

Bill No. 37-16
Concerning: Taxation – Development
Impact Tax – Transportation and
Public School Improvements –
Amendments
Revised: November 15, 2016 Draft No. 11
Introduced: August 2, 2016
Enacted: November 15, 2016
Executive: _____
Effective: March 1, 2017
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the Planning Board

AN ACT to:

- (1) modify the method of calculating the transportation and public school impact tax;
- (2) create new transportation tax districts associated with policy area categories;
- (3) adjust the transportation impact tax for residential uses based on Non-Auto Driver Mode Share associated with each tax district;
- (4) adjust the transportation impact tax for non-residential uses based on Vehicle Miles of Travel associated with each tax district;
- (5) [[authorize an adjustment to the transportation impact tax for providing parking below the minimum required under Chapter 59]] ~~exempt certain student-built houses from the impact tax;~~
- (6) [[modify the public school impact tax payable for property located in a former enterprise zone]] ~~eliminate the transportation mitigation payments for certain projects;~~
- (7) eliminate the school facilities payments for certain projects; ~~[[and]]~~
- [[~~(7)~~]] (8) ~~exempt certain farm tenant dwelling units from the impact tax for transportation improvements; and~~
- (9) generally amend County law concerning the development impact tax for transportation and public school ~~[[impact tax]] improvements.~~

By amending

Montgomery County Code

Chapter 52, Taxation

Sections 52-39, 52-40, 52-45, 52-47, 52-49, 52-50, 52-51, 52-52, 52-54, 52-55, 52-56, 52-58, and 52-59.

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:

Sec. 1. Sections 52-39, 52-40, 52-45, 52-47, 52-49, 52-50, 52,51, 52-52, 52-54, 52-55, 52-56, 52-58, and 52-59 are amended as follows:

52-39. Definitions.

In this Article the following terms have the following meanings:

Additional capacity means a new road, widening an existing road, adding an additional lane or turn lane to an existing road, or another transportation improvement that:

- (1) increases the maximum theoretical volume of traffic that a road or intersection can accommodate, or implements or improves transit, pedestrian and bike facilities or access to non-auto modes of travel; and
- (2) is classified as a minor arterial, arterial, parkway, major highway, controlled major highway, or freeway in the County's Master Plan of Highways, or is similarly classified by a municipality. The Director of Transportation may find that a specified business district street or industrial street also provides additional capacity as defined in this provision.

Additional capacity is sometimes referred to as added "*highway capacity*," "*transportation capacity*," or "*intersection capacity*".

* * *

Charitable, philanthropic institution means a private, tax-exempt organization whose primary function is to provide services, research, or educational activities in areas such as health, social service, recreation, or environmental conservation.

Clergy House means a single-family dwelling unit provided for the designated religious leader of a place of worship to live.

Construction means the planning, design, acquisition of land, site improvements, utility relocation, building, and initial furniture and equipment for a capital project.

* * *

Farm tenant dwelling means a dwelling unit under the control of the owner or operator of the farm on which the dwelling unit is located and occupied by an agricultural worker actively engaged in farming on a full-time or part-time basis. Farm Tenant Dwelling includes up to three mobile homes. A Farm Tenant Dwelling is not restricted by the definition of household.

* * *

52-40. Findings; purpose and intent.

(a) The master plan of [[highways]] transportation indicates that certain [[roads]] transportation facilities are needed in planning policy areas. Furthermore, the [[Growth]] Subdivision Staging Policy indicates that the amount and rate of growth projected in certain planning policy areas will place significant demands on the County for provision of [[major highways]] transportation facilities necessary to support and accommodate that growth.

* * *

(e) The development impact tax [[will fund]] funds, in part, the improvements necessary to increase the transportation system capacity, thereby allowing development to proceed. Development impact taxes [[will be]] are used exclusively for impact transportation improvements.

(f) In order to assure that the necessary impact transportation improvements are constructed in a timely manner, the County [[intends to assure]] assures the availability of funds sufficient to construct the impact transportation improvements.

(g) The County retains the power to determine the types of impact transportation improvements to be funded by development impact taxes~~[[;~~ to estimate the cost of such improvements; to establish the proper

55 timing of construction of the improvements so as to meet APFO policy
 56 area transportation adequacy standards where they apply; to determine
 57 when changes, if any, may be necessary in the County CIP;]] and to do
 58 all things necessary and proper to effectuate the purpose and intent of this
 59 Article.

60 (h) The County intends to further the public purpose of ensuring that an
 61 adequate transportation system is available in support of new
 62 development.

63 (i) [[The County's findings are based on the adopted or approved plans,
 64 planning reports, capital improvements programs identified in this
 65 Article, and specific studies conducted by the Department of
 66 Transportation and its consultants.

67 (j)]] The County intends to impose development impact taxes until the County
 68 has attained build-out as defined by the General Plan.

69 **52-41. Imposition and applicability of development impact taxes.**

70 (a) A development impact tax must be imposed before a building permit is
 71 issued for development in the County.

72 (b) An applicant for a building permit must pay a development impact tax in
 73 the amount and manner provided in this Article, unless a credit in the full
 74 amount of the applicable tax applies under Section 52-47 or an appeal
 75 bond is posted under Section 52-48.

76 (c) The following impact tax districts are established:

77 (1) [*Metro Station*: Friendship Heights, Bethesda CBD, Grosvenor,
 78 White Flint, Twinbrook, Rockville Town Center, Shady Grove
 79 Metro, Silver Spring CBD, Wheaton CBD, and Glenmont Metro
 80 station policy areas, as defined in the most recent Subdivision

- 81 Staging policy, except as modified by paragraph (3) for the White
 82 Flint policy area;
- 83 (2) *Clarksburg*: Clarksburg policy area, as defined in the most recent
 84 Subdivision Staging Policy;
- 85 (3) *White Flint*: The part of the White Flint Metro Station Policy Area
 86 included in the White Flint Special Taxing District in Section 68C-
 87 2; [and]
- 88 (2) *Red Policy Areas*: Bethesda CBD, Friendship Heights, Grosvenor,
 89 Glenmont, Rockville Town Center, Shady Grove Metro Station,
 90 Silver Spring CBD, Twinbrook, and Wheaton CBD Metro Station
 91 Policy Areas;
- 92 (3) *Orange Policy Areas*: Bethesda/Chevy Chase, Burtonsville
 93 Crossroads, Chevy Chase Lake, Clarksburg Town Center,
 94 Derwood, Gaithersburg City, Germantown Town Center,
 95 Kensington/Wheaton, Long Branch, North Bethesda, R & D
 96 Village, Rockville City, Silver Spring/Takoma Park,
 97 Takoma/Langley, White Flint, except the portion that is included
 98 in the White Flint Special Taxing District in Section 68C-2, and
 99 White Oak Policy Areas;
- 100 (4) *Yellow Policy Areas*: Aspen Hill, Clarksburg, Cloverly,
 101 Fairland/Colesville, Germantown East, Germantown West,
 102 Montgomery Village/Airpark, North Potomac, Olney, and
 103 Potomac Policy Areas; and
- 104 (5) *Green Policy Areas*: Damascus, Rural East, and Rural West Policy
 105 Areas.
- 106 [(4) *General*: Any part of the County, including any municipality, not
 107 located in an area listed in paragraphs (1) - (3).]

(d) [[Reserved]] A Clergy House must pay the impact tax rate that applies to a place of worship if the house:

- (1) is on the same lot or parcel, adjacent to, or confronting the property on which the place of worship is located; and
- (2) is incidental and subordinate to the principal building used by the religious organization as its place of worship.

The place of worship tax rate does not apply to any portion of a Clergy House that is nonresidential development.

* * *

(g) A development impact tax must not be imposed on:

* * *

- (5) any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1), (2), (3), or (4), or any combination of them; [[and]]
- (6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone; [[and]]
- (7) a house built by high school students under a program operated by the Montgomery County Board of Education; and
- (8) a farm tenant dwelling.

* * *

52-45. Restrictions on use and accounting of development impact tax funds.

* * *

[[h)] Development impact tax funds collected from the [Clarksburg impact tax district] Red Policy Areas must be used for impact transportation

improvements located in or that directly benefit [the Clarksburg] those
policy [area] areas.]]

52-47. Credits.

(a) ~~[[~~(1)~~]]~~ A property owner is entitled to a credit if the owner, before July 1, 2002, entered into a participation agreement, or a similar agreement with the state or a municipality, the purpose of which was to provide additional transportation capacity. A property owner is also entitled to a credit if the owner receives approval before July 1, 2002, of a subdivision plan, development plan, or similar development approval by the County or a municipality that requires the owner to build or contribute to a transportation improvement that provides additional transportation capacity. The Department of Transportation must calculate the credit. The credit must equal the amount of any charge paid under the participation agreement. The Department may give credit only for building permit applications for development on the site covered by the participation agreement.

~~[[~~(2) (A) An entity that received more than \$20 million in credits under this subsection that were certified before July 1, 2002, may apply any unused credit to satisfy an obligation under Policy Area Mobility Review, or any applicable successor policy area transportation test, if:

- (i) the County Executive has identified the project for which a credit would be applied under this paragraph as a strategic economic development project; and
- (ii) the credit is used before November 1, 2015.

(B) The total of any credits used under this paragraph to satisfy an obligation under Policy Area Mobility Review, or any applicable successor policy area transportation test, much not exceed \$1.7 million.]]

* * *

(d) Any credit for building or contributing to an impact transportation improvement does not apply to any development that [is] has been previously approved under the Alternative Review Procedure for Metro Station Policy Areas in the County Subdivision Staging Policy.

* * *

(j) (1) A property owner must receive a credit for constructing or contributing to the cost of building a new single family residence that meets Level I Accessibility Standards, as defined in Section 52-107(a).

(2) The credit allowed under this Section must be as follows:

(A) If at least 5% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of \$250 per residence.

(B) If at least 10% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of \$500 per residence.

(C) If at least 25% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of \$750 per residence.

(D) If at least 30% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of \$1,000 per residence.

(3) Application for the credit and administration of the credit be in accordance with Subsections 52-107(e) and (f).

(4) A person must not receive a property tax credit under this Section if the person receives any public benefit points for constructing units with accessibility features under Chapter 59.

(k) After a credit has been certified under this Section, the property owner or contract purchaser to whom the credit was certified may transfer all or part of the credit to any successor in interest of the same property. However, any credit transferred under this subsection must only be applied to the tax due under this Article with respect to the property for which the credit was originally certified.

52-49. Tax rates.

(a) The Council must establish the tax rates for each impact tax district, except as provided in subsection (b), by resolution, after a public hearing advertised at least 15 days in advance. [[are:]]

| <i>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</i> | | | |
|--|----------------------|-------------------|----------------|
| <i>Building Type</i> | <i>Metro Station</i> | <i>Clarksburg</i> | <i>General</i> |
| Single-family detached residential (per dwelling unit) | \$2,750 | \$8,250 | \$5,500 |
| Single-family attached residential (per dwelling unit) | \$2,250 | \$6,750 | \$4,500 |

| | | | |
|--|---------|---------|---------|
| Multifamily residential (except high-rise) (per dwelling unit) | \$1,750 | \$5,250 | \$3,500 |
| High-rise residential (per dwelling unit) | \$1,250 | \$3,750 | \$2,500 |
| Multifamily-senior residential (per dwelling unit) | \$500 | \$1,500 | \$1,000 |
| Office (per sq. ft. GFA) | \$2.50 | \$6 | \$5 |
| Industrial (per sq. ft. GFA) | \$1.25 | \$3 | \$2.50 |
| Bioscience facility (per sq. ft. GFA) | \$0 | \$0 | \$0 |
| Retail (per sq. ft. GFA) | \$2.25 | \$5.40 | \$4.50 |
| Place of worship (per sq. ft. GFA) | \$0.15 | \$0.35 | \$0.30 |
| Private elementary and secondary school (per sq. ft. GFA) | \$0.20 | \$0.50 | \$0.40 |
| Hospital (per sq. ft. GFA) | \$0 | \$0 | \$0 |
| Cultural institution | \$0.20 | \$0.50 | \$0.40 |
| Charitable, philanthropic institution | \$0 | \$0 | \$0 |
| Other nonresidential (per sq. ft. GFA) | \$1.25 | \$3 | \$2.50 |

| <u>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</u> | | | | |
|--|---|-----------------------------------|-----------------------------------|----------------------------------|
| <u>Land Use</u> | <u>Red Policy Areas (Metro Stations)</u> | <u>Orange Policy Areas</u> | <u>Yellow Policy Areas</u> | <u>Green Policy Areas</u> |
| <u>Residential Uses</u> | | | | |
| <u>SF Detached</u> | <u>\$3,653</u> | <u>\$10,959</u> | <u>\$18,266</u> | <u>\$29,225</u> |
| <u>MF Residential</u> | | | | |
| <u>SF Attached</u> | <u>\$2,552</u> | <u>\$7,656</u> | <u>\$12,759</u> | <u>\$20,415</u> |
| <u>Garden Apartments</u> | <u>\$2,312</u> | <u>\$6,937</u> | <u>\$11,562</u> | <u>\$18,499</u> |
| <u>High - Rise Apartments</u> | <u>\$1,652</u> | <u>\$4,955</u> | <u>\$8,259</u> | <u>\$13,214</u> |
| <u>Multi-Family Senior</u> | <u>\$661</u> | <u>\$1,982</u> | <u>\$3,303</u> | <u>\$5,286</u> |
| <u>Commercial Uses</u> | | | | |
| <u>Office</u> | <u>\$10.08</u> | <u>\$13.45</u> | <u>\$16.81</u> | <u>\$16.81</u> |
| <u>Industrial</u> | <u>\$5.01</u> | <u>\$6.69</u> | <u>\$8.36</u> | <u>\$8.36</u> |
| <u>Bioscience</u> | <u>\$0.00</u> | <u>\$0.00</u> | <u>\$0.00</u> | <u>\$0.00</u> |
| <u>Retail</u> | <u>\$8.97</u> | <u>\$11.96</u> | <u>\$14.95</u> | <u>\$14.95</u> |
| <u>Place of Worship</u> | <u>\$0.53</u> | <u>\$0.70</u> | <u>\$0.88</u> | <u>\$0.88</u> |

| | | | | |
|--------------------------------|---------------|---------------|---------------|---------------|
| <u>Private School</u> | <u>\$0.80</u> | <u>\$1.06</u> | <u>\$1.33</u> | <u>\$1.33</u> |
| <u>Hospital</u> | <u>\$0.00</u> | <u>\$0.00</u> | <u>\$0.00</u> | <u>\$0.00</u> |
| <u>Social Service Agencies</u> | <u>\$0.00</u> | <u>\$0.00</u> | <u>\$0.00</u> | <u>\$0.00</u> |
| <u>Other Non-Residential</u> | <u>\$5.02</u> | <u>\$6.69</u> | <u>\$8.36</u> | <u>\$8.36</u> |

204 **II**

205 (b) For any development located in the White Flint Impact Tax District, the
206 tax rates are \$0. **II**:

| Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA) | |
|---|--------------------|
| <i>Building Type</i> | <i>White Flint</i> |
| High-rise residential (per dwelling unit) | \$ 0 |
| Multifamily-senior residential (per dwelling unit) | \$ 0 |
| Office (per sq.ft. GFA) | \$ 0 |
| Industrial (per sq.ft. GFA) | \$ 0 |
| Bioscience facility (per sq.ft. GFA) | \$ 0 |
| Retail (per sq.ft. GFA) | \$ 0 |
| Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA) | |
| <i>Building Type</i> | <i>White Flint</i> |
| Place of worship (per sq.ft. GFA) | \$ 0 |
| Private elementary and secondary school (per sq.ft. GFA) | \$ 0 |
| Hospital (per sq.ft. GFA) | \$ 0 |
| Other nonresidential (per sq.ft. GFA) | \$ 0 |

209 **II**

210 (c) [Any development that receives approval of a preliminary plan of
211 subdivision under any Alternative Review Procedure must pay the tax at

double the rate listed in subsection (a). However, any development approved under an Alternative Review Procedure that is located in a Metro Station Policy Area must pay the tax at 75% of the rate listed in subsection (a) for the same type of development in the General district.

(d) Any Productivity Housing unit, as defined in Section 25B-17(j), must pay the tax at 50% of the applicable rate calculated in subsection (a).

[(e)] (d) Any building that would be located within one-half mile of the Germantown, Metropolitan Grove, Gaithersburg, Washington Grove, Garrett Park, or Kensington MARC stations must pay the tax at 85% of the applicable rate calculated in subsection (a).

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

[(g)] (f) The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section on [[July 1]] [[January 1]] July 1 of each odd-numbered year by the annual average increase or decrease in a published construction cost index specified by regulation for the two most recent calendar years. The Director must calculate the adjustment to the nearest multiple of 5 cents for rates per square foot of gross floor area or one dollar for rates per dwelling unit. The Director must publish the amount of this adjustment not later than [[May 1]] [[November 1]] May 1 of each [[odd]] [[even numbered]] odd-numbered year.

52-50. Use of impact tax funds.

Impact tax funds may be used for any:

(a) new road, widening of an existing road, or total reconstruction of all or part of an existing road required as part of widening of an existing road,

- 239 that adds highway or intersection capacity or improves transit service or
 240 bicycle commuting, such as bus lanes or bike lanes;
- 241 (b) new or expanded transit center or park-and-ride lot;
- 242 (c) bus added to the Ride-On bus fleet, but not a replacement bus;
- 243 (d) new bus shelter, but not a replacement bus shelter;
- 244 (e) hiker-biker trail [[or other bike facility]] and protected bike lanes used
 245 primarily for transportation;
- 246 (f) bicycle locker that holds at least 8 bicycles;
- 247 (g) bikesharing station (including bicycles) approved by the Department of
 248 Transportation; [[or]]
- 249 (h) sidewalk connector in a public right-of-way to or within a major activity
 250 center or along an arterial or major highway; or
- 251 (i) [[the operating expenses of any transit or trip reduction program]]
 252 element of bus rapid transit, including exclusive bus lanes, shelters, and
 253 buses.

254 **52-51. [[Transportation Mitigation Payment]] Reserved.**

- 255 [[(a) In addition to the tax due under this Article, an applicant for a building
 256 permit for any building on which an impact tax is imposed under this
 257 Article must pay to the Department of Finance a [Transportation] Transit
 258 Accessibility Mitigation Payment if that building was included in a
 259 preliminary plan of subdivision that was approved under the
 260 Transportation Mitigation Payment provisions in the County Subdivision
 261 Staging Policy adopted on ____.]]
- 262 [[(b) The amount of the Payment [for each building must be calculated by
 263 multiplying the Payment rate by the total peak hour trips generated by the
 264 development] is based upon the latest finding of adequacy for transit
 265 accessibility for each Policy Area as approved and applicable under the

266 County Subdivision Staging Policy process. The initial findings of
 267 applicability and adequacy as adopted on _____ are as follows:]] [.]]]

268

| <u>Policy Area</u> | <u>Transit Accessibility Mitigation</u> |
|-----------------------------------|---|
| <u>Red Group</u> | |
| <u>Bethesda CBD</u> | <u>Exempt</u> |
| <u>Friendship Heights</u> | <u>Exempt</u> |
| <u>Grosvenor</u> | <u>Exempt</u> |
| <u>Glenmont</u> | <u>Exempt</u> |
| <u>Rockville Town Center</u> | <u>Exempt</u> |
| <u>Shady Grove Metro Station</u> | <u>Exempt</u> |
| <u>Silver Spring CBD</u> | <u>Exempt</u> |
| <u>Twinbrook</u> | <u>Exempt</u> |
| <u>Wheaton CBD</u> | <u>Exempt</u> |
| <u>White Flint</u> | <u>Exempt</u> |
| <u>Orange Group</u> | |
| <u>Bethesda/Chevy Chase</u> | <u>Adequate</u> |
| <u>Clarksburg</u> | <u>Inadequate, Full Mitigation</u> |
| <u>Derwood</u> | <u>Inadequate, Partial Mitigation</u> |
| <u>Gaithersburg City</u> | <u>Inadequate, Full Mitigation</u> |
| <u>Germantown Town Center</u> | <u>Inadequate, Full Mitigation</u> |
| <u>Kensington/Wheaton</u> | <u>Inadequate, Full Mitigation</u> |
| <u>North Bethesda</u> | <u>Inadequate, Full Mitigation</u> |
| <u>R&D Village</u> | <u>Inadequate, Full Mitigation</u> |
| <u>Rockville City</u> | <u>Inadequate, Full Mitigation</u> |
| <u>Silver Spring/Takoma Park</u> | <u>Inadequate, Full Mitigation</u> |
| <u>White Oak</u> | <u>Adequate</u> |
| <u>Yellow Group</u> | |
| <u>Aspen Hill</u> | <u>Inadequate, Full Mitigation</u> |
| <u>Cloverly</u> | <u>Inadequate, Full Mitigation</u> |
| <u>Fairland/Colesville</u> | <u>Inadequate, Partial Mitigation</u> |
| <u>Germantown East</u> | <u>Inadequate, Full Mitigation</u> |
| <u>Germantown West</u> | <u>Inadequate, Full Mitigation</u> |
| <u>Montgomery Village/Airpark</u> | <u>Adequate</u> |
| <u>North Potomac</u> | <u>Inadequate, Full Mitigation</u> |
| <u>Olney</u> | <u>Inadequate, Full Mitigation</u> |
| <u>Potomac</u> | <u>Adequate</u> |
| <u>Green Group</u> | |
| <u>Damascus</u> | <u>Exempt</u> |

| | |
|-------------------|---------------|
| <u>Rural East</u> | <u>Exempt</u> |
| <u>Rural West</u> | <u>Exempt</u> |

In addition to the above, buildings in the Chevy Chase Lake, Langley Park, and Takoma/Langley Policy Areas are considered to have adequate transit accessibility as a result of programmed construction funds for the Purple Line.]]

[(c) The Transit Accessibility Mitigation Payment is based upon a percentage of the tax due under this Article according to the following schedule:

(1) Full Mitigation Required – 25% of tax due under this Article; and

(2) Partial Mitigation Required – 15% of tax due under this Article.

The rate must be set by Council resolution, including a resolution that amends the Subdivision Staging Policy.]] [The Director of Finance must adjust the then-applicable Payment rate as of July 1 of 2015 and each later odd-numbered year by the annual average increase or decrease in a published construction cost index specified by regulation for the two most recent calendar years to the nearest multiple of \$10. The Director must publish the amount of this adjustment in the County Register not later than May 1 of each odd numbered year. The Council by resolution, after a public hearing advertised at least 15 days in advance, may increase or decrease the Payment rate or set different rates for different types of development.]

[(d) The Payment must be paid at the same time and in the same manner as the tax under this Article, and is subject to all provisions of this Article for administering and collecting the tax.]]

[(e) The Department of Finance must retain funds collected under this Section in an account to be appropriated for transportation improvements that

293 result in added transportation capacity in the area where the development
 294 for which the funds were paid is located.]]

295 **52-52. Definitions.**

296 In this Article all terms defined in Section 52-39 have the same meanings, and
 297 the following terms have the following meanings:

298 Cost of a student seat means the construction cost of a school, not including the
 299 cost of land acquisition, divided by the program capacity of the school.

300 Development impact tax for public school improvements means a tax imposed
 301 to defray a portion of the costs associated with public school improvements that
 302 are necessary to accommodate the enrollment generated by the development.

303 High-rise unit means any dwelling unit located in a multifamily residential or
 304 mixed-use building that is taller than 4 stories, and any 1-bedroom garden
 305 apartment.

306 Public school improvement means any capital project of the Montgomery
 307 County Public Schools that adds to the number of teaching stations in a public
 308 school.

309 [[High-rise unit includes any dwelling unit located in a multifamily residential
 310 or mixed-use building that is taller than 4 stories, and any 1-bedroom garden
 311 apartment.]]

312 **52-54. Imposition and applicability of tax.**

313 * * *

314 (c) [[A portion of the development impact tax equal to 10% of the cost of a
 315 student seat must be dedicated to land acquisition for new schools.

316 (d)]] The tax under this Article must not be imposed on:

317 (1) any Moderately Priced Dwelling Unit built under Chapter 25A or
 318 any similar program enacted by either Gaithersburg or Rockville;

- 319 (2) any other dwelling unit built under a government regulation or
 320 binding agreement that limits for at least 15 years the price or rent
 321 charged for the unit in order to make the unit affordable to
 322 households earning equal to or less than 60% of the area median
 323 income, adjusted for family size;
- 324 (3) any Personal Living Quarters unit built under Sec. 59-A-6.15,
 325 which meets the price or rent eligibility standards for a moderately
 326 priced dwelling unit under Chapter 25A;
- 327 (4) any dwelling unit in an Opportunity Housing Project built under
 328 Sections 56-28 through 56-32, which meets the price or rent
 329 eligibility standards for a moderately priced dwelling unit under
 330 Chapter 25A;
- 331 (5) any non-exempt dwelling unit in a development in which at least
 332 25% of the dwelling units are exempt under paragraph (1), (2), (3),
 333 or (4), or any combination of them; [[and]]
- 334 (6) any development located in an enterprise zone designated by the
 335 State or in an area previously designated as an enterprise zone; or
 336 [[based upon the length of time since the expiration of its enterprise
 337 zone status. Within 1 year of its expiration, a full exemption must
 338 apply. Within 2 years of its expiration, 25% of the applicable
 339 development impact tax must apply. Within 3 years, 50% of the
 340 applicable development impact tax must apply. Within 4 years,
 341 75% of the applicable development impact tax must apply. A
 342 project within an area previously designated as an enterprise zone
 343 must be required to pay 100% of the applicable development
 344 impact tax for public school improvements beginning 4 years after
 345 its expiration]]

346 (7) a house built by high school students under a program operated by
 347 the Montgomery County Board of Education.

348 ~~[(d)]~~ ~~[[e)]~~ (d) The tax under this Article does not apply to:

- 349 (1) any reconstruction or alteration of an existing building or part of a
 350 building that does not increase the number of dwelling units of the
 351 building;
- 352 (2) any ancillary building in a residential development that:
- 353 (A) does not increase the number of dwelling units in that
 354 development; and
- 355 (B) is used only by residents of that development and their
 356 guests, and is not open to the public; and
- 357 (3) any building that replaces an existing building on the same site or
 358 in the same project (as approved by the Planning Board or the
 359 equivalent body in Rockville or Gaithersburg) to the extent of the
 360 number of dwelling units of the previous building, if:
- 361 (A) construction begins within one year after demolition or
 362 destruction of the previous building was substantially
 363 completed; or
- 364 (B) the previous building is demolished or destroyed, after the
 365 replacement building is built, by a date specified in a
 366 phasing plan approved by the Planning Board or equivalent
 367 body.

368 However, if in either case the tax that would be due on the new,
 369 reconstructed, or altered building is greater than the tax that would have
 370 been due on the previous building if it were taxed at the same time, the
 371 applicant must pay the difference between those amounts.

372 ~~[(e)]~~ ~~[[f)]~~ (e) If the type of proposed development cannot be categorized
 373 under the residential definitions in Section 52-39 and 52-52, the
 374 Department must use the rate assigned to the type of residential
 375 development which generates the most similar school enrollment
 376 characteristics.

377 (f) A Clergy House must pay the impact tax rate that applies to a place of
 378 worship under Section 52-41(d) if the house:

- 379 (1) is on the same lot or parcel, adjacent to, or confronting the property
 380 on which the place of worship is located; and
 381 (2) is incidental and subordinate to the principal building used by the
 382 religious organization as its place of worship.

383 The place of worship tax rate does not apply to any portion of a Clergy
 384 House that is nonresidential development.

385 **52-55. Tax rates.**

386 (a) The Council must establish the Countywide rates for the tax under this
 387 Article by resolution after a public hearing advertised at least 15 days in
 388 advance. ~~[[are:~~

| <i>Dwelling type</i> | <i>Tax per dwelling unit</i> |
|--------------------------------|-------------------------------------|
| Single-family detached | [\$8000] <u>\$18,878</u> |
| Single-family attached | [\$6000] <u>\$19,643</u> |
| Multifamily (except high-rise) | [\$4000] <u>\$15,507</u> |
| High-rise | [\$1600] <u>\$5,570</u> |
| Multifamily senior | \$ 0 |

390 **II**

391 (b) The tax on any single-family detached or attached dwelling unit must be
 392 increased by \$2 for each square foot of gross floor area that exceeds 3,500
 393 square feet, to a maximum of 8,500 square feet.

(c) Any Productivity Housing unit, as defined in Section 25B-17(j), must pay the tax at 50% of the otherwise applicable rate.

(d) [Any non-exempt dwelling unit located in a development where at least 30% of the dwelling units are exempt from this tax under Section 52-54(c)(1)-(4) must pay the tax at 50% of the applicable rate in subsection (a).]

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

[(f)] (e) The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section effective on [[July 1]] [[January 1]] July 1 of each [odd-numbered] [[even-numbered]] odd-numbered year[[, or on November 15,]] in accordance with the update to the Subdivision Staging Policy using the latest student generation rates and school construction cost data [by the annual average increase or decrease in a published construction cost index specified by regulation for the two most recent calendar years]. The Director must calculate the adjustment to the nearest multiple of one dollar[[, except that the rate must not be increased or decreased more than 5%]]. The Director must publish the amount of this adjustment not later than [[May 1]] [[November 1]] May 1 of each [odd numbered] [[even-numbered]] odd-numbered year.

52-56. Accounting; use of funds.

* * *

(d) Revenues raised under this Article may be used to fund planning design, acquisition of land, site improvements, utility relocation, construction, and initial furniture and equipment for any:

- (1) new public elementary or secondary school;
- (2) addition to an existing public elementary or secondary school that adds one or more teaching stations; [or] or
- (3) modernization of an existing public elementary or secondary school to the extent that the modernization adds one or more teaching stations[[: or
- (4) acquisition of land for a public elementary or secondary school]].

[[(e) Any funds collected for the acquisition of land must be placed in the MCPS Advance Land Acquisition Revolving Fund (ALARF), to be used for the purchase of property for new public schools.]]

52-58. Credits.

(a) Section 52-47 does not apply to the tax under this Article. A property owner must receive a credit for constructing or contributing to an improvement of the type listed in Section 52-56(d), including costs of site preparation. [A credit must not be allowed for the cost of any land dedicated for school use, including any land on which the property owner constructs a school] A property owner may receive credit for land dedicated for a school site, if:

- (1) the density calculated for the dedication area is excluded from the density calculation for the development site; and
- (2) the Montgomery County School Board agrees to the site dedication.

(b) If the property owner elects to make a qualified improvement or dedication, the owner must enter into an agreement with the Director of Permitting Services, or receive a development approval based on making the improvement, before any building permit is issued. The agreement or development approval must contain:

- 448 (1) the estimated cost of the improvement or the fair market value of
 449 the dedicated land, if known then;
 450 (2) the dates or triggering actions to start and, if known then, finish the
 451 improvement or land transfer; [.]
 452 (3) a requirement that the property owner complete the improvement
 453 according to Montgomery County Public Schools standards; [.]
 454 and
 455 (4) such other terms and conditions as MCPS finds necessary.

456 (c) MCPS must:

- 457 (1) review the improvement plan or dedication; [.]
 458 (2) verify costs or land value and time schedules; [.]
 459 (3) determine whether the improvement is a public school
 460 improvement of the type listed in Section 52-56(d) or meets the
 461 dedication requirements in subsection (a); [.]
 462 (4) determine the amount of the credit for the improvement or
 463 dedication; [.] and
 464 (5) certify the amount of the credit to the Department of Permitting
 465 Services before that Department or a municipality issues any
 466 building permit.

467 * * *

- 468 (e) (1) A property owner must receive a credit for constructing or
 469 contributing to the cost of building a new single family residence
 470 that meets Level I Accessibility Standards, as defined in Section
 471 52-107(a).
 472 (2) The credit allowed under this Section must be as follows:

- 473 (A) If at least 5% of the single family residences built in the
 474 project meet Level I Accessibility Standards, then the owner
 475 must receive a credit of ~~[\$500]~~ \$250 per residence.
- 476 (B) If at least 10% of the single family residences built in the
 477 project meet Level I Accessibility Standards, then the owner
 478 must receive a credit of ~~[\$1,000]~~ \$500 per residence.
- 479 (C) If at least 25% of the single family residences built in the
 480 project meet Level I Accessibility Standards, then the owner
 481 must receive a credit of ~~[\$1,500]~~ \$750 per residence.
- 482 (D) If at least 30% of the single family residences built in the
 483 project meet Level I Accessibility Standards, then the owner
 484 must receive a credit of ~~[\$2,000]~~ \$1,000 per residence.
- 485 (3) Application for the credit and administration of the credit be in
 486 accordance with Subsections 52-107(e) and (f).
- 487 (4) A person must not receive a property tax credit under this Section
 488 if the person receives any public benefit points for constructing
 489 units with accessibility features under Chapter 59.
- 490 (f) The Director of Finance must not provide a refund for a credit which is
 491 greater than the applicable tax.
- 492 (g) Any credit issued under this Section before December 31, 2015 expires 6
 493 years after the Director certifies the credit. Any credit issued under this
 494 Section on or after January 1, 2016 expires 12 years after the Director
 495 certifies the credit.
- 496 (h) After a credit has been certified under this Section, the property owner or
 497 contract purchaser to whom the credit was certified may transfer all or
 498 part of the credit to any successor in interest of the same property.
 499 However, any credit transferred under this subsection must only be

applied to the tax due under this Article with respect to the property for which the credit was originally certified.

52-59. [[School Facilities Payment]] Reserved.

[[a) In addition to the tax due under this Article, an applicant for a building permit for any building on which a tax is imposed under this Article must pay to the Department of Finance a School Facilities Payment if that building was included in a preliminary plan of subdivision that was approved under the School Facilities Payment provisions in the County Subdivision Staging Policy.]]

[[b) The amount of the Payment for each building must be calculated by multiplying the Payment rate by the latest per-unit student yield ratio for any level of school or individual school found to be inadequate for the purposes of imposing the School Facilities Payment in the applicable Subdivision Staging Policy and for that type of dwelling unit and geographic area issued by MCPS.]]

[[c) The Payment rates must be set by Council resolution. The Director of Finance must adjust the then-applicable Payment rates]] [as of] [[on July 1 of]] [2015 and] [[each]] [later odd- numbered] [[even-numbered]] [[odd-numbered year, or on November 15, in accordance with the update to the Subdivision Staging Policy by using the latest student generation rates and school construction cost data. The Director must calculate the adjustment to the nearest multiple of one dollar.]] [based on the construction cost of a student seat for each school level as certified by the Superintendent of Montgomery County Public Schools for the two most recent calendar years, to the nearest multiple of \$10.] [[The Director must publish the amount of this adjustment in the County Register not later than May 1 of each]] [odd numbered] [[even-numbered]] [[odd-

527 numbered year. The Council by resolution, after a public hearing
 528 advertised at least 15 days in advance, may increase or decrease the
 529 Payment rate or set different rates for different types of housing unit.]]

530 [[The Council must not increase or decrease the rate by more than 5%.]]

531 [[d) The Payment must be paid at the same time and in the same manner as
 532 the tax under this Article, and is subject to all provisions of this Article
 533 for administering and collecting the tax.]]

534 [[e) The Department of Finance must retain funds collected under this Section
 535 in an account to be appropriated for MCPS capital improvements that
 536 result in added student capacity for, to the extent possible, the affected
 537 grade level in the school cluster, or, if no cluster is established, another
 538 geographic administrative area, where the development for which the
 539 funds were paid is located.]]

540 **Sec. 2. Effective date; Transition.**

541 This Act takes effect on March 1, 2017. The amendments to the development
 542 impact tax for transportation improvements and the development impact tax for public
 543 school improvements added by Section 1 of this Act, must apply to any application for
 544 a building permit filed on or after March 1, 2017. [[A property owner who applies for
 545 subdivision approval before January 1, 2017 must pay a transportation mitigation
 546 payment and a school facilities payment at rates the Council establishes by resolution,
 547 after a public hearing advertised at least 15 days in advance, unless the property owner
 548 applies for a building permit on or after March 1, 2017.]] Any property owner who is
 549 required to pay the development impact tax rates for transportation or public school
 550 improvements that take effect on March 1, 2017 must not be required to pay a
 551 transportation mitigation payment or a school facilities payment.

552 *Approved:*

553 *Nancy Floreen* *November 6, 2016*
Nancy Floreen, President, County Council Date

554 *Approved:*

555 _____
Isiah Leggett, County Executive Date

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

557 _____
Linda M. Lauer, Clerk of the Council Date

558