

Resolution No.: 15-1506
Introduced: June 20, 2006
Adopted: June 27, 2006

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Approval of a Memorandum of Understanding between the City of Gaithersburg and Montgomery County regarding the improvements eligible for funding with Development Impact Tax for Transportation Improvements revenue collected in the City of Gaithersburg

Background

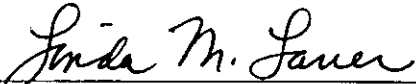
1. Section 52-49(e) of the County Code states that development impact taxes collected from developments located in the City of Gaithersburg must be used only to fund transportation improvements listed in a memorandum of understanding between the County Government and the City, which must be approved by the County Council.
2. The City approved a memorandum of understanding on April 12, 2006, and the County Government approved the same memorandum of understanding on June 5, 2006.

Action

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

The attached memorandum of understanding between the City of Gaithersburg and Montgomery County, regarding the improvements eligible for funding with Development Impact Tax for Transportation Improvements revenue collected in the City of Gaithersburg, is approved.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council

MEMORANDUM of UNDERSTANDING
Development Impact Taxes

THIS MEMORANDUM OF UNDERSTANDING (the "MOU"), is made and entered into this 5th day of JUNE, 2006 by and among the Mayor and Council of Gaithersburg ("City"), an incorporated municipality in Montgomery County, in the State of Maryland, and Montgomery County, Maryland, a body corporate and politic ("County").

WITNESSETH:

WHEREAS, On March 12, 2002, and effective July 1, 2002, the Montgomery County Council enacted Amendments to the Development Impact Tax, Article VII, Chapter 52, of the Montgomery County Code ("Impact Tax Law"), establishing impact tax districts for the Cities of Gaithersburg and Rockville, as well as the entire County; and

WHEREAS, the newly-adopted amendments provide for separate accounting of development impact taxes collected from developments located in the cities of Gaithersburg and Rockville, as well as provisions for, in certain instances, refunds and credits; and

WHEREAS, tax revenues collected from, and separately accounted for, the respective municipalities must be used to fund transportation improvements listed in an MOU between the County and the City, and approved by the Montgomery County Council; and

WHEREAS, it is the intent of the County to further the public purpose of ensuring that an adequate transportation system is available in support of new development; and

WHEREAS, the City recognizes the need to fund transportation improvements within City limits to support growth and development; and

WHEREAS, as provided for in the Impact Tax Law, the City may enter into an MOU with the County, which will include a list of transportation improvements for priority funding with Impact Tax revenues collected from developments within the City limits; and

WHEREAS, the City and the County agree that it is in the best interest of the City to enter into and agree to the terms and conditions of this MOU; and

WHEREAS, the City has authorized the City Manager to enter into this MOU on behalf of the City;

NOW, THEREFORE, in consideration of the above and the mutual promises hereinafter set forth, the parties hereto agree as follows:

1) In accordance with the provisions of Section 52-49(e) of the Montgomery County Code, the parties agree that the development impact taxes collected from developments located in the City must only be used to fund the transportation improvements that meet the following criteria:

- a) Improvements should be consistent with the approved and adopted City Master Plan or Neighborhood Plan; and
- b) Contained in an adopted City Capital Improvements Program; or
- c) Approved as a condition of a City development approval when the improvement is for an offsite improvement that meets the criteria contained in Section 52-58 or is an on-site arterial highway.


Below is the list of eligible transportation projects. FY 2006 Capital Improvements Program projects include the CIP project number, and the remaining improvements are either listed in the Adopted 2002 Comprehensive Master Plan or are under consideration for small scale capacity improvements. Impact Tax funds can be used only on the portions of the road projects listed below that creates new capacity in accordance with Section 52-58. Impact Tax funds can not be used for any improvement to or other action limited to a State road. Where the City or County has required a developer to fund all or part of an improvement, use of County impact tax funds must not replace the obligation of the developer to provide such an improvement. However, the developer may be eligible for a credit subject to approval by MC DPWT. The City may update this list on a semi-annual basis by providing MC DPWT with a revised list without amending this MOU. Any revised list shall be approved by the County Council.

- a) Watkins Mill Road Extended between MD 355 and I-270;
 - b) Watkins Mill Road Extended between MD 117 and I-270;
 - c) Teachers Way Extended as identified in the Olde Towne Plan;
 - d) Victory Farm Drive Extended as identified in the Old Towne Plan;
 - e) Sidewalk and Bike Paths as identified in the Gaithersburg CIP 79-3; and
 - f) Bus Shelters and benches at bus stops as identified in Gaithersburg CIP 98-7.
- 2) Impact taxes collected within the City shall be appropriated or otherwise formally designated for the above-listed projects as impact tax revenues become available, in accordance with the Impact Tax Law, and in all instances, by the end of the sixth fiscal year after the tax is collected.
- 3) The City will notify the County when a commencement of an eligible transportation project is authorized by the City. The County shall provide available funds from the City impact tax account within 30 days. If the available funds in the City impact tax account are insufficient to totally fund the project and the City pays the balance of the project cost, then the County will forward the difference on a quarterly basis to the City upon receipt of eligible payments to the City impact tax account up to the full amount of the project cost.

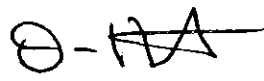
- 4) The Chief Administrative Officer of Montgomery County and the City Manager of Gaithersburg are authorized to execute such further documents and agreements that they determine to be necessary to implement this MOU.
- 5) **Dispute/Resolution:** In the event a dispute arises as to the interpretation or implementation of this MOU which cannot be resolved, the parties agree that the matter will be referred to the City Manager and the CAO of Montgomery County for consideration, review and resolution. If the City Manager and the CAO are unable to resolve the dispute they may agree to submit the dispute to mediation or binding arbitration or file an appropriate action in the Circuit Court of Montgomery County for resolution of the dispute.
- 6) This MOU shall be considered for amendments as proposed by either party, from time to time.

IN WITNESS WHEREOF, the CITY and the COUNTY have executed and sealed this MOU as of the date first written above.

CITY OF GAITHERSBURG



WITNESS

BY 

David B. Humpton,
City Manager

DATE 4/12/06

COUNTY OF MONTGOMERY, MARYLAND



WITNESS

BY 

Chief Administrative Officer

DATE 6-5-06

