

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

[(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.]

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

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

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

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

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

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

Resident means an adult domiciled in the relevant area.

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

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

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

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

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

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

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

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

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

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

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

42A-22. Findings and purposes.

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

- 294 (A) the Director finds that a plan is necessary to achieve the
 295 purpose of this Article because of the owner's control of
 296 parking or common space or for similar reasons; and
- 297 (B) the Director notifies the owner of the building under
 298 subsection (a).]
- 299 [(2) As specified in the notice, the owner's plan may cover all or some
 300 employers in the building. A plan submitted under this
 301 subsection may be in addition to one an individual employer
 302 must submit.]
- 303 [(3) After receiving notice under this Section, an owner must submit
 304 a traffic mitigation plan that meets the requirements applicable
 305 to an employer.]
- 306 [(g) (1) The Director may require an owner of a residential building or
 307 complex with at least 100 dwelling units, including a common
 308 ownership community as defined in Chapter 10B, in a district to
 309 submit a traffic mitigation plan if:
- 310 (A) the Director finds that a plan is necessary to achieve the
 311 purpose of this Article because of the owner's control of
 312 parking or common space or for similar reasons; and
- 313 (B) the Director notifies the owner of the building under
 314 subsection (a).
- 315 (2) After receiving notice under this Section, an owner of a
 316 residential building must submit a traffic mitigation plan that
 317 meets the requirements applicable to an employer.]
- 318 [(h) The Director must offer to help employers and owners prepare traffic
 319 mitigation plans.]
- 320 [(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.

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

537 (A) Appointment of a Transportation Coordinator and
538 Commitment to Cooperate with the Department's
539 Programs. Each owner of a project must designate an
540 individual responsible to assist and cooperate with the
541 Department's efforts to achieve the ~~Non-Auto Driver~~
542 ~~Mode Share~~ goals NADMS Goals and other traffic
543 mitigation and commuting goals established for that area.
544 This assistance must include distribution of information on
545 commuting options to the on-site population; coordinating
546 with the Department to conduct on-site commuting-related
547 outreach events; ensuring participation in commuter
548 surveys by the on-site population; attending occasional
549 training sessions for Transportation Coordinators; and
550 other duties included in the Executive Regulation.

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

557 (C) Access to the Project. Each owner must provide space on-
558 site by prior arrangement with the Department to allow the
559 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:

(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 Department must require that the owner or applicant implement parking management strategies for a project that fails to achieve its 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 achieving its goals, in compliance with the ~~Executive Regulation~~ executive regulation.

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

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
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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.