

AN ORDINANCE TO AMEND CHAPTER 24 (CITY ZONING ORDINANCE),
ARTICLE XV, ENTITLED, "ADEQUATE PUBLIC FACILITIES,"
§ 24-246, ENTITLED, "ADEQUACY OF SCHOOL CAPACITY,"
SO AS TO DEFINE APPLICABILITY OF AND ESTABLISH A GAITHERSBURG
MONTGOMERY COUNTY SCHOOLS FACILITIES PAYMENT FEE AND WAIVER
PROVISIONS OF SECTION

Text Amendment CTAM-7036-2015

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 24 of the City Code (City Zoning Ordinance) Article XV, § 24-246 is amended to read as follows:

ARTICLE XV. ADEQUATE PUBLIC FACILITIES

* * * *

Sec. 24-246. Adequacy of school capacity.

With the exception of age restricted development, schematic development plan or preliminary site plan for residential development shall not be approved if the subject property is within the attendance area of a Montgomery County Public School that is forecasted to have a student population that exceeds one hundred ~~ten (110)~~ **fifty (150)** percent of Montgomery County Public Schools program capacity five (5) years in the future subject to the following:

- (a) The program capacity for each school attended by Gaithersburg residents is determined annually by the Superintendent of Montgomery County Public Schools and reported to the board of education in the communities facilities master plan and capital improvements program.
- (b) Capacity shall be reviewed individually for each elementary school, middle school, and high school. Sharing of capacity between schools shall not be permitted.
- (c) Upon review of the current communities facilities master plan and capital improvements program, the city manager shall determine on the first business day of each fiscal year whether or not each public school attended by Gaithersburg residents is forecasted to exceed one hundred ~~ten (110)~~ **fifty (150)** percent of programming capacity five (5) years in the future.

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
Single strikethrough	<i>Deleted from existing law by original bill.</i>
<u><u>Double underlining</u></u>	<i>Added by Amendment.</i>
Double boldface strikethrough	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>

~~(d) Notwithstanding the foregoing, the city council may approve, by resolution, a schematic development or preliminary plan that does not exceed one hundred twenty (120) percent of programming capacity five (5) years in the future upon finding that the project is compatible with existing and proposed adjacent land uses; and:~~

~~i. The project is necessary to implement the master plan or strategic directions and attract an appropriate and compatible type or caliber of user; or~~

~~ii. The number of students generated by the development project, as determined by Montgomery County Public Schools, does not exceed the number of students associated with the existing development and projected number of students associated with proposed future development at the (development) site included in the school population forecasts five (5) years in the future.~~

(d) In addition to the Montgomery County School Impact Tax, the City shall collect, as of January 1, 2016, a Gaithersburg Montgomery County Schools Facilities Payment Fee on all development projects in the city within the attendance area of a Montgomery County Public School where any school serving the development is forecast to have a student population that exceeds one hundred and five (105) percent of Montgomery County Public Schools program capacity five (5) years in the future. .

(e) The rate imposed by the Gaithersburg Montgomery County Schools Facilities Payment Fee shall be the amount of the Montgomery County Schools Facilities Payment Fee set by the Montgomery County Government, and shall be established ~~set~~ by the City Council, in cooperation with Montgomery County Government, with the adoption of the City's annual budget or by separate City Council resolution.

(f) The revenue from the Gaithersburg Montgomery County Schools Facilities Payment Fee must be used to address capital needs for schools serving City residents which have been impacted by the development, and if the revenue is not so encumbered or planned for such use within fifteen (15) years after collection, the fees must be refunded to the owner of the property at the time of the refund.

(g) Other standards and implementation of the Gaithersburg Montgomery County Schools Facilities Payment Fee shall be subject to any additional requirements set forth in the Montgomery County Schools Facilities Payment Fee Standards, to be adopted by regulation pursuant to section 2-10 of this Code.

(h) The City Council, at its sole discretion, may waive the collection of the Gaithersburg Montgomery County Schools Facilities Payment Fee and/or allow a residential development within the attendance area of a Montgomery County Public School that is forecasted to have a student population that exceeds one hundred fifty (150) percent of Montgomery County Public Schools program capacity five (5) years in the future subject to the following findings:

- ~~i.~~ The property being developed is identified within the City's Maximum Expansion Limits as defined in the City's Municipal Growth Element; and/or
- ~~ii.~~ i. Is a property identified in either the "Frederick Avenue Corridor Land Use Plan", "Gaithersburg Old Town District Master Plan", or "Kontlands Boulevard Commercial District Special Study Area" the annual Strategic Plan as a priority area for (re)development; and/or
- ~~iii.~~ Is a property located within one quarter (1/4) mile of an existing or proposed bus rapid transit station, MARC station, Metro or MTA Express Bus Service stop, or Regional Transit Center; and/or
- ~~iv.~~ ii. Is a non-rental residential development that proposes thirty (30) percent or greater of the total fee-simple dwelling units be sold as Affordable Housing with a minimum of 15% moderately priced dwelling units and 15% workforce housing in accordance with ~~of~~ Article XVI of this Chapter; and/or
- ~~v.~~ iii. Is a development that provides either land at no cost for, funding of, or construction of a public/civic use benefitting the City of Gaithersburg.

ADOPTED by the City Council of Gaithersburg, Maryland, this ____ day of _____, 2015.

JUD ASHMAN, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2015. APPROVED by the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2015.

JUD ASHMAN, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2015, and the same was APPROVED by the Mayor of the City of Gaithersburg on the ____ day of _____, 2015. This Ordinance will become effective on the ____ of _____, 2015.

TONY TOMASELLO, City Manager

STAFF COMMENTS FOR PLANNING COMMISSION

MEETING DATE: September 2, 2015

TEXT AMENDMENT: CTAM-7036-2015

TITLE: CTAM-7036-2015: AN ORDINANCE TO AMEND CHAPTER 24 (CITY ZONING ORDINANCE), ARTICLE XV, ENTITLED, "ADEQUATE PUBLIC FACILITIES," § 24-246, ENTITLED, "ADEQUACY OF SCHOOL CAPACITY," SO AS TO DEFINE APPLICABILITY OF AND ESTABLISH A GAITHERSBURG MONTGOMERY COUNTY SCHOOLS FACILITIES PAYMENT FEE AND WAIVER PROVISIONS OF SECTION

REQUEST: RECOMMENDATION TO M&CC

STAFF LIASON: John Schlichting, Director, Planning & Code Administration

Enclosures:

Staff Comments
Revised Draft CTAM-7036-2015 Ordinance
CTAM-7036-2015 Index of Memorandum and Exhibits (in **Bold**)

STAFF COMMENTS

This item is on the Commission's agenda for a transmittal of a recommendation to the Mayor and Council. The consolidated joint public hearing regarding CTAM-7036-2015 was held on July 6, 2015. A joint work session was then conducted on August 10, 2015. The Planning Commission held open its record until 5:00 PM on August 24, 2015. At the time of the Commission's record closing, one additional piece of testimony was received into the record.

As discussed during the public hearing, the purpose of the subject text amendment is to amend Article XV, entitled, "Adequate Public Facilities," § 24-246, entitled, "Adequacy of School Capacity," so as to define applicability of and establish a Gaithersburg Schools Facilities Payment Fee and waiver provisions of section. Staff submitted a memorandum¹, detailing the proposed amendment to the Mayor and City Council and Planning Commission.

Following the public hearing and to respond to comments raised during the hearing, staff provided a more detailed memo² and, during the work session, a presentation that focused on the three facets of the proposed CTAM-7036-2015 amendment:

- The moratorium limits- 120%, 130%, 140%, or 150%
- A Proposed Facilities Payment Fee
- Proposed Waiver Provisions.

At the conclusion of the work session, the Council provided staff with the following guidance as to what to include in the draft ordinance moving forward:

- A moratorium limit above 150%
- A Facilities Payment Fee will be included based upon individual schools at or above 105%
- To remove the Annexation waiver provision
- To remove the Transit Oriented Development waiver provision
- To amend the Special Study Area waiver provision to not identify specific Master Plans in the ordinance, but to refer to the Annual Strategic Plan for identified areas
- To amend the Affordable Housing waiver provision to establish a minimum of 15% moderately priced dwelling units and 15% workforce housing
- To retain the public/civic use benefit waiver provision.

1 Exhibit 8

2 Exhibit 13

Staff has revised the draft ordinance to reflect the guidance given. Section 24-246(e) has been revised at the direction of the Assistant City Attorney to read:

"The rate imposed by the Gaithersburg Montgomery County Schools Facilities Payment Fee shall be the amount of the Montgomery County Schools Facilities Payment Fee set by the Montgomery County Government, and shall be established set by the City Council, in cooperation with Montgomery County Government, with the adoption of the City's annual budget or by separate City Council resolution."

This change addresses the need to specify that the fee will be the County fee, i.e., the amount set by the County, as that is what is permitted by State law and by the Federal District Court case reviewing a similar arrangement between Annapolis and Anne Arundel County.

Section 24-246(h): waiver provisions from the Gaithersburg Montgomery County Schools Facilities Payment Fee (Fee), has been revised to:

- Remove the Annexation and the Transit Oriented Development waiver provisions;
- Has identified priority areas be identified in the annual Strategic Plan to avoid future revisions to the ordinance as master plans achieve their sunset status; and
- Affirms the 30% threshold of fee-simple affordable housing with a minimum of 15% moderately priced dwelling units and 15% workforce housing.

The revised section now reads:

- ~~i.~~ The property being developed is identified within the City's Maximum Expansion Limits as defined in the City's Municipal Growth Element; and/or
- ~~ii.~~ i. Is a property identified in either the "Frederick Avenue Corridor Land Use Plan", "Gaithersburg Old Towne District Master Plan", or "Kontlands Boulevard Commercial District Special Study Area" the annual Strategic Plan as a priority area for (re)development; and/or
- ~~iii.~~ Is a property located within one quarter (1/4) mile of an existing or proposed bus rapid transit station, MARC station, Metro or MTA Express Bus Service stop, or Regional Transit Center; and/or
- ~~iv.~~ ii. Is a non-rental residential development that proposes thirty (30) percent or greater of the total fee-simple dwelling units be sold as Affordable Housing with a minimum of 15% moderately priced dwelling units and 15% workforce housing in accordance with ~~of~~ Article XVI of this Chapter; and/or
- ~~v.~~ iii. Is a development that provides either land at no cost for, funding of, or construction of a public/civic use benefitting the City of Gaithersburg.

In addition to the revisions to the amendment, both the Planning Commission and Council requested staff provide additional information as examples for implementation of the ordinance.

The Planning Commission requested that staff provide an analysis for the potential Fees received for both the Kentlands Commercial District Master Plan implementation and the Orchard Pond approved Sketch Plan.

Staff assumed that the current schools over 105% capacity will remain unchanged during build out (Quince Orchard HS, Rachel Carson ES, and Thurgood Marshall ES). Other assumptions are that the unit types will be low-rise multi-family, except for Kentlands, where 25% high-rise multi-family is used to reflect the Kentlands Master Plan near the CCT station. The fees used for the additional Gaithersburg school facilities payment are the fee rates currently used by Montgomery County in their Facility Fee in accordance with § 24-246(e) addressed above.

	Number of Dwelling	Elementary School (ES) Fee per Unit	Total ES Fee	High School (HS) Fee per	Total HS Fee	Total Fee Revenue
Kentlands (Quince Orchard Cluster)	2,300		\$5,566,357.65		\$3,700,125.00	\$9,266,482.25
New Low-Rise Multifamily	1,725	\$2,838.09	\$4,895,712.15	\$1,876.88	\$3,237,609.38	\$8,133,321.53
New High-Rise Multifamily	575	\$1,166.34	\$670,645.50	\$804.38	\$462,515.63	\$1,133,164.00
Orchard Pond (Quince Orchard Cluster)	1,410		\$4,001,712.54		\$2,646,393.75	\$6,648,107.70
New Low-Rise Multifamily – Phase 1	254	\$2,838.09	\$720,875.88	\$1,876.88	\$476,726.25	\$1,197,602.38
Replacement Multifamily – Phase 1	156	\$2,838.09	\$442,742.66	\$1,876.88	\$292,792.50	\$735,535.32
New Low-Rise Multifamily – Phase 2	408	\$2,838.09	\$1,157,942.35	\$1,876.88	\$765,765.00	\$1,923,707.76
Replacement Multifamily – Phase 2	592	\$2,838.09	\$1,680,151.65	\$1,876.88	\$1,111,110.00	\$2,791,262.24
GRAND TOTAL	3,710		\$9,568,070.19		\$6,346,518.75	\$15,914,594.95

The chart above shows that approximately 3,710 units will equate to almost \$16 million in fees collected. How that money relates to actual construction; using the adopted FY 2016 Capital Budget and Amendments for MCPS:

- The estimated construction cost of the new Clarksburg Cluster Elementary School is approximately \$28.7 Million
- The estimated construction cost of the new Clarksburg/Damascus Middle School is approximately \$52.8 Million.
- Using the FY 2013 Capital Improvement Program for MCPS (the first year it was identified as a line item); the estimated construction cost of the Gaithersburg High School modernization was approximately \$119.3 Million.

Staff notes that the total collected fees (~\$16 million) cited above would one-time fund either 50% of an elementary school; 30% of a middle school; or 13% of a high school in current dollars. If the total above were divided for funding by school level, elementary and high, the percentages would be much lower (33% and 5% respectively). Staff further notes that the former contribution examples may be considered a sizable percentage; however, these are one-time expenditures and, aside from potential redevelopment of Lakeforest Mall or the Fairgrounds, future projects generating thousands of residential units and thereby millions in fees are not likely.

The Council, during the work session, requested that staff provide examples of when developers have exchanged public benefits for relief from a zoning requirement or the like. In researching examples, most often these proffers or local ordinances are in relation to providing open space or trails, but not always. The following provide examples that show the breadth and scope of proffers may entail.

- Crown development: During the annexation process, the original developers of Crown, in response to the understanding that their request was a sizable increase in both residential and commercial density over what was allowed in the County and therefore had increased public facility impacts, proffered at no cost to any government entity to dedicate a future high school site (addressing school capacity) and operate a shuttle service (transportation impacts).
- Braemar Trail, Prince William County, Virginia: This is a 1,384 acre community with 3,300 homes. The developer proffered a 70 acre site to be used as part of the County's Broad Run Linear Park
- Ramsey City, Minnesota: For the approval of six housing units, the developer contributed \$22,675 in order to pave a 600 foot portion of the local trail system.
- Indian Spring Country Club, Silver Spring: The Montgomery County Planning Board in approving the Poplar Run development of 773 single-family detached and townhouses received a donation of three acres by the developer Winchester Homes to be conveyed to MCPS for a portion of an elementary school site to provide storm-water management and reforestation areas.

Conclusion:

Staff recommends that the Planning Commission **RECOMMEND ADOPTION OF TEXT AMENDMENT CTAM-7036-2015 TO THE MAYOR AND CITY COUNCIL.**

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Mayor and City Council

FROM: Planning Commission

DATE: September 3, 2015

SUBJECT: CTAM-7036-2015: An ordinance to amend Chapter 24 (City Zoning Ordinance), Article XV, entitled, "Adequate Public Facilities," § 24-246, entitled, "Adequacy of School Capacity," so as to define applicability of and establish a Gaithersburg Montgomery County Schools Facilities Payment Fee and waiver provisions of section.

At its regular meeting on September 2, 2015, the Planning Commission made the following motion:

Commissioner Lanier moved, seconded by Matthew Hopkins, to recommend to the Mayor and City Council ADOPTION of Text Amendment CTAM-7036-2015.

Vote: 3-0 (Absent: Kauffman and Winborne)

The Commission would like to reiterate in its recommendation their agreement with the State of Maryland's position that a Public Facilities Ordinance is "intended to provide the rational for prioritizing infrastructure investment decisions."

Joint Hearing - MCC & PC
CTAM-7036-2015
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August 31, 2015

The Honorable Jud Ashman, Mayor
and Members of the Gaithersburg City Council
and the Planning Commission
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, Maryland 20877-2038

Re: APFO School Test Amendment – CTAM-7036-2015

Dear Mayor Ashman and Members of the City Council and the Planning Commission:

On behalf of Beatty Management Company, Inc., the owner of Kentlands Market Square, and as a follow up to my testimony before you at the July 6, 2015 Public Hearing, the purpose of this letter is to express Beatty's support for CTAM-7036-2015, the proposed Zoning Text Amendment to Article XV Section 24-246 of the Gaithersburg City Code, including the 150% capacity limit and potential waiver for properties located in the Kentlands Boulevard Commercial District Special Study Area.

As you are aware, Kentlands Market Square is included in the 2008 Kentlands Boulevard Commercial District Special Study Area Master Plan, which call for "gradually [replacing] the Shopping Centers in the KBDC with a more urban model (Downtown Kentlands), through the conversion of parking lots to transit-oriented development sites" and "promot[ing] the future appropriate growth of Kentlands' downtown with a healthy mix of uses to support the needs of the neighborhood, region and the use of the transit system." Master Plan, p. 4.5. Specifically, the Master Plan calls for the introduction of residential uses in Kentlands Market Square to create a more mixed-use environment. As you are also aware, under the City's current APFO schools test, the City could not approve new residential redevelopment in Kentlands Market Square because Rachel Carson Elementary School, the elementary school serving the property, exceeds the City's current school capacity levels. Accordingly, the City's existing schools test effectively imposes a residential-development moratorium on the property, thwarting the explicit recommendations of the Master Plan and hindering retail and office activity in Kentlands that would benefit from more housing in close proximity.

Beatty supports the proposed APFO amendment because it includes two changes that will permit approval of, and incentivize, mixed-use development on the property. First, it would increase the City's school capacity cap to 150% and thereby lift the moratorium on residential development on the property and other areas that are zoned to Rachel Carson Elementary School. Second, in recognition of the importance of incentivizing mixed-use development in this location, and the

The Honorable Jud Ashman, Mayor, et al.
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current proximity of Rachel Carson to the 150% cap, the Amendment as drafted would also permit the City Council to waive the test and proposed school facilities fee for areas within the Kentlands Boulevard Commercial District Special Study Area. While we understand that there was some discussion during your August 10, 2015 work session regarding the propriety of waivers for special study areas, we believe that the inclusion of special study areas such as the Kentlands Boulevard Commercial District Special Study Area in the waiver provision is essential to ensuring that the City does not inadvertently prevent itself from approving projects that are otherwise squarely in the public interest and in accord with the special study Master Plans carefully crafted by the City.

Thank you for your consideration of these comments. If you have any questions, or would like any additional information, please do not hesitate to contact me.

Sincerely,



Kenneth Miller
Chief Operating Officer

cc: Erin E. Girard, Esquire

September 11, 2015

Gaithersburg Mayor and Council
City Hall
31 South Summit Avenue
Gaithersburg, MD 20877

Dear Gaithersburg Mayor and Council:

With this letter, I submit my personal thoughts and comments on CTAM-7036-2015: APFO Revisions for inclusion in the record and your consideration.

In my role as the CIP Committee Chair for MCCPTA, I am thoroughly involved in the CIP process at the MCPS level. I also meet with County Councilmembers and staff, the BOE, and MNCPPC staff to help find ways for our schools to be built to meet the needs of all our children across the county in a timely manner. Similarly, as Rockville Cluster Coordinator, I worked with the City of Rockville to make sure decision makers had up-to-date information at hand and understood the possible effects, and unintended side effects, of their APFO changes.

The opinions in this letter are my own, but they are informed by that work and reflect my commitment to serving every student. The schools in the City's boundaries vary widely in their needs, and I believe the City must consider them all. It is a daily struggle to balance capacity and revitalization/expansion projects.

My first request is that while you are considering these changes, please do not act before the next CIP recommendations are released on October 28, 2015.

MCPS is just getting down to the work of reviewing the capacity and feasibility studies completed earlier this year. Their October CIP recommendations will include recommendations for the Gaithersburg and Quince Orchard Clusters that will affect the 5-year schools test results. With MCPS plans to address capacity, the Rachel Carson 150% capacity proposal will most likely be unnecessary.

The current 110% threshold for moratorium was a choice the City made. I believe revisions might be helpful but caution you to consider how far you are willing to go. MCPS follows a cluster solution first process, although myself and other MCCPTA board members have been meeting with MCPS, BOE, County Council, and MNCPPC regarding the possibility of using an individual school capacity test rather than cluster averaging.

The County Subdivision Staging Policy will be reviewed in the coming year, and MCCPTA is hopeful for changes in that policy to address school capacity.

My fear is that your proposed 150% threshold will create increased enrollment in schools that are already overcapacity. To me, this is an injustice to all students. Why make a bigger problem when the County is unable to fund CIP projects to keep up with enrollment growth from just housing turnover?

Rockville hoped that its lower threshold would direct more money to its schools, but that was not the result. MCPS addresses where the need is greatest, and capacity projects are prioritized based on the number of seat deficiencies—period.

While I am curious about your idea for a Gaithersburg school facility fee, it also gives me pause. Please remember that MCPS must balance revitalization/expansion projects like Summit Hall as well as capacity projects like Rachel Carson, and this fee would give an unfair “leg up” to capacity projects. It also has the potential to be seen as unduly biasing MCPS/BOE toward Gaithersburg projects, which could lead to delays for—and resentment from—other schools in other areas of the county.

Thank you very much for your consideration. I look forward to speaking before you on this topic again on the 21st.

Respectfully submitted,

Melissa McKenna