

Denton Town Code Chapter 125
Water and Sewer Allocations – Summary of Major Amendments

1. Clarification of definitions.
2. Clarification for the application requirements.
3. Provisions for consistency with Chapter 102 and Chapter 124 for allocation requirements.
4. Provisions for allocation procedures for residential subdivisions and nonresidential subdivisions are listed separately.
5. Clarification for provisions for grandfathering allocations for subdivisions not developed.
6. Developers are allowed an expiration of three years to build residential subdivisions and nonresidential subdivisions and may reapply for allocations on lots not developed.
7. Clarification for provisions of forfeiture of water and sewer allocations.
8. Authorizing the Director of Planning and Codes to administratively approve water and sewer allocations for infill residential lots for single-family dwellings.
9. Expiration of water and sewer allocation for building permits is three years and applicants may reapply for allocations.
10. Allocations for building permits are invalid unless applicant has complied with Chapter 38, Building Construction.
11. Establish refund or forfeiture of payment procedures for subdivisions and building permits.
12. Establish assignability or transferability procedures for subdividers.

ORDINANCE NO. 715

INTRODUCED BY: _____

AN ORDINANCE OF THE TOWN OF DENTON REPEALING AND REENACTING WITH AMENDMENTS CHAPTER 125, WATER AND SEWER ALLOCATIONS OF THE TOWN CODE

WHEREAS, Article XI-E, Constitution of the State of Maryland; Section 4-103(b)(3), Subtitle 1, Title 4, Division II, Local Government Article, Annotated Code of Maryland; and the Charter and Code of the Town of Denton provide the authority under which the Town Council may adopt, repeal, and/or amend the ordinances of the Town of Denton; and,

WHEREAS, in order to clarify and amend current regulations, and to implement the numerous revisions to Chapter 125, Water and Sewer Allocations of the Town Code, such that the Town wishes to repeal and reenact with amendments the entire Chapter 125, Water and Sewer Allocations; and

WHEREAS, the Town Council has determined that it is desirable and in the public interest to repeal and reenact Denton Town Code Chapter 125, related to Water and Sewer Allocations; and

NOW, THEREFORE, the Town of Denton hereby ordains:

Section 1: The recitals set forth above are incorporated herein by reference and made a part of this Ordinance.

Section 2: Chapter 125, Water and Sewer Allocations of the Code of the Town of Denton, be repealed and reenacted with amendments to read as shown on the attached Exhibit A.

Section 3. In accordance with § C3-12 of the Town Charter, this Ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect seven (7) days from and after the date of its final passage and adoption, except that in accordance with Md. Code Ann., Land Use §§ 4-203(b)(3) and 4-204(b)(5), this Ordinance shall not be effective until at least ten (10) days after a public hearing is held.

ADOPTED THIS _____ DAY OF _____, 2021.

DENTON TOWN COUNCIL:

Abigail McNinch, Mayor

Dallas Lister, Councilperson

Lester L. Branson, Councilperson

Walter Keith Johnson, Councilperson

Doncella Wilson, Councilperson

ATTEST:

Karen L. Monteith, Clerk-Treasurer

Approved for legal sufficiency this _____ day of _____, 2021.

Christopher F. Drummond, Town Attorney

Date Introduced _____

Date Amendments Introduced _____

Date Passed _____

Effective Date _____

Text that is stricken reflects language omitted from the Town Code

Text in **bold** and *italicized* reflects additions to the Town Code

Exhibit A
Denton Town Code Chapter 125
Water and Sewer Allocations

§ 125-1 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

ALLOCATION

Water or wastewater capacity reserved at a utility facility for use at a particular property.

ALLOTMENT

The apportionment of available capacity of water or wastewater as provided by this chapter among the uses set forth in § 125-3 of this chapter.

AVAILABLE CAPACITY OF WASTEWATER

The positive difference between the capacity of the components of the wastewater system and the computed flow through the system, less allocations granted and outstanding. The available capacity of wastewater is determined by the Town at the Town's discretion.

AVAILABLE CAPACITY OF WATER

The positive difference between the safe working capacity of the components of the water system and the computed flow through the system, less allocations granted and outstanding. The available capacity of water is determined by the Town at the Town's discretion.

BUILDABLE APPROVED LOT

An approved lot that can reasonably be expected to receive the federal, state, county, and Town approvals necessary for the issuance of a building permit and which is not included within an approved subdivision.

CAPITAL ALLOCATION CONNECTION CHARGE

A charge levied to obtain an allocation of available water or wastewater capacity at the time the allocation is granted.

FINAL PLAT APPROVAL

The signing and dating of a final record plat by the Planning Commission as required under Chapter 73, Land Subdivision.

SUBDIVIDER

The meaning stated in Chapter 73, Land Subdivision.

SUBDIVISION

The meaning stated in Chapter 73, Land Subdivision.

§ 125-2 Findings; intent.

- A. The Town Council of Denton finds that temporary shortages of available capacity in water and wastewater facilities may occur as a result of health, environmental or financial considerations. The Town Council of Denton further finds that there is no mechanism currently in place by which the Town

of Denton can monitor the available allocation of water and wastewater. The Town Council of Denton further finds that to pursue these goals, it is necessary to establish a method by which available capacity is calculated, priority of water and wastewater services is determined, and available capacity is allotted.

- B. It is the intent of the Town Council of Denton that the provisions of this chapter shall accomplish these objectives, that the cost of construction and expansion of water and wastewater facilities be generally borne by those who will directly benefit, that a fair and equitable method of allotting available water and wastewater capacity be established, and that procedures be outlined by which new users of the system pay their fair share of the capital costs of construction.

§ 125-2.1 Application for sewer and/or water allocation.

- A. Any individual with a proprietary or financial interest in property located within the municipality of the Town of Denton may file an application for a sewer and/or water allocation within the provisions of this ordinance. Such individual shall complete an application prepared and approved by the Town Council of Denton and shall provide any and all documents required by the Town Council showing evidence of the financial or proprietary interest in the subject property. Such individual shall pay the capital allocation connection charge as provided below, unless the Town Council determines that the charge is inapplicable (an existing sewer and/or water allocation exists for the property and the connection charge has already been paid).
- B. The owner of any property required to connect with a public sewer and/or a public water main pursuant to the requirements in Chapter 102 and Chapter 124, is required to file an application for a sewer and/or water allocation with the Town of Denton and to pay the capital allocation connection charge as provided below.

§ 125-3 Allocation priorities.

- A. The Town Council shall allot available water and wastewater capacity in accordance with the following uses:
 - (1) Public health needs.
 - (2) Public service needs, including county or Town capital projects.
 - (3) Buildable approved lots for single-family dwellings.
 - (4) Other buildable approved lots.
 - (5) Subdivisions.
 - (6) Reserve capacity.
- B. The Town Council of Denton may at any time:
 - (1) Reorder the priority of uses.
 - (2) Redistribute available capacity in order to reflect changes in market demands, development inactivity, and needs of the community and Town.
 - (3) Establish subuses to the uses listed in Subsection A of this section.

C. The Town Council shall regularly issue reports of changes in the following:

- (1) Priority ranking of uses.
- (2) Proportion of allocation available to uses.
- (3) Available unallocated capacity.

§ 125-4 Allocation of capacity at time of subdivision approval.

A. Allotment procedures for residential subdivisions.

- (1) Prior to granting preliminary plat approval, the Planning Commission shall notify the Town Council that an application for subdivision approval has been filed and that an allocation is required.
- (2) The Town Council shall make an allocation in accordance with § 125-3 of this chapter at a regularly scheduled public meeting of the Town Council.
- (3) The Town Council shall notify the subdivider in writing of the allotted allocation, and thereafter, the Planning Commission shall take action on the preliminary plat at a regular meeting of the Planning Commission as required under Chapter 73, Land Subdivision.
- (4) Any new allotted allocation issued after April 8, 2021, is valid for three years from the date of the original allocation approval by the Town Council and shall expire after the three-year period has run. The allocation for any residential lot that has not been developed within this year shall expire. Upon good cause shown, the Town Council may extend this time period, however, in no event shall any extension be granted for more than one additional year from the date of the expiration of the original allocation approval. If individual lot allocations expire, the subdivider will be allowed to reapply for allocations as individual lots are developed pursuant to § 125-5 below.
- (5) For any allotted allocation issued before April 8, 2021, if preliminary plat approval is not obtained within six months following the allocation approved by the Town Council, the allocation is forfeited. Upon good cause shown, the Town Council may extend the time in which to obtain preliminary plat approval for purposes only of retaining the allocation. In no event, however, shall any extension be granted under this section for a period of one year from the date of the original allocation approval.

B. Allotment procedures for non-residential subdivisions.

- (1) Prior to granting preliminary plat approval, the Planning Commission shall notify the Town Council that an application for subdivision approval has been filed and that an allocation is required.
- (2) The Town Council shall make a preliminary allocation, based on representations from the subdivider regarding future uses, in accordance with § 125-3 of this chapter at a regularly scheduled public meeting of the Town Council. The preliminary allocation will be subject to change as plans for the subdivision are finalized.
- (3) The Town Council shall notify the subdivider in writing of the preliminary allocation, and thereafter, the Planning Commission shall take action on the preliminary plat at a regular meeting of

the Planning Commission as required under Chapter 73, Land Subdivision.

- (4) The Town Council shall make a final allocation before the final plat approval.
 - (5) Any new allotted allocation issued after April 8, 2021, is valid for three years from the date of the final allocation approval by the Town Council and shall expire after the three-year period has run. The allocation for any portion of the non-residential development that has not been developed within this year shall expire. Upon good cause shown, the Town Council may extend this time period, however, in no event shall any extension be granted for more than one additional year from the date of the expiration of the final allocation approval. If a portion of the allocation expires, the subdivider will be allowed to reapply for allocations as portions of the development are developed pursuant to § 125-5 below.
 - (6) For any allotted allocation issued before April 8, 2021, if final plat approval is not obtained within six months following the final allocation approved by the Town Council, the allocation is forfeited. Upon good cause shown, the Town Council may extend the time in which to obtain final plat approval for purposes only of retaining the allocation. In no event, however, shall any extension be granted under this section for a period of one year from the date of the final allocation approval.
- C. The subdivider must pay fees as outlined in § 125-6.

§ 125-5 Allocation of capacity upon issuance of building permits.

- A. Prior to the issuance of any building permit for a buildable approved lot that has not already received an allocation, the Director of Planning and Codes shall be notified that an application for a building permit has been made and that an allocation is required.
- B. The Director of Planning and Codes shall make an allocation in accordance with § 125-3 of this chapter if there is a building permit application filed for a single-family dwelling (as that term is defined at § 124-1 of this Code) on an infill lot or if there is a transfer in ownership of a single-family dwelling that was subject to a tax waiver prior to the transfer. The Director of Planning and Codes is authorized to do so administratively without further action by the Town Council. All other allocations of capacity must be approved by the Town Council.
- C. The Director of Planning and Codes shall notify the applicant in writing of the allotted allocation and thereafter, the Town's Building Official, at which time the building permit shall be issued, provided that the capital allocation connection charge has been paid, all requirements set forth in Chapter 38, Building Construction, are met and, where applicable, site plan approval in Chapter 128, Zoning, is completed with and those fees outlined in § 125-6 are paid.
- D. Any new allotted allocation issued after April 8, 2021, is valid for three years from the date of the original allocation approval by the Director of Planning and Codes and shall expire after the three-year period has run. The allocation for a building that has not been developed within this period shall expire. Upon good cause shown, the Director of Planning and Codes may extend this time period, in no event, however, shall any extension be granted for more than one additional year from the date of the expiration of the original allocation approval. If the allocation expires, the applicant will be allowed to reapply for an allocation prior to construction on the building.
- E. An allocation awarded to an applicant for a building permit for a buildable approved lot shall be invalid unless the applicant has complied with Chapter 38, Building Construction.

§ 125-6 Fees and charges.

A. Each structure and use to be connected to the public water or wastewater system shall pay a capital allocation connection charge for each utility as established by the Town Council unless the Town Council determines that the charge is not applicable.

(1) Schedule of payment for residential subdivider.

(a) A subdivider shall pay at least 25% of the capital allocation connection charge at the time preliminary plat approval is received.

(b) A subdivider shall pay the remaining 75% of the capital allocation connection charge at the time final plat approval is received and prior to the recordation of the final plat.

(2) Schedule of payment for non-residential subdivider.

(a) A subdivider shall pay at least 25% of the capital allocation connection charge at the time preliminary plat approval is received.

(b) A subdivider shall pay the remaining 75% of the capital allocation connection charge at the time final plat approval is received. This payment shall include any additional amounts associated with a change in the allocation from preliminary to final.

(3) An applicant for a building permit to permit construction or the modification or alteration of an existing building on a buildable lot must pay 100% of the capital allocation connection charge within the timeframe provided in correspondence from the Director of Planning and Codes or the Town Council establishing the allocation and in all cases prior to the issuance of the building permit, unless the Town Council determines that the charge is not applicable pursuant to § 125-2.1 above.

(4) An applicant who is required to connect with a public sewer and/or a public water main pursuant to the requirements in Chapter 102 and/or Chapter 124 of this Code, is required to pay 100% of the capital allocation connection charge prior to connecting with water and/or sewer service.

B. Failure to pay these fees in accordance with this section shall result in the immediate forfeiture of any allotted allocation granted by the Town Council.

C. Upon good cause shown, the Town Council may extend for a reasonable period the time for payment of the capital allocation connection charge under Subsection (1)(a) or (b), (2)(a) or (b), 3 or 4 of this section.

§ 125-7 Refund or forfeiture of payments.

A. For any allocation issued before April 8, 2021, any payments made in accordance with § 125-6 for a residential subdivision shall be subject to refund in accordance with § 125-8 for any allocations forfeited pursuant to § 125-4 above.

B. For any allocation issued after April 8, 2021, any payments made in accordance with § 125-6 for a residential subdivision shall be non-refundable, without regard to any allocations forfeited pursuant to § 125-4 above.

- C. For any allocation issued before April 8, 2021, any payments made in accordance with § 125-6 for a non-residential subdivision shall be subject to refund in accordance with § 125-8 for any allocations forfeited pursuant to § 125-4 above.
- D. For any allocation issued after April 8, 2021, any payments made in accordance with § 125-6 for a non-residential and residential subdivision shall be non-refundable, without regard to any allocations forfeited pursuant to § 125-4 above.
- E. Payments made by applicants for a building permit and payments made by individuals who are required to connect with a public sewer and/or a public water main pursuant to the requirements in Chapter 102 and/or Chapter 124 of this Code are non-refundable.

§ 125-8 Refund of charges.

- A. If a refund is provided for under § 125-7 of this chapter, the subdivider shall be refunded, with the following deductions:
 - (1) An administrative fee of 25% of the payment that is subject to refund.
- B. In the event that a subdivider or applicant for a building permit for a buildable approved lot has forfeited or lost an allocation, as set forth in § 125-4 or 125-5, and no payment has been made under § 125-6, the subdivider or applicant must pay the following charges to the Town of Denton.
 - (1) An administrative fee of 25% of the total of capital connection fee based on the total allocations provided.
- C. The Town Council of Denton has the authority to waive all or any portion of the administrative fee upon a finding of exceptional circumstances, limited to financial or developmental hardships caused by any water or sewer moratorium.

§ 125-9 Assignability or transferability.

- A. An allocation cannot be assigned or transferred without the prior approval of the Town Council.
- B. If Town Council approves the assignment or transfer of an allocation granted to a subdivision, the transfer or assignment shall be subject to the following conditions:
 - (1) Any transfer or assignment shall be to lots or units requiring an equivalent amount of allocation; and
 - (2) Any transfer or assignment shall be subject to the conditions, time limitations or other restrictions that are applicable to the unused allocation as of the date of transfer.
- C. In the event that assignment or transfer is contemplated in accordance with Subsection B, the subdivider shall make a written request to the Town Council for assignment or transfer of an allocation. The request shall specify those areas of the subdivision from which and to which the allocation will be transferred or assigned.
- D. If a subdivider transfers its interest, in whole or in part, in property that will be subdivided for residential or non-residential uses, the Town Council may at its discretion require that a new subdivider pay the capital allocation connection charge for the transferred property within a timeframe established by the Town Council.

- E. If a subdivider redesigns a subdivision such that additional allocations are needed, the Town Council may require that the subdivider pay the additional capital allocation connection charges for the property within a timeframe established by the Town Council.

§ 125-10 Effect of zoning action.

The grant of a special exception, reclassification of property, or other zoning action does not entitle a person to an allocation of water or wastewater capacity for that property.

§ 125-11 Conditions of allocation.

The award of an allocation under this chapter is subject to the following conditions:

- A. Water and wastewater capacity is contingent on the availability of federal, state, county, or Town funds to finance water and wastewater capital projects.
- B. The Town is not responsible to provide water or wastewater service and is not liable for monetary damages for the failure to provide service if the Town is unable to acquire rights-of-way necessary for the construction of water or wastewater capital projects.
- C. The Town is not responsible for any federal, state, county, or Town action, including operational moratorium, which temporarily suspends, delays, or otherwise affects an allocation.
- D. The Town is not responsible if a contractor defaults on a Town water or wastewater project in the service area in which an allocation has been made.
- E. The Town is not responsible for any other contingency that affects the timing or ability to connect which is beyond the control of the Town.