

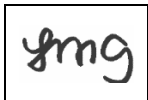
EXPEDITED BILL 25-23, TAXATION - DEVELOPMENT IMPACT TAXES FOR TRANSPORTATION AND PUBLIC SCHOOL IMPROVEMENTS – AMENDMENTS



Description

Expedited Bill 25-23 would modify the calculations for tax rate adjustments for transportation improvements by requiring a cumulative increase or decrease in the construction cost index rather than an annual average every two years. The bill would also establish a cap on the development impact tax rate for school and transportation improvements, allow certain increases to the biennial tax rate adjustments, and generally amend the law governing transportation and school development impact taxes.

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SUMMARY

- Expedited Bill 25-23 would do the following:
 - Modify the calculations for tax rate adjustments for transportation improvements by requiring cumulative increase or decrease in the construction cost index rather than an annual average every two years.
 - Set a cap on the development impact tax rate for school and transportation improvements.
 - Allow certain carryover increases of the biennial tax rate adjustments.
 - Generally, amend the law governing transportation and school development impact taxes.

BILL INFORMATION

Sponsors

Lead Sponsors: Councilmember Friedson, Glass,
and Stewart

Co-sponsor: Councilmember Fani-González

Review Basis

Chapter 52, Taxation

Public Hearing

June 13, 2023

Introduction Date

May 18, 2023

Planning Division

Countywide Planning & Policy

Planning Board Information

MCPB

Item No. 5

June 8, 2023

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EXPEDITED BILL 25-23, TAXATION - DEVELOPMENT IMPACT TAXES FOR TRANSPORTATION AND PUBLIC SCHOOL IMPROVEMENTS – AMENDMENTS

BACKGROUND

Chapter 52 requires the Director of Finance to adjust and publish updated development impact tax rates for transportation and public schools every two years, by May 1 of odd-numbered years.

The current law requires the transportation impact tax rates to be recalculated based on the annual average increase or decrease in a published construction cost index over the most recent two calendar years. The law has been interpreted as taking the average of the two annual index changes. The increase in the index in 2021 over 2020 was 6.05 percent, and the increase in the index in 2022 over 2021 was 12.89 percent. The average of those two increases is 9.47 percent. Therefore, the Director of Finance published updated rates to take effect on July 1 reflecting 9.47 percent increases.

School impact tax rates are calculated on a biennial basis by the Planning Department on behalf of the Department of Finance based on the latest school enrollment data (from MCPS), housing inventory data (from SDAT) and school construction costs (from MCPS). Student generation rates (SGRs) capture the average number of public school students living in a particular housing type and geography combination. Montgomery Planning calculates SGRs for eight combinations of housing types (single-family detached and attached, and multifamily low-rise and high-rise) and school impact areas (turnover and infill) using the current school year’s official and complete enrollment and a corresponding housing dataset. For the school impact taxes, the tax rates are reset and recalculated

to their true value every biennial update based on actual SGRs and actual MCPS school construction costs.

The table below demonstrates the percentage increases by unit and area type set to take effect on July 1:

	Infill Areas	Turnover Areas
Single-family detached	+45.6%	+41.3%
Single-family attached	+44.2%	+42.7%
Multi-family low-rise	+69.0%	+57.0%
Multi-family high-rise	+57.8%	+129.2%

This biennial increase for school impact taxes is much higher than previous adjustment updates.

The main driver for these rate increases is the increase in school construction cost per student. Compared to the construction costs provided by MCPS two years ago, the current cost to construct an elementary school is 34 percent higher; the cost to build a middle school is 44 percent higher; and the cost to build a high school is 53 percent higher per MCPS.

Relatedly, while the main driver for the increases was increased construction costs, the increase in student generation rates played a role in the increase for multifamily impact taxes. While current school year enrollments are up from the last time SGRs were calculated using pandemic-depressed 2020-21 enrollments, the enrollment increase is not uniformly distributed across housing types. Countywide, single-family detached and single-family attached SGRs fell 1.3 percent and 0.6 percent, respectively. Meanwhile, the multifamily SGRs increased 19.1 percent for units in low-rise structures (four stories or less) and 14.3 percent for units in high-rise structures (five stories or more). As a result, the increase in student generation rates played a larger role in increasing multifamily impact taxes. For example, 47 percent of the increase in the Turnover Impact Area Multifamily High-Rise impact tax was due to increased enrollment from those units.

Figure 1 below demonstrates this increase in each of the eight school impact tax rates and the portions of each increase that can be attributed to increased school construction costs (in orange) and the change in student generation rates (in blue). As discussed above, the main driver for the increase was largely increased construction costs for schools, with the increase in student generation rates playing a larger role in increasing multifamily impact taxes.

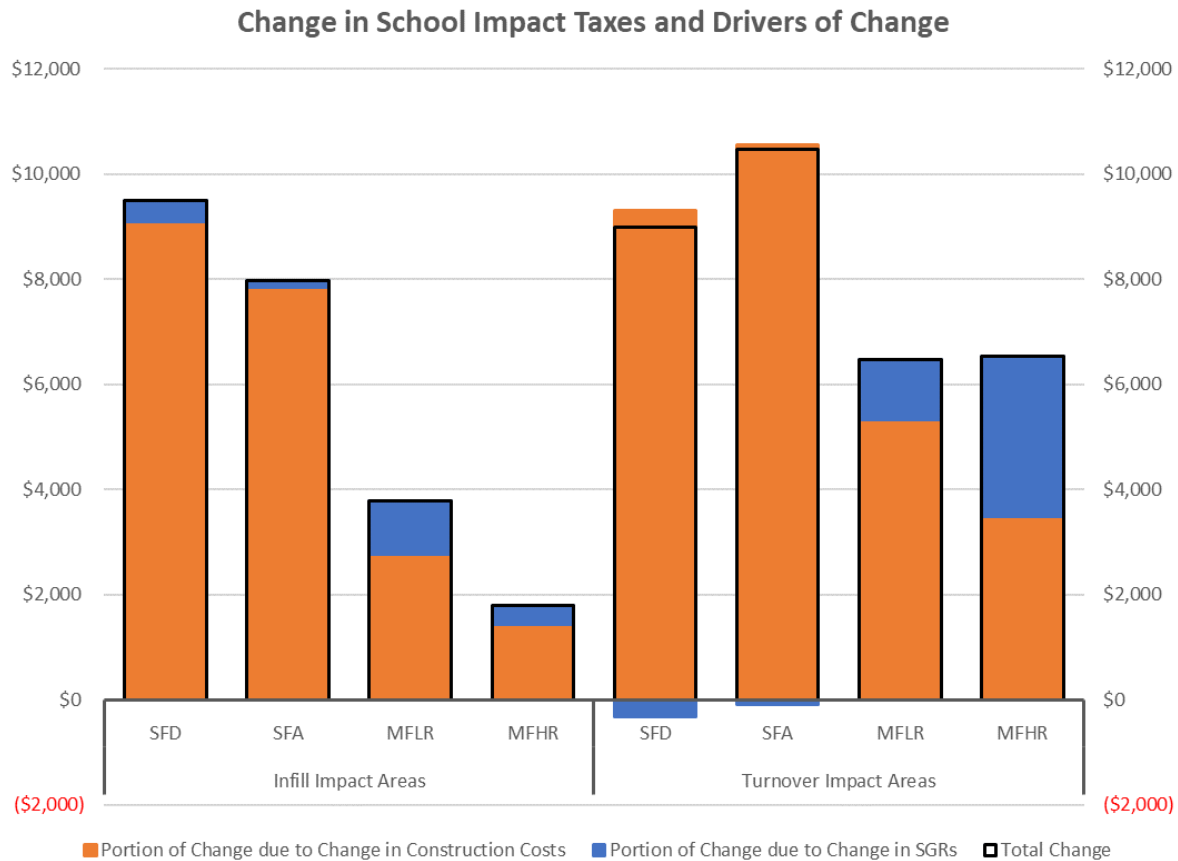


Figure 1 Change in School Impact Taxes and Drivers of Change

Planning staff also believes that the increase in multifamily student generation rates is indicative of the current housing market. Since 2019, the average sold price has increased by 32 percent for detached homes, and 18 percent for attached homes (Source: BrightMLS). Families are being priced out of single-family units and are opting instead to live in less expensive multifamily units (or live in them longer). Multifamily structures still see substantially fewer students on a per unit basis than single-family units. However, compared to enrollment data from two years ago when the impact tax rates were last updated, there are currently more students living in multifamily units.

BILL 25-23 OVERVIEW

Transportation Impact Taxes

Expedited Bill 25-23 would amend Section 52-49 regarding the calculation of tax rate adjustments for development impact taxes for transportation improvements by using a cumulative approach over the prior two years rather than an annual average. Applying the cumulative inflation factor to the current transportation impact tax rates would increase the rates by approximately 19 percent instead of the previously published increase of 9.47 percent.

There would also be a cap on biennial tax rate increases. The Director of Finance would have to cap the biennial tax rate to not exceed 20 percent. If the biennial tax rate adjustment is calculated to exceed 20 percent, the excess percentage amount must be carried over and added to the next biennial adjustment. If the next biennial tax adjustment again exceeded 20 percent, the excess percentage is then again carried over and added to the next biennial adjustment.

School Impact Taxes

Section 52-55, pertaining to the update of the school impact tax rates, would be amended to follow similar procedures as proposed for transportation impact taxes. The Director of Finance would have to cap the biennial impact tax adjustment to not exceed 20 percent. If the biennial tax rate adjustment is calculated to exceed 20 percent, the excess percentage amount must be carried over and added to the next biennial adjustment. If the next biennial tax adjustment again exceeded 20 percent, the excess percentage is then again carried over and added to the next biennial adjustment.

ANALYSIS AND RECOMMENDATIONS

On the transportation side, Planning staff supports the cumulative approach, the 20 percent cap and the use of a carryover balance. The cap and carryover system will help soften the impact of higher than average transportation impact tax updates, and the carryover ensures the easing of the previous discount to return to the true impact tax rates.

While Planning staff supports the approach for transportation impact taxes, staff believes it would be the most accurate to returning the rates to their true values by banking a dollar amount instead of a percentage.

Using a hypothetical example that assumes a true increase of 25 percent in the first update and a true increase of 10 percent in the second update, the tables below illustrate the difference between the percentage and dollar amount carryover approaches. Without the cap and carry provisions, a \$5,000 tax rate would initially increase to \$6,250 and then to \$6,875 after the second update.

By carrying over a percentage, the calculation overcompensates because the banked percentage is being applied in the second update to a higher base rate. Instead of applying the banked 5 percent to the original \$5,000, it is now being applied to \$6,000, which results in increasing the impact tax rate beyond the true rate. Overtime, whether a future carryover applies or not, the rates will continue to move further and further away from the true rates.

Percentage Carryover Approach

Update	Starting Tax Rate	Inflation Factor	Updated Tax Rate	Carryover Percentage
1	\$5,000	20% (25%-5%to carryover)	\$6,000	5%
2	\$6,000	15% (10%+5% from carryover)	\$6,900	0%

However, the dollar amount carryover approach ensures that the impact tax rates will always return to the true rate.

Dollar Amount Carryover Approach

Update	Starting Tax Rate	Add Carryover	Inflation Factor	Updated Tax Rate	Apply 20% Cap	Carryover Amount
1	\$5,000	\$5,000	25%	\$6,250	\$6,000	\$250
2	\$6,000	\$6,250	10%	\$6,875	\$6,875	\$0

Staff recommends modifying Section 52-49 to add specificity, clarity, and to change the carryover from a percentage to a dollar amount for the transportation impact tax biennial update.

- (2) *Carryover of biennial tax rate adjustments in excess of 20%.* If the biennial tax rate adjustment exceeds 20%, the excess [[percentage]] dollar amount must be carried over and added to the tax rate before calculating the next biennial adjustment. If this total adjustment, [[which is also capped at 20%]] including any carried over value, again exceeds 20%, the excess [[percentage]] dollar amount must be carried over and added to the tax rate before calculating the [[following]] biennial adjustment.

On the school side, Planning staff supports the 20 percent cap. Given the large increase seen in impact tax rates in the most recent biennial update, a cap will lessen the impact and ensure that impact taxes are not increasing at unattainable rates that could make development in Montgomery County untenable.

Staff does not support the carryover on the school side. Impact taxes rates are calculated to estimate the impact of new development on the county’s school and transportation infrastructure. The point of the carryover should be to bring the tax rate to the true value over time after it has been artificially reduced due to the cap. The carryover makes sense on the transportation side because the biennial update does not involve a full reset of transportation infrastructure costs. On the school side, the true value is achieved automatically every time the rates are updated. Applying the carryover after the biennial recalculation would cause the impact tax rates to overcharge developers for their impact on enrollment. Essentially, future projects would be overpaying for the discounts offered to earlier projects. Staff illustrates this in the hypothetical example. On the transportation side, applying the carryover is just telling future projects that they’ll be paying the appropriate share because we’re applying previous inflation that was never factored into the tax rate because of the cap.

Update	Calculated Tax Rate	Calculated Tax Rate Increase	Used Tax Rate	Used Tax Rate Increase	Cumulative Carryover
0	\$5,000		\$5,000		
1	\$7,100	42.0%	\$6,000	20.0%	\$1,100
2	\$7,700	8.5%	\$7,200	20.0%	\$1,600
3	\$8,100	5.2%	\$8,640	20.0%	\$1,060
4	\$8,400	3.7%	\$9,700	12.3%	\$0
5	\$8,750	4.2%	\$8,750	-9.8%	\$0

For the school impact tax recalculations, effectively, the carryover results in future projects paying in excess of their fair share (shown in red above) to pay for the discounts provided to earlier projects paying less than their fair share (shown in green).

While staff understands the need to balance revenue and ensure the development industry as a whole pays for the impact of development, the impact tax system as it exists today has many waivers, exemptions, and discounts that are not offset by requiring other developers to pay more than their fair share. These waivers, exemptions, and discounts include Moderately Priced Dwelling Units and other affordable units, projects with 25 percent Moderately Priced Dwelling Units, and projects within Enterprise and Opportunity Zones, among others.

Planning staff would recommend eliminating the carryover provision for the school impact tax, to prevent any project from paying more than their fair share.

Without the carryover, here is a hypothetical example:

Update	Calculated Tax Rate	Calculated Tax Rate Increase	Used Tax Rate	Used Tax Rate Increase	Cumulative Carryover
0	\$5,000		\$5,000		
1	\$7,100	42.0%	\$6,000	20.0%	
2	\$7,700	8.5%	\$7,200	20.0%	
3	\$8,100	5.2%	\$8,100	12.5%	
4	\$8,400	3.7%	\$8,400	3.7%	
5	\$8,750	4.2%	\$8,750	4.2%	

In this approach to the hypothetical example, projects would get a discounted rate and pay less than their fair share during the earlier years (shown in green above). Later projects would simply pay their fair share (shown in yellow).

If the Council keeps the school impact tax carryover provision, the carryover should be banked as a dollar amount, not a percentage. School impact taxes are already calculated on a dollar basis, not as a percentage increase. Here is potential amendment language as noted in red:

(2) Carryover of biennial tax rate adjustments in excess of 20%. If the biennial tax rate adjustment exceeds 20%, the excess **[[percentage]] dollar amount** must be carried over and added to the next biennial adjustment. If this total adjustment, **[[which is also capped at 20%]] including any carried over value**, again exceeds 20%, the excess **[[percentage]] dollar amount** must be carried over and added to the following biennial adjustment.

Planning staff also has a minor modification recommendation to Section 52-55, to help better capture the process of the recalculation of school impact taxes regarding school construction costs. As noted in red:

(d) The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section effective on July 1 of each odd-numbered year in accordance with the update to the Growth and Infrastructure Policy using the latest student generation rates and average MCPS school construction costs **[[data]]**. The Director must calculate the adjustment to the nearest multiple of one dollar. The Director must publish in the County Register the amount of this adjustment not later than May 1 of each odd-numbered year.

PARK IMPACT PAYMENT (PIP) / CIVIC IMPROVEMENT FUND (CIF) ZONING TEXT AMENDMENT

The same methodology that was used for calculating the transportation impact tax rate adjustments was also used in Chapter 59, the Zoning Ordinance.

Within the Bethesda Overlay Zone, there is a provision allowing applicants to exceed their mapped zoning by making a payment to the Park Impact Payment (PIP) fund. In the Downtown Silver Spring Overlay Zone, a similar provision exists, with payment to the Civic Improvement Fund (CIF). The Planning Board is required to hold a public hearing and adjust these rates by July first every two years. 2023 will see an adjustment to the PIP, and 2024 will see an adjustment to the CIF.

To update the inflation calculation to the cumulative rate, and to also mirror the 20 percent maximum bi-annual increase, a Zoning Text Amendment (ZTA) is recommended (Attachment 2). The language in the ZTA is nearly identical to that proposed by staff for the transportation impact taxes, tracking the cumulative change, but carrying forward any excess rate increases above 20 percent as a dollar amount rather than a percentage. The carried forward dollar amount would be added to the fund rates at the next adjustment before applying the cumulative inflation rate to ensure the rates stay as accurate as possible. Because the PIP in the Bethesda Overlay Zone is due to be updated this year, the ZTA will not have a chance to amend the code in time but would be able to correct the Downtown Silver Spring Overlay Zone before next summer.

CONCLUSION

Planning staff supports the modifications as recommended for the transportation impact taxes. The cap and carryover system will help soften the impact of higher than average transportation impact tax calculations, and the carryover ensures the easing of the previous discount and getting to the true rates.

For school impact taxes, staff supports the 20 percent cap on impact tax increases, but does not support the carryover. Planning staff would recommend eliminating the carryover provision for the school impact tax to prevent any project from paying more than their fair share.

Planning staff is also recommended a Zoning Text Amendment be introduced to update the language for the Park Impact Payment (PIP) in the Bethesda Overlay Zone and the Civic Improvement Fund (CIF) in the Downtown Silver Spring Overlay Zone.

ATTACHMENTS

[Attachment 1](#): Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments Introduction Packet

[Attachment 2](#): ZTA 23-## Park Improvement Payment and Civic Improvement Fund



Committee: GO
Committee Review: At a future date
Staff: Ludeen McCartney-Green, Legislative Attorney
Glenn, Orlin, Senior Analyst
Purpose: To introduce agenda item – no vote expected
Keywords: #CapOnImpactTax, #Development

AGENDA ITEM .5 & .75
May 18, 2023
Introduction
CORRECTED

SUBJECT

Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments

Resolution to Approve Development Impact Tax Rates for Transportation and Public School Improvements

Lead Sponsors: Councilmember Friedson, Glass, and Stewart
Co-sponsor: Councilmember Fani-González

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To introduce Bill – no vote expected

DESCRIPTION/ISSUE

Expedited Bill 25-23 would:

- (1) modify the calculations for tax rate adjustments for transportation improvements by requiring cumulative increase or decrease in the construction cost index rather than an annual average every two years;
- (2) set a cap on the development impact tax rate for school and transportation improvements;
- (3) allow certain carryover increases of the biennial tax rate adjustments; and
- (4) generally amend the law governing transportation and school development impact taxes.

SUMMARY OF KEY DISCUSSION POINTS

- As required by County Code §52-49(e) and §52-55(d), it is necessary to introduce a resolution for approval if the Council chooses to update the impact tax rates for transportation and public school improvements.

This report contains:

Staff Report	Pages 1-3
Expedited Bill 25-23	©1
Draft Resolution to Approve Development Impact Tax Rates for Transportation and Public School Improvements	©4
Notice of New Tax Rates – Published May 1, 2023	©7

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MEMORANDUM

May 17, 2023

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney
Glenn Orlin, Senior Analyst

SUBJECT: Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments
Resolution to Approve Development Impact Tax Rates for Transportation and Public School Improvements

PURPOSE: Introduction – no Council votes required

Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public-School Improvements – Amendments, sponsored by Lead Sponsors Councilmembers Friedson Glass and Stewart, and co-sponsor Fani-González is scheduled to be introduced on May 18, 2023. A public hearing is tentatively scheduled for June 13 at 1:30 p.m.¹ A GO committee worksession is scheduled for June 15.

Expedited Bill 25-23 would modify the calculations for tax rate adjustments for transportation improvements by requiring a cumulative increase or decrease in the construction cost index rather than an annual average every two years. Expedited Bill 25-23 would also establish a cap on the development impact tax rate for school and transportation improvements, allow certain increases to the biennial tax rate adjustments, and generally amend the law governing transportation and school development impact taxes.

Accompanying Expedited Bill 25-23 is a resolution to approve the proposed tax rates that would be established with a 20% inflation cap. ©4 The resolution by the Council is necessary as prescribed by County law to update the impact tax rates for transportation and public school improvements because the Director of Finance has already published new rates that will take effect on July 1. See page ©7. The resolution has an effective date of July 1, 2023.

¹#CapOnImpactTax, #Development

BACKGROUND

Code §§52-49 and 52-55 require the Director of Finance to adjust and publish the tax rates automatically every two years (in odd-numbered years) for the development impact tax for transportation and public school improvements.

The law also requires the transportation improvement tax rates to be calculated based on the annual average or increase in the published construction cost index inflation over the most recent two calendar years. The school adjustment rate takes into calculation construction unit cost inflation over the past two years coupled with the student generation rate by household type.

On May 1, 2023, the Director of Finance published in the County Register the new rates for the period effective 7/1/2023 through 6/30/2025.²

Under the current law, the rates for transportation will increase by a rate of 9.47%. According to the Finance Department, the increase in the index in calendar 2021 over calendar 2020 was 6.05%, and the increase in the index in calendar 2022 over calendar 2021 was 12.89%, thus the average increase was calculated to be about 9.5%.

The rates for school impact tax rates will increase substantially. In part depending on the type of unit and whether it is in an “infill” or “turnover” area, the rate may go up by anywhere between 41.3% to 129.2%. The school impact tax rates are developed by the Montgomery County Planning Board staff, with input from Montgomery County Public Schools staff, and are based on 2021-2022 school year construction costs and enrollment data. The projected percentage increases by unit and area type are:

Infill Areas:

Single-family detached	+45.6%
Single-family attached	+44.2%
Multi-family low-rise	+69.0%
Multi-family high-rise	+57.8%

Turnover Areas:

Single-family detached	+41.3%
Single-family attached	+42.7%
Multi-family low-rise	+57.0%
Multi-family high-rise	+129.2%

The inflation rate increases for transportation, and especially, the school impact taxes are significantly larger than past biennial adjustment updates.

BILL SPECIFICS

² Montgomery County Register.

<https://www.montgomerycountymd.gov/exec/register/regs/2023/May23Notices.html>

Expedited Bill 25-23 seeks to amend the law to address the flaw regarding the calculation of tax rate adjustments for development impact taxes for transportation improvements by using a cumulative approach over the prior two years rather than an annual average.

See lines 4-9, as follows:

Biennial tax rate adjustment. The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section on July 1 of each odd-numbered year by the [annual average] cumulative increase or decrease in a published construction cost index specified by regulation [for] over the [two most recent calendar years] prior two calendar years.

Bill 25-23 would also establish a 20% inflation cap on the biennial tax rate adjustments. In other words, if an increase in the construction cost index exceeds 20% in subsequent years, **the Director of Finance must limit the rate adjustments to 20% for transportation and public school impact taxes.** In addition, the Bill allows for the opportunity to recapture and carry over a percentage that exceeds 20% to be banked or reserved for future calculation. The carryover percentage may be used and added to the following biennial base tax rate, as long as, the excess carryover plus the base rate remains capped at 20%.

The net result of correcting the transportation impact tax biennial calculation and capping the transportation and school impact tax rate increases at 20% will result in a net revenue loss of about \$24.5 million in FYs24-28. The year-by-year impacts are shown below (\$000):

Impact Tax Bill - Inflation Caps	FY23-28	FY24	FY25	FY26	FY27	FY28
Impact Tax Transportation - Inflation Adj	4,255	851	851	851	851	851
Impact Tax Schools - Inflation Adj 20% cap Bill	(28,791)	(4,429)	(5,378)	(6,328)	(6,328)	(6,328)
change	(24,536)	(3,578)	(4,527)	(5,477)	(5,477)	(5,477)

This bill is an expedited bill because the published new tax rates by the Director of Finance will take effect on July 1, 2023, unless the Council enacts Bill 25-23 with the accompanying resolution to revise the rates by July 1.

This packet contains:	<u>Circle #</u>
Expedited Bill 25-23	1
Draft Resolution to Approve Development Impact Taxes for Transportation and Schools	4
Notice of New Tax Rates – Published May 1, 2023	7

Expedited Bill No. 25-23
Concerning: Taxation - Development
Impact Taxes for Transportation and
Public School Improvements -
Amendments
Revised: 5/16/2023 Draft No. 3
Introduced: May 18, 2023
Expiration: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Friedson, Glass, and Stewart
Co-sponsor: Councilmember Fani-González

AN EXPEDITED ACT to:

- (1) modify the calculations for tax rate adjustments for transportation improvements by requiring cumulative increase or decrease in the construction cost index rather than an annual average every two years;
- (2) set a cap on the development impact tax rate for school and transportation improvements;
- (3) allow certain carryover increases of the biennial tax rate adjustments; and
- (4) generally amend the law governing transportation and school development impact taxes.

By amending

Montgomery County Code
Chapter 52, Taxation
Sections 52-49 and 52-55

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 52-49 and 52-55 are amended as follows:**

2 **52-49. Tax rates.**

3 * * *

4 (f) Biennial tax rate adjustment. The Director of Finance, after advertising
5 and holding a public hearing as required by Section 52-17(c), must
6 adjust the tax rates set in or under this Section on July 1 of each odd-
7 numbered year by the [annual average] cumulative increase or decrease
8 in a published construction cost index specified by regulation [for] over
9 the [two most recent calendar years] prior two calendar years. The
10 Director must calculate the adjustment to the nearest multiple of 5 cents
11 for rates per square foot of gross floor area or one dollar for rates per
12 dwelling unit. The Director must publish in the County Register the
13 amount of this adjustment not later than May 1 of each odd-numbered
14 year.

15 (1) Inflation cap on biennial tax rate increases. Notwithstanding
16 subsection (f), the Director must cap the biennial tax rate
17 adjustment not to exceed 20%.

18 (2) Carryover of biennial tax rate adjustments in excess of 20%. If
19 the biennial tax rate adjustment exceeds 20%, the excess
20 percentage must be carried over and added to the next biennial
21 adjustment. If this total adjustment, which is also capped at 20%,
22 again exceeds 20%, the excess percentage must be carried over
23 and added to the following biennial adjustment.

24 * * *

25 **52-55. Tax rates.**

26 * * *

27 (d) The Director of Finance, after advertising and holding a public hearing
 28 as required by Section 52-17(c), must adjust the tax rates set in or under
 29 this Section effective on July 1 of each odd-numbered year in
 30 accordance with the update to the Growth and Infrastructure Policy
 31 using the latest student generation rates and school construction cost
 32 data. The Director must calculate the adjustment to the nearest multiple
 33 of one dollar. The Director must publish in the County Register the
 34 amount of this adjustment not later than May 1 of each odd-numbered
 35 year.

36 (1) Inflation cap on tax rate increases. Notwithstanding subsection
 37 (d), the Director must cap the biennial tax rate adjustment not to
 38 exceed 20%.

39 (2) Carryover of biennial tax rate adjustments in excess of 20%. If
 40 the biennial tax rate adjustment exceeds 20%, the excess
 41 percentage must be carried over and added to the next biennial
 42 adjustment. If this total adjustment, which is also capped at 20%,
 43 again exceeds 20%, the excess percentage must be carried over
 44 and added to the following biennial adjustment.

45 * * *

46 **Sec. 2. Expedited Effective Date.**

47 The Council declares that this legislation is necessary for the immediate protection
 48 of the public interest. This Act takes effect on July 1, 2023.

49 **Sec. 3. Transition.**

50 The amendments to the development impact tax for transportation improvements
 51 and the development impact tax for public school improvements added by Section 1
 52 of this Act, must apply to any application for a building permit filed on or after the
 53 effective date of this Act.

Resolution No.: _____
Introduced: May 18, 2023
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsors: Councilmembers Friedson, Glass, and Stewart
Cosponsor: Councilmember Fani-González

SUBJECT: Development Impact Tax Rates for Transportation and Public School Improvements

Background

1. Under County Code §52-49(e), the County Council may, by resolution, after a public hearing advertised at least 15 days in advance, increase or decrease the development impact tax rates for transportation.
2. Under County Code §52-55(d), the County Council may, by resolution, after a public hearing advertised at least 15 days in advance, increase or decrease the development impact tax rates for public school improvements.
3. A public hearing is scheduled for this resolution on June 13, 2023.
4. This resolution is necessary to update the impact tax rates for transportation and public school improvements.

Action

The County Council for Montgomery County, Maryland approves the following action:

1. The development impact tax rates for transportation, effective for any payments made on or after July 1, 2023, are:

Tax per Dwelling Unit or per Square Foot (SF) of Gross Floor Area (GFA)				
Land Use	Red Policy Areas	Orange Policy Areas	Yellow Policy Areas	Green Policy Areas
Residential Uses (\$/unit)				
Single-Family Detached	\$9,663	\$24,151	\$30,190	\$30,190
Single-Family Attached	\$7,905	\$19,761	\$24,702	\$24,702
Multi-Family Low Rise	\$6,146	\$15,366	\$19,208	\$19,208
Multi-Family High Rise	\$4,930	\$10,976	\$13,720	\$13,720
Multi-Family Senior	\$1,705	\$4,391	\$5,488	\$5,488
Student-Built Houses	\$0	\$0	\$0	\$0
Land Use	Red Policy Areas	Orange Policy Areas	Yellow Policy Areas	Green Policy Areas
Commercial Uses (\$/SF)				
Office	\$8.80	\$22.10	\$27.60	\$27.60
Industrial	\$4.45	\$10.95	\$13.85	\$13.85
Bioscience Facility	\$0.00	\$0.00	\$0.00	\$0.00
Retail	\$7.85	\$19.70	\$24.60	\$24.60
Place of Worship	\$0.00	\$0.00	\$0.00	\$0.00
Clergy House	\$0.00	\$0.00	\$0.00	\$0.00
Private School	\$0.70	\$1.80	\$2.25	\$2.25
Hospital	\$0.00	\$0.00	\$0.00	\$0.00
Charitable/Philanthropic Institution	\$0.00	\$0.00	\$0.00	\$0.00
Other Non-Residential	\$4.45	\$10.95	\$13.85	\$13.85
Agricultural Facility	\$0.00	\$0.00	\$0.00	\$0.00

2. The development impact tax rates for public school improvements, effective for any payments made on or after July 1, 2023, are:

Land Use (\$/unit)	Infill Impact Areas	Turnover Impact Areas
Single-Family Detached	\$25,004	\$26,084
Single-Family Attached	\$21,664	\$29,456
Multi-Family Low Rise	\$6,584	\$13,625
Multi-Family High Rise	\$3,739	\$6,073
Farm Tenant House	\$25,004	\$26,084
Senior Residential	\$0	\$0

This is a correct copy of Council action.

Sara R. Tenenbaum
Clerk of the Council

Montgomery County Register

May 1, 2023, Montgomery County Register Notice

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Pursuant to Chapter 52, Article IV and Article V of the Montgomery County Code (Development Impact Tax for Transportation Improvements and Development Impact Tax for Public School Improvements, respectively), the Director of Finance has adjusted the tax rates set under Sections 52-49, 52-55, and 52-59. As prescribed by law, the Director must adjust the Transportation Improvements tax rates by the annual average increase or decrease in a published construction cost index specified by regulation for the two most recent calendar years. The Director must calculate the adjustment to the nearest multiple of 5 cents for rates per square foot of gross floor area or one dollar for rates per dwelling unit. Based on the change in the Engineering-News Record's Baltimore Construction Cost Index for calendar years 2021 and 2022, the existing rates were increased by a rate of 9.47%. The rates were adjusted to the nearest 5 cents for rates calculated per square foot of gross floor area (GFA) or adjusted to the nearest dollar for rates calculated per dwelling unit.

The revised Public School Improvements Impact Tax Rates were developed by the Montgomery County Planning Board staff, with input from Montgomery County Public Schools staff, and are based on 2021-2022 school year construction costs and enrollment data.

TABLE 1		
Transportation Impact Taxes		
New Rates for the Period 7/1/2023 through 6/30/2025		
	Existing Rates	New Rates
<i>Residential Uses (\$/unit)</i>		
<i>Red Policy Areas</i>		
Single-Family Detached	\$8,071	\$8,835
Single-Family Attached	\$6,603	\$7,228

Multi-Family Low Rise	\$5,134	\$5,620
Multi-Family High-Rise	\$3,667	\$4,014
Multi-Family Senior	\$1,466	\$1,605
Student-Built Houses	\$0	\$0
<i>Orange Policy Areas</i>		
Single-Family Detached	\$20,173	\$22,084
Single-Family Attached	\$16,506	\$18,069
Multi-Family Low Rise	\$12,835	\$14,051
Multi-Family High-Rise	\$9,168	\$10,036
Multi-Family Senior	\$3,668	\$4,015
Student-Built Houses	\$0	\$0
<i>Yellow Policy Areas</i>		
Single-Family Detached	\$25,217	\$27,605
Single-Family Attached	\$20,633	\$22,587
Multi-Family Low Rise	\$16,044	\$17,563
Multi-Family High-Rise	\$11,460	\$12,545
Multi-Family Senior	\$4,584	\$5,018
Student-Built Houses	\$0	\$0
<i>Green Policy Areas</i>		
Single-Family Detached	\$25,217	\$27,605
Single-Family Attached	\$20,633	\$22,587
Multi-Family Low Rise	\$16,044	\$17,563
Multi-Family High-Rise	\$11,460	\$12,545
Multi-Family Senior	\$4,584	\$5,018
Student-Built Houses	\$0	\$0
<i>Commercial Uses (\$/SF)</i>		
<i>Red Policy Areas</i>		
Office	\$7.35	\$8.05
Industrial	\$3.70	\$4.05
Bioscience Facility	\$0.00	\$0.00
Retail	\$6.55	\$7.15
Place of Worship	\$0.00	\$0.00
Clergy House	\$0.00	\$0.00
Private Elementary and Secondary School	\$0.60	\$0.65
Hospital	\$0.00	\$0.00
Charitable/Philanthropic Institution	\$0.00	\$0.00
Other Non-Residential	\$3.70	\$4.05
Agricultural Facility	\$0.00	\$0.00

<i>Orange Policy Areas</i>		
Office	\$18.45	\$20.20
Industrial	\$9.15	\$10.00
Bioscience Facility	\$0.00	\$0.00
Retail	\$16.45	\$18.00
Place of Worship	\$0.00	\$0.00
Clergy House	\$0.00	\$0.00
Private Elementary and Secondary School	\$1.50	\$1.65
Hospital	\$0.00	\$0.00
Charitable/Philanthropic Institution	\$0.00	\$0.00
Other Non-Residential	\$9.15	\$10.00
Agricultural Facility	\$0.00	\$0.00
<i>Yellow Policy Areas</i>		
Office	\$23.05	\$25.25
Industrial	\$11.55	\$12.65
Bioscience Facility	\$0.00	\$0.00
Retail	\$20.55	\$22.50
Place of Worship	\$0.00	\$0.00
Clergy House	\$0.00	\$0.00
Private Elementary and Secondary School	\$1.90	\$2.10
Hospital	\$0.00	\$0.00
Charitable/Philanthropic Institution	\$0.00	\$0.00
Other Non-Residential	\$11.55	\$12.65
Agricultural Facility	\$0.00	\$0.00
<i>Green Policy Areas</i>		
Office	\$23.05	\$25.25
Industrial	\$11.55	\$12.65
Bioscience Facility	\$0.00	\$0.00
Retail	\$20.55	\$22.50
Place of Worship	\$0.00	\$0.00
Clergy House	\$0.00	\$0.00
Private Elementary and Secondary School	\$1.90	\$2.10
Hospital	\$0.00	\$0.00
Charitable/Philanthropic Institution	\$0.00	\$0.00
Other Non-Residential	\$11.55	\$12.65
Agricultural Facility	\$0.00	\$0.00

TABLE 2		
Public School Improvements Impact Taxes		
New Rates for the Period 7/1/2023 through 6/30/2025		
	Existing Rates	New Rates
<i>Infill Impact Areas</i>		
Single-Family Detached	\$20,837	\$30,343
Single-Family Attached	\$18,053	\$26,028
Multi-Family Low Rise	\$5,487	\$9,275
Multi-Family High Rise	\$3,116	\$4,911
Farm Tenant House	\$20,837	\$30,343
Senior Residential	\$0	\$0
<i>Turnover Impact Areas</i>		
Single-Family Detached	\$21,737	\$30,719
Single-Family Attached	\$24,547	\$35,018
Multi-Family Low Rise	\$11,354	\$17,827
Multi-Family High Rise	\$5,061	\$11,601
Farm Tenant House	\$21,737	\$30,719
Multi-Family Senior	\$0	\$0

TABLE 3						
Public School Utilization Premium Payments						
New Rates for the Period 7/1/2023 through 6/30/2025						
	Existing Rates			New Rates		
	Elementary	Middle	High	Elementary	Middle	High
<i>Residential TIER 1 UPP (per unit)</i>						
<i>Infill Impact Areas</i>						
Single-Family Detached	\$3,473	\$2,084	\$2,778	\$5,057	\$3,034	\$4,046
Single-Family Attached	\$3,009	\$1,805	\$2,407	\$4,338	\$2,603	\$3,470
Multi-Family Low Rise	\$915	\$549	\$732	\$1,546	\$928	\$1,237
Multi-Family High Rise	\$519	\$312	\$415	\$819	\$491	\$655

<i>Turnover Impact Areas</i>						
Single-Family Detached	\$3,623	\$2,174	\$2,898	\$5,120	\$3,072	\$4,096
Single-Family Attached	\$4,091	\$2,455	\$3,273	\$5,836	\$3,502	\$4,669
Multi-Family Low Rise	\$1,892	\$1,135	\$1,514	\$2,971	\$1,783	\$2,377
Multi-Family High Rise	\$844	\$506	\$675	\$1,934	\$1,160	\$1,547
Residential TIER 2 UPP (per unit)						
<i>Infill Impact Areas</i>						
Single-Family Detached	\$6,946	\$4,167	\$5,557	\$10,114	\$6,069	\$8,091
Single-Family Attached	\$6,018	\$3,611	\$4,814	\$8,676	\$5,206	\$6,941
Multi-Family Low Rise	\$1,829	\$1,097	\$1,463	\$3,092	\$1,855	\$2,473
Multi-Family High Rise	\$1,039	\$623	\$831	\$1,637	\$982	\$1,310
<i>Turnover Impact Areas</i>						
Single-Family Detached	\$7,246	\$4,347	\$5,797	\$10,240	\$6,144	\$8,192
Single-Family Attached	\$8,182	\$4,909	\$6,546	\$11,673	\$7,004	\$9,338
Multi-Family Low Rise	\$3,785	\$2,271	\$3,028	\$5,942	\$3,565	\$4,754
Multi-Family High Rise	\$1,687	\$1,012	\$1,350	\$3,867	\$2,320	\$3,094
Residential TIER 3 UPP (per unit)						
<i>Infill Impact Areas</i>						
Single-Family Detached	\$10,419	\$6,251	\$8,335	\$15,172	\$9,103	\$12,137
Single-Family Attached	\$9,027	\$5,416	\$7,221	\$13,014	\$7,808	\$10,411
Multi-Family Low Rise	\$2,744	\$1,646	\$2,195	\$4,638	\$2,783	\$3,710
Multi-Family High Rise	\$1,558	\$935	\$1,246	\$2,456	\$1,473	\$1,964
<i>Turnover Impact Areas</i>						
Single-Family Detached	\$10,869	\$6,521	\$8,695	\$15,360	\$9,216	\$12,288
Single-Family Attached	\$12,274	\$7,364	\$9,819	\$17,509	\$10,505	\$14,007
Multi-Family Low Rise	\$5,677	\$3,406	\$4,542	\$8,914	\$5,348	\$7,131
Multi-Family High Rise	\$2,531	\$1,518	\$2,024	\$5,801	\$3,480	\$4,640

Ordinance No.: _____
Zoning Text Amendment No.: 23-xx
Concerning: Park Improvement
Payments and Civic
Improvement Funds
Revised: _____ Draft No.: _____
Introduced: _____
Public Hearing: _____
Adopted: _____
Effective: _____

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President Glass at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- (1) Amend the way the bi-annual adjustments are calculated in the Bethesda Overlay Zone’s Park Improvement Payment and the Downtown Silver Spring Overlay Zone’s Civic Improvement Fund; and
- (2) generally amend the density provisions of the Bethesda Overlay Zone and the Downtown Silver Spring Overlay Zone.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division 4.9.	“Overlay zones”
Section 4.9.2.	“Bethesda (B) Overlay Zone”
Section 4.9.8.	“Downtown Silver Spring (DDS) Overlay Zone”

EXPLANATION: **Boldface** indicates a Heading or a defined term.
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
* * * indicates existing law unaffected by the text amendment.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-4.9 is amended as follows:

Division 4.9. Overlay Zones

* * *

Section 4.9.2. Bethesda (B) Overlay Zone

* * *

C. Development Standards

* * *

2. Density

* * *

ii. Qualification

To qualify for BOZ Density, a proposed development must:

A. use all gross floor area allowed by the mapped CR or CRT FAR and may not transfer BOZ Density to any other property.

B. except as provided under Subsection 3 concerning MPDUs, make a Park Impact Payment before the issuance of any building permit application at a rate of \$10 per square foot of approved BOZ Density gross floor area. The Planning Board, after advertising and holding a public hearing, must adjust this payment rate on July 1 of each odd-numbered year by the [annual average] cumulative increase or decrease in a published construction cost index [for] over the prior two [most recent] calendar years. The Planning Board must cap the biennial Park Impact Payment rate not to exceed 20%. If the biennial tax rate adjustment exceeds 20%, the excess dollar amount must be carried over and added to the Park

Impact Payment rate before calculating the next adjustment. If this total adjustment, including any carried over value, again exceeds 20%, the excess dollar amount must be carried over and added to the rate before calculating the next biennial adjustment. If a property owner dedicates land designated in the master plan as a recommended open space to the M-NCPPC Parks Department, the Planning Board may reduce the amount of square footage for which a Park Impact Payment must be made.

* * *

Section 4.9.8. Downtown Silver Spring (DDS) Overlay Zone

* * *

C. Development Standards

* * *

2. Density

* * *

e. Qualification

To qualify for DSS Density, a proposed development must:

- i. Make a contribution to the Civic Improvement Fund before the issuance of any building permit at a rate of \$5 per square foot of approved residential DSS Density gross floor area and at a rate of \$3 per square foot of approved non-residential DSS Density gross floor area
- ii. The Planning Board, after advertising and holding a public hearing, must adjust this payment rate by July 1 of each even-numbered year by the [annual average]

55 cumulative increase or decrease in a published
56 construction cost index [for] over the prior two [most
57 recent] calendar years. The Planning Board must cap the
58 biennial Civic Improvement Fund rate not to exceed
59 20%. If the biennial tax rate adjustment exceeds 20%, the
60 excess dollar amount must be carried over and added to
61 the Civic Improvement Fund rate before calculating the
62 next adjustment. If this total adjustment, including any
63 carried over value, again exceeds 20%, the excess dollar
64 amount must be carried over and added to the rate before
65 calculating the next biennial adjustment.

66 * * *

67 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
68 date of District Council adoption.

69

This is a correct copy of Council action.

Sara R. Tenenbaum

Clerk of the Council