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President Kate Stewart and
Members of the Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Re: Bill No. 24-25, Transportation Demand Management – Repeal

Dear President Stewart and Members of the Council:

The purpose of this letter is to transmit comments in strong support of proposed Bill No. 24-25, to repeal Chapter 42A of the Code concerning transportation demand management (“TDM”).

Bill No. 24-25 is an idea whose time has come. Because the TDM provisions of Chapter 42A are an idea whose time has passed.

This Bill takes an important step toward removing burdens from the private sector. Burdens over which they have no control. As noted in Councilmember Balcombe's Memorandum, significant changes in the commuting/work environment have occurred. Recent surveys are noted as indicating that the County has exceeded commuting goals, due to changes in commuting patterns. Given the changes in the telework environment, the increasing complexity of the TDM program, and the challenge/cost/risk it presents to owners and employers, repeal is appropriate at this time.

As described in the packet, the audits conducted by the Inspector General illuminate deficiencies in the TDM program. Coupled with having achieved and exceeded the NADMS goals, the results of the audits provide a further basis for repeal.

If the County wants to continue TDM efforts, the County should operate the program in a way that it becomes a public service. In other words, make it into a carrot, not a stick.

Individual Project-Level Evaluation

With adoption of the TDM legislation in 2019 (Bill No. 36-15), Chapter 42A unfortunately returned to a project-by-project evaluation of traffic management, that looks to each project to achieve goals individually and internally to itself. This tracks and measures actions at the individual project level, rather than as a larger pool through a Transportation Management District (“TMD”). The focus on individual project actions causes competition rather than cooperation. Further, the instrumentalities that are utilized for shared commuting are not under the control of

owners or employers. Whether Ride-On, or BRT, or other measures, the County is in control. The County could easily move a stop, build BRT, or change the timing on a route, and thus make it harder for an employer in a particular location to have sufficient commuting options to achieve the goals. This is particularly important where Chapter 42A extended the requirement for TDM measures to areas outside of established TMDs.

Penalties

The current law penalizes employers and property owners for failing to achieve results that are out of their control. Their success or failure is uniquely in the hands of their tenants/employees. In trying to encourage positive participation in transportation mitigation efforts, the private employer/owner should only be asked to do something that is within their control -- take a certain action; provide a certain opportunity; make certain things available. Failing to undertake those promised actions that are within their control is a justifiable basis for a penalty. But contrast this with requiring a commitment to accomplish something that is not within the party's control -- such as making employees accept an offer to utilize the opportunities provided -- and then penalizing when employees fail to do so.

Limited Pool of Users

With this project-based approach, only employees of the individual project are available for marketing with commuting alternatives. Compliance is measured within the coverage of the individual TDM agreement, which only applies to a particular project. This reduces the pool of participants who could take advantage of particular programs. For example, two neighbors who work in adjacent buildings would never be matched for carpooling, because each building's efforts are directed only to its own occupants. In contrast, efforts undertaken by the County, through a TMD, would market to the entire pool of employees in the area, in many buildings, and likely identify the two neighbors who could then take advantage of carpooling opportunities. Similarly, the TMD-level approach will balance out the mix of uses that have different susceptibilities to traffic mitigation. Different uses are not all able to mitigate trips at the same rate. Progress toward meeting goals does not occur at a constant rate for every business. But the presence of different uses in an area helps achieve collective mitigation success.

Instead of the individual building or employer programs, TDM measures could be offered and operated by the government for an identified area, so they can be marketed and attempt to connect people from a broader geographic area. As noted above, workers in neighboring buildings may never connect for rideshare or carpool because each is not contacted through the other building's programs. But they could connect through a County-operated program that markets to the "area" and all of the different buildings/employers in that area.

Timing

Another deficiency of the current law is that it requires that the agreement on TDM measures must be finalized prior to the issuance of the building permit for a project. This timing is premature and places an unnecessary roadblock on getting to building permit issuance. Having the deadline at building permit is an advancement from the previous deadline at building occupancy. In tying to occupancy, there is a correlation between building users and their ability to utilize TDM measures. But at issuance of the building permit, there are very few people occupying

the building, because it has not yet been built. At occupancy, however, there will be people to actually use the TDM measures.

Phaseout

The phaseout of existing agreements, as noted in lines 738 through 749 of the Bill, is a very important element to include. The Bill clarifies that the repeal action also terminates those existing “traffic mitigation agreements” that were created before the TDM Bill in 2019. The termination provision should reference traffic mitigation agreements previously entered pursuant to the requirements of either Chapter 50 or Chapter 59. Currently, only Chapter 59 is referenced.

Summary

The time has come. Chapter 42A should go.

Thank you for your consideration of these comments. I look forward to discussions during the worksessions.

Very truly yours,

Lerch, Early & Brewer, Chtd.



William Kominers