



Committee: GO
Committee Review: At a future date
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #ImpactTax, Development, Impact Tax

AGENDA ITEM 1D
July 29, 2020
Introduction

SUBJECT

Bill 38-20, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments
Lead Sponsor: Council President at the request of the Planning Board

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To introduce Bill – no vote expected

DESCRIPTION/ISSUE

Bill 38-20 would amend transportation and school impact tax district designations and the impact tax rates that apply in these districts. Bill 38-20 would also modify the applicability of development impact tax exemptions for certain uses and in certain locations, and generally amend the law governing transportation and school development impact taxes.

SUMMARY OF KEY DISCUSSION POINTS

- Do changes to the transportation and school impact tax districts align with County policies?
- Are the proposed changes to the impact tax rates reasonable and should discounts be provided based on the location of development?
- Do the proposed impact tax exemptions for certain uses and in certain locations reflective of County policies, and are they reasonable?

This report contains:

Bill 38-20	©1
Legislative Request Report	©11

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MEMORANDUM

July 27, 2020

TO: County Council

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

SUBJECT: Bill 38-20, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments

PURPOSE: Introduction – no Council votes required

Bill 38-20, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments, sponsored by Lead Sponsor Council President at the request of the Planning Board, is scheduled to be introduced on July 29, 2020. A public hearing is tentatively scheduled for September 15 at 7:30 p.m.¹

Bill 38-20 would amend transportation and school impact tax district designations and the impact tax rates that apply in these districts. Bill 38-20 would also modify the applicability of development impact tax exemptions for certain uses and in certain locations, and generally amend the law governing transportation and school development impact taxes.

Code §33A-15(b)(2) requires the Planning Board to approve and send to the Council a recommended Subdivision Staging Policy by August 1. The Planning Board often recommends other legislative changes concurrent with its recommended changes to the Subdivision Staging Policy (SSP). Bill 38-20 is one of the Planning Board’s recommended changes to law.

On July 30, the Planning Board is scheduled to approve the 2020-2024 Subdivision Staging Policy (SSP) and related legislative changes, including Bill 38-20. In order to provide additional opportunity for the public and the Council to review the Board’s recommendations, Bill 38-20 is being introduced before the Planning Board’s final action on the SSP. If the Planning Board modifies any of its recommendations for Bill 38-20, these modifications will be noted at the Council’s public hearing in September.

This packet contains:	<u>Circle #</u>
Bill 38-20	1
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¹# ImpactTax, Development, Impact Tax

Bill No. 38-20
Concerning: Taxation - Development
Impact Taxes for Transportation and
Public School Improvements -
Amendments
Revised: 7/24/2020 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

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

AN ACT to:

- (1) update transportation and school impact tax districts;
- (2) establish impact tax rates by school impact tax districts;
- (3) eliminate the school impact tax premium on certain types of dwelling units;
- (4) modify the applicability of development impact tax exemptions for certain uses and in certain locations; and
- (5) generally amend the law governing transportation and school development impact taxes

By amending

Montgomery County Code
Chapter 52, Taxation
Sections 52-41, 52-49, 52-54, 52-55 and 52-58

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:

26 (5) *Green Policy Areas: Damascus, Rural East, and Rural West*
27 *Policy Areas.*

28 * * *

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

30 (1) any Moderately Priced Dwelling Unit built under Chapter 25A
31 or any similar program enacted by either Gaithersburg or
32 Rockville[,];

33 (2) any other dwelling unit built under a government regulation or
34 binding agreement that limits for at least 15 years the price or
35 rent charged for the unit in order to make the unit affordable to
36 households earning less than 60% of the area median income,
37 adjusted for family size;

38 (3) any Personal Living Quarters unit built under [Sec. 59-A-6.15]
39 Section 59-3.3.2.D, which meets the price or rent eligibility
40 standards for a moderately priced dwelling unit under Chapter
41 25A;

42 (4) any dwelling unit in an Opportunity Housing Project built under
43 Sections 56-28 through 56-32, which meets the price or rent
44 eligibility standards for a moderately priced dwelling unit under
45 Chapter 25A;

46 (5) [any non-exempt dwelling unit in a development in which at least
47 25% of the dwelling units are exempt under paragraph (1), (2),
48 (3), or (4), or any combination of them;]

49 6] any development located in an enterprise zone designated by the
50 State [or in an area previously designated as an enterprise zone];

- 51 (6) any development located in a Qualified Opportunity Zone
- 52 certified by the United States Treasury Department;
- 53 (7) a house built by high school students under a program operated
- 54 by the Montgomery County Board of Education; [and] or
- 55 (8) a farm tenant dwelling.

56 * * *

57 **52-49. Tax rates.**

58 * * *

- 59 (g) Any non-exempt dwelling unit in a development in which at least 25%
- 60 of the dwelling units are exempt under Section 52-41(g)(1) must pay
- 61 the tax discounted by an amount equal to the lowest standard impact
- 62 tax rate in the county for that unit type.

63 * * *

64 **52-54. Imposition and applicability of tax.**

65 * * *

- 66 (c) The following public school impact tax districts are established, as
- 67 identified in the County Growth Policy:
- 68 (1) Infill Impact Areas;
- 69 (2) Turnover Impact Areas; and
- 70 (3) Greenfield Impact Areas.

- 71 (d) The tax under this Article must not be imposed on:
- 72 (1) any Moderately Priced Dwelling Unit built under Chapter 25A
- 73 or any similar program enacted by either Gaithersburg or
- 74 Rockville[.];
- 75 (2) any other dwelling unit built under a government regulation or
- 76 binding agreement that limits for at least 15 years the price or

77 rent charged for the unit in order to make the unit affordable to
78 households earning equal to or less than 60% of the area median
79 income, adjusted for family size;

80 (3) any Personal Living Quarters unit built under Section 59-
81 3.3.2.D, which meets the price or rent eligibility standards for a
82 moderately priced dwelling unit under Chapter 25A;

83 (4) any dwelling unit in an Opportunity Housing Project built under
84 Sections 56-28 through 56-32, which meets the price or rent
85 eligibility standards for a moderately priced dwelling unit under
86 Chapter 25A;

87 (5) [any non-exempt dwelling unit in a development in which at least
88 25% of the dwelling units are exempt under paragraph (1), (2),
89 (3), or (4), or any combination of them;

90 (6)] any development located in an enterprise zone designated by the
91 State; [or in an area previously designated as an enterprise zone;
92 or]

93 (6) any development located in a Qualified Opportunity Zone
94 certified by the United States Treasury Department; or

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

97 * * *

98 **52-55. Tax rates.**

99 (a) The Council must establish the [Countywide] rates for each school
100 impact tax district [the tax under this Article] by resolution after a
101 public hearing advertised at least 15 days in advance.

- 102 (b) [The tax on any single-family detached or attached dwelling unit must
 103 be increased by \$2 for each square foot of gross floor area that exceeds
 104 3,500 square feet, to a maximum of 8,500 square feet.]
 105 Any non-exempt single-family attached or multifamily unit located in
 106 a Desired Growth and Investment Area, as defined in the County
 107 Growth Policy, must pay the tax at 60% of the otherwise applicable
 108 rate.
- 109 (c) Any Productivity Housing unit, as defined in Section 25B-17(j), must
 110 pay the tax at 50% of the otherwise applicable rate.
- 111 (d) The County Council by resolution, after a public hearing advertised at
 112 least 15 days in advance, may increase or decrease the rates established
 113 under this Section.
- 114 (e) The Director of Finance, after advertising and holding a public hearing
 115 as required by Section 52-17(c), must adjust the tax rates set in or under
 116 this Section effective on July 1 of each odd-numbered year in
 117 accordance with the update to the Subdivision Staging Policy using the
 118 latest student generation rates and school construction cost data. The
 119 Director must calculate the adjustment to the nearest multiple of one
 120 dollar. The Director must publish the amount of this adjustment not
 121 later than May 1 of each odd- numbered year.
- 122 (f) Any non-exempt dwelling unit in a development in which at least 25%
 123 of the dwelling units are exempt under Section 52-41(g)(1) must pay
 124 the tax discounted by an amount equal to the lowest standard impact
 125 tax rate in the county for that unit type.

126 **52-58. Credits.**

- 127 (a) Section 52-47 does not apply to the tax under this Article.

128 (b) A property owner must receive a credit for constructing or contributing
 129 to an improvement of the type listed in Section 52-56(d), including
 130 costs of site preparation.

131 (c) A property owner may receive credit for constructing or contributing to
 132 other physical school facility improvements not listed in Section 52-
 133 56(d) if the Montgomery County School Board agrees to the
 134 improvement.

135 (d) A property owner may receive credit for land dedicated for a school
 136 site, if:

- 137 (1) the density calculated for the dedication area is excluded from
- 138 the density calculation for the development site; and
- 139 (2) the Montgomery County School Board agrees to the site
- 140 dedication.

141 [(b)] (e) If the property owner elects to make a qualified improvement or
 142 dedication, the owner must enter into an agreement with the Director of
 143 Permitting Services, or receive a development approval based on
 144 making the improvement, before any building permit is issued. The
 145 agreement or development approval must contain:

- 146 (1) the estimated cost of the improvement or the fair market value of
- 147 the dedicated land, if known then,
- 148 (2) the dates or triggering actions to start and, if known then, finish
- 149 the improvement or land transfer;
- 150 (3) a requirement that the property owner complete the improvement
- 151 according to Montgomery County Public Schools standards; and
- 152 (4) such other terms and conditions as MCPS finds necessary.

153 [(c)] (f) MCPS must:

- 154 (1) review the improvement plan or dedication;
- 155 (2) verify costs or land value and time schedules;
- 156 (3) determine whether the improvement is a public school
- 157 improvement of the type listed in Section 52-56(d), meets the
- 158 requirements of subsection (c), or meets the dedication
- 159 requirements in subsection [(a)] (d);
- 160 (4) determine the amount of the credit for the improvement or
- 161 dedication; and
- 162 (5) certify the amount of the credit to the Department of Permitting
- 163 Services before that Department or a municipality issues any
- 164 building permit.

165 [(d)] (g) An applicant for subdivision, site plan, or other development
 166 approval from the County, Gaithersburg, or Rockville, or the owner of
 167 property subject to an approved subdivision plan, development plan,
 168 floating zone plan, or similar development approval, may seek a
 169 declaration of allowable credits from MCPS. MCPS must decide,
 170 within 30 days after receiving all necessary materials from the
 171 applicant, whether any public school improvement which the applicant
 172 has constructed, contributed to, or intends to construct or contribute to,
 173 will receive a credit under this subsection. If during the initial 30-day
 174 period after receiving all necessary materials, MCPS notifies the
 175 applicant that it needs more time to review the proposed improvement,
 176 MCPS may defer its decision an additional 15 days. If MCPS indicates
 177 under this paragraph that a specific improvement is eligible to receive
 178 a credit, the Director of Permitting Services must allow a credit for that
 179 improvement. If MCPS cannot or chooses not to perform any function

180 under this subsection or subsection (c), the Department of Permitting
 181 Services must perform that function.

182 ~~[(e)]~~ (h) (1) A property owner must receive a credit for constructing or
 183 contributing to the cost of building a new single family residence
 184 that meets Level I Accessibility Standards, as defined in Section
 185 52-107(a).

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

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

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

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

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

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

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

204 ~~[(f)]~~ (i) The Director of Finance must not provide a refund for a credit
 205 which is greater than the applicable tax.

206 ~~[(g)]~~ (j) Any credit issued under this Section before December 31, 2015
207 expires 6 years after the Director certifies the credit. Any credit issued
208 under this Section on or after January 1, 2016 expires 12 years after the
209 Director certifies the credit.

210 ~~[(h)]~~ (k) After a credit has been certified under this Section, the property
211 owner or contract purchaser to whom the credit was certified may
212 transfer all or part of the credit to any successor in interest of the same
213 property. However, any credit transferred under this subsection must
214 only be applied to the tax due under this Article with respect to the
215 property for which the credit was originally certified.

216 **Sec. 2. Transition.**

217 The amendments in Section 1 take effect on March 1, 2021 and must apply to
218 any application for a building permit filed on or after March 1, 2021 except that the
219 amendments related to discounts or exemptions for projects with 25% MPDUs must
220 only apply to development for which a preliminary plan application is filed and
221 accepted on or after March 1, 2021.

LEGISLATIVE REQUEST REPORT

Bill 38-20

Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments

DESCRIPTION:	Bill 38-20 would amend transportation and school impact tax district designations and the impact tax rates that apply in these districts. Bill 38-20 would also modify the applicability of development impact tax exemptions for certain uses and in certain locations, and generally amend the law governing transportation and school development impact taxes.
PROBLEM:	This Bill is part of the Planning Board's recommended changes to the Subdivision Staging Policy.
GOALS AND OBJECTIVES:	Improve the development review process.
COORDINATION:	The Planning Board and Planning Department staff
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	OLO
EVALUATION:	To be determined.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Pamela Dunn, Senior Legislative Analyst and Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	None.