

Ordinance No: 15-83
Zoning Text Amendment No: 06-20
Concerning: Creating the
MXTC/TDR Zone
Draft No. & Date: 2 – 9/25/06
Introduced: June 13, 2006
Public Hearing: 7/18/06; 1:30 p.m.
Effective: October 15, 2006

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

By: District Council at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- creating the Mixed-Use Town Center Zone/ Transferable Development Rights Zone; and
- generally amending the Mixed-Use Town Center Zone.

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

DIVISION 59-C-11	“MIXED-USE TOWN CENTER ZONE (MXTC)”
Section 59-C-11.1	“Where Applicable”
Section 59-C-11.3.1	“Site Plan Approval”
Section 59-C-11.4	“Permitted uses”
Section 59-C-11.5	“Development standards”
Section 59-C-11.5.1	“Street façade requirements”
Add new sections:	
Section 59-C-11.5.2	“Special regulations for development using transferable development rights in the MXTC/TDR zone”
Section 59-C-11.5.21	“Applicability”
Section 59-C-11.5.22	“General provisions”

EXPLANATION:

Boldface indicates a heading or a defined term.

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

~~**[Single boldface brackets]**~~ indicate text that is deleted from existing law by the 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.

OPINION

The District Council introduced ZTA 06-20 on June 13, 2006. The ZTA proposes a new zone named the Mixed-Use Town Center /Transfer of Development Rights (MXTC/TDR) zone. The development standards of the zone are intended to encourage mixed-use development and the use of transferable development rights (TDRs).

ZTA 06-20 is recommended by the recently approved Damascus Master Plan. The zone is necessary to implement the Council's decision to require TDRs in the land use recommendations of that plan. Standards for both an optional method of development and a standard method of development are created by this ZTA.

Without any transferable development rights, the standard method of development would allow a maximum floor area ratio of .35 for non-residential uses and a maximum of 8 dwelling units per acre. The optional method development allows a maximum of floor area ratio of 1.0 for non-residential uses and a maximum of 20 dwelling units per acre. Market priced dwelling units above 8 units per acre are required to use transferable development rights. The zone requires compliance with the density and numerical limitations in the applicable master plan or sector plan.

The Damascus Master Plan recommended increasing the zoning density on some properties. In some instances the Master Plan recommended the use of TDRs to achieve maximum densities. On a Countywide bases, receiving areas for approximately 1,800 additional TDRs are needed to balance the number of TDRs from "sending" areas.

The Planning Board recommends approval of ZTA 06-20 as submitted. The Council held a public hearing on this ZTA on July 18, 2006. The only speaker was the Planning Board representative.

On September 18, 2006, the Committee recommended (3-0) that ZTA 06-20 be approved as submitted. The ZTA implements the recommendation of the Damascus Master Plan. The adoption of the zone provided needed receiving areas for transferred development rights while establishing standards identical to the MXTC zone.

The District Council reviewed Zoning Text Amendment No. 06-20 at a worksession held on September 26, 2006. The Council agreed with the Committee's recommendation to approve ZTA 06-20. It was the position of the Council that it is in the public interest to have a zoning classification to implement the recommendations of the Damascus Master Plan including the provision of additional TDR receiving areas.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 06-20 will be approved as introduced.

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-C-11 is amended as follows:

**DIVISION 59-C-11. MIXED-USE TOWN CENTER ZONE (MXTC) and
MIXED-USE TOWN CENTER / TRANSFERABLE DEVELOPMENT
RIGHTS ZONE (MXTC/TDR).**

59-C-11.1. Where Applicable.

No land may be classified in the MXTC zone or MXTC/TDR zone unless recommended in an approved and adopted master or sector plan.

59-C-11.2. New construction, re-use of existing building, remodeling and reconstruction.

Any lawful structure or building that existed before the applicable Sectional Map Amendment adoption date, is a conforming structure and may be continued, structurally altered, repaired, renovated or enlarged up to 10 percent of the gross building floor area or 10,000 square feet, whichever is less. However, any enlargement of the building that is more than 10 percent of the gross floor area or 10,000 square feet, or construction of a new building must comply with the standards of the MXTC zone or MXTC/TDR zone as applicable.

59-C-11.3. Methods of Development.

Two methods of development are available under the MXTC zone or MXTC/TDR zone.

(a) Standard Method.

A standard method project must comply with the applicable development requirements of 59-C-11.5 and the recommendations of the applicable master or sector plan. If residential uses are included in a development, moderately priced dwelling units must be provided in accordance with Chapter 25A. The

maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site.

(b) Optional Method.

Under the optional method of development, building height, and density levels greater than allowed under the standard method of development may be achieved for increased public use space. An optional method development must comply with the applicable development requirements of 59-C-11.5 and the recommendations of the applicable master or sector plan. If residential uses are included in a development, moderately priced dwelling units must be provided in accordance with Chapter 25A. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on site.

In the MXTC/TDR zone, residential density above that allowed under the standard method must use transferred development rights and must follow the special regulations of 59-C-11.5.2.

59-C-11.3.1. Site Plan Approval.

For the MXTC zone and the MXTC/TDR zone, [S] site plan approval is required for:

1. A standard method development project that includes:

- a. a net lot area of five acres or more;
- b. certain uses with more than 20,000 square feet for each establishment as specified in Sec. 59-C-11.4;
- c. a modification of the maximum front setback or the street facade requirements; or

- d. a recommendation for site plan review in the applicable master or sector plan.

2. All optional method development projects. For an optional method development project, the Board must find that the proposed development:

- a. conforms to recommendations of the applicable approved and adopted master or sector plan [.] ;
- b. is not detrimental to any existing development due to the size, intensity, design, scale and operational characteristics of its uses [.] ;
- c. satisfies the public use space requirements of the zone [.] ;
- d. takes maximum advantage of the topography, vistas, façade articulation, and other urban design elements to create an attractive physical environment [.] ;
- e. provides adequate linkages among different functions or structures, open areas, public amenities, parking, and adjoining properties and streets [.] ; and
- f. provides adequate parking and loading service areas with appropriate landscaping, screening, and lighting that will not adversely affect adjoining neighborhoods.

59-C-11.4. Permitted uses.

* * *

	MXTC	<u>MXTC/ TDR</u>
(a) Residential²:		
Dwellings	P	<u>P</u>
Group home, small	P	<u>P</u>
Group home, large	P	<u>P</u>
Hotel or Motel	P	
Housing and related facilities for the elderly or handicapped	P	<u>P</u>
Life care facility	P	<u>P</u>
Personal living quarters	P	<u>P</u>
(b) Transportation, Communication and Utilities:		
Parking of motor vehicles, off-street, in connection with any use permitted	P	<u>P</u>

	MXTC	<u>MXTC/ TDR</u>
Public utility buildings and structures telecommunications facilities	SE	<u>SE</u>
Radio and television broadcasting studio	SE	<u>SE</u>
Rooftop mounted antennas and related unmanned equipment building, equipment cabinet or equipment room	P ⁶	<u>P⁶</u>
Taxicab stand	P	<u>P</u>
(c) Commercial²:		
Antique stores, handicrafts or art sales	P ¹	<u>P¹</u>
Book store	P ¹	<u>P¹</u>
Delicatessen	P	<u>P</u>
Drug store	P ¹	<u>P¹</u>
Eating and drinking establishment, excluding drive-in	P	<u>P</u>
Eating and drinking establishment, drive-in	SE	<u>SE</u>
Florist shop	P	<u>P</u>
Furniture store, carpet or related furnishing sales or service	P ¹	<u>P¹</u>
Garden supply shop	P ¹	<u>P¹</u>
Gift shop	P	<u>P</u>
Grocery store	P ¹	<u>P¹</u>
Hardware store	P ¹	<u>P¹</u>
Jewelry store	P	<u>P</u>
Newsstand	P	<u>P</u>
Office supply store	P ¹	<u>P¹</u>
Photographic supply store	P	<u>P</u>
Pet sales and supply store	P ¹	<u>P¹</u>
Specialty shop	P ¹	<u>P¹</u>
Variety and dry goods store	P ¹	<u>P¹</u>
(d) Services:		
Adult foster care home	P	<u>P</u>
Ambulance or rescue squad	P	<u>P</u>
Animal boarding place	SE	<u>SE</u>
Appliance repair shop	P ¹	<u>P¹</u>
Art, music and photographic studio	P ¹	<u>P¹</u>
Automobile filling station	SE ³	<u>SE³</u>
Automobile fluid maintenance station	SE ⁴	<u>SE⁴</u>
Automobile rental services, excluding automobile storage	P/SE ⁵	<u>P/SE⁵</u>
Automobile repair and service	SE ⁴	<u>SE⁴</u>
Barber and beauty shop	P	<u>P</u>
Banks and other financial institutions	P/SE ⁸	<u>P/SE⁸</u>
Car wash	SE	<u>SE</u>
Charitable and philanthropic institution	P	<u>P</u>
Clinic	P	<u>P</u>
Child daycare facilities:		
- Family day care home	P	<u>P</u>
- Group day care home	P	<u>P</u>
- Child day care center	P	<u>P</u>
Daycare facility for not more than 4 senior adults and persons with disabilities	P	<u>P</u>
Domiciliary care home for more than 16 residents	P	<u>P</u>

	MXTC	<u>MXTC/ TDR</u>
Dry cleaning and laundry establishment, consisting of no more than 3,000 square feet of gross floor area	P	<u>P¹</u>
Dry cleaning and laundry pick-up station	P ¹	<u>P¹</u>
Duplicating services	P ¹	<u>P¹</u>
Educational institution	SE	<u>SE</u>
Home occupation, no impact	P	<u>P</u>
Home occupation, registered	P	<u>P</u>
Home occupation, major	SE	<u>SE</u>
Hospice care facility	P	<u>P</u>
Hospitals, veterinary	SE	<u>SE</u>
Laundromat, self-service	P ¹	<u>P¹</u>
Office, general	P ¹	<u>P¹</u>
Office, Professional	P ¹	<u>P¹</u>
Place of worship	P	<u>P</u>
Publicly owned or publicly operated uses	P	<u>P</u>
Shoe repair shop	P	<u>P</u>
Tailoring or dressmaking shop	P	<u>P</u>
Research, development and related activities	P ¹	<u>P¹</u>
(e) Cultural, Entertainment and Recreational:		
Billiard parlor	P ¹	<u>P¹</u>
Bowling alley	P ¹	<u>P¹</u>
Health clubs and gyms	P ¹	<u>P¹</u>
Libraries and museums	P	<u>P</u>
Private clubs and service organizations	SE	<u>SE</u>
Recreational or entertainment establishments, commercial	P ¹	<u>P¹</u>
Theaters, indoor	P ¹	<u>P¹</u>
(f) Miscellaneous Uses		
Accessory buildings and uses	P ¹	<u>P¹</u>
Signs in accordance with Article 59-F	P	<u>P</u>
(g) Uses of a light industrial nature⁷		
Manufacturing of electronic components, instruments and devices.	P	<u>P</u>
Manufacturing of medical, scientific or technical instruments, devices and equipment.	P	<u>P</u>
Manufacturing and assembly of semi-conductors, microchips, circuits and circuit boards.	P	<u>P</u>
Printing and publishing.	P	<u>P</u>
Research, development and related activities.	P	<u>P</u>
Sign making shop.	P	<u>P</u>
Warehousing and storage services:		
- Industrial and commercial users.	P	<u>P</u>
- Self-storage facilities.	P	<u>P</u>

- 75 _____
- 76 * * *
- 77 7 Allowed only if recommended in a master or sector plan.

8 A drive-up bank or drive-in window for a bank must be approved by
 79 special exception, subject to the general requirements of Section 59-G-1.

80 **59-C-11.5. Development standards.**

81 Development standards applicable to the standard and optional method development
 82 for the MXTC zone and the MXTC/TDR zone are indicated by the letters “S” and
 83 “O”.
 84

		S	O
1	Maximum residential density (units/acre)	8	20 ¹
2	Maximum non-residential FAR	0.35	1.0 ¹
3	Maximum Building height	42 feet	70 feet ¹
4	Minimum public use space		
	For lots of up to 40,000 sf:	10% ³	10% ³
	For lots of more than 40,000 sf:	10% ³	20% ³
5	Building setbacks: ⁴		
	Minimum front setback (feet)	0	0
	Maximum front setback (feet) from a street line	10 ²	10 ²
	Minimum side or rear setback from another lot in the same zone, or from an adjacent commercial zone (feet)	0	0
	Minimum side or rear setback from an adjacent residential zone (feet)	20	20

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- 85
 86 1. A master or sector plan may recommend a building height or density limit up
 87 to the maximum of the zone, and the appropriate mix of commercial,
 88 residential, and light industrial uses. Notwithstanding any building height
 89 limitation recommended in a master plan or sector plan, the Planning Board
 90 may further limit the maximum allowable building height to achieve
 91 compatibility with surrounding land uses. However, the Planning Board may
 92 waive any height limit established in a master or sector plan, up to the

maximum allowed in the zone, if expressly recommended in the applicable master or sector plan. In the MXTC\TDR zone, residential density above the standard method must use transferred development rights and follow the special regulations in 59-C-11.5.2.

2. The Planning Board may allow a front setback from the public right-of-way greater than 10 feet subject to site plan review and the street façade controls of the MXTC zone. Setbacks from the curb must be of sufficient width to provide for streetscape and adequate sidewalk space for pedestrians.
3. Public use space may be provided indoors or outdoors, and must conform to master or sector plan recommendations. Development on lots of up to 40,000 square feet may provide a portion or all of the required public use space as green area. Development on lots of more than 40,000 square feet must not provide all of the required public use space as green area. However, the Planning Board may waive setback requirements if expressly recommended in a master or sector plan.
4. The Planning Board may waive setback requirements if expressly recommended in a master or sector plan.

59-C-11.5.1. Street façade requirements for the MXTC zone and MXTC/TDR zone.

1. Any development [under the MXTC zone] must provide at least one street facade for a minimum of 75 percent of the lot frontage along a street or other publicly accessible sidewalk, way or space. The street facade must be located within 10 feet of: 1) the front lot line or; 2) the public use space along a street or other publicly accessible sidewalk, way or space.

2. The ground floor portion of any street facade in a non-residential development must have windows and principal entrances to stores and retail establishments from the adjoining sidewalk or public use space. Off-street parking structures, if located along required street facades, must have retail or other pedestrian-oriented uses at the ground floor level fronting the street with direct access to the sidewalk or a public use space.
3. The Planning Board may modify a street facade requirement including the location or the minimum length of a required street facade during site plan review to achieve the objectives of the applicable master or sector plan. For lots with more than one street frontage, the Planning Board may establish which side would be subject to the street facade requirements during site plan review based on a layout that best achieves pedestrian oriented streets.

59-C-11.5.2 Special regulations for development using transferable development rights in the MXTC/TDR zone.

59-C-11.5.21 Applicability. The following procedures and regulations apply to the transfer of development rights to land classified in a MXTC/TDR zone. The Planning Board may approve subdivision of such land at densities not to exceed the maximum density permitted in the applicable MXTC/TDR zone and conforming to the guidelines contained in the applicable master or sector plan. Any increase in dwelling units per acre allowed under the standard method of development of 59-C-11.5 must be based on a ratio of one single-family dwelling unit for each TDR, and 2 multi-family dwelling units for each TDR.

59-C-11.5.22 General provisions.

(a) A development right must be created, transferred and extinguished only by means of documents in a recordable form approved by the Planning Board, including an easement and appropriate releases. The easement must limit the future construction of one-family dwellings on a property in the RDT zone to the total number of development rights established by the zoning of the property minus all development rights previously transferred in accordance with this section, the number of development rights to be transferred by the instant transaction, and the number of existing one-family detached dwellings on the property.

(b) The transfer of development rights must be recorded among the land records of Montgomery County, Maryland.

(c) A property developed under a MXTC/TDR zone must conform to the requirements of Chapter 25A requiring MPDU's.

Sec. 59-C-11.6. Off-Street Parking for the MXTC zone and MXTC/TDR zone.

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59-C-11.6.1. Internal connection between parking lots for the MXTC zone and MXTC/TDR zone.

Any new developments pursuant to this zone must provide for a pedestrian and vehicular connection to existing and proposed parking areas on at least one adjoining lot where feasible. The Planning Board may modify this requirement during site plan review if the applicant demonstrates that compliance with this requirement is not feasible or that compliance with the requirement would preclude the lot from meeting the off-street parking requirements on site. The

176 Director may modify this requirement for projects not subject to site plan
177 review.

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179 **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of
180 Council adoption.

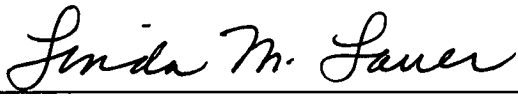
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182 This is a correct copy of Council action.

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A handwritten signature in cursive script, reading "Linda M. Lauer", is positioned above a horizontal line.

186 Linda M. Lauer, Clerk of the Council