



**MEMORANDUM**

January 13, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney   
Glenn Orlin, Deputy Council Administrator 

SUBJECT: **Public Hearing:** Expedited Bill 51-16, Taxation – Development Impact Tax – Local Area Transportation Review Mitigation Payment - Established

Expedited Bill 51-16, Taxation – Development Impact Tax – Local Area Transportation Review Mitigation Payment – Established, sponsored by Lead Sponsor then-Council President Berliner, was introduced on December 13, 2016. A Planning, Housing and Economic Development Committee/Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for January 26, 2017 at 9:30 a.m.

Bill 51-16 would:

- establish a local area transportation review mitigation payment;
- authorize the Council to set the rates by resolution after a public hearing; and
- amend the law concerning the development impact tax for transportation improvements.

**Background.** When the Council replaced Policy Area Transportation Review (TPAR) payments in the 2016-2020 Subdivision Staging Policy (SSP) with a higher transportation impact tax, it concurrently deleted the Transportation Mitigation Payment section of the transportation impact tax law in Bill 37-16, believing it was no longer needed. However, Council staff now acknowledges that this assumption was incorrect: a Transportation Mitigation Payment section is still needed in the Code to continue to give authority for Local Area Transportation Review (LATR) payments, including the White Oak LATR Improvements Program and rate proposed by the Department of Transportation (on today's public hearing agenda as Item 10), and for the rates to be set in the future for the Urban Mobility Programs (UMPs) in other areas.

Enacting this bill would provide the legal authority to impose these LATR payments. It is an expedited bill so that it could take effect on March 1, 2017, when Bill 37-16 takes effect. The LATR mitigation payments due in each local area would be established by the Council by resolution after a public hearing. The Office of the County Attorney found the Bill to be constitutional. See ©4.

This packet contains:	<u>Circle #</u>
Expedited Bill 51-16	1
Legislative Request Report	3
County Attorney Bill Review Memorandum	4

Expedited Bill No. 51-16  
Concerning: Taxation – Development  
Impact Tax – Local Area  
Transportation Review Mitigation  
Payment - Established  
Revised: December 8, 2016 Draft No. 3  
Introduced: December 13, 2016  
Expires: June 13, 2018  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: March 1, 2017  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President Berliner

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**AN EXPEDITED ACT** to:

- (1) establish a local area transportation review mitigation payment;
- (2) authorize the Council to set the rates by resolution after a public hearing; and
- (3) amend the law concerning the development impact tax for transportation improvements.

By amending

Montgomery County Code  
Chapter 52, Taxation  
Section 52-51

<b>Boldface</b>	<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:*

**Sec. 1. Section 52-51 is amended as follows:**

**52-51. [Reserved] Local Area Transportation Review Mitigation Payment.**

(a) In addition to the tax due under this Article, an applicant for a building permit for any building on which an impact tax is imposed under this Article must pay to the Department of Finance a Mitigation Payment if this payment is required for a building included in a preliminary plan of subdivision that was approved under the Local Area Transportation Review provisions in the County Subdivision Staging Policy.

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

(c) The Payment must be paid at the same time and in the same manner as the tax under this Article, and is subject to all provisions of this Article for administering and collecting the tax.

(d) The Department of Finance must retain funds collected under this Section in an account to be appropriated for transportation improvements that result in added transportation capacity or improved mobility in the area where the development for which the funds were paid is located.

**Sec. 2. Expedited Effective Date.**

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on March 1, 2017.

*Approved:*

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Roger Berliner, President, County Council

Date

## LEGISLATIVE REQUEST REPORT

Expedited Bill 51-16

*Taxation – Development Impact Tax – Local Area Transportation Review Mitigation Payment -  
Established*

**DESCRIPTION:** The Bill would establish a local area transportation review mitigation payment and authorize the Council to set the rates by resolution after a public hearing.

**PROBLEM:** Bill 37-16 deleted the Transportation Mitigation Payment section of the transportation impact tax law, but a version of that section is needed to provide the authority for Local Area Transportation Review (LATR) mitigation payments, including for the White Oak Local Area Transportation Improvements Program and future Urban Mobility Programs.

**GOALS AND OBJECTIVES:** To establish a local area transportation review mitigation payment, and to authorize the Council to set the rates by resolution after a public hearing.

**COORDINATION:** Departments of Permitting Services, Finance, County Attorney, Transportation

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Glenn Orlin, Montgomery County Council staff

**APPLICATION WITHIN MUNICIPALITIES:** To be researched.

**PENALTIES:** None




OFFICE OF THE COUNTY ATTORNEY


Isiah Leggett  
County Executive

Marc P. Hansen  
County Attorney

MEMORANDUM

TO: Chris Conklin, Deputy Director  
Office of Transportation Policy  
Department of Transportation

FROM: Scott R. Foncannon   
Associate County Attorney

VIA: Edward B. Lattner, Chief   
Division of Government Operations

DATE: December 16, 2016

RE: Expedited Bill 51-16, Taxation – Development Impact Tax – Local Area  
Transportation Review Mitigation Payment – Established

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I have reviewed Expedited Bill 51-16, Taxation – Development Impact Tax – Local Area Transportation Review Mitigation Payment – Established. This bill re-establishes a local area transportation review mitigation payment which was deleted by Bill 37-16. This bill is not vague, it will not increase or decrease the County's the liability exposure and is constitutional. In order to make it clear that this is a tax I recommend that the Bill be amended to add an uncodified provision that states, this Section is authorized by the County's general taxing authority in Section 52-17 of the County Code. The bill is within the authority of the County Council and is legally sufficient.

I have no further comments on this bill.

cc: Bonnie A. Kirkland, Assistant Chief Administrative Officer  
Marc P. Hansen, County Attorney

16-010373 – Bill Review