



Committee: Directly to Council
Committee Review: N/A
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: Final Action – vote expected
Keywords: #GrowthPolicy2020

AGENDA ITEM 16A
February 23, 2021
Action

SUBJECT

Expedited Bill 1-21, Growth and Infrastructure Policy – Renamed – Expedited Development Approval
Excise Tax - Repealed
Lead Sponsor: County Council

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Final Action – roll call vote expected
- This did not go to Committee – a motion is required.

DESCRIPTION/ISSUE

Expedited Bill 1-21 would rename the Subdivision Staging Policy the Growth and Infrastructure Policy and repeal the obsolete Expedited Development Approval Excise Tax.

SUMMARY OF KEY DISCUSSION POINTS

This report contains:

Expedited Bill 1-21	©1
Legislative Request Report	©29
Economic Impact statement	©30
Racial Equity and Social Justice Impact statement	©32
Fiscal Impact Statement	©34

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M E M O R A N D U M

February 18, 2021

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Expedited Bill 1-21, Growth and Infrastructure Policy – Renamed – Expedited Development Approval Excise Tax - Repealed

PURPOSE: Action – Council vote required

Expedited Bill 1-21, Growth and Infrastructure Policy – Renamed – Expedited Development Approval Excise Tax - Repealed, sponsored by Lead Sponsor County Council, was introduced on January 12, 2021. A public hearing was held on February 2 at which there were no speakers.¹

Last November, the Council decided to rename the Subdivision Staging Policy the Growth and Infrastructure Policy. There are many references to the Subdivision Staging Policy throughout the County Code. Bill 1-21 would rename the Subdivision Staging Policy the Growth and Infrastructure Policy throughout the Code.

In addition, while preparing this Bill, Council staff noticed that the Expedited Development Approval Excise Tax provisions remain in the Code despite the Council's decision to eliminate the Alternative Review Procedure for Expedited Development Approval from the Subdivision Staging Policy more than 10 years ago. Finance and the Planning Board staff each confirmed that there are no open developments that were approved under this process and that the County has not collected this excise tax in recent years. Both Finance and the Planning Board staff agreed that these provisions of the Code are obsolete and should be repealed. Bill 1-21 would repeal these provisions.

The economic impact statement prepared by OLO concludes that Bill 1-21 would have an insignificant impact on the County's economy (©30-31). OLO similarly concluded that Bill 1-21 would have minimal impact on racial equity and social justice (©32-33). OMB concluded that the Bill would have no impact on County expenses or revenue (©34-35)

This packet contains:	<u>Circle #</u>
Expedited Bill 1-21	1
Legislative Request Report	29
Economic Impact statement	30
Racial Equity and Social Justice Impact statement	32
Fiscal Impact Statement	34

Expedited Bill No. 1-21
Concerning: Growth and Infrastructure
Policy – Renamed – Expedited
Development Approval Excise Tax -
Repealed
Revised: 1/21/2021 Draft No. 6
Introduced: January 12, 2021
Expires: July 12, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: County Council

AN EXPEDITED ACT to:

- (1) rename the Subdivision Staging Policy the Growth and Infrastructure Policy;
- (2) repeal the Expedited Development Approval Excise Tax; and
- (3) generally amend the law governing the County Growth and Infrastructure Policy.

By amending

Montgomery County Code
Chapter 33A, Planning Procedures
Section 33A-15

Chapter 42A, Ridesharing and Transportation Management
Sections 42A-21, 42A-22, 42A-23, 42A-24, 42A-26, 42A-28, and 42A-29

Chapter 50, Subdivision of Land
Sections 50.2.2, 50.4.3, 50.7.1, and 50.10.3

Chapter 52, Taxation
Sections 52-39, 52-40, 52-47, 52-51, 52-55, 52-60, 52-61, 52-62, 52-63, 52-64, 52-65, and
52-111

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 33A-15, 42A-21, 42A-22, 42A, 42A-24, 42A-26, 42A-**
 2 **28, 42A-29, 50.2.2, 50.4.3, 50.7.1, 50.10.3, 52-39, 52-40, 52-47, 52-51, 52-55, 52-60,**
 3 **52-61, 52-62, 52-63, 52-64, 52-65, and 52-111 are amended as follows:**

4 **33A-15. [Subdivision Staging] Growth and Infrastructure Policy.**

5 (a) *Purpose; Policy.*

6 (1) The purpose of this Article is to establish a process by which the
 7 County Council can give policy guidance to agencies of
 8 government and the public on matters concerning:

9 (A) land use development;

10 (B) growth management; and

11 (C) related environmental, economic, and social issues.

12 (2) The policy guidance will be provided through the adoption by the
 13 County Council of a [subdivision staging policy] Growth and
 14 Infrastructure Policy, which is intended to be an instrument that
 15 facilities and coordinates the use of the powers of government to
 16 limit or encourage growth and development in a manner that best
 17 enhances the general health, welfare, and safety of the residents of
 18 the County.

19 (3) The County Council must adopt a [subdivision staging policy]
 20 Growth and Infrastructure Policy every 4 years. The policy must
 21 include guidelines for the Planning Board, and other agencies as
 22 appropriate, for their administration of Section 50-35(k) and other
 23 laws and regulations which affect the adequacy and timing of
 24 public facilities needed to support growth and development. This
 25 policy is the growth policy referred to in Article 28 of the Maryland
 26 Code and in Section 50-35(k) and elsewhere in the County Code.

27 (b) *Duties of the County Planning Board.*

Every fourth year, in the second year of a Council term, the Planning Board must produce a recommended [subdivision staging policy] Growth and Infrastructure Policy.

(1) By June 15, the Board must send to the Council a staff draft [subdivision staging policy] Growth and Infrastructure Policy which includes:

(A) a status report on general land use conditions in the county, including the remaining growth capacity of zoned land, recent trends in real estate transactions, the level of service conditions of major public facilities and environmentally sensitive areas, and other relevant monitoring measures;

(B) a forecast of the most probable trends in population, households, and employment for the next 10 years, including key factors that may affect the trends;

(C) a recommended set of guidelines for the Board, and other agencies as appropriate, with respect to subdivision staging and administration of related laws and regulations which affect growth and development; and

(D) any other information or recommendations relevant to [subdivision staging policy] the Growth and Infrastructure Policy [,] or requested by the Council in the course of adopting the [subdivision staging policy] Growth and Infrastructure Policy or by a later resolution.

(2) By August 1, the Board must approve and send to the Council a recommended [subdivision staging policy] Growth and Infrastructure Policy.

(3) The Board must promptly make available to the County Executive, other agencies (including the Office of Zoning and Administrative Hearings and the People's Counsel), and the public copies of the staff draft and the Board's recommended [subdivision staging policy] Growth and Infrastructure Policy.

(c) *Duties of the County Executive.*

(1) Every fourth year, in the second year of a Council term, the Executive must send to the Council by September 15 any revisions to the [subdivision staging policy] Growth and Infrastructure Policy recommended by the Planning Board in the form of specific additions and deletions.

(2) The Executive must promptly make available to the Planning Board, other agencies, and the public copies of the Executive's recommendations.

(3) The Executive must assist the Planning Board to compile its status report for the recommended [subdivision staging policy] Growth and Infrastructure Policy by making available monitoring data which is routinely collected by executive branch departments.

(d) *Duties of the County Board of Education.*

(1) Every fourth year, in the second year of a Council term, the Board of Education must send to the Council by September 15 any comments on the recommended [subdivision staging policy] Growth and Infrastructure Policy submitted by the Planning Board and the Executive's recommendations, including any proposed revisions in the form of specific additions or deletions.

(2) The Board of Education must promptly make available to the Planning Board, the Executive, and the public copies of these comments and revisions.

(3) The Board of Education must assist the Planning Board to compile its status report for the [subdivision staging policy] Growth and Infrastructure Policy by making available monitoring data which is routinely collected by Montgomery County Public Schools staff.

(e) *Duties of the County Council.*

(1) After receiving the recommended [subdivision staging policy] Growth and Infrastructure Policy, the recommendations of the Executive, and any other agency comments, the Council must hold a public hearing on the recommendations and comments.

(2) Every fourth year, in the second year of a Council term, the Council must adopt by November 15 a [subdivision staging policy] Growth and Infrastructure Policy to be effective until November 15 four years later. If the Council does not adopt a new [subdivision staging policy] Growth and Infrastructure Policy, the [subdivision staging policy] Growth and Infrastructure Policy adopted most recently remains in effect.

(f) *Amending the [subdivision staging policy] Growth and Infrastructure Policy.*

(1) The County Council, the County Executive, or the Planning Board may initiate an amendment to the [subdivision staging policy] Growth and Infrastructure Policy.

(2) If the Executive initiates an amendment:

(A) the Executive must send it to the Council, the Planning Board, and other agencies, and make copies available to the public;

(B) the Planning Board must send any comments on the proposed amendment to the Council and the other agencies within 45 days after receiving the amendment (unless the Council requests an earlier response), and must make copies of any comments available to the public; and

(C) the Council may amend the [subdivision staging policy] Growth and Infrastructure Policy after giving the Planning Board and Board of Education an opportunity to comment and holding a public hearing.

(3) If the Planning Board initiates an amendment:

(A) the Planning Board must send it to the Council, the Executive, and other agencies, and make copies available to the public;

(B) the Executive must send any comments on the proposed amendment to the Council and other agencies within 45 days after receiving the amendment (unless the Council requests an earlier response), and must make copies of any comments available to the public; and

(C) the Council may amend the [subdivision staging policy] Growth and Infrastructure Policy after giving the Executive and Board of Education an opportunity to comment and holding a public hearing.

(4) If the Council initiates an amendment:

(A) the Council must send it to the Executive, the Planning Board, and other agencies, and make copies available to the public;

(B) the Executive and the Planning Board must send any comments on the proposed amendment to the Council and other agencies within 45 days after receiving the amendment (unless the Council requests an earlier response), and must make copies of any comments available to the public; and

(C) the Council may amend the [subdivision staging policy] Growth and Infrastructure Policy after a public hearing.

(5) If it finds that an emergency so requires, the Council may hold the public hearing and adopt an amendment before receiving comments under subparagraphs (2)(B), (3)(B), or (4)(B).

42A-21. Definitions.

In this Article, unless the context indicates otherwise:

* * *

Employer means any business or government entity, including the County, employing 25 or more employees including contractors assigned to a worksite.

Employer does not include:

- (1) a home-based business;
- (2) a business with no employees housed at that work site; or
- (3) any government agency not required by law to follow County regulations.

Growth and Infrastructure Policy means the most recent policy adopted under Section 33A-15.

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] Growth and Infrastructure Policy, or through regulation.

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.

Peak period means the hours of highest transportation use each workday, as defined in the resolution creating a District, as established in the [Subdivision Staging] Growth and Infrastructure 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] Growth and Infrastructure 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.

183 * * *

184 **42A-22. Findings and purposes.**

185 * * *

186 (f) Transportation demand management should be consistent with any
 187 commuting goals set in the [Subdivision Staging] Growth and
 188 Infrastructure Policy, Master Plans, and Sector Plans. TDM should foster
 189 coordinated and comprehensive government, private industry, and public
 190 action to:

- 191 (1) make efficient use of existing transportation infrastructure;
 192 (2) increase transportation capacity as measured by numbers of people
 193 transported;
 194 (3) reduce existing and future levels of traffic congestion by moving
 195 more people in fewer vehicles;
 196 (4) reduce air and noise pollution, and address climate change; and
 197 (5) promote traffic safety together with transit, pedestrian and bicycle
 198 safety and access for all users.

199 * * *

200 **42A-23. Districts; authority of the Department and Planning Board.**

201 (a) The County Council by resolution may create a transportation
 202 management district (TMD) in Red, Orange, or Yellow Policy Areas as
 203 defined in the [Subdivision Staging] Growth and Infrastructure Policy. A
 204 district may be formed from all, or portions of, one or more Policy areas,
 205 even if they are not contiguous.

206 * * *

207 **42A-24. Transportation Demand Management Plans for Employers.**

208 (a) *Transportation Demand Management (TDM) Plan for an Individual*
 209 *Employer.*

- (1) The Director must require an employer subject to this Section to submit a TDM Plan meeting the requirements of this Section District.
- (2) Upon written request from the Director, an employer must provide the Director with the number of full-time and part-time employees working for that organization by workplace in each Policy Area or District.
- (3) An employer must submit a TDM Plan to the Director if:
- (A) the employer is in a Red Policy Area under the [Subdivision Staging] Growth and Infrastructure 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] Growth and Infrastructure 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] Growth and Infrastructure Policy and has 200 or more employees reporting to or assigned to that workplace; or
 - (D) the employer is in one of the following Districts and has 25 or more employees reporting to or assigned to a workplace:
 - Silver Spring TMD
 - Friendship Heights TMD
 - Bethesda TMD
 - North Bethesda TMD
 - Greater Shady Grove TMD.

- (4) The TDM Plan must be consistent with and contribute to the achievement of any NADMS Goal or other commuting goals set in the [Subdivision Staging] Growth and Infrastructure Policy, Master Plans, Sector Plans, and any individual project-based goals or 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 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.
- (5) Each employer must submit its TDM Plan within 90 days after receiving written notice from the Director that it is required. The Director may extend an employer's time to file a TDM Plan for good cause.

* * *

42A-26. Transportation Demand Management Plans for New Development Projects (Project-based TDM Plans).

- (a) *Applicability.* This Section applies to any owner or applicant for a new development or construction project that submits an application for a proposed subdivision or optional method development, site plan, conditional use or building permit in a District, but excluding any project consisting solely of single family detached housing, townhouses, or a

mixture of both. All such applicants must obtain approval from the Department for a Project-based Transportation Demand Management (TDM) Plan. This approval must be obtained prior to the issuance of any building permit by the Department of Permitting Services. Projects subject to this Section include developments:

- (1) in a Red, Orange or Yellow [Subdivision Staging] Growth and Infrastructure Policy Area and larger than the minimum sizes shown in subsection (b);
- (2) that do not have a fully-executed traffic mitigation agreement in effect; and
- (3) where the Department decides, under standards adopted by the Council for the adequacy of transportation, including Non-Auto Driver Mode Share goals and other commuting goals adopted in Master Plans, Sector Plans and the [Subdivision Staging] Growth and Infrastructure Policy, that more transportation facilities or transportation demand management measures are necessary to meet the County's commuting goals.

(b) *Levels of Project-based TDM Plans.* An owner or applicant for a new development or construction project may be required to submit a Level 1 TDM Basic Plan, a Level 2 TDM Action Plan, or a Level 3 TDM Results Plan based on the size and location of the project as follows:

- (1) An owner or applicant for a project located in a Red Policy Area under the [Subdivision Staging] Growth and Infrastructure Policy must:
 - (A) submit a Level 1 TDM Basic Plan for a project with less than or equal to 40,000 gross square feet; and

(B) submit a Level 3 TDM Results Plan for a project with more than 40,000 gross square feet;

(2) An owner or applicant for a project located in an Orange Policy Area under the [Subdivision Staging] Growth and Infrastructure Policy must:

(A) submit a Level 1 TDM Basic Plan 493 for a project with at least 40,000 gross square feet, but less than or equal to 80,000 gross square feet;

(B) submit a Level 2 TDM Action Plan for a project with more than 80,000 gross square feet, but less than or equal to 160,000 gross square feet; and

(C) submit a Level 3 TDM Results Plan for a project with more than 160,000 gross square feet;

(3) An owner or applicant for a project located in a Yellow Policy Area under the [Subdivision Staging] Growth and Infrastructure Policy must:

(A) submit a Level 1 TDM Basic Plan for a project with at least 60,000 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.

* * *

42A-28. Commuter survey and related data collection.

(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; and
- (2) monitor progress toward reaching any commuting goals set in the [Subdivision Staging] Growth and Infrastructure Policy, Master Plans or Sector Plans, as implemented by the Department through Executive Regulations or other adopted policies and procedures.

* * *

42A-29. Executive report on Transportation Demand Management.

* * *

(c) If any commuting goals set in the [Subdivision Staging] Growth and Infrastructure Policy are not met eight years after a district is created or by June 30, 2028, 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.

DIVISION 50.2. INTERPRETATION AND DEFINED TERMS

2.2. Definitions

All terms used in this Chapter that are defined in Chapter 59 or Chapter 49 have the same meanings as the definitions in those Chapters, unless otherwise defined here. In this Chapter, the following words and phrases have the meanings indicated.

* * *

G.

Growth and Infrastructure Policy: The resolution or guidelines adopted by the District Council to determine the adequacy of public facilities and services.

* * *

S.

* * *

Subdivision Regulations: Chapter 50 of the Montgomery County Code, also referred to as this Chapter.

[*Subdivision Staging Policy*: The resolution or guidelines adopted by the District Council to determine the adequacy of public facilities and services.]

* * *

DIVISION 50.4. PRELIMINARY PLAN

* * *

4.3. Technical Review

* * *

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

1. *Definitions.* Words and phrases used in this Subsection have the meanings indicated in Chapter 8, Section 8-30.
2. *Applicability.* The Board may only approve a preliminary plan when it finds that public facilities will be adequate to support and service the subdivision. Public facilities and services to be examined for adequacy include roads and transportation facilities, sewer and water service, schools, police stations, firehouses, and health clinics.
3. *Exemptions.* The following developments are exempt from the requirements of this Subsection:
 - a. exclusively residential development on a lot or parcel recorded by plat before July 25, 1989, or otherwise recorded in conformance with a preliminary plan approved before that date;
 - b. any place of worship or use associated with a place of worship that does not generate peak hour vehicle trips that exceed the limits of the [Subdivision Staging] Growth and Infrastructure Policy traffic test; and
 - c. any addition to a school associated with a place of worship that existed before July 25, 1989.

* * *
4. *Approval procedure.*
 - a. Each applicant for a preliminary plan must submit sufficient information for the subdivision to demonstrate the expected impact on and use of public facilities and services by the subdivision.

- b. The Board must consider the recommendations of the Executive and other agencies in determining the adequacy of public facilities and services under the [Subdivision Staging] Growth and Infrastructure Policy or other applicable guidelines.
- c. If the Board finds, under criteria and standards adopted by the Council, that additional transportation facilities or traffic mitigation measures are necessary to ensure that transportation facilities will be adequate to serve the subdivision and to meet the transportation goals established by a master plan or the [Subdivision Staging] Growth and Infrastructure Policy for that portion of the County, the subdivision plan may also be subject to the execution of a Traffic Mitigation Agreement (TMAg) at the discretion of the Board.

* * *

DIVISION 50.7. MINOR SUBDIVISION

7.1. Applicability

The submission of a preliminary plan or administrative subdivision plan under Sections 4.1 and 4.2, and Sections 6.1 and 6.2, is not required for:

* * *

B. Conversion of an outlot into a lot. An outlot may be converted into a lot if:

1. the outlot is not required for open space or green area, or is otherwise constrained in a manner that prevents it being converted into a buildable lot;

2. there is adequate sewerage and water service to accommodate development on the lot;
3. all applicable requirements or agreements under the Adequate Public Facilities Ordinance in Subsection 4.3.J and the [Subdivision Staging] Growth and Infrastructure Policy are satisfied before recording the plat;
4. all applicable conditions or agreements applicable to the original subdivision approval creating the outlot apply to the new lot. The conditions and agreements may include, but are not limited to, any adequate public facilities agreement, conservation easement, or building restriction lines; and
5. if the outlot is located within a special protection area, all applicable special protection area requirements and guidelines, including the approval of a water quality plan, are satisfied before recording the plat.

* * *

DIVISION 50.10. ADMINISTRATIVE PROCEDURES

* * *

10.3. Establishment of Adequate Public Facilities Guidelines

- A. The Council must establish by resolution, after public hearing, the process to determine the adequacy of public facilities and services. A [subdivision staging policy] Growth and Infrastructure Policy approved by the Council may serve this purpose if it contains those guidelines. To provide the basis for the Council resolution, the Board and the County Executive must provide the following information and recommendations to the Council:

* * *

52-39. Definitions.

In this Article the following terms have the following meanings:

* * *

Growth policy means the [subdivision staging policy] Growth and Infrastructure Policy most recently adopted under Chapter 33A to provide guidelines for the administration of the Adequate Public Facilities Ordinance.

* * *

52-40. Findings; purpose and intent.

(a) The master plan of transportation indicates that certain transportation facilities are needed in planning policy areas. Furthermore, the [Subdivision Staging] Growth and Infrastructure Policy indicates that the amount and rate of growth projected in certain planning policy areas will place significant demands on the County for provision of transportation facilities necessary to support and accommodate that growth.

* * *

52-47. Credits.

* * *

(d) Any credit for building or contributing to an impact transportation improvement does not apply to any development that has been previously approved under the Alternative Review Procedure for Metro Station Policy Areas in the [County Subdivision Staging] Growth and Infrastructure Policy.

* * *

52-51. Local Area Transportation Review Mitigation Payment.

(a) In addition to the tax due under this Article, an applicant for a building permit for any building must pay to the Department of Finance a Mitigation Payment if this payment is required for a building included in

a preliminary plan of subdivision that was approved under the Local Area Transportation Review provisions in the [County Subdivision Staging] Growth and Infrastructure Policy.

* * *

52-55. Tax rates.

- (a) The Council must establish the Countywide rates for the tax under this Article by resolution after a public hearing advertised at least 15 days in advance.
- (b) The tax on any single-family detached or attached dwelling unit must be increased by \$2 for each square foot of gross floor area that exceeds 3,500 square feet, to a maximum of 8,500 square feet.
- (c) Any Productivity Housing unit, as defined in Section 25B-17(j), must pay the tax at 50% of the otherwise applicable rate.
- (d) The County Council by resolution, after a public hearing advertised at least 15 days in advance, may increase or decrease the rates established under this Section.
- (e) The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section effective on July 1 of each odd-numbered year in accordance with the update to the [Subdivision Staging] Growth and Infrastructure Policy using the latest student generation rates and school construction cost data. The Director must calculate the adjustment to the nearest multiple of one dollar. The Director must publish the amount of this adjustment not later than May 1 of each odd-numbered year.

ARTICLE VI. [EXPEDITED DEVELOPMENT APPROVAL EXCISE TAX]

Reserved.

52-60. [Payment] Reserved.

[Any person who applies for approval of a preliminary plan of subdivision under the Alternative Review Procedure for Expedited Development Approval adopted in the Growth Policy must pay an expedited development approval excise tax to the Director of Finance. The applicant, or the applicant's successor in interest, must pay:

- (a) 10% of the applicable expedited development approval excise tax before the preliminary plan of subdivision is approved by the Montgomery County Planning Board under the Alternative Review Procedure for Expedited Development Approval; and
- (b) 90% of the applicable expedited development approval excise tax before a building permit is released for any building in the area covered by the subdivision plan.]

52-61. [Rates] Reserved.

[(a) As used in this Section, a moratorium policy area is any policy area created under the Growth Policy in which the amount of previously approved development exceeds the applicable jobs or housing staging ceiling, as defined under the Policy, when the applicant files a completed application for a preliminary plan of subdivision with the Planning Board.

(b) In any area that is not a moratorium policy area, the rate of the payment required under Section 52-60 is:

(1) \$0.25 per square foot of gross floor area in any building or part of a building that is:

(A) owned by a nonprofit organization that is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code;

(B) intended to be used primarily for the direct provision of charitable services; and

- 530 (C) not intended to be used as a permanent residence;
- 531 (2) \$0.50 per square foot of gross floor area in any building or part of
- 532 a building that is used for offices by a nonprofit organization that
- 533 is exempt from federal income taxes under Section 501(c)(3) of
- 534 the Internal Revenue Code;
- 535 (3) \$2 per square foot of gross floor area in any building or part of a
- 536 building that is intended to be used primarily for storage, industrial
- 537 or manufacturing, or research and development purposes,
- 538 (4) \$2.50 per square foot of gross floor area in any other nonresidential
- 539 building or part of a building;
- 540 (5) \$1500 for each dwelling unit in any multi-family residential
- 541 building;
- 542 (6) \$2250 for each townhouse; and
- 543 (7) \$3000 for each single-family detached residential building.
- 544 (c) In any moratorium policy area, the rate of the payment required under
- 545 Section 52-60 is:
- 546 (1) \$0.50 per square foot of gross floor area in any building or part of
- 547 a building that is:
- 548 (A) owned by a nonprofit organization that is exempt from
- 549 federal income taxes under Section 501(c)(3) of the Internal
- 550 Revenue Code;
- 551 (B) intended to be used primarily for the direct provision of
- 552 charitable services; and
- 553 (C) not intended to be used as a permanent residence;
- 554 (2) \$1 per square foot of gross floor area in any building or part of a
- 555 building that is used for offices by a nonprofit organization that is

556 exempt from federal income taxes under Section 501(c)(3) of the
 557 Internal Revenue Code:

558 (3) \$3 per square foot of gross floor area in any building or part of a
 559 building that is intended to be used primarily for storage, industrial
 560 or manufacturing, or research and development purposes,

561 (4) \$3.50 per square foot of gross floor area in any other nonresidential
 562 building or part of a building;

563 (5) \$2500 for each dwelling unit in any multi-family residential
 564 building;

565 (6) \$3500 for each townhouse; and

566 (7) \$4500.00 for each single-family detached residential building.

567 (d) If, within 5 years after a building permit is issued, any person changes the
 568 use of all or part of a building to a use for which a higher tax would have
 569 been due under this Section when the building permit was issued
 570 (including a change from a status, use, or ownership that is exempt from
 571 payment to a status, use, or ownership that is not so exempt), the owner
 572 of the building must within 10 days after the change in status, use, or
 573 ownership pay all additional taxes that would have been due if the
 574 building or part of the building had originally been used as it is later used.
 575 If the building owner does not pay any additional tax when due, each later
 576 owner is liable for the tax, and any interest or penalty due, until all taxes,
 577 interest, and penalties are paid.

578 (e) Each year the County Council by resolution, after a public hearing
 579 advertised at least 15 days in advance, may increase or decrease the rates
 580 set in this Section.

581 (f) (1) "Gross floor area", "dwelling unit", "building", and "person", as
 582 used in this Article, have the same meanings as in Chapter 59.

- (2) "Gross floor area", however, does not include any:
- (A) unfinished basement or attic area with a clear height less than 7 feet 6 inches;
 - (B) interior amenity space required to obtain approval of a site plan;
 - (C) area occupied by an atrium or other multi-story space other than the first floor of the space;
 - (D) area occupied by unenclosed mechanical, heating, air conditioning, or ventilating equipment;
 - (E) parking garage or area; or
 - (F) other accessory structure that is not a separate building.]

52-62. [Exemptions] Reserved.

[The tax required under Section 52-60 does not apply to:

- (a) (1) any reconstruction or alteration of an existing building or part of a building that does not increase the gross floor area of the building; and
- (2) any building that replaces an existing building on the same site to the extent of the gross floor area of the previous building, if construction begins within one year after demolition or destruction of the previous building was substantially completed;
- (b) the first 1200 square feet of gross floor area of:
 - (1) a new nonresidential building, or
 - (2) an addition to an existing nonresidential building;
- (c) (1) any Moderately Priced Dwelling Unit built under Chapter 25A,
- (2) any Productivity Housing Unit, as defined in Section 25B-17, and
- (3) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent

charged for the unit in order to make the unit affordable to households earning less than the income levels set by regulation for Moderately Priced Dwelling Units, adjusted for family size;

- (d) a nonresidential building owned, and used primarily, by any agency or instrumentality of federal, state, County or municipal government;
- (e) a building or part of a building owned by an accredited college or university and used exclusively for instruction, instruction-related research, and administration of higher education programs;
- (f) a building owned by a nonprofit organization that is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, used primarily for educational or religious activities, and not used for any substantial commercial activity.]

52-63. [Credits] Reserved.

[Any person who pays an expedited development approval tax under Section 52-60 may reduce that tax by:

- (a) any amount the person paid under Article IV (development impact tax) for any building that is the subject of this tax; and
- (b) any amount the person paid or is required to pay for any development district tax levied under County law on account of the building which is the subject of this tax, to the extent that the development district tax is in addition to (and not a part of or substitute for) the ad valorem real property tax applicable to the property.]

52-64. [Payments] Reserved.

- [(a) Before the Department of Permitting Services releases a building permit for any building subject to this Article, the applicant must show that all taxes due under Section 52-60 have been paid. If the Department releases a building permit before the applicant pays all taxes due under Section

52-60, and the applicant does not promptly pay the entire amount due when notified by the Department, the Department must immediately revoke the building permit and issue a stop work order if work under the permit has begun.

- (b) When a person applies to a city or town in the County for a building permit, the applicant must show that all taxes due under Section 52-60 with respect to the building or unit have been paid. The Director of Finance must promptly refund any tax paid for any building for which a building permit is not issued by the city or town.
- (c) Before the Planning Board approves a preliminary plan of subdivision for all or any part of a subdivision under the Alternative Review Procedure for Expedited Development Approval, the applicant must show that all taxes then due under Section 52-60 have been paid.
- (d) An applicant may pay the tax due under subsection 52-60(a) by posting a payment bond, in a form and amount approved by the Director of Finance, when the payment is due.
- (e) The Director of Finance may refund any tax paid under subsection 52-60(b) only if:
 - (1) the amount of the tax was calculated incorrectly;
 - (2) the applicant cancels the building permit before any work begins;
 - (3) the building permit lapses; or
 - (4) the building permit is revoked by the Department of Permitting Services or a city or town agency that issued the permit.

The Director must not refund any tax paid under subsection 52-60(a).]

52-65. [Collection and administration; interest and penalties; violation; lien; annual report; use of funds] Reserved.

- 663 [(a) The provisions of Section 52-42, except subsection (c), apply to the
 664 payment and collection of the expedited development approval excise tax
 665 as if it were the development impact tax.
- 666 (b) By September 1 of each year in which expedited development approval
 667 excise tax payments are received under this Article, the Director of
 668 Finance must report to the County Council for the preceding fiscal year:
- 669 (1) the amount collected under this Article, by policy area and building
 670 use type;
- 671 (2) the amount of property exempted under Section 52-62; and
- 672 (3) the amount of credits granted under Section 52-63.
- 673 (c) In each fiscal year the Council must appropriate the revenue received
 674 under this Article to fund transportation projects in the annual capital
 675 improvements program and the expenses of any transportation
 676 management district established under Chapter 42A. Unless the Council
 677 by resolution directs otherwise, revenue under this Article must not be
 678 appropriated to any project that is eligible for federal or state funding,
 679 except for the County's matching share of the project costs.]

680 **52-111. Urban Agricultural Tax Credit.**

- 681 (a) Definitions. In this Section:
- 682 *Gross income* means the revenue received from the sale of products
 683 grown or raised on the property, including the fair market value of food
 684 products grown or raised on the property donated to an organization
 685 registered as a charitable organization with the Maryland Secretary of
 686 State.
- 687 *Urban agricultural property* means real property in a residential zone that
 688 is:
- 689 (1) at least one-half of an acre and not more than 3 acres;

- (2) located within 1000 feet of or in a Metro Station Policy Area, as defined in the most recent [Subdivision Staging] Growth and Infrastructure Policy adopted under Section 33A-15, including the:
- (A) Bethesda Central Business District;
 - (B) Friendship Heights;
 - (C) Glenmont;
 - (D) Grosvenor;
 - (E) Rockville Town Center;
 - (F) Shady Grove;
 - (G) Silver Spring Central Business District;
 - (H) Twinbrook;
 - (I) Wheaton Central Business District; and
 - (J) White Flint; and
- (3) used for urban agricultural purposes.

* * *

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

LEGISLATIVE REQUEST REPORT

Expedited Bill 1-21

Growth and Infrastructure Policy – Renamed – Expedited Development Approval Excise Tax – Repealed

DESCRIPTION:	Expedited Bill 1-21 would rename the Subdivision Staging Policy the Growth and Infrastructure Policy and repeal the Expedited Development Approval Excise Tax.
PROBLEM:	The Council decided to change the name of the Subdivision Staging Policy to the Growth and Infrastructure Policy. Also, the Expedited Development Approval Excise Tax is no longer used.
GOALS AND OBJECTIVES:	To change references in the Code to the Subdivision Staging Policy to the Growth and Infrastructure Policy and repeal the obsolete Expedited Development Approval Excise Tax.
COORDINATION:	Planning Board
FISCAL IMPACT:	To be provided
ECONOMIC IMPACT:	To be provided
EVALUATION:	To be provided
EXPERIENCE ELSEWHERE:	To be researched
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	N/A

Economic Impact Statement

Office of Legislative Oversight

EXPEDITED BILL 1-21

Growth and Infrastructure Policy – Renamed – Expedited Development Approval Excise Tax – Repealed

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Expedited Bill 1-21 would have an insignificant impact on economic conditions in the County.

BACKGROUND

In November, the Council decided to rename the Subdivision Staging Policy (SSP) as the “Growth and Infrastructure Policy.” Expedited Bill 1-21, introduced on January 12, 2020, would replace references to the Subdivision Staging Policy with the Growth and Infrastructure Policy throughout the County Code. In addition, the bill would repeal the Expedited Development Approval Excise Tax.¹

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

Repealing any tax imposed on private organizations and/or residents would impact economic conditions in the County. However, the Expedited Development Approval Excise Tax that Expedited Bill 1-21 would repeal is “obsolete.” As Robert Drummer, Senior Legislative Attorney, writes in his memorandum to the County Council, “Finance and the Planning Board staff each confirmed ... that the County has not collected this excise tax in recent years,” due to the Council’s elimination of the Alternative Review Procedure for expedited Development Approval from the SSP over 10 years ago.² Because the tax is obsolete, its repeal would not impact economic conditions in the County.

VARIABLES

Not applicable

¹ Montgomery County Council, Expedited Bill 1-21, Growth and Infrastructure Policy – Renamed – Expedited Development Approval Excise Tax – Repealed, Introduced on January 12, 2020, Montgomery County, Maryland. See Introduction Staff Report, https://apps.montgomerycountymd.gov/cclims/DownloadFilePage?FileName=2692_1_13169_Bill_1-2021_Introduction_20210112.pdf.

² Robert H. Drummer to Montgomery County Council, Memorandum, January 7, 2021. See Introduction Staff Report.

Economic Impact Statement

Office of Legislative Oversight

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organization

OLO believes that Expedited Bill 1-21 would have insignificant economic impacts on private organizations in the County in terms of the Council's priority indicators, namely business income, workforce, operating costs, capital investments, property values, taxation policy, economic development and competitiveness.³

Residents

OLO believes that Expedited Bill 1-21 would have no economic impacts on County residents in terms of the Council's priority indicators.

QUESTIONS FOR CONSIDERATION

Not applicable

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. Expedited Bill 1-21, Growth and Infrastructure Policy – Renamed – Expedited Development Approval Excise Tax – Repealed. Introduced on January 12, 2020. Montgomery County, Maryland.

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 OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

³ 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.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

EXPEDITED BILL 1-21: GROWTH AND INFRASTRUCTURE POLICY- RENAMED- EXPEDITED DEVELOPMENT APPROVAL EXCISE TAX- REPEALED

SUMMARY

The Office of Legislative Oversight (OLO) expects Expedited Bill 1-21 to have a minimal impact on racial equity and social justice among Montgomery County residents at-large.

BACKGROUND

On January 12, 2021, the County Council introduced Expedited Bill 1-21 to change the name of a policy and cancel a tax no longer used in the County with amendments to:

- Rename the Subdivision Staging Policy the Growth and Infrastructure Policy;
- Repeal the Expedited Development Approval Excise Tax; and
- Generally amend the law governing the County Growth and Infrastructure Policy.¹

ANTICIPATED RESJ IMPACTS

OLO anticipates that Expedited Bill 1-21 will have little to no impact on racial equity or social justice in the County beyond the impact of the original legislation it amends (Bill 37-20, Subdivision, APF Amendments²). Since Expedited Bill 1-21 codifies existing policies and practices implemented under Bill 37-20, no changes in RESJ for residents in the County are anticipated under Expedited Bill 1-21.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffer Dr. Theo Holt drafted this racial equity and social justice impact statement.

¹ Montgomery County Council, Expedited Bill 1-21, Growth and Infrastructure Policy- Renamed- Expedited Development Approval Excise Tax- Repealed, January 12, 2021, Montgomery County Council.

RESJ Impact Statement

Bill 1-21

² https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2020/20201112/20201112_1-2.pdf

Fiscal Impact Statement
Expedited Bill 1-21, Growth and Infrastructure Policy – Renamed – Expedited
Development Approval Excise Tax - Repealed

1. Legislative Summary

Last November, the Council decided to rename the Subdivision Staging Policy to the Growth and Infrastructure Policy. There are many references to the Subdivision Staging Policy throughout the County Code. Bill 1-21 would rename the Subdivision Staging Policy to the Growth and Infrastructure Policy throughout the Code.

In addition, while preparing this Bill, Council staff noticed that the Expedited Development Approval Excise Tax provisions remain in the Code despite the Council's decision to eliminate the Alternative Review Procedure for Expedited Development Approval from the Subdivision Staging Policy more than 10 years ago. Finance and the Planning Board staff each confirmed that there are no open developments that were approved under this process and that the County has not collected this excise tax in recent years. Both Finance and the Planning Board staff agreed that these provisions of the Code are obsolete and should be repealed. Bill 1-21 would repeal these provisions.

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.

There is no impact on revenues and expenditures. This tax has not been collected in recent years; therefore, repeal of the tax has no fiscal impact.

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

There is no impact on revenues and expenditures of the next 6 fiscal years.

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.

The bill does not authorize future spending.

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

It is estimated that no additional staff time is needed to implement Bill 1-21.

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.

Not applicable.

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

Not applicable.

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

Not applicable.

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

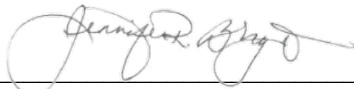
This tax has not been collected in recent years; therefore, repeal of the tax has no fiscal impact.

13. Other fiscal impacts or comments.

Not applicable.

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

James Babb, Chief, Treasury Division, Department of Finance
Jedediah Millard, Administrative Services Manager, Department of Finance
Estela Boronat de Gomes, Office of Management and Budget



Jennifer Bryant, Acting Director
Office of Management and Budget

1/31/21

Date