EXECUTIVE SUMMARY
MAYOR AND BOARD OF ALDERMEN

Submitted By: Rachel S. Depo, Assistant City Attorney Date: 8/7/2019

Presented By: Rachel S. Depo, Assistant City Attorney

Other Staff Present:
Zack Kershner, Director of Public Works
Tracy Coleman, Deputy Director for Engineering and Operations
Joe Adkins, Deputy Director for Planning
Gabrielle Collard, Division Manager of Current Planning
Cherian Eapen, Traffic Engineer

Meeting Dates

Workshop: 10/3/2018
2/6/2019 (General Procedures)
2/13/2019 (Schools)
2/27/2019 (Water and Sewer Lines)
3/6/2019 (Roads)
3/18/2019
8/7/2019 (Schools)
8/14/2019

Agenda Item: Discussion of the City’s Adequate Public Facilities Ordinance

Background Information:

Chapter 4 of the Frederick City Code, generally known as the Adequate Public Facilities Ordinance (APFO), was adopted in 2007. It is used to evaluate the impacts of land development on certain public facilities so as to coordinate necessary public improvements with the timing of development.

The attached draft ordinance would repeal and replace the current APFO. It would delete the requirements for adequate public water treatment capacity and sewer basin capacity, as that capacity is now allocated in conjunction with the issuance of building permits in accordance with the Water and Sewer Allocation and Impact Fees Ordinance (City Code, Ch. 25, Art. IX). It would also eliminate the obsolete references to water contracts and would instead provide that the approval period for certificates of adequate public facilities begins on the date of approval by the Planning Commission (or Planning Division, as the case may be). Otherwise, the draft ordinance does not reflect any major substantive changes. Rather, it reorganizes and clarifies various provisions of the APFO and makes stylistic changes for clarity and consistency.
The purpose of this workshop is to discuss the ordinance generally, with –time permitting– a particular emphasis on roads. One specific issue that merits further discussion is whether or not to institute a “mobility fee” option for certain constrained areas within the City, such as downtown, in lieu of APFO testing. If the Board wishes to pursue this option, we will need to engage a consultant to help identify the constrained areas, etc. This process may extend beyond the initial adoption of a revised APFO.

Committee Recommendations if Applicable: N/A

Fiscal Impact: N/A

Recommendation: N/A

Supporting Documentation: Draft Ordinance; Redlined Draft Ordinance

Director: __________________________________________ Date: ________________

Concurrence Needed:

☐ Legal: ___________ ___________ ☐
☐ Budget: ___________ ___________ ☐
☐ Finance: ___________ ___________ ☐
☐ Purchasing: ___________ ___________ ☐
☐ Public Works Operations: ___________ ___________ ☐
☐ Engineering: ___________ ___________ ☐
☐ Parks and Recreation: ___________ ___________ ☐
☐ Planning: ___________ ___________ ☐
☐ Police: ___________ ___________ ☐
☐ Human Resources: ___________ ___________ ☐
☐ Economic Development: ___________ ___________ ☐
☐ Other: ___________ ___________ ☐
THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN

ORDINANCE NO: G-19-____

AN ORDINANCE concerning adequate public facilities

FOR the purpose of... 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.

This chapter is intended to facilitate orderly development and growth by exercising 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.

Sec. 4-2. Definitions.

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

(b) CAPF. “CAPF” means a final certificate of adequate public facilities issued for each of the facilities described in this chapter, indicating the facility has been tested and determined to be adequate.

(c) CIP. “CIP” means capital improvements program.

(d) 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.

(e) Development project. “Development project” or “project” means any land improvement that is required under the LMC to obtain approval of a master plan, subdivision, or final site plan. “Development project” includes alteration to an existing structure, redevelopment, and change of use.
(f) **Director.** “Director” means the City’s Director of Public Works or the Director’s designee.

(g) **Division.** “Division” means the City’s Planning Division.

(h) **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.

(i) **Existing structure.** “Existing structure” means a structure for which a CO was issued before [effective date].

(j) **Facility or facilities.** “Facilities” are public facilities including and limited to water lines, sewer lines, roads, and schools.

(k) **LMC.** “LMC” means the Land Management Code, Appendix A of this Code.

(l) **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.

(m) **Lot of record.** “Lot of record” means any lot legally recorded in the land records of Frederick County as of [effective date] and having satisfied all zoning and subdivision regulation requirements in effect at the time the lot was recorded.

(n) **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.

(o) **Nonresidential project.** “Nonresidential project” means a project that includes any use other than a residential use, as identified in Section 404 of the LMC.

(p) **Plat.** “Plat”, unless otherwise indicated, means a preliminary subdivision plat or a final subdivision plat.

(q) **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.

(r) **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.

(s) **Residential project.** “Residential project” means a development project consisting solely of residential uses, as identified in Section 404 of the LMC.

(t) **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. Scope.

Except as otherwise provided in this chapter, the Planning Commission may not consider an application for approval of a master plan, plat, or final site plan until the Director:

(a) finds that the project is exempt under Sec. 4-9 of this chapter; or

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

Sec. 4-5. 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 Planning Commission.

Sec. 4-6. Submittal requirements.

An application for CAPFs shall be made by an applicant contemporaneously with any application for a master plan, plat, or site plan. 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. 4-7. Required CAPFs.

A developer may not apply for a building permit for the construction of a project unless the project has first been issued a CAPF for, or deemed exempt from the requirements of this chapter relating to, each facility (water line capacity, sewer line capacity, roads, and schools).

Sec. 4-8. Appeals.

Any person aggrieved by any final order, requirement, decision, or determination of the Director, the Planning 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. 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. Scope.

(a) In general. In planning and developing any project, the developer shall comply with the general principles and procedures set forth in this chapter for the provision of adequate facilities.

(b) The following types of development projects are exempt from this chapter:
(1) a project to be undertaken by the City;

(2) a residential project that creates 5 or fewer dwelling units; and

(3) subdivision that does not result in the creation of new lots.

Sec. 4-10. Testing.

Testing for adequacy for each facility described in this chapter will be conducted on a project after the Division determines that a complete master plan, plat, or site plan application has been submitted.

Sec. 4-11. Subdivisions and site plans.

(a) **Planning Commission approval.** The Planning Commission may not approve a plat or site plan that does not meet the requirements for adequate public facilities set forth in this chapter.

(b) **Previously-approved plans.** The Planning Commission may approve an application for revision or extension of a previously-approved plat or site plan resulting in an increase in density or intensity of use only after the requirements of this chapter have been met.

(c) **Approval period.**

(1) 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:

(A) for projects requiring Planning Commission approval, on the date of the Planning Commission’s conditional approval; or

(B) for projects that are reviewed administratively, on the date of the Planning Division’s approval.
A CAPF or provisional CAPF is valid for the applicable period specified as follows:

### Residential Plats/Final Site Plans

<table>
<thead>
<tr>
<th>Number of Dwelling Units</th>
<th>Years Valid (After Effective Date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Six - 50 units</td>
<td>3 years</td>
</tr>
<tr>
<td>51 - 200 units</td>
<td>5 years</td>
</tr>
<tr>
<td>201 - 500 units</td>
<td>7 years</td>
</tr>
<tr>
<td>501 - 1,000 units</td>
<td>10 years</td>
</tr>
<tr>
<td>More than 1,000 units</td>
<td>15 years</td>
</tr>
</tbody>
</table>

### Nonresidential Plats/Final Site Plans

<table>
<thead>
<tr>
<th>Size of Parcel</th>
<th>Years Valid (After Effective Date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 acres or less</td>
<td>3 years</td>
</tr>
<tr>
<td>More than 10 and less than or equal to 50 acres</td>
<td>5 years</td>
</tr>
<tr>
<td>More than 50 acres</td>
<td>8 years</td>
</tr>
</tbody>
</table>

(4) The approval period 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.

(d) **Reduction in time.** At the request of the developer, the Planning Commission may reduce an approval period from the one specified in subsection (c)(3) of this section to a period of at least one year. In considering a request under this provision, the Planning Commission should consider how the reduction will contribute to the attainment of the policies of the comprehensive plan.

(e) **Concurrent approvals.** If a developer is seeking concurrent subdivision and site plan approval, the adequate public testing is required as part of the plat approval. Planning Commission approval will be conditioned upon the placement of a note on the 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 this section if the Planning Commission determines:

(1) all conditions of approval are being met;

(2) all provisions associated with the CAPFs for each facility remain valid;

(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; and
(4) sufficient public water treatment and sewer basin capacity are available for the development project to proceed.

(g) **Phasing limitations.** At the request of the developer or on its own initiative, the Planning Commission may extend the approval period 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 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 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.

Sec. 4-12. Master plans.

(a) **In general.**

(1) 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 this chapter.

(2) 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.**

(1) A CAPF or provisional CAPF associated with a master plan or master plan amendment is valid for 2 years after the date the master plan or master plan amendment is unconditionally approved.

(2) If, during the approval period specified in paragraph (1) of this subsection, a developer obtains approval for at least one plat or final site plan associated with the master plan, then the approval period is as specified in Section 4-11 of this chapter.

(3) If, during the approval 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 CAPF for the master plan is void.

(c) **Retesting.** If the CAPF approval remains valid and the plat or site plan does not propose an increase in the density or intensity of use, 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 plat or site plan stage.

ARTICLE III. CERTIFICATES OF ADEQUATE PUBLIC FACILITIES

Sec. 4-13. 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 [date].

(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 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 five thousand (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 Planning 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. 4-14. 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 [date].

(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 an increase of at least 20% 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, 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.**

(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 Planning 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. 4-15. 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 development project is not required to obtain a CAPF for roads (CAPF-R) if the project is expected to generate no more than 15 peak hour new vehicle trips.

(2) A development project is not required to obtain a CAPF-R if the project:

   (A) is to be constructed entirely on a lot of record;
   
   (B) does not require an increase in road capacity of more than 20% more than the existing development; and
   
   (C) consists solely of:

   (i) the change of use of an existing structure;
   
   (ii) the renovation, with no addition of square footage, of an existing structure;
   
   (iii) the construction of an addition to an existing structure if addition is 5,000 square feet or less; or
   
   (iv) 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 highways, excluding on/off ramps, are exempt from the requirements of this section:

(A) I-70;

(B) I-270;

(C) U.S. 15; and

(D) the section of 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.

(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 Planning 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 preliminary plats or site plans. If a developer seeks approval of only a portion of a development project that generates fewer than 15 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.
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.

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.

(c) Issuance of CAPF-R.

(1) 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.

(2) If the Director denies the CAPF-R, the master plan, 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 in accordance with Article IV of this chapter.

Sec. 4-16. 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; and

(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

(3) “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 plat was unconditionally approved before ________________;

(D) is a residential or mixed use project or portion of a residential or mixed use project for which a final site plan was unconditionally approved before ________________;

(E) has a master plan approved before ________________; or

(F) qualifies as “housing for older persons” and meets the following criteria:

(i) 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.

(ii) Prior to recordation of final plats and issuance of the zoning certificate for the project, the developer shall record restrictive covenants that comply with the Fair Housing Act, address the exclusion of secondary school aged or younger children as residents, and contain appropriate enforcement mechanisms. Any amendments of the covenants pertaining to age limits on occupancy will require the reapproval of the site plan, zoning certificate, and plats, as necessary. For purposes of this paragraph, “appropriate enforcement mechanisms” include enforcement by the homeowner’s association for the project.

(iii) Before any revision or modification to the project at any time in the future, whether or not the project is built out and occupied, that 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.

(2) A project exempt under paragraph (1)(B) or (C) of this subsection remains exempt for the time period corresponding to the number of units in the project, as follows:

<table>
<thead>
<tr>
<th>Number of Units</th>
<th>Exemption Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 — 50 units</td>
<td>3 years from ______________</td>
</tr>
<tr>
<td>51 — 200 units</td>
<td>5 years from ______________</td>
</tr>
<tr>
<td>201 — 500 units</td>
<td>7 years from ______________</td>
</tr>
<tr>
<td>501 — 1,000 units</td>
<td>10 years from ____________</td>
</tr>
<tr>
<td>1,001 or more units</td>
<td>15 years from ____________</td>
</tr>
</tbody>
</table>
(c) Adequacy.

(1) FCPS will provide the Director with the actual enrollment data for the last school day of September, December, March, and June and the SRC for each school. 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. The Director, after receiving the assessment from FCPS, shall determine adequacy.

(2) A school is considered adequate if the projected enrollment is less than or equal to 100% of SRC.

(A) For purposes of this section, “enrollment” means the FCPS official enrollment figures plus background enrollment plus pupils generated from the proposed development.

(B) 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) master plan and 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 35% or more.

(3) Schools will be deemed adequate if 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.

(4) 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 APFO approval is sought. The SRC and pupil generation rates approved for use by FCPS shall be used in all calculations.

(5) This paragraph applies to projects for which the Director has determined schools are not adequate. The Planning Division, after receiving the September 30 actual enrollment data, will retest the project every October for as many as three years (three tests, one per year). The order that residential projects will be tested is based on the date of the formal acknowledgement of a completed plat or site plan application submission.

(6) 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 considered adequate.
If a project meets the requirements of this chapter during master plan approval, it will not be subject to adequate public facilities testing at a later stage of development.

(d) Issuance of CAPF-SCH.

(1) The Director shall issue a CAPF-SCH if:

(A) the Director determines that schools are adequate;

(B) the project has been tested and failed three times under subsection (c) of this section; or

(C) the project, after being placed on hold due to failure to pass the schools test, is retested based on new FCPS information and meets the test.

(2) Except as otherwise provided in subsection (d) of this section, if the Director determines that schools are not adequate, the Director shall deny the CAPF-SCH and the master plan, plat, or site plan will not be scheduled for consideration by the Planning Commission, subject to subsection (e) of this section.

(e) 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. 4-17. Developer options.

(a) In general. 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.

(b) Agreements. In addition to the other options described in this article, the developer may:

(1) phase the construction of any or all of the public facility improvements necessary to support the project and ensure adequacy of public facilities, in accordance with a mitigation agreement; or

(2) 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.

Sec. 4-18. Mitigation plans.

(a) Submittal. Upon choosing an option as described in Sec. 4-17(a) or (b) of this article, 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 Planning 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 Planning Commission.

Sec. 4-19. Mitigation agreements.

(a) **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.

(b) **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.

(c) **DRRA.** A development rights and responsibilities agreement that complies with Section 321 of the LMC may serve as a mitigation agreement.

(d) **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. 4-20. Public works agreement.

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. 4-21. 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. 4-22. Escrow funds for road and intersection improvements.

(a) In general.

(1) Following the Director's denial of a CAPF-R pursuant to Section 4-15 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 4-15 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 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.

(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 which 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 4-15 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 deny 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. 4-23. School construction fees.

(a) In general. 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 construction fee as described in this section.

(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 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) 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 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) 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 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.

(i) 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 the Frederick County Code.
(j) **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. AND BE IT FURTHER ENACTED AND ORDAINED,** That this ordinance shall take effect on [10 days after passage] 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:  

PASSED:

____________________________  

Michael C. O’Connor, Mayor  

____________________________  

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

Approved for Legal Sufficiency:

____________________________  

City Attorney
ADEQUATE PUBLIC FACILITIES

ARTICLE I. IN GENERAL

Sec. 4-1. Authority.

This chapter exercises intended to facilitate orderly development and growth by exercising the authority granted by Article 66B of the Annotated Code of Maryland, Land Use, § 7-101 to enact laws providing for or requiring the planning, staging, or provision of adequate public facilities.

Sec. 4-2. Applicability Definitions.

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

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

(b) CAPF. “CAPF” means a final certificate of adequate public facilities issued for each of the facilities described in this chapter, indicating the facility has been tested and determined to be adequate.

(c) Definitions. CIP. “CIP” means capital improvements program.

(d) Developer. “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.

(e) Development project. “Development project” or “project” means any land improvement, including but not limited to the that is required under the LMC to obtain approval of a master plan, subdivision of land, or final site plan. “Development project” includes 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.

(f) Director. “Director” means the director of public works or the Director’s designee.

(g) Division. “Division” means the City’s Planning Division.

(h) 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.

(j) 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. **Existing structure.** “Existing structure” means a structure for which a CO was issued before [effective date].

(i) **Facility or facilities.** “Facilities” are public facilities including and limited to water lines, sewer lines, roads, and schools.

(k) **LMC.** “LMC” 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). this Code.

(l) **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” 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.

(m) **Lot of record.** “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 [effective date] and having satisfied all zoning and subdivision regulation requirements in effect at the time the lot was recorded.

(n) **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.

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.

(o) **Nonresidential project means.** “Nonresidential project” means a project that includes any use other than a residential use, as identified in Section 404 of the LMC.

Normal required pressure means forty (40) psi.

(p) **Plat.** “Plat”, unless otherwise determined otherwise by the director based on site-specific requirements, indicated, means a preliminary subdivision plat or engineering studies. a ____ final subdivision plat.

Peak hour

(g) **Provisional CAPF.** “Provisional CAPF” 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 adequate 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 issued by the Director as determined by the state of Maryland, that can be reasonably accommodated described in a public school facility, this chapter; it is not a final CAPF for any purpose.

Water

(a) 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.

(s) Residential project. “Residential project” 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 a development project consisting solely of residential uses, as identified in Section 742404 of the LMC.

(l) School. “School” means a public primary/elementary, middle, or high school managed by the Frederick County Board of Education.

Sec. 4-3. Regulations.

Sec. 4-4. General exemptions.

(a) Types of projects. The following types of development projects are exempt from Scope.

Except as otherwise provided in 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 approval of a master plan, plat, or 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 — Director:

(a) finds that the project is exempt under Sec. 4-9 of this chapter; or

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

Sec. 4-5. (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 zoning.
regulations, development review and regulations, building codes, permitting requirements for development projects within the city, and review by the Planning Commission.

(c) Planning commission

Sec. 4-6. Submittal requirements.

An application for CAPFs shall be made by an applicant contemporaneously with any application for a master plan, plat, or site plan. 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. 4-7. Required CAPFs.

A developer may not apply for a building permit for the construction of a project unless the project has first been issued a CAPF for, or deemed exempt from the requirements of this chapter relating to, each facility (water line capacity, sewer line capacity, roads, and schools).

Sec. 4-8. Appeals.

Any person aggrieved by any final order, requirement, decision, or determination of the Director, the Planning 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. 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. remains subject to the authority of the Scope.

(a) In general. In planning and developing any project, the developer shall comply with the general principles and procedures set forth in this chapter for the provision of adequate facilities.

(b) The following types of development projects are exempt from this chapter:

(1) a project to be undertaken by the City;

(2) a residential project that creates 5 or fewer dwelling units; and

(3) subdivision that does not result in the creation of new lots.

Sec. 4-10. Testing.

Testing for adequacy for each facility described in this chapter will be conducted on a project after the Division determines that a complete master plan, plat, or site plan application has been submitted.

Sec. 4-11. Subdivisions and Approval of subdivisions, site plans.

4-
(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 only after 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) or provisional CAPF becomes effective:

1. After a CAPF, once or provisional CAPF is issued, a developer has two years to ensure that it becomes effective as described in accordance with paragraph (2) of this chapter, 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:
   
   A) for projects requiring Planning Commission approval, on the date of the Planning Commission’s conditional approval; or
   
   B) for projects that are reviewed administratively, on the date of the Planning Division’s approval.

3. A CAPF or provisional CAPF is valid for the following time applicable 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 specified as all other conditions of the preliminary or final subdivision plat, or site plan approval remain valid. The following applies:

   (1) Residential preliminary or final subdivision plats/final site plans - Plats/Final Site Plans

<table>
<thead>
<tr>
<th>Number of Dwelling Units</th>
<th>Years Valid (After Effective Date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Six - 50 units</td>
<td>3 years</td>
</tr>
<tr>
<td>51 - 200 units</td>
<td>5 years</td>
</tr>
<tr>
<td>201 - 500 units</td>
<td>7 years</td>
</tr>
<tr>
<td>501 - 1,000 units</td>
<td>10 years</td>
</tr>
<tr>
<td>More than 1,000 units</td>
<td>15 years</td>
</tr>
</tbody>
</table>

   (2) Nonresidential preliminary or final subdivision plats/final site plans - Plats/Final Site Plans

<table>
<thead>
<tr>
<th>Size of Parcel</th>
<th>Years Valid (After Effective Date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 acres or less</td>
<td>3 years</td>
</tr>
<tr>
<td>More than 10 and less or equal to 50 acres</td>
<td>5 years</td>
</tr>
<tr>
<td>More than 50 acres</td>
<td>8 years</td>
</tr>
</tbody>
</table>
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.

The approval period of a CAPF or provisional CAPF for a mixed use project is determined according to the applicable period for a residential preliminary or final subdivision plat or nonresidential preliminary or final subdivision plat, whichever is longer.

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 Planning Commission may reduce an approval period from the one specified 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 CAPFs, or meet the requirements for adequacy for each facility; and
4. Sufficient public water treatment and sewer basin capacity are available for the development project to proceed.

At the request of the developer, 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.

Sec. 4-7. Approval of master plans.

(a) **In general.**

(1) 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 of this chapter.

(2) 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 or provisional CAPF associated with a master plan or master plan amendment is valid for a maximum of twenty-four (24) months after the date the master plan or master plan amendment is unconditionally approved.

(1) 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 4-611 of this chapter.

(2) If, during the approval period specified in paragraph (1) of this subsection, the developer does not obtain approval of a preliminary subdivision plat, final subdivision plat, or final site plan associated with the master plan, then any CAPF for 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.** If the CAPF approval remains valid and the plat or site plan does not propose an increase in the density or intensity of use, 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.

ARTICLE III. CERTIFICATES OF ADEQUATE PUBLIC FACILITIES

Sec. 4-8. In general. 4-13. Water line capacity.
(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.

(a) Scope.

(1) A CAPF for water line capacity (CAPF-WL)

(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.

(e) 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.

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 [date] before April 15, 2007.[date].

(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 percent increase in water line capacity over the existing development and consists solely of one or more of the following:

(A) The the change of use of an existing 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 an existing structure existing as of April 15, 2007; or

(D) The demolition of an existing 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.

(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 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.
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.

(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. 4-14. Sewer line capacity.

(a) Scope.

(1) A CAPF 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 percent increase of at least 20% 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 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;

(D) The demolition of an existing structure and replacement with a structure no more than five thousand (5,000) square feet larger than the one demolished.

(b) Adequacy.
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, and 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-SL is denied, a developer may pursue any mitigation 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. 4-15. Roads.

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.

Scope.

A development project is not required to obtain a CAPF for roads (CAPF-R) if the project is expected to generate no more than 15 peak hour new vehicle trips.

A development project is not required to obtain a CAPF-R if the project:

(A) is to be constructed entirely on a lot of record;

(B) does not require an increase in road capacity of more than 20% more than the existing development; and

(C) consists solely of:

(i) the change of use of an existing structure;
(ii) the renovation, with no addition of square footage, of an existing structure;

(iii) the construction of an addition to an existing structure if addition is 5,000 square feet or less; or

(iv) 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 highways, excluding on/off ramps, are exempt from the requirements of this section:

(A) I-70;

(B) I-270;

(C) U.S. 15; and

(D) the section of 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 Section 4-16. The this subsection as well as the applicable provisions of LMC Sec. 1203.

(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 Planning 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 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 as reasonably possible.

(4) Peak hour trips.

(A) In determining the total peak hour vehicle trips generated by the proposed development, if the project during the director finds, using the criteria peak hour of subsection (b) of this section, that the adjacent street traffic, the implementation of Director will include all land at one location within the
mitigation plan would result in adequate sewer line capacity, city under common ownership or control of the director shall issue a provisional CAPF-SL, and developer.

(B) For purposes of this paragraph, "at one location" means all adjacent land under the master plan, 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 preliminary or final subdivision plat, plats, or site plans. If a developer seeks approval of only a portion of a development project that generates fewer than 15 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 may be scheduled for consideration by the planning commission pursuant to the city or county CIP or state CTP may be considered in the application of the adequacy test.

(7) If the director 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.

(c) Issuance of CAPF-R.

(1) If the Director determines, using 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.

(2) If the Director denies the CAPF-R, the master plan, 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 in accordance with Article IV of this chapter.

Sec. 4-16. 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; and
(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

(3) “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 plat was unconditionally approved before ____________________;

(D) is a residential or mixed use project or portion of a residential or mixed use project for which a final site plan was unconditionally approved before ____________________;

(E) has a master plan approved before ____________________; or

(F) qualifies as “housing for older persons” and meets the following criteria:

(i) 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.

(ii) Prior to recordation of final plats and issuance of the zoning certificate for the project, the developer shall record restrictive covenants that comply with the Fair Housing Act, address the exclusion of secondary school aged or younger children as residents, and contain appropriate enforcement mechanisms. Any amendments of the covenants pertaining to age limits on occupancy will require the reapproval of the site plan, zoning certificate, and plats, as necessary. For purposes of this paragraph, “appropriate enforcement mechanisms” include enforcement by the homeowner’s association for the project.

(iii) Before any revision or modification to the project at any time in the future, whether or not the project is built out and occupied, that 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.
(2) A project exempt under paragraph (1)(B) or (C) of this subsection remains exempt for the time period corresponding to the number of units in the project, as follows:

<table>
<thead>
<tr>
<th>Units</th>
<th>Time Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 — 50 units</td>
<td>3 years from</td>
</tr>
<tr>
<td>51 — 200 units</td>
<td>5 years from</td>
</tr>
<tr>
<td>201 — 500 units</td>
<td>7 years from</td>
</tr>
<tr>
<td>501 — 1,000 units</td>
<td>10 years from</td>
</tr>
<tr>
<td>1,001 or more units</td>
<td>15 years from</td>
</tr>
</tbody>
</table>

(c) Adequacy.

(1) FCPS will provide the Director with the actual enrollment data for the last school day of September, December, March, and June and the SRC for each school. 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. The Director, after receiving the assessment from FCPS, shall determine adequacy.

(2) A school is considered adequate if the projected enrollment is less than or equal to 100% of SRC.

(A) For purposes of this section, “enrollment” means the FCPS official enrollment figures plus background enrollment plus pupils generated from the proposed development.

(B) 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) master plan and 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 35% or more.

(3) Schools will be deemed adequate if 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.

(4) 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 APFO approval is sought. The SRC and pupil generation rates approved for use by FCPS shall be used in all calculations.
This paragraph applies to projects for which the Director has determined schools are not adequate. The Planning Division, after receiving the September 30 actual enrollment data, will retest the project every October for as many as three years (three tests, one per year). The order that residential projects will be tested is based on the date of the formal acknowledgement of a completed plat or site plan application submission.

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 considered adequate.

If a project meets the requirements of this chapter during master plan approval, it will not be subject to adequate public facilities testing at a later stage of development.

(d) Issuance of CAPF-SCH.

(1) The Director shall issue a CAPF-SCH if:

(A) the Director determines that schools are adequate;

(B) the project has been tested and failed three times under subsection (c) of this section; or

(C) the project, after being placed on hold due to failure to pass the schools test, is retested based on new FCPS information and meets the test.

(2) Except as otherwise provided in subsection (d) of this section, if the Director determines that schools are not adequate, the Director shall deny the CAPF-SCH and the master plan, plat, or site plan will not be scheduled for consideration by the Planning Commission, subject to subsection (e) of this section.

(e) 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. 4-17. Developer options.

(a) In general. 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.

(b) Agreements. In addition to the other options described in this article, the developer may:
(1) phase the construction of any or all of the public facility improvements necessary to support the project and ensure adequacy of public facilities, in accordance with a mitigation agreement; or

(2) 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.

Sec. 4-18. Mitigation plans.

(a) Submittal. Upon choosing an option as described in Sec. 4-17(a) or (b) of this article, 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 Planning Commission.

(c) would not result in adequate sewer line capacity, the director 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, preliminary or final subdivision plat, or site plan application will not be scheduled for consideration by the Planning Commission.

Sec. 4-19. Mitigation agreements.

(a) 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.

(b) 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.
(c) **DRRA.** A development rights and responsibilities agreement that complies with Section 321 of the LMC may serve as a mitigation agreement.

(d) **Issuance of CAPF.** If the Mayor 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. 4-20. Public works agreement.**

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 for the relevant facility. If the Mayor does not approve a public works agreement that includes such a mitigation plan, then the provisional CAPF-SL will be void.

**Sec. 4-21. Option to wait.** (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.

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. 4-22.**

(a) **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 4-11. 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

(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.

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:

<table>
<thead>
<tr>
<th>Number of Units</th>
<th>Exemption Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>6—50 units</td>
<td>3 years from April 15, 2007</td>
</tr>
<tr>
<td>51—200 units</td>
<td>5 years from April 15, 2007</td>
</tr>
<tr>
<td>201—600 units</td>
<td>7 years from April 15, 2007</td>
</tr>
<tr>
<td>501—1,000 units</td>
<td>10 years from April 15, 2007</td>
</tr>
<tr>
<td>1,001 or more units</td>
<td>15 years from April 15, 2007</td>
</tr>
</tbody>
</table>

(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;

(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.

**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.

**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.

**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

(b) Fees. The city may not accept any application for a building permit until all fees required pursuant to this chapter have been paid.
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.

Sec. 4-17. Escrow funds for road and intersection improvements.
(a) In general.
(1) Following the director's denial of a CAPF-R pursuant to Section 4-11:15 of this chapter, 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.
(2) The establishment of a new escrow account must be approved by the mayor and 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 shall be 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 4-11-15 of this chapter.

(2) 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 development is estimated to cause, when measured against the additional usable capacity that the proposed improvement is creating.

(3) The 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.

(4) The amount of escrow 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 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:

(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.

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.

(d) Limited impact projects.

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)1 of this chapter 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)% impact of the road improvement, the Director may deny the proposed escrow account request for either of the following reasons: based on a determination that:

(A) There are funds in the escrow account representing forty (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 deny 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 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.

(g) Maintenance of account and refunds.

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

(2) 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.

(3) The mayor and board of aldermen may extend this ten-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

(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 within one year of the time at which such funds become available for refund.
**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.

**Sec. 4-17.123. 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.

**(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)% 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) **Issue 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.

(i) **Use of funds.**

1. The City may appropriate funds from the school construction fee account.

(ii) **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.

(jj) **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.

(kk) **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. AND BE IT FURTHER ENACTED AND ORDAINED, That this ordinance shall take effect on [10 days after passage] 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: ____________________________  PASSED:

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

Approved for Legal Sufficiency:

____________________________
City Attorney

Sec. 4-18. Fees. The board of aldermen may, by resolution, establish fees to cover the administrative costs associated with adequate public facilities testing.

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.