



# Establishing a Temporary Residential Growth Moratorium Ordinance

Council Member Steve McKay (District 2)



# What We Will Discuss

- Motivation – Our “Perfect Storm”
- Features of the Moratorium Bill
- Why it is Essential to Apply the Bill to Development in All Unincorporated Areas, including with DRRAs
- Why we CAN Apply the Bill to DRRA Developments
- A Word from the US Supreme Court
- Comments on the Administration Response



# Motivation

- Frederick County faces a “perfect storm” of school construction requirements over the next decade (and more) driven by:
  - Modernization and replacement of existing older schools
  - Municipal residential growth
  - County approved residential development from 2012-2014
- Replacement and modernization of older schools have often been delayed while the County addressed urgent new capacity needs
- The County has little control over municipal growth decisions

*A temporary moratorium + A LOT of money are the only levers the County can use to address the overcrowding challenges we face*



# School Overcrowding\* in Frederick County

## Schools Exceeding 100% SRC

Ballenger Creek ES (115%)  
Blue Heron ES (106%)  
Brunswick ES (109%)  
Deer Crossing ES (101%)  
Hillcrest ES (109%)  
Lincoln ES (100%)  
Middletown Primary (106%)  
Monocacy ES (101%)  
New Market ES (100%)  
Orchard Grove ES (106%)  
Parkway ES (108%)  
Sugarloaf ES (112%)  
Twin Ridge ES (100%)  
Valley ES (104%)  
Urbana MS (109%)  
Frederick HS (110%)  
Oakdale HS (113%)  
Urbana HS (104%)  
Walkersville HS (110%)

## Schools Exceeding 120% SRC

Kempton ES (120%)  
Tuscarora ES (123%)  
Whittier ES (121%)  
Yellow Springs (136%)

## Schools Exceeding 150% SRC

Green Valley ES (176%)  
Oakdale ES (174%)

**Gordon Mill APFO School Test**  
*Forecasts Extreme Overcrowding in the New Market Area by the 2030-2031 School Year*

Deer Crossing ES – 221% SRC  
Oakdale MS – 161% SRC  
Oakdale HS – 190% SRC

## Schools with ongoing non-municipal residential development

\* Based on FCPS September 2024 Enrollment Projections

Note 1: SRC = State Rated Capacity, a State-defined measure of a school's maximum enrollment capacity.

Note 2: Excludes Sabillasville (100%), Carroll Creek Montessori (102%) & Frederick Classical (100%)

Note 3: For some reason, the Administration rebuttal didn't represent the 9/2024 projected enrollment numbers



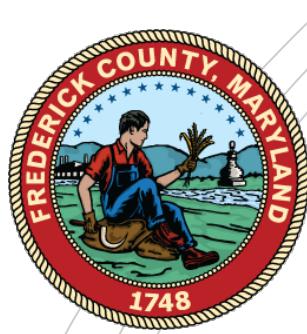
# This Bill is Predicated on Two Simple Concepts

- #1 – When a school is overcrowded and we have no new capacity coming in the next few years – then we ought to slow down home building near that school
- #2 – When a school is grossly overcrowded and we have no new capacity coming in the next few years – then we ought to stop home building near that school
- These measures provide us the time we need to fix the problem – rather than doing nothing while it worsens



# Applicability of the Ordinance

- Applies only to the unincorporated portions of Frederick County
  - This bill is NOT aimed at municipal growth
  - I'd rather try to lead by example than get into a municipal fight
- It is critical that this bill applies to all developments, including those protected by DRRAs
  - Outside of the municipalities, these are the developments pushing the overcrowding the most



# Two-Tier Moratorium

- Oriented around individual schools, their enrollment % of SRC, and their School Attendance Area
- If the school exceeds 120% SRC:
  - Moratorium on new residential plat recordation within that School Attendance Area
  - Lots on previously recorded plats would continue moving forward in development
- If the school exceeds 175% SRC:
  - Moratorium on new residential building permits within that School Attendance Area
  - Previously permitting homes would continue moving forward to build
- Moratorium would be triggered automatically and take effect after a defined time period following the publication of FCPS' quarterly enrollment report, including allowing for adequate public notice



# Defined Limitations on the Moratorium - 1

- County Council Override
  - Following a public hearing, the Council may override either the initiation or the ending of a moratorium
- Exemptions
  - Age-restricted developments
  - Low-income and MPDU developments
  - Small developments (<50 dwelling units) and minor subdivisions
  - Larger developments with only a small number (<50) of homes remaining



# Defined Limitations on the Moratorium - 2

## ■ Additional Limitations

- Moratorium would not be initiated if new school construction funds are budgeted in the first two years of the CIP and are projected to reduce the enrolled school attendance below 120% SRC
- Moratorium would not be initiated for a School Attendance Area that had been the subject of a prior moratorium in the last two years
- Maximum duration of a moratorium = 2 years



# Required County Action During a Moratorium

- It is imperative that the County uses the time afforded by a moratorium to make plans to fix the overcrowding
- Moratorium Study
  - Directs the County Executive to complete a study to address the overcrowding
  - Leaves the County Executive with complete discretion in the nature of the study and the manner of the solution



# Criteria for Ending a Moratorium

- Two sets of criteria for the two tiers, based on enrollment falling or projected to fall below 120% or 175%, based on
  - Creation of new school capacity
  - New school construction funding in the first two years of the CIP
  - Enrolled attendance falling for other reasons – e.g., redistricting, falling enrollment, or student attrition
- The moratorium hits the 2-year maximum duration



*A “Few” More Slides to Discuss Why We  
Need This Legislation*



# Determining the Financial Cost of Our “Perfect Storm” of School Construction Needs – 1

- We know that we need a LOT of money to address our school construction needs – but how much?
- Two primary documents address this question and neither has all the information
  - FY25-30 CIP – the budget we can afford, but ...
    - Only six years
    - Delays two schools and excludes three others found in the Educational Facilities Master Plan (EFMP) during the same time period
  - EFMP – the 10-year plan for the school system’s needs, but ...
    - Doesn’t include costs, other than year 1
    - Doesn’t include all approved developments in their school projections and in the 10-year capital plan
- I needed a new plan to estimate the total costs



# Determining the Financial Cost of Our “Perfect Storm” of School Construction Needs – 2

- I requested that FCPS provide a new version of the 10-year capital plan
- Includes additional capacity to address all approved growth in the Frederick and New Market areas
- NOT a formal budget request
  - This is a planning estimate for this legislation



# Determining the Financial Cost of Our “Perfect Storm” of School Construction Needs – 3

## CONSTRUCTION SCHEDULE

School Year	2023-2024	2024-2025	2025-2026	2026-2027	2027-2028	2028-2029	2029-2030	2030-2031	2031-2032	2032-2033	2033-2034
Fiscal Year	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
MAJOR PROJECTS											
Brunswick ES Replacement	Open										
Crestwood MS Addition		Open									
Green Valley ES Replacement	1		Open								
Valley ES Replacement	Redistricting		Open								
Yellow Springs ES Replacement		Potential Redistricting	2	Open							
Middletown Co-Located ES/MS					Open						
New Elementary School #41 (eastern Frederick area)	Land Acquisition	Redistricting	3		Open						
Brunswick HS Replacement						Open					
Liberty ES Replacement			Potential Redistricting	4	Open						
Walkersville MS Modernization						Open					
New Elementary School #42 (south Frederick area)					Redistricting	5		Open			
New Elementary School #43 (east/central Frederick area)					Redistricting	6		Open			
Middletown HS									Open		
New High School #11 Placeholder	Land Acquisition						7	Redistricting			Open
New Middle School #14 Placeholder					Redistricting		8			Open	
New Elementary School #44 (northern Frederick area)							9			Open	
Pre-K Expansion Needs					Open						

*Additional Capacity to Support Approved Growth*





# Determining the Financial Cost of Our “Perfect Storm” of School Construction Needs – 4

- Next, I estimated the total cost of these schools
- I took the FY25-FY30 CIP “as is” and then added the additional schools
- FCPS provided the current year cost of our schools
  - Elementary school – \$47,850,000
  - Middle school – \$68,500,000
  - High school – \$145,600,000
- Next, I projected the future cost using a 3% annual inflation factor and distributed the costs over the typical duration of each project
  - I reviewed this methodology with FCPS and County staff
  - The 3% inflation factor was seen as low – meaning the costs could be higher!



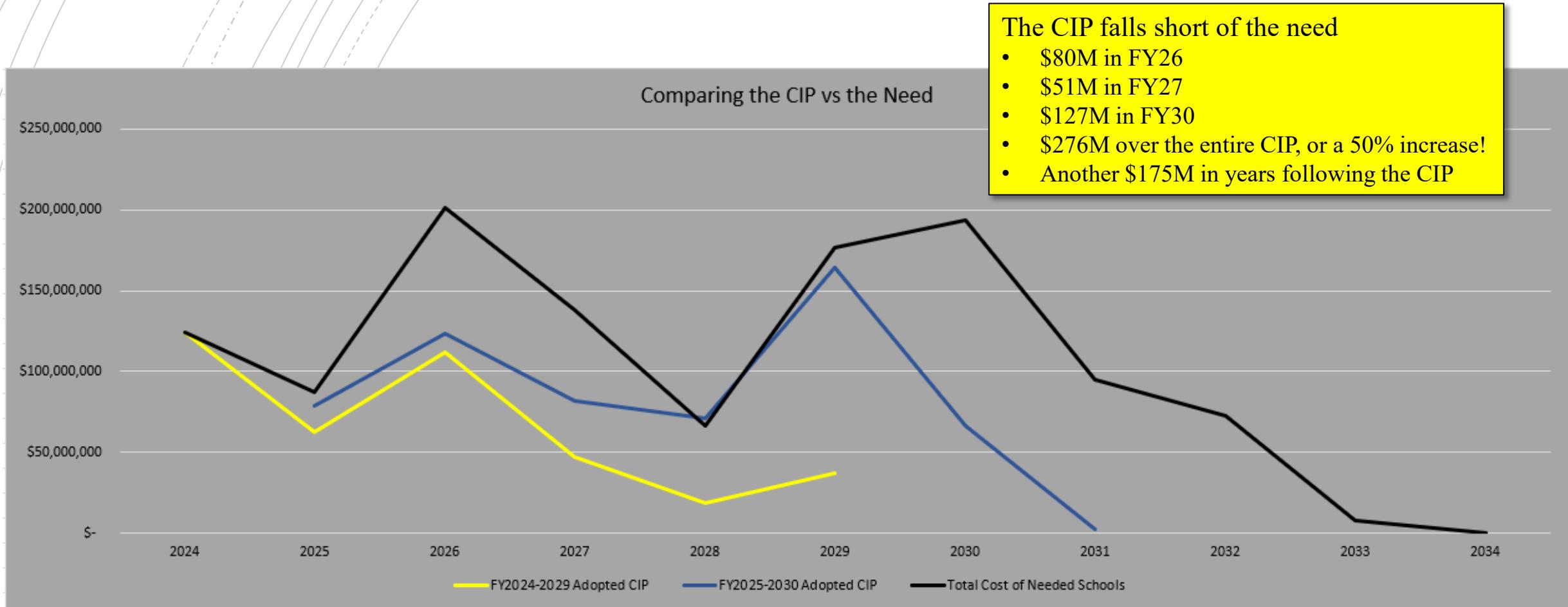
# Determining the Financial Cost of Our “Perfect Storm” of School Construction Needs – 5

School Project	Fiscal Year									
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
Brunswick ES Replacement	\$ 2,020,000									
Crestwood MS Replacement	\$ 11,121,191									
Green Valley ES Replacement	\$ 40,281,065									
Valley ES Replacement	\$ 43,001,819									
Yellow Springs ES Replacement	\$ 17,186,026	\$ 34,914,638	\$ 2,107,000							
Middletown Co-Located ES/MS	\$ 8,416,215	\$ 20,758,197	\$ 77,754,070	\$ 6,225,000						
New ES #41 (eastern Frederick area)		\$ -	\$ 19,766,044	\$ 38,807,120	\$ 2,200,000					
Brunswick HS Replacement (as needed)		\$ 13,390,000	\$ 62,062,650	\$ 55,856,385	\$ 6,206,265					
Brunswick HS Replacement				\$ 11,938,676	\$ 27,139,664	\$ 85,838,558	\$ 9,231,000			
Liberty ES Replacement					\$ 17,383,342	\$ 36,348,346	\$ 2,200,000			
Liberty ES Replacement (as needed)		\$ 16,422,469	\$ 30,615,921	\$ 2,000,000						
Walkersville MS Modernization			\$ 7,267,165	\$ 33,683,310	\$ 30,314,979	\$ 3,368,331				
New ES #42 (south Frederick area)						\$ 16,776,330	\$ 29,339,887	\$ 2,000,000		
New ES #43 (east/central Frederick area)						\$ 5,385,560	\$ 47,427,931	\$ 2,496,207		
Middletown HS Replacement						\$ 14,631,615	\$ 67,817,533	\$ 61,035,780	\$ 6,781,753	
New HS #11 Placeholder								\$ 17,313,758	\$ 80,249,270	\$ 72,224,343
New MS #14 Placeholder								\$ 32,161,161	\$ 3,573,462	\$ 8,024,927
New ES #44 (northern Frederick area)								\$ 48,850,769	\$ 2,571,093	
Pre-K Expansion Needs										
FCPS Bus Facility	\$ 2,200,000	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000						
Dedicated Reserve		\$ 21,346,438	\$ 22,447,156	\$ 23,636,856	\$ 24,380,361	\$ 25,135,772	\$ 25,902,236			
<b>TOTAL COST (as needed)</b>	<b>\$ 124,226,316</b>	<b>\$ 86,985,304</b>	<b>\$ 201,072,850</b>	<b>\$ 138,071,815</b>	<b>\$ 66,448,153</b>	<b>\$ 176,671,875</b>	<b>\$ 193,397,562</b>	<b>\$ 95,175,578</b>	<b>\$ 72,224,343</b>	<b>\$ 8,024,927</b>
<b>FY2024-2029 Adopted CIP</b>	<b>\$ 124,226,316</b>	<b>\$ 62,345,354</b>	<b>\$ 111,912,222</b>	<b>\$ 46,740,129</b>	<b>\$ 18,776,330</b>	<b>\$ 37,397,887</b>				
<b>FY2025-2030 Adopted CIP</b>		<b>\$ 78,519,273</b>	<b>\$ 123,574,270</b>	<b>\$ 82,107,652</b>	<b>\$ 71,103,367</b>	<b>\$ 164,099,006</b>	<b>\$ 66,673,123</b>			

- “As needed” refers to the timing in the EFMP
- Highlights (in red) added new capacity
- Includes the new Dedicated Reserve
- Includes the FY24 and FY25 CIPs



# Determining the Financial Cost of Our “Perfect Storm” of School Construction Needs – 6

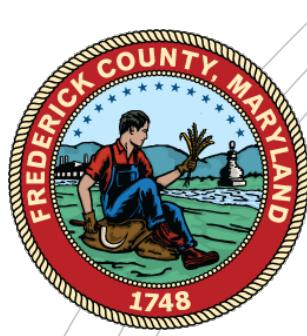




# Determining the Financial Cost of Our “Perfect Storm” of School Construction Needs – 7

- The capital budget requires another \$276M over the next six years, or \$451M over the next 10 years to meet the need
- Capital costs are only one part of the issue – we also need to staff and maintain the schools
- The County has consistently under-funded the FCPS/BOE budget – i.e., we don’t meet the current operational needs

*We cannot afford to build, staff, and maintain all the schools that we need to keep up with our projected growth*



# The Human Dimension of School Overcrowding – 1

- Overcrowded schools impact the health, safety, and welfare of our children
- The answer is NOT more portables – in fact, portables can mask systemic problems at these schools
- Input from FCPS on the less obvious, but very impactful challenges at overcrowded schools



# The Human Dimension of School Overcrowding – 2

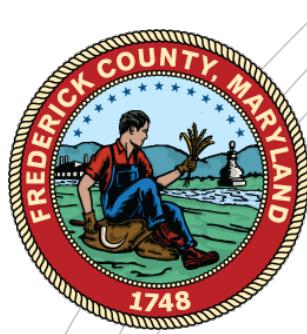
- Challenges Created by Portables – security, supervision during class transitions and accessing the main building, greater risks during the more frequent extreme weather conditions.
- Arrival and Departure Challenges – more vehicle, car, and pedestrian traffic than designed. Can lead to bad parent behavior – e.g., dropping off on main roads.
- Limited Core Areas – gyms, cafeterias, kitchen, restrooms, auditoriums, assembly space.



# The Human Dimension of School Overcrowding – 3

- Limited Specialty Instructional Spaces – classes are taught in spaces that they aren't designed for and harms the children's educational experience.
- Systemic Challenges – challenges balancing class sizes, no space for additional course offerings, scheduling complications, challenges with lunch scheduling given limited kitchen and cafeteria space – can mean lunch as early as 10:40am, and as late as 1:35pm.

*Myriad fundamental challenges that negatively impact the children's educational experience!*



# DRRAs are Not Frozen in Time

- Development Rights and Responsibilities Agreement (DRRA) freeze the applicable regulations at the time of signature – but they are still not frozen in time
- Each agreement acknowledges the County's authority to apply new regulations – as long as it is deemed “essential to ensure the health, safety, welfare of County residents”

## 8.1 *Effect of Agreement.*

A. Except as otherwise provided in Section 2.3 herein, the local laws, rules, regulations and policies governing the use, density or intensity of the Subject Properties, including but not limited to those governing development, subdivision, growth management, impact fee laws, water, sewer, stormwater management, environmental protection, land planning and design, adequate public facilities laws and architecture (hereafter collectively the “Development Laws”), shall be the laws, rules, regulations and policies, if any, in force on the Effective Date of the Agreement.

B. If the BOCC determines that compliance with Development Laws enacted or adopted after the Effective Date of this Agreement is essential to ensure the health, safety or welfare of residents of all or part of Frederick County, the BOCC may impose the change in laws, rules, regulations and policies and the effect thereof upon the Subject Properties.



# DRRAs Accept the Possibility of a Moratorium

- Not only do DRRAs accept that a moratorium may occur – they document how the impact of a moratorium on the development agreement will be mitigated
  - Extend the duration of the DRRA
  - Accounts for any phasing of lots or in the provision of infrastructure or payments

8.5 Moratorium. In the event that a “moratorium” (as hereinafter defined) is declared or imposed, then any lot recordation and the Developer’s rights to construct residential units on the lots or on the Property pursuant to any Development Approval for any section of the Project shall be extended for one (1) additional day for each day during which such moratorium exists, and the Project shall not be subject to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in construction, or issuance of zoning certificates/building permits as a result of the moratorium. Further, in the event that a moratorium is declared or imposed, then any deadline concerning the Developer’s obligation to construct, install, fund or post financial guarantees for the infrastructure improvements required pursuant to any Development Approval for the Project shall be extended for one (1) additional day for each day during which such moratorium exists, and the Project shall not be subjected to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in construction, or issuance of zoning certificates/building permits as a result of the moratorium. The term “moratorium” shall mean the implementation or declaration by the United States Government, State of Maryland, Frederick County, and/or any agency, department, division and/or branch thereof for purposes of a limitation, prohibition, restriction and/or phasing upon the review, recording, development and construction upon lots in the Project as intended by Developer, or a de facto moratorium imposed by any applicable governmental authority which has the effect of denying the Developer the ability to record lots or obtain permits for the Project pursuant to any Development Approval. Nothing in this Agreement shall be interpreted as exempting Developer from compliance with laws, regulations, and policies of the County or the State, including, without limitation, those of the Maryland Department of the Environment or the Frederick County Division of Utilities and Solid Waste Management concerning the allocation of water and sewer and related matters.



# A Few Words from the US Supreme Court

- While preparing this legislation, identified a number of moratorium examples in Maryland, but I really want to share this Supreme Court case
- 2002 – Tahoe-Sierra Preservation Council, et al, vs Tahoe Regional Planning Agency (TRPA)
  - Court upheld two separate moratoria instituted by TRPA totaling 32 months
- Couple of key concepts
  - A temporary moratorium is not a taking: *“A permanent deprivation of all use is a taking of the parcel as a whole, but a temporary restriction causing diminution in value is not, for the property will recover value when the prohibition is lifted.”*
  - Moratoria have a role in careful and judicious land-use planning: *“Moratoria are an essential tool of successful development. The interest in informed decision making counsels against adopting a per se rule that would treat such interim measures as takings regardless of the planners’ good faith, the landowners’ reasonable expectations, or the moratorium’s actual impact on property values.”*



# Comments on the Administration Response – 1

- Page 1, para 3: the Administration seems to portray that they have the overcrowding issue solved – they don't
- Page 2, para 3: the Administration seems to be arguing that we need the new growth to pay for the schools –reflects a fundamentally flawed argument that new residential growth “pays for itself”
- Page 2, para 4: the Administration criticizes that the bill doesn't include the municipalities – correct, let's take this one step at a time. Also the Administration notes that “there is no moratorium on existing housing...” ...?



# Comments on the Administration Response – 2

- Page 3, para 1: documents various Staff burdens and argues that it would require additional staff positions in DPP and Budget – many of the tasks identified would appear to be current parts of their jobs ...
- Page 3, para 2: notes the impact of the moratorium advertisement – this comment reflects an older version, but also inflates the advertising cost; either way, I found it trivial
- Page 3, para 3: notes the impact on Legal staff – correct, but we also have insurance that pays much of our legal expenses (e.g., the continued defense of trying to hide emails and not pay a successful litigant)



# Comments on the Administration Response – 3

- Page 3, para 4: documents the financial impacts on developers, local businesses, and prospective home buyers
  - I acknowledge the legitimacy of the impact on prospective home buyers from a moratorium on building permits. Thought long and hard on this but decided that 175% SRC is just too high to continue building.
  - As for the impact on the “greater Frederick County economy” – I’m prioritizing the students
- Page 3, para 5: cites the “non-interference clause”
  - The act of legislating always carries the potential to create, change, or eliminate tasking for County staff, including the County Executive. This isn’t “interference” – it is inherent to the legislative process
  - For example: Council approval of a zoning request initiates countless Staff actions, Council creation of a new commission can compel the County Executive to nominate people to that commission



# Comments on the Administration Response – 4

- Page 4, para 1: argues that many of the solutions to overcrowding are outside of the County's purview – this is true! The County Executive must work with FCPS and the BOE to solve overcrowding. If this isn't already occurring, why not?!
- Page 4, para 2: notes the uncertainty of including a school project in the first two years of the CIP
  - Not clear if the Administration commented on the current version of the bill, which specifies "construction funding" in the first two years
  - The Administration is correct that the actual capacity will take some time after that. If the Administration would rather that the moratorium hold until the school opens, then I think that will add a lot of complications and much more legal risk