

**THE CITY OF FREDERICK  
MAYOR AND BOARD OF ALDERMEN  
ORDINANCE NO: G-12-13**

**AN ORDINANCE** concerning

Water and Sewer Allocation and Impact Fees

**FOR** the purpose of combining the allocation and impact fee ordinances into one comprehensive ordinance; calculating impact fees based on amounts of water and sewer capacity allocated rather than on fixture units; clarifying the types of development projects to be charged initial water and sewer impact fees; requiring the owners of certain non-residential development projects to obtain additional allocation capacity based on a specified increase in annual average usage; requiring the owners of certain non-residential development projects to pay additional impact fees based on a specified increase in annual average usage; enforcing the payment of additional impact fees through the discontinuation of water service; clarifying language; and generally relating to water and sewer allocation and water and sewer impact fees.

**BY** repealing

§ 11-1  
The Code of the City of Frederick, 1966 (as amended)

**BY** repealing

Chapter 25  
Article IX  
The Code of the City of Frederick, 1966 (as amended)

**BY** adding

Chapter 25  
Article IX  
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OF ALDERMEN OF THE CITY OF FREDERICK** that § 11-1 of The Code of the City of Frederick, 1966 (as amended) is hereby repealed.

**SECTION II. 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THE CITY OF FREDERICK** that Chapter 25, Article IX of The Code of the City of Frederick, 1966 (as amended) is hereby repealed and a new Chapter 25, Article IX is enacted to read as follows:

## **ARTICLE IX. WATER AND SEWER ALLOCATION AND IMPACT FEES**

### **Sec. 25-76. Findings.**

The Board of Aldermen finds as follows:

- (a)** New development creates increased demands upon existing City water and sewer treatment and distribution systems;
- (b)** Planning, economic and demographic studies project that new development will continue and will place ever increasing demands on the City to provide water and sewer to serve the new development;
- (c)** The revenues generated by new development will not be sufficient to fund necessary capital improvements to the City's water and sewer treatment and distribution systems to serve such new development, including those portions of such treatment and distribution systems being funded under the Potomac River Water Supply Agreement between the City and Frederick County;
- (d)** The responsibility for satisfying the demands made upon the City's water and sewer systems by new development should rest with the new development creating the demands;
- (e)** The City is committed to providing water and sewer services at levels necessary to cure any existing deficiencies in already developed areas;
- (f)** The Department of Finance has prepared an analysis assessing the cost of the impact of new development upon existing and future water and sewer treatment and distribution systems;
- (g)** The imposition of impact fees to finance water and sewer treatment and distribution systems, the demand for which is created by new development, is in the best interest and the general welfare of the City and its residents, and is fair and equitable;
- (h)** The City desires to foster economic development by providing a degree of flexibility in the timing of payment of impact fees for nonresidential development projects;
- (i)** The City desires to encourage new development, particularly nonresidential development, which benefits the existing residents of the City by bringing new services and commercial opportunities and increasing the tax base; and
- (j)** The City desires to address inflow and infiltration (I&I), which occurs in the City's aging sewer systems and reduces capacity at the City's wastewater treatment plant and in the sewage conveyance system, by using a portion of the sewer impact fees for I&I mitigation.

**Sec. 25-77. Short title.**

This chapter may be cited as the Water and Sewer Allocation and Impact Fees Ordinance.

**Sec. 25-78. Authority.**

The impact fees established under this article are regulatory fees, as authorized by Article XI-E of the Maryland Constitution and Article 23A, § 2 of the Annotated Code of Maryland.

**Sec. 25-79. Purpose and intent.**

The purposes of this article are:

- (a) To ensure that adequate water and sewer capacity are available for the land uses within the City;
- (b) To ensure compliance with applicable Maryland laws, including § 9-512 of the Environment Article of the Annotated Code of Maryland;
- (c) To facilitate orderly growth and the implementation of the City's comprehensive plan;
- (d) To ensure that new development pays for its appropriate share of capital improvements to the City's water and sewer treatment and distribution systems; and
- (e) To encourage economic development.

**Sec. 25-80. Definitions.**

In this article, the following words have the meanings indicated unless a different meaning is clearly intended from the context:

**"Adjustment"** means the requirement to obtain additional allocation and the imposition of additional impact fees.

**"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 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 of this Code. For purposes of this article, “building permit” includes a zoning permit issued in accordance with § 302 of the Land Management Code (Appendix A of this Code); a plumbing permit, an on-site utility permit issued by the Building Department, and a permit for water and sewer service work in the public right-of-way.

**“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.

**“Department”** means the City's Building Department.

**“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.

**“Equivalent dwelling unit”**, or **“EDU”**, is a measure of water or wastewater capacity where one unit equals 250 gpd.

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

**“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).

**“Nonresidential project”** means any use other than a residential use, as identified in § 404 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.

**“Redevelopment project”** means a non-residential development project that will modify the existing usable living space of a structure without creating additional floor area, expanding the footprint of the building, or requiring a new or larger water/sewer meter or piping. “Redevelopment project” does not include the initial fit-out of a tenant space in a shell building.

**“Shell building”** means a special category of structure that when completed is not ready for occupancy. A shell building consists of all exterior walls, property line fire walls and the roof structure. Rooms dedicated to the building itself, such as an elevator control room, electrical room, or fire sprinkler pump room are considered part of the shell building. Multi-story shell buildings also include all elevated floor assemblies, mezzanines, stairways and elevators. A shell building does not include any restrooms or other facilities requiring water or sewer service. A shopping center is not considered a shell building.

**“Systems”** means the City’s water treatment and distribution system and wastewater treatment, pumping, and collection system.

**Sec. 25-81. Scope.**

(a) **Applicability.** Except as otherwise provided in subsection (b) of this section, this article applies to:

- (1) every development project within the City for which a building permit application is filed on or after July 1, 2012;
- (2) every development project outside the City to which water or sewer is provided in accordance with this Code and any other applicable regulation and for which a building permit application is filed on or after July 1, 2012; and
- (3) any structure within the City existing but not connected to the systems as of July 1, 2012.

(b) **Exceptions.** This article does not apply to:

- (1) a development project that requires no water or sewer capacity, as determined by the City Engineer; or
  - (2) a development project that will not be connected to the systems.
- (c) **Allocation contracts.** Except as otherwise provided in this article, 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.
- (d) **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.
- (e) **Water 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.

#### **§ 25-82. 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 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) **Regulations.** The Committee may 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.

#### **Sec. 25-83. Imposition of impact fees, generally.**

Except as otherwise provided in this article, the City will impose water impact fees in conjunction with allocation of water capacity and will impose sewer impact fees in conjunction with allocation of sewer capacity. The owner of any property on which a development project is to occur is responsible for payment to the City of water and sewer impact fees in accordance with this

article. The Department may not issue a building permit, plumbing permit, certificate of occupancy, or other permit for a development project unless the provisions of this article have been fulfilled. After initial impact fees have been paid and a development project has been permitted, additional impact fees may be imposed in the future based on the need for an additional water or sewer allocation.

#### **Sec. 25-84. 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 water or sewer.
- (c) **Tracking.** The City Engineer will track the allocation of water and sewer capacity and will make allocation information available to the public periodically.

#### **Sec. 25-85. Allocation of available capacity.**

- (a) **Allocation categories.** The total amount of available water and sewer capacity, as determined in accordance with § 25-84 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 § 25-85 of this article, the "claim of entitlement" category will be eliminated and the general category will be 76% of the total available capacity.

**Sec. 25-86. Allocation categories and 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 § 25-87 of this article. 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 § 25-90 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.

(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 by the regulations adopted by the Committee.

- (e) **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.
- (f) **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.

**Sec. 25-87. Application for allocation.**

The owner/developer of a development project meeting the eligibility requirements of § 25-86 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 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.

**Sec. 25-88. Allocation amount.**

- (a) **Approval by City Engineer.** The City Engineer, after review of an allocation application, shall determine whether an allocation is required and if so, the category from which the 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) Development projects determined by the City Engineer to be redevelopment projects are exempt from the requirement to obtain an initial allocation prior to the issuance of the building permit. Redevelopment projects are not subject to paragraphs (2) and (3) of this subsection, but will be monitored in accordance with this article.
  - (2) 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 regulations adopted by the Committee;
  - (B) The documented two-year history of use by comparable projects; or
  - (C) Engineering calculations signed and sealed by a Maryland licensed professional engineer.
- (3) Except as otherwise provided in paragraph (4) of this subsection, the amount requested may not exceed the maximum amount calculable under one of the methods set forth in paragraph (2) of this subsection.
- (4) The owner/developer may request an amount exceeding the amount calculated in accordance with paragraph (2) of this subsection. 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 paragraph (2) of this subsection; 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.

**Sec. 25-89. Allocation process.**

- (a) **Generally.** An allocation will be offered sequentially to each eligible development project in the order an allocation application is filed with the 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 § 25-90 of this article.
- (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.

**Sec. 25-90. Securing of allocation.**

This section applies to any allocation offered in accordance with § 25-89 of this article and to any allocation granted by an allocation contract as described in § 25-86 of this article. An allocation may be secured by payment of all applicable regulatory fees, including any initial water or sewer impact fees associated with the development project for which the allocation is sought and imposed pursuant to § 25-92 of this article. Once secured, an allocation is binding unless it is relinquished or revoked in accordance with this article. The Department will not issue a building permit unless adequate allocation has been secured for the development project authorized by the building permit.

**Sec. 25-91. Initial water and sewer impact fees.**

- (a) **Generally.** Initial water and sewer impact fees will be assessed based on the amount of capacity offered to a development project under § 25-89 of this article.
- (b) **Amount.** Initial impact fees will be calculated as follows:
  - (1) The impact fee for water is the amount, in gpd, of the water allocation, divided by 250, multiplied by \$5,981 per EDU (or fraction of an EDU).
  - (2) The impact fee for sewer is the amount, in gpd, of the sewer allocation, divided by 250, multiplied by \$5,250 per EDU (or fraction of an EDU).

**Sec. 25-92. Payment of impact fees for residential development projects.**

The owner of any property on which residential development is proposed is responsible for the payment of 100 % of the total impact fees calculated under § 25-91 of this article prior to the issuance of a building permit for that development project.

**Sec. 25-93. Payment of initial impact fees for nonresidential development projects.**

- (a) **Generally.** This section applies only to nonresidential development projects. The owner of any property on which nonresidential development is proposed is responsible for the payment of initial impact fees in accordance with subsection (b) or subsection (c) of this section, at the option of the property owner. The property owner shall select one of these options prior to the issuance of a building permit for that development project.
- (b) **Lump sum option.** One hundred percent of the total initial impact fees calculated under § 25-91 of this article must be received by the Department prior to the issuance of a building permit; or
- (c) **Annual installment option.**
  - (1) Initial impact fees must be paid in accordance with the following schedule:
    - (A) Twenty-five percent of the total impact fees calculated under § 25-91 of this article must be received by the Department prior to the issuance of a building permit;
    - (B) Twenty-five percent of the total impact fees calculated under § 25-91 of this article, plus 4% interest, must be received by the Finance Department on or before the first anniversary of the date of the issuance of a building permit;
    - (C) Twenty-five percent of the total impact fees calculated under § 25-91 of this article, plus 4% interest, must be received by the Finance Department on or before the second anniversary of the date of the issuance of a building permit; and
    - (D) Twenty-five percent of the total impact fees calculated under § 25-91 of this article, plus 4% interest, must be received by the Finance Department on or before the third anniversary of the date of the issuance of a building permit.
  - (2) Payments made under paragraph (1) of this subsection must be guaranteed prior to the issuance of a building permit by one of the following methods:
    - (A) The property owner shall enter into an agreement with the City, in a form acceptable to the City Attorney, under which the property owner agrees that failure to pay impact fees in accordance with this section will result in the disconnection of water supply and sewer service, or the placement of a lien on the property, or both, and which agreement will be binding on subsequent property owners; or
    - (B) The property owner shall furnish the Department with a letter of credit meeting all applicable City policies.

**Sec. 25-94. 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.

**Sec. 25-95. Redevelopment projects.**

- (a) **Baseline capacity.** Following the filing of a building permit application for a project determined by the City Engineer to be a redevelopment project, the City Engineer shall establish the baseline capacity in accordance with this subsection.
  - (1) If water and sewer impact fees previously have been paid for development on the same lot, the City Engineer will calculate the baseline capacity based on those previous water and sewer impact fees. If water and sewer impact fees have not previously been paid for development on the same lot, the City Engineer will calculate the baseline capacity under paragraph (2) or (3) of this subsection.
  - (2) If sufficient documentation exists to demonstrate the three-year history of water and sewer usage by the existing building on the same lot, the City Engineer will calculate the baseline capacity based on that documented three-year history. If sufficient documentation does not exist to demonstrate the three-year history of water and sewer usage, the City Engineer will calculate the baseline capacity under paragraph (3) of this subsection.
  - (3) If previous impact fees have not been paid under paragraph (1) of this subsection and sufficient documentation of the three-year history is not available under paragraph (1) or (2) of this subsection, the City Engineer will calculate the baseline capacity based on the flow factor matrix as set forth in the administrative regulations.
- (b) **Allocation and impact fees.** Redevelopment projects are subject to future allocations and impact fees in accordance with this article.

**Sec. 25-96. Monitoring and initial notification.**

- (a) **Nonresidential projects.** The City Engineer will monitor the water usage records of all nonresidential projects that have received initial allocations under § 25-90 of this article for a total of two years after a certificate of occupancy is issued for the project for the purpose of determining whether the amount of actual water or sewer use exceeds the amount allocated. An adjustment will be made in accordance with this section if the amount of actual water or sewer being used two years after the issuance of the certificate of occupancy exceeds the amount allocated by either (1) at least 1,000 gpd; or (2) at least 25%, provided that the 25% equals more than 250 gpd.
- (b) **Redevelopment projects.** The City Engineer will monitor the water usage records of all redevelopment projects for a total of two years after a certificate of occupancy is issued for the project for the purpose of determining whether the amount of actual water or sewer use exceeds the baseline capacity. An adjustment will be made in accordance with this section if the amount of actual water or sewer being used two years after the issuance of the certificate of occupancy exceeds the baseline capacity by either (1) at least 1,000 gpd; or (2) at least 25%, provided that the 25% equals more than 250 gpd.
- (c) **Initial evaluation and notification.** The City Engineer will evaluate each nonresidential project and redevelopment project being monitored under subsection (a) or (b) of this section one year after the issuance of the certificate of occupancy for the project. At that time, if the amount of water or sewer being used would warrant an adjustment under subsection (a) or (b) of this section, the City Engineer will mail to the current property owner an initial written notice. This notice will state that the property owner shall, within one year of receipt of the notice, implement conservation measures to reduce the usage by a specified amount; and that failure to reduce the usage will result an adjustment in accordance with this article.
- (d) **Reevaluation.** The City Engineer will reevaluate each nonresidential project and redevelopment project for an additional period of one year after the mailing of the initial notice. If the City Engineer determines that conservation efforts have been unsuccessful such that an adjustment is necessary, the City Engineer will mail to the current property owner a final written notice. This notice will inform the property owner that an additional allocation, secured through the payment of impact fees, is necessary and will explain the process by which to obtain the allocation, and the consequences of failure to obtain the allocation.

**Sec. 25-97. Additional allocations and impact fees.**

- (a) **Allocations.** The property owner shall submit an application for water and sewer allocation, in accordance with the application procedures established by the City Engineer, within 30 days after receipt of the final written notice issued by the City Engineer under § 25-96(d) of this article. Additional allocations will be granted in the same manner as initial allocations are granted under this article.

(b) **Impact fees.** The property owner shall secure the additional allocation by the payment of additional impact fees. The Department will calculate the additional impact fees based on the additional allocation, as follows:

- (1) The additional impact fee for water is the amount, in gpd, of the additional water allocation divided by 250, multiplied by \$5,981 per EDU (or fraction of an EDU).
- (2) The additional impact fee for sewer is the amount, in gpd, of the additional sewer allocation, divided by 250, multiplied by \$5,250 per EDU (or fraction of an EDU).

**Sec. 25-98. Payment of additional impact fees for nonresidential development projects.**

(a) This section applies only to payment of additional impact fees under § 25-97 of this article.

(b) The property owner may pay the additional impact fees within 30 days after an allocation is granted under § 25-97 of this article or may pay in installments in accordance with the following schedule:

- (1) Twenty-five percent of the total impact fees calculated under § 25-97 of this article must be received by the Department within 30 days after an allocation is granted under § 25-97 of this article;
- (2) Twenty-five percent of the total impact fees calculated under § 25-97 of this article, plus 4% interest, must be received by the Finance Department on or before the first anniversary of the date an allocation is granted under § 25-97 of this article;
- (3) Twenty-five percent of the total impact fees calculated under § 25-97 of this article, plus 4% interest, must be received by the Finance Department on or before the second anniversary of the date an allocation is granted under § 25-97 of this article; and
- (4) Twenty-five percent of the total impact fees calculated under § 25-97 of this article, plus 4% interest, must be received by the Finance Department on or before the third anniversary of the date an allocation is granted under § 25-97 of this article.

(c) Payments made under subsection (b) of this section must be guaranteed prior to the issuance of a building permit by one of the following methods:

- (1) The property owner shall enter into an agreement with the City, in a form acceptable to the City Attorney, under which the property owner agrees that failure to pay impact fees in accordance with this section will result in the disconnection of water supply and sewer service, or the placement of a lien on the property, or both; and which agreement will be binding on subsequent property owners; or

- (2) The property owner shall furnish the Department with a letter of credit meeting all applicable City policies.

**Sec. 25-99. Nonpayment of additional impact fees.**

Upon the failure of a property owner to timely pay the impact fees payable under § 25-97 of this article, the Department of Public Works shall discontinue water service to the property until the owner pays the amount due, plus a reconnection charge as established by the Board of Aldermen. Water service will be restored only after payment in full of the impact fees and any other outstanding water charges.

**Sec. 25-100. 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.

**Sec. 25-101. Appeals.**

- (a) **Appeals from action of City Engineer.** Any person aggrieved by a final decision of the City Engineer made under this article 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 made under this article may appeal within 30 days to the Circuit Court for Frederick County pursuant to the Maryland Rules governing judicial review of administrative agency actions.
- (c) **Impact fees.** A property owner may appeal the amount of the impact fees imposed under this article by filing written notice of appeal, including the grounds for the appeal, to the City Engineer within ten days of receiving notice of the amount of impact fees imposed by the Department. The property owner bears the burden of proof to demonstrate that the amount of the impact fees was not calculated according to the procedures established by this article.

**Sec. 25-102. Impact fee accounts.**

The water and sewer impact fees imposed under this article will be used to finance, defray, and reimburse the City for all or a portion of the costs of capital improvements to the City's systems, including inflow and infiltration mitigation. The City shall establish separate impact fee accounts for water and sewer, and impact fees collected shall be deposited in the appropriate accounts. The funds of the accounts shall not be commingled with other funds of the City. The impact fee accounts shall be interest bearing and the accumulated interest shall become a part of the accounts. Impact fees collected pursuant to this article will not be used to cure deficiencies in water and sewer facilities that are not a direct result of the increase in demand for use of the systems. Impact fees shall be expended only for the use for which they were imposed. Impact fees may be used to pay the principal, interest and other costs of bonds, notes and other obligations issued or undertaken by or on behalf of the City to finance such improvements.

**Sec. 25-103. Refunds.**

- (a) **Uncommitted funds.** Except as described in subsection (c) of this section, upon application of the property owner, the Department shall refund that portion of any impact fee which has been on deposit for more than ten years and which is unexpended and uncommitted. The refund shall be made to the then-current owner or owners of lots or units of the developments.
- (b) **Notification.** If a property owner is entitled to a refund, the Department shall notify the property owner by first class mail. The property owner must submit a request for a refund to the Finance Department in writing within one year of the date the right to claim the refund arises or the date the notice is given, whichever is later. Any impact fees that are not expended or encumbered within the time limitations established herein, and for which no application for a refund has been made within this one year period, shall be retained and expended in accordance with this section.
- (c) **Exemption.** If fees in any impact fee account are uncommitted for three or more years after deposit, the City shall make findings, at least once each fiscal year while such condition prevails, to identify the purpose to which such fees shall be put and to show a roughly proportional and reasonable relationship between the fee and the purpose for which it was collected. If the City makes such findings, the fees are exempt from the refund requirement.
- (d) **Methods.** The City may refund by direct payment, by offsetting the refund against other impact fees due for development projects by the owner of the same or other property, or otherwise by agreement with the owner.
- (e) **Building permits.** A property owner who has paid an impact fee for which the necessary building permit has expired prior to construction, for which the building permit has been revoked prior to construction, or for which the building permit has been cancelled prior to construction, shall be eligible to apply for a refund. The property owner must submit a request for a refund to the Finance Department in writing within one year of the date the subject permit expired, was revoked, or was cancelled. Any impact fees for which no application for a refund has been made within this one year period shall be retained and expended in accordance with this section.

**SECTION III. 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 IV. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that this ordinance shall take effect on July 1, 2012 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: June 7, 2012**



**Randy McClement, President,  
Board of Aldermen**

**APPROVED:**

**DATE: June 7, 2012**



**Randy McClement, Mayor**

**Approved for Legal Sufficiency:**

