

Introduction to Montgomery County's Adequate Public Facilities Ordinance and Growth Policy

This paper provides a short introduction to Montgomery County's Adequate Public Facilities Ordinance (APFO), implemented from 1986 to FY 2004 through a Montgomery County Council resolution called the Annual Growth Policy¹. This introduction will provide a short history and overview of both these documents.

Although commonly referred to as a separate ordinance, the APFO is actually part of the subdivision regulations, Section 50-35 (k) of the County Code. It was adopted by the County Council in 1973 with the goal of synchronizing development with the availability of public facilities needed to support that development. The introductory sentence states, "A preliminary plan of subdivision must not be approved unless the Planning Board determines that public facilities will be adequate to support and service the area of the proposed subdivision."

For the following 13 years, it was the responsibility of the Planning Board to define adequate public facilities, and it developed a series of reports and guidelines to do that. Then, during the building boom of the mid 1980s, the Council became concerned that too much development was being approved. After several proposals for moratoria or caps on building permits were rejected, the Council, as a compromise, enacted legislation under which the Council each year adopted an Annual Growth Policy (AGP) for the County. The growth policy was used by the Council to direct the Planning Board's administration of the Adequate Public Facilities Ordinance.

In 2003, the County Council engaged in a top-to-bottom review of the Annual Growth Policy and adopted changes to how the adequate public facilities ordinance is implemented. The Council's actions were focused on revising the methods that the Planning Board must use for determining the adequacy of transportation and school facilities. The Council also moved to a biennial growth policy resolution.

It must be stressed that the APFO and the growth policy have nothing to do with the location, amount, type or mix of development. These issues are dealt with in the County's General Plan, master plans, and sector plans. The APFO and AGP affect only the timing of development to ensure that it is matched with the availability of public facilities.

Facilities Tested for Adequacy

Section 50-35 (k) requires the Planning Board to test new subdivisions for the following public facilities: transportation, schools, water and sewage facilities, and police, fire and health services.

¹ Beginning in July 2004, the growth policy is reviewed on a biennial basis and is therefore no longer called the "Annual" Growth Policy.

The School Adequacy Test

The guidelines used to evaluate school adequacy incorporate MCPS enrollment projections, existing capacities of schools and any additional capacity (additions and new schools) that is programmed. The school system's 24 high school clusters are the geographic areas evaluated each year in the school test. Elementary, middle, and high school capacities in each cluster are evaluated separately in the growth policy. At the high school level only, the methodology also considers space available in adjacent clusters when determining if a cluster is in deficit.

The growth policy school evaluation process enables the County Council to link the effects of enrollment trends and capital projects to decisions on whether or not to allow approval of additional residential subdivisions in the coming year. The growth policy test for schools looks five years ahead in its evaluation of facility capacities. The five-year period represents the average length of time it will take a development plan to proceed through the governmental and construction phases to occupancy and, hence, the generation of additional students.

If projected enrollment will exceed 105 percent of projected capacity at the elementary or middle school level, or 100 percent of capacity at the high school level (after factoring in capacity in adjacent clusters), development in that cluster is subject to a school facilities payment of \$12,500 per student generated. Student generation rates are based on the results of the most recent Census Update Survey.

If projected enrollment will exceed 110 percent of projected capacity at any level, then the cluster is closed to new preliminary plan approvals that will generate students. Elderly housing and non-residential development are not subject to subdivision moratoriums that arise from application of the school test.

By July 1 of each year, the Planning Board must review and adopt the findings of the school test for the next fiscal year. The Planning Board must use the school test methodology adopted by the County Council. The results of the growth policy school test determine if the Montgomery County Planning Board will allow, allow with a "school facilities payment," or not allow subdivision approvals in the 24 high school cluster areas during that fiscal year. Currently, the school facilities payment is not charged in any cluster, nor is any cluster is closed to subdivision approvals based on inadequate school capacity.

The Water and Sewerage Facilities Test

Water and sewerage facilities are considered adequate if the property being subdivided is in category 1, 2 or 3 (service planned within two years) in the County's Ten Year Water and Sewer Plan. Police, fire and health facilities are assumed adequate unless the appropriate agency identifies a problem with a particular subdivision. This has never happened to date.

The Transportation Facilities Adequacy Test

From 1986 through 2003, the transportation test was administered on a policy area and a local area basis. Beginning July 1, 2004, the transportation test is administered on a local area basis only.

Since the mid 1970s, the Planning Board has used Local Area Transportation Review (LATR) to determine if a proposed preliminary plan of subdivision will cause unacceptable local traffic congestion at nearby critical intersections. A full Local Area Transportation Review is required only for subdivisions which generate 50 or more peak hour automobile trips. A somewhat less-stringent LATR is required of subdivisions generating 35 to 49 trips.

In administering LATR, the Planning Board must not approve a subdivision if it finds that an unacceptable peak hour level of service will result after taking into account existing and programmed roads and transit. If a proposed subdivision causes conditions at a nearby intersection to be worse than the standard, the applicant may make intersection improvements or provide trip reduction measures to bring the intersection back to the standard and gain preliminary plan approval. If the subdivision will affect an intersection or roadway for which congestion is already unacceptable, then the Planning Board may approve the subdivision only if it does not make the situation worse.

Intersection congestion is measured using a method called "critical lane volume," which is the number of vehicles which can move through an intersection's conflicting through or left-turn ("critical") lanes in an hour.

Montgomery County's level of service standards for intersections vary by policy area. The variation in LATR standards is based on the idea that less traffic congestion should be permitted in areas with lower transit service and usage and more traffic congestion should be allowed in areas with greater transit service and usage. For the rural policy areas, anything worse than 1400 CLV is unacceptable for LATR. For policy areas with the greatest level of transit service available, such as Metro station policy areas, the LATR standard is 1800 CLV. Other policy areas fall somewhere between the two standards, depending on the area's level of transit service and usage.

Development projects that help the County meet important economic, housing, or other policy objectives may be eligible for approval even if they are unable to meet the terms of LATR. Projects meeting certain economic development objectives (such as major corporate headquarters facilities and projects designated as "Strategic Economic Development Projects" by the County Council) may meet its LATR requirements by making a payment to the County, among other requirements. There is also an "Alternative Review Procedure for Metro Station Policy Areas," which allows development in the compact areas atop Metro stations to meet LATR obligations by mitigating 50 percent of their trips, making a payment toward transportation improvements, and participating in the area's transportation management organization.

The growth policy's transportation test takes into account the "pipeline of approved development, "which is the list of development projects which have passed their APFO tests, but have not yet been constructed. These are currently more than 100,000 jobs and 30,000 housing units in the pipeline. Once a project is approved, the APFO approval remains valid for a period of 5-12 years, not including possible extensions.