

Legislative Issue: *Research legislative authority for local APFO development wait times changes, including other jurisdictions that put restraints on developments moving forward unless adequate capacity or mitigation is provided.*

HCPSS Analysis: In 2018 the Howard County Council adopted amendments to the Adequate Public Facilities Ordinance (APFO) that included a new schools test. The current wait time for a residential development to move forward when failing the schools test under APFO is four years.

Subsequently, in 2019, Council Member Liz Walsh proposed CB17-2019 that would have extended this wait to seven years. After several months of deliberation, that bill failed, along with a reintroduction under CB1-2020 in January of the following year. During this same timeframe, the Council passed CB42-2019 to increase the school facility surcharge for residential developers and CR84-2020 to increase the County's transfer tax rate, of which 25% of any increase would be distributed to HCPSS capital projects.

In support of the local extended wait time bills above, HCPSS public testimony noted that the current four-year APFO wait time has not been sufficient to enable the school system to plan, develop, finance, and build additional infrastructure. The typical high school design to build time, for instance, is five years. In planning for capital needs, the Capital Budget sets an expectation with the projects listed that attempt to capitalize on available funding. There is limited opportunity within the current framework to insert new projects on a yearly basis based on new developments. Moreover, due to years of underfunded capital and deferred maintenance budgets, HCPSS capacity has not kept pace with the exponential growth in student populations in Howard County. In order for the school system to provide seats for our students, there needs to be continued commitment to:

1. Land acquisition,
2. Capital funding, and
3. Adequate time to build capital infrastructure.

Through a review of other local jurisdictions ordinances in 2019, HCPSS staff found that both Anne Arundel Code Sec. 17-5-503 and Calvert County Zoning Ordinance Sec. 7-1.05 included a wait period of six years related to adequate school capacity – two years beyond the current four years in Howard County. Calvert County also indicates a project can receive final approval if the developer provides improvements to render schools adequate. In 2020 [Montgomery County replaced an existing moratorium](#) on closed school areas with a three-tiered Utilization Premium Payment. The fee is mandatory and is based on a system that sets a fee dependent on the number of students the development will provide and anticipated overutilization. Other counties provide options for a developer to present mitigation strategies that are approved by the local board of education or county governing body.

Every ten years, Howard County updates its General Plan to guide land use decisions, with the next version expected in late spring 2023. Following the Plan's adoption, Sec. 16.1100 (b)(3)(iv) of the Howard County Code requires an Adequate Public Facilities Act Review Committee to be convened within one year to submit a report with recommendations on the Adequate Public Facilities Act to the County Executive and the County Council. The Committee includes representation of the school system and Board, and could likely revisit aspects of the development wait times.

RECOMMENDED BY HCPSS STAFF: *In order to maintain expected levels of service by the school system, APFO should work as intended to allow public facilities sufficient time and financing to have commensurate capital infrastructure growth to meet population needs. Staff recommends this topic be included as a legislative priority, seeking Howard County Delegation authorization if needed and Howard County Council support for an amendment to APFO to extend developer wait times to five or more years, along with the opportunity for developers to mitigate their impact by contributing financially to a capacity solution. In cases where capacity is beyond a predetermined threshold that will require new construction, a requirement for land acquisition may also be warranted.*

RECOMMENDED BY LEGISLATIVE COMMITTEE:

Committee Comments: