

T&E COMMITTEE #2
July 28, 2014

MEMORANDUM

July 24, 2014

TO: Transportation and Environment Committee
FROM: ^{GO} Glenn Orlin, Deputy Council Administrator
SUBJECT: Executive Regulation 26-13 – Impact Tax Credits Clarification

On June 4, 2014 the Executive transmitted a proposed amendment to Executive Regulation 9-09 (Method 2) that would clarify the calculation of impact tax credits for hiker-biker trails, transit centers, and park-and-ride lots. Also, the proposed regulation addresses the calculation of credits for bikesharing stations, a follow-up to Bill 25-12 (enacted in November 2012) that made bikesharing stations eligible for an impact tax credit. The Executive's transmittal memo is on ©A, the proposed amended regulation showing added and [deleted] text is on ©1-26, and OMB's Fiscal Impact Statement is on ©27-29.

The Council has 60 days to act on a Method 2 regulation; if not, it automatically goes into effect, unless the Council passes a resolution extending the deadline. Also recall that the Council cannot amend an Executive regulation: it can either approve it as submitted or disapprove it. To effect a revision, the Committee would need to request the Executive to submit an amended regulation. At present this resolution is scheduled for action by the Council on July 29. However, should the Committee wish to request a revised regulation, then the July 29 action would be replaced by a resolution to extend the deadline, allowing time for County staff to prepare the amendment. Action then would be rescheduled for after the summer recess, most likely in September.

Transit centers and park-and-ride lots (but roads, too). The proposed changes to the credit provisions for transit centers and park-and-ride lots are on ©10. The amendment makes clear that the lot must be used in support of ridesharing and transit resulting in a reduction in auto commuting, and that the lot be available to the public free of charge at all times. The amendment would also recognize as creditable expenses only the cost of those parking spaces that add to the capacity of a lot.

The last point is noteworthy. One of the intents of the original impact fee law was to allow a developer to meet the impact fee requirement by paying a fee, or offsetting all or part of it by building or widening a road—or building or enlarging a park-and-ride lot—by the cost of that improvement. The point was that either a developer would pay money to the County to make an improvement, or would save the County the same amount of money by building the improvement himself or herself. If

widening a road meant tearing up an existing road to re-grade and build a new 4-lane road, for example, then the credit should be equal to the developer's cost of doing just that—not a pro-rata share of the cost based on the percentage of new capacity being added.

For park-and-ride lots, this is not generally an issue, because expanding a lot usually does not involve rebuilding the existing lot. However, it happens often with road improvements, especially when an old 2-lane road is re-graded and relocated to create a multi-lane road. DOT, for many years now, has been allowing credit only for the pro-rata share of the cost of such improvements, rather than the entire cost. Certainly this method of calculating credit allows for more net impact tax revenue. But is it fair?

A technical correction: subsection 2b.(1)(E) on the top of ©10 is about transit centers and park-and-ride lots, but in the regulation it is placed in the road section. It should be moved to section 2b.(2).

Council staff recommends requesting an amended regulation that would:

- **revise subsections 2b.(2)(A) and 2b.(2)(E) to reflect the whole cost incurred in building or expanding a transit center or park-and-ride lot, not the pro-rata cost;**
- **add a subsection to 2b.(1) to reflect the whole cost incurred in building or widening a road that adds capacity, rather than a pro-rata share; and**
- **move subsection 2b.(1)(E) to section 2b.(2).**

Hiker-biker trails. The proposed revisions are in section 2b.(5), which is found from the middle of ©12 to the top of ©14. If a trail is to be maintained by Montgomery County, it must meet the criteria in 2b.(5)(A)(i); these are very similar to the current criteria. However, if it is a trail *not* to be maintained by Montgomery County, then it must also meet additional criteria listed in 2b.(5)(A)(ii).

This language was crafted primarily to allow the Clarksburg Village developer to get impact tax credit for the Greenway Trail that it will be maintaining. The Council will recall the agreement reached between the Executive and the Clarksburg Village developer that would have the latter drop his requirement on homeowners to charge a per-unit infrastructure charge (in lieu of a development district) in exchange for the County contributing to his cost of completing Snowden Farm Parkway, Little Seneca Parkway, and an intersection improvement at MD355/Brink Road. (The Council has programmed those funds in the Clarksburg Transportation Connections project in the CIP, created for this purpose.) Part of that agreement, however, was that the developer would receive credit for the Greenway Trail.

The problem is that Rockville and Gaithersburg can fund hiker-biker trails with impact tax funds collected within their respective jurisdictions, but developers in Rockville and Gaithersburg would not be able to get credit for trails they build, because they cannot meet all the criteria in subsection 2b.(5)(A)(ii)—specifically the criterion that the trail be located within or provides direct access to a designated urban area in the Road Code. The Road Code does not apply to streets in Rockville and Gaithersburg, and there are no designated urban areas within either.

Council staff recommendation: Put trails to be maintained by Rockville and Gaithersburg in the same category as those to be maintained by Montgomery County.

Bikesharing stations. The proposed credit provisions are in section 2b.(7) on ©13. These criteria are reasonable and straightforward. The only suggested revision, for the sake of clarity, is to replace in the (first) subsection (7)(B) the word “station” for “site.”

Council staff recommends that the full sentence in the (first) subsection (7)(B) read: “To be considered ‘permanent’ the station and bicycles must have a minimum life of 12 years.”

Formatting. The remaining proposed changes in the regulation all relate to its format and organization. Should the Committee agree to ask for an amended regulation, Executive staff should take the opportunity to correct the few places where the formatting was not complete, such as in the aforementioned subsection 2b.(7).

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

June 4, 2014

METHOD 2

TO: Craig Rice, President, Montgomery County Council
FROM: Isiah Leggett, County Executive *[Signature]*
SUBJECT: Executive Regulation 26-13 – Impact Tax Credits Clarification

I am submitting for Council approval Executive Regulation 26-13, Development Impact Tax for Transportation Improvements. This regulation amends and supersedes Executive Regulation 9-09.

The new regulation clarifies and expands several provisions of Executive Regulation 9-09 regarding the requirements for impact tax credits. The proposed amendments clarify and expand the hiker-biker trail, transit center, and park-and-ride lot impact tax credit provisions. New regulations concerning impact tax credit for a bikesharing station are also included in Executive Regulation 26-13. The amended language provides clarification, direction, and guidance for determining when these specific elements may be eligible for impact tax credit. It does so by identifying the criteria for impact tax credit eligibility. By including this guidance in the regulation, DOT's task of certifying impact tax credits in accordance with Section 52-55 of the Montgomery County Code, becomes more objective and efficient with less debate over the interpretation of what is considered an eligible transportation improvement.

Executive Regulation 26-13 was advertised in the March County Register and no comments were received. The Fiscal Impact Statement for the regulation is attached. If you have any questions or need additional information, please contact Emil Wolanin at 240-777-8788.

Attachment

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|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

Montgomery County Regulation on

DEVELOPMENT IMPACT TAX FOR TRANSPORTATION IMPROVEMENT

Issued by: County Executive

Regulation No. 26-13

COMCOR No. 52.47.01

Authority: Montgomery County Code (2004) Section 52-47

Supersedes: Executive Regulation 9-09

Council Review: Method (2) under Code Section 2A-15

Register Vol. 31 No. 2

Effective Date: _____

Comment Deadline: April 1, 2014

Summary: The purpose of this regulation is to amend Executive Regulation 9-09 to clarify and expand the elements of the hiker-biker trail impact tax credit, clarify the elements of the expanded transit center or park-and-ride lot credit and add new regulations concerning the bikesharing station impact tax credit.

Staff Contact: Emil Wolanin
Department of Transportation
(240) 777-8788

Address: Department of Transportation
100 Edison Park Drive
Gaithersburg, MD 20878



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

Background: Montgomery County Code Sections 52-47 through 52-59, Development Impact Taxes for Major Highways, was enacted on April 27, 1990. The proposed amendments to Executive Regulation 9-09 offer changes that are consistent with the purposes of those sections of the Code.

A. Authority

1. Bill 33-90 concerning development impact taxes for Germantown and Eastern Montgomery County was enacted April 27, 1990 with an effective date of July 29, 1986. This bill added Sections 52-47 through 52-59, titled "Development Impact Taxes for Major Highways" to the Montgomery County Code.

This Act was expanded to include the entire county effective July 1, 2002. The expanded program created four impact tax districts that include Germantown, Eastern Montgomery County, Clarksburg, and a County District of all [area] areas not included in the first three districts.

Effective March 1, 2004, three districts were created in place of the four from the previous revision of Section 52-47 through 52-59. The three districts are Metro Stations, Clarksburg, and a General District that comprises everything not included in the first two districts including the Cities of Gaithersburg and Rockville.

Pursuant to Chapter 2A of the Montgomery County Code, the County Executive hereby promulgates this regulation for the purpose of implementing the impact tax legislation. Bill 33-90 did not specifically identify the method for adopting regulations; consequently, pursuant to Chapter 2A, method 2 will be utilized for the adoption of these regulations.

2. This regulation is intended to:
 - a. clarify the provisions of Section 52-47 through 52-59 of the Code, and
 - b. provide guidance to the public regarding the administration of Chapter 52 of the Montgomery County Code as it relates to Development Impact Tax for Transportation Improvements.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

B. Definitions

The definitions in this section clarify by supplementation the various words and phrases used in Sections 52-47 through 52-59, Montgomery County Code, and in this regulation.

1. *Accessory Structures to a residential building:* as referenced in the fourth item listed under the definition of Gross Floor Area in Section 52-47 means any structure which:
 - a. is located on the same lot with the main building;
 - b. is not attached by any part of a common wall or roof to the main building;
 - c. the use of which is clearly incidental to the use of the main building. An incidental use does not include a use which is an integral part of the use of the main building nor does the incidental use involve regular occupation by humans.
2. *Altered:* which appears in Section 52-54(a)(3) and 52-55(c)(1) means that the number of dwelling units has been increased or decreased, the gross square footage in a non-residential project has been increased or decreased or the use mix has been changed to a use or uses which result in a different impact tax than that originally calculated.
3. *Amount of charge paid under the participation agreement:* which appears in Section 52-55(a) means the principal amount which the County is unconditionally entitled to receive under the participation agreement, whether as a lump sum or in installments. This amount will be determined at the time the application for credit is filed. No credit may be allowed, however, for interest, which may be charged if the County will receive the amount due under the participation agreement in installments.
4. *Automobile Parking Facilities:* Any lot or structure used for off-street parking of 6 or more motor vehicles, where service or repair facilities are not permitted. A parking facility must not be used for storage of dismantled or wrecked motor vehicles, parts thereof or junk. An automobile sales lot is not a parking facility for the purposes of this chapter. Under this definition, automobile parking facilities includes 6 or more parking spaces serving a special exception use. (See section 59-E-2.92 for special requirements applying to a smaller parking area serving a special exception use in a one-family residential zone.)
5. *Basement or attic areas with a headroom of less than seven (7) feet six (6) inches:* as referenced in the first item under the definition for Gross Floor Area in Section 52-47 means a space which is not usable for human activity, such as a crawl space. Therefore, either attics or cellars or basements which have headroom of less than 7 feet 6 inches are excluded from the computation of gross floor area.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

6. **Impact Tax:** Impact tax as used in this regulation means "development impact tax" as defined in Chapter 52-47 through 52-59 of the Montgomery County Code.
7. **Lapsed; Lapses:** which appear in Sections 52-54(a)(2) and 52-55(c)(2), respectively, means that a building permit has been revoked, voided or canceled either at the request of the owner or because the required work under the permit has not been done within the time specified by law.
8. **Non-residential:** which is defined in Section 52-47 includes the numerous types of non-residential construction listed in Attachment 1. Attachment 1 categorizes the many types of non-residential construction into the six types of non-residential development for which tax rates are established in the impact tax law.
9. **Parking Structures:** as referenced in the third item under the definition for Gross Floor Area in Section 52-47, refers to automobile parking facilities as defined herein.
10. **Participation agreement the purpose of which is to provide additional transportation capacity:** as referenced in Section 52-55(a) of the Montgomery County Code means an agreement between the state or a municipality and a property owner, which has been entered into prior to July 1, 2002, in which:
 - a. The property owner agreed to increase transportation capacity by constructing or reconstructing, or participating in the construction or reconstruction of, a transportation improvement; and
 - b. The agreed-upon eligible transportation improvement increases or will increase the overall capacity or the transportation network in the vicinity of the project.
11. **Project:** which appears in Sections 52-54(a)3 and 52-55(c)(1) refers to a land use for which one or more Building Permit(s) is required.
12. **Residential:** which is defined in Section 52-47 includes the numerous types of residential housing listed in Attachment 1. Attachment 1 categorizes the many types of residential construction into the two types for which tax rates are established in the impact tax law.
13. **Additional Transportation Capacity:** means the increase in the existing maximum theoretical amount of traffic that can be accommodated by a road or the intersection of two or more roads. It is intended to consist of the actual physical and permanent expansion of the road or intersection. For the purposes of this regulation, additional transportation capacity does not include reductions in traffic demand.
14. **Trip Reduction Program:** as referenced in Section 52-55(b) and 52-58(8) refers to a program with established goals and/or requirements and the means for achieving those goals and/or requirements that



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

will result in reducing the number of trips on the transportation network and reducing congestion.

C. Collection of Development Impact Taxes

1. Building Permit application forms and written instructions can be obtained from the Department of Permitting Services (Permitting Services). All applications must be submitted to Permitting Services.
2. Incomplete applications will not be accepted for processing. Applications must indicate whether an Impact Tax Credit has been certified, whether there is a Development Approval Payment (DAP) Agreement and must provide the information necessary to calculate the Impact Tax as specified in Section 52-51(a). A copy of the certification signature page of the Application for Development Impact Tax Credit must be provided with the Building Permit application.
3. To be considered a Social Service Provider under this regulation the applicant must include the following documents in the permit application packet:
 - a. IRS decision letter (indicating tax exempt status);
 - b. Organizational by-laws, covenants or other documents that demonstrate that services are provided primarily to Montgomery County residents.
4. Impact taxes must be collected immediately prior to issuance of the building permit. The applicant must:
 - a. Inform Permitting Services of how many permits are desired out of the total applied for;
 - b. Permitting Services must collect the Impact Tax. Payment of the impact tax must be made by check payable to Montgomery County, Maryland and;
 - c. be issued a receipt from Permitting Services.

D. Calculation of Development Impact Tax

1. Under Section 52-50(c) Permitting Services must not issue a building permit for development until the applicant has paid the applicable development impact tax.
2. Calculation of impact taxes due must be based on the schedule of rates in effect at the time a building permit application is accepted by Permitting Services. The current rates are posted on the Permitting



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

Services website.

3. If a single project contains a mix of uses Permitting Services must assign a separate land use type to each use as directed under Section 52-51(b) and calculate the development impact tax due for each use.
4. If the applicant changes the house type on an issued permit, that permit must be voided and the new permit must be subject to the impact tax rate in effect at the time of the house type change request.
5. If a property is located in the City of Rockville or the City of Gaithersburg, the amount of impact tax due at the time building permit is issued must be based on the land use certified by the City as directed under Section 52-51(e).
 - a. The City must certify the land use and calculate the amount of development impact tax due on the appropriate form that is provided by Permitting Services.
 - b. The completed form must be submitted to Permitting Services at the time the Impact Tax is collected.
 - c. Once the development impact tax has been paid to Permitting Services, the applicant must be given a receipt that verifies that the tax has been paid.
 - d. The receipt must be submitted to the City in order for the City to issue the Building Permit.

E. Refunds

In accordance with Section 52-54, all petitions for refunds must be submitted in writing to the Department of Permitting Services. A refund must only be granted under the provisions of and for the reasons stated in Section 52-54. However, if the tax was incorrectly calculated or was paid as a result of a clerical error, a refund may be issued. In this situation, the petitioner has the burden to establish that there was a miscalculation or clerical error. A refund must not be granted for any credit earned under Section 52-55.

The petition must contain:

1. a statement that the petitioner is the current owner of the property at the time the petition is submitted to Permitting Services;
2. a copy of the receipt issued by Permitting Services indicating payment of the development impact tax;



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

3. a certified copy of the latest recorded deed for the property;
4. a statement of the reasons for which the refund is sought and specify the section of the code that the petitioner is using as justification for the refund;
5. the date on which the event occurred which resulted in the petition for a refund;
6. an affidavit by the petitioner certifying any credits or refunds which have been applied for or granted for impact taxes previously paid for this property, and;
7. any other reasonable information which may be requested by the Department to verify or substantiate the assertions made in the petition.

For all refund petitions the Department of Permitting Services must issue a written decision on a refund within 3 months from the receipt of the petition.

1. Permitting Services must verify with the Department of Finance that the petitioner owes no other taxes or fees prior to issuance of a refund.
2. If a decision to grant a refund is made for a property within either the City of Rockville or the City of Gaithersburg, Permitting Services must notify the Department of Finance of that city as well as the Montgomery County Department of Finance and authorize said refund.

F. Credits

All credit requests must be submitted to the Department of Transportation, which has responsibility for certifying the credit. The Department of Permitting Services must refer all credit requests to the Department of Transportation. All requests must be submitted in writing and include a full explanation of the improvement for which a credit is being requested, the section of Code that allows the credit, and the justification for that credit.

A property owner may be eligible for an impact tax credit under any of the circumstances below:

1. Section 52-55(a):
 - a. Under Section 52-55(a), there are two circumstances under which a property owner may be eligible for an impact tax credit. These are:

[a.](1) If, prior to July 1, 2002, a property owner entered into a "participation agreement, or a similar agreement with the state or a municipality, the purpose for which was to provide



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

additional transportation capacity” as defined in Section B [*] of this regulation, the property owner is eligible for an impact tax credit; or

- [b.](2) A property owner is also eligible for a credit if the owner has received approval of a subdivision plan, development plan, or similar development approval by the County or a municipality before July 1, 2002 that resulted in requiring the property owner to build or contribute to a transportation improvement that provides additional transportation capacity as defined in Section B [*] of this regulation.

In either circumstance, the amount of the credit must be equal to the amount of any charge paid under the participation agreement or the cost of the improvement or contribution required as a condition of development approval as stated above. If more than one property owner has entered into the same participation agreement, the Department of Transportation must determine the amount of the credit accruing to each of the property owners. Credits to any one property owner must not exceed that property owner’s share of the cost of the improvement unless the property owners have agreed otherwise.

b. For purposes of Section 52-55(a) a property owner who has entered into a participation agreement includes any successor in interest to the property owner if:

- [a.](1) the successor in interest has jointly assumed the obligations of the property owner under the participation agreement, and;
- [b.](2) the property owner has assigned his claim for credit to the successor in interest.

c. Any request for impact tax credit under Section 52-55(a) must include:

- [a.](1) identification of the participation agreement by name, number (if applicable), and date;
- [b.](2) a copy of the participation agreement
- [c.](3) an affidavit by the applicant certifying any refunds or credits which [has] have been applied for or granted for the property which is the subject of the agreement, and;
- [d.](4) such other information as may be required by the Department of Transportation.

The Department of Transportation must determine whether a credit is appropriate and, if so, the amount of the credit.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

2. Section 52-55(b):

Under Section 52-55(b) a property owner must receive a credit for constructing or contributing to an improvement of the type listed in Section 52-58 if the improvement reduces traffic demand or provides additional transportation capacity.

a. The Department of Transportation must not certify a credit for any capacity improvement to a State road or an action that is limited to a State road except under the following circumstances:

- [1.](1) a transit or trip reduction program that operates on or relieves traffic on a State road;
- [2.](2) an improvement to a State road that is included in a memorandum of understanding between the County and either Rockville or Gaithersburg.

b. The Department of Transportation must determine eligibility of the impact tax credit in accordance with Section 52-55(b) and Section 55-58. Improvements of the type listed in Section 52-58 include:

[1.](1) A new road or widening of an existing road that adds highway or intersection capacity or improves transit service or bicycle commuting, such as bus lanes or bike lanes.

[•](A) Additional highway capacity must be for the general public use (not just to accommodate the traffic generated by the property) and includes the construction of new roadway segments, pavement widening to implement additional travel or approach lanes and any improvement deemed by the Director of the Department of Transportation to provide additional physical transportation capacity.

[•](B) Additional intersection capacity must be the result of a widening, which includes moving a curb or median to accommodate additional lanes.

[•](C) Intersection capacity does not include lanes added by restriping the pavement which is not a permanent widening of an existing road that adds capacity as specified in Section 52-58.

[•](D) For the purpose of this regulation, credits must not be provided for certain physical improvements that may increase the operating capacity of a road or intersection but do not increase the existing maximum theoretical capacity, including signal timing changes, or other operational changes to the road or



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

intersection.

[•](E) If a credit is requested for an "expanded" transit center or park-and-ride lot, applicant must provide plans that clearly delineate the existing and expanded transit center or park-and-ride lot.

[2.](2) new or expanded transit center or park-and-ride lot

[•](A) In order for an expanded transit center or park and ride lot to be eligible for a credit, it must serve a regional benefit, not just the development for which the credit is requested.

[•](B) [In an expansion to] If an existing transit center or park-and-ride lot is expanded, only the pro-rated costs associated with the [expanded part] expansion in the number of spaces of the transit center or park-and-ride lot [is]are eligible for credit. A credit will not be given for replacement parking of an existing park and ride lot.

[•](C) For any park-and-ride lot to be eligible for a credit, it must be located along a commuting corridor where the lot will be or is being used for commuter parking to rideshare, take transit or other means of commuting that result in a reduction of vehicle trips on [and thereby trips are being taken off of] the [roadway] road network.

[•](D) In order for a new or expanded park-and-ride lot to be eligible for a credit, the parking must be available to the public free of charge 7 days per week 24 hours per day.

[•](E) The value of the credit for a new or expanded park-and-ride lot will be based on the value of the new parking spaces or the increase in the number of spaces above the previously existing spaces. Such cost must be calculated as if the change was for surface parking.

[3.](3) a bus added to the Ride-On fleet, but not a replacement bus

[•](A) Purchasing a bus is only eligible for a credit if that bus or buses [represents] represent an actual increase in the size of the fleet, adding to the capacity of the fleet.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

[•](B) The purchase of a bus to replace an existing bus does not add capacity and is not eligible for a credit.

[•](C) In order for a bus with an average life of 12 years to be considered as adding "permanent" capacity there must be a commitment that the additional bus will be part of the fleet for the normal operating life of that bus.

[4.](4) a new bus shelter, but not a replacement bus shelter

[•](A) Purchasing and installing a bus shelter is only eligible for a credit if that shelter is a new addition to the inventory of bus shelters in the County.

[•](B) The purchase and installation of a bus shelter that replaces an existing shelter (even if that shelter is an improvement on the existing shelter) is not eligible for a credit.

[5.](5) a hiker-biker trail used primarily for transportation

[•] To determine that a hiker-biker trail is to be used primarily for transportation purposes rather than recreation, the location of the trail and the proximity to the road network must be evaluated.

• A hiker-biker trail must be located within the commuting path in order to be considered as a viable alternative transportation mode.

• The hiker-biker trail must present itself as a logical link between origins and destinations and/or residential communities and employment centers.

• "Used primarily for transportation" as stated in Section 52-58(5) of the Montgomery County Code means a hiker-biker trail that is maintained by the Department of Transportation and used mostly for commuting purposes.]

(A) To be eligible for a credit as a hiker-biker trail used primarily for transportation, the Department must consider the following criteria prior to granting a credit:

(i) For a hiker-biker trail maintained by Montgomery County the following criteria must be considered:

• Whether the hiker-biker trail is used primarily for commuting



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

purposes.

- The location and proximity of the hiker-biker trail to the road network.
- Whether the hiker-biker trail is located within the commuting path and is a viable alternative transportation mode.
- Whether the hiker-biker trail is a logical link between origins and destinations of residential communities and employment centers.

(ii) For a hiker-biker trail that is not maintained by Montgomery County, in addition to considering the criteria above in subparagraph (A)(i), the following criteria must be met in order to qualify for a credit:

- The hiker-biker trail is maintained by a public agency.
- The hiker-biker trail is specifically identified as a master planned bike way in the transportation element (chapter) of an area master plan or in the Countywide Bikeways Functional Master Plan.
- The hiker-biker trail is located within or provides direct access to a designated urban area in the Road Code.
- The hiker-biker trail provides a direct connection between at least two other master planned transportation bikeways.
- The hiker-biker trail serves at least two master planned community facilities.
- The hiker-biker trail is part of a negotiated agreement to meet other master planned objectives.
- The hiker-biker trail is expected to be used by a significant number of bicyclists for commuting purposes.

(B) After considering the criteria in subsection (A)(i) and/or if the hiker-biker trail not maintained by the County meets the criteria in subsection (A)(ii), the Director is



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

authorized to negotiate the extent of the credit granted, not to exceed the cost of design and construction of the hiker-biker trail.

[6.](6) a bicycle locker that holds at least 8 bicycles

[•](A) Bicycle locker must be a new locker not a replacement locker.

[•](B) Bicycle locker must be located at a major activity center or commuter transfer location where the locker would be used as a means to remove trips from the roadway network.

(7) a bikesharing station

In order for the cost of a bikesharing station to be eligible for a credit it must:

(A) be consistent with and incorporated into the County's Bikeshare system and approved by the Director, Department of Transportation.

(B) add "permanent" capacity. To be considered "permanent" the site and bicycles must have a minimum life of 12 years.

The amount of the credit may include:

(A) The cost of any infrastructure (e.g., docking station, concrete pad) and purchasing bicycles for the bikesharing station for the minimum 12 year life.

(B) The operating costs based on the County's current operating contract for Bikeshare.

(C) Credits will only be certified if funds have already been paid to the County or if a surety instrument is provided to the County for any future payments.

[7.](8) a sidewalk connector to a major activity center or along an arterial or major highway

[•](A) To determine whether a sidewalk actually serves as a connector to a major activity center its location and limits must be provided by the applicant.

[•](B) Applicant must provide information on sidewalk linkages to activity centers such as schools, shopping areas, employment centers, and metro to assist in determining eligibility for a credit.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

- [•](C) Arterial or major highways are considered to be classified as arterial or higher in the Master Plan of Highways (and should include Business Streets as well) and carry commuting and/or regional traffic.

- [•](D) "Major activity center" means a major employment area or commercial center such as a shopping mall.

[8.](9). The operating expenses of any transit or trip reduction program.

- [•](A) Transit or Trip Reduction Programs must be a Condition of Approval and/or include an executed Trip Reduction Program Agreement that states how the program is to reduce trips, the required life of the program in terms of years, and requires a security instrument based on the estimated cost of the program.

- [•](B) Trip Reduction Programs must relate to a specific program with set or established goals for the number of trips to be reduced by the program.

- [•](C) Only operating expenses associated with the transit or trip reduction program are eligible for credit. Examples of these operating expenses include but are not limited to advertising and marketing costs, survey costs, staffing, space, furniture, supplies, materials, bus fuel and costs associated with paying a bus driver.

- [•](D) In case of default on the Agreement, the security instrument must be forfeited and used to cover the operating expenses of the program so that the program will continue for the agreed upon life of said program.

c. The Department of Transportation must determine the amount of the credit in accordance with Section 52-55.

[1.](1) For improvements that have already been completed, the credit is based on the actual cost of the construction of the improvement.

- [a.](A) Documentation of actual costs including invoices, copies of checks or payments must be provided by the applicant in order to determine the actual cost of an improvement.

- [b.](B) The burden is on the applicant to provide documentation in sufficient detail to



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

determine whether a cost is an eligible cost.

[c.](C) Eligible costs include engineering, design, and construction costs associated with an eligible transportation improvement.

[d.](D) Right-of-way costs are not an eligible cost unless a loss of development benefit (without compensation) can be demonstrated.

[e.](E) Attorney fees are not eligible costs of implementing a transportation improvement.

[2.](2) For improvements that have not been completed or implemented at the time of a credit request, the credit must be based on the amount of the Performance Bond issued by Permitting Services.

[a.](A) The applicant must provide a copy of the Performance Bond or similar Surety document in order for a determination of the cost of transportation improvements to be made.

[b.](B) The Performance Bond or Surety document must be valid with a current expiration date (no expired documents will be accepted).

[c.](C) The Department of Transportation must review the cost estimate on which the Performance Bond or Surety document was based to ensure that all costs are appropriate and eligible for an impact tax credit.

[d.](D) If the applicant fails to construct the improvement for which the applicant has received a credit, the Performance Bond may be applied to the cost of construction of the improvement or the applicant will be held liable for the payment of the Impact Tax for which the credit was obtained.

[3.](3) In order to certify a credit, two documents must be executed and submitted to the Department of Transportation.

[a.](A) The first of these documents is the Impact Tax Credit Certification Agreement (Certification Agreement) between the property owner and the Department of Transportation.

[•](i) By signing the Certification Agreement, the property owner agrees to



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

make certain transportation improvements for which the Department of Transportation agrees that an impact tax credit will be certified.

[•](ii) An executed Certification Agreement must be submitted to and executed by the Department of Transportation.

[•](iii) Once executed by all parties, the certification date must be entered in the Agreement by the Department of Transportation.

[•](iv) The credit must expire six years from the certification date if the credit is issued under Section 52-55(b) on or after March 1, 2004.

[•](v) Exhibits to the Agreement must include the document of subdivision or land use project approval that lists the conditions of land use approval or the equivalent of the land use approval and clearly highlight the transportation improvements that are to be implemented as a condition of that approval, a copy of any participation agreement relevant to the improvement and/or property, the costs or cost estimate of the transportation improvements and related documentation, and the schedule for completing the improvements as well as the schedule for build-out of the project.

[•](vi) All exhibits must be included as supporting documentation as part of the Agreement.

[b.](B) The second document required as part of certifying an impact tax credit is the completed Department of Permitting Services Impact Tax Credit Application. This application must be completed, signed and notarized by the property owner and submitted to the Department of Transportation and must include the following documentation or information:

[•](i) justification for impact tax credit;

[•](ii) if a credit is requested because of a participation agreement under Section 52-55(a), the justification for impact tax credit must include the name, number, and date of that participation agreement and a signed copy of the participation agreement;

[•](iii) if a credit is requested because of subdivision or land use project



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

approval that requires an improvement or contribution to an improvement that adds transportation capacity under Section 52-55(a), the justification for impact tax credit must include the name, number, and date of that subdivision plan or land use project approval that required the improvement for which a credit is requested, and an official copy of that approval;

[•](iv) if a credit is requested under Section 52-55(b), the justification for impact tax credit must include the name, number, and date of the subdivision plan or land use project approval that required the improvement consistent with Section 52-58 for which a credit is requested, and an official copy of that approval;

[•](v) Affidavit #1 (signed by the applicant to affirm that the applicant is the current property owner) and Affidavit #2 of the application (required if the credit is justified due to an agreement to construct or contribute to a transportation improvement that provides additional capacity) of the application (if required) must include the amount of any refunds or credits which have been applied for or granted for the property which is the subject of the credit application and must be completed and notarized;

[•](vi) The Department of Transportation must enter the amount of the certified credit on the last page of the application.

[•](vii) Once executed by the Department of Transportation, the original application must be forwarded to Permitting Services while one copy remains on file in the Department of Transportation and another must be forwarded to the applicant.

[4.](4) An impact tax credit is certified as of the date that the Application for Development Impact Tax Credit is signed by the Director of the Department of Transportation or his/her designee.

[5.](5) The Department of Transportation has responsibility for certifying a credit. By certifying a credit, the Department confirms that a credit is eligible for a specific transportation improvement and certifies the amount of that credit. The Department will transmit the



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

certification documentation (the completed Impact Tax Credit Certification Agreement and the Application for Development Impact Tax Credit) to Permitting Services.

[6.](6) Upon receipt of a certified credit from the Department of Transportation, Permitting Services must create an impact tax credit escrow account in the permit database under the name of the property owner to which the credit is certified. The amount of the credit is entered as a deposit to the escrow account by which the credit amount can be drawn down as each building permit is issued. The credit is not issued until the property owner has the credit applied against impact tax due for a specific property in order for the building permit to be issued. Only Permitting Services can issue a credit.

[a.](A) An issued impact tax credit is a used credit and no longer available to the property owner.

[b.](B) In order for a building permit to be issued either the appropriate impact tax must be paid or the property owner must demonstrate that a credit has been certified so that the impact tax can be paid from the impact tax escrow account.

[c.](C) The Application for Development Impact Tax Credit is the documentation used to demonstrate that a credit has previously been certified.

[d.](D) At the time Impact Tax payment is due to Permitting Services, applicants wishing to pay Impact Taxes with a credit must submit a copy of the certification signature page of the Application for Development Impact Tax Credit in which the Department of Transportation has certified the credit and the credit amount.

[e.](E) The certified credit can be drawn down as building permits are issued until it has a zero balance. At that time, if additional building permits are requested, the property owner must pay the appropriate impact tax or have an additional credit certified.

[7.](7) An applicant for subdivision, site plan, or other land use project approval from the County, Gaithersburg, or Rockville, or the owner of property subject to an approved subdivision plan, land use project approval, or similar approval, may request a Declaration of Allowable Credits from the Department of Transportation under Section 52-55(b)(3).

[a.](A) A declaration of allowable credits can assist in business decisions regarding



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

property by advising the applicant whether a credit will be certified for making or contributing to specific transportation improvements.

- [b.](B) The property owner must submit to the Department of Transportation a written request for a declaration of allowable credit.
- [c.](C) Once all required documentation is received from the applicant, the Department of Transportation has 30 days to issue a written declaration of allowable credit to the applicant.
- [d.](D) The Department of Transportation may defer its decision for an additional 15 days by notifying the applicant that it needs more time to complete its analysis and review of the proposed improvement.
- [e.](E) Any improvement for which a declaration of allowable credit is issued in which that improvement is deemed to be eligible for an impact tax credit will be certified under Section 52-55(b) if and when the applicant submits a formal impact tax credit request.
- [•](F) In order for the Department of Transportation to act on an improvement that was originally declared eligible under a declaration of allowable credit, the same process by which any credit is certified must be followed and an Impact Tax Credit Certification Agreement and an Application for Development Impact Tax Credit must be completed and executed.

3. Section 52-55(c):

a. A property owner may apply to Permitting Services for a credit of the amount of development impact tax previously paid under the following two circumstances:

[a](1) [if] if the project has been altered, resulting in a decrease in the impact tax due in accordance with the definition of "altered" in Section B of these regulations.

[•](A) An example of an "altered" project would be a reduction in the amount of square feet for nonresidential property.

[•](B) Under this circumstance, Permitting Services may reimburse a portion of the impact tax previously paid.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

[b.](2) [if] If the building permit has lapsed because construction has not begun.

[•](A) In accordance with the definition of "lapsed" as defined in Section B of these regulations.

[•](B) Under this circumstance, Permitting Services may reimburse the impact tax previously paid.

b. In either circumstance a property owner may apply to Permitting Services for a credit of impact tax previously paid. The application must include:

[a.](1) a certified copy of the latest recorded deed for the property;

[b.](2) identification of the permits and impact tax district for which the credit is claimed;

[c.](3) a statement of the reasons for which the credit is sought, and;

[d.](4) an affidavit by the applicant certifying any credits or refunds which have been applied for or granted for this property.

G. Unusual Cases or Circumstances

The Director of the Department of Permitting Services, in consultation with the Director of the Department of Transportation and/or the County Attorney, as required, may apply the impact tax law in the event of unusual cases or circumstances, such as the classification of development which does not clearly fall into one of the categories described in Attachment 1 to this regulation.

H. Appeals

An applicant for a building permit or a property owner may appeal the determination of the amount of impact tax due, or the amount of credit certified, the determination that no credits should be certified, or the determination of an impact tax refund, to the Maryland Tax Court in accordance with Article 24, Title 9, and the Tax-General Article, Title 3, of the Maryland Code and Sections 52-54(f) and 52-56 of the Montgomery County Code. The filing of an appeal does not stay collection of the impact tax. If the appealing party files a bond or other surety satisfactory to the County Attorney in lieu of payment of the impact tax, the Department of Permitting Services must issue the building permit and the appeal may proceed. Impact tax that is paid will only



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

be refunded as provided in Section 52-54 of the Montgomery County Code.

I. Tax Funds

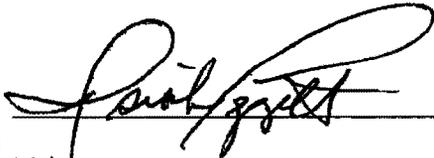
The Director of Finance will use the construction cost index for the Baltimore area, as published in the Engineering News-Record, a publication of The McGraw-Hill Companies, Inc., to calculate the new tax rates required under Section 52-57(f) of the Montgomery County Code.

J. Use of Impact Tax Funds

Impact tax funds may be used to program any of the types of transportation improvements listed in Section 52-58 of the Montgomery County Code.

K. Effective Date

This Executive Regulation will take effect immediately after adoption by the County Council.



Isiah Leggett

County Executive

Date: 6/4/2014

Approved as to form and legality:

Office of the County Attorney



Date: 5-30-14



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

ATTACHMENT I

RESIDENTIAL

SINGLE FAMILY

| | | |
|-----------------------|--------------|--------------------|
| Accessory Apartment | Duplex | Dwelling Unit (DU) |
| DU, Detached | DU, Fourplex | DU, Triplex |
| DU, 2 Family Detached | Modular Home | Townhouse |

MULTI-FAMILY

| | | |
|-----------------------------|----------------------|----------------|
| Apartment Building | Apartment Hotel | Boarding House |
| Garden Apt/Condo/Co-op | Group Facility | Guest House |
| High Rise/Condo/Co-op | Mid Rise/Condo Co-op | Mobile Home |
| Multi-Family Senior Housing | Tourist Cabin Camp | |

NON-RESIDENTIAL

OFFICE

| | | |
|------------------------------------|----------------------|----------------------------|
| Broadcasting Station | Business Office | Computer Service |
| Data Processing Equip. Maintenance | Drafting Services | Employment Agency |
| Finance Service | General Office | Government Office Building |
| Insurance Office | Lawyer's Office | Management Consultants |
| Professional Offices | Real Estate Services | Research Institute/Center |
| Secretarial Services | Telegraph Service | Trade Association |
| Telephone Communication Center | Title Insurance Co. | Word Processing Service |

PRIVATE ELEMENTARY & SECONDARY SCHOOL

| | | |
|----------------|------------------|--------------------|
| Nursery School | Parochial School | Private Elementary |
|----------------|------------------|--------------------|



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

Private Secondary

PLACES OF WORSHIP

| | | |
|---------|-----------|-----------|
| Church | Mosque | Parsonage |
| Rectory | Synagogue | Temple |

INDUSTRIAL

| | | |
|-------------------------------|-------------------------------|--------------------------------|
| Bakery Products Manufacturing | Beverage Manufacturer | Blueprinting |
| Bookbinding | Carpet Cleaning | Caterer |
| Cement Manufacturing | Ceramic Products | Chemical Product Manufacturing |
| Cold Storage | Converted Paper Manufacturing | Dairy Products Manufacturing |
| Dental Lab Services | Drug Manufacturing | Engraver |
| Exterminating | Food Product Manufacturing | Furniture Manufacturing |
| Grain Mill | Laboratory | Laundry |
| Manufacturing | Meat Products Manufacturing | Metal Products Manufacturing |
| Millinery | Millworking Services | Moving & Storage |
| Newspaper Print/Publishing | Paper Products Manufacturing | Petroleum Refining |
| Photo Finishing | Plastic Materials | Pottery Products Manufacturing |
| Recycling Center | Rubber Products Manufacturing | Sign Painting Shop |
| Taxicab Company | Textile Products | Trash Service |
| Warehouse | Welding Shop | Wholesale Trade |
| Wood Products Manufacturing | Work Shop | |

OTHER NON-RESIDENTIAL

| | | |
|-----------------|-------------------|--------------------|
| Aircraft School | Ambulance Service | Amusement Facility |
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MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

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| Animal Shelter | Art Center | Art School |
| Art Studio | Athletic Club | Auditorium/Hall |
| Billiard Parlor | Bioscience Facility | Bowling Alley |
| Business School | Bus Depot | College/Private |
| Commercial Pool | Convention Hall | Culture Center |
| Club | Dancing School | Day Care Center |
| Dog Kennel | Driving School | Dump |
| Funeral Parlor | Health Club | Hospital |
| Indoor Theater | Legitimate Theater | Library |
| Martial Arts Center | Music Instruction | Private Postal Facility |
| Public Utility Building | Rescue Squad | Sanitary Land Fill |
| Sewage Treatment Plant | Skating Rink | Stadium/Arena |
| Trade School | University | Veterinary Service |
| Vocational School | Youth Center | Nursing Home |
| Hotel | Motel | |
| <u>RETAIL</u> | | |
| Aircraft Parts Sales/Service | Alarm System Sales | Alcoholic Beverages |
| Animal Hospital | Antique Shop | Appliance Repair Shop |
| Appliance Store | Aquarium Supply Store | Arcade |
| Art Supply | Audio Visual Supplies | Automatic Teller |
| Automobile, Light Truck Rental | Automobile Paint Shop | Automobile Repair/Service/Sales |
| Bakery Products Sales | Bank | Barber Shop |
| Bathroom Accessories | Beauty Shop | Beer/Wine Retail |



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|---|------------------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

| | | |
|--------------------------|------------------------|----------------------------|
| Bicycle Repair | Bicycle Retail | Boat Sales |
| Book Sales | Bridal Shop | Building, Materials/Supply |
| Business Machine Rental | Business Machine Sales | Cabinet Shop Lots |
| Car Wash | Carpet Sales | Carryout |
| Cleaners | Clock/Sales/Repair | Clothing Store |
| Craft Supplies | Decorating Service | Delicatessen |
| Department Store | Doors, Retail/Install | Duplicating Service |
| Electrical Supply | Electronic Equipment | Exterminating |
| Fabric Store | Feed/Grain Storage | Fish Market |
| Florist | Food & Beverage Store | Frame Shop |
| Fur Sale | Furniture Store | Garden Center |
| Gasoline Service Station | General Merchandise | Gift Shop |
| Greenhouse, Commercial | Grocery Store | Gun Sales |
| Hardware Store | Health Food Store | Ice Cream Shop |
| Interior Decorating | Jewelry Store | Landscaping Service |
| Laundromat | Lighting Supply Store | Luggage Sales |
| Lumber Yard | Lumber/Wood Products | Machine Rental |
| Mail Order House | Mattress Retail | Medical Office |
| Mobile Home Sales | Motorcycle Sales | Museum Store |
| Musical Instruments | Needlework | Newsstand |
| Optical Goods, Sales | Optician | Produce Stand |
| Paint Sales | Paper Products Sales | Pet Shop |
| Pharmacy | Photo Studio | Photo Supplies |



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland, 20850

| | |
|--|-----------------|
| Subject Development Impact Tax for Transportation Improvement | Number 26-13 |
| Originating Department Department of Transportation | Effective Date |

| | | |
|-------------------------|----------------------|------------------------------|
| Plant Nursery | Piano Sales/Service | Post Office |
| Print & Publishing Shop | Radio & TV Repair | Record Shop |
| Rental Service | Restaurant | Savings & Loan |
| Service Station | Sewing Machine Sales | Shoe Repair Shop |
| Shoe Store | Shopping Center | Showroom |
| Specialty Shop | Sporting Goods Store | Stationery Store |
| Stove Sales | Surgical Supplies | Surplus Store, Commercial |
| Tailor Shop | Tavern | TV Sales & Service |
| Tire Dealer | Theater | Tombstone Sales |
| Toy Sales | Travel Service | Truck Repair Service |
| Undertaker | Upholstery Service | Vacuum Cleaner Sales/Service |
| Variety Store | Vegetable Market | Vending Machine Service |
| Wallpaper Store | Watch Repair Service | Yarn Shop |

**Fiscal Impact Statement
Executive Regulation 26-13
Development Impact Tax For Transportation Improvement**

1. Executive Regulation Summary.

Executive Regulation 26-13 amends and supersedes Executive Regulation 9-09. Its purpose is to clarify and expand the elements of the hiker-biker trail impact tax credit, clarify the elements of the expanded transit center or park-and-ride lot credit and add new provisions concerning the bikesharing station impact tax credit.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

There should be no direct impact on projected revenues from impact taxes. Last year, with the approval of Bill No. 25-12, bikesharing stations became eligible for impact tax credit effective February 20, 2013. In order to provide guidance in determining what costs related to a bikesharing station are to be eligible for a credit and how that credit should be calculated, the DOT was tasked with updating the Executive Regulations. This proposed revision to the Executive Regulation is to provide that guidance. The fiscal impact of the bikesharing component was evaluated when Bill 25-12 was introduced. The proposed amendment to the Executive Regulation is to merely clarify how the law should be implemented. Included in the revision is additional clarification and guidance for the hiker-biker trail and the expanded transit center or park-and-ride lot provisions of the law as well as the new bikesharing station element. The Regulations do not directly impact the County revenues and expenditure estimates.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

No revenue or expenditure impact is anticipated.

4. An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.

Not Applicable.

5. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.

None.

6. An estimate of the staff time needed to implement the regulation.

The staff time needed to implement the regulation does not change as a result of the regulation in that it merely provides clarification as to what is required in order for an impact tax credit to be certified.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

The proposed regulation does not require new staff responsibilities. It provides clarification and direction for staff to use in determining whether a transportation improvement warrants an impact tax credit being certified and what can be considered in calculating the amount of the credit.

8. An estimate of costs when an additional appropriation is needed.

Not Applicable.

9. A description of any variable that could affect revenue and cost estimates.

Not Applicable.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

None.

11. If a regulation is likely to have no fiscal impact, why that is the case.

The proposed regulation serves the purpose of providing clarification, guidance, and direction as to what requirements must be met in order for an impact tax credit to be certified for certain specific types of improvements (hiker-biker trail, transit center, park-and-ride, and bikesharing). It also provides guidance in determining the amount of a credit to be certified for these improvements.

12. Other fiscal impacts or comments.

None.

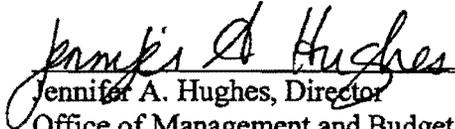
13. The following contributed to and concurred with this analysis:

Edgar Gonzalez, Department of Transportation

Emil Wolanin, Department of Transportation

David Moss, Department of Transportation

Scott Foncannon, Office of County Attorney



Jennifer A. Hughes, Director
Office of Management and Budget

12/16/13
Date