

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2013, Legislative Day No. 40

Bill No. 93-13

Introduced by Mr. Jones and Mr. Walker

By the County Council, November 4, 2013

Introduced and first read on November 4, 2013

Public Hearing set for December 2, 2013

Bill Expires February 7, 2014

By Order: Elizabeth E. Jones, Administrative Officer

A BILL ENTITLED

AN ORDINANCE concerning: Public Works – Utilities – Allocation reservation charge, capital facility connection charge, and capital facility connection deferral fee

FOR the purpose of establishing certain payment dates for allocation reservation charges; establishing certain annual installment payments of the capital facility connection charge and the capital facility connection deferral fee; establishing a two-year extension option for the payment of the capital facility connection charge and the capital facility connection deferral fee in certain situations; establishing a date for the payment of the capital facility connection deferral fee and the capital facility connection charge for sites located in whole or part in a commercial revitalization area; providing for interest on certain late payments of the capital facility connection charge and the capital facility connection deferral fee; making certain technical changes; providing for the applicability of this Ordinance; providing for the retroactive application of this Ordinance in certain situations; providing for the termination date of certain changes enacted by this Ordinance; and generally relating to the allocation reservation charge, capital facility connection charge, and the capital facility connection deferral fee.

BY repealing and reenacting, with amendments: §§ 13-5-403(b), (c), and (d); and 13-5-405(a)

Anne Arundel County Code (2005, as amended)

BY renumbering: § 13-5-403(e) to be § 13-5-403(f)

Anne Arundel County Code (2005, as amended)

EXPLANATION: CAPITALS indicate new matter added to existing law.
[Brackets] indicate matter stricken from existing law

BY repealing and reenacting, with amendments and renumbering: § 13-5-403(f)
Anne Arundel County Code (2005, as amended)

BY adding: § 13-5-403(e)
Anne Arundel County Code (2005, as amended)

SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,* That § 13-5-403(e) of the Anne Arundel County Code (2005, as amended) is hereby renumbered to be § 13-5-403(f).

SECTION 2. *And be it further enacted,* That Section(s) of the Anne Arundel County Code (2005, as amended) read as follows:

ARTICLE 13 PUBLIC WORKS

TITLE 5. UTILITIES

13-5-403. Charges and fees for property subject to adequate public facilities.

(a) **Fees and charges.** For [property] ALL PROPERTIES OTHER THAN A RESIDENTIAL SUBDIVISION OF THREE OR FEWER LOTS receiving an allocation in conjunction with approval by the Office of Planning and Zoning for adequacy of public facilities, the owner of the property shall pay, for each equivalent dwelling unit:

(1) an allocation reservation charge equal to 40% of the average cost of water and wastewater, as computed by the Department of Public Works, that would be used if the development on the property were complete and the property was receiving water or wastewater service from the County; AND

(2) a capital facility connection deferral fee of 8% of the capital facility connection charge in effect when the capital facility connection deferral fee is paid.[]; and

(3)]ALL OWNERS SHALL PAY the [capital facility connection charge] WATER AND WASTEWATER SYSTEM CONNECTION CHARGES AND ASSESSMENTS OR SPECIAL CHARGES established in §§ 13-5-813 and 13-5-814, subject to any [exemption] EXEMPTIONS contained in those sections.

(b) **Properties not on the waiting list.** For a property that is not on the waiting list provided for in § 17-5-503 of this Code:

(1) the allocation reservation charge shall be paid as follows:

(i) quarterly from the date of allocation until the lot is connected to the County's water or wastewater system; or

(ii) at the option of the property owner:

1. one-half of the 40% paid per quarter and one-half of the 40% deferred per quarter until, FOR A PROPERTY SUBJECT TO SUBSECTION (2)(I), the fifth anniversary of

allocation or connection, whichever occurs first, OR, FOR A PROPERTY SUBJECT TO SUBSECTION (2)(II), THE EIGHTH ANNIVERSARY OF ALLOCATION OR CONNECTION, WHICHEVER OCCURS FIRST;

2. [on the fifth anniversary of allocation or connection, whichever occurs first,] a lump sum consisting of the one-half of the 40% deferred per quarter plus interest at a rate of 8% per annum on the deferred amounts ON, FOR A PROPERTY SUBJECT TO SUBSECTION (2)(II), THE FIFTH ANNIVERSARY OF THE ALLOCATION OR CONNECTION, WHICHEVER OCCURS FIRST, OR, FOR A PROPERTY SUBJECT TO SUBSECTION (2)(II), THE EIGHTH ANNIVERSARY OF THE ALLOCATION OR CONNECTION, WHICHEVER OCCURS FIRST; and

3. [after the fifth anniversary of the allocation, if] IF the property is not connected, 40% per quarter, FOR A PROPERTY SUBJECT TO SUBSECTION (2)(I), AFTER THE FIFTH ANNIVERSARY OF THE ALLOCATION, OR, FOR A PROPERTY SUBJECT TO SUBSECTION (2)(II), AFTER THE EIGHTH ANNIVERSARY OF THE ALLOCATION; and

(2) except as provided in [subsection] SUBSECTIONS (d) AND (E), the capital facility connection deferral fee and the capital facility connection charge shall be paid in full:

(I) within the earlier of [five years after] THE LAST DAY OF THE MONTH OF THE FIFTH ANNIVERSARY OF the date of allocation or with a building permit; OR

(II) WITHIN THE EARLIER OF THE LAST DAY OF THE MONTH OF THE EIGHTH ANNIVERSARY OF THE DATE OF ALLOCATION OR WITH A BUILDING PERMIT IF THE SITE IS LOCATED IN WHOLE OR IN PART IN A COMMERCIAL REVITALIZATION AREA.

(c) Properties on the waiting list. For a property that is on the waiting list provided for in § 17-5-503 of this Code:

(1) the allocation reservation charge shall be paid as follows:

(i) quarterly from the date the property is removed from the waiting list until the lot is connected to the County's water or wastewater system; or

(ii) at the option of the property owner:

1. one-half of the 40% paid per quarter and one-half of the 40% deferred per quarter until the fifth anniversary of removal from the waiting list or connection, whichever occurs first;

2. on the fifth anniversary of removal from the waiting list or connection, whichever occurs first, a lump sum consisting of the one-half of the 40% deferred per quarter plus interest at a rate of 8% per annum on the deferred amounts; and

3. after the fifth anniversary of removal from the waiting list, if the property is not connected, 40% per quarter; and

(2) except as provided in [subsection] SUBSECTIONS (d) AND (E), the capital

facility connection deferral fee and the capital facility connection charge shall be paid in full within the earlier of [five years after] THE LAST DAY OF THE MONTH OF THE FIFTH ANNIVERSARY OF the date the property is removed from the waiting list or with a building permit.

(d) Annual installments.

(1) [(i) If the capital facility connection deferral fee or the capital facility connection charge is in arrears as of April 27, 2009, the capital facility connection deferral fee, the capital facility connection charge, and any interest and penalties provided for in subsection (f) may be paid in three annual installments.

(ii) If the capital facility connection deferral fee or the capital facility connection charge is not in arrears as of April 27, 2009, the] THE capital facility connection deferral fee and the capital facility connection charge may be paid in [three] FIVE annual installments. Any interest and penalties provided for in subsection [(f)] (G) shall be paid in full with the first installment.

(2) For properties not on the waiting list, the first payment shall be due [five years from allocation] ON THE LAST DAY OF THE MONTH OF THE FIFTH ANNIVERSARY OF THE ALLOCATION FOR A PROPERTY SUBJECT TO SUBSECTION (B)(2)(I) AND ON THE LAST DAY OF THE MONTH OF THE EIGHTH ANNIVERSARY OF THE ALLOCATION FOR A PROPERTY SUBJECT TO SUBSECTION (B)(2)(II). THE CAPITAL FACILITY CONNECTION CHARGE INCLUDED IN THE FIRST PAYMENT SHALL NOT EXCEED THE APPLICABLE CHARGE FOR 200 CONNECTIONS. Each subsequent payment shall be due on THE LAST DAY OF THE MONTH OF the anniversary of the allocation AND SHALL NOT EXCEED THE APPLICABLE CHARGE FOR 200 CONNECTIONS LESS THE APPLICABLE CREDIT FOR CONNECTIONS MADE DURING THE YEAR. The annual payments shall be subject to an annual percentage rate of 8% of the outstanding balance as of the payment due date, PAYABLE QUARTERLY. Interest begins to accrue five years after the date of allocation FOR A PROPERTY SUBJECT TO SUBSECTION (B)(2)(I) AND EIGHT YEARS AFTER THE DATE OF ALLOCATION FOR A PROPERTY SUBJECT TO SUBSECTION (B)(2)(II), in addition to any interest provided for in subsection [(f)] (G).

(3) For properties on the waiting list, the first payment shall be due [five years after] ON THE LAST DAY OF THE MONTH OF THE FIFTH ANNIVERSARY OF the DATE THE property is removed from the waiting list. Each subsequent payment shall be due on the LAST DAY OF THE MONTH OF THE anniversary of removal from the waiting list. The annual payments shall be subject to an annual percentage rate of 8% of the outstanding balance as of the payment due date, PAYABLE QUARTERLY[. Interest on the installments begins to accrue five years after the property is removed from the waiting list and is], in addition to any interest provided for in subsection [(f)] (G).

(4) SUBJECT TO SUBSECTION (2), [Each] EACH annual payment after the first payment shall be in the amount of the number of units of allocation remaining times the rates for the capital facility connection deferral fee and capital facility connection charge in effect at the time the payment is due, less the amounts previously paid by installment, divided by the number of years of payments remaining, plus the interest calculated as provided herein.

(5) Building permits issued during the [three] FIVE OR EIGHT years of installment payments will be assessed the capital facility connection deferral fee and capital facility connection charge in effect at the time the building permit is issued OR, IF LESS, THE REMAINING BALANCE OF THE CAPITAL FACILITY CONNECTION DEFERRAL FEE AND THE CAPITAL FACILITY CONNECTION CHARGES DUE UNDER THIS SUBSECTION.

(E) Two-year extension option.

(1) AT THE REQUEST OF THE PROPERTY OWNER AND DEVELOPER, RATHER THAN PAYING THE CAPITAL FACILITY CONNECTION DEFERRAL FEE AND THE CAPITAL FACILITY CONNECTION CHARGE WHEN DUE IN ACCORDANCE WITH SUBSECTION (B)(2) OR (C)(2) OR IN ANNUAL INSTALLMENTS IN ACCORDANCE WITH SUBSECTION (D), THE PAYMENT DUE DATE IN SUBSECTION (B)(2) OR (C)(2) MAY BE EXTENDED BY TWO YEARS. A REQUEST TO EXTEND THE PAYMENT DUE DATE SHALL BE MADE NO LATER THAN 30 DAYS AFTER THE DATE OF A NOTICE OF DEFAULT AND LAPSE OF ALLOCATION AND THE PROPERTY OWNER AND DEVELOPER SHALL ENTER INTO A PAYMENT EXTENSION AGREEMENT WITH THE COUNTY NO LATER THAN 60 DAYS AFTER THE DATE OF THE NOTICE OF DEFAULT AND LAPSE OF ALLOCATION, OR PAYMENT MAY NOT BE EXTENDED. ANY INTEREST AND PENALTIES PROVIDED FOR IN SUBSECTION (G) SHALL BE PAID IN FULL UPON EXECUTION OF A PAYMENT EXTENSION AGREEMENT. NO MORE THAN ONE PAYMENT EXTENSION PER PROPERTY MAY BE MADE UNDER THIS SUBSECTION AND, AFTER A PAYMENT EXTENSION AGREEMENT IS EXECUTED, THE CAPITAL FACILITY CONNECTION CHARGE MAY NOT BE PAID IN ANNUAL INSTALLMENTS IN ACCORDANCE WITH SUBSECTION (D).

(2) INTEREST IN THE AMOUNT OF ONE PERCENT PER MONTH IS PAYABLE QUARTERLY AND BEGINS TO ACCRUE ON THE LAST DAY OF THE MONTH OF THE DUE DATE IN ACCORDANCE WITH SUBSECTION (B)(2) OR (C)(2), IN ADDITION OF ANY INTEREST PROVIDED FOR IN SUBSECTION (G).

(3) BUILDING PERMITS ISSUED DURING ANY PAYMENT EXTENSION PERIOD WILL BE ASSESSED THE CAPITAL FACILITY CONNECTION DEFERRAL FEE AND CAPITAL FACILITY CONNECTION CHARGE IN EFFECT AT THE TIME THE BUILDING PERMIT IS ISSUED OR, IF LESS, THE REMAINING BALANCE OF THE CAPITAL FACILITY DEFERRAL FEE AND CAPITAL FACILITY CONNECTION CHARGES DUE UNDER THIS SUBSECTION.

[(f)] (G) Penalty; default.

(1) If an allocation reservation charge is not paid within 30 days after the date of billing, a penalty charge equal to 10% of the amount due is owed.

(2) IF THE CAPITAL FACILITY CONNECTION DEFERRAL FEE, CAPITAL FACILITY CONNECTION CHARGE, OR ANY ANNUAL INSTALLMENT PAYMENT OF THE CAPITAL FACILITY CONNECTION DEFERRAL FEE OR THE CAPITAL FACILITY CONNECTION CHARGE IS NOT PAID BY THE DUE DATE, INTEREST ON THE OUTSTANDING BALANCE IN THE AMOUNT OF ONE PERCENT PER MONTH SHALL ACCRUE.

[(2)] (3) A default occurs if any fee or charge set forth in this section in an amount of \$250 or more is not paid when required and remains unpaid 90 days after a notice of default and lapse of allocation is sent to the property owner.

[(3)] (4) Upon default, the allocation lapses and the amount set forth in § 13-5405(b) becomes due. A record of the default and lapse of allocation shall be sent to the property owner and to the Office of Planning and Zoning, where the record shall be

maintained and available to the public.

13-5-405. Lapse.

(a) **Lapse by operation of law.** An allocation lapses by operation of law if:

(1) any development application for which the County has granted an allocation becomes void, expires, or is revoked;

(2) there is a default on the requirement to pay fees and charges as described in [§ 13-5-403(f)(2)] § 13-5-403(G)(3); or

(3) the property is sold at tax sale.

SECTION 3. *And be it further enacted,* That this Ordinance shall be construed to apply retroactively to any property with either an outstanding bill for capital facility connection deferral fees and capital facility connection charges or a notice of default and lapse of allocation issued in accordance with § 13-5-403(g) of the Anne Arundel County Code as enacted by Section 2 of this Ordinance if either was issued prior to July 15, 2013 or any time before the effective date of this Bill, except that this Ordinance shall not apply to any allocations that lapsed in accordance with § 13-5-405 of the Anne Arundel County Code (2005 Code, as amended) prior to July 15, 2013.

SECTION 4. *And be it further enacted,* That for any property with either an outstanding bill for capital facility connection deferral fees and capital facility connection charges or a notice of default and lapse of allocation issued in accordance with § 13-5-403(g) of the Anne Arundel County Code as enacted by Section 2 of this Ordinance if either was issued prior to July 15, 2013 or any time before the effective date of this Bill, the lapse of allocation date shall be extended to 60 days after the effective date of this Ordinance, and prior to the lapse of allocation date, the property owner and developer may opt to continue with or initiate the annual installment option in accordance with § 13-5-403(d) of the Anne Arundel County Code as enacted by Section 2 of this Ordinance or extend the payment date of the capital facility connection deferral fee and capital facility connection charge for two years in accordance with § 13-5-403(e) of the Anne Arundel County Code as enacted by Section 2 of this Ordinance or in accordance with Section 6 of this Ordinance if any previous installment payments have been made by making a request to extend the payment due date at least 30 days before the effective date of this Ordinance and by entering into a payment extension agreement with the County as required by § 13-5-403(e)(1) of the Anne Arundel County Code as enacted by Section 2 of this Ordinance no later than 30 days after the effective date of this Ordinance.

SECTION 5. *And be it further enacted,* That if a request for extension is made in accordance with § 13-5-403(e) of the Anne Arundel County Code as enacted by Section 2 or in accordance with Section 4 or 6 of this Ordinance, and the capital facility connection deferral fee or the capital facility connection charge is in arrears at the time a request for extension is made, all late interest and penalties shall be paid prior to a payment extension agreement being executed.

SECTION 6. *And be it further enacted*, That upon the effective date of this Ordinance, for any property that has an annual installment plan in accordance with § 13-5-403(d) of the Anne Arundel County Code as enacted by Section 2 of this Ordinance that was entered into prior to the effective date of this Ordinance, the annual installments will automatically be extended in accordance with § 13-5-403(d) of the Anne Arundel County Code as enacted by Section 2 of this Ordinance, except that a property owner and developer may opt to extend the due date of the remaining balance of the capital facility connection deferral fees and capital facility connection charges for two years by making a request to extend at least 30 days before the effective date of this Ordinance and by entering into a payment extension agreement with the County as required by § 13-5-403(e)(1) of the Anne Arundel County Code as enacted by Section 2 of this Ordinance no later than 30 days after the effective date of this Ordinance. If a property owner and developer enter into a payment extension agreement with the County to extend the due date of the remaining balance of the capital facility connection deferral fees and capital facility connection charges for two years in accordance with this Section, interest will accrue in accordance with § 13-5-403(e) of the Anne Arundel County Code as enacted by Section 2 of this Ordinance and the remaining balance of the capital facility connection deferral fees and capital facility connection charges will be due in full, along with all interest and penalties, on the last day of the month of the two-year extension.

SECTION 7. *And be it further enacted*, That the provisions of this Ordinance shall remain in effect until April 27, 2017, after which all changes except those to subsection 13-5-403(g) of the Anne Arundel County Code as enacted by Section 2 of this Ordinance shall stand repealed and be of no further force and effect, except for capital facility connection deferral fees and capital facility connection charges that are being paid in annual installments or extended for two years under the provisions of Section 2 of this Ordinance, and except that capital facility connection deferral fees or capital facility connection charges for an allocation granted on or before the repeal date may be paid in annual installments or extended for two years under the provisions of Section 2 of this Ordinance.

SECTION 8. *And be it further enacted*, That this Ordinance shall take effect 45 days from the date it becomes law