

COUNTY COUNCIL

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OF

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DORCHESTER COUNTY, MARYLAND

2004 Legislative Session,
Legislative Day No. June 22, 2004

Introduced By: County Council

BILL NO. 2004- 6

BUILDING EXCISE TAX

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND, PURSUANT TO ARTICLE 24, SECTION 9-1002 OF THE ANNOTATED CODE OF MARYLAND, ADDING NEW ARTICLE X TO CHAPTER 144 OF THE DORCHESTER COUNTY CODE ENTITLED "BUILDING EXCISE TAX", ESTABLISHING A BUILDING EXCISE TAX ON ALL TYPES OF BUILDING CONSTRUCTION WITHIN DORCHESTER COUNTY; SPECIFYING THE TYPES OF BUILDING CONSTRUCTION SUBJECT TO THE TAX, THE CRITERIA AND FORMULAS USED TO ASSESS THE TAX, AND THE TAX RATES; REQUIRING THE REVENUES FROM THE BUILDING EXCISE TAX TO BE DEPOSITED IN A SPECIAL FUND; PROVIDING THAT THE REVENUES FROM THE BUILDING EXCISE TAX MAY ONLY BE USED FOR CERTAIN CAPITAL COSTS OF CERTAIN PUBLIC WORKS, IMPROVEMENTS AND FACILITIES RELATED TO THE SHERIFF'S OFFICE, SCHOOLS AND EMERGENCY SERVICES; PROVIDING THAT THE BUILDING EXCISE TAX SHALL APPLY THROUGHOUT DORCHESTER COUNTY, INCLUDING WITHIN MUNICIPAL CORPORATIONS; REQUIRING AN ANNUAL REPORT BY THE DIRECTOR OF FINANCE TO THE COUNTY COUNCIL CONCERNING THE REVENUES GENERATED BY THE BUILDING EXCISE TAX AND THE EXPENDITURE OF SUCH REVENUES; AND GENERALLY RELATING TO THE IMPOSITION OF A BUILDING EXCISE TAX IN DORCHESTER COUNTY.

Introduced, read first time, order posted on official bulletin board of Dorchester County, County Office Building, 501 Court Lane, Cambridge, Maryland 21613.

Ordered publication for once a week for two (2) successive weeks, and public hearing scheduled on Tuesday, July 6, 2004, Room 110, County Office Building, 501 Court Lane, Cambridge, Maryland, at 6:15 p.m.

By order:


Jane Baynard, County Manager

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND, PURSUANT TO ARTICLE 24, SECTION 9-1002 OF THE ANNOTATED CODE OF MARYLAND, ADDING NEW ARTICLE X TO CHAPTER 144 OF THE DORCHESTER COUNTY CODE ENTITLED "BUILDING EXCISE TAX", ESTABLISHING A BUILDING EXCISE TAX ON ALL TYPES OF BUILDING CONSTRUCTION WITHIN DORCHESTER COUNTY; SPECIFYING THE TYPES OF BUILDING CONSTRUCTION SUBJECT TO THE TAX, THE CRITERIA AND FORMULAS USED TO ASSESS THE TAX, AND THE TAX RATES; REQUIRING THE REVENUES FROM THE BUILDING EXCISE TAX TO BE DEPOSITED IN A SPECIAL FUND; PROVIDING THAT THE REVENUES FROM THE BUILDING EXCISE TAX MAY ONLY BE USED FOR CERTAIN CAPITAL COSTS OF CERTAIN PUBLIC WORKS, IMPROVEMENTS AND FACILITIES RELATED TO THE SHERIFF'S OFFICE, SCHOOLS AND EMERGENCY SERVICES; PROVIDING THAT THE BUILDING EXCISE TAX SHALL APPLY THROUGHOUT DORCHESTER COUNTY, INCLUDING WITHIN MUNICIPAL CORPORATIONS; REQUIRING AN ANNUAL REPORT BY THE DIRECTOR OF FINANCE TO THE COUNTY COUNCIL CONCERNING THE REVENUES GENERATED BY THE BUILDING EXCISE TAX AND THE EXPENDITURE OF SUCH REVENUES; AND GENERALLY RELATING TO THE IMPOSITION OF A BUILDING EXCISE TAX IN DORCHESTER COUNTY.

WHEREAS, the County Council of Dorchester County, Maryland (the "County") is authorized pursuant to Article 24, Section 9-1002 of the Annotated Code of Maryland (Chapter 401, Acts of the Maryland General Assembly 2004) to fix and impose, by ordinance, a building excise tax on all types and building construction within Dorchester County, including within incorporated municipalities; and

WHEREAS, the County retained the services of Tischler & Associates, Inc., fiscal, economic and planning consultants, to conduct a study and analysis regarding potential "impact fee" and/or "excise tax" funding to meet the demands generated by development. The final report by Tischler & Associates, Inc. (January 7, 2004) supports the implementation of a building excise tax in Dorchester County for public capital improvements related to schools, public safety communication systems and sheriff's office facilities and equipment; and

WHEREAS, the County Council is desirous of requiring new or expanding development in Dorchester County to pay its proportionate fair share of the capital facilities and funds necessary to accommodate new or expanding development impacts on schools, public safety communications and law enforcement.

SECTION 1. BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND, in Legislative Session, that new Article X, entitled "Building Excise Tax", is hereby added to Chapter 144 of The Dorchester County Code to read as follows:

**TAXATION
CHAPTER 144
ARTICLE X
BUILDING EXCISE TAX**

§ 144-28. Purpose and Authority.

In accordance with Article 24, Section 9-1002 of the Annotated Code of Maryland (Chapter 401, Acts of the Maryland General Assembly 2004), as amended:

(A) The County Council of Dorchester County may, by ordinance, fix and impose a Building Excise Tax on any building construction within Dorchester County.

(B) The County Council shall specify in the ordinance:

- (1) The types of building construction subject to the Building Excise Tax;
- (2) The criteria and formulas used to assess the tax; and
- (3) The tax rates.

(C) The County Council may impose different rates of the Building Excise Tax on different types of building construction subject to the Building Excise Tax. The tax rates:

- (1) Shall relate to the development or growth-related infrastructure needs in the County; and
- (2) May not exceed:
- (i) \$5,000 per unit for residential development where building construction is to occur; or
- (ii) \$1.00 per square foot for any category of nonresidential development, not to exceed \$5,000 per lot or parcel.

(D) The revenues from the Building Excise Tax shall be deposited in a special fund. The special fund may only be used for the capital costs of additional or expanded public works, improvements, and facilities required to accommodate new construction or development including: emergency services; sheriff's offices; and schools.

(E) The Building Excise Tax may be imposed throughout the County, including within municipal corporations.

§ 144-29. Establishment of Tax.

In accordance with Article 24, Section 9-1002 of the Annotated Code of Maryland (Chapter 401, Acts of the Maryland General Assembly of 2004), there is a Building Excise Tax on all new construction and addition construction within Dorchester County and the incorporated municipalities of Dorchester County, which tax will finance the costs for additional or expanded capital improvements necessary to accommodate new residential and nonresidential construction or development.

§ 144-30. Definitions.

Words and phrases used in this Chapter shall have their usual meaning, unless otherwise defined in this section.

(A) "Addition Construction" means the construction of an addition to a building or structure where the work requires a Dorchester County or municipality building permit and where the addition either:

- (1) For a residential structure, increases the number of dwelling units intended for occupancy; or
- (2) For a nonresidential structure, increases the number of gross square feet on the property and is intended occupancy.

(B) "Applicant" means any individual, firm, partnership, corporation, association, society, trust or other legal entity which files an application with the County or with any municipality for a building permit/zoning certificate.

(C) "Capital Improvements" means any public facility acquisition, architectural, engineering or site design, site development, equipment, facilities or other construction activity and associated costs related to schools, public safety communication systems and the sheriff's office. "Capital improvements" includes sheriff's office vehicles and equipment.

(D) "New Construction" means construction of a building or structure which requires a Dorchester County or municipality building permit. For a residential structure where the building replaces an existing residential building, "new construction" does not include replacement of a building due to casualty, loss or demolition within three (3) years that casualty, loss or demolition, or replacement of a mobile home on a site. For a nonresidential structure where the building replaces an existing building, "new construction" does not include replacement of a building ready for occupancy except to the extent that the gross square footage of the replacement building exceeds the gross square footage of the building being replaced.

(E) "Occupancy" means designed for human occupancy in which individuals may live, work, or congregate for amusement, educational or similar purposes and which is equipped with means of egress, light and ventilation facilities.

(F) “Residential” refers to a building which contains one (1) or more dwelling units, including boarding houses but not including transient accommodations such as hotels, country inns, bed and breakfast inns, camping trailers or recreational vehicles (RVs). “Residential” includes all areas that are contained within a residential building such as attached garages or home occupations, but does not include nonresidential uses in mixed use structures. “Residential” does not include detached accessory buildings such as detached garages or sheds which do not contain any living quarters.

§ 144-31. Schedule of Rates.

(A) Adopted by County Council. The County Council shall adopt by resolution a schedule of rates for the Building Excise Tax.

(1) For residential development where building construction is to occur (and a building permit is required), the rate may not exceed \$5,000 per unit.

(2) For any nonresidential development where building construction is to occur (and a building permit is required), the rate may not exceed \$1.00 per square foot, not to exceed \$5,000 per lot or parcel. The schedule shall specify the rates per gross square feet of nonresidential addition construction and new construction.

(B) Adjustment to Rates. The schedule of rates for the Building Excise Tax shall be reviewed annually by the Director of Finance and the Director of the Department of Planning, who shall recommend to the County Council by February 1 whether or not to modify the schedule for the next fiscal year based on new data or technical information.

(C) The Building Excise Tax shall not apply to those uses specifically exempted from the schedule of rates established under this section.

§ 144-32. Amount of Tax.

(A) Calculation of Amount. The amount of Building Excise Tax to be paid by an applicant shall be determined by the Director of the Department of Planning, or his designee, from the Building Excise Tax schedule of rates approved by the County Council.

(B) Appeal of Amount. An applicant aggrieved by a decision of the Director of the Department of Planning regarding the calculation of the amount of Building Excise Tax may appeal the decision to the Board of Appeals within thirty (30) days of the Director’s decision, provided that either:

(1) Processing of the building permit is delayed pending the decision of the Board of Appeals; or

(2) The applicant pays the Building Excise Tax prior to filing the appeal.

§ 144-33. Applicability, Payment and Collection of Tax.

(A) Building Excise Tax Paid When Paying for Building Permit. An applicant for a building permit for addition construction or new construction shall pay the Building Excise Tax to the Director of Finance of Dorchester County, or his designee, at the same time the applicant pays for the building permit. The applicant must submit relevant documentation as the Department of Finance requires.

(B) When a person applies to an incorporated municipality in Dorchester County for a building permit/zoning certificate for a building or dwelling unit, the applicant must show that all payments due under this Article with respect to the building or unit have been paid.

(C) Refunds.

(1) The Director of Finance shall refund to the applicant the Building Excise Tax paid if the building permit is disapproved, canceled or expires.

(2) If, upon appeal by an applicant who has paid the Building Excise Tax, the Board of Appeals determines that the Director of the Department of Planning 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.

(D) Nothing in this Chapter changes or supersedes any other requirement of city, county, state or federal law that may apply to the development, including county zoning and subdivision regulations may impose on-site and off-site infrastructure or other capital improvement requirements.

(E) Nothing in this Chapter shall be deemed to limit the County's authority or ability to enter into development agreements with applicants for new or expanded development which may provide for dedication of land, payments in lieu of taxes or fees, or actual infrastructure improvements.

(F) Unpaid Building Excise Taxes are a lien against the real property for which a building permit is issued 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.

§ 144-34. Independent Impact Analysis.

(A) An independent development impact analysis shall be used to compute the Building Excise Tax rate if:

(1) The Director of the Department of Planning determines that there is not a comparable land use type for the development or project under the Schedule of Rates established pursuant to § 144-31 of this Article; or

(2) The Director of the Department of Planning requires it when the location, intensity, or unusual nature of the use indicates that the impacts on schools, public safety communication systems or the sheriff's office would be substantially higher than the impacts assumed for the purposes of the Schedule of Rates established pursuant to § 144-31 of this Article.

(B) The applicant shall be responsible for the preparation of the draft independent development impact analysis and the Director of the Department of Planning shall accept, reject or modify the draft analysis.

(C) The person who prepares the draft independent impact fee analysis shall be approved by the Director of the Department of Planning on the basis of professional training and experience in preparation and development of impact analyses. The independent development impact analysis shall follow standard methodologies and format and be approved by the Director of the Department of Planning. Prior to submission of the draft independent development impact analysis, the applicant shall meet with the Director of the Department of Planning to review the requirements for the preparation of an independent development impact analysis.

§ 144-35. Building Excise Tax Fund.

(A) Establishment of Fund. The Director of Finance shall establish an account to be known as the Building Excise Tax Fund. All receipts from Building Excise Taxes shall be deposited in the Building Excise Tax Fund. Interest earned by money in the Building Excise Tax Fund shall remain in the Building Excise Tax Fund.

(B) Use of Building Excise Tax Fund. All funds from the Building Excise Tax Fund shall be expended only for capital improvements, as defined in this Chapter.

144-36. Annual Reports.

The Director of Finance shall prepare and submit an annual report on or before July 31 of each fiscal year to the County Council which shall include the following information:

- (a) Total amount of Building Excise Taxes collected.
- (b) Amount of funds appropriated from the Building Excise Tax Fund.
- (c) Amount of funds expended from the Building Excise Tax Fund.
- (d) Funds remaining in the Building Excise Tax Fund.
- (e) Total amount of Building Excise Tax refunds.

SECTION 2. BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY that General Code Publishers is directed to codify new Article X of Chapter 144 of The Dorchester County Code accordingly.

SECTION 3. BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY that this legislative act shall be known as Bill No. 2004- 6 of the Dorchester County, Maryland.

SECTION 4. BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY that this Bill No. 2004- 6, having been passed by the County Council of Dorchester County, at its Legislative Session on the 6th day of July, 2004, shall take effect September 15, 2004.

PASSED this 6th day of July, 2004.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND

By: Jane Baynard
Jane Baynard, County Manager

Glenn L. Bramble
Glenn L. Bramble, President

APPROVED this 6th day of July, 2004.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND

By: Jane Baynard
Jane Baynard, County Manager

Glenn L. Bramble
Glenn L. Bramble, President

VOTES:

	Yes	No	Abstention
Councilman Bramble	✓	_____	_____
Councilwoman Elzey	✓	_____	_____
Councilman Flowers	✓	_____	_____
Councilman Nichols	_____	✓	_____
Councilman Yockey	✓	_____	_____

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