

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

ORDINANCE NO: G-19-22

AN ORDINANCE concerning

Water and sewer allocation and impact fees

FOR the purpose of establishing certain regulations relating to apartment buildings; and generally relating to water and sewer allocation and impact fees.

BY repealing and reenacting, with amendments,
Section 25-76
The Code of the City of Frederick, 1966 (as amended)

BY repealing and reenacting, with amendments,
Section 25-80
The Code of the City of Frederick, 1966 (as amended)

BY repealing and reenacting, with amendments,
Section 25-88
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ALDERMEN OF THE CITY OF FREDERICK, That Section 25-76 of The Code of the City of Frederick, 1966 (as amended) is hereby repealed and reenacted, with amendments, as follows:

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] base;
- (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;
- (k) The City desires to encourage water conservation through sustainable building practices; and
- (l) In the context of water and sewer allocation, apartment buildings have certain characteristics of commercial enterprises, and thus the allocation of water may be determined differently than residential uses.

SECTION II. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that Section 25-80 of The Code of the City of Frederick, 1966 (as amended) is hereby repealed and reenacted, with amendments, as follows:

Sec. 25-80. Definitions.

- (a) In this article, the following words have the meanings indicated unless a different meaning is clearly intended from the context:
- (b) "Adjustment" means the requirement to obtain additional allocation and the imposition of additional impact fees.
- (c) "Affordable housing" means a housing project for low to moderate income City residents in which the rent or mortgage does not exceed thirty (30) percent of the gross household income. A low to moderate income household earns fifty (50) percent or less of the area median household income.
- (d) "Allocation contract" means a water and sewer allocation contract fully executed before May 23, 2011.
- (e) "Apartment building" means any building, or portion thereof, which is designed, built, rented, leased, let, or hired out to be occupied as three or more dwelling units or which is

occupied as the home or residence of three or more families living independently of each other and maintaining separate cooking facilities.

- (f) "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.
- (g) "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 [three hundred sixty-five (365)] 365 days, usually expressed in terms of million gallons per day (MGD) or gallons per day (gpd).
- (h) "Building permit" means a permit issued by the City's Building Department as required by section 5-14 of this Code. For purposes of this article, "building permit" includes a zoning permit issued in accordance with Section 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.
- (i) "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.
- (j) "City Engineer" means the City Engineer or the City Engineer's designee.
- (k) "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.
- (l) "Committee" means the City's Water and Sewer Service Committee.
- (m) "Department" means the City's Building Department.
- (n) "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.
- (o) "Equivalent dwelling unit" or "EDU" is a measure of water or wastewater capacity where one unit equals two hundred fifty (250) gpd.
- (p) "Gallons per day" or "gpd" means gallons of water used or sewerage discharged per day; a measure of water and sewer flow.
- (q) "Includes" or "including" means includes or including by way of illustration and not of limitation, unless the context clearly requires otherwise.
- (r) "LMC" means the Land Management Code, Appendix A of the Frederick City Code, 1966 (as amended).

- (s)** "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.
- (t)** "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.
- (u)** "Maximum day demand" means the measure of the highest daily water use rate during the calendar year.
- (v)** "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.
- (w)** "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).] LMC.
- (x)** "Nonresidential project" means any use other than a residential use, as identified in Section 404 of the [Land Management Code (Appendix A of this Code).] LMC, except that for purposes of this article an apartment building is a nonresidential use.
- (y)** "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.
- (z)** "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.
- (aa)** "Residential project" means a residential use, as identified in Section 404 of the LMC, except that for purposes of this article, an apartment building is not a residential use.
- (bb)** "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.
- (cc)** "Systems" means the City's water treatment and distribution system and wastewater treatment, pumping, and collection system.

SECTION III. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that Section 25-88 of The Code of the City of Frederick, 1966 (as amended) is hereby repealed and reenacted, with amendments, as follows:

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) This paragraph applies to all nonresidential projects except for apartment buildings and redevelopment projects. 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] the flow factor matrix as set forth in the regulations adopted by the Committee;
 - (B) [The] the documented two-year history of use by comparable projects; or
 - (C) [Engineering] engineering calculations signed and sealed by a Maryland licensed professional engineer.
 - (3) This paragraph applies to apartment buildings. The owner/developer of an apartment building may request a specified amount of capacity per dwelling unit less than the capacity that would be allocated under the administrative regulations for multi-family dwellings. If the owner/developer demonstrates, and the City Engineer finds, that the reduced allocation is warranted based on:
 - (A) the design of the project, which must include water saving fixtures or other physical mechanisms by which the amount of water used will be reduced by at least twenty percent (20%) as compared to a project constructed to the minimum standards required by applicable code;
 - (B) the documented two-year history of use by comparable projects; and

(C) engineering calculations signed and sealed by a Maryland licensed professional engineer.

~~[(3)]~~ (4) Except as otherwise provided in this [paragraph (4) of this subsection,] paragraph, 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] subsection;
- (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.

SECTION IV. AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That this ordinance shall take effect on the date it is approved by the Mayor 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:



**Michael C. O'Connor, President,
Board of Aldermen**

August 15, 2019

APPROVED:

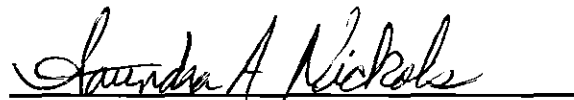
DATE:



Michael C. O'Connor, Mayor

August 15, 2019

Approved for Legal Sufficiency:



City Attorney