


MEMORANDUM

October 27, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Expedited Bill 32-17, Taxation – Development Impact Tax for Transportation and Public School Improvements – Definitions – Senior Residential

Expedited Bill 32-17, Taxation – Development Impact Tax for Transportation and Public School Improvements – Definitions – Senior Residential, sponsored by Lead Sponsor Councilmember Floreen, is scheduled to be introduced on October 31, 2017. A public hearing is tentatively scheduled for December 5 at 1:30 p.m.

Bill 32-17 would replace the multifamily-senior residential category used to impose the development impact tax for transportation and public school improvements with a senior residential category.

Background

Development impact taxes are designed to require an applicant to construct a new development to pay a portion of the County's cost to build transportation improvements and public school improvements needed to support the new development. The Council approved the initial impact fee law in 1986, and at the time, applied it to developments in the fastest areas of growth in the County (Germantown, Fairland, White Oak, and Cloverly). After the Court of Appeals found in 1990 that the County did not have authority to impose the impact fee it had enacted,¹ the Council enacted Expedited Bill 33-90, which converted the impact fee to an impact tax. In 2001, Bill 47-01 (effective July 2002) established the transportation impact tax countywide.

The Council approved a countywide school impact tax in 2003 (effective 2004) which applied only to residential development. Rates were set for single-family-detached houses, townhouses, low-rise apartments (up to 4 stories) and high-rise apartments. The rates for single-family-detached houses and townhouses also included a surcharge for larger homes. Multifamily-senior residential has a \$0 school impact tax rate because it is assumed that these housing units would not add many students to the public school system.

¹ *Eastern Diversified Properties, Inc. v. Montgomery County*, 39 Md. 45, 570 A.2d 850 (1990).

Bill 32-17 would make 2 changes to the impact tax charged to age-restricted senior housing. First, the Bill would replace the multifamily-senior residential category with a generic senior residential category. Traditional age-restricted senior housing in the County has been multifamily units. Recently, the County has received applications for age-restricted senior housing units comprised of townhouses or villas. Since these age-restricted senior townhouse developments are also expected to add few students to the public school system, Bill 32-17 would apply the senior residential rate of \$0 for the impact tax for public school improvements to these developments.² Bill 32-17 would apply this senior residential tax rate for school impact taxes paid on or after June 22, 2017.

Bill 32-17 would also define the senior residential category for the impact tax for transportation improvements. The new definition would include “a residential care facility as defined in Section 59.3.3.2.E used solely for housing seniors or persons with a disability.” Under current law, a residential care facility that has a central kitchen for providing meals to residents and does not include a kitchen in each housing unit is charged the higher “other non-residential” transportation impact tax rate instead of the lower multifamily-senior transportation impact tax rate. The current classification of this type of residential care facility is based upon an assumption that the staff needed to serve the residents would approximate the impact on the transportation system that results from other non-residential properties, such as a nursing home. Bill 32-17 would place this type of residential care facility in the new senior residential category that carries a reduced transportation impact tax rate.

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² Bill 37-16 required the Council to set the impact tax rates by resolution. Therefore, Bill 32-17 is being introduced with a resolution that would implement this change in the resolution adopting the impact tax rates.

Expedited Bill No. 32-17
Concerning: Taxation – Development
Impact Tax for Transportation and
Public School Improvements –
Definitions – Senior Residential
Revised: October 25, 2017 Draft No.8
Introduced: October 31, 2017
Expires: May 1, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Floreen

AN EXPEDITED ACT to:

- (1) replace the multifamily-senior residential category used to impose the development impact tax for transportation and public school improvements with a senior residential category;
- (2) define senior residential; and
- (3) generally amend the law governing the categories of residential dwelling units used to impose the development impact tax for transportation and public school improvements.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-39

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 52-39 is amended as follows:**

2 **52-39. Definitions.**

3 In this Article the following terms have the following meanings:

4 * * *

5 *Property owner* means any person, group of persons, firm, corporation, or other
6 entity with a proprietary interest in the land on which a building permit has been
7 requested.

8 *Residential* means the use of a building as a dwelling unit.

9 (1) *Single-family detached residential* includes detached single-family
10 dwelling units.

11 (2) *Single-family attached residential* includes townhouses, duplexes
12 and other attached single-family dwelling units.

13 (3) *Multifamily residential* includes:

14 (A) garden apartments;

15 (B) mid-rise and high-rise dwelling unit structures; and

16 (C) mobile homes.

17 (4) [*Multifamily-senior*] *Senior residential* means:

18 (A) [multifamily housing and related facilities for elderly or
19 handicapped persons, as defined in Section 59-1.4.2, with
20 occupancy restricted as provided in Section 59-3.3.2.C] a
21 residential care facility as defined in Section 59.3.3.2.E used
22 solely for housing seniors or persons with a disability;

23 (B) [multifamily housing] dwelling units located in the age-
24 restricted section of a planned retirement community, as
25 defined in Section [59-8.3.5] 59.8.3.5; [and]

26 (C) [a domiciliary care home, as defined in Section 59-1.4.2 and
27 subject to Section 59-3.3.2.E, which consists of separate

28 assisted living units] an independent living facility for
29 seniors or persons with a disability as defined in Section
30 59.3.3.2.C; and

31 (D) any household living unit constructed under Section
32 59.3.3.1 that is restricted by a covenant running with the
33 land for housing persons who are 55 years of age or older.

34 (5) *High-rise residential* includes any dwelling unit located in a
35 multifamily residential or mixed use building that is taller than 4
36 stories, and any 1-bedroom garden apartment.

37 *Use and occupancy permit* means a use and occupancy permit issued by the
38 Department of Permitting Services under Chapter 8.

39 * * *

40 **Sec. 2. Effective Date.**

41 The Council declares that this legislation is necessary for the immediate
42 protection of the public interest. This Act takes effect on June 22, 2017. The
43 amendments in Section 1 must apply to development impact tax for public school
44 improvements paid on or after June 22, 2017. The development impact tax rate for
45 public school improvements imposed for a senior residential development, as defined
46 in Section 1, payable between June 22, 2017 and July 1, 2017, must be \$0.

47 *Approved:*

48 _____
Roger Berliner, President, County Council Date

49 *Approved:*

50 _____
Isiah Leggett, County Executive Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 32-17

Taxation – Development Impact Tax for Transportation and Public School Improvements – Definitions – Senior Residential

- DESCRIPTION:** Bill 32-17 would replace the multifamily-senior residential category used to impose the development impact tax for transportation and public school improvements with a senior residential category.
- PROBLEM:** Traditional age-restricted senior housing in the County has been multifamily units. Recently, the County has received applications for age-restricted senior housing units that is a townhouse development. Since these age-restricted senior townhouse developments are also expected to add few students to the public school system.
- The current classification of a residential care facility is based upon an assumption that the staff needed to serve the residents would approximate the impact on the transportation system that results from other non-residential properties, such as a nursing home. Bill 32-17 would place this type of residential care facility in the new senior residential category that carries a reduced transportation impact tax rate based upon analysis of the impact on the transportation system.
- GOALS AND OBJECTIVES:** The goal is to properly classify age-restricted senior housing units for the development impact tax for both public school and transportation improvements.
- COORDINATION:** Planning Board, County Attorney, Permitting Services
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** To be researched.
- SOURCE OF INFORMATION:** Robert H. Drummer, Senior Legislative Attorney
- APPLICATION WITHIN MUNICIPALITIES:** To be researched.
- PENALTIES:** None.