

Bill No. 20-16  
Concerning: Use of the School Construction Fee  
Option in Certain Circumstances to Encourage  
Completion of Construction of that Development  
Introduced: September 29, 2020  
Revised: \_\_\_\_\_ Draft No. \_\_\_\_\_  
Enacted: December 15, 2020  
Effective: February 13, 2021  
Expires: December 28, 2020  
Frederick County Code, Chapter 1-20  
Section(s) 62

**COUNTY COUNCIL**  
**FOR FREDERICK COUNTY, MARYLAND**

By: Council Member Steve McKay on behalf of County Executive Jan Gardner

**AN ACT** to: Encourage completion of approved residential developments by allowing them to use the school construction fee option to pass APFO if certain requirements are met.

Executive: Jan H Gardner Date Received: Dec. 22, 2020  
Approved: ✓ Date: 1/2/2021  
Vetoed: \_\_\_\_\_ Date: \_\_\_\_\_

By amending:

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

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

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law.</i>
[Single boldface brackets]	<i>Deleted from existing law.</i>
* * *	<i>Existing law unaffected by bill.</i>

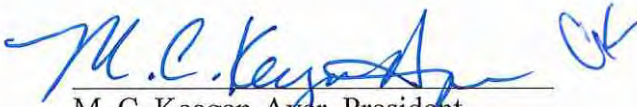
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3 The County Council of Frederick County, Maryland, finds it necessary and appropriate to  
4 amend the Frederick County Code to encourage complete construction of residential  
5 developments. This bill allows certain residential developments - those that were approved to use  
6 the school construction fee option prior to July 20, 2016, by a fully executed APFO Letter of  
7 Understanding which subsequently expired - to use the school construction fee option to pass  
8 APFO if the specific requirements in this bill are met.

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

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

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

(A) 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 (DRRA) 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) [Reserved] If a development has not entered into a DRRA with the county but was approved to use the school construction fee option prior to July 20, 2016 by a fully executed APFO Letter of Understanding, and if that APFO Letter of Understanding has expired, the development may apply for APFO re-testing and mitigate school capacity by using the school construction fee option, provided that all of the following requirements are met as of the APFO Test Date:

- (1) The total size of the development is equal to or less than 60 dwelling units;
- (2) More than 50% of the dwelling units in the development are built out and have certificates of occupancy;
- (3) The total number of projected students upon re-testing does not exceed 10, including all school levels;
- (4) No school serving or proposed to serve the development exceeds 120% of State Rated Capacity, taking into account actual capacity expected to be provided by new schools and school additions scheduled for construction in the first 2 years of the CIP;
- (5) All public roads in the development have been built to county standards and accepted by the county for public maintenance; and
- (6) All unplatted lots remaining in the development must be included in the APFO re-testing in accordance with this subsection. A development may not submit piecemeal applications for re-testing portions of an uncompleted development.

(D) 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 listed on the Department of Permits and Inspections fee schedule.

(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

Underlining indicates matter added to existing law.  
[Single boldface brackets] *indicates matter deleted from existing law.*  
\*\*\* - *indicates existing law unaffected by bill.*  
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1 the State of Maryland School Construction Cost Index. The proposed annual adjustment will not  
2 take effect unless the County Council enacts a bill adopting it.

3 (H) *School Construction Fee Account.*

4 (1) A School Construction Fee Account is hereby established.

5 (2) All school construction fees that the county collects shall be deposited into the School  
6 Construction Fee Account.

7 (3) The School Construction Fee Account shall be interest bearing.

8 (4) All interest earned on monies deposited to this account shall be credited to and shall be  
9 considered funds of the account.

10 (5) The county shall establish and implement necessary accounting controls to ensure that the  
11 school construction fee funds are properly deposited, accounted for, and appropriated in  
12 accordance with this chapter, and any other applicable legal requirements.

13 (6) The county may appropriate funds from the School Construction Fee Account for:

14 (a) Public school facility expenditures as defined in § 1-20-5(B), and

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

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

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

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

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