

## ZTA 25-14 OPTIONAL METHOD PUBLIC BENEFITS – OVERLAY ZONES




### Description

ZTA 25-14 updates multiple Overlay Zones to align with the recently updated system of calculating public benefits system for optional method of development and ensures continuity for existing public benefits in those zones by including the current provisions in the retained code section of Division 59-8.

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#### ZTA SPONSORS

Sponsors:  
Councilmembers Fani-Gonzalez, and  
Friedson

#### INTRODUCTION DATE

October 14, 2025

#### COUNCIL PUBLIC HEARING DATE

November 18, 2025

#### REVIEW BASIS

Chapter 59

## Summary

- This ZTA amends the following Overlay Zones to ensure they are consistent with the new optional method public benefit system:
  - Bethesda (B)
  - Downtown Silver Spring (DSS)
  - Germantown Transit Mixed Use (GTMU)
  - Great Seneca Life Science (GSLS)
  - Transferable Development Rights (TDR)
- The existing provisions for public benefits within the affected overlay zones are retained in a new Section 59-8.4.4.
- The ZTA also makes minor corrections and clarifications to the optional method public benefit system generally.

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## SECTION 1 – BACKGROUND

### Rationale For Introduction

Zoning Text Amendment (ZTA) 25-14, Optional Method Public Benefits – Overlay Zones was introduced on December 2, 2025, by the Planning, Housing, and Parks (PHP) Committee members, Councilmembers Fani-Gonzalez, Friedson, and Jawando (Attachment A). The ZTA is scheduled for a Public Hearing on January 13, 2026.

This ZTA is the second and final ZTA necessary to implement the recommendations from the [Incentive Zoning Update](#), which the Board reviewed and supported in June 2024. The first ZTA implementing the Incentive Zoning Update is [ZTA 25-05/Ordinance 20-21](#), which was reviewed by the Board in May 2025 and adopted by the full District Council on July 29, 2025. ZTA 25-05 laid the foundation for the updated public benefits for optional method of development with the following changes to the public benefit methodology:

- Total replacement of public benefit categories and the public benefits within
- New system for calculating necessary public benefits, based on tiers of effort, and earning FAR
- Updating the optional method development threshold in the CRT Zone to 0.5 FAR
- Removing optional method development from the Employment Zones
- Retaining the old methodology for public benefits in Division 59-8.4.

However, ZTA 25-05 did not update any of the Overlay Zones, some of which have provisions that modify the public benefit system for optional method development projects within that Overlay Zone. Planning Staff and Council Staff began collaborating on draft code language during the fall of 2025, which has led to the introduction of ZTA 25-14. This ZTA makes the necessary public benefit updates to five identified Overlay Zones. The ZTA also proposes various minor changes to the language approved in ZTA 25-05 based on experience working on ZTA 25-14, and working on the [Implementation Guidelines](#).

## SECTION 2 – ANALYSIS AND RECOMMENDATIONS

ZTA 25-14 contains updates to various sections of code, including within Division 4.7. Optional Method Public Benefits, Division 4.9. Overlay Zones, and Division 8.4. Optional Method Public Benefits (legacy code). The following analysis walks through each section of the ZTA, providing Planning Staff analysis and recommendations.

## Division 4.7. Optional Method Public Benefits

The first section of the ZTA contains proposed code refinements to the public benefit system that was adopted as part of ZTA 25-05/Ordinance 20-21.

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### GENERAL PUBLIC BENEFIT CONSIDERATIONS

The first section of ZTA 25-14 amends the General Public Benefit Considerations, Section 59-4.7.1.B. This section contains information on how the public benefit system should be interpreted, used, and implemented. This section was implemented as part of ZTA 25-05 and staff identified a few minor necessary adjustments. The following are minor updates to specific subsections.

#### Master Plans

The first revision is to Section 4.7.1.B.7. (lines 6-13), a code provision explaining the role master plans have in the public benefit system. The code allows a master plan to add, prioritize, modify, or prohibit a public benefit, or modify the compliance requirements for achieving certain tiers of effort. For a master plan to implement a change to code, it needs to be reflected in an Overlay Zone. However, an Overlay Zone is not necessary if a master plan is solely expressing priority in public benefits, which would be enforced through the development review and necessary findings for substantial conformance to the master plan. This code section is updated to clarify that adding, modifying, or prohibiting public benefits, or modifying the compliance for tiers, must be reflected in an overlay zone, striking the word ‘prioritizing’ in the statement.

**Recommendation:** Support the clarifying language.

#### Construction Costs

This next recommended revision is not part of ZTA 25-14 as introduced, but is a recommended addition from Planning Staff. In Section 4.7.1.B.9, the code discusses how payment in lieu rates will be adjusted for inflation using the Engineering News Record’s Baltimore Construction Cost Index for the adjustment basis. This specific index is what the County’s Department of Finance has historically been using to update existing fee-based programs such as transportation and school impact taxes. More recently, both the Bethesda (B) and the Downtown Silver Spring (DSS) Overlay Zones have included payment options (Bethesda Overlay Zone Density and Downtown Silver Spring Density), which are also biennially adjusted. These Overlay Zones base their adjustments on a published construction cost index, without specifying which specific index should be used. It has been Planning Staff practice to use the Engineering News Record’s Baltimore index for consistency with the county; however, concerns were noted that mandating a specific private publication may be problematic if the private entity were to cease publishing updates. Planning Staff recommends that the public benefits considerations be updated for consistency with the Bethesda and DSS Overlay Zone language, therefore revising subsection 9. As follows:

Payment in lieu rates must be adjusted biennially by the cumulative increase or decrease in a published construction cost index over the prior two calendar years based on the Engineering News-Record's Baltimore Construction Cost Index. Payment in lieu of providing a public benefit may be considered and accepted under the following criteria:

**Recommendation:** Support updating the payment in lieu adjustment language.

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#### PUBLIC BENEFIT DESCRIPTIONS AND CRITERIA

The next section of the ZTA, from lines 17 – 288, contains a reoccurring revision being recommended for clarity around payment in lieu. Within the public benefit system in Section 4.7.1.B.9, there are five public benefits that are eligible for a payment in lieu:

- Offsite Improvements
- Public Facilities
- Street Grid and Multi-Modal Extensions
- Art and Placemaking
- Great Public Realm

Like all public benefits, within Section 4.7.3. there are detailed descriptions of each public benefit, including the compliance requirements for achieving each tier of effort. For the five public benefits that allow payment in lieu, many tiers included a compliance requirement that began with “contribute a minimum of...”. For better clarity, it is recommended that the word ‘contribute’ be replaced with ‘make a payment in lieu at’. This minor modification more explicitly identifies the specific compliance requirement as one of the few payment in lieu options allowed by Section 4.7.1.B.9.

**Recommendation:** Support the updated language, replacing ‘contribute’ with ‘make a payment in lieu at’.

### Division 4.9. Overlay Zones

The next few sections of the ZTA contain the specific revisions proposed for the five Overlay Zones impacted by the updates to the public benefit system. In updating the Overlay Zones, Planning Staff and Council staff strived to translate the existing public benefit customizations into the new public benefit system as directly as possible without implementing any changes in policy. This resulted in some provisions being removed because they were no longer relevant, some being directly translated from the existing public benefit category into the corresponding new one, and some having unique language proposed to meet the existing intent.

## BETHESDA (B)

The Bethesda Overlay Zone (BOZ) contains many modifications to the public benefits system, including benefit prioritization, modified eligible points, and custom criteria and benefits. The analysis below explains the existing modifications made to public benefits, and how that is being translated into the new system.

### Moderately Priced Dwelling Units (MPDUs)

The first section of the BOZ with modifications to public benefits is within the Moderately Priced Dwelling Units (MPDUs) section, under the Public Benefit Point subsection 4.9.2.C.3. (lines 309-332). Straightforward amendments proposed by this ZTA include replacing the term ‘public benefit points’ with ‘incentive density’ and updating section references to new public benefits in Section 4.7.

Provision d.ii. (starting on line 314) is a unique public benefit that does not have a direct translation from the old to the new system. The existing language allows for public benefit points to be calculated using a sliding scale formula based on the percent of MPDUs being provided. The new public benefit system has distinct compliance requirements set to distinct tiers of effort and is not set up to provide pro-rata incentive density. The ZTA creates a unique compliance requirement that awards a pro-rata share of incentive density for projects that fall between the specified tiers of effort, retaining the ability to earn incremental benefit for incremental increases in MPDUs.

Also, within the MPDU section, the criteria under d.iii. and d.iv. are removed. These provisions allowed applications providing more than 15% MPDU’s to provide one less public benefit category, and for projects with 20% MPDU’s to provide no additional categories, except for Exceptional Design, and Energy Conservation, and Generation<sup>1</sup>. These two criteria are not needed under the new public benefit system because the new public benefit system already provides more incentive density for achieving higher tiers of effort and is not based on a prerequisite of selecting a minimum number of public benefit categories. Other sections of the BOZ are also being updated to capture the area-wide requirements for Exceptional Design, and Energy Conservation, and Generation.

**Recommendation:** Support the Bethesda Overlay Zone public benefit point criteria for MPDUs.

### Public Benefits

The next section of the Bethesda Overlay Zone being amended is the Public Benefits section 4.9.2.4. starting on line 333. The following summarizes the changes being made to each subsection, a – h:

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<sup>1</sup> Providing public benefits for Exceptional Design, and for Energy Conservation and Generation are required for any development application within the height incentive area of the BOZ.

- a. The provision is being fully replaced. The ZTA is removing reference to transit proximity, which is no longer a public benefit, and instead using subsection a. to add a statement that public benefits are only required to achieve incentive density, and are not required for any density awarded by making BOZ payments. This clarifying statement is consistent with how the Incentive Density Update has been presented.
- b. This provision spelled out criteria for being awarded public benefit points for making park impact payments (PIPs) either when none are required, or for making a PIP in excess of the requirement. The focus of this public benefit has shifted slightly to allowing a payment toward a Parks CIP rather than a PIP count for incentive density. This slight amendment was requested by Parks Staff to avoid confusion between required PIPs and this voluntary payment.
- c. This provision required all applications in the High-Performance area to exceed building code standards, and has been updated to require meeting Tier 1 under the public benefit Energy Efficiency, which is a comparable public benefit requirement.
- d. This provision granted public benefit points for partnering with the Department of Housing and Community Affairs (DHCA) for providing affordable housing (not MPDUs) within the plan area. The existing formula generates public benefit points at 50% the rate an applicant would receive for providing extra MPDUs. Provision e. below allows a similar agreement for preserving existing affordable housing units with DHCA. The ZTA creates a new Overlay-Zone-specific set of compliance requirements under the MPDU public benefit, requiring twice the number of units to be created or protected in partnership with DHCA to achieve each tier of effort.
- e. The existing e. is removed as it was incorporated with the DHCA affordable housing benefit discussed in d. above. The existing f. is now the new e. This section describes the requirement to achieve exceptional design. The updated provision now references the public benefit Design Excellence and requires a tier 2 level of effort to be achieved, maintaining a similar compliance criterion as the existing requirement of achieving a minimum 10 points in the category.
- f. A new f. is added, capturing a Bethesda Overlay Zone requirement that all new developments must provide for high quality design (Design Excellence) and higher standards of energy efficiency (Energy Efficiency). While previous subsections above capture both of these public benefits separately, this provision specifies that even if an application provides Tier 4 in a category, which normally awards all necessary incentive density, these other two public benefits must still be provided.
- g. The provisions under g. modified the total number of points available for various public benefits. This section is recommended for removal in its entirety. Planning Staff looked at each of the benefits that were modified and found that the existing Overlay Zone does



nothing to change how points were calculated. These benefits generated points based on formulas, and these formulas could generate more points than the maximum the code allowed for. This provision increased the maximum allowed points within the BOZ, but did not adjust the formula or the input criteria. This principle of receiving more points (incentive density) for more input is foundational to the new public benefits system and does not need to be specifically called out in the Bethesda Overlay Zone.

- h. This provision is being removed. It provided an option for paying a fee for public art, which is now a standard option included in the public benefit system.

**Recommendation:** Support the modifications made to subsections 4.9.2.4.a-h in the Bethesda Overlay Zone.

#### [FAR Averaging](#)

This last section of the Bethesda Overlay Zone, being amended by this ZTA (lines 428-435), is in the FAR Averaging (Density Transfer) section. The update is a minor language adjustment to remove reference to public benefit ‘points’.

**Recommendation:** Support the amendment to the language under FAR averaging.

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### [DOWNTOWN SILVER SPRING \(DSS\)](#)

The next Overlay Zone amended by ZTA 25-14 is the Downtown Silver Spring (DSS) Overlay Zone. This Overlay Zone made reference to or modifications to public benefits in two sections.

#### [Density](#)

In the section on Development Standards – Density (lines 443-448), the ZTA removes reference to public benefits as a consideration in determining eligibility for Downtown Silver Spring density. DSS density is a type of ‘excel to build’ density, where payments can be made into a fund in exchange for providing density above the mapped. Because public benefits only apply to incentive density (density between the standard method cutoff and the total mapped density), public benefits should not be referenced in the DDS density section.

**Recommendation:** Support removing public benefits from the DDS density provisions.

#### [Public Benefits](#)

The other section of the DSS Overlay Zone being amended is the Public Benefits section 4.9.7.C.4. starting on line 451. The following summarizes the changes proposed to each subsection a-c.

- a. The first subsection is a provision prohibiting the Board from granting public benefits for transit proximity. The new public benefit system has removed transit proximity as a category; therefore, this is no longer needed. The ZTA instead adds a code provision clarifying that public benefits are only required to achieve incentive density, and are not required for DDS density, or any other density awarded by Chapter 59.
- b. The next subsection is a requirement that applications achieve a minimum of 10 public benefit points for exceptional design, to be determined by a Design Advisory Panel. The ZTA translates this requirement to achieving a minimum of Tier 2 from Design Excellence based on similar compliance criteria between the two.
- c. The final subsection is a new provision added by the ZTA, ensuring incentive density for the public benefit Great Public Realm is properly applied. In the DSS Overlay Zone, unless specifically identified in the master plan, properties are to make payments to contribute to off-site open space. The new code section removes any incentive to provide on-site open space where it is not identified by the master plan. This section also ensures points are not awarded for making an off-site contribution for open space, unless the contribution exceeds the minimum necessary.

**Recommendation:** Support the modifications to subsections 4.9.7.C.4.a-c in the DDS Overlay Zone

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#### GERMANTOWN TRANSIT MIXED USE (GTMU)

In the Germantown Transit Mixed Use (GTMU) Overlay Zone, only one section is modified by this ZTA. Starting on line 482 of the ZTA is a major requirement of the GTMU Overlay Zone, requiring applicants to purchase BLT easements or make ALPF payments at a much higher rate (50%) than the county-wide standard. Purchasing BLTs used to be a public benefit in the previous system, and the Overlay Zone references the old public benefit section. With ZTA 25-05, which updated the public benefit system, BLTs/ALPF payments are no longer a public benefit and instead are a requirement of all optional method developments under the Commercial/Residential zones. The GTMU Overlay Zone is updated to require the higher BLTs/ALPF payments based on the C/R zones provisions in Section 4.5.4.A.2.b. The ongoing Germantown Sector Plan Amendment is exploring the BLT requirements among other potential Overlay Zone changes which will be brought before the Board at a future date.

**Recommendation:** Support the amendment to update the section references for calculating BLTs/ALPF payments to the Commercial/Residential section of the code.

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#### GREAT SENECA LIFE SCIENCES (GSLs)

The next major update with ZTA 25-14 is to the Great Seneca Life Science (GSLs) Overlay Zone. This Overlay Zone was adopted on February 4, 2025, by Ordinance 20-15, implementing ZTA 24-03, complementing the 2024 Great Seneca Plan. This Overlay Zone is unique, because it was written and

adopted concurrently with the writing and review of the new public benefits system. The GSLS Overlay Zone was written to take advantage of the new public benefit system's process and menu of public benefits and in many ways was a test case for the final public benefit system update. Now that ZTA 25-05 has been adopted, much of the existing GSLS Overlay Zone setting forth the public benefits and the compliance requirements for the tiers of effort can be removed. What will remain of the GSLS Overlay Zone are the few modifications to the public benefits, and the compliance criteria required for tiers that were unique and intentional.

#### [GSLS Overlay Zone Vs Public Benefits Section 59-4.7.](#)

There are a handful of public benefits and public compliance requirements that are included in the GSLS Overlay Zone but were modified before the adoption of ZTA 25-05. These are unique because they were not deliberately modified by the Overlay Zone and instead represent the best practices and recommendations coming from the Incentive Density project at the time. Planning Staff highlights the public benefits that are currently different in the GSLS Overlay Zone, but should utilize the countywide standards located in Section 4.7. rather than retain the current unique attributes.

- Payment in lieu rates (that were not proposed to be modified in tier 1), which were slightly higher in the final public benefits than in the GSLS Overlay Zone.
- Off-site construction of projects under Infrastructure for Compact Growth, and Complete Community Amenities, has had the amount of square or linear feet, and the anticipated cost range for each tier adjusted slightly.
- Green roof requirements under Environmental Resilience and Sustainable Site Design were modified, generally requiring more area at shallower soil depth based on consultations with the Department of Permitting Services.

#### [Public Benefits Unique to GSLS](#)

The GSLS Overlay Zone made a handful of deliberate changes to the public benefits and the compliance requirements for certain tiers. These modifications are currently integrated within the existing Overlay Zone's list of public benefits and criteria requirements that are proposed for deletion (lines 609 – 947). ZTA 25-14 has pulled out the specific public benefits, tiers, and compliance requirements in the existing Overlay Zone and presents them as specific modifications to the public benefit system located in Section 4.7. of the Zoning Code. Below is a summary of these unique provisions that are being maintained in the GSLS Overlay Zone with this ZTA, under Section 4.9.12.C.3., subsection a. – h. (starting on line 525):

- a. Requires LSC Zone properties to be reviewed as optional method, and to provide public benefits, consistent with the standards of the CR Zone.
- b. Modifies the FAR awarded at each tier of effort, down from the countywide standard. This is a reflection on the larger tract size for most properties in the GSLS Overlay Zone. Small amounts

of FAR can generate a lot of GFA density, which would result in fewer public benefits being provided without this change.

- c. Modifies the fee in lieu payments for tiers 2 and 3, down from the countywide standard, for the same reason the FAR awarded per tier is modified downward in subsection b. above.
- d. Establishes incentives for providing a certain percentage of residential development on properties within the LSC zone.
- e. Lowers the square footage amount of adaptive reuse required for tier 2 and 3 Sustainable Site Design public benefit.
- f. Adding specific infrastructure projects that are identified by the Master Plan for tier 4 under the Offsite Improvements public benefit.
- g. Adding a specific project identified by the Master Plan for tier 4 under the Street Grid and Multi-Modal Extension public benefit.
- h. Adding additional compliance requirement options for tier 1, 2, 3, and 4, for the Neighborhood Services and Mixed Use public benefit, including providing flex step-up space for life science companies, or achieving a certain amount of mixed use development on a site.

**Recommendation:** Support removing the existing public benefit text from the GSLS Overlay Zone, and replacing it with the condensed list of modifications recommended by the Great Seneca Plan

#### Other Recommendations

During development of ZTA 25-14, one typo was discovered and corrected in line 494 of the ZTA. The provision intends to lift the 30% residential cap on developments in the LSC Zone; however, the provision inadvertently referenced the GSLS Zone. The ZTA replaces GSLS Zone with LSC Zone to capture the intent of this section.

**Recommendation:** Support replacing the GSLS Zone with the LSC Zone.

During review of this ZTA, Planning Staff identified an additional typo in the Overlay Zone that was introduced, line 578. “Broschard” Road is incorrectly spelled and should be corrected to “Broschart” Road.

**Recommendation:** Update Broschard Road to say Broschart Road.

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#### TRANSFERABLE DEVELOPMENT RIGHTS (TDR)

The final Overlay Zone amended with ZTA 25-14 is the Transferable Development Rights (TDR) Overlay Zone. In section 4.9.18.3.b. Calculation of TDRs Required in the Commercial/Residential or Employment Zones (lines 979-981), the code allows the Board to grant up to 20 public benefit points

for providing TDRs. This public benefit was removed as part of the public benefit update; therefore, this subsection is being removed.

**Recommendation:** Support removing the provision allowing the Board to grant public benefit points for TDRs.

## Division 8.4. Optional Method Public Benefits (Legacy Code)

Division 8.4. Optional Method Public Benefits is a new section of code that was added to Article 8 as part of ZTA 25-05. Article 8 is a legacy Article where old zones and zoning provisions from the code in effect up until October 29, 2014, that were not officially rolled into the current code are located. As part of the updated public benefits system, legacy protections were added that allow applications already approved or under review at the time of this transition to still use the old public benefit system. The old system of public benefits was moved from Division 4.7. to Division 8.4. to retain the language for these legacy protected applications.

This ZTA, 25-14, is adding a new section 8.4.4. (lines 987 – 1429) where the existing provisions from the five Overlay Zones being amended will be retained. The formatting is not perfectly carried forward because many of the public benefit provisions were integrated with other code sections in the Overlay Zones, and only public benefit references were moved to Section 8.4.4. However, all the necessary language to continue using the legacy Overlay Zone public benefits is retained.

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### GENERAL PUBLIC BENEFIT CONSIDERATIONS

The first amendment in the ZTA is in Section 8.4.1. General Provisions. As part of the overhaul of public benefits, the threshold of density that separates a development application from standard method to optional method was modified, lowering the CRT Zone threshold from 1.0 FAR down to 0.5 FAR. After adoption of ZTA 25-05, it became apparent that the old optional method thresholds were not included in Section 8.4.1. Lines 1005 – 1007 add the previous threshold table from the Commercial/Residential Zones, for legacy purposes.

**Recommendation:** Support the addition of the old optional method thresholds from the Commercial/Residential Zone to Section 8.4.1.

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### OVERLAY ZONES

The final section amended by ZTA 25-14 is the addition of new Section 8.4.4, covering lines 1010 - 1453. This section is specific to Overlay Zones and retains the existing code provisions that are being deleted or updated through ZTA 25-14. This will enable applicants with existing approvals or with applications submitted and pending Board approval to still use the previous public benefit system, as modified by the overlay zones. While the formatting within each Overlay Zone is not identical, the text of each subsection is copied exactly as it exists in the code today.

**Recommendation:** Support the addition of Section 8.4.4. retaining the existing system of public benefit modifications within the five Overlay Zones being modified by ZTA 25-14.

### SECTION 3 – 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 on community resilience and adaptive capacity. The climate impact assessment for ZTA 25-14 is attached in Attachment B.

Planning Staff anticipates that the proposed changes to existing zoning regulations proposed in ZTA 25-14 will have no impact on the county's goals of addressing GHG emissions, carbon sequestration, or ensuring community resilience and adaptive capacity. ZTA 25-14 updates provisions in certain Overlay Zones to be consistent with the new public benefits policy and does not propose any policy changes.

### SECTION 4 – CONCLUSION

Planning Staff recommends that the Planning Board transmit comments supporting ZTA 25-14, with the minor amendments proposed by Planning Staff being less specific about the type of publication to calculate changes in construction cost index from and correcting the spelling of Broschart Road.

### SECTION 5 – ATTACHMENTS

*Attachment A: Zoning Text Amendment 25-13 Intro Packet*

*Attachment B: Climate Assessment 25-14*