

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Repealed  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  
Enacted: February 23, 2021  
Executive: February 26, 2021  
Effective: February 26, 2021  
Sunset Date: None  
Ch. 3, Laws of Mont. Co. 2021

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: County Council

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**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

<b>Boldface</b>	<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-23, 42A-24, 42A-26,**  
 2 **42A-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,**  
 3 **52-60, 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          facilitates 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.*

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

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

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

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

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

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

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

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

59 (c) *Duties of the County Executive.*

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

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

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

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

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

- 79 (2) The Board of Education must promptly make available to the  
 80 Planning Board, the Executive, and the public copies of these  
 81 comments and revisions.
- 82 (3) The Board of Education must assist the Planning Board to compile  
 83 its status report for the [subdivision staging policy] Growth and  
 84 Infrastructure Policy by making available monitoring data which  
 85 is routinely collected by Montgomery County Public Schools staff.
- 86 (e) *Duties of the County Council.*
- 87 (1) After receiving the recommended [subdivision staging policy]  
 88 Growth and Infrastructure Policy, the recommendations of the  
 89 Executive, and any other agency comments, the Council must hold  
 90 a public hearing on the recommendations and comments.
- 91 (2) Every fourth year, in the second year of a Council term, the  
 92 Council must adopt by November 15 a [subdivision staging policy]  
 93 Growth and Infrastructure Policy to be effective until November  
 94 15 four years later. If the Council does not adopt a new  
 95 [subdivision staging policy] Growth and Infrastructure Policy, the  
 96 [subdivision staging policy] Growth and Infrastructure Policy  
 97 adopted most recently remains in effect.
- 98 (f) *Amending the [subdivision staging policy] Growth and Infrastructure*  
 99 *Policy.*
- 100 (1) The County Council, the County Executive, or the Planning Board  
 101 may initiate an amendment to the [subdivision staging policy]  
 102 Growth and Infrastructure Policy.
- 103 (2) If the Executive initiates an amendment:

- 104 (A) the Executive must send it to the Council, the Planning  
 105 Board, and other agencies, and make copies available to the  
 106 public;
- 107 (B) the Planning Board must send any comments on the  
 108 proposed amendment to the Council and the other agencies  
 109 within 45 days after receiving the amendment (unless the  
 110 Council requests an earlier response), and must make copies  
 111 of any comments available to the public; and
- 112 (C) the Council may amend the [subdivision staging policy]  
 113 Growth and Infrastructure Policy after giving the Planning  
 114 Board and Board of Education an opportunity to comment  
 115 and holding a public hearing.
- 116 (3) If the Planning Board initiates an amendment:
- 117 (A) the Planning Board must send it to the Council, the  
 118 Executive, and other agencies, and make copies available to  
 119 the public;
- 120 (B) the Executive must send any comments on the proposed  
 121 amendment to the Council and other agencies within 45  
 122 days after receiving the amendment (unless the Council  
 123 requests an earlier response), and must make copies of any  
 124 comments available to the public; and
- 125 (C) the Council may amend the [subdivision staging policy]  
 126 Growth and Infrastructure Policy after giving the Executive  
 127 and Board of Education an opportunity to comment and  
 128 holding a public hearing.
- 129 (4) If the Council initiates an amendment:

- 130 (A) the Council must send it to the Executive, the Planning
- 131 Board, and other agencies, and make copies available to the
- 132 public;
- 133 (B) the Executive and the Planning Board must send any
- 134 comments on the proposed amendment to the Council and
- 135 other agencies within 45 days after receiving the
- 136 amendment (unless the Council requests an earlier
- 137 response), and must make copies of any comments available
- 138 to the public; and
- 139 (C) the Council may amend the [subdivision staging policy]
- 140 Growth and Infrastructure Policy after a public hearing.
- 141 (5) If it finds that an emergency so requires, the Council may hold the
- 142 public hearing and adopt an amendment before receiving
- 143 comments under subparagraphs (2)(B), (3)(B), or (4)(B).

144 **42A-21. Definitions.**

145 In this Article, unless the context indicates otherwise:

146 \* \* \*

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

149 Employer does not include:

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

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

156 *NADMS goal* means the specific NADMS percentage goal for peak period  
 157 commuters in a District or a Policy Area that has been established through a  
 158 Master Plan, through the [Subdivision Staging] Growth and Infrastructure  
 159 Policy, or through regulation.

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

165 *Peak period* means the hours of highest transportation use each workday, as  
 166 defined in the resolution creating a District, as established in the [Subdivision  
 167 Staging] Growth and Infrastructure Policy [,] or established through a technical  
 168 study.

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

171 *Policy Area* means a Transportation Policy Area adopted by the County Council  
 172 through the [Subdivision Staging] Growth and Infrastructure Policy.

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

174 *Resident* means an adult domiciled in the relevant area.

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

177 [*Subdivision Staging Policy* means the most recent policy adopted under Section  
 178 33A-15.]

179 *Telework* means a work arrangement where a manager directs or permits an  
 180 employee to perform usual job duties away from the central workplace in  
 181 accordance with established performance expectations and agency-approved or  
 182 agreed-upon terms.



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

\* \* \*

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

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

\* \* \*

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

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

\* \* \*

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

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

- 210 (1) The Director must require an employer subject to this Section to  
211 submit a TDM Plan meeting the requirements of this Section  
212 District.
- 213 (2) Upon written request from the Director, an employer must provide  
214 the Director with the number of full-time and part-time employees  
215 working for that organization by workplace in each Policy Area or  
216 District.
- 217 (3) An employer must submit a TDM Plan to the Director if:
- 218 (A) the employer is in a Red Policy Area under the [Subdivision  
219 Staging] Growth and Infrastructure Policy and has 25 or  
220 more employees reporting to or assigned to that workplace;
- 221 (B) the employer is in an Orange Policy Area under the  
222 [Subdivision Staging] Growth and Infrastructure Policy and  
223 has 100 or more employees reporting to or assigned to that  
224 workplace;
- 225 (C) the employer is in a Yellow Policy Area under the  
226 [Subdivision Staging] Growth and Infrastructure Policy and  
227 has 200 or more employees reporting to or assigned to that  
228 workplace; or
- 229 (D) the employer is in one of the following Districts and has 25  
230 or more employees reporting to or assigned to a workplace:  
231 Silver Spring TMD  
232 Friendship Heights TMD  
233 Bethesda TMD  
234 North Bethesda TMD  
235 Greater Shady Grove TMD.

- 236 (4) The TDM Plan must be consistent with and contribute to the  
 237 achievement of any NADMS Goal or other commuting goals set  
 238 in the [Subdivision Staging] Growth and Infrastructure Policy,  
 239 Master Plans, Sector Plans, and any individual project-based goals  
 240 or goals established in the regulations implementing this Article.  
 241 The TDM Plan must include strategies required by regulation and  
 242 other strategies selected by the employer from those permitted by  
 243 regulation or proposed by the employer and approved by the  
 244 Director. A TDM Plan may include an alternative work hours  
 245 program, carpool or vanpool incentives, subsidized transit passes,  
 246 preferential parking for carpools and vanpools, parking  
 247 management strategies, peak period or single-occupancy vehicle  
 248 parking charges, improved transit, bicycle and pedestrian access  
 249 and safety, telework, and other transportation demand  
 250 management measures approved by the Director.
- 251 (5) Each employer must submit its TDM Plan within 90 days after  
 252 receiving written notice from the Director that it is required. The  
 253 Director may extend an employer's time to file a TDM Plan for  
 254 good cause.

255 \* \* \*

256 **42A-26. Transportation Demand Management Plans for New Development**  
 257 **Projects (Project-based TDM Plans).**

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

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

268 (1) in a Red, Orange or Yellow [Subdivision Staging] Growth and  
 269 Infrastructure Policy Area and larger than the minimum sizes  
 270 shown in subsection (b);

271 (2) that do not have a fully-executed traffic mitigation agreement in  
 272 effect; and

273 (3) where the Department decides, under standards adopted by the  
 274 Council for the adequacy of transportation, including Non-Auto  
 275 Driver Mode Share goals and other commuting goals adopted in  
 276 Master Plans, Sector Plans and the [Subdivision Staging] Growth  
 277 and Infrastructure Policy, that more transportation facilities or  
 278 transportation demand management measures are necessary to  
 279 meet the County's commuting goals.

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

284 (1) An owner or applicant for a project located in a Red Policy Area  
 285 under the [Subdivision Staging] Growth and Infrastructure Policy  
 286 must:

287 (A) submit a Level 1 TDM Basic Plan for a project with less  
 288 than or equal to 40,000 gross square feet; and

- 289 (B) submit a Level 3 TDM Results Plan for a project with more  
 290 than 40,000 gross square feet;
- 291 (2) An owner or applicant for a project located in an Orange Policy  
 292 Area under the [Subdivision Staging] Growth and Infrastructure  
 293 Policy must:
- 294 (A) submit a Level 1 TDM Basic Plan 493 for a project with at  
 295 least 40,000 gross square feet, but less than or equal to  
 296 80,000 gross square feet;
- 297 (B) submit a Level 2 TDM Action Plan for a project with more  
 298 than 80,000 gross square feet, but less than or equal to  
 299 160,000 gross square feet; and
- 300 (C) submit a Level 3 TDM Results Plan for a project with more  
 301 than 160,000 gross square feet;
- 302 (3) An owner or applicant for a project located in a Yellow Policy  
 303 Area under the [Subdivision Staging] Growth and Infrastructure  
 304 Policy must:
- 305 (A) submit a Level 1 TDM Basic Plan for a project with at least  
 306 60,000 gross square feet, but less than or equal to 150,000  
 307 gross square feet; and
- 308 (B) submit a Level 2 TDM Action Plan for a project with more  
 309 than 150,000 gross square feet.
- 310 (4) If an adopted Master Plan or Sector Plan requires a higher Level  
 311 of Project-based TDM Plan, those Master Plan or Sector Plan  
 312 requirements override those described in paragraphs (1), (2), or (3).
- 313 (5) An owner or applicant for a project with a gross square feet size  
 314 disproportionate to its impact on traffic (e.g., large floor area  
 315 warehouses with lower impacts; small floor area food or beverage

316 establishments with higher impacts) may be required to adhere to  
317 a Project-based TDM Plan Level that is either lower or higher than  
318 otherwise required by its size and location, in accordance with the  
319 development approval and consistent with the Executive  
320 Regulation implementing this Article.

321 \* \* \*

322 **42A-28. Commuter survey and related data collection.**

323 (a) The Director, after consulting the appropriate Advisory Committee, must  
324 conduct a commuter survey, or obtain through other available  
325 mechanisms, data on commuting by employees and residents within a  
326 defined area. The data must be obtained on a schedule determined by the  
327 Director.

328 (b) The Director, in consultation with the appropriate Advisory Committee,  
329 must prepare a survey or other data collection mechanism as necessary to  
330 generate information to:

- 331 (1) create an accurate data base of employee and resident commuting  
332 patterns; and
- 333 (2) monitor progress toward reaching any commuting goals set in the  
334 [Subdivision Staging] Growth and Infrastructure Policy, Master  
335 Plans or Sector Plans, as implemented by the Department through  
336 Executive Regulations or other adopted policies and procedures.

337 \* \* \*

338 **42A-29. Executive report on Transportation Demand Management.**

339 \* \* \*

340 (c) If any commuting goals set in the [Subdivision Staging] Growth and  
341 Infrastructure Policy are not met eight years after a district is created or  
342 by June 30, 2028, whichever is later, the Director must recommend

343 corrective action to the Executive. This action may include additional  
344 mitigation measures. If the Executive agrees that such action is necessary,  
345 the Executive should propose appropriate legislation or adopt appropriate  
346 regulations as authorized by law.

347 **DIVISION 50.2. INTERPRETATION AND DEFINED TERMS**

348 **2.2. Definitions**

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

353 \* \* \*

354 **G.**

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

357 \* \* \*

358 **S.**

359 \* \* \*

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

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

364 \* \* \*

365 **DIVISION 50.4. PRELIMINARY PLAN**

366 \* \* \*

367 **4.3. Technical Review**

368 \* \* \*

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

- 370 1. *Definitions.* Words and phrases used in this Subsection have the  
 371 meanings indicated in Chapter 8, Section 8-30.
- 372 2. *Applicability.* The Board may only approve a preliminary plan  
 373 when it finds that public facilities will be adequate to support and  
 374 service the subdivision. Public facilities and services to be  
 375 examined for adequacy include roads and transportation facilities,  
 376 sewer and water service, schools, police stations, firehouses, and  
 377 health clinics.
- 378 3. *Exemptions.* The following developments are exempt from the  
 379 requirements of this Subsection:
- 380 a. exclusively residential development on a lot or parcel  
 381 recorded by plat before July 25, 1989, or otherwise recorded  
 382 in conformance with a preliminary plan approved before  
 383 that date;
- 384 b. any place of worship or use associated with a place of  
 385 worship that does not generate peak hour vehicle trips that  
 386 exceed the limits of the [Subdivision Staging] Growth and  
 387 Infrastructure Policy traffic test; and
- 388 c. any addition to a school associated with a place of worship  
 389 that existed before July 25, 1989.
- 390 \* \* \*
- 391 4. *Approval procedure.*
- 392 a. Each applicant for a preliminary plan must submit sufficient  
 393 information for the subdivision to demonstrate the expected  
 394 impact on and use of public facilities and services by the  
 395 subdivision.



396 b. The Board must consider the recommendations of the  
397 Executive and other agencies in determining the adequacy  
398 of public facilities and services under the [Subdivision  
399 Staging] Growth and Infrastructure Policy or other  
400 applicable guidelines.

401 c. If the Board finds, under criteria and standards adopted by  
402 the Council, that additional transportation facilities or traffic  
403 mitigation measures are necessary to ensure that  
404 transportation facilities will be adequate to serve the  
405 subdivision and to meet the transportation goals established  
406 by a master plan or the [Subdivision Staging] Growth and  
407 Infrastructure Policy for that portion of the County, the  
408 subdivision plan may also be subject to the execution of a  
409 Traffic Mitigation Agreement (TMAg) at the discretion of  
410 the Board.

411 \* \* \*

412 **DIVISION 50.7. MINOR SUBDIVISION**

413 **7.1. Applicability**

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

416 \* \* \*

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

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

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

\*                     \*                     \*

**DIVISION 50.10. ADMINISTRATIVE PROCEDURES**

\*                     \*                     \*

**10.3. Establishment of Adequate Public Facilities Guidelines**

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

\*                     \*                     \*

449 **52-39. Definitions.**

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

451 \* \* \*

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

455 \* \* \*

456 **52-40. Findings; purpose and intent.**

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

463 \* \* \*

464 **52-47. Credits.**

465 \* \* \*

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

471 \* \* \*

472 **52-51. Local Area Transportation Review Mitigation Payment.**

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

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

479 \* \* \*

480 **52-55. Tax rates.**

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

500 **ARTICLE VI. [EXPEDITED DEVELOPMENT APPROVAL EXCISE TAX]**

501 **Reserved.**

502 **52-60. [Payment] Reserved.**

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

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

515 **52-61. [Rates] Reserved.**

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

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

523 (1) \$0.25 per square foot of gross floor area in any building or part of  
 524 a building that is:

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

528 (B) intended to be used primarily for the direct provision of  
 529 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.

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

594 **52-62. [Exemptions] Reserved.**

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

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



- 610 charged for the unit in order to make the unit affordable to  
 611 households earning less than the income levels set by regulation  
 612 for Moderately Priced Dwelling Units, adjusted for family size;
- 613 (d) a nonresidential building owned, and used primarily, by any agency or  
 614 instrumentality of federal, state, County or municipal government;
- 615 (e) a building or part of a building owned by an accredited college or  
 616 university and used exclusively for instruction, instruction-related  
 617 research, and administration of higher education programs;
- 618 (f) a building owned by a nonprofit organization that is exempt from federal  
 619 income taxes under Section 501(c)(3) of the Internal Revenue Code, used  
 620 primarily for educational or religious activities, and not used for any  
 621 substantial commercial activity.]

622 **52-63. [Credits] Reserved.**

623 [Any person who pays an expedited development approval tax under Section  
 624 52-60 may reduce that tax by:

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

632 **52-64. [Payments] Reserved.**

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

637 52-60, and the applicant does not promptly pay the entire amount due  
 638 when notified by the Department, the Department must immediately  
 639 revoke the building permit and issue a stop work order if work under the  
 640 permit has begun.

641 (b) When a person applies to a city or town in the County for a building  
 642 permit, the applicant must show that all taxes due under Section 52-60  
 643 with respect to the building or unit have been paid. The Director of  
 644 Finance must promptly refund any tax paid for any building for which a  
 645 building permit is not issued by the city or town.

646 (c) Before the Planning Board approves a preliminary plan of subdivision for  
 647 all or any part of a subdivision under the Alternative Review Procedure  
 648 for Expedited Development Approval, the applicant must show that all  
 649 taxes then due under Section 52-60 have been paid.

650 (d) An applicant may pay the tax due under subsection 52-60(a) by posting a  
 651 payment bond, in a form and amount approved by the Director of  
 652 Finance, when the payment is due.

653 (e) The Director of Finance may refund any tax paid under subsection 52-  
 654 60(b) only if:

- 655 (1) the amount of the tax was calculated incorrectly;
- 656 (2) the applicant cancels the building permit before any work begins;
- 657 (3) the building permit lapses; or
- 658 (4) the building permit is revoked by the Department of Permitting  
 659 Services or a city or town agency that issued the permit.

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

661 **52-65. [Collection and administration; interest and penalties; violation; lien;  
 662 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;


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

704 \* \* \*

705 **Sec. 2. Expedited Effective Date.**

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

*Approved:*

  
\_\_\_\_\_  
Tom Hucker, President, County Council  
2/25/2021  
Date

*Approved:*

  
\_\_\_\_\_  
Marc Elrich, County Executive  
2/26/2021  
Date

*This is a correct copy of Council action.*

  
\_\_\_\_\_  
Selena Mendy Singleton, Esq., Clerk of the Council  
3/2/2021  
Date