

Bill No. 27-01
Concerning: Development Impact Tax -
Amendments
Revised: 10-29-01 Draft No. 2
Introduced: July 31, 2001
Enacted: October 30, 2001
Executive: November 12, 2001 (vetoed)
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Praisner

AN ACT to:

- (1) revise the tax categories and rates of the Development Impact Tax and the provisions for allowing exemptions from and credits against the tax;
- (2) replace the Clarksburg, Germantown, and Eastern Montgomery Impact Tax Districts with a countywide district;
- (3) repeal the requirement that the County Executive submit a biennial report on the impact tax;
- (4) expand the definition of impact highways to include certain transportation facilities, and revise the restrictions on spending funds derived from the impact tax;
- (5) make clarifying and stylistic changes; and generally amend the law governing the Development Impact Tax.

By amending

Montgomery County Code
Chapter 52, Taxation
Article VII, Development Impact Tax for Major Highways

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

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

27 [(m) *Impact tax district transportation program* means the transportation
 28 improvement program described under Section 52-58.]

29 [(n)] (l) *Improvement* means a highway, intersection improvement, transit
 30 center, [and] bus, bus shelter, hiker-biker trail, sidewalk connection,
 31 or park and ride lot [projects], including planning, engineering, design
 32 services, right-of-way acquisition, grading, paving, curbs, gutters,
 33 drainage, sidewalks, signalization, signage, and all other construction
 34 and associated costs.

35 [(o)](m) *Master plan of highways* means the “Master Plan of Highways”
 36 [prepared by the Maryland-National Capital Park and Planning
 37 Commission,] adopted by the [Montgomery County] Planning Board
 38 and approved by the District Council, and any similar plan adopted by
 39 either Gaithersburg or Rockville.

40 [(p)](n) *Impact [highways] transportation improvement* means [the arterial
 41 highway segments, transit centers, and park-and-ride facilities under]
 42 an improvement listed in Section 52-58.

43 [(q) *Maryland-National Capital Park and Planning Commission* means
 44 the agency established under Article 28 of the Maryland Code.]

45 [(r)] (o) *Nonresidential* means the use of a building that is not a residential
 46 use, and includes:

- 47 (1) offices, including general, medical, office parks, research parks,
 48 townhouse office buildings, government offices, and other
 49 similar uses;
- 50 (2) industrial uses, including truck terminals, warehouses, light or
 51 heavy industrial and manufacturing, industrial parks,
 52 biotechnology research and development facilities and related
 53 office space, and other similar uses;

54 (3) retail uses, including stores or shopping centers engaging in the
 55 sale of goods, restaurants, vehicle sales or service, banks or
 56 savings and loan institutions, theaters, post offices and other
 57 similar uses;

58 [(4) places of worship;]

59 [(5) private elementary and secondary schools;] and

60 [(6)] (4) other nonresidential uses, including places of worship,
 61 private elementary, [[or]] secondary, or post-secondary schools,
 62 hotels, motels, day care centers, hospitals, nursing homes,
 63 recreational facilities, and other public facilities and similar
 64 uses;

65 [(s)] (p) *Per-unit development impact tax* means the development impact tax
 66 [listed under Section 52-57(b)] imposed under this Article.

67 [(t)] (q) *Planning policy area* means any of the geographic areas described
 68 in the annual growth policy for which [the] APFO staging ceiling
 69 standards are identified.

70 [(u)] (r) *Programmed [highways] transportation improvement* means
 71 [highway] an improvement [projects that are contained within] listed
 72 in the current approved County capital improvements program, [or]
 73 the state consolidated transportation program, or any similar program
 74 adopted by either Gaithersburg or Rockville.

75 [(v)] (s) *Property owner* means any person, group of persons, firm,
 76 corporation, or other entity with a proprietary interest in the land on
 77 which a building permit has been requested.

78 [(w)](t) *Residential* means the use of a building as a dwelling unit.

79 (1) *Single-family detached residential* includes[: (A)] detached
 80 single-family dwelling units. [; and]

81 (2) Single-family attached residential includes: [(B)] townhouses,
 82 duplexes and other attached single-family dwelling units.

83 [(2)] (3) Multifamily residential includes:

- 84 (A) garden apartments;
- 85 (B) mid-rise and high-rise apartments;
- 86 (C) condominiums other than townhouses; and
- 87 (D) mobile homes.

88 [(3)] (4) Multifamily-senior residential means multifamily housing
 89 and related facilities for elderly or handicapped persons, as
 90 defined in Section 59-A-2.1, with occupancy restricted as
 91 provided in Section 59-G-2.35(b), and multifamily housing
 92 units located in the age-restricted section of a planned
 93 retirement community, as defined in Section 59-C-7.441.

94 [(x)] (u) Staging ceiling means the maximum amount of land development
 95 that can be accommodated in a planning policy area consistent with
 96 APFO staging ceiling standards given the programmed [highways]
 97 transportation facilities.

98 [(y) Traffic impact means the relative effect of different land uses on the
 99 need for impact highways in an impact tax district based on relative
 100 trip generation, average trip length, and the proportion of new trips, as
 101 described more fully in Section 52-57.]

102 [(z) Unprogrammed highways means improvement projects not contained
 103 within the current approved County CIP or the state consolidated
 104 transportation program, and which, if programmed, would increase
 105 the transportation system capacity and therefore the staging ceiling in
 106 an impact tax district.]

107 **52-48. Findings; purpose and intent.**

- 108 (a) The master plan of highways indicates that certain roads are needed in
109 planning policy areas. Furthermore, the [comprehensive planning
110 policies report] Annual Growth Policy indicates that the amount and
111 rate of growth projected in certain planning policy areas will place
112 significant demands on the County for provision of major highways
113 necessary to support and accommodate that growth.
- 114 (b) Montgomery County, through its adoption of the Capital
115 Improvements Program, indicates its commitment to provide
116 transportation infrastructure.
- 117 (c) Montgomery County has determined that a combination of approaches
118 will be necessary to fully achieve the level of [highway] transportation
119 improvements needed to accommodate growth [in the impact tax
120 districts]. Thus, Montgomery County proposes to fund certain master
121 planned [highways up to 50 percent] transportation improvements
122 through development impact taxes to allow new growth [in impact tax
123 districts].
- 124 (d) Imposing a development impact tax that requires new development [in
125 certain impact tax districts] to pay [their] its pro rata share of the costs
126 of [impact highway] transportation improvements necessitated by
127 [such new] that development in conjunction with other public funds is
128 a reasonable method of raising the funds to build [such] improvements
129 in a timely manner.
- 130 (e) The development impact tax will fund, in part, the improvements
131 necessary to increase the transportation system capacity [in the impact
132 tax districts], thereby allowing development to proceed. Development
133 impact taxes will be used exclusively for [impact highways]
134 transportation improvements.

- 135 [(f) In order to assure that the development impact taxes reflect the
136 reasonable pro rata share of the costs of the additional highway
137 improvements associated with each new development, the
138 development impact tax is based on relative trip impact associated
139 with the number and type of dwelling units and square footage and
140 type of nonresidential development.]
- 141 [(g)] (f) In order to assure that the necessary [highway] transportation
142 improvements are constructed in a timely manner, the County intends
143 to assure the availability of funds sufficient to construct the [impact
144 highway] transportation improvements.
- 145 [(h)] (g) The County retains the power to determine the [highway]
146 transportation improvements to be funded by development impact
147 taxes; to estimate the cost of such improvements; to establish the
148 proper timing of construction of the improvements so as to meet
149 APFO staging ceiling standards where they apply; to determine when
150 changes, if any, may be necessary in the County CIP; and to do all
151 things necessary and proper to effectuate the purpose and intent of this
152 Article.
- 153 [(i)] (h) [It is the intent of the] The County intends to further the public
154 purpose of ensuring that an adequate transportation system is
155 available in support of new development [in the impact tax districts. It
156 is not the intent of this Article to collect a development impact tax
157 from new development in the impact tax districts in excess of that
158 development's pro rata share of the costs associated with the impact
159 highway improvements, as measured by the development's
160 contribution to traffic impact in the tax district].

161 [(j)] (i) The County's findings are based upon [the] adopted or approved
 162 plans, planning reports, and capital [improvements programs] budgets
 163 identified in this Article[, and specific studies conducted by the
 164 Department of Public Works and Transportation and its consultants].

165 [(k)] (j) [It is the intent of the] The County intends to impose development
 166 impact taxes [in an impact tax district] until [that area] the County has
 167 attained build-out as defined by the [applicable master plan] General
 168 Plan.

169 **52-49. Imposition and applicability of development impact taxes.**

170 (a) A development impact tax for [impact highways] transportation must
 171 be imposed before a building permit is issued for development [in
 172 each impact tax district].

173 (b) An applicant for a building permit for development [in an impact tax
 174 district] must pay a development impact tax in the amount and manner
 175 provided in this Article, unless a credit in the full amount of the
 176 applicable tax [is determined to be applicable] applies under Section
 177 52-55 or an appeal bond is posted under Section 52-56.

178 [(c)] The following impact tax districts are established, consisting of the
 179 following Planning Policy Areas described in the Annual Growth
 180 Policy:

- 181 (1) Germantown: Germantown East, Germantown Town Center,
 182 and Germantown West;
- 183 (2) Eastern Montgomery County: Fairland/White Oak and
 184 Cloverly;
- 185 (3) Clarksburg; Clarksburg.]

186 [(d)] The boundaries for impact tax districts and the need to create
 187 additional impact tax districts must be reviewed biennially using the

188 methodology under Section 52-59. The County Council must hold a
189 public hearing before changing the boundaries for an impact tax
190 district or creating a new impact tax district.]

191 [(e)] (c) Development impact taxes [must be accounted for and segregated by
192 the impact tax district from which the taxes are received. The taxes]
193 must be restricted in their use to funding transportation improvements
194 [listed in the impact tax district transportation program for the
195 district].

196 (d) Development impact taxes collected from developments located in the
197 cities of Gaithersburg and Rockville must be accounted for separately
198 according to the municipality where the funds originated. These tax
199 revenues must be used only to fund transportation improvements
200 listed in a memorandum of understanding between the County and the
201 respective City, which must be approved by the County Council. If
202 the County and either City do not agree on a memorandum of
203 understanding regarding the use of impact tax revenues, the County
204 Council may appropriate funds to improvements which are consistent
205 with the master plan of the respective City.

206 [(f)] (e) A development impact tax must not be imposed on [the Montgomery
207 County Government, Montgomery College, the Montgomery County
208 Public School System, or the Maryland-National Capital Park and
209 Planning Commission] a building owned, and used primarily, by any
210 agency or instrumentality of federal, state, County or municipal
211 government.

212 [(g)] (f) A development impact tax must not be imposed on:

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

216 (2) any Productivity Housing Unit, as defined in Section 25B-
217 17(m), [and]

218 (3) any other dwelling unit built under a government regulation or
219 binding agreement that limits for at least 15 years the price or
220 rent charged for the unit in order to make the unit affordable to
221 households earning less than 50% of the area median income,
222 adjusted for family size[.] [[, and]] or

223 (4) any development located in [[a Metro Station or MARC Station
224 Policy Area as defined in the Annual Growth Policy]] an
225 enterprise zone designated under state law.

226 **52-50. Collection of development impact taxes.**

227 (a) The Department of Permitting Services must determine the amount of
228 the applicable development impact tax.

229 (b) Applicants for building permits for development [in an impact tax
230 district] that is not exempt from the development impact tax must
231 supply to the Department of Permitting Services for each requested
232 building permit:

233 (1) The number and type of dwelling units, and the gross floor area
234 of each unit and all enclosed common areas, for residential
235 development; and

236 (2) The gross floor area and type of development for nonresidential
237 development.

238 The applicant must submit for inspection relevant support
239 documentation as the Department requires.

240 (c) The Department of Permitting Services must not issue a building
241 permit for development [in an impact tax district] that is not exempt
242 from the development impact tax unless:

- 243 (1) the applicant has paid the applicable development impact tax;
- 244 (2) the applicant is entitled to a credit under Section 52-55 in the
- 245 amount of the applicable development impact tax; or
- 246 (3) an appeal has been taken and a bond or other surety posted
- 247 under Section 52-56.

248 (d) When a person applies to a city or town in the County for a building
249 permit for a building or dwelling unit, the applicant must show that all
250 payments due under this Section with respect to the building or unit
251 have been paid. The Director of Finance must promptly refund any
252 payment made for any building or part of a building for which a
253 building permit is not issued by the city or town.

- 254 [(d)] (e) * * *
- 255 [(e)] (f) * * *
- 256 [(f)] (g) * * *
- 257 [(g)] (h) * * *
- 258 [(h)] (i) * * *
- 259 [(i)] (j) * * *
- 260 [(j)] (k) * * *

261 **52-51. Calculation of development impact tax.**

262 (a) The Department of Permitting Services must calculate the amount of
263 the applicable development impact tax due for each building permit
264 by:

- 265 (1) determining [the applicable impact tax district] whether the
266 permit is for development that is exempt from the tax under
267 Section 52-49(f);
- 268 (2) verifying the number and type of dwelling units and the gross
269 floor area and type of nonresidential development for which
270 each building permit is sought;
- 271 (3) determining the applicable per-unit development impact tax
272 under Section 52-57; and
- 273 (4) multiplying the applicable per-unit development impact tax by:
274 (A) the appropriate number of dwelling units; and
275 (B) the gross floor area of nonresidential development
276 [divided by 1000].
- 277 (b) If the development for which a building permit is sought contains a
278 mix of uses, the Department [of Permitting Services] must separately
279 calculate the development impact tax due for each type of
280 development.
- 281 (c) If the type of proposed development cannot be categorized under
282 Sections 52-47[(r)](p) and [(w)](u), the Department [of Permitting
283 Services] must use the rate assigned to the type of development which
284 generates the most similar traffic impact characteristics.
- 285 (d) The Department [of Permitting Services] must calculate the amount of
286 the development impact tax due under this Article in effect when the
287 building permit application is submitted to the Department, or before
288 a building permit is issued by Gaithersburg or Rockville.
- 289 (e) A building permit application, or if the property is located in
290 Gaithersburg or Rockville a request to determine the amount of the

291 impact tax, must be resubmitted to the Department [of Permitting
 292 Services] if the applicant changes the project by:

- 293 (1) increasing the number of dwelling units;
- 294 (2) increasing the gross floor area of nonresidential development;
- 295 or
- 296 (3) changing the type of development so that the development
 297 impact tax would be increased.

298 The Department must recalculate the development impact tax based
 299 on the plans contained in the resubmitted building permit application.

300 **52-52. [Biennial recalculation of development impact tax.] Reserved**

301 [(a) Before July 1, 1988, and at least every 2 years thereafter, the County
 302 Executive must prepare a report to the County Council on
 303 development impact taxes. The report must contain recommendations
 304 on:

- 305 (1) the methodology for establishing and the data in support of the
 306 per-unit development impact taxes;
- 307 (2) the impact tax district transportation program; and
- 308 (3) the alteration or addition of impact tax districts.]

309 [(b) After receipt of the report prepared by the County Executive, the per-
 310 unit development impact tax imposed for each impact tax district,
 311 must be reviewed, recalculated if necessary, and, after a public
 312 hearing, readopted by the County Council. Until the County Council
 313 takes action, the development impact taxes remain in effect. The
 314 County Council may amend the tax schedule at any time if a master
 315 plan revision is adopted that significantly alters the development
 316 buildout or transportation program in an impact tax district.]

317 [(c) In the impact tax recalculation process, the County Council must
 318 consider the following factors:

- 319 (1) inflation as measured by changes in a construction cost index
 320 used by the Department of Public Works and Transportation;
- 321 (2) changes in the design, engineering, location, right-of-way, or
 322 other elements of the highways listed in the impact tax district
 323 transportation program;
- 324 (3) a revision to the master plan for an impact tax district;
- 325 (4) changes in the anticipated land uses projected for an impact tax
 326 district; and
- 327 (5) changes in the methodology and the data by which the per-unit
 328 development impact tax is calculated.]

329 **52-53. Restrictions on use and accounting of development impact tax**
 330 **funds.**

331 (a) The funds collected by [reason of establishment of] the development
 332 impact tax must be used solely [for the purpose of funding the impact
 333 tax district transportation program in the impact tax district from
 334 which the development impact tax was collected] to fund County or
 335 municipal transportation improvements of the types listed in Section
 336 52-58. In appropriating funds collected by the development impact
 337 tax, the Council should, to the extent [[possible]] feasible, designate
 338 funds to be used for transportation improvements in the [[general
 339 geographic]] planning policy area from which the funds were
 340 collected or an adjacent policy area. In any fiscal year, development
 341 impact tax funds may be spent only to the extent that the amount of
 342 funds from other County or city sources appropriated for

343 transportation improvements of the types listed in Section 52-58
 344 during that year exceeds \$12 million.

345 (b) Upon receipt of development impact taxes, the Department of
 346 Permitting Services must transfer the taxes to the Department of
 347 Finance for crediting to the appropriate account.

348 (c) The Department of Finance must establish separate accounts for [each
 349 impact tax district] the City of Gaithersburg, the City of Rockville,
 350 and the balance of the County, and must maintain records for each
 351 account so that development impact tax funds collected can be
 352 segregated by [the impact tax district of origin] each of these areas.

353 [The following accounts must be initially established:

- 354 (1) Germantown;
- 355 (2) Eastern Montgomery County.]

356 (d) The Department of Finance must maintain and keep adequate
 357 financial records [for each account] that must:

- 358 (1) Show the source and disbursement of all revenues;
- 359 (2) Account for all monies received; and
- 360 (3) Ensure that the disbursement of funds from each account is
 361 used exclusively for the financing of the type of transportation
 362 improvements listed in [the applicable impact tax district
 363 transportation program] Section 52-58.

364 (e) Interest earned by each account must be credited to that account and
 365 must be used solely for the purposes specified for funds of the
 366 account.

367 (f) The Department of Finance must annually issue a statement [for each
 368 account].

369 (g) Development impact taxes must be disbursed [from an account] only
 370 for the purposes for which the development impact tax has been
 371 imposed, including reimbursement to the County or either city of
 372 advances made for these purposes from other available funds.

373 **52-54. Refunds.**

374 (a) Any person who has paid a development impact tax may apply for a
 375 refund of the tax if:

376 (1) The County has [failed to provide impact highways in the
 377 applicable impact tax district in accordance with the applicable
 378 current impact tax district transportation program] not
 379 appropriated the funds for transportation improvements of the
 380 types listed in Section 52-58, or otherwise formally designated
 381 a specific improvement of a type listed in Section 52-58 to
 382 receive the funds, by the end of the ~~[[fifth]]~~ sixth fiscal year
 383 after the tax is collected;

384 (2) The building permit has been revoked or has lapsed because of
 385 noncommencement of construction;

386 (3) The project has been physically altered, resulting in a decrease
 387 in the amount of the development impact tax due; or

388 (4) A declaration encumbering the property for which the
 389 development impact tax has been paid has been recorded in the
 390 County land records as required under Section 14-17(c) and the
 391 applicant is entitled to a credit under Section 52-55(d).

392 * * *

393 (d) The Director of Permitting Services must investigate each claim and
 394 hold a hearing at the request of the petitioner. Within 3 months after
 395 receiving a petition for refund, the Director of Permitting Services

396 must provide the petitioner, in writing, with a decision on the refund
 397 request. The decision must include the reasons for the decisions,
 398 including, as appropriate, a determination of whether impact
 399 [highways have been provided in the applicable impact tax district
 400 transportation program] tax funds collected from the petitioner,
 401 calculated on a first-in-first-out basis, have been appropriated or
 402 otherwise formally designated for transportation improvements of the
 403 types listed in Section 52-58 within [[5]] 6 fiscal years. If a refund is
 404 due the petitioner, the Director of Permitting Services must notify the
 405 Department of Finance [and request that a refund payment be made to
 406 the petitioner] and, if the property is located in Gaithersburg or
 407 Rockville, the finance director of that city.

408 * * *

409 **52-55. Credits.**

410 (a) A property owner is entitled to a credit if the owner, before [July 29,
 411 1986] July 31, 2001, entered into a participation agreement, or a
 412 similar agreement with the state or a municipality, the purpose of
 413 which was to provide additional [staging ceiling] transportation
 414 capacity [in an impact tax district]. A property owner is also entitled
 415 to a credit if the owner received approval, before July 31, 2001, of a
 416 subdivision plan, development plan, or similar instrument that
 417 required the owner to build or contribute to a transportation
 418 improvement which provides additional transportation capacity. The
 419 Department of Public Works and Transportation must calculate the
 420 credit. The credit must equal the amount of any charge paid under the
 421 participation agreement. The Department may give credit only for
 422 building permit applications for development on the site covered by

423 the participation agreement. The Department must not give a refund
 424 for a credit earned under this subsection.

425 (b) A property owner [may construct] must receive a credit for
 426 constructing or contributing to an improvement of the type listed in
 427 [the impact tax district transportation program] Section 52-58 if the
 428 improvement reduces traffic demand or provides additional [[policy
 429 area or local area]] transportation capacity. [Construction of the
 430 improvement, however, must be in addition to all other on-site
 431 transportation improvements required by the County, or the Planning
 432 Board as a condition of subdivision, site plan, or other development
 433 approval.]

434 (1) If the property owner elects to make the improvement, the
 435 owner must enter into an agreement with a municipality or the
 436 County before any building permit is issued. The agreement
 437 must contain:

- 438 (A) the estimated cost of the improvement,
- 439 (B) the dates or triggering actions [[for initiating and
 440 completing]] to start and finish the improvement,
- 441 (C) a requirement that the property owner complete the
 442 improvement according to applicable municipal or
 443 County standards, and
- 444 (D) such other terms and conditions as the municipality or
 445 County finds necessary.

446 (2) The [Director of the] Department of Public Works and
 447 Transportation must:

- 448 (A) review the improvement plan,
- 449 (B) verify costs and time schedules,

- 450 (C) determine whether the improvement is an impact
- 451 [highway] transportation improvement which reduces
- 452 traffic demand or adds transportation capacity,
- 453 (D) determine the amount of the credit for the improvement
- 454 that will apply to the development impact tax, and
- 455 (E) certify the amount of the credit to the Department of
- 456 Permitting Services before that Department or a
- 457 municipality issues any building permit.
- 458 (3) An applicant for subdivision, site plan, or other development
- 459 approval from the County, Gaithersburg, or Rockville, or the
- 460 owner of property subject to an approved subdivision plan,
- 461 development plan, or similar instrument, may seek a declaration
- 462 of allowable credits from the Department of Public Works and
- 463 Transportation. The Department must decide, within 15 days
- 464 after receiving all necessary materials from the applicant,
- 465 whether any transportation improvement which the applicant
- 466 has constructed or contributed to, or intends to construct or
- 467 contribute to, will receive a credit under this subsection. If
- 468 during the initial 15-day period after receiving all necessary
- 469 materials the Department notifies the applicant that it needs
- 470 more time to review the proposed improvement, the
- 471 Department may defer its decision an additional 15 days. If the
- 472 Department indicates under this paragraph that a specific
- 473 improvement is eligible to receive a credit, the Department
- 474 must allow a credit for that improvement when taking action
- 475 under paragraph (2).

503 Department must not allow more than \$2,750,000 in credits under this
504 subsection.

505 **52-56. Appeals.**

506 After determination of the amount of the development impact tax or credit
507 due, an applicant for a building permit or a property owner may appeal to the
508 Maryland Tax Court to the extent permitted by state law or, if the Maryland Tax
509 Court does not have jurisdiction, to the Circuit Court under the Maryland Rules of
510 Procedure that regulate administrative appeals. If the appealing party posts a bond
511 or other sufficient surety satisfactory to the County Attorney in an amount equal to
512 the applicable development impact tax as calculated by the Department of
513 Permitting Services, the Department or municipality must issue the building permit
514 if all other applicable conditions have been satisfied. The filing of an appeal does
515 not stay the collection of the development impact tax until a bond or other surety
516 satisfactory to the County Attorney has been filed with the Department of
517 Permitting Services.

518 **52-57. Development impact taxes[; methodology].**

519 [(a) Development impact taxes must be calculated by the following
520 process:

- 521 (1) Calculate the difference between the amount of residential (in
522 dwelling units) and nonresidential development (in 1,000 sq. ft.
523 gross floor area increments) possible in each impact tax district
524 based on existing or proposed zoning and existing development
525 (including unbuilt development for which building permits have
526 been secured). These figures establish the full range of
527 development to which an impact tax will be applied as well as
528 the full amount of development that will need to be

- 529 accommodated by the additional impact highways to be funded,
530 in part, through the impact tax.
- 531 (2) Determine the full range of highway improvements needed to
532 accommodate the projected development through buildout, and
533 establish the estimated costs of the improvements. These are the
534 impact highway improvements included in the impact tax
535 district transportation program under Section 52-58.
- 536 (3) Establish relative trip impacts for various land use categories in
537 order to assure that each land use is subject to a reasonable pro
538 rata charge based upon its relative impact on the impact
539 highways system in the impact tax district. The relative impacts
540 are measured by the calculation of a trip impact value which is
541 a function of trip generation rates as modified by trip length
542 characteristics and percent of new trips generated by a
543 particular use.
- 544 (4) Multiply the number of units of projected new development for
545 the major land use categories (residential and nonresidential) by
546 the trip impact value for that category to establish the percent of
547 impact highway improvement costs to be assigned to residential
548 versus nonresidential development.
- 549 (5) Multiply the percent by the total costs to be borne by impact
550 taxes to establish a total cost burden for residential versus
551 nonresidential development; in the same way, divide the costs
552 for residential and nonresidential among the specific land use
553 categories.

554 (6) Divide the pro rata costs to be borne by each land use category
 555 by the per-unit traffic impact value of that land use category to
 556 arrive at a pro rata cost per unit for each land use category.

557 (7) Multiply 50% by the pro rata cost per unit for each land use
 558 category (calculated in Step 6) to determine the development
 559 impact tax for each land use category.]

560 [(b)] (a) The development impact tax rates [for each impact tax district] are:

Land Use Type	<u>Rate</u>	[Germantown]	[Eastern Montgomery County]	[Clarksburg]
Single-family detached residential (per [dwelling unit] square foot GFA)	<u>\$1.10</u>	[\$2,492]	[\$1,727]	[\$2,753]
Single-family attached residential (per square foot GFA)	<u>\$1.75</u>			
Multifamily residential (per [dwelling unit] square foot GFA)	<u>\$1.45</u>	[\$1,794]	[\$1,243]	[\$1,981]
Multifamily-senior residential (per [dwelling unit] square foot GFA)	<u>\$0.45</u>	[\$531]	[\$368]	[\$573]
Office (per sq. ft. GFA)	<u>\$2.10</u>	[\$2]	[\$2]	[\$2]
Industrial (per sq. ft. GFA)	<u>\$1.05</u>	[\$1]	[\$1]	[\$1]
Retail (per sq. ft. GFA)	<u>\$2.65</u>	[\$5.08]	[\$3.52]	[\$5.61]
[Places of worship (per sq. ft. GFA)]		[\$.29]	[\$.20]	[\$.32]

[Private elementary and secondary schools (per sq. ft. GFA)]		[\$.48]	[\$.33]	[\$.53]
Other nonresidential (per sq. ft. GFA)	<u>\$0.80</u>	[\$5.62]	[\$3.89]	[\$6.20]

561 (b) Except as provided in subsection (c), any development located in a
 562 Metro Station Policy Area, as defined in the Annual Growth Policy,
 563 must pay the tax at 50% of the rate listed in subsection (a) for the type
 564 of development.

565 (c) Any development located in a Metro Station Policy Area, as defined in
 566 the Annual Growth Policy, that receives approval of a preliminary plan
 567 of subdivision under the Alternative Review Procedure for Metro
 568 Station Policy Areas must pay the tax at the rate listed in subsection (a)
 569 for that type of development. Any credits for building or contributing
 570 to transportation capacity improvements under Section 52-55 do not
 571 apply to any development that is approved under the Alternative
 572 Review Procedure for Metro Station Policy Areas.

573 ~~[(b)]~~ (d) The County Council by resolution, after a public hearing advertised at
 574 least 15 days in advance, may increase or decrease the rates set in this
 575 Section.

576 ~~[(c)]~~ (e) The Director of Finance must adjust the tax rates set in or under this
 577 Section on July 1 of each odd-numbered year by the annual average
 578 increase or decrease in the Consumer Price Index for all urban
 579 consumers for the Washington-Baltimore metropolitan area, or any
 580 successor index, for the two most recent calendar years. The Director
 581 must calculate the adjustment to the nearest multiple of 5 cents. The

582

Director must publish the amount of this adjustment not later than

583

May 1 of each odd-numbered year.

584

52-58. Impact tax district transportation program.

585

[The impact tax district transportation program is as follows:]

<i>[Road Name</i>	<i>Limits</i>	<i>Improvement</i>	<i>Cost</i>	<i>Timing (Completion by FY 99-2004 Denoted by *)]</i>
<i>[(a) Germantown:]</i>				
Century Boulevard	Northern terminus (2001) to 1000' north	4-Lane Undivided Construct	\$2,085,000	
Great Seneca Highway	Middlebrook Road to Great Seneca Creek	4-Lane Divided Construct	\$14,700,000	*(Part): 4L from Middlebrook to Great Seneca Creek
Eastern Arterial (M-83)	Northern Planning Area Boundary to Great Seneca Creek	6-Lane Divided Construct with an Interchange at M-61	\$38,059,000	
Father Hurley Boulevard/ Ridge Road (M-27)	MD 27 to MD 118 Relocated	6-Lane Divided Construct from MD 27 to Crystal Rock Drive, with an interchange at I-270 and 4L divided from Wisteria Drive	\$62,788,000	*(Part): 6L from Crystal Rock to A-19 w/interchange at I-270; 4L from A-19 to MD 27; 21 A-254 to MD

		to MD 118 Relocated		118
MD 118 Relocated	2000' south of Clopper Road to Wisteria Drive and from I-270 to MD 355	6L Divided Construct from MD 355 to I-270 & from Wisteria Drive to Riffleford Road	\$35,935,000	*(Part): 6L from Wisteria Drive to MD 117 and I-270 to MD 355; 2L from MD 117 to 2000' south
German-town Rd. Extended (M-61)	MD 355 to Watkins Mill Rd.	6-Lane Divided Construct	\$11,113,000	
Crystal Rock Drive	MD 118 to M-27	Add 2 lanes	\$6,225,000	
Middlebrook Road	M-27 to Eastern Arterial	4L Divided Reconstruct from M-83 to MD 355; 6L divided reconstruct from MD 355 to Great Seneca Highway; add 2L from Great Seneca Highway to M-27	\$20,897,000	*(Part): 6L from Great Seneca Highway to I-270, 6L from I-270 to MD 355
Watkins Mill Road (A-17)	M-83 to Planning Area Boundary	4-Lane Undivided Reconstruct	\$5,322,000	
A-19 (Observation Drive)	MD 118 Relocated to Planning Area Boundary	4-Lane Undivided Construct with M-27	\$37,518,000	*(Part); 4L from MD 118 Relocated through

		Interchange		Milestone development
Waring Station Road	Wisteria Drive to Clopper Road	4-Lane Undivided Reconstruct	\$4,619,000	
A-254	MD 118 Relocated to Great Seneca Highway	4-Lane Undivided Construct	\$3,063,000	*(Part): 4L from MD 118 Relocated to Great Seneca Highway
I-4 (Northern Crossing)	Century Boulevard to Observation Drive	4-Lane Undivided Construct	\$9,643,000	
Park and Ride Lots	Planning Area	2550 spaces	\$16,575,000	*(Part) 769 spaces
German-town Transit Center	MD 118/Century Blvd.	Construct 200-space park & ride	\$1,913,000	
Total			\$270,455,000	
50%			\$135,227,500]	
<i>[(b) Eastern Montgomery County:</i>				
Briggs Chaney Road	Automobile Boulevard to P.G. County Line	4-6 Lane Reconstruct	\$14,668,000	*(Part): Reconstruct bridge
Fairland Road	E. Randolph Road Relocated to P.G. County Line	4-Lane Undivided Reconstruct from U.S. 29 to P.G. County Line and add 2L	\$18,716,000	

		from E. Randolph Road to Old Columbia Pike		
Greencastle Road	Robey Road to P.G. County Line	4-Lane Undivided Reconstruct	\$3,257,000	
Norbeck Road Extended	Layhill Road to New Hampshire Avenue	2-Lane Construct	\$27,115,000	
East Randolph Road	Burkhart Street to Old Columbia Pike	4-Lane Undivided Reconstruct	\$12,477,000	*
Park-and-Ride Lots		1814 spaces	\$11,791,000	*
<i>Total</i>			\$88,024,000	
50%			\$44,012,000]	
<i>[(c) Clarksburg:</i>				
Foreman Blvd (A-306)	MD 355 to A-305	Construct 2 lanes	\$1,605,035	
Gateway Center Drive (A-300)	A-260 to A-301	Widen to 4 lanes divided	\$3,602,537	
Midcounty Highway (M-83)	Brink Road to MD 27	Construct 6 lanes divided	\$8,728,439	
Midcounty Highway (A-305)	MD 27 to (Stringtown Road) MD 355	Construct 2/4 lanes divided	\$38,516,291	

Newcut Road (A-302)	MD 121 to MD 27	Construct 2/4 lanes divided	\$36,576,638
Observation Drive (A-19)	MD 355 to Germantown boundary	Construct 4 lanes divided	\$21,971,391
Old Frederick Road (B-1)	Through town center	Construct 2 lanes	\$2,675,814
Shawnee Lane (A-301)	Gateway Center Drive (A-300) to MD 355(A- 251)	Widen to 4 lanes divided	\$8,121,588
Stringtown Road (A-260)	I-270 to A-305	Construct 4 lanes divided	\$10,889,280
Park & Ride Spaces		155 spaces	\$1,054,899
Total			\$133,741,910
50%			\$66,870,955]

- 586 [(c)] Projects [to] that may be funded with impact taxes include any
587 [improvements to master-planned major arterial roadways, other
588 planned arterials needed for access within impact tax districts, and
589 park-and-ride facilities.];
- 590 (a) new road or widening of an existing road that adds highway or
591 intersection capacity or improves transit service or bicycle
592 commuting, such as bus lanes or bike lanes;
- 593 (b) new or expanded park-and-ride lot or transit center;
- 594 (c) bus added to the Ride-On bus fleet, but not a replacement bus;
- 595 (d) new bus shelter, but not a replacement bus shelter;
- 596 (e) hiker-biker trail used primarily for transportation;

- 597 (f) bicycle locker that holds at least 8 bicycles; [[or]]
- 598 (g) sidewalk connector to a major activity center or along an arterial or
- 599 major highway; or
- 600 (h) in a Metro Station Policy Area, as defined in the Annual Growth
- 601 Policy, or an adjacent policy area, the operating expenses of any
- 602 transit or trip reduction program.

603 **[52-59. Methodology to determine impact tax districts.]**

- 604 [(a) Impact tax districts are those planning policy areas, or combinations
- 605 of planning policy area, in which existing and approved development
- 606 is at or above the staging ceiling as defined by the Annual Growth
- 607 Policy. Where existing development is at or above the staging ceiling,
- 608 no further development can occur in the planning policy area without
- 609 violating the adequate public facilities ordinance transportation
- 610 standards, unless the staging ceiling is raised. The staging ceiling can
- 611 be raised by the addition of major improvements beyond those that are
- 612 programmed. The addition of these unprogrammed improvements
- 613 will raise the staging ceiling, with the objective of allowing additional
- 614 development consistent with APFO staging ceiling standards. After
- 615 an impact tax district has been designated under subsection (b), it
- 616 must remain an impact tax district until full buildout has occurred.]
- 617 [(b) Additional planning policy areas or combinations of planning policy
- 618 areas may be designated by the County Council as impact tax districts
- 619 under the procedure in this Article. The County Council must
- 620 consider the following factors in determining when and whether to
- 621 add impact tax districts:
- 622 (1) The Annual Growth Policy;
- 623 (2) The standards incorporated in the APFO;

- 624 (3) The projected buildout and timing of the projected buildout of
 625 planning policy areas;
 626 (4) The staging ceiling in planning policy areas;
 627 (5) The need for and cost of unprogrammed highways necessary to
 628 raise the staging ceiling or provide necessary improvements in
 629 support of projected development; and
 630 (6) Any other factor the County council finds relevant.

631 The principal reason for identifying a planning policy area or
 632 combination of planning policy areas as an impact tax district is to
 633 prevent the moratorium on development that would otherwise occur
 634 by application of APFO staging ceiling standards in a planning policy
 635 area where existing development is at or above the staging ceiling.]

636 **Sec. 2. Effective Date.** This Act takes effect on July 1, 2002, and applies to
 637 any development for which an application for a building permit is filed on or after
 638 that date. Each taxpayer must pay the development impact tax at ~~[[50%]]~~ 25% of
 639 the rates set in Section 52-57, as amended by Section 1 of this Act, for building
 640 permit applications filed between July 1, 2002 and December 31, 2002; ~~[[75%]]~~
 641 50% of the rates set in Section 52-57 for building permit applications filed between
 642 January 1, 2003, and June 30, 2003; 75% of the rates set in Section 52-57 for
 643 building permit applications filed between July 1, 2003 and December 31, 2003;
 644 and 100% of the rates set in Section 52-57 for building permit applications filed on
 645 or after ~~[[July 1, 2003]]~~ January 1, 2004. To the extent that any taxpayer pays a
 646 lower rate than that set in Section 52-57 because the previous sentence applies, any
 647 credit claimed under Section 52-55 must be reduced by the same ratio.

648 *Approved:*

649

650

Blair H. Ewing

11/01/01

Blair Ewing, President, County Council

Date

651 *Approved:* Disapproved:

652

653

Douglas M. Duncan

11/12/01

Douglas M. Duncan, County Executive

Date

654 *This is a correct copy of Council action.*

655

656

Mary A. Edgar, CMC, Clerk of the Council

Date