

Montgomery Planning

ZTA 23-07

**BETHESDA OVERLAY ZONE – PARK IMPROVEMENT PAYMENTS
AND DOWNTOWN SILVER SPRING OVERLAY ZONE – CIVIC
IMPROVEMENT FUNDS**

Description

This ZTA modifies the way the biennial adjustments for inflation are calculated for the Bethesda Overlay Zone’s Park Improvement Payments and the Downtown Silver Spring Overlay Zone’s Civic Improvement Fund.

ZTA 23-07

Completed: 11-09-2023

MCPB

Item No. 12

11-16-2023

Montgomery County

Planning Board

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Planning Staff



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ZTA SPONSORS

Lead Sponsor:

Council President Glass at the request of the
Planning Board

INTRODUCTION DATE

October 24, 2023

REVIEW BASIS

Chapter 59



Summary:

- ZTA 23-07 was requested by the Planning Board on June 8, 2023 as a result of Bill 25-23, which amended the calculations for the biennial adjustments to the school and transportation impact taxes. The Park Impact Payments and Civic Improvement Fund use the same flawed methodology previously used for adjustments to the transportation impact taxes.
- The new methodology calculates inflation based on a cumulative increase and caps how much the rates can increase every two years.

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SECTION 1: BACKGROUND

RATIONALE FOR INTRODUCTION

Zoning Text Amendment (ZTA) 23-07, Bethesda (B) Overlay Zone – Park Improvement Payments (PIP) and Downtown Silver Spring (DSS) Overlay Zone Civic Improvement Funds (CIF), was introduced by Council President Glass at the request of the Planning Board on October 24, 2023 (Attachment A). The ZTA is scheduled for a District Council Public Hearing on November 28, 2023. The need for this ZTA arose during the Planning Board’s review of Bill 25-23, discussed at its meeting on June 8, 2023. The issue corrected by Bill 25-23 is the methodology used to calculate the biennial inflation adjustments made to transportation impact taxes. ZTA 23-07 corrects the same issue for adjustments to the PIP and CIF.

The current methodology for calculating the biennial PIP and CIF inflation updates uses an annual average of inflation over the two-year period. The methodology proposed by this ZTA instead adjusts rates using the cumulative inflation over the previous two-year period. Like the changes to the impact tax adjustments in Bill 25-23, the proposed methodology for the PIP and CIF also includes a 20% cap on any biennial adjustment. Planning Staff identified during the review of Bill 25-23 that the Zoning Code used the same inflation adjustment methodology as impact taxes and recommended to the Board that the changes should be made consistently across all chapters of the code. The Board agreed and recommended to the Council on June 8th that this ZTA be introduced.

SECTION 2: ZTA 23-05 AS INTRODUCED

ZTA NO. 23-07 AS INTRODUCED

ZTA 23-07 modifies code in two areas: the Development Standards – Density – Qualification sub-section of the Bethesda Overlay Zone (Section 59-4.9.2.C.2.b.ii); and the Development Standards – Density – Qualification sub-section of the Downtown Silver Spring Overlay Zone (Section 59-4.8.C.2.e). The modifications are effectively the same in both overlay zones, which are shown below in context of the larger Qualification section.

Bethesda

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 [.] and
- B. Except as provided under Subsection 3 concerning MPDUs, make a Park Impact Payment before 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.

Downtown Silver Spring

e. Qualification

To qualify for DDS 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 DDS Density gross floor area and a rate of \$3 per square foot of approved non-residential DDS Density gross floor area.
- ii. The Planning Board, after advertising and holding a public hearing, must adjust this payment rate on July 1 of each even-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 Civic Improvement Fund 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 Civic Improvement Fund 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.

SECTION 3: ZTA ANALYSIS AND RECOMMENDATIONS

ZTA 23-07 ANALYSIS AND RECOMMENDATIONS

Planning staff recommends the Planning Board support ZTA 23-07 as introduced, with two minor revisions for accuracy and consistency with the language adopted from Bill 25-23, which were added after the Board made its initial ZTA request to the District Council. This ZTA is a result of a request the Planning Board made in June 2023 to update the biennial adjustments to the PIP and CIF rates to match the updated methodology that was being considered and is now approved for impact taxes.

The old methodology used the average of the two individual years' rates of inflation whereas the new methodology uses a cumulative rate of inflation over the two-year period.

The old methodology that took the two-year average was under-representing the actual inflationary increases to impact taxes and fund rates because rather than capturing the full price increases over the previous two-year period, it captured an 'averaged' change which under-captured the inflation rate. As a simple example, under the previous method, if year 1 had an inflation rate of 4% and year two had an inflation rate of 6%, the two-year average change was calculated as 5%, therefore the biennial increase to the PIP and CIF rates would be only 5%. The new methodology uses the cumulative inflation rate change over the previous two-year period, accurately capturing the actual inflation over that time. In the same 4% and 6% inflation scenario above, the calculated rate increase would be calculated as 10.2%,¹ which aligns with the actual total change to inflation over the two-year period and is more than twice the increase under the previous methodology.

To keep the biennial changes in PIP and CIF rates from being excessive and burdensome, a 20% cap for any two-year period is proposed. If the cumulative rate increase over the previous two-years is less than 20%, the full calculated increase would apply. However, if inflation rates are high and the cumulative increase over the previous two-years is over 20%, the rate increase that would apply is 20%. Any rate increases above 20% would be converted into a corresponding dollar value, and then applied to the PIP and CIF rates before calculating the next biennial adjustment.

To visualize this, the following simple scenarios assume an existing or 'base' rate of \$10. Under Scenario One, the assumed cumulative inflation is 14%. The new rate would be calculated as $\$10 \times 14\%$ (\$1.40) + \$10 (previous base) = \$11.40. When the next biennial adjustment is calculated, the new base rate would start as \$11.40. In Scenario Two, the assumed cumulative inflation rate is 24%. In this scenario the 20% cap would apply. The new rate would be calculated as $\$10 \times 20\%$ (\$2) + \$10 = \$12, plus the excess 4% which is rolled over as a dollar amount $\$10 \times 4\%$ (\$0.40). The next biennial adjustment when calculated would have a base rate of \$12.40 which includes the rolled over dollar amount in excess of the 20% cap ($\$12 + \0.40). For purposes of calculating the cumulative increase, the set rate of \$12 is used and the applied roll over of \$0.40 counts toward calculating the new 20% cap. This carry-over of the inflation in excess of 20% ensures the rates are able to eventually catch up with reality once inflation rates fall low enough for the cap to no longer apply. If there are multiple years of very high inflation causing successive years of 20% or more biennial adjustment, the excess will continue rolling forward.

As a point of consistency and clarity, both the PIP and CIF language should have the word 'adjustment' added as follows, shown in red text for clarity, to be consistent with the final adopted language of Bill 25-23.

¹ The new methodology recognizes the compounding nature of inflation, which is why the cumulative inflation is 10.2% and not simply 6% + 4%, or 10%.

Lines 35-36 of the ZTA:

...The Planning Board must cap the biennial Park Impact Payment rate adjustment not to exceed 20%...

Lines 68-70 of the ZTA:

...The Planning Board must cap the biennial Civic Improvement Fund rate adjustment not to exceed 20%...

SECTION 4: LEGISLATED ANALYSIS

CLIMATE ASSESSMENT

Bill 3-22, passed by the County Council on July 12, 2022, requires the Planning Board to prepare a climate assessment for each zoning text amendment, master plan, and master plan amendment, effective March 1, 2023. Each climate assessment must include the potential positive or negative effects a ZTA may have on climate change (including greenhouse gas emissions) and upon community resilience and adaptive capacity. The climate impact assessment for ZTA 23-07 is attached in Attachment B.

The ZTA is anticipated to have no impacts to any climate related variables under the Greenhouse Gas Emissions and Sequestration, or Community Resilience and Adaptive Capacity. The ZTA only modifies a formula used to calculate fund payments developers make on certain projects in Silver Spring and Bethesda and will not have any impact on the built or social environment.

RACIAL EQUITY AND SOCIAL JUSTICE (RESJ)

As of the posting of this staff report, the Office of Legislative Oversight has not completed a Racial Equity and Social Justice analysis for ZTA 23-07.

SECTION 5: CONCLUSION

Planning staff recommends the Planning Board support ZTA 23-07 as introduced with minor modifications as indicated above. This ZTA updates the methodology for calculating the biennial rate adjustments to a more accurate, cumulative approach, that includes safeguards in times of high inflation. This new methodology will mirror the newly adopted methodology for adjusting transportation impact tax rates.

ATTACHMENTS

Attachment A: Zoning Text Amendment 23-07 Intro Packet

Attachment B: Climate Assessment for ZTA 23-07



Committee: PHP
Committee Review: At a future date
Staff: Ludeen McCartney-Green, Legislative Attorney
Livhu Ndou, Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #BethesdaOverlay#BOZImpact
#SilverSpringOverlay #DDSImpact

AGENDA ITEM #3A
October 24, 2023
Introduction

SUBJECT

Zoning Text Amendment (ZTA) 23-07, Bethesda (B) Overlay Zone - Park Improvement Payments and Downtown Silver Spring (DDS) Overlay Zone - Civic Improvement Funds

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

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A; introduction

DESCRIPTION/ISSUE

ZTA 23-07 would:

- (1) modify the method the biennial adjustments are calculated and set an inflation limit 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.

SUMMARY OF KEY DISCUSSION POINTS

- In June 2023, the Council enacted Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments, along with an accompanying resolution that modified the calculation for the biennial adjustments for school and transportation taxes. The law became effective July 1, 2023.
- Bill 25-23 also established a 20% inflation cap on the development impact tax rate for school and transportation improvements; in addition, any excess dollar amount above the cap may be carried over and added to the following biennial tax rate adjustment.
- The purpose of ZTA 23-07, as recommended by the Planning Board (©6), is to mirror and adopt the changes made to the impact tax calculation in the County Code to: 1) the Park Impact Payment (PIP) within the BOZ Overlay Zone; and 2) the Civic Improvement Fund (CIF) within the DDS Overlay Zone.
- A public hearing is tentatively scheduled for November 28, 2023.

This report contains:

ZTA 23-07

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Planning Board Transmittal

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Ordinance No.: _____
Zoning Text Amendment No.: 23-07
Concerning: Bethesda (B) Overlay
Zone Park Improvement
Payments and Downtown
Silver Spring (DDS)
Overlay Zone Civic
Improvement Funds
Revised: 10/18/2023 Draft No.: 1
Introduced: October 24, 2023
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) modify the method 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

* * *

b. BOZ Density means the total square footage of gross floor area by which new development in the Bethesda Downtown Plan Area may cumulatively exceed the maximum square footage of gross floor area allowed under the mapped CR and CRT zones. BOZ Density is determined by subtracting the gross floor area of existing and approved development from 32.4 million (the total gross floor area recommended by the Bethesda Downtown Plan). The Planning Board must periodically publish the gross floor area remaining in BOZ 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[.]; and
- 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

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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.

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Section 4.9.8. Downtown Silver Spring (DDS) Overlay Zone

* * *

C. Development Standards

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2. Density

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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] 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 Civic Improvement Fund 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 Civic Improvement Fund 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.

* * *

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

June 8, 2023

To: The Honorable Evan Glass
President, Montgomery County District Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Proposed Zoning Text Amendment – Park Impact Payment and Civic Improvement Fund

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on June 8, 2023 and by a vote of 4:0 (Commissioner Bartley absent) recommended a new Zoning Text Amendment (ZTA) that would update the way the Park Impact Payment (PIP) and Civic Improvement Fund (CIF) are adjusted for inflation. The current bi-annual adjustments to the PIP and CIF are based on the same annual averaging methodology Bill 25-23E seeks to amend for updates to the transportation impact tax rates. This ZTA would mirror the proposed changes to the impact tax calculations recommended by the Board in its comments on Bill 25-23E.

The PIP is collected from developments within the Bethesda Overlay Zone, on a square footage basis, that exceed the mapped zoning density and meet certain requirements. The CIF is a similar payment that applies to projects in the Downtown Silver Spring Overlay Zone. The PIP is recalculated by July 1 of each odd-numbered year, and the CIF is recalculated by July 1 of each even-numbered year. The existing code has the adjustment based on an annual average change in construction costs whereas the new methodology would base the adjustment on a cumulative change in construction costs. The ZTA also limits the adjustments to no more than a 20 percent increase and provides for carrying over any excess increase to future recalculations.

The Planning Board appreciates the Council's consideration of this ZTA to update the PIP and CIF rate adjustment procedures to match the proposed changes to the transportation impact tax recalculation procedures. Planning staff are available to assist if the Council has questions or requests additional analysis pertaining to the impacts to the PIP and CIF rates.

The Honorable Evan Glass

June 8, 2023

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CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, June 8, 2023.



Jeffrey Zyontz

Chair

Attachments:

A - Planning Board Staff Packet Bill 25-23E and Proposed ZTA

 **Montgomery Planning****CLIMATE ASSESSMENT FOR
23-07, BETHESDA OVERLAY ZONE - PARK IMPROVEMENT
PAYMENTS AND DOWNTOWN SILVER SPRING (DDS) OVERLAY
ZONE - CIVIC IMPROVEMENT FUNDS****PURPOSE OF CLIMATE ASSESSMENTS**

The purpose of the Climate Assessments is to evaluate the anticipated impact of master plans and zoning text amendments (ZTAs) on the county's contribution to addressing climate change. These assessments will provide the County Council with a better understanding of the potential climate impacts and implications of proposed master plans and ZTAs, at the county level. The scope of the Climate Assessments is limited to addressing climate change, specifically the effect of land use recommendations in master plans and ZTAs on greenhouse gas (GHG) emissions and sequestration, and how actions proposed by master plans and ZTAs could improve the county's adaptive capacity to climate change and increase community resilience.

SUMMARY

The zoning text amendment (ZTA) 23-07 recommends modifications to the method the biennial adjustments are calculated and set an inflation limit in the Bethesda Overlay Zone's Park Improvement Payment and the Downtown Silver Spring Overlay Zone's Civic Improvement Fund.

CLIMATE-RELATED VARIABLES

GHG Emissions and Sequestration Checklist of Variables.

- None.

Community Resilience and Adaptive Capacity Impact Variables.

- None.

BACKGROUND AND PURPOSE OF ZTA 23-06

Zoning Text Amendment (ZTA) 23-07, Bethesda (B) Overlay Zone – Park Improvement Payments (PIP) and Downtown Silver Spring (DSS) Overlay Zone Civic Improvement Funds (CIF), was introduced by Council President Glass at the request of the Planning Board on October 24, 2023. The need for this ZTA arose during the Planning Board's review of Bill 25-23, at its meeting on June 8, 2023. The issue corrected by Bill 25-23 and that is now proposed for correction with ZTA 23-07 is the methodology used to calculate the biennial adjustments made to impact taxes, and the PIF and CIF because of inflation. The old methodology calculated inflation as an average rate of change over a two-year period, while the new methodology looks at a cumulative change in inflation.

ANTICIPATED IMPACTS

GREENHOUSE GAS EMISSIONS, CARBON SEQUESTRATION, AND DRAWDOWN

Montgomery Planning anticipates ZTA 23-07 will result no greenhouse gas increases or decreases. Nor will the ZTA result in positive or negative carbon sequestration and drawdown rates. The ZTA is an adjustment in the rate of calculation to the impact tax.

COMMUNITY RESILIENCE AND ADAPTIVE CAPACITY

Montgomery Planning anticipates ZTA 23-07 will have no impact and/or changes to community resilience and adaptive capacity.

RELATIONSHIP TO GREENHOUSE GAS REDUCTION AND SEQUESTRATION ACTIONS CONTAINED IN THE MONTGOMERY COUNTY CLIMATE ACTION PLAN (CAP)

ZTA 23-07 will not have any positive or negative impacts to greenhouse gas or carbon sequestration thereby it will not impact the goals within the County's Climate Action Plan.

RECOMMENDED AMENDMENTS

Planning staff does not have any recommended climate-related amendments to ZTA 23-07 because it will have no impact on the county's climate and/or sequestration rates.

SOURCES OF INFORMATION, ASSUMPTIONS, AND METHODOLOGIES USED

The climate assessment for ZTA 23-06 was prepared using the methodology (Tables 1, 2, and 8, in particular) for ZTAs contained within the [*Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, December 1, 2022*](#).