

## **City of Hagerstown's Sewer Capacity Allocation Program December 18, 2007**

### **I. Introduction**

The City of Hagerstown Mayor and Council entered into a Consent Judgement with the Maryland Department of the Environment (MDE) on January 12, 2005.

The Consent Judgement has limited the amount of sewer allocation that the City of Hagerstown is permitted to issue each calendar year for new development at 120,000 gallons per day until the wastewater plant has been rehabilitated and upgraded or until other sewer system improvements have been satisfactorily completed according to MDE.

The Consent Judgement required the City of Hagerstown to develop and submit to MDE for approval a Capacity Allocation Plan prior to July 11, 2005, and said plan shall provide for management of existing and future sewer commitments, distribution of future flow allocations in relation to capacity, and a system to limit the issuance of building permits and approval of new subdivision plats so as not to exceed the annual threshold of 120,000 gallons per day. The Mayor and City Council adopted a Sewer Capacity Allocation Program for the City of Hagerstown's Waste Water Treatment Plant for the remainder of 2005 on August 9, 2005 and for 2006 on December 20, 2005.

The following outlines the Sewer Capacity Allocation Program for the City of Hagerstown's Wastewater Treatment Plant for calendar year 2008. At least once in each calendar year, the Mayor and City Council shall review this program and with MDE review and approval may revise the program as they deem necessary. Such changes may reduce allocations therefore projections of allocations for 2008 and beyond are not commitments by the City. Statements and representations from anyone requesting allocation beyond 2008 shall not be binding upon the City.

The Consent Judgement sets up a process by which the Maryland Department of the Environment may grant approval of residential units or non-residential projects which request an allocation of greater than 120,000 gpd. Developers may approach the City to pursue this process, however it must be demonstrated that the proposed connections will not adversely affect the operation of the sewer system or the plant or increase the frequency or severity of overflows, bypasses or effluent violations.

Per the Consolidated General Services Agreement, any award of allocation to Washington County in the Discretionary Reserve process may not result in a total allocation from the annual 120,000 gpd that would exceed 25%, unless otherwise approved by the Mayor and City Council.

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**II. Definitions**

- A. "Development" shall mean a parcel(s) or tract of land that has been or is being prepared for improvement by subdivision of land into lots for development, or by preparation of a site plan for development, and/or the addition of structure(s) and/or infrastructure. For a section or phase to qualify as a separate development, final plats or site plans must have been approved on or before January 12, 2005.
- B. "Existing Development" shall mean development projects which received site plan or final plat approval from either the City of Hagerstown Planning Commission or the Washington County Planning Commission on or before January 12, 2005. This shall include infill on lots of record of single-family or two-family dwellings where the lot was in existence prior to January 12, 2005 and a site plan is not required for approval. This shall also include requests for increased usage by existing non-residential customers whether with or without an addition to the building. This shall include adaptive re-use of existing buildings, where additional allocation is required to serve the new use on the property.
- C. "New Development" shall mean development projects which received site plan or final plat approval from either the City of Hagerstown Planning Commission or the Washington County Planning Commission after January 12, 2005, except as defined in "B" above.

**III. Allocation of Capacity on an Annual Basis**

A. New Development

1. 120,000 gallons per day of new allocation per year for new development (MDE)
  - a. 15,000 gpd - Discretionary Reserve
  - b. 105,000 gpd – Allocation for City and County Projects
    - 25,000 gpd - County projects
    - 60,000 gpd - City residential projects
    - 20,000 gpd - City non-residential projects
2. Allocations are subject to annual review by Mayor and City Council.

B. Existing Development

1. 126,000 gallons per day of new allocation per year for existing development
  - 50,000 gpd (40%) - County projects
  - 46,000 gpd (36%) - City residential projects
  - 30,000 gpd (24%) - City non-residential projects
2. Allocations are subject to annual review by Mayor and City Council. As existing residential development projects conclude, annual allocation numbers decline.

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**IV. Residential Allocation Guidelines in the City**

A. New Development

1. 60,000 gpd to allocate per year for new development (300 units), plus any unused residential allocation rolling over from the previous award process.
2. Annual Allocation Program. Following Planning Commission approval of preliminary plat for subdivisions or concept plan for site plans, applicant may submit project to Planning Department for inclusion on Master List. The City will not approve a final plat or site plan unless all of the necessary sewer has been allocated. Requests for Master List awards shall include unit or lot numbers for the intended allocation and shall be limited to no more than 50 units per award cycle, unless otherwise approved by the Mayor and City Council. Planning Department makes allocations to Master List twice a year - projects must be submitted for inclusion on Master List for consideration (see Section VIII for schedule). Half of the annual allocation shall be distributed at each Master List award. Allocations are made for only this year's allocation amount and shall not commit future years' allocations. The following allocation strategy shall be utilized (if no applicants exist for one or more of the following categories, the allocation is distributed equally amongst the remaining categories):
  - a. 30% of allocation – equally allocated among all development projects on Master List.
  - b. 25% of allocation – proportionally distributed among all housing projects on Master List which received allocation in previous award cycles and have additional lots remaining (size of allocation request compared to total number of housing units on Master List - get that percentage of supply)
  - c. 45% of allocation - proportionally distributed among all housing projects on Master List (size of allocation request compared to total number of housing units on Master List - get that percentage of supply)
3. A final plat must be recorded or a site plan approved by the Planning Commission within eighteen (18) months of award of an allocation or the allocation shall be voided, unless a variance to the time period has been granted by the Mayor and City Council as outlined in Section X. If a final plat or site plan approval is voided due to non-compliance with City regulations and 18 months has passed since allocation, the sewer allocation will be voided. Building permits shall not be accepted for submittal until the site plan is approved by the City and/or the final plat is recorded. Any infrastructure which is not built by final plat approval must be bonded with the City.

**Example of Master List Process**

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<b>Development Project</b>	<b>Units Remaining</b>	<b>Allocation – 150 units</b>
Fred's Manor (on prior Master List)	50 (28%)	$11.25 + 19.5 + 19 = 50$
Jonathan Estates	30 (18%)	$11.25 + 12 = 23 + 1 = 24$
Floyd's Crossing (on prior Master List)	45 (26%)	$11.25 + 18 + 17.5 = 47 - 2 = 45$
Villas at Hagerstown	50 (28%)	$11.25 + 19 = 30 + 1 = 31$
	175	150

\* Split overage of request with remaining applicants who have not reached 50.

**B. Existing Development**

1. Up to 46,000 gpd to allocate per year for existing development, plus any unused allocation rolling over from the previous award process.
2. Distribution of allocation for calendar year 2008 as outlined in Section VI. Allocation subject to annual review by Mayor and City Council. Upon award of sewer, the applicant must inform the City of the lot or unit numbers which will use the allocation. For infill on lots of record in older sections of the city, allocation shall be made on first come, first served basis; and if a building permit has not been submitted for the project by the end of the calendar year, the reservation shall be voided. In the event that allocation has been exhausted for the year for infill on lots of record, applicants may submit their project to the Planning Department for inclusion on a list for allocation in the coming year as the SCAP permits.

**V. Non-Residential Allocation Guidelines in the City**

**A. New Development**

1. 20,000 gpd per year for new development, plus any unused non-residential allocation rolling over from the previous award process.
2. Allocations made first come, first served throughout the year, at date of site plan signature by the Planning Department and as available capacity permits.
3. A building permit shall be filed and sewer fees paid within eighteen (18) months of award of an allocation or the allocation shall be voided, unless a variance to the time period has been granted by the Mayor and City

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Council as outlined in Section X. Building permits shall not be accepted for submittal until the site plan is approved by the City.

**B. Existing Development**

1. 30,000 gpd per year for existing development, plus any unused non-residential allocation rolling over from the previous award process.
2. Allocations made first come, first served throughout the year, at date of site plan signature by the Planning Department and as available capacity permits.

**VI. Allocation for Existing Residential Projects for Calendar Year 2008**

<b>SCAP for EXISTING RESIDENTIAL PROJECTS</b>	2008
Greenwich Park	28
Additions to and Adaptive Re-use of Existing Buildings	150
Infill on Lots of Record	52
<b>TOTAL Units</b>	<b>230</b>
<b>TOTAL Allocation</b>	<b>46,000</b>

**VII. Discretionary Reserve Allocation Guidelines**

The SCAP sets aside 15,000 gpd per year for a Discretionary Reserve, plus any unused allocation rolling over from the previous award process for the Discretionary Reserve. The Discretionary Reserve shall be allocated on a quarterly basis by the Mayor and City Council. Development projects located within the City and outside the corporate limits are eligible for consideration. Following Planning Commission approval of preliminary plat for subdivisions or concept plan for site plans, or recommendation of project for consideration by respective Economic Development Directors, applicant may submit project to the Planning Department for inclusion on Discretionary Reserve Master List. Allocation to Master List is made per the schedule outlined in Section VIII. Recommendations on the submitted projects shall be made by the City and County Planning Directors. Eligible projects for Discretionary Reserve consideration are prioritized as follows, however, allocation shall be solely at the Mayor and City Council's discretion:

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	<b>Discretionary Reserve Priorities</b>	<b>Maximum Allocation Amount for 2008 (15,000 gpd plus carryover)</b>
A	High Priority Economic Development and Revitalization Projects (e.g., high wage/high tech job creation opportunities, redevelopment projects, downtown projects, etc.)	carryover from 2007
B	CIP Projects for New Public Schools	5,000 gpd plus carryover
C	Other Public Services (e.g., public safety facilities, parks facilities, public utilities facilities, public works facilities, government offices, etc.)	5,000 gpd plus carryover
D	Other residential, commercial, industrial, and/or institutional projects	5,000 gpd plus carryover
	<b>TOTAL</b>	15,000 gpd plus carryover

A final plat shall be recorded or site plan approved within eighteen (18) months of award of an allocation or the allocation shall be voided, unless a variance to the time period has been granted by the Mayor and City Council as outlined in Section X. Building permits shall not be accepted for submittal until the site plan is approved by the City and the final plat is recorded. If a final plat or site plan approval is voided due to non-compliance with City regulations and 18 months has passed since allocation, the sewer allocation will be voided.

**VIII. Schedule for Master List and Discretionary Reserve Allocation Awards**

<b>Master List</b>	<b>First Award for CY 2008</b>	<b>Second Award for CY 2008</b>	<b>First Award for CY 2009</b>
Master List Submission	Dec 28, 2007	June 30, 2008	Dec. 29, 2008
Master List Award by Planning Department	Jan 14, 2008	July 14, 2008	Jan 12, 2009

<b>Discretionary Reserve</b>	<b>First Quarter of CY 2008</b>	<b>Second Quarter</b>	<b>Third Quarter</b>	<b>Fourth Quarter</b>	<b>First Quarter of CY 2009</b>
Discretionary Reserve Submission	Jan 31, 2008	April 30, 2008	July 31, 2008	Oct 31, 2008	Jan 31, 2009

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Discretionary Reserve Awards by M&CC	Feb 26, 2008	May 27, 2008	August 26, 2008	Nov 25, 2008	Feb 24, 2009
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**IX. Policy for Use of Remaining Allocation from Development Projects**

A. Existing Development.

1. Residential (except infill) – For existing residential development (except infill on lots of record) projects with remaining allocation at the end of the year, the remaining allocation shall be reserved for the development project in future years.
2. Residential Infill – For infill on lots of record in older sections of the city, if a building permit has not been submitted and sewer fees paid by the end of the calendar year, the reservation shall be redistributed in the “infill on lots of record” category for “existing development” for the following year.
3. Non-Residential – For existing non-residential development projects with remaining allocation at the end of the year, the remaining allocation shall be reserved for the development project in future years. Any unallocated capacity shall roll over into the existing non-residential development category for the following year.

B. New Development

1. Residential – If any allocation remains for new residential development at the end of each Master List award process, the unallocated capacity shall roll over into the new residential development category for the following Master List award. For new residential development projects which do not use awarded allocation by the schedule outlined in Section IV, it shall roll over into the new residential development category for the following Master List award.
2. Non-Residential – If any allocation remains for new non-residential development at the end of the calendar year, the unallocated capacity shall roll over into the new non-residential development category for the following year. For new non-residential development projects which do not use awarded allocation by the schedule outlined in Section V, the remaining allocation shall roll over into the new non-residential development category for the following year.
3. Discretionary Reserve – If any allocation remains in the Discretionary Reserve at the end of calendar year 2007 or 2008 or if any new development projects do not use awarded allocation by the schedule

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outlined in Section VII, any balance shall be rolled over into the Discretionary Reserve Master List award process, for the following year, in the same category.

**X. Policy for Accumulation of Allocation Awards or Extension of Plat Recordation, Site Plan Approval, or Building Permit Deadlines**

Upon request of the property owner, the Mayor and City Council may grant variances to the deadlines for use of awarded allocation by new development projects in the following circumstances, however the granting of such variances shall be at the sole discretion of the Mayor and City Council:

- A. Phased, large-scale and/or complex development projects that require an extended period of time to accumulate sufficient allocation to make the project economically viable given its size and/or required infrastructure improvements. If a variance is granted for residential development projects, the 18 month clock for recordation of final plats or approval of site plans shall start ticking once 30% of the necessary allocation to complete the project has been awarded. For non-residential development projects, the 18 month clock for submittal of building permits shall start ticking once 75% of the necessary allocation to complete the project has been awarded.
- B. Projects which are unable to record final plats or gain site plan approvals or submit building permits within 18 months of allocation award due to circumstances beyond the developer's control and which were unforeseeable at the time of allocation award. The applicant shall have the burden of establishing that such circumstances existed and that it acted diligently in response to the acts or circumstances to comply with the deadline.