



**Committee:** PHP

**Committee Review:** At a future date

**Staff:** Ludeen McCartney-Green, Legislative Attorney  
Livhu Ndou, Legislative Attorney

**Purpose:** To introduce agenda item – no vote expected

**Keywords:** #BethesdaOverlay #BOZImpact  
#SilverSpringOverlay #DDSImpact

**CORRECTED**  
AGENDA ITEM #3A  
October 24, 2023  
**Introduction**

## SUBJECT

Zoning Text Amendment (ZTA) 23-07, Bethesda (B) Overlay Zone - Park Improvement Payments and Downtown Silver Spring (DDS) Overlay Zone - Civic Improvement Funds

Lead Sponsor: Council President Glass at the Request of the Planning Board

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A; introduction

## DESCRIPTION/ISSUE

ZTA 23-07 would:

- (1) modify the method used to calculate the biennial adjustments and set an inflation limit in the Bethesda Overlay Zone's Park Improvement Payment and the Downtown Silver Spring Overlay Zone's Civic Improvement Fund; and
- (2) generally amend the density provisions of the Bethesda Overlay Zone and the Downtown Silver Spring Overlay Zone.

## SUMMARY OF KEY DISCUSSION POINTS

- In June 2023, the Council enacted Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments, along with an accompanying resolution that modified the calculation for the biennial adjustments for school and transportation taxes. The law became effective July 1, 2023.
- Bill 25-23 also established a 20% inflation cap on the development impact tax rate for school and transportation improvements; in addition, any excess dollar amount above the cap may be carried over and added to the following biennial tax rate adjustment.
- The purpose of ZTA 23-07, as recommended by the Planning Board (©6), is to mirror and adopt the changes made to the impact tax calculation in the County Code to: 1) the Park Impact Payment (PIP) within the BOZ Overlay Zone; and 2) the Civic Improvement Fund (CIF) within the DDS Overlay Zone.
- A public hearing is tentatively scheduled for November 28, 2023.

**This report contains:**

ZTA 23-07

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Planning Board Transmittal

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Ordinance No.: \_\_\_\_\_  
Zoning Text Amendment No.: 23-07  
Concerning: Bethesda (B) Overlay  
Zone Park Improvement  
Payments and Downtown  
Silver Spring (DDS)  
Overlay Zone Civic  
Improvement Funds  
Revised: 10/24/2023 Draft No.: 2  
Introduced: October 24, 2023  
Public Hearing: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Effective: \_\_\_\_\_

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- (1) modify the method used to calculate the biennial adjustments and set an inflation limit for the Bethesda Overlay Zone's Park Improvement Payment and the Downtown Silver Spring Overlay Zone's Civic Improvement Fund; and
- (2) generally amend the density provisions of the Bethesda Overlay Zone and the Downtown Silver Spring Overlay Zone.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division 4.9.	"Overlay Zones"
Section 4.9.2.	"Bethesda (B) Overlay Zone"
Section 4.9.8.	"Downtown Silver Spring (DDS) Overlay Zone"

**EXPLANATION:** **Boldface** indicates a Heading or a defined term.

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

\* \* \* indicates existing law unaffected by the text amendment.

## ORDINANCE

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. DIVISION 59-4.9 is amended as follows:**

**Division 4.9. Overlay Zones**

\* \* \*

**Section 4.9.2. Bethesda (B) Overlay Zone**

\* \* \*

**C. Development Standards**

\* \* \*

**2. Density**

\* \* \*

- b. BOZ Density means the total square footage of gross floor area by which new development in the Bethesda Downtown Plan Area may cumulatively exceed the maximum square footage of gross floor area allowed under the mapped CR and CRT zones. BOZ Density is determined by subtracting the gross floor area of existing and approved development from 32.4 million (the total gross floor area recommended by the Bethesda Downtown Plan). The Planning Board must periodically publish the gross floor area remaining in BOZ Density.

\* \* \*

**ii. Qualification**

To qualify for BOZ Density, a proposed development must:

- A. use all gross floor area allowed by the mapped CR or CRT FAR and may not transfer BOZ Density to any other property[.]; and
- B. except as provided under Subsection 3 concerning MPDUs, make a Park Impact Payment before the issuance of any building permit application at a rate

of \$10 per square foot of approved BOZ Density gross floor area. The Planning Board, after advertising and holding a public hearing, must adjust this payment rate on July 1 of each odd-numbered year by the [annual average] cumulative increase or decrease in a published construction cost index [for] over the prior two [most recent] calendar years. The Planning Board must cap the biennial Park Impact Payment rate not to exceed 20%. If the biennial tax rate adjustment exceeds 20%, the excess dollar amount must be carried over and added to the Park Impact Payment rate before calculating the next adjustment. If this total adjustment, including any carried over value, again exceeds 20%, the excess dollar amount must be carried over and added to the rate before calculating the next biennial adjustment. If a property owner dedicates land designated in the master plan as a recommended open space to the M-NCPPC Parks Department, the Planning Board may reduce the amount of square footage for which a Park Impact Payment must be made.

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#### **Section 4.9.8. Downtown Silver Spring (DDS) Overlay Zone**

\* \* \*

#### **C. Development Standards**

\* \* \*

**2. Density**

\* \* \*

**e. Qualification**

To qualify for DSS Density, a proposed development must:

- i. Make a contribution to the Civic Improvement Fund before the issuance of any building permit at a rate of \$5 per square foot of approved residential DSS Density gross floor area and at a rate of \$3 per square foot of approved non-residential DSS Density gross floor area
- ii. The Planning Board, after advertising and holding a public hearing, must adjust this payment rate by July 1 of each even-numbered year by the [annual average] cumulative increase or decrease in a published construction cost index [for] over the prior two [most recent] calendar years. The Planning Board must cap the biennial Civic Improvement Fund rate not to exceed 20%. If the biennial tax rate adjustment exceeds 20%, the excess dollar amount must be carried over and added to the Civic Improvement Fund rate before calculating the next adjustment. If this total adjustment, including any carried over value, again exceeds 20%, the excess dollar amount must be carried over and added to the rate before calculating the next biennial adjustment.

\* \* \*

**Sec. 2. Effective date.** This ordinance becomes effective 20 days after the date of District Council adoption.

This is a correct copy of Council action.

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Sara R. Tenenbaum

Clerk of the Council



**June 8, 2023**

**To:** The Honorable Evan Glass  
President, Montgomery County District Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

**From:** Montgomery County Planning Board

**Subject:** Proposed Zoning Text Amendment – Park Impact Payment and Civic Improvement Fund

#### **BOARD RECOMMENDATION**

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on June 8, 2023 and by a vote of 4:0 (Commissioner Bartley absent) recommended a new Zoning Text Amendment (ZTA) that would update the way the Park Impact Payment (PIP) and Civic Improvement Fund (CIF) are adjusted for inflation. The current bi-annual adjustments to the PIP and CIF are based on the same annual averaging methodology Bill 25-23E seeks to amend for updates to the transportation impact tax rates. This ZTA would mirror the proposed changes to the impact tax calculations recommended by the Board in its comments on Bill 25-23E.

The PIP is collected from developments within the Bethesda Overlay Zone, on a square footage basis, that exceed the mapped zoning density and meet certain requirements. The CIF is a similar payment that applies to projects in the Downtown Silver Spring Overlay Zone. The PIP is recalculated by July 1 of each odd-numbered year, and the CIF is recalculated by July 1 of each even-numbered year. The existing code has the adjustment based on an annual average change in construction costs whereas the new methodology would base the adjustment on a cumulative change in construction costs. The ZTA also limits the adjustments to no more than a 20 percent increase and provides for carrying over any excess increase to future recalculations.

The Planning Board appreciates the Council's consideration of this ZTA to update the PIP and CIF rate adjustment procedures to match the proposed changes to the transportation impact tax recalculation procedures. Planning staff are available to assist if the Council has questions or requests additional analysis pertaining to the impacts to the PIP and CIF rates.

The Honorable Evan Glass

June 8, 2023

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### **CERTIFICATION**

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, June 8, 2023.



**Jeffrey Zyontz**

Chair

### **Attachments:**

A - Planning Board Staff Packet Bill 25-23E and Proposed ZTA