T&E Item 3
April 4, 2019
Worksession 3

MEMORANDUM

April 2, 2019

TO: Transportation and Environment Committee

FROM: Robert H. Drummer, Senior Legislative Attorney
GO Glenn Orlin, Deputy Director

SUBJECT: Bill 36-18, Transportation Management - Transportation Demand Management (TDM) Plan – Amendments[1]

PURPOSE: Committee to take straw vote recommendations on Bill 36-18

Councilmembers: Please bring your copy of the March 18 staff report to this worksession.

Expected attendees:

Al Roshdieh, Director, Department of Transportation (DOT)
Christopher Conklin, Deputy Director for Transportation Policy, DOT
Sande Brecher, Commuter Services, DOT
Casey Anderson, Chair, Planning Board
Gwen Wright, Director, Department of Planning

This is the third Committee worksession on this bill. The Department of Transportation (DOT) briefed the Committee on how the current TDM system works and how this Bill would change the system in a worksession on February 14. On March 21 (deferred from March 18) the Committee began its review of the Bill. Attached to this report is the revised fiscal impact statement for Bill 36-18 (©204-211), correspondence from the Greater Bethesda Chamber of Commerce (©212-215) and NAIOP (©216-217), and a map prepared by DOT showing the boundaries of the current transportation management districts (TMDs) as well as those proposed by DOT and by Council staff (©218).[2]

On March 21 the Committee left off at the section entitled "Requirements of new development projects" on page 6 of the March 18 report. The matters covered in this April 2 report respond to issues raised after the initial staff report, and they will be addressed at the appropriate points during this worksession.

The goal is for the Committee to take straw votes on each of the items related directly to Bill 36-18. If that can be accomplished, staff will re-draft the Bill and bring it back to the Committee at a subsequent worksession for its final review before forwarding it to the full Council.

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[1] Key search terms: #Traffic relief, traffic, transportation, transportation demand management, and multimodal transportation.

[2] The revised fiscal impact statement was included in an addendum for the March 21 meeting. The other items arrived later and were distributed to Councilmembers at that meeting.

* * *

Standard for whether an existing property is required to submit a TDM Plan. Both the Leggett and Elrich Bills would require employers of 25 employees or more in existing TMDs and in Red areas not currently in a TMD to submit a TDM Plan, and they both would require employers of 100 employees or more in Orange areas and employers of 200 employees or more in Yellow areas to submit a TDM Plan. **Council staff concurs with these provisions, except that the 25-or-more rule should not apply in White Oak.** The White Oak TMD, although created by Council resolution, has no budget and is not operational as yet. It is entirely in an Orange area, so the 100-or-more rule should apply.

Both Bills also would require that an existing non-residential building be required to submit a TDM Plan, "if the DOT Director finds that a plan is necessary to achieve the purpose of the Article," and if not already required to do so under a project-based TDM plan. Several individuals have commented that this provision gives the Director too much discretion, and that there should be explicit standards as to when an existing non-residential building should prepare a TDM plan.[3]

The purpose for requiring certain buildings to have a plan is because some buildings may have multiple employers with fewer than 25 (or 100, or 200) employees, but in aggregate houses a large number of employees. A medical office building, which may have a score of small offices, is an example. At the other extreme, a building may have only one large employer; it would make little sense for that employer to have one plan and the building owner have another. Each non-residential building is different. However, Council staff agrees that some standard should apply, rather than leaving the decision solely to the DOT Director discretion.

Council staff recommends revising Section42A-25(a)(1) to read:

(1) The Director [may] <u>must</u> require an owner of a nonresidential building in a [district] <u>District</u> to submit a TDM Plan if:
(A) [the Director find that a plan is necessary to achieve the purpose of the Article] <u>the building has at least 100 employees that are not under an employer-based TDM Plan</u>; and
...
(see ©144, Lines 378-381).

Section 42A-25(b)(1)(A) would also provide the DOT Director the same discretion for existing multi-family residential buildings with at least 100 units. However, there is no corollary rationale for drawing a distinction between one large multi-family complex and another; the same standard should apply to all. **Council staff recommends revising the language in Section 42A-25(b)(1) to be amended as follows** (see ©144-145, Lines 397-405):

(1) The Director [may] <u>must</u> require an owner of a residential building or complex with at least 100 dwelling units in a District, including a common ownership community as defined in Chapter 10B, to submit a TDM Plan, if[:

[3] See Greater Colesville Citizens Association (©99), Mr. Dalrymple (©107-108), Mr. Kominers (©119-120), and the Bethesda Chamber (©213).

(A) the Director finds that a plan is necessary to achieve the purpose of this Article; and (B)] the building is not subject to either a traffic mitigation agreement currently in effect or to a Project-based TDM Plan under Section 42A-26.

Required investments in TDM Level 2 Action and Level 3 Results Plans. Both versions of the Executive Regulation would require that, for a Level 2 Action Plan, the developer/building owner must commit funding to implement its plan at a level up to the equivalent of 50% of the applicable TDM fee. If the Level 2 Plan still has not made progress towards its NADMS goal within six years after final occupancy, the funding commitment must be equivalent to the applicable TDM fee. For a Level 3 Plan, the initial annual funding commitment must be the equivalent of the TDM fee. If the goal has not been achieved after six years, then the annual funding commitment must be equal to twice the TDM fee; if it has not been achieved after eight years, then the annual funding commitment must be equal to four times the TDM fee.

The problem with tying the required investment to a multiple of the TDM fee is that the TDM fee can vary from year to year. While the fees have been stable until now—at $0.10/sf—there is no reason to believe they will not change, not only from year to year, but from one Transportation Management District to the next.

Council staff recommends that the regulation set the investment equal to a multiple of the current rate, and to inflate it biennially according to the Consumer Price Index. The required initial investment would be:

Level 2 Action Plans:

- **Initial investment: up to $0.05/sf annually.**
- **If not made progress after six years: $0.10/sf annually.**

Level 3 Results Plans:

- **Initial investment: $0.10/sf annually.**
- **If not achieved goal after six years: $0.20/sf annually.**
- **If not achieved goal after eight years: $0.40/sf annually.**

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OFFICE OF MANAGEMENT AND BUDGET

Marc Elrich
County Executive

Richard S. Madaleno
Director

MEMORANDUM

March 15, 2019

TO: Nancy Navarro, President, County Council

FROM: Richard S. Madaleno, Jr., Director, Office of Management and Budget

SUBJECT: Fiscal Impact Statement for Bill 36-18, Transportation Demand Managemeent "NextGen TDM"

Please find attached the Fiscal Impact Statement for the above-referenced legislation.

RSM:brg

cc: Andrew Kleine, Chief Administrative Officer
Debbie Spielberg, Special Assistant to the County Executive
Dale Tibbitts, Special Assistant to the County Executive
Fariba Kassiri, Deputy Chief Administrative Officer
Ohene Gyapong, Acting Director, Public Information Office
Lisa Austin, Office of the County Executive
Monika Coble, Office of Management and Budget
Chrissy Mireles, Office of Management and Budget
Chris Conklin, Deputy Director, MCDOT
Sandra L. Brecher, Chief, Commuter Services

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Fiscal Impact Statement
Council Bill 36-18
Transportation Demand Management
"NextGen TDM"

1. Legislative Summary

Council Bill 36-18 recommends changes to Chapter 42A, Article II of the County Code, "Transportation Demand Management."

Under current Code, the County may require certain transportation demand management ("TDM") measures at new developments and for employers with over 25 employees located within the six designated transportation management districts ("TMDs"): Bethesda, North Bethesda, Silver Spring, Friendship Heights, Greater Shady Grove and White Oak. Existing buildings in those TMDs may also be required to adopt TDM measures under certain circumstances.

Bill 36-18 and the accompanying Executive Regulation provide for the expansion of TDM measures beyond the current TMDs to the rest of the County's Red, Orange, and Yellow Policy Areas. New development projects and employers in these additional areas would be required to submit TDM Plans, based on the project size or number of employees, and the Subdivision Staging Transportation Policy Area in which they are located.

For new development projects, a Project-based TDM Plan Level would be required based on the size of the project and the Subdivision Staging Transportation Policy Area in which it is located.

<u>There are three Project-based TDM Plan Levels</u>:

- Level 1: TDM Basic Plan
- Level 2: TDM Action Plan
- Level 3: TDM Results Plan

Projects in Policy Areas classified as Red, Orange or Yellow are included, with the size thresholds shown in Table 1 below:

<u>Table 1</u><u>: Project-based TDM Plan Requirements for New Developments</u>

Subdivision Staging Policy Area	No Requirements	Level 1: TDM Basic Plan	Level 2: TDM Action Plan	Level 3: TDM Results Plan
Red Areas		≤25K		>25K GSF
Orange Areas	<25K GSF	25K – 50K GSF	>75-150K GSF	>150K GSF
Yellow Areas	<50K GSF	50K – 150K GSF	>150K GSF	TDM Results Plan not required – May be used upon Applicant request

<u>Employers</u>: Current requirements to file a TDM Plan for employers with more than 25 employees located in a TMD would be extended beyond the current TMDs to include employers located within the Red, Orange and Yellow Policy Areas.

<u>Existing Buildings</u>: The bill would maintain current authority already in the Code enabling MCDOT to require TDM Plans for existing buildings, under certain circumstances, and would extend that authority to existing buildings in the Red, Orange and Yellow Policy Areas.

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

Sources of Information. An analysis was made of Planning Department development information for the past six Fiscal Years (2013-2018). Data analyzed included commercial, mixed-use and residential development projects (excluding single family detached units). The analysis found that in the "Non-TMD" areas covered by the proposed legislation (i.e., Red, Orange and Yellow Policy Areas outside current TMDs), a total of approximately 3 million square feet of projects were completed over those six years.

Under current Code, the Transportation Management fee applies only within the current TMDs, with the rate and type of development to which it applies set each year by Council resolution. Since inception in 2006 the rate has been set at $.10 per square foot and the fee has been applied only to new commercial development completed since 2006. The $.10 fee recovers approximately 45 percent of the current TMD operating expenses.

Section 42A-29 of the current Code authorizes the Council to set the transportation management fee by resolution, and states that the rate must not generate more than what it costs to administer the TMD and to carry out TDM programs. This analysis presents an option for an increase in the fee to $.125 per square foot to cover a larger portion of the expenses within the TMDs. The proposal would be made under a separate action.

New Revenue Generated within Non-TMD Areas. Table 2 below projects revenue over six years in the Non-TMD areas, based on the current fee rate of $.10 per square foot and the possible increase to $.125 per square foot. This analysis assumes the same rate of development will occur in these Non-TMD areas over the six years following the effective date of the proposed bill as occurred during the prior six years. It also assumes the TDM fees are applied to both commercial and multi-unit residential development, as is permitted under current Code. The projected additional revenue, based on those assumptions, would be as shown in Table 2 below.

Table 2: Projected Development-based TDM Fee Revenue Over 6 Years

Areas Outside Current TMDs ("Non-TMDs")

Non-TMD	**Gross SF**	**Annual Revenue $.10**	**6-Year Total**	**Annual Revenue $.125**	**6-Yr Total**
New Developments Completed	3.0 M	300,000	**1,800,000**	375,000	**2,250,000**

Revenue Generated within Current TMDs. During the same six-year period of 2013-2018, the County's current TMDs experienced the growth shown in Table 3 below in commercial, mixed use and non-single-family residential development. Assuming the same rate of development occurs over the six years following the effective date of the proposed legislation, Table 3 shows projected revenue applying the current fee to commercial and multi-unit residential development in the existing TMDs.

Applying the fees to multi-unit residential development in TMDs would represent a change from current practice, whereby the fees have been applied thus far only to commercial development in the TMDs. However, existing Code authorizes Council to apply the fees to multi-unit residential projects. Since many areas now have residentially-based NADMS goals, requiring multi-unit residential projects to pay for TMD services seems to make sense. Table 3 also shows the projected revenue if the TDM fee is raised to $.125 per square foot.

Table 3: Projected Development & TDM Fee Revenue Over 6 Years – Areas Within Current TMDs

TMD	Gross SF	Annual Revenue $.10	6-Yr Total	Annual Revenue $.125	6-Yr Total
Completed					
Commercial	4.4 M	440,000	2,640,000	550,000	3,300,000
Multi-unit Residential	2.8 M	280,000	1,680,000	350,000	2,100,000
Total	**7.2 M**	**720,000**	**4,320,000**	**900,000**	**5,400,000**

Total Projected New Fee Revenue. Total expected revenue increase from new development projected to be completed within the next six years for the TMDs and Non-TMD areas is shown in Table 4.

Table 4: Projected Revenue from TDM Fees on New Completed Development - 6 Year Totals

Revenue		
	$.10 / sf	**$.125 / sf**
Subtotal–Current TMDs – Projected New Completed Development	**4,320,000**	**5,400,000**
Commercial – 4.4 M GSF over 6 years	*2,640,000	*3,300,000
Multi-unit Residential – 2.8 M GSF over 6 years	1,680,000	2,100,000
Subtotal – "Non-TMDs" – Development Outside Current TMDs	**1,800,000**	**2,250,000**
GRAND TOTAL	**$6,120,000**	**$7,650,000**
Total New Revenue from Projected New Completed Development (Based on Applying TDM Fees to New Commercial Space in Areas Currently Outside TMDs + New Residential Space in both Current TMDs & Areas Outside Current TMDs)	**$3,480,000**	**$4,350,000**
*TDM fees of $2,640K for projected new commercial development in current TMDs are already required under existing Code & Council-adopted current fee resolution. If the fee rate is increased by Council resolution to $ .125, then the commercial development would be required to pay that increased amount, totaling $3,300K.		

Total estimated expenditures over six years are analyzed in Section 3 below.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Revenues – See discussion in Section #2 above.

Expenditures

The primary expense related to expansion of TDM to a broader portion of the County will consist of staffing requirements. Estimated expenditures include costs for County staff within MCDOT and for contractor staff, which are detailed in Tables 6 and 7 below. It is anticipated there will be approximately $50,000 in expenses related to IT that are addressed in more detail in Section 5 below. Some funding also will be necessary for outreach events, promotional and marketing costs, and related efforts to ensure TDM is promoted throughout these areas. Those costs are estimated at $50,000 per year, or $300,000 over six years. New programs and services also would be required to meet NADMS goals. That is shown below as $314,160. The tables below summarize the various types of expenses over a six-year period. Contract outreach costs are phased in; the Red Policy Area starts in year 1, the Orange Policy Area starts in year 4 and the Yellow Policy Area starts in year 6.

Table 5: Total Estimated Basic Expenditures Over 6 Years

Expenditures	
2 Staff Positions Grade 23	1,128,000
Contract Outreach Staff	1,687,840
Sub Total	2,815,840
IT Support – Web Development *	50,000
Promotion, events & related	300,000
New Programs and Services to Meet NADMS Goals	**314,160**
Total	**$3,480,000**
* See IT discussion Section 5 below	

County Staff: Two Grade 23 staff positions would be required to implement the new TDM approach for new and existing projects on a broader basis, monitor compliance and manage contractor outreach to existing and future employers and building projects. Projected costs shown in Table 6 below assume FY19 mid-point of Grade 23 salary range plus benefits with annual salary adjustments. The total of $1,127,999 has been rounded to $1,128,000 for use in analyses included herein.

Table 6: Projected Staff Expenses Over 6 Years

FY20	169,340		FY23	191,505
FY21	178,772		FY24	198,208
FY22	185,029		FY25	205,145
			Total	**$1,127,999**

Contract Staff for Employer and Building Outreach: Cost analysis based on current average annualized contractor hourly rate of $88.94 for a typical TMD and approximately $1,370 expended annually per building or employer. Projected number and size of employers located within each Policy Area shown in Table 7 is based on a more detailed analysis of numbers within each Policy Area using data received from the Department of Finance. If growth occurs in the number and size of employers or additional buildings in each of these areas, the expenditures required would increase.

Table 7: Projected Contract Outreach Staff Expenses Phased In Over 6 Years

Policy Area	**Employers**	**Expenditure (x $1370)**	**6-Yr Total**	
Red / 25+ employees	102	139,740	838,440	6 yrs
Orange / 100+	195	267,150	801,450	3 yrs
Yellow / 200+	35	47,950	47,950	1 yr.
Total	**471**	**$571,290**	**$1,687,840**	

Note: Orange Policy Area expenditures are calculated to start in year 4 and Yellow Policy Area expenditures are calculated to start in year 6. The Red Policy Area does not include the City of Rockville.

Table 8: Comparison of New Expenditures to New Revenue Over 6 Years

	$.10 / sf	$.125 / sf
Total Contractor + County Staff	2,815,840	2,815,840
IT / ERP Systems (see #5)	50,000	50,000
Promotion, events & related	300,000	300,000
New programs & services to meet NADMS goals	314,160	*1,184,160
Subtotal Expenditures	**3,480,000**	**4,350,000**
"Non-TMD" Revenue (*Areas outside current TMDs*)	1,800,000	2,250,000
TMD Revenue – *Adding Multi-unit residential*	1,680,000	2,100,000
Subtotal – New Revenue	**3,480,000**	**4,350,000**
Net Revenue to Expense	**$0**	**$0**

Increased TMD fee rate would allow for increased new programs and services.

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

   Not applicable. This bill does not affect retiree benefits or group insurance costs.

5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

   The County will need to develop an online registration system for developers to submit basic information on Project-based TDM Plans, survey results, and biannual reports, and for monitoring compliance.

   Estimate based on experience with Department of Technology Services during development of the current online employer traffic mitigation plan (TMP) system is shown in the table below. For estimating purposes, because the exact amount of time required is not known, this figure has been rounded to $50,000 for purposes of this analysis.

Table 9: Estimated IT Development Cost

# of Staff	Salary ($121.372 x 2)	Hourly Rate	Weekly Hrs. Spent	Cost Per Week	12 Month Project Span
2	$242,744	$116.70	8	$933.60	**$46,680**

6. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

   The current rate of $0.10/sq. ft. on new commercial development in the existing TMDs has been in place since 2006. Council sets the amount of the fee and the types of development to which it applies by resolution each year as part of the budget process, and could establish a higher rate, increasing revenue. This analysis assumes the TDM fee would be applied to new multi-unit residential projects as well as new commercial projects, which Council already has the authority to do under current Code. Council also has the authority under current Code to apply the fee to existing buildings.

   There may be a longer-term need for additional County staff for monitoring and compliance of new and existing development. The need for any additional positions would be linked to the increased level of development and would be less than the net revenue expected from that additional new development.

7. **An estimate of the staff time needed to implement the bill.**

   Two full time Grade 23 staff (80 hrs./week) will be required to oversee contractors and collect and monitor development fees. In addition, administrative support from the Commuter Services Section OSC will be needed for approximately four hours per week.

8. **An explanation of how the addition of new staff responsibilities would affect other duties.**

   Impacts should be manageable but will affect the duties of the Planning Specialist regarding master plans, analyses of special programs and their implementation, and interactions with community groups and advisory committees; the Senior Marketing Manager in managing additional outreach contracts and staging County- and Region-wide TDM-related events on a broader basis (e.g., Bike to Work Day); the Program Specialist regarding fee collection activities and monitoring of TDM Plan filings; and on the Section Chief and OSC.

9. **An estimate of costs when an additional appropriation is needed.**

   See above analysis. Costs indicated would need to be covered by appropriations, but offsetting revenue from TDM fees will be sufficient to cover those costs.

10. **A description of any variable that could affect revenue and cost estimates.**

    The rate of development in both the current TMDs and non-TMD areas for completed projects could vary, impacting both costs and revenues. Over the last six years the rate of development of projects that would be covered by the new TDM approach has been approximately 25 projects per year. If this rate increases, additional County staff and/or contracted staff may be required beyond those assumed here. That additional development would result in corresponding increases in revenue which would be sufficient to cover those added costs.

11. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

    Private sector development activity is dependent on many factors, including the national and regional economy which, in the event of another recession, could affect the level of new development and projected revenue.

12. **If a bill is likely to have no fiscal impact, why that is the case.**

    The costs of implementing the bill are expected to be covered by additional revenue from TDM fees as shown in Table 8 above. Fee revenues are required to be used within the TMD in which they were generated. This additional revenue would be used to help cover the cost of added transportation services necessary to increase non-auto options and thus the success of TDM efforts, such as shuttle or circulator services and bikeshare-related expenses.

13. **Other fiscal impacts or comments.** – N/A

14. **The following contributed to or concurred with this analysis:**

Chris Conklin, Deputy Director, MCDOT
Sandra L. Brecher, Chief, Commuter Services
Jim Carlson, Planning Specialist, Commuter Services
Beth Dennard, Program Specialist, Commuter Services
Michelle Golden, Senior Marketing Manager, Commuter Services
Brady Goldsmith, Office of Management and Budget
Brandon Hill, MCDOT Director's Office
Christine McGrew, M-NCPPC
Jay Mukherjee, M-NCPPC

Richard S. Madaleno

Richard S. Madaleno, Jr., Director
Office of Management and Budget

3/15/19
Date

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VIA EMAIL

March 19, 2019

Councilmember Tom Hucker, Chair
and Members of the Transportation & Environment Committee
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Bill No. 36-18, Transportation Demand Management (TDM) Plan Amendments (the "TDM Bill") – Recommended Amendments to Preserve Existing Development Rights, Encourage Job Creation and Affordable Housing *(March 21st Worksession)*

Dear Chair Hucker and Members of the Transportation & Environment Committee:

On behalf of The Greater Bethesda Chamber of Commerce (the "Greater Bethesda Chamber"), we are submitting these comments for your review and consideration relative to the proposed comprehensive rewrite of the County's TDM Plan provisions (Chapter 42A of the County Code). The Greater Bethesda Chamber represents over 600 member businesses and nonprofit organizations in Montgomery County, many of which will be subject to the standards and requirements of the TDM Bill. We recommend that the TDM Bill be revised to: **(1) clarify the applicability of Section 42A-25 (TDM Plans for existing buildings); (2) ensure additional costs and demands in the form of TDM Fees are not imposed on Moderately Priced Dwelling Units ("MPDUs") and bioscience facilities consistent with other County policies; and (3) clarify the size of expansions to existing development that require submission of a TDM Plan.**

As an initial matter, we are concerned with the implementation of Council Staff's recommendation that the boundaries of the Bethesda and Friendship Heights Transportation Management Districts (TMDs) be consolidated with the Bethesda Chevy-Chase and Chevy Chase Lake Policy Areas to allow for a new larger Bethesda Chevy-Chase TMD. Prior to making a decision on this recommendation, we respectfully request that the Council consult with Bethesda Transportation Solutions and the Montgomery County Department of Transportation (MCDOT) to more closely evaluate the operational and financial impacts of making such a change to these existing TMDs.

1. Clarify the circumstances that require a TDM Plan in the context of existing development, and what strategies are required as part of a TDM Plan for existing development that is not otherwise redeveloping

The Greater Bethesda Chamber supports expansion of TDM measures throughout the Greater Bethesda region (particularly in urbanizing areas adjacent to transit) to alleviate traffic impacts and help produce favorable economic results. However, we are particularly concerned that the current draft of the TDM Bill would subject existing development to new requirements, which would unnecessarily create conflicts with existing business operations and private agreements between landowners and tenants. The application of these proposed TDM measures on a retroactive basis to existing development creates uncertainty and additional costs that will burden economic growth that is necessary for job growth in the County. Given that the current TMD program is much more limited geographically than what is proposed by the TDM Bill (and only includes larger new development projects), we are very concerned that the proposed expansion of these new requirements on a Countywide basis to both new and existing development would lead to an even lengthier and uncertain process that discourages commercial growth in the County. However, we believe that some of these concerns can be alleviated through the following revisions to proposed Section 42A-25.

A Section 42A-25(a) lacks a clear and objective standard for determining if an existing property is required to submit a TDM Plan

As currently drafted, there is no meaningful language that puts existing property owners on notice of the circumstances or conditions that would require an existing building to submit a TDM Plan. Proposed Section 42A-25(a)(1)(A) states that the "Director may require an owner of a nonresidential building in a District to submit a TDM Plan if … The Director finds that a plan ***is necessary to achieve the purpose of this Article***." (Emphasis provided). This provision lacks an objective standard that is necessary to provide adequate notice to existing property owners. Moreover, this provision is also capable of being applied in an arbitrary manner that will discourage economic growth in the County. In order to eliminate this uncertainty, we suggest that Section 42A-25(a)(1)(A) be replaced with a specified development size that requires an existing project to submit a TDM Plan.

B. Confirm that only the list of required strategies in Section II.A.2 of the Draft Executive Regulations apply to existing development projects that are required to submit a TDM Plan

As currently drafted, Section 42A-25 is also unclear as to the level of TDM Plan required of existing development projects. In light of the need to preserve existing business operations and minimize the impacts of new regulatory burdens on those businesses, Section 42A-25 should clearly indicate that only the following list of strategies can be required of existing development: (a) designation of a contact person; (b) distribution of information on transportation alternatives; (c) facilitating periodic presentations; (d) participation in the County's commuter survey; (e) providing a permanent display area; and (f) filling an annual report on TDM Plan. If additional strategies beyond these items (also identified on page 8 of the draft Executive Regulations) are required for existing development, it is likely that reinvestment in existing buildings will be discouraged to the detriment of the County's commercial tax base. Accordingly, we recommend that Section 42A-25 be modified to clearly state that only the required strategies identified in Section II.A.2 of the Executive Regulations can be applied to existing development through a TDM Plan.

2. Exempt MPDUs and Bioscience Facilities from imposition of TDM Fees

It is imperative that additional costs and demands associated with TDM measures not be imposed on development projects that are encouraged through other well-established County policies. More specifically, existing County law exempts MPDUs from the Development Impact Tax for Transportation Improvements and Development Impact Tax for School Facilities provisions (the "Impact Tax")[1]. Additionally, development projects that provide 25% MPDUs are exempt from the Impact Tax for purposes of all unregulated market rate units. In addition to affordable housing, existing County law exempts bioscience facilities from imposition of the Impact Tax. In light of the County's plan to open a satellite office in the Cambridge-Boston area aimed at recruiting bio-tech and life science companies, the Council should support consistent public policy that encourages additional bioscience employers to relocate to the County. However, Chapter 42A of the Montgomery County Code does not exempt MPDUs or bioscience facilities from the imposition of TDM Fees.

In order to better encourage positive economic impacts and affordable housing in Montgomery County, we request that the T&E Committee recommend exempting all gross square feet associated with MPDUs from

[1]In addition to exempting MPDUs from the Impact Tax, MPDUs are also exempt from the Park Impact Payment (for development projects in Downtown Bethesda) and the Washington Suburban Sanitary Commission's System Development Charge. The County should enact a similar policy with respect to TMD Fees.

imposition of a TDM Fee. Additionally, all gross floor area (market rate residential uses and commercial uses) of a project that provides a minimum of 25% MPDUs should be exempt from imposition of a TDM Fee. Based upon the reasons stated above, we recommend that additional language be added to proposed Section 42A-30 (entitled Transportation Demand Management Fee) as follows (proposed additional language in underline):

Sec. 42A-31. Transportation Demand Management Fee

****

<u>(f) Exemptions. A transportation demand management fee must not be imposed on:</u>

(1) <u>All gross square feet associated with any Moderately Priced Dwelling Unit built under Chapter 25A;</u>

(2) <u>All residential and commercial gross square feet in a development in which at least 25% of the dwelling units are Moderately Priced Dwelling Units built under Chapter 25A; and</u>

(3) <u>any Bioscience facility, as defined in Section 52-39 of the County Code.</u>

3. Clarify how expansions to existing development are treated under proposed Section 42A-26(b)

Section 42A-26(b) identifies various levels of development on a gross square foot basis that would trigger the need for a Level 1 TDM Basic Plan, Level 2 TDM Action Plan, or Level 3 TDM Results Plan. However, Section 42A-26(b) does not clearly state that the amount of gross square feet is based solely upon the new development proposed in the context of an expansion to existing development. In other words, Section 42A-26(b) does not distinguish between existing lawful development that predates the TDM Bill, and new development that is proposed in connection with an expansion to existing development. In order to ensure that the new requirements of the TDM Bill are being applied prospectively and consistently, we urge the T&E Committee to modify Section 42A-26 to include a provision relative to expansion development projects. For the reasons stated above, this is necessary to ensure that the County encourages economic development and revitalization that enhances the County's commercial tax base. We recommend that the following subsection (f) be added to Section 42A-26 (proposed additional language in underline):

(f) <u>Expansions to existing development</u>. <u>For purposes of calculating gross square feet under Section 42A-26(b), only the amount of new gross square feet that is proposed as part of the development application shall be considered for determining the type of TDM Plan required, if any. Any gross square feet that is lawfully in existence as of the time of the effective date of Bill No. 36-18 shall not be considered for purposes of applying Section 42A-26(b).</u>

In summary, we respectfully request that the TDM Bill be revised to better promote economic growth, affordable housing and bioscience uses in Montgomery County. Accordingly, the proposed TDM Bill should be modified in a manner that provides greater certainty to the business community, which is vital to spurring increased economic growth. The TDM Bill should also be modified to be consistent with existing County policies and Master Plan priorities for affordable housing and innovative bioscience uses. We thank you for the opportunity to submit these comments, and look forward to continuing to work with the T&E Committee, Council and other stakeholders on this important legislation. Thank you for your consideration of our remarks.

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Sincerely,

Jane Fairweather
Chair
(The Jane Fairweather Team)

Matthew Gordon
Vice President, Economic Development
(Linowes and Blocher LLP)

cc: Sandra Brecher, MCDOT Commuter Services
Glenn Orlin, Deputy Council Administrator
Casey Anderson, Chair, Montgomery County Planning Board
Gwen Wright, M-NCPPC Planning Director

Orlin, Glenn

From: Silber, Stacy P. <spsilber@lerchearly.com>
Sent: Wednesday, March 20, 2019 5:37 PM
To: Hucker's Office, Councilmember; Glass's Office, Councilmember; Riemer's Office, Councilmember; Navarro's Office, Councilmember; Orlin, Glenn; robert.drummond@montgomerycountymd.gov; 'Casey.Anderson@mncppc-mc.org'; gwen.wright@montgomeryplanning.org; amrandall@wellsandassociates.com; clkabatt@wellsandassociates.com; FE Waters; 'Downie, Brian'; Sally T. Modjeska (smodjeska@naiopdcmd.org)
Subject: Bill 36-18: Transportation Demand Management: T&E Worksession 2

Dear Councilmembers Navarro, Tucker, Riemer and Glass:

On behalf of NAIOP DC/MD, we commend Council staff on their March 14, 2019 Memorandum that clearly describes the proposed TMD Bill and questions/comments that have arisen regarding the proposed Bill. NAIOP DC/MD provides the following comments on Staff's March 14, 2019 recommendations:

1. Existing Buildings (Staff Memo p. 4-5). As discussed in previous correspondence, we do not believe that TDM measures and fees should apply to existing buildings. It sends the wrong message that laws can claw back and apply to existing buildings that relied on associated requirements/costs in place at the time of construction. We understand that Staff believes requiring a transportation demand management plan ("TDMP) is an incentive to help achieve NADMS goals. Thus, should the committee decide to claw back and apply these laws to existing buildings, there should be an option. We suggest that an option could be that if an existing building (multifamily or commercial) agrees to participate in a TDMP, no fees would be levied. In other words, this would be providing both a carrot and stick. We agree with the Planning Director's comment number 2 in her 3/12/19 Memo.

2. Survey Compliance Rates (Staff Memo p 6-7). Staff agrees that a 60% compliance rate is too high, and suggests 40%. We suggest a 25% compliance rate, which is greater than the 22% the County acknowledges to be the average response rate. Adopting a realistic compliance rate is important. In addition, while staff opines that there is no penalty for failing to meet this 60% (or 40%) compliance rate, as the law currently appears to be written per Section 42A-32 (Enforcement), one would be in violation and could be subject to penalties if one doesn't meet the adopted threshold.

3. Unbundling of Parking (Staff Memo p. 7-8). We appreciate Staff's distinction that unbundling of parking would only be required in red zones. We continue to suggest, however, that this be an option for consideration in a TDMP, rather than a mandate, to allow flexibility in different factual circumstances. We submit that this option should only be applied to new buildings. This should not apply to existing buildings, which have already built their parking infrastructure in reliance on certain assumptions and have loans in place based upon such assumptions. We also suggest that any unbundling requirement should only apply to commercial buildings, because of the unintended consequence of applying it to residential developments and impacts to "on-street" parking in surrounding residential neighborhoods.

4. 2% Carpool/Vanpool (Staff Memo p. 7). It is our understanding that DOT does not require carpool/vanpool spaces for residential development. This requirement should only be applicable to commercial buildings, where such is achievable.

5. TMD boundaries should not be reshaped as recommended by Staff (p. 10-11). We suggest that the TMDs mirror the boundaries that have already been established. With the expansion of TMD's to the remainder of the County, we suggest that those districts be distinct, because those communities are also distinct. Without further study, reshaping the boundaries, as recommended by Staff, could result in unintended consequences. For example, Staff suggests combining the Bethesda TMD with Friendship Heights, Chevy Chase and Chevy Chase Lake policy areas. Each of these communities is distinct in relation to services, funding and density. Funds raised by projects in a distinct district, should stay within the existing district in which it would be collected. To combine Chevy Chase, which has limited public transportation and is primarily single family

residential, with Bethesda, for example, would be in effect having Bethesda subsidize other distinct and separate areas of the County.

6. Grandfathering/Transition (circle 35). The grandfathering/transition allowances should be revisited to clearly state that the new TMD requirements do not apply to projects with prior approvals.

Thank you.

Stacy P. Silber, Attorney
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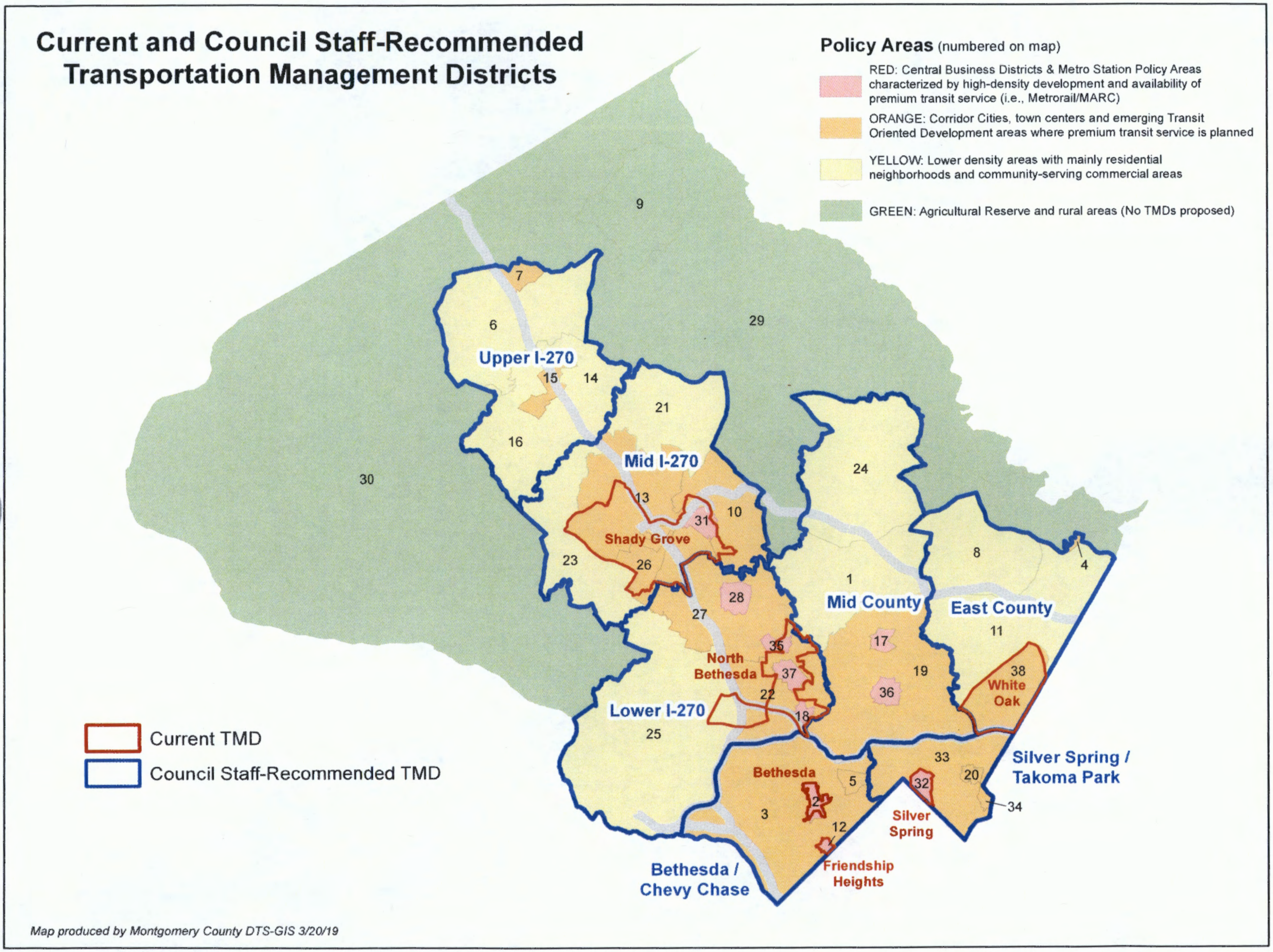
Current and Council Staff-Recommended
Transportation Management Districts
Policy Areas (numbered on map)
RED: Central Business Districts & Metro Station Policy Areas characterized by high-density development and availability of premium transit service (i.e., Metrorail/MARC)
ORANGE: Corridor Cities, town centers and emerging Transit Oriented Development areas where premium transit service is planned
YELLOW: Lower density areas with mainly residential neighborhoods and community-serving commercial areas
GREEN: Agricultural Reserve and rural areas (No TMDs proposed)
Current TMD
Council Staff-Recommended TMD
Upper I-270
Mid I-270
Shady Grove
North Bethesda
Lower I-270
Mid County
East County
White Oak
Silver Spring / Takoma Park
Silver Spring
Bethesda
Friendship Heights
Bethesda / Chevy Chase
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31
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Map produced by Montgomery County DTS-GIS 3/20/19
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