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# OFFICE OF THE COUNTY AUDITOR
# INTEROFFICE MEMORANDUM

TO: All Council Members

FROM: Lauren M. Smelkinson, County Auditor

DATE: May 13, 2019

SUBJECT: Addendum to Council Meeting Notes

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Please find attached an addendum (Bill 16-19) to the Council Meeting Notes issued May 9, 2019. This item will be discussed at the May 14, 2019 work session for the May 23, 2019 Council meeting.

Attachment

cc: notes distribution list

**Bill 16-19** **Council District(s) __All_ _**

**Mr. Marks**

## Development Impact Fees

Bill 16-19 imposes a regulatory fee, otherwise referred to as a development impact fee, on new residential development to offset the costs of capital facilities, public amenities, and other expenses necessary to accommodate development impacts on infrastructure and public school and public safety facilities. A related measure, Bill 23-19, was introduced at the same legislative session as Bill 16-19. That bill imposes a development impact surcharge, otherwise referred to as a building excise tax. While these charges are similar, several key differences exist between the development impact fee and the building excise tax, as discussed below.

*Development and Building Charges Generally*

Fourteen out of the twenty-four county-level governments in Maryland currently impose either a development impact fee or a building excise tax, which combined are expected to generate approximately $162.5 million in revenues in fiscal year 2019.

Development impact fees and building excise taxes enable local governments to collect revenue from builders for public facilities necessitated by new residential and/or commercial development. These development or building charges typically allow local officials to collect the needed revenue for the expansion or construction of new public facilities prior to the construction of new development. Thus, the capacity of public facilities can more closely track the increased need for such capacity.

*Development Impact Fee versus Building Excise Tax*

A **development impact fee** is a regulatory measure designed to fund facilities specifically required by new development projects. The funds mitigate the impact of such development on infrastructure or public facilities. However, there must be a reasonable connection, or nexus, between the amount of the impact fee imposed and the actual cost of providing facilities to the properties assessed. The projects and services funded by impact fees typically include public school construction, libraries, community colleges, transportation, public safety, parks and recreation, and water/sewer utilities.

In order to justify the imposition of a development impact fee, a jurisdiction must conduct a study that measures the effects that new development will have on public facilities. The amount of a development impact fee is subject to judicial review. Moreover, the revenue from the fee must be dedicated to substantially benefit the assessed properties. Thus, a county cannot collect an impact fee in one geographic area and spend the funds in another area.

Counties do not have the authority to impose development impact fees without State authorization. During the 2019 legislative session, the General Assembly passed HB 449 and the cross-filed SB 491, which authorize the Baltimore County Council to impose development impact fees to finance the capital costs of certain public works, improvements, and facilities.

By contrast, a **building excise tax** is another, more general means of raising revenue from new development. Unlike a development impact fee, the amount of an excise tax does not have to be closely related to the actual cost of providing public facilities to serve new development. In addition, excise tax revenues do not have to be spent to specifically benefit the properties that are taxed but can generally be spent throughout the county. While this allows for more flexible appropriations, there is no requirement that the revenue either offset the development's impact on public facilities or that it benefit the specific area where the development is located.

*Bill 16-19 - Development Impact Fee*

Bill 16-19 imposes a development impact fee on all residential new construction in the amount of three dollars ($3.00) per square foot of occupiable gross floor area in the residential new construction. The fee amount will be reviewed by the County Administrative Officer once every two years, after which recommended changes will be sent to the County Council for approval.

"Residential" is defined as a building with one or more dwelling units, including boarding houses, but excluding transient accommodations, the non-residential sections of a mixed-use structure, and detached accessory buildings such as garages and sheds, so long as they do not have living quarters. "New construction" includes any construction that needs a building permit, but it excludes replacement of a building within three (3) years of loss, replacement of a mobile home with a permanent structure, and replacement of a mobile home with another mobile home with the same or less occupiable gross floor area.

Several types of development are exempt from the proposed development impact fee. First, the fee will not be imposed on new development for which a development plan conference has been held prior to the bill's effective date. Second, no fee will be imposed on new residential development which does not add a new dwelling unit, or that alters or expands an existing dwelling

unit without creating an additional dwelling unit. Third, no fee will be imposed on public facilities developed by the federal, state, or county governments.

Developers will be required to include an estimated occupiable gross floor area with a development plan. The fee will be calculated and set at the Hearing Officer's hearing by the Administrative Law Judge. Payment will be made to the Department of Permits, Approvals and Inspections and will be due within thirty (30) days of the development plat's recordation. Building permit applications will not be accepted until the full fee is paid. After construction, developers may request an inspection to review the actual occupiable gross floor area and recalculate the fee. If there is a discrepancy between the fee paid and the recalculated fee, a refund or a supplemental fee will be issued. Any use and occupancy permits may be withheld or revoked if a supplemental fee is not paid.

Revenue generated from the fee shall be kept separate from other funds and must be used only to supplement capital improvement funds that expand the capacity of public schools, roads, and public safety facilities or debt service on bonds issued for such improvements. To create development fee districts, the bill adopts the Baltimore County Public School facilities map of the current school year. Impact fee funds may only be appropriated for projects located in the development fee district where the development occurred and from which the fee was collected.

Developers may receive credits against an imposed impact fee, but only if they enter a written agreement with the County. Credits may be given for land gifted to the County or the Baltimore County Board of Education, which must be transferred on or before the fee payment deadline. Such gifts may include improvements or construction set forth in the impact fee agreement prior to the construction. Credits may also be given for transportation improvements if the improvements create capacity over and above the adequate road facilities requirements of the project. Developments that include affordable housing may also receive a thirty-five percent (35%) credit on the imposed fee for each affordable housing unit. Last, credits may be given for a developer who provides capital improvements to create additional school capacity over the amount needed to meet existing school capacity deficiencies.

Beginning on July 1, 2020, and every two years thereafter, the County Administrative Officer will provide a report to the Council on the amount of development fees assessed and collected by development impact fee district, including each project's name, address, and Council district; the number and type of development units to be constructed; the amount of the fee collected for each project; and an accounting of revenues for each Council district and development fee district and corresponding appropriations. The report may also include recommendations for changes to the

impact fee program, the County's capital improvements program, the boundaries of the development impact fee districts, and the amount and/or calculation of the impact fee.

County revenues will increase beginning in FY 2020 to the extent that impact fees are imposed (i.e., the amount of the fees and the number and types of development projects that are subject to the fees). Based on permit issuances in recent years, the annual revenue associated with the proposed legislation totals an estimated $10 million.

With the affirmative vote of five members of the County Council, Bill 16-19 will take effect June 5, 2019.