



Bill No. 21-12

Concerning: Amend and Update Chapter 1-22 Article I, Development Impact Fee Procedures and Requirements, and Article II, Public School Development Impact Fee, of the Frederick County Code

Introduced: November 2, 2021

Revised: December 7, 2021 Draft No. _____

Enacted: _____

Effective: _____

Expires: January 31, 2022

Frederick County Code, Chapter 1-22

Section(s) 2, 3, 4, 5, 7, 14 and 16

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council Member Jerry Donald

AN ACT to: adopt changes to Chapter 1-22 of the Frederick County Code (Development Impact Fee Procedures and Requirements).

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

By amending:

Frederick County Code, Chapter, 1-22 Section(s) 2, 3, 4, 5, and 14

Other:

Boldface
Underlining
[Single boldface brackets]
* * *

Heading or defined term.
Added to existing law.
Deleted from existing law.
Existing law unaffected by bill.

1

Bill No. 21-12

2 The County Council of Frederick County, Maryland, finds it necessary and appropriate to
3 amend Chapter 1-22 of the Frederick County Code to update the development impact fee
4 procedures and requirements to: (1) reflect changes in the calculation of public school development
5 impact fees, which now includes land acquisition and certain transportation costs (e.g., new buses
6 required due to increased numbers of students); (2) change references to “Community
7 Development Division” to “County Division of Planning and Permitting”; (3) clarify certain
8 situations where full development impact fees are not required to be paid; (4) specify requirements
9 for refunds when development impact fees are paid in advance for senior housing developments;
10 and (5) specify and clarify requirements for impact fee credits when public school facilities are
11 constructed and when land is dedicated for construction of a public school facility.

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

15
16
17
18
19
20
21
22

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

PROPOSED TEXT AMENDMENTS TO

CHAPTER 1-22 - IMPACT FEES

ARTICLE I: DEVELOPMENT IMPACT FEE PROCEDURES AND REQUIREMENTS

§ 1-22-2. DEFINITIONS.

CATASTROPHIC EVENT. A fire, explosion, flood, hurricane, tornado, or other disaster not caused by the property owner or his or her agent.

DIRECTOR. The Director of the Division of Planning and Permitting for the county, or designee.

LAND DEDICATION. Land that is transferred to the county or the Board of Education for a public school facility, without expectation of payment or compensation from the county or the Board of Education.

[PLANNING DIRECTOR. The Director of the Department of Planning and Development Review for the county, or designee.]

PUBLIC FACILITY EXPENDITURES. Include amounts appropriated in connection with the planning, design, engineering and construction of public facilities; planning, legal, appraisal, land acquisition, and other costs related to financing and development costs; the costs of compliance with purchasing procedures and applicable administrative and legal requirements; and all other costs necessary or incident to provision of the public facility.

PUBLIC SCHOOL DEVELOPMENT IMPACT FEE. A fee imposed only on new residential development to fund the proportionate share of the costs of public school buildings, including costs for land acquisition and school transportation (e.g., buses).

§ 1-22-3. GENERAL PROVISIONS; APPLICABILITY.

{Subsections (A) through (D) remain unchanged}

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Double underlining boldface indicates matter added by Amendment.

[[Double bracket]] boldface and strikethrough indicates matter deleted by Amendment.

AMENDED Bill No. 21-12

(E) *Type of development not required to pay development impact fees [affected].*

(1) *Previously-issued building permits/ zoning certificates.*

a. No development impact fee shall be imposed on new development [for which] if the following conditions have been satisfied: (i) a building permit/zoning certificate was [has been] issued [prior to] before the effective date of this chapter; (ii) the work authorized by the building permit has been completed; and (iii) a certificate of occupancy has been issued.

b. If a project is abandoned, if the building permit expires or is revoked, or if the property ownership has changed, any previously paid development impact fees which have not been refunded will be credited toward the development impact fees due for the property, and only the difference between the amount paid and the current rate will be required to be paid prior to the issuance of a new or replacement building permit.

(2) *No net increase in dwelling units.*

a. No development impact fee shall be imposed on any new residential development which does not add a new dwelling unit, provided that the dwelling unit being replaced must have been habitable and occupied as of July 1, 2001 and must have been continuously habitable and occupied from July 1, 2001 through the date of application for a replacement building permit for the dwelling unit.

b. No development impact fee shall be imposed for alteration or expansion of an existing dwelling unit where no additional dwelling unit is created.

c. No development impact fee shall be imposed if a dwelling unit has been destroyed by a catastrophic event, and the applicant:

- i. requests this exemption within two (2) years after the date of the catastrophic event; and

ii. submits a building permit application for the replacement dwelling unit.

d. The burden of proof shall be on the permit applicant to requirements of a., b., or c. above have been satisfied.

(3) *Development agreements.* The provisions of this chapter shall not apply to development projects which are the subject of a development agreement and which contain provisions for a development impact fee or other provisions in conflict with this chapter, but only to the extent of the conflict or inconsistency.

(4) *Public facilities provided by governments.* No development impact fees shall be imposed on the development of public facilities by the State of Maryland, the county, any municipality or the federal government.

(F) *Effect of payment of development impact fees on other applicable county land use, zoning, platting, subdivision or development regulations.*

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Double underlining boldface indicates matter added by Amendment.

[[Double bracket]] boldface and strikethrough indicates matter deleted by Amendment.

[[Double bracket]] ~~substituted~~
AMENDED Bill No. 21-12

1 (1) The payment of development impact fees shall not entitle the applicant to a building
2 permit/zoning certificate unless all other applicable land use, zoning, planning, adequate public
3 facilities, forest resource, platting, subdivision or other related requirements, standards and
4 conditions have been met. Such other requirements, standards and conditions are independent of
5 the requirement for payment of a development impact fee.

6 (2) Nothing in this chapter shall affect, in any manner, the permissible use of property,
7 density/ intensity of development, design and improvement standards or other applicable
8 standards or requirements of the land development regulations of the county or any municipality,
9 where applicable.

10

11 **§ 1-22-4. PROCEDURES FOR IMPOSITION, CALCULATION AND COLLECTION OF**
12 **DEVELOPMENT IMPACT FEES.**

13 (A) *In general.* An applicant shall be notified by the county or by the municipality within
14 which new development is located of the applicable development impact fee requirements at the
15 time of application for a building permit/zoning certificate. At such time, the development
16 impact fees shall be calculated by the Director ~~[of the Community Development Division of the~~
17 ~~county, or designee,]~~ and shall be paid by the applicant ~~[prior to]~~ before the issuance of a
18 building permit/zoning certificate.

19 (B) *Calculation.*

20 (1) Upon receipt of an application for a building permit/zoning certificate, the Director ~~[of~~
21 ~~the Community Development Division of the county, or designee,]~~ shall determine:

22 (a) Whether it is a residential use;
23 (b) The specific category (type) of residential development, if applicable; and
24 (c) If residential, the number of new dwelling units.

25 (2) Upon receipt of an application for a building permit/zoning certificate, the Director ~~[of~~
26 ~~the Community Development Division of the county, or designee,]~~ shall determine whether it is
27 for a change in use. In such cases, the development impact fee due shall be based only on the
28 incremental increase in the fee for the additional public facilities needed for the change in use.
29 An applicant shall not be entitled to a refund where the change of use is to a category of
30 development which imposes a lower demand on public facilities.

31 (3) After making these determinations, the Director ~~[of the Community Development~~
32 ~~Division of the county, or designee,]~~ shall calculate the applicable development impact fee by
33 multiplying the demand added by the new development by the amount of the applicable
34 development impact fee per unit of development, incorporating any applicable credit if set forth
35 in the particular development impact fee calculation methodology.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Double underlining boldface indicates matter added by Amendment.

[[Double bracket]] boldface and strikethrough indicates matter deleted by Amendment.

AMENDED Bill No. 21-12

1 (4) If the type of land use proposed for new development is not expressly listed in the
2 particular development impact fee ordinance and schedule, the Director ~~[of the Community~~
3 ~~Development Division of the county, or designee,]~~ shall:

4 (a) Identify the most similar residential development type listed and calculate the
5 development impact fee based on that residential development type; or

6 (b) At the option of the applicant, or the ~~[Planning]~~ Director~~[,]~~ determine the basis used to
7 calculate the fee pursuant to an independent impact analysis for development impact fee
8 calculation. The applicant on a form provided by the county for such purpose shall request this
9 option. If this option is chosen, the following shall apply.

10 1. The applicant shall be responsible, at its sole expense, for preparing the independent
11 impact analysis, which shall be reviewed for approval by the ~~[Planning]~~ Director, before ~~[prior~~
12 ~~to]~~ payment of the fee.

13 2. The independent impact analysis shall measure the impact that the proposed
14 development will have on the particular public facility at issue and shall be based on the same
15 methodologies used in the development impact fee calculation methodology report and shall be
16 supported by professionally acceptable data and assumptions.

17 3. After review of the independent impact analysis submitted by the applicant, the
18 ~~[Planning]~~ Director shall accept or reject the analysis and provide written notice to the applicant
19 of its decision within 45 days. If the independent impact analysis is rejected, the written notice
20 shall provide an explanation of the insufficiencies of the analysis.

21 4. The final decision of the ~~[Planning]~~ Director may be appealed pursuant to § 1-22-
22 6 herein.

23 (5) An applicant may, at any time, request a non-binding estimate of development impact
24 fees due for a particular new development by filing a request on a form provided for such
25 purpose by the Director ~~[of the Community Development Division of the county]~~; provided,
26 however, that such estimate may be subject to change when a formal application for a building
27 permit/zoning certificate for new development is made. Such non-binding estimate is solely for
28 the benefit of the prospective applicant and shall in no way bind the county nor preclude it from
29 making amendments or revisions to any provisions of this chapter or the development impact fee
30 schedules.

31 (6) The calculation of development impact fees due from a multiple-use new development
32 shall be based upon the type and number of dwelling units created in the new development.

33 (7) The calculation of development impact fees due from a phased new development shall
34 be based upon the development impact fees due for each dwelling unit within the phase of
35 development for which building permits/zoning certificates are requested.

36 (8) Development impact fees shall first be calculated based on the development impact fee
37 amount in effect at the time of application for a building permit/zoning certificate, but the

Underlining indicates matter added to existing law.

~~[Single boldface brackets]~~ indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Double underlining boldface indicates matter added by Amendment.

~~[[Double bracket]]~~ boldface and strikethrough indicates matter deleted by Amendment.

AMENDED Bill No. 21-12

1 amount of the development impact fee due is the amount of the development impact fee in effect
2 on the date of issuance of the building permit/zoning certificate.

3 (C) Offsets Reserved.

4 ~~[(1) Offsets against the amount of a development impact fee due from a new development shall be provided for, among other things, contributions made concurrently or to be made in the future in cash, or by actual construction of all or part of a public facility by the affected property owner for public facilities meeting or exceeding the demand generated by the new development for the specific facility and the contribution is determined by the Planning Director to be a reasonable substitute for the cost of public facilities which are included in the particular development impact fee calculation methodology. No offset shall be provided for the dedication of land.]~~

5 ~~— (2) The amount of the excess contribution shall be determined by the Planning Director upon receipt of an application form requesting an offset; provided, however, that:~~

6 ~~— (a) The Planning Director will make no reimbursement for excess contributions unless and until the particular public facility fund has sufficient revenue to make the reimbursement without jeopardizing the continuity of the county's capital improvements program; and~~

7 ~~— (b) The excess contribution may not be transferred or credited to any other type of development impact fees calculated to be due from that development for other types of public facilities. The determination of the eligibility for and the amount of the credit shall be made by the Planning Director on a form provided for such purposes. If the applicant contends that any aspect of the Planning Director's decision constitutes an abuse of discretion, the applicant shall be entitled to appeal pursuant to § 1-22-6.~~

8 ~~— (3) No offset shall be allowed unless the County Executive has approved the contribution or expenditure before it is made.~~

9 ~~— (4) Offsets for provision of public facilities shall be applicable only as to development impact fees imposed for the same types of public facilities which are proposed to be dedicated or provided. Even if the value of the public facility provided exceeds the development impact fee due for the type of public facility, the excess value may not be transferred to development impact fees calculated to be due from the applicant for other types of public facilities for which development impact fees may be imposed. Offsets may, however, be transferred to the same applicant or to other applicants for new development which are proposed within the final approved plan for a single development and for the same type of public facility.~~

10 ~~— (5) Notwithstanding any other provision of this section, no credit or offset shall be given for land dedicated, cash contributed or actual construction undertaken prior to the effective date of this chapter.]~~

11 (D) Collection.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Double underlining boldface indicates matter added by Amendment.

[[Double bracket]] boldface and strikethrough indicates matter deleted by Amendment.

AMENDED Bill No. 21-12

1 (1) The [County] Director [~~of the Community Development Division, or designee,~~] shall
2 collect all applicable development impact fees at the time of issuance of a building permit/zoning
3 certificate and shall issue a receipt to the applicant for such payment unless:

4 (a) The applicant has been determined to be entitled to a full credit or offset; or

5 (b) The applicant has been determined to be not subject to the payment of a development
6 impact fee; or

7 (c) The applicant has filed an appeal, and a letter of credit in the amount of the
8 development impact fee, as calculated by the [County] Director [~~of the Community Development~~
9 ~~Division, or designee,~~] has been posted with the county. Such letter of credit must first be
10 approved by the County Attorney and Director of Finance.

11 (2) The [County] Director [~~of the Community Development Division,~~] shall collect a
12 development impact fee at the time of issuance of a building permit/zoning certificate even if
13 development impact fees were paid by the applicant at an earlier time in the development permit
14 or approval process, including at the time of application for a building permit/zoning certificate,
15 if the amount of the development impact fees has increased since such prior approval. The
16 applicant shall only be liable for the difference between the development impact fees paid earlier
17 and those in effect at the time of issuance of the subsequent building permit/zoning certificate.

18

19

20 **§ 1-22-5. ESTABLISHMENT OF DEVELOPMENT IMPACT FEE ACCOUNTS;**
21 **APPROPRIATION OF DEVELOPMENT IMPACT FEE FUNDS; AND REFUNDS.**

22 (A) *Development impact fee accounts.* A development impact fee account shall be
23 established by the county for each category of public facilities for which development impact
24 fees are imposed. Such account shall clearly identify the category, account, or fund for which the
25 development impact fee has been imposed. All development impact fees collected by the county
26 or a municipality shall be deposited into the appropriate development impact fee account or
27 subaccount, which shall be interest bearing. All interest earned on monies deposited to such
28 account shall be credited to and shall be considered funds of the account. The funds of each such
29 account shall be capable of being accounted for separately from all other county funds, over
30 time. The county shall establish and implement necessary accounting controls to ensure that the
31 development impact fee funds are properly deposited, accounted for, and appropriated in
32 accordance with this chapter, and any other applicable legal requirements.

33 (B) *Appropriation of development impact fee funds.*

34 (1) *In general.* Development impact fee funds may be appropriated for public facilities, for
35 public facility expenditures as defined in § 1-22-2 hereof, and for the payment of principal,
36 interest and other financing costs on contracts, bonds, notes or other obligations issued by or on
37 behalf of the county or other applicable local governmental entities to finance such public

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Double underlining boldface indicates matter added by Amendment.

[[Double bracket]] boldface and strikethrough indicates matter deleted by Amendment.

AMENDED Bill No. 21-12

1 facilities and public facility expenditures. All appropriations from development impact fee
2 accounts shall be documented by the Finance Division.

3 (2) *Restrictions on appropriations.* Development impact fees shall be appropriated only [·

4 (a) [For the particular category of public facilities for which they were imposed,
5 calculated and collected]; and

6 (b) ~~Within 6 years of the beginning of the fiscal year immediately succeeding the date of~~
7 ~~collection, unless a longer time period is established as provided herein. Development impact~~
8 ~~fees shall not be appropriated for funding any expenditure that would be classified in an~~
9 ~~accounting as a maintenance or repair expense or for operational or personnel expenses~~
10 ~~associated with the provision of the public facility.~~

11 (3) ~~Appropriation of development impact fee funds beyond 6 years of collection.~~

12 ~~Notwithstanding subsection (B)(2), development impact fee funds may be appropriated beyond 6~~
13 ~~years from the beginning of the fiscal year immediately succeeding the date of collection if the~~
14 ~~appropriation is for a public facility which requires more than 6 years to plan, design and~~
15 ~~construct, and the demand for the public facility is generated in whole or in part by the new~~
16 ~~development, or if the public facility will actually serve the new development, or where the~~
17 ~~capital improvements program prepared by the county for a particular category of public facility~~
18 ~~has used a longer time frame. Such appropriations shall be documented by the county.~~

19 (C) *Procedure for appropriation of development impact fee funds.*

20 (1) The Budget Director shall each year identify public facility projects anticipated to be
21 funded in whole or in part with development impact fees. The public facilities so identified shall
22 be based upon such information as may be relevant and may be part of the county's annual
23 budget and capital improvements programming process.

24 (2) All such identification of public facility projects shall be consistent with the provisions
25 of this chapter or other applicable legal requirements and any guidelines adopted by the county.

26 (3) The county may include development impact fee-funded public facilities in the county's
27 annual budget and capital improvements program. Before [Prior to] including these [such] public
28 facilities in the budget and capital improvements program, the county shall consider the nature of
29 the facility, the location of the public facility, the capacity to be added by the public facility, the
30 service area of the public facility, the need/ demand for the public facility, and the anticipated
31 timing of completion of the public facility.

32 (4) The county may authorize development impact fee-funded public facilities at such other
33 times as may be deemed necessary and appropriate by the county governing body.

34 (5) The County Executive shall verify that adequate development impact fee funds are or
35 will be available from the appropriate development impact fee account for the particular public
36 facility.

37 (D) *Refunds.*

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Double underlining boldface indicates matter added by Amendment.

[[Double bracket]] boldface and strikethrough indicates matter deleted by Amendment.

AMENDED Bill No. 21-12

1 (1) *Eligibility for refund.*

2 (a) *Expiration or revocation of building permit/zoning certificate.* An applicant who has
3 paid a development impact fee for a new development for which the necessary building
4 permit/zoning certificate has expired or for which the building permit/zoning certificate has been
5 revoked before [prior to] construction shall be eligible to apply for a refund of development
6 impact fees paid on a form provided by the county for such purposes.

7 **[(b) *Failure of county to use or appropriate development impact fee funds within time***
8 ~~*limit. The current property owner may apply for a refund of development impact fees paid by an*~~
9 ~~*applicant if the county has failed to use or appropriate the development impact fees collected*~~
10 ~~*from the applicant within the time limit established in subsections (B)(2) and (3)(1)). The refund*~~
11 ~~*application shall be made on a form provided by the county for such purposes]*~~

12 (b[e]) *Abandonment of development after initiation of construction.* An applicant who has
13 paid a development impact fee for a new development for which a building permit/zoning
14 certificate has been issued and pursuant to which construction has been initiated, but which
15 construction is abandoned before [prior to] completion and issuance of a certificate of occupancy
16 shall not be eligible for a refund unless the uncompleted building is completely demolished.

17 (c[d]) *Administrative fee.* A 2% administrative fee, [but] not to exceed \$500, shall be
18 deducted from the amount of any refund granted and shall be retained by the county to defray the
19 administrative expenses associated with the processing of a refund application.

20 (2) Except as provided in subsections (D)(1)(a) and (b[e]) hereof, refunds shall be made
21 only to the current owner of property on which the new development was proposed or occurred.

22 (3) Applications for a refund shall be made on a form provided by the county for such
23 purposes and shall include all information required in subsection[s] (D)(4[5]) ~~(6)~~ hereof, as
24 appropriate. Upon receipt of a complete application for a refund, the [County] Director ~~[of the~~
25 ~~Community Development Division, or designee,]~~ shall review the application and documentary
26 evidence submitted by the applicant as well as such other information and evidence as may be
27 deemed relevant and make a determination as to whether a refund is due. Refunds by direct
28 payment shall be made following an affirmative determination by the [County] Director ~~[of the~~
29 ~~Community Development Division, or designee].~~

30 (4) Applications for refunds due to abandonment of a new development before [prior to]
31 completion or due to expiration or revocation of a building permit/zoning certificate shall be
32 made on forms provided by the [County] Director ~~[of the Community Development Division]~~
33 and shall be made within 60 days following expiration or revocation of the building
34 permit/zoning certificate. The applicant shall submit:

35 (a) Evidence that the applicant is the property owner or the duly designated agent of the
36 property owner;

37 (b) The amount of the development impact fees paid by public facilities category and
38 receipts evidencing such payments; and

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Double underlining boldface indicates matter added by Amendment.

[[Double bracket]] boldface and strikethrough indicates matter deleted by Amendment.

AMENDED Bill No. 21-12

1 (c) Documentation evidencing the expiration or revocation of the building permit/zoning
2 certificate before [prior to] construction or approval of demolition of the structure pursuant to a
3 valid county- issued demolition permit.

4 (d) Failure to apply for a refund within 60 days following expiration or revocation of the
5 building permit/zoning certificate or demolition of the structure shall constitute a waiver of
6 entitlement to a refund. No interest shall be paid by the county in calculating the amount of the
7 refunds.

8 [(5) ~~Applications for refunds due to the failure of the county to appropriate development
9 impact fees collected from the applicant within the time limits established in subsection (B)(2)
10 hereof shall be made on forms provided by the county and shall be made within 1 year following
11 the expiration of such time limit. The applicant shall submit:~~

12 (a) ~~Evidence that the applicant is the property owner or the duly designated agent of the
13 property owner;~~

14 (b) ~~The amount of the development impact fees paid by public facility category and
15 receipts evidencing such payments; and~~

16 (e) ~~Description and documentation of the county's failure to appropriate development
17 impact fee funds for relevant public facilities.]~~

18 (5[6]) The county may, at its option, make refunds of development impact fees by direct
19 payment, by offsetting such refunds against other development impact fees due for the same
20 category of public facilities for new development on the same property, or by other means
21 subject to agreement with the property owner.

22 *****

23 **§ 1-22-7. EXEMPTIONS/WAIVERS.**

24 (A) *Filing of application.* Petitions for waivers from specific development impact fees shall
25 be filed with the county on forms provided by the county.

26 (B) *Effect of grant of exemption.* If an exemption from the application of the provisions of this
27 chapter is authorized by the terms of a specific impact fee ordinance, the county shall not be
28 required to provide any funds equal to the amount of any development impact fee which would
29 have been due without such exemption.

30 (C) *Effect of grant of waiver.* If the county grants a waiver in whole or in part of development
31 impact fees otherwise due, the amount of the development impact fees waived shall be provided
32 by the county from nondevelopment impact fee funds, and such funds shall be deposited to the
33 appropriate development impact fee account within a reasonable period of time consistent with
34 the applicable county capital improvements program.

35 Underlining indicates matter added to existing law.

36 [Single boldface brackets] indicates matter deleted from existing law.

37 *** - indicates existing law unaffected by bill.

38 Double underlining boldface indicates matter added by Amendment.

[[Double bracket]] boldface and strikethrough indicates matter deleted by Amendment.

AMENDED Bill No. 21-12

1 (D) *Development agreements.* Nothing herein shall be deemed to limit the county's authority
2 or ability to enter into development agreements with applicants for new development which may
3 provide for dedication of land, payments in lieu of development impact fees, or actual
4 infrastructure improvements. Such development agreements may allow offsets or credits against
5 development impact fees for contributions made or to be made in the future in cash, or by taxes
6 or assessments or dedication of land or by actual construction of all or part of a public facility by
7 the affected property owner.

8
9 (E) *Reserved.* ~~[Affordable housing impact fee waiver program. The county shall establish an
10 affordable housing impact fee waiver program. The county shall separately provide policies and
11 guidelines for this affordable housing impact fee waiver program. Waivers under this program
12 shall be limited to the funds the county appropriates for this program.]~~

13 (F) *Exemption for affordable housing program.*

14 (1) Residential development is exempt from the payment of a development impact fee if:

15 (a) The residential development is financed, in whole or part, by public funding that
16 requires mortgage restrictions or recorded covenants restricting the rental or sale of the housing
17 units to lower income residents in accordance with specific government program requirements or

18 (b) The residential development is developed by a nonprofit organization that:

19 1. Has been exempt from federal taxation under § 501(c)(3) of the Internal Revenue
20 Code for a period of at least 3 years; and

21 2. Requires the homebuyer to participate in the construction of the residential
22 development; and

23 (2) The initial purchaser of the residential development may not have an income greater
24 than 60% of the Frederick County area median income.

25 (3) Rental housing must be financed by public funding with mortgage restrictions that
26 include:

27 (a) A requirement that the residential units must be part of an affordable housing program
28 for at least ~~[25]~~40 years; and

29 (b) Each residential unit shall be occupied by a household with initial income no greater
30 than 60% of the Frederick County area median income.

31 (4) If the residential development fails to continue to satisfy the requirements for this
32 development impact fee exemption, the owner of the property shall pay the development
33 impact fee immediately.

34
35 **(5) FOR PROPERTIES SUBJECT TO AN AFFORDABLE HOUSING LAND TRUST
36 AGREEMENT, THE IMPACT FEE EXEMPTION WILL CONTINUE AS LONG AS
37 THE PROPERTY REMAINS SUBJECT TO AN AFFORDABLE HOUSING LAND
38 TRUST AGREEMENT BETWEEN THE FREDERICK COUNTY AFFORDABLE
39 HOUSING LAND TRUST LLC AND THE HOMEOWNER. IF THE PROPERTY
40 CEASES TO BE SUBJECT TO AN AFFORDABLE HOUSING LAND TRUST
41 AGREEMENT, THE HOMEOWNER SHALL PAY THE DEVELOPMENT IMPACT
42 FEE IMMEDIATELY.**

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Double underlining boldface indicates matter added by Amendment.

[[Double bracket]] boldface and strikethrough indicates matter deleted by Amendment.

AMENDED Bill No. 21-12

1
2 (G) *Impact fee waiver for farm lots.*

3 (1) *Definitions.* For the purposes of this subsection, the following terms shall have the
4 designated definitions:

5 **CHILD.** A person's offspring, whether natural or legally adopted.

6 **FARM.** A parcel of land not less than 25 acres in size on which an agricultural activity, as
7 defined in § [1-19-11.100](#) of the Zoning Ordinance, is being actively conducted as of the date of
8 application for the farm lot waiver.

9 **FARMER.** A person who owns and operates a farm.

10 **FARM LOT.** A lot which has been legally subdivided from a farm by a farmer.

11 **GRANDCHILD.** The offspring of a child, as defined herein, whether natural or legally
12 adopted.

13 (2) Impact fees collected under this chapter shall be waived for farm lots if the following
14 conditions are met at the time that the waiver is applied for:

15 (a) The farm lot must have been transferred directly from a farmer to the farmer's child or
16 grandchild; and

17 (b) The farmer's child or grandchild must show proof that he or she currently provides
18 support to the farm, whether by physical or administrative work, or by financial support.

19 (3) If the farmer's child or grandchild sells or otherwise transfers the farm lot (except by
20 reason of his or her death) within 5 years after the date of issuance of the building permit to
21 which the impact fee waiver has been applied, then the farmer's child or grandchild shall be
22 obligated to repay the total amount of the waived impact fees to the county.

23 (4) If the farmer's child or grandchild sells or otherwise transfers the farm lot more than 5
24 years after the date of issuance of the building permit to which the impact fee waiver has been
25 applied, then the obligation to repay the waived impact fees to the county shall not apply.

26 (5) The obligation to repay the waived impact fees to the county shall be memorialized by a
27 recorded lien on the farm lot, which shall, by its terms, expire 5 years after the date of issuance
28 of the building permit to which the impact fee waiver has been applied.

29
30 *****

31 ARTICLE II: PUBLIC SCHOOL DEVELOPMENT IMPACT FEE

32 *****

33 § 1-22-14. SENIOR HOUSING EXEMPTION.

34 (A) The development or construction of age- restricted adult or senior citizen housing shall be
35 exempt from payment of a public school development impact fee, provided that:

36 (1) All requests for exemption under this section shall be submitted to the **[Planning]**
37 Director; and

38 (2) All such housing shall contain a deed restriction recorded against the property, in form
39 satisfactory to the Frederick County Attorney, which deed restriction shall provide that:

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Double underlining boldface indicates matter added by Amendment.

[[Double bracket]] boldface and strikethrough indicates matter deleted by Amendment.

AMENDED Bill No. 21-12

(a) Such housing is restricted to occupancy by older persons, in compliance with the terms and provisions of the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3607;

(b) No person under the age of 18 years shall reside within any such housing unit; and

(c) The deed restriction shall provide that in the event that the above restrictions are ever modified or violated, the owner of the property at the time the restrictions are modified or violated shall pay to the county the then-current public school development impact fee.

(B) If public school development impact fees for age-restricted adult or senior citizen housing are paid before issuance of building permits, then these fees may be refunded if the following requirements are satisfied:

- (1) A notice of intent to seek a refund of the public school impact fees is submitted at the time that the fees are paid; and
- (2) All of the requirements listed above in § 1-22-14 (A) are completed and approved within 12 months of payment of the public school development impact fees.

(C) The county may adopt such administrative regulations and guidelines and provisions for enforcement as they deem appropriate to implement this section and ensure that any housing exempted from payment of the public school development impact fee under this section contains adequate age and occupancy restrictions.

* * * *

§ 1-22-16. CREDITS FOR LAND DEDICATION OR CONSTRUCTION OF PUBLIC SCHOOL FACILITIES.

(A) The county may provide credits against the development impact fees due from a new development for the value of: land dedication for construction of a public school facility; and actual construction of all or part of a public school facility.

(B) Credits will be available only for: (i) the dedication of land for a public school facility, or (ii) actual construction of public school facilities meeting or exceeding the demand generated by the new development for the specific facility; and only if the land dedication or construction is determined by the Director to be a reasonable substitute for the cost of public school facilities which are included in the particular development impact fee calculation methodology.

(C) The Director shall determine eligibility for, and the amount of, the credit available under this section. The Director may not approve a credit for land dedication or construction of public school facilities unless the particular public facility development impact fee fund has sufficient revenue to make the reimbursement without jeopardizing the continuity of the county's capital improvements program.

(D) The total amount of any impact fee credit under this section may not exceed the actual amount of the impact fees due, and credits may not be transferred to any other type of development impact fee due from the same applicant for other types of public facilities.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Double underlining boldface indicates matter added by Amendment.

[[Double bracket]] boldface and strikethrough indicates matter deleted by Amendment.

[[Delete bracketed text]] Substitute

1 (E) Impact Fee Credits for Public School Construction.

2 (1) An impact fee credit for construction of public school facilities may only be applied
3 to development impact fees imposed for the same level(s) of public school facilities constructed.

4 (2) Even if the value of the public school facility provided by construction exceeds the
5 total development impact fees due for that type of public school facility, the excess value may
6 not be transferred to development impact fees due from the applicant for other types of public
7 facilities or for other property being developed or to be developed by the applicant.

8 (F) Impact Fee Credits for Land Dedication.

9 (1) The County may approve impact fee credits for public school facility land dedication if the
10 applicant submits an impact fee credit application which: (a) specifies the location and
11 dimensions of the land which has been or will be dedicated for the public school facility; and (b)
12 identifies the applicant's development and specific lots that are eligible for the land donation
13 credit.

14 (2) To be eligible for this impact fee credit, land dedicated for public school facilities must:
15 (a) be subdivided as an outlot; (b) be of sufficient size, as determined by the Board of Education,
16 for the school type to be constructed; (c) comply with all applicable Board of Education Policies,
17 as amended; and (d) be formally accepted by the Board of Education.

18 **||(3) No credit shall be applied under this subsection (F) for public school development**
19 **impact fees paid prior to July 1, 2019.||**

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Double underlining boldface indicates matter added by Amendment.

[[Double bracket]] boldface and strikethrough indicates matter deleted by Amendment.

AMENDED Bill No. 21-12