



FOR PLANNING COMMISSION USE ONLY
 Rezoning No. _____
 Date Filed: _____

WASHINGTON COUNTY PLANNING COMMISSION
 ORDINANCE TEXT AMENDMENT APPLICATION

 Applicant

- Property Owner Contract Purchaser
 Attorney Consultant
 Other: _____

 Address

 Primary Contact

 Phone Number

 Address

 E-mail Address

- Adequate Public Facilities Ordinance
 Forest Conservation Ordinance
 Subdivision Ordinance
 Solid Waste Plan

- Water and Sewer Plan
 Zoning Ordinance
 Other _____

Section No. _____

Please provide the proposed text on a separate sheet of paper as follows: strike-through should be used for deletions [~~deletions~~], unchanged wording in regular type, and new wording should be underlined [new wording].

 Applicant's Signature

Subscribed and sworn before me this _____ day of _____, 20____.

My commission expires on _____

 Notary Public

FOR PLANNING COMMISSION USE ONLY	
<input type="checkbox"/> Application Form <input type="checkbox"/> Fee Worksheet <input type="checkbox"/> Application Fee	<input type="checkbox"/> Proposed Text Changes <input type="checkbox"/> 30 copies of complete Application



DEPARTMENT OF PLANNING & ZONING
PLANNING | ZONING | LAND PRESERVATION | FOREST CONSERVATION | GIS

April 2025

APF-25-001

**APPLICATION FOR TEXT AMENDMENTS
WASHINGTON COUNTY ADEQUATE PUBLIC FACILITIES ORDINANCE &
WASHINGTON COUNTY BUILDING EXCISE TAX ORDINANCE**

STAFF REPORT AND ANALYSIS

Proposal: Application is being made to amend portions of Article II – Definitions, Article V – Schools and Article IX – Exceptions, Agency Participation of the Adequate Public Facilities Ordinance (APFO). In coordination with changes to sections of the APFO, amendments are also being proposed to sections 2, 3, 4, 5, 6, 8, 9, 10, 12, and 13 of the Building Excise Tax Ordinance (BETO).

Staff Report: The purpose of the APFO is to ensure that public facilities and services needed to support new development shall be available concurrently with the impacts of such new developments. It is used to measure the capacity of key infrastructure and services as well as provide methods to mitigate impacts from new development that might overburden those resources. The BETO was implemented as a revenue generating tool to assist with development and construction of needed infrastructure to support growth and development.

The amendments included within this request include: 1) adjusting the adequacy determination for elementary schools, 2) removing the Alternate Mitigation Contribution (AMC) provision thereby shifting some development mitigation fees from the APFO and including them in the BETO, 3) slightly increasing BETO fees to adjust for inflation, and 4) slightly adjusting the revenue share between specified categories in Section 8.03 of the BETO.

Analysis: The most significant change being proposed as part of these amendments is to remove the AMC from the APFO and shift some of those mitigation contributions into the BETO. Currently, if a new residential development causes a school district to become inadequate, the AMC can be used to move a new residential development forward by paying a pre-determined fee. If a development causes the State Rated Capacity (SRC) in a school district servicing the area to exceed 120%, the AMC is no longer available to use as a mitigation method. A proposal must be made to the Board of County Commissioners on how the developer intends to address the severe inadequacy of the school.

747 Northern Avenue | Hagerstown, MD 21742 | P: 240.313.2430 | F: 240.313.2431 | TDD: 7-1-1

WWW.WASHCO-MD.NET

The primary reason for this change relates to the inconsistent implementation of each jurisdiction APFO. Adoption of an APFO is at the discretion of any county or municipality in the State. APFOs may only be enforced in the jurisdiction that adopts an ordinance, therefore the APFO adopted by the County is not enforceable in any of our local municipalities. This has created an inequality related to school capacity mitigation between development under county jurisdiction vs. municipal jurisdiction.

Three municipalities (Hagerstown, Clear Spring, Sharpsburg) do not have an adopted APFO and therefore approve residential developments with no regard as to whether there is school capacity for the new students being generated by the development. This isn't really an issue in Clear Spring or Sharpsburg due to historically few new residential units being created in those areas. However, the City of Hagerstown has approved approximately 530 new residential lots within City limits that has and/or will produce approximately 321 elementary, 153 middle, and 158 high new students in some schools (elementary and high) where capacities are inadequate.

The six municipalities that have adopted APFOs are not consistently enforcing their ordinances. Most of the APFO's are vague and leave the decision of whether to enforce mitigation for schools up to the Town Planning Commission and Mayor and Council. This again results in residential developments creating numerous students in school districts that have inadequate capacity. This has resulted in an exacerbation of school capacity issues and a loss of potential revenue to offset the impact of the development on our schools.

Over the last 6 years (FY 2018-FY 2023) the County has collected \$1,427,933 in APFO fees and \$4,055,255 in Excise Tax (Total \$5,483,188). If the other municipalities in the county would have enforced an APFO similar to the county, an additional \$1,458,900 in revenue could have been realized. By shifting revenue collection from an APFO to the BETO, a more equitable level of execution and enforcement will occur in all of the county.

Unlike the APFO, the BETO is an ordinance that can be enforced across the entire county including municipalities. Currently, municipalities are permitted to keep a portion of the tax collected related to roads and general government capital projects if that municipality adopts an APFO that is 'substantially similar' to that of the County. As stated previously, problems are arising in the enforcement of the ordinance not necessarily the adopted text.

If the AMC is removed from the APFO, the following changes are recommended to the BETO to maintain revenue for necessary capital projects.

- Residential Construction: Increase from \$1.00 to \$2.00 per square foot of habitable gross sq. ft.
- Additions: Remain one-half the amount per square foot of residential construction.
- Non-residential, Non-Retail Construction: Increase from \$1.00 to \$1.50 per sq. ft. of gross area

- Non-residential, Retail Construction: Increase from \$1.00 to \$1.50 per sq. ft. of gross area
- Residential construction projects that have already paid an AMC in accordance with the current APFO shall receive credits of up to \$1.00 per sq. ft. of habitable gross sq. ft.

In addition, language is proposed to replace the AMC for developments that exceed 100% SRC but does not exceed 120% SRC that will limit the number of building permits that may be issued within an individual development to 25 units in one calendar year. There is also a provision for apartment buildings.

Other changes to the two documents include the following:

- Added a definition of affordable/workforce housing.
- Adjusted elementary school capacity standard from 90% of SRC to 100%.
- Added instructional language and mitigation options for projects that exceed 120% ARC and require an approved mitigation plan prior to final plan approval.
- Increased BETO rates slightly to account for inflation. Non-residential rates are proposed to increase as well as residential as delineated previously.
- Adjusted the allocation of excise tax from residential development to remove a 2% dedication to libraries and moving it into the allocation for roads bringing the total to 25% for the category. Libraries will be included in the list of general capital government expenses.
- Added an exemption from paying excise tax to new residential construction occurring in the Hancock and Cascade Elementary school districts.
- Removed language that requires municipalities to adopt an APFO that is substantially similar to the county in order to retain some tax revenue.

Staff Recommendation: Staff recommends approval of the amendments to both the APFO and BETO as presented. We would also request a deferred effective date for a period of 6 months to update our tracking and permitting processes.

Respectfully submitted,



Jill Baker, AICP
Director

ADEQUATE PUBLIC FACILITIES ORDINANCE

Adopted this 16th day of October, 1990.

This Ordinance is effective as of December 1, 1990.

Revision 1 - August 13, 1991

Revision 2 - August 31, 1993

Revision 3 - August 29, 1995

Revision 4 - November 26, 2002

Revision 5 – December 16, 2003
(Effective January 1, 2004)

Revision 6 – May 25, 2004

Revision 7 – November 1, 2005

Revision 8 – June 18, 2013

Revision 9 – October 22, 2013

Revision 10 - 2025

ADEQUATE PUBLIC FACILITIES ORDINANCE

ARTICLE I - PURPOSE

1.1 SHORT TITLE

This Ordinance shall be known and may be cited as the Adequate Public Facilities Ordinance of Washington County, Maryland.

1.2 PURPOSE

It is the purpose of the Board of County Commissioners of Washington County that public facilities and services needed to support new development shall be available concurrently with the impacts of such new developments. In meeting this purpose, public facility and service availability shall be deemed sufficient if the public facilities and services for new development are phased, or the new development is phased, so that the public facilities and those related services which are deemed necessary by the local government to operate the facilities necessitated by that new development, are available concurrently with the impacts of the new development.

ARTICLE II - DEFINITIONS

2.1 GENERAL

(a) For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. Words in the present tense include the future, the singular number includes the plural, and the plural includes the singular. The word "shall" is mandatory and the word "may" is permissive. The words "used for" shall include "arranged for," "designed for," "intended for", "maintained for," "constructed for", or "occupied for". The word "individual" shall mean natural person, joint venture, joint stock company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, association, club, company, corporation, limited liability company, real estate investment trust, business trust or similar legal entity or the manager, lessee, agent, servant, officer or employee of any of them. The word "land" shall include water surface and land under water. The term "Ordinance" shall refer to this Ordinance and all subsequent additions or amendments thereto.

(b) A Developer shall not avoid the intent of this Ordinance by submitting piecemeal applications for preliminary plats or site plans. However, a Developer may seek approval of only a portion of the subdivision or development, provided that the impact from all previously approved preliminaries or site plans from that development shall be considered during the adequate public facilities review of each subsequent portion of the development.

2.2 ADEQUATE PUBLIC FACILITIES

For the purpose of this Ordinance, the term “Adequate Public Facilities” shall be defined as those facilities relating to roads, sewerage disposal systems, schools, water supply and distribution systems, and interim fire protection systems meeting established minimum standards.

2.3 DEFINITIONS

2.3.01 Affordable (aka Workforce) Housing

In accordance with the Housing and Community Development Article of the Maryland Annotated Code §4-1801, affordable housing means residential dwelling units where housing costs (rent or mortgage payments) do not exceed 30% of a household's income and being affordable to households earning 60% or less of the area median income.

2.3.1 Agricultural Purposes

A parcel of land that has been determined by the Maryland Department of Assessments and Taxation as having an “Agricultural Use Assessment” or a parcel of land that is primarily involved in a bona fide and continuing agricultural activity, such as, the raising of farm products for use or sale, including animal or poultry husbandry, and the growing of crops such as grain, vegetables, fruit, grass for pasture or sod, trees, shrubs, flowers and similar products of the soil.

2.3.1.1 Background Enrollment Growth

The average annual impact of equated student enrollment changes during the preceding three (3) years in the school attendance areas serving the proposed development as determined in Section 5.4 with appropriate adjustments made in the

determination by the Board of Education to eliminate student enrollment changes caused solely by school redistricting.

2.3.2 Board of County Commissioners (Board)

The legislative body of Washington County, Maryland.

2.3.3 Board of Education (BOE)

The elected Board of Education of Washington County.

2.3.4 Comprehensive Plan

The Comprehensive Plan of the County.

2.3.5 County

Washington County, Maryland.

2.3.6 County Engineer

The duly designated Chief Engineer of Washington County, Maryland.

2.3.7 County Health Department

The Washington County Health Department.

2.3.8 Developer

Any individual commencing proceedings under this Ordinance to affect a subdivision or development of land for himself or for another.

2.3.9 Extraordinary Hardship

Extraordinary hardship is a condition that exists when strict compliance with this Ordinance would result in an unusually and extraordinarily severe financial economic impact on the owner or Developer.

2.3.10 Immediate Family Member

Immediate family member shall mean father, mother, step-father, step-mother, son, daughter, brother, sister, stepson, stepdaughter, grandchild.

2.3.11 Improvements

Improvements shall mean storm sewers, sanitary sewers, water supply lines, roads, curbs, gutters, gas lines, electricity lines, water lines, septic tanks, wells, walks, and other accessory works and appurtenances, dwellings, farm buildings, and other principal or accessory structures.

2.3.12 Lot

A parcel of real property marked by the Developer as a numbered, lettered or otherwise identified tract to be utilized as a unit of land intended for building development or a lot or parcel described by metes and bounds, the description of which has been recorded among the land records of Washington County.

2.3.12.1 Minor subdivision

A minor subdivision is the division of a lot, tract or parcel into seven (7) or fewer lots for the immediate or future transfer of property ownership.

2.3.13 New Development

New development consists of new subdivisions and site plans for new construction received for approval by the Washington County Planning Commission after the effective date of this Ordinance as set forth in Article XII. New development also consists of construction activity requiring a building and/or zoning permit but does not consist of construction activity for agricultural purposes provided that, after said development, the parcel does not lose the "Agricultural Use Assessment" classification as determined by the Department of Assessments and Taxation.¹⁰

2.3.14 Original Tract of Land.

A parcel of real estate unsubdivided as of the date of adoption of this Ordinance.

2.3.15 Planning Commission (Commission).

The Washington County Planning Commission.

2.3.16 Plat

A map, plan, chart or drawing indicating the subdivision or resubdivision of land filed or intended to be filed for the record.

2.3.16.1 Remaining Lands

The residual portion or tract of land which remains after lots or parcels have been subdivided from the original tract of land.¹¹

2.3.17 Residential Development

The term “residential development” as used in this Ordinance means any lot, building or portion thereof used exclusively for dwelling units, including concomitant uses, and other uses of a residential nature for the individuals residing in said dwelling units.

2.3.18 Right-of-Way

A land area designated, dedicated, or reserved for use as a highway, street, alley, interior walk, or for a drainage channel, or other public use.

¹⁰ Section 2.3.13 amended 8/31/93

¹¹ Section 2.3.16.1 added 8/31/93

2.3.19 Road

A public right-of-way, intended for vehicular traffic, including freeways, expressways, arterials, parkways, thoroughfares, collector streets, local streets, cul-de-sacs, marginal access streets, avenues, boulevards, lanes and other public ways, and as now or hereafter or otherwise designated.

2.3.20 Simplified Plat

The term “simplified plat” as used in this Ordinance is a map, plan, chart or drawing indicating the proposed subdivision or resubdivision of land filed or intended to be filed with the Planning Commission and where the intent of the subdivider is neither to develop the land nor to divide land containing existing development.

2.3.21 Site Plan

A drawing that shows all of the existing conditions of a specified area (the site) and all of the improvements and changes proposed to be made on the site. A site plan is the drawing required by the Zoning Ordinance for all new development and certain additions and must contain all applicable information as specified in the Zoning Ordinance.

2.3.21.1 State Rated Capacity

As used in this Ordinance, State Rated Capacity shall refer to the capacity of each school as determined by the state of Maryland. Portable classrooms shall not be used in computing the school capacity for the purposes of this Ordinance.

2.3.22 Subdivision Ordinance

The Washington County, Maryland Subdivision Ordinance, and all subsequent additions or amendments thereto.

2.3.23 Zoning Ordinance

The Zoning Ordinance of Washington County, Maryland, and all subsequent additions or amendments thereto.

DRAFT

ARTICLE V - SCHOOLS

5.1 ADEQUACY

All new residential development shall be served by public schools that:

(a) Are currently adequate; or

(b) Have construction of additional capacity funded and scheduled for completion within the same school attendance area in the current or the next year of the approved Washington County Capital Improvement Program (CIP) following final plat or site plan approval. Adequate is defined in Section 5.4.1 below. The additional capacity funded and scheduled shall be exclusive of any capacity created pursuant to a developer-funded mitigation program; or

(c) Have been identified by the Board of Education (BOE) as part of an approved redistricting plan scheduled to occur in the same school year or the school year following final plat or site plan approval that will render the public schools adequate.

5.1.1 CAPACITY CREATED BY MITIGATION PROGRAM

Construction of capacity that is funded and to be created by a mitigation program may not be used in a determination of adequacy for any Developer other than the Developers who are parties to the mitigation program.

5.2 EXEMPTIONS

Article V of this Ordinance does not apply to:

(a) New development to be developed exclusively for non-residential uses;

³³ Article V repealed and reenacted 12/16/03

³⁴ Article V amended 11/1/05.

³⁵ Article V amended 10/22/13 (APF-13-002)

(b) New development to be developed and managed according to the applicable regulations and guidelines of the Federal Fair Housing Act and the Housing for Older Persons Act;

(c) Public or private elementary and secondary schools, and public safety facilities; or

(c) Minor Subdivisions.³⁸

5.3 DATA ON WHICH ADEQUACY SHALL BE DETERMINED.

The BOE shall provide actual enrollment data to the Board of County Commissioners for the last school day of September, December, March and June and the State Rated Capacity for each elementary and secondary school.

5.4 DETERMINATION OF ADEQUACY

5.4.1 The Planning Commission shall determine whether public school facilities are adequate for the proposed new development upon recommendation by the Planning Department after evaluating enrollment information provided by the BOE. The Planning Commission shall determine that a school is adequate if the school has the capacity as follows:

(a) Elementary, middle and high schools are adequate if the school has available capacity to accommodate student enrollment, including approved new development without exceeding the State Rated Capacity (SRC).

(b) Available capacity for individual schools shall be determined in accordance with Section 5.5, below.

³⁸ See Section 2.3.12.1 Minor Subdivision. A minor subdivision is the division of a lot, tract or parcel into seven (7) or fewer lots for the immediate or future transfer of property ownership.

(c) Final approval will not be granted for developments in the review process until schools obtain adequate status through the determination made according to the procedures described in Sections 5.5 and 5.6 below.

5.5 MEASURING FOR AVAILABLE CAPACITY

(a) Adequacy of every elementary, middle and high school serving the proposed development shall be tentatively measured at the time of preliminary consultation and preliminary plat review and shall be finally measured and determined as of the date of final plat or site plan submission, or the first date upon which all necessary documentation and materials have been submitted, whichever occurs last, based upon data published by the BOE.

(b) If approval has not been received from the Planning Commission within twelve (12) months of the date of plan submission, the most recent quarterly school enrollment data must be utilized by the Commission for APFO review unless a delay occurs not attributable to the applicant.

(c) For determining adequacy, enrollment shall mean the total of the BOE official enrollment figures, background enrollment, pupils generated from the proposed development, and pupils generated from other previously approved developments, including developments in municipalities.

(d) On a biennial schedule, student yield from approved development may be subtracted from the equation to determine adequacy in an amount equal to the number yielded by the dwelling units constructed.

(e) Pupil generation rates shall be determined by the Board of County Commissioners with advice from and consultation with the BOE and shall reflect the characteristics of the school attendance area within which the proposed development is located.

5.6 OPTIONS FOR MITIGATION OF INADEQUATE SCHOOL CAPACITY

(a) If a school is not adequate as defined in Section 5.4.1 but does not exceed 120% of State Rated Capacity:

- i. The Developer and/or Home Builder shall be subject to an annual permit limitation of not more than 25 dwelling unit permits per calendar year. Permits for multi-family apartment and condo units shall be limited to a permit for one structure to contain up to 35 dwelling units per calendar year. Notes shall be placed on record plats referring to the restrictions delineated in this section.

Permit allocations are assigned based on the master plan development not by phases or other subsets. Permit allocations may not be transferred to other

developments. Permit applications that cannot be permitted due to the annual limitation shall be deferred to the subsequent year, subject to the same review and mitigation requirements. Unused allocations of permits may not be carried over into a new calendar year.

Emergency or Public Benefit Projects: Development proposals that directly address public health, safety or welfare as delineated in Section 9.3A, may be exempt from the permit limitation or permitted outside of the annual cap as determined and approved by the Board.

- ii. If a school is not adequate as defined in section 5.4.1 and an adjoining school district at the same level is at least twenty (20%) percent below State Rated Capacity, then the Developer may request the BOE to determine the viability of redistricting to accommodate the new development. If the BOE determines that redistricting is a viable alternative, and the BOE approves a specific redistricting plan that would result in all the schools serving the proposed development meeting the standards established in Section 5.4.1, then the school shall be considered adequate.

(b) If a school is not adequate as defined in Section 5.4.1 and the development proposal exceeds 120% of the SRC, the Developer shall be required to mitigate the impact of the proposed development by providing one or more of the following mitigation measures to receive final plat approval. The Board of County Commissioners, at their sole discretion, may approve a mitigation proposal under this section. Failure to obtain an approved mitigation plan within two (2) years from the date of final plan submittal shall result in denial of the final plat and/or site plan.

- i. Facility Improvements. A Developer may propose construction of capital facility improvements to the inadequate school(s) affected by the development when it has been determined that said contribution(s) will provide impactful relief of overcapacity issues in a school within a five-year period starting from the date of final plat approval. Temporary or portable classrooms shall not be included as part of any mitigation plan under this subsection. If approved as a mitigation plan, the Developer will be required to sign a Memorandum of Agreement with the County affirming their responsibility and commitment to complete the construction project. The Board may, at their sole discretion, require a bond to be posted to ensure that the project will be completed.

Any Developer proposal to create improvements to meet adequacy shall be submitted to the Department of Planning and Zoning to review with the BOE for guidance and recommendations on the proposed improvements. Plans shall be reviewed for consistency with any BOE adopted mitigation policy then in effect and the most current Education Facilities Master Plan. Mitigation plans along with staff recommendations will be forwarded to the Board for discussion and deliberation by the Department of Planning and Zoning.

ii. Redistricting. If a school is not adequate as defined in section 5.4.1 and an adjoining school district at the same level is at least twenty (20%) percent below State Rated Capacity, then the Developer may request the BOE to determine the viability of redistricting to accommodate the new development. If the BOE determines that redistricting is a viable alternative, and the BOE approves a specific redistricting plan that would result in all the schools serving the proposed development meeting the standards established in Section 5.4.1, then the school shall be considered adequate.

iii. Financial contributions. Monetary contributions to a public facility improvement fund earmarked for public school construction may be proposed when it has been determined that said contribution(s) will provide impactful relief of overcapacity issues in a school within a five-year period starting from the date of final plat approval. Use of this mitigation option will require the Developer to provide a detailed analysis of the monetary contribution being proposed. The analysis shall include:

1. A monetary figure based on the proposed cost per dwelling unit.
2. A narrative explaining the rationale and/or formulas that resulted in the cost per dwelling unit.
3. A narrative explaining how the monetary contribution will provide impactful relief in the affected school district(s) within five years of final plat approval.

Financial contributions must be paid prior to final plat approval. Any sums paid as part of the mitigation plan are not refundable.

iv. Other mitigation strategies. The Developer may propose an alternative method of mitigation that must provide impactful relief for overcapacity issues in a school within a five-year period starting from the date of final plat approval. Use of this mitigation option must be accompanied by a detailed narrative and/or financial analysis that support their desire to use an alternative mitigation plan.

5.7 RESIDENTIAL BUILDING PERMIT APPROVAL

5.7.1 The Board of County Commissioners shall have the authority to limit the number of building permits in any school attendance area. The decision to limit building permits shall be based on the recommendation of the Planning Commission upon receipt of a recommendation from the BOE taking into consideration the adequacy of the school attendance area and enrollment capacity in immediately adjacent school attendance areas.

5.7.2 The Board of County Commissioners shall have the authority to cap the number of residential building lots approved for development on an annual basis.

ARTICLE IX - EXCEPTIONS, AGENCY PARTICIPATION

9.3A In its sole discretion, the Board of County Commissioners or its designee may approve a mitigation program that allows a development to proceed in a school district otherwise designated as inadequate for development under the following conditions:

(a) The Board of County Commissioners determines that approving this development benefits the community by:

(i) encouraging certain types of development that offer advantages to the community, including but not limited to the following:

- (1) development in designated revitalization areas;
- (2) renovation of abandoned or under-utilized structures;
- (3) affordable or workforce housing as defined in 2.3.01 or community revitalization projects; or
- (4) developments with preliminary plat approval prior to July 1,

2005.

DRAFT

BUILDING EXCISE TAX ORDINANCE
FOR WASHINGTON COUNTY, MARYLAND

Adopted June 17, 2003
Effective July 1, 2003

Revision 1 (Amended)-Adopted June 22, 2004
Effective as of July 1, 2004.

Revision 2 - Adopted and effective October 12, 2004

Revision 3 - adopted July 12, 2005
Effective as of July 12, 2005.

Revision 4 - adopted May 2, 2006.
Effective as of May 2, 2006, except as otherwise provided herein.

Revision 5 - Repealed and reenacted, with amendments, on June 17,
2008 Effective July 1, 2008

Revision 6 - Repealed and reenacted, with amendments, on June 23,
2009 Effective June 26, 2009

Revision 7 (Amended)-Adopted March 1, 2011
Effective March 1, 2011

Revision 8 (Amended) - Adopted September 13, 2011
Effective September 13, 2011

Revision 9 (Amended) - Adopted August 28, 2012
Effective August 28, 2012

Revision 10 (Amended) - Adopted March 26, 2013
Effective March 26, 2013

Revision 11 (Amended) - Adopted August 4, 2015
Effective August 4, 2015

BUILDING EXCISE TAX ORDINANCE FOR WASHINGTON COUNTY, MARYLAND

Revision 12 (Amended)-Adopted September 10, 2019
Effective September 10, 2019

Revision 13 (Amended) - Adopted June 28, 2022
Effective June 28, 2022

Revision 14 (Amended) – Adopted
Effective

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 Permits and Inspections* means the Director of the Division of Permits and Inspections 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'etre*. 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 \$2.00 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 *Credits from previous Adequate Public Facilities Ordinance (APFO) regulations.* Residential units that have paid an Alternate Mitigation Contribution (AMC) in accordance with preceding APFO requirements to gain final plat approvals shall receive credit for the first \$1.00 per square foot of building excise tax. The Department of Planning and Zoning shall provide a report to the Department of Permits and Inspections delineating units that may receive this credit.

3.04 *Calculation of amount.* The amount of building excise tax to be paid by an applicant shall be determined by the Director of Permits and Inspections.

4. Nonresidential Construction

4.01 *Nonresidential nonretail construction.* The building excise tax for nonresidential nonretail construction is \$1.50 per square foot of the gross square footage.

4.02 *Nonresidential retail construction.* The building excise tax for nonresidential retail construction is \$1.50 per square foot of the first 15,000 square feet of gross square footage and \$3 per square foot of any gross square footage over 15,000 square feet.

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 Director of Permits and Inspections.

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 Director of Permits and Inspections 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.

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 non-residential 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.

* 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.

6.09 *Fire, Rescue, or Ambulance Companies.* No building excise tax shall be imposed upon structures:

- (a) Owned by corporations authorized to provide fire protection or firefighting service, rescue, or ambulance service as described in Section 10-401 of the Code of Public Local Laws for Washington County, Maryland; and used primarily for the delivery of fire, rescue, or ambulance service.

6.10 Residential construction occurring within the Hancock and Cascade Elementary School attendance districts shall be exempt from excise tax for a period of ten (10) years from the effective date of this amendment (Revision 14). This exemption also applies to construction of residential additions outlined in 3.03.

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 non-residential 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 §7.05.

7.03 *Conversion from residential to non-residential 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.

7.04 *Conversion from residential to non-residential 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.

7.05 *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 non-lapsing 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 – non-residential 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) 25% for roads;
- (c) 5% for general county government capital improvement expenditures except roads.

8.04 The revenues from the building excise tax imposed on residential construction used for general county government improvement expenditures 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*

(a) All municipal corporations located within Washington County 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) shall disqualify that municipality from retaining any funds for administrative costs provided for in §9.03 of this Ordinance for the period of non-compliance.

(c) 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 general county government capital expenditures 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~~

(d) For non-residential construction, the municipal corporation:

(i) Shall assist the County Commissioners in the collection of 75% of the building excise tax on non-residential construction as provided under § 8.02 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.

(e) The municipal corporation is not required to retain any portion of the building excise tax as provided under §9.02.

(f) Any portion of the building excise tax not retained by a municipal corporation under §§9.02(c).(ii) or 9.02(d)(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 §9.02(f) shall disqualify that municipality from retaining any funds for administrative costs provided for in §9.03 of this Ordinance for the period of non-compliance.

(g) The director of finance of a municipal corporation retaining any revenue from the building excise tax under §§9.02(c)(ii) or 9.02(d)(ii) shall deposit the revenues into a non-

lapsing special fund.

(h) The revenues from the municipal corporation's special fund indicated in §9.02(g) may only be used for the capital costs of public works, capital 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.

~~(i) 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 §9.02(h) of this section, and does not revert to the general fund of the municipal corporation.

9.03 *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 §9.02, 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 §9.03(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 Director of Permits and Inspections, provided that either:

- (a) Processing of the building permit is delayed pending the decision
- (b) of the County Administrator; or
- (c) 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 decision of the Director of Permits and Inspections is erroneous.

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 Director of Permits and Inspections under this Ordinance shall be *de nova*. 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 nova*.

(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

(d) 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 Director of Permits and Inspections 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

BUILDING EXCISE TAX ORDINANCE FOR WASHINGTON COUNTY, MARYLAND
~~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 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

BUILDING EXCISE TAX ORDINANCE FOR WASHINGTON COUNTY, MARYLAND
~~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.

13.01