



Forest Conservation Fees: In-lieu Fees and Administrative Civil Penalty Rate

MP Mark Pfefferle, Chief, Mark.Pfefferle@montgomeryplanning.org, 301 495-4730

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SUMMARY

- Staff recommends a \$0.05 increase to the forest conservation in-lieu fee amount to a new rate of \$1.25 per square foot.
- Staff recommends a \$0.35 increase to the maximum administrative civil penalty allowable for forest conservation violations to a new rate of \$11.40 per square foot.

BACKGROUND

Staff is required by Montgomery County Council Resolution 15-1271 to assess the forest conservation in-lieu fee amount and the maximum administrative civil penalty every odd numbered year. The County Resolution indicates that this increase must be made by May 1 of each odd numbered year and applicable on July 1. The in-lieu fee amount is currently \$1.20 per square foot and the maximum civil administrative penalty is currently \$11.05 per square foot. These rates became effective on July 1, 2017.

Montgomery County Council Resolution 15-1271 (Attachment 1) requires the Planning Board to adjust the forest conservation in-lieu amount and administrative civil penalty based on the Consumer Price Index for all urban consumers in the Washington-Baltimore metropolitan area, or any successor index. The County resolution indicates that increases shall only be based on the two most recent calendar years.

In January 2018, the U.S. Bureau of Labor Statistics, part of the Department of Labor, discontinued the Washington-Baltimore metropolitan area and separated it into 2 new Core Based Statistical Areas (CBSA). Montgomery County was placed into the CBSA called Washington-Arlington-Alexandria. Therefore, the determination of the new in-lieu fee amount and the administrative civil penalty is based on the comparison of the consumer price index for the Washington-Arlington-Alexandria CBSA from January 2017 to January 2019.

ANALYSIS

The United States Bureau of Labor Statistics data indicates that the Consumer Price Index increased between January 2017 and January 2019 for the Washington-Arlington-Alexandria CBSA (Attachment 2). The consumer price index in January 2017 was 254.495 and 262.304 in January 2019. The January 2019 index is a 3.07% increase from January 2017. Therefore:

- Based on Consumer Price Index the increase in the forest conservation in-lieu amount is \$0.0368 ($\$1.20 \times 3.07\% = \0.0368) per square foot. The new in-lieu fee rate would be \$1.2368 per square foot ($\$1.20 + \0.0368).
- Based on the Consumer Price Index the increase in the maximum forest conservation administrative civil penalty is \$0.3391 ($\$11.05 \times 3.07\% = \0.3391) per square foot. The new maximum forest conservation penalty rate would be \$11.3891 per square foot ($\$11.05 + \$0.3391 = \$11.3891$).

The Council Resolution requires all adjustments to be rounded to the nearest multiple of 5 cents. Common rounding practices will round the in-lieu amount from \$1.2368 to \$1.25 per square foot and the maximum administrative civil penalty rate will be rounded from \$11.3891 to \$11.40 per square foot.

RECOMMENDATIONS

Based on the direction provided in County Council Resolution 15-1271 staff recommends the Planning Board set the in-lieu rate and the maximum administrative civil penalty to the following amounts:

- In-lieu amount = \$1.25 per square foot
- Maximum administrative civil penalty = \$11.40 per square foot.

These new rates will become effective July 1, 2019. County Council Resolution 15-1271 does not include a grandfathering clause therefore, applicants desiring to meet their forest conservation requirements via an in-lieu fee payment after July 1, 2019 must pay at a rate equal to \$1.25 per square foot regardless of when the plan was approved. Similarly, violations to the Chapter 22A of the County code can be assessed civil administrative penalties based on the higher rate after July 1, 2019.