be based on the requirement outlined in the Child Development Facilities Regulations;
 - Building space for special uses including, but not limited to, community **educational or social development**, promotion of the **arts** or similar programs and not otherwise required by the

zone district, a **grocery store** larger than fifteen thousand square feet (15,000 sq. ft.) in areas where a grocery store does not exist within a three mile (3 mi.) radius, or incubation space for small or **local businesses**;

- Outdoor **children's play area**: a public, active, outdoor children's play area that shall be secure, separated from parking and maneuvering areas, and designed to facilitate adult supervision. The play area shall include play equipment, installed to the manufacturer's specifications, or natural features suitable for children in both preschool and elementary school. The play area shall be a minimum of five hundred square feet (500 sq. ft.);
- Sustainability
 - Environmental and sustainable benefits to the extent they exceed the standards required by zoning or other regulations including, but not limited to:
 - Storm water runoff controls in excess of those required by Stormwater Management Regulations;
 - Use of natural design techniques that store, infiltrate, evaporate, treat, and detain runoff in close proximity to where the runoff is generated;
 - Garden(s) or on-site food production through permanent and viable growing space and/or facilities such as a greenhouse or a garden conservatory which provide fencing, watering systems, soil, secured storage space for tools, solar access, and pedestrian access as applicable. The facility shall be designed to be architecturally compatible with the development and to minimize the visibility of mechanical equipment;
 - Total green area ratio scores that exceed requirements by at least one-tenth (0.1); and
 - Meeting the minimum standards for Leadership in Energy and Environmental Design (LEED) Gold certification. The project does not have to achieve actual LEED certification; however, the developer must include the LEED checklist and documentation in the application, approved by a LEED Accredited Professional (LEED-AP) that shows that the project will comply with LEED requirements;
- Park maintenance or participation in the Department of Park and Recreation (DPR) "Adopt-a-Park Program" for the life of the development;
- Streetscape
 - Streetscape plans, subject to approval by the Department of Transportation Public Space Committee including implementation and maintenance of the streetscape for the duration of the project for areas where there is no design standards;
- Transportation
 - Transportation infrastructure beyond that needed to mitigate any potential adverse impacts of the application including, but not limited to, dedication and/or construction of a public street or alley; maintenance of a street median; or provision of a public easement for a pedestrian walkway that would not otherwise be required;
 - Mass transit improvements, including, but not limited to, location and funding of a shared bike station; accommodation, and/or construction of a Metro station entrance; or donation of space for a transit store or other similar space to provide services such as the sale of transit cards, Metro passes, bus and train schedules, and information on bike and car sharing programs, etc.;

- Uses of special value to the neighborhood or the District of Columbia as a whole; and
- Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.