

LATR PROPORTIONALITY GUIDE UPDATE AND BRIEFING ON UPDATES TO THE TRANSPORTATION IMPACT TAXES

Description

Request to revise the Local Area Transportation Review (LATR) Proportionality Guide rates, which are used to calculate the recommended maximum cost of off-site improvements a development applicant is required to construct or fund to address deficiencies identified in the review of the Growth and Infrastructure Policy's pedestrian, bicycle and bus transit system adequacy tests.

COMPLETED: JUNE 16, 2023

MCPB
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2425 Reedie Drive
Floor 14
Wheaton, MD 20902



Darcy Buckley, Planner III, Countywide Planning and Policy Division
darcy.buckley@montgomeryplanning.org, 301-495-4514



David Anspacher, Supervisor, Countywide Planning and Policy Division
david.anspacher@montgomeryplanning.org, 301-495-2191



Jason Sartori, Chief, Countywide Planning and Policy Division
jason.Sartori@montgomeryplanning.org, 301-495-2172

OVERVIEW

BACKGROUND

The [Growth and Infrastructure Policy](#) (GIP) is a set of policy tools that guide the timely delivery of public facilities (schools, transportation, water, sewer, and other infrastructure) to serve existing and future development. These policy tools are the guidelines for the administration of the county’s Adequate Public Facilities Ordinance (APFO), and they are updated every four years by the County Council. The APFO directs the Montgomery County Planning Board to approve preliminary subdivision plans and other development applications or permits only after finding that public facilities will be adequate to serve the subdivision or project.

The most recent quadrennial update to the growth policy was adopted through Council Resolution 19-655 on November 16, 2020, which created the GIP. In July 2021, the Planning Board approved the Local Area Transportation Review (LATR) Guidelines, which articulate a methodology for documenting and analyzing the anticipated impacts of a proposed development on pedestrian, bicycling, bus transit, and motor vehicle travel. The guidelines were revised in March 2022 by the Planning Board to include the LATR Proportionality Guide and again in September 2022 by staff to reference the Non-Auto Driver Mode Share goals in the Downtown Silver Spring and Adjacent Communities Master Plan.¹

LATR PROPORTIONALITY GUIDE

Section VIII of the LATR Guidelines, the LATR Proportionality Guide, ensures that required off-site transportation improvements are reasonable as they relate to a project’s impact. It provides an objective, consistent procedure for calculating a recommended maximum cost of improvements that a development applicant must construct or fund to address deficiencies identified in reviewing the Growth and Infrastructure Policy’s pedestrian, bicycle, and bus transit system adequacy tests. This tool was added to the LATR Guidelines in March 2022 in response to concerns raised by several

¹ <https://montgomeryplanning.org/wp-content/uploads/2022/09/LATR-Guidelines-Update-FINAL-2022.09.26.pdf>

applicants and land use attorneys who expressed concern that the policy is likely to impose transportation improvement costs that are out of proportion to the impacts of an individual development project.

The LATR Proportionality Guide (Attachment A) uses available and accepted measurements of a project’s impact on transportation infrastructure. The LATR Proportionality Guide Rates in Appendix 5 of the LATR Guidelines (Attachment B) were based on the Transportation Impact Tax rates for orange policy areas, which are approved by the County Council. New Transportation Impact Tax rates take effect on July 1, 2023, and the LATR Proportionality Guide rates should be updated accordingly.

ANALYSIS

Planning staff proposes amending Appendix 5: LATR Proportionality Guide Rates of the LATR Guidelines, to tie the proportionality rates directly to the Transportation Impact Tax. Rather than specifying rates in a table, the revised Appendix will reference the most recent Transportation Impact Tax Rates for each land use.²

The proposed revisions to the Appendix 5 are below. Attachment C shows the proposed revised appendix.

| Appendix Table 5: LATR Proportionality Guide Rates through June 30, 2023 | | | |
|--|-----------------|----------|--|
| Land Use | Unit | Rate | Rate* |
| Residential Use | | | |
| Single-Family Detached | per unit | \$20,173 | <u>Transportation Impact Tax rate for Orange Policy Areas, per unit, for each residential use type</u> |
| Single-Family Attached | per unit | \$16,506 | |
| Multifamily Low Rise | per unit | \$12,835 | |
| Multifamily High Rise | per unit | \$9,168 | |
| Senior Residential | per unit | \$3,668 | |
| Commercial Uses | | | |
| Office | per sq. ft. GFA | \$18.45 | <u>Transportation Impact Tax rate for Orange Policy Areas, per sq. ft. GFA, for each corresponding commercial use type</u> |
| Retail | per sq. ft. GFA | \$16.45 | |
| Private School and Daycare | per sq. ft. GFA | \$1.50 | |
| Place of Worship | per sq. ft. GFA | \$0.95 | |
| Other Nonresidential | per sq. ft. GFA | \$9.15 | |

* The rates applicable to a project are those effective on the date the scope for the transportation study is accepted by Planning staff.

² <https://www.montgomerycountymd.gov/DPS/fees/Taxes.html>

TRANSPORTATION IMPACT TAX UPDATE

Transportation Impact Taxes, set by the Montgomery County Council, are assessed on new residential and commercial buildings and additions to commercial buildings in the county to fund, in part, the improvements necessary to increase the transportation or public-school systems capacity, thereby allowing development to proceed.

On May 1, 2023, the Director of Finance published in the County Register the new development impact tax rates for transportation and public school improvements for the period effective 7/1/2023 through 6/30/2025, as required by County Code. Under the current law, the transportation impact tax rates will increase by the average of the annual rates of inflation. According to the Finance Department, the increase in the applicable inflation 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 9.47%.

The County Council subsequently introduced [Expedited Bill 25-23](#) (Attachment D), seeking to amend how transportation impact tax rate adjustments are calculated – to use a cumulative inflation approach over the prior two years rather than an annual average. Bill 25-23 would also establish a 20% cap on any biennial impact tax rate increase. In addition, the bill requires increases that exceed 20% to be carried over and applied to future biennial rate updates.

Accompanying Expedited Bill 25-23 is a resolution to approve the proposed tax rates that would be established with the new cumulative inflation calculation and a 20% inflation cap (Attachment D, page 9 of 16). The resolution has an effective date of July 1, 2023. The County Council was scheduled to take action on the bill on Tuesday, June 20, 2023. Planning Board approval of the recommended changes to the LATR Guidelines contained herein would accordingly update the LATR Proportionality Guide rates effective July 1.

RECOMMENDATION

Planning staff recommends amending Appendix 5: LATR Proportionality Guide Rates of the LATR Guidelines to tie the proportionality rates directly to the Transportation Impact Tax. The revised appendix is in Attachment C. The change would be effective immediately and the rates would automatically update with subsequent tax updates.

ATTACHMENTS

- Attachment A: LATR Proportionality Guide
- Attachment B: LATR Proportionality Guide Rates
- Attachment C: Revised LATR Proportionality Guide Rates
- Attachment D: Expedited Bill 25-23