

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Addendum:** Bill 62-14, Taxation - Development Impact Taxes – Exemption – Ancillary Facilities

Bill 62-14, Taxation - Development Impact Taxes – Exemption – Ancillary Facilities, sponsored by then-Council President Rice, was introduced on November 25, 2014. After the Bill was introduced, Council President Leventhal and Councilmembers Floreen, Katz, Riemer, and Navarro added themselves as co-sponsors.

After extensive discussion with Council staff and Diane Schwartz Jones, Director of the Department of Permitting Services, representing the County Executive, the Government Operations and Fiscal Policy Committee voted 2-1 (Committee Chair Navarro dissenting) to recommend incorporating the Executive amendments in the Bill at the January 29 worksession. Committee Chair Navarro preferred to introduce the Executive amendments as a separate Bill so that they would receive a public hearing. The Committee requested further information from Ms. Jones about the scope and cost of the Executive amendments; particularly the broad proposed definition of “charitable, philanthropic institution”. Since this Bill is scheduled for Council consideration on February 3, Ms. Jones said she could provide that information by Friday January 30; however, we received that information after the Action packet went to print. The information received from Ms. Jones is at ©1.

This packet contains:
DPS Memo

Circle #
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MEMORANDUM

January 30, 2015

To: Nancy Navarro, Chair
GO Committee

From: Diane R. Schwartz Jones, Director
Montgomery County Department of Permitting Services

Subject: Bill 62-14 – GO Committee requested information

At yesterday's GO Committee meeting, you requested additional information relative to County Executive Leggett's recommended amendments to Bill 62-14, which the Committee unanimously supported in concept and procedurally supported by a 2-1 vote. In particular, with respect to the proposal to replace the effectively undefined term "social service provider" with the term "Charitable, Philanthropic Institution," the Committee requested follow-up with examples of types of uses that would fit into the definition of Charitable, Philanthropic Institution and how would that relate to other types of uses.

The term "social service provider" is defined as "a locally-based, federally tax-exempt nonprofit direct provider of social services whose primary service area is Montgomery County." The term social services itself is not defined. This issue does not come up often, but from time to time non-profit organizations come to us and ask that they not be obligated to pay impact taxes because they are non-profit and providing beneficial services. This has come up for administrative offices for an organization serving people with disabilities, an organization building a youth development facility, and in other limited circumstances as well. Most recently, this came up with respect to a non-profit museum that operates on limited hours and is engaged in educational programs in coordination with county schools.

The definition of Charitable, Philanthropic Institution "means a private, tax-exempt organization whose primary function is to provide services, research, or educational activities in areas such as health, social service, recreation, or environmental conservation." This definition comes from the recently adopted zoning ordinance and would provide greater clarity for the department.

Overall and in the longterm, the fiscal impact of this amendment is not likely to be significant. The immediate impact is that one recent permittee (a common ownership community) would be entitled to a refund of \$5,535 and a 2nd recent permittee (a non-profit museum) would pay at a reduced rate and would be entitled to a refund of \$416,450.

It is important to note that one of the threshold rationales behind impact taxes is that developers pay for the service and infrastructure demands generated by their projects. This policy does not apply in the same way where a non-profit organization is providing services that supplement or relieve the need for services or quality of life amenities that the County would otherwise provide or find desirable, or where other important competing policies are involved. That is what has given rise to certain exemptions and rates of \$0 for some types of land use. For example, and in response to some of the specific uses that were discussed in Committee session yesterday, the following uses pay a rate of \$0: bioscience facilities; hospitals, and other social service agencies, which the department must currently decide on an ad hoc basis. Additionally, facilities owned *and* used by government agencies are exempt from payment of impact taxes, as are moderately priced dwelling units, workforce housing, personal living quarter projects, opportunity housing projects and development that is constructed in an area that is currently or formerly identified as an enterprise zone.

services, research, or educational activities in areas, such as	Impact tax rates	FY12	FY13	FY14
health	\$0	0	0	0
Social service	\$0	0	0	0
recreation	Exempt for HOAs and common ownership communities per 62-14	1 (would qualify under original bill)	1 (would qualify under original bill)	
Environmental conservation	0	0	0	0

A review of the past three fiscal years has identified no projects that would qualify as a Charitable Philanthropic Organization other than two that would be covered by the original bill and one project that would qualify as a Cultural Institution. I am aware of an environmental sustainability building that is planned and *may* qualify as a Charitable Philanthropic Organization, but at this time I do not have any information because the permit application has not yet been submitted and we do not yet know the ownership structure.

- CC: George Leventhal, Council President
 Craig Rice, Councilmember
 Hans Riemer, Councilmember
 Sidney Katz, Councilmember
 Timothy L. Firestine, CAO
 Joseph Beach, Director, Department of Finance
 Jennifer Hughes, Director, OMB
 Bonnie Kirkland, ACAO