

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

ORDINANCE NO: G-11-11

AN ORDINANCE concerning

Water and Sewer Allocation

FOR the purpose of redefining allocation categories; requiring allocations at the time of building permit application; revising the allocation process; eliminating the need for allocation contracts; clarifying language; and otherwise pertaining to the allocation of water and sewer capacity.

BY repealing

Article IX

Chapter 25

The Code of the City of Frederick, 1966 (as amended)

BY adding

Article IX

Chapter 25

The Code of the City of Frederick, 1966 (as amended)

SECTION I. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that Chapter 25, Article IX of The Code of the City of Frederick, 1966 (as amended) is hereby repealed and a new Chapter 25, Article IX is enacted to read as follows:

**CHAPTER 25
WATER**

ARTICLE IX. WATER AND SEWER ALLOCATION.

§ 25-76. Purpose.

The purposes of this article are to provide adequate water and sewer capacity for the City's land uses; ensure compliance with applicable State regulations; facilitate orderly growth; further the implementation of the comprehensive plan; and encourage economic development.

§ 25-77. Scope.

- (a) **Applicability.** This article governs the allocation of water and sewer capacity to any development project within the City and to any development project outside the City to which water or sewer is provided in accordance with the City Code and any other applicable regulation.
- (b) **Exemptions.** A development project is exempt from the requirements of this article if it is determined by the City Engineer that the project requires no water or sewer capacity.

- (c) **Effect on Other Laws.** All development projects, whether or not deemed exempt from the requirements of this article, remain subject to all other applicable laws and regulations, including those relating to the development review and permitting requirements for development projects within the City.

§ 25-78. Definitions. Unless the context clearly indicates otherwise, for the purposes of this article the following terms have the meanings given.

“Affordable housing” means a housing project for low to moderate income City residents in which the rent or mortgage does not exceed 30% of the gross household income. A low to moderate income household earns 50% or less of the area median household income.

“Allocation” means water and sewer capacity available for a development project in a specific amount from a specific category.

“Allocation contract” means a water and sewer allocation contract fully executed before May 23, 2011.

“Available water and sewer capacity” means the quantity of water and sewer capacity determined by the City Engineer to be available to serve new development projects in accordance with this article.

“Average day demand” means a mathematical expression that takes the total volume of water used or proposed to be used during a year divided by 365 days, usually expressed in terms of million gallons per day (MGD) or gallons per day (gpd).

“Building permit” means a permit issued by the City's Building Department as required by § 5-14(a)(1) of this Code. “Building permit” also includes a zoning permit issued in accordance with § 302 of the Land Management Code (Appendix A of this Code).

“Capacity” means an amount of water or sewer flow per time which may be provided by a given infrastructure system, including source, piping, pumping, storage and treatment, and which may be permitted by applicable regulations.

“City Engineer” means the City Engineer or the City Engineer's designee.

“Claim of entitlement” means a claim of right to a water and sewer allocation based upon some legally binding agreement or contract with the City formally recognized by the Mayor and Board of Aldermen before December 1, 2002.

“Committee” means the City's Water and Sewer Service Committee.

“Development project” or **“Project”** means the grading or construction activities occurring on a specific tract, parcel or lot, including redevelopment. The activities include any man-made change to improved or unimproved real estate, changes to or construction of buildings and other structures, dredging, fill, grading, paving, clearing, excavation, dumping, extraction, or storage of equipment or materials. Development includes subdivision of land and substantial improvements.

“Gallons per day (gpd)” means gallons of water used or sewerage discharged per day; a measure of water and sewer flow.

“Impact fees” means water and sewer impact fees imposed in accordance with § 11-1 of the City Code.

“Includes” or “including” means includes or including by way of illustration and not of limitation, unless the context clearly requires otherwise.

“Lot of record” means any lot legally recorded in the Land Records of Frederick County before August 15, 2005. A lot of record must have satisfied all zoning and subdivision regulation requirements in effect at the time the lot was recorded.

“Master list” means the inventory of development projects categorized according to type and eligibility for water and sewer allocation as assembled, managed and updated by the City Engineer.

“Maximum day demand” means the measure of the highest daily water use rate during the calendar year.

“Maximum day demand peaking factor” means 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 to calculate the maximum water supply capacity of a system.

“Mixed-use project” means a development project that contains a combination of both residential and non-residential uses in accordance with the applicable provisions of the Land Management Code (Appendix A of this Code).

“Owner/developer” means the legal owner of a property on which a development project is proposed; or any person, firm, or governmental agency proposing a development project on a property and having primary financial responsibility for the proposed project.

§ 25-79. Water and Sewer Service Committee.

- (a) **Establishment.** A Water and Sewer Service Committee is hereby established to carry out the responsibilities set forth in this article. The Committee is comprised of the City Engineer, the Deputy Director for Planning, and the Building Department Manager. The members may select their own chairperson.
- (b) **Meetings.** The Committee shall hold meetings as necessary to discharge its duties. A quorum of the Committee consists of two members. No action may be taken in the absence of a quorum. Every meeting of the Committee will be open to the public in accordance with the Maryland Open Meetings Act, unless allowed by the Open Meetings Act to be closed. The Committee shall keep a record of its proceedings and actions, which will be kept on file for public view in the Engineering Department. The Committee may adopt rules of procedure to assist it in the transaction of its business.
- (c) **Administrative Regulations.** The Committee shall adopt rules and regulations to implement the provisions of this article. Before adopting any proposed rule or regulation, the Committee will hold a hearing at which any member of the public may appear and be heard. At least seven days before a hearing, the Committee will publish the proposed rule or regulation on the City's website. At the conclusion of the public hearing, the Committee may adopt the proposed rule or regulation with or without modification.

§ 25-80. Capacity and Tracking.

- (a) **Determination of Available Capacity.** The City Engineer will determine the total amounts of water capacity and sewer capacity deemed available for allocation purposes, taking into account the existing (approved or constructed) development projects in the City.
 - (1) **Water.** The safe yield of all water sources will be considered in determining the total available water supply to satisfy maximum day demand, using a maximum day demand peaking factor of 1.6.
 - (2) **Sewer.** The treatment capacity of all sewer facilities used by the City will be considered for total sewer treatment capacity for allocation.
- (b) **Annual Report.** At least once each calendar year, the City Engineer will present to the Mayor and Board of Aldermen a report on the available capacity. Available amounts of capacity, combined with water safe yield or sewer existing use, must not exceed the limits of treatment capacity for either utility.
- (c) **Tracking.** The City Engineer will track the allocation of water and sewer capacity and will make allocation information available to the public periodically.

§ 25-81. Allocation of Available Capacity.

- (a) **Allocation Categories.** The total amount of available water and sewer capacity, as determined in accordance with § 25-80 of this article, is divided into the allocation categories established by this section. As set forth in this section, each allocation category constitutes a certain percentage of the total available capacity. Allocations will be made to certain classes of development projects from the various categories, as further described in this section.
 - (1) The “claims of entitlement category” is 6% of the total available capacity. Allocations will be made from this category to development projects associated with valid claims of entitlement.
 - (2) The “general category” is 70% of the total available capacity, subject to subsection (b)(5) of this section. Allocations will be made from this category to single family residential (including townhouse) projects, multifamily residential projects, commercial projects, industrial projects, and mixed-use projects.
 - (3) The “affordable housing category” is 5% of the total available capacity. Allocations will be made from this category to affordable housing projects.
 - (4) The “special projects” category is 4% of the total available capacity. Allocations will be made from this category to emergency projects, government projects, and minor projects.
 - (5) The “business retention, institutional, and infill category” is 15% of the total available capacity. Allocations will be made from this category to business retention projects, institutional projects, and infill projects.

(b) Redistribution.

- (1)** If the Committee determines that one or more of the categories established in subsection (a) of this section are being underutilized, the Committee may redistribute water and sewer capacity in accordance with this subsection.
- (2)** In redistributing capacity, the Committee will remove 50% of the capacity from an underutilized category and distribute it equally to those categories that have been completely depleted or for which there is a demonstrated demand for additional capacity.
- (3)** The Committee may redistribute capacity on a semi-annual basis.
- (4)** For purposes of this subsection, "underutilized" means that no more than 10% of the capacity available in a category has been allocated within the previous 12 months.
- (5)** After every claim of entitlement project has received its final allocation in accordance with § 25-83, the "claim of entitlement" category will be eliminated and the general category will be 76% of the total available capacity.

§ 25-82. Eligibility.

- (a) In General.** In order to be eligible to apply for an allocation from any allocation category except the claims of entitlement category, a development project must meet the criteria of this section.
 - (1)** Except as otherwise provided in subsection (a)(2), a development project must have an approved final site plan with all conditions met and, if applicable, a preliminary subdivision plat with all conditions met.
 - (2)** A development project that does not require a site plan or subdivision, including a project consisting solely of the conversion or redevelopment of an existing structure to add new units, is eligible to receive an allocation.
- (b) Use of Prior Allocations.** This subsection applies to any project with an allocation contract in effect at the time of application in accordance with § 25-84. This subsection does not apply to contracts granting allocations from the claims of entitlement category. A project is not eligible to apply for or receive a new allocation until the allocation granted by the contract is secured in accordance with § 25-85(d) of this article. After an allocation is secured, the associated allocation contract will be void.
- (c) Special Projects Category.** In addition to the criteria of subsection (a) of this section, a project must meet the applicable criteria of this subsection to be eligible to receive an allocation from the special projects category.
 - (1)** A government project is eligible to receive an allocation from the special projects category if it is confirmed by the City Engineer that the proposed project is owned or developed by a federal, state or local government entity and that it will serve a governmental function.

- (2) A minor project is eligible to receive an allocation from the special projects category if the City Engineer confirms that the proposed project will create an increase in water and sewer use of not more than 10% over the established current 12-month average daily use, as calculated in accordance with this article and the administrative regulations.
- (3) An emergency project is eligible to receive an allocation from the special projects category if the applicant demonstrates, and the City Engineer confirms, that:
 - (A) The emergency was not created by the owner/developer;
 - (B) Exigent circumstances or gross hardship justifies granting the request for emergency category determination;
 - (C) Granting the request for emergency category determination would not be contrary to the purposes and intent of this article; and
 - (D) Granting the request for emergency category determination would not be contrary to any federal, state or local regulation.
- (d) **Business Retention, Institutional and Infill Category.** In addition to the criteria of subsection (a) of this section, a project must meet the applicable criteria of this subsection to be eligible to receive an allocation from the business retention, institutional and infill category.
 - (1) A business retention project must be certified by the City's Department of Economic Development in accordance with the criteria established in the administrative regulations.
 - (2) An institutional project must be proposing a public or private, profit or non-profit use designed to advance the knowledge or application of educational, religious, health, cultural or other similar objectives.
 - (3) An infill project must be a new structure on a vacant or partially developed lot of record, surrounded by or in close proximity to areas that are substantially or fully developed. An infill project must meet any additional criteria established in the administrative regulations.

§ 25-83. Claims of Entitlement.

Projects with claims of entitlement will continue to receive allocations each year until all available allocation in the claim of entitlement category has been distributed or until every claim of entitlement has received its entire allocation, whichever comes first.

§ 25-84. Application for Allocation.

The owner/developer of a development project meeting the eligibility requirements of § 25-82 of this article shall apply for water and sewer allocation at the time of building permit application in accordance with the application procedures established by the City Engineer. The Building Department will accept an application for a building permit only if it includes an allocation application. The allocation application must include (1) any

documentation necessary to demonstrate the amount of the requested allocation; and (2) the proposed category from which the allocation is to be drawn and an explanation, if necessary, for the choice of category.

§ 25-85. Allocation Process.

- (a) **Generally.** An allocation will be made available sequentially to each eligible development project in the order an allocation application is filed with the Building Department. For purposes of this section, "development project" means that portion of a development project for which a building permit application is filed.
- (b) **Prioritization.** If there is insufficient capacity in a category to meet the needs of an eligible development project requesting an allocation, the project will be placed on a master list until additional capacity is available for allocation. Projects will be ranked on the master list sequentially by the date the allocation application was filed with the Building Department. The master list will include a brief description of each development project; the requested allocation category; and the requested allocation amount.
- (c) **Offering of Allocation.** When water and sewer capacity becomes available for allocation and more than one project is on the master list, the capacity will be offered to projects in accordance with this subsection.
 - (1) If the total amount of available capacity is greater than the total demand associated with all development projects on the master list, the requested amounts will be offered to the owner/developer of each project on the master list.
 - (2) If the total amount of available capacity is less than the total demand associated with all development projects on the master list, the requested amount will be offered to the owner/developer of each project in order of priority until the available capacity is depleted.
 - (3) Within 30 days of receiving an offer, an owner/developer may secure an allocation by paying for the allocation in accordance with subsection (d) of this section.
 - (4) If an owner/developer does not secure the allocation, the offer is deemed rejected and is void, and the development project will be moved to the end of the master list.
 - (5) Any capacity that remains available as a result of one or more offers being rejected will be offered to the first project on the master list to which an offer has not yet been made. Once an offer has been made to each project on the master list and is either accepted or rejected, any remaining capacity will be retained by the City to be made available for future allocations.
- (d) **Securing of Allocation.** This subsection (d) applies to any allocation offered in accordance with subsection (c) of this section and to any allocation granted by an allocation contract as described in § 25-82(b) of this article. An allocation may be secured by payment of all applicable regulatory fees, including any impact fees associated with the development project for which the allocation is sought. Once secured, an allocation is binding unless it is relinquished or revoked in accordance with this article.

- (e) **Building Permits.** The Building Department will not issue a building permit unless adequate allocation has been secured for the development project authorized by the building permit.

§ 25-86. Allocation Amount.

- (a) **Approval by City Engineer.** The City Engineer, after review of an allocation application, shall determine the category from which an allocation will be made and the amount of the allocation. All allocations will be made on an average daily demand basis. The City Engineer may approve of the amount of water and sewer allocation requested for the development project as submitted in the application or may require further supporting documentation.
- (b) **Residential Projects.** The amount of capacity allocated to a residential development project is based on the number of equivalent dwelling units comprising the project, as further described in the administrative regulations.
- (c) **Non-residential Projects.**
 - (1) The owner/developer shall request a specified amount of capacity to be allocated to a non-residential development project. The proposed amount of capacity must be based upon one or more of the following methods:
 - (A) The flow factor matrix as set forth in the administrative regulations;
 - (B) The documented two-year history of use by comparable projects;
or
 - (C) Engineering calculations signed and sealed by a Maryland licensed Professional Engineer.
 - (2) Except as otherwise provided in subsection (c)(3) of this section, the amount requested may not exceed the maximum amount calculable under one of the methods set forth in subsection (c)(1).
 - (3) The owner/developer may request an amount exceeding the amount calculated in accordance with subsection (c)(1) of this section. The City Engineer may approve such a request if the owner/developer demonstrates, and the City Engineer finds, that:
 - (A) Due to the unusually water-intensive nature of the intended use, the intended use cannot feasibly be conducted under the maximum amount calculated under subsection (c)(1); and
 - (B) The owner/developer has made best efforts to reduce the proposed water and sewer consumption of the intended use; and
 - (C) The increased allocation proposed is the minimum necessary for the intended use.

§ 25-87. Affordable Housing.

If sufficient capacity is available in the general category, an allocation will be made to an affordable housing project from the general category. If insufficient allocation is available in the general category, an allocation may be made to an affordable housing project from the affordable housing category.

§ 25-88. Allocation Contracts.

Except as otherwise provided in § 25-82(b), an allocation contract will remain in effect until terminated in accordance with the terms of the allocation contract. An allocation contract will be administered and enforced in accordance with the water and sewer allocation ordinance and administrative regulations in effect on the effective date of the allocation contract.

§ 25-89. Administrative Fees.

The Board of Aldermen may, by ordinance or resolution, adopt a schedule of fees to be paid for applications or other regulatory requirements of this article. An owner/developer shall pay the then-current administrative fees at the time an application is filed.

§ 25-90. Relinquishment and Revocation.

- (a) **Relinquishment.** At any time before water and sewer service is extended to a development project, the owner/developer may relinquish the secured water and sewer allocation by submitting a written request to the City Engineer.
- (b) **Revocation.** The City may revoke and recapture the secured water and sewer allocation associated with a project if a building permit associated with the project expires or becomes void, or for failure to comply with any condition imposed on the development project.
- (c) **Allocation Amount Return.** Any allocation relinquished or revoked will be returned to the allocation category from which it originated.
- (d) **Refund of Fees.** The refunding of fees paid in association with obtaining the water and sewer allocation shall be made in accordance with the applicable regulations governing the establishment and payment of such fees.

§ 25-91. Appeals.

- (a) **Appeals from Action of City Engineer.** Any person aggrieved by a final decision of the City Engineer may appeal to the Committee in writing within 30 days after the action appealed from.
- (b) **Appeals from Action of Committee.** Any person aggrieved by a final action of the Committee may appeal within 30 days to the Circuit Court for Frederick County pursuant to the Maryland Rules governing judicial review of administrative agency actions.

§ 25-92. Drought Emergency.

The Mayor may direct the Committee and the City Engineer to cease granting allocations following the declaration of a water emergency by the Governor or the Mayor; or due to other circumstances under which the Mayor deems restrictions are needed.

SECTION II. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK 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 III. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that this ordinance shall take effect on May 23, 2011, 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.

PASSED:

DATE: May 5, 2011



Randy McClement, President,
Board of Aldermen

APPROVED:

DATE: May 5, 2011



Randy McClement, Mayor

Approved for Legal Sufficiency:


