

Resolution No.: 16-1061
Introduced: July 28, 2009
Adopted: July 28, 2009

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council at Request of County Executive

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

Background

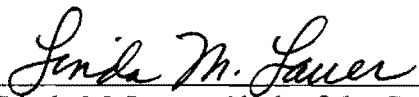
1. On July 1, 2009, the County Executive forwarded proposed Executive Regulation 8-09.
2. The Council must review the regulation under method (2) of Section 2A-15 of the County Code.
3. The Management and Fiscal Policy Committee held a worksession on proposed Executive Regulation 8-09 on July 27, 2009. The Committee unanimously recommended approval of Executive Regulation 8-09 as submitted.

Action

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

Executive Regulation 8-09, *Development Impact Tax for Public School Improvements*, is approved.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council



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

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: July 28, 2009

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.

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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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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.



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- 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



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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



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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*
Ed Brum 3-23-09