THE CITY OF FREDERICK

MAYOR AND BOARD OF ALDERMEN

ORDINANCE NO: G-11-29

AN ORDINANCE concerning

Adequate public facilities

FOR the purpose of establishing an additional option for a developer to meet the public school adequacy requirements of the Adequate Public Facilities Ordinance (APFO), namely the payment of school construction fees; clarifying language; and otherwise pertaining to adequate public facilities.

BY adding

§ 4-17.1

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

WHEREAS, the Board of Aldermen of The City of Frederick has adopted an Adequate Public Facilities Ordinance ("APFO"), codified as Chapter 4 of the Code of the City of Frederick, Maryland, 1966 (as amended); and

WHEREAS, the APFO provides, among other things, that approval of certain development projects is contingent upon the demonstrated adequacy of the public schools intended to serve the proposed development (subject to certain exemptions and conditions); and

WHEREAS, the Board of Aldermen desires to allow developers to meet the school adequacy requirements by paying a school construction fee, as described herein; and

WHEREAS, the school construction fee is based on the public school development impact fee required by Frederick County to ensure that new residential development in Frederick County (including the municipalities therein) contributes to the costs of public school facilities reasonably necessitated by new residential development; and

WHEREAS, the Board of Aldermen has determined that payment of school construction fees will provide additional funds for public school construction projects (including renovations) serving City residents and allow construction of development projects within City boundaries that are currently unable to meet the APFO public school adequacy requirements; and

WHEREAS, the Board of Aldermen expects that the additional funds obtained by the City as a result of the imposition of the school construction fee will create jobs, employment opportunities, and tax revenue for the residents of the City; and

WHEREAS, the Board of Aldermen finds the amendments to the APFO, as set forth herein, to be in the best interests of the residents of the City to be and consistent with the general intent of the APFO to facilitate the construction of adequate public school facilities.

SECTION I. NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that § 4-17.1 of The Code of the City of Frederick, 1966 (as amended) is hereby added to read as follows:

Sec. 4-17.1. School construction fees.

- (a) In general. Following the Director's denial of a CAPF-SCH pursuant to Section 4-12, in addition to the developer options described in Section 4-16, except as otherwise provided in subsection (b) of this section, a developer has the option to pay the school construction fee as described in this Section 4-17.1.
- (b) Exception. The developer shall not have the option to satisfy the school adequacy provisions of this chapter by payment of the school construction fee if any school serving or proposed to serve the proposed development project exceeds 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) School construction fee account.

- (1) A school construction fee account is hereby established. The City will deposit all school construction fees collected under this section into the school construction fee account.
- (2) The school construction fee account will be interest bearing. All interest earned on monies deposited to the school construction 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 construction fees are properly deposited, accounted for, and appropriated in accordance with this section and any other applicable legal requirements.
- (d) Calculation. The Board of Aldermen will establish by resolution the school construction fee components for each housing type and school level. The school construction fee payable for each development will be calculated by multiplying the appropriate school construction 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.
- (e) Issuance of CAPF-SCH. A developer choosing to pay the school construction 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.

- (f) Payment. School construction fees must be paid at the time of recording of subdivision plats for each residential unit, except for multifamily residential units. School construction 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 construction fees to be applied to each residential unit are the fees in effect at the time of subdivision plat recordation or, for multifamily residential units, at the time of building permit application.
- (g) Further testing. Upon payment of all school construction fees applicable to the proposed development project, the project will not be subject to further testing for school adequacy under the APFO for the duration of the APFO approval period, unless the density or intensity of the development project increases.
- (h) Annual meeting. Each year, the Director shall contact the Board of Education and the Frederick County Board of County Commissioners to set up a meeting with the Mayor and Board of Aldermen for the purpose of discussing the priorities for construction projects relating to schools within the City. The City will use this discussion as a basis for determining how and when to allocate funds from the school construction fee account.

(i) Use of funds.

- (1) The City may appropriate funds from the school construction fee account at its discretion for school construction projects for public schools serving or intended to serve residents of the City. These school construction projects may consist of renovating schools existing as of the effective date of this section or constructing new schools.
- (2) Specific uses of school construction fees include, but are not limited to, capital costs in connection with the construction of public school facilities, including planning, design, engineering, land acquisition, legal, appraisal and other costs related to financing and development, costs of compliance with purchasing procedures and applicable administrative and legal requirements, and all other costs necessary or incidental to the provision of public school facilities.
- (3) The Department of Finance shall document each appropriation from the school construction fee account.
- (j) Other fees. The school construction 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 Section 1-22 of the Frederick County Code.
- (k) Other developments. The payment of the school construction fee or the obligation to pay the school construction fee does not satisfy the public school adequacy requirement for any other development served by the same school or schools as the proposed development project.

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

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

SECTION IV. AND BE IT FURTHER ENACTED AND ORDAINED that this ordinance shall remain in effect through January 1, 2016, and shall expire and be of no further force and effect at midnight on January 1, 2016.

PASSED:	DATE:	December 1, 20

Randy MicClement, President,

Board of Aldermen

APPROVED: DATE: December 1, 2011

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Approved for Legal Sufficiency:

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