



COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

APPROVED

Thursday, November 5, 2020

The County Council for Montgomery County, Maryland convened via video conference at 9:30 A.M. on Thursday, November 5, 2020.

PRESENT

Councilmember Sidney Katz, President
Councilmember Gabe Albornoz
Councilmember Evan Glass
Councilmember Nancy Navarro

Councilmember Tom Hucker, Vice President
Councilmember Andrew Friedson
Councilmember Will Jawando
Councilmember Craig Rice

Councilmember Hans Riemer

The President in the Chair.

- (1) **ACTION** - [Position on the I-495/I-270 Managed Lanes Study Draft Environmental Impact Statement \(DEIS\)](#)

Participating in the discussion were Dr. Orlin, Senior Analyst; Mr. Conklin, Director, Department of Transportation (DOT); and Ms. Rubin, Planning Department.

Mr. Hucker, Chair of the Transportation and Environment (T&E) Committee, said that November 9, 2020, is the deadline for comments on the DEIS. The Committee recommended asking the State to conduct further study of the MD 200 Diversion Alternative, pointing out three key factors: public confidence in the Public Private Partnership (P3) model is lacking given the experience with the Purple Line project, travel patterns are likely to change due to the COVID-19 pandemic, and high costs of widening the Beltway associated with WSSC Water utilities.

Reviewed the draft letter prepared by Mr. Conklin commenting on the I-495/I-270 DEIS. Mr. Conklin noted that the DEIS does not include any traffic impact analysis on local road networks. Dr. Orlin noted that the City of Rockville Mayor and Council recommend the “no-build” option. He also noted that over the years, the Planning Board has recommended that when the American Legion Bridge is

reconstructed, it should be built structurally to accommodate rail, as was done on the Woodrow Wilson Bridge reconstruction.

Supported Mr. Friedson's edit to the letter to add that the Council has concerns about the community and environmental impacts of the project on all sections of the Beltway, both east and west of the I-270 spurs.

Noted that some existing noise walls are located in a variety of locations within the right-of-ways for both I-495 and I-270, and questioned whether it was appropriate to state all work must be done within existing walls. Agreed with Mr. Rice's suggestion to include the strong preference that work must be done within existing walls, and acknowledging that in certain areas this may not be practicable, and that this should apply to all areas, not just in the western section.

Agreed to remove the reference to "residents of Rockville" from the letter since the City is sending its own letter to the State regarding the DEIS.

Agreed with Mr. Riemer's suggestion to reference monorail pertaining to the reconstructed American Legion Bridge, and Mr. Hucker's suggestion to add to the letter systems management enhancements such as ramp metering and use of the shoulder during peak traffic periods.

Mr. Conklin will forward the re-drafted letter to Councilmembers for review prior to sending it on to the State.

(2) **COUNCIL SITTING AS BOARD OF HEALTH**

A. **Introduction** - Board of Health Regulation to adopt an Executive Order 122-20, COVID-19 Local Order Amending and Restating Order dated September 29, 2020

and **Public Hearing** - Board of Health Regulation to adopt an Executive Order 122-20 COVID-19 Local Order Amending and Restating Order dated September 29, 2020

The public hearing was held and the record closed.

(3) **INTRODUCTION** - Resolution to approve an Executive Order 122-20, COVID-19 Local Order Amending and Restating Order dated September 29, 2020, as the County Council

Mr. Drummer explained that the Council's role regarding the Executive Order is limited to approval or disapproval. An Executive Order goes into effect when approved by the Council and if not approved, the existing Executive Order

remains in effect. The subject resolution was not introduced. An amended Executive Order is anticipated to be received for consideration at the November 10, 2020, Council session.

Councilmembers spoke to the need to ensure the safety and wellbeing of residents, while acknowledging hardships created for some residents as a result of necessary precautions and imposed restrictions.

Dr. Gayles provided an update on the increases in the number of cases in the County, positivity rate, and number of cases per 100,000 people, stating that this data is what is driving new restrictions included in the Executive Order, with the goal of minimizing contact points. Dr. Stoddard indicated that contact tracing information is reviewed weekly and shows that the increased transmission of the virus is reflected in people's activities, including indoor dining and attending houses of worship.

Mr. Rice discussed the County's request to obtain a waiver from the State to allow an increased teacher-child ratio at childcare centers. Dr. Gayles said it is not known when the State would respond to the waiver request, and that childcare capacity limits are established by the State's Department of Education, and that limits would stay at current levels to maintain the current teacher-child ratio. He noted that there have been cases involving childcare providers, as well as outbreaks of cases involving youth sports, including soccer, baseball, basketball, and cheerleading, and have been transmitted to non-public school settings. Councilmembers requested data be broken out by ages 0 to 6 and 7 to 19.

Councilmembers spoke to the need for a regional approach regarding guidelines and restrictions and noted that it was anticipated that other local jurisdictions would be imposing new restrictions similar to those included in the forthcoming Executive Order.

Mr. Hucker expressed concern that certain "big box" and large grocery stores are not taking steps to limit capacity and enforce social distancing requirements, resulting in a disadvantage to smaller stores that are following the rules. Mr. Riemer noted the different levels of compliance and asked if enforcement measures could be increased. Dr. Gayles indicated that all stores must follow the guidelines, and residents should contact the County to report violations and concerns. He stated that late-night alcohol permits would be suspended with the forthcoming Executive Order, and that permit holders have been notified. Councilmembers commented on the need for clear, concise communication that is broadly distributed, and acknowledged the work of local non-profits in providing assistance to residents in highly impacted communities.

(2) **COUNCIL SITTING AS BOARD OF HEALTH** *(continued)*

B. **Action** - [Resolution to adopt an Executive Order 122-20, COVID-19 Local Order Amending and Restating Order dated September 29, 2020 as a Board of Health Regulation](#)

Action was postponed until November 10, 2020, to consider an anticipated amended Executive Order

(4) 1:30 **WORKSESSIONS:**

- A. [2020-2024 Subdivision Staging Policy \(SSP\)](#) (Dunn/Orlin)
Action is tentatively scheduled for 11/16/20.
- B. [Bill 37-20, Subdivision - Preliminary Plan - Adequate Public Facilities - Amendments](#) (Drummer)
Action is tentatively scheduled for 11/16/20.
- C. [Bill 38-20, Taxation - Development Impact Taxes for Transportation and Public School Improvements - Amendments](#) (Drummer)
Action is tentatively scheduled for 11/16/20.
- D. [Expedited Bill 39-20, Taxation - Recordation Tax - Amendments](#) (Drummer)
Action is tentatively scheduled for 11/16/20.

Participating in the discussion were Mr. Conklin, Director, Department of Transportation; Mr. Anderson, Chair, Montgomery County Planning Board; Ms. Wright, Director, and Mr. Sartori, Planning Department, Maryland-National Capital Park and Planning Commission (M-NCPPC); Dr. Orlin, Senior Analyst; Ms. Dunn, Senior Legislative Analyst; and Mr. Drummer, Senior Legislative Attorney.

Dr. Orlin began the review on page 1 of the staff report with *Section A - Policy areas around Metrorail stations*. Supported, without objection, the joint Planning, Housing and Economic Development (PHED) and Government Operations and Fiscal Policy (GO) Committee recommendation to concur with the Planning Board not to raise the rates in current Red Policy Areas.

Dr. Orlin noted that EYA is planning to develop the King Buick property on the west side of MD 355. Since there was no committee recommendation regarding the property, Dr. Orlin recommended supporting the City of Rockville by identifying the 20-acre consolidated property in the SSP as a “satellite” of the Rockville Town Center Policy Area. The Town Center Policy Area was created many years ago strictly for the purposes of applying the lower set of transportation impact tax rates to the roughly half-mile walkshed of a Metro

Station; since it is entirely in the City, the County's SSP rules do not apply. The same situation pertains to this 20-acre property. Supported, without objection, Mr. Riemer's motion in support of Dr. Orlin's recommendation.

Mr. Friedson reviewed *Section B - Designated Growth Area (DGA) discount against the transportation impact tax*. Noted that the GO Committee considered but unanimously rejected a proposed discount of school impact taxes in certain DGAs. Mr. Friedson submitted a revised proposal to his recommendation contained in the staff report to discount the transportation impact tax by 40% in DGAs within Orange policy areas (except in the Rockville City Policy Area, where there would be no discount) and by 32% in DGAs within Yellow Policy Areas.

Supported Mr. Friedson's motion to discount the transportation impact tax by 40% in DGAs within Orange policy areas (except in the Rockville City Policy Area, where there would be no discount) and by 32% in DGAs within Yellow Policy Areas. The motion passed 6-3 (supported by Navarro, Friedson, Riemer, Albornoz, Rice, Katz; opposed by Jawando, Hucker, Glass).

Dr. Orlin reviewed the joint PHED/GO Committee recommendation for *Section C - Policy areas around Purple Line stations*. Councilmembers Friedson, Navarro, and Riemer concurred with the Planning Board to categorize the Purple Line policy areas as Red policy areas. Councilmembers Jawando and Katz concurred with the Planning staff/Council staff recommendation. Discussed both the majority and minority recommendations.

Supported, by a vote of 6-3, the majority PHED/GO Committee recommendation for *Section C* (supported by Navarro, Friedson, Riemer, Albornoz, Rice, Hucker; opposed by Glass, Jawando, Katz).

Dr. Orlin reviewed *Section D - Policy area boundary and classification for Westfield Montgomery Mall*. Supported, without objection, the joint PHED/GO Committee recommendation to move the portion of the Rock Spring Sector Plan area west of the I-270 West Spur from the Potomac Policy Area into the North Bethesda Policy Area, rendering it part of that Orange policy area.

Dr. Orlin reviewed *Section E - Classification for the White Oak Policy Area*. Supported, without objection, the joint PHED/GO Committee recommendation to concur with the Planning Board that the White Oak Policy Area remain as an Orange policy area.

Dr. Orlin reviewed *Section F - Non-auto-driver mode share (NADMS) goals*. Supported, without objection, the PHED Committee recommendations to review the existing master plan NADMS goals in Table 1 as part of the Pedestrian Master Plan; and to revise the Planning Board's proposed NADMS goals in Table 2 as contained on page 8.

Dr. Orlin reviewed *Section G - Local Area Transportation Review (LATR), Subsection 1 - Motor Vehicle System Adequacy Test, Part a - Red policy areas* and the PHED Committee recommendations: Councilmembers Riemer and Friedson concurred with the Planning Board to eliminate the Motor Vehicle System Adequacy Test in Red policy areas. Councilmember Jawando concurred with Council staff to retain the test and its 120 seconds/vehicle standard in each Red policy area until replaced by a Unified Mobility Program (UMP). Both the majority and minority recommendations were discussed.

Supported, by a vote of 7-2, the majority PHED Committee recommendation for *Section G, Subsection 1, Part a* - to concur with the Planning Board to eliminate the Motor Vehicle System Adequacy Test in Red policy areas (supported by Navarro, Friedson, Riemer, Glass, Rice, Hucker, Katz; opposed by Jawando, Albornoz).

Dr. Orlin reviewed *Section G - LATR, Subsection 1 - Motor Vehicle System Adequacy Test, Part b - Expand Critical Lane Volume (CLV) methodology as an alternative to Highway Capacity Manual (HCM) analysis methodology*. Supported, without objection, the PHED Committee recommendation to not change the test's methodology, which concurs with the Executive recommendation.

Dr. Orlin reviewed *Section G - LATR, Subsection 1 - Motor Vehicle System Adequacy Test, Part c - Bus Rapid Transit (BRT) Corridor standard*. Supported, without objection, the PHED Committee recommendation to not apply a 100 seconds/vehicle congestion delay standard to intersections along master-planned BRT routes. Text should be added stating that if a master or sector plan specifies a congestion standard, it would take precedence over what is in the SSP.

Dr. Orlin reviewed *Section G - LATR, Subsection 2 - Bicycle System Adequacy Test*. Supported, without objection, the PHED Committee recommendation to replace Section TL2.4 with the following:

TL2.4 Bicycle System Adequacy

Bicycle system adequacy is defined as providing a low Level of Traffic Stress (LTS-2) for bicyclists. Bicycle system analysis will be based on the following standards and scoping:

For any site generating at least 50 peak-hour person trips:

Conduct an existing adequacy test to ensure low Level of Traffic Stress (LTS-2) conditions on all transportation rights-of-way within a certain distance of the site frontage, specified in the table below. If current and programmed connections will not create adequate conditions, the applicant must construct sidepaths, separated bike lanes, or trails, consistent with the Bicycle Master Plan, that create or extend LTS-2 conditions up to the specified distance from the site frontage.

| Peak-Hour Person Trips Generated | Red and Orange Policy Areas | Yellow and Green Policy Areas |
|----------------------------------|-----------------------------|-------------------------------|
| 50-99 | 400 | 250 |
| 100-199 | 750 | 400 |
| 200-349 | 900 | 500 |
| 350 or more | 1,000 | 600 |

Alternatively, if the Planning Board and MCDOT agree that constructing all or part of this requirement may not be practicable due to undesirable transitions, unattainable right-of-way, or an existing CIP project, an applicant may meet this requirement with a mitigation payment to MCDOT that is reasonably related to MCDOT’s estimated cost of constructing the required facilities. These funds must be used by MCDOT in the construction of other LTS-1 or LTS-2 bicycle system improvements within the same policy area, or - for a Red policy area or an Orange town center policy area - either in that area or an adjacent one, unless the applicant agrees otherwise.

Dr. Orlin reviewed *Section G - LATR, Subsection 3 - Transit System Adequacy Test*. Supported, without objection, the PHED Committee recommendation to replace Section TL2.5 with the following:

For any site generating at least 50 peak-hour person trips in Red, Orange, and Yellow policy areas:

Conduct an existing adequacy test to assure that there are bus shelters outfitted with realtime travel information displays and other standard amenities, along with a safe, efficient, and accessible path between the site and a bus stop, at a certain number of bus stops within a certain distance of the site frontage, specified below. Where shelters and associated amenities are not provided, an applicant must construct up to the number of shelters and amenities specified below.

| Peak-Hour Person-Trips Generated | Red and Orange Policy Areas | Yellow Policy Areas |
|----------------------------------|-----------------------------|--------------------------|
| 50-99 | 2 shelters within 500’ | 1 shelter within 500’ |
| 100-199 | 2 shelters within 1,000’ | 2 shelters within 1,000’ |
| 200-349 | 3 shelters within 1,300’ | 2 shelters within 1,300’ |
| 350 or more | 4 shelters within 1,500’ | 3 shelters within 1,500’ |

Alternatively, if the Planning Board and MCDOT agree that constructing all or part of this requirement may not be practicable due to undesirable transitions, unattainable right-of- way, or an existing CIP project, an applicant may meet this requirement with a mitigation payment to MCDOT that is reasonably related to MCDOT’s estimated cost of constructing the required facilities. These funds must be used by MCDOT in the construction of other bus shelters with the same amenities and improvements to pedestrian access to

and from bus stops, such as improved paved connections, crossings, and lighting. These funds must be spent on such improvements within the same policy area, or - for a Red policy area or an Orange town center policy area - either in that area or an adjacent one, unless the applicant agrees otherwise.

Dr. Orlin reviewed *Section G - LATR, Subsection 4 - Pedestrian System Adequacy Test*.

As an aside to requirements in the SSP, briefly discussed holding a future joint PHED/HHS/T&E Committee to deliberate on new Countywide ADA standards.

Supported, without objection, the PHED Committee recommendation to replace Section TL2.3 with the following:

TL2.3 Pedestrian System Adequacy

The Pedestrian System Adequacy Test consists of three components:

1. Pedestrian Level of Comfort (PLOC). Pedestrian system adequacy is defined as providing a “Somewhat Comfortable” or “Very Comfortable” PLOC score on streets and intersections for roads classified as Primary Residential or higher (excluding Controlled Major Highways and Freeways, and their ramps), within a certain walkshed from the site frontage, specified in Table T3. The table also identifies the maximum span of improvement that the applicant must provide beyond the frontage. Specific improvements to be constructed should be identified in consultation with Montgomery Planning and MCDOT.
2. Street Lighting. The applicant must evaluate existing street lighting based on MCDOT standards along roadways or paths from the development to destinations within a certain walkshed from the site frontage, specified in Table T3. The table also identifies the maximum span of streetlighting that the applicant must provide beyond the frontage. Where standards are not met, the developer must upgrade the street lighting to meet the applicable standards.
3. ADA Compliance. The applicant must fix Americans with Disabilities Act (ADA) noncompliance issues within a certain walkshed from the site frontage equivalent to half the walkshed specified in Table T3. The table also identifies the maximum span of ADA improvements that the applicant must provide beyond the frontage.

Table T3. Pedestrian Adequacy Test Scoping

| Peak-hour Person Trips Generated | Red and Orange Policy Area Walkshed* | Yellow and Green Policy Area Walkshed* |
|----------------------------------|--------------------------------------|----------------------------------------|
| 50-99 | 400' | 250' |
| 100-199 | 750' | 400' |
| 200-349 | 900' | 500' |
| 350 or more | 1,000' | 600' |

*The maximum required length of sidewalk and streetlighting improvements beyond the frontage is 4 times the appropriate value in this column. The maximum span required for ADA improvements beyond the frontage is equal to the appropriate value in this column.

Alternatively, if the Planning Board and MCDOT agree that constructing all or part of these requirements may not be practicable due to unattainable right-of-way, an existing CIP project, other operational conditions outside the applicant's control, or otherwise not considered practicable by the Planning Board and MCDOT, an applicant may meet this requirement with a mitigation payment to MCDOT that is reasonably related to MCDOT's estimated cost of constructing the required facilities. These funds must be used by MCDOT in the construction of other pedestrian system improvements within the same policy area, or - for a Red policy area or an Orange town center policy area - either in that area or an adjacent one, unless the applicant agrees otherwise.

Dr. Orlin reviewed *Section G - LATR, Subsection 5 - Safety System Adequacy Test*. Supported, without objection, the PHED Committee recommendation to not include the proposed Safety System Adequacy Test in the SSP at this time.

Dr. Orlin reviewed *Section G - LATR, Subsection 6 - Vision Zero Impact Statement*. Supported, without objection, the PHED Committee recommendation to replace Section TL3 with the following:

All LATR studies for a site that will generate 50 or more peak-hour person trips must develop a Vision Zero Statement. This statement must assess and propose solutions to high injury network and safety issues, review traffic speeds, and describe in detail how safe site access will be provided. With concurrence of the responsible agency, projects must implement or contribute to the implementation of safety countermeasures. The County Council may adopt predictive safety analysis as part of this statement, when available.

Dr. Orlin reviewed *Section G - LATR, Subsection 7 - Vision Zero resources*. Supported, without objection, the PHED Committee recommendation to concur with the Planning Board, except that the text should refer to transportation network databases generally (including road and transit system databases) and not to specific documents, which may change over time.

Dr. Orlin reviewed *Section G - LATR, Subsection 8 - Mitigation priorities*. Supported, without objection, the PHED Committee recommendation to delete Section TL5 entirely, and instead revise the text in Section TL2.2 to read as follows:

TL2.2 Motor Vehicle System Adequacy

To achieve an approximately equivalent transportation level of service in all areas of the county, greater vehicular traffic congestion is permitted in policy areas with greater transit accessibility and usage. For motor vehicle adequacy, Table T2 shows the intersection level of service standards by policy area. The motor

vehicle adequacy test will not be applied in Red Policy Areas and these areas will not be subject to LATR motor vehicle mitigation requirements. For intersections located within Orange policy areas, the Highway Capacity Manual (HCM) delay-based level of service standard applies to all study intersections. For intersections located within Yellow or Green policy areas, the CLV level of service standard applies to study intersection with a CLV of 1,350 or less and the HCM delay-based level of service standard applies to study intersections with a CLV of more than 1,350. The Planning Board may adopt administrative guidelines that allow use of Highway Capacity Manual 2010 methodologies and other analysis techniques consistent with guidance published by the Transportation Research Board. Motor vehicle mitigation in the Orange, Yellow and Green policy areas is required for any intersection failing the HCM test (i.e., exhibiting delay exceeding the applicable policy area HCM delay standard). However, it is important to emphasize that safety for all roadway users is the top priority. The applicant must mitigate its impact on vehicle delay or down to the applicable policy area standard, whichever is less. In this context, transportation demand management is the first mitigation option to be pursued. Operational changes are the next priority. Roadway capacity improvements can be considered next but only if they do not negatively impact safety.

Alternatively, if the Planning Board and MCDOT agree that constructing all or part of this requirement may not be practicable or desirable due to unattainable right-of-way, an existing CIP project, or because it creates conditions that adversely impact pedestrian or bicycle safety or the results of the other LATR tests, an applicant may meet this requirement with a mitigation payment to MCDOT that is reasonably related to MCDOT’s estimated cost of constructing the required facilities. These funds must be used by MCDOT for transportation demand management actions, roadway operational changes or roadway capacity improvements within the same policy area, or - for an Orange town center policy area - either in that area or an adjacent one, unless the applicant agrees otherwise. The scope of the motor vehicle adequacy test is based on the size of the project and the number of peak-hour vehicle trips generated by the project. Each LATR motor vehicle study must examine, at a minimum, the number of signalized intersections identified in Table T1, unless the Planning Board affirmatively finds that special circumstances warrant a more limited study.

Table T1. Motor Vehicle and Safety System LATR Scoping

| Maximum Peak-Hour Vehicle Trips Generated | Minimum Signalized Intersections in Each Direction |
|-------------------------------------------|----------------------------------------------------|
| < 250 | 1 |
| 250 – 749 | 2 |
| 750 – 1,249 | 3 |
| 1,250 – 1,749 | 4 |
| 1,750 – 2,249 | 5 |
| 2,250 – 2,749 | 6 |
| >2,750 | 7 |

Dr. Orlin reviewed *Section G - LATR, Subsection 9 - Temporary exemption of biohealth facilities from LATR requirements*. Supported, without objection, the PHED Committee recommendation to approve temporary LATR exemption, using the impact tax definition of bioscience facility as a proxy for a biohealth/life sciences facility, sunsetting the exemption after four years instead of five, and using the same January 1, 2021, effective date recommended for the full 2020-2024 SSP.

Dr. Orlin reviewed *Section H - Amendment to transportation impact tax credit provision*. Noted that the recommendation in the staff packet should be for the GO Committee, not the PHED Committee. Supported, without objection, the GO Committee recommendation to concur with the revisions proposed by the Executive and MCDOT as shown on page 24 for Sec. 52-39 - Definitions, and Sec. 52-50 - Use of impact tax funds. Noted that the revisions will make clear what the County has always intended with this credit.

Mr. Riemer and Mr. Friedson reviewed *Section I - Amendment to transportation impact tax for agritourism* and their proposed amendment. Supported, without objection, Mr. Riemer's motion to amend **Bill 38-20** to create a new non-residential rate category - agritourism - that would apply to buildings "in the Agricultural or Rural Residential Zones that is used exclusively for the storage or processing of an agricultural product to prepare the product for market."

Dr. Orlin reviewed *Section J - Recommendations not included in the Draft SSP resolution, Subsection 2 - Continue producing the Travel Monitoring Report*. Supported, without objection, the PHED Committee recommendation to concur with the Planning Board.

Ms. Dunn and Mr. Drummer reviewed *Section K - Renaming the Subdivision Staging Policy*. Supported, without objection, the PHED Committee recommendation to change the name from the Subdivision Staging Policy to the Growth and Infrastructure Policy. Noted that any name change will require introduction and adoption of a separate bill.

The meeting adjourned at 4:58 P.M.

This is a correct copy of Council action.

Approved/Signed by Clerk of the Council

Selena Mendy Singleton, Esq.
Clerk of the Council