



Legislation Details (With Text)

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Type: Ordinance **Status:** Adopted

File created: 3/31/2014 **In control:** City Council

On agenda: 7/28/2014 **Final action:** 7/28/2014

Title: Water Service to the Chesapeake Harbour Subdivision- For purpose of authorizing and approving an agreement regarding the provision of water service to the Chesapeake Harbour Subdivision.

Sponsors: Michael J. Pantelides, Ross Arnett

Indexes: Environmental Matters Committee, Finance Committee

Code sections:

Attachments: 1. O-2-14.pdf, 2. O-2-14 Staff Report.pdf, 3. Fiscal Impact Note.pdf, 4. O-2-14 Environmental Amendment, 5. O-2-14_Signed.pdf

| Date | Ver. | Action By | Action | Result |
|-----------|------|---------------------------------|---------------------------|--------|
| 7/28/2014 | 1 | City Council | adopt on second reader | Pass |
| 7/17/2014 | 1 | Environmental Matters Committee | recommend with amendments | Pass |
| 7/17/2014 | 1 | Environmental Matters Committee | amendment(s) approved | Pass |
| 7/14/2014 | 1 | City Council | amendment(s) approved | Pass |
| 6/19/2014 | 1 | Environmental Matters Committee | | |
| 6/17/2014 | 1 | Finance Committee | recommend favorably | Pass |
| 5/15/2014 | 1 | City Council | consider | |
| 4/7/2014 | 1 | City Council | adopt on first reader | Pass |

Water Service to the Chesapeake Harbour Subdivision- For purpose of authorizing and approving an agreement regarding the provision of water service to the Chesapeake Harbour Subdivision.

CITY COUNCIL OF THE City of Annapolis

Ordinance 2-14 Amended

Introduced by: Mayor Pantelides

Referred to
Finance Committee
Environmental Matters Committee

A ORDINANCE concerning

Water Service to the Chesapeake Harbour Subdivision

FOR the purpose of authorizing and approving an agreement regarding the provision of water service to the

Chesapeake Harbour Subdivision.

WHEREAS, the Association is the community association for the Chesapeake Harbour subdivision ("Chesapeake Harbour") as shown on Plats Nos. 4775 to 4779 as recorded in the Land Records of Anne Arundel County and amended, which subdivision contains four hundred fifty-two (452) residential units, a marina, a restaurant, and recreational facilities all located in Anne Arundel County Maryland, but outside the City's boundaries; and

WHEREAS, all of the applicable owners of such units, businesses, and facilities of Chesapeake Harbour are members of the Association (collectively, the "Owners"); and

WHEREAS, the City provides water to Chesapeake Harbour pursuant to the Water Agreement dated August 6, 1984 by and between the City and the developer of Chesapeake Harbour (the "Water Agreement"), which Water Agreement was approved by City Council in City Ordinance 55-84 adopted on August 6, 1984; and

WHEREAS, the Water Agreement states that the Owners in Chesapeake Harbour are to pay the City A MULTIPLIER OF two (2) times the rate charged to similar City users of City water; and

WHEREAS, in 2006, the City Council amended Section 16.08.050.B of the City Code, to require water customers outside of the City to pay an amount that is A MULTIPLIER OF three (3) times the rate charged to similar City users of City water; and

WHEREAS, in late 2006, the City inadvertently began charging Owners in Chesapeake Harbour A MULTIPLIER OF three (3) times the rate charged to similar City users of City water contrary to the Water Agreement; and

WHEREAS, the City and the Owners wish to reach an amicable and final resolution of their dispute without litigating.

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that it hereby approves the form and substance of the Settlement Agreement, a copy of which ~~it~~ IS attached hereto and incorporated herein by reference, by and between the City of Annapolis and the Association; and the Mayor is hereby authorized to execute the Settlement Agreement on behalf of the City.

SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the City's reimbursement to the Association pursuant to the Settlement Agreement is subject to City Council appropriation.

SECTION III: 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.

SETTLEMENT AGREEMENT

This Settlement Agreement (the "**Agreement**"), is made this ____ day of _____ 2014, by and between

the City of Annapolis, a municipal corporation of the State of Maryland (the “City”), and Chesapeake Harbour Community Association, Inc., a Maryland corporation, its successors and assigns (collectively, the “Association”). The City and the Association are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties.”

RECITALS

WHEREAS, the Association is the community association for the Chesapeake Harbour subdivision (“Chesapeake Harbour”) as shown on Plats Nos. 4775 to 4779 as recorded in the Land Records of Anne Arundel County and amended, which subdivision contains four hundred fifty-two (452) residential units, a marina, a restaurant, and recreational facilities all located in Anne Arundel County Maryland, but outside the City’s boundaries; and

WHEREAS, all of the applicable owners of such units, businesses, and facilities of Chesapeake Harbour are members of the Association (collectively, the “Owners”); and

WHEREAS, the City provides water to Chesapeake Harbour pursuant to the Water Agreement dated August 6, 1984 by and between the City and the developer of Chesapeake Harbour (the “Water Agreement”), which Water Agreement was approved by City Council in City Ordinance 55-84 adopted on August 6, 1984; and

WHEREAS, the Water Agreement states that the Owners in Chesapeake Harbour are to pay the City A MULTIPLIER OF two (2) times the rate charged to similar City users of City water; and

WHEREAS, in 2006, the City Council amended Section 16.08.050.B of the City Code, to require water customers outside of the City to pay an amount that is A MULTIPLIER OF three (3) times the rate charged to similar City users of City water; and

WHEREAS, in late 2006, the City inadvertently began charging Owners in Chesapeake Harbour A MULTIPLIER OF three (3) times the rate charged to similar City users of City water contrary to the Water Agreement; and

WHEREAS, the Parties wish to resolve their differences and reach an amicable and final resolution of their dispute without litigating.

NOW THEREFORE, in consideration of the mutual agreements herein and other good and valuable consideration, and incorporating the Recitals above and the promises below, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the Parties as follows:

1. The City shall change the water rate MULTIPLIER charged for Chesapeake Harbour effective July 1, 2014 (the “Effective Date”). The charges for water by the City to the Owners in the Chesapeake Harbour shall be reduced from A MULTIPLIER OF three (3) times the rate charged to similar City users to two (2) times such rate, as agreed to in the Water Agreement.

2. The City shall pay to the Association the sum of Twenty-Five Thousand Dollars (\$25,000.00) as reimbursement of it attorney’s fee, plus the sum of all overpayments paid by the Owners in Chesapeake Harbour from July, 2011 to the Effective Date of this Agreement, (collectively, the “Settlement Amount”). The Settlement Amount shall be determined within thirty (30) calendar days after the Effective Date of this Agreement. The Settlement Amount shall be paid by the City in two (2) approximately equal installments, one

on or before June 30, 2014 and the second on or before July 31, 2014. The Settlement Amount shall be pro-rated if the Settlement Amount is established and fixed before the ending date of the applicable City quarterly billing period.

3. It shall be the sole responsibility of the Association, in its sole discretion, to fairly and proportionately disburse the Settlement Amount to all applicable Owners in Chesapeake Harbor, both past and present, who are affected by this Agreement. The City shall have no responsibility to determine or make such fair and proportionate disbursement to the Owners in Chesapeake Harbor, either past or present. The City's only responsibility regarding the disbursement of the Settlement Amount shall be to render the two payments to the Association referenced in paragraph 2 above, directly to and through its attorney.

4. The Association, on its own behalf and on behalf of its members, the Owners, past, present and future, and their respective heirs, personal representatives, successors and assigns, expressly agree to and hereby do release, acquit and forever discharge the City and its elected officials, employees, and agents from any and all and every manner of action, cause of action, suits, debts, dues, sums of money, accounts, reckonings, contracts, controversies, agreements, promises, damages, judgments, expenses, executions, claims and demands of every manner whatsoever, which it or its members, the Owners has or may have previous to this time or at this time, or any time hereinafter against the City, its elected officials, employees and agents, upon or by any reason of any manner, cause or thing arising out of the alleged overcharges by the City for the period January 2007 to the determination date of the Settlement Amount, and attorney's fees and costs. In addition, the Association hereby agrees to and shall indemnify, defend and save and hold the City, its elected officials, employees and agents harmless from any claims by its members, the Owners, past, present and future, and their respective heirs, personal representatives, successors and assigns, as a result of any alleged overcharge by the City for such period.

5. The City hereby acknowledges and agrees that the Water Agreement sets the WATER rate MULTIPLIER to be paid by Owners of Chesapeake Harbour to the City for use of City water despite provisions of the City Code to the contrary.

6. It is understood and agreed by the Parties that this Agreement is not an admission of any liability by the City. The purpose of this Agreement is to avoid a lawsuit and to effectuate the rights and obligations of the Parties under the Water Agreement

7. Each Party has signed this Agreement after consultation with counsel of its own choosing and intends to be legally bound hereby.

8. This Agreement may be executed in counterparts, each of which may be considered an original.

9. The persons signing this Agreement represent, warrant and acknowledge by their signatures that they are fully authorized by the Party or Parties for whom they are executing this Agreement to execute this Agreement on behalf of said Party or Parties.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be binding and effective as of the year and date first set forth above.

ATTEST:

THE CITY OF ANNAPOLIS

By: _____

Regina C. Watkins-Eldridge, City Clerk

Michael J. Pantelides, Mayor

Date: _____

David A. Jarrell, Acting City Manager

Bruce T. Miller, Director of Finance

Marcia A. Patrick, Acting Director of Public Works

Approved for Form & Legal Sufficiency:

Gary M. Elson, Acting City Attorney

ATTEST CHESAPEAKE HARBOUR COMMUNITY ASSOCIATION, INC.

By: _____
Aaron Bueno, President

Date: _____