

Bill No. 47-01
Concerning: Development Impact Tax -
Amendments
Revised: 3-12-02 Draft No. 4
Introduced: December 11, 2001
Enacted: March 12, 2002
Executive: March 21, 2002
Effective: July 1, 2002
Sunset Date: None
Ch. 4, Laws of Mont. Co. 2002

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President, and at the request of the County Executive

AN ACT to:

- (1) establish a fourth impact tax district encompassing certain areas of the County;
- (2) phase in the application of the impact tax in certain areas of the County;
- (3) ~~[[repeal]]~~ amend the requirement that the County Executive submit a biennial report on the impact tax ~~[[rates]]~~;
- (4) ~~[[provide for certain additional credits against the impact tax]]~~ expand the definition of impact highways to include certain transportation facilities, and revise the restrictions on spending funds derived from the impact tax;
- (5) provide for certain exemptions from the tax;
- (6) make clarifying and stylistic changes; and
- (7) generally amend the law governing the Development Impact Tax.

By amending

Montgomery County Code
Chapter 52, Taxation
Article VII, Development Impact Tax for Major Highways

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Chapter 52, Article VIII, is amended as follows:**

2 **ARTICLE VII. DEVELOPMENT IMPACT TAX [FOR MAJOR**
 3 **HIGHWAYS].**

4 **52-47. Definitions.**

5 In this Article the following terms have the following meanings:

6 [[a)] * * *

7 [[b)] *Adequate Public Facilities Ordinance staging ceiling standards* means
 8 standards by which the area-wide adequacy of [[major highways and]]
 9 transportation facilities serving a proposed development are judged.
 10 APFO staging ceiling standards do not include requirements for other
 11 on-site or off-site transportation improvements that may be separately
 12 required[, nor do they include] or standards relating to local area
 13 review[,] which may be independently required.

14 [[c)] *Annual growth policy* means [current] the annual growth policy most
 15 recently adopted under Chapter 33A to provide guidelines for the
 16 administration of the Adequate Public Facilities Ordinance.

17 [[d)] * * *

18 *Bioscience facility* means any biological research and development or
 19 manufacturing facility that substantially involves research, development
 20 or manufacturing of:

- 21 (1) biologically active molecules.
- 22 (2) devices that employ or affect biological processes.
- 23 (3) devices and software for production or management of specific
- 24 biological information. or
- 25 (4) products or materials that purify or handle biologically active
- 26 products:

27 [[e)] * * *

28 **[[f)] * * ***

29 **[[g)] * * ***

30 **[[h)]** *Development impact tax* means a pro rata per unit or per square foot of
 31 gross floor area tax imposed before a building permit is issued for
 32 development **[[in an impact tax district]]** which is intended to defray a
 33 portion of the costs associated with impact **[highway]** transportation
 34 improvements **[[in the tax districts]]** that are necessary to accommodate
 35 the traffic generated by the development.

36 **[[i)] * * ***

37 **[[j)] * * ***

38 **[[k)] * * ***

39 *Hospital* means an institution licensed as a hospital under state law.

40 **[[l)]** *Impact tax district* means a planning policy area or combination of
 41 planning policy areas described under Section 52-49(c).

42 **[[m)]** *Impact tax district transportation program* means the transportation
 43 improvement program described under Section 52-58.

44 **[[n)]** *Improvement* means a highway, intersection improvement, transit
 45 center, **[and] bus**, bus shelter, hiker-hiker trail, sidewalk connection, or
 46 park and ride **[projects] lot**, including planning, engineering, design
 47 services, right-of-way acquisition, grading, paving, curbs, gutters,
 48 drainage, sidewalks, signalization, signage, and all other construction
 49 and associated costs.

50 **[[o)]** *Master plan of highways* means the "Master Plan of Highways"
 51 **[prepared by the Maryland-National Capital Park and Planning**
 52 **Commission,]** adopted by the **[Montgomery County]** Planning Board
 53 and approved by the District Council, and any similar plan adopted by
 54 either Gaithersburg or Rockville.

- 55 **[[p)]] *Impact [highways] transportation improvement* means [the arterial**
 56 **highway segments, transit centers, and park-and-ride facilities under] an**
 57 **improvement listed in Section 52-58.**
- 58 **[[q) *Maryland-National Capital Park and Planning Commission* means the**
 59 **agency established under Article 28 of the Maryland Code.]]**
- 60 **[[r)]] *Nonresidential* means the use of a building that is not a residential use**
 61 **and includes:**
- 62 (1) **offices, including general, medical, office parks, research parks,**
 63 **townhouse office buildings, government offices, and other similar**
 64 **uses;**
- 65 (2) **industrial uses, including truck terminals, warehouses, light or**
 66 **heavy industrial and manufacturing, industrial parks,**
 67 **[[biotechnology research and development facilities and related**
 68 **office space.]] and other similar uses;**
- 69 (3) **retail uses, including stores or shopping centers engaging in the**
 70 **sale of goods, restaurants, vehicle sales or service, banks or**
 71 **savings and loan institutions, theaters, post offices and other**
 72 **similar uses;**
- 73 (4) **places of worship;**
- 74 (5) **private elementary, [and] secondary, or post-secondary schools;**
 75 **and**
- 76 (6) **other nonresidential uses, including hotels, motels, day care**
 77 **centers, [[hospitals,]] nursing homes, recreational facilities, and**
 78 **other public facilities and similar uses;**
- 79 **[(s) *Per-unit development impact tax* means the development impact tax**
 80 **listed under Section 52-57(b).]**

81 **[(t)][(s)]** *Planning policy area* means any of the geographic areas described
 82 in the annual growth policy [for which the APFO staging ceiling
 83 standards are identified].

84 **[(u)][(t)]** *Programmed [highways] transportation improvement* means
 85 [highway]an improvement [projects that are contained within] listed in
 86 the current approved county capital improvements program or the state
 87 consolidated transportation program or any similar program adopted by
 88 either Gaithersburg or Rockville.

89 **[v)][(u)]** * * *

90 **[(w)][(v)]** *Residential* means the use of a building as a dwelling unit.

- 91 (1) *Single-family detached residential* includes[[:
 92 (A)]] detached single-family dwelling units,[[; and]]
 93 (2) **[(B)]** *Single-family attached residential* includes townhouses,
 94 duplexes and other attached single-family dwelling units.

- 95 **[(2)] (3)** *Multifamily residential* includes:
 96 (A) garden apartments;
 97 (B) mid-rise and high-rise [apartments] dwelling unit
 98 structures; and
 99 [(C) condominiums other than townhouses; and]
 100 [(D)](C) mobile homes.

- 101 **[(3)] (4)** *Multifamily-senior residential* means;
 102 (A) multifamily housing and related facilities for elderly or
 103 handicapped persons, as defined in Section 59-A-2.1, with
 104 occupancy restricted as provided in Section 59-G-2.35(b);
 105 **[[and]]**

106 (B) multifamily housing units located in the age-restricted
 107 section of a planned retirement community, as defined in
 108 Section 59-C-7.441; and

109 (C) a domiciliary care home, as defined in Section 59-A-2.1
 110 and subject to Section 59-G- 2.37, which consists of
 111 separate assisted living units.

112 ~~[(x)]~~~~[[w]]~~ ~~[[* * *]]~~ *Staging ceiling* means the maximum amount of
 113 land development that can be accommodated in a planning policy area
 114 consistent with APFO staging ceiling standards given the programmed
 115 ~~[[highways]]~~ transportation facilities.

116 ~~[(y)]~~ *Traffic Impact* means the relative effect of different land uses on the
 117 need for impact highways in an impact district based on relative trip
 118 generation, average trip length, and the proportion of new trips, as
 119 described more fully in Section 52-57.]

120 ~~[(z)]~~ *Unprogrammed highways* means improvement projects not contained
 121 within the current approved County CIP or the state consolidated
 122 transportation program, and which, if programmed, would increase the
 123 transportation system capacity and therefore the staging ceiling in an
 124 impact tax district.]

125 **52-48. Findings; purpose and intent.**

126 (a) The master plan of highways indicates that certain roads are needed in
 127 planning policy areas. Furthermore, the ~~[comprehensive planning~~
 128 policies report] Annual Growth Policy indicates that the amount and
 129 rate of growth projected in certain planning policy areas will place
 130 significant demands on the County for provision of major highways
 131 necessary to support and accommodate that growth.

- 132 (b) Montgomery County, through its adoption of the Capital Improvements
133 Program, indicates its commitment to provide transportation
134 infrastructure.
- 135 (c) Montgomery County has determined that a combination of approaches
136 will be necessary to fully achieve the level of [highway] impact
137 transportation improvements needed to accommodate growth in the
138 [impact tax districts] County. Thus, Montgomery County proposes to
139 fund [certain master planned highways up to 50 percent] a program of
140 transportation improvements through development impact taxes to
141 allow new growth in [impact tax districts] the County.
- 142 (d) Imposing a development impact tax that requires new development [in
143 certain impact tax districts] to pay [their] its pro rata share of the costs
144 of impact [highway] transportation improvements necessitated by [such
145 new] that development in conjunction with other public funds is a
146 reasonable method of raising the funds to build [such] improvements in
147 a timely manner.
- 148 (e) The development impact tax will fund, in part, the improvements
149 necessary to increase the transportation system capacity [[in the impact
150 tax districts]], thereby allowing development to proceed. Development
151 impact taxes will be used exclusively for impact [highways]
152 transportation improvements.
- 153 [(f) In order to assure that the development impact taxes reflect the
154 reasonable pro rata share of the costs of the additional highway
155 improvements associated with each new development, the development
156 impact tax is based on relative trip impact associated with the number
157 and type of dwelling units and square footage and type of nonresidential
158 development.]

159 ~~[(g)]~~(f) In order to assure that the necessary [highway] impact transportation
 160 improvements are constructed in a timely manner, the County intends to
 161 assure the availability of funds sufficient to construct the impact
 162 [highway] transportation improvements.

163 ~~[(h)]~~(g) The County retains the power to determine the impact [highway]
 164 transportation improvements to be funded by development impact taxes;
 165 to estimate the cost of such improvements; to establish the proper
 166 timing of construction of the improvements so as to meet APFO staging
 167 ceiling standards where they apply; to determine when changes, if any,
 168 may be necessary in the County CIP; and to do all things necessary and
 169 proper to effectuate the purpose and intent of this Article.

170 ~~[(i)]~~(h) [It is the intent of the] The County intends to further the public purpose
 171 of ensuring that an adequate transportation system is available in
 172 support of new development ~~[[in the impact tax districts]].~~ [It is not the
 173 intent of this Article to collect a development impact tax from new
 174 development in the impact tax districts in excess of that development's
 175 pro rata share of the costs associated with the impact highway
 176 improvements, as measured by the development's contribution to traffic
 177 impact in the tax district.]

178 ~~[(j)]~~(i) * * *

179 ~~[(k)]~~(i) [It is the intent of the] The County intends to impose development
 180 impact taxes ~~[[in an impact tax district]]~~ until ~~[[that area]]~~ the County
 181 has attained build-out as defined by the ~~[[applicable master plan]]~~
 182 General Plan

183 **52-49. Imposition and applicability of development impact taxes.**

- 184 (a) A development impact tax [for impact highways] must be imposed
 185 before a building permit is issued for development in [each impact tax
 186 district] the County.
- 187 (b) An applicant for a building permit for development in an impact tax
 188 district must pay a development impact tax in the amount and manner
 189 provided in this Article, unless a credit in the full amount of the
 190 applicable tax [is determined to be applicable] applies under Section 52-
 191 55 or an appeal bond is posted under Section 52-56.
- 192 (c) The following impact tax districts are established, consisting of the
 193 following Planning Policy Areas as described in the Annual Growth
 194 Policy:
- 195 (1) Germantown: Germantown East, Germantown Town Center, and
 196 Germantown West;
 - 197 (2) Eastern Montgomery County: Fairland/White Oak and Cloverly;
 - 198 (3) Clarksburg: Clarksburg[.];
 - 199 (4) The County District: all planning policy areas and municipalities
 200 not located in the Germantown, Eastern Montgomery County, or
 201 Clarksburg impact tax districts.
- 202 [(d) The boundaries for impact tax districts and the need to create additional
 203 impact tax districts must be reviewed biennially using the methodology
 204 under Section 52-59. The County Council must hold a public hearing
 205 before changing the boundaries for an impact tax district or creating a
 206 new impact tax district.]
- 207 [(e)] (d) Development impact taxes must be accounted for and segregated by
 208 the impact tax district from which the taxes are received. The taxes must
 209 be restricted in their use to funding improvements listed in [the impact
 210 tax district transportation program for the district] Section 52-58.

211 (e) Development impact taxes collected from developments located in the
 212 cities of Gaithersburg and Rockville must be accounted for separately
 213 according to the municipality where the funds originated. These tax
 214 revenues must be used only to fund transportation improvements listed
 215 in a memorandum of understanding between the County and the
 216 respective City, which must be approved by the County Council. If the
 217 County and the respective City do not agree on a memorandum of
 218 understanding regarding the use of impact tax revenues, the County
 219 Council may appropriate funds to improvements which are consistent
 220 with the master plan of the respective City after holding a separate
 221 hearing on any specific improvement if the City so requests.

222 (f) A development impact tax must not be imposed on ~~[[the Montgomery~~
 223 ~~County Government, Montgomery College, the Montgomery County~~
 224 ~~Public School System, the Housing Opportunities Commission of~~
 225 ~~Montgomery County, or the Maryland-National Capital Park and~~
 226 ~~Planning Commission, or on]]~~ any building owned, and used primarily,
 227 by any agency or instrumentality of federal, state, County, or municipal
 228 government.

229 (g) A development impact tax must not be imposed on:
 230 (1) any Moderately Priced Dwelling Unit built under Chapter 25A or
 231 any similar program enacted by either Gaithersburg or Rockville.
 232 (2) any Productivity Housing [Unit] ~~[[Project]]~~ unit, as defined in
 233 Section 25B-17~~[(m)](j)~~, [and] which meets the price or rent
 234 eligibility standards for a moderately priced dwelling unit under
 235 Chapter 25A;
 236 (3) ~~[[any development in which at least 20% of the dwelling units:~~
 237 (A) are multifamily senior-residential, having occupancy

238 restricted to households who are elderly, disabled, or
 239 handicapped, and

240 (B) for which the price or rent charged for the unit makes the
 241 unit affordable to households earning less than 60% of
 242 the area median income, adjusted for family size.]]

243 ~~[[4]]~~ any other [dwelling unit] development in which at least 20% of
 244 the dwelling units are built under a government regulation or
 245 binding agreement that limits for at least 15 years the price or
 246 rent charged for the unit in order to make the unit affordable to
 247 households earning less than [50%] ~~[[60%]]~~ 50% of the area
 248 median income, or 40% of the units are built under a similar
 249 regulation or agreement that makes them affordable to
 250 households earning less than 60% of the area median income,
 251 adjusted for family size[.];

252 ~~[[5]]~~ (4) any Personal Living Quarters ~~[[facility]]~~ unit built under
 253 Sec. 59-A-6.15, which meets the price or rent eligibility
 254 standards for a moderately priced dwelling unit under Chapter
 255 25A;

256 ~~[[6]]~~ any Accessory Apartment unit built under Section 59-G-2.00.]]

257 ~~[[7]]~~ (5) any dwelling unit in an Opportunity Housing Project built
 258 under Sections 56-28 through 56-32, which meets the price or
 259 rent eligibility standards for a moderately priced dwelling unit
 260 under Chapter 25A:

261 ~~[[8]]~~ ~~[[7]]~~ any biological research and development or
 262 manufacturing facility that substantially involves research,
 263 development or manufacturing of:

264 (A) biologically active molecules.

- 265 (B) devices that employ or affect biological processes. ~~[[or]]~~
- 266 (C) devices and software for production or management of
- 267 specific biological information. ~~or~~
- 268 (D) products or materials that purify or handle biologically
- 269 active products:]]

270 ~~[[9) any optional method development for which a project plan~~
 271 ~~approval, or equivalent approval in Gaithersburg or Rockville.~~
 272 ~~has been issued prior to the effective date of this act and for~~
 273 ~~which a building permit is issued within 2 years of the effective~~
 274 ~~date of this act.]]~~

275 ~~[[10) any standard method development for which subdivision~~
 276 ~~approval, or equivalent approval in Gaithersburg or Rockville,~~
 277 ~~has been issued prior to the effective date of this act and for~~
 278 ~~which a building permit is issued within 2 years of the effective~~
 279 ~~date of this act.]] and~~

280 ~~[[11]] (6) any development located in an enterprise zone designated~~
 281 ~~by the State [[of Maryland]].~~

282 (h) The development impact tax does not apply to:

- 283 (1) any reconstruction or alteration of an existing building or part of
- 284 a building that does not increase the gross floor area of the
- 285 building; and
- 286 (2) any building that replaces an existing building on the same site to
- 287 the extent of the gross floor area of the previous building, if
- 288 construction begins within one year after demolition or
- 289 destruction of the previous building was substantially completed.

290 However, if in either case the development impact tax due on the new

291 reconstructed, or altered building is greater than the tax that would have

292 been due on the previous building if it were taxed at the same time. the
 293 applicant must pay the difference between those amounts.

294 **52-50. Collection of development impact taxes.**

295 (a) The Department of Permitting Services must determine the amount of
 296 the applicable development impact tax.

297 (b) Applicants for building permits for development [in an impact tax
 298 district] that is not exempt from the development impact tax must
 299 supply to the Department of Permitting Services for each requested
 300 building permit:

301 (1) The number and type of dwelling units for residential
 302 development; and

303 (2) The gross floor area and type of development for nonresidential
 304 development.

305 The applicant must submit for inspection relevant support
 306 documentation as the Department requires.

307 (c) The Department of Permitting Services must not issue a building permit
 308 for development [in an impact tax district] that is not exempt from the
 309 development impact tax unless:

310 (1) the applicant has paid the applicable development impact tax;

311 (2) the applicant is entitled to a credit under Section 52-55 in the
 312 amount of the applicable development impact tax; or

313 (3) an appeal has been taken and a bond or other surety posted under
 314 Section 52-56.

315 (d) When a person applies to a municipality in the County for a building
 316 permit for a building or dwelling unit, the applicant must show that all
 317 payments due under this Section with respect to the building or unit
 318 have been paid. The Director of Finance must promptly refund any

- 346 (A) the appropriate number of dwelling units; and
- 347 (B) the gross floor area of nonresidential development [divided
- 348 by 1000].

349 (b) If the development for which a building permit is sought contains a mix
 350 of uses, the Department [[of Permitting Services]] must separately
 351 calculate the development impact tax due for each type of development.

352 (c) If the type of proposed development cannot be categorized under
 353 [[Sections]] the definitions of *nonresidential* and *residential* in Section
 354 52-47 [(r) and (w) (v)], the Department [[of Permitting Services]]
 355 must use the rate assigned to the type of development which generates
 356 the most similar traffic impact characteristics.

357 (d) The Department [[of Permitting Services]] must calculate the amount of
 358 the development impact tax due under this Article in effect when the
 359 building permit application is submitted to the Department. or before a
 360 building permit is issued by a municipality.

361 (e) A building permit application. or if the property is located in a
 362 municipality with authority to issue building permits. a request to
 363 determine the amount of the impact tax. must be resubmitted to the
 364 Department [[of Permitting Services]] if the applicant changes the
 365 project by:

- 366 (1) increasing the number of dwelling units;
- 367 (2) increasing the gross floor area of nonresidential development; or
- 368 (3) changing the type of development so that the development impact
 369 tax would be increased.

370 The Department must recalculate the development impact tax based on
 371 the plans contained in the resubmitted building permit application.

372 **52-52. [Biennial recalculation of development impact tax.] [[Reserved]]**

373 **Annual report.**

374 The County Executive must submit a report to the Council on the development
375 impact tax not later than April 1 of each year. The report must include:

376 **(a)** a summary of the revenue collected from the tax in the previous
377 calendar year in each impact tax district:

378 **(b)** a list of each building exempted from the tax during the previous
379 calendar year under Section 52-49(g) or taxed at a rate of \$0 under
380 Section 52-57, and the tax that otherwise would have been paid for that
381 building; and

382 **(c)** any other information that the Executive finds relevant.

383 **[(a)]** Before July 1, 1988, and at least every 2 years thereafter, the County
384 Executive must prepare a report to the County Council on development
385 impact taxes. The report must contain recommendations on:

386 **(1)** the methodology for establishing and the data in support of the
387 per-unit development impact taxes;

388 **(2)** the impact tax district transportation program; and

389 **(3)** the alteration or addition of impact tax districts.

390 **(b)** After receipt of the report prepared by the County Executive, the per-
391 unit development impact tax imposed for each impact tax district, must
392 be reviewed, recalculated if necessary, and, after a public hearing,
393 readopted by the County Council. Until the County Council takes
394 action, the development impact taxes remain in effect. The County
395 Council may amend the tax schedule at any time if a master plan
396 revision is adopted that significantly alters the development buildout or
397 transportation program in an impact tax district.

- 398 (c) In the impact tax recalculation process, the County Council must
 399 consider the following factors:
- 400 (1) inflation as measured by changes in a construction cost index
 401 used by the Department of Public Works and Transportation;
 - 402 (2) changes in the design, engineering, location, right-of-way, or
 403 other elements of the highways listed in the impact tax district
 404 transportation program;
 - 405 (3) a revision to the master plan for an impact tax district;
 - 406 (4) changes in the anticipated land uses projected for an impact tax
 407 district; and
 - 408 (5) changes in the methodology and the data by which the per-unit
 409 development impact tax is calculated.]

410 **52-53. Restrictions on use and accounting of development impact tax**
 411 **funds.**

- 412 (a) The funds collected by [[reason of establishment of]] the development
 413 impact tax must be used solely for the purpose of funding the impact tax
 414 district transportation program in the impact tax district from which the
 415 development impact tax was collected and in the County district to
 416 fund County or municipal transportation improvements of the types
 417 listed in Section 52-58 located anywhere in the County. In any fiscal
 418 year, development impact tax funds may be spent only to the extent that
 419 the annual average amount of funds from other County or city sources
 420 spent for transportation improvements listed in Section 52-58 during the
 421 3 previous fiscal years exceeds \$12 million.
- 422 (b) Upon receipt of development impact taxes, the Department of
 423 Permitting Services must transfer the taxes to the Department of
 424 Finance for crediting to the appropriate account

425 (c) The Department of Finance must establish separate accounts for each
 426 impact tax district, the City of Gaithersburg, and the City of Rockville,
 427 and must maintain records for each account so that development impact
 428 tax funds collected can be segregated by [the impact tax district of
 429 origin] each of these areas. [The following accounts must be initially
 430 established:

- 431 (1) Germantown;
- 432 (2) Eastern Montgomery County.]

433 (d) The Department of Finance must maintain and keep adequate financial
 434 records for each account that must:

- 435 (1) Show the source and disbursement of all revenues;
- 436 (2) Account for all monies received; and
- 437 (3) Ensure that the disbursement of funds from each account is used
 438 exclusively for the financing of the transportation improvements
 439 listed in [[the applicable impact tax district transportation
 440 program]] Section 52-58.

441 * * *

442 (g) Development impact taxes must be disbursed from an account only for
 443 the purposes for which the [[development impact]] tax has been
 444 imposed, including reimbursement to the County or Gaithersburg or
 445 Rockville of advances made for these purposes from other available
 446 funds.

447 (h) Development impact tax funds collected from a project in a Metro
 448 Station Policy Area, as defined by the Annual Growth Policy, under the
 449 Alternative Review Procedure for Metro Station Policy Areas, must be
 450 used for impact transportation improvements located in the same Metro
 451 Station Policy Area, or in an adjacent Planning Policy Area.

452 **52-54. Refunds.**

453 (a) Any person who has paid a development impact tax may apply for a
 454 refund of the tax if:

- 455 (1) The county has [failed to provide impact highways in the
 456 applicable impact tax district in accordance with the applicable
 457 current impact tax district transportation program] not
 458 appropriated the funds for impact transportation improvements of
 459 the types listed in Section 52-58. or otherwise formally
 460 designated a specific improvement of a type listed in Section 52-
 461 58 to receive funds. by the end of the sixth fiscal year after the tax
 462 is collected;
- 463 (2) The building permit has been revoked or has lapsed because of
 464 noncommencement of construction;
- 465 (3) The project has been physically altered, resulting in a decrease in
 466 the amount of the development impact tax due; or
- 467 (4) A declaration encumbering the property for which the
 468 development impact tax has been paid has been recorded in the
 469 County land records as required under Section 14-17(c) and the
 470 applicant is entitled to a credit under Section 52-55(d).

471 * * *

472 (d) The Director of Permitting Services must investigate each claim and
 473 hold a hearing at the request of the petitioner. Within 3 months after
 474 receiving a petition for refund, the Director of Permitting Services must
 475 provide the petitioner, in writing, with a decision on the refund request.
 476 The decision must include the reasons for the decisions, including, as
 477 appropriate, a determination of whether impact [highways have been
 478 provided in the applicable impact tax district transportation program]

479 tax funds collected from the petitioner, calculated on a first-in-first-out
 480 basis, have been appropriated or otherwise formally designated for
 481 impact transportation improvements of the types listed in Section 52-58
 482 within six fiscal years. If a refund is due the petitioner, the Director of
 483 Permitting Services must notify the Department of Finance [and request
 484 that a refund payment be made to the petitioner] and, if the property is
 485 located in Gaithersburg or Rockville, the finance director of that city.

486 (e) The Department of Finance must not pay a refund unless the petitioner
 487 has paid all other state, county, or municipal taxes, fees, or charges that
 488 the Department is responsible for collecting.

489 (f) The petitioner may appeal the determination of the Director of
 490 Permitting Services in accordance with Article 24, Title 9, of the
 491 Maryland Code or any successor law.

492 **52-55. Credits.**

493 (a) A property owner is entitled to a credit if the owner, before [July 29,
 494 1986] [(effective date of act)] July 1, 2002, entered into a participation
 495 agreement, or a similar agreement with the state or a municipality, the
 496 purpose of which was to provide additional [staging ceiling]
 497 transportation capacity [in an impact tax district]. A property owner is
 498 also entitled to a credit if the owner receives approval before [(effective
 499 date of act)] July 1, 2002, of a subdivision plan, development plan, or
 500 similar [(instrument)] development approval by the County or a
 501 municipality that requires the owner to build or contribute to a
 502 transportation improvement that provides additional transportation
 503 capacity. The Department of Public Works and Transportation must
 504 calculate the credit. The credit must equal the amount of any charge
 505 paid under the participation agreement. The Department may give

506 credit only for building permit applications for development on the site
 507 covered by the participation agreement. The Department must not give a
 508 refund for a credit earned under this subsection.

509 (b) A property owner [may construct] must receive a credit for constructing
 510 or contributing to an improvement of the type listed in [the impact tax
 511 district transportation program] Section 52-58 if the improvement
 512 reduces traffic demand or provides additional transportation capacity.
 513 [Construction of the improvement, however, must be in addition to all
 514 other on-site transportation improvements required by the County or the
 515 Planning Board as a condition of subdivision, site plan, or other
 516 development approval.]

517 (1) If the property owner elects to make the improvement, the owner
 518 must enter into an agreement with a municipality or the County,
 519 or receive a development approval based on making the
 520 improvement before any building permit is issued. The
 521 agreement or development approval must contain:

522 (A) the estimated cost of the improvement, if known then,

523 (B) the dates or triggering actions [for initiating and
 524 completing] to start and, if known then, finish the
 525 improvement,

526 (C) a requirement that the property owner complete the
 527 improvement according to applicable municipal or County
 528 standards, and

529 (D) such other terms and conditions as the municipality or
 530 County finds necessary.

531 (2) The [Director of the] Department of Public Works and
 532 Transportation must:

- 533 (A) review the improvement plan,
 534 (B) verify costs and time schedules,
 535 (C) determine whether the improvement is an impact
 536 [highway] transportation improvement,
 537 (D) determine the amount of the credit for the improvement
 538 that will apply to the development impact tax, and
 539 (E) certify the amount of the credit to the Department of
 540 Permitting Services before that Department or a
 541 municipality issues any building permit.
- 542 (3) An applicant for subdivision, site plan, or other development
 543 approval from the County, Gaithersburg, or Rockville, or the
 544 owner of property subject to an approved subdivision plan,
 545 development plan, or similar [[instrument]] development
 546 approval, may seek a declaration of allowable credits from the
 547 Department of Public Works and Transportation. The
 548 Department must decide, within 30 days after receiving all
 549 necessary materials from the applicant, whether any
 550 transportation improvement which the applicant has
 551 constructed, contributed to, or intends to construct or contribute
 552 to, will receive a credit under this subsection. If during the
 553 initial 30-day period after receiving all necessary materials, the
 554 Department notifies the applicant that it needs more time to
 555 review the proposed improvement, the Department may defer
 556 its decision an additional 15 days. If the Department indicates
 557 under this paragraph that a specific improvement is eligible to
 558 receive a credit, the Department must allow a credit for that
 559 improvement when taking action under paragraph 2.

560 ~~[(3)]~~(4) The County must not provide a refund for a credit which is
 561 greater than the applicable ~~[[development impact]]~~ tax. If,
 562 however, the amount of the credit exceeds the amount of the
 563 ~~[[development impact]]~~ tax due, the property owner may apply
 564 the excess credit toward the development impact taxes imposed
 565 on other building permits for development ~~[[in the same~~
 566 ~~[impact tax district] or an adjacent planning policv area and]]~~
 567 with the same ownership. In this Section, a property has the
 568 same ownership as another property if the same legal entity
 569 owns at least 30% of the equity in both properties.

570 * * *

- 571 (e) Any property owner who, before May 1, 2001, built all or part of a
 572 project in the Clarksburg ~~[impact district] planning policv area~~ which is
 573 listed in the impact tax transportation program (including building any
 574 road which would be widened under the program) is entitled to a credit
 575 equal to the reasonable cost of the improvement. The Department of
 576 Public Works and Transportation must calculate the credit. The
 577 Department must not give a refund for a credit earned under this
 578 subsection.
- 579 (f) A property owner may transfer a credit against the development impact
 580 tax to another property owner ~~[[in the [impact tax district] planning~~
 581 ~~policv area where the credit originated or an adjacent planning policv~~
 582 area]] if the transferor received the credit on or before August 7, 1992 in
 583 exchange for the sale of land to the County. The transferee is entitled to
 584 the amount of the credit transferred to it, up to the amount of unpaid tax
 585 the transferee owes. The Department must not give a refund for a credit

586 used under this subsection. The Department must not allow more than
587 \$2,750,000 in credits under this subsection.

588 (g) Any credits for building or contributing to an impact transportation
589 improvement do not apply to any development that is approved under
590 the Alternative Review Procedure for Metro Station Policy Areas.

591 [[* * *]]

592 **52-56. Appeals.**

593 After determination of the amount of the development impact tax or credit due,
594 an applicant for a building permit or a property owner may appeal to the Maryland
595 Tax Court to the extent permitted by state law or, if the Maryland Tax Court does not
596 have jurisdiction, to the Circuit Court under the Maryland Rules of Procedure that
597 regulate administrative appeals. If the appealing party posts a bond or other
598 sufficient surety satisfactory to the County Attorney in an amount equal to the
599 applicable development impact tax as calculated by the Department of Permitting
600 Services, the Department or municipality must issue the building permit if all other
601 applicable conditions have been satisfied. The filing of an appeal does not stay the
602 collection of the development impact tax until a bond or other surety satisfactory to
603 the County Attorney has been filed with the Department of Permitting Services.

604 **52-57. Development impact taxes[; methodology].**

- 605 [(a) Development impact taxes must be calculated by the following process:
- 606 (1) Calculate the difference between the amount of residential (in
607 dwelling units) and nonresidential development (in 1,000 sq. ft.
608 gross floor area increments) possible in each impact tax district
609 based on existing or proposed zoning and existing development
610 (including unbuilt development for which building permits have
611 been secured). These figures establish the full range of
612 development to which an impact tax will be applied as well as the

613 full amount of development that will need to be accommodated
614 by the additional impact highways to be funded, in part, through
615 the impact tax.

616 (2) Determine the full range of highway improvements needed to
617 accommodate the projected development through buildout, and
618 establish the estimated costs of the improvements. These are the
619 impact highway improvements included in the impact tax district
620 transportation program under Section 52-58.

621 (3) Establish relative trip impacts for various land use categories in
622 order to assure that each land use is subject to a reasonable pro
623 rata charge based upon its relative impact on the impact highways
624 system in the impact tax district. The relative impacts are
625 measured by the calculation of a trip impact value which is a
626 function of trip generation rates as modified by trip length
627 characteristics and percent of new trips generated by a particular
628 use.

629 (4) Multiply the number of units of projected new development for
630 the major land use categories (residential and nonresidential) by
631 the trip impact value for that category to establish the percent of
632 impact highway improvement costs to be assigned to residential
633 versus nonresidential development.

634 (5) Multiply the percent by the total costs to be borne by impact
635 taxes to establish a total cost burden for residential versus
636 nonresidential development; in the same way, divide the costs for
637 residential and nonresidential among the specific land use
638 categories.

639 (6) Divide the pro rata costs to be borne by each land use category by
 640 the per-unit traffic impact value of that land use category to arrive
 641 at a pro rata cost per unit for each land use category.

642 (7) Multiply 50% by the pro rata cost per unit for each land use
 643 category (calculated in Step 6) to determine the development
 644 impact tax for each land use category.]

645 [(b)](a) The development impact tax rates for each impact tax district are:

<i>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</i>				
Land Use Type	Germantown	Eastern Montgomery County	Clarksburg	<u>County District</u>
Single-family detached residential (per dwelling unit)	\$2,492	\$1,727	\$2,753	<u>\$2,100</u>
Single-family attached residential (per dwelling unit)	<u>\$2,492</u>	<u>\$1,727</u>	<u>\$2,753</u>	<u>\$2,100</u>
Multifamily residential (per dwelling unit)	\$1,794	\$1,243	\$1,981	<u>\$1,100</u>
Multifamily-senior residential (per	\$531	\$368	\$573	<u>\$325</u>

dwelling unit)				
Office (per sq. ft. GFA)	\$2	\$2	\$2	<u>\$1.50</u>
Industrial (per sq. ft. GFA)	\$1	\$1	\$1	<u>\$1[.00]</u>
Bioscience facilities (per sq. ft. GFA)	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Retail (per sq. ft. GFA)	\$5.08	\$3.52	\$5.61	<u>\$1.50</u>
Places of worship (per sq. ft. GFA)	\$0.29	\$0.20	\$0.32	<u>\$0.20</u>
Private elementary and secondary schools (per sq. ft. GFA)	\$0.48	\$0.33	\$0.53	<u>\$0.30</u>
Hospitals (per sq. ft. GFA)	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Other nonresidential (per sq. ft. GFA)	\$5.62	\$3.89	\$6.20	<u>\$1[.00]</u>

646

647

[(b) Each taxpayer in the County District must pay the development impact tax at 25% of the rates set in this Section for building permit

648 applications filed before June 30, 2003; 50% of the rates set in this
 649 Section for building permit applications filed between July 1, 2003 and
 650 June 30, 2004; 75% of the rates set in this Section for building permit
 651 applications filed between July 1, 2004 and December 31, 2004; and
 652 100 % of the rates set in this Section for building permit applications
 653 filed on or after January 1, 2005. To the extent that a taxpayer pays a
 654 lower rate because of this subsection than the rate set in subsection (a),
 655 any credit claimed under Section 52-55 must be reduced by the same
 656 ratio.]]

657 [[c]] (b) Except as provided in subsection [[d]] (c), any development
 658 located in a Metro Station Policy Area, as defined in the Annual Growth
 659 Policy, must pay the tax at 50% of the tax calculated in [[subsections]]
 660 subsection (a) [[and (b) of this Section]].

661 [[d]] (c) Any development located in a Metro Station Policy Area that
 662 receives approval of a preliminary plan of subdivision under the
 663 Alternative Review Procedure for Metro Station Policy Areas must pay
 664 the tax [[calculated in subsections]] at the rate listed in subsection (a)
 665 [[and (b) of this Section]].

666 [[e]] (d) The County Council by resolution, after a public hearing advertised
 667 at least 15 days in advance, may increase or decrease the rates set in this
 668 Section.

669 [[f]] (e) The Director of Finance must adjust the tax rates set in or under this
 670 Section on July 1 of each odd-numbered year by the annual average
 671 increase or decrease in the Consumer Price Index for all urban
 672 consumers in the Washington-Baltimore metropolitan area, or any
 673 successor index, for the two most recent calendar years. The Director
 674 must calculate the adjustment to the nearest multiple of 5 cents for rates

675 per square foot of gross floor area, or one dollar for rates per dwelling
 676 unit. The Director must publish the amount of this adjustment not later
 677 than May 1 of each odd numbered year.

678 **52-58. Impact tax district transportation program.**

679 The impact tax district transportation program is as follows:

680 * * *

681 (d) [Projects to] In the County district, projects that may be funded with impact
 682 taxes [include] are any [improvements to master-planned major arterial
 683 roadways, other planned arterials needed for access within impact tax
 684 districts, and park-and-ride facilities.]:

685 (1) new road or widening of an existing road that adds highway or
 686 intersection capacity or improves transit service or bicycle
 687 commuting, such as bus lanes or bike lanes:

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

689 (3) bus added to the Ride-On bus fleet, but not a replacement bus;

690 (4) new bus shelter, but not a replacement bus shelter;

691 (5) hiker-biker trail used primarily for transportation;

692 (6) bicycle locker that holds at least 8 bicycles;

693 (7) sidewalk connector to a major activity center or along an arterial
 694 or major highway; or

695 (8) in a Metro Station Policy Area or an adjacent policy area, the
 696 operating expenses of any transit or trip reduction program.

697 (e) No more than 10% of the funds collected from this tax in the County
 698 District, other than funds collected in a Metro Station Policy Area, may
 699 be spent for the items listed in paragraphs (4)-(8) of subsection (d).

700 **[52-59. Methodology to determine impact tax districts.]**

701 **[(a) Impact tax districts are those planning policy areas, or combinations of**
702 **planning policy area, in which existing and approved development is at**
703 **or above the staging ceiling as defined by the Annual Growth Policy.**
704 **Where existing development is at or above the staging ceiling, no**
705 **further development can occur in the planning policy area without**
706 **violating the adequate public facilities ordinance transportation**
707 **standards, unless the staging ceiling is raised. The staging ceiling can be**
708 **raised by the addition of major improvements beyond those that are**
709 **programmed. The addition of these unprogrammed improvements will**
710 **raise the staging ceiling, with the objective of allowing additional**
711 **development consistent with APFO staging ceiling standards. After an**
712 **impact tax district has been designated under subsection (b), it must**
713 **remain an impact tax district until full buildout has occurred.**

714 **(b) Additional planning policy areas or combinations of planning policy**
715 **areas may be designated by the County Council as impact tax districts**
716 **under the procedure in this Article. The County Council must consider**
717 **the following factors in determining when and whether to add impact**
718 **tax districts:**

- 719 **(1) The Annual Growth Policy;**
- 720 **(2) The standards incorporated in the APFO;**
- 721 **(3) The projected buildout and timing of the projected buildout of**
722 **planning policy areas;**
- 723 **(4) The staging ceiling in planning policy areas;**
- 724 **(5) The need for and cost of unprogrammed highways necessary to**
725 **raise the staging ceiling or provide necessary improvements in**
726 **support of projected development; and**
- 727 **(6) Any other factor the County council finds relevant.**

728 The principal reason for identifying a planning policy area or
 729 combination of planning policy areas as an impact tax district is to
 730 prevent the moratorium on development that would otherwise occur by
 731 application of APFO staging ceiling standards in a planning policy area
 732 where existing development is at or above the staging ceiling.]

733 **Sec. 2. Effective Dates: Transition.**


734 (a) This Act takes effect on July 1, 2002, and applies to any development
 735 for which an application for a building permit is filed on or after that
 736 date.

737 (b) Each taxpayer in the County District must pay the development impact
 738 tax at 25% of the rates set in Section 52-57, as amended by Section 1 of
 739 this Act, for building permit applications filed between July 1, 2002 and
 740 December 31, 2002; 50% of the rates set in Section 52-57 for building
 741 permit applications filed between January 1, 2003, and June 30, 2003;
 742 75% of the rates set in Section 52-57 for building permit applications
 743 filed between July 1, 2003 and December 31, 2003; and 100% of the
 744 rates set in Section 52-57 for building permit applications filed on or
 745 after January 1, 2004. To the extent that any taxpayer pays a lower rate
 746 than that set in Section 52-57 because this subsection applies, any credit
 747 claimed under Section 52-55 must be reduced by the same ratio.

748 (c) In the County District, the development impact tax does not apply to
 749 any building if:

- 750 (1) a subdivision plan, project plan, or an equivalent development
 751 approval mechanism in Gaithersburg or Rockville, which
 752 includes that building was approved before July 1, 2002, and
 753 (2) a building permit is issued before July 1, 2003.

754 *Approved:*

755 
Steven A. Silverman, President, County Council

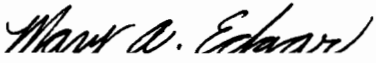
3/14/02
Date

756 *Approved:*

757 
Douglas M. Duncan, County Executive

3/21/02
Date

758 *This is a correct copy of Council action.*

759 
Mary A. Edgar, CMC, Clerk of the Council

3/25/02
Date