



FREDERICK COUNTY GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE

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TO: Council Member Steve McKay

THROUGH: County Executive Jessica Fitzwater

FROM: Victoria Venable, Director of Government Relations and Strategic Partnership

DATE: June 4, 2024

SUBJECT: Proposed Ordinance to Establish a Residential Growth Moratorium

ISSUE: Administrative Feedback on Proposed Ordinance to establish a residential growth moratorium.

BACKGROUND:

The proposed ordinance establishes a new section in the Frederick County Code that defines the conditions upon which a residential growth moratorium may be declared. The stated intention of the residential growth moratorium is to address overcrowding in Frederick County Public Schools. The application of this ordinance depends on the determination that a moratorium is essential to ensure the health, safety, and welfare of the residents of Frederick County.

The concern for overcrowding in Frederick County Public Schools is legitimate and well-founded. Currently, Frederick County Public Schools' enrollment is the fastest growing in the State of Maryland. It is a priority of the County Executive to address this concern and the Administration is actively exploring opportunities to expedite the design and construction of new capacity in the areas of the County that are facing the most significant growth.

This proposed ordinance uses 120% capacity or higher as the trigger for a residential growth moratorium. Currently, FCPS has four (4) schools over 120% capacity and the County and Board of Education have identified solutions for each of these schools. Green Valley Elementary School is currently under construction, having broken ground earlier this month. The Yellow Springs Elementary School replacement is currently under design and will be breaking ground in FY25. A site for Elementary School #41 has been approved by the Board of Education. This new school will provide over 800 seats of additional capacity adjacent to Oakdale Elementary School, with design funding included in the Capital Improvement Plan (CIP) for FY26. Finally, the Board of Education owns a school site in the vicinity of Tuscarora Elementary School that is expected to address its overcrowding. That school site will become either School #42 or #43, depending on which is needed sooner.

As exemplified by the FCPS Educational Facilities Master Plan (EFMP) and reflected in the FY2025-30 capital budget and CIP, there is an extensive plan for addressing school capacity issues in Frederick County. The plan is updated annually, by the Board of Education, and approved by both branches of Frederick County Government through the annual budget and CIP planning process. Executing the CIP for new school capacity relies on steady revenue, which currently includes impact fees, school mitigation fees and cost-sharing with the State.

ADMINISTRATION POSITION:

After review of the proposed ordinance and based on input from relevant staff, the Administration has several key concerns with the proposed language.

Ineffective Solution

A primary concern with the proposed ordinance is that a county moratorium designed to affect the timing of plat recordation or the issuance of building permits will consequently affect the timing of solutions to remedy issues of inadequate school capacity. The County has two primary sources of revenue for additional school capacity, impact fees and school mitigation fees. The County collects school mitigation fees primarily when plats are recorded and impact fees when building permits are issued. If enacted, a moratorium would halt or delay the collection of these fees. A delay or reduction in this dedicated revenue for new capacity will only further delay the school construction which could mitigate or rectify the capacity concerns at hand.

Additionally, the proposed ordinance will only apply in unincorporated areas of Frederick County. Development within municipal boundaries would not be subject to this ordinance. Many of the schools that are currently facing overcrowding over 120% are in or near growing municipalities. It is unlikely that halting residential growth within the unincorporated areas of the County will solve the capacity issues in schools. If a moratorium is enacted and plat recordation or the issuance of building permits is delayed but a portion of the school's enrollment resides in a growing neighborhood located in an adjacent municipal boundary that feeds into the same school, the school's enrollment will continue to increase, even with a moratorium. Plus, a moratorium would only apply to new residential housing, there is no moratorium on existing housing when enrollments change over time as students age in and out of the school system.

Financial Burden

Based on initial review, the administration expects the implementation of this proposed ordinance to place a significant financial burden on Frederick County Government due to increased demand on staff time, lost revenue, legal challenges to initiated moratoriums, and required public notices.

To ensure accurate implementation of this bill, staff would be required to take on a significant number of additional duties. To accurately identify when a moratorium would be required, staff

would need to monitor and verify the FCPS quarterly enrollment reports¹, map proposed new residential subdivision plats and building permits against school attendance areas, factor in exempted residential subdivisions, review the Frederick County Capital Improvement Program and determine the impact of each CIP project on projected enrolled student attendance for the next five years, and track all previous moratoriums. The amount of staff time that this would entail would require additional positions in the Division of Planning and Permitting and the Budget Office.

When an impending moratorium is identified, a public notice must be published each week for 4 consecutive weeks. While the proposed language does not specify which entity is responsible for posting those notices, we estimate that this would cost the County between \$4,000 and \$6,000 per moratorium. Once a moratorium is established, the required study would mandate additional staff time to be dedicated.

Finally, based on feedback from the Office of the County Attorney, a legal challenge to this ordinance and any initiated moratoriums is inevitable. This will burden our internal legal representatives as well as require additional outside counsel, resulting in significant costs to Frederick County Government and taxpayers.

A moratorium that impacts the timing for issuing building permits will likely directly impact residents, who likely have purchased a lot and completed other financial and contractual arrangements with a home builder before applying for a building permit. If enacted, a moratorium could last up to 24 months. Residents and several businesses could face significant financial impacts due to a delay in building permits, including but not limited to higher costs, supply chain fluctuations, other housing contracts/contingencies, legal costs, and perhaps the most significant cost being the stress and uncertainty created by a moratorium with no definitive start or end date. Advertising for a proposed moratorium, even for 4 weeks, may not provide enough time, for residents, businesses, realtors, sellers, contractors, sub-contractors, and others who may be impacted by a moratorium, to make alternative financial and contractual arrangements and alternative living arrangements. While the greater Frederick County economy could be significantly impacted by a moratorium or multiple simultaneously occurring moratoriums, the exact dollar impact would be extremely difficult to calculate.

Decisions Outside the Purview of the County Council

In several sections, this ordinance provides direction to entities outside the purview of the County Council. First, the ordinance establishes the County Council's ability to override the initiation or termination of a moratorium. However, this Council action would require the Division of Planning and Permitting staff to take subsequent actions and per Frederick County Charter Article 2, Section

¹ Enrollment is extensively validated by the school system for the September 30th official annual enrollment count. The other remaining quarterly reports are based on a date and point in time and not validated to the same degree.

212, the County Council is prohibited from giving direction to Executive Branch staff.

Additionally, many of the factors that contribute to school capacity challenges, as well as many of the viable solutions, are outside the purview of the County Council, and even Frederick County Government. For example, a feasible path to alternative capacity is redistricting the school attendance area; however, this is a decision under the purview of the Board of Education, not County Government. Likewise, decisions about adding portables, determining the priority order of school construction projects, establishing school attendance boundaries, redistricting, grade level configurations, and other educational programmatic decisions that impact school enrollment and capacity are solely the responsibility of the Board of Education and not under the control of Frederick County Government.

Furthermore, inclusion within the first two years of the Frederick County Capital Improvement Program does not guarantee the project will be underway within that timeframe. While currently an elementary school project could be completed in approximately two years, a middle or high school project needs much more time, typically 4-5 years. Additionally, school construction timelines are heavily dependent on state planning approvals and participation in cost sharing, which cannot be directed by Frederick County Government.

Considering the many potential consequences and negative impacts of this ordinance, as well as the concern that halting residential growth in this manner will not effectively address school capacity concerns, the administration does not support this proposed ordinance.