



160 Duke of Gloucester Street  
Annapolis, MD 21401

**Signature Copy**  
O-36-15 Amended

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**..Title**

**Adequate Public Facilities** – For the purpose of adding review criteria and certification for adequate school facilities to Title 22 of the Code of the City of Annapolis; and matters generally relating to the adequacy of school facilities.

**..Body**

**CITY COUNCIL OF THE  
City of Annapolis**

**Ordinance 36-15 Amended**

**Introduced by: Alderman Littmann and Alderman Arnett  
And Mayor Pantelides**

**Referred to  
Planning Commission  
Rules and City Government Committee  
Economic Matters Committee  
Housing and Human Welfare Committee  
Finance Committee**

**AN ORDINANCE** concerning

**Adequate Public Facilities**

**FOR** the purpose of adding review criteria and certification for adequate school facilities to Title 22 of the Code of the City of Annapolis; and matters generally relating to the adequacy of school facilities.

**BY** repealing and reenacting, with amendments, the following portions of the Code of the City of Annapolis, 2015 Edition:  
Section 22.04.010  
Section 22.10.020  
Section 22.28.010

**BY** repealing and reenacting, without amendments, the following portion of the Code of the City of Annapolis, 2015 Edition:  
Section 22.10.010

**BY:** adding “Chapter 22.25 - Review Criteria and Certification for Adequate School Facilities” to Title 22 of the Code of the City of Annapolis, 2015 Edition.

**WHEREAS,** it shall be ensured that a proposed development project will be served by a public school that is not over capacity.

**SECTION 1: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL** that the Code of the City of Annapolis shall be amended to read as follows:

**TITLE 22 – ADEQUATE PUBLIC FACILITIES**  
**Chapter 22.04 - TERMS AND DEFINITIONS**

**22.04.010 - Terms and definitions.**

As used in this title, the following terms shall have the meanings indicated:

"Adequacy" means that adequate facilities exist or are expected to exist to serve existing development and the proposed project.

“AGE-RESTRICTED RESIDENTIAL PROJECT” MEANS ANY OTHER HOUSING THAT IS EITHER:

A. PROVIDED UNDER ANY STATE OR FEDERAL PROGRAM THAT THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT DETERMINES IS SPECIFICALLY DESIGNED AND OPERATED TO ASSIST ELDERLY PERSONS (AS DEFINED IN THE STATE OR FEDERAL PROGRAM); OR

B. INTENDED FOR, AND SOLELY OCCUPIED BY, PERSONS 62 YEARS OF AGE OR OLDER; OR

C. INTENDED AND OPERATED FOR OCCUPANCY BY PERSONS 55 YEARS OF AGE OR OLDER, AND—

1. AT LEAST 80 PERCENT OF THE OCCUPIED UNITS ARE OCCUPIED

BY AT LEAST ONE PERSON WHO IS 55 YEARS OF AGE OR OLDER; AND

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 RULES ISSUED BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT FOR VERIFICATION OF OCCUPANCY, WHICH SHALL—

(I) PROVIDE FOR VERIFICATION BY RELIABLE SURVEYS AND AFFIDAVITS; AND

(II) INCLUDE EXAMPLES OF THE TYPES OF POLICIES AND PROCEDURES RELEVANT TO A DETERMINATION OF COMPLIANCE WITH THE REQUIREMENT OF SUBPARAGRAPH 2. SUCH SURVEYS AND AFFIDAVITS SHALL BE ADMISSIBLE IN ADMINISTRATIVE AND JUDICIAL PROCEEDINGS FOR THE PURPOSES OF SUCH VERIFICATION.

D. THE AGE RESTRICTION SHALL BE NOTED ON THE PLAT AND RECORDED IN THE LAND RECORDS FOR ANNE ARUNDEL COUNTY.

"Applicant" means a person, partnership, firm, corporation, company, any other entity or combination of entities, or an agent thereof, with an interest in the proposed development and that undertakes or participates in the activities covered by these regulations, and that applies for a Certificate of Adequate Public Facilities.

"Development" means the construction or enlargement of residential, commercial, industrial, institutional or transportation uses or principal structures.

"Facilities" means:

1. Public facilities provided, managed or within the exclusive control of the City of Annapolis and includes:
  - a. Fire, rescue, emergency medical and fire inspection services;
  - b. Police protection;
  - c. Public maintenance services;
  - d. Water and sewer services;
  - e. Recreational facilities;

- f. Non-auto transportation;
- g. Storm water management;
- h. City roads.

2. PUBLIC SCHOOLS MANAGED BY THE ANNE ARUNDEL COUNTY BOARD OF EDUCATION.

"Inadequacy" means that adequate facilities are not currently available to serve existing development and the proposed project.

"Major site design plan" is as defined in Section 21.22.020(B)(1) for a project covered by this title.

"Proposed project" means all new development or redevelopment of any non-residential building or any mixed-use development of non-residential and residential uses, proposed by an applicant, where the proposed development is greater than ten thousand square feet in area or a residential subdivision of more than eleven lots regardless of the square footage of the development.

"Redevelopment" means the expansion, significant rehabilitation, alteration, reconstruction, or substantial improvement of any existing principal structure on a site, which has previously been developed. The construction of new structures on an undeveloped site is not redevelopment for purposes of this title.

**Chapter 22.10 - GENERAL REVIEW CRITERIA**

**22.10.010 - Development or redevelopment to be included.**

In determining the adequacy or inadequacy of public facilities, departments responsible for the applicable facilities shall take into consideration the following:

- A. Residential, commercial, and mixed use development and approved development existing within the City, as applicable.
- B. Proposed projects, as applicable, for which a Certificate of Adequate Public Facilities has been issued under this title.
- C. The proposed project for which an application for a Certificate of Adequate Public Facilities has been applied.

D. The Capital Improvement Program, including projected facilities, the Comprehensive Plan as defined in Title 21, and any other land use conditions that the Director of Planning and Zoning may reasonably prescribe to be considered by the departments.

**22.10.020 - Process.**

A. General.

1. Each director or department responsible for the applicable facilities shall, for each facility, collect and maintain current information on the facility, existing levels of service, and projected levels of service.

2. The Fire Chief and the Police Chief, respectively, shall each annually assess the response times for adequate fire, rescue, and emergency services, and annual assessment of officer ratio and response times for adequate police protection.

a. The Fire Chief and the Police Chief, respectively, shall each assess and otherwise measure annually the facilities for which they are responsible, as described in this title, and shall each prepare a separate report of such assessments and measurements by September 1st of each year for use in conjunction with this title which shall be forwarded to the Director of Planning and Zoning.

b. If the annual summary shows that the facilities meet the standards described in this title, the facilities are adequate and all projects shall be deemed to meet the adequacy standards. If the summary shows that one or more of the facilities do not meet the standards described in this title, the facilities are inadequate and applicants shall proceed in accordance with the requirements of Chapter 22.28.

3. Each director or department responsible for the applicable facilities, including the Fire Chief and Police Chief, may employ persons or contract for services as may be necessary to implement such information collection and assessments as described in Subsections (2)(a) and (b).

B. Procedures.

1. Evaluation.

a. Upon referral of any and all materials related to an application for a Certificate of Adequate Public Facilities to the each director or department responsible for the applicable facilities pursuant to Section 22.08.030, the director of the department shall assess and otherwise measure the projected levels of service of the facility or facilities as

impacted by the proposed project in accordance with the standards required to be promulgated by this title. In the director's sole discretion, the director may request that an applicant provide supplemental information regarding the development or redevelopment of the proposed project and estimates of the facility services that the proposed project will demand.

b. When a director's review and assessment of adequacy that is required by this title is contingent upon the findings and conclusions of another department, the director of the reviewing department shall promptly transmit copies of the materials to such other departments for written comments that include recommending a finding of adequacy or inadequacy of facilities with regard to the proposed project. Notwithstanding any recommendation, only the director or department responsible for the applicable facilities can issue a finding or conclusion as to the adequacy or inadequacy of facilities.

## 2. Findings and Conclusion.

a. Following the assessment and measurement of the projected levels of service of the facility or facilities as impacted by the proposed project and, if applicable, based upon the comment of other departments, the director or department responsible for the applicable facilities shall determine the adequacy of facilities to serve the proposed project under review.

b. If a director determines that the facilities under review are or will be adequate for a proposed project, such findings and conclusions shall be forwarded to the Director of Planning and Zoning.

c. If a director determines that one or more facilities is or will not be adequate for a proposed project, the applicant may proceed in accordance with the requirements of Chapter 22.28. FOR SCHOOL CAPACITY, SEE ALSO, SECTION 22.25.050.

3. Transmittal to Planning and Zoning Director. Upon determining that (a) the facilities are adequate for a proposed project, (b) the facilities will be adequate for a proposed project because the project is in compliance with the provisions of Chapter 22.28, or (c) the facilities are inadequate for a project, the director of the department shall forward a written copy of such findings and explanation to the Planning and Zoning Director.

## **CHAPTER 22.25 - REVIEW CRITERIA AND CERTIFICATION FOR ADEQUATE SCHOOL FACILITIES**

**22.25.010 - RESPONSIBILITY.**

THE DIRECTOR OF PLANNING AND ZONING SHALL BE RESPONSIBLE FOR REVIEW AND ASSESSMENT OF A PROPOSED PROJECT WITH REGARD TO THE ADEQUACY OF SCHOOL FACILITIES.

**22.25.020 - GOAL.**

THE GOAL OF REVIEWING AND ASSESSING ADEQUATE SCHOOL FACILITIES IS TO ENSURE THAT THE PROPOSED PROJECT IS SERVED BY PUBLIC SCHOOLS THAT DO NOT EXCEED CAPACITY AS DESCRIBED IN SECTION 22.25.040.

**22.25.030 - EXEMPTIONS.**

~~THE FOLLOWING ARE EXEMPT FROM THE REQUIREMENTS OF THIS CHAPTER: NON-RESIDENTIAL PROJECTS; RESIDENTIAL SUBDIVISIONS IF NO NEW DWELLING UNIT POTENTIAL IS CREATED; INSTITUTIONS FOR THE CARE OF THE AGED; AND AGE-RESTRICTED RESIDENTIAL PROJECTS.~~

THE FOLLOWING ARE EXEMPT FROM THE REQUIREMENTS OF THIS CHAPTER:

- A. NON-RESIDENTIAL PROJECTS;
- B. RESIDENTIAL SUBDIVISIONS IF NO NEW DWELLING UNIT POTENTIAL IS CREATED;
- C. INSTITUTIONS FOR THE CARE OF THE AGED;
- D. PROPOSED PROJECTS IN (1) THE ARTS AND ENTERTAINMENT DISTRICT AND (2) THE BOUNDARIES AS ESTABLISHED BY THE MAIN STREET MARYLAND LETTER OF AGREEMENT FOR DESIGNATED COMMUNITIES AS SHOWN ON THE ANNAPOLIS MAIN STREET DISTRICT MAP DATED 3/9/16;
- E. AGE-RESTRICTED RESIDENTIAL PROJECTS; AND
- F. PROPOSED PROJECTS THAT HAVE RECEIVED A CERTIFICATE OF ADEQUATE PUBLIC FACILITIES PRIOR TO THE EFFECTIVE DATE OF ORDINANCE 36-15.

**22.25.040 - STANDARDS.**

~~A. TESTING FOR ADEQUATE SCHOOL CAPACITIES; THE CREATION OF A SCHOOL UTILIZATION CHART IN ACCORDANCE WITH PARAGRAPH D OF THIS SECTION, SHALL OCCUR ON JANUARY 1 AND JULY 1 OF EACH YEAR. THE DIRECTOR OF PLANNING AND ZONING SHALL PREPARE A SCHOOL UTILIZATION CHART FOR USE ON BOTH OF THESE DATES EACH YEAR.~~

B. TESTING FOR ADEQUATE SCHOOL CAPACITIES IS PREPARED BY THE DIRECTOR OF PLANNING AND ZONING AND IS BASED ON THE SCHOOL UTILIZATION CHART, AS DESCRIBED IN PARAGRAPH D BELOW.

C. NOTWITHSTANDING THE DEFINITION OF "PROPOSED PROJECT" IN SECTION 22.04.010, RESIDENTIAL DEVELOPMENTS EXCEEDING ~~FIVE ELEVEN~~ DWELLING UNITS SHALL NOT BE APPROVED AT LOCATIONS WHERE: ~~THE ENROLLMENT AT THE ELEMENTARY, MIDDLE OR HIGH SCHOOL THAT SERVES THE SITE IS GREATER THAN 100% OF THE STATE RATED CAPACITY OR IS PROJECTED BY ANNE ARUNDEL COUNTY PUBLIC SCHOOLS TO BE GREATER THAN 100% WITHIN THREE YEARS.~~

1. THE ENROLLMENT AT THE ELEMENTARY AND MIDDLE SCHOOLS THAT SERVE THE SITE, PLUS FROM THE DEVELOPMENT PROPOSED BY THE APPLICATION THE NUMBER OF ELEMENTARY AND MIDDLE SCHOOLS STUDENTS EXPECTED TO ATTEND BASED ON THE SCHOOL PUPIL GENERATION FACTORS YIELD PER UNIT CONTAINED IN THE ANNE ARUNDEL COUNTY EDUCATIONAL FACILITIES MASTER PLAN, IS CURRENTLY OR PROJECTED TO BE EQUAL TO OR GREATER THAN 105% OF THE STATE RATED CAPACITY WITHIN THREE YEARS, AND
2. THE ENROLLMENT AT THE HIGH SCHOOL THAT SERVES THE SITE, PLUS FROM THE DEVELOPMENT PROPOSED BY THE APPLICATION THE NUMBER OF HIGH SCHOOL STUDENTS EXPECTED TO ATTEND BASED ON THE SCHOOL PUPIL GENERATION FACTORS YIELD PER UNIT CONTAINED IN THE ANNE ARUNDEL COUNTY EDUCATIONAL FACILITIES MASTER PLAN, IS CURRENTLY OR PROJECTED TO BE EQUAL TO OR GREATER THAN 120% OF THE STATE RATED CAPACITY WITHIN THREE YEARS.

D. THE SCHOOL CAPACITY OF A SCHOOL USED IN THE SCHOOL UTILIZATION CHART SHALL INCLUDE THE FOLLOWING AND SHALL NOT VARY IN SUBSTANCE FROM THE INFORMATION INCLUDED IN THE ANNE ARUNDEL COUNTY EDUCATIONAL FACILITIES MASTER PLAN, UNLESS THE VARIATION IS CONFIRMED IN WRITING BY THE SUPERINTENDENT OF THE SCHOOL BOARD, OR HIS DESIGNEE, OR APPROVED BY RESOLUTION OF THE CITY COUNCIL:

1. THE EXISTING CAPACITY OF THE SCHOOL BASED ON THE PROGRAM REQUIREMENTS OF THE ANNE ARUNDEL COUNTY BOARD OF



EDUCATION; AND

2. ENROLLMENT AS OF SEPTEMBER 30; AND
3. PROJECTED ENROLLMENT FOR THE SUBSEQUENT THREE YEARS AS PROVIDED BY ANNE ARUNDEL COUNTY SCHOOLS; AND
4. ANY APPLICABLE FUTURE CAPACITY IF:
  - (a.) A CONTRACT FOR CONSTRUCTION OF THE SCHOOL OR AN ADDITION TO THE SCHOOL NECESSARY TO ACHIEVE THE FUTURE CAPACITY HAS BEEN AWARDED; AND
  - (b.) THE BOARD OF EDUCATION ESTIMATES THAT THE CONSTRUCTION WILL BE COMPLETED IN TIME TO BE USED FOR THE BEGINNING OF CLASSES IN THE SCHOOL YEAR IN WHICH THE FUTURE CAPACITY IS INCLUDED IN THE SCHOOL UTILIZATION CHART; AND
  - (c.) DOES NOT INCLUDE CAPACITY BASED ON TEMPORARY OR RELOCATABLE STRUCTURES.

**22.25.050 CONDITIONAL REVIEW APPROVAL PROCESS**

~~A. UPON REQUEST BY THE APPLICANT, THE DEPARTMENT OF PLANNING AND ZONING MAY PROCEED WITH A CONDITIONAL REVIEW APPROVAL IN CONSULTATION WITH THE APPLICABLE DEPARTMENTS. THE DEPARTMENT OF PLANNING AND ZONING SHALL ESTABLISH A WAITING LIST FOR APPROVAL OF THE ADEQUACY OF PUBLIC FACILITIES FOR SCHOOLS, WITH THE DATE OF ENTRY ONTO THE LIST BEING THE DATE THE APPLICATION IS DEEMED COMPLETE.~~

BA. 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. FOR THE PURPOSES OF THIS CHAPTER, THE SIX-YEAR PERIOD BEGINS WHEN THE APPLICATION FOR A CERTIFICATE OF ADEQUATE PUBLIC FACILITIES AND CORRESPONDING APPLICATION UNDER TITLE 21 OF THE CITY CODE IS DEEMED COMPLETE BY THE DIRECTOR OF PLANNING AND ZONING. WITHIN FOURTEEN (14) DAYS OF THE DATE WHEN THEY ARE DEEMED COMPLETE, THE DIRECTOR OF PLANNING AND ZONING SHALL NOTIFY THE APPLICANT IN WRITING OF WHETHER

THE APPLICATION HAS BEEN DEEMED COMPLETE FOR THE PURPOSES OF THIS CHAPTER. IF THE APPLICATION IS NOT DEEMED COMPLETE, THE DIRECTOR SHALL SPECIFY TO THE APPLICANT ANY ADDITIONAL INFORMATION NEEDED TO COMPLETE THE APPLICATION. THE DIRECTOR MAY EXTEND THE DEADLINE FOR NOTIFICATION FOR AN ADDITIONAL FOURTEEN (14) DAYS AS NEEDED WITH WRITTEN NOTICE TO THE APPLICANT.

C. — A CONDITIONAL REVIEW APPROVAL MAY BE GRANTED BY THE BOARD OF APPEALS, PLANNING COMMISSION, OR PLANNING DIRECTOR, AS APPLICABLE.

## **Chapter 22.28 – MITIGATION**

### **22.28.010 - Opportunity to mitigate.**

A. An applicant whose proposed project is subject to denial or delay under this title shall be given an opportunity to provide infrastructure funds, to improve facilities directly, or to donate necessary facilities in order to allow for approval of the applicant's application under this title for a Certificate for Adequate Public Facilities.

B. The forms and levels of mitigation required of an applicant shall be roughly proportionate to the projected impact of the proposed project upon the facility or facilities and shall be determined by the Director of Planning and Zoning in consultation with the other departments responsible for the applicable facilities as outlined in Section 22.28.010.

C. FOR A SCHOOL FACILITY, MITIGATION CONSISTS OF THE CONSTRUCTION OR FUNDING OF IMPROVEMENTS BY A DEVELOPER THAT INCREASE CAPACITY OF THE SCHOOL FACILITY WHICH, AT THE TIME OF APPLICATION, IS BELOW THE MINIMUM STANDARD IN THE IMPACT AREA SO THAT THE CAPACITY OF THE FACILITY IN THE SCHEDULED COMPLETION YEAR IS EQUAL TO, OR GREATER THAN, IT WOULD HAVE BEEN HAD THE DEVELOPMENT NOT BEEN CONSTRUCTED. A MITIGATION PLAN WITH PHYSICAL IMPROVEMENTS MAY BE SECURED BY BOND, LETTER OF CREDIT OR OTHER SECURITY ACCEPTABLE TO THE CITY AND SHALL BE PROVIDED UNDER AN AGREEMENT WITH THE BOARD OF EDUCATION TO CONSTRUCT SCHOOL FACILITIES, INCLUDING CONTRACT SCHOOLS. THE DEVELOPER SHALL SUBMIT A COST ESTIMATE TO ESTABLISH THE VALUE OF CONSTRUCTION OFFERED IN MITIGATION IN CONFORMANCE WITH CITY SPECIFICATIONS. CAPITAL IMPROVEMENTS TO ANY PORTION OF THE DEVELOPER'S PROPERTY OR PROJECT, PURSUANT TO A SCHOOL CAPACITY MITIGATION AGREEMENT, SHALL BE MADE AVAILABLE AND SHALL PROVIDE SCHOOL CAPACITY TO ALLOW APPROVAL OF PRELIMINARY SUBDIVISION PLAN APPLICATIONS THAT

ARE FILED WITHIN SIX YEARS OF THE DATE OF THE SCHOOL CAPACITY MITIGATION AGREEMENT.

**SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its passage.

**EXPLANATION**

CAPITAL LETTERS indicate matter added to existing law.

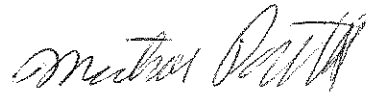
~~Strikethrough~~ indicates matter stricken from existing law.

Underlining indicates amendments.

ADOPTED this 25<sup>th</sup> day of July, 2016.

Aye: Mayor Pantelides, Alderman Arnett, Alderman Budge,  
Alderman Finlayson, Alderman Littmann, Alderman Paone  
and Alderman Pfeiffer.  
Abstain: Alderman PindellCharles  
Nay: Alderman Kirby

THE ANNAPOLIS CITY  
COUNCIL



Date: 8-05-2016

Michael J. Pantelides, Mayor

ATTEST



Date: 8/9/16

Regina Watkins-Eldridge, MMC,  
City Clerk

