

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

ORDINANCE NO: G-19-42

AN ORDINANCE concerning adequate public facilities

FOR the purpose of adding certain definitions; deleting certain definitions; removing certain exemptions; revising certain provisions relating to the effectiveness and expiration of certificates of adequate public facilities; grandfathering previously submitted applications; increasing the number of years a project can fail the test for adequacy of schools before being permitted to proceed with the development review process; removing requirements relating to water and sewer basin treatment capacity; removing certain requirements relating to housing for older persons; renaming school construction fees to be school mitigation fees; providing for a waiver of school mitigation fees for affordable housing projects; clarifying language; updating references; and otherwise generally relating to the provision of adequate public facilities within The City of Frederick.

BY repealing

Chapter 4

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

BY adding

Chapter 4

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OF ALDERMEN OF THE CITY OF FREDERICK, That Chapter 4 of The Code of the City of Frederick, 1966 (as amended) is hereby repealed and a new Chapter 4 be enacted to read as follows:

Chapter 4. ADEQUATE PUBLIC FACILITIES

ARTICLE I. IN GENERAL

Sec. 4-1. Authority and purpose.

This chapter exercises the authority granted by MD Code, Land Use, § 7-101 to enact laws providing for or requiring the planning, staging, or provision of adequate public facilities in order to facilitate orderly development and growth. It is further intended to ensure that new land development projects take place in accordance with the City's comprehensive plan and capital improvements program and to ensure that adequate public facilities and services are available concurrent with new development. Provision of adequate facilities will take place in cooperation with the County, especially when County facilities are affected by new development within the city.

Sec. 4-2. Definitions.

(a) **In general.** For purposes of this chapter, the following terms have the meanings indicated.

- (b) **CAPF.** "CAPF" or "final CAPF" means a final certificate of adequate public facilities issued for each of the facilities described in this chapter.
- (c) **CIP.** "CIP" means capital improvements program.
- (d) **Commission.** "Commission" means the City's Planning Commission.
- (e) **Density.** "Density" means the total number of dwelling units per gross area of subdivision or land development
- (f) **Developer.** "Developer" means a person or government agency with primary financial responsibility for undertaking or proposing the construction of one or more structures or any other development project.
- (g) **Development project.** "Development project" or "project" means any land improvement - including but not limited to the alteration to an existing structure, redevelopment, or change of use - that is required under the LMC to obtain approval of a master plan, plat, or final site plan.
- (h) **Director.** "Director" means the City's Director of Public Works or the Director's designee.
- (a) **Division.** "Division" means the City's Planning Division.
- (j) **Dwelling unit.** "Dwelling unit" means a room or group of rooms forming a single residential unit with facilities for living, sleeping, and cooking used exclusively for the person or persons living within the unit.
- (k) **Existing structure.** "Existing structure" means a structure for which a certificate of occupancy was issued before January 1, 2020.
- (l) **Facility or facilities.** "Facilities" are public facilities including and limited to water lines, sewer lines, roads, and schools.
- (m) **Intensity of use.** "Intensity of use" means the impacts generated by the land uses proposed by a development project on each facility specific to the unit of measurement for that facility.
- (n) **LMC.** "LMC" means the Land Management Code, Appendix A of this Code.
- (o) **Level of service.** "Level of service" or LOS means a standardized index of relative service provided by a road or highway ranging from "A" to "F" as defined in the Highway Capacity Manual published by the Highway Research Board.
- (p) **Lot of record.** "Lot of record" means any lot legally recorded in the land records of Frederick County as of January 1, 2020 and having satisfied all zoning and subdivision regulation requirements in effect at the time the lot was recorded.
- (q) **Master plan.** "Master plan" means a comprehensive plan to guide the long-term physical development of a particular area, in accordance with the provisions of Section 310 of the LMC.

- (r) **Mixed use project.** "Mixed use project" means a project that contains a mixture of residential and nonresidential land uses developed under one master plan application.
- (s) **Nonresidential project.** "Nonresidential project" means a project that includes any use other than a residential use, as identified in Section 404 of the LMC.
- (t) **Plat.** "Plat", unless otherwise indicated, means a preliminary plat or a final subdivision plat.
- (u) **Provisional CAPF.** "Provisional CAPF" means a certificate of adequate public facilities issued by the Director as described in this chapter; it is not a final CAPF for any purpose.
- (v) **Public works agreement.** "Public works agreement" means a contract between the developer and the City to complete the necessary improvements in accordance with the approved plans and specifications by a given date.
- (w) **Residential project.** "Residential project" means a development project consisting solely of residential uses, as identified in Section 404 of the LMC.
- (x) **School.** "School" means a public primary/elementary, middle, or high school managed by the Frederick County Board of Education.

Sec. 4-3. Regulations.

The Director may issue rules and regulations to implement the provisions of this chapter.

Sec. 4-4. Submittals.

An application for CAPFs or one or more exemptions for a development project shall be made by a developer contemporaneously with the application for a master plan, plat, or site plan, whichever is submitted first for that project. The developer shall submit to the Director any documentation or information, including but not limited to surveys, computations, models, and reports, determined by the Director to be necessary to the exercise of the Director's responsibilities under this chapter.

Sec. 4-5. Exemptions.

- (a) **In general.** The following types of development projects are exempt from this chapter:
 - (1) a project to be undertaken by the City;
 - (2) a project for which a master plan was unconditionally approved before April 15, 2007;
 - (3) a residential project that creates 5 or fewer dwelling units; and
 - (4) subdivision that does not result in the creation of additional lots.
- (b) **Individual facilities.** Exemptions in addition to those listed in subsection (a) of this section are listed in the individual facility sections of Article II of this chapter.

Sec. 4-6. Scope and grandfathering.

- (a) **Generally.** Except as otherwise provided in this chapter, the provisions of this chapter apply to any development project application submitted on or after January 1, 2020.
- (b) **Permits.** Any building permit issued valid as of January 1, 2020 shall remain in force, and nothing in this chapter shall require a change of plans, construction, or use of land for which that permit has been issued.
- (c) **Prior submittals.**
 - (1) Notwithstanding the provisions of this chapter, except as otherwise provided herein, an application received and deemed complete by the Division prior to January 1, 2020 shall be processed under the regulations existing at the time the application was deemed complete. Any fees or charges payable under this chapter shall be calculated in accordance with all applicable regulations existing as of the date the fee or charge is imposed.
 - (2) A CAPF issued before January 1, 2020 for which no effective date was specified at the time of issuance shall be deemed to become effective on January 1, 2020.

Sec. 4-7. Effect on other laws.

A project deemed exempt from the requirements of this chapter remains subject to all other applicable laws and regulations, including but not limited to zoning regulations, development regulations, building codes, permitting requirements, and review by the Commission.

Sec. 4-8. Appeals.

Any person aggrieved by any final order, requirement, decision, or determination of the Director, the Commission, or the Board of Aldermen under this chapter may appeal the same within 30 days of the receipt of the determination to the Zoning Board of Appeals in accordance with Sec. 315 of the LMC. A notice of appeal must be in writing, submitted to the Director, and must specify the grounds of the appeal.

ARTICLE II. DEVELOPMENT PROJECTS AND PROCESS

Sec. 4-9. Testing.

Except as otherwise provided in this chapter, testing for adequacy for each facility described in this chapter will be conducted on a project after the Division determines that the pertinent submitted master plan, plat, or site plan application is complete.

Sec. 4-10. Plats and site plans.

- (a) **Consideration by Commission.** The Commission may not consider an application for approval of a plat or final site plan, or a revision to a previously approved plat or final site plan resulting in an increase in density or intensity of use, until the Director:
 - (1) finds that the project is exempt under Sec. 4-6 of this chapter; or

- (2) with respect to each facility, issues a CAPF or provisional CAPF or determines the project is exempt.

(b) Effective date of certificates.

- (1) Except as otherwise provided in this chapter, after a CAPF or provisional CAPF is issued, a developer has two years to ensure that it becomes effective as described in paragraph (2) of this subsection. A CAPF or provisional CAPF that does not become effective within 2 years after its issuance will be deemed void.
- (2) A CAPF or provisional CAPF becomes effective as specified in this paragraph.
 - (A) The effective date of a CAPF or provisional CAPF associated with a plat or site plan that requires approval by the Commission is the date of the Commission's approval (conditional or unconditional).
 - (B) The effective date of a CAPF or provisional CAPF for a plat or site plan that requires approval by the Division is the date of the Division's approval.

(c) Period of validity.

- (1) A CAPF or provisional CAPF is valid for the applicable period, beginning on the effective date as determined under subsection (b) of this section, as follows:

Residential Plats/Final Site Plans

Number of Dwelling Units	Years Valid
Six - 50 units	3 years
51 - 200 units	5 years
201 - 500 units	7 years
501 - 1,000 units	10 years
More than 1,000 units	15 years

Nonresidential Plats/Final Site Plans

Size of Parcel	Years Valid
10 acres or less	3 years
More than 10 and less than or equal to 50 acres	5 years
More than 50 acres	8 years

- (2) The expiration date of a CAPF or provisional CAPF for a mixed use project is determined according to the applicable period for a residential project or a nonresidential project, whichever is longer.
- (3) If a developer requests a shorter period of validity for purposes of determining the adequacy of schools in accordance with Sec. 4-15 of this chapter, the Planning Commission may approve the request upon finding that reduction will contribute to

the attainment of one or more policies of the comprehensive plan. A reduced period must be at least one year.

- (d) **Concurrent approvals.** If a developer is seeking concurrent subdivision plat and site plan approval, the adequate public testing is required as part of the plat approval. Commission approval will be conditioned upon the placement of a note on the plat and the site plan specifying approved use.
- (e) **Extension.** At the request of the developer, the Commission may extend the expiration date established under this section if the Commission determines:
 - (1) all conditions of approval are being met;
 - (2) all provisions associated with the CAPFs for each facility remain valid; and
 - (3) all unrecorded lots or unbuilt site plan structures are either vested in accordance with the mitigation plans associated with the CAPFs, or meet the requirements for adequacy for each facility.
- (f) **Phasing limitations.** At the request of the developer or on its own initiative, the Commission may extend the expiration date if required phasing limitations warrant such an extension.
- (g) **Expiration.** A CAPF or provisional CAPF issued in connection with a plat expires automatically if the preliminary plat approval expires or is voided before all the lots shown on that plat are recorded. The Division may not approve a plat for the unrecorded lots until the applicable requirements of this chapter, including but not limited to testing and issuance of CAPFs, have been met.
- (h) **Expiration of site plan approval.** If CAPFs or provisional CAPFs are issued at the time of site plan and subsequently the site plan approval expires or is voided before the development is completely built, the Commission may not reapprove the site plan for the unbuilt portion until the applicable requirements of this chapter, including but not limited to testing and issuance of CAPFs, have been met - either by reason of valid and existing CAPFs, or by retesting if there are no such valid and existing CAPFs.
- (i) **Retesting.** Subject to all applicable requirements of this chapter, a development project that receives CAPF or provisional CAPF approval at the time of plat approval will not be subject to adequate public facilities testing at the site plan approval stage.

Sec. 4-11. Master plans.

- (a) **In general.** The Commission may not approve a master plan application, or an application for an amendment to a master plan resulting in an increase in density or intensity of use, unless the master plan meets the requirements of this chapter.
- (b) **Deadline for additional approvals.**
 - (1) With respect to the issuance of a CAPF or provisional CAPF associated with a master plan or master plan amendment, a developer has a period of 2 years after the date the master plan or master plan amendment is unconditionally approved

to obtain approval for at least one plat or final site plan associated with that master plan.

- (2) Once a developer obtains plat or final site plan approval as specified in paragraph (1) of this subsection, the CAPF or provisional CAPF associated with a master plan or master plan amendment will be subject to all applicable requirements of Sec. 4-10 of this article, including the period of validity.
 - (3) If, during the 2-year period specified in paragraph (1) of this subsection, the developer does not obtain approval of a plat or final site plan associated with the master plan, then any certificate for the master plan is void.
- (c) **Retesting.** Subject to all other requirements of this chapter, a development project that is issued a CAPF or provisional CAPF at the time of master plan approval will not be subject to adequate public facilities testing at the plat or site plan stage.

ARTICLE III. CERTIFICATES OF ADEQUATE PUBLIC FACILITIES

Sec. 4-12. Water line capacity.

(a) **Scope.**

- (1) A CAPF for water line capacity (CAPF-WL) is not required for a development project for which a master plan is unconditionally approved pursuant to the LMC before April 15, 2007.
- (2) A CAPF-WL is not required for a development project to be constructed entirely on a lot of record if the development project does not require more than a 20% increase in water line capacity over the existing development and consists solely of one or more of the following:
 - (A) the change of use of an existing structure;
 - (B) the renovation, with no addition of square footage, of an existing structure;
 - (C) the construction of an addition of 5,000 square feet or less to an existing structure; or
 - (D) the demolition of an existing structure and replacement with a structure no more than 5,000 square feet larger than the one demolished.

(b) **Adequacy.**

- (1) The Director shall determine whether water line capacity is adequate based on the criteria set forth in this subsection. Water line capacity is deemed adequate if:
 - (A) The storage tanks, lines, and local pumping stations have sufficient available capacity to provide maximum daily demand to the proposed

development and meet peak hour demand in addition to fire flow, taking into account existing and approved system demands; and

- (B) The existing distribution system is capable of providing normal required pressure as well as minimal residual pressure to the proposed development.
- (2) **Additional capacity.** The Director may consider additional water line capacity resulting from construction within the first 2 years of the City or County CIP as of the date of the application.
- (c) **Issuance of CAPF-WL.**
 - (1) If the Director determines that the water line capacity is adequate based on the criteria of subsection (b) of this section, the Director shall issue a CAPF-WL for the project.
 - (2) If the Director determines that the water line capacity is not adequate, the Director shall deny the CAPF-WL. Subject to subsection (d) of this section, the master plan, plat, or site plan application will not be scheduled for consideration by the Commission.
- (d) **Mitigation.** If the Director denies a CAPF-WL, a developer may mitigate the impact of the proposed development in accordance with Article IV of this chapter.
- (e) **Water taps.** Granting of a CAPF-WL for a project may not be construed as a guarantee of water taps or an allocation for the project.

Sec. 4-13. Sewer line capacity.

- (a) **Scope.**
 - (1) A CAPF for sewer line capacity (CAPF-SL) is not required for a development project for which a master plan is unconditionally approved pursuant to the LMC before April 15, 2007.
 - (2) A CAPF-SL is not required for a development project to be constructed entirely on a lot of record if the development project does not require more than a 20% increase in sewer line capacity over the existing development and consists solely of one or more of the following:
 - (A) the change of use of an existing structure;
 - (B) the renovation, with no addition of square footage, of an existing structure;
 - (C) the construction of an addition of 5,000 square feet or less to an existing structure; or
 - (D) the demolition of an existing structure and replacement with a structure no more than 5,000 square feet larger than the one demolished.

(b) Adequacy.

- (1) The Director shall determine whether sewer line capacity is adequate based on the criteria set forth in this subsection.
- (2) Sewer line capacity is deemed adequate if the sewer interceptors, lines, and local pump stations have sufficient capacity to accommodate the ultimate peak flow for the proposed project taking into account existing and approved system demands.

(c) Issuance of CAPF-SL.

- (1) If the Director determines that the sewer line capacity is adequate based on the criteria of subsection (b) of this section, the Director shall issue a CAPF-SL for the project.
- (2) If the Director determines that the sewer line capacity is not adequate, the Director shall deny the CAPF-SL and the master plan, plat, or site plan will not be scheduled for consideration by the Commission, subject to subsection (d) of this section.

(d) Mitigation. If the Director denies a CAPF-SL, a developer may mitigate the impact of the proposed development in accordance with Article IV of this chapter.

(e) Sewer taps. Granting of a CAPF-SL for a project may not be construed as a guarantee of sewer taps or an allocation for the project.

Sec. 4-14. Roads.

(a) Definition. For purposes of this section, "peak hour" means the one-hour period of greatest utilization of a transportation facility; week days normally have an a.m. peak and a p.m. peak.

(b) Scope.

- (1) A CAPF for roads (CAPF-R) is not required for a development project if the project is expected to generate no more than 50 peak hour new vehicle trips.
- (2) A CAPF-R is not required for a development project to be constructed entirely on a lot of record if the development project does not require more than a 20% increase in road capacity over the existing development and consists solely of one or more of the following:
 - (A) the change of use of an existing structure;
 - (B) the renovation, with no addition of square footage, of an existing structure;
 - (C) the construction of an addition to an existing structure if addition is 5,000 square feet or less; or
 - (D) the demolition of an existing structure and replacement with a structure no more than 5,000 square feet larger than the one demolished.

(3) Except as otherwise provided in this paragraph, all roads, including county and state roads, are subject to the requirements of this section. The following interstate highways, excluding on/off ramps, are exempt from the requirements of this section:

(A) I-70;

(B) I-270;

(C) U.S. 15 (Frederick Freeway, between U.S. 40 and Monocacy Blvd./Christopher's Crossing); and

(D) U.S. 40 (between I-270 and U.S. 15).

(c) Adequacy.

(1) The Director shall determine whether roads and intersections are adequate based on the criteria set forth in this subsection as well as the applicable provisions of LMC Sec. 1203, taking into consideration existing and approved development.

(2) Roads and intersections are adequate if a LOS of D or better is maintained on all evaluated road segments, for each turning movement at an intersection, and for the overall intersection. For each turn lane in the study area, the 95th percentile of the queue lengths shall not exceed the length of the turn lane.

(3) The Commission may (in its sole discretion) determine that the existing roads and intersections are adequate if:

(A) adequacy cannot be achieved without alteration or removal of existing structures; and

(B) the developer has incorporated as much mitigation as reasonably possible.

(4) Peak hour trips.

(A) In determining the total peak hour vehicle trips generated by the proposed development project during the peak hour of the adjacent street traffic, the Director will include all land at one location within the city under common ownership or control of the developer.

(B) For purposes of this paragraph, "at one location" means all adjacent land the property lines of which are contiguous or nearly contiguous at any point.

(5) A developer may not avoid the requirements of this section by submitting piecemeal applications for plats or site plans. If a developer seeks approval of only a portion of a development project that generates fewer than 50 peak hour trips, when the developer seeks approval of the rest of the project, the previously approved trips will be included as new trips in the new submittal.

- (6) The capacity of any road funded for construction within 2 years of the date of application pursuant to the City or County CIP or state CTP may be considered in the application of the adequacy test.
 - (7) If the LOS meets the criteria but changes the grades by two or more levels, the Director will review the project and may require mitigation before issuance of a CAPF-R.
- (d) **Issuance of CAPF-R.**
- (1) If the Director determines that the roads and intersections are adequate based on the criteria of subsection (c) of this section, the Director shall issue a CAPF-R for the project.
 - (2) If the Director denies the CAPF-R, the master plan, plat, or site plan application will not be scheduled for consideration by the Commission, subject to subsection (d) of this section.
- (e) **Mitigation.** If the Director denies a CAPF-R, a developer may mitigate the impact of the proposed development in accordance with Article IV of this chapter.

Sec. 4-15. Schools.

- (a) **Definitions.** In this section, the following words have the meanings indicated.
- (1) "FCPS" means Frederick County Public Schools.
 - (2) "Housing for older persons" means housing intended and operated for occupancy by individuals at least 55 years old, and meeting the following criteria:
 - (A) At least 80% of the occupied units are occupied by at least one person who is at least 55 years old;
 - (B) The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this section;
 - (C) The housing facility or community complies with the rules promulgated by the Secretary of Housing and Urban Development for verification of occupancy, as set forth in the Fair Housing Act, 42 U.S.C. 3601 et seq.; and
 - (D) The construction and development of the project must reflect the special needs of older persons and include amenities for them.
 - (3) "Projected enrollment" means the FCPS official enrollment figures, plus background enrollment, plus pupils generated from the proposed development project.
 - (4) "SRC" means state rated capacity, the maximum number of students, as determined by the state, that can be reasonably accommodated in a school facility without significantly hampering delivery of the given educational program.

(b) Scope.

- (1) A development project is not required to obtain a CAPF for schools (CAPF-SCH) if the project:
 - (A) is a nonresidential project;
 - (B) creates fewer than 6 residential dwelling units;
 - (C) is a residential or mixed use project or portion of a residential or mixed use project for which a master plan was unconditionally approved before April 15, 2007; or
 - (D) qualifies as "housing for older persons".

(c) Testing process and criteria.

- (1) Each year, FCPS will provide the Director with the SRC for each school and the actual enrollment data for each school as of the last school day of September, December, March, and June.
- (2) FCPS will provide the Director with an assessment of adequacy of every elementary, middle, and high school serving the proposed development as of the date of plan submission.
- (3) FCPS will determine pupil generation rates based on FCPS formulas and the characteristics of the school attendance area within which the proposed development is located. Pupil yield by housing types from the proposed development will be prorated over the number of years for which APFO approval is sought.
- (4) The SRC and pupil generation rates approved for us by FCPS shall be used in all calculations.
- (5) Background enrollment growth and pupil generation rates will be extrapolated over the number of years in the period of validity as specified in Sec. 4-10 of this chapter.
- (6) Background enrollment will be calculated taking into consideration any development project for which the Director has issued a provisional or final CAPF-SCH.

- (d) Redistricting.** If a school's capacity is not adequate and an adjoining school district at the same level is at least 20% below SRC, the developer may request the Frederick County Board of Education (BOE) to determine the viability of redistricting to accommodate the new development. If the BOE determines that redistricting is a viable alternative, and the redistricting would result in all the schools serving the proposed development meeting the applicable standards established in this subsection, then the school will be deemed adequate.

(e) Adequacy.

- (1) The Director, after receiving the assessment from FCPS, shall determine adequacy in accordance with this subsection.
- (2) The Director shall determine that a school is adequate if:
 - (A) the projected enrollment is less than or equal to 100% of SRC;
 - (B) the school is deemed adequate based on redistricting in accordance with subsection (d) of this section; or
 - (C) adequate capacity is scheduled for construction within the first 2 years of the county CIP. The CIP project and the proposed development must be located within the same school attendance boundaries, including areas where redistricting boundaries have been approved.
- (3) If the Director determines that a school is not adequate, the Director shall notify the developer in writing as soon as practicable.

(f) Issuance of CAPF-SCH.

- (1) The Director shall issue a CAPF-SCH if:
 - (A) the Director determines that all schools serving the proposed development are adequate; or
 - (B) issuance is warranted under subsection (g) of this section.
- (2) Except as otherwise provided in subsections (g) and (h) of this section, if the Director determines that schools are not adequate, the Director shall not issue the CAPF-SCH and the master plan, plat, or site plan will not be scheduled for consideration by the Commission.

(g) Five-year option.

- (1) This subsection applies to projects for which the Director has determined schools are not adequate and has notified the developer in accordance with subsection (e) of this section.
- (2) Upon receipt of the notice, the developer shall notify the Director, in writing, if the developer elects to pursue the "five-year option" described in this subsection.
- (3) The Planning Division, after receiving the September 30 actual enrollment data, will retest the project every October for as many as 5 years (five tests, one per year). The order that residential projects will be tested is based on the date a plat or site plan application is deemed complete by the Planning Division.
- (4) The Director shall issue a CAPF-SCH:

- (A) if, after any retesting performed under paragraph (4) of this subsection, the schools are deemed adequate; or
 - (B) after all five years of retesting performed under paragraph (4) of this subsection, regardless of whether or not one or more schools is deemed adequate.
- (5) If a developer has elected to pursue the "five-year option" described in this section for a project, the effective date of each provisional or final CAPF issued for that project is the same as the effective date of the CAPF-SCH, as determined under Sec. 4-10 of this chapter. If the CAPF-SCH is issued in conjunction with the submission of a master plan, then the effective date is deemed to be the effective date of the subsequently approved site plan or plat.
- (h) **Mitigation.** If the Director denies a CAPF-SCH, a developer may mitigate the impact of the proposed development in accordance with Article IV of this chapter.

ARTICLE IV. MITIGATION

Sec. 4-16. Developer options.

If the Director denies a CAPF for one or more facilities for a project, the developer of that project may choose an option as described in this article in order to mitigate the impact of the development project and obtain a CAPF for that facility.

Sec. 4-17. Mitigation plans.

- (a) **Submittal.** Except as otherwise provided in this chapter, upon denial of a CAPF for one or more facilities for a project, a developer shall submit to the Director a mitigation plan describing the improvements the developer intends to make in order to render the facility adequate to serve the proposed development.
- (b) **Adequate facility.** If the Director finds that the implementation of the mitigation plan would result in the facility being adequate:
 - (1) the Director shall issue a provisional CAPF; and
 - (2) subject to all other requirements of this chapter, the master plan, plat, or site plan may be scheduled for consideration by the Commission.
- (c) **Inadequate facility.** If the Director determines that the implementation of the mitigation plan would not result in the facility being adequate:
 - (1) the Director shall deny the mitigation plan; and
 - (2) the master plan, plat, or site plan will not be scheduled for consideration by the Commission.

Sec. 4-18. Mitigation agreements.

- (a) **Generally.** In addition to the other options described in this article, the developer may phase the construction of any or all public facility improvements necessary to support the project and ensure adequacy of public facilities, in accordance with a mitigation agreement.
- (b) **Contents.** Except as otherwise provided in subsection (b) of this section, a mitigation agreement must:
 - (1) include the approved mitigation plan;
 - (2) address the financial guarantee of public facility improvements; and
 - (3) establish, for each phase or section of development, the terms and conditions under which the necessary public facility improvements will be constructed, financed and delivered.
- (c) **Scheduled improvements.** A mitigation agreement may provide that instead of financially guaranteeing the completion of a public facility improvement required within a phase or section of development, the developer may demonstrate that the improvement is scheduled for construction, as a result of other specifically identified funding, within 2 years after the unconditional approval of a specified preliminary plat or final site plan.
- (d) **DRRA.** A development rights and responsibilities agreement that complies with Section 321 of the LMC may serve as a mitigation agreement.
- (e) **Issuance of CAPF.** If the Board of Aldermen approves a mitigation agreement that includes the mitigation plan approved by the Director or a substantially similar mitigation plan, the Director shall issue a CAPF for the relevant facility. If the Board of Aldermen does not approve a mitigation agreement that includes such a mitigation plan, then the provisional CAPF will be void.

Sec. 4-19. Public works agreement.

- (a) **Generally.** In addition to the other options described in this article, the developer may financially guarantee and construct, in accordance with a public works agreement, any or all of the public facility improvements necessary to support the proposed development and to ensure adequacy of public facilities.
- (b) **Issuance of CAPF.** If the Mayor approves a public works agreement that includes the mitigation plan approved by the Director or a substantially similar mitigation plan, the Director shall issue a CAPF for the relevant facility. If the Mayor does not approve a public works agreement that includes such a mitigation plan, then the provisional CAPF will be void.

Sec. 4-20. Option to wait.

A developer may opt to wait for the inadequate facility or facilities to become adequate through improvements made pursuant to the City or County CIP or other sources.

Sec. 4-21. Escrow funds for road and intersection improvements.

(a) In general.

- (1) Following the Director's denial of a CAPF-R pursuant to Section 4-14 of this chapter, in addition to the developer options described in this chapter, a developer has the option of requesting to establish, or contribute money to, an escrow account.
- (2) The establishment of a new escrow account must be approved by the Board of Aldermen.
- (3) The Director may approve the developer's escrow request pursuant to subsection (c) of this section.

(b) Proportionate share.

- (1) The amount of money the developer is required to place in the escrow account will be the proportionate share of costs of making the improvements required to satisfy the roads adequacy requirements in Section 4-14 of this chapter.
- (2) Based upon information supplied by the developer, the Director shall determine the proportionate share in accordance with this section.
- (3) The proportionate share will be based on an equitable allocation or portion of new peak hour vehicle trips that the development is estimated to cause, when measured against the additional usable capacity that the proposed improvement is creating.
- (4) The amount of the escrow will roughly proportionate to the anticipated traffic impact of the proposed development. In arriving at the equitable allocation or portion, the Director shall consider the traffic impact of the development as it relates to the entire road improvement being proposed.
- (5) The proposed road improvement may, upon request of the developer, be designed to create more new capacity than only that which is required for the project to satisfy the adequacy requirements, if the Director determines that the road link or intersection to be improved will require greater improvement to handle additional future development consistent with the comprehensive plan.

(c) Approval of escrow request.

- (1) The Director shall approve a developer's escrow request if the Director determines:
 - (A) it would not be equitable to impose the entire cost of the required improvements on the developer because of the limited impact that the development would have on the roads in question; and
 - (B) the development would not have a substantial adverse impact on traffic.

- (2) The Director may approve an escrow request if improvements necessary to establish adequacy are practically infeasible due to circumstances beyond the control of the developer but are feasible for construction as a public project.

(d) Limited impact projects.

- (1) A limited impact project is a project that produces 50% or less of the traffic impact capable of being handled by the proposed road improvement. In determining whether a development has limited impact, the Director shall consider the general requirement in Section 4-14 of this chapter that the developer not avoid the intent of this chapter by submitting piecemeal applications.

- (2) For limited impact projects of between 25% and 50% impact of the road improvement, the Director may deny the proposed escrow account request based on a determination that:

- (A) There are funds in the escrow account representing 40% or more of the traffic capacity associated with the proposed improvement needed for road adequacy, and along with the developer's proportionate share, there are sufficient funds to substantially complete the necessary improvements; or

- (B) The escrow approval will result in a piecemeal effort by the developer to avoid making the necessary road improvements.

- (e) **Denial.** The Director shall deny an escrow request if the director determines the road improvement is infeasible to construct. If the Director denies the escrow request, the Director shall not issue the CAPF-R.

- (f) **Already-established escrow accounts.** Once an escrow is established for an improvement project, any developer having an impact on the improvement project shall be required to pay its proportionate share into the escrow account. If, pursuant to a mitigation agreement, a developer constructs road improvements for which an escrow account has previously been established pursuant to this section, the funds in the escrow account shall be made available to the developer to defray the construction costs of the improvements.

(g) Maintenance of account and refunds.

- (1) The escrow account shall be maintained by the City's Director of Finance in an interest-bearing account and shall be used solely for road improvements benefiting the property as determined by the Board of Aldermen.

- (2) Any funds in the escrow account (including interest earned) not expended or encumbered by the end of the tenth fiscal year following collection will, upon application by the escrow account payer, be refunded to the payer.

- (3) The Board of Aldermen may extend the 10-year period referenced in paragraph (2) of this subsection for a specified term based on a reasonable expectation that road improvements benefiting the property will be constructed during the extended term.

- (4) If the money paid into an escrow account for road improvements exceeds actual costs, the developer may seek a refund. Any application for refund must be filed with the Director of Finance within one year of the time at which the funds become available for refund.
- (h) **Issuance of CAPF-R.** If the Director approves an escrow request for road improvements under this section and the development meets all other requirements, then the Director shall issue a provisional CAPF-R. Once the developer remits to the Director of Finance the proportionate share of funds established pursuant to this section, the Director shall issue a final CAPF-R.
- (i) **Other government agencies.** A county, state, or municipal government agency may participate in the construction of road improvements associated with an escrow account.

Sec. 4-22. School mitigation fees.

- (a) **In general.**
 - (1) Following the Director's denial of a CAPF-SCH, except as otherwise provided in subsection (b) of this section, a developer has the option to pay the school mitigation fee as described in this section.
 - (2) The developer shall notify the Director, in writing, if the developer elects to pay the school mitigation fee.
 - (3) Upon receipt of the notice from the developer described in paragraph (2) of this subsection, the Director shall issue a provisional CAPF-SCH.
- (b) **Exception.** The developer shall not have the option to satisfy the school adequacy provisions of this chapter by payment of the school mitigation fee if any school serving or proposed to serve the proposed development project is more than 120% of state rated capacity after taking the following factors into account:
 - (1) the current enrollment as of the APFO test date; and
 - (2) actual capacity expected to be provided by new schools and school additions scheduled for construction in the first two years of the County's CIP for school construction.
- (c) **Affordable housing.** Notwithstanding any other provision of this section, for developers of projects that have been awarded the low-income housing tax credit (LIHTC) created by the federal Tax Reform Act of 1986, the amount of the school mitigation fee is \$0.
- (d) **School mitigation fee account.**
 - (1) A school mitigation fee account is hereby established. The City will deposit all school mitigation fees collected under this section into the school mitigation fee account.


- (2) The school mitigation fee account will be interest bearing. All interest earned on monies deposited to the school mitigation fee account will be credited to that account and will be considered funds of the account.
- (3) The City shall establish and implement necessary accounting controls to ensure that the school mitigation fees are properly deposited, accounted for, and appropriated in accordance with this section and any other applicable legal requirements.
- (e) **Calculation.** The Board of Aldermen will establish by resolution the school mitigation fee components for each housing type and school level. The school mitigation fee payable for each development will be calculated by multiplying the appropriate school mitigation fee components (based on the proposed development project's failure to meet public school adequacy standards at the elementary, middle, or high school level) by the number of residential units of each type.
- (f) **Issuance of CAPF-SCH.** A developer choosing to pay the school mitigation fee shall enter into an agreement with the City identifying the fees to be paid. Upon submission of such an agreement signed by the developer and the Mayor, if the development meets all other requirements, the Director shall issue a CAPF-SCH.
- (g) **Payment.** School mitigation fees must be paid at the time of recording of plats for each residential unit, except for multifamily residential units. School mitigation fees for multifamily residential units must be paid on or before the date a building permit application is submitted for the construction of those units. The school mitigation fees to be applied to each residential unit are the fees in effect at the time of final plat recordation or, for multifamily residential units, at the time of building permit application.
- (h) **Use of funds.**
 - (1) The City may appropriate funds from the school mitigation fee account at its discretion for public school construction or other educational enhancement projects serving or intended to serve city residents.
 - (2) The Department of Finance shall document each appropriation from the school mitigation fee account.
- (i) **Other fees.** The school mitigation fee paid in accordance with this section is in addition to, not in lieu of, any other applicable tax or fee, including but not limited to the public school development impact fee established in the Frederick County Code.
- (j) **Other developments.** The payment of the school mitigation fee or the obligation to pay the school mitigation fee does not satisfy the school adequacy requirement for any other development served by the same school or schools as the proposed development project.

SECTION II. AND BE IT FURTHER ENACTED AND ORDAINED, That this ordinance shall take effect on January 1, 2020 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.

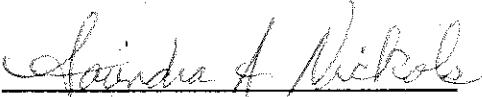
APPROVED: December 19, 2019

PASSED: December 19, 2019


Michael C. O'Connor, Mayor


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

Approved for Legal Sufficiency:


Sandra A. Nichols
City Attorney