



Committee: PHP
Committee Review: Completed
Staff: Ludeen McCartney-Green, Legislative Attorney
Livhu Ndou, Legislative Attorney
Purpose: Final action – vote expected
Keywords: #BethesdaOverlay #BOZImpact
#SilverSpringOverlay #DDSImpact

AGENDA ITEM #1B
January 16, 2024
Action

SUBJECT

Zoning Text Amendment (ZTA) 23-07, Bethesda (B) Overlay Zone - Park [Improvement] Impact Payments and Downtown Silver Spring (DSS) Overlay Zone Civic Improvement Funds

Lead Sponsor: Then Council President Glass at the Request of the Planning Board

EXPECTED ATTENDEES

Planning Department Staff

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

The Planning, Housing & Parks (PHP) Committee (3-0) recommends approval with clarifying amendments.

DESCRIPTION/ISSUE

ZTA 23-07 would:

- (1) modify the method used to calculate the biennial adjustments and set an inflation limit in the Bethesda Overlay Zone's Park **[[Improvement]] Impact** Payment and the Downtown Silver Spring Overlay Zone's Civic Improvement Fund; and
- (2) generally amend the density provisions of the Bethesda Overlay Zone and the Downtown Silver Spring Overlay Zone.

SUMMARY OF KEY DISCUSSION POINTS

- In June 2023, the Council enacted Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments, along with an accompanying resolution that modified the calculation for the biennial adjustments, the bill established a 20% inflation cap and allows for any excess dollar amount above the cap to carry over and added to the next biennial tax rate adjustment for school and transportation taxes. The law went into effect as of July 1, 2023.
- The purpose of ZTA 23-07, as recommended by the Planning Board (©6), is to mirror and adopt the same changes made to the impact tax calculation in the County Code to the zoning ordinance for: 1) the Park Impact Payment (PIP) within the BOZ Overlay Zone; and 2) the Civic Improvement Fund (CIF) within the DDS Overlay Zone.
- A Planning, Housing, and Parks Committee held a worksession on December 11, 2023, and unanimously recommended approval of ZTA 23-07, with 2 clarifying amendments, which included:

- Inserting the language “adjustment” after the word “rate.” For example, “the Planning Board must cap the biennial PIP and CIF rate **adjustment** not to exceed 20%.” (Lines 35-36 and 68-70).
- Correct the technical error of the ZTA’s subject title. The title was introduced as the “**Park Improvement Payment,**” but the zoning ordinance specifies BOZ density is called, “**Park Impact Payment.**”

This report contains:

ZTA 23-07, with PHP amendments	© 1
Planning Board Recommendation ZTA 23-07	© 6
Planning Staff Memorandum ZTA 23-07	© 8
Climate Assessment	© 15
RESJ Impact Statement	© 17
Planning Board Recommendation Bill 25-23	© 20
Planning Staff Memorandum Bill 25-23	© 22

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MEMORANDUM

January 11, 2024

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney
Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 23-07, Bethesda (B) Overlay Zone - Park
[[Improvement]] Impact Payment and Downtown Silver Spring (DSS) Overlay
Zone Civic Improvement Fund¹

PURPOSE: **Action** – roll call vote expected

Expected Attendees (Invited)

- Jason Sartori, Director, Montgomery County Planning Department
- Lisa Govoni, Housing Planner IV, Montgomery County Planning Department
- Benjamin Berbert, Planner III, Countywide Planning & Policy, Planning Department

Introduction

Zoning Text Amendment (ZTA) 23-07 Bethesda (B) Overlay Zone - Park Impact Payment and Downtown Silver Spring (DSS) Overlay Zone Civic Improvement Fund, lead sponsor then Council President Glass at the request of the Planning Board, was introduced on October 24, 2023.

ZTA 23-07 would modify the method used to calculate the biennial adjustments and set an inflation limit in the Bethesda Overlay Zone’s Park Impact Payment (PIP) and the Downtown Silver Spring Overlay Zone’s Civic Improvement Fund (CIF)

Public Hearing

A public hearing was held on November 28, 2023. There was one speaker, Benjamin Berbert, Planning Staff on behalf of the Planning Board, in support of the ZTA with a recommendation for technical amendment. See, testimony at © 6.

¹ Council staff noticed a partial error with ZTA 23-07 subject name (PIP should be “Park Impact Payment” and not “Park Improvement Payment”). The approval to amend and correct the error is subject to the PHP’s committee vote. See Discussion Item #3 for more details.

Summary of Impact Statements

RESJ Impact Statement

The Office of Legislative Oversight (OLO) provided a Racial Equity and Social Justice (RESJ) Impact Statement on November 22, 2023. OLO found that it could not discern the anticipated impact of ZTA 23-07. OLO noted that, “available data suggests that developers are disproportionately White; however, the actual benefit of this ZTA to developers and its fiscal impact to the County remains unknown. More specifically, it remains unclear how much developers costs for either park impact or civic improvement would decrease with this ZTA. Also unknown is how this ZTA would impact County residents who live, work, or play in these overlay zones.” (© 20)

Climate Assessment

As noted in the Planning Staff Report, the ZTA is anticipated to have no impacts to any climate related variables under Greenhouse Gas Emissions and Sequestration, or Community Resilience and Adaptive Capacity. (© 15)

Planning Board Recommendation

The Planning Board met and discussed the need for ZTA 23-07 at its meeting on June 8, 2023. The Board supports introduction of ZTA 23-07 that would mirror and correct the calculation method related to biennial tax rate adjustments to the PIP and CIF. See, Planning Memo – Section 1 at © 6.

In addition, at the public hearing Planning Staff identified for clarity and consistency, a clarifying amendment to include the word “adjustment” after Park Impact Payment and Civic Improvement Fund on lines 35 and 68 of the ZTA, respectively. See, Planning Memo – Section 3 at © 14.

Background

The Council enacted Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments², which modified the methodology used to calculate the biennial inflation tax rate adjustment. The modification seeks to address a flaw with the calculation of the development impact tax for transportation improvements by using a *cumulative* approach over the prior two years rather than an annual average. The Bill also created a 20% inflation cap on the biennial tax rate adjustment and if the cost index exceeds 20% in subsequent years, the Director must limit the rate adjustment to 20% for transportation and public school impact taxes. This would help to buffer excessive or high inflation rate.

Similarly, the BOZ and DSS Overlay Zone uses the old methodology to calculate Park Impact Payment and Civic Improvement Fund. As a result of the change in County law for development

² Now codified under Code Section 52-49 and 52-55.

impact taxes, Planning Board recommends the zoning ordinance should also be modified and mirror the changes made to the impact taxes.

The BOZ PIP was established by Council in 2017 to fund the acquisition and development of public open space in the Bethesda Downtown Sector Plan area. To acquire bonus density, developments must pay the PIP. Currently, the PIP rate is set at \$10 per square feet of approved BOZ Density gross floor area.³ The Planning Board is required to set or adjust the payment rate on July 1 of each odd numbered year. The BOZ PIP has already been set for this year and the next rate adjustment would be July 1, 2025.

The CIF was established under the Silver Spring Downtown and Adjacent Communities Plan approved by the Council last year to help support more public amenities. The CIF rate is \$5 per square foot of approved residential DSS Density floor area and a rate of \$3 per square foot of approved non-residential DSS Density gross floor area. The Planning Board will set or adjust the next payment rate on July 1, 2024.

What would be the actual dollar amount at the next biennial tax rate adjustment?

Unfortunately, the Planning Board is unable to predict or forecast the actual dollar amount until the inflationary factor is provided. The inflationary factor is based on the published construction cost index issued by the Engineering-News Record's Baltimore Construction Cost Index.

However, for illustrative purposes, below is chart that shows the PIP biennial rate adjustment using the existing methodology (annual average) versus the revised methodology (cumulative). If the cumulative inflation rate exceeds 20%, then the 20% cap would apply. For a more descriptive example, see Planning Memo, Section 3 at © 13.

Park Impact Payment	2017	2018	2019	2020	2021	2022	2023
Methodology							
Avg. Annual	\$10	n.a.	\$11.08	n.a.	\$11.41	n.a.	\$12.49
Cumulative	\$10	n.a.	\$12.27	n.a.	\$13.01	n.a.	\$15.57

Source: *Provided by Planning Staff*

COMMITTEE RECOMMENDATION

The Planning, Housing, and Parks Committee held a worksession on December 11, 2023, and unanimously recommended approval of ZTA 23-07, with 2 clarifying amendments.

1. Clarifying Amendment proposed by Planning Board

As suggested by Planning in its staff report and public testimony, ZTA 23-07 calculation methodology should mirror and be consistent with the final adopted language of Bill 25-23 (Code § 52-49 and 52-55) by adding the word, “adjustment” after the word “rate” for both the PIP and CIF.

³ Section 59.4.9.1.C.2.b.II.B

Amend lines 35-36 and 68-70, as follows:

The Planning Board must cap the biennial Park Impact Payment rate **adjustment** not to exceed 20%.

The Planning Board must cap the biennial Civic Improvement Fund rate **adjustment** not to exceed 20%.

Decision Point: Whether the Committee may wish to adopt the following amendment as described above? **Adopted unanimously by the Committee (3-0).**

2. Technical Amendment

Council staff notes there is an error with the ZTA’s title, as introduced. The Zoning Ordinance specifies the BOZ Density requires a “**Park Impact Payment**” not a “**Park Improvement Payment**.” Council staff recommends the Committee adopt a technical amendment to correct this issue.

ZTA 23-07: Bethesda (B) Overlay Zone - Park ~~[[Improvement]]~~ **Impact** Payment and Downtown Silver Spring (DSS) Overlay Zone - Civic Improvement Fund

Decision Point: Whether to adopt the amendment to correct the ZTA’s title? **Adopted unanimously by the Committee (3-0).**

Next steps: Whether the Committee recommends the adoption of ZTA 23-07, as amended? **Adopted for recommendation by the Committee (3-0) to the full Council.**

This staff packet contains:

ZTA 23-07, with PHP amendments	© 1
Planning Board Recommendation ZTA 23-07	© 6
Planning Staff Memorandum ZTA 23-07	© 8
Climate Assessment	© 15
RESJ Impact Statement	© 17
Planning Board Recommendation Bill 25-23	© 20
Planning Staff Memorandum Bill 25-23	© 22

Ordinance No.: _____
Zoning Text Amendment No.: 23-07
Concerning: Bethesda (B) Overlay
Zone Park Improvement
Payments and Downtown
Silver Spring (DSS)
Overlay Zone Civic
[[Improvement]] Impact
Funds
Revised: 12/11/2023 Draft No.: 3
Introduced: October 24, 2023
Public Hearing: November 28, 2023
Adopted: _____
Effective: _____

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

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

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- (1) modify the method used to calculate the biennial adjustments and set an inflation limit for the Bethesda Overlay Zone’s Park [[Improvement]] Impact Payment and the Downtown Silver Spring Overlay Zone’s Civic Improvement Fund; and
- (2) generally amend the density provisions of the Bethesda Overlay Zone and the Downtown Silver Spring Overlay Zone.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division 4.9.	“Overlay Zones”
Section 4.9.2.	“Bethesda (B) Overlay Zone”
Section 4.9.8.	“Downtown Silver Spring (DSS) Overlay Zone”

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

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-4.9 is amended as follows:

Division 4.9. Overlay Zones

* * *

Section 4.9.2. Bethesda (B) Overlay Zone

* * *

C. Development Standards

* * *

2. Density

* * *

b. BOZ Density means the total square footage of gross floor area by which new development in the Bethesda Downtown Plan Area may cumulatively exceed the maximum square footage of gross floor area allowed under the mapped CR and CRT zones. BOZ Density is determined by subtracting the gross floor area of existing and approved development from 32.4 million (the total gross floor area recommended by the Bethesda Downtown Plan). The Planning Board must periodically publish the gross floor area remaining in BOZ Density.

* * *

ii. Qualification

To qualify for BOZ Density, a proposed development must:

- A. use all gross floor area allowed by the mapped CR or CRT FAR and may not transfer BOZ Density to any other property[.]; and
- B. except as provided under Subsection 3 concerning MPDUs, make a Park Impact Payment before the issuance of any building permit application at a rate

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of \$10 per square foot of approved BOZ Density gross floor area. The Planning Board, after advertising and holding a public hearing, must adjust this payment rate on July 1 of each odd-numbered year by the [annual average] cumulative increase or decrease in a published construction cost index [for] over the prior two [most recent] calendar years. The Planning Board must cap the biennial Park Impact Payment rate adjustment not to exceed 20%. If the biennial tax rate adjustment exceeds 20%, the excess dollar amount must be carried over and added to the Park Impact Payment rate before calculating the next adjustment. If this total adjustment, including any carried over value, again exceeds 20%, the excess dollar amount must be carried over and added to the rate before calculating the next biennial adjustment. If a property owner dedicates land designated in the master plan as a recommended open space to the M-NCPPC Parks Department, the Planning Board may reduce the amount of square footage for which a Park Impact Payment must be made.

* * *

Section 4.9.8. Downtown Silver Spring (DSS) Overlay Zone

* * *

C. Development Standards

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2. Density

* * *

e. Qualification

To qualify for DSS Density, a proposed development must:

- i. Make a contribution to the Civic Improvement Fund before the issuance of any building permit at a rate of \$5 per square foot of approved residential DSS Density gross floor area and at a rate of \$3 per square foot of approved non-residential DSS Density gross floor area
- ii. The Planning Board, after advertising and holding a public hearing, must adjust this payment rate by July 1 of each even-numbered year by the [annual average] cumulative increase or decrease in a published construction cost index [for] over the prior two [most recent] calendar years. The Planning Board must cap the biennial Civic Improvement Fund rate adjustment not to exceed 20%. If the biennial tax rate adjustment exceeds 20%, the excess dollar amount must be carried over and added to the Civic Improvement Fund rate before calculating the next adjustment. If this total adjustment, including any carried over value, again exceeds 20%, the excess dollar amount must be carried over and added to the rate before calculating the next biennial adjustment.

* * *

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of District Council adoption.



November 22, 2023

To: The Honorable Evan Glass, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Zoning Text Amendment 23-07, Bethesda Overlay Zone – Park Improvement Payments, and
Downtown Silver Spring Overlay Zone - Civic Improvement Funds

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on November 16, 2023, and by a vote of 5:0 recommended support for Zoning Text Amendment (ZTA) 23-07 with minor amendments for clarification and consistency. This ZTA is introduced at the request of the Planning Board, to amend the methodology for calculating the biennial rate adjustments for the Bethesda Overlay Zone’s Park Improvement Payments (PIP) and the Downtown Silver Spring Overlay Zone’s Civic Improvement Fund (CIF).

The change proposed in the ZTA aligns with the change in methodology that was discussed and approved as part of Bill 25-23, which updated the methodology for calculating the biennial adjustments to the transportation impact taxes. Currently, the methodology for calculating the biennial rate adjustments for the PIP and CIF is based on an average of the previous two years’ increase to the construction cost index. This leads to a substantial under-calculation of the real rate of change in construction prices. The ZTA amends the methodology to calculate the rate adjustment based on the previous two-year cumulative change, fully capturing the changes in construction costs.

Similar to Bill 25-23, ZTA 23-07 also introduces a 20 percent cap on increases to the PIP and CIF rates, with a carry-over provision that would track any increases exceeding 20 percent to be applied at the start of the following biennial rate adjustment. This provision shields developers from excessive rate adjustments in the short term while allowing the fund rates to eventually reach equilibrium with actual inflation levels.

For consistency with the final language approved with Bill 25-23, and for clarity, the Board recommends adding the word ‘adjustment’ in the language of both the PIP and the CIF language as follows:

... rate adjustment not to exceed 20%...

This change would be on lines 35-36 in the PIP portion of the ZTA, and lines 68-70 in the CIF portion.

The Board also reviewed the Climate assessment prepared by Planning staff for ZTA 23-07. The assessment found there would be no impact on greenhouse gas emissions, sequestration efforts, adaptive capacity, or resiliency since the ZTA only modifies the methodology for calculating fund payment rates and has no material impact on policies impacting the built environment.

The Planning Board appreciates the District Council's introduction of ZTA 23-07, and the opportunity to review the ZTA and provide these recommendations. Planning staff is available to assist if the Council has any questions.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, November 16, 2023.



Artie L. Harris
Chair

Attachments:

A - Planning Board Staff Packet

Montgomery Planning

ZTA 23-07

**BETHESDA OVERLAY ZONE – PARK IMPROVEMENT PAYMENTS
AND DOWNTOWN SILVER SPRING OVERLAY ZONE – CIVIC
IMPROVEMENT FUNDS**

Description

This ZTA modifies the way the biennial adjustments for inflation are calculated for the Bethesda Overlay Zone’s Park Improvement Payments and the Downtown Silver Spring Overlay Zone’s Civic Improvement Fund.

ZTA 23-07

Completed: 11-09-2023

MCPB

Item No. 12

11-16-2023

Montgomery County

Planning Board

2425 Reedie Drive, Floor 14

Wheaton, MD 20902

Planning Staff



Benjamin Berbert, Planner III, Countywide Planning and Policy
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Jason Sartori, Chief, Countywide Planning and Policy
Jason.Sartori@montgomeryplanning.org, 301-495-2172

ZTA SPONSORS

Lead Sponsor:

Council President Glass at the request of the
Planning Board

INTRODUCTION DATE

October 24, 2023

REVIEW BASIS

Chapter 59



Summary:

- ZTA 23-07 was requested by the Planning Board on June 8, 2023 as a result of Bill 25-23, which amended the calculations for the biennial adjustments to the school and transportation impact taxes. The Park Impact Payments and Civic Improvement Fund use the same flawed methodology previously used for adjustments to the transportation impact taxes.
- The new methodology calculates inflation based on a cumulative increase and caps how much the rates can increase every two years.

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SECTION 1: BACKGROUND

RATIONALE FOR INTRODUCTION

Zoning Text Amendment (ZTA) 23-07, Bethesda (B) Overlay Zone – Park Improvement Payments (PIP) and Downtown Silver Spring (DSS) Overlay Zone Civic Improvement Funds (CIF), was introduced by Council President Glass at the request of the Planning Board on October 24, 2023 (Attachment A). The ZTA is scheduled for a District Council Public Hearing on November 28, 2023. The need for this ZTA arose during the Planning Board’s review of Bill 25-23, discussed at its meeting on June 8, 2023. The issue corrected by Bill 25-23 is the methodology used to calculate the biennial inflation adjustments made to transportation impact taxes. ZTA 23-07 corrects the same issue for adjustments to the PIP and CIF.

The current methodology for calculating the biennial PIP and CIF inflation updates uses an annual average of inflation over the two-year period. The methodology proposed by this ZTA instead adjusts rates using the cumulative inflation over the previous two-year period. Like the changes to the impact tax adjustments in Bill 25-23, the proposed methodology for the PIP and CIF also includes a 20% cap on any biennial adjustment. Planning Staff identified during the review of Bill 25-23 that the Zoning Code used the same inflation adjustment methodology as impact taxes and recommended to the Board that the changes should be made consistently across all chapters of the code. The Board agreed and recommended to the Council on June 8th that this ZTA be introduced.

SECTION 2: ZTA 23-05 AS INTRODUCED

ZTA NO. 23-07 AS INTRODUCED

ZTA 23-07 modifies code in two areas: the Development Standards – Density – Qualification sub-section of the Bethesda Overlay Zone (Section 59-4.9.2.C.2.b.ii); and the Development Standards – Density – Qualification sub-section of the Downtown Silver Spring Overlay Zone (Section 59-4.8.C.2.e). The modifications are effectively the same in both overlay zones, which are shown below in context of the larger Qualification section.

Bethesda

ii. Qualification

To qualify for BOZ Density, a proposed development must:

- A. Use all gross floor area allowed by the mapped CR, or CRT FAR and may not transfer BOZ Density to any other property [.] and
- B. Except as provided under Subsection 3 concerning MPDUs, make a Park Impact Payment before issuance of any building permit application at a rate of \$10 per square

foot of approved BOZ Density gross floor area. The Planning Board, after advertising and holding a public hearing, must adjust this payment rate on July 1 of each odd-numbered year by the [annual average] cumulative increase or decrease in a published construction cost index [for] over the prior two [most recent] calendar years. The Planning Board must cap the biennial Park Impact Payment rate not to exceed 20%. If the biennial tax rate adjustment exceeds 20%, the excess dollar amount must be carried over and added to the Park Impact Payment rate before calculating the next adjustment. If this total adjustment, including any carried over value, again exceeds 20%, the excess dollar amount must be carried over and added to the rate before calculating the next biennial adjustment. If a property owner dedicates land designated in the master plan as a recommended open space to the M-NCPPC Parks Department, the Planning board may reduce the amount of square footage for which a Park Impact Payment must be made.

Downtown Silver Spring

e. Qualification

To qualify for DDS Density, a proposed development must:

- i. Make a contribution to the Civic Improvement Fund before the issuance of any building permit at a rate of \$5 per square foot of approved residential DDS Density gross floor area and a rate of \$3 per square foot of approved non-residential DDS Density gross floor area.
- ii. The Planning Board, after advertising and holding a public hearing, must adjust this payment rate on July 1 of each even-numbered year by the [annual average] cumulative increase or decrease in a published construction cost index [for] over the prior two [most recent] calendar years. The Planning Board must cap the biennial Civic Improvement Fund rate not to exceed 20%. If the biennial tax rate adjustment exceeds 20%, the excess dollar amount must be carried over and added to the Civic Improvement Fund rate before calculating the next adjustment. If this total adjustment, including any carried over value, again exceeds 20%, the excess dollar amount must be carried over and added to the rate before calculating the next biennial adjustment.

SECTION 3: ZTA ANALYSIS AND RECOMMENDATIONS

ZTA 23-07 ANALYSIS AND RECOMMENDATIONS

Planning staff recommends the Planning Board support ZTA 23-07 as introduced, with two minor revisions for accuracy and consistency with the language adopted from Bill 25-23, which were added after the Board made its initial ZTA request to the District Council. This ZTA is a result of a request the Planning Board made in June 2023 to update the biennial adjustments to the PIP and CIF rates to match the updated methodology that was being considered and is now approved for impact taxes.

The old methodology used the average of the two individual years' rates of inflation whereas the new methodology uses a cumulative rate of inflation over the two-year period.

The old methodology that took the two-year average was under-representing the actual inflationary increases to impact taxes and fund rates because rather than capturing the full price increases over the previous two-year period, it captured an 'averaged' change which under-captured the inflation rate. As a simple example, under the previous method, if year 1 had an inflation rate of 4% and year two had an inflation rate of 6%, the two-year average change was calculated as 5%, therefore the biennial increase to the PIP and CIF rates would be only 5%. The new methodology uses the cumulative inflation rate change over the previous two-year period, accurately capturing the actual inflation over that time. In the same 4% and 6% inflation scenario above, the calculated rate increase would be calculated as 10.2%,¹ which aligns with the actual total change to inflation over the two-year period and is more than twice the increase under the previous methodology.

To keep the biennial changes in PIP and CIF rates from being excessive and burdensome, a 20% cap for any two-year period is proposed. If the cumulative rate increase over the previous two-years is less than 20%, the full calculated increase would apply. However, if inflation rates are high and the cumulative increase over the previous two-years is over 20%, the rate increase that would apply is 20%. Any rate increases above 20% would be converted into a corresponding dollar value, and then applied to the PIP and CIF rates before calculating the next biennial adjustment.

To visualize this, the following simple scenarios assume an existing or 'base' rate of \$10. Under Scenario One, the assumed cumulative inflation is 14%. The new rate would be calculated as $\$10 \times 14\%$ (\$1.40) + \$10 (previous base) = \$11.40. When the next biennial adjustment is calculated, the new base rate would start as \$11.40. In Scenario Two, the assumed cumulative inflation rate is 24%. In this scenario the 20% cap would apply. The new rate would be calculated as $\$10 \times 20\%$ (\$2) + \$10 = \$12, plus the excess 4% which is rolled over as a dollar amount $\$10 \times 4\%$ (\$0.40). The next biennial adjustment when calculated would have a base rate of \$12.40 which includes the rolled over dollar amount in excess of the 20% cap (\$12 + \$0.40). For purposes of calculating the cumulative increase, the set rate of \$12 is used and the applied roll over of \$0.40 counts toward calculating the new 20% cap. This carry-over of the inflation in excess of 20% ensures the rates are able to eventually catch up with reality once inflation rates fall low enough for the cap to no longer apply. If there are multiple years of very high inflation causing successive years of 20% or more biennial adjustment, the excess will continue rolling forward.

As a point of consistency and clarity, both the PIP and CIF language should have the word 'adjustment' added as follows, shown in red text for clarity, to be consistent with the final adopted language of Bill 25-23.

¹ The new methodology recognizes the compounding nature of inflation, which is why the cumulative inflation is 10.2% and not simply 6% + 4%, or 10%.

Lines 35-36 of the ZTA:

...The Planning Board must cap the biennial Park Impact Payment rate adjustment not to exceed 20%...

Lines 68-70 of the ZTA:

...The Planning Board must cap the biennial Civic Improvement Fund rate adjustment not to exceed 20%...

SECTION 4: LEGISLATED ANALYSIS

CLIMATE ASSESSMENT

Bill 3-22, passed by the County Council on July 12, 2022, requires the Planning Board to prepare a climate assessment for each zoning text amendment, master plan, and master plan amendment, effective March 1, 2023. Each climate assessment must include the potential positive or negative effects a ZTA may have on climate change (including greenhouse gas emissions) and upon community resilience and adaptive capacity. The climate impact assessment for ZTA 23-07 is attached in Attachment B.

The ZTA is anticipated to have no impacts to any climate related variables under the Greenhouse Gas Emissions and Sequestration, or Community Resilience and Adaptive Capacity. The ZTA only modifies a formula used to calculate fund payments developers make on certain projects in Silver Spring and Bethesda and will not have any impact on the built or social environment.

RACIAL EQUITY AND SOCIAL JUSTICE (RESJ)

As of the posting of this staff report, the Office of Legislative Oversight has not completed a Racial Equity and Social Justice analysis for ZTA 23-07.

SECTION 5: CONCLUSION

Planning staff recommends the Planning Board support ZTA 23-07 as introduced with minor modifications as indicated above. This ZTA updates the methodology for calculating the biennial rate adjustments to a more accurate, cumulative approach, that includes safeguards in times of high inflation. This new methodology will mirror the newly adopted methodology for adjusting transportation impact tax rates.

ATTACHMENTS

Attachment A: Zoning Text Amendment 23-07 Intro Packet

Attachment B: Climate Assessment for ZTA 23-07

Montgomery Planning

CLIMATE ASSESSMENT FOR 23-07, BETHESDA OVERLAY ZONE - PARK IMPROVEMENT PAYMENTS AND DOWNTOWN SILVER SPRING (DDS) OVERLAY ZONE - CIVIC IMPROVEMENT FUNDS

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of master plans and zoning text amendments (ZTAs) on the county's contribution to addressing climate change. These assessments will provide the County Council with a better understanding of the potential climate impacts and implications of proposed master plans and ZTAs, at the county level. The scope of the Climate Assessments is limited to addressing climate change, specifically the effect of land use recommendations in master plans and ZTAs on greenhouse gas (GHG) emissions and sequestration, and how actions proposed by master plans and ZTAs could improve the county's adaptive capacity to climate change and increase community resilience.

SUMMARY

The zoning text amendment (ZTA) 23-07 recommends modifications to the method the biennial adjustments are calculated and set an inflation limit in the Bethesda Overlay Zone's Park Improvement Payment and the Downtown Silver Spring Overlay Zone's Civic Improvement Fund.

CLIMATE-RELATED VARIABLES

GHG Emissions and Sequestration Checklist of Variables.

- None.

Community Resilience and Adaptive Capacity Impact Variables.

- None.

BACKGROUND AND PURPOSE OF ZTA 23-06

Zoning Text Amendment (ZTA) 23-07, Bethesda (B) Overlay Zone – Park Improvement Payments (PIP) and Downtown Silver Spring (DSS) Overlay Zone Civic Improvement Funds (CIF), was introduced by Council President Glass at the request of the Planning Board on October 24, 2023. The need for this ZTA arose during the Planning Board's review of Bill 25-23, at its meeting on June 8, 2023. The issue corrected by Bill 25-23 and that is now proposed for correction with ZTA 23-07 is the methodology used to calculate the biennial adjustments made to impact taxes, and the PIF and CIF because of inflation. The old methodology calculated inflation as an average rate of change over a two-year period, while the new methodology looks at a cumulative change in inflation.

ANTICIPATED IMPACTS

GREENHOUSE GAS EMISSIONS, CARBON SEQUESTRATION, AND DRAWDOWN

Montgomery Planning anticipates ZTA 23-07 will result no greenhouse gas increases or decreases. Nor will the ZTA result in positive or negative carbon sequestration and drawdown rates. The ZTA is an adjustment in the rate of calculation to the impact tax.

COMMUNITY RESILIENCE AND ADAPTIVE CAPACITY

Montgomery Planning anticipates ZTA 23-07 will have no impact and/or changes to community resilience and adaptive capacity.

RELATIONSHIP TO GREENHOUSE GAS REDUCTION AND SEQUESTRATION ACTIONS CONTAINED IN THE MONTGOMERY COUNTY CLIMATE ACTION PLAN (CAP)

ZTA 23-07 will not have any positive or negative impacts to greenhouse gas or carbon sequestration thereby it will not impact the goals within the County's Climate Action Plan.

RECOMMENDED AMENDMENTS

Planning staff does not have any recommended climate-related amendments to ZTA 23-07 because it will have no impact on the county's climate and/or sequestration rates.

SOURCES OF INFORMATION, ASSUMPTIONS, AND METHODOLOGIES USED

The climate assessment for ZTA 23-06 was prepared using the methodology (Tables 1, 2, and 8, in particular) for ZTAs contained within the [*Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, December 1, 2022*](#).

Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

ZTA 23-07: BETHESDA OVERLAY ZONE - PARK IMPROVEMENT PAYMENTS AND DOWNTOWN SILVER SPRING OVERLAY ZONE - CIVIC IMPROVEMENT FUNDS

SUMMARY

The Office of Legislative Oversight (OLO) cannot discern the anticipated impact of ZTA 23-07, Bethesda Overlay Zone – Park Improvement Payments and Downtown Silver Spring Overlay Zone – Civic Improvement Funds – on racial equity and social justice (RESJ) in the County with available data.

PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements (RESJIS) for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership 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 harms that have caused racial and social inequities.²

PURPOSE OF ZTA 23-07

The purpose of ZTA 23-07 is to modify biennial adjustments to the Bethesda Overlay Zone’s Park Improvement Payment and the Downtown Silver Spring Overlay Zone’s Civic Improvement Fund to mirror changes in how impact taxes are calculated for transportation and public-school improvements codified by Expedited Bill 25-23 that became effective June 30, 2023.³

ZTA 23-07 would calculate changes in park improvement payments and civic improvement fund taxes based on a two-year change in construction costs rather than combine the annual change in costs for a two-year period. ZTA 23-07 would also cap biennial increases to a 20 percent inflation cap for both development taxes and require that any biennial tax rate adjustments exceeding 20 percent be carried over and added to the next biennial adjustment. ZTA 23-07 also amends the density provisions of the Bethesda Overlay Zone and the Downtown Silver Spring Overlay Zone.

ZTA 23-07 was introduced on October 24, 2023. Of note, this RESJIS builds on two RESJIS’s for:

- Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public-School Improvements - Amendments, published on June 8, 2023;⁴ and
- ZTA 23-06, Fenton Village Overlay Zone, published on November 1, 2023.⁵

Refer to these RESJIS’s for background on commercial real estate, capital projects, and racial equity.

RESJ Impact Statement

Zoning Text Amendment 23-07

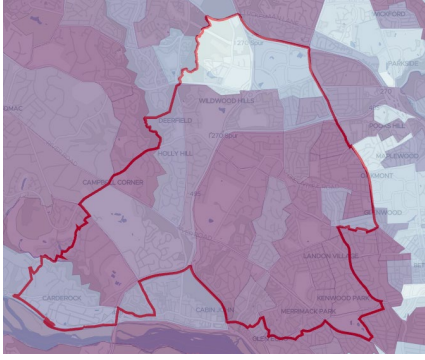
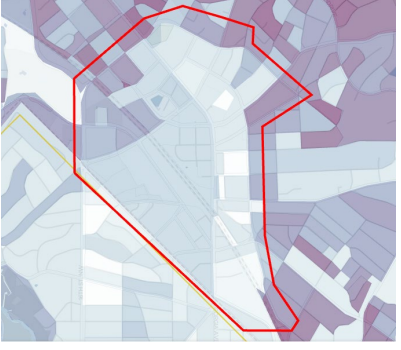
ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of ZTA 23-07 on racial equity and social justice, OLO considers two related questions:

- Who are the primary beneficiaries of this ZTA?
- What racial and social inequities could passage of this ZTA weaken or strengthen?

Consistent with the RESJIS for Expedited Bill 25-23, OLO anticipates that developers could benefit from the cap in development taxes for park improvements in Bethesda and civic improvement funds for Downtown Silver Spring associated with ZTA 23-07. Available data suggests that developers are disproportionately White. However, the actual benefit of this ZTA to developers and its fiscal impact to the County remains unknown. More specifically, it remains unclear how much developers costs for either park improvement or civic improvement would decrease with this ZTA.

Also unknown is how this ZTA would impact County residents who live, work, or play in these overlay zones. While the racial demographics of those residing in Bethesda and Downtown Silver Spring overlays are known, with White constituents accounting for a majority of residents in Bethesda and a minority of residents in Downtown Silver Spring per the table below, the racial demographics of people who work and enjoy free time in these communities are unknown. As such, OLO cannot discern the anticipated impact of ZTA 23-07 on RESJ in the County with available data.

	BETHESDA ⁶	DOWNTOWN SILVER SPRING⁷
		
Race	2021 Population: 7,412 ^{8*}	2021 Population: 66,294^{9**}
White	70.1%	41.1%
Black	4.69%	25.8%
Latinx	9.03%	9.5%
Asian	11.3%	5.8%
Two or more races	4.37%	17.6%

Source: ^{*}Data USA 2021 ^{**}Citydata.com (unofficial)

RECOMMENDED AMENDMENTS

Bill 44-20 amending the County’s Racial Equity and Social Justice Act¹⁰ requires OLO to consider whether recommended amendments aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements for zoning text amendments. OLO cannot discern the anticipated impact of ZTA 23-07 on RESJ in the County with available data. As such, OLO does not offer recommended amendments.

RESJ Impact Statement

Zoning Text Amendment 23-07

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council’s decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO’s endorsement of, or objection to, the ZTA under consideration.

CONTRIBUTIONS

OLO staffers Elsabett Tesfaye, Performance Management and Data Analyst, and Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this RESJ impact statement.

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

² Ibid.

³ RESJIS for Bill 25-23E, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments, Montgomery County Office of Legislative Oversight, June 8, 2023.

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2023/Bill25-23E.pdf>

⁴ Racial Equity and Social Justice (RESJ) Impact Statement. Office of Legislative Oversight-RESJIS Expedited Bill 25-23 - Taxation – Development Impact Taxes for Transportation and Public School Improvements – Amendments. June 8, 2023

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2023/Bill25-23E.pdf>

⁵ Racial Equity and Social Justice (RESJ) Impact Statement. Office of Legislative Oversight-RESJIS ZTA 23-06 – Fenton Overlay Zone – Site Plan. November 1, 2023 <https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/ZTA/2023/ZTA23-06.pdf>

⁶ Data USA. 2023. Demographics, Bethesda, Maryland

<https://datausa.io/profile/geo/bethesda-md/>

⁷ City Data.com.2023. Downtown Silver Spring (Downtown) neighborhood in Silver Spring, Maryland (MD), 20910 detailed profile.

<https://www.city-data.com/neighborhood/Downtown-Silver-Spring-Silver-Spring-MD.html>

⁸ Data USA. 2023.

⁹ City Data.com.2023.

¹⁰ Bill 44-20, Racial Equity and Social Justice – Impact Statements – Advisory Committee – Amendments, Montgomery County, Maryland, December 1, 2020.

https://apps.montgomerycountymd.gov/ccllims/DownloadFilePage?FileName=2682_1_12149_Bill_44-20_Signed_20201211.pdf

June 8, 2023

To: The Honorable Evan Glass
President, Montgomery County District Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Proposed Zoning Text Amendment – Park Impact Payment and Civic Improvement Fund

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on June 8, 2023 and by a vote of 4:0 (Commissioner Bartley absent) recommended a new Zoning Text Amendment (ZTA) that would update the way the Park Impact Payment (PIP) and Civic Improvement Fund (CIF) are adjusted for inflation. The current bi-annual adjustments to the PIP and CIF are based on the same annual averaging methodology Bill 25-23E seeks to amend for updates to the transportation impact tax rates. This ZTA would mirror the proposed changes to the impact tax calculations recommended by the Board in its comments on Bill 25-23E.

The PIP is collected from developments within the Bethesda Overlay Zone, on a square footage basis, that exceed the mapped zoning density and meet certain requirements. The CIF is a similar payment that applies to projects in the Downtown Silver Spring Overlay Zone. The PIP is recalculated by July 1 of each odd-numbered year, and the CIF is recalculated by July 1 of each even-numbered year. The existing code has the adjustment based on an annual average change in construction costs whereas the new methodology would base the adjustment on a cumulative change in construction costs. The ZTA also limits the adjustments to no more than a 20 percent increase and provides for carrying over any excess increase to future recalculations.

The Planning Board appreciates the Council's consideration of this ZTA to update the PIP and CIF rate adjustment procedures to match the proposed changes to the transportation impact tax recalculation procedures. Planning staff are available to assist if the Council has questions or requests additional analysis pertaining to the impacts to the PIP and CIF rates.

The Honorable Evan Glass

June 8, 2023

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CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, June 8, 2023.



Jeffrey Zyontz

Chair

Attachments:

A - Planning Board Staff Packet Bill 25-23E and Proposed ZTA

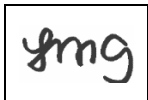
EXPEDITED BILL 25-23, TAXATION - DEVELOPMENT IMPACT TAXES FOR TRANSPORTATION AND PUBLIC SCHOOL IMPROVEMENTS – AMENDMENTS



Description

Expedited Bill 25-23 would modify the calculations for tax rate adjustments for transportation improvements by requiring a cumulative increase or decrease in the construction cost index rather than an annual average every two years. The bill would also establish a cap on the development impact tax rate for school and transportation improvements, allow certain increases to the biennial tax rate adjustments, and generally amend the law governing transportation and school development impact taxes.

Planning Staff



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SUMMARY

- Expedited Bill 25-23 would do the following:
 - Modify the calculations for tax rate adjustments for transportation improvements by requiring cumulative increase or decrease in the construction cost index rather than an annual average every two years.
 - Set a cap on the development impact tax rate for school and transportation improvements.
 - Allow certain carryover increases of the biennial tax rate adjustments.
 - Generally, amend the law governing transportation and school development impact taxes.

BILL INFORMATION

Sponsors

Lead Sponsors: Councilmember Friedson, Glass,
and Stewart

Co-sponsor: Councilmember Fani-González

Review Basis

Chapter 52, Taxation

Public Hearing

June 13, 2023

Introduction Date

May 18, 2023

Planning Division

Countywide Planning & Policy

Planning Board Information

MCPB

Item No. 5

June 8, 2023

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EXPEDITED BILL 25-23, TAXATION - DEVELOPMENT IMPACT TAXES FOR TRANSPORTATION AND PUBLIC SCHOOL IMPROVEMENTS – AMENDMENTS

BACKGROUND

Chapter 52 requires the Director of Finance to adjust and publish updated development impact tax rates for transportation and public schools every two years, by May 1 of odd-numbered years.

The current law requires the transportation impact tax rates to be recalculated based on the annual average increase or decrease in a published construction cost index over the most recent two calendar years. The law has been interpreted as taking the average of the two annual index changes. The increase in the index in 2021 over 2020 was 6.05 percent, and the increase in the index in 2022 over 2021 was 12.89 percent. The average of those two increases is 9.47 percent. Therefore, the Director of Finance published updated rates to take effect on July 1 reflecting 9.47 percent increases.

School impact tax rates are calculated on a biennial basis by the Planning Department on behalf of the Department of Finance based on the latest school enrollment data (from MCPS), housing inventory data (from SDAT) and school construction costs (from MCPS). Student generation rates (SGRs) capture the average number of public school students living in a particular housing type and geography combination. Montgomery Planning calculates SGRs for eight combinations of housing types (single-family detached and attached, and multifamily low-rise and high-rise) and school impact areas (turnover and infill) using the current school year’s official and complete enrollment and a corresponding housing dataset. For the school impact taxes, the tax rates are reset and recalculated

to their true value every biennial update based on actual SGRs and actual MCPS school construction costs.

The table below demonstrates the percentage increases by unit and area type set to take effect on July 1:

	Infill Areas	Turnover Areas
Single-family detached	+45.6%	+41.3%
Single-family attached	+44.2%	+42.7%
Multi-family low-rise	+69.0%	+57.0%
Multi-family high-rise	+57.8%	+129.2%

This biennial increase for school impact taxes is much higher than previous adjustment updates.

The main driver for these rate increases is the increase in school construction cost per student. Compared to the construction costs provided by MCPS two years ago, the current cost to construct an elementary school is 34 percent higher; the cost to build a middle school is 44 percent higher; and the cost to build a high school is 53 percent higher per MCPS.

Relatedly, while the main driver for the increases was increased construction costs, the increase in student generation rates played a role in the increase for multifamily impact taxes. While current school year enrollments are up from the last time SGRs were calculated using pandemic-depressed 2020-21 enrollments, the enrollment increase is not uniformly distributed across housing types. Countywide, single-family detached and single-family attached SGRs fell 1.3 percent and 0.6 percent, respectively. Meanwhile, the multifamily SGRs increased 19.1 percent for units in low-rise structures (four stories or less) and 14.3 percent for units in high-rise structures (five stories or more). As a result, the increase in student generation rates played a larger role in increasing multifamily impact taxes. For example, 47 percent of the increase in the Turnover Impact Area Multifamily High-Rise impact tax was due to increased enrollment from those units.

Figure 1 below demonstrates this increase in each of the eight school impact tax rates and the portions of each increase that can be attributed to increased school construction costs (in orange) and the change in student generation rates (in blue). As discussed above, the main driver for the increase was largely increased construction costs for schools, with the increase in student generation rates playing a larger role in increasing multifamily impact taxes.

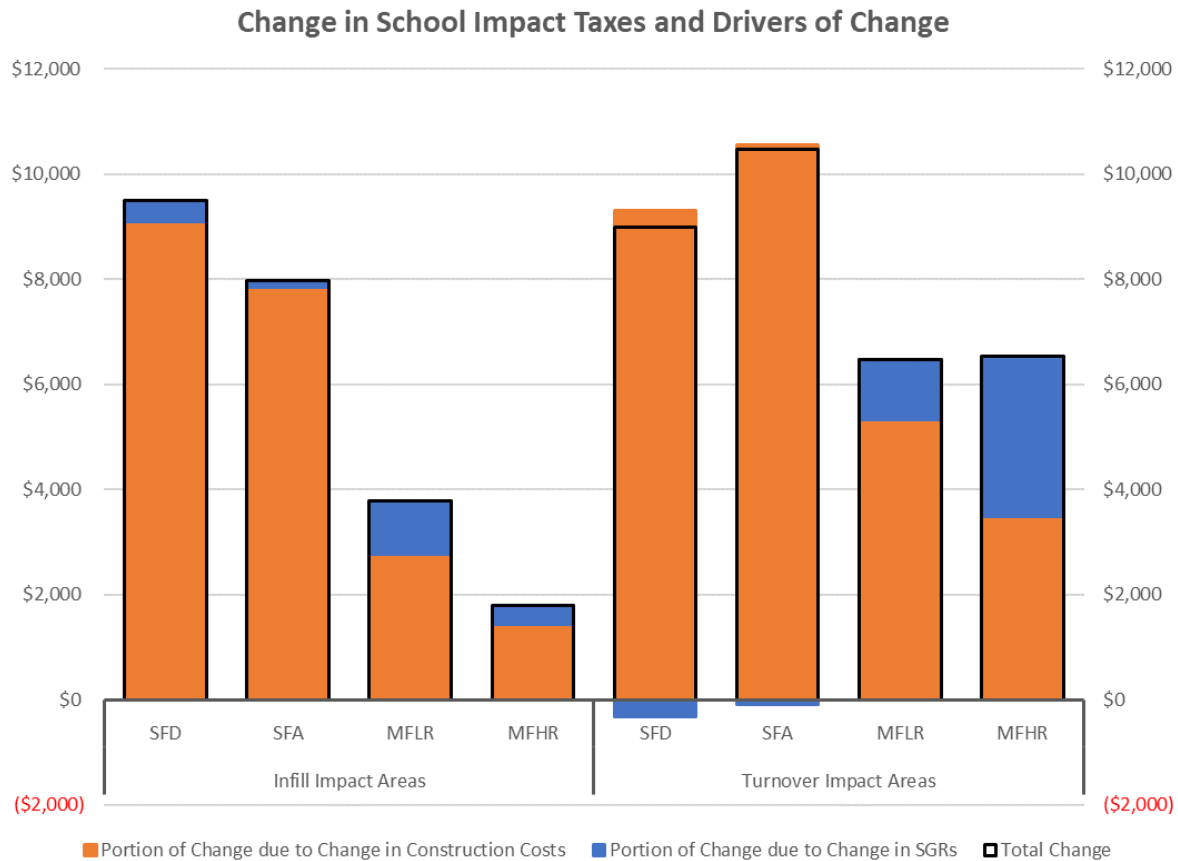


Figure 1 Change in School Impact Taxes and Drivers of Change

Planning staff also believes that the increase in multifamily student generation rates is indicative of the current housing market. Since 2019, the average sold price has increased by 32 percent for detached homes, and 18 percent for attached homes (Source: BrightMLS). Families are being priced out of single-family units and are opting instead to live in less expensive multifamily units (or live in them longer). Multifamily structures still see substantially fewer students on a per unit basis than single-family units. However, compared to enrollment data from two years ago when the impact tax rates were last updated, there are currently more students living in multifamily units.

BILL 25-23 OVERVIEW

Transportation Impact Taxes

Expedited Bill 25-23 would amend Section 52-49 regarding the calculation of tax rate adjustments for development impact taxes for transportation improvements by using a cumulative approach over the prior two years rather than an annual average. Applying the cumulative inflation factor to the current transportation impact tax rates would increase the rates by approximately 19 percent instead of the previously published increase of 9.47 percent.

There would also be a cap on biennial tax rate increases. The Director of Finance would have to cap the biennial tax rate to not exceed 20 percent. If the biennial tax rate adjustment is calculated to exceed 20 percent, the excess percentage amount must be carried over and added to the next biennial adjustment. If the next biennial tax adjustment again exceeded 20 percent, the excess percentage is then again carried over and added to the next biennial adjustment.

School Impact Taxes

Section 52-55, pertaining to the update of the school impact tax rates, would be amended to follow similar procedures as proposed for transportation impact taxes. The Director of Finance would have to cap the biennial impact tax adjustment to not exceed 20 percent. If the biennial tax rate adjustment is calculated to exceed 20 percent, the excess percentage amount must be carried over and added to the next biennial adjustment. If the next biennial tax adjustment again exceeded 20 percent, the excess percentage is then again carried over and added to the next biennial adjustment.

ANALYSIS AND RECOMMENDATIONS

On the transportation side, Planning staff supports the cumulative approach, the 20 percent cap and the use of a carryover balance. The cap and carryover system will help soften the impact of higher than average transportation impact tax updates, and the carryover ensures the easing of the previous discount to return to the true impact tax rates.

While Planning staff supports the approach for transportation impact taxes, staff believes it would be the most accurate to returning the rates to their true values by banking a dollar amount instead of a percentage.

Using a hypothetical example that assumes a true increase of 25 percent in the first update and a true increase of 10 percent in the second update, the tables below illustrate the difference between the percentage and dollar amount carryover approaches. Without the cap and carry provisions, a \$5,000 tax rate would initially increase to \$6,250 and then to \$6,875 after the second update.

By carrying over a percentage, the calculation overcompensates because the banked percentage is being applied in the second update to a higher base rate. Instead of applying the banked 5 percent to the original \$5,000, it is now being applied to \$6,000, which results in increasing the impact tax rate beyond the true rate. Overtime, whether a future carryover applies or not, the rates will continue to move further and further away from the true rates.

Percentage Carryover Approach

Update	Starting Tax Rate	Inflation Factor	Updated Tax Rate	Carryover Percentage
1	\$5,000	20% (25%-5%to carryover)	\$6,000	5%
2	\$6,000	15% (10%+5% from carryover)	\$6,900	0%

However, the dollar amount carryover approach ensures that the impact tax rates will always return to the true rate.

Dollar Amount Carryover Approach

Update	Starting Tax Rate	Add Carryover	Inflation Factor	Updated Tax Rate	Apply 20% Cap	Carryover Amount
1	\$5,000	\$5,000	25%	\$6,250	\$6,000	\$250
2	\$6,000	\$6,250	10%	\$6,875	\$6,875	\$0

Staff recommends modifying Section 52-49 to add specificity, clarity, and to change the carryover from a percentage to a dollar amount for the transportation impact tax biennial update.

- (2) *Carryover of biennial tax rate adjustments in excess of 20%.* If the biennial tax rate adjustment exceeds 20%, the excess [[percentage]] dollar amount must be carried over and added to the tax rate before calculating the next biennial adjustment. If this total adjustment, [[which is also capped at 20%]] including any carried over value, again exceeds 20%, the excess [[percentage]] dollar amount must be carried over and added to the tax rate before calculating the [[following]] biennial adjustment.

On the school side, Planning staff supports the 20 percent cap. Given the large increase seen in impact tax rates in the most recent biennial update, a cap will lessen the impact and ensure that impact taxes are not increasing at unattainable rates that could make development in Montgomery County untenable.

Staff does not support the carryover on the school side. Impact taxes rates are calculated to estimate the impact of new development on the county’s school and transportation infrastructure. The point of the carryover should be to bring the tax rate to the true value over time after it has been artificially reduced due to the cap. The carryover makes sense on the transportation side because the biennial update does not involve a full reset of transportation infrastructure costs. On the school side, the true value is achieved automatically every time the rates are updated. Applying the carryover after the biennial recalculation would cause the impact tax rates to overcharge developers for their impact on enrollment. Essentially, future projects would be overpaying for the discounts offered to earlier projects. Staff illustrates this in the hypothetical example. On the transportation side, applying the carryover is just telling future projects that they’ll be paying the appropriate share because we’re applying previous inflation that was never factored into the tax rate because of the cap.

Update	Calculated Tax Rate	Calculated Tax Rate Increase	Used Tax Rate	Used Tax Rate Increase	Cumulative Carryover
0	\$5,000		\$5,000		
1	\$7,100	42.0%	\$6,000	20.0%	\$1,100
2	\$7,700	8.5%	\$7,200	20.0%	\$1,600
3	\$8,100	5.2%	\$8,640	20.0%	\$1,060
4	\$8,400	3.7%	\$9,700	12.3%	\$0
5	\$8,750	4.2%	\$8,750	-9.8%	\$0

For the school impact tax recalculations, effectively, the carryover results in future projects paying in excess of their fair share (shown in red above) to pay for the discounts provided to earlier projects paying less than their fair share (shown in green).

While staff understands the need to balance revenue and ensure the development industry as a whole pays for the impact of development, the impact tax system as it exists today has many waivers, exemptions, and discounts that are not offset by requiring other developers to pay more than their fair share. These waivers, exemptions, and discounts include Moderately Priced Dwelling Units and other affordable units, projects with 25 percent Moderately Priced Dwelling Units, and projects within Enterprise and Opportunity Zones, among others.

Planning staff would recommend eliminating the carryover provision for the school impact tax, to prevent any project from paying more than their fair share.

Without the carryover, here is a hypothetical example:

Update	Calculated Tax Rate	Calculated Tax Rate Increase	Used Tax Rate	Used Tax Rate Increase	Cumulative Carryover
0	\$5,000		\$5,000		
1	\$7,100	42.0%	\$6,000	20.0%	
2	\$7,700	8.5%	\$7,200	20.0%	
3	\$8,100	5.2%	\$8,100	12.5%	
4	\$8,400	3.7%	\$8,400	3.7%	
5	\$8,750	4.2%	\$8,750	4.2%	

In this approach to the hypothetical example, projects would get a discounted rate and pay less than their fair share during the earlier years (shown in green above). Later projects would simply pay their fair share (shown in yellow).

If the Council keeps the school impact tax carryover provision, the carryover should be banked as a dollar amount, not a percentage. School impact taxes are already calculated on a dollar basis, not as a percentage increase. Here is potential amendment language as noted in red:

(2) Carryover of biennial tax rate adjustments in excess of 20%. If the biennial tax rate adjustment exceeds 20%, the excess **[[percentage]] dollar amount** must be carried over and added to the next biennial adjustment. If this total adjustment, **[[which is also capped at 20%]] including any carried over value**, again exceeds 20%, the excess **[[percentage]] dollar amount** must be carried over and added to the following biennial adjustment.

Planning staff also has a minor modification recommendation to Section 52-55, to help better capture the process of the recalculation of school impact taxes regarding school construction costs. As noted in red:

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

PARK IMPACT PAYMENT (PIP) / CIVIC IMPROVEMENT FUND (CIF) ZONING TEXT AMENDMENT

The same methodology that was used for calculating the transportation impact tax rate adjustments was also used in Chapter 59, the Zoning Ordinance.

Within the Bethesda Overlay Zone, there is a provision allowing applicants to exceed their mapped zoning by making a payment to the Park Impact Payment (PIP) fund. In the Downtown Silver Spring Overlay Zone, a similar provision exists, with payment to the Civic Improvement Fund (CIF). The Planning Board is required to hold a public hearing and adjust these rates by July first every two years. 2023 will see an adjustment to the PIP, and 2024 will see an adjustment to the CIF.

To update the inflation calculation to the cumulative rate, and to also mirror the 20 percent maximum bi-annual increase, a Zoning Text Amendment (ZTA) is recommended (Attachment 2). The language in the ZTA is nearly identical to that proposed by staff for the transportation impact taxes, tracking the cumulative change, but carrying forward any excess rate increases above 20 percent as a dollar amount rather than a percentage. The carried forward dollar amount would be added to the fund rates at the next adjustment before applying the cumulative inflation rate to ensure the rates stay as accurate as possible. Because the PIP in the Bethesda Overlay Zone is due to be updated this year, the ZTA will not have a chance to amend the code in time but would be able to correct the Downtown Silver Spring Overlay Zone before next summer.

CONCLUSION

Planning staff supports the modifications as recommended for the transportation impact taxes. The cap and carryover system will help soften the impact of higher than average transportation impact tax calculations, and the carryover ensures the easing of the previous discount and getting to the true rates.

For school impact taxes, staff supports the 20 percent cap on impact tax increases, but does not support the carryover. Planning staff would recommend eliminating the carryover provision for the school impact tax to prevent any project from paying more than their fair share.

Planning staff is also recommended a Zoning Text Amendment be introduced to update the language for the Park Impact Payment (PIP) in the Bethesda Overlay Zone and the Civic Improvement Fund (CIF) in the Downtown Silver Spring Overlay Zone.

ATTACHMENTS

[Attachment 1](#): Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments Introduction Packet

[Attachment 2](#): ZTA 23-## Park Improvement Payment and Civic Improvement Fund