

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

PETITION OF
QUANTUM MARYLAND, LLC,

and

JOAN AQUILINO,

FOR JUDICIAL REVIEW OF
THE DECISION OF THE FREDERICK
COUNTY BOARD OF ELECTIONS,

and

BARBARA WAGNER

IN THE MATTER OF THE PETITION OF
THE FREDERICK COUNTY DATA
CENTER REFERENDUM COMMITTEE
FOR REFERENDUM OF FREDERICK
COUNTY COUNCIL ORDINANCE
26-01-001

Case No. C-10-CV-26-000309

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QUANTUM MARYLAND, LLC et al.

Plaintiffs,

v.

FREDERICK COUNTY BOARD OF
ELECTIONS, et al.

Defendants.

Case No. C-10-CV-26-000309

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PETITION OF WINDRIDGE
PROPERTIES, L.C. et al.,

Petitioners,

FOR JUDICIAL REVIEW OF
THE DECISION OF THE FREDERICK
COUNTY BOARD OF ELECTIONS,

and

BARBARA WAGNER

IN THE MATTER OF THE PETITION OF
THE FREDERICK COUNTY DATA
CENTER REFERENDUM COMMITTEE
FOR REFERENDUM OF FREDERICK
COUNTY COUNCIL ORDINANCE
26-01-001

Case No. C-10-CV-26-000321

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WINDRIDGE PROPERTIES, L.C. et al.

Plaintiffs,

v.

FREDERICK COUNTY BOARD OF
ELECTIONS, et al.

Defendants.

Case No. C-10-CV-26-000321

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PETITION OF NDR PROPERTIES, LLC et
al.,

Petitioners,

FOR JUDICIAL REVIEW OF
THE DECISION OF THE FREDERICK
COUNTY BOARD OF ELECTIONS,

and

BARBARA WAGNER

IN THE MATTER OF THE PETITION OF
THE FREDERICK COUNTY DATA
CENTER REFERENDUM COMMITTEE
FOR REFERENDUM OF FREDERICK

Case No. C-10-CV-26-000325

COUNTY COUNCIL ORDINANCE
26-01-001

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NDR PROPERTIES, LLC et al.

Plaintiffs,

v.

FREDERICK COUNTY BOARD OF
ELECTIONS, et al.

Defendants.

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PETITION OF ROWAN FREDERICK,
LLC et al.,

Petitioners,

FOR JUDICIAL REVIEW OF
THE DECISION OF THE FREDERICK
COUNTY BOARD OF ELECTIONS,

and

BARBARA WAGNER

IN THE MATTER OF THE PETITION OF
THE FREDERICK COUNTY DATA
CENTER REFERENDUM COMMITTEE
FOR REFERENDUM OF FREDERICK
COUNTY COUNCIL ORDINANCE
26-01-001

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ROWAN FREDERICK, LLC et al.

Plaintiffs,

v.

FREDERICK COUNTY BOARD OF
ELECTIONS, et al.

Defendants.

* * * * *

PETITION OF FREDERICK DATA
CENTER OWNER, LLC, et al.,

Petitioners,

FOR JUDICIAL REVIEW OF
THE DECISION OF THE FREDERICK
COUNTY BOARD OF ELECTIONS,

and

BARBARA WAGNER

IN THE MATTER OF THE PETITION OF
THE FREDERICK COUNTY DATA
CENTER REFERENDUM COMMITTEE
FOR REFERENDUM OF FREDERICK
COUNTY COUNCIL ORDINANCE
26-01-001

Case No. C-10-CV-26-000327

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FREDERICK DATA CENTER OWNER,
LLC et al.

Plaintiffs,

v.

FREDERICK COUNTY BOARD OF
ELECTIONS, et al.

Defendants.

* * * * *

PETITIONERS' MEMORANDUM OF LAW

Petitioners-Plaintiffs Quantum Maryland, LLC (“Quantum Maryland”) and Joan Aquilino (“Petitioners”), by and through their undersigned counsel, respectfully file this memorandum in support of their petition for judicial review.

INTRODUCTION

Ordinance 26-01-001 is not a “law” subject to referendum under Frederick County Charter § 308. The Charter allows a referendum only of “a law, or part of a law, enacted pursuant to th[e] Charter.” The Ordinance was never enacted pursuant to the Charter. It is a routine zoning map amendment adopted under the Land Use Article procedures that Charter § 601 expressly preserved as separate from the Council’s lawmaking authority in §§ 301-310. It followed the Planning Commission recommendation, public hearing, and the Council approval track required by the Land Use Article and County Code Chapter 1-19. It was never introduced as a bill, never presented to the County Executive, and never given the sixty-day delayed effective date that defines every Charter “law.”

The Ordinance merely implemented a careful, bipartisan compromise the County had already reached months earlier through the actual Charter law—Bill 25-09. Enacted in September 2025, Bill 25-09 created the Critical Digital Infrastructure Overlay Zone and confined all future data-center development to a single, targeted industrial site on the former Eastalco property, less than one percent of the County’s land mass. The Frederick County Data Center Referendum Committee (“**Referendum Committee**”) and its principals from the Sugarloaf Alliance participated in the Bill 25-09 process from the very beginning. They knew the two-track system. They had sixty days to seek referendum of the real law. They deliberately chose not to. They also could have brought a declaratory judgment action in circuit court seeking a declaration that the Ordinance is invalid. *See, e.g., Cnty. Council of Prince George’s Cnty. v. Zimmer Dev. Co.*, 444

Md. 490, 510, 120 A.3d 677, 688 (2015) (“[C]omprehensive rezonings are subject to judicial invalidation when found to be arbitrary, discriminatory or illegal.”). But they did not. Instead, they waited until the referendum window closed and then targeted the implementing map amendment—Ordinance 26-01-001.

The Election Director had been alerted long before this past April that the Ordinance was not referable. On January 5, 2026, the Referendum Committee itself asked her the exact question. The County Attorney publicly answered: it was not. Yet when the petition arrived, the Election Director failed to perform the mandatory gatekeeping duty imposed by Maryland Code, Election Law Article (“**Election Law**”) § 6-206(c)(5)(i). She declared herself “unable” to determine whether the petition was authorized by law, invented a “presumption of sufficiency” that appears nowhere in the statute, and certified the petition anyway.

In addition, the petition papers are facially defective. The Referendum Committee shrunk the full text of the Ordinance to 4.5-point font—one-sixteenth of an inch in height—rendering it virtually illegible without magnification. Maryland law requires no smaller than 8-point type in numerous legal contexts. Additionally, it affirmatively altered the Ordinance by converting its two integral, color-coded zoning maps—delineating the parcels impacted by the Ordinance—into black-and-white copies, collapsing nine distinct zones into indistinguishable shades of gray and stripping them of their color legend. Voters could not tell what was happening: which parcels were inside the overlay zone or outside it, which land was newly added or removed, or which parcels would be affected by their vote. Correct and legible alternatives existed—the Committee could have used larger paper or a fold-out format—but it chose not to, even though it was required to reproduce the Ordinance, including its color-coded maps exactly as enacted. The result is that every petition paper fails the Charter’s requirement to “contain the full and accurate text.”

Three independent grounds accordingly require reversal of the Board of Elections' certification. First, Ordinance 26-01-001 is not a referable "law" under the Charter. Second, the petition papers do not contain the full and accurate text of the Ordinance. Third, the Election Director failed to make the determination required by the Election Law before certifying the petition.

The Court should reverse and vacate the Board of Elections' certification.

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

- I. IS ORDINANCE 26-01-001 SUBJECT TO REFERENDUM UNDER THE FREDERICK COUNTY CHARTER?
- II. WAS THE ELECTION DIRECTOR'S CERTIFICATION OF THE REFERENDUM PETITION ERRONEOUS?
- III. WAS THE REFERENDUM PETITION DEFECTIVE?
- IV. IN THE ALTERNATIVE, SHOULD A WRIT OF MANDAMUS ISSUE?

STATEMENT OF FACTS MATERIAL TO THE QUESTIONS

A. Zoning Regulation In Frederick County

Before its Charter took effect in 2014, Frederick County operated as a commission county governed by a Board of County Commissioners.¹ Commission counties are subject to two categories of laws enacted by the Maryland General Assembly: public local laws, which apply only to a specific county, and public general laws, which apply more broadly. Md. Const. art. XI-A, § 3. Before the adoption of the Charter, the Board of County Commissioners had no authority to enact public local laws. *Id.* § 4. Those laws were enacted exclusively by the Maryland General Assembly and collected in the Code of Public Local Laws of Frederick County (Part II of the Frederick County Code). That code was limited, reflecting only what the General Assembly chose

¹ Frederick County Council History, *available at* <https://frederickcountymd.gov/591/County-Council>.

to enact for the County. *See* Md. Ass’n of Cntys., *Code Home Rule vs. Commissioner vs. Charter Comparison*, at 1 (2023)² (“[The] General Assembly has full power to legislate for [Commissioner] Count[ies].”).

The Commissioners did, however, regulate land use under the Land Use Article (then Article 66B), a public general law that governs zoning statewide. *See id.* at 3 (Commissioner Counties’ planning and zoning authority is subject to State law (Article 66B)); *Zimmer*, 444 Md. at 503 (“Maryland ... delegates to local political subdivisions significant authority to regulate land use.”). Under that Article, they enacted ordinances establishing zone types, use tables, design standards, bulk regulations, and land use maps. They also conducted parcel-specific zoning reclassification under Land Use Article §§ 4-203 and 4-204. These actions were accomplished by ordinance—not by law—and none were subject to referendum. *See Code Home Rule Comparison*, *supra*, at 1 (“Commissioners may enact ordinances where authorized....”); *id.* at 2 (only public local laws subject to referendum).

When Frederick County adopted its Charter in 2014, the authority to enact public local laws shifted to the County Council. Under Maryland Constitution Article XI-A § 3, the Council acquired the power—previously held by the General Assembly—to legislate on express topics. Charter § 301 provides that “[t]he Council may enact public local laws for the peace, good government, health, safety or welfare of the County.” The Charter imposes procedural safeguards on this new lawmaking authority. Charter § 305 specifies that “[t]he Council may enact no law except by written Bill.” Charter § 308 further subjects the Council’s laws—with limited

² *Available at* <https://www.mdcounties.org/DocumentCenter/View/5448/2023-NEOO---Code-Home-Rule-vs-Commissioner-vs-Charter-Comparison>.

exception—to referendum “upon the filing of a petition signed by seven percent of the registered voters of the County.”

The Charter left the County’s longstanding zoning authority under the Land Use Article intact. Charter § 601, titled “Adoption of Land Use Article of the Annotated Code of Maryland,” provides in subsection (a) that “the provisions of the Land Use Article of the Annotated Code of Maryland that governed land use in the County prior to the Effective Date of this Charter shall continue to apply as if they have been codified in the Code of Public Local Laws of Frederick County.”³

The Charter drew a deliberate line between two distinct tracks. Public local laws—general rules of governance—must follow a mandatory procedural track: introduction by written bill, publication, public hearing, enactment by vote, executive review, and a sixty-day effective date. Charter §§ 305-307. Those laws are then subject to referendum. *Id.* § 308. The Land Use Article’s zoning regulations and maps, by contrast, follow a separate track: Planning Commission recommendation, Council hearings, and adoption by ordinance, with map amendment taking effect ten days after the final hearing. LUA §§ 3-202, 3-203, 3-204, 4-203. These implementing ordinances have never been treated as “laws” subject to referendum—neither before the Charter nor after it.

After the Charter’s adoption, therefore, the County Council enacts the zoning framework through laws passed by bill. *See* FC Code § 1-19-3.100.1 (“A zoning text amendment shall be initiated as provided in the county charter for the enactment of legislation.”). Once those laws are passed, the Council implements them through ordinances following the procedures established by

³ *See* Charter § 601(b) & (c) (providing that Frederick County shall codify the provisions of the Land Use Article and any relevant “revis[ions] by the Maryland General Assembly”); Frederick County Code Ch. 1-19 (codifying provisions of Land Use Article) (“FC Code”).

the Land Use Article. *See id.* § 1-19-1.110(A) (establishing zoning code “in accordance with the provisions of Md. Ann. Code, Land Use Article”). Bill 25-09 was the former. Ordinance 26-01-001 was the latter.

B. The Critical Digital Infrastructure Overlay Zone

The CDI Overlay Zone—the subject of Ordinance 26-01-001—emerged from this deliberate two-step process.

1. Frederick County Reaches A Compromise Over Data Center Development

The CDI Overlay Zone emerged from a protracted negotiation that produced a compromise on data center development in Frederick County. Previously, such development was permitted on land zoned Light Industrial or General Industrial, but a public debate arose over the appropriate locations for these facilities.

In 2025, the County Council and Executive reached a bipartisan solution. On May 6, 2025, County Executive Jessica Fitzwater and all members of the County Council “announced a compromise to limit where data centers can be built to the area around the old East Alcoa property north of Adamstown.” Frederick County Office of the County Executive, News Release (May 6, 2025).⁴ The announcement promised to “limit the development to less than 1% of the County’s total land mass, in an area with the infrastructure to support it, and ensure the County Council retains the tools to prevent future sprawl.” *Id.*

County leaders from both parties praised the CDI Overlay Zone as a compromise that balanced the interests at stake. Executive Fitzwater praised the “bipartisan compromise” as “protecting our environment and quality of life, while acknowledging that Frederick County’s

⁴ *Available at* <https://www.frederickcountymd.gov/DocumentCenter/View/356132/CDI-Legislation-050625-Archived>.

location makes it a logical site for this critical industry.” *Id.* Council Member Renee Knapp stated the compromise showed that “Frederick County is emerging as a leader for sensible data center regulations that address community concerns for sustainability while supporting an industry that adds important diversification to our local economy.” *Id.* Council Member Jerry Donald praised the overlay approach as a “bipartisan compromise that both encourages economic development while protecting the rights of landowners to peacefully enjoy their property.” *Id.* Council Member Steve McKay—who later supported the Referendum Petition—likewise stated he was “very pleased to support this compromise approach.” *Id.* In his view, the CDI Overlay Zone helped “ensure that the Council maintains a firm hand on where we allow data centers” and even “goes one step further by ensuring that we further limit data center development to the Eastalco area.” *Id.*

The announcement made clear that the CDI Overlay Zone would be created in two distinct phases. First, the Council would introduce a bill containing “a text amendment to the zoning code to create a tool called an overlay, which will be used to limit data center development.” Frederick County Office of the County Executive, News Release (May 6, 2025). “All seven Council members will co-sponsor the measure,” and the “Council will review and vote on the bill through its ordinary public legislative process.” *Id.* “After that,” the announcement continued, “the Division of Planning and Permitting will develop a map through an open and transparent public process, which will be presented to the Planning Commission for review and the County Council for approval”—precisely the process Council Member McKay has described as giving the Council “a firm hand on where [the County] allows data centers.” *Id.*

These two phases tracked the Charter’s lawmaking procedures under Article 3 and the Council’s separate regulatory authority under the Land Use Article. First, the CDI Overlay Zone

would be introduced by bill using the Council’s lawmaking power under Charter § 305, presented to the Executive, and then potentially subject to referendum. Second, the Planning Commission and County Council would exercise their regulatory authority to implement the CDI Overlay Zone under the LUA (§§ 3-202, 3-203, 4-202 to 4-204), which would not be subject to referendum.

2. Bill 25-09

On June 17, 2025, the CDI Overlay Zone was introduced via Bill 25-09.⁵ The bill amended the Frederick County Code to create the CDI Overlay Zone.

From the beginning, it was clear where the County would likely place the CDI Overlay Zone and which land would likely be affected. One month after Bill 25-09 was introduced, in July 2025, the Frederick County Division of Planning and Permitting published a draft Comprehensive Plan Amendment and proposed zoning map amendment. *See* Frederick County Division of Planning and Permitting, Critical Digital Infrastructure Overlay Zone: An Amendment of the Livable Frederick Comprehensive Plan (Jul. 2025).⁶ The detailed public document identified the precise boundaries, acreage, and parcel-by-parcel composition of the proposed CDI Overlay Zone—2,566.4 acres, or 0.6% of the County’s total land mass—and included twelve maps depicting the geographic extent of the proposed overlay and associated changes. *Id.* at 6.

All the issues the Referendum Committee later raised in its campaign were present in July. The proposed map covered virtually the same parcels and totaled almost the same acreage as the one later promulgated by Ordinance 26-01-001. The public—including the leaders of the Referendum Committee—therefore had full notice as of July 2025 of the likely size, shape, and

⁵ Frederick County Council June 17, 2025 Minutes, *available at* <https://www.frederickcountymd.gov/ArchiveCenter/ViewFile/Item/15930>

⁶ *Available at* <https://planning.maryland.gov/Documents/OurWork/PBP/compplans/AMD-2025-Frederick.pdf>.

parcel composition of the overlay zone that would ultimately be implemented by Ordinance 26-01-001.

Bill 25-09 proceeded through the full public legislative process contemplated in the Charter. Introduced at the Council’s June 17, 2025 meeting, the bill remained an active agenda item across four subsequent sessions—July 15, August 19, August 26, 2025 (which included a dedicated public hearing workshop), and September 2, 2025, the date on which the Council adopted it.⁷ Opposition figures, including Referendum Committee Co-Chair Steve Black, appeared and spoke at the June 17, July 15, and August 26 meetings.⁸ The legislative process afforded more than two months of open debate and gave every interested party the opportunity to advocate for changes to or restrictions on the bill’s implementing authority.

After a full and open presentation of the facts and issues, and with significant community participation—including by key figures of the Referendum Committee—the Council enacted Bill 25-09 on September 2, 2025. The Council found the legislation “necessary and appropriate” to “establish a Critical Digital Infrastructure Overlay Zone for the purpose of directing Critical Digital Infrastructure Facilities and Critical Digital Infrastructure Electric Substations to industrial lands in proximity to data conveyance infrastructure and other industrial uses,” while “minimizing impacts to non-compatible uses and allowing for development of industrial lands not included in the Critical Digital Infrastructure Overlay Zone for other industrial uses.” Bill No. 25-09, Legislative Purpose.

⁷ Frederick County Council Agendas: Jun. 17, 2025 (<https://www.frederickcountymd.gov/ArchiveCenter/ViewFile/Item/15875>); Jul. 15, 2025 (<https://www.frederickcountymd.gov/ArchiveCenter/ViewFile/Item/15923>); Aug. 19, 2025 (<https://www.frederickcountymd.gov/ArchiveCenter/ViewFile/Item/15981>); Aug. 26, 2025 (<https://www.frederickcountymd.gov/ArchiveCenter/ViewFile/Item/15988>); and Sep. 2, 2025 (<https://www.frederickcountymd.gov/ArchiveCenter/ViewFile/Item/15993>).

⁸ *Supra* n. 5.

Bill 25-09 amended the Frederick County Code to provide that Critical Digital Infrastructure Facilities and related electric substations may be developed “only” on land “within the Critical Digital Infrastructure Overlay Zone.” Bill No. 25-09 § 1-19-8.402(B)(1)(b); § 1-19-8.403(A)(1)(b). As a direct result, new data centers could only be developed within the newly created CDI Overlay Zone—a zone that now existed in the Code but had not yet been mapped to any specific parcels.

Bill 25-09’s enactment followed the lawmaking procedures of Charter § 305. As noted above, the Council enacted Bill 25-09 on September 2, 2025. The County Executive received the bill on September 3, 2025 and approved it on September 12, 2025 under Charter § 306(b). The bill took effect November 1, 2025. The Referendum Committee did not seek to refer Bill 25-09.

3. *Ordinance 26-01-001*

After Bill 25-09 took effect on November 1, 2025, the remaining steps were for the Council to enact (1) a Resolution approving the 2025 Critical Digital Infrastructure Overlay Zone Comprehensive Plan Amendment with amendments (“Comprehensive Plan Amendment”) and (2) the Ordinance implementing the CDI Overlay Zone following the routine procedures for zoning regulation in the Land Use Article. Under the Land Use Article, the Planning Commission must prepare and approve a plan amendment and certify an attested copy to the Council before it can act. LUA §§ 3-202(a), 3-203(f). The Planning Commission must also hold at least one public hearing before recommending adoption of a plan amendment, with notice published in a newspaper of general circulation. LUA § 3-203(b)(1)-(2).

The Planning Commission followed these procedures in implementing the Comprehensive Plan Amendment and the CDI Overlay Zone. It developed the Comprehensive Plan Amendment and the CDI Overlay Zone, held its required public hearing (two, for that matter), and certified the amendment to the Council on November 4, 2025. The Plan amendment that became part of the

Resolution, incorporated the CDI Overlay Zone into the Livable Frederick Comprehensive Plan and made conforming land use designation changes throughout the Planning Area—including modifications to Rural Legacy Area and Priority Preservation Area boundaries.⁹

After required public notice, the Council held a two-day public hearing on both the Comprehensive Plan Amendment and the proposed rezoning on December 16 and 17, 2025. On December 23, 2025, the Council approved the amendments to the Planning Commission’s recommended Plan—including the CDI Overlay Zone boundary—and directed staff to prepare a rezoning ordinance to implement those changes. The vote was 5-2, with Council Members Donald and McKay opposed.

On January 20, 2026, the Council acted on both instruments. It first enacted Resolution No. 26-01, formally adopting the Comprehensive Plan Amendment that included the modifications to the Rural Legacy Area and the Priority Preservation Area. It then enacted Ordinance No. 26-01-001, amending the zoning boundary map to designate specific parcels as within the CDI Overlay Zone—implementing the Plan. Both instruments took effect that day.

As a zoning map amendment, the Ordinance designated specific parcels—as previewed—on the County’s boundary map as lying within the CDI Overlay Zone. It approves no development, grants no permit, and commits no infrastructure. It makes no changes to any Rural Legacy Area boundary or Priority Preservation Area.

On January 20, 2026—the same day the Council acted—County Attorney Bryon Black issued a memorandum to the County Executive and Council concluding that neither the Resolution nor the Ordinance is subject to referendum under Charter § 308. Administrative Record, Item 6b,

⁹ Planning Commission Recommend Amendment and Map (November 2025), available at <https://www.frederickcountymd.gov/DocumentCenter/View/358101>.

at 8 (Letters from T. Maloney and B. Black to Wagner and County Officials (Mar. 20, 2026)) [hereinafter “A.R.”]. The County Attorney’s Office further retained Timothy Maloney—a Maryland attorney with extensive experience in election law, charter interpretation, and referendum matters—as outside counsel. *Id.* at 1. Maloney “concurred with the Office’s conclusion that neither the Resolution nor the Ordinance is subject to the referendum process under Section 308 of the Frederick County Charter.” *Id.* at 1, 8. The Black memorandum explained that the Charter’s definition of “law” does not encompass the CDI overlay map amendment because it was not enacted as a bill under Charter §§ 301-310. *Id.* at 10-11. That conclusion was consistent with the position taken in December 2022 by Assistant County Attorney Kate Keller, who advised the newly seated Council that “[o]rdinances essentially have the effect of law without necessarily being a law” and identified rezonings as paradigmatic examples. *See* Frederick County Council Meeting Presentation by Kate Keller (Dec. 6, 2022).¹⁰

C. The Referendum Committee Ignores The County Attorney’s Opinion

The Referendum Committee had concerns from the start. On January 5, 2026—two weeks before the Council adopted Ordinance 26-01-001—the Referendum Committee sought clarification on a list of questions about the referendum process. A.R. Item 3a, at 2 (Email from T. Funari to Wagner (Jan. 5, 2026)).¹¹ The first question went to the heart of the matter: “Can the county council ordinance which is making changes to the zoning map as a result of a Comprehensive Plan amendment resolution can [sic] be overturned by a referendum.” *Id.* The

¹⁰ Available at https://frederick.granicus.com/MediaPlayer.php?view_id=10&clip_id=9150.

¹¹ This document was attached to an email included in the administrative record transmitted to this Court, although the document was itself inadvertently omitted. *See* A.R. Item 3a. Because the attachment constitutes part of the correspondence between the Referendum Committee and the Board of Elections, it should have been included in the administrative record under Maryland Rule 7-206, and Counsel for the Board provided the attachment to Petitioners upon request. Accordingly, Petitioners respectfully move this Court under Maryland Rule 2-311 to supplement the administrative record to include this document. *See* Exhibit 1, attached hereto.

Committee then listed three sub-questions, each of which framed the precise issue this brief now litigates: “Does an ordinance count as a ‘law’ under the Charter’s definitions?” “Is there a prohibition on using a referendum to address a zoning map change(s)?” “Does it matter that the CDI Overlay zoning map amendment was not done with a quasi-judicial process?” *Id.*

The Election Director responded three days later, on January 8, 2026, that her office “does not provide legal advice” and that the questions about the Charter “should be clarified by the County Attorney’s office.” A.R. Item 3a, at 1. The County Attorney’s office, as the advance-determination letter would later disclose, had already advised the County Council and the County Executive that Ordinance 26-01-001 is not a “law” subject to referendum. The Committee thus had two indications that the Ordinance’s referability was disputed: the Election Director’s refusal to confirm that an ordinance is a “law,” and the County Attorney’s determination that it is not.

Despite those indications, the Referendum Committee charged forward, embarking on a campaign that misrepresented the Ordinance’s scope and effect. Beginning on or about January 20, 2026, the Referendum Committee deployed circulators across Frederick County to gather signatures. The Referendum Committee submitted the petition on March 19, 2026.

D. The Board Of Elections’ Letter

On March 22, 2026, the Board of Elections held an emergency session and voted to complete signature verification before addressing legal sufficiency. A.R. Item 5a, at 1 (Minutes of the Frederick County Board of Elections (Mar. 22, 2026)). The Board of Elections verified 21,029 signatures as valid, above the 15,611-signature threshold required by Charter § 308. A.R. Item 8a, at 1 (Letter from Wagner to Referendum Committee (Apr. 3, 2026)).

On April 3, 2026, the Election Director sent a letter to the Referendum Committee with her final decision. A.R. Item 8a, at 1. In the letter, the Election Director found the Referendum

Petition sufficient under Maryland Election Law § 6-206 despite not determining whether it was “authorized by law.” *Id.* She wrote:

I have reviewed each number under EL 6-206 subsection (c) and there is no deficiency under 1, 2, 3, 4 and 6. However, as the chief election official, based on the advice of legal authority (Board counsel) I am unable to make a determination that the petition is not authorized by law under EL 6-206 (c) (5) (i). In short, since there is a presumption of sufficiency, unless a determination of a deficiency is made, and I am unable to make a determination of a deficiency, the petition is sufficient for purposes of EL 6-206. The Frederick County Board of Elections will inform the Frederick County Council and Frederick County Office of Law of the final disposition of the petition.

Id. The letter accordingly: (1) invoked a “presumption of sufficiency”; (2) concluded the Director was “unable” to make a determination of whether the Referendum Petition was authorized by law; and (3) on that basis, declared the presumption controlling. *Id.* Notably, that approach is inconsistent with the Election Director’s January 23, 2026 advance-determination memorandum, in which the Election Director told the Committee she would decide the petition’s validity under § 6-206(c)(5)(i) “after the filing of the petition with signatures.” A.R. Item 4a, at 1 (Letter from Wagner to S. Black (Jan. 23, 2026)). The filing came, the Election Director did not decide, but she certified regardless. *Id.*; *see also* A.R. Item 8b, at 1 (Email from Wagner to County Officials (B. Black et al.) (Apr. 3, 2026) (certifying petition to County Officials)). Indeed, the Board’s Answer in these proceedings admits that the Board believes the “referendum rights in the County Charter’s text [at issue in this case] are unclear,” Answer ¶ 85, and asserts that “[i]t is not up to the Election Director to resolve an uncertainty in the County Charter,” *id.* ¶ 123—thereby admitting the Election Director failed to make a determination on the Referendum Petition’s validity under the law.

LEGAL STANDARD

The Court reviews the Election Director’s legal conclusions *de novo*, including her interpretation of Charter § 308 and Election Law §§ 6-206 and 6-208. *Gray v. Howard Cnty. Bd.*

of Elections, 218 Md. App. 654, 662, 98 A.3d 423 (2014). The construction of a local charter presents a question of law that receives no deference. *Town of Bel Air v. Bodt*, 487 Md. 354, 366, 318 A.3d 570 (2024). And the construction of a charter begins and, where the text is unambiguous, ends with the plain language. *Id.* at 370.

ARGUMENT

I. ORDINANCE 26-01-001 IS NOT REFERABLE

Charter § 308 reaches only “a law, or part of a law, enacted pursuant to th[e] Charter.” Ordinance 26-01-001 meets neither requirement. It is not a “law,” because the Charter’s text reserves that term for measures passed through the mandatory bill-and-law process that the Council did not use here. And it was not “enacted pursuant to th[e] Charter,” because every step was taken “pursuant to” the Land Use Article, specifically the procedures that § 601 of the Charter deliberately preserved as separate from the Council’s §§ 301-310 lawmaking authority. The Charter’s text compels this result. Decades of unbroken County practice confirm it. Maryland Law, moreover, gives aggrieved parties an avenue to challenge an ordinance’s validity in this Court—one the Referendum Committee ignored. *Zimmer*, 444 Md. at 510 n.10 & 11. The Referendum Committee’s contrary reading rests on negative inferences drawn from § 308(a)’s exemptions—inferences that contradict the Charter’s plain language and, if accepted, would cast doubt on more than a decade of local governance.

A. A “Law” Comes From A Bill, And The Ordinance Did Not

The Charter does not directly define “law,” but the constitutional and statutory framework supplies the answer. Section 301 empowers the Council to “enact public local laws for the peace, good government, health, safety or welfare of the County.” This is precisely the authority the General Assembly once exercised for Frederick County before it transitioned to charter governance. The substance never changed—only the enacting body. A “law” within the meaning

of Charter § 308 is therefore the modern successor to what the General Assembly previously enacted: a governance-level public local law of general application and continuing force.

Section 305(a) provides the mandatory and exclusive process for enacting laws: “[t]he Council may enact no law except by written Bill.” Every bill must be drafted in the exact form it will take as law (§ 305(b)), presented to the County Executive for signature or veto (§ 306), and delayed sixty days before taking effect (§ 307). Section 308 then opens the fifty-nine day referendum window. These provisions form a single, interlocking sequence—introduction, presentment, delay, referendum—expressly designed for public local laws of general application.

The timing is dispositive. Every Charter law is deliberately postponed for sixty days so the people have time to seek referendum. The referendum remedy is literally baked into the lawmaking process itself. Land Use Article ordinances operate on an entirely different schedule. They can take effect within ten days of a public hearing, consistent with the Land Use Article.

Other Maryland charters erase any distinction by expressly equating “laws” with “ordinances.” Frederick County’s charter does not. Wicomico County’s Charter defines “law” to “include all acts, ordinances, public local laws and other legislative acts of the County Council.” Anne Arundel County’s Charter defines “public local laws” enacted by the council as “ordinances.” Frederick County’s Charter does neither. It distinguishes ordinances from laws at every turn. Section 104(c) defines a “Bill” as “any proposed act of the County Council resulting in a law *or* ordinance”—two distinct outputs. Sections 207, 214(d), 306, 702, and 705 each treat laws, ordinances, and resolutions as different instruments serving different functions. Where the Charter means laws, it says “law.” Where it means ordinances, it says “ordinance.” The terms are not interchangeable, and *Bodt* instructs that courts do not “judicially insert language to impose exceptions, limitations, or restrictions not evident in the plain language” of a charter. 487 Md. at

370. The Court must give the distinction effect, particularly where one charter equates the terms and another does not.

Crucially, an ordinance can have the effect of law without being a Charter “law.” The Maryland Supreme Court recognized a similar principle in *Prince George’s County v. Thurston*, 479 Md. 575, 278 A.3d 1251 (2022). *Thurston* held that, under the Prince George County Charter, “a resolution, while having the effect of law, is not a substitute for a law.” *Id.* at 591. The court anchored that holding in a Charter provision requiring that “the Council must use a ‘bill’ to pass a ‘law,’ subject to presentment to the County Executive and executive veto.” *Id.* at 606. Frederick County’s Charter § 305(a) contains the identical requirement. The conclusion follows directly: an instrument that bypasses bill and presentment is not a “law” under the Charter, even though it carries legal force.

The County’s legal staff has understood this for years—in language nearly identical to *Thurston*. In December 2022, just months after *Thurston* was decided, Assistant County Attorney Kate Keller advised the newly seated Frederick County Council that “[o]rdinances essentially have the effect of law without necessarily being a law”—and identified rezonings as the paradigmatic examples.¹² The current County Attorney has reaffirmed this conclusion consistently, including in January 2026 immediately after Ordinance 26-01-001 was adopted, when it advised that the Ordinance was not a “law” subject to referendum. A.R. Item 6b, at 8. The Office of the County Attorney’s view—first stated in 2022 and reaffirmed in 2026—mirrors the Charter’s text and *Thurston*’s reasoning perfectly.

Although Ordinance 26-01-001 “ha[s] the effect of law,” *Thurston*, 479 Md. at 591, it does not constitute a “law” under the Charter. It was not enacted by a bill (§ 305(a)), presented to the

¹² *Supra*, n.10.

County Executive for signature (§ 306), or delayed sixty days before taking effect (§ 307). Because Ordinance 26-01-001 is not a “law” under the Charter, it is not subject to referendum under Charter § 308.

B. The Ordinance Was Enacted “Pursuant To” The Land Use Article

Ordinance 26-01-001 falls outside § 308 on a second, independent ground: it was not enacted “pursuant to” the Charter. Every step of its adoption followed the Land Use Article—a distinct source of authority whose provisions “continue to apply” in Frederick County per Charter § 601. In fact, the Charter Commission itself told voters in 2012 that the Land Use Article “will continue to control land decisions after the adoption of the Charter until this requirement in the Charter is amended by voters.” Frederick County, Md., Charter Highlights, Frederick Cnty. Gov’t, <https://frederickcountymd.gov/DocumentCenter/View/256996/Charter-Highlights> (last visited June 4, 2026).

The County Code honors that promise: Chapter 1-19 declares that the County’s zoning code is “established in accordance with the provisions of Md. Ann. Code, Land Use Article.” FC Code § 1-19-1.110(A). The Land Use Article requires that zoning ordinances be “consistent with” the County’s “comprehensive plan,” LUA § 1-303, which must be amended pursuant to the Land Use Article’s procedures. *See* LUA §§ 3-201, 3-204 (requirements and procedures for preparing and adopting comprehensive plan). Zoning regulations like Ordinance 26-01-001 must also follow the procedures required under the Land Use Article, including holding “at least one public hearing,” “publish[ing] the first notice of the hearing at least 14 days before the hearing,” and ensuring the zoning ordinance does “not become effective until 10 days after the hearing or hearings.” LUA § 4-203.

The County followed those procedures to the letter. It first enacted Resolution 26-01, the predicate Comprehensive Plan Amendment, under Land Use Article §§ 3-201 and 3-204. It then

enacted Ordinance 26-01-001 under Land Use Article §§ 4-203 by providing notice, holding public hearings, and enacting the Ordinance 10 days after the hearings. The Ordinance was therefore enacted “pursuant to” the Land Use Article—not the lawmaking provisions of the Charter. *See Kent Island Def. League, LLC v. Queen Anne’s Cnty. Bd. of Elections*, 145 Md. App. 684, 692, 806 A.2d. 341 (2002) (rejecting referendum where “the ordinances in question were enacted pursuant to a public general law and not as an exercise of home rule powers”).

C. The Proper Mechanism To Contest A Comprehensive Rezoning Is A Judicial Challenge, Not A Referendum

A taxpayer aggrieved by a comprehensive rezoning may challenge it directly in this Court. *Zimmer*, 444 Md. at 510 n.10 & n.11. That was a proper avenue for challenging Ordinance 26-01-001—not an unlawful referendum.

Because comprehensive rezonings are legislative acts, “[t]he scope of review by Maryland courts ... is quite narrow.” *Id.* at 509. The zoning action stands unless the challenger proves that the Council (1) failed to follow the required procedures, (2) violated due process, (3) lacked a valid public purpose, and (4) exceeded the police power. *Id.* at 509-10. “Once an act of comprehensive zoning is enacted properly, the ‘motives or wisdom of the legislative body’ in adopting the zoning ‘enjoy a strong presumption of correctness and validity’ and are not changed easily.” *Anne Arundel Cnty. v. Bell*, 442 Md. 539, 554, 113 A.3d 639, 648 (2015); *accord Zimmer*, 444 Md. at 510 (“A ‘[p]roperly enacted original zoning and comprehensive rezoning are presumed to be correct.’”).

The Council’s adoption of Ordinance 26-01-001 satisfies each prong. It followed the procedure Chapter 1-19 prescribes for comprehensive rezonings: the Planning Commission hearing, the County Council hearing, the property signs, and the mailed notice to adjoining owners.

FC Code § 1-19-3.110.7. It considered the Planning Commission’s recommendation.¹³ The CDI Overlay Zone it implemented serves the public purposes identified in Bill 25-09 and Resolution 26-01—namely, to “direct Critical Digital Infrastructure [facilities and substations] to industrial lands ... while minimizing impacts to non-compatible uses” and “guiding and accomplishing the coordinated and harmonious development of Frederick County [to] accommodate present and future needs ... of the County and its citizens.” And the rezoning sits comfortably within the police power the General Assembly delegated to the County under the Land Use Article. The Committee almost certainly would have lost on the merits under this deferential standard.

Perhaps for that very reason, the Committee bypassed direct judicial challenge and pursued referendum instead. It was not free to do so. The deferential standard that governs it reflects Maryland’s long-settled view that comprehensive rezonings are legislative judgments entrusted to the local legislative body and reviewable only at the margins. The Committee chose the wrong forum, and the Court should not sanction its unlawful detour.

D. The Referendum Committee’s Contrary Reading Cannot Be Reconciled With The Charter

The Board of Elections has not proffered a substantive interpretation of Charter § 308. Instead, the Election Director simply punted, declaring herself “unable” to decide whether the petition was authorized by law. A.R. Item 8a, at 1.

The Referendum Committee’s sole argument is not better—and it is affirmatively absurd. It insists that because § 308(a) exempts four specific subjects—taxes, appropriations, Council Districts, and the Compensation-Review Commission—from referendum, and because the Charter elsewhere authorizes those subjects by ordinance, “law” and “ordinance” must be interchangeable.

¹³ Frederick County Council Meeting Minutes *available at* <https://www.frederickcountymd.gov/ArchiveCenter/ViewFile/Item/16161>.

That reading cannot be squared with the Charter’s text. Section 308 applies to “a law, or part of a law, enacted pursuant to the Charter.” Section 104(c) expressly provides that a bill may result in either a law or an ordinance. If and when the County chooses to use the full bill-and-law process for an ordinance—either independently or “as part of” a law—it follows that the resulting ordinance is potentially referable, unless it falls within one of the four exempted subjects. That is precisely why the Charter contains targeted exemptions for those very ordinances in other sections: § 207 requires the Compensation-Review Commission by ordinance; § 214(d) expressly exempts any “ordinance establishing Council Districts” from referendum; and §§ 506(d) and 507 require the Annual Budget and Appropriations Ordinance. The exemptions in § 308(a) are therefore not surplusage; they are the Charter’s own mechanism for handling ordinances that qualify as part of a law.

The Referendum Committee’s contrary reading collapses this carefully integrated structure. It would convert *every* ordinance into a referable “law,” rendering virtually every ordinance enacted since the Charter’s adoption in 2014 procedurally invalid for bypassing the mandatory bill process of § 305—including the Sugarloaf Treasured Landscape Overlay championed by members of the Referendum Committee itself. The resulting disruption to local governance—from zoning and land-use regulation to countless other matters—would be catastrophic, and entirely unintended by the voters who ratified the Charter. *See, e.g.*, Ordinance 20-03-003 (Development Bonds); Ordinance 19-03-003 (Water and Sewer System User Rates).

Even if an ordinance could sometimes qualify as a “law” under § 308(a), the four exempted subjects would still be enacted “pursuant to” the Charter. Ordinance 26-01-001 was not. It was adopted under the Land Use Article—the separate regulatory regime § 601 deliberately preserved outside the Charter’s lawmaking provisions.

II. THE BOARD OF ELECTIONS' CERTIFICATION IS INDEPENDENTLY DEFECTIVE

The Election Article imposes a clear binary duty: when a petition raises a question whether its subject matter may be put to referendum, the Election Director must determine that the use of a petition is authorized by law or determine that it is not. The Election Director did neither. Instead, she invented a third option—a presumption of sufficiency that appears nowhere in the Code—and certified the Referendum Petition on that basis. The Election Article does not permit it.

A. The Election Director Failed To Make The Determination The Election Article Required

The Election Article imposes a strict three-stage sequence—review, determine, certify—each of which must be completed before the next may occur. Section 6-206(a) requires the chief election official to “promptly” review a filed petition. Section 6-206(c) then commands that the official “shall declare” the petition deficient if any of the six enumerated defects exist, including if, “based on the advice of the legal authority,” the “use of a petition for the subject matter of the petition is not authorized by law.”

Section 6-208(a)(2) then directs that, at the conclusion of verification, the Election Director “*shall . . .*, if [she] has not done so previously, determine whether the petition has satisfied all other requirements established by law for that petition.” (emphasis added). Section 6-208(c) permits certification only upon an affirmative finding that “a petition has satisfied all requirements established by law.” The statute therefore presents a binary choice with no third option and no allowance for certification while the authorization question remains open.

The April 3, 2026, certification letter leaves no doubt that the Election Director failed to satisfy the statutory requirements. After finding no deficiency under the first through fourth and sixth grounds in § 6-206(c), the Election Director addressed the fifth as follows: “I am unable to

make a determination that the petition is not authorized by law under EL 6-206 (c) (5) (i).” That is not a determination that the Ordinance is subject to referendum. It is a statement that the Election Director does not know. The statute demands an affirmative answer; it does not authorize certification on the absence of a negative finding.

Section 6-208(c) therefore bars certification on this record. The letter itself admits that the Election Director failed to perform the duty § 6-208(a)(2) imposed on her. That failure alone requires that the certification be set aside.

The Election Director’s reference to the advice of the Board’s Counsel changes nothing. In fact, the requirement that the Director’s determination be “based on the advice of the legal authority” makes the Board’s position particularly untenable. As far back as January 2026, when the Committee sought guidance on the petition, the Election Director referred the Committee to the County Attorney’s office for clarity on “what a law is” under the Charter. A.R. Item 3a, at 1. As the Board concedes in its Answer, it received that legal opinion from the County Attorney, who concluded that Ordinance 26-01-001 is not a “law” subject to referendum. Answer ¶ 26. Rather than defer to that “advice of legal authority,” however, the Election Director refused to determine whether the Referendum Petition was authorized by law when the Board received a contradictory opinion from the Referendum Committee’s former attorney—a party with an obvious interest in the outcome. Answer ¶ 26. Not only did this decision violate her statutory duty to decide the petition’s validity, it failed to defer to the “advice of the legal authority” tasked with interpreting the County Charter.

B. The Presumption Of Sufficiency Has No Basis In The Election Article

To fill the gap created by her failure to make the required determination, the Election Director invoked “a presumption that a petition is sufficient unless there is a finding or

determination of a deficiency.” A.R. Item 8a, at 1. That presumption is the load-bearing premise of her certification—and it is an invention.

The word “presumption” appears nowhere in § 6-206 or § 6-208, and no Maryland court has ever recognized one in this context. Indeed, the text the Election Director relied upon says the opposite. Section 6-206(b) provides that, “[u]nless a determination of deficiency is made under subsection (c) of this section, the chief election official shall (1) make a determination that the petition, as to matters other than the validity of signatures, is sufficient; or (2) defer a determination of sufficiency pending further review.” The operative word is “unless.” Subsection (b) is conditional on completing subsection (c) first; it does not create a default to sufficiency when the Director cannot decide.

The Election Director’s reading nullifies § 6-206(b)(2)’s express deferral option and defeats the gatekeeping function of § 6-206(c)(5)(i). It also violates Section 6-208(a)(2)’s command that the Election Director “*shall* ... determine” that the petition satisfies “all other requirements established by law for that petition.” (emphasis added). The General Assembly placed these provisions in the Code precisely to keep unauthorized petitions off the ballot before signatures are counted and ballots are printed. Under the Election Director’s approach, the harder the legal question, the more reliably the gate stays open. That is not what the statute says, and it is not what the statute is for.

III. THE REFERENDUM PETITION IS FATALY DEFECTIVE

The reproduction of Ordinance 26-01-001 on the petition papers fails to satisfy the Charter’s requirement that each petition contain the full and accurate text of the law. Charter § 308(b) requires each petition paper to “contain the full and accurate text of the law, or part of the law, that is subject to the petition.” The Maryland State Board of Elections provides further

clarification that such text must be printed or copied onto the back of each signature page.¹⁴ “If a signature page does not contain the required text ... when it reaches the local election board for verification, the signatures on the page will be invalidated.”¹⁵ In the alternative, a petition may instead carry “a fair and accurate summary of the substantive provisions of the proposal.” Election Law § 6-201(c)(2)(i).¹⁶ But any such summary must “be free from any misleading tendency, whether of amplification, or omission,” so as to permit voters to exercise “intelligent and enlightened judgment” as to whether to sign. *Gray*, 218 Md. App. at 665 (quoting *Anne Arundel Cnty. v. McDonough*, 277 Md. 271, 301-02, 806 A.2d. 341 (1976)). The Referendum Committee’s petition satisfies neither standard.

A. The Font Size Rendered The Text Of The Ordinance Illegible

The Referendum Committee reproduced Ordinance 26-01-001 in a font size and print density that rendered the text effectively illegible. Although the Ordinance’s text was originally in 12-point font, the Committee shrunk it to fit four pages onto the back of a single 8.5 x 11 inch signature page (in addition to printer margins and gutters between panels). Admin. R. Item 2b, at 2. The font height consequently shrank to one-sixteenth (1/16) of an inch—**4.5-point** font.¹⁷ See Matthew Butterick, *Typography for Lawyers* 136 (2d ed. 2015) (“There are 72 points to an inch.”). An unreadable reproduction is not (and cannot sensibly be) a “full and accurate text” within the

¹⁴ *Procedures for Filing a Statewide or a Public Local Law Referendum Petition, 2023 – 2024 Elections*, State Board of Elections, State of Maryland (revised Jan. 2024), available at <https://elections.maryland.gov/pdf/6-201-3a.pdf>.

¹⁵ *Id.*

¹⁶ Charter § 308(b) requires the “full and accurate text of the law” and does not appear to contemplate including a summary as an alternative. Petitioners address Election Law § 6-201(c)(2)(i)’s “fair and accurate summary” standard in the alternative only; the Referendum Petition fails to meet that standard for the reasons stated herein.

¹⁷ For illustration purposes, the following text reproduces this paragraph in 4.5 point font:

The Referendum Committee reproduced Ordinance 26-01-001 in a font size and print density that rendered the text effectively illegible. Although the Ordinance’s text was originally in 12-point font, the Committee scaled it down to fit four pages onto the back of a single 8.5 x 11 inch signature page (in addition to printer margins and gutters between panels). Admin. R. Item 2b, at 2. The font height consequently shrank to one-sixteenth (1/16) of an inch—**4.5-point** font. See Matthew Butterick, *Typography for Lawyers* 136 (2d ed. 2015) (“There are 72 points to an inch.”). An unreadable reproduction is not (and cannot sensibly be) a “text” within the meaning of the Charter.

meaning of the Charter, nor can it constitute a “fair and accurate summary,” Election Law § 6-201(c)(2)(i), that enables the “intelligent and enlightened judgment” that *Gray* requires. 218 Md. App. at 665.

Maryland law independently confirms that font sizes this small are unacceptable in legal instruments. Maryland Code, Commercial Law Article § 14-2002(b) requires that mandated notices appear “in at least 10 point boldface type.” Maryland Code, Business Regulation Article § 16-604(b)(2) requires that safety markings on cigarettes “be in a font of at least 8 point type.” The 4.5-point font the Committee used falls below every one of those statutory floors. Federal authorities applying deceptive-trade-practices principles have reached the same conclusion: even truthful information can mislead when critical disclosures are made in fine print. *See FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1065-67 (C.D. Cal. 2012), *aff’d in relevant part*, 815 F.3d 593 (9th Cir. 2016) (finding advertisement deceptive when key disclosure was “in the smallest text size on the page and densely packed with the other text”); *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1200-01 (9th Cir. 2006) (finding that small-print disclosures on the back of a check were insufficient to defeat the net impression created by the document’s front face); *see also FTC v. Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 42-43 (D.C. Cir. 1985) (holding that a cigarette advertisement was deceptive despite a truthful fine-print explanation in the corner of the page). A Maryland voter presented with 4.5-point type is in no better position than one presented with no text at all. Each petition paper bearing illegible text is facially defective, and all signatures on those papers must be invalidated.

The illegibility problem was avoidable. The Committee could have printed its petitions on larger paper—legal-size sheets, or a fold-out format—which would have provided the space necessary to reproduce the Ordinance’s text at a legible size. Both alternatives were readily

available. By choosing instead to compress four pages of text onto a quarter of a standard signature page, the Committee rendered every petition paper facially defective.

B. The Black-And-White Reproduction Of The Maps Obscured Critical Information

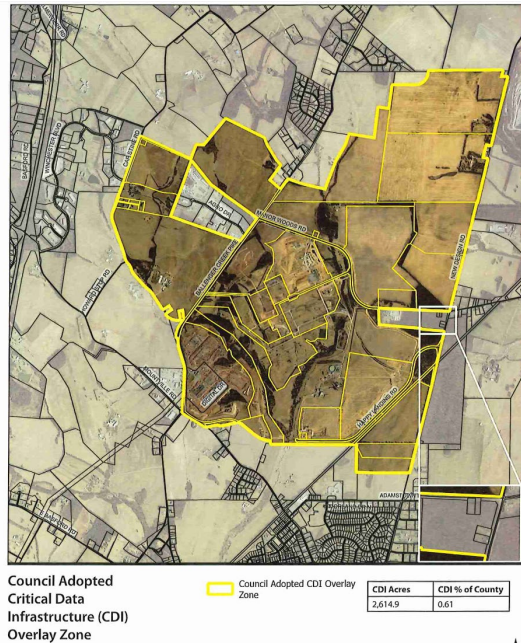
The petition also failed to include an “accurate” reproduction or a “fair” summary of Ordinance 26-01-001 because the Committee stripped its zoning maps of color. Ordinance 26-01-001 incorporates two color-coded zoning boundary maps: Council Adopted CDI Overlay Zone (“Map A”) and Council Adopted Zoning (“Map B”). Maps A and B are necessary and integral components of the Ordinance. They are incorporated by reference in the Ordinance’s text, and serve as the Ordinance’s only substantive depiction of the zoning and land use designation changes enacted to provide voters with a clear indication of what specific land was being re-zoned and where. The petition papers reproduce Maps A and B—originally produced and appended to the Ordinance in color—in black-and-white, collapsing distinct zone classification colors and shades, as well as boundary lines, into indistinguishable shades of gray.

Map A depicts the boundary line of the CDI Overlay Zone that lies at the heart of Ordinance 26-01-001. The petition’s black-and-white reproduction makes that boundary line impossible to see. The yellow line, which reads clearly against the color original’s aerial photographic background, disappears entirely when converted to grayscale. Although certain areas within the Overlay Zone appear darkened in the reproduction—portions of the western edge, for example—other areas within the Zone are completely indistinguishable from the surrounding territory. The northeastern and southeastern edges, in particular, blend into the background. A signer reviewing the petition cannot trace the boundary of the CDI Overlay Zone and therefore cannot determine which parcels are subject to the Ordinance challenged by the Referendum Petition.

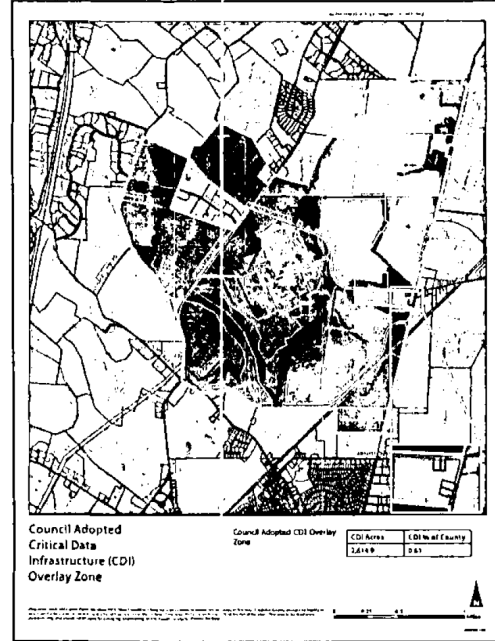
A side-by-side comparison of Map A as appended to Ordinance 26-01-001 against the version appearing on the petition sheets demonstrates the stark differences in quality and legibility:

Map A: Council Adopted CDI Overlay Zone

Ordinance:



Petition:



See Mot. to Stay, Van Grack Aff., Ex. A-5; A.R. Item 2b, at 2.

As a result, Maryland voters cannot determine from the reproduced map which parcels are subject to the CDI Overlay Zone—the primary purpose of the Ordinance. To the extent that the referendum asks whether data center development should be permitted on particular parcels, that purpose is entirely undermined by a map that conceals the identity of the affected parcels, and does not permit voters to exercise any meaningful “judgment” about the question. *Gray*, 218 Md. App. at 665. The reproduction of Map A also renders the text of street names entirely illegible. These deficiencies are exacerbated by the maps’ reduced scale—less than one-quarter of an 8.5” x 11” petition sheet.

Map B suffers from the same fatal defects. Map B depicts the underlying zoning designations enacted by Ordinance 26-01-001 that are also critical to the development of data

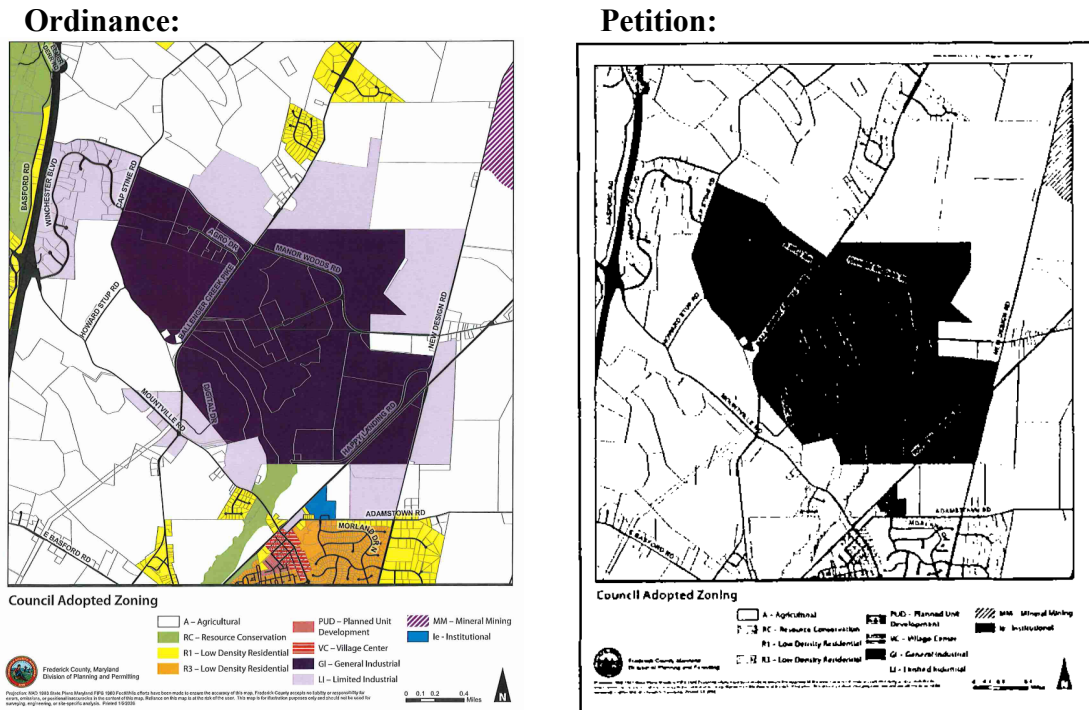
centers. In order to develop a Critical Digital Infrastructure Facility on a parcel, that parcel must not only fall within the Overlay Zone, but must also carry a General Industrial (GI) or Limited Industrial (LI) zoning designation. *See* Bill No. 25-09, Frederick County Code § 1-19-10.1100(B) (establishing that the CDI Overlay Zone “shall be established only on lands with a comprehensive plan land use designation of Limited Industrial (LI) or General Industrial (GI) uses”). Map B therefore tells voters which parcels within the Overlay are actually eligible for data center development, and it also shows voters how close that development could come to residential areas—a question central to the Referendum Committee’s public campaign.

The original Map B displays ten color-coded zoning designations: Agricultural (white), Resource Conservation (green), R1–Low Density Residential (yellow), R3–Low Density Residential (orange), PUD–Planned Unit Development (pink hatched), VC–Village Center (red hatched), GI–General Industrial (dark purple), LI–Limited Industrial (light purple/lavender), MM–Mineral Mining (diagonal hatching), and Ie–Institutional (blue).¹⁸ But the Referendum Petition’s black-and-white reproduction makes it impossible to distinguish all but two of those designations from one another.

¹⁸ The Institutional designation covers parcels—such as the Adamstown area wastewater facilities—that are not eligible for data center development under the Overlay framework.

A side-by-side comparison of Map B as appended to Ordinance 26-01-001 against the version appearing on the petition sheets demonstrates these deficiencies:

Map B: Council Adopted Zoning



See Mot. to Stay, Van Grack Aff., Ex. A-5; A.R. Item 2b, at 2.

Most critically, GI (dark purple) and Ie–Institutional (blue) both appear black and are indistinguishable from each other. Because Institutional parcels are ineligible for data centers, the inability to distinguish General Industrial from Institutional causes the reproduced map to overstate the area available for data centers. A signer cannot tell which of the blackened parcels are industrially zoned sites and which are institutional properties that cannot be developed for this use. Similarly, LI (light purple) and R1–Low Density Residential (yellow) are both rendered in indistinguishable light shades of gray, making it impossible for a signer to tell which nearby parcels carry industrial zoning eligible for data center development and which are residential neighborhoods that cannot.

Just as microscopic text cannot satisfy the Charter’s requirement to “accurate[ly]” or “fair[ly]” reproduce the Ordinance, a black-and-white reproduction that eliminates the Ordinance’s color coding does not “contain” an accurate presentation of Ordinance 26-01-001. The Ordinance uses color to identify the ten zoning designations that determine permitted uses, applicable land-use restrictions, and which parcels are subject to the Overlay Zone. A signer reviewing only a grayscale reproduction cannot make those distinctions, understand where data centers can be developed, or determine their potential proximity to residential areas. The conversion to black-and-white does not merely degrade the maps’ appearance; it eliminates the information the maps exist to convey.

C. The Higher-Resolution Copy Of The Petition Suffers From The Same Defects

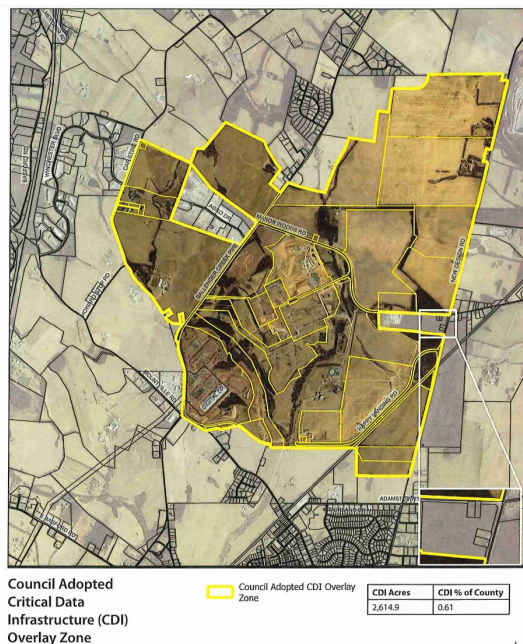
The maps above appear in the administrative record, to which this Court’s review under Title 7 is limited. However, Petitioners have also obtained a higher-resolution copy of the petition that signers may have seen, which is included in this memorandum as an exhibit. *See* Exhibit 2, attached hereto. Notably, neither the Board nor the Committee has sought to supplement the administrative record, and discovery—which the Committee resisted—remains ongoing. Nevertheless, in the interest of completeness, Petitioners address that higher-resolution version, which suffers from similar, fatal defects.

The problem concerning the undersized text remains the same. The higher-resolution copy reproduces Ordinance 26-01-001’s text in the same 4.5-point font, which—for the reasons given above, *see supra* Section III.A—fails to provide a fair and accurate representation of the Ordinance. As to Map A, an ordinary signer still cannot discern the CDI Overlay Zone boundaries. The bright yellow boundary line that delineates the Overlay Zone in the original Ordinance is again absent. As before, the northeastern and southeastern corners of the Zone still remain indistinguishable with no clear boundary lines. A voter reviewing this version cannot trace the

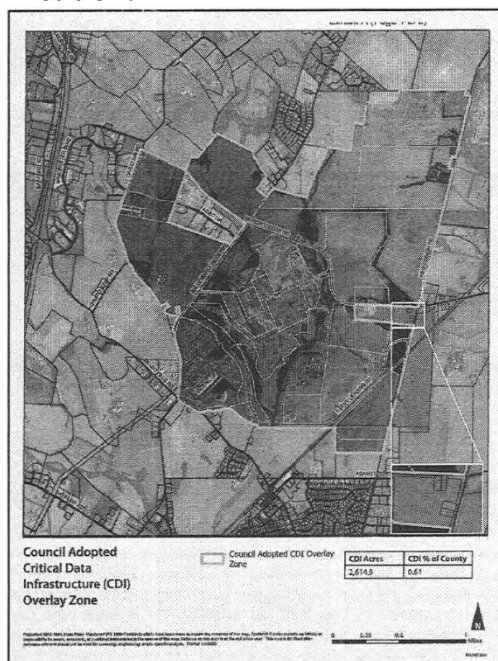
Overlay Zone any more reliably than one reviewing the version contained in the administrative record.

Map A: Council Adopted CDI Overlay Zone

Ordinance:



Petition:

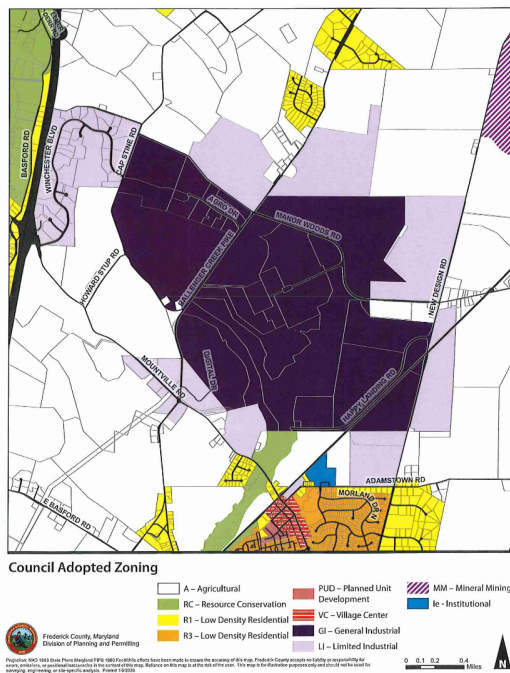


See Mot. to Stay, Van Grack Aff., Ex. A-5; Ex. 2.

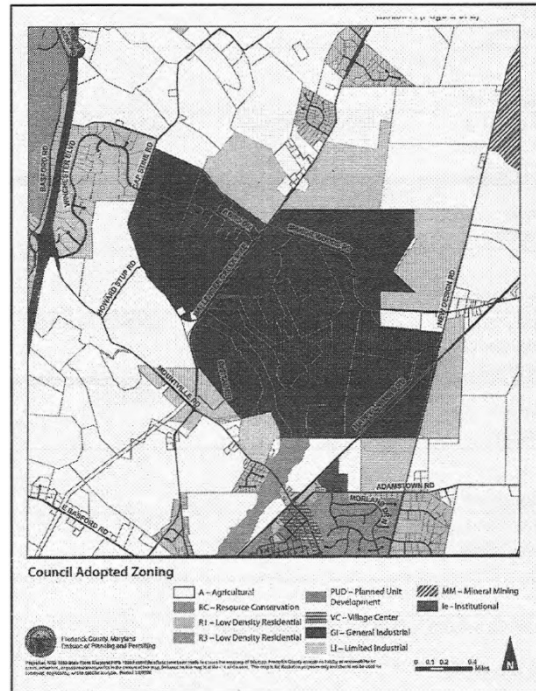
The higher-resolution version of Map B presents the same core problems. Although the reproduction faintly distinguishes a few additional zoning designations, the critical distinctions remain impossible to draw. GI (dark purple) and Ie—Institutional (blue) still appear in the same dark shade, making it impossible for a signer to distinguish industrially zoned land eligible for data center development from Institutional parcels that are not. Limited Industrial (lavender) and R1—Low Density Residential (yellow) still appear in indistinguishably similar light shades of gray. The reproduced map therefore remains simultaneously overinclusive—conflating GI and Institutional—and affirmatively misleading about the proximity of potential data center development to residential neighborhoods, by blending LI-zoned parcels with adjacent R1-residential areas.

Map B: Council Adopted Zoning

Ordinance:



Petition:



See Mot. to Stay, Van Grack Aff., Ex. A-5; Ex. 2.

As before, the greyscale reproductions—even in a higher resolution—eliminate critical color coding and therefore fail to convey a “fair” and “accurate” presentation of Ordinance 26-01-001. Signers examining this version of the Ordinance cannot distinguish between critical zoning designations, identify the parcels where data centers can be developed, or assess their proximity to residential land. As such, they do not permit voters to exercise “intelligent and enlightened judgment” as to whether to sign the Referendum Petition. *Gray*, 218 Md. App. at 665. The signatures should therefore be invalidated.

IV. IN THE ALTERNATIVE, A WRIT OF MANDAMUS SHOULD ISSUE

The April 3, 2026, letter purports to be a final determination reviewable under § 6-209(a). The letter states that the Board of Elections “will inform the Frederick County Council and the Frederick County Office of Law of the final disposition of the petition.” A.R. Item 8a, at 1. The

Election Director then certified the petition to the County officials. A.R. Item 8b, at 1. Out of caution, however, Petitioners request a writ of mandamus in the alternative.

Mandamus is available where the action sought is ministerial and non-discretionary, and the petitioner has a clear legal right to that action. *Motor Vehicle Admin. v. Geppert*, 470 Md. 28, 52, 233 A.3d 102 (2020). Both elements are satisfied here. Sections 6-206(c), 6-208(a)(2), and 6-208(c) impose a mandatory duty to make an affirmative authorization determination before certifying any petition. Petitioners are entitled to that determination—which the Election Director expressly acknowledged she never made. If § 6-209(a) review is unavailable, mandamus is the only adequate remedy, with strict instructions from this Court that Ordinance 26-01-001 is not subject to referendum.

CONCLUSION

The Court should reverse the Board of Elections' determination that the Referendum Petition is sufficient.

Date: June 4, 2026

Respectfully submitted,

LONGMAN & VAN GRACK, LLC

/s/ Adam L. Van Grack

Adam L. Van Grack, Esq. (CPF# 0212190262)

/s/ Theodore B. Kiviat

Theodore B. Kiviat, Esq. (CPF# 0101110004)

10411 Motor City Drive, Suite 750

Bethesda, Maryland 20817

Telephone: (301) 291-5027

Fax: (301) 291-5028

avangrack@lvglawfirm.com

tkiviat@lvglawfirm.com

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

Keith H. Forst

(Special Admission)

Asher Griffin

(Special Admission)

José R. Pereyó

(Special Admission)

Paul D. Henderson

(Special Admission)

555 13th Street NW, Suite 600

Washington, District of Columbia 20004

Telephone: (202) 538-8000

Fax: (202) 538-8100

keithforst@quinnemanuel.com

ashergriffin@quinnemanuel.com

josepereyo@quinnemanuel.com

paulhenderson@quinnemanuel.com

*Counsel for Petitioners-Plaintiffs Quantum
Maryland, LLC and Joan Aquilino*

CERTIFICATE REGARDING RESTRICTED INFORMATION

I, Adam L. Van Grack, HEREBY CERTIFY that this submission does not contain any restricted information.

/s/ Adam L. Van Grack
Adam L. Van Grack, Esq. (CPF# 0212190262)

CERTIFICATE OF SERVICE

I, Adam L. Van Grack, HEREBY CERTIFY that on this 4th day of June, 2026, a copy of the foregoing *Petitioners' Memorandum of Law* was filed electronically in the Maryland Electronic Courts (MDEC) system in the above-captioned matter and served and/or will be served upon all parties registered in the MDEC System.

/s/ Adam L. Van Grack

Adam L. Van Grack, Esq. (CPF# 0212190262)

EXHIBIT 1

Questions for County Attorney and Board of Elections

Dear Sir/Madam:

Below are questions we seek clarification to when pursuing a referendum.

1. Can the county council ordinance which is making changes to the zoning map as a result of a Comprehensive Plan amendment resolution can be overturned by a referendum.
2. Additional questions on this topic:
 - a. Does an ordinance count as a “law” under the Charter’s definitions?
 - b. Is there a prohibition on using a referendum to address a zoning map change(s)?
 - c. Does it matter that the CDI Overlay zoning map amendment was not done with a quasi-judicial process?
 - d. If the effective date of an ordinance is the day it is signed, what happens 60 days later if we get enough signatures? (Charter says it can’t “take effect” but it will have already taken effect?)
 - e. Does the petition committee need to be registered with the County prior to collecting signatures or does the petition itself require any registration?
 - f. Can we set up a ballot committee before the vote on the ordinance?
 - g. What form should be submitted to the Board of Elections for notification of the formation of a ballot committee? Do we submit to the State and/or the County? Please forward a copy of form(s).
 - h. Which set of instruction should we follow:
 - a. State of Maryland procedures, Number of Signatures for “public local law” states, “the petition must be signed by registered voters equal in number to 10% of the votes cast for Governor in the affected jurisdiction in the preceding Gubernatorial General Election.”
 - b. The Frederick County Charter, Section 308(a) states “petition signed by seven percent of the register voters of the County”
 - c. Which rule do we follow?
 - d. Frederick County Charters’ statement of registered voters is vague, at what point in time?
 - i. Frederick County Charter, Section 308(c) states “No later than fifty-nine days following the date a law is enacted.” What is the definition of this legislation on the ordinance?
 - a. The date the legislation is voted on by the Council,
 - b. The date the Council AND the County Executive sign the legislation, or

- c. The effective date of the legislation?
 - j. Is it possible this referendum, if we are successful in obtaining the required signatures, that a special election would be called?
- 3. Can the committee submit signatures in batches or do they all have to be submitted at the same time?
- 4. If the committee can submit the signatures in batches, will there be signature verifications of the signatures in each batch, and if so, will we be told of the unacceptable signatures, so we can correct the deficiency.
- 5. If the committee adds a numbering system to each petition sheet, will that invalidate the submission of signatures.
- 6. We are proposing a referendum be put before voters at a future election such that voters can determine whether an enacted bill by the Frederick County Council should be upheld or repealed. The sample petition entitled "State of Maryland--Charter Amendment Petition" includes the phrase "hereby petition to have this amendment of the County or City Charter submitted to a vote..." For our County petition, can we substitute "this amendment of the County or City Charter" with "this enacted bill by the Frederick County Council"? [wording may need to be adjusted of course to absolute correctness but hopefully the gist is clear]
- 7. If we use a modified version of the State of Maryland - Charter Amendment Petition (see above), we note an apparent conflict with the Frederick County Charter. The conflict is as follows: The Charter Amendment Petition's two paragraphs at the top of the page (one starting "We, the undersigned..." and the other starting "NOTICE TO SIGNERS:") both make reference to the petition matter be "submitted to a vote" or "placed on the ballot," respectively, "at the next general election." However, Section 308. Referendum, item (3) allows the County Council, depending on the timing of the petition filing, to choose to either put the referendum on the ballot at the next general election or a "special election...not less than thirty days and not more than ninety days following the filing of a valid petition ... A special election is prohibited whenever members of the United States Congress are to be elected at a general election within one hundred eighty days of the filing..." Based on our presumed petition filing date of around March 20 (depending on the date of Council bill enactment), the proposed petition would allow this choice to be made by the Council. Further, our understanding is based on the Frederick County Charter that a Council decision regarding a special election would be made after the petition filing. Therefore, can we revise the Charter Amendment Petition wording of "general election" to "general election or special election called by the Frederick County Council." This would prevent us from presuming a specific action by the Council.

From: [Dan Loftus](#)
To: [Jose Pereyo](#)
Cc: [Adam Van Grack](#)
Subject: RE: Board of Elections - Administrative Record
Date: Thursday, May 14, 2026 2:37:19 PM
Attachments: [Attachment Questions for County Attorney and Board of Elections Transmittal of Record.docx](#)

[EXTERNAL EMAIL from danloftus@verizon.net]



Excellent. Thank you, Jose! I won't file until I hear from Adam. I believe he's in Court.

Next, Barbara just sent me the attachment with the questions regarding 3a. Barbara answered them in her e-mail on 3a.

Dan

CONFIDENTIALITY NOTICE

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This transmission, including any attachments, contains information from the law firm Daniel B. Loftus, P.C., which may be confidential and/or privileged. The information is intended to be for the exclusive use of the intended recipient. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other uses of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately and delete this transmission and all copies. Thank you.

From: Jose Pereyo <josepereyo@quinnemanuel.com>
Sent: Thursday, May 14, 2026 1:16 PM
To: Dan Loftus <DanLoftus@verizon.net>
Cc: 'Adam Van Grack' <avangrack@lvglawfirm.com>
Subject: RE: Board of Elections - Administrative Record

Thanks, Dan. Some minor edits and a few comments regarding the notices. Defer to Adam on any substantive comments or the caption headings.

From: Dan Loftus <DanLoftus@verizon.net>
Sent: Thursday, May 14, 2026 1:05 PM
To: Jose Pereyo <josepereyo@quinnemanuel.com>
Cc: 'Adam Van Grack' <avangrack@lvglawfirm.com>
Subject: RE: Board of Elections - Administrative Record

[EXTERNAL EMAIL from danloftus@verizon.net]

Hey Jose ----

Just following up on our call today (5/14/26). As I mentioned, I did get a hold of Barbara today. She is out of the office and will get me those attachments once she gets back to the office.

Next, here is a draft notice of participation for your review I plan on filing today.
Thanks for reviewing this.

Dan

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From: Jose Pereyo <josepereyo@quinnemanuel.com>

Sent: Thursday, May 14, 2026 12:34 PM

To: Dan Loftus <danloftus@verizon.net>

Cc: Paul Henderson <paulhenderson@quinnemanuel.com>; Jacob Beach <jacobbeach@quinnemanuel.com>; Adam Van Grack <avangrack@lvglawfirm.com>; Theodore B. Kiviat, Esq. <tkiviat@lvglawfirm.com>

Subject: RE: Board of Elections - Administrative Record

Hi Dan,

Wanted to follow up. Were you able to speak with Barbara.

Thanks,

José

From: Jose Pereyo <josepereyo@quinnemanuel.com>

Sent: Wednesday, May 13, 2026 12:35 PM

To: Dan Loftus <danloftus@verizon.net>

Cc: Paul Henderson <paulhenderson@quinnemanuel.com>; Jacob Beach <jacobbeach@quinnemanuel.com>; Adam Van Grack <avangrack@lvglawfirm.com>

Subject: Board of Elections - Administrative Record

Dan,

Thanks for confirming yesterday the batch numbering issue regarding batches 78 and 79. Would also appreciate looking into, and as discussed, the privilege log regarding Item No. 9 (pgs. 2 – 3 of the attached PDF).

Relatedly, and I would greatly appreciate if you could send this at your earliest convenience, there is an email that seems to be missing its attachments. I'm referring to item 3a (pgs. 12-13 of the attached PDF). Could you please send those attachments today?

Thanks,

José

EXHIBIT 2

FREDERICK COUNTY ORDINANCE NO. 26-01-001

Comprehensive Zoning for the Critical Digital Infrastructure Overlay Zone -An Element of the Livable Frederick Comprehensive Plan. Effective date of this Ordinance is January 20, 2026.

THE EFFECTIVE DATE OF THIS ORDINANCE IS JANUARY 20, 2026

ORDINANCE NO. 26-01-001

ORDINANCE OF THE COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND

RE: Comprehensive Zoning for the Critical Digital Infrastructure Overlay Zone -An
Element of the Livable Frederick Comprehensive Plan

PREAMBLE

WHEREAS, in conjunction with the Frederick County Planning Commission's development of the Critical Digital Infrastructure Overlay Zone - An Element of the Livable Frederick Comprehensive Plan (Plan), the Planning Commission also engaged in a comprehensive review of the zoning and land use designations of the properties within the Critical Digital Infrastructure Overlay Zone Planning Area (Planning Area); and

WHEREAS, Planning Department Staff and County property owners requested changes to zoning and land use designations of numerous properties within the Planning Area; and

WHEREAS, The Frederick County Planning Commission also recommended certain zoning and land use designation changes when it certified the Critical Digital Infrastructure Overlay Zone -An Element of the Livable Frederick Comprehensive Plan on November 4, 2025; and

WHEREAS, after providing the required public notice, the County Council conducted a public hearing on December 16 and 17, 2025, on the proposed Plan; and

WHEREAS, after providing the required public notice, the County Council conducted a public hearing on December 16 and 17, 2025, concerning the proposed land use and rezoning designation changes, and overlay application for various properties within the Planning Area; and

WHEREAS, The County Council considered all of the recommendations of the Frederick County Planning Commission, the Planning Staff, public comments received as part of the public hearings of the Planning Commission and the County Council, written correspondence submitted concerning the Plan and the zoning and land use designation from adjoining planning jurisdictions, municipalities, affected State and local agencies and interested persons; and

WHEREAS, the County Council conducted a review in sessions open to the public; and

WHEREAS, after the various public hearings, and consideration of all comments and correspondence received on this matter, the County Council approved changes to the Planning Commission's recommended Critical Digital Infrastructure Overlay Zone -An Element of the Livable Frederick Comprehensive Plan and to the recommended land use and zoning designations; and

WHEREAS, the County Council has determined that the zoning and land use designation changes set forth in the attached Exhibit A are consistent with the Plan and are designed to create predictability for the community and the data center industry, and support other industries with industrial land needs, to best promote health, safety order, convenience, prosperity, and general welfare.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND that the zoning and land use designation, as set forth in Exhibit A, which is attached hereto and incorporated by reference, shall hereinafter be as designated in the exhibit.

AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on January 20th, 2026.

The undersigned hereby certifies that this Ordinance was approved and adopted on the 20th day of January, 2026.

ATTEST:

Rajoy Churney
Rajoy Churney
Council Chief of Staff

FREDERICK COUNTY COUNCIL

By: *Brad W. Young*
Brad W. Young
President

The motion to adopt the zoning changes outlined in Exhibit A was approved by a vote of 5-2.



Council Adopted Critical Data Infrastructure (CDI) Overlay Zone

Produced by 10/20/2025 Data from Maryland and 10/20/2025 Data from the County of Frederick. This map is a representation of the data provided and is not a guarantee of accuracy. The map is for informational purposes only and should not be used for engineering, planning, or other specific applications. Revised 10/20/2025

0 0.25 0.5 1 Miles



Council Adopted Zoning

Produced by 10/20/2025 Data from Maryland and 10/20/2025 Data from the County of Frederick. This map is a representation of the data provided and is not a guarantee of accuracy. The map is for informational purposes only and should not be used for engineering, planning, or other specific applications. Revised 10/20/2025

0 0.1 0.2 0.4 Miles