



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #5a
5/7/09

May 1, 2009

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Glenn Kreger, Acting Chief, Vision Division *GK*

FROM: Jacob Sesker, Planner Coordinator, Vision Division (301.650.5619) *JS*

SUBJECT: Worksession #10: White Flint Sector Plan – Status of Implementation

STAFF RECOMMENDATION: Discuss and provide direction to staff.

PURPOSE OF THIS WORK SESSION

This work session has three purposes:

- (1) To review the January 12 public hearing testimony related to the implementation sections of the Draft Sector Plan,
- (2) To discuss various legal and public policy considerations affecting the financing and administration sections of the Sector Plan, and
- (3) To consider potential changes to the implementation sections of the Sector Plan in light of the new information that has been presented to staff through testimony and subsequent discussions with Executive Branch staff.

This review and discussion will inform staff's efforts to revise the Draft Plan and present those revisions to the Planning Board on June 4, 2009.

SUMMARY

The testimony submitted by the County Executive, and subsequent discussions with the County Executive and officials from various Executive Branch agencies, indicated significant opposition to many implementation elements of the Draft Sector Plan. This memo presents the Planning Board with new information that staff has learned through those discussions, and discusses potential changes to the Sector Plan that would be consistent with that information.

This memo addresses the following topics:

1. Background: Testimony Submitted by County Executive
2. Progress Since Public Hearing
3. Issue Summary and Staff Response
 - A. Legal Considerations
 - B. Policy Considerations
 - C. Cost Considerations
 - D. Administrative Considerations
4. Note: Charter Review Commission

1. BACKGROUND: TESTIMONY SUBMITTED BY COUNTY EXECUTIVE

Most of the testimony addressing the financing mechanism submitted by non-public sector participants could be characterized as favorable. However, the Executive Branch raised a number of significant concerns. The details of those concerns are paraphrased below:

- **Financing:** The specific mechanism recommended in the plan implicates various legal concerns, and is unnecessary given existing tools. Reserving a portion of the tax increment also implicates policy concerns. The County should not create a closed system, thereby isolating an area of prosperity. The incremental revenue generated by development in White Flint should be available to support spending in other, less successful areas of the County.
- **Administration:** The proposed administrative mechanism is redundant and unnecessary. The administrative mechanism might also be less accountable than current/existing structures. Decisions about raising and spending money should be made as part of established budget and CIP processes.

2. PROGRESS SINCE PUBLIC HEARING

In the period following the public hearing, staff has met frequently with representatives from the Office of the County Executive and various Executive Branch agencies. The purpose of those meetings has been threefold: to discuss in greater detail the Executive Branch's concerns regarding the Sector Plan generally, to discuss specifically the Executive Branch's concerns as they relate to the administration and financing portions of the Plan, and to learn from the implementing agencies valuable information regarding the implementation of master plans.

Through those meetings staff has developed a more detailed understanding of the implementing tools available in the County today. Synthesizing all of this new information, staff believes that the County Executive and implementing agencies would generally support a Sector Plan that calls for the creation of a Regional Services Center, an Urban Service District, a redevelopment office or similar entity, a special assessment district, and one or more development districts.

- A Regional Services Center would provide White Flint with a representative in the County Executive's cabinet capable of advocating for the White Flint Sector Plan and advancing the implementation of the Sector Plan.
- The Urban Service District¹ would provide targeted services beyond those normally provided by County government. Examples of such services include landscaping, maintenance, marketing, programming, way-finding, and operation of a bus circulator.

¹ The urban service district (similar to the model of the Bethesda Urban Partnership) could receive funding from a number of sources including ad valorem taxes, transfers from the County's general fund, and private contributions. The challenge would be how to fund the Urban Service District without revenues from a Parking Lot District. This is because the amount of revenue that can be generated by the Special Taxes is limited by the Section 305 of the Charter (the "Charter limit," which will be discussed in greater detail below).

- A redevelopment office (or similar Executive Branch entity) would provide specific redevelopment expertise to an area facing a significant redevelopment challenges. A redevelopment office could also help by providing an interface between developers and County agencies regulating development, utilities, State Highways, WMATA, and other affected common carriers and public sector entities.²
- A special assessment district could be created by the Council simultaneous to the Sectional Map Amendment. The special assessment district could be coterminous with the Sector Plan boundary and could include all properties within that boundary. The properties within the district could be assessed a share of the cost of certain infrastructure projects proportional to the special benefit received.
- One or more development districts should be created, as necessary. This could be done such that as properties develop they are no longer subject to the special benefit assessment and are instead part of a development district.

Staff's work with the Executive Branch has been productive, and the meetings have become more productive as they have progressed. The Executive Branch has expressed heightened interest in the success of the White Flint Sector Plan. That having been said, some Sector Plan recommendations remain stumbling blocks. As an example, the Executive Branch still opposes the use of Tax Increment Financing or, alternatively, any pre-commitment of a portion of incremental tax revenues.

3. ISSUE SUMMARY AND STAFF RESPONSE

Testimony and subsequent discussions with public sector and private sector stakeholders have raised numerous issues with respect to the implementation recommendations. Staff has divided those issues into the following broad categories:

- A. Legal considerations
- B. Policy considerations
- C. Cost considerations
- D. Administrative considerations

Following staff's summary of each of those broad considerations, staff will provide a brief response and recommendations, as appropriate.

A. Legal Considerations

The Draft Sector Plan states: "Levy an annual special assessment or special tax of not more than 10% of the total ad valorem real property tax bill, which would then be applied to all commercial uses within the Sector Plan boundary..." As explained below, this language contemplates a property tax that would implicate Charter limit issues and may violate current Maryland law.

² This approach worked successfully in the Silver Spring urban renewal area.

An area of particular focus in our conversations with the Executive is the legality of the financing mechanism described in the Draft Sector Plan and in staff's memorandum dated February 19. While there are a number of legal issues that have been raised by the Executive Branch, the most significant ones are the following:

- A tax that is ad valorem is a property tax
- A property tax implicates the County's Section 305 charter limits³
- A property tax, under state law, must be applied equally to residential and non-residential uses⁴

Staff Response and Recommendations

Staff assumes the following:

- A goal of the Sector Plan is an implementable Sector Plan,
- The uncertainty and delay associated with making changes to County law would be acceptable, so long as those changes do not require the agreement of nine Council members, and
- The greater uncertainty and delay associated with changes to State law would be unacceptable.

Logically, those assumptions leave the following possible alternatives:

- Levy the special tax equally on residential and commercial uses and confront the Charter limit issues, or
- Fund a portion of the infrastructure using existing infrastructure finance tools that do not implicate the Charter limit, including:
 - Excise tax
 - Development Districts
 - Special Assessments

Staff will address each of those options in turn.

Levy the special ad valorem tax equally on residential and commercial uses and confront the Charter limit issues. To levy an ad valorem special tax on both commercial and residential uses would be a departure from the principles that have been stated throughout this process. Furthermore, an ad valorem tax would implicate the Charter limit. In essence, in order to be able to raise any significant sums of money using an ad valorem tax, the agreement of nine Council members would be required; alternatively, the County would need to make changes to the Charter limit.⁵

³ Section 305 of the Charter generally limits the growth of property tax revenue in any year to the rate of inflation unless nine Council members agree to exceed it. There are a number of special districts that apply a further *ad valorem* property tax to limited geographic areas, including four parking districts, three urban districts, and two noise abatement districts. Although this type of ad valorem tax is charged only to the residents and/or businesses within specified/limited geographic areas, these revenues are counted against the countywide tax limitation.

⁴ Article 15 of the Constitution applies to property tax. Article 15 provides some limitation on the authority of the County to tax and requires that the tax must be for public purpose and must be equal and uniform and according to actual value within each class or subclass of land. This is construed as meaning that a property tax should have uniformity of assessment and tax rate.

⁵ The Charter Review Commission is currently exploring possible changes that would allow for more revenue to be generated by Special Taxing Districts representing defined geographic areas. Council staff has proposed such changes, and the County Executive is on record as opposing those changes.

Levy an excise tax. Levying an excise tax (a form of tax that is not ad valorem) is one way to raise revenues without implicating the charter limit. One example of an excise tax is a development impact tax.⁶ Among the issues related to excise taxes are the following:

- Whether a taxable event must occur (e.g. development)
- Whether that taxable event lends itself to creating a bondable stream of revenue (e.g. a steady and predictable deferred payment of the impact tax)
- Whether it is practically/administratively feasible to collect an impact tax when payment has been deferred (e.g. establish lien priorities, method of collection, etc.)

To take an example, an impact tax on development has a clear taxable event (development). It may be possible to create an impact tax for the White Flint Sector Plan that would apply only to commercial uses⁷ and which could be paid/deferred over a period of years, rather than all at once.

Create one or more development districts. Development districts are a tool that was created to finance private infrastructure (using public sector interest rates) and to spread the cost of infrastructure over a period of years. Development districts raise a number of other issues (see below). One issue not raised by development districts is the charter limit—development district taxes/charges are specifically exempted from the Section 305 charter limits.

Development districts raise the issue of consent. Though development, district proceedings can be initiated by the Council or by petition of the landowners, the legislation is interpreted to require consent of the affected landowners regardless of who initiates the development district. In order for a development district to be created around a certain boundary, 80% of the owners by identity and by value must consent to be taxed. As such, this tool is most useful in areas where consent is easily achieved.

Development districts are to be applied only to properties that are not “fully developed.” Most if not all of the properties in White Flint could be considered “fully developed.”⁸ As such, financing a portion of the infrastructure needs using development districts would require changes to the “fully developed” requirement and/or definition in the development district legislation. For example, if all properties within the boundary of a development district were “fully developed,” then all properties would be exempt from the development district tax or charge. While the development district could be repaid later when these properties redevelop more intensively, until that time there would be no predictable or bondable stream of revenue.

⁶ Impact taxes are specifically authorized in Section 52-17 of the County Code.

⁷ An advantage of excise taxes relative to ad valorem taxes is that there appears to be no State law requirement to apply the same rate to both residential and non-residential land uses.

⁸ Section 14-5 (c) states that “any development district...should largely, if not entirely, consist of undeveloped or underdeveloped land.” Further, Section 14-10 (b) that “(1) any property which is fully developed before the development district is created is exempt from any special assessment, special tax, fee, or charge imposed under this Chapter; and (2) the owner of any property exempt from payment under paragraph 1 which is later developed more intensively and benefits from any development capacity attributable to infrastructure improvements financed by the district must pay any tax, fee, or charge that it would have otherwise paid under this Chapter.”

Create one or more special assessment districts. Special assessments can be imposed by the County where an infrastructure improvement bestows special benefits on a select group of properties. The assessment charged is proportional to the benefit received. While conceptually different from a tax, it is not clear whether a charge to property owners receiving a special benefit is considered a property tax for purposes of the Charter limit. A special assessment district could collect revenue from properties that are already fully developed.

- The Draft Sector Plan should not contain recommendations which violate Maryland law.
- By creating one or more special assessment districts and one or more development districts, the County could avoid the Charter limit, collect revenues from both new and existing development, and spread the cost of private infrastructure over a period of years and among those who benefit from the infrastructure.
- Excise taxes could be used to fund a portion of the infrastructure costs as well, e.g. a development impact tax charged to residential uses.
- While the public sector, as landowner (e.g. of the Conference Center), could participate in a development district or special assessment district, doing so may not close the infrastructure financing gaps identified in earlier analyses.

B. Policy Considerations

The County Executive's testimony states:

"The proposed plan proposes that increases in the tax base be reserved at least in part for the infrastructure for the White Flint planning area. This raises significant policy considerations that are a major departure from County budget and financing strategies relative to determinations about projects competing for general fund support. The dedication of general funds will create an undesirable precedent of isolating areas of economic prosperity. Historically, general tax funds from these areas have also benefitted economic development and infrastructure improvements in less prosperous areas. This is an area of the plan that simply needs more thought and work."

In addition, it has been the fiscal policy of the County to eschew Tax Increment Financing.⁹ Though TIF is available to jurisdictions in Maryland, it has not been used in Montgomery County. In discussions with the Department of Finance, staff has learned that the County feels that it should not borrow money at a higher rate of interest using TIF bonds than it would be able to get for issuing general obligation bonds.

The Executive fundamentally disagrees with the proposal in the Sector Plan to capture a portion (staff's report of February 19 estimated that portion at 10%) of the incremental general fund tax revenues and direct that incremental revenue to infrastructure investments.

⁹ Tax Increment Financing is a tool that is often used, with varied success, to finance infrastructure in redevelopment areas. Though the tool is available in Maryland, it is not used in Montgomery County. Staff has written more about Tax Increment Financing in past memoranda. A description of TIF can be found in Attachment D.

Staff Response and Recommendations

Whether or not TIF is used to implement the White Flint Sector Plan, general funds will be necessary in order to pay for the infrastructure included in this Plan. Given that fact, in many respects the question becomes how to balance the public sector's desire for flexibility to allocate general fund resources through the budget CIP process and the private sector's desire to have some certainty with regard to the timing and pace of public sector contributions from the general fund.

- Staff created a financial model of an infrastructure financing mechanism; that mechanism was deemed necessary in part because of the extraordinary cost of road improvements in the Sector Plan area, which were driven by the extraordinary cost of the improvements to Rockville Pike. The Rockville Pike improvements would extend throughout the Sector Plan area, as well as beyond the boundary of the Sector Plan area. It would be reasonable to expect the public sector to pay a substantial portion of the cost of the Rockville Pike improvements.
- TIF would be an appropriate tool for funding the public sector's share of the costs of improvements to Rockville Pike, though the public sector may choose to pay for the Rockville Pike improvements using traditional financing tools.

For additional details regarding TIF, see Attachment D.

C. Cost Considerations

In meetings occurring after the Public Hearing, the Executive Branch¹⁰ has communicated its concerns regarding the infrastructure cost assumptions made by staff in the transportation technical appendix and in staff's financial analysis of the proposed financing mechanism (as presented to the Board as a staff report on February 19, 2009). The Executive is concerned that staff understated the cost of infrastructure and overstated the feasibility of financing the Sector Plan's implementation. In particular, the Executive Branch is concerned that the Sector Plan and February 19 staff report fail to account for the cost of right-of-way acquisition that would fall to the public sector wherever rights-of-way are not dedicated as a condition of subdivision/redevelopment.¹¹

Staff Response and Recommendations

Staff's February 19 memorandum did not address the cost of acquiring rights-of-way. Based on a detailed review of the Sector Plan area and all presentations by property owners during the land use work sessions, staff believes that the County will need to acquire the following:

- Land for the Civic Green
- Land for the realignment of the five-legged intersection at Old Georgetown Road and Executive Boulevard
- Land for the Main Street

¹⁰ The Executive Branch is required by law to submit to the Council a fiscal analysis of every master plan approved by the Planning Board.

¹¹ The County Executive is also concerned about the cost of public parking (constructing and/or acquiring land for parking lots). These concerns will be addressed as a part of the transportation work sessions.

Staff's earlier analysis (see February 19 memo) estimated a total financing gap over the three stages of roughly \$65 million, not including any right-of-way acquisition or parking.¹² Staff estimated the cost of the Rockville Pike improvements in Stage 3 at \$66 million.

- Land for the Civic Green could be paid for out of the proposed Amenity Fund or ALARF.
- There may also be opportunities to site the Civic Green on land acquired for road rights-of-way, or to swap abandoned land or remainders of parcels acquired for ROW for an appropriate parcel. All land for the Stage 1 rights-of-way (i.e. excluding any cost of Rockville Pike ROW) and the Civic Green could likely be acquired for \$15 million to \$30 million (approximately 150,000 square feet at \$100 to \$200 per dirt square foot).
- Staff's February 19 memorandum estimated the financing gap, and consequently the public sector obligation for roadway improvements, at \$65 million. Based on new information, staff would now estimate that cost at \$80 million to \$95 million (\$65 million to close the financing gap plus \$15 million to \$30 million in Stage 1 land acquisition).
- Public sector financing could be directed to Rockville Pike improvements and/or to improvements close to the Conference Center site.

D. Administrative Considerations

The County Executive notes that there are mechanisms authorized by existing law that can achieve many of the goals of the Sector Plan. The Executive notes that Parking Lot Districts and Urban Service Districts are tools that are available to achieve some of the objectives of the Sector Plan.

The Executive also expressed concern that decisions regarding taxation and budgeting belong in established public processes and agencies, and has expressed concern that the proposed Authority would lack accountability.

Staff Response and Recommendations

Staff recognizes that existing structures, along with ample public investments, have played a significant role in the successful redevelopment of the Silver Spring CBD. Staff also recognizes that existing County structures, and partnerships with the private sector, have played a significant role in the success of the Bethesda CBD.

Parking Lot Districts are a valuable source of revenues for funding the activities of Urban Service Districts; however, Parking Lot Districts require public ownership of land. In the absence of Parking Lot District revenues, an Urban Service District would rely on funding from a special tax (minimal, and subject to the charter limit), transfers from the general fund, and other private or public contributions.

Urban Service Districts and Regional Services Centers have established relationships with Executive Branch agencies and established protocols for addressing the particular needs of local urban areas. Urban Service Districts typically provide "clean and safe" programs (provide greater levels of public safety and cleanliness, way-finding, event programming, etc.) and are generally not involved in building infrastructure, programming infrastructure, or funding infrastructure. Bethesda Urban District services are provided by the Bethesda Urban

¹² Parking will be addressed in a future transportation work session.

Partnership, Inc., a County-established Urban District Corporation, under contract with the Bethesda-Chevy Chase Regional Services Center. The Silver Spring and Wheaton Urban Districts are managed by Regional Service Center employees.

A redevelopment office or similar Executive Branch entity could work with the Regional Services Center and Urban Services District.

- The White Flint Sector Plan area should be administered by existing Executive Branch structures. Those structures include a Regional Services Center, an Urban Service District, and a redevelopment office.
- In the absence of a Parking Lot District as a source of revenue, the operation of these entities would depend heavily on transfers from the general fund.

4. NOTE: CHARTER REVIEW COMMISSION

The Constitution of Maryland, Article XI-A, enables counties to adopt charters to establish local governments. Montgomery County has chosen this form of government. Montgomery County's charter serves a role similar to that of a constitution because it establishes the duties and responsibilities, and limitations on power for the different branches of government.

Charter Section 509 requires the quadrennial appointment of an eleven-member, bipartisan Commission to study the Charter and make recommendations on potential Charter amendments. The Charter Review Commission researches and evaluates Charter issues raised by the Executive, Council members, other government officials, and the public. Since July 2007, the Charter Review Commission has studied a variety of issues that could result in Charter amendments. One such issue, raised by Council staff and some Council members, is whether certain special taxing districts should be excluded from the Charter's limitation that property tax revenue should not increase faster than the rate of inflation.

The Charter Review Commission is currently considering possible changes that would increase the amount of revenue that could be raised in special taxing districts, so long as those districts are limited geographic areas. The County Executive opposes changes to the Charter limits.

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Attachments

- A. Public Hearing Draft, Selected Portions, Implementation Chapter
- B. Testimony of the County Executive on the Public Hearing Draft White Flint Sector Plan
- C. Acquisition and Abandonment
- D. Tax Increment Financing (TIF)
- E. Tyson's Corner
- F. Development District Act

cc: Piera Weiss, Master Planner

ATTACHMENT A: PUBLIC HEARING DRAFT, SELECTED PORTIONS, **IMPLEMENTATION CHAPTER**

Administration

This Plan recommends an administrative structure, the White Flint Redevelopment Implementation Authority, to oversee the orderly implementation of the public infrastructure and other aspects of the White Flint Sector Plan. The Authority would have broad and carefully defined powers, as well as numerous responsibilities. These powers and responsibilities would be greater than currently authorized for entities such as the Bethesda Urban Partnership. The Authority would be similar to a municipality in that it would perform a number of varied functions.

Creating the White Flint Redevelopment Implementation Authority will require enabling legislation and amendments to existing legislation at both the County and State level.

At a minimum, the Authority should be authorized to perform the following functions:

- Hire or contract for administrative, legal, and accounting staff.
- Contract with architects, engineers and other technical professionals for the purpose of designing or coordinating projects deemed necessary for successful master plan implementation.
- Enter into contracts to purchase, sell, or lease real property and personal property.
- Collect revenues from taxes and assessments, make any necessary disbursements, and issue bonds as necessary for successful master plan implementation.
- Sue or be sued, and file any necessary legal actions (including eminent domain).
- Prepare a capital program designating facilities to be constructed, estimated costs of each facility, and prioritize those facilities consistent with the goals of the Plan.
- Enter into contracts, agreements, or memoranda of understanding for the construction of capital facilities.
- Participate in the ongoing affairs of the Sector Plan area, including maintenance, security and branding/marketing efforts.

In addition to those powers, the Authority would possess certain responsibilities. The responsibilities of the Authority should include:

- Maintain accurate records of revenues and expenditures, including an annual audit of its operations and accounts.
- Prepare an annual operating report, to be transmitted along with the annual audit, to the Planning Board for review and then to the County Council.
- Prepare an annual report of development activity and traffic congestion levels to transmit to the Planning Board and the County Council.
- Establish a protocol for receiving public input, including open hearings and work sessions.

- Review and comment on project plans and other pertinent actions that come before the Planning Board.
- Governance by a board with representatives from a broad group of stakeholders and County agencies.
- Establish a protocol for determining which infrastructure projects should be funded in each stage of development, as established in this Plan, as well as a protocol for changing the infrastructure staging to reflect emerging realities.
- Establish a protocol for determining that enough development has occurred to merit the issuance of bonds for the next stage of infrastructure projects.

Some portion of the revenues from the Parking Lot District, recommended in the Staging Plan, could be made available to support the transportation-related capital and operating budget of the Authority.

Financing

Successful implementation of the White Flint Sector Plan will require substantial public and private investment in infrastructure and other public facilities, as well as timely delivery of key infrastructure. In White Flint, as elsewhere, the public and private sectors will share the costs of the necessary infrastructure and facilities. Certain capital costs may be financed entirely by the private sector, others may be financed entirely by the public sector, and others still may be financed by the public and private sectors together.

Excessive reliance on piecemeal private sector delivery of capital facilities can result in haphazard, “Swiss-cheese” development patterns. Excessive dependence on public sector capital improvement programming can often result in infrastructure delivery that is slowed by politics or bonding capacity, and which favors projects that add lane capacity over those that improve aesthetic qualities of place. As such, finding the proper balance between public and private sector financing and delivery of infrastructure can prove critical to successful implementation of complex redevelopment plans.

Montgomery County has a number of tools available to close financing gaps for needed capital improvements; those tools work either by channeling private-sector capital into public projects or by reinvesting revenues generated by development in White Flint to improvements within White Flint. Impact taxes and adequate public facilities payments are two significant mechanisms the County uses to direct private money to finance capital facilities. These tools allow government to recoup costs associated with growth at the time that new development occurs.

However, other tools may be more appropriate in situations in which timeliness of delivery is an important consideration, when the cost of the project is disproportionate to the benefit for any individual property owner, and when the class of property owners receiving benefit is large. Examples of effective tools include:

- Tax-Increment Financing (TIF) Districts
- Special Taxing Districts and Special Assessment Districts

Using any one of these financing mechanisms, or a combination of these financing mechanisms, the County could create a mechanism capable of repaying bonds issued to pay for certain infrastructure/public facility projects.

The following principles were established to guide the development of the financing mechanism:

- *Value capture:* To the extent possible, capture impact taxes paid by development in the district to spend on projects within the district. To the extent possible, capture a portion of the incremental property tax revenue to spend on projects within the district.
- *Leverage future private sector revenues:* To the extent possible, allow future private sector revenues to pay for current projects. Eliminate, reduce or phase-out transportation impact taxes on commercial uses, and replace the impact taxes with a special assessment on commercial uses that can be used to meet the financial obligations of the district, including retiring the debt issued to pay for “district” infrastructure costs.
- *Leverage future public sector revenues:* To the extent necessary, leverage future incremental property tax revenues to cover a portion of the cost of up-front mobility projects that are necessary precursors of the planned improvements to Rockville Pike.

Those principles are reflected in the following implementation strategy:

- Expand the Metro Station Policy Area boundary to be coterminous with the Sector Plan boundary. Within the Sector Plan boundary, all non-exempted transportation impact fees on new development will be captured and applied to pay down debt on bonds issued for designated public infrastructure and facilities projects within the Sector Plan.
- Fund the district through a special assessment or special tax. Levy an annual special assessment or special tax of not more than 10 percent of the total ad valorem real property tax bill, which would be applied to all commercial uses within the Sector Plan boundary from such time as the first bond is issued to finance designated public infrastructure and facilities projects and continuing until such time as the last bond financing a capital project designated in the Sector Plan is retired.
- In order to create a transportation network capable of accommodating the future disruption to mobility along Rockville Pike resulting from the Rockville Pike improvement projects, the County should contribute to the financing of key up-front mobility projects. County participation should be in the form of General Obligation debt to be paid out of the County’s General Fund and supported by the net new revenue generated by the White Flint redevelopment; alternatively, Tax-Increment Financing would be an appropriate tool to meet the public sector’s share of the cost of district projects.

ATTACHMENT B:

TESTIMONY OF THE COUNTY EXECUTIVE ON THE PUBLIC HEARING DRAFT WHITE FLINT SECTOR

January 12, 2009

Good evening. I am Diane Schwartz Jones with the Office of the County Executive. Thank you for this opportunity to provide the County Executive's comments on the Public Hearing Draft for the White Flint Sector Plan. The staff draft is a significant effort that proposes a bold vision premised on a new, responsible approach to development that is cognizant of the environment and the need for sustainability and that focuses denser development around mass transit. The draft plan also has as a key theme the "taming" of Rockville Pike into a pedestrian friendly, inviting boulevard. The County Executive generally supports the vision and objectives of the draft plan, but believes it needs more work.

Some of the plan recommendations are a significant departure from existing County policy on financing and administration, growth policy, and transportation policy. Without taking away from the vision and objectives expressed throughout the draft plan, these departures need to be fleshed out, and in some cases, modified.

The Executive's major concerns are addressed in this testimony. We are also providing Planning Board Staff with more detailed. The draft plan has many important concepts to embrace, but as always, the "devil is in the details." We look forward to continuing to work with the Planning Board and your staff as you advance the vision for the White Flint Sector Plan and work through the details of the plan.

Financing and Administration

A key concern that we have raised with the Planning Board Staff is the recommendation in the draft plan that a Redevelopment Implementation Authority be created that would essentially have many of the functions of both the Executive and Legislative branches of government. Such an authority is unnecessary, redundant, expensive, and would lack electoral accountability. The plan proposes an authority that would have broad powers to collect taxes, issue bonds, condemn property, make determinations as to which projects should be built, enter into contracts to design and build projects, purchase and sell property, and participate in the "ongoing affairs" of the White Flint Planning area for maintenance, security and marketing, etc. Such duplication of powers is unnecessary and the County Executive does not support the creation of an autonomous development authority to implement this master plan. Decisions on taxation,

budgeting, and capital project development belong within the established public processes and agencies. The objectives cited as the reason for the creation of a separate authority can be accomplished through many existing tools that we have used in other areas of the County such as through a parking lot district and/or an urban district. We also have tools for financing that bears greater analysis.

The Executive supports focusing development contributions to pay for local infrastructure, however, the draft plan raises serious policy concerns and lacks detail about the assumptions of the public/private funding split. The proposed plan proposes that increases in the tax base be reserved at least in part for the infrastructure for the White Flint planning area. This raises significant policy considerations that are a major departure from County budget and financing strategies relative to determinations about projects competing for general fund support. The dedication of general funds will create an undesirable precedent of isolating areas of economic prosperity. Historically, general tax funds from these areas have also benefitted economic development and infrastructure improvements in less prosperous areas. This is an area of the plan that simply needs more thought and work. There are tools under existing County law to fund infrastructure. We should explore these tools. If we determine that changes may be useful we can pursue any such change. This in particular is an area in which collaborative work between the Executive Branch and the Planning Board will be very helpful. Your staff has begun to engage us on this topic and we look forward to continuing to work with your staff and the community to plan for how the infrastructure can be funded.

Transportation and Growth Policy

We agree with the objective of the proposed plan to focus development around metro, however, this also is an area that needs more work and analysis to determine how to accomplish this objective. In order to achieve the significant density increases proposed in the draft plan, the metro and transit system needs to be able to accommodate the ridership that will be generated. The Department of Transportation has identified reservations about the ability of the transportation infrastructure to support actual congestion generated by the recommended levels of new development projected for White Flint. Previously, transportation capacity was measured by trip generation and Critical Lane Volume. This plan sets a goal for a transit-focused, multi-modal mobility system to support a bustling urban center. The draft plan moves away from capacity-focused principles which have been used to link growth with public facilities in Montgomery County.

The plan proposes that LATR standards can be met with a proposed expansion of the Metro Station Policy Area boundaries to the entire Plan area. This action will serve to set higher levels of acceptable congestion at intersections which will enable developments to pass LATR review with less mitigation. The Executive is concerned that this approach will lead to congestion in the White Flint area that exceeds levels currently allowed in the area. Even with the higher threshold of acceptable congestion, the Plan assumes that two intersections -- MD 355 and Old Georgetown Road, and Old Georgetown Road and Executive Boulevard -- will fail LATR.

Policy Area Mobility Review, or PAMR, standards for automobile congestion should not be lowered. Such a change would provide unacceptable automobile congestion in transit-oriented areas. Buses need to travel along these streets with the cars in order to support transit use. The Draft Plan rests on the assumption that the current PAMR Standards can be changed and lowered for the White Flint Plan, this is contrary to the 2007 Growth Policy.

The Executive supports the creation of a new public facility review procedure applicable to all development in the White Flint Sector Plan Area if it is based on an end-state that achieves balance between land use and transportation.

Parking

The Plan appears to show the need for 9,000 new parking spaces, at an estimated cost of approximately \$360 million, excluding land. Although the Plan refers to a number of public facilities to be constructed and defines their size and location, there is only one location, other than on-street meters, identified for a possible parking garage/PLD facility. Greater specificity is needed regarding the location of parking in the Plan.

Montgomery County Aquatic Center/Wall Park

In order for the Montgomery County Aquatic Center to continue existing operations it requires direct convenient access and a minimum of 250 parking spaces. Expansion of Aquatic Center would require a greater commitment to both access and parking. Relocating parking for the Aquatic Center to an adjacent parcel may be a challenge as the plan identifies this same parcel as a possible school site. It seems difficult at best to locate a large parking structure and a school on the same parcel – a parcel which may also be potentially encumbered by SHA intersection improvements/realignments as a part of future work on the Montrose/Randolph/355 interchanges.

Civic Green

The Conference Center site was originally acquired with Federal transit funds. Use of this site must be for transit oriented development. For this reason, we recommend that the Civic Green be located on the east side of Rockville Pike rather than the west side. This would enhance making the White Flint Metro a truly dense, mixed-use development for Montgomery County.

Regional Services Center/Express Library

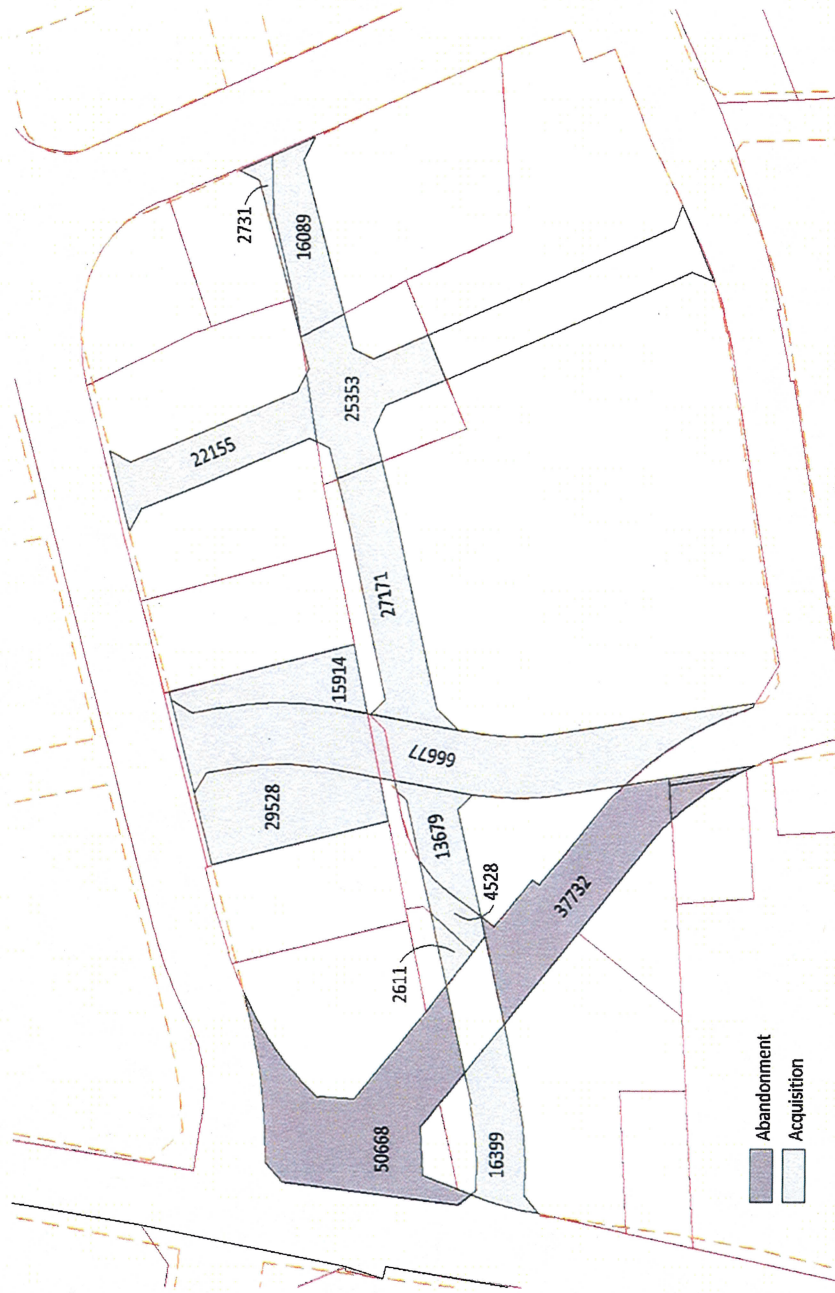
We think it would be beneficial for the Plan to recognize and address the need for offices for urban/business district staff. This could be accomplished through the establishment of a satellite regional services center under the management of the

Bethesda-Chevy Chase Regional Services Center. Such a facility could also include public meeting space and offices for the North Bethesda TMD. We recommend that the proposed express library be included as a street front component of this facility located adjacent to a relocated Civic Green or in the North Bethesda Town Center. Our preference is that any public meeting space be located as described earlier rather than with the Express Library.

In conclusion, the County Executive supports the approach the Planning Board staff has proposed for the vision for White Flint and the design principles aimed at achieving sustainability. We do not support creating an authority as laid out in the draft plan and we urge the Planning Board to have staff do more work on the plan with our staff before it is finalized. This will enable infrastructure, staging and transportation concerns to be better addressed resulting in a more sustainable long range vision for White Flint. We will provide more detailed comments to your staff and we look forward to working with you and your staff on this important plan.

Thank you for the opportunity to share our views.

ATTACHMENT C: ACQUISITION AND ABANDONMENT



ATTACHMENT D: TAX INCREMENT FINANCING (TIF)

Introduction

In a TIF, property tax revenues derived from the *increase* in assessed values due to appreciation and/or new development are used to pay off bonds issued for improvements in the TIF District. At the time the District is created, a baseline of revenues is established. Revenue above that baseline accrues to the District and is applied to the debt payments.

TIF assists the jurisdiction to unlock the development potential of targeted areas without having infrastructure development directly tied to whether or not a particular development moves forward. TIF also allows a greater share of the private money chasing profits in a targeted market to be directed to development of taxable uses, often decreasing to some extent the amount of private capital spent on infrastructure projects.

Recent TIF districts in the region have been backed by Special Assessment districts. In the event that the TIF district does not meet projected revenues, all property owners within the district are assessed a share of the shortfall.

Purpose of TIF

Many state and local government officials believe that without government participation in the development or redevelopment of urban areas, real estate developers and investors are more willing to invest in “Green field” sites, where land costs are lower, public facility capacity is less encumbered by existing development, and infrastructure investments are less likely to be expensive retrofits.

Under certain circumstances, TIF can serve as an effective tool for jurisdictions seeking to fund economic development of targeted geographic areas, especially those that contain “Brownfield” or “Grayfield” sites. Similarly, state and local officials in jurisdictions around the nation recognize that TIF can be a valuable tool in suburban transit-oriented development (TOD) projects as a way of meeting the high costs of retrofitting aging and suburban infrastructure.

TIF in Maryland

The Maryland Tax Increment Financing Act authorizes most Maryland counties and municipalities to use TIF for the purposes of financing certain development/redevelopment projects. See the Maryland TIF Act, Article 41 of the Annotated Code of Maryland, Sections 14-201 through 14-214.

Under the TIF Act, authorized governmental bodies may issue TIF bonds for the purpose of financing development or infrastructure to support development. The first step in that process requires the government to create a TIF District (see Article 41, §14-206) and a special fund (see

Article 41, §§14-207 and 14-208). The TIF bonds issued are then payable from the special fund which holds the incremental tax payments associated with the TIF District.

Under the TIF Act, neither a finding of “blight” nor a “but for” analysis is required as a precondition to the establishment a TIF District. The Act simply states that “the governing body of the issuer shall designate by resolution a contiguous area within its jurisdiction as a ‘development district’.” Maryland law then grants “the governing body of any county or municipality [the authority to] adopt a resolution creating a special fund....with respect to a development district.”

While the fact that no finding of “blight” is necessary or “but for” analysis is required is an indication that TIF law in Maryland is relatively liberal, Maryland TIF law is limited in the range of revenues that can be captured by a TIF district. Jurisdictions in Maryland, unlike jurisdictions in some other states, cannot capture incremental sales tax revenues within a TIF district.

TIF Financing Terms

TIF bonds are unsecured, revenue bonds. In their purest form, they are backed by a projection of the District’s tax revenues. The full faith and credit of a jurisdiction is not necessarily at risk when a TIF bond is issued. While all of these factors contribute to TIF bonds’ flexibility, they also contribute to risk. When underwriters feel that the risk associated with using TIF is too high, then any of a number of conceptually similar financing tools may be more appropriate.

TIF Boundaries

In theory, TIF boundaries should be drawn narrowly enough to allow the whole district to benefit from TIF investments. However, bond placement agencies often prefer to see TIF Districts that are large and diverse, thereby reducing the risk of default. However, larger districts raise questions as to why the TIF District is so large as to include areas that receive little or no benefit from the new development. Districts that are too large also can create political and inter-jurisdictional problems.

Smaller and more narrowly drawn TIF districts usually require higher debt coverage ratios (i.e. a lower percentage of net operating income can be used for debt payment because the small TIF district is perceived to be riskier). For example, a project that will generate an annual tax increment of \$1 million might have a large TIF district boundary and a debt coverage ratio of 1.25 (i.e. \$800,000 available each year for principal and interest); the same project with a more narrowly drawn TIF district boundary might have a debt coverage ratio of 1.67 (i.e. \$600,000 available each year for principal and interest).

ATTACHMENT E: TYSON'S CORNER

Fairfax County is in the process of amending its comprehensive plan in order to address the redevelopment of the area designated as Tyson's Corner Urban Center. According to the Draft Plan, "Successful implementation will require: commitment to the vision and Guiding Planning Principles; committed leadership; dedicated professional staff¹³ at the County and other agencies; loyal, hard-working citizen participants; and a private sector willing to work together to seize new opportunities and learn new development and building techniques."

The Chapter broadly outlines an implementation strategy which includes detailed planning, an implementation entity, funding strategies, public-private partnerships, private-private partnerships, a regulatory framework, and phasing of private and public improvements. Of particular interest are the recommendations addressing the implementation entity and the recommendations addressing funding strategies.

The implementation entity is conceived as a "keeper of the vision," and is to be established by the Board of Supervisors (equivalent to the County Council). The entity will work "in conjunction with, and supplemental to" the Fairfax County structure. "It is intended that the implementation entity work in conjunction with Fairfax County by recommending infrastructure to support development, requesting capital improvements, and being part of the budgeting process."

The entity would work with the County and the State to develop urban standards for improvements to the public realm, develop design guidelines, changes to the Zoning Ordinance, changes to standards of adequacy for public facilities, research and develop a list of priority infrastructure and amenity projects, participate in the zoning process through design review, and monitor and review plans. In addition, the plan states that the entity could plan and implement initiatives affecting: schools, parks, libraries, transportation enhancements such as bus circulators, improved streetscapes, infrastructure, enhanced public safety, maintenance of common areas, litter and graffiti control, and cultural and recreational activities and facilities. Finally, the plan recommends that the entity "raise and expend funds for all types of improvements and initiatives to be carried out by the implementation entity."

With respect to funding, the Draft Plan accepts the premise that existing public and private funding mechanisms will not be able to meet the substantial cost of the infrastructure and amenities outlined in the Plan. The Draft includes a list of mechanisms that could be used, but does not match up funding mechanisms with specific projects or groups of projects.

¹³ In the case of the revitalization of Silver Spring, Montgomery County designated individuals in key departments to work on an Executive Branch task force.

ATTACHMENT F: DEVELOPMENT DISTRICT ACT

Chapter 14. Development Districts.

Article I. General Provisions.

§ 14-1. Short title.

§ 14-2. Purposes.

§ 14-3. Definitions.

§ 14-4. Powers of County.

Article II. Creating a Development District.

§ 14-5. Location.

§ 14-6. First Council resolution.

§ 14-7. Planning Board review; compliance with adequate public facilities and Annual Growth Policy requirements.

§ 14-8. Executive fiscal report.

§ 14-9. Second Council resolution.

Article III. Financing a Development District.

§ 14-10. Special taxes and assessments.

§ 14-11. Special fund.

Article IV. Issuing Debt.

§ 14-12. Bonds-Payment, sinking funds, reserve funds, pledges and other financial guaranties, proceeds.

§ 14-13. Resolution; investment of special fund or sinking fund; tax exemption.

§ 14-14. Form, terms and conditions of bonds.

§ 14-15. Credit of County not pledged.

Article V. Miscellaneous Provisions.

§ 14-16. Administration of district; termination.

§ 14-17. Disclosure; notices.

§ 14-18. Construction of chapter.

Article I. General Provisions.

Sec. 14-1. Short Title.

This Chapter may be referred to as the Montgomery County Development District Act. (1994 L.M.C., ch. 12, § 1.)

Sec. 14-2. Purposes.

(a) The purposes of this Chapter are to:

(1) authorize the County to provide financing, refinancing or reimbursement for the cost of infrastructure improvements necessary for the development of land in areas of the County of high priority for new development or redevelopment by creating development districts in which special assessments, special taxes, or both, may be levied;

(2) authorize the issuance of bonds or other obligations of the County that are payable from special assessments or special taxes collected, in a development district;

(3) specify the procedures to be followed in creating a development district, issuing bonds, and assessing and enforcing the collection of special assessments or special taxes in such a district; and

(4) provide for the tax-exempt nature and form of the bonds.

(b) Development districts would be especially useful in achieving these purposes where:

(1) an approved master plan recommends significant development in a specific area of the County;

(2) the infrastructure needs necessary to serve that development include extensive and long-term facilities; and

(3) the real estate market and the availability of land will permit significant development within the life of a development district. (1994 L.M.C., ch. 12, § 1; 2008 L.M.C., ch. 34, § 1.)

*Editor's note—2008 L.M.C., ch. 34, took effect on January 26, 2009.

2008 L.M.C., ch. 34, § 3, states: Applicability; interpretation.

(a) Any amendment to County Code Chapter 14 made in Section 1 of this Act applies to any action taken after this Act take effect.

- (b) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not alter or affect any Council resolution adopted, or other action taken with respect to a development district, before this Act takes effect.
- (c) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not indicate that the previous version of a provision amended by Section 1 of this Act should be interpreted differently from the same provision as amended by Section 1 of this Act.
- (d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Sec. 14-3. Definitions.

In this Chapter the following words have the following meanings:

Adequate Public Facility means any infrastructure improvement required by the Planning Board as a condition of approving a preliminary plan of subdivision under Section 50-35(k) or identified in the County Growth Policy as necessary for adequate public facilities approval in a development district.

Additional Public Facility Capacity means the provision of an infrastructure improvement not fully funded in the first 4 years of the County's then-applicable Capital Improvement Program.

Administrative Expense means any expense incurred by any County department or office in connection with the administration or funding of a development district, including:

- (1) any expense directly related to levying and collecting any special tax, special assessment, fee, or charge under this Chapter;
- (2) any expense of complying with any arbitrage rebate requirement or disclosure requirement under federal or state law;
- (3) an allocable share of the salary of any County employee who is primarily responsible for the administration or funding of a development district;
- (4) an allocable share of County administrative overhead related to the administration and funding of a development district; and
- (5) the fees and expenses of any fiscal agent employed by the County in connection with development district bonds.

Bond means a special obligation or revenue bond, note, or similar instrument issued under this Chapter or any other law if the indebtedness evidenced thereby will be repaid from revenue generated by special assessments, special taxes, fees, or charges levied under this Chapter in a development district.

Cost means the aggregate dollar cost of:

- (1) building, rebuilding, or renovating any infrastructure improvement, and acquiring any land, structure, real or personal property, right, right-of-way, franchise, easement, or interest;
- (2) machinery and equipment, including machinery and equipment needed to expand or enhance services in a development district;
- (3) financing charges and interest before and during construction and, if the Executive finds it advisable, for a limited period after completing construction; interest and reserves for principal and interest, including costs of municipal bond insurance and any other financial guaranty, costs of issuance, and administrative expenses;
- (4) extensions, enlargements, additions, or improvements;
- (5) architectural, engineering, financial, and legal services;
- (6) plans, specifications, studies, surveys, and estimates of costs or revenues;
- (7) expenses necessary or incident to deciding whether to proceed with a district or any infrastructure improvement; and
- (8) any other expense necessary or incident to building, acquiring, or financing any infrastructure improvement.

Development includes redevelopment of underdeveloped land.

Development District means a special taxing district created for the purposes listed in Section 14-2 and, if a resolution adopted under Section 14-9 creates one or more subdistricts in a development district, each subdistrict.

Infrastructure Improvement means a school, police station, fire station, library, civic or government center, storm drainage system, sewer, water system, road, bridge, culvert, tunnel, street, transit facility or system, parking lot or facility, sidewalk, lighting, park, recreational facility, or any similar public facility, and the land where it is or will be located.

Owner means a person or entity with legal title to property, or a contract purchaser of a property.

Special Assessment means a levy on property which is assessed in relation to any special benefit received from the construction of one or more infrastructure improvements to support development in a development district.

Special Benefit means any advantage or betterment accruing to real property as the direct result of any infrastructure improvement. The allocation of any additional public facility capacity to a development project is a special benefit.

Special Fund means an independent account in which special assessment, special tax, fee, or charge payments received for a development district are deposited and, if a resolution adopted under Section 14-9 creates one or more subaccounts in a special fund, each subaccount.

Special Tax means a property or excise tax levied in a development district, not based on any special benefit received, to pay for one or more infrastructure improvements to support development in that district. (1994 L.M.C., ch. 12, § 1; 2004 L.M.C., ch. 2; § 2; 2008 L.M.C., ch. 34, § 1.)

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- (d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Sec. 14-4. Powers of County.

In addition to any power granted under any other law, the County may, subject to applicable state law and this Chapter:

- (a) create one or more development districts;

(b) levy special assessments, special taxes, fees, or charges, in any development district; and

(c) issue bonds and other obligations payable from special assessments, special taxes, fees, or charges, levied in any development district. (1994 L.M.C., ch. 12, § 1; 2008 L.M.C., ch. 34, § 1.)

*Editor's note—2008 L.M.C., ch. 34, took effect on January 26, 2009.

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(c) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not indicate that the previous version of a provision amended by Section 1 of this Act should be interpreted differently from the same provision as amended by Section 1 of this Act.

(d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Article II. Creating a Development District.

Sec. 14-5. Location.

Any development district:

(a) must be located entirely in the County, but may include land in any municipality;

(b) need not consist of a contiguous geographic area unless otherwise required by State law;

(c) should largely, if not entirely, consist of undeveloped or underdeveloped land; and

(d) may be used to finance an infrastructure improvement located outside the district if the improvement is located in the County and related to the development or use of land in that development district. (1994 L.M.C., ch. 12, § 1.)

Sec. 14-6. First Council Resolution.

(a) If a petition to create a development district signed by at least 80 percent of the owners of real property and the owners of at least 80 percent in value of the real property, as shown by the most recent assessment records available from the State Department of Assessments and Taxation or any successor agency on the date the petition is filed, located in a proposed development district, is filed with the Council, the Council must hold a public hearing after at least 15 days notice in two newspapers of general circulation in the County. The petition must specify the boundaries of the proposed district and list the maximum number of housing units and the maximum nonresidential space that the signing property owners intend to build in the district.

(b) Alternatively, the Council, on request of the Executive or on its own motion, may hold a public hearing after giving notice as required in subsection (a). The notice must:

- (1) specify the proposed boundaries of the proposed district, and
- (2) list the maximum number of housing units and the maximum nonresidential space expected to be built in the district.

(c) After holding a hearing under subsection (a), the Council, by resolution approved by the Executive, may declare its intent to create a development district consisting of a specified geographic area. In the resolution the Council must explain why intensive development of and public investment in that area during the term of the district will benefit the public interest.

(d) If the Executive disapproves a resolution adopted under this Section within 10 days after it is adopted and the Council readopts it by a vote of six Councilmembers, or if the Executive does not act within 10 days after the Council adopts it, the resolution takes effect.

(e) For the purposes of this Section, multiple owners of a single parcel of real property must be treated as one owner and a single owner of multiple parcels must be treated as one owner.

(f) The adoption of a resolution under this Section does not:

- (1) obligate the Council to create a development district;
- (2) confer any contract, property, or other right on any person; or
- (3) limit a district to the area described in the resolution.

(g) After the Council has adopted a resolution under Section 14-6, the Executive may require any applicant for provisional adequate public facilities approval under Section 14-7 to pay one or more filing fees or provide other financial assurances, in amounts and installments set by Executive regulation, to cover all costs of:

- (1) Executive review of the proposed district;
- (2) preparation of the fiscal report required under Section 14-8; and
- (3) preparation of any bond issue or other financing after the district is created. (1994 L.M.C., ch. 12, § 1; 1996 L.M.C., ch. 1, § 1; 2008 L.M.C., ch. 34, § 1.)

*Editor's note—2008 L.M.C., ch. 34, took effect on January 26, 2009.

2008 L.M.C., ch. 34, § 3, states: Applicability; interpretation.

- (a) Any amendment to County Code Chapter 14 made in Section 1 of this Act applies to any action taken after this Act take effect.
- (b) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not alter or affect any Council resolution adopted, or other action taken with respect to a development district, before this Act takes effect.
- (c) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not indicate that the previous version of a provision amended by Section 1 of this Act should be interpreted differently from the same provision as amended by Section 1 of this Act.
- (d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Sec. 14-7. Planning Board Review; Compliance with Adequate Public Facilities and Annual Growth Policy Requirements.

(a) After the Council has adopted a resolution under Section 14-6, one or more owners of land located in the proposed district may submit an application for provisional adequate public facilities approval, covering the entire proposed district, to the Planning Board. The application must:

- (1) explain how each development located in the proposed district will comply with all applicable zoning and subdivision requirements, including any action necessary under Section 50-35(k);
- (2) identify any infrastructure improvement necessary to satisfy the Growth Policy's adequate public facilities requirements for a development district; and
- (3) estimate the cost to provide each such improvement.

(b) Within 180 days after receiving an application under subsection (a) and all information needed to review that application, the Board must jointly review for compliance with Section 50-35(k) and the Growth Policy all developments located in the proposed district as if they were one development. The Board may extend the deadline in this subsection for another 90 days, by notifying each applicant and the Executive and Council, if delays beyond the Board's control require more time to conduct the required review. The Council at any time may waive any applicable deadline under this Section if the public interest so requires. In its review, the Board must apply all otherwise applicable standards and procedures. The Board may conditionally approve an application if it finds that the proposed district will meet all requirements under Section 50-35(k) and any added requirements which apply to a district under the Growth Policy. The Board may condition its approval on, among other things, the creation and funding of the district and the building of no more than the maximum number of housing units and the maximum nonresidential space listed in the petition filed under Section 14-6 or any later amendment to the petition.

(c) In the aggregate, the applications approved must commit the applicants to produce (through the funding of the proposed development district or otherwise) the infrastructure improvements needed to meet the applicants' adequate public facility requirements in the proposed district and any added requirements which apply to an applicant under the Growth Policy. In its approval, the Board must list those infrastructure improvements.

(d) An applicant may withdraw a development from a district before the district is created under Section 14-9(c). An applicant must not withdraw a development after the district is created. If an applicant withdraws a development before the district is created, the applicant's provisional adequate public facility approval is cancelled. If any withdrawal would significantly impair the ability of the proposed district to finance the required infrastructure improvements, the Planning Board may modify or cancel any approval under subsection (b) and may attach new conditions to any previous approval.

(e) (1) After a development district is created and the financing of all required infrastructure improvements is arranged, any development located in the district has for all purposes satisfied:

(A) the adequate public facility requirements of Section 50-35(k);

(B) any added requirements which apply to a district under the Growth Policy; and

(C) any other requirement to provide infrastructure improvements which the County adopts within 12 years after the district is created.

(2) This subsection does not relieve any taxpayer from paying a generally applicable County tax, assessment, fee, or charge.

(f) The County may reserve for its own use or transfer to other owners through regular development approval processes, or as otherwise provided by law, any additional public facility capacity attributable to improvements financed by the district which exceeds the capacity required for developments in the district. (1994 L.M.C., ch. 12, § 1; 2004 L.M.C., ch. 2, § 2; 2008 L.M.C., ch. 34, § 1.)

*Editor's note—2008 L.M.C., ch. 34, took effect on January 26, 2009.

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- (c) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not indicate that the previous version of a provision amended by Section 1 of this Act should be interpreted differently from the same provision as amended by Section 1 of this Act.
- (d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Sec. 14-8. Executive Fiscal Report.

(a) After the Planning Board has acted under Section 14-7(b) and within 180 days after the Executive has received all information necessary to review the application, the Executive, after consulting the Superintendent of Schools with respect to school facilities and the Washington Suburban Sanitary Commission with respect to water and sewer facilities, must submit a report estimating:

(1) the cost of each infrastructure improvement listed by the Planning Board under Section 14-7(c) or recommended by the Executive under subsection (b); and

(2) (A) the amount of revenue needed annually to finance all infrastructure improvements funded, fully or partly, by a district; and

(B) the rate for each tax, assessment, fee, or charge available to the district that would produce the necessary revenue.

The Executive should compare these estimates to those submitted by the applicants under Section 14-7(a). The Executive may extend the 180-day deadline in this subsection for another 90 days, by notifying the Council, if delays beyond the Executive's control require more time to produce the required report. The Council at any time may waive any applicable deadline under this subsection if the public interest so requires.

(b) In this report the Executive should also recommend whether to create a district, its boundaries if one is created, whether any subdistricts should be created in the district and, if so, their boundaries, which infrastructure improvements the district should fully or partly fund, and alternative financing or revenue-raising measures. (1994 L.M.C., ch. 12, § 1; 2008 L.M.C., ch. 34, § 1.)

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(c) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not indicate that the previous version of a provision amended by Section 1 of this Act should be interpreted differently from the same provision as amended by Section 1 of this Act.

(d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Sec. 14-9. Second Council Resolution.

(a) The Council must hold a public hearing on the final resolution to create a development district not earlier than 45 days after the Planning Board has acted on all applications filed under Section 14-7 for that district.

(b) (1) The Council must give notice of the hearing by:

(A) advertisement in at least two newspapers of general circulation in the County at least 21 days before the hearing; and

(B) first-class mail to the record owner of each property located in the proposed district at the address shown on the most recent tax assessment records available 30 days before the hearing from the State Department of Assessments and Taxation or any successor agency. The Council must retain sufficient proof that each required notice was mailed. However, the failure of any property owner to receive notice by mail does not invalidate the adoption of a resolution under this Section or any later action by the Council or Executive.

(2) Each notice mailed under this subsection must include:

(A) a copy of the proposed resolution to create a district; and

(B) an estimated rate for any tax, assessment, fee, or charge proposed to fund infrastructure improvements for the district, or, if the estimated rate cannot reasonably be determined, a description of how the rate will be set.

(c) If the Council intends to use special obligation debt to finance the district, and the district was initiated by the Council under subsection 14-6(b), before the Council adopts a resolution under this Section the Council must receive a petition to create a development district signed by at least 80 percent of the owners of real property and the owners of at least 80 percent in value of the real property, as shown on the latest tax assessment records available from the State Department of Assessments and Taxation or any successor agency, located in the proposed district.

(d) If the district to be approved under this Section would extend beyond the specified geographic area approved under Section 14-6(c), before the Council adopts a resolution under this Section the Council must also receive a petition to create the district signed by at least 80 percent of the owners of the real property and the owners of at least 80 percent in value of the real property located in the area added to the district, as shown on the latest tax assessment records available from the State Department of Assessments and Taxation or any successor agency.

(e) After the public hearing, the Council by resolution approved by the Executive may create a development district. If the Executive disapproves a resolution within 10 days after it is adopted and the Council readopts it by a vote of six Councilmembers, or if the Executive does not act within 10 days after the Council adopts it, the resolution takes effect.

(f) A resolution adopted under this Section must:

(1) define the development district by specifying its boundaries and listing the tax account number of each property in the district;

(2) list each infrastructure improvement that will be financed by the development district, the estimated completion date and cost of that improvement, and the share of that cost which the County or another government agency will pay;

(3) create, and specify the amount or percentage of, a contingency account for unexpected cost overruns; and

(4) create a special fund for the development district.

(g) A resolution adopted under this Section may also require that a building permit must not be issued for any listed development (or part of a development) in the district until the earlier of:

(1) the date a specific infrastructure improvement begins construction; or

(2) a specific date.

(h) An infrastructure improvement financed by a development district may include any infrastructure required by the Planning Board as a condition of project, preliminary, or site plan approval.

(i) A district may finance an infrastructure improvement which primarily serves residents or occupants of only one development or subdivision only if:

(1) the improvement also provides added transportation capacity, enhanced public services, or other significant public benefits to residents or occupants of one or more other developments or subdivisions; or

(2) (A) either the Planning Board or the Executive recommends that the district finance that improvement; and

(B) the Council concludes that the public interest justifies the district financing that improvement.

(j) The Council may amend a resolution adopted under this Section after giving notice as required by subsection (b), including notice by mail to each property owner in the district. If the Executive disapproves an amended resolution within 10 days after it is adopted and the Council readopts it by a vote of 6 Councilmembers, or if the Executive does not act within 10 days after the Council adopts it, the amended resolution takes effect.

(k) A resolution adopted under this Section may create one or more subdistricts in a development district if the petition to create the development district filed under Section 14-6 was signed by at least 80 percent of the owners of real property and the owners of at least 80 percent in value of the real property located in the proposed subdistrict. All special taxes,

assessments, fees, or charges levied on the properties located in any subdistrict must be dedicated to a subaccount of the special fund and used to fund the construction of specified infrastructure improvements in or which benefit the district. If any subdistrict is created, the resolution adopted under this Section must:

- (1) specify the boundaries of each subdistrict;
- (2) list the tax account number of each property in the subdistrict;
- (3) list the amount of each infrastructure improvement to be financed by special taxes, assessments, fees, or charges applicable in the subdistrict; and
- (4) create designated subaccounts in the special fund.

(l) The adoption of a resolution under this Section does not:

- (1) obligate the County to finance any infrastructure improvement or levy any tax, assessment, fee, or charge in the development district; or
- (2) confer any contract, property or other right on any person. (1994 L.M.C., ch. 12, § 1; 1996 L.M.C., ch. 1, § 1; 2008 L.M.C., ch. 34, § 1.)

*Editor's note—2008 L.M.C., ch. 34, took effect on January 26, 2009.

2008 L.M.C., ch. 34, § 3, states: Applicability; interpretation.

- (a) Any amendment to County Code Chapter 14 made in Section 1 of this Act applies to any action taken after this Act take effect.
- (b) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not alter or affect any Council resolution adopted, or other action taken with respect to a development district, before this Act takes effect.
- (c) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not indicate that the previous version of a provision amended by Section 1 of this Act should be interpreted differently from the same provision as amended by Section 1 of this Act.
- (d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Article III. Financing a Development District.

Sec. 14-10. Special Taxes and Assessments.

(a) A resolution adopted under Section 14-9 must also authorize the imposition of a special assessment, special tax, fee, or charge, or any combination of them, in the development district at a rate designed to provide adequate revenues to:

- (1) pay the principal of, interest on, and redemption premium, if any, on the bonds;
- (2) replenish any debt service reserve fund;
- (3) pay the cost of any approved infrastructure improvement, or reimburse the County for the cost of any approved infrastructure improvement paid from other County funds;
- (4) pay directly the cost of any approved infrastructure improvement built or funded other than by the County; and
- (5) pay the administrative expenses of the development district.

The resolution may reserve the Council's authority to adjust any rate schedule.

(b) The resolution must provide, except when clearly inconsistent with state law, that:

- (1) any property which is fully developed before the development district is created is exempt from any special assessment, special tax, fee, or charge imposed under this Chapter; and
- (2) the owner of any property exempt from payment under paragraph (1) which is later developed more intensively and benefits from any development capacity attributable to infrastructure improvements financed by the district must pay any tax, fee, or charge that it would have otherwise paid under this Chapter.

Under paragraph (1), “fully developed” property does not include any property developed after the Council adopted a resolution under Section 14-6 by any property owner who signed a petition under subsection 14-6(a) or that owner’s successor in interest, and any such property is not exempt from any special assessment, special tax, fee, or charge imposed under this Chapter.

(c) A special assessment or special tax must:

- (1) be levied and collected in the same manner, for the same period or periods, and with the same date or dates of finality as otherwise provided by law; and
- (2) end when all bonds issued for the district have been paid in full and the County has been fully paid for each infrastructure improvement built or funded by the County.

(d) The special assessments, special taxes, fees, or charges authorized under subsection (a) must be payable as otherwise provided by law or (if state and County law are silent) as provided in the resolution adopted under Section 14-9. Any special assessment, special tax, fee, or charge

must not be levied until each infrastructure improvement to be financed or refinanced has been approved in the County capital improvements program.

(e) The resolution may establish procedures for the prepayment of any special tax, special assessment, fee, or charge levied in the district. The resolution also must, subject to modification by a resolution adopted under Section 14-13:

(1) specify (to the extent not already controlled by state or County law) the basis of and any exemptions from any special assessment, special tax, fee, or charge;

(2) set a maximum special assessment, special tax, fee, or charge applicable to each individual property in the district; and

(3) prohibit any increase in, or extension of the term of, the maximum special assessment, special tax, fee, or charge applicable to any individual property because of any delinquency or default by any other taxpayer.

(f) (1) A taxpayer who did not sign a petition under Section 14-6(a), and that taxpayer's successor in interest, may defer any special ad valorem tax on real property imposed to support that debt until the Planning Board approves a plan of subdivision or resubdivision for that taxpayer's property, or, if no subdivision plan is necessary, until the first building permit is issued for any building on the affected property.

(2) The Director of Finance and the taxpayer may agree on a payment schedule.

(3) The taxpayer must pay interest on any deferred tax at the rate set by law for unpaid real property taxes during each year that taxes are deferred. (1994 L.M.C., ch. 12, § 1; 2008 L.M.C., ch. 34, § 1.)

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2008 L.M.C., ch. 34, § 3, states: Applicability; interpretation.

(a) Any amendment to County Code Chapter 14 made in Section 1 of this Act applies to any action taken after this Act take effect.

(b) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not alter or affect any Council resolution adopted, or other action taken with respect to a development district, before this Act takes effect.

(c) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not indicate that the previous version of a provision amended by Section 1 of this Act should be interpreted differently from the same provision as amended by Section 1 of this Act.

(d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Sec. 14-11. Special Fund.

(a) The resolution creating a special fund under Section 14-9 must:

(1) pledge to the special fund the proceeds of any special assessment, special tax, fee, or charge levied under Section 14-10; and

(2) require that proceeds from any special tax, special assessment, fee, or charge be paid into the special fund.

(b) When any bonds authorized by this Chapter with respect to a development district are outstanding, the County has not been reimbursed for the cost of any infrastructure improvement funded or reimbursed by the County, or the cost of any infrastructure improvement to be paid by the County directly from special assessments or special taxes have not been paid, funds in the special fund must be used in any fiscal year to pay the principal of, interest on, and redemption premium, if any, on the bonds, to pay or reimburse the County for infrastructure improvements, to pay administrative expenses, and to replenish any debt service reserve fund established with respect to the bonds.

(c) After the bonds authorized by this Chapter with respect to a development district are fully paid, the County has been reimbursed for the cost of any infrastructure improvement funded or reimbursed by the County, and the cost of any infrastructure improvement to be paid by the County directly from special assessments or special taxes has been paid, further special assessments, special taxes, fees, or charges must not be levied and the district terminates by operation of law. If the Council so determines, any balance in the special fund must be paid to the general fund of the County. (1994 L.M.C., ch. 12, § 1; 2008 L.M.C., ch. 34, § 1.)

*Editor's note—2008 L.M.C., ch. 34, took effect on January 26, 2009.

2008 L.M.C., ch. 34, § 3, states: Applicability; interpretation.

(a) Any amendment to County Code Chapter 14 made in Section 1 of this Act applies to any action taken after this Act take effect.

(b) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not alter or affect any Council resolution adopted, or other action taken with respect to a development district, before this Act takes effect.

(c) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not indicate that the previous version of a provision amended by Section 1 of this Act should be interpreted differently from the same provision as amended by Section 1 of this Act.

(d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Article IV. Issuing Debt.

Sec. 14-12. Bonds-Payment, Sinking Funds, Reserve Funds, Pledges and Other Financial Guaranties, Proceeds.

(a) If the resolution adopted under Section 14-13 so provides, the Executive must take all necessary actions to issue bonds under this Chapter, subject to the usual and customary requirements and procedures for issuance of special district bonds.

(b) Bonds must be payable from the special fund required under Section 14-11 and any other assets or revenues of the district pledged toward their payment.

(c) If the resolution adopted under Section 14-9(c) provides for the issuance of bonds, the resolution may authorize the Executive to:

- (1) establish sinking funds and debt service reserve funds;
- (2) pledge other assets in and revenues from the district towards the payment of the principal and interest; or
- (3) arrange for insurance or any other financial guaranty of the bonds.

(d) All proceeds received from any bonds issued must be applied solely towards:

- (1) costs of the infrastructure improvements listed in the resolution adopted under Section 14-9(f)(2);
- (2) costs of issuing bonds; and
- (3) payment of the principal and interest on loans, money advances, or indebtedness incurred by the County for any purpose stated in this Chapter. (1994 L.M.C., ch. 12, § 1; 2008 L.M.C., ch. 34, § 1.)

*Editor's note—2008 L.M.C., ch. 34, took effect on January 26, 2009.

2008 L.M.C., ch. 34, § 3, states: Applicability; interpretation.

- (a) Any amendment to County Code Chapter 14 made in Section 1 of this Act applies to any action taken after this Act take effect.
- (b) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not alter or affect any Council resolution adopted, or other action taken with respect to a development district, before this Act takes effect.
- (c) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not indicate that the previous version of a provision amended by Section 1 of this Act should be interpreted differently from the same provision as amended by Section 1 of this Act.
- (d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Sec. 14-13. Resolution; Investment of Special Fund or Sinking Fund; Tax Exemption.

- (a) In order to issue bonds, the Council must adopt a resolution that:
 - (1) describes the infrastructure improvements to be financed and states that the County has complied with the procedures in this Chapter;
 - (2) specifies the maximum principal amount of bonds to be issued;
 - (3) covenants to levy special taxes, special assessments, or both, at a rate and amount sufficient in each year when any bonds are outstanding to:
 - (A) provide for the payment of the principal of and interest on the bonds, and the redemption premium, if any, on the bonds;
 - (B) replenish any debt service reserve fund established with respect to the bonds; and
 - (C) enforce the collection of all special assessments and special taxes as provided in Section 52-36, et seq., of the County Code and Section 14-808, et seq., of the Tax Property Article of the Maryland Code, or other applicable law; and
 - (4) specifies (to the extent not already controlled by state or County law) the basis of any special assessment, special tax, fee, or charge in a development district, and any exemptions from a special assessment or special tax subject to any change in law that does not materially impair the district's ability to pay principal and interest and maintain adequate debt service reserves;
 - (5) declares that:

(A) the construction of the infrastructure improvements financed by the bonds:

(i) creates a public benefit, and special benefits, if applicable, to the properties assessed in the development district; and

(ii) serves a public purpose; and

(B) the projected special assessment, special tax, fee, or charge revenue will be sufficient to retire the bonds, taking into account the value of land in the district; and

(6) (A) prohibits acceleration of assessments or taxes because of any bond default;

(B) sets a maximum special assessment, special tax, fee, or charge applicable to each individual property in a development district; and

(C) prohibits any increase in, or extension of the term of, the maximum special assessment, special tax, fee, or charge applicable to any individual property because of any delinquency or default by any other taxpayer.

(b) To the extent not otherwise required by state law, the resolution may specify, or may authorize the Executive by executive order to specify as needed:

(1) the actual principal amount of the bonds to be issued;

(2) the actual rate or rates of interest for the bonds;

(3) how and on what terms the bonds must be sold;

(4) how, when, and where interest on the bonds must be paid;

(5) when the bonds may be executed, issued, and delivered;

(6) the form and tenor of the bonds, and the denominations in which the bonds may be issued;

(7) how, when, and where the principal of the bonds must be paid within the limits in this Section;

(8) how any or all of the bonds may be called for redemption before their stated maturity dates; or

(9) any other provision not inconsistent with law that is necessary or desirable to finance an infrastructure improvement.

(c) The special fund and any sinking fund or reserve fund established by the County to provide for the payment of the principal of or interest on any bonds issued by the County under

this Chapter may be invested by the County fiscal officer having custody of the fund in the manner prescribed under Article 95, Section 22 of the Maryland Code. Any fiscal officer having custody of the proceeds of the sale of any such bonds may invest the proceeds, pending their expenditure, as prescribed under Article 95, Section 22.

(d) To the extent provided in State law, the principal amount of the bonds, the interest payable on the bonds, their transfer, and any income derived from the transfer, including any profit made in the sale or transfer of the bonds, must be exempt from County taxation of any kind.

(e) The adoption of a resolution under this Section does not:

(1) obligate the County to issue bonds; or

(2) confer any contract, property, or other right on any person. (1994 L.M.C., ch. 12, § 1; 2008 L.M.C., ch. 34, § 1.)

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(a) Any amendment to County Code Chapter 14 made in Section 1 of this Act applies to any action taken after this Act take effect.

(b) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not alter or affect any Council resolution adopted, or other action taken with respect to a development district, before this Act takes effect.

(c) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not indicate that the previous version of a provision amended by Section 1 of this Act should be interpreted differently from the same provision as amended by Section 1 of this Act.

(d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Sec. 14-14. Form, terms and conditions of bonds.

(a) Any bond may be in bearer form or in coupon form or may be registrable as to principal alone or as to both principal and interest. Each bond is a security as defined in Section 8-102 of the Commercial Law Article of the Maryland Code, whether or not it is either one of a class or series or by its terms is divisible into a class or series of instruments.

(b) Each bond must be signed manually or in facsimile by the County Executive, and the seal of the County must be affixed to the bonds and attested by the Clerk of the Council. If any officer whose signature or countersignature appears on the coupons ceases to hold that office before the bonds are delivered, the officer's signature or countersignature is nevertheless valid and sufficient for all purposes as if the officer had remained in office until delivery.

(c) Each bond must mature not later than 30 years after issuance.

(d) All bonds must be sold in the manner, either at public or private sale, and upon the terms as the County Executive directs. Any contract to acquire property may provide that payment must be made in bonds. Any bond issued under this Chapter is not subject to Article 31, Sections 10 and 11 of the Maryland Code. (1994 L.M.C., ch. 12, § 1; 2006 L.M.C., ch. 33, § 1.)

Sec. 14-15. Credit of County not Pledged.

(a) Any bond issued under this Chapter is not an indebtedness of the County within the meaning of Section 312 of the Charter.

(b) Any bond issued under this Chapter must not pledge the full faith and credit of the County and must state that the full faith and credit of the County is not pledged to pay its principal, interest, or premium, if any. (1994 L.M.C., ch. 12, § 1.)

Article V. Miscellaneous Provisions.

Sec. 14-16. Administration of district; Termination.

(a) The Executive must administer each district, prepare bond issues, collect taxes and revenues, and oversee construction of infrastructure improvements. Chapter 11B does not apply to:

(1) financing, acquiring, or building any infrastructure improvement under this Chapter;
or

(2) retaining consultants or other professional services in connection with financing any infrastructure improvement or administering any development district.

(b) Construction of each infrastructure improvement listed in the resolution creating a district must begin promptly when bond proceeds or other funds are available unless:

(1) the approved Capital Improvements Program provides otherwise; or

(2) the improvement is being or has already been built.

(c) (1) The County may contract with the Revenue Authority or another public agency or a private party, including any owner of property in a development district, to construct or reimburse the cost of any infrastructure improvement when significant cost or time savings have resulted or are likely to result. In a contract under this subsection, the County may reimburse the cost of an infrastructure improvement as it is being built or after construction is complete.

(2) However, any reimbursement of construction costs under this subsection must not exceed the lowest of:

(A) the unencumbered appropriation available for that item;

(B) the actual construction cost of the item; or

(C) a fair and reasonable price developed under a cost/price analysis method used by the Office of Procurement.

(d) If the County has not issued any bonds for a district created under this Chapter, or if all bonds issued to finance a district have been repaid, the County has been reimbursed for the cost of any infrastructure improvement funded or reimbursed by the County, and the cost of any infrastructure improvement to be paid by the County directly from special assessments or special taxes has been paid, the Council may terminate the district by resolution approved by the Executive. If the Executive disapproves a resolution within 10 days after it is adopted and the Council readopts it by a vote of 6 Councilmembers, or if the Executive does not act within 10 days after the Council adopts it, the resolution takes effect. (1994 L.M.C., ch. 12, § 1; 2008 L.M.C., ch. 34, § 1.)

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(c) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not indicate that the previous version of a provision amended by Section 1 of this Act should be interpreted differently from the same provision as amended by Section 1 of this Act.

(d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed

development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Sec. 14-17. Disclosure; notices.

(a) A seller of real property located in a development district or proposed development district (as defined in subsection (f)) must disclose to any buyer during the life of any development district created under this Chapter:

(1) the amount of any special assessment, special tax, fee, or charge which the buyer must pay; or

(2) if that amount cannot readily be determined, a method of calculating the amount in sufficient detail to enable the buyer to estimate the maximum amount the buyer will pay currently and during the life of the district.

This disclosure must be made in any sale or lot reservation contract.

(b) The seller of any property located in a development district or proposed development district (as defined in subsection (f)) must specify in any advertisement, sales brochure, sign, or other sales material that the seller creates or authorizes, that:

(1) the property is or would be located in a development district; and

(2) any potential buyer should ask the seller about the additional taxes and other charges for which a property owner in the district may be liable.

Each sales office and model home in a new housing development located in a development district or proposed development district (as defined in subsection (f)) must prominently display at least one sign that contains the information required under this subsection. The information required under this subsection need not be included in a printed advertisement that is smaller than 16 square inches, or on the initial screen of an internet listing as long as the information appears elsewhere on that listing.

(c) A notice in a contract of sale or similar document which prominently contains the heading "Notice of Special Tax or Assessment" and substantially conforms to the following text complies with subsection (a):

Each year the buyer of this property must pay a special assessment or special tax imposed under Chapter 14 of the Montgomery County Code, in addition to all other taxes and assessments that are due. As of (date of this contract), the special assessment or special tax on this property amounts to or will not exceed (dollar amount in arabic numbers) each year. As of (date of each scheduled or expected increase), the assessment or tax is scheduled to increase to (amount of

each scheduled or expected increase). For further information on this assessment or tax, the buyer can contact the County Department of Finance at (current telephone number).

If an increase in any special assessment, special tax, fee, or charge is likely to occur in the foreseeable future but the timing or amount of the increase is not certain when the contract is signed, the notice must also expressly disclose that fact.

(d) Promptly after the Council adopts a resolution under Section 14-9, the Director of Finance must record among the land records of the County at the cost of the development district a declaration encumbering all real property located in the district and designating that property as subject to a development district. The declaration must terminate when the Director records a release stating that all bonds are fully repaid, the County has been reimbursed for the cost of any infrastructure improvement funded or reimbursed by the County, the cost of any infrastructure improvement to be paid by the County directly from special assessments or special taxes has been paid, and all other obligations of the County relating to the district have been satisfied. While the declaration is in effect, each deed to any real property located in the district must contain a notice that:

- (1) the property is located in a development district; and
- (2) a declaration filed in the County land records encumbers the property.

(e) The Director of Finance must indicate on the real estate tax bill for each property in a development district the amount of any special assessment or special tax imposed on the property.

(f) Any notice or other information that this Section requires a seller to provide for a property located in a development district must also be provided if a development district has not been created but the property is located in an area proposed to be included in a development district by a petition filed under Section 14-6.

(g) Any contract which does not disclose all information required by this Section is voidable at the option of the buyer before the date of settlement.

(h) In addition to any other applicable remedy or penalty, any person who does not comply with this Section is liable for any damages sustained by a buyer or potential buyer because of that person's failure to provide any required notice or information. However, a seller or the seller's agent is not liable for an incorrect estimate of the amount of any tax, assessment, fee, or charge disclosed under this Section if the seller relied in good faith on a method approved or recommended by the County to estimate that amount.

(i) The Office of Consumer Protection must enforce this Section as if it were part of Chapter 11. (1994 L.M.C., ch. 12, § 1; 2008 L.M.C., ch. 34, § 1.)

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- (c) Any amendment to County Code Chapter 14 made in Section 1 of this Act does not indicate that the previous version of a provision amended by Section 1 of this Act should be interpreted differently from the same provision as amended by Section 1 of this Act.
- (d) Any notice or disclosure requirement in Section 14-17, as amended by Section 1 of this Act, applies to any sale contract signed, and any sales material or advertisement for sale disseminated, after this Act takes effect in any development district created, and in any proposed development district for which the Council adopted a resolution under Section 14-6, after January 1, 2001.

Sec. 14-18. Construction of Chapter.

- (a) This Chapter is necessary for the welfare of the County and its residents and must be liberally construed to achieve the purposes stated in Section 14-2.
- (b) The powers granted under this Chapter supplement any power conferred by any other law and do not restrict any other power of County government. (1994 L.M.C., ch. 12, § 1.)