

**THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN**

ORDINANCE NO: G-07-21

AN ORDINANCE concerning the development and management of land and structures within The City of Frederick

FOR THE PURPOSE of amending the Land Management Code (Appendix A of the Frederick City Code, 1966, as amended) to clarify and correct various provisions

**BY AMENDING Section 742, entitled “Water and Sewer Allocation”;
and**

BY AMENDING Section 1002, entitled “Definitions.”

WHEREAS, the Mayor and Board of Aldermen adopted on July 12, 2005 the Land Management Code, which implements many of the policies and strategies of the Comprehensive Plan; and

WHEREAS, the Planning Department identified the need to address deficiencies in the Land Management Code water allocation process for special allocations, the establishment of maximum day demand, the establishment of available allocation capacity, and the determination of maximum potential allocation for commercial and industrial properties; and

WHEREAS, the Planning Commission reviewed the proposed amendments to the Land Management Code; received public testimony at public hearings on August 13 and September 10, 2007; revised the draft Code based on public comment; and approved a resolution on September 10, 2007 recommending the amendments; and

WHEREAS, the Board of Aldermen received the recommendation of the City of Frederick Planning Commission and heard public testimony on the proposed amendments to the Land Management Code in public workshop on October 3, 2007, and held a public hearing on October 18, 2007.

SECTION 1. NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FREDERICK THAT in the Code of the City of Frederick, 1966, as amended, Appendix A, entitled “The Land Management Code”, Article 7, Section 742, entitled “Water and Sewer Allocation,” more particularly subsection (a), entitled “Applicability,” is hereby amended as follows:

(a) *Applicability*

- (1) This Section governs the allocation of water and sewer capacity to all development projects requesting water ~~[and/]~~or sewer from the City.
- (2) This Section applies to all development projects within the jurisdictional boundaries of the City and to any development project outside of the jurisdictional boundaries of the City to which water ~~[and/]~~or sewer has been legally provided pursuant to the City Code.

SECTION 2. BE IT FURTHER ENACTED AND ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN THAT in the Code of the City of Frederick, 1966, as amended, Appendix A, entitled "The Land Management Code", Article 7, Section 742, entitled "Water and Sewer Allocation," more particularly subsection (c), entitled "Exemptions," is hereby amended as follows:

(c) *Exemptions and Special Allocations*

- (1) Exemptions. ~~[The following classes of development projects are exempt from this Section and will not require allocation contracts unless otherwise stated:]~~
 - A. A development project that does not require any water or sewer use is exempt from this section and does not require an allocation contract.
 - B. Projects for which exemptions are granted shall not be, by reason of such exemption, deemed to have any right to receive any other form of development approval, including but not limited to a building permit or grading permit. Such projects shall be subject to the usual and customary development review and permitting process within the City.
 - ~~[A. Any project to be undertaken by the City or any of its agencies required for the health, safety and welfare of the citizens of the City, as a valid exercise of police powers;~~
 - ~~B. Decks, sheds, fences, porches and patios that do not require any water usage;~~
 - ~~C. Replacement in kind and repairs that do not require any additional water usage;~~
 - ~~D. Improvements to existing sites and/or structures that do not require any additional water usage;~~

~~E. Other projects requiring no new water, as determined by the Committee;]~~

(2) Special Allocations.

~~A[F].~~ A project that will expand [~~Expansion~~] or change [~~of~~] the use of an existing, lawfully occupied commercial and industrial buildings [~~provided~~] and that [~~said expansion or change of use~~] will result in an increase in water consumption of no more than ten percent (10%) over the established current water consumption, as determined by the Committee, may receive an allocation from the exemptions subcategory of the discretionary allocation. The amount of water and sewer granted to the applicant shall not exceed an increase of 10% over the established current water consumption. The actual water and sewer allocated to the requested use shall be the least necessary to provide adequate water and sewer for the proposed activity.

~~B[G].~~ Projects of an emergency nature, required by exigent circumstances and/or gross hardship, may receive an allocation from the exemptions subcategory of the discretionary allocation, upon the following findings by the Committee:

1. that the emergency was not created by the applicant; and
2. that exigent circumstances and/or gross hardship justifies granting the exemption; and
3. that granting the exemption would not be contrary to the purposes and intent of this Section; and
4. that granting the exemption would not be contrary to any federal, state or local laws or regulations.

~~[(2)](3)[Any allocation made pursuant to subsections (c)(1)F or G above shall be deducted from the exemption subcategory of the discretionary category.]~~ Applicants receiving a [~~Water Allocation~~] special allocation under this subsection [~~exemption~~] shall be required to sign an allocation contract. Special allocations [~~Exemption~~] will be granted only if sufficient water and sewer is available to be allocated from the exemptions subcategory of the discretionary category. If there is no water [~~and~~] or sewer available to be allocated, [~~exemptions~~] special allocations will not be processed.

~~[(3)]~~ Projects for which exemptions are granted shall not be, by reason of such exemption, deemed to have any right to receive any other form of development approval, including but not limited to a building permit or

~~grading permit. Such projects shall be subject to the usual and customary development review and permitting process within the City.]~~

- (4) Water and sewer contracts required under this subsection must be applied for within ten (10) days of the allocation by the Committee.

SECTION 3. BE IT FURTHER ENACTED AND ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN THAT in the Code of the City of Frederick, 1966, as amended, Appendix A, entitled "The Land Management Code", Article 7, Section 742, entitled "Water and Sewer Allocation," more particularly subsection (e), entitled "Water and Sewer Allocation," is hereby amended as follows:

(e) *Water and Sewer Allocation*

- (1) The City will determine the total amount of available water for allocation purposes as follows:
 - A. A Maximum Daily Demand Peaking Factor of 1.35 or greater shall be used until the Potomac River water supply has officially been determined available by the Director of Public Works or the director's designee [City Engineer].
 - B. A Maximum Daily Demand Peaking Factor of 1.6 [~~1.4~~] or greater shall be used to determine available water for allocation purposes, once the Potomac River water supply is available, as determined by the Director of Public Works or the director's designee [City Engineer].
 - C. Each December, the Director of Public Works or the director's designee shall report to the Mayor and Board of Aldermen the water and sewer capacity available for allocation.
- (2) The City will award allocations in accordance with the following:
 - A. Residential projects will be allocated 45% of existing Average Daily Demand; and
 - B. Commercial & Industrial projects will be allocated 30% of existing Average Daily Demand; and
 - C. The Discretionary Category will be 25% of existing Average Daily Demand.
- (3) Every allocation granted under this Section shall be subtracted from the available water supply for the appropriate category. Upon the expiration or revocation of any allocation contract, the water and sewer demand

committed with that development project shall be added to the category from which it originated.

- (4) Mixed-use projects will receive portions of their allocation from two or more categories, as further described in subsection (h) below.

SECTION 4. BE IT FURTHER ENACTED AND ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN THAT in the Code of the City of Frederick, 1966, as amended, Appendix A, entitled "The Land Management Code", Article 7, Section 742, entitled "Water and Sewer Allocation," more particularly subsection (g), entitled "Commercial and Industrial Allocation Guidelines," is hereby amended as follows:

(g) Commercial and Industrial Allocation Guidelines

~~[(1) Allocation for preliminary subdivision review of land located within integrated development projects shall be calculated based upon the overall net acreage of the total project, and shall establish a maximum potential water allocation for the entire integrated development project, which cannot be exceeded by cumulative final water allocations to occur at the Site Plan review stage.]~~

- (1[2]) A "maximum potential allocation" shall be established, based on the net acreage, at the preliminary plat stage for all properties under common ownership, whether previously recorded or not prior to the adoption of this Section, based upon the following:

- A. Except as otherwise provided in subsection B, the maximum potential allocation shall be calculated as follows:

Table 742-1 Maximum Potential Allocation

<u>Net Acreage</u>	<u>Maximum Potential Allocation</u>
<u>0 – 2 acres</u>	<u>Based on Flow Factor of proposed use</u>
<u>2.01 – 5.00 acres</u>	<u>1,800 GPD per acre</u>
<u>5.01 – 20.00 acres</u>	<u>1,800 GPD per acre for 1st 5 acres, plus</u> <u>1,350 GPD per acre for land area over 5</u> <u>acres</u>
<u>More than 20 acres of land</u>	<u>1,800 GPD per acre for 1st 5 acres, plus</u> <u>1,350 GPD per acre for 2nd 15 acres,</u> <u>plus</u> <u>900 GPD for land area over 20 acres</u>

- B. After a development project has received final site plan approval, the Committee may approve a maximum potential allocation exceeding the maximum potential allocation specified in

subsection (g)(1)(A) if the applicant demonstrates, and the Committee finds, that:

1. Due to the unusually water-intensive nature of the proposed use, the use cannot feasibly be conducted under the maximum potential allocation provided in subsection (g)(1)(A); and
2. The applicant has made its best efforts to reduce the proposed water and sewer consumption for the property.
3. The increased maximum potential allocation awarded by the Committee will be the minimum reasonably necessary to allow the proposed use to operate.
4. Award of an increased maximum potential allocation by the Committee may not be construed to relieve the developer of any other obligations, or to limit the authority of the City to exercise its authority, under this Sec. 742 or the administrative regulations adopted hereunder, including but not limited to the City's right to recapture any unused allocation.

~~[A. 4.99 acres or less of land = 1,800 GPD per acre; and~~

~~B. between 5 and 19.99 acres of land = 1,350 GPD; and~~

~~C. 20 acres or more of land = 900 GPD per acre]~~

- (2) Allocation to lots within an integrated development projects will be calculated based upon the overall net acreage of the total project. The maximum potential water allocation for the entire integrated development project cannot be exceeded by cumulative final water allocations that occur after the Site Plan approval stage.
- (3) If recordation of final plats of an integrated development project takes place prior to submission of a Site Plan, the assignment of a portion of maximum potential allocation shall take place at recordation of the lots.
- (4) Unless limited by a restricted allocation at final recordation of the plat as further described in subsection (k) below, a “final allocation” shall be established, based on the net acreage, at the Site Plan review stage based upon the allocation rates set forth in subsection (1[2]) above.
- (5) Allocation to lots ~~[of Site Plans]~~ located within an integrated development project shall be based on the allocation rates set forth in subsection (1[2])

above; provided the cumulative final allocations does not exceed the maximum potential allocation determined for the integrated development project, and that no individual recorded lot is left with less than the minimum allocation to allow development to occur. No lot shall be left with no allocation, unless declared “unbuildable” with appropriate deed restrictions recorded or dedicated to the City or property owners association with the intent of never receiving an allocation.

- (6) Eligibility for allocation and priorities for recorded lots or development projects shall be determined by the Committee based upon the following:

Table 742-2[1] Water and Sewer Allocation Prioritization Tiers

Prioritization Tier	Project Status	Next Stage of Review Process
1	Existing buildings, including shell structures, vacant or partially vacant buildings with insufficient plumbing/water for the use(s) within the building(s), provided the total water demand does not exceed the Final Allocation as defined in Subsection E above	Apply and Receive Building Permit for Installation of Plumbing Fixtures/Water
2	Site Plan (with existing recorded lot) approval, with all conditions met, and off-site public improvements bonded, under construction or completed and engineering improvement plans approved/signed by City Engineer.	Apply for Building Permit
3	Site Plan, with all conditions met, and Final Plat, consistent with the Site Plan and with all conditions met, with off-site public improvements bonded, under construction, or completed and engineering improvement plans approved/signed by City Engineer.	Record final plat
4	Site Plan, with all conditions met, and Final Plat, consistent with the Site Plan and with all conditions met, without approved improvement plans (on-site or off-site)	Receive engineering approval of improvement plans
5	Proposed projects that do not have Site Plan, with all conditions met. These projects are not eligible for a water allocation.	Must obtain Site Plan approval with all conditions met before becoming eligible for allocation

- (7) The Committee shall exhaust each tier set forth above prior to allocating water to the next tier.

- (8) Project placement in a specific prioritization tier will be made by the Planning Department each year based on the creation of an annual Master List. In the event that allocation is insufficient for all projects within a prioritization tier, allocations shall be equally distributed based on the overall number of projects within that prioritization tier.
- (9) Commercial and industrial infill development projects are eligible for water and sewer allocation from the commercial and industrial category established in subsection (g). If allocation is not available from the commercial and industrial category, the Committee may allocate water and sewer from the discretionary category.
- (10) Allocations for individual lots within an integrated development project under common ownership or control may be transferred among the individual recorded lots in an integrated development project, provided that no individual recorded lot is left with less than the minimum allocation to allow development to occur (no lot shall be left with no allocation), and provided the cumulative final allocations does not exceed the maximum potential allocation determined for the integrated development project. A note indicating it is an integrated development project and individual allocation for each lot shall be placed on the preliminary plat and recorded plats.
- (11) Projects classified as integrated development projects and/or mixed use development projects, which have property in more than one prioritization tier, may transfer water and sewer allocated to property in one tier to property classified in another tier, in accordance with the provisions of subsections (f) and (g), provided that any project that transfers water and sewer from a more preferred tier to a less preferred tier loses its priority, to the extent of the transfer, over projects that subsequently move up into the more preferred tier. Transferred Site Plans shall be voided and shall require all necessary re-approvals.
- (12) Seven and a half percent (7-1/2 %) or no more than 30,000 GPD of the allocable commercial and industrial category will be reserved for single buildings using less than 1800 GPD. Projects shall be considered on a first-come-first-serve basis, based on when the Site Plan had all its conditions met. Tier 1 projects are not eligible to receive an allocation from this set aside.

SECTION 5. BE IT FURTHER ENACTED AND ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN THAT in the Code of the City of Frederick, 1966, as amended, Appendix A, entitled "The Land Management Code", Article 7, Section 742, entitled "Water and Sewer Allocation," more particularly subsection (i), entitled "Discretionary Allocation Guidelines," more particularly sub-subsection (1), more particularly Table 742-2, entitled "Water and Sewer Allocations for Discretionary

Development,” is hereby amended as follows:

Table 742-3 [2] Water and Sewer Allocations for Discretionary Development

Category	Percent of Discretionary Allocation
Claims of Entitlement	25%
Business Retention and Development	15%
Government projects	15%
Exemptions	15%
Institutional Development projects	15%
Infill Development projects if allocations are not available under residential or commercial and industrial categories	15%

Section 6. BE IT FURTHER ENACTED AND ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN THAT in the Code of the City of Frederick, 1966, as amended, Appendix A, entitled “The Land Management Code”, Article 10, Section 1002, entitled “Definitions,” is hereby amended to add the following terms in alphabetic order:

Average Day Demand

A mathematical expression that takes the total volume of water used during a year divided by 365 days, usually expressed in terms of million gallons per day (MGD) or gallons per minute.

Maximum Day Demand

The measure of the highest daily water use rate during the year. This is the one-day within a given year that the maximum amount of water is produced to meet the water demands of the customers.

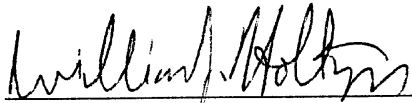
Maximum Day Demand Peaking Factor

A mathematical expression dividing the maximum day demand by the average day demand. Peaking factors are multipliers that are applied to the average day demand to approximate other peak water demands. The maximum day demand peaking factor is used as a measuring stick to calculate the maximum water supply capacity of a system and for designing for water supply needs.

Section 7. BE IT FURTHER ENACTED AND ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN THAT in the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence clause or part of this Ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

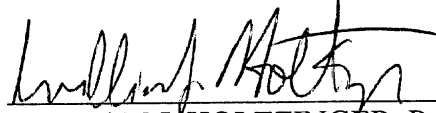
Section 8. BE IT FURTHER ENACTED AND ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN THAT this Ordinance shall take effect on October 29, 2007, and all other ordinances or parts of ordinances inconsistent with the provisions of this Ordinance will as of that date be repealed to the extent of such inconsistency.

APPROVED: October 18, 2007



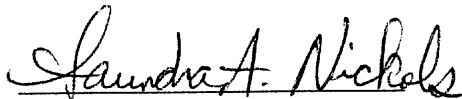
WILLIAM J. HOLTZINGER, Mayor

PASSED: October 18, 2007



WILLIAM J. HOLTZINGER, President,
Board of Aldermen

Approved for Legal Sufficiency:



Legal Department