

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE TO ENACT AN ADEQUATE
PUBLIC FACILITIES ORDINANCE FOR THE
CITY OF HAGERSTOWN**

RECITALS

WHEREAS, Article 66B Section 10.0.1 of the Annotated Code of Maryland authorizes municipal corporations within the State of Maryland to enact Adequate Public Facilities Ordinances, and

WHEREAS, the Washington County Growth Management Act of 2005 authorizes Washington County to collect a building excise tax and further authorizes municipalities within Washington County to retain a portion of the tax provided they enact an Adequate Public Facilities Ordinance with school adequacy tests substantially similar to or more stringent than that in the Adequate Public Facilities Ordinance adopted by the County, and

WHEREAS, the City deems it in its best interest to enact an Adequate Public Facilities Ordinance for the benefit of its citizens.

NOW, THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED, by the Mayor and Council of the City of Hagerstown, Maryland as its duly constituted legislative body as follows:

Section 1 of the Code of the City of Hagerstown is hereby amended by adding thereto a new chapter to be Chapter _____ Adequate Public Facilities Ordinance to read as follows:

**ADEQUATE PUBLIC FACILITIES ORDINANCE
OF THE CITY OF HAGERSTOWN, MARYLAND**

ARTICLE I - PURPOSE

1.1 SHORT TITLE

This Ordinance shall be known and may be cited as the Adequate Public Facilities Ordinance of the City of Hagerstown, Maryland.

1.2 PURPOSE

It is the purpose of the Mayor and City Council of the City of Hagerstown that public facilities and services needed to support new development shall be available concurrently with the impacts of such new developments. In meeting this purpose, public facility and service availability shall be deemed sufficient if the public facilities and services for new development are phased, or the new development is phased, so that the public facilities and those related services which are deemed necessary by the local government to operate the facilities

necessitated by that new development, are available concurrently with the impacts of the new development.

ARTICLE II - DEFINITIONS

2.1 GENERAL

(a) For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. Words in the present tense include the future, the singular number includes the plural, and the plural includes the singular. The word “shall” is mandatory and the word “may” is permissive. The words “used for” shall include “arranged for,” “designed for,” “intended for,” “maintained for,” “constructed for”, or “occupied for”. The word “individual” shall mean natural person, joint venture, joint stock company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, association, club, company, corporation, limited liability company, real estate investment trust, business trust or similar legal entity or the manager, lessee, agent, servant, officer or employee of any of them. The word “land” shall include water surface and land under water. The term “Ordinance” shall refer to this Ordinance and all subsequent additions or amendments thereto.

(b) A developer shall not avoid the intent of this Ordinance by submitting piecemeal applications for preliminary plats or site plans. However, a developer may seek approval of only a portion of the subdivision or development, provided that the impact from all previously approved preliminaries or site plans from that development shall be considered during the adequate public facilities review of each subsequent portion of the development.

2.2 ADEQUATE PUBLIC FACILITIES

For the purpose of this Ordinance, the term “Adequate Public Facilities” shall be defined as those facilities relating to roads, parks and recreational facilities, schools and public safety systems meeting established minimum standards.

2.3 DEFINITIONS

2.3.1 Agricultural Purposes

A parcel of land that has been determined by the Maryland Department of Assessments and Taxation as having an “Agricultural Use Assessment” or a parcel of land that is primarily involved in a bona fide and continuing agricultural activity, such as, the raising of farm products for use or sale, including animal or poultry husbandry, and the growing of crops such as grain, vegetables, fruit, grass for pasture or sod, trees, shrubs, flowers and similar products of the soil.

2.3.1.1 Background Enrollment Growth

The average annual impact of equated student enrollment changes during the preceding three (3) years in the school attendance areas serving the proposed development as determined in

Section 4.4 with appropriate adjustments made in the determination by the Board of Education to eliminate student enrollment changes caused solely by school redistricting.

2.3.2 Board of County Commissioners

The legislative body of Washington County, Maryland.

2.3.3 Board of Education

The elected Board of Education of Washington County.

2.3.4 The City of Hagerstown Comprehensive Plan

The Comprehensive Plan of the City of Hagerstown.

2.3.5 County

Washington County, Maryland.

2.3.6 City Engineer

The City Engineer of the City of Hagerstown

2.3.7 County Engineer

The duly designated Chief Engineer of Washington County, Maryland.

2.3.8 County Health Department

The Washington County Health Department.

2.3.9 Developer

Any individual commencing proceedings under this Ordinance to effect a subdivision or development of land for himself or for another.

2.3.10 Extraordinary Hardship

Extraordinary hardship is a condition that exists when strict compliance with this Ordinance would result in an unusually and extraordinarily severe financial economic impact on the owner or developer.

2.3.11 Immediate Family Member

Immediate family member shall mean father, mother, step-father, step-mother, son, daughter, brother, sister, stepson, stepdaughter, grandchild.

2.3.12 Improvements

Improvements shall mean storm sewers, sanitary sewers, water supply lines, roads, curbs, gutters, gas lines, electricity lines, water lines, septic tanks, wells, walks, and other accessory works and appurtenances, dwellings, farm buildings, and other principal or accessory structures.

2.3.13 Lot

A parcel of real property marked by the developer as a numbered, lettered or otherwise identified tract to be utilized as a unit of land intended for building development or a lot or parcel described by metes and bounds, the description of which has been recorded among the land records of Washington County.

2.3.13.1 Minor Subdivision

Any parcel which has been or is proposed to be subdivided to create five (5) or fewer lots.

2.3.14 Mayor and Council

The Mayor and Council of the City of Hagerstown.

2.3.15 New Development

New development consists of new subdivisions and site plans for new construction received for approval by the City of Hagerstown Planning Commission after the effective date of this Ordinance. New development also consists of construction activity requiring a building and/or zoning permit but does not consist of construction activity for agricultural purposes provided that, after said development, the parcel does not lose the "Agricultural Use Assessment" classification as determined by the Department of Assessments and Taxation.

2.3.16 Original Tract of Land.

A parcel of real estate unsubdivided as of the date of adoption of this Ordinance.

2.3.17 Planning Commission.

The Planning Commission of the City of Hagerstown.

2.3.18 Plat

A map, plan, chart or drawing indicating the subdivision or resubdivision of land filed or intended to be filed for the record.

2.3.19 Remaining Lands

The residual portion or tract of land which remains after lots or parcels have been subdivided from the original tract of land.

2.3.20 Residential Development

The term “residential development” as used in this Ordinance means any lot, building or portion thereof used exclusively for dwelling units, including concomitant uses, and other uses of a residential nature for the individuals residing in said dwelling units.

2.3.21 Right-of-Way

A land area designated, dedicated, or reserved for use as a highway, street, alley, interior walk, or for a drainage channel, or other public use.

2.3.22 Road

A public right-of-way, intended for vehicular traffic, including freeways, expressways, arterials, parkways, thoroughfares, collector streets, local streets, cul-de-sacs, marginal access streets, avenues, boulevards, lanes and other public ways, and as now or hereafter or otherwise designated.

2.3.23 Simplified Plat

The term “simplified plat” as used in this Ordinance is a map, plan, chart or drawing indicating the proposed subdivision or resubdivision of land filed or intended to be filed with the Planning Commission and where the intent of the subdivider is not to develop the land. Any future development would require submittal of a preliminary and final plat.

2.3.24 Site Plan

A drawing that shows all of the existing conditions of a specified area (the site) and all of the improvements and changes proposed to be made on the site. A site plan is the drawing required by the Zoning Ordinance for all new development and certain additions and must contain all applicable information as specified in the Zoning Ordinance.

2.3.25 State Rated Capacity

As used in this Ordinance, State Rated Capacity shall refer to the capacity of each school as determined by the state of Maryland. Portable classrooms shall not be used in computing the school capacity for the purposes of this Ordinance.

2.3.26 Subdivision Ordinance

The City of Hagerstown, Maryland Subdivision Ordinance, and all subsequent additions or amendments thereto.

2.3.27 Zoning Ordinance

The Zoning Ordinance of the City of Hagerstown, Maryland, and all subsequent additions or amendments thereto.

ARTICLE III - ADMINISTRATION

3.1 ADMINISTRATION OF ORDINANCE

This Ordinance shall be administered by the Planning Commission. All applications, maps, and documents relative to subdivision or site plan approval or building permit coming under the provisions of this Ordinance shall be submitted to the Planning Commission.

3.2 JURISDICTION

This Ordinance does not apply to land outside the City of Hagerstown.

3.3 NEW DEVELOPMENT

This Ordinance applies to all new subdivisions and site plans for new construction received for preliminary approval, not to include preliminary consultations under the Subdivision Ordinance or Zoning Ordinance, by the Planning Commission after the effective date of this Ordinance, as set forth in Article XI. Except as provided in this Section or Section 3.5 of this Ordinance, all new development shall meet the requirements set forth in this Ordinance prior to preliminary plat or site plan approval, or prior to building permit approval for those renovation projects not requiring a site plan. Nothing in this Ordinance shall prevent the Planning Commission from approving portions of subdivisions or site plans of new development if the portions of the subdivision or site plan comply with the provisions of this Ordinance. If any plan approval becomes void per City regulations, any approval through this ordinance shall become void. If the Planning Director of the City of Hagerstown Planning Department determines that a site plan or building permit contains minor additions or changes to existing development, the site plan or building permit shall not be subject to the requirements of this Ordinance.

3.4 DISAPPROVAL

New development not meeting the requirements for adequate public facilities contained within this Ordinance shall not be approved by the Planning Commission unless the developer reaches an agreement with the Mayor and Council for the purpose of advancing the adequacy of public facilities, pursuant to Section 8.1.

3.5 SIMPLIFIED PLATS EXEMPT

Subdivisions which can be approved by the simplified plat procedure described in Section 219-29 of the City of Hagerstown Subdivision Ordinance are not subject to the requirements of this Ordinance.

3.6 APPEALS

Any person or persons, jointly or severally, aggrieved by any decision of the Planning Commission, or any other Officer, Department, Board, Bureau of the Jurisdiction, may appeal the same to the Circuit Court for Washington County, Maryland. Such appeal shall be taken in accordance with the Maryland Rules of Practice and Procedures for Judicial Review of Administrative Agency Decisions.

3.7 VIOLATIONS AND PENALTIES

Any violation of this Ordinance shall constitute a municipal infraction and shall be punishable upon conviction by a fine of not less than Two Hundred (\$200.00) Dollars or more than One Thousand (\$1,000.00) Dollars. Each day that a violation continues shall be deemed a separate offense. In addition to any other remedies, the Mayor and Council may institute any appropriate actions or proceedings to compel compliance with this Ordinance, as provided for in Article 66B of the Annotated Code of Maryland, as amended from time to time.

ARTICLE IV - SCHOOLS

4.1 ADEQUACY

All residential new development shall be served by public schools that:

- (a) Are currently adequate; or
- (b) Have funded construction capacity, exclusive of any capacity created pursuant to a Developer-funded mitigation program, scheduled for completion within the same school attendance area in the current or the next year of the approved Washington County Capital Improvement Program following preliminary plat approval to be adequate based upon 90% of elementary school State Rated Capacity and to be adequate based on 100% of State Rated Capacity for middle schools and high schools; or
- (c) Have been identified by the Board of Education (BOE) as part of an approved redistricting plan scheduled to occur within the current or next year of preliminary plat approval that will render the public schools adequate.

4.2 EXEMPTIONS

Article IV of this Ordinance does not apply to:

- (a) New development to be developed exclusively for non-residential uses;
- (b) New development to be developed according to federal regulations restricting occupancy in the dwelling units to elderly persons;
- (c) Minor residential subdivisions as defined in Section 2.3.13.1, as well as an equivalent amount of new dwelling units within City boundaries per high school attendance area in a given year as were exempted by the County in the prior year in the North Hagerstown High and South Hagerstown High school attendance areas;
- (d) Public or private elementary and secondary schools and public safety facilities;
- (e) New development requiring only a building permit for approval which does not result in the creation of additional dwelling units on the property;
- (f) New development of single-family or two-family dwellings on existing lots of record requiring only a building permit for approval;
- (g) Developments which have preliminary plat or site plan approval prior to the effective date of this Ordinance; or
- (h) Developments requiring only a building permit for approval (e.g., renovation projects) which had building permits submitted prior to the effective date of this ordinance and which have construction underway no later than six months following issuance of permits.

4.3 DATA ON WHICH ADEQUACY SHALL BE DETERMINED.

The Board of Education shall provide actual enrollment data to the City of Hagerstown for the last school day of September, December, March and June and the State Rated Capacity for each elementary and secondary school.

4.4 DETERMINATION OF ADEQUACY

4.4.1 The Planning Commission of the City shall determine whether public school facilities are “adequate” for the proposed new development upon recommendation by the Planning Department of the City after evaluating enrollment information provided by the Washington County Board of Education (BOE). The Planning Commission shall determine that a school is adequate if the school has the capacity as follows:

- (a) Elementary schools are adequate if the school has available capacity to accommodate student enrollment, including new development without exceeding 90% of the State Rated Capacity (SRC) for each school.
- (b) Middle schools and high schools are adequate if the school has available capacity to accommodate student enrollment, including new development without exceeding the State Rated Capacity established for each school.

(c) Available capacity for individual schools shall be determined in accordance with 4.5 below.

(d) Preliminary Plat or site plan approval, or building permit approval for projects that do not require site plan approval (e.g., renovation projects), will not be granted for developments in the review process until the affected schools obtain adequate status.

4.5 MEASURING FOR AVAILABLE CAPACITY

(a) Adequacy of every elementary, middle and high school serving the proposed development shall be measured at the time of preliminary consultation, preliminary plat review, or site plan review, or the first date upon which all necessary documentation and materials have been submitted, whichever occurs last, based upon data as published by the BOE.

(b) If approval has not been received from the Planning Commission within six (6) months of the date of plan submission, the most recent quarterly school enrollment data must be utilized by the Commission for APFO review unless a delay occurs not attributable to the applicant.

(c) For determining adequacy, enrollment shall mean the total of the BOE official enrollment figures, background enrollment, pupils generated from the proposed development, and other previously approved developments.

(d) Pupil generation rates shall be determined using the formulas proposed by the BOE and adopted by the Board of County Commissioners and shall reflect the characteristics of the school attendance area within which the proposed development is located.

(e) If a school is not adequate as defined in Section 4.4.1 and an adjoining school attendance area at the same level is at least twenty (20) percent below State Rated Capacity, then the applicant may request the BOE to determine the viability of redistricting to accommodate the new development. If the BOE determines that redistricting is a viable alternative, and the BOE approved a specific redistricting plan that would result in all the schools serving the proposed development meeting the standards established in Section 4.4.1, then the school shall be considered adequate.

(f) If a school is not adequate, and the BOE has not approved a specific redistricting plan that would result in the school meeting the standards established in Section 4.4.1, then the preliminary plat of subdivision or site plan approval shall be denied, except as provided for in Section 8.3A.

(g) Improvements necessary to meet the standards herein shall be determined by the Planning Commission and may be provided by the developer. Any developer proposal to create improvements to meet adequacy shall be submitted to the Board of Education for recommendations and reviewed under any BOE adopted mitigation policy then in effect and be

subject to the standards and review processes of the Interagency Committee on School Construction (IAC) of the Board of Public Works of the State of Maryland.

(h) Background enrollment growth will be extrapolated over the number of years for which approval is requested. Included in the calculations shall be any additional approved but unplatted major preliminary plan developments in the affected area which might impact the historical growth trend to make it inaccurate or obsolete.

(i) The Planning Commission may require phasing or an annual maximum build-out rate to plan for future adequacy.

4.6 RESIDENTIAL BUILDING PERMIT APPROVAL

4.6.1 The Mayor and Council shall have the authority to limit the number of building permits in any school attendance area. The decision to limit building permits shall be based on the recommendation of the Planning Commission upon receipt of a recommendation from the BOE taking into consideration of the adequacy of a school attendance area and enrollment capacity in immediately adjacent school attendance areas.

4.6.2 The Mayor and Council shall have the authority to cap the number of residential building lots approved for development on an annual basis.

ARTICLE V – ROADS **(To be Added)**

ARTICLE VI - SEWAGE DISPOSAL SYSTEMS **(To be Added)**

ARTICLE VII - WATER SUPPLY AND DISTRIBUTION SYSTEMS **(To be Added)**

ARTICLE VIII - EXCEPTIONS, AGENCY PARTICIPATION

8.1 Nothing under the terms of this Ordinance shall prohibit or prevent the Mayor and Council or any governmental body from reaching an agreement as to a mitigation program with a developer for the purpose of advancing the adequacy of public facilities as required by this Ordinance. Prior to entering any such agreement, the Mayor and Council shall invite comment from the BOE and shall gain the approval by the Board of County Commissioners as follows:

- (a) If the mitigation program is in compliance with the standards set forth in Section 9.3A of the Washington County Adequate Public Facilities Ordinance, it shall be deemed approved.

- (b) If the Board of County Commissioners determines that the mitigation program is not in compliance with Section 9.3A of the Washington County Adequate Public Facilities Ordinance and withholds its approval it must set forth in writing the reasons for withholding approval with specific findings of fact based on substantial evidence.

8.2 Notwithstanding any other provision or term of this Ordinance, neither the Mayor and Council nor any governmental body shall be compelled to enter into an agreement as to a mitigation program with a developer for the purpose of advancing the adequacy of public facilities as required by this Ordinance.

8.3 A mitigation program may be agreed to including, but not limited to, the types, methods and schedules for the implementation of the mitigation program for the purpose of advancing the adequacy of public facilities.

8.3A In its sole discretion, the Mayor and City Council or its designee may approve a mitigation program, subject to the approval of the Board of County Commissioners, that allows a development to proceed in a school attendance area otherwise designated as inadequate for development under the following conditions:

- (a) The Mayor and City Council determines that approving this development benefits the community by:
 - (i) encouraging certain types of development that offer advantages to the community, including but not limited to the following:
 - (1) development in designated revitalization areas;
 - (2) renovation of abandoned or under-utilized structures;
 - (3) affordable or workforce housing; or
 - (4) community revitalization projects.
- (b) Development occurring while a particular school is in an inadequate status must not cause the enrollment level at that school to reach a level where temporary measures such as portable classrooms are not sufficient to prevent the class size from rising beyond the class size based on State Rated Capacity or prevent the school's core services from serving the increased number of students in an acceptable manner.
- (c) A mitigation program for major subdivisions under this section must provide for improvements that will occur within three years in order to return a school attendance area to adequate status.
- (d) A mitigation program proposed under this section must include an acceptable phasing program for the development that is approved by the Mayor and City Council or designee.

- (e) Any developer-funded mitigation program construction project shall be excluded from the adequacy testing calculation in Article 4 of this Ordinance.

8.4 With regard to any public facility required to be adequate under the terms of this Ordinance, the Mayor and Council of the City, the state of Maryland, Washington County or any other governmental body, may elect to participate in the cost of any necessary improvements to advance the adequacy of facilities as required by this Ordinance.

8.5 Any mitigation program shall be contained in a legal, binding, adequate public facilities agreement between the developer or other responsible party and the Mayor and Council. Such agreement must have been approved for form and content by the Office of the City Attorney.

8.6 A mitigation program shall be binding on the heirs, successors, and assigns of a project and shall run with the land. The subdivision plat or site plan for the property shall contain references to the mitigation program.

8.7 If a developer fails to agree to a mitigation program to assure adequacy of public facilities, the Planning Commission shall disapprove the project for want of adequate public facilities as required by this Ordinance.

8.8 The Mayor and Council shall require security as appropriate to cover the costs of the facilities and lands not under the developer's ownership that are part of a mitigation program providing for deferred payment of fees, in a form acceptable to the Mayor and Council. The amount of the security shall be reduced as payments are made under the mitigation program. Upon default, the Mayor and Council shall have the authority to redeem the security in addition to any other remedy provided by law.

ARTICLE IX - VALIDITY

If validity of any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is, for any reason, held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

ARTICLE X - PERIODIC REPORTS

The Planning Department of the City of Hagerstown, beginning six (6) months from the date of the effective date of this Ordinance, shall periodically review whether there is a continuing need for this Ordinance or suggested amendments at an open, public, advertised meeting.

ARTICLE XI - EFFECTIVE DATE

This Ordinance is effective as of May 25, 2006. Adopted this 25th day of April, 2006.

Section 2. This Ordinance shall become effective at the expiration of thirty (30) calendar days following its approval.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED, that if at any time this Ordinance becomes detrimental to the ability of the City to administer its policies and goals affecting growth and development in the City, that it may repeal in part or in total this Ordinance and if so repealed it may no longer retain 28% of the County excise tax collected within the City.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler,
City Clerk

Robert E. Bruchey, II, Mayor

Date of Introduction: 3/28/06
Date of Passage: 4/25/06
Effective Date: 5/25/06

PREPARED BY:
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