



## NextGen Transportation Demand Management (TDM) – Proposed Code Changes and Executive Regulations

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### Overview

Montgomery County Department of Transportation (MCDOT) is proposing revisions to Chapter 42A, Article II of the County Code and an accompanying Executive Regulation to enhance Transportation Demand Management (TDM) in Montgomery County. The intent of the proposed changes, known as NextGen TDM, is to expand TDM to areas of the County beyond the current TDM districts, streamline existing TDM processes, provide more flexibility in the selection of TDM strategies, ensure fairness, and increase the non-auto driver mode share (NADMS) in the county. Key elements of the proposed NextGen TDM program include:

- A tiered TDM approach with three program levels (basic, action and results). Each tier requires various commitments of developers depending on the size and geographic location of the project;
- TDM program tier thresholds (measured in gross square feet) which vary based on Subdivision Staging Policy (SSP) transportation policy area categories (i.e., red, orange, and yellow); See Figure 1.
- A Traffic Mitigation Plan is required of employers within a red, orange, or yellow transportation policy area; And,
- Traffic Mitigation Plan thresholds (based on number of employees) that vary according to the transportation policy area category of the employer's location.

A public hearing pertaining to the NextGen TDM program is anticipated to be scheduled this coming fall. Planning Department staff commentary pertaining to the proposed Next Gen TDM program is provided in Attachment A. Proposed changes to County Code and Executive Regulations are provided in Attachments B and C, respectively. At today's Planning Board meeting, MCDOT and Planning Department staff will facilitate a discussion with the Planning Board to solicit additional commentary regarding the proposed

TDM program changes. In support of this discussion, MCDOT staff will provide a briefing to the Planning Board describing the details of key elements of the NextGen TDM program.

### **Staff Recommendation**

Develop and transmit Planning Board public hearing commentary to the County Council.

### **Background**

Beginning in the fall of 2016, MCDOT convened a TDM workgroup to assist with the overhaul of the TDM process. Department staff representing Area Teams and Functional Planning and Policy participated in the workgroup and provided feedback to the consultants and MCDOT. During the past two years MCDOT has hosted meetings with stakeholders to discuss changes to the TDM process and on Monday, July 16, 2018 held a public open house to garner public feedback. A brief overview of the existing TDM process, its components and proposed major changes is provided below.

Chapter 42A, Article II of the County Code authorizes the County Council to establish Transportation Management Districts (TMDs) as a means to enforce and provide various transportation demand management strategies. To date, the County Council has approved six TMDs (Friendship Heights, Downtown Silver Spring, Downtown Bethesda, North Bethesda, Greater Shady Grove and White Oak). See Figure 2. Each TMD (except for White Oak) is funded via a TMD fee paid on a per square foot basis by commercial properties. The proposed changes at this time would not expand TMD boundaries but provides authorization for the County Council to expand TMDs where a SSP policy area exists. County law requires employers with 25 or more employees located in a TMD to file a Traffic Mitigation Plan (TMP) and Annual Report. Employers submit TMPs, which include completed optional and required strategies, via a standardized online form to MCDOT. Employers must also participate in an annual survey administered by MCDOT to determine each district's NADMS and other performance metrics. The proposed changes would expand the employer-based requirements to all areas of the county within a red, orange, or yellow transportation policy area with various employment-based thresholds.

If a proposed subdivision is located within a TMD, the Planning Board and MCDOT may jointly require the applicant to enter into a Transportation Mitigation Agreement (TMAG) as a condition of development approval. The TMAG must include trip mitigation measures and is negotiated between the applicant and MCDOT. TMAGs authorized under Chapter 42A-25 (Article 2) often do not include a monitoring provision to ensure performance targets are being met at the project level. This is in contrast to TMAGs authorized under Chapter 42A-9A (Article 1) which often include an ongoing monitoring program to ensure project level transportation goals are being met. The proposed changes to chapter 42A and executive regulation would clarify optional and required elements, according to the TDM program tier, of TMAGs. The proposed changes also seek to add flexibility to enable adjustments to TMAG strategies over time. Currently, however, MCDOT is only proposing changes to Chapter 42A article 2. TMAGs therefore authorized under 42A-9A (Article 1) would remain unchanged.

**Attachments:**

Attachment A - Submitted comments by staff to MCDOT regarding the proposed NextGen TDM program

Attachment B - County Code

Attachment C - Executive Regulations

RP/EG/aj

**Figure 1: Montgomery County Transportation Policy Areas**

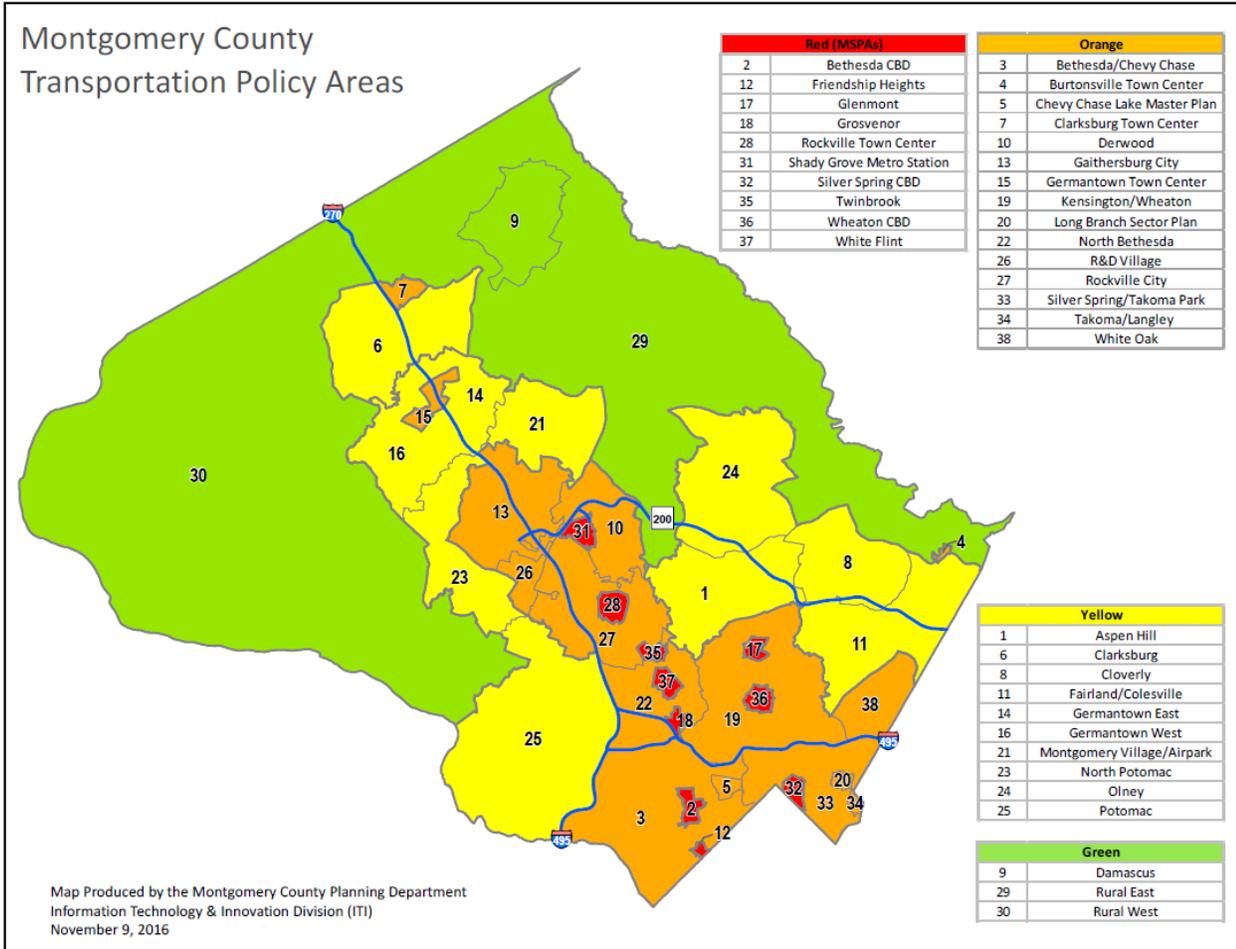
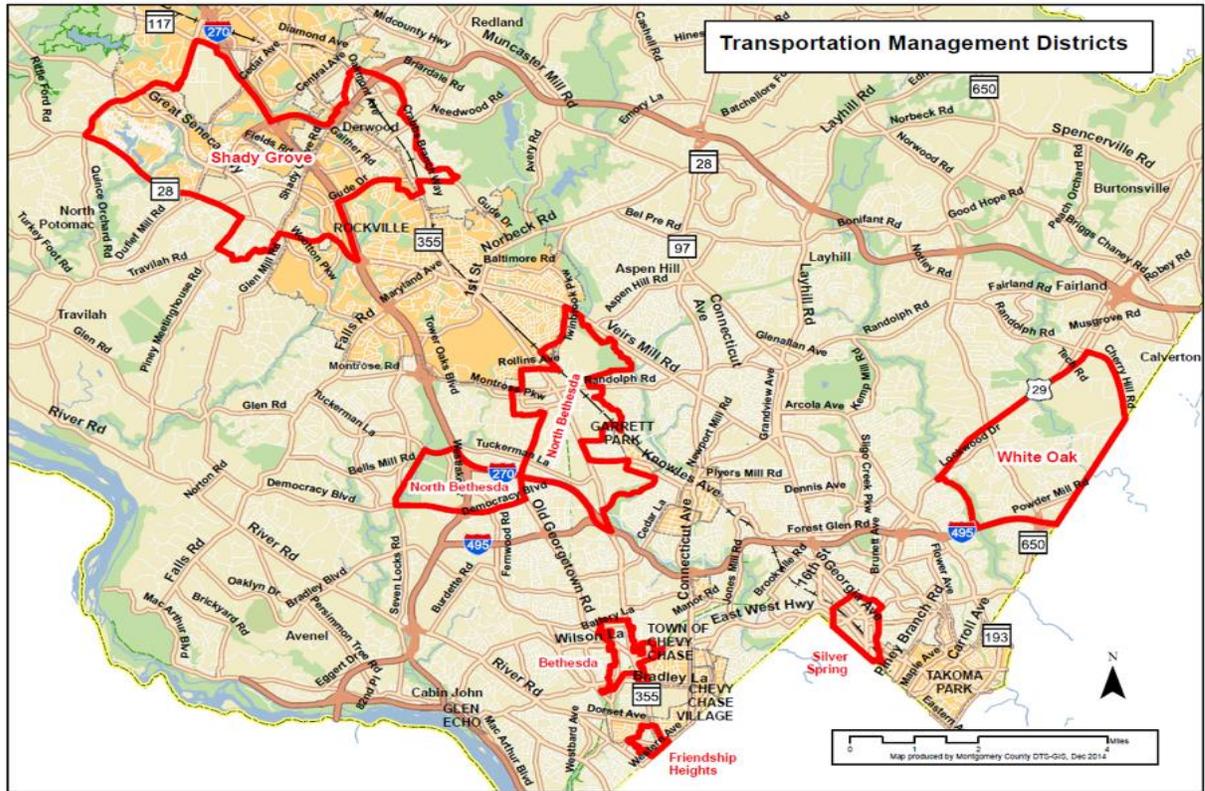


Figure 2: Montgomery County Transportation Management Districts



## Submitted Staff Comments to MCDOT

### Suggestions regarding TDM Program Menu Strategies

1. Currently the draft encourages additional long-term bicycle parking above the minimum required in the zoning code. While more long-term bicycle parking is good (especially for residential developments), the quality of the long-term bike parking is also important. The [Bicycle Parking Guidelines](#) identifies the following list of long-term bicycle parking facilities in order of quality. We should encourage a minimum of “c”, but preferably “a” or “b”.
  - a. Bicycle rooms on the ground floor.
  - b. Bicycle rooms in a parking garage.
  - c. Bicycle cages in a parking garage.
  - d. Bicycle lockers.
  - e. Bicycle racks in a parking garage.
2. Showers/lockers/changing rooms are already required in the zoning code. Is this intended to encourage more of each?
3. Should alternative work schedules be added? May be hard to enforce, but it is noted in the definition of TDM in the county code. Also, should telework policies be added? (It is mentioned in 42A-24, d as a TMP method)

### SSP Issues/Consistency

1. The last paragraph on page 6 of the [SSP resolution](#) states that “to support creating facilities that encourage transit use, walking, and bicycling, to maintain an approximately equivalent level of service at the local level for both auto and non-auto modes, the Board may allow the applicant to use peak hour vehicle trip credits for providing non-auto facilities. **Before approving credits for non-auto facilities to reduce Local Area Transportation Review impacts, the Board should first consider the applicability and desirability of traffic mitigation agreement measures**”. This language should likely be updated to reflect the new TDM program requirements to have it better tie in with adequacy findings.
2. Section APF (starting on 14 of the SSP resolution) appears to lay out a “customized” TDM program/process for developments that do not go through the subdivision/site plan review process (adequacy findings at the time of building permit). This should be updated to reflect the fact that the new TDM program requirements will apply to all developments meeting the area thresholds.

### Broader TDM Suggestions

1. Create an exemption process for developments with a large GSF, but small trip-generating land use &/or number of employees such as a warehouse. MCDOT differentiated between a building with many employees (i.e., office) versus a large number of customers and few employees (i.e., high-turn around retail uses).
2. Differentiate between TDM programs (developer) and a TMP (employer).

3. Currently the results based TDMPs require the developer to self-monitor at least year 6. There needs to be clarification as to subsequent monitoring requirements if:
  - a. The development is meeting its goal, or
  - b. The development is not meeting its goal.
4. Consider adding Glenmont and Wheaton to the TDMP areas by making all Metro Station Policy Areas (MSPAs) TMD areas.
5. We understand the Planning Department will not be involved with the TMPs, however, the coordination of the TDMP's between the Planning Department and MCDOT still needs clarifying. (If MCDOT has final approval authority, why are the plans adopted as a condition of development approval? What role will the Planning Department have in reviewing and commenting on the TDMPs?)
6. On the Action programs – how do we know if self-monitoring is going to be done correctly? It seems without some independent monitoring, it is up to the ethics of the property owner. Is MCDOT ok with that?
7. It is suggested that Independent Monitoring start sooner than the 6<sup>th</sup> year – that seems like too long of a wait to get reliable data on a project.

#### **Unanswered legal issues**

1. In section 42A-23 of the proposed changes to the county code (page 6), authority is given to MCDOT to prohibit “bundling of parking in new developments approved after January 1, 2019, whereby a prospective purchaser or tenant is required to commit to purchasing or leasing a minimum number of parking spaces as a precondition to buying or leasing space or renewing a lease in any commercial or residential building”. How would this requirement interact with our zoning requirements? Are they at odds? Would this require a zoning text amendment?
2. Proposal states that NADMS goals for areas of the county without predetermined goals be set at 5% above existing NADMS. For example, the Takoma Langley Crossroads Sector Plan call for a transportation demand management program for the New Hampshire Avenue Corridor but gives no specific NADMS goals. If a TMD was created in this area, would the 5% increase in NADMS makes sense? Should it be higher?
3. The aim of the TDMPs is to provide the developer with more flexibility. The intent is then to make these programs a “living” program where changes can be made over time to the program’s strategy. Although this is well intentioned, it may prove difficult to ensure these changing requirements are recorded in perpetuity.
4. All references to Optional Development Method should be examined for relevance under the new code.
5. How do we get TMPs to recognize federal contractors who may not be under the purview of Federal TMP plans and may not be considered employees?
6. Current code modifications recommend ignoring edits to Article 1 of Chapter 49 – is that an issue?

#### **Specific comments regarding proposed County Code language**

1. Should definition of employee be updated to include contractors (Sec. 42A-21. Definitions).
2. Enforcement section should also mention Preliminary Plans, not just Site Plans and Building Permits.

3. Section 42A-23, d – (“The Department and the Planning Board may, in accordance with this Article and other applicable law, jointly impose transportation demand management measures as conditions on the Board's approval of development in any district or Subdivision Staging Policy Area.”) Is the inclusion of “or Subdivision Staging Policy Area” is too broad and gives too much control to MCDOT and PB, instead of the Council? Also, at a minimum, “Subdivision Staging Policy Area” should be added to the definitions – it is not currently included.
4. Section 42A-24, d – (“The traffic mitigation plan should be consistent with and contribute to the achievement of any commuting goals set in the Subdivision Staging Policy.”) What about TMPs in Orange and Yellow area’s that do not have commuting goals set in the Subdivision Staging Policy? You may want to provide language that addresses TMPs in those areas.
5. Consolidated Traffic Mitigation Plans – how will these be enforced? Also, the intent/execution of item 2 under this section is not clear.
6. Section 42A-24, k – (“The Director may require an employer or owner to resubmit a plan that is inadequate to achieve any NADMS goals set in the Subdivision Staging Policy. The Director must not require an employer to submit a plan that meets the requirements of this Section more than once every 2 years. An employer or owner must submit a report on transportation demand management measures used to implement a traffic mitigation plan to the transportation management organization based on a schedule the Director sets.”) Why must an employer or an owner submit both a TMP plan AND a report on transportation demand management measures? What is the difference and why are both necessary? Should the report requirement be separated from the other text in this section (i.e., resubmit the plan if is it inadequate) – since the two are not always linked?
7. Section 42A-25, a, 1 – This does not capture Conditional Uses that do not have to go through Preliminary or Site Plan (which is very few) or Mandatory Referrals (public projects).
8. For the TDM Programs (Section 42A,25, b) – why does the Action Based Program start with 100K GSF for both Orange and Yellow Areas? Should Yellow Areas be tiered slighting – say to start at 150K? Since there is a difference between Red and Orange at 100K, shouldn’t there be a difference between Orange and Yellow at 100K as well?
9. Section 42A-25, c, 3 – The requirements of the Results Based Program seem very similar to the Action based program – to the point they are undistinguishable except for the Independent Monitoring and Increased Funding/Rewards (which sounds very similar to Action Program). Should it be made clearer what the differences are or that the costs are higher than Action? Also, Independent Monitoring should be further defined or a reference to the Executive Regulations where it is further defined should be provided.
10. Section 42A-25, d, 2 – Does this code give the Planning Board authority to require the TDM program to be “made an express condition of any approval for subdivision under Chapter 50 or optional method development under Chapter 59”? If not, some regulation should be considered.
11. If a TDM Program is intended to “run with the land” via land records (Section 42A-25,2,4), does that make it too hard or cumbersome to amend or create in the first place?
12. Section 42A-25, e – Preliminary Plans should be added to this list.
13. Section 42A-26, 2 “New building or project approvals. Any new building or development project approved after January 1, 2019, must be subject to the requirements of Section 42A-25; no traffic mitigation agreement will be required.” – Does that mean that we as Planning Staff no longer have a

tool to allow development to mitigate for intersections over capacity? Or will that be done by TMPs? If done by TMPs, I'm guessing those will be monitored by MCDOT? If so, they will need separate requirements that are more stringent than what are outlined here (i.e., reporting should be done a year or two after occupancy, not 6.

14. Section 42A-26,3, I and iii ("a traffic mitigation agreement has not yet been fully executed" and "construction has not commenced") – Wouldn't the County want to encourage old projects to come under the new system? This discourages old projects from doing so.
15. Section 42A-28, a ("operation district") – What is meant by "operating" district? Why was that modifier included and what does it mean? (Should be added to definitions)
16. Section 42A-28, a,1 ("employee commuting patterns by employer or project; residential commuting patterns by building or project; other commuting or travel patterns as appropriate;") – This level of granularity seems like it could be a lot of work. Do you want to allow for more aggregated data based on block level or something?
17. Section 42A-28, a,3 ("level of service measurements for each major intersection in the policy area and selected critical intersections outside the area;") – How is MCDOT going to get this info? Can this info be shared with the Planning Department? It should possibly be noted that this LOS should be based on Subdivision Staging Policy Area guidelines, as opposed to overall national guidelines, as our LOS standards change with by policy area groupings.
18. Section 42A-28, a,4 – How is MCDOT going to get parking demand info? That is not something that would be easily reportable or reliable from developers.
19. Section 42A-28, b – Can we request this also be forwarded to the Planning Department?
20. Section 42A-28, b or c ("If any commuting goals set in the Subdivision Staging Policy are not met 48 years after a district is created or by June 30, 2027, whichever is later, the Director must recommend corrective action to the Executive. This action may include additional mitigation measures. If the Executive agrees that such action is necessary, the Executive should propose appropriate legislation or adopt appropriate regulations as authorized by law.") – Shouldn't the Planning Board and staff be involved in this step seeing as all/most of the goals of the Subdivision Staging Policy were developed from Master Plans, created through the Planning process?
21. Section 42A-29 – What is method 2? Can that be explained, or section be pointed to?