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Adequate Facilities Tax

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Adequate Facilities Tax

Private Acts of 2004 Chapter 90

SECTION 1. This act shall be known and may be cited as the "Montgomery County Adequate Facilities Tax".

SECTION 2. As used in this act, unless a different meaning clearly appears from the context:

- (1) "Board of Construction Appeals" means the board established in Montgomery County pursuant to the requirements of the Southern Building Code Congress International.
- (2) "Building Permit" means a permit for a single family or multi-family residential development or any use containing dwelling units as defined below which is issued in Montgomery County, whether by the county or by any city therein.
- (3) "Certificate of Occupancy" means a license for occupancy of a building or structure issued in Montgomery County, whether by the county or by any city therein.
- (4) "Condominium" means a building, or group of buildings, in which the dwelling units, offices, or floor area are owned individually, and the structure, common areas, and facilities are owned by all of the owners on a proportional, undivided basis.
- (5) "County Building Commissioner" means the person appointed by the County mayor charged with directing the building and codes department.
- (6) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which creates one or more new dwelling units, and includes recording an approved plat for a lot or lots to be used for a single-family or multi-family dwelling unit or units.
- (7) "Dwelling Unit" means a room or rooms, connected together, constituting a separate, independent, housekeeping establishment for owner occupancy, rental or lease, on a daily, weekly, monthly, or longer basis; physically separated from any other room, rooms or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.
- (8) "Governing Body" means the board of county commissioners of Montgomery County, Tennessee.
- (9) "Lot" means a designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed, or built upon.
- (10) "Multi-Family Dwelling" means a building containing two (2) or more dwelling units, including units that are located one over the other.
- (11) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, in the plural as well as the singular number.
- (12) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions, or which are intended to be leased, rented, or used by persons who do not have tax-exempt status.
- (13) "Plat" includes any plat, plan plot, replot or replat where the same creates additional lots.
- (14) "Public Facility or Facilities" means a physical improvement undertaken by the federal, state, county, or city governments, including, but not limited to, the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities, and other governmental capital improvements benefiting the citizens of the county or city.
- (15) "Residential" means the development of any property for a dwelling unit or units or any structure, including a mobile home, built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind.
- (16) "Single-Family Dwelling" means a building containing one dwelling unit and that is not attached to any other dwelling by any means and is surrounded by open space or yards.

(17) "Townhouse" means a single-family dwelling unit constructed in a series or group of attached units with property lines separating each unit.

SECTION 3. It is the intent and purpose of this act to impose a tax on new residential development in Montgomery County so as to ensure and require that the persons responsible for the new development share in the burdens of growth by paying their fair share for the cost of expanded school services and facilities made necessary by such development.

SECTION 4. Engaging in the act of development within Montgomery County, except as provided in Section 6, is declared to be a privilege upon which Montgomery County may levy a tax at the rate set forth in Section 7.

SECTION 5. The governing body shall, by resolution, adopt administrative guidelines, procedures, regulations, and forms necessary to properly implement, administer, and enforce the provisions of this act.

SECTION 6. This act shall not apply to:

- (1) A lot or structure owned by a nonprofit corporation which is a qualified 501(c)(3) corporation under the Internal Revenue Code;
- (2) Nonresidential facilities;
- (3) Permanent residential structures replacing mobile homes where the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, provided, that the permanent structure is a residence for the owner and occupant of the mobile home and the owner and occupant has resided on the property;
- (4) Places of worship;
- (5) Public buildings;
- (6) Replacement structures for previously existing habitable structures destroyed by fire or other disaster, or voluntarily demolished, when the building permit is issued within twenty-four (24) months of being destroyed or demolished. This exemption applies only to the number of units destroyed or demolished.
- (7) Platted lots of record, meaning a lot or lots that exist as show or described on a plat in the records of the local register of deeds, and which was recorded prior to the effective date of this act; or
- (8) Any lot on which the tax imposed pursuant to this act has been previously paid.

SECTION 7. For the exercise of the privilege described herein, the governing body imposes a tax of two hundred fifty dollars (\$250) on each lot to be used for a single-family residential dwelling unit or units or multi-family dwelling unit or units, and a tax of two hundred fifty dollars (\$250) on each single-family residential dwelling unit or units or multi-family dwelling unit or units, increasing six percent (6%) annually to a combined maximum of one thousand dollars (\$1,000) as follows:

- (1) That portion of the tax imposed on each lot to be used for a single-family or multi-family dwelling unit or units shall be collected by the Montgomery County register of deeds, at the time the approved plat is recorded.
- (2) That portion of the tax imposed on each single-family or multi-family dwelling unit or units shall be collected by the Montgomery County building and codes department at the time the building permit is issued.
- (3) In the event a single-family or multi-family dwelling unit is placed upon property and a plat is not required by applicable provision of the general law, that portion imposed on each lot shall be collected by the Montgomery County building and codes department at the time the building permit is issued.
- (4) For condominiums or townhouses where each dwelling unit is individually owned, each separate unit shall be taxed at the combined rate of five hundred dollars (\$500) and collected by the Montgomery County building and codes department at the time the building permit is issued.
- (5) The initial tax shall be increased annually by six percent (6%) as follows:

Fiscal Year Beginning	Combined Rate	Rate Per Lot	Rate Per Dwelling Unit
(Initial Tax)	\$500.00	\$250.00	\$250.00
July 1, 2005	530.00	265.00	265.00
July 1, 2006	562.00	281.00	281.00
July 1, 2007	596.00	298.00	298.00

Fiscal Year Beginning	Combined Rate	Rate Per Lot	Rate Per Dwelling Unit
July 1, 2008	632.00	316.00	316.00
July 1, 2009	670.00	335.00	335.00
July 1, 2010	710.00	355.00	355.00
July 1, 2011	752.00	376.00	376.00
July 1, 2012	798.00	399.00	399.00
July 1, 2013	846.00	423.00	423.00
July 1, 2014	896.00	448.00	448.00
July 1, 2015	950.00	475.00	475.00
July 1, 2016	1,000.00	500.00	500.00

SECTION 8. Proceeds from the tax levied herein shall be applied to school services, capital projects, or the related debt service for new school construction including the renovation of and additions to existing school facilities as appropriated annually by the Montgomery County board of commissioners.

SECTION 9. The county building commissioner shall collect that portion of the tax established in this act to be collected at the time of application for a building permit. If the county issues the building permit, the county building commissioner or other responsible official shall receive payment in full in cash or other negotiable instrument as specified by resolution of the county and as approved by the county attorney. If the building permit is issued by one of the incorporated cities of Montgomery County, the city shall, before issuance of the building permit, require evidence by a valid certificate executed by the county building commissioner, that the full amount of the tax due the county has been paid. The issuance of a building permit by any city official, without the certificate from the county that the tax has been paid, shall render the city liable to the county for the sum or sums that would have been collected by the county had the certificate of tax paid been required by the city.

SECTION 10. The authority to impose this privilege tax on new development in Montgomery County is in addition to all other authority to impose taxes, fees, assessments, or other revenue raising or land development regulatory measures granted either by the private or public acts of the state of Tennessee, and the imposition of the tax, in addition to any other authorized tax, fee assessment or charge, shall not be deemed to constitute double taxation.

SECTION 11. Any person aggrieved by the decision of the county building commissioner or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

- (1) By payment of the disputed amount to Montgomery County and by notifying the official that the payment is made under protest.
- (2) By requesting an appeal of the decision of the official in written form within thirty (30) days of the protest and payment. Appeals shall be heard by the Montgomery County board of construction appeals. Hearing shall be scheduled within forty-five (45) days of the written request for appeal.

The board of construction appeals shall render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued from time to time by a majority vote of the board for further information.

The board of construction appeals shall act as a quasi-judicial body whose purpose is to determine the intent of this act, its applicability to the appellant, and to rule upon the interpretation of the official.

The board will not be bound by formal rules of evidence applicable to the various court of the state.

Hearings before the board shall proceed as follows:

- (1) The county building commissioner or other responsible official shall explain the ruling and the reason for the ruling.
- (2) The appellant shall explain the reasons for protesting the ruling.
- (3) The board may request further information from any county official, including, but not limited to, the county mayor, county commissioners, or committee members, the county attorney, or the county planning staff. The board will not have the power of subpoena.
- (4) The board will deliberate and render a decision by a majority vote. Decisions will be reduced to writing and copies shall be sent to all parties and shall become a part of the minutes of the board. Decisions of the board of construction appeals shall be final, except that either the county building commissioner, other responsible official, or the person aggrieved may seek review of the board's action by certiorari and supersedeas to the chancery court of Montgomery County, Tennessee, provided that an application to the court is made within sixty (60) days of the written decision of the board.

SECTION 12. The provisions of this act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to Montgomery County. This act shall be deemed to create an additional and alternative method for Montgomery County to impose and collect taxes for the purpose of providing public facilities.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by a two-thirds (2/3) vote fo the county legislative body of Montgomery County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by such officer to the secretary of state.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective July 1, 2004, subject to local approval as provided in Section 14.

Passed: March 15, 2004.

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