

## Article II. Transportation Demand Management.

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**Editor's note**—Article II. “Transportation System Management” was renamed “Transportation Demand Management” and §§ 42A-10 through 42A-20 were repealed by [2002 L.M.C., ch. 34](#), § 1. Secs. 42A-10, 42A-12, 42A-13, 42A-14, 42A-15, 42A-16, 42A-17, 42A-18, 42A-19, and 42A-20 were derived from 1988 L.M.C., ch. 18, § 1; Sec. 42A-11 was derived from 1988 L.M.C., ch. 18, and § 1; 1996 L.M.C., ch. 4, § 1.

### **Sec. 42A-10. — Sec. 42A-20. Reserved.**

**Editor's note**—Article III. “Transportation Management in Metro Station Areas” was repealed by [2002 L.M.C., ch. 34](#), § 1.

### **Sec. 42A-20A. Reserved.**

**Editor's note**—Sec. 42A-20A was repealed by [2002 L.M.C., ch. 34](#), § 1. Note that § 42A-20A was enacted as § 42A-20 under Article III by 1993 L.M.C., ch. 47, § 1. This section was editorially renumbered § 42A-20A to avoid duplication with the final section of art. II, also numbered § 42A-20.

### **Sec. 42A-21. Definitions.**

In this Article, unless the context indicates otherwise:

*Alternative work hours program* means any system that shifts the workday of an employee so that the workday starts or ends outside of a peak period, including:

- (1) compressed workweeks;
- (2) staggered work hours involving a shift in the set work hours of an employee at the workplace; or
- (3) flexible work hours involving individually determined work hours under guidelines established by the employer.

*Bundling of parking* means a requirement by the seller or lessor that a prospective purchaser or tenant purchase or lease a minimum number of parking spaces in the facility as a precondition to buying or leasing space or renewing a lease in a commercial or residential building. Bundling of parking does not include:

- (1) the provision of parking spaces as a component of a sale or lease when voluntarily requested by a prospective purchaser or lessee; or
- (2) a parking space physically integrated with an individual leasable or sales unit if the parking space is dedicated to that unit and can be directly accessed through that unit such that only occupants of that unit are able to use the space or spaces.

*Carpool* means a motor vehicle occupied by 2 or more employees traveling together.

*Commute* means a home-to-work or work-to-home trip. A commute may have brief intervening stops, but the primary purpose must be travel between work and home.

*Date of final occupancy* means the earlier of:

- (1) the date on which 80 percent of a building or project has been leased or sold; or
- (2) two years after the first final use and occupancy certificate has been issued.

*Department* means the Department of Transportation.

*Director* means the Director of the Department of Transportation or the Director's designee.

*District* means a transportation management district created under this Article.

*Employee* means a person hired by an employer, including a part-time or seasonal worker or a contractor, reporting to or assigned to work on a regular basis at a specific workplace controlled by that business or organization, including a teleworker.

*Employer* means any business or government entity, including the County, employing 25 or more employees including contractors assigned to a worksite. Employer does not include:

- (1) a home-based business;
- (2) a business with no employees housed at that work site; or
- (3) any government agency not required by law to follow County regulations.

*NADMS goal* means the specific NADMS percentage goal for peak period commuters in a District or a Policy Area that has been established through a Master Plan, through the Subdivision Staging Policy, or through regulation.

*Non-Auto Driver Mode Share or NADMS* means the percent of commuters who travel by modes other than driving an automobile. NADMS includes commuters who travel by transit, vanpool, biking, walking, or connecting to the workplace electronically. NADMS does not include carpool or vanpool drivers, but it does include carpool and vanpool passengers.

*Peak period* means the hours of highest transportation use each workday, as defined in the resolution creating a District, as established in the Subdivision Staging Policy, or established through a technical study.

*Planning Board* means the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

*Policy Area* means a Transportation Policy Area adopted by the County Council through the Subdivision Staging Policy.

*Project-based TDM Plan* means a TDM plan for a new development project.

*Resident* means an adult domiciled in the relevant area.

*Single-occupancy vehicle* means a motor vehicle occupied by one employee for commuting purposes, other than a two-wheeled vehicle.

*Subdivision Staging Policy* means the most recent policy adopted under Section 33A-15.

*Telework* means a work arrangement where a manager directs or permits an employee to perform usual job duties away from the central workplace in accordance with established performance expectations and agency-approved or agreed-upon terms.

*Traffic Mitigation Plan or TMP* means a set of strategies designed to implement TDM at an existing commercial or residential building or by an employer in an existing building.

*Transportation demand management or TDM* means any method of reducing demand for road capacity, especially during a peak period, including an alternative work hours program, carpools, vanpools, subsidized transit passes, preferential parking for carpools or vanpools, improved bicycle and pedestrian access and safety, public transportation, and a parking charge, or other parking management strategies.

*Transportation Demand Management Plan or TDM Plan* means a set of strategies designed to implement TDM for a new or existing building, a new or existing development project, or an employer.

*Transportation management organization* means a public, nonprofit private, or public-private firm, corporation, or instrumentality created or contracted to manage or coordinate transportation demand management programs.

*Vanpool* means a vehicle that has the capacity for 6 or more passengers in addition to the driver if:

- (1) passengers occupy 50% or more of the seats at any point during the trip; and
- (2) the vehicle is used to transport employees between their residences, designated locations, and their place of employment for 80% or more of the miles the vehicle is driven.

*Workplace* means the place of employment, base of operations, or predominant location of an employee.

(1993 L.M.C., ch. 47, § 1; 1996 L.M.C., ch. 4, § 1; [2002 L.M.C., ch. 34](#), § 1; [2004 L.M.C., ch. 2](#), § 2; [2008 L.M.C., ch. 5](#), § 1; [2019 L.M.C., ch. 28](#), §1.)

**Editor's note**—[2008 L.M.C., ch. 5](#), § 3, states: Sec. 3. Any regulation in effect when this Act takes effect that implements a function transferred to another Department or Office under Section 1 of this Act continues in effect, but any reference in any regulation to the Department from which the function was transferred must be treated as referring to the Department to which the function is transferred. The transfer of a function under this Act does not affect any right of a party to any legal proceeding begun before this Act took effect.

## **Sec. 42A-22. Findings and purposes.**

(a) New economic development is important to stimulate the local economy. Focusing new development in high transit-service areas is an important County land use and economic development objective.

(b) Limited transportation infrastructure, traffic congestion, inadequate access to transit, bicycle and pedestrian facilities, and safety issues impede the County's land use and economic development objectives.

(c) Transportation demand management, in conjunction with adequate transportation facility review, planned capital improvement projects, and parking and traffic control measures, will:

- (1) help provide sufficient transportation capacity to achieve County land use objectives and permit further economic development;
- (2) reduce the demand for road capacity, promote safety for all users of transportation infrastructure, and improve access to transit, bicycle and pedestrian facilities; and
- (3) help reduce vehicular emissions, energy consumption, and noise levels, and help address climate change.

(d) Improved traffic levels and air quality, and a reduction in ambient noise levels will help create attractive and convenient places to live, work, visit, and conduct business.

(e) Transportation demand management will equitably allocate responsibility for reducing single-occupancy vehicle trips among government, developers, employers, property owners, tenants, and the public.

(f) Transportation demand management should be consistent with any commuting goals set in the Subdivision Staging Policy, Master Plans, and Sector Plans. TDM should foster coordinated and comprehensive government, private industry, and public action to:

- (1) make efficient use of existing transportation infrastructure;
- (2) increase transportation capacity as measured by numbers of people transported;
- (3) reduce existing and future levels of traffic congestion by moving more people in fewer vehicles;
- (4) reduce air and noise pollution, and address climate change; and

(5) promote traffic safety together with transit, pedestrian and bicycle safety and access for all users.

(g) Transportation demand management will substantially advance public policy objectives. Adoption of this Article is in the best interest of the public health, safety, and general welfare of the County.

(1993 L.M.C., ch. 47, § 1; [2002 L.M.C., ch. 34](#), § 1; [2004 L.M.C., ch. 2](#), § 2; [2019 L.M.C., ch. 28](#), §1.)

#### **Sec. 42A-23. Districts; authority of the Department and Planning Board.**

(a) The County Council by resolution may create a transportation management district (TMD) in Red, Orange, or Yellow Policy Areas as defined in the Subdivision Staging Policy. A district may be formed from all, or portions of, one or more Policy areas, even if they are not contiguous.

(b) The Department may take actions necessary to achieve effective transportation demand management in each District, on its own or by contract with any employer, transportation management organization, or other party, including:

- (1) controlling the use of or limiting public parking, by regulation adopted under method (2);
- (2) prohibiting bundling of parking in new developments;
- (3) monitoring and assessing traffic patterns and pedestrian access and safety;
- (4) adopting traffic and parking control measures;
- (5) providing transit, shuttles, circulator services, or other transportation services;
- (6) implementing approved transportation-related capital projects;
- (7) promoting, implementing, and improving existing transit and ridesharing incentives;
- (8) promoting regional cooperation between the County and other government agencies;
- (9) creating cooperative County-private sector programs to increase ridesharing and transit use; and

(10) conducting surveys, studies, and statistical analyses to determine the effectiveness of and improvements needed to advance transportation demand management plans and employer and building owner efforts.

(c) In each District, sole source contracts may be signed with, or funds granted to, one or more transportation management organizations to carry out transportation demand management programs that the Department could otherwise carry out, under Chapter 11B.

(d) The Department and the Planning Board may, in accordance with this Article and other applicable law, jointly or separately impose transportation demand management measures as conditions on the Board's approval of development in any District.

(e) Each District may have a Transportation Management District Advisory Committee if the Executive by regulation decides a Committee is necessary to carry out this Article or if the Council creates a Committee by resolution. The Executive or Council may designate any existing advisory body appointed by the Executive and confirmed by the Council to serve as a Transportation Management District Advisory Committee. The Executive must appoint and the Council must confirm members of any Advisory Committee. The County must not compensate members of an Advisory Committee for their services. Advisory Committee members, not otherwise public employees as defined in Chapter 19A, are not subject to the financial disclosure provisions of that Chapter.

(1993 L.M.C., ch. 47, § 1; [2002 L.M.C., ch. 34](#), § 1; [2004 L.M.C., ch. 2](#), § 2; [2006 L.M.C., ch. 1](#), § 1; [2019 L.M.C., ch. 28](#), § 1.)

#### **Sec. 42A-24. Transportation Demand Management Plans for Employers.**

(a) *Transportation Demand Management (TDM) Plan for an Individual Employer.*

(1) The Director must require an employer subject to this Section to submit a TDM Plan meeting the requirements of this Section District.

(2) Upon written request from the Director, an employer must provide the Director with the number of full-time and part-time employees working for that organization by workplace in each Policy Area or District.

(3) An employer must submit a TDM Plan to the Director if:

(A) the employer is in a Red Policy Area under the Subdivision Staging Policy and has 25 or more employees reporting to or assigned to that workplace;

(B) the employer is in an Orange Policy Area under the Subdivision Staging Policy and has 100 or more employees reporting to or assigned to that workplace;

(C) the employer is in a Yellow Policy Area under the Subdivision Staging Policy and has 200 or more employees reporting to or assigned to that workplace; or

(D) the employer is in one of the following Districts and has 25 or more employees reporting to or assigned to a workplace:

Silver Spring TMD

Friendship Heights TMD

Bethesda TMD

North Bethesda TMD

Greater Shady Grove TMD.

(4) The TDM Plan must be consistent with and contribute to the achievement of any NADMS Goal or other commuting goals set in the Subdivision Staging Policy, Master Plans, Sector Plans, and any individual project-based goals or goals established in the regulations implementing this Article. The TDM Plan must include strategies required by regulation and other strategies selected by the employer from those permitted by regulation or proposed by the employer and approved by the Director. A TDM Plan may include an alternative work hours program, carpool or vanpool incentives, subsidized transit passes, preferential parking for carpools and vanpools, parking management strategies, peak period or single-occupancy vehicle parking charges, improved transit, bicycle and pedestrian access and safety, telework, and other transportation demand management measures approved by the Director.

(5) Each employer must submit its TDM Plan within 90 days after receiving written notice from the Director that it is required. The Director may extend an employer's time to file a TDM Plan for good cause.

(b) *Consolidated Employer Transportation Demand Management Plans.*

(1) An employer may submit a consolidated TDM Plan with other employers in the same building or building complex. An owner of a nonresidential building in a District may submit a consolidated TDM Plan on behalf of one or more employers in the building.

(2) A consolidated plan must be designed so that the action it requires satisfies this Section for employers covered by the plan and complies with the regulations implementing this Section.

(c) *Actions and assistance to be provided.* The Director must:

- (1) offer to help employers prepare TDM Plans;
- (2) decide if each proposed plan meets the requirements of this Section; and
- (3) help an employer revise a plan that the Director determines does not meet the requirements of this Section.

(d) *Resubmission of TDM Plan.* The Director may require an employer to resubmit a plan that the Director finds inadequate to achieve any Non-Auto Driver Mode Share goals or other commuting goals. Once a plan has been approved, the Director must not require an employer to submit a revised plan that meets the requirements of this Section more than once every two years.

(e) *Annual TDM Plan report.* An employer must submit a report on strategies used to implement a TDM Plan, including progress achieved under that plan, to the transportation management organization and the Director on a schedule established by the Director.

(f) *Transportation Demand Management Plan for the Montgomery County Government.*

(1) The Director of the Office of Human Resources, after consulting with the Director of Transportation, must submit a TDM Plan for County employees to the Chief Administrative Officer with a copy to the Council.

(2) The TDM Plan must include incentives, policies, or outreach needed to increase the number of County employees commuting to work through modes other than driving an automobile.

(1993 L.M.C., ch. 47, § 1; [2002 L.M.C., ch. 34](#), § 1; [2004 L.M.C., ch. 2](#), § 2; [2019 L.M.C., ch. 28](#), § 1.)

**Editor's note**—See County Attorney Opinion dated [8/24/07](#) regarding the elements that dictate when an entity must pay the transportation management fee.

2019 L.M.C., ch. 28, § 2(c), states: Transition. ...

(c) **Projects with prior approvals.** Any building or development project with an existing subdivision or optional method approval when this Act takes effect where a traffic mitigation agreement was a condition of that approval, may opt to be considered for re-approval of their application under the amendments in Section 1 if:

- (1) a traffic mitigation agreement has not yet been fully executed;
- (2) the building or project approved is larger than the minimum sizes designated for each Subdivision Staging Policy Area group in Section 42A-26; and
- (3) construction has not begun.

2002 L.M.C., ch. 34, § 2, Phase-in, states: (a) An employer that employs 50 or more employees and has received notice under Section 42A-24(a) must submit an initial traffic mitigation plan that meets the requirements of this Section to the Director by January 1, 2004.

(b) An employer that employs 25 to 49 employees and has received notice under Section 42A-24(a) must submit an initial traffic mitigation plan that meets the requirements of this Section to the Director by January 1, 2005.

#### **Sec. 42A-25. Transportation Demand Management Plans for Existing Buildings.**

(a) *Transportation Demand Management (TDM) Plans for Existing Non-residential Buildings.*

(1) The Director may require an owner of a nonresidential building in a District to submit a TDM Plan if:

- (A) the Director finds that a plan is necessary to achieve the purpose of this Article; and

(B) the building is not subject to either a traffic mitigation agreement currently in effect or a Project-based TDM Plan under Section 42A-26.

(2) If an existing non-residential building is subject to this Section, the Director must notify the building owner that a TDM plan meeting the requirements of this Section must be submitted. As specified in the notice, the owner's plan may cover all or some employers in the building. A plan submitted under this subsection may be in addition to one an individual employer must submit.

(3) After receiving notice under this Section, an owner must submit a TDM Plan meeting the requirements established in the Executive Regulations for approval by the Director.

(b) *Transportation Demand Management (TDM) Plans for Existing Multi-Unit Residential Buildings.*

(1) The Director may require an owner of a residential building or complex with at least 100 dwelling units in a District, including a common ownership community as defined in Chapter 10B, to submit a TDM Plan if:

(A) the Director finds that a plan is necessary to achieve the purpose of this Article; and

(B) the building is not subject to either a traffic mitigation agreement currently in effect or to a Project-based TDM Plan under Section 42A-26.

(2) If an existing multi-unit residential building is subject to this Section, the Director must notify the building owner(s) that a TDM Plan meeting the requirements of this Section must be submitted.

(3) After receiving notice under this Section, the owner(s) must submit a TDM Plan that meets the requirements established in the Executive Regulations for approval by the Director.

(c) *Actions and assistance to be provided.* The Director must:

(1) offer to help building owners prepare TDM Plans;

(2) decide if each proposed plan meets the requirements of this Section; and

(3) help the building owner(s) revise a plan which does not meet the requirements.

(d) *Resubmission of TDM Plan.* The Director may require a building owner to resubmit a plan that the Director finds inadequate to achieve any Non-Auto Driver Mode Share goals or other commuting goals. Once a plan has been approved, the Director must not require a building owner to submit a revised plan that meets the requirements of this Section more than once every two years.

(e) *Annual TDM Plan report.* A building owner must submit a report on strategies used to implement a TDM Plan, and progress on achievement of goals under that plan, to the transportation management organization and the Department based on a schedule established by the Director.

(1993 L.M.C., ch. 47, § 1; [2002 L.M.C., ch. 34](#), § 1; [2004 L.M.C., ch. 2](#), § 2; [2019 L.M.C., ch. 28](#), § 1.)

**Editor's note**—See County Attorney Opinion dated [8/24/07](#) regarding the elements that dictate when an entity must pay the transportation management fee.

2019 L.M.C., ch. 28, § 2(a), states: Transition.

(a) Existing agreements. All traffic mitigation agreements executed under this Chapter before this Act takes effect that have not expired or terminated, remain in effect.

#### **Sec. 42A-26. Transportation Demand Management Plans for New Development Projects (Project-based TDM Plans).**

(a) *Applicability.* This Section applies to any owner or applicant for a new development or construction project that submits an application for a proposed subdivision or optional method development, site plan, conditional use or building permit in a District, but excluding any project consisting solely of single family detached housing, townhouses, or a mixture of both. All such applicants must obtain approval from the Department for a Project-based Transportation Demand Management (TDM) Plan. This approval must be obtained prior to the issuance of any building permit by the Department of Permitting Services. Projects subject to this Section include developments:

(1) in a Red, Orange or Yellow Subdivision Staging Policy Area and larger than the minimum sizes shown in subsection (b);

(2) that do not have a fully-executed traffic mitigation agreement in effect; and

(3) where the Department decides, under standards adopted by the Council for the adequacy of transportation, including Non-Auto Driver Mode Share goals and other commuting goals adopted in Master Plans, Sector Plans and the Subdivision Staging Policy, that more transportation facilities or transportation demand management measures are necessary to meet the County's commuting goals.

(b) *Levels of Project-based TDM Plans.* An owner or applicant for a new development or construction project may be required to submit a Level 1 TDM Basic Plan, a Level 2 TDM Action Plan, or a Level 3 TDM Results Plan based on the size and location of the project as follows:

(1) An owner or applicant for a project located in a Red Policy Area under the Subdivision Staging Policy must:

(A) submit a Level 1 TDM Basic Plan for a project with less than or equal to 40,000 gross square feet; and

(B) submit a Level 3 TDM Results Plan for a project with more than 40,000 gross square feet;

(2) An owner or applicant for a project located in an Orange Policy Area under the Subdivision Staging Policy must:

- (A) submit a Level 1 TDM Basic Plan 493 for a project with at least 40,000 gross square feet, but less than or equal to 80,000 gross square feet;
- (B) submit a Level 2 TDM Action Plan for a project with more than 80,000 gross square feet, but less than or equal to 160,000 gross square feet; and
- (C) submit a Level 3 TDM Results Plan for a project with more than 160,000 gross square feet;

(3) An owner or applicant for a project located in a Yellow Policy Area under the Subdivision Staging Policy must:

- (A) submit a Level 1 TDM Basic Plan for a project with at least 60,000 gross square feet, but less than or equal to 150,000 gross square feet; and
- (B) submit a Level 2 TDM Action Plan for a project with more than 150,000 gross square feet.

(4) If an adopted Master Plan or Sector Plan requires a higher Level of Project-based TDM Plan, those Master Plan or Sector Plan requirements override those described in paragraphs (1), (2), or (3).

(5) An owner or applicant for a project with a gross square foot size disproportionate to its impact on traffic (e.g., large floor area warehouses with lower impacts; small floor area food or beverage establishments with higher impacts) may be required to adhere to a Project-based TDM Plan Level that is either lower or higher than otherwise required by its size and location, in accordance with the development approval and consistent with the Executive Regulation implementing this Article.

(c) *Components of Project-based TDM Plans.* The components of each Project-based TDM Plan Level are described in detail in the Executive Regulation adopted to implement these provisions. Each plan must include the components listed below and in the Executive Regulation. The plan must be submitted by the owner or applicant and approved by the Department. Any owner or applicant may choose to comply with the requirements for a higher Level of Project-based TDM Plan.

(1) Level One: A Project-based TDM Basic Plan is not required to include specific project-based strategies other than providing information, but must implement County-led strategies at the Project and must include:

(A) Appointment of a Transportation Coordinator and Commitment to Cooperate with the Department's Programs. Each owner of a project must designate an individual responsible to assist and cooperate with the Department's efforts to achieve the Non-Auto Driver Mode Share goals and other traffic mitigation and commuting goals. This assistance must include distribution of information on commuting options to the on-site population; coordinating with the Department to conduct on-site commuting-related outreach events; ensuring participation in commuter surveys by the on-site population; attending occasional training sessions for Transportation Coordinators; and other duties included in the Executive Regulation.

(B) *Notification.* Each owner of a project is required to notify the Department in writing within 30 days of receipt of final Use and Occupancy certificate from the Department of Permitting Services of the designated Coordinator's contact information; and within 30 days of any subsequent change in that designation or contact information.

(C) *Access to the Project.* Each owner must provide space on-site by prior arrangement with the Department to allow the Department to promote TDM, including participation in commuter surveys. Such space need not be exclusively for this purpose but must be suitable for this purpose, as determined by the Department.

(D) *TDM Information.* Displays of TDM-related information must be placed in a location visible to employees, residents and other project users.

(2) Level Two: A Project-based TDM Action Plan requires a commitment to take specific actions by the owner or applicant to achieve a base Non-Auto Driver Mode Share that is 5% higher than the District's NADMS goal to help the County achieve district-wide commuting goals. The Director may establish a project NADMS goal that is up to 5% higher or 5% lower than the base NADMS goal in Red Policy Areas and up to 10% higher or 10% lower than the base NADMS goal in Orange and Yellow Policy Areas. The plan must include project-based strategies and demonstrate over time that the adopted strategies are contributing toward achievement of the commuting goals, in compliance with the Executive Regulation. A project must be considered to be contributing toward achievement of the district's commuting goals if the biennial surveys of building occupants demonstrate increased on-site Non-Auto Driver Mode Share, or a measurable improvement in an alternative Department-approved metric, if applicable, in proportion to the level necessary to achieve the project's goal by the date established in the project's TDM plan. Once the NADMS goal or other commuting goals have been achieved, the owner must maintain the level necessary to continue achieving the goals. A Project-based TDM Action Plan must include the Project-based TDM Basic Plan components and the following:

(A) *Selection of Strategies.* The owner or applicant must propose a Project-based TDM Plan that includes required strategies and selected optional strategies. Additional strategies may be proposed by the owner or applicant and may be included in the Project-based TDM Plan if approved by the Department.

(B) *Commitment to Fund and Implement the Plan.* The owner or applicant must commit to fund and implement the Project-based TDM Plan at an adequate level to contribute toward achievement of the commuting goals.

(C) *Self-Monitoring.* The owner or applicant must conduct self-monitoring, consistent with Department requirements, to determine if the Project-based TDM Plan is contributing toward achievement of the District's goals. The self-monitoring must be conducted in addition to any monitoring conducted by the Department.

(D) *Biennial Report.* Progress reports must be provided to the County in alternating years, in a format consistent with Department

requirements.

(E) *Addition and/or Substitution of Strategies.* If the strategies initially selected by the owner or applicant do not result in the plan contributing toward achievement of District goals by four years after Date of Final Occupancy, the Department may require revisions in the project's plan using other strategies proposed by the owner or applicant. The owner or applicant must agree to implement these revised strategies if required by the Department at a level consistent with the owner's commitment to fund and implement the plan. This process may be repeated until the project demonstrates it is contributing toward achievement of district goals, consistent with the Executive Regulations. Once the NADMS goal or other commuting goals have been achieved, the owner must maintain the level necessary to continue achieving the goals.

(F) *Additional Funding Commitment.* If the project does not contribute toward achievement of the commuting goals by six years after Date of Final Occupancy, the Department may require increased funding by the owner for existing or new TDM strategies to be implemented at the project. The owner must commit additional funds to supplement on-site strategies if required by the Department. The amount of the additional funding must be as established in the Executive Regulation.

(G) *Performance Incentives.* The owner may be eligible for annual performance incentives established by the Department for continued contribution over multiple years toward achievement of commuting goals, including reductions in TDM fees or other financial benefits, as established in the Executive Regulation.

(3) Level Three: A Project-based TDM Results Plan requires a commitment by the owner or applicant to achieve a base Non-Auto Driver Mode Share that is 5% higher than the District's goal as well as related commuting goals at that project. The plan must include project-based strategies and demonstrate that the plan is achieving the goals established for the project. The Director may establish a project NADMS goal that is up to 5% higher or 5% lower than the base NADMS goal in Red Policy Areas and up to 10% higher or 10% lower than the base NADMS goal in Orange and Yellow Policy Areas. The plan must be submitted by the owner or applicant and approved by the Department. A Project-based TDM Results Plan must include the Project-based TDM Action Plan components and the following:

(A) *Independent Monitoring.* Monitoring by a consultant approved by the Department, to determine whether the project is meeting its goals. This monitoring must be done on a regular basis consistent with the Executive Regulations.

(B) *Addition and/or Substitution of Strategies.* If the strategies initially selected by the owner or applicant do not result in the project achieving its goals by six years after Date of Final Occupancy, the Department may require revisions in the project's plan using other strategies proposed by the owner or applicant. The owner or applicant must agree to implement these revised strategies if required by the Department at a level consistent with the owner's commitment to fund and implement the plan. This process may be repeated until the project demonstrates it is achieving its goals, in compliance with the Executive Regulation.

(C) *Additional Funding Commitment.* If the strategies selected by the owner or applicant do not result in achievement of the project goals by six years after Date of Final Occupancy, the Department may require increased funding by the owner for existing or new TDM strategies to be implemented at the project. Additional increases in funding may be required if the goals have still not been achieved by eight years after Date of Final Occupancy. The owner must commit additional funds to supplement on-site strategies if required by the Department. The amount of the additional funding must be as established in the Executive Regulation.

(D) *Performance Incentives.* The owner may be eligible for annual performance incentives established by the Department for continued achievement of project goals over multiple years, including reductions in TDM fees or other financial benefits, as established by the Executive Regulation.

(d) *Process.* A Project-based TDM Plan must be:

(1) proposed by the owner or applicant and approved by the Department;

(2) made an express condition of any approval for:

(A) subdivision or another plan approval under Chapter 50;

(B) site plan or another plan approval under Chapter 59; or

(C) building permit for a recorded lot;

(3) subject to all other review and approval requirements of Chapter 50 and Chapter 59, with approval of the Department required for any revisions to an approved TDM Program; and

(4) recorded in the County's land records.

A Project-based TDM Plan must be required for all such approvals except where equivalent provisions of a fully-executed traffic mitigation agreement for the project are in effect in perpetuity.

(e) *Enforcement.* The Director must enforce the terms of each Project-based TDM Plan. This does not limit the Planning Board's authority to revoke or otherwise enforce any approvals under Chapter 50 or Chapter 59. Where a Project-based TDM Plan is a condition of building permit approval, the Department of Permitting Services must confirm that the TDM Plan has been approved by the Director prior to issuing a building permit.

(1993 L.M.C., ch. 47, § 1; [2002 L.M.C., ch. 34](#), § 1; [2004 L.M.C., ch. 2](#), § 2; [2019 L.M.C., ch. 28](#), § 1.)

**Editor's note**—2019 L.M.C., ch. 28, § 2(b), states: Transition. ...

(b) New building or project approvals. No traffic mitigation agreement must be required for any new building or development project

approved after this Act takes effect.

#### **Sec. 42A-27. Traffic Mitigation Agreements.**

*Enforcement.* The Department must enforce the terms of each traffic mitigation agreement. This does not limit the Planning Board's authority to revoke or otherwise enforce any approvals for subdivision under Chapter 50 or optional method development under Chapter 59.

(1993 L.M.C., ch. 47, § 1; [2002 L.M.C., ch. 34](#), § 1; [2004 L.M.C., ch. 2](#), § 2; [2019 L.M.C., ch. 28](#), § 1.)

#### **Sec. 42A-28. Commuter survey and related data collection.**

(a) The Director, after consulting the appropriate Advisory Committee, must conduct a commuter survey, or obtain through other available mechanisms, data on commuting by employees and residents within a defined area. The data must be obtained on a schedule determined by the Director.

(b) The Director, in consultation with the appropriate Advisory Committee, must prepare a survey or other data collection mechanism as necessary to generate information to:

(1) create an accurate data base of employee and resident commuting patterns; and

(2) monitor progress toward reaching any commuting goals set in the Subdivision Staging Policy, Master Plans or Sector Plans, as implemented by the Department through Executive Regulations or other adopted policies and procedures.

(c) The Department must distribute the survey to employers; building owners or managers; tenants, condominium and homeowners associations; Transportation Coordinators, and others required to conduct the survey or to participate in other ways in the data collection process, based on a schedule the Director sets. The Department may also collect commuting data through other available mechanisms in addition to or in place of the commuter survey.

(d) Each notified employer, building owner or manager, Transportation Coordinator or other entity must distribute, collect, and return the completed surveys, or otherwise provide the required data through other Department-approved mechanisms. Data collected must be provided to the transportation management organization and the Department within the time period established by the Department.

(e) Any entity required to participate in the commuting survey, or to participate in data collection through another mechanism, must make a good faith effort to generate survey responses or other data from their target population with the objective of achieving at least a 40 percent compliance rate for an entity with a target population of either 100 or more employees or 100 or more residents and 50 percent for an entity with a target population of less than 100 employees or less than 100 residents. The Director may require a smaller or larger response rate from a given worksite, building, or project based on requirements for statistical validity.

(1993 L.M.C., ch. 47, § 1; [2019 L.M.C., ch. 28](#), § 1.)

#### **Sec. 42A-29. Executive report on Transportation Demand Management.**

(a) By December 1 of each even-numbered year, the Director must submit to the appropriate Advisory Committee and the Planning Board a report on transportation demand management in each operating District. The report should include the following information to the extent feasible within the constraints of available resources:

(1) employee commuting patterns by employer, building or project; residential commuting patterns by building or project; other commuting or travel patterns as appropriate;

(2) auto occupancy rates by employer, residential unit or other appropriate measures;

(3) level of service measurements for each major intersection in the policy area and selected critical intersections outside the area;

(4) parking supply and demand;

(5) status of road or intersection improvements, signal automation, bicycle and pedestrian access and safety, and other traffic modifications in or near the district;

(6) transit use and availability;

(7) carpool and vanpool use;

(8) bicycle and bikeshare use;

(9) use of other transportation modes relevant to analyzing achievement of commuting goals;

(10) the number of electric vehicle charging stations in the area; and

(11) the source and use of any funds received under this Article.

(b) By March 1 of each odd-numbered year, the Executive must forward required reports to the Council. The Executive must note any area of disagreement between the Director and an Advisory Committee.

(c) If any commuting goals set in the Subdivision Staging Policy are not met eight years after a district is created or by June 30, 2028, whichever is later, the Director must recommend corrective action to the Executive. This action may include additional mitigation measures. If the Executive agrees that such action is necessary, the Executive should propose appropriate legislation or adopt appropriate

regulations as authorized by law.

(1993 L.M.C., ch. 47, § 1; [2002 L.M.C., ch. 34](#), § 1; [2004 L.M.C., ch. 2](#), § 2; [2006 L.M.C., ch. 1](#); [2019 L.M.C., ch. 28](#), § 1.)

**Editor's note**—See County Attorney Opinion dated [8/24/07](#) regarding the elements that dictate when an entity must pay the transportation management fee. See County Attorney Opinion dated [4/26/05](#) discussing the Council's role in setting certain transportation fees and the Executive's role in setting transportation management fees.

### **Sec. 42A-30. Regulations.**

The Executive must adopt regulations under method (2) to implement this Article. The regulations may implement the requirements of this Article in phases.

(1993 L.M.C., ch. 47, § 1; [2002 L.M.C., ch. 34](#), § 1; [2019 L.M.C., ch. 28](#), § 1.)

### **Sec. 42A-31. Transportation Demand Management Fee.**

(a) *Authority.*

(1) The Council may, by resolution adopted under Section 2-57A, set the transportation demand management fee that the Department must annually charge an applicant, and each successor in interest, for subdivision, optional method development approval, or a building permit.

(2) The Department is authorized to charge a transportation demand management fee adopted by the Council to:

(A) an applicant for subdivision or optional method approval, site plan approval or a building permit in a District and

(B) an owner of existing commercial, industrial or multi-unit residential developed property in the District, including a property where the principal use is a commercial parking facility.

(b) *Use of revenue.* The revenue generated by a transportation demand management fee must be used in the District in which the development or property subject to the fee is located to cover the cost of:

(1) administering the District and TDM strategies, and coordinating with projects and occupants (including employees and residents) within that District or Policy Area, including review and monitoring of TDM Plans; and

(2) any program implemented under Section 42A-23(b), including any vehicle or other equipment necessary to carry out the program.

(c) *Rate.* The rate of a transportation demand management fee must be set to produce not more than an amount of revenue substantially equal to the:

(1) portion of the cost of administering TDM in the District, including the review and monitoring of TDM Plans, reasonably attributable to the transportation effects of the development project or property subject to the fee; and

(2) portion of the cost of any program implemented under Section 42A-23(b), including any vehicle or other equipment necessary to carry out the program, reasonably attributable to the transportation effects of the development project or property subject to the fee.

(d) *Method.* A transportation demand management fee may be assessed on:

(1) the gross square feet, the gross floor area, the maximum or actual number of employees, or the average number of customers, visitors, or patients, in a nonresidential building;

(2) the number of dwelling units, the gross square feet or the gross floor area, in a residential building;

(3) the number of parking spaces associated with a building; or

(4) any other measurement reasonably related to transportation use by occupants of, employees located in, or visitors to a particular development or property, including property where the principal use is as a commercial parking facility.

(e) *Variation.* The transportation demand management fee and the basis on which it is assessed may vary within each District, between one District and another, and from one building category or land use category to another.

([2019 L.M.C., ch. 28](#), § 1.)

### **Sec. 42A-32. Enforcement.**

(a) The Department must enforce this Article. An employer, owner, building or project manager or other responsible party subject to Section 42A-24 or 42A-25 that does not submit a TDM Plan or required report, comply with required provisions of a plan, or provide survey data consistent with the requirements of Section 42A-28 within 30 days after a second notice has committed a class C violation.

(b) A party to a Project-based Transportation Demand Management Plan under Section 42A-26 who does not comply with the approved plan within 30 days after notice of noncompliance has committed a class A violation.

(c) Any party that does not submit required reports on numbers of employees, transportation demand management plans and strategies, Non-Auto Driver Mode Share, progress toward goals, survey results or other TDM-related provisions or measurements on a timely basis has committed a class C violation.

(d) Any party who falsifies any required data or reports has committed a class A violation.

[\(2019 L.M.C., ch. 28, § 1.\)](#)