



Committee: GO
Committee Review: Completed
Staff: Livhu Ndou, Senior Legislative Attorney
Bilal Ali, Legislative Analyst
Purpose: Final action – vote expected

AGENDA ITEM #9F
November 12, 2024
Action

SUBJECT

Bill 16-24, Development Impact Tax – Amendments

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

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
Essie McGuire, Chief of Staff, Montgomery County Public Schools (MCPS)

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- The GO Committee recommends approval of Bill 16-24 with amendments.
- During today's worksession, the Council will vote on the recommendations of the GO Committee regarding Bill 16-24.

DESCRIPTION/ISSUE

- The Planning Board recommends changes to development impact taxes as part of the Growth and Infrastructure Policy (GIP). 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 Adequate Public Facilities Ordinance (APFO) help manage growth, impact taxes are not a part of the County's APF requirement, and the Council is not required to review and make recommendations by November 15th.

SUMMARY OF KEY DISCUSSION POINTS

- The GO Committee held two worksessions on Bill 16-24: Development Impact Tax – Amendments.
 - The staff report for the first worksession held on October 10, 2024 is available [here](#). An [addendum](#) was also posted for this worksession.
 - The staff report for the second worksession held on October 17, 2024 is available [here](#).
- The Planning Board’s recommendations for amending impact taxes are in Chapter 4 of the [Draft Growth and Infrastructure Policy \(GIP\)](#). Additional information is available in the appendices.

This packet contains:

Staff Memorandum	Pages 1-28
Bill 16-24	© 1
Fiscal Impact Statement	© 12
Economic Impact Statement	© 19
Climate Assessment	© 22
Racial Equity & Social Justice (RESJ) Impact Statement	© 25
County Executive Letter and Recommendations	© 27
Letter from MBIA and NAIOP	© 41
Letter from Lerch Early Brewer representing Westfield Montgomery Mall	© 44
Letters from Lerch Early Brewer representing Duffie Inc.	© 47
Letter from Nancy Floreen	© 54
Letter from Clifford Debelius Boynton	© 56
Councilmember Glass Memorandum	© 58
Letter from Greater Colesville Citizens Association	© 60
Letter from Montgomery County Board of Education	© 63
Letter from Miles & Stockbridge representing MCB White Oak, LLC	© 65
Letter from William Kominers of Lerch, Early & Brewer	© 67
Letter from Lerch, Early & Brewer representing Lerner Enterprises	© 75
Letter from Lerch, Early & Brewer representing Community Three Maryland, LLC	© 78
Letter from Miles & Stockbridge land use practice group	© 81
Planning Staff Memorandum on Parking Reduction	© 83
Letter from Selzer Gurvitch	© 88

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MEMORANDUM

November 7, 2024

TO: County Council

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

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

PURPOSE: Action

Committee Recommendation:

The GO Committee (3-0) recommends approval of Bill 16-24 with amendments.

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
- Essie McGuire, Chief of Staff, Montgomery County Public Schools (MCPS)

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 (APF) requirements. Montgomery Planning initiates 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 Council reviewed the GIP on October 15, with a follow-up worksession and straw vote held on October 22.²

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.

Summary of Actions from GO Committee Worksessions

The GO Committee held worksessions on October 10 and October 17, 2024. A summary of the recommendations made by the Committee is below:

Planning Board Recommendation	GO Committee Recommendation
Recommendation 4.1: <i>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 state aid.</i>	3-0 do not recommend
Recommendation 4.2: <i>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.</i>	3-0 agree with Planning Board recommendation
Recommendation 4.3: <i>Introduce a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller.</i>	3-0 do not exempt from school impact tax, exempt transportation impact tax for 1,800 square feet or 2,200 with attached garage
Recommendation 4.4: <i>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.</i>	3-0 agree with Planning Board recommendation.

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

² A draft resolution for the GIP will be posted on the Council website on October 29, 2024.

Recommendation 4.5: <i>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.</i>	3-0 do not recommend
Recommendation 4.6: <i>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.</i>	3-0 do not exempt from school impact taxes, exempt transportation impact tax for office-to-residential conversions whether adaptive reuse, renovation, or demolition
Recommendation 4.7: <i>Continue exempting bioscience projects from transportation impact tax and add the exemption to the county code.</i>	3-0 agree with Planning Board recommendation
Recommendation 4.8a: <i>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.</i>	3-0 agree with Planning Board recommendation
Recommendation 4.8b: <i>Convene a working group across county government and with external stakeholders to explore additional financing and funding mechanisms to better meet infrastructure needs.</i>	3-0 agree with Planning Board recommendation
Recommendation 4.9: <i>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.</i>	3-0 agree with Planning Board recommendation, but also list applicable census tracts

Public Hearing

A public hearing was held on October 1, 2024.³ 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

³ 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>.

in school funding, as well as concern about the effect on the Capital Improvements Program (CIP).⁴

The Council also received written testimony.⁵ The majority of the written testimony was in support of Bill 16-24, including support for many of the exemptions recommended by the Planning Board. However, much of the testimony requested amendments that are discussed later in this staff report.

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.

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	
<u>Revenues</u>	<u>6-Year Impact</u>
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)
<u>Expenditures</u>	<u>6-Year Impact</u>
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)

⁴ Included in this staff packet is a letter from the County Executive as well as a chart of recommended additions and deletions.

⁵ Written testimony can be found here:

<https://www.montgomerycountymd.gov/COUNCIL/OnDemand/testimony/20241001/item5.html>.

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 LATR, then the expenditure should not be attributed to impact taxes. There is no policy mechanism by which projects 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.

There are fundamental questions about the purpose and usefulness of a fiscal impact statement in the context of impact taxes. Impact taxes do generate funds in any given fiscal year, meaning OMB and the Department of Finance must attempt to forecast it. According to the theory of impact taxes, however, if there is no growth, there would be no need for impact taxes, which should only support projects that add capacity to accommodate growth. Nonetheless, as this staff packet notes, impact taxes are not precisely tied to the delivery of growth-related infrastructure so for budgeting purposes, it is reasonable to generate a forecast.

Estimates of future impact tax revenue because of Bill 16-24 are based on past development trends. Therefore, if projects pay less in impact taxes because of incentives waiving them, the assumption of future growth leads to a corresponding reduction in impact tax revenue. However, impact tax collections are driven primarily by the rate of development, and a small change in market conditions and other factors outside the County’s control, like a reduction in interest rates, could lead to a disproportionate increase in impact taxes.

Furthermore, the fiscal impact analysis cannot estimate the relationship between impact tax rates, incentives, and the rate of development. It is important to note it is unlikely impact tax incentives have a significant effect on influencing the rate of development beyond other factors in the economy. Yet, the assumption that incentives reduce impact tax revenue because on average, developments are paying less, also implies that if impact tax rates increased by a similar amount, impact tax revenue would increase. A fiscal impact analysis of increasing impact tax rates may have to acknowledge the effect such a policy would have on development trends, which could be a chilling one.

[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 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 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 Economic 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 (RESJ) 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 APF requirement is a land use regulation and administered as an exaction for infrastructure. APF 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 linked to the development and meet some standard for reasonableness. 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 *fees*. 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.⁶

⁶ 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." (emphasis added)

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.⁷

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 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.

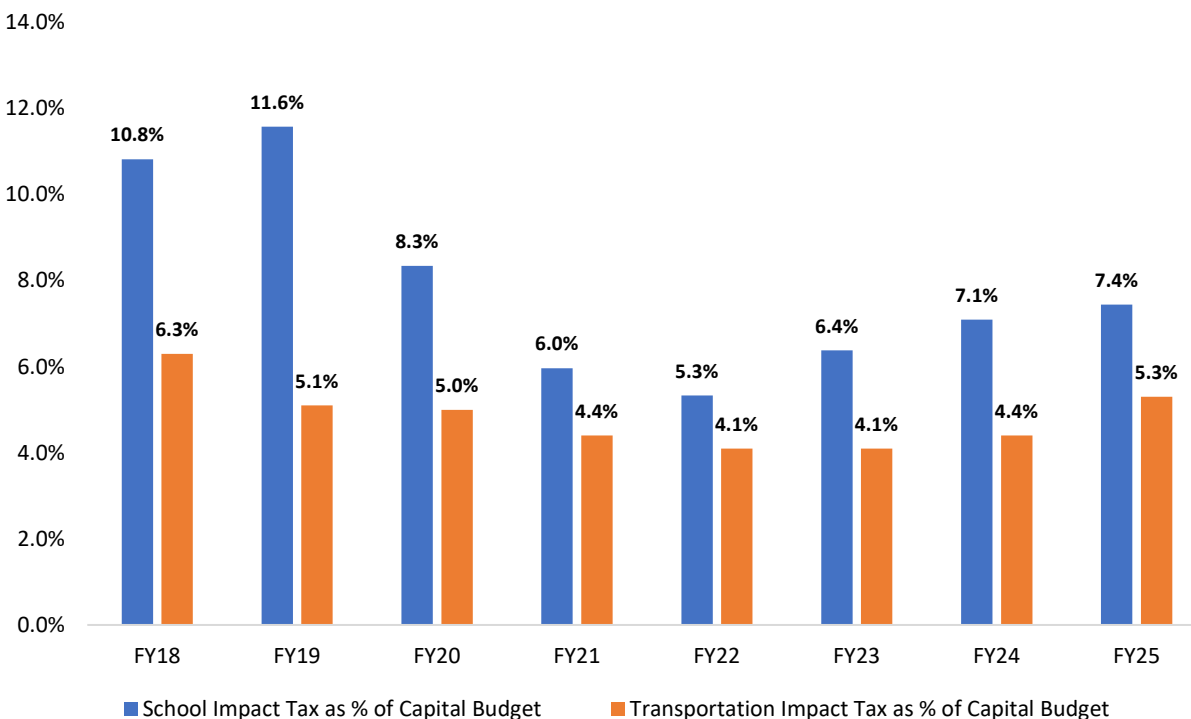
A contemporary analysis using the same approach would likely yield fundamentally different results, and it is not obvious that rates would increase or decrease. For example, as the County is increasingly built-out, how many net new infrastructure projects related to growth exist compared to in 2007? 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?

⁷ 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.

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 (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 Annual Schools Test 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. For example, 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 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, and then the Council, 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 projects 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 description of how the Committee voted.

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. [Lines 202-205]

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.

Testimony from MCPS indicated that the increase in costs was not only the result of increased State Aid and recommended against reducing school construction costs by 30%. MCPS also recommended school construction costs be studied as part of a proposed working group reviewing the impact tax policy and future infrastructure needs.

Council Staff noted the Council’s decision would not necessarily reduce school impact taxes in the short-term. Even if the costs are reduced by 30%, according to the Department of Finance, the carryover or ‘bank’ from the most recent biennial update exceeds 20% of the current rate for some of the school impact tax rates.⁸

The Committee unanimously voted against supporting the Planning Board’s recommendation to reduce school construction costs by accounting for State Aid.

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 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

⁸ 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.

20% increase, the amount above the 20% cap is banked and added to any future changes to the rate.⁹

The Committee unanimously supported this recommendation to continue using the Cap and Carryover system.

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. [Lines 82-85, 151-154, and 208-212]

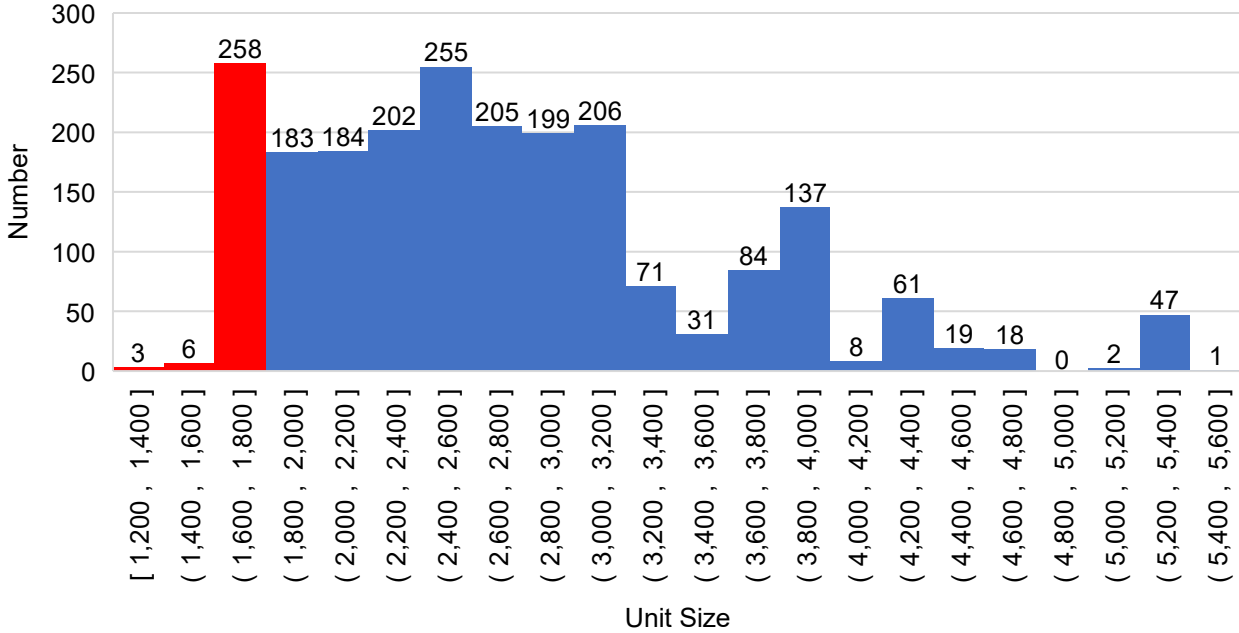
Planning Staff's stated justification for this recommendation is that there is a lack of these housing types. The Council received testimony to support this recommendation but increase the limit to 2,200 square feet.

One reason to consider a discount for 1,800 square foot units or smaller single-family units is that the same impact tax rate applies to all townhomes regardless of size. To the extent smaller townhomes sell for a lower price, the impact tax is disproportionately high for smaller townhomes.

Planning noted the effect of this dynamic is reflected not only in the small number of small townhomes, but also because most small townhomes are MPDUs, meaning they are small to reduce the overall cost of building them as MPDU townhomes sell at a net loss to developers. That suggests there is very little market incentive, if any, to build small townhomes. As shown in Figure 1 below, just 12 percent of townhomes are 1,800 square feet or smaller. Approximately 17% are between 1,800 square feet and 2,200 square feet.

⁹ 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%.

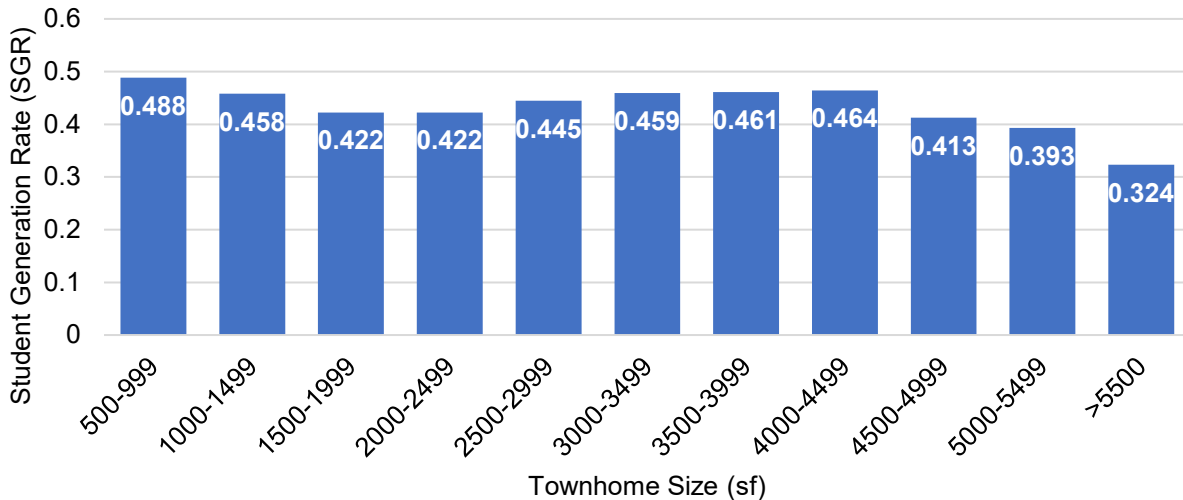
Figure 2: Distribution of New Townhomes by Size, 2020-2024 YTD



Source: Montgomery Planning

However, Planning also noted that accounting for townhome size for school impact tax rates would increase the rate applied to smaller townhomes, as they generate more students on average. Single-family attached units between 1,500 and 2,000 square feet generate 0.436 students on average, compared to 0.333 students for units between 2,000 and 2,500 square feet. This is summarized in Figure 2 below.

Figure 3: Student Generation Rate by Gross Floor Area Single-Family Detached Units, 2022-2023



Source: Montgomery Planning

Given concerns about school and transportation impacts raised during the discussion, Council Staff noted that neither school nor transportation impact taxes are directly tied to the delivery of adequate infrastructure to serve the new development that pays the impact taxes. Adequate public facilities would be ensured through Utilization Premium Payments (UPPs) for schools, and through required frontage and off-site LATR improvements for transportation adequacy.

Council Staff also noted that school impact taxes as conceived and implemented today should not be used as an incentive for housing units intended for families. Similarly, Council Staff recommended waiving the transportation impact tax because it is not clear that it enables ‘development to pay its fair share’ towards growth-related transportation needs. Waiving transportation impact taxes could also have the effect of incentivizing more small townhomes.

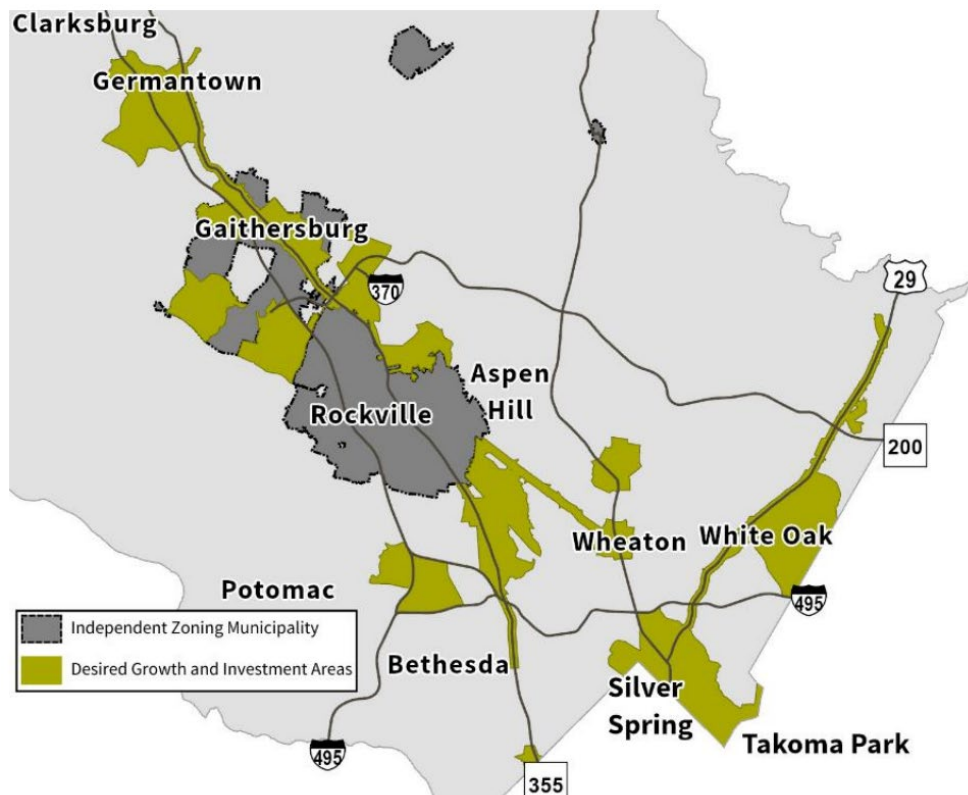
As a result of the discussion, the Committee agreed it would not be reasonable to waive school impact taxes but did agree to waive transportation impact taxes for single-family units smaller than 1,800 square feet. However, because unit sizes as measured by DPS do include attached garages, the Committee recommended a 2,200 square foot unit with an attached garage also receive a waiver from transportation impact taxes.

The Committee unanimously voted against an exemption from school impact taxes for single-family attached and detached units that are 1,800 square feet or smaller. The Committee unanimously supported an exemption from transportation impact taxes for single-family attached or detached units that are 1,800 square feet or less, and for single-family attached or detached units that are 2,200 square feet or less and have an attached garage.

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. [Lines 141-150]

The Desired Growth and Investment Areas include certain Metropolitan Washington Council of Governments (MWCOC) 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 shown in the map in Figure 2 below.

Figure 4: 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.

The Committee voted unanimously to support the Planning Board's recommendation to remove the Desired Growth and Investment Areas discount.

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 exemption will apply to multi-family residential units with three or more bedrooms in multi-family structures. [Line 207-214]

As noted for previous recommendations, neither school nor transportation impact taxes are directly tied to the delivery of adequate infrastructure to serve the new development that pays the impact taxes. Adequate public facilities would be ensured through Utilization Premium Payments (UPPs)

for schools, and through required frontage and off-site LATR improvements for transportation adequacy.

Nonetheless, 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. However, by contrast, transportation impact taxes have a weaker policy basis and could be waived for this reason.

The Committee voted unanimously to exempt three-bedroom multifamily units from transportation impact taxes, but not from school impact taxes. The Committee noted that this would retain the current language, which allows a three-bedroom multi-family dwelling unit located in an Infill Impact Area to pay the school impact tax at 40% of the otherwise applicable rate.

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. [Line 80-81, 89-92, 155-157, 187-188, 215-217]

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 that 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.

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.

Members of the GO Committee did note that office buildings do not generate any students, so incentivizing a conversion to housing by any means could potentially generate a significant number of students. Like discussions of other incentives, it would be counterintuitive to waive school impact taxes for projects that generate students. Therefore, to the extent repositioning these buildings would help reduce office vacancy, it would be reasonable to incentivize demolition and redevelopment generally. Whether or not impact taxes are the appropriate mechanism to incentivize this type of development is part of the broader policy question. However, an approach consistent with the Committee's approach to other impact tax incentives would be to waive

transportation impact taxes but maintain school impact taxes for any adaptive reuse or redevelopment via demolition of an office building.¹⁰

The Committee voted unanimously to modify the Planning Board's recommendation and exempt office-to-residential conversions via demolition and redevelopment or renovation and adaptive reuse from transportation impact taxes but maintain school impact taxes.

Recommendation 4.7 Continue exempting bioscience projects from transportation impact tax and add the exemption to the county code. [Line 77]

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 Council voted to exempt bioscience facilities from LATR, which is tied to the transportation APF requirements, as part of the 2024-2028 GIP. It would be consistent for the Council to also exempt bioscience facilities from impact taxes, given that impact taxes have a weaker policy basis than LATR.

The Committee voted unanimously to support the Planning Board's recommendation.

Recommendation 4.8a Update the County Code to allow credit for capacity improvements along state roadways. [Line 128-137]

Members of the GO Committee noted the public's expectation that constructed improvements are made to support development, regardless of whether the improvement is on a County- or State-owned road. Staff from the Department of Transportation (MCDOT) shared their view that there is a risk that improvement on State roads may not necessarily connect with the County's planned transportation network improvements.

Planning Staff also noted that in the case where developers can choose among capacity improvements to provide, there is a disincentive to providing improvements on State roads when there is a choice because there is no credit. This suggests the credit could allow for more constructed improvements along State-owned roadways.

The Committee voted unanimously to support the Planning Board's recommendation.

Recommendation 4.8a and 4.8b 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

¹⁰ For additional information regarding potential strategies for reducing office vacancies, please refer to the [March 11th staff report for the ECON Committee](#).

clarity. / Convene a working group across county government and with external stakeholders to explore additional financing and funding mechanisms to better meet infrastructure needs.

There are several recommendations in the GIP that would benefit from further review and analysis. More broadly, discussions around both the GIP and Bill 16-24 have revealed a consensus that estimating future schools and transportation infrastructure needs will require an up-to-date and detailed analysis, including the fundamental question of how funding towards those needs are generated, and by whom.

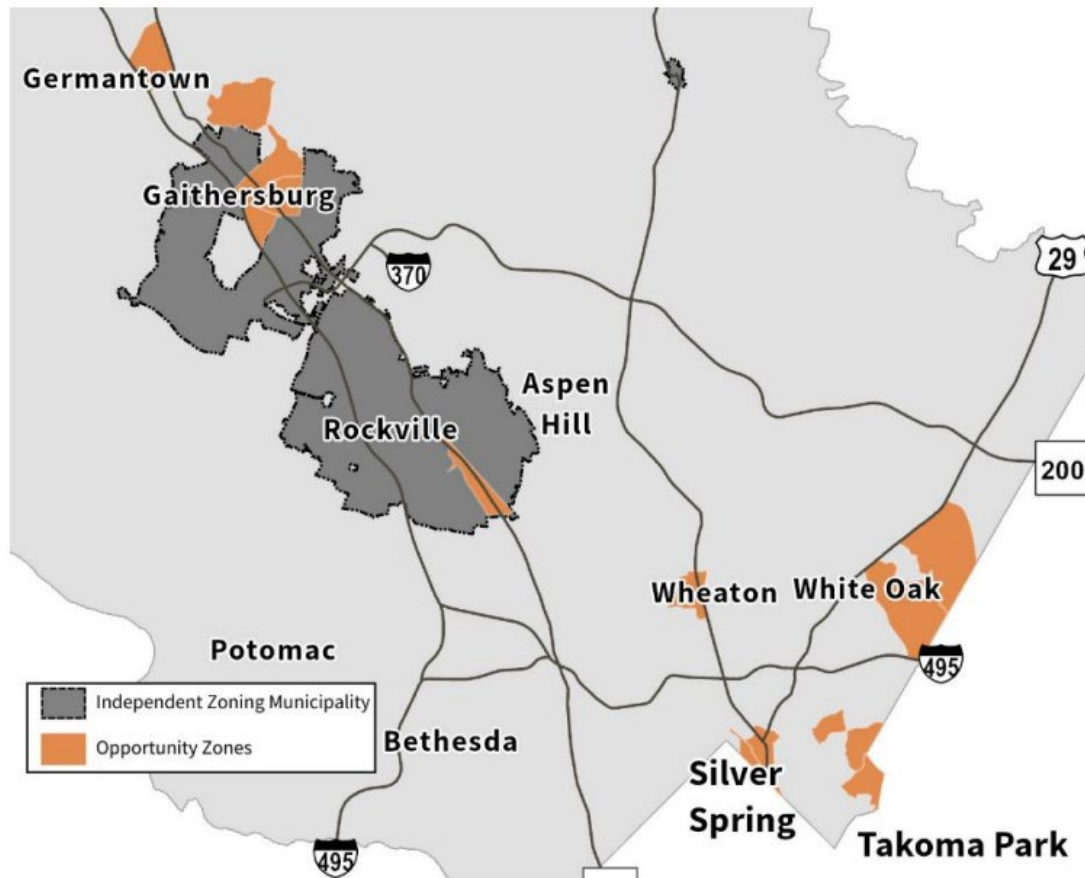
Council Staff prepared a comprehensive summary of all guidance towards what a working group on this topic could look like, as shown below. Please note that this is not intended to be a draft form of a future resolution, but can serve as the basis for a more cohesive resolution. Indeed, the Chair of the GO Committee stated a desire to hold a separate worksession to discuss and recommend a resolution to form a working group. This would include a discussion of the timeline and composition of the workgroup.

- ***Issues the Committee discussed as possible items for the workgroup to consider:***
 - Consider whether to suspend impact taxes for a limited time, or altogether, for schools and/or transportation.
 - What geographies should be used, if any, when determining development impact tax exemptions; including whether the use of Opportunity Zones should be continued, or whether to transition to an alternative such as census tracts.
 - How are costs passed down from developers to end-users, such as from landlords to renters.
 - Consider a long-range schools and transportation infrastructure plan accounting for both ongoing and growth-related needs.
 - Address growth-related schools and transportation capital needs, and how to raise funding for those in a sustainable way that does not prevent new development.
 - Determine whether to deduct the portion of funding for school capacity projects in the adopted 6-year CIP attributed to State aid.
 - Evaluate student generation rates by unit size and suggest new and/or improved ways to fund the County's infrastructure needs.
 - Consider whether impact tax exemptions should continue, and how the County should determine those exemptions; including considering policy goals such as affordable housing, accessibility, and reduced parking.
 - Address the negative impacts the current system has on racial equity and social justice in the County and provide recommendations on how to create a system that supports growth while also promoting racial equity and social justice.
 - Assess the timing of the impact tax bill, including whether to tie it to the Growth and Infrastructure Policy, and whether to require submission before Council's August recess so that public hearings may occur at the same time.

Recommendation 4.9 Maintain the Opportunity Zone impact tax exemption for projects located in Opportunity Zone designated census tracts regardless of the status of the federal program. [Line 65-73, 174-182]

Opportunity Zones were created under the Tax Cuts and Jobs Act of 2017. Under this program, 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 5: 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. Since 2017, the County has made more sophisticated, data-driven attempts to map equity needs in the County, such as through Equity Focus Areas (EFAs) and more recently through the Community Equity Index.

At the request of the GO Committee, Council Staff prepared a draft amendment that would explicitly recognize both the term Opportunity Zone but also the underlying census tracts to which it refers. This language should confirm there are no underlying changes to exemptions as they exist today, but also provide Council a chance to transition to a more thoughtful geographic approach to development incentives, including whether a geographic approach is appropriate at all. Achieving both outcomes should ostensibly boost investor confidence.

The Committee voted unanimously for an amendment referencing Opportunity Zones and the underlying census tracts to which they refer.

Amendments

The Council has received requests for amendments to Bill 16-24. The Committee discussed and provided recommendations, as summarized in this section.

Amendment 1. Add Census Tract 15.05 in the White Oak Area to the language on Opportunity Zones for the purpose of exempting both school and transportation impact taxes. (Councilmember Mink) [Lines 71 and 180]

During the October 17th worksession, Councilmember Mink requested an amendment to add census tract 15.05 to the definition of the White Oak Opportunity Zone. Census Tract 15.05 is adjacent to census tract 15.09, which is one of two census tracts comprising the White Oak Opportunity Zone (the second is 14.21). Councilmember Mink stated her justification for including this census tract specifically is that it is contiguous with the opportunity zone, covered in the Master Plan area, and has faced historical underinvestment. It is also bounded by a natural boundary, the Northwest Branch, to the southwest.

The Committee voted unanimously to support Councilmember Mink's amendment.

Amendment 2. Include all of White Oak in the red policy area (Public hearing testimony)

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.

White Oak will likely remain in an Opportunity Zone, census tract, or any geography the Committee chooses to use for exemptions. Further, the PHP Committee opposed including White Oak Downtown in a red policy area for purposes of adequacy.

At the October 10th GO Committee worksession, MCDOT noted that the funding for the BRT in this area is at 35% and it is unlikely to be completed by 2028. The Committee noted that pedestrian and bicycle infrastructure is desired in this area, which does not yet meet the definition of a red

policy area. The Committee requested a list of which projects would be impacted by the removal of White Oak from the orange policy area and a removal of White Oak Downtown from the red policy area. MCDOT and Planning provided the following list:

PROJECT NAME	APPROVED UNITS	POLICY AREA	OPP ZONE
1254 Cresthaven Drive	3	White Oak	NO
Hillandale Block D Lot 27 & 28	2	White Oak	NO
Hillandale Gateway	463	White Oak	NO
Hillandale Section 2	2	White Oak	NO
Viva White Oak	Not yet approved by Planning Board	White Oak Downtown	YES
White Oak Apartments	387	White Oak Downtown	YES

As noted above, the project that requested this amendment will receive benefits from being in an Opportunity Zone and White Oak does not yet meet the criteria for a red policy area.

The Committee voted unanimously to reject this amendment.

Amendment 3. Extension for impact tax credits (Public hearing testimony) [Lines 116-119]

Attorneys from Lerch, Early & Brewer, representing URW, the owners of the Westfield Montgomery Mall, requested an amendment to Section 52-47(b) that would extend the impact tax credit for 4 years in instances where the applicant has made a significant transportation improvement of \$3 million dollars or more and the credit was certified between January 1, 2016, and January 1, 2022.

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.

MCDOT noted that a project that had a credit on file prior to 2016, and then received an additional credit before 2022, could end up with a credit exceeding \$3 million to which the amendment applies. Notwithstanding, MCDOT provided the following list of potentially effected projects:

<u>Name of Project</u>	<u>Name of Applicant</u>	<u>Amount</u>	<u>Date Certified</u>	<u>Use of funds</u>
Black Hill Germantown LLC	Black Hill Germantown LLC	\$6,329,764.60	6/1/2019	Permits and construction of Crystal Rock Dr. and Century Blvd. to full width through property
Cabin Branch		\$4,791,349.16	4/16/2020	West Old Baltimore Rd. upgrade
Clarksburg Town Center	CTC Development, Inc. (Third Try, LLC)	\$4,000,000.00	10/7/2016	Stringtown Rd. per Participation Agreement
Clarksburg Village	Elm Street - Clarksburg Village LLC	\$5,822,813.00	5/11/2016	Supplemental credit for Section 54, 56, 57, 58, 59, 63 (A-302, A-305, Foreman Blvd., Stringtown Rd.)
Poplar Grove	Nicole Totah, Manager Symmetry at Cloverleaf llc	\$4,250,645.11	7/26/2021	Century Blvd. extension, from Father Hurley Blvd. to future Dorsey Mill Rd. in Germantown
Westfield Montgomery Mall	Montgomery Mall, LLC	\$6,045,889.70	8/19/2016	Transit Center

The Committee voted unanimously to support this amendment.

Amendment 4. Remove the requirement to increase capacity to receive the transportation impact tax credit. (Public hearing testimony)

Written testimony from William Kominers of Lerch, Early & Brewer requests the threshold requirement to increase capacity to receive the credit be eliminated. The letter explains that this measurement is difficult with non-vehicle facilities; and that even for vehicles, there may be safety or significant maintenance needs that are called for and can be satisfied by an applicant.

The Committee noted addressing this topic is inherent in the work of the proposed working group, which will be discussed in detail during a future GO worksession on the resolution to create the working group.

The Committee voted unanimously to reject this amendment at this time.

Amendment 5. Exempt projects that provide no onsite parking and are located near transit from impact taxes. (Public hearing testimony)

Community Three Maryland, LLC, represented by Lerch, Early & Brewer, requested an amendment that would eliminate any impact tax obligations for projects located within ½ mile of a Metro station, within a Parking Lot District (PLD), and that provide no parking on-site.

The GO Committee and Councilmembers in attendance requested a list of other benefits provided to developers for projects located near transit with no onsite parking. MCDOT noted that other incentives exist within ½ mile of metro stations as well as red policy areas, for example. Some of these additional benefits are described below:

Eliminating Mandatory Minimum Parking Requirements

Zoning Text Amendment (ZTA) 23-10, which was adopted by the Council last year, removed the requirement for developments in red policy areas and ½-mile from transit to provide a minimum number of parking spaces. The appropriate number of parking spaces in a building, particularly near transit, can be difficult to estimate and the proximity to high-capacity transit may suggest there is a reduced need for parking. From a policy perspective, minimum parking requirements, which are typically implemented in increments of 0.25 or 0.5 parking spaces per unit, may overestimate the actual need and can drive up development costs as parking is expensive and a developer is being required to provide more than might be needed. One justification for this policy rests not only on the reduced parking needs in such areas, but that by reducing development costs the policy can support more development overall, which will help reduce the housing shortage.

Lower Impact Tax Rates in Red Policy Areas

Although there is no requirement to tie impact tax rates to policy area color designations, they are currently linked and there is no recommendation to unlink them. As a result, red policy areas have the lowest transportation impact tax rates. All red policy areas are also infill areas for the purposes of school impact tax rates, which are lower than turnover area tax rates.

While there is no legal requirement that transportation impact taxes uphold adequacy, the lower rates correspond with having lower transportation impacts because the development is in an area served by high-capacity transit. Similarly, infill areas generate fewer students than turnover areas, resulting in a lower tax rate. It is difficult to conclude whether these lower rates are an incentive. They are an incentive by contrast to higher rates in other parts of the County, but the rates are ostensibly linked to infrastructure needs, although this connection may be weak, as Council Staff have noted.

Reduction of Impact Taxes for Specific Uses

A development in a red policy area is typically required to provide at least 12.5% MPDUs, although many parts of the County have increased this requirement to 15% through master plans. All affordable housing units would be exempt from impact taxes. Projects providing 25% MPDUs are exempt from paying any impact taxes. The historical justification for these exemptions has been that affordable housing is a desirable use to promote, and that these incentives do compel more MPDUs.

Similarly, under the current policy, multifamily three-bedroom units in Infill Impact Areas pay a 40% discounted impact tax rate for both schools and transportation.

Elimination of Impact Taxes in Opportunity Zones and Enterprise Zones

Under the current policy, impact taxes are also exempt in Opportunity and Enterprise Zones, with an aim of incentivizing development in places that have had historical underinvestment, for example. This exemption exists regardless of the policy area designation and in theory, offers a larger savings in non-red policy and non-infill areas, where impact tax rates are higher as currently implemented.

Members of the GO Committee noted that it would be consistent with other incentives in Bill 16-24 to exempt such projects from transportation impact taxes while maintaining school impact taxes. However, they also noted that several incentives apply in these instances, and that ZTA 23-10, which exempted residential uses from providing parking minimums, would have a greater effect on improving feasibility of projects in red policy areas.

The Committee voted 2-1 to reject this amendment, with Councilmember Friedson dissenting.

Amendment 6. Exemption for undergrounding utilities (Public hearing testimony)

The Council received a request from Miles & Stockbridge's land use and zoning practice group to provide a transportation impact tax credit for the undergrounding of existing utilities. As noted in the letter, recent master plans have encouraged projects to underground existing utilities as a frontage improvement, noting benefits to pedestrians and cyclists. MCDOT expressed opposition to this amendment.

In certain cases, undergrounding utilities can have a direct impact on the delivery of adequate infrastructure serving a project. Undergrounding utilities may be necessary for reconfiguring roadway cross-sections to accommodate new bicycle infrastructure, safer pedestrian infrastructure, and Bus Rapid Transit (BRT). However, in many cases, undergrounding utilities does not have a direct impact on transportation capacity.

This range of functions led to a discussion among Councilmembers during the October 17th worksession regarding purpose and function of undergrounding utilities, acknowledging that their effects on improving pedestrian safety, for example, could be considered as adding capacity. It is possible that if the basis of the transportation impact tax were updated today, a list of growth-related infrastructure projects may well include the undergrounding of utilities.

If transportation impact taxes collected from a development were used to support the cost of undergrounding utilities serving that project, that would be a stronger connection between impact taxes and the delivery of adequate infrastructure than currently exists. Today, impact taxes are not specifically allocated to projects serving the developments that paid them. Allowing for an impact tax credit for costs towards undergrounding utilities could therefore strengthen this connection, even if there remain doubts about the effect of undergrounding utilities on transportation capacity. As a general principle, Council Staff suggest strengthening the basis of the policy where possible.

Furthermore, the costs of undergrounding utilities can be high; but more importantly, they can be difficult to predict. Therefore, to the extent developers ever face a choice about which frontage improvements they agree to make, they could be more inclined to choose undergrounding utilities if they know a credit is available. This may also help support the viability of projects in master plans that require undergrounding of utilities as part of frontage improvements.

As a result of the discussion, the Committee supported including the issue of undergrounding utilities in discussions for the proposed workgroup, but requested Council Staff work with MCDOT to draft language that can provide credits for undergrounding utilities where it adds transportation capacity. Council Staff proposes the following three options:

- **Option A:** Given the discussion at Committee, in consultation with MCDOT and Planning Staff, Council Staff recommends language that allows the credit based on the width of the street. For example, if it was not possible to get 5-foot wide sidewalks, 8-foot wide sidepaths, or ADA curb ramps without moving utilities, it may be reasonable to provide a credit. However, Council Staff notes that these numbers may not be applicable in all neighborhoods. While MCDOT staff were able to find specific examples of projects where underground utilities would have a specific transportation safety benefit, it was difficult to determine a set of rules or language that would apply across the County.
- **Option B:** Do not make changes to Bill 16-24 and include discussion of this issue in a list of considerations for the proposed working group. In addition, Council Staff recommends that the undergrounding of utilities be considered in the 2028-2032 GIP, as it may have a stronger connection to adequacy than the incentives under the current transportation impact tax system. However, the latter option would require careful consideration of the level of priority of undergrounding utilities over other transportation improvements, given the cost.
- **Option C:** Given the somewhat arbitrary nature of any specific guidelines or metrics for undergrounding utilities and that impact taxes are not currently spent to support projects that paid them, Council Staff reiterates the original recommendation to allow a credit for undergrounding utilities under any circumstances.

Amendment 6. Amend the definition of high-rise residential units (Council Staff / Public hearing testimony) [Line 21-23]

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. Council Staff recommended a technical amendment to correct this oversight.

Lerner Enterprises, represented by Lerch, Early, & Brewer, opposed this change to the definition of a high-rise unit because it would “have a drastic, negative economic impact on those garden apartment projects that have relied on this calculation.” The written testimony suggested adding a grandfathering provision. The letter noted that the project in question, Black Hill in Germantown, has had its building permits approved since August 2022 but has not yet pulled them due to current high interest rates and high construction costs.

The Committee voted unanimously to support an amendment that would retain the definition of high-rise residential units in both Sec. 52-52 and 52-39 but add a grandfathering provision for projects that have an approved preliminary plan as of the effective date of this bill.

Amendment 7. Expedited bill (Council Staff) [Lines 244-247]

Bill 16-24 includes a transition clause that states the bill takes effect on January 1, 2025. Under Section 112 of the Charter,

“All legislation, except expedited legislation, shall take effect ninety-one days after the date when it becomes law, unless a later effective date is prescribed in the legislation. Expedited legislation shall take effect on the date when it becomes law, unless a different effective date is prescribed in the legislation.”

Given the timing of the legislative process for this bill, an effective date of 90 days would be after the date prescribed in the transition clause. Therefore, to take effect on January 1, 2025, Bill 16-24 would need to be expedited. Council Staff proposed language to create an expedited bill that does not take effect immediately but does take effect in less than 90 days.

The Committee voted unanimously to support this amendment.

Amendment 8. Amend Section 52-59 (Council Staff) [Line 239-242]

The GIP recommends “Allow[ing] 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.”¹¹ This would require an amendment to Section 52-59(e). The bill as transmitted did not include this amendment. Council Staff proposed the following language:

52-59. Utilization Premium Payment.

* * *

- (e) The Department of Finance must retain funds collected under this Section in an account to be appropriated for:

- (1) any public school improvement that adds capacity designed to alleviate overutilization in the school service area from which the funds were collected; or
- (2) for capital projects adding capacity at any school adjacent to the school for which the funds were collected. Adjacent schools must be determined using the Planning Board’s Annual School Utilization Report.

The Committee voted unanimously to support this amendment.

Amendment 9. Clarify definition of stacked flats (Council Staff) [Line 26-28]

¹¹ The PHP Committee recommended approval of this recommendation.

The Office of the County Attorney (OCA) noted that the definition of stacked flats in the bill may be too broad. Bill 16-24 proposes defining stacked flats as “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.” The term adjacent, in both the Zoning Ordinance and in layperson terms, means “nearby.” OCA suggested adding the phrase “within a single building” and clarifying that the definition applies to a building of 4 stories or less, in contrast to the definition for a high-rise residential building.

The Committee voted unanimously to support this amendment.

Amendment 10. Technical Corrections (Council Staff)

The following 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...” However, in reviewing the introduced bill and the GIP, the language should read “Any single-family attached or detached dwelling units...” [Lines 82-85, 151-154, 208-212]
- Minor technical corrections are needed to address incorrect capitalizations, mis-underlined periods, and re-alphabetizing.

The Committee voted unanimously to support these technical amendments.

This packet contains:

Bill 16-24	© 1
Fiscal Impact Statement	© 12
Economic Impact Statement	© 19
Climate Assessment	© 22
Racial Equity & Social Justice (RESJ) Impact Statement	© 25
County Executive Letter and Recommendations	© 27
Letter from MBIA and NAIOP	© 41
Letter from Lerch Early Brewer representing Westfield Montgomery Mall	© 44
Letters from Lerch Early Brewer representing Duffie Inc.	© 47
Letter from Nancy Floreen	© 54
Letter from Clifford Debelius Boynton	© 56
Councilmember Glass Memorandum	© 58
Letter from Greater Colesville Citizens Association	© 60
Letter from Montgomery County Board of Education	© 63
Letter from Miles & Stockbridge representing MCB White Oak, LLC	© 65
Letter from William Kominers of Lerch, Early & Brewer	© 67
Letter from Lerch, Early & Brewer representing Lerner Enterprises	© 75
Letter from Lerch, Early & Brewer representing Community Three Maryland, LLC	© 78

Letter from Miles & Stockbridge land use practice group
Planning Staff Memorandum on Parking Reduction
Letter from Selzer Gurvitch

© 81
© 83
© 88

Expedited Bill No. 16-24
Concerning: Development Impact Tax –
Amendments
Revised: 10/23/2024 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 EXPEDITED 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, 52-43, 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, 52-43, 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:

* * *

Demolish means to tear down or destroy an entire building or structure, or 67 percent or more of first-story exterior walls of a one-family or two-family dwelling unit.

Demolish includes the conversion of an exterior wall into an interior wall. Basement and cellar walls are not considered exterior walls.

* * *

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]] 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 within a single building that is 4 stories or less.

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, including a development located in the following census tracts, as defined by their 2010 Census Boundaries: Silver Spring – 25.00, 26.01; Takoma Park – 17.03, 20.00, 23.01; White Oak – 15.05, 15.09, 14.21; Wheaton – 38.00; Rockville – 9.04; Gaithersburg – 7.24, 7.23, 7.13, 8.13; and Germantown – 8.30;
- (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

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

82 ~~[(12)]~~(11) Any single-family attached or detached dwelling units
 83 with a gross floor area of 1,800 square feet or less, or a gross
 84 floor area of 2,200 square feet or less including an attached
 85 garage.

86 * * *

87 (h) The development impact tax does not apply to:

88 * * *

89 (4) office-to-residential conversions when the building is adaptively
 90 reused or renovated for multi-family housing; and

91 (5) the conversion of office to multi-family, single-family detached,
 92 or single-family attached housing when demolition is involved.

93 * * *

94 **52-43. Calculation of development impact tax.**

95 * * *

96 (f) A 1-bedroom garden apartment must be calculated using the high-rise
 97 residential rate if the building permit was approved before January 1,
 98 2025.

99 * * *

100 **52-47. Credits**

101 * * *

102 (b) Except as provided in subsection (l), a property owner must receive a
 103 credit for constructing or contributing to an improvement of the type
 104 listed in Section 52-50, including the cost of an improvement in a
 105 Unified Mobility Program or the White Oak Local Area Transportation
 106 Improvement Program, if the improvement reduces traffic demand or

provides additional transportation capacity and to the extent the cost of the improvement exceeds the property owner's fee under a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program.

* * *

(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.

* * *

- (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), that has an accepted preliminary plan application, or equivalent plan acceptance in the City of Gaithersburg, before January 1, 2025, must pay the tax at:

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

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

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

[(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)](i) 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, including a development located in the following census tracts, as defined by their 2010 Census Boundaries: Silver Spring – 25.00, 26.01; Takoma Park – 17.03, 20.00, 23.01; White Oak – 15.05, 15.09, 14.21; Wheaton – 38.00; Rockville – 9.04; Gaithersburg – 7.24, 7.23, 7.13, 8.13; and Germantown – 8.30; [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]

187 ~~[[(9)]]~~ (8) an office-to-residential conversion when the building is
 188 adaptively reused or renovated for multifamily housing~~[[;]]~~.

189 * * *

190 **52-55. Tax rates.**

191 * * *

192 (d)~~[(d)]~~ The Director of Finance, after advertising and holding a public
 193 hearing as required by Section 52-17(c), must adjust the tax rates set
 194 in or under this Section effective on July 1 of each odd-numbered year
 195 in accordance with the update to the Growth and Infrastructure Policy
 196 using the latest student generation rates and average Montgomery
 197 County Public School construction costs. The Director must calculate
 198 the adjustment to the nearest multiple of one dollar. The Director must
 199 publish in the County Register the amount of this adjustment not later
 200 than May 1 of each odd-numbered year.

201 * * *

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

206 * * *

207 (f) [A three-bedroom multi-family dwelling unit located in an Infill Impact
 208 Area must pay the tax at 40% of the otherwise applicable rate.] ~~[[Any~~
 209 single-family [[detached residential or detached single-family]]
 210 attached or detached dwelling [[units]] unit with a gross floor area of
 211 1,800 square feet or less must pay the tax at 50 percent of the otherwise
 212 applicable rate.]] A 3-bedroom multi-family dwelling unit located in an

Infill Impact Area must pay the tax at 40 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)](g) Stacked flats must pay the multifamily low-rise applicable rate.

[(i)](h) A one-bedroom garden apartment must be calculated using the high-rise residential rate if the building permit was approved before January 1, 2025.

* * *

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.

* * *

(e) The Department of Finance must retain funds collected under this Section in an account to be appropriated for:

(1) any public school improvement that adds capacity designed to alleviate overutilization in the school service area from which the funds were collected; or

(2) for capital projects adding capacity at any school adjacent to the school for which the funds were collected. Adjacent schools must be determined using the Planning Board's Annual School Utilization Report.

* * *

Sec. 2. [[Transition]] Expedited Effective Date. The Council declares that this legislation is necessary for the immediate protection of the public interest. 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)

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.

Fiscal Impact Analysis

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 <u>Gaithersburg</u> , 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.

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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

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.

October 1, 2024

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.

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.

RESJ Impact Statement

Bill 16-24

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.

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

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 result, 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				
<p>Recommendation 2.1 School Impact Tax Areas: <i>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.</i> <i>All policy areas recommended as Red Transportation policy areas will be recommended as Infill Impact Areas regardless of the data analysis results.</i></p> <p>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.</p>	Yes	No	Yes	Delete
<p>Recommendation 2.2 Annual School Test: Adjust the Seat Deficit Thresholds to Better Align with MCPS' CIP Thresholds <i>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.</i></p> <p>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.</p> <p>Since Planning is aligning the seat threshold with MCPS' guidelines to consider capacity projects in the CIP, it would be useful to consider increasing</p>	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.				
<p>Recommendation 2.3: Utilization Premium Payments: <i>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.</i></p> <p>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.</p> <p>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.</p> <p>This recommendation is more in tune for how the Board addresses capacity problems in the County.</p>	No	n/a	n/a	Add
<p>Recommendation 2.4: Student Generation Rates (SGR): <i>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.</i></p> <p>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.</p>	No (Current Practice)	No	No	No position

Recommendation 2.5 <i>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.</i>				Add

Planning Staff Recommendations:	Fiscal Impact	Revenue Increase	Revenue Loss	Position
Transportation Element				
Recommendation 3.1a <i>Update policy areas to support the county's goals.</i> 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 <i>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.</i> No changes from the existing program.	No	No	No	Add
Recommendation 3.2 <i>Require LATR studies for a proposed development project generating 50 or more peak-hour vehicle trips.</i> 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 <i>Update the LATR intersection delay standards to reflect changes to policy area boundaries and designations.</i> 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 <i>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</i>	No	No	No	Add

<p><i>individual pedestrian, bicycle, and bus transit systems tests.</i></p> <p>This recommendation is essentially just how things are organized, as other recommendations address each Test in detail.</p>				
<p>Recommendation 3.5</p> <p><i>Modify the non-motor vehicle adequacy test requirements to maintain the county's high standards while minimizing unnecessary data collection and analysis.</i></p> <p>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.</p> <p>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).</p> <p>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.</p>	Minimal	Minimal reduction in operating costs	Minimal	Neutral
<p>Recommendation 3.6</p> <p><i>Refine the Vision Zero Statement to focus on managing speed for safety.</i></p> <p>This is likely to focus more on language refinements than any new actions from the status quo.</p>	No	No	No	Add
<p>Recommendation 3.7</p> <p><i>Remove the reference to the Safe Systems Adequacy Test from the GIP.</i></p>	No	No	No	Add

The status quo had little effect. Its removal should similarly have little effect.				
Recommendation 3.8 <i>As part of the 2025 LATR Guidelines update, develop a vehicle trip-based Proportionality Guide calculation that better accounts for impacts.</i> 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 <i>Allow all fee-in-lieu funds to be spent in both the subject policy area and adjacent policy areas.</i> 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 <i>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.</i> 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 <i>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</i>	Yes	No	Yes	Delete unless additional funding identified prior to implementation

<p><i>affordable units. The trips generated by these units will still count toward the 50-vehicle-trip LATR threshold.</i></p> <p>Without a funding source to provide offsite mitigation, affordable housing developments may have fewer adequate public facilities as compared to market rate developments.</p> <p>Costs to construct infrastructure afterward will be higher due to having to remobilize for construction.</p>				
<p>Recommendation 3.11b</p> <p><i>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.</i></p> <p>Without a funding source to provide offsite mitigation, Mixed-Income Housing Communities may have fewer adequate public facilities as compared to market rate developments.</p> <p>Costs to construct infrastructure afterward will be higher due to having to remobilize for construction.</p> <p>Additionally, the County would not have data on the anticipated trip generation and impacts of these developments on the transportation network.</p>	Yes	No	Yes	Delete unless additional funding identified prior to implementation
<p>Recommendation 3.12</p> <p><i>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.</i></p> <p>Without a funding source to provide offsite mitigation, multifamily structures with 3+</p>	Yes	No	Yes	Delete unless additional funding identified prior to implementation

<p>Bedroom units may have fewer adequate public facilities as compared to developments with smaller units.</p> <p>Costs to construct infrastructure afterward will be higher due to having to remobilize for construction.</p> <p>However, we note that these cost impacts are substantially less than with Recommendation 3.11.</p>				
<p>Recommendation 3.13 <i>Exempt daycares from the requirement to complete an LATR study.</i></p> <p>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.</p> <p>Without a funding source to provide offsite mitigation, daycare facilities may have fewer adequate public facilities as compared to other land uses.</p> <p>Costs to construct infrastructure afterward will be higher due to having to remobilize for construction.</p>	Yes	No	Yes	Delete unless additional funding identified prior to implementation
<p>Recommendation 3.14 <i>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.</i></p> <p>No functional change from the 2020-2024 GIP.</p>	No	No	No	Add
<p>Recommendation 3.15 <i>Establish NADMS goals for new policy areas and other areas without goals. Update the NADMS goals to reflect recently adopted master plans.</i></p> <p>MCDOT has a separate analysis related to NADMS and GIP, as it pertains to ER 8-21. We are supportive of the methods that</p>	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 <i>Revise the GIP resolution text to reflect updated county plans, policies, laws, regulations, and guidance.</i>	No	No	No	Add
Recommendation 3.17 <i>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.</i>	No	No	No	Add
Recommendation 3.18 <i>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.</i>	No	No	No	Neutral
This is between SHA and Planning.				

Planning Staff Recommendations:	Fiscal Impact	Revenue Increase	Revenue Loss	Position
Impact Tax				
<p>Recommendation 4.1</p> <p>A. Calculation of School Impact Taxes: <i>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.</i></p> <p>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.</p> <p>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 aid 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.</p>	Likely	No	Likely	Delete
<p>B. CAP and Carryover System: <i>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.</i></p> <p>This recommendation maintains current practice.</p>	No	No	No	Neutral
<p>C. Discount for Smaller Homes: Recommendation 4.3: <i>Offer a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller.</i></p>	Yes	No	Yes	Delete

<p>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.</p> <p>If trends in housing stock shift and more of these units are produced due to the policy, the fiscal impact would grow.</p>				
<p>D. Exemption for Multi-Family Units with Three or More Bedrooms: Recommendation 4.5 <i>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.</i></p> <p>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.</p> <p>If trends in housing stock shift and more of these units are produced due to the policy, the fiscal impact would grow.</p>	Yes	No	Yes	Delete
<p>E. Office-To-Residential Conversions: Recommendation 4.6 <i>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.</i></p> <p>No historical data is available to perform revenue projections.</p> <p>Per Finance: <i>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.</i></p>	Yes	No	Yes	Delete

<p><i>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.</i></p> <p>This would heavily depend on the pace of this type of development.</p>				
<p>Recommendation 4.7 <i>Continue exempting bioscience projects from transportation impact tax and add the exemption to the county code.</i></p>	No	No	No	Add
<p>Recommendation 4.8a <i>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.</i></p> <p>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.</p>	Yes	No	Yes	Delete
<p>Recommendation 4.8b <i>Convene a working group across county government and with external stakeholders to explore additional financing and funding mechanisms to better meet infrastructure needs.</i></p> <p>While this recommendation is needed, there should be no more revenue losses before replacement funding is identified</p>	No	No	No	Add only if it has completed its work BEFORE adding revenue reducing measures

Recommendation 4.9 <i>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.</i>	Yes	No	Yes	Neutral
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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.
 - o 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 aid in the school impact tax calculation will promote fair assessment and reduce cost to developers, and ultimately cost to the home purchasers.
 - o 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 not 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,

A handwritten signature in blue ink, reading "Christopher M. Ruhlen". The signature is fluid and cursive, with a long horizontal stroke at the end.

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]lligning 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,



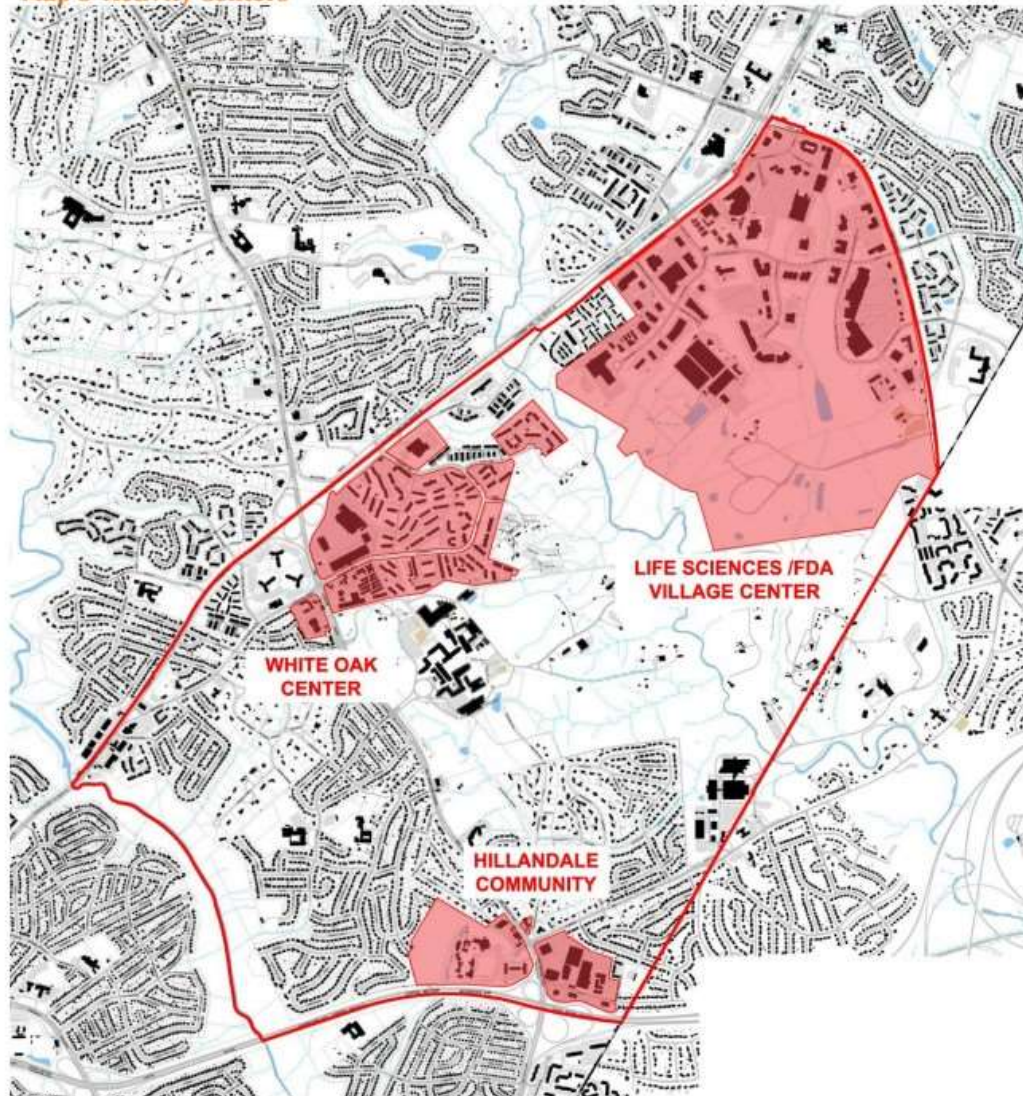
Christopher M. Ruhlen

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

Map 5 Activity Centers



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.

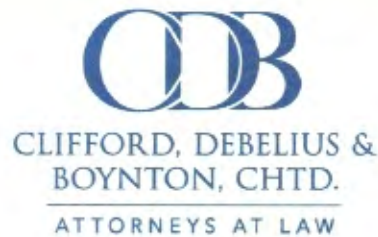
This is a small chance for you to right those wrongs.

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)



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.

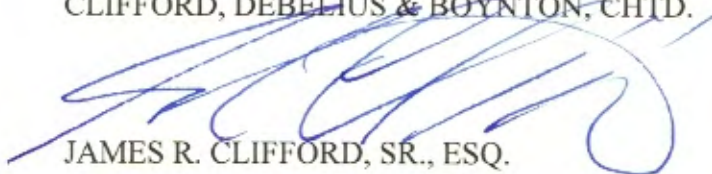
However, I would ask you to consider moving up the maximum square feet qualifier for the house from 1,800 square feet to 2,200 square feet in order to fit front loaded garages and a

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

Greater Colesville Citizens Association
PO Box 4087
Colesville, MD 20914
September 10, 2024

Montgomery County Council
Attn: Andrew Friedson
100 Maryland Ave
Rockville, MD 20850

Re: Growth & Infrastructure Policy and Bill 16-24

Dear Council President Friedson:

The Greater Colesville Citizens Association (GCCA) has commented for decades on the Growth & Infrastructure Policy (GIP) and its predecessor documents as well as the related impact tax rules (Bill 16-24). The staff proposed changes are largely small adjustments to make the existing process work better. GCCA supports the recommendations in the draft document, except as noted below.

The council desires to encourage economic development and especially the production of affordable housing, which GCCA also strongly supports. The high cost of obtaining county approvals has stemmed such development. Two parts of that high cost come from the LATR requirements and another part from the impact taxes. The GIP and related impact tax recommendations from the Planning Board allow the council to reduce both of these cost elements. Specific changes are:

- GCCA supports Recommendation 2.1 to simplify LATR investigations by reducing the number of boundaries.
- GCCA supports Recommendation 3.2 to not require LATR studies for small projects – those under 50 peak-hour vehicle trips.
- GCCA supports Recommendations 3.4 and 3.5 to simplify the non-motor vehicles adequacy tests.
- GCCA support Recommendation 3.8 to update and refine the proportionality guide.
- GCCA supports Recommendations 3.11a, 3.11b and Table 13 (Impact Tax Exemptions). To reduce the cost, LATR should not be required for affordable housing and mixed-income Housing. Also, the school and transportation impact taxes should be eliminated for this category of development.
- GCCA supports Recommendations 3.13 and 3.14 to exempt daycare and bioscience development from the LATR requirement. GCCA also supports maintaining the existing impact tax exception for bioscience projects (Table 13 and Recommendation 4.7)
- GCCA supports the recommendations in Table 13.
- GCCA supports Recommendation 4.3 to apply a 50% impact tax reduction for single family housing under 1800 sq ft as a means of linking the tax to the degree of impact.

Many units of this small size will often be used by two adults or a couple with one child. Thus, the impact would be less than with larger families.

- GCCA supports Recommendation 4.5 to completely eliminate impact taxes for multifamily units with at least three bedrooms. This would help provide housing for low-income families with multiple children.
- GCCA supports Recommendation 4.6 dealing with office-to-residential conversions. We support an exemption for both the situation where the existing structure is used (as recommended) and when the existing building is demolished (as not recommended). It is often not economical to repurpose office buildings. We also do not want buildings to sit empty and become a blight on the community. We expect the transportation demand will be typically lower for residential use than office use, so imposing a transportation impact tax would not be fair.
- GCCA supports Recommendation 4.9 to maintain the impact tax exemption (both transportation and school) for opportunity zones. We also support continuing this exception should the federal program expire. Most of the development in east Montgomery County has been delayed because of covid. This is especially true for the Viva White Oak Project. The exemption is needed to allow the project to economically proceed, in part since the developer will be required to provide a lot more infrastructure than in many other parts of the county. The opportunity zone applies to economically distressed communities.

GCCA supports Recommendation 3.1a in part. That recommendation creates the White Oak Downtown area (Tech Rd and Industrial Pkwy) and a White Oak area (New Hampshire Ave). The citizens in this part of the county consider the downtown area to be on New Hampshire Ave at Lockwood Dr/US29. Having two area with the name “White Oak” is confusing. As indicated below we recommend they be combined. However, If they are kept separate, we suggest the name of “Life Science” be used for the Tech Rd/Industrial Pkwy area as indicated in the Master Plan.

Nearly all of the combined area (White Oak Downtown and White Oak) is covered by the White Oak Science Gateway Master Plan. That combined area should be classified as “red,” since it is covered by the Local Area Transportation Improvement Program (LATIP) which replaces LATR, and thus most of the GIP transportation rules do not apply to them. We also consider the area from New Hampshire Ave to Briggs Chaney and east of Old Columbia Pike/US29 as being a single large activity center. Thus, this entire area should be considered as a single red policy area.

If the council retains the two policy areas, the small area along Cherry Hill Road between Viva White Oak, Federal Research Center and Prince George’s County should be in the DownTown/Life Science area, not the White Oak area. Otherwise, this small area would be separated from the remainder of the White Oak Policy Area by the large FRC and Adelphi Labs. This area is already built-out and consists of half the small shopping center and three of the garden apartment buildings. The remainder of the shopping center and garden apartment development is in PG County.

Note that in Bill 16-24, the bracket is misplaced under the list of Orange Policy Areas to exclude White Oak.

Recommendation 3.1b is not clear since it appears to be attempting to redefine the LATIP area to be only one of the three activity centers it covers. As indicated above, we oppose splitting the existing LATIP area.

Transportation Impact Rate Adjustment for NADMS. The Policy establishes non-auto driver mode share (NADMS) goals but fails to reduce the transportation impact tax to account for achieving the goal or exceeding it. The current LATR contains two tables that could be used to address this shortcoming: Appendixes 1a and 1b. Appendix 1a adjusts the ITE vehicle trip generation rate to reflect local conditions. Appendix 1b could be modified and updated to identify existing NADMS rates. Using those two tables, the transportation impact tax should thus become:

= ITE rate * Appendix 1a factor * (1 – Appendix 1b NADMS rate) * tax rate

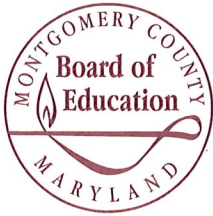
Appendix 1b would represent the default NADMS rate. However, if the developer could demonstrate a higher NADMS, that higher value would be used in place of the Appendix 1b value. The NADMS would most likely vary by the nature of the development in terms of number of auto trips, provision of public transportation, and any measures the developer puts in place to encourage non-auto trips. The tax rate would be value per auto trip. Thus, trips taken by transit, walking or biking would not be charged an impact tax, thus encouraging their usage.

Thank you for considering our recommendations.

Sincerely

Daniel L. Wilhelm

GCCA President



MONTGOMERY COUNTY BOARD OF EDUCATION

Expanding Opportunity and Unleashing Potential

15 West Gude Drive ♦ Suite 100 ♦ Rockville, Maryland 20850

September 27, 2024

The Honorable Andrew Friedson, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: 2024–2028 Growth and Infrastructure Policy

Dear Council President Friedson:

Thank you for the opportunity to comment on the 2024–2028 Growth and Infrastructure Policy currently under review and the accompanying Bill 16-24, *Development Impact Tax – Amendments*. We appreciate that Montgomery County Public Schools (MCPS) is a significant component of the overall public infrastructure of Montgomery County, and we share the collective goal of ensuring a robust public infrastructure that meets the current and future needs of our growing community.

Our primary concern relates to the revenue projections and the need for revenue enhancement in the structure of the Growth Policy. The Council's Approved Fiscal Year (FY) 2025–2030 Capital Improvements Program (CIP) included significant funding to reflect the ongoing needs for systemic infrastructure projects; however, it also deferred several important school capacity and renovation projects. The Council approved funding that is \$52.1 million less than the previously approved CIP funding level and \$145.7 million less than the level requested by the Board of Education (Board). Last year, the County's Office of Finance revised Recordation Tax revenue projections down from previously assumed levels, one factor which led to the reductions to the Board's requested CIP. We know there is a shared understanding of the facility infrastructure needs of the school system, and we ask you to ensure that revenue measures are in place to adequately fund the MCPS CIP now and in the future.

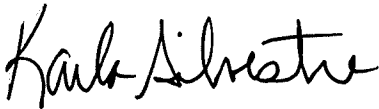
We acknowledge that there are many competing policy priorities related to structuring growth and development patterns in the county, as well as a range of options for incentivizing growth that reflect policy objectives. However, we are very concerned that the County's Office of Finance estimates more than \$20 million of lost revenues due to the provisions around both school and transportation infrastructure and the proposed Impact Tax discounts and reductions. We strongly urge the Council to implement robust and appropriate revenue measures that will meet the County's growth objectives while maintaining positive trajectories for revenues that support needed facility infrastructure to meet that growth.

MCPS does not support Recommendation 4.1, Calculation of School Impact Taxes, which would reduce the calculation by the amount of State Aid programmed in the CIP. The State Aid reflected in the CIP is, in many cases, only projected and is contingent on review and approval by the State on a project-by-project basis. In addition, the CIP State Aid projections include both traditional State Aid formulas and the remainder of the Built To Learn allocation, which have different calculations and approval levels. These factors and others could result in artificially low calculations of Impact Taxes needed to support the ultimate cost of school construction.

MCPS supports Recommendation 2.3 of the Planning Board's proposed policy, which allows funds collected from Utilization Premium Payments to be allocated to areas adjacent to the impacted cluster. This aligns with the MCPS capital planning approach to use all school facilities in an area to address capacity needs and also aligns with the direction from the State Interagency Commission on School Construction to consider adjacent school capacity when planning construction.

Thank you for including these comments in your consideration of the Growth and Infrastructure Policy and Bill 16-24, *Development Impact Tax – Amendments*. We appreciate your partnership and support in providing the infrastructure needed to create a high-quality educational environment for all Montgomery County staff, students, and families.

Sincerely,



Karla Silvestre
President



Thomas W. Taylor, Ed.D., M.B.A.
Superintendent of Schools

TWT:EM:mms

Copy to:

Ms. Alfonso-Windsor
Ms. McGuire
Mr. Mamoon
Ms. Webb
Mr. Lockman

The Hon. Andrew Friedson, President
And Montgomery County Councilmembers
October 3, 2024
Page 2



In order to ensure the stability and continuity of the economic assumptions and projections that support the financing of the project, we urge the Council to adopt the Bill with this provision and maintain the impact tax exemption after the Opportunity Zone designation expires.

If you need any additional information or have any questions, please do not hesitate to contact me.

Thank you for your consideration of this testimony.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Scott C. Wallace'.

Scott C. Wallace

cc: Ms. Pamela Dunn, Sr. Legislative Analyst
Ms. Livhu Ndou, Sr. Legislative Attorney
Mr. Bilal Ali, Legislative Analyst
Mr. Carlos Bonner, Sr. Managing Director,
MCB White Oak Developer, LLC

William Kominers
Attorney
301-841-3829
wkominers@lerchearly.com

October 3 2024

The Honorable Andrew Friedson, Council President
Montgomery County Council
100 Maryland Ave., 6th Floor
Rockville, MD 20850

Re: Bill 16-24 Development Impact Tax - Amendments (the "Bill")

Dear President Friedson and Members of the Council:

This letter is to transmit my comments on Bill 16-24, Development Impact Tax -- Amendments. Please place this letter in the Record of the public hearing on the Bill.

I presented my comments at the September 10 public hearing on the Draft 2024-2028 Growth and Infrastructure Policy (the "GIP"). Bill 16-24 is designed to implement legislative changes consistent with the Planning Board's recommendations as put forth in the Draft GIP. Thus, my comments on certain of the Impact Tax recommendations in the GIP are equally applicable to those elements of the Bill that would implement those recommendations. Therefore, I wish to express my support for those portions of the Bill that reflect the relevant GIP recommendations. A copy of my earlier testimony is attached.

Opportunity Zones (Lines 55-58 and 123-126; GIP Recommendation 4.9)

The recommendation to continue the Impact Tax exemption for properties in Opportunity Zones represents a critical economic development and equity matter for the County.

During its existence, the federal Opportunity Zone program has not solved all the problems of the distressed areas to which it applied. The County's Impact Tax exemption supports these same goals, but also has not yet achieved the desired results. The Planning Staff and the Planning Board recognized the need to continue the exemption from Impact Taxes for Opportunity Zone areas, beyond the completion of the federal tax benefits. Retaining the Impact Tax exemption for those areas previously designated as Opportunity Zones will continue to support the efforts of those areas to climb out of the circumstances that caused the Opportunity Zone designation in the first place. The challenges faced by these areas require long-term efforts, care, and some special treatment.

Recognizing the continuing struggle of these Opportunity Zone areas, the Planning Staff and Planning Board propose to continue the exemption from Impact Taxes once the federal

Opportunity Zone program and its designations expire. The Opportunity Zones can continue to be used to delineate geographic areas within which the Impact Tax exemption continues to apply.

Without the continued exemption for Opportunity Zones, areas such as downtown Silver Spring, downtown Wheaton, and White Oak, just as examples, will suffer severely negative effects on development activity. Construction costs in those areas are no different from those in Bethesda, while rental rate structures lag well behind the corresponding Bethesda rates. Adding the Impact Tax as a new cost into the financial equation for development in those areas can be expected to have a serious negative impact on the continued success of redevelopment.

Unfortunately, the time needed for overcoming of the distress in these areas requires a longer duration, and relief has a longer gestation period, than the life of the government designations as an Opportunity Zone. Therefore, the Impact Tax exemption for those geographic areas should be continued, by use of whatever means of identification can be established.

Bioscience Facilities (Line 62; GIP Recommendation 4.7)

The exemption from Impact Taxes for bioscience facilities is a valuable part of the toolkit to encourage bioscience uses in Montgomery County. Continuing the exemption for bioscience projects is appropriate and in the public interest. Adding the exemption to the Code will provide interested companies with assurance of greater certainty and consistency, which will benefit the County's pursuit of bioscience businesses.

Credits for Improvements to State Roads (Lines 77-82; GIP Recommendation 4.8(a))

This is change that is long overdue. The importance of this credit has escalated over time, as there are more frequent requests to make improvements to state roads (including non-vehicular facilities, such as sidewalks, bike paths, and crosswalks, as well as roadways). Often, those improvements are not called for by the state, but instead result from directions in County master plans or policies. Where the County is the source of the requirement, a credit should be given for the work, even if the improvement involves a state road.

In addition, the threshold requirement to "increase capacity" in order to receive a credit, should be eliminated. Such a measurement is very difficult to evaluate with non-vehicle facilities. Even for vehicles, there may be safety or significant roadway maintenance needs that are called for and satisfied by an applicant, where capacity is not increased, but the public interest is served. These too deserve credit.

School Construction Costs (Lines 146-149; GIP Recommendation 4.1)

This recommendation proposes to adjust the School Impact Tax to reflect the state aid portion of construction cost for schools. This is simply a matter of fairness. Applicants should only be asked to pay for the share of construction otherwise provided by the County. If part of construction is funded by a third party, the development should not have to duplicate that amount.

The Impact Tax should reflect only the cost to the County to build these facilities. To the extent that funds come from others, such as the state, those amounts should be deducted from the equation calculating the County share, and consequently, the applicant's assigned responsibility.

Thank you for your consideration of my comments.

Very truly yours,

LERCH, EARLY & BREWER, CHTD.

William Kominers

William Kominers

Enclosure

WK/bp

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
Livhu Ndou, Esquire

2024 – 2028 GROWTH AND INFRASTRUCTURE POLICY

Testimony of William Kominers

(September 10, 2024)

Good afternoon President Friedson and members of the Council. My name is Bill Kominers. I am an attorney with Lerch, Early & Brewer, but I am testifying today as an individual on the Planning Board Draft 2024 – 2028 Growth and Infrastructure Policy ("GIP" or the "Draft"). There are many positive thoughts and recommendations in the GIP, but there are also those that call for adjustment, or that should be included in the GIP, but are absent.

Recommendation 3.2. Returning the analysis threshold to 50 or more new peak hour vehicle trips is a positive change. The vehicle trips are easier to understand and identify. The language of the GIP should clarify that the 50 trips represent "50 or more new peak hour vehicle trips." The word "new" needs to be inserted into the recommendation.

Recommendation 3.4. The change in the non-motor vehicle adequacy test proposed by this recommendation -- one test rather than three tests -- is hard to discern, and seems to be one of semantics rather than substance. Currently, as the Draft points out, there are three individual mode tests (pedestrian, bicycle, transit). The recommendation proposes changing to a single test that will encompass five modes -- stating that "the test will have five components" (the current three, plus ADA and illumination). This appears merely to be camouflage for a non-change change. Instead of three different tests, the recommendation proposes one test with five different components. A distinction without a difference? Similar to the Lord of the Rings with "one ring to rule them all," the GIP will have "one test to include them all."

Recommendation 3.5. Standardizing the study area distances across all policy areas (Table 9) is a positive change. However, the distances required for analysis for each of the different modes are not uniform and often seem excessive. The variation in distances can range over 500%. (For example, the Pedestrian Level of Comfort or PLOC must be analyzed for double the distance of ADA compliance. Bicycles are analyzed for over three times the distance of ADA).

Especially in urban areas (where the County wishes to focus development), there are vast numbers of facilities within these distances, all translating to costs. Improvements to these non-motor vehicle transportation modes can be particularly costly, not always because of the cost of the facilities themselves, but because of the cost of relocating the existing utilities that interfere. There is also no consideration of whether the facilities in question, such as curb ramps, are in compliance with the standards when they were built originally (which may be recently). Instead, they are evaluated against current standards, often requiring replacement of newer facilities.

To truly simplify the GIP, use the same study distances for each mode in the analysis.

Illumination. A separate category is proposed for illumination. Yet, the inventory of existing illumination (*i.e.*, streetlights) is held by the County and is established based on County standards. In order to obtain streetlight information to satisfy this test, the applicant must seek the

information from the Department of Transportation. That same information is then returned to the County as a part of the analysis. This seems like an unnecessary duplicative step, since the County already has the information desired. If streetlights are missing, the County should install them without being dependent on a nearby development.

Off-Site Improvements/Use of Impact Taxes. To simplify even further, the GIP and the subsequent LATR Guidelines, could dispense with analysis of these off-site non-vehicular elements such as sidewalks, streetlights, bike paths, and transit, and eliminate the "fix or fund" obligation on applicants. Instead, the "funding" for the "fix" should come from the Impact Tax payments that are required from the Project and be implemented by the County. Particularly today, when there is a preference not to make actual "road" improvements, these off-site improvements to support other modes of travel seem a proper use for Impact Tax revenues.

As an alternative to the individual project having to "fix" or "fund," an applicant could be required only to make the appropriate studies, to provide data on the conditions. Thereafter, the County would have that information for deciding where to spend Impact Tax dollars. In either case, the County could take the revenues and prioritize improvements to the greatest need, rather than obtaining improvements only as the serendipitous result of development proposals.

Recommendation 3.6. Managing speed for safety is certainly a valid concern. But before imposing the corrective burden on an applicant, consider how the analyses are conducted and determine whether the applicant can actually provide certainty of an answer or solution.

Recommendation 3.8. A factor should be added to the proportionality calculation formula to account for the development's percentage utilization of the quantity of impacts that trigger the need for an improvement. If a new development contributes only 10% to the quantity of impact, its responsibility should be limited to that same 10%. That percentage impact should be added as another multiplier in the calculation for the payment contribution. In short, if a new development becomes the straw of impact that crosses the quantity line and breaks the transportation camel's back, the applicant should only be responsible to mitigate its straw, rather than the entire camel.

Recommendations 3.9 and 3.10. Expanded use of fee-in-lien funds. The logic of these recommendations is understandable and reasonable. However, applying them undermines the nexus between the development and a payment based on the need for certain facilities to serve that development. If the payments can be used in adjacent areas, or for other modes of travel, they are no longer being used to solve the problems from which they arose. This seems to dilute or eliminate the nexus between the payments and the conditions that give rise to them.

Recommendations 3.11.a, b; 3.12; 3.13. These LATR exemptions represent positive steps toward meeting and supporting County goals. The LATR exemptions have a direct connection to implementing County policy decisions and should be approved.

Recommendation 3.14. Bioscience exemption from LATR. Extending the bioscience exemption from all LATR tests continues a favorable mechanism to support the County's economic development focus on bioscience facilities. Removing the three-year period for filing the building permit makes this exemption more practically usable.

Bioscience research and development does not proceed on a strictly linear basis. Scientific progress sometimes gets ahead of, or sometimes falls behind, the development review process in Montgomery County. Trying to keep in alignment those two parallel paths, each of uncertain duration, can be a challenge that is not always successful. Even with the best of intentions, a bioscience project may end up with the physical facility approved by the County, but delays from unexpected research setbacks, obstacles in clinical trials, or delays in FDA approval, may prevent the project moving forward on the building schedule as originally planned. The previous requirement in the GIP that an application for a building permit must be filed within three years after the approval of the Preliminary Plan or Site Plan, can cause application of the exemption to terminate and with it, a corresponding adverse effect on the underlying plan approval and its adequate public facilities review. Removing this limitation is a positive step to support this industry.

Recommendation 4.1. This recommendation proposes to adjust the School Impact Tax to reflect the state aid portion of construction cost. This is a matter of fairness, so that applicants are only being asked to pay for the share of construction provided by the County. If part of construction is funded by a third party, the development should not have to duplicate that amount. The Impact Tax should reflect only the cost to the County to build these facilities. To the extent that funds come from others, such as the state, those amounts should be deducted from the equation calculating the County share, and consequently, the applicant's assigned responsibility.

Recommendation 4 . Office to residential conversions The text notes correctly that the credits that currently exist are based upon applying the tax that "would have been" required for the office building that is being removed. That amount will then be credited against the tax required for the new residential building. This is consistent with the treatment that has been used heretofore and should be continued. The text notes quite correctly that a credit is only given for the transportation Impact Tax for the original office use against the transportation portion of the new residential tax cost.

Recommendation 4.7. Bioscience exemption from Impact Taxes. In a similar vein to the LATR exemption, the exemption from Impact Taxes for bioscience facilities is a valuable part of the County's toolkit to encourage bioscience uses in Montgomery County. Continuing the exemption for bioscience projects is appropriate and in the public interest. Adding the exemption to the Code will provide assurance of greater certainty and consistency, which will benefit pursuit of bioscience businesses.

Recommendation 4.8(a). Credits for improvements to state roads. This is a change that is long overdue. The importance of this credit has escalated over time, as there are more frequent requests to make improvements to state roads (including sidewalks, bike paths, and crosswalks, as well as roadways). Often, those improvements are not called for by the state, but instead result from directions in County master plans. Where the County is the source of the requirement, there should be a credit given, even if the improvement involves a state road.

In addition, the threshold requirement to "increase capacity" in order to receive a credit, should be eliminated. Such a measurement is very difficult with non-vehicle facilities. Even for

vehicles, there may be safety or significant maintenance needs that are called for and can be satisfied by an applicant. These too deserve credit.

Finally, the private sector should be included in the working group discussed in the Draft. This will help bring the perspectives and pertinent details from those who actually undertake the work to the consideration of what will be required and how it will be implemented.

Recommendation 4.9. Opportunity Zones. The recommendation on Opportunity Zones represents a critical economic development and equity matter for the County. During its existence, the federal Opportunity Zone program has not solved all the problems of the distressed areas to which it applied. The County's Impact Tax exemption supports these same goals, but also has not yet achieved the desired results. The Planning Staff and the Planning Board recognize that there is a need to continue the exemption from Impact Taxes for Opportunity Zone areas, beyond the completion of the federal tax benefits. Retaining the Impact Tax exemption for those areas previously designated as Opportunity Zones will continue to support the efforts of those areas to climb out of their present circumstances that caused the Opportunity Zone designation in the first place. The challenges faced by these areas require long term efforts, care, and some special treatment.

Recognizing the continuing struggle of these Opportunity Zone areas, the Staff and Planning Board propose to continue the exemption from Impact Taxes once the federal Opportunity Zone program and its designations expire. The Opportunity Zones can continue to be used to delineate geographic areas within which the Impact Tax exemption continues to apply.

For ease of understanding and to facilitate taking advantage of this economic development measure, the maps of those Opportunity Zones should be included in the GIP, just like the transportation policy area maps. In this way, the boundaries and the applicability to specific properties will be very clear.

Without the continued exemption for Opportunity Zones, areas such as downtown Silver Spring, downtown Wheaton, and White Oak, will suffer severely negative effects on development activity. Construction costs in those areas are no different from those in Bethesda, while rental rate structures lag well behind the corresponding Bethesda rates. Adding the Impact Tax as a new cost in the financial equation for development in those areas can be expected to have a serious negative impact on the continued success of redevelopment.

Unfortunately, the time for resolution of the distress in these areas has a longer duration, and relief has a longer gestation period, than the life of the government designations as an Opportunity Zone. Therefore, the Impact Tax exemption for those geographic areas should be continued, by use of whatever means of identification can be found.

New Recommendation. Address No Impact and De Minimis Impact.

No Impact. A development application that does not propose any additional square footage, or proposes a change of use that does not generate any net new peak hour trips, or proposes only *de Minimis* impacts should be exempt from providing any improvements (frontage improvements or other improvements called for by any master, sector, or functional plan), and should be deemed

to satisfy adequate public facilities standards by virtue of being an existing condition that is not changing.

This proposed exemption will recognize that when producing no new impacts on public facilities, there is no nexus for requiring any new improvements.

De Minimis Impact. In addition to the no impact scenario above, a development application that proposes new development of only a *de Minimis* quantity should also be exempt from adequate public facilities review and from providing any improvements, (whether frontage or other improvements called for by any master, sector, or functional plan). For this purpose, "*de Minimis*" would mean traffic generation of up to [a number to be decided] commercial trips, or up to [a number to be decided] residential trips, including an equivalent combination of both, and up to a total of [a number to be decided] school students of all levels.

Thank you for your consideration of these comments and recommendations. I am happy to try to answer any questions you may have.

Elizabeth C. Rogers
301-841-3845
ecrogers@lerchearly.com

October 3, 2024

The Honorable Andrew Friedson, President
And Members of the Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

**Re: Development Impact Tax Amendment – Bill No. 16-24
Adjustment to Infill Impact Area Boundaries in Germantown and Definition of
“High-rise unit”**

Dear President Friedson and Members of the County Council:

Our firm represents Lerner Enterprises, the long-time owner and master developer of the project commonly known as “Black Hill,” in Germantown, Maryland. The overall Black Hill development is comprised of approximately 107 acres of land located along Crystal Rock Drive and Century Boulevard (surrounding the intersection of the two streets), just west of I-270 and approximately 1.5 miles north of the Germantown Center (the “Property”). The Property is zoned Commercial/Residential CR 0.75, C-0.5, R-0.5, H-145T and also located in the Germantown Transit Mixed Use Overlay zone. The Black Hill development is a multi-phased, mixed-use development which is currently approved for up to 3,284,000 square feet of total development (the “Project”). Several phases of the Project have been built to-date, including approximately 97,000 square feet of office use, 140 Assisted Living beds, approximately 6,400 square feet of retail use, and 355 multi-family dwelling units, along with a significant amount of open space and amenities. There are an additional 292 multi-family dwelling units that are approved and “building permit” ready, pending favorable economic conditions.

We are requesting that the County Council (1) reject the change proposed to the definition of “high-rise units” in Bill 16-24 and (2) adjust the proposed School Impact Area designation for the Property. These requested changes will better align with current County policy and facilitate the construction of additional, much-needed housing on this Property and others.

I. Definition of High-Rise Units in Proposed Impact Tax Legislation

Currently, Chapter 52 of the County Code defines high-rise units to include “any dwelling unit located in a multifamily residential or mixed-use building that is taller than 4 stories, and any 1-bedroom garden apartment.” (*Emphasis added*). Bill 16-24, as currently proposed, eliminates

one-bedroom garden apartments from this definition. This would have significant negative impacts on currently planned projects. It is also a matter of fairness, as many developers have relied on this definition, which has been unchanged since 2003 (*see* Bill 31-03), in preparing development budgets and feasibility for projects. This change would have a drastic, negative economic impact on those garden apartment projects that have relied on this calculation. The Black Hill development is a prime example. Lerner Enterprises has obtained Site Plan and building permit approval for the next phase of the multi-family development in Black Hill, comprised of six multi-family residential buildings and 292 dwelling units. However, due to the challenges presented by high construction costs and persistently high interest rates, although the building permits have been “approved,” Lerner has not pulled the building permits. As a result, these buildings have sat “building permit ready” since August 2022. This proposed change would only further setback the next phase, and this desirable, additional residential development. This change alone, with all else remaining equal, would add \$1,084,314 in additional development impact taxes to the 292 units planned in the next phase of the project. We ask that the Council reject this proposed modification or, if the Council is not so inclined, at least provide grandfathering for those projects that are already well into the entitlement process, and proceeding in reliance on this long-standing definition.

II. School Impact and Transportation Policy Area Designations

We applaud the Planning Board for recommending that Germantown be reclassified in the Orange Policy Area, which is appropriate for “[c]orridor cities, town centers, and emerging transit-oriented development (TOD) areas where premium transit service (*e.g.*, Corridor Connectors and bus rapid transit) is planned.” (Planning Board Draft, 2024-2028 Growth and Infrastructure Policy, Page 6). Germantown is planned to have numerous Corridor Connector and Bus Rapid Transit routes. The Property sits at the terminus of the Manekin West Connector. In fact, Lerner Enterprises has funded the design of the future Dorsey Mill Road Bridge, which would provide for a direct connection between the Manekin West Connector and the Milestone/COMSAT East Clarksburg Connector, if constructed. As such, the Property certainly fits within the definition ascribed to Orange Policy Areas. This reclassification is reflected in Bill 16-24 and we support this change.

However, the Property is proposed to be located in a Turnover Impact Area, which is not reflective of the existing and planned development. As such we are requesting that the County Council expand the Infill Impact Area to also include the Property. Infill Impact Areas are intended to include those areas with “[h]igh housing growth predominately in the form of multi-family units that generate relatively fewer students on a per-unit basis.” (Planning Board Draft, 2024-2028 Growth and Infrastructure Policy, Page 4) (*emphasis added*) (as opposed to Turnover Impact Areas that are intended for areas with “[l]ow housing growth where enrollment trends are largely dependent on the turnover of existing single-family units.” *See Id. Emphasis added.*). This Property is certainly aligned with an Infill Impact Area classification, given the largely multi-

family residential development that is approved and/or planned for the residential component of the Black Hill development.

This change is fair as it would treat the Property similarly to other multi-family developments in the County. And from a practical perspective, it would have a positive impact on increasing housing production, which the County desperately needs. As discussed herein, Lerner Enterprises is trying to get the next phase of the Black Hill development, which includes 292 multi-family dwelling units, off the ground. Lerner Enterprises has obtained all necessary approvals for the next phase but has not moved forward with construction due to economic factors. This modification would provide a meaningful economic change to help get this next phase out of the ground.

We appreciate your time and consideration of our requests.

Sincerely,


Elizabeth Rogers

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October 3, 2024

The Honorable Andrew Friedson, President
And Members of the Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

**Re: Development Impact Tax Amendment – Bill No. 16-24
Exemption from Impact Taxes for Projects Providing No Parking and Located near
Metro**

Dear President Friedson and Members of the County Council:

Our firm represents Community Three Maryland, LLC, (“Community Three”), the owner of the property located at 4725 Cheltenham Drive in Bethesda, Maryland (the “Property”). The Property contains approximately 0.24 acres and is zoned CR 3.0, C-2.0, R-2.75, H-90’ and located in the Bethesda Overlay Zone. Community Three has obtained Sketch, Preliminary and Site Plan approvals, and even its building permit, for the redevelopment of the underutilized Property (previously used as a single-story automotive detailing use), transforming it into a unique residential apartment building containing eight (8) live/work units and 102 dwelling units, with 15% Moderately Priced Dwelling Units and the market rate units designed to target workforce housing rent levels within HUD AMI parameters (the “Project”).

We use the term unique, in large part, because the approved Project is not providing any parking on-site. The Property is located within the Bethesda Parking Lot District and Community Three made the decision to provide no parking long before the approval of ZTA 23-10, which allows certain transit-accessible residential developments to eliminate its parking requirement. The County has long since sought to incentivize reduced parking, given the important planning and policy objectives this promotes (as recognized by the Council in its adoption of ZTA 23-10). To further this important public policy objective, we are requesting that the Council provide an **exception that would eliminate any impact tax obligation if a project, located within ½ mile**

of a Metro station, and within a Parking Lot District, provides no parking on-site.¹ This mirrors the distance requirement in ZTA 23-10.

We recognize that this request is coming to the Council a bit late in the process; however, for the reasons set forth in this correspondence, we believe it makes sense to include this exemption. We also would note that, although they did not consider this specific request, an important focus of the Planning Board in its review of the GIP and associated modifications to the Development Impact Taxes was how the County can implement policies that will promote desirable development.² This fits that bill.

Why provide the exemption for both transportation and school impact taxes? For the transportation impact tax, first and foremost, a project that provides no on-site parking is placing little to no stress on the road network where the transportation impact taxes are designed to be utilized. Using Vehicle Miles Traveled (“VMT”) as a measure to assess the need for transportation impact taxes leads to the conclusion that a project without parking will generate the least amount of VMT’s. Instead, these future residents will likely be utilizing transit and thus, providing the additional ridership that the region’s transit services critically need. As far as the school impact tax is concerned, that exemption is like other exemptions in the Code, which seek to promote an important policy objective. Nonetheless, we would note that market forces will dictate which building can successfully provide no parking on-site. A building that has no parking is almost certain to contain smaller units (primarily studios and one bedrooms), and thus, generate far fewer students, if any, as compared to a buildings that has larger units and on-site parking. As such, there is a clear nexus to waiving the transportation and school impact tax requirements for buildings that provide no parking. Simply put, under current economic conditions, as is, the impact tax policy severely limits, if not eliminates, the ability to build workforce housing units with no parking.

Not only does this exemption further an important policy objective, but from a practical point of view, it will allow for the advancement of much-needed additional housing near transit. Community Three has been working to move their Cheltenham project forward without great success. High construction costs and persistently high interest rates have taken its toll on the Project’s feasibility. Providing the exemption will help close the gap and truly make a difference

¹ If the Council wanted, this exemption could further be limited to projects in Red Policy Areas. Red Policy Areas are envisioned for “Downtowns with current or master planned high-density development and premium transit service (e.g., Metrorail, Purple Line, BRT).” (See Public Hearing Draft, Growth and Infrastructure Policy 2024-2028, page 24).

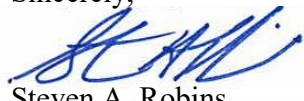
² We would note that the Planning Board’s support for ZTA 23-10 is applicable to this requested exemption. In the Planning Board’s transmittal statement to the County Council in connection with ZTA 23-10, date December 27, 2023, the Board noted: “The Planning Board is very supportive of these changes, as they align with many of its recent planning initiatives that are working to reduce vehicle miles traveled, reduce car dependency, and generally create great spaces that are made for people rather than vehicles.”

in getting this Project off the ground (as opposed to the continuation of the automotive use of the Property).

The Development Impact Taxes are an important tool in the County's tool box for implementing important land use policies and objectives. This requested exemption is a specific and important upgrade to those policies – further reinforcing the Planning Board's initiatives to “reduce car dependency, and generally create great spaces that are made for people, [at all income levels,] rather than vehicles.”

We appreciate your time and consideration of our request.

Sincerely,



Steven A. Robins



Elizabeth Rogers

October 9, 2024

Andrew Friedson, President and
Members of the Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

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

Dear President Friedson and Members of the Montgomery County Council:

The attorneys at Miles & Stockbridge P.C.’s land use/zoning practice group in Rockville (the “Miles Group”) wish to provide written testimony on Bill 16-24: Development Impact Taxes – Amendments (the “Bill”). The Miles Group requests the Bill provide a transportation impact tax credit for the undergrounding of existing utilities. We believe this addition will enhance the County’s development impact tax law as a significant tool for implementing beneficial policy goals, including supporting a diverse transportation network, enhancing economic competitiveness, and promoting environmental resilience.

Recent master plans have consistently encouraged development projects to underground existing utilities as a frontage improvement.¹ Countywide functional master plans have also recognized there are transportation benefits for pedestrians and cyclists associated with undergrounding existing utilities.² A requirement to underground existing utilities, however, can render a desirable development project

¹ See, e.g., 2023 Fairland and Briggs Chaney Master Plan, pgs. 86, 108 (“[u]tilities should be underground”); 2022 Silver Spring Downtown and Adjacent Communities Plan, pg. 132 (“[r]elocate existing utilities underground”); 2021 Ashton Village Center Sector Plan, pg. 99 (“[b]ury existing overhead utilities, if feasible”); 2021 Shady Grove Sector Plan Minor Master Plan Amendment, pg. 141 (identifying “undergrounding of utilities” as a priority public benefit under the optional method of redevelopment); 2020 Forest Glen/Montgomery Hills Sector Plan, pg. 50 (“[e]mphasize the importance of undergrounding utilities during redevelopment”); 2019 MARC Rail Communities Sector Plan, pg. 54 (“[e]valuate relocating existing overhead utilities underground”); 2018 White Flint 2 Sector Plan, pg. 104 (identifying “undergrounding of utilities” as a priority public benefit under the optional method of redevelopment).

² See, e.g., 2023 Pedestrian Master Plan, pg. 2 (identifying “removing obstructions like utility poles from pedestrian pathways” as a “particularly significant recommendation”); 2018 Bicycle Master Plan, pg. 143 (stating utilities should “not conflict with the future construction of the bikeway”).

financially infeasible and/or result in increased costs for renters and homeowners due to the complexity and expense involved.

As a result, the Bill should be amended to add undergrounding of existing utilities to the list of improvements eligible for an impact tax credit under Sections 52-47 and 52-50 of the County Code. Although the Miles Group believes it is appropriate to provide a full credit for the entire cost associated with undergrounding existing utilities, providing even a partial credit for 75% of the cost is worthwhile for several reasons. Undergrounding existing utilities is similar to many transportation improvements already eligible for impact tax credits under Section 52-50 of the County Code (such as bicycle and sidewalk facilities) that promote walking, biking, and rolling, and reduce reliance on the automobile. Allowing impact tax credits for undergrounding existing utilities can also support the economic viability of development projects that advance important County priorities, such as sustainability, housing attainability, and safety.³ Additionally, providing development impact tax credits for undergrounding existing utilities recognizes the shared responsibility of the private and public sectors to enhance our built environment.

Thank you for your consideration of our comments.

Sincerely,

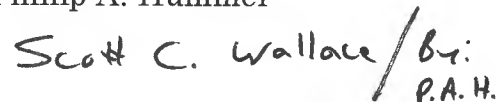
MILES & STOCKBRIDGE P.C.



Casey L. Cirner



Phillip A. Hummel


P.A.H.

Scott C. Wallace

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

³ For reference, Gaithersburg's recently adopted revised Zoning Ordinance provides a density bonus for the undergrounding of overhead utility lines along MD 355. See § 24-4.4(C)(2)(c)(iii) of the Gaithersburg City Code.

**October 14, 2024**

To: Government Operations and Fiscal Policy Committee

From: David Anspacher, Chief, Countywide Planning and Policy
Darcy Buckley, Transportation Planner III, Countywide Planning and Policy

Subject: Options for Impact Tax Reductions for Parking Reductions

MEMORANDUM

Summary

This memo addresses the Government Operations and Fiscal Policy (GO) committee members' request from the October 10, 2024, work session. Committee members asked Planning Staff to investigate the possibility of reducing or eliminating transportation impact taxes, in order to incentivize developers to include fewer parking spaces in new projects.

Reduced parking in areas with access to other modes of transportation is one of the best ways to reduce Vehicle Miles Traveled (VMT), a goal of *Thrive Montgomery 2050* and the *Climate Action Plan*. Reducing VMT also has other benefits. It can lead to improved road safety and, when traffic lanes are reclaimed for other uses, increased space for trees and stormwater management. Reducing on-site parking can also reduce the cost of housing units, as the cost of parking structures is high.

Planning Staff support providing transportation impact tax reductions to incentivize developers to provide fewer parking spaces in Red policy areas. For example, projects that provide no more than 25% of the baseline parking minimum could get a 50% reduction in transportation impact taxes. Alternatively, if committee members are concerned about the basis of transportation impact taxes, as previously raised by Council Staff, they could be further reduced or eliminated altogether.

This approach acknowledges that residents without parking in their building still impact the transportation system through rideshare, food and package delivery, transit use and using publicly supported micromobility, and may still own vehicles they park elsewhere. It also recognizes that providing some parking spaces may be desirable for people who require motor vehicles for work or to accommodate a disability, among other reasons. It is also relatively straightforward to administer.

While loss of transportation impact taxes is a legitimate concern, Planning Staff believe that a loss of pedestrian and bicycle improvements, specifically around the vicinity of new developments, will be minimal. This is because transportation impact taxes, being an excise tax, are often not spent to

specifically benefit the properties that are taxed. Furthermore, regardless of impact taxes assessed, all development projects must provide onsite and frontage improvements and those projects that trigger adequate public facilities review must provide offsite transportation improvements. The focus of onsite, frontage and offsite improvements is to improve walking, bicycling and transit conditions.

Background

Steve Robins and Liz Rogers of Lerch Early and Brewer on behalf of Community Three Maryland, LLC, the owner of the property at 4725 Cheltenham Drive in Bethesda, Maryland, requested that the Council provide an exception that would eliminate any impact tax obligation if a project, located within ½ mile of a Metrorail station, and within a Parking Lot District, provides no parking on-site. Their recommendation would apply to both transportation and school impact taxes. They also suggest that an alternative would be to limit this exemption on Red policy areas. They state that:

a project that provides no on-site parking is placing little to no stress on the road network where the transportation impact taxes are designed to be utilized. Instead, these future residents will likely be utilizing transit and thus, providing the additional ridership that the region's transit services critically need...A building that has no parking is almost certain to contain smaller units (primarily studios and one bedrooms), and thus, generate far fewer students, if any, as compared to a building that has larger units and on-site parking. As such, there is a clear nexus to waiving the transportation and school impact tax requirements for buildings that provide no parking.

During a work session of the Government Operations and Fiscal Policy (GO) committee on October 10, 2024, committee members requested that Planning Staff investigate the possibility of reducing or eliminating transportation impact taxes, in order to incentivize developers to include fewer parking spaces in new projects.

Existing and Potential Benefit of Parking Reductions

A hypothetical multifamily high-rise project can illustrate the benefits to developers for reducing parking in the existing zoning and impact tax codes and as proposed by Liz Rogers and Steve Robins. This hypothetical project is constructing a multifamily high-rise with 100 units, including 15 MPDUs in a CR zone in Downtown Bethesda, a Red policy area and Infill school impact area.

- Existing Reduced Parking in Zoning Code: Under the parking table in [Section 6.2.4.B](#) of the county's zoning code, the baseline minimum for this hypothetical project would be 76 parking spaces.¹ Assuming a cost of \$70,000 to \$100,000 per parking space, if this hypothetical project could fully take advantage of the new Parking Minimums Near Transit provision in [Section](#)

¹ The Baseline Minimum parking spaces in the CR zones for projects located in Parking Lot Districts is 1.0 parking spaces per dwelling unit per [Section 6.2.4](#) of the county's zoning code. Two adjustment factors are relevant to the hypothetical example per [Section 6.2.3.I](#) of the county's zoning code: 1) market rate units are reduced by the non-auto driver mode share goal in the applicable master plan, up to a maximum reduction of 20%, 2) MPDUs are adjusted by a factor of 0.5. Therefore, a total of 76 parking spaces would be required, including 68 spaces for the market rate units (85 units x 1.0 parking spaces per dwelling unit x 80%) and 8 spaces for MPDUs (15 units x 0.5 spaces per dwelling unit, rounded up).

[6.2.3.I](#) of the county's zoning code, approved as part of ZTA 23-10 in early 2024, it could reduce its costs by **as much as \$5.32 to \$7.60 million.**²

- **Proposed Transportation Impact Tax Elimination:** The Department of Permitting Services (DPS) assesses the transportation impact tax at the time of building permit based on the building type and the policy area color category. Eliminating transportation impact taxes for this hypothetical project, as proposed by Steve Robins and Liz Rodgers, could reduce costs by **as much as \$373,150.**³
- **Proposed School Impact Tax Elimination:** DPS assesses the school impact tax at the time of building permit based on the building type and the school impact area category. Eliminating school impact taxes for this hypothetical project, as proposed by Steve Robins and Liz Rodgers, could reduce costs **by as much as \$317,815.**⁴

Thus, the potential benefits of eliminating parking minimums under ZTA 23-10 would outweigh the combined benefits of eliminating transportation and school impact taxes for this hypothetical project by roughly six to nine times. The ZTA has the potential to offer far greater cost reductions to applicants than the elimination of transportation and school impact taxes. That said, Planning Staff is not able to assess whether eliminating impact taxes would make more projects financially viable at this time.

Based on direction from the GO Committee on October 10, 2024, that school impact tax reductions are difficult to justify when student generation rates remain robust, this memo does not consider reducing or eliminating school impact taxes for projects that eliminate (or reduce) on-site parking. Additionally, the assertion that multifamily units primarily composed of studios and one bedrooms should not have to pay school impact taxes because they have far lower student generation rates is difficult to support as the biennially updated student generation rates capture the impact of such smaller units.

Transportation Impact Taxes

As noted by Council Staff in their October 10, 2024, staff report, the County Council originally calculated transportation impact tax rates as the total cost of capacity-related capital projects per vehicle trips generated by new development (capital cost per new vehicle trip), over a 25-year period.

² The County Council adopted Zoning Text Amendment (ZTA) 23-10 on March 5, 2024, and become effective on March 25, 2024. It adds a new adjustment to vehicle parking in the county's zoning code that exempts residential uses within ½ mile of a Metrorail station or Purple Line station, or ¼ mile of a bus rapid transit station that is built or funded for construction in the capital improvement program, from the baseline parking minimums in the parking table under [Section 6.2.4.B](#) of the county's zoning code. Applicants who choose to provide no parking under this new provision must still provide accessible parking spaces, at a rate of one space per 25 dwelling units, unless the requisite number of handicapped parking spaces are available within 1,000 feet of an accessible entrance to the residential use.

³ MPDUs built under Chapter 25A are exempt from development impact taxes under Section [52-41\(g\)\(1\)](#) of the county code. Transportation impact rates for July 1, 2023 through June 30, 2025 are available [here](#). Also note that some projects are eligible to receive transportation impact tax credits, which may reduce transportation impact taxes. \$373,150 = 85 dwelling units x \$4,390 per dwelling unit.

⁴ School impact rates for July 1, 2023 through June 30, 2025 are available [here](#). \$317,815 = 85 dwelling units x \$3,739.

The transportation impact tax rate structure accounts for the fact that projects with fewer or more motor vehicle trips pay a lower or higher impact tax rate. Orange policy areas pay the calculated impact tax rate. Red policy areas pay 40% of the Orange rate, because on average they about 40% of the VMT of Orange policy areas. Yellow and Green policy areas pay 125% of the Orange rate, because they generate higher VMT. However, within each policy area, some projects generate greater, and some generate fewer VMT than the average unit type. Of course, as Council Staff documented at the GO Committee work session on October 10, 2024, the County Council has not comprehensively updated transportation impact tax rates since 2007 so they may bear little relation to addressing the impact of new development on the current transportation infrastructure demands.⁵

Options

Transportation impact tax options for the Committee's consideration include:

1. No Transportation Impact Tax Reduction: This option maintains the status quo. Committee members may want to consider this option if they believe that additional incentives are unnecessary to reduce parking or if they are concerned about reducing transportation impact tax collections.
2. Transportation Impact Tax Exemption for Projects that Eliminate All On-Site Parking: This option most closely aligns with the recommendation from Steve Robins and Liz Rodgers. Committee members may want to consider exempting projects that provide no parking from transportation impact taxes if they want to further incentivize the elimination of on-site parking spaces for a relatively few projects.
3. Transportation Impact Tax Discount: This option provides transportation impact tax reductions in areas with access to other modes of transportation to reduce parking. For example, projects that provide no more than 25% of the baseline parking minimum could get a 50% reduction in transportation impact taxes. Alternatively, if committee members are concerned about the basis of transportation impact taxes, as previously raised by Council Staff, they could be further reduced or eliminated. Committee members may want to consider this option if they want to further incentivize the reduction of on-site parking spaces even if a small share of parking spaces remain.
4. Transportation Impact Tax Discount Proportional to Parking Reduction: This option provides transportation impact tax reductions based on the number of parking spaces approved as a share of the adjusted baseline minimum. Committee members may want to consider this option if they want to proportionally incentivize reductions in baseline parking minimums, be it a 20% reduction or an 80% reduction.

Planning Staff Recommendation

Reduced parking in areas with access to other modes of transportation is one of the best ways to reduce VMT, a goal of *Thrive Montgomery 2050* and the *Climate Action Plan*. Reducing VMT also has other benefits. It can lead to improved road safety and, when traffic lanes are reclaimed for other uses, increased space for trees and stormwater management. While ZTA 23-10 represents a

⁵ There is some disagreement here as Planning Staff has found that transportation impact taxes were last comprehensively calculated in 2001, but the point still remains.

substantial step forward in reducing parking, it does not require new development projects to eliminate or even reduce parking. In fact, many projects find it challenging to reduce or eliminate parking due to requirements from lenders. Therefore, additional financial incentives to reduce parking could be beneficial.

Planning Staff supports Option 3, as it could incentivize development projects to reduce parking, but acknowledges that 1) residents without parking in their building still impact the transportation system through rideshare, food and package delivery, transit use and using publicly supported micromobility, 2) building users may still own vehicles they park elsewhere, and 3) providing some parking spaces may be desirable for people who require motor vehicles for work or to accommodate a disability, among other reasons. It is also relatively straightforward to administer.

While loss of transportation impact taxes is a legitimate concern, Planning Staff believe that a loss of pedestrian and bicycle improvements around the vicinity of new developments will be minimal. This is because transportation impact taxes are an excise tax, which are often not spent to specifically benefit the properties that are taxed and are intended to be used for transportation projects that increase regional transportation capacity as defined in [Section 52-50](#) of the county code. Furthermore, all development projects, regardless of impact taxes assessed, must provide onsite and frontage improvements and those projects that trigger adequate public facilities review must provide offsite transportation improvements. The focus of onsite, frontage and offsite improvements is on improving walking, bicycling and transit conditions.

Planning Staff do not support Option 2, as the number of projects that could take advantage of this exemption will likely be smaller than Option 3. Planning Staff do not support Option 4 as this option could be more difficult to administer.

If committee members support Option 2, 3 or 4, Planning Staff recommend linking them to Red policy areas only. This is because identifying specific geographic areas avoids confusion about how to measure distances from Metrorail stations. Red policy areas are also where non-auto driver mode shares are higher because of their greater access to other modes of transportation.



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October 22, 2024

Via Email - Councilmember.Friedson@montgomerycountymd.gov

Mr. Andrew Friedson, President
And Councilmembers
Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: October 28, 2024, Council Meeting; Requested revisions to Bill 16-24,
Development Impact Taxes – Amendments (the “Impact Tax Bill” or “Bill”)

Dear President Friedson and Councilmembers,

We have reviewed the Government Operations (GO) Committee recommendations from October 17th closely and respectfully request that the Council make additional changes to the Bill to be more consistent with prevailing County land use, economic development and housing policies. More specifically, we request that the Council revisit Planning Board recommendation 4.6 (office to residential conversions) and proposed amendment 4 (exempt projects that provide no onsite parking and are located near transit from impact taxes) for the reasons described below.

Office to Residential Conversions

While it is a step in the right direction that the GO Committee recommended exempting office to residential conversions (both through adaptive reuse and when demolition is involved) from transportation impact taxes, this is insufficient to spur meaningful reinvestment in underutilized and obsolete office buildings. The Planning Board properly recognized that exemptions and discounts to school impact taxes are also necessary to be consistent with Thrive Montgomery County 2050 (“Thrive”), which promotes “cost-effective infill and adaptive design strategies to retrofit single-use commercial sites such as ... office parks into mixed use developments.” (Thrive, p. 101).

The cost to reposition underperforming and obsolete office buildings are extensive, and the benefit of encouraging these conversions (e.g., increases real property taxes and housing, and mitigating the negative impacts that vacant office buildings can have on surrounding properties) far outweigh a reduction in school impact taxes. The County Code already provides an allowable

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off-set against the transportation impact tax when an existing use is replaced with a different use, which will allow for residential conversions without the assessment of any additional impact taxes in most cases. In this respect, if the County's goal is to be competitive with neighboring jurisdictions (e.g., DC offers significant tax abatement for office conversions) and reduce office vacancies, it should provide some level of a discount on school impact taxes. The Council should properly balance the competing interests of school funding with the need to promote economic development and the production of new housing **by providing 60% discount on school impact taxes**. This treatment is consistent with the Council's treatment of 3-bedroom units in multi-family buildings in infill impact areas, which receive a 60% discount on school impact taxes.

Requested Change: *Provide a 60% discount on school impact taxes for office to residential conversions (both adaptive reuse/renovations and when demolition is involved) for multi-family housing and single-family attached housing.*

Transportation Impact Tax Discount for Projects that Provide No On-Site Parking

We respectfully request that the Council reconsider amendment 4 from the GO Committee worksession on October 17th to reinstate this sound public policy that will provide a discount to development projects that provide no on-site parking for residential uses near transit. Thrive includes a number of recommendations aimed at reducing parking, including the management of "parking efficiently and equitably by charging market rates and reducing the supply of public and private parking where appropriate," and implementation of "policies to ensure that new buildings and parking structures are adaptable to changing technologies and market preferences and are able to mitigate effects of climate change over time." (Thrive, pp. 101, 113).

The Council's decision to exempt residential projects within ½ mile of transit from providing parking through ZTA 23-10 furthers the above-referenced recommendations from Thrive, but additional incentives are necessary to overcome the perceived market necessity of parking often required by institutional investment groups. In order to achieve the land use, environment, and housing goals that will flow from residential projects that forego providing any on-site parking, the Council should strongly consider providing a complete exemption (or a meaningful discount at a minimum) from the transportation impact tax.

While we fully support a complete exemption from the transportation impact tax, it would be fair and appropriate to grant these residential projects a discount equal to the Non-Auto Driver Mode Share (NADMS) goal for the particular policy area. Section 42A-21 of the County Code defines NADMS as "the percent of commuters who travel by modes other than driving an automobile." The elimination of all on-site parking is the most effective strategy at ensuring that residents elect to travel by transit, biking, walking, or carpool in-lieu of single occupancy vehicles. As a result, a project that eliminates all on-site parking will meet or exceed the applicable NADMS goal and should, therefore, be granted a discount on transportation impact taxes that is commensurate with the applicable NADMS goal. By way of example, a project that provides no on-site private parking spaces in the Bethesda Central Business District would be entitled to a 55% discount on transportation impact taxes because that is the applicable NADMS goal.

October 22, 2024

Page 3 of 3

Requested Change: *Provide a complete exemption, or a discount on transportation impact taxes commensurate with the applicable NADMS goal, for projects that provide no onsite private parking and are located in a Parking Lot District.*

We hope that the Council will not bypass this opportunity to make additional changes to the Bill that are aimed at the production of much needed housing (including senior and affordable housing) in the County. Thank you for your time, consideration and leadership in ‘walking the walk’ when it comes to enacting regulations that implement the County’s housing policies.

Very truly yours,

**Selzer Gurvitch Rabin Wertheimer
& Polott, P.C.**

C. Robert Dalrymple

C. Robert Dalrymple

Matthew M. Gordon

Matthew M. Gordon

cc: Livhu Ndou
Bilal Ali
Cindy Gibson
Valeria Carranza
Tommy Heyboer
Jason Sartori
Robert Kronenberg