Expedited Bill 2-21 Changes the effective date of Chapter 37 to February 26, 2021.

Bill No. 38-20
Concerning: Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments
Revised: 12/08/2020 Draft No. 13
Introduced: July 29, 2020
Enacted: November 16, 2020
Executive: Vetoed: November 30, 2020
Re-enacted after Veto: December 8, 2020
Effective: March 9, 2021
Sunset Date: None
Ch. 37, Laws of Mont. Co. 2020

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

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

AN ACT to:

(1) update transportation and school impact tax districts;
(2) establish impact tax rates by school impact tax districts;
(3) eliminate the school impact tax premium on certain types of dwelling units;
(4) modify the applicability of development impact tax exemptions for certain uses and in certain locations; **[[**and**]]**
(5) establish a Utilization Premium Payment for certain developments to reduce school overcapacity; **[[**and**]]**
(6) define an agricultural facility;
(7) provide a discount on certain impact tax rates for certain types of developments and for developments in certain areas; and
(8) generally amend the law governing transportation and school development impact taxes.

By amending
Montgomery County Code
Chapter 52, Taxation
Sections 52-39, 52-41, 52-49, 52-50, 52-52, 52-54, 52-55, **[[**and**]]** 52-58, and 52-59

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

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

52-39. Definitions.

In this Article the following terms have the following meanings:

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

(1) increases the maximum theoretical volume of traffic that a road or intersection can accommodate, or implements or improves transit, pedestrian and bike facilities or access to non-auto modes of travel; and

(2) is classified as a minor arterial, arterial, parkway, major highway, controlled major highway, or freeway in the County's Master Plan of Highways, or is similarly classified by a municipality. The Director of Transportation may find that a specified business district street or industrial street also provides additional capacity as defined in this provision.

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

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

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

* * *

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

* * *

(c) The following impact tax districts are established:

(1) *White Flint:* The part of the White Flint Metro Station Policy Area included in the White Flint Special Taxing District in Section 68C-2;

(2) *Red Policy Areas:* Bethesda CBD, Chevy Chase Lake, **[[**Dale Drive/Manchester Place,**]]** Forest Glen, Friendship Heights, Grosvenor, Glenmont, **[[**Long Branch, Lyttonsville/Woodside**]]**, Lyttonsville, Medical Center, Purple Line East, Rockville Town Center, Shady Grove **[[**Metro Station**]]**, Silver Spring CBD, **[[**Takoma/Langley**]]** Takoma, Twinbrook, **[[**and**]]** Wheaton CBD and Woodside;

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

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

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

* * *

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

(1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville**[**,**]**<u>;</u>

(2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning less than 60% of the area median income, adjusted for family size;

(3) any Personal Living Quarters unit built under **[**Sec. 59-A-6.15**]** <u>Section</u> <u>59-3.3.2.D</u>, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

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

6**]** any development located in an enterprise zone designated by the State **[**or in an area previously designated as an enterprise zone**]**;

(6) except for a development located in the City of Rockville, any development located in a Qualified Opportunity Zone certified by the United States Treasury Department;

(7) a house built by high school students under a program operated by the Montgomery County Board of Education; **[**and**]** or

(8) a farm tenant dwelling.

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

(1) any reconstruction or alteration of an existing building or part of a building that does not increase the gross floor area of the building;

(2) any ancillary building in a residential development that:

(A) does not increase the number of dwelling units in that development; and

(B) is used only by residents of that development and their guests, and is not open to the public; and

(3) any building that replaces an existing building on the same site or in the same project (as approved by the Planning Board or the equivalent body in Rockville or Gaithersburg) to the extent of the gross floor area of the previous building, if:

(A) **[[**construction begins**]]** an application for a building permit is filed within four years **[[**one year**]]** after demolition or destruction of the previous building was substantially completed; **[[**or**]]**

(B) the Director of the Department of Permitting Services or the Director's designee finds that the applicant was unable to apply for a building permit or commence construction within four years after demolition or destruction of the previous building was substantially completed due to circumstances beyond the control of the applicant or the applicant's agents; or

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

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

52-49. Tax rates.

* * *

(g) Any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are exempt under Section 52-41(g)(1) must pay the tax discounted by an amount equal to the **[[**lowest standard**]]** impact tax rate applicable in the **[[**County**]]** Red Policy Area for that unit type.

(h) Except for a development located in the City of Rockville, any development located in a Desired Growth and Investment Area, as defined in the 2020-2024 Growth and Infrastructure Policy (Subdivision Staging Policy), must pay the tax at:

(1) **[[**40%**]]** 60% of the otherwise applicable rate if located in an Orange Policy Area; or

(2) [[32%]] 68% of the otherwise applicable rate if located in a Yellow Policy Area.

52-50. Use of impact tax funds.

Impact tax funds may be used for any:

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

* * *

52-52. Definitions.

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

* * *

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

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

52-54. Imposition and applicability of tax.

* * *

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

(1) Infill Impact Areas; and

(2) Turnover Impact Areas [[; and

(3) Greenfield Impact Areas]].

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

(1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville**[**,**]**;

(2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning equal to or less than 60% of the area median income, adjusted for family size;

(3) any Personal Living Quarters unit built under Section 59-3.3.2.D, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

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

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

(6) except for a development located in the City of Rockville, any development located in a Qualified Opportunity Zone certified by the United States Treasury Department; or

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

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

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

(2) any ancillary building in a residential development that:

(A) does not increase the number of dwelling units in that development; and

(B) is used only by residents of that development and their guests, and is not open to the public; and

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

(A) **[[**construction begins**]]** an application for a building permit is filed within four years **[[**one year**]]** after demolition or destruction of the previous building was substantially completed; **[[**or**]]**

(B) the Director of the Department of Permitting Services or the Director's designee finds that the applicant was unable to apply for a building permit or commence construction within four years after demolition or destruction of the previous building was substantially completed due to circumstances beyond the control of the applicant or the applicant's agents; or

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

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

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

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

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

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

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

52-55. Tax rates.

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

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

[[Any non-exempt single-family attached or multifamily unit located in a Desired Growth and Investment Area, as defined in the County Growth Policy, must pay the tax at 60% of the otherwise applicable rate.

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

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

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

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

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

52-58. Credits.

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

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

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

(d)]] A property owner may receive credit for land dedicated for a school site, if:

(1) the density calculated for the dedication area is excluded from the density calculation for the development site; and

(2) the Montgomery County School Board agrees to the site dedication.

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

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

(2) the dates or triggering actions to start and, if known then, finish the improvement or land transfer;

(3) a requirement that the property owner complete the improvement according to Montgomery County Public Schools standards; and

(4) such other terms and conditions as MCPS finds necessary.

[(c)] [[(f)]] (e) MCPS must:

(1) review the improvement plan or dedication;

(2) verify costs or land value and time schedules;

(3) determine whether the improvement is a public school improvement of the type listed in Section 52-56(d)[[, meets the

requirements of subsection (c),**]]** or meets the dedication requirements in subsection **[**(a)**]** **[[**(d)**]]** (c);

(4) determine the amount of the credit for the improvement or dedication; and

(5) certify the amount of the credit to the Department of Permitting Services before that Department or a municipality issues any building permit.

[(d)**]** **[[**(g)**]]** (f) An applicant for subdivision, site plan, or other development approval from the County, Gaithersburg, or Rockville, or the owner of property subject to an approved subdivision plan, development plan, floating zone plan, or similar development approval, may seek a declaration of allowable credits from MCPS. MCPS must decide, within 30 days after receiving all necessary materials from the applicant, whether any public school improvement which the applicant has constructed, contributed to, or intends to construct or contribute to, will receive a credit under this subsection. If during the initial 30-day period after receiving all necessary materials, MCPS notifies the applicant that it needs more time to review the proposed improvement, MCPS may defer its decision an additional 15 days. If MCPS indicates under this paragraph that a specific improvement is eligible to receive a credit, the Director of Permitting Services must allow a credit for that improvement. If MCPS cannot or chooses not to perform any function under this subsection or subsection (c), the Department of Permitting Services must perform that function.

[(e)**]** **[[**(h)**]]** (g) (1) A property owner must receive a credit for constructing or contributing to the cost of building a new single family residence that meets Level I Accessibility Standards, as defined in Section 52-107(a).

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

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

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

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

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

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

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

[(f)**]** **[[**(i)**]]** (h) The Director of Finance must not provide a refund for a credit which is greater than the applicable tax.

[(g)**]** **[[**(j)**]]** (i) Any credit issued under this Section before December 31, 2015 expires 6 years after the Director certifies the credit. Any credit issued under this Section on or after January 1, 2016 expires 12 years after the Director certifies the credit.

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

52-59. [[Reserved]] Utilization Premium Payment.

(a) In addition to the tax due under this Article, an applicant for a building permit must pay to the Department of Finance a Utilization Premium Payment if such payment was required under the Annual School Test in effect at the time the building was approved.

(b) The Council by resolution, after a public hearing advertised at least 15 days in advance, must establish the rates for the Utilization Premium Payment.

(c) The Director of Finance, after advertising and holding a public hearing, must adjust the rates set in or under this Section effective on July 1 of each odd-numbered year in accordance with the update to the Subdivision Staging Policy using the latest student generation rates and school construction cost data. The Director must calculate the adjustment to the nearest multiple of one dollar. The Director must publish the amount of this adjustment not later than May 1 of each odd-numbered year.

(d) The Payment must be paid at the same time and in the same manner as the tax under this Article.

(e) The Department of Finance must retain funds collected under this Section in an account to be appropriated for any public school improvement that adds capacity designed to alleviate overutilization in the school service area from which the funds were collected.

(f) The Utilization Premium Payment must not be imposed on any:

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

(2) other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning equal to or less than 60% of the area median income, adjusted for family size;

(3) Personal Living Quarters unit built under Section 59-3.3.2.D, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A; or

(4) dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A.

Sec. 2. Effective date -Transition.

This Act takes effect on **[[**February 26, 2021**]]** March 9, 2021. The amendments in Section 1 **[[**take effect on March 1, 2021 and**]]** must apply to:

(1) any application for a building permit filed on or after **[[**March 1**]]** February 26, 2021; except for

(2) **[[**that the amendments related to discounts or exemptions for projects with 25% MPDUs must only apply to**]]** any dwelling unit in a development for which a preliminary plan application is filed **[[**and accepted on or after**]]** prior to **[[**March 1**]]** February 26, 2021 that

includes 25% affordable units as defined in Sections 52-41(g)(1) through 52-41(g)(4) or 52-54(d)(1) through 52-54(d)(4); or

(3) any development in a former Enterprise Zone for which a preliminary plan application is filed and accepted before January 1, 2021.

Approved:

11/17/2020

Sidney Katz, President, County Council Date

Approved:

DISAPPROVED November 30, 2020

Marc Elrich, County Executive Date

Re-enacted by Council:

12/8/2020

Tom Hucker, President, County Council Date

This is a correct copy of Council action.

12/9/2020

Selena Mendy Singleton, Esq., Clerk of the Council Date

OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

November 30, 2020

TO: Sidney Katz, President
County Council

FROM: Marc Elrich, County Executive

RE: Veto explanation: Bill 38-20 Taxation – Development Impact Taxes for Transportation and Public-School Improvements – Amendments

With new development comes increased infrastructure needs; the newly renamed "Growth and Infrastructure Policy" (Growth Policy) reduces the funding available to provide the necessary infrastructure while the need to provide infrastructure is more critical to our success than ever. While I have long been concerned with how impact taxes work and I believe that there are alternatives that should be implemented, I cannot support simply reducing the necessary revenues without an appropriate replacement. Therefore, I am vetoing Bill 38-20.

The primary purpose of the Growth Policy is to put forth policies for adequate infrastructure – schools, transportation and more – that accompany new development. While I have other concerns about the bill, my primary concern is the projected revenue loss, which is estimated to be between $12.5 million and $20 million per year based on an analysis of projects in the development pipeline.

These reduced revenues are occurring at a time when we know we don't have enough funding to address current needs or other infrastructure investments needed to grow our economy and maintain our status as a desirable place to live. For example, legislation to increase state aid for school construction will require the county to provide local matching funds; traditional state aid costs the County $3 for every $1 from the State or an average of $200 million annually. It is important to ensure the County will be able to continue to match traditional state aid for school construction as well as the approximately $400 million in additional state aid expected from the Built to Learn Act. (This Act will take effect immediately upon the legislature's expected override of the Governor's veto of the "Kirwan" bill.) School over-crowding and a $1.5 billion-dollar backlog in new construction, renovation and modernization needs burden our school system – one of our prime assets.

In addition, regional business leaders have said that improved transportation is central to economic development, pointing out the importance of efforts like Bus Rapid Transit.

Yet at a time when we know that (post-Covid19) we need improved transportation and relief for overcrowded schools and delayed modernizations, this Growth Policy reduces our ability to finance those needs.

These and other increased needs are coming while we are lowering our General Obligation bond borrowing to slow the growth of debt service costs, which lowers the amount of infrastructure we can fund with bonds. Less bonding and fewer impact tax revenues will not allow us to address our education and transportation needs. Even as the Growth Policy reduces revenues, the need for the infrastructure will not disappear. Either the funds will have to come from somewhere else, largely from county residents, or we will have to forgo important infrastructure improvements which will make righting our economic ship even more difficult.

I laid out my concerns in a letter I sent to the Council on September 10 (attached) and I highlighted my concerns again in another letter on November 10 (attached). My staff also raised several issues throughout the process. While I appreciate some of the improvements to the Growth Policy, including the improved annual school test and the clarification for agricultural storage facilities, I cannot sign this bill as it is currently written.

The Council has stated that it will consider an increase in the recordation tax to fill the gap from the reduced revenue, but that discussion is not currently scheduled. Furthermore, using an increase in the recordation tax shifts the costs from the developers of the projects to people refinancing or buying homes as well as to purchasers of commercial properties. Additionally, in these uncertain budgetary times, any potential revenue source may have to be reserved for other needs.

If competitiveness is the issue vis-a-vis our neighbors, then we should consider how our neighbors raised the money to meet their infrastructure needs. I think we will find that their focus was not on ways to reduce the revenues coming from development – rather, the opposite – they looked for ways to ensure the resources needed to provide the infrastructure for a growing community.

I regret that in the middle of this pandemic we have not had the opportunity for a more fundamental discussion of other methods to achieve adequate public facilities under the Growth Policy. While I recognize that one of the driving forces behind the recommended changes is to generate more housing, we know this will generate more residents in need of services, more students in our schools, and more people traveling to their jobs. This strongly suggests the need to increase revenue sources, not reduce them. I would welcome an opportunity to work with the Council to identify fair, alternative methods to fund the necessary infrastructure. For example, our office is working on how we could structure development districts, which have been successfully implemented in Northern Virginia and which were recently recommended by the Economic Advisory Group. Without such a replacement, I cannot support a loss of revenue. That's not providing adequate public facilities by any measure. We can do better.

ME/ds

OFFICE OF THE COUNTY EXECUTIVE
Rockville, Maryland 20850

Marc Elrich
County Executive

September 10, 2020

Dear President Katz, PHED Committee Chair Riemer, and Councilmembers,

In accordance with Sec. 33A-15 (c), I am submitting extensive comments and specific policy guidance on the Planning Board Draft for the 2020-2024 SSP.

Introduction

Based on the Executive Branch's thorough review, including detailed analysis by OMB, Finance, and MCDOT, I conclude that I cannot support the Planning Board Draft of the SSP because I simply do not understand why we would do anything that reduces or destabilizes existing revenue sources such as impact taxes or general fund recordation taxes at this time. I recommend instead that the Council let the current SSP remain in place, which will happen automatically once the November 15th deadline for adopting a new SSP passes. Minor modifications to the current SSP noted below could also enhance revenues for infrastructure.

The current proposal is set in another time—before Covid-19. **This SSP proposes rate structure changes that, without changes in exemptions and new funding sources, will result in a loss of $43.9M dollars from FY21-FY-26 through deep cuts and discounts in the school impact taxes and the elimination of a surcharge, seriously diminishing our ability to provide adequate public facilities.** I know that you share my concern about proposals that could result in millions of dollars in lost revenue for transportation and school facilities.

The Planning Board Draft's disregard for the requirements of the Adequate Public Facilities Ordinance (APFO) is demonstrated not only by its deep tax cuts but also by its treatment of school adequacy. The Planning Board's recommendations tolerate much higher levels of school overcrowding than currently permitted through recommended changes in technical standards (4.6--"snapshot" test), revenue reductions, raising the standard for moratorium in Clarksburg from greater than 120% to greater than 125%, and, finally, by eliminating the emergency button—moratorium—from the rest of the county. As a result, if this SSP is approved, there will be more school overcrowding and no mechanism to manage the overcrowding in most of the county.

In the discussion below, this letter delineates three overriding problems with the Planning Board Draft: 1) It does not meet the SSP's primary purpose – to provide policies for adequate infrastructure to accompany new development, instead, it is an attempt, at great cost, to incentivize housing in locations where incentives are not needed; 2) it removes the county's ability to manage school overcrowding, except in Clarksburg; and 3) its new transportation recommendations are premature, because the recommendations are based on documents that haven't been completed yet, and are therefore not available for review by either the County Executive or the County Council. There are other transportation concerns, too, that are discussed later.

Fiscal Background

On July 6, I sent the County Council, and on July 28, the Council approved, a FY21 Savings Plan to address the shortfall in revenues due to the pandemic and subsequent economic shutdown. That shortfall in revenues - over $1 billion during the next six years - will have long-term consequences due to the current charter limit.

These reduced revenues are occurring at a time when we know we don't have enough funding to address current needs or other infrastructure investments needed to grow our economy and maintain our status as a desirable place to live. **For example, legislation to increase State Aid for school construction will require expensive match requirements at the same time that we are ramping down our General Obligation bond borrowing to rein in debt service costs.**

On July 10, the County Executive and County Council President announced that the county has again maintained its Triple-A bond rating. Building on this solid foundation, the county must continue its long tradition of responsible fiscal stewardship through prudent spending policies, careful management of the tax dollars we receive, and investment in job creation.

Statutory Background: Adequate Public Facilities and the SSP

The purpose of the SSP (or "Growth Policy") is to evaluate the adequacy of the infrastructure – schools, transportation and more – to support new development. Under the APFO, the Planning Board "may only approve a preliminary plan when it finds that public facilities will be adequate. Public facilities and services to be examined for adequacy include roads and transportation facilities, sewer and water service, schools, police stations, firehouses, and health clinics." Sec. 50 4.3.J.2. Requirements for adequate public facilities have been in place since 1973, and are also codified in the Maryland Code, Land Use, Section 9-1902.

As you know, the Subdivision Staging Policy (SSP) should provide the <u>means</u> to assure adequate public facilities for new development. The SSP assesses the needs of the county, especially for schools and transportation infrastructure, and the impact of new projects on that infrastructure, and then requires developers to pay their fair share through the payment of impact taxes.

1. **The Planning Board Draft ignores the requirements of the Adequate Public Facilities Ordinance and reduces school impact taxes without evidence that it is solving any problem.**

The Planning Board Draft is nothing like past SSPs. This new policy ignores the statutory requirements of adequate public facilities. **It gives up necessary revenues. Without approval of changes in impact tax exemptions and a new Utilization Premium Payment, OMB's**

estimate is an impact tax revenue decline of $43.9M for FY21-FY26. These reductions are the result of eliminating a surcharge, substantially reducing impact taxes rates, and then discounting them an additional 60% in some places in the county. These discounts mean that developers are not paying their fair share of the impact of their new developments on infrastructure. It is essential that the costs of new development be shared fairly and that county residents are not asked to shoulder an unfair portion of infrastructure costs.

In the Planning Board Draft, adequate public facilities are not the primary goal as they should be. Instead, the range of impact taxes is designed to encourage housing in some locations while discouraging it in others. That policy goal should be achieved through the master planning process, not by reducing the amount of money available for necessary infrastructure. There's no evidence that this is solving any problem, and there's no evidence that reducing the impact taxes would reduce the price of apartments or spur developers to build new housing types when they are making profits on the housing that they are building now. Furthermore, if the increased impact taxes in areas such as Clarksburg act as a disincentive as intended, that will result in significant revenue losses not included in OMB's analysis.

The Planning Board Draft never discusses the reality of existing investment behavior and the market. In Montgomery County, there is ample evidence that the greatest demand for new housing and for space to locate businesses is in and around our transportation cores, and more specifically areas along the Red Line. Yet the Planning Board eschews any analysis of markets, and simply assumes that reducing the costs to developers through lower impact taxes will result in less expensive housing being built in selected locations of the county.

The Planning Board Draft's assumption that housing is not locating in the areas where the county wants it is also problematic. **In fact, it appears that substantial housing is going to the locations desired by the county.** Initially, Planning targeted the county's 23 Activity Centers, as defined by COG, for reduced impact taxes, in order to incentivize housing in those ACs. OMB worked with Planning to analyze the consequences of this recommendation, and the proposal as a whole. OMB's analysis showed that 66% of growth was already going to the Activity Centers. Instead of revising the SSP to reflect this new information, the Planning Board reduced the list of locations where it believed development should go, changing Bethesda to a non-desired area for housing. But even the Draft's revised list suggests that substantial growth is already occurring in the county's preferred locations. And when one looks at the revised list plus Bethesda, the results are even better.

There are other, cost neutral ways to reduce the costs of development that will not affect the county's finances. The Planning Board can and should be reducing the parking requirements in new developments. These requirements are particularly costly in Activity Centers that are already transit accessible, and reduced parking forwards our long-term environmental goals to reduce the use of automobiles. Currently, the Executive Branch is reviewing how to reduce the time to process development approvals, which will further reduce costs of development projects. Both of these changes are substantive and beneficial and will not leave the county chasing infrastructure as it did for so many years because of inadequate resources partially caused by developers not paying their fair share.

2. **Clarksburg should not be singled out from the rest of the county with different rules for the adequacy of its schools. There must be an emergency button to pause school overcrowding throughout the entire school system.**

This SSP developed its own unique groupings of Infill, Turnover, and Greenfield that has different results for different parts of the county, largely because of the 60% discount. Consequently, the Draft recommends much higher school impact tax rates for Clarksburg than elsewhere, and Clarksburg (and Bethesda, too) is designated a non-Desired Growth Area, even though Clarksburg is also a COG approved Activity Center.

This new tax structure is likely to be challenged by affected developers as arbitrary, because, as a result of the discounts, the tax rates in many places aren't commensurate with the new infrastructure needed for the new development. How can the county argue that the undiscounted taxes in Clarksburg are this developer's fair share, while the significantly reduced taxes in another part of the county are the fair share of the developers there? In fact, the actual cost of providing infill infrastructure, like sidewalks, land for parks and schools, is greater in the denser, more urban areas of the county than in places like Clarksburg. And yet Clarksburg would be designated for far greater impact tax assessments.

Clarksburg is also singled out for special treatment for school adequacy—it is the only area that is recommended for a policy of moratorium. The County Executive believes that it is wrong to offer some MCPS students in one geographic location greater protection from school overcrowding than students living in other parts of the county. As explained in greater detail in the recommendations, the County Executive supports a policy of moratorium for the entire county. The Utilization Premium Payments (UPPs) are neither a substitute for moratorium nor an adequate offset to the lost impact taxes. The amounts are too low, and they are triggered too late when overcrowding is already greater than 120%, and school capacity is a crisis. If the Council chooses to use them, UPPs should kick in much earlier, when a school's capacity is at 105%.

3. **The Transportation recommendations are premature and should not move forward until the County Executive and the Council have all of the materials that the Planning Board cites as support for its recommendations, the most critical being the Predictive Safety Analysis.**

The Transportation recommendations are incomplete and are another reason that the Council should not take this SSP up between now and November 15.

In the Planning Board Draft at p. 68, of the eight planning documents identified to be used to design roads near new development, only three have been completed: the Bicycle Master Plan, the High Injury Network, and the Bicycle Level of Traffic Stress Map. The others, the Pedestrian Master Plan, the Predictive Safety Analysis, the Pedestrian Level of Comfort Map, the Vision Zero Toolkit, and the Complete Streets Design Guide are still in progress. The most important of these is the Predictive Safety Analysis.

The County Executive recommends deleting all references to the Predictive Safety Analysis in the Planning Board Draft, and in the proposed Resolution, including all of TL2.1 Safety System Adequacy, because it does not exist, and has not been implemented or validated.

There is also a problem with Recs. 5.11 through 5.14, whereby the Planning Board Draft appears to restore Policy Area Review for master plans, but nothing is included in the proposed Resolution. It is critical to have the appropriate mechanism to evaluate the adequacy of master plans. The Planning Board needs to explain this discrepancy.

Additionally, the rationale for differentiated transportation impact tax across the county is not based on the cost of adequate infrastructure; again, the taxes are an attempt to incentivize development in certain parts of the county over other parts. While I agree that development should occur in areas closest to transit, that development is guided through the master planning process, not by insufficiently funding infrastructure.

4. **Finally, the County Executive does not recommend reductions in school impact taxes and will not support an increase in the recordation tax to make up for the lost impact tax revenues.**

The County Executive is concerned that this substantial change in the revenue structure for paying for infrastructure for new development significantly reduces and destabilizes impact tax revenues, a funding source that cannot be used in any other context. The current impact taxes assure that each new development pays its fair share of the cost of new infrastructure. Using the increased recordation tax revenues for infrastructure shifts the burden of new infrastructure costs to residents and forecloses the use of recordation tax revenues for other urgent county needs in this unprecedented time.

OMB points out that while the increase in the recordation tax was proposed in an effort to offset any impact tax losses, the Planning Board has simultaneously proposed a first-time homebuyer exemption. There are significant challenges in determining the impact of the first time homebuyer exemptions – but it is clear that it will not only negate a significant portion of the increased funds for the capital budget and the housing initiative fund, but it will also reduce recordation taxes coming to the general fund at a time of extreme fiscal stress.

Additional Tax Considerations and a First Glance Analysis of the Tax Implications

The proposed SSP recommendations imply a complex web of financial increases and decreases in County funding sources that are difficult to definitively predict. Since the Council may decide to pick and choose between various options, the fiscal analysis has been segmented to reflect the major changes. Reductions in impact tax revenues due to a new rate structure including the elimination of a surcharge and desired growth area discounts are estimated to result in an estimated $7.3 million annual reduction in impact taxes ($43.9 million over a six-year CIP).

These losses are partially offset by proposed changes in existing impact tax exemptions ($3.5 million/year on net). The Planning Board's recommendation to reduce the amount of subsidy provided for market rate units when developers double the number of Moderately Priced Dwelling Units is a step in the right direction to help ensure that we make the best use of resources devoted to affordable housing. Executive branch staff and I are currently exploring further enhancements to the Planning Board's recommendation for fall Council consideration.

Elimination of the exemption for former enterprise zones also makes sense given our tremendous infrastructure needs – particularly for impact taxes for school construction. Unfortunately, the elimination of the former enterprise zone exemption is effectively negated by the Board's recommendation to provide exemptions to developers in opportunity zones where significant federal tax breaks are already in place.

The Planning Board has also proposed a new Utilization Premium Payment based on a percent of the appropriate impact tax that could yield an estimated $4 million a year when school enrollment would be over 120 percent of capacity. The timing of these payments, however, is an issue. Waiting until schools are above 120 percent of their enrollment capacity will simply provide too little too late.

It is important to know the limitations of our ability to accurately forecast future impact taxes and related revenues based on the Planning Board recommendations. Two approaches have been used to estimate impacts – 1) a forecast based on prior history, and 2) an analysis of projects that are in the development pipeline. The forecast approach assumes that prior development patterns will continue. With the proposed rate structure, impact tax rates would increase significantly in Clarksburg. Based on substantial prior development in Clarksburg, the forecast methodology assumes that Clarksburg impact taxes will cover the significant reductions in impact taxes from other parts of the County. If these same development patterns do not occur, our revenue losses could be considerable. Similarly, the pipeline analysis assumes a ten-year buildout period. If these projects move faster or slower – or not at all, that will also affect revenues.

As noted above, OMB is also analyzing the proposed changes in the recordation taxes. While the proposed rate increase would generate additional income, a preliminary analysis of a proposed first-time homebuyer exemption appears to largely offset this increase – and will certainly result in a decrease in funding for the general fund – precisely when we need the revenues.

While not directly related to the SSP, there are several additional changes to the impact tax law that I would like Council to consider while other impact tax legislative changes are under consideration. The first relates to improving our partnerships with Gaithersburg and Rockville to facilitate the productive use of transportation impact taxes collected for development projects within the municipalities. We are in the process of setting up meetings with local officials and staff to discuss refinements to our partnership, and we will update you on our progress. In addition, language to clarify eligible costs for roads will be helpful in ensuring that credits are only granted for projects that improve transportation capacity.

Conclusion

Adequate public facilities are a critical part of building a thriving and successful community. If school capacity is disregarded and there's no concern about managing congestion, then we risk losing our perceived edge in education and we confirm to businesses and residents alike that we're not serious about transportation. If competitiveness is the issue vis a vis our neighbors, then we should consider how our neighbors raised the money to meet their infrastructure needs. I think that what we will find is that their focus was not on ways to reduce the revenues coming from development – rather, the opposite – they looked for ways to ensure the resources needed to provide the infrastructure for a growing community.

I have attached OMB's PowerPoint, as well as Executive branch comments on each of the 44 recommendations in the Planning Board Draft. These attachments substantiate that the county is better served by the current SSP than by a new SSP that loses substantial impact tax revenues instead of providing needed funding for adequate roads and transportation facilities, sewer and water service, schools, police stations, firehouses, and health clinics for Montgomery County residents and their children.

Sincerely,

Marc Elrich

c: Glenn Orlin, Senior Analyst, County Council
Pam Dunn, Senior Legislative Analyst, County Council

County Executive Comments on the Planning Board Draft for the 2020-2024 County Growth Policy—September 10, 2020

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The CE agrees.</td><td>34</td></tr>
<tr><td>Schools Recommendations: School Impact Areas</td><td></td></tr>
<tr><td>4.1 Classify county neighborhoods into School Impact Areas based on their recent and anticipated growth contexts. Update the classifications with each quadrennial update to the County Growth Policy.

The CE opposes these classifications as irrelevant to an SSP that provides adequate public facilities. The CE also questions their usefulness even for the purpose for which they were created.

This division is only necessary to implement the schedule of impact fees and discounts that the Planning Board recommends in order to encourage certain housing types in certain parts of the county. It is not being used for the purposes of the SSP—to diagnose infrastructure problems, and provide for adequate public facilities. What do these divisions add to the SSP requirement to evaluate school overcrowding attributable to new development?

4.2 Classify all Red Policy Areas (Metro Station Policy Areas and Purple Line Station Policy Areas) as Impact Policy Areas.

MCDOT recommends deferring classifying the Purple Line Stations to Red Policy Areas, and the CE supports that recommendation.

It is preferable to wait until the Purple Line is ready to be operational. Developments under construction should be reviewed under current provisions and not the proposed new provisions for the Red Policy Area. The county should also wait in order to get the benefit of the University of Maryland's review of the Purple Line Corridor planned land use and TOD opportunities.</td><td>37</td></tr>
<tr><td>Schools Recommendations: Annual School Test and Utilization Report</td><td></td></tr>
<tr><td>4.3 By January 1, 2021, the Planning Board must adopt a set of Annual School Test Guidelines which outline the methodologies used to conduct the Annual School Test and to evaluate the enrollment impacts of development applications and master plans.

The CE believes that to the extent that the Planning Board uses new methodologies in the Annual School Test, those should be disclosed now, and reviewed by the County Council. Planning Staff should also consult with MCPS.</td><td>43</td></tr>
<tr><td>4.4 The Annual School Test will be conducted at the individual school level only, for each and every elementary, middle and high school, for the purposes of determining school utilization adequacy.</td><td>43</td></tr>
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The CE is open to discussing borrowing as a general policy to ameliorate school overcrowding. Borrowing needs to be discussed by the County Executive, the Council and MCPS to develop a policy that is workable and benefits the students and the school.

The CE opposes borrowing that is done ad hoc to allow particular projects to proceed that would otherwise be in moratorium, as described below.

At the SSP work sessions the Planning Board had a long discussion about finding that school had adequate capacity if a nearby school Y had unused capacity, or was vercrowded, but less overcrowded than X school. The Planning Board has added a pecial test for Clarksburg in Recommendation 4.11 whereby a school could be onsidered adequate based on the capacity of a school 10 miles away being at 105% apacity. The CE does not support that proposal.

4.5 <u>The Annual School Test will evaluate projected school utilization three years in the future using the following school utilization adequacy standards:</u> 44

School Adequacy Standards		Adequacy Status		
Projected Utilization	Projected Seat Deficit	Greenfield Impact Areas	Turnover Impact Areas	Infill Impact Areas
> 120%	N/A	UP Payment Required	UP Payment Required	UP Payment Required
> 125%	≥ 115 seats for ES ≥ 188 seats for MS N/A for HS	Moratorium		

The CE supports the Draft's use of three years rather than the current five years because it is much easier to predict school enrollment three years out.

<u>Moratorium:</u> The CE does not support having moratoria for school overcrowding only in Clarksburg. The CE supports moratoria in all parts of the County when school infrastructure is not adequate to keep up with projected development. It is one school system, and it should be treated as such.

<u>Standard for Moratorium:</u> The CE does not support <125% as the standard for moratorium in Clarksburg. Staff recommended <120% but the Planning Board raised it to <125%. There needs to be a better understanding of the rationale for this increase.

As currently drafted, except in Clarksburg, there is no outer limit to school overcrowding that would require the disapproval of a preliminary plan under the APFO. The only significance of the <120% standard is that when overcrowding reaches that percentage, a developer must pay Utilization Premium Payments (UPPs) in addition to the impact taxes. The fees are the same whether the overcrowding is at 120% or 150%.

The CE does not support reduced, discounted impact taxes with UPPs that result in

the developer not paying his fair share of the infrastructure costs of new development. If, however, the Council approves a tax scheme that includes the proposed UPPs, these payments should be required when overcrowding reaches greater than 105%. **THIS RECOMMENDATION WILL INCREASE SCHOOL OVERCROWDING.**	
4.6 The Annual School Test will establish each school service area's adequacy status for the entirety of the applicable fiscal year. This is a return to the "snapshot" test that resulted in exacerbating overcrowding as many schools got closer to the margin of 120%. **The CE does not support the snapshot test. The CE supports a cumulative test that tracks enrollment throughout the year because it is more accurate in capturing SGRs**. **THIS RECOMMENDATION WILL INCREASE SCHOOL OVERCROWDING.**	45
4.7 The Annual School Test will include a Utilization Report that will provide a *countywide* analysis of utilization at each school level. **The CE does not understand the purpose of a countywide Utilization Report.**	46
4.8 The Utilization Report will also provide additional utilization and facility condition information for each school, as available. **The CE only supports in-kind developer contributions that add to school capacity, not air conditioning or improvements like that**. There also need to be objective standards so that the contribution can be measured, and compared to other in-kind contributions.	47
Schools Recommendations: Residential Development Moratorium	
4.9 Moratoria will only apply in Greenfield Impact Areas. The Planning Board cannot approve any preliminary plan of subdivision for residential uses in an area under a moratorium, unless it meets certain exceptions. **\s stated before, the CE does not support leaving moratorium in place only in :larksburg. He believes that there must be an emergency button—an outside limit o school overcrowding—that stops residential development in any area of the ounty where schools are severely overcrowded.** As currently written, there is no ›utside limit or cap for overcrowding in the county, except in Clarksburg. The CE also does not support the Planning Board's weakening of this recommendation for moratorium in Clarksburg by deleting the word "automatic" to describe moratoria, and carving out complicated exceptions that increase school overcrowding. **THIS RECOMMENDATION WILL INCREASE SCHOOL OVERCROWDING.**	45

4.10 Exceptions to residential development moratoria will include projects estimated to net fewer than one full student at any school in moratorium, and projects where the residential component consists entire of senior living units. **The CE has no objection.** 4.11 Establish a new exception that allows the Planning Board to approve residential development in an area under a moratorium if a school (at the same level as any school causing the moratorium) is located within 3, 5, or 10 network miles (ES, MS, or HS, respectively) of the proposed subdivision and has a projected utilization less than or equal to 105 percent. **The CE opposes this exception because it increases school overcrowding.** **THIS RECOMMENDATION WILL INCREASE SCHOOL OVERCROWDING.**	45
4.12 Eliminate the moratorium exception adopted in 2019 pertaining to projects providing high quantities of deeply affordable housing or projects removing condemned buildings. **The County Executive supports the recommendation of DHCA.** DHCA—The existing exception would be helpful to retain, with the limitations that Student Generation Rate calculation of under 10 students and the property must provide 50% affordable housing. 4.13 Calculate countywide and School Impact Area student generation rates by analyzing all single-family units and multifamily units built since 1990, without distinguishing multifamily buildings by height. It is important to have the most accurate SGRs possible for two reasons: 1) in order to anticipate overcrowding early enough to remedy it, and 2) in order to assure that the developer pays his fair share. **The CE does not support merging multi-family buildings when calculating SGRs.** **Multi-family**--The Planning Board Draft, p.54, notes "a major difference" between the SGR when high and low-rise multi-family are counted separately. When calculated separately, low-rise generates on average 3.58 times more students than high rise. The result is an overall higher SGR than when the SGR is calculated for all multi-family units, low and high, without distinguishing between high and low-rise. This discrepancy needs to be resolved. Otherwise, the Planning Staff should continue to calculate high and low rise multi-family separately. **Single-Family--**Planning Staff recognizes that for single family homes, there is a debate about how to count new houses that were built as a result of tear downs. The Planning Board is of the view that students from new houses/teardown are part of turnover, so long as the new home is built less than a year after the teardown. Using this categorization, 23.3% of all new students are attributable to new development. (SSP work session, June 18, 5:36:26--5:40:50) Planning Staff has calculated what the percentage would be if new homes/teardown	47

were included as new construction--27.6%--an additional 4.3%. (Staff Presentation to Planning Board, March 26)There were 848 homes in this category. **The CE agrees with ULI's recommendation that new homes/teardown be counted as new construction, and any students generated counted in the SGR.** The ULI said, in part: The panel understands the interpretation of the staff research and recommendation. However, the panel suggests that the county take into consideration the following in revising the policy: • The impact fee is a single event from a funding perspective; the generation of that fee on what is essentially a "new construction" event (despite the fact that an existing home is being replaced) is important in terms of generation of revenue. • The imposition of an impact fee is a progressive revenue source; the cost of that fee can, and probably will be, rolled into a future mortgage, amortizing the fee over a long period of time.	
Schools Recommendations: Student Generation Rate Calculation	

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Schools Recommendations: Development Application Review	
4.14 Amend Chapter 50, Article II, Section 4.3.J.7. of the County Code to require a development application to be retested for school infrastructure adequacy when an applicant requests an extension of their Adequate Public Facilities validity period. **The CE agrees.**	58
4.15 Require MCPS to designate a representative to the Development Review Committee to better tie the development review process with school facility planning. Ensure this representative has appropriate authority to represent MCPS' official positions. **The CE agrees.**	58
4.16 Require applicants to pay Utilization Premium Payments when a school's projected utilization three years in the future exceeds 120 percent. in Turnover and Infill Impact Area when a school's projected utilization three years in the future established	59

Table 12. Utilization Premium Payment Calculation Factors.

School Level	Payment Factor
Elementary School	25% of the standard impact tax for the School Impact Area and dwelling type
Middle School	15% of the standard impact tax for the School Impact Area and dwelling type
High School	20% of the standard impact tax for the School Impact Area and dwelling type

The CE supports developers paying their fair share of impact taxes, i.e., an amount that reflects their contribution to increased school enrollment. Impact taxes should be

increased in this SSP so that Utilization Premium Payments are not necessary, and this recommendation rejected. **If, however, the Council approves these payments than the payments should be required when overcrowding is greater than 105%, not greater than 120%.**	
Transportation Recommendations: Vision Zero Resources	
5.1 Design roads immediately adjacent to new development to account for all identified recommendations from applicable planning documents including Functional Plans, Master Plans and Area Plans. MCDOT has two comprehensive observations about this SSP's transportation proposals: • The new analyses proposed for new development are largely information-gathering with few clear actionable results. · • The motor vehicle analyses continue to use old analysis methodologies that are not giving more practical understanding of traffic operations, and are constraining developments and master plans. The analysis methodology should continue to be explored and updated as appropriate within the current SSP. **The CE agrees with these observations. The CE is also concerned that the transportation impact taxes are too low in the Red Policy Areas, and would support an increase in those impact tax rates due to the need and relatively high cost of providing transportation improvements in the more urbanized areas of the Co**unty. **Furthermore, the CE does not support the recommendation in Sec. 5.1 because it needs clarification, and for the reasons below.** The transportation recommendations need more work, and it is premature to consider them at this time. This recommendation requires the roads to be designed to account for all identified recommendations from applicable planning documents, as described above. However, in the Planning Board Draft at p. 68, of the eight planning documents identified, only three have been completed, the Bicycle Master Plan, the High Injury Network, and the Bicycle Level of Traffic Stress Map. The others, the Pedestrian Master Plan, the Predictive Safety Analysis, the Pedestrian Level of Comfort Map, the Vision Zero Toolkit, and the Complete Streets Design Guide are still in progress. **The CE recommends deleting all references to the Predictive Safety Analysis; it should be struck from the document,** because it has not been implemented or validated, and it should also be struck from Sec. TL.2.1 Safety System Adequacy in the proposed Resolution. Appendix L. Page 68 states that "it is critical that any capacity-based mitigation strategy does not negatively impact the safety of any roadway user." This statement needs to be restated or deleted, as its goal, as written, is unattainable. The question is how to effectively balance competing needs to create a safe environment for all road users, and to attain Vision Zero for pedestrians, while allowing the roads to be used for the effective movement of vehicles. The county will need to rethink its signalization for cars and for pedestrians, as well as other road safety solutions.	68

	1st bullet on p. 68 - Need to include a reference to what these TDM measures are, and how they translate into meeting required mitigation needs. Need to define how collision mitigation strategies, TDM, ped/bike, and transit treatments translate into satisfying vehicular mitigation requirements. Same for Recommendation 5.2. The set of bullets for Rec 5.1 and the set for Rec 5.2 appear to convey largely the same information and intent. This overlap may result in conflict and confusion, as developers use the 1st set of bullets to address mobility metrics and the 2nd set of bullets to address safety metrics. References to "Predictive Safety Analysis" should be replaced with "Systematic Safety Analysis" or similar wording. Their methodology develops an expected number of crashes based on the current built environment and crash history, it does not predict the crash rate or density in the future.	
Transportation Recommendations: Mitigation Priorities		
5.2	Prioritize motor vehicle mitigation strategies designed to improve travel safety. While the recommendation is to prioritize motor vehicle mitigation strategies, in fact, the Planning Board prioritizes non-motorized strategies to mitigate congestion such as payment in lieu, and bike, pedestrians, and transit/TDM strategies. The Planning Board needs to explain what the TDM measures are, and how they translate into satisfying mitigation requirements.	68
Transportation Recommendations: Development Review Committee		
5.3	Given the additional focus on Vision Zero principles in the development review process, designate a Vision Zero representative to the Development Review Committee to review the development application and Vision Zero elements of LATR transportation impact studies and to make recommendations regarding how to incorporate the conclusions and safety recommendations of LATR transportation impact studies. **The CE understands this position would be a MCDOT representative, and agrees with that.** Planning Board also asked if this recommendation was necessary or redundant. DOT Vision Zero staff are already included in DOT's internal Development Review Committee reviews. Consequently, this recommendation would have no substantive effect on what DOT already does.	70
Transportation Recommendations: Transportation Impact Study Approach		
5.4	Introduce a Vision Zero Impact Statement for LATR studies pertaining to subdivisions that will generate 50 or more peak-hour person trips. **CE agrees with comments from MCDOT.** 1st Bullet – Need to consider what action this prompts from developers; how is this information used? Does it prompt any changes in what actions are required whether they have frontage that is or isn't within the HIN? Need to avoid information-gathering of info that we already have.	70

	2nd Bullet – The Vision Zero impact statement should not include crash analysis. For one, it can be a huge lift and is not an expertise that developers have. Second, this is likely to backfire on Planning's intentions to push for safety improvements as savvy developers will argue that the crash volume along their frontage does not warrant them paying for changes to the built environment. Master plans and the pending Complete Streets Design Guide should be driving what is required for improvements regardless of the current or "predicted" crash rates. 2nd and 4th Bullets – Need to consider what action this prompts from developers; how is this information used? How does this analysis affect conditioned treatments? 5th Bullet – Same. Need to consider what action this prompts from developers; how is this information used? How does a speed study affect conditioned treatments? Do we intend to database these speed studies for future reference? (If so, we need to ensure our Traffic Division (DTEO) has access to these studies.) 6th Bullet – So far, it is unclear as to what conditions can be imposed on developers. How do we pick & choose projects and needs, particularly if off-site? We need more definition to this and metrics to guide implementation.	
5.5	For LATR studies of new development generating 50 or more peak-hour weekday person trips, couple current multi-modal transportation adequacy tests with options that can be implemented over time utilizing Vision Zero-related tools and resources currently available and under development. **The CE agrees with the comments of MCDOT. See Sec. 5.1. above.** When the appropriate set of tools (described in the Vision Zero Resources section above) are operational, the current multi-modal transportation adequacy tests should be updated as described above. We would like to see this Recommendation improve the definition of adequacy for things such as ADA compliance, lighting adequacy, transit needs, pedestrian accessibility, etc. *Safety System Adequacy* – This section needs to be deleted or significantly revised as the current requirements are overly complex and unlikely to have the intended outcome Planning envisions. First, it is overly reliant on a tool, the "Predictive" Safety Analysis, that does not yet exist, so it cannot be assumed in this document that it will produce a valid safety performance function (SPF) for any roadway. Incorporating tools that have not been implemented or validated, such as the predictive safety analysis, should be struck from the document. In addition, by not increasing the estimated number of crashes, this leads the developer to do nothing or the absolute minimum to meet this threshold instead of making meaningful investments called for in the various master plans. It also would allow the developer off	70

	the hook if the estimated crashes were near zero. It assumes too much power of the SPF and the calculated crash modification factor (CMF) that you can perfectly quantify the safety benefit down to the decimal. Treatments listed in the Crash Modification Factor Clearinghouse can have multiple CMFs because the Clearinghouse is not based on meta-analyses like other clearinghouses, but may be based on one small study done at one location. The Safety System Adequacy should be based on whether or not the current and proposed buildout of the property meets the requirements of the relevant master plan, ped/bike master plan, and the recommended design in the Complete Streets Guide. Basing the safety system adequacy on hard requirements such as those listed in the guides and plans rather than a convoluted equation that a savvy developer can bend to avoid making improvements is key to making this section work. *Motor Vehicle System Adequacy* – This document appears to rely heavily on Critical Lane Volume Thresholds or Highway Capacity Manual (HCM) delays to determine roadway adequacy. In more congested areas, these metrics alone may not tell the whole operational story, and may mask some operational issues that contribute to significant safety concerns. Having language that calls for assessing existing vehicular queues by movement for a project's study area, as well as expected queues with background and build out trips included, would help to reduce situations where excessive queuing and blocking of the roadway network lead to undesirable operations that impact the safety of pedestrians, bicyclists, transit users, and vehicles.	
Transportation Recommendations: Transportation Impact Study Scoping		
5.6	Eliminate the LATR study requirement for motor vehicle adequacy in Red Policy Areas (Metrorail Station Policy Areas and Purple Line Station Areas).	74
	The CE opposes eliminating LATR Study in Red Policy Areas until Unified Mobility Program is implemented to share in the infrastructure improvement costs. Red Areas have pedestrian safety, bicycle network gaps, transit capacity needs as well as NADMS goals to achieve.	74
5.7	Expand the application of the Critical Lane Volume (CLV) analysis methodology as a screening tool to determine the necessity for the application of the more robust Highway Capacity Manual (HCM) analysis methodology for the motor vehicle transportation adequacy analysis. **The County Executive opposes this recommendation.**	
Transportation Recommendations: Transit Corridor LATR Intersection Congestion Standard		
5.8	Increase the intersection delay standards to 1,700 CLV and 100 seconds/vehicle for transit corridor roadways in Orange and Yellow policy areas to promote multi-modal access to planned Bus Rapid Transit service in transit corridors.	75

The County Executive opposes this recommendation.	

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5.9	Place all Purple Line Station policy areas (existing and proposed) in the Red policy area category. **This move increases the congestion delay standard and reduces the transportation impact tax. The County Executive opposes this change as premature. See 4.2 above.**	79
5.10	Continue producing the Travel Monitoring Report (formerly the Mobility Assessment Report) on a biennial schedule as a key travel monitoring element of the County Growth Policy. **Agree**	72
Transportation Recommendations: Policy Area Review		
5.11	The proposed auto and transit accessibility metric is the average number of jobs that can be reached within a 45-minute travel time by automobile or walk access transit. **This metric is recommended in the Planning Board Draft but not in the Council Resolution. While a policy area test is important, the measure as recommended in the Planning Board Draft is insufficient to evaluate the adequacy of master plans.**	82
5.12	The proposed metric for auto and transit travel times is average time per trip, considering all trip purposes. **See comment for 5.11.**	83
5.13	The proposed metric for vehicle miles traveled per capita is daily miles traveled per "service population," where "service population" is the sum of population and total employment for a particular TAZ. **See comment for 5.11.**	84
5.14	The proposed metric for non-auto driver mode share is the percentage of non-auto driver trips (i.e., HOV, transit and nonmotorized trips) for trips of all purposes. **See comment for 5.11.**	85
5.15	The proposed metric for bicycle accessibility is the Countywide Connectivity metric documented in the 2018 Montgomery County Bicycle Master Plan (page 200). **The CE takes no position on this recommendation.**	85
		86
5.16	Define the boundary of the Forest Glen Metro Station Policy Area. MCDOT suggests that the boundary only go to the Beltway to the south.	86
5.17	Expand the boundary of the Grosvenor Metro Station Policy Area. **Agree**	86
5.18	Establish the proposed Lyttonsville/Woodside Purple Line Station policy area as a Red policy area. MCDOT recommends deferring the decision to make the Purple Line station a Red Area until the Purple Line is operational.	87

5.19	Establish the proposed Dale Drive/Manchester Place Purple Line Station policy area as a Red policy area. MCDOT recommends deferring the decision to make the Purple Line station a Red Area until the Purple Line is operational. The CE agrees with this recommendation.	
Tax Recommendations: School Impact Taxes		
6.1	Change the calculation of school impact taxes to include one tax rate for all multifamily units, in both low-rise and high-rise buildings, based on the student generation rate for multifamily units built since 1990. **The CE does not support this change in the calculation of SGRs for multi-family units. See answer to 4.13.**	79
6.2	Calculate standard school impact taxes at 100% of the cost of a student seat using School Impact Area student generation rates. Apply discount factors to single-family attached and multifamily units to incentivize growth and maintain the current 120% factor within the Agricultural Reserve Zone, in certain desired growth and investment areas. **The CE does not support the reduction of revenue that this formula represents**. First, the CE supports the current standard of 120% to calculate the cost of a student seat. The CE does not agree that the UPPs represent sufficient revenue to justify a 10% reduction in the standard. The additional 10% was to help pay for land for school sites. There has been no change in the need for land for schools. As discussed in his letter, the County Executive does not support the reduced impact tax rates and discounts, because this revenue is needed to deal with the county's schools and other important infrastructure.	89
6.3	Allow a school impact tax credit for any school facility improvement constructed or funded by a property owner with MCPS's agreement. **The CE does not support this recommendation as currently written.** The SSP needs to describe a process for a developer to make a school facility improvement and receive an impact tax credit. Any improvement must add student capacity. **OMB:** Support credit only for school improvements that add student capacity. While an argument can be made that credits for facility capital maintenance (e.g., replacing components in existing schools) may "preserve" capacity, expanding capacity is the greater priority. Credits for such improvements can be explored in future SSPs.	92
6.4	Eliminate the current impact tax surcharge on units larger than 3,500 square feet. **The CE opposes this recommendation.** **OMB:** Do not support. The bulk of new SFD homes built since FY15 have been larger than 3,500 SF (90% of total, almost 2300 units) and have been subject to the surcharge. SFD homes continue (along with SFA) to generate the bulk of schools	92

	impact taxes by unit type.	
Tax Recommendations: Impact Tax Exemptions on Residential Uses		
6.5	Eliminate the current impact tax exemptions for development in former Enterprise Zones. **The CE supports this recommendation.** **OMB:** Generally agree. Support grandfathering in projects/units that have been approved through building permit only (if seeking to maximize future impact tax revenue) or through preliminary plan approval for less impact on developers. Also consider removing the exemption on residential only and retaining it for non-residential development.	95
6.6	Any development located in a Qualified Opportunity Zone certified by the United States Treasury Department is exempt from development impact taxes. CE does not support this exemption. Qualified Opportunity Zone property owners already have significant federal tax advantages and do not need this incentive to develop.	95
6.7	Modify the current impact tax exemptions applied to all housing units when a project includes 25% affordable units to: 1. require the affordable units be placed in the county's or a municipality's MPDU program, and 2. limit the exemption amount to the lowest standard impact tax in the county for the applicable dwelling type. OMB--The Planning Board's recommendation to reduce the amount of subsidy provided for market rate units when developers double the number of Moderately Priced Dwelling Units is a step in the right direction to help ensure that we make the best use of resources devoted to affordable housing. Executive branch staff are analyzing possible additional changes in this exemption to ensure the most efficient delivery of affordable housing units.	97
6.8	Continue to apply impact taxes on a net impact basis, providing a credit for any residential units demolished. **The CE agrees with OMB.** **OMB:** Support in part. Credit (full or partial) should only be given if demolished unit had previously paid impact taxes. If it did not, then it should be subject to impact tax payment at the applicable rate.	99

Recommendation	Page
Tax Recommendations: Recordation Tax	
6.9 Incorporate progressive modifications into calculation of the Recordation Tax to provide additional funding for school construction and the county's Housing Initiative Fund. **The CE does not support an increase in the recordation tax in order to offset the revenues lost from the impact taxes charged to developers.** The SSP is the vehicle for assessing developers with their commensurate share of new infrastructure needs, and that is what should be done in this SSP. The Planning Board's recommendation to add an exemption for the first $500,000 of the sales price for first time homebuyers will result in significant reductions in recordation tax proceeds – particularly in the general fund which was not recommended for a rate increase. Further analysis is required to determine the net impact of these proposed changes.	101

2020 Subdivision Staging Policy (SSP) – Forecast and Analysis of Impact Taxes and Recordation Taxes

Office of Management and Budget
and Department of Finance
September 1, 2020

Goals of the Analysis

- Prepare the fiscal impact analysis in response to Bill 38-20 (Development Impact Tax Amendment) and Bill 39-20 (Recordation Tax Amendment), introduced by the Council on July 28, 2020.
- Evaluate the historical/actual impact tax collections between FY15 and FY20 under the new school Impact Area framework.
- Analyze the macro-level effects on school and transportation impact tax collections resulting from the rate and structural changes as proposed by the Planning Board:
  - Utilize a forecasting model developed by the Department of Finance;
  - Evaluate the pipeline data of unbuilt residential projects in the County to provide an illustrative example of the potential impact rate changes would have on specific locations in the County.

Planning Board's Impact Tax Recommendations (part I)

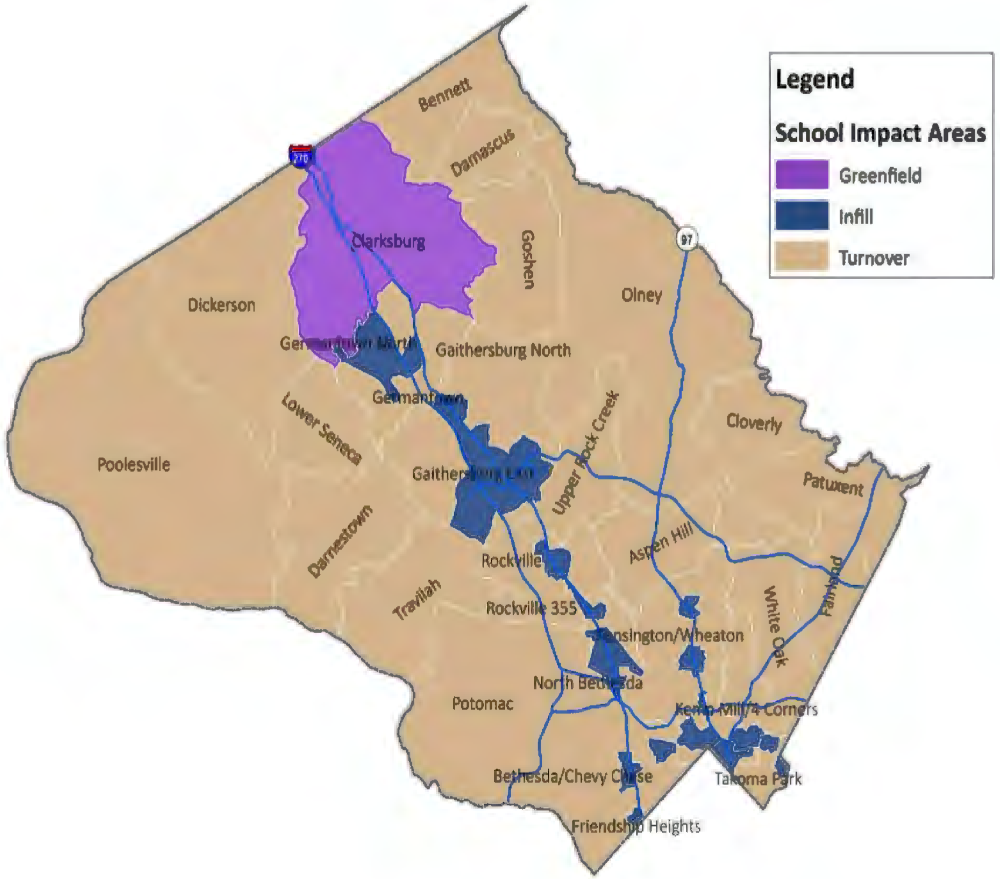
	No.	Recommendations	Notes
School Impact Taxes	6.1	Apply one tax rate for all multifamily units in both low-rise and high-rise buildings.	• Currently two different impact taxes for MF housing - $21,961 for Low-rise (four stories or less) and $6,113 for High-rise (five stories or more). • Charge one impact tax for multifamily due to no distinguishable difference in the student generation rates in those multifamily units constructed since 1990.
	6.2	• Calculate the standard school impact taxes at 100% of the cost of a student seat using "new" School Impact Area student generation rates. • Apply a discount to single-family attached and multifamily units to incentivize growth in certain desired growth and investment areas (DGA). • Maintain the current 120% factor within the Agricultural Reserve	• The current rate is 120% of the cost of a student seat. Planning Board recommends the rate at 100% due to the introduction of Utilization Premium Payments. • Discounted rate (60%) is applied to certain Desired Growth Areas (=18 Activity Centers).
	6.3	Allow a school impact tax credit for any school facility improvement constructed or funded by a property owner with MCPS's agreement.	A tax credit is allowable for school facility improvements (i.e., roof replacements; HVAC upgrades).
	6.4	Eliminate School Impact Tax Surcharge ($2/sf) on units larger than 3,500 sf.	The surcharge elimination is based on the data of no relationship between the size of a single-family unit and the number of public school students generated. Planning Board believes the increase in student generation rate is not sufficient to warrant the surcharge.
	4.16	Require applicants to pay "<u>Utilization Premium Payments</u>" when a school's projected utilization three years in the future exceeds 120%.	• Require payments to be made when the developer applies for a building permit if the schools serving a residential development project are overcapacity. • If multiple schools serving the project site exceed the capacity, then payments are required for each school.

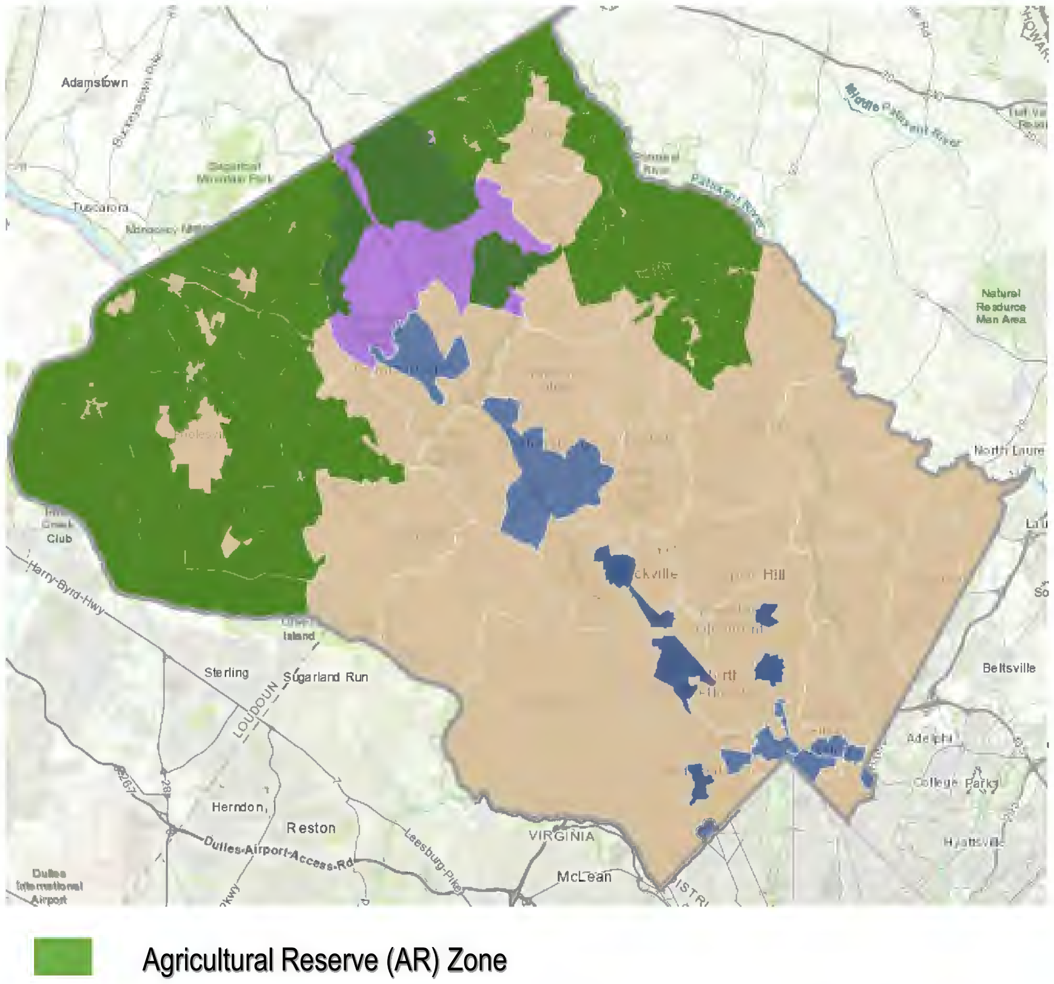
Note: Recommendation 6.1 through 6.4 are included in Bill 38-20.

Planning Board's Impact Tax Recommendations (part II)

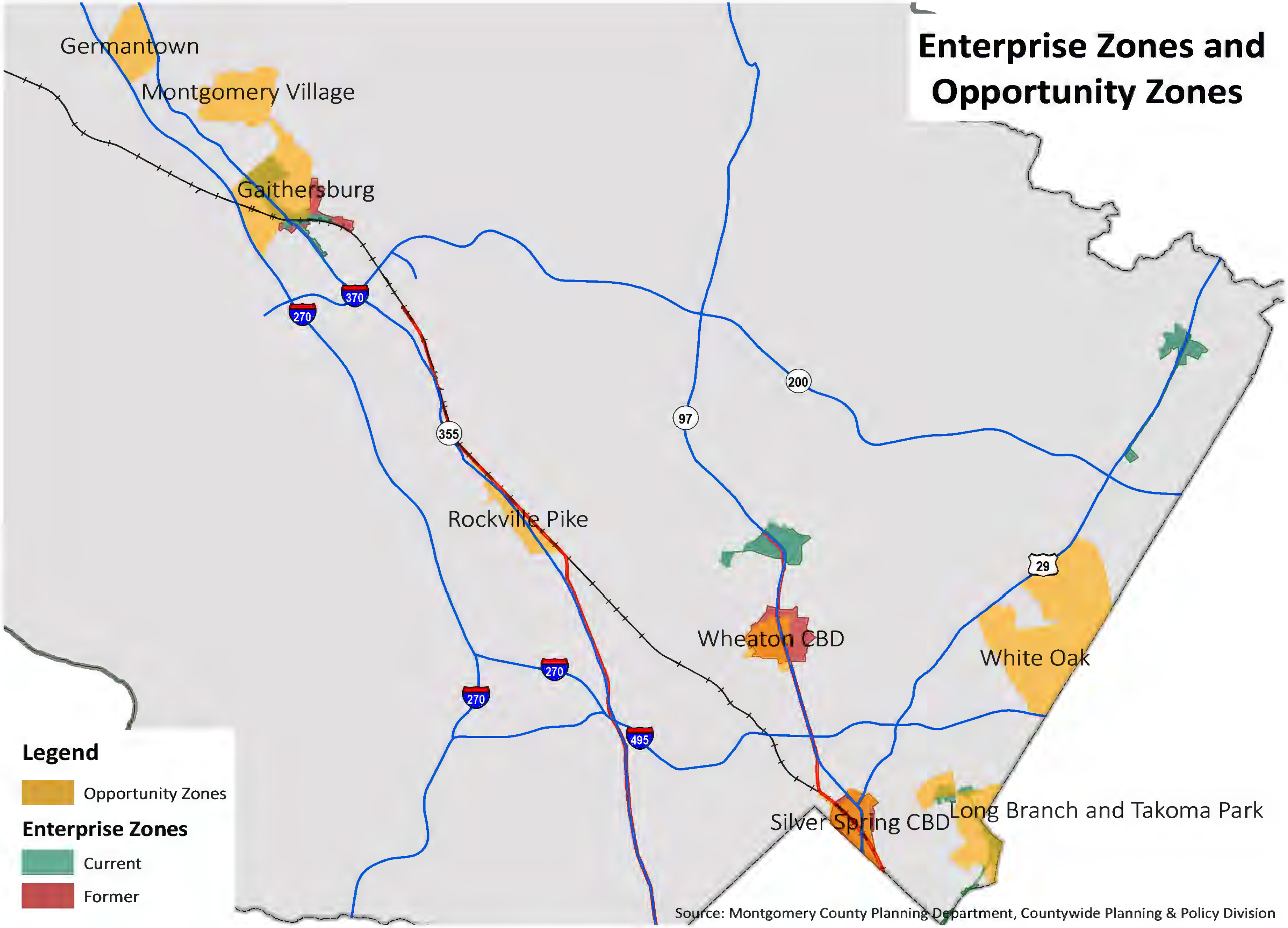
	No.	Recommendations	Notes
Tax Exemptions on Residential Uses	6.5	**Enterprise Zone Exemptions** -- Eliminate the current impact tax exemptions from development in former Enterprise Zones.	• Exemption will be eliminated from former Enterprise Zones (i.e., Silver Spring and Wheaton CDBs) and added to Qualified Opportunity Zones. • Most of Silver Spring and Wheaton CBDs are located within Qualified OZ.
	6.6	**Opportunity Zone Exemptions** - Exempt any development in Opportunity Zones	• 14 Census tracks in the County are certified as Qualified OZ. • Same as EZ, designated by the State to provide property tax credits to businesses that create new jobs. • Assume exemption for school and transportation impact taxes could incentivize growth in OZ.
	6.7	**25% Affordable Housing Exemptions** - Limit the exemption amount to the lowest standard impact tax by housing type and place the affordable units in the MPDU Program.	• Exemption is only equal to the lowest standard impact tax rate by unit type for projects that provide 25% MPDUs. • Require all affordable units to be placed in the MPDU program to maximize the control period. •Any applicable taxes for a building permit filed on or after the impact tax bill's effect date will be collected.
	6.8	Continue to apply impact taxes on a net impact basis, providing a credit for any residential units demolished	• Planning Board supports the current policy that the replacement house will not pay impact taxes if it's rebuilt within one year. If the rebuilt changes its housing type (i.e., from a single-family detached to multi-family building or single-family attached), it would get an impact tax credit equivalent to that of the single-family detached unit that was demolished but would pay the difference.
Recordation Tax	6.9	Modify calculation of the Recordation Tax to provide additional funding for school construction and the Housing Initiative Fund	•Increase $0.50 for each $500 that the sale price exceeds $100,000 and $500,000 to the MCPS CIP. •Charge $1.00 for each $500 that the sale price of a single-family home exceed $1M to the HIF for the increasing need in rental assistance.

Proposed School Impact Areas





Enterprise Zones and Opportunity Zones



Source: Montgomery County Planning Department, Countywide Planning & Policy Division

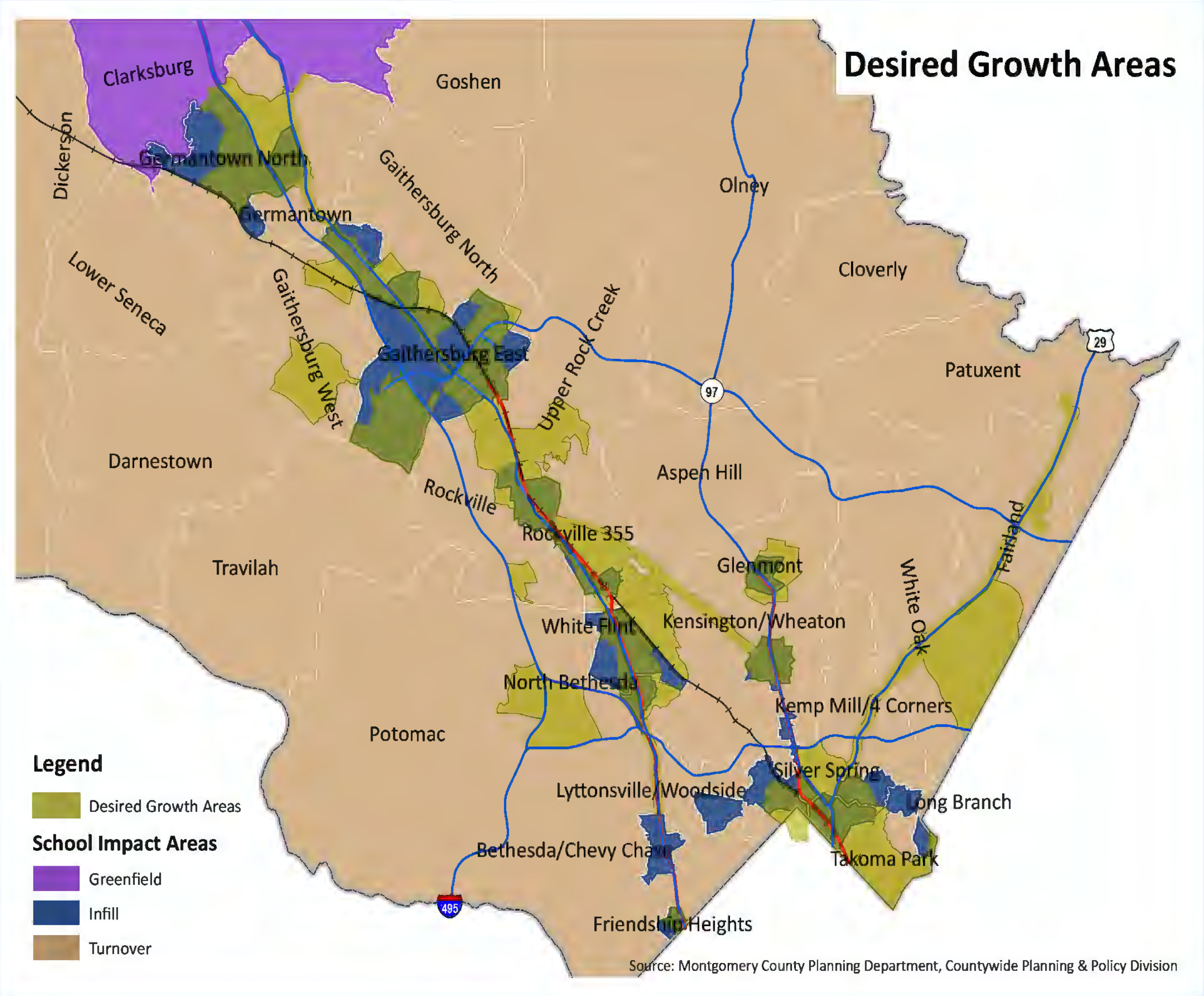
Desired Growth Areas

- Planning Board expects future housing growth will occur in Activity Centers (AC) due to proximity to multi-modal transportation and job centers. 23 ACs are identified, and they are concentrated in urban centers, towns, and along major transportation corridors.

- Desired Growth Areas (DGA) include all ACs located within Infill and Turnover Impact Areas, except for 5 ACs:
  - Olney and Kensington ACs (large area, little growth, not projected for large amount of growth);
  - NIH Walter Reed AC (little growth, not projected for large growth);
  - Bethesda and Clarksburg ACs (already experience high level of growth).

- No DGA in Greenfield School Impact Area.

- DGA also includes development on parcels within a 500 ft. buffer of an existing BRT line or planned BRT lines with construction funds in County CIPs (i.e., US29, MD355, Veirs Mill Road).



Collections of Development Impact Taxes, CY10-FY19

Impact Taxes	Total (CY10-19)	Annual Average	Notes
Transportation Impact Taxes	108,156,423	10,815,642	Exclude Transportation Impact Taxes collected from Rockville and Gaithersburg.
School Impact Taxes	250,391,718	25,039,172	Exclude School Facility Payments.
Total Development Impact Taxes	**358,548,141**	**35,854,814**	
Transportation Impact Taxes Waived	**66,717,143**	**6,671,714**	Exemption of school impact taxes is not reported in the DPS annual report.
EZ Exemption	20,578,666	2,057,867	Includes tax exemptions from Silver Spring ($1.9M/yr, or 58%), Wheaton ($835K/yr, or 41%), and Burtonsville ($244K for 2018 only, 1%).
MPDU/Affordable Units Exemption	21,698,133	2,169,813	The exemption for 25% MPDUs began in 2018. The reported amount was **$1.41M** for 2018 (i.e., development in Germantown, Sandy Spring, and Silver Spring) and **$3.78M** for 2019 (i.e., in Germantown, Clarksburg, & Silver Spring).
Other Residential Exemption	1,688,039	168,804	Include Ancillary Buildings and Opportunity Housing Projects
Non-Residential Exemption	22,752,304	2,275,230	Include buildings owned by Governments or by private owners with tax refunds

Source: Annual Report of Revenue Collected from Development Impact Tax, Department of Permitting Services

- The exemption of total transportation taxes represents 19% of the total impact taxes collected over the past decade.

Historical Collections of School Impact Taxes by School Impact Areas

	FY15	FY16	FY17	FY18	FY19	FY20	Total	Annual Average	%
Infill - Non-DGA	$1,275,582	$348,162	$1,625,805	$1,804,634	$3,094,868	$496,043	$8,645,094	$1,440,849	
Infill - DGA	$10,541,129	$7,131,677	$9,419,584	$1,572,871	$6,085,436	$9,603,838	$44,354,535	$7,392,423	
Infill - subtotal	***$11,816,711***	***$7,479,839***	***$11,045,389***	***$3,377,505***	***$9,180,304***	***$10,099,881***	***$52,999,629***	***$8,833,272***	***32%***
Turnover - Non-DGA	$11,293,764	$8,414,023	$11,651,535	$7,450,266	$7,697,872	$3,660,831	$50,168,292	$8,361,382	
Turnover - DGA	$536,700	$502,381	$2,066,435	$518,727	$1,408,814	$1,481,135	$6,514,192	$1,085,699	
Turnover - AR Zone	$90,766	$118,020	$91,827	$397,442	$618,014	$152,988	$1,469,057	$244,843	
Turnover - subtotal	***$11,921,230***	***$9,034,424***	***$13,809,797***	***$8,366,435***	***$9,724,700***	***$5,294,954***	***$58,151,541***	***$9,691,923***	***35%***
Greenfield – Non-DGA	$9,300,235	$6,061,900	$11,011,658	$9,982,571	$9,886,214	$6,484,207	$52,726,785	$8,787,798	
Greenfield- AR Zone	$58,892	-	$77,028	$30,874	$146,142	-	$312,936	$52,156	
Greenfield - subtotal	***$9,359,127***	***$6,061,900***	***$11,088,686***	***$10,013,445***	***$10,032,356***	***$6,484,207***	***$53,039,721***	***$8,839,954***	***32%***
Total:	**$33,097,068**	**$22,576,163**	**$35,943,872**	**$21,757,385**	**$28,937,360**	**$21,879,042**	**$164,190,891**	**$27,365,148**	**100%**

Source: Building Permit Data from Montgomery County Planning Department

- Of the $164M collected between FY15 and FY20, total impact tax collections were relatively even among three school impact areas. However, nearly one-third of school impact taxes were generated from Greenfield/Clarksburg (32%), followed by Turnover Non-DGA (31%), and Infill-DGA (27%).
- Desired Growth Areas are expected to receive a discount rate of 60% when compare to Non-DGAs of each school impact area.

Historical Collections of School Impact Taxes by Desired Growth Areas

	FY15	FY16	FY17	FY18	FY19	FY20	Total	Annual Average	%
Non-DGA	$ 21,869,581	$ 14,824,085	$ 24,288,998	$ 19,237,471	$ 20,678,954	$ 10,641,081	$ 111,540,171	$ 18,590,028	68%
DGA	$ 11,077,829	$ 7,634,058	$ 11,486,019	$ 2,091,598	$ 7,494,250	$ 11,084,973	$ 50,868,727	$ 8,478,121	31%
AR Zone	$ 149,658	$ 118,020	$ 168,855	$ 428,316	$ 764,156	$ 152,988	$ 1,781,993	$ 296,999	1%
Total:	**$ 33,097,068**	**$ 22,576,163**	**$ 35,943,872**	**$ 21,757,385**	**$ 28,937,360**	**$ 21,879,042**	**$ 164,190,891**	**$ 27,365,148**	**100%**

Source: Building Permit Data from Montgomery County Planning Department

- While more than two-thirds of school impact taxes were collected from Non-DGA, DGA (with a very small geographic area) collected nearly one-third of taxes ($31%, $51M).
- Only 1% of tax collection came from Agricultural Reserve Zone.

Historical Collections of School Impact Taxes by Unit Type

- Nearly 76% of taxes ($125M) were collected from new construction of single-family homes, split between SFD ($73M) and SFA ($52M).
- Of those single-family new construction units, 63% of taxes were collected from Non-DGA areas.
- Most new single-family detached (51%) homes built since FY15 were above 5,000 s.f.
- Tax collections from low-rise multi-family ($16.7M) were slightly less than high-rise multi-family ($22.1M).

	FY15	FY16	FY17	FY18	FY19	FY20	Total	Annual Average
SFD - Non-DGA	$15,317,485	$9,669,402	$15,526,425	$11,042,839	$10,074,426	$6,361,843	$67,992,420	$11,332,070
SFD - DGA	$1,181,499	$469,083	$200,567	$519,508	$352,745	$484,849	$3,208,251	$534,709
SFD - AR Zone	$149,658	$118,020	$168,855	$428,316	$764,156	$152,988	$1,781,993	$296,999
SFD - subtotal	***$16,648,642***	***$10,256,505***	***$15,895,847***	***$11,990,663***	***$11,191,327***	***$6,999,680***	***$72,982,664***	***$12,163,777***
SFA - Non-DGA	$5,105,397	$4,889,495	$7,152,493	$6,791,413	$7,346,615	$4,000,120	$35,285,533	$5,880,922
SFA - DGA	$3,066,210	$3,471,597	$3,647,345	$1,572,090	$3,252,878	$2,042,556	$17,052,676	$2,842,113
SFA - subtotal	***$8,171,607***	***$8,361,092***	***$10,799,838***	***$8,363,503***	***$10,599,493***	***$6,042,676***	***$52,338,209***	***$8,723,035***
MF Low-Rise - Non-DGA	$724,407	-	$1,095,940	$251,207	$3,257,913	$279,118	$5,608,585	$934,764
MF Low-Rise - DGA	$414,573	$1,512,342	$5,040,347	-	$527,082	$3,669,078	$11,163,422	$1,860,570
MF LR - subtotal	***$1,138,980***	***$1,512,342***	***$6,136,287***	***$251,207***	***$3,784,995***	***$3,948,196***	***$16,772,007***	***$2,795,335***
MF High-Rise - Non-DGA	$722,292	$265,188	$514,140	$1,152,012	-	-	$2,653,632	$442,272
MF High-Rise - DGA	$6,415,547	$2,181,036	$2,597,760	-	$3,361,545	$4,888,490	$19,444,378	$3,240,730
MF HR - subtotal	***$7,137,839***	***$2,446,224***	***$3,111,900***	***$1,152,012***	***$3,361,545***	***$4,888,490***	***$22,098,010***	***$3,683,002***
Total:	**$33,097,068**	**$22,576,163**	**$35,943,872**	**$21,757,385**	**$28,937,360**	**$21,879,042**	**$164,190,891**	**$27,365,148**

Note: Housing units constructed in AR zone are only single-family detached.

Planning Board's Proposed School Impact Tax Rate Changes

	Current Countywide		Infill			Turnover				Greenfield			
		SGR	Standard	Desired Growth	SGR	Standard	Desired Growth	AR Zone	SGR	Standard	Desired Growth	AR Zone	SGR
Single-family Detached	$ 26,207	0.450	$ 19,707	$ 19,707	0.419	$ 21,582	$ 21,582	$ 25,898	0.457	$ 33,809	$ -	$ 40,571	0.724
Single-family Attached	$ 27,598	0.494	$ 17,311	$ 10,387	0.369	$ 23,928	$ 14,357	$ 28,714	0.510	$ 28,691	$ -	$ 34,429	0.618
Multifamily Low-Rise	$ 21,961	0.512	$ 4,370	$ 2,622	0.093	$ 9,688	$ 5,813	$ 11,626	0.208	$ 24,898	$ -	$ 29,878	0.532
Multifamily High-Rise	$ 6,113	0.171	$ 4,370	$ 2,622	0.093	$ 9,688	$ 5,813	$ 11,626	0.208	$ 24,898	$ -	$ 29,878	0.532

Recommended School Impact Changes:

- Apply one rate to multifamily unit regardless of low-rise or high-rise due to no distinguishable difference in the SGR.
- Change the Impact tax rate to 100% of the cost of a student seat in different school impact areas from the current 120% of the average cost of a student seat.
- Apply a discount (60%) to Single-family Detached and Multifamily units to Desired Growth Areas to incentivize growth.
- No Desired Growth Areas in Greenfield.

Forecasting Model Used to Project the Fiscal Impact of Rate Changes

- Finance's Forecasting Model is designed to show magnitude/direction of changes **– not designed for budgeting purposes**
- Apply the new School Impact Area framework (Infill, Turnover, and Greenfield) by Non-DGA, DGA, and AR Zone to the type of development to determine where revenues have been generated between FY15 and FY20.
- Use the historical FY15-FY20 data to
    - Establish a "baseline", which assumes that development patterns would continue over the next six years in similar trends and under current rate structure;
    - Apply a differential between the proposed rates and the average historical rates to each School Impact Area;
    - Forecast the potential revenues that could have been generated if the recommended rate changes were applied.
- Resulting difference indicates the change in macro impact tax collections projected over the next six years (FY21-FY26).

Charge One Rate for All Multifamily Units

(Recommendation 6.1)

	Historical Data (FY15-20)		Forecast - Current Rates (FY21-FY26)		Forecast - Proposed Rates (FY21-FY26)			
	Total Amount	Annual Average	Est. Total	Est. Annual Average	Est. Total	Est. Annual Average	Avg. Difference (Current vs. Proposed Rates)	% Change
MF LOW-RISE	**$ 16,772,007**	**$ 2,795,335**	**$ 19,521,692**	**$ 3,253,615**	**$ 9,577,919**	**$ 1,596,320**	**$ (1,657,296)**	**-51%**
Greenfield- Non-DGA	$ 2,404,188	400,698	$ 2,798,342	$ 466,390	$ 3,176,473	$ 529,412	$ 63,022	14%
Infill - Non-DGA	$ 2,400,661	400,110	$ 2,794,237	$ 465,706	$ 1,433,636	$ 238,939	$ (226,767)	-49%
Infill - DGA	$ 11,163,422	1,860,570	$ 12,993,608	$ 2,165,601	$ 4,239,645	$ 706,607	$ (1,458,994)	-67%
Turnover - Non-DGA	$ 803,736	133,956	$ 935,504	$ 155,917	$ 728,164	$ 121,361	$ (34,557)	-22%
MF HIGH-RISE	**$ 22,098,010**	**$ 3,683,002**	**$ 25,720,865**	**$ 4,286,811**	**$ 9,086,414**	**$ 1,514,402**	**$ (2,772,409)**	**-65%**
Infill - Non-DGA	$ 2,653,632	442,272	$ 3,088,681	$ 514,780	$ 1,584,707	$ 264,118	$ (250,662)	-49%
Infill - DGA	$ 19,053,146	3,175,524	$ 22,176,812	$ 3,696,135	$ 7,236,005	$ 1,206,001	$ (2,490,134)	-67%
Turnover - DGA	$ 391,232	65,205	$ 455,372	$ 75,895	$ 265,702	$ 44,284	$ (31,612)	-42%
Total	**$ 38,870,017**	**$ 6,478,336**	**$ 45,242,557**	**$ 7,540,426**	**$ 18,664,332**	**$ 3,110,722**	**$ (4,429,704)**	**-59%**

- Planning Board recommends to change two rates for multifamily units to one rate due to no distinguishable difference in the student generation rates of low-rise and high-rise multifamily units constructed since 1990.

- Forecasting under the proposed rates indicates that the County is likely to collect $4.4M (or 59%) less from all multifamily units per year than that of the forecast using the current rates over the next six years.

Forecast School Impact Taxes with Rate Changes

(Recommendation 6.2)

	Historical Data (FY15-FY20)		Forecast - "Baseline" (FY21-FY26)		Forecast - "Proposed Rates" (FY21-FY26)		Difference between Baseline vs. Proposed	
	Total	Annual Avg.	Estimated Total	Annual Avg.	Estimated Total	Annual Avg.	Estimated Total for FY21-FY26	Annul Avg.
Infill - Non-DGA	$ 8,645,094	$ 1,440,849	$ 7,346,781	$ 1,224,464	$ 4,387,381	$ 731,230	$ (2,959,401)	$ (493,233)
Infill - DGA	$ 44,354,535	$ 7,392,423	$ 45,106,508	$ 7,517,751	$ 17,130,552	$ 2,855,092	$ (27,975,956)	$ (4,662,659)
Turnover - Non-DGA	$ 50,168,292	$ 8,361,382	$ 71,960,930	$ 11,993,488	$ 65,134,211	$ 10,855,702	$ (6,826,719)	$ (1,137,786)
Turnover - DGA	$ 6,514,192	$ 1,085,699	$ 11,482,202	$ 1,913,700	$ 7,798,051	$ 1,299,675	$ (3,684,151)	$ (614,025)
Turnover - AR Zone	$ 1,469,057	$ 244,843	$ 2,206,997	$ 367,833	$ 2,320,994	$ 386,832	$ 113,997	$ 19,000
Greenfield - Non-DGA	$ 52,726,785	$ 8,787,798	$ 52,692,932	$ 8,782,155	$ 69,635,271	$ 11,605,878	$ 16,942,339	$ 2,823,723
Greenfield - AR Zone	$ 312,936	$ 52,156	$ 312,796	$ 52,133	$ 515,327	$ 85,888	$ 202,531	$ 33,755
Total	$ 164,190,891	$ 27,365,148	$ 191,109,145	$ 31,851,524	$ 166,921,786	$ 27,820,298	$ (24,187,359)	$ (4,031,227)

- Forecasting under the proposed rates indicates that the County is likely to collect $4M (or 12.7%) less in school impact taxes per year than that of the baseline forecast over the next six years.
- When compared to the average historical data, the proposed rate forecast shows a potential revenue gain of $455K per year (or 2% more).

*Notes: **Baseline Forecast** assumes that similar development patterns and trends continue over FY21-FY26 with current rates. **Proposed Rate Forecast** is calculated by applying a differential between the proposed rates and the average historical rates to each school impact area.*

Forecast School Impact Taxes with Rate Changes

in Desired Growth Areas vs. Non-Desired Growth Areas

Desired Growth Areas

	Historical Data (FY15-FY20)		Forecast - "Baseline" (FY21-FY26)		Forecast - "Proposed Rates" (FY21-FY26)		Difference between Baseline vs. Proposed	
	Total	Annual Avg.	Estimated Total	Annual Avg.	Estimated Total	Annual Avg.	Estimated Total for FY21-FY26	Annul Avg.
Infill - DGA	$ 44,354,535	$ 7,392,423	$ 45,106,508	$ 7,517,751	$ 17,130,552	$ 2,855,092	$ (27,975,956)	$ (4,662,659)
Turnover - DGA	$ 6,514,192	$ 1,085,699	$ 11,482,202	$ 1,913,700	$ 7,798,051	$ 1,299,675	$ (3,684,151)	$ (614,025)
Total	$ 50,868,727	$ 8,478,121	$ 56,588,710	$ 9,431,452	$ 24,928,603	$ 4,154,767	$ (31,660,108)	$ (5,276,685)

Non-Desired Growth Areas

	Historical Data (FY15-FY20)		Forecast - "Baseline" F(FY21-FY26)		Forecast - "Proposed Rates" (FY21-FY26)		Difference between Baseline vs. Proposed	
	Total	Annual Avg.	Estimated Total	Annual Avg.	Estimated Total	Annual Avg.	Estimated Total for FY21-FY26	Annul Avg.
Infill - Non-DGA	$ 8,645,094	$ 1,440,849	$ 7,346,781	$ 1,224,464	$ 4,387,381	$ 731,230	$ (2,959,401)	$ (493,233)
Turnover - Non-DGA	$ 50,168,292	$ 8,361,382	$ 71,960,930	$ 11,993,488	$ 65,134,211	$ 10,855,702	$ (6,826,719)	$ (1,137,786)
Turnover - AR Zone	$ 1,469,057	$ 244,843	$ 2,206,997	$ 367,833	$ 2,320,994	$ 386,832	$ 113,997	$ 19,000
Greenfield - Non-DGA	$ 52,726,785	$ 8,787,798	$ 52,692,932	$ 8,782,155	$ 69,635,271	$ 11,605,878	$ 16,942,339	$ 2,823,723
Greenfield - AR Zone	$ 312,936	$ 52,156	$ 312,796	$ 52,133	$ 515,327	$ 85,888	$ 202,531	$ 33,755
Total	$ 113,322,164	$ 18,887,027	$ 134,520,435	$ 22,420,073	$ 141,993,184	$ 23,665,531	$ 7,472,748	$ 1,245,458

Note: *No Desired Growth Areas are identified by Planning staff in Greenfield School Impact Area.*

- Forecasting under the proposed rates indicates that the County is likely to collect $5.28M (or -56%) less in Desired Growth Areas per year than that of the baseline forecast over the next six years.
- The estimated annual increase of $1.25M (or +6%) from Non-Desired Growth Areas will only partially offset the revenue loss resulted from Desired Growth Areas.

Pipeline Analysis –

What would school impact taxes be if all pipeline units are built today under each rate structure?

Select Master Plan Areas	# of Unbuilt Units	# of Unbuilt - SF Units	# of Unbuilt - MF Units	Current Rates	Proposed Rates	Difference	% Change
Infill	*23,256*	*3,456*	*19,800*	*$ 188,912,432*	*$ 110,287,900*	*$ (78,624,532)*	*-41.6%*
Betheda Downtown	4,621	-	4,621	$ 24,717,151	$ 31,471,057	$ 6,753,905	27.3%
Chevy Chase Lake	645	-	645	$ 3,450,024	$ 11,122,138	$ 7,672,114	222.4%
Gaithersburg City	1,593	313	1,280	$ 14,235,925	$ 5,717,759	$ (8,518,165)	-59.8%
North Bethesda Garrett Park	1,356	394	973	$ 32,720,879	$ 12,315,087	$ (20,405,792)	-62.4%
Rockville City	1,010	302	708	$ 11,079,775	$ 5,829,192	$ (5,250,583)	-47.4%
Shady Grove Sector	1,734	608	1,126	$ 20,560,080	$ 8,054,678	$ (12,505,402)	-60.8%
Silver Spring CBD	4,189	-	4,189	$ 22,406,437	$ 9,610,613	$ (12,795,824)	-57.1%
White Flint	4,831	-	4,831	$ 25,895,883	$ 11,083,522	$ (14,812,361)	-57.2%
Turnover	*6,772*	*2,975*	*3,797*	*$ 73,933,612*	*$ 65,261,938*	*$ (8,671,674)*	*-11.7%*
Gaithersburg City	825	351	474	$ 11,011,403	$ 7,708,046	$ (3,303,357)	-30.0%
Gaithersburg Vicinity	640	574	66	$ 13,900,194	$ 12,305,139	$ (1,595,055)	-11.5%
North Bethesda Garrett Park	1,183	339	844	$ 4,876,674	$ 4,481,336	$ (395,338)	-8.1%
Potomac Subregion	816	474	342	$ 10,160,462	$ 8,962,805	$ (1,197,656)	-11.8%
Greenfield	*1,933*	*1,137*	*796*	*$ 30,627,594*	*$ 44,755,708*	*$ 14,128,114*	*46.1%*
Clarksburg	1,838	1,118	720	$ 30,221,079	$ 43,099,991	$ 12,878,912	42.6%
Damascus	79	3	76	$ 406,515	$ 1,655,717	$ 1,249,203	307.3%
Total	**31,961**	**7,568**	**24,393**	**$ 293,473,638**	**$ 220,305,545**	**$ (73,168,092)**	**-24.9%**
	Annual Average					Difference	
If 5-yr buildout	6,392	1,514	4,879	$ 58,694,728	$ 44,061,109	$ (14,633,618)	
If 10-yr buildout	3,196	757	2,439	$ 29,347,364	$ 22,030,555	$ (7,316,809)	
If 15-yr buildout	2,131	505	1,626	$ 19,564,909	$ 14,687,036	$ (4,877,873)	

Assumptions:

1. School impact taxes are collected at full buildout for all pipeline projects.

2. Projects with less than 20 single-family units are assumed to be SF Detached.

3. 12.5% MPDU exemption is applied to multi-family and single-family attached units.

4. The estimates are based on residential and mixed projects only (totaling 318 projects).

- Rate changes result in an estimated reduction of 25% compared to current rates at full build-out.
- If it take 10 years to build out all pipeline projects, the average revenue collected per year within the proposed rates would be $7.3M less than the current rates.
- Nearly 75% of unbuilt residential or mix-used development projects are in Desired Growth Areas.
- Significant revenue would be collected from Multi-family development in Infill areas (i.e., Bethesda Downtown, Chevy Chase Lake, N. Bethesda/Garrett Park, White Flint)
- With proposed rates, school impact tax revenue increases are heavily dependent on Clarksburg, followed by Chevy Chase Lake and Bethesda located in the Non-DGA areas.
- Future development may significantly shift as a result of the pandemic and changes in the housing market.

Pipeline Analysis –

What would school impact taxes be in Desired Growth Areas vs. Non-Desired Growth Areas?

Pipeline Projects (DGA vs. Non-DGA)	# of Unbuilt Units	# of Unbuilt -SF Units	# of Unbuilt - MF Units	Current Rates	Proposed Rates	Difference	% Change
Desired Growth Areas							
Infill	20,465	3,006	17,459	$ 165,741,337	$ 67,266,654	$ (98,474,683)	-59.4%
Turnover	3,196	924	2,272	$ 26,641,594	$ 19,093,669	$ (7,547,925)	-28.3%
Subtotal	***23,661***	***3,930***	***19,731***	***$ 192,382,931***	***$ 86,360,323***	***$ (106,022,608)***	***-55.1%***
If 10-yr buildout, annual average amount				***$ 19,238,293***	***$ 8,636,032***	***$ (10,602,261)***	
Non-Desired Growth Areas							
Infill	2,791	450	2,341	$ 23,171,095	$ 43,021,246	$ 19,850,151	85.7%
Turnover	3,576	2,051	1,525	$ 47,292,018	$ 46,168,269	$ (1,123,749)	-2.4%
Greenfield	1,933	1,137	796	$ 30,627,594	$ 44,755,708	$ 14,128,114	46.1%
Subtotal	***8,300***	***3,638***	***4,662***	***101,090,707***	***133,945,222***	***$ 32,854,516***	***32.5%***
If 10-yr buildout, annual average amount				***$ 10,109,071***	***$ 13,394,522***	***$ 3,285,452***	
Total Amount	31,961	7,568	24,393	293,473,638	220,305,545	$ (73,168,092)	-24.9%
If 10-yr buildout, annual average amount	3,196	757	2,439	29,347,364	22,030,555	(7,316,809)	

Assumptions:

1. School impact taxes are collected at full buildout for all pipeline projects.
2. Projects with less than 20 single-family units are assumed to be SF Detached.
3. 12.5% MPDU exemption is applied to multi-family and single-family attached units.
4. The estimates are based on residential and mixed projects (totaling 318 projects) only.

- If it takes 10 years to build out all pipeline projects, the average revenue collected in Desired Growth Areas within the proposed rates would be $10.6M less than the current rates, while the revenue could be increased in Non-Desired Growth Areas by $3.3M per year.
- The estimated revenue increase in Non-DGAs could not offset the significant revenue loss projected for the Desired Growth Areas based on the proposed rate changes.

Newly Proposed Utilization Premium Payments

(Recommendation 4.16)

- Planning Board recommends lower tax rates based on the School Impact Areas and limits moratoria to Greenfield Impact Areas only.

- To help ensure the needed school construction funds, it requires applicants to pay Utilization Premium Payments (UPP) when a school's projected utilization three years in the future exceeds 120%.

- UPP would be made by the developers when they apply for a building permit.

		Single-family Detached	Single-family Attached	Multifamily
Infill Impact Areas	Elementary School	$4,927	$4,328	$1,093
	Middle School	$2,956	$2,597	$656
	High School	$3,941	$3,462	$874
Turnover Impact Areas	Elementary School	$5,396	$5,982	$2,422
	Middle School	$3,237	$3,589	$1,453
	High School	$4,316	$4,786	$1,938
Greenfield Impact Areas	Elementary School	$8,452	$7,173	$6,225
	Middle School	$5,071	$4,304	$3,735
	High School	$6,762	$5,738	$4,980

Notes:

1. *The proposed UPP is calculated as a percentage of the applicable standard impact rates. The calculation factors vary by school level to reflect the relative impact housing units have on student enrollment at each level.*
2. *The factor used for Elementary School is 25% of the standard impact tax for the School Impact Area and dwelling type, while 15% is for Middle School and 20% for High School.*

Estimated UPP Collections for Pipeline Projects by School Impact Area, School Level, and Unit Type

(Recommendation 4.16)

	Historical Data (FY15-20) if UPP applied	Estimated UPP for Pipeline Projects
Infill	**755,189**	**20,832,396**
Single-family Detached	141,877	241,612
Single-family Attached/TH	581,617	5,101,280
Multi-family	31,695	15,489,504
Turnover	**9,013,436**	**15,852,745**
Single-family Detached	3,965,788	3,812,481
Single-family Attached/TH	5,041,834	3,149,174
Multi-family	5,814	8,891,090
Greenfield	**8,378,590**	**2,903,326**
Single-family Detached	3,502,716	74,382
Single-family Attached/TH	4,263,334	877,914
Multi-family	612,540	1,951,030
Total	**18,147,215**	**39,588,467**
Annual Average	3,024,536	
Annual Avg. if 10-yr build out		3,958,847

Note:

1. *The collection of UPP is only calculated for resident projects with valid data provided by Planning staff.*
2. *Given the data limitation, the UPP estimate is based on one school per school level. The UPP collections could be higher if multiple schools serving the project site exceed the given threshold, then payments would be required for each school.*

- If the new UPP were collected from applicable building permits over the past five years, County revenues would generate additional $18.1M (or $3M per year).
- It's estimated that nearly $40M in UPP revenue could have been generated from all pipeline projects, representing an average UPP collection of $4M per year if projects take 10 years to build out.
- Nearly 40% of UPP collections (or $15.4M) would come from multi-family pipeline projects in Infill Areas.

Eliminate School Impact Tax Surcharge

(Recommendation 6.4)

	Historical Data (FY15-20)	Total Amount
School Impact Taxes	Total School Impact Taxes - All Unit Types	$ 164,190,891
	Expected Revenue Generated from SFD by Applicable Rate Each Year	$ 63,002,354
	Actual Revenue Collected from SFD	$ 72,982,664
	Average SIT Revenue Generated per permit	$ 28,277
Surcharge	Delta between Expected and Actual = Surcharge	$ 9,980,310
	Estimated Surcharge per year	$ 1,663,385
	% of Surcharge Share in Total School Impact Taxes	6.1%
	% of Surcharge Share in SIT Collected from SFD	13.7%
	Average Surchage per permit	$ 3,867
	Pipeline Data (416 projects)	**Estimated Amount**
	# of Projects identified from SFD	204
	Estimated Surcharge from SFD Projects	$ 788,835

Notes:

1. *The total number of permits identified for Single-family Detached between FY15 and FY20 is 2,581, representing an average of 430 permits per year.*
2. *416 pipeline projects are currently approved. Of those, 204 projects are identified as single-family units with less than 20 units per project. Calculating the impact of surcharge elimination from the pipeline projects would be impossible due to no data available for the final square footage being constructed for each single-family unit.*

- The estimated surcharge was approximately $1.66M per year over the past six years.
- It's estimated that the average surcharge collected from each permit would be $3,867 based on approximately 430 permits identified for Single-family units per year.
- If similar development patterns and trends continue over the next six years, eliminating the surcharge from single-family units could have a negative impact on County revenues.

Eliminate Impact Tax Exemption in Former Enterprise Zones

(Recommendation 6.5)

Enterprise Zone Exemption by Planning Areas	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Total Actual (FY10-19)
Silver Spring - CBD	$ 2,087,823	$ 136,947	$ 1,405,690	$ 870,036	$ 190,348	$ 1,860,892	$ 2,655,729	$ 187,056	$ 185,152	$ 2,320,008	$ 11,899,681
Wheaton CBD		$ 4,241,922	$ 444,400	$ 60,311	$ 4,812		$ 3,596,947				$ 8,348,392
Glemeont Metro							$ 85,709				$ 85,709
Burtonsville									$ 244,884		$ 244,884
Total	**$ 2,087,823**	**$4,378,869**	**$ 1,850,090**	**$930,347**	**$195,160**	**$ 1,860,892**	**$ 6,338,385**	**$ 187,056**	**$ 430,036**	**$ 2,320,008**	**$ 20,578,666**

Source: Annaul Impact Taxes Report from Department of Permitting Services

Impact Taxes	Pipeline Projects			
	Est. Exemption under Current Rates	Est. Exemption under Proposed Rates	Difference (Current vs. Proposed)	% Change
School Impact Tax	$ 33,098,839	$ 14,196,819	$ (18,902,020)	-57%
Transportation Tax	$ 10,673,669	$ 10,673,669	$ -	0%
Office	*$ 5,612,307*	*$ 5,612,307*		
Retail	*$ 5,061,363*	*$ 5,061,363*		
Total	**$ 43,772,508**	**$ 24,870,488**	$ (18,902,020)	-43%
Annual Avg. if 10-yr buildout	$ 4,377,251	$ 2,487,049	$ (1,890,202)	-43%

Notes:

- *Due to data limitation, the estimated exemption for pipeline projects only includes multi-family high-rise units.*
- *The calculation is solely focused on 15 projects currently approved in Silver Spring CBD.*

- 58% (or $11.9M) of tax exemption occurred in Silver Spring CBD over the past decade, followed by Wheaton ($8.3M or 41%).
- Based on OMB's analysis, if the tax exemption in EZs was removed, the proposed rate changes would likely to help the County collect more impact taxes.

Exempt Impact Taxes for Development in Opportunity Zones

(Recommendation 6.6)

	Historical Data (FY15-20) if OZ was exempted	Pipeline Projects			
	Estimated Amount	Est. Exemption under Current Rates	Est. Exemption under Proposed Rates	Difference (Current vs. Proposed)	% Change
School Impact Tax	$ 5,483,073	$ 24,650,015	$ 10,841,766	$ (13,808,249)	-56%
Transportation Tax	$ 855,142	$ 11,586,959	$ 11,586,959	$ -	0%
Total	**$ 6,338,215**	**$ 36,236,974**	**$ 22,428,725**	$ (13,808,249)	-38%
Annual Average	$ 1,056,369				
Annual Avg. if 10-yr build out		$ 3,623,697	$ 2,242,872	$ (1,380,825)	-38%

Assumptions:

1. Exemption for Opportunity Zones in pipeline projects are identified by Planning Staff

2. The calculation assumes that all pipeline projects are required with 12.5% MPDUs.

Opportunity Zones Benefits:

- The State designates 14 census tracks in Montgomery County as OZs in which businesses, equipment, and real property can receive investment through Opportunity Funds.
- OZs are compatible with existing State/Local incentives. There is no legal prohibition on using OZ capital in combination with those state/local programs.
- An Opportunity Fund is the vehicle for investors to invest capital gains and receive three different federal tax credits, including
    - **Temporary Deferral** – for realized capital gains from any asset that are reinvested into an Opportunity Fund prior to December 31, 2026;
    - **Tax Relief** – investors can exclude certain percentage (10%-15%) of their original capital gains from taxation if the reinvested gains remain in an Opportunity Fund;
    - **Permanent Tax Exclusion** – gains are permanently excluded from taxation if the investment is held in an Opportunity Fund for at least 10 years.

- If the impact tax exemption was applied to those selected Opportunity Zones over the past six years, the total tax exemption would have been $6.3M, or $1.06M per year.
- OMB estimates that tax exemption on OZs for pipeline projects would be an average of $3.6M per year under current tax rates.
- The average exemption amount would be reduced, by $1.38M per year or 38% less, if the proposed rates were applied.
- The revenue gains from eliminating tax exemption in former Enterprise Zones are likely to be offset by the tax exemption proposed for Opportunity Zones.

Limit Exemption of Impact Taxes on 25% MPDUs
(Recommendation 6.7)

Transportation Tax Exemption between 12.5% vs. 25% MPDUs CY2010 - CY2019 (in millions)											
	2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**Total**
Required "Base" MPDU Exemption (County Code Section 52-49 g.1)	$ 1.26	$ 1.42	$ 1.99	$ 1.15	$ 1.30	$ 0.78	$ 2.08	$ 3.56	$ 1.97	$ 0.99	**$ 16.49**
25% MPDU Exemptions (County Code Section 52-41 g.5)	-	-	-	-	-	-	-	-	$ 1.41	$ 3.79	**$ 5.20**

Source: Annual Impact Taxes Report from Department of Permitting Services. No exemption of annual school taxes is available from DPS.

- DPS data were only available for transportation taxes exempted from specific projects. No historical comparison can be analyzed for school impact taxes between 12.5% and 25% MPDUs (the current County mandate).
- For 2018, the majority of 25% MPDU exemptions were attributed to development projects in Germantown, Sandy Spring, and Silver Spring.
- For 2019, most of 25% MPDU exemptions came from projects in Germantown, Silver Spring, and Clarksburg.

Planning Board's Proposed Application of the 25% MPDU Exemption

School Impact Tax Exemption

		Single-family Detached			Single-family Attached			Multifamily		
		Impact Tax	Exemption	To Pay	Impact Tax	Exemption	To Pay	Impact Tax	Exemption	To Pay
Infill Impact Areas	Standard	$19,707	$19,707	$0	$17,311	$17,311	$0	$4,370	$4,370	$0
	Desired Growth	$19,707	$19,707	$0	$10,387	$17,311	$0	$2,622	$4,370	$0
Turnover Impact Areas	Standard	$21,582	$19,707	$1,875	$23,928	$17,311	$6,617	$9,688	$4,370	$5,318
	Desired Growth	$21,582	$19,707	$1,875	$14,357	$17,311	$0	$5,813	$4,370	$1,443
	AR Zone	$25,898	$19,707	$6,191	$28,714	$17,311	$11,403	$11,626	$4,370	$7,256
Greenfield Impact Areas	Standard	$33,809	$19,707	$14,102	$28,691	$17,311	$11,380	$24,898	$4,370	$20,528
	AR Zone	$40,571	$19,707	$20,864	$34,429	$17,311	$17,118	$29,878	$4,370	$25,508

Transportation Impact Tax Exemption

	Single-family Detached			Single-family Attached			Multifamily Low-rise			Multifamily High-rise			Multifamily Senior		
	Impact Tax	Exemption	To Pay	Impact Tax	Exemption	To Pay	Impact Tax	Exemption	To Pay	Impact Tax	Exemption	To Pay	Impact Tax	Exemption	To Pay
Red Policy Area	$7,838	$7,838	$0	$6,413	$6,413	$0	$4,986	$4,986	$0	$3,561	$3,561	$0	$1,424	$1,424	$0
Orange Policy Area	$19,591	$7,838	$11,753	$16,030	$6,413	$9,617	$12,465	$4,986	$7,479	$8,904	$3,561	$5,343	$3,562	$1,424	$2,138
Yellow Policy Area	$24,490	$7,838	$16,652	$20,038	$6,413	$13,625	$15,582	$4,986	$10,596	$11,130	$3,561	$7,569	$4,452	$1,424	$3,028
Green Policy Area	$24,490	$7,838	$16,652	$20,038	$6,413	$13,625	$15,582	$4,986	$10,596	$11,130	$3,561	$7,569	$4,452	$1,424	$3,028

What impact would occur if the current exemption requirement for 25% MPDUs is limited?

#	Projects	Location	School Impact Area	Policy Zone	Total Units	Total Market Units	Total MPDU Units	Total Potential Impact Taxes	Total Foregone Impact Taxes - Marekt Rate Units	Total Foregone Impact Taxes - All Units	Total Impact Taxes Paid - Market Rate Units	Cost Per MPDU Created (est.)	Cost Per Base MPDU	Cost Per Incentivized MPDU Created (est.)
	Agreement to Build Signed													
1	Bradford's Landing (sale)	Silver Spring	Turnover	Yellow	244	182	62	$ 8,649,274	$ 3,929,190	$ 6,061,680	$ 2,587,594	$ 97,769	$ 34,395	$ 161,143
2	Century (sale and rental)	Germantown	Infill	Orange	488	370	118	$ 8,424,196	$ 4,241,238	$ 5,660,870	$ 2,763,326	$ 47,973	$ 12,031	$ 83,916
3	Cabin Branch Multi-Family (rental)	Clarksburg	Greenfield	Yellow	272	204	68	$ 9,799,616	$ 1,617,924	$ 4,067,828	$ 5,731,788	$ 59,821	$ 36,028	$ 83,614
4	Dowden's Station (sale)	Clarksburg	Greenfield	Yellow	105	77	28	$ 5,317,515	$ 1,906,989	$ 3,271,401	$ 2,046,114	$ 116,836	$ 48,729	$ 184,943
	Totals:				1,109	833	276	$ 32,190,601	$ 11,695,341	$ 19,061,779	$ 13,128,822	$ 69,064	$ 26,690	$ 111,439
	In Pipeline													
5	Bloom Montgomery	Montgomery Village	Turnover	Yellow	494	370	124	$ 17,294,732	$ 7,861,050	$ 12,126,030	$ 5,168,702	$ 97,791	$ 34,395	$ 161,186
6	8000 Wisconsin Avenue (rental)	Bethesda	Infill	Red	441	309	132	$ 2,726,703	$ 1,910,547	$ 2,726,703	$ -	$ 20,657	$ 6,183	$ 35,131
7	Hillandale Gateway	White Oak	Turnover	Orange	463	347	116	$ 6,813,971	$ 2,752,057	$ 4,459,229	$ 2,354,742	$ 38,442	$ 14,717	$ 62,166
8	White Oak Town Center	Silver Spring	Turnover	Orange	364	274	90	$ 5,356,988	$ 2,173,094	$ 3,497,624	$ 1,859,364	$ 38,862	$ 14,717	$ 63,008
9	Natelli/Egan Property	Clarksburg TC	Infill	Orange	357	267	90	$ 9,430,869	$ 4,485,600	$ 6,863,130	$ 2,567,739	$ 76,257	$ 26,417	$ 126,097
10	Great Key/PTSA Site	R&D Village	Infill	Orange	645	487	158	$ 12,348,345	$ 5,828,448	$ 8,212,194	$ 4,136,151	$ 51,976	$ 15,087	$ 88,865
11	College View	Germantown	Turnover	Yellow	137	103	34	$ 2,931,115	$ 963,668	$ 1,691,098	$ 1,240,017	$ 49,738	$ 21,395	$ 78,081
	Totals:				2,901	2,157	744	$ 56,902,723	$ 25,974,464	$ 39,576,008	$ 17,326,715	$ 53,194	$ 18,282	$ 88,105
	Plans Not Yet Submitted					-	-							
12	Aris Mardirossian Bethesda (rental)	Bethesda	Infill	Red	319	223	96	$ 1,972,377	$ 1,378,809	$ 1,972,377	$ -	$ 20,546	$ 6,183	$ 34,908
13	Aldon/Battery Lane District	Bethesda	Infill	Red	1,530	1,050	480	$ 9,459,990	$ 6,492,150	$ 9,459,990	$ -	$ 19,708	$ 6,183	$ 33,234
14	Montgomery Village Center	Montgomery Vilage	Turnover	Yellow	115	87	28	$ 2,460,425	$ 813,972	$ 1,413,032	$ 1,047,393	$ 50,465	$ 21,395	$ 79,536
	Totals:				1,964	1,360	604	13,892,792	$ 8,260,344	12,845,399	1,047,393	$ 21,267	$ 6,888	$ 34,240
	Total - All Units:				5,974	4,350	1,624	102,986,116	$ 45,930,149	$ 71,483,186	$ 31,502,930	$ 44,017	$ 15,473	$ 72,037
	Development Loan - Housing Init. Fund:	$ 49,925	**Per MPDU**											

Assumptions:

1. *Calculation is based on the proposed rates for both school and transportation impact taxes.*
2. *Exemption is double-rated (i.e., 25% must be MPDUs and 30% MPDUs in downtown Bethesda).*
3. *If exemption target met, applicable rate is the lowest for that unit type.*
4. *Only count MPDUs towards meeting 25-30% exemption threshold.*

- The average cost per MPDU produced by the HIF is $49,925.
- The cost of each incentivized MPDU in Red Policy Area is less than that amount.

Comparison of MPDUs Exemption among Basic Requirement, Current Policy, and Recommended Changes

(Recommendation 6.7)

	Pre-2018 MPDU Exemption (12.5% MPDU)	Post-2018 Current MPDU Exemption (25% MPDU)	2020 Proposed 25% MPDU Exemption Changes
# of Projects	14	14	14
# of Total Units	5,974	5,974	5,974
Total # of Market-Rate Units	5,160	4,350	4,350
Total # of Required MPDUs	814	812	812
Total # of Incentivized MPDUs	-	812	812
Total Potential Impact Taxes Collected without Exemption	$ 141,704,600	$ 141,704,600	$ 102,986,116
Total Impact Taxes Wavied	**$ (17,531,889)**	**$ (141,704,600)**	**$ (71,483,186)**
Foregone Impact Taxes on Market-Rate Units	*$ -*	*$ (106,640,822)*	*$ (46,354,736)*
Foregone Impact Taxes on Required MPDUs	*$ (17,531,889)*	*$ (17,531,889)*	*$ (12,564,225)*
Foregone Impact Taxes on Incentivized MPDUs	*$ -*	*$ (17,531,889)*	*$ (12,564,225)*
Total Impact Taxes Collected	**$ 124,172,711**	**$ -**	**$ 31,502,930**
Cost Per MPDU Created	$ 21,538	$ 87,257	$ 44,017
Cost Per Incentivized MPDU	$ -	$ 152,922	$ 72,560

Notes:

- *The cost per MPDU created is calculated based on all taxes waived to create MPDUs.*
- *The cost per incentivized MPDU is calculated based on the taxes waived for market-rate units and additional MPDUs.*
- *The cost per MPDU under the Planning Board's recommendation is in part significantly reduced due to changes in the proposed rate structure.*

Assumptions:

1. *The analysis assumes all 14 projects are fully built out, including 4 projects with building permits, 7 in the pipeline, and 3 are not yet submitted.*
2. *All projects continue to utilize the required base exemption (12.5% - 15%). The "Incentivized" MPDU refers to those MPDU units provided beyond the required 12.5% - 15% threshold.*
3. *Per DHCA's report, the average cost per affordable unit produced by the HIF loans is approximately $49,925.*

- The amount of impact taxes for a property varies widely depending on the type of unit, any age restrictions, and the location of development.
- The average Impact Tax cost per extra MPDU varies tremendously. It could be from $74,700 for a rental project in Bethesda to $325,200 for a single-family detached and townhouse project in Silver Spring.
- OMB's analysis suggests that the recommendation proposed by Planning Board to limit 25% MPDU exemptions would have generated additional $31.5M in impact taxes revenue to the County. It will also reduce the cost of incentivized MPDU per unit.

Continue to Apply a Net Impact Basis on Demolished and Rebuilt Homes, Providing a Credit for Any Units Demolished

(Recommendation 6.8)

Estimated Revenues

	Year 1	Year 2 and beyond
School Impact Tax	3,823,892	7,647,785
Excise Tax for Affordable Housing	2,524,530	5,049,061
Total	**6,348,423**	**12,696,846**

Note: 1). Assume a 20% reduction in historical trends to account for possible changes in property owner behavior. 2). Assume an additional 50% reduction in Year 1 to reflect the possibility that homeowners and developers might rush to secure permits before the Bill's effective date.

Notes:

1. *Bill 34-19 was proposed in October 2019 to create an excise tax on certain demolitions and renovations of single-family homes that exceed the square footage of the original home. Bill 34-19 has not been moved forward by the Council.*
2. *In response to Bill 34-19, OMB conservatively estimated that $6.3M could be generated from Year one while an additional $12.7M per year could be generated for Year two and beyond.*

- Based on the analysis of student generation rates among recently torn down and rebuilt homes, Planning Board affirms the current policy that the replacement of a single-family home only pays impact taxes on a net impact basis if it's rebuilt within one year.

- If the rebuilt house changes its type (i.e., teardown a single-family detached unit and put up multifamily building or single-family attached), the developer would get an impact tax credit equal to that of the demolished unit but would have to pay the difference.

Modify Recordation Tax Collections to Provide Funding for School CIP and the HIF

(Recommendation 6.7)

County Code 52-16B (a)	Current Rate	Proposed Changes	Notes
For each $500 that the sales price exceeds $100K and less than $500K	$ 4.45	$ 4.95	
To General Fund	$ 2.08	$ 2.08	
To MCPS CIP	$ 2.37	$ 2.87	Increase $0.50 for each $500 interval to the MCPS CIP
For each $500 that sales price exceeds $500K but less than $1M	$ 6.75	$ 7.75	
To County CIP and Rental Assistance	$ 2.30	$ 2.30	
To MCPS	$ -	$ 0.50	Increase another $0.50 for each $500 to the MCPS CIP
For each $500 that sales price of a single-family home exceeds $1M	$ 6.75	$ 8.75	
To the Housing Initiative Fund	$ -	$ 1.00	Increase additional $1.00 for each $500 to the HIF

Planning Board's Recommendations:

1. Based on the data, more than 70% of recent MCPS enrollment growth were attributed to turnover of existing dwelling units.
2. Increase by $0.50 to the MCPS CIP for each $500 that the home sales price exceeds $100,000 (rate changed from $2.37 to $2.87) and above $500,000 (change from $2.30 to $2.80).
3. Charge $1.00 additional to the Housing Initiative Fund for each $500 that the home sales price exceeds $1M.
4. Exempt tax from the first $500,000 for the principal residence of first-time homebuyers.
5. Planning staff estimated the proposed change would have generated $20M more in revenue for MCPS CIP in FY19. However, the estimate does not include the additional exemption for first-time homebuyers.

Recordation Tax Collections from FY10 through FY19

Funding Allocation	RECORDATION TAX REVENUES (in millions)										Total (FY10-FY19)	Annual Average	Annual Avg. Growth Rate
	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19			
School CIP	$ 18.5	$ 19.3	$ 20.1	$ 28.0	$ 25.0	$ 26.2	$ 28.8	$ 58.1	$ 55.8	$ 62.0	$ 341.9	$ 34.2	12.9%
General Fund	$ 44.9	$ 57.7	$ 51.2	$ 57.6	$ 54.0	$ 55.5	$ 61.1	$ 60.4	$ 49.1	$ 54.7	$ 546.3	$ 54.6	2.0%
Premium*	$ 8.2	$ 10.9	$ 12.2	$ 18.9	$ 15.7	$ 17.2	$ 19.1	$ 30.9	$ 26.1	$ 31.8	$ 191.0	$ 19.1	14.5%
TOTAL	**$ 71.6**	**$ 87.9**	**$ 83.5**	**$ 104.5**	**$ 94.7**	**$ 99.0**	**$ 109.0**	**$ 149.4**	**$ 131.1**	**$ 148.5**	**$ 1,079.3**	**$ 107.9**	7.6%

Source: CAFR, Department of Finance

** Recordation Premium is splited between the County CIP and Rental Assistance.*

Notes:

- *Planning staff estimated the proposed change would have generated $20M more in revenue for MCPS CIPs in FY19. However, their estimate did not include the additional exemption for first-time homebuyers.*
- Due to the complexity of analyzing the exemption of first $500,000 for first-time homebuyers, the fiscal impact analysis of proposed recordation tax changes is pending.

OFFICES OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

November 10, 2020

Dear Councilmembers,

I am writing regarding the Subdivision Staging Policy (SSP), which you have been reviewing in both committee and full Council sessions. You have heard from various Executive staff with their concerns, and I appreciate your working with them.

As you move to final consideration of the SSP, I would urge you to consider the following:

Revenue Loss. In this time of great budget uncertainty and great public need, this bill should not be reducing revenue to fund adequate infrastructure. If new development does not pay for the costs of infrastructure, then current and future residents, will pay a disproportionate share. As documented in your current Council packet, the changes in school and transportation impact taxes will be reduced about $13 million per year. I understand that the lost revenue is proposed to be replaced by an increase in the recordation tax, but that revenue source (recordation tax) should, at the very least, be reserved for other needs. These needs could include covering COVID-related budget shortfalls or providing more local match for state aid for schools.

Regarding **transportation impact tax revenue reductions**, the November 10 packet (pg. 3) shows a transportation impact tax revenue reduction of over $182 million from pipeline development, which, while widely acknowledged to be an unreliable estimate of the revenue generated from these taxes, does give a sense of the magnitude of potential revenue loss. The financial analysis translates this to a 30% reduction in annual revenues. If our County is to improve our competitiveness in attracting business and quality jobs and if we are to provide safer and more sustainable transportation options for our residents, we need to maintain and increase our ability to invest in transportation facilities that meet the needs of tomorrow. Reducing our revenues by lowering impact taxes runs counter to our need to invest and suggests an indifference to the consequences of further neglect of our transportation system. If the Council ultimately decides to adopt these impact tax reductions, I encourage immediate, focused exploration of other strategies so that our transportation system receives the funding that it so desperately needs, and real estate development pays its fair share. It is unfair to shift this burden to our property-owning residents when County residents have worked for years to get the County government to create a tax structure that brings in money for infrastructure from the projects that drive the need for that infrastructure. These costs should not be shifted back to tax-payers.

Local Area Policy Area Review (LATR) Tests
While new approaches to transit, pedestrian and bicycle tests appear to be promising, I profoundly disagree with the decision to remove consideration of traffic conditions in the Red Policy Areas. My concern is compounded by the coincident decision to expand the Red Policy Areas into communities that are newly unprotected from increased traffic, and that will no longer be studied, even when there is new development. Residents have the right to know what the impacts of decisions will be and obfuscating the impacts is simply wrong. Moreover, despite the canard that these tests are about roads, that is simply not true. Expanding roads is not the foregone solution, there are many important polices for reducing congestion. We look to tools such as setting mode share splits, using parking policy to drive shifts to transit and, most important, to actually provide the transit as ways to mitigate the impacts. Washington's business leaders have repeatedly cited transit as the number one impediment to economic development here, and have called on us to improve and expand transit – which we have largely failed to do. No one is seeking to create a major expansion of traffic capacity in these areas (nor could you even do that in our cores), but our residents deserve an honest assessment of the impact of new development on traffic conditions. On the basis of the LATR auto analysis, DOT understands what tools to employ, other than roads, to abate congestion. Again, this proposed County policy further shifts the responsibility for addressing the transportation impacts from the developers to the public, while simultaneously reducing the amount of public dollars available to address these problems.

Opportunity zones should not be exempted from impact taxes. Removing all impact taxes from opportunity zone areas is a large revenue loss not justified by policy. Revenue loss is justified only when it generates additional affordable housing, not when it generates market rate housing. As the COG study and other studies have shown, the greatest need is for more affordable housing. Additionally, the exemption of the Opportunity Zones will disincentivize the existing policy that allows exemption from impact taxes for projects with 25% MPDU; if impact taxes are automatically waived in opportunity zones, then the developer has no incentive to provide 25% MPDUs. Furthermore, the exemption will likely result in an increase in the cost of land in these areas because the exempted properties become more valuable due to the absence of impact taxes. I have attached the memo, dated November 2, from DHCA Director Aseem Nigam that addresses some of these concerns.

Purple Line stations should not be classified as Red policy areas for transportation impact taxes. I would urge you to adopt the recommendation of the Planning Staff and Council Staff to create Purple policy areas around the Purple Line Stations, rather than including them as Red policy areas. This is important because the Purple Line is fundamentally different from Metro in terms of frequency, speed, and capacity, and, most importantly, in terms of the location of Purple Line stations, most of which are in residential neighborhoods. The areas around most of the Purple Line stations do not resemble the other Red policy areas, which are either in commercial business districts--our established downtowns--or areas where suburban commercial development is being replaced with higher density transit-oriented development. Aside from the locations that are already Red policy areas, the Purple Line stations are mostly located in long-established, economically diverse residential communities. Declaring them as

Red policy areas creates great uncertainty for the established residential communities that surround the Purple Line, and will increase development pressure on these neighborhoods. Potential redevelopment may also mean the loss of naturally occurring affordable housing. The concept of Purple Line policy areas represents a more appropriate treatment for these communities; it reflects the potential growth and development opportunities around the Purple Line stations, while preserving appropriate transportation standards for the existing communities and generating revenue to invest in the infrastructure needed to support the Purple Line. I strongly encourage the Council to reconsider its straw vote and adopt the Purple Policy area approach for these communities.

Emergency button. I understand that the Council voted unanimously to eliminate the moratorium related to schools, which was designed to exert pressure for funding for adequate facilities. I understand the concern about the moratorium, but like Councilmember Will Jawando, I believe that some sort of "emergency button" is necessary to signal a needed response to severe school overcrowding. Right now, the Council has set no outside cap on school overcrowding—it can go to 150% or even higher. Perhaps, the Council will consider higher Utilization Premium Payments (UPP) payments at the 150% level, and even adding another tier of payments at 165%.

In conclusion, the decisions you make in adopting this SSP will be extremely consequential when it comes to the ability of Montgomery County to meet the infrastructure needs of a growing population. I hope you will consider the above points before taking a final vote. Future growth with meaningful economic development is an important goal, and it will follow from our having a first class transportation system, first class schools, and opportunities for our residents to participate in the prosperity that, along with our diverse population, has been a hallmark of Montgomery County.

Sincerely,

Marc Elrich

DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Marc Elrich
County Executive

Aseem K. Nigam
Director
Executive

MEMORANDUM

TO: Pam Dunn, Senior Legislative Analyst
Montgomery County Council

FROM: Aseem Nigam, Director AKN
Department of Housing and Community Affairs

DATE: November 2, 2020

SUBJECT: County Growth Policy Proposed Impact Tax Exemption for Qualified Opportunity Zone Developments

I am writing to express concerns about the County Growth Policy/Subdivision Staging Plan Planning Board Draft of July 30, 2020 recommendation for the extension of impact tax exemptions to all developments in a Qualified Opportunity Zones irrespective of affordability. Providing the exemption from impact taxes based solely on location in the Qualified Opportunity Zone will also eliminate the incentive to deliver 25% MPDUs to achieve the same benefit.

The exemption of impact taxes for residential developments in Qualified Opportunity Zones (QOZs) does not advance affordable housing objectives and will likely negatively impact availability of affordable housing in these census tracts. The federal capital gains benefits provide incentives for equity capital to invest in new construction residential development in the defined census tract, irrespective of affordability. As currently structured, Qualified Opportunity Zone investors target realizing capital gain tax benefits after ten years, which does not align with long-term affordable housing rent levels, creating specific advantage to market rate housing over affordable housing in these zones.

The areas in the County designated by the state as QOZs include areas with existing redevelopment incentives: Silver Spring and Wheaton CBDs; tracts abutting Rockville Pike between Twinbrook and Rockville; Montgomery College campus area in Gaithersburg; and the Longbranch/Langley Park Purple Line corridor. The County has made significant transit and amenity investments in these areas and exempting impact taxes would put additional pressure on affordability of existing housing.

Providing Impact Tax exemption on top of the QOZ federal tax incentives for market rate housing is inconsistent with the use of Impact Tax exemptions to address critical housing needs.

Office of the Director

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