Prince George's County, Maryland
Inter-Office Memorandum
Office of Law

LEGISLATIVE COMMENT

DATE: September 16, 2025

TO: Colette R. Gresham, Acting Council Administrator

THRU: Anthony D. Jones, County Attorney

THRU: Jason A. Alston, Deputy County Attorney

FROM: Dinora A. Hernandez, Associate County Attorney

RE: CR-098-2025

The Office of Law has reviewed the above referenced resolution as it was introduced on September 16, 2025, and finds it to be in proper legislative form. The Office of Law, however, does find that there is a legal impediment to its adoption in its current form.

Draft 1

Under the Prince George's County Charter, a bill is required when the Council enacts law or alters substantive rights, including zoning, subdivision, or permitting processes. A resolution is limited to matters of internal procedure, administrative housekeeping, or expressions of policy. DPIE, as an executive branch agency under the County Executive, carries out duties established by law. Pursuant to Section 501 of the Charter, "the County government shall be subject to the direction, supervision, and control of the County Executive." The Council cannot, by resolution, suspend or override these duties.

Maryland courts have consistently rejected attempts to use resolutions to accomplish substantive legislative changes:

- Prince George's County Council Redistricting Case (2022): The Court of Appeals struck down the Council's attempt to adopt a redistricting plan by resolution, holding that an act with the force of law must be adopted as a bill.
- Friel v. Triangle Oil Co., 406 A.2d 768 (Md. Ct. Spec. App. 1979): A zoning moratorium was invalidated where procedural requirements for legislative action were not followed. The Court emphasized that moratoria are treated as zoning regulations, which must be enacted through the proper legislative process.
- County Council v. Concerned Citizens (2023): The Court reiterated that changes to zoning and land use processes must comply with the Maryland Land Use Article's procedural requirements.

Taken together, these cases establish that when a Council measure substantively alters the legal landscape, such as halting the issuance of permits, it must be enacted as a bill.

As to Draft 1, the Office of Law finds that it is not legally permissible for the County Council to direct DPIE to refrain from issuing permits through a resolution. A resolution may express policy preferences or request Executive action, but any binding directive to DPIE requires adoption of a bill consistent with the Charter and Maryland Land Use Article.

Draft 2

Draft 2 of the Resolution only partially addresses the problem. By removing the "permit" language, the resolution no longer directs DPIE to withhold building or grading permits, which was a clear intrusion into executive/administrative functions already governed by County Code. Now it focuses only on preliminary plans of subdivision, which are approved through the Planning Board under Title 23 of the Land Use Article and the County Subdivision Regulations.

A preliminary plan approval is a quasi-legislative/administrative action with legal effect. Changing how, or whether, such applications can be accepted or reviewed is still a substantive change to subdivision law. Under the Charter, changes to subdivision procedures must be made by bill, not resolution. A resolution may express policy (e.g., "the Council supports delaying data center review until recommendations are received"), but it cannot impose a legally binding moratorium on the Planning Board's acceptance or review of subdivision applications.

Courts have repeatedly held that moratoria on land development approvals must be done by ordinance (with findings to support health, safety, and welfare), not by resolution. Narrowing the scope reduces the extent of conflict with DPIE, but it still leaves the Council vulnerable to a challenge that it is legislating by resolution.

Draft 2 helps but it doesn't cure the underlying Charter problem. A moratorium on preliminary subdivision plan acceptance/review is still a substantive land-use regulation, which must be enacted by bill, not resolution.

Executive Order

Prince George's County Executive Aisha N. Braveboy has issued Executive Order No. 42-2025 which issues a temporary hold on accepting, considering, processing, or reviewing any permit application for Qualified Data Centers. Frederick County Executive Jessica Fitzwater issued an Executive Order (03-2025) on June 11, 2025 that was very similar to the one issued by County Executive Braveboy which directed the Frederick County Planning and Permitting Office to pause issuing permits for data centers in Frederick County until the Council enacted legislation creating a special overlay zone for data centers. County Executive Braveboy's Executive Order was modeled after the Executive Order issued by the Frederick County Executive. The Prince George's County Charter, Article V, Section 501, confers express authority on the County Executive to exercise "direction, supervision, and control" over "all agencies of the County government." This specific authority to direct, supervise and control County Agencies extends to exercising authority over DPIE with respect to building permits. The Frederick County Executive's order was premised on similar authority under the Frederick County Charter.

An Executive Order is a more appropriate vehicle than a resolution for a temporary hold on accepting/processing permits because:

- It falls within the Executive's supervisory authority over permitting agencies.
- It avoids the Charter problem of the Council legislating by resolution
- It can be immediate and temporary, while a bill is being drafted.

In conclusion, while an Executive Order is more appropriate than a resolution, for a legally durable, countywide moratorium, only a bill adopted by Council can provide a firm legal basis.