

Bill No. 37-16  
 Concerning: Taxation – Development  
Impact Tax – Transportation and  
Public School Improvements –  
Amendments  
 Revised: November 15, 2016 Draft No. 11  
 Introduced: August 2, 2016  
 Enacted: November 15, 2016  
 Executive: November 28, 2016  
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 Sunset Date: None  
 Ch. 36, Laws of Mont. Co. 2016

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the Planning Board

**AN ACT to:**

- (1) modify the method of calculating the transportation and public school impact tax;
- (2) create new transportation tax districts associated with policy area categories;
- (3) adjust the transportation impact tax for residential uses based on Non-Auto Driver Mode Share associated with each tax district;
- (4) adjust the transportation impact tax for non-residential uses based on Vehicle Miles of Travel associated with each tax district;
- (5) ~~[[authorize an adjustment to the transportation impact tax for providing parking below the minimum required under Chapter 59]]~~ exempt certain student-built houses from the impact tax;
- (6) ~~[[modify the public school impact tax payable for property located in a former enterprise zone]]~~ eliminate the transportation mitigation payments for certain projects;
- ~~(7)~~ eliminate the school facilities payments for certain projects; [[and]]
- ~~[[ (7) ]]~~ (8) exempt certain farm tenant dwelling units from the impact tax for transportation improvements; and
- (9) generally amend County law concerning the development impact tax for transportation and public school [[impact tax]] improvements.

By amending

Montgomery County Code  
 Chapter 52, Taxation  
 Sections 52-39, 52-40, 52-45, 52-47, 52-49, 52-50, 52,51, 52-52, 52-54, 52-55, 52-56, 52-58, and 52-59.

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Sections 52-39, 52-40, 52-45, 52-47, 52-49, 52-50, 52,51, 52-52, 52-**  
 2 **54, 52-55, 52-56, 52-58, and 52-59 are amended as follows:**

3 **52-39. Definitions.**

4           In this Article the following terms have the following meanings:

5           *Additional capacity* means a new road, widening an existing road, adding an  
 6 additional lane or turn lane to an existing road, or another transportation  
 7 improvement that:

- 8           (1) increases the maximum theoretical volume of traffic that a road or  
 9 intersection can accommodate, or implements or improves transit,  
 10 pedestrian and bike facilities or access to non-auto modes of travel; and  
 11 (2) is classified as a minor arterial, arterial, parkway, major highway,  
 12 controlled major highway, or freeway in the County’s Master Plan of  
 13 Highways, or is similarly classified by a municipality. The Director of  
 14 Transportation may find that a specified business district street or  
 15 industrial street also provides additional capacity as defined in this  
 16 provision.

17           *Additional capacity* is sometimes referred to as added “*highway capacity*,”  
 18 “*transportation capacity*,” or “*intersection capacity*”.

19                                       \*      \*      \*

20           *Charitable, philanthropic institution* means a private, tax-exempt organization  
 21 whose primary function is to provide services, research, or educational activities  
 22 in areas such as health, social service, recreation, or environmental conservation.

23           *Clergy House* means a single-family dwelling unit provided for the designated  
 24 religious leader of a place of worship to live.

25           *Construction* means the planning, design, acquisition of land, site  
 26 improvements, utility relocation, building, and initial furniture and equipment  
 27 for a capital project.

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Farm tenant dwelling means a dwelling unit under the control of the owner or operator of the farm on which the dwelling unit is located and occupied by an agricultural worker actively engaged in farming on a full-time or part-time basis.

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Farm Tenant Dwelling includes up to three mobile homes. A Farm Tenant Dwelling is not restricted by the definition of household.

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**52-40. Findings; purpose and intent.**

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(a) The master plan of ~~[[highways]]~~ transportation indicates that certain ~~[[roads]]~~ transportation facilities are needed in planning policy areas. Furthermore, the ~~[[Growth]]~~ Subdivision Staging Policy indicates that the amount and rate of growth projected in certain planning policy areas will place significant demands on the County for provision of ~~[[major highways]]~~ transportation facilities necessary to support and accommodate that growth.

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(e) The development impact tax ~~[[will fund]]~~ funds, in part, the improvements necessary to increase the transportation system capacity, thereby allowing development to proceed. Development impact taxes ~~[[will be]]~~ are used exclusively for impact transportation improvements.

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(f) In order to assure that the necessary impact transportation improvements are constructed in a timely manner, the County ~~[[intends to assure]]~~ assures the availability of funds sufficient to construct the impact transportation improvements.

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(g) The County retains the power to determine the types of impact transportation improvements to be funded by development impact taxes~~[[;~~ to estimate the cost of such improvements; to establish the proper

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55 timing of construction of the improvements so as to meet APFO policy  
 56 area transportation adequacy standards where they apply; to determine  
 57 when changes, if any, may be necessary in the County CIP;]] and to do  
 58 all things necessary and proper to effectuate the purpose and intent of this  
 59 Article.

60 (h) The County intends to further the public purpose of ensuring that an  
 61 adequate transportation system is available in support of new  
 62 development.

63 (i) [[The County's findings are based on the adopted or approved plans,  
 64 planning reports, capital improvements programs identified in this  
 65 Article, and specific studies conducted by the Department of  
 66 Transportation and its consultants.

67 (j)]] The County intends to impose development impact taxes until the County  
 68 has attained build-out as defined by the General Plan.

69 **52-41. Imposition and applicability of development impact taxes.**

70 (a) A development impact tax must be imposed before a building permit is  
 71 issued for development in the County.

72 (b) An applicant for a building permit must pay a development impact tax in  
 73 the amount and manner provided in this Article, unless a credit in the full  
 74 amount of the applicable tax applies under Section 52-47 or an appeal  
 75 bond is posted under Section 52-48.

76 (c) The following impact tax districts are established:

77 (1) [*Metro Station*: Friendship Heights, Bethesda CBD, Grosvenor,  
 78 White Flint, Twinbrook, Rockville Town Center, Shady Grove  
 79 Metro, Silver Spring CBD, Wheaton CBD, and Glenmont Metro  
 80 station policy areas, as defined in the most recent Subdivision

- 81                    Staging policy, except as modified by paragraph (3) for the White  
 82                    Flint policy area;
- 83                    (2) *Clarksburg*: Clarksburg policy area, as defined in the most recent  
 84                    Subdivision Staging Policy;
- 85                    (3)] *White Flint*: The part of the White Flint Metro Station Policy Area  
 86                    included in the White Flint Special Taxing District in Section 68C-  
 87                    2; [and]
- 88                    (2) *Red Policy Areas*: Bethesda CBD, Friendship Heights, Grosvenor,  
 89                    Glenmont, Rockville Town Center, Shady Grove Metro Station,  
 90                    Silver Spring CBD, Twinbrook, and Wheaton CBD Metro Station  
 91                    Policy Areas;
- 92                    (3) *Orange Policy Areas*: Bethesda/Chevy Chase, Burtonsville  
 93                    Crossroads, Chevy Chase Lake, Clarksburg Town Center,  
 94                    Derwood, Gaithersburg City, Germantown Town Center,  
 95                    Kensington/Wheaton, Long Branch, North Bethesda, R & D  
 96                    Village, Rockville City, Silver Spring/Takoma Park,  
 97                    Takoma/Langley, White Flint, except the portion that is included  
 98                    in the White Flint Special Taxing District in Section 68C-2, and  
 99                    White Oak Policy Areas;
- 100                    (4) *Yellow Policy Areas*: Aspen Hill, Clarksburg, Cloverly,  
 101                    Fairland/Colesville, Germantown East, Germantown West,  
 102                    Montgomery Village/Airpark, North Potomac, Olney, and  
 103                    Potomac Policy Areas; and
- 104                    (5) *Green Policy Areas*: Damascus, Rural East, and Rural West Policy  
 105                    Areas.
- 106                    [(4) *General*: Any part of the County, including any municipality, not  
 107                    located in an area listed in paragraphs (1) - (3).]

108 (d) ~~[[Reserved]]~~ A Clergy House must pay the impact tax rate that applies to  
109 a place of worship if the house:

110 (1) is on the same lot or parcel, adjacent to, or confronting the property  
111 on which the place of worship is located; and

112 (2) is incidental and subordinate to the principal building used by the  
113 religious organization as its place of worship.

114 The place of worship tax rate does not apply to any portion of a Clergy  
115 House that is nonresidential development.

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117 (g) A development impact tax must not be imposed on:

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120 (5) any non-exempt dwelling unit in a development in which at least  
121 25% of the dwelling units are exempt under paragraph (1), (2), (3),  
122 or (4), or any combination of them; ~~[[and]]~~

123 (6) any development located in an enterprise zone designated by the  
124 State or in an area previously designated as an enterprise zone;  
125 ~~[[and]]~~

126 (7) a house built by high school students under a program operated by  
127 the Montgomery County Board of Education; and

128 (8) a farm tenant dwelling.

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130 **52-45. Restrictions on use and accounting of development impact tax funds.**

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132 ~~[[h]]~~ Development impact tax funds collected from the [Clarksburg impact tax  
133 district] Red Policy Areas must be used for impact transportation

134 improvements located in or that directly benefit [the Clarksburg] those  
135 policy [area] areas.]]

136 **52-47. Credits.**

137 (a) ~~[(1)]~~ A property owner is entitled to a credit if the owner, before July 1,  
138 2002, entered into a participation agreement, or a similar  
139 agreement with the state or a municipality, the purpose of which  
140 was to provide additional transportation capacity. A property  
141 owner is also entitled to a credit if the owner receives approval  
142 before July 1, 2002, of a subdivision plan, development plan, or  
143 similar development approval by the County or a municipality that  
144 requires the owner to build or contribute to a transportation  
145 improvement that provides additional transportation capacity. The  
146 Department of Transportation must calculate the credit. The credit  
147 must equal the amount of any charge paid under the participation  
148 agreement. The Department may give credit only for building  
149 permit applications for development on the site covered by the  
150 participation agreement.

151 ~~[(2)~~ (A) An entity that received more than \$20 million in credits  
152 under this subsection that were certified before July 1, 2002,  
153 may apply any unused credit to satisfy an obligation under  
154 Policy Area Mobility Review, or any applicable successor  
155 policy area transportation test, if:

- 156 (i) the County Executive has identified the project for  
157 which a credit would be applied under this paragraph  
158 as a strategic economic development project; and  
159 (ii) the credit is used before November 1, 2015.

160 (B) The total of any credits used under this paragraph to satisfy  
161 an obligation under Policy Area Mobility Review, or any  
162 applicable successor policy area transportation test, much  
163 not exceed \$1.7 million.]]

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165 (d) Any credit for building or contributing to an impact transportation  
166 improvement does not apply to any development that [is] has been  
167 previously approved under the Alternative Review Procedure for Metro  
168 Station Policy Areas in the County Subdivision Staging Policy.

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170 (j) (1) A property owner must receive a credit for constructing or  
171 contributing to the cost of building a new single family residence  
172 that meets Level I Accessibility Standards, as defined in Section  
173 52-107(a).

174 (2) The credit allowed under this Section must be as follows:

175 (A) If at least 5% of the single family residences built in the  
176 project meet Level I Accessibility Standards, then the owner  
177 must receive a credit of \$250 per residence.

178 (B) If at least 10% of the single family residences built in the  
179 project meet Level I Accessibility Standards, then the owner  
180 must receive a credit of \$500 per residence.

181 (C) If at least 25% of the single family residences built in the  
182 project meet Level I Accessibility Standards, then the owner  
183 must receive a credit of \$750 per residence.

184 (D) If at least 30% of the single family residences built in the  
185 project meet Level I Accessibility Standards, then the owner  
186 must receive a credit of \$1,000 per residence.



187           (3)   Application for the credit and administration of the credit be in  
 188                       accordance with Subsections 52-107(e) and (f).

189           (4)   A person must not receive a property tax credit under this Section  
 190                       if the person receives any public benefit points for constructing  
 191                       units with accessibility features under Chapter 59.

192           (k)   After a credit has been certified under this Section, the property owner or  
 193                       contract purchaser to whom the credit was certified may transfer all or  
 194                       part of the credit to any successor in interest of the same property.  
 195                       However, any credit transferred under this subsection must only be  
 196                       applied to the tax due under this Article with respect to the property for  
 197                       which the credit was originally certified.

198   **52-49. Tax rates.**

199           (a)   The Council must establish the tax rates for each impact tax district,  
 200                       except as provided in subsection (b), by resolution, after a public hearing  
 201                       advertised at least 15 days in advance. [[are:]]

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<i><b>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</b></i>			
<i><b>Building Type</b></i>	<i><b>Metro Station</b></i>	<i><b>Clarksburg</b></i>	<i><b>General</b></i>
Single-family detached residential (per dwelling unit)	\$2,750	\$8,250	\$5,500
Single-family attached residential (per dwelling unit)	\$2,250	\$6,750	\$4,500

Multifamily residential (except high-rise) (per dwelling unit)	\$1,750	\$5,250	\$3,500
High-rise residential (per dwelling unit)	\$1,250	\$3,750	\$2,500
Multifamily-senior residential (per dwelling unit)	\$500	\$1,500	\$1,000
Office (per sq. ft. GFA)	\$2.50	\$6	\$5
Industrial (per sq. ft. GFA)	\$1.25	\$3	\$2.50
Bioscience facility (per sq. ft. GFA)	\$0	\$0	\$0
Retail (per sq. ft. GFA)	\$2.25	\$5.40	\$4.50
Place of worship (per sq. ft. GFA)	\$0.15	\$0.35	\$0.30
Private elementary and secondary school (per sq. ft. GFA)	\$0.20	\$0.50	\$0.40
Hospital (per sq. ft. GFA)	\$0	\$0	\$0
Cultural institution	\$0.20	\$0.50	\$0.40
Charitable, philanthropic institution	\$0	\$0	\$0
Other nonresidential (per sq. ft. GFA)	\$1.25	\$3	\$2.50

<b><u>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</u></b>				
<b><u>Land Use</u></b>	<b><u>Red Policy Areas (Metro Stations)</u></b>	<b><u>Orange Policy Areas</u></b>	<b><u>Yellow Policy Areas</u></b>	<b><u>Green Policy Areas</u></b>
<b><u>Residential Uses</u></b>				
<u>SF Detached</u>	<u>\$3,653</u>	<u>\$10,959</u>	<u>\$18,266</u>	<u>\$29,225</u>
<u>MF Residential</u>				
<u>SF Attached</u>	<u>\$2,552</u>	<u>\$7,656</u>	<u>\$12,759</u>	<u>\$20,415</u>
<u>Garden Apartments</u>	<u>\$2,312</u>	<u>\$6,937</u>	<u>\$11,562</u>	<u>\$18,499</u>
<u>High - Rise Apartments</u>	<u>\$1,652</u>	<u>\$4,955</u>	<u>\$8,259</u>	<u>\$13,214</u>
<u>Multi-Family Senior</u>	<u>\$661</u>	<u>\$1,982</u>	<u>\$3,303</u>	<u>\$5,286</u>
<b><u>Commercial Uses</u></b>				
<u>Office</u>	<u>\$10.08</u>	<u>\$13.45</u>	<u>\$16.81</u>	<u>\$16.81</u>
<u>Industrial</u>	<u>\$5.01</u>	<u>\$6.69</u>	<u>\$8.36</u>	<u>\$8.36</u>
<u>Bioscience</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Retail</u>	<u>\$8.97</u>	<u>\$11.96</u>	<u>\$14.95</u>	<u>\$14.95</u>
<u>Place of Worship</u>	<u>\$0.53</u>	<u>\$0.70</u>	<u>\$0.88</u>	<u>\$0.88</u>

<u>Private School</u>	<u>\$0.80</u>	<u>\$1.06</u>	<u>\$1.33</u>	<u>\$1.33</u>
<u>Hospital</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Social Service Agencies</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Other Non-Residential</u>	<u>\$5.02</u>	<u>\$6.69</u>	<u>\$8.36</u>	<u>\$8.36</u>

204 II

205 (b) For any development located in the White Flint Impact Tax District, the  
 206 tax rates are \$0. II:

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<b>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</b>	
<i>Building Type</i>	<i>White Flint</i>
High-rise residential (per dwelling unit)	\$ 0
Multifamily-senior residential (per dwelling unit)	\$ 0
Office (per sq.ft. GFA)	\$ 0
Industrial (per sq.ft. GFA)	\$ 0
Bioscience facility (per sq.ft. GFA)	\$ 0
Retail (per sq.ft. GFA)	\$ 0
<b>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</b>	
<i>Building Type</i>	<i>White Flint</i>
Place of worship (per sq.ft. GFA)	\$ 0
Private elementary and secondary school (per sq.ft. GFA)	\$ 0
Hospital (per sq.ft. GFA)	\$ 0
Other nonresidential (per sq.ft. GFA)	\$ 0

209 II

210 (c) [Any development that receives approval of a preliminary plan of  
 211 subdivision under any Alternative Review Procedure must pay the tax at

212 double the rate listed in subsection (a). However, any development  
 213 approved under an Alternative Review Procedure that is located in a  
 214 Metro Station Policy Area must pay the tax at 75% of the rate listed in  
 215 subsection (a) for the same type of development in the General district.

216 (d) Any Productivity Housing unit, as defined in Section 25B-17(j), must pay  
 217 the tax at 50% of the applicable rate calculated in subsection (a).

218 [(e)] (d) Any building that would be located within one-half mile of the  
 219 Germantown, Metropolitan Grove, Gaithersburg, Washington Grove,  
 220 Garrett Park, or Kensington MARC stations must pay the tax at 85% of  
 221 the applicable rate calculated in subsection (a).

222 [(f)] (e) The County Council by resolution, after a public hearing  
 223 advertised at least 15 days in advance, may increase or decrease the rates  
 224 [[set in]] established under this Section.

225 [(g)] (f) The Director of Finance, after advertising and holding a public  
 226 hearing as required by Section 52-17(c), must adjust the tax rates set in  
 227 or under this Section on [[July 1]] [[January 1]] July 1 of each odd-  
 228 numbered year by the annual average increase or decrease in a published  
 229 construction cost index specified by regulation for the two most recent  
 230 calendar years. The Director must calculate the adjustment to the nearest  
 231 multiple of 5 cents for rates per square foot of gross floor area or one  
 232 dollar for rates per dwelling unit. The Director must publish the amount  
 233 of this adjustment not later than [[May 1]] [[November 1]] May 1 of each  
 234 [[odd]] [[even numbered]] odd-numbered year.

235 **52-50. Use of impact tax funds.**

236 Impact tax funds may be used for any:

237 (a) new road, widening of an existing road, or total reconstruction of all or  
 238 part of an existing road required as part of widening of an existing road,

- 239 that adds highway or intersection capacity or improves transit service or
- 240 bicycle commuting, such as bus lanes or bike lanes;
- 241 (b) new or expanded transit center or park-and-ride lot;
- 242 (c) bus added to the Ride-On bus fleet, but not a replacement bus;
- 243 (d) new bus shelter, but not a replacement bus shelter;
- 244 (e) hiker-biker trail [[or other bike facility]] and protected bike lanes used
- 245 primarily for transportation;
- 246 (f) bicycle locker that holds at least 8 bicycles;
- 247 (g) bikesharing station (including bicycles) approved by the Department of
- 248 Transportation; [[or]]
- 249 (h) sidewalk connector in a public right-of-way to or within a major activity
- 250 center or along an arterial or major highway; or
- 251 (i) [[the operating expenses of any transit or trip reduction program]]
- 252 element of bus rapid transit, including exclusive bus lanes, shelters, and
- 253 buses.

254 **52-51. [[Transportation Mitigation Payment]] Reserved.**

- 255 [[a) In addition to the tax due under this Article, an applicant for a building
- 256 permit for any building on which an impact tax is imposed under this
- 257 Article must pay to the Department of Finance a [Transportation] Transit
- 258 Accessibility Mitigation Payment if that building was included in a
- 259 preliminary plan of subdivision that was approved under the
- 260 Transportation Mitigation Payment provisions in the County Subdivision
- 261 Staging Policy adopted on \_\_\_\_.]]
- 262 [[b) The amount of the Payment [for each building must be calculated by
- 263 multiplying the Payment rate by the total peak hour trips generated by the
- 264 development] is based upon the latest finding of adequacy for transit
- 265 accessibility for each Policy Area as approved and applicable under the

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County Subdivision Staging Policy process. The initial findings of applicability and adequacy as adopted on \_\_\_\_\_ are as follows:]] [. ]]

<u>Policy Area</u>	<u>Transit Accessibility Mitigation</u>
<b><u>Red Group</u></b>	
Bethesda CBD	Exempt
Friendship Heights	Exempt
Grosvenor	Exempt
Glenmont	Exempt
Rockville Town Center	Exempt
Shady Grove Metro Station	Exempt
Silver Spring CBD	Exempt
Twinbrook	Exempt
Wheaton CBD	Exempt
White Flint	Exempt
<b><u>Orange Group</u></b>	
Bethesda/Chevy Chase	Adequate
Clarksburg	Inadequate, Full Mitigation
Derwood	Inadequate, Partial Mitigation
Gaithersburg City	Inadequate, Full Mitigation
Germantown Town Center	Inadequate, Full Mitigation
Kensington/Wheaton	Inadequate, Full Mitigation
North Bethesda	Inadequate, Full Mitigation
R&D Village	Inadequate, Full Mitigation
Rockville City	Inadequate, Full Mitigation
Silver Spring/Takoma Park	Inadequate, Full Mitigation
White Oak	Adequate
<b><u>Yellow Group</u></b>	
Aspen Hill	Inadequate, Full Mitigation
Cloverly	Inadequate, Full Mitigation
Fairland/Colesville	Inadequate, Partial Mitigation
Germantown East	Inadequate, Full Mitigation
Germantown West	Inadequate, Full Mitigation
Montgomery Village/Airpark	Adequate
North Potomac	Inadequate, Full Mitigation
Olney	Inadequate, Full Mitigation
Potomac	Adequate
<b><u>Green Group</u></b>	
Damascus	Exempt

Rural East	Exempt
Rural West	Exempt

269 In addition to the above, buildings in the Chevy Chase Lake, Langley  
 270 Park, and Takoma/Langley Policy Areas are considered to have adequate  
 271 transit accessibility as a result of programmed construction funds for the  
 272 Purple Line.]]

273 **[[c)** The Transit Accessibility Mitigation Payment is based upon a percentage  
 274 of the tax due under this Article according to the following schedule:

- 275 (1) Full Mitigation Required – 25% of tax due under this Article; and
- 276 (2) Partial Mitigation Required – 15% of tax due under this Article.

277 The rate must be set by Council resolution, including a resolution that  
 278 amends the Subdivision Staging Policy.]] [The Director of Finance must  
 279 adjust the then-applicable Payment rate as of July 1 of 2015 and each later  
 280 odd-numbered year by the annual average increase or decrease in a  
 281 published construction cost index specified by regulation for the two most  
 282 recent calendar years to the nearest multiple of \$10. The Director must  
 283 publish the amount of this adjustment in the County Register not later  
 284 than May 1 of each odd numbered year. The Council by resolution, after  
 285 a public hearing advertised at least 15 days in advance, may increase or  
 286 decrease the Payment rate or set different rates for different types of  
 287 development.]

288 **[[d)** The Payment must be paid at the same time and in the same manner as  
 289 the tax under this Article, and is subject to all provisions of this Article  
 290 for administering and collecting the tax.]]

291 **[[e)** The Department of Finance must retain funds collected under this Section  
 292 in an account to be appropriated for transportation improvements that



293 result in added transportation capacity in the area where the development  
 294 for which the funds were paid is located.]]

295 **52-52. Definitions.**

296 In this Article all terms defined in Section 52-39 have the same meanings, and  
 297 the following terms have the following meanings:

298 Cost of a student seat means the construction cost of a school, not including the  
 299 cost of land acquisition, divided by the program capacity of the school.

300 Development impact tax for public school improvements means a tax imposed  
 301 to defray a portion of the costs associated with public school improvements that  
 302 are necessary to accommodate the enrollment generated by the development.

303 High-rise unit means any dwelling unit located in a multifamily residential or  
 304 mixed-use building that is taller than 4 stories, and any 1-bedroom garden  
 305 apartment.

306 Public school improvement means any capital project of the Montgomery  
 307 County Public Schools that adds to the number of teaching stations in a public  
 308 school.

309 [[High-rise unit includes any dwelling unit located in a multifamily residential  
 310 or mixed-use building that is taller than 4 stories, and any 1-bedroom garden  
 311 apartment.]]

312 **52-54. Imposition and applicability of tax.**

313 \* \* \*

314 (c) [[A portion of the development impact tax equal to 10% of the cost of a  
 315 student seat must be dedicated to land acquisition for new schools.

316 (d)]] The tax under this Article must not be imposed on:

- 317 (1) any Moderately Priced Dwelling Unit built under Chapter 25A or  
 318 any similar program enacted by either Gaithersburg or Rockville;

- 319 (2) any other dwelling unit built under a government regulation or  
 320 binding agreement that limits for at least 15 years the price or rent  
 321 charged for the unit in order to make the unit affordable to  
 322 households earning equal to or less than 60% of the area median  
 323 income, adjusted for family size;
- 324 (3) any Personal Living Quarters unit built under Sec. 59-A-6.15,  
 325 which meets the price or rent eligibility standards for a moderately  
 326 priced dwelling unit under Chapter 25A;
- 327 (4) any dwelling unit in an Opportunity Housing Project built under  
 328 Sections 56-28 through 56-32, which meets the price or rent  
 329 eligibility standards for a moderately priced dwelling unit under  
 330 Chapter 25A;
- 331 (5) any non-exempt dwelling unit in a development in which at least  
 332 25% of the dwelling units are exempt under paragraph (1), (2), (3),  
 333 or (4), or any combination of them; ~~[[and]]~~
- 334 (6) any development located in an enterprise zone designated by the  
 335 State or in an area previously designated as an enterprise zone; or  
 336 ~~[[based upon the length of time since the expiration of its enterprise~~  
 337 ~~zone status. Within 1 year of its expiration, a full exemption must~~  
 338 ~~apply. Within 2 years of its expiration, 25% of the applicable~~  
 339 ~~development impact tax must apply. Within 3 years, 50% of the~~  
 340 ~~applicable development impact tax must apply. Within 4 years,~~  
 341 ~~75% of the applicable development impact tax must apply. A~~  
 342 ~~project within an area previously designated as an enterprise zone~~  
 343 ~~must be required to pay 100% of the applicable development~~  
 344 ~~impact tax for public school improvements beginning 4 years after~~  
 345 ~~its expiration]]~~

346                   (7)   a house built by high school students under a program operated by  
 347   the Montgomery County Board of Education.

348           [[d)] [[(e)]] (d)   The tax under this Article does not apply to:

349                   (1)   any reconstruction or alteration of an existing building or part of a  
 350   building that does not increase the number of dwelling units of the  
 351   building;

352                   (2)   any ancillary building in a residential development that:  
 353   (A)   does not increase the number of dwelling units in that  
 354   development; and  
 355   (B)   is used only by residents of that development and their  
 356   guests, and is not open to the public; and

357                   (3)   any building that replaces an existing building on the same site or  
 358   in the same project (as approved by the Planning Board or the  
 359   equivalent body in Rockville or Gaithersburg) to the extent of the  
 360   number of dwelling units of the previous building, if:

361   (A)   construction begins within one year after demolition or  
 362   destruction of the previous building was substantially  
 363   completed; or

364   (B)   the previous building is demolished or destroyed, after the  
 365   replacement building is built, by a date specified in a  
 366   phasing plan approved by the Planning Board or equivalent  
 367   body.

368                   However, if in either case the tax that would be due on the new,  
 369   reconstructed, or altered building is greater than the tax that would have  
 370   been due on the previous building if it were taxed at the same time, the  
 371   applicant must pay the difference between those amounts.

372 ~~[(e)]~~ ~~[[f)]~~ (e) If the type of proposed development cannot be categorized  
 373 under the residential definitions in Section 52-39 and 52-52, the  
 374 Department must use the rate assigned to the type of residential  
 375 development which generates the most similar school enrollment  
 376 characteristics.

377 (f) A Clergy House must pay the impact tax rate that applies to a place of  
 378 worship under Section 52-41(d) if the house:

- 379 (1) is on the same lot or parcel, adjacent to, or confronting the property  
 380 on which the place of worship is located; and
- 381 (2) is incidental and subordinate to the principal building used by the  
 382 religious organization as its place of worship.

383 The place of worship tax rate does not apply to any portion of a Clergy  
 384 House that is nonresidential development.

385 **52-55. Tax rates.**

386 (a) The Council must establish the Countywide rates for the tax under this  
 387 Article by resolution after a public hearing advertised at least 15 days in  
 388 advance. ~~[[are:~~

389

<i>Dwelling type</i>	<i>Tax per dwelling unit</i>
Single-family detached	<del>[\$8000]</del> \$18,878
Single-family attached	<del>[\$6000]</del> \$19,643
Multifamily (except high-rise)	<del>[\$4000]</del> \$15,507
High-rise	<del>[\$1600]</del> \$5,570
Multifamily senior	\$ 0

390 **]]**

391 (b) The tax on any single-family detached or attached dwelling unit must be  
 392 increased by \$2 for each square foot of gross floor area that exceeds 3,500  
 393 square feet, to a maximum of 8,500 square feet.

394 (c) Any Productivity Housing unit, as defined in Section 25B-17(j), must pay  
 395 the tax at 50% of the otherwise applicable rate.

396 (d) [Any non-exempt dwelling unit located in a development where at least  
 397 30% of the dwelling units are exempt from this tax under Section 52-  
 398 54(c)(1)-(4) must pay the tax at 50% of the applicable rate in subsection  
 399 (a).]

400 [(e)] (d) The County Council by resolution, after a public hearing  
 401 advertised at least 15 days in advance, may increase or decrease the rates  
 402 [[set in]] established under this Section.

403 [(f)] (e) The Director of Finance, after advertising and holding a public  
 404 hearing as required by Section 52-17(c), must adjust the tax rates set in  
 405 or under this Section effective on [[July 1]] [[January 1]] July 1 of each  
 406 [odd-numbered] [[even-numbered]] odd-numbered year[[, or on  
 407 November 15,]] in accordance with the update to the Subdivision Staging  
 408 Policy using the latest student generation rates and school construction  
 409 cost data [by the annual average increase or decrease in a published  
 410 construction cost index specified by regulation for the two most recent  
 411 calendar years]. The Director must calculate the adjustment to the nearest  
 412 multiple of one dollar[[, except that the rate must not be increased or  
 413 decreased more than 5%]]. The Director must publish the amount of this  
 414 adjustment not later than [[May 1]] [[November 1]] May 1 of each [odd  
 415 numbered] [[even-numbered]] odd-numbered year.

416 **52-56. Accounting; use of funds.**

417 \* \* \*

418 (d) Revenues raised under this Article may be used to fund planning design,  
 419 acquisition of land, site improvements, utility relocation, construction,  
 420 and initial furniture and equipment for any:

- 421 (1) new public elementary or secondary school;
- 422 (2) addition to an existing public elementary or secondary school that
- 423 adds one or more teaching stations; [or] or
- 424 (3) modernization of an existing public elementary or secondary
- 425 school to the extent that the modernization adds one or more
- 426 teaching stations[; or
- 427 (4) acquisition of land for a public elementary or secondary school]].
- 428 [(e) Any funds collected for the acquisition of land must be placed in the
- 429 MCPS Advance Land Acquisition Revolving Fund (ALARF), to be used
- 430 for the purchase of property for new public schools.]

431 **52-58. Credits.**

- 432 (a) Section 52-47 does not apply to the tax under this Article. A property
- 433 owner must receive a credit for constructing or contributing to an
- 434 improvement of the type listed in Section 52-56(d), including costs of site
- 435 preparation. [A credit must not be allowed for the cost of any land
- 436 dedicated for school use, including any land on which the property owner
- 437 constructs a school] A property owner may receive credit for land
- 438 dedicated for a school site, if:
- 439 (1) the density calculated for the dedication area is excluded from the
- 440 density calculation for the development site; and
- 441 (2) the Montgomery County School Board agrees to the site
- 442 dedication.
- 443 (b) If the property owner elects to make a qualified improvement or
- 444 dedication, the owner must enter into an agreement with the Director of
- 445 Permitting Services, or receive a development approval based on making
- 446 the improvement, before any building permit is issued. The agreement
- 447 or development approval must contain:

- 448 (1) the estimated cost of the improvement or the fair market value of  
449 the dedicated land, if known then;
- 450 (2) the dates or triggering actions to start and, if known then, finish the  
451 improvement or land transfer; [.]
- 452 (3) a requirement that the property owner complete the improvement  
453 according to Montgomery County Public Schools standards; [.]  
454 and
- 455 (4) such other terms and conditions as MCPS finds necessary.
- 456 (c) MCPS must:
- 457 (1) review the improvement plan or dedication; [.]
- 458 (2) verify costs or land value and time schedules; [.]
- 459 (3) determine whether the improvement is a public school  
460 improvement of the type listed in Section 52-56(d) or meets the  
461 dedication requirements in subsection (a); [.]
- 462 (4) determine the amount of the credit for the improvement or  
463 dedication; [.] and
- 464 (5) certify the amount of the credit to the Department of Permitting  
465 Services before that Department or a municipality issues any  
466 building permit.
- 467 \* \* \*
- 468 (e) (1) A property owner must receive a credit for constructing or  
469 contributing to the cost of building a new single family residence  
470 that meets Level I Accessibility Standards, as defined in Section  
471 52-107(a).
- 472 (2) The credit allowed under this Section must be as follows:

- 473 (A) If at least 5% of the single family residences built in the  
 474 project meet Level I Accessibility Standards, then the owner  
 475 must receive a credit of ~~[\$500]~~ \$250 per residence.
- 476 (B) If at least 10% of the single family residences built in the  
 477 project meet Level I Accessibility Standards, then the owner  
 478 must receive a credit of ~~[\$1,000]~~ \$500 per residence.
- 479 (C) If at least 25% of the single family residences built in the  
 480 project meet Level I Accessibility Standards, then the owner  
 481 must receive a credit of ~~[\$1,500]~~ \$750 per residence.
- 482 (D) If at least 30% of the single family residences built in the  
 483 project meet Level I Accessibility Standards, then the owner  
 484 must receive a credit of ~~[\$2,000]~~ \$1,000 per residence.
- 485 (3) Application for the credit and administration of the credit be in  
 486 accordance with Subsections 52-107(e) and (f).
- 487 (4) A person must not receive a property tax credit under this Section  
 488 if the person receives any public benefit points for constructing  
 489 units with accessibility features under Chapter 59.
- 490 (f) The Director of Finance must not provide a refund for a credit which is  
 491 greater than the applicable tax.
- 492 (g) Any credit issued under this Section before December 31, 2015 expires 6  
 493 years after the Director certifies the credit. Any credit issued under this  
 494 Section on or after January 1, 2016 expires 12 years after the Director  
 495 certifies the credit.
- 496 (h) After a credit has been certified under this Section, the property owner or  
 497 contract purchaser to whom the credit was certified may transfer all or  
 498 part of the credit to any successor in interest of the same property.  
 499 However, any credit transferred under this subsection must only be



500 applied to the tax due under this Article with respect to the property for  
 501 which the credit was originally certified.

502 **52-59. [[School Facilities Payment]] Reserved.**

503        [[a) In addition to the tax due under this Article, an applicant for a building  
 504 permit for any building on which a tax is imposed under this Article must  
 505 pay to the Department of Finance a School Facilities Payment if that  
 506 building was included in a preliminary plan of subdivision that was  
 507 approved under the School Facilities Payment provisions in the County  
 508 Subdivision Staging Policy.]]

509        [[b) The amount of the Payment for each building must be calculated by  
 510 multiplying the Payment rate by the latest per-unit student yield ratio for  
 511 any level of school or individual school found to be inadequate for the  
 512 purposes of imposing the School Facilities Payment in the applicable  
 513 Subdivision Staging Policy and for that type of dwelling unit and  
 514 geographic area issued by MCPS.]]

515        [[c) The Payment rates must be set by Council resolution. The Director of  
 516 Finance must adjust the then-applicable Payment rates]] [as of] [[on July  
 517 1 of]] [2015 and] [[each]] [later odd- numbered] [[even-numbered]]  
 518 [[odd-numbered year, or on November 15, in accordance with the update  
 519 to the Subdivision Staging Policy by using the latest student generation  
 520 rates and school construction cost data. The Director must calculate the  
 521 adjustment to the nearest multiple of one dollar.]] [based on the  
 522 construction cost of a student seat for each school level as certified by the  
 523 Superintendent of Montgomery County Public Schools for the two most  
 524 recent calendar years, to the nearest multiple of \$10.] [[The Director must  
 525 publish the amount of this adjustment in the County Register not later  
 526 than May 1 of each]] [odd numbered] [[even-numbered]] [[odd-

527 numbered year. The Council by resolution, after a public hearing  
 528 advertised at least 15 days in advance, may increase or decrease the  
 529 Payment rate or set different rates for different types of housing unit.]]

530 [[The Council must not increase or decrease the rate by more than 5%.]]

531 [[d) The Payment must be paid at the same time and in the same manner as  
 532 the tax under this Article, and is subject to all provisions of this Article  
 533 for administering and collecting the tax.]]

534 [[e) The Department of Finance must retain funds collected under this Section  
 535 in an account to be appropriated for MCPS capital improvements that  
 536 result in added student capacity for, to the extent possible, the affected  
 537 grade level in the school cluster, or, if no cluster is established, another  
 538 geographic administrative area, where the development for which the  
 539 funds were paid is located.]]

540 **Sec. 2. Effective date; Transition.**

541 This Act takes effect on March 1, 2017. The amendments to the development  
 542 impact tax for transportation improvements and the development impact tax for public  
 543 school improvements added by Section 1 of this Act, must apply to any application for  
 544 a building permit filed on or after March 1, 2017. [[A property owner who applies for  
 545 subdivision approval before January 1, 2017 must pay a transportation mitigation  
 546 payment and a school facilities payment at rates the Council establishes by resolution,  
 547 after a public hearing advertised at least 15 days in advance, unless the property owner  
 548 applies for a building permit on or after March 1, 2017.]] Any property owner who is  
 549 required to pay the development impact tax rates for transportation or public school  
 550 improvements that take effect on March 1, 2017 must not be required to pay a  
 551 transportation mitigation payment or a school facilities payment.

552 *Approved:*

553 *Nancy Floreen* *November 6, 2016*  
Nancy Floreen, President, County Council Date

554 *Approved:*

555 *Isiah Leggett* *November 28, 2016*  
Isiah Leggett, County Executive Date

556 *This is a correct copy of Council action.*

557 *Linda M. Lauer* *Nov. 28, 2016*  
Linda M. Lauer, Clerk of the Council Date

558