

*Note: Text relocated but not changed is indicated with yellow highlights*

## **I. Introduction**

The Adequate Public Facilities Ordinance (APFO) establishes procedures and standards necessary to ensure that adequate public facilities and services are provided concurrent with new development and redevelopment:

~~The Adequate Public Facilities Ordinance (APFO) and~~ tests the capacity of public facilities based on current and projected data available at the time of development application, as outlined in Table I. Net available system capacities<sup>1</sup> will change as 1) new projects come into the system, 2) other projects are completed, 3) some projects are abandoned, and 4) new facilities are programmed in capital budgets. APFO provisions are integrated into the development review process to establish a benchmark for the availability of capacity at the time of project review. Once a development project is approved, capacity of public facilities required by that project is reserved, throughout its validity period, as determined at the time of project approval, including any extensions.

The Mayor and Council has developed the following mission statement to guide administration of the APFO:

*The City of Rockville is experiencing substantial interest in redevelopment of older areas into mixed use, dynamic centers. This pressure has raised concerns regarding public infrastructure capacity because of the expected increase in commercial/office square footage and residential dwelling units. The Mayor and Council have expressly stated that they want to provide opportunities to revitalize certain areas of the city [in] and insure that all attributes needed for modern urban living are provided. Additionally, they want to provide for long term economic vitality.*

*The Mayor and Council have adopted an ordinance to ensure that the necessary public facilities will be available to serve new development and redevelopment. Developers may be permitted to mitigate the impact of their development projects. The Mayor and Council will periodically review the adequate public facilities standards and modify them as deemed necessary.*

The APFO will be applied to all development projects - unless specifically exempted herein. Adequacy shall first be considered at the earliest stage in the application process so as to assure adequacy of public facilities for the project and to provide guidance to the applicant as to how the APFO requirements can be met if deficiencies are identified.

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<sup>1</sup> Net available system capacity is the total amount of capacity minus all existing background development, development with building permits, and development approved but not yet permitted.

TABLE I: APFO Approval Types

Type	Application	Scope of Review
<b>Initial</b>	Concept Plans for Project Plans (PJT), Some Special Exceptions (SPXs), Development applications filed during the pendency of a related annexation petition	Transportation Impact (may exclude some site-specific design review that requires more detailed design), Schools, Fire/Emergency, Water, and Sewer. <del>The school impact for development applications filed during the pendency of a related annexation petition is evaluated at the time of annexation.</del>
<b>Detailed</b>	Site Plan (STP), some SPXs, Preliminary Subdivision Plans	Requirements of Initial Approval (if not previously approved) plus transportation analyses that require detailed site-specific design.
<b>Final</b>	Building Permit	Water and Sewer evaluated by City to ensure that capacity is still available. Other detailed approval elements are not retested.

All new development applications filed after the effective date of the Ordinance<sup>2</sup> are subject to its provisions. Any development applications filed prior to the effective date will be reviewed based on the standards and requirements in effect at that time, except as provided in section II.B below.

## **II. Process**

Determining whether or not a development project provides “adequate” public facilities is dependent on the City’s standard level of performance of a public facility, which is referred to as a Level of Service (LOS). The impacts of a development project must not be so great that they negatively impact citizens’ quality of life beyond certain thresholds. The thresholds, or standards, have been established by the City for various public facilities (transportation, schools, fire protection, water supply, and sewer) and are outlined in detail in the following sections.

The following are procedures used by the City to ensure that adequate public facility systems exist during and after a development project:

- During review of any development project, the City will check to ensure that capacities of public facility systems are adequate, as defined in this document, through all phases, including at the completion of the development.
- To ensure that approved but not yet built development does not use all of the available capacity required to maintain adequate LOS, the City will approve firm schedules for the implementation of multi-phase development projects. In other cases, the expiration dates established in the Zoning Ordinance for the particular type of development application will determine the service commitment.
- If a development project does not provide adequate public facilities, it ~~is will~~ either be denied or approved with special conditions.

<sup>2</sup> The effective date of the Ordinance is November 1, 2005.

This general framework is described in further detail in the body of this document.

### **I.A.II.A. Development Projects and Capacity Schedules**

Table II outlines the stages at which different public facilities are evaluated against prior approvals and when capacity is reserved. If a developer fails to meet the predetermined service commitment for use of reserved capacity, APFO approval lapses.

**TABLE II: Facility Capacity Schedules**

<b>Facility Type</b>	<b>Capacity Schedule</b>
Transportation	Application approval reserves transportation capacity; capacity moves from the reserved to the used category once staff determines that the site is fully operational.
Schools	Project Plan approval, subdivision approval or site plan approval reserves the capacity; at the building permit stage capacity is moved from the reserved to the used category. <del>For development applications filed during the pendency of a related annexation petition, school capacity is determined and reserved at the time of annexation approval.</del>
Fire/Emergency	Application approval reserves the capacity; at the building permit stage capacity is moved from the reserved to the used category.
Water	Project Plan approval, subdivision approval or Site Plan approval reserves the capacity; at the building permit stage capacity is moved from the reserved to the used category.
Sewer	Project Plan approval, subdivision approval or Site Plan approval reserves the capacity; at the building permit stage capacity is moved from the reserved to the used category.

A binding service commitment attached to the validity periods, as defined in the Zoning Ordinance or as approved for multi-phase projects, is a critical component of the system for reserving capacity for proposed projects. The consequence of failure to comply with the validity period or service commitment is that the developer is required to reapply for that capacity before proceeding with the project or with the uncompleted portions of the project.

For a multi-phase project, the service commitment allocates the capacity for a set period of time for specific phases. Capacity allocations expire automatically according to the service commitment unless the original ~~approving body~~ Approving Authority determines that an extension is warranted.

### **I.B.II.B. Approved, Not-Completed Development Projects**

There are several multi-phase projects in the City that have received development approvals prior to this APFO. At the time these projects were approved, there was no requirement for a completion schedule.

Development projects approved within a Planned Development Zone are subject to review and implementation of adequate public facilities as specified in the following provisions. The length of time for which facilities are deemed adequate under these approvals may vary for each public facility. The validity period for determining the adequacy of public facilities is as follows:

- a. The number of years specified in the original approval, if explicitly stated; or
- b. If the original approval does not specify the number of years that public facilities are deemed adequate, the validity period ends twenty-five (25) years from November 1, 2005 if all required public infrastructure have not been provided. The Mayor and Council may approve one five-year extension to implement the approved development project when the applicant demonstrates that development has proceeded with due diligence but that factors beyond the control of the developer such as a economic conditions or change in governmental regulations have precluded development of the property within the approved time frame or that the project is substantially complete.

If the adequate public facility approval is no longer valid, then the development must retest the relevant public facilities, with credit for provided facilities, prior to approval of subsequent detailed applications, use permits, or final record plats.

### ***II.C. Exemptions and Waiver Provisions***<sup>3</sup>

~~Certain classes of uses are deemed to have little or no impact on public facilities. As such, the deciding body may waive full compliance with the APFO provisions if it finds that there will be minimal adverse impact resulting from such a waiver. Such a waiver does not exclude any project from the final adequacy check for water and sewer service, if needed for the project.~~

The following uses or classes of uses are ~~eligible for a waiver~~exempt from the APFO requirements:

- ~~• Accessory Apartments~~
- ~~• Houses of Worship~~
- ~~• Personal Living Quarters~~
- ~~• Wireless Communications Facility~~

<sup>3</sup> ~~Section 25.20.01.b of the City's Zoning Ordinance provides the following: "A waiver of the requirement to comply with one or more of the Adequate Public Facilities Standards may be granted only upon a super majority vote of the Approving Authority. For purposes of this Article, a super majority vote shall be 3 votes for the Board of Appeals, 5 votes for the Planning Commission, and 4 votes for the Mayor and Council. The Chief of Planning may not grant a waiver."~~

- Nursing Homes (no waiver from the, except for Fire and Emergency Service Protection provision)provisions and any necessary final adequacy checks for water and sewer service:
  - Housing for the Elderly and Physically Handicapped, or for other age restricted residential uses (no waiver from the Fire and Emergency Service Protection provision)
  - Publicly owned or publicly operated uses (Note: the addition of portable classrooms to existing schools are excluded from the APFO requirements)
  - Accessory apartments
  - Personal living quarters
  - Wireless communications facilities
  - MCPS schools and portable classrooms
- Minor subdivisions (up to 3 residential lots)

If not otherwise exempted above, the following uses or classes of uses are eligible for a waiver<sup>4</sup> from the APFO requirements, except for Fire and Emergency Service Protection provisions and any necessary final adequacy checks for water and sewer:

- Publicly-owned or -operated uses
- Houses of worship
- Nursing homes
- Housing for the elderly and physically handicapped and other age-restricted residential uses
- Transit-Oriented Area uses in the Town Center Performance District or within 2,000 feet of a Metro station [\*Note – distance measured from Metro station entrance]

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<sup>4</sup> Section 25.20.01.b of the City's Zoning Ordinance provides the following: "A waiver of the requirement to comply with one or more of the Adequate Public Facilities Standards may be granted only upon a super-majority vote of the Approving Authority. For purposes of this Article, a super-majority vote shall be 3 votes for the Board of Appeals, 5 votes for the Planning Commission, and 4 votes for the Mayor and Council. The Chief of Planning may not grant a waiver."

## **H.III. Levels of Service**

### **H.A.III.A. Transportation**

Currently, mobility throughout the City of Rockville is limited due to traffic congestion generated by local and regional trips. Regional growth, combined with anticipated development activity within the City, will stress the existing and proposed infrastructure. In addition, Rockville's roadway system is essentially built out. Locations that currently contain the worst congestion levels generally require multi-million-dollar improvements to solve the problem. Alternatively, these areas will require an increased reliance on non-vehicular improvements to increase the capacity of a multi-modal transportation system. However, in less densely developed areas of the City where traffic operates at acceptable LOS, many small-scale intersection improvements can still occur.

The City's Master Plan provides a vision for a shift from an auto-centric transportation system to a multi-modal system that serves motorists, bicyclists and pedestrians. Through stated goals and objectives, it aims to create a transportation system that is safe and accessible, provides mobility for all users, and accommodates anticipated local and regional demands. To address all modes of transportation, the City has implemented a Comprehensive Transportation Review (CTR) for new development projects. The CTR policy is included by reference in the Adequate Public Facilities review for purposes of determining the adequacy of transportation facilities. The CTR focuses on auto, transit, pedestrian, and bicycle levels of service, as well as Transportation Demand Management (TDM) programs. The CTR requires a Transportation Report (TR) be submitted with all development applications. The TR consists of five components: an examination of existing conditions, a site access and circulation analysis, an automobile traffic analysis, a non-auto off-site analysis, and proposed mitigation and credits. The analysis included in the TR is based on the type of development project and projected site trip generation(s). Development projects in the City that generate more than 30 peak hour auto trips, as defined in the CTR, must submit all five (5) components of the TR. Development projects that generate less than 30 peak hour auto trips do not need to provide the automobile traffic analysis and the non-auto off-site analysis. The TR report is used to test if the development project meets APF standards.

The following are principles used by the City requirements to ensure that adequate transportation facilities exist during and after a development project:

- In order to address increased congestion and to encourage development activity where viable transportation options exist, the City has established Transit-Oriented Areas (TOA's) and non-Transit-Oriented Areas (non-TOA's), as approved by the Mayor and Council. Areas defined as TOA's must include existing or programmed facilities that provide multi-modal access. TOA's include areas 7/10ths of a mile accessible walking distance from existing and programmed Metro and MARC stations and programmed fixed-guideway transit stations on dedicated transit rights-of-way. A map of the TOA's is attached in Appendix B and shows walking distances of 7/10ths of a mile from fixed-guideway transit stations.
- Transit-Oriented Areas (TOA's) and non-Transit-Oriented Areas (non-TOA's) have different thresholds. More congestion is allowed in TOA's, where viable multi-modal options exist. Stricter congestion standards are applied in non-TOA's where less congestion is mandated.

- Development projects in ~~TOA's~~ TOAs can claim larger amounts of credit for multi-modal transportation improvements and TDM programs and/or contributions than development projects in non-~~TOA's~~ TOAs.

At the preliminary plan, Project Plan, or Site Plan review stage there must be a detailed transportation capacity analysis following the CTR. If transportation facilities are found to be inadequate the proposed project will be denied. If transportation facilities are found to be adequate, or adequate subject to specified conditions, the project may be approved. Mitigation and other physical improvements may be required to meet APF standards through the normal development review process. Capacity for a development will be reserved after approval.

~~For Montgomery County Public Schools portable classrooms that generate 30 or more peak hour site trips, they are exempt from the CTR requirements to complete all components of the TR, and they will not be required to perform any mitigation or physical improvements for such projects.~~

~~The Comprehensive Transportation Review Methodology was approved by the Mayor and Council on September 29, 2004. It replaced the Standard Traffic Methodology that had previously been utilized. The CTR policy is included by reference in the Adequate Public Facilities review for purposes of determining the adequacy of transportation facilities.~~

**H.B.III.B. Schools**

The Montgomery County Public Schools system has established a method of determining school capacity that it applies and reports as part of its annual Educational Facilities Master Plan (FY2006, App. H, and subsequent amendments). ~~In general, the school system uses a planning capacity of 23 students per section for most K-5 students, with classrooms for special programs considered adequate at capacities ranging from 6:1 to 15:1 (Special Education Program) to 44:1. (1/2-day Kindergarten/Head Start); secondary schools use a capacity ratio of 22.5:1 (see MCPS FY2006, App. H.), which provides an objective basis for determining building capacity.~~

The APFO test for schools in Rockville is based on the program capacity for each school as defined by MCPS. Program capacity for class size is based on regular and supplemental programs for each school. The supplemental programs may include English for Speakers of Other Languages (ESOL) as well as Class Size Reductions (CSR) to accommodate special populations at individual schools. ~~Six of the elementary schools serving the City are subject to CSR provisions.~~

~~In the case of development applications filed during the pendency of a related annexation petition for properties that are to be annexed into the City, the school capacity determination is based on the findings of capacity as would be determined through the County's development approval process by MCPS. If MCPS determines there is school capacity, such that the subject cluster is not in moratorium, and, therefore, the proposed development would be able to meet the County's schools test, the impact on school capacity would be the same whether the land was in or outside of the City's boundaries. Therefore, development applications for sites subject to annexation filed during the pendency of the annexation petition are subject to the special provisions of subsection (ii) below. If subsection (ii) below is satisfied, the Approving Authority must find that the City's schools test has been met so long as there have not been any amendments to the development application that would result in an increase in student generation at any school level between the time of annexation approval and the time of development application approval.~~

School demand is based on actual student census in the most recent complete academic year, adjusted for the following: demographic changes; changes in district boundaries and other changes anticipated by planners with Montgomery County Public Schools; additional demand from approved development; and additional demand from the specific development being considered for approval. Developers may be required to obtain current certification of school capacities for individual clusters, because the annual figures reported to the Board of Education can rapidly be outdated.

~~(i) Levels of Service~~

Except for development applications filed during the pendency of a related annexation petition, (see paragraph ii), a determination of the adequacy of public school capacity is based on the following principles:

(i) Levels of Service

- The program capacities determined annually by the Superintendent of Montgomery County Public Schools, as reported to the Board of Education, shall be used as the

capacity basis for the APFO program, based on 110 percent of program capacity at all school levels within 2 years;

- Within the City, capacity is based on a cluster of schools, using the clusters already established by the Montgomery County Public Schools; however, “borrowing” of capacity from adjacent clusters will not be counted towards the adequacy of school capacity within the City. “Borrowing” of capacity within a cluster will not be counted towards adequacy of school capacity;
- Capacity temporarily taken off-line for rehabilitation and remodeling in accordance with the Montgomery County Public Schools Capital Improvements Program shall be considered available;
- Facilities shown on an adopted Capital Improvements Program with identified sources of funding and planned for completion within 2 years or less shall be considered available;

(ii) Development applications filed during the pendency of a related annexation petition

For a development application for property being annexed into the City filed during the pendency of the annexation petition, ~~a determination by MCPS that the only school cluster in which the proposed development is located would not capacity standard to be in moratorium with the added student generation from the proposed development shall be accepted~~ applied for consideration by the Mayor and Council ~~at the time of annexation~~ as part of its annexation ~~approval review~~ for purposes of satisfying the City’s APFS test for schools ~~shall be the County’s development approval standard, provided the following conditions are met:~~ 1) the ~~affected~~ schools are located outside ~~of~~ the City; 2) less than 10 percent of the ~~schools’ schools’~~ population at the time of annexation is comprised of students residing within the City; and 3) the determination is made within one year prior to the effective date of the annexation. ~~Otherwise, the City’s school capacity standards in paragraph (i) shall apply to the proposed annexation.~~

~~Once this determination is accepted by the Mayor and Council as part of an annexation approval, the~~ The Approving Authority of ~~the~~ development application filed for property subject to the annexation ~~must accept this determination as satisfying the City’s APFS test for schools at the time of review and approval of the~~ shall refer only to the County’s development ~~application, as long as approval standard in its review of the development application for purposes of considering school capacity, provided~~ the following conditions are met: 1) the development application must be approved within 2 years of the effective date of the annexation approval; and 2) there must not have been any amendments to the development application that would result in an increase in the student generation at any school level between the time of annexation approval and development application approval. ~~Any amendment to~~ ~~If either of these conditions shall not be met, then the City’s school capacity standards in paragraph (i) shall apply,~~ the development application ~~that increases student generation at any school level shall subject the development applications shall be subjected~~ to a new APFS determination for schools, and the previous determination by the ~~Mayor and Council~~ Approving Authority at the time of annexation that the ~~City’s APFS~~ test for schools has been satisfied shall be void.

(iii) Regulatory Implementation

~~Note that school~~School clusters in Rockville draw some of their enrollment from outside the City. Thus, for schools, the tracking system for enrollment – both from dwelling units built since the last annual MCPS capacity report and from pipeline projects – must be coordinated with the MCPS administration and the Maryland-National Capital Park and Planning Commission to ensure that the accounting includes new demand from outside the City, as well as the demand from within the City.

Capacities are available from the Montgomery County Public Schools annually and will be made available to prospective developers. It will be necessary to conduct a project-specific review for residential development projects simply to compute the projected demand from each development project.



### H.C.III.C. Fire and Emergency Service Protection

~~Based on Calendar Year 2001 data~~For all proposed development, the average structure fire response time was 7 minutes~~required for an emergency call to be received and 25 seconds; the average EMS response time was 5 minutes~~processed and 56 seconds. Both of these are within the County~~for emergency apparatus from at least two (2) Fire and Rescue Service goals for response time.~~

~~First response to any location in Rockville is possible within established response time goals. A full response calls for the availability of engines from at least 3 separate stations to arrive at the location within 10 minutes. With the programming of a new fire station at the Fire Training Academy, all areas of Rockville are within an 8-minute response time, based on data from site of the proposed development shall be no more than ten minutes. Fire and Rescue Service stations included and funded in the Montgomery County Fire and Rescue Service (MCFRS). The City now requires all new residential units to have sprinklers. Therefore, being on the fringe of the full response areas shall not be a determining factor for Capital Improvements Program (CIP) shall be countable. Service areas and adequacy of fire protection for new residential development activity. However, certain sensitive types of uses shall likely be subject to such a standard, as much for ambulance/rescue services as for fire protection.~~

~~Certain higher risk uses shall be allowed only where a full response from 3 stations within 10 minutes is possible. Such uses would include schools, hospitals, nursing homes, and places of assembly seating more than 500. Clearly the public risk issues are much greater in dealing with such uses and there is thus a logical basis to require that an optimal fire or EMS response be available to any such use that is established in the future.~~

#### (i) Levels of Service

~~The following higher risk uses shall be allowed only where a full response from 3 stations within 10 minutes is possible: schools with the exception of relocatable classrooms; hospitals; nursing homes; commercial buildings over 3 stories high with no sprinklers; places of assembly seating more than 500.~~

#### (ii) Regulatory Implementation

~~Service areas~~will be determined based on the latest data provided by MCFRS.

**H.D.III.D. Water Supply**

The APFO requires denial of any development that would create total water demand in the City that would exceed available supply, less a reasonable reserve for fire-flow.

**(i) Levels of Service**

Any proposed development that would create total water demand in the City that would exceed available supply, less a reasonable reserve for fire-flow, shall not be approved.

Any proposed development for which a minimum fire-flow of 1,000 gallons per minute, or where such fire-flow will not be available from hydrants located within 500 feet of any structure within the development not provided with sprinklers, shall not be approved.

**(ii) Regulatory Implementation**

Final check-off for adequacy of water service will be determined prior to the issuance of building permits.

**H.E.III.E. Sewer Service**

The APFO provisions require denial of any development project that would cause the City to exceed the transmission capacity in any part of the sewerage system or the treatment capacity available to it at the Blue Plains Treatment Plant or other facilities provided by WSSC.

**(i) Levels of Service**

Any proposed development that would cause the City to exceed the treatment capacity available to it at the Blue Plains Treatment Plant or other facilities provided by WSSC shall not be approved.

Any development for which transmission capacity in the City or WSSC system to Blue Plains or another treatment facility will not be available concurrently with the anticipated demand shall not be approved.

**(ii) Regulatory Implementation**

Final check-off for adequacy of water service will be determined prior to the issuance of building permits.

## Sources

Annual Growth Policy (AGP), 2004 (Montgomery County, Maryland-National Capital Park and Planning Commission).

Comprehensive Plan. “City of Rockville Comprehensive Master Plan” November 12, 2002.

Comprehensive Transportation Review Methodology, September 29, 2004.

Hollida, John, P.E. 2003. Civil Engineer II, City of Rockville, Public Works Department; e-mail communication April 14, 2003.

Ierley, Sarah. 2002. (Montgomery County Fire Department). E-mail to District Chief James Resnick, responding to inquiry from Deane Mellander.

Montgomery County Public Schools (MCPS). FY 2006 Educational Facilities Master Plan and the Amended FY 2005-2010 CIP

Resnick, James. 2002. District Chief, Montgomery County Fire Department. Meeting November 2002; also included Paul Quigley and others.

Rockville Town Center Master Plan. October 22, 2001.

## Appendix A: Definitions

<i>Development Project</i>	Any new development or significant redevelopment project presented to the City after November 5, 2001.
<i>CTR</i>	<ul style="list-style-type: none"> <li>Comprehensive Transportation Review describes the process by which to proceed with development or redevelopment within the City. Principles and methodologies explained in the CTR are used by the City to evaluate the transportation impacts of development applications on site access and circulation, multi-modal facilities, and off-site automobile traffic. Mitigation measures to alleviate negative impacts are also addressed.</li> </ul>
<i>Transportation Report (TR)</i>	<p>Transportation Report, required by the CTR, is one report that consists of five components:</p> <ul style="list-style-type: none"> <li><b>Component A: Introduction and Existing Conditions:</b> Project description.</li> <li><b>Component B: Site Access &amp; Circulation:</b> Analysis of internal circulation, entrance configurations, truck access and other relevant access and on-site features.</li> <li><b>Component C: Automobile Traffic Analysis:</b> Analysis of auto traffic using the technical guidelines for traffic analysis in the auto study area.</li> <li><b>Component D: Non-Auto Off-Site Analysis:</b> Analysis of access to alternative modes of transportation available in the respective study area for pedestrian, bicycle, and transit facilities in the multi-modal study area.</li> <li><b>Component E: Summary and Mitigation:</b> Summary of the report findings and recommendations.</li> </ul>
<i>Service Commitment</i>	Public facility capacity reserved as part of project approval.
<i>TOA</i>	Areas defined as TOA's must include existing or programmed facilities that provide multi-modal access. TOA's include areas 7/10ths of a mile accessible walking distance from existing and programmed Metro and MARC stations and programmed fixed-guideway transit stations on dedicated transit rights-of-way.
<i>TDM</i>	Transportation Demand Management is a general term for strategies that promote alternatives to travel by single occupancy vehicle.
<i>PJT</i>	Project Plan.
<i>STP</i>	Site Plan.
<i>SPX</i>	Special Exception.
<i>Subdivision</i>	The creation of lots, either by dividing existing lots or parcels or combining existing lots, for the purpose of new development or redevelopment.