

T&E COMMITTEE #1  
December 7, 2015

## MEMORANDUM

December 3, 2015

TO: Transportation, Infrastructure, Energy and Environment (T&E) Committee

FROM: Glenn Orlin, <sup>GO</sup> Deputy Council Administrator

SUBJECT: Executive Regulation 26-13 AM III – Transportation Impact Tax Credits Clarification

On June 4, 2014 the Executive transmitted Executive Regulation 26-13 (Method 2), a proposed amendment to Executive Regulation 9-09 that would clarify the calculation of impact tax credits for hiker-biker trails, transit centers, and park-and-ride lots. Also, the proposed regulation addressed 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.

On July 28, 2014 the T&E Committee reviewed the proposed regulation, concurring with most of its provisions. However, there were some further revisions and clarifications that the Committee wished the Executive to consider, so it did not recommend approval of the regulation at that time. Eventually the Executive responded with Executive Regulation 26-13 AM in early 2015, and later, on July 15, 2015 he transmitted a corrected version, Executive Regulation 26-13AM II. This past week the Department of Transportation (DOT) found that one more correction was needed—to conform the effective date of the new 12-year life for credits to the January 1, 2016 date in Bill 47-15; the Council received Executive regulation 26-13 AM III on December 3, 2015. The transmittal memo is on ©A, and the proposed regulation on ©1-26, showing [deleted text bracketed] and new text underlined.

***Credits for transit centers, park-and-ride lots, and road widenings.*** 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 the fee, or offsetting all or part of it by building or widening a road 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 two-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 it is not how the credit provision was envisioned when the impact fee law was created in 1986.

Therefore, Council staff recommended revising subsection 2b.(1) to reflect the whole cost incurred in building or widening a road that adds capacity, rather than a pro-rata share. That has been incorporated in the revised regulation on ©9. The County Attorney's Office is of the opinion this change is significant enough to be included in the impact tax law itself, therefore it is one the amendments currently recommended by the Executive in Bill 47-15.

**Hiker-biker trails.** The proposed revisions are in section 2b.(5), which is found from the middle of ©11 to the top of ©13. 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 initial proposed regulation applied to trails maintained by Montgomery County. The problem is that Rockville and Gaithersburg can fund hiker-biker trails with impact tax funds collected within their respective jurisdictions, but under the initial proposed regulation developers in Rockville and Gaithersburg would not have been able to get credit for trails they build, because they would not 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.

Therefore, the Committee believed that trails to be maintained by Rockville and Gaithersburg be put in the same category as those to be maintained by Montgomery County. The revised regulation incorporates this point.

***Bikesharing stations.*** The proposed credit provisions are in section 2b.(7) on ©13. These criteria require that a bikesharing station be incorporated into the County’s bikeshare system and that it be approved by the DOT Director, and that the station and its bicycles have a minimum life of 12 years. The credit is based on the infrastructure cost and any net operating costs. At the July 2014 worksession the only suggestion was, for the sake of clarity, to replace in the (first) subsection (7)(B) the word “station” for “site,” so that it would read “To be considered ‘permanent’ the station and bicycles must have a minimum life of 12 years.” The Executive has made that change in the revised regulation.

**Council staff recommendation: Approve Executive Regulation 26-13 AM III.**

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OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

December 3, 2015

TO: Nancy Floreen, President, Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Executive Regulation 26-13 AM III

I am submitting for Council approval Executive Regulation 26-13 AM III, Development Impact Tax For Transportation Improvements. This regulation amends and supersedes Executive Regulation 9-09 and reflects a minor correction in the language that was recently transmitted in 26-13 AM II.

This corrected version has been approved as to form and legality by the Office of the County Attorney. If you have any questions or need additional information, please contact David Moss at 240-777-2184.

Attachment





# 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 AM III
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 AM III

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:**

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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 AM III
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.

## B. Definitions



# 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 AM III
Originating Department Department of Transportation	Effective Date

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.
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.



# 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 AM III
Originating Department Department of Transportation	Effective Date

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



# 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 AM III
Originating Department Department of Transportation	Effective Date

## 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 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.



# 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 AM III
Originating Department Department of Transportation	Effective Date

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;
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;



# 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 AM III
Originating Department Department of Transportation	Effective Date

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 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



# 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 AM III
Originating Department Department of Transportation	Effective Date

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.

**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.



# 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 AM III
Originating Department Department of Transportation	Effective Date

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, or total reconstruction of all or part of an existing road as required as part of 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 intersection.
- [•] 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



# 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 AM III
Originating Department Department of Transportation	Effective Date

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) 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.
- [•](F) 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 AM III
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 Cities of Rockville, or Gaithersburg the following criteria must be considered:

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



# 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 AM III
Originating Department Department of Transportation	Effective Date

- 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, the Cities of Rockville or Gaithersburg 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 AM III

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 station 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 AM III
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 determine whether a cost is an eligible cost.



# 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 AM III
Originating Department Department of Transportation	Effective Date

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



# 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 AM III

Originating Department

Department of Transportation

Effective Date

[•](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 and before December 31, 2015. Any credit certified under this subsection on or after January 1, 2016, expires 12 years from the date of certification.

[•](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 approval that requires an improvement or contribution to an



# 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 AM III
Originating Department Department of Transportation	Effective Date

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



# 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 AM III
Originating Department Department of Transportation	Effective Date

[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 property by advising the applicant whether a credit will be certified for making or contributing to specific 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 AM III
Originating Department Department of Transportation	Effective Date

- [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.

[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.



# 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 AM III
Originating Department Department of Transportation	Effective Date

[•](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 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



# 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 AM III

Originating Department  
Department of Transportation

Effective Date

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.

Handwritten signature of Isiah Leggett in cursive.

Date: Dec. 3, 2015

Isiah Leggett

County Executive

Approved as to form and legality:

Office of the County Attorney

Handwritten signature of the County Attorney in cursive.

Date: 12-3-15



# 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 AM III
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
Private Secondary		



# 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 AM III
Originating Department Department of Transportation	Effective Date

### PLACES OF WORSHIP

Church	Mosque	Parsonage
Rectory	Synagogue	Temple
<u>INDUSTRIAL</u>		
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
Animal Shelter	Art Center	Art School
Art Studio	Athletic Club	Auditorium/Hall



# 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 AM III
Originating Department Department of Transportation	Effective Date

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
Bicycle Repair	Bicycle Retail	Boat Sales
Book Sales	Bridal Shop	Building, Materials/Supply
Business Machine Rental	Business Machine Sales	Cabinet Shop Lots



# 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 AM III

Originating Department  
Department of Transportation

Effective Date

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
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



# 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 AM III
Originating Department Department of Transportation	Effective Date

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