



**Committee:** T&E

**Staff:** Robert Drummer, Senior Legislative Attorney and Glenn Orlin, Deputy Director

**Purpose:** Final action – vote expected

**Keywords:** #Traffic relief, traffic, transportation, transportation demand management, and multimodal transportation.

AGENDA ITEM #6B

December 3, 2019

**Action**

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## SUBJECT

Bill 36-18, Transportation Management - Transportation Demand Management (TDM) Plan – Amendments, sponsored by the Council President at the request of the County Executive

## EXPECTED ATTENDEES

Christopher Conklin, Director, Department of Transportation (DOT)

Gary Erenrich, Special Assistant to the Director, DOT

Sande Brecher, Chief, Commuter Services, DOT

Casey Anderson, Chair, Planning Board

Gwen Wright, Director, Planning staff

Brady Goldsmith, Senior Budget Analyst, Office of Management and Budget (OMB)

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- The Transportation and Environment Committee recommends approval of the bill with amendments described in the staff report. Councilmember Glass opposes the bill.
- Subsequently, Councilmember Glass and DOT have proposed further amendments, also described in the staff report.

## DESCRIPTION/ISSUE

Bill 36-18 would expand the County's use of TDM to reduce traffic congestion and automobile emissions, support multi-modalism and achievement of non-automobile travel goals, enhance the efficient use of transportation infrastructure, and promote sustainability of existing and future development. It would establish requirements for TDM plans for new developments in certain areas of the County, make the County's approach more flexible and responsive to changing parameters in transportation and development, and increase accountability for results.

## SUMMARY OF KEY DISCUSSION POINTS

(See staff report.)

### This report contains:

Staff Report – if applicable

Pages 1-12



Attachments noted at the end of the staff report

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**MEMORANDUM**

November 27, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney   
Glenn Orlin, Deputy Director 

SUBJECT: Bill 36-18, Transportation Management - Transportation Demand Management (TDM) Plan – Amendments

PURPOSE: Action on Bill – Roll call vote required

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| <p><b>Transportation and Environment (T&amp;E) Committee recommendation (2-1):</b><br/>Councilmembers Hucker and Riemer support the Bill with the Committee amendments included in this staff report. Councilmember Glass opposes the Bill.</p> |
|---|

Expected attendees:

Christopher Conklin, Director, Department of Transportation (DOT)  
Gary Erenrich, Special Assistant to the Director, DOT  
Sande Brecher, Chief, Commuter Services, DOT  
Casey Anderson, Chair, Planning Board  
Gwen Wright, Director, Planning staff  
Brady Goldsmith, Senior Budget Analyst, Office of Management and Budget (OMB)

Bill 36-18, Transportation Management - Transportation Demand Management Plan – Amendments, sponsored by Lead Sponsor Council President at the request of County Executive Isiah Leggett (hereafter referred to as the “Leggett Bill,” was introduced on November 13, 2018. A public hearing was held on December 4, 2018, at which five people testified on the Bill.

**I. Background**

Bill 36-18 would expand the County’s use of transportation demand management (TDM) to reduce traffic congestion and automobile emissions, support multi-modalism and achievement of non-automobile travel goals, enhance the efficient use of transportation infrastructure, and promote sustainability of existing and future development. The Bill would establish requirements for transportation demand management plans for new developments in certain areas of the County, make the County’s approach more flexible and responsive to changing parameters in transportation and development, and increase accountability for results.<sup>1</sup>

<sup>1</sup> Key search terms: #Traffic relief, traffic, transportation, transportation demand management, and multimodal transportation.

Under existing law, TDM strategies are only required for businesses and development projects in transportation management districts (TMDs). Since traffic congestion is generated countywide, and many areas outside TMDs could benefit from these strategies, the Bill would allow for TDM to be applied countywide, except in Green Policy Areas (the rural areas).

Negotiation of traffic mitigation agreements for new development projects can be protracted and jeopardize the timing of projects. Agreements under current Code provisions are fixed in time and do not allow flexibility to adapt to changing conditions. The Bill would streamline the process for approving TDM plans and increase accountability for results.

A work group comprised of representatives from the Executive Branch, Council staff, and M-NCPPC received input from expert consultants about experience in other jurisdictions and recommended several of the provisions included in the proposed bill. Former Executive Leggett's transmission memo describing the Bill is at ©41-43.

On February 13, the Council received County Executive Elrich's markup (hereafter referred to as the "Elrich Bill"), modifying some provisions that had been developed by the prior administration. He proposed:

1. reducing the thresholds for the size of developments in each Policy Area so that more developments would be required to achieve TDM goals;
2. authorizing the DOT Director to set Non-Auto Driver Mode Share (NADMS) targets for new projects at 5% above the area goals to increase the likelihood that area goals are met; and
3. setting parking management as a priority strategy for new developments that are not making progress meeting their goals.

At the public hearing the Planning Board recommended applying TDM to land uses that generate large travel demand during off-peak periods, such as religious organizations. The Board also suggested an independent process to audit performance of TDM plans, conforming existing TDM boundaries with parking lot districts, urban districts, and SSP policy areas, and to reconsider the use of the term "rewards" to describe public actions when a TDM plan meets its performance goal. Other testimony is in the staff report of an early Committee worksession:

[https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2019/20190318/20190318\\_T E1.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2019/20190318/20190318_T E1.pdf).

The revisions of the County's transportation demand management program will be contained in four sequential Council actions: (1) Bill 36-18; (2) the Executive Regulation following from the version of Bill 36-18 ultimately enacted; (3) a resolution identifying a new set of Transportation Management Districts (TMDs), their geographic scope, and the composition of their advisory committees; and (4) the TDM fee schedule, which will be included in a revised version of the resolution that sets transportation fees, charges, and fares. Soon after the Council's version of Bill 36-18 is enacted, DOT will promulgate a draft Executive regulation. Council staff believes that this Method 2 regulation could be transmitted to the Council in early 2020.

The balance of this staff report identifies T&E Committee's recommended revisions to the Bill that was introduced last year, as well as other suggested amendments subsequently proposed by Councilmember Glass and DOT staff. The Bill, as amended by the Committee, is on ©1-38. The several amendments that are non-substantive are not addressed in this report.

## **II. Committee Amendments**

**1. *Non-auto-driver mode share (NADMS) goals.*** The primary quantitative objective of TDM is to achieve Non-Auto-Driver Mode Share (NADMS) goals in Red, Orange, and Yellow policy areas in the County. Many master and sector plans stipulate the NADMS goal(s) in their respective areas, based on what is necessary to bring each of the areas into land use/transportation balance at build-out. Some areas have goals that apply only to employees arriving or leaving work (i.e., Silver Spring CBD); some plans also have goals for residents living in that area commuting to work (i.e., North Bethesda, Chevy Chase Lake); and some blend the two into one goal (i.e., Bethesda CBD).

**T&E Committee recommendation: The next Subdivision Staging Policy—which, by law, must be adopted by November 15, 2020—should include explicit NADMS goals for employees and residents for every Red, Orange, or Yellow area that currently does not have a goal, or a goal only for employees.** There could be separate goals for employees and residents, or a blended goal between the two. (This recommendation is not part of the Bill, per se, but is necessary to fulfill its purpose.)

### **2. *Section 42A-23(a).*** The Leggett Bill would state:

The County Council by resolution may create a transportation management district (TMD) in a policy area where the Subdivision Staging Policy requires transportation review. A district may be formed from one or more Subdivision Staging Policy areas, even if they are not contiguous.

The Elrich Bill would state:

The County Council by resolution may create a transportation management district (TMD). A District may be formed from one or more Policy Areas, even if they are not contiguous.

A goal of both the Leggett and Elrich Bills is to allow for TMDs to be established in the Red, Orange, and Yellow Policy Areas, but not in Green Policy Areas: the County's rural areas. However, since the SSP requires transportation review in all areas, the Leggett Bill language would allow for TMDs to be established there. A problem with both versions of the Bill is that it is possible that the Council might choose to establish a TMD that overlaps more than one Policy Area. For example, the current North Bethesda TMD overlaps all or portions of five policy areas: Grosvenor, White Flint, Twinbrook, North Bethesda, and Potomac. **T&E Committee recommendation: Amend Section 42A-23(a) to read as follows:**

**The County Council by resolution may create a transportation management district (TMD) in Red, Orange, or Yellow Policy Areas as defined in the Subdivision Staging Policy. A district may be formed from all, or portions of, one or more Policy Areas, even if they are not contiguous. (See ©7, Lines 151-156.)**

**3. Sections 42A-24 and 42A-25.** The current TDM law, which has been in effect since 2006, has required any employer of 25 or more employees within a transportation management district (TMD)—even those that were in existence before creation of the TMD—to submit a traffic mitigation plan consistent with the NADMS goal of the TMD and to report annually on progress in implementing that plan. Two or more employers in the same building or complex can submit a consolidated plan. There is no requirement for the plan to achieve the area NADMS goal. The rationale for this requirement is that the very act of preparing a plan will inform employers of the many options and resulting benefits available to them and their employees of transit, ridesharing, and other forms of alternative transportation. Furthermore, simply having a plan and reporting annually would be an incentive (albeit a soft one) to make progress towards achieving a higher NADMS.

Both bills would broaden the requirement to submit a traffic mitigation plan, now to be called a TDM plan, to include employers of 25 or more in any Red area, including those that do not currently have TMDs<sup>2</sup>, employers of 100 or more in Orange areas, and 200 or more in Yellow areas. For portions of existing TMDs that extend beyond a Red area, the 25-or-more rule would still apply.<sup>3</sup> A requirement for these employers under existing law, which both Bills would continue, is to submit an annual report on the strategies used to implement the TDM plan, including progress achieved under the plan. Furthermore, in the Red, Orange, and Yellow areas the owners of a non-residential building or a residential building or complex with at least 100 dwelling units would also be required to submit a TDM plan and report annually on implementation. The new requirements are not onerous. As with current Code provisions, both bills require DOT to offer to help employers and building owners develop TDM plans, and to help revise them if they do not meet the requirements of the Law.

**T&E Committee recommendation: Concur with these provisions, except that the 25-or-more rule should not apply in White Oak.** (See ©11, Line 243.) The White Oak TMD, although created by Council resolution, has no budget and is not operational. It is entirely an Orange area, so the 100-or-more rule should apply.

**4. Section 42A-24(a)(1).** The Leggett Bill would state:

The Director must require an employer subject to this Section to submit a TDM Plan meeting the requirements of this Section if the Council by resolution or in the Subdivision Staging Policy has approved the use of traffic mitigation or TDM plans in a given district.

The Elrich Bill version would simply state:

The Director must require an employer subject to this Section to submit a TDM Plan meeting the requirements of this Section.

**T&E Committee recommendation: Approve the language in the Elrich Bill** (see ©9-10, Lines 209-216). The purpose of the Bill is to authorize TMDs everywhere in the County, except in Green Policy Areas. The establishment of a TMD should not be dependent on the SSP approving the use of traffic mitigation or TDM plans in a given district.

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<sup>2</sup> This refers to employers of 25 or more in Wheaton CBD or Glenmont.

<sup>3</sup> This refers to employers of 25 or more in Rock Spring Park, Montgomery Mall area, and R&D Village.

**5. Section 42A-24(a)(2).** The Leggett Bill would state:

Upon written request from the Director, an employer within a district must provide the Director with the number of full-time and part-time employees working for that organization at any workplace within the district.

The Elrich Bill would state:

Upon written request from the Director, an employer must provide the Director with the number of full-time and part-time employees working for that organization by workplace in each Policy Area or District.

**T&E Committee recommendation: Approve the language in the Elrich Bill** (see ©10, Lines 217-221). Under the Elrich language an employer with offices or stores in more than one TMD might receive one request rather than multiple ones.

**6. Section 42A-26(b)(1-3).** Both bills have three tiers of requirements for project-based TDM plans for new development. The Leggett and Elrich Bills recommend different size thresholds for Level 1 Basic, Level 2 Action, and Level 3 Results plans. Their respective proposals are displayed in the following tables:

Thresholds in Leggett Bill (in square feet of gross floor area)

| SSP Area Type | No requirements | Level 1 Basic  | Level 2 Action   | Level 3 Results |
|---------------|-----------------|----------------|------------------|-----------------|
| Red           | < 25,000        | 25,000-100,000 | N/A              | >100,000        |
| Orange        | <50,000         | 50,000-100,000 | >100,000-200,000 | >200,000        |
| Yellow        | <75,000         | 75,000-150,000 | >150,000         | Not Required    |

Thresholds in Elrich Bill (in square feet of gross floor area)

| SSP Area Type | No requirements | Level 1 Basic  | Level 2 Action  | Level 3 Results |
|---------------|-----------------|----------------|-----------------|-----------------|
| Red           | N/A             | <25,000        | N/A             | >25,000         |
| Orange        | <25,000         | 25,000-75,000  | >75,000-150,000 | >150,000        |
| Yellow        | <50,000         | 50,000-150,000 | >150,000        | Not Required    |

The business groups support the ranges in the Leggett bill, as they are deemed less onerous.

**T&E Committee recommendation: Revise the ranges in the table as per the table below** (in square feet of gross floor area), which are between those in the Leggett and Elrich bills for each area type (see ©19-20, Lines 474-497):

| SSP Area Type | No requirements | Level 1 Basic  | Level 2 Action  | Level 3 Results |
|---------------|-----------------|----------------|-----------------|-----------------|
| Red           | <20,000         | <40,000        | N/A             | >40,000         |
| Orange        | <40,000         | 40,000-80,000  | >80,000-160,000 | >160,000        |
| Yellow        | <60,000         | 60,000-150,000 | >150,000        | Not Required    |

Both bills would not have these requirements apply to any project consisting solely of single-family-detached units, because marketing TDM to them is not cost-effective nor would there be specific programs (shuttles, transit fare buy-downs, etc.) that would be geared to individual homes. The same observation is true for single-family-attached (townhouse) developments, so they, too, should be exempt. **T&E Committee recommendation: The requirements for Level 1, 2, and 3 plans should not apply to any development consisting solely of single-family housing (i.e., developments solely consisting of detached houses, townhouses, or a mixture of the two), nor should they be subject to the annual TDM fee** (see ©18, Lines 446-451). On the other hand, if such housing is part of a larger development that includes multi-family housing, there is likely to be a homeowners or condominium association and common meeting areas, and so TDM outreach could be effective. In these cases, the single-family housing units would be part of these requirements and be subject to the TDM fee.

One of the provisions in the Leggett Bill that was decried by the development industry was requiring that project-based TDM plans be approved by DOT before Planning Board approval of the development. The concern was that the 90-day review period for subdivision review does not leave enough time for developers to negotiate the terms of the project-based TDM plan with DOT. The Elrich bill cures this by requiring DOT approval before the developer obtains a building permit. The comments on the Elrich Bill from the development industry acknowledge this fix. **T&E Committee recommendation: Concur with the Elrich Bill to require DOT approval before the developer obtains a building permit** (see ©19, Lines 453-457).

The requirements of each tier are noted in the Bills (see ©21-27, Lines 510-677). In summary, Level 1 Basic plans require of the applicant/owner:

- Appointment of a Transportation Benefits Coordinator, who basically would serve as DOT's facilitator on site to distribute information on commuting options and coordinating with DOT to conduct on-site outreach efforts, ensuring participation in commuter surveys, attending occasional training sessions, etc.
- Provision of on-site space for outreach and promotion of TDM.
- Displays of real-time transit and related information.
- While neither version of the Bill includes other requirements, the draft regulation notes that the applicant/owner be required: (1) to provide less than the maximum amount of parking allowed by the Zoning Ordinance; (2) to unbundle parking, that is, no longer require a buyer or lessee to commit to purchasing or leasing a minimum number of parking spaces; and (3) provide at least 2% of spaces for preferential carpool/vanpool parking. Furthermore, the first two requirements would only apply in Red Policy Areas. Therefore, the Bill and the two sections of the draft regulation are currently inconsistent with each other.

Parking management is one of the most effective set of strategies for achieving NADMS, especially where there are readily available transit options. NAIOP opposes prohibiting bundling but acknowledges that unbundling is a viable business practice where commute options are abundant. Planning staff notes that building-based parking management is not applicable to those buildings in parking lot districts that have no private parking; the staff recommends stipulating that parking strategies *may* be part of a TDM plan for new developments.

**T&E Committee recommendation:** Recommend that the forthcoming Executive Regulation require Level 1 plans to provide less than maximum parking, prohibit the building from requiring bundled parking, and to provide at least 2% of spaces for carpools/vanpools. However, these requirements would come with two caveats: (1) providing less than maximum parking and prohibiting bundling by a building owner would be required only of buildings in Red Policy Areas that have their own private parking; and (2) bundling required by a building owner currently could continue for the life of an existing lease. These provisions are highly recommended elsewhere, but they would not be required.

**7. Section 42A-26(c)(2-3).** Under Levels 2 and 3, the Leggett Bill requires that a project be considered as contributing to the area's NADMS goal if it is making measurable improvement toward (under Level 2) or achieving (under Level 3) the District's goal within the date established in the TDM plan. The Elrich Bill aims higher, requiring that the project make such progress towards a base goal for new development that is 5% higher than the area's NADMS goal. New development has a greater opportunity to reach higher NADMS goals than existing development, and this fact should be recognized if an area is to reach its overall NADMS goals. **T&E Committee recommendation:** Concur with the concept in the Elrich Bill (see ©22, Lines 550-554 and ©25, Lines 631-635).

The Leggett Bill calls for the DOT Director to establish a project-based goal to be higher than or lower than the area's base NADMS goal for new development. This reflects the reality that developments very close to a transit station have higher NADMS than those up to a half-mile away. The Elrich Bill would put parameters on this variation: it would allow the project's goal to be up to 5% higher or down to 5% lower than the base NADMS for the area. Including parameters would provide a degree of predictability for a potential developer.

Research has shown that NADMS falls off dramatically after a few blocks' walk from a transit station. The following is from a 2005 study by WMATA examining the transit mode share by walking distance to a Metro Station. The mode share between an office or residence at a Metro Station is more than 20% higher than those a half-mile away. (Most Red Policy Areas have a radius of about a half-mile.)

| Distance (Miles) | Metrorail      |             |
|------------------|----------------|-------------|
|                  | Office Commute | Residential |
| 0                | 35%            | 54%         |
| 0.25             | 23%            | 43%         |
| 0.5              | 10%            | 31%         |

**T&E Committee recommendation:** The DOT Director may set a Level 2 or Level 3 project's goal in Red Policy Areas up to 5% higher or down to 5% lower than the District's base NADMS goal for new development, and in Orange and Yellow Policy Areas up to 10% higher or down to 10% lower than the District's base NADMS goal for new development (see ©22, Lines 554-558 and ©26, Lines 639-643).



Level 2 Action plans require of the applicant/owner in Orange and Yellow areas all the elements of Level 1 plans, plus:

- Identifying specific actions to be implemented by the applicant/owner to achieve the NADMS goals.
- Requiring preferential carpool/vanpool parking for at least 2% of the spaces. However, providing less than the maximum parking under the Zoning Ordinance and prohibiting bundling of parking are not required.
- Requiring that a project-based Action Plan demonstrate over time that it is making measurable progress towards NADMS goals.

For Level 3 Results plans, the following is required:

- Committing funding to implement the specific actions.
- Self-monitoring of progress. The Elrich Bill notes that this would be in addition to any monitoring DOT chooses to do.
- Submitting a biennial progress report.
- Adding or substituting strategies if the initial set of strategies have not made progress towards the goal within four years after final occupancy.
- Committing a higher level of funding if the project still has not made progress towards the goal within six years after final occupancy.

If a project has contributed towards achievement of the NADMS goal for multiple years, then it may be eligible for annual performance incentives, including reductions in TDM fees or other financial benefits as established in the upcoming Executive Regulation.

Level 3 Results plans require of the applicant/owner in Red areas all the elements of Level 1 plans, and the applicant/owner in Orange areas all the elements of Level 1 and 2 plans<sup>4</sup>, plus:

- In Red and Orange areas, including secure bicycle parking and providing showers, lockers, and changing rooms are required.
- Committing funding equivalent if the project has not actually achieved the goal within six years of final occupancy, not merely making progress towards the goal, as in a Level 2 plan.
- Higher additional funding if the project has not achieved the goal within eight years of final occupancy.
- Independent monitoring to determine if the project is meeting its goals, until the project's goals are achieved. Once the goals are achieved, the Elrich bill would require independent monitoring every 6 years hence, and if no longer meeting the goals, then the monitoring would return to the biennial cycle until they were met again.

**8. Section 42A-26(a).** Regarding DOT's approval of a project-based TDM Plan, the Leggett Bill would state:

This approval must be obtained prior to Planning Board approval of the application, or prior to Department of Permitting Services approval for projects not requiring Planning Board action.

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<sup>4</sup> Level 3 plans are not required in Yellow areas.

The Elrich Bill version would state:

This approval must be obtained prior to the issuance of any building permit by the Department of Permitting Services.

**T&E Committee recommendation: Approve the language in the Elrich Bill** (see ©19, Lines 453-457). One of the changes requested by the building industry is that TDM Plans, which still may involve some negotiation in some cases, should not be finalized until prior to issuance of a building permit, so as not to unduly slow down a subdivision approval. DOT concurs, which is why it is in the Elrich Bill. **The corollary change should be made in Section 42A-26(e)** (see ©28, Lines 701-704).

The Elrich Bill also would insert text on ©23, Lines 569-571 and in Section 42A-16(c)(2)(E) (see ©24-25, Lines 610-613) stating that:

Once the NADMS goal or other commuting goals have been achieved, the owner must maintain the level necessary to continue achieving the goal.

**T&E Committee recommendation: Concur with the Elrich Bill.**

**9. Section 42A-26(c)(2)(C).** Both versions of the Bill require owners or applicants of Level Two plans to self-monitor its achievement of its TDM goals. The Elrich Bill would add the following on ©24, Lines 590-592:

This self-monitoring must be conducted in addition to any monitoring conducted by the Department.

**T&E Committee recommendation: Concur with the Elrich Bill.**

**10. Section 42A-28(e).** The existing law requires that employers make a good faith effort to generate responses from their employees to the commuting survey, with the objective of achieving at least an 80% compliance rate (see ©18, Lines 443-445). There is no penalty for not meeting this objective.

Both the Leggett and Elrich Bills recommend reducing the objective to 60%. MNCBIA and NAIOP point out that the average response rate is 22%, and it believes even a 60% goal is unrealistic. DOT has pointed out that several firms have achieved a 100% response rate.

DOT has conducted more research on this issue and noted that for a statistically reliable result, surveys of smaller office and residential projects require a higher response rate, and surveys of larger projects can be reliable with a smaller response rate. **T&E Committee recommendation:**

- **Amend the response rate goal to 40 percent for employers with 100 or more employees, and a response rate of 50% for an employer with less than 100 employees** (see ©30-31, Lines 767-774).
- **Add the following sentences: “Worksites, buildings, or projects with fewer than 100 employees or residents must use a good faith effort to achieve at least a 50% response rate. The Director may require a smaller or larger response rate from a given**

**worksite, building, or project, based upon requirements for statistical validity”** (see ©31, Lines 774-776).

**11. Section 42A-29(a).** This section lists the types of information to be included in the biennial report for the TMDs, to the extent feasible within the constraints of available resources. The Leggett Bill includes ten types of information, monitoring progress in all aspects of transportation, including commuting patterns, congestion relief, transit use and availability, carpool/vanpool rates, bicycle and bikeshare use, etc. **T&E Committee recommendation: Add information on the number of electric vehicle (EV) charging stations** (see ©34, Line 851).

### **III. Councilmember Glass’s Amendments**

Subsequent to the Committee’s work on the Bill, Councilmember Glass has proposed three amendments:

**1. Section 42A-23(b).** This section lists the types of TDM measures DOT may undertake with its own staff or by contract. Councilmember Glass would amend two of the types (on ©8):

*Amend lines 174-175 as follows:*

[ (5) ] (7) promoting, ~~[[or]] implementing, and improving existing~~ transit and ridesharing incentives;

*Amend lines 180-183 as follows:*

[ (8) ] (10) conducting surveys, studies, and statistical ~~[analysis]~~ analyses to determine the effectiveness of ~~[traffic mitigation]~~ and improvements needed to advance transportation demand management plans and employer and building owner efforts.

**Council staff recommends approval of both amendments.**

**2. Section 42A-24.** Councilmember Glass recommends adding a new subsection, after ©12, Line 290, as follows:

(f) Transportation Demand Management Plan for the Montgomery County Government.

(1) The Director of the Office of Human Resources, after consulting with the Director of Transportation, must submit a TDM Plan for County employees to the Chief Administrative Officer with a copy to the Council.

- (2) The TDM Plan must include incentives, policies, or outreach needed to increase the number of County employees commuting to work through modes other than driving an automobile.

**Council staff recommends approval of this amendment.** The County Government should have the same expectations as with businesses in the Red, Orange, and Yellow Policy Areas.

#### **IV. DOT's Amendments**

DOT suggests three further sets of amendments to the Bill:

**1. Section 42A-22.** DOT would include addressing climate change as one of the rationales in the Findings and Purposes section. Specifically, DOT recommends in subsection (c)(3):

- (3) help reduce vehicular emissions, energy consumption, and noise levels, and help address climate change. [Line 127]

and in subsection (f)(4):

- ~~[(3)]~~ (4) reduce air and noise pollution, and address climate change; and

**Council staff recommends approval of this amendment.**

**2. Deleting references to the “Sample Menu of TDM Strategies.”** The Draft Executive Regulation would include a sample menu of strategies that a developer or employer might select depending on the tier (Level 1, 2, or 3) and location. While there would be such guidance in the regulation that DOT ultimately promulgates, it might not be in the form of a “sample menu.” So DOT recommends deleting this reference on Lines 577, 597-598, 602, and 657-658. **Council staff concurs.**

**3. Section 42A-29(c).** This section addresses when the DOT Director needs to recommend to the Executive a course of action if the SSP NADMS goals are not met. When the Bill was introduced in November 2018, DOT assumed adoption of new Transportation Management Districts by June 30, 2019. Therefore, the Bill stated that the Directors recommendations would be due either by June 30, 2027 or eight years after a TMD is created, whichever is later. However, by now there is no way any new TMDs will have been created and be eight years old by then. DOT suggests either re-setting the date to June 30, 2028 or deleting the date altogether.

**Of these options, Council staff recommends changing the date, so that the text on ©34, Lines 857-860 is amended as follows:**

If any commuting goals set in the Subdivision Staging Policy are not met eight years after a district is created or by June 30, [[2027]] 2028, whichever is later, the Director must recommend corrective action to the Executive.

This packet contains:

|                                      | <u>Circle #</u> |
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| T&E Committee Bill                   | 1-38            |
| Legislative Request Report           | 39-40           |
| County Executive Leggett memo        | 41-43           |
| Fiscal and Economic Impact statement | 44-53           |
| Planning Board's hearing testimony   | 54-55           |
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Bill No. 36-18  
Concerning: Transportation  
Management - Transportation  
Demand Management Plan -  
Amendments  
Revised: November 27, 2019 Draft #10  
Introduced: November 13, 2018  
Expires: May 13, 2020  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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**AN ACT** to:

- (1) expand transportation demand management to reduce traffic congestion and automobile emissions, support multi-modalism and achievement of non-automobile travel goals, enhance the efficient use of transportation infrastructure, and promote the sustainability of existing and future development;
- (2) establish the requirements for a transportation demand management plan for development in certain areas of the County; and
- (3) update the law governing transportation management in the County.

By amending

Montgomery County Code  
Chapter 42A, Ridesharing and Transportation Management  
Sections 42A-21, 42A-22, 42A-23, 42A-24, 42A-25, 42A-26, 42A-27, 42A-28, 42A-29,  
and 42A-30

By adding

Montgomery County Code  
Chapter 42A, Ridesharing and Transportation Management  
Sections 42A-31 and 42A-32

|                                     |  |
|-------------------------------------|--|
| <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 42A-21, 42A-22, 42A-23, 42A-24, 42A-25, 42A-26, 42A-**  
 2        **27, 42A-28, 42A-29, and 42A-30 are amended and Sections 42A-31 and 42A-32**  
 3        **are added as follows:**

4        **42A-21. Definitions.**

5        In this Article, unless the context indicates otherwise:

6        *Alternative work hours program* means any system that shifts the workday of  
 7        an employee so that the workday starts or ends outside of a peak period,  
 8        including:

- 9            (1)    compressed workweeks;
- 10           (2)    staggered work hours involving a shift in the set work hours of  
 11                  an employee at the workplace; or
- 12           (3)    flexible work hours involving individually determined work  
 13                  hours under guidelines established by the employer.

14        *Bundling of parking* means a requirement by the seller or lessor that a  
 15        prospective purchaser or tenant purchase or lease a minimum number of  
 16        parking spaces in the facility as a precondition to buying or leasing space or  
 17        renewing a lease in a commercial or residential building. Bundling of parking  
 18        does not include:

- 19           (1)    the provision of parking spaces as a component of a sale or lease  
 20                  when voluntarily requested by a prospective purchaser or lessee;  
 21                  or
- 22           (2)    a parking space physically integrated with an individual leasable  
 23                  or sales unit if the parking space is dedicated to that unit and can  
 24                  be directly accessed through that unit such that only occupants  
 25                  of that unit are able to use the space or spaces.

26        *Carpool* means a motor vehicle occupied by 2 or more employees traveling  
 27        together.

*Commute* means a home-to-work or work-to-home trip. A commute may have brief intervening stops, but the primary purpose must be travel between work and home.

*Date of final occupancy* means the earlier of:

(1) the date on which 80 percent of a building or project has been leased or sold; or

(2) two years after the first final use and occupancy certificate has been issued.

*Department* means the Department of Transportation.

*Director* means the Director of the Department of Transportation or the Director's designee.

*District* means a transportation management district created under this Article.

*Employee* means a person hired by an employer, including a part-time or seasonal worker or a contractor, reporting to or assigned to work on a regular basis at a specific workplace controlled by that business or organization, including a teleworker.

*Employer* means any [public or private] business or government entity, including the County, employing 25 or more [employees and having a permanent place of business] employees including contractors [[at]] assigned to a worksite [[within]] [in] [[a district]]. [The maximum number of employees on the largest shift working in a district determines the size of the employer.] Employer does not include:

(1) a [contractor, business, or government entity with no permanent place of business in a district] home-based business;

(2) [a home-based business;

(3)] a business with no employees housed at that work site;

[(4) any business with no permanent workplace or location;] or



55           ~~[(5)]~~ (3)       any government agency not required by law to follow  
56                       County regulations.

57       [Growth Policy means the most recently adopted Growth Policy under Section  
58       33A-15.]

59       NADMS goal means the specific NADMS percentage goal for peak period  
60       commuters in a District or a Policy Area that has been established through a  
61       Master Plan, through the Subdivision Staging Policy, or through regulation.

62       Non-Auto Driver Mode Share or NADMS means the percent of commuters  
63       who travel by modes other than driving an automobile. NADMS includes  
64       commuters who travel by transit, vanpool, biking, walking, or connecting to  
65       the workplace electronically. NADMS does not include carpool or vanpool  
66       drivers, but it does include carpool and vanpool passengers.

67       Peak period means the hours of highest transportation use [[in a district]] each  
68       workday, as defined in the resolution creating a [[district]] District, as  
69       established in the Subdivision Staging Policy, or established through a  
70       technical study.

71       Planning Board means the Montgomery County Planning Board of the  
72       Maryland-National Capital Park and Planning Commission.

73       Policy Area means a Transportation Policy Area adopted by the County  
74       Council through the Subdivision Staging Policy.

75       Project-based TDM Plan means a TDM plan for a new development project.

76       Resident means an adult domiciled in the relevant area.

77       Single-occupancy vehicle means a motor vehicle occupied by one employee  
78       for commuting purposes, other than a two-wheeled vehicle.

79       Subdivision Staging Policy means the most recent policy adopted under  
80       Section 33A-15.

*Telework* means a work arrangement where a manager directs or permits an employee to perform usual job duties away from the central workplace in accordance with established performance expectations and agency-approved or agreed-upon terms.

*Traffic Mitigation Plan or TMP* means a set of strategies designed to implement TDM at an existing commercial or residential building or by an employer in an existing building.

*Transportation demand management or TDM* means any method of reducing demand for road capacity, especially during a peak period, including an alternative work hours program, carpools, vanpools, subsidized transit [pass] passes, preferential parking for carpools or vanpools, improved bicycle and pedestrian access and safety, public transportation, and [or peak period] a parking charge, or other parking management strategies.

*Transportation Demand Management Plan or TDM Plan* means a set of strategies designed to implement TDM for a new or existing building, a new or existing development project, or an employer.

*Transportation management organization* means a public, nonprofit private, or public-private firm, corporation, or instrumentality created or contracted to manage or coordinate transportation demand management programs.

*Vanpool* means a [van occupied by at least 8 employees traveling together] vehicle that has the capacity for 6 or more passengers in addition to the driver if:

- (1) passengers occupy 50% or more of the seats at any point during the trip; and
- (2) the vehicle is used to transport employees between their residences, designated locations, and their place of employment for 80% or more of the miles the vehicle is driven.

*Workplace* means the place of employment, base of operations, or predominant location of an employee.

**42A-22. Findings and purposes.**

- (a) New economic development is important to stimulate the local economy. Focusing new development in high transit-service areas is an important County land use and economic development objective.
- (b) Limited transportation infrastructure, traffic congestion, inadequate access to transit, bicycle and pedestrian [access] facilities, and safety issues impede the County's land use and economic development objectives.
- (c) Transportation demand management, in conjunction with adequate transportation facility review, planned capital improvement projects, and parking and traffic control measures, will:
  - (1) help provide sufficient transportation capacity to achieve County land use objectives and permit further economic development;
  - (2) reduce the demand for road capacity, [and] promote [traffic] safety for all users of transportation infrastructure, and improve access to transit, bicycle and pedestrian [access] facilities; and
  - (3) help reduce vehicular emissions, energy consumption, and noise levels.
- (d) Improved traffic levels and air quality, and a reduction in ambient noise levels will help create attractive and convenient places to live, work, visit, and conduct business.
- (e) Transportation demand management will equitably allocate responsibility for reducing single-occupancy vehicle trips among government, developers, employers, property owners, [[renters]] tenants, and the public.

- (f) Transportation demand management should be consistent with any commuting goals set in the [Growth] Subdivision Staging Policy, Master Plans, and Sector Plans. TDM should [and] foster coordinated and comprehensive government, private industry, and public action to:
- (1) make efficient use of existing transportation infrastructure;
  - (2) increase transportation capacity as measured by numbers of people transported;
  - [(2)] (3) reduce existing and future levels of traffic congestion by moving more people in fewer vehicles;
  - [(3)] (4) reduce air and noise pollution; and
  - [(4)] (5) promote traffic safety together with transit, [and] pedestrian and bicycle safety and access for all users.
- (g) Transportation demand management will substantially advance public policy objectives. Adoption of this Article is in the best interest of the public health, safety, and general welfare of the County.

**42A-23. Districts; authority of the Department and Planning Board.**

- (a) The County Council by resolution may create a transportation management district [in] (TMD) [[in a policy area where]] in Red, Orange, or Yellow Policy Areas as defined in the Subdivision Staging Policy [[requires transportation review]]. A district may be formed from all, or portions of, one or more [[Subdivision Staging]] Policy areas, even if they are not contiguous. [:
- (1) a Metro station policy area, which may include adjacent areas served by the same transportation network; or
  - (2) an area where transportation review applies under the Growth Policy.]

(b) The Department may take actions necessary to achieve effective transportation demand management in each ~~[[district]]~~ District, on its own or by contract with any employer, transportation management organization, or other party, including:

(1) ~~[[regulating]]~~ controlling the use of or limiting public parking, by regulation adopted under method (2);

(2) prohibiting bundling of parking in new developments;

(3) monitoring and assessing traffic patterns and pedestrian access and safety;

~~[(3)]~~ (4) adopting traffic and parking control measures;

~~[(4)]~~ (5) providing transit, shuttles, circulator services, or other transportation services;

(6) implementing approved transportation-related capital projects;

~~[(5)]~~ (7) promoting or implementing transit and ridesharing incentives;

~~[(6)]~~ (8) promoting regional cooperation between the County and other government agencies;

~~[(7)]~~ (9) creating cooperative County-private sector programs to increase ridesharing and transit use; and

~~[(8)]~~ (10) conducting surveys, studies, and statistical ~~[analysis]~~ analyses to determine the effectiveness of ~~[traffic mitigation]~~ transportation demand management plans and employer and building owner efforts.

(c) In each ~~[[transportation management district]]~~ District, sole source contracts may be signed with, or funds granted to, one or more transportation management organizations to carry out transportation

demand management programs that the Department could otherwise carry out, under Chapter 11B.

(d) The Department and the Planning Board may, in accordance with this Article and other applicable law, jointly or separately impose transportation demand management measures as conditions on the Board's approval of development in any [[district]] District.

(e) Each [[district]] District may have a Transportation Management District Advisory Committee if the Executive by regulation decides a Committee is necessary to carry out this Article or if the Council creates a Committee by resolution. The Executive or Council may designate any existing advisory body appointed by the Executive and confirmed by the Council to serve as a Transportation Management District Advisory Committee. The Executive must appoint, and the Council must confirm, members of any Advisory Committee. The County must not compensate members of an Advisory Committee for their services. Advisory Committee members, not otherwise public employees as defined in Chapter 19A, are not subject to the financial disclosure provisions of that Chapter.

**42A-24. [Traffic mitigation plans] Transportation Demand Management Plans for Employers.**

(a) Transportation Demand Management (TDM) [[Plans]] Plan for an Individual Employer.

(1) The Director must require an employer subject to this Section to submit a TDM Plan meeting the requirements of this Section [If an employer is subject to this Section, and] [[if the Council by resolution or in the [Growth] Subdivision Staging Policy has approved the use of traffic mitigation plans or TDM Plans in a

given]] [[district]] District], the Director must notify the employer by letter that the employer must submit a traffic mitigation plan meeting the requirements of this Section].

[(b)] (2) Upon written request from the Director, an employer  
[[within a [[district]] District]] must provide the Director with the  
number of full-time and part-time employees working for that  
organization [[at any]] by workplace [[within the district]] in  
each Policy Area or District.

(3) An employer [who employs 25 or more employees in a district at any time within one year before receiving notice under subsection (a)] must submit a [traffic mitigation plan] TDM Plan to the Director if:

(A) the employer is in a Red Policy Area under the  
Subdivision Staging Policy and has 25 or more employees  
reporting to or assigned to that workplace;

(B) the employer is in an Orange Policy Area under the  
Subdivision Staging Policy and has 100 or more  
employees reporting to or assigned to that workplace;

(C) the employer is in a Yellow Policy Area under the  
Subdivision Staging Policy and has 200 or more  
employees reporting to or assigned to that workplace; or

(D) the employer is in one of the following [[districts]]  
Districts and has 25 or more employees reporting to or  
assigned to a workplace:

Silver Spring TMD

Friendship Heights TMD

Bethesda TMD

North Bethesda TMD

Greater Shady Grove TMD

[[White Oak TMD]].

[(c)] (4) The [traffic mitigation plan should] TDM Plan must be consistent with and contribute to the achievement of any NADMS Goal or other commuting goals set in the [Growth] Subdivision Staging Policy, Master Plans, Sector Plans, and any individual project-based goals or [[interim]] goals established in the regulations implementing this Article. The TDM Plan must include strategies required by regulation and other strategies selected by the employer from those permitted by regulation or proposed by the employer and approved by the Director. A [traffic mitigation plan] TDM Plan may include an alternative work hours program, carpool or vanpool incentives, subsidized transit passes, preferential parking for carpools and vanpools, parking management strategies, peak period or single-occupancy vehicle parking charges, improved transit, bicycle and pedestrian access and safety, telework, and other transportation demand management measures approved by the Director.

[(d)] (5) Each employer must submit its [traffic mitigation plan] TDM Plan within 90 days after receiving written notice from the Director that it is required [under subsection (a)]. The Director may extend an employer's time to file a [traffic mitigation plan] TDM Plan for good cause.

[(e)] (b) Consolidated Employer Transportation Demand Management Plans.



(1) An employer may submit a consolidated [traffic mitigation plan] TDM Plan with other employers in the same building or building complex. An owner of a nonresidential building in a [[district]] District may submit a consolidated [traffic mitigation plan] TDM Plan on behalf of one or more employers in the building.

(2) A consolidated plan must be designed so that the action it requires satisfies this Section for employers covered by the plan and complies with the regulations implementing this Section.

[(f)] (c) Actions and assistance to be provided. The Director must:

(1) offer to help employers prepare TDM Plans;

(2) decide if each proposed plan meets the requirements of this Section; and

(3) help an employer revise a plan that the Director determines does not meet the requirements of this Section.

(d) Resubmission of TDM Plan. The Director may require an employer to resubmit a plan that the Director finds inadequate to achieve any Non-Auto Driver Mode Share goals or other commuting goals [[for that district]]. Once a plan has been approved, the Director must not require an employer to submit a revised plan that meets the requirements of this Section more than once every two years.

(e) Annual TDM Plan report. An employer must submit a report on strategies used to implement a TDM Plan, including progress achieved under that plan, to the transportation management organization and the Director on a schedule established by the Director.

[(1)] The Director may require an owner of a nonresidential building in a district to submit a traffic mitigation plan if:

- (A) the Director finds that a plan is necessary to achieve the purpose of this Article because of the owner's control of parking or common space or for similar reasons; and
- (B) the Director notifies the owner of the building under subsection (a).]

[(2) As specified in the notice, the owner's plan may cover all or some employers in the building. A plan submitted under this subsection may be in addition to one an individual employer must submit.]

[(3) After receiving notice under this Section, an owner must submit a traffic mitigation plan that meets the requirements applicable to an employer.]

[(g) (1) The Director may require an owner of a residential building or complex with at least 100 dwelling units, including a common ownership community as defined in Chapter 10B, in a district to submit a traffic mitigation plan if:

- (A) the Director finds that a plan is necessary to achieve the purpose of this Article because of the owner's control of parking or common space or for similar reasons; and
- (B) the Director notifies the owner of the building under subsection (a).

(2) After receiving notice under this Section, an owner of a residential building must submit a traffic mitigation plan that meets the requirements applicable to an employer.]

[(h) The Director must offer to help employers and owners prepare traffic mitigation plans.]

[(i) The Director must:

- (1) decide if each proposed plan meets the requirements of this Section; and
- (2) help the employer or owner revise a plan which does not meet the requirements.]

[(j) The Director may require an employer or owner to resubmit a plan that is not consistent with any commuting goals set in the Growth Policy. The Director must not require an employer to submit a plan that meets the requirements of this Section more than once every 2 years. An employer must submit a report on transportation management measures used to implement a traffic mitigation plan to the transportation management organization based on a schedule the Director sets.]

**42A-25. [Traffic mitigation agreements] Transportation Demand Management Plans for Existing Buildings.**

[(a) Any proposed subdivision or optional method development in a district must be subject to a traffic mitigation agreement if the Planning Board and the Director jointly decide, under standards adopted by the Council for the adequacy of public transportation, that more transportation facilities or transportation demand management measures are necessary to meet any commuting goals set in the Growth Policy.]

[(b) A traffic mitigation agreement must specify transportation demand management measures that the applicant or a responsible party must carry out. The measures must be calculated to ensure that public transportation will be adequate to meet commuting goals set in the Annual Growth Policy.]

[(c) A traffic mitigation agreement may require:

- (1) naming a transportation coordinator;
- (2) limits on parking spaces;

- (3) peak period or single-occupancy vehicle parking charges;
- (4) preferential parking for carpools and vanpools;
- (5) subsidies for employees not using single-occupancy vehicles;
- (6) financial or other participation in building or operating on- or off-site transportation facilities or systems;
- (7) providing space on a periodic basis for marketing and promotional activities of the district;
- (8) designating permanent areas in prominent locations to display information on commuting options; or
- (9) other transportation demand management measures.]

[(d) A traffic mitigation agreement must be:

- (1) agreed to by the applicant, the Department, and the Planning Board;
- (2) made an express condition of any approval for subdivision under Chapter 50 or optional method development under Chapter 59;
- (3) subject to all other review and approval requirements of Chapter 50 and Chapter 59; and
- (4) recorded in the County's land records.]

[(e) A traffic mitigation agreement may:

- (1) require adequate financial security, including bonds, letters of credit, or similar guarantees;
- (2) bind future tenants of the development; and
- (3) specify liquidated damages, specific performance, or other contractual remedies, as appropriate.]

[(f) The Department must enforce the terms of each traffic mitigation agreement. This does not limit the Planning Board's authority to revoke

or otherwise enforce any approvals for subdivision under Chapter 50 or optional method development under Chapter 59.]

(a) Transportation Demand Management (TDM) Plans for Existing Non-residential Buildings.

(1) The Director may require an owner of a nonresidential building in a [[district]] District to submit a TDM Plan if:

(A) the Director finds that a plan is necessary to achieve the purpose of this Article; and

(B) the building is not subject to either a traffic mitigation agreement currently in effect or a Project-based TDM Plan under Section 42A-26.

(2) If an existing non-residential building is subject to this Section, the Director must notify the building owner that a TDM plan meeting the requirements of this Section must be submitted. As specified in the notice, the owner's plan may cover all or some employers in the building. A plan submitted under this subsection may be in addition to one an individual employer must submit.

(3) After receiving notice under this Section, an owner must submit a TDM Plan meeting the requirements established in the Executive Regulations for approval by the Director.

(b) Transportation Demand Management (TDM) Plans for Existing Multi-Unit Residential Buildings.

(1) The Director may require an owner of a residential building or complex with at least 100 dwelling units in a [[district]] District, including a common ownership community as defined in Chapter 10B, to submit a TDM Plan if:

(A) the Director finds that a plan is necessary to achieve the purpose of this Article; and

(B) the building is not subject to either a traffic mitigation agreement currently in effect or to a Project-based TDM Plan under Section 42A-26.

(2) If an existing multi-unit residential building is subject to this Section, the Director must notify the building owner(s) that a TDM Plan meeting the requirements of this Section must be submitted.

(3) After receiving notice under this Section, the owner(s) must submit a TDM Plan that meets the requirements established in the Executive Regulations for approval by the Director.

(c) Actions and assistance to be provided. The Director must:

(1) offer to help building owners prepare TDM Plans;

(2) decide if each proposed plan meets the requirements of this Section; and

(3) help the building owner(s) revise a plan which does not meet the requirements.

(d) Resubmission of TDM Plan. The Director may require a building owner to resubmit a plan that the Director finds inadequate to achieve any Non-Auto Driver Mode Share goals or other commuting goals [[for that district]]. Once a plan has been approved, the Director must not require a building owner to submit a revised plan that meets the requirements of this Section more than once every two years.

(e) Annual TDM Plan report. A building owner must submit a report on strategies used to implement a TDM Plan, and progress on achievement

of goals under that plan, to the transportation management organization and the Department based on a schedule established by the Director.

**42A-26. [Annual survey] Transportation Demand Management Plans for New Development Projects (Project-based TDM Plans).**

[(a) The Director, after consulting the appropriate Advisory Committee, must schedule an annual commuter survey, unless the Director determines that a less frequent plan is appropriate.]

[(b) The Director, after consulting the appropriate Advisory Committee, must prepare a survey that generates information to:

(1) create an accurate data base of employee commuting patterns in the district; and

(2) monitor progress toward reaching any commuting goals set in the Growth Policy.]

[(c) The Department must distribute the survey to employers based on a schedule the Director sets. Each notified employer must distribute, collect, and return the completed surveys to the transportation management organization within 45 days after receiving the surveys.]

[(d) An employer must make a good faith effort to generate survey responses from employees with the objective of achieving at least an 80 percent compliance rate.]

(a) Applicability. This Section applies to any owner or applicant for a new development or construction project that submits an application for a proposed subdivision or optional method development, site plan, conditional use or building permit in a [[district]] District, but excluding any project consisting solely of single family detached housing, townhouses, or a mixture of both. All such applicants must obtain approval from the Department for a Project-based Transportation

Demand Management (TDM) Plan. This approval must be obtained prior to [[Planning Board approval of the application, or prior to Department of Permitting Services approval for projects not requiring Planning Board action]] the issuance of any building permit by the Department of Permitting Services. Projects subject to this Section include developments:

- (1) in a Red, Orange or Yellow Subdivision Staging Policy Area and larger than the minimum sizes shown in subsection (b);
- (2) that do not have a fully-executed traffic mitigation agreement in effect; and
- (3) where the Department decides, under standards adopted by the Council for the adequacy of transportation, including Non-Auto Driver Mode Share goals and other commuting goals adopted in Master Plans, Sector Plans and the Subdivision Staging Policy, that more transportation facilities or transportation demand management measures are necessary to meet the County's commuting goals.

(b) Levels of Project-based TDM Plans. An owner or applicant for a new development or construction project may be required to submit a Level 1 TDM Basic Plan, a Level 2 TDM Action Plan, or a Level 3 TDM Results Plan based on the size and location of the project as follows:

- (1) An owner or applicant for a project located in a Red Policy Area under the Subdivision Staging Policy must:
  - (A) submit a Level 1 TDM Basic Plan for a project with [[at least 25,000 gross square feet, but]] less than or equal to [[100,000]] 40,000 gross square feet; and



- (B) submit a Level 3 TDM Results Plan for a project with more than ~~[[100,000]] 40,000 gross square feet;~~
- (2) An owner or applicant for a project located in an Orange Policy Area under the Subdivision Staging Policy must:
- (A) submit a Level 1 TDM Basic Plan for a project with at least ~~[[50,000]] 40,000 gross square feet, but less than or equal to [[100,000]] 80,000 gross square feet;~~
- (B) submit a Level 2 TDM Action Plan for a project with more than ~~[[100,000]] 80,000 gross square feet, but less than or equal to [[200,000]] 160,000 gross square feet; and~~
- (C) submit a Level 3 TDM Results Plan for a project with more than ~~[[200,000]] 160,000 gross square feet;~~
- (3) An owner or applicant for a project located in a Yellow Policy Area under the Subdivision Staging Policy must:
- (A) submit a Level 1 TDM Basic Plan for a project with at least ~~[[75,000]] 60,000 gross square feet, but less than or equal to 150,000 gross square feet; and~~
- (B) submit a Level 2 TDM Action Plan for a project with more than 150,000 gross square feet.
- (4) If an adopted Master Plan or Sector Plan requires a higher Level of Project-based TDM Plan, those Master Plan or Sector Plan requirements override those described in paragraphs (1), (2), or (3).
- (5) An owner or applicant for a project with a gross square feet size disproportionate to its impact on traffic (e.g., large floor area warehouses with lower impacts; small floor area food or beverage establishments with higher impacts) may be required to

506 adhere to a Project-based TDM Plan Level that is either lower or  
 507 higher than otherwise required by its size and location, in  
 508 accordance with the development approval and consistent with  
 509 the Executive Regulation implementing this Article.

510 (c) Components of Project-based TDM Plans. The components of each  
 511 Project-based TDM Plan Level are described in detail in the Executive  
 512 Regulation adopted to implement these provisions. Each plan must  
 513 include the components listed below and in the Executive Regulation.  
 514 The plan must be submitted by the owner or applicant and approved by  
 515 the Department. Any owner or applicant may choose to comply with  
 516 the requirements for a higher Level of Project-based TDM Plan.

517 (1) Level One: A Project-based TDM Basic Plan is not required to  
 518 include specific project-based strategies other than providing  
 519 information, but must implement County-led strategies at the  
 520 Project and must include:

521 (A) Appointment of a Transportation Coordinator and  
 522 Commitment to Cooperate with the Department's  
 523 Programs. Each owner of a project must designate an  
 524 individual responsible to assist and cooperate with the  
 525 Department's efforts to achieve the Non-Auto Driver  
 526 Mode Share goals and other traffic mitigation and  
 527 commuting goals [[established for that area]]. This  
 528 assistance must include distribution of information on  
 529 commuting options to the on-site population; coordinating  
 530 with the Department to conduct on-site commuting-related  
 531 outreach events; ensuring participation in commuter  
 532 surveys by the on-site population; attending occasional

training sessions for Transportation Coordinators; and  
other duties included in the Executive Regulation.

(B) Notification. Each owner of a project is required to notify  
the Department in writing within 30 days of receipt of final  
Use and Occupancy certificate from the Department of  
Permitting Services of the designated Coordinator's  
contact information; and within 30 days of any subsequent  
change in that designation or contact information.

(C) Access to the Project. Each owner must provide space on-  
site by prior arrangement with the Department to allow the  
Department to promote TDM, including participation in  
commuter surveys. Such space need not be exclusively  
for this purpose but must be suitable for this purpose, as  
determined by the Department.

(D) TDM Information. Displays of TDM-related information  
must be placed in a location visible to employees,  
residents and other project users.

(2) Level Two: A Project-based TDM Action Plan requires a  
commitment to take specific actions by the owner or applicant to  
achieve a base Non-Auto Driver Mode Share that is 5% higher  
than the District's NADMS goal [[specific actions]] to help the  
County achieve district-wide commuting goals. The Director  
may establish a project NADMS goal that is up to 5% higher or  
5% lower than the base NADMS goal in Red Policy Areas and  
up to 10% higher or 10% lower than the base NADMS goal in  
Orange and Yellow Policy Areas. The plan must include project-  
based strategies and demonstrate over time that the adopted

strategies are contributing toward achievement of the  
 [[district's]] commuting goals, in compliance with the Executive  
 [[Regulations]] Regulation. A project must be considered to be  
 contributing toward achievement of the district's commuting  
 goals if the [[biannual]] biennial surveys of building occupants  
 demonstrate increased on-site Non-Auto Driver Mode Share, or  
 a measurable improvement in an alternative Department-  
 approved metric, if applicable, in proportion to the level  
 necessary to achieve the project's goal by the date established in  
 the project's TDM plan. Once the NADMS goal or other  
 commuting goals have been achieved, the owner must maintain  
 the level necessary to continue achieving the goals. A Project-  
 based TDM Action Plan must include the Project-based TDM  
 Basic Plan components and the following:

(A) *Selection of Strategies.* The owner or applicant must  
 propose a Project-based TDM Plan that includes required  
 strategies and selected optional strategies from the  
 "Sample Menu of TDM Strategies" identified in the  
 Executive Regulation. Additional strategies may be  
 proposed by the owner or applicant and may be included  
 in the Project-based TDM Plan if approved by the  
 Department.

(B) *Commitment to Fund and Implement the Plan.* The owner  
 or applicant must commit to fund and implement the  
 Project-based TDM Plan at an adequate level to contribute  
 toward achievement of the [[district's]] commuting goals.

586 (C) Self-Monitoring. The owner or applicant must conduct  
 587 self-monitoring, consistent with Department  
 588 requirements, to determine if the Project-based TDM Plan  
 589 is contributing toward achievement of the [[district's]]  
 590 District's goals. The self-monitoring must be conducted  
 591 in addition to any monitoring conducted by the  
 592 Department.

593 (D) Biennial Report. Progress reports must be provided to the  
 594 County in alternating years, in a format consistent with  
 595 Department requirements.

596 (E) Addition and/or Substitution of Strategies. If the strategies  
 597 initially selected from the "Sample Menu of TDM  
 598 Strategies" by the owner or applicant do not result in the  
 599 plan contributing toward achievement of [[district]]  
 600 District goals by four years after Date of Final Occupancy,  
 601 the Department may require revisions in the project's plan  
 602 using the "Sample Menu of TDM Strategies" or other  
 603 strategies proposed by the owner or applicant. The owner  
 604 or applicant must agree to implement these revised  
 605 strategies if required by the Department at a level  
 606 consistent with the owner's commitment to fund and  
 607 implement the plan. This process may be repeated until  
 608 the project demonstrates it is contributing toward  
 609 achievement of district goals, consistent with the  
 610 Executive Regulations. Once the NADMS goal or other  
 611 commuting goals have been achieved, the owner must

612 maintain the level necessary to continue achieving the  
 613 goals.

614 (F) *Additional Funding Commitment.* If the project does not  
 615 contribute toward achievement of [[district]] the  
 616 commuting goals by six years after Date of Final  
 617 Occupancy, the Department may require increased  
 618 funding by the owner for existing or new TDM strategies  
 619 to be implemented at the project. The owner must commit  
 620 additional funds to supplement on-site strategies if  
 621 required by the Department. The amount of the additional  
 622 funding must be as established in the Executive  
 623 Regulation.

624 (G) *[[Rewards]] Performance Incentives.* The owner may be  
 625 eligible for annual [[rewards]] performance incentives  
 626 established by the Department for continued contribution  
 627 over multiple years toward achievement of [[district]]  
 628 commuting goals, including reductions in TDM fees or  
 629 other financial benefits, as established in the Executive  
 630 Regulation.

631 (3) Level Three: A Project-based TDM Results Plan requires a  
 632 commitment by the owner or applicant to achieve [[certain]] a  
 633 base Non-Auto Driver Mode Share that is 5% higher than the  
 634 District's goal as well as [[and]] related commuting goals at that  
 635 project. The plan must include project-based strategies and  
 636 demonstrate that the plan is achieving the goals established for  
 637 the project. [[Those goals may be equal to, higher or lower than  
 638 the [[district's]] District's goals based on project-specific

parameters, consistent with the Executive Regulation.]] The  
Director may establish a project NADMS goal that is up to 5%  
higher or 5% lower than the base NADMS goal in Red Policy  
Areas and up to 10% higher or 10% lower than the base NADMS  
goal in Orange and Yellow Policy Areas. The plan must be  
submitted by the owner or applicant and approved by the  
Department. A Project-based TDM Results Plan must include  
the Project-based TDM Action Plan components and the  
following:

(A) Independent Monitoring. Monitoring by a consultant  
approved by the Department, to determine whether the  
project is meeting its goals. This monitoring must be done  
on a regular basis consistent with the Executive  
Regulations.

(B) Addition and/or Substitution of Strategies. If the strategies  
initially selected by the owner or applicant do not result in  
the project achieving its goals by six years after Date of  
Final Occupancy, the Department may require revisions in  
the project's plan using the "Sample Menu of TDM  
Strategies" or other strategies proposed by the owner or  
applicant. The owner or applicant must agree to  
implement these revised strategies if required by the  
Department at a level consistent with the owner's  
commitment to fund and implement the plan. This process  
may be repeated until the project demonstrates it is  
achieving its goals, in compliance with the Executive  
[[Regulations]] Regulation.

(C) Additional Funding Commitment. If the strategies selected by the owner or applicant do not result in achievement of the project goals by six years after Date of Final Occupancy, the Department may require increased funding by the owner for existing or new TDM strategies to be implemented at the project. Additional increases in funding may be required if the goals have still not been achieved by eight years after Date of Final Occupancy. The owner must commit additional funds to supplement on-site strategies if required by the Department. The amount of the additional funding must be as established in the Executive Regulation.

(D) [[Rewards]] Performance Incentives. The owner may be eligible for annual [[rewards]] performance incentives established by the Department for continued achievement of project goals over multiple years, including reductions in TDM fees or other financial benefits, as established by the Executive Regulation.

(d) Process. A Project-based TDM Plan must be:

- (1) proposed by the owner or applicant and approved by the Department;
- (2) made an express condition of any approval for:
  - (A) subdivision or another plan approval under Chapter 50;
  - (B) site plan or another plan approval under Chapter 59; or
  - (C) building permit for a recorded lot;



- (3) subject to all other review and approval requirements of Chapter 50 and Chapter 59, with approval of the Department required for any revisions to an approved TDM Program; and
- (4) recorded in the County's land records.

A Project-based TDM Plan must be required for all such approvals except where equivalent provisions of a fully-executed traffic mitigation agreement for the project are in effect in perpetuity.

- (e) *Enforcement.* The Director must enforce the terms of each Project-based TDM Plan. This does not limit the Planning Board's authority to revoke or otherwise enforce any approvals under Chapter 50 or Chapter 59. [[Where a Project-based TDM Plan is a condition of subdivision, optional method, site plan, or conditional use, the Planning Board must confirm that TDM Plan has been approved by the Director before issuing final approval.]] Where a Project-based TDM Plan is a condition of building permit approval, the Department of Permitting Services must confirm that ~~the~~ TDM Plan has been approved by the Director prior to issuing a building permit.

**42A-27. [Executive report] Traffic Mitigation Agreements.**

- [(a) By December 1 of each even-numbered year, the Director must submit to the appropriate Advisory Committee and the Planning Board a report on transportation demand management in each district. The report should include:

- (1) employee commuting patterns by employer;
- (2) auto occupancy rates by employer;
- (3) level of service measurements for each intersection in the policy area and selected critical intersections outside the area;
- (4) parking supply and demand;

- (5) status of road or intersection improvements, signal automation, improved bicycle and pedestrian access and safety, and other traffic modifications in or near the policy area;
- (6) transit use and availability;
- (7) carpool and vanpool use; and
- (8) the source and use of any funds received under this Article.]

[(b) By March 1 of each odd-numbered year, the Executive must forward each report to the Council. The Executive must note any area of disagreement between the Director and an Advisory Committee.]

[(c) If any commuting goals set in the Growth Policy are not met 4 years after a district is created, the Director must recommend corrective action to the Executive. This action may include mandatory mitigation measures. If the Executive agrees that such action is necessary, the Executive should propose appropriate legislation or adopt appropriate regulations as authorized by law.]

Enforcement. The Department must enforce the terms of each traffic mitigation agreement. This does not limit the Planning Board's authority to revoke or otherwise enforce any approvals for subdivision under Chapter 50 or optional method development under Chapter 59.

**42A-28. [Regulations] Commuter survey and related data collection.**

[The Executive may adopt regulations under method (2) to implement this Article.]

(a) The Director, after consulting the appropriate Advisory Committee, must conduct a commuter survey, or obtain through other available mechanisms, data on commuting by employees and residents within a defined area. The data must be obtained on a schedule determined by the Director.

(b) The Director, in consultation with the appropriate Advisory Committee, must prepare a survey or other data collection mechanism as necessary to generate information to:

(1) create an accurate data base of employee and resident commuting patterns [[in the district]]; and

(2) monitor progress toward reaching any commuting goals set in the Subdivision Staging Policy, Master Plans or Sector Plans, as implemented by the Department through Executive Regulations or other adopted policies and procedures.

(c) The Department must distribute the survey to employers; building owners or managers; tenants, condominium and homeowners associations; Transportation Coordinators, and others required to conduct the survey or to participate in other ways in the data collection process, based on a schedule the Director sets. The Department may also collect commuting data through other available mechanisms in addition to or in place of the commuter survey.

(d) Each notified employer, building owner or manager, Transportation Coordinator or other entity must distribute, collect, and return the completed surveys, or otherwise provide the required data through other Department-approved mechanisms. Data collected must be provided to the transportation management organization and the Department within the time period established by the Department.

(e) Any entity required to participate in the commuting survey, or to participate in data collection through another mechanism, must make a good faith effort to generate survey responses or other data from their target population with the objective of achieving at least a [[60]] 40 percent compliance rate for an entity with a target population of either

100 or more employees or 100 or more residents and 50 percent for an entity with a target population of less than 100 employees or less than 100 residents. The Director may require a smaller or larger response rate from a given worksite, building, or project based on requirements for statistical validity.

**42A-29. [Transportation Management Fee] Executive report on [[TMDs]] Transportation Demand Management.**

**[(a) *Authority.***

(1) The Council may by resolution adopted under Section 2-57A set the transportation management fee that the Department must annually charge, under the Alternative Review Procedures in the Growth Policy, an applicant for subdivision or optional method development approval in a district and each successor in interest.

(2) If the resolution creating a district authorizes the Department to charge a transportation management fee to any of the following persons, the Council may, by resolution adopted under Section 2-57A, set the fee that the Department must charge:

(A) an applicant for subdivision or optional method development in the district who is not subject to a transportation management fee under the Alternative Review Procedures in the Growth Policy and each successor in interest; and

(B) an owner of existing commercial and multi-unit residential property in the district.]

**[(b) *Use of revenue.*** The revenue generated by a transportation management fee must be used in the district in which the development or property subject to the fee is located to cover the cost of:

- (1) administering the district, including review and monitoring of traffic mitigation plans under Section 42A-24 and traffic mitigation agreements under Section 42A-25; and
- (2) any program implemented under Section 42A-23(b), including any vehicle or other equipment necessary to carry out the program.]

[(c) *Rate.* The rate of a transportation management fee must be set to produce not more than an amount of revenue substantially equal to the:

- (1) portion of the cost of administering the district, including the review and monitoring of traffic mitigation plans under Section 42A-24 and traffic mitigation agreements under Section 42A-25, reasonably attributable to the transportation effects of the development or property subject to the fee; and
- (2) portion of the cost of any program implemented under Section 42A-23(b), including any vehicle or other equipment necessary to carry out the program, reasonably attributable to the transportation effects of the development or property subject to the fee.]

[(d) *Method.* A transportation management fee may be assessed on:

- (1) the gross floor area, the maximum or actual number of employees, or the average number of customers, visitors, or patients, in a nonresidential building;
- (2) the number of dwelling units, or the gross floor area, in a residential building;
- (3) the number of parking spaces associated with a building; or

(4) any other measurement reasonably related to transportation use by occupants of, employees located in, or visitors to a particular development or property.]

[(e) *Variation.* The transportation management fee and the basis on which it is assessed may vary from one district to another and one building category or land use category to another.]

(a) By December 1 of each even-numbered year, the Director must submit to the appropriate Advisory Committee and the Planning Board a report on transportation demand management in each operating [[district]] District. The report should include the following information to the extent feasible within the constraints of available resources:

- (1) employee commuting patterns by employer, building or project; residential commuting patterns by building or project; other commuting or travel patterns as appropriate;
- (2) auto occupancy rates by employer, residential unit or other appropriate measures;
- (3) level of service measurements for each major intersection in the policy area and selected critical intersections outside the area;
- (4) parking supply and demand;
- (5) status of road or intersection improvements, signal automation, bicycle and pedestrian access and safety, and other traffic modifications in or near the district;
- (6) transit use and availability;
- (7) carpool and vanpool use;
- (8) bicycle and bikeshare use;
- (9) use of other transportation modes relevant to analyzing achievement of commuting goals; [[and]]

(10) the number of electric vehicle charging stations in the area; and

(11) the source and use of any funds received under this Article.

(b) By March 1 of each odd-numbered year, the Executive must forward  
[[each report]] required reports to the Council. The Executive must  
note any area of disagreement between the Director and an Advisory  
Committee.

(c) If any commuting goals set in the Subdivision Staging Policy are not  
met eight years after a district is created or by June 30, 2027, whichever  
is later, the Director must recommend corrective action to the  
Executive. This action may include additional mitigation measures. If  
the Executive agrees that such action is necessary, the Executive should  
propose appropriate legislation or adopt appropriate regulations as  
authorized by law.

#### **42A-30. [Enforcement] Regulations.**

[The Department must enforce this Article. An employer that does not submit a traffic mitigation plan or provide survey data within 30 days after a second notice has committed a class C violation. An owner who does not submit a traffic mitigation plan within 30 days after a second notice has committed a class C violation. A party to a traffic mitigation agreement under Section 42A-26 who does not comply with the agreement within 30 days after notice has committed a class A violation.]

The Executive must adopt regulations under method (2) to implement this Article. The regulations may implement the requirements of this Article in phases.

#### **42A-31. Transportation Demand Management Fee.**

(a) Authority.

(1) The Council may, by resolution adopted under Section 2-57A,  
set the transportation demand management fee that the

Department must annually charge an applicant, and each successor in interest, for subdivision, optional method development approval, or a building permit.

(2) The Department is authorized to charge a transportation demand management fee adopted by the Council to:

(A) an applicant for subdivision or optional method approval, site plan approval or a building permit in a [[district]] District and

(B) an owner of existing commercial, industrial or multi-unit residential developed property in the [[district]] District, including a property where the principal use is a commercial parking facility.

(b) Use of revenue. The revenue generated by a transportation demand management fee must be used in the [[transportation management district]] District in which the development or property subject to the fee is located to cover the cost of:

(1) administering the [[district]] District and TDM strategies, and coordinating with projects and occupants (including employees and residents) within that [[district]] District or Policy Area, including review and monitoring of TDM Plans; and

(2) any program implemented under Section 42A-23(b), including any vehicle or other equipment necessary to carry out the program.

(c) Rate. The rate of a transportation demand management fee must be set to produce not more than an amount of revenue substantially equal to the:



- (1) portion of the cost of administering TDM in the [[district]] District, including the review and monitoring of TDM Plans, reasonably attributable to the transportation effects of the development project or property subject to the fee; and
- (2) portion of the cost of any program implemented under Section 42A-23(b), including any vehicle or other equipment necessary to carry out the program, reasonably attributable to the transportation effects of the development project or property subject to the fee.

(d) Method. A transportation demand management fee may be assessed on:

- (1) the gross square feet, the gross floor area, the maximum or actual number of employees, or the average number of customers, visitors, or patients, in a nonresidential building;
- (2) the number of dwelling units, the gross square feet or the gross floor area, in a residential building;
- (3) the number of parking spaces associated with a building; or
- (4) any other measurement reasonably related to transportation use by occupants of, employees located in, or visitors to a particular development or property, including property where the principal use is as a commercial parking facility.

(e) Variation. The transportation demand management fee and the basis on which it is assessed may vary within each [[district]] District, between one [[district]] District and another, and from one building category or land use category to another.

#### **42A-32. Enforcement.**

- (a) The Department must enforce this Article. An employer, owner, building or project manager or other responsible party subject to Section 42A-24 or 42A-25 that does not submit a TDM Plan or required report, comply with required provisions of a plan, or provide survey data consistent with the requirements of Section 42A-28 within 30 days after a second notice has committed a class C violation.
- (b) A party to a Project-based Transportation Demand Management Plan under Section 42A-26 who does not comply with the approved plan within 30 days after notice of noncompliance has committed a class A violation.
- (c) Any party [[required to]] that does not submit required reports on numbers of employees, transportation demand management plans and strategies, Non-Auto Driver Mode Share, progress toward goals, survey results or other TDM-related provisions or measurements on a timely basis has committed a class C violation.
- (d) Any party who falsifies any required data or reports has committed a class A violation.

## **Sec. 2. Transition.**

- (a) *Existing agreements.* All traffic mitigation agreements executed under this Chapter before this Act takes effect that have not expired or terminated, remain in effect.
- (b) *New building or project approvals.* No traffic mitigation agreement must be required for any new building or development project approved after this Act takes effect.
- (c) *Projects with prior approvals.* Any building or development project with an existing subdivision or optional method approval when this Act takes effect where a traffic mitigation agreement was a condition of that

approval, may opt to be considered for re-approval of their application under the amendments in Section 1 if:

- (1) a traffic mitigation agreement has not yet been fully executed;
- (2) the building or project approved is larger than the minimum sizes designated for each Subdivision Staging Policy Area group in Section 42A-26; and
- (3) construction has not begun.

*Approved:*

---

Nancy Navarro, President, County Council

Date

*Approved:*

---

Marc Elrich, County Executive

Date

*This is a correct copy of Council action.*

---

Mary Anne Paradise, Acting Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 36-18

*Transportation Management – Transportation Demand Management - Amendments*

**DESCRIPTION:** Bill 36-18 would expand the County's use of transportation demand management (TDM) to reduce traffic congestion and automobile emissions, support multi-modalism and achievement of non-automobile travel goals, enhance the efficient use of transportation infrastructure and promote sustainability of existing and future development. The Bill would establish requirements for transportation demand management plans for new developments in certain areas of the County, make the County's approach more flexible and responsive to changing parameters in transportation and development, and increase accountability for results.

**PROBLEM:** Under existing law, TDM strategies are only required for businesses and development projects in transportation management districts (TMDs). Since traffic congestion is generated countywide, and many areas outside TMDs could benefit from use of these strategies, the Bill would apply TDM countywide.

Negotiation of traffic mitigation agreements for new development projects can be protracted and jeopardize the timing of projects. Agreements under current Code provisions are fixed in time and do not allow flexibility to adapt to changing conditions. The process for approving TDM plans needs streamlining, flexibility, and enhanced accountability for results.

**GOALS AND OBJECTIVES:** Extension of TDM strategies to settings outside existing TMDs. Streamlining of process for development project TDM plan approvals. Provide flexibility in TDM strategies to be used at projects, both initially and over time. Clarify requirements, increase effectiveness and accountability. Provide incentives and disincentives to promote goal achievement.

**COORDINATION:** Departments of Permitting Services, Finance, Environmental Protection, OMB; M-NCPPC

**FISCAL IMPACT:** To be provided

**ECONOMIC IMPACT:** To be provided

**EVALUATION:** To be provided

**EXPERIENCE  
ELSEWHERE:**

Many U.S. jurisdictions have transportation demand management requirements in place, including the District of Columbia and Arlington County. The County has had elements of TDM included in the Code for many years, but an improved approach was desired. A work group comprised of representatives from the Executive Branch, Council staff, M-NCPPC, and stakeholder representatives, received input from expert consultants about experience in other jurisdictions and recommended several of the provisions included in the proposed bill.

**SOURCE OF  
INFORMATION:**

Department of Transportation –  
Chris Conklin, Deputy Director for Transportation Policy, 240-777-7198  
Gary Erenrich, Special Assistant to the Director, 240-777-7156  
Sandra Brecher, Commuter Services Section Chief, 240-777-8383

**APPLICATION  
WITHIN  
MUNICIPALITIES:**

Chapter 42A does not apply within municipalities

**PENALTIES:**

N/A

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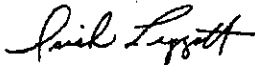
OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

September 19, 2018

TO: Hans Riemer, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Bill xx-18: Transportation Management – Transportation Demand Management Plan – Amendments

The purpose of this memorandum is to transmit for the County Council's approval Amendments to Chapter 42A, Article II of the Montgomery County Code that relate to Transportation Demand Management.

Transportation demand management (TDM) encompasses a wide variety of strategies to reduce the demand for road capacity and promote use of alternatives to solo driving. Research has shown it to be one of the most effective tools for reducing traffic congestion. The proposed bill would expand the County's use of transportation demand management to reduce traffic congestion and automobile emissions, support multi-modalism and achievement of non-automobile travel goals, enhance the efficient use of transportation infrastructure and promote sustainability of existing and future development. It will establish requirements for transportation demand management plans for new developments in certain areas of the County and make the County's approach more flexible and responsive to changing parameters in transportation and development, while at the same time increasing accountability for results.

Over the past two years the County Department of Transportation has worked with a diverse group of representatives from multiple Executive Branch agencies, County Council staff, the Maryland-National Capital Park and Planning Commission, consultants, many advisory committees and representatives from the civic, business and developer communities to discuss how to improve the TDM approach used by the County. The goals of the effort were to streamline the process for TDM plan approvals, provide flexibility in strategies including the ability to adjust them over time, and ensure fairness by clarifying requirements including costs and improving consistency in application. In addition, an overriding goal was to increase the effectiveness of TDM in achieving the County's transportation goals, by extending these approaches to a broader portion of the County; improving accountability through monitoring, reporting and enforcement; and providing incentives and disincentives to promote goal achievement.

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The result of this effort is the proposed legislation submitted herein. Key provisions include the following:

- Broader application of TDM, based on Transportation Policy Areas. Under existing Code, TDM strategies are required only in existing transportation management districts (TMDs). Since traffic congestion is generated countywide, and many areas outside TMDs could benefit from use of these strategies, TDM should be applied more broadly. Transportation Policy Areas adopted as part of the Subdivision Staging Policy form the basis for a tiered approach, with the highest-level requirements in the Red Policy Areas, mid-range requirements in the Orange Policy Areas, and the lowest-level requirements in the Yellow Policy Areas. Green Policy Areas, which are not planned for significant new business or development activity generating significant traffic impacts, are not included. Likewise, existing or proposed single family detached developments are not included in the proposed expansion of TDM.
- Revised approach to TDM for new development projects, eliminating TMAgs. Current Code requires new development projects within TMDs to have a traffic mitigation agreement (TMAg), if the Planning Board and MCDOT jointly decide one is necessary to achieve commuting goals for that area. The requirement for an agreement is included as a condition of development approval by the Planning Board. TMAgs are negotiated by developers with MCDOT and the Planning Board; those negotiations have at times become protracted, consuming significant time for all parties and potentially jeopardizing timing of projects. Our public outreach to the development community indicated a concern that the current practice may not treat every development the same since each development generates its own TMAg.

The proposed Code revisions would streamline this process, make it more flexible, and provide increased accountability. Certain basic TDM strategies would be required of all new projects over a certain minimum size, based on the Policy Area classification. Developers of projects over a certain size would select additional TDM strategies they determine would work best for their project. These would be incorporated into a "Project-based TDM Plan."

Once occupied, projects would have several years to demonstrate the effectiveness of their plan. Mid-sized projects in Orange or Yellow Policy Areas would be required to contribute toward achieving the goals for that Policy Area or TMD. Larger-sized projects in Red or Orange Policy Areas would be required to achieve the goals for that Policy Area or TMD. If they are not meeting the standard for success (either contributing toward or achieving the goals) they would be required to add or change strategies – and could be required to provide added resources to their on-site program to increase its effectiveness. Projects achieving the goals would be eligible for reduced TDM fees.

A summary of the proposed requirements for new projects of various sizes in each Policy Area classification is included as a chart entitled "TDM Plan Components for New Development Projects," on page 8 of Attachment A.

Hans Riemer, Council President  
September 19, 2018  
Page 3

- Extension of TDM to businesses outside existing TMDs. Under existing Code requirements, employers of 25 or more employees in a transportation management district are required to file a traffic mitigation plan showing what TDM strategies they will use to encourage non-auto commuting.

The proposed legislation retains these existing provisions and extends them to additional areas of the County. Workforce size thresholds are based on the color classification of the Policy Area where the workplace is located. In Red Policy Areas employers of 25 or more workers would be required to file; in Orange Areas, 50 or more workers; and in Yellow Areas 100 or more workers. Known under current Code as "traffic mitigation plans," these would now be called "TDM Plans for Employers."

Existing non-residential buildings and multi-unit residential buildings of at least 100 units in a TMD also can be required under current Code to file traffic mitigation plans committing them to implement TDM strategies. These provisions have been retained but the plans would now be called "TDM Plans for Existing Buildings."

Attachment A to this memorandum is a PowerPoint summary of the proposed legislation. This overview has been presented to multiple stakeholder groups and other interested parties and posted on the Department of Transportation website. Attachment B is a draft Executive Regulation. While still in preliminary form, it provides a fuller picture of how the Executive Branch plans to implement provisions contained in the proposed legislation. A revised version of this Executive Regulation will be submitted for Council approval under Method 2 once the bill has been adopted.

The proposed bill is hereby transmitted for the Council's review and consideration. The Legislative Request Report is included as Attachment C; Fiscal and Economic Impact Statements will be provided prior to the public hearing. I recommend prompt passage of this bill to advance these programs. Please direct any questions to Chris Conklin, Deputy Director for Transportation Policy at the Department of Transportation at (240) 777-7198.

**Attachments (3)**

Attachment A: "NextGen TDM – Proposed Code Changes and Executive Regulation Provisions"

Attachment B: Draft Executive Regulation

Attachment C: Legislative Request Report

cc: Al Roshdieh, Director, Montgomery County Department of Transportation  
Casey Anderson, Chair, Montgomery County Planning Board





OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

MEMORANDUM

Jennifer A. Hughes  
Director

November 30, 2018

TO: Hans Riemer, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Alexandre A. Espinosa, Director, Department of Finance *AE* *MCB for JAH*

SUBJECT: FEIS for Bill Transportation Demand Management "NextGen TDM"

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:bg

c: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Alexandre Espinosa, Department of Finance  
Dennis Hetman, Department of Finance  
David Platt, Department of Finance  
Chris Conklin, Deputy Director, MCDOT  
Sandra L. Brecher, Chief, Commuter Services  
Jim Carlson, Planning Specialist, Commuter Services  
Beth Dennard, Program Specialist, Commuter Services  
Michelle Golden, Senior Marketing Manager, Commuter Services  
Brady Goldsmith, Office of Management and Budget  
Brandon Hill, MCDOT Director's Office  
Christine McGrew, M-NCPPC  
Jay Mukherjee, M-NCPPC  
Helen Vallone, Office of Management and Budget

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Office of the Director

101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800  
[www.montgomerycountymd.gov](http://www.montgomerycountymd.gov)

**Fiscal Impact Statement**  
**Council Bill 36-18**  
**Transportation Demand Management**  
**"NextGen TDM"**

**1. Legislative Summary**

Council Bill 36-18 recommends changes to Chapter 42A, Article II of the County Code, "Transportation Demand Management."

Under current Code, the County may require certain transportation demand management ("TDM") measures at new developments and for employers with over 25 employees located within the six designated transportation management districts ("TMDs"): Bethesda, North Bethesda, Silver Spring, Friendship Heights, Greater Shady Grove and White Oak. Existing buildings in those TMDs may also be required to adopt TDM measures under certain circumstances.

Bill 36-18 and the accompanying Executive Regulation provide for the expansion of TDM measures beyond the current TMDs to the rest of the County's Red, Orange, and Yellow Policy Areas. New development projects and employers in these additional areas would be required to submit TDM Plans, based on the project size or number of employees, and the Subdivision Staging Transportation Policy Area in which they are located.

For new development projects, a Project-based TDM Plan Level would be required based on the size of the project and the Subdivision Staging Transportation Policy Area in which it is located.

There are three Project-based TDM Plan Levels:

- Level 1: TDM Basic Plan
- Level 2: TDM Action Plan
- Level 3: TDM Results Plan

Projects in Policy Areas classified as Red, Orange or Yellow are included, with the size thresholds shown in Table 1 below:

| Subdivision<br>Staging Policy<br>Area | No<br>Requirements | Level 1: Project-<br>based TDM<br>Basic Plan | Level 2:<br>Project-based<br>TDM Action Plan | Level 3:<br>Project-based<br>TDM Results Plan                            |
|---------------------------------------|--------------------|--|--|--|
| Red Areas                             | <25K GSF           | 25K – 100K GSF                               | Not Applicable                               | >100+K GSF   |
| Orange Areas                          | <50K GSF           | 50K – 100K GSF                               | >100-200K GSF                                | >200+K GSF   |
| Yellow Areas                          | <75K GSF           | 75K – 150K GSF                               | >150K GSF                                    | TDM Results Plan not<br>required – May be used<br>upon Applicant request |

**Table 1: Project-based TDM Plan Requirements for New Developments**

For employers or existing buildings, the requirements to file a TDM Plan would be extended beyond the current TMDs to employers and existing buildings over a certain size located within the Red, Orange and Yellow Policy Areas.

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.

Sources of Information. An analysis was made of Planning Department development information for the past six Fiscal Years (2013-2018). Data analyzed included commercial, mixed-use and residential development projects (excluding single family detached units). The analysis found that in the "Non-TMD" areas covered by the proposed legislation (i.e., Red, Orange and Yellow Policy Areas outside current TMDs), a total of approximately 3 million square feet of projects were completed over those six years.

Under current Code, the Transportation Management fee applies only within the current TMDs, with the rate and type of development to which it applies set each year by Council resolution. Since inception in 2006 the rate has been set at \$.10 per square foot and the fee has been applied only to new commercial development completed since 2006. The \$.10 fee recovers approximately 45 percent of the current TMD operating expenses.

Section 42A-29 of the current Code authorizes the Council to set the transportation management fee by resolution, and states that the rate must not generate more than what it costs to administer the TMD and to carry out TDM programs. This analysis presents an option for an increase in the fee to \$.125 per square foot to cover a larger portion of the expenses within the TMDs. The proposal would be made under a separate action.

New Revenue Generated within Non-TMD Areas. Table 2 below projects revenue over six years in the Non-TMD areas, based on the current fee rate of \$.10 per square foot and the possible increase to \$.125 per square foot. This analysis assumes the same rate of development will occur in these Non-TMD areas over the six years following the effective date of the proposed bill as occurred during the prior six years. It also assumes the TDM fees are applied to both commercial and multi-unit residential development, as is permitted under current Code. The projected additional revenue, based on those assumptions, would be as shown in Table 2 below.

**Table 2: Projected Development-based TDM Fee Revenue Over 6 Years**  
**Areas Outside Current TMDs ("Non-TMDs")**

| Non-TMD                    | Gross SF | Annual Revenue \$.10 | 6-Year Total | Annual Revenue \$.125 | 6-Yr Total |
|----------------------------|----------|----------------------|--------------|-----------------------|------------|
| New Developments Completed | 3.0 M    | 300,000              | 1,800,000    | 375,000               | 2,250,000  |

Revenue Generated within Current TMDs. During the same six-year period of 2013-2018, the County's current TMDs experienced the growth shown in Table 3 below in commercial, mixed use and non-single-family residential development. Assuming the same rate of development occurs over the six years following the effective date of the proposed legislation, Table 3 shows projected revenue applying the current fee to commercial and multi-unit residential development in the existing TMDs.

Applying the fees to multi-unit residential development in TMDs would represent a change from current practice, whereby the fees have been applied thus far only to commercial development in the TMDs. However, existing Code authorizes Council to apply the fees to multi-unit residential projects. Since many areas now have residentially-based NADMS goals, requiring multi-unit residential projects to pay for TMD services seems to make sense. Table 3 also shows the projected revenue if the TDM fee is raised to \$.125 per square foot.

**Table 3: Projected Development & TDM Fee Revenue Over 6 Years – Areas Within Current TMDs**

| TMD                           | Gross SF     | Annual Revenue \$.10 | 6-Yr Total       | Annual Revenue \$.125 | 6-Yr Total       |
|-------------------------------|--------------|----------------------|------------------|-----------------------|------------------|
| <b>Completed</b>              |              |                      |                  |                       |                  |
| <i>Commercial</i>             | 4.4 M        | 440,000              | 2,640,000        | 550,000               | 3,300,000        |
| <i>Multi-unit Residential</i> | 2.8 M        | 280,000              | 1,680,000        | 350,000               | 2,100,000        |
| <b>Total</b>                  | <b>7.2 M</b> | <b>720,000</b>       | <b>4,320,000</b> | <b>900,000</b>        | <b>5,400,000</b> |

**Total Projected New Fee Revenue.** Total expected revenue increase from new development projected to be completed within the next six years for the TMDs and Non-TMD areas is shown in Table 4.

**Table 4: Projected Revenue from TDM Fees on Completed Development - 6 Year Totals**

| Revenue   |                    |                    |
|---|--------------------|--------------------|
|   | \$.10 / sf         | \$.125 / sf        |
| Subtotal-Current TMDs – Projected Completed Development   | 4,320,000          | 5,400,000          |
| <i>Commercial – 4.4 M GSF over 6 years</i>  | *2,640,000         | *3,300,000         |
| <i>Multi-unit Residential – 2.8 M GSF over 6 years</i>  | 1,680,000          | 2,100,000          |
| “Non-TMDs” – Development Outside Current TMDs   | 1,800,000          | 2,250,000          |
| <b>GRAND TOTAL</b>  | <b>\$6,120,000</b> | <b>\$7,650,000</b> |
| <b>Total New Revenue from Projected New Completed Development</b>   | <b>\$3,480,000</b> | <b>\$4,350,000</b> |
| *TDM fees of \$2,640K for projected new commercial development in current TMDs are already required under existing Code & Council-adopted current fee resolution.<br>If the fee rate is increased by Council resolution to \$.125, then the commercial development would be required to pay that increased amount, totaling \$3,300K. |                    |                    |

Total estimated expenditures over six years are analyzed in Section 3 below.

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

**Revenues** – See discussion in Section #2 above.

#### **Expenditures**

The primary expense related to expansion of TDM to a broader portion of the County will consist of staffing requirements. Estimated expenditures include costs for County staff within MCDOT and for contractor staff, which are detailed in Tables 6 and 7 below. It is anticipated there will be approximately \$50,000 in expenses related to IT that are addressed in more detail in Section 5 below. Some funding also will be necessary for outreach events, promotional and marketing costs, and related efforts to ensure TDM is promoted throughout these areas. Those costs are estimated at \$50,000 per year, or \$300,000 over six years. The tables below summarize the various types of expenses over a six-year period.

**Table 5: Total Estimated Basic Expenditures Over 6 Years**

| Expenditures                        |                    |
|-------------------------------------|--------------------|
| 2 Staff Positions Grade 23          | 1,128,000          |
| Contract Outreach Staff             | 1,726,200          |
| IT Support – Web Development *      | 50,000             |
| Promotion, events & related         | 300,000            |
| <b>Total</b>                        | <b>\$3,204,200</b> |
| * See IT discussion Section 5 below |                    |

County Staff: Two Grade 23 staff positions would be required to implement the new TDM approach for new and existing projects on a broader basis, monitor compliance and manage contractor outreach to existing and future employers. Projected costs shown in Table 6 below assume FY19 mid-point of Grade 23 salary range plus benefits = \$84,670 + COLA 2% annually and 3.5% service increments thereafter, per the current collective bargaining agreement. The total of \$1,127,999 has been rounded to \$1,128,000 for use in analyses included herein.

**Table 6: Projected Staff Expenses Over 6 Years**

|              |         |                    |         |
|--------------|---------|--------------------|---------|
| FY20         | 169,340 | FY23               | 191,505 |
| FY21         | 178,772 | FY24               | 198,208 |
| FY22         | 185,029 | FY25               | 205,145 |
| <b>Total</b> |         | <b>\$1,127,999</b> |         |

Contract Staff for Employer Outreach: Cost analysis based on current average annualized contractor hourly rate of \$88.94 for a typical TMD and approximately \$1,370 expended annually per employer. Projected number and size of employers located within each Policy Area assumes similar sizes and numbers of employers as exist currently (based on data received from Department of Finance).

**Table 7: Projected Contract Outreach Staff Expenses Over 6 Years**

| Policy Area         | Employers  | Expenditure (x \$1370) | 6-Yr Total         |
|---------------------|------------|------------------------|--------------------|
| Red / 25+ employees | 50         | 68,500                 | 411,000            |
| Orange / 100+       | 130        | 178,100                | 1,068,600          |
| Yellow / 200+       | 30         | 41,100                 | 246,600            |
| <b>Total</b>        | <b>210</b> | <b>\$287,700</b>       | <b>\$1,726,200</b> |

**Table 8: Comparison of New Expenditures to New Revenue Over 6 Years**

|  | \$ .10 / sf      | \$ .125 / sf     |
|--|------------------|------------------|
| Total Contractor + County Staff                | 2,854,200        | 2,854,200        |
| IT / ERP Systems (see #5)                      | 50,000           | 50,000           |
| Promotion, events & related                    | 300,000          | 300,000          |
| New programs & services to meet NADMS goals    | 275,800          | 1,145,800        |
| <b>Subtotal Expenditures</b>                   | <b>3,480,000</b> | <b>4,350,000</b> |
|  |                  |                  |
| "Non-TMD" Revenue (Areas outside current TMDs) | 1,800,000        | 2,250,000        |
| TMD Revenue – Adding Multi-unit residential    | 1,680,000        | 2,100,000        |
| <b>Subtotal – New Revenue</b>                  | <b>3,480,000</b> | <b>4,350,000</b> |
| <b>Net Revenue to Expense</b>                  | <b>\$0</b>       | <b>\$0</b>       |

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

Not applicable. This bill does not affect retiree benefits or group insurance costs.

5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

The County will need to develop an online registration system for developers to submit basic information on Project-based TDM Plans, survey results, and biannual reports, and for monitoring compliance.

Estimate based on experience with Department of Technology Services during development of the current online employer traffic mitigation plan (TMP) system is shown in the table below. For estimating purposes, because the exact amount of time required is not known, this figure has been rounded to \$50,000 for purposes of this analysis.

**Table 9: Estimated IT Development Cost**

| # of Staff | Salary (\$121,372 x 2) | Hourly Rate | Weekly Hrs. Spent | Cost Per Week | 12 Month Project Span |
|------------|------------------------|-------------|-------------------|---------------|-----------------------|
| 2          | \$242,744              | \$116.70    | 8                 | \$933.60      | \$46,680              |

6. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

The current rate of \$0.10/sq. ft. on new commercial development in the existing TMDs has been in place since 2006. Council sets the amount of the fee and the types of development to which it applies by resolution each year as part of the budget process, and could establish a higher rate, increasing revenue. This analysis assumes the TDM fee would be applied to new multi-unit residential projects as well as new commercial projects, which Council already has the authority to do under current Code. Council also has the authority under current Code to apply the fee to existing buildings.

There may be a longer-term need for additional County staff for monitoring and compliance of new and existing development. The need for any additional positions would be linked to the increased level of development and would be less than the net revenue expected from that additional new development.

7. **An estimate of the staff time needed to implement the bill.**

Two full time Grade 23 staff (80 hrs./week) will be required to oversee contractors and collect and monitor development fees. In addition, administrative support from the Commuter Services Section OSC will be needed for approximately four hours per week.

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

Impacts should be manageable but will affect the duties of the Planning Specialist regarding master plans, analyses of special programs and their implementation, and interactions with community groups and advisory committees; the Senior Marketing Manager in managing additional outreach contracts and staging County- and Region-wide TDM-related events on a broader basis (e.g., Bike to Work Day); the Program Specialist regarding fee collection activities and monitoring of TDM Plan filings; and on the Section Chief and OSC.

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

See above analysis. Costs indicated would need to be covered by appropriations, but offsetting revenue from TDM fees will be sufficient to cover those costs.

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

The rate of development in both the current TMDs and non-TMD areas for completed projects could vary, impacting both costs and revenues. Over the last six years the rate of development of projects that would be covered by the new TDM approach has been approximately 25 projects per year. If this rate increases, additional County staff and/or contracted staff may be required beyond those assumed here. That additional development would result in corresponding increases in revenue which would be sufficient to cover those added costs.

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

Private sector development activity is dependent on many factors, including the national and regional economy which, in the event of another recession, could affect the level of new development and projected revenue.


**12. If a bill is likely to have no fiscal impact, why that is the case.**

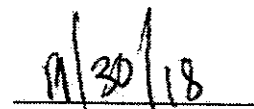
The costs of implementing the bill are expected to be covered by additional revenue from TDM fees as shown in Table 8 above. Fee revenues are required to be used within the TMD in which they were generated. This additional revenue would be used to help cover the cost of added transportation services necessary to increase non-auto options and thus the success of TDM efforts, such as shuttle or circulator services and bikeshare-related expenses.

**13. Other fiscal impacts or comments. -- N/A**

**14. The following contributed to or concurred with this analysis:**

Chris Conklin, Deputy Director, MCDOT  
Sandra L. Brecher, Chief, Commuter Services  
Jim Carlson, Planning Specialist, Commuter Services  
Beth Dennard, Program Specialist, Commuter Services  
Michelle Golden, Senior Marketing Manager, Commuter Services  
Brady Goldsmith, Office of Management and Budget  
Brandon Hill, MCDOT Director's Office  
Christine McGrew, M-NCPPC  
Jay Mukherjee, M-NCPPC

  
Jennifer A. Hughes, Director  
Office of Management and Budget

  
Date

**Economic Impact Statement**  
**Bill 36-18 -- Transportation Management**  
**Transportation Demand Management Plan - Amendments**

**Background**

Council Bill 36-18 recommends changes to Chapter 42A, Article II of the County Code, "Transportation Demand Management."

Under current Code, the County may require certain transportation demand management ("TDM") measures at new developments and for employers with over 25 employees located within the six designated transportation management districts ("TMDs"): Bethesda, North Bethesda, Silver Spring, Friendship Heights, Greater Shady Grove and White Oak. Existing buildings in those TMDs may also be required to adopt TDM measures under certain circumstances.

Bill 36-18 and the accompanying Executive Regulation provide for the expansion of TDM measures beyond the current TMDs. New development projects and employers in these additional areas would be required to submit TDM Plans, based on the project size or number of employees, and the Subdivision Staging Transportation Policy Area in which they are located.

For new development projects, a Project-based TDM Plan Level would be required based on the size of the project and the Subdivision Staging Transportation Policy Area in which it is located.

There are three Project-based TDM Plan Levels:

- Level 1: TDM Basic Plan
- Level 2: TDM Action Plan
- Level 3: TDM Results Plan

The purpose of the Bill is to extend Transportation Demand Management (TDM) to a broader portion of the County, streamline the process for TDM Plan approval for new projects, and provide flexibility in implementing TDM. The amendments are designed to increase the effectiveness of TDM in addressing traffic congestion, support multi-modalism, enhance the efficient use of transportation infrastructure, and promote sustainability.

Key Changes to Chapter 42A, Article II include:

1. Subdivision Staging Policy Areas would be used as the basis for determining which developments and existing businesses must have TDM Plans.
2. New development projects would be required to file a Project-based TDM Plan if they are over a minimum size, based on Policy Area. These Plans would replace the negotiated Traffic Mitigation Agreements (TMAs) authorized under current Code; TMAs will no longer be required for future development projects.
3. Three Levels of Project-based TDM Plans are created: Basic – minimal requirements; Action – mid-range requirements and must contribute to achieving area goals; and Results – highest level requirements and must achieve goals at the project. The Level of Plan required is dependent upon the size of the project and the Subdivision Staging Policy Area in which it is located.



4. Employer Transportation Demand Management Plans are currently required only in TMDs. These Plans would now be required for employers over a certain size throughout the County (except for Green Policy Areas), based on the number of employees and the Policy Area.

**1. The sources of information, assumptions, and methodologies used.**

- Department of Transportation data including: existing County Code Section 42A, Article II; information on transportation demand management and its effectiveness in the County and elsewhere; typical sizes and locations of new development applications within existing TMDs and in areas outside TMDs over recent years; and data on employer workforce sizes and locations within and outside existing TMDs.

**2. A description of any variable that could affect the economic impact estimates.**

The rate of development in both the TMDs and non-TMD areas for approved and built projects could vary, impacting costs, revenues, and corresponding economic impacts. Over the last six years the rate of development of projects that would be covered by the new TDM approach has been approximately 25 projects per year. The current rate of \$0.10/sq ft on new commercial development in the existing TMDs has been in place since 2006. Council sets the amount of the fee and defines the types of development to which it applies by resolution each year as part of the budget process, and could establish a higher rate, increasing revenue. This analysis assumes the TDM fee would be applied to new multi-unit residential projects as well as new commercial projects, which Council already has the authority to do under current Code. Council also has the authority under current Code to apply the fee to existing buildings. That additional development would result in corresponding increases in revenue which would be sufficient to cover those added costs.

Variables that could affect economic impact estimates are:

- the number of potential future development projects in areas outside existing TMDs
- the number of future employers and their workforce sizes in areas currently outside TMDs
- the effectiveness of TDM efforts in areas currently without substantial transit alternatives and the timeframe within which those alternatives can be provided

As noted in the fiscal impact statement for the legislation, estimates suggest that anticipated revenue and expenditures will match over the next six years resulting in no additional net revenue to the County at both the \$.10 per square foot and \$.125 per square foot rates. Since the revenues are required to be used within the TMD in which they were generated, any additional revenue would be used to help cover the cost of transportation services or other initiatives in that TMD.

**3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes and property values in the County.**

Because it will expand the use of TDM, Bill 36-18 would have the potential to generate positive impacts on employment and property values in the County, due to anticipated reductions in traffic congestion, increased efficiencies in use of transportation infrastructure and related services and streamlining of the development approval process. Private sector development activity is partially dependent on the national and regional economy which, in the event of another recession, could affect the level of new development and projected revenue. Focusing new development in highly transit-served areas is an important County land use and economic development objective. The proposed amendments will make it more attractive to concentrate more jobs and housing in areas with good transit service along with other multi-modal options.

As stated in the existing Code, "Transportation demand management, in conjunction with adequate transportation facility review, planned capital improvement projects, and parking and traffic control

measures, will, among other things, help provide sufficient transportation capacity to achieve County land use objectives and permit further economic development." (Ch 42A, Article II, Section 22 Findings/Purposes (c) 1)

Bill 36-18 is anticipated to have a positive economic impact on property values and real property tax base, due to expanded transportation demand management efforts resulting in more sustainable development projects and businesses being attracted to the area. Reduced traffic congestion and increased multi-modal options could result in an increase in businesses in the County, with a potential corresponding increase in employment. The potential property value and employment impacts cannot be quantified with specificity given a lack of data enumerating the scale of future developments but are anticipated to be a net positive for the County as a direct result of this legislation.

**4. If a Bill is likely to have no economic impact, why is that the case?**

As noted above, it is anticipated that this Bill would have a positive economic impact.

**5. The following contributed to or concurred with this analysis:**

Christopher Conklin, Sandra Brecher and Beth Dennard - Office of Transportation Policy  
Department of Transportation.

David Platt, Dennis Hetman - Department of Finance

  
\_\_\_\_\_  
Alexandre A. Espinosa, Director  
Department of Finance

11/29/18  
\_\_\_\_\_  
Date

Trans



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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November 30, 2018

The Honorable Hans Riemer  
President, Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

**SUBJECT: Public Hearing Commentary: NextGen Transportation Demand Management (TDM) Program – Proposed Code Changes and Executive Regulations**

Dear Mr. Riemer:

This letter transmits the Montgomery County Planning Board's commentary pertaining to Montgomery County Department of Transportation (MCDOT) proposed changes to Chapter 42A, Article II of the County Code and accompanying Executive Regulations in support of the NextGen Transportation Demand Management (TDM) Program. It is anticipated these proposed changes will be introduced to the Council (followed by a public hearing) this fall in the form of Bill 36-18. At its regular meeting on September 13, 2018, the Planning Board reviewed these proposed changes. Our review was supported by a briefing delivered by MCDOT staff describing the key elements of the proposed NextGen TDM program. This briefing was followed by an extensive discussion of the topic with MCDOT and Planning Department staff. The Planning Board applauds the intent of the proposed NextGen TDM Program to support the expansion of certain TDM requirements beyond the boundaries of existing Transportation Management Districts (TMDs) in Montgomery County. In summary, the Planning Board recognizes the following key elements of the program:

- Distinguishes between employer and developer based TDM requirements and responsibilities;
- Establishes a three-tiered developer based TDM program that requires varying levels of TDM responsibilities and outcomes.
- Ties the tiered developer TDM program to the 2016 - 2020 Subdivision Staging Policy (SSP) policy areas enabling sensitivity to the variety and quality of local mobility options. Developments in the green policy areas, and single-family detached developments anywhere, would be exempt;
- Consistently requires developer TDM participation in moderate-to-high density residential developments;
- Expands employer-based TDM programs to all red, orange, and yellow SSP policy areas;
- Establishes non-auto driver mode share (NADMS) goals where they do not currently exist;
- Develops a TDM menu of traffic mitigation tools and strategies that allows for choices by developers and employers and flexibility over time; and
- Improves monitoring, reporting and strengthens enforcement mechanisms.

The Honorable Hans Rierner  
November 30, 2018  
Page Two

By a vote of 4:0 (Commissioner Dreyfuss absent), the Planning Board approved the transmittal of the commentary summarized below.

- Although the proposed TDM is land use agnostic, please consider the application of TDM requirements to land uses that invoke large demand during off-peak periods such as large religious institutions.
- Establish an independent process to audit performance reporting in TDM monitoring reports.
- Conform (to the extent feasible) existing TMD boundaries with parking lot districts (PLDs), Urban Districts and/or Subdivision Staging Policy (SSP) policy areas.
- Continue to solicit feedback /commentary from private sector stakeholders (e.g., Chamber of Commerce) regarding the proposed TDM requirements.
- Reconsider the use of the term "rewards" to describe public actions when a TDM plan meets its performance goal. Reevaluate the allotted time for TDM plan participants to be required to adjust their strategies if performance targets are not being met (every six years may be too infrequent).

We look forward to collaborating with the County Council and MCDOT to assure that TDM in the county is adjusted as described above. In addition to public efforts, we recognize that meeting the County's transportation goals will require active participation by the private sector. The NextGen TDM program encourages the private sector to take ownership of their onsite transportation strategies that will both benefit their tenants/employees and assist the larger community in reducing congestion.

Sincerely,

  
Casey Anderson  
Chair

cc: Glenn Orlin  
Sandra Brecher



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Marc Elrich  
County Executive

## MEMORANDUM

February 13, 2019

TO: Nancy Navarro, President  
Montgomery County Council

FROM: Marc Elrich, County Executive *Marc Elrich*

SUBJECT: Recommended Revisions -- Bill 36-18, Amendments to Montgomery County Code, Chapter 42A, Article II, Transportation Demand Management, Sections 42A-21 - 42A-30, and adding Sections 42A-31 and 42A-32

The subject bill was introduced this past fall and a public hearing held in early December, prior to my becoming County Executive. I fully support expanding the role of Transportation Demand Management (TDM) in the County, as proposed in this bill. Upon reviewing the original language, staff realized that that approach would not let us achieve the mode share goals critical to effectively managing traffic congestion and its community impacts. TDM is one of the tools to make the mode shares stated in master plans a reality. Controlling traffic impacts from new development within our master plan areas requires that we achieve the commuting goals adopted in those plans. To ensure those goals are met, and based upon testimony at the public hearing, I am hereby submitting recommended revisions to the proposed bill, which are shown in the attached version.

Key components of the revised bill include the following provisions designed to increase the TDM program's effectiveness in meeting the commuting goals of each Master Plan, Policy Area and Transportation Management District (TMD):

1. Thresholds for development size in each category of Policy Area have been revised downward, so that a larger portion of new projects in each category will be required to contribute toward achieving the goals for each area.  
(See highlighted text, pages 20-21.)
2. Non-Auto Driver Mode Share (NADMS) targets for new projects in each Policy Area or TMD may be set by the Director of the Department of Transportation at five percent above the NADMS goal for that area or district as a whole, to increase

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the likelihood the area-wide commuting goals will be met, even when significant existing development is already in place. (*See highlighted text, pages 23 and 26.*)

3. Parking management is identified as a priority strategy for new developments if they are not making adequate progress toward, or achieving, their target commuting goals. (*See highlighted text, pages 25 and 27.*)

As the Council conducts its review of Bill 36-18, I would appreciate consideration of the revised version of this bill. The recommended revisions – many of which are in response to input received from the civic and business communities – will enable a more robust and effective program. Al Roshdieh, Director, Montgomery County Department of Transportation (MCDOT), Chris Conklin, MCDOT Deputy Director for Transportation Policy, and other MCDOT staff will be available to discuss the bill and these revisions at the Council work sessions. In the interim, please direct any questions to Mr. Conklin at (240) 777-7198.

Attachment

cc: Al Roshdieh, Director, MCDOT  
Casey Anderson, Chair, Montgomery County Planning Board  
Chris Conklin, MCDOT  
Gary Erenrich, MCDOT  
Sandra Brecher, MCDOT