



Bill No. 20-16

Concerning: Use of the School Construction Fee

Option in Certain Circumstances to Encourage

Completion of Construction of that Development

Introduced: September 29, 2020

Revised: _____ Draft No. _____

Enacted: _____

Effective: _____

Expires: December 28, 2020

Frederick County Code, Chapter 1-20

Section(s) 62

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council Member Steve McKay on behalf of County Executive Jan Gardner

AN ACT to: Encourage completion of approved residential developments by allowing them to use the school construction fee option to pass APFO if certain requirements are met.

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

By amending:

Frederick County Code, Chapter, 1-20 Section(s) 62

Other: _____

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law.</i>
[Single boldface brackets]	<i>Deleted from existing law.</i>
***	<i>Existing law unaffected by bill.</i>

1 Bill No. 20-16

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3 The County Council of Frederick County, Maryland, finds it necessary and appropriate to
4 amend the Frederick County Code to encourage complete construction of residential
5 developments. This bill allows certain residential developments - those that were approved to use
6 the school construction fee option prior to July 20, 2016, by a fully executed APFO Letter of
7 Understanding which subsequently expired - to use the school construction fee option to pass
8 APFO if the specific requirements in this bill are met.

9 NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF
10 FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby,
11 amended as shown on the attached Exhibit 1.

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M. C. Keegan-Ayer, President
County Council of Frederick County,
Maryland

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§ 1-20-62. SCHOOL CONSTRUCTION FEE OPTION.

(A) The provisions of this section shall apply only to those developments approved to use the school construction fee option, as documented by an APFO Letter of Understanding or development rights and responsibilities agreement (DRRA) fully executed by the developer and the county on or prior to July 20, 2016. No new developments may choose to use the school construction fee option after July 20, 2016.

(B) School construction fees shall be paid in addition to, and not in lieu of, public school development impact fees under Chapter 1-22 of the Frederick County Code.

(C) [Reserved] If a development has not entered into a DRRA with the county but was approved to use the school construction fee option prior to July 20, 2016 by a fully executed APFO Letter of Understanding, and if that APFO Letter of Understanding has expired, the development may apply for APFO re-testing and mitigate school capacity by using the school construction fee option, provided that all of the following requirements are met as of the APFO Test Date:

- (1) The total size of the development is equal to or less than 60 dwelling units;
- (2) More than 50% of the dwelling units in the development are built out and have certificates of occupancy;
- (3) The total number of projected students upon re-testing does not exceed 10, including all school levels;
- (4) No school serving or proposed to serve the development exceeds 120% of State Rated Capacity, taking into account actual capacity expected to be provided by new schools and school additions scheduled for construction in the first 2 years of the CIP;
- (5) All public roads in the development have been built to county standards and accepted by the county for public maintenance; and
- (6) All unplatted lots remaining in the development must be included in the APFO re-testing in accordance with this subsection. A development may not submit piecemeal applications for re-testing portions of an uncompleted development.

(D) The APFO Letter of Understanding, and any development rights and responsibilities agreement ("DRRA"), for the development shall incorporate provisions for payment of the school construction fees.

(E) School construction fees due to the county shall be listed on the Department of Permits and Inspections fee schedule.

(F) School construction fees shall be paid at the time of recording of subdivision plats for each unit, except for multi-family units, which shall be paid not later than the time of building permit application. The school construction fees to be applied to each residential unit shall be the fees in effect at the time of plat recordation or building permit application.

(G) *Annual adjustment.* On or before January 15, 2017, and on or before January 15 of each year thereafter, the County Executive shall provide to the County Council a report which proposes an annual adjustment to the School Construction Fee Schedule, based on the most recent data from

Underlining indicates matter added to existing law.
[Single boldface brackets] indicates matter deleted from existing law.
*** - indicates existing law unaffected by bill.

1 the State of Maryland School Construction Cost Index. The proposed annual adjustment will not
2 take effect unless the County Council enacts a bill adopting it.

3 (H) *School Construction Fee Account.*

4 (1) A School Construction Fee Account is hereby established.

5 (2) All school construction fees that the county collects shall be deposited into the School
6 Construction Fee Account.

7 (3) The School Construction Fee Account shall be interest bearing.

8 (4) All interest earned on monies deposited to this account shall be credited to and shall be
9 considered funds of the account.

10 (5) The county shall establish and implement necessary accounting controls to ensure that the
11 school construction fee funds are properly deposited, accounted for, and appropriated in
12 accordance with this chapter, and any other applicable legal requirements.

13 (6) The county may appropriate funds from the School Construction Fee Account for:

14 (a) Public school facility expenditures as defined in § 1-20-5(B), and

15 (b) The payment of principal, interest and other financing costs on contracts, bonds, notes
16 or other obligations issued by or on behalf of the county or other applicable local governmental
17 entities to finance public school facility expenditures.

18 (7) The Finance Division shall document each appropriation from the School Construction
19 Fee Account.

20 (I) The payment of the school construction fee or the obligation to pay the school construction
21 fee under the terms of an APFO Letter of Understanding or DRRA shall not satisfy the public
22 school adequacy requirement for any other development served by the same school or schools as
23 the proposed development.

24 (J) Upon payment of all school construction fees applicable to the proposed development, the
25 development shall not be subject to further testing for school adequacy under the APFO for the
26 duration of the APFO approval period under the DRRA or APFO Letter of Understanding, unless
27 the density or intensity of the development increases.

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FREDERICK COUNTY GOVERNMENT
DIVISION OF PLANNING & PERMITTING

Jan H. Gardner
 County Executive

Steven C. Horn, Division Director

MEMORANDUM

TO: County Executive Jan Gardner

FROM: Steven C. Horn, Division Director, Planning & Permitting Division SH

DATE: August 24, 2020

SUBJECT: Proposed Bill - Use of the School Construction Fee Option (Section 1-20-62 of the Adequate Public Facilities Ordinance) under Certain Limited, Specific Conditions, to Facilitate the Completion of Substantially Built-out, but Currently Expired Residential Development Projects

ISSUE:

Should the County Executive forward the proposed bill (Attachment 1) allowing the completion of certain development projects (e.g., those that were approved to use the School Construction Fee Option prior to July 20, 2016) that are already substantially built-out, but have expired Adequate Public Facilities Ordinance (APFO) Letters of Understanding (LOU) to the County Council for public hearing?

BACKGROUND:

Developers of residential subdivisions, approved under the School Construction Fee Option section of the Frederick County Code, are prohibited from proceeding with the construction of lots, roadways, and other amenities if they allow their respective APFO LOU to expire.

Periodically, a developer may inadvertently allow an APFO LOU to expire after a substantial portion of an approved subdivision is constructed and many homes are occupied. The APFO LOU expiration prohibits the developer from proceeding with the construction of any remaining lots and final improvements that are required under the original conditions of subdivision approval.

The resulting unfinished condition of a community under these circumstances may negatively affect the quality of life of its residents. Citizens that moved into the community have a reasonable expectation that homes, roadways, sidewalks, and other amenities would eventually be constructed in accordance with the approved subdivision plan.

The County received a petition dated January 23, 2020, from the Days Range Community Association (Attachment 2). The petitioners request that the County “facilitate a means by which these remaining homes can be built in a timely manner, allowing the completion of our

community as was intended and represented to us when purchasing our homes.” This development is partially completed with only 15 lots remaining. All APFO road requirements have been completed.

Adoption of this proposed bill will allow a developer in this situation to finalize construction and satisfy all conditions of subdivision approval as long as the specific criteria enumerated under Section 1-20-62 (C) is met (Attachment 1).

RECOMMENDATION:

Staff recommends the proposed bill be forwarded to the County Council for its consideration.

Approve? Yes X No _____

Jan Gardner

8/27/2020

**Jan H. Gardner, County Executive
Frederick County, Maryland**

Date

FINANCIAL IMPACT: No

ATTACHMENT(S):

Attachment 1 – Proposed Bill

Attachment 2 – Days Range Community Association Petition