

AGENDA ITEMS #2H&2I  
July 28, 2009  
**Action**

**MEMORANDUM**

July 24, 2009

TO: County Council

FROM: <sup>GO</sup> Glenn Orlin, Deputy Council Staff Director

SUBJECT: **Action**—Executive Regulation 8-09, School Impact Tax Construction Cost Index;  
**Action**—Executive Regulation 9-09, Transportation Impact Tax Construction Cost Index

**The MFP Committee is taking up these matters at its July 27 meeting. Its recommendations will be reported at the Council worksession.**

\* \* \*

In 2003 the Council adopted comprehensive amendments to the impact tax laws for transportation and schools, one of which was to index the rates to the consumer price index over the prior two calendar years (Section 52-90(f) of the County Code). Therefore, on July 1, 2005 the two impact tax rate schedules were increased by the cumulative increase in the CPI during 2003 and 2004, and on July 1, 2005 the two schedules were increased by the cumulative increase in the CPI during 2005 and 2006.

During its review of the impact tax laws in the fall of 2007, the Council wished to use a construction cost index rather than the CPI, since the rate schedule is related to the cost of building schools and transportation facilities, and not to the cost of the general bundle of goods and services that go into the calculation of the CPI. However, the Council did not want to decide which particular CCI to use, so the 2007 amendments directed the Executive to produce Method 2 regulations that would identify a particular CCI to be used by the Department of Finance.

This past spring the Executive promulgated Temporary Regulations 8-09T and 9-09T, establishing the Baltimore area construction cost index published in the Engineering News-Record as the CCI to be used in calculating the biennial inflation adjustments for the two impact taxes. The E-NR index has been compiled since 1908 and is used widely in the construction industry and in government for cost estimating. According to this index, the CCI increased over 2007 and 2008 by a cumulative 7.16%, and so this adjustment was applied to both rate schedules. (If the CPI had been used instead, the inflation adjustment would have been about 1% higher.) The Executive Branch advertised and held an administrative hearing on the new rates (see ©1-4).

On July 1 the Executive forwarded permanent Executive regulations 8-09 and 9-09 for the Council's consideration. They are identical to the temporary regulations that went into effect last spring. Proposed Executive regulation 8-09 (with its transmittal letter and fiscal impact statement) is on ©5-14, and proposed Executive regulation 9-09 (with its transmittal letter and fiscal impact statement) is on ©15-38. The new text added by the proposed regulations are new "Tax Rates" sections on ©11 and ©31 (underlined).

*Council staff recommendation: Approve the regulations as recommended by the County Executive.*

Note: On the July 28 agenda the Council will consider introducing a bill that, if enacted, would retroactively waive the July 1, 2009 inflation adjustment. The two actions are not interrelated. The regulations fulfill a requirement directed by the 2007 amendments to replace the CPI with a CCI, while the bill under consideration would waive the 2009 inflation adjustment, no matter what index is used.

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ted to Stephen B.

All inquiries regarding the sale should be directed to Stephen B. Jackson, Substituted Trustee.

STEPHEN B. JACKSON  
STEVEN P. HENNE  
Substituted Trustees  
18310 Montgomery Village Avenue, Suite 400  
Gaithersburg, MD 20879  
301-977-8400

Richard F. Stefanelli  
Attorney for Trustees  
18310 Montgomery Village Avenue, Suite 400  
Gaithersburg, MD 20879  
301-977-8400

ue, Suite 400

(5-22, 5-29, 6-5-09)

MC 52232

(5-22, 5-29, 6-5-09)

to the highest bidder.

June 5, 2009  
10:30 a.m.

at CASTLE MINI STORAGE,  
12040 Parklawn Drive, Rockville,  
MD 20852

Castle reserves the right to cancel  
at any time or for any reason.

Auctioneer: Manager  
301-468-0640

UNIT	NAME
A101	Itzhak Yanconzon
B220	Daniel Adams
D220	Suely Maia

MC 52234

(5-22-09)

PHANS' COURT FOR  
(OR)  
THE REGISTER  
WILLS FOR  
MERY COUNTY  
MARYLAND.

**NOTICE OF HEARING  
DEVELOPMENT IMPACT TAX FOR TRANSPORTATION  
IMPROVEMENTS AND DEVELOPMENT IMPACT TAX FOR PUBLIC  
SCHOOL IMPROVEMENTS MANDATORY RATE ADJUSTMENT**

Pursuant to Sections 52-57 and 52-90 of the Montgomery County Code (2004 Edition as amended) a public hearing will be held at 1:00 p.m. on Tuesday, June 16, 2009, in the large conference room on the 15th floor of the Executive Office Building (EOB) at 101 Monroe Street in Rockville, Maryland concerning the levy and imposition of the Development Impact Tax for Transportation Improvements and the Development Impact Tax for Public School Improvements.

Under Sections 52-57 and 52-90 of the Montgomery County Code the Director of Finance must adjust the tax rates by the annual average increase or decrease in a published construction cost index specified by regulation for the two most recent calendar years. The Director must calculate the adjustment to the nearest multiple of 5 cents for rates per square foot of gross floor area or one dollar for rates per dwelling unit.

Information on the mandatory rate adjustments is available at the following office: Montgomery County Department of Finance on the 15th floor of the Executive Office Building, 101 Monroe Street, Rockville, Maryland. The phone number is 240-777-8860.

Written statements may be submitted to Michael J. Coveyou, Fiscal Projects Manager, 101 Monroe Street, 15th Floor, Rockville, Maryland 20850. Interpreter services are available for deaf and hearing impaired citizens. These services can only be guaranteed with five (5) days advance notice. This facility is accessible to the handicapped. DEPT: Finance-Director's Office FULL MAIL ADDRESS; 101 Monroe Street, Fifteenth Floor EOB, Rockville, Maryland, 20850 PHONE NUMBER 240-777-8860.

MC 52209

(5-22, 5-29, 6-5-09)

**NOTICE OF SALE**

JEFFREY B. FISHER

vs.

PATRICK STEVEN FROGALE

In the Circuit Court for  
Frederick County

Case No.: 10-C-09-000903 F

Notice is hereby issued by the Circuit Court for Frederick County this 14th day of May, 2009, that the sale made and recorded by Jeffrey B. Fisher, et al, for the sale of the property described in these proceedings, 6709 Kernel Court, Frederick, Maryland 21703 be ratified and confirmed thirty (30) days from the date of this Notice, unless cause to the contrary be shown, provided a copy of this Notice be inserted in some Newspaper published in this County, once in each of three (3) successive weeks.

The report states the amount of the sale to be \$178,300.00

SANDRA K. DALTON, Clerk  
Circuit Court of Frederick County  
100 West Patrick Street  
Frederick, MD 21701-5485

FC 52235

(5-22, 5-29, 6-5-09)

ATE OF:  
REGG, SR.

W61623

E OF JUDICIAL  
ROBATE

ons Interested in the

by notified that a peti-  
en filed by HELEN  
UCK and PATRICIA A.

ESQ. for judicial pro-  
will dated OCTOBER  
id codicils, if any, dated  
r the appointment of a  
representative. A hearing  
d at 50 MARYLAND  
ROCKVILLE, MARY-  
D on JULY 22, 2009 at

g may be transferred or  
to a subsequent time.  
formation may be  
r reviewing the estate  
ffice of the Register of

1. GRIFFIN

Willis,  
y County  
d Avenue, Room 322  
ID 20850-2397

(5-15, 5-22-09)

ad in The Gazette

IER

301-670-2544  
@gazette.net

**NOTICE**

Notice is being requested from the States Attorney's Office for Montgomery County, MD to remove the remains of Marie A. Voles from niche 38 columbarium at Norbeck Memorial Park, 16225 Batchellors Forest Road, Olney, MD for reburial to niche 3A at Blossom Hill Cemetery, 311 North State Street, Concord, NH.

This request is being made for the purpose of Marie A. Voles remains to be interred next to her husband Joseph A. Voles.

This request is being made by Lorraine A. Voles, daughter of the deceased.

MC 52228

(5-22-09)



## MONTGOMERY COUNTY REGISTER NOTICE

Development Impact Tax Rates for July 1, 2009 through June 30, 2011

Pursuant to Chapter 52, Sections 57(e) and 90(e) of the Montgomery County Code (Development Impact Tax for Transportation Improvements and Development Impact Tax for Public School Improvements, respectively) the Director of Finance has adjusted the tax rates set under Sections 57(a) and 90(e). As prescribed by law, the Director must adjust the tax rates by the annual average increase or decrease in a published construction cost index specified by regulation for the two most recent calendar years. The Director must calculate the adjustment to the nearest multiple of 5 cents for rates per square foot of gross floor area or one dollar for rates per dwelling unit. Based on the change in the Engineering-News Record's Baltimore Construction Cost Index for calendar years 2007 and 2008, the existing rates were increased by a rate of 7.16 percent. The rates were adjusted to the nearest 5 cents for rates calculated per square foot of gross floor area (GFA) or adjusted to the nearest dollar for rates calculated per dwelling unit. Table 1 provides the new rates for the Development Impact Tax for Transportation Improvements, while Table 2 provides the new rates for the Development Impact Tax for Public School Improvements.

**TABLE 1**  
**Transportation Impact Taxes**  
**New Rates for the Period 7/1/2009 through 6/30/2011**

Residential	Existing Rates	New Rates
<i>General</i>		
Single-family detached	\$10,649	\$11,411
Single-family attached	\$8,713	\$9,337
Multi-family residential (except high-rise)	\$6,776	\$7,261
High-rise residential	\$4,840	\$5,186
Multi-family senior residential	\$1,936	\$2,075
<i>Metro Station</i>		
Single-family detached	\$5,325	\$5,706
Single-family attached	\$4,357	\$4,669
Multi-family residential (except high-rise)	\$3,388	\$3,630

High-rise residential	\$2,420	\$2,593
Multi-family senior residential	\$968	\$1,037
<i>Clarksburg</i>		
Single-family detached	\$15,973	\$17,116
Single-family attached	\$13,070	\$14,005
Multi-family residential (except high-rise)	\$10,164	\$10,891
High-rise residential	\$7,261	\$7,781
Multi-family senior residential	\$2,904	\$3,112
<b>Non-Residential (per square foot GFA)</b>		
<i>General</i>		
Office	\$9.69	\$10.40
Industrial	\$4.85	\$5.20
Bioscience facility	\$0.00	\$0.00
Retail	\$8.67	\$9.30
Place of worship	\$0.51	\$0.55
Private elementary and secondary school	\$0.77	\$0.85
Hospital	\$0.00	\$0.00
Social Service Agency	\$0.00	\$0.00
Other non-residential	\$4.85	\$5.20
<i>Metro Station</i>		
Office	\$4.85	\$5.20
Industrial	\$2.43	\$2.60
Bioscience facility	\$0.00	\$0.00
Retail	\$4.34	\$4.65
Place of worship	\$0.26	\$0.30
Private elementary and secondary school	\$0.39	\$0.40
Hospital	\$0.00	\$0.00
Social Service Agency	\$0.00	\$0.00

Other non-residential	\$2.43	\$2.60
<i>Clarksburg</i>		
Office	\$11.65	\$12.50
Industrial	\$5.78	\$6.20
Bioscience facility	\$0.00	\$0.00
Retail	\$10.46	\$11.20
Place of worship	\$0.68	\$0.75
Private elementary and secondary school	\$1.02	\$1.10
Hospital	\$0.00	\$0.00
Social Service Agency	\$0.00	\$0.00
Other non-residential	\$5.78	\$6.20

TABLE 2  
Public School Improvements Impact Taxes

	Existing Rates	New Rates
<i>Countywide</i>		
Single-family detached	\$20,456	\$21,920
Single-family attached	\$15,401	\$16,503
Multi-family (except high-rise)	\$9,734	\$10,431
High-rise	\$4,127	\$4,422
Multi-family senior	\$0	\$0

EXEC REG



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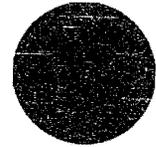
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KL  
OLO  
CB

Isiah Leggett  
County Executive

OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

MEMORANDUM

July 1, 2009



TO: Phil Andrews, President  
Montgomery County Council

Method 2

FROM: Isiah Leggett, County Executive

*Isiah Leggett*

SUBJECT: Executive Regulation 8-09, Development Impact Tax for Public School Improvements

The purpose of this memorandum is to transmit Executive Regulation 8-09, Development Impact Tax for Public School Improvements. The County Council passed Expedited Bill 10-07, Impact Taxes – Amendments, requiring that biennial impact tax rate adjustments be made using a construction cost index that is specified in a regulation. Executive Regulation 8-09 adds a section, "C. TAX RATES," that specifies that the construction cost index to be used to update the impact tax rates will be the index published in the Engineering News-Record for the Baltimore area (there is no Washington, D.C. area index). The index dates back to 1908, and is widely used. This regulation allows the County to make the biennial required adjustment in the Schools Impact Tax rates, per Section 52-90(f) of the Montgomery County Code.

Executive Regulation 8-09 was published in the April issue of the Montgomery Register, and no comments were received. A fiscal impact statement for this regulation is also included. If you have any questions, please call Mike Coveyou, who can be reached at 240-777-8878.

Attachment

2009 JUL -1 PM 2:00

MONTGOMERY COUNTY  
OFFICIAL



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Development Impact Tax for Public School Improvements	<b>Number</b> 8-09
<b>Originating Department</b> Department of Finance	<b>Effective Date</b>

## Montgomery County Regulation on DEVELOPMENT IMPACT TAX FOR PUBLIC SCHOOL IMPROVEMENTS

Issued by: County Executive  
Regulation No. 8-09

Authority: Section 52-90(f) of the Montgomery County Code  
Council Review: Method 2 under § 2A-15 Montgomery County Code  
Supersedes Regulation No. 19-08 AM  
Register Vol. 26 No. 4

Comment Deadline: May 1, 2009  
Effective Date: \_\_\_\_\_

Sunset Date: None

**SUMMARY:** The purpose of this regulation is to amend Executive Regulation 19-08 AM to add a section on biennial tax rate adjustments, as required under Section 52-90(f) of the Montgomery County Code.

**STAFF CONTACT:** Scott R. Foncannon, Associate County Attorney  
240-777-6795

**ADDRESS:** Office of the County Attorney  
101 Monroe Street, Third Floor  
Rockville, MD 20850-2540

**BACKGROUND:** Sections 52-87 through 52-94, Development Impact Taxes for Public School Improvements, was enacted on October 28, 2003, with an effective date of March 1, 2004. The proposed amendment to Executive Regulation 17-08 AM offers a change that is consistent with the amendments to Chapter 52 that became effective December 1, 2007.

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# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Development Impact Tax for Public School Improvements	<b>Number</b> 8-09
<b>Originating Department</b> Department of Finance	<b>Effective Date</b>

## A. Authority

1. Bill 9-03 concerning development impact taxes for public school improvements was enacted October 28, 2003 with an effective date of March 1, 2004. This bill added Sections 52-87 through 52-94, titled "Development Impact Taxes for Public School Improvements" to the Montgomery County Code.

Pursuant to Chapter 2A of the Montgomery County Code, the County Executive hereby promulgates this regulation for the purpose of implementing the impact tax legislation. Bill 9-03 did not specifically identify the method for adopting regulations; consequently, pursuant to Chapter 2A, method 2 will be utilized for the adoption of these regulations.

2. This regulation is intended to:
  - a. clarify the provisions of Sections 52-87 through 52-94 of the Code, and
  - b. provide guidance to the public regarding the administration of Chapter 52 of the Montgomery County Code as it relates to the Development Impact Tax for Public School Improvements.
3. Except as expressly provided in this regulation, the provisions of Regulation 17-08 AM apply to this regulation, unless the application of Regulation 17-08 AM would be clearly inconsistent with any provisions of this regulation.

## B. Credits

The Department of Permitting Services must refer all credit requests to Montgomery County Public Schools (MCPS), Department of Facilities Management (DFM). All requests must be submitted in writing and include a full explanation of the improvement for which a credit is being requested, the section of the Code that allows the credit, and the justification for that credit.

1. Section 52-93(a)

Any request for impact tax credit under Section 52-93(a) must include:

- a. identification of the agreement or development approval name, number (if applicable), and date;
- b. a copy of the agreement or development approval;
- c. an affidavit by the applicant certifying any refunds or credits which have been applied for or granted for the property which is the subject of the agreement or development approval; and
- d. such other information as may be required by the MCPS Department of Facilities Management.



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The MCPS Department of Facilities Management must determine whether a credit is appropriate and, if so, the amount of the credit.

2. Under Section 52-93(a) a property owner must receive a credit for constructing or contributing to an improvement of the type listed in Section 52-91(d) if the improvement increases public school capacity, including costs of site preparation.
  - a. The MCPS Department of Facilities Management must not certify a credit for the cost of land dedicated for school use.
  - b. The MCPS Department of Facilities Management must determine eligibility of the impact tax credit in accordance with Section 52-93(a) and Section 52-91. Improvements of the type listed in Section 52-91(d) include:
    - new public elementary or secondary school;
    - addition to an existing public elementary or secondary school that adds one or more teaching stations; or
    - modernization of an existing public elementary or secondary school to the extent that the modernization adds one or more teaching stations.
  - c. For a project that adds school capacity, the MCPS Department of Facilities Management may consider impact tax credit for the appropriate portion of the following activities:
    - off-site mitigation of stormwater management requirements;
    - off-site mitigation of reforestation requirements; and
    - grading of a school site that is eligible for impact tax credit.
3. The MCPS Department of Facilities Management must determine the amount of the credit in accordance with Section 52-93(c).

For improvements that have already been completed, the credit is based on the actual cost of the construction of the improvement.

- a. Documentation of actual costs including invoices, copies of checks or payments must be provided by the applicant in order to determine the actual cost of an improvement.
- b. The burden is on the applicant to provide documentation in sufficient detail for a determination to be made as to whether a cost is an eligible cost.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Development Impact Tax for Public School Improvements	<b>Number</b> 8-09
<b>Originating Department</b> Department of Finance	<b>Effective Date</b>

- c. Eligible costs include engineering, design, and construction costs associated with an eligible school improvement.
- d. Attorney fees are not an eligible cost of implementing a school improvement.

For improvements that have not been completed or implemented at the time of a credit request, the credit must be based on the amount of the Performance Bond approved by Permitting Services.

- a. The applicant must provide a copy of the Performance Bond or similar Surety document in order for a determination of the cost of school improvements to be made.
  - b. The Performance Bond or Surety document must be valid with a current expiration date (no expired documents will be accepted).
  - c. The MCPS Department of Facilities Management must review the cost estimate on which the Performance Bond or Surety document was based to ensure that all costs are appropriate and eligible for an impact tax credit.
  - d. If the applicant fails to construct the improvement for which the applicant has received a credit, the Performance Bond may be applied to the cost of construction of the improvement or the applicant will be held liable for the payment of the Impact Tax for which the credit was obtained.
4. In order to certify a credit, two documents must be executed and submitted to the MCPS Department of Facilities Management.
- a. The first of these documents is the Impact Tax Credit Certification Agreement (Certification Agreement) between the property owner and the MCPS Department of Facilities Management.
    - By signing the Certification Agreement, the property owner agrees to make certain school improvements for which the MCPS Department of Facilities Management agrees that an impact tax credit will be certified.
    - An executed Credit Certification Agreement must be submitted to and executed by the MCPS Department of Facilities Management.
    - Once executed by all parties, the certification date must be entered in the Agreement by the MCPS Department of Facilities Management.
    - The credit must expire six years from the certification date.
    - Exhibits to the Certification Agreement should include the Development Approval that lists the conditions of land use approval or its equivalent and school improvements that are to be implemented as a condition of that approval, a copy of any agreement relevant to the



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Development Impact Tax for Public School Improvements	Number 8-09
Originating Department Department of Finance	Effective Date

improvement and/or property, the costs or cost estimate of the school improvements and related documentation, and the schedule for completing the improvements as well as the schedule for build-out of the project.

- All exhibits must be included as supporting documentation as part of the Certification Agreement.
- b. The second document required as part of certifying an impact tax credit is the completed Department of Permitting Services Impact Tax Credit Application. This application must be completed, signed, and notarized by the property owner and submitted to the MCPS Department of Facilities Management and must include the following documentation or information:
- Justification for impact tax credit.
  - If a credit is requested because of an agreement under Section 52-93(b), the justification for impact tax credit must include the name, number, and date of that agreement and a signed copy of the agreement.
  - If a credit is requested because of subdivision or land use project approval that requires an improvement or contribution to an improvement that adds school capacity under Section 52-91(d), the justification for impact tax credit must include the name, number, and date of that subdivision plan or land use project approval that required the improvement for which a credit is requested, and an official copy of that approval.
  - Affidavit #1 (signed by the applicant to affirm that the applicant is the current property owner) and Affidavit #2 (required if the credit is justified due to an agreement to construct or contribute to a transportation improvement that provides additional capacity) must be notarized and must include the amount of any refunds or credits which have been applied for or granted for the property which is the subject of the credit application.
  - The MCPS Department of Facilities Management must enter the amount of the certified credit on the last page of the application.
  - Once executed by the MCPS Department of Facilities Management, the original application is forwarded to Permitting Services while one copy remains on file in the MCPS Department of Facilities Management and another is forwarded to the applicant.
5. An impact tax credit is certified as of the date that the Application for Development Impact Tax Credit is signed by the Director of the MCPS Department of Facilities Management or his/her designee.
6. The MCPS Department of Facilities Management has responsibility for certifying a credit. By certifying a credit, the Department of Facilities Management confirms that a credit is eligible for a



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specific school improvement and certifies the amount of that credit. The Department must transmit the certification documentation (the completed Impact Tax Credit Certification Agreement and the Application for Development Impact Tax Credit) to Permitting Services.

7. Permitting Services sets up an impact tax credit account by which the credit amount can be drawn down as each building permit is issued based on the certification documentation received from the MCPS Department of Facilities Management. The credit is not issued until the property owner has the credit applied against impact tax due for a specific property in order for the building permit to be issued. Only Permitting Services can issue a credit.
  - a. An issued impact tax credit is a used credit and no longer available to the property owner.
  - b. In order for building permit to be issued, either the appropriate impact tax must be paid or the property owner must demonstrate that a credit has been certified.
  - c. The executed Application for Development Impact Tax Credit is the documentation used to demonstrate that a credit has previously been certified.
  - d. The certified credit can be drawn down as building permits are issued until it has a zero balance. At that time if additional building permits are requested, the property owner must pay the appropriate impact tax or have an additional credit certified.

## C. Tax Rates

The Director of Finance will use the construction cost index for the Baltimore area, as published in the Engineering News-Record, a publication of The McGraw-Hill Companies, Inc., to calculate the new tax rates required under Section 52-90(f) of the Montgomery County Code.

## D. Refunds

1. In accordance with Section 52-92(b) all petitions for refunds must be submitted in writing to the Department of Permitting Services. A refund may only be granted under the provisions of and for the reasons stated in Section 52-92(b). However, if the tax was incorrectly calculated or was paid as a result of a clerical error, a refund may be issued. In this situation, the petitioner has the burden to establish that there was a miscalculation or clerical error. A refund must not be granted for any credit earned under Section 52-93.

## E. Appeals

1. An applicant for a building permit or property owner may appeal the determination of the amount of impact tax due, or the amount of credit, the determination that no credits should be certified, or the determination of an impact tax refund,, to the Maryland Tax Court in accordance with Article 24, Title



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Development Impact Tax for Public School Improvements	<b>Number</b> 8-09
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9, and the Tax-General Article, Title 3, of the Maryland Code and Section 52-89(a) of the Montgomery County Code. The filing of an appeal does not stay collection of the impact tax. If the appealing party files a bond or other surety satisfactory to the County Attorney, in lieu of payment of the impact tax, the Department of Permitting Services must issue the building permit and the appeal may proceed. Impact tax that is paid will only be refunded as provided in Section 52-89 of the Montgomery County Code.

F. Effective Date

This Executive Regulation takes effect immediately after adoption by the County Council.

*Isiah Leggett*  
 For Isiah Leggett  
 County Executive

*Approved as to form  
 and legality*  
*[Signature]* 3-23-09



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Acting Director

MEMORANDUM

June 25, 2009

TO: Joseph F. Beach, Director  
Office of Management and Budget

VIA: Angela Dizelos, Management and Budget Manager *AD*

VIA: Brady Goldsmith, Management and Budget Specialist *Brady*

FROM: Bryan Hunt, Management and Budget Specialist *BH*

SUBJECT: Executive Regulation 8-09, Development Impact Tax for  
Public School Improvements

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**REGULATION SUMMARY**

The proposed regulation amends regulation 19-08AM by adding a section, "Tax Rates" that deals with the legal requirement to note the construction cost index used to update the impact tax rates biennially.

Executive Regulation 8-09 implements the change to the biennial update required under Section 52-90(f) of the County Code. Previously, the biennial update was made by multiplying the existing tax rates by the last two calendar year's Consumer Price Index (CPI) for the Baltimore-Washington region. Expedited Bill 10-07 changed Section 52-90(f) so that a construction cost index must be used to adjust rates, rather than the CPI. Executive Regulation 8-09 amends the impact tax regulations to note the construction cost index that will be used for biennial updates is the Baltimore region Construction Cost Index published monthly (since 1908) in the "Engineering News Record."

**FISCAL AND ECONOMIC SUMMARY**

Executive Regulation 8-09 has a minimal negative fiscal effect on the County's impact tax revenues, and a consequent minimal positive economic impact on the development community. The construction cost index for calendar years 2007 and 2008 leads to impact tax rates that are about 1% lower than those rates would have been if the CPI had been used to adjust the rates. The net effect on the FY2010 budget would be impact taxes that are \$110,000 lower than under the previous update methodology (and \$200,000 lower for FY2011). The net effect on the development community would be a savings on impact taxes of \$110,000 in FY2010 and \$200,000 in FY2011.

Office of the Director *(13)*

The following contributed to and concurred with this analysis: Mike Coveyou, Department of Finance.

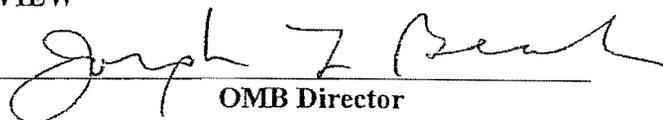
JFB:mjc

cc: Kathleen Boucher, Assistant Chief Administrative Officer  
Caroline Darden, CEX  
Dee Gonzalez, CEX  
Carla Reid, Director, Department of Permitting Services  
Arthur Holmes, Department of Transportation  
David Moss, Department of Transportation  
Reginald Jetter, Department of Permitting Services  
Mike Coveyou, Department of Finance  
Brady Goldsmith, OMB

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OMB REVIEW

Fiscal Impact Statement approved

  
OMB Director

Fiscal Impact Statement not approved, OMB will contact department to remedy.

EXEC REG



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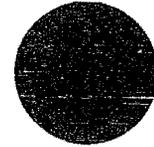
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Isiah Leggett  
County Executive

OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

MEMORANDUM

July 1, 2009



Method 2

TO: Phil Andrews, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive *Foulk*

SUBJECT: Executive Regulation 9-09, Development Impact Tax for Transportation

The purpose of this memorandum is to transmit Executive Regulation 9-09, Development Impact Tax for Transportation. The County Council passed Expedited Bill 10-07, Impact Taxes – Amendments, requiring that biennial impact tax rate adjustments be made using a construction cost index that is specified in a regulation. Executive Regulation 9-09 adds a section, "I. TAX RATES," that specifies that the construction cost index to be used to update the impact tax rates will be the index published in the Engineering News-Record, for the Baltimore area (there is no Washington, D.C. area index). The index dates back to 1908, and is widely used. This regulation allows the County to make the biennial required adjustment in the Transportation Impact Tax rates, per Section 52-57(f) of the Montgomery County Code.

Executive Regulation 9-09 was published in the April issue of the Montgomery Register, and no comments were received. A fiscal impact statement for this regulation is also included. If you have any questions, please call Mike Coveyou, who can be reached at 240-777-8878.

Attachment

2009 JUL -1 PM 2:00

MONTGOMERY COUNTY  
COUNCIL

15



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Development Impact Tax for Transportation	<b>Number</b> 9-09
<b>Originating Department</b> Department of Finance	<b>Effective Date</b>

Montgomery County Regulation on  
DEVELOPMENT IMPACT TAX FOR TRANSPORTATION IMPROVEMENTS

Issued by: County Executive

Regulation No. 9-09

Authority: Section 52-57(f) of the Montgomery County Code

Council Review: Method 2 under § 2A-15 Montgomery County Code

Supersedes Regulation No. 17-08 AM

Register Vol. 26 No. 4

Comment Deadline: May 1, 2009

Effective Date: \_\_\_\_\_

Sunset Date: None

**SUMMARY:** The purpose of this regulation is to amend Executive Regulation 17-08 AM to add a section on biennial tax rate adjustments, as required under Section 52-57(f) of the Montgomery County Code.

**STAFF CONTACT:** Scott R. Foncannon, Associate County Attorney  
240-777-6795

**ADDRESS:** Office of the County Attorney  
101 Monroe Street, Third Floor  
Rockville, MD 20850-2540

**BACKGROUND:** Sections 52-47 through 52-59, Development Impact Taxes for Major Highways, was enacted on April 27, 1990. The proposed amendment to Executive Regulation 17-08 AM offers a change that is consistent with the amendments to Chapter 52 that became effective December 1, 2007.



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## A. Authority

1. Bill 33-90 concerning development impact taxes for Germantown and Eastern Montgomery County was enacted April 27, 1990 with an effective date of July 29, 1986. This bill added Sections 52-47 through 52-59, titled "Development Impact Taxes for Major Highways" to the Montgomery County Code.

This Act was expanded to include the entire county effective July 1, 2002. The expanded program created four impact tax districts that include Germantown, Eastern Montgomery County, Clarksburg, and a County District of all area not included in the first three districts.

Effective March 1, 2004, three districts were created in place of the four from the previous revision of Section 52-47 through 52-59. The three districts are Metro Stations, Clarksburg, and a General District that comprises everything not included in the first two districts including the Cities of Gaithersburg and Rockville.

Pursuant to Chapter 2A of the Montgomery County Code, the County Executive hereby promulgates this regulation for the purpose of implementing the impact tax legislation. Bill 33-90 did not specifically identify the method for adopting regulations; consequently, pursuant to Chapter 2A, method 2 will be utilized for the adoption of these regulations.

2. This regulation is intended to:
  - a. clarify the provisions of Sections 52-47 through 52-59 of the Code, and
  - b. provide guidance to the public regarding the administration of Chapter 52 of the Montgomery County Code as it relates to Development Impact Tax for Transportation Improvements.

## B. Definitions

The definitions in this section clarify by supplementation the various words and phrases used in Sections 52-47 through 52-59, Montgomery County Code, and in this regulation.

1. Accessory Structures to a residential building: as referenced in the fourth item listed under the definition of Gross Floor Area in Section 52-47 means any structure which:
  - a. is located on the same lot with the main building;
  - b. is not attached by any part of a common wall or roof to the main building;
  - c. the use of which is clearly incidental to the use of the main building. An incidental use does not include a use which is an integral part of the use of the main building nor does the incidental use involve regular occupation by humans.



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2. Altered: which appears in Section 52-54(a)(3) and 52-55(c)(1) means that the number of dwelling units has been increased or decreased, the gross square footage in a non-residential project has been increased or decreased or the use mix has been changed to a use or uses which result in a different impact tax than that originally calculated.
3. Amount of charge paid under the participation agreement: which appears in Section 52-55(a) means the principal amount which the County is unconditionally entitled to receive under the participation agreement, whether as a lump sum or in installments. This amount will be determined at the time the application for credit is filed. No credit may be allowed, however, for interest, which may be charged if the County will receive the amount due under the participation agreement in installments.
4. Automobile Parking Facilities: Any lot or structure used for off-street parking of 6 or more motor vehicles, where service or repair facilities are not permitted. A parking facility must not be used for storage of dismantled or wrecked motor vehicles, parts thereof or junk. An automobile sales lot is not a parking facility for the purposes of this chapter. Under this definition, automobile parking facilities includes 6 or more parking spaces serving a special exception use. (See section 59-E-2.92 for special requirements applying to a smaller parking area serving a special exception use in a one-family residential zone.)
5. Basement or attic areas with a headroom of less than seven (7) feet six (6) inches: as referenced in the first item under the definition for Gross Floor Area in Section 52-47 means a space which is not usable for human activity, such as a crawl space. Therefore, either attics or cellars or basements which have headroom of less than 7 feet 6 inches are excluded from the computation of gross floor area.
6. Impact Tax: Impact tax as used in this regulation means "development impact tax" as defined in Chapter 52-47 through 52-59 of the Montgomery County Code.
7. Lapsed; Lapses: which appear in Sections 52-54(a)(2) and 52-55(c)(2), respectively, means that a building permit has been revoked, voided or canceled either at the request of the owner or because the required work under the permit has not been done within the time specified by law.
8. Non-residential: which is defined in Section 52-47 includes the numerous types of non-residential construction listed in Attachment 1. Attachment 1 categorizes the many types of non-residential construction into the six types of non-residential development for which tax rates are established in the impact tax law.
9. Parking Structures: as referenced in the third item under the definition for Gross Floor Area in Section 52-47, refers to automobile parking facilities as defined herein.
10. Participation agreement the purpose of which is to provide additional transportation capacity: as referenced in Section 52-55(a) of the Montgomery County Code means an agreement between the state or a municipality and a property owner, which has been entered into prior to July 1, 2002, in which:



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- a. The property owner agreed to increase transportation capacity by constructing or reconstructing, or participating in the construction or reconstruction of, a transportation improvement; and
- b. The agreed-upon eligible transportation improvement increases or will increase the overall capacity or the transportation network in the vicinity of the project.

11. Project: which appears in Sections 52-54(a)3 and 52-55(c)(1) refers to a land use for which one or more Building Permit(s) is required.
12. Residential: which is defined in Section 52-47 includes the numerous types of residential housing listed in Attachment 1. Attachment 1 categorizes the many types of residential construction into the two types for which tax rates are established in the impact tax law.
13. Additional Transportation Capacity: means the increase in the existing maximum theoretical amount of traffic that can be accommodated by a road or the intersection of two or more roads. It is intended to consist of the actual physical and permanent expansion of the road or intersection. For the purposes of this regulation, additional transportation capacity does not include reductions in traffic demand.
14. Trip Reduction Program: as referenced in Section 52-55(b) and 52-58(8) refers to a program with established goals and/or requirements and the means for achieving those goals and/or requirements that will result in reducing the number of trips on the transportation network and reducing congestion.

## C. Collection of Development Impact Taxes

1. Building Permit application forms and written instructions can be obtained from the Department of Permitting Services (Permitting Services). All applications must be submitted to Permitting Services.
2. Incomplete applications will not be accepted for processing. Applications must indicate whether an Impact Tax Credit has been certified, whether there is a Development Approval Payment (DAP) Agreement and must provide the information necessary to calculate the Impact Tax as specified in Section 52-51(a). A copy of the certification signature page of the Application for Development Impact Tax Credit must be provided with the Building Permit application.
3. To be considered a Social Service Provider under this regulation the applicant must include the following documents in the permit application packet:
  - a. IRS decision letter (indicating tax exempt status);
  - b. Organizational by-laws, covenants or other documents that demonstrate that services are provided primarily to Montgomery County residents.
4. Impact taxes must be collected immediately prior to issuance of the building permit. The applicant must:



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- a. Inform Permitting Services of how many permits are desired out of the total applied for;
- b. Permitting Services must collect the Impact Tax. Payment of the impact tax must be made by check payable to Montgomery County, Maryland and;
- c. be issued a receipt from Permitting Services.

## D. Calculation of Development Impact Tax

1. Under Section 52-50(c) Permitting Services must not issue a building permit for development until the applicant has paid the applicable development impact tax.
2. Calculation of impact taxes due must be based on the schedule of rates in effect at the time a building permit application is accepted by Permitting Services. The current rates are posted on the Permitting Services website.
3. If a single project contains a mix of uses Permitting Services must assign a separate land use type to each use as directed under Section 52-51(b) and calculate the development impact tax due for each use.
4. If the applicant changes the house type on an issued permit, that permit must be voided and the new permit must be subject to the impact tax rate in effect at the time of the house type change request.
5. If a property is located in the City of Rockville or the City of Gaithersburg, the amount of impact tax due at the time building permit is issued must be based on the land use certified by the City as directed under Section 52-51(e).
  - a. The City must certify the land use and calculate the amount of development impact tax due on the appropriate form that is provided by Permitting Services.
  - b. The completed form must be submitted to Permitting Services at the time the Impact Tax is collected.
  - c. Once the development impact tax has been paid to Permitting Services, the applicant must be given a receipt that verifies that the tax has been paid.
  - d. The receipt must be submitted to the City in order for the City to issue the Building Permit.

## E. Refunds

In accordance with Section 52-54, all petitions for refunds must be submitted in writing to the Department of Permitting Services. A refund must only be granted under the provisions of and for the reasons stated in Section 52-54. However, if the tax was incorrectly calculated or was paid as a result of a clerical error, a refund may be issued. In this situation, the petitioner has the burden to establish that



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there was a miscalculation or clerical error. A refund must not be granted for any credit earned under Section 52-55.

The petition must contain:

1. a statement that the petitioner is the current owner of the property at the time the petition is submitted to Permitting Services;
2. a copy of the receipt issued by Permitting Services indicating payment of the development impact tax;
3. a certified copy of the latest recorded deed for the property;
4. a statement of the reasons for which the refund is sought and specify the section of the code that the petitioner is using as justification for the refund;
5. the date on which the event occurred which resulted in the petition for a refund;
6. an affidavit by the petitioner certifying any credits or refunds which have been applied for or granted for impact taxes previously paid for this property, and;
7. any other reasonable information which may be requested by the Department to verify or substantiate the assertions made in the petition.

For all refund petitions the Department of Permitting Services must issue a written decision on a refund within 3 months from the receipt of the petition.

1. Permitting Services must verify with the Department of Finance that the petitioner owes no other taxes or fees prior to issuance of a refund.
2. If a decision to grant a refund is made for a property within either the City of Rockville or the City of Gaithersburg, Permitting Services must notify the Department of Finance of that city as well as the Montgomery County Department of Finance and authorize said refund.

## F. Credits

All credit requests must be submitted to the Department of Transportation, which has responsibility for certifying the credit. The Department of Permitting Services must refer all credit requests to the Department of Transportation. All requests must be submitted in writing and include a full explanation of the improvement for which a credit is being requested, the section of Code that allows the credit, and the justification for that credit. A property owner may be eligible for an impact tax credit under any of the circumstances below:

1. Section 52-55(a):



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Under Section 52-55(a), there are two circumstances under which a property owner may be eligible for an impact tax credit. These are:

- a. If, prior to July 1, 2002, a property owner entered into a "participation agreement, or a similar agreement with the state or a municipality, the purpose for which was to provide additional transportation capacity" as defined in Section B\* of this regulation, the property owner is eligible for an impact tax credit; or
- b. A property owner is also eligible for a credit if the owner has received approval of a subdivision plan, development plan, or similar development approval by the County or a municipality before July 1, 2002 that resulted in requiring the property owner to build or contribute to a transportation improvement that provides additional transportation capacity as defined in Section B\* of this regulation.

In either circumstance, the amount of the credit must be equal to the amount of any charge paid under the participation agreement or the cost of the improvement or contribution required as a condition of development approval as stated above. If more than one property owner has entered into the same participation agreement, the Department of Transportation must determine the amount of the credit accruing to each of the property owners. Credits to any one property owner must not exceed that property owner's share of the cost of the improvement unless the property owners have agreed otherwise.

For purposes of Section 52-55(a) a property owner who has entered into a participation agreement includes any successor in interest to the property owner if:

- a. the successor in interest has jointly assumed the obligations of the property owner under the participation agreement, and;
- b. the property owner has assigned his claim for credit to the successor in interest.

Any request for impact tax credit under Section 52-55(a) must include:

- a. identification of the participation agreement by name, number (if applicable), and date;
- b. a copy of the participation agreement
- c. an affidavit by the applicant certifying any refunds or credits which has been applied for or granted for the property which is the subject of the agreement, and;
- d. such other information as may be required by the Department of Transportation.

The Department of Transportation must determine whether a credit is appropriate and, if so, the amount of the credit.



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## 2. Section 52-55(b):

Under Section 52-55(b) a property owner must receive a credit for constructing or contributing to an improvement of the type listed in Section 52-58 if the improvement reduces traffic demand or provides additional transportation capacity.

- a. The Department of Transportation must not certify a credit for any capacity improvement to a State road or an action that is limited to a State road except under the following circumstances:
  1. a transit or trip reduction program that operates on or relieves traffic on a State road;
  2. an improvement to a State road that is included in a memorandum of understanding between the County and either Rockville or Gaithersburg.
- b. The Department of Transportation must determine eligibility of the impact tax credit in accordance with Section 52-55(b) and Section 55-58. Improvements of the type listed in Section 52-58 include:
  1. A new road or widening of an existing road that adds highway or intersection capacity or improves transit service or bicycle commuting, such as bus lanes or bike lanes.
    - Additional highway capacity must be for the general public use (not just to accommodate the traffic generated by the property) and includes the construction of new roadway segments, pavement widening to implement additional travel or approach lanes and any improvement deemed by the Director of the Department of Transportation to provide additional physical transportation capacity.
    - Additional intersection capacity must be the result of a widening, which includes moving a curb or median to accommodate additional lanes.
    - Intersection capacity does not include lanes added by restriping the pavement which is not a permanent widening of an existing road that adds capacity as specified in Section 52-58.
    - For the purpose of this regulation, credits must not be provided for certain physical improvements that may increase the operating capacity of a road or intersection but do not increase the existing maximum theoretical capacity, including signal timing changes, or other operational changes to the road or intersection.
    - If a credit is requested for an “expanded” transit center or park-and-ride lot, applicant must provide plans that clearly delineate the existing and expanded transit center or park-and-ride lot.



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2. new or expended transit center or park-and-ride lot
  - In order for an expended transit center or park and ride lot to be eligible for a credit, it must serve a regional benefit, not just the development for which the credit is requested.
  - In an expansion to an existing transit center or park-and-ride lot, only the costs associated with the expanded part of the transit center or park-and-ride lot is eligible for credit.
  - For any park-and-ride lot to be eligible for a credit, it must be located along a commuting corridor where the lot will be or is being used for commuter parking and thereby trips are being taken off of the roadway network.
3. a bus added to the Ride-On fleet, but not a replacement bus
  - Purchasing a bus is only eligible for a credit if that bus or buses represents an actual increase in the size of the fleet, adding to the capacity of the fleet.
  - The purchase of a bus to replace an existing bus does not add capacity and is not eligible for a credit.
  - In order for a bus with an average life of 12 years to be considered as adding "permanent" capacity there must be a commitment that the additional bus will be part of the fleet for the normal operating life of that bus.
4. a new bus shelter, but not a replacement bus shelter
  - Purchasing and installing a bus shelter is only eligible for a credit if that shelter is a new addition to the inventory of bus shelters in the County.
  - The purchase and installation of a bus shelter that replaces an existing shelter (even if that shelter is an improvement on the existing shelter) is not eligible for a credit.
5. a hiker-biker trail used primarily for transportation
  - To determine that a hiker-biker trail is to be used primarily for transportation purposes rather than recreation, the location of the trail and the proximity to the road network must be evaluated.
  - A hiker-biker trail must be located within the commuting path in order to be considered as a viable alternative transportation mode.
  - The hiker-biker trail must present itself as a logical link between origins and destinations and/or residential communities and employment centers.



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- “Used primarily for transportation” as stated in Section 52-58(5) of the Montgomery County Code means a hiker-biker trail that is maintained by the Department of Transportation and used mostly for commuting purposes.
6. a bicycle locker that holds at least 8 bicycles
    - Bicycle locker must be a new locker not a replacement locker.
    - Bicycle locker must be located at a major activity center or commuter transfer location where the locker would be used as a means to remove trips from the roadway network.
  7. a sidewalk connector to a major activity center or along an arterial or major highway
    - To determine whether a sidewalk actually serves as a connector to a major activity center its location and limits must be provided by the applicant.
    - Applicant must provide information on sidewalk linkages to activity centers such as schools, shopping areas, employment centers, and metro to assist in determining eligibility for a credit.
    - Arterial or major highways are considered to be classified as arterial or higher in the Master Plan of Highways (and should include Business Streets as well) and carry commuting and/or regional traffic.
    - “Major activity center” means a major employment area or commercial center such as a shopping mall.
  8. The operating expenses of any transit or trip reduction program.
    - Transit or Trip Reduction Programs must be a Condition of Approval and/or include an executed Trip Reduction Program Agreement that states how the program is to reduce trips, the required life of the program in terms of years, and requires a security instrument based on the estimated cost of the program.
    - Trip Reduction Programs must relate to a specific program with set or established goals for the number of trips to be reduced by the program.
    - Only operating expenses associated with the transit or trip reduction program are eligible for credit. Examples of these operating expenses include but are not limited to advertising and marketing costs, survey costs, staffing, space, furniture, supplies, materials, bus fuel and costs associated with paying a bus driver.



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- In case of default on the Agreement, the security instrument must be forfeited and used to cover the operating expenses of the program so that the program will continue for the agreed upon life of said program.

The Department of Transportation must determine the amount of the credit in accordance with Section 52-55.

1. For improvements that have already been completed, the credit is based on the actual cost of the construction of the improvement.
  - a. Documentation of actual costs including invoices, copies of checks or payments must be provided by the applicant in order to determine the actual cost of an improvement.
  - b. The burden is on the applicant to provide documentation in sufficient detail to determine whether a cost is an eligible cost.
  - c. Eligible costs include engineering, design, and construction costs associated with an eligible transportation improvement.
  - d. Right-of-way costs are not an eligible cost unless a loss of development benefit (without compensation) can be demonstrated.
  - e. Attorney fees are not eligible costs of implementing a transportation improvement.
2. For improvements that have not been completed or implemented at the time of a credit request, the credit must be based on the amount of the Performance Bond issued by Permitting Services.
  - a. The applicant must provide a copy of the Performance Bond or similar Surety document in order for a determination of the cost of transportation improvements to be made.
  - b. The Performance Bond or Surety document must be valid with a current expiration date (no expired documents will be accepted).
  - c. The Department of Transportation must review the cost estimate on which the Performance Bond or Surety document was based to ensure that all costs are appropriate and eligible for an impact tax credit.
  - d. If the applicant fails to construct the improvement for which the applicant has received a credit, the Performance Bond may be applied to the cost of construction of the improvement or the applicant will be held liable for the payment of the Impact Tax for which the credit was obtained.
3. In order to certify a credit, two documents must be executed and submitted to the Department of Transportation.



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- a. The first of these documents is the Impact Tax Credit Certification Agreement (Certification Agreement) between the property owner and the Department of Transportation.
- By signing the Certification Agreement, the property owner agrees to make certain transportation improvements for which the Department of Transportation agrees that an impact tax credit will be certified.
  - An executed Certification Agreement must be submitted to an executed by the Department of Transportation.
  - Once executed by all parties, the certification date must be entered in the Agreement by the Department of Transportation.
  - The credit must expire six years from the certification date if the credit is issued under Section 52-55(b) on or after March 1, 2004.
  - Exhibits to the Agreement must include the document of subdivision or land use project approval that lists the conditions of land use approval or the equivalent of the land use approval and clearly highlight the transportation improvements that are to be implemented as a condition of that approval, a copy of any participation agreement relevant to the improvement and/or property, the costs or cost estimate of the transportation improvements and related documentation, and the schedule for completing the improvements as well as the schedule for build-out of the project.
  - All exhibits must be included as supporting documentation as part of the Agreement.
- b. The second document required as part of certifying an impact tax credit is the completed Department of Permitting Services Impact Tax Credit Application. This application must be completed, signed and notarized by the property owner and submitted to the Department of Transportation and must include the following documentation or information:
- justification for impact tax credit;
  - if a credit is requested because of a participation agreement under Section 52-55(a), the justification for impact tax credit must include the name, number, and date of that participation agreement and a signed copy of the participation agreement;
  - if a credit is requested because of subdivision or land use project approval that requires an improvement or contribution to an improvement that adds transportation capacity under Section 52-55(a), the justification for impact tax credit must include the name, number, and date of that subdivision plan or land use project approval that required the improvement for which a credit is requested, and an official copy of that approval;



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- if a credit is requested under Section 52-55(b), the justification for impact tax credit must include the name, number, and date of the subdivision plan or land use project approval that required the improvement consistent with Section 52-58 for which a credit is requested, and an official copy of that approval;
  - Affidavit #1 (signed by the applicant to affirm that the applicant is the current property owner) and Affidavit #2 of the application (required if the credit is justified due to an agreement to construct or contribute to a transportation improvement that provides additional capacity) of the application (if required) must include the amount of any refunds or credits which have been applied for or granted for the property which is the subject of the credit application and must be completed and notarized;
  - The Department of Transportation must enter the amount of the certified credit on the last page of the application.
  - Once executed by the Department of Transportation, the original application must be forwarded to Permitting Services while one copy remains on file in the Department of Transportation and another must be forwarded to the applicant.
4. An impact tax credit is certified as of the date that the Application for Development Impact Tax Credit is signed by the Director of the Department of Transportation or his/her designee.
  5. The Department of Transportation has responsibility for certifying a credit. By certifying a credit, the Department confirms that a credit is eligible for a specific transportation improvement and certifies the amount of that credit. The Department will transmit the certification documentation (the completed Impact Tax Credit Certification Agreement and the Application for Development Impact Tax Credit) to Permitting Services.
  6. Upon receipt of a certified credit from the Department of Transportation, Permitting Services must create an impact tax credit escrow account in the permit database under the name of the property owner to which the credit is certified. The amount of the credit is entered as a deposit to the escrow account by which the credit amount can be drawn down as each building permit is issued. The credit is not issued until the property owner has the credit applied against impact tax due for a specific property in order for the building permit to be issued. Only Permitting Services can issue a credit.
    - a. An issued impact tax credit is a used credit and no longer available to the property owner.
    - b. In order for a building permit to be issued either the appropriate impact tax must be paid or the property owner must demonstrate that a credit has been certified so that the impact tax can be paid from the impact tax escrow account.



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- c. The Application for Development Impact Tax Credit is the documentation used to demonstrate that a credit has previously been certified.
  - d. At the time Impact Tax payment is due to Permitting Services, applicants wishing to pay Impact Taxes with a credit must submit a copy of the certification signature page of the Application for Development Impact Tax Credit in which the Department of Transportation has certified the credit and the credit amount.
  - e. The certified credit can be drawn down as building permits are issued until it has a zero balance. At that time, if additional building permits are requested, the property owner must pay the appropriate impact tax or have an additional credit certified.
7. An applicant for subdivision, site plan, or other land use project approval from the County, Gaithersburg, or Rockville, or the owner of property subject to an approved subdivision plan, land use project approval, or similar approval, may request a Declaration of Allowable Credits from the Department of Transportation under Section 52-55(b)(3).
- a. A declaration of allowable credits can assist in business decisions regarding property by advising the applicant whether a credit will be certified for making or contributing to specific transportation improvements.
  - b. The property owner must submit to the Department of Transportation a written request for a declaration of allowable credit.
  - c. Once all required documentation is received from the applicant, the Department of Transportation has 30 days to issue a written declaration of allowable credit to the applicant.
  - d. The Department of Transportation may defer its decision for an additional 15 days by notifying the applicant that it needs more time to complete its analysis and review of the proposed improvement.
  - e. Any improvement for which a declaration of allowable credit is issued in which that improvement is deemed to be eligible for an impact tax credit will be certified under Section 52-55(b) if and when the applicant submits a formal impact tax credit request.
    - In order for the Department of Transportation to act on an improvement that was originally declared eligible under a declaration of allowable credit, the same process by which any credit is certified must be followed and an Impact Tax Credit Certification Agreement and an Application for Development Impact Tax Credit must be completed and executed.

3. Section 52-55(c):

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# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Development Impact Tax for Transportation	<b>Number</b> 2-09
<b>Originating Department</b> Department of Finance	<b>Effective Date</b>

A property owner may apply to Permitting Services for a credit of the amount of development impact tax previously paid under the following two circumstances:

- a. if the project has been altered, resulting in a decrease in the impact tax due in accordance with the definition of "altered" in Section B\* of these regulations.
  - An example of an "altered" project would be a reduction in the amount of square feet for nonresidential property.
  - Under this circumstance, Permitting Services may reimburse a portion of the impact tax previously paid.
- b. if the building permit has lapsed because construction has not begun.
  - In accordance with the definition of "lapsed" as defined in Section B\* of these regulations.
  - Under this circumstance, Permitting Services may reimburse the impact tax previously paid.

In either circumstance a property owner may apply to Permitting Services for a credit of impact tax previously paid. The application must include:

- a. a certified copy of the latest recorded deed for the property;
- b. identification of the permits and impact tax district for which the credit is claimed;
- c. a statement of the reasons for which the credit is sought, and;
- d. an affidavit by the applicant certifying any credits or refunds which have been applied for or granted for this property.

## G. Unusual Cases or Circumstances

The Director of the Department of Permitting Services, in consultation with the Director of the Department of Transportation and/or the County Attorney, as required, may apply the impact tax law in the event of unusual cases or circumstances, such as the classification of development which does not clearly fall into one of the categories described in Attachment 1 to this regulation.

## H. Appeals

An applicant for a building permit or a property owner may appeal the determination of the amount of impact tax due, or the amount of credit certified, the determination that no credits should be certified, or the determination of an impact tax refund, to the Maryland Tax Court in accordance with Article 24,



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Development Impact Tax for Transportation	<b>Number</b> 9-09
<b>Originating Department</b> Department of Finance	<b>Effective Date</b>

Title 9, and the Tax-General Article, Title 3, of the Maryland Code and Sections 52-54(f) and 52-56 of the Montgomery County Code. The filing of an appeal does not stay collection of the impact tax. If the appealing party files a bond or other surety satisfactory to the County Attorney in lieu of payment of the impact tax, the Department of Permitting Services must issue the building permit and the appeal may proceed. Impact tax that is paid will only be refunded as provided in Section 52-54 of the Montgomery County Code.

**I. Tax Rates**

The Director of Finance will use the construction cost index for the Baltimore area, as published in the Engineering News-Record, a publication of The McGraw-Hill Companies, Inc., to calculate the new tax rates required under Section 52-57(f) of the Montgomery County Code.

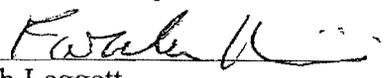
**J. Use of Impact Tax Funds**

Impact tax funds may be used to program any of the types of transportation improvements listed in Section 52-58 of the Montgomery County Code.

**K. Effective Date**

This Executive Regulation will take effect immediately after adoption by the County Council.

(Administrative History: Reg. No. 17-08AM (Method 2); Dept.: Transportation (previously Environmental Protection); superseded Reg. No. 34-90)

*For*   
Isiah Leggett  
County Executive

*Approved as to form  
and legality  
S. M. M. 3-23-09*



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Development Impact Tax for Transportation	<b>Number</b> 9-09
<b>Originating Department</b> Department of Finance	<b>Effective Date</b>

## ATTACHMENT I

### RESIDENTIAL

#### SINGLE FAMILY

Accessory Apartment	Duplex	Dwelling Unit (DU)
DU, Detached	DU, Fourplex	DU, Triplex
DU, 2 Family Detached	Modular Home	Townhouse

#### MULTI-FAMILY

Apartment Building	Apartment Hotel	Boarding House
Garden Apt/Condo/Co-op	Group Facility	Guest House
High Rise/Condo/Co-op	Mid Rise/Condo Co-op	Mobile Home
Multi-Family Senior Housing	Tourist Cabin Camp	

### NON-RESIDENTIAL

#### OFFICE

Broadcasting Station	Business Office	Computer Service
Data Processing Equip. Maintenance	Drafting Services	Employment Agency
Finance Service	General Office	Government Office Building
Insurance Office	Lawyer's Office	Management Consultants
Professional Offices	Real Estate Services	Research Institute/Center
Secretarial Services	Telegraph Service	Trade Association
Telephone Communication Center	Title Insurance Co.	Word Processing Service

#### PRIVATE ELEMENTARY & SECONDARY SCHOOL

Nursery School	Parochial School	Private Elementary
Private Secondary		



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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<b>Originating Department</b> Department of Finance	<b>Effective Date</b>

## PLACES OF WORSHIP

Church	Mosque	Parsonage
Rectory	Synagogue	Temple

## INDUSTRIAL

Bakery Products Manufacturing	Beverage Manufacturer	Blueprinting
Bookbinding	Carpet Cleaning	Caterer
Cement Manufacturing	Ceramic Products	
Chemical Product Manufacturing	Cold Storage	
Converted Paper Manufacturing	Dairy Products Manufacturing	
Dental Lab Services	Drug Manufacturing	Engraver
Exterminating	Food Product Manufacturing	Furniture Manufacturing
Grain Mill	Laboratory	Laundry
Manufacturing	Meat Products Manufacturing	
Metal Products Manufacturing	Millinery	Millworking Services
Moving & Storage	Newspaper Print/Publishing	Paper Products Manufacturing
Petroleum Refining	Photo Finishing	Plastic Materials
Pottery Products Manufacturing	Recycling Center	Rubber Products Manufacturing
Sign Painting Shop	Taxicab Company	Textile Products
Trash Service	Warehouse	Welding Shop
Wholesale Trade	Wood Products Manufacturing	

## OTHER NON-RESIDENTIAL

Aircraft School	Ambulance Service	Amusement Facility
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# MONTGOMERY COUNTY EXECUTIVE REGULATION

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Animal Shelter	Art Center	Art School
Art Studio	Athletic Club	Auditorium/Hall
Billiard Parlor	Bioscience Facility	Bowling Alley
Business School	Bus Depot	College/Private
Commercial Pool	Convention Hall	Culture Center
Club	Dancing School	Day Care Center
Dog Kennel	Driving School	Dump
Funeral Parlor	Health Club	Hospital
Indoor Theater	Legitimate Theater	Library
Martial Arts Center	Music Instruction	Private Postal Facility
Public Utility Building	Rescue Squad	Sanitary Land Fill
Sewage Treatment Plant	Skating Rink	Stadium/Arena
Trade School	University	Veterinary Service
Vocational School	Youth Center	Nursing Home
Hotel	Motel	
<u>RETAIL</u>		
Aircraft Parts Sales/Service	Alarm System Sales	Alcoholic Beverages
Animal Hospital	Antique Shop	Appliance Repair Shop
Appliance Store	Aquarium Supply Store	Arcade
Art Supply	Audio Visual Supplies	Automatic Teller
Automobile, Light Truck Rental	Automobile Paint Shop	Automobile Repair/Service/Sales
Bakery Products Sales	Bank	Barber Shop
Bathroom Accessories	Beauty Shop	Beer/Wine Retail



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Bicycle Repair	Bicycle Retail	Boat Sales
Book Sales	Bridal Shop	Building, Materials/Supply
Business Machine Rental	Business Machine Sales	Cabinet Shop Lots
Car Wash	Carpet Sales	Carryout
Cleaners	Clock/Sales/Repair	Clothing Store
Craft Supplies	Decorating Service	Delicatessen
Department Store	Doors, Retail/Install	Duplicating Service
Electrical Supply	Electronic Equipment	Exterminating
Fabric Store	Feed/Grain Storage	Fish Market
Florist	Food & Beverage Store	Frame Shop
Fur Sale	Furniture Store	Garden Center
Gasoline Service Station	General Merchandise	Gift Shop
Greenhouse, Commercial	Grocery Store	Gun Sales
Hardware Store	Health Food Store	Ice Cream Shop
Interior Decorating	Jewelry Store	Landscaping Service
Laundromat	Lighting Supply Store	Luggage Sales
Lumber Yard	Lumber/Wood Products	Machine Rental
Mail Order House	Mattress Retail	Medical Office
Mobile Home Sales	Motorcycle Sales	Museum Store
Musical Instruments	Needlework	Newsstand
Optical Goods, Sales	Optician	Produce Stand
Paint Sales	Paper Products Sales	Pet Shop
Pharmacy	Photo Studio	Photo Supplies

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# MONTGOMERY COUNTY EXECUTIVE REGULATION

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Plant Nursery	Piano Sales/Service	Post Office
Print & Publishing Shop	Radio & TV Repair	Record Shop
Rental Service	Restaurant	Savings & Loan
Service Station	Sewing Machine Sales	Shoe Repair Shop
Shoe Store	Shopping Center	Showroom
Specialty Shop	Sporting Goods Store	Stationery Store
Stove Sales	Surgical Supplies	Surplus Store, Commercial
Tailor Shop	Tavern	TV Sales & Service
Tire Dealer	Theater	Tombstone Sales
Toy Sales	Travel Service	Truck Repair Service
Undertaker	Upholstery Service	Vacuum Cleaner Sales/Service
Variety Store	Vegetable Market	Vending Machine Service
Wallpaper Store	Watch Repair Service	Yarn Shop



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

March 18, 2009

TO: Joseph F. Beach, Director  
Office of Management and Budget

VIA: Angela Dizelos, Management and Budget Manager *AD*

VIA: Brady Goldsmith, Management and Budget Specialist *Brig*

FROM: Bryan Hunt, Management and Budget Specialist *BH*

SUBJECT: Executive Regulation 9-09, Development Impact Tax For  
Transportation Improvements

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**REGULATION SUMMARY**

The proposed regulation updates and supersedes Executive Regulation 17-08 AM by adding a section, "I. TAX RATES" that names the construction cost index required for biennial rate updates. Section 52-57(f) of the County Code requires that the construction cost index be specified in a regulation. Executive Regulation 9-09 meets that requirement.

**FISCAL SUMMARY**

County law (Chapter 52, Section 57(f)) requires that the construction cost index used to update impact taxes every odd year must be specified in a regulation. Without this regulation, the Transportation Impact Taxes collected in future fiscal years would be 7.16% lower than required by law. The 7.16% figure is the adjustment factor that would be applied to FY 2009 rates to update the FY 2010 and FY 2011 rates.

The following contributed to and concurred with this analysis: Mike Coveyou, Department of Finance.

jfb:mjc

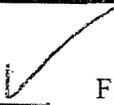
cc: Kathleen Boucher, Assistant Chief Administrative Officer  
Jennifer Barrett, Director, Department of Finance  
Carla Reid, Director, Department of Permitting Services  
Art Holmes, Director, Department of Transportation  
David Moss, Department of Transportation  
Reginald Jetter, Department of Permitting Services

Office of the Director *31*

Mike Coveyou, Department of Finance  
Dee Gonzalez, CEX  
Brady Goldsmith, OMB

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OMB REVIEW



Fiscal Impact Statement approved

*Joseph Z...*

OMB Director

Fiscal Impact Statement not approved, OMB will contact department to remedy.