

Bill No. 38-20
Concerning: Taxation - Development
Impact Taxes for Transportation and
Public School Improvements -
Amendments
Revised: 11/13/2020 Draft No. 12
Introduced: July 29, 2020
Enacted: November 16, 2020
Executive: _____
Effective: February 26, 2021
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) establish a Utilization Premium Payment for certain developments to reduce school overcapacity; ~~[[and]]~~
- (6) define an agricultural facility;
- (7) provide a discount on certain impact tax rates for certain types of developments and for developments in certain areas; and
- (8) generally amend the law governing transportation and school development impact taxes.

By amending

Montgomery County Code

Chapter 52, Taxation

Sections 52-39, 52-41, 52-49, 52-50, 52-52, 52-54, 52-55, ~~[[and]]~~ 52-58, and 52-59

Boldface

Underlining

~~[[Single boldface brackets]]~~

Double underlining

~~[[Double boldface brackets]]~~

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

1 **Sec. 1. Sections 52-39, 52-41, 52-49, 52-50, 52-52, 52-54, 52-55, [[and]] 52-**
 2 **58, and 52-59 are amended as follows:**

3 **52-39. Definitions.**

4 In this Article the following terms have the following meanings:

5 *Additional capacity* means a new road, [[widening an existing road,]] adding
 6 an additional lane or turn lane to an existing road, or another transportation
 7 improvement that:

8 (1) increases the maximum theoretical volume of traffic that a road
 9 or intersection can accommodate, or implements or improves
 10 transit, pedestrian and bike facilities or access to non-auto modes
 11 of travel; and

12 (2) is classified as a minor arterial, arterial, parkway, major highway,
 13 controlled major highway, or freeway in the County’s Master
 14 Plan of Highways, or is similarly classified by a municipality.
 15 The Director of Transportation may find that a specified business
 16 district street or industrial street also provides additional capacity
 17 as defined in this provision.

18 *Adequate Public Facilities Ordinance policy area transportation adequacy*
 19 *standards* means standards by which the area-wide adequacy of transportation
 20 facilities serving a proposed development are judged. APFO policy area
 21 transportation adequacy standards do not include requirements for other on-
 22 site or off-site transportation improvements that may be separately required
 23 or standards relating to local area review which may be independently
 24 required.

25 *Agricultural facility* means a building or structure, or portion of a building or
 26 structure that is used exclusively for the storage or processing of an

27 agricultural product to prepare the product for market and is located in the
28 Agricultural Reserve, Rural Residential, RE-1 or RE-2 Zones.

29 *Applicant* means the property owner, or duly designated agent of the property
30 owner, of land on which a building permit has been requested for
31 development.

32 * * *

33 **52-41. Imposition and applicability of development impact taxes.**

34 * * *

35 (c) The following impact tax districts are established:

36 (1) *White Flint*: The part of the White Flint Metro Station Policy
37 Area included in the White Flint Special Taxing District in
38 Section 68C-2;

39 (2) *Red Policy Areas*: Bethesda CBD, Chevy Chase Lake, ~~[[Dale~~
40 ~~Drive/Manchester Place,]]~~ Forest Glen, Friendship Heights,
41 Grosvenor, Glenmont, ~~[[Long Branch, Lyttonsville/Woodside]]~~,
42 Lyttonsville, Medical Center, Purple Line East, Rockville Town
43 Center, Shady Grove ~~[[Metro Station]]~~, Silver Spring CBD,
44 ~~[[Takoma/Langley]]~~ Takoma, Twinbrook, ~~[[and]]~~ Wheaton
45 CBD and Woodside;

46 (3) *Orange Policy Areas*: Bethesda/Chevy Chase, Burtonsville
47 Crossroads, [Chevy Chase Lake,] Clarksburg Town Center,
48 Derwood, Gaithersburg City, Germantown Town Center,
49 Kensington/Wheaton, [Long Branch,] North Bethesda, R&D
50 Village, Rockville City, Silver Spring/Takoma Park,
51 [Takoma/Langley,] White Flint, except the portion that is
52 included in the White Flint Special Taxing District in Section
53 68C-2, and White Oak Policy Areas;

- 54 (4) *Yellow Policy Areas:* Aspen Hill, Clarksburg, Cloverly,
- 55 Fairland/Colesville, Germantown East, Germantown West,
- 56 Montgomery Village/Airpark, North Potomac, Olney, and
- 57 Potomac Policy Areas; and
- 58 (5) *Green Policy Areas:* Damascus, Rural East, and Rural West
- 59 Policy Areas.

60 * * *

- 61 (g) A development impact tax must not be imposed on:
- 62 (1) any Moderately Priced Dwelling Unit built under Chapter 25A
- 63 or any similar program enacted by either Gaithersburg or
- 64 Rockville[.];
- 65 (2) any other dwelling unit built under a government regulation or
- 66 binding agreement that limits for at least 15 years the price or
- 67 rent charged for the unit in order to make the unit affordable to
- 68 households earning less than 60% of the area median income,
- 69 adjusted for family size;
- 70 (3) any Personal Living Quarters unit built under [Sec. 59-A-6.15]
- 71 Section 59-3.3.2.D, which meets the price or rent eligibility
- 72 standards for a moderately priced dwelling unit under Chapter
- 73 25A;
- 74 (4) any dwelling unit in an Opportunity Housing Project built under
- 75 Sections 56-28 through 56-32, which meets the price or rent
- 76 eligibility standards for a moderately priced dwelling unit under
- 77 Chapter 25A;
- 78 (5) [any non-exempt dwelling unit in a development in which at least
- 79 25% of the dwelling units are exempt under paragraph (1), (2),
- 80 (3), or (4), or any combination of them;

- 81 6] any development located in an enterprise zone designated by the
 82 State [or in an area previously designated as an enterprise zone];
 83 (6) except for a development located in the City of Rockville, any
 84 development located in a Qualified Opportunity Zone certified
 85 by the United States Treasury Department;
 86 (7) a house built by high school students under a program operated
 87 by the Montgomery County Board of Education; [and] or
 88 (8) a farm tenant dwelling.
- 89 (h) The development impact tax does not apply to:
- 90 (1) any reconstruction or alteration of an existing building or part of
 91 a building that does not increase the gross floor area of the
 92 building;
- 93 (2) any ancillary building in a residential development that:
- 94 (A) does not increase the number of dwelling units in that
 95 development; and
- 96 (B) is used only by residents of that development and their
 97 guests, and is not open to the public; and
- 98 (3) any building that replaces an existing building on the same site
 99 or in the same project (as approved by the Planning Board or the
 100 equivalent body in Rockville or Gaithersburg) to the extent of the
 101 gross floor area of the previous building, if:
- 102 (A) [[construction begins]] an application for a building permit
 103 is filed within four years [[one year]] after demolition or
 104 destruction of the previous building was substantially
 105 completed; [[or]]
- 106 (B) the Director of the Department of Permitting Services or
 107 the Director's designee finds that the applicant was unable

108 to apply for a building permit or commence construction
109 within four years after demolition or destruction of the
110 previous building was substantially completed due to
111 circumstances beyond the control of the applicant or the
112 applicant’s agents; or

113 (C) the previous building is demolished or destroyed, after the
114 replacement building is built, by a date specified in a
115 phasing plan approved by the Planning Board or
116 equivalent body.

117 However, if in ~~[[either]]~~ any case the development impact tax
118 that would be due on the new, reconstructed, or altered building
119 is greater than the tax that would have been due on the previous
120 building if it were taxed at the same time, the applicant must pay
121 the difference between those amounts.

122 **52-49. Tax rates.**

123 * * *

124 (g) Any non-exempt dwelling unit in a development in which at least 25%
125 of the dwelling units are exempt under Section 52-41(g)(1) must pay
126 the tax discounted by an amount equal to the ~~[[lowest standard]]~~ impact
127 tax rate applicable in the ~~[[County]]~~ Red Policy Area for that unit type.

128 (h) Except for a development located in the City of Rockville, any
129 development located in a Desired Growth and Investment Area, as
130 defined in the 2020-2024 Growth and Infrastructure Policy
131 (Subdivision Staging Policy), must pay the tax at:

132 (1) ~~[[40%]]~~ 60% of the otherwise applicable rate if located in an
133 Orange Policy Area; or

- 161 (1) any Moderately Priced Dwelling Unit built under Chapter 25A
 162 or any similar program enacted by either Gaithersburg or
 163 Rockville[,];
- 164 (2) any other dwelling unit built under a government regulation or
 165 binding agreement that limits for at least 15 years the price or
 166 rent charged for the unit in order to make the unit affordable to
 167 households earning equal to or less than 60% of the area median
 168 income, adjusted for family size;
- 169 (3) any Personal Living Quarters unit built under Section 59-
 170 3.3.2.D, which meets the price or rent eligibility standards for a
 171 moderately priced dwelling unit under Chapter 25A;
- 172 (4) any dwelling unit in an Opportunity Housing Project built under
 173 Sections 56-28 through 56-32, which meets the price or rent
 174 eligibility standards for a moderately priced dwelling unit under
 175 Chapter 25A;
- 176 (5) [any non-exempt dwelling unit in a development in which at least
 177 25% of the dwelling units are exempt under paragraph (1), (2),
 178 (3), or (4), or any combination of them;
- 179 (6)] any development located in an enterprise zone designated by the
 180 State; [or in an area previously designated as an enterprise zone;
 181 or]
- 182 (6) except for a development located in the City of Rockville, any
 183 development located in a Qualified Opportunity Zone certified
 184 by the United States Treasury Department; or
- 185 (7) a house built by high school students under a program operated
 186 by the Montgomery County Board of Education.
- 187 ~~[(d)]~~ (e) The tax under this Article does not apply to:

- 188 (1) any reconstruction or alteration of an existing building or part of
 189 a building that does not increase the number of dwelling units of
 190 the building;
- 191 (2) any ancillary building in a residential development that:
 192 (A) does not increase the number of dwelling units in that
 193 development; and
 194 (B) is used only by residents of that development and their
 195 guests, and is not open to the public; and
- 196 (3) any building that replaces an existing building on the same site
 197 or in the same project (as approved by the Planning Board or the
 198 equivalent body in Rockville or Gaithersburg) to the extent of the
 199 number of dwelling units of the previous building, if:
 200 (A) [[construction begins]] an application for a building permit
 201 is filed within four years [[one year]] after demolition or
 202 destruction of the previous building was substantially
 203 completed; [[or]]
 204 (B) the Director of the Department of Permitting Services or
 205 the Director's designee finds that the applicant was unable
 206 to apply for a building permit or commence construction
 207 within four years after demolition or destruction of the
 208 previous building was substantially completed due to
 209 circumstances beyond the control of the applicant or the
 210 applicant's agents; or
 211 (C) the previous building is demolished or destroyed, after the
 212 replacement building is built, by a date specified in a
 213 phasing plan approved by the Planning Board or
 214 equivalent body.

215 However, if in ~~[[either]]~~ any case the tax that would be due on the new,
 216 reconstructed, or altered building is greater than the tax that would have
 217 been due on the previous building if it were taxed at the same time, the
 218 applicant must pay the difference between those amounts.

219 ~~[[e)]~~ (f) If the type of proposed development cannot be categorized under
 220 the residential definitions in Section 52-39 and 52-52, the Department
 221 must use the rate assigned to the type of residential development which
 222 generates the most similar school enrollment characteristics.

223 ~~[[f)]~~ (g) A Clergy House must pay the impact tax rate that applies to a
 224 place of worship under Section 52-41(d) if the house:

- 225 (1) is on the same lot or parcel, adjacent to, or confronting the
 226 property on which the place of worship is located; and
 227 (2) is incidental and subordinate to the principal building used by the
 228 religious organization as its place of worship.

229 The place of worship tax rate does not apply to any portion of a Clergy
 230 House that is nonresidential development.

231 **52-55. Tax rates.**

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

235 (b) [The tax on any single-family detached or attached dwelling unit must
 236 be increased by \$2 for each square foot of gross floor area that exceeds
 237 3,500 square feet, to a maximum of 8,500 square feet.]

238 [[Any non-exempt single-family attached or multifamily unit located in
 239 a Desired Growth and Investment Area, as defined in the County
 240 Growth Policy, must pay the tax at 60% of the otherwise applicable
 241 rate.

242 (c)] Any Productivity Housing unit, as defined in Section 25B-17(j), must
243 pay the tax at 50% of the otherwise applicable rate.

244 [(d)] (c) The County Council by resolution, after a public hearing
245 advertised at least 15 days in advance, may increase or decrease the
246 rates established under this Section.

247 [(e)] (d) The Director of Finance, after advertising and holding a public
248 hearing as required by Section 52-17(c), must adjust the tax rates set in
249 or under this Section effective on July 1 of each odd-numbered year in
250 accordance with the update to the Subdivision Staging Policy using the
251 latest student generation rates and school construction cost data. The
252 Director must calculate the adjustment to the nearest multiple of one
253 dollar. The Director must publish the amount of this adjustment not
254 later than May 1 of each odd-numbered year.

255 [(f)] (e) Any non-exempt dwelling unit in a development in which at least
256 25% of the dwelling units are exempt under Section [[52-41(g)(1)] 52-
257 54(d)(1) must pay the tax discounted by an amount equal to the [[lowest
258 standard]] impact tax rate applicable in the [[County]] Infill School
259 Impact Area for that unit type up to the amount of the impact tax
260 otherwise applicable.

261 (f) A three-bedroom multi-family dwelling unit located in an Infill Impact
262 Area must pay the tax at 40% of the otherwise applicable rate.

263 **52-58. Credits.**

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

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

268 (c) [[A property owner may receive credit for constructing or contributing
 269 to other physical school facility improvements not listed in Section 52-
 270 56(d) if the Montgomery County School Board agrees to the
 271 improvement.

272 (d)] A property owner may receive credit for land dedicated for a school
 273 site, if:

- 274 (1) the density calculated for the dedication area is excluded from
- 275 the density calculation for the development site; and
- 276 (2) the Montgomery County School Board agrees to the site
- 277 dedication.

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

- 283 (1) the estimated cost of the improvement or the fair market value of
- 284 the dedicated land, if known then[,];
- 285 (2) the dates or triggering actions to start and, if known then, finish
- 286 the improvement or land transfer;
- 287 (3) a requirement that the property owner complete the improvement
- 288 according to Montgomery County Public Schools standards; and
- 289 (4) such other terms and conditions as MCPS finds necessary.

290 [(c)] [(f)] (e) MCPS must:

- 291 (1) review the improvement plan or dedication;
- 292 (2) verify costs or land value and time schedules;
- 293 (3) determine whether the improvement is a public school
- 294 improvement of the type listed in Section 52-56(d)[, meets the

295 requirements of subsection (c),]] or meets the dedication
 296 requirements in subsection [(a)] ~~[(d)]~~ (c);

297 (4) determine the amount of the credit for the improvement or
 298 dedication; and

299 (5) certify the amount of the credit to the Department of Permitting
 300 Services before that Department or a municipality issues any
 301 building permit.

302 ~~[(d)]~~ ~~[(g)]~~ (f) An applicant for subdivision, site plan, or other
 303 development approval from the County, Gaithersburg, or Rockville, or
 304 the owner of property subject to an approved subdivision plan,
 305 development plan, floating zone plan, or similar development approval,
 306 may seek a declaration of allowable credits from MCPS. MCPS must
 307 decide, within 30 days after receiving all necessary materials from the
 308 applicant, whether any public school improvement which the applicant
 309 has constructed, contributed to, or intends to construct or contribute to,
 310 will receive a credit under this subsection. If during the initial 30-day
 311 period after receiving all necessary materials, MCPS notifies the
 312 applicant that it needs more time to review the proposed improvement,
 313 MCPS may defer its decision an additional 15 days. If MCPS indicates
 314 under this paragraph that a specific improvement is eligible to receive
 315 a credit, the Director of Permitting Services must allow a credit for that
 316 improvement. If MCPS cannot or chooses not to perform any function
 317 under this subsection or subsection (c), the Department of Permitting
 318 Services must perform that function.

319 ~~[(e)]~~ ~~[(h)]~~ (g) (1) A property owner must receive a credit for
 320 constructing or contributing to the cost of building a new single

321 family residence that meets Level I Accessibility Standards, as
322 defined in Section 52-107(a).

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

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

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

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

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

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

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

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

343 ~~[(g)]~~ ~~[(j)]~~ (i) Any credit issued under this Section before December 31,
344 2015 expires 6 years after the Director certifies the credit. Any credit
345 issued under this Section on or after January 1, 2016 expires 12 years
346 after the Director certifies the credit.

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

353 **52-59. ~~[[Reserved]]~~ Utilization Premium Payment.**

- 354 (a) In addition to the tax due under this Article, an applicant for a building
355 permit must pay to the Department of Finance a Utilization Premium
356 Payment if such payment was required under the Annual School Test
357 in effect at the time the building was approved.
- 358 (b) The Council by resolution, after a public hearing advertised at least 15
359 days in advance, must establish the rates for the Utilization Premium
360 Payment.
- 361 (c) The Director of Finance, after advertising and holding a public hearing,
362 must adjust the rates set in or under this Section effective on July 1 of
363 each odd-numbered year in accordance with the update to the
364 Subdivision Staging Policy using the latest student generation rates and
365 school construction cost data. The Director must calculate the
366 adjustment to the nearest multiple of one dollar. The Director must
367 publish the amount of this adjustment not later than May 1 of each odd-
368 numbered year.
- 369 (d) The Payment must be paid at the same time and in the same manner as
370 the tax under this Article.
- 371 (e) The Department of Finance must retain funds collected under this
372 Section in an account to be appropriated for any public school

373 improvement that adds capacity designed to alleviate overutilization in
 374 the school service area from which the funds were collected.

375 (f) The Utilization Premium Payment must not be imposed on any:

376 (1) Moderately Priced Dwelling Unit built under Chapter 25A or any
 377 similar program enacted by either Gaithersburg or Rockville;

378 (2) other dwelling unit built under a government regulation or
 379 binding agreement that limits for at least 15 years the price or
 380 rent charged for the unit in order to make the unit affordable to
 381 households earning equal to or less than 60% of the area median
 382 income, adjusted for family size;

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

386 (4) dwelling unit in an Opportunity Housing Project built under
 387 Sections 56-28 through 56-32, which meets the price or rent
 388 eligibility standards for a moderately priced dwelling unit under
 389 Chapter 25A.

390 **Sec. 2. Effective date -Transition.**

391 This Act takes effect on February 26, 2021. The amendments in Section 1
 392 [[take effect on March 1, 2021 and]] must apply to:

393 (1) any application for a building permit filed on or after [[March 1]]
 394 February 26, 2021; except for

395 (2) [[that the amendments related to discounts or exemptions for projects
 396 with 25% MPDUs must only apply to]] any dwelling unit in a
 397 development for which a preliminary plan application is filed [[and
 398 accepted on or after]] prior to [[March 1]] February 26, 2021 that

399 includes 25% affordable units as defined in Sections 52-41(g)(1)
400 through 52-41(g)(4) or 52-54(d)(1) through 52-54(d)(4); or
401 (3) any development in a former Enterprise Zone for which a preliminary
402 plan application is filed and accepted before January 1, 2021.

Approved:

 _____ 11/17/2020
Sidney Katz, President, County Council Date

Approved:

Marc Elrich, County Executive Date

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council Date