

MEMORANDUM

September 18, 2019

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Senior Legislative Analyst

SUBJECT: Department of Permitting Services Executive Regulation (ER) 22-19, Schedule of Fees for Fire Safety Code Permits, Code Modifications, Inspections and Licenses – Method 2

PURPOSE: Develop recommendations for the Council’s consideration

Expected Participants:

Hemal Mustafa, Chief, Fire Prevention & Code Compliance, DPS
Rick Merck, Manager, Fire Prevention & Code Compliance, DPS

Background

The Council approved Executive Regulation (ER) 8-18 last September. The regulation simplified the old fee structure based on hourly rates by changing to flat rates for the Fire Marshal and Fire Code Compliance Section.¹ It also eliminated a 10% automation fee. ER 8-18 increased FY19 projected fees by \$2,000,000. Prior to that fee increase, expenditures exceeded revenues by approximately \$1,600,000 in FY17. The shortfall was covered by other permit fees since the Section was transferred to the Department of Permitting Services (DPS).

¹ The Section’s activities have been described by the Fire Marshal as follows:

The Office of the Fire Marshal (OFM) at DPS is focused on the safety of occupants, including visitors and residents, in all commercial buildings of Montgomery County. As our brothers and sisters in Police and Fire are “first responders”, we in the Office of the Fire Marshal are “first preventers”. We help owners and tenants operate safely and keep their fire protection systems, like automatic sprinkler and fire alarm systems, compliant and working. OFM supports Fire and Rescue with a Fire Marshal Inspector 24 hour per day, 7 days per week and inspects commercial buildings on a risk-based schedule, such as schools, day-cares, group homes, apartment buildings and places of assembly.

The Council received ER 22-19 in a memorandum from the Executive dated August 12, 2019. The regulation would reduce the fees charged to “Garden Apartment Complexes” by Permitting Services for Fire Code Compliance and Fire Alarm and Sprinkler Operations permits. (These fees were increased last year by ER 8-18.)

ER 22-19 was advertised in the June 1, 2019 Montgomery County Register. No public comment was received.

Under §2A of the County Code, this Method 2 Regulation is “automatically approved” 60 days after the Council received it if the Council does not disapprove it or extend time by resolution before the 60-day period ends. The 60th day after August 12, 2019 is Friday, October 11, 2019.

Issues

1) What is the fiscal and budget impact of Executive Regulation 22-19?

The Office of Management and Budget estimates that ER 22-9 would decrease DPS revenues by \$675,000 for each fiscal year after its effective date.

2) How would ER 22-19 reduce fees?

The fees for each building in a garden apartment complex are \$95 per building for Compliance and another \$95 for Operations permits. ER 22-19 would continue to charge the first building in the complex the same fee, but any additional buildings in the complex would be charged \$9.50 for each permit.

3) Why decrease these fees?

DPS received a complaint that an increase in fees for garden apartments under ER 8-18 was too dramatic. The Executive agreed with the complaint.

4) What happens to the DPS budget when these fees are reduced?

The DPS budget is intended to be fully supported by fees. Reducing reserves increases the risk that tax-supported funds would be required to support a Department that is intended to be self-supporting. In the short term, the Department has reserves to withstand revenues below expectations. In the long term, a reduction in these fees will mean that other fees may be increased to retain current staffing.

5) What is the proposed definition of “Multi-Family Residential Garden Style Apartment Complex”?

ER 22-19 adds a definition for “Multi-Family Residential Garden Style Apartment Complex”. It would mean:

- A residential complex consisting of more than one multi-family residential building (sic) where each building does not exceed three stories above grade and is located on one lot, site, ownership unit or subdivision.

This is a circular definition. It uses the terms being defined as part of the definition. The terms “residential”, “complex”, and “multi-family” are both in the definition and in the term being defined. Having pointed that out, there is some prior understanding of those terms. On a practical level the definition may work, but it would be better if the circular elements were corrected.

The fundamental problem with the definition is that a complex may be on one “lot, site, ownership unit or subdivision”. With the use of the conjunction “or”, the complex may be any one of those areas. The term “site” has many meanings and is not defined. The term “subdivision” can include extremely preliminary plans that ultimately have many sites and multiple ownerships.² Staff would not recommend the expansive definition proposed in ER 22-19.

Staff recommends disapproval of Executive Regulation 22-19.

In light of Staff’s recommendation, DPS will recommend an amended regulation before the PHED Committee meets on Monday. Staff will present that amendment at the Committee meeting.

<u>This packet includes</u>	<u>© number</u>
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Executive Regulation 22-19 with changes indicated	5 – 13
Draft Resolution (if the Committee recommends approval)	14 – 15

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² A preliminary plan for Shady Grove Station included 1,458 apartment units all of which could (depending upon the number of stories) could be in one complex.

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

MEMORANDUM

August 12, 2019

Method 2

TO: Nancy Navarro, President
Montgomery County Council

FROM: Marc Elrich, County Executive *Man [Signature]*

SUBJECT: Department of Permitting Services (DPS) Executive Regulation 22-19 - Adoption Schedule of Fees for Fire Safety Code Permits, Code Modification, Inspections and Licenses.

Attached please find Executive Regulation 22-19 pertaining to Fees for Fire Safety Code Permits, Code Modifications, Inspections and Licenses. The regulation was advertised on June 1, 2019, Montgomery County Register, volume 36, issue 6 with a comment's deadline of June 30, 2019. No public comments were received.

This regulation amends Executive Regulation 8-18 by reducing the impact of the fee on Multi-Family Residential Garden Style Apartment Building Complexes. The permit fees for the first building in a Multi-Family Residential Garden Style Apartment Building Complex will be calculated under COMCOR 22.00.03.04(g)(1) and (2). The permit fees for each additional building in the complex will be 10% of the Fire Code Compliance Permit fee and 10% of the Fire Alarm and Sprinkler Operational Permit fee assessed to the first building.

Attached are the two executive regulation copies (clean and mark up). If you need additional information, please contact Hemal Mustafa at 240-777-6226.

Attachments

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Fiscal Impact Statement
Executive Regulation 22-19
Schedule of Fees for Fire Safety Code Permits, Code Modifications, Inspections
and Licenses

1. Executive Regulation Summary (Enter narrative that explains the purpose of the regulation).

This regulation amends Executive Regulation 18-18 by reducing the impact of the fee on multi-family residential garden style apartment building complexes. The permit fees for the first building in a multi-family residential garden style apartment building complex will be calculated under COMCOR 22.00.03.04(g)(1) and (2). The permit fees for each additional building in the complex will be 10% of the Fire Code Compliance (FCC) Permit fee and 10% of the Fire Alarm and Sprinkler Operational Permit fee assessed to the first building.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

There is no fiscal impact to the Department as far as expenditures. The department will continue to review and inspect existing buildings, and existing fire protection systems for conformance with the adopted fire codes, and issue contractor licenses and other fire permits. The changes made in this regulation will not increase or decrease the required number of employees. This regulation amends Executive Regulation 18-18 by reducing the impact of the fee on multi-family residential garden style apartment building Complexes. The permit fees for the first building in a multi-family residential garden style apartment building complex will be calculated under COMCOR 22.00.03.04(g)(1) and (2). The permit fees for each additional building in the complex will be 10% of the Fire Code Compliance Permit fee and 10% of the Fire Alarm and Sprinkler Operational Permit fee assessed to the first building. It is estimated that this regulation will reduce FCC revenues by \$675,000 per year.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years

The regulation does not impact County expenditures.

It is estimated that this regulation will reduce FCC revenues by \$675,000 per year.

4. An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.

Not Applicable

- 5. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.**

Not Applicable

- 6. An estimate of the staff time needed to implement the regulation.**

No additional staff time is needed to implement this regulation. The Department will continue to review and inspect permits of existing buildings, and existing fire protection systems for conformance with the adopted fire codes, and issue contractor licenses and other fire permits. The changes made in this regulation will not increase or decrease the required number of employees.

- 7. An explanation of how the addition of new staff responsibilities would affect other duties.**

Not Applicable

- 8. An estimate of costs when an additional appropriation is needed.**

See answer to question #6

- 9. A description of any variable that could affect revenue and cost estimates.**

DPS revenues have a high degree of unpredictability. Demand for DPS services and resulting revenues is outside of the control of the Department and is affected by factors such as the economy, market absorption, availability of funds, law changes, processes at other agencies, etc. DPS has incorporated a better-defined enterprise fund stabilization factor in the regulations which will be determined each year to better tailor rates to address prior year fund balance, projected revenues and DPS cost.

- 10. Ranges of revenue or expenditures that are uncertain or difficult to project.**

See response to question #9

- 11. If a regulation is likely to have no fiscal impact, why that is the case.**

Not Applicable

12. Other fiscal impacts or comments.

Not Applicable

13. The following contributed to and concurred with this analysis.

Hemal Mustafa, DPS

Barbara Suter, DPS

Alison Dollar, OMB

Richard Madaleno

Richard S. Madaleno, Director
Office of Management and Budget

5/21/19

Date



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Schedule of Fees for Fire Safety Code Permits, Code Modifications, Inspections and Licenses

Number: 22-19

Originating Department: Department of Permitting Services

Effective Date:

Montgomery County Regulations on:

**SCHEDULE OF FEES FOR FIRE SAFETY CODE PERMITS, CODE
MODIFICATIONS, INSPECTIONS and LICENSES**

DEPARTMENT OF PERMITTING SERVICES

Issued by: County Executive

Regulation No: 22-19

COMCOR No: 22.00.03

Authority: Montgomery County Code Section 22-13

Supersedes: Executive Regulation 8-18

Council Review: Method (2) under Code Section 2A-15

Register Vol. 36, Issue 6

Comment Deadline: June 30, 2019

Effective date:

Sunset date: None

SUMMARY:

This regulation amends Executive Regulation 8-18 by reducing the impact of the fee on Multi-Family Residential Garden Style Apartment Building Complexes. The permit fees for the first building in a Multi-Family Residential Garden Style Apartment Building Complex will be calculated under COMCOR 22.00.03.04(g)(1) and (2). The permit fees for each additional building in the complex will be 10% of the Fire Code Compliance Permit fee and 10% of the Fire Alarm and Sprinkler Operational Permit fee assessed to the first building.

ADDRESSES:

Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, MD 20850

STAFF CONTACT:

Hemal Mustafa, Division Chief
Division of Fire Prevention and Code Compliance
240-777-6226
Hadi Mansouri, Chief Operating Officer
Department of Permitting Services



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Number: 22-19

Originating Department: Department of Permitting Services

Effective Date:

BACKGROUND INFORMATION: The Fire Code Compliance (FCC) Section was transferred from the Montgomery County Fire and Rescue Service to the Department of Permitting Services (DPS) in April 2016. Among other accomplishments, Executive Regulation 8-18 fully integrated the FCC into DPS's enterprise fund by replacing an existing and complicated fee system that was based on hourly rates with flat fees. This allowed DPS to eliminate an existing invoice method of collecting fees and integrate the fee collection process into DPS's automated services. The single permit fee and collection process has eliminated confusion, improved customer service, and created consistency across all building and process types. After Executive Regulation 8-18 was adopted, when the regulation was implemented, an unintended impact on Multi-Family Residential Garden Style Apartment Building Complexes was discovered. The impact was not identified during the public comment period. This amended regulation addresses and corrects that unintended impact.

COMCOR No. 22.00.03 SCHEDULE OF FEES FOR FIRE SAFETY CODE PERMITS, CODE MODIFICATIONS, INSPECTIONS and LICENSES

22.00.03.01 Statement of Purpose.

The following fire prevention maintenance inspections, permits and license fees are adopted pursuant to the authority contained in Chapter 22, Fire Safety Code, of the Montgomery County Code as amended. Fees are for inspections, permits, licenses, and code modifications as specified in the Fire Safety Code and regulations adopted by Montgomery County, Department of Permitting Services.

22.00.03.02 General Provisions.

The following provisions apply to all types of permits, licenses and certificates:

- a. **Display.** All required permits and certificates must be readily accessible upon request when not displayed.
- b. **Fee Payment.** All fees required by this regulation must be paid before the issuance of the permit, license, certificate, or code modification.
- c. **Government Activities.** All activities of municipal, county, and state government requiring a permit, license, certificate, exception, inspection or testing must conform to the Maryland State Fire Prevention Code and Montgomery County Fire Safety Code and will be charged the applicable fees except where



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Originating Department: Department of Permitting Services

Effective Date:

specifically exempted by law. Applicable fees will be charged to the permit, license, certificate, or exception holder.

- d. Refund. All fees are non-refundable, except in the case of an administrative error.
- e. Transfer. Permits and Permit fees are not transferable.

22.00.03.03 Definitions:

- a. Fire Code Compliance Permit: A permit to ensure that any business, school, multi-family residential building, health care facility, place of worship, and other commercial building is in compliance with the applicable fire safety codes.
- b. Operational Permit: A Permit to ensure that each active and passive Fire Protection System is in compliance with the applicable fire safety codes in any business, school, multi-family building, health care facility, place of worship, or other commercial building or occupancy.
- c. General Permit: A permit for particular operations, special events, blasting, including items listed under 22.00.03.05 of this document.
- d. Multi-Family Residential Garden Style Apartment Complex means a residential complex consisting of more than one multi-family residential building where each building does not exceed three stories above grade plane and is located on one lot, site, ownership unit, or subdivision.

22.00.03.04 Fire Code Compliance and Operational Permits, Terms and Fees.

- a. Systems and Structures Maintenance – All code required fire protection systems and features must be operational and maintained in good working order at all times and must be inspected or tested by an authorized individual or agency in compliance with the Montgomery County Fire Safety Code and applicable NFPA standards.
 - 1. The building owner or representative, occupant, or a Montgomery County licensed fire protection contractor must submit inspection, maintenance, and testing report documents and data in compliance required by the Montgomery County Fire Safety Code and NFPA code requirements to the



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Effective Date:

Department of Permitting Services, Division of Fire Prevention and Code Compliance.

2. The building owner or occupant or both must maintain the documents and data required in paragraph 1 of this subsection for the previous two years and have the documents and data readily available on site.
3. Failure to submit the documents and data required under paragraph 1 of this subsection, or the failure to maintain the required records, may result in an order to conduct an annual test of the fire protection systems and features witnessed by the Montgomery County Fire Marshal.
 - b. Non-compliance. All reported or discovered deficiencies or impairments, or any failures to provide the documentation and data required under subsection a.1, may result in a Notice of Violation being issued to the responsible party.
 - c. Fire Code Compliance Permits. A Fire Code Compliance Permit must be renewed annually and in accordance with 22.00.03.04(f) of this document.
 - d. Operational Permits. An Operational Permit must be renewed annually and in accordance with 22.00.03.04(f) of this document.
 - e. Fire Code Compliance Permits and Operational Permits are valid for one calendar year from the date of issuance and must indicate an expiration date.
 - f. Fire Code Compliance Permits and Operational Permits must be renewed immediately when any of the following occur:
 1. The Use and Occupancy for the building or tenant space issued by the Department of Permitting Services is changed,
 2. The owner of the building or tenant changes.
 - g. Fees.
 1. Fire Code Compliance Permit
 - (a) \$95 per year.
 - (b) \$95 per additional building or tenant space.

Exception. For Multi-Family Residential Garden Style Apartment Building Complexes, the permit fee for each additional building in the complex is 10% of the Fire Code Compliance Permit fee assessed to the first building.



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Originating Department: Department of Permitting Services

Effective Date:

- 2. Operational Permit. (a) \$95 per system per year.
(b) \$95 per additional building or tenant space.
Exception. For Multi-Family Residential Garden Style Apartment Building Complexes, the permit fee for each additional building in the complex is 10% of the Fire Alarm and Sprinkler Operational Permit fee assessed to the first building.

- 3. Initial structure or existing condition inspections. No charge.

- 4. Follow up inspection for non-compliance. \$95

- 5. Subsequent re-inspections for non-compliance. \$95

- 6. Overtime inspection (When available) \$270 Inspection

h. A cancellation within 24 hours before a scheduled inspection will be counted as an inspection.

- i. Witnessed Tests of Systems or Structures \$95

22.00.03.05 General Permits, Terms, and Fees.

Fees for the following items are \$95 except as noted. An inspection may be required at the discretion of the Fire Marshal before a permit is issued. For additional inspections required post event (Example Fireworks), an additional fee will be charged as a reinspection fee.

a. Amusement and entertainment

- 1. To conduct or operate any scary (haunted) house, crop maze, carnival, fair, exhibit, trade show, concert, or other public event that presents an unusual life safety or fire hazard. Permit Term – 30 calendar days.
- 2. To conduct or operate any fireworks shoot. Permit Term – 30 calendar days.
- 3. To use any flame effects before an audience. Permit Term – 30 calendar days.



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Effective Date:

b. Flammable and combustible liquids and gases

1. To install, remove, abandon, repair or alter a stationary tank for storing flammable or combustible liquids, dispensing devices, or associated piping. Permit Term - 30 calendar days.
2. To place any flammable or combustible liquid stationary tank temporarily or permanently out of service. Permit Term - 30 calendar days.
3. To conduct floor resurfacing and refinishing operations involving the use and application of flammable liquids or materials. Permit Term - 30 calendar days.
4. For spraying or dipping operations utilizing more than one gallon of flammable or combustible liquids on any working day. Permit Term - 12 calendar months.
5. For the operation of a bulk storage plant and/or for storage and dispensing of any formulation of natural gases or liquefied petroleum gases. Permit Term - 12 calendar months.

c. Flammable and combustible solids

1. To store or handle more than 100 cubic feet of combustible fibers. Permit Term - 12 calendar months.
2. To conduct or maintain any tire recapping or rebuilding plant. Permit Term - 12 calendar months.
3. To store more than 100,000 board feet of lumber. Permit Term - 12 calendar months.
4. To use explosives (for blasting permit) per month, \$95. Permit Term - not to exceed 12 calendar months.
5. To operate any commercial rubbish-handling facility or site. Permit Term - 12 calendar months.

d. Hot Work



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Effective Date:

1. To conduct any cutting or welding operations except those activities contained in a fabrication shop. Permit Term – Site specific, 12 calendar months.
 2. To use an open flame torch for the application of roofing materials or stripping of paint. Permit Term – Site specific, 30 calendar days.
 3. To place and operate a tar kettle. Permit Term – Site specific, 30 calendar days.
- e. Motor vehicles
1. To use any building, shed, or enclosure as a place of business for the purpose of repairing or refurbishing any motor vehicle, including aircraft. Permit Term – 12 calendar months.
 2. To operate any motor vehicle wrecking yard. Permit Term – 12 calendar months.
 3. To operate any motor vehicle refueling facility, including aircraft. Permit Term – 12 calendar months.
- f. To review Fire Department Access and/or Fire hydrant location. Site Specific.
- g. Miscellaneous Permits.
1. To operate any commercial establishment or conduct any process or activity that poses an unusual fire or life safety risk not otherwise covered in this regulation is \$95. Permit Term – 12 calendar months, or until a change in ownership or use group.
 2. The fee for any inspection associated with the issuance of a permit is included in the permit fee.
 3. The fee for any other Permit required by the Fire Marshal, or identified in other reference documents or in NFPA 1 is \$95. Permit Term – 12 calendar months, or as noted on permit.



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Number: 22-19

Originating Department: Department of Permitting Services

Effective Date:

22.00.03.06 License Fees.

a. Fire protection systems and equipment

1. Fire Extinguisher Corporate License – For a firm to engage in the business of servicing portable fire extinguishers. \$88. License Term – 12 calendar months.
2. Corporate License – For a firm to engage in the business of repairing, servicing or inspecting, maintaining and testing any fixed fire protection system or structural fire protection element or feature. \$88. License Term – 12 calendar months.
3. Individual License – To install, repair, service, inspect, maintain, or test any fixed fire protection system, structural fire protection element or feature, or portable fire extinguishers. \$88. License Term – 12 calendar months.

b. Fire Safety Permits (Licensing Inspections)

1. Family or Group Day Care home. \$95
2. Nursery or Day Care Centers. \$95
3. Board & Care (Group Home). \$95
4. Assisted Living or Nursing Home \$95
5. Health Care, Detention. \$95
6. Other Licensed Facility. \$95
7. Private Educational Institutions. \$95

22.00.03.07 Miscellaneous Fees

a. Additional Inspection fees:

1. Initial inspection of work or event site or property required before permit issuance \$95



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- 2. When a post event inspection is required \$95
- 3. Each re-inspection fee after two disapprovals \$95

22.00.03.08 Indexing of Fees to Labor and Operating Cost Changes and to Manage Reserves

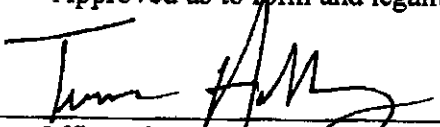
The Director of Permitting Services must calculate an enterprise fund stabilization factor (EFSF) each year to be applied to each fee set in or under this regulation on July 1 or each year. The EFSF is the factor by which the fee calculation is adjusted, up or down, to cover DPS labor and operating costs and to manage the DPS reserve policy under the 2002 Principles of the Fiscal Management of the Permitting Services Fund. The Director must publish the EFSF for each upcoming fiscal year not later than March 15 of the current fiscal year. For any year in which the EFSF will be less than .80 or greater than 1.20, the Department must review its fee rates and functional analysis behind the fee rates to determine if changes need to be made to the fee rates.

22.00.03.09 Severability

The provisions of these regulations are severable. If a court of competent jurisdiction holds that a provision is invalid or inapplicable, the remainder of the regulation remains in effect.



 Marc Elrich, County Executive Date 8/14/19

Approved as to form and legality:


 Office of the County Attorney Date 7/11/19

Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President at the request of the County Executive

SUBJECT: ER 22-19, Schedule of Fees for Fire Safety Code Permits, Code Modifications, Inspections and Licenses

Background

1. On August 12, 2019, the Council received the County Executive's recommended Regulation 22-19 as a Method 2 regulation. Under §2A of the County Code, this Method 2 regulation is "automatically approved" 60 days after the Council received it if the Council does not disapprove it or extend time by resolution before the 60-day period ends. The 60th day after August 12, 2019 is Friday, October 11, 2019.
2. The Regulation would define a Multi-Family Residential Garden Style Apartment Complex.
3. The Regulation would reduce fees for those complexes when there is more than one building in the complex.
4. On September 23, 2019, the Council's Planning, Housing, and Economic Development Committee held a worksession on the DPS Budget.
5. The Committee recommended disapproval due to a definition that was circular and overly-expansive.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The County Council disapproves ER 22-19.

This is a correct copy of Council action.

Mary Anne Paradise
Acting Clerk of the Council