



COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

APPROVED

Monday, November 16, 2020

The County Council for Montgomery County, Maryland convened via video conference at 1:34 P.M. on Monday, November 16, 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.

Ms. Singleton, Clerk of the Council, announced that action on **Expedited Bill 39-20**, Taxation - Recordation Tax - Amendments, has been deferred.

(1) **ACTION** - [2020-2024 Subdivision Staging Policy](#)

Mr. Katz stated that he is co-owner of property in Gaithersburg that is within the designated Enterprise Zone, and has previously abstained from voting on items concerning Enterprise Zones during Committee and Council worksessions, but will vote on the issue in its entirety today.

Mr. Riemer, Chair of the Planning, Housing, and Economic Development (PHED) Committee, expressed thanks to Planning Department and Council staff for the incredible effort during a difficult year to develop a policy that reflects the vision of the Council to seek more momentum in the economy, accurately charges for the impacts of development on schools and transportation, and aligns the policy with development goals. He said this is the most significant step forward for the County's development policy in decades, due in part to the significant revisions recommended by the PHED and Government Operations and Fiscal Policy (GO) Committees, including elimination of moratoria and a more urbanized model for transportation, and is reflected in its new name, the Growth and Infrastructure Policy.

Ms. Navarro, Chair of the GO Committee, expressed thanks to staff, the Planning Board, and County residents for their forward-thinking approach to growth and infrastructure policy, which reflects the four quadrants of the economic development platform previously adopted by the Council: workforce development, transportation, housing, and business retention, creation, and expansion. The policy embraces the Council's commitment to meeting the Council of Government's (COG) housing target for the creation of 31,000 new units, commitment to racial equity and social justice, and expansion of the tax base to provide for increasing needs in the County.

Mr. Jawando expressed thanks to staff for their efforts and stated that eliminating moratoria was the right thing to do. He noted that data showed that Turnover areas produce more students per household, and that the numbers were adjusted to reflect this. While his amendment to create a discount for the creation of three-bedroom units in denser Infill areas was approved, he expressed the view that the policy misses the mark overall and would not result in any more affordable housing than would have already been built. He suggested the Council needs to return to the issue of incentives for construction of affordable housing, should strive for better control of what is or is not happening in the County, and that a targeted approach is needed to build in more controls to obtain what the Council wants in an equitable fashion, along with work to protect much needed sources of revenue.

Mr. Rice said the County is not in a good place, with many unknowns due to the pandemic, economic recession, and higher unemployment than has been seen in the County in a long time. He said decisions were made to help spur development and growth in the County and adapt to a changing world, noting that the Council has always stood up for the more vulnerable community members. The policy prioritizes education and moves the County to be at the forefront to encourage mass transit and walkable communities. The revised policy has created an impact tax structure that is more fair for the upcounty.

Mr. Friedson expressed the view that the revised policy better aligns with the Council's goals and priorities, makes the County more attractive for private sector investment, more affordable and welcoming for new residents, more aligned with broader smart growth and sustainability practices, reflects taxes based on refined data regarding actual impacts of development on school enrollment, and prioritizes investment in the Purple Line corridor and in Opportunity Zone areas. He noted that ending moratoria was a significant decision, and new and growth areas are focused on transit, emphasizing that buses are transit. He said that the policy takes a tangible approach to Vision Zero and prioritizing pedestrian and resident safety. He expressed thanks to staff and community advocates and said that the new policy puts up a "welcome" sign where formerly there had been a wall.

Mr. Hucker expressed thanks to staff for their hard work and to community advocates for their participation, and appreciation for the data that provided needed insight for the Council to make its decisions. He commented that it is important to monitor the impact of the assumptions derived from that data to make sure they are correct and to make adjustments if needed. Commenting that his priorities are to encourage smart, manageable development in the right places and continue to ensure enough funding for schools and transportation infrastructure, he noted that Montgomery County Public Schools (MCPS) has work to do to ensure optimal use of limited resources and to reconsider and redraw school boundaries. He noted that the policy encourages development of amenities and jobs in the East County, eliminates the school moratorium, and advances the County's commitment to housing following the COG model.

Mr. Albornoz expressed thanks to the Committee Chairs and staff, commenting that the ambitious plan focused on best practices and the need to take bold action to address the County's situation, keep pace with other jurisdictions, and bring in revenue to support the County's infrastructure and social safety net. Noting that the Council would have the opportunity to assess and evaluate its decisions and make adjustments if needed, he said the Council would revisit how to secure additional revenue to offset what has been lost and think creatively in other areas regarding potential revenue sources.

Mr. Glass, expressing thanks to all involved, said the new policy tackles the housing crisis head on by ending the moratorium and will improve resident safety by requiring new measures to look at the requirements in Vision Zero, lighting analyses and review of collision history to ensure safer roads and sidewalks. The end result of the new policy will benefit both current and future residents, and the Council will continue to discuss school construction funding in support of MCPS.

Mr. Katz expressed thanks to staff, noting that the policy tries to predict what is happening based on prior experience, but the pandemic created an economic crisis. He said working together and looking at the complete picture, the County would get through the current situation and land in a better place.

Adopted **Resolution 19-655**, approving the 2020-2024 Growth and infrastructure Policy.

Mr. Riemer made the motion, which carried unanimously.

LEGISLATIVE SESSION - DAY #34

(Clerk's note: the correct legislative day is #35)

(2) Call of Bills for Final Reading:

- A. [Bill 37-20, Subdivision - Preliminary Plan - Adequate Public Facilities Amendments](#)

Approved Mr. Riemer's motion to amend **Bill 37-20** to make it expedited legislation, without objection.

Enacted draft #4 of **Expedited Bill 37-20**, as amended and shown at the end of these minutes.

Mr. Riemer made the motion and the expedited bill was enacted by a roll call vote:

YEAS: Glass, Jawando, Riemer, Navarro, Rice, Friedson, Katz, Albornoz, Hucker.

B. [Bill 38-20, Taxation - Development Impact Taxes for Transportation and Public School Improvements - Amendments](#)

Enacted draft #12 of **Bill 38-20**, as shown at the end of these minutes.

Ms. Navarro made the motion and the bill was enacted by a roll call vote:

YEAS: Glass, Jawando, Riemer, Navarro, Rice, Friedson, Katz, Albornoz, Hucker.

C. **Expedited Bill 39-20, Taxation - Recordation Tax - Amendments**

This item was deferred.

(3) **ACTION** - [Resolution to amend Development Impact Tax Rates for Transportation and Public School Improvements](#)

Adopted **Resolution 19-656**, amending Development Impact Tax Rates for Transportation and Public School Improvements.

Mr. Riemer made the motion, which carried unanimously.

(4) **Introduced** a resolution to Establish Utilization Premium Payment Rates for Public School Improvements. A public hearing and action are scheduled for December 8, 2020 at 1:30 P.M.

The meeting adjourned at 2:38 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

Expedited Bill No. 37-20
 Concerning: Subdivision – Preliminary Plan
– Adequate Public Facilities –Amendments
 Revised: 11/13/2020 Draft No. 4
 Introduced: July 29, 2020
 Enacted: _____
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
 FOR MONTGOMERY COUNTY, MARYLAND**

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

AN **EXPEDITED** ACT to:

- (1) ~~[[require an applicant]]~~ authorize the Planning Board, when reviewing an application for an extension of the validity period of an adequate public facilities determination, to ~~[[provide]]~~ require an updated determination of school adequacy for the remaining unbuilt units; and
- (2) generally amend the law governing a determination of adequate public facilities.

By amending
 Montgomery County Code
 Chapter 50, Subdivision of Land
 Division 50.4, Section 4.3

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:

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Sec. 1. Division 50.4, Section 4.3 is amended as follows:

4.3. Technical Review

* * *

J. *Adequate Public Facilities Ordinance (APFO).*

* * *

7. *Extensions.*

a. *Application.* Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.

* * *

- iii. For each extension of an adequate public facilities determination:
 - (a) the applicant must not propose any additional development above the amount approved in the original determination;
 - (b) the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;
 - (c) the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest;[and]
 - (d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot[.]; and
 - (e) if the remaining unbuilt units would generate more than 10 students at any school serving the development, the [[applicant]] Board must [[provide]] make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.

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g. If a new adequate public facilities determination is required under this Subsection, the procedures in Chapter 8, Section 8-32 apply.

Sec. 2. Expedited Effective Date. Transition.

Bill No. 38-20
 Concerning: Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments
 Revised: 11/13/2020 Draft No. 12
 Introduced: July 29, 2020
 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) update transportation and school impact tax districts;
- (2) establish impact tax rates by school impact tax districts;
- (3) eliminate the school impact tax premium on certain types of dwelling units;
- (4) modify the applicability of development impact tax exemptions for certain uses and in certain locations; ~~[[and]]~~
- (5) establish a Utilization Premium Payment for certain developments to reduce school overcapacity;
~~[[and]]~~
- (6) define an agricultural facility;
- (7) provide a discount on certain impact tax rates for certain types of developments and for developments in certain areas; and
- (8) generally amend the law governing transportation and school development impact taxes.

By amending

Montgomery County Code
 Chapter 52, Taxation
 Sections 52-39, 52-41, 52-49, 52-50, 52-52, 52-54, 52-55, [[and]] 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:

1 **Sec. 1. Sections 52-39, 52-41, 52-49, 52-50, 52-52, 52-54, 52-55, ~~[[and]] 52-58, and 52-59~~ are amended**
2 **as follows:**

3 **52-39. Definitions.**

4 In this Article the following terms have the following meanings:

5 *Additional capacity* means a new road, ~~[[widening an existing road,]]~~ adding an additional lane or turn lane
6 to an existing road, or another transportation improvement that:

- 7 (1) increases the maximum theoretical volume of traffic that a road or intersection can
8 accommodate, or implements or improves transit, pedestrian and bike facilities or access
9 to non-auto modes of travel; and
- 10 (2) is classified as a minor arterial, arterial, parkway, major highway, controlled major
11 highway, or freeway in the County’s Master Plan of Highways, or is similarly classified
12 by a municipality. The Director of Transportation may find that a specified business
13 district street or industrial street also provides additional capacity as defined in this
14 provision.

15 *Adequate Public Facilities Ordinance policy area transportation adequacy standards* means standards by
16 which the area-wide adequacy of transportation facilities serving a proposed development are judged.
17 APFO policy area transportation adequacy standards do not include requirements for other on-site or off-
18 site transportation improvements that may be separately required or standards relating to local area review
19 which may be independently required.

20 *Agricultural facility* means a building or structure, or portion of a building or structure that is used
21 exclusively for the storage or processing of an agricultural product to prepare the product for market and is
22 located in the Agricultural Reserve, Rural Residential, RE-1 or RE-2 Zones.

23 *Applicant* means the property owner, or duly designated agent of the property owner, of land on which a
24 building permit has been requested for development.

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26 **52-41. Imposition and applicability of development impact taxes.**

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

- 29 (1) *White Flint*: The part of the White Flint Metro Station Policy Area included in the White
30 Flint Special Taxing District in Section 68C-2;
- 31 (2) *Red Policy Areas*: Bethesda CBD, Chevy Chase Lake, ~~[[Dale Drive/Manchester Place,]]~~
32 Forest Glen, Friendship Heights, Grosvenor, Glenmont, ~~[[Long Branch,~~
33 Lyttonsville/Woodside]], Lyttonsville, Medical Center, Purple Line East, Rockville Town
34 Center, Shady Grove ~~[[Metro Station]]~~, Silver Spring CBD, ~~[[Takoma/Langley]]~~
35 Takoma, Twinbrook, ~~[[and]]~~ Wheaton CBD and Woodside;
- 36 (3) *Orange Policy Areas*: Bethesda/Chevy Chase, Burtonsville Crossroads, [Chevy Chase
37 Lake,] Clarksburg Town Center, Derwood, Gaithersburg City, Germantown Town
38 Center, Kensington/Wheaton, [Long Branch,] North Bethesda, R&D Village, Rockville
39 City, Silver Spring/Takoma Park, [Takoma/Langley,] White Flint, except the portion that
40 is included in the White Flint Special Taxing District in Section 68C-2, and White Oak
41 Policy Areas;
- 42 (4) *Yellow Policy Areas*: Aspen Hill, Clarksburg, Cloverly, Fairland/Colesville, Germantown
43 East, Germantown West, Montgomery Village/Airpark, North Potomac, Olney, and
44 Potomac Policy Areas; and
- 45 (5) *Green Policy Areas*: Damascus, Rural East, and Rural West Policy Areas.

46 * * *

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

- 48 (1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program
49 enacted by either Gaithersburg or Rockville[,]z;
- 50 (2) any other dwelling unit built under a government regulation or binding agreement that
51 limits for at least 15 years the price or rent charged for the unit in order to make the unit
52 affordable to households earning less than 60% of the area median income, adjusted for
53 family size;
- 54 (3) any Personal Living Quarters unit built under [Sec. 59-A-6.15] Section 59-3.3.2.D, which
55 meets the price or rent eligibility standards for a moderately priced dwelling unit under
56 Chapter 25A;

- 57 (4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through
- 58 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling
- 59 unit under Chapter 25A;
- 60 (5) [any non-exempt dwelling unit in a development in which at least 25% of the dwelling
- 61 units are exempt under paragraph (1), (2), (3), or (4), or any combination of them;
- 62 6] any development located in an enterprise zone designated by the State [or in an area
- 63 previously designated as an enterprise zone];
- 64 (6) except for a development located in the City of Rockville, any development located in a
- 65 Qualified Opportunity Zone certified by the United States Treasury Department;
- 66 (7) a house built by high school students under a program operated by the Montgomery
- 67 County Board of Education; [and] or
- 68 (8) a farm tenant dwelling.

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

- 70 (1) any reconstruction or alteration of an existing building or part of a building that does not
- 71 increase the gross floor area of the building;
- 72 (2) any ancillary building in a residential development that:
- 73 (A) does not increase the number of dwelling units in that development; and
- 74 (B) is used only by residents of that development and their guests, and is not open to
- 75 the public; and
- 76 (3) any building that replaces an existing building on the same site or in the same project (as
- 77 approved by the Planning Board or the equivalent body in Rockville or Gaithersburg) to
- 78 the extent of the gross floor area of the previous building, if:
- 79 (A) [[construction begins]] an application for a building permit is filed within four
- 80 years [[one year]] after demolition or destruction of the previous building was
- 81 substantially completed; [[or]]
- 82 (B) the Director of the Department of Permitting Services or the Director’s designee
- 83 finds that the applicant was unable to apply for a building permit or commence
- 84 construction within four years after demolition or destruction of the previous
- 85 building was substantially completed due to circumstances beyond the control of
- 86 the applicant or the applicant’s agents; or
- 87 (C) the previous building is demolished or destroyed, after the replacement building
- 88 is built, by a date specified in a phasing plan approved by the Planning Board or
- 89 equivalent body.

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

52-49. Tax rates.

* * *

- 96 (g) Any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are
- 97 exempt under Section 52-41(g)(1) must pay the tax discounted by an amount equal to the [[lowest
- 98 standard]] impact tax rate applicable in the [[County]] Red Policy Area for that unit type.
- 99 (h) Except for a development located in the City of Rockville, any development located in a Desired
- 100 Growth and Investment Area, as defined in the 2020-2024 Growth and Infrastructure Policy
- 101 (Subdivision Staging Policy), must pay the tax at:
- 102 (1) [[40%]] 60% of the otherwise applicable rate if located in an Orange Policy Area; or
- 103 (2) [[32%]] 68% of the otherwise applicable rate if located in a Yellow Policy Area.

52-50. Use of impact tax funds.

Impact tax funds may be used for any:

- 106 (a) new road[[, widening of an existing road,]] or total reconstruction of all or part of an existing road
- 107 [[required as part of widening of an existing road,]] that adds an additional lane or turn lane
- 108 [[highway or intersection capacity]] or improves transit service or bicycle commuting, such as bus
- 109 lanes or bike lanes;

* * *

52-52. Definitions.

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

* * *

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

School service area means the geographically defined attendance area for an individual school.

52-54. Imposition and applicability of tax.

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(c) The following public school impact tax districts are established, as identified in the County Growth Policy:

- (1) Infill Impact Areas; and
- (2) Turnover Impact Areas [; and
- (3) Greenfield Impact Areas]].

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

- (1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville[.];
- (2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning equal to or less than 60% of the area median income, adjusted for family size;
- (3) any Personal Living Quarters unit built under Section 59-3.3.2.D, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
- (4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
- (5) any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1), (2), (3), or (4), or any combination of them;
- (6) any development located in an enterprise zone designated by the State; [or in an area previously designated as an enterprise zone; or]
- (6) except for a development located in the City of Rockville, any development located in a Qualified Opportunity Zone certified by the United States Treasury Department; or
- (7) a house built by high school students under a program operated by the Montgomery County Board of Education.

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

- (1) any reconstruction or alteration of an existing building or part of a building that does not increase the number of dwelling units of the building;
- (2) any ancillary building in a residential development that:
 - (A) does not increase the number of dwelling units in that development; and
 - (B) is used only by residents of that development and their guests, and is not open to the public; and
- (3) any building that replaces an existing building on the same site or in the same project (as approved by the Planning Board or the equivalent body in Rockville or Gaithersburg) to the extent of the number of dwelling units of the previous building, if:
 - (A) [[construction begins]] an application for a building permit is filed within four years [[one year]] after demolition or destruction of the previous building was substantially completed; [[or]]
 - (B) the Director of the Department of Permitting Services or the Director’s designee finds that the applicant was unable to apply for a building permit or commence construction within four years after demolition or destruction of the previous building was substantially completed due to circumstances beyond the control of the applicant or the applicant’s agents; or
 - (C) the previous building is demolished or destroyed, after the replacement building is built, by a date specified in a phasing plan approved by the Planning Board or equivalent body.

166 However, if in ~~[[either]]~~ any case the tax that would be due on the new, reconstructed, or altered
167 building is greater than the tax that would have been due on the previous building if it were taxed
168 at the same time, the applicant must pay the difference between those amounts.

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

172 ~~[[f)]~~ (g) A Clergy House must pay the impact tax rate that applies to a place of worship under
173 Section 52-41(d) if the house:

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

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

180 **52-55. Tax rates.**

181 (a) The Council must establish the [Countywide] rates for each school impact tax district [the tax
182 under this Article] by resolution after a public hearing advertised at least 15 days in advance.

183 (b) [The tax on any single-family detached or attached dwelling unit must be increased by \$2 for each
184 square foot of gross floor area that exceeds 3,500 square feet, to a maximum of 8,500 square feet.]
185 [[Any non-exempt single-family attached or multifamily unit located in a Desired Growth and
186 Investment Area, as defined in the County Growth Policy, must pay the tax at 60% of the
187 otherwise applicable rate.

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

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

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

198 ~~[[f)]~~ (e) Any non-exempt dwelling unit in a development in which at least 25% of the dwelling
199 units are exempt under Section [[52-41(g)(1)] 52-54(d)(1) must pay the tax discounted by an
200 amount equal to the [[lowest standard]] impact tax rate applicable in the [[County]] Infill School
201 Impact Area for that unit type up to the amount of the impact tax otherwise applicable.

202 (f) A three-bedroom multi-family dwelling unit located in an Infill Impact Area must pay the tax at
203 40% of the otherwise applicable rate.

204 **52-58. Credits.**

205 (a) Section 52-47 does not apply to the tax under this Article.

206 (b) A property owner must receive a credit for constructing or contributing to an improvement of the
207 type listed in Section 52-56(d), including costs of site preparation.

208 (c) [[A property owner may receive credit for constructing or contributing to other physical school
209 facility improvements not listed in Section 52-56(d) if the Montgomery County School Board
210 agrees to the improvement.

211 (d)] A property owner may receive credit for land dedicated for a school site, if:
212 (1) the density calculated for the dedication area is excluded from the density calculation for
213 the development site; and
214 (2) the Montgomery County School Board agrees to the site dedication.

215 (b)] ~~[[e)]~~ (d) If the property owner elects to make a qualified improvement or dedication, the owner
216 must enter into an agreement with the Director of Permitting Services, or receive a development
217 approval based on making the improvement, before any building permit is issued. The agreement
218 or development approval must contain:

- 219 (1) the estimated cost of the improvement or the fair market value of the dedicated land, if
220 known then[,];

- 221 (2) the dates or triggering actions to start and, if known then, finish the improvement or land
- 222 transfer;
- 223 (3) a requirement that the property owner complete the improvement according to
- 224 Montgomery County Public Schools standards; and
- 225 (4) such other terms and conditions as MCPS finds necessary.
- 226 [(c)] [(f)] (e) MCPS must:
- 227 (1) review the improvement plan or dedication;
- 228 (2) verify costs or land value and time schedules;
- 229 (3) determine whether the improvement is a public school improvement of the type listed in
- 230 Section 52-56(d)[, meets the requirements of subsection (c).]] or meets the dedication
- 231 requirements in subsection [(a)] [(d)] (c);
- 232 (4) determine the amount of the credit for the improvement or dedication; and
- 233 (5) certify the amount of the credit to the Department of Permitting Services before that
- 234 Department or a municipality issues any building permit.
- 235 [(d)] [(g)] (f) An applicant for subdivision, site plan, or other development approval from the County,
- 236 Gaithersburg, or Rockville, or the owner of property subject to an approved subdivision plan,
- 237 development plan, floating zone plan, or similar development approval, may seek a declaration of
- 238 allowable credits from MCPS. MCPS must decide, within 30 days after receiving all necessary
- 239 materials from the applicant, whether any public school improvement which the applicant has
- 240 constructed, contributed to, or intends to construct or contribute to, will receive a credit under this
- 241 subsection. If during the initial 30-day period after receiving all necessary materials, MCPS
- 242 notifies the applicant that it needs more time to review the proposed improvement, MCPS may
- 243 defer its decision an additional 15 days. If MCPS indicates under this paragraph that a specific
- 244 improvement is eligible to receive a credit, the Director of Permitting Services must allow a credit
- 245 for that improvement. If MCPS cannot or chooses not to perform any function under this
- 246 subsection or subsection (c), the Department of Permitting Services must perform that function.
- 247 [(e)] [(h)] (g) (1) A property owner must receive a credit for constructing or contributing to the
- 248 cost of building a new single family residence that meets Level I Accessibility Standards,
- 249 as defined in Section 52-107(a).
- 250 (2) The credit allowed under this Section must be as follows:
- 251 (A) If at least 5% of the single family residences built in the project meet Level I
- 252 Accessibility Standards, then the owner must receive a credit of \$250 per
- 253 residence.
- 254 (B) If at least 10% of the single family residences built in the project meet Level I
- 255 Accessibility Standards, then the owner must receive a credit of \$500 per
- 256 residence.
- 257 (C) If at least 25% of the single family residences built in the project meet Level I
- 258 Accessibility Standards, then the owner must receive a credit of \$750 per
- 259 residence.
- 260 (D) If at least 30% of the single family residences built in the project meet Level I
- 261 Accessibility Standards, then the owner must receive a credit of \$1,000 per
- 262 residence.
- 263 (3) Application for the credit and administration of the credit must be in accordance with
- 264 Subsections 52-107(e) and (f).
- 265 (4) A person must not receive a tax credit under this Section if the person receives any public
- 266 benefit points for constructing units with accessibility features under Chapter 59.
- 267 [(f)] [(i)] (h) The Director of Finance must not provide a refund for a credit which is greater than the
- 268 applicable tax.
- 269 [(g)] [(j)] (i) Any credit issued under this Section before December 31, 2015 expires 6 years after the
- 270 Director certifies the credit. Any credit issued under this Section on or after January 1, 2016
- 271 expires 12 years after the Director certifies the credit.
- 272 [(h)] [(k)] (j) After a credit has been certified under this Section, the property owner or contract
- 273 purchaser to whom the credit was certified may transfer all or part of the credit to any successor in
- 274 interest of the same property. However, any credit transferred under this subsection must only be
- 275 applied to the tax due under this Article with respect to the property for which the credit was
- 276 originally certified.

277 **52-59. ~~[[Reserved]] Utilization Premium Payment.~~**

- 278 (a) In addition to the tax due under this Article, an applicant for a building permit must pay to the
- 279 Department of Finance a Utilization Premium Payment if such payment was required under the
- 280 Annual School Test in effect at the time the building was approved.
- 281 (b) The Council by resolution, after a public hearing advertised at least 15 days in advance, must
- 282 establish the rates for the Utilization Premium Payment.
- 283 (c) The Director of Finance, after advertising and holding a public hearing, must adjust the rates set in
- 284 or under this Section effective on July 1 of each odd-numbered year in accordance with the update
- 285 to the Subdivision Staging Policy using the latest student generation rates and school construction
- 286 cost data. The Director must calculate the adjustment to the nearest multiple of one dollar. The
- 287 Director must publish the amount of this adjustment not later than May 1 of each odd- numbered
- 288 year.
- 289 (d) The Payment must be paid at the same time and in the same manner as the tax under this Article.
- 290 (e) The Department of Finance must retain funds collected under this Section in an account to be
- 291 appropriated for any public school improvement that adds capacity designed to alleviate
- 292 overutilization in the school service area from which the funds were collected.
- 293 (f) The Utilization Premium Payment must not be imposed on any:
 - 294 (1) Moderately Priced Dwelling Unit built under Chapter 25A or any similar program
 - 295 enacted by either Gaithersburg or Rockville;
 - 296 (2) other dwelling unit built under a government regulation or binding agreement that limits
 - 297 for at least 15 years the price or rent charged for the unit in order to make the unit
 - 298 affordable to households earning equal to or less than 60% of the area median income,
 - 299 adjusted for family size;
 - 300 (3) Personal Living Quarters unit built under Section 59-3.3.2.D, which meets the price or
 - 301 rent eligibility standards for a moderately priced dwelling unit under Chapter 25A; or
 - 302 (4) dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-
 - 303 32, which meets the price or rent eligibility standards for a moderately priced dwelling
 - 304 unit under Chapter 25A.

305 **Sec. 2. Effective date - Transition.**

306 This Act takes effect on February 26, 2021. The amendments in Section 1 ~~[[take effect on March 1, 2021~~
307 ~~and]]~~ must apply to:

- 308 (1) any application for a building permit filed on or after ~~[[March 1]]~~ February 26, 2021; except for
- 309 (2) ~~[[that the amendments related to discounts or exemptions for projects with 25% MPDUs must~~
310 ~~only apply to]]~~ any dwelling unit in a development for which a preliminary plan application is
- 311 filed ~~[[and accepted on or after]]~~ prior to ~~[[March 1]]~~ February 26, 2021 that includes 25%
- 312 affordable units as defined in Sections 52-41(g)(1) through 52-41(g)(4) or 52-54(d)(1) through 52-
- 313 54(d)(4); or
- 314 (3) any development in a former Enterprise Zone for which a preliminary plan application is filed and
- 315 accepted before January 1, 2021.

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