

# DRAFT

Montgomery County Regulation on:

Transportation Demand Management

Department of Transportation

Issued by: County Executive

Regulation No. 10 – 18

Authority: Montgomery County Code, 2018, Chapter 42A, Articles I and II (as revised 2018)

Council Review: Method (2) under Code Section \_\_\_\_

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Effective Date: \_\_\_\_\_

Comment Deadline: \_\_\_\_\_

Summary: The proposed regulation describes the Transportation Demand Management requirements for new development projects of multiple types, as determined by the project size and location relative to the County's designated Subdivision Staging Areas as established in the Subdivision Staging Policy.

Address for comments: Montgomery County Department of Transportation  
Director's Office  
Executive Office Building  
101 Monroe Street, 10th Floor  
Rockville, MD 20850

Staff contact: Sandra L. Brecher, Chief, Commuter Services Section  
(240) 777-8383

**Background:** The Montgomery County Council adopted the current approach to managing growth in the County, known as the Subdivision Staging Policy (SSP). Under this policy, the County has been divided into regions based upon the existing or planned level of transportation infrastructure and resulting capacity of each area, and any future development, to accommodate traffic through non-auto-based alternatives.

The SSP uses a color-coded system, with Red Areas being those with the highest potential for non-auto travel and thus the highest potential for urban development; Orange Areas surround those urban activity centers and are still planned for significant reliance on non-auto travel; Yellow Areas are planned for significantly lower, suburban densities with more expectation of reliance on auto travel; and Green Areas are planned to continue as rural portions of the County, including the Agricultural Reserve, and are designated for very limited new development at low densities. Non-Auto Driver Mode Share goals and related Transportation Demand Management (TDM) goals have been established for these areas, except for the Green Policy Areas. In addition, Non-Auto Driver Mode Share goals have been established for the Transportation Management Districts. Implementation of effective TDM strategies for new developments will be a key determinant of whether the transportation and development goals established for each of these areas can be achieved.

To incorporate this revised approach to evaluating and monitoring traffic impacts into the County's TDM policies, and to streamline the process for ensuring new projects adopt strategies to achieve the goals for each of the SSP Areas, revisions are proposed to Chapter 42A, Article II. Transportation Demand Management. Accompanying those proposed revisions is the current proposed Executive Regulation, intended to provide more specificity and guidance for implementation of Chapter 42A.

**Definitions:** Terms defined herein are for purposes of this Regulation only. The terms used are as defined in Chapter 42 of the Montgomery County Code or as defined in this section:

(TBD as to whether there are any terms unique to these Regs vs. already defined in the Code)

## I. Commuting Goals

- A. Establishment of Goals. Commuting goals for each portion of the County are based upon analyses conducted during the course of master planning processes, which determine the amount and type of new development permitted over the planning period, the transportation infrastructure to be provided, and the amount of non-auto commuting required to limit traffic congestion and produce acceptable traffic flows. These master planned commuting goals are reflected within the Subdivision Staging Policy, along with other objectives for growth and development within the County.
- B. Specificity and Phasing of Goal Achievement. Although overall targets for commuting goals are established in master plans and the Subdivision Staging Policy, sub-areas within larger planning or Policy areas typically do not have specific goals established, and the overall goals are often not specific as to portions of achievement expected to come from various sources or at various time points.

For example, within a given master plan area, projects with certain types of land uses located in close proximity to a Metrorail station might be expected to produce a higher level of non-auto travel than a project with a different land use located several blocks away.

In addition, the planning and policy documents do not always specify the incremental staging needed over time to enable realistic achievement of ultimate goals. More specific goal targets, and interim stages for goal achievement are therefore established in these Regulations.

- C. Listing of Non-Auto Driver Mode Share (NADMS) Goals. Commuting goals established for each of the Policy Areas by the Subdivision Staging Policy (SSP) are displayed in the chart below. In addition, commuting goals established for individual Master Plan and/or Sector Plan areas are indicated. Where no commuting goals have been established under the SSP, or where the Department has determined interim goals are needed while still remaining consistent with the SSP, Master Plan or Sector Plan longer term goals, those additional commuting goals are included in the chart below.

**CHART OF NON-AUTO DRIVER MODE SHARE (NADMS) GOALS**

<b>Policy Area</b>	<b>NADMS Employees</b>	<b>NADMS Residential</b>
Silver Spring	46% existing 50% new	
Bethesda TMD	55% blended for residents and workers	
Chevy Chase Lake Sector Plan	36%	49%
Long Branch Sector Plan	36%	49%
Rock Spring Master Plan	23%	41%
Lyttonsville Sector Plan		50%
North Bethesda TMD	37%	30%
Friendship Heights TMD	39%	
Grosvenor Strathmore Metro Area	Blended goal 50%	
Greater Shady Grove TMD	12.5% transit	35% transit in Shady Grove Metro Station Policy Area 25% transit elsewhere
Great Seneca Science Corridor Master Plan	18% before Stage 2 23% before Stage 3 28% before Stage 4	
White Oak Center	25% all new development in the White Oak Center and Hillandale Center  30% Life Science/FDA Village Center	
White Flint	34% for Phase 1 for Plan area 42% for Phase 2 for Plan area 50% employees for Phase 3	51% for residents for Phase 3
White Flint 2	34% phase 1 27% phase 1 east of tracks 42% phase 2 35% phase 2 east of tracks 50% phase 3 42% phase 3 east of tracks	34% phase 1 27% phase 1 east of tracks 42% phase 2 35% phase 2 east of tracks 51% phase 3 42% phase 3 east of tracks
Areas without specified goals	5% above existing NADMS	5% above existing NADMS

- 1) Individual Project Goals. In the course of its review of future development projects, the Department will recommend as conditions of development approval higher level achievement of TDM goals if the project is such that by its use and location it could be expected to contribute disproportionately to achievement of a given areawide commuting goal.
- 2) Periodic Reexamination of NADMS Goals. NADMS and other TDM goals will be reassessed by the Department on a periodic basis, including examination of data on commuting patterns, traffic congestion, and other relevant factors. Recommendations for adjustments in the interim or longer term goals will be made through revisions to these Executive Regulations as needed.
- 3) Goal Achievement. As part of the process for developing the biennial report for each district, the Department will make an assessment as to the achievability of the NADMS goals and other TMD goals, based on current infrastructure, reporting from projects, survey results and other relevant factors. The Department may determine a reduced goal from that established in the SSP on an interim basis, may waive imposition of penalties on projects not achieving adopted goals, and/or may reassess performance targets.

## **II. Transportation Demand Management – Implementation in Subdivision Staging Policy Areas and Transportation Management Districts**

- A. Applicability. These regulations apply to any new building or development project larger than the sizes indicated below that is completed after January 1, 2019, excluding the following:

- 1) single family detached development in any Policy area
- 2) any development in a Green Policy Area.

New building or development projects larger than the following sizes as designated for each Subdivision Staging Policy Area group (expressed as Gross Square Feet or “GSF”), are required to adopt certain basic transportation demand management measures as further detailed below, in order to assist in achieving the purposes outlined in the Montgomery County Code, Section 42A-22:

- 3) Red Areas: 25,000 square feet of GSF
- 4) Orange Areas: 50,000 square feet of GSF
- 5) Yellow Areas: 75,000 square feet of GSF

- B. Program Levels. There are three levels of Transportation Demand Management (TDM) Programs: TDM Basic Program, TDM Action Program and TDM Results Program. The level of TDM Program required of a building or project is dependent upon the size of the building or project and the Subdivision Staging Policy Area in which it is located. The table below depicts the TDM program levels required for each category of project and the type of Traffic Mitigation

Agreement (TMAg) needed to implement that program, as discussed further in Section III. Traffic Mitigation Agreements.

Subdivision Staging Policy Area	No Requirements	TDM Basic Program (No TMAg)	TDM Action Program (“Action-Based TMAg”)	TDM Results Program (“Results-Based TMAg”)
Red Areas	<25K GSF	25K – 100K GSF	Not Applicable	>100+K GSF
Orange Areas	<50K GSF	50K – 100K GSF	>100-200K GSF	>200+K GSF
Yellow Areas	<75K GSF	75K – 100K GSF	>100K GSF	Not required – May be used upon request by Applicant

### III. Traffic Mitigation Agreements

A. Purpose: A Traffic Mitigation Agreement (TMAg) is a contractual agreement through which a developer or builder of a new project (generally referred to as “Applicant” or “Owner”) legally commits to implement TDM measures at their project. Action-Based and Results-Based TMAgs serve as the implementation mechanism for TDM Programs required for developments of a certain size in TMDs and certain Policy Areas of the County, as detailed in Section II above. TMAgs are binding agreements that run with the land, and are signed by the Applicant, the Department and the Planning Board.

#### B. Components

1. Traffic mitigation agreements consist of the following two types:
  - a. Action-Based TMAgs – Used to memorialize TDM Action Programs
  - b. Results-Based TMAgs – Used to memorialize TDM Results Programs
2. In addition to the specific TDM strategies included in a traffic mitigation agreement, an agreement also may:
  - (a) Provide opportunity for adding or substituting TDM strategies in the event those initially adopted do not result in achievement of the project or area goals on a timely basis. The Department will determine, after consultation

with the Planning Board, whether such changes are significant enough to require amendment to the agreement.

- (b) require adequate financial security, including bonds, letters of credit, or similar guarantees;
- (c) bind future tenants of the development; and
- (d) specify liquidated damages, specific performance, penalties, or other contractual remedies, as appropriate.

#### **IV. Transportation Demand Management Programs**

A. Components of TDM Programs. The required and optional components of each type of TDM Program are detailed below and summarized in the table in IV. B. entitled “Menu of TDM Strategies.”

1. A TDM Basic Program must include the following components:
  - a. Cooperation. Agreement by Owner/Applicant to actively participate and cooperate with the Department to achieve the traffic mitigation and Non-Auto Driver Mode Share goals established for that area. There are no project-based goals associated with a TDM Basic Program. Cooperation includes participation in County-wide and Regional Events related to TDM goals.
  - b. Appointment of a Transportation Coordinator. A Coordinator must be designated by the building or project Owner to have the following responsibilities:
    - i. Serve as a point of contact on commuting and other transportation issues.
    - ii. Participate in training programs offered at no cost to the Owner or Coordinator by the Department or its designees related to performance of these duties and coordination with other traffic mitigation programs
    - iii. Coordinate with the Department to promote use of alternatives to single occupant vehicles and to maximize participation of tenants, employees, residents and others on-site in programs to help meet transportation goals.
    - iv. Facilitate access to tenants, employees, residents and other members of the on-site population for purposes of informing and educating about available transportation-related programs and services; distribute information through use of displays, bulletins, brochures, email notices, social media or other mechanisms
    - v. Provide the Department with updated lists of on-site commercial tenants/employers on a semi-annual basis, which information will be used by MCDOT solely for transportation-related purposes

- vi. Assist in distribution, administration and related activities required for conducting commuting and other transportation surveys as requested by the Department; obtain no less than a 50 percent response rate from among the on-site population.
  - vii. Prepare and submit an annual summary report outlining the transportation demand management measures, programs and activities conducted during the course of the previous year. The Department will provide the Coordinator with a template for use in preparing the report and notification of the due date.
  - viii. Other duties listed in IV. B. Menu of TDM Strategies as “Required” or as later established by the Department in implementing TDM programs.
- c. Notification. Each owner of a building subject to this section is required to promptly notify the Department in writing of the designated Coordinator’s contact information and any subsequent change in that designation or contact information.
- d. Provision of on-site space for outreach and promotion of TDM.
- i. Applicant and the TBC must provide and facilitate use of space in the development on a periodic basis (by prior arrangement) for outreach, marketing and promotional activities.
  - ii. Marketing and promotional activities will include periodic hosting of TDM-related events and contests prepared or conducted solely by the Applicant/Owner or in concert with MCDOT
- e. Displays of Real Time and other TDM Information
- i. Applicant must provide a permanent, static information display in a highly-used location (e.g., the lobby of the building) on the Property containing commuter and general transportation information and promotional material on transportation management programs in the TMD or TDM Area, the County and the region.
  - ii. If the Project has primary access points for visitors and members of the public which are different from those access points for Residents and employees, a display must be provided in each of the primary access areas to reach each of these target markets.
  - iii. Applicant must provide space and equipment for one Real Time Transit Information sign at a highly-used location in the Project to assist employees, visitors, and Residents as appropriate, with transportation information. Applicant must provide conduit, electrical and internet connections.



- iv. Applicant may display County-provided transit information on monitor(s) Applicant uses to display other information related to the Project (i.e., building directory, event announcements, location of specific sections or rooms in the project or building). Applicant must display on such monitor(s) Real Time Transit Information and other commuter and general transportation information and promotional materials on transportation management programs.
  - f. Other. Additional components required for a TDM Basic Program as indicated in the “Menu of TDM Strategies.”
- 2. A TDM Action Program must include all of the components required for the TDM Basic Program, plus the following components:
  - a. Commitment to TDM Strategies. Each TDM Action Program will include certain required strategies along with optional strategies selected from the “Menu of TDM Strategies” included below. The optional strategies will be selected by the Owner/Applicant with advice as requested from the Department and will be determined by the Owner/Applicant to be sufficient to contribute toward achieving the Non-Auto Driver Mode Share (NADMS) goals of that TMD, Policy Area or Master Plan, whichever is highest, and any goals established for that project site. These TDM strategies will be incorporated into an Action-Based Traffic Mitigation Agreement.
  - b. Minimum Financial Commitment. Each TDM Action Program must be accompanied by a financial commitment by the Owner/Applicant to fund the program at a level at least equivalent to that of 50 percent of the annual TMD fee level for the Project. While a Project is not required to expend the full amount of funding initially, there must be a commitment to increase funding to the full level of the commitment as necessary to contribute toward progress in achieving the TMD and project goals.
  - c. Self-Monitoring. Beginning two years after Date of Final Occupancy, and at least every other year thereafter, the Owner/Applicant of the project shall collect data on the effectiveness and results of the TDM strategies included in the TDM Action Program. This monitoring shall determine if the TDM program is contributing toward achievement of the TMD goals and achieving the goals for that project.

- d. Biennial Report. The data collected regarding implementation of TDM strategies, achievement of project goals, and any related findings will be included in a biennial report submitted to the Department, substantially conforming to the format and content established by the Department for such reporting. An accounting for funds expended on the program shall be provided. The Department and/or its representatives will be entitled to conduct spot checks of self-monitoring results.
- e. Addition and/or Substitution of Strategies. In the event the strategies initially selected from the menu by the Owner/Applicant do not result in the project contributing toward continued progress in achieving the TMD goals at a point four years after Date of Final Occupancy (i.e., following the Department's receipt of two biennial reports), the Owner/Applicant or assignee shall be required to add and/or substitute other TDM strategies at the project site, selected from the Menu of TDM Strategies. No additional funding of such programs beyond the original commitment shall be required; however funds committed under paragraph b. above may be shifted to alternative strategies to produce better results, and additional funds may be voluntarily provided. The Department shall have the option to waive this requirement. Notification of the additional or substitute strategies, and any changes in funding allocations or structure, shall be provided in writing to the Department and to MNCPPC.
- f. Penalties. In the event the project is not contributing toward continued progress in achieving the TMD goals at a point six years after date of final occupancy, the project shall be required to allocate one multiple of TMD fees to augment their TDM program. In the alternative, the project may elect to pay this amount to the Department for use in TDM efforts within that TMD. Continued allocations of one multiple of TMD fees shall continue each year until such point as the Project demonstrates contribution toward the TMD goals over a period of at least three years.
- g. Rewards. At the point at which the project contributes toward achievement of the TMD goals for a period of ten successive years, the project shall be provided with a credit of 50 percent toward payment of its TMD fees on an annual basis for every additional year during which it continues to so contribute.

3. A TDM Results Program must include all of the components required for the TDM Basic Program, plus the following components:
  - a. Commitment to TDM Strategies. Each TDM Results Program will include certain required strategies along with optional strategies selected from the “Menu of TDM Strategies” included below. The optional strategies will be selected by the Owner/Applicant with advice from the Department as requested, and will be determined by the Owner/Applicant to be sufficient to achieve the Non-Auto Driver Mode Share (NADMS) goals for that project. These TDM strategies will be incorporated into a Results-Based Traffic Mitigation Agreement, which commits the Owner/Applicant to achieve the results required within six years of initial occupancy.
  - g. Minimum Financial Commitment. Each TDM Results Program must be accompanied by a financial commitment by the Owner/Applicant to fund the program at a level adequate to achieve the Project’s goals within a six-year period from Date of Final Occupancy. This commitment must be at least equivalent to that of the annual TMD fee level for the Project. While a Project is not required to expend the full amount of funding initially, there must be a commitment to increase funding to the full level of the commitment as necessary to accomplish the goals.
  - h. Self-Monitoring. Beginning two years after Date of Final Occupancy, and at least every other year thereafter, the Owner/Applicant of the project shall collect data on the effectiveness and results of the TDM strategies included in the TDM Results Program. This monitoring shall determine if the TDM program is achieving the goals for that project during that time period.
  - i. Biennial Report. The data collected, goals achieved, and any related findings shall be included in a biennial report to be submitted to the Department, substantially conforming to the format and content established by the Department for such reporting. An accounting for funds expended on the program shall be provided. The Department or their representatives shall be entitled to conduct spot checks of self-monitoring results on a periodic basis.
  - j. Independent Monitoring. In the sixth year following Date of Final Occupancy the Owner/Applicant of the project shall retain an independent consultant from a list of approved consultants maintained by the Department and/or MNCPPC to collect data, monitor program implementation, and otherwise provide a comprehensive review of the program in place at the project, including funds expended and results achieved. This review shall determine whether the project is meeting

its goals as established in the TDM Results-Based TMAg. The data collected, and any related findings and conclusions shall be included in the report submitted to the Department. The Department or its representatives shall be entitled to conduct spot checks, to meet with the consultants, and to conduct reviews or audits of these results.

- k. Addition and/or Substitution of Strategies. In the event the strategies initially selected by the Owner/Applicant from the menu for inclusion in the TDM Results Program do not achieve the project's goals at a point four years following Date of Final Occupancy (i.e., following the Department's receipt of the the first two biennial reports), the Owner/Applicant or assignee shall be required to add and/or substitute other TDM strategies for inclusion in the TDM Results Program at the project site. No additional funding of such programs beyond the original commitment shall be required; however funds committed under paragraph b. above may be shifted to alternative strategies to produce better results, and additional funds may be voluntarily provided. Notification of the additional or substitute strategies, and any changes in funding allocations or structure, shall be provided in writing to the Department. The Owner/Applicant is required to conduct independent monitoring at the next monitoring cycle and until such time as the project's goals are achieved.
- l. Penalties. In the event the strategies selected by the Owner/Applicant from the menu for the TDM Results Program do not result in achievement of the project goals at a point six years following Date of Final Occupancy (ie., following the Department's receipt of the Independent Monitoring Report), the Owner/Applicant shall be required to dedicate two times the level of the project's TMD fees to augment the resources dedicated to the TDM Results Program.

In the event the project still is not meeting the established goals at a point eight years following Date of Final Occupancy, the project must dedicate four times the level of TMD fees to augment the resources of the TDM Results Program.

The level of resource dedication to the project's TDM Results Program must remain at the level at which the goal is being achieved, or where substantial progress is evidenced, at the Director's discretion.

The level of increased financial support and the specific components to be added, and any penalties to be imposed consistent with the Enforcement provisions of the Code and these Regulations, will be determined by the Department in concert with the Planning Board.

h. Rewards. At the point at which the Project has achieved its TMD goals for a period of ten successive years, the Project shall be provided with a credit of 50 percent toward payment of its TMD fees on an annual basis for every additional year during which it continues to achieve those goals.

B. Menu of TDM Strategies

The table below summarizes the required and optional TDM strategies within each level of TDM program: Basic, Action, and Results.

	Menu of TDM Strategies*								
SIZE OF BUILDING/PROJECT:	25K - 100K GSF	100K + GSF	50K - 100K GSF	100K - 200K GSF	200 + GSF	75K - 100K GSF	100K + GSF	100K + GSF	
COLOR CATEGORY OF SUBDIVISION STAGING POLICY AREA:	RED		ORANGE			YELLOW			
TYPE OF TDM PROGRAM:	BASIC	RESULTS	BASIC	ACTION	RESULTS	BASIC	ACTION	RESULTS	[Optional]
<b>TDM STRATEGIES</b>									
<u>Cooperation</u>									
Participate in County-wide and Regional Events	X	X	X	X	X	X	X	X	X
Transportation Coordinator / Training + Responsibilities	X	X	X	X	X	X	X	X	X
Notification	X	X	X	X	X	X	X	X	X
On-Site Space for Outreach & Displays (Real Time & TDM Information )	X	X	X	X	X	X	X	X	X
<u>Parking</u>									
Provide Less than Max # of Spaces ( use percentages?)	X	X	X	X	X	X	X	X	O
Unbundle Parking From Lease Arrangements	X	X	X	X	X	X	X	X	O
Unassigned/Unreserved Spaces (Except car/vanpool, carshare, EV)	X	X	X	X	X	X	X	X	O
Market-Rate Parking Charges for Employees	X	X	O	X	X	O	O	O	O
Carpool/Vanpool Parking - Preferentially Located Spaces	X	X	X	X	X	X	X	X	X
Parking Cash-Out	O	O	O	O	O	O	O	O	O
<u>Onsite Bicycle Parking</u>									
Bikeshare Participation (memberships, bikeshare stations, etc.)	X	X	X	X	X	O <sup>a</sup>	O <sup>a</sup>	O	O
Secure Bicycle Parking (> required under Zoning Ordinance)	O	X	O	X	X	O	O	O	O
Bicycle Repair Station(s)	O	O	O	O	O	O	O	O	O
<u>Bicycle and Pedestrian Facilities</u>									
Shower Availability/Lockers/Changing Rooms	O	X	O	O	X	O	O	O	O
Onsite Pedestrian Amenities (i.e., benches, sidewalks, etc.) > Requ'd	O	X	O	X	X	O	O	O	O
<u>Amenities</u>									
On-Site Amenities (refreshments, dry cleaning, convenience retail, etc.)	O	O	O	X	X	O	O	O	O
On-Site or Nearby Child Care	O	O	O	O	O	O	O	O	O
<u>Transit</u>									
Subsidized Transit Passes (e.g., SmartBenefits, etc.)	X	X	X	X	X	X	X	X	O
Provide Transit Passenger Amenities (e.g., shelters, waiting areas)	X	X	O	X	X	O	O	O	O
Shuttle Bus Services (e.g., Circulators, Microtransit)	O	X	O	O	O	O	O	O	O
Vanpool Services	X	X	X	X	X	O	O	O	O
Availability of Mid-Day Short-term Car Services (i.e., Zipcar memberships, ride hailing services) for Alt Commuters	O	X	O	X	X	O	O	O	O
<u>Employee &amp; Resident Incentives (Employer/Management Costs)</u>									
>\$50 - \$100 per employee/resident per year	N/A	N/A	N/A	N/A	N/A	X	X	O	O
>\$100 - \$200 per employee/resident per year	N/A	N/A	X	X	X	O	O	O	O
>\$200 per employee/resident per year	X	X	O	O/X <sup>b</sup>	X	O	O	O	O
NOTES: X = Required; O = Optional; N/A=Not Available/Applicable									
Red Policy Areas: TDM Action Program = Not Available									
Yellow Policy Areas: TMD Results Program = Optional									
<sup>a</sup> - Bikeshare in areas without existing program could provide own program or dockless bikeshare program support									
<sup>b</sup> - If don't meet goals after 6 years, required to go to \$200/employee/year									
<sup>1</sup> Note: Determination of which strategies are required or optional in each area will be further analyzed for evaluation of impacts.									
Additional/new strategies may be added by project owners, developers, employers, residential managers, MCDOT or others.									
Evaluation of impacts will be important to assess, but new approaches are welcome.									

[Above table also available as separate document for easier readability.]