

Chapter 4 - ADEQUATE PUBLIC FACILITIES

ARTICLE I. - IN GENERAL

Sec. 4-1. - Authority.

This chapter exercises the authority granted by Article 66B of the Annotated Code of Maryland to enact laws providing for or requiring the planning, staging, or provision of adequate public facilities.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-2. - Applicability.

Except as provided in Section 4-5, this chapter applies to every new or pending development project within the jurisdictional boundaries of the city.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-3. - Definitions.

CIP means capital improvements program.

Developer means a person, business, or government agency with primary financial responsibility for undertaking or proposing the construction of one or more structures or any other development project.

Development project or *project* means any land improvement, including but not limited to the subdivision of land, alteration to an existing structure, redevelopment, and the change of use of land.

Development Rights and Responsibilities Agreement means an agreement established pursuant to Section 321 of the LMC, as authorized in Section 13.01 of Article 66B of the Annotated Code of Maryland.

Director means the director of public works or designee.

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.

Fair Housing Act means 42 U.S.C. 3601 et seq.

gpd means gallons per day; a measure of water and sewer supply.

Housing for older persons means housing intended and operated for occupancy by persons fifty-five (55) years of age or older, and meeting the following criteria:

- (1) At least eighty (80) percent of the occupied units are occupied by at least one person who is fifty-five (55) years of age or older;
- (2) The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and
- (3) 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.

Land Management Code or *LMC* means Appendix A of the Frederick City Code (1966, as amended).

Level of service or *LOS* means a standardized index of relative service provided by a road or highway ranging from "A" to "F" with "A" representing free, unobstructed flow and "F" representing a forced flow beyond capacity of the facility, as defined in the Highway Capacity Manual published by the Highway Research Board.

Lot of record means any lot legally recorded in the land records of Frederick County as of April 15, 2007. A lot of record must have satisfied all zoning and subdivision regulation requirements in effect at the time the lot was recorded.

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.

Minimum residual pressure means twenty (20) psi.

Moratorium means any executive or legislative action by any governmental body (city, county, state, or federal) that prevents the recordation of plats or issuance of building permits.

Nonresidential project means any use other than a residential use, as identified in Section 404 of the LMC.

Normal required pressure means forty (40) psi, unless determined otherwise by the director based on site-specific requirements or engineering studies.

Peak hour means the one-hour period of greatest utilization of a transportation facility; weekdays normally have an a.m. peak and a p.m. peak.

psi means pounds per square inch, a measurement of pressure.

Public facilities means public roads, water line, water source/supply, water treatment capacity, sewer line, sewer treatment capacity, and schools.

Roadway capacity means the maximum number of vehicles that can pass a given point during one hour under prevailing roadway and traffic conditions.

State rated capacity or *SRC* means the maximum number of students, as determined by the state of Maryland, that can be reasonably accommodated in a public school facility.

Water contract means a water service contract executed pursuant to the city's 2002 water allocation ordinance, or a water and sewer allocation contract executed pursuant to Section 742 of the LMC.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-4. - Regulations.

The mayor may promulgate rules and regulations to implement the provisions of this chapter.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-5. - General exemptions.

(a) Types of projects. The following types of development projects are exempt from this chapter:

- (1) Any project to be undertaken by the city;
- (2) Any residential project that does not create any additional dwelling units;
- (3) Any residential project that creates five (5) or fewer dwelling units;
- (4) Any nonresidential project for which a final site plan has been unconditionally approved and which has received an allocation through a water contract executed before April 15, 2007; and
- (5) Any residential project that has received an allocation for all its units through one or more water contracts executed before April 15, 2007. If, through a water contract executed before April 15, 2007, an allocation has been assigned to specific lots within a residential subdivision, or to a certain number of units within a multifamily structure, then that portion of the residential project that has received the allocation is exempt from this chapter.

- (b) 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 those relating to the development review and permitting requirements for development projects within the city.
- (c) Planning commission requirements. A project deemed exempt from the requirements of this chapter remains subject to the authority of the planning commission.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-6. - Approval of subdivisions, site plans.

- (a) Approval required. The planning commission may not approve a preliminary or final subdivision plat, or site plan that does not meet the requirements for adequate public facilities set forth in Sections 4-8 through 4-12 of this chapter.
- (b) Previously-approved plans. Except as provided in Section 4-5, the planning commission may not approve an application for revision or extension of a previously-approved preliminary or final subdivision plat, or site plan resulting in an increase in density or intensity of use unless the requirements of Sections 4-8 through 4-12 of this chapter have been met.
- (c) Approval period. Any certificate of adequate public facilities (CAPF), once issued in accordance with this chapter, is valid for the following time period, starting from the effective date of the water contract for the preliminary or final subdivision plat, or site plan indicating sufficient allocation has been received for construction to commence, as long as all other conditions of the preliminary or final subdivision plat, or site plan approval remain valid.

(1) Residential preliminary or final subdivision plats/final site plans.

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

(2) Nonresidential preliminary or final subdivision plats/final site plans.

Ten acres or less	3 years
More than ten and less than or equal to 50 acres	5 years
More than 50 acres	8 years

- (3) The planning commission shall, at the request of the developer, extend the time periods specified in this subsection for the period of time during which (A) a moratorium is in effect; or (B) the developer is unable to record a plat or obtain a building permit because of the application of the city's water and sewer regulations.
 - (4) The approval period for a mixed use project is determined according to the applicable period for a residential preliminary or final subdivision plat/final site plan or a nonresidential preliminary or final subdivision plat/final site plan, whichever is longer.
- (d) Reduction in time. At the request of the developer, the planning commission may approve adequate public facilities for a preliminary or final subdivision plat, or site plan for a shorter time period than the one specified in Section 4-6(c), but in no case for less than one year.
 - (e) Concurrent approvals. If a developer is seeking concurrent preliminary or final subdivision and site plan approval, the adequate public facilities testing is required as part of the preliminary or final subdivision approval. Planning commission approval will be conditioned upon the placement of a note on the preliminary or final subdivision plat and the site plan specifying approved use.
 - (f) Extension. At the request of the developer, the planning commission may extend the approval of adequate public facilities testing beyond the time period provided in Section 4-6(c) upon finding that:
 - (1) All conditions of approval are being met;
 - (2) All provisions associated with the certificates of adequate public facilities for water line capacity, sewer line capacity, roads, and schools (CAPF-WL, CAPF-SL, CAPF-R, and CAPF-SCH) remain valid;
 - (3) All unrecorded lots or unbuilt site plan structures are either vested in accordance with the mitigation plans associated with the CAPF-WL, CAPF-SL, CAPF-R, or CAPF-SCH, or meet the requirements for adequate water line capacity, sewer line capacity, roads, and schools; and
 - (4) Sufficient public water treatment and sewer basin capacity are available for the development project to proceed.
 - (g) Phasing limitations. The planning commission may extend the approval periods beyond those periods specified in Section 4-6(c) if required phasing limitations warrant such an extension.
 - (h) Expiration of preliminary subdivision plat approval. If preliminary subdivision plat approval expires or is voided prior to the recording of all lots, the planning commission may not approve a preliminary or final subdivision plat for the unrecorded lots until the requirements of this chapter have been met.
 - (i) Expiration of site plan approval. If site plan approval expires or is voided before the development is completely built, the planning commission may not reapprove the site plan for the unbuilt portion until the requirements of this chapter have been met.
 - (j) Retesting. A development project that receives CAPF approval at the time of preliminary or final subdivision plat approval will not be subject to adequate public facilities testing at the site plan approval stage provided that the CAPF approval remains valid and that the site plan does not propose an increase in the density or intensity of use.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-7. - Approval of master plans.

- (a) *In general.* The planning commission may not approve an application for approval of a master plan 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 Sections 4-8 through 4-12 this chapter. As part of the approval of a master plan or amendment, the planning commission shall approve a phasing plan indicating the density and rate of development in accordance with the availability of adequate public facilities.

- (b) *Approval period.* Certificates of adequate public facilities (CAPF) issued pursuant to Sections 4-8 through 4-14 of this chapter are valid for a maximum of twenty-four (24) months after a master plan or master plan amendment is unconditionally approved. If, within twenty-four (24) months after a master plan or master plan amendment is unconditionally approved, the developer obtains approval for at least one preliminary subdivision plat, final subdivision plat, or final site plan associated with the master plan, then the approval period is as specified in Section 4-6 of this chapter. If the developer does not obtain approval of a preliminary subdivision plat, final subdivision plat, or final site plan associated with the master plan within twenty-four (24) months after a master plan or master plan amendment is unconditionally approved, then the certificates of adequate public facilities are void.
- (c) *Retesting.* A development project that receives CAPF approval at the time of master plan approval will not be subject to adequate public facilities testing at the preliminary or final subdivision plat or site plan approval stage provided that the CAPF approval remains valid and that the preliminary or final subdivision plat or site plan does not propose an increase in the density or intensity of use.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

(Ord. No. G-13-18, § I, 7-18-13)

ARTICLE II. - CERTIFICATES OF ADEQUATE PUBLIC FACILITIES

Sec. 4-8. - In general.

- (a) In general. Except as otherwise provided in this chapter, the planning commission may not consider an application for approval of a master plan, preliminary or final subdivision plat, or final site plan until the director, in accordance with the provisions of this chapter, (1) finds that the application is exempt pursuant to Section 4-5(a) or Sections 4-9(a), 4-10(a), 4-11(a) and 4-12(a), (2) issues a final certificate of adequate public facilities, (3) issues a provisional certificate of public facilities; or (4) recommends approval of a mitigation plan, for each of the following public facilities: water line capacity, sewer line capacity, roads, and schools.
- (b) Option to wait. A developer whose project has been denied one or more certificates of adequate public facilities has, in addition to the other options described in this chapter, the option to wait for the inadequate public facility or facilities to become adequate through improvements made pursuant to the city or county CIP or other sources.
- (c) Submittal requirements. 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.
- (d) Effect on other laws. Any project receiving certificates of adequate public facilities in accordance with the provisions of this chapter remains subject to all other applicable laws and regulations, including but not limited to those relating to the development review and permitting requirements for development projects within the city.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-9. - Certificate of adequate public facilities for water line capacity (CAPF-WL).

- (a) Exemptions.
 - (1) A CAPF-WL is not required for a development project for which a preliminary or final subdivision plat, or a final site plan is unconditionally approved before April 15, 2007.

- (2) A 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.
 - (3) 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 twenty (20) percent 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 a structure existing as of April 15, 2007;
 - (B) The renovation, with no addition of square footage, of a structure existing as of April 15, 2007;
 - (C) The construction of an addition of five thousand (5,000) square feet or less to a structure existing as of April 15, 2007; or
 - (D) The demolition of a structure existing as of April 15, 2007 and replacement with a structure no more than five thousand (5,000) square feet larger than the one demolished.
- (b) Adequacy of water line capacity.
- (1) Test. 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 two (2) years of the city or county CIP as of the date of the application.
- (c) Issuance of CAPF-WL. 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. If the director determines that the water line capacity is not adequate, the director shall deny the CAPF-WL. If the director denies the CAPF-WL, the master plan, preliminary or final subdivision plat, or site plan application will not be scheduled for consideration by the planning commission, subject to subsection (d) of this section.
- (d) Mitigation. If a CAPF-WL is denied, a developer may pursue any of the options set forth in Section 4-16. The developer shall submit to the director a mitigation plan describing the improvements the developer intends to make in order to render the water line capacity adequate to serve the proposed development. If the director finds, using the criteria of subsection (b) of this section, that the implementation of the mitigation plan would result in adequate water line capacity, the director shall issue a provisional CAPF-WL, and the master plan, preliminary or final subdivision plat, or site plan application may be scheduled for consideration by the planning commission. If the director determines, using the criteria of subsection (b) of this section, that the implementation of the mitigation plan would not result in adequate water line capacity, the director shall deny the mitigation plan, and the master plan, preliminary or final subdivision plat, or site plan application will not be scheduled for consideration by the planning commission.
- (1) If the mayor approves, in accordance with Section 4-16(a)(1), a public works agreement that includes the mitigation plan approved by the director or a substantially similar mitigation plan, the director shall issue a final CAPF-WL. If the mayor does not approve a public works agreement that includes such a mitigation plan, then the provisional CAPF-WL will be void.
 - (2) If the mayor and board of aldermen approve, in accordance with Section 4-16(b), a mitigation agreement that includes the mitigation plan approved by the director or a substantially similar mitigation plan, the director shall issue a final CAPF-WL. If the mayor and board of aldermen do

not approve a mitigation agreement that includes such a mitigation plan, then the provisional CAPF-WL will be void.

- (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.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-10. - Certificate of adequate public facilities for sewer line capacity (CAPF-SL).

(a) Exemptions.

- (1) A CAPF-SL is not required for a development project for which preliminary or final subdivision plat, or final site plan unconditional approval is granted before April 15, 2007.
- (2) A 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.
- (3) 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 twenty (20) percent 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 a structure existing as of April 15, 2007;
 - (B) The renovation, with no addition of square footage, of a structure existing as of April 15, 2007;
 - (C) The construction of an addition of five thousand (5,000) square feet or less to a structure existing as of April 15, 2007; or
 - (D) The demolition of a structure existing as of April 15, 2007 and replacement with a structure no more than five thousand (5,000) square feet larger than the one demolished.
- (b) Test for adequacy of sewer line capacity. The director shall determine whether sewer line capacity is adequate based on the criteria set forth in this subsection. Sewer line capacity is deemed adequate if, given existing connections, future connections from buildings under construction, and recorded lots for which allocations have been made, the sewer interceptors, lines, and local pump stations have sufficient capacity to accommodate the ultimate peak flow for the proposed project.
- (c) Issuance of CAPF-SL. 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. If the director determines that the sewer line capacity is not adequate, the director shall deny the CAPF-SL. If the director denies the CAPF-SL, the master plan, preliminary or final subdivision plat, or site plan application will not be scheduled for consideration by the planning commission, subject to subsection (d) of this section.
- (d) Mitigation. If a CAPF-SL is denied, a developer may pursue any of the options set forth in Section 4-16. The developer shall submit to the director a mitigation plan describing the improvements the developer intends to make in order to render the sewer line capacity adequate to serve the proposed development. If the director finds, using the criteria of subsection (b) of this section, that the implementation of the mitigation plan would result in adequate sewer line capacity, the director shall issue a provisional CAPF-SL, and the master plan, preliminary or final subdivision plat, or site plan application may be scheduled for consideration by the planning commission. If the director determines, using the criteria of subsection (b) of this section, that the implementation of the mitigation plan would not result in adequate sewer line capacity, the director shall deny the mitigation plan, and the master plan, preliminary or final subdivision plat, or site plan application will not be scheduled for consideration by the planning commission.
 - (1) If the mayor approves, in accordance with Section 4-16(a)(1), a public works agreement that includes the mitigation plan approved by the director or a substantially similar mitigation plan,

the director shall issue a final CAPF-SL. If the mayor does not approve a public works agreement that includes such a mitigation plan, then the provisional CAPF-SL will be void.

- (2) If the mayor and board of aldermen approve, in accordance with Section 4-16(b), a mitigation agreement that includes the mitigation plan approved by the director or a substantially similar mitigation plan, the director shall issue a final CAPF-SL. If the mayor and board of aldermen do not approve a mitigation agreement that includes such a mitigation plan, then the provisional CAPF-SL will be void.
- (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.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-11. - Certificate of adequate public facilities for roads (CAPF-R).

- (a) Exemptions. A development project is exempt from the requirements of this Section 4-11 if:
- (1) A preliminary or final subdivision plat, final site plan, or master plan is unconditionally approved for the project before April 15, 2007; or
 - (2) The project generates or is expected to generate no more than fifteen (15) peak hour new vehicle trips.
 - (3) 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 twenty (20) percent increase in road capacity over the existing development and consists solely of one or more of the following:
 - (A) The change of use of a structure existing as of April 15, 2007;
 - (B) The renovation, with no addition of square footage, of a structure existing as of April 15, 2007;
 - (C) The construction of an addition of five thousand (5,000) square feet or less to a structure existing as of April 15, 2007; or
 - (D) The demolition of a structure existing as of April 15, 2007 and replacement with a structure no more than five thousand (5,000) square feet larger than the one demolished.
- (b) Determination of adequacy.
- (1) Test. The director shall determine whether roads and intersections are adequate based on the criteria set forth in this subsection.
 - (A) 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 ninety-fifth percentile of the queue lengths shall not exceed the length of the turn lane. The methods outlined in Section 1203 of the LMC will be used for this analysis.
 - (B) Except for on/off ramps, the following highways are exempt from the testing provisions of this section:
 - (i) I-70;
 - (ii) I-270;
 - (iii) U.S. 15; and
 - (iv) The section of U.S. 40 between I-270 and U.S. 15.
 - (C) All other roads, including county and state roads, are subject to the requirements of this section.

- (D) If the criteria for adequacy specified in Section 4-11(b)(1) and Section 1203 of the LMC cannot be achieved without alteration or removal of existing structures, the planning commission may (in its sole discretion) conclude that the existing roads and intersections are adequate so long as the planning commission finds that the developer has incorporated as much mitigation as reasonably possible.
- (2) 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. The phrase "at one location" means all adjacent land the property lines of which are contiguous or nearly contiguous at any point.
- (3) A developer may not avoid the requirements of this section by submitting piecemeal applications for preliminary plats or site plans. If a developer seeks approval of only a portion of a development project that generates fewer than fifteen (15) peak hour trips, then upon seeking approval of the rest of the project, the previously approved trips will be included as new trips in the new submittal.
- (4) The capacity of any road funded for construction within two (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.
- (5) If the LOS meets the criteria but changes the grades by two (2) or more levels, the director will review the project and may require mitigation before issuance of a CAPF-R.
- (c) Issuance of CAPF-R. If the director determines that the roads and intersections are adequate based on the criteria of subsection (b) of this section, the director shall issue a CAPF-R for the project. If the director denies the CAPF-R, the master plan, preliminary or final subdivision plat, or site plan application will not be scheduled for consideration by the planning commission, subject to subsection (d) of this section.
- (d) Mitigation. If the director denies a CAPF-R, a developer may mitigate the impact of the proposed development through any of the actions described in this Section 4-11(d).
 - (1) A developer may pursue any of the options set forth in Section 4-16. The developer shall submit to the director a mitigation plan describing the improvements the developer intends to make in order to render the roads and intersections adequate to serve the proposed development. If the director finds, using the criteria of subsection (b) of this section, that the implementation of the mitigation plan would result in adequate roads and intersections, the director shall issue a provisional CAPF-R, and the master plan, preliminary or final subdivision plat, or site plan application may be scheduled for consideration by the planning commission. If the director determines, using the criteria of subsection (b) of this section, that the implementation of the mitigation plan would not result in both adequate roads and adequate intersections, the director shall deny the mitigation plan, and the master plan, preliminary or final subdivision plat, or site plan application will not be scheduled for consideration by the planning commission.
 - (A) If the mayor approves, in accordance with Section 4-16(a)(1), a public works agreement that includes the mitigation plan approved by the director or a substantially similar mitigation plan, the director shall issue a final CAPF-R. If the mayor does not approve a public works agreement that includes such a mitigation plan, then the provisional CAPF-R will be void.
 - (B) If the mayor and board of aldermen approve, in accordance with Section 4-16, a mitigation agreement that includes the mitigation plan approved by the director or a substantially similar mitigation plan, the director shall issue a final CAPF-R. If the mayor and board of aldermen do not approve a mitigation agreement that includes such a mitigation plan, then the provisional CAPF-R will be void.

- (2) In lieu of any of the options referenced in Section 4-11(d)(1), a developer may mitigate the impact of the proposed development on roads and intersections by contributing money to an escrow account as set forth in Section 4-17.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-12. - Certificate of adequate public facilities for schools (CAPF-SCH).

(a) Exemptions.

- (1) The following types of development projects are exempt from the requirements of this Section 4-12:
 - (A) Any project that creates five (5) or fewer residential dwelling units as documented in an application for preliminary or final subdivision plat, site plan, or building permit;
 - (B) Any residential or mixed use project or portion of a residential or mixed use project that has received preliminary or final subdivision plat unconditional approval prior to April 15, 2007;
 - (C) Any residential or mixed use project or portion of a residential or mixed use project that has received final site plan unconditional approval prior to April 15, 2007;
 - (D) Any nonresidential project;
 - (E) Any development project for which a master plan is approved pursuant to the LMC before April 15, 2007; and
 - (F) Any project that qualifies as "housing for older persons" and meets the following criteria:
 - (i) The proposed project must comply with the minimum age restrictions, as stated in the Fair Housing Act requirements for older persons, and thereby maintain an exemption from the prohibition against family status discrimination, such that children will be excluded as residents.
 - (ii) The zoning certificate, site plan and preliminary or final subdivision plat approvals shall limit the usage of the property to ages specified by the Fair Housing Act in order to qualify as housing for older persons.
 - (iii) The construction and development of the project must reflect the special needs of, and include a full program of amenities and other activities for, older persons.
 - (iv) As part of the site plan approval process, the planning commission shall ensure that the proposed restrictive covenants applicable to the project are limited to housing for older persons and that appropriate enforcement mechanisms are in place to enforce the age restriction and also to ensure compliance with the requirements to qualify as housing for older persons under the Fair Housing Act.
 - (v) Prior to recordation of final subdivision plats and issuance of the zoning certificate for the project, restrictive covenants must be recorded which comply with the Fair Housing Act, address senior citizen housing and the exclusion of secondary school aged or younger children as residents, and contain appropriate enforcement mechanisms. Any subsequent revisions or modifications of the covenants pertaining to age limits on occupancy will require the re-approval of the site plan, zoning certificate, and preliminary or final subdivision plat(s), as necessary.
 - (vi) Before any revision or modification to the project at any time in the future, whether or not the project is built out and occupied, which has the effect of removing or substantially modifying the age restriction for residents, the project must first comply with the school adequacy requirements of this section.

(vii) "Appropriate enforcement mechanisms" as used in this subsection shall include that the restrictive covenants for the project require the homeowners association, through a property management agent, to enforce the age restrictions and ensure compliance with the requirements to qualify as housing for older person under the Fair Housing Act, such that children will be excluded as residents. If more than one homeowners association is established for the project, then the homeowners association governing the housing for older persons project shall have the primary responsibility for enforcing the age restrictions to qualify as housing for older persons under the Fair Housing Act such that children shall be excluded as residents.

(2) A residential project exempt pursuant to Section 4-12(a)(1)(B) or (C) remains exempt for the time period corresponding to the number of units in the project, as follows:

6 — 50 units	3 years from April 15, 2007
51 — 200 units	5 years from April 15, 2007
201 — 500 units	7 years from April 15, 2007
501 — 1,000 units	10 years from April 15, 2007
1,001 or more units	15 years from April 15, 2007

(3) The planning commission shall, at the request of the developer, extend the time periods specified in this subsection for the period of time during which (A) a moratorium is in effect; or (B) the developer is unable to record a plat or obtain a building permit because of the application of the city's water and sewer regulations.

(b) In general.

(1) An elementary, middle or high school is considered adequate if the projected enrollment is less than or equal to one hundred (100) percent of SRC.

(2) School testing will be conducted on a residential project once the planning department has formally acknowledged that a complete preliminary or final subdivision plat or site plan application has been submitted.

(3) For each residential project, each school (elementary, middle and high school) only needs to pass the test outlined in subsection 4-12(b) once for the residential development project to be eligible to proceed.

(4) If one or more of the schools being tested for the residential project fails, the test of subsection 4-12(b)(1) shall be repeated on the residential project each year on or after October 15th. A residential project that fails the October 15th schools test for three (3) years is permitted to obtain a CAPF-SCH.

(5) The director shall issue a CAPF-SCH if any one of the following conditions is met:

(A) The residential project has passed all three (3) schools (elementary, middle, and high school);

(B) An acceptable mitigation plan has been approved and associated agreements executed pursuant to section 4-16; or

- (C) The project is permitted to obtain a CAPF-SCH pursuant to Section 4-12(b)(4).
 - (6) The planning department, upon receiving the September 30th actual enrollment data and SRC for each school from Frederick County Public Schools (FCPS), will test each residential project application that has failed the school test every year on or after October 15th. The order that residential projects will be tested is based on the date of the formal acknowledgement of completed preliminary or final subdivision plat, or site plan application submission.
 - (7) If a residential project placed on hold due to failure to pass the school test is retested based on new FCPS information and meets the adequacy test for schools, the director shall issue a CAPF-SCH for the submitted preliminary or final subdivision plat, or site plan.
 - (8) If a residential development, or the residential portion of a mixed use development, meets the requirements of this chapter during preliminary subdivision plat approval, it will not be subject to adequate public facilities testing at the final subdivision plat or site plan approval stage.
- (c) Determination of adequacy.
- (1) FCPS will provide the city with the actual enrollment data and the SRC for each school for the last school day of September, December, March, and June. FCPS shall 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 or the date upon which all necessary adequate public facilities documentation and materials were submitted, whichever is later. The director, after receiving an assessment from FCPS, shall determine adequacy. An assessment of adequacy from FCPS is valid for a period of six (6) months, after which time FCPS will be required to submit a new assessment to the city.
 - (2) For determining adequacy, enrollment means the FCPS official enrollment figures plus background enrollment plus pupils generated from the proposed development.
 - (3) Pupil generation rates shall be determined using the formulas adopted by FCPS, and shall reflect 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 adequate public facilities approval is sought. The SRC and pupil generation rates approved for use by FCPS shall be used in all calculations.
 - (4) Background enrollment growth will be extrapolated over the number of years for which adequate public facilities approval is requested. Included in the calculations shall be any additional approved (but unrecorded) preliminary plats for major developments in the affected area which might impact the historical growth trend to make it inaccurate or obsolete by a factor of thirty-five (35) percent or more.
 - (5) To meet adequacy criteria, all public elementary, middle, and high schools serving the proposed residential project must be adequate or, alternatively, adequate capacity must be scheduled for construction within the first two (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.
 - (6) If a school's capacity is not adequate as defined in Section 4-12(b)(1) and an adjoining school district at the same level is at least twenty (20) percent below SRC, then the applicant 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 standards established in Section 4-12(b)(1) then the school will be considered adequate.
- (d) Denial of CAPF-SCH. If a school's capacity is not adequate, and redistricting is not a viable alternative, the director shall deny the CAPF-SCH.
- (e) Mitigation. If a CAPF-SCH is denied, a developer may pursue a mitigation agreement in accordance with Section 4-16(a)(2). The developer shall submit to the director a mitigation plan describing the improvements necessary to meet the standards of this section. The developer shall first submit the

mitigation plan to BOE and FCPS for review and comment. The director may not accept a mitigation plan unless the mitigation plan has been approved by BOE and FCPS. If the director finds that the implementation of the mitigation plan would result in adequate school capacity, the director shall recommend to the planning commission that the mitigation plan be accepted. If the director recommends acceptance of the mitigation plan, the planning commission shall consider the mitigation plan as submitted along with the application for master plan, preliminary or final subdivision plat, or site plan approval. If the planning commission approves the mitigation plan, the director shall issue a provisional CAPF-SCH. If the mayor and board of aldermen approve, in accordance with Section 4-16, a mitigation agreement that includes the mitigation plan approved by the planning commission, BOE, and FCPS, the director shall issue a final CAPF-SCH. If the mayor and board of aldermen do not approve a mitigation agreement that includes the mitigation plan, then the provisional CAPF-SCH will be void.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-13. - Certificate of adequate public facilities for public water treatment capacity (CAPF-PW).

- (a) Exemption. A CAPF-PW is not required for a project for which a water contract is executed before April 15, 2007. For purposes of this Section 4-13, the term "project" includes any portion of a project.
- (b) Test for adequacy. After an allocation is made to a project pursuant to Section 742 of the LMC, the developer will assign that allocation to a specific lot. Once that assignment is made, then the director shall issue a CAPF-PW to that lot on the approved plan. The CAPF-PW will reserve the water allocation until the project passes any remaining test required under this chapter.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-14. - Certificate of adequate public facilities for sewer basin treatment capacity (CAPF-SBT).

- (a) Exemption. A CAPF-SBT is not required for a project for which a water contract is executed before April 15, 2007. For purposes of this Section 4-14, the term "project" includes any portion of a project.
- (b) Determination of adequacy. The allocation of sewer basin treatment capacity shall be allocated on a first come first serve basis. Once a CAPF-PW is issued for a project, the director shall evaluate sanitary sewer basin treatment capacity to determine if sufficient wastewater treatment capacity remains. The director may take into account any additional sewer basin treatment capacity resulting from construction within the first two (2) years of the city or county CIP following the date of application.
- (c) Issuance of CAPF-SBT. If the director determines that the sewer basin treatment capacity is adequate to accommodate the proposed project, the director shall issue a CAPF-SBT to the project based on the maximum day and the average daily flow established for that project as measured in gallons per day (gpd). If the director determines that the sewer basin treatment capacity is not adequate to serve the proposed project, the director shall deny the CAPF-SBT request. If the director denies the CAPF-SBT, the development project may not proceed through the development approval process until the CAPF-SBT is issued.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-15. - Building permits.

- (a) Required certificates. A developer may not apply for a building permit for the construction of a project unless the project has first been issued, or deemed exempt from, each of the following certificates:

- (1) Certificate of adequate public facilities-water line capacity;
 - (2) Certificate of adequate public facilities-sewer line capacity;
 - (3) Certificate of adequate public facilities-roads;
 - (4) Certificate of adequate public facilities-schools;
 - (5) Certificate of adequate public facilities-public water treatment; and
 - (6) Certificate of adequate public facilities-sewer basin treatment.
- (b) Fees. The city may not accept any application for a building permit until all fees required pursuant to this chapter have been paid.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-16. - Mitigation.

- (a) *Developer options.* Following the director's denial of a CAPF, the developer may mitigate the impact of the proposed development through either of the options described in this subsection.
- (1) A developer has the option to financially guarantee and construct, in accordance with a public works agreement with the city, any or all of the public facility improvements necessary to support the proposed development and to ensure adequacy of public facilities as set forth in this chapter. A public works agreement must include the mitigation plan approved pursuant to Section 4-9(d), 4-10(d), 4-11(d), or 4-12(e).
 - (2) A developer has the option to pursue a mitigation agreement with the city in accordance with Section 4-16(b).
- (b) *Mitigation agreements.*
- (1) In order to receive a final CAPF, a developer proposing to phase the construction of any public facility improvements necessary to support the proposed development must enter into a mitigation agreement with the city. A mitigation agreement is not valid unless it is approved by the mayor and board of aldermen.
 - (2) A mitigation agreement must:
 - (A) include the mitigation plan approved under Section 4-9(d), 4-10(d), 4-11(d), or 4-12(e) of this article; and
 - (B) address the financial guarantee of public facility improvements.
 - (3) A development rights and responsibilities agreement that complies with Section 321 of the LMC may serve as a mitigation agreement.
 - (4) A mitigation agreement shall 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.
 - (5) 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 two years after the unconditional approval of a specified preliminary subdivision plat or final site plan.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

(Ord. No. G-13-18, § II, 7-18-13; Ord. No. G-14-06, § I, 6-5-14)

Sec. 4-17. - Escrow funds for road and intersection improvements.

- (a) In general. Following the director's denial of a CAPF-R pursuant to Section 4-11, in addition to the developer options described in Section 4-16(a), a developer has the option of requesting to establish, or contribute money to, an escrow account as set forth in this Section 4-17. The establishment of a new escrow account must be approved by the mayor and board of aldermen. The director may approve the developer's escrow request pursuant to subsection (c) of this section.
- (b) Proportionate share. The amount of money the developer shall be required to place in the escrow account shall be the proportionate share of costs of making the improvements required to satisfy the roads adequacy requirements in Section 4-11. Based upon information supplied by the developer, the director shall determine the proportionate share in accordance with this section. This proportionate share shall be based on an equitable allocation or portion of new peak hour vehicle trips that the proposed development is estimated to cause, when measured against the additional usable capacity that the proposed improvement is creating. The amount of such escrow shall be 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. 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 in Section 4-11, 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. Subject to Sections 4-17(c)(2) and 4-17(c)(3), the director shall approve a developer's escrow request if the director determines that it would not be equitable to impose the entire cost of the required improvements on the developer because of the limited impact that the proposed development would have on the roads in question and that the development would not have a substantial adverse impact on traffic. 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 which are feasible for construction as a public project.
 - (1) A limited impact project is a project that produces fifty (50) percent 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 4-11(b) that the developer not avoid the intent of this chapter by submitting piecemeal applications.
 - (2) For limited impact projects of between twenty-five (25) and fifty (50) percent impact of the road improvement, the director may deny the proposed escrow account request for either of the following reasons:
 - (A) There are funds in the escrow account representing forty (40) percent 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.
 - (3) The director shall deny an escrow request if the director determines the road improvement is infeasible to construct.
 - (4) If the director denies the escrow request in accordance with this subsection, the director shall deny the CAPF-R.
- (d) 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 with the city as described in Section 4-16, a developer constructs road improvements for which an escrow account has previously

been established pursuant to this Section 4-17, the funds in the escrow account shall be made available to the developer to defray the construction costs of the improvements.

- (e) Maintenance of account and refunds. The escrow account shall be maintained by the 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. Any funds in the escrow account (together with interest earned thereon) which are not expended or encumbered by the end of the tenth fiscal year following collection shall, upon application by the escrow account payer, be refunded to the payer. The mayor and board of aldermen may extend this ten (10) year period for a specified term based on a reasonable expectation that road improvements benefiting the property will be constructed during the extended term. In addition, 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 such funds become available for refund.
- (f) 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.
- (g) Other government agencies. A county, state, or municipal government agency may participate in the construction of road improvements associated with an escrow account.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

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 one hundred twenty (120) percent 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.

(Ord. No. G-11-29, § I, 12-1-11; Ord. No. G-16-19, § I, 7-21-16)

Sec. 4-18. - Fees.

The board of aldermen may, by resolution, establish fees to cover the administrative costs associated with adequate public facilities testing.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)

Sec. 4-19. - Appeals.

Any person aggrieved by any final order, requirement, decision, or determination of the director, the planning commission, or the mayor and board of aldermen under this chapter may appeal the same within thirty (30) days of the developer's receipt thereof to the zoning board of appeals. Any appeal made pursuant to this section must be filed with the individual or entity that issued the order, requirement, decision, or determination being appealed, and with the zoning board of appeals, and must specify the grounds of the appeal.

(Ord. No. G-07-6, § 1, 3-22-07; Ord. No. G-07-19, § 1, 9-6-07)