



Bill No. 24-12
Concerning: Establishment of a Temporary
Residential Growth Moratorium Ordinance
Introduced: July 16, 2024
Revised: _____ Draft No. _____
Enacted: _____
Effective: _____
Expires: October 14, 2024
Frederick County Code, Chapter 1-26
Section(s) all

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council Member Steve McKay

AN ACT to: Create a new section in Frederick County Code that defines the conditions upon which a temporary residential growth moratorium may be declared, as well as the conditions upon which such moratorium would end.

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

By amending:

Frederick County Code, Chapter, 1-26 Section(s) all

Other: _____

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Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Existing law unaffected by bill.

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Data released by the U.S. Census Bureau show that Frederick County experienced the largest population growth of all jurisdictions in Maryland between July 1, 2020, and July 1, 2023. The population in the County jumped from 272,786 in July of 2020 to 293,391 in July 2023. This population growth has an immediate impact on the County's public school system.

Severe school overcrowding is projected in areas where residential construction and associated new student generation is outpacing the addition of needed school capacity and in some instances where alternative capacity through the addition of portable classrooms is impossible due to lack of space on the school property.

In Frederick County, 25 schools are projected to exceed 100% of State Rated Capacity in September 2024, with six of these schools exceeding 120% and two of these exceeding 150%. As residential construction continues to occur in the County, more and more schools will continue to exceed 120% of State Rate Capacity. Three schools in the New Market area are projected to reach or exceed 200% of State Rated Capacity within eight years, resulting primarily from additional students projected to come from approved new developments.

The funding required to construct, staff, and maintain the new schools needed to ensure that adequate public-school capacity is reasonably available concurrent with the construction of new homes places an unmanageable strain on the County's operating and capital budgets. It creates situations where the County and Frederick County Public Schools (FCPS) must make untenable decisions between supporting new growth versus replacement and modernization of existing older schools, often exacerbating existing inequities in the County's school system.

Over-crowded schools negatively impact the health, safety, welfare, and educational experience of Frederick County students and FCPS staff in myriad ways. Portable classrooms provide additional classroom space but create other challenges such as ensuring adequate security

and adequate supervision during class transitions. Portable structures are less safe during the type of severe weather events occurring more frequently in the County. Further, portables do not address the severe limitations in core areas (assembly halls, gymnasiums, cafeterias, and hallways) of over-crowded schools, often creating scheduling and safety challenges. Over-crowded schools often do not have enough specialized instructional capacity (e.g., for chemistry, biology, and the arts), forcing teachers to use sub-optimal spaces, and harming the students' educational experience.

A temporary moratorium maintains the status quo while facilitating informed County decision making by setting a reasonable timeframe to study and evaluate ways to address the public infrastructure deficiency triggering a moratorium.

For these reasons, the County Council of Frederick County, Maryland, finds it essential to ensure the health, safety, and welfare of the citizens of Frederick County to create a Residential Growth Moratorium Ordinance, which specifies the conditions upon which a temporary moratorium on new residential development may from time to time be declared, based on the public risks entailed by insufficient infrastructure to support such development.

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

Brad Young, President
County Council of Frederick County,
Maryland

§ 1-26. TEMPORARY RESIDENTIAL GROWTH MORATORIUM

ARTICLE I: IN GENERAL (§§ 1-26-1 – 1-26-8)

<u>1-26-1</u>	<u>Title</u>
<u>1-26-2</u>	<u>Authority</u>
<u>1-26-3</u>	<u>Jurisdiction</u>
<u>1-26-4</u>	<u>Intent</u>
<u>1-26-5</u>	<u>Definitions</u>
<u>1-26-6</u>	<u>Applicability</u>
<u>1-26-7</u>	<u>County Council Over-Ride</u>

§ 1-26-1. TITLE.

This chapter shall be known as the “Temporary Residential Growth Moratorium Ordinance of Frederick County, Maryland.”

§ 1-26-2. AUTHORITY.

This chapter is established in accordance with the provisions of Md. Code Ann., Land Use Article, § 7-103.

§ 1-26-3. JURISDICTION.

The provisions of this chapter shall apply to all unincorporated lands within the territorial limits of the county.

§ 1-26-4. INTENT.

(A) This chapter is adopted to ensure that new residential development will be built consistent with the Frederick County Comprehensive Plan (including but not limited to the Livable Frederick Master Plan) and the Capital Improvements Program, and to ensure that adequate public facilities and services are reasonably available concurrent with new development so that orderly development and growth can occur.

(B) Ensuring concurrent availability of public facilities with new development is essential to ensure the public health, safety and welfare of Frederick County residents. School enrollment projections generated by Frederick County Public Schools (FCPS) confirm that several Frederick County Public Schools at the elementary, middle, and high school levels will soon significantly exceed State Rated Capacity standards, resulting in severe overcrowding and risk to student health, safety, and welfare.

(C) Severe school overcrowding is projected in areas where residential construction and new student generation is outpacing the addition of needed school capacity and in some instances where alternative capacity through the addition of portable classrooms is impossible due to lack of space on the school property. This situation requires the County to enact legislation that will enable the imposition of a temporary building moratorium to allow time to study and prepare a plan to address public facility inadequacies.

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§ 1-26-5. DEFINITIONS.

The words or phrases used in this chapter shall have the meaning prescribed in the current County Code except as otherwise indicated herein:

MORATORIUM. A moratorium or other legislation adopted by the county preventing the recordation of plats or a hold on the issuance of residential building permits because of inadequate school, road, water or sewer capacity.

SCHOOL ATTENDANCE AREA. The geographic boundary established by FCPS that determines the attendance area for an individual school.

SCHOOL CONSTRUCTION FUNDING. Includes funding for the actual construction of a school, and does not include funding for feasibility studies, land acquisition, planning or design of a school.

STATE RATED CAPACITY. The maximum number of students, as determined by the state, that can be reasonably accommodated in a school facility without significantly hampering delivery of the given educational program.

§ 1-26-6. APPLICABILITY.

The County Council has determined that it is essential to ensure the health, safety and welfare of the residents of Frederick County that this chapter apply to all residential subdivisions, including any residential subdivision subject to a Development Rights And Responsibilities Agreement(s) executed under the terms of Chapter 1-25 of the Frederick County Code in accordance with Md. Code Ann., Land Use Article, § 7-304.

§ 1-26-7. COUNTY COUNCIL OVERRIDE.

(A) A Moratorium begins or ends when the criteria established in this chapter are met, without further County Council action.

(B) The County Council may override the initiation or termination of a Moratorium by a majority vote. Prior to taking action to override the initiation or termination of a Moratorium, the County Council shall first conduct a public hearing on the proposed override. Notice of the hearing shall be published in a newspaper of general circulation in the county once each week for 2 consecutive weeks, with the first such publication of notice appearing at least 14 days prior to the public hearing.

ARTICLE II: SCHOOL CAPACITY (§§ 1-26-8 – 1-26-11)

- 1-26-8. Exemptions.
- 1-26-9. Criteria for initiating a Moratorium
- 1-26-10. Moratorium study
- 1-26-11. Criteria for ending a Moratorium

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§ 1-26-8. EXEMPTIONS.

The following residential subdivisions are exempt from the terms of this Article:

(A) Residential subdivisions that received Preliminary Plan and APFO approval for no more than 50 dwelling units prior to the initiation of a Moratorium;

(B) Residential subdivisions approved for more than 50 dwelling units, prior to the initiation of a Moratorium, if 50 or fewer of the approved dwelling units have not received residential building permit approval;

(C) An age-restricted community as defined in Chapter 1-20 of the County Code;

(D) Any portion of a residential subdivision consisting of:

- (1) Affordable housing that meets the requirements of § 1-22-7 (F)(1) of the County Code;
- (2) Moderately-priced dwelling units that meet the requirements of Chapter 1-6A of the County Code; or
- (3) The portion deemed as affordable housing by the Frederick County Division of Housing; or

(E) Minor subdivisions as defined in Chapter 1-16 of the County Code.

§ 1-26-9. CRITERIA FOR INITIATING A MORATORIUM.

(A) A Moratorium on new residential subdivision plats shall be initiated by the Division of Planning and Permitting (“Division”) for all residential subdivisions within a School Attendance Area when the enrolled student attendance at the school subject to the Attendance Area exceeds 120% of state rated capacity for that school, based on a quarterly enrollment report published by FCPS.

(B) A Moratorium on new residential building permits shall be initiated by the Division for all residential subdivisions within a School Attendance Area when the enrolled student attendance at the school subject to the Attendance Area exceeds 175% of state rated capacity for that school, based on a quarterly enrollment report published by FCPS.

(C) A Moratorium pursuant to § 1-26-9 (A) shall not be initiated within the School Attendance Area if either of the following conditions are met:

- (1) New school capacity that is projected to reduce the enrolled student attendance below 120% of State Rated Capacity for the next five (5) years within the School Attendance Area, as reflected in the most recent FCPS Educational Facilities Master Plan (EFMP), has been:
 - a. Budgeted with construction funding within the first two years of the Frederick County Capital Improvement Program (CIP) and has been approved for future State funding by the Interagency Commission on School

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Construction's (IAC) award of local planning to FCPS for the project; or

b. Has been fully budgeted within prior years of the Frederick County CIP;
or

(2) A moratorium was initiated for the same School Attendance Area within the last two (2) years and was ended under the conditions specified in § 1-26-11.

(D) A Moratorium pursuant to § 1-26-9 (B) shall not be initiated within the School Attendance Area if either of the following conditions are met:

(1) New school capacity that is projected to reduce the enrolled student attendance below 175% of State Rated Capacity for the next five (5) years within the School Attendance Area, as reflected in the most recent FCPS EFMP, has been:

a. Budgeted with construction funding within the first two years of the Frederick County CIP and has been approved for future State funding by the IAC's award of local planning to FCPS for the project; or

b. Has been fully budgeted within prior years of the Frederick County CIP;
or

(2) A moratorium was initiated for the same School Attendance Area within the last two (2) years and was ended under the conditions specified in § 1-26-11.

(E) Notice of an impending Moratorium shall be published by the Division in a newspaper of general circulation in the county once each week for four (4) consecutive weeks, with the first such publication of notice appearing at least fourteen (14) days following the publication date of the quarterly enrollment report by FCPS which satisfied the criteria in subsections A or B of this section.

(F) The effective date of the moratorium, as published pursuant to subsection E, shall be no later than eight (8) weeks following the publication date of the quarterly enrollment report by FCPS which satisfied the criteria in subsections A or B of this section.

§ 1-26-10. MORATORIUM STUDY

(A) No later than ninety (90) days after a Moratorium takes effect, the County Executive must initiate a study of ways and means to bring enrolled student attendance within the affected School Attendance Area below 120% of state rated capacity for that school.

(B) This study must be completed within twelve (12) months of initiation, unless the study period is extended by the County Council for a reasonable period that is necessary to complete the study.

(C) Within ten (10) days of completion of the study, the County Executive must transmit the study findings and recommendations to the County Council.

§ 1-26-11. CRITERIA FOR ENDING A MORATORIUM.

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(A) A Moratorium on residential plat recordation, initiated under the conditions specified in § 1-26-9 (A), shall end when the enrolled student attendance for the school within the School Attendance Area within which the Moratorium was initiated, falls, or is projected to fall below 120% of State Rated Capacity, for any of the following reasons:

(1) New school capacity that is projected to reduce the enrolled student attendance below 120% of State Rated Capacity for the next five (5) years within the School Attendance Area, as reflected in the most recent FCPS EFMP, has been:

a. Budgeted with construction funding within the first two years of the Frederick County CIP and has been approved for future State funding by the IAC's award of local planning to FCPS for the project; or

b. Has been fully budgeted within prior years of the Frederick County CIP; or

(2) Student enrollment falls below 120% of State Rated Capacity for four consecutive quarterly enrollment reports.

(B) A Moratorium on residential building permits, initiated under the conditions specified in § 1-26-9 (B), shall end when the enrolled student attendance for the school within the School Attendance Area within which the Moratorium was initiated, falls, or is projected to fall below 175% of State Rated Capacity, for any of the following reasons:

(1) New school capacity that is projected to reduce the enrolled student attendance below 175% of State Rated Capacity for the next five (5) years within the School Attendance Area, as reflected in the most recent FCPS EFMP, has been:

a. Budgeted with construction funding within the first two years of the Frederick County CIP and has been approved for future State funding by the IAC's award of local planning to FCPS for the project; or

b. Has been fully budgeted within prior years of the Frederick County CIP; or

(2) Student enrollment falls below 175% of State Rated Capacity for four consecutive quarterly enrollment reports.

(C) The effective date for the ending of the Moratorium shall be the publication date of the FCPS quarterly enrollment reports or EFMP which satisfies the criteria defined in §1-26-11 (A) or (B).

(D) A Moratorium for a School Attendance Area shall not exceed twenty-four (24) months.

ARTICLE III: ROAD CAPACITY

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ARTICLE IV: WATER CAPACITY

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ARTICLE IV: SEWER CAPACITY

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