

ADEQUATE PUBLIC FACILITIES ORDINANCE (APFO)

1978 Article 66B, 10.01 Annotated Code of Maryland enabled municipalities and non-charter counties to adopt adequate public facilities ordinances including: Water, Sewer, Schools, Roads, Police, Fire and Emergency Services, Parks and Recreation Facilities, and Solid Waste.

1995 Maryland Department of Planning “Managing Maryland’s Growth Adequate Public Facilities Ordinances”
<https://planning.maryland.gov/Documents/OurProducts/Archive/72195/mg24-Adequate-Public-Facilities-Ordinances-APFO.pdf>

2020 The Baltimore County Adequate Public Facilities Ordinance (APFO) Task Force, which the County Council created through passage of Resolution 76-20 on August 3, 2020, has been formed to study and evaluate methods to make improvements to the Baltimore County APFO as it relates to development and the need for adequate infrastructure, particularly public school facilities.

<https://countycouncil.baltimorecountymd.gov/countycouncil/boards%20and%20commissions/apfotaskforce.html>

The County Auditor’s Office is providing technical support to the Task Force. The eight-member Task Force consists of five members appointed by the County Council, as well as three members designated by County agencies, and includes the following members:

- Maureen Astarita, Principal, Parkville High School – representing the Council of Administrative & Supervisory Employees (CASE) (appointee)
- Jayne Lee, President, PTA Council of Baltimore County (appointee)
- Lisa Norrington, Teacher, Patapsco High School – representing the Teachers Association of Baltimore County (TABCO) (appointee)
- Rick Williams, Principal, Development Design Consultants, Inc. – representing the Maryland Building Industry Association (appointee)
- Yara Cheikh, Partner, Creating Equity, LLC – representing the League of Women Voters (appointee)
- C. Pete Gutwald, Director, Baltimore County Department of Planning (designee)
- Julie Henn, Vice Chair, Board of Education of Baltimore County (designee)
- Elizabeth Irwin, Baltimore County Deputy Auditor and Director of Fiscal & Policy Analysis (designee)

https://resources.baltimorecountymd.gov/Documents/CountyCouncil/boards%20and%20commissions/APFO_Task_Force_Report_12312020_.pdf

2024 (May) APFO report, Baltimore County Department of Planning
<https://www.baltimorecountymd.gov/files/Documents/Planning/apfo/apforeport.pdf>

2024 Legislatively –

Basic Services Map covers the issues of Water, Sewer and Traffic. (Bill 17-24)

THE APFO Ordinance only covers the issue of School Overcrowding. (Bills 31-24 [passed/vetoed/overridden] and 50-25 [clarifying/pending])

MANY of the issues listed at the top of the page are not addressed in the County Code.

Baltimore County Code, Article 32 (Planning, Zoning and Subdivision Control), Title 6 (Adequate Public Facilities)

There are other subjects in this part of the code including storm water management and open space.

https://library.municode.com/md/baltimore_county/codes/code_of_ordinances?nodeId=ART32PLZOSUCO_TIT6ADPUFA

Significant changes in the passed Bill 31-24 Adequate Public Facilities Ordinance (APFO)

Changes and reduces the definition of what “over crowded” schools means. 115% reduced down to 105%. 115% until September 30, 2025, then 110% until September 30, 2028 and 105% starting October 1, 2028.

Removes the Adjacency Exemption

The APFO Bill applies to residential development. This includes residential development permitted on commercially zoned property.

The APFO Bill exempts Elderly or Senior Housing, Emergency or Transitional Housing, Community Care facilities, Sheltered Housing for the Handicapped or Disabled, Child Care Centers, Minor Subdivision (3 or less units), Redevelopment which does not increase the number of units, Purpose Built Student Housing, University based Retirement Communities, and Veteran housing/treatment communities.

Changes when evaluation of the school capacity. From when building permits are issued to any time after the development plan approval is made.

Grandfathers vested developments with filing dates prior to December 31, 2024.

Clarifying bill 50-24

Will not be passed before this meeting. The bill is posted and is subject to hearings / amendments.

Comments below are related to the bill as introduced on July 1, 2024.

Name of the committee in the previous bill is changed to the “ADVISORY Committee on Public School Capacity”

Loops in the Board of Education and the Superintendent of BCPS.

Adds language about ADA compliance for persons with developmental and physical disabilities.

Adds clarifying language to include under Community Care Facilities to include long term care and assisted living facilities.

Adds a huge section (6 pages) requiring the Department of Planning and BCPS to generate a report identifying projected school overcrowding and the many, may ways BCPS could mitigate those situations.

The “Committee” will not issue school capacity approval certificates. This “function” would be assigned to the Planning Department who will make a recommendation if the school district is overcrowded.

Requires the County Attorney in consultation with the Director of DHCD to issue an opinion whether the proposed development “is necessary” to meet the 2016 VCA for affordable housing. If it does, then permits cannot be prevented from being issued.

Allows an approved development plan to remain “approved” and not expired, if school capacity remains above the set limits.

IMPACT FEES

Impact Fees are not new.

Counties assess either as Impact Fee or Excise Tax. Some do neither.

1988 Impact Fees in Maryland, Paul Tiburzi

<https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1501&context=ublr>

“Impact fees have two essential features: (1) they shift the cost of capital improvements from all users or taxpayers in the jurisdiction to the new residents who create the need for them, and (2) they are collected before the improvements are constructed rather than after they are in service. Impact fees are imposed on every new house, condominium, apartment, or other dwelling unit in proportion to the impact the unit will make on the public infrastructure. 6 An impact fee, at least in theory, represents the proportionate share of the capital costs of providing a municipal service to an individual dwelling unit or other consuming unit which begins using that service for the first time.”

“Maryland is divided into twenty-three counties which fall into three categories: county commissioner counties, code counties, and charter counties. Counties comprising the latter two categories have certain home-rule powers, with charter counties being more autonomous.” (Baltimore County is a charter county)

“Charter counties have the greatest degree of local autonomy. Article XI-A of the Maryland Constitution directs the General Assembly to provide a grant of express powers to charter counties. The Express Powers Act 43 delegates more than thirty different areas of power to the charter counties. None of those provisions, however, authorizes the imposition of impact fees.”

2013 Department of Legislative Services Report

<https://dls.maryland.gov/pubs/prod/InterGovMatters/LocFinTaxRte/County-Development-Impact-Fees-and-Building-Excise-Taxes-in-Maryland-for-web.pdf>

By 2013, 16 of the 23 counties were assessing either Impact Fees or Excise Taxes. Neither Baltimore County or Baltimore City assessed either Impact Fees or Excise Taxes.

2019 Authorizations

Maryland Legislature passes SB 451 authorizing Baltimore County to collect Development Impact Fees beginning June 1, 2019. The Baltimore County Council then passed Bill 16-19. The money could only be used for public works and school construction projects.

This bill assessed an impact fee based on square footage, at a rate shown below to be collected at settlement and before an occupancy permit was issued on new construction.

Single-family detached 1.5% of gross sales price
Single-family semi-detached 1.5% of gross sales price
Single-family attached 1.5% of gross sales price
Multi-family - for sale condominium 1.5% of gross sales price

There were exemptions including projects already under construction, senior housing, non-residential farms, schools, hospitals, religious buildings and transit oriented developments, enterprise zones, opportunity zones, and commercial revitalization zones. There was also a loophole in the bill which avoided the collection of these impact fees. Property owners who purchased land and then later built on the site. As there is never any “settlement” on the home, the owner avoided the collection of the impact fee. (The law specifies how the gross price is determined, specifically which line on the settlement form.) Given the timeline of building the bill was not expected to be delivered until 2023. This bill was expected to garner \$5.7M down from the original projections of 10.3M.

Impact Fee Exemptions of Total

CY 21 539 of 948 * per Baltimore Metropolitan Council

CY 22 257 of 459

CY 23 666 of 687

Impact Fees Collected Under Bill 16-19

FY20 \$ 0

FY21 \$ 0

FY22 \$13,890

FY23 \$ 0 the Planning Board report estimated that they should have collected \$ 61,827

2024 Bill 45-24 Development Impact Fee

Single-family detached \$6.00 per square foot.
Single-family semi-detached \$6.00 per square foot.
Single-family attached \$6.00 \$6.00 per square foot.
Multi-family - for sale condominium \$6.00 \$6.00 per square foot.

Of the residential building permits issued in CY 2023 only 41 (1633 of 1674 estimate from the Bill 45-24 Fiscal Note) will pay Impact Fees at the time of settlement in the approximate amount of \$ 242,287. Under the new schedule that amount would be approximately \$ 1,587,114.