AGENDA ITEM #2C
May 19, 2010

Action

MEMORANDUM

May 17, 2010

TO: County Council

FROM: Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Action:** Resolution to approve Washington Suburban Sanitary Commission (WSSC) System Development Charge (SDC) for FY11

Council Staff Recommendation: Approve as proposed by WSSC (consistent with the results of the May 13, 2010 Bi-County meeting).

On May 4, 2010, the Council introduced a resolution (attached on ©1) regarding FY11 System Development Charge (SDC) modifications. Each year, both Montgomery and Prince George's Counties must approve an annual SDC charge and the maximum allowable charge.

Background

As part of the FY11-16 WSSC CIP review process, WSSC proposed the following actions regarding FY11 SDC charges.

- Keep SDC charges for FY11 at current (FY10) levels. (see rate chart on ©5)
- Raise the maximum allowable rate by 2.1 percent[1], as allowed under State law, in order to give WSSC and the Counties flexibility to raise rates in the future if necessary to cover gaps in growth funding versus growth expenditures.

Council Review

The Transportation, Infrastructure, Energy & Environment Committee previously discussed and concurred with WSSC's SDC recommendations during its review of WSSC's

[1] consistent with the consumer price index published by the Bureau of Labor Statistics of the United States Department of Labor for urban wage earners and clerical workers for all items for the Washington - Baltimore metropolitan area from November 2008 to November 2009.

FY11-16 Capital Improvements Program and later during its review of the FY11 Operating Budget. **The Council discussed the FY11 WSSC Operating Budget and SDC charges on May 10 and supported WSSC's FY11 SDC charge proposals as well.**

On May 13, 2010 the Montgomery and Prince George's County Councils met to discuss issues related to the FY11 Washington Suburban Sanitary Commission Operating Budget and FY11-16 Capital Improvements Program (CIP). **FY11 SDC charges were also discussed and both Councils supported WSSC's proposed actions.**

Council Staff has drafted the attached resolution consistent with the above actions and recommends approval.

Attachment
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Resolution No.: _____
Introduced: _____
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

SUBJECT: System Development Charge (SDC) Modification

Background

1. The General Assembly enacted Chapter 559, Laws of Maryland 1993, which provides the enabling authority for the Montgomery and Prince George's County Councils to establish a system development charge which will be paid by applicants for new water and sewer service.

2. The General Assembly enacted Chapter 713, Laws of Maryland 1998, which, among other things, altered the schedule for the payment of the System Development Charge to the Washington Suburban Sanitary Commission for certain properties; established a new maximum System Development Charge per fixture unit; allowed for and limited the amount of certain exemptions; established a maximum System Development Charge based on the number of toilets per dwelling; and authorized a charge in the maximum System Development Charge for certain residential units based on the number of toilets per dwelling. This legislation also enabled WSSC to provide full or partial exemptions for public sponsored affordable housing and revitalization projects.

3. Chapter 713, Laws of Maryland 1998 provides that Montgomery and Prince George's County may exempt properties used for biotechnology, elderly housing, and revitalization from the System Development Charge.

4. Both County Councils have worked with industry representatives and Executive staffs to determine appropriate definitions of biotechnology, elderly housing, and revitalization areas for the purposes of implementing the authorized exemptions.

5. The Washington Suburban Sanitary Commission owns and operates various water treatment and sewage treatment disposal plants and facilities within the Washington Suburban Sanitary District (WSSD) and utilizes and has an equity share in sewage treatment plants operated by other jurisdictions to treat sewage generated in portions of the WSSD.

6. It is necessary that the Commission, with the advice and consent of the respective County Councils, develop alternative funding to cover the costs of providing quality water and sewer

service in the WSSD and to similarly accommodate new growth as authorized by the County Governments.

7. The System Development Charge is a component of the Commission's Fiscal Year 2010 capital and operating budgets prepared pursuant to §1-204, Article 29, Maryland Code.

8. The Commission last approved the System Development Charge, effective July 1, 2009 by Commission Resolution No. 2009-1825.

9. It is necessary and desirable to continue the imposition of a System Development Charge fee.

10. Chapter 713, Laws of Maryland 1998 provides that the Montgomery and Prince George's County Councils may adopt and the Commission may implement a System Development Charge not to exceed $200.00 per fixture unit, effective July 1, 1998.

11. Chapter 713, Laws of Maryland 1998 provides that on July 1, 1999, and each July 1 of each succeeding year, the maximum charge may be changed by an amount equal to the prior calendar year's change in the consumer price index published by the Bureau of Labor Statistics of the United States Department of Labor for urban wage earners and clerical workers for all items for the Washington - Baltimore metropolitan area.

12. The consumer price index published by the Bureau of Labor Statistics of the United States Department of Labor for urban wage earners and clerical workers for all items for the Washington - Baltimore metropolitan area increased 2.1 percent from November 2008 to November 2009.

13. In Council Resolution 13-509, the County Council adopted the process for approving exemptions to the System Development Charge.

14. In Council Resolution 13-1508, the County Council adopted exemption cap requirements.

15. In April 2007 the General Assembly enacted House Bill 667: Washington Suburban Sanitary District – System Development Charge – Exemptions. This legislation authorized the County Councils of Montgomery County and Prince George's County to grant full or partial exemptions for properties used exclusively for programs and services to youth which are owned by community-based organizations that are exempt from taxation under 501(c)(3) of the Internal Revenue Code. The exemption amount is limited to $80,000.

16. In April 2009 the General Assembly enacted House Bill 1139: Washington Suburban Sanitary Commission – System Development Surcharge – Exemptions. This legislation revised the youth facilities exemption first approved under House Bill 667 by expanding the exemption to include properties that are used, "primarily for recreational and educational programs and services to youth."

17. The Commission recommends keeping the System Development Charge rates unchanged for FY11. However, the Commission recommends increasing the maximum allowable charge by

2.1 percent in order to maintain future rate flexibility to address future potential growth funding gaps.

18. The County Councils of Prince George's County and Montgomery County met and approved the modifications to the System Development Charge set forth below on May 13, 2010.

Action

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

The Montgomery County Council hereby adopts the following System Development Charge:

A. Definitions.

(1) Apartment Unit means one of several single family residential units within one building that is not a "multi-unit dwelling." For purposes of this resolution, an "apartment unit" must contain at least one full bath and kitchen, but not more than two toilets. An "apartment unit" typically includes, but is not limited to, an individual dwelling unit in a garden, medium or high-rise type residential building.

(2) Biotechnology Research and Development or Manufacturing means any development as jointly defined and approved by the Montgomery and Prince George's County Councils as eligible for a System Development Charge exemption, more particularly described in Schedule C, attached.

(3) Drainage Charge is the portion of the System Development Charge applicable to drainage fixture units for apartments and residential properties having five or fewer toilets.

(4) Drainage Fixture Unit Value is a measure of the probable discharge into the drainage system by a particular plumbing fixture in terms of volume rate of discharge and duration of a single drainage operation and the time between successive operations.

(5) Dwelling Unit means a single family housing unit used as a residence, including a trailer or mobile home.

(6) Elderly Housing means residential units as jointly defined and approved by the Montgomery and Prince George's County Councils as eligible for a System Development Charge exemption, more particularly described in Schedule D, attached.

(7) Hookup means the joining of the on-site water and/or sewer line(s) to the Commission's service connection or the installation of plumbing fixtures in a building served by the Commission's water and/or sewer facilities.

(8) Multi-Unit Dwelling means a building that contains several housing units on a lateral basis; namely, a semi-attached house, row house, or townhouse used as a residence.

(9) New Service means:

(a) the first-time hook-up of a property to the Commission's water and/or sewer system; or

(b) a new connection or increased water meter size for a property previously or currently served by the Commission if the new connection or increased meter size is needed because of a change in the use of the property or an increase in demand for service at the property.

(10) Non-Residential Unit is a structure not otherwise defined as a Residential Unit, generally commercial or industrial in nature. Examples include a shopping mall, non-residential townhouse, warehouse, industrial building, restaurant, school, dormitory, hospital, hotel, motel, nursing home, office building, church, theater, and similar commercial or industrial building.

(11) Property Used Primarily for Recreational and Educational Programs and Services to Youth means real property, owned in fee simple, by a Community Based Organization as jointly defined and approved by the Montgomery and Prince George's County Councils as eligible for a System Development Charge exemption, more particularly described in Schedule F, attached.

(12) Public Sponsored or Affordable Housing means residential units as jointly defined and approved by the Montgomery and Prince George's County Councils as eligible for a waived System Development Charge, more particularly described in Schedule A, attached.

(13) Residential Unit means any housing unit defined in Paragraphs 1, 5, 6, 8, and 11, which is used as a residence.

(14) Revitalization means any development as jointly defined and approved by the Montgomery and Prince George's County Councils as eligible for a System Development Charge exemption, more particularly described in Schedule B, attached.

(15) System Development Charge means that charge imposed by the Commission pursuant to § 6-113, Article 29, Maryland Code. (Maximum allowable System Development Charge is the maximum charge authorized by law, but not necessarily imposed in a given year.)

(16) Toilet is a water closet as defined in the WSSD Plumbing and Gasfitting Regulations.

(17) Water Supply Charge is the portion of the System Development Charge applicable to water supply fixture units for apartments and residential units having five or fewer toilets.

(18) Water Supply Fixture Unit Value is a measure of the probable hydraulic demand on the water supply by a particular plumbing fixture in terms of volume rate of supply and duration of a single supply operation and the time between successive operations.

B. Process

The County Council reaffirms the existing SDC exemption process as approved in Council Resolution 13-509.

C. Exemption Caps

The County Council reaffirms the existing SDC exemption cap of $1,000,000 per year, $500,000 per county, and $50,000 maximum per project in Montgomery County for elderly housing, revitalization, biotechnology, and youth facilities project exemptions as approved in Council Resolutions 13-1508, 13-509, and 16-367. Amounts remaining in the caps at the end of a fiscal year must be rolled over to the next fiscal year and allocated to properties in the same jurisdiction along with the annual allocation amount for properties in that jurisdiction for the next fiscal year.

D. Rates

(1) The System Development Charge rates for FY11 are approved as follows:

Item	FY11 Charge	Max. Allowable Charge
Apartment		
- Water	$896	$1,152
- Sewer	$1,140	$1,467
1-2 toilets/residential		
- Water	$1,344	$1,728
- Sewer	$1,710	$2,197
3-4 toilets/residential		
- Water	$2,240	$2,881
- Sewer	$2,850	$3,663
5 toilets/residential		
- Water	$3,135	$4,031
- Sewer	$3,991	$5,132
6+ toilets/residential*		
- Water	$88	$113
- Sewer	$115	$149
Non-residential*		
- Water	$88	$113
- Sewer	$115	$149

*costs shown are per fixture unit

(2) The System Development Charge for each non-residential property and each dwelling unit or multi-unit dwelling with more than five toilets must be based on the number of plumbing fixtures and the assigned values for those fixtures specified in the WSSD Plumbing and Gasfitting Regulations.

E. Payment. The System Development Charge must be paid to the Commission at the time of application for plumbing permit to install fixtures or hookup(s) to the Commission's water and/or sewage system(s), except that an applicant for a plumbing permit for a residential unit may pay the System Development Charge in two payments as follows:

(1) One-half at the time of plumbing permit application;

(2) The remaining one-half within 12 months after the first payment or before title to the property is transferred, whichever occurs first.

At the time of the first payment, the applicant for the plumbing permit for a residential unit must deposit with the Commission security for the second payment in an amount and form established by the Commission.

F. The SDC is in addition to, and not a substitution for, any other fee, rate, charge, or assessment allowed by law, except in areas where an established sub-district charge prevails. If a sub-district charge applies, the greater amount of the sub-district charge or the System Development Charge must be paid.

G. The System Development Charge must be waived for any public sponsored or affordable housing as defined in Schedule A.

H. The System Development Charge, subject to the provisions of this Resolution, must be waived for a revitalization project as defined in Schedule B.

I. The System Development Charge partial exemptions for Elderly Housing are established by Schedule E.

J. The System Development Charge partial exemptions for Biotechnology Research and Development or Manufacturing are $18 per water supply fixture with an assigned fixture unit value of 1 and $25 per drainage fixture with an assigned drainage fixture unit value of 1, or $43 per combined fixture unit value.

K. The County Councils of Prince George's County and Montgomery County may adopt implementing resolutions for System Development Charge partial exemptions for Biotechnology Research and Development or Manufacturing and Elderly Housing as defined in Schedules C and D, and the System Development Charge full exemption for Revitalization as defined in Schedule B. Council resolutions may limit the amount of the full and partial exemptions authorized by this Resolution for individual properties or projects. In addition, the full and partial exemptions authorized by this Resolution,

except those granted for affordable housing (as defined in Schedule A), do not take effect unless both Councils adopt implementing resolutions.

L. This resolution does not create a contract between the Commission and any applicant for service, and the provision of water and/or sewer service to an applicant's property is subject to other applicable laws, rules, and policies adopted by Montgomery and Prince George's Counties and the Commission's ability to otherwise provide that service.

M. This resolution supersedes Council Resolution No. 16-955, adopted May 12, 2009.

N. The System Development Charge as specified in this resolution takes effect on July 1, 2010.

This is a correct copy of Council action:

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Linda M. Lauer, Clerk of the Council

SCHEDULE A

"Public sponsored or affordable housing" means:

1) any dwelling unit built or financed under a government program, regulation, or binding agreement that limits for at least 10 years the price or rent charged for the unit in order to make the unit affordable to households earning less than 80% of the area median income, adjusted for family size;

2) any Moderately Priced Dwelling Unit built under Chapter 25A of the Montgomery County Code or Subtitles 13 and 27 of the Prince George's County Code;

3) any Productivity Housing Unit, as defined in Section 25B-17 (k) of the Montgomery County Code;

4) any unit in an Opportunity Housing Project built under Sections 56-28 through 56-32 of the Montgomery County Code or Subtitle 13, Division 8, of the Prince George's County Code, which is reserved for occupancy only by persons with low or moderate incomes (as defined in applicable provisions of State and County Law);

5) any dwelling unit constructed pursuant to the Capturing Housing Opportunities in Communities Everywhere (CHOICE) Program in Prince George's County which is reserved for occupancy only by persons with low or moderate incomes (as defined in applicable provisions of State and County Law).

SCHEDULE B

1) "Revitalization" means a project located in one of the following geographic areas and meeting any additional criteria that may be adopted by the respective county council or applicable municipal council:

a) any state-designated revitalization area as defined by the Maryland Department of Housing and Community Development (DHCD).

b) any state-designated enterprise zone as defined by the Maryland Department of Business and Economic Development (DBED).

c) any federally-designated economic development district as defined by the U.S. Department of Commerce, Economic Development Administration (EDA).

d) any federally-designated empowerment zone and developable sites as defined by the U.S. Department of Housing and Urban Development (HUD).

e) any Transit District Overlay Zone (T-D-O Zone) as defined by Subtitle 27, Part 10A, Division 1, of the Prince George's County Code.

f) any Prince George's County designated revitalization area as defined in Subtitle 10 of the Prince George's County Code.

g) any state-designated Neighborhood Business Development Program, as defined in Subtitle 2, of Title 4, of Article 83B, of the Annotated Code of Maryland.

h) any Montgomery County designated neighborhoods, as determined by the Montgomery County Executive and County Council, as a revitalization neighborhood for activities that will act to preserve, stabilize, and enhance the social, physical, and economic conditions of the neighborhood. Activities may include concentrated housing code inspections and enforcement, housing rehabilitation, social service programs, public infrastructure improvements, and private and/or public capital investment.

SCHEDULE C

"Biotechnology Research and Development or Manufacturing" means:

Any activity that substantially involves research, development, or manufacturing of:

a. Biologically-active molecules;

b. Devices that employ or affect biological processes; or

c. Devices and software for production or management of specific biological information.

SCHEDULE D

"Elderly Housing" includes the following types of housing:

As defined in the Prince George's County Zoning Ordinance:

Sec. 27-107.01. Definitions

(a) Terms in the Zoning Ordinance are defined as follows:

(20.1) Assisted Living Facility
(54) Congregate Living Facility
(151.1) Mixed Retirement Development

Sec. 27-352.01 Elderly Housing (one-family attached dwellings)

Sec. 27-374 Medical / residential campus

Sec. 27-395 Planned retirement community

OR

As defined in the Montgomery County Zoning Ordinance:

Sec. 59-G-2.35 Housing and related facilities for elderly or handicapped persons

Sec. 59-G-2.35.1 Life Care (continuing care) facility

Sec. 59-C-7.4 Housing constructed in a planned retirement community zone

OR

As defined in a municipal zoning ordinance in a municipality having separate zoning powers and that is found by the Director of the Department of Housing and Community Affairs to be equivalent to the definition for the county in which the municipality is located. The review of equivalency should be based upon age of occupants and the inclusion of assisted living dwelling units.

SCHEDULE E

Maximum "elderly housing" exemptions are as follows:

1.	Apartment unit	$436.00
2.	Dwelling unit or housing unit within a multi-unit dwelling with one or two toilets	$654.00
3.	Dwelling unit or housing unit within a multi-unit dwelling with three or four toilets	$1,090.00
4.	Dwelling unit or housing unit with a multi-unit dwelling with five toilets	$1,526.00
5.	For other housing that meets the elderly housing exemption criteria	Not more than $43 per combined fixture unit value

SCHEDULE F

1. "Property Used Primarily for Recreational and Educational Programs and Services to Youth" means:

Real property, owned in fee simple, by a Community Based Organization, located within the Washington Suburban Sanitary District, which is used to advance the mission and purpose of providing program and services to youth in Prince George's and/or Montgomery County.

2. "Community Based Organization" means:

A not-for-profit entity duly incorporated in or authorized to do business by the State of Maryland and in good standing under the laws of the State of Maryland, which has as its primary mission and purpose to provide program and services to youth in Prince George's and/or Montgomery County.

3. "Exempt From Taxation" means:

A not-for-profit, charitable or educational organization as determined by the Internal Revenue Service, under Section 501(c) (3) of the Internal Revenue Code.