

Bill No. 16-09

Concerning: Chapter 1-20 (Adequate Public Facilities) of the Frederick County Code

Revised: \_\_\_\_\_ Draft No. \_\_\_\_\_

Introduced: July 5, 2016

Expires: \_\_\_\_\_

Enacted: August 30, 2016

Executive: Jan H. Gardner Date Rec'd 9/6/16

Approved: ✓ Date: 9/7/16

Vetoed: \_\_\_\_\_ Date: \_\_\_\_\_

Effective: October 29, 2016

Frederick County Code, Chapter 1-20, Section(s) 11, 62

Other: \_\_\_\_\_

## COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council President Bud Otis on behalf of County Executive Jan Gardner

**AN ACT** to: amend Chapter 1-20 (Adequate Public Facilities) of the Frederick County Code to reinstate and maintain certain portions of §1-20-62 for developments approved to use the School Construction Fee Option prior to July 20, 2016; to make clarifying changes to §1-20-11 (Developer Option); and to provide for a retroactive effective date in order to avoid a gap in the ability of developments that have received approval of this option to meet their School Construction Fee obligations.

By amending:

Frederick County Code, Chapter 1-20, Section(s) 11, 62

Other: \_\_\_\_\_

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**Underlining**

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Double underlining

[[Double boldface brackets]]

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*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

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## BACKGROUND

Ordinance No. 11-18-584 created the School Construction Fee Option for meeting Adequate Public Facilities Ordinance (“APFO”) requirements, which was codified as §1-20-62 of the Frederick County Code. That Ordinance states that “the amendments adopted in this Ordinance shall ... expire and be of no further force and effect at midnight on July 20, 2016.”

As of May 24, 2016, more than 40 developments received approval to use the School Construction Fee Option, documented by a fully executed APFO Letter of Understanding (“LOU”), or a Development Rights and Responsibilities Agreement (“DRRA”). Most of these APFO LOUs and DRRA will continue to be valid for various time periods after the School Construction Fee Option expires on July 20, 2016.

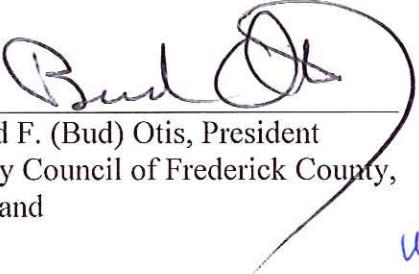
Therefore, the County Council of Frederick County, Maryland, finds it necessary and appropriate to amend Chapter 1-20 (Adequate Public Facilities) of the Frederick County Code to reinstate and maintain certain portions of §1-20-62 for developments approved to use the School Construction Fee Option prior to July 20, 2016. Clarifying changes to §1-20-11 (Developer Option) are also proposed to recognize the expiration of the school construction fee option for future developments.

In addition, the County Council also finds it necessary and appropriate to provide for a retroactive effective date in order to avoid a gap in the ability of developments that have received approval of this option to meet their School Construction Fee obligations.

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, and

BE IT FURTHER ENACTED, that this Bill shall be construed to apply retroactively to and including July 20, 2016, in order to avoid a gap in the ability to meet School Construction Fee obligations under §1-20-62, and

BE IT FURTHER ENACTED, that the effective date of this Bill shall be October 29, 2016.

  
Harold F. (Bud) Otis, President  
County Council of Frederick County,  
Maryland

W8/30/16

**§ 1-20-11. DEVELOPER OPTION.**

[Except as provided in § 1-20-62 (K), a] A developer shall have the option to: (1) provide the public facility improvements necessary to support the proposed development and to ensure adequacy of public facilities set forth in this chapter; or (2) [exercise the school construction fee option described in § 1-20-62; or (3)] wait for public facilities to become adequate by improvements made pursuant to the CIP or other sources. A county, state or municipal agency may participate in the improvements.

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

(A) [A developer may elect to satisfy the school adequacy standards of § 1-20-61 by the payment to Frederick County of school construction fees as described in subsection (E) below.] 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 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) [The developer may elect to satisfy the school adequacy standard of § 1-20-61 by any combination of: (1) constructing the required public school facilities; or (2) waiting for the public school facilities to become adequate; or (3) paying the school construction fee.] RESERVED

(D) [If the developer elects the school construction fee option, t] 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 determined by using the chart below. The school construction fees shall be calculated by multiplying the appropriate school construction fee component(s) (based on the proposed development’s failure to meet public school adequacy at the elementary, middle, or high school level) by the number of residential units of each type.] SHALL BE LISTED ON THE DEPARTMENT OF PERMITS AND INSPECTIONS FEE SCHEDULE.

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<b>School Construction Fees</b>			
<b>Housing Unit Type</b>	<b>Failure at Elementary School Level</b>	<b>Failure at Middle School Level</b>	<b>Failure at High School Level</b>
Single-Family Detached	\$3,977	\$1,752	\$3,721
Townhouse/Duplex	\$4,981	\$1,533	\$2,894
Other Residential	\$2,181	\$594	\$1,148

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

(H) *School Construction Fee Account.*

- (1) A School Construction Fee Account is hereby established.
- (2) All school construction fees that the county collects shall be deposited into the School Construction Fee Account.
- (3) The School Construction Fee Account shall be interest bearing.
- (4) All interest earned on monies deposited to this account shall be credited to and shall be considered funds of the account.
- (5) The county shall establish and implement necessary accounting controls to ensure that the school construction fee funds are properly deposited, accounted for, and appropriated in accordance with this chapter, and any other applicable legal requirements.
- (6) The county may appropriate funds from the School Construction Fee Account for:
  - (a) Public school facility expenditures as defined in § 1-20-5(B), and

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

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

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

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

~~[(K) The developer shall not have the option to satisfy the school adequacy provisions of this chapter by payment of the school construction fee if any school serving or proposed to serve the proposed development exceeds 120% of state rated capacity, after taking the following factors into account:~~

- ~~— (1) The current enrollment of the APFO test date; and~~
- ~~— (2) Actual capacity expected to be provided by new schools and school additions scheduled for construction in the first 2 years of the CIP.]~~

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