


MEMORANDUM

February 12, 2019

TO: Transportation and Environment Committee

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

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

PURPOSE: Worksession – briefing on current and proposed TDM requirements

Expected attendees:

Al Roshdieh, Director, Department of Transportation (DOT)
Christopher Conklin, Deputy Director for Transportation Policy, DOT
Sande Brecher, Commuter Services, DOT
Casey Anderson, Chair, Planning Board

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

The purpose of this worksession is for DOT to brief the Committee on how the current TDM system works and how this Bill would change the system. A second worksession is tentatively scheduled for February 28 for the Committee to review the Bill and make recommendations.

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.¹

¹ 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 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 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 ©39 and a PowerPoint presentation prepared by DOT staff is at ©42. We have not yet received comments from Executive Elrich.

Public Hearing

There were five speakers at the public hearing. Planning Board Chair Casey Anderson generally supported the Bill. Chair Anderson's letter supporting the Bill and recommending some changes is at ©64-65. 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.

Daniel Wilhelm, Greater Colesville Citizens Association President, supported the goals of the Bill, but suggested some amendments. ©66-68. Mr. Wilhelm commented that:

1. there were some inconsistencies between the Executive's transmittal letter and the Bill;
2. the increase in requirements for developments where premium transit is planned but does not exist is too strict;
3. the Bill is unclear as to what existing building owners must do;
4. certain types of situations should be excluded from TDM requirements; and
5. the definition of peak period is too open ended.

Sylke Knuppel, testifying on behalf of the Maryland Building Industry Association (MBIA), supported the goal of reducing traffic congestion but expressed concerns. ©69-70. MBIA opposes the concept that a builder can be held responsible for a TDM plan long after selling the property, suggested delaying the time for execution of a TDM plan, and expressed concern that the additional fees would hamper future development of market-rate affordable housing.

Sherri Mohebbi supported the Bill. ©71.

Stacy Silber, an attorney with Lerch, Early & Brewer, representing the National Association of Industrial and Office Properties (NAIOP) DC/MD's Advocacy Committee, supported the goals of the Bill but warned about unintended consequences. ©72-73. Ms. Silber

recommended moving away from penalties and moving more toward rewards to affect behavior. Ms. Silber opposed applying the law to existing businesses, recommended restricting the use of fees to projects in the same district, removing the assessment of fees based on the number of customers, employees, visitors or patients, and argued that the proposed 60% return rate on surveys is untenable.

C. Robert Dalrymple also submitted written testimony on behalf of Linowes and Blocher supporting the Bill's goals but recommending some amendments. ©74-81. Mr. Dalrymple suggested:

1. modifying the timelines for review and approval of a TDM plan;
2. clarifying or eliminating the requirements on existing non-residential and multi-unit residential buildings;
3. limiting a TDM plan requirement to buildings that need to do a traffic study;
4. clarifying the application of a TDM requirement to the expansion of an existing building;
5. clarifying that the TDM fee includes the cost of promotional material printed by MCDOT;
6. clarifying that the transitional provision applies to projects with a preliminary plan or site plan application accepted by M-NCPPC; and
7. identifying more detail for Level 2 and Level 3 TDM plan requirements.

This packet contains:

	<u>Circle #</u>
Bill 36-18	1
Legislative Request Report	37
County Executive Memo	39
MCDOT PowerPoint	42
Fiscal and Economic Impact statement	54
Testimony	
Casey Anderson	64
Daniel Wilhelm	66
Sylke Knuppel	69
Sherri Mohebbi	71
Stacy Silber	72
C. Robert Dalrymple	74

Bill No. 36-18
Concerning: Transportation
Management - Transportation
Demand Management Plan -
Amendments
Revised: December 12, 2018 Draft No. 2
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

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

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

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<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 that a prospective purchaser or
 15 tenant purchase or lease a minimum number of parking spaces as a
 16 precondition to buying or leasing space or renewing a lease in a commercial
 17 or residential building. Bundling of parking does not include a parking space
 18 physically integrated with an individual leasable or sales unit if the parking
 19 space is dedicated to that unit and can be directly accessed through that unit.

20 *Carpool* means a motor vehicle occupied by 2 or more employees traveling
 21 together.

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

25 *Date of final occupancy* means the earlier of:

- 26 (1) the date on which 80 percent of a building or project has been
 27 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 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
- [(5)] (3) any government agency not required by law to follow County regulations.

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

Peak period means the hours of highest transportation use in a district each workday, as defined in the resolution creating a district.

55 *Planning Board* means the Montgomery County Planning Board of the
 56 Maryland-National Capital Park and Planning Commission.

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

58 *Resident* means an adult domiciled in the relevant area.

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

61 *Subdivision Staging Policy* means the most recent policy adopted under
 62 Section 33A-15.

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

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

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

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

79 *Transportation management organization* means a public, nonprofit private,
 80 or public-private firm, corporation, or instrumentality created or contracted to
 81 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, 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 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. [:

- (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, on its own or by contract with any employer, transportation management organization, or other party, including:

- (1) regulating 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

161 ~~[(8)]~~ (10) conducting surveys, studies, and statistical ~~[analysis]~~
 162 analyses to determine the effectiveness of ~~[traffic mitigation]~~
 163 transportation demand management plans and employer and
 164 building owner efforts.

165 (c) In each transportation management district, sole source contracts may
 166 be signed with, or funds granted to, one or more transportation
 167 management organizations to carry out transportation demand
 168 management programs that the Department could otherwise carry out,
 169 under Chapter 11B.

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

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

186 **42A-24. ~~[Traffic mitigation plans]~~ Transportation Demand Management**
 187 **Plans for Employers.**

(a) Transportation Demand Management (TDM) Plans 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[, 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 must provide the Director with the number of full-time and part-time employees working for that organization at any workplace within the 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 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 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, 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 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

321 carry out. The measures must be calculated to ensure that public
 322 transportation will be adequate to meet commuting goals set in the
 323 Annual Growth Policy.]

324 [(c) A traffic mitigation agreement may require:

- 325 (1) naming a transportation coordinator;
- 326 (2) limits on parking spaces;
- 327 (3) peak period or single-occupancy vehicle parking charges;
- 328 (4) preferential parking for carpools and vanpools;
- 329 (5) subsidies for employees not using single-occupancy vehicles;
- 330 (6) financial or other participation in building or operating on- or off-
 331 site transportation facilities or systems;
- 332 (7) providing space on a periodic basis for marketing and
 333 promotional activities of the district;
- 334 (8) designating permanent areas in prominent locations to display
 335 information on commuting options; or
- 336 (9) other transportation demand management measures.]

337 [(d) A traffic mitigation agreement must be:

- 338 (1) agreed to by the applicant, the Department, and the Planning
 339 Board;
- 340 (2) made an express condition of any approval for subdivision under
 341 Chapter 50 or optional method development under Chapter 59;
- 342 (3) subject to all other review and approval requirements of Chapter
 343 50 and Chapter 59; and
- 344 (4) recorded in the County's land records.]

345 [(e) A traffic mitigation agreement may:

- 346 (1) require adequate financial security, including bonds, letters of
 347 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 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, 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.

- [(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, but excluding any project consisting solely of single family detached housing. 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. 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:

- 454 (A) submit a Level 1 TDM Basic Plan for a project with at
 455 least 25,000 gross square feet, but less than or equal to
 456 100,000 gross square feet; and
- 457 (B) submit a Level 3 TDM Results Plan for a project with
 458 more than 100,000 gross square feet;
- 459 (2) An owner or applicant for a project located in an Orange Policy
 460 Area under the Subdivision Staging Policy must:
- 461 (A) submit a Level 1 TDM Basic Plan for a project with at
 462 least 50,000 gross square feet, but less than or equal to
 463 100,000 gross square feet;
- 464 (B) submit a Level 2 TDM Action Plan for a project with more
 465 than 100,000 gross square feet, but less than or equal to
 466 200,000 gross square feet; and
- 467 (C) submit a Level 3 TDM Results Plan for a project with
 468 more than 200,000 gross square feet;
- 469 (3) An owner or applicant for a project located in a Yellow Policy
 470 Area under the Subdivision Staging Policy must:
- 471 (A) submit a Level 1 TDM Basic Plan for a project with at
 472 least 75,000 gross square feet, but less than or equal to
 473 150,000 gross square feet; and
- 474 (B) submit a Level 2 TDM Action Plan for a project with more
 475 than 150,000 gross square feet.
- 476 (4) If an adopted Master Plan or Sector Plan requires a higher Level
 477 of Project-based TDM Plan, those Master Plan or Sector Plan
 478 requirements override those described in paragraphs (1), (2), or
 479 (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 adhere to a Project-based TDM Plan Level that is either lower or higher than otherwise required by its size and location, in accordance with the development approval and consistent with the Executive Regulation implementing this Article.

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

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

(A) Appointment of a Transportation Coordinator and Commitment to Cooperate with the Department's Programs. Each owner of a project must designate an individual responsible to assist and cooperate with the Department's efforts to achieve the Non-Auto Driver Mode Share goals and other traffic mitigation and commuting goals established for that area. This assistance must include distribution of information on commuting

options to the on-site population; coordinating with the Department to conduct on-site commuting-related outreach events; ensuring participation in commuter 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 by the owner or applicant to specific actions to help the County achieve district-wide commuting goals. 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

534 Executive Regulations. A project must be considered to be
535 contributing toward achievement of the district's commuting
536 goals if the biannual surveys of building occupants demonstrate
537 increased on-site Non-Auto Driver Mode Share, or a measurable
538 improvement in an alternative Department-approved metric, if
539 applicable, in proportion to the level necessary to achieve the
540 goal by the date established in the project's TDM plan. A
541 Project-based TDM Action Plan must include the Project-based
542 TDM Basic Plan components and the following:

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

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

555 (C) Self-Monitoring. The owner or applicant must conduct
556 self-monitoring, consistent with Department
557 requirements, to determine if the Project-based TDM Plan
558 is contributing toward achievement of the district's goals.

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

562 (E) Addition and/or Substitution of Strategies. If the strategies
563 initially selected from the "Sample Menu of TDM
564 Strategies" by the owner or applicant do not result in the
565 plan contributing toward achievement of district goals by
566 four years after Date of Final Occupancy, the Department
567 may require revisions in the project's plan using the
568 "Sample Menu of TDM Strategies" or other strategies
569 proposed by the owner or applicant. The owner or
570 applicant must agree to implement these revised strategies
571 if required by the Department at a level consistent with the
572 owner's commitment to fund and implement the plan.
573 This process may be repeated until the project
574 demonstrates it is contributing toward achievement of
575 district goals, consistent with the Executive Regulations.

576 (F) Additional Funding Commitment. If the project does not
577 contribute toward achievement of district goals by six
578 years after Date of Final Occupancy, the Department may
579 require increased funding by the owner for existing or new
580 TDM strategies to be implemented at the project. The
581 owner must commit additional funds to supplement on-site
582 strategies if required by the Department. The amount of
583 the additional funding must be as established in the
584 Executive Regulation.

(G) Rewards. The owner may be eligible for annual rewards established by the Department for continued contribution over multiple years toward achievement of district goals, including reductions in TDM fees or other financial benefits, as established in the Executive Regulation.

(3) Level Three: A Project-based TDM Results Plan requires a commitment by the owner or applicant to achieve certain Non-Auto Driver Mode Share and related commuting goals at that project. The plan must include project-based strategies and demonstrate that the plan is achieving the goals established for the project. Those goals may be equal to, higher or lower than the district's goals based on project-specific parameters, consistent with the Executive Regulation. 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.

(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.* The owner may be eligible for annual rewards 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:

- 638 (1) proposed by the owner or applicant and approved by the
 639 Department;
- 640 (2) made an express condition of any approval for:
- 641 (A) subdivision or another plan approval under Chapter 50;
 642 (B) site plan or another plan approval under Chapter 59; or
 643 (C) building permit for a recorded lot;
- 644 (3) subject to all other review and approval requirements of Chapter
 645 50 and Chapter 59, with approval of the Department required for
 646 any revisions to an approved TDM Program; and
- 647 (4) recorded in the County's land records.

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

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

661 **42A-27. [Executive report] Traffic Mitigation Agreements.**

- 662 [(a) By December 1 of each even-numbered year, the Director must submit
 663 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 percent compliance rate.

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

[(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.]

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

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

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

- 754 (1) portion of the cost of administering the district, including the
 755 review and monitoring of traffic mitigation plans under Section
 756 42A-24 and traffic mitigation agreements under Section 42A-25,
 757 reasonably attributable to the transportation effects of the
 758 development or property subject to the fee; and
- 759 (2) portion of the cost of any program implemented under Section
 760 42A-23(b), including any vehicle or other equipment necessary
 761 to carry out the program, reasonably attributable to the
 762 transportation effects of the development or property subject to
 763 the fee.]

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

- 765 (1) the gross floor area, the maximum or actual number of
 766 employees, or the average number of customers, visitors, or
 767 patients, in a nonresidential building;
- 768 (2) the number of dwelling units, or the gross floor area, in a
 769 residential building;

- 770 (3) the number of parking spaces associated with a building; or
- 771 (4) any other measurement reasonably related to transportation use
- 772 by occupants of, employees located in, or visitors to a particular
- 773 development or property.]

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

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

- 782 (1) employee commuting patterns by employer, building or project;
- 783 residential commuting patterns by building or project; other
- 784 commuting or travel patterns as appropriate;
- 785 (2) auto occupancy rates by employer, residential unit or other
- 786 appropriate measures;
- 787 (3) level of service measurements for each major intersection in the
- 788 policy area and selected critical intersections outside the area;
- 789 (4) parking supply and demand;
- 790 (5) status of road or intersection improvements, signal automation,
- 791 bicycle and pedestrian access and safety, and other traffic
- 792 modifications in or near the district;
- 793 (6) transit use and availability;
- 794 (7) carpool and vanpool use;
- 795 (8) bicycle and bikeshare use;

(9) use of other transportation modes relevant to analyzing achievement of commuting goals; and

(10) 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 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; and

(B) an owner of existing commercial, industrial or multi-unit residential developed property in the 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 in which the development or property subject to the fee is located to cover the cost of:

(1) administering the district and TDM strategies, and coordinating with projects and occupants (including employees and residents) within that 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, 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, between one 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

877 report, comply with required provisions of a plan, or provide survey
 878 data within 30 days after a second notice has committed a class C
 879 violation.

880 (b) A party to a Project-based Transportation Demand Management Plan
 881 under Section 42A-26 who does not comply with the approved plan
 882 within 30 days after notice of noncompliance has committed a class A
 883 violation.

884 (c) Any party required to submit required reports on numbers of
 885 employees, transportation demand management plans and strategies,
 886 Non-Auto Driver Mode Share, progress toward goals, survey results or
 887 other TDM-related provisions or measurements on a timely basis has
 888 committed a class C violation.

889 (d) Any party who falsifies any required data or reports has committed a
 890 class A violation.

891 **Sec. 2. Transition.**

892 (a) *Existing agreements.* All traffic mitigation agreements executed under
 893 this Chapter before this Act takes effect that have not expired or
 894 terminated, remain in effect.

895 (b) *New building or project approvals.* No traffic mitigation agreement
 896 must be required for any new building or development project approved
 897 after this Act takes effect.

898 (c) *Projects with prior approvals.* Any building or development project
 899 with an existing subdivision or optional method approval when this Act
 900 takes effect where a traffic mitigation agreement was a condition of that
 901 approval, may opt to be considered for re-approval of their application
 902 under the amendments in Section 1 if:

903 (1) a traffic mitigation agreement has not yet been fully executed;

904 (2) the building or project approved is larger than the minimum sizes
 905 designated for each Subdivision Staging Policy Area group in
 906 Section 42A-26; and

907 (3) construction has not begun.

908 *Approved:*

909

Hans D. Riemer, President, County Council

Date

910 *Approved:*

911

Isiah Leggett, County Executive

Date

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

913

Megan Davey Limarzi, Esq., 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

F:\LAW\BILLS\1836 Transportation Demand Mgmt. Plan\LRR.docx




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.

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



Montgomery County Department of Transportation

NextGen TDM

Proposed Code Changes & Executive Regulation

Supporting Transportation Demand Management
And Multi-Modal Options



For New Developments,
Employers and Multi-Unit Residential Projects

 **Better Ways To Work!**
Montgomery County Commuter Services



NextGen TDM – Goals of the Effort

➤ Streamline Process

- Reduce need for negotiation during development process
- Shorten time for approval of TDM programs

➤ Provide Flexibility

- Provide more choices of TDM strategies, tailored to type of project, geography, availability of transportation options
- Provide ability to make adjustments, change strategies over time

➤ Ensure Fairness

- Clarify requirements, including costs to the project
- Improve consistency and predictability

➤ Increase Effectiveness

- Extend TDM/multi-modal approaches to broader segment of the County
- Improve monitoring, reporting & enforcement
- Provide incentives/disincentives to promote goal achievement
- Enhance ability to achieve County's transportation goals

NextGen TDM – Overview

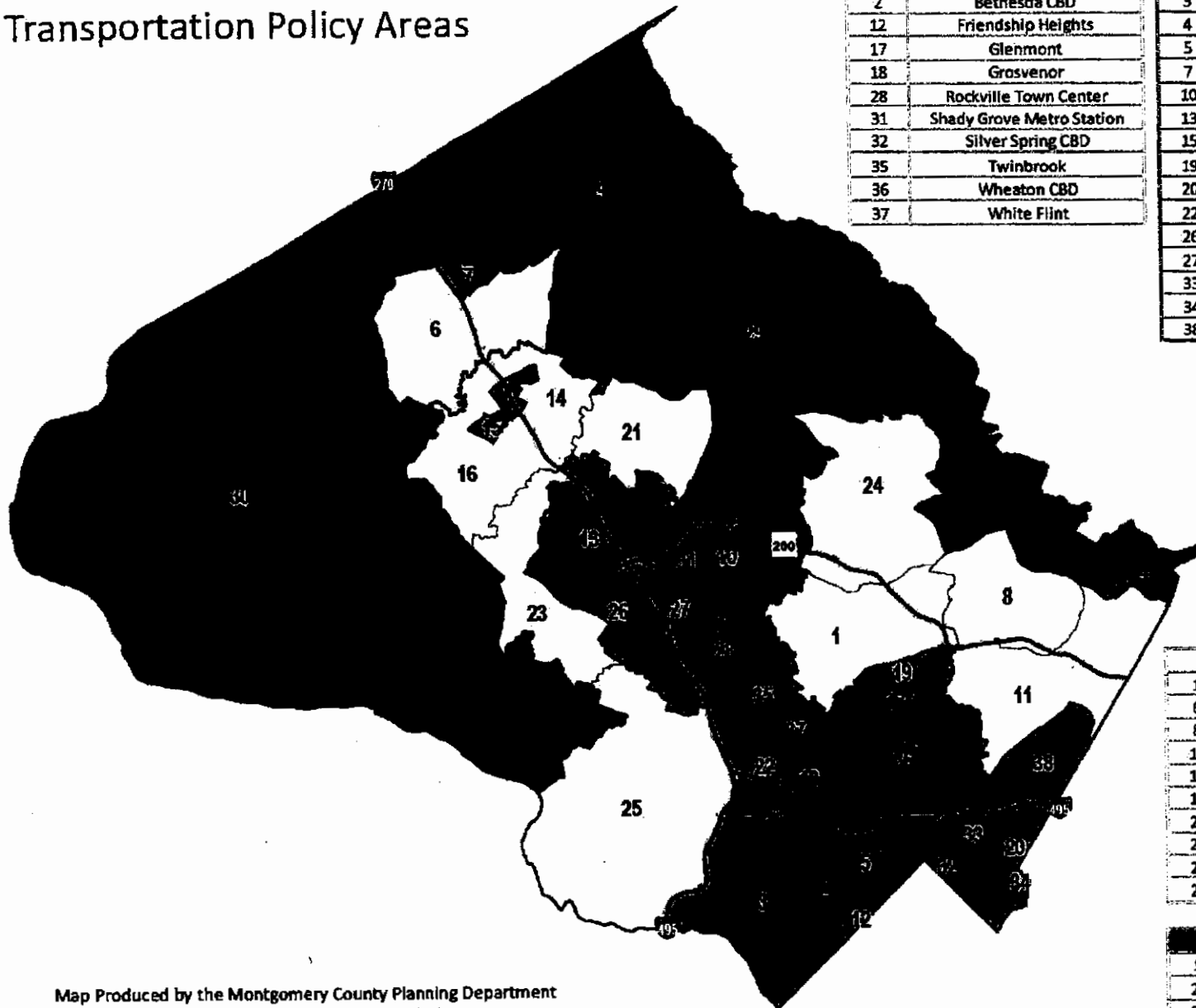
➤ Two Components

- Revisions to Chapter 42A, Article II of County Code:
“Transportation Demand Management”
- Accompanying Executive Regulation (Method 2)

➤ Approach

- Maintain/enhance shared responsibility for implementing TDM
 - County, developers, employers, property owners, residents, public
- Leave current Transportation Management Districts (TMDs) as they are
- Establish a Countywide TDM program - & allow for Countywide TMD(s)
- Revise Code to improve processes & include flexibility for future changes
 - Eliminate TMAGs for New Developments – TDM Plans provide greater flexibility
 - Extend TDM Plan requirement to broader segment of employers
- Adopt Executive Regulation to clarify implementation
 - Enable TDM strategies to be added, revised
 - Enable other implementation adjustments over time without legislation

Montgomery County Transportation Policy Areas



2	Bethesda CBD
12	Friendship Heights
17	Glenmont
18	Grosvenor
28	Rockville Town Center
31	Shady Grove Metro Station
32	Silver Spring CBD
35	Twinbrook
36	Wheaton CBD
37	White Flint

3	Bethesda/Chevy Chase
4	Burtonsville Town Center
5	Chevy Chase Lake Master Plan
7	Clarksburg Town Center
10	Derwood
13	Gaithersburg City
15	Germantown Town Center
19	Kensington/Wheaton
20	Long Branch Sector Plan
22	North Bethesda
26	R&D Village
27	Rockville City
33	Silver Spring/Takoma Park
34	Takoma/Langley
38	White Oak

Yellow	
1	Aspen Hill
6	Clarksburg
8	Cloverly
11	Fairland/Colesville
14	Germantown East
16	Germantown West
21	Montgomery Village/Airpark
23	North Potomac
24	Olney
25	Potomac

9	Damascus
29	Rural East
30	Rural West

Map Produced by the Montgomery County Planning Department
Information Technology & Innovation Division (ITI)
August 2, 2018

NON-AUTO DRIVER MODE SHARE (NADMS) GOALS

	Transportation Policy Area	NADMS Employees	NADMS Residential
2	Bethesda TMD	55% blended for residents and workers	
5	Chevy Chase Lake Master Plan Area	36 %	49%
12	Friendship Heights TMD	39%	
	Great Seneca Science Corridor Master Plan	18% before Stage 2 23% before Stage 3 28% before Stage 4	
31	Greater Shady Grove TMD	12.5% transit	25% transit elsewhere 35% transit in Shady Grove Metro Station Policy Area
18	Grosvenor Strathmore Metro Area	Blended goal 50%	
	Long Branch Sector Plan	36%	49%
	Lyttonsville Sector Plan		50%
35	Twinbrook Metro Area / North Bethesda TMD	39%	30%
	Rock Spring Master Plan	23%	41%
32	Silver Spring TMD	46% existing 50% new	
37	White Flint / North Bethesda TMD	34% for Phase 1 for Plan area 42% for Phase 2 for Plan area 50% employees for Phase 3	51% for residents for Phase 3
37	White Flint 2 / North Bethesda TMD	34% Phase 1 27% Phase 1 east of tracks 42% Phase 2 35% Phase 2 east of tracks 50% Phase 3 42% Phase 3 east of tracks	34% Phase 2 27% Phase 1 east of tracks 42% Phase 2 35% Phase 2 east of tracks 51% Phase 3 42% phase 3 east of tracks
	White Oak	25% all new commercial and residential development in the White Oak Center and Hillandale Center 30% all new commercial and residential development in the Life Science/FDA Village Center	
36	Wheaton CBD	30%	
	Areas Without Specific Goals	5% above existing NADMS	5% above existing NADMS

Changes to Chapter 42A, Article II – Transportation Demand Management

- Incorporates Subdivision Staging Transportation Policy Areas/Color Categories
- Eliminates Traffic Mitigation Agreements for New Developments
- Instead: New developments - required to have TDM Plan with varying minimum sizes:

Red – 25K GSF

[REDACTED]

Yellow – 75K GSF
- Three Levels of Project-based TDM Plans: Basic, Action, Results

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

TDM Program Levels

- Basic Program – Bare minimum
 - Appoint contact person, coordinate/cooperate with County program efforts
 - Facilitate outreach to on-site population
 - Provide Real Time and other TDM-related information
 - Otherwise relies on County programs
- Action Program – Mid-range commitment: Must contribute to achieving TMD goal
 - Commitment to implement specific strategies (some required, some applicant-selected)
 - Minimum funding commitment for on-site program as necessary to achieve progress
 - Self-monitoring, reporting
 - Addition/substitution of program elements if progress is not being made
 - Modest increases required in funding of on-site program for non-performance
 - Rewards for ongoing performance
- Results Program – Highest level commitment: Must achieve TMD/Project goal
 - All the above plus:
 - Independent monitoring
 - More substantial increases in on-site funding if goal not met after multiple monitoring periods
 - Rewards for ongoing goal achievement

TDM Plan Components For New Development Projects

Submission Step by Policy Area (If other last column)	No Requirements	Level 1 TDM Plan Fee	Level 2 TDM Audit Fee	Level 3 TDM Design Fee
Redevelop				
City - 200K	<50K GSF	50K - 100K GSF	>100-200K GSF	>200K GSF
County - 200K				
Requires TDM Plan for approval				
Facilitate outreach/information to on-site population		X	X	X
Coordinate/Cooperate with County program efforts		X	X	X
See Menu of Strategies				
Minimum Financial Commitment to Support On-Site Program			50% of Annual TDM Fee	100% of Annual TDM Fee
Independent Monitoring - Beginning in 6th year				X
Addition/Substitution of TDM Strategies (Beginning 4th year if needed)			X	X
Rewards - For 10 years of ongoing progress/goal achievement			50% of Annual TDM Fee for Contributing toward TMD Goal Achievement	50% of Annual TDM Fee for TMD Goal Achievement

	A	B	D	E	F	G	H	I	J
2	Sample Menu of TDM Strategies*								
3	SIZE OF BUILDING/PROJECT:	25K - 100K GSF	100K + GSF	50K - 100K GSF	100K - 200K GSF	200 + GSF	75K - 100K GSF	100K + GSF	100K + GSF
4	COLOR CATEGORY OF SUBDIVISION STAGING POLICY AREA:							YELLOW	
5	TYPE OF TDM PROGRAM:	BASIC	RESULTS	BASIC	ACTION	RESULTS	BASIC	ACTION	RESULTS
6									(Optional)
7	TDM STRATEGIES								
8	A. Cooperation/Marketing & Education	X	X	X	X	X	X	X	X
9	Participate in County-wide and Regional Events	X	X	X	X	X	X	X	X
10	Transportation Coordinator / Training + Responsibilities	X	X	X	X	X	X	X	X
11	Notification of Changes in Contacts	X	X	X	X	X	X	X	X
12	On-Site Space for TDM Outreach & Promotion	X	X	X	X	X	X	X	X
13	Displays of Real Time & Other TDM Information	X	X	X	X	X	X	X	X
14									
15	B. Parking								
16	Provide Less than Max # of Spaces [use percentages?]	X	X	H	H	H	H	H	O
17	Unbundle Parking From Lease Arrangements	X	X	H	H	H	H	H	O
18	Unassigned/Unreserved Spaces (Except car/vanpool, carshare, EV)	H	H	H	H	H	H	H	O
19	Market-Rate Parking Charges for Employees/Residents	H	H	O	H	H	O	O	O
20	Carpool/Vanpool Parking - Preferentially Located Spaces	X	X	X	X	X	X	X	X
21	Parking Cash-Out (Employer-owned projects)	O	O	O	O	O	O	O	O
22									
23	C. Onsite Bicycle & Pedestrian Support								
24	Bikeshare Participation (memberships, bikeshare stations, etc.)	H	H	O	O	H	O ^a	O ^a	O
25	Secure Bicycle Parking (> required under Zoning Ordinance)	O	X	O	X	X	O	O	O
26	Bicycle Repair Station(s)	O	O	O	O	O	O	O	O
27	Shower Availability/Lockers/Changing Rooms	O	X	O	O	X	O	O	O
28	Onsite Pedestrian Amenities (i.e., benches, sidewalks, etc.) > Requ'd	O	H	O	H	H	O	O	O
29									
30	D. Amenities Supporting Commuting Alternatives								
31	On-Site Amenities (refreshments, dry cleaning, convenience retail, etc.)	O	O	O	O	O	O	O	O
32	On-Site or Nearby Child Care	O	O	O	O	O	O	O	O
33									
34	E. Transit Support								
35	Subsidized Transit Passes (e.g., SmartBenefits, etc.)	H	H	H	H	H	H	H	O
36	Provide Transit Passenger Amenities (e.g., shelters, waiting areas)	H	H	O	H	H	O	O	O
37	Shuttle Bus Services (e.g., Circulators, Microtransit)	O	H	O	O	H	O	O	O
38	Vanpool Services	H	H	O	H	H	O	H	O
39	Availability of Mid-Day Short-term Car Services	O	H	O	H	H	O	O	O
40	(i.e., Zipcar memberships, Taxi, Uber/Lyft services) for Alt Commuters								
41									
42	F. Employee & Resident Incentives (Recommended Owner/Manager Funding Allocations)								
43	>\$50 - \$100 per employee/resident per year	O	O	O	O	O	H	H	O
44	>\$100 - \$200 per employee/resident per year	O	O	H	H	H	O	O	O
45	>\$200 per employee/resident per year	H	H	O	O/H ^b	H	O	O	O
46									
47	NOTES: X = Required; O = Optional; H = Highly Effective-Recommended for Highly Effective Program								
48									
49	Red Policy Areas: TDM Action Program = Not Available								
50	Yellow Policy Areas: TMD Results Program = Optional								
51	a - Bikeshare in areas without existing program could provide own program or dockless bikeshare program support								
52	b - If don't meet goals after 6 years, increase to \$200/employee/year								
53	* Note: Determination of which strategies are required or optional in each area to be discussed/further analyzed for evaluation of impacts.								
54	Additional/new strategies may be added by project owners, developers, employers, residential managers, MCDOT or others.								
55	Evaluation of impacts will be important to assess, but new approaches are welcome.								

Employer TDM Plans

Change in Terminology + Expansion of Required TDM Plans to More Employers

Current Code Requirements:

Only employers located in TMDs who have 25 or more employees are required to file a
“Traffic Mitigation Plan” (TMP)

TMPs would now be called an **Employer TDM Plans** & have similar requirements.

Employers of 25+ in these areas are currently required by Code to:

- ✓ File a report on the TDM measures they are implementing
- ✓ Participate in the Annual Commuter Survey

MCDOT provides online templates for the TMP and the Annual Report

The Plan can be completed and filed online – see template shown on next slides

Proposed Change to Code:

Extend Employer TDM Plans Countywide in these Policy Areas

for employers of the following sizes:

Red – 25 workers



Yellow – 200 workers



SAMPLE EMPLOYER TRAFFIC MITIGATION PLAN (TMP)

Employer Name: Company ABC, Inc.
Address: 0000 Main Street, Rockville, MD 20850
Full time employees: 80 **Part Time Employees:** 10
Strategies # 1 – 8 are required.

No.	TRAFFIC MITIGATION STRATEGY	EMPLOYER DESCRIPTION
1	Contact person designated to receive and distribute information	Mary Jenkins, Executive Assistant 301-444-4444 maryjenkins@abc.com We will notify the TMD in writing of any changes in this information.
2	Information on transit/pooling/other commute alternatives distributed/posted regularly (furnished by TMD)	Information on transit/ carpooling/other commute alternatives is posted regularly in the employee break area.
3	Facilitate TMD staff presentations to employees and HR/Administrative staff on commuter information/alternatives on periodic basis.	We hold office meetings periodically and will invite TMD staff to present information at the meetings. We will inform employees when TMD staff holds a "Commuter Information Event" in our building.
4	Guaranteed Ride Home Promotion (free regional program offering emergency rides)	We will promote the Guaranteed Ride Home program to our employees. We will provide brochures.
5	Annual Commuter Survey distributed to employees (short survey of transportation-supplied by TMD). Please describe you approach to gaining 80% participation for your employees.	We will distribute the survey to employees and offer small incentives to complete.
6	ADA information provided (transportation services for people with disabilities)	We will provide disabled employees with information on the regional Metro Access program.
7	Permanent display area for TMD-provided bus schedules and other worksite and other transportation information	We plan to display a transit map and brochure in our employee break area.
8	Compile information on yearly TMP activities and submit Annual Report	We will keep on our TMP activities and submit an Annual Report.

Additional TDM Strategies – To Be Selected by Employers

9	Attendance at free CSS-sponsored meetings/workshops permitted for designated contact person	We will allow Tracy Smith to attendance free CSS-sponsored meetings or workshops permitted as her schedule permits.	17	Carpool matching for employees (as part of free region-wide matching program, or can be onsite only)	We do not offer carpool matching for our employees, but encourage them to contact our TMD representative for information.
10	Information on commuting alternatives provided to new employees (TMD can provide materials and/or attend orientations)	We will put brochures and other information provided by TMD in new employee orientation packages.	18	Alternative work schedules. Indicate which one(s) you offer: Flex time, Jobsharing, Compressed Work week or Telecommute/Teleworking	We do not offer alternative work schedules at this time.
11	Free or reduced rate parking for car/vanpools offered to employees	Carpoolers can park for free.	19	Monthly transit subsidies provided to employees. Indicate the amount of pre-tax and amount of direct benefits you provide. Indicate if the pre-tax or direct benefit is more or less than you provided last year, and if so how much (as a percent or dollar amount).	We participate in the SmartBenefits program with WMATA.
12	Preferred location and/or reserved parking for car/vanpools offered to employees	The 2 spaces reserved for carpools are in preferred locations.	20	Maryland State Commuter Tax Credit for employers For more information visit the website http://www.commuterchoicemaryland.com/taxcredit.htm	We take advantage of the commuter tax credit.
13	Provision of car sharing space in highly visible location within on-site parking facility.	We will look into providing this in the future.	21	Pre-tax payroll deduction for transit costs offered to employees (saves employer and employee money)	We plan to offer pre-tax payroll deductions for transit costs in the future.
14	Provision of car sharing incentives, including paying part or all of membership costs, rental costs, or similar incentives	We only promote car sharing at this time but plan to subsidize membership costs in the future.	22	Transit passes offered for purchase at worksite (at full or reduced price)	We sell SmarTrip cards to employees who need them.
15	Bike amenities at worksite, such as racks, lockers and showers (TMD may be able to supply)	Our building has bike racks for employees to use.	23	Subsidize employee parking and transit equally (if employee parking is currently subsidized, offer equal subsidy for transit costs)	We plan to do this in the future.
16	Transit/pedestrian amenities at worksite, e.g., sidewalks, benches, etc.	There is a Metrobus stop a block from our office. A sidewalk leads from the bus stop to our door. We make sure the sidewalk is clear of snow or debris.	24	Ozone Action Days participation (regional program to alert people to dangerous air quality days) Visit Clean Air Partners website to sign up for air alerts. http://www.cleanairpartners.net	We include information about Ozone Action Days to summer editions of our e-newsletter.



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 *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

Office of the Director

101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800
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 Staging Policy Area	No Requirements	Level 1: Project-based TDM Basic Plan	Level 2: Project-based TDM Action Plan	Level 3: Project-based 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 required – May be used 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
Completed					
<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
Total	7.2 M	720,000	4,320,000	900,000	5,400,000

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
GRAND TOTAL	\$6,120,000	\$7,650,000
Total New Revenue from Projected New Completed Development	\$3,480,000	\$4,350,000
*TDM fees of \$2,640K for projected new commercial development in current TMDs are already required under existing Code & Council-adopted current fee resolution. 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
Total	\$3,204,200
* 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
Total		\$1,127,999	

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
Total	210	\$287,700	\$1,726,200

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
Subtotal Expenditures	3,480,000	4,350,000
“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
Subtotal – New Revenue	3,480,000	4,350,000
Net Revenue to Expense	\$0	\$0

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.

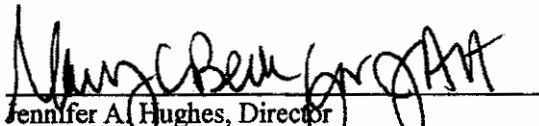
12. If a bill is likely to have no fiscal impact, why that is the case.

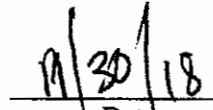
The costs of implementing the bill are expected to be covered by additional revenue from TDM fees as shown in Table 8 above. Fee revenues are required to be used within the TMD in which they were generated. This additional revenue would be used to help cover the cost of added transportation services 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



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

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:

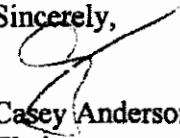
- Distinguishes between employer and developer based TDM requirements and responsibilities;
- Establishes a three-tiered developer based TDM program that requires varying levels of TDM responsibilities and outcomes.
- Ties the tiered developer TDM program to the 2016 - 2020 Subdivision Staging Policy (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.

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

Greater Colesville Citizens Association

PO Box 4087
Colesville, MD 20914
December 4, 2018

2

Montgomery County Council
Attn: Nancy Navarro, President
100 Maryland Ave
Rockville, MD 20850

Re: Transportation Demand Management, Bill 36-18

Dear Council President Navarro:

The Greater Colesville Citizens Association (GCCA) supports the goals of Bill 36-18 to expand Transportation Demand Management (TDM) to more areas of the county and to streamline the existing process. We however feel that the proposed legislation still needs some work as identified below.

1. We have read the proposed legislation and compared it with the County Executive's letter and have found a number of apparent conflicts
 - a. Careful reading indicates the TDM Plan requirements apply to districts, which are defined as Transportation Management Districts (TMDs). The stated intent is not to add new districts but rather expand the TDM requirements to select planning areas. TDM Plans are the new requirement while Traffic Mitigation Plans are the old requirement within TMDs. Except for keeping language dealing with existing districts, the document needs to be edited to delete the word "district" and replace it with "policy area". (Replace the word "district" at lines 41, 53*, 54*, 195, 199, 201, 249, 264, 358, 377, 401, 429, 530, 533, 535, 554, 558, 565, 575, 577, 588, 598, 702, 779, 792, 803, 829, 831, 835, 838, 840, 848, 870, and 871. (* Other problems with this definition – see item 5 below.)
 - b. The letter indicates the revised requirement does not apply to single family houses but the proposed legislation on line 430 indicates it only excludes projects that are solely single family detached housing. Projects that contain the specified number of units also contain MPDUs which typically are detached houses. The bill needs to exclude single family housing (both attached and detached) from the gross square foot determination (starting on line 448). The trend now is for mixed use and single family units need to be excluded from all developments – including mixed use.
 - c. The letter indicates that a TDM Plan is required for employers above 25 employees in red areas, 50 in orange area and 100 in yellow area, but line 210 of the draft legislation has 100 for orange areas and line 213 has 200 for yellow areas. We support the higher number.
2. GCCA feels that the requirement for development projects to submit a TDM Plan is too expansive (this would also apply to employers and building owners). There is a limited ability to increase non-auto driver mode share (NADMS) if good public transportation is not available. Transit is currently poor in many parts of the orange and yellow policy areas, especially outside the beltway and not along the I-270 corridor. Therefore we think the proposed five percent NADMS increase in the draft regulation for policy areas without a master plan requirement is not obtainable until good transit (ie premium) is provided.

As a reminder, the basis from the SSP for the three categories where the draft legislation calls for a TDM Plan is the following (also see the attached map):

- **“Red:** Down-county central business districts and Metro station policy areas (MSPAs) characterized by high-density development and the availability of premium transit service (i.e., Metrorail, MARC).
- **Orange:** Corridor cities, town centers and emerging transit-oriented development (TOD) areas where premium transit service (i.e., Corridor Cities Transitway, Purple Line, bus rapid transit) is planned.
- **Yellow:** Lower density areas of the county characterized by mainly residential neighborhoods with community-serving commercial areas.”

The red category policy areas cover small geographic areas and already have premium transit service. The orange areas are much larger (see map) and premium service is planned. The yellow areas are also large and a small amount of premium transit is planned for some of the areas. Generally the zoning density decreases from red to orange to yellow, which means that good transit service is harder to provide economically through this progression.

We oppose increasing the NADMS requirement for any project, employer, or building owner where premium transit is not already nearby (i.e. within two miles). We assume that good local bus is provided within 2 miles of a premium transit station which would be used to transport people to the premium transit station when the distance is too far to walk (i.e. >1/4 mile). The Council applied this same line of thinking at the bottom of page 12 of Resolution 17-1204 dealing with the White Oak Science Gateway Master Plan. It indicates that the NADMS goal is “based on the area’s future transit service (assuming BRT) and connectivity opportunities,” which we take to be provided by local bus. Thus, the NADMS goals must be contingent upon the county providing BRT and improved local bus service.

This requirement would surely mean that each red area would be required to provide a TDM plan and meet the NADMS goal, as appropriate. A percentage (but not all) of each orange area would be covered at some point in the future once premium transit has been built within them and a small percentage in some yellow areas once premium transit has been built there. Until premium transit is provided in a policy area, the County could require a TDM Plan but not require any NADMS level be achieved. Thus it would be a best efforts approach to increasing the NADMS.

Since the county is studying BRT premium transit service for a number of corridors, this proposal would mean that many more projects, employers and building owners would be added every few years (where NADMS needs to be increased). The justification to increase the area covered by TDM would be to build more premium transit.

3. The legislation needs to state clearly when a TDM Plan is needed for building owners. We recommend it be the same requirement for employers as found in lines 192-195: by council resolution or in the Subdivision Staging Policy.
4. The need to produce a TDM Plan should exclude certain types of situations from the calculations.
 - Within senior housing, the seniors should be excluded from the number of units or square feet. Only staff should be counted. The same would be true for other types of facilities that provide care.
 - Employees should be counted on a per shift basis and then only for that shift who travel during the peak period.

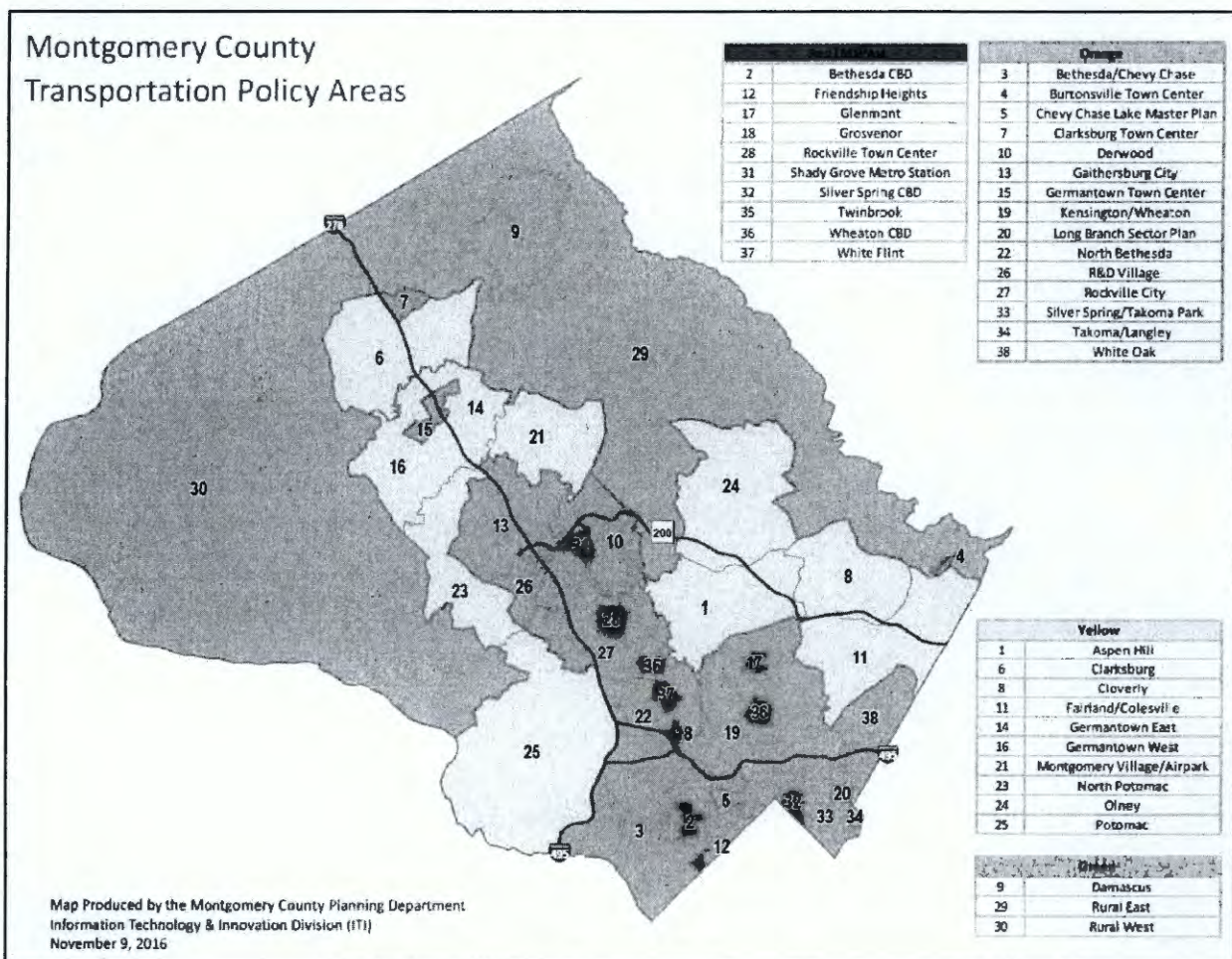
5. The definition of peak period is too open ended. Line 53 says it is the hours of the highest transportation use. How many hours? It should be one hour. It is unreasonable to expect a company and/or employees to be able to shift work schedules by three hours, which is the normal peak period.

The draft legislation and draft regulations are much improved over the version provided to the public in the spring but they both need to be improved further. We think our recommendations will improve the documents and produce a program that is workable. Thank you for considering our recommendations.

Sincerely,

Daniel L. Wilhelm

Daniel L. Wilhelm,
GCCA President



**Maryland Building Industry Association Testimony Comments on Bill 36-18-- Transportation Management -
Transportation Demand Management Plan – Amendments
December 4, 2018**

Thank you for allowing MBIA to provide comments on Bill 36-18, Transportation Management - Transportation Demand Management Plan – Amendments. While MBIA supports initiatives that create a more comprehensive and Countywide approach to reducing congestion and vehicle emissions, we have concerns over aspects of the bill and would like to offer technical comments for the Council's consideration.

MBIA commends the legislation for spreading the financial burden and implementation mandate over a broad base—as is appropriate for a holistic policy and efforts to transform the transportation behaviors of County residents and commuters – and not burden just new development. As such, we hope to see actual returns on the investments and creative solutions businesses and multifamily communities are making that will keep Montgomery County economically competitive in the region.

I am concerned how for-sale product will be held accountable for the transportation mitigation plans they are asked to develop under this new bill. It is unclear what objective engineering standard these TDMs will be evaluated against. Also, the legislation notes the evaluation is at Director discretion, but if there is a disagreement on the plan, it is unclear as to how that would be resolved. It may be appropriate for these plans to fall within the Planning Director's authority to provide evaluation and analysis of proposed plans. It appears that a builder or developer will be on the hook for future outcomes, long after they have sold the units they built to individual homebuyers. MBIA believes the sponsor and committee that receives this bill should think critically about the implementation of this aspect of the bill.

The method by which these fees are proposed to be assessed is not directly correlated to the intent of this bill – to reduce vehicular traffic and congestion. Rather than assessing by the number of customers, visitors, or employees at a business/site, is it not better to relate the fee to number of vehicles, or give credits based on the reduction in number of vehicles?

MBIA suggests that the Council consider modifying the timeline so that the execution of a TDM Agreement is later in the process—perhaps at the Certified Site Plan stage or later. The recent OLO report on Development notes how complicated Montgomery County's entitlement process is to navigate, and the Planning Commission has worked to streamline this process. As such, we think it's critical to evaluate when a TDM agreement is required to be executed.

Further, by adding additional fees to the cost of development, we fear an unintended consequence could be the reduction of naturally occurring, market rate affordable housing. If a multifamily or townhome project is mandated to pay additional fees and possibly be responsible for an ongoing commitment to TDMs in the future, a developer cannot anticipate the full costs of a project or future costs of a project. The lack of certainty and need to cover possible future expenses related to TMPs could result in an increase in unit costs and subsequent rents. To mitigate the impact, we suggest offsetting transportation impact taxes or offering a credit against transportation impact taxes --which as noted in the OLO report are some of the highest in the region-- whenever there are TDM fees associated with a project. Further, all fees collected must go to transportation improvements in the District in which they are assessed.

I and other MBIA members look forward to working with the bill sponsor and the Council members on this bill. If you have questions or concerns, please contact Erin Bradley, Vice President of Government Affairs at MBIA at (301) 776-6207 or eradley@marylandbuilders.org.

Thank you for your consideration.

Sylke Knuppel
Chair, Montgomery County Chapter of MBIA

Sherri Mohebbi forty year resident of Montgomery County

5

I support approving bill 36-18. Transportation Management Plan for Montgomery County. For the reason that it will keep Montgomery County options open while proactively reducing traffic and reducing harmful gases, as well as create local jobs for hopefully local companies.

My comment is for having

Effective positive stakeholders' campaigns such as CAR FREE DIET ALWAYS!

Not to be confused with carb free diet!

Moving off of the singular bus era, by not being a singular car driver. Using regional shared rides for with first last mile to metro and bus hubs, and shopping centers, as well as places of business.

The proactive measure of reducing traffic and emission gases via incentivizing will hopefully allow work toward connected vehicle era.

NAIOP DC/MD TESTIMONY

BILL 36-18 – Transportation Management, Transportation Demand Management Plan

12/4/18

Good afternoon. My name is Stacy Silber, and I am a partner with the law firm of Lerch, Early & Brewer. I am here today in my voluntary role as Chair of NAIOP DC/MD's Advocacy Committee. NAIOP's members include most of the vertical developers that create communities in Montgomery County and our region. NAIOP and its members are very supportive of activities that encourage smart growth and increasing transit, bike and other modes of transportation to help reduce traffic congestion. We also commend certainty in process and equitable application of laws. As such, we commend the principles behind Bill No. 36-18, but respectfully submit that Bill changes are essential to prevent unintended consequences. Our intent today is provide an overview of our comments, but ask that the record remain open through T&E's worksessions.

We first would like to complement the inclusion of certain provisions within the Bill, including:

1. Looking to provide certainty in the review process of TMAGs, and
2. The clarification on van pool allowances.

There are other proposed provisions of the Bill, however, that would result in unintended consequences:

1. We have found that the regulatory carrot, works much better than a stick approach in encouraging the incorporation of TDM practices. Much of the proposed Bill represents more of a stick, than incentives to change behavior. For example, currently the proposed Bill penalizes projects that have bundling of parking. The Zoning Ordinance already addresses this point. One, who includes unbundled parking in a development project, has an advantageous parking requirement. Thus, we suggest that this provision be removed from the Bill, and rather reference incentive benefits for providing unbundled parking. There will be some instances where bundled parking will be an important marketing tool for a project, for example and there are other TDM efforts that would make more sense.
2. The law should not be mandatorily applied to existing businesses. It is a retroactive application of a law, which is inequitable and sends the wrong message to businesses looking to invest in Montgomery County. Introducing a new fee and requiring a building create space for certain TDM practices is not tenable for many businesses that rely on certainty in budgeting a development, and in planning public space within a building. We agree that businesses and building owners should be encouraged to participate in TDM practices and we look forward to working with you and your staff on how this can be accomplished.

3. We support the concept of having the resources to ensure full implementation of a TDM program. However, any requirement for fees must be proportionate and fully vetted before agreed upon. The Bill currently identifies that there will be a fee, but indicates that it will be determined through Executive Regulation, which does not identify fee amounts. Before the Council considers the appropriateness of a fee, we submit that the fee structure needs to be identified and reviewed to fully understand its impact.
4. Should a fee be imposed, we submit that the Bill should be amended to explicitly state that the funds will only go directly to the District, within which a development is located, and only be applied to specific measures that will reduce traffic congestion. Furthermore, if there are fees, they need to be offset by any physical improvements required through the TMAG.
5. Currently the Bill suggests that fees may be assessed on the number of customers, employees, visitors or patients. This should be removed. TDM is used to change travel modes, but should not penalize a business's success.
6. We suggest that the Council review what the current average return rate is on surveys. We expect that the proposed 60% return rate is untenable.

On behalf of NAIOP and NAIOP's working group that helped develop our testimony, we thank you for your consideration of our comments. We look forward to working with you and your staff in refining this Bill, and working together to improve Transportation Management in our County. We again ask that the record remain open through the worksession review process that is targeted to commence on January 31st.

Thank you.

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

January 3, 2019

C. Robert Dalrymple
bdalrymple@linowes-law.com
301.961.5208

By Email & First-Class Mail Delivery

Council President Nancy Navarro
and Members of the County Council
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Requested Clarifications and Changes on Bill No. 36-18, Transportation Demand Management Plan (the "TDM Bill")

Dear President Navarro and Members of the County Council:

On behalf of the Land Use and Zoning Practice Group at Linowes and Blocher LLP, we offer the following comments on the TDM Bill based upon many collective years of experience negotiating traffic mitigation agreements ("TMAg") with the Montgomery County Department of Transportation ("MCDOT") as part of the development review and building permit process. We support the TDM Bill's identified goals of reducing traffic congestion, increasing multi-modal travel, and increasing the efficient use of transportation infrastructure, as these objectives will create additional economic development opportunities and support fulfillment of the land use visions embraced by many County master plans. However, we do have a number of concerns with the content of the TDM Bill and offer these written comments primarily in support of another stated goal of the TDM Bill: to streamline the process for development project TDM plan approvals.

1. Modify the timeframes for review and approval of TDM Plans

The current review and approval process for a TMAg within the County's established transportation management districts ("TMD"s) often takes more than one year to complete. Although draft TMAgs are submitted with Preliminary and/or Site Plan filings, the review process does not usually begin until the building permit phase of development and frequently leads to delays in the permitting and construction of developments in the County (as an executed TMAg is a prerequisite condition to permit issuance), creating uncertainty in the development process. Although the TDM Bill purportedly sets out to make the County's approach to TMAgs more flexible through their replacement with a newly created Transportation Demand

**L&B 7198502v5/09000.0002

Council President Navarro
and Members of the Council
January 3, 2019
Page 2

Management Plan ("TDM Plan") model, we are not convinced that the proposed revisions, as currently drafted, will result in a shorter, more predictable, and less expensive review process.

As currently drafted, Lines 432-435 could be construed to require that the formal TDM Plan be executed by all parties prior to Planning Board action on a development application. This requirement could very well lead to delays at that level of the entitlement process, as Planning Board hearings get pushed out waiting for final execution of the TDM Plan. We would therefore suggest that, in lieu of requiring this level of formality at the hearing stage, Section 42A-26(a) be modified such that the Planning Board, in consultation with MCDOT and the applicant, simply confirm which TDM strategies need to be included in a future TDM Plan at the time of Preliminary Plan and/or Site Plan approval.¹ Under this proposal, the subsequent review process for the TDM Plan would only require inputting these TDM strategies into a standard MCDOT template for execution by the parties prior to building permit, as opposed to protracted negotiations over which TDM strategies must be included, leading to a simplified and more predictable process. Additionally, because the elements of the TDM Plan would have already been agreed to by the parties and the format for the Plan will have been standardized, the potential for delays in the issuance of building permits because of TDM Plan negotiations would effectively be eliminated. We also suggest that the TDM Plan process could be further streamlined by eliminating the need for M-NCPPC to sign the final agreement. It typically takes over a month for a TMAg to be signed by M-NCPPC, which is a redundant and inefficient process given that M-NCPPC and the Planning Board will have already reviewed and approved the selected TDM strategies.

2. Clarify and/or eliminate application of these new requirements to existing non-residential buildings and multi-unit residential buildings that predate the TDM Bill

Proposed Section 42A-25(a) (entitled Transportation Demand Management Plans for Existing Buildings) would authorize the Director of MCDOT to "require an owner of a nonresidential building in a district to submit a TDM Plan if: (A) the Director find that a plan is necessary to achieve the purposes 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." Proposed Section 42A-25(b) provides the same authority to the Director relative to a residential building or complex with at least 100 dwelling units in a district (inclusive of a common ownership community). Proposed Section 42A-25 provides no meaningful standards to reasonably put an existing property owner on notice of the fact that it may be required to submit

¹ Please see Pages 6 to 7 of this letter for more detail on our proposal for a streamlined and objective process for selecting and confirming TDM strategies that are included in a TDM Plan.

Council President Navarro
and Members of the Council
January 3, 2019
Page 3

a TDM Plan to MCDOT, however. The proposed provisions would essentially allow MCDOT to require the owner of an existing building to submit itself to the costly TDM Plan review process in any instance that the Director subjectively deems necessary to achieve a number of broadly framed goals.

In addition to Section 42A-25 delegating overbroad and arbitrary authority to MCDOT, it would be improper to require existing development to submit to the TDM Plan review process unless there was some level of redevelopment being proposed by the owner. In order for a local government to lawfully subject a landowner to such regulatory costs and review processes, the regulatory process must be roughly proportionate in nature and extent to the impact of the proposed development. However, proposed Section 42A-25 would apply in instances where there is no new development proposed. There is simply no nexus for subjecting an existing property owner that is proposing no new development to the TDM Plan requirements. As well, this requirement (or even possible exposure to this requirement) would be resoundingly viewed as an anti-business measure at a time where the business environment and the County's competitive economic standing in the region is already in question. We therefore request that Section 42A-25 be deleted in its entirety and the TDM Plan requirements limited to those properties submitting Preliminary Plan and/or Site Plan applications for an expansion or redevelopment that includes a net-new amount of gross square feet that falls within parameters identified in Section 42A-26(b)(1) through (3) for the Red, Orange and Yellow Policy Areas.

3. Modify the applicability of Section 42A-26(a) such that the submittal of a TDM plan is only required for projects requiring a traffic study

Proposed Section 42A-26(a) would require that applicants for certain building permit and conditional use applications obtain approval of a TDM Plan. As noted above, only development projects that generate a certain level of impact on the adjacent transportation network should be subject to the additional regulatory requirements included in a TDM Plan. A building permit or conditional use application may not independently generate enough of a traffic impact to make it roughly proportionate in nature and extent to the requirements of a TDM Plan. To the extent that a development project does create substantial enough traffic impact to necessitate submittal of a TDM Plan, it will trigger the requirements for a traffic study. Section TL1 of the 2016-2020 Subdivision Staging Policy requires submittal of a Local Area Transportation Review study (i.e., a traffic study) for any subdivision that would generate at least 50 new peak-hour person trips. This same criteria should apply in evaluating which building permit or conditional use applications will be subject to submittal of a TDM Plan, with the type of TDM Plan to be determined in accordance with Section 42A-26(b)(1) through (3) of the TDM Bill. We therefore respectfully request that the TDM Bill be modified such that the requirement to submit a TDM

Council President Navarro
and Members of the Council
January 3, 2019
Page 4

Plan is limited to those conditional use and building permit projects that trigger the need for a traffic study under applicable laws and regulations.

4. Clarify the extent to which an expansion of an existing development is subject to submission of a TDM Plan

Proposed Sections 42A-26(b)(1), (2), and (3) establish square footage thresholds that would trigger the need to submit a Level 1 Basic Plan, Level 2 Action Plan, or Level 3 TDM Results Plan. These development thresholds are defined based upon the transportation policy area of a project as identified in the Subdivision Staging Policy. These development thresholds are defined to apply to “an owner or applicant for a project,” however the TDM Bill does not clearly define “project” in the context of properties with existing development that predates the new provisions. More specifically, these provisions do not indicate whether the square-foot thresholds apply only to “new development” proposed by the application triggering submission of a TDM Plan, or if the square-foot threshold would also include the existing area of a project in addition to the expansion area.² These provisions must be clarified to clearly state that these square-foot thresholds are to be measured solely based on new development proposed by the applicant or owner, and that existing development at a site that predates the effective date of the TDM Bill is not to be counted for purposes of these new requirements.

5. Clarification that the Transportation Demand Management Fee (Section 42A-31) includes the cost for promotional materials printed by MCDOT

Pursuant to Section 42A-31 of the TDM Bill, the use of revenue generated by the TDM fee is intended to cover the cost of “administering the district and TDM strategies, and coordinating with projects and occupants (including employees and residents) ... and any program implemented under Section 42A-23(b), including any vehicle or other equipment necessary to carry out the program.” Section 42A-23(b) notes that MCDOT “may take actions necessary to achieve effective transportation demand management in each district ... including ... promoting

² By way of example, an existing 100,000 square-foot retail center that is located in a Red Policy Area may seek approval of a Site Plan application to develop two (2) pad sites with up to 9,999 gross square feet of new development. If the existing development at the retail center is counted in applying proposed Section 42A-26(b)(1), the property owner would be required to submit a Level 3 TDM Results Plan for this incremental expansion to the property. Such an interpretation of the TDM Bill would retroactively apply these new regulatory burdens/exactions to lawfully existing development that predates such requirements.

Council President Navarro
and Members of the Council
January 3, 2019
Page 5

or implementing transit and ridesharing incentives.” These provisions are consistent with existing County law included in Chapter 42A of the County Code. MCDOT’s current practice, however, is to require an applicant to agree to separately reimburse it for any costs associated with promotional materials. Since the TDM fee is explicitly defined to cover the cost of promotional materials, we request that the TDM Bill be modified to clearly state that applicants and property owners will not be required to provide any additional reimbursements to MCDOT for such materials outside of the TDM Fee.

6. Clarify that the transitional provisions apply to projects with a Preliminary Plan and/or Site Plan application accepted by M-NCPPC

While Section 2 of the TDM Bill includes grandfathering provisions for projects that have a subdivision or optional method approval as of the effective date of the proposed legislation, the TDM Bill does not include transitional provisions for development applications that have been formally accepted for review by M-NCPPC. This is inconsistent with the Council’s past practice of allowing development projects to proceed under the law and regulations in effect at the time the respective application is accepted by M-NCPPC. By way of example, the recent legislation adopted by the Council to comprehensively update the Moderately Priced Dwelling Unit (MPDU) Law through Bill Nos. 34-17 and 38-17 included transitional provisions for accepted development applications. More specifically, Bill Nos. 34-17 and 38-17 allow development applications accepted as complete or approved before the effective date of the legislation such to be processed in accordance with the prior version of the MPDU Law. We respectfully request that Section 2 of the TDM Bill be modified to allow for consistent grandfathering, as provided below (proposed additions in bold and underline):

Sec. 2. Transition

- (a) *Existing agreements ...*
- (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.~~
- (b) **Pending development applications. The provisions of this Act do not apply to any Preliminary Plan or Site Plan accepted as complete by the Planning Board before the effective date of this Act. Such development applications are permitted to process a traffic mitigation agreement under the standards and procedures of Chapter 42A in effect prior to the effective date of this Act.**

Council President Navarro
and Members of the Council
January 3, 2019
Page 6

7. Identify in more detail the general components of TDM Plans with a list of TDM Strategies and assigned point values to be selected by the applicant or owner for Level 2 TDM Action Plans and Level 3 TDM Results Plans

A primary goal of the TDM Bill is to make the review of TDM Plans streamlined in the context of the development review process. In order for this to be the case, we recommend that the County Council identify a menu of options that can be selected by an applicant or owner for the required TDM Plan during the Preliminary Plan and/or Site Plan process. The current review process for a TMAg generates significant uncertainty in the package of TDM strategies that will be accepted by MCDOT. It is ultimately left to the subjective view of MCDOT to determine what package of TDM strategies are required for the TMAg to be approved, which results in a protracted and inefficient review process. If a menu of TDM Strategies were confirmed and finalized at the time the Planning Board approval of the applicable Preliminary Plan and/or Site Plan, however, the TDM Plan process would be much more streamlined and efficient.

Similar to the public benefit point system used for the Commercial-Residential zones and applied by the Planning Board, the County Council should identify a minimum amount of points needed for approval of a Level 2 TDM Action Plan and Level 3 TDM Results Plan.³ The TDM strategies could be identified and agreed upon through the development review process in a manner that eliminates a lengthy negotiation process. For purposes of this example, we are suggesting that Level 2 TDM Action Plans must include a minimum of 15 points and Level 3 TDM Results Plans a minimum of 30 points using the following framework:

³ The requirements for a Level 1 TDM Basic Plan appear to be sufficiently narrow and understandable; thus, we do not have the same level of concern of uncertainty in the review and approval process for these Level 1 TDM Basic Plans.

Council President Navarro
and Members of the Council
January 3, 2019
Page 7

Strategies	Points
<ul style="list-style-type: none">• Agreeing to actively participate with MCDOT staff to exceed the Non-Auto Driver Mode Share (NAMDS) goal established by the applicable Master Plan	15 points
<ul style="list-style-type: none">• Minimum parking (providing less than the maximum number of parking allowed under the Zoning Ordinance)	5 points
<ul style="list-style-type: none">• Minimum parking (providing less than the minimum parking number of parking required under the Zoning Ordinance)	10 points
<ul style="list-style-type: none">• Accommodating a Bikeshare Station (or similar facility approved by MCDOT)	5 points per station (or facility)
<ul style="list-style-type: none">• Providing long-term bicycle storage spaces in the interior of a project	5 points
<ul style="list-style-type: none">• Providing shower and changing facilities in connection with long-term bicycle storage spaces	10 points
<ul style="list-style-type: none">• Providing a bicycle repair station in the project	5 points
<ul style="list-style-type: none">• Providing both dynamic and static information displays with transit information	10 points
<ul style="list-style-type: none">• Providing Carshare parking spaces on-site	5 points

We are confident that modifying the process for review and approval of a TDM Plan to an objective, point-based system that is finalized at the time of Planning Board approval of the relevant development application(s), or prior to issuance of building permits for those projects not requiring Preliminary or Site Plan approvals, will result in a more certain and objective process that is fair to all stakeholders.

Council President Navarro
and Members of the Council
January 3, 2019
Page 8

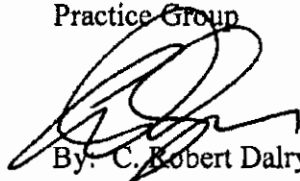
8. Require a standard template for a TDM Plan

Finally, in connection with establishing an objective point system for TDM Plans, it is also vital that a standard template for a TDM Plan be set and not subject to significant substantive changes and negotiation through the building permit process. With the current TMAg process, the "standard" form is constantly evolving such that there is no certainty regarding its general provisions. The intent of the proposed legislation, if truly aimed at streamlining the process, should therefore be that the approved elements are added to a pre-determined, standard format TDM Plan post-approval that is predictable and not subject to further negotiation.

Thank you for consideration of these comments and suggestions. While we are supportive of the intent behind the TDM Bill, it is vital that several important clarifications and changes be made to ensure that implementation of the newly proposed TDM Plans will achieve the desired results and ensure that attendant economic development opportunities are viable and can benefit the County's tax base. We look forward to the opportunity to work with the Council, its staff, MCDOT, and other stakeholders to improve upon the TDM Bill such that it will benefit the County's transportation network.

Very truly yours,

LINOWES AND BLOCHER LLP
Linowes and Blocher Land Use/Zoning
Practice Group



By: C. Robert Dalrymple

cc: Mr. Glenn Orlin, Deputy Director
Robert H. Drummer, Senior Legislative Attorney
Ms. Sande Brecher, MCDOT
Ms. Beth Dennard, MCDOT
Ms. Pam Dunn, M-NCPPC
Mr. Eric Graye, M-NCPPC
Mr. Matt Folden, M-NCPPC

MEMORANDUM

February 13, 2019

TO: Transportation and Environment Committee

FROM: Robert H. Drummer, Senior Legislative Attorney *RD*
~~60~~ Glenn Orlin, Deputy Director

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

PURPOSE: Worksession – briefing on current and proposed TDM requirements

During the early evening of February 13, the Council received the County Executive's recommendations regarding Bill 36-18, which had been developed by the prior administration. His cover memo and marked-up version of the bill is attached. The Department of Transportation staff will summarize his recommendations as part of their presentation Thursday morning.

Also attached are comments from William Kominers in response to the bill as introduced. His correspondence was inadvertently omitted from the main staff report.



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

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

Bill No. 36-18
Concerning: Transportation
Management - Transportation
Demand Management Plan -
Amendments
Revised: December 12, 2018 Draft No. 2
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

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

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

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<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 the provision of parking spaces as a component of a sale or
19 lease when voluntarily requested by a prospective purchaser or lessee.
20 Bundling of parking also does not include a parking space physically
21 integrated with an individual leasable or sales unit if the parking space is
22 dedicated to that unit and can be directly accessed through that unit., such that
23 only occupants of that unit are able to use the space or spaces.

24 *Carpool* means a motor vehicle occupied by 2 or more employees traveling
25 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

53 [(5)] (3) any government agency not required by law to follow
54 County regulations.

55 [Growth Policy means the most recently adopted Growth Policy under Section
56 33A-15.]

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

62 NADMS Goal means the specific NADMS percentage goal for peak period
63 commuters in a District or a Policy Area that has been established through a
64 Master Plan, through the Subdivision Staging Policy, or through Regulation.

65 Peak period means the hours of highest transportation use ~~in a district~~ each
66 workday, as defined in the resolution creating a ~~district~~ District, as established
67 in the Subdivision Staging Policy, or established through a technical study.

68 Planning Board means the Montgomery County Planning Board of the
69 Maryland-National Capital Park and Planning Commission.

70 Policy Area means a Transportation Policy Area adopted by the County
71 Council through the Subdivision Staging Policy.

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

73 Resident means an adult domiciled in the relevant area.

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

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

78 Telework means a work arrangement where a manager directs or permits an
79 employee to perform usual job duties away from the central workplace in

80 accordance with established performance expectations and agency-approved
81 or agreed-upon terms.

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

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

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

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

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

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

105 Workplace means the place of employment, base of operations, or
106 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, 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) Where a NADMS Goal has been specifically established for a District it must be achieved for that District. Where a Policy Area is part of a District, the NADMS Goal established for the Policy Area must be achieved.

(h) 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 the Subdivision Staging Policy requires transportation review.]. A district~~District may be formed from one or more ~~Subdivision Staging Policy areas~~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/or~~

[(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 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~~], 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 must provide the Director with the number of full-time and part-time employees working for that organization at anyby workplace within the districtin 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 NADMS 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~~ NADMS Goal 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.

[(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 for a project that is of the sizes referenced in a district, but excluding subsection (b) below. This Section does not apply to any project consisting solely of single family detached housing, or which consists solely of renovations to, or a

change in use of, an existing building or buildings unless the change in use causes the project to exceed the sizes referenced in subsection (b) below. All ~~such~~ applicants subject to this Section 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 the issuance of the application, or prior to any building permit by the Department of Permitting Services approval for projects not requiring Planning Board action.~~ Projects subject to this Section include developments:

- (1) in ~~a~~ Red, Orange or Yellow Subdivision Staging Policy ~~Area~~ Areas 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~~ NADMS Goals and other commuting goals adopted in Master Plans, Sector Plans ~~and~~, the Subdivision Staging Policy, or through an executive regulation, 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~~ project's development 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 up to 25,000 gross square feet, but less than or equal to 100,000 gross square feet; and

(B) submit a Level 3 TDM Results Plan for a project with more than 10025,000 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 25,000 gross square feet, but less than or equal to 75,000 gross square feet;

(B) submit a Level 2 TDM Action Plan for a project with more than 75,000 gross square feet, but less than or equal to 150,000 gross square feet; and

(C) submit a Level 3 TDM Results Plan for a project with more than 150,000 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 50,000 gross square feet, but less than or equal to 100,000 gross square feet;

(B) submit a Level 2 TDM Action Plan for a project with more than 100,000 gross square feet, but less than or equal to 200,000 gross square feet; and

(C) submit a Level 3 TDM Results Plan for a project with more than 200,000 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 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 adhere to a Project-based TDM Plan Level that is either lower or higher than otherwise required by its size and location, in accordance with the development approval and consistent with the Executive Regulation implementing this Article.

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

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

(A) Appointment of a Transportation Coordinator and Commitment to Cooperate with the Department's Programs. Each owner of a project must designate an individual responsible to assist and cooperate with the Department's efforts to achieve the ~~Non-Auto Driver Mode Share~~ NADMS Goals and other traffic mitigation and commuting goals ~~established for that area.~~ This assistance must include distribution of information on commuting options to the on-site population; coordinating with the Department to conduct on-site commuting-related outreach events; ensuring participation in commuter 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 by the owner or applicant to specific actions to help the County achieve ~~district-wide~~NADMS Goals or other commuting goals established in an executive regulation. 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~~.executive regulation. A project must be considered to be contributing toward achievement of the ~~district's~~ commuting goals if the biannual 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 goal~~five percent NADMS above the NADMS 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 goal. 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.

(C) Self-Monitoring. The owner or applicant must conduct self-monitoring, consistent with Department requirements, to determine if the Project-based TDM Plan is contributing toward achievement of the ~~district's~~ goals. This self-monitoring must be conducted in addition to any monitoring conducted by the Department.

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

(E) Addition and/or Substitution of Strategies. If the strategies initially selected ~~from the "Sample Menu of TDM Strategies"~~ by the owner or applicant do not result in the plan contributing toward achievement of ~~district~~ goals by four 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 Department must require that the owner or applicant implement parking management strategies for projects that fail to demonstrate progress toward attaining the commuting goals. Parking management strategies may include limiting the parking available for use by employees commuting during peak periods. 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 contributing toward achievement of ~~district goals, consistent with the Executive Regulations~~ District commuting goals, consistent with the executive regulationr. Once the NADMS Goal or other commuting goals have been achieved, the owner must maintain the level necessary to continue achieving the goal.

(F) Additional Funding Commitment. If the project does not contribute toward achievement of ~~distriethe~~ the commuting 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. 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~~ executive regulation.

(G) ~~Rewards~~ Performance Incentives. The owner may be eligible for annual ~~rewards~~ performance incentives established by the Department for continued contribution over multiple years toward achievement of ~~district~~ commuting goals, including reductions in TDM fees or other financial benefits, as established in the ~~Executive Regulation~~ executive regulation.

(3) Level Three: A Project-based TDM Results Plan requires a commitment by the owner or applicant to achieve certain ~~Non-Auto Driver Mode Share~~ NADMS Goals and related commuting goals at that project. The plan must include project-based strategies and demonstrate that the plan is achieving the goals established for the project. ~~Those goals~~ The project plan may be equal establish a project NADMS Goal that is up to, five-percent higher or five percent lower than the ~~district's goals~~ NADMS Goals based on project-specific parameters, consistent with the ~~Executive Regulation~~ executive regulation. When approving the Project-Based TDM Results Plan, the Director must make a determination that the commuting goals for the District or Policy Area will be attained with the established project NADMS Goal. 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:

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

672 (B) Addition and/or Substitution of Strategies. If the strategies
 673 initially selected by the owner or applicant do not result in
 674 the project achieving its goals by six years after Date of
 675 Final Occupancy, the Department may require revisions in
 676 the project's plan using the "Sample Menu of TDM
 677 Strategies" or other strategies proposed by the owner or
 678 applicant. The Department must require that the owner or
 679 applicant implement parking management strategies for a
 680 project that fails to achieve its goals. Parking management
 681 strategies may include limiting the parking available for
 682 use by employees commuting during peak periods. The
 683 owner or applicant must agree to implement these revised
 684 strategies if required by the Department at a level
 685 consistent with the owner's commitment to fund and
 686 implement the plan. This process may be repeated until
 687 the project demonstrates it is achieving its goals, in
 688 compliance with the ~~Executive Regulation~~ executive
 689 regulation.

690 (C) Additional Funding Commitment. If the strategies
 691 selected by the owner or applicant do not result in
 692 achievement of the project goals by six years after Date of
 693 Final Occupancy, the Department may require increased

694 funding by the owner for existing or new TDM strategies
 695 to be implemented at the project. Additional increases in
 696 funding may be required if the goals have still not been
 697 achieved by eight years after Date of Final Occupancy.
 698 The owner must commit additional funds to supplement
 699 on-site strategies if required by the Department. The
 700 amount of the additional funding must be as established in
 701 the ~~Executive Regulation~~ executive regulation.

702 (D) ~~Rewards-Performance Incentives.~~ The owner may be
 703 eligible for annual ~~rewards~~ performance incentives
 704 established by the Department for continued achievement
 705 of project goals over multiple years, including reductions
 706 in TDM fees or other financial benefits, as established by
 707 the ~~Executive Regulation~~ executive regulation.

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

- 709 (1) proposed by the owner or applicant and approved by the
 710 Department;
 711 (2) made an express condition of any approval for:
 712 (A) subdivision or another plan approval under Chapter 50;
 713 (B) site plan or another plan approval under Chapter 59; or
 714 (C) building permit for a recorded lot;
 715 (3) subject to all other review and approval requirements of Chapter
 716 50 and Chapter 59, with approval of the Department required for
 717 any revisions to an approved TDM Program; and
 718 (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 percent compliance rate.

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.~~ 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)(3)~~

(3) 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)(5)~~

(4) transit use and availability;

~~(75)~~ carpool and vanpool use;

~~(86)~~ bicycle and bikeshare use;

~~(97)~~ use of other transportation modes relevant to analyzing achievement of commuting goals; and

~~(108)~~ 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 Committees.

(c) If any commuting goals set in the Subdivision Staging Policy are not met eight years after a district is created by 2030 or by June 30, 2027 the

dates established by master plans, 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 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.

985 *Approved:*

986

~~Hans D. Riemer~~ Nancy Navarro, President, County Council

Date

987 *Approved:*

988

~~Isiah Leggett~~ Marc Elrich, County Executive

Date

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

990

Megan Davey Limarzi, Esq., Clerk of the Council

Date

|991



William Kominers
Attorney
301-841-3829
wkominers@lerchearly.com

January 18, 2019

VIA OVERNIGHT DELIVERY & ELECTRONIC MAIL

The Honorable Nancy Navarro
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Re: Bill No. 36-18 (Transportation Demand Management Plan--Amendments)--
Comments for the Public Record

Dear President Navarro:

Please include this letter and the attached comments on Bill No. 36-18 (Transportation Demand Management Plan--Amendments) in the record of the public hearing on this Bill.

I look forward to the worksessions on this matter.

Thank you.

Very truly yours,

LERCH, EARLY & BREWER, CHARTERED

William Kominers

WK/paj
Enclosure

cc: The Honorable Thomas Hucker
The Honorable Evan Glass
The Honorable Hans Riemer
Robert H. Drummer, Esquire
Ms. Erin Bradley

COMMENTS ON BILL NO. 36-18 (Transportation Demand Management)

(Comments from William Kominers—January 18, 2019)

Bill No. 36-18 seeks to incorporate the experiences that have been developed over years of traffic mitigation efforts and negotiation. The Bill also intends to simplify the process for developing agreements for traffic management, so that they do not become impediments to the development process generally. These are laudable goals. I appreciate the thought and effort that has gone into this legislation, and I applaud the Department of Transportation for working to address the issues.

Below are my comments on the Bill, both general and specific. As I was unable to attend the public hearing, these comments should be placed in the record of that hearing. My comments reflect both philosophical issues, as well as questions and explanations seeking clarifications, to assure that the law will achieve the intended goals, in part, by being so clearly understood that disagreements are minimized. I am ready to discuss these comments, particularly the details, at any convenient time.

General Comments.

Individual vs. Collective Approach.

Bill No. 36-18 (the “Bill”) appears to be moving backwards in many ways, compared with past progress on Transportation Demand Management (“TDM”). The Bill seems to return to a process of measuring trips or people only within the four corners of each project, and evaluating results only individually as to that project. Up to now, the County had moved away from that individual evaluation, recognizing that not all projects are created equal in their ability to individually accomplish traffic mitigation, but could accomplish more collectively. (For example, while an office project may be relatively homogeneous in arrivals and departures, a retail or hotel project has a very different pattern of travel by employees and customers.) In recognition of this reality, the County had moved more to focus on collective efforts through the structure of the transportation management district (“TMD”). The TMD structure allows pooling of different projects and types of uses to achieve a collective goal for an area. When mitigation measures and commuting alternatives are offered through the broader umbrella of the TMD organization, employees of different projects can be approached together by the TMD, and make connections that would not occur if each project kept blinders on, to look at, and work, only with itself.

The TMD structure, with collective evaluation, allows better use of County resources to support community goals. The County Department of Transportation (“DOT”), the agency that controls many of the means of collective commuting (bus routes; schedules; etc.), can use money from the TMD members to adjust those commuting methods/modes to meet changing needs of the area as a whole. DOT also has the expertise and experience with these methodologies, and how to make them used most effectively.

The new TDM Bill appears to direct a return to a project by project treatment, that looks to each project to achieve any commuting goals individually and internally to itself. This tracks and measures every action at the individual project level, rather than as a group in the TMD. The

focus on individual project actions causes competition rather than cooperation. This approach is likely not to achieve the County's goals for many projects. Particularly for certain types of uses, this new methodology is a prescription for failure.

Failure to Recognize Changing Occupancy and External Conditions.

The Bill does not address or account for occupancy changes that will occur over time. Uses on which the initial TDM plan and program was premised, may change. This change may be to uses for which particular TDM strategies are not operationally practical. This will cause failure, and resulting penalties that come about through no means other than a building's success in leasing, but to a use that is not as susceptible to successful TDM measures.

Similar to the change in users in a building, there is no accounting for external circumstances and changes that affect the ability of commuters to use other means of travel. The instrumentalities utilized for shared commuting are not under the control of building owners or employers. The County could add a bus stop nearby or build the BRT system, thus making public transit easier to use. On the other hand, the County could equally move a bus stop farther away, or change the timing on a route, so as to make it harder for an employer in a particular location to have sufficient commuting options to achieve the goals.

In trying to encourage positive participation in traffic mitigation efforts (and thus achieve positive results), the commitment asked of the private sector should be to do something within its control—take a certain action; provide a certain opportunity; make certain things available. This is in contrast to requiring a commitment to accomplish something that is not within the party's control—such as making people/employees accept an offer or utilize the opportunities provided—and then penalizing when those people fail to do so.

Inappropriate Penalties.

The Bill appears to begin with the expectation of private sector failure or evasion. Thus the Bill is principally made up of sticks, with minimal carrots.

A penalty is an acceptable stick if an applicant/owner/employer does not do what is promised with its own actions. For example, if one does not appoint a transportation coordinator, does not file reports, does not participate with DOT in other commuting measures, then a penalty is appropriate. These are all actions which under the unique control of the owner/employer. For failing to undertake the actions that the applicant can take—"you promised to do it, and you didn't do it"—the applicant can justifiably be penalized. However, if no employees take advantage of the offers or other opportunities that are provided, in spite of diligent pursuit by the owner/employer of those elements that it controls, then there should not be a penalty. The owner/employer should not be responsible if people do not take advantage of opportunities offered.

Insufficient Basis to Support Application of TDM Measures to Some Parties.

The legislation seems to run together the different sources or justifications for TDM measures in a specific project, in a way that is hard to determine what requirements or measures

apply. Project-based measures are the easiest illustration of this issue. These measures arise from an “approval,” but what “approval” is intended? Is it an initial approval of new square footage? Does an amendment reconfiguring already approved square footage also trigger the requirement? Does each subsequent approval step in a multi-step process that has already begun trigger the need for TDM measures (i.e., approval of the site plan for an already-approved sketch plan)?

There does not appear to be a clear nexus between the TDM measures required and many entities covered by the Bill. For example: existing businesses, existing employers, and existing buildings appear to be covered, irrespective of the length of their presence and inclusion in background conditions.

For areas in existing TMDs today, do the three “levels” of TDM Plans apply? Areas outside TMDs today or tomorrow would not be subject to the requirements.

The menu of TDM strategies does not explain what the strategies mean, insofar as actual operation of those strategies.

Specific Comments on the Bill.

The following are comments on specific provisions of the Bill. The Line numbers are taken from the version of the Bill as introduced November 13, 2018.

1. Section 42A-21. Definitions. There is some confusing terminology and perhaps unintended overlap in some of the definitions in the Bill. See for example Lines 57, 67-69 and 76-78.

(a) On Line 57, a “Project-Based TDM Plan” is a TDM plan for a new development project.

(b) In Line 67-69, a “Traffic Mitigation Plan” is a set of strategies to implement TDM at an existing commercial residential building or an employer in an existing building.

(c) In Lines 76-78, a “Transportation Demand Management Plan” is a set of strategies designed to implement TDM at a new or existing building, a new or existing development project, or an employer.

The Traffic Mitigation Plan and the Transportation Demand Management Plan each seem to be applying to existing buildings, existing development, existing employers, and utilizing a set of strategies to implement TDM. There seem to be several points of overlap between these two elements. If however they are meant to be different, the distinction between them is not apparent in the definitions.

Line 82. Vanpool definition. The definition offers challenging compliance issues.

The definition requires a capacity of 6 or more passengers who occupy at least 50% of the seats at any point during the trip. This leaves open the question of what happens if too many

people are sick on any one day. A strict reading would say that the group cannot be a “vanpool” and cannot use vanpool privileges if too many riders are not present. Similarly, during certain religious holidays, fewer than 50% of the seats may be filled. Does the County intend that the vanpool does not get the benefits of being a vanpool on those days?

In subsection (2), the vehicle must be used for commuting for 80% or more of the miles it is driven. This would seem to penalize people who live close to work and therefore do not drive enough miles to work, by comparison to their private use of the vehicle. For example, such a private vehicle used by “travel” sports teams could end up using much more of the mileage to the sports team travel than the commuters. This seems to be a challenging standard for people to track and for the County to track to enforce.

Line 148. This section seeks to achieve effective transportation demand management by prohibiting bundling of parking in new developments approved after January 1, 2019.

a. The timing of is this decision is critical, but not stated. Because the result of the determination affects the pro forma and leasing/sale for the particular building. As a general matter, the County should avoid injecting itself into the details of private business operations.

b. Achieving this result should be done by creating an incentive, rather than just using the very blunt stick of “prohibiting”.

Line 152. What is the purpose of listing all the different kinds of transit uses and enumerating individual elements? Why not just utilize the term “transit”? That would be both broader and more able to accommodate future methods of transit that have not been considered to date.

2. Section 42A-24. Transportation Demand Management Plans for Employers. There does not appear to be a clear nexus between existing employers and the obligations being created for transportation demand management. The TDM plan must include “strategies required by the regulations” plus other strategies chosen from those allowed by the regulations. In Section 24(d) (Lines 261-264), the Director can require an employer to resubmit a plan that is “inadequate to achieve any NADMS goals...” The term “inadequate to achieve” seems very subjective and no standards are provided. Similarly, is NADMS the only commuting goal that exists today? A plan might be adequate to achieve many other commuting goals, but not NADMS. This seems rather single-focused and seems to ignore the many different commuting goals and ways to achieve them. Is the Director’s decision intended as a final administrative action for purposes of appeals? How does an employer dispute this finding?

3. Section 42A-2(a); Lines 311-312. Transportation Demand Management Plans for Existing Non-Residential Buildings. For an existing non-residential building, the Department may require a TDM plan if such a plan, is found “necessary to achieve the purpose of this article.” This seems an excessively vague standard. Line 364 notes the actions the Director must take to notify the owner, “if an existing non-residential building is subject to this section...” Is what makes a building “subject to this section” merely the triggers in Lines 359-363—meaning that the Director finds the plan is necessary to achieve the purposes of traffic mitigation and the building is not

already subject to a TMA or a project-based TDM plan? Essentially, there are no clear standards as to what makes a building qualify as being “subject to this section.”

Placing this potential obligation on the building owner, in addition to employers of the sizes designated, could be seen as simply a means by which to try to apply the law to those employers who would not otherwise be subject to the law because of their small size. Instead, they could be swept in under the umbrella of regulation by being tenants in a building on which the obligation for TDM measures is placed.

4. Section 42A-25(b). TDM plans for existing multi-unit residential buildings is found in Section 25(b) (Lines 374-375). This section has many of the same deficiencies as Section 25(a) for existing non-residential buildings. These include the Director’s finding that “a plan is necessary to achieve the purpose of this article” and that the building is not already subject to a TMA or a Project-Based TDM Plan. Similarly, notification results “if an existing building is subject to this section...” The lack of standards in this area are similar to the lack of standards for existing non-residential buildings.

5. Section 42A-26; Lines 408-409. TDM Plans for New Development Projects. In Lines 426-436, the applicability of this Section is triggered by an application for certain approvals. Those applicants must then get approval of a “Project-Based TDM Plan”. Such applicants have to obtain approval of the TDM plan before obtaining Planning Board approval of the particular application.

Given the current processes for creation of a traffic management plan, but certainly when taking into account the laborious signature process for any such plan agreement, the likelihood of this timing causing a significant delay in the statutory review process for Planning Board applications is almost a certainty. Extensions of that review period is almost assured. Particularly where the final information from the applicant is required 65 days prior to the end of that 120 day period. The likelihood of having the TDM Plan drafted, negotiated, agreed upon, and signed 65 days before the end of 120 day review period is not at all likely.

6. Section 42A-26(a); Lines 427-429. While indicating the applications that trigger the TDM plan requirement (in Lines 427-429), the Bill does not address two important questions that arise: (i) whether those applications present enough information on which to base a TDM plan, because of the phase of development that is the subject of that application, or (ii) how the later applications in the development sequence are treated for TDM as subsequent steps in a process where a plan has already been required. (See also, General Comments, above.)

Similarly, this Section does not address treatment of properties that do not have a traffic mitigation plan in place, because one had been in place previously and has terminated by its own terms. On these facts, a new TDM Plan should not be required, because the property and the quantity of development subjected to the earlier agreement has already fulfilled all TDM obligations from that time.

7. Section 42A-26(b)(4); Lines 476-479. In the discussion of the levels of development that require different levels of TDM plans, the Bill notes at Lines 476-479, that a master plan can

require a higher level of Project-Based TDM Plans to override those described in Sections 26(b)(1),(2), or (3). However, the language in subsection 26(b)(4) is not clear as to what aspects of the “higher levels” the master plan can apply. For example, does this allow a master plan only to increase the level of plan required (i.e., Levels 1, 2, or 3?) May the master plan change the size of a project that would trigger the requirement? Or could both be done? For example, could a Level 3 Plan be required in a yellow policy area for a development of only 20,000 sf.? There do not appear to be any standards to support or justify a master plan taking such action. This provision could be used to unfairly target individual use types, land areas, or localities.

8. Section 42A-26(b)(5); Lines 480-487. Subsection 26(b)(5) also allows a very subjective judgment—to impose different standards for a TDM Plan level—if a project is considered to have a “disproportionate impact on traffic relative to its size”. The standards for imposing this decision, “consistent with the Executive Regulation,” seem to be absent.

9. Section 42A-26(c)(2); Lines 528-542. Level Two Project-Based TDM Action Plan. The obligation of the Action Plan is to “demonstrate over time that the adopted strategies are contributing toward achievement of the district commuting goals....” This is to be demonstrated by showing either: (i) an increased NADMS share, or (ii) measurable improvement in some alternate metric. These appear to be the exclusive methods by which to demonstrate compliance. But other methods might be equally or more appropriate. The legislation should allow opportunities for other methods to be utilized.

There seems to be an inconsistency between the necessity to demonstrate specific reduction results in Lines 536-538 and the purpose of the TDM action plan “to help the County achieve” district wide commuting goals in Line 529. (Emphasis added.) This Section does not say anything about needing to meet on particular goals on site or by a certain date for that. A project might contribute to meeting the district goals by totally other means. Doing so may not currently be permitted by the Bill.

10. Section 42A-26(c)(2)(C); Lines 555-558. Self-monitoring is required. This is to help determine if the project-based TDM plan “is contributing toward achievement of the district’s goals.” There do not appear to be any standards against which to evaluate whether this is contributing toward achievement of the goals. Perhaps, the intention is that the same standards mentioned in Lines 536-538 are meant to apply here.

11. Section 42A-26(c)(2)(E); Lines 562-575. If a project does not meet the standard of “contributing toward achievement of the goals” within four years, the Department may require revisions to the Plan. This revision process can be repeated until success is demonstrated. After six years (Lines 576-580) DOT can require increased funding toward the Plan. Neither the four nor the six year time periods currently take into account the potential for occupancy changes and other external impacts that would affect the ability to utilize the Plan elements as then-currently operating. (See also, General Comments, above.)

Inability to “contribute toward achievement of the goals,” (regardless of what that really means), should be treated differently in a situation with the same tenant/user for that entire four to six year period, as opposed to a situation where the tenant, user, or use changes during that period.

In the later case, the time period for goal achievement should be viewed as recommencing. A new tenant/user/use needs time to “ramp-up,” and integrate the new participants into the opportunities that the TDM Plan may provide. It is not fair to the owner, employer, or the tenant to retain the same deadlines as factual conditions change.

12. Section 42A-26(c)(2)(F); Lines 576-584. The requirement to make revisions to the project’s TDM Plan and the imposition of a potential penalty to commit additional funds to supplement the strategies, seems inconsistent with the section title and function of an “Action” Plan. Perhaps this level of Plan is misnamed. The Bill seems to not be just asking for “action,” but instead, requiring results of that action and imposing penalties if a project fails to achieve those results.

13. Section 42A-26(c)(3); Lines 590-593. Where achievement of goals is measured. The Level Three Project-Based TDM Results Plan requires an owner or applicant to achieve NADMS and commuting goals “at that project.” Yet the goals for this particular Level Three Project may be equal to, higher, or lower than the district’s goals.

The two criteria in this Section exemplify some of the specific failings of the underlying premise of the legislation. First, by evaluating achievement of goals “at that project,” the benefit of being in a district and working cooperatively with other properties/employers within that district is lost. As described in the General Comments above, not all uses and not all employers have an equal ability to achieve NADMS or other commuting goals within the confines of only their individual project and employees. The benefit of establishing districts, having an overall operating structure that transcends individual projects, is what may allow goals to be achieved collectively for an area. But achievement of those goals must also be measured collectively.

14. Section 42A-26(c)(3), Lines 595-597. The ability to impose different goals on a particular project, based on “project specific parameters” and consistent with executive regulation”, seems an opportunity to single out individual sites on an unequal basis.

15. Sections 42A-26(c)(3)(B) and (C); Lines 607-619 and 620-631. These Sections allow the Department to require addition and/or substitution of TDM strategies and additional funding commitments if TDM goals have not been achieved on an individual project basis, within six or eight years respectively. These have the same deficiency as the four to six year requirements of the Action Plans.

16. Section 42-26(d); Lines 637 et seq. The proposed process for Project-Based TDM Plans is flawed in its inconsistency with the timing necessary for the other County regulatory processes with which it will be associated.

Line 640. “Made an express condition of any approval.” This requirement appears to be intended to apply to each one of these enumerated types of plans when they are acted upon, regardless of whether a TDM plan has already been established for a related, previous approval of the same project. Perhaps this language is intended to make clear that as the project evolves, the requirements of the TDM Plan can also evolve. However, this seems to be a laborious process by which to achieve that goal, that could otherwise be achieved simply by providing for amendments

of existing TDM plans before or during their implementation (which is certainly allowed today, even without specific mention).

In many cases, certain of the approvals for which TDM Plans are required are premature relative to the approval decisions that affect the TDM Plan. For example, details of a project may not be sufficiently known at the Preliminary Plan of Subdivision stage to determine and select the most viable measures for traffic mitigation. Further, for residential projects, only at site plan review does one really know with certainty the number of units to be approved in the project, as each previous approval will normally state that the “final number of units will be established at site plan review.”

The Planning Board is required to determine that a TDM plan is “approved by the Director” before the underlying development application is approved. However the action that represents the Director’s approval is not described, thereby leaving open to debate what will adequately evidence the approval of the TDM plan for purposes of MCPB action. Evidence of that approval can significantly impact the timing/schedule of Planning Board action on the underlying application. If “approved by the Director” means that an agreement must have been signed before MCPB acts, the current, very laborious and time-consuming signature process will negate every 120 day review clock. (See Lines 655-657.)

17. Section 42A-31. Lines 819, et seq. TDM fee. The new TDM fee can be charged to an applicant for an application, or to the owner of an existing building (see Lines 828-832). The timing of payment of the fee is important, as well as the conditions which give rise to its being levied. This issue must be looked in two situations—an existing building, and an applicant for a new application.

(a) For the owner of an existing building, the issue is fairly straightforward, because the existing building already exists. There is still a question of at what point in time the fee is due, but at least the owner of the existing building has an income stream with which to pay that fee.

(b) On the other hand, an “applicant” will not be getting revenue from that “application” for years, if at all. The Bill does not identify when payment of the fee is due as to an applicant. To resolve this question, the fee should only be applicable and payable once the project for which the application has been sought, receives a use and occupancy certificate allowing it to operate. (There is no traffic to mitigate until that time.) While an application is going through the regulatory review process, there is no income with which to pay the fee, and, as we know, the regulatory process can be protracted.

(c) Does the fee apply the moment when an individual becomes an “applicant,” merely by filing an application? Must the fee then be paid each year thereafter—while the applications are continuing through the government processes and construction? This seems most unfair to charge the fee to an “applicant” while he/she is simply applying for or seeking approvals or implementing an approved use before the use actually exists. What happens if the application never proceeds to construction? Is the fee forgiven or refunded?

(d) This fee can represent a significant upfront burden of cost that has to be financed by an applicant throughout the entire term of the regulatory and construction processes. Instead, the fee should be due only after a use and occupancy certificate is issued to the particular project with which the application has been filed. Essentially, in order to be fundamentally fair, the fee on an applicant should wait until an “applicant” matures into being an “owner”.

18. Section 42A-31(c); Lines 845-856. TDM Fee Rate. The rate of the TDM fee is to be set so as to produce not more than the amount of revenue necessary for the administering the TDM in the district and the cost of programs/vehicles/equipment needed to carry out the TDM program. There are some significant problems with this approach that may or may not be intended.

(a) There is no incentive to economize, or use revenue wisely. By allowing the fee to float and cover “all costs” of TDM in the district, it represents a blank check from the fee paying members of the public to the County.

(b) The Bill makes it appear that the entire cost of TDM in the district is to be supported by the fee. This would present a knowing offset of other General Fund contributions. This seems like the government getting out of the government business--not funding these operations by tax revenue, but only by the fee. This places a significant cost burden on properties within the district and creates inequities in competitiveness within the County, even before examining and comparing the County competitiveness to other surrounding jurisdictions. If the TDM and the districts are a desired and intended public benefit, they should be supported, at least in significant part, by the public generally through the General Fund.

(c) Section 31(c)(2) appears to allow the TMDs to fund capital costs for vehicles—for buses, BRT vehicles, etc. These expenditures should be general government costs, rather than costs particular to the TMD district alone. Ride-On buses for example, are unlikely to operate only within the district, and therefore not only benefit properties/uses within the district. Similarly, BRT, is, by its very nature, a service that transcends individual TMDs or planning areas. These are not assets/benefits only to the TMDs and should not be supported only by the TMDs.

Lines 848-851. The fee speaks of the portion of the cost “reasonably attributable to the effects of the development project property subject to the fee.” This suggests that the fee can be varied on a project by project basis, not just uniformly by categories of uses, as in Lines 871-872. Variation in fees imposed, without standards by the government department, seems ripe for abuse. Any fee imposed should be the same for like uses within each district, without individual variation.

19. Section 42A-32, Lines 873-889. Enforcement. The Bill should make a distinction between two areas of non-compliance. Failing to undertake what is under the applicant’s control and called for by the TDM Plan is a suitable point for action to be treated as a violation. But, Sections 42A-32(a) and (b) treat a party who “does not comply with the approved plan” as a violation. This could make failing to meet NADMS or other commuting goals into a violation. This is not appropriate and should be changed.

Failing to do what the TDM Plan requires a party to do that is within that party’s control is suitable to be treated as a violation. But “not complying” with the approved Plan by failing to

achieve the goals, is out of the control of the party signing onto the Plan. That failure to comply should not be a violation.

20. Section 42A-32(c). Lines 884-888. This Section is missing the act that is intended to constitute the violation. See particularly Line 887. The action that represents the violation appears to be missing in that sentence.

Thank you for the opportunity to present these comments on Bill No. 36-18.