

Expedited Bill No. 26-11
Concerning: Taxation - Development
Impact Tax - Payment
Revised: 11-1-11 Draft No. 6
Introduced: September 13, 2011
Enacted: November 1, 2011
Executive: November 9, 2011
Effective: December 1, 2011
Sunset Date: [[December 1, 2016]] None
Ch. 19, Laws of Mont. Co. 2011

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

AN EXPEDITED ACT to:

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

By amending

Montgomery County Code

Chapter 52, Taxation

Sections 52-47[[, 52-49,]] and 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,]] and 52-50[[, 52-51, 52-54, 52-55, 52-
2 56, 52-59, 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]] building permit
8 has been 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]] building 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]] building
17 permit is issued for development which is intended to defray a portion of the
18 costs associated with impact transportation improvements that are necessary to
19 accommodate 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]] building 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

29 and occupancy]] building permit is issued for development in the
30 County.

31 (b) An applicant for a [building] [[use and occupancy]] building permit
32 must pay a development impact tax in the amount and manner provided
33 in this Article, unless a credit in the full amount of the applicable tax
34 applies under Section 52-55 or an appeal bond is posted under Section
35 52-56.

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37 **52-50. Collection of development impact taxes.**

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

- 44 (1) The number and type of dwelling units for residential
- 45 development; and
- 46 (2) The gross floor area and type of development for nonresidential
- 47 development.

48 The applicant must submit for inspection relevant support
49 documentation as the Department requires.

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

- 53 (1) the applicant has paid the applicable development impact tax;
- 54 (2) the applicant is entitled to a credit under Section 52-55 in the
- 55 amount of the applicable development impact tax; or
- 56 (3) an appeal has been taken and a bond or other surety posted under

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Section 52-56.

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

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

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- (l) Notwithstanding any other provision of this Chapter, an applicant for a building permit need not pay any development impact tax, Transportation Mitigation Payment, or School Facilities Payment due until:

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- (1) if the building is a single-family detached or attached residential building, the earlier of:

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- 84 (A) the final inspection of the building by the Department of
- 85 Permitting Services; or
- 86 (B) 6 months after the building permit is issued; and
- 87 (2) if the building is a multi-family residential or non-residential
- 88 development, the earlier of:
- 89 (A) the final inspection of the building by the Department of
- 90 Permitting Services; or
- 91 (B) 12 months after the building permit is issued.

The rate of the tax or Payment due is the rate in effect when the tax or Payment is paid. A permittee may appeal the imposition or calculation of the tax or Payment under Section 52-56. If the Department of Permitting Services or a municipality revokes or suspends a building permit or issues a stop-work order solely because the permittee did not pay any tax or Payment due under this Article, the permittee or any other party must not appeal the permit revocation or suspension or the stop work order issuance, or any modification of either, under Chapter 8. If the appealing party posts a bond or other sufficient surety satisfactory to the County Attorney as provided in Section 52-56, the Department or municipality must reissue or reinstate the building permit or revoke the stop-work order.

52-51. Calculation of development impact tax.

- 105 (a) The Department of Permitting Services must calculate the amount of the
- 106 applicable development impact tax due for each [building] [[use and
- 107 occupancy]] building permit by:
- 108 (1) determining the applicable impact tax district and whether the
- 109 permit is for development that is exempt from the tax under
- 110 Section 52-49(f);

- 111 (2) verifying the number and type of dwelling units and the gross
112 floor area and type of nonresidential development for which each
113 [building] ~~[[use and occupancy]]~~ building permit is sought;
- 114 (3) determining the applicable tax under Section 52-57; and
- 115 (4) multiplying the applicable tax by:
- 116 (A) the appropriate number of dwelling units; and
- 117 (B) the gross floor area of nonresidential development.
- 118 (b) If the development for which a [building] ~~[[use and occupancy]]~~
119 building permit is sought contains a mix of uses, the Department must
120 separately calculate the development impact tax due for each type of
121 development.
- 122 (c) If the type of proposed development cannot be categorized under the
123 definitions of nonresidential and residential in Section 52-47, the
124 Department must use the rate assigned to the type of development
125 which generates the most similar traffic impact characteristics.
- 126 (d) The Department must calculate the amount of the development impact
127 tax due under this Article in effect when the [building] ~~[[use and
128 occupancy]]~~ building permit application is submitted to the Department,
129 or before a [building] ~~[[use and occupancy]]~~ building permit is issued
130 by a municipality.
- 131 (e) A [building] ~~[[use and occupancy]]~~ building permit application, or if the
132 property is located in a municipality with authority to issue [building]
133 ~~[[use and occupancy]]~~ building permits, a request to determine the
134 amount of the impact tax, must be resubmitted to the Department if the
135 applicant changes the project by:
- 136 (1) increasing the number of dwelling units;
- 137 (2) increasing the gross floor area of nonresidential development; or

138 (3) changing the type of development so that the development impact
139 tax would be increased.

140 The Department must recalculate the development impact tax based on
141 the plans contained in the resubmitted [building] [[use and occupancy]]
142 building permit application.

143 **52-54. Refunds.**

144 (a) Any person who has paid a development impact tax may apply for a
145 refund of the impact tax if:

146 (1) the County has not appropriated the funds for impact
147 transportation improvements of the types listed in Section 52-58,
148 or otherwise formally designated a specific improvement of a
149 type listed in Section 52-58 to receive funds, by the end of the
150 sixth fiscal year after the tax is collected;

151 (2) the [building] [[use and occupancy]] building permit has been
152 revoked or has lapsed because construction did not start; or

153 (3) the project has been physically altered, resulting in a decrease in
154 the amount of impact tax due.

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156 **52-55. Credits.**

157 (a) (1) A property owner is entitled to a credit if the owner, before July
158 1, 2002, entered into a participation agreement, or a similar
159 agreement with the state or a municipality, the purpose of which
160 was to provide additional transportation capacity. A property
161 owner is also entitled to a credit if the owner receives approval
162 before July 1, 2002, of a subdivision plan, development plan, or
163 similar development approval by the County or a municipality
164 that requires the owner to build or contribute to a transportation

165 improvement that provides additional transportation capacity.
 166 The Department of Transportation must calculate the credit. The
 167 credit must equal the amount of any charge paid under the
 168 participation agreement. The Department may give credit only
 169 for [building] [[use and occupancy]] building permit applications
 170 for development on the site covered by the participation
 171 agreement.

172 * * *

173 (b) A property owner must receive a credit for constructing or contributing
 174 to an improvement of the type listed in Section 52-58 if the
 175 improvement reduces traffic demand or provides additional
 176 transportation capacity. However, the Department must not certify a
 177 credit for any improvement in the right-of-way of a State road, except a
 178 transit or trip reduction program that operates on or relieves traffic on a
 179 State road or an improvement to a State road that is included in a
 180 memorandum of understanding between the County and either
 181 Rockville or Gaithersburg.

182 (1) If the property owner elects to make the improvement, the owner
 183 must enter into an agreement with a municipality or the County,
 184 or receive a development approval based on making the
 185 improvement, before any [building] [[use and occupancy]]
 186 building permit is issued. The agreement or development
 187 approval must contain:

- 188 (A) the estimated cost of the improvement, if known then;
- 189 (B) the dates or triggering actions to start and, if known then,
 190 finish the improvement;

- 191 (C) a requirement that the property owner complete the
192 improvement according to applicable municipal or County
193 standards; and
- 194 (D) any other term or condition that the municipality or County
195 finds necessary.
- 196 (2) The Department of Transportation must:
- 197 (A) review the improvement plan;
- 198 (B) verify costs and time schedules;
- 199 (C) determine whether the improvement is an impact
200 transportation improvement;
- 201 (D) determine the amount of the credit for the improvement
202 that will apply to the development impact tax; and
- 203 (E) certify the amount of the credit to the Department of
204 Permitting Services before that Department or a
205 municipality issues any [building] [[use and occupancy]]
206 building permit.

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208 **52-56. Appeals.**

209 After determination of the amount of the development impact tax or credit due,
210 an applicant for a [building] [[use and occupancy]] building permit or a property
211 owner may appeal to the Maryland Tax Court to the extent permitted by state law or,
212 if the Maryland Tax Court does not have jurisdiction, to the Circuit Court under the
213 Maryland Rules of Procedure that regulate administrative appeals. If the appealing
214 party posts a bond or other sufficient surety satisfactory to the County Attorney in an
215 amount equal to the applicable development impact tax as calculated by the
216 Department of Permitting Services, the Department or municipality must issue the
217 [building] [[use and occupancy]] building permit if all other applicable conditions

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

221 **52-59. Transportation Mitigation Payment.**

222 (a) In addition to the tax due under this Article, an applicant for a [building]
223 [[use and occupancy]] building permit for any building on which an
224 impact tax is imposed under this Article must pay to the Department of
225 Finance a Transportation Mitigation Payment if that building was
226 included in a preliminary plan of subdivision that was approved under
227 the Transportation Mitigation Payment provisions in the County
228 Subdivision Staging Policy.

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230 **52-89. Imposition and applicability of tax.**

231 (a) An applicant for a [building] [[use and occupancy]] building permit for
232 a residential development must pay a development impact tax for public
233 school improvements in the amount and manner provided in this Article
234 before a [building] [[use and occupancy]] building permit is issued for
235 any residential development in the County unless:

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

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239 **52-93. Credits.**

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241 (b) If the property owner elects to make a qualified improvement, the owner
242 must enter into an agreement with the Director of Permitting Services,
243 or receive a development approval based on making the improvement,
244 before any [building] [[use and occupancy]] building permit is issued.
245 The agreement or development approval must contain:

- 246 (1) the estimated cost of the improvement, if known then,
- 247 (2) the dates or triggering actions to start and, if known then, finish
- 248 the improvement.
- 249 (3) a requirement that the property owner complete the improvement
- 250 according to Montgomery County Public Schools standards, and
- 251 (4) such other terms and conditions as MCPS finds necessary.
- 252 (c) MCPS must:
- 253 (1) review the improvement plan,
- 254 (2) verify costs and time schedules,
- 255 (3) determine whether the improvement is a public school
- 256 improvement of the type listed in Section 52-91(d),
- 257 (4) determine the amount of the credit for the improvement, and
- 258 (5) certify the amount of the credit to the Department of Permitting
- 259 Services before that Department or a municipality issues any
- 260 [building] [[use and occupancy]] building permit.

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52-94. School Facilities Payment.

- 263 (a) In addition to the tax due under this Article, an applicant for a [building]
- 264 [[use and occupancy]] building permit for any building on which a tax is
- 265 imposed under this Article must pay to the Department of Finance a
- 266 School Facilities Payment if that building was included in a preliminary
- 267 plan of subdivision that was approved under the School Facilities
- 268 Payment provisions in the County Subdivision Staging Policy.

* * *

Section 2. Expedited Effective date. The Council declares that this
 271 legislation is necessary for the immediate protection of the public welfare. This Act
 272 takes effect [[91 days after it becomes law]] on December 1, 2011. The payment
 273 date for the development impact tax imposed under Articles VII and XII of Chapter

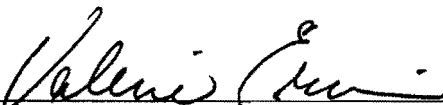
274 52, as amended by Section 1 of this Act, applies to any building for which an
275 application for a [[use and occupancy]] building permit is filed on or after that date.
276 The payment date for the Transportation Mitigation Payment and School Facilities
277 Payment, imposed respectively under Section 52-59 and 52-94, apply to any
278 Payment required on or after that date. [[However, an applicant need not pay the tax
279 before receiving a use and occupancy permit for development if the applicant paid
280 the tax before receiving a building permit for the same development.]]

281 [[Section 3. Expiration. Section 52-50(l), inserted by Section 1 of this Act,
282 expires on December 1, 2016.]]

283 *Approved:*

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Valerie Ervin, President, County Council

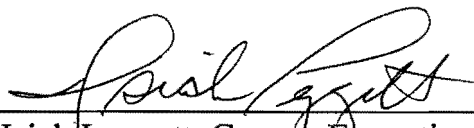
11/2/2011

Date

286 *Approved:*

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Isiah Leggett, County Executive


11/9/2011

Date

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

290

291



Linda M. Lauer, Clerk of the Council

11/10/11

Date