

BRIEFING ON THE 2024–2028 GROWTH AND INFRASTRUCTURE POLICY AND IMPACT TAXES

Description

Planning staff will update the Planning Board on the newly adopted Growth and Infrastructure Policy and impact tax recommendations, highlighting how the County Council’s decisions differ from the recommendations included in the Planning Board draft.

Complete: 12-12-2024

MCPB

Item No. 6

12/19/2024

2425 Reedie Drive

Floor 14

Wheaton, MD 20902

	Lisa Govoni, Planning Supervisor, Countywide Planning & Policy Division lisa.govoni@montgomeryplanning.org , 301-650-5624
	Darcy Buckley, Planner III, Countywide Planning & Policy Division darcy.buckley@montgomeryplanning.org , 301-495-4514
	Hye-Soo Baek, Planner III, Countywide Planning & Policy Division hye-soo.baek@montgomeryplanning.org ,
	Eli Glazier, Acting Transportation Supervisor, Countywide Planning & Policy Division eli.glazier@montgomeryplanning.org , 301-495-4548
	David Anspacher, Chief, Countywide Planning & Policy Division david.anspacher@montgomeryplanning.org , 301-495-2191

Summary

- This staff report outlines the adopted recommendations from the County Council on the 2024–2028 Growth and Infrastructure Policy (GIP) and related impact tax changes.
- The GIP addresses the adequacy of public facilities as it relates to the regulatory or development review process. It sets standards for evaluating individual development proposals to determine if the surrounding public infrastructure, such as transportation networks and school facilities, can accommodate the demands of the development. It also outlines requirements for mitigating inadequate infrastructure.

BRIEFING ON THE 2024–2028 GROWTH AND INFRASTRUCTURE POLICY AND IMPACT TAXES

Background

The foundation of the Growth and Infrastructure Policy (GIP) is that Montgomery County must have adequate infrastructure to support growth. Every four years, the County Council updates the GIP to ensure the best available tools are in place to test whether infrastructure like schools, transportation, water, and sewer services can support a proposed development. These policy tools are the guidelines for administering the county's Adequate Public Facilities (APF) requirements.

The GIP addresses the adequacy of public facilities as it relates to the regulatory or development review process. The master-planning process is aspirational in creating a long-term vision for our communities, but the GIP has a more focused, shorter-term view. It sets standards for evaluating individual development proposals to determine if the surrounding public infrastructure, such as transportation and school facilities, can accommodate the demands of the development. It also outlines requirements for mitigating inadequate infrastructure.

The County Council held three Planning, Housing, and Parks Committee work sessions on the GIP, and one work session with the entire County Council. The Government Operations and Fiscal Policy Committee held two work sessions on the related impact tax bill, Bill 16-24, and one work session/action item with the full County Council. The 2024–2028 Growth and Infrastructure Policy and Bill 16–24 were adopted on November 12, 2024. Bill 16–24 was vetoed by the County Executive on November 25, 2024, however, that veto was overturned by the Council on December 10, 2024.

Growth and Infrastructure Policy

Key Takeaways

The County Council generally supported the recommendations to update policy area boundaries and classifications to better reflect the county's goals and priorities. However, recognizing the four-year timeframe of the Growth and Infrastructure Policy (GIP), the Council did not support reclassifying three Downtowns (Great Seneca Life Sciences, White Oak, and Rock Springs) from Orange to Red policy areas, stating that adequate alternative transportation options will not be available within this timeframe. Instead, the Council exempted Downtowns from the motor vehicle adequacy test. This will mean that new development projects in these areas will continue to pay a higher transportation impact tax, but do not have to study or mitigate excessive intersection delay.

The Council expressed reservations about using exemptions and discounts within the GIP to incentivize specific development types. While recognizing the importance of affordable housing, they rejected expanded and new exemptions for affordable housing and multi-family units from transportation off-site mitigation requirements. Affordable housing units will continue to be exempt

from transportation mitigation payments but not from constructed transportation mitigation. However, daycare uses generating fewer than 50 net new peak-hour vehicle trips and Mixed-Income Housing Communities (and equivalent developments) will be exempt from the Land Use and Transportation Regulations (LATR) Study requirement. Furthermore, the Council supported the recommendation to extend the Bioscience LATR exemption and remove the three-year building permit deadline.

The Council endorsed efforts to streamline the process by removing outdated guidance, modifying and simplifying transportation data collection and analysis, and adjusting seat deficit thresholds to align with Montgomery County Public Schools' guidelines for classroom additions. They also supported recommendations to create a motor vehicle trip based LATR Proportionality Guide. Finally, the Council supported increased flexibility in spending School Utilization Premium Payment (UPP) funds and transportation fee-in-lieu funds.

The [2024–2028 GIP Interactive Map](#) displays the updated policy areas and classifications.

Schools Element Recommendations

Recommendation 2.1: Modify the School Impact Area boundaries so that they align with the proposed Transportation Policy Area boundaries, and classify each area into Infill, Turnover, or Greenfield based on an updated analysis of their latest growth context and potential.

- **Council Vote:** Supported realigning the boundaries and updating the classifications. Also supported modifications to the classification weight factors, although with a different ratio than the Planning Board Draft; the Council's weight factor did not alter the classifications.

Recommendation 2.2: Adjust the seat deficit thresholds of each UPP tier to align with MCPS's CIP guidelines for classroom additions and maintain the existing utilization rate thresholds.

- **Council Vote:** Supported.

Recommendation 2.3: Allow funds collected as UPPs to be used for capital projects adding capacity at schools adjacent to the school for which they were collected, as outlined in the School Utilization Report.

- **Council Vote:** Supported.

Recommendation 2.4: Keep stacked flats in the multi-family low-rise category for the purposes of both student generation rates and impact taxes.

- **Council Vote:** Supported.

Recommendation 2.5: Monitor the countywide early childhood program projections through the School Utilization Report. When the enrollment is projected to be more universal, include the projections in the elementary school SGR calculations.

- **Council Vote:** Supported.

Transportation Element Recommendations

Recommendation 3.1a: Update policy areas to support the county's goals.

- **Council Vote:** Supported most changes to policy area boundaries and designations, but did not support classifying three Downtowns (White Oak Downtown, Rock Spring, and Great Seneca Life Science Center) as Red Policy Areas due to limited alternative transportation options available in the next four years. However, the Council did support exempting Downtowns (in addition to Red Policy Areas) from the Motor Vehicle Adequacy requirement.

Recommendation 3.1b: Define the geographic extents of the White Oak Local Area Transportation Improvement Program (LATIP) area, therefore differentiating it from the White Oak Policy Area and retaining the program's current boundaries.

- **Council Vote:** Supported.

Recommendation 3.2: Require an LATR study for any proposed development generating 50 or more net new weekday peak-hour motor vehicle trips.

- **Council Vote:** Supported a 30 net new weekday peak-hour motor vehicle trip threshold. This is the equivalent of the current 50 net new weekday peak-hour person trip threshold.

Recommendation 3.3: Update the LATR Intersection Delay Standards to reflect changes to policy area boundaries and designations.

- **Council Vote:** Supported.

Recommendation 3.4: Simplify the Non-Motor Vehicle Adequacy Test. The test will have five components: Pedestrian Level of Comfort (PLOC), illuminance, Americans with Disabilities Act (ADA) compliance, bicycle system, and bus transit system. This test will replace the individual pedestrian, bicycle, and bus transit systems tests.

- **Council Vote:** Supported.

Recommendation 3.5: Modify the non-motor vehicle adequacy test requirements to maintain the county's high standards while minimizing unnecessary data collection and analysis.

- **Council Vote:** Supported.

Recommendation 3.6: Refine the Vision Zero Statement to focus on managing speed for safety.

- **Council Vote:** Supported.

Recommendation 3.7: Remove the reference to the Safe Systems Adequacy Test.

- **Council Vote:** Supported.

Recommendation 3.8: As part of the 2025 LATR Guidelines update, develop a vehicle trip-based Proportionality Guide calculation that better accounts for impacts.

- **Council Vote:** Supported. (This recommendation is related to the GIP, but not part of the official policy.)

Recommendation 3.9: Allow all fee-in-lieu funds to be spent in both the subject policy area and adjacent policy areas.

- **Council Vote:** Supported.

Recommendation 3.10: Rather than limiting the use of funds to specific modes, allow fee-in-lieu funds collected for non-motor vehicle deficiencies to be used for any non-motor vehicle improvement within the subject policy area or an adjacent policy area.

- **Council Vote:** Supported.

Recommendation 3.11a: Expand the current off-site mitigation exemption for affordable housing units, which currently only includes mitigation payments, to include constructed improvements. Adjust the Proportionality Guide limit by subtracting trips attributed to new affordable units. The trips generated by these units will still count toward the 50-vehicle-trip LATR threshold.

- **Council Vote:** Opposed but maintained existing mitigation payment exemption. Council expressed reservations about using exemptions and discounts within the GIP to incentivize specific development types. For this recommendation, they also stated a desire to ensure that residents of affordable housing units have access to the same constructed improvements as other residents. They felt comfortable exempting mitigation payments because the payments wouldn't necessarily go to the area directly surrounding the development project under review.

Recommendation 3.11b: Exempt development projects that meet the definition of a Mixed-Income Housing Community in Section 3.3.4a of the zoning code from the requirement to complete an LATR study.

- **Council Vote:** Supported in a 6-5 vote. The majority supported this recommendation because it helps implement Zoning Text Amendment 23-02, which created an expedited approval process for development projects that meet certain affordability-criteria.

Recommendation 3.12: Exempt multi-family units with three or more bedrooms in multi-family structures from off-site mitigation construction and payment. Adjust the Proportionality Guide limit by subtracting trips attributed to new multi-family units with three or more bedrooms. The trips generated by these units will still count toward the 50-vehicle-trip LATR threshold.

- **Council Vote:** Opposed. Council expressed reservations about using exemptions and discounts within the GIP to incentive specific development types.

Recommendation 3.13: Exempt daycares from the requirement to complete an LATR study.

Council Vote: Opposed the full exemption but supported a 50 net new peak-hour motor vehicle trip threshold for daycare use. Council expressed reservations about using exemptions and discounts within the GIP to incentivize specific development types. However, they raised the LATR threshold for daycare uses to provide relief to smaller daycares, while still requiring larger facilities to make improvements.

Recommendation 3.14: Extend the bioscience LATR exemption for another four years, so it applies to applications filed before January 1, 2029. Remove the exemption's current three-year time limit to file a building permit.

- **Council Vote:** Supported.

Recommendation 3.15: Update the NADMS goals to reflect recently adopted master plans. Establish NADMS goals for new policy areas and other areas without goals.

- **Council Vote:** Supported.

Recommendation 3.16: Revise the policy to reflect updated county plans, policies, laws, regulations, and guidance.

- **Council Vote:** Supported.

Recommendation 3.17: Reorganize and update the LATR Guidelines. The revised version will reduce duplicative and contradictory language, address frequently asked questions, and include example documents and directions for common challenges.

- **Council Vote:** Supported. (This recommendation is related to the GIP, but not part of the official policy.)

Recommendation 3.18: Continue to work with SHA and State Delegates to codify SHA review times. Clarify mutual expectations for stakeholders in the development review process, particularly for projects in Red policy areas, where motor vehicle analysis and mitigation are not a county priority.

- **Council Vote:** Supported. (This recommendation is related to the GIP, but not part of the official policy.)

Impact Tax Bill 16-24

Key Takeaways

The Council determined that impact tax policy, as opposed to the GIP, is a more suitable tool for incentivizing specific policy goals. They expressed greater comfort in using transportation impact taxes for this purpose compared to school impact taxes. This preference stems from the fact that school impact tax rates are comprehensively updated every two years and tied directly to student generation rates based on School Impact Area and land use type, while the underlying basis of transportation impact tax rates has not been updated in approximately 20 years, leading to a less robust foundation for adequacy determinations.

Recommendations

Recommendation 4.1: Modify the calculation of the standard school impact tax rates to reflect the true per student cost of school construction to the county. Do this by adjusting the rates to account for the portion of funding for school capacity projects in the adopted 6-year CIP attributed to state aid.

- **Council Vote:** Opposed. The County Council felt this issue is something that could be studied through the infrastructure working group.

Recommendation 4.2: Continue the use of the cap and carryover system as adopted through Bill 25-23E. Its implementation is relatively new and will help soften any anticipated upward adjustments.

- **Council Vote:** Supported.

Recommendation 4.3: Introduce a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller.

- **Council Vote:** Supported the full transportation exemption for under 1,800 sf and under 2,200 sf if there is an attached garage, no school discount. The Council did not support the discount for schools as these types of units will generate students.

Recommendation 4.4: Remove the Desired Growth and Investment Areas discount and rely on other policies to advance corridor-focused compact growth and housing. This will simplify the number of boundaries used in conjunction with the policy. Include legacy language for projects with an accepted preliminary plan application, or equivalent plan acceptance in the City of Gaithersburg, before January 1, 2025.

- **Council Vote:** Supported.

Recommendation 4.5: Replace the current school impact tax discount for multi-family units with three or more bedrooms in Infill areas with a countywide impact tax exemption for both transportation and school impact taxes. The exemption will apply to multi-family residential units with three or more bedrooms in multi-family structures.

- **Council Vote:** Supported a full transportation exemption; maintained existing school discount of 40% for Infill policy areas. As these units will typically generate more students than smaller multifamily units, the Council did not support a full exemption of school impact taxes.

Recommendation 4.6: Exempt office-to-residential conversions from transportation and school impact taxes when the building is adaptively reused or renovated for multi-family housing. Offer a 50% transportation and school impact tax discount for office-to-residential conversions when demolition is involved in the conversion of office-to-residential to multi-family or single-family attached housing.

- **Council Vote:** Supported a full exemption for transportation for demolitions and conversions; no discount or exemption for schools as residential uses will generate students.

Recommendation 4.7: Continue exempting bioscience projects from transportation impact tax and add the exemption to the county code.

- **Council Vote:** Supported.

Recommendation 4.8a: Update the County Code to provide allow credit for capacity improvements along state roadways. Work with MCDOT to propose additional modifications and clarifications concurrently with the Council’s review of the Draft GIP. Revisions will focus on conversion to the county’s new Complete Streets classifications, types of creditable infrastructure, and clarity.

- **Council Vote:** Supported recommendation to allow credit for capacity improvements along state roadways. MCDOT did not pursue additional clarifications or modifications during the Council review process.

Recommendation 4.8b: Convene a working group across county government and with external stakeholders to explore additional financing and funding mechanisms to better meet infrastructure needs.

- **Council Vote:** Supported but will hold its own work session on the topic at a later date. Council staff has indicated they expect the full Council to address this in January or February 2025.

Recommendation 4.9/Amendment 1: Maintain the Opportunity Zone impact tax exemption for projects located in an Opportunity Zone designated census tracts regardless of the status of the federal program.

- **Council Vote:** Supported Council staff text edits, including listing the census tracts in the code, clarifying the eligibility date, and adding the missing piece of the White Oak LATIP area to the Opportunity Zone list (1505) through Amendment 1.

Amendment 2: Include all of White Oak in the Red policy area (Public hearing testimony)

- **Council Vote:** Opposed. The Council opposed changing White Oak to a Red policy area in the GIP recommendations.

Amendment 3: Extend the transportation impact tax credit validity period for an additional four years in instances where the applicant has made a significant transportation improvement of \$3 million dollars or more. (Public hearing testimony)

- **Council Vote:** Supported.

Amendment 4: Remove the requirement to increase capacity to receive the transportation impact tax credit.

- **Council Vote:** No action.

Amendment 5: Exempt projects that provide no onsite parking and are located near transit from impact transportation taxes.

- **Council Vote:** Supported.

Amendment 6: Credit for undergrounding utilities.

- **Council Vote:** No action.

Amendment 7: Grandfather garden apartments as high-rise residential units for preliminary plans approved before January 2025.

- **Council Vote:** Supported. The Council voted unanimously to support an amendment that would retain the definition of high-rise residential units in both Sec. 52-52 and 52-39 but add a grandfathering provision for projects that have an approved preliminary plan as of the effective date of this bill.

Amendment 8: Change to expedited bill.

- **Council Vote:** Supported. Given the timing of the legislative process for this bill, an effective date of 90 days would be after the date prescribed in the transition clause. Therefore, to take effect on January 1, 2025, Bill 16-24 would need to be expedited.

Amendment 9: Amend 52-59 to allow UPP Payments in adjacent school service areas, per the GIP recommendation.

- **Council Vote:** Supported. The GIP recommends “Allow[ing] funds collected as UPPs to be used for capital projects adding capacity at schools adjacent to the school for which the funds were collected, as outlined in the School Utilization Report. This would require an amendment to Section 52-59(e). The bill as transmitted did not include this amendment.

Amendment 10: Clarify the definition of stacked flats.

- **Council Vote:** Supported. The Office of the County Attorney (OCA) noted that the definition of stacked flats in the bill may be too broad.

Amendment 11: Technical corrections.

- **Council Vote:** Supported.

Next Steps

- **Update the Annual School Test (AST) Guidelines:** The Planning Board will consider the revised AST Guidelines after the GIP and Impact Tax Briefing on Thursday, December 19, 2024.
- **Update the LATR Guidelines:** Planning staff will update the guidelines two phases.
 - **Phase 1 Update:** The Board will consider the first update to the LATR Guidelines in January 2025. This interim update will incorporate the new GIP, improve the document organization, and provide a new proportionality guide.
 - **Phase 2 Update:** The Board will consider the second update in Spring 2025. This update will feature a new user-friendly design, provide additional guidance, and address policy issues that require more stakeholder coordination.

Attachments

Attachment 1 2024–2028 Growth and Infrastructure Policy Resolution

Attachment 2 Bill 16–24