

Expedited Bill No. 34-12
Concerning: Stormwater Management –
Water Quality Protection Charge
Revised: 4-16-13 Draft No. 4
Introduced: November 27, 2012
Enacted: April 16, 2013
Executive: April 24, 2013
Effective: July 1, 2013
Sunset Date: None
Ch. 11, Laws of Mont. Co. 2013

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) subject all properties not otherwise exempt under state law to the Water Quality Protection Charge;
- (2) allow certain property owners to obtain a credit equal to a certain percentage of the Charge;
- (3) exempt certain property owners that are able to demonstrate substantial financial hardship;
- (4) provide for a phase-in of certain increases to the Charge; and
- (5) generally amend County law regarding the Water Quality Protection Charge.

By amending

Montgomery County Code
Chapter 19, Erosion, Sediment Control and Storm Water Management
Sections 19-21, 19-28, 19-29, 19-35

By adding

Chapter 19, Erosion, Sediment Control and Storm Water Management
Section 19-29A

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:

Sec. 1. Sections 19-21, 19-28, 19-29 and 19-35 are amended, and Section 19-29A is added, as follows:

19-21. Definitions

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[Associated nonresidential property: A nonresidential property from which stormwater drains into a stormwater management facility that primarily serves one or more residential properties.]

* * *

Impervious area or impervious surface: Any surface that prevents or significantly impedes the infiltration of water into the underlying soil, including any structure, building, patio, [deck,] sidewalk, compacted gravel, pavement, asphalt, concrete, stone, brick, tile, swimming pool, or artificial turf. Impervious surface also includes any area used by or for motor vehicles or heavy commercial equipment, regardless of surface type or material, including any road, [road shoulder,] driveway, or parking area.

* * *

Nonprofit organization: A corporation, foundation, or other legal entity that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code.

* * *

Person: An individual;[, corporation, firm, partnership, joint venture, agency, organization, municipal corporation,] a legal entity; or a department, agency, or instrument of the County or, [state agency, or any combination of them] to the extent allowed by law, federal, state, or local government.

* * *

19-28. Inspection and maintenance of stormwater management systems.

* * *

28 (b) *Maintenance of new stormwater management systems.*

29 (1) Before issuing a sediment control permit to develop any
30 property that requires implementation of best management
31 practices, the Department must require the property owner to
32 execute an easement and an inspection and maintenance
33 agreement that is binding on each later [owner[s]] owner of the
34 land to be served by any private stormwater management
35 system.

36 (2) The easement must give the County a perpetual right of access
37 to the stormwater management system at all reasonable times to
38 inspect, operate, monitor, install, construct, reconstruct, modify,
39 maintain, clean, or repair any part of the stormwater
40 management system [within] in the area covered by the
41 easement as needed to assure that the system remains in proper
42 working condition under approved design and environmental
43 standards. The inspection and maintenance agreement must
44 require the owner to be responsible for all maintenance of any
45 completed ESD treatment system and nonstructural
46 maintenance of any on-site stormwater management facility if
47 the development consists of residential property [[or
48 [associated] of nonresidential property that contains a
49 stormwater management facility built or retrofitted by the
50 County]]. Otherwise, the inspection and maintenance
51 agreement must require the owner to be responsible forever for
52 all maintenance of the entire on-site stormwater management
53 system, including maintaining in good condition, and promptly
54 repairing and restoring, each ESD practice, grade surface, wall,

55 drain, dam and structure, vegetation, erosion and sediment
56 control measure, and any other protective device [forever].

57 (3) The owner must record the easement and agreement in the
58 County land records and deliver a certified copy of each
59 recorded document to the Departments of Permitting Services
60 and Environmental Protection before the Department may issue
61 a completion certificate.

62 (4) After the Department issues a completion certificate for
63 construction of a new stormwater management facility, the
64 County must perform all structural maintenance on the facility
65 if the facility serves residential property [[or [associated] is a
66 facility built or retrofitted by the County that serves
67 nonresidential property]] unless the inspection and maintenance
68 agreement requires the property owner to be responsible for
69 structural maintenance of the facility. No other person may
70 perform structural maintenance on a stormwater management
71 facility that the County is required to structurally maintain
72 without the County's written consent.

73 (5) Any repair or restoration and maintenance performed under this
74 Section must comply with each previously approved or newly
75 submitted plan and any reasonable corrective measure specified
76 by the Director of Environmental Protection.

77 (c) *Maintenance of existing or retrofitted stormwater management*
78 *[facilities] systems.*

79 (1) The owner of a stormwater management facility that is not
80 subject to subsection (b) must perform all structural
81 maintenance needed to keep the facility in proper working

82 condition. The owner of a residential property or [associated] a
83 nonresidential property that contains a stormwater management
84 facility built or retrofitted by the County, or a homeowners'
85 association that includes the residential property, may execute a
86 stormwater management easement granting the County a
87 perpetual right of access to inspect, operate, monitor, install,
88 construct, reconstruct, modify, maintain, clean, or repair any
89 part of the stormwater management facility [within] in the
90 easement as needed to assure that the facility remains in proper
91 working condition under approved design standards.

92 (2) If the owner of a stormwater management facility grants a
93 stormwater management easement to the County, the owner
94 must make any structural repairs needed to place the facility in
95 proper working condition, as determined by the Department of
96 Environmental Protection, before the County enters into an
97 inspection and maintenance agreement with the owner that
98 [obligates] makes the County [to assume responsibility]
99 responsible for structural maintenance of the facility. After the
100 owner and the County have agreed that the County will [assume
101 responsibility] be responsible for structural maintenance of the
102 facility, the owner must record in the County land records the
103 easement and any other agreement executed in conjunction with
104 the easement that binds any later owner of the land. The owner
105 must deliver a certified copy of each recorded document to the
106 Department of Environmental Protection.

107 (3) After the Department of Environmental Protection receives a
108 certified copy of the easement and agreements, the County must

109 structurally maintain and inspect the facility as provided in
110 subsection (b).

111 (4) If a property contains [[an ESD treatment]] a stormwater
112 management system that was installed or retrofitted by the
113 County under a sediment control permit, the inspection and
114 maintenance agreement may require the County to maintain the
115 system.

116 * * *

117 **19-29. Stormwater management loan program.**

118 (a) The Department of Environmental Protection must create a
119 Stormwater Management Loan Program. The Program must provide
120 direct loans to eligible homeowners' associations and other residential
121 [and associated nonresidential] property owners to:

- 122 (1) make structural repairs to restore a stormwater management
123 facility to acceptable design standards before the owner
124 petitions the County to assume responsibility for future
125 structural maintenance of the facility under Section 19-28(d), or
126 (2) cover the cost of abandoning a facility under Section 19-28(e).

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128 **19-29A. Watershed restoration grants program.**

129 (a) The Director of Environmental Protection may establish a Watershed
130 Restoration Grant Program. The purpose of the Program is to provide
131 funds to non-profit organizations to perform water quality protection
132 or improvement activities that would help the County satisfy
133 applicable regulatory requirements of the County's National Pollutant
134 Discharge Elimination Systems permit.

- 135 **(b)** To identify non-profit organizations to perform water quality
136 protection or improvement activities, the Director of the Department
137 of General Services may issue a competitive solicitation under
138 Chapter 11B that is limited to non-profit organizations.
- 139 **(c)** The Director of Environmental Protection may also establish a
140 supplemental grant program to offset the cost to eligible homeowners'
141 associations of paying the Charge assessed under Section 19-35 for
142 those private roads which are:
- 143 (1) open to the public without restriction;
144 (2) not parking lots; and
145 (3) eligible to receive State highway user revenue.

146 **19-35. Water Quality Protection Charge.**

147 [[* * *]]

- 148 **(a)** As authorized by State law [(Maryland Code, Environment Art., § 4-
149 204)], the Director of Finance must annually impose and collect a
150 Water Quality Protection Charge, as provided in this Section. The
151 Director must collect the Charge in the same manner as County real
152 property taxes, apply the same interest, penalties, and other remedies
153 (including tax sale) if the Charge is not paid, and generally treat the
154 Charge for collection and administration purposes as if it were a
155 County real property tax. The Director may treat any unpaid Charge
156 as a lien on the property to which the charge applies.
- 157 **(b)** The Charge must be imposed on each [residential property and
158 associated nonresidential] property, as specified in regulations
159 adopted by the Executive under Method (1) to administer this Section.
160 The regulations may define different classes of real property,
161 depending on the amount of impervious surface on the property,

162 stormwater runoff from the property, and other relevant
 163 characteristics, for purposes of applying the Charge.

164 * * *

165 (e) ~~[[The regulations may allow credits against and exemptions from the~~
 166 ~~Charge:~~

167 (1) to the extent that credits and exemptions are not
 168 prohibited by State law; and

169 (2) if each credit or exemption will enhance water quality or
 170 otherwise promote the purposes of this Article.]]

171 (1) A property owner may [[request]] apply for, and the Director of
 172 Environmental Protection must grant, a credit equal to a
 173 percentage, set by regulation, of the Charge if:

174 (A) the property contains a stormwater management system
 175 that is not maintained by the County [[or if]];

176 (B) the owner participates in a County-approved water
 177 quality management practice or initiative;

178 (C) the property treats off-site drainage from other properties
 179 located within the same drainage area; or

180 (D) the property does not contain a stormwater management
 181 system, but is located in the same drainage area as
 182 another that contains a stormwater management system
 183 and both properties have the same owner.

184 (2) To receive the credit, the property owner must [[submit a
 185 request]] apply to the Director of Environmental Protection in a
 186 form prescribed by the Director not later than October 31 of the
 187 year before payment of the Charge is due. Any credit granted
 188 under this subsection is valid for 3 years.

189 ~~[(2)]~~ (3) The owner of an owner-occupied residential property, or
 190 any non-profit organization, that [is able to] can demonstrate
 191 substantial financial hardship may [request] apply for an
 192 exemption from all or part of the Charge for that property,
 193 based on criteria set by regulation. The [owner-occupant]
 194 owner or organization may apply for the exemption [by
 195 submitting a written request] to the Director of
 196 [Environmental Protection] Finance not later than April 1 of
 197 the year [before] when payment of the Charge is due.

- 198 (f) The Director must deposit funds raised by the Charge, and funds for
 199 this purpose from any other source, into a stormwater management
 200 fund. Funds in the stormwater management fund may be applied and
 201 pledged to pay debt service on debt obligations to finance the
 202 construction and related expenses of stormwater management
 203 facilities as approved in the Capital Improvements Program. Funds in
 204 the stormwater management fund must only be used for:

205 * * *

206 (3) any other activity authorized by this Article or [Maryland
 207 Code, Environment Art., § 4-204] state law.

- 208 (g) This Charge does not apply to any property located in a municipality
 209 in the County which[[:]] notifies the County that it has imposed or
 210 intends to impose

211 ~~[(1)]~~ operates a stormwater management program that meets all
 212 applicable federal, State, and County requirements and has
 213 received any necessary federal or State permit; and

214 (2) imposes]] a similar charge [or other means of funding] to fund
 215 its stormwater management program in that municipality.

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Sec. 2. Implementation; effective date.

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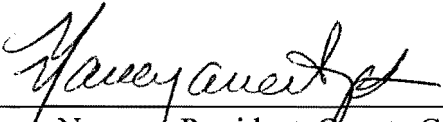
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- (i) A person that believes that the Director of Environmental Protection has incorrectly denied the person's [[request]] application for a credit or exemption under subsection [[(b)]] (e) may appeal the Director's decision to the County Board of Appeals within 10 days after the Director issues the decision.

- (a) The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This Act takes effect on July 1, 2013. Notwithstanding County Code Section 19-35(b), as amended by Section 1 of this Act, the Director of Finance must phase in the Water Quality Protection Charge as provided in this Section.
- (b) The Director must phase in over [[3]] [[5]] 3 years any increase in the Charge that results from the application of Section 19-35(b), as amended by Section 1 of this Act, or any regulation adopted under that Section, by including:
- (1) only [[one-third]] [[20%]] one-third of the additional impervious surface that has been added to the calculation of the Charge in the fiscal year that begins on July 1, 2013;
 - (2) only [[two-thirds]] [[40%]] two-thirds of the additional impervious surface that has been added to the calculation of the Charge in the fiscal year that begins on July 1, 2014; [[and]] and

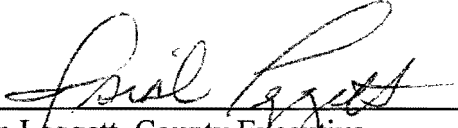
- 241 [(3) only 60% of the additional impervious surface that has been
 242 added to the calculation of the Charge in the fiscal year that
 243 begins on July 1, 2015;
- 244 (4) only 80% of the additional impervious surface that has been
 245 added to the calculation of the Charge in the fiscal year that
 246 begins on July 1, 2016; and]]
- 247 [(3)] [(5)] (3) the full amount of the additional impervious surface
 248 that has been added to the calculation of the Charge in the fiscal
 249 year that begins on July 1, [[2015]] [[2017]] 2015.
- 250 (c) The phase-in established in this Section does not apply to any portion
 251 of the Charge that results from the inclusion in the calculation of the
 252 Charge of any impervious surface area that is created after [[this Act
 253 takes effect]] June 30, 2013.
- 254 (d) To receive a credit or exemption under Section [[19-35(b)] 19-35(e)
 255 for the fiscal year that begins on July 1, 2013, [[the]] a property owner
 256 must [[submit a request]] apply to the Director of Environmental
 257 Protection or the Director of Finance, as applicable, [[on a form
 258 prescribed by the Director]] not later than [[July 31]] September 30,
 259 2013.

260 *Approved:*

261  4/16/13

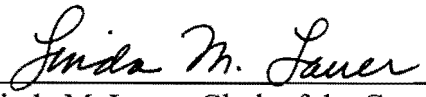
Nancy Navarro, President, County Council Date

262 *Approved:*

263  April 14, 2013

Isiah Leggett, County Executive Date

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

265  April 26, 2013

Linda M. Lauer, Clerk of the Council Date