

# FINAL

## COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2023, Legislative Day No. 11

Bill No. 52-23

Introduced by Mr. Smith, Chair  
(by request of the County Executive)

and Ms. Pickard, Ms. Hummer, and Mr. Smith

By the County Council, June 5, 2023

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Introduced and first read on June 5, 2023  
Public Hearing set for and held on July 3, 2023  
Bill Expires September 8, 2023

By Order: Laura Corby, Administrative Officer

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### A BILL ENTITLED

1 AN ORDINANCE concerning: Subdivision and Development – Adequate Public Facilities  
2 – Adequate School Facilities – Affordable Housing – Workforce Housing – School  
3 Utilization Chart

4  
5 FOR the purpose of repealing the termination date established by Bill No. 85-21 and  
6 extended by Bill No. 9-23; adding a definition of “affordable housing”; adding certain  
7 requirements and exemptions of workforce housing and affordable housing for passing  
8 the adequacy of public facilities tests; amending certain standards of development to  
9 pass the test for school facilities; amending the timelines for preparing a school  
10 utilization chart; amending the test for school capacity by requiring schools with  
11 enrollment at or greater than 100% of the State-Rated Capacity to be listed as closed  
12 on the annual school utilization chart; amending the method for determining projected  
13 enrollment of a school; and generally relating to subdivision and development.

14  
15 BY repealing: Bill No. 85-21, Section 3, Laws of Anne Arundel County 2021, as amended  
16 by Bill No. 9-23, Section 1, Laws of Anne Arundel County 2023

17  
18 BY renumbering: § 17-1-101(2) through (102) to be 17-1-101(3) through (103),  
19 respectively

20  
21 BY adding: § 17-1-101(2)  
22 Anne Arundel County Code (2005, as amended)

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EXPLANATION: CAPITALS indicate new matter added to existing law.  
[[Brackets]] indicate matter deleted from existing law.  
Captions and taglines in **bold** in this bill are catchwords and are not law.  
Asterisks \*\*\* indicate existing Code provisions in a list or chart that remain unchanged.

1 BY repealing and reenacting, with amendments: §§ 17-5-201(b); 17-5-501(a); and 17-5-  
2 502  
3 Anne Arundel County Code (2005, as amended)

4  
5 SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,*  
6 That Bill No. 85-21, Section 3, Laws of Anne Arundel County, 2021, as amended by Bill  
7 No. 9-23, Section 1, Laws of Anne Arundel County, 2023 is hereby repealed.

8  
9 SECTION 2. *And be it further enacted,* That § 17-1-101(2) through (102) of the Anne  
10 Arundel County Code (2005, as amended) is hereby renumbered to be § 17-1-101(3)  
11 through (103), respectively.

12  
13 SECTION 3. *And be it further enacted,* That Section(s) of the Anne Arundel County  
14 Code (2005, as amended) read as follows:

15  
16 **ARTICLE 17. SUBDIVISION AND DEVELOPMENT**

17  
18 **TITLE 1. DEFINITIONS**

19  
20 **17-1-101. Definitions.**

21  
22 Unless defined in this article, the Natural Resources Article of the State Code, or  
23 COMAR, the definitions of words defined elsewhere in this Code apply in this article. The  
24 following words have the meanings indicated:

25  
26 (2) "AFFORDABLE HOUSING" MEANS HOUSING:

27  
28 (I) THAT COMPLIES WITH THE REQUIREMENTS FOR WORKFORCE HOUSING  
29 LISTED IN TITLE 10 OF ARTICLE 18 OF THIS CODE; OR

30  
31 (II) 1. FOR WHICH THERE ARE RECORDED RESTRICTIVE COVENANTS ON THE  
32 PROPERTY FOR AT LEAST 30 YEARS RESTRICTING OCCUPANCY TO INCOME ELIGIBLE  
33 HOUSEHOLDS; AND

34  
35 2. THE HOUSING IS FINANCED, IN WHOLE OR IN PART, THROUGH THE U.S.  
36 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FUNDING, LOW INCOME HOUSING  
37 TAX CREDIT PROGRAM, MARYLAND COMMUNITY DEVELOPMENT ADMINISTRATION'S  
38 RENTAL HOUSING DEVELOPMENT PROGRAMS, ANNE ARUNDEL COUNTY AFFORDABLE  
39 HOUSING TRUST FUNDS, OR A COMBINATION OF THESE FUNDS AND PROGRAMS.

40  
41 **TITLE 5. ADEQUATE PUBLIC FACILITIES**

42  
43 **17-5-201. Requirement to pass adequacy of public facilities tests; exemptions.**

44  
45 (b) **General requirement.** The Planning and Zoning Officer may not give final  
46 approval to a proposed record plat, recommend approval of an application for a building  
47 or grading permit in connection with a preliminary plan or site development plan, or  
48 approve a site development plan for development that does not require a permit unless the  
49 development passes the tests for adequate public facilities set forth in this title if required  
50 by the chart in this section.

1 The chart uses the following key: S = subject to the test and E = exempted from the  
2 test.

Development Type	Fire Suppression	Roads	Schools	Sewage Disposal	Storm Drain	Water Supply
***						
<b>Residential:</b>						
***						
Housing for the elderly of moderate means	S	S	E	S	S	S
AFFORDABLE HOUSING OR WORKFORCE HOUSING UNDER TITLE 10, ARTICLE 18 OF THIS CODE	S	S	E	S	S	S
***						

4  
5 **17-5-501. Standards; report to the Board of Education.**

6  
7 (a) **Standards.** A development passes the test for adequate school facilities if:

8  
9 (1) each public elementary, middle, and high school is designated as “open” on the  
10 school utilization chart described in § 17-5-502 for the geographical attendance areas for  
11 the development in the third school year after the school year in which the determination  
12 is being made, and the number of students projected to be generated by the development  
13 in the third school year after the school year in which the determination is being made  
14 **[[based on the student generation factors for the development]]** does not exceed **[[85% of]]**  
15 the available capacity of each open school **[[as of]]** AFTER THE AVAILABLE CAPACITY IS  
16 ADJUSTED TO ACCOUNT FOR PROJECTED STUDENT GENERATION FROM EACH  
17 DEVELOPMENT THAT HAS BEEN APPROVED SINCE the date of the last approved **[[or**  
18 updated]] school chart, as determined by the Office of Planning and Zoning;

19  
20 (2) the Office of Planning and Zoning has received written notice via certified mail  
21 from the Board of Education that the requirements for applicable future capacity, as  
22 described in § 17-5-502(d)(2)(i) and (ii), have been satisfied, without formal adoption of a  
23 school utilization chart, and with the applicable future capacity the development will satisfy  
24 the requirements of subsection (a);

25  
26 (3) the developer has executed an approved School Capacity Mitigation Agreement  
27 under the provisions of § 17-5-901; **[[or]]**

28  
29 (4) the Planning and Zoning Officer and the Board of Education approve a donation  
30 of land for future construction of school facilities as provided in § 17-5-901(h)(2); OR

31  
32 (5) A PUBLIC ELEMENTARY, MIDDLE, OR HIGH SCHOOL IN A GEOGRAPHICAL  
33 ATTENDANCE AREA ADJACENT TO A GEOGRAPHICAL ATTENDANCE AREA WITH A  
34 CLOSED PUBLIC ELEMENTARY, MIDDLE, OR HIGH SCHOOL HAS AVAILABLE CAPACITY  
35 SUFFICIENT TO RENDER THE CLOSED SCHOOL OF THE CORRESPONDING EDUCATIONAL  
36 LEVEL LESS THAN 100% OF THE STATE-RATED CAPACITY.

1 **17-5-502. School utilization chart.**

2  
3 (a) **Chart defined.** The Planning and Zoning Officer shall prepare a school utilization  
4 chart for approval by ordinance of the County Council. The school utilization chart:

5  
6 (1) shall be revised at least once a year by the County Council upon the annual  
7 recommendation of the Planning and Zoning Officer made no later than [[November 30]]  
8 MARCH 1 each year, and the chart may be revised more often because of significant changes  
9 in capacities;

10  
11 (2) [[shall be updated by the Planning and Zoning Officer on May 1 and September  
12 1 of each year, and be effective as of that date, based on proposed reductions in available  
13 school capacity due to new students proposed to be generated by new development  
14 approved by the Office of Planning and Zoning since the last school utilization chart was  
15 approved or updated;

16  
17 (3)] shall be based on enrollments projected by the Board of Education and the  
18 capacities of schools as determined by the Board of Education [[in the most recent  
19 educational facilities master plan prepared by the Board of Education and as required under  
20 subsections (b) and (c), as well as new students proposed to be generated by each new  
21 development approved by the Office of Planning and Zoning since the last school  
22 utilization chart was approved or updated]] AS OF FEBRUARY 1 OF EACH YEAR; and

23  
24 [[(4)] (3) shall determine for each public elementary, middle, and high school  
25 whether, taking into account all enrollment and student generation data provided by the  
26 Board of Education, including new students projected to be generated by new development  
27 approved since the last school utilization chart was approved [[or updated]], the school  
28 enrollment:

29  
30 (i) for each PUBLIC elementary, [[and]] middle, AND HIGH school THAT is at or  
31 less than [[95%]] 100% of the State-rated capacity during the third school year after the  
32 school year in which the most recent revision of the school utilization chart is adopted, and  
33 designate for that year each public elementary, [[and]] middle, AND HIGH school in the  
34 County as either "open", if the school enrollment is less than [[95%]] 100% of the State-  
35 rated capacity, or "closed", if the school enrollment is at or over [[95%]] 100% of the State-  
36 rated capacity; and

37  
38 (ii) [[for each high school is less than 100% of the State-rated capacity during  
39 the third school year after the school year in which the most recent revision of the school  
40 utilization chart is adopted and designate for that year each public high school in the County  
41 as either "open", if the school enrollment is less than 100% of the State-rated capacity, or  
42 "closed", if the school enrollment is at or over 100% of the State-rated capacity]] SHALL  
43 INCLUDE THE VERIFIED ACTUAL ENROLLMENT DATA FOR EACH SCHOOL AS OF  
44 SEPTEMBER 30 OF THE YEAR IMMEDIATELY PRECEDING THE DATE OF THE SCHOOL  
45 UTILIZATION CHART.

46  
47 (b) **Appeal not allowed.** [[An update to the]] THE school utilization chart PREPARED  
48 by the Planning and Zoning Officer [[may]] IS not [[constitute]] an administrative or  
49 adjudicatory order and may not be appealed.

1 (c) **Projected enrollment.** The projected enrollment of a school used in the school  
2 utilization chart shall be based upon ~~[[the most recent educational facilities master plan~~  
3 ~~prepared]]~~ A STUDENT YIELD GENERATION FORMULA AND CAPACITY DETERMINATION  
4 METHOD ACCEPTED BY THE OFFICE OF PLANNING AND ZONING AND ANNE ARUNDEL  
5 COUNTY PUBLIC SCHOOLS AND POSTED ON A COUNTY WEBSITE ACCESSIBLE TO THE  
6 PUBLIC. PROJECTIONS SHALL BE PROVIDED by the Board of Education BY FEBRUARY 1 OF  
7 EACH YEAR and shall include:

8  
9 (1) any predicted increase in the number of students from new development in the  
10 geographical attendance area of the school; ~~[[and]]~~

11  
12 (2) A LIST OF NEW DEVELOPMENT PROJECTS, INCLUDING THE NUMBER AND TYPE  
13 OF APPROVED DWELLING UNITS AS PROVIDED TO THE BOARD OF EDUCATION BY THE  
14 OFFICE OF PLANNING AND ZONING; AND

15  
16 ~~[[2)]]~~ (3) other students expected by the Board of Education to enroll in the school,  
17 including students assigned to the school for programmatic reasons.

18  
19 (d) **Capacity.** The capacity of a school used in the school utilization chart shall be based  
20 upon the most recent educational facilities master plan prepared by the Board of Education  
21 and:

22  
23 (1) shall include the existing capacity of the school based on the program  
24 requirements of the Board of Education;

25  
26 (2) shall include any applicable future capacity if:

27  
28 (i) a contract for construction of the school or an addition to the school  
29 necessary to achieve the future capacity has been awarded; and

30  
31 (ii) the Board of Education estimates that the construction will be completed in  
32 time to be used for the beginning of classes in the school year in which the future capacity  
33 is included in the school utilization chart; ~~[[and]]~~

34  
35 (3) CAPACITY GENERATED BY A NEW SCHOOL FOR WHICH THE CONTRACT HAS  
36 BEEN AWARDED BUT FOR WHICH ASSIGNMENT OF THE GEOGRAPHICAL ATTENDANCE  
37 AREA FOR THE NEW SCHOOL HAS NOT YET OCCURRED AND SHALL BE  
38 CONSIDERED AVAILABLE CAPACITY FOR ADJACENT SCHOOLS AS PROVIDED FOR IN 17-5-  
39 501(A)(5); AND

40  
41 ~~[[3)]]~~ (4) may not include capacity based on temporary or relocatable structures.

42  
43 (e) **Approval.** A school utilization chart and any revisions to the chart may not take  
44 effect until the County Council by ordinance has approved the chart or the revisions to the  
45 chart~~[[, or the Planning and Zoning Officer has approved an update to the chart pursuant~~  
46 ~~to subsection (a)(2)]]~~. The ordinance shall establish the effective date of the chart or revised  
47 chart, and the chart or revised chart~~[[, or any update to the chart approved by the Planning~~  
48 ~~and Zoning Officer,]]~~ shall continue in effect until replaced~~[[,]]~~ OR revised~~[[, or updated]]~~.

49  
50 SECTION 4. *And be it further enacted,* That this Ordinance shall take effect 45 days  
51 from the date it becomes law.

Bill No. 52-23

Page No. 6


READ AND PASSED this 3<sup>rd</sup> day of July, 2023

By Order:



Laura Corby  
Administrative Officer

PRESENTED to the County Executive for his approval this 5<sup>th</sup> day of July, 2023



Laura Corby  
Administrative Officer

APPROVED AND ENACTED this 13<sup>th</sup> day of July, 2023



Steuart Pittman  
County Executive

EFFECTIVE DATE: August 27, 2023

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF  
BILL NO. 52-23 THE ORIGINAL OF WHICH IS RETAINED IN THE FILES  
OF THE COUNTY COUNCIL.

A handwritten signature in black ink, appearing to read "Laura Corby". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Laura Corby  
Administrative Officer