

Introduced	<u>9/3/2019</u>
Public Hearing	<u>9/18/2019</u>
Council Action	<u>11/4/2019</u>
Executive Action	<u>11/6/2019</u>
Effective Date	<u>1/10/2020</u>

County Council of Howard County, Maryland

2019 Legislative Session

Legislative Day No. **11**

Bill No. 42 -2019

Introduced by: Christiana Mercer Rigby and Deb Jung
Co-sponsored by: Opel Jones and Liz Walsh

AN ACT to alter the school facilities surcharge in accordance with Chapter 744 of the Acts of the General Assembly of 2019; and generally relating to the school facilities surcharge.

Introduced and read first time September 3, 2019. Ordered posted and hearing scheduled.
By order *Diane Schwartz Jones*
Diane Schwartz Jones, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on September 18, 2019.
By order *Diane Schwartz Jones*
Diane Schwartz Jones, Administrator

This Bill was read the third time on November 4, 2019 and Passed , Passed with amendments , Failed .
By order *Diane Schwartz Jones*
Diane Schwartz Jones, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 6th day of November, 2019 at 2:45 p.m.
By order *Diane Schwartz Jones*
Diane Schwartz Jones, Administrator

Approved by the County Executive November 6, 2019
Calvin Ball
Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Whereas**, the County Council has considered the following issues when determining the amount
2 of the school facilities surcharge:

- 3 (i) the capital costs for the construction of new public schools and additions to existing
4 public schools;
- 5 (ii) the anticipated amount of the state contribution for school construction funding;
- 6 (iii) the average percentage of student enrollments that will be generated by the
7 residential new construction;
- 8 (iv) the impact of school redistricting by the Howard County Board of Education;
- 9 (v) the potential for charging different amounts for differently sized residential new
10 construction units;
- 11 (vi) the effect on affordable housing units; and
- 12 (vii) sources of tax and fee revenue for the county, including the transfer tax.

13 Now therefore,

14 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the Howard
15 County Code is amended as follows:

16 *By amending:*

17 *Title 20 - Taxes, charges, and fees.*

18 *Subtitle 1. - Real property tax; administration, credits, and enforcement.*

19 *Sections 20.142. — [Surcharge enacted.] and Section 20.143. -*

20 *Surcharge imposed.*

21
22 **Title 20 - Taxes, charges, and fees.**

23 **Subtitle 1. - Real property tax; administration, credits, and enforcement.**

24
25 ~~**SEC. 20.142. — SURCHARGE ENACTED.**~~

26 ~~(a) — (1) — In this section the following words have the meanings indicated:~~

27 ~~(2) — Applicant means the individual, partnership, corporation, or other legal~~
28 ~~entity whose signature appears on the building permit application.~~

29 ~~(3) — (i) — Building means a structure with exterior walls which combine to form~~
30 ~~an occupiable structure.~~

31 ~~(ii) — Building does not include a temporary structure, as defined in the~~
32 ~~Howard County Building Code.~~

1 (4) — (i) — ~~New construction means construction of a building which requires a~~
2 ~~Howard County building permit.~~

3 (ii) — ~~New construction does not include, if the building replaces an~~
4 ~~existing building, replacement of a building due to casualty or loss within three~~
5 ~~years of that casualty or loss, or replacement of a mobile home on a site, except to~~
6 ~~the extent the gross square footage of the replacement building or replacement~~
7 ~~mobile home exceeds the gross square footage of the building or mobile home~~
8 ~~being replaced.~~

9 (5) — ~~Occupiable means space that is:~~

10 (i) — ~~Designed for human occupancy in which individuals may live, work,~~
11 ~~or congregate for amusement; and~~

12 (ii) — ~~Equipped with means of egress, light, and ventilation.~~

13 (6) — (i) — ~~Residential means a building that contains one or more dwelling units~~
14 ~~and includes a boarding house.~~

15 (ii) — ~~Residential includes all areas that are contained within a residential~~
16 ~~building, including an attached garage or area for home occupations.~~

17 (iii) — ~~Residential does not include:~~

18 1. — ~~Transient accommodations, including a hotel, country inn, or~~
19 ~~bed and breakfast inn;~~

20 2. — ~~Nonresidential uses in a mixed-use structure; or~~

21 3. — ~~Detached accessory buildings, including a detached garage or~~
22 ~~shed that does not contain living quarters.~~

23 (b) — ~~The County Council by ordinance shall impose a school facilities surcharge on~~
24 ~~residential new construction for which a building permit is issued on or after July 1,~~
25 ~~2004.~~

26 (c) — (1) — ~~[[For fiscal year 2005, a school facilities surcharge imposed on residential~~
27 ~~new construction shall be in the amount of one dollar per square foot of occupiable area~~
28 ~~in the residential new construction.~~

29 (2) — ~~For fiscal year 2006 and each succeeding fiscal year, the facilities surcharge~~
30 ~~established in paragraph (1) of this subsection shall be adjusted for inflation in~~
31 ~~accordance with the Consumer Price Index for All Urban Consumers published by the~~

1 ~~United States Department of Labor, for the fiscal year preceding the year for which the~~
2 ~~amount is being calculated}}.~~

3 ~~(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, FOR FISCAL YEAR 2020~~
4 ~~AND EACH SUCCEEDING FISCAL YEAR, A SCHOOL FACILITIES SURCHARGE IMPOSED~~
5 ~~ON RESIDENTIAL NEW CONSTRUCTION SHALL BE IN AN AMOUNT:~~

6 ~~1. EQUAL TO OR GREATER THAN THE AMOUNT IMPOSED BY THE~~
7 ~~COUNTY COUNCIL ON JUNE 30, 2019, PER SQUARE FOOT OF OCCUPIABLE~~
8 ~~AREA IN THE RESIDENTIAL NEW CONSTRUCTION; AND~~

9 ~~2. EQUAL TO THE AMOUNT IMPOSED BY THE COUNTY COUNCIL ON~~
10 ~~JUNE 30, 2019, PER SQUARE FOOT OF OCCUPIABLE AREA IN THE~~
11 ~~RESIDENTIAL NEW CONSTRUCTION THAT IS CLASSIFIED AS SENIOR HOUSING~~
12 ~~UNDER 42 U.S.C. § 3607(B).~~

13 ~~(II) THE COUNTY COUNCIL MAY NOT IMPOSE A SCHOOL FACILITIES~~
14 ~~SURCHARGE ON RESIDENTIAL NEW CONSTRUCTION THAT IS CLASSIFIED AS SENIOR~~
15 ~~HOUSING AND AN AFFORDABLE HOUSING UNIT, AS DEFINED IN § 28.116 OF THE~~
16 ~~COUNTY CODE.~~

17 ~~(2) THE COUNTY COUNCIL MAY ENACT A LOCAL LAW THAT PROVIDES FOR AN~~
18 ~~ANNUAL ADJUSTMENT IN THE AMOUNT OF THE SCHOOL FACILITIES SURCHARGE UNDER~~
19 ~~PARAGRAPH (1)(I) OF THIS SUBSECTION IN THE FOLLOWING MANNER:~~

20 ~~(I) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AN INCREASE OR~~
21 ~~DECREASE IN THE AMOUNT OF THE SCHOOL FACILITIES SURCHARGE UNDER~~
22 ~~PARAGRAPH (1)(I)1 OF THIS SUBSECTION;~~

23 ~~(II) A DECREASE IN THE AMOUNT OF THE SCHOOL FACILITIES SURCHARGE~~
24 ~~UNDER PARAGRAPH (1)(I)2 OF THIS SUBSECTION; OR~~

25 ~~(III) ESTABLISHMENT OF A GRANDFATHERING PROCESS FOR RESIDENTIAL~~
26 ~~NEW CONSTRUCTION BASED ON THE STATUS IN THE DEVELOPMENT PROCESS.~~

27 ~~(3) THE COUNTY COUNCIL MAY NOT IMPOSE A SCHOOL FACILITIES SURCHARGE ON~~
28 ~~RESIDENTIAL NEW CONSTRUCTION UNDER PARAGRAPH (1)(I)1 OF THIS SUBSECTION IN AN~~
29 ~~AMOUNT THAT IS LESS THAN THE AMOUNT IMPOSED BY THE COUNTY COUNCIL ON JUNE 30,~~
30 ~~2019.~~

1 ~~(4) BEFORE ENACTING A LOCAL LAW TO ADJUST THE AMOUNT OF THE SCHOOL~~
2 ~~FACILITIES SURCHARGE UNDER THIS SUBSECTION, THE COUNTY COUNCIL SHALL CONSIDER~~
3 ~~THE FOLLOWING ISSUES WHEN DETERMINING THE AMOUNT:~~

4 ~~(i) THE CAPITAL COSTS FOR THE CONSTRUCTION OF NEW PUBLIC SCHOOLS~~
5 ~~AND ADDITIONS TO EXISTING PUBLIC SCHOOLS;~~

6 ~~(ii) THE ANTICIPATED AMOUNT OF THE STATE CONTRIBUTION FOR SCHOOL~~
7 ~~CONSTRUCTION FUNDING;~~

8 ~~(iii) THE AVERAGE PERCENTAGE OF STUDENT ENROLLMENTS THAT WILL BE~~
9 ~~GENERATED BY THE RESIDENTIAL NEW CONSTRUCTION;~~

10 ~~(iv) THE IMPACT OF SCHOOL REDISTRICTING BY THE HOWARD COUNTY~~
11 ~~BOARD OF EDUCATION;~~

12 ~~(v) THE POTENTIAL FOR CHARGING DIFFERENT AMOUNTS FOR DIFFERENTLY~~
13 ~~SIZED RESIDENTIAL NEW CONSTRUCTION UNITS;~~

14 ~~(vi) THE EFFECT ON AFFORDABLE HOUSING UNITS; AND~~

15 ~~(vii) SOURCES OF TAX AND FEE REVENUE FOR THE COUNTY, INCLUDING THE~~
16 ~~TRANSFER TAX.~~

17 ~~(d) — (1) — The school facilities surcharge shall be paid by the applicant at the time a~~
18 ~~building permit is issued for the residential new construction.~~

19 ~~(2) — The school facilities surcharge may not be construed to be a settlement cost.~~

20 ~~(e) — (1) — The County shall rebate to the Applicant the school facilities surcharge~~
21 ~~imposed on residential new construction under this section if, on the initial sale of the~~
22 ~~property, the property is sold for a fair market value that is less than \$200,000.00.~~

23 ~~(2) — If, on completion, the residential new construction is not sold but the~~
24 ~~property is occupied by the Applicant or the immediate family of the Applicant, the~~
25 ~~County shall rebate to the Applicant the school facilities surcharge imposed under this~~
26 ~~section if the initial assessment value assigned to the property by the State Department of~~
27 ~~Assessments and Taxation for purposes of the County real property tax equates to a~~
28 ~~market value that is less than \$200,000.00.~~

29 ~~(3) — For fiscal year 2006 and each succeeding fiscal year, the value of the~~
30 ~~property that is entitled to a rebate under this subsection shall be adjusted for inflation in~~
31 ~~accordance with the Consumer Price Index for all Urban Consumers published by the~~

1 United States Department of Labor, for the fiscal year preceding the year for which the
2 value is being calculated.

3 (4) — Within 30 days after the start of each fiscal year, the Howard County Office
4 of Finance shall calculate and publish in a newspaper of general circulation in the County
5 the value of the property that is entitled to the rebate specified under this subsection.

6 (f) — Payment of the school facilities surcharge does not eliminate any authority to apply
7 any test concerning the adequacy of school facilities under the County's adequate public
8 school facility ordinance.

9 (g) — Revenue collected under the school facilities surcharge shall be deposited in a
10 separate account and may only be used to pay for:

11 (1) — Additional or expanded public school facilities such as renovations to
12 existing school buildings or other systemic changes; or

13 (2) — Debt service on bonds issued for additional or expanded public school
14 facilities or new school construction.

15 (h) — Revenue collected under the school facilities surcharge is intended to supplement
16 funding for public school facilities and may not supplant other County or State funding
17 for school construction.

18 (i) — (1) Subject to section 22.1000 of the County Code, the County Executive of
19 Howard County shall prepare an annual report on the school facilities surcharge on or
20 before August 31 of each year for the County Council of Howard County, the Howard
21 County Senate Delegation, and the Howard County House Delegation, to include:

22 (I) DETAILED INFORMATION REGARDING THE SCHOOL FACILITIES
23 SURCHARGE, AND THE AMOUNT AND KIND OF RESIDENTIAL DEVELOPMENT AND THE
24 CHANGE IN SCHOOL POPULATION IN THE COUNTY OVER THE PREVIOUS 5 YEARS;

25 ~~[[1]]~~ (II) — A detailed description of how fees were expended; ~~[[and]]~~

26 ~~[[2]]~~ (III) — The amount of fees collected~~[[.]]~~; AND

27 (IV) RECOMMENDATIONS REGARDING HOW THE COUNTY
28 SHOULD PROCEED IN ITS CALCULATION OF THE SCHOOL FACILITIES SURCHARGE
29 FOR THE NEXT 5 YEARS.

30 (K) IN A YEAR THAT THE COUNTY COUNCIL ENACTS A LOCAL LAW TO PROVIDE FOR AN
31 ANNUAL INCREASE IN THE SCHOOL FACILITIES SURCHARGE IN ACCORDANCE WITH

1 SUBSECTION (C)(2) OF THIS SECTION, THE COUNTY EXECUTIVE SHALL INCLUDE IN THE
2 REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION A DESCRIPTION OF THE
3 COUNTY COUNCIL'S CONSIDERATION OF THE ISSUES UNDER SUBSECTION (C)(4) OF THIS
4 SECTION.

5
6 **Sec. 20.143. - Surcharge imposed.**

7 (a) [[House bill 1445 of the Acts of the General Assembly of 2004]] CHAPTER 744 OF
8 THE ACTS OF THE GENERAL ASSEMBLY OF 2019, [[to be codified as]] SET FORTH IN SECTION
9 20.142 OF THE HOWARD COUNTY CODE, REQUIRES THAT THE COUNTY COUNCIL IMPOSE A SCHOOL
10 FACILITIES SURCHARGE ON RESIDENTIAL NEW CONSTRUCTION FOR WHICH A BUILDING PERMIT IS ISSUED
11 ON OR AFTER JULY 1, 2004, WITH THE REVENUE FROM THE SURCHARGE TO BE USED TO PAY FOR
12 ADDITIONAL OR EXPANDED PUBLIC SCHOOL FACILITIES SUCH AS RENOVATIONS TO EXISTING SCHOOL
13 BUILDINGS OR OTHER SYSTEMIC CHANGES, DEBT SERVICE ON BONDS ISSUED FOR ADDITIONAL OR
14 EXPANDED PUBLIC SCHOOL FACILITIES, OR NEW SCHOOL CONSTRUCTION.

15 (b) (1) IN ACCORDANCE WITH [[HOUSE BILL 1445]] CHAPTER 744 OF THE ACTS OF
16 THE GENERAL ASSEMBLY OF 2019, THERE IS A PUBLIC SCHOOL FACILITIES SURCHARGE IMPOSED ON
17 RESIDENTIAL NEW CONSTRUCTION FOR WHICH A BUILDING PERMIT IS ISSUED ON OR AFTER JULY 1,
18 2004, OTHER THAN RESIDENTIAL NEW CONSTRUCTION THAT IS BOTH:

19 (I) CLASSIFIED AS SENIOR HOUSING; AND

20 (II) AN AFFORDABLE HOUSING UNIT, AS DEFINED IN § 28.116 OF THE
21 COUNTY CODE.

22 (2) EXCEPT AS PROVIDED IN ~~PARAGRAPH (3)~~ PARAGRAPHS (3) AND (4) OF THIS
23 SUBSECTION, THE SURCHARGE IS ~~\$6.80 PER SQUARE FOOT OF OCCUPIABLE AREA IN~~
24 ~~RESIDENTIAL NEW CONSTRUCTION. IS:~~

25 (I) \$4.75 PER SQUARE FOOT OF OCCUPIABLE AREA IN RESIDENTIAL NEW
26 CONSTRUCTION THROUGH DECEMBER 31, 2020;

27 (II) \$6.25 PER SQUARE FOOT OF OCCUPIABLE AREA IN RESIDENTIAL NEW
28 CONSTRUCTION THROUGH 5 DECEMBER 31, 2021; AND

29 (III) \$7.50 PER SQUARE FOOT OF OCCUPIABLE AREA IN RESIDENTIAL NEW
30 CONSTRUCTION THEREAFTER.

1 (3) ~~(i)~~ THE SURCHARGE IS \$1.32 PER SQUARE FOOT OF OCCUPIABLE AREA IN
2 RESIDENTIAL NEW CONSTRUCTION THAT IS CLASSIFIED AS SENIOR HOUSING UNDER 42
3 U.S.C. § 3607(B).

4 ~~(ii) THE~~ 1. IN THIS PARAGRAPH, “DOWNTOWN COLUMBIA DEVELOPMENT
5 DISTRICT” HAS THE MEANING PROVIDED FOR THE TERM “DEVELOPMENT DISTRICT” IN COUNCIL
6 RESOLUTION 105-2016.

7 2. OUTSIDE THE DOWNTOWN COLUMBIA DEVELOPMENT DISTRICT,
8 SURCHARGE IS THE GREATER OF \$1.32 OR ONE-THIRD THE RATE SET UNDER PARAGRAPH (2)
9 OF THIS SUBSECTION FOR A MODERATE INCOME HOUSING UNIT THAT IS BUILT ONSITE
10 BEYOND THE NUMBER OF MODERATE INCOME HOUSING UNITS REQUIRED FOR THE
11 DEVELOPMENT BY TITLE 13, SUBTITLE 4 OF THIS CODE.”.

12 3. IN THE DOWNTOWN COLUMBIA DEVELOPMENT DISTRICT, THE
13 SURCHARGE ON RESIDENTIAL NEW CONSTRUCTION THAT IS AN AFFORDABLE UNIT IS A
14 RATE OF:

15 A. \$1.32 PER SQUARE FOOT OF OCCUPIABLE AREA; PLUS

16 B. ONE-HALF OF THE DIFFERENCE BETWEEN \$1.32 AND THE RATE THAT
17 WOULD BE APPLICABLE TO THE RESIDENTIAL NEW CONSTRUCTION IF IT WAS LOCATED OUTSIDE
18 THE DOWNTOWN COLUMBIA DEVELOPMENT DISTRICT.

19 ~~(iii)~~ THE SURCHARGE IS ONE-THIRD OF THE RATE SET UNDER PARAGRAPH (2)
20 OF THIS SUBSECTION FOR NON-SENIOR RESIDENTIAL NEW CONSTRUCTION PROJECTS THAT
21 HAVE APPLIED FOR OR RECEIVED FUNDING FROM THE STATE OF MARYLAND OR FROM THE
22 COUNTY AS AN AFFORDABLE HOUSING PROJECT AFTER DECEMBER 31, 2020.

23 (4) THE RATE ESTABLISHED IN PARAGRAPH (2) OF THIS SUBSECTION SHALL BE
24 ADJUSTED FOR INFLATION IN ACCORDANCE WITH THE CONSUMER PRICE INDEX FOR ALL
25 URBAN CONSUMERS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, FOR THE
26 FISCAL YEAR PRECEDING THE YEAR FOR WHICH THE AMOUNT IS BEING CALCULATED. THE
27 ADJUSTMENT MAY NOT REDUCE THE RATE BELOW \$1.32.

28 (c) The amount and terms of the surcharge, and the use of the revenue collected under the
29 surcharge, shall be as required by section 20.142 of the Howard County Code, as enacted by
30 [[House bill 1445]] CHAPTER 744 OF THE ACTS OF THE GENERAL ASSEMBLY OF 2019.

31

1 **Section 2. And Be It Further Enacted** by the County Council of Howard County,

2 Maryland that:

3 (a) Notwithstanding the school facility surcharge rates established in Section 1 of this
4 Act, the school facility surcharge rate shall be \$1.32 per square foot for non-senior
5 residential new construction projects that have, on or before the effective date of this Act:

6 (1) an approved preliminary plan original signature or preliminary equivalent sketch
7 plan;

8 (2) a final plan approval letter for a minor subdivision or resubdivision;

9 (3) an approved site development plan; or

10 (4) (i) on file with the Department of Planning and Zoning a final development plan
11 for a project in the Downtown Columbia Development District; and

12 (ii) posted a notice of the filing on the property before the day that the surcharge
13 is assessed.

14 (1) within the Planned Service Area, a signed Site Development Plan; or

15 (2) outside of the Planned Service Area, a technically complete Final Plan; at record
16 plat of phase one for a phased project; or

17 (3) a final plan approval letter for a minor subdivision.

18 (b) The rates provided for in this Section 2 shall only apply to construction for which the
19 surcharge is collected on or before the day that is 2 years after the effective date of this
20 Act.

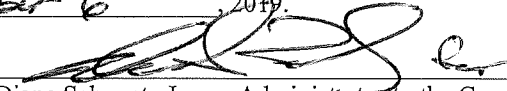
21
22 ~~Section 2. Section 3~~ **And Be It Further Enacted** by the County Council of Howard
23 County, Maryland that notwithstanding the school facility surcharge rates established in
24 Section 1 of this Act, the school facility surcharge rate shall be \$1.32 per square foot for
25 non-senior residential new construction projects that have ~~applied for or~~ received
26 funding from the State of Maryland or from the County as an affordable housing project
27 on or before December 31, 2020.

28
29 ~~Section 2. Section 3~~ **Section 4** **And Be It Further Enacted** by the County Council of Howard
30 County, Maryland that this Act shall become effective 61 days after its enactment.

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on

November 6, 2019.



Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2019.

Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2019.

Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2019.

Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2019.

Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2019.

Diane Schwartz Jones, Administrator to the County Council