

MEMORANDUM

January 21, 2025

TO: Government Operations & Fiscal Policy (GO) Committee

FROM: Livhu Ndou, Senior Legislative Attorney

SUBJECT: Expedited Bill 22-24, Taxation - Collection of Development Impact Taxes

PURPOSE: Worksession

Expected Attendees

- Rachel Silberman, Capital Budget Manager, Office of Management and Budget (OMB)
- Anita Aryeetey, Fiscal & Policy Analyst, Office of Management and Budget (OMB)
- Todd Fawley-King, Fiscal and Policy Analyst, Department of Finance
- Gail M. Lucas, Division Chief – Customer Support and Outreach, Department of Permitting Services (DPS)

Background

Under current County law, an applicant for a building permit need not pay any development impact tax, Transportation Mitigation Payment, or School Facilities Payment until 6 or 12 months after the building permit is issued, or the final inspection of the building by the Department of Permitting Services (DPS), whichever is earlier. Expedited Bill 22-24 would strike the provisions about payment 6 or 12 months after the building permit is issued and amend the law so that payment is not required until final inspection of the building by DPS, regardless of the type of building. As noted in a memorandum from Councilmember Glass, lead sponsor, the current policy contributes to higher upfront housing construction costs. The intent of the bill is to address the timing of taxes and fees in a revenue-neutral manner.

Public Hearing

A public hearing was held on December 3, 2024. The Council also received written testimony.¹ Testimony included individuals, housing advocates, chambers of commerce, and private land use attorneys. Testimony noted that this bill would encourage development because the shift in timing of payment will reduce the costs to developers, and that payment after final inspection provides a stronger nexus between development and impacts. Testimony noted that the bill would address the housing crisis by increasing housing stock. Lastly, while testimony in support argued that this bill

¹ Written testimony can be found here:
<https://www.montgomerycountymd.gov/COUNCIL/OnDemand/testimony/20241203/item7.html>.

would not financially impact the County, other testimony noted that the delay in collection creates a cash flow issue, and the Council should consider ways to mitigate this issue in order to ensure no negative impact on school construction.

Summary of Impact Statements

Fiscal Impact Statement

The Office of Management and Budget (OMB) found that “[t]here is no fiscal impact on DPS in terms of revenues or expenditure.” However, OMB noted that “[w]hile DPS doesn’t anticipate any significant impact on its operations or revenues, there could be significant impact in the timing of the collection of Schools Impact Tax revenues and Transportation Impact Tax revenues.” According to OMB,

In developing a model to compute the impact of delaying collection of revenues, a random number generator was used within the parameters provided by DPS on the expected delay for each type of project to estimate when 10 years of actual projects would have generated impact taxes. Comparing actual payments to the hypothetical date of payment generates a percentage difference year by year and across the six-year total. This percentage difference was then applied to the latest forecast of impact taxes to arrive at the result. Based on the latest forecast from Finance, the six-year loss would be about \$14.8M for Schools Impact taxes and \$13M for Transportation Impact taxes over the six-year period.

Representatives from Finance, DPS, and OMB will be at the worksession. The Committee may wish to ask for more information on the methodology used to reach this conclusion. For example, what parameters were used for the random number generator, and how those numbers relate to the forecasts shown in the table provided in the fiscal impact statement (copied below).²

Schools Impact Tax							
Fiscal Year	2025	2026	2027	2028	2029	2030	Total
School Impact Taxes Forecast	16,942,635	20,331,162	20,331,162	19,493,271	19,493,271	16,942,635	113,534,136
Change	-53.38%	-34.02%					-13.05%
School Impact Taxes Forecast w/Bill 22-24	7,898,813	13,414,701	19,352,139	19,352,139	19,352,139	19,352,139	98,722,069
S Change w/Bill 22-24	(9,043,822)	(6,916,462)	(979,023)	(141,132)	(141,132)	2,409,504	(14,812,067)
Transportation Impact Tax							
Fiscal Year	2025	2026	2027	2028	2029	2030	Total
Transportation Forecast	12,590,248	12,590,248	12,590,248	12,590,248	12,590,248	12,590,248	75,541,488
Change	-53.24%	-46.17%					-17.22%
Transportation Impact Taxes Forecast w/Bill 22-24	5,887,295	6,777,859	12,466,427	12,466,427	12,466,427	12,466,427	62,530,864
S Change w/Bill 22-24	(6,702,953)	(5,812,389)	(123,821)	(123,821)	(123,821)	(123,821)	(13,010,624)

The County Executive submitted a letter to the Council expressing concerns about the bill due to the fiscal impact statement. The letter argues that “recent reductions to impact tax estimates” will “substantially hamper our ability to make critical community investments in school capacity

² As noted during the worksessions for Bill 16-24, Development Impact Taxes – Amendments, a fiscal impact analysis may not be able to estimate the relationship between impact tax rates, incentives, and the rate of development. This is because while a delay in payment may reduce County finances in the initial years, an incentive such as delaying payment could increase development, leading to the County collecting more impact taxes.

projects and transportation improvements.” The letter suggests, “While impact taxes may not be the ideal tool for funding transportation and school infrastructure, further reductions to impact tax revenues should not be enacted before assembling the study group recommended by the Planning Board and the County Council to identify alternative revenue streams.”

Economic Impact Statement

The Office of Legislative Oversight (OLO) “anticipates that Expedited Bill 22-24 would have a positive impact on economic conditions in the County in terms of the Council’s priority economic indicators.” OLO found that by allowing development impact tax payments to be made at the time of final inspection, financing costs would likely be reduced for development projects, which could increase developers’ business incomes. However, OLO noted that “due to uncertainty about the length of this extension, OLO could not determine potential impacts on other indicators or residents.”

In its analysis, OLO explained that financing costs include interest, fees, and other expenses that are associated with borrowing the funds needed for land acquisition, construction, and other aspects of the development project. And therefore, delaying the impact tax payment can: 1) reduce the total amount of equity developers use to finance their projects; 2) shorten the interest accrual period between the initial loan disbursement and the repayment date; and 3) decrease the real cost of development impact taxes over time. OLO noted that it was unclear how much additional time developers might receive, but “[i]f the financing savings are substantial, property owners could see an increase in what developers are willing to pay for land and, in turn, effectively capitalize those savings into higher property values.” And, if more property owners are willing to sell, there could also be an increase in private sector capital development in the County.

OLO suggested the Committee ask DPS for additional information regarding the amount of extra time Expedited Bill 22-24 would provide developers before payments are due, “as the duration of this extension could significantly affect the potential economic impacts.”

Climate Assessment

OLO anticipates that Expedited Bill 22-24 could have a minimal impact on the County’s contribution to climate change and community resilience. OLO found that since affordable housing is a component of community resilience, the increased availability of affordable housing could increase community resilience. OLO explained that affordable housing can improve community resilience by increasing housing stability and alleviating cost-burdened households. And that since cost-burdened households have less cash on hand to weather shocks such as extreme weather events, decreasing the amount of cost-burdened households can improve community resilience.

OLO also noted that if the bill leads to increased development, there would be an increase in the County’s greenhouse gas emissions from increased construction. However, since OLO could not predict how much the overall costs of construction will be reduced, how much affordable housing will be created by this policy, nor how much the proposed changes would increase construction in the County and associated greenhouse gas emissions with the construction, the bill will have a minimal impact on the County’s contribution to climate change.

Racial Equity and Social Justice (RESJ) Impact Statement

OLO anticipates Expedited Bill 22-24 will have a minimal impact on racial equity and social justice (RESJ) in the County because “changing the timing of when development impact taxes are imposed is not likely to affect existing racial and ethnic inequities and disparities in the County.” OLO explained that “[r]esearch suggests that by imposing impact fees on developers, local governments effectively shift the cost of new public infrastructure from existing community members to new community members through increased housing prices.” Since the population of Black, Indigenous, and other people of color (“BIPOC”) community members is expected to continue growing, OLO explained that impact fees can perpetuate racial inequity by benefitting existing community members, who are more likely to be white, and burdening new community members, who are more likely to be BIPOC. Based on this analysis, OLO found that,

[S]ince impact taxes will eventually be due, the overall cost of development will not change. Thus, in the housing context, OLO assesses that changing the timing of impact taxes is not likely to meaningfully impact the supply of housing in the County more broadly and the supply of affordable housing specifically – factors that could impact racial inequities and disparities in housing.

OLO recommended the Council commission a RESJ study of the Capital Improvements Program (CIP). Such a review “could include a review of how CIP funding sources such as development impact taxes are currently impacting racial and ethnic disparities and how they could be designed to better advance RESJ.” OLO provided an example of a study in San Diego – the Build Better SD initiative – which led to improvements in the City’s impact fee system that were more equitable.

Discussion

Under current County law, an applicant for a building permit need not pay any development impact tax, Transportation Mitigation Payment, or School Facilities Payment until 6 or 12 months after the building permit is issued, or the final inspection of the building by the Department of Permitting Services (DPS), whichever is earlier. The difference in the number of months is based on building type: 6 months applies to a single-family detached or attached residential building, and 12 months applies to a multi-family residential or non-residential development.³ Expedited Bill 22-24 amends two subsections of Chapter 52, Taxation. First, in Section 52-42(1), the bill strikes the provisions about payment 6 or 12 months after the building permit is issued and amends the law so that payment is not required until final inspection of the building by DPS, regardless of the type of building. Second, in Section 52-42(c), which states that DPS “must not issue a building permit for development that is not exempt from the development impact tax”, the bill clarifies “unless payment is deferred under Section 52-42(1).”

Section 52-42 is under Article IV, Development Impact Tax for Transportation Improvements. But the County also charges development impact taxes for public school improvements. However, Section 52-54, which determines the imposition and applicability of the school impact tax, reads,

³ The timing of impact tax payments was changed in November 2011 under [Expedited Bill 26-11, Taxation Development Impact Taxes – Payment](#), to provide the 6 to 12 month delay.

Except as expressly provided in this Article, this tax must be levied, collected, and administered in the same way as the tax imposed under Article IV. All provisions of Article IV apply to this tax unless the application of that Article would be clearly inconsistent with any provision of this Article.

In other words, the imposition and applicability for the school impact tax is the same as the transportation impact tax. Therefore, no amendment is needed in Article V, Development Impact Tax for Public School Improvements.

Council President Stewart and Councilmember Katz Proposed Amendment

The City of Gaithersburg submitted a letter to the GO Committee expressing concern that the bill unintentionally leaves municipalities at a disadvantage. Under Section 52-42(d), “when a person applies to a municipality in the County for a building permit for a building or dwelling unit, the applicant must show that all payments due under this Section with respect to the building or unit have been paid.” In other words, when an applicant applies for a building permit in a municipality, they must show payment of the impact tax. Since the bill will allow deferral of payment until final inspection, in effect someone applying in a municipality will not have the option of deferring payment until final inspection if they need to get their municipality building permit.

Chair Stewart and Councilmember Katz propose an amendment that would clarify the municipality may issue the building permit if payment is deferred under Expedited Bill 22-24. The amendment will also require the applicant to submit proof of the payment to the municipality once it is made. This would allow the municipality to mark the payment as complete and perform local final inspections.

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| <p>(d) When a person applies to a municipality in the County for a building permit for a building or dwelling unit, the applicant must show that all payments due under this Section with respect to the building or unit have been paid <u>unless payment is deferred under Section 52-42(1). If payment is deferred under Section 52-42(1), the applicant must submit proof of payment to the municipality once payment has been made.</u> The Director of Finance must promptly refund any payment made for any building or part of a building for which a building permit is not issued by the municipality.</p> |
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Council Staff Technical Amendments

“At” vs “Until”

Expedited Bill 22-24 says that the applicant does not have to pay the impact tax “until the final inspection of the building by the Department of Permitting Services.” In practice, DPS does not schedule the final inspection until the impact taxes are paid. In other words, the word “until” has been interpreted as “before.” To avoid a situation where an applicant could argue that payment is due “at the time of” final inspection, thus requiring DPS to schedule the inspection if payment is received by the date of inspection – or even minutes before – Council Staff recommends an amendment to clarify when the payment is due that is consistent with DPS practice.

- (l) Notwithstanding any other provisions of this Chapter, an applicant for a building permit need not pay any development impact tax, Transportation Mitigation Payment, or School Facilities Payment due until the final inspection of the building by the Department of Permitting Services[:] Final inspection will not be scheduled until payment is received.

Effective Date

Expedited Bill 22-24 is expedited so that the changes may apply immediately, and to applications received this year. However, as currently written, the effective date is retroactive. Council Staff recommends an amendment to clarify that while the bill is not retroactive, its provisions should apply to any application received on or after January 1, 2025. This should not have a major effect on projects that are in the pipeline because the date is when the building permit application is filed, not the development application.

Sec. 2. 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.

This packet contains:

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Expedited Bill No. 22-24
Concerning: Taxation – Collection of
Development Impact Taxes
Revised: 11/26/2024 Draft No. 2
Introduced: October 15, 2024
Expires: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Glass
Co-Sponsors: Councilmembers Luedtke, Fani-González, Katz, Albornoz,
and Council President Friedson

AN EXPEDITED ACT to:

- (1) require collection of development impact taxes at final inspection of the building; and
- (2) generally amend the law governing development impact taxes.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-42

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

Sec. 1. Section 52-42 is amended as follows:

52-42. Collection of development impact taxes.

* * *

(c) The Department of Permitting Services must not issue a building permit for development that is not exempt from the development impact tax unless:

- (1) the applicant has paid the applicable development impact tax;
- (2) the applicant is entitled to a credit under Section 52-47 in the amount of the applicable development impact tax; [or]
- (3) an appeal has been taken and a bond or other surety posted under Section 52-48[.]; or
- (4) payment is deferred under Section 52-42(1).

* * *

(l) Notwithstanding any other provisions of this Chapter, an applicant for a building permit need not pay any development impact tax, Transportation Mitigation Payment, or School Facilities Payment due until the final inspection of the building by the Department of Permitting Services[:]

- [(1) if the building is a single-family detached or attached residential building, the earlier of:
 - (A) the final inspection of the building by the Department of Permitting Services; or
 - (B) 6 months after the building permit is issued; and]
- [(2) if the building is a multi-family residential or non-residential development, the earlier of:
 - (A) the final inspection of the building by the Department of Permitting Services; or
 - (B) 12 months after the building permit is issued].

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* * *

Sec. 2. 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.



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



Fiscal Impact Statement

Office of Management and Budget

Bill 22-24 Taxation - Collection of Development Impact Taxes

Bill Summary

Under current County law, an applicant for a building permit need not pay any development impact tax, Transportation Mitigation Payment, or School Facilities Payment until 6 or 12 months after the building permit is issued (depending on the type of building), or final inspection of the building by the Department of Permitting Services (DPS), whichever is earlier. Bill 22-24 would strike the provisions about payment 6 or 12 months after the building permit is issued and amend the law so that payment is not required until final inspection of the building by DPS, regardless of the type of building.

Fiscal Impact Summary

While DPS doesn't anticipate any significant impact on its operations or revenues, there could be significant impact in the timing of the collection of Schools Impact Tax revenues and Transportation Impact Tax revenues.

Fiscal Impact Analysis

There is no fiscal impact on DPS in terms of revenues or expenditure; the Department will continue to collect the Impact Tax revenues as always but change the time of collection at the final inspection.

While the DPS doesn't anticipate any significant impact on its operations, the bill's largest impact is a delay in collecting Impact Taxes, which would reduce the revenues available to support capital improvement projects in the early years of the Capital Improvement Program (CIP). Revenues would still be earned just not within the FY25-30 six-year analysis period.

Methodology

In developing a model to compute the impact of delaying collection of revenues, a random number generator was used within the parameters provided by DPS on the expected delay for each type of project to estimate when 10 years of actual projects would have generated impact taxes. Comparing actual payments to the hypothetical date of payment generates a percentage difference year by year and across the six-year total. This percentage difference was then applied to the latest forecast of impact taxes to arrive at the result.

Based on the latest forecast from Finance, the six-year loss would be about \$14.8M for Schools Impact taxes and \$13M for Transportation Impact taxes over the six-year period.

Schools Impact Tax							
Fiscal Year	2025	2026	2027	2028	2029	2030	Total
School Impact Taxes Forecast	16,942,635	20,331,162	20,331,162	19,493,271	19,493,271	16,942,635	113,534,136
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Transportation Impact Tax							
Fiscal Year	2025	2026	2027	2028	2029	2030	Total
Transportation Forecast	12,590,248	12,590,248	12,590,248	12,590,248	12,590,248	12,590,248	75,541,488
Change	-53.24%	-46.17%					-17.22%
Transportation Impact Taxes Forecast w/Bill 22-24	5,887,295	6,777,859	12,466,427	12,466,427	12,466,427	12,466,427	62,530,864
S Change w/Bill 22-24	(6,702,953)	(5,812,389)	(123,821)	(123,821)	(123,821)	(123,821)	(13,010,624)

Staff Impact The bill is not expected to impact staff time or duties.

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

The bill does not authorize future spending.



projected

Contributors

Gail Lucas, Department of Permitting Services
Barbara Suter, Department of Permitting Services
Todd Fawley-King, Department of Finance
Anita Aryeetey, Office of Management and Budget



Economic Impact Statement

Montgomery County, Maryland

Expedited Bill 22-24

Taxation - Collection of Development Impact Taxes

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Expedited Bill 22-24 would have a positive impact on economic conditions in the County in terms of the Council's priority economic indicators. By requiring development impact tax payments to be paid at the time of final inspection by the Department of Permitting Services (DPS), the Bill would extend the time certain developers have before payments are due. The additional time would likely reduce financing costs for certain development projects, which would potentially increase developers' business incomes. However, due to uncertainty about the length of this extension, OLO could not determine potential impacts on other indicators or residents.

BACKGROUND AND PURPOSE OF EXPEDITED BILL 22-24

Development impact taxes – also referred to as development impact fees or impact fees – are fees that local governments impose on new development. Localities charge impact fees to developers to help cover infrastructure and public service needs related to population growth.¹

The County collects development impact taxes for transportation and schools. The Transportation Development Impact Tax is assessed on both residential and commercial projects and is used to fund improvements to enhance local transportation capacity. The School Development Impact Tax is assessed on residential projects only and is used to fund improvements to enhance the capacity of the public school system.²

Under current County law, development impact taxes and other related payments are due “6 or 12 months after the building permit is issued (depending on the type of building), or the final inspection of the building by the Department of Permitting Services (DPS), whichever is earlier.”³ If enacted, Bill 22-24 would require these payments only at final inspection of the building by DPS, regardless of building type.⁴ According to the sponsoring Councilmember, the intent of Bill 22-24 is to “reduce[] the overall cost of housing construction” by reducing “higher upfront housing construction costs” associated with paying impact taxes towards the beginning of a project.⁵

The Council introduced Expedited Bill 22-24, Taxation – Collection of Development Impact Taxes, on October 15, 2024.

¹ “Fact Sheets: Development Impact Fees.”

² “Development Impact Taxes.”

³ Introduction Staff Report for Expedited Bill 22-24.

⁴ Ibid.

⁵ Memorandum from Councilmember Evan Glass to Government Operations Committee, Introduction Staff Report for Bill 22-24, circle 4

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess, both, the impacts of Expedited Bill 22-24 on residents and private organizations in terms of the Council’s priority economic indicators and whether the Bill would have a net positive or negative impact on overall economic conditions in the County.⁶

No assumptions or formal methodologies are used in this analysis. OLO draws on the following sources of information to assess the economic impacts of the Bill, namely its affects on financing costs for developers:

- A 2021 report by Washington State’s Joint Legislative Audit and Review Committee (JLARC) on impact fee deferral programs in the state for new single-family residential construction⁷
- A 2019 report by UC Berkeley’s Tern Center for Housing Innovation on residential impact fees in California⁸
- A 2021 policy brief by the UCLA Lewis Center for Regional Policy Studies that examines the impacts of adopting impact fee deferral program for new housing construction in cities across Southern California.⁹

VARIABLES

The primary variable that would affect the economic impacts of enacting Expedited Bill 22-24 is the average time gap between building permit issuance and final inspection.

IMPACTS

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

Businesses, Non-Profits, Other Private Organizations

OLO anticipates that Expedited Bill 22-24 would have a positive impact on certain private organizations in the County in terms of the Council’s priority economic indicators.

The Bill would primarily impact property developers based in the County. Currently, unless the final inspection comes first, developers are required to pay development impact taxes:

- six months after the issuance of a building permit for single-family detached or attached residential projects, or
- one year after the issuance of a building permit for multi-family or non-residential projects.

⁶ Montgomery County Code, Sec. 2-81B.

⁷ “Impact Fee Deferral Programs.”

⁸ Raetz, Garcia, and Decker, “Residential Impact Fees in California.”

⁹ Phillips, “Reducing Development Costs with Impact Fee Deferral.”

The proposed policy change would delay these tax payments to the time of final inspection by DPS. For projects in which the final inspection would occur six- or 12-months after the building permit has been issued, developers would effectively have additional time before the payment is due.

However, OLO does not know how much additional time developers might receive. OLO has reached out to DPS staff for data to help answer this question but has not received a response.

Based on the above-cited reports, the additional time certain developers would have to pay the development impact taxes likely would reduce financing costs for certain developments. For developers, financing costs encompass the total amount of interest, fees, and other expenses associated with borrowing funds needed for land acquisition, construction, and other aspects of the development project. Delaying when developers are required to pay impact taxes can reduce financing costs in several ways:

- **Reduce the total amount of equity developers use to finance their projects:** As explained in the UCLA policy brief, developers finance their projects with a mix of equity and debt.¹⁰ Equity from developers and their investors is often used to pay for early development activities, such as land acquisition, whereas debt is often used to fund subsequent activities. Due to its higher risk, equity investors often expect a higher return than the interest rate of debt. For this reason, reducing the equity share of project funding and increasing the debt share can reduce financing costs for developers.
- **Shorten the interest accrual period between the initial loan disbursement and the repayment date:** By delaying the due date for impact taxes, developers can wait longer before drawing on their loans to cover these costs. This reduces the period during which interest accrues on the loan amount used for the tax payment, as there is less time between when the loan is drawn and when it is repaid. Consequently, this shortened interest accrual period lowers the total financing costs for developers.
- **Decrease the real cost of development impact taxes over time:** Inflation erodes the purchasing power of money over time, meaning a fixed amount of money is worth less in the future than it is today. If the development impact tax is the same amount whether paid at the building permit or final inspection stage, then paying it later effectively reduces its real cost. In other words, due to inflation, the “real” value of that deferred payment is less than it would be if paid earlier. However, if the development impact tax amount is adjusted for inflation, then the real cost to developers would remain unchanged regardless of when it is paid.¹¹

Importantly, the magnitude of the reduction in financing costs would depend on the amount of additional time developers would have to pay the impact tax, as well as interest rates, inflation rates, and other factors.¹² Holding all else equal, reducing financing costs for certain developments could increase developers’ business incomes.

However, as noted, OLO currently lacks to estimate the average additional time developers would have to pay the development impact tax. If the financing savings are substantial, property owners could see an increase in what developers are willing to pay for land and, in turn, effectively capitalize those savings into higher property values. If this occurs, more property owners may be willing to sell, thereby increasing private sector capital development in the County.¹³

¹⁰ Ibid.

¹¹ For additional background, see Cote, “Time Value of Money (TVM).”

¹² “Impact Fee Deferral Programs.”

¹³ Phillips, “Reducing Development Costs with Impact Fee Deferral.”

Beyond these potential impacts, OLO does not have enough information to estimate the Bill's impacts on private organizations in terms of the Council's other priority indicators.

Residents

It is uncertain whether Expedited Bill 22-24 would significantly impact residents in the County in terms of the Council's priority economic indicators. With insufficient information on the potential magnitude of reduced financing costs for developers, OLO cannot assess whether the Bill might affect developers' workforces or residential development in the County.

Net Impact

By requiring development impact tax payments to be paid at the time of final inspection by DPS, the Bill would extend the time certain developers have before payments are due. The additional time would likely reduce financing costs for certain development projects, which would potentially increase developers' business incomes. However, due to uncertainty about the length of this extension, OLO could not determine potential impacts on other indicators or residents.

DISCUSSION ITEMS

Councilmembers may wish to request additional information from DPS regarding the amount of extra time the Bill would provide developers before payments are due, as the duration of this extension could significantly affect the potential economic impacts.

WORKS CITED

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Montgomery County Council. [Introduction Staff Report for Expedited Bill 22-24.](#) October 15, 2024

Phillips, Shane. "[Reducing Development Costs with Impact Fee Deferral.](#)" UCLA Lewis Center for Regional Policy Studies, January 27, 2021.

Raetz, Hayley, David Garcia, and Nathaniel Decker. "[Residential Impact Fees in California.](#)" Turner Center for Housing Innovation, UC Berkeley, August 5, 2019.

[Sec. 2-81B, Economic Impact Statements,](#) Montgomery County Code.

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.

AUTHOR

Stephen Roblin (OLO) prepared this report.

Climate Assessment

Office of Legislative Oversight

Expedited Taxation – Collection of Development Impact Taxes Bill 22-24:

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 22-24 could have a minimal impact on the County's contribution to climate change and community resilience as the intention of the proposed bill is to reduce the overall cost of housing construction through changing the timing of when impact taxes are charged. Affordable housing is a component of community resilience; therefore the increased availability of affordable housing could increase community resilience. However, if the proposed changes led to increased development, there would be an increase in the County's greenhouse gas emissions from increased construction.

BACKGROUND AND PURPOSE OF EXPEDITED BILL 22-24

Development impact taxes – also referred to as development impact fees or impact fees – are fees that local governments impose on new development. Localities charge impact fees to developers to help cover infrastructure and public service needs related to population growth.¹

The County collects development impact taxes for transportation and schools. The Transportation Development Impact Tax is assessed on both residential and commercial projects and is used to fund improvements to enhance local transportation capacity. The School Development Impact Tax is assessed on residential projects only and is used to fund improvements to enhance the capacity of the public school system.²

Under current County law, development impact taxes and other related payments are due “6 or 12 months after the building permit is issued (depending on the type of building), or the final inspection of the building by the Department of Permitting Services (DPS), whichever is earlier.”³ If enacted, Bill 22-24 would require these payments only at final inspection of the building by DPS, regardless of building type.⁴ According to the sponsoring Councilmember, the intent of Bill 22-24 is to “reduce[] the overall cost of housing construction” by reducing “higher upfront housing construction costs” associated with paying impact taxes towards the beginning of a project.⁵

The Council introduced Expedited Bill 22-24, Taxation – Collection of Development Impact Taxes, on October 15, 2024.

ANTICIPATED IMPACTS

According to OLO’s Economic Impact Statement, the bill would extend the time developers have before payments are due and “the additional time would likely reduce financing costs for certain development projects, which would potentially increase developers’ business incomes.”⁶ The increased income could incentivize increased development, which could lead to more houses constructed in the County. In turn, more housing stock could lead to more availability of affordable housing and increased emissions from construction in the County.

The availability and quantity of affordable housing has a direct correlation to the overall resilience of a community, and on its ability to prepare for current and future risks. Affordable housing can improve community resilience through two ways: increasing housing stability and alleviating cost-burdened households.⁷ Housing stability can enhance social cohesion by building community ties and enabling residents to stay better connected during emergencies, which increases community resilience. Cost-burdened households, which are households that spend more than 30% of income on housing, generally have less cash on hand to weather shocks, such as extreme weather events, compared to households that are not cost burdened.⁸ Decreasing the amount of cost-burdened households through increasing the amount of affordable housing can improve community resilience as well.⁹

The decreased costs of development may also lead to increased construction activity. In Montgomery County, commercial and residential buildings accounted for 50% of total County emissions in 2018.¹⁰ Most of these emissions came from heating, cooling, and lighting buildings but the construction of new buildings also contributes to total building emissions.¹¹ However, steps can be taken by developers and builders to decrease and offset the emissions associated with construction, such as choosing more less carbon intensive materials and construction methods as well as building energy efficient buildings.¹²

The bill proposes changes that are intended to reduce the overall costs of housing construction and ultimately, reduce the cost of housing in the County. However, it cannot be predicted how much the overall costs of construction will be reduced by and how much affordable housing will be created by this policy. Further, OLO cannot predict how much the proposed changes would increase construction in the County and associated greenhouse gas emissions with the construction. OLO anticipates Expedited Bill 22-24 will have a minimal impact on the County’s contribution to climate change, including greenhouse gas emissions and climate community resilience.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.¹³ OLO does not offer recommendations or amendments as Expedited Bill 22-24 is likely to have minimal impact on 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 [“Fact Sheets: Development Impact Fees,”](#) Federal Highway Administration, U.S. Department of Transportation.

² [“Development Impact Taxes,”](#) Montgomery County Department of Permitting Services.

³ [Introduction Staff Report for Bill 22-24,](#) Montgomery County Council, Introduced October 15, 2024, PDF pg. 2.

⁴ Ibid.

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- ⁵ Memorandum from Councilmember Evan Glass to Government Operations Committee, Introduction Staff Report for Bill 22-24, circle 4
- ⁶ Office of Legislative Oversight, Economic Impact Statement for Bill 22-24, November 12, 2024.
- ⁷ U.S. Department of Housing and Urban Development, "[Building More Resilient, Equitable, and Inclusive Communities](#)", September 13, 2022.
- ⁸ U.S. Census Bureau, "[Nearly Half of Renter Households Are Cost-Burdened, Proportions Differ by Race](#)", September 12, 2024.
- ⁹ U.S. Department of Housing and Urban Development, "[JCHS State of the Nation's Housing Report](#)", September 17, 2024.
- ¹⁰ Montgomery County Government, "[Montgomery County Climate Action Plan](#)", June 2021.
- ¹¹ United Nations Environment Program, "[Building Materials And The Climate: Constructing A New Future](#)", September 12, 2023.; U.S. Department of Energy, "[New Residential Construction Carbon Emissions](#)", February 2023.
- ¹² U.S. Department of Energy, "[New Residential Construction Carbon Emissions](#)", February 2023.
- ¹³ 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

EXPEDITED TAXATION – COLLECTION OF DEVELOPMENT IMPACT TAXES BILL 22-24:

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 22-24 will have a minimal impact on racial equity and social justice (RESJ) in the County. Changing the timing of when development impact taxes are imposed is not likely to affect existing racial and ethnic inequities and disparities in the County.

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 EXPEDITED BILL 22-24

Development impact taxes – also referred to as development impact fees or impact fees – are fees that local governments impose on new development. Localities charge impact fees to developers to help cover infrastructure and public service needs related to population growth.³

The County collects development impact taxes for transportation and schools. The Transportation Development Impact Tax is assessed on both residential and commercial projects and is used to fund improvements to enhance local transportation capacity. The School Development Impact Tax is assessed on residential projects only and is used to fund improvements to enhance the capacity of the public school system.⁴

Under current County law, development impact taxes and other related payments are due “6 or 12 months after the building permit is issued (depending on the type of building), or the final inspection of the building by the Department of Permitting Services (DPS), whichever is earlier.”⁵ If enacted, Bill 22-24 would require these payments only at final inspection of the building by DPS, regardless of building type.⁶ According to the sponsoring Councilmember, the intent of Bill 22-24 is to “reduce[] the overall cost of housing construction” by reducing “higher upfront housing construction costs” associated with paying impact taxes towards the beginning of a project.⁷

The Council introduced Expedited Bill 22-24, Taxation – Collection of Development Impact Taxes, on October 15, 2024.

RESJ Impact Statement

Expedited Bill 22-24

DEVELOPMENT IMPACT FEES AND RACIAL EQUITY

Impact fees are a relatively new tool for local governments to pay for growth-related infrastructure costs. As described by researcher Susan Opp, “[h]istorically, the infrastructure needs of new growth were paid for by existing residents and property owners through some combination of sales, income, and property taxes.”⁸ The use of impact fees first emerged in Florida in 1977,⁹ and gained momentum in local governments across the U.S. through the 1980s.¹⁰ In the County, impact fees for transportation-related costs were first adopted in 1986.¹¹ Today, transportation- and school-related impact fees are required for development projects throughout the County.¹²

In *Development Impact Fees as Planning Tools and Revenue Generators*, Opp further notes that the transition to impact fees has come with a shifting perception in communities that it is not “the local government’s responsibility to pay for new growth with the existing population’s tax dollars.”¹³ Opp proposes “the revolt against the traditional ways of paying for new development” was driven by three events:¹⁴

1. Inflation of the 1970s, which substantially increased housing values and led to increased property taxes;
2. Federal retrenchment of the 1980s and 1990s, which led to more financial responsibility at the lower government levels; and
3. A general tax revolt against real property taxes that has occurred over the past couple of decades.

The revolt against local governments paying for new development has also coincided with shifting demographics in communities. For instance, in Broward County, FL – the first local government to adopt impact fees – the growth of the Latinx population has largely surpassed the growth of the total population since 1970.¹⁵ Locally, the use of impact fees has also coincided with the growth of Black, Indigenous, and other people of color (BIPOC) in the County. Since the 1960s, the share of White people in the County has steadily decreased, while the share of BIPOC has grown to the point where in 2010, the County became majority-BIPOC.¹⁶ Between 1980 and 1990 – the decade when the County first adopted impact fees – the County’s population grew by 177,974 people, 60 percent of whom were BIPOC.¹⁷ The shift to impact taxes in the 1980s contrasts with the County’s approach during prior periods of rapid growth. For instance, between 1950 and 1960 – when the County’s population grew by 176,527 people, nearly all of whom were White –¹⁸ the County assumed public infrastructure costs related to the influx of community members.

Research suggests that by imposing impact fees on developers, local governments effectively shift the cost of new public infrastructure from existing community members to new community members through increased housing prices.¹⁹ For instance, one study of over 45,000 properties across 63 cities in Texas concluded that “[t]he imposition of impact fees are associated with an increase in property values that appears to negatively impact affordability, positively impact existing homeowners equity and increases the property taxes that cities collect.”²⁰ Aside from reducing housing affordability, impact fees could also have implications on the development of housing that is affordable at lower incomes. One study found that “[i]n desirable markets, builders tend to respond to high impact fees by ignoring lower-income households and focusing on more expensive housing, where the impact fee can be more easily passed on.”²¹

RESJ Impact Statement

Expedited Bill 22-24

As shown in Figure A (Appendix), the population of BIPOC community members is expected to continue growing in the County, while the population of White community members is expected to decline. As BIPOC become a larger share of the County's population, impact fees can perpetuate racial inequity by benefitting existing community members, who are more likely to be White, and burdening new community members, who are more likely to be BIPOC. Further, impact fees could also perpetuate racial inequity by reducing the development of affordable housing. Data on housing cost burden and median incomes in the County (Table A and Table B, Appendix) suggest that Black and Latinx community members have a higher demand for housing that is affordable at lower incomes.

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 24-24 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who would primarily benefit or be burdened by this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

Developers of commercial and residential properties would benefit from lower upfront costs, since development impact taxes would not be imposed until the end of a project. However, this benefit would be marginal – since impact taxes will eventually be due, the overall cost of development will not change. Thus, in the housing context, OLO assesses that changing the timing of impact taxes is not likely to meaningfully impact the supply of housing in the County more broadly and the supply of affordable housing specifically – factors that could impact racial inequities and disparities in housing.

OLO anticipates Bill 22-24 will have a minimal impact on RESJ in the County. As described in the previous section, development impact fees may perpetuate racial inequities by benefitting existing community members, who are more likely to be White, at the expense of future community members, who are more likely to be BIPOC. However, changing the timing of when development impact taxes are imposed is not likely to affect existing racial and ethnic inequities and disparities in the County.

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.²² OLO anticipates Expedited Bill 22-24 will have a minimal impact on RESJ in the County. As such, OLO does not offer recommended amendments. Yet should the Council seek to improve the RESJ impact of this Bill, one recommended amendment can be considered:

- **Commission RESJ study of Capital Improvements Program.** A RESJ review of the County's Capital Improvements Program (CIP) could include a review of how CIP funding sources such as development impact taxes are currently impacting racial and ethnic disparities and how they could be designed to better advance RESJ. For instance, in 2022, the City of San Diego adopted the citywide Build Better SD initiative "to enable faster delivery of public spaces and buildings equitably and sustainably across San Diego."²³ As a part of this initiative, the City's Planning Department studied the origins of long-standing policies, documented disparities in public spaces, and intentionally engaged underrepresented community members.²⁴ Among other changes, the Build Better SD initiative has prompted changes to the City's impact fees; as observed by the Lincoln Institute of Land Policy:²⁵

RESJ Impact Statement

Expedited Bill 22-24

“A key aspect of Build Better SD was changing the city’s system of collecting and spending neighborhood-specific development impact fees. These one-time fees...varied drastically across the city, and had to be spent in the neighborhood they were raised. Per-unit impact fees were up to 50 times higher in wealthy districts, discouraging denser growth in well-off areas while simultaneously concentrating reinvestment in those same places. The city has now shifted to a citywide fee structure, where impact fees are the same across every neighborhood and infrastructure investments can be prioritized for areas with the greatest need.”

CAVEATS

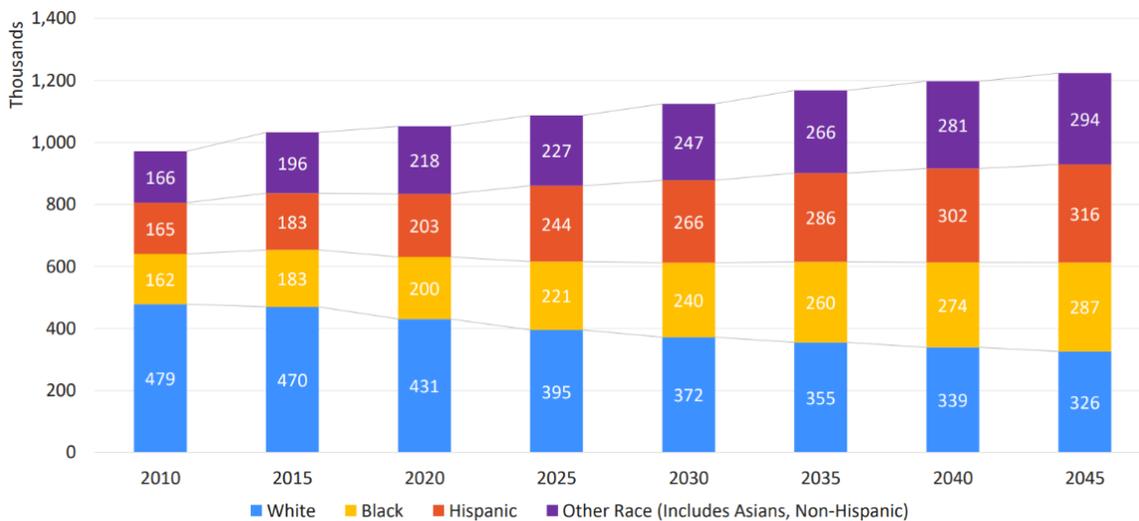
Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended 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.

APPENDIX

Figure A. County Population Projections by Race and Ethnicity from 2010 to 2045



Source: Montgomery Planning Analysis of State Data Center Data, Maryland Department of Planning.

RESJ Impact Statement

Expedited Bill 22-24

Table A. Percent of Housing Cost Burdened Households by Race and Ethnicity, Montgomery County²⁶

Race or ethnicity ²⁷	Owner-Occupied Households	Renter Occupied Households
Asian	27.8	41.4
Black	39.3	57.6
White	19.7	50.4
Latinx	31.3	59.9
County	25.8	53.6

Source: [Table S0201](#), 2023 American Community Survey 1-Year Estimates, Census Bureau.

Table B. Median Household Income by Race and Ethnicity, Montgomery County

Race or ethnicity	Median Household Income
Asian	\$143,911
Black	\$86,359
White	\$160,756
Latinx	\$92,050
County	\$125,371

Source: [Table S0201](#), 2023 American Community Survey 1-Year Estimates, Census Bureau.

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 “[Fact Sheets: Development Impact Fees](#),” Federal Highway Administration, U.S. Department of Transportation.

⁴ “[Development Impact Taxes](#),” Montgomery County Department of Permitting Services.

⁵ [Introduction Staff Report for Bill 22-24](#), Montgomery County Council, Introduced October 15, 2024, PDF pg. 2.

⁶ Ibid.

⁷ Memorandum from Councilmember Evan Glass to Government Operations Committee, Introduction Staff Report for Bill 22-24, circle 4

⁸ Susan Opp, “[Development Impact Fees as Planning Tools and Revenue Generators](#),” Center for Environmental Policy and Management, University of Louisville, 2007, pg 1.

⁹ Ibid.

¹⁰ “Fact Sheets: Development Impact Fees”

¹¹ Blaise DeFazio and Leslie Rubin, “[Private Development and Public Infrastructure](#),” Office of Legislative Oversight, November 27, 2018, pg.20.

¹² Development Impact Taxes

¹³ Opp, pg. 1

¹⁴ Ibid.

¹⁵ “[Broward by the Numbers: Broward County Hispanic Population](#),” Broward County Urban Planning Division, April 2017.

¹⁶ Janmarie Peña and Chitra Kalyandurg, “[OLO Report 2024-8: Community Engagement for Racial Equity and Social Justice](#),” Office of Legislative Oversight, March 12, 2024, pg. 14.

¹⁷ OLO analysis of 1980 and 1990 Census data from [Table 51: General Characteristics of Persons by Type of Spanish Origin and Race for Counties: 1980](#), pgs. 206-207, and [Table 5, Race and Hispanic Origin: 1990](#), pg. 12, Census Bureau.

¹⁸ “[How Montgomery County Grew in the 1950s](#),” Montgomery History.

¹⁹ Jennifer Evans-Cowley and Larry Lawhon, “[The Effects of Impact Fees on the Price of Housing and Land: a Literature Review](#),” Journal of Planning Literature, February 2003.

²⁰ Jennifer Evans-Cowley, et. al., “[The Effect of Development Impact Fees on Housing Values](#),” Journal of Housing Research, 2009.

RESJ Impact Statement

Expedited Bill 22-24

²¹ Evans-Cowley and Lawhon citing Huffman, et. al., “Who Bears the Burden of Development Impact Fees,” 1988.

²² Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

²³ [Build Better SD](#), City of San Diego, CA.

²⁴ Jon Gorey, “[Five Ways Urban Planners are Addressing a Legacy of Inequity](#),” Lincoln Institute of Land Policy, May 16, 2023.

²⁵ Ibid.

²⁶ For Table A, ‘housing cost burdened’ refers to paying 30 percent or more of income on housing costs.

²⁷ For Tables A and B, estimates are not available for Native American and Pacific Islander community members.

Bill 22-24 (open)

Requested by [Dan Wilhelm](mailto:djwilhelm@verizon.net) · djwilhelm@verizon.net

Assigned to **Ludeen McCartney-Green (Staff)**

Created at **Dec 11, 2024 9:24 AM**

Last updated at **Dec 11, 2024 9:42 AM**

Tags Dropdown: Bills::Bill 22-24, Taxation - Collection of Development Impact Taxes PRO

Letter Summary: Pro Bill 22-24, Taxation - Collection of Development Impact Taxes

Dan Wilhelm

Dec 11, 2024 9:24 AM

Greater Colesville Citizens Association

PO Box 4087

Colesville, MD 20914

December 11, 2024

Montgomery County Council

Attn: Kate Stewart, President

100 Maryland Ave

Rockville, MD 20850

Re: Bill 22-24

Dear Council President Stewart:

The Greater Colesville Citizens Association supports Bill 22-24. It will delay when a developer must pay impact taxes until the time when final inspection occurs. It doesn't change the amount of funds the county will collect. However, it will delay the expenditure of funds for the developer, which often means it will lower his borrowing costs. That will likely result in one or more of the following:

- Reduce the cost to the consumer, which for housing would be the homeowner.
- Allow more potential development to be economical and thus built. That in turn will increase property tax revenue and could reduce county costs in other areas (such as the need for fewer roads/less maintenance because of shorter driving distances.)

Until recently new development in East County had been stagnated since the late 1980s, and we have seen the negative effects of it. Therefore, we want more development of the right kind (such as employment and market rate housing).

Thank you for considering our recommendations.

Sincerely

Daniel L. Wilhelm

GCCA President



Bill 22-24, Taxation - Collection of Development Impact Taxes
Montgomery County Council
December 3, 2024
Support

The Montgomery County Chamber of Commerce (MCCC), the voice of business in Metro Maryland, supports Bill 22-24, *Taxation - Collection of Development Impact Taxes*.

Bill 22-24 requires the collection of development impact taxes at final inspection of a building. Current law mandates that the applicant for a building permit pay the development impact taxes at six or 12 months, depending on the type of construction, after the building permit is issued, or the final inspection of the building by the Department of Permitting Services, whichever is earlier.

The bill sponsor states that the intent of the bill is to address the timing of taxes and fees in a revenue-neutral manner and lower upfront housing construction costs for developers. This is all done as part of an effort to address Montgomery County's housing shortage, and a way to increase housing stock is to make it easier and more affordable for developers to build new residential units.

MCCC contends that this proposed policy change will hasten development because it delays the payment based on the timing of delivery. This change will more closely align the payment of these taxes with the delivery of the actual housing units. Moreover, it will increase Montgomery County's competitiveness regionally while seeking to proactively address housing shortages.

The Chamber hopes this bill, along with efforts to examine the role of impact taxes, will help address the cost of new development and make housing more attainable. Additionally, MCCC applauds the County Council's effort to create an impact taxes task force and asks that it be included in the selection of representatives from the private sector to sit on such a task force.

For these reasons, the Montgomery County Chamber of Commerce supports Bill 22-24 and respectfully requests favorable consideration of the bill.

The Montgomery County Chamber of Commerce (MCCC), established in 1959, is an independent non-profit membership organization. MCCC advocates on behalf of our members for growth in business opportunities, strategic investment in infrastructure, and balanced tax reform to advance Metro Maryland as a regional, national, and global location for business success.

*Brian Levine | Vice President of Government Affairs
Montgomery County Chamber of Commerce
51 Monroe Street | Suite 1800
Rockville, Maryland 20850
301-738-0015 | www.mccc.md.com*

December 3, 2024

Hon. Andrew Friedson
President, Montgomery County Council
100 Maryland Avenue
Rockville, MD 20857

Subject: Support - Bill 22-24 - Taxation - Collection of Development Impact Taxes

Dear President Friedson,

The Montgomery County Chapter of the Maryland Building Industry Association (MBIA) is submitting testimony in support of Bill 22-24 - Taxation - Collection of Development Impact Taxes. The bill would strike the provisions about payment 6 or 12 months after the building permit issued and amend the law so that payment is not required until final inspection of the building by DPS, regardless of the type of building.

The proposed bill is a necessary step to addressing the burden of impact fees on development in the county. Montgomery County has the highest impact tax rates in the state by a substantial margin, and they continue to increase on a bi annual basis, with the most recent rate increasing nearly 70 percent then forced the council to pass an emergency cap on the increased figure amount at 20 percent.

- We support the expedited effective date of 1/1/25
 - o We would recommend changing the last sentence to be: *"The amendments made in Section 1 take effect on January 1, 2025, and must apply to any application for a building **permit that is active and the payment has not been made or is** filed on or after January 1, 2025."*
 - This would help active permits, avoid a lag in building permit filing during December, and keep DPS' workflow smooth
 - o Does this apply to the School Utilization Premium Payment? If not, we would recommend that it be included

From an equitable standpoint, the new development does not have an impact on schools until the house is occupied so having it paid at occupancy permit is a stronger "essential nexus" for the impact tax. The same is true for the permanent transportation impact. The temporary traffic impact for construction was not (and should not be) a factor in the original calculation of impact tax amounts. Paying up to \$56,274 in school and transportation impact taxes per home is a substantial amount of money and a major cash flow item in every home's construction budget. Having that money paid earlier than needed has a number of direct and indirect costs for builders or a person who is building their own home. That \$56,274 has an opportunity cost and could be used for other investments (like building more houses faster) by minimizing the length of time it is tied up and being financed

- If the impact taxes are paid with money that is borrowed as part of the construction loan, the builder may have to pay several months of interest on the tax
- Putting the payment closer to occupancy permit, also puts it closer to the resident's purchase of the home. If those can occur in the same month, the repayment of the construction loan can occur in the same month that the tax payment is made to avoid/minimize interest

The improved “essential nexus” is even more important in light of the United States Supreme Court’s unanimous decision on *Sheetz v. El Dorado County*. The decision which states, that *permit conditions must have an “essential nexus” to the government’s land-use interest and permit conditions must have “rough proportionality” to the development’s impact on the land-use interest.*¹ This highlights the importance of how these fees are calculated for development projects in the county and their impact.

The state of housing in Montgomery County is concerning, as stated in the staff report development has slowed and the county’s housing goals have not come close to being reached. Any lever to increase housing (of all types) needs to be pulled and this needs to include financial offsets. Impact taxes contribute a minuscule amount to the county’s overall CIP and these figures have and will decrease as building continues to do the same. The impact tax policy is a deterrent to housing production in Montgomery County and needs to be completely re evaluated.

However, we greatly appreciate Councilmember Glass and the council in their bringing this bill forward. While the system is not perfect, this is a step in the right direction and the industry appreciates the opportunity to provide feedback.

We urge the council to give this measure a favorable report with the suggested edits.

Respectfully,



Griffin Benton
Vice President, MBIA

¹ 22-1074 *Sheetz v. County of El Dorado* (04/12/2024) - https://www.supremecourt.gov/opinions/23pdf/22-1074_bqmd.pdf

From: Joe Shashaty

Date: 1/16/2025

Councilmembers and Staff:

Understanding that today, 1/16/15, is the last day to add to the official record of the public hearing held on 12/3/24 for Expedited Bill 22-24, I request that the following be added:

Distinguished Councilmembers,

My name is Joe Shashaty, and I am a resident of Silver Spring. I write, today, in relation to Expedited Bill 22-24.

The purpose of the bill is clear. The county seeks to encourage development, and the bill supports this by delaying the collection of impact tax from about the time of permit to about the time of final inspection. This allows an entity pursuing development to avoid loss of the time value of money that they might need to borrow or otherwise could not invest.

The financial analysis of the bill by OMB also suggests that this is revenue neutral. We would expect the same taxes to be collected on a project either under the current collection regime or under the proposed regime. While an entity might be incentivized to hold on a permitted project due to the lower carrying cost, I expect such an effect would be marginal, and might well be countered by an expectation of greater overall development that the bill would encourage, if passed.

However, the delay in collection leaves a cash flow gap for the county, itself, some \$9 million in the first year and close to \$7 million in the second year before smaller negative flows lead to an increase in the sixth year. This is of particular concern because it suggests that these cash flows would not be available to fund the school (and transportation) projects during those years. If left unmitigated, this could lead to delays in construction of a number of years, where we know that projects related to adequate capacity and condition of schools, in particular, are woefully behind, already. As these capital projects are delayed, associated greater operational costs arise -- it is not just a matter of capital expenditure.

Therefore, I firmly request that you consider this bill only with a mechanism for such cash flow mitigation. If that would require the County to pursue financing of its own, that cost should be part of the consideration. Privatizing profit at public expense can make sense to move the market towards a desired outcome. However, we should pursue such with eyes open to the full effects, accepting or mitigating them, as appropriate.

Additionally, while it is true that the needs for roads and schools would come at the time of occupancy, the lead time to plan and execute the related projects take many years of lead time. Suggesting that it is the right thing to do to collect impact taxes to fund these projects at the time of occupancy would miss this important aspect of public works financing.

Finally, I am concerned that no MCPS representation appeared at the public hearing. As this directly impacts funding for MCPS, I would hope that significant coordination happen between the Council, County staff, MCPS and the Board of Education prior to further legislative action. School funding, and its timing, should be held harmless in this matter.

Thank you for your time.

Respectfully,

Joe Shashaty



GREATER
ROCKVILLE
CHAMBER OF COMMERCE

Empower
Amplify
Elevate

November 22, 2024

Support. Bill 22-24, Taxation

The Greater Rockville Chamber of Commerce is in support of the recently introduced Bill 22-24, Taxation, Collection of Development Impact Taxes.

This legislation will help to save developers money by not charging them impact fees up front, thus making it more affordable to build housing.

Currently, developers in Montgomery County are charged impact taxes up front when they build housing projects. These taxes must be paid within 6-12 months of receiving initial permits. When developers take out a loan to finance their projects, impact taxes are often included in the total amount of the loan, meaning they are paying interest on the loan for those impact taxes.

The simple change proposed in the legislation will lower the upfront costs. The Greater Rockville Chamber of Commerce agrees with the Office of Legislative Oversight's economic impact statement "this bill will have a positive impact on economic conditions in Montgomery County. The additional time developers would have before payments are due would likely reduce financing costs for certain development projects, which would potentially increase developers' business incomes."

This legislation will encourage the construction of more needed housing in Montgomery County.

Sincerely,

Marji Graf, President & CEO
Greater Rockville Chamber of Commerce
1 Research Court, Suite 450
Rockville, MD. 20850
marji@rockvillechamber.org
301-424-9300



MONTGOMERY HOUSING ALLIANCE

www.montgomeryhousingalliance.org

A coalition of organizations focused on increasing the rate of preservation and development of affordable housing in Montgomery County

Testimony on Expedited Bill 22-24E, Taxation – Collection of Development Impact Taxes Montgomery Housing Alliance

January 15, 2025

Montgomery Housing Alliance (MHA), a county-wide coalition of affordable housing providers and advocates across the housing continuum, supports legislative efforts to foster housing production throughout Montgomery County. Expedited Bill 22-24 is one such measure, reducing development costs in a way that is revenue-neutral for the capital budget.

As the Council is well aware, the county must significantly increase housing production to meet housing targets over the next several years. Especially post-pandemic, inflation and rising construction and insurance costs have added barriers to the development process and exacerbated the challenge of producing new homes at the necessary rate. We appreciate the Council's efforts to identify creative solutions to ease the development process.

As the Council looks to support development, we urge you especially to support and incentivize production of affordable units. Of the 41,000 units the county aims to produce by 2030, 75% must be affordable to low- and moderate-income households. As a county, we face an overall shortfall of housing; this is particularly true with regard to affordable housing. The National Low Income Housing Coalition estimates that we have a deficit of over 33,000 units affordable and available to households at or below 50% of the area median income (AMI). This means that for every 100 low-income households, only 36 affordable units are available to them. The impact of this shortfall is felt everyday by these individuals and families. Forty-eight percent of renter households in the county are cost burdened, and 25% are severely cost burdened, meaning they spend over half their incomes on housing costs. For low-income households, the situation is even more dire. Among households earning less than 50% of AMI, 88% are cost burdened and 34% are severely cost burdened. Every day, these families must make impossible choices between paying for housing and paying for other critical priorities like education, health care, and reliable transportation.

Measures to increase overall housing production, such as Bill 22-24E, are important steps to addressing the shortage, and we urge you to combine them with other important tools that especially advance efforts on affordable housing, such as continuing to prioritize affordable housing in the county budget, establishing strong affordability incentives in proposed zoning



*The Montgomery Housing Alliance is a coalition of
the Community Development Network of Maryland*



MONTGOMERY HOUSING ALLIANCE

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A coalition of organizations focused on increasing the rate of preservation and development of affordable housing in Montgomery County

updates, supporting rental assistance programs, and continuing to prioritize preservation of naturally occurring affordable housing.

We applaud the Council for the hard work you have done and continue to do to prioritize housing. As you know, fully addressing the housing crisis requires myriad tools. Measures to reduce the cost of housing development, like Bill 22-24E, are an important tool, and must be combined with strong and continued support of targeted affordable housing preservation and development to ensure a diverse, vibrant, and economically robust Montgomery County where all residents have homes they can afford.

Thank you for the opportunity to provide input as you consider this matter.



The Montgomery Housing Alliance is a coalition of the Community Development Network of Maryland

January 15, 2024

Re: Support for Bill 22-24

Dear President Stewart, Vice President Jawando, and Councilmembers:

My name is Michael Larkin, I live in district 4, and I am writing in support of Bill 22-24 proposed by Councilmember Glass. The members of this Council know the cost of housing is too high, and the high cost of actually building housing makes our county's current housing supply crunch even harder to resolve. Bill 22-24 is a revenue-neutral measure that could help more housing projects become a reality by reducing the overall cost of development.

It is obvious that one policy fix cannot resolve the housing crisis. From adequately funding affordable housing measures to legalizing more housing where it is currently not allowed, Montgomery County must pursue every option that will get control of housing costs. Bill 22-24 fits this approach, and I urge the County Council to enact it. Thank you for your time and consideration.

Sincerely,

Michael Larkin
Silver Spring, MD

December 16, 2024

Council President Kate Stewart
& Members of the County Council
Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
Councilmember.stewart@montgomerycountymd.gov

Re: Bill 22-24 Taxation – Collection of Impact Taxes

Dear Council President Stewart and Members of the County Council. As a member of NAIOP DC/MD's Board of Directors and Chair of its Leadership Committee, I am writing to express NAIOP DC/MD's strong support for Bill 22-24. NAIOP DC/MD represents hundreds of companies that have been involved in creating the most innovative, sustainable mixed-use developments in Montgomery County and the region. Our members have the breadth of experience of working in multiple jurisdictions.

The Bill sends a strong message to developers, but also to the equally important financial institutional market that the County Council understands the need for creative solutions to attract equity to the County. The proposal is practical, and will not financially impact the County. We commend Councilmember Glass and other sponsors for their leadership in this effort.

The proposed Bill simply allows impact taxes to be paid at the time of final inspection of a building. This new timing pushes the soft cost expense to a point closer to when a project will become income producing. This will help improve the financial viability of a project. The timing of payment continues to ensure that the County has collected the funds prior to building use.

We commend the County Council on thinking creatively and introducing legislation that concretely will make a difference. This Bill demonstrates the Council's commitment to encouraging investment and economic development in the County. We ask that the Council support Bill 22-24.

Sincerely,



Stacy Silber

Testimony of William Kominers

Bill No. 22-24

(December 3, 2024)

Good afternoon Council President and members of the Council. My name is Bill Kominers. I am attorney with the law firm of Lerch, Early & Brewer in Bethesda and I am here as an individual to speak strongly in support of Bill No. 22-24. This Bill makes good economic sense, enhancing the opportunity for construction with its jobs, and occupancy with its benefits to homeowners and businesses.

In preparing to testify on this Bill, I went back 13 years to look at my testimony and the Council Staff Reports on Bill 26–11. Bill 26-11 moved the payment of the Impact Tax from building permit to the current schedule.

Bill 22-24 has a number of benefits.

1. Bill 22–24 is a good successor to Bill 26–11 for the same reasons that Bill 26-11 was a good start. Bill 22–24 makes good economic sense. This Bill puts the resources of a builder (that means money) first into building the building, and then makes payment for the impacts (schools and roads) when those impacts actually occur – with occupancy of the building. What could be more logical? This approach fulfills the intent of the Impact Tax by having that tax collected at the time that the impacts are likely to occur. At the time a building permit is issued, no impact is created. Only when a building, home, or apartment is occupied does actual, physical impact occur to the road network or school system. Correlating the payment of the Impact Tax with the real time implementation of the impact is more appropriate and better fulfills the underlying basis for the Impact Tax.

2. Delay in the payment of the Impact Tax will likely allow more approved building projects to proceed. This is because the shift in time of payment of the Impact Tax reduces the upfront cost, and thereby allows greater borrowing to be used for the actual project itself. This significantly increases a builder’s ability to secure construction financing and proceed with a project.

3. This greater ability to finance projects will increase the ultimate likelihood of payment of the Impact Tax, because more projects will actually be able to be built. Without this shift in time of payment, many projects may not be able to go forward. No project at all means no Impact Tax at all. Thus, Bill 22-24 will actually

increase the opportunity to collect a greater amount of Impact Tax revenue.

4. The County never gets revenue from the project that is not built. There is neither Impact Tax, nor long-term revenue. With this proposed delay in payment of the Impact Tax, the County receives both. That sounds like a win/win.

5. The Bill will cause a simple, one-time delay in the immediate revenue stream. But in reality, the long-term result will be a much greater revenue return to the County. The project that can now be built, because of the lower upfront cost, will generate real estate tax and other revenue to the County for its entire useful life. The Impact Tax revenue is not lost, only delayed. The short term revenue loss (the Impact Tax payment delay) should be more than offset by the long-term revenue gain (the ability to build the project and generate tax revenue over the 40 year life of the building). That seems like a good investment decision – spend a little but gain a lot.

6. This time shift in payment of Impact Tax has a very positive effect on construction. Because of the lengthy construction time for multi-family and non-residential projects, the benefit in the eventual cost of the product to the ultimate consumer is even greater. A construction period range of 18+ months means that the cost of the upfront payment of Impact Tax must be financed for that much longer. This results in a higher cost throughout the construction period and therefore a higher cost of borrowing and generates a higher cost of the ultimate product, in the form of higher rents and prices. Delaying the Impact Tax until the time of occupancy ameliorates this difficulty by reducing borrowing costs and incurring the tax cost at the time that there is revenue with which it may be paid.

Summary. This Bill sends a very positive message about Montgomery County and the Council's efforts to address the current economic challenges -- to encourage and facilitate the creation of homes, and businesses, and jobs. In addition, the Bill supports the underlying principle of the Impact Tax, the nexus of the payment of the tax to the creation of the actual impact.

I urge you to act quickly to enact this Bill; it does what is needed and is fair.

Thank you for your consideration. I am available to answer any questions that you might have.



January 7, 2025

County Council President Kate Stewart
Chair, Government Operations and Fiscal Policy (GO) Committee
Montgomery County Council
Stella Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Stewart,

The City of Gaithersburg recognizes the spirit and intent of Expedited Bill 22-44: Taxation - Collection of Development Impact Taxes and supports the County's attempt to help mitigate housing construction costs.

As noted within the bill's staff report, under current County law, an applicant for a building permit is not required pay any development impact tax, Transportation Mitigation Payment, or School Facilities Payment until 6 or 12 months after the building permit is issued (depending on the type of building), or the final inspection of the building by the Department of Permitting Services (DPS), whichever is earlier. Bill 22-24 would strike the provisions about payment 6 or 12 months after the building permit is issued and amend the law so that payment is not required until final inspection of the building by DPS, regardless of the type of building. Given the costs that these taxes cause upon home builders, we agree that the current policy may contribute to higher upfront housing construction costs, which in turn can impact project financing or even curtail new housing construction in Montgomery County. However, we believe that the bill unintentionally leaves municipalities at a disadvantage.

Bill 22-24 offers changes to Section 52-42, subsection (c) of the County Code. Upon review of Montgomery County Chapter 52, section 52-42 subsection (d) by city staff, it states that municipalities must make sure the taxes are paid prior to the issuance of a permit. Specifically, it reads *(d) When a person applies to a municipality in the County for a building permit for a building or dwelling unit, the applicant must show that all payments due under this Section with respect to the building or unit have been paid. The Director of Finance must promptly refund any payment made for any building or part of a building for which a building permit is not issued by the municipality.*

Under Bill 22-24, subsection (d) of Section 52-42 as applied to municipalities does not change and is targeted only to development within unincorporated areas of Montgomery County. First, subsection (c)'s deferral is, by its own terms, only affecting DPS issuance of building permits; again, subsection (d), referring to municipalities, remains unchanged. A liberal interpretation of the wording of subsection (d) could be read to have a more equal impact, as it refers only to applicants in general. Nevertheless, because the last sentence refers directly to the County DPS final inspection, which then routes back to subsection (c)'s reference to DPS permits, it is our opinion that this only impacts County permits/final inspections issued by DPS, and not those provided by municipalities. The problem, then, is that while DPS is directed

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2038
301-258-6300 • FAX 301-948-6149 • cityhall@gaitthersburgmd.gov • gaitthersburgmd.gov

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Jud Ashman

COUNCIL MEMBERS
Neil Harris
Lisa Henderson
Yamil Hernández
Jim McNulty
Robert Wu

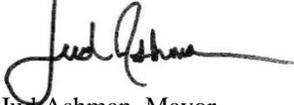
CITY MANAGER
Tanisha R. Briley

not to require these payments until the final inspections, municipalities under subsection (d) have to require all such payments to have been paid at the time of permit application.

The City of Gaithersburg respectfully requests an amendment to Bill 22-24 to reference **subsection (d) of Section 52-42 language and proposes it be changed to refer to the permit application or application for final inspection, giving the municipalities the option to require payment at permit stage or upon final inspection.**

Thank you in advance for your consideration of this recommendation. Please let me know if you have any questions or require additional information.

Respectfully submitted,



Jud Ashman, Mayor
City of Gaithersburg

cc: Government Operations and Fiscal Policy (GO) Committee



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

January 17, 2025

TO: Kate Stewart, President and Chair of the GO Committee
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Bill 22-24, Taxation – Collection of Development Impact Taxes

I write to express concern regarding the fiscal impacts of Bill 22-24, Taxation – Collection of Development Impact Taxes on the Capital Improvement Program's (CIP) limited resources. Bill 22-24 would delay when a building permit applicant pays impact taxes, Transportation Mitigation Payments and School Facilities Payments, until the building's final inspection, postponing revenue collection for residential development between three and six months and one to two years for commercial projects.

Based on projections by the County's Department of Finance, the bill could result in a reduction of \$14.8 million over six years for School Impact Taxes and \$13.0 million over six years for Transportation Impact Taxes, with particularly large impacts in the early years of the CIP. Though the bill does not reduce overall collections, the anticipated delay in revenues would compound the effect of recent reductions to impact tax estimates. The Department of Finance recently reduced school impact tax estimates for the FY26-30 Capital Improvement program after a decrease in FY24 collections to levels not seen since the Great Recession. In FY14, the County collected \$60.8 million in school and transportation impact taxes, compared to FY24 collections totaling \$15.6 million, a reduction of \$45 million or 74.4%. These reductions substantially hamper our ability to make critical community investments in school capacity projects and transportation improvements.

While impact taxes may not be the ideal tool for funding transportation and school infrastructure, further reductions to impact tax revenues should not be enacted before assembling the study group recommended by the Planning Board and the County Council to identify alternative revenue streams. Further, reductions in impact taxes should not be enacted without a replacement structure. I have long advocated for special taxing districts, which would greatly reduce the up-front costs for developers and give the county the ability to deliver in a timely way the infrastructure projects that are integral to economic development.

I urge you to leave the impact taxes where they are now and not further reduce revenues. Let's work together to produce an alternative revenue source that can replace impact taxes and improve the process.

ME:rs

cc: Richard S. Madaleno, Chief Administrative Officer, Office of the County Executive
Fariba Kassiri, Deputy Chief Administrative Officer, Office of the County Executive
Tricia Swanson, Director of Strategic Partnerships, Office of the County Executive
Dale Tibbitts, Special Assistant to the County Executive, Office of the County Executive
Debbie Spielberg, Special Assistant to the County Executive, Office of the County Executive
Mike Coveyou, Director, Department of Finance
Jennifer Bryant, Director, Office of Management and Budget
Rachel Silberman, Capital Budget Manager, Office of Management and Budget
Livhu Ndou, Senior Legislative Attorney, Montgomery County Council