



**Committee:** PHED  
**Committee Review:** At a future date  
**Staff:** Robert H. Drummer, Senior Legislative Attorney  
Pamela Dunn, Senior Legislative Analyst  
Glenn Orlin, Senior Analyst  
**Purpose:** To receive testimony – no vote expected  
**Keywords:** #ValidityPeriod, Subdivision Staging Policy, SSP

AGENDA ITEM 18  
September 15, 2020  
**Public Hearing**

## SUBJECT

Bill 37-20, Subdivision – Preliminary Plan - Adequate Public Facilities – Amendments  
Lead Sponsor: Council President at the request of the Planning Board

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Public Hearing – no vote expected

## DESCRIPTION/ISSUE

Bill 37-20 would require a development application to be retested for school infrastructure adequacy for the remaining unbuilt units when an applicant requests an extension of the validity period of an adequate public facilities determination. The retest would be done using the school test in effect at the time of the review by the Planning Board.

## SUMMARY OF KEY DISCUSSION POINTS

- Is it reasonable to require a determination of school adequacy on unbuilt units under a request for extension of the validity period?

### This report contains:

Bill 37-20	©1
Legislative Request Report	©4
Economic Impact statement	©5
Fiscal Impact statement	©7
Planning Board Recommendation 4.14	©9

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**M E M O R A N D U M**

September 10, 2020

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney  
Pamela Dunn, Senior Legislative Analyst  
Glenn Orlin, Senior Analyst

SUBJECT: Bill 37-20, Subdivision – Preliminary Plan - Adequate Public Facilities – Amendments

PURPOSE: Public Hearing – no Council votes required

Bill 37-20, Adequate Public Facilities – Validity Period Extensions – Amendments, sponsored by Lead Sponsor Council President at the request of the Planning Board, was introduced on July 29, 2020. A Planning, Housing and Economic Development Committee worksession is tentatively scheduled for September 30 at 1:30 p.m.<sup>1</sup>

Bill 37-20 would require a development application to be retested for school infrastructure adequacy for the remaining unbuilt units when an applicant requests an extension of the validity period of an adequate public facilities determination. The retest would be done using the school test in effect at the time of the review by the Planning Board. The new retest would be required because school conditions and tests change over time. Planning Board Recommendation 4.14 explains the purpose of this Bill. See ©9.

Code §33A-15(b)(2) requires the Planning Board to approve and send to the Council a recommended Subdivision Staging Policy (SSP) by August 1. The Planning Board often recommends other legislative changes concurrent with its recommended changes to the Subdivision Staging Policy (SSP).<sup>2</sup> Bill 37-20 is one of the Planning Board’s recommended changes to law.

On July 30, the Planning Board transmitted a recommended 2020-2024 Subdivision Staging Policy (SSP) and related legislative changes, including Bill 37-20. In order to provide additional opportunity for the public and the Council to review the Board’s recommendations, Bill 37-20 was introduced before the Planning Board’s final action on the SSP.

OMB estimated that the Bill would have no effect on County expenditures. County revenue could change if the retest requires (or removes the requirement for) a Utilization Premium Payment. If adopted by the Council as part of the 2020-2024 SSP, Utilization Premium Payments would be required for projects in certain school service areas based on the Annual School Test.

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<sup>1</sup>#ValidityPeriod, Subdivision Staging Policy, SSP

<sup>2</sup> One of the Planning Board’s recommendations is to change the name of the SSP to the County Growth Policy.

See ©7-8. OLO estimated that Bill 37-20 would have an insignificant impact on the County's economy. See ©5-6.

This packet contains:

	<u>Circle #</u>
Bill 37-20	1
Legislative Request Report	4
Economic Impact statement	5
Fiscal Impact statement	7
Planning Board Recommendation 4.14	9

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Bill No. 37-20  
Concerning: Subdivision – Preliminary  
Plan – Adequate Public Facilities –  
Amendments  
Revised: 6/30/2020 Draft No. 1  
Introduced: July 29, 2020  
Expires: January 29, 2022  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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**AN ACT** to:

- (1) require an applicant for an extension of the validity period of an adequate public facilities determination to provide an updated determination of school adequacy for the remaining unbuilt units; and
- (2) generally amend the law governing a determination of adequate public facilities

By amending

Montgomery County Code  
Chapter 50, Subdivision of Land  
Division 50.4, Section 4.3

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

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

1           **Sec. 1. Division 50.4, Section 4.3 is amended as follows:**

2   **4.3. Technical Review**

3   \*     \*     \*

4           J.    *Adequate Public Facilities Ordinance (APFO).*

5   \*     \*     \*

6                   7.    *Extensions.*

7                   a.    *Application.* Only the Board may extend the validity  
8                                   period for a determination of adequate public facilities;  
9                                   however, a request to amend any validity period phasing  
10                                  schedule may be approved by the Director if the length of  
11                                  the total validity period is not extended.

12   \*     \*     \*

13                   iii.   For each extension of an adequate public facilities  
14                                  determination:

15                                  (a)   the applicant must not propose any additional  
16    development above the amount approved in  
17    the original determination;

18                                  (b)   the Board must not require any additional  
19    public improvements or other conditions  
20    beyond those required for the original  
21    preliminary plan;

22                                  (c)   the Board may require the applicant to submit  
23    a traffic study to demonstrate how the  
24    extension would not be adverse to the public  
25    interest;[and]

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(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot[.]; and

(e) the applicant must provide a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.

\* \* \*

g. If a new adequate public facilities determination is required under this Subsection, the procedures in Chapter 8, Section 8-32 apply.

**Sec. 2. Transition.**

The amendments made in Section 1 must apply to any requests to extend the validity period for a determination of adequate public facilities received by the Planning Board on or after January 1, 2021.

## LEGISLATIVE REQUEST REPORT

Bill 37-20

*Subdivision – Preliminary Plan – Adequate Public Facilities – Amendments*

<b>DESCRIPTION:</b>	Bill 37-20 would require an applicant requesting an extension of the validity period of an adequate public facilities determination to provide a new determination of school adequacy for the remaining unbuilt units under the school test in effect at the time of Planning Board review.
<b>PROBLEM:</b>	This Bill is part of the Planning Board’s recommended changes to the Subdivision Staging Policy.
<b>GOALS AND OBJECTIVES:</b>	Improve the development review process.
<b>COORDINATION:</b>	The Planning Board and Planning Department staff
<b>FISCAL IMPACT:</b>	Office of Management and Budget
<b>ECONOMIC IMPACT:</b>	OLO
<b>EVALUATION:</b>	To be determined.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Pamela Dunn, Senior Legislative Analyst and Robert H. Drummer, Senior Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	None.

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# Economic Impact Statement

Office of Legislative Oversight

## Bill 37-20

## Subdivision – Preliminary Plan – Adequate Public Facilities – Amendments

### SUMMARY

The Office of Legislative Oversight (OLO) expects the enactment of Bill 37-20 to have an insignificant economic impact on private organizations and residents in Montgomery County.

### BACKGROUND

The purpose of Bill 37-20 is to improve the development review process.<sup>1</sup> If enacted, the Bill would change the Planning Board’s Subdivision Staging Policy by requiring “an applicant for an extension of the validity period of an adequate public facilities determination to provide an updated determination of school adequacy for the remaining unbuilt units.”<sup>2</sup>

### METHODOLOGIES, ASSUMPTIONS and UNCERTAINTIES

No methodologies were used in this statement. The assumptions underlying the claims made in the subsequent sections are based on OLO staff judgment.

### VARIABLES

Not applicable

### IMPACTS

#### Businesses, Non-Profits, Other Private Organizations

Workforce, operating costs, property values, capital investment, taxation policy, economic development, competitiveness, etc.

OLO believes that enacting Bill 37-20 would have an insignificant impact on private organizations in the County in terms of the Council’s priority indicators, namely workforce, operating costs, property values, capital investment, taxation policy, economic development, and competitiveness.<sup>3</sup>

#### Residents

Workforce, property values, income, taxation policy, economic development, etc.

OLO believes that enacting Bill 37-20 would have an insignificant impact on County residents in terms of the Council’s priority indicators, namely

<sup>1</sup> Montgomery County Council, Bill 37-20, Subdivision – Preliminary Plan – Adequate Public Facilities – Amendments, Introduced on July 29, 2020, Montgomery County, Maryland, 4.

<sup>2</sup> Ibid, 1.

<sup>3</sup> For the Council’s priority indicators, see Montgomery County Council, Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments, Enacted on July 30, 2019, Montgomery County, Maryland, 3.

# Economic Impact Statement

Office of Legislative Oversight

workforce, property values, income, taxation policy, and economic development.

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## WORKS CITED

Montgomery County Council. Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments. Enacted on July 30, 2019. Montgomery County, Maryland.

Montgomery County Council. Bill 37-20, Subdivision – Preliminary Plan – Adequate Public Facilities – Amendments. Introduced on July 29, 2020. Montgomery County, Maryland.

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## CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent the OLO's endorsement of, or objection to, the bill under consideration.

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## CONTRIBUTIONS

Stephen Roblin (OLO) drafted this economic impact statement after consultation with Lisa Govoni, Housing Policy Coordinator, with the Montgomery County Planning Department.

**Fiscal Impact Statement**  
**Bill 37-20, Subdivision – Preliminary Planning –**  
**Adequate Public Facilities – Amendments**

**1. Legislative Summary**

Bill 37-20 would require an applicant requesting an extension of the validity period of an adequate public facilities determination to provide a new determination of school adequacy for the remaining unbuilt units under the school test in effect at the time of Planning Board review. The proposed bill aims to improve the development review process.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

This bill will have no impact on County expenditures. Its impact on revenues depends on the school test at the time that an applicant requests an extension of the adequate public facilities determination, whether that school test would increase or reduce impact taxes or fees on the remaining, unbuilt units, and whether, in certain parts of the county, there is any school capacity for building.

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

Per Question #2, this Bill does not impact County expenditures over the next six years. Impact on revenues would depend on whether impact taxes or fees would be increased or reduced for the remaining, unbuilt units under the school test in effect at the time of Planning Board review.

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

Not applicable.

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

Not applicable.

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

This bill does not authorize future spending.

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

No additional staff time is needed to implement Bill 37-20.

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

Not applicable.

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

No addition appropriation is needed.

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

As noted in #2, revenues are affected by tax and fee rates in the school test at the time that an applicant seeks an extension of the adequate public facilities determination, and whether there is school capacity to build in certain parts of the county.

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

See responses in Questions #2 and #10.

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

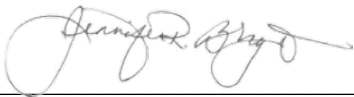
Not applicable.

**13. Other fiscal impacts or comments.**

Not applicable.

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

Meredith Wellington, Land Use Planning Policy Analyst, Office of the County Executive  
Pofen Salem, Office of Budget and Management



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Jennifer Bryant, Acting Director  
Office of Management and Budget

08/21/20

Date

Table 11. 2019 Student Generation Rate Countywide and by School Impact Area.

		Student Generation Rates			
		ES	MS	HS	K-12
Countywide	Single-Family Detached	0.198	0.111	0.155	0.464
	Single-Family Attached	0.222	0.115	0.151	0.487
	Multifamily (Since 1990)	0.066	0.030	0.036	0.133
Infill Impact Areas	Single-Family Detached	0.190	0.096	0.133	0.419
	Single-Family Attached	0.171	0.086	0.112	0.369
	Multifamily (Since 1990)	0.050	0.020	0.024	0.093
Turnover Impact Areas	Single-Family Detached	0.193	0.109	0.155	0.457
	Single-Family Attached	0.229	0.120	0.160	0.510
	Multifamily (Since 1990)	0.097	0.050	0.060	0.208
Greenfield Impact Areas	Single-Family Detached	0.336	0.181	0.206	0.724
	Single-Family Attached	0.318	0.141	0.158	0.618
	Multifamily (Since 1990)	0.253	0.131	0.149	0.532

## Development Application Review



**Recommendation 4.14:** Amend Chapter 50, Article II, Section 4.3.J.7. of the County Code to require a development application to be retested for school infrastructure adequacy when an applicant requests an extension of their Adequate Public Facilities validity period.

County Code currently limits the validity of an approved preliminary plan for a development’s adequate public facilities (APF) approval to “no less than 5 and no more than 10 years after the preliminary plan is approved, as determined by the Board when it approved the plan.”<sup>28</sup> If the applicant requests an extension of the APF validity period, County Code requires that the applicant demonstrate it has secured financing and met other markers indicating that project is moving forward. It also allows the Planning Board to require the applicant to submit an updated traffic study “to demonstrate how the extension would not be averse to the public interest.”<sup>29</sup>

<sup>28</sup> Montgomery County Code, Chapter 50, Section 4.3.J.5.

<sup>29</sup> Montgomery County Code, Chapter 50, Section 4.3.J.7.

Recognizing that school conditions and school tests also change over time, this recommended amendment to the County Code would require an updated schools APF determination for any remaining unbuilt residential units utilizing the school infrastructure adequacy test in place at the time of the Planning Board’s review of the extension request.



**Recommendation 4.15:** Require MCPS to designate a representative to the Development Review Committee to better tie the development review process with school facility planning. Ensure this representative has appropriate authority to represent MCPS’s official positions.

The Development Review Committee is established in County Code as a committee consisting of Montgomery Planning staff and representatives from utility companies and federal, state, county and municipal agencies. The committee’s responsibility is to meet with development