

BUILDING EXCISE TAX ORDINANCE FOR WASHINGTON COUNTY, MARYLAND

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Table of Contents

1. Establishment of tax.....1

2. Definitions.....1

3. Residential Construction.....3

4. Nonresidential Construction.....4

5. Payment of tax.....4

6. Exemptions.....5

7. Change in use.....6

8. Special excise tax fund.....7

9. Municipalities.....8

10. Appeals.....11

11. Enforcement.....12

12. Annual reports.....12

13. Advisory School Design Review Committee.....14

14. Agricultural land preservation.....15

1. Establishment of tax.

1.01 In accordance with Section 2-701 of the Code of the Public Local Laws of Washington County, as amended from time to time, there is a building excise tax on all building construction in Washington County.

2. Definitions.

2.01 The words and phrases used in this Ordinance shall have their usual meaning, unless otherwise defined in this section.

2.02 *Addition construction* means construction that requires a building permit and that increases the gross square footage of an existing nonresidential nonretail structure or nonresidential retail structure, or the habitable gross square footage of an existing residential structure.

2.03 *Applicant* means the individual, partnership, corporation, limited liability company, or other legal entity whose signature or name appears on the building permit application.

2.04 *Basement* means that portion of a building that is partly or completely below grade and has a ceiling height of at least seven feet.

2.05 *Board or Board of County Commissioners or County Commissioners* means the Board of County Commissioners for Washington County, Maryland.

2.06 *Building* means any permanent structure used or intended for supporting or sheltering any use or occupancy. *Building* does not include an accessory structure or a temporary structure, as defined in the Washington County building code.

2.07 *Common area* means the interior or exterior circulation paths, rooms, spaces or elements that are not for public use and are made available for the shared use of two or more people in a multifamily residential structure, including lobbies and laundry facilities.

2.08 *Construction* means construction or alteration of a building or part of a building that requires a building permit.

2.09 *Director of Finance* means the Director of Budget and Finance for Washington County or the Director's designee.

2.10 *Director of Planning or Planning Director* means the Director of the Department of Planning and Community Development for Washington County or the Director's designee.

2.11 *Farm construction* means construction intended to be actively used for farm use, but does not include residential construction thereon.

2.12 *Farm or agricultural use* means the raising of farm products for use or sale, including animal or poultry husbandry, animal husbandry facilities, aquaculture, and the growing of crops such as grain, vegetables, fruit, grass for pasture or sod, trees, shrubs, flowers, and similar products of the soil.

2.13 *Gross square footage* means the entire interior area of a structure, finished or unfinished.

2.14 *Habitable gross square footage* means the entire interior area of living space in a residential structure, finished or unfinished, including but not limited to bathrooms, toilet rooms, closets, halls, basements, and storage or utility spaces, but not including porches, garages, unfinished attics, and crawl spaces. Habitable gross square footage does not include the common areas of multifamily residential structures having three or more dwelling units.

2.15 *Mixed-use structure* means a structure or part of a structure, but not a separated occupancy, having any combination of residential use, nonresidential nonretail use, or nonresidential retail use.

2.16 *Nonresidential* means the use of a structure for purposes other than living or permanent habitation.

2.17 *Nonresidential nonretail* means the use of a structure for assembly, business, factory, storage, utility, education, institutional, transient accommodations or habitation, or hazardous uses.

2.18 *Nonresidential retail* means the use of a structure open to the public for the display and sale of merchandise, and involves stocks of goods, wares, or merchandise incidental to such purposes, including but not limited to restaurants, stores, members-only discount stores, and other commercial sales enterprises not solely engaged in the wholesale distribution of merchandise.

2.19 *Principal use* means the foremost purpose for the use, its *raison d'être*. A principal use may be accompanied by one or more *accessory uses* that are incidental to or supportive of the principal use. The ratio of the gross square footage of the structure

devoted to any principal and accessory uses is not a factor in determining the principal use of the structure.

2.20 *Redevelopment area* means the “Hagerstown Redevelopment Area,” consisting of all that land zoned Downtown Mixed-Use District or within a Hagerstown Conversion District overlay zone as set forth in the Hagerstown Zoning Ordinance as of June 26, 2009, and those areas in other municipal corporations as may be designated by the Board of County Commissioners by resolution upon request.

2.21 *Residential* means the use of a structure for living or permanent habitation, or a structure having one (1) or more dwelling units, including but not limited to boarding houses, but not including institutional uses or transient accommodations such as hotels, country inns, bed and breakfast inns, and the like, which shall be considered nonresidential nonretail uses.

2.22 *Separated occupancy* means a discrete part of a structure having a principal use that is distinct from other uses in the same structure, including but not limited to a store in a mall or an office in a multi-unit office building.

2.23 *Structure* means a building or part of a building.

3. Residential Construction.

3.01 *Base building excise tax.* The base amount of the building excise tax for residential construction is \$3 per square foot of habitable gross square footage.

3.02 *Addition construction.* The amount of the building excise tax for residential addition construction is one-half of the amount per square foot set forth in § 3.01.

3.03 *Subdivisions over 25 units under certain conditions.* In any single subdivision or development where the Department of Permits and Inspections has issued 25 building permits for new residential dwelling units in that fiscal year, an applicant that applies for building permits for the 26th or any subsequent units in the same fiscal year will be subject to a building excise tax that is twice the amount set forth in § 3.01, if the construction of the subdivision or development:

(a) Is in a school district where a school is at or above 90% of the state rated school capacity; or

(b) Causes the roads or intersection within one centerline mile in any direction of any new street connecting the subdivision to be lower than a level of

service D; or

(c) Causes the intersections outside of the urban and town growth areas to be lower than a level of service C.

3.04 *Interpretation.* All phases or sections of a single development shall be considered a single subdivision for the purposes of § 3.03, in the discretion of the Planning Director.

3.05 *Calculation of amount.* The amount of building excise tax to be paid by an applicant shall be determined by the Planning Director.

3.06 *No avoidance.* An applicant for a building permit shall not avoid or attempt to avoid the intent of this Ordinance or the applicant's obligations hereunder, and especially those in § 3.03, by creating artificial, disingenuous, or unreasonable portions of a whole development or subdivision.

4. Nonresidential Construction

4.01 *Nonresidential nonretail construction.* The building excise tax for nonresidential nonretail construction is \$1 per square foot of the gross square footage.

4.02 *Nonresidential retail construction.* The building excise tax for nonresidential retail construction is \$3 per square foot of the gross square footage.

4.03 *Addition construction.* The amount of the tax due under this section shall be determined according to the increase in the gross square footage of the structure at the same rate per square foot set forth in §§ 4.01 and 4.02, as the circumstance may require.

4.04 *Mixed-use structures.* The building excise tax for mixed-use construction is the tax imposed under this Ordinance for the principal use of the structure as determined by the Planning Director.

4.05 *Separated occupancies.* The building excise tax for separated occupancy construction is the tax imposed under this Ordinance for the principal use of the separated occupancy.

5. Payment of tax.

5.01 *Building excise tax paid before issuance of building permit.* An applicant for a building permit shall pay the building excise tax before the building permit for the respective structure is issued.

5.02 *Refunds.* The Director of Finance shall refund to the applicant the building excise tax paid if the building permit is cancelled or expires so long as work has not commenced. If, upon appeal by an applicant pursuant to § 10.03 who has paid the building excise tax, the County Administrator determines that the Planning Director has erred in calculating the building excise tax, the Director of Finance shall refund to the applicant the difference between the amount of building excise tax paid by the applicant and the correct amount as determined by the County Administrator.

6. Exemptions.

6.01 *Farm construction.* Farm construction is not subject to the building excise tax so long as the construction continues to be actively used for farm use. Should the construction be used for some purpose other than active farm use, then the building excise tax shall be remitted to the Director of Finance at the then existing amount of the building excise tax.

6.02 *Government construction.* No building excise tax shall be imposed on construction by the Board of County Commissioners, any municipality, the Washington County Board of Education, Hagerstown Community College, the State of Maryland, or the federal government.

6.03 *Replacement construction.** No building excise tax shall be imposed on construction that replaces an existing structure as long as there is no:

- (a) Increase in the habitable gross square footage of a residential structure;
- (b) Change in the use of a structure from a nonresidential nonretail use to a nonresidential retail use; or
- (c) Increase in the gross square footage of a nonresidential structure.

6.04 *Residential accessory structures.* No building excise tax shall be imposed on residential accessory structures that are not habitable.

6.05 *Schools.* No building excise tax shall be imposed on construction of public or private elementary or secondary schools or higher education institutions issued a certificate of approval by the Maryland Higher Education Commission pursuant to Md. Code Ann., Educ. § 11-202.

* The building excise tax on any increase in habitable gross square footage or gross square footage created by the construction shall be computed in accordance with §§ 3, 4, and 7 of this Ordinance.

6.06 *Redevelopment area.* No building excise tax shall be imposed on construction in a redevelopment area as defined in § 2.20 of this Ordinance.

6.07 *Enterprise zones.* No building excise tax shall be imposed upon nonresidential construction within enterprise zones in the County.

6.08 *Religious corporations.* No building excise tax shall be imposed upon structures:

(a) Owned by corporations organized and operated exclusively for religious purposes within the meaning of 26 U.S.C. 501, and

(b) Used primarily for religious purposes.

7. Change in use.

7.01 *General.* Upon receipt of a building permit application for a change in use that requires a zoning certification, the building excise tax shall be imposed based on the use applied for in the building permit application, subject to any credit allowed by § 7.07.

7.02 *Conversion from nonresidential to residential.* When an existing structure is subject to construction pursuant to a building permit that converts its use from a nonresidential use to residential use, the building excise tax is 70% of the amount set forth in § 3.01 on all existing gross square footage. Any addition construction will be taxed at the amount set forth in § 3.02. Conversion construction under this § 7.02 is not entitled to the credit set forth in § 7.07.

7.03 *Conversion from nonresidential nonretail to nonresidential retail.* When an existing structure is subject to construction pursuant to a building permit that converts its use from nonresidential nonretail use to nonresidential retail use, the building excise tax is as set forth in § 4.02 on all existing gross square footage. Any addition construction will be taxed at the amount set forth in § 4.03.

7.04 *Conversion from nonresidential retail to nonresidential nonretail.* When an existing structure is subject to construction pursuant to a building permit that converts its use from nonresidential retail use to nonresidential nonretail use, the building excise tax is as set forth in § 4.01 on all existing gross square footage. Any addition construction will be taxed at the amount set forth in § 4.03.

7.05 *Conversion from residential to nonresidential nonretail.* When an existing structure is subject to construction pursuant to a building permit that converts its use from residential use to nonresidential nonretail use, the building excise tax is as set forth in § 4.01 on all existing habitable gross square footage. Any addition construction will be taxed at the amount set forth in § 4.03.

7.06 *Conversion from residential to nonresidential retail.* When an existing structure is subject to construction pursuant to a building permit that converts its use from residential use to nonresidential retail use, the building excise tax is as set forth in § 4.02 on all existing gross square footage. Any addition construction will be taxed at the amount set forth in § 4.03.

7.07 *Credit.* A credit shall be granted for any building excise tax due under this § 7 for any excise tax previously paid upon prior construction of the structure since July 12, 2005. No refund shall be granted if the credit for any building excise tax previously paid exceeds the building excise tax imposed under this § 7.

8. Special excise tax fund.

8.01 *Establishment of fund.* The Director of Finance shall establish a special nonlapsing fund to be known as the special excise tax fund. All revenues from the building excise tax shall be deposited in the special excise tax fund. Interest earned by money in the special excise tax fund shall accrue to the special excise tax fund.

8.02 *Use of special excise tax fund – nonresidential construction.* Revenues deposited in the special fund that are generated by the building excise tax imposed on nonresidential construction may only be used for:

- (a) Primary, secondary, or higher education capital expenditures;
- (b) Public safety capital expenditures;
- (c) Public infrastructure projects; and
- (d) Debt reduction related to capital improvements expenditures.

8.03 *Use of special excise tax fund - residential construction.* The revenues from the building excise tax imposed on residential construction may only be used as follows:

- (a) 70% for schools;
- (b) 23% for roads;

(c) 2% for public libraries; and

(d) 5% for parks and recreational facilities, public safety, water and sewer infrastructure, and agricultural land preservation.

8.04 The revenues from the building excise tax imposed on residential construction used for public libraries, water and sewer infrastructure, and parks and recreation may only be used for the capital costs of public works, improvements, and facilities.

8.05 The revenues from the building excise tax imposed on residential construction used for schools may only be used for the capital costs required to accommodate new construction or development in the County.

8.06 At the end of a fiscal year, any unspent or unencumbered balance in the special fund shall remain in the fund, available for use in future fiscal years for purposes specified in this subsection, and does not revert to the general fund of Washington County.

8.07 Capital costs include the costs of land acquisition for public works, improvements, facilities, and schools.

9. Municipalities.

9.01 *Building excise tax applicable.* This building excise tax shall apply to all construction in Washington County, including construction within the boundaries of a municipal corporation.

9.02 *Collection of tax by a municipal corporation without an adequate public facilities ordinance.* This § 9.02 applies to a municipal corporation within Washington County that has not adopted an adequate public facilities ordinance with school adequacy tests substantially similar to or more stringent than the adequate public facilities ordinance adopted by the County Commissioners.

(a) A municipal corporation described in § 9.02 of this paragraph shall assist the County Commissioners in the collection of the building excise tax within the municipal corporation by:

(i) Collecting the tax prior to the issuance of a building permit and remitting the tax monthly to the Director of Finance, but in no case more than 30 days after the end of the month during which it was

collected, and shall deliver therewith a full and accurate accounting of the collections in a format specified by the County; or

(ii) Requiring the tax to be paid to the Director of Finance prior to the issuance of a building permit.

(b) The failure of a municipality to comply with the requirements of § 9.02(a)(i) shall disqualify that municipality from retaining any funds for administrative costs provided for in § 9.04 of this Ordinance for the period of non-compliance.

9.03 *Collection of tax by a municipal corporation with an adequate public facilities ordinance.* This § 9.03 applies to a municipal corporation within Washington County that has adopted an adequate public facilities ordinance with school adequacy tests substantially similar to or more stringent than the adequate public facilities ordinance adopted by the County Commissioners.

(a) For residential construction, the municipal corporation:

(i) Shall assist the County Commissioners in the collection of that portion of the building excise tax that is dedicated to schools and public libraries as provided under § 8.03 of this Ordinance, by collecting and remitting that amount of the tax to the County Director of Finance; and

(ii) May retain the remaining portion of the building excise tax.

(b) For nonresidential construction, the municipal corporation:

(i) Shall assist the County Commissioners in the collection of 72% of the building excise tax on nonresidential construction by collecting and remitting that amount of the tax to the County Director of Finance; and

(ii) May retain the remaining portion of the building excise tax.

(c) The municipal corporation is not required to retain any portion of the building excise tax as provided under § 9.03.

(d) Any portion of the building excise tax not retained by a municipal corporation under §§ 9.03(a)(ii) or 9.03(b)(ii) shall be remitted to the County Director of Finance monthly, but in no case more than 30 days after the end of

the month during which it was collected, and shall deliver therewith a full and accurate accounting of the collections in a format specified by the County. The failure of a municipality to comply with the requirements of § 9.03(d) shall disqualify that municipality from retaining any funds for administrative costs provided for in § 9.04 of this Ordinance for the period of non-compliance.

(e) The director of finance of a municipal corporation retaining any revenue from the building excise tax under §§ 9.03(a)(ii) or 9.03(b)(ii) shall deposit the revenues into a nonlapsing special fund.

(f) The revenues from the municipal corporation's special fund indicated in § 9.03(e) may only be used for the capital costs of public works, improvements, and facilities required to accommodate new construction for development of:

- (i) Roads;
- (ii) New construction or development of parks and recreational facilities;
- (iii) New construction or development of water and sewer infrastructure; and
- (iv) New construction or development of public safety facilities.

(g) At the end of a fiscal year, any unspent or unencumbered balance in the municipal corporation's special fund shall remain in the fund, available for use in future fiscal years for purposes specified in § 9.03(f) of this section, and does not revert to the general fund of the municipal corporation.

9.04 *Administrative fees for collection.*

(a) A municipal corporation that collects and remits the excise tax to the County Commissioners may deduct from the revenues collected a fee of two percent (2%) of the revenues remitted to the County Commissioners under this section, not including any portion retained pursuant to § 9.03, for administrative costs.

(b) If the municipal corporation can demonstrate to the satisfaction of the Board of County Commissioners that the direct administrative costs of collecting the building excise tax exceed the two percent (2%) rate authorized in the § 9.04(a), the Board, in its sole discretion, after receiving the recommendation of the Director of Finance, may authorize the municipal corporation to withhold all

or any portion of the direct administrative costs claimed for collecting the building excise tax remitted to the County Commissioners or may direct that the municipal corporation be reimbursed with the costs.

10. Appeals

10.01 *Administrative appeals.* An applicant aggrieved by a decision regarding the calculation of the amount of building excise tax, the granting or denial of an exemption, or otherwise interpreting or applying this building excise tax, may appeal the decision to the County Administrator within 30 days of the date of the written decision of the Planning Director, provided that either:

(a) Processing of the building permit is delayed pending the decision of the County Administrator; or

(b) The applicant pays the building excise tax prior to filing the appeal.

10.02 *Burden of proof.* The burden of proof shall be on the appellant to demonstrate that the Planning Director's decision is erroneous.

10.03 *Procedures.* Appeals must be filed in writing with the County Administrator, with a copy of the appeal to the Office of the County Attorney, stating the grounds of the appeal. Appeals from any decision of the Planning Director under this Ordinance shall be *de novo*. The County Administrator shall hold such hearings as are necessary and may request additional information from the Appellant. The decision of the County Administrator shall be in writing and shall be rendered within a reasonable time.

10.04 *Judicial review.*

(a) Any party aggrieved by a decision of the County Administrator may file for judicial review of the decision in accordance with Maryland Rules 7-201, *et seq.*, provided that such appeal is filed within thirty (30) days of the date of the written decision of the County Administrator. This and all subsequent appeals shall be on the record of the decision of the County Administrator and may not be heard *de novo*.

(b) The decision of the Circuit Court may be appealed to the Court of Special Appeals or, upon certiorari, to the Court of Appeals in accordance with the Maryland Rules.

(c) The County Commissioners may file a responsive pleading and be a party to or file for judicial review in the Circuit Court, or take an appeal to the Court of Special Appeals or, upon certiorari, to the Court of Appeals, of any decision made under this Ordinance.

10.05 *Reports to the Board of County Commissioners.* The County Administrator shall immediately report to the Board of County Commissioners on appeals from decisions of the Planning Director including the issues raised, the decision, the decision on any further appeal, and any changes made to County policies and procedures as a result of the appeal.

11. Enforcement.

11.01 *Misdemeanor.* It is unlawful for any person or entity to enlarge, alter or change any use of property or to erect, construct, enlarge, alter, repair, move, improve, make, put together, or convert any building in the County, or attempt to do so, or cause the same to be done, without first paying any building excise tax imposed by this Ordinance. Any person or entity who shall so violate this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined up to five hundred dollars (\$500.00) or imprisoned for up to thirty (30) days, or be both fined and imprisoned. Each day that the violation continues shall be deemed a separate offense.

11.02 *Action to enforce.* In the event the building excise tax is not paid as required, the Office of the County Attorney or its designee may institute an action to recover the building excise tax and enjoin the use of the property until the building excise tax is paid. The person who fails so to pay shall be responsible for the costs of such suit, including reasonable attorney's fees.

11.03 *Lien and enforcement same as County real property taxes.* If not paid as required by this Ordinance, the building excise tax shall automatically constitute a lien against the property being developed and shall be levied, collected, and enforced in the same manner as are County real property taxes, and shall have the same priority and bear the same interest and penalties as County real property taxes for lien purposes.

12. Annual reports.

12.01 *Reports by the municipal corporations.*

(a) On or before September 30 of each year, each municipal corporation that retains revenues under § 9.03 of this Ordinance shall report annually to the Board of County Commissioners:

(i) The amount of revenues the municipal corporation received and the number of single-family and multifamily residential units that generated these revenues;

(ii) The amount of revenues remitted to the Board of County Commissioners and the amount retained by the municipal corporation; and

(iii) A detailed accounting of how the revenues that were retained by the municipal corporation were distributed among the acceptable uses specified in § 9.03(f) of this Ordinance and the specific projects for which the revenues were used.

(b) The report prepared by each municipal corporation shall be based on the fiscal year ending on June 30 of the year the report is submitted.

12.02 *Reports by the Director of Finance.* The Director of Finance shall prepare and submit an annual report on or before November 30 of each year to the Board of County Commissioners that shall include the following information for the prior fiscal year:

(a) The total amount of building excise taxes collected;

(b) The amount of funds appropriated from the special excise tax fund;

(c) The amount of funds expended from the special excise tax fund;

(d) The amount of funds from County sources appropriated for each of the categories set forth in § 8 of this Ordinance; and

(e) The funds remaining in the special excise tax fund.

12.03 *Reports by the Board of County Commissioners.* On or before December 31 of each year, the Board of County Commissioners shall:

(a) Report to the members of the Washington County legislative delegation:

(i) The amount of revenues by school district that the Board of County Commissioners received from nonresidential building types, residential units, and the number and types of units that generated these revenues; and

(ii) The manner in which the revenues were distributed among the acceptable uses specified in § 8 of this Ordinance and the specific projects for which the revenues were used.

(b) Submit to members of the Washington County legislative delegation the report prepared by each municipal corporation under § 12.01 of this Ordinance.

(c) The reports prepared by the Board of County Commissioners shall be based on the fiscal year ending on June 30 of the year the reports are submitted.

13. Advisory School Design Review Committee.

13.01 The Advisory School Design Review Committee is hereby created.

13.02 In this section, the following words shall have the meanings indicated.

(a) “Bidding documents stage” means the period of time following the completion of design where all documents are compiled and made suitable for advertisement and competitive bidding.

(b) “Committee” means the Advisory School Design Review Committee established by the Board of County Commissioners.

(c) “Design development stage” means the point when the overall design for a school capital improvement project is approximately 60% complete.

13.03 The Committee shall:

(a) Review all construction plans for school capital improvement projects that exceed \$2 million; and

(b) Ensure that the construction and operational and maintenance of efficiencies for each capital improvement project provide an effective educational environment in a cost efficient manner.

13.04 The Committee shall begin its duties specified in § 13.03 at the design development stage for each capital improvement project and conclude its review at the bidding document stage of each capital improvement project.

13.05 At the conclusion of the Committee’s review of a project, the Committee shall prepare a report summarizing its findings and making recommendations

regarding the capital improvement project to the Board of County Commissioners and the Board of Education.

13.06 Prior to advertisement for competitive bids, the Board of County Commissioners and the Board of Education shall jointly review the recommendations of the Committee.

13.07 The Board of County Commissioners shall have the responsibility of determining whether a capital improvement project may proceed to the bidding documents stage.

13.08 The Board of County Commissioners is not bound by the recommendations submitted by the Committee.

14. Agricultural land preservation

14.01 Each fiscal year, the Board of County Commissioners shall encumber at least \$1,000,000 of local funds for agricultural land preservation.