LEGISLATIVE SUMMARY

O-5-23

TITLE 22 – ADEQUATE PUBLIC FACILITIES ("APF")

This summary was prepared by the City of Annapolis Office of Law for use by members of the Annapolis City Council during the consideration of the legislation.

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This Legislative Summary explains proposed changes to the City's existing APF law. For the most part, it does not address style changes, grammatical changes, or clarification changes.

GENERAL PROVISIONS

Chapter 22.02 - PURPOSE

Section 22.02.010 – Purpose

Section 22.02.010 provides that one of the purposes for testing and certification of Adequate Public Facilities is to "[a]ssure that proposed development fits harmoniously into the fabric of the community." This purpose is deleted because other portions of the City Code, such as zoning, are designed to create harmonious communities. APF law does not serve this purpose.

Section 22.02.020 – Six-year timeframe

Existing law provides that adequacy standards "should" be achievable within a six-year time frame and that the Capital Improvement Program "should" ensure that existing facilities are corrected within six years. In lieu of this provision, the Bill provides that adequacy standards *shall* be achievable within a 6-year timeframe and that the standards may be achieved through a mitigation agreement or, when appropriate, through the Capital Improvement Program.

Section 22.25.050 of existing law provides that an "applicant is not required to remain on the waiting list for consideration for more than six years and, at the end of six years, the applicant is entitled to approval of the development without regard to the adequacy of public facilities for *schools*." Emphasis added. This concept is broadened to apply to all public facilities, not just schools.

Chapter 22.04.010 - DEFINITIONS

Section 22.04.010 - Definitions

"Age-restricted residential project" is defined, in part, as a residence solely occupied by persons sixty-two years of age or older. The amendment provides that a live-in caregiver who is less than sixty-two years of age is allowed for a resident with a disability that meets the definition of a disability under 42 U.S.C. § 12102. This brings the definition into conformance with the Americans with Disability Act.

"Redevelopment" is currently defined, among other things, as "significant rehabilitation" and "substantial improvement," leaving the meaning of what is "significant" or "substantial" to the eye of the beholder. The definition is revised so that it includes a substantial improvement of an existing principal structure. A new definition of "substantial improvement" is added.

Chapter 22.08 - ADMINISTRATION

Section 22.08.010 – Administering Department

Section 22.10.08.10 requires department heads to promulgate standards that they will use for certification purposes. The requirement for the departments to "promulgate standards" is deleted throughout. The bill instead requires that the standards be in the Code.

Chapter 22.12 - CITY ROADS AND SIDEWALK FACILITIES

Section 22.12.010 – Responsibility

The adequacy of public maintenance services is repealed because maintenance issues are determined in the review process. The Department of Public Works states, as an example, that trash collection responsibilities are normally handled by the City but, if access to a proposed project would require the trash truck to back out of the access area, the City requires the developer to handle trash collection and the requirement is noted on the plat.

In lieu of public maintenance services, and after consulting with the Department of Public Works, adequate City roads and sidewalk facilities are added to the bill.

Section 22.12.040 – Standards

This section contains detailed standards for City roads and sidewalk facilities.

Chapter 22.14 - FIRE DEPARTMENT

Section 22.14.020 – Goals

Fire inspection services are deleted wherever the phrase appears because fire inspections are not a public facility. A property owner has no say or control over fire inspections, and there is no potential mitigation. As described on the City's website, "[t]he Life Safety Section [of the Fire Department] is tasked with ensuring that all of the buildings in Annapolis, both new and existing,

meet the requirements of The Fire Prevention Code. This is accomplished through Fire Safety inspections and the permit process." *See* https://www.annapolis.gov/269/Fire-Safety-Inspections.

Section 22.14.030 – Applicability

The existing Code provides that proposed projects with a sprinkler system are "deemed to have adequate facilities," apparently meaning that all fire, rescue, and emergency medical care standards do not apply. Most projects now require sprinkling as a matter of law. This wholesale exemption is repealed as overly broad.

In lieu of the above provision, and to encourage the inclusion of sprinkler systems when the law does not require sprinkling, Section 22.12.030 provides that a proposed project is exempt only from the adequate fire flow and flow duration requirements of the National Fire Protection Association codes and standards if, but only if, the proposed project includes a sprinkler system not required by law. Otherwise, this Chapter applies to all proposed projects.

Section 22.14.040 – Standards

Section 22.02.040 changes the standard for evaluating fire flow and flow duration. Existing law provides that fire flow and flow duration is in accordance with the requirements of Section 17.20.020 and the Maryland Fire Prevention Code. Under the Bill, as suggested by the Fire Department, fire flow and flow duration are in accordance with the National Fire Protection Association codes and standards.

Also, existing law requires that the standards include "but not be limited to" … . This phrase is deleted here and elsewhere. The language appears to allow the City to "make up" standards not included in the Code. In addition, this language does not provide applicants with the information they need to demonstrate adequacy.

Chapter 22.18 - POLICE DEPARTMENT

Section 22.18.030 – Applicability

Section 22.14.030 currently provides that there are no exemptions for projects. Here and elsewhere, this existing language is repealed, and the applicability of the Chapter is stated instead. For the police department, the provision states that the Chapter applies to all proposed projects.

Chapter 22.20 - RECREATIONAL FACILITIES

Section 22.20.030 – Applicability

Existing law provides that the Chapter "applies to projects that include residential and mixed residential and commercial uses and buildings." The meaning of this phrase is not at all clear. Including "buildings" alone would seem to make the Chapter applicable to all proposed projects.

After consultation with the Department of Planning and Zoning, it was determined that the Chapter applies to projects that include residential, whether or not combined with other uses. The Chapter does not relate to other proposed projects. Thus, for example, the Chapter does not apply to a proposed project that consists of commercial alone because commercial projects do not cause the need for recreational facilities.

Section 22.20.040 – Standards

Another change, at the suggestion of the Department of Planning and Zoning, relates to fees in lieu. Section 22.20.040 provides that a fee in lieu is the fee provided in a resolution adopted by the City Council. It also provides that the fee is to be deposited into a designated fund to be administered by the Director of Recreation and Parks, the purpose being to ensure that the fees are used to improve recreational facilities.

Chapter 22.24 - STORM DRAIN FACILITIES

Section 22.24.010 – Responsibility

After consultation with the Department of Public Works, adequate stormwater management facilities are repealed as a public facility. Stormwater management is heavily regulated by State and local law. Furthermore, with but a few examples to the contrary, most stormwater management facilities are privately owned and maintained. In most cases, they are located on private property. Adequate stormwater management facilities are not "public" facilities. Calling them "public" facilities might imply that the City must maintain them. In lieu of stormwater facilities, the section addresses adequate storm facilities.

Section 22.24.030 – Applicability

With one exception, this Chapter applies to all proposed projects. The exception is that the Chapter does not apply to a proposed project that qualifies as redevelopment and does not increase impervious surfaces.

Section 22.24.040 – Standards

This section contains detailed standards for the adequacy of storm drain facilities.

Chapter 22.26 - WATER AND SEWER FACILITIES

Section 22.26.040 – Standards

This section provides detailed standards for the adequacy of water and sewer facilities.

Chapter 22.30 - MITIGATION

Section 22.30.010 – Opportunity to mitigate

This section requires that a mitigation plan include all information required by the Director of Planning and Zoning and all information required by other departments.

Existing law provides that "the mitigation required of an applicant shall be roughly proportionate (sic) to the projected impact of the proposed project… ." Rough proportionality means that the cost of the mitigation roughly corresponds to the burden resulting from the proposed development. It does not mean that the cost of the mitigation must be precisely equal to the burden.

The proportional standard is approved by the State of Maryland. In a 2012 report by The APFO Workgroup of the Maryland Sustainable Growth Commission, the State, in the context of reducing moratoria, provides: "The mitigation of project impacts, proportional to the impacts and increment of capacity improvements by facility type, … should be preferred." *See* page 24, paragraph 5, at https://planning.maryland.gov/Documents/YourPart/773/2013/APFO-WorkgroupReport072213.pdf. The report goes on to say that jurisdictions should "consider options for cost recoupment if the minimum increment of capacity improvement exceeds the proportional share. *Id*.

Existing law also provides that the mitigation must be "equal to or greater than if the proposed project had not been developed." *See* section 22.28.020 (A). This conflicts with the rough proportionality test. It provides no "wiggle room" at all. For example, mitigation for Fire Department response times may be the building of a fire station, paying money to assist the City in building a fire station, or paying money to assist the City in hiring and retaining additional personnel. It is difficult, if not impossible, to determine whether this mitigation is precisely equal to the projected impact of the proposed project.

Existing law provides mitigation examples for school facilities but not for other public facilities. This section gives detailed examples of potential mitigation for most of the public facilities.

Existing law provides that the Chief of Police "shall" require certain mitigation if development will negatively impact the City's ability to provide the required level of police service set forth in the Code. "Shall" is changed to "may" because (1) additional non-mandatory mitigation relating to the level of police service is set forth in the bill, and (2) all mitigation provisions are permissive, not mandatory.

MISCELLANEOUS

22.21.010 - Traffic impact analyses.

Existing law includes a section relating to a traffic impact study. This section is deleted because a "traffic impact" is not a public facility. A traffic impact analysis is associated with development.

There is a provision in Title 21, Section 21.62.090, that addresses traffic impacts with respect to development. It is anticipated that all or some of the provisions in Title 22 will be incorporated into Section 21.62.090 at a later time.

22.30.020 Process

This section requires that an applicant enter into a mitigation plan acceptable to the Department of Planning and Zoning in consultation with the Office of Law. All departments may consult with the Office of Law as necessary. Many mitigation plans do not require consultation with the Office of Law. At the request of the Office of Law, this provision is repealed.