

**TITLE 28. INTERIM ADEQUATE
FACILITIES ORDINANCE**

Subtitle 1. General Provisions

28-101 Title

This Ordinance shall be known as the Interim Adequate Public Facilities Ordinance of Queen Anne’s County, Maryland (IAPFO).

28-102 Purpose and Intent

The Queen Anne’s County Commissioners find that the health, safety and general public welfare of the residents of Queen Anne’s County will be promoted by establishing temporary public facilities regulations to be in effect while the County updates the Comprehensive Plan and Zoning Code, in addition to preparing an Impact Fee Ordinance and an Adequate Public Facilities Ordinance (referred to herein as the “Growth Management Program”). The purpose and intent of this Ordinance is not to prohibit the filing, review or approval of development applications, but instead, to influence the rate at which development may occur while the County updates its Growth Management Program.

The purposes of this Ordinance are to:

- (a) implement “Interim” Adequate Public Facilities policies in anticipation of preparation and adoption of an Adequate Public Facilities Ordinance.
- (b) determine that public facilities, infrastructure and services adequate to serve proposed development are either existing or will be provided concurrent with that development.
- (c) assure that proposed development will not adversely affect the public health, safety and welfare of County residents.
- (d) establish uniform procedures for the review of development applications while this Ordinance remains in effect.

28-103 Affected Area

This Ordinance shall apply within the entire unincorporated area of the County.

28-104 Definitions

To the extent that the words and terms used herein are defined in the Queen Anne’s County Code and Master Water and Sewer Plan, they shall be accorded the same

meaning and definitions herein. The following words and terms, not defined in said Code and Plan, are defined as follows:

(a) Adequate Public Facilities Study (APFS)

A study that describes (a) existing essential public facilities (including schools, roads, wastewater and water systems) likely to be impacted by a proposed development, (b) the impact the proposed development will have upon such essential public facilities, and (c) whether the public facilities will continue to provide adequate service to the residents of Queen Anne's County after the proposed development (and each phase thereof) is completed.

(b) Capital Improvements Program (CIP)

A document adopted annually by the County Commissioners itemizing County capital projects funded for the current fiscal year and those capital projects planned for the following five-year period, including the proposed means of funding such projects, sometimes referred to herein as "the six year CIP".

(c) Development Application: Any of the following submitted or pending on/after 11/1/00.

- (1) Concept/sketch plan.
- (2) Preliminary/final subdivision application.
- (3) Preliminary/final mixed use application.
- (4) Site plan application.
- (5) Conditional use application.

(d) Essential Public Facilities

- (1) Public schools.
- (2) Public roads.
- (3) Wastewater systems including community sewerage systems, multi-use systems or individual sewerage disposal systems.
- (4) Water systems including community water systems, multi-use systems or individual water supply systems.

Subtitle 2. Term and Extension

28-201 Term of Ordinance

This Ordinance shall remain in effect from the date of its adoption until the earlier of:

- (a) nine (9) months from its date of adoption, unless extended by the County Commissioners as set forth below; or
- (b) the date of adoption of an Adequate Public Facilities Ordinance.

28-202 Extension of Term of Ordinance

The Queen Anne's County Commissioners may extend the term of this Ordinance for a period not exceeding nine (9) months. The County Commissioners may extend the term of this Ordinance by resolution without the requirement of additional public hearings.

Subtitle 3. Applicability

28-301 Development Approvals

Unless otherwise provided in Section 28-302, this Ordinance applies to all development applications as defined herein.

28-302. Exempted Uses and Development

This Ordinance does not apply to the following:

- (a) Sketch plan applications of less than 20 lots.
- (b) Subdivision applications of less than 20 lots.
- (c) Mixed use development applications of less than 20 lots/units and less than 5,000 sq. ft. of nonresidential floor area.
- (d) Concept plan applications of less than 5,000 sq. ft. of floor area.
- (e) Site plan applications of less than 5,000 sq. ft. of floor area.
- (f) Public service uses.
- (g) Building permits or zoning certificates.

Subtitle 4. Applicability

28-401 Compliance

An APFS must be submitted to the Dept. of Planning & Zoning prior to the review of any new development application. Review of new development applications will not begin until the Planning Director determines that adequate essential public facilities exist or will be provided concurrently with the proposed development.

An APFS must be submitted to the Dept. of Planning & Zoning for any development application pending on the effective date of this Ordinance prior to any further review or approvals of the pending development application. Further review and approvals of pending development applications will not proceed until the Planning Director determines that adequate essential public facilities exist or will be provided concurrently with the proposed development.

28-402 Submission Requirements

If a phased development is proposed or contemplated, the APFS shall address the impacts of the entire development on affected essential public facilities. A complete APFS shall contain at a minimum the following information:

- (a) Schools - an APFS shall include the following regarding schools:
 - (1) schools to be attended by the projected students based upon school districts, as established by the Queen Anne's County Board of Education.
 - (2) for each school district affected by the project, existing enrollments and enrollments projected to be generated by all other proposed developments in the school district, and all other enrollments projected by the Queen Anne's County Board of Education by the time of project completion.
 - (3) the APFS may propose improvements which will achieve adequacy of service as defined in Section 28-502 (a).
- (b) Roads - an APFS regarding roads shall include a traffic impact study of public rights-of-way owned and maintained by the State or County that will be impacted by the proposed development. The traffic impact study shall, at a minimum, provide information regarding the following roadway improvements or conditions: pavement, drainage, traffic control devices, bridges and culverts, existing service levels at all impacted intersections and projected service levels. In assessing projected service levels, the APFS shall include traffic to be generated by other development projects pending or reasonably anticipated. The APFS may propose improvements which will achieve adequacy of service as defined in Section 28-502 (b).
- (c) Wastewater Systems - an APFS regarding wastewater systems shall be based upon the adequacy criteria set forth in Section 28-502 (c). The APFS may propose improvements which will achieve adequacy of service as defined in Section 28-502(c).
- (d) Water Systems - an APFS regarding water systems shall be based upon the adequacy criteria set forth in Section 28-502 (d). The APFS may propose improvements which will achieve adequacy of service as defined in Section 28-502 (d).

Subtitle 5. Procedure and Requirements

27-501 Procedures for Determination of Adequacy of Public Facilities

- (a) Submission to Planning Director. The Planning Director shall within fifteen (15) days determine whether the APFS is complete pursuant to the submission requirements set forth in Section 28-402. If the APFS is complete, the Planning Director shall forward the APFS to the Department

of Public Works and Board of Education and other agencies deemed appropriate by the Planning Director for review and comment.

- (b) Planning Director Determination of Adequacy. The comments and recommendations of agencies to which the APFS has been referred shall be considered by the Planning Director. If the Planning Director determines that each essential public facility will be adequate to serve the proposed development at the standards set forth in this Ordinance, the Planning Director shall notify the applicant in writing within thirty (30) days. The development application shall then be reviewed and considered for approval as provided in Title 18 of the Queen Anne's County Code.

If the Planning Director determines that any essential public facility will not be adequate to serve the proposed development at the standards set forth in this Ordinance, the Planning Director shall notify the applicant in writing within thirty (30) days that one or more essential public facilities are inadequate to serve the proposed development. The applicant may then submit a mitigation plan that proposes means to maintain or generate adequate essential public facilities concurrently with the development of the project.

- (c) Mitigation Plan.
 - (1) The Planning Director shall consider a mitigation plan submitted by an applicant. The Planning Director may recommend final approval of a mitigation plan by the Planning Commission only if the Planning Director finds that the plan will assure that adequate levels of essential public facilities exist or will be made available to serve the proposed development concurrently with the development of the project. A mitigation plan may include one or more of the following:
 - (i) dedication of property to the County.
 - (ii) front funding payment of impact fees.
 - (iii) fees in lieu of necessary public facilities improvements.
 - (iv) participation in private/public partnerships.
 - (v) developer agreements.
 - (vi) off-site improvements.

(vii) other mechanisms as may be determined by the County Commissioners, Sanitary Commission or Planning Director.

(2) The Planning Director shall consider the recommendations of the Director of the Department of Public Works, the Superintendent of Schools and any other agency. The Planning Director shall notify the applicant in writing within forty-five (45) days of receiving a complete mitigation plan whether the mitigation plan will be recommended for approval by the Planning Commission. The development application shall then be reviewed and considered for approval as provided in Title 18 of the Queen Anne's County Code. The mitigation plan shall include the type(s) of mitigation and the methods and schedules, including project phasing, for the implementation of the mitigation plan. The Planning Commission shall review and have final approval authority of the mitigation plan at or before final project approval.

(3) Following final approval by the Planning Commission, the mitigation plan shall be reduced to a binding Adequate Public Facilities Agreement between the applicant and the County, that shall run with and bind the applicant's property. The Agreement shall be approved for form and content by the County Attorney.

(d) Disapproval of Project.

If the Planning Director has determined that one or more essential public facilities are inadequate and an applicant fails to provide a mitigation plan to assure adequate levels of essential public facilities, the Planning Director shall reject the development application. The decision of the Planning Director shall be in writing to the applicant.

(e) Performance Guarantees.

The County Commissioners may require a performance guarantee (bond, letter of credit, etc.) when appropriate to insure compliance with an approved mitigation plan.

28-502 Threshold Requirements

(a) Public Schools.

Public schools in the service area of the proposed development shall be considered adequate if:

- (1) the existing and projected school population together with the school population projected to be generated from the proposed development is 120% or less of the State rated capacity per school affected or the Board of Education determines that exceeding capacity will not be detrimental to the curriculum or quality of education; or
- (2) the County is scheduled to initiate construction within the first two years of the adopted six-year CIP, such additional schools or school improvements as are necessary in combination with existing schools to comply with Item #1 above; or
- (3) the applicant agrees to undertake school construction or improvements necessary to meet Item #1 above; or
- (4) the applicant agrees to contribute to the financing of specific improvements in accordance with the CIP that will comply with Item #1 above.

(b) Public Roads.

Roads affected by the proposed development shall be considered adequate if:

- (1) in growth areas, the projected level of service after buildout of the project for road segments and intersections affected by the proposed project is B or higher for off-peak hours and C or above for peak hours.
- (2) outside growth areas, the projected level of service after buildout of the project for road segments and intersections affected by the proposed project is A for off-peak and peak hours.
- (3) the County is scheduled to initiate construction within the first two years of the six-year CIP, such additional roads, or road improvements as are necessary in combination with existing roads and intersections to comply with the standards specified in Items #1 & #2 above; or
- (4) the applicant agrees to undertake the construction of the roads or road improvements to comply with the standards specified in Items #1 & #2 above; or

- (5) the applicant agrees to contribute to the financing of specific improvements in accordance with the six-year CIP to comply with Item #3 above.

(c) Wastewater Systems.

The proposed development shall be served by an adequate community sewage system, multi-use system, or individual sewage disposal system.

- (1) The community sewage system shall be considered adequate if the lateral systems, interceptors, pumping stations, force mains and treatment plant have sufficient unreserved or uncommitted available capacity to accommodate expected and ultimate peak flows from the proposed development; or
- (2) The community sewage system shall also be considered adequate if improvements, expansion or construction of facilities necessary to comply with standards in Item #1 above are scheduled to be constructed and on-line within the first two years of the six-year CIP; or
- (3) The community sewage system may be considered adequate if improvements, expansion or construction of facilities necessary to comply with standards in Item #1 are scheduled to be constructed and on-line within the first four years of the six-year CIP and the applicant agrees to contribute to financing of specific improvements in accordance with the six-year CIP which will comply with Items #1 or #2 above.
- (4) Multi-use systems and on-site sewage disposal systems shall be considered adequate if the design is approved by appropriate State and County authorities.

(d) Water Systems.

The proposed development shall be served by an adequate community water system, multi-use water system or individual water supply system.

- (1) The community water system shall be considered adequate if the source facilities, storage tanks, pumping stations and distribution systems have sufficient unreserved or uncommitted capacity available to provide the average flow required in addition to minimum fire flow for the proposed project; or
- (2) The community water system shall be considered adequate if improvements, expansion or construction of facilities necessary to comply with standards in Item #1 above are scheduled to be constructed and on-line within the first two years of the six-year CIP; or

- (3) The community water system may be considered adequate if improvements, expansion or construction of facilities necessary to comply with standards in Item #1 above are scheduled to be constructed and on-line within the first four years of the six-year CIP and the applicant agrees to contribute to the financing of specific improvements in accordance with the six-year CIP which will comply with Items #1 or #2 above.
- (4) Multi-use systems and individual water supply systems shall be considered adequate if the design is approved by appropriate State and County authorities.

Subtitle 6. Miscellaneous

27-601 Appeals

Appeals from any decision of the Planning Director or Planning Commission under this Ordinance shall be to the Queen Anne's County Board of Appeals.

27-602 Effect on Existing County Ordinance This Ordinance is not intended to amend or repeal any existing County ordinance or regulation, or the Queen Anne's County Master Water and Sewer Plan and any sewer allocation policy adopted by the Queen Anne's County Sanitary Commission. The requirements of this Ordinance shall be deemed to be supplemental to, and not in substitution of, existing County ordinances, regulations, or adopted policies.

28-603 Conflict

In the event of conflict between this Ordinance and any other County law or regulations, the most restrictive legally applicable law shall apply.

27-603 Severability

If any section, subsection, sentence, clause, phase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of law, such portions shall be deemed a separate, distinct or independent provision, and such holding shall not effect the validity of the remaining portions of this Ordinance; it being the intent of the Queen Anne's County Commissioners that this Ordinance shall stand, notwithstanding the invalidity of any section, sentence, clause, phrase, or portion hereof.