

MEMORANDUM

July 12, 2018

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Expedited Bill 16-18, Taxation – Transportation Mitigation Payment - Credit

PURPOSE: Action on Bill – Roll call vote required

<p>Government Operations and Fiscal Policy Committee recommendation (3-0): enact the Bill as introduced.</p>

Expedited Bill 16-18, Taxation – Transportation Mitigation Payment – Credit, sponsored by Lead Sponsor Councilmember Floreen and Co-Sponsors Councilmembers Katz, Rice and Navarro was introduced on May 1. A public hearing was held on June 12 with one speaker, Soo Lee Choo, representing Columbia Wegman Acquisitions, LLC and a Government Operations and Fiscal Policy Committee worksession was held on July 9.

Bill 16-18 would authorize the Director of Finance to refund a transportation mitigation payment or give the property owner a credit against the development impact tax for transportation due for the development in the amount of any transportation mitigation payment made for the same development prior to March 1, 2017.

Background

Bill 37-16, Taxation – Development Impact Tax – Transportation and Public School Improvements – Amendments, enacted on November 15, 2016 and signed into law on November 28, 2016, eliminated the transportation mitigation payment in exchange for increasing the development impact tax rate for transportation improvements. Bill 37-16 took effect on March 1, 2017 and included a transition clause that provided that a property owner who paid the revised impact tax rate in effect on or after March 1, 2017 would not be required to pay a transportation mitigation payment. However, some property owners paid all or part of the transportation mitigation payment before March 1, 2017, but were not required to pay the impact tax on the property until after the revised rates took effect on March 1, 2017. Bill 16-18 would authorize the Director of Finance to refund or provide a credit for a transportation mitigation payment made before March 1, 2017 under these limited circumstances.

Public Hearing

The lone speaker, Soo Lee Cho, an attorney representing Columbia Wegman Acquisitions, LLC, supported the Bill. Ms. Cho testified that the Bill would rectify an overpayment of a transportation mitigation impact payment made by her client before the new impact tax rates for transportation improvements took effect on March 1, 2017.

GO Worksession

The Committee discussed the purpose and the provisions of the Bill. Mr. Drummer explained why the transition clause for Bill 37-16 did not authorize a refund of the transportation mitigation payment made by the developer of the Colesville Senior Living Facility.

The Committee recommended (3-0) approval of the Bill as introduced.

Issues

1. What is the fiscal and economic impact of the Bill?

The Executive Branch had not submitted the fiscal and economic impact statement for this Bill when this packet went to print. The Bill would require the County to reimburse Columbia Wegman Acquisitions, LLC for the transportation mitigation payments made prior to March 1, 2017 for one project in the amount of \$227,039.38. Finance has not determined if there are other applicants who would benefit from this Bill.

2. How could Bill 37-16 create an overpayment of a transportation impact tax?

Council staff is aware of one incident where an applicant paid a transportation mitigation payment prior to March 1, 2017 and eventually was required to pay a transportation impact tax under the revised impact tax rates established in Bill 37-16. Bill 37-16 included a transition clause stating that a “property owner who is required to pay the development impact tax rates for transportation ... improvements that take effect on March 1, 2017 must not be required to pay a transportation mitigation payment ...” Since the transportation mitigation payment is not due until the property owner pays the transportation impact tax, we did not expect anyone to have to pay both the mitigation payment and the new rates.

However, the Planning Board staff report required Columbia Wegman Acquisitions, LLC to make a transportation mitigation payment before the impact tax was required for its Columbia Senior Living Facility Project. Although the Planning Board simply required the property owner to pay both together when due under law, the property owner paid the transportation mitigation payment of \$227,039.38 prior to paying the impact tax based upon the Planning Board staff recommendation. Columbia paid the mitigation payment before March 1, 2017 and will pay the impact tax after March 1, 2017 under the new rates, as required by Bill 37-16. If Columbia had not paid the mitigation payment before March 1, they would not have been required to make that payment because they will pay the transportation impact tax under the new rates.

DPS correctly refused to refund the mitigation payment because Bill 37-16 did not authorize a refund under these circumstances. Bill 16-18 would amend the transition clause enacted as part of Bill 37-16 to authorize DPS to either refund or provide a property owner, such as Columbia, with a credit against the impact tax payment in the amount of the mitigation payment already made. Council staff is unaware of how many other property owners are in the same situation, but it should be a limited number. **Committee recommendation (3-0):** approve the Bill as introduced.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 16-18
Concerning: Taxation -- Transportation
Mitigation Payment - Credit
Revised: April 24, 2018 Draft No. 3
Introduced: May 1, 2018
Expires: November 1, 2019
Enacted: [date]
Executive: [date signed]
Effective: [date takes effect]
Sunset Date: None
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Floreen
Co-Sponsors: Councilmembers Katz, Rice and Navarro

AN EXPEDITED ACT to:

- (1) provide a refund or a credit for a transportation mitigation payment made by a property owner under certain circumstances; and
- (2) generally amending the law governing the development impact tax for transportation improvements.

By amending

Chapter 36 of the Laws of Montgomery County 2016
Section 2, Effective Date; Transition

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

1 **Sec. 1. Section 2 of Chapter 36 of the Laws of Montgomery County 2016**
 2 **is amended as follows:**

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

4 This Act takes effect on March 1, 2017. The amendments to the development
 5 impact tax for transportation improvements and the development impact tax for public
 6 school improvements added by Section 1 of this Act, must apply to any application for
 7 a building permit filed on or after March 1, 2017. [Any] If a property owner [who] is
 8 required to pay the development impact tax rates for transportation or public school
 9 improvements that take effect on March 1, 2017, the Director of Finance:

10 (a) must not [be required to pay] require the payment of a transportation
 11 mitigation payment or a school facilities payment for the same
 12 development; and

13 (b) must refund the payment or give the property owner a credit against the
 14 development impact tax for transportation due for the development in the
 15 amount of any transportation mitigation payment made for the same
 16 development prior to March 1, 2017.

17 **Sec. 2. Expedited Effective Date.**

18 The Council declares that this legislation is necessary for the immediate
 19 protection of the public interest. This Act takes effect on the date on which it becomes
 20 law and must apply to any transportation mitigation payment made on or after
 21 November 29, 2016.

22 *Approved:*

23 _____
 Hans D. Riemer, President, County Council

_____ Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 16-18

Taxation – Transportation Mitigation Payment - Credit

DESCRIPTION:	Expedited Bill 16-18 would authorize the Director of Finance to refund a transportation mitigation payment or give the property owner a credit against the development impact tax for transportation due for the development in the amount of any transportation mitigation payment made for the same development prior to March 1, 2017.
PROBLEM:	Bill 37-16 provided that a property owner who pays the impact tax on or after March 1, 2017 no longer needs to pay a transportation mitigation payment. However, Bill 37-16 did not authorize the Director of Finance to refund or credit a transportation mitigation payment made before March 1, 2017 where the property owner pays the impact tax after March 1, 2017.
GOALS AND OBJECTIVES:	The goal is to authorize the Director of Finance to refund or credit a transportation mitigation payment made under these circumstances.
COORDINATION:	Department of Finance, Planning Board
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	N/A