

December 3, 2024

Hon. Andrew Friedson
President, Montgomery County Council
100 Maryland Avenue
Rockville, MD 20857

Subject: Support - Bill 22-24 - Taxation - Collection of Development Impact Taxes

Dear President Friedson,

The Montgomery County Chapter of the Maryland Building Industry Association (MBIA) is submitting testimony in support of Bill 22-24 - Taxation - Collection of Development Impact Taxes. The bill would strike the provisions about payment 6 or 12 months after the building permit issued and amend the law so that payment is not required until final inspection of the building by DPS, regardless of the type of building.

The proposed bill is a necessary step to addressing the burden of impact fees on development in the county. Montgomery County has the highest impact tax rates in the state by a substantial margin, and they continue to increase on a bi annual basis, with the most recent rate increasing nearly 70 percent then forced the council to pass an emergency cap on the increased figure amount at 20 percent.

- We support the expedited effective date of 1/1/25
 - o We would recommend changing the last sentence to be: *"The amendments made in Section 1 take effect on January 1, 2025, and must apply to any application for a building permit that is active and the payment has not been made or is filed on or after January 1, 2025."*
 - This would help active permits, avoid a lag in building permit filing during December, and keep DPS' workflow smooth
 - o Does this apply to the School Utilization Premium Payment? If not, we would recommend that it be included

From an equitable standpoint, the new development does not have an impact on schools until the house is occupied so having it paid at occupancy permit is a stronger "essential nexus" for the impact tax. The same is true for the permanent transportation impact. The temporary traffic impact for construction was not (and should not be) a factor in the original calculation of impact tax amounts. Paying up to \$56,274 in school and transportation impact taxes per home is a substantial amount of money and a major cash flow item in every home's construction budget. Having that money paid earlier than needed has a number of direct and indirect costs for builders or a person who is building their own home. That \$56,274 has an opportunity cost and could be used for other investments (like building more houses faster) by minimizing the length of time it is tied up and being financed

- If the impact taxes are paid with money that is borrowed as part of the construction loan, the builder may have to pay several months of interest on the tax
- Putting the payment closer to occupancy permit, also puts it closer to the resident's purchase of the home. If those can occur in the same month, the repayment of the construction loan can occur in the same month that the tax payment is made to avoid/minimize interest

The improved “essential nexus” is even more important in light of the United States Supreme Court’s unanimous decision on *Sheetz v. El Dorado County*. The decision which states, that *permit conditions must have an “essential nexus” to the government’s land-use interest and permit conditions must have “rough proportionality” to the development’s impact on the land-use interest.*¹ This highlights the importance of how these fees are calculated for development projects in the county and their impact.

The state of housing in Montgomery County is concerning, as stated in the staff report development has slowed and the county’s housing goals have not come close to being reached. Any lever to increase housing (of all types) needs to be pulled and this needs to include financial offsets. Impact taxes contribute a minuscule amount to the county’s overall CIP and these figures have and will decrease as building continues to do the same. The impact tax policy is a deterrent to housing production in Montgomery County and needs to be completely re evaluated.

However, we greatly appreciate Councilmember Glass and the council in their bringing this bill forward. While the system is not perfect, this is a step in the right direction and the industry appreciates the opportunity to provide feedback.

We urge the council to give this measure a favorable report with the suggested edits.

Respectfully,

Griffin Benton

Griffin Benton
Vice President, MBIA

¹ 22-1074 *Sheetz v. County of El Dorado* (04/12/2024) - https://www.supremecourt.gov/opinions/23pdf/22-1074_bqmd.pdf