

**PERTAINING TO THE REPEAL OF RESOLUTION NO. 32-16 AND ADOPTION OF AN
AMENDED WATER AND SEWER ALLOCATION POLICY**

WHEREAS, a water and sewerage allocation policy was adopted by Resolution No. 32-16, which repealed and replaced provisions of prior Resolution Nos. 29-15 and 02-14

WHEREAS, the Board of County Commissioners desires to amend the annual audit for Allocation assignment to only non-residential (i.e., commercial, industrial, institutional, etc.) customers, and amend the allocation for residential dwelling units;

WHEREAS, the Board of County Commissioners is authorized by the Environment Article of the Maryland Annotated Code to establish such rules as circumstances require for the allocation of water and sewerage treatment capacity;

WHEREAS, after due notice was published, the Board of County Commissioners conducted a public hearing on August 6, 2024, at which time the proposed amendments were discussed, staff's recommendations were considered, and public comment was solicited; and

WHEREAS, after considering the evidence which had been presented at the public hearing regarding the proposed text amendments, and in furtherance of the public health, safety and welfare, the Board of County Commissioners has determined that the revised Allocation policy is consistent with existing laws and regulations and, further, finds that it is in the best interest of the citizens of the County to repeal Resolution No. 32-16 and adopt the provisions of this Resolution, and the "Calvert County Water and Sewer Allocation Table" as set forth in Exhibit A, attached hereto and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Calvert County, Maryland, that Resolution No 32-16 is hereby repealed and that the following policy and procedures are hereby designated and adopted as the "Calvert County Water & Sewerage Allocation Policy" effective upon the Effective Date of this Resolution.

BE IT FURTHER RESOLVED by the Board of County Commissioners of Calvert County, Maryland, that this Water & Sewerage Allocation Policy applies to all connections to County-owned water and sewerage infrastructure and facilities. This policy provides procedures for allocating and procuring public water and sewerage capacity (hereinafter referred to jointly and severally as "Allocation").

1. **Application and Number of EDUs.** An estimated construction/hook-up schedule and utility plan for any residential, commercial, or industrial development, including, without limitation, any single lot of record, shall be submitted where a connection is proposed to County-owned water and sewerage infrastructure and facilities. The Chief of the Water & Sewer Division (hereinafter referred to as the "Chief") shall determine the number of Equivalent Dwelling Units ("EDUs") to be allocated to a project based upon detailed project drawings submitted, and the following guidelines:
 - a. Every applicant requesting an Allocation must agree to employ the use of strict water conservation devices as detailed in the Calvert County Water Conservation Plan in effect at the time the Allocation is requested.
 - b. The calculation of the number of Allocations required for any development or redevelopment shall be based on flow estimates set forth in Exhibit A hereto made a part hereof and incorporated herein by reference. Notwithstanding the foregoing, Allocations may be adjusted upon the request of the applicant and approval of the Chief if the Chief finds, in the Chief's sole and absolute discretion, that proposed water conservation measures will result in water conservation above that projected in the Calvert County Water Conservation Plan and, if approved, may be subject to conditions or revocation of approval of the deviation from the estimate calculated using flow data set forth in Exhibit A if such projected conservation is not achieved. Accordingly, an approved deviation shall not vest and shall remain subject to modification.

- c. Residential Allocation shall be assigned at one (1) EDU per dwelling unit.
2. **Availability and Allocation of EDUs.** The Chief shall maintain a registry of available water and sewerage capacity for each Calvert County Water and Wastewater system, and the County's available allocation at facilities operated by others. Requests for water or sewerage capacity will be considered in accordance with the following:
- a. All requests shall be evaluated and, if approved, allocated on a four-year need basis, not to exceed seventy-five (75) capital connections per year, for each development, without the prior written approval of the Director of Public Works.
 - b. All requests will be considered on a first-come, first-served basis, based on the date of receipt of the written request by the Water & Sewerage Division.
 - c. Applications may only be approved if sufficient capacity is available in the system to which the applicant seeks to connect and there is sufficient existing infrastructure, including, without limitation, lines, pumps, lift stations, etc., as determined by the Chief.
 - d. In determining the availability of allocation, the Chief shall deduct from the capacity of the system:
 - i. All existing connections;
 - ii. Allocations deemed reasonably necessary for peak flow rates that may result in overflows or insufficient fire-flow capacity, or such other and similar purposes;
 - iii. Eighteen (18%) percent of the available allocation, as may be modified by the State from time to time, shall be set aside to provide service to those projects which are deemed necessary for the economic growth of the County, or deemed necessary for the routine function of government (Allocation required for the Calvert County Detention Center are not to be deducted from this set aside Allocation);
 - iv. Fifteen (15%) percent of the available Allocations from a County-operated water or wastewater treatment facility, as may be modified by the State from time to time, shall be set aside to provide service to residential housing for rental or ownership by residents having an income below eighty percent (80%) of the median family income for Calvert County as determined by HUD; and
 - v. All requests received prior to the subject request being considered.
 - e. In calculating the number of EDUs allocated to all applications submitted prior to the subject application, (Paragraph 2(d)(v), above), the Chief may deduct that value calculated based on capital connections using data on flow estimates set forth in Exhibit A hereto, regardless of whether any reduction in Allocation may have been approved as allowed by Paragraph 2(d), above.
 - f. In general, no additional Allocations can be granted until the approved Allocation is exhausted, or project is under construction. The Chief may consider any evidence presented by involved parties to the accuracy of the originally assigned Allocation and may reassign Allocation as may be appropriate.
 - g. Any request for water or sewer allocation shall expire if:
 - i. Within one year of an approved application, a utility plan for any recorded residential, commercial, or industrial development, including any single lot of record, has not been resubmitted that utilizes the approved Allocation;
 - ii. A residential Allocation, not part of an approved subdivision, not utilizing the Allocation within four (4) years of the date of approving an Allocation;
or
 - iii. Surrender, or loss of an Allocation as prescribed in Paragraph 3, below.
3. **Capital Connection Charge.** A capital connection charge shall be collected for each Allocation as follows:
- a. For a development for which a phasing plan has not been approved, the approved estimated Allocation(s) shall be reserved by the Chief for so long as the following criteria are met:

- i. Applicant shall pay not less than one-third (1/3) of the capital connection charge for all Allocations for the project not later than thirty (30) days from the Chief's determination of the number of Allocations required for the project;
 - ii. The unpaid balance of the capital connection charge shall be paid the earlier of: (1) four (4) years from the date the subdivision or site plan receives final approval, (2) four (4) years from the date initial payment is made pursuant to 3(a)(i), or (3) prior to receipt of the Use and Occupancy permit utilizing an Allocation so reserved;
 - iii. The applicant may surrender any Allocation(s) prior to the date which is four (4) years from the date of the capital connection charge paid pursuant to Paragraph 3(a)(i) was made and shall receive a full refund, minus an administrative fee of twenty percent (20%) of the amount already collected per Allocation being surrendered; and
 - iv. Failure to make any payment when due shall result in the surrender of the capital connection charge paid pursuant to Paragraph 3(a)(i), automatic revocation of all Allocation(s) for which payment was due and owing, and removal of the project from the Allocation ranking and request list. A written request may be made to the Director of Public Works and Chief for a one (1) year extension, or a fifty percent (50%) refund of capital connection charge paid pursuant to Paragraph 3(a)(i).
- b. For a development for which a phasing plan has been approved, the approved estimated Allocation(s) for all phases shall be reserved by the Chief for so long as the following payment criteria are met:
- i. Applicant shall pay not less than one-third (1/3) of the capital connection charge for all Allocations for the project not later than thirty (30) days from the Chief's determination of the number of Allocations required;
 - ii. The unpaid balance of the capital connection charge for each phase shall be paid the earlier of: (1) four (4) years from the date the subdivision or site plan for the particular phase receives final approval; or (2) prior to receipt of each Use and Occupancy permit within the phase;
 - iii. The applicant may relinquish any Allocation(s) prior to the date which is four (4) years from the date of the capital connection charge paid pursuant to Paragraph 3(a)(i) and shall receive a full refund less an administrative fee of 20% of the amount already collected for each Allocation;
 - iv. Allocations for subsequent phases shall continue to be reserved so long as each phase begins no later than one (1) year from receiving the last Use and Occupancy permit(s) of the prior phase;
 - v. Failure to make any payment when due shall result in the surrender of the capital connection charge paid pursuant to Paragraph 3(b)(i), automatic revocation of all Allocation(s), and removal of the project from the Allocation ranking and request list. A written request may be made to the Director of Public Works and Chief for a one (1) year extension or 50% refund of capital connection charge paid pursuant to Paragraph 3(b)(i). Approval for said extension or refund shall be with the sole and absolute discretion of the Director of Public Works and upon good cause shown.
- c. Notwithstanding the foregoing, the Chief may defer collection of the capital connection charge of all but one of the Allocations required by Exhibit A hereto for the development or redevelopment of a non-residential, Eligible Business, as hereinafter defined, upon the request of an applicant and for good cause shown. If a request for deferral is approved:
- i. The Chief shall indicate the use of all Allocations required by Exhibit A hereto upon the registry of available Allocations for the receiving wastewater treatment plant and capacity of the applicable potable water supply system;

- ii. The applicant and all lienholders of the subject property shall execute an Allocation Agreement constituting a first-priority lien against the subject property, in a form recordable in Land Records. This form shall be approved by the Chief and the County Attorney for Calvert County that shall run with the land, be binding upon all current owner(s) and future owners for the duration of the Allocation Agreement to indicate the number of Allocations deferred, the time period for reconciling the final number of allocations required for the Eligible Business and such other terms deemed necessary and appropriate;
 - iii. Cessation of the Eligible Business at any time during the deferment period shall accelerate and make immediately due and payable the capital connection charges for the deferred Allocations;
 - iv. During the deferment period, the applicant shall still be required to pay the quarterly base rate associated with all Allocations required by Exhibit A hereto, including, without limitation, the quarterly base rate associated with the deferred Allocation(s). Failure to make such payments when due shall accelerate and make immediately due and payable the capita connection charges for all deferred Allocations;
 - v. Not later than twenty-four (24) months from the execution of an Allocation Agreement, the Chief shall inform the applicant of the final number of Allocations required based upon the peak flow of the connected Eligible Business;
 - vi. Notwithstanding the provisions of sub-part (v), herein, the applicant may request the Chief make a final determination as to the total number of Allocations required at any time prior to twenty-four (24) months from the execution of an Allocation Agreement; and
 - vii. Financial reconciliation of the final determination of the number of Allocations required shall be charged at the capital connection fee in effect at the time the final determination is made if made by the Chief, or at the capital connection fee in effect at the time of request if the request is made by the applicant.
 - viii. If payment of the final reconciliation is not received within thirty (30) days of the date of the final determination, late payment interest in the amount of five (5%) percent per annum shall be assessed to the applicant.
 - ix. In the event the final reconciliation payment is not received within sixty (60) days of the date of the final determination, the Chief may pursue all available remedies, including, but not limited to, disconnection of service.
- d. Base rates, as defined and specified in each year's adopted County Budget, will be assigned, and payment shall be required for, the total number of EDUs allocated at the time of the capital connection purchase and will be reflected on the first quarterly bill following the purchase.
- 4. Assignment or Transfer of EDUs.**
- a. Notwithstanding any other provision of this Resolution to the contrary, including, without limitation, the restriction upon transfer as set forth above, upon an approved written request by the owner or authorized agent to the Director of Public Works, the transferor (being the project or customer account for which a water/sewer capacity has been Allocated) of any acquired, unexpired and not currently past due Allocation, which was deemed in excess during an audit pursuant to Paragraphs 5(b) and 5(h), may transfer Allocations so long as the transferee (being the receiving project or customer account) is: (1) under common ownership of no less than ten percent (10%) with said transferor; (2) the project has been approved by the Chief; (3) is mapped for public water or sewer within the Comprehensive Water and Sewer Plan in effect upon the adoption of this Resolution; and (4) the transferring and the receiving water and sewer service districts are properly adjusted to reflect accurate inventories related to approved transfers. Base rate adjustments due to

- the transfer of allocations will be reflected on the first quarterly bill following the agreement to transfer EDU Allocations.
- b. Notwithstanding the foregoing, only one (1) application to transfer Allocations may be made for each development or commercial account. The transferor of EDUs may not, at a later date, become the recipient of transferred EDUs and the transferee of EDUs may not at a later date transfer EDUs. Any future EDUs needed by either party shall be purchased at the current rate.
 - c. It shall be at the discretion of the Director of Public Works if other transfer agreements are to be considered.
5. **Redetermination of EDUs.** With the exception of the applicants on a valid deferred Allocation Agreement, the Chief reserves the right to review and adjust non-residential account EDU Allocations only once during a County fiscal year, save and excepting the receipt of any new building and/or Water and Sewerage permit applications, which may cause additional audits within the same year. :
- a. The Chief, Director, or Board of County Commissioners retains the authority to conduct audits annually or at any other interval deemed necessary or appropriate.
 - b. In this section, “peaked average usage” means the quarterly average number of gallons of water or sewer usage during the preceding four (4) or more quarters, times the peaking factor of 1.2. At the discretion of the Chief, specific quarters of consumption may be excluded in determining the quarterly average number of gallons when unique circumstances exist that may affect this determination.
 - c. The number of EDU Allocations required for a connection, determined as one (1) EDU per two hundred (200) gallons per day, may be adjusted if a change in the original permit application is requested, or during the commercial customer account audit. The Chief will consider the need to adjust EDU Allocations during the non-residential customer account audit only if there is sufficient evidence that a user’s peak average usage is below eighty (80%) of the current EDU Allocation or above one hundred and twenty percent (120%) of the current EDU Allocation.
 - d. If it is determined that there is a need to adjust EDU allocations pursuant to Paragraphs 5(b) or 5(h), the Chief will provide written notification to the owner of the subject property of the determination along with rate adjustments and capital connection fee charges or refunds, pursuant to Paragraphs 5(d) through 5(g).
 - e. Base rate adjustments due to increases in EDU Allocations will be reflected on the first quarterly bill following the allocation.
 - f. Capital connection fees due to increases in EDU Allocations reflecting the current rate will be payable quarterly over a period of eight (8) quarters or as a single one-time payment. Non-payment will be subject to penalties per delinquency policy at the time.
 - g. Base rate, as defined and specified in each year’s adopted County Budget, adjustments due to decreases in EDU Allocations will be reflected on the first quarterly billing cycle following written notification from the owner of subject property electing to surrender the excess Allocations.
 - h. Capital connection fees refundable due to decreases in EDU Allocations reflecting one half the rate at the time of original Allocation purchase will be refunded as an account credit over a period of up to twenty (20) quarters or as a single one-time payment following written notification from the owner of subject property electing to surrender the excess Allocations.
 - i. The results of the any audit conducted in the first quarter of Fiscal year 2025 will be subject to the Fiscal year 2024 fees.
 - j. It shall be at the discretion of the Director of Public Works if other agreements are made for the determination of allocated EDUs (“Redetermination Agreements”).

- 6. **Eligible Business.** For the purposes of this Policy, an "Eligible Business" meets the following minimum capital investment requirements whereby the cost of land, fixtures, furniture, or capital connections are not to be included in the calculation:
 - a. New Construction - \$500,000.00 (actual construction costs);
 - b. Renovation of Existing Building - \$250,000.00 (actual construction costs); or
 - c. Projects not meeting the minimum requirements of Sub-Paragraphs (a) or (b), herein above, may be submitted to the Board of County Commissioners or its designee, for consideration.

BE IT FURTHER RESOLVED by the Board of County Commissioners of Calvert County, Maryland that, in the event any portion of this Resolution is found to be unconstitutional, illegal, null, or void, it is the intent of the Board of County Commissioners to sever only the invalid portion or provision, and that the remainder of the Resolution shall be enforceable and valid.

BE IT FURTHER RESOLVED by the Board of County Commissioners of Calvert County, Maryland that the foregoing recitals are adopted as if fully rewritten herein.

BE IT FURTHER RESOLVED, by the Board of County Commissioners that this Resolution shall be effective upon recordation without publication of a fair summary.

DONE, this 27th day of August, 2024, by the Board of County Commissioners of Calvert County, Maryland, sitting in regular session.

Aye: 5

Nay: 0

Absent/Abstain: 0

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF CALVERT COUNTY, MARYLAND

Katie Brittain
Katie Brittain, Clerk

Earl F. Hance
Earl F. Hance, President

Catherine M. Grasso
Catherine M. Grasso, Vice President

Approved for legal sufficiency:

Mark C. Cox Sr.
Mark C. Cox Sr.

John B. Norris III
John B. Norris III, County Attorney

Mike Hart
Mike Hart

Received for Record... 8/29... 2024
at 4:18 o'clock... P... M. Same day
recorded in Liber KPS No. 74
Folio 330... COUNTY COMMISSIONERS
ORDINANCES AND RESOLUTION.

Todd Ireland
Todd Ireland

Garry P. Smith