

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

QUANTUM MARYLAND, LLC, et al.

Plaintiffs,

v.

FREDERICK COUNTY BOARD OF
ELECTIONS, et al.

Defendants.

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

PETITIONERS' RULE 7-205 MOTION TO STAY BOARD OF ELECTIONS'
DETERMINATION PENDING PETITION FOR JUDICIAL REVIEW

COME NOW Petitioners Quantum Maryland, LLC (“**Quantum Maryland**”) and Joan Aquilino (the “**Petitioners**”), by and through their undersigned counsel, and pursuant to Maryland Rule 7-205, hereby move this Honorable Court to stay the effect of Respondents Frederick County’s Board of Elections’ (“**Board of Elections**”) and Election Director Barbara Wagner’s determination, dated April 3, 2026, that the Frederick County Data Center Referendum Committee’s (“**Referendum Committee**”) petition for referendum (“**Referendum Petition**”) is sufficient for purposes of §§ 6-206, 6-208 of the Election Law Article of the Annotated Code of Maryland (“**Election Law**”), and as such, subject to a referendum vote in an upcoming ballot.

After years of public debate over data center development in Frederick County (“**County**”), a unanimous, bipartisan County Council sponsored a comprehensive two-step solution. First, in September 2025, the County Council passed Bill 25-09—a law, enacted under the County Charter’s full legislative process, that created the Critical Digital Infrastructure Overlay Zone (“**CDI Overlay Zone**”) that would confine all future data center development to a single, discrete area of the County comprising less than one percent of its total land mass. *See* Affidavit of Adam Van Grack, Exhibit A, attached hereto, (“**Van Grack Affidavit**”) Ex. A-3. Second, in January 2026, the County Council approved Ordinance 26-01-001, a routine zoning map amendment that applied the CDI Overlay Zone to the specific parcels the law had designated. *See* Van Grack Affidavit Ex. A-5. Both steps followed well-worn legal tracks. Both were conducted in public, with full notice and opportunity to be heard. *See* Van Grack Affidavit Ex. A-2.

Opponents of data center development, including key members of the Referendum Committee, declined to challenge the law. When the sixty-day referendum window for Bill 25-09 opened in September 2025, they did nothing. They waited until the law was safely beyond reach, then turned their attention to the implementing ordinance—filing the Referendum Petition

that targets the map amendment rather than the law it implements. *See* Van Grack Affidavit Ex. A-4. The Referendum Committee also did not come to the effort with a complete and accurate account of what the referendum would accomplish. Circulators communicated a misleading narrative to prospective signatories about the ordinance's scope and effect. *See* Van Grack Affidavit Ex. A-8.

The Referendum Petition suffers from a deeper problem than the manner in which it was circulated: it targets an ordinance that is categorically ineligible for referendum. Frederick County Charter § 308 extends the referendum right only to "law[s]" enacted through the Charter's own bill-to-law procedures. Ordinance 26-01-001 followed a different track entirely—the Land Use Article's mandatory map-amendment process, which the County has used to amend zoning boundaries for more than four decades. Not a single step in Ordinance 26-01-001's promulgation invoked Charter § 305. Ordinance 26-01-001 is not a "law" within the meaning of § 308, so a petition targeting it is not valid.

The Election Law Article accounts for exactly that problem. Under Election Law § 6-206(c)(5)(i), the Election Director may not approve a petition if "the use of a petition for the subject matter of the petition is not authorized by law." Yet the Election Director declared herself "unable to make [that] determination," and, instead invoked a presumption of sufficiency to certify the Referendum Petition. *See* Van Grack Affidavit Ex. A-9. That alleged presumption does not survive § 6-208, which mandates that at the conclusion of the verification and counting processes, the chief election official shall "determine whether the petition has satisfied all other requirements established by law for that petition"—including whether the subject matter is authorized by law. The Election Director made no such determination. She certified a petition whose authorization

she never resolved—nullifying the very screening function Election Law §§ 6-206 and 6-208 exist to perform.

Petitioners filed their Petition for Judicial Review and Declaratory Judgment Complaint days after the Board of Elections' April 3, 2026, determination, and have moved contemporaneously to shorten the time for transmitting the administrative record. They are proceeding as expeditiously as the rules allow. But the Board of Elections' determination has already triggered the automatic suspension of Ordinance 26-01-001 under Charter § 308(d), and the threat of a special election—raised publicly by Council Member Steve McKay just days after the determination—risks placing this referendum on a ballot before this Honorable Court has had any opportunity to rule. *See* Van Grack Affidavit at ¶17. A stay is warranted to preserve the status quo, protect the substantial reliance interests at stake, and avoid the waste of public resources on an election that this Honorable Court may determine should never have taken place.

SUMMARY OF THE ARGUMENT

The balance of equities and the relative positions of the parties strongly support the requested stay. Four factors, each independently sufficient and collectively compelling, warrant this Honorable Court's intervention. First, Petitioners face irreparable harm in the absence of a stay. The Board of Elections' and the Election Director's determination has triggered the automatic suspension of Ordinance 26-01-001 under Charter § 308(d), thus potentially affecting development rights in properties situated in the Overlay Zone. *See* Frederick Cnty., Md. Charter § 308(d) ("Whenever a petition complying with all the provisions of law and this Charter is filed, the referred law, or the referred portion of law, other than expedited legislation, may not take effect until thirty days after approval by a majority of voters."). Moreover, on *April 7, 2026*, during the Frederick County Council's Meeting, one of the Referendum Committee's strongest supporters,

Council Member McKay, went on the record stating that there should be a public discussion on whether the County should hold a special election on the Referendum Petition. *See Van Grack Affidavit at ¶17.* If that were to happen, the Referendum Petition could appear on the ballot before this Court has an opportunity to determine its validity, potentially wasting resources on a special election that is later deemed unlawful.

Second, the equities of the parties' relative positions favor Petitioners. The Referendum Committee's opposition did not materialize until after Ordinance 26-01-001 was enacted through a lengthy, deliberative, and fully public two-step legislative process—a process in which key members of the Referendum Committee participated and to which they raised no timely legal objection. *See Van Grack Affidavit Ex. A-2.* Having allowed the process to run its course, they cannot now claim that halting the referendum's progress pending judicial review works an inequity upon them.

Third, Petitioners have a strong case on the merits. As discussed below, the Board of Elections' and its Election Director's determination contradicts the conclusions of the County's own legal authorities—including the County Council's attorney and independent outside counsel—each of whom determined that Ordinance 26-01-001 is not a "law" subject to referendum under Charter § 308, a threshold requirement that the Election Director expressly circumvented under Elections Law § 6-206(c)(5)(i).

Fourth and finally, neither the Board of Elections nor the County will suffer harm if the stay is entered and the public interest will be served not only by ensuring orderly elections, but also by respecting the County's concerted and carefully designed plan to create a specific zone for data center development. In support of this Motion, Petitioners state as follows:

SUMMARY OF PROCEEDINGS

1. On May 6, 2025, Frederick County Executive, Ms. Jessica Fitzwater, and members of the County Council announced a “compromise” to limit where data centers could be built in the County. *See* Van Grack Affidavit Ex. A-2. The County Council’s proposed legislation would limit development of data centers to less than 1% of the County’s total land mass and, even more crucially, on 2,122 acres of land where the former Eastalco aluminum smelting plant was located and was now being developed as the only comprehensive planned data center campus in the County. *Id.*

2. At the time of this announcement, all seven County Council members would co-sponsor the proposed legislation. *Id.* This included Council Member McKay, who went on the record stating that:

I am very pleased to support this compromise approach to where the County plans for data center growth. I have pushed for the floating zone because I wanted to ensure that the Council maintains a firm hand on where we allow data centers. This overlay approach satisfies that goal and then goes one step further by ensuring that we further limit data center development to the Eastalco area. I look forward to seeing the details and working to implement this important piece of legislation.¹

3. To effect this compromise approach, the County Council would follow a deliberate, two-step process. *Id.* First, the County Council first would review and vote on a bill through its ordinary public legislative process prescribed by the County Charter to create the CDI Overlay Zone. Second, the County Council would develop a zoning map specifying which land falls with the CDI Overlay Zone, which would be enacted through an ordinance under the procedures of the Land Use Article. *Id.*

¹ Van Grack Affidavit Ex. A-2, Vivian Laxton, *Legislation Introduced to Limit Data Centers*, Frederick County Government Press Release, May 6, 2025.

4. Over the next few months, the County Council followed the longstanding ordinary public legislative process enshrined in the County Charter for enacting a bill into a law. After that, the County's Division of Planning and Permitting would develop a map through an open and transparent public process, which would be presented to the County's Planning Commission for review and for the County Council to approve as an ordinance, not a law. *Id.*

5. Following this process, on September 2, 2025, the County Council approved Bill 25-09, establishing the CDI Overlay Zone by amending and adding text to the Frederick County Code. *See* Van Grack Affidavit Ex. A-3. Bill 25-09 came into effect on November 1, 2025. *Id.* Previously, data centers could be developed on land zoned for general Light Industrial or General Industrial use, but after Bill 25-09, they could only be developed within the CDI Overlay Zone. *Id.* Critically, Bill 25-09 itself did not specify which parcels fell within the CDI Overlay Zone. *Id.* That would come later, through a Comprehensive Plan amendment and a zoning map amendment that the Planning Commission and Council would undertake together. *Id.*

6. On December 23, 2025, following public hearings, comments, and correspondence on the creation of the Overlay Zone, the County Council approved the Overlay Map and the CDI Comprehensive Plan. *See* Van Grack Affidavit Exs. A-5, A-6.

7. On January 20, 2026, the County Council enacted and approved Ordinance 26-01-001, creating an Overlay Map by amending the zoning boundary map to designate specific parcels as within the CDI Overlay Zone. *See* Van Grack Affidavit ¶ 9. The County Council also enacted and approved Resolution 26-01, adopting several amendments to the CDI Comprehensive Plan. *Id.* ¶ 10. Both Ordinance 26-01-001 and Resolution 26-01-001 came into effect on January 20, 2026.

8. In January 2026, opponents to the creation of a zoning map for the Overlay Zone, with the support of previous Overlay Zone advocate Council Member McKay, formed the Referendum Committee, to commence a referendum effort and collect petition signatures challenging Ordinance 26-01-001. Van Grack Affidavit Ex. A-4. The Referendum Committee did not seek to refer Bill 25-09 to referendum.

9. In or around January 20, 2026, the County Council's attorney, Mr. Bryon Black, in conjunction with Tim Maloney of Joseph, Greenwald & Laake, concluded that Ordinance 26-01-001 is not a "law" subject to referendum under Charter § 308—specifically, that the Charter's definition of "law" does not encompass a zoning map amendment not enacted as a Bill under Charter §§ 301-310.² See Van Grack Affidavit Ex. A-7. On March 19, 2026, the Referendum Committee presented a petition to the Board of Elections for verification of approximately 24,000 signatures, pursuant to the Procedures for Filing a Statewide or a Public Law Referendum Petition. See Van Grack Affidavit Ex. A-9.

10. On Sunday, March 22, 2026, the Board of Elections held an emergency open session to discuss specifically the Referendum Committee's Referendum Petition. See Van Grack Affidavit ¶ 12. Present at that session was Mr. Dan Loftus, attorney for the Board of Elections, who gave a presentation regarding how the Board of Elections should proceed. *Id.* Mr. Loftus explained that he had spoken to counsel for the Referendum Committee as well as the County and that he was aware of diverging legal opinions regarding the validity of the Referendum Petition. *Id.* In light of the above, Mr. Loftus suggested, and the Board of Elections approved by vote, the following procedure regarding the Referendum Committee's petition: (1) the Board of Elections

² See, e.g., Van Grack Affidavit Ex. A-7, Erik Anderson, *County Attorney Says Data Center Zone Not Subject to Referendum; Opponents Disagree*, Frederick News-Post, Jan. 20, 2026 ("Further, Bryon Black writes in the memo that county charter's definition of 'law' does not include the process used to change the zoning code map for the CDI overlay because 'it was not enacted as a bill' under section 301-310 of the county charter.").

would first count and validate all signatures prior to making any determination regarding the sufficiency of the Referendum Petition; and (2) once all signature had been counted and validated, the Board of Elections *had to make a determination* regarding the sufficiency of the Referendum Petition. *Id.* As mentioned above, the Board of Elections approved this procedure and voted to commence counting and validation of signatures the following day. *Id.*

11. On March 25, 2026, Petitioner Quantum Maryland sent a letter to the Board of Elections. *See* Van Grack Affidavit at ¶13 & Ex. A-8. In this letter, Quantum Maryland identified several defects in the Referendum Committee’s Referendum Petition. *See* Van Grack Affidavit Ex. A-8. *First*, Quantum Maryland stated that there is a threshold defect that is clear and dispositive of this issue: Ordinance 26-01-001 is not a “law” subject to referendum under Charter § 308—specifically, that the Charter’s definition of “law” does not encompass a zoning map amendment not enacted as a Bill under Charter §§ 301-310. *Id.* *Second*, the petition circulators lacked both an accurate understanding of Ordinance 26-01-001 and adequate training on signature-gathering requirements, therefore standard verification likely would reveal that a significant percentage of submitted signatures are improper, incorrect, or ultimately invalid. *Id.* *Third*, upon information and belief, petition circulators communicated a misleading account of Ordinance 26-01-001’s scope and effect to prospective signatories, including representations about which areas and projects would be affected by the referendum. *Id.* And *fourth*, flyers distributed alongside the petition contained unsupported assertions about the referendum’s environmental and infrastructure impacts that were not supported by the Ordinance. *Id.* The Board of Elections never responded to Quantum Maryland’s letter.

12. On April 3, 2026, the Election Director sent a letter to the Referendum Committee in which she determined that, after counting and validating all signatures, the Referendum Petition

is sufficient for purposes of Election Law § 6-206 to go on a ballot.³ Specifically, the Election Director stated the following:

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.

Van Grack Affidavit Ex. A-9.

13. The Election Director later that day spoke to the Frederick News-Post stating that “[m]y office has said this is sufficient and can go on the ballot” and that any party has the ability to challenge the referendum’s legality in circuit court.⁴

14. On April 7, 2026, during the County Council’s Meeting, Council Member McKay discussed the Board of Elections’ determination dated April 3, 2026, calling it a “momentous” occasion for the County. *See* Van Grack Affidavit at ¶17. During his intervention, Council Member McKay confirmed that Ordinance 26-01-001 is no longer in effect until after a referendum is held and that there should be a public discussion as to whether a special election is warranted. *Id.*

³ Van Grack Affidavit at ¶14, Ex. A-9, Barbara Wagner Letter to the Referendum Committee, April 3, 2026.

⁴ *See, e.g.*, Van Grack Affidavit at ¶15, Erik Anderson, *Updated: Board of Elections says data center zone referendum can be on the ballot*, Frederick News-Post, April 3, 2026.

ARGUMENT

A. Standard for Stay

15. Under Rule 7-205, the Circuit Court has the authority to grant a stay of the order or action of the administrative agency pending completion of the Court's review: "[u]pon motion and after hearing, the court may grant a stay, unless prohibited by law, upon the conditions as to bond or otherwise that the court considers proper."

16. Maryland courts have recognized that there is "a dearth of cases addressing the issue of a stay" and the appropriate standard to apply. *Reichart v. State*, 2008 WL 8053624 (Md. Cir. Ct. Jan. 14, 2008). The Supreme Court of Maryland has recognized that a stay and an injunction are two separate forms of relief. *LOCC, Inc. v. Kohli*, 347 Md. 258 (1997). The Court of Special Appeals (in an unpublished decision) similarly observed that injunctions and administrative stays "are governed by different Rules—Rule 7–205 for a stay and Rule 15–501 for an injunction—which require different standards"—albeit without articulating the standard for granting a stay. *N. Ct. Assocs., LLC v. City of Frederick Historic Pres. Comm'n*, No. 0980 Sept. Term 2015, 2016 WL 3961384, at *3 (Md. Ct. Spec. App. July 20, 2016).

17. In *Reichart v. State*, 2008 WL 8053624 (Circuit Court for Baltimore County, January 30, 2008), the court said it was "not persuaded . . . that a full four (4) pronged inquiry is required in determining the propriety of a stay." The court observed that the stay decision was "within the sound discretion of this court" and that "[u]ltimately, it requires a fundamental balancing of the parties' respective positions." It looked to the United States Supreme Court for guidance, *see id.* (discussing *Sampson v. Murray*, 415 US 61 (1974)), which applies the following well-worn four-factors:

- (1) [W]hether the stay applicant has made a strong showing that he is likely to succeed on the merits;

- (2) [W]hether the applicant will be irreparably injured absent a stay;
- (3) [W]hether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) [W]here the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); see *Ohio v. Env't Prot. Agency*, 603 U.S. 279, 291 (2024) (applying *Nken* factors to stay of agency decision).

B. Petitioners Are Likely to Prevail on the Merits

18. Although proving a substantial likelihood of ultimate success is not strictly needed for approval of a stay pending judicial review, there is a high likelihood that Petitioners will prevail on the merits. That likelihood provides an additional reason for ordering the requested stay.

19. Ordinance 26-01-001 is not a “law” subject to referendum under Charter § 308, for multiple independent and reinforcing reasons. First, the Charter treats “laws” and “ordinances” as categorically distinct instruments. Charter § 104(c) defines a “Bill” as a proposed act “resulting in a law or ordinance”—two separate outputs—and Charter § 305 provides that “the Council may enact no law except by written Bill.”

20. Read together, these provisions are decisive: while an ordinance may result from a bill, a *law* must result from a bill. Ordinance 26-01-001 was not introduced or enacted as a bill. It was enacted under the Land Use Article’s mandatory map-amendment procedures—the same regulatory track the County has used to change zoning boundaries for more than forty years, before and after the Charter’s adoption. Because Ordinance 26-01-001 was not enacted by written bill, it cannot qualify as a “law” under the Charter’s plain terms.

21. Second, the Ordinance was not enacted “pursuant to” the Charter, which is the other threshold requirement for a referendum under Charter § 308. See Van Grack Affidavit, Ex. A-1.

That provision subjects to referendum only “a law, or part of a law, enacted *pursuant to* this Charter.” *Id.* (emphasis added). Every step of the Ordinance’s promulgation was taken pursuant to the procedures and requirements of the Land Use Article—not the Charter’s bill process. Resolution 26-01-001 expressly invokes Land Use Article §§ 3-201 and 3-204 as authority for the Comprehensive Plan amendment; Ordinance 26-01-001 implements that plan amendment under Land Use Article §§ 4-203 and 4-204. *See* Van Grack Affidavit, Ex. A-5. Not one step invoked the lawmaking process described in Charter § 305.

22. The contrast with Bill 25-09, a governance-level enactment processed through the bill track with a sixty-day effective date, confirms the distinction. *See* Van Grack Affidavit Ex. A-3. Charter § 601 preserved the Land Use Article as the continuing framework for zoning in Frederick County. That framework has always distinguished between public local laws that create the zoning rules and ordinances that implement them on the map. The referendum provision was never intended to, and does not, convert these routine implementing ordinances into referable laws.

23. Third, even if the referability question were a close one, the Board of Elections’ determination is independently defective. The Election Director never made the determination required by Election Law § 6-206(c)(5)(i)—she stated only that she was “unable to make a determination that the petition is not authorized by law,” and then treated that non-determination as equivalent to a finding of sufficiency. *See* Van Grack Affidavit, Ex. A-9. The statute does not permit that approach. Section 6-206(b)’s sufficiency determination is conditional on completing the subsection (c) analysis; it is not a freestanding presumption that activates whenever the Election Director declines to decide. And Section 6-208(c) requires an affirmative determination that the petition has satisfied *all* requirements before certification may issue. Because the Election

Director allowed the Referendum Petition to proceed without ever resolving whether its subject matter is authorized by law, the determination is procedurally void on its face.

24. In addition to and independent of the “not authorized by law” defect, the Referendum Petition suffers from several other deficiencies that further support the likelihood of success. As Petitioner Quantum Maryland detailed in its March 25, 2026, letter to the Board of Elections (which the Board never acknowledged or addressed), the Referendum Petition is defective on multiple additional grounds. *See* Van Grack Affidavit Ex. A-8.

25. As explained in the letter, petition circulators communicated a misleading account of the scope of Ordinance 26-01-001 to prospective signatories. *Id.* at 3. Circulators were instructed to tell prospective signers that the referendum targeted only a “1,000 acre expansion” and would leave ongoing construction at the Eastalco site undisturbed. *Id.* That framing omits the critical legal reality: following Bill 25-09’s amendments to the Frederick County Zoning Ordinance, CDI facilities may only be established within a designated CDI Overlay Zone. *See* Van Grack Affidavit Ex. A-3. Suspending or voiding Ordinance 26-01-001 would leave Frederick County with no such zone on the map. Signatures procured based on that incomplete and misleading picture are not “genuine and bona fide” within the meaning of Charter § 308(b).

26. Furthermore, flyers distributed alongside the petition as part of the signature-gathering effort contained false and unsupported claims of permanent environmental damage and severe impacts on water supplies, utilities, and transmission lines—none of which Ordinance 26-01-001 supports. *See* Van Grack Affidavit Ex. A-8, at 3; *see Gray v. Howard Cnty. Bd. of Elections*, 218 Md. App. 654, 665, 98 A.3d 423, 430 (2014) (referendum “language must ‘be free from misleading tendency, amplification, or omission’ to permit voters to exercise ‘intelligent and enlightened judgment’ as to whether to sign the referendum petition”).

27. These representations, individually and collectively, raise serious questions about the integrity of the Referendum Petition and provide additional grounds for this Court to find the determination of sufficiency legally erroneous. For these reasons, Petitioners are likely to succeed on the merits.

C. Balance of Harms Support Stay

28. The County Council, in partnership with the County Executive, undertook a concerted and comprehensive legislative effort to manage data center development in the County—a process that was deliberate, public, and transparent from the outset. *See* Van Grack Affidavit Ex: A-2. Beginning in May 2025, all seven County Council members co-sponsored the proposed legislation creating the CDI Overlay Zone, with Council Member McKay publicly praising it as a carefully balanced compromise that would concentrate data center development in a single appropriate location while giving the County Council firm oversight over that growth. *Id.* Over the following months, the County followed its established two-step zoning process: first enacting Bill 25-09 to create the text of the CDI Overlay Zone through the standard public bill process, and then approving Ordinance 26-01-001 to apply the zone map to specific parcels following public hearings and Planning Commission review. *See* Van Grack Affidavit Exs. A-3, A-5, A-8. This was not *ad hoc* policymaking; it was the County’s considered, multi-year implementation of a comprehensive land use vision. A stay preserves the fruit of that work while this Honorable Court considers whether the referendum petition is legally valid.

29. Notably, those who now seek to undo this framework through the referendum process were present for and on notice of the mapping process from its inception. The Referendum Committee made no challenge to Bill 25-09—the foundational legislation creating the CDI Overlay Zone—despite having ample opportunity to do so. It was only after the map was finalized

and Ordinance 26-01-001 was enacted that the Referendum Committee moved to seek a referendum. See Van Grack Affidavit Ex. A-4. This tactical delay underscores that the Referendum Committee's true objective is not to vindicate any procedural right but to unwind a zoning decision they dislike after having participated in the very process that produced it. Allowing the Board of Elections' determination to stand while that challenge is litigated would reward delay and create significant disruption to a process that was open, public, and lawfully conducted.

30. The harm to Petitioners from denial of a stay is immediate and irreparable. Under Frederick County Charter § 308(d), a facially compliant referendum petition automatically suspends the referred law's effective date until thirty days after approval by a majority of voters. See Van Grack Affidavit Ex. A-1, Frederick Cnty., Md. Charter § 308(d) ("Whenever a petition complying with all the provisions of law and this Charter is filed, the referred law, or the referred portion of law, other than expedited legislation, may not take effect until thirty days after approval by a majority of voters."). As a direct consequence of the Board of Elections' and the Election Director's April 3rd determination, Ordinance 26-01-001 is now suspended, meaning the CDI Overlay Zone map is effectively inoperative for an indefinite period extending at minimum through the next general election. *Id.*

31. Petitioner Quantum Maryland is the owner and developer of the approximately 2,122-acre Eastalco Data Center Campus, the only comprehensively planned data center campus in the County and the property directly rezoned by Ordinance 26-01-001. The suspension of Ordinance 26-01-001 clouds the zoning status of the entire campus and potentially places development financing in jeopardy. See *Holiday Spas v. Montgomery Cnty. Hum. Rels. Comm'n*, 315 Md. 390, 399, 554 A.2d 1197, 1201 (1989) (holding that, "[b]ecause the negative effect on

[petitioner]’s business resulting from [agency] order could not be remedied at a later date, the order inflicted upon [petitioner] sufficient irreparable injury” warranting court intervention). These harms cannot be undone by a money judgment and cannot be adequately remedied after the fact if the referendum ultimately proceeds and Petitioners’ legal challenge is vindicated only after irreversible damage has been done. *See* Md. Code, Cts. & Jud. Proc. § 5-303(a) (limiting recoverable damages against a local government); *cf. Ohio*, 603 U.S. at 292 (nonrecoverable economic losses constitute irreparable harm).

32. The urgency of the situation is further underscored by public statements made following Ms. Wagner’s April 3rd determination. Consistent with Charter § 308(d), Council Member McKay publicly acknowledged after the determination, in recent public social media posts as well as the County Council’s Meeting on April 7, 2026, that the Ordinance’s operation is now suspended pending a popular vote. *See* Van Grack Affidavit at ¶17. He further noted the possibility that the referendum could be placed on a November general election ballot or even an earlier special election ballot (which he urged at the County Council’s Meeting should be an issue of public discussion)—meaning the current suspension could be extended for many months, or the matter could be forced to a costly special election at any time. *Id.* A stay pending judicial review is the only mechanism to prevent this harm from compounding while the Honorable Court considers whether the Referendum Petition is legally authorized in the first place. *See Nken*, 556 U.S. at 421 (“A stay does not make time stand still, but does hold a ruling in abeyance to allow an appellate court the time necessary to review it.”).

33. Neither the Board of Elections nor the County will suffer cognizable harm if this Honorable Court grants the stay. The Board of Elections is an administrative body; its interest is in conducting a lawful electoral process, not in advancing any particular referendum to the ballot.

Staying its April 3rd determination while the Honorable Court reviews its legality imposes no burden on the Board of Elections. The County likewise does not stand to lose anything from a stay—to the contrary, it affirmatively advocated through its own counsel that the Ordinance is not subject to referendum. *See* Van Grack Affidavit Ex. A-7. Requiring the County to expend substantial public resources preparing a ballot for a referendum that may be declared legally unauthorized would impose a significant burden on the public fisc. The cost of preparing and administering a referendum election—whether at the general election or, worse, at a special election—is substantial, and those costs cannot be recovered if the referendum is later determined to have been unauthorized.

34. The public interest strongly favors a stay. First, orderly elections are served by resolving threshold legal questions about a referendum’s validity before the electoral machinery is set in motion, not after. Second, the public interest in stable and predictable land use governance weighs heavily in Petitioners’ favor. The County’s two-step zoning process—under which text amendments are enacted as bills and map amendments are enacted as ordinances—has governed the County’s land use framework for more than fourteen years since Charter adoption, and for decades before that under the Commission. Interpreting the Charter to allow referenda on zoning map ordinances would unsettle vested rights of countless landowners who relied on prior map amendments conducted under the same procedure and would invite a flood of similar petitions challenging other ordinances, effectively paralyzing the County’s ability to implement zoning decisions. The public interest is served by this Court upholding the clear structural limits of the Charter and preserving the integrity of the referendum process for its intended purpose.

WHEREFORE, Petitioners pray that this Honorable Court grant this Motion and stay the Board of Elections’ and Ms. Wagner’s determination, dated April 3, 2026, that the Referendum

Committee's Referendum Petition of Ordinance 26-01-001 is sufficient for purposes of Election Law § 6-206, in particular § 6-206 (c) (5) (i).

Date: April 10, 2026

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day April 10, 2026, a copy of the foregoing Motion, Exhibit, and Proposed Order has been filed in the Maryland MDEC Tylerhost Electronic Filing System, Served on all parties registered in the System within the above-captioned matter, and will be provided to all Respondents/ Defendants with the service of the Summons and Complaint in the above-captioned matter.

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

THEORY OF THE EARTH

The theory of the earth is a branch of geology which deals with the origin and development of the earth and its various parts. It is a science which seeks to explain the processes which have shaped the earth and its features. The theory of the earth is based on the study of the earth's structure and the forces which have acted upon it. It is a science which is constantly developing and changing as new discoveries are made and new theories are proposed.

THE EARTH'S STRUCTURE

The earth's structure is the study of the earth's internal layers and the forces which have shaped them. The earth is composed of several layers, each of which has its own characteristics. The layers are the crust, the mantle, and the core. The crust is the outermost layer and is composed of solid rock. The mantle is the layer below the crust and is composed of molten rock. The core is the innermost layer and is composed of molten metal.

The forces which have shaped the earth's structure are the forces of gravity, the forces of heat, and the forces of pressure. Gravity is the force which pulls the earth's mass toward its center. Heat is the energy which is transferred from the core to the mantle and from the mantle to the crust. Pressure is the force which is exerted by the weight of the earth's layers upon each other.

The theory of the earth is a science which is constantly developing and changing as new discoveries are made and new theories are proposed. The theory of the earth is a science which seeks to explain the processes which have shaped the earth and its features. It is a science which is based on the study of the earth's structure and the forces which have acted upon it.

EXHIBIT A

EXHIBIT A

EXHIBIT A-2

TO AFFIDAVIT OF ADAM VAN GRACK

**FREDERICK COUNTY GOVERNMENT**
OFFICE OF THE COUNTY EXECUTIVE

News Release

FOR IMMEDIATE RELEASE:
MAY 6, 2025CONTACT: Vivian Laxton
Communications Director, 301-600-1315

Legislation Introduced to Limit Data Centers



FREDERICK, Md. – Frederick County Executive Jessica Fitzwater and members of the County Council today announced a compromise to limit where data centers can be built to the area around the old East Alcoa property north of Adamstown. The compromise will 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.

"One of the most important questions facing our community is where data centers can be located and, by extension, where they will not be allowed," Executive Fitzwater said. "This bipartisan compromise ensures we are protecting our environment and quality of life, while acknowledging that Frederick County's location makes it a logical site for this critical industry. I want to thank the Council members, who have worked with my Administration to create a way forward that we can all support."

The County Executive will introduce a text amendment to the zoning code to create a tool called an overlay, which will be used to limit data center development. All seven Council members will co-sponsor the measure. The Council will review and vote on the bill through its ordinary public legislative process. After that, 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.

-more-

Frederick County: Rich History, Bright Future

Winchester Hall • 12 East Church Street, Frederick, MD 21701 • 301-600-1100 • Fax 301-600-1050
www.FrederickCountyMD.gov

Here's what others are saying:

Council President Brad Young (at-large): "I'm excited to support this commonsense approach to data center siting. We heard loud and clear from the public about the need for limits on where these facilities can be built. This solution addresses those concerns effectively—without relying on floating zones."

Council Member Steve McKay (District 2): "I am very pleased to support this compromise approach to where the County plans for data center growth. I have pushed for the floating zone because I wanted to ensure that the Council maintains a firm hand on where we allow data centers. This overlay approach satisfies that goal and then goes one step further by ensuring that we further limit data center development to the Eastalco area. I look forward to seeing the details and working to implement this important piece of legislation."

Council Member Renee Knapp (at-large): "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. I am proud to have been part of a solution that addresses the concerns of our community while providing everyone the certainty and clarity they deserve."

Council Member Jerry Donald (District 1): "I would like to thank County Executive Fitzwater for brokering a bipartisan compromise that both encourages economic development while protecting the rights of landowners to peacefully enjoy their property."

###

Frederick County, Maryland does not discriminate on the basis of race, color, religion, national origin, sex, age, marital status, disability, familial status, gender identity, sexual orientation, or source of income.

EXHIBIT A-3

TO AFFIDAVIT OF ADAM VAN GRACK

EXHIBIT A-3



Bill No. 25-09
Concerning: Critical Digital Infrastructure Overlay
Zone
Introduced June 17, 2025
Revised: August 19, 2025 Draft No.
Enacted: September 2, 2025
Effective: November 1, 2025
Expires: September 15, 2025
Frederick County Code, Chapter 1-19
Section(s) 5.310, 8.402, 8.403, 10.1100

**COUNTY COUNCIL
FOR FREDERICK COUNTY, MARYLAND**

By: Council President Brad Young on behalf of County Executive Jessica Fitzwater

AN ACT 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.

Date Council Approved: 9/2/2025 Date Transmitted to Executive: 9/3/2025
Executive: Jessica Fitzwater Date Received: 9/3/2025
Approved: ✓ Date: 9/12/25
Vetoed: Date:
Date returned to Council by County Executive with no action:
By amending: Frederick County Code, 1-19 Section(s) 5.310, 8.402, 8.403, 10.1100
Other:

Boldface
Underlining
[Single boldface brackets]

Heading or defined term.
Added to existing law.
Deleted from existing law.
Existing law unaffected by bill.

1
2 Bill No. 25-09

3 The County Council of Frederick County, Maryland, finds it necessary and appropriate to
4 amend the Frederick County Code §§ 1-19-5.310, 1-19-8.402, and 1-19-8.403, and establish § 1-
5 19-10.1100 to establish a Critical Digital Infrastructure Overlay Zone for the purpose of directing
6 Critical Digital Infrastructure Facilities and Critical Digital Infrastructure Electric Substations to
7 industrial lands in proximity to data conveyance infrastructure and other industrial uses, while
8 minimizing impacts to non-compatible uses and allowing for development of industrial lands not
9 included in the Critical Digital Infrastructure Overlay Zone for other industrial uses.

10 It is the intention of the County, in accordance with § 1-19-10.110(B), that for every acre
11 of land within the Overlay Zone that is in the agricultural district and approved for a rezoning to
12 Limited Industrial (LI) or General Industrial (GI), five acres of nonpreserved agricultural land
13 shall be preserved at the applicant's expense by providing the necessary funding through a
14 Community Benefit Agreement negotiated with the County Executive to secure this preservation,
15 with all funds dedicated to the Frederick County Agricultural Preservation Fund.

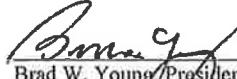
16 NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF
17 FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby,
18 amended as shown on the attached Exhibit 1.

19 AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF FREDERICK
20 COUNTY that the provisions of this bill shall apply only to Critical Digital Infrastructure Facilities
21 applications and Critical Digital Infrastructure Electric Substation applications submitted on or
22 after the effective date of this bill.

23

24

1
2
3
4
5


Brad W. Young, President
County Council of Frederick County, 
Maryland

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Bill No. 25-09

Exhibit 1

§ 1-19-5.310. USE TABLE.

(A) *Permitted uses and required development review.*

P Principal permitted use subject to design regulations

PS Principal permitted use subject to site development plan approval. See §§ 1-19-2.160, and 1-19-3.300 through 1-19-3.300.4

E Principal permitted use as a special exception with site development plan approval. See §§ 1-19-8.320 and following

T Permitted as temporary use as a special exception. See § 1-19-8.300

X Permitted as temporary use only. See § 1-19-8.700

SW Solid Waste Floating Zone

CDI-OZ Principal permitted use subject to site development plan approval in the Critical Digital Infrastructure Overlay Zone

A blank indicates that the use is not permitted under any situation

Industrial Uses

<i>Uses</i>	<i>RC</i>	<i>A</i>	<i>R1</i>	<i>R3</i>	<i>R5</i>	<i>R8</i>	<i>R12</i>	<i>R16</i>	<i>V</i>	<i>M</i>	<i>GC</i>	<i>OR</i>	<i>LI</i>	<i>GI</i>
Cannabis growing facility												PS	PS	PS
Cannabis processing facility												PS	PS	PS

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Bill No. 25-09

Limited manufacturing and assembly use													PS	PS	PS
General manufacturing															PS
Critical Digital Infrastructure Facility														[[PS]] <u>CDI-</u> <u>OZ</u>	[[PS]] <u>CDI-</u> <u>OZ</u>
Critical Digital Infrastructure Electric Substation														[[PS]] <u>CDI-</u> <u>OZ</u>	[[PS]] <u>CDI-</u> <u>OZ</u>
Nongovernmental Utility	E	E	E	E	E	E	E	E	E	E		PS		PS	PS
Nongovernmental electric substation														E	E

§ 1-19-8.402. CRITICAL DIGITAL INFRASTRUCTURE FACILITIES

The following provisions apply to critical digital infrastructure facilities.

(A) Purpose and intent.

- (1) The Critical Digital Infrastructure use is established to provide a location for facilities consisting of one or more buildings used primarily for the storage, management, processing, and transmission of digital data, which houses computer and/or network equipment, systems, servers, appliances, and other associated components related to digital data operations. ~~The siting of these facilities is dependent upon several~~

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Bill No. 25-09

1 factors, including proximity to sufficient electrical power and data conveyance
2 infrastructure.]

3
4 (B) Size and location.

5 (1) Critical Digital Infrastructure use may be established only where:

6
7 (a) The tract of land where the Critical Digital Infrastructure use is proposed has a
8 zoning designation of Limited Industrial (LI) or General Industrial (GI);

9
10 ~~[(b) The tract of land where the Critical Digital Infrastructure use is proposed is within~~
11 ~~a Community Growth Area, as designated on the Comprehensive Plan Land Use map;]~~

12
13 ~~[(e)b] [The tract of land where the Critical Digital Infrastructure use is proposed is~~
14 ~~located within 2 miles of existing 69 K-V or greater high-voltage electrical~~
15 ~~transmission lines;] The tract of land where the Critical Digital Infrastructure use is~~
16 ~~proposed is within the Critical Digital Infrastructure Overlay Zone (CDI-OZ); and~~

17
18 ~~[(d) The tract of land where the Critical Digital Infrastructure use is proposed may not~~
19 ~~abut land that is zoned residential or is designated residential on the Comprehensive~~
20 ~~Plan Land Use map; and-]~~

21
22 ~~[(e) c] [Notwithstanding subsection (d),]~~ Critical Digital Infrastructure may only be
23 established on a tract of land that abuts land that is zoned Residential or is designated
24 Residential on the Comprehensive Plan Land Use map ~~[so long as]~~ if the front, side,
25 and rear yard setbacks set forth in section 1-19-6.100 for a Critical Digital
26 Infrastructure facility are increased to ~~[200]~~500 feet from any property line abutting
27 such Residentially zoned or Designated land.

28

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- 1 (2) The tract of land proposed to be utilized for a Critical Digital Infrastructure use may
2 not be located within a Priority Preservation Area (PPA), a Rural Legacy Area (RLA),
3 or a Treasured Landscape Management Area.
4
- 5 (3) The tract of land proposed to be utilized for a Critical Digital Infrastructure use may
6 not have a designation of No Planned Service (NPS) in the Frederick County Water
7 and Sewerage Plan.
8
- 9 (4) Additional size and location criteria - Applicants must demonstrate ~~the following~~
10 that:
11
- 12 (a) ~~The applicant must demonstrate that~~ the visual impact of the project on the
13 viewshed, surrounding properties, public roadways, including roadways with
14 rustic, scenic, or historic designation, and historic sites will be avoided or
15 minimized to the maximum extent practicable;[-]
16
- 17 (b) ~~The applicant must demonstrate that~~ schools, college and universities, daycare
18 centers, health care facilities, houses of worship, residences, and other non-
19 industrial uses in the vicinity have been identified and negative impacts to these
20 uses will be avoided or minimized to the maximum extent practicable;[-]
21
- 22 (c) ~~The applicant must demonstrate that~~ fragile ecosystems and watersheds in the
23 vicinity have been identified, and negative impacts will be avoided or minimized
24 to the maximum extent practicable;[-]
25
- 26 (d) ~~The applicant must demonstrate that~~ negative impacts to local, state, and federal
27 recreational amenities and private parks, as defined in §1-19-11.100, will be
28 avoided or minimized to the maximum extent practicable;[-] and
29

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Bill No. 25-09

1 (e) ~~[The applicant must demonstrate that]~~ the siting of the proposed use(s) will not
2 have a negative impact that disproportionately affects ~~[negatively impact]~~
3 overburdened communities or underserved communities as those terms are
4 defined in Md. Code Ann., Environmental Article, § 1-701.

5
6 ***

7 **§ 1-19-8.403. CRITICAL DIGITAL INFRASTRUCTURE ELECTRIC SUBSTATION.**

8
9 The following provisions apply to critical digital infrastructure electric substations:

10
11 (A) Size and location.

12
13 (1) Critical Digital Infrastructure Electric Substation use may be established only where:

14 (a) The tract of land where the Critical Digital Infrastructure Electric Substation is
15 proposed has a zoning designation of Limited Industrial (LI) or General Industrial
16 (GI); and

17 ~~[(b) The tract of land where the Critical Digital Infrastructure Electric Substation use~~
18 ~~is proposed is within a Community Growth Area, as designated on the Comprehensive~~
19 ~~Plan Land Use map; and]~~

20 ~~[(e)b] [The tract of land where the Critical Digital Infrastructure use is proposed is~~
21 ~~located within 2 miles of existing 69 KV or greater high voltage electrical~~
22 ~~transmission lines;] The tract of land where the Critical Digital Infrastructure use is~~
23 ~~proposed is within the Critical Digital Infrastructure Overlay Zone (CDI-OZ);~~

24
25 (2) The tract of land proposed to be utilized for a Critical Digital Infrastructure Electric
26 Substation use may not be located within a Priority Preservation Area (PPA), a Rural
27 Legacy Area (RLA), or a Treasured Landscape Management Area.

28 ~~{(3) The tract of land proposed to be utilized for a Critical Digital Infrastructure Electric~~
29 ~~Substation use may not have a designation of No Planned Service (NPS) in the Water~~
30 ~~and Sewerage Plan.]~~

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Bill No. 25-09

DIVISION 11. Critical Digital Infrastructure Overlay Zone

§ 1-19-10.1100. Critical Digital Infrastructure Overlay Zone (CDI-OZ).

(A) Purpose and Intent.

The Critical Digital Infrastructure Overlay Zone is created 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.

(B) Establishment of Critical Digital Infrastructure Overlay Zone.

- (1) A Critical Digital Infrastructure Overlay Zone may be created by the County Council, with the boundaries established by ordinance and identified on the Zoning Map.**

A Critical Digital Infrastructure Overlay Zone shall be established by the County Council only on lands with a comprehensive plan land use designation of Limited Industrial (LI) or General Industrial (GI) uses. **THE OVERLAY MAY BE**

ESTABLISHED ON LOTS OR PARCELS OF LAND THAT ARE

DESIGNATED LI OR GI AND WHICH INCLUDE PORTIONS

DESIGNATED NATURAL RESOURCE (NR), PROVIDED THAT NR LAND

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Bill No. 25-09

1 WILL NOT BE INCLUDED FOR ANY DENSITY CALCULATION AND NO
2 ALLOWABLE OVERLAY USES WILL BE PERMITTED ON THE NR
3 LAND.

4 (2)

5
6 (3) In establishing the area of the Critical Digital Infrastructure Overlay Zone, the County
7 Council ~~[[may]]~~ SHALL consider proximity to schools, colleges and universities,
8 daycare centers, healthcare facilities, and residential uses.

9
10 (4) The Critical Digital Infrastructure Overlay Zone, as approved by the County Council,
11 shall include less than 1% of the total land area of the County.

12
13 (5) Development of Critical Digital Infrastructure Facilities and Critical Digital
14 Infrastructure Electric Substations in the Critical Digital Infrastructure Overlay Zone
15 shall comply with § 1-19-8.402. CRITICAL DIGITAL INFRASTRUCTURE
16 FACILITIES and § 1-19-8.403. CRITICAL DIGITAL INFRASTRUCTURE
17 ELECTRIC SUBSTATIONS.

18
19 (6) (a) Individual zoning map amendments for properties located within the Critical
20 Digital Infrastructure Overlay Zone shall be subject to the approval criteria in ~~[[§]]§~~
21 1-19-3.110.4 ~~[(A)] but shall not be subject to the additional criteria listed under~~
22 ~~§§ 1-19-3.110.4(B)]~~;

23
24 (b) In the event that the County Council approves removal of a property within the
25 CDI-OZ from the Rural Legacy Area, an individual zoning map amendment
26 application shall not be accepted or processed until final State approval of the revised
27 Rural Legacy Area map is received.

28
29 (C) Principal Permitted Uses.

30
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Bill No. 25-09

1 (1) All principal permitted uses in the underlying zoning district shall be permitted in the
2 Critical Digital Infrastructure Overlay Zone subject to site development plan
3 approval. CRITICAL DIGITAL INFRASTRUCTURE FACILITIES and CRITICAL
4 DIGITAL INFRASTRUCTURE ELECTRIC SUBSTATIONS shall be a principal
5 permitted use subject to site development plan approval in the Critical Digital
6 Infrastructure Overlay Zone only in the LI and GI zoning districts.

7

8 (D) Special Exception Uses.

9

10 (1) All uses permitted by special exception in the underlying zoning district shall be
11 permitted by special exception and site development plan approval in the Critical
12 Digital Infrastructure Overlay Zone.

13

14

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Bill No. 25-09

EXHIBIT A-4

TO AFFIDAVIT OF ADAM VAN GRACK

EXHIBIT A-4

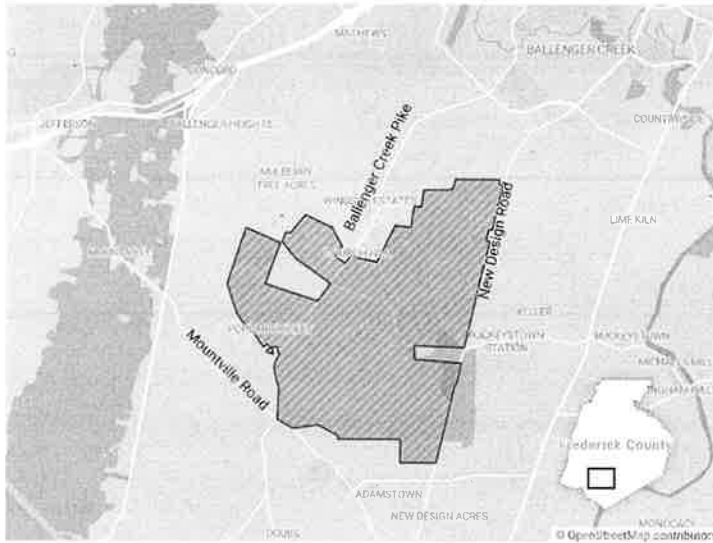
<https://thefnp.com/tncms/asset/editorial/72dea755-85b1-4abe-b6f1-4f09842c25b3/>

ALERT CENTERPIECE

Group seeking referendum on data center zone

By Erik Anderson eanderson@newspost.com

Jan 3, 2026



Showing



News-Post map by Graham Cullen

News-Post map by Graham Cullen

An informal committee that opposes a Dec. 23 Frederick County Council decision to create a 2,615-acre zone for possible data center construction near Adamstown is in the early stages of an effort seeking to put a referendum on the November ballot that would allow voters to void the council decision.

Committee members said they believe they will need to collect about 15,000 signatures from the county's registered voters to get the issue on the ballot.

The county charter states that a petition for a referendum seeking to undo a council law must have the needed signatures within 59 days of the law's enactment.

Council President Brad Young said he believes that the data center zone will be considered enacted when the council signs the final version of the amendments, which he believes will be on Jan. 20.

"The petition that we're going to be getting people to sign is whether to let Frederick County residents decide how big we want the data center industry to be in the county," Steve Black, an organizer of the referendum movement, said in an interview on Saturday. "It's about putting a really high-impact, important decision in front of the entire community and not just seven officials."

Elizabeth Bauer, another referendum organizer, said the informal and as of yet unnamed referendum committee, which is comprised of seven members, is consulting with an attorney before taking any official steps toward a referendum. The group, however, is starting to gather volunteers to collect signatures.

She said that as of Saturday morning, the informal committee's email address, smartergrowthfc@gmail.com, had received about 75 messages from people interested in signing the petition, about 60 of whom expressed interest in volunteering to collect signatures.

At least four of the informal committee members, she said, represent nonprofit organizations that have many members. She said those organizations may decide to formally support the referendum effort when their boards have an opportunity to vote on the issue.

Bauer said she doesn't want to name those organizations unless they vote to join the effort, but said Envision Frederick County, which she chairs, formally voted to become a sponsor of the referendum effort on Saturday.

Black, who is president of the nonprofit Sugarloaf Alliance, said his organization does not yet have a position on the referendum but he hopes the board will vote to support it later this month.

He said that when he spoke against the largest version of the proposed data center zoning map at the County Council's Dec. 16 public hearing, he was officially representing the Sugarloaf Alliance's position.

Council Member Steve McKay, one of the two council members to vote against the new data center zone, said in an interview on Friday that he supports the referendum effort in part because 11 "organized groups" signed a letter urging the council to adopt the 1,585-acre data center map recommended by the county Planning Commission, which would have limited the zone to the existing data center campus being constructed at the former Alcoa Eastalco property.

"The Council majority just kind of blew that all away," McKay said of the organizations' advocacy efforts.

Black said he expects the signature drive to be challenging because of the long list of specific requirements that the Maryland State Board of Elections has for considering signatures to be valid. But he said he believes the support for the referendum exists in the county.

"I firmly believe there are 15,000 people in Frederick County that would sign a commonsense petition if it was put in front of them," he said. "The challenge for us is a logistics one."

One of the challenges for the referendum group, he said, is being uncertain of the number of signatures they require.

The county charter states that, but for a small list of exceptions, "a law, or part of a law, enacted pursuant to this Charter may be referred to the voters for approval upon the filing of a petition signed by seven percent of the registered voters of the County."

As of December, there were 208,091 registered voters in the county, according to a document posted on the Frederick County website. Under the language of the charter, that would mean a referendum would need nearly 14,600 signatures to be on the ballot.

However, Black said he fully expects many of the signature forms to be thrown out because of errors, so he's aiming for a higher number. It's even possible, he said, that they may need to meet a state requirement that 10% of registered voters sign the petition, but he said he thinks that requirement

applies to so-called "code counties," not to counties that have charter governments like Frederick County.

Young, who voted for the new data center map, said in an interview on Friday that he is not sure whether the decision to enact the map is legally subject to veto by referendum.

He said the board of elections will have to determine whether the data center zoning map, known as a Critical Digital Infrastructure overlay, is a law under the county charter's definition, but added, "I don't believe it is."

McKay said the new data center map is enacted by both an amendment to the county's comprehensive plan and by an amendment to the county's zoning ordinance. He said he does not know whether the comprehensive plan is subject to referendum, because amendments to that document are enacted by council resolution, rather than by ordinance.

However, he said he believes the amendment to the county zoning code is considered a law and therefore subject to referendum.

He said that if the zoning amendment is overturned by a voter referendum, that would be enough of a repeal to prevent data center companies from receiving site plan approvals for properties outside of the existing campus.

"There would effectively be a moratorium on any new [critical digital infrastructure] in the county," he said of the possibility of the referendum effort succeeding.

Erik Anderson

EXHIBIT A-5

TO AFFIDAVIT OF ADAM VAN GRACK

EXHIBIT A-5

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 its 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

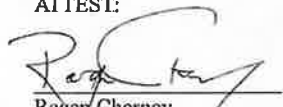
WHEREAS, the County Council has determined that the zoning and land use designation changes set forth in the attached Exhibit A are consistent with the Plan and are designed to create predictability for the community and the data center industry, and support other industries with industrial land needs,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

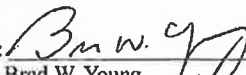
AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on January 20th, 2026.

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

ATTEST:


Ragen Cherney
Council Chief of Staff

FREDERICK COUNTY COUNCIL

By: 
Brad W. Young
President

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

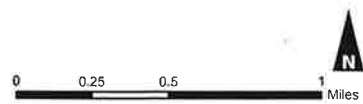


**Council Adopted
Critical Data
Infrastructure (CDI)
Overlay Zone**

 Council Adopted CDI Overlay Zone

CDI Acres	CDI % of County
2,614.9	0.61

Projection: NAD 1983 State Plane Maryland FIPS 1900 Feet/Inch. Efforts have been made to ensure the accuracy of this map. Frederick County accepts no liability or responsibility for errors, omissions, or positional inaccuracies in the content of this map. Reliance on this map is at the risk of the user. This map is for illustration purposes only and should not be used for surveying, engineering, or site-specific analysis. Printed 1/5/2020



MAPID 540



Council Adopted Zoning

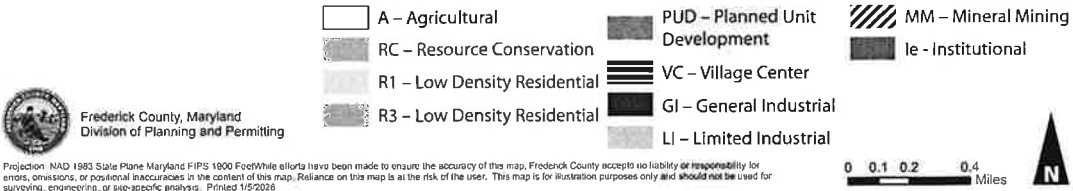


EXHIBIT A-6

TO AFFIDAVIT OF ADAM VAN GRACK

RESOLUTION OF THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND

RESOLUTION NO. 26-01

Re: Adoption of the Critical Digital Infrastructure Comprehensive Plan Amendment

RECITALS

WHEREAS, State Law, Md. Code Ann., Land Use Article § 3-201 et. seq provides that the Planning Commission shall make and approve a plan which the Planning Commission shall recommend to the local legislative body, the County Council, for adoption; and

WHEREAS, the Frederick County Planning Commission certified to the County Council the Critical Digital Infrastructure Overlay Zone Comprehensive Plan Amendment (Plan) on November 4, 2025; and

WHEREAS, Md. Code Annotated, Land Use § 3-204 provides that the County Council may approve, modify, remand, or disapprove the whole or part of the Plan amendment received from the Planning Commission.

WHEREAS, the County Council, after providing the required public notice, conducted a public hearing on December 16 and 17, 2025, concerning the Plan amendment; 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 before the Council, and also reviewed written correspondence which was submitted concerning the Plan by adjoining planning jurisdictions, municipalities, affected State and local agencies and interested persons, and the County Council conducted this review in sessions open to the public; and

WHEREAS, as a result of the public hearing, comments, and correspondence received on this matter, the County Council approved 7 amendments to the Planning Commission's recommended Plan on December 23, 2025; and

WHEREAS, the County Council finds that the Plan was made in accordance with the Land Use Article of the Annotated Code of Maryland with the general purpose of guiding and accomplishing the coordinated and harmonious development of Frederick County, and will accommodate present and future needs, promote the health, safety, morals, order, convenience, prosperity, and general welfare of the County and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND, that the Planning Commission certified 2025 Critical
Digital Infrastructure Overlay Zone Comprehensive Plan Amendment with the 7 amendments
approved by the County Council is hereby approved and adopted.

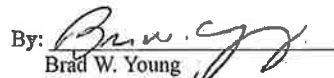
AND BE IT FURTHER RESOLVED that this Resolution shall take effect on January 20,
2026.

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

ATTEST:

FREDERICK COUNTY COUNCIL


Ragen Cherney
Council Chief of Staff

By: 
Brad W. Young
President

The motion to adopt the Critical Digital Infrastructure Comprehensive Plan Amendment was approved by
a vote of 5-2.

EXHIBIT A-7

TO AFFIDAVIT OF ADAM VAN GRACK

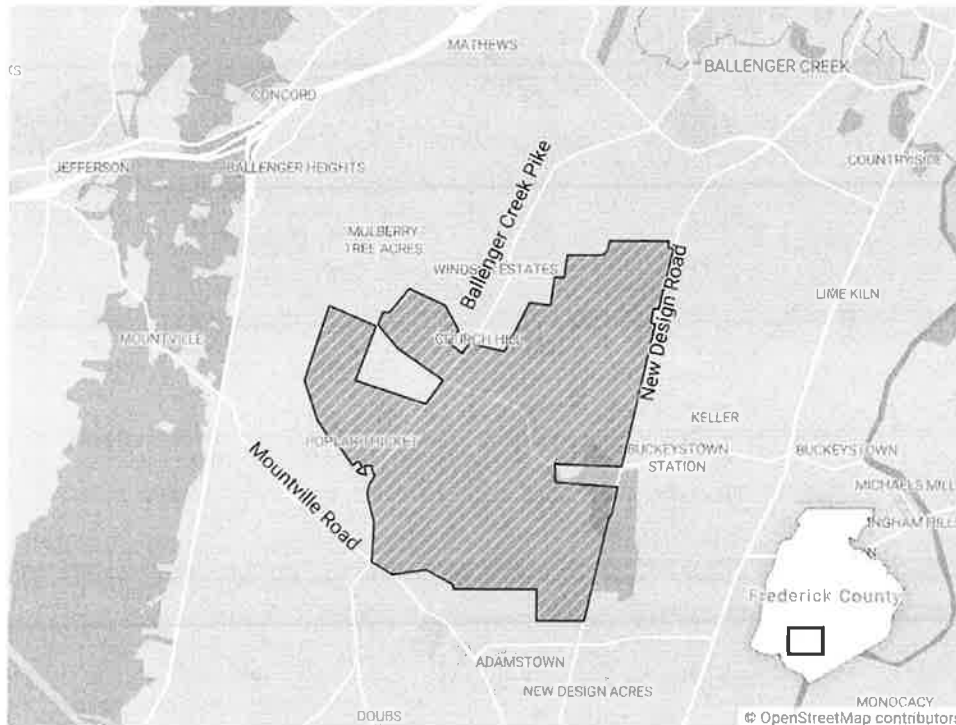
EXHIBIT A-7

<https://thefnp.com/tncms/asset/editorial/20334b78-e0a4-40c8-9b13-7c3257f8648a/>

ALERT

Updated: County attorney says data center zone not subject to referendum; opponents disagree

By Erik Anderson eanderson@newspost.com
Jan 20, 2026



News-Post map by Graham Cullen

The Frederick County Council voted on Dec. 23 to adopt a 2,615-acre data center overlay map near Adamstown.

News-Post map by Graham Cullen

The new 2,615-acre data center zone near Adamstown is not subject to a referendum on the November ballot, according to an official opinion of a Frederick County government attorney — which conflicts with legal advice an opposition group has received.

If residents petition for a referendum on the data center zone, the county government will likely reject the petition “as inapplicable,” according to a memo written by county attorney Bryon Black as an advisory opinion to the county executive and Frederick County Council.

“Any such rejection could lead to judicial review, and the outcome of such litigation cannot be guaranteed given the novelty of the issue in Frederick County,” the memo states.

Frederick County Council President Brad Young summarized the key findings of the memo at Tuesday’s council meeting immediately after he signed the documents that formally enact the new data center zone, which the council passed in a Dec. 23 vote.

Shortly after the signing, Steve Black, the chair of the Frederick County Data Center Referendum Committee, which officially formed in January in response to the Frederick County Council voting on the new data center zone, said in an interview that he's not concerned about the county attorney's opinion.

"It's not up to the county attorney or the County Council to decide if a particular ordinance can be put up for referendum," he said. "That is a decision that the Board of Elections makes. Needless to say, we have a very different interpretation of case law about referendums in Maryland."

Elizabeth Bauer, the referendum committee's convenor, said in an interview that three lawyers have advised the group that their petition effort is valid, but they are remaining anonymous for now.

Bauer and Steve Black said they are aware of multiple cases in which zoning issues were subject to referendum in Maryland.

Their seven-member referendum committee believes they need to collect just under 15,000 signatures from the registered voters of Frederick County to have the issue put to a referendum, according to Bauer. She said the group will aim for 18,000, with the expectation that some of the signatures will be invalidated.

She said that more than 180 people have signed up for the committee's training to gather signatures and the effort is officially endorsed by Envision Frederick County and the Sugarloaf Alliance.

Steve Black said now that the CDI overlay has been enacted, the referendum group will submit the text of its petition to the Board of Elections and will begin collecting signatures as soon as the board approves the text language.

Bauer said the committee's understanding is that they have 59 days from Tuesday to reach their signature goal and they are aiming to finish by March 15.

Referendum questions

The county charter states that, but for a small list of exceptions, "a law, or part of a law, enacted pursuant to this Charter may be referred to the voters for approval upon the filing of a petition signed by seven percent of the registered voters of the County."

The CDI overlay is being implemented both through amendments to the county's comprehensive plan and to the county's zoning code.

Frederick County Council Member Steve McKay, one of two council members to vote against the overlay, previously told The Frederick News-Post that he's uncertain whether the comprehensive plan aspects are subject to referendum because they are implemented through resolution, rather than by ordinance.

However, he said he believes the amendment to the county zoning code is considered a law and therefore subject to referendum.

There are several charter-based counties in Maryland where resolutions are subject to referendum, but Frederick is not one of them, according to the memo written by Bryon Black, the county attorney.

Further, Bryon Black writes in the memo that the county charter's definition of "law" does not include the process used to change the zoning code map for the CDI overlay because "it was not enacted as a bill" under section 301-310 of the county charter.

The memo was based on the legal advice of Timothy Maloney, an attorney with Joseph, Greenwald & Laake, whom the county hired to review the issue.

"We wanted to make sure we were doing this right," county spokesperson Vivian Laxton said of the county's reason for seeking Maloney's review.

"I appreciate the thorough research and clear guidance provided by the Office of the County Attorney on this matter," County Executive Jessica Fitzwater said in a statement provided through Laxton.

Young and Council Vice President Kavontè Duckett also provided statements through Laxton.

"The Council has received the County Attorney's memo clarifying that the CDI overlay is not subject to referendum," Young said. "We respect and will fully abide by the requirements of the County Charter as we move forward."

"I appreciate the County Attorney's timely and thorough review of the charter to clarify whether the CDI overlay is subject to petition," Duckett said. "Had the outcome been different, I would have respected that decision and allowed the process to move forward accordingly."

Erik Anderson

EXHIBIT A-8

TO AFFIDAVIT OF ADAM VAN GRACK

quinn emanuel trial lawyers | washington, dc

1300 I Street NW, Suite 900, Washington, District of Columbia 20005-3314 | TEL (202) 538-8000 FAX (202) 538-8100

WRITER'S DIRECT DIAL NO.
(202) 538-8139

WRITER'S EMAIL ADDRESS
keithforst@quinnemanuel.com

March 25, 2026

VIA ELECTRONIC MAIL

Frederick County Board of Elections
8490 Progress Drive, Suite 300
Frederick, Maryland 21701
ElectionBoard@FrederickCountyMD.gov

Re: *Referendum Petition Targeting Ordinance 26-01-001*

Dear Members of the Board:

We write on behalf of Quantum Maryland LLC regarding Ordinance 26-01-001, which established the zoning map for the Critical Digital Infrastructure Overlay Zone. Enacted by the Frederick County Council on January 20, 2026, this Ordinance took immediate effect upon approval by the County Council. We understand that the Data Center Referendum Committee is seeking to subject this Ordinance to public referendum and has presented a petition to the Frederick County Board of Elections (the "Board") for verification pursuant to the Procedures for Filing a Statewide or a Public Law Referendum Petition. Despite the standard verification procedures that apply in such cases, a fundamental threshold defect requires the Board to reject the petition outright.

That threshold defect is clear and dispositive: publicly available information confirms that the County Attorney, Mr. Bryon Black, in conjunction with Tim Maloney of Joseph, Greenwald & Laake, has correctly concluded that Ordinance 26-01-001 is not a "law" subject to referendum under Charter § 308—specifically, that the Charter's definition of "law" does not encompass a zoning map amendment not enacted as a Bill under Charter §§ 301-310. *See, e.g., Erik Anderson, County Attorney Says Data Center Zone Not Subject to Referendum; Opponents Disagree, Frederick News-Post, Jan. 24, 2026* ("Further, Bryon Black writes in the memo that county charter's definition of 'law' does not include the process used to change the zoning code map for the CDI overlay because 'it was not enacted as a bill' under section 301-310 of the county charter."). Our independent analysis reaches the same definitive conclusion. We respectfully but strongly urge the Board to stand by the County Attorney's well-reasoned position without hesitation. Doing so upholds the clear limits of the Charter, prevents a flood of similar petitions

quinn emanuel urquhart & sullivan, llp

ATLANTA | AUSTIN | BOSTON | BRUSSELS | CHICAGO | DOHA | HAMBURG | HONG KONG | HOUSTON | LONDON | LOS ANGELES | MANNHEIM |
MIAMI | MUNICH | NEUILLY-LA DEFENSE | NEW YORK | PARIS | PERTH | RIYADH | SALT LAKE CITY | SAN FRANCISCO | SEATTLE | SHANGHAI |
SILICON VALLEY | STUTTGART | SYDNEY | TOKYO | WASHINGTON, DC | ZURICH

against other ordinances that would otherwise overwhelm county governance, preserves the integrity of the referendum process, and serves the public interest.

The Frederick County Charter expressly treats “laws” and “ordinances” as distinct instruments. Section 104(c) defines a “Bill” as a proposed act “resulting in a law or ordinance”—two separate outputs. Section 305 then states unequivocally that no law may be enacted except by written Bill. Read together, these provisions are dispositive: while an ordinance *may* result from a bill, a law *must* result from a bill. Because Ordinance 26-01-001 did not begin as a bill, it cannot qualify as a “law” under the Charter’s plain language and structure.

The distinction is not merely formal; it reflects a functional division built into the Charter itself. Laws are governance-level enactments “of general application and continuing force;” Charter § 310, while ordinances serve as the *implementing* instrument. The Charter expressly incorporates this very framework from the Land Use Article, Charter § 601, which carefully distinguishes a “local law” that establishes zoning rules from a “zoning ordinance” that *implements* those rules. LUA §§ 1-101(j)(1), (t)(1)-(2).

Bill 25-09 and Ordinance 26-01-001 followed this structure exactly. Bill 25-09—enacted as law and effective November 1, 2025—amended the Frederick County Zoning Code to create the Critical Digital Infrastructure Zone. That was the framework legislation. Ordinance 26-01-001 then implemented that framework by applying the CDI Zone to the map. Its procedural markers confirm it was enacted as an ordinance: it took effect immediately upon adoption, without the 60-day delay that attaches to laws, and required no new public hearing after amendment. Because Charter § 308(a) subjects only laws—not ordinances—to referendum, the referendum power only reached Bill 25-09 (and that window closed long ago). It does not reach Ordinance 26-01-001.

More than forty years of consistent County practice only reinforces what the Charter already makes plain. When the Charter was adopted, Section 601 preserved the Land Use Article as the continuing and governing framework for land use in Frederick County, expressly continuing the County’s longstanding treatment of comprehensive rezonings and rezoning map amendments as ordinances, not laws. *See, e.g.*, Ordinance 22-07-007 (Sugarloaf Treasured Landscape). The referendum provision was therefore never intended—and does not—transform these routine zoning instruments into referendable “laws.”

Although the Board could properly conclude its review at the threshold determination that Ordinance 26-01-001 is not referendable “law,” the petition is independently defective. Charter § 308(b) requires that each petition paper “contain the full and accurate text of the law.” That requirement is substantive: signatories must be able to read precisely what they are signing. The petition fails this requirement entirely. While gathering purported signatures, the organizers of the petition reproduced the text of the Ordinance at such a reduced scale that it is effectively illegible. An unreadable photographic reproduction does not satisfy the Charter’s requirement and is equivalent to omitting the text of the Ordinance altogether. Every signature page bearing illegible text is therefore facially defective, and all signatures on those pages should be invalidated.

Further, the petition circulators lacked both an accurate understanding of the Ordinance and adequate training on signature-gathering requirements. Based on our historical understanding of similar petition efforts, standard verification often reveals that a significant percentage of submitted signatures are improper, incorrect, or ultimately invalidated—including duplicate

signatures, signatures that cannot be matched to registered Frederick County voters at the addresses provided, and signatures from ineligible signatories. These issues are compounded by the Data Center Referendum Committee's mail-in petition alternative, which requires the petitioner to follow strict guidelines for submitting a valid petition. As a result, many mail-in submissions may contain errors that render them invalid.

The petition's deficiencies also extend beyond technical deficiencies. Petition circulators were instructed to—and in fact did—make material misrepresentations to prospective signatories about the Ordinance's scope and effect. They falsely claimed the referendum would affect only the additional 1,000 acres (omitting that the Ordinance implements zoning as to the entire 2,600-acre site) and that it would apply solely to future projects, not existing ones. These misrepresentations are critical because they concealed the fact that the referendum risks disrupting a long-standing project that employs dozens of companies and hundreds of individuals in Frederick County. Because these statements are demonstrably false, any signatures obtained through such misrepresentations are not "genuine and bona fide" under Charter § 308(b), notwithstanding any affidavits attesting otherwise. *See* COMAR 33.06.03.08(B)(4)(a); Md. Code Elec. Law § 16-401 (a)(3) ("A person may not willfully and knowingly ... misrepresent any fact for the purpose of inducing another person to sign or not to sign any petition.").

These defects were compounded by flyers distributed alongside the petition, which contained false and unsupported assertions of permanent environmental damage and severe impacts on transmission lines, utilities, and water supplies—none of which the Ordinance supports. Because the full text of the Ordinance is illegible on the petition pages, these misleading campaign materials effectively substituted for the "full and accurate text" requirement under Charter § 308(b), rendering the petition entirely improper. *Cf. Gray v. Howard Cnty. Bd. of Elections*, 218 Md. App. 654, 663 (2014) ("Section 6-206(c)(1)-(6) of the Election Law Article lists six deficiencies, any of which, if found by the Election Director, would require him to decline certification.").

Quantum Maryland has a direct and substantial interest in the zoning map established by Ordinance 26-01-001. We respectfully submit this information to assist the Board in its verification process and urge the Board to reject the petition consistent with public comments on the matter. We are available to provide additional information or analysis at the Board's request.

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP



Keith Forst

cc:

Barbara Wagner, Elections Director (BWagner@FrederickCountyMD.gov)

Anthony Gutiérrez, Deputy Elections Director (AGutierrez@FrederickCountyMD.gov)

EXHIBIT A-9

TO AFFIDAVIT OF ADAM VAN GRACK



Frederick County Board of Elections

8490 Progress Drive, Ste 300, Frederick, Maryland 21701
 FrederickCountyMD.gov/elections

301-600-VOTE (8683)
 ElectionBoard@FrederickCountyMD.gov



April 3, 2026

VIA EMAIL

Frederick County Data Center Referendum Committee
 Mr. Steve Black
 2313 New Design Road
 Adamstown, MD. 21710

Dear Mr. Black,

The Frederick County Board of Elections has verified all signatures on your petition submission from March 19, 2026. In relation to the Petition for Referendum of Frederick County Council Ordinance 26-01-00, the verification process at the Frederick County Board of Elections confirmed the following:

Number of signatures processed: 24,053
Number of valid signatures: 21,029
Number of invalid signatures: 3,024

It has been determined that you have gathered enough valid signatures to exceed the threshold for signatures (signed by 7 percent of the County's qualified voters). That number calculated to be 15,611 as set forth in the Frederick County Charter section 308.

There is a presumption that a petition is sufficient unless there is a finding or determination of a deficiency. Under EL 6-206 (b) --- Unless a determination of deficiency is made under subsection (c) ... the chief election official shall (1) make a determination that the petition, as to matters other than the validity of signatures, is sufficient.

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 the Frederick County Office of Law of the final disposition of the petition.

Sincerely,

Barbara Wagner

Barbara Wagner
 Election Director, CERA

CC: Frederick County Board of Elections
 Frederick County Office of Law
 Frederick County Council