

RESOLUTION NO. 2029
AS AMENDED ON FEBRUARY 14, 2011

A RESOLUTION OF THE COUNCIL OF THE
CITY OF SALISBURY, MARYLAND THAT ESTABLISHES A
WATER AND SEWER CAPACITY FEE PAYMENT PLAN

WHEREAS, Title 13.02.010 (B) of the City code references the authority of the City to “determine an appropriate fee or assessment for connection of water and sanitary sewer;” and

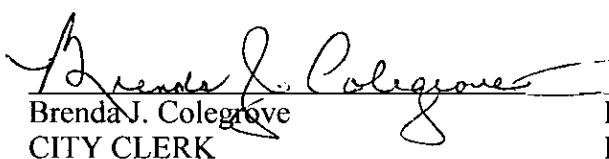
WHEREAS, Title 13.02.070 (A) (9) of the City code authorizes the mayor and council to adopt a policy by resolution that “would allow discounts, deferrals, and payment plans for the comprehensive connection charge in appropriate cases to provide incentive for development and redevelopment;” and

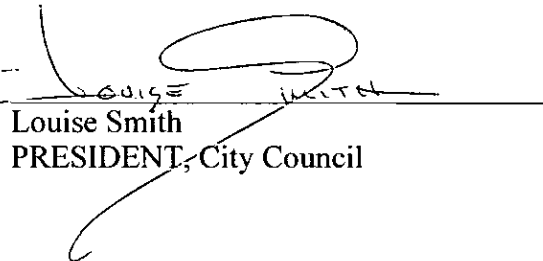
WHEREAS, the capacity fee is one element of the comprehensive connection charge.

NOW, THEREFORE, BE IT RESOLVED that the Salisbury City Council approves a capacity fee payment plan with guidelines, and a capacity fee agreement, Attachment A & B, and as set forth in this Resolution.

THE ABOVE RESOLUTION was introduced and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on the 14th day of February, 2011 and is to become effective immediately upon adoption.

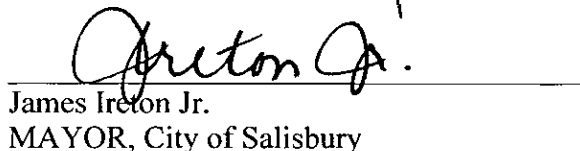
ATTEST:


Brenda J. Colegrove
CITY CLERK


Louise Smith
PRESIDENT, City Council

APPROVED BY ME THIS

15th day of February, 2011


James Irton Jr.
MAYOR, City of Salisbury

WATER AND SEWER CAPACITY FEE PAYMENT PLAN GUIDELINES

ELIGIBLE APPLICANTS

1. All new water and/or sewer customers whose water and/or sewer usage will be greater than two (2) edu's.
2. Existing water and/or sewer customers whose water and/or sewer usage will increase by more than two (2) edu's.

TERMS OF PAYMENT

3. Property owner shall be required to pay for two EDU's or twenty percent, whichever is greater, of the estimated capacity fee prior to water meter installation and/or sewer service being provided to the property by the City. Payment of the remaining balance shall be required in four (4) equal quarterly payments during the twelve (12) months immediately following water meter installation or as otherwise specified in the Water and Sewer Capacity Fee Payment Agreement. If the estimated capacity fee exceeds six EDU's, the property owner may request that the payment period be extended beyond four, up to a maximum of eight, equal quarterly payments. If this request is granted by the City Mayor, payment shall be due in consecutive quarterly payments within the twenty-four (24) months immediately following water meter installation.
4. All other comprehensive connections charges must be paid in full prior to water meter installation and/or sewer service being provided to the property by the City.
5. Property owners who, due to an underestimate of water/or sewer demand, owe a capacity fee adjustment as stipulated under Title 13.02.070 (B) (9) of the City code may be permitted to pay twenty percent of the capacity fee adjustment owed within 60 days of written notification from the City and to pay the remaining capacity fee balance in four (4) equal quarterly payments during the twelve (12) months immediately following written notification from the City.
6. Unpaid balances may be paid in advance.
7. In the event that quarterly water and sewer capacity fees are unpaid, said fees shall be collectable in the same manner as is used by the City to collect unpaid water bills, or in the same manner as real estate taxes are collected, or by civil judgment.
8. Unpaid balances shall be charged one percent (1 %) per annum interest.
9. Late payments will be assessed in the same manner and at the same rate as unpaid water and/or sewer bills.

ADMINISTRATION FEES

10. Property owners shall pay a twenty five dollar (\$25) administrative fee prior to water meter installation and/or sewer service being provided to the property by the City.
11. Customers shall pay the Water and Sewer Capacity Fee Payment Agreement recording fee.

FORM NEEDED

12. Water and Sewer Capacity Fee Payment Agreement. (Attachment B)

City of Salisbury



Salisbury



2010

125 NORTH DIVISION STREET
SALISBURY, MARYLAND 21801
Tel: 410-548-3170
Fax: 410-548-3107

JAMES IRETON, JR.
MAYOR

JOHN R. PICK
CITY ADMINISTRATOR

LORÉ L. CHAMBERS
ASSISTANT CITY ADMINISTRATOR

MARYLAND

TERESA GARDNER, P.E.
DIRECTOR OF PUBLIC WORKS

WATER AND SEWER CAPACITY FEE PAYMENT AGREEMENT

This Water and Sewer Capacity Fee Payment Agreement, hereinafter called "AGREEMENT", is made and executed this _____ day of _____, 20____, by and between The City of Salisbury, a Municipal corporation of the State of Maryland, hereinafter called "CITY", and _____ hereinafter called "OWNER".

WITNESSETH THAT:

WHEREAS, the OWNER, owns that certain parcel of land (the "PROPERTY") situated in the City of Salisbury, Maryland, at _____

(Street Name(s) and or address)

specifically, **District -** _____ **Account Number -** _____ ; and
(Md. Dept. of Assessments and Taxation Account Identifier)

WHEREAS, the CITY has adopted a policy by Resolution XXXX that allows a payment plan agreement for the water and sewer capacity fee; and

WHEREAS, the CITY and OWNER desire to memorialize the capacity fee payment plan agreement for the PROPERTY as outlined herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Source of Agreement

The OWNER acknowledges that the CITY is allowing capacity fee payments per Resolution XXXX.

2. Mutual Agreement

Upon a two EDU or twenty percent (20%), whichever is greater, partial payment of the estimated capacity fee and full payment of all other comprehensive connection charges and completion of all other requirements of the CITY for the PROPERTY, the CITY agrees to install a water meter and/or provide sewer service to the PROPERTY, and OWNER agrees to fulfill the requirements of this agreement. The City's installation of the water meter will be in accordance with the terms of this AGREEMENT and as provided for in the City Code.

3. **Terms of Payment**

This AGREEMENT is applicable only to the PROPERTY, as identified above. OWNER shall pay to the CITY all charges in accordance with resolution XXXX and this AGREEMENT.

- A. OWNER shall be required to pay for XXX EDU's of the estimated capacity fee prior to water meter installation and/or sewer service being provided to the property by the City. Payment of the remaining balance shall be required in XXX equal consecutive quarterly payments during the XXX months immediately following water meter installation.
- B. All other comprehensive connection charges must be paid in full prior to water meter installation and/or sewer service being provided to the property by the City.
- C. If a capacity fee adjustment is subsequently owed to the City, OWNER shall be required to pay the adjustment amount within 60 days of written notification from the City or OWNER may be permitted to pay twenty percent of the adjustment owed within 60 days of written notification and to pay the remaining balance in four (4) equal consecutive quarterly payments during the twelve (12) months immediately following the date of written notification from the City.
- D. Unpaid balances may be paid in advance.
- E. In the event that quarterly water and sewer capacity fees are unpaid, said fees shall be collectable in the same manner as is used by the City to collect unpaid water bills, or in the same manner as real estate taxes are collected, or by civil judgment.
- F. Unpaid balances shall be charged one percent (1 %) per annum interest.
- G. Late payments will be assessed in the same manner and at the same rate as unpaid water and/or sewer bills.

4. **Compliance with Other Laws**

This AGREEMENT does not, and shall not be construed to guarantee the issuance of any grading or building permit, nor does it excuse the OWNER from compliance with any State, Local or Federal laws or regulations governing the development of land concerning this PROPERTY.

5. **Consistency with State and Federal Law**

The obligations imposed by this AGREEMENT and resolution XXXX are only such as are consistent with City, State and Federal law. The parties agree that if any provision of this AGREEMENT becomes, in its performance, inconsistent with City, State or Federal law or is declared invalid, the parties shall, at the sole option of the CITY, either terminate this AGREEMENT or in good faith negotiate to modify the AGREEMENT so as to make it consistent with City, State, or Federal law as the case may be.

6. **Disconnection**

Disconnection because of unpaid charges will be handled in the same manner and under the same guidelines as for unpaid water and/or sewer charges.

In addition to the foregoing, the CITY has the right to enforce its ordinances and regulations and the terms of this AGREEMENT by seeking an injunction to compel turning off or disconnection of the supply of water and/or sewer service provided hereunder.

The CITY shall be free from any liability arising out of the exercise of its rights under this paragraph.

7. Reconnection after discontinuance of service

Should the OWNER fail to pay the capacity fee charges billed to him within the time limited, and should the water and/or sewer service be discontinued, service shall not be resumed until all delinquent charges and the cost of disconnection and reconnection have been paid to the city, regardless of any change of occupancy.

8. Modification

This agreement between the parties supersedes all prior agreements, whether oral or written, covering the same subject matter. This AGREEMENT may not be modified or amended except in writing mutually agreed to and accepted by both parties to this AGREEMENT. No officer, official, or agent of the CITY has the power to amend, modify or alter this AGREEMENT or waive any of its conditions as to bind the CITY by making any promise or representation not contained herein. Notwithstanding the foregoing, this AGREEMENT does not modify any pre-existing agreements or Permit(s) between the parties.

9. Assignment

This AGREEMENT is binding upon the parties hereto and shall inure to the benefit of successors and assigns. This AGREEMENT may be assigned by either party without the consent of the other, provided that (i) any and all successors and assigns assume all obligations and comply with all terms and conditions herein and that (ii) the party assigning its rights and obligations does so in writing and promptly provides a copy of the assignment to the other. This AGREEMENT shall be a covenant binding upon the OWNER, its successors and assigns and shall run with the land.

10. Attorneys' Fees

Should any party hereto employ an attorney for the purpose of enforcing this AGREEMENT, or any judgment based on this AGREEMENT, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or re-hearings, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

11. Notices

All notices hereunder shall be given in writing by certified mail, return receipt requested, postage prepaid, at the following addresses:

CITY: City of Salisbury
Internal Services Director
Department of Internal Services
125 North Division Street
Salisbury, MD. 21801

OWNER: _____

The CITY and the OWNER shall notify the other of any address changes within 10 working days of change.

12. **Governing Law**

This AGREEMENT is entered into pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Maryland.

13. **Signature**

This AGREEMENT may be signed in one or more counterparts, which taken together shall constitute one original.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the date first set forth above.

ATTEST:

OWNER:

OWNER NAME

BY:

Name: _____

(enter Printed Name and Title here)

ATTEST:

CITY:

CITY OF SALISBURY, a
Municipal corporation of
the state of Maryland

BY:

Name: _____

James Ireton Jr., Mayor

I HEREBY CERTIFY that I am an attorney admitted to practice before the Court of Appeals of Maryland, and that the foregoing instrument was prepared under my supervision.

Paul D. Wilber, Esquire

STATE OF MARYLAND
COUNTY OF WICOMICO

I hereby certify that on this _____ day of _____, 20 _____,
before me the undersigned officer personally appeared,
_____ of _____

_____, and on his/her behalf did acknowledge the foregoing
instrument to be the act and deed of said partnership.

As witness, I set my hand and official seal.

(SEAL)

Notary Public

My commission expires: _____

STATE OF MARYLAND
COUNTY OF WICOMICO

I hereby certify that on this _____ day of _____, 20 _____,
before me the undersigned officer personally appeared,

_____, _____ of the City of Salisbury,
a Municipal corporation of the State of Maryland and on his behalf did acknowledge the foregoing
instrument to be the act and deed of said corporation.

As witness, I set my hand and official seal.

(SEAL)

Notary Public

My commission expires: _____

City of Salisbury



MARYLAND

Salisbury



2010

125 NORTH DIVISION STREET
SALISBURY, MARYLAND 21801

Tel: 410-548-3170

Fax: 410-548-3107

JAMES IRETON, JR.
MAYOR

JOHN R. PICK
CITY ADMINISTRATOR

LORÉ L. CHAMBERS
ASSISTANT CITY ADMINISTRATOR

TERESA GARDNER, P.E.
DIRECTOR OF PUBLIC WORKS

To: John Pick, City Administrator

From: Teresa Gardner

Subject: WATER AND SEWER CAPACITY FEE PAYMENT PLAN

Date: February 8, 2011

Section 13.02.010 of the municipal code authorizes the City to collect Comprehensive Connection Charges, including Capacity Fees, from new water and sewer customers or from current customers who propose to increase their water usage. The Capacity Fees collected are used to fund water and sewer projects listed in the City's 10-year Capital Improvement Plan. As authorized by Section 13.02.070 A. 10. of the code, the City currently requires payment in full of the Capacity Fee prior to water meter installation.

In response to requests from business owners and in order to facilitate economic growth and business expansion in the community, the Public Works Department has drafted a policy relating to deferred payment of Capacity Fees. The City is authorized to develop such a policy by Section 13.02.070 A. 9. of the code which states that "The mayor and council may adopt a policy by separate resolution, which would allow discounts, deferrals, and payment plans for the Comprehensive Connection Charge to encourage water and sewer usage that is consistent with the City's goals."

The attached draft WATER AND SEWER CAPACITY FEE PAYMENT PLAN requires a down payment for two EDU's or 20 percent, whichever is greater, of the Capacity Fee owed prior to water meter installation with the remaining balance to be paid in four equal quarterly installments over the following year. The draft policy also indicates that, if the proposed water usage is estimated to be more than six EDU's, the City would consider repayment of the unpaid balance over a maximum of eight quarterly installments.

Subsequent Capacity Fee payment adjustments owed to the City that result from an initial underestimate of water usage will also be eligible for payment deferral of 80 percent of the adjustment amount. New or increased water users whose proposed usage increase would be less than two Equivalent Dwelling Units (EDU's) would not be eligible for the deferred payment plan. All other Comprehensive Connection Charges, including Facility Fees, Central System Line Fees and Tap Fees, would also not be eligible for deferral.

By way of background, the current Capacity Fee is \$8,508.

Unless you or the Mayor has further questions, please forward this memo to the City Council.



Teresa Gardner