



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

MEMORANDUM

February 13, 2019

TO: Nancy Navarro, President
Montgomery County Council

FROM: Marc Elrich, County Executive

SUBJECT: Recommended Revisions – Bill 36-18, Amendments to Montgomery County Code, Chapter 42A, Article II, Transportation Demand Management, Sections 42A-21 – 42A-30, and adding Sections 42A-31 and 42A-32

The subject bill was introduced this past fall and a public hearing held in early December, prior to my becoming County Executive. I fully support expanding the role of Transportation Demand Management (TDM) in the County, as proposed in this bill. Upon reviewing the original language, staff realized that that approach would not let us achieve the mode share goals critical to effectively managing traffic congestion and its community impacts. TDM is one of the tools to make the mode shares stated in master plans a reality. Controlling traffic impacts from new development within our master plan areas requires that we achieve the commuting goals adopted in those plans. To ensure those goals are met, and based upon testimony at the public hearing, I am hereby submitting recommended revisions to the proposed bill, which are shown in the attached version.

Key components of the revised bill include the following provisions designed to increase the TDM program's effectiveness in meeting the commuting goals of each Master Plan, Policy Area and Transportation Management District (TMD):

1. Thresholds for development size in each category of Policy Area have been revised downward, so that a larger portion of new projects in each category will be required to contribute toward achieving the goals for each area.
(See highlighted text, pages 20-21.)
2. Non-Auto Driver Mode Share (NADMS) targets for new projects in each Policy Area or TMD may be set by the Director of the Department of Transportation at five percent above the NADMS goal for that area or district as a whole, to increase

the likelihood the area-wide commuting goals will be met, even when significant existing development is already in place. (*See highlighted text, pages 23 and 26.*)

3. Parking management is identified as a priority strategy for new developments if they are not making adequate progress toward, or achieving, their target commuting goals. (*See highlighted text, pages 25 and 27.*)

As the Council conducts its review of Bill 36-18, I would appreciate consideration of the revised version of this bill. The recommended revisions – many of which are in response to input received from the civic and business communities – will enable a more robust and effective program. Al Roshdieh, Director, Montgomery County Department of Transportation (MCDOT), Chris Conklin, MCDOT Deputy Director for Transportation Policy, and other MCDOT staff will be available to discuss the bill and these revisions at the Council work sessions. In the interim, please direct any questions to Mr. Conklin at (240) 777-7198.

Attachment

cc: Al Roshdieh, Director, MCDOT
Casey Anderson, Chair, Montgomery County Planning Board
Chris Conklin, MCDOT
Gary Erenrich, MCDOT
Sandra Brecher, MCDOT

Bill No. 36-18
Concerning: Transportation
Management - Transportation
Demand Management Plan -
Amendments
Revised: December 12, 2018 Draft No.2
Introduced: November 13, 2018
Expires: May 13, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the County Executive

AN ACT to:

- (1) expand transportation demand management to reduce traffic congestion and automobile emissions, support multi-modalism and achievement of non-automobile travel goals, enhance the efficient use of transportation infrastructure, and promote the sustainability of existing and future development;
- (2) establish the requirements for a transportation demand management plan for development in certain areas of the County; and
- (3) update the law governing transportation management in the County.

By amending

Montgomery County Code
Chapter 42A, Ridesharing and Transportation Management
Sections 42A-21, 42A-22, 42A-23, 42A-24, 42A-25, 42A-26, 42A-27, 42A-28, 42A-29,
and 42A-30

By adding

Montgomery County Code
Chapter 42A, Ridesharing and Transportation Management
Sections 42A-31 and 42A-32

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. Sections 42A-21, 42A-22, 42A-23, 42A-24, 42A-25, 42A-26, 42A-**
 2 **27, 42A-28, 42A-29, and 42A-30 are amended and Sections 42A-31 and 42A-32**
 3 **are added as follows:**

4 **42A-21. Definitions.**

5 In this Article, unless the context indicates otherwise:

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

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

14 *Bundling of parking* means a requirement by the seller or lessor that a
 15 prospective purchaser or tenant purchase or lease a minimum number of
 16 parking spaces in the facility as a precondition to buying or leasing space or
 17 renewing a lease in a commercial or residential building. Bundling of parking
 18 does not include the provision of parking spaces as a component of a sale or
 19 lease when voluntarily requested by a prospective purchaser or lessee.
 20 *Bundling of parking also does not include a parking space physically*
 21 *integrated with an individual leasable or sales unit if the parking space is*
 22 *dedicated to that unit and can be directly accessed through that unit, such that*
 23 *only occupants of that unit are able to use the space or spaces.*

24 *Carpool* means a motor vehicle occupied by 2 or more employees traveling
 25 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 [public or private] business or government entity, including the County, employing 25 or more [employees and having a permanent place of business] employees including contractors at assigned to a worksite ~~within [in] a district~~. [The maximum number of employees on the largest shift working in a district determines the size of the employer.]

Employer does not include:

- (1) a [contractor, business, or government entity with no permanent place of business in a district] home based business;
- (2) [a home-based business;
- (3)] a business with no employees housed at that work site;
- [(4) any business with no permanent workplace or location;] or

[(5)] (3) any government agency not required by law to follow
County regulations.

[Growth Policy means the most recently adopted Growth Policy under Section
33A-15.]

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.

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.

Peak period means the hours of highest transportation use ~~in a district~~ each
workday, as defined in the resolution creating a ~~district~~ 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 [pass] passes, preferential parking for carpools or vanpools, improved bicycle and pedestrian access and safety, public transportation, and [or peak period] 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 [van occupied by at least 8 employees traveling together] 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.

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 [access] 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, [and] promote [traffic] safety for all users of transportation infrastructure, and improve access to transit, bicycle and pedestrian [access] facilities; and
 - (3) help reduce vehicular emissions, energy consumption, and noise levels.
- (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, renters, and the public.
- (f) Transportation demand management should be consistent with any commuting goals set in the [Growth] Subdivision Staging Policy,

Master Plans, and Sector Plans. TDM should [and] 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;

[(2)] (3) reduce existing and future levels of traffic congestion by moving more people in fewer vehicles;

[(3)] (4) reduce air and noise pollution; and

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

(g) Where a NADMS Goal has been specifically established for a District it must be achieved for that District. Where a Policy Area is part of a District, the NADMS Goal established for the Policy Area must be achieved.

(h) 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.

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

(a) The County Council by resolution may create a transportation management district [in] ~~(TMD) in a policy area where the Subdivision Staging Policy requires transportation review.~~). ~~A district~~ District may be formed from one or more ~~Subdivision Staging Policy areas~~ Areas, even if they are not contiguous. [:

(1) a Metro station policy area, which may include adjacent areas served by the same transportation network; or

(2) an area where transportation review applies under the Growth Policy.]

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

(1) ~~regulating~~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;

[(3)] (4) adopting traffic and parking control measures;

[(4)] (5) providing transit, shuttles, circulator services, or other transportation services;

(6) implementing approved transportation-related capital projects;

[(5)] (7) promoting or implementing transit and ridesharing incentives;

[(6)] (8) promoting regional cooperation between the County and other government agencies;

[(7)] (9) creating cooperative County-private sector programs to increase ridesharing and transit use; ~~and/or~~

[(8)] (10) conducting surveys, studies, and statistical [analysis] analyses to determine the effectiveness of [traffic mitigation] transportation demand management plans and employer and building owner efforts.

(c) In each ~~transportation management district~~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 ~~distriet~~District.

(e) Each ~~distriet~~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.

42A-24. [Traffic mitigation plans] Transportation Demand Management Plans for Employers.

(a) Transportation Demand Management (TDM) Plans 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 [If an employer is subject to this Section, and] ~~if the Council by resolution or in the [Growth] Subdivision Staging Policy has approved the use of traffic mitigation plans or TDM Plans in a~~

~~given district~~], the Director must notify the employer by letter that the employer must submit a traffic mitigation plan meeting the requirements of this Section].

[(b)] (2) Upon written request from the Director, an employer
~~within a district~~ must provide the Director with the number of
full-time and part-time employees working for that organization
~~at anyby workplace within the district~~ in each Policy Area or
District.

(3) An employer [who employs 25 or more employees in a district at any time within one year before receiving notice under subsection (a)] must submit a [traffic mitigation plan] 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~~ 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

White Oak TMD.

[(c)] (4) The [traffic mitigation plan should] TDM Plan must be consistent with and contribute to the achievement of any NADMS Goal or other commuting goals set in the [Growth] Subdivision Staging Policy, Master Plans, Sector Plans, and any individual project-based goals or interim 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 [traffic mitigation plan] 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.

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

[(e)] (b) Consolidated Employer Transportation Demand Management Plans.

(1) An employer may submit a consolidated [traffic mitigation plan] TDM Plan with other employers in the same building or building complex. An owner of a nonresidential building in a ~~district~~District may submit a consolidated [traffic mitigation plan] 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.

[(f)] (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~~NADMS Goals or other commuting goals ~~for that district.~~ 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.

[(1)] The Director may require an owner of a nonresidential building in a district to submit a traffic mitigation plan if:

(A) the Director finds that a plan is necessary to achieve the purpose of this Article because of the owner's control of parking or common space or for similar reasons; and

(B) the Director notifies the owner of the building under subsection (a).]

[(2) 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 traffic mitigation plan that meets the requirements applicable to an employer.]

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

(A) the Director finds that a plan is necessary to achieve the purpose of this Article because of the owner's control of parking or common space or for similar reasons; and

(B) the Director notifies the owner of the building under subsection (a).

(2) After receiving notice under this Section, an owner of a residential building must submit a traffic mitigation plan that meets the requirements applicable to an employer.]

[(h) The Director must offer to help employers and owners prepare traffic mitigation plans.]

[(i) The Director must:

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

(2) help the employer or owner revise a plan which does not meet the requirements.]

[(j) The Director may require an employer or owner to resubmit a plan that is not consistent with any commuting goals set in the Growth Policy. The Director must not require an employer to submit a plan that meets the requirements of this Section more than once every 2 years. An employer must submit a report on transportation management measures used to implement a traffic mitigation plan to the transportation management organization based on a schedule the Director sets.]

42A-25. [Traffic mitigation agreements] Transportation Demand Management Plans for Existing Buildings.

[(a) Any proposed subdivision or optional method development in a district must be subject to a traffic mitigation agreement if the Planning Board and the Director jointly decide, under standards adopted by the Council for the adequacy of public transportation, that more transportation facilities or transportation demand management measures are necessary to meet any commuting goals set in the Growth Policy.]

[(b) A traffic mitigation agreement must specify transportation demand management measures that the applicant or a responsible party must carry out. The measures must be calculated to ensure that public transportation will be adequate to meet commuting goals set in the Annual Growth Policy.]

[(c) A traffic mitigation agreement may require:

- (1) naming a transportation coordinator;
- (2) limits on parking spaces;

- (3) peak period or single-occupancy vehicle parking charges;
- (4) preferential parking for carpools and vanpools;
- (5) subsidies for employees not using single-occupancy vehicles;
- (6) financial or other participation in building or operating on- or off-site transportation facilities or systems;
- (7) providing space on a periodic basis for marketing and promotional activities of the district;
- (8) designating permanent areas in prominent locations to display information on commuting options; or
- (9) other transportation demand management measures.]

[(d) A traffic mitigation agreement must be:

- (1) agreed to by the applicant, the Department, and the Planning Board;
- (2) made an express condition of any approval for subdivision under Chapter 50 or optional method development under Chapter 59;
- (3) subject to all other review and approval requirements of Chapter 50 and Chapter 59; and
- (4) recorded in the County's land records.]

[(e) A traffic mitigation agreement may:

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

[(f) 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.]

(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~~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~~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 NADMS Goal~~ or other commuting goals ~~for that district~~. 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.

42A-26. [Annual survey] Transportation Demand Management Plans for New Development Projects.

[(a) The Director, after consulting the appropriate Advisory Committee, must schedule an annual commuter survey, unless the Director determines that a less frequent plan is appropriate.]

[(b) The Director, after consulting the appropriate Advisory Committee, must prepare a survey that generates information to:

- (1) create an accurate data base of employee commuting patterns in the district; and
- (2) monitor progress toward reaching any commuting goals set in the Growth Policy.]

[(c) The Department must distribute the survey to employers based on a schedule the Director sets. Each notified employer must distribute, collect, and return the completed surveys to the transportation management organization within 45 days after receiving the surveys.]

[(d) An employer must make a good faith effort to generate survey responses from employees with the objective of achieving at least an 80 percent compliance rate.]

(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 for a project that is of the sizes referenced in a district, but excluding subsection (b) below. This Section does not apply to any project consisting solely of single family detached housing, or which consists solely of renovations to, or a

change in use of, an existing building or buildings unless the change in use causes the project to exceed the sizes referenced in subsection (b) below. All ~~such~~ applicants subject to this Section must obtain approval from the Department for a Project-based Transportation Demand Management (TDM) Plan. This approval must be obtained prior to ~~Planning Board approval the issuance of the application, or prior to any building permit by the~~ Department of Permitting Services ~~approval for projects not requiring Planning Board action~~. Projects subject to this Section include developments:

- (1) in ~~a~~ Red, Orange or Yellow Subdivision Staging Policy ~~Area~~Areas 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~~ NADMS Goals and other commuting goals adopted in Master Plans, Sector Plans ~~and~~, the Subdivision Staging Policy, ~~or through an executive regulation~~, 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~~project's development 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 at least up to 25,000 gross square feet, but less than or equal to 100,000 gross square feet; and

(B) submit a Level 3 TDM Results Plan for a project with more than 10025,000 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 for a project with at least 25,000 gross square feet, but less than or equal to 75,000 gross square feet;

(B) submit a Level 2 TDM Action Plan for a project with more than 75,000 gross square feet, but less than or equal to 150,000 gross square feet; and

(C) submit a Level 3 TDM Results Plan for a project with more than 150,000 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 50,000 gross square feet, but less than or equal to 100,000 gross square feet;

(B) submit a Level 2 TDM Action Plan for a project with more than 100,000 gross square feet, but less than or equal to 200,000 gross square feet; and

(C) submit a Level 3 TDM Results Plan for a project with more than 200,000 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 75,000 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 feet 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~~ NADMS Goals and other traffic mitigation and commuting goals ~~established for that area.~~ 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 by the owner or applicant to specific actions to help the County achieve ~~district-wide~~NADMS Goals or other commuting goals ~~established in an executive regulation.~~ The plan must include project-based strategies and demonstrate over time that the adopted strategies are contributing toward achievement of the ~~district's~~ commuting goals, in compliance with the ~~Executive Regulations.~~executive regulation. A project must be considered to be contributing toward achievement of the ~~district's~~ commuting goals if the biannual 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 goal~~five percent NADMS above the NADMS 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 goal. A Project-based TDM Action Plan must include the Project-based TDM Basic Plan components and the following:

586 (A) Selection of Strategies. The owner or applicant must
 587 propose a Project-based TDM Plan that includes required
 588 strategies and selected optional strategies from the
 589 “Sample Menu of TDM Strategies” identified in the
 590 Executive Regulation. Additional strategies may be
 591 proposed by the owner or applicant and may be included
 592 in the Project-based TDM Plan if approved by the
 593 Department.

594 (B) Commitment to Fund and Implement the Plan. The owner
 595 or applicant must commit to fund and implement the
 596 Project-based TDM Plan at an adequate level to contribute
 597 toward achievement of the ~~district’s~~ commuting goals.

598 (C) Self-Monitoring. The owner or applicant must conduct
 599 self-monitoring, consistent with Department
 600 requirements, to determine if the Project-based TDM Plan
 601 is contributing toward achievement of the ~~district’s~~
 602 ~~goals.commuting goals.~~ This self-monitoring must be
 603 ~~conducted in addition to any monitoring conducted by the~~
 604 ~~Department.~~

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

608 (E) Addition and/or Substitution of Strategies. If the strategies
 609 initially selected ~~from the “Sample Menu of TDM~~
 610 ~~Strategies”~~ by the owner or applicant do not result in the
 611 plan contributing toward achievement of ~~district~~ goals by
 612 four years after Date of Final Occupancy, the Department

may require revisions in the project's plan using the "Sample Menu of TDM Strategies" or other strategies proposed by the owner or applicant. The Department must require that the owner or applicant implement parking management strategies for projects that fail to demonstrate progress toward attaining the commuting goals. Parking management strategies may include limiting the parking available for use by employees commuting during peak periods. 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~~ District commuting goals, consistent with the executive regulationr. Once the NADMS Goal or other commuting goals have been achieved, the owner must maintain the level necessary to continue achieving the goal.

- (F) *Additional Funding Commitment.* If the project does not contribute toward achievement of ~~district~~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~~ executive regulation.

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

(3) Level Three: A Project-based TDM Results Plan requires a commitment by the owner or applicant to achieve certain ~~Non-Auto Driver Mode Share~~ NADMS Goals and 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. ~~Those goals~~ The project plan may be ~~equal~~ establish a project NADMS Goal that is up to, five-percent higher or five percent lower than the ~~district's goals~~ NADMS Goals based on project-specific parameters, consistent with the ~~Executive Regulation.~~ executive regulation. When approving the Project-Based TDM Results Plan, the Director must make a determination that the commuting goals for the District or Policy Area will be attained with the established project NADMS Goal. 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:

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

672 (B) Addition and/or Substitution of Strategies. If the strategies
 673 initially selected by the owner or applicant do not result in
 674 the project achieving its goals by six years after Date of
 675 Final Occupancy, the Department may require revisions in
 676 the project's plan using the "Sample Menu of TDM
 677 Strategies" or other strategies proposed by the owner or
 678 applicant. The Department must require that the owner or
 679 applicant implement parking management strategies for a
 680 project that fails to achieve its goals. Parking management
 681 strategies may include limiting the parking available for
 682 use by employees commuting during peak periods. The
 683 owner or applicant must agree to implement these revised
 684 strategies if required by the Department at a level
 685 consistent with the owner's commitment to fund and
 686 implement the plan. This process may be repeated until
 687 the project demonstrates it is achieving its goals, in
 688 compliance with the ~~Executive Regulation~~ executive
 689 regulation.

690 (C) Additional Funding Commitment. If the strategies
 691 selected by the owner or applicant do not result in
 692 achievement of the project goals by six years after Date of
 693 Final Occupancy, the Department may require increased

694 funding by the owner for existing or new TDM strategies
 695 to be implemented at the project. Additional increases in
 696 funding may be required if the goals have still not been
 697 achieved by eight years after Date of Final Occupancy.
 698 The owner must commit additional funds to supplement
 699 on-site strategies if required by the Department. The
 700 amount of the additional funding must be as established in
 701 the ~~Executive Regulation~~ executive regulation.

702 (D) ~~Rewards~~ Performance Incentives. The owner may be
 703 eligible for annual ~~rewards~~ performance incentives
 704 established by the Department for continued achievement
 705 of project goals over multiple years, including reductions
 706 in TDM fees or other financial benefits, as established by
 707 the ~~Executive Regulation~~ executive regulation.

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

- 709 (1) proposed by the owner or applicant and approved by the
 710 Department;
 711 (2) made an express condition of any approval for:
 712 (A) subdivision or another plan approval under Chapter 50;
 713 (B) site plan or another plan approval under Chapter 59; or
 714 (C) building permit for a recorded lot;
 715 (3) subject to all other review and approval requirements of Chapter
 716 50 and Chapter 59, with approval of the Department required for
 717 any revisions to an approved TDM Program; and
 718 (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 subdivision, optional method, site plan, or conditional use, the Planning Board must confirm that TDM Plan has been approved by the Director before issuing final approval.~~ 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.

42A-27. [Executive report] Traffic Mitigation Agreements.

[(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 district. The report should include:

- (1) employee commuting patterns by employer;
- (2) auto occupancy rates by employer;
- (3) level of service measurements for each 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, improved bicycle and pedestrian access and safety, and other traffic modifications in or near the policy area;
- (6) transit use and availability;

(7) carpool and vanpool use; and

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

[(b) By March 1 of each odd-numbered year, the Executive must forward each report 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 Growth Policy are not met 4 years after a district is created, the Director must recommend corrective action to the Executive. This action may include mandatory 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.]

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.

42A-28. [Regulations] Commuter survey and related data collection.

[The Executive may adopt regulations under method (2) to implement this Article.]

(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 ~~in the district~~; 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 60 percent compliance rate.

42A-29. [Transportation Management Fee] Executive report on TMDs Transportation Demand Management.

[(a) *Authority.*

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

(2) If the resolution creating a district authorizes the Department to charge a transportation management fee to any of the following persons, the Council may, by resolution adopted under Section 2-57A, set the fee that the Department must charge:

(A) an applicant for subdivision or optional method development in the district who is not subject to a transportation management fee under the Alternative Review Procedures in the Growth Policy and each successor in interest; and

(B) an owner of existing commercial and multi-unit residential property in the district.]

[(b) *Use of revenue.* The revenue generated by a transportation 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, including review and monitoring of traffic mitigation plans under Section 42A-24 and traffic mitigation agreements under Section 42A-25; 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 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 the district, including the review and monitoring of traffic mitigation plans under Section 42A-24 and traffic mitigation agreements under Section 42A-25, reasonably attributable to the transportation effects of the development 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 or property subject to the fee.]

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

- (1) 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, 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.]

[(e) *Variation.* The transportation management fee and the basis on which it is assessed may vary from one district to another and one building category or land use category to another.]

(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)(3)~~

(3) 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)(5)~~

(4) transit use and availability;

~~(75)~~ carpool and vanpool use;

~~(86)~~ bicycle and bikeshare use;

~~(97)~~ use of other transportation modes relevant to analyzing achievement of commuting goals; and

~~(108)~~ the source and use of any funds received under this Article.

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

(c) If any commuting goals set in the Subdivision Staging Policy are not met ~~eight years after a district is created by 2030 or by June 30, 2027~~the

dates established by master plans, 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.

42A-30. [Enforcement] Regulations.

[The Department must enforce this Article. An employer that does not submit a traffic mitigation plan or provide survey data within 30 days after a second notice has committed a class C violation. An owner who does not submit a traffic mitigation plan within 30 days after a second notice has committed a class C violation. A party to a traffic mitigation agreement under Section 42A-26 who does not comply with the agreement within 30 days after notice has committed a class A violation.]

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

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~~District; and

(B) an owner of existing commercial, industrial or multi-unit residential developed property in the ~~distriet~~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 ~~transportation management distriet~~District in which the development or property subject to the fee is located to cover the cost of:

(1) administering the ~~distriet~~District and TDM strategies, and coordinating with projects and occupants (including employees and residents) within that ~~distriet~~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 ~~distriet~~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~~District, between one ~~district~~District and another, and from one building category or land use category to another.

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 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 ~~required to~~ 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.

Sec. 2. 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.

(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.

(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.

985 *Approved:*

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~~Hans D. Riemer~~Nancy Navarro, President, County Council Date

987 *Approved:*

988

~~Isiah Leggett~~Marc Elrich, County Executive Date

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

990

Megan Davey Limarzi, Esq., Clerk of the Council Date

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