

ENROLLED

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

LEGISLATIVE SESSION, 2016

LEGISLATIVE BILL 2016 - 12

Introduced: September 20, 2016

By: The Council President at the request of the County Executive.

AN ACT to repeal Chapter 130 of the Wicomico County Code, titled "Development Impact Fees."

WHEREAS, Wicomico County desires to encourage new residential development, to stimulate job creation, and to support growth in the economy; and

WHEREAS, it appears advisable, upon the favorable recommendation of the County Executive to repeal Chapter 130 of the Wicomico County Code, titled "Development Impact Fees," in its entirety.

SECTION I: BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND, IN LEGISLATIVE SESSION, that Chapter 130, "Development Impact Fees," be repealed in its entirety.

* * *

CHAPTER 130

~~§ 130-1. Legislative authority.~~

~~Wicomico County has the power and authority to enact development impact fees by virtue of public law § 203-22 under Article IX, Development Impact Fees, (1992) and Article 23 of the Public Local Laws of Maryland.~~

~~§ 130-2. Definitions.~~

~~The following definitions apply to these regulations:~~

~~AGRICULTURAL PURPOSES~~

~~The production, processing, or harvesting of crops, vegetation, or animals for human or animal consumption or use, and includes without limitation horticultural and floricultural wholesale operations, greenhouses, sod production, wholesale nurseries, viticulture (grape growing), orchards and aquaculture.~~

~~APPLICANT~~

~~Any individual, corporation, or other legal entity which files an application with the county or with any municipality for a building permit or zoning certificate.~~

~~APPROPRIATION or TO APPROPRIATE~~

~~An action by the County Council to identify specific public facilities for which development impact fee funds may be utilized. "Appropriation" shall include, but is not limited to:~~

~~A.~~

~~Listing of a public facility in the adopted county budget, capital improvements program, or capital budget;~~

~~B.~~

~~Execution of a contract or other legal encumbrance for construction of a public facility using development impact fee funds in whole or in part; or~~

~~C.~~

~~Actual expenditure of development impact fee funds through payments made from a development impact fee account or subaccount.~~

~~BUILDING PERMIT/ZONING CERTIFICATE~~

~~A permit or other final approval required as a condition precedent to the construction, extension, conversion, alteration, or reconstruction of a structure required under:~~

~~A.~~

~~Chapter 117 (Building Construction) and Chapter 225 (Zoning); or~~

~~B.~~

~~The applicable building code or zoning ordinance of a municipal corporation.~~

~~CAPITAL BUDGET~~

~~The budget adopted by the County Council from time to time, for the purpose of identifying and financing needed capital improvements.~~

~~CAPITAL IMPROVEMENT~~

~~Land acquisition, site development, site-related improvements, purchase of equipment, or construction of structures necessary for the expansion or construction of public facilities in the county, including all related costs.~~

~~CAPITAL IMPROVEMENT PROGRAM~~

~~The schedule of capital improvements to be undertaken by the county as determined from time to time by the County Council or as set forth in the capital budget.~~

~~CREDIT AGREEMENT~~

~~An agreement made pursuant to this chapter, which provides for a credit of certain required development impact fees in exchange for the provision of dedicated lands or the construction of facilities that are consistent with, add to, or complement the county capital program.~~

DEPARTMENT

~~The Wicomico County Department of Planning, Zoning and Community Development.~~

~~{Amended 12-18-2012 by Bill No. 2012-13}~~

DEVELOPER

~~Any individual, firm, corporation, partnership, association, society, syndication, trust, or other legal entity that is responsible for creating a demand for county facilities and services.~~

DEVELOPMENT

~~Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, dumping, extraction, dredging, grading, paving, storage of materials or equipment, land excavation, land clearing, land improvement, landfill operation, or any combination thereof; and any change in the use of a building for which a building permit/zoning certificate is required by law.~~

DEVELOPMENT IMPACT FEE

~~A fee levied pursuant to this chapter as a condition of issuance of a building permit or zoning certificate, and which is intended to fund capital improvements and public facilities in the county needed to serve new growth and development activity in the county and municipal corporations. It may also be referred to as an "impact fee."~~

EXEMPTION

~~A waiver, either in whole or in part, in the amount of impact fees assessed against new development pursuant to the terms of this chapter, and based on the criteria set forth herein.~~

IMPACT FEE SUBAREA

~~A geographically defined area in the county that has been designated by the County Council as an area in which new development will create the need for specified capital improvements to be funded in part or in whole by development impact fees.~~

IMPACT FEE SUBAREA MAP

~~The map of impact fee subareas adopted by the County Council in which development impact fees for specified capital improvements are imposed.~~

MUNICIPALITY

~~Any one of the incorporated municipalities of the county.~~

NEW DEVELOPMENT

~~Any development or development activity for which a building permit or zoning certificate is issued after the effective date of this chapter, and which increases the number of dwelling units.~~

~~PERSON~~

~~Includes an individual, a corporation, a partnership, an incorporated association or any other similar entity, but shall not include a county, state or federal governmental entity.~~

~~PUBLIC FACILITIES~~

~~Public works, improvements, and facilities, including government facilities, bridges, streets and roads, parks and recreational facilities, libraries, schools, and storm drainage facilities required to accommodate new construction or development.~~

~~PUBLIC FACILITIES EXPENDITURES~~

~~Funds or resources appropriated or dedicated in connection with the planning, design, engineering, and construction of public facilities; planning, legal, appraisal, and other costs related to the acquisition of land, financing, and development costs, the costs of compliance with purchasing procedures and applicable administrative and legal requirements, and all other necessary or incidental costs to provide the public facility.~~

~~RESIDENTIAL DEVELOPMENT~~

~~Any new development for residential use.~~

~~RESIDENTIAL USE~~

~~Any use approved by the county or a municipal corporation that is for existing or proposed dwelling units, including, but not limited to, single family, multifamily, duplex, manufactured, or modular homes, and apartments, including second floor apartments.~~

~~SITE RELATED IMPROVEMENT~~

~~Off site capital improvements or facilities made necessary by new development, including, but not limited to, roadway construction, upgrades or improvements, and traffic control devices or measures.~~

~~ZONING CERTIFICATE~~

~~A permit:~~

~~A.~~

~~For the use or occupancy of a structure where a building permit is not required but the development of the structure will produce additional dwelling units; and~~

~~B.~~

~~That is required under:~~

~~(1)~~

~~Chapter 117 (Building Construction) or Chapter 225 (Zoning); or~~

~~(2)~~

~~The applicable building code or zoning ordinance of a municipal corporation.~~

~~§ 130-3. Purpose.~~

~~The purpose of this chapter is to promote the health, safety, and general welfare of the residents of Wicomico County and its municipal corporations by:~~

~~A.~~

~~Establishing uniform procedures for the imposition, calculation, collection, expenditure, and administration of development impact fees imposed on new residential development;~~

~~B.~~

~~Requiring all new residential development to contribute its fair and proportionate share towards the costs of capital improvements reasonably necessitated by such new development;~~

~~C.~~

~~Providing a means of financing public facilities needed to accommodate new residential development in a safe and timely manner;~~

~~D.~~

~~Ensuring that the new residential development paying development impact fees reasonably benefits from the appropriation of impact fees to fund public facilities provided to accommodate such new development;~~

~~E.~~

~~Implementing the Wicomico County Comprehensive Plan and capital budget by seeking to ensure that adequate public facilities are available in a timely and well-planned manner; and~~

~~F.~~

~~Ensuring that all applicable legal standards and criteria are properly incorporated in these procedures.~~

~~§ 130-4. Effect on other chapters.~~

~~A.~~

~~This chapter may not be construed to alter, amend, or modify any provision of Chapter 117 (Building Construction), Chapter 200 (Subdivision Regulations), or Chapter 225 (Zoning) of this Code. The provisions of those chapters shall be operative and remain in full force and effect notwithstanding any contrary provisions, definitions, or intentions that are or may be expressed or implied in this chapter.~~

~~B.~~

~~Payment of development impact fees shall not entitle the applicant to a building permit or zoning certificate unless all other applicable federal, state, county, and municipal statutes, ordinances, and regulations concerning land use, zoning, planning, forest conservation, critical area, sewage disposal, platting, subdivision, and other laws, requirements, standards, and conditions have been met, and all applicable permit requirements have been fulfilled. All of the foregoing prerequisites are independent of and in addition to the requirement for payment of a development impact fee.~~

~~C.~~

~~This chapter, including the specific development impact fee provisions for particular public facilities, shall not affect, in any manner, the permissible use of property, density or intensity of development, design and improvement standards, or other applicable standards or requirements of land development regulations of the county or any municipal corporation.~~

~~§ 130-5. Establishment of impact fee subareas.~~

~~A.~~

~~The County Council may establish impact fee subareas to ensure that collection of development impact fees is more directly tied to the expenditure of such fees for public facilities made necessary by new development.~~

~~B.~~

~~The County Council may amend the boundaries of any impact fee subarea, from time to time, as necessary or desirable to carry out the purposes of this chapter or to comply with applicable legal requirements for collection/expenditure of development impact fees.~~

~~§ 130-6. Applicability of development impact fees.~~

~~A.~~

~~Any person who is granted a building permit/zoning certificate for purposes of constructing new residential dwelling units shall be required to pay school impact fees in the manner and amount set forth in this chapter.~~

~~B.~~

~~This chapter shall apply to all new residential development within the county, including new residential development which takes place within the boundaries of any municipality.~~

~~C.~~

~~The following land use types may be exempt, either in whole or in part, from the requirements of this chapter:~~

~~(1)~~

~~No development impact fee shall be imposed on new development for which a building permit/zoning certificate has been issued prior to the effective date of this chapter.~~

~~(2)~~

~~No development impact fee shall be imposed on any new residential development which does not add a new dwelling unit. No impact fee shall be imposed for alteration or expansion of an existing dwelling unit where no additional dwelling unit is created.~~

~~(3)~~

~~No development impact fee shall be imposed on developments that are the subject of a valid development rights and responsibilities agreement or other agreement to which the county is a party that contains provisions in conflict with this chapter, but only to the extent of the conflict or inconsistency.~~

~~(4)~~

~~No development impact fees shall be imposed on the development of public facilities by the State of Maryland, the county, any municipality or the federal government.~~

~~(5)~~

~~No development impact fees shall be imposed on farm structures, defined as any building or structure used for agricultural purposes.~~

~~(6)~~

~~No development impact fees shall be imposed on housing constructed by a public housing authority, or on housing constructed by a public or private organization under a binding agreement that directly benefits households with an income not exceeding 80% of the median for Wicomico County, adjusted for household size as determined by the U.S. Department of Housing and Urban Development.~~

~~[Amended 10-17-2006 by Bill No. 2006-10]~~

~~(7)~~

~~The development or construction of age-restricted adult or senior citizen housing shall be exempt from payment of a public school development impact fee, provided that:~~

~~[Added 10-17-2006 by Bill No. 2006-9]~~

~~(a)~~

~~All such housing shall be developed in accordance with the terms and provisions of the federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3607.~~

~~(b)~~

~~All such housing shall contain a deed restriction recorded against the property, in form satisfactory to the County Attorney, which deed restriction shall provide that:~~

~~[H]~~

~~Except as permitted by the federal Fair Housing Act, as amended, such housing shall be restricted to occupancy by persons 55 years or older;~~

~~{2}~~

~~No student enrolled in the public school system of Wicomico County shall reside at the premises;~~

~~{3}~~

~~No person under the age of 19 years shall reside within any such housing unit; and~~

~~{4}~~

~~The deed restriction shall provide that in the event that the above restrictions are ever modified or violated, the owner of the property at the time the restrictions are modified or violated shall pay to the county the then-current public school development impact fee.~~

~~(e)~~

~~The County Council may adopt such administrative regulations and guidelines and provisions for enforcement as it deems appropriate to implement this section and ensure that any housing exempted from payment of the public school development impact fee under this section contains adequate age and occupancy restrictions.~~

~~D.~~

~~Impact fees for certain public facilities shall be collected and spent within a defined geographical area. The impact fee subareas are described in § 130-17 of this chapter.~~

~~E.~~

~~The county shall collect development impact fees on new residential development within municipal corporations prior to issuance of a building permit or zoning certificate as required by this chapter. No municipal corporation shall issue a building permit or zoning certificate until the applicant demonstrates that all impact fees required by this chapter have been paid to the county.~~

~~§ 130-7. Annual review and adjustments.~~

~~A.~~

~~On or before March 1 of each year after adoption of this chapter, and prior to County Council adoption of the annual budget and capital improvements program, the Director of Planning, Zoning and Community Development, or designee, shall coordinate the preparation and submission of an annual report to the County Council on the subject of development impact fees. The annual report may include any or all of the following:~~

~~(1)~~

~~Recommendations for amendments, if appropriate, to these procedures or to specific ordinances adopting development impact fees for particular public facilities;~~

~~(2)~~

~~Proposed changes to the boundaries of impact fee subareas;~~

~~(3)~~

~~Proposed changes to development impact fee schedules as set forth in the ordinances imposing and setting development impact fees for particular public facilities;~~

~~(4)~~

~~Proposed changes to any development impact fee calculation methodology; and~~

~~(5)~~

~~Any other data, analysis, or recommendations as the Finance Officer, or designee, may deem appropriate, or as the County Council may request.~~

~~B.~~

~~The Director of Planning, Zoning and Community Development shall submit the annual report to the County Council, who shall receive the annual report and who may take such actions as it deems appropriate, including, but not limited to, requesting additional data or analyses and holding public workshops and public hearings.~~

~~C.~~

~~On July 1 of each year thereafter in which this chapter is in effect, the amount of any development impact fee may be automatically adjusted to account for inflationary increases in the cost of providing public facilities utilizing the most recent twenty city annual national average data from the Engineering News Record Construction Cost Index.~~

~~(1)~~

~~The Director of Planning, Zoning and Community Development or designee shall make the automatic annual adjustment unless the County Council has, in its annual review, determined an alternate adjustment.~~

~~(2)~~

~~Nothing herein shall prevent the County Council from electing to retain existing development impact fees for any given fiscal year.~~

~~§ 130-8. Development impact fees.~~

~~The development impact fees are established based on the following principles:~~

~~A.~~

~~In no event shall the fee charged be more than the costs incurred by the county.~~

~~B.~~

~~Fees shall be based on data provided by Wicomico County service agencies, comparison fee data provided by other states and Maryland counties.~~

~~C.~~

~~Where appropriate, development impact fees will be charged by the county for projects with specific impacts on public services for public facilities.~~

~~D.~~

~~Impact fees are for growth-related expenses only, and are not intended for on-going operating, repair, alteration, maintenance or replacement of capital facilities. The objective is to ensure that there are adequate capital facilities to serve new development.~~

~~§ 130-9. Imposition and enforcement of development impact fees.~~

~~A.~~

~~A building permit or zoning certificate shall not be issued by the county or a municipal corporation for a new development until the development impact fees required under this chapter have been calculated and paid. The amount of the development impact fee due is the amount of the fee in effect on the date of application for a building permit or zoning certificate or issuance of the permit whichever is earlier.~~

~~B.~~

~~In the event new residential development is undertaken without the payment of all applicable development impact fees, the development impact fees shall:~~

~~(1)~~

~~Be a lien against the site of development;~~

~~(2)~~

~~Be levied, collected, and enforced in the same manner as real property taxes imposed by the county; and~~

~~(3)~~

~~Have the same priority and bear the same interest and penalties as real property taxes.~~

~~C.~~

~~In the event a development impact fee is not paid as required by this chapter, the County Attorney may institute an action to recover the fee and enjoin the use of the property until the fee is paid. The person who fails so to pay shall be responsible for the costs of such suit, including reasonable attorney's fees.~~

~~§ 130-10. Calculation of development impact fees.~~

~~A.~~

~~An applicant shall be notified by the county or by the municipal corporation within which the new residential development is located of the applicable development impact fee requirements at the time of application for a building permit or zoning certificate. At such time, the development impact fees shall be calculated by the Director of Planning, Zoning and Community Development, or designee, and the applicant shall pay the same to the county prior to the issuance of a building permit or zoning certificate.~~

~~B.~~

~~Calculation.~~

~~(1)~~

~~Upon receipt of an application for a building permit or zoning certificate, the Director of Planning, Zoning and Community Development, or designee, shall determine:~~

~~(a)~~

~~Whether the proposed new development constitutes a residential or nonresidential use;~~

~~(b)~~

~~The specific type of residential development, if applicable;~~

~~(c)~~

~~If residential, the number of new dwelling units; and~~

~~(d)~~

~~If applicable, the development impact fee subarea or subareas in which the new development is located.~~

~~(2)~~

~~The calculation of development impact fees due from a mixed-use development shall be based upon the development impact fee for schools generated by each residential type in the mixed-use development.~~

~~(3)~~

~~The calculation of development impact fees due from a phased new development shall be based upon the development impact fees due for each specific residential type within the phase of development for which building permits or zoning certificates are requested.~~

~~(4)~~

~~After making these determinations, the Director of Planning, Zoning and Community Development, or designee, shall calculate the applicable development impact fee by multiplying the demand added by the new development, measured by the number of new dwelling units, by the amount of the applicable development impact fee per unit of development, and incorporating any applicable credit made pursuant to this chapter.~~

~~§ 130-11. Development impact fee credits.~~

~~A.~~

~~The Director of Planning, Zoning and Community Development shall grant a credit against any development impact fee imposed by this chapter upon any new residential development where the applicant has negotiated and entered into a credit agreement with the county to dedicate land or construct capital improvements, which:~~

~~(1)~~

~~Are consistent with, add to, or complement the county's capital program;~~

~~(2)~~

~~Are funded by development impact fee revenue;~~

~~(3)~~

~~Are of the same category of public facility impacted by the proposed new residential development;
and~~

~~(4)~~

~~Will be constructed or dedicated in accordance with a schedule set forth in the capital program or credit agreement.~~

~~B.~~

~~No credit shall exceed development impact fees imposed by this chapter for the proposed new residential development.~~

~~C.~~

~~The determination of the credit shall be undertaken through the submission of a proposed credit agreement to the Planning Officer, which shall include the following:~~

~~(1)~~

~~A proposal to dedicate specific capital assets or to construct specific capital improvements that will be dedicated or constructed in lieu of the required development impact fee, and the time by which the capital assets will be dedicated or the capital improvements will be constructed; and~~

~~(2)~~

~~The fair market value of the assets to be dedicated, supported by independent appraisal(s), and the projected costs for the suggested capital improvements, which shall be based on local information for similar capital improvements, along with a construction timetable for the completion thereof. Such estimated costs shall include the cost of construction, labor and materials, lands, easements and rights, surveys, plans and specifications, engineering and legal services, and all other expenses necessary or incident to such construction.~~

~~(3)~~

~~The proposed plan and cost estimates shall be prepared by a person or persons qualified in the provision of the particular capital improvement, impact analysis, and economics.~~

~~D.~~

~~If the development site or the land or dedication of any structure for credit is located within a municipal corporation, the Planning Director of the municipal corporation shall be consulted regarding the proposed conveyance or dedication.~~

~~E.~~

~~Within 60 working days of the submission of the proposed credit agreement, the Director of Planning, Zoning and Community Development shall determine if the proposed agreement is complete. If it is determined that the proposed credit agreement is not complete, the Director of Planning, Zoning and Community Development shall send a written statement to the applicant outlining the deficiencies, and no further action shall be taken until all deficiencies have been corrected.~~

~~F.~~

~~Once the Director of Planning, Zoning and Community Development determines the proposed credit agreement is complete, within 60 working days, the Director of Planning, Zoning and Community Development shall approve the agreement if it is determined that the proposed capital improvements are consistent with and implement the capital improvement program, as it applies to the specific category of capital improvement. If, within this time period, the Director of Planning, Zoning and Community Development determines that either the suggested capital improvements are not consistent with or do not implement the capital improvement program, or that the proposed costs are not acceptable, the Director of Planning, Zoning and Community Development shall propose changes to the agreement that are consistent with this section.~~

~~G.~~

~~If the Director of Planning, Zoning and Community Development approves the proposed credit agreement, or if the changes proposed by the Director of Planning, Zoning and Community Development are acceptable to the applicant, the credit agreement shall be prepared and forwarded to the County Council for final approval and execution. The County Council may approve, disapprove, or modify the proposed credit agreement, in whole or in part, and may make any decision or determination that, in its judgment, may be necessary or prudent to protect the public interest or promote the purposes of this chapter.~~

~~H.~~

~~Upon execution of the credit agreement, the balance of development impact fees due, if any, shall be paid in accordance with this chapter and any land dedicated pursuant to the credit agreement shall be conveyed in fee simple to the County Council free and clear of all liens and encumbrances.~~

~~I.~~

~~If the credit agreement requires dedication of assets other than land, the applicant shall execute such deeds, leases, easements, and other instruments in a form satisfactory to the County Attorney as may be necessary to convey the same to the county for public purposes no later than the time the development impact fees would otherwise be due.~~

~~J.~~

~~Any portion of the development impact fee represented by a credit for construction shall be deemed paid when the construction is completed and accepted by the county for maintenance or when adequate security for the completion of the construction has been provided. The credit agreement shall include a payment and performance bond, surety, or other acceptable assurance that the project will be completed as proposed and that all payments required to be made by the applicant will be paid in full and on time in accordance with the credit agreement and construction contract~~

~~documents. The bond, surety, or other assurance shall be in a form and amount acceptable to the County Engineer and County Attorney.~~

~~K.~~

~~Any aggrieved person may appeal the County Council's decision to approve, deny, or modify a proposed credit agreement under this section by filing an appeal in accordance with this chapter.~~

~~L.~~

~~Credit will not be given for any facility donated or dedicated in order to satisfy any other provision of state or county law.~~

~~M.~~

~~Nothing herein shall be deemed to limit the county's authority or ability to enter into development agreements with applicants for new residential development which may provide for dedication of land, payments in lieu of development impact fees, or actual infrastructure improvements.~~

~~§ 130-12. Administration of development impact fees.~~

~~A.~~

~~Collection.~~

~~(1)~~

~~The Director of Planning, Zoning and Community Development, or designee, shall collect all applicable development impact fees at the time of issuance of a building permit or zoning certificate unless:~~

~~(a)~~

~~The applicant is determined to be entitled to a full credit, pursuant to § 130-11 of this chapter;~~

~~(b)~~

~~The applicant has been determined to be not subject to the payment of a development impact fee; or~~

~~(c)~~

~~The applicant has filed an appeal and has posted with the county a letter of credit in the amount of the development impact fee, as calculated by the Director of Planning, Zoning and Community Development, or designee. Such letter of credit must first be approved by the County Attorney and Finance Director.~~

~~(2)~~

~~The person required to pay development impact fees shall provide the Department with an accounting of the amount of development impact fees required under this chapter.~~

~~B.~~

~~A development impact fee account shall be established by the County Council for the school development impact fees which are imposed. Subaccounts may be established for individual impact fee subareas. All development impact fees collected by the county or a municipal corporation shall be deposited in the appropriate development impact fee account or subaccount, which shall be interest-bearing. All interest earned on funds deposited to such account shall be credited to and considered funds of the account. The funds of each such account shall be capable of being accounted for separately from all other county funds, over time. The county shall establish and implement necessary accounting controls to ensure that the development impact fee funds are properly deposited, accounted for, and appropriated in accordance with this chapter, and any other applicable legal requirements.~~

~~§ 130-13. Appropriation and use of funds.~~

~~A.~~

~~All funds collected from school construction impact fees shall be used solely for the purpose of capital improvements for school facilities to increase the capacity of public schools and for the payment of principal, interest, and other financing costs on contracts, bonds, notes, or other obligations issued by or on behalf of the county or other applicable local governmental entities to finance such public facilities and public facility expenditures. All appropriations from development impact fee accounts shall be detailed in a budget adopted by the County Council.~~

~~B.~~

~~Development impact fees shall not be appropriated for funding any expenditure that would be classified in an accounting as a maintenance or repair expense or for operational or personnel expenses associated with the provision of a public facility.~~

~~C.~~

~~Development impact fees shall be appropriated within six years of the beginning of the fiscal year immediately succeeding the date of collection, unless; the appropriation is for a public facility or capital improvement that requires more than six years to plan, design, and construct, and the demand for the public facility is generated in whole or in part by the new development; or the public facility will actually serve the new development; or where the capital improvements program prepared by the county for a particular category of public facility has used a longer time frame; in which event, the county may extend the time for appropriation and shall document such extension.~~

~~§ 130-14. Refund of fees.~~

~~A.~~

~~Eligibility for refund.~~

~~(1)~~

~~An applicant who has paid a development impact fee for a new residential development for which the necessary building permit or zoning certificate has expired or for which the building permit or~~

~~zoning certificate has been revoked prior to construction shall be eligible to apply for a refund of development impact fees paid on a form provided by the county for such purposes.~~

~~(2)~~

~~The current property owner may apply for a refund of development impact fees paid by an applicant if the county has failed to use or appropriate the development impact fees collected from the applicant within the time limit established in § 130-13. The refund application shall be made on a form provided by the county for such purposes.~~

~~(3)~~

~~An applicant who has paid a development impact fee for a new residential development for which a building permit/zoning certificate has been issued and pursuant to which construction has been initiated, but which construction is abandoned prior to completion and issuance of a certificate of occupancy, shall not be eligible for a refund unless the uncompleted building is completely demolished.~~

~~(4)~~

~~An administrative fee of 6% shall be deducted from the amount of any refund granted and shall be retained by the county to defray the administrative expenses associated with the processing of a refund application.~~

~~B.~~

~~Hereof, refunds shall be made only to the current owner of property on which the new residential development was proposed or occurred.~~

~~C.~~

~~Procedure and submittal requirements.~~

~~(1)~~

~~Applications for a refund shall be made on a form provided by the county for such purposes and shall include all information required below. Upon receipt of a complete application for a refund, the Director of the Department of Planning, Zoning and Community Development, or designee, shall review the application and documentary evidence submitted by the applicant as well as such other information and evidence as may be deemed relevant, and make a determination as to whether a refund is due. No interest shall be paid by the county in calculating the amount of the refund.~~

~~(2)~~

~~Applications for refunds due to abandonment of a new residential development prior to completion or due to expiration or revocation of a building permit or zoning certificate shall be made on forms provided by the Director of the Department of Planning, Zoning and Community Development and shall be made within 60 days following expiration or revocation of the building permit or zoning certificate. The applicant shall submit:~~

~~(a)~~

~~Evidence that the applicant is the property owner or the duly designated agent of the property owner; and~~

~~(b)~~

~~The amount of the development impact fees paid and receipts evidencing such payments; and~~

~~(c)~~

~~Documentation evidencing the expiration or revocation of the building permit or zoning certificate prior to construction or approval of demolition of the structure pursuant to a valid county issued demolition permit.~~

~~(3)~~

~~Applications for refunds due to the failure of the county to appropriate development impact fees collected from the applicant within the time limits established in § 130-13 hereof shall be made on forms provided by the county and shall be made within one year following the expiration of such time limit. The applicant shall submit:~~

~~(a)~~

~~Evidence that the applicant is the property owner or the duly designated agent of the property owner;~~

~~(b)~~

~~The amount of the development impact fees paid and receipts evidencing such payments; and~~

~~(c)~~

~~Description and documentation of the county's failure to appropriate development impact fee funds for relevant public facilities.~~

~~D.~~

~~Failure to apply for a refund within the deadlines set forth in this section shall constitute a waiver of entitlement to a refund.~~

~~E.~~

~~The county may, at its option, make refunds of development impact fees by direct payment, by offsetting such refunds against other development impact fees due for the same category of public facilities for new residential development on the same property, or by other means subject to agreement with the property owner.~~

~~F.~~

~~Appeals. The decision of the Director of Planning, Zoning and Community Development, or designee, shall be a final administrative decision from which an appeal as provided in this chapter may be taken.~~

~~§ 130-15. Exemptions from development impact fees.~~

~~A.~~

~~Applications for exemptions to the provisions of this chapter, pursuant to § 130-6, shall be filed with the Director of Planning, Zoning and Community Development, or designee, on forms provided by the county.~~

~~B.~~

~~Upon receipt of a complete application for exemption, the Director of Planning, Zoning and Community Development, or designee, shall determine whether the proposed new residential development qualifies for an exemption pursuant to the provisions of § 130-6 of this chapter. In determining whether an exemption is appropriate, the Director of Planning, Zoning and Community Development, or designee, shall consider only whether the proposed new residential development constitutes one of the uses described in § 130-6 of this chapter, and whether covenants, easements, and other required documentation, in a form satisfactory to the County Attorney, have been submitted where necessary to demonstrate conformance with said section.~~

~~C.~~

~~If the Director of Planning, Zoning and Community Development, or designee, determines that the proposed development qualifies for an exemption, the Director shall notify the Building Official of the amount of the impact fee, if any, that should be imposed on the new residential development prior to issuance of a building permit or zoning certificate, and shall notify the Finance Director that the exemption has been approved and that a funding source other than development impact fees or other development exactions shall be used to fund public facilities in accordance with the adopted capital improvements program.~~

~~§ 130-16. Appeals.~~

~~A.~~

~~An appeal from any decision of a county official pursuant to this chapter shall be made to the Board of Appeals by filing a written appeal on the appropriate county form with the Department of Planning, Zoning and Community Development within 30 days following the decision which is being appealed. If the notice of appeal is accompanied by a cash bond or letter of credit in a form satisfactory to the County Attorney and the Finance Director in an amount equal to the development impact fee calculated to be due, a building permit or zoning certificate may be issued for the new residential development. The filing of an appeal shall not stay the imposition or the collection of the development impact fee as calculated by the county unless a cash bond or letter of credit has been provided.~~

~~B.~~

~~The burden of proof shall be on the appellant to demonstrate that the decision is arbitrary or capricious.~~

~~§ 130-17. Public school impact fee service area.~~

~~The applicable service area for imposition of a public school impact fee is the entire county, including all municipal corporations.~~

~~§ 130-18. Amount of public school impact fee.~~

~~As required by this chapter, all new residential development in the service area shall be subject to the payment of manufactured homes.~~

Housing Unit by Type	Total for Public Schools
	(per dwelling unit)
Single family detached*	\$5,231.00
All other residential	\$1,524.00

~~Notes:~~

~~*SFD includes manufactured homes.~~

~~§ 130-19. Separability.~~

~~A.~~

~~If any section, subsection, sentence, clause, phrase or portion of this chapter is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or portion of this chapter shall be deemed to be a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining provisions of this chapter nor impair or nullify the remainder of this chapter which shall continue in full force and effect.~~

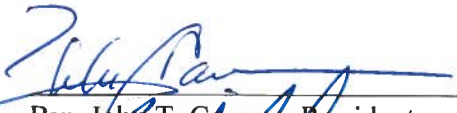
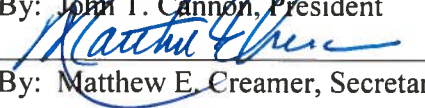
~~B.~~

~~If the application of any provision of this chapter to any new residential development is declared to be invalid by a decision of any court of competent jurisdiction, the intent of the County Council is that such decision shall be limited only to the specific new residential development expressly involved in the controversy, action or proceeding in which such decision of invalidity was rendered. Such decision shall not affect, impair, or nullify this chapter as a whole or the application of any provision of this chapter to any other new residential development.~~

SECTION II: BE IT FURTHER ENACTED THAT this Legislative Bill shall be known as Legislative Bill No. 2016-12 of Wicomico County, Maryland, and shall take effect sixty (60) days after its final passage.

Certified correct as passed and adopted by the County Council of Wicomico County, Maryland, this 1st day of November, 2016.

WICOMICO COUNTY, MARYLAND

 (SEAL)
By: John T. Cannon, President
 (SEAL)
By: Matthew E. Creamer, Secretary

I HEREBY CERTIFY that copies of the above Bill are available to the public, the press and other news media at the time of its introduction.

 (SEAL)
By: Matthew E. Creamer, Secretary

Explanation:

~~Strike Out indicates matters deleted from existing law.~~

CAPITALS INDICATE MATTERS ADDED TO EXISTING LAW.