

Introduced 11-1-2021  
Public Hearing 11-15-2021  
Council Action 12-6-2021  
Executive Action 12-13-2021  
Effective Date 2-12-2022

## County Council of Howard County, Maryland

2021 Legislative Session

Legislative Day No. 17

Bill No. 86 -2021

Introduced by: The Chairperson at the request of the County Executive

AN ACT providing that the Fee-in-Lieu for Moderate Income Housing Units and the Building Excise Tax shall be paid at the time of building permit issuance in order to align with the timing of payment of the School Facilities Surcharge; and generally related to fees collected by the Department of Inspections, Licenses and Permits.

Introduced and read first time Nov 1, 2021. Ordered posted and hearing scheduled.  
By order Michelle Harrod  
Michelle Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to the Charter, the Bill was read for a second time at a public hearing on Nov 15, 2021.

By order Michelle Harrod  
Michelle Harrod, Administrator

This Bill was read the third time on Dec 6, 2021 and Passed , Passed with amendments \_\_\_\_\_, Failed \_\_\_\_\_.

By order Michelle Harrod  
Michelle Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 7 day of Dec, 2021 at 4:00 a.m./p.m.

By order Michelle Harrod  
Michelle Harrod, Administrator

Approved/Vetoed by the County Executive Dec 13, 2021

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

3  
4 *By amending:*

5 *Title 13, Housing and Community Development*  
6 *Subsection (e) of Section 13.402C.*

7  
8 *Title 20, Taxes, Charges and Fees.*  
9 *Subsection (a) of Section 20.505.*

10  
11 **Title 13. Housing and Community Development.**

12 **Subtitle 4. Moderate Income Housing Units.**

13  
14 **Section 13.402C. Alternatives to moderate income housing unit obligation in certain zones.**

15 (e) *Fee-In-Lieu.* The developer may pay a fee-in-lieu to the Department for each unit in the  
16 development or portion of the development that is not providing MIHUs onsite:

- 17 (1) The fee-in-lieu shall be based on the square footage calculated by the County for  
18 purposes of determining a unit's building excise tax when applying for a building permit  
19 for the development;
- 20 (2) The fee-in-lieu shall be set yearly by Council resolution based upon the percentage of  
21 increase in the ENR Construction Cost Index for the Baltimore Region as reported in  
22 ENR, Engineering News Record;
- 23 (3) The fee-in-lieu shall be published on the County's website together with the base sales  
24 prices and rents for moderate income housing units;
- 25 (4) If the developer chooses to provide a portion of the required MIHUs on site, the fee shall  
26 be prorated accordingly.
- 27 (5) Except as provided in paragraph (a) of this section, a developer may not pay a fee in lieu  
28 of a single-family attached or apartment moderate income housing unit except in an age-  
29 restricted adult housing or planned senior community;
- 30 (6) A developer shall pay the fee-in-lieu for each unit [[when]] AT THE TIME a building permit  
31 [[application]] is [[submitted]]ISSUED;

1 (7) The fee-in-lieu collected by the Department shall be used for the following:

2 (i) The Settlement Downpayment Loan Program;

3 (ii) The Rehabilitation Loan Program;

4 (iii) Grants to other County entities, the Howard County Housing Commission or local  
5 non-profits for rental housing subsidies, the purchase and rehabilitation of existing  
6 properties for sale or rent to low or moderate income households, emergency eviction  
7 support, or other housing opportunities for low and moderate income households; and

8 (8) By February 1 of each year, the Department shall provide a detailed annual report to the  
9 Council of each collection and expenditure of all fee-in-lieu funds for the prior calendar  
10 year.

11 (9) In census tract block group where the poverty level is ten percent or greater according to  
12 the most recent census, the fee-in-lieu collected by the Department shall be used only for  
13 the Settlement Downpayment Loan Program and the Rehabilitation Loan Program.

14  
15 **Title 20. Taxes, Charges and Fees.**

16 **Subtitle 5. Building Excise Tax.**

17  
18 **Section 20.505. Payment of tax.**

19 (a) *Building Excise Tax Paid When Paying for Building Permit.* An Applicant for a building  
20 permit for addition construction or new construction shall pay the building excise tax to the  
21 Director of Finance of Howard County at the [[same]] time the [[Applicant pays for the]]  
22 building permit IS ISSUED.

23  
24 **Section 2.** *And Be It Further Enacted by the County Council of Howard County, Maryland that*  
25 *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 Dec 13, 2021.

Michelle Harrod  
Michelle Harrod, 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 \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, 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 \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, 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 \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, 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 \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, 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 \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council



# HOWARD COUNTY DEPARTMENT OF INSPECTIONS, LICENSES AND PERMITS

3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2433

Robert J. Frances, P.E., Director

FAX 410-313-3322

Date: October 21, 2021

To: Lonnie Robbins, Chief Administrative Officer  
Department of County Administration

From: Robert Frances, P.E., Director  
Department of Inspections, Licenses, & Permits

Subject: Testimony Regarding the Timing of the Collection of Moderate Income Housing Unit Fee-In-Lieu (MIHU) and Building Excise Tax Fees

The Building Excise Tax was originally instituted in the late 1990's and was a fee based upon the square footage of newly constructed buildings. Around 2004 the School Facilities Surcharge was created with language intending to capture the same measurable building square footage. Lastly, in the early 2010's the Moderate Income Housing Unit (MIHU) Fee-In-Lieu fee was established, again utilizing the same new building square footage. The use of this square footage was deliberate so that from a practical standpoint it could be easily identified, measured, and managed to allow collection in a method that was understandable and predictable to everyone involved.

The Department of Inspections, Licenses & Permits (DILP) is the primary agency responsible for the identification, assessment and collection of these fees for the Department of Finance. Because these fees are typically adjusted as part of the budget cycle that take effect July 1<sup>st</sup>, the first day of each new fiscal year, DILP has traditionally collected the fees based upon the rates in effect at the time of permit issuance. However, the strict letter of the code does not specifically state this in every case. In fact, the language varies in County Code from §20.505 (Building Excise); §20.142 (School Facilities Surcharge); and §13.402C (MIHU Fee-In-Lieu).

Below is a brief summary of the current language from the various sections of County Code:

### **Building Excise**

§20.505(a) states that an applicant shall pay the tax...at the same time [they] pay for the building permit.

### **School Facilities Surcharge**

§20.142(d)(1) states it shall be paid by the applicant at the time a building permit is issued for the residential new construction.

### **MIHU**

§13.402C.(e)(6) states that a developer shall pay the fee-in-lieu for each unit when a building permit application is submitted.

### **Fiscal Impact**

The current practice is to impose the rate and fees at the time a permit is issued which provides consistency and predictability. The proposed legislation, which will codify the current practice, will not have any fiscal impact.

CB86-2021

**Sayers, Margery**

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**From:** LISA MARKOVITZ <lmarkovitz@comcast.net>  
**Sent:** Tuesday, November 30, 2021 3:17 PM  
**To:** CouncilMail  
**Subject:** CB86

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

The People's Voice supports CB86 with comment on fiscal impact problems. We believe it does make sense to charge fees when it is clear a project will proceed; however, the fiscal impact statement reads as follows:

"Fiscal Impact:

We do not anticipate any fiscal impact as a result of this legislation. This legislation is revising the County Code to be in alignment with the County's current practice of collecting building excise taxes, school facilities surcharges, and fees-in-lieu."

This is problematic. The fiscal impact should be shown to be what it actually is as if the regulations were actually being followed. The idea that the County is disobeying its own rules, and therefore there is no actual fiscal impact is not an appropriate publication of information. It is an issue of County processes being accurately compliant, and transparency regarding lost funds due to that inaccuracy.

Thank you,  
Lisa Markovitz  
President, The People's Voice

**Office of the County Auditor  
Auditor's Analysis**

**Council Bill No. 86-2021**

Introduced: November 1, 2021

Auditors: Owen Clark and Rebecca Gold

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Fiscal Impact:

We do not anticipate any fiscal impact as a result of this legislation. This legislation is revising the County Code to be in alignment with the County's current practice of collecting building excise taxes, school facilities surcharges, and fees-in-lieu.

Purpose:

The purpose of Council Bill 86-2021 is to codify the County's current practice of collecting certain fees at the time a building permit is issued. The passage of the bill will align the payment dates of the fee-in-lieu for Modern Income Housing Units (MIHUs) and the building excise tax to be consistent with the payment date of the school facilities surcharge.

Other Comments:

The Department of Inspections, Licenses and Permits (DILP) is responsible for collection of the building excise tax, school facilities surcharge, and fee-in-lieu for MIHUs. According to the Director of DILP, it has been the department's long-standing practice to collect all three fees at the time a building permit is issued. As currently written, the County Code has these fees paid separately at different times:

- The school facilities surcharge is paid at the time of building permit issuance, according to Sec. 20.142(d)(1).
- The building excise tax is paid at the time the building permit is paid for, according to Sec. 20.505(a).
- The per-unit MIHU fee-in-lieu is paid when the building permit application is submitted, according to Sec. 13.402C(e)(6).



HOWARD COUNTY COUNCIL  
AFFIDAVIT OF AUTHORIZATION  
TO TESTIFY ON BEHALF OF AN ORGANIZATION

I, BRENT LOVELESS, have been duly authorized by  
(name of individual)

PTACHC to deliver testimony to the  
(name of nonprofit organization or government board, commission, or task force)

County Council regarding CB 86, CR 163, CR 166 to express the organization's  
(bill or resolution number)

support for / opposition to / request to amend this legislation.  
(Please circle one.)

Printed Name: BRENT Loveless

Signature: Brent Loveless

Date: 11/15/21

Organization: PTACHC

Organization Address: 5451 Beaverkill Rd Columbia MD 21044

Number of Members: Representing PTA's at all HCPSS sites

Name of Chair/President: Srini Gorantla

This form can be submitted electronically via email to  
councilmail@howardcountymd.gov no later than 2 hours prior to the start of the  
Public Hearing.