GO Committee #2
October 10, 2024
Worksession

M E M O R A N D U M

October 7, 2024

TO: Government Operations and Fiscal Policy (GO) Committee

FROM: Livhu Ndou, Senior Legislative Attorney
Bilal Ali, Legislative Analyst

SUBJECT: Bill 16-24: Development Impact Taxes – Amendments

PURPOSE: Worksession to review Bill 16-24 and develop recommendations for Council consideration

Invited Attendees:

- Artie Harris, Chair, Montgomery Planning Board
- Jason Sartori, Director, Planning Department
- Robert Kronenberg, Deputy Director, Planning Department
- David Anspacher, Chief, Countywide Planning Division, Planning Department
- Lisa Govoni, Acting Supervisor/Housing Planner IV, Countywide Planning
- Hye-Soo Baek, Planner III, Countywide Planning
- Darcy Buckley, Planner III, Countywide Planning
- Rachel Silberman, Capital Budget Manager, Office of Management and Budget (OMB)
- Dennis Hetman, Fiscal Manager, Department of Finance
- Todd Fawley-King, Fiscal and Policy Analyst, Department of Finance
- Rebecca Torma, Manager, Development Review, Department of Transportation
- Andrew Bossi, Senior Engineer, Transportation Policy, Department of Transportation

Councilmembers may wish to bring a copy of the Draft 2024-2028 GIP to the worksession.

Introduction

The Planning Board recommends changes to development impact taxes as part of the Growth and Infrastructure Policy (GIP).[1] The GIP provides guidelines for administering Montgomery County's Adequate Public Facility Ordinance (APFO) requirements. Montgomery Planning

[1] A copy of the GIP can be found here: https://montgomeryplanning.org/wp-content/uploads/2024/08/2024-GIP-Report-Final-Web.pdf.

initiatives an update to the GIP every four years, in accordance with Chapter 33A of the County Code. The Planning Board must transmit the GIP to the Council by August 1st, and the Council must adopt the policy by November 15th. The Planning, Housing, and Parks (PHP) Committee reviewed the GIP on September 16, September 23, and October 7, 2024. The PHP Committee provided recommendations for the Council's consideration, which are summarized at © 24-35.

Bill 16-24, which amends development impact taxes within Chapter 52 of the County Code, contains the Planning Board's recommended changes to impact taxes. While historically reviewed as part of the GIP because impact taxes and the APF help manage growth, impact taxes are not a part of the County's APF requirement, and the Committee is not required to review and make recommendations by November 15th.

Public Hearing

A public hearing was held on October 1, 2024.[2] Several speakers testified, both in support and opposition. Speakers included County officials, individuals, and developers. The County Executive, via the Office of Management and Budget (OMB), testified regarding concerns about the reduction in revenue proposed by the bill. OMB expressed opposition to the resulting decrease in school funding, as well as concern about the effect on the Capital Improvements Program (CIP).[3] Other testimony at the hearing included support for: amendments to the definitions based on housing size because these changes could encourage projects for smaller homes for new homeowners and seniors; and an exemption near metro if there is no parking onsite, since those projects provide no additional stress on the transportation road network and likely provide smaller units that will not generate students.

The Council also received written testimony.[4] The majority of the written testimony was in support of Bill 16-24. Written testimony from Lerch, Early & Brewer supported the reclassification of the two-over-two building type as low-rise multi-family units for purposes of student generation rates and impact tax rates, and support for a 50% impact tax discount for single-family attached or detached homes that are less than 1,800 square feet. Miles & Stockbridge, representing MCB White Oak, supported continuing the exemption from impact taxes for properties in opportunity zones. Craftmark Homes and Elm Street Development supported the legacy provision for the

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[2] A public hearing on the Growth and Infrastructure Policy was held on September 10, 2024. A recording of the hearing can be found here (9/10/24 Council Session, Item #5): https://www.montgomerycountymd.gov/COUNCIL/ondemand/index.html. Written testimony on the policy can be found here: https://www.montgomerycountymd.gov/COUNCIL/OnDemand/testimony/20240910/item5.html.

[3] Included in this staff packet is a letter from the County Executive as well as a chart of recommended additions and deletions.

[4] Written testimony can be found here: https://www.montgomerycountymd.gov/COUNCIL/OnDemand/testimony/20241001/item5.html.

transportation impact tax discount for projects in Desired Growth and Investment Areas (DGIA's).[5]

Requested amendments received via either written or oral testimony include:

1. The Maryland Building Industry Association (MBIA) and NAIOP supported many of the recommendations in the bill but requested further evaluation of the eligibility for impact tax credits, including allowing all transportation projects that align with the County's current policies in both County and State rights-of-way to be eligible for impact tax credits.[6]
2. Lerch, Early & Brewer, representing Westfield Montgomery Mall, requested an amendment to Section 52-47(b) to extend the impact tax credit validity period for four years in instances where the applicant has made a transportation improvement of $3 million dollars or more.
3. Upcounty law firm Clifford Debelius Boynton requested an increase in the maximum square feet qualifier for a 50% impact tax discount from 1,800 square feet to 2,200 square feet in order to fit front-loaded garages and a first-floor master bedroom in these small houses.
4. Former Councilmember Nancy Floreen requested a full exemption from impact taxes for affordable housing, Level I accessible housing, units of 2,000 square feet or less, and units constructed with a religious or non-profit organization that prioritizes housing. Alternatively presented was a recommendation to suspend the GIP and development tax system for 4 years.
5. Lerch, Early & Brewer, representing Ralph J. Duffie, Inc., supported the designation of a red policy area for White Oak but requested this policy area change be expanded within the current White Oak Policy Area. The firm suggests that red designation either be applied uniformly to all properties located in the White Oak Plan Area or, alternatively, to the three activity centers established in the 2014 White Oak Science Gateway Master Plan.

Summary of Impact Statements

Fiscal Impact Statement

The Office of Management and Budget (OMB) transmitted a Fiscal Impact Statement on September 30, 2024. OMB estimates that Bill 16-24 as submitted by the Planning Board will have a negative fiscal impact of $28.1 million over the coming six fiscal years (2026-2031) because of reduced impact tax revenues due to changes specified in the bill and increased expenditures associated with other recommended policy changes.

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[5] The letter refers to DGIAs as "designated growth infrastructure areas". Council Staff assumes this was meant to read "desired growth and investment areas" as they are called in the Planning Board draft of the Growth and Infrastructure Policy.

[6] NAIOP was most recently the National Association for Industrial and Office Parks, but in 2009 the organization dropped the words behind the acronym.

OMB concedes that while the bill does not authorize or require new spending by the County, additional expenditures will likely be necessary to ensure adequate transportation facilities. As summarized by OMB, the bill is expected to increase County expenditures by $6.9 million and to decrease County revenues by $21.2 million over the six-year period by: 1) reducing impact tax revenues as more of the County is shifted to lower impact tax rate zones and by expanding discounts; 2) increasing impact tax credits, further reducing impact tax revenues; 3) increasing expenditures for transit improvement to provide sufficient facilities to geographies designated with more urban policy areas; and 4) reducing infrastructure improvements provided by developers, requiring construction by the County to achieve the same facility levels. The below chart, provided by OMB, summarizes the fiscal impacts:

Fiscal Impact Summary	
Revenues	**6-Year Impact**
Impact Tax revenue change through designation of more of the County in lower impact tax rate zones and expanded tax discounts	$ (19,200,000)
Impact Tax revenue change due to credit for improvements on state roadways	$ (2,000,000)
Total revenue impact	**$ (21,200,000)**
Expenditures	**6-Year Impact**
Construction and operation of Damascus-area transit improvements	$ 3,200,000
Construction of improvements that developers are required to build under current policy	$ 3,700,000
Total expenditure impact	**$ 6,900,000**
Net fiscal impact to County	**$ (28,100,000)**

The Fiscal Impact Statement does not specify what percent $28.1 million is of the total six-year anticipated capital costs. As shown in the 'Impact Tax Revenue' discussion in this staff report, impact taxes comprised 7.4% of school capital costs in FY24, and 5.3% of transportation capital costs.

It is also unclear whether it is reasonable to attribute an additional $3.7 million in expenditures of constructed improvements developers would otherwise build to Bill 16-24. If $3.7 million represents the cost of constructed improvements identified through Local Area Transportation Review (LATR), then the expenditure should not be attributed to impact taxes. There is no policy mechanism by which improvements that would otherwise be constructed through LATR are translated to the Transportation CIP, even if the exemptions were to create a gap in adequate transportation infrastructure.

Economic Impact Statement

The Office of Legislative Oversight (OLO) transmitted an Economic Impact Statement on October 1, 2024. OLO found that it could not estimate the impact of Bill 16-24 on the County's priority economic indicators because an analysis of the bill would require an understanding of how the Growth and Infrastructure Policy (GIP) would be impacted by the proposed changes and the subsequent economic impacts to private organizations, residents, and overall economic conditions in the County, which OLO states is beyond the scope of the economic impact statement. OLO suggested that such analysis would fall under the purview of the Planning Department, and that for OLO to complete this analysis they would need approximately 3 to 4 months.

Climate Assessment

The Office of Legislative Oversight (OLO) transmitted a Climate Assessment on October 1, 2024. OLO found that it could not estimate the impact of Bill 16-24 on the County's contribution to climate change nor climate resilience because an analysis of the bill would require an understanding of how the GIP would be impacted by the proposed changes and the subsequent environmental impacts, which OLO states is beyond the scope of the climate assessment. OLO suggested that such analysis would fall under the purview of the Planning Department, and that for OLO to complete this analysis they would need approximately 3 to 4 months.

Racial Equity & Social Justice (RESJ) Impact Statement

The Office of Legislative Oversight (OLO) transmitted an RESJ Impact Statement on October 1, 2024. OLO found that it could not estimate the impact of Bill 16-24 on racial equity and social justice because an analysis of the bill would require an understanding of how the GIP would be impacted by the proposed changes and the subsequent impacts to racial equity and social justice, which OLO states is beyond the scope of the impact statement. OLO suggested that such analysis would fall under the purview of the Planning Department, and that for OLO to complete this analysis they would need approximately 3 to 4 months.

Background

Impact Taxes vs Impact Fees

The County's APFO requirement is a land use regulation administered to ensure adequate infrastructure, requiring mitigation or exactions when infrastructure id insufficient to support growth. APFO requirements are minimum standards of infrastructure adequacy, and the GIP provides guidelines for administering those standards. In general, exactions for infrastructure, like constructed infrastructure improvements, must be <u>linked</u> to the development and meet some standard for <u>reasonableness</u>. Montgomery County's APF requirements for schools (i.e., Annual Schools Test and Utilization Premium Payments) and transportation (Local Area Transportation Review) are held to these standards of "nexus" and "proportionality". Impact *fees*, can also be an exaction for infrastructure, and must be calculated in a way that abides by nexus and proportionality.

Montgomery County has impact *taxes*, not impact *fe*es. Thus, impact taxes are not a part of the County's APF requirement. Montgomery County did have impact fees, but in *Eastern Diversified v. Montgomery Cty*., 319 Md. 45, 570 A.2d 850 (1990), the Court found that the calculation of fees and the approach for spending the fee revenue did not meet nexus and proportionality standards.[7] In response, the Council implemented an excise tax, which does not have to be closely related to the actual cost of providing public facilities to serve new development and does not have to be spent to specifically benefit the properties that are taxed.

Despite the lack of a strict, legal link to adequacy, the Council and Planning Board have continued to relate impact taxes to growth management. These linkages are explained below.

School Impact Taxes

School impact taxes are calculated based on school construction costs as estimated by MCPS, and actual student generation rates by housing unit type. This ensures a connection to growth by assuming new housing development is associated with some number of elementary, middle, and high school students, and charging developers a corresponding fee towards new school construction or additions.

Transportation Impact Taxes

The 2007 Growth Policy was the most recent attempt to relate the calculation of transportation impact taxes to growth management. The Council approved rates derived from an in-depth analysis of future transportation infrastructure needs. First, Planning identified projects in the 2007-2030 Constrained Long Range Plan that would add transportation capacity, many of which would add new road capacity. The total estimated cost of capacity-related projects was $1.18 billion over 25 years, or $47.3 million per year. Impact tax rates were calculated by converting forecasted growth from 2005 to 2030 by land use into vehicle trips and then reallocating the total costs proportionally to each land use based on their share of forecasted vehicle trips.[8]

Notably, this analysis has not been revisited since 2007, suggesting today's transportation impact taxes may have a relatively weak policy basis. Transportation impact tax rates since 2007 have been increased by inflation, as measured by the Engineering News-Record's Baltimore Construction Cost Index (BCCI). Although an impact tax is not required to resemble the actual cost of providing facilities for net new growth generated by a development, the current transportation impact tax rates raise revenue towards an evolving list of transportation projects that

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[7] According to the Maryland Department of Legislative Services, "A development impact fee is a regulatory measure designed to fund facilities **specifically required by new development projects in order to mitigate the impact of such development** on infrastructure or public facilities. However, **there must be a reasonable connection between the amount of the impact fee imposed and the actual cost of providing facilities** to the properties assessed. In order to justify the imposition of an impact fee, **a jurisdiction must conduct a study that measures the effects that new development will have on public facilities.** The amount of an impact fee is subject to judicial review. Moreover, **the revenue from the fee must be dedicated to substantially benefit the assessed properties**. Thus, a county cannot collect an impact fee in one geographic area and spend the funds in another area."

[8] The methodology used to determine transportation impact tax rates in 2007 can be found starting on page 191 of the Infrastructure Financing of the 2007 Growth Policy.

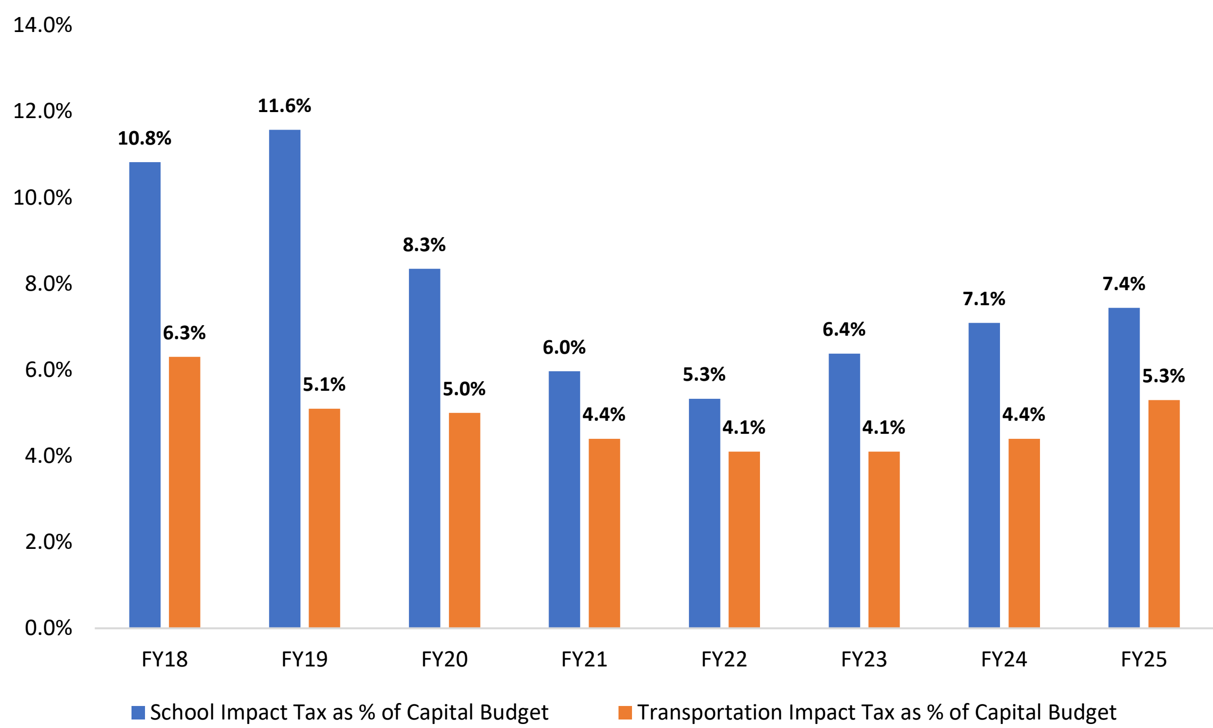
are removed from the original cost basis. Moreover, there is no requirement to spend transportation impact taxes on projects in proximity to the project from which they are collected.

A contemporary analysis using the same approach would likely yield fundamentally different results, and it is not obvious that rates would increase or decrease. For example, as the County is increasingly built-out, how much net new infrastructure projects related to growth exist compared to in 2007? Furthermore, with increasing shifts towards multi-modal transport, and high-capacity transportation networks, would the nature of the projects be the same as in 2007, and how would the cost of such projects be allocated to growth if the projects do not exclusively serve net new growth?

Impact Tax Revenue

Impact taxes raise revenue, which is ostensibly allocated to school and transportation projects that add capacity. Forecasted impact tax revenue is allocated to projects to offset bond funding. There is no mechanism to guide which projects impact taxes are allocated towards. As shown in Figure 1, Planning Staff estimated the share of the schools and transportation capital budgets funded by impact taxes. Since FY18, impact taxes as a share of the school's capital budget ranged from 5.3% to 11.6%, and from 4.1% to 6.3% for the transportation capital budget.

Figure 1: Impact Taxes as a Share of Capital Budgets



Source: Montgomery Planning, 2024.

Relationship of Bill 16-24 to the 2024-2028 GIP

As noted, the 2024-2028 GIP provides guidelines for administering Montgomery County's Adequate Public Facility Ordinance (APF) requirements, which are Local Area Transportation Review (LATR) and mitigation payments for transportation adequacy, and the Annual Schools Test (AST) and Utilization Premium Payments (UPP) for school adequacy.

While there is no requirement for connecting impact taxes to APF requirements, both transportation and schools impact taxes are currently applied based on the administration of the APF requirements. Furthermore, the 2024-2028 GIP as recommended by the Planning Board applied waivers and exemptions to APF requirements to incentivize development of desirable land uses and development types, like affordable housing. This is connected to impact taxes because there are waivers and exemptions for the same desirable land uses and development types for impact taxes.

Implementation Overlap Between APF Requirements and Impact Taxes

For schools, the ASTs and UPPs are part of APF requirements. Every year, the AST determines which schools will be charged a UPP and places the schools in three tiers of utilization threshold. The UPP itself is a percentage increase above the impact tax rate. For example, if the AST determines an elementary school is in Tier 1, the school impact tax rate is increased by 16.66%.

Although the UPP is linked to the impact taxes, this is not a requirement. If there were no school impact taxes but the APF requirements remained, the Council would need to approve a new approach for calculating the UPP. Neither the Planning Board nor Council Staff are recommending changing how the UPP is calculated by unlinking school APF requirements from the impact tax. Therefore, decisions in the GIP regarding the calculation of school generation rates and geographies for infill and turnover areas have a direct impact on determining school impact taxes.

Two of the Planning Board's recommendations on the schools' element of the GIP implicate impact taxes, and the Council's decisions will directly impact the calculation of the school impact tax rate:

- 2.1: Modify the School Impact Area boundaries so that they align with the proposed Transportation Policy Area boundaries, and classify each area into Infill, Turnover, or Greenfield based on an updated analysis of their latest growth context and potential.

- 2.4: Keep stacked flats in the multi-family low-rise category for the purposes of both student generation rates and impact taxes.

Transportation APF requirements are also linked to transportation impact taxes in implementation, albeit less closely. While constructed off-site improvements or mitigation payments as determined through LATR are not based on impact tax rates at all, developers receive impact tax credits for the cost of constructed improvements. That is, if APF requirements are fulfilled through construction, there is a corresponding reduction in impact taxes, which are not a part of APF requirements.

Additionally, transportation policy area color designations currently indicate what adequacy tests and standards will apply to new development. They are also associated with different transportation impact tax rates. This is not a requirement, because as noted, impact taxes are not a part of APF requirements. For example, the Committee and Council could charge one rate in all policy areas. Indeed, there is no connection between the rate and the underlying infrastructure needs in the various policy areas because there is no requirement to spend impact taxes from where they are generated and are not utilized this way in practice.

The PHP committee discussed policy area color designations as part of recommendation 3.1a in the transportation element of the GIP. Specifically, the Committee discussed the definition of red, orange, and yellow policy areas and what designation Rock Spring, Great Seneca, and White Oak should receive. Council Staff explained to the Committee that the decisions regarding the policy area designation should only consider the adequacy test and standard requirements and should not also assume their decision will also lead to which impact tax rates apply in each policy area.

Use of APF Requirements as Incentives

There is a historical precedent for waiving, exempting, or discounting impact taxes to incentivize certain kinds of development, including desirable building types and development in particular locations. Neither school nor transportation impact tax rates are calculated by accounting for the types of development that would be exempted, which means the County is effectively paying the impact taxes for desirable development activity. Put another way, impact taxes are not inflated for other development to make up for the lack of collection from exempted types of development.

The 2024-2028 GIP introduces waivers, discounts, and exemptions for transportation APF requirements. However, unlike impact taxes, which are calculated to transfer uncollected impact taxes as a cost to the County, there is no policy mechanism by which improvements that would otherwise be constructed through LATR are translated to the Transportation CIP, even if the exemptions were to create a gap in adequate transportation infrastructure. This was one reason that Council Staff suggested against exempting LATR requirements as a development incentive during PHP worksessions on the GIP.

Recommendations

The Planning Board is recommending 10 amendments to Development Impact Taxes in Chapter 52 of the County Code. Council Staff present each recommendation as approved by the Planning Board, a summary of testimony related to the recommendation, and a Council Staff suggestion for the Committee's consideration with corresponding analysis as needed.

1. **Modify the calculation of the standard school impact tax rates to reflect the true per student cost of school construction to the county. Do this by adjusting the rates to account for the portion of funding for school capacity projects in the adopted 6-year CIP attributed to state aid. [Lines 151 – Line 154]**

School impact taxes are calculated by multiplying student generation rates, which are calculated by unit type (i.e., single family detached, single family attached, multifamily low-rise, and multifamily high-rise) and location (i.e., turnover and infill), by the construction costs per student by school type (i.e., elementary, middle, and high school).

For example, using hypothetical assumptions, if a single family detached unit in an infill area generates 0.2 elementary school students, 0.1 middle school students, and 0.15 high school students, and the cost of building each school per student is, respectively, $60,000, $65,000, and $70,000, the school impact tax rate for a single family detached unit in an infill area would be:

$$(0.1 \times \$60{,}000) + (0.2 \times \$65{,}000) + (0.15 \times \$70{,}000) = \$29{,}500$$

School impact tax rates are calculated in this way to reflect the significant differences in student generation rates based on development type and location. Generally, larger housing units generate more children than smaller ones, and that development in turnover areas generates more students than in infill areas. Although this helps ensure some proportionality in the levying school impact taxes on development projects, school impact taxes are not legally required to be calculated in this way.

The recommendation from the Planning Board to adjust school impact tax rates to account for State Aid was in response to a significant increase in school construction costs from the most recent biennial update to the tax rates in FY22. As Table 1 shows, school construction costs per seat by school type, as provided to Planning by MCPS, shows an increase of between 34% and 53% from FY22 to FY24. By contrast, the increase from FY20 to FY22 was less than 6% across all three school types. The Planning Board attributes a significant portion of this increase to a significant increase in State Aid for school construction.

Table 1: School Construction Costs per Seat

School	FY2018	FY 2020	FY 2022	FY 2024
Elementary	$ 37,192	$ 44,162	$ 45,926	$ 61,488
% Change	n.a.	18.7%	4.0%	33.9%
Middle	$ 39,600	$ 44,667	$ 47,250	$ 67,933
% Change	n.a.	12.8%	5.8%	43.8%
High	$ 48,238	$ 52,842	$ 52,842	$ 80,938
% Change	n.a.	9.5%	0.0%	53.2%

Source: Montgomery Planning via MCPS, 2024.

While the Committee may wish to better understand why school construction costs increased dramatically between FY22 and FY24, Council Staff do not agree with the Planning Board's recommendation to reduce impact taxes by State Aid for two reasons: impact taxes will increase by 20% regardless of the construction cost amount, and the ratio of Montgomery County's contribution to State Aid is unclear.

First, the Planning Board's recommendation assumes State Aid equals 30% of the FY24 estimate of school construction costs. Even if the costs are reduced by 30%, according to the Department of Finance, the carryover[9] or 'bank' from the most recent biennial update exceeds 20% of the current rate for all but one of the school impact tax rates.[10] That is, even if construction costs were unchanged, the carryover from the most recent update would likely increase the rate by 20%. By not discounting State Aid, the rates would still increase by 20% due to the cap, but the excess amount without the cap would be banked. Therefore, the FY26 to FY27 rate will not change based on this recommendation.

Second, the Committee may wish to better understand school construction costs in detail. There may be elements of the total cost that are not appropriate for the impact tax calculation. The Committee may also wish to understand how much State Aid Montgomery County receives compared to what the County contributes towards State Aid. This could help determine whether or not it is reasonable to account for State Aid.

Council Staff does not suggest the Committee support the Planning Board's recommendation. *Council Staff suggest that any future approach to calculating school impact taxes should focus on accuracy. If the school impact tax rates reach a level where they are a significant obstacle to housing development feasibility, the Council may want to revisit whether impact taxes are an appropriate and sustainable mechanism for raising revenue towards the schools CIP.*

2. **Continue the use of the cap and carryover system as adopted through Bill 25-23E. Its implementation is relatively new and will help soften any anticipated upward adjustments.**

Under the cap and carryover system, both transportation and school impact tax rates cannot increase by more than 20% in one biennial update. If the methodology (construction costs for the school impact tax rate and inflation for the transportation impact tax rate) leads to a larger than 20% increase, the amount above the 20% cap is banked and added to any future changes to the rate[11].

Council Staff suggest the Committee support this recommendation.

3. **Introduce a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller. [Lines 104 – Line 107, Line 156 – Line 161]**

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[9] In the 2020-2024 GIP, the Council implemented a cap and carryover system to mitigate fluctuations in school impact taxes. During the biennial update, if school construction costs and student generation rates would lead to a greater than 20% increase in impact tax rates, the increase is capped at 20% and any increase above that would be 'banked' and applied to future changes, up to a 20% increase.

[10] The impact tax rates for single-family attached units in Turnover areas would increase by slightly less than 20%.

[11] Mathematically, this means if calculated rates decrease, then the banked amount is still added in. For example, if calculated rates do not change but the banked amount is 20% of the current rate, the rate would increase by 20%.

In the 2024-2028 GIP, the Planning Board recommends maintaining the multifamily low-rise designation for stacked flats (i.e., “two-over-twos” or “piggyback” townhomes) because there is not enough data to reliably understand student generation rates in these units. Similarly, the Planning Board does not provide student generation data for townhomes smaller than 1,800 square feet, meaning there is no data to suggest a smaller townhome generates fewer students than a larger unit of the same type.

Although not a legal requirement, if the intent of school impact taxes is to raise revenue towards new school construction to accommodate new students generated by growth, it would be counterintuitive to reduce impact taxes for a unit type that has the second highest student generation rate as currently measured.

One reason to consider a discount for 1,800 square foot units or smaller single-family units is that the same rate is applied regardless of unit size, meaning impact taxes are a larger portion of the development cost of a smaller unit. Reducing impact taxes by unit size could resolve this feasibility issue but should also be consistent with the premise of school impact taxes, which are linked to student generation rates, unless this premise changes.

> **Public hearing requested amendment: Increase maximum square feet qualifier from 1,800 to 2,200 square feet.**
>
> Jim Clifford, a farmer and land use attorney at Clifford Debelius Boynton, requested an increase in the maximum square-foot qualifier for a 50% impact tax discount from 1,800 square feet to 2,200 square feet. Under Bill 16-24, any single-family attached or detached dwelling units with a gross floor area of 1,800 square feet or less pay the tax at 50% of the otherwise applicable rate.[12] The testimony notes that an increase from 1,800 to 2,200 square feet will accommodate front-loaded garages and a first-floor master bedroom in these small houses. This change would allegedly encourage missing middle housing for first-time homebuyers and for seniors who want to move to smaller homes but remain in the County. A 2,200 square foot home can accommodate a modest two- to three-bedroom home. Testimony argues that because impact tax rates are not different for a 2,000 square foot and a 4,000 square foot home, developers are reluctant to build the smaller home for the same impact tax rate when a larger home can make more money. The letter also argues that an 1,800 square foot home is too small for a two-story house with a first-floor master, a feature important to seniors.

Council Staff does not suggest that the Committee support this recommendation as it pertains to school impact taxes, but does support the discount for transportation impact taxes. *While testimony suggested that rejecting this amendment would encourage only larger townhomes to be built, there is no corresponding data to show the distribution of townhome sizes, and new townhomes built in a range of sizes, from 1,400 square feet and up, do exist. Council Staff suggest a more robust approach to remove obstacles from missing middle housing types is a per square foot impact tax rate with a corresponding analysis of student generation rates. Council Staff recommends the Committee gain a better understanding of student generation rates by unit size*

[12] Council Staff notes that the bill actually says, “single-family detached residential or detached single-family dwelling units”. This was an error, and a technical amendment is proposed.

and evaluate findings as part of a task force focused on finding new and improved ways to fund the County's infrastructures needs.

Council Staff does not believe there is currently sufficient evidence to support the premise that a 50% discount, for either 1,800 or 2,200 square feet, will encourage enough missing middle housing given the importance of ensuring that the school impact tax accounts for actual student generation rates. Council Staff recommends the Committee gain a better understanding of student generation rates by unit size and evaluate findings as part of a task force focused on finding new and improved ways to fund the County's infrastructures needs.

Policy options for the Committee's consideration include:

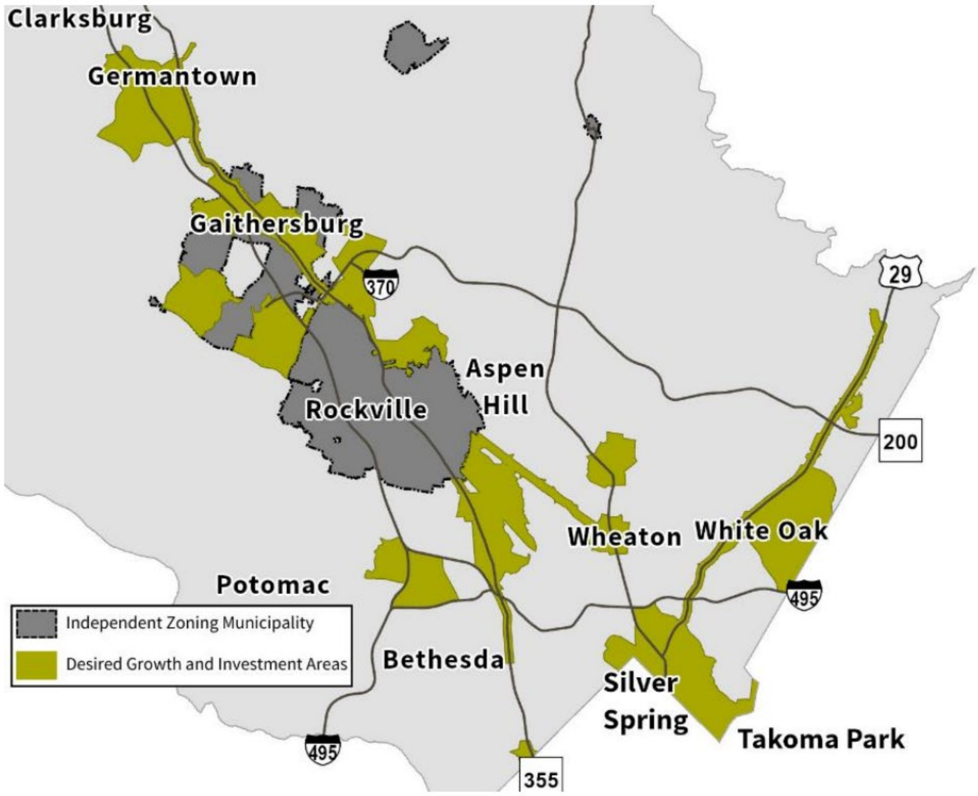
- a. *Support the Planning Board's recommendation to introduce a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller.*
- b. *Exempt single-family attached and detached units that are 1,800 square feet or smaller from transportation impact taxes, but maintain a full school impact tax rate for the unit type*
- c. *In addition to policy options (a) and (b), evaluate the possibility of a school impact tax rate by square foot, and gain a better understanding of SGRs by unit size.*

Council Staff suggest the committee consider options (b) and (c) as recommendations for the full Council.

4. **Remove the Desired Growth and Investment Areas discount and rely on other policies to advance corridor-focused compact growth and housing. This will simplify the number of boundaries used in conjunction with the policy. Include legacy language for projects with an accepted preliminary plan application, or equivalent plan acceptance in the City of Gaithersburg, before January 1, 2025. [Lines 94 – Line 103]**

The Desired Growth and Investment Areas include certain Metropolitan Washington Council of Governments (MWCOG) designated Activity Centers and a 500-foot buffer around existing and certain planned bus rapid transit (BRT) lines (excluding any area located within the City of Rockville). The areas are show in the map in Figure 2below.

Figure 2: Map of Desired Growth and Investment Areas



Source: Montgomery Planning, 2024.

Projects in Desired Growth and Investment Areas pay a discounted transportation impact tax rate. If the area is an orange policy area, projects within it receive a 40% discount. Projects in an area that is also a yellow policy area receive a 32% discount.

Planning Staff recommends removing the Desired Growth and Investment Areas discount to simplify the number of geographies applicable to development. Planning Staff also believe recommendations for changing transportation policy area designations will support development feasibility in area identified through this geography.

Council Staff agrees with Planning Staff that eliminating this geography will simplify implementation of impact taxes. *Furthermore, as Council Staff has noted, the transportation impact tax does not have a strong policy basis, which suggests that the varying degrees of discounts may be arbitrary.*

5. **Replace the current school impact tax discount for multi-family units with three or more bedrooms in Infill areas with a countywide impact tax exemption for both transportation and school impact taxes. The exemption will apply to multi-family residential units with three or more bedrooms in multi-family structures. [Lines 156 – Line 161]**

Although not a legal requirement, if the intent of school impact taxes is to raise revenue towards new school construction to accommodate new students generated by growth, it would be counterintuitive to reduce impact taxes for a unit type intended to accommodate families.

Additionally, while this incentive could lead to savings for certain projects and unlock projects that are marginally infeasible, it is unlikely to compel a developer to provide additional three-bedroom units for the sake of reducing impact taxes. Multifamily development is already charged a lower school impact tax rate because they are associated with smaller student generation rates, meaning the savings per unit are corresponding lower. Moreover, in many cases, larger multifamily rental units can charge lower rents per square foot, which may offset the savings to some degree.

Council Staff does not suggest the Committee agree with a Countywide exemption for school taxes for three-bedroom units. To the extent the transportation impact tax does not have a strong basis, Council Staff does agree with the Planning Board's recommendation to exempt transportation impact taxes for all multifamily units with three bedrooms, countywide.

Policy options for the Committee's consideration include:

- *a. Support the Planning Board's recommendation to extend a school and transportation exemption for multifamily units with three bedrooms.*
- *b. Assess school impact taxes on multifamily units with three bedrooms countywide but exempt such units from transportation impact taxes.*
- *c. Exempt multifamily units with three bedrooms in infill areas from the school impact tax and exempt all multifamily units with three bedrooms countywide from the transportation impact tax.*

Council Staff suggest the committee consider options (b) and (c) as recommendations for the full Council.

6. **Exempt office-to-residential conversions from transportation and school impact taxes when the building is adaptively reused or renovated for multi-family housing. Offer a 50% transportation and school impact tax discount for office-to-residential conversions when demolition is involved in the conversion of office-to-residential to multi-family or single-family attached housing. [Lines 108 – Line 110, Line 162 – Line 164]**

Converting an office building to a residential use can be very expensive. If reducing office vacancy is a policy priority, this recommendation would be consistent with that. However, it is important to note the office-to-residential conversions are unlikely to have a significant impact on reducing office vacancy. Experts estimate that very few office buildings have the potential to accommodate a residential use and the feasibility challenges can be very significant. It is unclear whether this incentive would on its own unlock the feasibility of a conversion, but with such high costs, any savings would help.

However, demolition and redevelopment of office buildings is more likely to have a significant impact on reducing office vacancy. If reducing office vacancy is a policy priority, it would be reasonable to extend the exemption to demolition and redevelopment of office buildings. Moreover, if a policy priority, there may be a stronger justification for waiving school impact taxes despite the potential for new students than for incentivizing, three-bedroom units, for example. A waiver of school impact taxes would have a greater impact on incentivizing such development than it will on incentivizing additional three-bedroom units.

Council Staff suggest the Committee support this recommendation, but also consider a full exemption of impact taxes for office-to-residential conversions when demolition is involved.

Policy options for the Committee's consideration include:

a. *Support the Planning Board's recommendation to exempt office-to-residential conversions from transportation and school impact taxes when the building is adaptively reused or renovated for multi-family housing, and offer a 50% transportation and school impact tax discount for office-to-residential conversions when demolition is involved.*
b. *Exempt both office-to-residential conversions and demolition and redevelopment from both schools and transportation impact taxes.*
c. *Exempt office-to-residential conversions from both school and transportation impact taxes. For office-to-residential conversions when demolition is involved, exempt them from transportation impact taxes but charge 50% of the school impact tax rate.*

Council Staff suggest the committee consider options (b) and (c) as recommendations for the full Council.

7. **Continue exempting bioscience projects from transportation impact tax and add the exemption to the county code. [Line 66]**

This exemption is intended to promote an industry that is critical to the County's economy. The bioscience industry is growing nationally, and Montgomery County is facing increasing competition for bioscience facility development, and therefore bioscience firms.

In addition, from an adequacy perspective, bioscience facilities were determined to have a relatively small transportation impact that would not undermine adequacy. As a result, the PHP committee recommended exempting bioscience facilities from LATR, which is tied to the transportation APF requirements. If the GO Committee accepts this analysis, it would also be reasonable to also exempt bioscience facilities from impact taxes, given that impact taxes have a weaker policy basis than LATR.

Council Staff suggest the Committee support this recommendation.

8. **Update the County Code to allow credit for capacity improvements along state roadways. Form a working group of staff from Montgomery Planning and the Executive Branch to propose additional modifications concurrently with the Council's review of the Draft GIP. Revisions will focus on conversion to the county's**

new Complete Streets classifications, types of creditable infrastructure, and clarity. Convene a working group across county government and with external stakeholders to explore additional financing and funding mechanisms to better meet infrastructure needs. [Line 81 – Line 90]

There are several recommendations in the GIP that would benefit from further review and analysis. In prior recommendations to this Committee in this staff report, Council Staff has suggested a task force to:

- address growth-related schools and transportation capital needs, and raising funding for those in a sustainable way that does not prevent new development;
- consider developing a long-range schools and transportation infrastructure plan accounting for both ongoing and growth-related needs; and,
- evaluate student generation rates by unit size and evaluate findings as part of a task force focused on finding new and improved ways to fund the County's infrastructure needs.

Public hearing requested amendment: full exemption for certain uses, or suspension of impact tax for 4 years

In both written and oral testimony, Nancy Floreen requested Bill 16-24 provide a full exemption from both school and transportation impact taxes for:

- all units in projects that include more than 15% Moderately-Priced Dwelling Units (MPDUs) or a similar affordability program;
- all units constructed with a religious or non-profit organization that prioritizes housing;
- all units of 2,000 square feet or less; and
- all units that satisfy Level I accessibility requirements.[13]

The testimony notes that such a policy would be consistent with the County's Racial Equity & Social Justice Act and would correct the "inequitable tax and land use system" that the County has created over the years. Specifically, that a class system was created via "countless new rules and regulations that simply made it harder to construct new housing and commercial space – based on school capacity and roadway tests that truly bear no relationship to reality, serve miniscule portions of our population, but looked good on paper."

Council Staff suggest the Committee support the recommendation to form a workgroup to address the issues Council Staff has identified throughout this report as well as the public testimony. *The full Council can form a task force via resolution. Alternatively, the Committee or*

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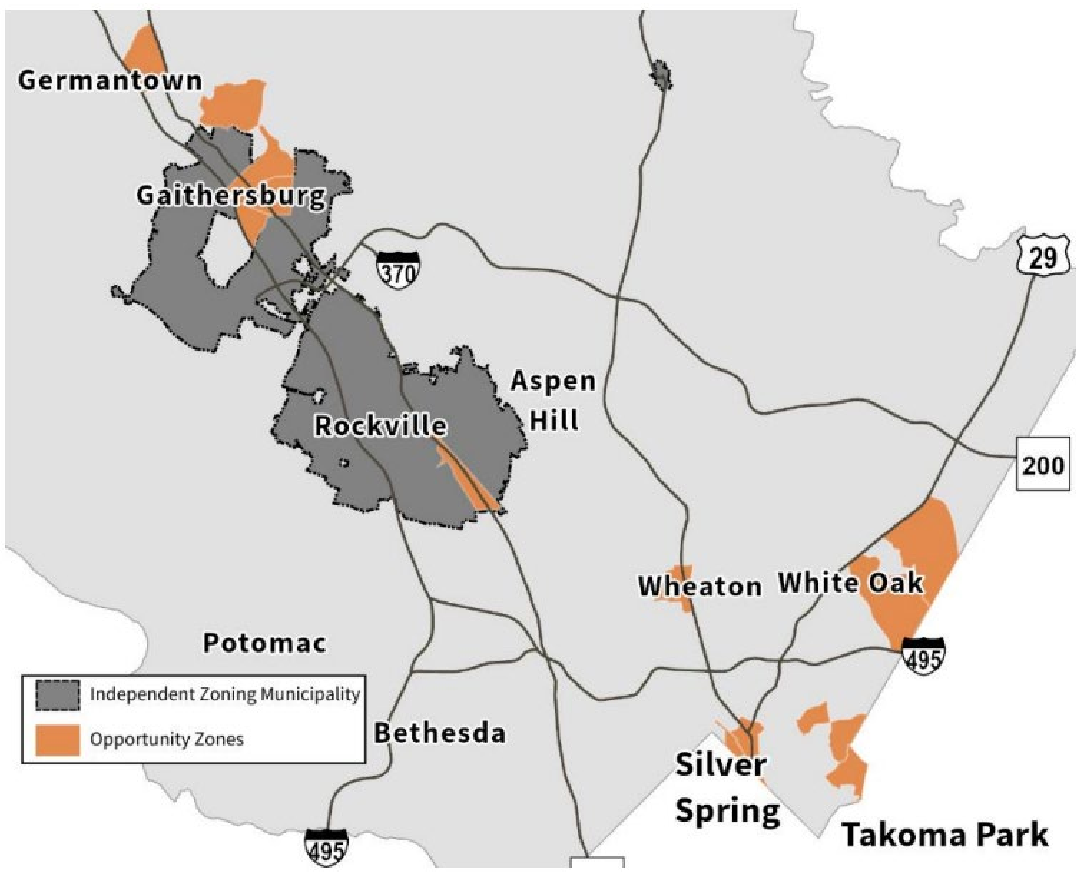
[13] Under Section 52-107, Property tax credit — level I and level II accessibility standards, "Level I Accessibility Standard" means "a permanent addition to a single family residence that include at least one no-step entrance located at any entry door to the house that is connected to an accessible route to a place to visit on the entry level, a usable powder room or bathroom, and a 32-inch nominal clear width interior door as further defined and described in Executive Regulations adopted under Method 2."

full Council could draft a letter requesting the County Executive or Planning Board convene a working group. In addition to the list above, Council Staff recommends the task force be specifically instructed to consider racial equity and social justice when doing its analysis. Council Staff recommends that any proposed amendments or changes to both impact taxes and the GIP provided by the task force include data on how they will improve racial equity and social justice in the County.

9. **Maintain the Opportunity Zone impact tax exemption for projects located in an Opportunity Zone designated census tracts regardless of the status of the federal program. [Line 59 – Line 62, Line 128 – 131]**

Opportunity Zones were created under the Tax Cuts and Jobs Act of 2017. Effectively, investors temporarily defer tax on eligible gains on investments in opportunity zones. The opportunity zone geography is census tracts. States nominated communities for the designation based on whether they are low-income or neighbor low-income areas, and the U.S. Department of the Treasury certified those nominations. Fourteen Montgomery County census tracts are certified Qualified Opportunity Zones, as shown in Figure 3 below.

Figure 3: Map of Opportunity Zones



Source: Montgomery Planning, 2024.

As part of the GIP update in 2020, impact tax amendments waived school and transportation impact taxes for projects in opportunity zones. Although the federal government plans to end the Opportunity Zone program by 2026, the Planning Board is recommending maintaining the exemption regardless of the status of the federal program.

The opportunity zone exemption is a geographic incentive to support development in desirable places. This exemption specifically targets geographies for the purposes of promoting equity and supporting development in historically underinvested places. However, the County has made more sophisticated attempts to map equity needs in the County, such as through Equity Focus Areas (EFAs) and more recently through the Community Equity Index. These are data-driven analyses utilized by Planning and County Staff.

Council Staff suggest the Committee support a recommendation to consider geographic incentives. *However, Council Staff proposes two alternatives because opportunity zones may not be the best proxy for determining those geographies. If the Committee supports incentivizing development in places that have had historical underinvestment or else have high share of low-income households, it could be more practical to utilize other geographies that are more rigorously defined than opportunity zones. However, the Committee may also wish to consider whether it is reasonable to at once promote compact growth around transit and growth in 'equity-defined' areas that may not be compact and near transit.*

Policy options for the Committee's consideration include:

a. Support the Planning Board's recommendation to waive school and transportation impact taxes for projects in opportunity zones.
b. Waive school and/or transportation impact taxes in specific census tracts, which could include all opportunity zones.
c. Waive school and/or transportation impact taxes using a geography other than opportunity zones.
d. Do not use geography to determine impact tax incentives

Council Staff suggest the committee consider options (b) and (c) as recommendations for the full Council.

10. Councilmember Glass proposes a change to the timing of when impact taxes are paid.

A memo from Councilmember Glass to colleagues discussing this proposal is included in this staff report at ©67. Councilmember Glass proposes impact taxes be charged at the time of the final building inspection. Currently, they must be paid either 6 or 12 months after the building permit is issued, depending on the building type, or at the time of final inspection, whichever is earlier. Almost always, the 6 or 12 months is earlier. The intent of this change is to alleviate high upfront housing construction costs while remaining revenue-neutral."

Additional Proposed Amendments

1. **Include all of White Oak in the red policy area (Public hearing testimony) [Line 34 – 49]**

Attorneys from Lerch, Early & Brewer, representing Ralph J. Duffie, Inc., requested an amendment to apply the red policy designation in White Oak either uniformly to all properties located in the White Oak Plan Area or, alternatively, to the three activity centers established in the 2014 White Oak Science Gateway Master Plan. Under Bill 16-24, "White Oak Downtown" is added to the list of red policy areas, and "White Oak" is removed from the orange policy areas. For purposes of a bill on impact taxes, the policy areas establish impact tax districts. Red policy areas generally have lower tax rates.

As noted in the written testimony, the 2014 White Oak Science Gateway Master Plan recommended that:

> "in light of the County's economic objectives and its ownership interest in the Life Sciences property, the Plan area be considered an economic opportunity center, similar in form and function to areas around a Metro Station or a central business district with an ultimately urban character, and that the roadway and transit adequacy standards used in the Subdivision Staging Policy for areas that are currently designated as Urban be applied to the Plan area."[14]

The Plan recommended the policy area be coterminous with the master plan area. The written testimony requested, alternatively, that the three activity centers established in the master plan be included in the red policy area for impact taxes. These activity centers are White Oak Center, Hillandale Community, and Life Sciences/FDA Village Center.

If the Committee chooses to maintain policy areas and to stagger the rates by policy area as currently designed, then Council Staff does not suggest the Committee support this amendment. *Council Staff notes that the White Oak Science Gateway Master Plan was approved and adopted in 2014. As noted by Council Staff in its review of the GIP, while Downtown White Oak is not currently a dense urban center with premium transit service that would justify a red policy area, it has partial bus rapid transit (BRT) service that will likely reach full operation by 2028. Further, an upcoming VIVA White Oak project in Downtown White Oak will contribute to the urban downtown vision for this area, consistent with Thrive Montgomery 2050.[15] However, it is important to note that the PHP Committee will be reviewing the policy areas for the purposes of adequacy, while the GO Committee must review the policy areas from the perspective of impact taxes, which are not about adequacy. Historically, impact taxes have been used as revenue-raising measures and a development incentive.*

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[14] The 2014 White Oak Science Gateway Master Plan can be found here: https://www.montgomeryplanning.org/community/wosg/documents/approved_and_adopted_final.pdf.

[15] If the White Oak area in its entirety were to remain in one policy area, Council Staff would likely recommend the orange policy area.

2. Extension for impact tax credits (Public hearing testimony)

Attorneys from Lerch, Early & Brewer, representing URW, the owners of the Westfield Montgomery Mall, requested an amendment to extend the impact tax credits. This proposed amendment to Section 52-47(b) would extend the impact tax credit validity period for 4 years in instances where the applicant has made a significant transportation improvement of $3 million dollars or more. The language provided would read:

> (4) Any credit that was certified under this subsection on or after March 1, 2004, and before December 31, 2015, expires 6 years after the Department certifies the credit. Any credit that was certified under this subsection on or after January 1, 2016, expires 12 years after the Department certifies the credit, except that any credit certified between January 1, 2016 and January 1, 2022 in the amount of at least $3 million expires 16 years after the Department certifies the credit.

The transportation impact tax credit allows developers to receive a credit for construction improvements that reduce traffic demand or increase transportation capacity. To receive the credit, a developer must build infrastructure that the County would otherwise build. The agreement is reviewed by the Department of Transportation (MCDOT) and certified to the Department of Permitting Services (DPS) before the impact tax is collected.

The proposed amendment is dated back to 2016 consistent with existing language. It extends to 2022 to cover a time of financial stress and high interest rates caused in part by the COVID-19 pandemic. It extends the 12-year expiration by 4 years, to a 16-year credit. The investment of $3 million ensures only projects that have made substantial transportation improvements are covered.

The Council has approved similar extensions in the past. For example, the adequate public facilities (APF) validity period has been extended several times during periods of slow economic growth. An APF validity period requires all building permits for buildings on the recorded lot be secured within the APF validity period established in the approving resolution. The requested extension of impact tax credits is different because a significant financial investment in transportation improvements has already been made.

Council Staff notes that this amendment could affect several developments, some of which may have credits left. The intent of the 12-year period was to encourage implementation of approved projects, similar to the deadline for validity periods. Twelve years is a reasonable number because it covers two 6-year CIP cycles.

Council Staff recommends the Committee support this amendment. *Sixteen years is a long time, even accounting for the lifetime of a project, a pandemic, and periods of slow economic growth. However, this amendment ensures that this extension will end before the next review of the Growth and Infrastructure Policy. Considering the recommendation for a task force and the investment made by the project in question, Council Staff believes this is a reasonable amendment. However, Council Staff notes that the Committee should keep in mind the effect on other projects that may be impacted.*

3. Technical Amendments (Council Staff)

Despite best efforts from both Council and Planning Staff, some technical corrections are recommended for Bill 16-24.

- Bill 16-24 adds the language: "Any single-family detached residential or detached single-family dwelling units with a gross floor area of 1,800 square feet or less must pay the tax at 50% of the otherwise applicable rate." However, in reviewing the introduced bill and the GIP, the language should read:

> (i) Any single-family [[~~detached residential or detached single-family~~]] attached or detached dwelling units with a gross floor area of 1,800 square feet or less must pay the tax at 50 percent of the otherwise applicable rate.

- In its recommendations to the Council, the Planning Board recommended removing 1-bedroom low-rise units from the definition of high-rise units. This recommendation is reflected in Section 52-52, transportation impact taxes, but not in Section 52-39, school impact taxes. The language should read:

> (5) *High-rise residential* includes any dwelling unit located in a multifamily residential or mixed use building that is taller than 4 stories. [[~~, and any 1-bedroom garden apartment~~]].

- Minor technical corrections are needed to address incorrect capitalizations, mis-underlined periods, and re-alphabetizing.

Council Staff recommends these technical amendments.

This packet contains:

Bill No.	16-24
Concerning:	Development Impact Tax – Amendments
Revised:	10/4/2024 Draft No. 3
Introduced:	September 10, 2024
Expires:	December 7, 2026
Enacted:	
Executive:	
Effective:	
Sunset Date:	None
Ch. _____, Laws of Mont. Co.	

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

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

AN ACT to:

(1) update transportation impact tax districts;

(2) modify the applicability of development impact tax exemptions for certain uses and in certain locations; and

(3) generally amend the law governing transportation and school development impact taxes.

By amending

Montgomery County Code

Chapter 52, Taxation

Sections 52-39, 52-41, 52-47, 52-49, 52-52, 52-54, 52-55, and 52-59

EXPLANATION:	***Boldface*** *indicates a Heading or a defined term.* *Underlining indicates text that is added to existing law by the original text amendment.* ***[****Single boldface brackets****]*** *indicate text that is deleted from existing law by original text amendment.* *Double underlining indicates text that is added to the text amendment by amendment.* ***[[****Double boldface brackets****]]*** *indicate text that is deleted from the text amendment by amendment.* * * * *indicates existing law unaffected by the text amendment.*

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

Sec. 1. Sections 52-39, 52-41, 52-47, 52-49, 52-52, 52-54, 52-55, and 52-59 are amended as follows:

52-39. Definitions.

In this Article the following terms have the following meanings:

* * *

Office-to-residential conversion is when an existing office building is turned into housing through adaptive reuse, renovation, or demolition.

Operating **[[***Expense***]]** expense includes reasonable costs of staffing, advertisement, marketing, building rental, furniture, supplies and materials, bus fuel, and personnel to operate a trip reduction program.

[[*Office-to-residential conversion* is when an existing office building is turned into housing through adaptive reuse, renovation, or demolition.**]]**

* * *

Residential means the use of a building as a dwelling unit.

* * *

(5) *High-rise residential* includes any dwelling unit located in a multifamily residential or mixed use building that is taller than 4 stories. **[[**, and any 1-bedroom garden apartment**]]**.

Sidewalk Connector means a sidewalk that provides a direct link or connection to a major activity center.

Stacked flats are dwelling units constructed in a stack of two or more dwelling units, where each dwelling unit is located either above or below an adjacent unit.

Use and occupancy permit means a use and occupancy permit issued by the Department of Permitting Services under Chapter 8.

[*Sidewalk Connector* means a sidewalk that provides a direct link or connection to a major activity center.**]**

* * *

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

* * *

(c) The following impact tax districts are established:

(1) *White Flint:* The part of the [White Flint] North Bethesda Metro Station Policy Area included in the White Flint Special Taxing District in Section 68C-2;

(2) *Red Policy Areas:* Bethesda CBD, Chevy Chase Lake, Forest Glen, Friendship Heights, Great Seneca Life Science Center, Grosvenor, Glenmont,[,] Lyttonsville, Medical Center, North Bethesda Metro Station, Purple Line East, Rock Spring, Rockville Town Center, Shady Grove, Silver Spring CBD, Takoma, Twinbrook, Wheaton CBD, White Oak Downtown, and Woodside Metro Station Policy Areas;

(3) *Orange Policy Areas:* Aspen Hill, Bethesda/Chevy Chase, Burtonsville Crossroads, Clarksburg East, Clarksburg Town Center, Derwood, Fairland/Briggs Chaney, Gaithersburg City, Germantown East, Germantown Town Center, Germantown West, Great Seneca Communities, Kensington/Wheaton, North Bethesda, [R&D Village,] Olney Town Center, Rockville City, and Silver Spring/Takoma Park[, White Flint, except the portion that is included in the White Flint Special Taxing District in Section 68C-2, and White Oak] Policy Areas;

(4) *Yellow Policy Areas:* [Aspen Hill,] Clarksburg West, Cloverly, Damascus [Fairland/Colesville], Colesville [Germantown East, Germantown West], Montgomery Village/Airpark, North Potomac, Olney, and Potomac Policy Areas; and

(5) *Green Policy Areas:* [Damascus,] Rural East[,] and Rural West Policy Areas.

* * *

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

* * *

(6) except for a development located in the City of Rockville, any development located in a Qualified Opportunity Zone certified by the United States Treasury Department, or in an area previously designated as an Opportunity Zone;

(7) a house built by high school students under a program operated by the Montgomery County Board of Education; [or]

(8) a farm tenant dwelling[.];

(9) a bioscience facility;

(10) a multifamily dwelling unit with 3 or more bedrooms in a multifamily structure; or

(11) an office-to-residential conversion when the building is adaptively reused or renovated for multifamily housing.

* * *

52-47. Credits

* * *

(l) The Department must not certify a credit for[:]

[(1)] the cost of a project in a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program or the White Oak Local Area Transportation Improvement Program up to the property owner's fee under a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program.[; or]

[(2) any improvement in the right-of-way of a State road, except:]

[(A) a transit program that operates on or relieves traffic on a State road or an improvement to a State road that is included in a memorandum of understanding between the County and either Rockville or Gaithersburg; or]

[(B) the cost of an improvement in a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program to the extent it exceeds the property owner's fee under a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program.]

* * *

52-49. Tax rates.

* * *

(h) Except for a development located in the City of Rockville, any development located in a Desired Growth and Investment Area, as defined in the 2020-2024 Growth and Infrastructure Policy (Subdivision Staging Policy), <u>that has an accepted preliminary plan application, or equivalent plan acceptance in the City of Gaithersburg, before January 1, 2025,</u> must pay the tax at:

(1) 60[%] <u>percent</u> of the otherwise applicable rate if located in an Orange Policy Area; or

(2) 68[%] <u>percent</u> of the otherwise applicable rate if located in a Yellow Policy Area.

<u>(i)</u> <u>Any single-family</u> [[<u>detached residential or detached single-family</u>]] <u>attached or detached dwelling units with a gross floor area of 1,800 square feet or less must pay the tax at 50 percent of the otherwise applicable rate.</u>

(j) Office-to-residential conversions when demolition is involved in the conversion of office to multifamily or single-family attached housing must pay the tax at 50 percent of the otherwise applicable rate.

(k) Stacked flats must pay the multifamily low-rise applicable rate.

* * *

52-52. Definitions.

In this Article all terms defined in Section 52-39 have the same meanings, and the following terms have the following meanings:

* * *

High-rise unit means any dwelling unit located in a multifamily residential or mixed-use building that is taller than 4 stories. **[**, and any 1-bedroom garden apartment.**]**

Low-rise unit means any dwelling unit located in a multifamily residential or mixed-use building that is 4 stories or less.

* * *

52-54. Imposition and applicability of tax.

* * *

(d) The tax under this Article must not be imposed on:

* * *

(6) except for a development located in the City of Rockville, any development located in a Qualified Opportunity Zone certified by the United States Treasury Department, or in an area previously designated as an Opportunity Zone; **[**or**]**

(7) a house built by high school students under a program operated by the Montgomery County Board of Education**[[**.**]]**; or

(8) a multifamily dwelling unit with 3 or more bedrooms in a multifamily structure; or

(9) an office-to-residential conversion when the building is adaptively reused or renovated for multifamily housing[[;]].

* * *

52-55. Tax rates.

* * *

(d)**[**(d)**]** 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 Growth and Infrastructure Policy using the latest student generation rates and average Montgomery County Public School construction costs. The Director must calculate the adjustment to the nearest multiple of one dollar. The Director must publish in the County Register the amount of this adjustment not later than May 1 of each odd-numbered year.

* * *

(3) *Calculation of impact tax rates.* The tax rates must reflect the County's cost to construct a student seat, reducing the rates by a factor equivalent to the portion of funding for capacity-adding projects in the adopted school CIP attributed to State Aid.

* * *

(f) **[**A three-bedroom multi-family dwelling unit located in an Infill Impact Area must pay the tax at 40% of the otherwise applicable rate.**]** Any single-family **[[**detached residential or detached single-family**]]** attached or detached dwelling units with a gross floor area of 1,800 square feet or less must pay the tax at 50 percent of the otherwise applicable rate.

(g) An office-to-residential conversion when demolition is involved in the conversion of office to multifamily or single-family attached housing must pay the tax at 50 percent of the otherwise applicable rate.

(h) Stacked flats must pay the multifamily low-rise applicable rate.

* * *

52-59. Utilization Premium Payment.

* * *

(c) The Director of Finance, after advertising and holding a public hearing, must adjust the 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.

* * *

Sec. 2. Transition.

The amendments made in Section 1 take effect on January 1, 2025, and must apply to any application for a building permit filed on or after January 1, 2025.

Fiscal Impact Statement

Office of Management and Budget

Bill 16-24 Development Impact Tax - Amendments

Bill Summary

Bill 16-24 would amend transportation impact tax district designations and the impact tax rates that apply in these districts. The bill would also modify the applicability of development impact tax exemptions for certain uses and locations. This Bill is part of the Planning Board's recommended changes to the Growth and Infrastructure Policy (GIP).
Specifically, the bill:

- Updates transportation impact tax districts to expand red, orange, and yellow transportation policy areas in the county. Policy area colors govern impact tax rates among other transportation policies.
- Replaces the current school impact tax discount for multi-family units with three bedrooms in Infill areas with a countywide impact tax exemption for multi-family residential units with three or more bedrooms for school and transportation impact taxes.
- Introduces a 50 percent transportation and school impact tax discount for single-family attached and detached units that are 1,800 square feet or smaller.
- Reduces school impact tax rates to exclude the State funded portion of the cost to construct a student seat.
- Exempts office-to-residential conversions from transportation and school impact taxes when the building is adaptively reused or renovated for multi-family housing and offers a 50 percent discount for office-to-residential conversions when demolition is required.
- Maintains stacked flat units in the multifamily low-rise impact tax rate category.
- Extends the existing impact tax exemption for bioscience facility.
- Introduces impact tax credits for improvements on State roads.

In addition, although not included in Bill 16-24, the Planning Board's recommended updates to the GIP change Local Area Transportation Review (LATR) requirements for transportation mode adequacy testing and proportionality guides which, if implemented, would exempt eligible development projects from constructing off-site transportation improvements, thus shifting the costs of these improvements to the County. Finally, although not included in the bill as drafted, the Planning Board also recommends permitting the use of funds from Utilization Premium Payments (UPP) in adjacent schools in their updates to the GIP.

Fiscal Impact Summary

The Growth and Infrastructure Policy changes submitted by the Planning Board are anticipated to have a negative fiscal impact of $28.1 million over the coming six fiscal years (2026-2031) as displayed below. This impact is the result of reduced impact tax revenues due to changes specified in the bill and increased expenditures associated with other recommended policy changes. While the bill does not authorize or require new spending by the County, additional expenditures will likely be necessary to ensure adequate transportation facilities as provided for in the current GIP. Meanwhile, expenditures for both transportation and schools are likely to be reduced overall as a result of impact tax revenue decreases proposed in the bill.

The bill is expected to increase County expenditures by $6.9 million and to decrease County revenues by $21.2 million over the six-year period by:

- Reducing impact tax revenues as more of the County is shifted to lower impact tax rate zones and by expanding discounts;
- Increasing impact tax credits further reducing impact tax revenues;
- Increasing expenditures for transit improvement to provide sufficient facilities to geographies designated with more urban policy areas; and
- Reducing infrastructure improvements provided by developers, requiring construction by the County to

achieve the same facility levels.

Fiscal Impact Summary	
Revenues	**6-Year Impact**
Impact Tax revenue change through designation of more of the County in lower impact tax rate zones and expanded tax discounts	$ (19,200,000)
Impact Tax revenue change due to credit for improvements on state roadways	$ (2,000,000)
Total revenue impact	**$ (21,200,000)**
Expenditures	**6-Year Impact**
Construction and operation of Damascus-area transit improvements	$ 3,200,000
Construction of improvements that developers are required to build under current policy	$ 3,700,000
Total expenditure impact	**$ 6,900,000**
Net fiscal impact to County	**$ (28,100,000)**

Fiscal Impact Analysis

Impact Tax Revenues

The bill is anticipated to reduce school impact tax revenues by approximately $4.6 million from FY2026 to FY2031, a reduction of approximately $800,000 per year. The policy is anticipated to reduce transportation impact taxes by $14.6 million in the same time period, a reduction of approximately $2.4 million per year.

The 2024-2028 Growth and Infrastructure Policy contains numerous individual sub-policies, only a number of which affect impact tax revenues. The Department of Finance analyzed the sub-policies listed in the following table to determine how future impact tax revenues may change.

Policy Number	Recommendation
2.1	Modify the School Impact Area boundaries so that they align with the proposed Transportation Policy Area boundaries, and classify each area into Infill, Turnover, or Greenfield based on an updated analysis of their latest growth context and potential.
3.1a	Update [transportation] policy areas to support the county's goals.
4.3	Introduce a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller.
4.5	Replace the current school impact tax discount for multi-family units with three or more bedrooms in Infill areas with a countywide impact tax exemption for both transportation and school impact taxes. The exemption will apply to multi-family residential units with three or more bedrooms in multi-family structures.

Due to the volatility of land development as well as the intricacy of the impact tax rate system in Montgomery County, impact tax revenues are highly variable and difficult to predict. Realized impact tax revenues are highly dependent on the amount of development that occurs, the specific type of development, and where that development is located. The future development of any property is influenced by numerous factors that are impossible to predict, such as cost of materials, interest rates, and market rents. As a result of the difficulty of accurately forecasting future development, the Department of Finance used past developments that paid an impact tax to the Department of Permitting Services as a proxy for where future development will occur, and at what intensity and use. The Department of Finance utilized 10 years of development as this period covers multiple economic cycles, generating a reliable proxy for the amount of development that may occur in good economic times as well as during recessions.

The Department of Permitting Services provided a database of all projects paying impact taxes in fiscal years 2014 to 2023. The result was a database of approximately 8,200 development projects containing 21,650 market rate residential units and almost 6.9 million square feet of commercial space located across Montgomery County.

The Department of Finance added data from multiple sources for each project in the database:

- Current and proposed impact tax transportation and school zones from the Department of Planning;
- Current property details (i.e. use, building square footage, etc.) from the Department of Planning

- Units and 3-bedroom units for each multifamily property from CoStar, a commercial real estate data service; and
- Moderately-priced-dwelling-units (MPDUs) from the Department of Housing and Community Affairs;

The Department of Finance compiled the data provided into a unified database and then calculated the fees each individual development project would have paid under the current transportation and school impact tax rate structure, and the fees that would be required under the system proposed by the 2024-2028 Growth and Infrastructure Policy. The Department of Finance compared the results and calculated the annual average expected change in revenues, as well as the six fiscal year change from 2026 to 2031.

The analysis incorporates various assumptions, notably that future development use, intensity, and location will reflect the development trend from FY2014 to FY2023. In addition, the analysis does not incorporate future change to impact tax rates. Impact tax rates are revised biennially based on transportation construction cost inflation, school construction cost inflation, and changes to student generation rates.

In addition to estimating the overall change to impact tax revenues, the Department of Finance calculated the estimated change to impact tax revenues resulting from each of the sub-policies analyzed, shown in tables 1 and 2 below. The total for each sub-policy does not sum to the total anticipated change in impact tax revenues because the sub-policies are applied simultaneously and properties may be subject to multiple sub-policies. The amount for each sub-policy reflects the summation of the revenue change associated with each property subject to the sub-policy in question. For example, the total for sub-policy 3.1a is the change in revenues for all properties that would have been in a different transportation impact tax zone and includes any discounts due to sub-policy 4.3 and sub-policy 4.5.

Table 1. Estimated Revenue Changes for Planning Board's Recommendations on School Elements and on the Code

Items	Average Annual Change	6-year Change
Total Projected Change on Schools Impact Tax Revenues	**-$800,000**	**-$4,600,000**
Policy 2.1: Modify the School Impact Area boundaries so that they align with the proposed Transportation Policy Area boundaries, and classify each area into Infill, Turnover, or Greenfield based on an updated analysis of their latest growth context and potential.	-$300,000	-$1,600,000
Policy 4.3: Introduce a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller.	-$340,000	-$2,030,000
Policy 4.5 / Code Section 52-55 (f): Replace the current school impact tax discount for multi-family units with three or more bedrooms in Infill areas with a countywide impact tax exemption for both transportation and school impact taxes. The exemption will apply to multi-family residential units with three or more bedrooms in multi-family structures.	-$200,000	-$1,400,000

Table 2. Estimated Revenue Changes for Planning Board's Recommendations on Transportation Elements and on the Code

Items	Average Annual Change	6-year Change
Total Transportation Impact Tax Revenues	**-$2,400,000**	**-$14,600,000**
Policy 3.1a: Update [transportation] policy areas to support the county's goal	-$2,200,000	-$13,200,000
Policy 4.3: Introduce a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller.	-$150,000	-$930,000
Policy 4.5: Replace the current school impact tax discount for multi-family units with three or more bedrooms in Infill areas with a countywide impact tax exemption for both transportation and school impact taxes. The exemption will apply to multi-family residential units with three or more bedrooms in multi-family structures.	-$500,000	-$3,200,000

Illustrative Example: Glenmont Forest Redevelopment

Due to the complexity of factors that influence the decision to develop a property, the location, use, and intensity of any future development is not predictable. For this reason, the methodology employed by the Department of Finance used past actual developments in Montgomery County that paid an impact tax as a proxy for the future development the county will experience. If future development trends differ from the past it would result in a change to anticipated future impact taxes. The Glenmont Forest Apartment redevelopment proposal exemplifies how such a change in development trends or the build-out of large projects can affect the range of impact tax revenue realized.

The project at 2386 Glenmont Circle adjacent to the Glenmont Metro station proposes to replace 486 low-rise market-rate multifamily apartments with 2,276 new units of low-rise and high-rise units and 5,000 square feet of retail. The 2024-2028 Growth and Infrastructure Policy proposes to change this property from the turnover school impact tax zone to the infill zone, and from the orange transportation policy zone to the red zone. The 2024-2028 Growth and Infrastructure Policy would result in a decrease of $9.9 million in school impact taxes and $3.7 million in transportation impact taxes compared to the current impact tax rates, if the development is built out as planned.
This estimate assumes the following:

- Based on the proportional square footage proposed of each low-rise and high-rise building, the 2,276 units will comprise 601 low-rise units and 1,675 high-rise units;
- 15% of the proposed units will be dedicated MPDUs;
- The developer receives a credit for the existing 486 low-rise units and only pays impact taxes on the remaining 29 net-new low-rise market rate units;
- 2.70% percent of the new market rate units are 3-bedroom (the average number of market rate units built in the past 10 years that were 3-bedroom

Development of the Glenmont Forest project is in the very early phases of the approval process, and thus the potential impacts identified above are dependent upon the stated assumptions which may not hold for the actual development. However, this example is provided to illuminate potential fiscal impacts as the analysis is otherwise based solely on historical development data.

Impact Tax Credits
Revenue changes associated with Impact Tax credits for improvements along State roadways are expected total $2.0 million over the six-year period as estimated by the Department of Transportation based on the number of projects constructed under the current and previous GIPs, that could have been eligible were this allowance in place. This is likely a low estimate, as more infrastructure may have been constructed along State roadways if improvements were creditable. While there may be expenditure increases for future maintenance on improvements to State roads (currently the subject of ongoing State legislative discussion), the impact is difficult to estimate and not assumed in this analysis.

Transportation System Enhancements
Shifting policy areas from lower-growth to higher-growth categories as proposed by the bill results in an estimated expenditure increase of $3.2 million over the six-year period. This estimate represents the cost estimated by the Department of Transportation of providing sufficient transportation facilities to meet the guidelines as a result of changing Damascus from a "green" to a "yellow" policy area. While this new transit infrastructure may not be required initially, the cost estimate illustrates the impact of altering policy district designations. There would be additional and significant expenditures to enhance transit services in new Orange and Red Policy areas, if enacted. However, due to the proposed changes in definitions of the policy areas, these expenses would be difficult to estimate at this time.

Transportation Facility Construction
While not included in the bill, expenditures are expected to increase $3.7 million over the six-year period to support infrastructure development costs that may be shifted from private developers to the County as a result of modifying transportation adequacy mode testing and LATR exemptions proposed by the planning board in the 2024-2030 GIP update.

	For policy recommendations that would modify transportation mode (e.g. automobile, pedestrian, bike) adequacy testing, expenditure changes reflect the estimated net cost of infrastructure needs that would have been identified by these tests and built by developers or paid for through mitigation payments under the current guidelines. Note that in some cases changes to testing would require developments to construct additional improvements as compared to the current policy, but the net change results in added expenditures for the county. This is likely a low estimate, as the calculation is based on a limited number of developments approved within the changing policy areas over the past three years. Development may increase, and Complete Streets guidelines, Pedestrian Rights of Way Accessibility Guidelines, and other new policies may increase the amount of existing infrastructure that does not meet standards. For policy recommendations that would expand LATR exemptions, expenditure changes reflect the estimated cost of infrastructure that would have been built by developers or paid for through mitigation payments under the current guidelines. Infrastructure cost estimates were developed based on the average annual value of transportation needs identified under the current and previous GIPs. Expenditures include both the capital expenditures needed to construct improvements, plus expenditures for operation and maintenance.
Staff Impact	The Department of Permitting Services estimates that approximately 160 hours of staff time will be needed to implement proposed changes to impact taxes. This additional workload can be absorbed by existing staff.
Actuarial Analysis	The bill is not expected to impact retiree pension or group insurance costs.
Information Technology Impact	The bill is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.
Other Information	
Later actions that may impact revenue or expenditures if future spending is projected	The bill does not authorize future spending.
Ranges of revenue or expenditures that are uncertain or difficult to project	All projections of revenues and expenditures are based on growth data that may be prone to change, especially as the intent of this GIP update is explicitly to result in more growth. Impact tax revenues are difficult to forecast: Future development may not reflect the trends from FY2014 to FY2023 in location, type of use, and intensity of development. In addition, Future inflation to transportation construction costs, school construction costs, and changes to student generation rates are unknown and cannot be foreseen. Changes to these factors may change the impact tax rates, which could in turn impact future impact tax revenues. While some sub-policies in the bill and the 2024-2028 Growth and Infrastructure Policy relate to impact tax revenues, they are either recommendations to continue existing practices or there is insufficient data to evaluate their effect. Accordingly, the Department of Finance did not evaluate the sub-policies shown in the table below.

Policy #	Code Section	Recommendation	Reason not Evaluated
2.2		Adjust the seat deficit thresholds of each UPP tier to align with MCPS's CIP guidelines for classroom additions and maintain the existing utilization rate thresholds.	UPP collections since introduction have been too minimal to noticeably affect the impact tax revenue forecast.
2.3		Allow funds collected as UPPs to be used for capital projects adding capacity at schools adjacent to the school for which the funds were collected, as outlined in the School Utilization Report.	No impact on future County revenues.
2.4	52-55	Keep stacked flats in the multi-family low-rise category for the purposes of both student generation rates and impact taxes.	Policy does not reflect a change to current practice.
2.5		Monitor the countywide early childhood program projections through the School Utilization Report. When the enrollment is projected to be more universal, include the projections in the elementary school SGR calculations.	No impact determined at this time.
4.1	52-55	Modify the calculation of the standard school impact tax rates to exclude the State funded portion of the per student cost of school construction. Do this by adjusting the rates to account for the portion of funding for school capacity projects in the adopted 6-year CIP attributed to state aid.	It is not possible to forecast the future school construction costs, student generation rates, and level of state contribution required to evaluate the impact of this recommendation on the County's funding costs and impact taxes.
4.2		Continue the use of the cap and carryover system as adopted through Bill 25-23E. Its implementation is relatively new and will help soften any anticipated upward adjustments.	Policy does not reflect a change to current practice.
4.4		Remove the Desired Growth and Investment Areas discount and rely on other policies to advance corridor-focused compact growth and housing. This will simplify the number of boundaries used in conjunction with the policy. Include legacy language for projects with an accepted preliminary plan application, or equivalent plan acceptance in the City of Gaithersburg, before January 1, 2025.	Removal of the DGIA discount is consistent with existing practices.
4.6		Exempt office-to-residential conversions from transportation and school impact taxes when the building is adaptively reused or renovated for multi-family housing. Offer a 50% transportation and school impact tax discount for office-to-residential conversions when demolition is involved in the conversion of office-to-residential to multi-family or single-family attached housing	It is not possible to predict which office buildings may convert to residential use, where converted properties would be located, and when this conversion may occur.
4.7		Continue exempting bioscience projects from transportation impact tax and add the exemption to the county code.	Policy does not reflect a change to current impact tax practices.
4.9		Add legacy language to allow approved projects in Opportunity zones that have not received building permits to receive the impact tax exemption.	Policy does not reflect a change to current impact tax practices.

For transportation specifically, if reduced costs for developing affordable housing, 3+ bedroom units, and daycares encourage additional development of these uses, or if additional applicants apply for credits along State roads, then actual cost impacts due to these exemptions and credits will be higher. Similarly, for schools, if cost reductions for these uses result in additional development, enrollment may increase without sufficient impact tax revenue to support capacity projects resulting in additional relocatable expenditures.

For transportation, change to proportionality would shift the assignment of costs between private & public uses. Costs are based on actual costs from developments under the 2020-2024 GIP. Infrastructure not built as part of a new development will carry a higher cost if it is done at a later time as part of a second construction mobilization. There will also be user impacts during that interim timespan where users do not benefit from infrastructure that may have otherwise been built. Finally, changes to the County Code regarding "types of

	creditable infrastructure" could potentially further decrease impact tax revenue. In addition, Planning Board Recommendation 3.11b would exempt development projects that meet the definition of a Mixed-Income Housing Community in Section 3.3.4a of the zoning code from the requirement to complete an LATR study. Due to the lack of historical data on these types of developments, it was not possible to determine a fiscal impact this recommendation. For schools, currently school impact tax rates are based on the average school construction cost and by the latest student generation rate generated by the size and type of residential development. However, the Planning Board recommends discounting these rates by the percentage of the MCPS CIP capacity-adding projects funded with State aid. Though it is difficult to project the magnitude of revenue lost due limitations in forecasting the future cost of school construction, student generation rates, and level of state aid contribution, it is expected that revenues will decrease as a result of Planning's recommendation.
Contributors	Todd Fawley-King, Department of Finance Dennis Hetman, Department of Finance Rachel Silberman, Office of Management and Budget Veronica Jaua, Office of Management and Budget Gary Nalven, Office of Management and Budget Haley Peckett, Department of Transportation Andrew Bossi, Department of Transportation Rebecca Torma, Department of Transportation Barbara Suter, Department of Permitting Services

Economic Impact Statement

Montgomery County, Maryland

Bill 16-24 Development Impact Tax – Amendments

SUMMARY

Based on available information and limited timeframe, the Office of Legislative Oversight (OLO) cannot estimate the impact of Bill 16-24 on the Council's priority economic indicators. An analysis of the Bill would require an understanding of how the Growth and Infrastructure Policy (GIP) would be impacted by the proposed changes, and the subsequent economic impacts to private organizations, residents, and overall economic conditions in the County, which is beyond the scope of this Economic Impact Statement. The GIP is similar to a master plan; thus, the analysis would fall under the purview of Montgomery Planning. However, OLO staff could complete an economic assessment for Bill 16-24 in approximately three to four months if the Council chooses to add it to OLO's work program.

BACKGROUND AND PURPOSE OF BILL 16-24

Every four years, the Montgomery County Planning Board must produce a recommended Growth and Infrastructure Policy (GIP).[1] The GIP ensures that Montgomery County's public infrastructure—such as schools, transportation, and water & sewer services—can support new development in the County.[2] The GIP is responsible for:

- creating a process for analyzing the impact of new developments on public infrastructure;
- setting standards for determining if infrastructure is adequate to support new development; and
- establishing how to identify inadequate infrastructure, how inadequacies should be addressed, and the time frame for when improvements should take place.[3]

The Planning Board submitted their recommended draft of the 2024-2028 GIP on July 25, 2024.[4] After receiving comments and recommendations on the draft from the County Executive and County Board of Education, the Council must hold a public hearing and then decide whether to adopt the policy by November 15th, 2024.[5] (If the Council does not adopt the new GIP, the previously adopted policy remains in effect.)[6]

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[1] Montgomery County Code, "Sec. 33A-15. Growth and Infrastructure Policy."
[2] Montgomery County Planning Department, "Growth and Infrastructure Policy Explainer."
[3] Ibid.
[4] Montgomery County Council, "Introduction Staff Report for Bill 16-24," September 10, 2024.
[5] Sec. 33A-15. Growth and Infrastructure Policy.
[6] Ibid.

The Planning Board submitted Bill 16-24 to the Council. The purpose of the Bill is "to implement legislative changes consistent with the Planning Board draft of the 2024-2028 GIP. "[7] It would do so by updating transportation impact tax districts, modifying development impact tax exemptions for certain uses and in certain locations, and adjusting how the County calculates development impact taxes.[8]

On behalf of the Planning Board, the Council introduced Bill 16-24 on September 10, 2024.

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess the impacts of Bill 16-24 on County-based private organizations and residents in terms of the Council's priority economic indicators and whether the Bill would likely result in a net positive or negative impact on overall economic conditions in the County.[9]

Due to the complexity of the proposed changes, Bill 16-24 would require a detailed investigation of the impacts of each proposed change to the tax districts, development impact tax exemptions, and laws governing the transportation and school development impact taxes.[10] The Bill's proposed changes would directly impact the policy tools of the Growth and Infrastructure Policy and it is not possible to evaluate the changes in the timeframe given for this statement. In the past, Planning Staff have solicited stakeholder input along with data to evaluate policy recommendations, including development taxes and changes to tax districts.[11] This investigation is beyond the scope of this Economic Impact Statement. OLO staff could complete an economic assessment for Bill 16-24 in approximately three to four months if the Council chooses to add it to OLO's work program.

VARIABLES

Not applicable

IMPACTS

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

Not applicable

[7] Montgomery County Council, "Introduction Staff Report for Bill 16-24."
[8] Ibid.
[9] Montgomery County Code, Sec. 2-81B.
[10] Montgomery County Council, Introduction Report for Bill 16-24.
[11] Montgomery Planning, 2024 - 2028 Growth and Infrastructure Policy Working Draft, May 3, 2024.

DISCUSSION ITEMS

Not applicable

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.

Climate Assessment

Office of Legislative Oversight

Bill 16-24: Development Impact Tax - Amendments

SUMMARY

Based on available information and limited timeframe, the Office of Legislative Oversight cannot estimate the impact of Bill 16-24 on the County's contribution to climate change, nor climate resilience. An analysis of the Bill would require an understanding of how the Growth and Infrastructure Policy (GIP) would be impacted by the proposed changes, and the subsequent environmental impacts, which is beyond the scope of this climate assessment. The GIP is similar to a master plan; thus, the analysis would fall under the purview of Montgomery Planning. However, OLO staff could complete an assessment for Bill 16-24 in approximately three to four months if the Council chooses to add it to OLO's work program.

BACKGROUND AND PURPOSE OF BILL 16-24

Every four years, the Montgomery County Planning Board must produce a recommended Growth and Infrastructure Policy (GIP).[1] The GIP ensures that Montgomery County's public infrastructure—such as schools, transportation, and water & sewer services—can support new development in the County. [2] The GIP is responsible for:

- Creating a process for analyzing the impact of new developments on public infrastructure;
- Setting standards for determining if infrastructure is adequate to support new development; and
- Establishing how to identify inadequate infrastructure, how inadequacies should be addressed, and the time frame for when improvements should take place.[3]

The Planning Board submitted their recommended draft of the 2024-2028 GIP on July 25, 2024.[4] After receiving comments and recommendations on the draft from the County Executive and County Board of Education, the Council must hold a public hearing and then decide whether to adopt the policy by November 15th, 2024.[5] (If the Council does not adopt the new GIP, the previously adopted policy remains in effect.)[6]

The Planning Board submitted Bill 16-24 to the Council. The purpose of the Bill is "to implement legislative changes consistent with the Planning Board draft of the 2024-2028 GIP. "[7] It would do so by updating transportation impact tax districts, modifying development impact tax exemptions for certain uses and in certain locations, and adjusting how the County calculates development impact taxes.[8]

On behalf of the Planning Board, the Council introduced Bill 16-24 on September 10, 2024.

ANTICIPATED IMPACTS

Due to the complexity of the proposed changes, Bill 16-24 would require a detailed investigation of the impacts of each proposed change to the tax districts, development impact tax exemptions, and laws governing the transportation and school development impact taxes.[9] The Bill's proposed changes would directly impact the policy tools of the Growth and Infrastructure Policy and it is not possible to evaluate the changes in the timeframe given for this statement. In the past, Planning Staff have solicited stakeholder input along with data to evaluate policy recommendations, including development taxes and changes to tax districts.[10] This investigation is beyond the scope of this climate assessment. OLO staff could complete an assessment for Bill 16-24 in approximately three to four months if the Council chooses to add it to OLO's work program.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.[11] OLO does not offer recommendations or amendments as the impact of Bill 16-24 cannot be estimated regarding the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. 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.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptative capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

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[1] Montgomery County Code, "Sec. 33A-15. Growth and Infrastructure Policy," Accessed September, 26, 2024.
[2] Montgomery County Planning, Growth and Infrastructure Policy - Montgomery Planning, May 3, 2024.
[3] Ibid.
[4] Montgomery County Council, "Introduction Staff Report for Bill 16-24,", September 10, 2024.
[5] Sec. 33A-15. Growth and Infrastructure Policy.
[6] Ibid.
[7] Montgomery County Council, "Introduction Staff Report for Bill 16-24."
[8] Ibid.
[9] Montgomery County Government, Introduction Report for Bill 16-24, Introduced September 10, 2024.
[10] Montgomery Planning, 2024 - 2028 Growth and Infrastructure Policy Working Draft, May 3, 2024.
[11] Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 16-24: DEVELOPMENT IMPACT TAX - AMENDMENTS

SUMMARY

Based on available information and limited timeframe, the Office of Legislative Oversight cannot estimate the impact of Bill 16-24 on racial equity and social justice (RESJ). An analysis of the Bill would require an understanding of how the Growth and Infrastructure Policy (GIP) would be impacted by the proposed changes, and the subsequent impacts to racial equity and social justice, which is beyond the scope of this impact statement.

Of note, the GIP is like a master plan in its scope and thus its analysis would fall under the purview of Montgomery Planning. If the Council chooses to add a RESJ impact statement on Bill 16-24 to OLO's work program, OLO staff could complete it in approximately three to four months.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.[1] Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social inequities that have caused racial and social disparities.[2]

PURPOSE OF BILL 16-24

Every four years, the Montgomery County Planning Board must produce a recommended Growth and Infrastructure Policy (GIP).[3] The GIP ensures that Montgomery County's public infrastructure—such as schools, transportation, and water and sewer services—can support new development in the County.[4] The GIP is responsible for:[5]

- creating a process for analyzing the impact of new developments on public infrastructure;
- setting standards for determining if infrastructure is adequate to support new development; and
- establishing how to identify inadequate infrastructure, how inadequacies should be addressed, and the time frame for when improvements should take place.

The Planning Board submitted their recommended draft of the 2024-2028 GIP on July 25, 2024.[6] After receiving comments and recommendations on the draft from the County Executive and County Board of Education, the Council must hold a public hearing and then decide whether to adopt the policy by November 15, 2024.[7] If the Council does not adopt the new GIP, the previously adopted policy remains in effect.[8]

The Planning Board submitted Bill 16-24 to the Council. The purpose of the Bill is "to implement legislative changes consistent with the Planning Board draft of the 2024-2028 GIP."[9] It would do so by updating transportation impact tax districts, modifying development impact tax exemptions for certain uses and in certain locations, and adjusting how the County calculates development impact taxes.[10]

On behalf of the Planning Board, the Council introduced Bill 16-24 on September 10, 2024.

Anticipated RESJ Impacts

Due to the complexity of the proposed changes, Bill 16-24 would require a detailed investigation of the impacts of each proposed change to the tax districts, development impact tax exemptions, and laws governing the transportation and school development impact taxes.[11] The Bill's proposed changes would directly impact the policy tools of the Growth and Infrastructure Policy and it is not possible to evaluate the changes in the timeframe given for this statement. In the past, Planning Staff have solicited stakeholder input along with data to evaluate policy recommendations, including development taxes and changes to tax districts.[12] This investigation is beyond the scope of this impact statement. OLO staff could complete a RESJ impact statement for Bill 16-24 in approximately three to four months if the Council chooses to add it to OLO's work program.

Recommended Amendments

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.[13] OLO does not offer recommended amendments for Bill 16-24 since the analysis required for this Bill is outside of the scope of this impact statement.

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 impact 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 Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

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[1] Definition of racial equity and social justice adopted from "Applying a Racial Equity Lens into Federal Nutrition Programs" by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. https://www.racialequitytools.org/glossary

[2] Ibid.

[3] "Sec. 33A-15. Growth and Infrastructure Policy," Montgomery County Code §

[4] "Growth and Infrastructure Policy Explainer," Montgomery County Planning Department.

[5] Ibid.

[6] Introduction Staff Report for Bill 16-24, Montgomery County Council, Introduced September 10, 2024.

[7] Sec. 33A-15. Growth and Infrastructure Policy

[8] Ibid.

[9] Introduction Staff Report for Bill 16-24.

[10] Ibid.

[11] Ibid.

[12] 2024-2028 Growth and Infrastructure Policy Working Draft, Montgomery County Planning Department, May 3, 2024.

[13] Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

GIP Rec #	Current GIP	Planning Board Recommendation	Committee Recommendations	Council Straw Votes
2.1	Census tracts (or aggregations of census tracts) in combination with Planning Area boundaries are used to identify 35 areas for analysis.	**Recommendation 2.1:** *Modify the School Impact Area boundaries so that they align with the proposed Transportation Policy Area boundaries, and classify each area into Infill, Turnover, or Greenfield based on an updated analysis of their latest growth context and potential.*	PHP Committee: Follow-up analysis requested. Comparison of boundaries and changes in School Impact Area classifications.	
2.2	The current GIP seat deficit thresholds are based on MCPS seat deficit thresholds; however, they range from 84 to 125 percent of the MCPS threshold and vary across all school levels and utilization rate thresholds.	**Recommendation 2.2:** *Adjust the seat deficit thresholds of each UPP tier to align with MCPS's CIP guidelines for classroom additions and maintain the existing utilization rate thresholds.*	PHP Committee: (3-0) in favor of the Planning Board recommended adjustment to seat deficit thresholds to better align with MCPS thresholds for capacity planning. Recommended thresholds are a consistent percentage of the MCPS threshold across all school levels with Tier 1 at 80 percent of the MCPS seat deficit threshold, Tier 2 at 100 percent, and Tier 3 at 120 percent.	
2.3	Currently, the funds collected are limited to public school improvements that add capacity designed to alleviate overutilization in the school service area from which they are collected.	**Recommendation 2.3***:* *Allow funds collected as UPPs to be used for capital projects adding capacity at schools adjacent to the school for which the funds were collected, as outlined in the School Utilization Report.*	PHP Committee: (3-0) in favor of Planning Board recommendation.	

2.4	These units are currently recognized as multi-family low-rise by zoning standards and categorized as such for SGR purposes. However, DPS has stated that their current practice is to recognize stacked flats as single-family attached structures and charge rates accordingly.	**Recommendation 2.4:** *Keep stacked flats in the multi-family low-rise category for the purposes of both student generation rates and impact taxes.*	PHP Committee: (3-0) in favor of the Planning Board recommendation.	
2.5	N/A	**Recommendation 2.5:** *Monitor the countywide early childhood program projections through the School Utilization Report. When the enrollment is projected to be more universal, include the projections in the elementary school SGR calculations.*	PHP Committee: (3-0) in favor of Planning Board recommendation with the following edit: Recommendation 2.5: *Monitor the countywide early childhood program projections through the School Utilization Report. When the enrollment is projected to be more universal, [include the projections in the elementary school SGR calculations] <u>provide an update and analysis of the potential impact of these programs on school utilization and capacity</u>.*	

GIP Rec #	Current GIP	Planning Board Recommendation	Committee Recommendations	Council Straw Votes
3.1a	Current definition of policy area classifications: • Red: Down County Central Business Districts and Metro Station Policy Areas characterized by high-density development and the availability of premium transit service (i.e., Metrorail/Purple Line). • Orange: Corridor cities, Town centers and emerging Transit-Oriented Development (TOD) areas where premium transit service (i.e., Corridor Cities Transitway, Bus Rapid Transit) is planned. • Yellow: Lower density areas of the County characterized by mainly residential neighborhoods with community-serving commercial areas. • Green: The County's agricultural reserve and rural areas.	**Recommendation 3.1a**: *Update policy areas to support the County's goals.* To reflect these changed definitions, Rec. 2.1a makes the following changes to the policy area boundaries. Establish three new Red policy areas from formerly Orange areas: • Great Seneca Life Science Center • White Oak Downtown • Rock Spring Establish new Orange policy areas from formerly Yellow areas: • Aspen Hill • Clarksburg East (Clarksburg West to remain Yellow) • Fairland/Briggs Chaney • Germantown East & West • Olney Town Center Change Damascus from a Green policy area to Yellow, recognizing that it is an established community where limited growth is possible.	PHP Committee: Follow-up analysis requested. Look at tightening proposed definitions of colored policy areas to reflect the proposed color-coded transportation policy area classifications. Following concurrence with a definition, the Committee will weigh in on the changes in color classification recommended by the Board.	

3.1b	Currently, the White Oak policy area and the White Oak LATIP (Local Area Transportation Improvements Program) boundaries are the same.	**Recommendation 3.1b:** *Define the geographic extents of the White Oak Local Area Transportation Improvement Program (LATIP) area, therefore differentiating it from the White Oak Policy area and retaining the program's current boundaries.*	PHP Committee: (3-0) in favor of the Planning Board recommendation.	
3.2	The threshold for an LATR study is 50 person trips. This translates into approximately 30 vehicle trips.	**Recommendation 3.2:** *Require LATR studies for a proposed development project generating 50 or more peak-hour vehicle trips.*	PHP Committee: (3-0) in favor of the Planning Board recommendation to change to a vehicle trip based threshold; however, the Committee (3-0) in favor of retaining the 30 vehicle-trip trigger.	
3.3	HCM Average Vehicle Delay Standards are set for each policy area and are relative to the color classification of the policy area.	**Recommendation 3.3:** *Update the LATR intersection delay standards to reflect changes to policy area boundaries and designations.*	PHP Committee: (3-0) in favor of the Planning Board recommendation pending any changes to Recommendation 3.1a that would impact it.	
3.4	There are 5 non-motor vehicle adequacy tests.	**Recommendation 3.4:** *Simplify the Non-Motor Vehicle Adequacy Test. The test will have five components: Pedestrian Level of Comfort (PLOC), illuminance, Americans with Disabilities Act (ADA) compliance, bicycle system, and bus transit system. This test will replace the individual pedestrian, bicycle, and bus transit systems tests.*	PHP Committee: (3-0) in favor of the Planning Board recommendation.	

3.5	Current scoping requirements for transit, pedestrian, and bicycle adequacy tests vary by number of trips and policy area color with greater requirements and greater area of analysis for red and orange policy areas.	**Recommendation 3.5:** *Modify the non-motor vehicle adequacy test requirements to maintain the county's high standards while minimizing unnecessary data collection and analysis.*	PHP Committee: (3-0) in favor of the Planning Board recommendation.	
3.6	Current statement must assess and propose solutions to high injury network and safety issues, review traffic speeds, and describe how safe site access will be provided.	**Recommendation 3.6**: *Refine the Vision Zero Statement to focus on managing speed for safety.*	PHP Committee: (3-0) in favor of the Planning Board recommendation.	
3.7	This was added as a placeholder in the 2020 GIP.	**Recommendation 3.7**: *Remove the reference to the Safe Systems Adequacy Test from the GIP.*	PHP Committee: (3-0) in favor of the Planning Board recommendation.	
3.8	The Planning Board introduced the LATR Proportionality Guide in 2022 as an immediate measure to address concerns about unpredictable and disproportionate mitigation costs.	**Recommendation 3.8:** *As part of the 2025 LATR Guidelines, develop a vehicle trip-based Proportionality Guide calculation that better accounts for impacts.*	PHP Committee (3-0) in favor of the Planning Board recommendation.	
3.9	Current fee-in-lieu funds must be spent in the subject policy area.	**Recommendation 3.9**: *Allow all fee-in-lieu funds to be spent in both the subject policy area and adjacent policy areas.*	PHP Committee (3-0) in favor of the Planning Board recommendation.	

3.10	Current fee-in-lieu funds must be spent on the non-motor vehicle mode for which the deficiency was assessed.	**Recommendation 3.10:** *Rather than limiting the use of funds to specific modes, allow fee-in-lieu funds collected for non-motor vehicle deficiencies to be used for any non-motor vehicle improvement within the subject policy area or an adjacent policy area.*	PHP Committee (3-0) in favor of the Planning Board recommendation.	
3.11a	The current GIP exempts affordable housing units from the calculation of mitigation payments, but not LATR improvements.	**Recommendation 3.11a:** *Expand the current off-site mitigation exemption for affordable housing units, which currently only includes mitigation payments, to include constructed improvements. Adjust the Proportionality Guide limit by subtracting trips attributed to new affordable units. The trips generated by these units will still count toward the 50-vehicle-trip LATR threshold.*	PHP Committee: Deferred deciding on Recommendation 3.11a pending additional analysis and alternative language on LATR exemption recommendations.	
3.11b	The current GIP does not exempt Mixed-Income Housing Communities from LATR requirements.	**Recommendation 3.11b:** *Exempt development projects that meet the definition of a Mixed-Income Housing Community in Section 3.3.4a of the zoning code from the requirement to complete an LATR study.*	PHP Committee: Deferred deciding on Recommendation 3.11b pending additional analysis and alternative language on other LATR exemption recommendations.	

3.12	The current GIP does not exempt multi-family units with three or more bedrooms from the calculation of LATR improvements.	**Recommendation 3.12:** *Exempt multi-family units with three or more bedrooms in multifamily structures from off-site mitigation construction and payment. Adjust the Proportionality Guide limit by subtracting trips attributed to new multi-family units with three or more bedrooms. The trips generated by these units will still count toward the 50-vehicle-trip LATR threshold.*	PHP Committee: Deferred deciding on Recommendation 3.12 pending additional analysis and alternative language on LATR exemption recommendations.	
3.13	The current GIP does not exempt daycares from LATR requirements.	**Recommendation 3.13:** *Exempt daycares from the requirement to complete an LATR study.*	PHP Committee: Additional analysis required. Committee requested that Council staff work with Planning staff to develop language that would exempt smaller daycares but not exempt larger daycares.	
3.14	The current GIP offers an exemption from LATR requirements to bioscience facility applications filed after January 1, 2021, and before January 1, 2025. The application for a building permit must be filed within three years after the approval of any required preliminary plan or site plan.	**Recommendation 3.14:** *Extend the bioscience LATR exemption for another four years, so it applies to applications filed before January 1, 2029. Remove the exemption's current three-year time limit to file a building permit.*	PHP Committee: Additional analysis required. Committee requested that Council staff work with Planning staff to develop language that would still require a time limit to file a building permit but that would provide developers with more than 3 years.	
3.15	Current GIP lists NADMS goals for most policy areas, but some policy areas do not have goals. Some with goals have not been updated for policy area changes or recent master plans.	**Recommendation 3.15:** *Establish NADMS goals for new policy areas and other areas without goals. Update the NADMS goals to reflect recently adopted master plans.*	PHP Committee (3-0) in favor of the Planning Board recommendation.	

3.16	Current GIP resolution text does not include recent	***Recommendation 3.16****: Revise the GIP resolution text to reflect updated county plans, policies, laws, regulations, and guidance.*	PHP Committee (3-0) in favor of the Planning Board recommendation.	
3.17	Current LATR guidelines have some unclear and vague language that causes some confusion among applicants and other stakeholders.	**Recommendation 3.17:** *Reorganize and update the LATR Guidelines. The revised version will reduce duplicative and contradictory language, address frequently asked questions, and include example documents and directions for common challenges.*	PHP Committee (3-0) in favor of the Planning Board recommendation.	
3.18	Currently, SHA's 45-day review period does not align with the Development review Committee's review timeline. Planning and SHA sometimes have conflicting expectations for motor vehicle adequacy.	**Recommendation 3.18:** *Continue to work with SHA and State Delegates to codify SHA review times. Clarify mutual expectations in the development review process, particularly for projects in Red policy areas, where motor vehicle analysis and mitigation are not a county priority.*	PHP Committee (3-0) in favor of the Planning Board recommendation.	

GIP Rec #	Current GIP	Planning Board Recommendation	GO Committee Recommendations	Council Straw Votes
4.1	Currently, school impact taxes are not adjusted for the State's contribution to county school infrastructure.	**Recommendation 4.1:** *Modify the calculation of the standard school impact tax rates to reflect the true per student cost of school construction to the county. Do this by adjusting the rates to account for the portion of funding for school capacity projects in the adopted 6-year CIP attributed to state aid.*		
4.2	Cap and carryover system currently in place was adopted in 2020. It caps the biennial tax rate adjustment at 20% and if the biennial tax rate adjustment exceeds 20%, allows the excess dollar to be carried over and added to the tax rate before calculating the next biennial adjustment.	**Recommendation 4.2:** *Continue the use of the cap and carryover system as adopted through Bill 25-23E. Its implementation is relatively new and will help soften any upward adjustments.*		
4.3	There are no reductions to impact taxes based on unit size.	**Recommendation 4.3:** *Introduce a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller.*		

4.4	Any development located in a Desired Growth and Investment Area must pay the tax at: (1) 60% of the otherwise applicable rate if located in an Orange Policy Area; or (2) 68% of the otherwise applicable rate if located in a Yellow Policy Area Desired Growth and Investment Areas include certain MWCOG designated Activity Centers and a 500-foot buffer around existing and certain planned bus rapid transit (BRT) lines (excluding any area located within the City of Rockville), as detailed in Map T44.	**Recommendation 4.4:** *Remove the Desired Growth and Investment Areas discount and rely on other policies to advance corridor-focused compact growth and housing. This will simplify the number of boundaries used in conjunction with the policy. Include legacy language for projects with an accepted preliminary plan application, or equivalent plan acceptance in the City of Gaithersburg, before January 1, 2025.*		
4.5	Currently, a three-bedroom multi-family dwelling unit located in an Infill Impact Area must pay the tax at 40% of the otherwise applicable rate. There is no discount for three-bedroom units constructed in Turnover Impact Areas.	**Recommendation 4.5:** *Replace the current school impact tax discount for multi-family units with three or more bedrooms in Infill areas with a countywide impact tax exemption for both transportation and school impact taxes. The full exemption will apply to multi-family residential units with three or more bedrooms in multi-family structures.*		

4.6	There is no exemption nor discount for office-to-residential conversions.	**Recommendation 4.6:** *Exempt office-to-residential conversions from transportation and school impact taxes when the building is adaptively reused or renovated for multi-family housing. Offer a 50% transportation and school impact tax discount for office-to-residential conversions when demolition is involved in the conversion of office-to-residential to multi-family or single-family attached housing. Table 14 illustrates an example of a potential office-to-residential conversion and how the exemption could work.*		
4.7	Impact tax rate for bioscience use is $0.	**Recommendation 4.7:** *Continue exempting bioscience projects from transportation impact tax and add the exemption to the county code.*		
4.8a	Credit is given for improvements to County roadways.	**Recommendation 4.8a:** *Update the County Code to allow credit for capacity improvements along state roadways. Form a working group of staff from Montgomery Planning and the Executive Branch to propose additional modifications concurrently with the Council's review of the Draft GIP. Revisions will focus on conversion to the county's new Complete Streets classifications, types of creditable infrastructure, and clarity.*		

4.8b	N/A	**Recommendation 4.8b:** *Convene a working group across county government and with external stakeholders to explore additional financing and funding mechanisms to better meet infrastructure needs.*		
4.9	Currently, except for a development located in the City of Rockville, any development located in a Qualified Opportunity Zone certified by the United States Treasury Department is exempt from the school and transportation impact tax.	**Recommendation 4.9***:* *Maintain the Opportunity Zone impact tax exemption for projects located in an Opportunity Zone designated census tracts regardless of the status of the federal program.*		

COUNTY EXECUTIVE TESTIMONY
BILL 16-24, DEVELOPMENT IMPACT TAX - AMENDMENTS

October 1, 2024

Good afternoon Council President and members of the County Council. My name is Rachel Silberman. I am the Capital Improvement Program Coordinator in the Office of Management and Budget and I am here today to testify on behalf of the County Executive regarding Bill 16-24 Development Impact Tax - Amendment.

On behalf of the County Executive, I would like to express concern about the continued reduction of impact tax revenues supporting critical transportation and school improvement projects proposed in the Bill. While impact taxes may not be the ideal tool for funding transportation and school infrastructure, the County Executive urges you to "do no harm" and avoid further reductions before assembling the study group recommended by the Planning Board to identify alternative revenue streams.

The Planning Board's proposed impact tax and Growth and Infrastructure policy changes are expected to have a negative fiscal impact of more than $28 million over the next six fiscal years. The County's Capital Improvements Program (CIP) is constrained by spending affordability guidelines for general obligation bonds and declining Recordation and Impact tax revenues due in part to Impact Tax adjustments approved in the last Growth and Infrastructure Policy update. At the same time, escalation in the construction market has eroded buying power in the CIP and made it challenging to support already approved projects. Further reductions would substantially hamper our ability to make critical community investments in school capacity projects and transportation improvements.

What is not included in our estimated fiscal impact and what we have lingering concerns over is the proposal to exclude the State-funded portion of school construction projects when calculating school impact tax rates. While it is difficult to project the amount lost revenue, it is expected that revenues will decrease as reult, further reducing school construction funding, only months after many painful but critical adjustments to the Montgomery County Public Schools CIP were made to build a more fiscally viable capital program.

We urge you to weigh the bill's impact on the County's ability to provide adequate infrastructure for residents and urge you not to take action that would reduce impact tax revenues without first studying alternative revenue streams. We appreciate being included in future committee sessions on this bill and look forward to the continued discussion. Thank you.

GIP: Index of Executive Branch Recommended Additions/Deletions to the Planning Board Draft of the Growth and Infrastructure Policy

Total estimated fiscal impact over 6 years:
School Impact Tax Revenues: -$4,600,000
Transportation Impact Tax Revenues: -$14,600,000

Planning Staff Recommendations in blue:	Fiscal Impact	Revenue Increase	Revenue Loss	Comment
Schools Element				
Recommendation 2.1 **School Impact Tax Areas:** *Modify the School Impact Area boundaries so that they align with the proposed Transportation Policy Area boundaries, and classify each area into Infill, Turnover, or Greenfield based on an updated analysis of their latest growth context and potential. All policy areas recommended as Red Transportation policy areas will be recommended as Infill Impact Areas regardless of the data analysis results.* Based on Finance's analysis this policy is expected to result in an average annual reduction of $300K in revenues and $1.6M over six-years.	Yes	No	Yes	Delete
Recommendation 2.2 **Annual School Test:** **Adjust the Seat Deficit Thresholds to Better Align with MCPS' CIP Thresholds** *Adjust the seat deficit thresholds of each UPP tier to align with MCPS's CIP guidelines for classroom additions and maintain the existing utilization rate thresholds.* Because the seat deficit threshold is lower, the chances for developments hitting the seat deficit threshold is higher. Therefore, this could be translated into more developments having to pay UPP. However, it is important to mention that UPPs are just a fraction of the cost of a seat. Since Planning is aligning the seat threshold with MCPS' guidelines to consider capacity projects in the CIP, it would be useful to consider increasing	Potential	Maybe	No	Add

the Payment Factor of Tier 2 to 100% of the school impact tax rate since this is the Tier in which planning is matching MCPS's guidelines.				
Recommendation 2.3: **Utilization Premium Payments:** *Allow funds collected as UPPs to be used for capital projects adding capacity at schools adjacent to the school for which the funds were collected, as outlined in the School Utilization Report.* This recommendation will allow the County to program and use in the CIP funds collected as UPPs in adjacent schools when the school that generated the fee does not have its own capacity project because the capacity project in the adjacent school will relieve their capacity issues. Per information sent by Planning, there are 14 applications for development that will be required to pay UPP fees. None of the schools that generated the fee have a project in the CIP. However, all but 3 have adjacent schools with capacity projects that intend to relieve capacity in their schools. This recommendation is more in tune for how the Board addresses capacity problems in the County.	No	n/a	n/a	Add
Recommendation 2.4: **Student Generation Rates (SGR):** *Reclassify stacked flats and similar housing unit types that deviate from the traditional single-family or multi-family classifications from the current multi-family low-rise category to the single-family attached category.* Although this recommendation could have a fiscal impact because the SGR for a SFA is larger than the MFLR, it seems that DPS has been applying SGR for a SFA to this type of housing. Therefore, this recommendation maintains current practice.	No (Current Practice)	No	No	No position

Recommendation 2.5 *Monitor the countywide early childhood program projections through the School Utilization Report. When the enrollment is projected to be more universal, include the projections in the elementary school SGR calculations.*				Add

Planning Staff Recommendations:	**Fiscal Impact**	**Revenue Increase**	**Revenue Loss**	**Position**
Transportation Element				
Recommendation 3.1a *Update policy areas to support the county's goals.* Reduced revenues & built infrastructure from Impact Tax and LATR. Additional costs associated with more urban policy areas & subsequent need for additional non-auto infrastructure/services.	Yes	No	Yes	Delete
Recommendation 3.1b *Define the geographic extents of the White Oak Local Area Transportation Improvement Program (LATIP) area, therefore differentiating it from the White Oak Policy Area and retaining the program's current boundaries.* No changes from the existing program.	No	No	No	Add
Recommendation 3.2 *Require LATR studies for a proposed development project generating 50 or more peak-hour vehicle trips.* The intent is a nearly direct conversion from 30 person-trips to 50 vehicle trips. Fiscal impacts (based on developments over the 2020-2024 GIP) are relatively low.	Minimal	No	Minimal	Add
Recommendation 3.3 *Update the LATR intersection delay standards to reflect changes to policy area boundaries and designations.* This has the potential to have a minor increase in vehicular congestion in areas without sufficient multimodal options, but effects & fiscal impact should be low.	Minimal	No	Minimal	Neutral
Recommendation 3.4 *Simplify the Non-Motor Vehicle Adequacy Test. The test will have five components: Pedestrian Level of Comfort (PLOC), illuminance, Americans with Disabilities Act (ADA) compliance, bicycle system, and bus transit system. This test will replace the*	No	No	No	Add

individual pedestrian, bicycle, and bus transit systems tests. This recommendation is essentially just how things are organized, as other recommendations address each Test in detail.				
Recommendation 3.5 *Modify the non-motor vehicle adequacy test requirements to maintain the county's high standards while minimizing unnecessary data collection and analysis.* The changes to the Pedestrian Test will result in less pedestrian infrastructure (sidewalks, ADA, lighting, and other elements relating to Level of Comfort) built by developers, necessitating others (the County) to eventually construct. New users may have inadequate pedestrian infrastructure until it is built, and constructing later carries additional costs due to having a separate mobilization. Conversely, the changes to the Bicycle & Transit Tests would theoretically expand the provision of bicycle & bus infrastructure by new development: providing additional value to the County (alongside negligible increases in operating costs due to this additional infrastructure). However, Proportionality already limits the extent of off-site mitigation for most categories, so this recommendation would have very little, if any, impact on the extent of improvements.	Minimal	Minimal reduction in operating costs	Minimal	Neutral
Recommendation 3.6 *Refine the Vision Zero Statement to focus on managing speed for safety.* This is likely to focus more on language refinements than any new actions from the status quo.	No	No	No	Add
Recommendation 3.7 *Remove the reference to the Safe Systems Adequacy Test from the GIP.*	No	No	No	Add

The status quo had little effect. Its removal should similarly have little effect.				
Recommendation 3.8 *As part of the 2025 LATR Guidelines update, develop a vehicle trip–based Proportionality Guide calculation that better accounts for impacts.* Zero fiscal impact at this time, but the future task is likely to have a cost based on whatever changes are determined. Any changes in Proportionality will shift the balance between Private vs Public costs, and are more likely to shift the balance toward greater Public costs.	No	No	No	No position
Recommendation 3.9 *Allow all fee-in-lieu funds to be spent in both the subject policy area and adjacent policy areas.* We support additional flexibility in how to expend revenues. This helps ensure that revenues are applied locally but helps reduce instances where we have too few funds in too small of categories.	No	No	No	Add
Recommendation 3.10 *Rather than limiting the use of funds to specific modes, allow fee-in-lieu funds collected for non-motor vehicle deficiencies to be used for any non-motor vehicle improvement within the subject policy area or an adjacent policy area.* We support additional flexibility in how to expend revenues. This helps ensure that revenues are applied locally but helps reduce instances where we have too few funds in too small of categories.	No	No	No	Add
Recommendation 3.11a *Expand the current off-site mitigation exemption for affordable housing units, which currently only includes mitigation payments, to include constructed improvements. Adjust the Proportionality Guide limit by subtracting trips attributed to new*	Yes	No	Yes	Delete unless additional funding identified prior to implementation

affordable units. The trips generated by these units will still count toward the 50-vehicle-trip LATR threshold. Without a funding source to provide offsite mitigation, affordable housing developments may have fewer adequate public facilities as compared to market rate developments. Costs to construct infrastructure afterward will be higher due to having to remobilize for construction.				
Recommendation 3.11b *Exempt development projects that meet the definition of a Mixed-Income Housing Community in Section 3.3.4a of the zoning code from the requirement to complete an LATR study.* Without a funding source to provide offsite mitigation, Mixed-Income Housing Communities may have fewer adequate public facilities as compared to market rate developments. Costs to construct infrastructure afterward will be higher due to having to remobilize for construction. Additionally, the County would not have data on the anticipated trip generation and impacts of these developments on the transportation network.	Yes	No	Yes	Delete unless additional funding identified prior to implementation
Recommendation 3.12 *Exempt multi-family units with three or more bedrooms in multi-family structures from off-site mitigation construction and payment. Adjust the Proportionality Guide limit by subtracting trips attributed to new multi-family units with three or more bedrooms. The trips generated by these units will still count toward the 50-vehicle-trip LATR threshold.* Without a funding source to provide offsite mitigation, multifamily structures with 3+	Yes	No	Yes	Delete unless additional funding identified prior to implementation

Bedroom units may have fewer adequate public facilities as compared to developments with smaller units. Costs to construct infrastructure afterward will be higher due to having to remobilize for construction. However, we note that these cost impacts are substantially less than with Recommendation 3.11.				
Recommendation 3.13 *Exempt daycares from the requirement to complete an LATR study.* Based on daycares approved under the 2020-2024 GIP this would have negligible fiscal impact, though the intent of this recommendation is to spur growth of additional daycares. Without a funding source to provide offsite mitigation, daycare facilities may have fewer adequate public facilities as compared to other land uses. Costs to construct infrastructure afterward will be higher due to having to remobilize for construction.	Yes	No	Yes	Delete unless additional funding identified prior to implementation
Recommendation 3.14 *Extend the bioscience LATR exemption for another four years, so it applies to applications filed before January 1, 2029. Remove the exemption's current three-year time limit to file a building permit.* No functional change from the 2020-2024 GIP.	No	No	No	Add
Recommendation 3.15 *Establish NADMS goals for new policy areas and other areas without goals. Update the NADMS goals to reflect recently adopted master plans.* MCDOT has a separate analysis related to NADMS and GIP, as it pertains to ER 8-21. We are supportive of the methods that	No	No	No	Add

Planning used to establish the goals for areas without goals, although without implementation of the Executive Regulation, MCDOT has no way to track or ensure achievement of these goals.				
Recommendation 3.16 *Revise the GIP resolution text to reflect updated county plans, policies, laws, regulations, and guidance.*	No	No	No	Add
Recommendation 3.17 *Reorganize and update the LATR Guidelines. The revised version will reduce duplicative and contradictory language, address frequently asked questions, and include example documents and directions for common challenges.*	No	No	No	Add
Recommendation 3.18 *Continue to work with SHA and State Delegates to codify SHA review times. Clarify mutual expectations in the development review process, particularly for projects in Red policy areas, where motor vehicle analysis and mitigation are not a county priority.* This is between SHA and Planning.	No	No	No	Neutral

Planning Staff Recommendations:	**Fiscal Impact**	**Revenue Increase**	**Revenue Loss**	**Position**
Impact Tax				
Recommendation 4.1 **A. Calculation of School Impact Taxes:** *Modify the calculation of the standard school impact tax rates to reflect the true per student cost of school construction to the county. Do this by adjusting the rates to account for the portion of funding for school capacity projects in the adopted 6-year CIP attributed to state aid.* This recommendation would reduce the raw calculated impact tax rate for developers and result in a quicker drawdown of the "bank" of the unallocated impact tax increases from prior years. This bank is added to the raw calculated rate up to a 20% increase from the prior year until it is exhausted. Once the bank is exhausted or once there is insufficient bank to maintain 20% increases, the resulting impact tax rate per unit will be lower. State Aid programmed in the CIP includes Built to Learn funding, though the funding has been allocated and the program is ending. Including these dollars in the State calculation artificially inflates average State Aid for projects since the Built to Learn calculation is favorable to MCPS compared to traditional State aid. In addition, State Aid adjustments currently programmed in the State Aid Reconciliation PDF must also be accounted for in any determination of State Aid funding in the CIP.	Likely	No	Likely	Delete
B. CAP and Carryover System: *Continue the use of the cap and carryover system as adopted through Bill 25-23E. Its implementation is relatively new and will help soften any anticipated upward adjustments.* This recommendation maintains current practice.	No	No	No	Neutral
C. Discount for Smaller Homes: ***Recommendation 4.3:*** *Offer a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller.*	Yes	No	Yes	Delete

Based on Finance's analysis this policy is expected to result in an average annual reduction of \$340K in school impact tax revenues and \$2.0M over six-years. For transportation, this policy is expected to result in an average annual reduction of \$150K and \$930K over six-years. If trends in housing stock shift and more of these units are produced due to the policy, the fiscal impact would grow.				
D. Exemption for Multi-Family Units with Three or More Bedrooms: ***Recommendation 4.5*** *Expand the current discount for units with three or more-bedroom units to a total impact tax exemption for both transportation and school impact taxes and in all impact areas and policy areas.* Based on Finance's analysis this policy is expected to result in an average annual reduction of \$200K in school impact tax revenues and \$1.4M over six-years. For transportation, this policy is expected to result in an average annual reduction of \$500K and \$3.2 million over six-years. If trends in housing stock shift and more of these units are produced due to the policy, the fiscal impact would grow.	Yes	No	Yes	Delete
E. Office-To-Residential Conversions: ***Recommendation 4.6*** *Exempt office-to-residential conversion projects from impact taxes, given the high office vacancy rate in the county and the difficulty of converting office space to residential use. Table 14 illustrates an example of a potential office-to-residential conversion and how the exemption could work.* No historical data is available to perform revenue projections. Per Finance: *The exemption of all transportation and school impact taxes for projects converting office into high-rise multi-family may reduce transportation impact taxes by around \$150K to \$300K per year, and school impact taxes by between \$900K and \$1.8M per year.*	Yes	No	Yes	Delete

Between FY13 and FY22 a total of 36 high-rise multi-family projects paid impact taxes to DPS. Under the proposed 2024 growth and infrastructure policy rate system we estimate they would have paid an average of $500K in transportation taxes and $745K in school impact taxes each. This would heavily depend on the pace of this type of development.				
Recommendation 4.7 *Continue exempting bioscience projects from transportation impact tax and add the exemption to the county code.*	No	No	No	Add
Recommendation 4.8a *Update the County Code to allow credit for capacity improvements along state roadways. Form a working group of staff from Montgomery Planning and the Executive Branch to propose additional modifications concurrently with the Council's review of the Draft GIP. Revisions will focus on conversion to the county's new Complete Streets classifications, types of creditable infrastructure, and clarity.* MCDOT does not support tax credits for improvements along state roads; this shifts more burden from developers to the county. Impact taxes are calculated based on a list of projects along County roads only, so inclusion of state roads would need to be accompanied by increases in impact tax rates. MCDOT does not support changing the code to allow for more types of creditable infrastructure for the same reason: impact tax rates are calculated based on capacity improvements only and the addition of other eligible improvements would need to be accompanied by increases in impact taxes.	Yes	No	Yes	Delete
Recommendation 4.8b *Convene a working group across county government and with external stakeholders to explore additional financing and funding mechanisms to better meet infrastructure needs.* While this recommendation is needed, there should be no more revenue losses before replacement funding is identified	No	No	No	Add only if it has completed its work BEFORE adding revenue reducing measures

Recommendation 4.9 *Maintain the Opportunity Zone impact tax exemption for projects located in an Opportunity Zone designated census tract regardless of the status of the federal program.*	Yes	No	Yes	Neutral

September 10, 2024

Hon. Andrew Friedson
President, Montgomery County Council
100 Maryland Avenue, 4th Floor
Rockville, MD

Dear President Friedson and Members of the Council:

Members of MBIA and NAIOP participated in both the Transportation Advisory Group (TAG) and the School Technical Advisory Team (STAT), collaborating with MNCPPC Staff along with several advocates and stakeholders, as well as representatives from local municipalities to influence and shape the updates to the GIP based on our areas of expertise. We commend staff for weighing the needs of countless residents and positioning our guiding APFO document to provide a sustainable system for the next four years. The implementation of these recommendations is an important step to help make the County more resilient, increase the housing supply, encourage a swift and through development review process, and spur economic development by not placing huge cost burdens on developers.

We would now like to highlight a few important points NAIOP and MBIA would support and provide further refinements.

First, we highlight our support for the removal of the proportionality guide for affordable housing. We are also excited to support the exemption of the LATR requirement for Mixed Income Communities. By doing so, this will reduce the reliance on County funds to build affordable units as the market rate units in the mixed income communities will now support the viability of the affordable units.

- We support the elimination of the proportionality guide and impact tax exemptions for large multifamily units (Recommendation 3.12 and 4.5).
- We support the exemption of an LATR study for daycares and bioscience projects (Recommendation 3.13 and 3.14). These are needed uses in the County and often these projects are infill development, and the trips associated with the uses are already assumed to be on the roadway network. With the number of LATR exemptions proposed, we would like to encourage the focus of the transportation studies in the county to ensure they have a focus on-site transportation elements.
- (Recommendation 4.8a). Currently eligible projects for impact tax credits include projects that are adding regional capacity or reduce traffic demand. We believe that the eligibility criteria, as defined in the County Code, needs further evaluation. The current eligibility criteria are limited and do not align with the County's broader goals of enhancing multimodal infrastructure and

safety. Notably, the eligibility list omits improvements along roadways owned by the state, which represents the majority of roads along major development corridors, upgrades to infrastructure to comply with ADA standards, upgrades to conform to the County's Complete Streets guidelines, and improvements to support the County's commitment to Vision Zero. We would encourage you to allow all transportation projects that align with the County's current policies in both County and State ROW to be eligible for impact tax credits.

- (Recommendation 3.8). The Proportionality Guide was established in response to concerns associated with the costs borne by developers to meet multimodal adequacy standards. We support the efforts to ensure that required off-site transportation improvement costs are reasonable and proportional to a project's impact. However, we note a disparity in rates, particularly for residential developments in Red Policy Areas. Higher non-auto driver mode share goals in these areas result in higher Proportionality Guide Rates that are greater than the Transportation Impact Tax Rates for these projects.
    - These rates need to be adjusted to equally apply to all policy areas.
- We support the recommendation for a 50% reduction in impact fees for single-family attached or detached dwelling units smaller than 1,800 sf (Recommendation 4.3). We spoke with a number of home builders and they do not see viability in building homes smaller than 1,500 sf and the 1,800 sf allows units to be built that will be able to take advantage of this policy. This is for a number of reasons including the required width of units and achieving the number of bedrooms homeowners are interested in having, even in the smallest units. Additionally, we support the recommendation for impact tax incentives to encourage office to residential conversions by offering tax exemptions or a 50% reduction for these conversions (Recommendation 4.6). We believe this will encourage these conversions and support the County's goals of increasing the housing supply.
- We support the move to 50 vehicle trips, being the requirement for an LATR traffic study (Recommendation 3.2). We support updating the delay standards (Recommendation 3.3), simplifying the LATR study area boundaries (Recommendation 3.4), and refining the LATR Vision Zero statement to focus on managing speeds (Recommendation 3.6)
- We support the recommendation for the 30-day SHA review timeline and desire to have mutual expectations in the development review process (Recommendation 3.18). We consistently get requests for analysis from SHA for projects located in Red Policy areas and the purpose of the study is typically for informational purposes where no access permit is required or outside the desired project timeline.
- We support the recommendation for alignment of School Impact Tax Areas with the Transportation Policy Area Boundaries (GIP Recommendation 2.1).
- We support the recommendation of adjusting the seat deficit thresholds of each Utilization Premium Payment (UPP) tier to align with MCPS Capital Improvement Plan (CIP) guidelines for classroom additions and maintain the existing utilization rate thresholds (GIP Recommendation 2.2).. We suggest continuing to monitor the effectiveness of the UPP system, to date little money has been paid into the program to impact schools.
- We support the recommendation of keeping stacked flats in the multi-family low-rise category for the purposes of school generation rates and impact taxes (GIP Recommendation 2.4). Stacked flats and similar building typologies are critical to the attainable housing initiative being pursued by MNCPPC as a tool to create more housing types and sizes that are affordable for

citizens of the County. The creation of separate criteria for these building types would result in increased costs, driving the affordability of the unit types further out of reach antithetical to the current initiatives ongoing throughout the County.

- We support the recommendation to modify the calculation of the standard school impact tax rates to reflect the true per student cost of school construction to the County. Do this by adjusting the rates to account for the portion of funding for school capacity projects in the adopted 6-year CUP attributed to state aid (Recommendation 4.1). Accounting for state aide in the school impact tax calculation will promote fair assessment and reduce cost to developers, and ultimately cost to the home purchasers.
    - Montgomery County is one of the few Counties that forward funds school construction, contributing to lack of clarity on how much the County funds for a the cost of a seat v. how much the state funds.

Finally, we support the recommendation to exempt office-to-residential conversions from transportation and school impact taxes when the building is adaptively reused or renovated for multi-family housing. Offer a 50% transportation and school impact tax discount for office-to-residential conversions when demolition is involved in the conversion of office-to-residential to multi-family or single-family attached housing (Recommendation 4.6).

We would like to note that the illustration in the MNCPPC recommendation (Table 14) doesn't appear to appropriately convey the 50% discount as described and request the Council review that with staff to ensure it is enacted effectively.

In closing, MBIA and NAIOP are excited to see the transportation and school recommendations put forth in the GIP Update. We believe these recommendations look to make Montgomery County resilient, increase the housing supply, encourage a swift development review process, and spur economic development.

Thank you for your time today.

cc: Montgomery County Council

Testimony of Patricia Harris
Development Impact Tax Amendments
Montgomery County Council – October 1, 2024

Good Afternoon President Friedson and Members of the County Council. I am Vince Biase with the law firm of Lerch, Early & Brewer stepping in for my colleague Pat Harris on behalf of URW, the owners of the Westfield Montgomery Mall. We respectfully request a minor revision to Section 52-47(b) of the Impact Tax legislation to extend the impact tax credit validity period for four years in instances where the applicant has made a significant transportation improvement of $3 million dollars or more. Attached to our written testimony is the recommended revised language.

My testimony briefly summarizes our August 28th letter to the Council. In summary, in 2016 URW constructed the $7 million transit center on the County owned property adjacent to Montgomery Mall in advance of the approved development that triggered the required transportation improvement. URW subsequently filed revised development applications in 2018 proposing a significant amount of residential development on the Mall site, along with increased retail, a hotel and office space, and these applications were approved in July 2020. As we all know, the world was a very different place in 2018 than it was in 2020 – think pre-Covid vs. Covid. The upshot has been that development on the Mall site has been delayed as a result of the pandemic, a school moratorium and a few other factors. As a result, development likely will not occur on the site prior to the expiration of the impact tax credit.

We want to emphasize that unlike some of the other impact tax credit provisions the Council is considering, the proposed revision to extend the validity period by four years does <u>not</u> result in the applicant paying less than what is currently required – it only ensures that they do not end up paying the impact tax twice, simply because they frontloaded a needed transportation improvement. There is no reason they should be penalized for this and in fact, the County encourages the front loading of transportation improvements – it results in the benefit of the improvement without the impact of the development.

The proposed revision is limited in scope. It only applies to improvements made between 2016 and 2022 in excess of $3 million dollars and the extension is only for four additional years. Importantly, prior to 2004, there was no expiration on impact tax credits. Moreover, there is precedent for this request. Recognizing that a $3 million improvement is significant, the County's APF legislation allows for a 12 year extension of APF periods when improvements of $3 million or more have been made.

We appreciate your consideration of this important request that will help ensure the development of needed residential units on the Montgomery Mall site.

Thank you.

Bill 16-24 Development Impact Tax – Amendments
Proposed Modification

Insert at Line 87 of draft Bill 16-24:

Section 52-47(b)

(4) Any credit that was certified under this subsection on or after March 1, 2004, and before December 31, 2015, expires 6 years after the Department certifies the credit. Any credit that was certified under this subsection on or after January 1, 2016, expires 12 years after the Department certifies the credit, except that any credit certified between January 1, 2016 and January 1, 2022 in the amount of at least $3 million expires 16 years after the Department certifies the credit.

Christopher M. Ruhlen
Attorney
301-841-3834
cmruhlen@lerchearly.com

October 2, 2024

VIA E-MAIL - county.council@montgomerycountymd.gov

The Honorable Andrew Friedson, Council President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

RE: Bill 16-24, Development Impact Tax – Amendments (the "Bill")
White Oak Policy Area Transportation Element Recommendations

Dear President Friedson and Members of the Council:

On behalf of our client, Ralph J. Duffie, Inc. ("Duffie"), please include this letter in the public record for the above-referenced Bill. We previously provided testimony to the County Council concerning recommendations in the Planning Board's draft of the 2024-2028 Growth and Infrastructure Policy (the "Proposed GIP") to establish a new Red transportation policy area for properties in the "White Oak Downtown" portion of the White Oak Policy Area. These recommendations now are reflected in Lines 35 and 45 of the subject Bill, which implements portions of the Proposed GIP related to transportation impact tax districts.

As we explained in our prior testimony, Duffie supports the designation of a Red policy area for White Oak, but also believes that this policy area change should be expanded within the current White Oak Policy Area (*i.e.*, the proposed White Oak LATIP Area). Rather than dividing the existing White Oak Policy Area into two new, discrete policy subareas (as currently recommended in the Proposed GIP), we suggested that the Red designation either be applied uniformly to all properties located in the White Oak Plan Area or, alternately, to the three "activity centers" established in the 2014 White Oak Science Gateway Master Plan (the "Master Plan"). Either of these changes would better align the Proposed GIP with the specific recommendations of the Master Plan which, among other things, views the entirety of White Oak as "an economic opportunity center, similar in form and function to areas around a Metro Station or a central business district with an ultimately urban character." (Master Plan, Page 54.) A copy of our previous testimony is provided with this letter for reference.

The proposed Bill, in amending the provisions of the Montgomery County Code related to transportation impact tax districts to implement the Proposed GIP, touches on these same concerns. To that end, we would respectfully request that the Council consider revising Line 35 for consistency with its ultimate determination on this aspect of the Proposed GIP. More specifically, should the Council endorse either of the recommendations for the Proposed GIP presented in our previous testimony, we would request that Line 35 be revised to reference either the "White Oak" policy area or the "White Oak Master Plan Activity Centers" in the broader list of County Red policy areas.

We thank you for your consideration of the above, and look forward to your continued review of these matters.

Sincerely,

Christopher M. Ruhlen

Christopher M. Ruhlen

w/ Enclosures

cc: Councilmember Gabe Albornoz
Councilmember Marilyn Balcombe
Councilmember Natali Fani-González
Councilmember Evan Glass
Councilmember Will Jawando
Councilmember Sidney Katz
Councilmember Dawn Luedtke
Councilmember Kristin Mink
Councilmember Laurie-Anne Sayles
Councilmember Kate Stewart
Mr. Tim Kamas

ATTACHMENT A

Testimony of Ralph J. Duffie, Inc. re
2024-2028 Growth and Infrastructure Policy, dated September 9, 2024

Christopher M. Ruhlen
Attorney
301-841-3834
cmruhlen@lerchearly.com

September 9, 2024

VIA E-MAIL - county.council@montgomerycountymd.gov

The Honorable Andrew Friedson, Council President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

RE: 2024-2028 Growth and Infrastructure Policy – White Oak Policy Area Transportation Element Recommendations

Dear President Friedson and Members of the Council:

On behalf of our client, Ralph J. Duffie, Inc. ("Duffie"), please include this letter in the public record for the 2024-2028 Growth and Infrastructure Policy (the "Proposed GIP"). Duffie is a third generation, family-owned real estate development and asset management company with roots in Montgomery County. Among other accomplishments, the company has been responsible for much of the development that has occurred in the Hillandale community of the White Oak Policy Area, as that policy area is defined in the 2020-2024 Growth and Infrastructure Policy (the "Current GIP"). Duffie owns and maintains – in whole or in partnership – a significant asset base in and around Hillandale that includes the following properties, among others: (i) the Hillandale Shopping Center, located at 10101 and 10145 New Hampshire Avenue; (ii) 10001 New Hampshire Avenue, the area's only privately-owned LEED Gold office building; and (iii) 1701 Elton Road, the home of the LEED Platinum Certified Home2 Suites by Hilton (one of the nation's only LEED Platinum hotels).

In partnership with The Housing Opportunities Commission of Montgomery County, Duffie also is in the process of developing the Hillandale Gateway project on the west side of New Hampshire Avenue. When complete, Hillandale Gateway will deliver a new modern, energy efficient, mixed-use development to the Hillandale community with market rate (including age-restricted) and affordable multi-family housing, commercial space, and amenities. The project also will provide a County bus transit center that is being constructed to satisfy applicable requirements of the White Oak Local Area Transportation Improvement Program ("LATIP").

Over the years, Duffie has actively participated in the County's formulation of various plans and policies that affect development in the White Oak Policy Area, including the 2014 White Oak Science Gateway Master Plan (the "Master Plan"). Consequently, Duffie has been analyzing the Planning Board's draft of the Proposed GIP closely and with great interest, to ensure that – with all of the revisions made over many months of review – the changes proposed for the White Oak Policy Area's designations and boundaries remain consistent with the Master Plan's vision for the future of this community. As the Proposed GIP states, "[a]ligning the GIP and related policies with our planned vision increases the likelihood of achieving it." (Proposed GIP, Page 22.) Duffie shares this objective.

To this end, Duffie supports the Proposed GIP's establishment of a new Red transportation policy area for properties in the White Oak Downtown. However, rather than dividing the existing White Oak Policy Area into two discrete subareas for this purpose, **Duffie respectfully requests that the proposed Red policy area for White Oak be expanded, so as to apply to all properties within the current White Oak Policy Area (*i.e.*, the proposed White Oak LATIP Area)**. This broader policy area boundary would more appropriately reflect the "current and master-planned land-use contexts and travel trends" of the White Oak Policy Area, consistent with the definition of such transportation policy areas in the Proposed GIP. (See Proposed GIP, Page 21-22.) These land-use contexts and travel trends are described in the Master Plan, which provides the following specific recommendation for the transportation standards that are to be applied in the White Oak planning area at large:[1]

> *This Plan recommends that in light of the County's economic objectives and its ownership interest in the Life Sciences property, the [entire] Plan area be considered an economic opportunity center, similar in form and function to areas around a Metro Station or a central business district with an ultimately urban character, and that the roadway and transit adequacy standards used in the Subdivision Staging Policy for areas that are currently designated as Urban be applied to the Plan area. (Master Plan, Page 54.)*

The Proposed GIP explains that Red policy areas are intended for "[d]owntowns and town centers with current or master planned high-density development and premium transit service." (Proposed GIP, Page 22.) Given the Master Plan's express recommendation for the White Oak planning area to be considered "urban" for transportation standards purposes, similar to a Metro Station area or central business district, establishing the entire White Oak Policy Area as a Red policy area would bring the Proposed GIP into total alignment with the Master Plan's vision for future development. In contrast, designating only a portion of the planning area as a Red policy area (*i.e.*, the approach reflected in the current Planning Board draft) does not fully align with the Master Plan's clear language or intent to treat the entire policy area as an "economic opportunity center" with an "ultimately urban" character.

In addition to the foregoing, we note that the Master Plan specifically recommends the establishment of three distinct activity centers within the White Oak planning area:

> *The Plan envisions White Oak's major centers – Hillandale, White Oak, and Life Sciences/FDA Village – evolving from conventional, auto-dependent suburban shopping centers, business parks, and light industrial areas into vibrant, mixed-use, transit-served nodes. Redevelopment of the centers must be carefully integrated with existing residential neighborhoods and designed to enhance the entire area's quality of life, appearance, walkability, and sense of place... This Plan provides a blueprint to connect White Oak's*

[1] The White Oak Planning Area, as defined in the Master Plan, is generally coterminous with the existing White Oak Policy Area defined in the Current GIP, and with the White Oak LATIP Area defined in the Proposed GIP.

> *centers to each other and the broader region through a transit system that includes Bus Rapid Transit as an integral component. (Master Plan, Page 11.)*

Should the Council determine that it is desirable to establish an expanded Red policy area for White Oak that does not include the entirety of the White Oak Policy Area, **Duffie requests, in the alternative, that the boundaries of any such Red policy area include the three White Oak activity centers described in the Master Plan.** The boundaries of these activity centers are depicted in the Master Plan excerpt attached to this letter as Exhibit A.

We note that the expanded Red policy area boundaries requested herein can be accomplished without adversely impacting the delivery of transportation infrastructure. This is because development in the White Oak Policy Area is subject to the LATIP, which exists separately from the transportation development impact tax to ensure that necessary transportation infrastructure is provided incrementally with, and in proportion to, new development in White Oak.

In summary, by expanding the boundaries of the proposed White Oak Red policy area as described herein, this Council can ensure that the Proposed GIP is more fully aligned with the Master Plan's recommendations for the White Oak community. This, in turn, will increase the likelihood that the housing, infrastructure, and other elements recommended in the Master Plan can be delivered in that policy area in the near future.

We thank you for your consideration of the above, and trust that you will let us know if you any additional information would be helpful.

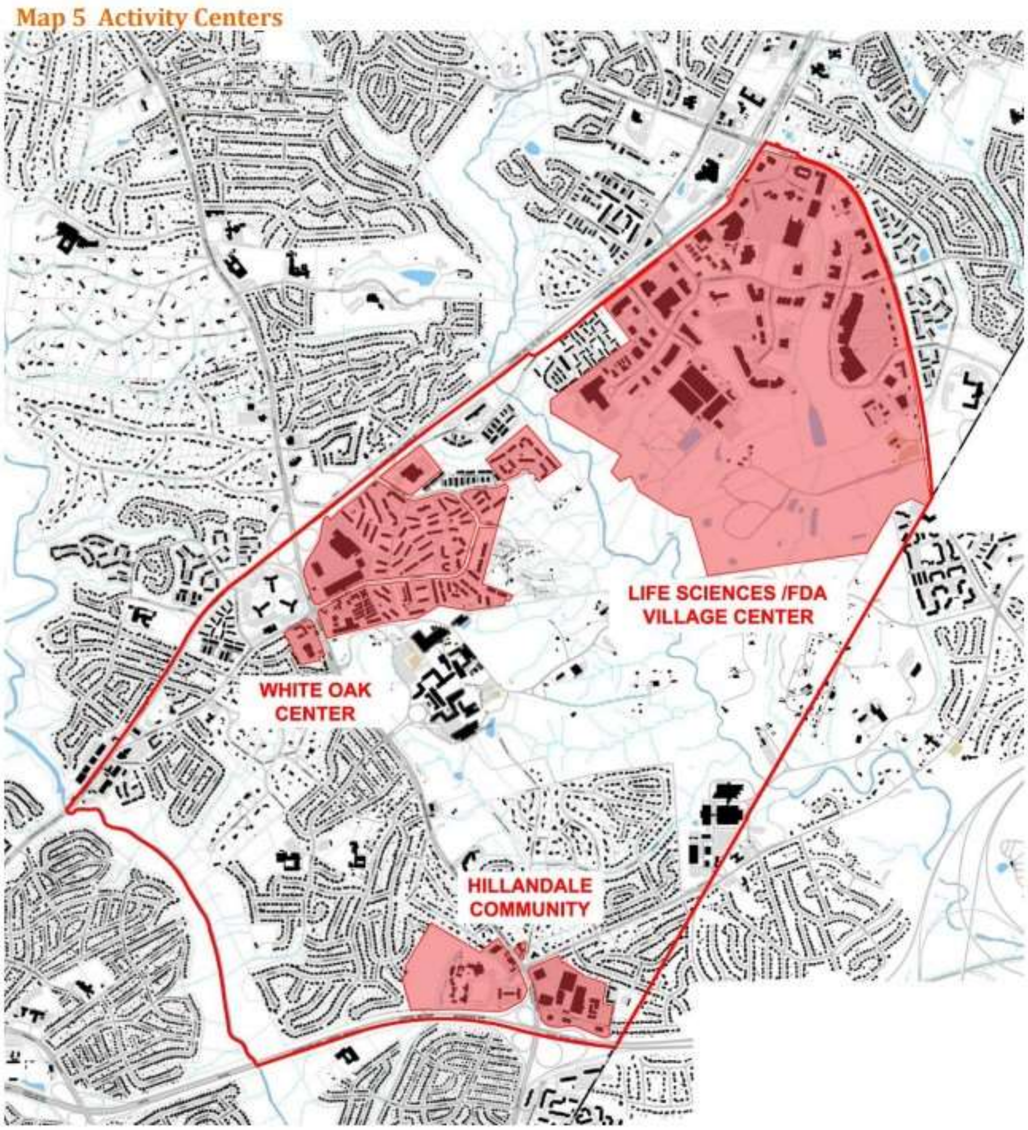
Sincerely,

Christopher M. Ruhlen

Christopher M. Ruhlen

cc: Councilmember Gabe Albornoz
Councilmember Marilyn Balcombe
Councilmember Natali Fani-González
Councilmember Evan Glass
Councilmember Will Jawando
Councilmember Sidney Katz
Councilmember Dawn Luedtke
Councilmember Kristin Mink
Councilmember Laurie-Anne Sayles
Councilmember Kate Stewart
Mr. Tim Kamas

EXHIBIT A
Excerpt from 2014 White Oak Science Gateway Master Plan, Page 29



Testimony on Bill 16-24, Development Tax Amendments, October 1, 2024

Nancy Floreen
On behalf of better public policy

This bill offers you a real chance to do something, not just talk. And so, I offer you two suggestions. The first, a simple way to advance the production of affordable housing:

Permit 100 percent exemptions from school and transportation and parks taxes and tests and related mitigation obligations on and off site for units that are affordable or support affordability, that is

1)all – not just some - units in projects that include more than 15 percent Moderately Priced Dwelling Units or units produced under another similar affordability program;

2) all of those units constructed in conjunction with religious or non-profit organizations prioritizing housing;

3) all units of 2000 square feet or less;

4) all units that satisfy level 1 accessibility improvements.

This will not solve the problem, but it will help. And it will help conform this policy to the Racial Equity and Social Justice Act.

My unique perspective, based on 8 years as a member of the planning board and 16 years as a member of the county council, allows me to say, with some certainty, that during that time we created an inequitable tax and land use system. We created a class system. We burdened new construction with costs prior residents did not have to pay. We basically priced less wealthy people out. We came up with countless new rules and regulations that simply made it harder to construct new housing and commercial space – based on school capacity and roadway tests that truly bear no relationship to reality, serve miniscule portions of our population, but looked good on paper.

This is a small chance for you to right those wrongs.

The cost to your $6 billion capital and $7 billion operating budgets would be miniscule, and you might actually do some good.

This brings me to my second suggestion - frankly, the more intellectually honest one. Alternatively, suspend the whole GIP and development tax system for four years and see what you get. An incidental benefit is that you would save huge amounts of staff review time and cut out the cost of private consultants. You would certainly improve Montgomery

County’s economic competitive status and would open the doors to a more equitable system of housing for all. Give it a shot. Be bold. Be better!

James R. Clifford, Sr. (MD)
James J. Debelius (MD)
Lynn Caudle Boynton (MD, DC)

CLIFFORD, DEBELIUS & BOYNTON, CHTD.
ATTORNEYS AT LAW

316 East Diamond Avenue
Gaithersburg, MD 20877
(301) 840-2232 tel
(301) 975-9829 fax

September 30, 2024

Montgomery County Council President
100 Maryland Avenue
Rockville MD 20850

Re: Impact tax Bill 16-24 Development Impact Tax-Amendments
Tuesday, October 1, 2024, 1:30pm – 3:30pm

Good afternoon, Mr. President and members of the Council,

I am Jim Clifford a Farmer and have been a Land Use Attorney in Upper Montgomery County for the past 45 years. With just three (3) minutes to speak, I wish to limit my comments to 52-49 (i) of the subject legislation. This provision addresses a critical problem and inequity that exists in the current Development Impact tax rates, especially in the Green Zone, which encompasses the Agricultural Reserve.

For seven (7) years I have tried to help my clients orchestrate a small lot, small house subdivision in the town of Poolesville. This project is to address the Town's desire to add missing middle housing primarily for first time home buyers and move down seniors that are now moving to Frederick County to meet their housing needs. Because the current Development Impact rates do not differentiate between a 2,000 square foot house and a 4,000 square foot house, and the cost in impact fees approaches $60,000.00 for a single-family dwelling in the Green Zone, builders are reluctant to build a small house for the same impact tax they pay for a larger home where they can make more money. On the Poolesville project we have approvals and record plat for 62 new homes with the LOT sizes of only 4,000 square feet. Our lot sizes are smaller than the house sizes being built elsewhere in the County. We anticipate the cost of these homes will also be half the cost of the other new houses being offered in the Up County. It only makes sense that building smaller houses can be incentivized by the County having the Impact Tax relate to the house size. This would help all Zones that are in short supply of missing middle housing.

My client's small houses in Poolesville will be offered with two and three bedrooms. All the homes are adjacent to or within a short walk of the public and commercial areas as well as the elementary school and high school. This will be a prototype development for a small walkable community needing little or no vehicles to navigate everyday living. I also have clients with similar properties in Potomac and Bethesda that would like to do this sort of development, if the impact tax fits the formula as proposed in this amended Impact tax legislation.

However, I would ask you to consider moving up the maximum square feet qualifier for the house from 1,800 square feet to 2,200 square feet in order to fit front loaded garages and a first-floor master bedroom in these small houses. We have found that 1,800 square feet is too small a footprint in a two-story house to do first floor master which are important to seniors. Consider, that in a 1,800 square feet house with only 900 square feet on the first floor and the inset garage taking up 400 square feet and a master bedroom and bath using another 400 square feet there will only be 100 square feet left to buildout the first-floor kitchen, dining area, living room, entry way and hallways. 2,200 square feet is a more reasonable limit for this housing product and proposed tax break. As I understand it, Park and Planning was considering townhouses when they proposed the 1,800 square foot qualifier.

This subject is of great interest for me, and I will make myself available to the Council as needed. Thank you.

Sincerely,

CLIFFORD, DEBELIUS & BOYNTON, CHTD.

JAMES R. CLIFFORD, SR., ESQ.

JRC/map
cc: William F. Willard, Sr.

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

EVAN GLASS
COUNCILMEMBER AT-LARGE

TRANSPORTATION & ENVIRONMENT COMMITTEE, CHAIR
ECONOMIC DEVELOPMENT COMMITTEE

MEMORANDUM

October 2, 2024

TO: Members of the Government Operations Committee
FROM: Councilmember Evan Glass
SUBJECT: Impact Taxes and Long-Term Economic Growth in Montgomery County

Communities across the United States are experiencing a housing crisis and Montgomery County is no exception. The shortage of new residential construction has been exacerbated by post-pandemic challenges, including high inflation levels that have significantly increased building and borrowing costs. Despite the Council's decision four years ago to encourage new housing construction by lowering impact taxes, development has been slower than anticipated, and as a result, the county has fallen short of its housing goals.

I appreciate that the Government Operations and Fiscal Policy Committee is conducting a series of worksessions to review our impact taxes. The current policy requires that impact taxes are charged at the beginning of a project, which contributes to unnecessarily higher upfront housing construction costs. Later this month I plan to introduce legislation addressing the timing of taxes and fees – in a revenue neutral manner – that reduces the overall cost of housing construction.

For background, a majority of the Council in 2011 supported the introduction of Bill 26-11, which would have changed the timing for when impact fees are paid – from before a building permit is issued to before a use and occupancy permit is issued. Given the effects of the recession at the time, the legislation was ultimately amended to require the collection of impact taxes at six or twelve months (depending on the type of construction) after a building permit is issued, or at the time of final building inspection – whichever comes first.

More than a decade later, I believe it is time to revisit this policy. We must position Montgomery County for financial success and reduce the cost of housing.

The legislation I will be proposing stipulates that impact taxes be collected at the time of final building inspection, which ensures that impact taxes are paid before a building receives a use and occupancy permit.

While impact taxes are by nature an imperfect and unreliable tool for raising revenue, they do contribute to our capital budget and help us build schools, roads and other important infrastructure projects.

As the Government Operations and Fiscal Policy Committee considers the issue of impact taxes, I request that my proposal be part of the October 10 discussion.

By implementing this common sense change, we can further facilitate long-term growth while ensuring that important school and infrastructure projects are built to benefit current residents and those who are excited to one day call Montgomery County home.

CC: Councilmembers
Livhu Ndou, Legislative Attorney
Pamela Dunn, Senior Legislative Analyst