

MEMORANDUM

TO: County Council

FROM: ~~MS~~ Michael Faden, Senior Legislative Attorney
GO Glenn Orlin, Deputy Council Staff Director

SUBJECT: **Public Hearing:** Bill 26-11, Taxation – Development Impact Taxes - Payment

Bill 26-11, Taxation – Development Impact Taxes - Payment, sponsored by Councilmember Riemer, Council President Ervin, and Councilmembers Berliner, Floreen, Leventhal, Navarro and Rice, was introduced on September 13, 2011. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for October 10 at 10:30 a.m.

Bill 26-11 would require the transportation and school development impact taxes, and the associated transportation mitigation and school facilities payments, to be paid before a use and occupancy permit is issued, rather than before a building permit is issued as current law provides.

This packet contains:

Bill 26-11

Legislative Request Report

Circle #

1

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Bill No. 26-11
Concerning: Taxation - Development
Impact Tax - Payment
Revised: 8-17-2011 Draft No. 3
Introduced: September 13, 2011
Expires: March 13, 2013
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Riemer, Council President Ervin, and Councilmembers Berliner, Floreen,
Leventhal, Navarro and Rice

AN ACT to:

- (1) require any development impact tax to be paid before a use and occupancy permit is issued;
- (2) require any transportation mitigation payment or school facilities payment to be paid before a use and occupancy permit is issued; and
- (3) generally amend the law governing development impact taxes.

By amending

Montgomery County Code

Chapter 52, Taxation

Sections 52-47, 52-49, 52-50, 52-51, 52-54, 52-55, 52-56, 52-59, 52-89, 52-93, 52-94

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 Section 1. Sections 52-47, 52-49, 52-50, 52-51, 52-54, 52-55, 52-56, 52-59,
2 52-89, 52-93, and 52-94 are amended as follows:

3 52-47. Definitions.

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

5 * * *

6 *Applicant* means the property owner, or duly designated agent of the property
7 owner, of land on which a [building] use and occupancy permit has been
8 requested for development.

9 * * *

10 *Development* means the carrying out of any building activity or the making of
11 any material change in the use of any structure or land which requires issuance
12 of a [building] use and occupancy permit and:

13 (1) Increases the number of dwelling units; or

14 (2) Increases the gross floor area of nonresidential development.

15 *Development impact tax* means a pro rata per unit or per square foot of gross
16 floor area tax imposed before a [building] use and occupancy permit is issued
17 for development which is intended to defray a portion of the costs associated
18 with impact transportation improvements that are necessary to accommodate
19 the traffic generated by the development.

20 * * *

21 *Property owner* means any person, group of persons, firm, corporation, or
22 other entity with a proprietary interest in the land on which a [building] use
23 and occupancy permit has been requested.

24 * * *

25 Use and occupancy permit means a use and occupancy permit issued by the
26 Department of Permitting Services under Chapter 8.

27 **52-49. Imposition and applicability of development impact taxes.**

28 (a) A development impact tax must be imposed before a [building] use and
 29 occupancy permit is issued for development in the County.

30 (b) An applicant for a [building] use and occupancy permit must pay a
 31 development impact tax in the amount and manner provided in this
 32 Article, unless a credit in the full amount of the applicable tax applies
 33 under Section 52-55 or an appeal bond is posted under Section 52-56.

34 * * *

35 **52-50. Collection of development impact taxes.**

36 * * *

37 (b) [Applicants] Each applicant for [building permits] a use and occupancy
 38 permit for development that is not exempt from the development impact
 39 tax must supply to the Department of Permitting Services for each
 40 requested [building] use and occupancy permit:

41 (1) The number and type of dwelling units for residential
 42 development; and

43 (2) The gross floor area and type of development for nonresidential
 44 development.

45 The applicant must submit for inspection relevant support
 46 documentation as the Department requires.

47 (c) The Department of Permitting Services must not issue a [building] use
 48 and occupancy permit for development that is not exempt from the
 49 development impact tax unless:

50 (1) the applicant has paid the applicable development impact tax;

51 (2) the applicant is entitled to a credit under Section 52-55 in the
 52 amount of the applicable development impact tax; or

53 (3) an appeal has been taken and a bond or other surety posted under
54 Section 52-56.

55 (d) When a person applies to a municipality in the County for a [building]
56 use and occupancy permit for a building or dwelling unit, the applicant
57 must show that all payments due under this Section with respect to the
58 building or unit have been paid. The Director of Finance must promptly
59 refund any payment made for any building or part of a building for
60 which a [building] use and occupancy permit is not issued by the
61 municipality.

62 * * *

63 (k) If, within 10 years after a [building] use and occupancy permit is issued,
64 any person changes the use of all or part of a building to a use for which
65 a higher tax would have been due under this Article when the [building]
66 use and occupancy permit was issued (including a change from a status,
67 use, or ownership that is exempt from payment to a status, use, or
68 ownership that is not so exempt), the owner of the building must within
69 10 days after the change in status, use, or ownership pay all additional
70 taxes that would have been due if the building or part of the building
71 had originally been used as it is later used. If the building owner does
72 not pay any additional tax when due, each later owner is liable for the
73 tax, and any interest or penalty due, until all taxes, interest, and penalties
74 are paid.

75 **52-51. Calculation of development impact tax.**

76 (a) The Department of Permitting Services must calculate the amount of the
77 applicable development impact tax due for each [building] use and
78 occupancy permit by:

- 79 (1) determining the applicable impact tax district and whether the
80 permit is for development that is exempt from the tax under
81 Section 52-49(f);
- 82 (2) verifying the number and type of dwelling units and the gross
83 floor area and type of nonresidential development for which each
84 [building] use and occupancy permit is sought;
- 85 (3) determining the applicable tax under Section 52-57; and
- 86 (4) multiplying the applicable tax by:
- 87 (A) the appropriate number of dwelling units; and
- 88 (B) the gross floor area of nonresidential development.
- 89 (b) If the development for which a [building] use and occupancy permit is
90 sought contains a mix of uses, the Department must separately calculate
91 the development impact tax due for each type of development.
- 92 (c) If the type of proposed development cannot be categorized under the
93 definitions of nonresidential and residential in Section 52-47, the
94 Department must use the rate assigned to the type of development
95 which generates the most similar traffic impact characteristics.
- 96 (d) The Department must calculate the amount of the development impact
97 tax due under this Article in effect when the [building] use and
98 occupancy permit application is submitted to the Department, or before
99 a [building] use and occupancy permit is issued by a municipality.
- 100 (e) A [building] use and occupancy permit application, or if the property is
101 located in a municipality with authority to issue [building] use and
102 occupancy permits, a request to determine the amount of the impact tax,
103 must be resubmitted to the Department if the applicant changes the
104 project by:
- 105 (1) increasing the number of dwelling units;

- 106 (2) increasing the gross floor area of nonresidential development; or
- 107 (3) changing the type of development so that the development impact
- 108 tax would be increased.

109 The Department must recalculate the development impact tax based on
 110 the plans contained in the resubmitted [building] use and occupancy
 111 permit application.

112 **52-54. Refunds.**

- 113 (a) Any person who has paid a development impact tax may apply for a
- 114 refund of the impact tax if:
 - 115 (1) the County has not appropriated the funds for impact
 - 116 transportation improvements of the types listed in Section 52-58,
 - 117 or otherwise formally designated a specific improvement of a
 - 118 type listed in Section 52-58 to receive funds, by the end of the
 - 119 sixth fiscal year after the tax is collected;
 - 120 (2) the [building] use and occupancy permit has been revoked or has
 - 121 lapsed because construction did not start; or
 - 122 (3) the project has been physically altered, resulting in a decrease in
 - 123 the amount of impact tax due.

124 * * *

125 **52-55. Credits.**

- 126 (a) (1) A property owner is entitled to a credit if the owner, before July
- 127 1, 2002, entered into a participation agreement, or a similar
- 128 agreement with the state or a municipality, the purpose of which
- 129 was to provide additional transportation capacity. A property
- 130 owner is also entitled to a credit if the owner receives approval
- 131 before July 1, 2002, of a subdivision plan, development plan, or
- 132 similar development approval by the County or a municipality

133 that requires the owner to build or contribute to a transportation
 134 improvement that provides additional transportation capacity.
 135 The Department of Transportation must calculate the credit. The
 136 credit must equal the amount of any charge paid under the
 137 participation agreement. The Department may give credit only
 138 for [building] use and occupancy permit applications for
 139 development on the site covered by the participation agreement.

140 * * *

141 (b) A property owner must receive a credit for constructing or contributing
 142 to an improvement of the type listed in Section 52-58 if the
 143 improvement reduces traffic demand or provides additional
 144 transportation capacity. However, the Department must not certify a
 145 credit for any improvement in the right-of-way of a State road, except a
 146 transit or trip reduction program that operates on or relieves traffic on a
 147 State road or an improvement to a State road that is included in a
 148 memorandum of understanding between the County and either
 149 Rockville or Gaithersburg.

150 (1) If the property owner elects to make the improvement, the owner
 151 must enter into an agreement with a municipality or the County,
 152 or receive a development approval based on making the
 153 improvement, before any [building] use and occupancy permit is
 154 issued. The agreement or development approval must contain:

- 155 (A) the estimated cost of the improvement, if known then;
- 156 (B) the dates or triggering actions to start and, if known then,
 157 finish the improvement;

158 (C) a requirement that the property owner complete the
159 improvement according to applicable municipal or County
160 standards; and

161 (D) any other term or condition that the municipality or County
162 finds necessary.

163 (2) The Department of Transportation must:

164 (A) review the improvement plan;

165 (B) verify costs and time schedules;

166 (C) determine whether the improvement is an impact
167 transportation improvement;

168 (D) determine the amount of the credit for the improvement
169 that will apply to the development impact tax; and

170 (E) certify the amount of the credit to the Department of
171 Permitting Services before that Department or a
172 municipality issues any [building] use and occupancy
173 permit.

174 * * *

175 **52-56. Appeals.**

176 After determination of the amount of the development impact tax or credit due,
177 an applicant for a [building] use and occupancy permit or a property owner may
178 appeal to the Maryland Tax Court to the extent permitted by state law or, if the
179 Maryland Tax Court does not have jurisdiction, to the Circuit Court under the
180 Maryland Rules of Procedure that regulate administrative appeals. If the appealing
181 party posts a bond or other sufficient surety satisfactory to the County Attorney in an
182 amount equal to the applicable development impact tax as calculated by the
183 Department of Permitting Services, the Department or municipality must issue the
184 [building] use and occupancy permit if all other applicable conditions have been

185 satisfied. The filing of an appeal does not stay the collection of the development
186 impact tax until a bond or other surety satisfactory to the County Attorney has been
187 filed with the Department of Permitting Services.

188 **52-59. Transportation Mitigation Payment.**

189 (a) In addition to the tax due under this Article, an applicant for a [building]
190 use and occupancy permit for any building on which an impact tax is
191 imposed under this Article must pay to the Department of Finance a
192 Transportation Mitigation Payment if that building was included in a
193 preliminary plan of subdivision that was approved under the
194 Transportation Mitigation Payment provisions in the County
195 Subdivision Staging Policy.

196 * * *

197 **52-89. Imposition and applicability of tax.**

198 (a) An applicant for a [building] use and occupancy permit for a residential
199 development must pay a development impact tax for public school
200 improvements in the amount and manner provided in this Article before
201 a [building] use and occupancy permit is issued for any residential
202 development in the County unless:

- 203 (1) a credit for the entire tax owed is allowed under Section 52-93; or
- 204 (2) an appeal bond is posted under Section 52-56.

205 * * *

206 **52-93. Credits.**

207 * * *

208 (b) If the property owner elects to make a qualified improvement, the owner
209 must enter into an agreement with the Director of Permitting Services,
210 or receive a development approval based on making the improvement,

211 before any [building] use and occupancy permit is issued. The
212 agreement or development approval must contain:

- 213 (1) the estimated cost of the improvement, if known then,
- 214 (2) the dates or triggering actions to start and, if known then, finish
215 the improvement.
- 216 (3) a requirement that the property owner complete the improvement
217 according to Montgomery County Public Schools standards, and
- 218 (4) such other terms and conditions as MCPS finds necessary.

219 (c) MCPS must:

- 220 (1) review the improvement plan,
- 221 (2) verify costs and time schedules,
- 222 (3) determine whether the improvement is a public school
223 improvement of the type listed in Section 52-91(d),
- 224 (4) determine the amount of the credit for the improvement, and
- 225 (5) certify the amount of the credit to the Department of Permitting
226 Services before that Department or a municipality issues any
227 [building] use and occupancy permit.

228 * * *

229 **52-94. School Facilities Payment.**

230 (a) In addition to the tax due under this Article, an applicant for a [building]
231 use and occupancy permit for any building on which a tax is imposed
232 under this Article must pay to the Department of Finance a School
233 Facilities Payment if that building was included in a preliminary plan of
234 subdivision that was approved under the School Facilities Payment
235 provisions in the County Subdivision Staging Policy.

236 * * *

237 **Section. 2. Effective date.**

238 This Act takes effect 91 days after it becomes law. The development impact
239 tax imposed under Article VII and XII of Chapter 52, as amended by Section 1 of
240 this Act, applies to any building for which an application for a use and occupancy
241 permit is filed on or after that date. However, an applicant need not pay the tax
242 before receiving a use and occupancy permit for development if the applicant paid
243 the tax before receiving a building permit for the same development.

244 *Approved:*

245

Valerie Ervin, President, County Council Date

246 *Approved:*

247

Isiah Leggett, County Executive Date

248 *This is a correct copy of Council action.*

249

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 26-11

Taxation – Development Impact Taxes - Payment

DESCRIPTION: Requires any development impact tax, and the associated transportation mitigation and school facilities payments, to be paid before a use and occupancy permit is issued, rather than before a building permit is issued.

PROBLEM: Requiring impact taxes to be paid before a building permit is issued can cause cash flow difficulties for builders since the payment comes well before the building is sold or leased.

GOALS AND OBJECTIVES: To mitigate cash flow hardships that builders encounter without reducing impact tax payments to the County.

COORDINATION: Department of Permitting Services, Department of Finance

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905; Glenn Orlin, Deputy Council Staff Director, 240-777-7936

APPLICATION WITHIN MUNICIPALITIES: Taxes and payments apply County-wide.

PENALTIES: Not applicable.