

MEMORANDUM

November 10, 2016

TO: County Council

FROM: Robert Drummer, Senior Legislative Attorney
GO Glenn Orlin, Deputy Council Administrator 

SUBJECT: **Action:** Bill 37-16, Taxation – Development Impact Tax - Transportation and Public School Improvement – Amendments

Bill 37-16, sponsored by Lead Sponsor Council President Floreen at the request of the Planning Board, was introduced on August 2, 2016. A public hearing was held on September 13. Government Operations and Fiscal Policy Committee worksessions were held on September 22, October 6, October 20, and October 27. Council worksessions were held on October 25, November 1, November 3, and November 8.

Background

A brief history of impact taxes in Montgomery County. The Council approved the initial impact fee law in 1986, and at the time it applied only in Germantown and Eastern Montgomery County (Fairland, White Oak, and Cloverly), then the fastest growing areas. After the Court of Appeals found in 1990 that the County did not have authority to impose the impact fee it had enacted¹, the Council enacted Emergency Bill 33-90 that transformed the fee to an excise tax, but most other aspects of the law remained unchanged. After the approval of the Clarksburg Master Plan in 1994, the Council extended the tax to Clarksburg. Funds collected in each of these areas could be spent only on projects within the respective areas that were explicitly listed in the law, most of which were new roads, road widenings, and park-and-ride lots. Taxes were collected prior to the issuance of building permits. The cost of capacity-adding projects built by a development were creditable against the tax.

In 2001, Bill 47-01 (effective July 2002) established transportation impact taxes countywide. It created a new “County” District that encompassed all areas not within Germantown, Eastern Montgomery County, and Clarksburg, and established its own rate schedule. It created separate accounts for Rockville and Gaithersburg, noting that funds within each municipality could be spent only on projects that served them, respectively. It set the rates in Metro Station Policy Areas at half of the County District rates. It also deleted the explicit list of projects in the law, replacing it with several categories of projects that were eligible; the categories were no longer simply auto-based, but included such elements as added Ride On buses and shelters, new or expanded transit centers, hiker-biker trails, sidewalk connectors, and bike storage facilities. Two years

¹ *Eastern Diversified Properties, Inc. v. Montgomery County*, 39 Md. 45, 570 A.2d 850 (1990).

later the County District and the Germantown and Eastern Montgomery County areas were combined into a new “General” District. Early in this decade further amendments to the law deferred the payment of the tax for housing to 6 months after permit issuance or final inspection (whichever is earlier)², established bikesharing stations as an eligible expense, and extended the use of credits to 12 years. Several amendments over the years exempted (or set \$0 rates) for certain types of development: development in existing and former enterprise zones, affordable dwelling units, hospitals, bioscience facilities, social service agencies, and charitable institutions.

The Council approved a countywide school impact tax in 2003 (effective 2004) which applied only to residential development. Rates were set for single-family-detached houses, townhouses, low-rise apartments (up to 4 stories) and high-rise apartments. The rates for single-family-detached houses and townhouses also included a surcharge for larger homes. Senior housing had a \$0 rate. There was one set of rates countywide, and funds collected anywhere in the County could be spent on any capacity-adding school project in the County. Under both the transportation and school taxes, affordable dwelling units and development in existing and (starting in 2007) former enterprise zones were exempted. A law enacted in 2015 provides that if a development includes at least 25% affordable units, all units in that development are exempt from both taxes.

Impact tax collections over the years have fluctuated widely, reflecting the varying activity in the building industry. Transportation impact tax collections have been especially volatile, due to the unpredictability of when credits (which can be substantial) are cashed in.

Revenue from Impact Taxes since FY 2005

Year	School	Transportation
FY05	\$7,695,345	\$8,470,768
FY06	6,960,032	6,252,060
FY07	9,562,889	11,500,814
FY08	6,766,534	9,743,841
FY09	7,925,495	2,398,310
FY10	11,473,071	3,812,138
FY11	14,480,846	5,444,115
FY12	16,462,394	6,352,481
FY13	27,901,753	13,179,898
FY14	45,837,274	20,274,781
FY15	32,676,773	16,632,489
FY16	23,349,333	9,114,573

Impact taxes constitute about one of every eight dollars spent on school capital projects. The funding sources for MCPS’s Approved FY17-22 CIP are comprised of:

² For non-residential, 12 months after permit issuance or final inspection, whichever is sooner.

Funding Source	Funding Programmed	% of Total
G.O. Bonds/Current Revenue	\$834,292,000	48.3%
Recordation Tax	\$373,700,000	21.6%
State Aid	\$308,628,000	17.8%
School Impact Tax	\$210,985,000	12.2%
School Facility Payments	\$1,854,000	0.1%
Total	\$1,729,459,000	100.0%

Impact taxes are projected to fund \$50,605,000 (4.5%) of the \$1,120,821,000 transportation capital program in FY17-22.

Bill 37-16, as amended

Bill 37-16, as introduced, included the amendments to the law governing the development impact tax for transportation and public school improvements proposed by the Planning Board as part of the quadrennial update to the rules by which the Adequate Public Facilities Ordinance (APFO) is implemented in the Subdivision Staging Policy (SSP). Bill 37-16, as amended by the Council in its worksessions on November 1, November 3, and November 8 is at ©1-26. The major amendments to the current law governing the development impact tax for transportation and public school improvements are discussed below.

1. Removal of tax rates from the law and established by Council Resolution.

Currently, the impact tax tables are adopted in the law and then revised by resolution every 2 years. The result is that after the first revision of the tax rates by resolution, the tax tables contained in the law are out of date. Bill 37-16 would delete the tax tables from the law and require the Council to establish the tax rates by resolution. A resolution to establish the new tax rates was introduced on September 27 and a public hearing was held on October 18. This resolution is tentatively scheduled for adoption by the Council on November 15.

2. Eliminate the school facility payment.

The 2003 Growth Policy introduced the concept of the school facility payment (SFP), but not until the 2007 Growth Policy, when the threshold was lowered, did it have an effect. Since 2007 a developer has had the option to pay the SFP to meet the school test if the enrollment/capacity ratio at a cluster/level exceeds 105%³ but is under 120%. The SFP rates have been set at 60% of the capital cost/student seat at each level, based on the average cost of a new school at each level. The development would pay the cost/student seat rate for the number of seats at each level it generates above 105% capacity, so in some clusters there could be two or even three sets of payments. The payments are made concurrently with impact taxes: 6 months after issuing a building permit or at final inspection, whichever is earlier. The first SFP payments were made in FY11; over the FY11-16 period only \$4,957,329 has been collected. SFP payments fund only 0.1% of MCPS's Approved FY17-22 CIP.

Bill 37-16, as amended, would eliminate the SFP. The lost revenue would be recouped by increasing the school impact tax.

³ In 2007 the Planning Board and BOE had recommended 110% as the threshold for the SFP.

3. Split the credit for providing a better accessibility standard equally between the transportation impact tax and the school impact tax.

Code §52-58 provides credits to the school impact tax law for providing certain levels of accessibility standards:

- (e) (1) A property owner must receive a credit for constructing or contributing to the cost of building a new single family residence that meets Level I Accessibility Standards, as defined in Section 52-107(a).
- (2) The credit allowed under this Section must be as follows:
 - (A) If at least 5% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of \$500 per residence.
 - (B) If at least 10% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of \$1,000 per residence.
 - (C) If at least 25% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of \$1,500 per residence.
 - (D) If at least 30% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of \$2,000 per residence.
- (3) Application for the credit and administration of the credit be in accordance with Subsections 52-107(e) and (f).
- (4) A person must not receive a property tax credit under this Section if the person receives any public benefit points for constructing units with accessibility features under Chapter 59.

There is no comparable credit for the transportation impact tax. Bill 37-16 would add the same credit for the transportation impact tax, but split the amount of the credit equally between the transportation and school impact tax owed.

4. Eliminate the transportation mitigation payment.

In the 2012-2016 Subdivision Staging Policy, the Council created a new policy area transportation test called Transportation Policy Area Review (TPAR), which expanded the time-horizon of “countable”

projects to those programmed for completion within 10 years. TPAR has a road component and a transit component. The road component calculates the future average congestion in the peak direction during peak periods on major roads in a policy area and compares that average to a standard specific to that policy area. If the average road congestion forecasts to fail the standard, then a development can proceed only by paying an additional traffic mitigation fee equal to 25% of the applicable transportation impact tax. The transit component assesses whether a policy area has sufficient local bus service—in terms of coverage, frequency, and span (the hours of bus service during a normal weekday)—measured against policy-specific standards for coverage, frequency, and span. If local bus service cannot meet the standards, then, again, a development can proceed only by paying an additional traffic mitigation fee equal to 25% of the applicable transportation impact tax. If a policy area fails both the road and transit components, then a 50% surcharge is required.

Bill 37-16 would eliminate the TPAR test and the transportation mitigation payment. Instead, the lost revenue would be recouped by increasing the transportation impact tax rates in certain policy areas.

5. New classification of policy areas.

Bill 37-16, as proposed by the Planning Board, was to categorize the planning areas into four geographic groups according to relative transit service and accessibility. “Red” policy areas are the current MSPAs; “Orange” policy areas are corridor cities (but not MSPAs), town centers, and emerging transit-oriented development areas where transitways (Purple Line, BRT lines) are planned; “Yellow” policy areas are lower density residential neighborhoods with community-serving commercial areas; and “Green” policy areas are the Agricultural Reserve and other rural areas.

Bill 37-16, as amended, continues this categorization with some changes. The Bill would create a new Clarksburg Town Center policy area in the Orange group and leave the rest of Clarksburg in the Yellow group and create a new Burtonsville Crossroads policy area in the Orange Group and leave the rest of the Fairland/Colesville policy area in the Yellow group. The maps showing each group would be established in the SSP.

6. New discounts and exemptions.

Bill 37-16, as amended, would establish a \$0.00 transportation tax rate for places of worship. The Bill would also impose the same transportation impact tax rate on a clergy house.

Bill 37-16 would also exempt a farm tenant dwelling from the transportation impact tax, but not the school impact tax. If the property is no longer used as a farm tenant dwelling, the property owner is required to pay the transportation impact tax that would have been due under existing Code §52-42(k), which states:

- (k) If, within 10 years after a building permit is issued, any person changes the use of all or part of a building to a use for which a higher tax would have been due under this Article when the building permit was issued (including a change from a status, use, or ownership that is exempt from payment to a status, use, or ownership that is not so exempt), the owner of the building must within 10 days after the change in status, use, or ownership pay all additional taxes that would have been due if the building or part of the building had originally been used as it is later used. If the building owner does not pay any additional tax when due, each later owner*

is liable for the tax, and any interest or penalty due, until all taxes, interest, and penalties are paid.

Bill 37-16 would also create a new exemption from transportation and school impact tax for a house built by high school students in a program operated by the Montgomery County Board of Education.

7. Effective date.

Bill 37-16, as amended, would take effect on March 1, 2017. The amendments to the development impact tax for transportation improvements and the development impact tax for public school improvements would apply to any application for a building permit filed on or after March 1, 2017. A property owner who applies for subdivision approval before January 1, 2017, the proposed effective date of the SSP, must pay a transportation mitigation payment and a school facilities payment at rates the Council establishes by resolution unless the property owner applies for a building permit on or after March 1, 2017.

This Packet Contains:

Bill 37-16, as amended

Circle #

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Bill No. 37-16
 Concerning: Taxation – Development
Impact Tax – Transportation and
Public School Improvements -
Amendments
 Revised: November 10, 2016 Draft No. 10
 Introduced: August 2, 2016
 Expires: February 2, 2018
 Enacted: _____
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

AN ACT to:

- (1) modify the method of calculating the transportation and public school impact tax;
- (2) create new transportation tax districts associated with policy area categories;
- (3) adjust the transportation impact tax for residential uses based on Non-Auto Driver Mode Share associated with each tax district;
- (4) adjust the transportation impact tax for non-residential uses based on Vehicle Miles of Travel associated with each tax district;
- (5) [[authorize an adjustment to the transportation impact tax for providing parking below the minimum required under Chapter 59]] exempt certain student-built houses from the impact tax;
- (6) [[modify the public school impact tax payable for property located in a former enterprise zone]] eliminate the transportation mitigation payments for certain projects;
- (7) eliminate the school facilities payments for certain projects; [[and]]
- [[~~(7)~~]] (8) exempt certain farm tenant dwelling units from the impact tax for transportation improvements; and
- (9) generally amend County law concerning the development impact tax for transportation and public school [[impact tax]] improvements.

By amending

Montgomery County Code
 Chapter 52, Taxation
 Sections 52-39, 52-40, 52-45, 52-47, 52-49, 52-50, 52,51, 52-52, 52-54, 52-55, 52-56, 52-58, and 52-59.

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:

* * *

Farm tenant dwelling means a dwelling unit under the control of the owner or operator of the farm on which the dwelling unit is located and occupied by an agricultural worker actively engaged in farming on a full-time or part-time basis. Farm Tenant Dwelling includes up to three mobile homes. A Farm Tenant Dwelling is not restricted by the definition of household.

* * *

52-40. Findings; purpose and intent.

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

* * *

(e) The development impact tax [[will fund]] funds, in part, the improvements necessary to increase the transportation system capacity, thereby allowing development to proceed. Development impact taxes [[will be]] are used exclusively for impact transportation improvements.

(f) In order to assure that the necessary impact transportation improvements are constructed in a timely manner, the County [[intends to assure]] assures the availability of funds sufficient to construct the impact transportation improvements.

(g) The County retains the power to determine the types of impact transportation improvements to be funded by development impact taxes~~[[; to estimate the cost of such improvements; to establish the proper~~

55 timing of construction of the improvements so as to meet APFO policy
 56 area transportation adequacy standards where they apply; to determine
 57 when changes, if any, may be necessary in the County CIP;]] and to do
 58 all things necessary and proper to effectuate the purpose and intent of this
 59 Article.

60 (h) The County intends to further the public purpose of ensuring that an
 61 adequate transportation system is available in support of new
 62 development.

63 (i) [[The County's findings are based on the adopted or approved plans,
 64 planning reports, capital improvements programs identified in this
 65 Article, and specific studies conducted by the Department of
 66 Transportation and its consultants.

67 (j)]] The County intends to impose development impact taxes until the County
 68 has attained build-out as defined by the General Plan.

69 **52-41. Imposition and applicability of development impact taxes.**

70 (a) A development impact tax must be imposed before a building permit is
 71 issued for development in the County.

72 (b) An applicant for a building permit must pay a development impact tax in
 73 the amount and manner provided in this Article, unless a credit in the full
 74 amount of the applicable tax applies under Section 52-47 or an appeal
 75 bond is posted under Section 52-48.

76 (c) The following impact tax districts are established:

77 (1) [*Metro Station*: Friendship Heights, Bethesda CBD, Grosvenor,
 78 White Flint, Twinbrook, Rockville Town Center, Shady Grove
 79 Metro, Silver Spring CBD, Wheaton CBD, and Glenmont Metro
 80 station policy areas, as defined in the most recent Subdivision

81 Staging policy, except as modified by paragraph (3) for the White
 82 Flint policy area;

83 (2) *Clarksburg*: Clarksburg policy area, as defined in the most recent
 84 Subdivision Staging Policy;

85 (3)] *White Flint*: The part of the White Flint Metro Station Policy Area
 86 included in the White Flint Special Taxing District in Section 68C-
 87 2; [and]

88 (2) *Red Policy Areas*: Bethesda CBD, Friendship Heights, Grosvenor,
 89 Glenmont, Rockville Town Center, Shady Grove Metro Station,
 90 Silver Spring CBD, Twinbrook, and Wheaton CBD Metro Station
 91 Policy Areas;

92 (3) *Orange Policy Areas*: Bethesda/Chevy Chase, Burtonsville
 93 Crossroads, Chevy Chase Lake, Clarksburg Town Center,
 94 Derwood, Gaithersburg City, Germantown Town Center,
 95 Kensington/Wheaton, Long Branch, North Bethesda, R & D
 96 Village, Rockville City, Silver Spring/Takoma Park,
 97 Takoma/Langley, White Flint, except the portion that is included
 98 in the White Flint Special Taxing District in Section 68C-2, and
 99 White Oak Policy Areas;

100 (4) *Yellow Policy Areas*: Aspen Hill, Clarksburg, Cloverly,
 101 Fairland/Colesville, Germantown East, Germantown West,
 102 Montgomery Village/Airpark, North Potomac, Olney, and
 103 Potomac Policy Areas; and

104 (5) *Green Policy Areas*: Damascus, Rural East, and Rural West Policy
 105 Areas.

106 [(4) *General*: Any part of the County, including any municipality, not
 107 located in an area listed in paragraphs (1) - (3).]

108 (d) [[Reserved]] A Clergy House must pay the impact tax rate that applies to
109 a place of worship if the house:

110 (1) is on the same lot or parcel, adjacent to, or confronting the property
111 on which the place of worship is located; and

112 (2) is incidental and subordinate to the principal building used by the
113 religious organization as its place of worship.

114 The place of worship tax rate does not apply to any portion of a Clergy
115 House that is nonresidential development.

116 * * *

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

118

119 * * *

120 (5) any non-exempt dwelling unit in a development in which at least
121 25% of the dwelling units are exempt under paragraph (1), (2), (3),
122 or (4), or any combination of them; [[and]]

123 (6) any development located in an enterprise zone designated by the
124 State or in an area previously designated as an enterprise zone;
125 [[and]]

126 (7) a house built by high school students under a program operated by
127 the Montgomery County Board of Education; and

128 (8) a farm tenant dwelling.

129 * * *

130 **52-45. Restrictions on use and accounting of development impact tax funds.**

131

* * *

132 [[h)] Development impact tax funds collected from the [Clarksburg impact tax
133 district] Red Policy Areas must be used for impact transportation

134 improvements located in or that directly benefit [the Clarksburg] those
135 policy [area] areas.]]

136 **52-47. Credits.**

137 (a) ~~[[1]]~~ A property owner is entitled to a credit if the owner, before July 1,
138 2002, entered into a participation agreement, or a similar
139 agreement with the state or a municipality, the purpose of which
140 was to provide additional transportation capacity. A property
141 owner is also entitled to a credit if the owner receives approval
142 before July 1, 2002, of a subdivision plan, development plan, or
143 similar development approval by the County or a municipality that
144 requires the owner to build or contribute to a transportation
145 improvement that provides additional transportation capacity. The
146 Department of Transportation must calculate the credit. The credit
147 must equal the amount of any charge paid under the participation
148 agreement. The Department may give credit only for building
149 permit applications for development on the site covered by the
150 participation agreement.

151 ~~[[2]]~~ (A) An entity that received more than \$20 million in credits
152 under this subsection that were certified before July 1, 2002,
153 may apply any unused credit to satisfy an obligation under
154 Policy Area Mobility Review, or any applicable successor
155 policy area transportation test, if:

- 156 (i) the County Executive has identified the project for
157 which a credit would be applied under this paragraph
158 as a strategic economic development project; and
159 (ii) the credit is used before November 1, 2015.

160 (B) The total of any credits used under this paragraph to satisfy
161 an obligation under Policy Area Mobility Review, or any
162 applicable successor policy area transportation test, much
163 not exceed \$1.7 million.]]

164 * * *

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

169 * * *

170 (j) (1) A property owner must receive a credit for constructing or
171 contributing to the cost of building a new single family residence
172 that meets Level I Accessibility Standards, as defined in Section
173 52-107(a).

174 (2) The credit allowed under this Section must be as follows:

175 (A) If at least 5% of the single family residences built in the
176 project meet Level I Accessibility Standards, then the owner
177 must receive a credit of \$250 per residence.

178 (B) If at least 10% of the single family residences built in the
179 project meet Level I Accessibility Standards, then the owner
180 must receive a credit of \$500 per residence.

181 (C) If at least 25% of the single family residences built in the
182 project meet Level I Accessibility Standards, then the owner
183 must receive a credit of \$750 per residence.

184 (D) If at least 30% of the single family residences built in the
185 project meet Level I Accessibility Standards, then the owner
186 must receive a credit of \$1,000 per residence.

187 (3) Application for the credit and administration of the credit be in
 188 accordance with Subsections 52-107(e) and (f).

189 (4) A person must not receive a property tax credit under this Section
 190 if the person receives any public benefit points for constructing
 191 units with accessibility features under Chapter 59.

192 (k) After a credit has been certified under this Section, the property owner or
 193 contract purchaser to whom the credit was certified may transfer all or
 194 part of the credit to any successor in interest of the same property.
 195 However, any credit transferred under this subsection must only be
 196 applied to the tax due under this Article with respect to the property for
 197 which the credit was originally certified.

198 **52-49. Tax rates.**

199 (a) The Council must establish the tax rates for each impact tax district,
 200 except as provided in subsection (b), by resolution, after a public hearing
 201 advertised at least 15 days in advance. [[are:]]

<i>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</i>			
<i>Building Type</i>	<i>Metro Station</i>	<i>Clarksburg</i>	<i>General</i>
Single-family detached residential (per dwelling unit)	\$2,750	\$8,250	\$5,500
Single-family attached residential (per dwelling unit)	\$2,250	\$6,750	\$4,500

Multifamily residential (except high-rise) (per dwelling unit)	\$1,750	\$5,250	\$3,500
High-rise residential (per dwelling unit)	\$1,250	\$3,750	\$2,500
Multifamily-senior residential (per dwelling unit)	\$500	\$1,500	\$1,000
Office (per sq. ft. GFA)	\$2.50	\$6	\$5
Industrial (per sq. ft. GFA)	\$1.25	\$3	\$2.50
Bioscience facility (per sq. ft. GFA)	\$0	\$0	\$0
Retail (per sq. ft. GFA)	\$2.25	\$5.40	\$4.50
Place of worship (per sq. ft. GFA)	\$0.15	\$0.35	\$0.30
Private elementary and secondary school (per sq. ft. GFA)	\$0.20	\$0.50	\$0.40
Hospital (per sq. ft. GFA)	\$0	\$0	\$0
Cultural institution	\$0.20	\$0.50	\$0.40
Charitable, philanthropic institution	\$0	\$0	\$0
Other nonresidential (per sq. ft. GFA)	\$1.25	\$3	\$2.50

<u>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</u>				
<u>Land Use</u>	<u>Red Policy Areas (Metro Stations)</u>	<u>Orange Policy Areas</u>	<u>Yellow Policy Areas</u>	<u>Green Policy Areas</u>
<u>Residential Uses</u>				
<u>SF Detached</u>	<u>\$3,653</u>	<u>\$10,959</u>	<u>\$18,266</u>	<u>\$29,225</u>
<u>MF Residential</u>				
<u>SF Attached</u>	<u>\$2,552</u>	<u>\$7,656</u>	<u>\$12,759</u>	<u>\$20,415</u>
<u>Garden Apartments</u>	<u>\$2,312</u>	<u>\$6,937</u>	<u>\$11,562</u>	<u>\$18,499</u>
<u>High - Rise Apartments</u>	<u>\$1,652</u>	<u>\$4,955</u>	<u>\$8,259</u>	<u>\$13,214</u>
<u>Multi-Family Senior</u>	<u>\$661</u>	<u>\$1,982</u>	<u>\$3,303</u>	<u>\$5,286</u>
<u>Commercial Uses</u>				
<u>Office</u>	<u>\$10.08</u>	<u>\$13.45</u>	<u>\$16.81</u>	<u>\$16.81</u>
<u>Industrial</u>	<u>\$5.01</u>	<u>\$6.69</u>	<u>\$8.36</u>	<u>\$8.36</u>
<u>Bioscience</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Retail</u>	<u>\$8.97</u>	<u>\$11.96</u>	<u>\$14.95</u>	<u>\$14.95</u>
<u>Place of Worship</u>	<u>\$0.53</u>	<u>\$0.70</u>	<u>\$0.88</u>	<u>\$0.88</u>

<u>Private School</u>	<u>\$0.80</u>	<u>\$1.06</u>	<u>\$1.33</u>	<u>\$1.33</u>
<u>Hospital</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Social Service Agencies</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Other Non-Residential</u>	<u>\$5.02</u>	<u>\$6.69</u>	<u>\$8.36</u>	<u>\$8.36</u>

204]]

205 (b) For any development located in the White Flint Impact Tax District, the
 206 tax rates are \$0. [[:

207

Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)	
<i>Building Type</i>	<i>White Flint</i>
High-rise residential (per dwelling unit)	\$ 0
Multifamily-senior residential (per dwelling unit)	\$ 0
Office (per sq.ft. GFA)	\$ 0
Industrial (per sq.ft. GFA)	\$ 0
Bioscience facility (per sq.ft. GFA)	\$ 0
Retail (per sq.ft. GFA)	\$ 0
Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)	
<i>Building Type</i>	<i>White Flint</i>
Place of worship (per sq.ft. GFA)	\$ 0
Private elementary and secondary school (per sq.ft. GFA)	\$ 0
Hospital (per sq.ft. GFA)	\$ 0
Other nonresidential (per sq.ft. GFA)	\$ 0

209]]

210 (c) [Any development that receives approval of a preliminary plan of
 211 subdivision under any Alternative Review Procedure must pay the tax at

212 double the rate listed in subsection (a). However, any development
 213 approved under an Alternative Review Procedure that is located in a
 214 Metro Station Policy Area must pay the tax at 75% of the rate listed in
 215 subsection (a) for the same type of development in the General district.

216 (d) Any Productivity Housing unit, as defined in Section 25B-17(j), must pay
 217 the tax at 50% of the applicable rate calculated in subsection (a).

218 [(e)] (d) Any building that would be located within one-half mile of the
 219 Germantown, Metropolitan Grove, Gaithersburg, Washington Grove,
 220 Garrett Park, or Kensington MARC stations must pay the tax at 85% of
 221 the applicable rate calculated in subsection (a).

222 [(f)] (e) The County Council by resolution, after a public hearing
 223 advertised at least 15 days in advance, may increase or decrease the rates
 224 [[set in]] established under this Section.

225 [(g)] (f) The Director of Finance, after advertising and holding a public
 226 hearing as required by Section 52-17(c), must adjust the tax rates set in
 227 or under this Section on [[July 1]] [[January 1]] July 1 of each odd-
 228 numbered year by the annual average increase or decrease in a published
 229 construction cost index specified by regulation for the two most recent
 230 calendar years. The Director must calculate the adjustment to the nearest
 231 multiple of 5 cents for rates per square foot of gross floor area or one
 232 dollar for rates per dwelling unit. The Director must publish the amount
 233 of this adjustment not later than [[May 1]] [[November 1]] May 1 of each
 234 [[odd]] [[even numbered]] odd-numbered year.

235 **52-50. Use of impact tax funds.**

236 Impact tax funds may be used for any:

237 (a) new road, widening of an existing road, or total reconstruction of all or
 238 part of an existing road required as part of widening of an existing road,

- 239 that adds highway or intersection capacity or improves transit service or
 240 bicycle commuting, such as bus lanes or bike lanes;
- 241 (b) new or expanded transit center or park-and-ride lot;
- 242 (c) bus added to the Ride-On bus fleet, but not a replacement bus;
- 243 (d) new bus shelter, but not a replacement bus shelter;
- 244 (e) hiker-biker trail [[or other bike facility]] and protected bike lanes used
 245 primarily for transportation;
- 246 (f) bicycle locker that holds at least 8 bicycles;
- 247 (g) bikesharing station (including bicycles) approved by the Department of
 248 Transportation; [[or]]
- 249 (h) sidewalk connector in a public right-of-way to or within a major activity
 250 center or along an arterial or major highway; or
- 251 (i) [[the operating expenses of any transit or trip reduction program]]
 252 element of bus rapid transit, including exclusive bus lanes, shelters, and
 253 buses.

254 **52-51. [[Transportation Mitigation Payment]] Reserved.**

255 [[a) In addition to the tax due under this Article, an applicant for a building
 256 permit for any building on which an impact tax is imposed under this
 257 Article must pay to the Department of Finance a [Transportation] Transit
 258 Accessibility Mitigation Payment if that building was included in a
 259 preliminary plan of subdivision that was approved under the
 260 Transportation Mitigation Payment provisions in the County Subdivision
 261 Staging Policy adopted on ____.]]

262 [[b) The amount of the Payment [for each building must be calculated by
 263 multiplying the Payment rate by the total peak hour trips generated by the
 264 development] is based upon the latest finding of adequacy for transit
 265 accessibility for each Policy Area as approved and applicable under the

266 County Subdivision Staging Policy process. The initial findings of
 267 applicability and adequacy as adopted on _____ are as follows:]] [.] [[
 268

<u>Policy Area</u>	<u>Transit Accessibility Mitigation</u>
<u>Red Group</u>	
<u>Bethesda CBD</u>	<u>Exempt</u>
<u>Friendship Heights</u>	<u>Exempt</u>
<u>Grosvenor</u>	<u>Exempt</u>
<u>Glenmont</u>	<u>Exempt</u>
<u>Rockville Town Center</u>	<u>Exempt</u>
<u>Shady Grove Metro Station</u>	<u>Exempt</u>
<u>Silver Spring CBD</u>	<u>Exempt</u>
<u>Twinbrook</u>	<u>Exempt</u>
<u>Wheaton CBD</u>	<u>Exempt</u>
<u>White Flint</u>	<u>Exempt</u>
<u>Orange Group</u>	
<u>Bethesda/Chevy Chase</u>	<u>Adequate</u>
<u>Clarksburg</u>	<u>Inadequate, Full Mitigation</u>
<u>Derwood</u>	<u>Inadequate, Partial Mitigation</u>
<u>Gaithersburg City</u>	<u>Inadequate, Full Mitigation</u>
<u>Germantown Town Center</u>	<u>Inadequate, Full Mitigation</u>
<u>Kensington/Wheaton</u>	<u>Inadequate, Full Mitigation</u>
<u>North Bethesda</u>	<u>Inadequate, Full Mitigation</u>
<u>R&D Village</u>	<u>Inadequate, Full Mitigation</u>
<u>Rockville City</u>	<u>Inadequate, Full Mitigation</u>
<u>Silver Spring/Takoma Park</u>	<u>Inadequate, Full Mitigation</u>
<u>White Oak</u>	<u>Adequate</u>
<u>Yellow Group</u>	
<u>Aspen Hill</u>	<u>Inadequate, Full Mitigation</u>
<u>Cloverly</u>	<u>Inadequate, Full Mitigation</u>
<u>Fairland/Colesville</u>	<u>Inadequate, Partial Mitigation</u>
<u>Germantown East</u>	<u>Inadequate, Full Mitigation</u>
<u>Germantown West</u>	<u>Inadequate, Full Mitigation</u>
<u>Montgomery Village/Airpark</u>	<u>Adequate</u>
<u>North Potomac</u>	<u>Inadequate, Full Mitigation</u>
<u>Olney</u>	<u>Inadequate, Full Mitigation</u>
<u>Potomac</u>	<u>Adequate</u>
<u>Green Group</u>	
<u>Damascus</u>	<u>Exempt</u>

<u>Rural East</u>	<u>Exempt</u>
<u>Rural West</u>	<u>Exempt</u>

269 In addition to the above, buildings in the Chevy Chase Lake, Langley
 270 Park, and Takoma/Langley Policy Areas are considered to have adequate
 271 transit accessibility as a result of programmed construction funds for the
 272 Purple Line.]]

273 [[c) The Transit Accessibility Mitigation Payment is based upon a percentage
 274 of the tax due under this Article according to the following schedule:

275 (1) Full Mitigation Required – 25% of tax due under this Article; and

276 (2) Partial Mitigation Required – 15% of tax due under this Article.

277 The rate must be set by Council resolution, including a resolution that
 278 amends the Subdivision Staging Policy.]] [The Director of Finance must
 279 adjust the then-applicable Payment rate as of July 1 of 2015 and each later
 280 odd-numbered year by the annual average increase or decrease in a
 281 published construction cost index specified by regulation for the two most
 282 recent calendar years to the nearest multiple of \$10. The Director must
 283 publish the amount of this adjustment in the County Register not later
 284 than May 1 of each odd numbered year. The Council by resolution, after
 285 a public hearing advertised at least 15 days in advance, may increase or
 286 decrease the Payment rate or set different rates for different types of
 287 development.]

288 [[d) The Payment must be paid at the same time and in the same manner as
 289 the tax under this Article, and is subject to all provisions of this Article
 290 for administering and collecting the tax.]]

291 [[e) The Department of Finance must retain funds collected under this Section
 292 in an account to be appropriated for transportation improvements that

293 result in added transportation capacity in the area where the development
 294 for which the funds were paid is located.]]

295 **52-52. Definitions.**

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

298 Cost of a student seat means the construction cost of a school, not including the
 299 cost of land acquisition, divided by the program capacity of the school.

300 Development impact tax for public school improvements means a tax imposed
 301 to defray a portion of the costs associated with public school improvements that
 302 are necessary to accommodate the enrollment generated by the development.

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

306 Public school improvement means any capital project of the Montgomery
 307 County Public Schools that adds to the number of teaching stations in a public
 308 school.

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

312 **52-54. Imposition and applicability of tax.**

313 * * *

314 (c) [[A portion of the development impact tax equal to 10% of the cost of a
 315 student seat must be dedicated to land acquisition for new schools.

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

- 317 (1) any Moderately Priced Dwelling Unit built under Chapter 25A or
 318 any similar program enacted by either Gaithersburg or Rockville;

- 319 (2) any other dwelling unit built under a government regulation or
 320 binding agreement that limits for at least 15 years the price or rent
 321 charged for the unit in order to make the unit affordable to
 322 households earning equal to or less than 60% of the area median
 323 income, adjusted for family size;
- 324 (3) any Personal Living Quarters unit built under Sec. 59-A-6.15,
 325 which meets the price or rent eligibility standards for a moderately
 326 priced dwelling unit under Chapter 25A;
- 327 (4) any dwelling unit in an Opportunity Housing Project built under
 328 Sections 56-28 through 56-32, which meets the price or rent
 329 eligibility standards for a moderately priced dwelling unit under
 330 Chapter 25A;
- 331 (5) any non-exempt dwelling unit in a development in which at least
 332 25% of the dwelling units are exempt under paragraph (1), (2), (3),
 333 or (4), or any combination of them; ~~[[and]]~~
- 334 (6) any development located in an enterprise zone designated by the
 335 State or in an area previously designated as an enterprise zone; or
 336 [[based upon the length of time since the expiration of its enterprise
 337 zone status. Within 1 year of its expiration, a full exemption must
 338 apply. Within 2 years of its expiration, 25% of the applicable
 339 development impact tax must apply. Within 3 years, 50% of the
 340 applicable development impact tax must apply. Within 4 years,
 341 75% of the applicable development impact tax must apply. A
 342 project within an area previously designated as an enterprise zone
 343 must be required to pay 100% of the applicable development
 344 impact tax for public school improvements beginning 4 years after
 345 its expiration]]

346 (7) a house built by high school students under a program operated by
 347 the Montgomery County Board of Education.

348 ~~[(d)]~~ ~~[[e)]~~ (d) The tax under this Article does not apply to:

349 (1) any reconstruction or alteration of an existing building or part of a
 350 building that does not increase the number of dwelling units of the
 351 building;

352 (2) any ancillary building in a residential development that:
 353 (A) does not increase the number of dwelling units in that
 354 development; and
 355 (B) is used only by residents of that development and their
 356 guests, and is not open to the public; and

357 (3) any building that replaces an existing building on the same site or
 358 in the same project (as approved by the Planning Board or the
 359 equivalent body in Rockville or Gaithersburg) to the extent of the
 360 number of dwelling units of the previous building, if:

361 (A) construction begins within one year after demolition or
 362 destruction of the previous building was substantially
 363 completed; or

364 (B) the previous building is demolished or destroyed, after the
 365 replacement building is built, by a date specified in a
 366 phasing plan approved by the Planning Board or equivalent
 367 body.

368 However, if in either case the tax that would be due on the new,
 369 reconstructed, or altered building is greater than the tax that would have
 370 been due on the previous building if it were taxed at the same time, the
 371 applicant must pay the difference between those amounts.

372 ~~[(e)]~~ ~~[[f]]~~ (e) If the type of proposed development cannot be categorized
 373 under the residential definitions in Section 52-39 and 52-52, the
 374 Department must use the rate assigned to the type of residential
 375 development which generates the most similar school enrollment
 376 characteristics.

377 (f) A Clergy House must pay the impact tax rate that applies to a place of
 378 worship under Section 52-41(d) if the house:

- 379 (1) is on the same lot or parcel, adjacent to, or confronting the property
 380 on which the place of worship is located; and
 381 (2) is incidental and subordinate to the principal building used by the
 382 religious organization as its place of worship.

383 The place of worship tax rate does not apply to any portion of a Clergy
 384 House that is nonresidential development.

385 **52-55. Tax rates.**

386 (a) The Council must establish the Countywide rates for the tax under this
 387 Article by resolution after a public hearing advertised at least 15 days in
 388 advance. ~~[[are:~~

389

<i>Dwelling type</i>	<i>Tax per dwelling unit</i>
Single-family detached	[\$8000] \$18,878
Single-family attached	[\$6000] \$19,643
Multifamily (except high-rise)	[\$4000] \$15,507
High-rise	[\$1600] \$5,570
Multifamily senior	\$ 0

390]]

391 (b) The tax on any single-family detached or attached dwelling unit must be
 392 increased by \$2 for each square foot of gross floor area that exceeds 3,500
 393 square feet, to a maximum of 8,500 square feet.

394 (c) Any Productivity Housing unit, as defined in Section 25B-17(j), must pay
 395 the tax at 50% of the otherwise applicable rate.

396 (d) [Any non-exempt dwelling unit located in a development where at least
 397 30% of the dwelling units are exempt from this tax under Section 52-
 398 54(c)(1)-(4) must pay the tax at 50% of the applicable rate in subsection
 399 (a).]

400 [(e)] (d) The County Council by resolution, after a public hearing
 401 advertised at least 15 days in advance, may increase or decrease the rates
 402 ~~[[set in]]~~ established under this Section.

403 [(f)] (e) The Director of Finance, after advertising and holding a public
 404 hearing as required by Section 52-17(c), must adjust the tax rates set in
 405 or under this Section effective on ~~[[July 1]]~~ ~~[[January 1]]~~ July 1 of each
 406 ~~[odd-numbered]~~ ~~[[even-numbered]]~~ odd-numbered year~~[[, or on~~
 407 November 15,]] in accordance with the update to the Subdivision Staging
 408 Policy using the latest student generation rates and school construction
 409 cost data [by the annual average increase or decrease in a published
 410 construction cost index specified by regulation for the two most recent
 411 calendar years]. The Director must calculate the adjustment to the nearest
 412 multiple of one dollar~~[[, except that the rate must not be increased or~~
 413 decreased more than 5%]]. The Director must publish the amount of this
 414 adjustment not later than ~~[[May 1]]~~ ~~[[November 1]]~~ May 1 of each [odd
 415 numbered] ~~[[even-numbered]]~~ odd-numbered year.

416 **52-56. Accounting; use of funds.**

417 * * *

418 (d) Revenues raised under this Article may be used to fund planning design,
 419 acquisition of land, site improvements, utility relocation, construction,
 420 and initial furniture and equipment for any:

- 421 (1) new public elementary or secondary school;
- 422 (2) addition to an existing public elementary or secondary school that
- 423 adds one or more teaching stations; [or] or
- 424 (3) modernization of an existing public elementary or secondary
- 425 school to the extent that the modernization adds one or more
- 426 teaching stations[; or
- 427 (4) acquisition of land for a public elementary or secondary school].

428 [(e) Any funds collected for the acquisition of land must be placed in the
 429 MCPS Advance Land Acquisition Revolving Fund (ALARF), to be used
 430 for the purchase of property for new public schools.]

431 **52-58. Credits.**

432 (a) Section 52-47 does not apply to the tax under this Article. A property
 433 owner must receive a credit for constructing or contributing to an
 434 improvement of the type listed in Section 52-56(d), including costs of site
 435 preparation. [A credit must not be allowed for the cost of any land
 436 dedicated for school use, including any land on which the property owner
 437 constructs a school] A property owner may receive credit for land
 438 dedicated for a school site, if:

- 439 (1) the density calculated for the dedication area is excluded from the
 440 density calculation for the development site; and
- 441 (2) the Montgomery County School Board agrees to the site
 442 dedication.

443 (b) If the property owner elects to make a qualified improvement or
 444 dedication, the owner must enter into an agreement with the Director of
 445 Permitting Services, or receive a development approval based on making
 446 the improvement, before any building permit is issued. The agreement
 447 or development approval must contain:

- 448 (1) the estimated cost of the improvement or the fair market value of
449 the dedicated land, if known then;
- 450 (2) the dates or triggering actions to start and, if known then, finish the
451 improvement or land transfer; [.]
- 452 (3) a requirement that the property owner complete the improvement
453 according to Montgomery County Public Schools standards; [.]
454 and
- 455 (4) such other terms and conditions as MCPS finds necessary.

456 (c) MCPS must:

- 457 (1) review the improvement plan or dedication; [.]
- 458 (2) verify costs or land value and time schedules; [.]
- 459 (3) determine whether the improvement is a public school
460 improvement of the type listed in Section 52-56(d) or meets the
461 dedication requirements in subsection (a); [.]
- 462 (4) determine the amount of the credit for the improvement or
463 dedication; [.] and
- 464 (5) certify the amount of the credit to the Department of Permitting
465 Services before that Department or a municipality issues any
466 building permit.

467 * * *

- 468 (e) (1) A property owner must receive a credit for constructing or
469 contributing to the cost of building a new single family residence
470 that meets Level I Accessibility Standards, as defined in Section
471 52-107(a).
- 472 (2) The credit allowed under this Section must be as follows:

- 473 (A) If at least 5% of the single family residences built in the
 474 project meet Level I Accessibility Standards, then the owner
 475 must receive a credit of ~~[\$500]~~ \$250 per residence.
- 476 (B) If at least 10% of the single family residences built in the
 477 project meet Level I Accessibility Standards, then the owner
 478 must receive a credit of ~~[\$1,000]~~ \$500 per residence.
- 479 (C) If at least 25% of the single family residences built in the
 480 project meet Level I Accessibility Standards, then the owner
 481 must receive a credit of ~~[\$1,500]~~ \$750 per residence.
- 482 (D) If at least 30% of the single family residences built in the
 483 project meet Level I Accessibility Standards, then the owner
 484 must receive a credit of ~~[\$2,000]~~ \$1,000 per residence.
- 485 (3) Application for the credit and administration of the credit be in
 486 accordance with Subsections 52-107(e) and (f).
- 487 (4) A person must not receive a property tax credit under this Section
 488 if the person receives any public benefit points for constructing
 489 units with accessibility features under Chapter 59.
- 490 (f) The Director of Finance must not provide a refund for a credit which is
 491 greater than the applicable tax.
- 492 (g) Any credit issued under this Section before December 31, 2015 expires 6
 493 years after the Director certifies the credit. Any credit issued under this
 494 Section on or after January 1, 2016 expires 12 years after the Director
 495 certifies the credit.
- 496 (h) After a credit has been certified under this Section, the property owner or
 497 contract purchaser to whom the credit was certified may transfer all or
 498 part of the credit to any successor in interest of the same property.
 499 However, any credit transferred under this subsection must only be

500 applied to the tax due under this Article with respect to the property for
 501 which the credit was originally certified.

502 **52-59. [[School Facilities Payment]] Reserved.**

503 [[(a) In addition to the tax due under this Article, an applicant for a building
 504 permit for any building on which a tax is imposed under this Article must
 505 pay to the Department of Finance a School Facilities Payment if that
 506 building was included in a preliminary plan of subdivision that was
 507 approved under the School Facilities Payment provisions in the County
 508 Subdivision Staging Policy.]]

509 [[(b) The amount of the Payment for each building must be calculated by
 510 multiplying the Payment rate by the latest per-unit student yield ratio for
 511 any level of school or individual school found to be inadequate for the
 512 purposes of imposing the School Facilities Payment in the applicable
 513 Subdivision Staging Policy and for that type of dwelling unit and
 514 geographic area issued by MCPS.]]

515 [[(c) The Payment rates must be set by Council resolution. The Director of
 516 Finance must adjust the then-applicable Payment rates]] [as of] [[on July
 517 1 of]] [2015 and] [[each]] [later odd- numbered] [[even-numbered]]
 518 [[odd-numbered year, or on November 15, in accordance with the update
 519 to the Subdivision Staging Policy by using the latest student generation
 520 rates and school construction cost data. The Director must calculate the
 521 adjustment to the nearest multiple of one dollar.]] [based on the
 522 construction cost of a student seat for each school level as certified by the
 523 Superintendent of Montgomery County Public Schools for the two most
 524 recent calendar years, to the nearest multiple of \$10.] [[The Director must
 525 publish the amount of this adjustment in the County Register not later
 526 than May 1 of each]] [odd numbered] [[even-numbered]] [[odd-

527 numbered year. The Council by resolution, after a public hearing
 528 advertised at least 15 days in advance, may increase or decrease the
 529 Payment rate or set different rates for different types of housing unit.]]

530 ~~[[The Council must not increase or decrease the rate by more than 5%.]]~~

531 ~~[[~~(d) The Payment must be paid at the same time and in the same manner as
 532 the tax under this Article, and is subject to all provisions of this Article
 533 for administering and collecting the tax.]]

534 ~~[[~~(e) The Department of Finance must retain funds collected under this Section
 535 in an account to be appropriated for MCPS capital improvements that
 536 result in added student capacity for, to the extent possible, the affected
 537 grade level in the school cluster, or, if no cluster is established, another
 538 geographic administrative area, where the development for which the
 539 funds were paid is located.]]

540 **Sec. 2. Effective date; Transition.**

541 This Act takes effect on March 1, 2017. The amendments to the development
 542 impact tax for transportation improvements and the development impact tax for public
 543 school improvements added by Section 1 of this Act, must apply to any application for
 544 a building permit filed on or after March 1, 2017. A property owner who applies for
 545 subdivision approval before January 1, 2017 must pay a transportation mitigation
 546 payment and a school facilities payment at rates the Council establishes by resolution,
 547 after a public hearing advertised at least 15 days in advance, unless the property owner
 548 applies for a building permit on or after March 1, 2017.

549
 550 *Approved:*

551

Nancy Floreen, President, County Council Date