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| Resolution No.: | <u>18-1182</u> |
| Introduced: | <u>July 17, 2018</u> |
| Adopted: | <u>July 17, 2018</u> |

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

Lead Sponsor: Council President on behalf of the County Executive

SUBJECT: Approval of Executive Regulation 4-18, Water Quality Protection Charge

Background

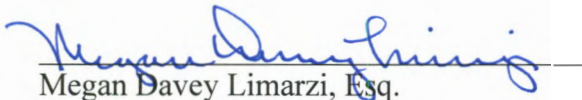
1. On July 2, 2018, the County Council received Executive Regulation 4-18, Water Quality Protection Charge. The proposed regulation would implement Bill 1-18, Water Quality Protection Charge – Appeals, which requires a property owner who wants to appeal the imposition of a Water Quality Protection Charge to take that appeal to the Tax Court.
2. The Council reviewed the regulation under Method (1). A regulation proposed under Method (1) is not adopted until the County Council approves it.

Action

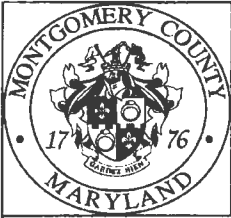
The County Council for Montgomery County, Maryland approves the following resolution:

Executive Regulation 4-18, Water Quality Protection Charge is approved.

This is a correct copy of Council action.



Megan Davey Limarzi, Esq.
Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

| | |
|---|--|
| Subject Water Quality Protection Charge | Number 4-18 |
| Originating Department Department of Environmental Protection and Department of Finance | Effective Date July 17, 2018 |

Montgomery County Regulation on:

WATER QUALITY PROTECTION CHARGE

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND
DEPARTMENT OF FINANCE

Issued by: County Executive
Regulation No. 4-18
COMCOR No. 19.35.01

Authority: Code Section 19-35
Supersedes: Executive Regulation 12-16AM
Council Review: Method (1) under Code Section 2A-15
Register Vol. 35 No. 4

Comment Deadline: April 30
Effective Date: July 17, 2018
Sunset Date: None

Summary: This regulation requires that final appealable decisions involving the Water Quality Protection Charge be issued by the Director of Finance and designates the Maryland Tax Court as the administrative agency with jurisdiction to hear appeals from those decisions.

Address: Written comments on these regulations should be sent to:

Vicky Wan
Office of the Director
Department of Environmental Protection
255 Rockville Pike
Rockville, Maryland 20850

Staff Contact: For further information or to obtain a copy of this regulation, contact Vicky Wan at (240) 777-7722.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject

Water Quality Protection Charge

Number

4-18

Originating Department

Department of Environmental Protection and Department of Finance

Effective Date

19.35.01.01 General Provisions

A. Authority. In accordance with the authority conferred under Chapter 19, Section 19-35, of the Montgomery County Code, 2014, as amended (hereinafter referred to as the "Code"), the County Executive hereby promulgates this regulation for the purpose of implementing the County's Water Quality Protection Charge as set forth in Chapter 19 of the Code.

B. Applicability. This regulation applies to all owners of residential property and nonresidential property in Montgomery County, Maryland.

19.35.01.02 Definitions

The definitions of the terms used in this regulation are provided in Chapter 19, Section 19-21, of the Code. For purposes of this regulation, the following additional words and phrases will have the meaning respectively ascribed to them in this regulation unless the context indicates otherwise:

Agricultural Property means a property that is used primarily for agriculture, viticulture, aquaculture, silviculture, horticulture, or livestock and equine activities; temporary or seasonal outdoor activities that do not permanently alter the property's physical appearance and that do not diminish the property's rural character; or activities that are intrinsically related to the ongoing agricultural enterprise on the property.

Base Rate means the annually designated dollar amount set by the County Council to be assessed for each equivalent residential unit of property that is subject to the Water Quality Protection Charge.

Condominium means a property that is subject to the condominium regime established under the Maryland Condominium Act.

Director means the Director of the Montgomery County Department of Environmental Protection or the Director's designee.

Eligible Nonprofit Property means real property owned by a 501(c)(3) nonprofit organization that is listed with the Maryland Department of Assessments and Taxation as exempt from ad valorem property taxes under State law.

Equivalent Residential Unit or ERU means the statistical median of the total horizontal impervious area of developed single family detached residences in the County that serves as the base unit of



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

| | |
|---|-----------------------|
| Subject Water Quality Protection Charge | Number 4-18 |
| Originating Department Department of Environmental Protection and Department of Finance | Effective Date |

assessment for the Water Quality Protection Charge. The designated ERU for Montgomery County equals 2,406 square feet of impervious surface.

Multifamily Residential Property means a mobile home park or a residential building where one or more dwelling units share a common entrance from the outside with other dwelling units that are arranged above, below or next to one another in the same building, and any housing unit that is subject to the condominium regime established under the Maryland Condominium Act.

Parking Lot means any area that is intended for parking of motor vehicles.

Water Quality Protection Charge or Charge means an excise tax levied by the Director of Finance to cover the cost of constructing, operating, and maintaining facilities within the County's stormwater management system and fund related expenses allowed under applicable state law based on the impact of stormwater runoff from the impervious areas of developed land in the County.

19.35.01.03 Classification of Properties

For purposes of determining the appropriate assessment rate, all properties that are subject to the Water Quality Protection Charge are assigned to one of the following classifications:

A. Single Family Residential Tier 1 (SFR1): For single family residential properties where the estimated total impervious area is greater than 0 square feet and less than or equal to 1,000 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.

B. Single Family Residential Tier 2 (SFR2): For single family residential properties where the estimated total impervious area is greater than 1,000 square feet and less than or equal to 1,410 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.

C. Single Family Residential Tier 3 (SFR3): For single family residential properties where the estimated total impervious area is greater than 1,410 square feet and less than or equal to 3,412 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.

D. Single Family Residential Tier 4 (SFR4): For single family residential properties where the estimated total impervious area is greater than 3,412 square feet and less than or equal to 3,810 square feet



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

| | |
|---|-----------------------|
| Subject Water Quality Protection Charge | Number 4-18 |
| Originating Department Department of Environmental Protection and Department of Finance | Effective Date |

and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.

E. Single Family Residential Tier 5 (SFR5): For single family residential properties where the estimated total impervious area is greater than 3,810 square feet and less than or equal to 5,815 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.

F. Single Family Residential Tier 6 (SFR6): For single family residential properties where the estimated total impervious area is greater than 5,815 square feet and less than or equal to 6,215 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.

G. Single Family Residential Tier 7 (SFR7): For single family residential properties where the estimated total impervious area is greater than 6,215 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.

H. Multifamily residential property: For multifamily residential properties the impervious area includes the residential structures that contain the dwelling units, the sidewalks, parking lots and any other permanent installations on the developed parcel, whether under single or common ownership, that is impenetrable by water.

I. Nonresidential property: Nonresidential properties may include commercial properties such as office buildings, hotels, retail establishments or industrial properties such as factories and warehouses. Nonresidential properties may also include properties owned by homeowner associations, nonprofit organizations, and any government-owned properties subject to the Charge. The impervious area for these properties includes all buildings, parking lots, sidewalks, and any other impermeable installations permanently attached to the land parcel containing those installations.

J. Nonprofit Tier 1 (NP1): For eligible nonprofit property where the estimated total impervious area is greater than 0 square feet and less than or equal to 6,910 square feet and includes all buildings, driveways, parking lots, sidewalks, and any other impermeable installations permanently attached to the land parcel containing those installations.

K. Nonprofit Tier 2 (NP2): For eligible nonprofit property where the estimated total impervious area is greater than 6,910 square feet and less than or equal to 54,455 square feet and includes all buildings, driveways, parking lots, sidewalks, and any other impermeable installations permanently attached to the land parcel containing those installations.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

| | |
|---|-----------------------|
| Subject Water Quality Protection Charge | Number 4-18 |
| Originating Department Department of Environmental Protection and Department of Finance | Effective Date |

L. Nonprofit Tier 3 (NP3): For eligible nonprofit property where the estimated total impervious area is greater than 54,455 square feet and includes all buildings, driveways, parking lots, sidewalks, and any other impermeable installations permanently attached to the land parcel containing those installations.

M. Agricultural property: The impervious area for agricultural properties only includes the houses on those properties and is assessed in accordance with the Single Family Residential Tier classification.

19.35.01.04 Rates

A. Single family residential properties: The Charge for each single family residential property is based on a percent of the base rate for one ERU in accordance with its assigned tier classification as follows:

(1) Single Family Residential Tier 1 (SFR1): The Charge for each Single Family Residential Tier 1 property is 33 percent of the applicable base rate for one ERU.

(2) Single Family Residential Tier 2 (SFR2): The Charge for each Single Family Residential Tier 2 property is 50 percent of the applicable base rate for one ERU.

(3) Single Family Residential Tier 3 (SFR3): The Charge for each Single Family Residential Tier 3 property is 100 percent of the applicable base rate for one ERU.

(4) Single Family Residential Tier 4 (SFR4): The Charge for each Single Family Residential Tier 4 property is 150 percent of the applicable base rate for one ERU.

(5) Single Family Residential Tier 5 (SFR5): The Charge for each Single Family Residential Tier 5 property is 200 percent of the applicable base rate for one ERU.

(6) Single Family Residential Tier 6 (SFR6): The Charge for each Single Family Residential Tier 6 property is 250 percent of the applicable base rate for one ERU.

(7) Single Family Residential Tier 7 (SFR7): The Charge for each Single Family Residential Tier 7 property is 300 percent of the applicable base rate for one ERU.

B. Multifamily residential properties: The Charge for each multifamily residential property is based on the number of ERUs assigned to the property in accordance with the following procedure:



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

| | |
|---|-----------------------|
| Subject Water Quality Protection Charge | Number 4-18 |
| Originating Department Department of Environmental Protection and Department of Finance | Effective Date |

(1) The Director determines the number of ERUs for a multifamily residential property by dividing the property's actual impervious area by the designated ERU for Montgomery County.

(2) The Director computes the billable Charge by multiplying the base rate by the total number of ERUs assigned to the property.

(3) If the multifamily residential property is a condominium development, the Director calculates the Charge to be billed in equal shares to the owners of the development by dividing the total ERUs calculated for the property by the number of individual condominium units and then multiplying the sum by the base rate to determine the amount billable to each unit owner.

C. Nonresidential properties: Except for eligible nonprofit property subject to nonprofit tier classifications under subsection D, the Charge for each nonresidential property is based on the number of ERUs assigned to the property in accordance with the following procedure:

(1) The Director determines the number of ERUs for a nonresidential property by dividing the property's actual impervious area by the designated ERU for Montgomery County.

(2) The Director computes the billable Charge by multiplying the base rate by the total number of ERUs assigned to the property.

(3) If the nonresidential property is a condominium development, the Director calculates the Charge to be billed in equal shares to the owners of the development by dividing the total ERUs calculated for the property by the number of individual condominium units and the multiplying the sum by the base rate to determine the amount billable to each unit owner.

D. Nonprofit properties: The Charge for eligible nonprofit property must not exceed the percent of the base rate for one ERU in accordance with the assigned tier classification as follows:

(1) Nonprofit Tier 1 (NP1): The Charge for each nonprofit property is based on its total impervious area up to 150 percent of the applicable base rate for one ERU.

(2) Nonprofit Tier 2 (NP2): The Charge for each nonprofit property is based on its total impervious area up to 900 percent of the applicable base rate for one ERU.

(3) Nonprofit Tier 3 (NP3): The Charge for each nonprofit property is based on its total impervious area up to 2,300 percent of the applicable base rate for one ERU.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

| | |
|---|-----------------------|
| Subject Water Quality Protection Charge | Number 4-18 |
| Originating Department Department of Environmental Protection and Department of Finance | Effective Date |

E. Agricultural properties: The Charge for each agricultural property is based on a percent of the base rate for one ERU in accordance with the applicable Single Family Residential Tier.

19.35.01.05 Credits

A. Eligibility. If a property contains a stormwater management system, the system must be maintained by the property owner exclusively and in accordance with the maintenance requirements of Section 19-28 of the Code for the property owner to be eligible to receive a credit against the Water Quality Protection Charge unless the system was built as part of a County-approved stormwater management participation project.

B. Credit Awards.

(1) The Director must award a credit, not to exceed 60 percent, based on the proportion of the total volume of water treatment provided by the stormwater management system relative to the environmental site design storage volume required under State law as specified in the Water Quality Protection Charge Credit Procedures Manual published by the Director and incorporated by reference as if fully set forth. The volume of treatment required will be based on the environmental site design volume (ESDv) requirements specified in the 2000 Maryland Stormwater Design Manual, as amended.

(2) A nonresidential property or a multifamily residential property must be credited for treatment of off-site drainage from other properties located within the same drainage area as that property, not to exceed 100 percent of the Charge billed to the property owner, if the stormwater management system located on the nonresidential property or multifamily residential property treats the required on-site environmental site design storage volume while at the same time providing additional storage volume for off-site drainage. The total credit will be determined by applying the percent credit of off-site property to the impervious area of that off-site property and then adding that computation to the credit for the on-site impervious area, not to exceed 100 percent of the total Charge billed to the property owner as specified in the Water Quality Protection Charge Credit Procedures Manual.

(3) The owner of a property that does not contain a stormwater management system must be credited if that property is located within the same drainage area as another property that contains a stormwater management system for which the County does not perform structural maintenance or the stormwater management system was built as part of the County-approved stormwater management participation project and both properties have the same owner. However, a property owner must not receive a credit based on a calculation that exceeds the total impervious area on the property for which the credit is issued.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

| | |
|---|-----------------------|
| Subject Water Quality Protection Charge | Number 4-18 |
| Originating Department Department of Environmental Protection and Department of Finance | Effective Date |

(4) The Director must award a credit, not to exceed 80 percent, if the total volume of water treatment is provided by a stormwater management system that implements environmental site design to the maximum extent practicable.

C. Application Schedule.

(1) To receive the credit, the property owner must apply to the Director of Environmental Protection in a form prescribed by the Director not later than September 30 of the year that payment of the Charge is due.

(2) Once approved, the credit is valid for three years. To renew the credit, the property owner must reapply to the Director in a form prescribed by the Director not later than September 30 of the year that payment of the Charge is due.

D. Credit Revocation.

(1) The Director of Environmental Protection may revoke a credit granted under this Section if the property owner does not continue to take the measures needed to assure that the stormwater management system remains in proper working condition by correcting any deficiencies discovered by the Director during a maintenance inspection.

(2) The Director must not reinstate a revoked credit until the property owner has sufficiently corrected the deficiencies to fully satisfy the property owner's maintenance obligations under Section 19-28 of the Code.

E. Appeals.

(1) If the Director denies or revokes the credit, the property owner may seek review of the Director's decision by submitting a written request for review with supporting reasons to the Director of Finance within 30 days after the date of the Director's written decision.

(2) After reviewing the decision of the Director of Environmental Protection, the Director of Finance must notify the property owner in writing of the decision to affirm or reverse the decision of the Director of Environmental Protection. The property owner may appeal the decision of the Director of Finance to the Maryland Tax Court. The appeal must be filed within 30 days after the date of the decision of the Director of Finance.

19.35.01.06 Billing and Payment



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

| | |
|---|-----------------------|
| Subject Water Quality Protection Charge | Number 4-18 |
| Originating Department Department of Environmental Protection and Department of Finance | Effective Date |

A. The Director must prepare and forward to the Director of Finance the necessary data for collecting the Water Quality Protection Charge from owners of property subject to the Charge. The data must identify every parcel to be charged and include the amount of the Charge. If requested by the owner using the review and adjustment process outlined in Section 19.35.01.07, the Director may consolidate under a single parcel any contiguous parcels owned by the same legal owner. If the Director combines two or more parcels consisting individually of at least one residential parcel and at least one nonresidential parcel, the Director must, for purposes of calculating the Water Quality Protection Charge, treat the consolidated parcel as nonresidential property.

B. The Director of Finance must include the Charge as a separate line item on the real estate tax bill for each property subject to the Charge.

C. The Director of Finance must deposit all payments collected under this Section into a County stormwater management fund.

D. Interest on any overdue payment accrues according to the same schedule and at the same rate charged for delinquent real property taxes until the owner has remitted the outstanding payment and interest. An unpaid Charge is subject to all penalties and remedies that apply to unpaid real property taxes. Any delinquent Charge is a lien against the property. The lien has the same priority as a lien imposed for nonpayment of real property taxes. The Charge must be collected in the same manner as real property taxes.

19.35.01.07 Requests for Adjustment; Appeals

A. A property owner may request a review and adjustment of the Charge by petitioning the Director in writing, not later than September 30 of the year that payment of the Charge is due if the property owner believes that the Charge has been assigned or calculated incorrectly.

B. When submitting a petition for review of the Charge, the property owner must include a detailed statement of the basis for the petition and documents supporting the property owner's assertion that the property should be assigned to a different classification, the impervious area measurements used to calculate the ERUs for the property are incorrect, or the property is not subject to the Charge under applicable law.

C. Within 60 days after receiving the petition, the Director must review the Charge assigned to the property and make a written determination of whether the property owner's request for an adjustment of the Charge should be granted or denied. The Director may request additional information from the property owner that the Director reasonably believes will help the Director decide whether the property owner is entitled to an adjustment.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

| | |
|---|-----------------------|
| Subject Water Quality Protection Charge | Number 4-18 |
| Originating Department Department of Environmental Protection and Department of Finance | Effective Date |

D. If the Director concludes that the Charge was levied by mistake or resulted from an inaccurate computation, the Director must submit the corrected data to the Department of Finance with a request for an adjustment to the property owner's bill. After receiving the Director's request, the Director of Finance must make an appropriate adjustment based on the new data submitted by the Director and refund any overpayment to the property owner.

E. If the Director concludes that some or all of the requested adjustment should be denied, the property owner may seek review of the Director's conclusion by submitting a written request for review with supporting reasons to the Director of Finance within 30 days after the date of the Director's written decision.

F. After reviewing the decision of the Director of Environmental Protection, the Director of Finance must notify the property owner in writing of the decision to affirm or reverse the decision of the Director of Environmental Protection. The property owner may appeal the decision of the Director of Finance to the Maryland Tax Court. The appeal must be filed within 30 days after the date of the decision of the Director of Finance.

19.35.01.08 Requests for Exemption

A. Before paying the Charge, the owner of residential property that is owner-occupied, or a nonprofit organization that owns property subject to the Charge, may apply for a financial hardship exemption from the Charge by submitting a written request to the Director of Finance in a form prescribed by the Director not later than September 30 of the year when payment of the Charge is due.

B. (1) To qualify for the exemption, the request submitted by an owner-occupant of residential property must be accompanied by a copy of the owner-occupant's income tax returns indicating that the property owner's gross household income did not exceed 170 percent of the poverty guidelines published by the United States Department of Health and Human Services for the year before payment of the Charge is due or verification that the property owner meets eligibility criteria for receiving benefits under the Maryland Energy Assistance Program for the year that payment of the Charge is due.

(2) The request submitted by a nonprofit organization must be accompanied by the organization's most recent federal tax return or other verification of total revenues derived from the property for which the exemption is sought, as required by the Director of Finance. To qualify for a partial exemption: (i) the amount of the Charge must exceed 0.2% of the organization's total revenues from the property for which the exemption is sought for the year before payment of the Charge is due; and (ii) the property for which the exemption is sought must be exempt from real property ad valorem taxation under State law. The amount of the partial exemption is the amount of the Charge that exceeds 0.2 percent of the nonprofit's total revenues derived from the property.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

| | |
|---|-----------------------|
| Subject Water Quality Protection Charge | Number 4-18 |
| Originating Department Department of Environmental Protection and Department of Finance | Effective Date |

C. The Director of Finance must issue a written decision to grant or deny the exemption within 30 days after receiving the request.

D. Any exemption granted under this Section is only valid for the year that payment of the Charge is due.

E. If the Director of Finance denies the exemption, the property owner may appeal the Director's decision to the Maryland Tax Court. The appeal must be filed within 30 days after the date of the Director's written decision.


19.35.01.09 Requests for Grants

An owner of an improved aircraft landing area that is exempt from County property taxes under Maryland Code, Tax-Property Art., §8-302, as amended, may apply for a grant to offset all or part of the cost of the Charge by submitting a written application to the Director not later than September 30 of the year that payment of the Charge is due.

19.35.01.10 Severability

If a court holds that a portion of this regulation is invalid, the other portions remain in effect.

Approved as to Form and Legality
Office of County Attorney

By 
Date 3/7/18
Walter Wilson


Ishah Leggett
County Executive