

## Growth and Infrastructure Policy Testimony

Ken Hartman Espada, Assistant Chief Administrative Officer,  
testifying on behalf of County Executive Elrich.

Good afternoon Council President and members of the county Council,

I am here to make two main points about the Growth and Infrastructure Policy.

- 1. The Growth and Infrastructure Policy is the tool for adequate public facilities – built on the premise that private development must happen in combination with necessary public infrastructure.**

It is intended to ensure that development share in the cost of that infrastructure. And that infrastructure is built in a timely manner to support development.

- 2. The County Executive asks that you not support recommendations to reduce revenues without a plan to replace them.** We need to rebalance and re-think the structure that helps fund **new** public infrastructure. He is asking that you “do no harm” until that is done.

Impact taxes **are** an imperfect tool to raise funds for public infrastructure. We **are** different than other Counties in our region.

In their 2022 analysis for Montgomery County, JLL found that: *“Montgomery County places a lower burden of developer-related business taxes and fees upon developments, although it generally imposes higher upfront costs...”*

We have shared this report with Councilmembers.

The Finance Department estimates **the Planning Board recommendations reduce revenues by about \$18.6 million over 6 years.** We all know it is increasingly difficult to fund projects within current limitations.

The Planning Board recommends a workgroup **to explore additional financing and funding mechanisms to better meet infrastructure needs.** The Council should immediately take action to establish that working group - before taking any actions that reduce revenue.

Former County Executive Leggett once worried that without new tools to fund transportation infrastructure, “the county will be in a position looking back and have no reasonable alternatives.”

**This Executive remains eager to work with you to build the infrastructure needed to support a growing economy.** Please “do no harm” to our ability to fund priority projects, many of which are waiting in line for funding.

Finally, some thoughts about process.

OMB and DOT asked to testify to provide their analysis, but that request was denied. I brought their testimony with me to share with you. The full list of Executive revisions to the Growth and Infrastructure Policy will be provided by the September 15 deadline in Section 33A-15.

The Council should review the practice to hold this hearing before the statutory deadlines for the Executive and Board of Education to propose amendments.

Section 33A-15 specifies the County Council’s duty to hold this hearing:  
***“After receiving the recommended Growth and Infrastructure Policy, the recommendations of the Executive, and any other agency comments...”***

This would allow the public access to all recommendations prior to a hearing.

Finally, we request that Executive Branch and MCPS representatives will be invited to be full participants in your upcoming worksessions.

Thank you.



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Ambitions*



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*Multi-Jurisdictional Developer Tax Burden Comparative Analysis*

*January 2022*

*Final Report*



# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

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# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

## I. Executive Summary

Montgomery County, Maryland (the “County”) requested a developer tax burden analysis, comparing the taxes and fees levied upon a commercial real property developer in the County with one located in selected jurisdictions of Northern Virginia. This analysis is structured to aid the County in evaluation of potential tax-based funding approaches which could support the funding and financing framework for investment in transportation infrastructure. This report identifies the relevant taxes in Montgomery County and Fairfax and Loudoun Counties in Virginia and estimates the effect of these taxes on indicative case study development projects.

### Overview of Relevant Taxes

Several taxes are applied to development projects in Montgomery County, Fairfax County, and Loudoun County, and are levied by state or local governments. The broad categories of taxes are shown in Exhibit 1.

**Exhibit 1: Tax Classifications**

Tax	Levied by State Gov.	Levied by Local Gov.
<b>Corporate income taxes:</b> A tax paid on a company’s taxable income, which includes Revenue minus Cost of Goods Sold, General and Administrative Expenses, Research and Development, Depreciation Costs, and Other Operating Costs.	✓	
<b>Business, professional, and occupational license (“BPOL”) taxes:</b> Most businesses, professions, trades, and occupations are assessed a license tax based on gross receipts for the prior year. For wholesale merchants, the license tax is based on gross purchases rather than gross receipts.		✓
<b>Real property taxes:</b> Taxes paid by businesses on real property, including income-generating residential rental property.	✓	✓
<b>Business personal property taxes:</b> Taxes paid by business on all personal property, excluding intangible personal property, merchants’ capital, or as short-term rental property (e.g., computer equipment, machinery, and tools).	✓	✓
<b>Developer taxes:</b> Includes (i) impact taxes, assessed on new residential and commercial developments, which includes public school and transportation contributions; (ii) regional transportation improvement program fees as applicable; and (iii) affordable housing contributions.		✓
<b>Proffers:</b> A voluntary, legally-binding agreement of a developer to limit land use in some way, undertake agreed-upon acts, and/or give money to a jurisdiction as part of a rezoning process. <sup>1</sup>		✓

<sup>1</sup> See VA Code, § 15.2-2296 et seq.; see also Edward A. Mullen & Michael A. Banzhaf, Virginia’s Proffer System and the Proffer Reform Act of 2016, 20 Richmond Pub. Int. Law Journal 203, 204 (2017); <https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/assets/documents/pdf/forms/proffer-matrix-form-with-examples.pdf>



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

Corporate income and BPOL taxes are levied on an ongoing basis during the life of a business. Impact taxes and proffers are upfront taxes levied once when a new development project occurs.<sup>2</sup> The impact taxes in Montgomery County are not uniform across the entire County, as they differ by Transportation Policy Area and other districts.

The specific taxes for this analysis and their rates across the three counties (Montgomery County, Fairfax County, Loudoun County) are shown in Exhibit 2. Certain taxes are shown in ranges because they vary by location in each county. The BPOL tax is not levied in Montgomery County.

**Exhibit 2: Summary of Business Taxes in the Three Counties**

Business Taxes	Jurisdictions	Units	Rates (FY 2020)
Corporate Income Tax	Montgomery County	dollars taxable income	8.25%
	Fairfax County		6.25%
	Loudoun County		6.25%
Real Property Tax	Montgomery County	per \$100 assessment	\$1.08 - \$1.64
	Fairfax County		\$1.28 - \$1.83
	Loudoun County		\$1.21 - \$1.41
Business Personal Property Tax	Montgomery County	per \$100 assessment	\$2.22 - \$5.77
	Fairfax County		\$4.57
	Loudoun County		\$ 0.01 \$4.20
BPOL Tax	Montgomery County	per \$100 receipts/purchases	N/A
	Fairfax County		\$0.04 - \$0.31
	Loudoun County		\$0.03 - \$0.50
Impact Tax/ Proffer	Montgomery County	dollars	<i>project specific</i>
	Fairfax County		<i>project specific</i>
	Loudoun County		<i>project specific</i>
Other Developer Taxes	Montgomery County	variable	<i>location specific</i>
	Fairfax County		<i>location specific</i>
	Loudoun County		<i>location specific</i>

<sup>2</sup> Though not strictly a tax, proffers are considered a tax in this analysis to distinguish such proffer costs from those arising from normal operations and maintenance costs of a development.



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

Certain taxes collected by businesses are not included, such as excise taxes on tobacco and alcohol and fuel energy, sales and use taxes, including motor fuel and utility consumption, vehicle registration fees, business permit fees, local road fee, recordation tax, and payroll-related taxes for the Federal Unemployment Tax Act (“FUTA”), Federal Insurance Contributions Act (“FICA”), Social Security, and Medicare. Also, business tax credits (e.g., job creation and enterprise zone credits) and government incentives/rebates (e.g., density bonus, residential energy conservation property tax credit, and energy efficiency) are excluded from this analysis.

JLL limited the scope for the following reasons.

- Excise taxes on tobacco, alcohol and fuel energy do not apply to select developments or the differential impact of their burdens is limited;
- Vehicle registration fees, business permit fees, local road fee, and recordation tax are often not a “true” burden to the developer since they can simply pass the charges to the tenant or are borne by the tenant;
- Sales and uses taxes are generally transferred to lease holder (or end consumer) and do not truly affect developer’s cost of development; and
- Payroll-related taxes are difficult to quantify as they are subject to developer-specific data outside the public domain, or, in the case of Federal taxes, generally equal among the selected jurisdictions.

### Proffer / Impact Taxes

Montgomery County requires developers to contribute to the development of transportation improvement projects and public schools by building transportation-related maintenance and operation features through the payment of development impact taxes. These are assessed by Transportation Policy Area. Provisions allow for developers to reduce or eliminate impact taxes related to certain development types (e.g., bioscience, moderately priced dwelling units).

Instead of impact taxes, jurisdictions in Northern Virginia require “proffer” contributions of various types. A proffer contribution is established once a county approves a rezoning application. As a part of the rezoning process, Virginia law authorizes local jurisdictions to authorize developments to provide proffers. The estimated burdens in key proffer and impact tax categories for the indicative projects across the three counties are summarized below in Exhibit 3.

**Exhibit 3: Select Proffer / Impact Taxes in the Three Counties**

Project	Jurisdiction	Public School	Transportation	Affordable Housing	Total Select Proffer / Impact Taxes
Capital One Tower	Montgomery	\$ 25,252,170	\$40,205,612 - \$116,877,667	\$ 13,807,668 - \$20,709,069	\$79,265,450 - \$162,838,905
	Fairfax	3,634,335	48,648,588	41,651,637	93,934,560
The Mather - Arbor Row Block B/C1*	Montgomery	-	4,177,132 - 10,871,341	-	4,177,132 - 10,871,341
	Fairfax	2,745,942	8,716,211	1,942,692	93,934,560
Kincora Village Center	Montgomery	8,558,200	39,168,429 - 117,857,795	21,709,816 - 32,560,898	69,436,445 - 158,976,893
	Loudoun	\$ 21,929,754	\$ 24,895,078	\$ 37,758,070	\$ 84,582,902

\* The Mather - Arbor Row project has no residential space in the mixed-use development, so the affordable housing contribution is significantly lower than other case study projects.

Additionally, certain proffer and impact taxes levied on new development are not included, as follows.

- Public Amenities: JLL identified public amenity contributions by developers in Fairfax and Loudoun Counties, including bicycle facilities, metro station-related facilities, stream restoration works, and



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

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other public infrastructure such as signal, street, and signage. In Fairfax and Loudoun County, these proffered contributions may be credited toward the transportation-related monetary contributions, which consist of Tysons Grid of Streets Transportation Fund, Tysons-wide Road Fund, and Route 123 Super Boulevard Fund in Fairfax County, and regional transportation improvements in lieu of a cash capital facilities contribution in Loudoun County. We have assumed that in Montgomery County public amenity points are credited to the developer to offset cash contributions or increase permitted density, however, we understand these considerations to be site specific and in certain circumstances, subject to negotiation. Furthermore, the level of public amenity contributions appears to be not materially affected by jurisdiction. Thus, JLL does not factor in public amenities contribution by developer in the case studies.

- Design details: Although local governments often require certain design elements (e.g., LEED certification, energy efficiency building materials, and parking requirements) that add to the development construction cost, quantifying such expansive proffer items and measuring the incremental costs added to the base cost of construction in new development are complex by nature and developers often voluntarily include these items in their design irrespective of the minimum requirement. Thus it is assumed that the developments are not materially affected by these requirements, which exist in all three counties.

### Tax Burden Analysis

The tax rates shown above were applied to three indicative development projects based on actual projects developed in Northern Virginia (the Capital One Tower, The Mather - Arbor Row Block B/C1, and Kincora Village Center projects). The analysis considered both upfront taxes and the present value of ongoing costs to allow for analysis of all relevant charges.<sup>3</sup> The estimated tax burdens for the indicative projects across the three counties are summarized below in Exhibit 4.

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<sup>3</sup> The County levies transportation impact taxes in different zones called Transportation Policy Areas as detailed below. These are grouped into four categories based on density, zoning, and existing transportation infrastructure as follows:

- Red (Metro Station Policy Area): Central business districts and Metro station policy areas (“MSPAs”) characterized by high-density development and the availability of premium transit service (e.g., Metrorail, MARC);
- Orange: Corridor cities, town centers and emerging transit-oriented development (“TOD”) areas where premium transit service (e.g., Corridor Cities Transitway, Purple Line, bus rapid transit) is planned;
- Yellow: Lower-density areas of the county characterized by mainly residential neighborhoods with community-serving commercial areas; and
- Green: The County’s agricultural reserve and rural areas.





# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

**Exhibit 4: Total Burden Comparison (\$ Million)**

Project	Jurisdictions	Policy Area	Upfront Costs	NPV of Recurring Business Taxes	Total Burden
Capital One Tower	Montgomery	Red	\$ 86.2	\$ 612.8	\$ 699.0
		Orange	139.0	606.9	746.0
		Yellow	155.9	678.5	834.4
	Fairfax		103.4	957.9	1,061.3
	Loudoun		86.3	747.4	833.7
The - Mather - Arbor Row Block B/C1	Montgomery	Red	4.2	82.1	86.3
		Orange	9.3	81.2	90.5
		Yellow	10.9	90.9	101.8
	Fairfax		19.8	132.4	152.2
	Loudoun		12.3	102.6	114.9
Kincora Village Center	Montgomery	Red	80.3	382.2	462.5
		Orange	132.3	378.3	510.5
		Yellow	148.1	425.7	573.8
	Fairfax		115.1	614.9	730.1
	Loudoun		\$ 96.1	\$ 476.3	\$ 572.4

As seen above in Exhibit 4, Montgomery County places a lower burden of developer-related business taxes and fees upon developments, although it generally imposes higher upfront costs in the Orange and Yellow Transportation Policy Areas related to County impact taxes and other developer taxes<sup>4</sup>. The Capital One Tower and Kincora Village Center Projects are mixed-use development with residential space. These developments require additional affordable housing contributions as a portion of the upfront costs. The higher upfront taxes in the County are generally offset by the lower recurring development-related business taxes.

- In the Capital One Tower case, the average of the total business tax burden for the three Policy Areas in Montgomery County is approximately 72% of the total business tax burden in Fairfax County, and approximately 91% of the total business tax burden in Loudoun County.
- In the Mather - Arbor Row Block B/C1 case, the average of the total business tax burden for the three Policy Areas in Montgomery County is approximately 61% of the total business tax burden in Fairfax County, and approximately 81% of the total business tax burden in Loudoun County.
- In Kincora Village Center case, the average of the total business tax burden for the three Policy Areas in Montgomery County is approximately 71% of the total business tax burden in Fairfax County, and approximately 90% of the total business tax burden in Loudoun County.

## Conclusions

As described in this report, the tax burden for development projects in Montgomery County was compared against Fairfax and Loudoun Counties in Northern Virginia. This analysis included business taxes and impact taxes and proffers.

<sup>4</sup> These other developer taxes include a hypothetical Bethesda UMP (“BUMP”) for the Red Policy Area, and White Oak LATIP for the Orange and Yellow Policy Areas. While the BUMP has not yet been adopted by the County Council, it is included in this analysis on an assumed estimated fee schedule basis as shown in Exhibit 11, because the rates have been estimated to be the necessary tax burden to pay for required improvements in Downtown Bethesda.



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

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- **The County’s Business Tax Burden is Generally Lower as Compared to Fairfax and Loudoun Counties:** Based on the case studies analyzed in this report, the business tax burden on developers in the County is lower when compared against Fairfax and Loudoun Counties. Although Montgomery County generally has higher upfront taxes in the form of impact taxes (except for development in Red Policy Areas that have best access to high quality transit), the business tax across all Policy Areas, including the net present value of ongoing taxes, is generally lower than in Fairfax and Loudoun Counties. Notably, Montgomery County has lower transit-dedicated recurring taxes than Fairfax and Loudoun Counties, and has lower real property taxes in total, based on consideration of the three indicative districts examined: Downtown Bethesda, White Oak, and West Germantown.
- **The Business Tax Burden on Projects within Montgomery County is Location Dependent:** Business tax burdens can vary by both Transportation Policy Area and districts within a given Transportation Policy Area. Although Montgomery County business taxes are generally lower than in the two Northern Virginia counties studied in this report, some areas of the County impose higher tax burdens than others; this suggests that development within the County could favor lower-taxed areas, such as in Red and Orange Policy Areas, where tax rates are purposely set lower to incentivize development. The County may wish to consider the relative business tax competitiveness of different areas within the County and whether business tax burdens should be adjusted to favor a desired geographic distribution of future growth, as any change to a tax rate in these districts could have an impact on the desirability of development.
- **Transitioning from Upfront Impact Tax to Ongoing Taxes May Encourage Development:** The County imposes significant one-time impact taxes for transportation improvements, public school needs, and affordable housing contributions, which are generally higher than the upfront charges imposed by Fairfax and Loudoun Counties. It is worth noting that impact taxes levied upon mixed-use developments with residential space in Orange and Yellow Policy Areas exhibit a heavy burden to developers. Transitioning from upfront impact taxes, in whole or in part, to a recurring tax levied upon real property may be attractive to developers as upfront costs would be less of a burden during initial development when large construction and development costs are incurred. Such a shift may also be beneficial for the County as relying more on recurring taxes would provide a long-term revenue stream for Montgomery County which could provide a reliable and financeable stream of funding for capital programs.
- **Consider Accepting Proffered Specific Public Works and Facilities on a Larger Scale:** Montgomery County currently requires certain contributions from developers in the form of smaller public works and facilities (e.g., bicycle lanes, adequate parking); comparison with Northern Virginia counties indicates that the County could require larger proffers without losing regional competitiveness, especially if other upfront taxes are reduced. To the extent consistent with State code and County law, requiring specific proffered public works and facilities can provide flexibility to the County’s capital expenditure plans. The County should also consider making such a proffer program transparent and structured, including potentially a schedule of acceptable proffers. Potential expansion of proffers should be balanced against the potential benefit of reducing the total upfront impact tax burden.



# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

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## II. Introduction

Montgomery County (the “County”) requested a developer tax burden analysis, comparing the taxes and fees levied upon a commercial real property developer in the County with those located in selected jurisdictions of Northern Virginia. The analysis covers conventional business taxes as well as proffers, impact taxes, and other developer taxes when relevant. The objective of this exercise was to compare the relative business tax burden imposed upon such a developer against other jurisdictions in the greater Washington DC area that could attract similar development opportunities. This comparison is designed to aid the County in evaluation of potential tax-based funding approaches to support the funding and financing framework for transportation infrastructure.

This Introduction is followed by a description of the relevant taxes in the County and the comparator jurisdictions in Northern Virginia in Section III. Next, Section IV presents case study analyses of three indicative development projects with estimated tax burdens in the County and the two Northern Virginia jurisdictions. Section V presents conclusions for the County in considering future funding mechanisms for transportation. Lastly, the Appendices contain more data on the indicative case study projects.



## III. Business Taxes in the Three Counties

This section provides background on the type of taxes analyzed in this report, including introducing general categories of taxes and presenting detail on their application in the County and Loudoun and Fairfax Counties in Virginia. This report only summarizes the income and business-related taxes incurred by a C-Corporation developer with a single-state operation.<sup>5</sup> Certain taxes collected by businesses are not included, such as excise taxes on tobacco and alcohol and fuel energy, sales and use taxes, including motor fuel and utility consumption, vehicle registration fees, business permit fees, local road fee, recordation tax, and payroll-related taxes for the Federal Unemployment Tax Act (“FUTA”), Federal Insurance Contributions Act (“FICA”), Social Security, and Medicare. Also, business tax credits (e.g., job creation and enterprise zone credits) and government incentives/rebates (e.g., density bonus, residential energy conservation property tax credit, and energy efficiency) are excluded from this analysis. JLL limited the scope for the following reasons.

- Excise taxes on tobacco, alcohol and fuel energy do not apply to select developments or the differential impact of their burdens is limited;
- Vehicle registration fees, business permit fees, local road fee, and recordation tax are often not a “true” burden to the developer since they can simply pass the charges to the tenant or are borne by the tenant,;
- Sales and uses taxes are generally transferred to lease holder (or end consumer) and do not truly affect developer’s cost of development; and
- Payroll-related taxes are difficult to quantify as they are subject to developer-specific data outside the public domain, or, in the case of Federal taxes, generally equal among the selected jurisdictions.

### Classification of Business Taxes

This study generally defines business taxes as those that are the legal liability of businesses. The business taxes included in this study to which a developer would be subject are defined in Exhibit 5, which also shows the level of government that levies the tax.

**Exhibit 5: Tax Classifications**

Tax	Levied by State Gov.	Levied by Local Gov.
<b>Corporate income taxes:</b> A tax paid on a company’s taxable income, which includes Revenue minus Cost of Goods Sold, General and Administrative Expenses, Research and Development, Depreciation Costs, and Other Operating Costs.	✓	
<b>Business, professional, and occupational license (“BPOL”) taxes:</b> Most businesses, professions, trades, and occupations are assessed a license tax based on gross receipts for the prior year. For wholesale merchants, the license tax is based on gross purchases rather than gross receipts.		✓

<sup>5</sup> These entities, also known as ordinary corporations, are separate from their owners. For tax purposes, corporates are subject to tax burdens at the corporate level and after-tax income is distributed to shareholders as dividends or realized capital gains is taxed again at the individual level. <https://fas.org/sgp/crs/misc/R43104.pdf>



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

Tax	Levied by State Gov.	Levied by Local Gov.
<b>Real property taxes:</b> Taxes paid by businesses on real property, including income-generating residential rental property.	✓	✓
<b>Business personal property taxes:</b> Taxes paid by business on all personal property, excluding intangible personal property, merchants' capital, or as short-term rental property (e.g., computer equipment, machinery, and tools).	✓	✓
<b>Developer taxes:</b> Includes (i) impact taxes, assessed on new residential and commercial developments, which includes public school and transportation contributions; (ii) regional transportation improvement program fees as applicable; and (iii) affordable housing contributions.		✓
<b>Proffers:</b> A voluntary, legally binding agreement of a developer to limit land use in some way, undertake agreed-upon acts, and/or give money to a jurisdiction as part of a rezoning process. <sup>6</sup>		✓

This study examines the tax burden for different types of business entities operating in the County, Fairfax, and Loudoun Counties, including summarizing the rates for various taxes in these three jurisdictions. This study only examines C-Corporations that pay taxes on Net Operating Income. When corporate income is distributed to business owners, that income is taxed at the individual level. All taxes discussed in this report reflect FY 2020 rates.

### Income and BPOL Taxes

The corporate income tax applies to every business entity in the state of Maryland. The current tax rate is set by the state of Maryland at 8.25% for C-Corporations and 8% for pass-through entities with non-resident individual and fiduciary members. Business entities in the County do not pay BPOL taxes.

In Virginia, the corporate income tax is the primary tax burden levied specifically on business entities, but other taxes, including BPOL tax, are imposed by counties to supplement the tax base. The current tax rate set by the state of Virginia is 6% of taxable income, and this rate applies to single-state operations in Fairfax and Loudoun counties.

In Fairfax and Loudoun Counties, all business entities, including owners of home-based businesses, are subject to a BPOL tax. Most businesses, professions, trades, and occupations are assessed a license tax based on gross receipts for the prior year. Fairfax County has a specific rate schedule for BPOL taxes depending on the size of gross receipts or purchases and business classification and Loudoun county has flat rates that vary according to classification of businesses regardless of the size of gross receipts/purchases.

<sup>6</sup> See VA Code, § 15.2-2296 et seq.; see also Edward A. Mullen & Michael A. Banzhaf, Virginia's Proffer System and the Proffer Reform Act of 2016, 20 Richmond Pub. Int. Law Journal 203, 204 (2017); <https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/assets/documents/pdf/forms/proffer-matrix-form-with-examples.pdf>



# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

In Fairfax County, business entities pay different BPOL taxes based on size as detailed below.<sup>7</sup>

- There is no fee for business entities with \$10,000 or less in gross receipts;
- For business entities with \$10,001 to \$50,000 in gross receipts, the fee is \$30;
- For business entities with \$50,001 to \$100,000 in gross receipts, the fee is \$50; and
- For business entities with \$100,000 or greater in gross receipts, the rates vary depending on the business classification, as shown below in Exhibit 6.

### Exhibit 6: BPOL Taxes in Fairfax County for Business with Gross Receipts above \$100,000

<b>Business Classification</b>	<b>Rates (per \$100 of Gross Receipts/Purchases)</b>
Wholesale Merchants	0.04
Builders and Developers	0.05
Contractors	0.11
Retail Merchants	0.17
Business Service, Money Lenders	0.19
Personal Service, Repair Service	0.19
Telephone Companies	0.24
Amusements, Hotels/Motels	0.26
Renting by Owner	0.26
Professional Services	0.31
Research and Development	0.31

Additionally, certain business entities in Fairfax County are required to obtain an additional license and pay a tax. These business entities include automobile graveyard, bondsman, dance hall, fortune teller, mixed beverage, and circuses/carnivals.

In Loudoun County, business entities pay flat rates regardless of the size of gross receipts/purchases. The tax for the first year is \$30; thereafter, the tax is levied on the prior year’s gross receipts per \$100 of gross receipts/purchases, as shown in Exhibit 7.<sup>8</sup>

<sup>7</sup> <https://www.fairfaxcounty.gov/taxes/sites/taxes/files/assets/documents/pdf/business/2020-bpol-brochure.pdf>

<sup>8</sup> <https://www.loudoun.gov/1570/Business-Tax-Rates>



# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

## Exhibit 7: BPOL Taxes in Loudoun County

Business Classification	Rates (per \$100 of Gross Receipts/Purchases)
Amusements	0.21
Business Service	0.17
Business Service - Aircraft Leasing	0.05
Business Service - Computer Information Online Service Prov	0.15
Business Service - Global Satellite Based Imaging and Mobile	0.15
Business Service - Federally Appropriated Research and Dev	0.03
Personal Service	0.23
Contractors and Contracting / Developers	0.13
Hotels and Motels	0.23
Money Lender	0.16
Professional Services	0.33
Rental by Owner - Commercial or Residential Property	0.16
Repair Service	0.16
Retail Merchant	0.17
Retail Merchant - Certified Daily Short Term Rental	0.20
Wholesale Merchant	0.05
Public Service Corporation	0.50
Other Businesses	0.33

In summary, BPOL taxes are imposed for various business categories according to different rate schedules for business in Fairfax and Loudoun Counties. In Fairfax County, BPOL taxes are a function of size and type of business. In Loudoun County BPOL taxes are a function of business type only. Montgomery County does not impose any BPOL taxes.

### Real Property Taxes

Real property tax is levied upon developers in the County in the following categories.<sup>9</sup> The rates are on ad-valorem basis, which means they are imposed on all taxable land and improvements, per the assessed value of the property.

- **State:** a tax levied by the State of Maryland for the payment of principal and interest on State bonds;
- **General County:** a tax levied on all properties in the County to fund, in part, such basic services as police protection, elementary and secondary education, the community college, transportation, health and social services, and libraries;
- **Municipal District:** a tax levied by each municipal district for street and sidewalk maintenance, trash removal, tree care, sanitation, and police protection;

<sup>9</sup> <http://www.Montgomerycountymd.gov/Finance/taxes/info.html>



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

- **Transit:** a tax levied to fund transit-related activities within the County (e.g., capital improvement programs, transit operation and maintenance, and bus system); and
- **Other Special Service Area:** The County finances certain infrastructure improvements and conducts public services (e.g., public park, storm drainage, and public parking) by issuing bonds secured by taxes and assessments levied on property in the districts. An ad-valorem special tax is levied on all real property located in the districts to generate revenues to pay the debt service on the special obligation bonds issued for each district and to continue serving the districts. These taxes include Metropolitan, Regional, Recreational, Storm Drainage, Urban, Noise Abatement, and Development District Taxes, as applicable, which can vary by district.

Exhibit 8 presents a comparison of real property taxes in the County and the two comparison counties in Virginia.<sup>10</sup> These taxes include state and local taxes, and taxes for a range of purposes including transit, special service areas, and others. This study excludes use of density bonus, enterprise zone tax credit, new jobs tax credit, renewable energy-related credits (e.g., energy and environmental design and renewable energy device), or other property exemptions. As shown in Exhibit 7, the County has lower transit-dedicated taxes than Fairfax and Loudoun Counties. Other special service area taxes vary depending on the location of property, with the lowest rate for property in Town of Barnesville and the highest rate in City of Tacoma, per the FY 2020 real property tax rate schedule.<sup>11</sup> Fairfax County has the highest ceiling and Montgomery County has the lowest floor in total real property taxes in comparison with other two counties.

**Exhibit 8: Comparison of Real Property Taxes**

Tax (per \$100 Assessment)	Jurisdictions	State	General County Tax	Transit / Transportation Taxes	Other Special Service Area Taxes	Total
Real Property Tax	Montgomery	\$ 0.11	\$ 0.81	\$ 0.07	\$0.08* - \$0.64*	<b>\$1.08 - \$1.64</b>
	Fairfax	\$ -	\$ 1.15	\$ 0.13** - \$ 0.64**	up to \$0.05	<b>\$1.28 - \$1.83</b>
	Loudoun	\$ -	\$ 1.04	\$0.17*** - \$0.37***	\$ -	<b>\$1.21 - \$1.41</b>

\* These are Municipal, Metropolitan, Regional, Recreational, Storm Drainage, Urban, Noise Abatement, and Development District Taxes, as applicable, which can vary by district.

\*\* These include Commercial Transportation (countywide), Route 28 Improvement, Tysons Service, and Dulles Phase I / Phase II Transportation Improvement District special district taxes, as applicable.

\*\*\* This includes Route 28 Improvement and Metro Service District special district taxes, as applicable.

The County imposes real property taxes at the district level, unlike Fairfax and Loudoun Counties. Supplementing the State rate of \$0.11 per \$100 is the County’s general County tax rate of \$0.81 per \$100 assessment. The general County tax rate is comprised of charges of \$0.6948 per \$100 for the base tax, \$0.1182 per \$100 for fire district tax, and \$0.001 for the advanced land acquisition tax. The general County tax rate, as well as transit taxes, apply to all districts. In certain districts, municipal district and other special service area taxes are levied.

Fairfax County’s real property taxes include two large sources: general county tax and transit tax. The base general county rate of \$1.15 per \$100 assessment is supplemented with transit taxes of \$0.64 per \$100 assessment through creation of special taxing districts, including the countywide commercial transportation

<sup>10</sup> The Maryland State Department of Assessments and Taxation (“MD SDAT”) assess each property on a three-year cycle at 100% of fair market value. Fairfax and Loudoun Counties assess real property tax on an annual basis at 100% of fair market value. In this analysis, fair market value is assumed to equal the estimated project cost, escalating at 2% per annum.

<sup>11</sup> <https://www.montgomerycountymd.gov/Finance/Resources/Files/data/propertytaxrate/2020/realproperty.pdf>





## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

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tax district, the Route 28 improvement district, the phase I and II Dulles rail transportation improvement districts, and the Tysons service district. Fairfax County, in partnership with Loudoun County, established the Route 28 improvement and metro service districts (Dulles rail transportation improvement) to provide improvements to State Route 28, which connects State Route 7 in eastern Loudoun County to U.S. Route 50 and Interstate Highway 66 in western Fairfax County and to fund a 23-mile Metrorail extension connecting the Tysons, Reston, Herndon, and Dulles airport areas. Other special service area taxes of \$0.05 per \$100 assessment include stormwater management, pet infestation control, and leaf collection services.

Similar to Fairfax County, real property taxes in Loudoun County include general county tax and transit tax, both of which are uniform across the county. The general county tax is a flat rate of \$1.04 per \$100 assessment and transit taxes are levied upon properties in special districts for Route 28 improvement and Metro Service Districts, at \$0.17 and \$0.2 per \$100 assessment, respectively.

Overall, the real property in the County incurs lower transit-dedicated real property taxes in comparison with Fairfax and Loudoun Counties, and lower real property tax floor in total.

### Business Property Taxes

Business personal property generally includes furniture, fixtures, office and industrial equipment, machinery, tools, supplies, inventory, and any other property not otherwise classified as real property. The taxes are imposed and collected by local governments only in Maryland and Virginia (no state levies).<sup>12</sup>

The County levies business property taxes at different rates in various special taxing districts.<sup>13</sup> A general County tax of \$1.74 per \$100 assessment applies across districts regardless of the tax class. Additionally, properties located within the Downtown Bethesda, White Oak, and West Germantown pay \$0.77, \$0.74, and \$0.00 per \$100 assessment, respectively.<sup>14</sup> Fairfax County has a flat rate of \$4.57 per \$100 assessment regardless of the type of property and Loudoun County differs in the types of taxes imposed (e.g., \$4.20/\$100 for Furniture, Fixtures and Equipment, and Computer Equipment).<sup>15</sup> The table in Exhibit 8 shows the taxes on business personal property in the County and Fairfax and Loudoun Counties.

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<sup>12</sup> Montgomery County has a 100% exemption for personal property tax on commercial inventory, manufacturing inventory and manufacturing machinery. However, these categories do not impact the three development types sampled in this analysis.

<sup>13</sup> <https://www.montgomerycountymd.gov/Finance/Resources/Files/data/propertytaxrate/2020/personalproperty.pdf>

<sup>14</sup> These three districts/townships are included as examples as a subset of districts/townships within the County.

<sup>15</sup> Select business personal properties relevant to the development are included for estimates. Other tax rates for business personal properties not included in the case studies is here. <https://www.loudoun.gov/1570/Business-Tax-Rates>



# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

## Exhibit 9: Comparison of Business Personal Property Taxes

Tax (per \$100 Assessment)	Jurisdiction	General County Tax	Other Special Service Area Taxes	Total
Business Personal Property Tax	Montgomery	\$ 1.74	\$ 0.48 - \$ 4.03	\$ 2.22 - \$ 5.77
	<b>Jurisdiction</b>	<b>Use</b>		<b>Total</b>
	Fairfax	\$	4.57	\$ 4.57
	Loudoun	\$ 0.01	- \$ 4.20	\$ 0.01 - \$ 4.20

As seen in Exhibit 9, the County has the highest business personal property taxes ceiling in comparison with Fairfax and Loudoun Counties.

### Developer Taxes in Montgomery County

Montgomery County requires developers to contribute to the development of transportation improvement projects and public schools by building transportation-related maintenance and operation features through the payment of development impact taxes, as well as the Transportation Mitigation Fund, Transportation Demand Management Plan, Bethesda Unified Mobility Program, and White Oak Local Area Transportation Improvement Program (“LATIP”). These are assessed by Transportation Policy Area. Provisions allow for developers to reduce or eliminate impact taxes related to certain development types (e.g., bioscience, moderately priced dwelling units).<sup>16</sup>

#### 1. Impact Taxes

Impact taxes follow specific formulas and allocation methodologies to measure the impact of new development. To capture the economic impact of the new development, the County asks developers to contribute certain dollar amounts based on new students generated from the development and additional gross floor area (“GFA”) or number of dwelling units from the development by property classification. The County levies transportation impact taxes in different zones called Transportation Policy Areas as detailed below.<sup>17</sup> These are grouped into four categories based on density, zoning, and existing transportation infrastructure as follows:

- **Red (Metro Station Policy Area):** Central business districts and Metro station policy areas (“MSPAs”) characterized by high-density development and the availability of premium transit service (e.g., Metrorail, MARC);
- **Orange:** Corridor cities, town centers and emerging transit-oriented development (“TOD”) areas where premium transit service (e.g., Corridor Cities Transitway, Purple Line, bus rapid transit) is planned;<sup>18</sup>
- **Yellow:** Lower-density areas of the county characterized by mainly residential neighborhoods with community-serving commercial areas; and
- **Green:** The County’s agricultural reserve and rural areas.

<sup>16</sup> In this analysis, “developer taxes” consist of impact taxes as well as upfront Transportation Mitigation Fund, Transportation Demand Management Plan, Bethesda Unified Mobility Program, and White Oak Local Area Transportation Improvement Program costs.

<sup>17</sup> <https://montgomeryplanning.org/transportation-policy-areas/>

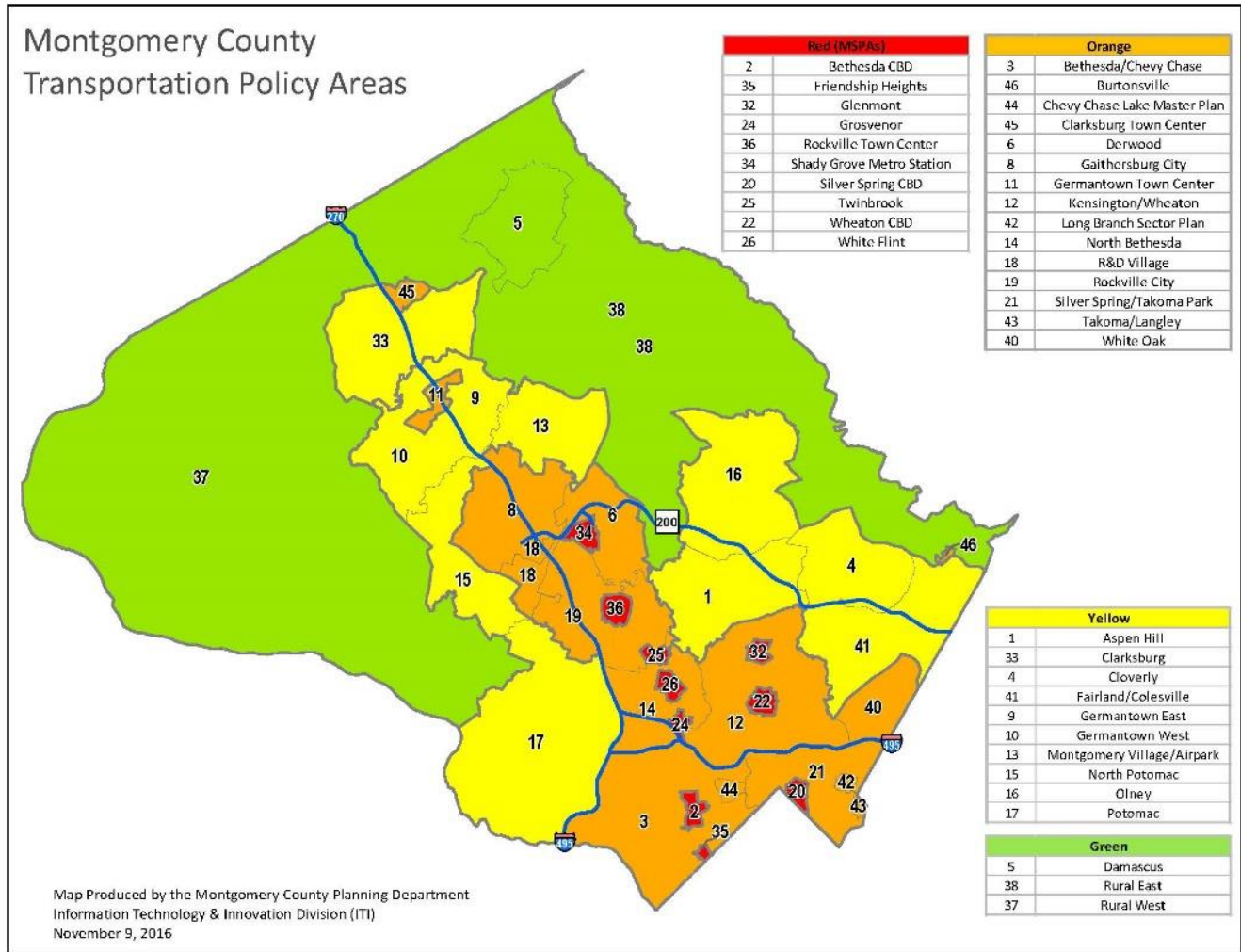
<sup>18</sup> The Corridor Cities Transitway is a 15-miles bus rapid transit project, including nine-mile BRT line operating between Metropolitan Grove MARC stations and Shady Grove Metrorail Station (Phase I) and six-mile extension from Metropolitan Grove to the COMSAT facility south of Clarksburg (Phase II).



# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

The geographic distribution of the Transportation Policy Areas is shown in Exhibit 10.

**Exhibit 10: Map of Transportation Policy Areas**



As seen in Exhibit 10, the Red and Orange Transportation Policy Areas cover locations with denser development that are closer to existing or planned major transportation infrastructure. The Yellow Policy Areas tend to be less dense and further from major infrastructure, while the Green Transportation Policy Areas cover rural portions of the County.

The impact taxes in the various Transportation Policy Areas as of June 30, 2020 are shown below in Exhibit 10.



# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

**Exhibit 11: Transportation Impact Taxes by Policy Area**

Policy Area	Type of Business	Unit	Rates
Red	Office	Gross Floor Area	7.15
	Retail	Gross Floor Area	6.35
	Other Non-Residential	Dwelling Unit	3.60
	Single-Family Attached	Dwelling Unit	6,413.00
	Multifamily High Rise	Dwelling Unit	3,561.00
Orange	Office	Gross Floor Area	17.90
	Retail	Gross Floor Area	16.00
	Other Non-Residential	Dwelling Unit	8.90
	Single-Family Attached	Dwelling Unit	16,030.00
	Multifamily High Rise	Dwelling Unit	8,904.00
Yellow	Office	Gross Floor Area	22.40
	Retail	Gross Floor Area	19.95
	Other Non-Residential	Dwelling Unit	11.20
	Single-Family Attached	Dwelling Unit	20,038.00
	Multifamily High Rise	Dwelling Unit	11,130.00

As seen in Exhibit 11, the transportation impact tax rates vary greatly by Transportation Policy Area, with rates being generally lowest in the Red Transportation Policy Areas, with rates in the Yellow Transportation Policy Area being highest.<sup>19</sup>

Other impact taxes in the County include those for public schools and transportation improvements as follows:

- **Public School Contribution:** Impact taxes for public schools (School Impact Tax) is a formulated monetary contribution used for capital improvements that enhance capacity and does not offset the school’s budgeted operating costs. The contribution is estimated per new dwelling unit generated from the development. For single attached and single detached developments, the rate is \$27,598 per unit, \$21,961 for multi-family low rise, and \$6,113 for multi-family high rise.
- **Transportation Improvement:** Transportation impact taxes are formulated monetary contributions used for transportation-related activities (e.g., road maintenance and operation and capital improvement project). Commitments from private sector developers fund Montgomery County’s transportation improvements based on the Gross Floor Area of development, per dedicated funding schedules. The County levies upon commercial real properties at the district level by the use of property (e.g., \$7.15 per SF on office use, \$6.35 per SF on retail use, \$3.6 per SF, and \$6,413 per dwelling unit for single-family attached in the Red Policy Area).
- **Affordable Housing Contribution:** Developers/builders are subject to the regulatory process for developing Moderately Priced Dwelling Units (MPDUs) in Montgomery County. The requirement applies to new development with 20 or more units in Montgomery County. The required nominal percentage of MPDUs on new development ranges from 12.5 percent to 15.0 percent of the total units in the development. The effective percentage for certain developments may depend upon the density

<sup>19</sup> In this analysis, Green Policy Area was not considered as this Policy Area is intentionally not targeted for development.



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

bonus credited and developers/builders who do not receive the density bonus are still subject to the minimum 12.5 percent of the MPDUs requirement. In Montgomery County, the Zoning Ordinance allows for a density bonus of up to 22 percent above a zone’s base density in exchange for providing additional MPDUs above the minimum 12.5 percent required.

In the case studies to follow, JLL assumes the minimum 12.5 percent MPDUs requirement with no density bonus credits for new developments in Montgomery County. Developers/builders forego potential earnings from below- market priced dwelling units. JLL compiled three similar properties located in or near the vicinity of Downtown Bethesda, White Oak, and West Germantown and quantified the differential amount between a sample MPDU (1,600 SQFT single-attached unit at \$193,044 MPDU sales price) and comparable properties sold at fair market value. Exhibit 12 below estimates the differential amount utilizing the minimum of 12.5 percent and up to 15 percent of the MPDU requirement.

**Exhibit 12: Estimated Foregone Earnings for Residential Space in Montgomery County<sup>20</sup>**

	Capital One Tower		Kincora	
	12.5%	15.0%	12.5%	15.0%
Downtown Bethesda	\$ 20,709,069	\$ 24,850,882	\$ 32,560,898	\$ 39,073,078
White Oak	15,185,334	18,222,401	23,875,923	28,651,107
West Germantown	\$ 13,807,668	\$ 16,569,202	\$ 21,709,816	\$ 26,051,779

- Capital One Tower Project of Fairfax County:** In the Capital One Tower case study, the developer proposed 915 dwelling units, or 982,000 GFA. 12.5 percent of the proposed GFA, or 122,750 GFA of the total number of units associated with the development would be set aside for MPDUs in Montgomery County. The foregone earnings for similar development profile are estimated at \$20.7 million in Bethesda, \$15.2 million in White Oak, and \$13.8 million in West Germantown.
- Kincora Village Center Project of Loudoun County:** In the Kincora Village Center study, the developer proposed 1400 dwelling units, or 1,544,000 GFA. 12.5 percent of the proposed GFA, or 193,750 GFA of the total number of units associated with the development would be set aside for MPDUs in Montgomery County. The foregone earnings for similar development profile are estimated at \$32.6 million in Bethesda, \$23.9 million in White Oak, and \$21.7 million in West Germantown.

### Other Developer Taxes

Additionally, the County is considering Unified Mobility Programs, which would include the potential Bethesda UMP and White Oak LATIP to fund necessary transportation improvements.<sup>21</sup> The purpose of the Unified Mobility Programs (“UMPs”), and the Local Area Transportation Improvement Program (“LATIP”), is to provide a streamlined transparent process for implementing transportation network improvements (e.g., transit improvements, pedestrian/bicycle improvements, and intersection improvements) for the downtown Bethesda and White Oak areas. In addition, areas such as White Flint utilize special taxing districts intended to

<sup>20</sup> The Arbor Row project is excluded because the project does not have residential properties, so no comparable public school and affordable housing contribution exists.

<sup>21</sup> The Bethesda UMP has not yet been adopted by the County Council. However, it is included in this analysis on an assumed estimated fee schedule basis as shown in Exhibit 11, because the rates have been estimated to be the necessary tax burden to pay for required improvements in Bethesda.



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

provide additional revenue, resulting in a patchwork of tax jurisdictions. The scattered nature of development in an area can result in a number of uncoordinated transportation projects being pursued by various developers. In some cases, an agreement can be struck between developers to provide shared and coordinated treatments, though these agreements can be difficult to implement as intended. These defined transportation funding programs reduce these issues, allowing for a unified analysis that can identify all treatments required across the transportation policy area.<sup>22</sup>

These programs impose upfront cost burdens to the developer based on the use of development and projected number of new vehicle trips generated in support of Master Plan improvements (e.g., the WOSG Master Plan<sup>23</sup>), based upon local area traffic analyses which are customized to reflect existing conditions and future changes in both land use and travel behavior.

The County has established or proposed dedicated funding sources for these two areas, as noted below:

- **Bethesda UMP:** Bethesda UMP as currently drafted contemplates a proposed per-trip fee paid by development identifying necessary transportation infrastructure needs, per 2017 Bethesda Downtown Plan.<sup>24</sup> The draft program estimates costs for new infrastructure initiatives and divides the costs across future development. Potential Bethesda UMP charges needed to fund comprehensive transportation investments are summarized below in Exhibit 13.

**Exhibit 13: Estimated Bethesda UMP fee schedule<sup>25</sup>**

USE	UNIT	Trips per Unit
Single Family Detached	DU	\$2,542
Single Family Attached	DU	\$2,542
Multi-Family High-Rise	DU	\$488
Multi-Family Low-Rise	DU	\$488
Multi-Family Senior	DU	\$2,542
Student-Built Houses	DU	\$2,542
Clergy House	DU	\$2,542
Office	GFA	\$1.78
Industrial	GFA	\$1.27
Bioscience Facility	GFA	\$2.40
Retail	GFA	\$9.75
Place of Worship	GFA	\$2.40
Private Elementary & Secondary School	GFA	\$2.40
Hospital	GFA	\$2.40
Charitable, Philanthropic Institution	GFA	\$1.78
Other Non-Residential	GFA	\$2.40
Agricultural Facility	GFA	\$1.27

<sup>22</sup> <https://www.montgomerycountymd.gov/dot-dir/Resources/Files/LATR-WhitePaper.pdf>

<sup>23</sup> The White Oak Science Gateway (“WOSG”) Master Plan provides the foundation upon which the area can evolve into a community that offers more local opportunities to live, work and play. The Plan envisions White Oak’s major centers — Hillandale, White Oak and the Life Sciences/FDA Village — evolving from conventional, auto-dependent suburban shopping centers, business parks, and light industrial areas into vibrant, mixed-use, transit-served nodes; [https://www.montgomeryplanning.org/community/wosg/documents/approved\\_and\\_adopted\\_final.pdf](https://www.montgomeryplanning.org/community/wosg/documents/approved_and_adopted_final.pdf)

<sup>24</sup> <https://www.montgomeryplanning.org/planning/communities/downcounty/bethesda-downtown-plan/>

<sup>25</sup> Rate schedule provided by MCDOT



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

- White Oak LATIP:** Developers constructing new development within the White Oak area pay the County certain special taxes based on a dedicated fee schedule, as noted in the table below. The fee is quantified multiplying \$5,010 per new PM peak hour vehicle trips by assigned rates by use of property. The LATIP charges are summarized below in Exhibit 14.

**Exhibit 14: Estimated White Oak LATIP Fee Schedule<sup>26</sup>**

USE	Trips per Unit	Units
Office	1.20	per 1000 SF
Retail	3.00	per 1000 SF
Industrial	1.00	per 1000 SF
Bioscience	0.99	per 1000 SF
Hospital	1.07	per 1000 SF
Other Non-Residential	0.92	per 1000 SF
Single Family Detached	1.28	DU
Single Family Attached	0.65	DU
Multi-Family High-Rise	0.52	DU
Multi-Family Low-Rise	0.34	DU

The County has a range of developer taxes in different jurisdictions. This can lead to variation in the upfront tax burden on development projects in different parts of the County.

### Proffers in Virginia

Instead of impact taxes, jurisdictions in Northern Virginia require “proffer” contributions of various types. A proffer contribution is established once a county approves a rezoning application. As a part of the rezoning process, Virginia law authorizes local jurisdictions to authorize developments to provide proffers.<sup>27</sup> Fairfax County also requires monetary contributions to Transportation Road Funds in addition to special-purpose facility proffers and proffers in-kind (e.g., right of way (“ROW”), Metro station-related facilities, publicly accessible recreational facilities, affordable dwelling units, and other items). Similarly, Loudoun County also requires monetary contribution for transportation improvement and capital facilities (e.g., school, fire station, sheriff station, public park, public library, recreation center, and adult detention center). Fairfax and Loudoun Counties have established somewhat transparent proffer policies, meaning that the proffer schedules for new developments are often publicly accessible although not always easily found.

Montgomery County also accepts proffers; however, it is worth noting that the County cannot ask a developer for a proffer; instead, proffers must be voluntarily offered to the County. As a matter of practice, the County accepts smaller-scale public works and facilities from the developer.

Proffers in Virginia are not restricted to tangible properties and monetary contributions but also include design guidelines, building footprint, architecture of building structures, transportation demand management, GFA, noise attenuation, and other requirements set by the relevant county for rezoning approval. Modifications to the proffered items are allowed when the Zoning Administrator determines that they substantially conform to the proffered conditions and do not materially alter the character of the approved development. If the cost estimates for non-monetary proffers exceed the original offering amount,

<sup>26</sup> [http://montgomeryplanningboard.org/wp-content/uploads/2017/09/2017-LATIP-Payment-Schedule\\_092817\\_Final.pdf](http://montgomeryplanningboard.org/wp-content/uploads/2017/09/2017-LATIP-Payment-Schedule_092817_Final.pdf)

<sup>27</sup> See VA Code, § 15.2-2303 et seq.; see also the Zoning Ordinance of Fairfax County, § 18.204 et seq. and the 1993 Loudoun County Zoning Ordinance, § 6.1209 et seq.



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

then the developer may elect to make equivalent monetary contribution to the counties (for example, if the cost of delivering a specified facility increases over time). Although many proffers are negotiated and heavily dependent upon development profile, certain proffers are standardized in Fairfax and Loudoun Counties, as noted below.

**Public School Contribution:** In Virginia, the public school contribution fee is based on a local formula that removes all capital facilities, pre-school, and detention center expenditures. Additionally, enrollment numbers are adjusted for pre-school aged children, with only 85% of kindergarten students included in the calculations. For the capital contribution, Fairfax County calculates per-student cost using the school board's appropriated operating budget, including the cost of capital bus leases<sup>28</sup> and Loudoun County calculates per-dwelling unit based on the capital intensity factor<sup>29</sup> by the type of housing. The per student cost used in the case studies is \$26,921 (Single-Family Attached) for Fairfax County<sup>30</sup> and the per-dwelling unit cost used in the case studies is \$15,664 (Multi-Family Attached) for Loudoun County<sup>31</sup>.

**Transportation Improvement Funds:** Similar to the County's transportation impact tax, Fairfax and Loudoun Counties also levy upon commercial properties by the use of property. However, Fairfax county has flat rates funded to three accounts, as follows.<sup>32</sup> These funds do not include any public-use facilities and existing developments. Examples of such funds include the following:

- **Tysons Grid of Streets Fund:** \$7.17 per SF for non-residential use and \$1,114 per dwelling unit for residential use.
- **Tyson-Wide Developer Fund:** \$6.29 per SF for non-residential use and \$1,114 per dwelling unit for residential use.
- **Route 123 Super Boulevard Fund:** \$0.126 per net new SF of development.

**Affordable Housing Unit (ADU) Contribution:** In Fairfax and Loudoun Counties, developers/builders are subject to the ADU contribution, as required by the zoning ordinance of ADU for each jurisdiction. Both jurisdictions require an ADU contribution from 10 percent to 20 percent of the total number of dwelling units. In Fairfax County, the requirement of the ADU applies to any development with 50 or more dwelling units at an equivalent density greater than one unit per acre. In Loudoun County, the requirement of the ADU applies to any development with 24 or more dwelling units at an equivalent density greater than one unit per 40,000 SQFT.

JLL sampled three similar properties located with Fairfax and Loudoun Counties and quantified the spread between the fair market value of properties and ADU sales price, which results to foregone earnings for developer by offering such properties at below market price. Exhibit 15 below presents the foregone earnings considered as an indirect proffer burden to the developer for two of the three case studies: 982,000 SQFT Capital One Tower development and 1,544,000 SQFT Kincora Village Center development. Another case study, The Mather – Arbor Row Block B/C1 is not subject to the ADU requirement, as the development does not

<sup>28</sup> <https://www.loudoun.gov/DocumentCenter/View/100221/FY15-Proposed-Fiscal-Plan-Volume-2?bidId=>

<sup>29</sup> Capital intensity factor is a financial multiple that estimates the future costs of development in Loudoun County and is used by the Planning Commission and the Planning and Zoning Department in proffer negotiation.

<sup>30</sup> [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/C2HJDX4BD4BE/\\$file/Presentation%20-%20Student%20Yield%20Ratios%20and%20Proffer%20Updates%202021%20v2%20\(002\).pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/C2HJDX4BD4BE/$file/Presentation%20-%20Student%20Yield%20Ratios%20and%20Proffer%20Updates%202021%20v2%20(002).pdf)

<sup>31</sup> <https://www.loudoun.gov/DocumentCenter/View/55679/Capital-Intensity-Factor?bidId=>

<sup>32</sup> <https://www.fairfaxcounty.gov/budget/sites/budget/files/assets/documents/fy2020/adopted/volume2/30040.pdf>





## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

include residential use space. Exhibit 15 below estimates the differential amount utilizing the minimum of 10 percent and up to 20 percent of the MPDU requirement.

**Exhibit 15: Estimated Foregone Earnings for Residential Space in Fairfax and Loudoun Counties**

	Capital One Tower		Kincora Village Center	
	10.0%	20.0%	10.0%	20.0%
Fairfax and Loudoun Counties	\$ 31,608,858	\$ 63,217,715	\$ 28,409,995	\$ 56,819,991

In addition, Fairfax County may accept other voluntary commitments (e.g., public facilities, ROW Acquisition, and service road construction). However, these proffers can be fully or partially credited to the transportation funds and offset the total burden amount.

### Summary of Business Taxes in the Three Counties

Corporate income tax is collected at the State or Commonwealth level. In Maryland, the corporate income tax is 2% higher than in Virginia. Local governments in Maryland cannot impose BPOL taxes, unlike in Virginia. Montgomery County has lower business taxes in real property and business personal property and lower business tax burdens in total as compared to Fairfax and Loudoun Counties. Exhibit 16 presents breakdowns of business taxes in the three counties (Montgomery County, Fairfax County, Loudoun County).

**Exhibit 16: Summary of Business Taxes in Three Counties**

Business Taxes	Jurisdictions	Units	Rates (FY 2020)
Corporate Income Tax	Montgomery County	dollars taxable income	8.25%
	Fairfax County		6.25%
	Loudoun County		6.25%
Real Property Tax	Montgomery County	per \$100 assessment	\$1.08 - \$1.64
	Fairfax County		\$1.28 - \$1.83
	Loudoun County		\$1.21 - \$1.41
Business Personal Property Tax	Montgomery County	per \$100 assessment	\$2.22 - \$5.77
	Fairfax County		\$4.57
	Loudoun County		\$ 0.01 - \$4.20
BPOL Tax	Montgomery County	per \$100 receipts/purchases	N/A
	Fairfax County		\$0.04 - \$0.31
	Loudoun County		\$0.03 - \$0.50
Impact Tax/ Proffer	Montgomery County	dollars	<i>project specific</i>
	Fairfax County		<i>project specific</i>
	Loudoun County		<i>project specific</i>
Other Developer Taxes	Montgomery County	variable	<i>location specific</i>
	Fairfax County		<i>location specific</i>
	Loudoun County		<i>location specific</i>

As seen in Exhibit 16, Fairfax and Loudoun Counties have higher corporate income tax, and in the case of Fairfax County, the highest real property tax for the three counties by range. Corporate and real property taxes are the heaviest taxes imposed on developments in all the counties. Impact taxes and proffers are highly dependent on a specific development, and other developer taxes dependent on location. In Fairfax and



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

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Loudoun Counties, proffer contribution is subject to negotiation between the developer and local government. In Montgomery County, while impact tax rates are not negotiated, the County and developer can negotiate improvements performed by the developer in exchange for impact tax credits.



## IV. Case Studies

The illustrative case studies in this section examine the tax implications for developments in Fairfax and Loudoun Counties and estimate the business tax burden in Montgomery County on the developer of a hypothetical project approximately fitting the financial profile of three new developments: (i) Capital One Tower Project of Fairfax County; (ii) The Mather - Arbor Row Block B/C1 Project of Fairfax County; and (iii) Kincora Village Center Project of Loudoun County. This approach involves applying the general business characteristics of each development and estimating the impacts of taxes and proffers if the development were situated in each of the County, Fairfax County, and Loudoun County.

The analysis of each case study includes estimates of assessments in three Transportation Policy Areas in the County: (i) Downtown Bethesda (Red Policy Area); (ii) White Oak (Orange Policy Area); and (iii) West Germantown (Yellow Policy Area).

Exhibit 14 presents a comparison of real property taxes in the County for (i) Downtown Bethesda (Red Policy Area); (ii) White Oak (Orange Policy Area); and (iii) West Germantown (Yellow Policy Area), and the two comparison counties in Virginia.<sup>33</sup> These taxes include state and local taxes, and taxes for a range of purposes including transit, special service areas, and others. This study excludes use of density bonus, enterprise zone tax credit, new jobs tax credit, renewable energy-related credits (e.g., energy and environmental design and renewable energy device), or other property exemptions. As shown in Exhibit 14, the County has lower transit-dedicated taxes than Fairfax and Loudoun Counties, and has lower real property taxes in total, based on consideration of the three indicative districts observed: Downtown Bethesda, White Oak, and West Germantown.

**Exhibit 17: Comparison of Real Property Taxes**

Tax (per \$100 Assessment)	Jurisdictions	Districts / Township / Cities	State	General County Tax	Transit / Transportation Taxes	Other Special Service Area Taxes	Total
Real Property Tax	Montgomery	Downtown Bethesda	\$ 0.1120	\$ 0.8140	\$ 0.0736	\$ 0.1156*	\$1.1152
		White Oak				\$ 0.1036*	\$1.1032
		West Germantown				\$ 0.2576*	\$1.2572
	Fairfax	Tysons	\$ -	\$ 1.1500	\$ 0.6350**	\$ 0.0455	\$1.8305
	Loudoun	Sterling	\$ -	\$ 1.0350	\$ 0.3700***	\$ -	\$1.4050

\* In addition to State, General County (\$0.6948 plus Fire District Tax (\$0.1182) and Advance Land Acquisition Tax (\$0.001)), and Transit Tax (\$0.0736), the three Montgomery County indicative districts/townships include the following Special Service Area Taxes:

- Downtown Bethesda (tax class 76) includes Metropolitan (\$0.06), Regional (\$0.0176), Recreational (\$0.026), and Urban District (\$0.012) taxes.
- White Oak (tax class 38) includes Metropolitan (\$0.06), Regional (\$0.0176), and Recreational (\$0.026) taxes.
- West Germantown (tax class 64) includes Metropolitan (\$0.06), Regional (\$0.0176), Recreational (\$0.026), and Development District (\$0.1540) taxes.

\*\* These include Commercial Transportation (countywide), Route 28 Improvement, Tysons Service, and Dulles Phase I / Phase II Transportation Improvement District special district taxes.

\*\*\* This includes Route 28 Improvement and Metro Service District special district taxes.

The table in Exhibit 15 shows the taxes on business personal property in Montgomery County for (i) Downtown Bethesda (Red Policy Area); (ii) White Oak (Orange Policy Area); and (iii) West Germantown (Yellow Policy Area), and the two comparison counties in Virginia.

<sup>33</sup> The Maryland State Department of Assessments and Taxation ("MD SDAT") assess each property on a three-year cycle at 100% of fair market value. Fairfax and Loudoun Counties assess real property tax on an annual basis at 100% of fair market value. In this analysis, fair market value is assumed to equal the estimated project cost, escalating at 2% per annum.



# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

**Exhibit 18: Comparison of Business Personal Property Taxes**

Tax (per \$100 Assessment)	Jurisdictions	Districts / Township	General County Tax	Transit / Transportation Taxes	Other Special Service Area Taxes	Total	
Business Personal Property Tax	Montgomery	Downtown Bethesda	\$ 2.0350	\$ 0.1840	\$ 0.2890*	\$ 2.5080	
		White Oak			\$ 0.2590*	\$ 2.4780	
		West Germantown			\$ -	\$ -	\$ -
	<b>Jurisdictions</b>	<b>Cities</b>	<b>Use</b>			<b>Total</b>	
	Fairfax	Tysons				4.5700	\$ 4.5700
	Loudoun	Sterling				4.2000	\$ 4.2000

\* In addition to General County [\$1.7370 plus Fire District Tax (\$0.2955) and Advance Land Acquisition Tax (\$0.0025)], and Transit Tax (\$0.1840), the three Montgomery County indicative districts/townships include the following Special Service Area Taxes:

- Downtown Bethesda (tax class 76) includes Metropolitan (\$0.15), Regional (\$0.044), Recreational (\$0.065), and Urban District (\$0.03) taxes.
- White Oak (tax class 38) includes Metropolitan (\$0.15), Regional (\$0.044), and Recreational (\$0.065) taxes.
- West Germantown (tax class 64) does not impose business personal property taxes.

Developer taxes in the County and proffers in Northern Virginia jurisdictions are estimated based on formula schedules and proffer statements submitted by the developers of the actual projects upon which the case studies are based. For the Red Policy Area, the analysis includes estimated proposed Bethesda UMP (“BUMP”). For the Orange and Yellow Policy Areas, the analysis includes White Oak LATIP.

The resulting tax burden for the County is compared against the corresponding tax burdens associated with Tysons in Fairfax County and Sterling in Loudoun County. The tax burden for local jurisdictions is quantified with applicable rates/fees to estimate the cost of doing business in each jurisdiction.

The case studies estimate the tax burdens facing developers of three indicative real estate projects. These indicative projects include a wide variety of mixed-use properties (e.g., office, retail, residential, non-residential, and public facility) generating lease revenues upon completion of construction. Other underlying assumptions include the following attributes:

- **Gross Receipts:** The current leasing revenues, as of June 30, 2021, including taxes and expenses for properties that are adjacent to the development with similar building tabulations, have been sampled to estimate the average leasing rate per SF per year. The market rate for properties are (i) \$48 per SF per year, which translates into \$225.95 million lease revenues per year for the Capital One Tower project, (ii) \$39.83 per SF per year or \$26.62 million a year for the Mather – Arbor Row Block B/C1 project, and (iii) \$26.54 per SF per year or \$139.07 million a year for the Kincora Village Center project.
- **Earnings Before Income Taxes:** The lease revenues above serve to quantify the hypothetical BPOL tax and corporate income tax assessed by Montgomery County, Fairfax County, and Loudoun County. Earnings Before Income Tax margin rates are assumed to be 20% for the Capital One Tower project, 10% for the Mather – Arbor Row Block B/C1 project, and 10% for the Kincora Village Center project. The case studies apply flat rates of the corporate income tax for all developments and assume a median rate of \$0.19 per \$100 assessment on gross receipts/purchase for business entities in Fairfax and Loudoun Counties.
- **Business Personal Property Investment:** This study assumes \$10 million in business personal property investment for the Capital One Tower project, \$2.5 million for the Mather – Arbor Row Block B/C1 project, and \$6 million for the Kincora Village Center over 25 years.



# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

Recurring business taxes are quantified on a Net Present Value (“NPV”) basis to allow comparisons with upfront levies (e.g., developer taxes and proffer contributions), and to allow for comparison across jurisdictions. Annual recurring tax burdens are discounted to provide a NPV over 25 years, assuming an 8% discount rate and a 2% growth rate, respectively.

## Developer Taxes / Proffers

This study includes a sampling of proffered items to Fairfax and Loudoun Counties for comparison with the developer taxes in the County. These proffers may be negotiated and substituted with other offerings or eliminated if an agreement can be reached between the developer and the counties. Certain proposed items are not included in the burden of developer because they may include (i) items that are already credited toward transportation funds, and (ii) expenses that the developer incurs regardless of the proffers (e.g., green building certification, best management practices, landscape plans, signage, traffic signals, streetscape, and sidewalk/trail). While developer taxes are calculated according to an established schedule (or proposed in the case of Bethesda UMP), proffer contributions in some jurisdictions (e.g., Fairfax County) can be heavily negotiated.

Exhibits 19-21 present actual known proffered items for the three development projects that are used as case studies in the business tax burden analysis.

**Exhibit 19: Capital One Tower Project in Fairfax County**

Proffer Item	Category	Contribution Amount
Tysons Grid of Streets Transportation Fund	Transportation	\$ 25,470,112
Tysons-wide Road Fund	Transportation	22,601,116
Route 123 Super Boulevard	Transportation	577,360
Public Schools Contribution	Public School	3,634,335
Building 5A - Capital One Center	Public Facility	9,496,560
Residential Affordable Housing Contribution	Affordable Housing	31,608,858
Non-Residential Affordable Housing Contribution	Affordable Housing	10,042,779
<b>Total Proffers</b>		<b>\$ 103,431,120</b>



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

**Exhibit 20: The Mather - Arbor Row Block B/C1 Project in Fairfax County**

Proffer Item	Category	Contribution Amount
Tysons Grid of Streets Transportation Fund	Transportation	\$ 4,643,034
Tysons-wide Road Fund	Transportation	4,073,178
8 Acres Land	Public Facility	4,500,000
Stream Restoration Work	Public Facility	500,000
Monetary Contribution	N/A	600,000
Synthetic Turf Fields	Public Facility	225,000
Private Active Recreation Facilities	Public Facility	570,000
Public Schools Contribution	Public School	2,745,942
Residential Affordable Housing Contribution	Affordable Housing	-
Non-Residential Affordable Housing Contribution	Affordable Housing	1,942,692
<b>Total Proffers</b>		<b>\$ 19,799,845</b>

**Exhibit 21: Kincora Village Center Project in Loudoun County**

Proffer Item	Category	Contribution Amount
Monetary Contribution	Transportation	\$ 24,895,078
Public School Contribution	Public School	21,929,754
Fire and Rescure Contribution	Public Facility	719,603
5 Acres Land	Public Facility	10,820,000
Residential Affordable Housing Contribution	Affordable Housing	28,409,995
Non-Residential Affordable Housing Contribution	Affordable Housing	9,348,075
<b>Total Proffers</b>		<b>\$ 96,122,505</b>

As seen in Exhibits 19-21, the nature and cost of proffer items can vary greatly. They can also include delivery of facilities or services and monetary contributions.

A discussion of each of the three case study projects follows.



## Capital One Tower Project (Fairfax County)

### Project Overview

- **Owner:** Capital One Bank, USA, NA
- **Area:** 26.22 Acres
- **Proposed GFA:** 4,707,222
- **Est. Project Gross Receipts:** \$225.95 million
- **Est. EBIT Margin:** 20%
- **Est. Business Personal Property Investment:** \$10 million
- **Est. Total Project Cost:** \$3 Billion



The Capital One Tower Project is a 4.7 million SF mixed-use development including Office, Retail, Hotel, Residential, and Public Facility spaces, as noted in the table below. The proposed development will supplement and partially replace the existing development (24.56 acres in size, 479,500 SF, 26,000 SF conference facility, 1,529 structured parking spaces, temporary athletic fields, and sport courts).

The total project cost is estimated to be \$3 billion, excluding an estimated proffer burden of \$103.4 million. Development assessment is based on \$654.7 per SF rate, with the total project SF excluding a proffered public facility. The proffer commitment mainly includes a \$48.6 million monetary contribution for Tysons transportation funds, \$41.6 affordable housing contribution, and a 125,000 SF Capital One Center with assessment value of \$9.5 million.

Development	Proposed GFA (SF)
Office	2,682,219
Retail	252,629
Residential	982,000
Non-Residential	665,374
Public Facility	125,000
<b>Total New Developments</b>	<b>4,707,222</b>

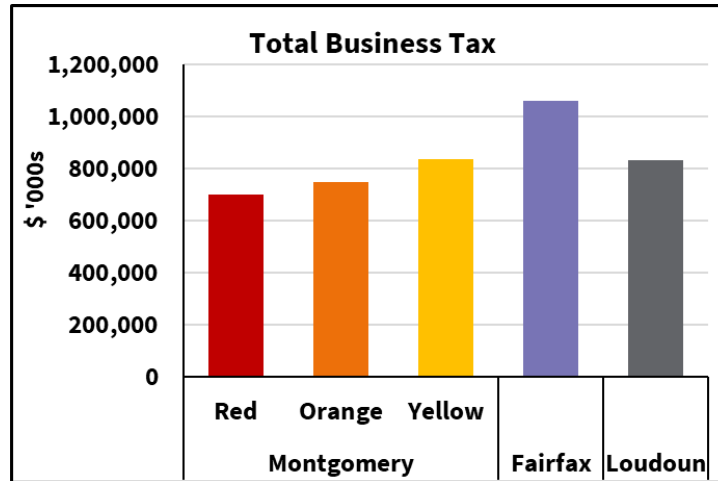
### Comparative Business Tax Burden Analysis

The County is generally lower in comparison to Fairfax and Loudoun Counties across all three Transportation Policy Areas in the County when considering the full business tax burden, including upfront taxes and the present value of recurring taxes. This is illustrated below in Exhibit 22.



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

**Exhibit 22: Comparative Business Tax Burden Analysis – Capital One Tower Project of Fairfax County**



The case result shows significant differences in total business tax between Montgomery County and Fairfax and Loudoun Counties. The total business tax in the County is in the range of \$699.01 - \$834.42 million, with the three policy areas averaging \$759.79 million. Notably, the total business tax of \$1.06 billion in Fairfax county is at least \$315.34 million higher than the County and up to \$362.33 million higher depending on the choice of Transportation Policy Area. The differences are mainly driven by lower real property tax rates in the County. However, the developer in the County is heavily burdened with the upfront costs up to \$52.51 million and \$69.59 million higher when compared against Fairfax and Loudoun Counties, respectively, even when considering that Virginia proffers are assumed to be paid upfront. In this case, the average of the total business tax burden for the three Policy Areas in Montgomery County is approximately 72% of the total business tax burden in Fairfax County, and approximately 91% of the total business tax burden in Loudoun County.





## The Mather – Arbor Row Block B/C1 Project (Fairfax County)

### Project Overview

- **Owner:** Essex 7929 Westpark LLC
- **Area:** 19.4 Acres
- **Proposed GFA:** 668,435
- **Est. Project Gross Receipts:** \$26.62 million
- **Est. EBIT Margin:** 10%
- **Est. Business Personal Property Investment:** \$2.5 million
- **Est. Total Project Cost:** \$424 Million



The Mather – Arbor Row Block B/C1 project is a 0.7 million SF mixed-use development including Retail, Commercial, and Public Facility spaces, as noted in the table below. The developer provides publicly-accessible elements within the civic plaza. This 2,750 SF public space includes walkways, stair access to the common green park, and seat areas. Other notable proffered items include stream restoration work, synthetic turf fields, and private active recreation facilities.

The total project cost is estimated to be \$424.3 million, excluding an estimated proffer burden of \$19.8 million. The development assessment is based on \$637.3 per SF rate, with the total project SF excluding a proffered public facility. The proffer commitment has two large items: a \$8.7 million monetary contribution for Tysons transportation funds and eight acres of land worth approximately \$4.5 million.

Development	Prop. GFA (SF)
Retail/Service	18,121
Continuing Care Facility	647,564
<u>Public Facility</u>	<u>2,750</u>
<b>Total New Developments</b>	<b>668,435</b>

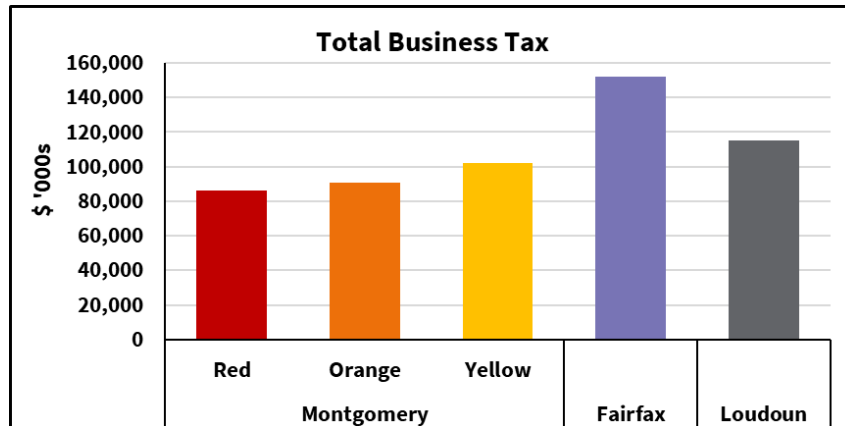
### Comparative Tax Burden Analysis

The County is lower in comparison to Fairfax and Loudoun Counties across all three Transportation Policy Areas when considering the full business tax burden, including upfront taxes and the present value of recurring taxes. This is illustrated below in Exhibit 23.



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

**Exhibit 23: Comparative Business Tax Burden Analysis – The Mather – Arbor Row Block B/C1 Project of Fairfax County**



The case study result shows significant differences in total business tax burdens between Montgomery County and Fairfax and Loudoun Counties. The total business tax in the County is in the range of \$86.25 - \$101.78 million, with the three policy areas averaging \$92.86 million. The total business tax of \$152.25 million in Fairfax county is at least \$61.71 million higher than the County and up to \$65.99 million higher depending on the choice of Transportation Policy Area. The differences are mainly driven by lower real property tax rates in the County. The County has lower upfront costs across all Transportation Policy Areas for this development than Fairfax County and higher upfront costs than Loudoun County. In this case, the average of the total business tax burden for the three Policy Areas in Montgomery County is approximately 61% of the total business tax burden in Fairfax County, and approximately 81% of the total business tax burden in Loudoun County.



## Kincora Village Center Project (Loudoun County)

### Project Overview

- **Owner:** NA Dulles Real Estate Investor LLC
- **Area:** 335 Acres
- **Proposed GFA:** 5,240,025
- **Est. Project Gross Receipts:** \$139.07 million
- **Est. EBIT Margin:** 10%
- **Est. Business Personal Property Investment:** \$6 million
- **Est. Total Project Cost:** \$2 Billion



The Kincora Village Center Project is a 5.2 million SF mixed-use development including Office, Commercial, Hotel, Residential, and Public Facility spaces, as noted in the table below. In addition, the developer includes a new fire and rescue station located between Pacific Boulevard and Route 28 on the north side of Gloucester Parkway/Nokes Boulevard. The development is located in the southwest quadrant of the Route 7/Route 28 interchange, on the west side of Route 28. Gloucester Parkway bisects the subject site. The property is bounded on the west and north by the Broad Run.

The total project cost is estimated to be \$2 billion, excluding an estimated proffer burden of \$96.1 million. Development assessment is based on \$385 per SF rate, with the total project SF excluding civic use property that is proffered to Loudoun county. The proffer commitment mainly includes a \$25 million in monetary contribution, five acres of land worth \$11 million, \$37.8 million affordable housing contribution, and a \$22 million public school contribution.

Development	Prop. GFA (SF)
Office / Employment	2,722,200
Commercial	393,825
Hotel	475,000
Muti-Family Residential	1,544,000
Civic	105,000
<b>Total New Developments</b>	<b>5,240,025</b>

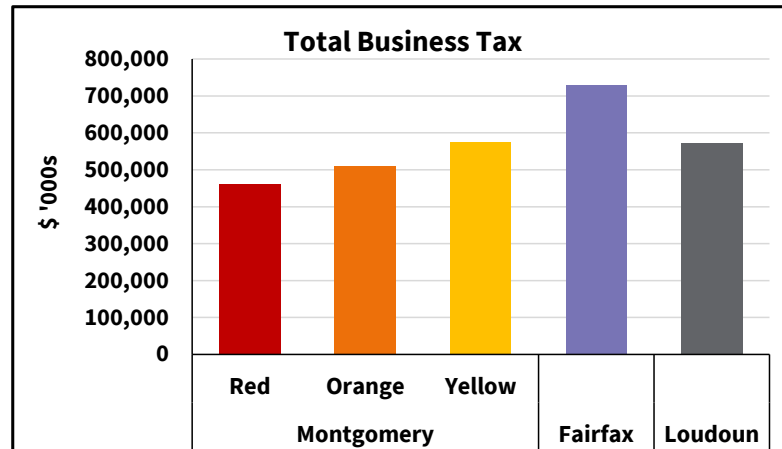
### Comparative Business Tax Burden Analysis

The County is lower in comparison to Fairfax and Loudoun Counties across all three Transportation Policy Areas in the County when considering the full business tax burden, including upfront taxes and the present value of recurring taxes. This is illustrated below in Exhibit 24.



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

**Exhibit 24: Comparative Tax Burden Analysis – Kincora Village Center Project of Fairfax County**



The case result shows significant differences in total business tax between Montgomery County and Fairfax and Loudoun Counties. The total business tax in the County is in the range of \$462.47 - \$573.80 million, with the three policy areas average of \$515.61 million. Notably, the total business tax of \$730.06 million in Fairfax county is at least \$219.51 million higher than the County and up to \$267.59 million depending on the choice of Transportation Policy Area. The differences are mainly driven by lower real property tax rates in the County. The developer in the County is heavily burdened with the upfront costs up to \$32.97 million and \$52.00 million higher when compared against Fairfax and Loudoun Counties, respectively. In this case, the average of the total business tax burden for the three Policy Areas in Montgomery County is approximately 71% of the total business tax burden in Fairfax County, and approximately 90% of the total business tax burden in Loudoun County.



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

### Summary of Three Case Studies

Based on the preceding analysis of case studies, Montgomery County generally has a lower comparative estimated business tax burden than the two counties in Virginia, although the County imposes higher upfront taxes. The higher upfront taxes are generally offset by the recurring taxes which are lower in the County relative to the Virginia jurisdictions. A summary of the case study results is shown in Exhibit 25.

**Exhibit 25: Total Tax Burdens**

Project	Jurisdictions	Policy Area	Upfront Costs	NPV of Recurring Business Taxes	Total Burden
Capital One Tower	Montgomery	Red	\$ 86.2	\$ 612.8	\$ 699.0
		Orange	139.0	606.9	746.0
		Yellow	155.9	678.5	834.4
	Fairfax		103.4	957.9	1,061.3
	Loudoun		86.3	747.4	833.7
The - Mather - Arbor Row Block B/C1	Montgomery	Red	4.2	82.1	86.3
		Orange	9.3	81.2	90.5
		Yellow	10.9	90.9	101.8
	Fairfax		19.8	132.4	152.2
	Loudoun		12.3	102.6	114.9
Kincora Village Center	Montgomery	Red	80.3	382.2	462.5
		Orange	132.3	378.3	510.5
		Yellow	148.1	425.7	573.8
	Fairfax		115.1	614.9	730.1
	Loudoun		\$ 96.1	\$ 476.3	\$ 572.4

Developers in the County face particularly high upfront tax burdens for developments in the Orange and Yellow Transportation Policy areas. The Capital One Tower and Kincora Village Center Projects are mixed-use development with residential space. These developments cost additional affordable housing contribution portion of the upfront costs. The upfront tax burden in the Red Transportation Policy Area is much lower, being at most 62% of the upfront tax burden in the other two Transportation Policy Areas.



### V. Conclusions

As described in this report, the tax burden for development projects in Montgomery County was compared against Fairfax and Loudoun Counties in Northern Virginia. This analysis included business taxes and impact taxes and proffers. Key findings follow which may inform Montgomery County's plans for implementing transportation funding programs.

- **The County's Business Tax Burden is Generally Lower as Compared to Fairfax and Loudoun Counties:** Based on the case studies analyzed in this report, the business tax burden on developers in the County is lower when compared against Fairfax and Loudoun Counties. Although Montgomery County generally has higher upfront taxes in the form of impact taxes (except for development in Red Policy Areas that have best access to high quality transit), the business tax across all Policy Areas, including the net present value of ongoing taxes, is generally lower than in Fairfax and Loudoun Counties. Notably, Montgomery County has lower transit-dedicated recurring taxes than Fairfax and Loudoun Counties, and has lower real property taxes in total, based on consideration of the three indicative districts examined: Downtown Bethesda, White Oak, and West Germantown.
- **The Business Tax Burden on Projects within Montgomery County is Location Dependent:** Business tax burdens can vary by both Transportation Policy Area and districts within a given Transportation Policy Area. Although Montgomery County business taxes are generally lower than in the two Northern Virginia counties studied in this report, some areas of the County impose higher tax burdens than others; this suggests that development within the County could favor lower-taxed areas, such as in Red and Orange Policy Areas, where tax rates are purposely set lower to incentivize development. The County may wish to consider the relative business tax competitiveness of different areas within the County and whether business tax burdens should be adjusted to favor a desired geographic distribution of future growth, as any change to a tax rate in these districts could have an impact on the desirability of development.
- **Transitioning from Upfront Impact Tax to Ongoing Taxes May Encourage Development:** The County imposes significant one-time impact taxes for transportation improvements, public school needs, and affordable housing contributions, which are generally higher than the upfront charges imposed by Fairfax and Loudoun Counties. It is worth noting that impact taxes levied upon mixed-use developments with residential space in Orange and Yellow Policy Areas exhibit a heavy burden to developers. Transitioning from upfront impact taxes, in whole or in part, to a recurring tax levied upon real property may be attractive to developers as upfront costs would be less of a burden during initial development when large construction and development costs are incurred. Such a shift may also be beneficial for the County as relying more on recurring taxes would provide a long-term revenue stream for Montgomery County which could provide a reliable and financeable stream of funding for capital programs.
- **Consider Accepting Proffered Specific Public Works and Facilities on a Larger Scale:** Montgomery County currently requires certain contributions from developers in the form of smaller public works and facilities (e.g., bicycle lanes, adequate parking); comparison with Northern Virginia counties indicates that the County could require larger proffers without losing regional competitiveness, especially if other upfront taxes are reduced. To the extent consistent with State code and County law, requiring specific proffered public works and facilities can provide flexibility to the County's capital expenditure plans. The County should also consider making such a proffer program transparent and



## Multi-Jurisdictional Developer Tax Burden Comparative Analysis

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structured, including potentially a schedule of acceptable proffers. Potential expansion of proffers should be balanced against the potential benefit of reducing the total upfront impact tax burden.



# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

## VI. Appendices

### a. Business Taxes by Case Study

#### 1. Capital One Tower Project in Fairfax County

**Exhibit 1: Business Taxes – Montgomery County**

Business Taxes	Policy Areas	Annual	NPV
Corporate Income Tax		\$ 3,728,120	\$ 61,032,737
Real Property Tax	Red	33,456,000	547,705,374
	Orange	33,096,000	541,811,844
	Yellow	37,716,000	617,445,477
Business Personal Property Tax	Red	250,800	4,105,826
	Orange	247,800	4,056,713
	Yellow	-	-
BPOL Tax		\$ -	\$ -

**Exhibit 2: Business Taxes – Fairfax and Loudoun County**

Business Taxes	Jurisdictions	Annual	NPV
Corporate Income Tax	Virginia	\$ 2,711,360	\$ 44,387,445
Real Property Tax	Fairfax	54,915,000	899,008,865
	Loudoun	42,150,000	690,034,119
Business Personal Property Tax	Fairfax	457,000	7,481,509
	Loudoun	420,000	6,875,785
BPOL Tax	Fairfax	429,299	7,028,012
	Loudoun	\$ 372,812	\$ 6,103,274

**Exhibit 3: Impact Taxes / Proffers\***

Jurisdictions	Policy Areas	NPV
Montgomery	Red	\$ 86,166,850
	Orange	139,049,621
	Yellow	155,937,505
Fairfax		103,431,120
Loudoun		\$ 86,348,819

\*For Red Policy Area, includes estimated proposed Bethesda UMP (BUMP). For Orange and Yellow Policy Areas, includes White Oak LATIP.



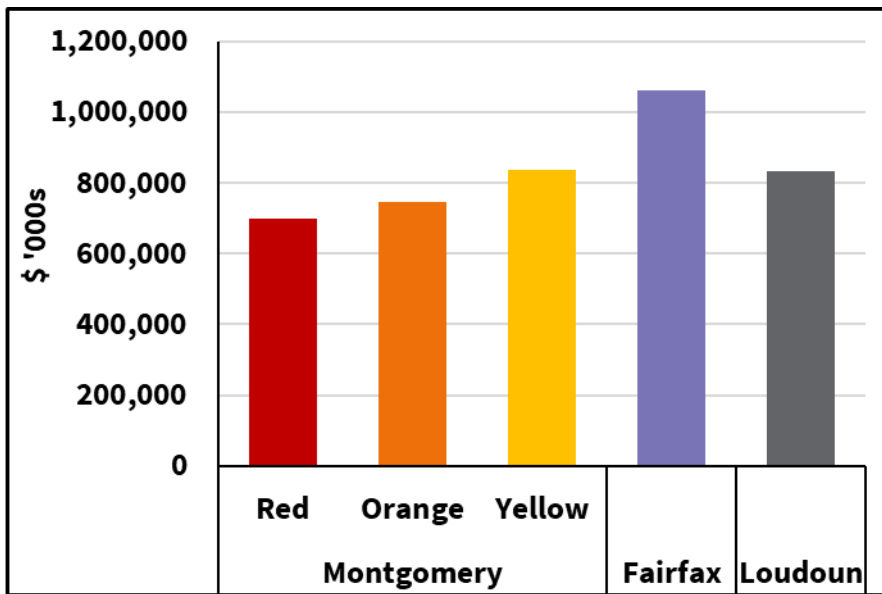


# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

**Exhibit 4: Total Business Tax**

Jurisdictions	Policy Areas	NPV
Montgomery	Red	\$ 699,010,787
	Orange	745,950,915
	Yellow	834,415,719
Fairfax		1,061,336,951
Loudoun		\$ 833,749,442

**Exhibit 5: Cross-Jurisdiction Comparison**





# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

## 2. The Mather – Arbor Row Block B/C1 Project in Fairfax County

**Exhibit 1: Business Taxes – Montgomery County**

Business Taxes	Policy Areas	Annual	NPV
Corporate Income Tax		\$ 219,646	\$ 3,595,807
Real Property Tax	Red	4,731,274	77,455,291
	Orange	4,680,364	76,621,841
	Yellow	5,333,714	87,317,784
Business Personal Property Tax	Red	62,700	1,026,456
	Orange	61,950	1,014,178
	Yellow	-	-
BPOL Tax		\$ -	\$ -

**Exhibit 2: Business Taxes – Fairfax and Loudoun County**

Business Taxes	Jurisdictions	Annual	NPV
Corporate Income Tax	Virginia	\$ 159,743	\$ 2,615,133
Real Property Tax	Fairfax	7,765,959	127,135,860
	Loudoun	5,960,760	97,583,110
Business Personal Property Tax	Fairfax	114,250	1,870,377
	Loudoun	105,000	1,718,946
BPOL Tax	Fairfax	50,585	828,125
	Loudoun	\$ 43,929	\$ 719,161

**Exhibit 3: Impact Taxes / Proffers\***

Jurisdictions	Policy Areas	NPV
Montgomery	Red	\$ 4,177,132
	Orange	9,310,366
	Yellow	10,871,341
Fairfax		19,799,845
Loudoun		\$ 12,261,706

\*For Red Policy Area, includes estimated proposed Bethesda UMP (BUMP). For Orange and Yellow Policy Areas, includes White Oak LATIP.

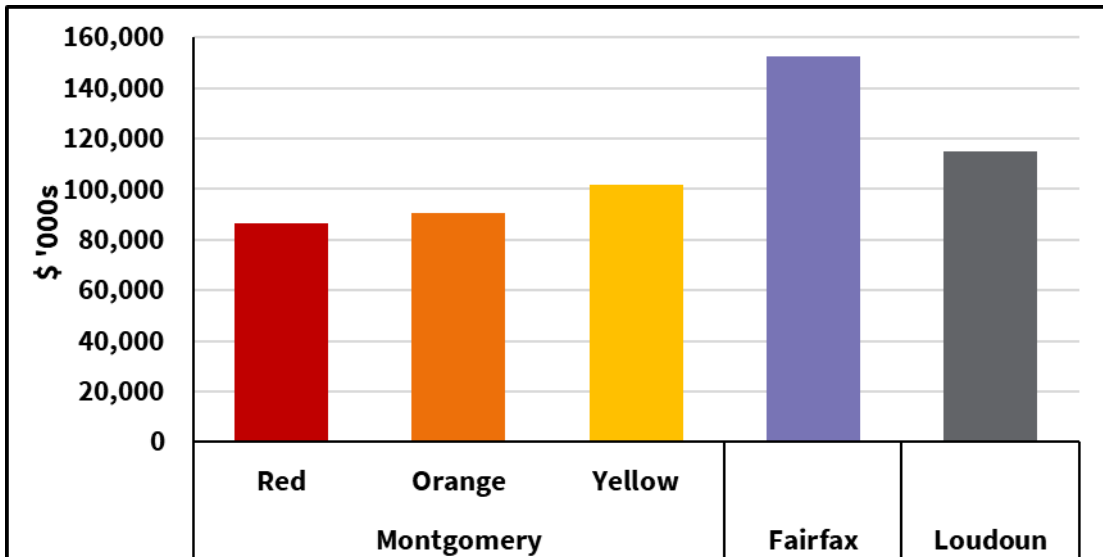


# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

**Exhibit 4: Total Business Tax**

Jurisdictions	Policy Areas	NPV
Montgomery	Red	\$ 86,254,687
	Orange	90,542,193
	Yellow	101,784,932
Fairfax		152,249,340
Loudoun		\$ 114,898,057

**Exhibit 5: Cross-Jurisdiction Comparison**





# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

## 3. Kincora Village Center Project in Loudoun County

**Exhibit 1: Business Taxes – Montgomery County**

Business Taxes	Policy Areas	Annual	NPV
Corporate Income Tax		\$ 1,147,330	\$ 18,782,838
Real Property Tax	Red	22,047,333	360,935,034
	Orange	21,810,094	357,051,228
	Yellow	24,854,651	406,893,405
Business Personal Property Tax	Red	150,480	2,463,495
	Orange	148,680	2,434,028
	Yellow	-	-
BPOL Tax		\$ -	\$ -

**Exhibit 2: Business Taxes – Fairfax and Loudoun County**

Business Taxes	Jurisdictions	Annual	NPV
Corporate Income Tax	Virginia	\$ 834,422	\$ 13,660,246
Real Property Tax	Fairfax	36,188,704	592,442,235
	Loudoun	27,776,634	454,728,948
Business Personal Property Tax	Fairfax	274,200	4,488,905
	Loudoun	252,000	4,125,471
BPOL Tax	Fairfax	264,234	4,325,745
	Loudoun	\$ 229,466	\$ 3,756,568

**Exhibit 3: Impact Taxes / Proffers\***

Jurisdictions	Policy Areas	NPV
Montgomery	Red	\$ 80,287,527
	Orange	132,277,509
	Yellow	148,125,811
Fairfax		115,138,324
Loudoun		\$ 96,122,505

\*For Red Policy Area, includes estimated proposed Bethesda UMP (BUMP). For Orange and Yellow Policy Areas, includes White Oak LATIP.

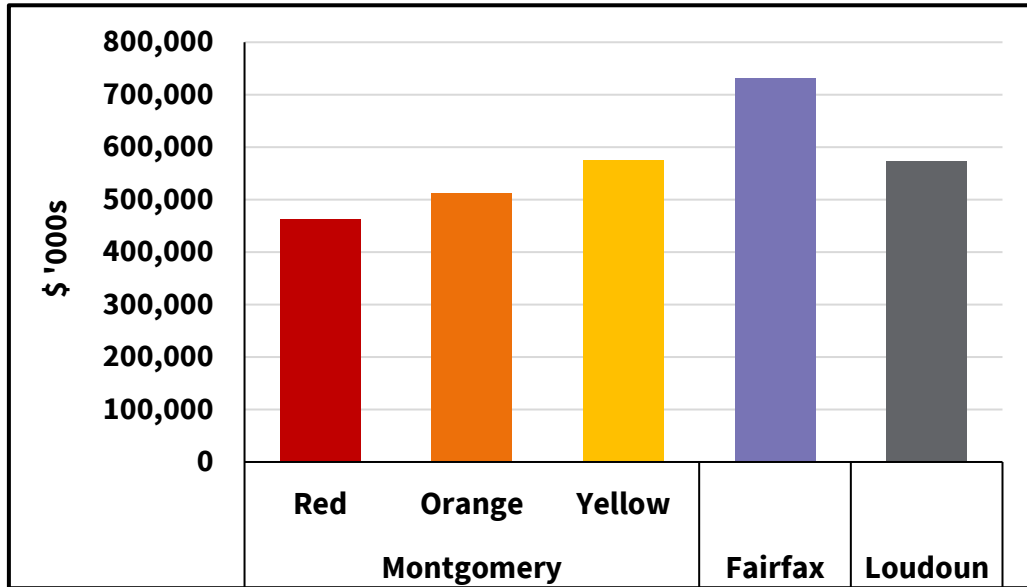
**Exhibit 4: Total Business Tax**

Jurisdictions	Policy Areas	NPV
Montgomery	Red	\$ 462,468,894
	Orange	510,545,603
	Yellow	573,802,054
Fairfax		730,055,454
Loudoun		\$ 572,393,737



# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

Exhibit 5: Cross-Jurisdiction Comparison





# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

## b. Summary of Total Business Tax Burden

Exhibit 1: Comparison of Total Business Tax Burden (\$ Million)

Project	Jurisdictions	Policy Area	Upfront Costs	NPV of Recurring Business Taxes	Total Burden
Capital One Tower	Montgomery	Red	\$ 86.2	\$ 612.8	\$ 699.0
		Orange	139.0	606.9	746.0
		Yellow	155.9	678.5	834.4
	Fairfax Loudoun		103.4	957.9	1,061.3
			86.3	747.4	833.7
The - Mather - Arbor Row Block B/C1	Montgomery	Red	4.2	82.1	86.3
		Orange	9.3	81.2	90.5
		Yellow	10.9	90.9	101.8
	Fairfax Loudoun		19.8	132.4	152.2
			12.3	102.6	114.9
Kincora Village Center	Montgomery	Red	80.3	382.2	462.5
		Orange	132.3	378.3	510.5
		Yellow	148.1	425.7	573.8
	Fairfax Loudoun		115.1	614.9	730.1
			\$ 96.1	\$ 476.3	\$ 572.4



# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

## c. Total Business Tax Burden Metrics



### 1. Total Burden / Square Foot

Exhibit1: Capital One Tower Project of Fairfax County

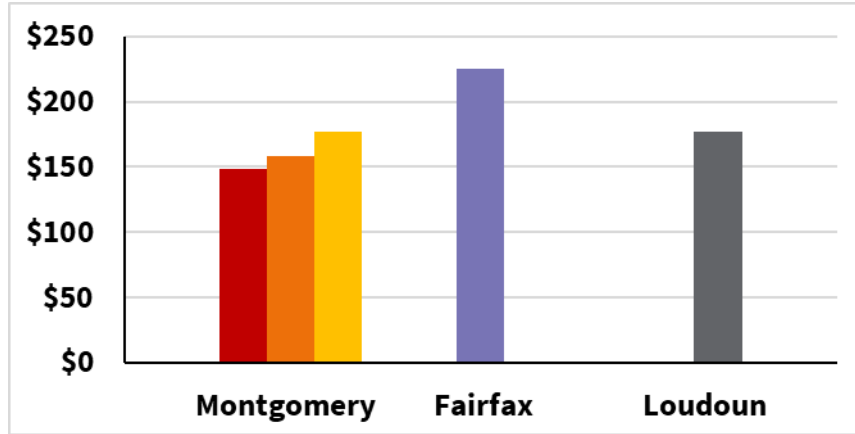
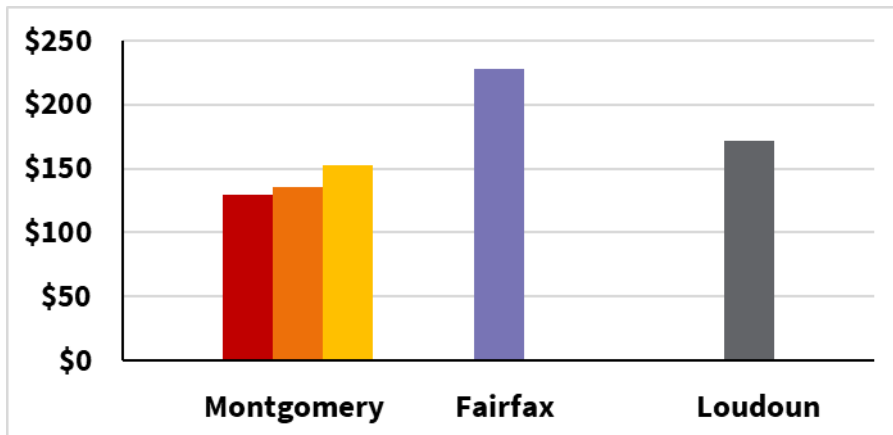


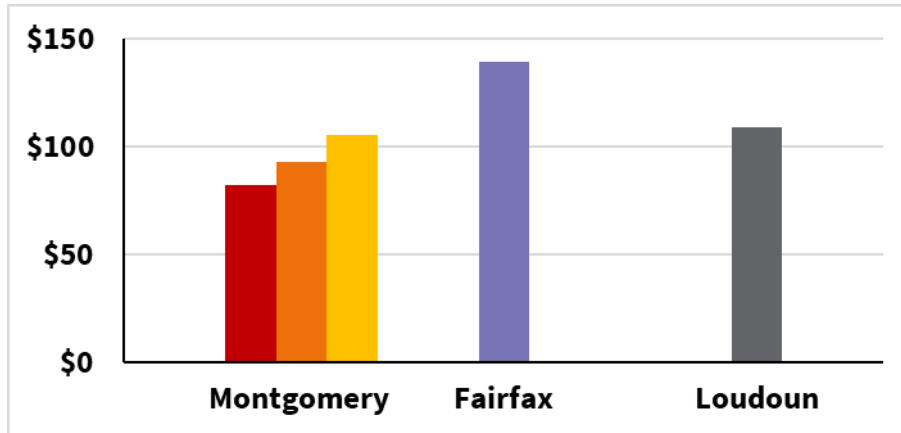
Exhibit 2: The Mather – Arbor Row Block B/C1 Project of Fairfax County





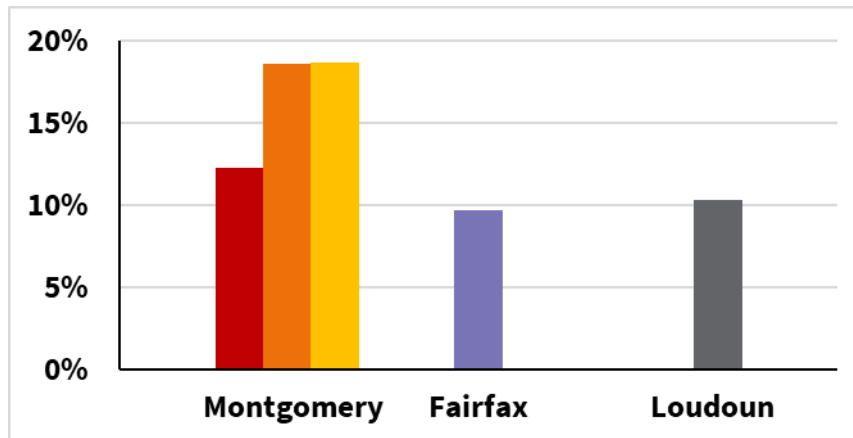
# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

**Exhibit 3: Kincora Village Center Project of Loudoun County**

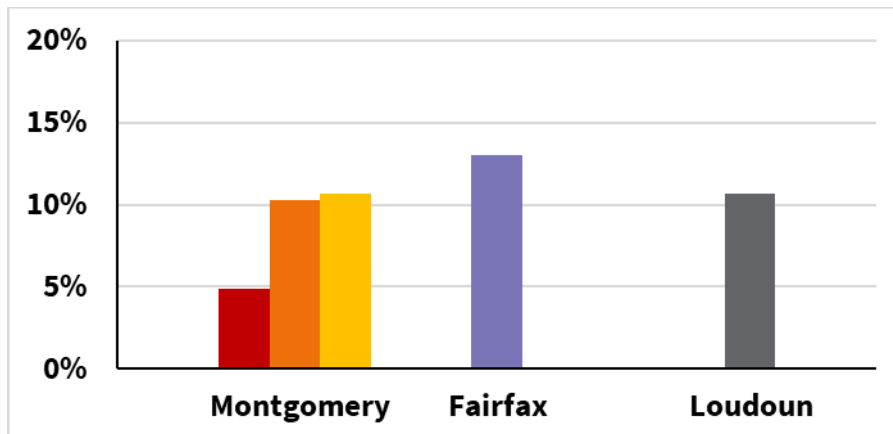


## 2. Upfront Costs / Total Burden

**Exhibit 1: Capital One Tower Project of Fairfax County**



**Exhibit 2: The Mather – Arbor Row Block B/C1 Project of Fairfax County**







# Multi-Jurisdictional Developer Tax Burden Comparative Analysis

Exhibit 3: Kincora Village Center Project of Loudoun County

