


**MEMORANDUM**

October 7, 2019

TO: Transportation and Environment Committee

FROM: <sup>GO</sup> Glenn Orlin, Deputy Director  
Robert H. Drummer, Senior Legislative Attorney 

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

PURPOSE: Make recommendations on the Bill and suggestions on the draft regulation

**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

Bill 36-18, Transportation Management - Transportation Demand Management Plan – Amendments, sponsored by Lead Sponsor Council President at the request of the County Executive, was introduced on November 13, 2018. A public hearing was held on December 4, 2018 at which five people testified on the Bill. 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.

**Background**

Bill 36-18 would expand the County's use of transportation demand management (TDM) to reduce traffic congestion and automobile emissions, support multi-modalism and achievement of non-automobile travel goals, enhance the efficient use of transportation infrastructure, and promote sustainability of existing and future development. The Bill would establish requirements for transportation demand management plans for new developments in certain areas of the County, make the County's approach more flexible and responsive to changing parameters in transportation and development, and increase accountability for results.<sup>1</sup>

Under existing law, TDM strategies are only required for businesses and development projects in transportation management districts (TMDs). Since traffic congestion is generated countywide, and many areas outside TMDs could benefit from these strategies, the Bill would apply TDM countywide.

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<sup>1</sup> Key search terms: #Traffic relief, traffic, transportation, transportation demand management, and multimodal transportation.

Negotiation of traffic mitigation agreements for new development projects can be protracted and jeopardize the timing of projects. Agreements under current Code provisions are fixed in time and do not allow flexibility to adapt to changing conditions. The Bill would streamline the process for approving TDM plans and increase accountability for results.

A work group comprised of representatives from the Executive Branch, Council staff, and M-NCPPC received input from expert consultants about experience in other jurisdictions and recommended several of the provisions included in the proposed bill. Former Executive Leggett's transmission memo describing the Bill is at ©39 and a PowerPoint presentation prepared by DOT staff is at ©42-85.

During the early evening of February 13, the Council received County Executive Elrich's recommendations regarding Bill 36-18, modifying some provisions of the bill that had been developed by the prior administration. His cover memo and marked-up version of the bill is attached at ©127-167. County Executive Elrich proposed:

1. reducing the thresholds for the size of developments in each Policy Area so that more developments would be required to achieve TDM goals;
2. authorizing the DOT Director to set Non-Auto Driver Mode Share (NADMS) targets for new projects at 5% above the area goals to increase the likelihood that area goals are met; and
3. setting parking management as a priority strategy for new developments that are not making progress meeting their goals.

### **Public Hearing**

There were five speakers at the public hearing. Planning Board Chair Casey Anderson generally supported the Bill. Chair Anderson's letter supporting the Bill and recommending some changes is at ©96-97. The Planning Board recommended applying TDM to land uses that generate large travel demand during off-peak periods, such as religious organizations. The Board also suggested an independent process to audit performance of TDM plans, conforming existing TDM boundaries with parking lot districts, urban districts, and SSP policy areas, and to reconsider the use of the term "rewards" to describe public actions when a TDM plan meets its performance goal.

Daniel Wilhelm, Greater Colesville Citizens Association President, supported the goals of the Bill, but suggested some amendments (©98-100). Mr. Wilhelm commented that:

1. there were some inconsistencies between the Executive's transmittal letter and the Bill;
2. the increase in requirements for developments where premium transit is planned but does not exist is too strict;
3. the Bill is unclear as to what existing building owners must do;
4. certain types of situations should be excluded from TDM requirements; and
5. the definition of peak period is too open ended.

Sylke Knuppel, testifying on behalf of the Maryland Building Industry Association (MBIA), supported the goal of reducing traffic congestion but expressed concerns (©101-102). MBIA opposes the concept that a builder can be held responsible for a TDM plan long after selling the property, suggested delaying the time for execution of a TDM plan, and expressed concern that the additional fees would hamper future development of market-rate affordable housing.

Sherri Mohebbi supported the Bill (©103).

Stacy Silber, an attorney with Lerch, Early & Brewer, representing the National Association of Industrial and Office Properties (NAIOP) DC/MD's Advocacy Committee, supported the goals of the Bill but warned about unintended consequences. ©104-105. Ms. Silber recommended moving away from penalties and moving more toward rewards to affect behavior. Ms. Silber opposed applying the law to existing businesses, recommended restricting the use of fees to projects in the same district, removing the assessment of fees based on the number of customers, employees, visitors or patients, and argued that the proposed 60% return rate on surveys is untenable.

C. Robert Dalrymple also submitted written testimony on behalf of Linowes and Blocher supporting the Bill's goals but recommending some amendments (©106-113). Mr. Dalrymple suggested:

1. modifying the timelines for review and approval of a TDM plan;
2. clarifying or eliminating the requirements on existing non-residential and multi-unit residential buildings;
3. limiting a TDM plan requirement to buildings that need to do a traffic study;
4. clarifying the application of a TDM requirement to the expansion of an existing building;
5. clarifying that the TDM fee includes the cost of promotional material printed by MCDOT;
6. clarifying that the transitional provision applies to projects with a preliminary plan or site plan application accepted by M-NCPPC; and
7. identifying more detail for Level 2 and Level 3 TDM plan requirements.

William Kominers also submitted extensive written comments and recommendations for the Bill at ©115-125.

## **Issues**

***General approach to this review.*** The proposed revisions of the County's transportation demand management program would be contained in four separate Council actions during the next several months: (1) Bill 36-18; (2) the Executive Regulation following from the version of Bill 36-18 ultimately enacted; (3) a resolution identifying a new set of Transportation Management Districts (TMDs), their geographic scope, and the composition of their advisory committees; and (4) the TDM fee schedule, which will be included in a revised version of the resolution that sets transportation fees, charges, and fares. The issues raised in this staff report by members of the public and by staff touch on the Bill and regulation; the structure of the districts and the TDM fee schedule will be addressed in the future, after the law and regulation have been enacted. The Committee has asked for—and received—a draft of the associated Executive Regulation, and

indications as to how certain aspects of the TMD structure and fees might be applied along with the Bill.

Rather than proceeding line-by-line through the Bill, this report addresses the major issues raised in the hearing testimony and subsequent correspondence, including issues raised in response to County Executive Elrich's version, as well as Council staff's analysis and recommendations. Once the Committee has given its guidance on these issues, Council staff will prepare an amended Bill in subsequent weeks for the Committee's review.

This report references provisions in the "Leggett bill" (Bill 36-18 as introduced), the "Leggett reg" (the draft regulation associated the Leggett bill), the "Elrich bill" (how the County Executive would revise Bill 36-18 as introduced), and the associated "Elrich reg." "Both bills" and "both regs" are used for provisions that are common to both versions.

***Non-auto-driver mode share (NADMS) goals.*** The primary quantitative objective of TDM is to achieve NADMS goals in Red, Orange, and Yellow policy areas in the County. Many master and sector plans stipulate the NADMS goal(s) in their respective areas, based on what is necessary to bring each of the areas into land use/transportation balance at build-out. The goals are shown in the chart on ©172: some areas have goals that apply only to employees arriving or leaving work (i.e., Silver Spring CBD); some plans also have goals for residents living in that area commuting to work (i.e., North Bethesda, Chevy Chase Lake); and some blend the two into one goal (i.e., Bethesda CBD). Both regs would state that where no numerical NADMS goals have been established, DOT will set as the goal a 5% improvement over the current measured NADMS, using data from Planning staff's transportation model.

**Council staff recommends that the next Subdivision Staging Policy—which, by law, must be adopted by November 15, 2020—include explicit NADMS goals for employees and residents for every Red, Orange, or Yellow area that currently does not have a goal, or a goal only for employees.** The new TDM regime would apply to both multifamily housing and non-residential uses. Therefore, there could be separate goals for employees and residents, or a blended goal between the two. If the full TDM package of Council actions is completed prior to the adoption of the next SSP, the "5% improvement" would be an interim goal that would be in place only until then.

***Should TDM be required of existing development?*** The current TDM law, which has been in effect since 2006, has required any employer of 25 or more employees within a transportation management district (TMD)—even those that were in existence before creation of the TMD—to submit a traffic mitigation plan consistent with the NADMS goal of the TMD and to report annually on progress in implementing that plan. Two or more employers in the same building or complex can submit a consolidated plan. There is no requirement for the plan to achieve the area NADMS goal. The rationale for this requirement is that the very act of preparing a plan will inform employers of the many options and resulting benefits available to them and their employees of transit, ridesharing, and other forms of alternative transportation. Furthermore, simply having a plan and reporting annually would be an incentive (albeit a soft one) to make progress towards achieving a higher NADMS.



Both bills would broaden the requirement to submit a traffic mitigation plan, now to be called a TDM plan, to include employers of 25 or more in any Red area, including those that do not currently have TMDs<sup>2</sup>, employers of 100 or more in Orange areas, and 200 or more in Yellow areas. For portions of existing TMDs that extend beyond a Red area, the 25-or-more rule would still apply.<sup>3</sup> A requirement for these employers under existing law, which both Bills would continue, is to submit an annual report on the strategies used to implement the TDM plan, including progress achieved under the plan. Furthermore, in the Red, Orange, and Yellow areas the owners of a non-residential building or a residential building or complex with at least 100 dwelling units would also be required to submit a TDM plan and report annually on implementation. The new requirements are not onerous. As with current Code provisions, both bills require DOT to offer to help employers and building owners develop TDM plans, and to help revise them if they do not meet the requirements of the Law.

**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. It is entirely an Orange area, so the 100-or-more rule should apply.

Because the amount of potential new development is dwarfed by the amount of existing development, it will be virtually impossible to achieve an area's NADMS goals without extremely onerous and possibly unrealistic requirements levied on new development. In other words, the math doesn't work unless the NADMS from existing development is also raised significantly. One concept that was discussed in the interagency work group but did not find its way into either version of the Bill is a regular financial contribution from existing development. Consider that what is required of new development in a TMD is both: (1) to undertake a package of one or more actions taken to mitigate traffic demand and to increase NADMS within its development and, often, in the surrounding area to a degree; and (2) to pay an annual TDM fee to support alternative transportation in the TMD. The TDM fee helps to pay for the TMD staff and consultants that market ridesharing, biking, telework, etc., and to engage in public-private partnerships to buy down transit fares, such as the Fare Share Program. Most annual TMD funding comes from the Mass Transit Fund, i.e., general taxpayers. Given the general budget stringency over the past dozen years, the total funding for TMD operations and programs has been slim, meaning that the efforts to market and financially incentivize ridesharing has been anything but robust.

Many of these developments were approved more than a decade ago, where the developer has long left the scene and the building owner has since been paying the annual TDM fee. The question is: Why is it then that some building owners should pay for annual TMD operations and others should not? The products of TMD operations benefit all in a TMD.

**Council staff concurs with both Bills to authorize levying a TDM fee on all non-residential and multi-family residential development in Red, Orange, and Yellow areas.** Applying a TDM fee to all existing nonresidential development and multi-family residential development, which would be authorized under either version of the Bill<sup>4</sup>, would broaden the fee base so widely that *the fee could be lowered substantially from the current annual rate of \$0.10/sf and yet provide considerable additional resources for TDM incentives.*

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<sup>2</sup> That's you, employer of 25 or more in Wheaton CBD or Glenmont.

<sup>3</sup> That's you, employer of 25 or more in Rock Spring Park, Montgomery Mall area, and R&D Village.

<sup>4</sup> Section 42A-31(a)(2).

AOBA and NAOIP oppose levying fees on existing buildings. They note that the current year budgets of building owners do not account for having to pay an additional fee. They also believe the fee would reinforce concerns about the ability and willingness to do business in the County. However, applying a lower fee to all buildings would level the playing field between the “old” existing buildings erected before a TMD was established and “newer” existing buildings erected afterwards, which have been paying the (higher) fee. Regarding the shock to the system of a new (albeit low) fee, it could be phased in over 2-3 years.

**Requirements of new development projects.** Both bills have three tiers of requirements for project-based TDM plans for new development. Both bills would not have these requirements apply to any project consisting solely of single-family-detached units, because marketing TDM to them is not cost-effective nor would there be specific programs (shuttles, transit fare buy-downs, etc.) that would be geared to individual homes. The same observation is true for single-family-attached (townhouse) developments, so they, too, should be exempt. **Council staff recommends that the requirements for Level 1, 2, and 3 plans not apply to any development consisting solely of single-family housing (i.e., developments solely consisting of detached houses, townhouses, or a mixture of the two), nor should they be subject to the annual TDM fee.** On the other hand, if such housing is part of a larger development that includes multi-family housing, there is likely to be a homeowners or condominium association and common meeting areas, and so TDM outreach could be effective. In these cases, the single-family housing units would be part of these requirements and be subject to the TDM fee.

One of the provisions in the Leggett bill that was decried by the development industry was requiring that project-based TDM plans be approved by DOT before Planning Board approval of the development. The concern was that the 90-day review period for subdivision review does not leave enough time for developers to negotiate the terms of the project-based TDM plan with DOT. The Elrich bill cures this by instead requiring DOT approval before the developer obtains a building permit. The comments on the Elrich bill from the development industry acknowledge this fix.

The requirements of each tier are noted in the Bills, summarized in the table on ©199-200, and described in more detail in the draft regulation:

Level 1 Basic plans require of the applicant/owner:

- Appointment of a Transportation Benefits Coordinator, who basically would serve as DOT’s facilitator on site to distribute information on commuting options and coordinating with DOT to conduct on-site outreach efforts, ensuring participation in commuter surveys, attending occasional training sessions, and other duties described in the draft reg on ©179-180.

Many have noted that the Bills’ objective in Section 42A-28(e) of achieving a 60% response rate on the commuter surveys is too high, especially since the average response rate for these surveys has been 22%. While there is nothing wrong with setting a high goal—and there is no penalty for an employer or building not achieving it—it would be better to avoid setting an unrealistically high goal. **Council staff recommends reducing the response rate goal to 40%.**

- Provision of on-site space for outreach and promotion of TDM.

- Displays of real-time transit and related information.
- While neither version of the Bill includes other requirements, each version of the draft reg notes that the “Sample Menu of TDM Strategies” requires the applicant/owner: (1) to provide less than the maximum amount of parking allowed by the Zoning Ordinance; (2) to unbundle parking, that is, no longer require a buyer or lessee to commit to purchasing or leasing a minimum number of parking spaces; and (3) provide at least 2% of spaces for preferential carpool/vanpool parking (©182). Furthermore, the “Sample Menu” indicates that the first two are requirements only in Red areas (©189). Therefore, the Bill and the two sections of the draft reg are currently inconsistent with each other.

Parking management is one of the most effective set of strategies for achieving NADMS, especially where there are readily available transit options. NAIOP opposes prohibiting bundling but acknowledges that unbundling is a viable business practice where commute options are abundant. Planning staff notes that building-based parking management is not applicable to those buildings in parking lot districts that have no private parking; the staff recommends stipulating that parking strategies *may* be part of a TDM plan for new developments.

**Council staff recommends that the provisions in the “Sample Menu” apply, and that the Bill and Section III.C.1.e of the draft reg be revised accordingly: to require Level 1 plans to provide less than maximum parking, prohibit the building from requiring bundled parking, and to provide at least 2% of spaces for carpools/vanpools. However, these requirements would come with two caveats: (1) providing less than maximum parking and prohibiting bundling by a building owner would be required only of buildings in Red areas that have their own private parking; and (2) bundling required by a building owner currently could continue for the life of an existing lease. These provisions are highly recommended elsewhere, but they would not be required.**

Level 2 Action plans require of the applicant/owner in Orange and Yellow areas all the elements of Level 1 plans, plus:

- Identifying specific actions to be implemented by the applicant/owner to achieve the NADMS goals. Preferential carpool/vanpool parking for at least 2% of the spaces is required. However, providing less than the maximum parking under the Zoning Ordinance and prohibiting bundling of parking are not required. The Leggett bill requires that a project-based Action Plan demonstrate over time that it is making measurable progress towards NADMS goals. The Elrich bill would have such plans make measurable progress to 5% above the NADMS goals. **Council staff concurs with the language in the Leggett bill;** once a goal is set for a project, that is what should be attained.<sup>5</sup>

For Level 3 Results plans, the Leggett bill calls for the DOT Director to establish a project-based goal to be higher than or lower than the area’s NADMS goal. This reflects the reality that developments very close to a transit station have higher NADMS than those up to a half-mile away. The Elrich bill would put parameters on this variation: it would allow the project’s goal to be up to 5% higher or down

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<sup>5</sup> In both bills, Section 42A-26(c)(2) states that a project is contributing towards achieving commuting goals if the *biannual* surveys of building occupants demonstrate increased on-site NADMS (*emphasis, ours*). The surveys are done every two years, not twice a year. This term should be replaced with *biennial*, as in Section 42A-26(c)(2)(D).

to 5% lower than the NADMS for the area. Including parameters would provide a degree of predictability for a potential developer. However, the 10% spread (between 5% higher to 5% lower) is too small: research has shown that NADMS falls off dramatically after a few blocks' walk from a transit station. **Council staff recommends that the DOT Director set the project's goal—whether it be for a Level 2 or Level 3 plan—up to 10% higher or down to 10% lower than the NADMS for the area.**

- Committing funding to implement the specific actions. The annual commitment must be at a level as much as the equivalent of 50% of the applicable TDM fee.<sup>6</sup>
- Self-monitoring of progress. The Elrich bill notes that this would be in addition to any monitoring DOT chooses to do.
- Submitting a biennial progress report.
- Adding or substituting strategies if the initial set of strategies have not made progress towards the goal within 4 years after final occupancy. At this stage, the Elrich bill would require that parking management strategies be implemented. The Sample Menu in the draft reg lists several such strategies, including providing less than the maximum parking under the Zoning Ordinance and prohibiting owner-required bundling of parking, but also eliminating assigned or reserved parking, charging market parking rates for employees or residents, and cashing out parking. The Elrich bill also explicitly mentions that limiting the spaces available to employees commuting during peak periods may be used as a strategy. The draft reg says that other strategies suggested by the owner that are not listed in the law or reg—including other parking management strategies—may be used, if approved by DOT.
- Committing a higher level of funding if the project still has not made progress towards the goal within 6 years after final occupancy. At this point the commitment must be equivalent to (not up to 50% of) the applicable TDM fee. This higher funding commitment is required annually until the project shows that it is contributing to the goal and has sustained that level for at least 3 years.

If a project has contributed towards achievement of the NADMS goal for 10 successive years, then its TDM fee would be halved for each subsequent year that it maintains that level.

The primary objection raised to the Level 2 Action plan measures by NAIOP, AOBA, the Montgomery County Chamber of Commerce, and others are the Elrich bill's requirement that parking management *must* be part of the solution if progress is not made after 4 years, and they especially object to requiring limiting parking spaces and prohibiting bundling. The Planning Director also recommends against requiring parking management measures, preferring the Leggett bill language that allows more flexibility. **Council staff concurs with the Planning Director: parking management measures should be among the options, but they should not be required.** It is very probable that many will gravitate to parking management strategies on their own, given their effectiveness.

A further note. If the Council were to agree with Council staff's recommendation that TDM fees apply to "old" existing, "newer" existing", and new development, and if the resulting

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<sup>6</sup> The draft reg says the commitment should be *at least* 50% of the TDM fee, but DOT staff has clarified that this is incorrect.

rates are lower than they are now, then the funding commitments and performance incentives for Level 2 (and Level 3) plans may need to be higher multiples of the fee. For example, if the fee, on average, were to drop to \$0.05/sf GFA, then the required investment after 4 years would need to be equivalent to the fee (not half as much), and the required investment after 6 years would need to be twice as much (not equivalent to) the fee, for the investment to be the same size.

Level 3 Results plans require of the applicant/owner in Red areas all the elements of Level 1 plans, and the applicant/owner in Orange areas all the elements of Level 1 and 2 plans<sup>7</sup>, plus:

- In Red and Orange areas, including secure bicycle parking and providing showers, lockers, and changing rooms are required.
- Committing funding equivalent to twice the TDM fee if the project has not actually achieved the goal within 6 years of final occupancy, not merely making progress towards the goal, as in a Level 2 plan.
- Committing funding equivalent to 4 times the TDM fee if the project has not achieved the goal within 8 years of final occupancy.
- Independent monitoring every 2 years until the project’s goals are achieved. Once the goals are achieved, the Elrich bill would require independent monitoring every 6 years hence, and if no longer meeting the goals, then the monitoring would return to the biennial cycle until they were met again.

The Leggett and Elrich bills recommend different size thresholds for Level 1 Basic, Level 2 Action, and Level 3 Results plans. Their respective proposals are displayed in the following tables:

Thresholds in Leggett Bill (in square feet of gross floor area)

SSP Area Type	No requirements	Level 1 Basic	Level 2 Action	Level 3 Results
Red	< 25,000	25,000-100,000	N/A	>100,000
Orange	<50,000	50,000-100,000	>100,000-200,000	>200,000
Yellow	<75,000	75,000-150,000	>150,000	Not Required

Thresholds in Elrich Bill (in square feet of gross floor area)

SSP Area Type	No requirements	Level 1 Basic	Level 2 Action	Level 3 Results
Red	N/A	≤25,000	N/A	>25,000
Orange	<25,000	25,000-75,000	>75,000-150,000	>150,000
Yellow	<50,000	50,000-150,000	>150,000	Not Required

The business groups support the ranges in the Leggett bill, as they are deemed less onerous.

The Planning Director has shared an analysis showing ranges that coincide with the actual clustering of plan sizes for preliminary plans received since 2015. In the Red areas, these ranges fall between those in the Leggett and Elrich bills. In the Orange areas they are the same as in the Elrich bill, except that developments in the 150,000-200,000 range would require Level 2 plans, not Level 3 plans. In the Yellow areas they are roughly comparable with the Elrich bill.

<sup>7</sup> Level 3 plans are not required in Yellow areas.

Clustering by Plan Sizes (in square feet of gross floor area)

<b>SSP Area Type</b>	<b>No requirements</b>	<b>Level 1 Basic</b>	<b>Level 2 Action</b>	<b>Level 3 Results</b>
Red	<20,000	20,000-80,000	N/A	>80,000
Orange	<25,000	25,000-75,000	>75,000-200,000	>200,000
Yellow	<45,000	45,000-155,000	>155,000	Not Required

**Council staff recommends the following ranges in the table below (in square feet of gross floor area), which are between those in the Leggett and Elrich bills for each area type:**

<b>SSP Area Type</b>	<b>No requirements</b>	<b>Level 1 Basic</b>	<b>Level 2 Action</b>	<b>Level 3 Results</b>
<b>Red</b>	<b>&lt;20,000</b>	<b>20,000-40,000</b>	<b>N/A</b>	<b>&gt;40,000</b>
<b>Orange</b>	<b>&lt;40,000</b>	<b>40,000-80,000</b>	<b>&gt;80,000-160,000</b>	<b>&gt;160,000</b>
<b>Yellow</b>	<b>&lt;60,000</b>	<b>60,000-150,000</b>	<b>&gt;150,000</b>	<b>Not Required</b>

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Bill No. 36-18  
Concerning: Transportation  
Management - Transportation  
Demand Management Plan -  
Amendments  
Revised: December 12, 2018 Draft No.2  
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Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
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Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President at the Request of the County Executive

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**AN ACT** to:

- (1) expand transportation demand management to reduce traffic congestion and automobile emissions, support multi-modalism and achievement of non-automobile travel goals, enhance the efficient use of transportation infrastructure, and promote the sustainability of existing and future development;
- (2) establish the requirements for a transportation demand management plan for development in certain areas of the County; and
- (3) update the law governing transportation management in the County.

By amending

Montgomery County Code  
Chapter 42A, Ridesharing and Transportation Management  
Sections 42A-21, 42A-22, 42A-23, 42A-24, 42A-25, 42A-26, 42A-27, 42A-28, 42A-29,  
and 42A-30

By adding

Montgomery County Code  
Chapter 42A, Ridesharing and Transportation Management  
Sections 42A-31 and 42A-32

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Sections 42A-21, 42A-22, 42A-23, 42A-24, 42A-25, 42A-26, 42A-**  
 2 **27, 42A-28, 42A-29, and 42A-30 are amended and Sections 42A-31 and 42A-32**  
 3 **are added as follows:**

4 **42A-21. Definitions.**

5           In this Article, unless the context indicates otherwise:

6           *Alternative work hours program* means any system that shifts the workday of  
 7 an employee so that the workday starts or ends outside of a peak period,  
 8 including:

- 9           (1) compressed workweeks;
- 10           (2) staggered work hours involving a shift in the set work hours of  
 11 an employee at the workplace; or
- 12           (3) flexible work hours involving individually determined work  
 13 hours under guidelines established by the employer.

14           *Bundling of parking* means a requirement that a prospective purchaser or  
 15 tenant purchase or lease a minimum number of parking spaces as a  
 16 precondition to buying or leasing space or renewing a lease in a commercial  
 17 or residential building. Bundling of parking does not include a parking space  
 18 physically integrated with an individual leasable or sales unit if the parking  
 19 space is dedicated to that unit and can be directly accessed through that unit.

20           *Carpool* means a motor vehicle occupied by 2 or more employees traveling  
 21 together.

22           *Commute* means a home-to-work or work-to-home trip. A commute may  
 23 have brief intervening stops, but the primary purpose must be travel between  
 24 work and home.

25           *Date of final occupancy* means the earlier of:

- 26           (1) the date on which 80 percent of a building or project has been  
 27 leased or sold; or



28                   (2)   two years after the first final use and occupancy certificate has  
 29                                   been issued.

30           *Department* means the Department of Transportation.

31           *Director* means the Director of the Department of Transportation or the  
 32           Director’s designee.

33           *District* means a transportation management district created under this Article.

34           *Employee* means a person hired by an employer, including a part-time or  
 35           seasonal worker or a contractor, reporting to or assigned to work on a regular  
 36           basis at a specific workplace controlled by that business or organization,  
 37           including a teleworker.

38           *Employer* means any [public or private] business or government entity,  
 39           including the County, employing 25 or more [employees and having a  
 40           permanent place of business] employees including contractors at a worksite  
 41           within [in] a district. [The maximum number of employees on the largest shift  
 42           working in a district determines the size of the employer.] Employer does not  
 43           include:

- 44                   (1)   a [contractor, business, or government entity with no permanent
- 45                                   place of business in a district] home based business;
- 46                   (2)   [a home-based business;
- 47                   (3)] a business with no employees housed at that work site;
- 48                   [(4) any business with no permanent workplace or location;] or
- 49                   [(5)] (3) any government agency not required by law to follow
- 50                                   County regulations.

51           [Growth Policy means the most recently adopted Growth Policy under Section  
 52           33A-15.]

53           *Peak period* means the hours of highest transportation use in a district each  
 54           workday, as defined in the resolution creating a district.

55 *Planning Board* means the Montgomery County Planning Board of the  
56 Maryland-National Capital Park and Planning Commission.

57 *Project-based TDM Plan* means a TDM plan for a new development project.

58 *Resident* means an adult domiciled in the relevant area.

59 *Single-occupancy vehicle* means a motor vehicle occupied by one employee  
60 for commuting purposes, other than a two-wheeled vehicle.

61 *Subdivision Staging Policy* means the most recent policy adopted under  
62 Section 33A-15.

63 *Telework* means a work arrangement where a manager directs or permits an  
64 employee to perform usual job duties away from the central workplace in  
65 accordance with established performance expectations and agency-approved  
66 or agreed-upon terms.

67 *Traffic Mitigation Plan or TMP* means a set of strategies designed to  
68 implement TDM at an existing commercial or residential building or by an  
69 employer in an existing building.

70 *Transportation demand management or TDM* means any method of reducing  
71 demand for road capacity, especially during a peak period, including an  
72 alternative work hours program, carpools, vanpools, subsidized transit [pass]  
73 passes, preferential parking for carpools or vanpools, improved bicycle and  
74 pedestrian access and safety, public transportation, and [or peak period] a  
75 parking charge.

76 *Transportation Demand Management Plan or TDM Plan* means a set of  
77 strategies designed to implement TDM for a new or existing building, a new  
78 or existing development project, or an employer.

79 *Transportation management organization* means a public, nonprofit private,  
80 or public-private firm, corporation, or instrumentality created or contracted to  
81 manage or coordinate transportation demand management programs.

82 *Vanpool* means a [van occupied by at least 8 employees traveling together]  
 83 vehicle that has the capacity for 6 or more passengers in addition to the driver  
 84 if:

- 85 (1) passengers occupy 50% or more of the seats at any point during  
 86 the trip; and
- 87 (2) the vehicle is used to transport employees between their  
 88 residences, designated locations, and their place of employment  
 89 for 80% or more of the miles the vehicle is driven.

90 *Workplace* means the place of employment, base of operations, or  
 91 predominant location of an employee.

92 **42A-22. Findings and purposes.**

- 93 (a) New economic development is important to stimulate the local  
 94 economy. Focusing new development in high transit-service areas is  
 95 an important County land use and economic development objective.
- 96 (b) Limited transportation infrastructure, traffic congestion, inadequate  
 97 access to transit, bicycle and pedestrian [access] facilities, and safety  
 98 issues impede the County's land use and economic development  
 99 objectives.
- 100 (c) Transportation demand management, in conjunction with adequate  
 101 transportation facility review, planned capital improvement projects,  
 102 and parking and traffic control measures, will:
- 103 (1) help provide sufficient transportation capacity to achieve County  
 104 land use objectives and permit further economic development;
- 105 (2) reduce the demand for road capacity, [and] promote [traffic]  
 106 safety for all users of transportation infrastructure, and improve  
 107 access to transit, bicycle and pedestrian [access] facilities; and

108 (3) help reduce vehicular emissions, energy consumption, and noise  
 109 levels.

110 (d) Improved traffic levels and air quality, and a reduction in ambient noise  
 111 levels will help create attractive and convenient places to live, work,  
 112 visit, and conduct business.

113 (e) Transportation demand management will equitably allocate  
 114 responsibility for reducing single-occupancy vehicle trips among  
 115 government, developers, employers, property owners, renters, and the  
 116 public.

117 (f) Transportation demand management should be consistent with any  
 118 commuting goals set in the [Growth] Subdivision Staging Policy,  
 119 Master Plans, and Sector Plans. TDM should [and] foster coordinated  
 120 and comprehensive government, private industry, and public action to:

121 (1) make efficient use of existing transportation infrastructure;

122 (2) increase transportation capacity as measured by numbers of  
 123 people transported;

124 [(2)] (3) reduce existing and future levels of traffic congestion by  
 125 moving more people in fewer vehicles;

126 [(3)] (4) reduce air and noise pollution; and

127 [(4)] (5) promote traffic safety together with transit, [and]  
 128 pedestrian and bicycle safety and access for all users.

129 (g) Transportation demand management will substantially advance public  
 130 policy objectives. Adoption of this Article is in the best interest of the  
 131 public health, safety, and general welfare of the County.

132 **42A-23. Districts; authority of the Department and Planning Board.**

133 (a) The County Council by resolution may create a transportation  
 134 management district [in] (TMD) in a policy area where the Subdivision

135 Staging Policy requires transportation review. A district may be formed  
 136 from one or more Subdivision Staging Policy areas, even if they are not  
 137 contiguous. [:

138 (1) a Metro station policy area, which may include adjacent areas  
 139 served by the same transportation network; or

140 (2) an area where transportation review applies under the Growth  
 141 Policy.]

142 (b) The Department may take actions necessary to achieve effective  
 143 transportation demand management in each district, on its own or by  
 144 contract with any employer, transportation management organization,  
 145 or other party, including:

146 (1) regulating or limiting public parking, by regulation adopted  
 147 under method (2);

148 (2) prohibiting bundling of parking in new developments;

149 (3) monitoring and assessing traffic patterns and pedestrian access  
 150 and safety;

151 [(3)] (4) adopting traffic and parking control measures;

152 [(4)] (5) providing transit, shuttles, circulator services, or other  
 153 transportation services;

154 (6) implementing approved transportation-related capital projects;

155 [(5)] (7) promoting or implementing transit and ridesharing  
 156 incentives;

157 [(6)] (8) promoting regional cooperation between the County and  
 158 other government agencies;

159 [(7)] (9) creating cooperative County-private sector programs to  
 160 increase ridesharing and transit use; and

161           ~~[(8)]~~ (10) conducting surveys, studies, and statistical ~~[analysis]~~  
 162                           analyses to determine the effectiveness of ~~[traffic mitigation]~~  
 163                           transportation demand management plans and employer and  
 164                           building owner efforts.

165           (c) In each transportation management district, sole source contracts may  
 166                           be signed with, or funds granted to, one or more transportation  
 167                           management organizations to carry out transportation demand  
 168                           management programs that the Department could otherwise carry out,  
 169                           under Chapter 11B.

170           (d) The Department and the Planning Board may, in accordance with this  
 171                           Article and other applicable law, jointly or separately impose  
 172                           transportation demand management measures as conditions on the  
 173                           Board's approval of development in any district.

174           (e) Each district may have a Transportation Management District Advisory  
 175                           Committee if the Executive by regulation decides a Committee is  
 176                           necessary to carry out this Article or if the Council creates a Committee  
 177                           by resolution. The Executive or Council may designate any existing  
 178                           advisory body appointed by the Executive and confirmed by the  
 179                           Council to serve as a Transportation Management District Advisory  
 180                           Committee. The Executive must appoint, and the Council must  
 181                           confirm, members of any Advisory Committee. The County must not  
 182                           compensate members of an Advisory Committee for their services.  
 183                           Advisory Committee members, not otherwise public employees as  
 184                           defined in Chapter 19A, are not subject to the financial disclosure  
 185                           provisions of that Chapter.

186   **42A-24. ~~[Traffic mitigation plans]~~ Transportation Demand Management**  
 187   **Plans for Employers.**

188 (a) Transportation Demand Management (TDM) Plans for an Individual  
189 Employer.

190 (1) The Director must require an employer subject to this Section to  
191 submit a TDM Plan meeting the requirements of this Section [If  
192 an employer is subject to this Section, and] if the Council by  
193 resolution or in the [Growth] Subdivision Staging Policy has  
194 approved the use of traffic mitigation plans or TDM Plans in a  
195 given district[, the Director must notify the employer by letter  
196 that the employer must submit a traffic mitigation plan meeting  
197 the requirements of this Section].

198 [(b)] (2) Upon written request from the Director, an employer  
199 within a district must provide the Director with the number of  
200 full-time and part-time employees working for that organization  
201 at any workplace within the district.

202 (3) An employer [who employs 25 or more employees in a district  
203 at any time within one year before receiving notice under  
204 subsection (a)] must submit a [traffic mitigation plan] TDM Plan  
205 to the Director if:

206 (A) the employer is in a Red Policy Area under the  
207 Subdivision Staging Policy and has 25 or more employees  
208 reporting to or assigned to that workplace;

209 (B) the employer is in an Orange Policy Area under the  
210 Subdivision Staging Policy and has 100 or more  
211 employees reporting to or assigned to that workplace;

212 (C) the employer is in a Yellow Policy Area under the  
213 Subdivision Staging Policy and has 200 or more  
214 employees reporting to or assigned to that workplace; or

215 (D) the employer is in one of the following districts and has 25  
 216 or more employees reporting to or assigned to a  
 217 workplace:

218 Silver Spring TMD

219 Friendship Heights TMD

220 Bethesda TMD

221 North Bethesda TMD

222 Greater Shady Grove TMD

223 White Oak TMD.

224 [(c)] (4) The [traffic mitigation plan should] TDM Plan must be  
 225 consistent with and contribute to the achievement of any  
 226 commuting goals set in the [Growth] Subdivision Staging Policy,  
 227 Master Plans, Sector Plans, and any individual project-based  
 228 goals or interim goals established in the regulations  
 229 implementing this Article. The TDM Plan must include  
 230 strategies required by regulation and other strategies selected by  
 231 the employer from those permitted by regulation or proposed by  
 232 the employer and approved by the Director. A [traffic mitigation  
 233 plan] TDM Plan may include an alternative work hours program,  
 234 carpool or vanpool incentives, subsidized transit passes,  
 235 preferential parking for carpools and vanpools, peak period or  
 236 single-occupancy vehicle parking charges, improved transit,  
 237 bicycle and pedestrian access and safety, telework, and other  
 238 transportation demand management measures approved by the  
 239 Director.

240 [(d)] (5) Each employer must submit its [traffic mitigation plan]  
 241 TDM Plan within 90 days after receiving written notice from the



242 Director that it is required [under subsection (a)]. The Director  
 243 may extend an employer's time to file a [traffic mitigation plan]  
 244 TDM Plan for good cause.

245 [(e)] (b) Consolidated Employer Transportation Demand Management  
 246 Plans.

247 (1) An employer may submit a consolidated [traffic mitigation plan]  
 248 TDM Plan with other employers in the same building or building  
 249 complex. An owner of a nonresidential building in a district may  
 250 submit a consolidated [traffic mitigation plan] TDM Plan on  
 251 behalf of one or more employers in the building.

252 (2) A consolidated plan must be designed so that the action it  
 253 requires satisfies this Section for employers covered by the plan  
 254 and complies with the regulations implementing this Section.

255 [(f)] (c) Actions and assistance to be provided. The Director must:

256 (1) offer to help employers prepare TDM Plans;

257 (2) decide if each proposed plan meets the requirements of this  
 258 Section; and

259 (3) help an employer revise a plan that the Director determines does  
 260 not meet the requirements of this Section.

261 (d) Resubmission of TDM Plan. The Director may require an employer to  
 262 resubmit a plan that the Director finds inadequate to achieve any Non-  
 263 Auto Driver Mode Share goals or other commuting goals for that  
 264 district. Once a plan has been approved, the Director must not require  
 265 an employer to submit a revised plan that meets the requirements of this  
 266 Section more than once every two years.

267 (e) Annual TDM Plan report. An employer must submit a report on  
 268 strategies used to implement a TDM Plan, including progress achieved

269 under that plan, to the transportation management organization and the  
 270 Director on a schedule established by the Director.

271 [(1) The Director may require an owner of a nonresidential building  
 272 in a district to submit a traffic mitigation plan if:

273 (A) the Director finds that a plan is necessary to achieve the  
 274 purpose of this Article because of the owner's control of  
 275 parking or common space or for similar reasons; and

276 (B) the Director notifies the owner of the building under  
 277 subsection (a).]

278 [(2) As specified in the notice, the owner's plan may cover all or some  
 279 employers in the building. A plan submitted under this  
 280 subsection may be in addition to one an individual employer  
 281 must submit.]

282 [(3) After receiving notice under this Section, an owner must submit  
 283 a traffic mitigation plan that meets the requirements applicable  
 284 to an employer.]

285 [(g) (1) The Director may require an owner of a residential building or  
 286 complex with at least 100 dwelling units, including a common  
 287 ownership community as defined in Chapter 10B, in a district to  
 288 submit a traffic mitigation plan if:

289 (A) the Director finds that a plan is necessary to achieve the  
 290 purpose of this Article because of the owner's control of  
 291 parking or common space or for similar reasons; and

292 (B) the Director notifies the owner of the building under  
 293 subsection (a).

294 (2) After receiving notice under this Section, an owner of a  
 295 residential building must submit a traffic mitigation plan that  
 296 meets the requirements applicable to an employer.]

297 [(h) The Director must offer to help employers and owners prepare traffic  
 298 mitigation plans.]

299 [(i) The Director must:

300 (1) decide if each proposed plan meets the requirements of this  
 301 Section; and

302 (2) help the employer or owner revise a plan which does not meet  
 303 the requirements.]

304 [(j) The Director may require an employer or owner to resubmit a plan that  
 305 is not consistent with any commuting goals set in the Growth Policy.  
 306 The Director must not require an employer to submit a plan that meets  
 307 the requirements of this Section more than once every 2 years. An  
 308 employer must submit a report on transportation management measures  
 309 used to implement a traffic mitigation plan to the transportation  
 310 management organization based on a schedule the Director sets.]

311 **42A-25. [Traffic mitigation agreements] Transportation Demand**  
 312 **Management Plans for Existing Buildings.**

313 [(a) Any proposed subdivision or optional method development in a district  
 314 must be subject to a traffic mitigation agreement if the Planning Board  
 315 and the Director jointly decide, under standards adopted by the Council  
 316 for the adequacy of public transportation, that more transportation  
 317 facilities or transportation demand management measures are necessary  
 318 to meet any commuting goals set in the Growth Policy.]

319 [(b) A traffic mitigation agreement must specify transportation demand  
 320 management measures that the applicant or a responsible party must

321 carry out. The measures must be calculated to ensure that public  
 322 transportation will be adequate to meet commuting goals set in the  
 323 Annual Growth Policy.]

324 [(c) A traffic mitigation agreement may require:

- 325 (1) naming a transportation coordinator;
- 326 (2) limits on parking spaces;
- 327 (3) peak period or single-occupancy vehicle parking charges;
- 328 (4) preferential parking for carpools and vanpools;
- 329 (5) subsidies for employees not using single-occupancy vehicles;
- 330 (6) financial or other participation in building or operating on- or off-  
 331 site transportation facilities or systems;
- 332 (7) providing space on a periodic basis for marketing and  
 333 promotional activities of the district;
- 334 (8) designating permanent areas in prominent locations to display  
 335 information on commuting options; or
- 336 (9) other transportation demand management measures.]

337 [(d) A traffic mitigation agreement must be:

- 338 (1) agreed to by the applicant, the Department, and the Planning  
 339 Board;
- 340 (2) made an express condition of any approval for subdivision under  
 341 Chapter 50 or optional method development under Chapter 59;
- 342 (3) subject to all other review and approval requirements of Chapter  
 343 50 and Chapter 59; and
- 344 (4) recorded in the County’s land records.]

345 [(e) A traffic mitigation agreement may:

- 346 (1) require adequate financial security, including bonds, letters of  
 347 credit, or similar guarantees;

- 348 (2) bind future tenants of the development; and  
349 (3) specify liquidated damages, specific performance, or other  
350 contractual remedies, as appropriate.]

351 [(f) The Department must enforce the terms of each traffic mitigation  
352 agreement. This does not limit the Planning Board's authority to revoke  
353 or otherwise enforce any approvals for subdivision under Chapter 50 or  
354 optional method development under Chapter 59.]

355 (a) Transportation Demand Management (TDM) Plans for Existing Non-  
356 residential Buildings.

357 (1) The Director may require an owner of a nonresidential building  
358 in a district to submit a TDM Plan if:

359 (A) the Director finds that a plan is necessary to achieve the  
360 purpose of this Article; and

361 (B) the building is not subject to either a traffic mitigation  
362 agreement currently in effect or a Project-based TDM Plan  
363 under Section 42A-26.

364 (2) If an existing non-residential building is subject to this Section,  
365 the Director must notify the building owner that a TDM plan  
366 meeting the requirements of this Section must be submitted. As  
367 specified in the notice, the owner's plan may cover all or some  
368 employers in the building. A plan submitted under this  
369 subsection may be in addition to one an individual employer  
370 must submit.

371 (3) After receiving notice under this Section, an owner must submit  
372 a TDM Plan meeting the requirements established in the  
373 Executive Regulations for approval by the Director.

374 (b) Transportation Demand Management (TDM) Plans for Existing Multi-  
 375 Unit Residential Buildings.

376 (1) The Director may require an owner of a residential building or  
 377 complex with at least 100 dwelling units in a district, including a  
 378 common ownership community as defined in Chapter 10B, to  
 379 submit a TDM Plan if:

380 (A) the Director finds that a plan is necessary to achieve the  
 381 purpose of this Article; and

382 (B) the building is not subject to either a traffic mitigation  
 383 agreement currently in effect or to a Project-based TDM  
 384 Plan under Section 42A-26.

385 (2) If an existing multi-unit residential building is subject to this  
 386 Section, the Director must notify the building owner(s) that a  
 387 TDM Plan meeting the requirements of this Section must be  
 388 submitted.

389 (3) After receiving notice under this Section, the owner(s) must  
 390 submit a TDM Plan that meets the requirements established in  
 391 the Executive Regulations for approval by the Director.

392 (c) Actions and assistance to be provided. The Director must:

393 (1) offer to help building owners prepare TDM Plans;

394 (2) decide if each proposed plan meets the requirements of this  
 395 Section; and

396 (3) help the building owner(s) revise a plan which does not meet the  
 397 requirements.

398 (d) Resubmission of TDM Plan. The Director may require a building  
 399 owner to resubmit a plan that the Director finds inadequate to achieve  
 400 any Non-Auto Driver Mode Share goals or other commuting goals for

401 that district. Once a plan has been approved, the Director must not  
 402 require a building owner to submit a revised plan that meets the  
 403 requirements of this Section more than once every two years.

404 (e) Annual TDM Plan report. A building owner must submit a report on  
 405 strategies used to implement a TDM Plan, and progress on achievement  
 406 of goals under that plan, to the transportation management organization  
 407 and the Department based on a schedule established by the Director.

408 **42A-26. [Annual survey] Transportation Demand Management Plans for New**  
 409 **Development Projects.**

410 [(a) The Director, after consulting the appropriate Advisory Committee,  
 411 must schedule an annual commuter survey, unless the Director  
 412 determines that a less frequent plan is appropriate.]

413 [(b) The Director, after consulting the appropriate Advisory Committee,  
 414 must prepare a survey that generates information to:

415 (1) create an accurate data base of employee commuting patterns in  
 416 the district; and

417 (2) monitor progress toward reaching any commuting goals set in the  
 418 Growth Policy.]

419 [(c) The Department must distribute the survey to employers based on a  
 420 schedule the Director sets. Each notified employer must distribute,  
 421 collect, and return the completed surveys to the transportation  
 422 management organization within 45 days after receiving the surveys.]

423 [(d) An employer must make a good faith effort to generate survey  
 424 responses from employees with the objective of achieving at least an  
 425 80 percent compliance rate.]

426 (a) Applicability. This Section applies to any owner or applicant for a new  
 427 development or construction project that submits an application for a

428 proposed subdivision or optional method development, site plan,  
 429 conditional use or building permit in a district, but excluding any  
 430 project consisting solely of single family detached housing. All such  
 431 applicants must obtain approval from the Department for a Project-  
 432 based Transportation Demand Management (TDM) Plan. This  
 433 approval must be obtained prior to Planning Board approval of the  
 434 application, or prior to Department of Permitting Services approval for  
 435 projects not requiring Planning Board action. Projects subject to this  
 436 Section include developments:

- 437 (1) in a Red, Orange or Yellow Subdivision Staging Policy Area and  
 438 larger than the minimum sizes shown in subsection (b);  
 439 (2) that do not have a fully-executed traffic mitigation agreement in  
 440 effect; and  
 441 (3) where the Department decides, under standards adopted by the  
 442 Council for the adequacy of transportation, including Non-Auto  
 443 Driver Mode Share goals and other commuting goals adopted in  
 444 Master Plans, Sector Plans and the Subdivision Staging Policy,  
 445 that more transportation facilities or transportation demand  
 446 management measures are necessary to meet the County's  
 447 commuting goals.

448 (b) Levels of Project-based TDM Plans. An owner or applicant for a new  
 449 development or construction project may be required to submit a Level  
 450 1 TDM Basic Plan, a Level 2 TDM Action Plan, or a Level 3 TDM  
 451 Results Plan based on the size and location of the project as follows:

- 452 (1) An owner or applicant for a project located in a Red Policy Area  
 453 under the Subdivision Staging Policy must:



- 454 (A) submit a Level 1 TDM Basic Plan for a project with at  
 455 least 25,000 gross square feet, but less than or equal to  
 456 100,000 gross square feet; and
- 457 (B) submit a Level 3 TDM Results Plan for a project with  
 458 more than 100,000 gross square feet;
- 459 (2) An owner or applicant for a project located in an Orange Policy  
 460 Area under the Subdivision Staging Policy must:
- 461 (A) submit a Level 1 TDM Basic Plan for a project with at  
 462 least 50,000 gross square feet, but less than or equal to  
 463 100,000 gross square feet;
- 464 (B) submit a Level 2 TDM Action Plan for a project with more  
 465 than 100,000 gross square feet, but less than or equal to  
 466 200,000 gross square feet; and
- 467 (C) submit a Level 3 TDM Results Plan for a project with  
 468 more than 200,000 gross square feet;
- 469 (3) An owner or applicant for a project located in a Yellow Policy  
 470 Area under the Subdivision Staging Policy must:
- 471 (A) submit a Level 1 TDM Basic Plan for a project with at  
 472 least 75,000 gross square feet, but less than or equal to  
 473 150,000 gross square feet; and
- 474 (B) submit a Level 2 TDM Action Plan for a project with more  
 475 than 150,000 gross square feet.
- 476 (4) If an adopted Master Plan or Sector Plan requires a higher Level  
 477 of Project-based TDM Plan, those Master Plan or Sector Plan  
 478 requirements override those described in paragraphs (1), (2), or  
 479 (3).

480           (5) An owner or applicant for a project with a gross square feet size  
481 disproportionate to its impact on traffic (e.g., large floor area  
482 warehouses with lower impacts; small floor area food or  
483 beverage establishments with higher impacts) may be required to  
484 adhere to a Project-based TDM Plan Level that is either lower or  
485 higher than otherwise required by its size and location, in  
486 accordance with the development approval and consistent with  
487 the Executive Regulation implementing this Article.

488           (c) Components of Project-based TDM Plans. The components of each  
489 Project-based TDM Plan Level are described in detail in the Executive  
490 Regulation adopted to implement these provisions. Each plan must  
491 include the components listed below and in the Executive Regulation.  
492 The plan must be submitted by the owner or applicant and approved by  
493 the Department. Any owner or applicant may choose to comply with  
494 the requirements for a higher Level of Project-based TDM Plan.

495           (1) A Project-based TDM Basic Plan is not required to include  
496 specific project-based strategies other than providing  
497 information, but must implement County-led strategies at the  
498 Project and must include:

499           (A) Appointment of a Transportation Coordinator and  
500 Commitment to Cooperate with the Department's  
501 Programs. Each owner of a project must designate an  
502 individual responsible to assist and cooperate with the  
503 Department's efforts to achieve the Non-Auto Driver  
504 Mode Share goals and other traffic mitigation and  
505 commuting goals established for that area. This assistance  
506 must include distribution of information on commuting

507 options to the on-site population; coordinating with the  
508 Department to conduct on-site commuting-related  
509 outreach events; ensuring participation in commuter  
510 surveys by the on-site population; attending occasional  
511 training sessions for Transportation Coordinators; and  
512 other duties included in the Executive Regulation.

513 (B) Notification. Each owner of a project is required to notify  
514 the Department in writing within 30 days of receipt of final  
515 Use and Occupancy certificate from the Department of  
516 Permitting Services of the designated Coordinator's  
517 contact information; and within 30 days of any subsequent  
518 change in that designation or contact information.

519 (C) Access to the Project. Each owner must provide space on-  
520 site by prior arrangement with the Department to allow the  
521 Department to promote TDM, including participation in  
522 commuter surveys. Such space need not be exclusively  
523 for this purpose but must be suitable for this purpose, as  
524 determined by the Department.

525 (D) TDM Information. Displays of TDM-related information  
526 must be placed in a location visible to employees,  
527 residents and other project users.

528 (2) Level Two: A Project-based TDM Action Plan requires a  
529 commitment by the owner or applicant to specific actions to help  
530 the County achieve district-wide commuting goals. The plan  
531 must include project-based strategies and demonstrate over time  
532 that the adopted strategies are contributing toward achievement  
533 of the district's commuting goals, in compliance with the

534 Executive Regulations. A project must be considered to be  
535 contributing toward achievement of the district's commuting  
536 goals if the biannual surveys of building occupants demonstrate  
537 increased on-site Non-Auto Driver Mode Share, or a measurable  
538 improvement in an alternative Department-approved metric, if  
539 applicable, in proportion to the level necessary to achieve the  
540 goal by the date established in the project's TDM plan. A  
541 Project-based TDM Action Plan must include the Project-based  
542 TDM Basic Plan components and the following:

543 (A) Selection of Strategies. The owner or applicant must  
544 propose a Project-based TDM Plan that includes required  
545 strategies and selected optional strategies from the  
546 "Sample Menu of TDM Strategies" identified in the  
547 Executive Regulation. Additional strategies may be  
548 proposed by the owner or applicant and may be included  
549 in the Project-based TDM Plan if approved by the  
550 Department.

551 (B) Commitment to Fund and Implement the Plan. The owner  
552 or applicant must commit to fund and implement the  
553 Project-based TDM Plan at an adequate level to contribute  
554 toward achievement of the district's commuting goals.

555 (C) Self-Monitoring. The owner or applicant must conduct  
556 self-monitoring, consistent with Department  
557 requirements, to determine if the Project-based TDM Plan  
558 is contributing toward achievement of the district's goals.

- 559                    (D) *Biennial Report.* Progress reports must be provided to the  
560                    County in alternating years, in a format consistent with  
561                    Department requirements.
- 562                    (E) *Addition and/or Substitution of Strategies.* If the strategies  
563                    initially selected from the “Sample Menu of TDM  
564                    Strategies” by the owner or applicant do not result in the  
565                    plan contributing toward achievement of district goals by  
566                    four years after Date of Final Occupancy, the Department  
567                    may require revisions in the project’s plan using the  
568                    “Sample Menu of TDM Strategies” or other strategies  
569                    proposed by the owner or applicant. The owner or  
570                    applicant must agree to implement these revised strategies  
571                    if required by the Department at a level consistent with the  
572                    owner’s commitment to fund and implement the plan.  
573                    This process may be repeated until the project  
574                    demonstrates it is contributing toward achievement of  
575                    district goals, consistent with the Executive Regulations.
- 576                    (F) *Additional Funding Commitment.* If the project does not  
577                    contribute toward achievement of district goals by six  
578                    years after Date of Final Occupancy, the Department may  
579                    require increased funding by the owner for existing or new  
580                    TDM strategies to be implemented at the project. The  
581                    owner must commit additional funds to supplement on-site  
582                    strategies if required by the Department. The amount of  
583                    the additional funding must be as established in the  
584                    Executive Regulation.

585 (G) Rewards. The owner may be eligible for annual rewards  
586 established by the Department for continued contribution  
587 over multiple years toward achievement of district goals,  
588 including reductions in TDM fees or other financial  
589 benefits, as established in the Executive Regulation.

590 (3) Level Three: A Project-based TDM Results Plan requires a  
591 commitment by the owner or applicant to achieve certain Non-  
592 Auto Driver Mode Share and related commuting goals at that  
593 project. The plan must include project-based strategies and  
594 demonstrate that the plan is achieving the goals established for  
595 the project. Those goals may be equal to, higher or lower than  
596 the district's goals based on project-specific parameters,  
597 consistent with the Executive Regulation. The plan must be  
598 submitted by the owner or applicant and approved by the  
599 Department. A Project-based TDM Results Plan must include  
600 the Project-based TDM Action Plan components and the  
601 following:

602 (A) Independent Monitoring. Monitoring by a consultant  
603 approved by the Department, to determine whether the  
604 project is meeting its goals. This monitoring must be done  
605 on a regular basis consistent with the Executive  
606 Regulations.

607 (B) Addition and/or Substitution of Strategies. If the strategies  
608 initially selected by the owner or applicant do not result in  
609 the project achieving its goals by six years after Date of  
610 Final Occupancy, the Department may require revisions in  
611 the project's plan using the "Sample Menu of TDM

612 Strategies” or other strategies proposed by the owner or  
 613 applicant. The owner or applicant must agree to  
 614 implement these revised strategies if required by the  
 615 Department at a level consistent with the owner’s  
 616 commitment to fund and implement the plan. This process  
 617 may be repeated until the project demonstrates it is  
 618 achieving its goals, in compliance with the Executive  
 619 Regulations.

620 (C) Additional Funding Commitment. If the strategies  
 621 selected by the owner or applicant do not result in  
 622 achievement of the project goals by six years after Date of  
 623 Final Occupancy, the Department may require increased  
 624 funding by the owner for existing or new TDM strategies  
 625 to be implemented at the project. Additional increases in  
 626 funding may be required if the goals have still not been  
 627 achieved by eight years after Date of Final Occupancy.  
 628 The owner must commit additional funds to supplement  
 629 on-site strategies if required by the Department. The  
 630 amount of the additional funding must be as established in  
 631 the Executive Regulation.

632 (D) Rewards. The owner may be eligible for annual rewards  
 633 established by the Department for continued achievement  
 634 of project goals over multiple years, including reductions  
 635 in TDM fees or other financial benefits, as established by  
 636 the Executive Regulation.

637 (d) Process. A Project-based TDM Plan must be:

- 638 (1) proposed by the owner or applicant and approved by the
- 639 Department;
- 640 (2) made an express condition of any approval for:
- 641 (A) subdivision or another plan approval under Chapter 50;
- 642 (B) site plan or another plan approval under Chapter 59; or
- 643 (C) building permit for a recorded lot;
- 644 (3) subject to all other review and approval requirements of Chapter
- 645 50 and Chapter 59, with approval of the Department required for
- 646 any revisions to an approved TDM Program; and
- 647 (4) recorded in the County's land records.

648 A Project-based TDM Plan must be required for all such approvals  
 649 except where equivalent provisions of a fully-executed traffic  
 650 mitigation agreement for the project are in effect in perpetuity.

651 (e) Enforcement. The Director must enforce the terms of each Project-  
 652 based TDM Plan. This does not limit the Planning Board's authority to  
 653 revoke or otherwise enforce any approvals under Chapter 50 or Chapter  
 654 59. Where a Project-based TDM Plan is a condition of subdivision,  
 655 optional method, site plan, or conditional use, the Planning Board must  
 656 confirm that TDM Plan has been approved by the Director before  
 657 issuing final approval. Where a Project-based TDM Plan is a condition  
 658 of building permit approval, the Department of Permitting Services  
 659 must confirm that TDM Plan has been approved by the Director prior  
 660 to issuing a building permit.

661 **42A-27. [Executive report] Traffic Mitigation Agreements.**

662 [(a) By December 1 of each even-numbered year, the Director must submit

663 to the appropriate Advisory Committee and the Planning Board a report



664 on transportation demand management in each district. The report  
 665 should include:

- 666 (1) employee commuting patterns by employer;
- 667 (2) auto occupancy rates by employer;
- 668 (3) level of service measurements for each intersection in the policy  
 669 area and selected critical intersections outside the area;
- 670 (4) parking supply and demand;
- 671 (5) status of road or intersection improvements, signal automation,  
 672 improved bicycle and pedestrian access and safety, and other  
 673 traffic modifications in or near the policy area;
- 674 (6) transit use and availability;
- 675 (7) carpool and vanpool use; and
- 676 (8) the source and use of any funds received under this Article.]

677 [(b) By March 1 of each odd-numbered year, the Executive must forward  
 678 each report to the Council. The Executive must note any area of  
 679 disagreement between the Director and an Advisory Committee.]

680 [(c) If any commuting goals set in the Growth Policy are not met 4 years  
 681 after a district is created, the Director must recommend corrective  
 682 action to the Executive. This action may include mandatory mitigation  
 683 measures. If the Executive agrees that such action is necessary, the  
 684 Executive should propose appropriate legislation or adopt appropriate  
 685 regulations as authorized by law.]

686 Enforcement. The Department must enforce the terms of each traffic  
 687 mitigation agreement. This does not limit the Planning Board's authority to  
 688 revoke or otherwise enforce any approvals for subdivision under Chapter 50  
 689 or optional method development under Chapter 59.

690 **42A-28. [Regulations] Commuter survey and related data collection.**

691 [The Executive may adopt regulations under method (2) to implement this  
692 Article.]

693 (a) The Director, after consulting the appropriate Advisory Committee,  
694 must conduct a commuter survey, or obtain through other available  
695 mechanisms, data on commuting by employees and residents within a  
696 defined area. The data must be obtained on a schedule determined by  
697 the Director.

698 (b) The Director, in consultation with the appropriate Advisory Committee,  
699 must prepare a survey or other data collection mechanism as necessary  
700 to generate information to:

701 (1) create an accurate data base of employee and resident commuting  
702 patterns in the district; and

703 (2) monitor progress toward reaching any commuting goals set in the  
704 Subdivision Staging Policy, Master Plans or Sector Plans, as  
705 implemented by the Department through Executive Regulations  
706 or other adopted policies and procedures.

707 (c) The Department must distribute the survey to employers; building  
708 owners or managers; tenants, condominium and homeowners  
709 associations; Transportation Coordinators, and others required to  
710 conduct the survey or to participate in other ways in the data collection  
711 process, based on a schedule the Director sets. The Department may  
712 also collect commuting data through other available mechanisms in  
713 addition to or in place of the commuter survey.

714 (d) Each notified employer, building owner or manager, Transportation  
715 Coordinator or other entity must distribute, collect, and return the  
716 completed surveys, or otherwise provide the required data through  
717 other Department-approved mechanisms. Data collected must be

718 provided to the transportation management organization and the  
 719 Department within the time period established by the Department.

720 (e) Any entity required to participate in the commuting survey, or to  
 721 participate in data collection through another mechanism, must make a  
 722 good faith effort to generate survey responses or other data from their  
 723 target population with the objective of achieving at least a 60 percent  
 724 compliance rate.

725 **42A-29. [Transportation Management Fee] Executive report on TMDs.**

726 [(a) *Authority.*

727 (1) The Council may by resolution adopted under Section 2-57A set  
 728 the transportation management fee that the Department must  
 729 annually charge, under the Alternative Review Procedures in the  
 730 Growth Policy, an applicant for subdivision or optional method  
 731 development approval in a district and each successor in interest.

732 (2) If the resolution creating a district authorizes the Department to  
 733 charge a transportation management fee to any of the following  
 734 persons, the Council may, by resolution adopted under Section  
 735 2-57A, set the fee that the Department must charge:

736 (A) an applicant for subdivision or optional method  
 737 development in the district who is not subject to a  
 738 transportation management fee under the Alternative  
 739 Review Procedures in the Growth Policy and each  
 740 successor in interest; and

741 (B) an owner of existing commercial and multi-unit residential  
 742 property in the district.]

- 743           **[(b) Use of revenue.** The revenue generated by a transportation  
744 management fee must be used in the district in which the development  
745 or property subject to the fee is located to cover the cost of:
- 746           (1) administering the district, including review and monitoring of  
747 traffic mitigation plans under Section 42A-24 and traffic  
748 mitigation agreements under Section 42A-25; and
- 749           (2) any program implemented under Section 42A-23(b), including  
750 any vehicle or other equipment necessary to carry out the  
751 program.]
- 752           **[(c) Rate.** The rate of a transportation management fee must be set to  
753 produce not more than an amount of revenue substantially equal to the:
- 754           (1) portion of the cost of administering the district, including the  
755 review and monitoring of traffic mitigation plans under Section  
756 42A-24 and traffic mitigation agreements under Section 42A-25,  
757 reasonably attributable to the transportation effects of the  
758 development or property subject to the fee; and
- 759           (2) portion of the cost of any program implemented under Section  
760 42A-23(b), including any vehicle or other equipment necessary  
761 to carry out the program, reasonably attributable to the  
762 transportation effects of the development or property subject to  
763 the fee.]
- 764           **[(d) Method.** A transportation management fee may be assessed on:
- 765           (1) the gross floor area, the maximum or actual number of  
766 employees, or the average number of customers, visitors, or  
767 patients, in a nonresidential building;
- 768           (2) the number of dwelling units, or the gross floor area, in a  
769 residential building;

- 770 (3) the number of parking spaces associated with a building; or  
 771 (4) any other measurement reasonably related to transportation use  
 772 by occupants of, employees located in, or visitors to a particular  
 773 development or property.]

774 [(e) *Variation.* The transportation management fee and the basis on which  
 775 it is assessed may vary from one district to another and one building  
 776 category or land use category to another.]

777 (a) By December 1 of each even-numbered year, the Director must submit  
 778 to the appropriate Advisory Committee and the Planning Board a report  
 779 on transportation demand management in each operating district. The  
 780 report should include the following information to the extent feasible  
 781 within the constraints of available resources:

- 782 (1) employee commuting patterns by employer, building or project;  
 783 residential commuting patterns by building or project; other  
 784 commuting or travel patterns as appropriate;  
 785 (2) auto occupancy rates by employer, residential unit or other  
 786 appropriate measures;  
 787 (3) level of service measurements for each major intersection in the  
 788 policy area and selected critical intersections outside the area;  
 789 (4) parking supply and demand;  
 790 (5) status of road or intersection improvements, signal automation,  
 791 bicycle and pedestrian access and safety, and other traffic  
 792 modifications in or near the district;  
 793 (6) transit use and availability;  
 794 (7) carpool and vanpool use;  
 795 (8) bicycle and bikeshare use;

- 796           (9) use of other transportation modes relevant to analyzing  
 797                   achievement of commuting goals; and
- 798           (10) the source and use of any funds received under this Article.
- 799           (b) By March 1 of each odd-numbered year, the Executive must forward  
 800           each report to the Council. The Executive must note any area of  
 801           disagreement between the Director and an Advisory Committee.
- 802           (c) If any commuting goals set in the Subdivision Staging Policy are not  
 803           met eight years after a district is created or by June 30, 2027, whichever  
 804           is later, the Director must recommend corrective action to the  
 805           Executive. This action may include additional mitigation measures. If  
 806           the Executive agrees that such action is necessary, the Executive should  
 807           propose appropriate legislation or adopt appropriate regulations as  
 808           authorized by law.

809   **42A-30. [Enforcement] Regulations.**

810           [The Department must enforce this Article. An employer that does not submit  
 811 a traffic mitigation plan or provide survey data within 30 days after a second notice  
 812 has committed a class C violation. An owner who does not submit a traffic  
 813 mitigation plan within 30 days after a second notice has committed a class C  
 814 violation. A party to a traffic mitigation agreement under Section 42A-26 who does  
 815 not comply with the agreement within 30 days after notice has committed a class A  
 816 violation.]

817           The Executive must adopt regulations under method (2) to implement this  
 818 Article. The regulations may implement the requirements of this Article in phases.

819   **42A-31. Transportation Demand Management Fee.**

820           (a) Authority.

821           (1) The Council may, by resolution adopted under Section 2-57A,  
 822           set the transportation demand management fee that the

823 Department must annually charge an applicant, and each  
 824 successor in interest, for subdivision, optional method  
 825 development approval, or a building permit.

826 (2) The Department is authorized to charge a transportation demand  
 827 management fee adopted by the Council to:

828 (A) an applicant for subdivision or optional method approval,  
 829 site plan approval or a building permit in a district; and

830 (B) an owner of existing commercial, industrial or multi-unit  
 831 residential developed property in the district, including a  
 832 property where the principal use is a commercial parking  
 833 facility.

834 (b) Use of revenue. The revenue generated by a transportation demand  
 835 management fee must be used in the transportation management district  
 836 in which the development or property subject to the fee is located to  
 837 cover the cost of:

838 (1) administering the district and TDM strategies, and coordinating  
 839 with projects and occupants (including employees and residents)  
 840 within that district or Policy Area, including review and  
 841 monitoring of TDM Plans; and

842 (2) any program implemented under Section 42A-23(b), including  
 843 any vehicle or other equipment necessary to carry out the  
 844 program.

845 (c) Rate. The rate of a transportation demand management fee must be set  
 846 to produce not more than an amount of revenue substantially equal to  
 847 the:

848 (1) portion of the cost of administering TDM in the district,  
 849 including the review and monitoring of TDM Plans, reasonably

850 attributable to the transportation effects of the development  
 851 project or property subject to the fee; and

852 (2) portion of the cost of any program implemented under Section  
 853 42A-23(b), including any vehicle or other equipment necessary  
 854 to carry out the program, reasonably attributable to the  
 855 transportation effects of the development project or property  
 856 subject to the fee.

857 (d) Method. A transportation demand management fee may be assessed  
 858 on:

859 (1) the gross square feet, the gross floor area, the maximum or actual  
 860 number of employees, or the average number of customers,  
 861 visitors, or patients, in a nonresidential building;

862 (2) the number of dwelling units, the gross square feet or the gross  
 863 floor area, in a residential building;

864 (3) the number of parking spaces associated with a building; or

865 (4) any other measurement reasonably related to transportation use  
 866 by occupants of, employees located in, or visitors to a particular  
 867 development or property, including property where the principal  
 868 use is as a commercial parking facility.

869 (e) Variation. The transportation demand management fee and the basis  
 870 on which it is assessed may vary within each district, between one  
 871 district and another, and from one building category or land use  
 872 category to another.

873 **42A-32. Enforcement.**

874 (a) The Department must enforce this Article. An employer, owner,  
 875 building or project manager or other responsible party subject to  
 876 Section 42A-24 or 42A-25 that does not submit a TDM Plan or required



877 report, comply with required provisions of a plan, or provide survey  
 878 data within 30 days after a second notice has committed a class C  
 879 violation.

880 (b) A party to a Project-based Transportation Demand Management Plan  
 881 under Section 42A-26 who does not comply with the approved plan  
 882 within 30 days after notice of noncompliance has committed a class A  
 883 violation.

884 (c) Any party required to submit required reports on numbers of  
 885 employees, transportation demand management plans and strategies,  
 886 Non-Auto Driver Mode Share, progress toward goals, survey results or  
 887 other TDM-related provisions or measurements on a timely basis has  
 888 committed a class C violation.

889 (d) Any party who falsifies any required data or reports has committed a  
 890 class A violation.

891 **Sec. 2. Transition.**

892 (a) *Existing agreements.* All traffic mitigation agreements executed under  
 893 this Chapter before this Act takes effect that have not expired or  
 894 terminated, remain in effect.

895 (b) *New building or project approvals.* No traffic mitigation agreement  
 896 must be required for any new building or development project approved  
 897 after this Act takes effect.

898 (c) *Projects with prior approvals.* Any building or development project  
 899 with an existing subdivision or optional method approval when this Act  
 900 takes effect where a traffic mitigation agreement was a condition of that  
 901 approval, may opt to be considered for re-approval of their application  
 902 under the amendments in Section 1 if:

903 (1) a traffic mitigation agreement has not yet been fully executed;

- 904                   (2)   the building or project approved is larger than the minimum sizes  
905                                    designated for each Subdivision Staging Policy Area group in  
906                                    Section 42A-26; and  
907                   (3)   construction has not begun.

908   *Approved:*

909

---

Hans D. Riemer, President, County Council

Date

910   *Approved:*

911

---

Isiah Leggett, County Executive

Date

912   *This is a correct copy of Council action.*

913

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Megan Davey Limarzi, Esq., Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 36-18

*Transportation Management – Transportation Demand Management - Amendments*

- DESCRIPTION:** Bill 36-18 would expand the County's use of transportation demand management (TDM) to reduce traffic congestion and automobile emissions, support multi-modalism and achievement of non-automobile travel goals, enhance the efficient use of transportation infrastructure and promote sustainability of existing and future development. The Bill would establish requirements for transportation demand management plans for new developments in certain areas of the County, make the County's approach more flexible and responsive to changing parameters in transportation and development, and increase accountability for results.
- PROBLEM:** Under existing law, TDM strategies are only required for businesses and development projects in transportation management districts (TMDs). Since traffic congestion is generated countywide, and many areas outside TMDs could benefit from use of these strategies, the Bill would apply TDM countywide.
- Negotiation of traffic mitigation agreements for new development projects can be protracted and jeopardize the timing of projects. Agreements under current Code provisions are fixed in time and do not allow flexibility to adapt to changing conditions. The process for approving TDM plans needs streamlining, flexibility, and enhanced accountability for results.
- GOALS AND OBJECTIVES:** Extension of TDM strategies to settings outside existing TMDs. Streamlining of process for development project TDM plan approvals. Provide flexibility in TDM strategies to be used at projects, both initially and over time. Clarify requirements, increase effectiveness and accountability. Provide incentives and disincentives to promote goal achievement.
- COORDINATION:** Departments of Permitting Services, Finance, Environmental Protection, OMB; M-NCPPC
- FISCAL IMPACT:** To be provided
- ECONOMIC IMPACT:** To be provided
- EVALUATION:** To be provided

**EXPERIENCE ELSEWHERE:** Many U.S. jurisdictions have transportation demand management requirements in place, including the District of Columbia and Arlington County. The County has had elements of TDM included in the Code for many years, but an improved approach was desired. A work group comprised of representatives from the Executive Branch, Council staff, M-NCPPC, and stakeholder representatives, received input from expert consultants about experience in other jurisdictions and recommended several of the provisions included in the proposed bill.

**SOURCE OF INFORMATION:** Department of Transportation –  
Chris Conklin, Deputy Director for Transportation Policy, 240-777-7198  
Gary Erenrich, Special Assistant to the Director, 240-777-7156  
Sandra Brecher, Commuter Services Section Chief, 240-777-8383

**APPLICATION WITHIN MUNICIPALITIES:** Chapter 42A does not apply within municipalities

**PENALTIES:** N/A

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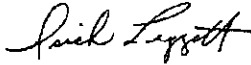
OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

September 19, 2018

TO: Hans Riemer, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Bill xx-18: Transportation Management – Transportation Demand Management Plan – Amendments

The purpose of this memorandum is to transmit for the County Council's approval Amendments to Chapter 42A, Article II of the Montgomery County Code that relate to Transportation Demand Management.

Transportation demand management (TDM) encompasses a wide variety of strategies to reduce the demand for road capacity and promote use of alternatives to solo driving. Research has shown it to be one of the most effective tools for reducing traffic congestion. The proposed bill would expand the County's use of transportation demand management to reduce traffic congestion and automobile emissions, support multi-modalism and achievement of non-automobile travel goals, enhance the efficient use of transportation infrastructure and promote sustainability of existing and future development. It will establish requirements for transportation-demand management plans for new developments in certain areas of the County and make the County's approach more flexible and responsive to changing parameters in transportation and development, while at the same time increasing accountability for results.

Over the past two years the County Department of Transportation has worked with a diverse group of representatives from multiple Executive Branch agencies, County Council staff, the Maryland-National Capital Park and Planning Commission, consultants, many advisory committees and representatives from the civic, business and developer communities to discuss how to improve the TDM approach used by the County. The goals of the effort were to streamline the process for TDM plan approvals, provide flexibility in strategies including the ability to adjust them over time, and ensure fairness by clarifying requirements including costs and improving consistency in application. In addition, an overriding goal was to increase the effectiveness of TDM in achieving the County's transportation goals, by extending these approaches to a broader portion of the County; improving accountability through monitoring, reporting and enforcement; and providing incentives and disincentives to promote goal achievement.

The result of this effort is the proposed legislation submitted herein. Key provisions include the following:

- Broader application of TDM, based on Transportation Policy Areas. Under existing Code, TDM strategies are required only in existing transportation management districts (TMDs). Since traffic congestion is generated countywide, and many areas outside TMDs could benefit from use of these strategies, TDM should be applied more broadly. Transportation Policy Areas adopted as part of the Subdivision Staging Policy form the basis for a tiered approach, with the highest-level requirements in the Red Policy Areas, mid-range requirements in the Orange Policy Areas, and the lowest-level requirements in the Yellow Policy Areas. Green Policy Areas, which are not planned for significant new business or development activity generating significant traffic impacts, are not included. Likewise, existing or proposed single family detached developments are not included in the proposed expansion of TDM.
- Revised approach to TDM for new development projects, eliminating TMAgs. Current Code requires new development projects within TMDs to have a traffic mitigation agreement (TMAg), if the Planning Board and MCDOT jointly decide one is necessary to achieve commuting goals for that area. The requirement for an agreement is included as a condition of development approval by the Planning Board. TMAgs are negotiated by developers with MCDOT and the Planning Board; those negotiations have at times become protracted, consuming significant time for all parties and potentially jeopardizing timing of projects. Our public outreach to the development community indicated a concern that the current practice may not treat every development the same since each development generates its own TMAg.

The proposed Code revisions would streamline this process, make it more flexible, and provide increased accountability. Certain basic TDM strategies would be required of all new projects over a certain minimum size, based on the Policy Area classification. Developers of projects over a certain size would select additional TDM strategies they determine would work best for their project. These would be incorporated into a "Project-based TDM Plan."

Once occupied, projects would have several years to demonstrate the effectiveness of their plan. Mid-sized projects in Orange or Yellow Policy Areas would be required to contribute toward achieving the goals for that Policy Area or TMD. Larger-sized projects in Red or Orange Policy Areas would be required to achieve the goals for that Policy Area or TMD. If they are not meeting the standard for success (either contributing toward or achieving the goals) they would be required to add or change strategies – and could be required to provide added resources to their on-site program to increase its effectiveness. Projects achieving the goals would be eligible for reduced TDM fees.

A summary of the proposed requirements for new projects of various sizes in each Policy Area classification is included as a chart entitled "TDM Plan Components for New Development Projects," on page 8 of Attachment A.

Hans Riemer, Council President

September 19, 2018

Page 3

- Extension of TDM to businesses outside existing TMDs. Under existing Code requirements, employers of 25 or more employees in a transportation management district are required to file a traffic mitigation plan showing what TDM strategies they will use to encourage non-auto commuting.

The proposed legislation retains these existing provisions and extends them to additional areas of the County. Workforce size thresholds are based on the color classification of the Policy Area where the workplace is located. In Red Policy Areas employers of 25 or more workers would be required to file; in Orange Areas, 50 or more workers; and in Yellow Areas 100 or more workers. Known under current Code as "traffic mitigation plans," these would now be called "TDM Plans for Employers."

Existing non-residential buildings and multi-unit residential buildings of at least 100 units in a TMD also can be required under current Code to file traffic mitigation plans committing them to implement TDM strategies. These provisions have been retained but the plans would now be called "TDM Plans for Existing Buildings."

Attachment A to this memorandum is a PowerPoint summary of the proposed legislation. This overview has been presented to multiple stakeholder groups and other interested parties and posted on the Department of Transportation website. Attachment B is a draft Executive Regulation. While still in preliminary form, it provides a fuller picture of how the Executive Branch plans to implement provisions contained in the proposed legislation. A revised version of this Executive Regulation will be submitted for Council approval under Method 2 once the bill has been adopted.

The proposed bill is hereby transmitted for the Council's review and consideration. The Legislative Request Report is included as Attachment C; Fiscal and Economic Impact Statements will be provided prior to the public hearing. I recommend prompt passage of this bill to advance these programs. Please direct any questions to Chris Conklin, Deputy Director for Transportation Policy at the Department of Transportation at (240) 777-7198.

Attachments (3)

Attachment A: "NextGen TDM – Proposed Code Changes and Executive Regulation Provisions"

Attachment B: Draft Executive Regulation

Attachment C: Legislative Request Report

cc: Al Roshdiah, Director, Montgomery County Department of Transportation  
Casey Anderson, Chair, Montgomery County Planning Board



# Overview of Transportation Demand Management and Proposed Changes to County Code

County Council  
Transportation & Environment  
Committee

February 14, 2019

Department of Transportation  
Office of Transportation Policy  
Commuter Services Section





# Overview Outline

- Key goals of Bill 36-18
- Process & timeline
- Current Approach under existing program:
  - Transportation Demand Management (TDM) in the County
  - Transportation Management Districts (TMDs)
  - Developer & Employer Responsibilities
- Monitoring and Measuring: Results/Metrics
- Current Funding Sources
- NextGen TDM and Proposed Changes to Code
- Executive Regulations



## Key Goals of Bill 36-18

### ➤ Streamline Process

- Reduce need for negotiation during development process
- Shorten time for approval of TDM programs

### ➤ Provide Flexibility

- Provide more choices of TDM strategies, tailored to type of project, geography, availability of transportation options
- Provide ability to make adjustments, change strategies over time

### ➤ Ensure Fairness

- Clarify requirements, including costs to the project
- Improve consistency and predictability

### ➤ Increase Effectiveness

- Extend TDM/multi-modal approaches to broader segment of the County
- Improve monitoring, reporting & enforcement
- Provide incentives/disincentives to promote goal achievement
- Enhance ability to achieve County's transportation goals



# Process

- White Flint I Sector Plan TDM analysis = technical basis
- Recognition of need for improved tools to meet commuting goals
- County Working Group comprised of Executive Branch Departments, Council staff, M-NCPPC staff
- Public outreach – multiple stakeholders including advisory committees, civic groups, developers, land use attorneys, general public
  - Two Public Open Houses Conducted
- Presentations to Planning Board and Department Heads
- Reviewed Council Public Hearing testimony
- Continuing to receive additional input
- Next Steps:
  - Council consideration of Bill 36-18 as revised
  - Executive Regulation
  - Create new TMDs by Council Resolution
  - Determine funding/sources

## Current Approach to TDM and Commuter Services

- **TDM Mission:**  
Promote use of Alternative Modes to Single Occupant Vehicles (SOVs) to address congestion, air quality, sustainability & safety
- **TDM = Transportation Demand Management**  
“Any method of reducing demand for road capacity during a peak period . . .”  
(County Code 42A-21)
- **Work Trip Focused = Employer/Developer Components Are Key:**
  - Partnering w/ business/employment community
  - Increasingly Master Plans/TMDs include goals for commuting by residents within that area



[www.montgomerycountymd.gov/commute](http://www.montgomerycountymd.gov/commute)





# Why TDM?

## Helps Communities

- Address traffic congestion, air quality concerns; improve safety/Vision Zero
- Make more efficient use of infrastructure – More bang for the buck!
- Provide more sustainable, economical land use patterns
- Improve workforce access & health
- Address Global Warming/Climate Change

## Helps Businesses

- Recruit & retain employees - Helps them find “*Better Ways to Work*”
- Reduce cost of employee turnover; commuting-related & other travel delays
- Reduce cost/more efficient use of office space & parking
- Reduce taxes + Be good corporate citizen
- Become a Certified Green Business – [www.mcgreenbiz.org](http://www.mcgreenbiz.org) (+ LEED)

## Helps Employees/Residents

- Reduce cost & stress of commuting, parking, gas, multi-car ownership
- Inform/educate re options; Make better use of time
- Improve health, balance work & family concerns
- Reduce taxes



# TDM & Commuter Services



- **Backbone of TDM is Transit**
  - Commuter Services Section promotes all forms of transit, including Metrorail, Metrobus, Ride On, MTA buses, MARC Rail
- **Promote all other non-SOV commuting options (“modes”) and alternatives to commuting, including:**
  - Car/Van Pooling                      - Carsharing                      - Telework
  - Biking/Bikesharing                      - Walking                      - Alternative Work Schedules
- **Operate Transportation Management Districts (TMDs)**
  - Primary mechanism for implementing TDM in the County
  - TMDs currently focus TDM in the County’s most highly-urbanized areas



# TDM & Commuter Services



18th & M (northbound)		3:21
S4	Silver Spring Station	0
S1	18th & Colorado	0
S9	Silver Spring Station	3
S2	Silver Spring Station	7
18th & M (southbound)		3:21
S4	Federal Triangle	7
S9	Franklin Square	9
S2	Federal Triangle	11
M Farragut North		8:K
RD	Glenmont	2
RD	Shady Grove	2

- Facilitate and promote amenities & “adjuncts” to make it easier, more attractive, sensible to use commute options

- Clear, Easy-to-Use Information
  - Static Information – e.g., Timetables, Route maps
  - Dynamic / Real Time Information
- Guaranteed Ride Home (GRH)
- SmarTrip; SmartBenefits
- Parking Management (Policies: “Parking Parity”)
- Bikesharing / Car Sharing
- Bike Paths / Racks / Lockers / Showers / Benefits
- Pedestrian Amenities / Safety
- Lighting, Landscaping, Security
- Bus Shelters, Benches
- Other Programs & Services

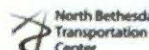




# TMDs – Transportation Management Districts



- **TDM Efforts Concentrated in 6 TMDs**
  - Silver Spring
  - Bethesda
  - Friendship Heights
  - North Bethesda
  - Greater Shady Grove
  - White Oak
- Additional Focal Areas Include: Medical Center (NIH/WR), Rockville, Wheaton
- **Mode Share & Other Goals have been established for each TMD**
  - Goals Range from 18% - 55% Non-Auto Driver Mode Share (NADMS)
- **Advisory Committees for each TMD provide input from diverse perspectives**
  - Employers
  - Residents
  - Developers
  - Owners/Managers
  - Public Agencies
- **Beyond TMDs - Commuter Services are available throughout the County**
  - Over 2,200 employers with about 200,000 employees are involved in some way in Commuter Services programs





# TMDs: Locations & Operations

## 6 TMDs:

Different development patterns, sizes, operating arrangements

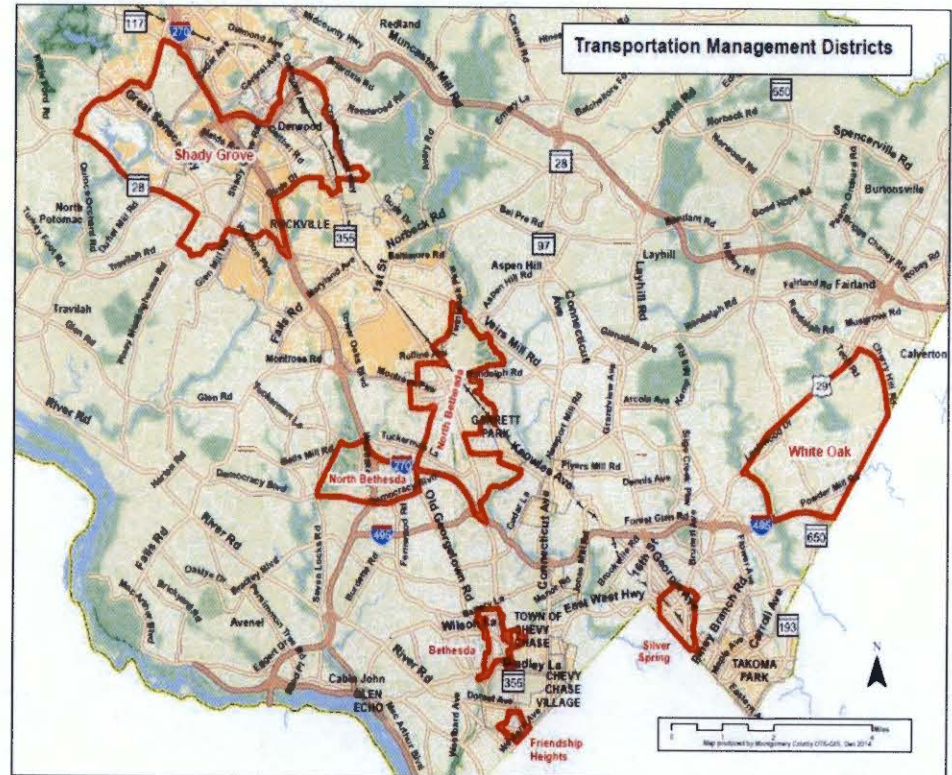
3 are operated directly by MCDOT with contractor assistance

- Silver Spring
- Friendship Heights
- Greater Shady Grove

2 are operated by contractors with MCDOT oversight:

- Bethesda – Operated by BUP
- North Bethesda – Operated by TAP

White Oak – Not yet operational



**Better Ways To Work!**  
Montgomery County Commuter Services

Bethesda  
Transportation Solutions

Friendship Heights TMD

North Bethesda  
Transportation  
Center

SILVER  
SPRING  
Transportation  
Management District

Greater  
Shady Grove  
Transportation Management District





## TMD Basics: Advisory Committees

**TMD Advisory Committees provide input to TMD staff and the County from diverse perspectives:**

**Appointed by County Executive, Confirmed by County Council**

- ❑ **Employers** – Large (50+ employees) & Small (< 50 employees)
- ❑ **Project Owners/Developers/Building Management** representatives
- ❑ **Residents** of the TMD and surrounding areas
- ❑ **Civic/business** organization representatives – e.g., Chamber of Commerce
- ❑ **Public Agency** representatives (Non-Voting)

Meetings are held bi-monthly to quarterly (varies by TMD)

# TMD Funding Sources



- ❑ **Transportation Management District Annual Fees**
  - Currently 10 cents per square foot non-residential floor space
  - Average about 1/3 of total TMD funding
- ❑ **Parking Management Revenues**
  - Non-PLD Managed Parking (On- or Off-Street)
- ❑ **Other: Developers/Municipal/State Funding/Grants**
  - E.g., Traffic Mitigation Agreements with Developers; Grants
- ❑ **General Fund**



# Current Code: TDM Requirements

- TDM requirements currently apply only within the 6 TMDs
- Several categories of development within TMDs are subject to TDM requirements under current code 42A-24 and 42A-25:
  - Developers of new commercial or residential projects
  - Owners of existing commercial projects
  - Owners of existing multi-unit residential projects of 100 dwelling units or more
  - Employers of 25 or more employees (on largest shift)
- MCDOT has only implemented TDM requirements for new projects and for employers

## Current Code: Developer Requirements

- **Developer Traffic Mitigation Agreements (TMAGs)**
  - **For Projects in TMDs** (subdivision or optional method)
  - **Project approval conditions established by Planning Board**
    - MCDOT makes recommendations; coordinates w/ MNCPPC
  - **3-Party Agreements:** Developer, Planning Board, County (MCDOT)
  - **Negotiated** using template as basis
    - Templates require relatively basic efforts by developer
    - Where greater trip reduction necessary, or achieving goals is more challenging, higher impact strategies required
  - **Term** (duration)
    - Most provisions run in perpetuity
    - Specific performance (e.g., trip cap) typically has a specific term
  - **Recorded in land records**
  - **Performance guarantees/security instruments** (when required)
  - **Annual Reporting**



## 5 Basic Elements of Developer TMAGs



1. **Appoint TBC**
  - ❑ Transportation Benefits Coordinator
2. **Facilitate communication, on-site access for outreach**
  - ❑ To tenants/employers, employees, &/or residents for information/education
  - ❑ E.g., distribute e-newsletter; provide space for occasional outreach events
3. **Provide permanent information displays**
  - ❑ In lobbies of building(s), employee break-rooms
  - ❑ Provide Real Time Transit Information signs
4. **Participate in Commuter Survey**
  - ❑ Facilitate tenant/employer and employee/resident participation
5. **File Annual Report**
  - ❑ Report on TDM activities & results

# Current Code: Employer Requirements to Address Congestion

## 1. Develop a Traffic Mitigation Plan (TMP)

- Template provided by MCDOT showing required & optional elements
- Online filing system created by MCDOT – used by most employers
- MCDOT TMD staff provide assistance
- Advisory Committee reviews, makes recommendations to Director of MCDOT

## 2. Actively implement their TMP – Working with TMD staff

- Host employee outreach events, post & distribute information
- Participate in the County's Commuter Survey

## 3. Submit an Annual Report of Activities

- Template provided
- Online filing system for Annual Report used by most
- MCDOT TMD staff provide assistance
- Advisory Committee reviews, makes recommendations to Director of MCDOT



## A Higher Level: Enhanced Developer & Employer Participation – For Better Results



**Examples:** Some only possible thru Developers, Others thru Employers or Building Owners/Managers

- **Transit and/or Vanpool subsidies** for employees and/or residents at the site
- **Car/Van pool incentives** – reserved parking spaces in preferential locations
- **Car Sharing incentives** – reserve parking spaces in preferential locations; provide membership rental discounts
- **Bicycle incentives** – weather-protected, secure racks/lockers sufficient to meet demand; lockers/showers; bicycle purchase discounts; safe, well-lit paths
- **Bikesharing** – provide space for station; pay capital/operating costs; memberships/usage fees
- **Walking incentives** – attractive, well-lit, safe sidewalks/paths; shoe discounts
- **Contribution to costs of additional transit service** - e.g., buses
- **Parking supply limits** (constrained supply)
- **Parking charges/Parking parity** – equalizing cost and support for parking and transit.
- **Transit Centers; Real Time Signs/Systems** – Other transit amenities
- **Provide/support circulator shuttle** connecting with transit, other uses
- **Telework incentives** – laptop & other equipment discounts
- **Alternative Work Week** – Flexible/Staggered Work Hours, Compressed Work Week
- **Live Near Your Work** – Mortgage or rent incentives; providing information on options



## Key Benefits from Participating in TDM for Both Employers & Employees

### **Transit/Vanpool benefits (Direct &/or Pre-Tax)**

Tax-free total to \$265/month for both employers & employees  
Pre-tax = Reduced Payroll Taxes    Direct = Employee benefit  
FareShare = County partners w/ employers to reduce costs



**Maryland tax credit** – 50% to \$100/month/employee

**Technical Assistance** - Personalized help for employers/commuters

### **Information/Access**

E-newsletter; e-blasts, updates on commuting-related info

### **Reduced Costs for Employers/Employees**

Improved recruiting/retention, reduced parking needs

### **Reduced stress for employees**

Improved morale

### **Recognition**

COG Employer Recognition Awards; Commuter Events, Contests & Prizes; County A<sup>2</sup>CE Awards (“Advocates for Alternative Commuting Excellence”)





# Commuter Services: Typical Activities/Services in TMDs



- Bike to Work Day
- Car Free Day
- Walk & Ride Campaign
- Commuter Survey
- Advisory Committee Meetings – Speakers & Presentations
- Employer Meetings, “Lunch & Learn” Sessions
- Employer Recognition Events
- Outreach Events (Benefits Fairs, Contests, Prizes, Special Events)
- Training and Information Sessions for TBCs
- One-on-one assistance to employers & commuters
  - Pass sales (TRiPS Silver Spring & Mobile Commuter Store)
  - Carpool/Vanpool formation
- MCDOT staff also conduct outreach & coordinate with other organizations:
  - Chambers of Commerce, MWCOG, WMATA, MTA, Civic Groups, Municipalities

**WALK  
&  
RIDE**

**COMMUTER CONNECTIONS<sup>®</sup>**  
A SMARTER WAY TO WORK



## Measuring Progress: Metrics Used

- **Commuter Survey**

- Tracks achievement of several TMD goals, including:
  - Non-Auto Driver Mode Share (NADMS) in peak period
  - Transit Ridership; Mode Choices; Changes over time
- Collects information useful for marketing/outreach
- Conducted every two years – Online, takes about 5-10 minutes
- Dependent on cooperation of building owners/managers & employers/employees to complete

- **Traffic Mitigation Plans (TMPs)**

- Required of employers of 25+ in TMDs
- Ongoing staff outreach to employers required to obtain & implement
- Voluntary plans filed by some smaller employers

# Metrics – NADMS-E in TMDs

## Non-Auto Driver Mode Share for Employees in Peak Period\*



### Commuter Survey Results

	<u>NADMS-E Goal</u>	<u>2012 (FY13)</u>	<u>2014 (FY14)</u>	<u>2015 (FY16)</u>	<u>2017 (FY18)</u>
Silver Spring TMD	46%	55%	39% <sup>(?)</sup>	53%	57%
Friendship Heights TMD	39%	41%	42%	39%	44%
Bethesda TMD	37%	42%	34%	38%	37%
North Bethesda TMD	39%	24%	27%	28%	29%
White Flint Sector Plan	34 % (Phase I)	30%	34%	41%	38%
Greater Shady Grove TMD	**	15%	16%	15%	20%
Life Sciences Center	18% (Stage 1)	16%	16%	14%	19%

\* A.M. Peak Period = 7 – 9 AM

\*\* No NADMS goal has been established for the overall GSG TMD

? – 2014 Silver Spring results reflect non-participation of NOAA, large employer with typically high NADMS due to high level of transit benefits





# Metrics – Transit Use in TMDs A.M. Peak Period\*

## Commuter Survey Results

	<u>Transit Goal</u>	<u>2012 (FY13)</u>	<u>2014 (FY14)</u>	<u>2015 (FY16)</u>	<u>2017 (FY18)</u>
Silver Spring TMD	25%	39%	24% <sup>(?)</sup>	38%	38%
Friendship Heights TMD	**	30%	31%	27%	28%
Bethesda TMD	26%	30%	26%	28%	24%
North Bethesda TMD	16%	12%	15%	15%	14%
White Flint Sector Plan	**	17%	21%	28%	22%
Greater Shady Grove TMD	**	7%	5%	6%	8%
Life Sciences Center	**	9%	8%	7%	8%

\* A.M. Peak Period = 7 – 9 AM

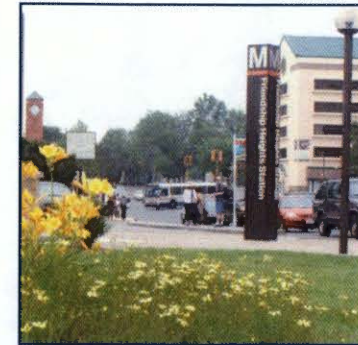
\*\* No Transit Use goal established

? – 2014 Silver Spring results reflect non-participation of NOAA, large employer with typically high NADMS due to high level of transit benefits

# Metrics:

## Traffic Mitigation Plans (TMPs)

### Filings by Employers of 25+ Employees in TMDs



- Silver Spring TMD
  - 98 employers  
with 9,200 employees
- North Bethesda TMD
  - 155 employers  
with 17,000 employees
- Bethesda TMD
  - 157 employers  
with 11,400 employees
- Friendship Heights TMD
  - 38 employers  
with 4,900 employees
- Greater Shady Grove TMD
  - 63 employers  
with 4,200 employees
- Overall Results :
  - **511 TMPs Filed**  
(including 22 Voluntary TMPs)
  - **Nearly 50,000 Employees at Worksites Impacted by TMPs**

 **Better Ways To Work!**  
Montgomery County Commuter Services

 Bethesda  
Transportation Solutions

 Friendship Heights TMD

 North Bethesda  
Transportation  
Center

 SILVER  
SPRING  
Transportation  
Management District

 Shady Grove  
Transportation Management District



# NextGen TDM: Bill 36-18

## Proposed Code Changes & Executive Regulation

Supporting Transportation Demand Management  
And Multi-Modal Options



For New Developments,  
Employers  
and Commercial & Multi-Unit Residential Projects



# NextGen TDM: Bill 36-18

## Goals of the Bill and Related Actions

### ➤ Streamline Process

- Reduce need for negotiation during development approval process
- Shorten time for approval of TDM programs

### ➤ Provide Flexibility

- Provide more choices of TDM strategies, tailored to type of project, geography, availability of transportation options
- Provide ability to make adjustments, change strategies over time

### ➤ Ensure Fairness

- Clarify requirements, including costs to the project
- Improve consistency and predictability

### ➤ Increase Effectiveness

- Extend TDM/multi-modal approaches to broader segment of the County
- Improve monitoring, reporting & enforcement
- Provide incentives/disincentives to promote goal achievement
- Enhance ability to achieve County's transportation goals



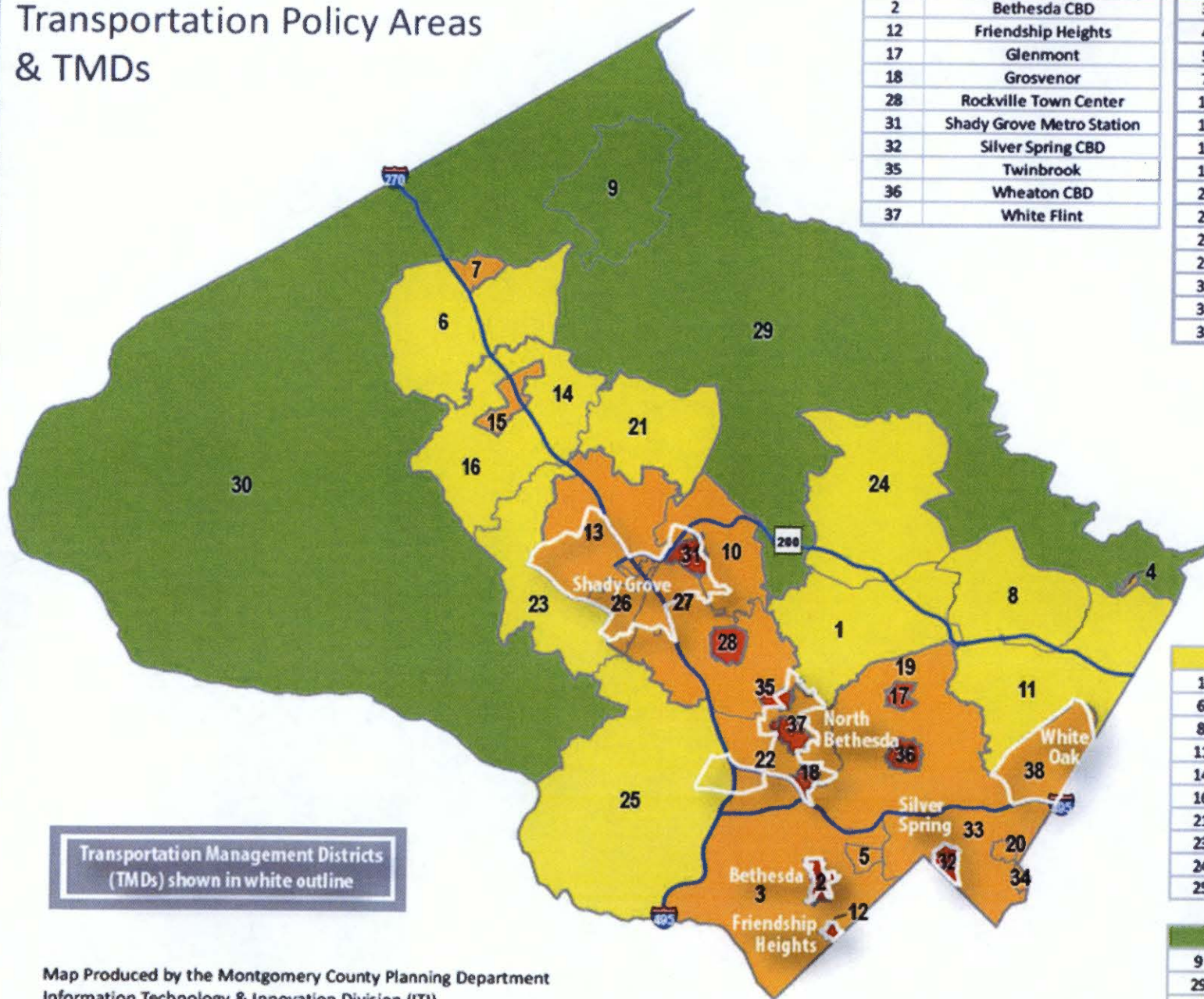
## NextGen TDM: Actions Required to Implement New Approaches

### ➤ Four Primary Actions Required

- Amendments to Chapter 42A, Article II of County Code: Transportation Demand Management = Bill 36-18 with revisions
- Adoption of related Executive Regulation (Method 2)
- Creation by Council Resolution of new TMDs for areas not currently covered
- Adoption of funding mechanisms – proposals may include:
  - Increasing TDM fee from current 10 cents/sf
  - Applying TDM fee to new multi-unit residential (currently applies only to new commercial projects in TMDs)



# Montgomery County Transportation Policy Areas & TMDs



Red (MSPAs)	
2	Bethesda CBD
12	Friendship Heights
17	Glenmont
18	Grosvenor
28	Rockville Town Center
31	Shady Grove Metro Station
32	Silver Spring CBD
35	Twinbrook
36	Wheaton CBD
37	White Flint

Orange	
3	Bethesda/Chevy Chase
4	Burtonsville Town Center
5	Chevy Chase Lake Master Plan
7	Clarksburg Town Center
10	Derwood
13	Gaithersburg City
15	Germantown Town Center
19	Kensington/Wheaton
20	Long Branch Sector Plan
22	North Bethesda
26	R&D Village
27	Rockville City
33	Silver Spring/Takoma Park
34	Takoma/Langley
38	White Oak

Yellow	
1	Aspen Hill
6	Clarksburg
8	Cloverly
11	Fairland/Colesville
14	Germantown East
16	Germantown West
21	Montgomery Village/Airpark
23	North Potomac
24	Olney
25	Potomac

Green	
9	Damascus
29	Rural East
30	Rural West

Transportation Management Districts (TMDs) shown in white outline

Map Produced by the Montgomery County Planning Department  
Information Technology & Innovation Division (ITI)  
August 2, 2018

Map overlaid with TMDs by Montgomery County DTS-GIS on 10/17/18

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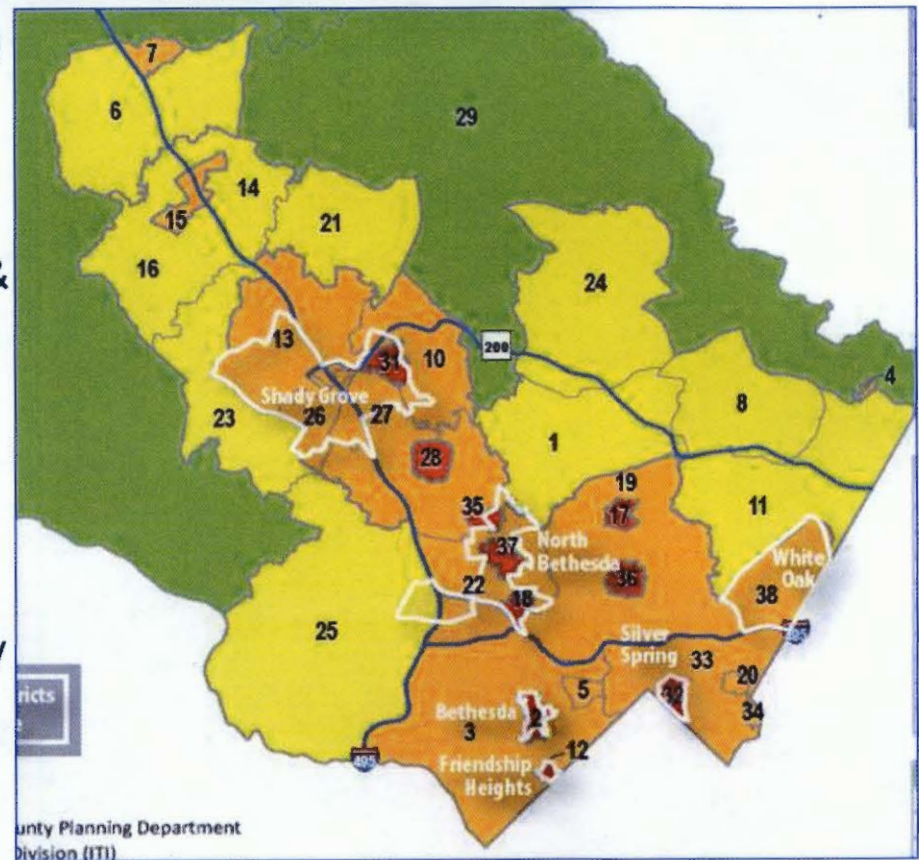
# NextGen TDM: Approach

- **Maintain/enhance shared responsibility for implementing TDM**
  - County, developers, employers, property owners, residents, public
- **Revise Code to improve processes & incorporate flexibility for future changes**
  - Eliminate TMAgs for New Developments – TDM Plans provide greater flexibility
  - Developers select strategies; Approval process streamlined
  - Extend TDM Plan requirement to broader segment of County
- **Simplify terminology – Eliminate TMAgs, TMPs. Instead use term “TDM Plans” and indicate application: New Developments, Existing Buildings, Employers**
- **Adopt Executive Regulation to clarify implementation**
  - Enable TDM strategies to be added, revised in TDM Plans
  - Enable other implementation adjustments over time
  - Establish consistent targets for Policy Areas & update



# Planning for Countywide TDM

- Establish a Countywide TDM program
- Leave current TMDs as they are
- Base new TMDs on Policy Areas
  - Create one new TMD for Wheaton & Glenmont Metro Station Policy Areas (Red/MSPAs #36 & 17)
  - Group all Orange areas not currently in a TMD into one new TMD
  - Group all Yellow areas not currently in a TMD into one new TMD





# NextGen TDM – Original Bill 36-18

## Requirements for New Development Projects

- Extends TDM to more new development projects in more areas of County
- Incorporates Subdivision Staging Transportation Policy Areas/Color Categories
- Eliminates Traffic Mitigation Agreements (TMAgs) for New Developments
- Instead: New developments submit TDM Plan based on size & location of project:

**Three Levels of Project-Based TDM Plans: Basic, Action, Results**

Subdivision Staging Policy Area	No Requirements	Level 1: TDM Basic Plan	Level 2: TDM Action Plan	Level 3: TDM Results Plan
<b>Red Areas</b>	≤25K	25K – 100K GSF		>100K GSF
<b>Orange Areas</b>	<50K GSF	50K – 100K GSF	>100 -200K GSF	>200+K GSF
<b>Yellow Areas</b>	<75K GSF	75K – 150K GSF	>150K GSF	TDM Results Plan not required – May be used upon Applicant request

# NextGen TDM: Bill 36-18

## Changes Proposed for Employers

### More Employers Covered + Change in Terminology

#### Current Code Requirements:

Employers located in TMDs who have 25 or more employees are required to:

- File a “Traffic Mitigation Plan” (TMP)
- Report annually on the TDM measures they are implementing
- Participate in the Commuter Survey
- **MCDOT provides online templates for the TMP and the Annual Report**
- The Plan can be completed and filed online – See template shown in Appendix

#### Proposed Changes to Code Under NextGen:

- TMPs would now be called **Employer TDM Plans** & have similar requirements
- Employers of the following sizes located in these Policy Areas must file TDM Plans:

**Red** – ≥ 25 employees

**Orange** – ≥ 100 employees

**Yellow** – ≥ 200 employees



# Recommended Revisions to Bill 36-18

- Bill 36-18 originally submitted by Leggett Administration
- Elrich Administration supports NextGen TDM effort with proposed revisions
  - Must ensure that goals established in Master Plans, TMDs and Policy Areas are achieved
  - Critical to achieve goals in order to fulfill commitments made to those communities
- Proposed revisions are targeted at increasing the Bill's effectiveness, as highlighted on the following slides
- Revisions recommended to requirements for New Development Projects
- No revisions related to requirements for Employers

## Recommended Revisions to Bill 36-18 (Cont'd)

### 1. Expand Applicability

- Reduce new project size thresholds for submission of TDM plan
- More projects in each area will be required to help achieve area goals

### 2. Provide Flexibility in Setting Project Goals

- MCDOT Director may set higher (or lower) NADMS goal for a specific project
- Project goal may vary up to 5% from the NADMS goal for that area
- Project goal set based on project parameters & what is necessary in order to achieve NADMS goal for that Master Plan/TMD/Policy Area
- Director must find area goals will be attained when approving Results-based TDM Plan

### 3. Make Parking Management a Priority

- Implementation of more effective parking management strategies will be a priority for projects falling short of the goals
- Parking management may include employee parking restrictions



# NextGen TDM – Recommended Revisions to Bill 36-18

## Changes Proposed for New Development Projects

- Extends TDM to more new development projects in broader portion of County
- Incorporates Subdivision Staging Transportation Policy Areas/Color Categories
- **Focuses on achieving Master Plan/TMD/Policy Area NADMS Goals**
- Eliminates Traffic Mitigation Agreements (TMAGs) for New Developments
- Instead: New developments submit TDM Plan based on size & location of project:

### Three Levels of Project-Based TDM Plans: Basic, Action, Results - **REVISED**

Subdivision Staging Policy Area	No Requirements	Level 1: TDM Basic Plan	Level 2: TDM Action Plan	Level 3: TDM Results Plan
<b>Red Areas</b>	<25K GSF	25K-100 GSF ≤25K GSF		>100+K GSF >25K GSF
<b>Orange Areas</b>	<50K GSF <25K GSF	50K – 100K GSF 25K-75K GSF	>100-200K GSF >75K-150K GSF	>200+K GSF >150K GSF
<b>Yellow Areas</b>	<75K GSF <50K GSF	75K – 150K GSF 50K – 150K GSF	>150+K GSF >150K GSF	TDM Results Plan not required – May be used upon Applicant request



## NON-AUTO DRIVER MODE SHARE (NADMS) GOALS

	Transportation Policy Area	NADMS Employees	NADMS Residential
<b>2</b>	Bethesda TMD	55% blended for residents and workers	
<b>5</b>	Chevy Chase Lake Master Plan Area	36 %	49%
<b>12</b>	Friendship Heights TMD	39%	
	Great Seneca Science Corridor Master Plan	18% before Stage 2 23% before Stage 3 28% before Stage 4	
<b>26</b>	Greater Shady Grove TMD	12.5% transit	25% transit elsewhere
<b>31</b>			35% transit in Shady Grove Metro Station Policy Area
<b>18</b>	Grosvenor Strathmore Metro Area	Blended goal 50%	
<b>20</b>	Long Branch Sector Plan	36%	49%
	<u>Lyttonsville</u> Sector Plan		50%
<b>35</b>	<u>Twinbrook</u> Metro Area / North Bethesda TMD	39%	30%
<b>14</b>	Rock Spring Master Plan	23%	41%
<b>32</b>	Silver Spring TMD	46% existing 50% new	
<b>37</b>	White Flint / North Bethesda TMD	34% for Phase 1 for Plan area 42% for Phase 2 for Plan area 50% employees for Phase 3	51% for residents for Phase 3
<b>37</b>	White Flint 2 / North Bethesda TMD	34% Phase 1 27% Phase 1 east of tracks 42% Phase 2 35% Phase 2 east of tracks 50% Phase 3 42% Phase 3 east of tracks	34% Phase 2 27% Phase 1 east of tracks 42% Phase 2 35% Phase 2 east of tracks 51% Phase 3 42% phase 3 east of tracks
<b>38</b>	White Oak	25% all new commercial and residential development in the White Oak Center and Hillandale Center  30% all new commercial and residential development in the Life Science/FDA Village Center	
<b>36</b>	Wheaton CBD	30%	
	Areas Without Specific Goals	5% above existing NADMS	5% above existing NADMS

# Project-Based TDM Plans – Key Components\*

- **Level 1: Basic Program** – Bare minimum
  - Appoint contact person, cooperate with County program efforts
  - Facilitate outreach on-site
  - Provide Real Time and other TDM-related information
  - Otherwise relies on County programs
- **Level 2: Action Program** – Mid-range commitment: **Must contribute** to achieving TMD goal
  - Commitment to implement specific strategies
  - Minimum funding commitment for on-site program
  - Self-monitoring, reporting
  - Addition/substitution of program elements if progress not being made
  - Modest increases required in funding of on-site program for non-performance
  - Performance incentives for ongoing contribution toward area goal
- **Level 3: Results Program** – Highest level commitment: **Must achieve** TMD/Project goal
  - Independent monitoring
  - More substantial increases in on-site funding if goal not met after multiple monitoring periods
  - Performance incentives for ongoing project goal achievement

\* Related Chart in Appendix: "TDM Plan Components for New Development Projects"

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# Questions? Contacts & Resources

## Contact Information:

### Montgomery County Commuter Services

Department of Transportation  
Office of Transportation Policy  
101 Monroe Street – 10<sup>th</sup> Floor  
Rockville, MD 20850

[www.montgomerycountymd.gov/commute](http://www.montgomerycountymd.gov/commute)

### Other TDM Resources:

[www.vtppi.org](http://www.vtppi.org)

[www.nctr.usf.edu/clearinghouse](http://www.nctr.usf.edu/clearinghouse)

<http://www.nctr.usf.edu/ABE50/othsites.htm>

<http://www.cutr.usf.edu/index2.htm>

[www.actweb.org](http://www.actweb.org)

### Chris Conklin, Deputy Director for Transportation Policy

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# Appendix

- TDM Plan Components for New Development Projects
- Sample Menu of TDM Strategies
- Sample Traffic Mitigation Agreement (TMAg) Template
- Sample Employer Traffic Mitigation Plan Template (TMP)
- List of Acronyms

## TDM Plan Components for New Development Projects ¶

Subdivision Staging Policy Area (Color Classification)	No Requirements	Level 1: TDM Basic Program (No TMAg)	Level 2: TDM Action Program (*Action- Based TMAg*)	Level 3: TDM Results Program (*Results-Based TMAg*)
Red Areas		≤25K	Not Applicable	>25K GSF
Orange Areas	<25K GSF	25K – 75K GSF	>75-150K GSF	>150K GSF
Yellow Areas	<50K GSF	50K – 150K GSF	>150K GSF	Not required – May be used upon request
Required TDM Plan Components				
Appoint contact person		X	X	X
Facilitate outreach/information to on- site population		X	X	X
Provide Real Time and other TDM-related information		X	X	X
Coordinate/Cooperate with County program efforts		X	X	X
Commitment to Additional TDM Strategies Selected by Applicant (See Menu of Strategies)			X	X
Minimum Financial Commitment			50% of Annual TDM Fee	100% of Annual TDM Fee
Self-Monitoring – Every 2 years			X	X
Independent Monitoring – Beginning in 6 <sup>th</sup> year				X
Biennial Report			X	X

[Chart-Continued-Next-Page] ¶





<b>TDM Plan Components for New Development Projects (Continued)</b>				
<b>Subdivision Staging Policy Area (Color Classification)</b>	<b>No Requirements</b>	<b>Level 1: TDM Basic Program (No TMAg)</b>	<b>Level 2: TDM Action Program (*Action- Based TMAg*)</b>	<b>Level 3: TDM Results Program (*Results-Based TMAg*)</b>
Red Areas		≤25K	Not Applicable	>25K GSF
Orange Areas	<25K GSF	25K – 75K GSF	>75-150K GSF	>150K GSF
Yellow Areas	<50K GSF	50K – 150K GSF	>150K GSF	Not required – May be used upon request
<b>Required TDM Plan Components</b>				
<b>Biennial Report</b>			X	X
<b>Addition/Substitution of TDM Strategies</b>			X	X
<b>Added Funding for On-Site Program - Beginning 6th year if no progress/goal achievement</b>			<b>One Multiple of Annual TDM Fees to augment Project's program, or provided to County program</b>	<b>6<sup>th</sup> year = 2X Annual TDM Fees 8th year = 4X Annual TDM Fees To augment Project's program</b>
<b>Performance Incentives – For 10 years of ongoing progress/goal achievement</b>			<b>50% of Annual TDM Fee for contributing toward achievement of TMD goals</b>	<b>50% of Annual TDM Fee for achievement of TMD goal</b>

## Sample Menu of TDM Strategies\*

SIZE OF BUILDING/PROJECT: COLOR CATEGORY OF SUBDIVISION STAGING POLICY AREA:	<25K GSF	25K + GSF	25K - 75K GSF	75K - 150K GSF	150K + GSF	50K - 150K GSF	150K + GSF	150K + GSF
LEVEL OF TDM PLAN:	RED	ORANGE			YELLOW			
LEVEL OF TDM PLAN:	BASIC	RESULTS	BASIC	ACTION	RESULTS	BASIC	ACTION	RESULTS [Optional]
<b>TDM STRATEGIES</b>								
<b>A. Cooperation/Marketing &amp; Education</b>								
Participate in County-wide and Regional Events	X	X	X	X	X	X	X	X
Transportation Coordinator / Training + Responsibilities	X	X	X	X	X	X	X	X
Notification of Changes in Contacts	X	X	X	X	X	X	X	X
On-Site Space for TDM Outreach & Promotion	X	X	X	X	X	X	X	X
Displays of Real Time & Other TDM Information	X	X	X	X	X	X	X	X
<b>B. Parking</b>								
Provide Less than Max # of Spaces [percentage basis]	H	X	H	H	H	H	H	O
Unbundle Parking From Lease Arrangements	H	X	H	H	H	H	H	O
Unassigned/Unreserved Spaces (Except car/vanpool, carshare, EV)	H	H	H	H	H	H	H	O
Market-Rate Parking Charges for Employees/Residents	H	H	O	H	H	O	O	O
Carpool/Vanpool Parking - Preferentially Located Spaces	X	X	X	X	X	X	X	X
Parking Cash-Out (Employer-owned projects)	H	H	X	X	H	O	O	O
Employee Parking Controls/Restrictions	H	H	H	H	H	H	H	O
<b>C. Onsite Bicycle &amp; Pedestrian Support</b>								
Bikeshare/Dockless Vehicles (e.g., subsidies, stations, pkg areas)	H	H	O	O	H	O <sup>a</sup>	O <sup>a</sup>	O
Secure Bicycle Parking (> required under Zoning Ordinance)	O	X	O	X	X	O	O	O
Bicycle Repair Station(s)	O	O	O	O	O	O	O	O
Shower Availability/Lockers/Changing Rooms	O	X	O	O	X	O	O	O
Onsite Pedestrian Amenities (i.e., benches, sidewalks, etc.) > Requ'd	O	H	O	H	H	O	O	O
<b>D. Amenities Supporting Commuting Alternatives</b>								
On-Site Amenities (refreshments, dry cleaning, convenience retail, etc.)	O	O	O	O	O	O	O	O
On-Site or Nearby Child Care	O	O	O	O	O	O	O	O
<b>E. Transit Support</b>								
Subsidized Transit Passes (e.g., SmartBenefits, etc.)	H	H	H	H	H	H	H	O
Provide Transit Passenger Amenities (e.g., shelters, waiting areas)	H	H	O	H	H	O	O	O
Shuttle Bus Services (e.g., Circulators, Microtransit)	O	H	O	O	H	O	O	O
Vanpool Services	H	H	O	H	H	O	H	O
Availability of Mid-Day Short-term Car Services (i.e., Zipcar memberships, Taxi, Uber/Lyft services) for Alt Commuters	O	H	O	H	H	O	O	O
<b>E. Employee &amp; Resident Incentives (Recommended Owner/Manager Funding Allocations)</b>								
>\$50 - \$100 per employee/resident per year	O	O	O	O	O	H	H	O
>\$100 - \$200 per employee/resident per year	O	O	H	H	H	O	O	O
>\$200 per employee/resident per year	H	H	O	O/H <sup>b</sup>	H	O	O	O
<b>NOTES: X = Required; O = Optional; H = Highly Effective-Recommended for Highly Effective Program</b>								
Red Policy Areas: TDM Action Plan = Not Available								
Yellow Policy Areas: TMD Results Plan = Optional								
<i>a - Bikeshare in areas without existing program could provide own dock-based program or dockless bikeshare program</i>								
<i>b - If don't meet goals after 6 years, increase to \$200/employee/year</i>								
* Note: Determination of which strategies are required vs. optional in each area to be determined including further analysis re impacts. Additional/new strategies may be added by project owners, developers, employers, residential managers, MCDOT or others. Evaluation of impacts will be important to assess, but new approaches are welcome.								





## SAMPLE EMPLOYER TRAFFIC MITIGATION PLAN (TMP)

**Employer Name:** Company ABC, Inc.  
**Address:** 0000 Main Street, Rockville, MD 20850  
**Full time employees:** 80    **Part Time Employees:** 10  
**Strategies # 1 – 8 are required.**

No.	TRAFFIC MITIGATION STRATEGY	EMPLOYER DESCRIPTION
1	Contact person designated to receive and distribute information	Mary Jenkins, Executive Assistant 301-444-4444 maryjenkins@abc.com We will notify the TMD in writing of any changes in this information.
2	Information on transit/pooling/other commute alternatives distributed/posted regularly (furnished by TMD)	Information on transit/ carpooling/other commute alternatives is posted regularly in the employee break area.
3	Facilitate TMD staff presentations to employees and HR/Administrative staff on commuter information/alternatives on periodic basis.	We hold office meetings periodically and will invite TMD staff to present information at the meetings. We will inform employees when TMD staff holds a "Commuter Information Event" in our building.
4	Guaranteed Ride Home Promotion (free regional program offering emergency rides)	We will promote the Guaranteed Ride Home program to our employees. We will provide brochures.
5	Annual Commuter Survey distributed to employees (short survey of transportation-supplied by TMD). Please describe you approach to gaining 80% participation for your employees.	We will distribute the survey to employees and offer small incentives to complete.
6	ADA information provided (transportation services for people with disabilities)	We will provide disabled employees with information on the regional Metro Access program.
7	Permanent display area for TMD-provided bus schedules and other worksite and other transportation information	We plan to display a transit map and brochure in our employee break area.
8	Compile information on yearly TMP activities and submit Annual Report	We will keep on our TMP activities and submit an Annual Report.

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## Additional TDM Strategies – To Be Selected by Employers

9	Attendance at free CSS-sponsored meetings/workshops permitted for designated contact person	We will allow Tracy Smith to attendance free CSS-sponsored meetings or workshops permitted as her schedule permits.	17	Carpool matching for employees (as part of free region-wide matching program, or can be onsite only)	We do not offer carpool matching for our employees, but encourage them to contact our TMD representative for information.
10	Information on commuting alternatives provided to new employees (TMD can provide materials and/or attend orientations)	We will put brochures and other information provided by TMD in new employee orientation packages.	18	Alternative work schedules. Indicate which one(s) you offer: Flex time, Jobsharing, Compressed Work seek or Telecommute/Teleworking	We do not offer alternative work schedules at this time.
11	Free or reduced rate parking for car/vanpools offered to employees	Carpoolers can park for free.	19	Monthly transit subsidies provided to employees. Indicate the amount of pre-tax and amount of direct benefits you provide. Indicate if the pre-tax or direct benefit is more or less than you provided last year, and if so how much (as a percent or dollar amount).	We participate in the SmartBenefits program with WMATA.
12	Preferred location and/or reserved parking for car/vanpools offered to employees	The 2 spaces reserved for carpools are in preferred locations.	20	Maryland State Commuter Tax Credit for employers For more information visit the website <a href="http://www.commuterchoicemaryland.com/taxcredit.htm">http://www.commuterchoicemaryland.com/taxcredit.htm</a>	We take advantage of the commuter tax credit.
13	Provision of car sharing space in highly visible location within on-site parking facility.	We will look into providing this in the future.	21	Pre-tax payroll deduction for transit costs offered to employees (saves employer and employee money)	We plan to offer pre-tax payroll deductions for transit costs in the future.
14	Provision of car sharing incentives, including paying part or all of membership costs, rental costs, or similar incentives	We only promote car sharing at this time but plan to subsidize membership costs in the future.	22	Transit passes offered for purchase at worksite (at full or reduced price)	We sell SmarTrip cards to employees who need them.
15	Bike amenities at worksite, such as racks, lockers and showers (TMD may be able to supply)	Our building has bike racks for employees to use.	23	Subsidize employee parking and transit equally (if employee parking is currently subsidized, offer equal subsidy for transit costs)	We plan to do this in the future.
16	Transit/pedestrian amenities at worksite, e.g., sidewalks, benches, etc.	There is a Metrobus stop a block from our office. A sidewalk leads from the bus stop to our door. We make sure the sidewalk is clear of snow or debris.	24	Ozone Action Days participation (regional program to alert people to dangerous air quality days) Visit Clean Air Partners website to sign up for air alerts. <a href="http://www.cleanairpartners.net">http://www.cleanairpartners.net</a>	We include information about Ozone Action Days to summer editions of our e-newsletter.

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# List of Acronyms

LATR = Local Area Transportation Review

NADMS = Non-Auto Driver Mode Share

TDM = Transportation Demand Management

TMD = Transportation Management District

TMP = Traffic Mitigation Plan – Employers

TMAg = Traffic Mitigation Agreement - Developers



OFFICE OF MANAGEMENT AND BUDGET

MEMORANDUM

Isiah Leggett  
County Executive

Jennifer A. Hughes  
Director

November 30, 2018

TO: Hans Riemer, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Alexandre A. Espinosa, Director, Department of Finance *AE* *MCB for JAH*

SUBJECT: FEIS for Bill Transportation Demand Management "NextGen TDM"

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:bg

c: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Alexandre Espinosa, Department of Finance  
Dennis Hetman, Department of Finance  
David Platt, Department of Finance  
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  
Helen Vallone, Office of Management and Budget

Office of the Director

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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.

There are three Project-based TDM Plan Levels:

- 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:

Subdivision Staging Policy Area	No Requirements	Level 1: Project-based TDM Basic Plan	Level 2: Project-based TDM Action Plan	Level 3: Project-based TDM Results Plan
Red Areas	<25K GSF	25K – 100K GSF	Not Applicable	>100+K GSF
Orange Areas	<50K GSF	50K – 100K GSF	>100-200K GSF	>200+K GSF
Yellow Areas	<75K GSF	75K – 150K GSF	>150K GSF	TDM Results Plan not required – May be used upon Applicant request

**Table 1: Project-based TDM Plan Requirements for New Developments**

For employers or existing buildings, the requirements to file a TDM Plan would be extended beyond the current TMDs to employers and existing buildings over a certain size located within 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”)

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

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 Completed Development - 6 Year Totals**

Revenue		
	\$.10 / sf	\$.125 / sf
Subtotal-Current TMDs – Projected Completed Development	4,320,000	5,400,000
<i>Commercial – 4.4 M GSF over 6 years</i>	*2,640,000	*3,300,000
<i>Multi-unit Residential – 2.8 M GSF over 6 years</i>	1,680,000	2,100,000
“Non-TMDs” – Development Outside Current TMDs	1,800,000	2,250,000
<b>GRAND TOTAL</b>	<b>\$6,120,000</b>	<b>\$7,650,000</b>
<b>Total New Revenue from Projected New Completed Development</b>	<b>\$3,480,000</b>	<b>\$4,350,000</b>
*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. The tables below summarize the various types of expenses over a six-year period.

**Table 5: Total Estimated Basic Expenditures Over 6 Years**

Expenditures	
2 Staff Positions Grade 23	1,128,000
Contract Outreach Staff	1,726,200
IT Support – Web Development *	50,000
Promotion, events & related	300,000
<b>Total</b>	<b>\$3,204,200</b>
* 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. Projected costs shown in Table 6 below assume FY19 mid-point of Grade 23 salary range plus benefits = \$84,670 + COLA 2% annually and 3.5% service increments thereafter, per the current collective bargaining agreement. 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
<b>Total</b>		<b>\$1,127,999</b>	

Contract Staff for Employer 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 employer. Projected number and size of employers located within each Policy Area assumes similar sizes and numbers of employers as exist currently (based on data received from Department of Finance).

**Table 7: Projected Contract Outreach Staff Expenses Over 6 Years**

Policy Area	Employers	Expenditure (x \$1370)	6-Yr Total
Red / 25+ employees	50	68,500	411,000
Orange / 100+	130	178,100	1,068,600
Yellow / 200+	30	41,100	246,600
<b>Total</b>	<b>210</b>	<b>\$287,700</b>	<b>\$1,726,200</b>

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

	\$ .10 / sf	\$ .125 / sf
Total Contractor + County Staff	2,854,200	2,854,200
IT / ERP Systems (see #5)	50,000	50,000
Promotion, events & related	300,000	300,000
New programs & services to meet NADMS goals	275,800	1,145,800
<b>Subtotal Expenditures</b>	<b>3,480,000</b>	<b>4,350,000</b>
"Non-TMD" Revenue (Areas outside current TMDs)		
TMD Revenue – Adding Multi-unit residential	1,800,000	2,250,000
<b>Subtotal – New Revenue</b>	<b>3,480,000</b>	<b>4,350,000</b>
<b>Net Revenue to Expense</b>	<b>\$0</b>	<b>\$0</b>



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.**

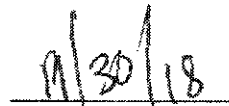
The costs of implementing the bill are expected to be covered by additional revenue from TDM fees as shown in Table 8 above. Fee revenues are required to be used within the TMD in which they were generated. This additional revenue would be used to help cover the cost of added transportation services 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

  
Jennifer A. Hughes, Director  
Office of Management and Budget

  
Date

**Economic Impact Statement**  
**Bill 36-18 -- Transportation Management**  
Transportation Demand Management Plan - Amendments

**Background**

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. 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.

There are three Project-based TDM Plan Levels:

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

The purpose of the Bill is to extend Transportation Demand Management (TDM) to a broader portion of the County, streamline the process for TDM Plan approval for new projects, and provide flexibility in implementing TDM. The amendments are designed to increase the effectiveness of TDM in addressing traffic congestion, support multi-modalism, enhance the efficient use of transportation infrastructure, and promote sustainability.

Key Changes to Chapter 42A, Article II include:

1. Subdivision Staging Policy Areas would be used as the basis for determining which developments and existing businesses must have TDM Plans.
2. New development projects would be required to file a Project-based TDM Plan if they are over a minimum size, based on Policy Area. These Plans would replace the negotiated Traffic Mitigation Agreements (TMAs) authorized under current Code; TMAs will no longer be required for future development projects.
3. Three Levels of Project-based TDM Plans are created: Basic -- minimal requirements; Action -- mid-range requirements and must contribute to achieving area goals; and Results -- highest level requirements and must achieve goals at the project. The Level of Plan required is dependent upon the size of the project and the Subdivision Staging Policy Area in which it is located.

4. Employer Transportation Demand Management Plans are currently required only in TMDs. These Plans would now be required for employers over a certain size throughout the County (except for Green Policy Areas), based on the number of employees and the Policy Area.

**1. The sources of information, assumptions, and methodologies used.**

- Department of Transportation data including: existing County Code Section 42A, Article II; information on transportation demand management and its effectiveness in the County and elsewhere; typical sizes and locations of new development applications within existing TMDs and in areas outside TMDs over recent years; and data on employer workforce sizes and locations within and outside existing TMDs.

**2. A description of any variable that could affect the economic impact estimates.**

The rate of development in both the TMDs and non-TMD areas for approved and built projects could vary, impacting costs, revenues, and corresponding economic impacts. 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. 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 defines 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. That additional development would result in corresponding increases in revenue which would be sufficient to cover those added costs.

Variables that could affect economic impact estimates are:

- the number of potential future development projects in areas outside existing TMDs
- the number of future employers and their workforce sizes in areas currently outside TMDs
- the effectiveness of TDM efforts in areas currently without substantial transit alternatives and the timeframe within which those alternatives can be provided

As noted in the fiscal impact statement for the legislation, estimates suggest that anticipated revenue and expenditures will match over the next six years resulting in no additional net revenue to the County at both the \$.10 per square foot and \$.125 per square foot rates. Since the revenues are required to be used within the TMD in which they were generated, any additional revenue would be used to help cover the cost of transportation services or other initiatives in that TMD.

**3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes and property values in the County.**

Because it will expand the use of TDM, Bill 36-18 would have the potential to generate positive impacts on employment and property values in the County, due to anticipated reductions in traffic congestion, increased efficiencies in use of transportation infrastructure and related services and streamlining of the development approval process. Private sector development activity is partially dependent on the national and regional economy which, in the event of another recession, could affect the level of new development and projected revenue. Focusing new development in highly transit-served areas is an important County land use and economic development objective. The proposed amendments will make it more attractive to concentrate more jobs and housing in areas with good transit service along with other multi-modal options.

As stated in the existing Code, "Transportation demand management, in conjunction with adequate transportation facility review, planned capital improvement projects, and parking and traffic control



measures, will, among other things, help provide sufficient transportation capacity to achieve County land use objectives and permit further economic development.” (Ch 42A, Article II, Section 22 Findings/Purposes (c) 1)

Bill 36-18 is anticipated to have a positive economic impact on property values and real property tax base, due to expanded transportation demand management efforts resulting in more sustainable development projects and businesses being attracted to the area. Reduced traffic congestion and increased multi-modal options could result in an increase in businesses in the County, with a potential corresponding increase in employment. The potential property value and employment impacts cannot be quantified with specificity given a lack of data enumerating the scale of future developments but are anticipated to be a net positive for the County as a direct result of this legislation.

**4. If a Bill is likely to have no economic impact, why is that the case?**

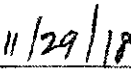
As noted above, it is anticipated that this Bill would have a positive economic impact.

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

Christopher Conklin, Sandra Brecher and Beth Dennard - Office of Transportation Policy  
Department of Transportation.

David Platt, Dennis Hotman - Department of Finance

  
\_\_\_\_\_  
Alexandre A. Espinosa, Director  
Department of Finance

  
\_\_\_\_\_  
Date

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**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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November 30, 2018

The Honorable Hans Riemer  
President, Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

**SUBJECT: Public Hearing Commentary: NextGen Transportation Demand Management (TDM) Program – Proposed Code Changes and Executive Regulations**

Dear Mr. Riemer:

This letter transmits the Montgomery County Planning Board's commentary pertaining to Montgomery County Department of Transportation (MCDOT) proposed changes to Chapter 42A, Article II of the County Code and accompanying Executive Regulations in support of the NextGen Transportation Demand Management (TDM) Program. It is anticipated these proposed changes will be introduced to the Council (followed by a public hearing) this fall in the form of Bill 36-18. At its regular meeting on September 13, 2018, the Planning Board reviewed these proposed changes. Our review was supported by a briefing delivered by MCDOT staff describing the key elements of the proposed NextGen TDM program. This briefing was followed by an extensive discussion of the topic with MCDOT and Planning Department staff. The Planning Board applauds the intent of the proposed NextGen TDM Program to support the expansion of certain TDM requirements beyond the boundaries of existing Transportation Management Districts (TMDs) in Montgomery County. In summary, the Planning Board recognizes the following key elements of the program:

- Distinguishes between employer and developer based TDM requirements and responsibilities;
- Establishes a three-tiered developer based TDM program that requires varying levels of TDM responsibilities and outcomes.
- Ties the tiered developer TDM program to the 2016 - 2020 Subdivision Staging Policy (SSP) policy areas enabling sensitivity to the variety and quality of local mobility options. Developments in the green policy areas, and single-family detached developments anywhere, would be exempt;
- Consistently requires developer TDM participation in moderate-to-high density residential developments;
- Expands employer-based TDM programs to all red, orange, and yellow SSP policy areas;
- Establishes non-auto driver mode share (NADMS) goals where they do not currently exist;
- Develops a TDM menu of traffic mitigation tools and strategies that allows for choices by developers and employers and flexibility over time; and
- Improves monitoring, reporting and strengthens enforcement mechanisms.

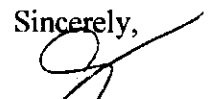
The Honorable Hans Riemer  
November 30, 2018  
Page Two

By a vote of 4:0 (Commissioner Dreyfuss absent), the Planning Board approved the transmittal of the commentary summarized below.

- Although the proposed TDM is land use agnostic, please consider the application of TDM requirements to land uses that invoke large demand during off-peak periods such as large religious institutions.
- Establish an independent process to audit performance reporting in TDM monitoring reports.
- Conform (to the extent feasible) existing TMD boundaries with parking lot districts (PLDs), Urban Districts and/or Subdivision Staging Policy (SSP) policy areas.
- Continue to solicit feedback /commentary from private sector stakeholders (e.g., Chamber of Commerce) regarding the proposed TDM requirements.
- Reconsider the use of the term “rewards” to describe public actions when a TDM plan meets its performance goal. Reevaluate the allotted time for TDM plan participants to be required to adjust their strategies if performance targets are not being met (every six years may be too infrequent).

We look forward to collaborating with the County Council and MCDOT to assure that TDM in the county is adjusted as described above. In addition to public efforts, we recognize that meeting the County’s transportation goals will require active participation by the private sector. The NextGen TDM program encourages the private sector to take ownership of their onsite transportation strategies that will both benefit their tenants/employees and assist the larger community in reducing congestion.

Sincerely,

  
Casey Anderson  
Chair

cc: Glenn Orlin  
Sandra Brecher

Greater Colesville Citizens Association

PO Box 4087  
Colesville, MD 20914  
December 4, 2018

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Montgomery County Council  
Attn: Nancy Navarro, President  
100 Maryland Ave  
Rockville, MD 20850

Re: Transportation Demand Management, Bill 36-18

Dear Council President Navarro:

The Greater Colesville Citizens Association (GCCA) supports the goals of Bill 36-18 to expand Transportation Demand Management (TDM) to more areas of the county and to streamline the existing process. We however feel that the proposed legislation still needs some work as identified below.

1. We have read the proposed legislation and compared it with the County Executive's letter and have found a number of apparent conflicts
  - a. Careful reading indicates the TDM Plan requirements apply to districts, which are defined as Transportation Management Districts (TMDs). The stated intent is not to add new districts but rather expand the TDM requirements to select planning areas. TDM Plans are the new requirement while Traffic Mitigation Plans are the old requirement within TMDs. Except for keeping language dealing with existing districts, the document needs to be edited to delete the word "district" and replace it with "policy area". (Replace the word "district" at lines 41, 53\*, 54\*, 195, 199, 201, 249, 264, 358, 377, 401, 429, 530, 533, 535, 554, 558, 565, 575, 577, 588, 598, 702, 779, 792, 803, 829, 831, 835, 838, 840, 848, 870, and 871. (\* Other problems with this definition – see item 5 below.)
  - b. The letter indicates the revised requirement does not apply to single family houses but the proposed legislation on line 430 indicates it only excludes projects that are solely single family detached housing. Projects that contain the specified number of units also contain MPDUs which typically are detached houses. The bill needs to exclude single family housing (both attached and detached) from the gross square foot determination (starting on line 448). The trend now is for mixed use and single family units need to be excluded from all developments – including mixed use.
  - c. The letter indicates that a TDM Plan is required for employers above 25 employees in red areas, 50 in orange area and 100 in yellow area, but line 210 of the draft legislation has 100 for orange areas and line 213 has 200 for yellow areas. We support the higher number.
2. GCCA feels that the requirement for development projects to submit a TDM Plan is too expansive (this would also apply to employers and building owners). There is a limited ability to increase non-auto driver mode share (NADMS) if good public transportation is not available. Transit is currently poor in many parts of the orange and yellow policy areas, especially outside the beltway and not along the I-270 corridor. Therefore we think the proposed five percent NADMS increase in the draft regulation for policy areas without a master plan requirement is not obtainable until good transit (ie premium) is provided.

As a reminder, the basis from the SSP for the three categories where the draft legislation calls for a TDM Plan is the following (also see the attached map):



- **“Red:** Down-county central business districts and Metro station policy areas (MSPAs) characterized by high-density development and the availability of premium transit service (i.e., Metrorail, MARC).
- **Orange:** Corridor cities, town centers and emerging transit-oriented development (TOD) areas where premium transit service (i.e., Corridor Cities Transitway, Purple Line, bus rapid transit) ***is planned.***
- **Yellow:** Lower density areas of the county characterized by mainly residential neighborhoods with community-serving commercial areas.”

The red category policy areas cover small geographic areas and already have premium transit service. The orange areas are much larger (see map) and premium service is planned. The yellow areas are also large and a small amount of premium transit is planned for some of the areas. Generally the zoning density decreases from red to orange to yellow, which means that good transit service is harder to provide economically through this progression.

We oppose increasing the NADMS requirement for any project, employer, or building owner where premium transit is not already nearby (i.e. within two miles). We assume that good local bus is provided within 2 miles of a premium transit station which would be used to transport people to the premium transit station when the distance is too far to walk (i.e. >1/4 mile). The Council applied this same line of thinking at the bottom of page 12 of Resolution 17-1204 dealing with the White Oak Science Gateway Master Plan. It indicates that the NADMS goal is “based on the area’s future transit service (assuming BRT) and connectivity opportunities,” which we take to be provided by local bus. Thus, the NADMS goals must be contingent upon the county providing BRT and improved local bus service.

This requirement would surely mean that each red area would be required to provide a TDM plan and meet the NADMS goal, as appropriate. A percentage (but not all) of each orange area would be covered at some point in the future once premium transit has been built within them and a small percentage in some yellow areas once premium transit has been built there. Until premium transit is provided in a policy area, the County could require a TDM Plan but not require any NADMS level be achieved. Thus it would be a best efforts approach to increasing the NADMS.

Since the county is studying BRT premium transit service for a number of corridors, this proposal would mean that many more projects, employers and building owners would be added every few years (where NADMS needs to be increased). The justification to increase the area covered by TDM would be to build more premium transit.

3. The legislation needs to state clearly when a TDM Plan is needed for building owners. We recommend it be the same requirement for employers as found in lines 192-195: by council resolution or in the Subdivision Staging Policy.
4. The need to produce a TDM Plan should exclude certain types of situations from the calculations.
  - Within senior housing, the seniors should be excluded from the number of units or square feet. Only staff should be counted. The same would be true for other types of facilities that provide care.
  - Employees should be counted on a per shift basis and then only for that shift who travel during the peak period.

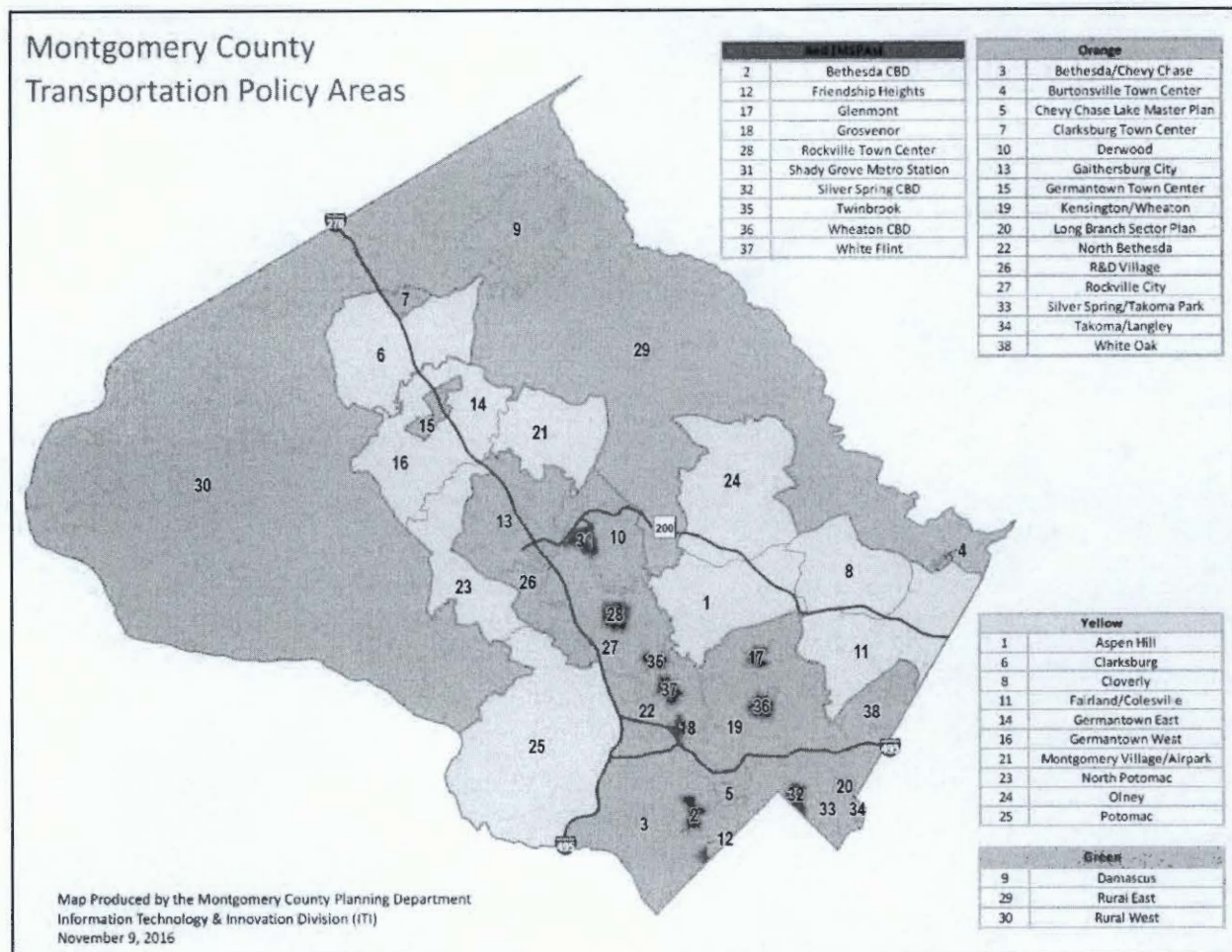
- The definition of peak period is too open ended. Line 53 says it is the hours of the highest transportation use. How many hours? It should be one hour. It is unreasonable to expect a company and/or employees to be able to shift work schedules by three hours, which is the normal peak period.

The draft legislation and draft regulations are much improved over the version provided to the public in the spring but they both need to be improved further. We think our recommendations will improve the documents and produce a program that is workable. Thank you for considering our recommendations.

Sincerely,

*Daniel L. Wilhelm*

Daniel L. Wilhelm,  
GCCA President



**Maryland Building Industry Association Testimony Comments on Bill 36-18-- Transportation Management -  
Transportation Demand Management Plan – Amendments  
December 4, 2018**

Thank you for allowing MBIA to provide comments on Bill 36-18, Transportation Management - Transportation Demand Management Plan – Amendments. While MBIA supports initiatives that create a more comprehensive and Countywide approach to reducing congestion and vehicle emissions, we have concerns over aspects of the bill and would like to offer technical comments for the Council's consideration.

MBIA commends the legislation for spreading the financial burden and implementation mandate over a broad base—as is appropriate for a holistic policy and efforts to transform the transportation behaviors of County residents and commuters – and not burden just new development. As such, we hope to see actual returns on the investments and creative solutions businesses and multifamily communities are making that will keep Montgomery County economically competitive in the region.

I am concerned how for-sale product will be held accountable for the transportation mitigation plans they are asked to develop under this new bill. It is unclear what objective engineering standard these TDMs will be evaluated against. Also, the legislation notes the evaluation is at Director discretion, but if there is a disagreement on the plan, it is unclear as to how that would be resolved. It may be appropriate for these plans to fall within the Planning Director's authority to provide evaluation and analysis of proposed plans. It appears that a builder or developer will be on the hook for future outcomes, long after they have sold the units they built to individual homebuyers. MBIA believes the sponsor and committee that receives this bill should think critically about the implementation of this aspect of the bill.

The method by which these fees are proposed to be assessed is not directly correlated to the intent of this bill – to reduce vehicular traffic and congestion. Rather than assessing by the number of customers, visitors, or employees at a business/site, is it not better to relate the fee to number of vehicles, or give credits based on the reduction in number of vehicles?

MBIA suggests that the Council consider modifying the timeline so that the execution of a TDM Agreement is later in the process—perhaps at the Certified Site Plan stage or later. The recent OLO report on Development notes how complicated Montgomery County's entitlement process is to navigate, and the Planning Commission has worked to streamline this process. As such, we think it's critical to evaluate when a TDM agreement is required to be executed.

Further, by adding additional fees to the cost of development, we fear an unintended consequence could be the reduction of naturally occurring, market rate affordable housing. If a multifamily or townhome project is mandated to pay additional fees and possibly be responsible for an ongoing commitment to TDMs in the future, a developer cannot anticipate the full costs of a project or future costs of a project. The lack of certainty and need to cover possible future expenses related to TMPs could result in an increase in unit costs and subsequent rents. To mitigate the impact, we suggest offsetting transportation impact taxes or offering a credit against transportation impact taxes --which as noted in the OLO report are some of the highest in the region-- whenever there are TDM fees associated with a project. Further, all fees collected must go to transportation improvements in the District in which they are assessed.



11825 West Market Place | Fulton, MD 20759 | 301-776-6242 | [marylandbuilders.org](http://marylandbuilders.org)

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I and other MBIA members look forward to working with the bill sponsor and the Council members on this bill. If you have questions or concerns, please contact Erin Bradley, Vice President of Government Affairs at MBIA at (301) 776-6207 or [ebradley@marylandbuilders.org](mailto:ebradley@marylandbuilders.org).

Thank you for your consideration.

Sylke Knuppel  
Chair, Montgomery County Chapter of MBIA



Sherri Mohebbi forty year resident of Montgomery County

5

I support approving bill 36-18. Transportation Management Plan for Montgomery County. For the reason that it will keep Montgomery County options open while proactively reducing traffic and reducing harmful gases, as well as create local jobs for hopefully local companies.

My comment is for having

Effective positive stakeholders' campaigns such as CAR FREE DIET ALWAYS!

Not to be confused with carb free diet!

Moving off of the singular bus era, by not being a singular car driver. Using regional shared rides for with first last mile to metro and bus hubs, and shopping centers, as well as places of business.

The proactive measure of reducing traffic and emission gases via incentivizing will hopefully allow work toward connected vehicle era.

**NAIOP DC/MD TESTIMONY**

**BILL 36-18 – Transportation Management, Transportation Demand Management Plan**

**12/4/18**

Good afternoon. My name is Stacy Silber, and I am a partner with the law firm of Lerch, Early & Brewer. I am here today in my voluntary role as Chair of NAIOP DC/MD’s Advocacy Committee. NAIOP’s members include most of the vertical developers that create communities in Montgomery County and our region. NAIOP and its members are very supportive of activities that encourage smart growth and increasing transit, bike and other modes of transportation to help reduce traffic congestion. We also commend certainty in process and equitable application of laws. As such, we commend the principles behind Bill No. 36-18, but respectfully submit that Bill changes are essential to prevent unintended consequences. Our intent today is provide an overview of our comments, but ask that the record remain open through T&E’s worksessions.

We first would like to complement the inclusion of certain provisions within the Bill, including:

- 1. Looking to provide certainty in the review process of TMAGs, and
- 2. The clarification on van pool allowances.

There are other proposed provisions of the Bill, however, that would result in unintended consequences:

- 1. We have found that the regulatory carrot, works much better than a stick approach in encouraging the incorporation of TDM practices. Much of the proposed Bill represents more of a stick, than incentives to change behavior. For example, currently the proposed Bill penalizes projects that have bundling of parking. The Zoning Ordinance already addresses this point. One, who includes unbundled parking in a development project, has an advantageous parking requirement. Thus, we suggest that this provision be removed from the Bill, and rather reference incentive benefits for providing unbundled parking. There will be some instances where bundled parking will be an important marketing tool for a project, for example and there are other TDM efforts that would make more sense.
- 2. The law should not be mandatorily applied to existing businesses. It is a retroactive application of a law, which is inequitable and sends the wrong message to businesses looking to invest in Montgomery County. Introducing a new fee and requiring a building create space for certain TDM practices is not tenable for many businesses that rely on certainty in budgeting a development, and in planning public space within a building. We agree that businesses and building owners should be encouraged to participate in TDM practices and we look forward to working with you and your staff on how this can be accomplished.

3. We support the concept of having the resources to ensure full implementation of a TDM program. However, any requirement for fees must be proportionate and fully vetted before agreed upon. The Bill currently identifies that there will be a fee, but indicates that it will be determined through Executive Regulation, which does not identify fee amounts. Before the Council considers the appropriateness of a fee, we submit that the fee structure needs to be identified and reviewed to fully understand its impact.
4. Should a fee be imposed, we submit that the Bill should be amended to explicitly state that the funds will only go directly to the District, within which a development is located, and only be applied to specific measures that will reduce traffic congestion. Furthermore, if there are fees, they need to be offset by any physical improvements required through the TMAG.
5. Currently the Bill suggests that fees may be assessed on the number of customers, employees, visitors or patients. This should be removed. TDM is used to change travel modes, but should not penalize a business's success.
6. We suggest that the Council review what the current average return rate is on surveys. We expect that the proposed 60% return rate is untenable.

On behalf of NAIOP and NAIOP's working group that helped develop our testimony, we thank you for your consideration of our comments. We look forward to working with you and your staff in refining this Bill, and working together to improve Transportation Management in our County. We again ask that the record remain open through the worksession review process that is targeted to commence on January 31<sup>st</sup>.

Thank you.

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

January 3, 2019

C. Robert Dalrymple  
[bdalrymple@linowes-law.com](mailto:bdalrymple@linowes-law.com)  
301.961.5208

**By Email & First-Class Mail Delivery**

Council President Nancy Navarro  
and Members of the County Council  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Requested Clarifications and Changes on Bill No. 36-18, Transportation Demand Management Plan (the "TDM Bill")

Dear President Navarro and Members of the County Council:

On behalf of the Land Use and Zoning Practice Group at Linowes and Blocher LLP, we offer the following comments on the TDM Bill based upon many collective years of experience negotiating traffic mitigation agreements ("TMAg") with the Montgomery County Department of Transportation ("MCDOT") as part of the development review and building permit process. We support the TDM Bill's identified goals of reducing traffic congestion, increasing multi-modal travel, and increasing the efficient use of transportation infrastructure, as these objectives will create additional economic development opportunities and support fulfillment of the land use visions embraced by many County master plans. However, we do have a number of concerns with the content of the TDM Bill and offer these written comments primarily in support of another stated goal of the TDM Bill: to streamline the process for development project TDM plan approvals.

1. Modify the timeframes for review and approval of TDM Plans

The current review and approval process for a TMAg within the County's established transportation management districts ("TMD"s) often takes more than one year to complete. Although draft TMAgs are submitted with Preliminary and/or Site Plan filings, the review process does not usually begin until the building permit phase of development and frequently leads to delays in the permitting and construction of developments in the County (as an executed TMAg is a prerequisite condition to permit issuance), creating uncertainty in the development process. Although the TDM Bill purportedly sets out to make the County's approach to TMAgs more flexible through their replacement with a newly created Transportation Demand

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and Members of the Council  
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Management Plan (“TDM Plan”) model, we are not convinced that the proposed revisions, as currently drafted, will result in a shorter, more predictable, and less expensive review process.

As currently drafted, Lines 432-435 could be construed to require that the formal TDM Plan be executed by all parties prior to Planning Board action on a development application. This requirement could very well lead to delays at that level of the entitlement process, as Planning Board hearings get pushed out waiting for final execution of the TDM Plan. We would therefore suggest that, in lieu of requiring this level of formality at the hearing stage, Section 42A-26(a) be modified such that the Planning Board, in consultation with MCDOT and the applicant, simply confirm which TDM strategies need to be included in a future TDM Plan at the time of Preliminary Plan and/or Site Plan approval.<sup>1</sup> Under this proposal, the subsequent review process for the TDM Plan would only require inputting these TDM strategies into a standard MCDOT template for execution by the parties prior to building permit, as opposed to protracted negotiations over which TDM strategies must be included, leading to a simplified and more predictable process. Additionally, because the elements of the TDM Plan would have already been agreed to by the parties and the format for the Plan will have been standardized, the potential for delays in the issuance of building permits because of TDM Plan negotiations would effectively be eliminated. We also suggest that the TDM Plan process could be further streamlined by eliminating the need for M-NCPPC to sign the final agreement. It typically takes over a month for a TMAg to be signed by M-NCPPC, which is a redundant and inefficient process given that M-NCPPC and the Planning Board will have already reviewed and approved the selected TDM strategies.

2. Clarify and/or eliminate application of these new requirements to existing non-residential buildings and multi-unit residential buildings that predate the TDM Bill

Proposed Section 42A-25(a) (entitled Transportation Demand Management Plans for Existing Buildings) would authorize the Director of MCDOT to “require an owner of a nonresidential building in a district to submit a TDM Plan if: (A) the Director find that a plan is necessary to achieve the purposes of this Article; and (B) the building is not subject to either a traffic mitigation agreement currently in effect or a Project-based TDM Plan under Section 42A-26.” Proposed Section 42A-25(b) provides the same authority to the Director relative to a residential building or complex with at least 100 dwelling units in a district (inclusive of a common ownership community). Proposed Section 42A-25 provides no meaningful standards to reasonably put an existing property owner on notice of the fact that it may be required to submit

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<sup>1</sup> Please see Pages 6 to 7 of this letter for more detail on our proposal for a streamlined and objective process for selecting and confirming TDM strategies that are included in a TDM Plan.

Council President Navarro  
and Members of the Council  
January 3, 2019  
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a TDM Plan to MCDOT, however. The proposed provisions would essentially allow MCDOT to require the owner of an existing building to submit itself to the costly TDM Plan review process in any instance that the Director subjectively deems necessary to achieve a number of broadly framed goals.

In addition to Section 42A-25 delegating overbroad and arbitrary authority to MCDOT, it would be improper to require existing development to submit to the TDM Plan review process unless there was some level of redevelopment being proposed by the owner. In order for a local government to lawfully subject a landowner to such regulatory costs and review processes, the regulatory process must be roughly proportionate in nature and extent to the impact of the proposed development. However, proposed Section 42A-25 would apply in instances where there is no new development proposed. There is simply no nexus for subjecting an existing property owner that is proposing no new development to the TDM Plan requirements. As well, this requirement (or even possible exposure to this requirement) would be resoundingly viewed as an anti-business measure at a time where the business environment and the County's competitive economic standing in the region is already in question. We therefore request that Section 42A-25 be deleted in its entirety and the TDM Plan requirements limited to those properties submitting Preliminary Plan and/or Site Plan applications for an expansion or redevelopment that includes a net-new amount of gross square feet that falls within parameters identified in Section 42A-26(b)(1) through (3) for the Red, Orange and Yellow Policy Areas.

3. Modify the applicability of Section 42A-26(a) such that the submittal of a TDM plan is only required for projects requiring a traffic study

Proposed Section 42A-26(a) would require that applicants for certain building permit and conditional use applications obtain approval of a TDM Plan. As noted above, only development projects that generate a certain level of impact on the adjacent transportation network should be subject to the additional regulatory requirements included in a TDM Plan. A building permit or conditional use application may not independently generate enough of a traffic impact to make it roughly proportionate in nature and extent to the requirements of a TDM Plan. To the extent that a development project does create substantial enough traffic impact to necessitate submittal of a TDM Plan, it will trigger the requirements for a traffic study. Section TL1 of the 2016-2020 Subdivision Staging Policy requires submittal of a Local Area Transportation Review study (i.e., a traffic study) for any subdivision that would generate at least 50 new peak-hour person trips. This same criteria should apply in evaluating which building permit or conditional use applications will be subject to submittal of a TDM Plan, with the type of TDM Plan to be determined in accordance with Section 42A-26(b)(1) through (3) of the TDM Bill. We therefore respectfully request that the TDM Bill be modified such that the requirement to submit a TDM

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and Members of the Council  
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Plan is limited to those conditional use and building permit projects that trigger the need for a traffic study under applicable laws and regulations.

4. Clarify the extent to which an expansion of an existing development is subject to submission of a TDM Plan

Proposed Sections 42A-26(b)(1), (2), and (3) establish square footage thresholds that would trigger the need to submit a Level 1 Basic Plan, Level 2 Action Plan, or Level 3 TDM Results Plan. These development thresholds are defined based upon the transportation policy area of a project as identified in the Subdivision Staging Policy. These development thresholds are defined to apply to “an owner or applicant for a project,” however the TDM Bill does not clearly define “project” in the context of properties with existing development that predates the new provisions. More specifically, these provisions do not indicate whether the square-foot thresholds apply only to “new development” proposed by the application triggering submission of a TDM Plan, or if the square-foot threshold would also include the existing area of a project in addition to the expansion area.<sup>2</sup> These provisions must be clarified to clearly state that these square-foot thresholds are to be measured solely based on new development proposed by the applicant or owner, and that existing development at a site that predates the effective date of the TDM Bill is not to be counted for purposes of these new requirements.

5. Clarification that the Transportation Demand Management Fee (Section 42A-31) includes the cost for promotional materials printed by MCDOT

Pursuant to Section 42A-31 of the TDM Bill, the use of revenue generated by the TDM fee is intended to cover the cost of “administering the district and TDM strategies, and coordinating with projects and occupants (including employees and residents) ... and any program implemented under Section 42A-23(b), including any vehicle or other equipment necessary to carry out the program.” Section 42A-23(b) notes that MCDOT “may take actions necessary to achieve effective transportation demand management in each district ... including ... promoting

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<sup>2</sup> By way of example, an existing 100,000 square-foot retail center that is located in a Red Policy Area may seek approval of a Site Plan application to develop two (2) pad sites with up to 9,999 gross square feet of new development. If the existing development at the retail center is counted in applying proposed Section 42A-26(b)(1), the property owner would be required to submit a Level 3 TDM Results Plan for this incremental expansion to the property. Such an interpretation of the TDM Bill would retroactively apply these new regulatory burdens/exactions to lawfully existing development that predates such requirements.

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or implementing transit and ridesharing incentives.” These provisions are consistent with existing County law included in Chapter 42A of the County Code. MCDOT’s current practice, however, is to require an applicant to agree to separately reimburse it for any costs associated with promotional materials. Since the TDM fee is explicitly defined to cover the cost of promotional materials, we request that the TDM Bill be modified to clearly state that applicants and property owners will not be required to provide any additional reimbursements to MCDOT for such materials outside of the TDM Fee.

6. Clarify that the transitional provisions apply to projects with a Preliminary Plan and/or Site Plan application accepted by M-NCPPC

While Section 2 of the TDM Bill includes grandfathering provisions for projects that have a subdivision or optional method approval as of the effective date of the proposed legislation, the TDM Bill does not include transitional provisions for development applications that have been formally accepted for review by M-NCPPC. This is inconsistent with the Council’s past practice of allowing development projects to proceed under the law and regulations in effect at the time the respective application is accepted by M-NCPPC. By way of example, the recent legislation adopted by the Council to comprehensively update the Moderately Priced Dwelling Unit (MPDU) Law through Bill Nos. 34-17 and 38-17 included transitional provisions for accepted development applications. More specifically, Bill Nos. 34-17 and 38-17 allow development applications accepted as complete or approved before the effective date of the legislation such to be processed in accordance with the prior version of the MPDU Law. We respectfully request that Section 2 of the TDM Bill be modified to allow for consistent grandfathering, as provided below (proposed additions in bold and underline):

## Sec. 2. Transition

- (a) *Existing agreements ...*
- (b) ~~*New building or project approvals.* No traffic mitigation agreement must be required for any new building or development project approved after this act takes effect.~~
- (b) ***Pending development applications.* The provisions of this Act do not apply to any Preliminary Plan or Site Plan accepted as complete by the Planning Board before the effective date of this Act. Such development applications are permitted to process a traffic mitigation agreement under the standards and procedures of Chapter 42A in effect prior to the effective date of this Act.**



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7. Identify in more detail the general components of TDM Plans with a list of TDM Strategies and assigned point values to be selected by the applicant or owner for Level 2 TDM Action Plans and Level 3 TDM Results Plans

A primary goal of the TDM Bill is to make the review of TDM Plans streamlined in the context of the development review process. In order for this to be the case, we recommend that the County Council identify a menu of options that can be selected by an applicant or owner for the required TDM Plan during the Preliminary Plan and/or Site Plan process. The current review process for a TMAg generates significant uncertainty in the package of TDM strategies that will be accepted by MCDOT. It is ultimately left to the subjective view of MCDOT to determine what package of TDM strategies are required for the TMAg to be approved, which results in a protracted and inefficient review process. If a menu of TDM Strategies were confirmed and finalized at the time the Planning Board approval of the applicable Preliminary Plan and/or Site Plan, however, the TDM Plan process would be much more streamlined and efficient.

Similar to the public benefit point system used for the Commercial-Residential zones and applied by the Planning Board, the County Council should identify a minimum amount of points needed for approval of a Level 2 TDM Action Plan and Level 3 TDM Results Plan.<sup>3</sup> The TDM strategies could be identified and agreed upon through the development review process in a manner that eliminates a lengthy negotiation process. For purposes of this example, we are suggesting that Level 2 TDM Action Plans must include a minimum of 15 points and Level 3 TDM Results Plans a minimum of 30 points using the following framework:

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<sup>3</sup> The requirements for a Level 1 TDM Basic Plan appear to be sufficiently narrow and understandable; thus, we do not have the same level of concern of uncertainty in the review and approval process for these Level 1 TDM Basic Plans.

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Strategies	Points
<ul style="list-style-type: none"> <li>• Agreeing to actively participate with MCDOT staff to exceed the Non-Auto Driver Mode Share (NAMDS) goal established by the applicable Master Plan</li> </ul>	15 points
<ul style="list-style-type: none"> <li>• Minimum parking (providing less than the maximum number of parking allowed under the Zoning Ordinance)</li> </ul>	5 points
<ul style="list-style-type: none"> <li>• Minimum parking (providing less than the minimum parking number of parking required under the Zoning Ordinance)</li> </ul>	10 points
<ul style="list-style-type: none"> <li>• Accommodating a Bikeshare Station (or similar facility approved by MCDOT)</li> </ul>	5 points per station (or facility)
<ul style="list-style-type: none"> <li>• Providing long-term bicycle storage spaces in the interior of a project</li> </ul>	5 points
<ul style="list-style-type: none"> <li>• Providing shower and changing facilities in connection with long-term bicycle storage spaces</li> </ul>	10 points
<ul style="list-style-type: none"> <li>• Providing a bicycle repair station in the project</li> </ul>	5 points
<ul style="list-style-type: none"> <li>• Providing both dynamic and static information displays with transit information</li> </ul>	10 points
<ul style="list-style-type: none"> <li>• Providing Carshare parking spaces on-site</li> </ul>	5 points

We are confident that modifying the process for review and approval of a TDM Plan to an objective, point-based system that is finalized at the time of Planning Board approval of the relevant development application(s), or prior to issuance of building permits for those projects not requiring Preliminary or Site Plan approvals, will result in a more certain and objective process that is fair to all stakeholders.

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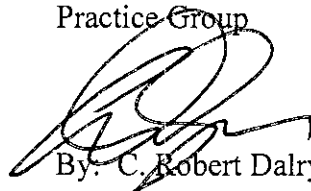
8. Require a standard template for a TDM Plan

Finally, in connection with establishing an objective point system for TDM Plans, it is also vital that a standard template for a TDM Plan be set and not subject to significant substantive changes and negotiation through the building permit process. With the current TMAg process, the "standard" form is constantly evolving such that there is no certainty regarding its general provisions. The intent of the proposed legislation, if truly aimed at streamlining the process, should therefore be that the approved elements are added to a pre-determined, standard format TDM Plan post-approval that is predictable and not subject to further negotiation.

Thank you for consideration of these comments and suggestions. While we are supportive of the intent behind the TDM Bill, it is vital that several important clarifications and changes be made to ensure that implementation of the newly proposed TDM Plans will achieve the desired results and ensure that attendant economic development opportunities are viable and can benefit the County's tax base. We look forward to the opportunity to work with the Council, its staff, MCDOT, and other stakeholders to improve upon the TDM Bill such that it will benefit the County's transportation network.

Very truly yours,

**LINOWES AND BLOCHER LLP**  
Linowes and Blocher Land Use/Zoning  
Practice Group



By: C. Robert Dalrymple

cc: Mr. Glenn Orlin, Deputy Director  
Robert H. Drummer, Senior Legislative Attorney  
Ms. Sande Brecher, MCDOT  
Ms. Beth Dennard, MCDOT  
Ms. Pam Dunn, M-NCPPC  
Mr. Eric Graye, M-NCPPC  
Mr. Matt Folden, M-NCPPC

# THE DUFFIE COMPANIES

1701 Elton Road, Silver Spring, MD 20903

Phone: 301 434-3040 Fax: 301 434-3854

VIA E-Mail

December 11<sup>th</sup>, 2018

Members of the Transportation and Environment Committee - Attn: Committee Chair

Re: Bill 36-18 Transportation Demand Management

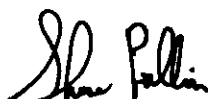
Dear Committee Chair Huckler and Committee Members:

I write you today on behalf of The Duffie Companies and the Duffie family in to raise a couple of concerns with Bill 36-18 that we request you consider. Without having taken a deep dive into the bill, while we are supportive of the concept of the implementation of more uniformly applicable Transportation Demand Management Program throughout the County, we nonetheless have several items which we think deserve particular focus.

- NADMS – First, globally, we have some concern that NADMS *should not (and probably cannot)* be realistically or accurately measured on a project by project basis. Even a cursory study of NADMS reveals that it is most typically applied across a citywide transportation network not to individual buildings (see [http://en.wikipedia.org/wiki/Modal\\_share](http://en.wikipedia.org/wiki/Modal_share))? We think there needs to be some clarification as to how NADMS measurements are conducted especially on mixed use project.
- The Premise of NADMS - Any project's ability to achieve the worthy NADMS goals set forth within the Master Plan will require the successful implementation of at least three components.
  - Incentive - Efforts on behalf of individual projects to encourage the use of alternative means of transportation;
  - Options - The successful investment in and implementation of a transit network which actually provides options other than cars; and
  - People - The community's willingness to accept both the incentives provided by projects and the alternative transportation system largely implemented by the County.

As to incentive, we would advocate an approach where new projects are fairly and uniformly required to create and agree to be bound by a Transportation Management Agreement. A model TMA could be developed to provide certainty to the development community. Each project would be held accountable for compliance with and continued satisfaction of the *measures* identified within their TMA (e.g. the provision of bus passes, distribution of ride-share literature, installation and maintenance of bicycle facilities, etc...). Enforcement of these agreements would not pose new challenges as this type of agreement is already enforced within the County as part of existing site plan enforcement mechanisms. The key we believe is for projects to be held accountable for the critical component of NADMS **which they control**, namely the creation of measures which incentivize, not satisfaction of the goal itself. In addition to the creation of these incentives, *it will also take the availability of actual transit options* (e.g. BRT) and buy in of the community *if the goal is to be achieved*. If one agrees with the premise that it will take at least three components to achieve NADMS goals, then it would seem illogical to expect individual projects to have the capability of shouldering the full burden.

Thank you for your continued efforts toward solving these challenging issues and we look forward to participating in the process.



Shane Pollin - Director of Development - Ralph J. Duffie, Inc.





**William Kominers**  
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[wkominers@lerchearly.com](mailto:wkominers@lerchearly.com)

January 18, 2019

**VIA OVERNIGHT DELIVERY & ELECTRONIC MAIL**

The Honorable Nancy Navarro  
President, Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, MD 20850

Re: Bill No. 36-18 (Transportation Demand Management Plan--Amendments)--  
Comments for the Public Record

Dear President Navarro:

Please include this letter and the attached comments on Bill No. 36-18 (Transportation Demand Management Plan--Amendments) in the record of the public hearing on this Bill.

I look forward to the worksessions on this matter.

Thank you.

Very truly yours,

LERCH, EARLY & BREWER, CHARTERED

William Kominers

WK/paj  
Enclosure

cc: The Honorable Thomas Hucker  
The Honorable Evan Glass  
The Honorable Hans Riemer  
Robert H. Drummer, Esquire  
Ms. Erin Bradley

**COMMENTS ON BILL NO. 36-18 (Transportation Demand Management)**

(Comments from William Kominers—January 18, 2019)

Bill No. 36-18 seeks to incorporate the experiences that have been developed over years of traffic mitigation efforts and negotiation. The Bill also intends to simplify the process for developing agreements for traffic management, so that they do not become impediments to the development process generally. These are laudable goals. I appreciate the thought and effort that has gone into this legislation, and I applaud the Department of Transportation for working to address the issues.

Below are my comments on the Bill, both general and specific. As I was unable to attend the public hearing, these comments should be placed in the record of that hearing. My comments reflect both philosophical issues, as well as questions and explanations seeking clarifications, to assure that the law will achieve the intended goals, in part, by being so clearly understood that disagreements are minimized. I am ready to discuss these comments, particularly the details, at any convenient time.

**General Comments.**

**Individual vs. Collective Approach.**

Bill No. 36-18 (the “Bill”) appears to be moving backwards in many ways, compared with past progress on Transportation Demand Management (“TDM”). The Bill seems to return to a process of measuring trips or people only within the four corners of each project, and evaluating results only individually as to that project. Up to now, the County had moved away from that individual evaluation, recognizing that not all projects are created equal in their ability to individually accomplish traffic mitigation, but could accomplish more collectively. (For example, while an office project may be relatively homogeneous in arrivals and departures, a retail or hotel project has a very different pattern of travel by employees and customers.) In recognition of this reality, the County had moved more to focus on collective efforts through the structure of the transportation management district (“TMD”). The TMD structure allows pooling of different projects and types of uses to achieve a collective goal for an area. When mitigation measures and commuting alternatives are offered through the broader umbrella of the TMD organization, employees of different projects can be approached together by the TMD, and make connections that would not occur if each project kept blinders on, to look at, and work, only with itself.

The TMD structure, with collective evaluation, allows better use of County resources to support community goals. The County Department of Transportation (“DOT”), the agency that controls many of the means of collective commuting (bus routes; schedules; etc.), can use money from the TMD members to adjust those commuting methods/modes to meet changing needs of the area as a whole. DOT also has the expertise and experience with these methodologies, and how to make them used most effectively.

The new TDM Bill appears to direct a return to a project by project treatment, that looks to each project to achieve any commuting goals individually and internally to itself. This tracks and measures every action at the individual project level, rather than as a group in the TMD. The

focus on individual project actions causes competition rather than cooperation. This approach is likely not to achieve the County's goals for many projects. Particularly for certain types of uses, this new methodology is a prescription for failure.

#### Failure to Recognize Changing Occupancy and External Conditions.

The Bill does not address or account for occupancy changes that will occur over time. Uses on which the initial TDM plan and program was premised, may change. This change may be to uses for which particular TDM strategies are not operationally practical. This will cause failure, and resulting penalties that come about through no means other than a building's success in leasing, but to a use that is not as susceptible to successful TDM measures.

Similar to the change in users in a building, there is no accounting for external circumstances and changes that affect the ability of commuters to use other means of travel. The instrumentalities utilized for shared commuting are not under the control of building owners or employers. The County could add a bus stop nearby or build the BRT system, thus making public transit easier to use. On the other hand, the County could equally move a bus stop farther away, or change the timing on a route, so as to make it harder for an employer in a particular location to have sufficient commuting options to achieve the goals.

In trying to encourage positive participation in traffic mitigation efforts (and thus achieve positive results), the commitment asked of the private sector should be to do something within its control—take a certain action; provide a certain opportunity; make certain things available. This is in contrast to requiring a commitment to accomplish something that is not within the party's control—such as making people/employees accept an offer or utilize the opportunities provided—and then penalizing when those people fail to do so.

#### Inappropriate Penalties.

The Bill appears to begin with the expectation of private sector failure or evasion. Thus the Bill is principally made up of sticks, with minimal carrots.

A penalty is an acceptable stick if an applicant/owner/employer does not do what is promised with its own actions. For example, if one does not appoint a transportation coordinator, does not file reports, does not participate with DOT in other commuting measures, then a penalty is appropriate. These are all actions which under the unique control of the owner/employer. For failing to undertake the actions that the applicant can take—"you promised to do it, and you didn't do it"—the applicant can justifiably be penalized. However, if no employees take advantage of the offers or other opportunities that are provided, in spite of diligent pursuit by the owner/employer of those elements that it controls, then there should not be a penalty. The owner/employer should not be responsible if people do not take advantage of opportunities offered.

#### Insufficient Basis to Support Application of TDM Measures to Some Parties.

The legislation seems to run together the different sources or justifications for TDM measures in a specific project, in a way that is hard to determine what requirements or measures

apply. Project-based measures are the easiest illustration of this issue. These measures arise from an “approval,” but what “approval” is intended? Is it an initial approval of new square footage? Does an amendment reconfiguring already approved square footage also trigger the requirement? Does each subsequent approval step in a multi-step process that has already begun trigger the need for TDM measures (i.e., approval of the site plan for an already-approved sketch plan)?

There does not appear to be a clear nexus between the TDM measures required and many entities covered by the Bill. For example: existing businesses, existing employers, and existing buildings appear to be covered, irrespective of the length of their presence and inclusion in background conditions.

For areas in existing TMDs today, do the three “levels” of TDM Plans apply? Areas outside TMDs today or tomorrow would not be subject to the requirements.

The menu of TDM strategies does not explain what the strategies mean, insofar as actual operation of those strategies.

### **Specific Comments on the Bill.**

The following are comments on specific provisions of the Bill. The Line numbers are taken from the version of the Bill as introduced November 13, 2018.

1. Section 42A-21. Definitions. There is some confusing terminology and perhaps unintended overlap in some of the definitions in the Bill. See for example Lines 57, 67-69 and 76-78.

(a) On Line 57, a “Project-Based TDM Plan” is a TDM plan for a new development project.

(b) In Line 67-69, a “Traffic Mitigation Plan” is a set of strategies to implement TDM at an existing commercial residential building or an employer in an existing building.

(c) In Lines 76-78, a “Transportation Demand Management Plan” is a set of strategies designed to implement TDM at a new or existing building, a new or existing development project, or an employer.

The Traffic Mitigation Plan and the Transportation Demand Management Plan each seem to be applying to existing buildings, existing development, existing employers, and utilizing a set of strategies to implement TDM. There seem to be several points of overlap between these two elements. If however they are meant to be different, the distinction between them is not apparent in the definitions.

Line 82. Vanpool definition. The definition offers challenging compliance issues.

The definition requires a capacity of 6 or more passengers who occupy at least 50% of the seats at any point during the trip. This leaves open the question of what happens if too many



people are sick on any one day. A strict reading would say that the group cannot be a “vanpool” and cannot use vanpool privileges if too many riders are not present. Similarly, during certain religious holidays, fewer than 50% of the seats may be filled. Does the County intend that the vanpool does not get the benefits of being a vanpool on those days?

In subsection (2), the vehicle must be used for commuting for 80% or more of the miles it is driven. This would seem to penalize people who live close to work and therefore do not drive enough miles to work, by comparison to their private use of the vehicle. For example, such a private vehicle used by “travel” sports teams could end up using much more of the mileage to the sports team travel than the commuters. This seems to be a challenging standard for people to track and for the County to track to enforce.

Line 148. This section seeks to achieve effective transportation demand management by prohibiting bundling of parking in new developments approved after January 1, 2019.

a. The timing of this decision is critical, but not stated. Because the result of the determination affects the pro forma and leasing/sale for the particular building. As a general matter, the County should avoid injecting itself into the details of private business operations.

b. Achieving this result should be done by creating an incentive, rather than just using the very blunt stick of “prohibiting”.

Line 152. What is the purpose of listing all the different kinds of transit uses and enumerating individual elements? Why not just utilize the term “transit”? That would be both broader and more able to accommodate future methods of transit that have not been considered to date.

2. Section 42A-24. Transportation Demand Management Plans for Employers. There does not appear to be a clear nexus between existing employers and the obligations being created for transportation demand management. The TDM plan must include “strategies required by the regulations” plus other strategies chosen from those allowed by the regulations. In Section 24(d) (Lines 261-264), the Director can require an employer to resubmit a plan that is “inadequate to achieve any NADMS goals...” The term “inadequate to achieve” seems very subjective and no standards are provided. Similarly, is NADMS the only commuting goal that exists today? A plan might be adequate to achieve many other commuting goals, but not NADMS. This seems rather single-focused and seems to ignore the many different commuting goals and ways to achieve them. Is the Director’s decision intended as a final administrative action for purposes of appeals? How does an employer dispute this finding?

3. Section 42A-2(a); Lines 311-312. Transportation Demand Management Plans for Existing Non-Residential Buildings. For an existing non-residential building, the Department may require a TDM plan if such a plan, is found “necessary to achieve the purpose of this article.” This seems an excessively vague standard. Line 364 notes the actions the Director must take to notify the owner, “if an existing non-residential building is subject to this section,...” Is what makes a building “subject to this section” merely the triggers in Lines 359-363—meaning that the Director finds the plan is necessary to achieve the purposes of traffic mitigation and the building is not

already subject to a TMA or a project-based TDM plan? Essentially, there are no clear standards as to what makes a building qualify as being “subject to this section.”

Placing this potential obligation on the building owner, in addition to employers of the sizes designated, could be seen as simply a means by which to try to apply the law to those employers who would not otherwise be subject to the law because of their small size. Instead, they could be swept in under the umbrella of regulation by being tenants in a building on which the obligation for TDM measures is placed.

4. Section 42A-25(b). TDM plans for existing multi-unit residential buildings is found in Section 25(b) (Lines 374-375). This section has many of the same deficiencies as Section 25(a) for existing non-residential buildings. These include the Director’s finding that “a plan is necessary to achieve the purpose of this article” and that the building is not already subject to a TMA or a Project-Based TDM Plan. Similarly, notification results “if an existing building is subject to this section...” The lack of standards in this area are similar to the lack of standards for existing non-residential buildings.

5. Section 42A-26; Lines 408-409. TDM Plans for New Development Projects. In Lines 426-436, the applicability of this Section is triggered by an application for certain approvals. Those applicants must then get approval of a “Project-Based TDM Plan”. Such applicants have to obtain approval of the TDM plan before obtaining Planning Board approval of the particular application.

Given the current processes for creation of a traffic management plan, but certainly when taking into account the laborious signature process for any such plan agreement, the likelihood of this timing causing a significant delay in the statutory review process for Planning Board applications is almost a certainty. Extensions of that review period is almost assured. Particularly where the final information from the applicant is required 65 days prior to the end of that 120 day period. The likelihood of having the TDM Plan drafted, negotiated, agreed upon, and signed 65 days before the end of 120 day review period is not at all likely.

6. Section 42A-26(a); Lines 427-429. While indicating the applications that trigger the TDM plan requirement (in Lines 427-429), the Bill does not address two important questions that arise: (i) whether those applications present enough information on which to base a TDM plan, because of the phase of development that is the subject of that application, or (ii) how the later applications in the development sequence are treated for TDM as subsequent steps in a process where a plan has already been required. (See also, General Comments, above.)

Similarly, this Section does not address treatment of properties that do not have a traffic mitigation plan in place, because one had been in place previously and has terminated by its own terms. On these facts, a new TDM Plan should not be required, because the property and the quantity of development subjected to the earlier agreement has already fulfilled all TDM obligations from that time.

7. Section 42A-26(b)(4); Lines 476-479. In the discussion of the levels of development that require different levels of TDM plans, the Bill notes at Lines 476-479, that a master plan can

require a higher level of Project-Based TDM Plans to override those described in Sections 26(b)(1),(2), or (3). However, the language in subsection 26(b)(4) is not clear as to what aspects of the “higher levels” the master plan can apply. For example, does this allow a master plan only to increase the level of plan required (i.e., Levels 1, 2, or 3?) May the master plan change the size of a project that would trigger the requirement? Or could both be done? For example, could a Level 3 Plan be required in a yellow policy area for a development of only 20,000 sf.? There do not appear to be any standards to support or justify a master plan taking such action. This provision could be used to unfairly target individual use types, land areas, or localities.

8. Section 42A-26(b)(5); Lines 480-487. Subsection 26(b)(5) also allows a very subjective judgment—to impose different standards for a TDM Plan level—if a project is considered to have a “disproportionate impact on traffic relative to its size”. The standards for imposing this decision, “consistent with the Executive Regulation,” seem to be absent.

9. Section 42A-26(c)(2); Lines 528-542. Level Two Project-Based TDM Action Plan. The obligation of the Action Plan is to “demonstrate over time that the adopted strategies are contributing toward achievement of the district commuting goals...” This is to be demonstrated by showing either: (i) an increased NADMS share, or (ii) measurable improvement in some alternate metric. These appear to be the exclusive methods by which to demonstrate compliance. But other methods might be equally or more appropriate. The legislation should allow opportunities for other methods to be utilized.

There seems to be an inconsistency between the necessity to demonstrate specific reduction results in Lines 536-538 and the purpose of the TDM action plan “to help the County achieve” district wide commuting goals in Line 529. (Emphasis added.) This Section does not say anything about needing to meet on particular goals on site or by a certain date for that. A project might contribute to meeting the district goals by totally other means. Doing so may not currently be permitted by the Bill.

10. Section 42A-26(c)(2)(C); Lines 555-558. Self-monitoring is required. This is to help determine if the project-based TDM plan “is contributing toward achievement of the district’s goals.” There do not appear to be any standards against which to evaluate whether this is contributing toward achievement of the goals. Perhaps, the intention is that the same standards mentioned in Lines 536-538 are meant to apply here.

11. Section 42A-26(c)(2)(E); Lines 562-575. If a project does not meet the standard of “contributing toward achievement of the goals” within four years, the Department may require revisions to the Plan. This revision process can be repeated until success is demonstrated. After six years (Lines 576-580) DOT can require increased funding toward the Plan. Neither the four nor the six year time periods currently take into account the potential for occupancy changes and other external impacts that would affect the ability to utilize the Plan elements as then-currently operating. (See also, General Comments, above.)

Inability to “contribute toward achievement of the goals,” (regardless of what that really means), should be treated differently in a situation with the same tenant/user for that entire four to six year period, as opposed to a situation where the tenant, user, or use changes during that period.

In the later case, the time period for goal achievement should be viewed as recommencing. A new tenant/user/use needs time to “ramp-up,” and integrate the new participants into the opportunities that the TDM Plan may provide. It is not fair to the owner, employer, or the tenant to retain the same deadlines as factual conditions change.

12. Section 42A-26(c)(2)(F); Lines 576-584. The requirement to make revisions to the project’s TDM Plan and the imposition of a potential penalty to commit additional funds to supplement the strategies, seems inconsistent with the section title and function of an “Action” Plan. Perhaps this level of Plan is misnamed. The Bill seems to not be just asking for “action,” but instead, requiring results of that action and imposing penalties if a project fails to achieve those results.

13. Section 42A-26(c)(3); Lines 590-593. Where achievement of goals is measured. The Level Three Project-Based TDM Results Plan requires an owner or applicant to achieve NADMS and commuting goals “at that project.” Yet the goals for this particular Level Three Project may be equal to, higher, or lower than the district’s goals.

The two criteria in this Section exemplify some of the specific failings of the underlying premise of the legislation. First, by evaluating achievement of goals “at that project,” the benefit of being in a district and working cooperatively with other properties/employers within that district is lost. As described in the General Comments above, not all uses and not all employers have an equal ability to achieve NADMS or other commuting goals within the confines of only their individual project and employees. The benefit of establishing districts, having an overall operating structure that transcends individual projects, is what may allow goals to be achieved collectively for an area. But achievement of those goals must also be measured collectively.

14. Section 42A-26(c)(3), Lines 595-597. The ability to impose different goals on a particular project, based on “project specific parameters” and consistent with executive regulation”, seems an opportunity to single out individual sites on an unequal basis.

15. Sections 42A-26(c)(3)(B) and (C); Lines 607-619 and 620-631. These Sections allow the Department to require addition and/or substitution of TDM strategies and additional funding commitments if TDM goals have not been achieved on an individual project basis, within six or eight years respectively. These have the same deficiency as the four to six year requirements of the Action Plans.

16. Section 42-26(d); Lines 637 et seq. The proposed process for Project-Based TDM Plans is flawed in its inconsistency with the timing necessary for the other County regulatory processes with which it will be associated.

Line 640. “Made an express condition of any approval.” This requirement appears to be intended to apply to each one of these enumerated types of plans when they are acted upon, regardless of whether a TDM plan has already been established for a related, previous approval of the same project. Perhaps this language is intended to make clear that as the project evolves, the requirements of the TDM Plan can also evolve. However, this seems to be a laborious process by which to achieve that goal, that could otherwise be achieved simply by providing for amendments



of existing TDM plans before or during their implementation (which is certainly allowed today, even without specific mention).

In many cases, certain of the approvals for which TDM Plans are required are premature relative to the approval decisions that affect the TDM Plan. For example, details of a project may not be sufficiently known at the Preliminary Plan of Subdivision stage to determine and select the most viable measures for traffic mitigation. Further, for residential projects, only at site plan review does one really know with certainty the number of units to be approved in the project, as each previous approval will normally state that the “final number of units will be established at site plan review.”

The Planning Board is required to determine that a TDM plan is “approved by the Director” before the underlying development application is approved. However the action that represents the Director’s approval is not described, thereby leaving open to debate what will adequately evidence the approval of the TDM plan for purposes of MCPB action. Evidence of that approval can significantly impact the timing/schedule of Planning Board action on the underlying application. If “approved by the Director” means that an agreement must have been signed before MCPB acts, the current, very laborious and time-consuming signature process will negate every 120 day review clock. (See Lines 655-657.)

17. Section 42A-31. Lines 819, et seq. TDM fee. The new TDM fee can be charged to an applicant for an application, or to the owner of an existing building (see Lines 828-832). The timing of payment of the fee is important, as well as the conditions which give rise to its being levied. This issue must be looked in two situations—an existing building, and an applicant for a new application.

(a) For the owner of an existing building, the issue is fairly straightforward, because the existing building already exists. There is still a question of at what point in time the fee is due, but at least the owner of the existing building has an income stream with which to pay that fee.

(b) On the other hand, an “applicant” will not be getting revenue from that “application” for years, if at all. The Bill does not identify when payment of the fee is due as to an applicant. To resolve this question, the fee should only be applicable and payable once the project for which the application has been sought, receives a use and occupancy certificate allowing it to operate. (There is no traffic to mitigate until that time.) While an application is going through the regulatory review process, there is no income with which to pay the fee, and, as we know, the regulatory process can be protracted.

(c) Does the fee apply the moment when an individual becomes an “applicant,” merely by filing an application? Must the fee then be paid each year thereafter—while the applications are continuing through the government processes and construction? This seems most unfair to charge the fee to an “applicant” while he/she is simply applying for or seeking approvals or implementing an approved use before the use actually exists. What happens if the application never proceeds to construction? Is the fee forgiven or refunded?

(d) This fee can represent a significant upfront burden of cost that has to be financed by an applicant throughout the entire term of the regulatory and construction processes. Instead, the fee should be due only after a use and occupancy certificate is issued to the particular project with which the application has been filed. Essentially, in order to be fundamentally fair, the fee on an applicant should wait until an “applicant” matures into being an “owner”.

18. Section 42A-31(c); Lines 845-856. TDM Fee Rate. The rate of the TDM fee is to be set so as to produce not more than the amount of revenue necessary for the administering the TDM in the district and the cost of programs/vehicles/equipment needed to carry out the TDM program. There are some significant problems with this approach that may or may not be intended.

(a) There is no incentive to economize, or use revenue wisely. By allowing the fee to float and cover “all costs” of TDM in the district, it represents a blank check from the fee paying members of the public to the County.

(b) The Bill makes it appear that the entire cost of TDM in the district is to be supported by the fee. This would present a knowing offset of other General Fund contributions. This seems like the government getting out of the government business--not funding these operations by tax revenue, but only by the fee. This places a significant cost burden on properties within the district and creates inequities in competitiveness within the County, even before examining and comparing the County competitiveness to other surrounding jurisdictions. If the TDM and the districts are a desired and intended public benefit, they should be supported, at least in significant part, by the public generally through the General Fund.

(c) Section 31(c)(2) appears to allow the TMDs to fund capital costs for vehicles—for buses, BRT vehicles, etc. These expenditures should be general government costs, rather than costs particular to the TMD district alone. Ride-On buses for example, are unlikely to operate only within the district, and therefore not only benefit properties/uses within the district. Similarly, BRT, is, by its very nature, a service that transcends individual TMDs or planning areas. These are not assets/benefits only to the TMDs and should not be supported only by the TMDs.

Lines 848-851. The fee speaks of the portion of the cost “reasonably attributable to the effects of the development project property subject to the fee.” This suggests that the fee can be varied on a project by project basis, not just uniformly by categories of uses, as in Lines 871-872. Variation in fees imposed, without standards by the government department, seems ripe for abuse. Any fee imposed should be the same for like uses within each district, without individual variation.

19. Section 42A-32, Lines 873-889. Enforcement. The Bill should make a distinction between two areas of non-compliance. Failing to undertake what is under the applicant’s control and called for by the TDM Plan is a suitable point for action to be treated as a violation. But, Sections 42A-32(a) and (b) treat a party who “does not comply with the approved plan” as a violation. This could make failing to meet NADMS or other commuting goals into a violation. This is not appropriate and should be changed.

Failing to do what the TDM Plan requires a party to do that is within that party’s control is suitable to be treated as a violation. But “not complying” with the approved Plan by failing to

achieve the goals, is out of the control of the party signing onto the Plan. That failure to comply should not be a violation.

20. Section 42A-32(c). Lines 884-888. This Section is missing the act that is intended to constitute the violation. See particularly Line 887. The action that represents the violation appears to be missing in that sentence.

Thank you for the opportunity to present these comments on Bill No. 36-18.



*To Lead, Advocate and Connect as the Voice of Business*

**Bill 36-18, Transportation Management - Transportation Demand Management  
Plan – Amendment**

Transportation and Environment

March 18, 2019

**LETTER OF CONCERN**

**Bill 36-18** expands the role of Transportation Demand Management (TDM) in the County. Currently, there are a handful of places in the County where TDM plans are required; the proposed bill expands this countywide. Where TDM plans are currently required, an additional level of negotiation, and therefore real capital and operational costs, is added to projects.

The Montgomery County Chamber of Commerce supports transit-oriented development and the County's overall efforts to reduce traffic congestion. The Chamber has advocated strongly for the secured WMATA funding at the state-level and is an environmental steward as a Montgomery County Green Certified Business.

The Chamber advocates and promotes a regulatory climate that is conducive to economic development and expansion of our tax base. Our concern is that this bill would move the County in the opposite direction. MCCC also has specific concerns around imposing any regulation on how a property developer or owner utilizes their available parking.

The Chamber appreciates streamlining processes to make it easier to do business *with* the county; however, it should be equally as important to do business *within* the county. To the extent that the County Executive and County Council want to remain competitive with our surrounding jurisdictions and not have additional requirements, please note that TDMs are not required adjacent jurisdictions areas like Frederick and Prince George's County.

For these reasons, the Montgomery County Chamber of Commerce has serious concerns with Bill 36-18.

*The Montgomery County Chamber of Commerce (MCCC) accelerates the success of our nearly 500 members by advocating for increased business opportunities, strategic investment in infrastructure, and balanced tax reform to advance Metro Maryland as a regional, national, and global location for business success. Established in 1959, MCCC is an independent non-profit membership organization and is proud to be a Montgomery County Green Certified Business.*

Tricia Swanson, Vice President, Government Relations  
Montgomery County Chamber of Commerce  
51 Monroe Street, Suite 1800 Rockville, MD 20850  
301-738-0015 [www.mccc.md.com](http://www.mccc.md.com)





OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Marc Elrich  
County Executive

## MEMORANDUM

February 13, 2019

TO: Nancy Navarro, President  
Montgomery County Council

FROM: Marc Elrich, County Executive *Marc Elrich*

SUBJECT: Recommended Revisions – Bill 36-18, Amendments to Montgomery County Code, Chapter 42A, Article II, Transportation Demand Management, Sections 42A-21 – 42A-30, and adding Sections 42A-31 and 42A-32

The subject bill was introduced this past fall and a public hearing held in early December, prior to my becoming County Executive. I fully support expanding the role of Transportation Demand Management (TDM) in the County, as proposed in this bill. Upon reviewing the original language, staff realized that that approach would not let us achieve the mode share goals critical to effectively managing traffic congestion and its community impacts. TDM is one of the tools to make the mode shares stated in master plans a reality. Controlling traffic impacts from new development within our master plan areas requires that we achieve the commuting goals adopted in those plans. To ensure those goals are met, and based upon testimony at the public hearing, I am hereby submitting recommended revisions to the proposed bill, which are shown in the attached version.

Key components of the revised bill include the following provisions designed to increase the TDM program's effectiveness in meeting the commuting goals of each Master Plan, Policy Area and Transportation Management District (TMD):

1. Thresholds for development size in each category of Policy Area have been revised downward, so that a larger portion of new projects in each category will be required to contribute toward achieving the goals for each area.  
(See highlighted text, pages 20-21.)
2. Non-Auto Driver Mode Share (NADMS) targets for new projects in each Policy Area or TMD may be set by the Director of the Department of Transportation at five percent above the NADMS goal for that area or district as a whole, to increase

the likelihood the area-wide commuting goals will be met, even when significant existing development is already in place. *(See highlighted text, pages 23 and 26.)*

3. Parking management is identified as a priority strategy for new developments if they are not making adequate progress toward, or achieving, their target commuting goals. *(See highlighted text, pages 25 and 27.)*

As the Council conducts its review of Bill 36-18, I would appreciate consideration of the revised version of this bill. The recommended revisions – many of which are in response to input received from the civic and business communities – will enable a more robust and effective program. Al Roshdieh, Director, Montgomery County Department of Transportation (MCDOT), Chris Conklin, MCDOT Deputy Director for Transportation Policy, and other MCDOT staff will be available to discuss the bill and these revisions at the Council work sessions. In the interim, please direct any questions to Mr. Conklin at (240) 777-7198.

Attachment

cc: Al Roshdieh, Director, MCDOT  
Casey Anderson, Chair, Montgomery County Planning Board  
Chris Conklin, MCDOT  
Gary Erenrich, MCDOT  
Sandra Brecher, MCDOT

Bill No. 36-18  
 Concerning: Transportation  
Management - Transportation  
Demand Management Plan -  
Amendments  
 Revised: December 12, 2018 Draft No. 2  
 Introduced: November 13, 2018  
 Expires: May 13, 2020  
 Enacted: \_\_\_\_\_  
 Executive: \_\_\_\_\_  
 Effective: \_\_\_\_\_  
 Sunset Date: None  
 Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President at the Request of the County Executive

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**AN ACT** to:

- (1) expand transportation demand management to reduce traffic congestion and automobile emissions, support multi-modalism and achievement of non-automobile travel goals, enhance the efficient use of transportation infrastructure, and promote the sustainability of existing and future development;
- (2) establish the requirements for a transportation demand management plan for development in certain areas of the County; and
- (3) update the law governing transportation management in the County.

By amending

Montgomery County Code  
 Chapter 42A, Ridesharing and Transportation Management  
 Sections 42A-21, 42A-22, 42A-23, 42A-24, 42A-25, 42A-26, 42A-27, 42A-28, 42A-29,  
 and 42A-30

By adding

Montgomery County Code  
 Chapter 42A, Ridesharing and Transportation Management  
 Sections 42A-31 and 42A-32

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Sections 42A-21, 42A-22, 42A-23, 42A-24, 42A-25, 42A-26, 42A-**  
 2 **27, 42A-28, 42A-29, and 42A-30 are amended and Sections 42A-31 and 42A-32**  
 3 **are added as follows:**

4 **42A-21. Definitions.**

5           In this Article, unless the context indicates otherwise:

6           *Alternative work hours program* means any system that shifts the workday of  
 7 an employee so that the workday starts or ends outside of a peak period,  
 8 including:

- 9           (1) compressed workweeks;
- 10           (2) staggered work hours involving a shift in the set work hours of  
 11 an employee at the workplace; or
- 12           (3) flexible work hours involving individually determined work  
 13 hours under guidelines established by the employer.

14           *Bundling of parking* means a requirement by the seller or lessor that a  
 15 prospective purchaser or tenant purchase or lease a minimum number of  
 16 parking spaces in the facility as a precondition to buying or leasing space or  
 17 renewing a lease in a commercial or residential building. Bundling of parking  
 18 does not include the provision of parking spaces as a component of a sale or  
 19 lease when voluntarily requested by a prospective purchaser or lessee.  
 20 Bundling of parking also does not include a parking space physically  
 21 integrated with an individual leasable or sales unit if the parking space is  
 22 dedicated to that unit and can be directly accessed through that unit, such that  
 23 only occupants of that unit are able to use the space or spaces.

24           *Carpool* means a motor vehicle occupied by 2 or more employees traveling  
 25 together.



26 *Commute* means a home-to-work or work-to-home trip. A commute may  
 27 have brief intervening stops, but the primary purpose must be travel between  
 28 work and home.

29 *Date of final occupancy* means the earlier of:

- 30 (1) the date on which 80 percent of a building or project has been  
 31 leased or sold; or
- 32 (2) two years after the first final use and occupancy certificate has  
 33 been issued.

34 *Department* means the Department of Transportation.

35 *Director* means the Director of the Department of Transportation or the  
 36 Director's designee.

37 *District* means a transportation management district created under this Article

38 *Employee* means a person hired by an employer, including a part-time or  
 39 seasonal worker or a contractor, reporting to or assigned to work on a regular  
 40 basis at a specific workplace controlled by that business or organization,  
 41 including a teleworker.

42 *Employer* means any [public or private] business or government entity,  
 43 including the County, employing 25 or more [employees and having a  
 44 permanent place of business] employees including contractors at assigned to  
 45 a worksite ~~within [in] a district.~~ [The maximum number of employees on the  
 46 largest shift working in a district determines the size of the employer.]

47 Employer does not include:

- 48 (1) a [contractor, business, or government entity with no permanent  
 49 place of business in a district] home based business;
- 50 (2) [a home-based business;
- 51 (3)] a business with no employees housed at that work site;
- 52 [(4) any business with no permanent workplace or location;] or



53 [(5)] (3) any government agency not required by law to follow  
54 County regulations.

55 [Growth Policy means the most recently adopted Growth Policy under Section  
56 33A-15.]

57 Non-Auto Driver Mode Share or NADMS means the percent of commuters  
58 who travel by modes other than driving an automobile. NADMS includes  
59 commuters who travel by transit, vanpool, biking, walking or connecting to  
60 the workplace electronically. NADMS does not include carpool or vanpool  
61 drivers, but it does include carpool and vanpool passengers.

62 NADMS Goal means the specific NADMS percentage goal for peak period  
63 commuters in a District or a Policy Area that has been established through a  
64 Master Plan, through the Subdivision Staging Policy, or through Regulation.

65 Peak period means the hours of highest transportation use in a district each  
66 workday, as defined in the resolution creating a district District, as established  
67 in the Subdivision Staging Policy, or established through a technical study.

68 Planning Board means the Montgomery County Planning Board of the  
69 Maryland-National Capital Park and Planning Commission.

70 Policy Area means a Transportation Policy Area adopted by the County  
71 Council through the Subdivision Staging Policy.

72 Project-based TDM Plan means a TDM plan for a new development project.

73 Resident means an adult domiciled in the relevant area.

74 Single-occupancy vehicle means a motor vehicle occupied by one employee  
75 for commuting purposes, other than a two-wheeled vehicle.

76 Subdivision Staging Policy means the most recent policy adopted under  
77 Section 33A-15.

78 Telework means a work arrangement where a manager directs or permits an  
79 employee to perform usual job duties away from the central workplace in



80 accordance with established performance expectations and agency-approved  
 81 or agreed-upon terms.

82 Traffic Mitigation Plan or TMP means a set of strategies designed to  
 83 implement TDM at an existing commercial or residential building or by an  
 84 employer in an existing building.

85 Transportation demand management or TDM means any method of reducing  
 86 demand for road capacity, especially during a peak period, including an  
 87 alternative work hours program, carpools, vanpools, subsidized transit [pass]  
 88 passes, preferential parking for carpools or vanpools, improved bicycle and  
 89 pedestrian access and safety, public transportation, and [or peak period] a  
 90 parking charge or other parking management strategies.

91 Transportation Demand Management Plan or TDM Plan means a set of  
 92 strategies designed to implement TDM for a new or existing building, a new  
 93 or existing development project, or an employer.

94 Transportation management organization means a public, nonprofit private,  
 95 or public-private firm, corporation, or instrumentality created or contracted to  
 96 manage or coordinate transportation demand management programs.

97 Vanpool means a [van occupied by at least 8 employees traveling together]  
 98 vehicle that has the capacity for 6 or more passengers in addition to the driver  
 99 if:

- 100 (1) passengers occupy 50% or more of the seats at any point during
- 101 the trip; and
- 102 (2) the vehicle is used to transport employees between their
- 103 residences, designated locations, and their place of employment
- 104 for 80% or more of the miles the vehicle is driven.

105 Workplace means the place of employment, base of operations, or  
 106 predominant location of an employee.

107 **42A-22. Findings and purposes.**

- 108 (a) New economic development is important to stimulate the local  
109 economy. Focusing new development in high transit-service areas is  
110 an important County land use and economic development objective.
- 111 (b) Limited transportation infrastructure, traffic congestion, inadequate  
112 access to transit, bicycle and pedestrian [access] facilities, and safety  
113 issues impede the County's land use and economic development  
114 objectives.
- 115 (c) Transportation demand management, in conjunction with adequate  
116 transportation facility review, planned capital improvement projects,  
117 and parking and traffic control measures, will:
- 118 (1) help provide sufficient transportation capacity to achieve County  
119 land use objectives and permit further economic development;
- 120 (2) reduce the demand for road capacity, [and] promote [traffic]  
121 safety for all users of transportation infrastructure, and improve  
122 access to transit, bicycle and pedestrian [access] facilities; and
- 123 (3) help reduce vehicular emissions, energy consumption, and noise  
124 levels.
- 125 (d) Improved traffic levels and air quality, and a reduction in ambient noise  
126 levels will help create attractive and convenient places to live, work,  
127 visit, and conduct business.
- 128 (e) Transportation demand management will equitably allocate  
129 responsibility for reducing single-occupancy vehicle trips among  
130 government, developers, employers, property owners, renters, and the  
131 public.
- 132 (f) Transportation demand management should be consistent with any  
133 commuting goals set in the [Growth] Subdivision Staging Policy,



134 Master Plans, and Sector Plans. TDM should [and] foster coordinated  
 135 and comprehensive government, private industry, and public action to:

136 (1) make efficient use of existing transportation infrastructure;  
 137 (2) increase transportation capacity as measured by numbers of  
 138 people transported;

139 [(2)] (3) reduce existing and future levels of traffic congestion by  
 140 moving more people in fewer vehicles;

141 [(3)] (4) reduce air and noise pollution; and

142 [(4)] (5) promote traffic safety together with transit, [and]  
 143 pedestrian and bicycle safety and access for all users.

144 (g) Where a NADMS Goal has been specifically established for a District  
 145 it must be achieved for that District. Where a Policy Area is part of a  
 146 District, the NADMS Goal established for the Policy Area must be  
 147 achieved.

148 (h) Transportation demand management will substantially advance public  
 149 policy objectives. Adoption of this Article is in the best interest of the  
 150 public health, safety, and general welfare of the County.

151 **42A-23. Districts; authority of the Department and Planning Board.**

152 (a) The County Council by resolution may create a transportation  
 153 management district [in] (TMD) in a policy area where the Subdivision  
 154 Staging Policy requires transportation review.]. A district District may  
 155 be formed from one or more Subdivision Staging Policy areas.  
 156 even if they are not contiguous. [:

157 (1) a Metro station policy area, which may include adjacent areas  
 158 served by the same transportation network; or

159 (2) an area where transportation review applies under the Growth  
 160 Policy.]



161 (b) The Department may take actions necessary to achieve effective  
 162 transportation demand management in each ~~district~~District, on its own  
 163 or by contract with any employer, transportation management  
 164 organization, or other party, including:

165 (1) ~~regulating~~controlling the use of or limiting public parking, by  
 166 regulation adopted under method (2);

167 (2) prohibiting bundling of parking in new developments;

168 (3) monitoring and assessing traffic patterns and pedestrian access  
 169 and safety;

170 [(3)] (4) adopting traffic and parking control measures;

171 [(4)] (5) providing transit, shuttles, circulator services, or other  
 172 transportation services;

173 (6) implementing approved transportation-related capital projects;

174 [(5)] (7) promoting or implementing transit and ridesharing  
 175 incentives;

176 [(6)] (8) promoting regional cooperation between the County and  
 177 other government agencies;

178 [(7)] (9) creating cooperative County-private sector programs to  
 179 increase ridesharing and transit use; and/or

180 [(8)] (10) conducting surveys, studies, and statistical [analysis]  
 181 analyses to determine the effectiveness of [traffic mitigation]  
 182 transportation demand management plans and employer and  
 183 building owner efforts.

184 (c) In each ~~transportation management district~~District, sole source  
 185 contracts may be signed with, or funds granted to, one or more  
 186 transportation management organizations to carry out transportation

187 demand management programs that the Department could otherwise  
 188 carry out, under Chapter 11B.

189 (d) The Department and the Planning Board may, in accordance with this  
 190 Article and other applicable law, jointly or separately impose  
 191 transportation demand management measures as conditions on the  
 192 Board's approval of development in any ~~district~~District.

193 (e) Each ~~district~~District may have a Transportation Management District  
 194 Advisory Committee if the Executive by regulation decides a  
 195 Committee is necessary to carry out this Article or if the Council creates  
 196 a Committee by resolution. The Executive or Council may designate  
 197 any existing advisory body appointed by the Executive and confirmed  
 198 by the Council to serve as a Transportation Management District  
 199 Advisory Committee. The Executive must appoint, and the Council  
 200 must confirm, members of any Advisory Committee. The County must  
 201 not compensate members of an Advisory Committee for their services.  
 202 Advisory Committee members, not otherwise public employees as  
 203 defined in Chapter 19A, are not subject to the financial disclosure  
 204 provisions of that Chapter.

205 **42A-24. [Traffic mitigation plans] Transportation Demand Management**  
 206 **Plans for Employers.**

207 (a) Transportation Demand Management (TDM) Plans for an Individual  
 208 Employer.

209 (1) The Director must require an employer subject to this Section to  
 210 submit a TDM Plan meeting the requirements of this Section [If  
 211 an employer is subject to this Section, and] ~~if the Council by~~  
 212 ~~resolution or in the [Growth] Subdivision Staging Policy has~~  
 213 ~~approved the use of traffic mitigation plans or TDM Plans in a~~



214 ~~given district~~], the Director must notify the employer by letter  
 215 that the employer must submit a traffic mitigation plan meeting  
 216 the requirements of this Section].

217 [(b)] (2) Upon written request from the Director, an employer  
 218 ~~within a district~~ must provide the Director with the number of  
 219 full-time and part-time employees working for that organization  
 220 ~~at anyby workplace within the district~~ in each Policy Area or  
 221 District.

222 (3) An employer [who employs 25 or more employees in a district  
 223 at any time within one year before receiving notice under  
 224 subsection (a)] must submit a [traffic mitigation plan] TDM Plan  
 225 to the Director if:

226 (A) the employer is in a Red Policy Area under the  
 227 Subdivision Staging Policy and has 25 or more employees  
 228 reporting to or assigned to that workplace;

229 (B) the employer is in an Orange Policy Area under the  
 230 Subdivision Staging Policy and has 100 or more  
 231 employees reporting to or assigned to that workplace;

232 (C) the employer is in a Yellow Policy Area under the  
 233 Subdivision Staging Policy and has 200 or more  
 234 employees reporting to or assigned to that workplace; or

235 (D) the employer is in one of the following ~~districts~~Districts  
 236 and has 25 or more employees reporting to or assigned to  
 237 a workplace:

238 Silver Spring TMD

239 Friendship Heights TMD

240 Bethesda TMD

241 North Bethesda TMD

242 Greater Shady Grove TMD

243 White Oak TMD.

244 [(c)] (4) The [traffic mitigation plan should] TDM Plan must be  
 245 consistent with and contribute to the achievement of any  
 246 NADMS Goal or other commuting goals set in the [Growth]  
 247 Subdivision Staging Policy, Master Plans, Sector Plans, and any  
 248 individual project-based goals or ~~interim~~ goals established in the  
 249 regulations implementing this Article. The TDM Plan must  
 250 include strategies required by regulation and other strategies  
 251 selected by the employer from those permitted by regulation or  
 252 proposed by the employer and approved by the Director. A  
 253 [traffic mitigation plan] TDM Plan may include an alternative  
 254 work hours program, carpool or vanpool incentives, subsidized  
 255 transit passes, preferential parking for carpools and vanpools,  
 256 parking management strategies, peak period or single-occupancy  
 257 vehicle parking charges, improved transit, bicycle and pedestrian  
 258 access and safety, telework, and other transportation demand  
 259 management measures approved by the Director.

260 [(d)] (5) Each employer must submit its [traffic mitigation plan]  
 261 TDM Plan within 90 days after receiving written notice from the  
 262 Director that it is required [under subsection (a)]. The Director  
 263 may extend an employer's time to file a [traffic mitigation plan]  
 264 TDM Plan for good cause.

265 [(e)] (b) Consolidated Employer Transportation Demand Management  
 266 Plans.



267 (1) An employer may submit a consolidated [traffic mitigation plan]  
 268 TDM Plan with other employers in the same building or building  
 269 complex. An owner of a nonresidential building in a  
 270 ~~district~~District may submit a consolidated [traffic mitigation  
 271 plan] TDM Plan on behalf of one or more employers in the  
 272 building.

273 (2) A consolidated plan must be designed so that the action it  
 274 requires satisfies this Section for employers covered by the plan  
 275 and complies with the regulations implementing this Section.

276 [(f)] (c) Actions and assistance to be provided. The Director must:

277 (1) offer to help employers prepare TDM Plans;

278 (2) decide if each proposed plan meets the requirements of this  
 279 Section; and

280 (3) help an employer revise a plan that the Director determines does  
 281 not meet the requirements of this Section.

282 (d) Resubmission of TDM Plan. The Director may require an employer to  
 283 resubmit a plan that the Director finds inadequate to achieve any ~~Non-~~  
 284 ~~Auto Driver Mode Share~~ goals NADMS Goals or other commuting  
 285 goals ~~for that district.~~ Once a plan has been approved, the Director must  
 286 not require an employer to submit a revised plan that meets the  
 287 requirements of this Section more than once every two years.

288 (e) Annual TDM Plan report. An employer must submit a report on  
 289 strategies used to implement a TDM Plan, including progress achieved  
 290 under that plan, to the transportation management organization and the  
 291 Director on a schedule established by the Director.

292 [(1)] The Director may require an owner of a nonresidential building  
 293 in a district to submit a traffic mitigation plan if:

- 294 (A) the Director finds that a plan is necessary to achieve the
- 295 purpose of this Article because of the owner's control of
- 296 parking or common space or for similar reasons; and
- 297 (B) the Director notifies the owner of the building under
- 298 subsection (a).]

299 [(2) As specified in the notice, the owner's plan may cover all or some  
300 employers in the building. A plan submitted under this  
301 subsection may be in addition to one an individual employer  
302 must submit.]

303 [(3) After receiving notice under this Section, an owner must submit  
304 a traffic mitigation plan that meets the requirements applicable  
305 to an employer.]

306 [(g) (1) The Director may require an owner of a residential building or  
307 complex with at least 100 dwelling units, including a common  
308 ownership community as defined in Chapter 10B, in a district to  
309 submit a traffic mitigation plan if:

310 (A) the Director finds that a plan is necessary to achieve the  
311 purpose of this Article because of the owner's control of  
312 parking or common space or for similar reasons; and

313 (B) the Director notifies the owner of the building under  
314 subsection (a).

315 (2) After receiving notice under this Section, an owner of a  
316 residential building must submit a traffic mitigation plan that  
317 meets the requirements applicable to an employer.]

318 [(h) The Director must offer to help employers and owners prepare traffic  
319 mitigation plans.]

320 [(i) The Director must:

- 321 (1) decide if each proposed plan meets the requirements of this
- 322 Section; and
- 323 (2) help the employer or owner revise a plan which does not meet
- 324 the requirements.]

325 [(j) The Director may require an employer or owner to resubmit a plan that  
 326 is not consistent with any commuting goals set in the Growth Policy.  
 327 The Director must not require an employer to submit a plan that meets  
 328 the requirements of this Section more than once every 2 years. An  
 329 employer must submit a report on transportation management measures  
 330 used to implement a traffic mitigation plan to the transportation  
 331 management organization based on a schedule the Director sets.]

332 **42A-25. [Traffic mitigation agreements] Transportation Demand**  
 333 **Management Plans for Existing Buildings.**

334 [(a) Any proposed subdivision or optional method development in a district  
 335 must be subject to a traffic mitigation agreement if the Planning Board  
 336 and the Director jointly decide, under standards adopted by the Council  
 337 for the adequacy of public transportation, that more transportation  
 338 facilities or transportation demand management measures are necessary  
 339 to meet any commuting goals set in the Growth Policy.]

340 [(b) A traffic mitigation agreement must specify transportation demand  
 341 management measures that the applicant or a responsible party must  
 342 carry out. The measures must be calculated to ensure that public  
 343 transportation will be adequate to meet commuting goals set in the  
 344 Annual Growth Policy.]

345 [(c) A traffic mitigation agreement may require:  
 346 (1) naming a transportation coordinator;  
 347 (2) limits on parking spaces;

- 348 (3) peak period or single-occupancy vehicle parking charges;
- 349 (4) preferential parking for carpools and vanpools;
- 350 (5) subsidies for employees not using single-occupancy vehicles;
- 351 (6) financial or other participation in building or operating on- or off-
- 352 site transportation facilities or systems;
- 353 (7) providing space on a periodic basis for marketing and
- 354 promotional activities of the district;
- 355 (8) designating permanent areas in prominent locations to display
- 356 information on commuting options; or
- 357 (9) other transportation demand management measures.]

358 [(d) A traffic mitigation agreement must be:

- 359 (1) agreed to by the applicant, the Department, and the Planning
- 360 Board;
- 361 (2) made an express condition of any approval for subdivision under
- 362 Chapter 50 or optional method development under Chapter 59;
- 363 (3) subject to all other review and approval requirements of Chapter
- 364 50 and Chapter 59; and
- 365 (4) recorded in the County's land records.]

366 [(e) A traffic mitigation agreement may:

- 367 (1) require adequate financial security, including bonds, letters of
- 368 credit, or similar guarantees;
- 369 (2) bind future tenants of the development; and
- 370 (3) specify liquidated damages, specific performance, or other
- 371 contractual remedies, as appropriate.]

372 [(f) The Department must enforce the terms of each traffic mitigation

373 agreement. This does not limit the Planning Board's authority to revoke



374 or otherwise enforce any approvals for subdivision under Chapter 50 or  
 375 optional method development under Chapter 59.]

376 (a) *Transportation Demand Management (TDM) Plans for Existing Non-*  
 377 *residential Buildings.*

378 (1) The Director may require an owner of a nonresidential building  
 379 in a ~~district~~District to submit a TDM Plan if:

380 (A) the Director finds that a plan is necessary to achieve the  
 381 purpose of this Article; and

382 (B) the building is not subject to either a traffic mitigation  
 383 agreement currently in effect or a Project-based TDM Plan  
 384 under Section 42A-26.

385 (2) If an existing non-residential building is subject to this Section,  
 386 the Director must notify the building owner that a TDM plan  
 387 meeting the requirements of this Section must be submitted. As  
 388 specified in the notice, the owner's plan may cover all or some  
 389 employers in the building. A plan submitted under this  
 390 subsection may be in addition to one an individual employer  
 391 must submit.

392 (3) After receiving notice under this Section, an owner must submit  
 393 a TDM Plan meeting the requirements established in the  
 394 Executive Regulations for approval by the Director.

395 (b) *Transportation Demand Management (TDM) Plans for Existing Multi-*  
 396 *Unit Residential Buildings.*

397 (1) The Director may require an owner of a residential building or  
 398 complex with at least 100 dwelling units in a ~~district~~District,  
 399 including a common ownership community as defined in  
 400 Chapter 10B, to submit a TDM Plan if:

- 401                    (A) the Director finds that a plan is necessary to achieve the  
 402                                    purpose of this Article; and
- 403                    (B) the building is not subject to either a traffic mitigation  
 404                                    agreement currently in effect or to a Project-based TDM  
 405                                    Plan under Section 42A-26.
- 406                    (2) If an existing multi-unit residential building is subject to this  
 407                                    Section, the Director must notify the building owner(s) that a  
 408                                    TDM Plan meeting the requirements of this Section must be  
 409                                    submitted.
- 410                    (3) After receiving notice under this Section, the owner(s) must  
 411                                    submit a TDM Plan that meets the requirements established in  
 412                                    the Executive Regulations for approval by the Director.
- 413                    (c) Actions and assistance to be provided. The Director must:
- 414                                    (1) offer to help building owners prepare TDM Plans;
- 415                                    (2) decide if each proposed plan meets the requirements of this  
 416                                    Section; and
- 417                                    (3) help the building owner(s) revise a plan which does not meet the  
 418                                    requirements.
- 419                    (d) Resubmission of TDM Plan. The Director may require a building  
 420                                    owner to resubmit a plan that the Director finds inadequate to achieve  
 421                                    any ~~Non-Auto Driver Mode Share~~ goals NADMS Goal or other  
 422                                    commuting goals ~~for that district~~. Once a plan has been approved, the  
 423                                    Director must not require a building owner to submit a revised plan that  
 424                                    meets the requirements of this Section more than once every two years.
- 425                    (e) Annual TDM Plan report. A building owner must submit a report on  
 426                                    strategies used to implement a TDM Plan, and progress on achievement



427 of goals under that plan, to the transportation management organization  
 428 and the Department based on a schedule established by the Director.

429 **42A-26. [Annual survey] Transportation Demand Management Plans for New**  
 430 **Development Projects.**

431 [(a) The Director, after consulting the appropriate Advisory Committee,  
 432 must schedule an annual commuter survey, unless the Director  
 433 determines that a less frequent plan is appropriate.]

434 [(b) The Director, after consulting the appropriate Advisory Committee,  
 435 must prepare a survey that generates information to:

436 (1) create an accurate data base of employee commuting patterns in  
 437 the district; and

438 (2) monitor progress toward reaching any commuting goals set in the  
 439 Growth Policy.]

440 [(c) The Department must distribute the survey to employers based on a  
 441 schedule the Director sets. Each notified employer must distribute,  
 442 collect, and return the completed surveys to the transportation  
 443 management organization within 45 days after receiving the surveys.]

444 [(d) An employer must make a good faith effort to generate survey  
 445 responses from employees with the objective of achieving at least an  
 446 80 percent compliance rate.]

447 (a) Applicability. This Section applies to any owner or applicant for a new  
 448 development or construction project that submits an application for a  
 449 proposed subdivision or optional method development, site plan,  
 450 conditional use or building permit for a project that is of the sizes  
 451 referenced in a district, but excluding subsection (b) below. This  
 452 Section does not apply to any project consisting solely of single family  
 453 detached housing; or which consists solely of renovations to, or a



454 change in use of, an existing building or buildings unless the change in  
 455 use causes the project to exceed the sizes referenced in subsection (b)  
 456 below. All ~~such~~ applicants subject to this Section must obtain approval  
 457 from the Department for a Project-based Transportation Demand  
 458 Management (TDM) Plan. This approval must be obtained prior to  
 459 Planning Board approval the issuance of the application, or prior to any  
 460 building permit by the Department of Permitting Services ~~approval for~~  
 461 projects not requiring Planning Board action. Projects subject to this  
 462 Section include developments:

- 463 (1) in a ~~Red, Orange or Yellow~~ Subdivision Staging Policy  
 464 Area ~~Areas~~ and larger than the minimum sizes shown in  
 465 subsection (b);
- 466 (2) that do not have a fully-executed traffic mitigation agreement in  
 467 effect; and
- 468 (3) where the Department decides, under standards adopted by the  
 469 Council for the adequacy of transportation, including ~~Non-Auto~~  
 470 Driver Mode Share goals NADMS Goals and other commuting  
 471 goals adopted in Master Plans, Sector Plans ~~and~~, the Subdivision  
 472 Staging Policy, or through an executive regulation, that more  
 473 transportation facilities or transportation demand management  
 474 measures are necessary to meet the County's commuting goals.

475 (b) Levels of Project-based TDM Plans. An owner or applicant for a new  
 476 development or construction project may be required to submit a Level  
 477 1 TDM Basic Plan, a Level 2 TDM Action Plan, or a Level 3 TDM  
 478 Results Plan based on the size and location of the ~~project~~ project's  
 479 development as follows:



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- (1) An owner or applicant for a project located in a Red Policy Area under the Subdivision Staging Policy must:
  - (A) submit a Level 1 TDM Basic Plan for a project with at least up to 25,000 gross square feet, but less than or equal to 100,000 gross square feet; and
  - (B) submit a Level 3 TDM Results Plan for a project with more than 10025,000 gross square feet;
- (2) An owner or applicant for a project located in an Orange Policy Area under the Subdivision Staging Policy must:
  - (A) submit a Level 1 TDM Basic Plan for a project with at least 25,000 gross square feet, but less than or equal to 75,000 gross square feet;
  - (B) submit a Level 2 TDM Action Plan for a project with more than 75,000 gross square feet, but less than or equal to 150,000 gross square feet; and
  - (C) submit a Level 3 TDM Results Plan for a project with more than 150,000 gross square feet;
- (3) An owner or applicant for a project located in a Yellow Policy Area under the Subdivision Staging Policy must:
  - (A) submit a Level 1 TDM Basic Plan for a project with at least 50,000 gross square feet, but less than or equal to 100,000 gross square feet;
  - (B) submit a Level 2 TDM Action Plan for a project with more than 100,000 gross square feet, but less than or equal to 200,000 gross square feet; and
  - (C) submit a Level 3 TDM Results Plan for a project with more than 200,000 gross square feet;



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~~(3) An owner or applicant for a project located in a Yellow Policy Area under the Subdivision Staging Policy must:~~

~~(A) submit a Level 1 TDM Basic Plan for a project with at least 75,000 gross square feet, but less than or equal to 150,000 gross square feet; and~~

~~(B) submit a Level 2 TDM Action Plan for a project with more than 150,000 gross square feet.~~

(4) If an adopted Master Plan or Sector Plan requires a higher Level of Project-based TDM Plan, those Master Plan or Sector Plan requirements override those described in paragraphs (1), (2), or (3).

(5) An owner or applicant for a project with a gross square feet size disproportionate to its impact on traffic (e.g., large floor area warehouses with lower impacts; small floor area food or beverage establishments with higher impacts) may be required to adhere to a Project-based TDM Plan Level that is either lower or higher than otherwise required by its size and location, in accordance with the development approval and consistent with the Executive Regulation implementing this Article.

(c) *Components of Project-based TDM Plans.* The components of each Project-based TDM Plan Level are described in detail in the Executive Regulation adopted to implement these provisions. Each plan must include the components listed below and in the Executive Regulation. The plan must be submitted by the owner or applicant and approved by the Department. Any owner or applicant may choose to comply with the requirements for a higher Level of Project-based TDM Plan.



533 (1) Level One: A Project-based TDM Basic Plan is not required to  
534 include specific project-based strategies other than providing  
535 information, but must implement County-led strategies at the  
536 Project and must include:

537 (A) Appointment of a Transportation Coordinator and  
538 Commitment to Cooperate with the Department's  
539 Programs. Each owner of a project must designate an  
540 individual responsible to assist and cooperate with the  
541 Department's efforts to achieve the ~~Non-Auto Driver~~  
542 ~~Mode Share~~ goals NADMS Goals and other traffic  
543 mitigation and commuting goals ~~established for that area.~~  
544 This assistance must include distribution of information on  
545 commuting options to the on-site population; coordinating  
546 with the Department to conduct on-site commuting-related  
547 outreach events; ensuring participation in commuter  
548 surveys by the on-site population; attending occasional  
549 training sessions for Transportation Coordinators; and  
550 other duties included in the Executive Regulation.

551 (B) Notification. Each owner of a project is required to notify  
552 the Department in writing within 30 days of receipt of final  
553 Use and Occupancy certificate from the Department of  
554 Permitting Services of the designated Coordinator's  
555 contact information; and within 30 days of any subsequent  
556 change in that designation or contact information.

557 (C) Access to the Project. Each owner must provide space on-  
558 site by prior arrangement with the Department to allow the  
559 Department to promote TDM, including participation in



560 commuter surveys. Such space need not be exclusively  
 561 for this purpose but must be suitable for this purpose, as  
 562 determined by the Department.

563 (D) TDM Information. Displays of TDM-related information  
 564 must be placed in a location visible to employees,  
 565 residents and other project users.

566 (2) Level Two: A Project-based TDM Action Plan requires a  
 567 commitment by the owner or applicant to specific actions to help  
 568 the County achieve ~~district-wide~~NADMS Goals or other  
 569 commuting goals established in an executive regulation. The  
 570 plan must include project-based strategies and demonstrate over  
 571 time that the adopted strategies are contributing toward  
 572 achievement of the ~~district's~~ commuting goals, in compliance  
 573 with the ~~Executive Regulations~~.executive regulation. A project  
 574 must be considered to be contributing toward achievement of the  
 575 ~~district's~~ commuting goals if the biannual surveys of building  
 576 occupants demonstrate increased on-site Non-Auto Driver Mode  
 577 Share, or a measurable improvement in an alternative  
 578 Department-approved metric, if applicable, in proportion to the  
 579 level necessary to achieve ~~the goal~~five percent NADMS above  
 580 the NADMS Goal by the date established in the project's TDM  
 581 plan. Once the NADMS Goal or other commuting goals have  
 582 been achieved, the owner must maintain the level necessary to  
 583 continue achieving the goal. A Project-based TDM Action Plan  
 584 must include the Project-based TDM Basic Plan components and  
 585 the following:



- 586 (A) Selection of Strategies. The owner or applicant must  
587 propose a Project-based TDM Plan that includes required  
588 strategies and selected optional strategies from the  
589 “Sample Menu of TDM Strategies” identified in the  
590 Executive Regulation. Additional strategies may be  
591 proposed by the owner or applicant and may be included  
592 in the Project-based TDM Plan if approved by the  
593 Department.
- 594 (B) Commitment to Fund and Implement the Plan. The owner  
595 or applicant must commit to fund and implement the  
596 Project-based TDM Plan at an adequate level to contribute  
597 toward achievement of the ~~district’s~~ commuting goals.
- 598 (C) Self-Monitoring. The owner or applicant must conduct  
599 self-monitoring, consistent with Department  
600 requirements, to determine if the Project-based TDM Plan  
601 is contributing toward achievement of the ~~district’s~~  
602 ~~goals.commuting goals.~~ This self-monitoring must be  
603 conducted in addition to any monitoring conducted by the  
604 Department.
- 605 (D) Biennial Report. Progress reports must be provided to the  
606 County in alternating years, in a format consistent with  
607 Department requirements.
- 608 (E) Addition and/or Substitution of Strategies. If the strategies  
609 initially selected ~~from the “Sample Menu of TDM~~  
610 ~~Strategies”~~ by the owner or applicant do not result in the  
611 plan contributing toward achievement of ~~district~~ goals by  
612 four years after Date of Final Occupancy, the Department

613 may require revisions in the project's plan using the  
 614 "Sample Menu of TDM Strategies" or other strategies  
 615 proposed by the owner or applicant. The Department must  
 616 require that the owner or applicant implement parking  
 617 management strategies for projects that fail to  
 618 demonstrate progress toward attaining the commuting  
 619 goals. Parking management strategies may include  
 620 limiting the parking available for use by employees  
 621 commuting during peak periods. The owner or applicant  
 622 must agree to implement these revised strategies if  
 623 required by the Department at a level consistent with the  
 624 owner's commitment to fund and implement the plan.  
 625 This process may be repeated until the project  
 626 demonstrates it is contributing toward achievement of  
 627 ~~district goals, consistent with the Executive~~  
 628 ~~Regulations~~ District commuting goals, consistent with the  
 629 executive regulationr. Once the NADMS Goal or other  
 630 commuting goals have been achieved, the owner must  
 631 maintain the level necessary to continue achieving the  
 632 goal.

633 (F) *Additional Funding Commitment.* If the project does not  
 634 contribute toward achievement of ~~district~~the commuting  
 635 goals by six years after Date of Final Occupancy, the  
 636 Department may require increased funding by the owner  
 637 for existing or new TDM strategies to be implemented at  
 638 the project. The owner must commit additional funds to  
 639 supplement on-site strategies if required by the



640 Department. The amount of the additional funding must  
 641 be as established in the ~~Executive Regulation~~ executive  
 642 regulation.

643 (G) ~~Rewards~~ Performance Incentives. The owner may be  
 644 eligible for annual ~~rewards~~ performance incentives  
 645 established by the Department for continued contribution  
 646 over multiple years toward achievement of  
 647 ~~district~~ commuting goals, including reductions in TDM  
 648 fees or other financial benefits, as established in the  
 649 ~~Executive Regulation~~ executive regulation.

650 (3) Level Three: A Project-based TDM Results Plan requires a  
 651 commitment by the owner or applicant to achieve certain ~~Non-~~  
 652 ~~Auto Driver Mode Share~~ NADMS Goals and related commuting  
 653 goals at that project. The plan must include project-based  
 654 strategies and demonstrate that the plan is achieving the goals  
 655 established for the project. ~~Those goals~~ The project plan may be  
 656 equal establish a project NADMS Goal that is up to, five-percent  
 657 higher or five percent lower than the ~~district's~~ goals NADMS  
 658 Goals based on project-specific parameters, consistent with the  
 659 ~~Executive Regulation,~~ executive regulation. When approving  
 660 the Project-Based TDM Results Plan, the Director must make a  
 661 determination that the commuting goals for the District or Policy  
 662 Area will be attained with the established project NADMS Goal.  
 663 The plan must be submitted by the owner or applicant and  
 664 approved by the Department. A Project-based TDM Results Plan  
 665 must include the Project-based TDM Action Plan components  
 666 and the following:



667 (A) Independent Monitoring. Monitoring by a consultant  
668 approved by the Department, to determine whether the  
669 project is meeting its goals. This monitoring must be done  
670 on a regular basis consistent with the Executive  
671 Regulations.

672 (B) Addition and/or Substitution of Strategies. If the strategies  
673 initially selected by the owner or applicant do not result in  
674 the project achieving its goals by six years after Date of  
675 Final Occupancy, the Department may require revisions in  
676 the project's plan using the "Sample Menu of TDM  
677 Strategies" or other strategies proposed by the owner or  
678 applicant. The Department must require that the owner or  
679 applicant implement parking management strategies for a  
680 project that fails to achieve its goals. Parking management  
681 strategies may include limiting the parking available for  
682 use by employees commuting during peak periods. The  
683 owner or applicant must agree to implement these revised  
684 strategies if required by the Department at a level  
685 consistent with the owner's commitment to fund and  
686 implement the plan. This process may be repeated until  
687 the project demonstrates it is achieving its goals, in  
688 compliance with the ~~Executive Regulation~~ executive  
689 regulation.

690 (C) Additional Funding Commitment. If the strategies  
691 selected by the owner or applicant do not result in  
692 achievement of the project goals by six years after Date of  
693 Final Occupancy, the Department may require increased



694 funding by the owner for existing or new TDM strategies  
 695 to be implemented at the project. Additional increases in  
 696 funding may be required if the goals have still not been  
 697 achieved by eight years after Date of Final Occupancy.  
 698 The owner must commit additional funds to supplement  
 699 on-site strategies if required by the Department. The  
 700 amount of the additional funding must be as established in  
 701 the ~~Executive Regulation~~ executive regulation.

702 (D) ~~Rewards-Performance Incentives.~~ The owner may be  
 703 eligible for annual ~~rewardsperformance incentives~~  
 704 established by the Department for continued achievement  
 705 of project goals over multiple years, including reductions  
 706 in TDM fees or other financial benefits, as established by  
 707 the ~~Executive Regulation~~ executive regulation.

708 (d) Process. A Project-based TDM Plan must be:

- 709 (1) proposed by the owner or applicant and approved by the  
 710 Department;  
 711 (2) made an express condition of any approval for:  
 712 (A) subdivision or another plan approval under Chapter 50;  
 713 (B) site plan or another plan approval under Chapter 59; or  
 714 (C) building permit for a recorded lot;  
 715 (3) subject to all other review and approval requirements of Chapter  
 716 50 and Chapter 59, with approval of the Department required for  
 717 any revisions to an approved TDM Program; and  
 718 (4) recorded in the County's land records.

719 A Project-based TDM Plan must be required for all such approvals  
 720 except where equivalent provisions of a fully-executed traffic  
 721 mitigation agreement for the project are in effect in perpetuity.

722 (e) Enforcement. The Director must enforce the terms of each Project-  
 723 based TDM Plan. This does not limit the Planning Board's authority to  
 724 revoke or otherwise enforce any approvals under Chapter 50 or Chapter  
 725 59. ~~Where a Project-based TDM Plan is a condition of subdivision,~~  
 726 ~~optional method, site plan, or conditional use, the Planning Board must~~  
 727 ~~confirm that TDM Plan has been approved by the Director before~~  
 728 ~~issuing final approval.~~ Where a Project-based TDM Plan is a condition  
 729 of building permit approval, the Department of Permitting Services  
 730 must confirm that the TDM Plan has been approved by the Director  
 731 prior to issuing a building permit.

732 **42A-27. [Executive report] Traffic Mitigation Agreements.**

733 [(a) By December 1 of each even-numbered year, the Director must submit  
 734 to the appropriate Advisory Committee and the Planning Board a report  
 735 on transportation demand management in each district. The report  
 736 should include:

- 737 (1) employee commuting patterns by employer;
- 738 (2) auto occupancy rates by employer;
- 739 (3) level of service measurements for each intersection in the policy  
 740 area and selected critical intersections outside the area;
- 741 (4) parking supply and demand;
- 742 (5) status of road or intersection improvements, signal automation,  
 743 improved bicycle and pedestrian access and safety, and other  
 744 traffic modifications in or near the policy area;
- 745 (6) transit use and availability;

- 746 (7) carpool and vanpool use; and  
 747 (8) the source and use of any funds received under this Article.]  
 748 [(b) By March 1 of each odd-numbered year, the Executive must forward  
 749 each report to the Council. The Executive must note any area of  
 750 disagreement between the Director and an Advisory Committee.]  
 751 [(c) If any commuting goals set in the Growth Policy are not met 4 years  
 752 after a district is created, the Director must recommend corrective  
 753 action to the Executive. This action may include mandatory mitigation  
 754 measures. If the Executive agrees that such action is necessary, the  
 755 Executive should propose appropriate legislation or adopt appropriate  
 756 regulations as authorized by law.]

757 Enforcement. The Department must enforce the terms of each traffic  
 758 mitigation agreement. This does not limit the Planning Board's authority to  
 759 revoke or otherwise enforce any approvals for subdivision under Chapter 50  
 760 or optional method development under Chapter 59.

761 **42A-28. [Regulations] Commuter survey and related data collection.**

762 [The Executive may adopt regulations under method (2) to implement this  
 763 Article.]

- 764 (a) The Director, after consulting the appropriate Advisory Committee,  
 765 must conduct a commuter survey, or obtain through other available  
 766 mechanisms, data on commuting by employees and residents within a  
 767 defined area. The data must be obtained on a schedule determined by  
 768 the Director.  
 769 (b) The Director, in consultation with the appropriate Advisory Committee,  
 770 must prepare a survey or other data collection mechanism as necessary  
 771 to generate information to:



772 (1) create an accurate data base of employee and resident commuting  
 773 patterns ~~in the district~~; and

774 (2) monitor progress toward reaching any commuting goals set in the  
 775 Subdivision Staging Policy, Master Plans or Sector Plans, as  
 776 implemented by the Department through Executive Regulations  
 777 or other adopted policies and procedures.

778 (c) The Department must distribute the survey to employers; building  
 779 owners or managers; tenants, condominium and homeowners  
 780 associations; Transportation Coordinators, and others required to  
 781 conduct the survey or to participate in other ways in the data collection  
 782 process, based on a schedule the Director sets. The Department may  
 783 also collect commuting data through other available mechanisms in  
 784 addition to or in place of the commuter survey.

785 (d) Each notified employer, building owner or manager, Transportation  
 786 Coordinator or other entity must distribute, collect, and return the  
 787 completed surveys, or otherwise provide the required data through  
 788 other Department-approved mechanisms. Data collected must be  
 789 provided to the transportation management organization and the  
 790 Department within the time period established by the Department.

791 (e) Any entity required to participate in the commuting survey, or to  
 792 participate in data collection through another mechanism, must make a  
 793 good faith effort to generate survey responses or other data from their  
 794 target population with the objective of achieving at least a 60 percent  
 795 compliance rate.

796 **42A-29. [Transportation Management Fee] Executive report on**  
 797 **TMDs Transportation Demand Management.**

798 [(a) *Authority.*



799 (1) The Council may by resolution adopted under Section 2-57A set  
 800 the transportation management fee that the Department must  
 801 annually charge, under the Alternative Review Procedures in the  
 802 Growth Policy, an applicant for subdivision or optional method  
 803 development approval in a district and each successor in interest.

804 (2) If the resolution creating a district authorizes the Department to  
 805 charge a transportation management fee to any of the following  
 806 persons, the Council may, by resolution adopted under Section  
 807 2-57A, set the fee that the Department must charge:

808 (A) an applicant for subdivision or optional method  
 809 development in the district who is not subject to a  
 810 transportation management fee under the Alternative  
 811 Review Procedures in the Growth Policy and each  
 812 successor in interest; and

813 (B) an owner of existing commercial and multi-unit residential  
 814 property in the district.]

815 [(b) *Use of revenue.* The revenue generated by a transportation  
 816 management fee must be used in the district in which the development  
 817 or property subject to the fee is located to cover the cost of:

818 (1) administering the district, including review and monitoring of  
 819 traffic mitigation plans under Section 42A-24 and traffic  
 820 mitigation agreements under Section 42A-25; and

821 (2) any program implemented under Section 42A-23(b), including  
 822 any vehicle or other equipment necessary to carry out the  
 823 program.]

824 [(c) *Rate.* The rate of a transportation management fee must be set to  
 825 produce not more than an amount of revenue substantially equal to the:

826 (1) portion of the cost of administering the district, including the  
 827 review and monitoring of traffic mitigation plans under Section  
 828 42A-24 and traffic mitigation agreements under Section 42A-25,  
 829 reasonably attributable to the transportation effects of the  
 830 development or property subject to the fee; and

831 (2) portion of the cost of any program implemented under Section  
 832 42A-23(b), including any vehicle or other equipment necessary  
 833 to carry out the program, reasonably attributable to the  
 834 transportation effects of the development or property subject to  
 835 the fee.]

836 [(d) *Method.* A transportation management fee may be assessed on:

837 (1) the gross floor area, the maximum or actual number of  
 838 employees, or the average number of customers, visitors, or  
 839 patients, in a nonresidential building;

840 (2) the number of dwelling units, or the gross floor area, in a  
 841 residential building;

842 (3) the number of parking spaces associated with a building; or

843 (4) any other measurement reasonably related to transportation use  
 844 by occupants of, employees located in, or visitors to a particular  
 845 development or property.]

846 [(e) *Variation.* The transportation management fee and the basis on which  
 847 it is assessed may vary from one district to another and one building  
 848 category or land use category to another.]

849 (a) By December 1 of each even-numbered year, the Director must submit  
 850 to the appropriate Advisory Committee and the Planning Board a report  
 851 on transportation demand management ~~in each operating district.~~ The



852 report should include the following information to the extent feasible  
 853 within the constraints of available resources:

854 (1) employee commuting patterns by employer, building or project;  
 855 residential commuting patterns by building or project; other  
 856 commuting or travel patterns as appropriate;

857 (2) auto occupancy rates by employer, residential unit or other  
 858 appropriate measures;

859 ~~(3) level of service measurements for each major intersection in the~~  
 860 ~~policy area and selected critical intersections outside the area;~~

861 ~~(4)(3)~~

862 (3) parking supply and demand;

863 ~~(5) status of road or intersection improvements, signal automation,~~  
 864 ~~bicycle and pedestrian access and safety, and other traffic~~  
 865 ~~modifications in or near the district;~~

866 ~~(6)(5)~~

867 (4) transit use and availability;

868 (75) carpool and vanpool use;

869 (86) bicycle and bikeshare use;

870 (97) use of other transportation modes relevant to analyzing  
 871 achievement of commuting goals; and

872 ~~(108) the source and use of any funds received under this Article.~~

873 (b) By March 1 of each odd-numbered year, the Executive must forward  
 874 ~~each report required reports to the Council. The Executive must note~~  
 875 ~~any area of disagreement between the Director and an Advisory~~  
 876 ~~Committee Committees.~~

877 (c) If any commuting goals set in the Subdivision Staging Policy are not  
 878 ~~met eight years after a district is created by 2030 or by June 30, 2027 the~~

879 dates established by master plans, whichever is later, the Director must  
 880 recommend corrective action to the Executive. This action may include  
 881 additional mitigation measures. If the Executive agrees that such action  
 882 is necessary, the Executive should propose appropriate legislation or  
 883 adopt appropriate regulations as authorized by law.

884 **42A-30. [Enforcement] Regulations.**

885 [The Department must enforce this Article. An employer that does not submit  
 886 a traffic mitigation plan or provide survey data within 30 days after a second notice  
 887 has committed a class C violation. An owner who does not submit a traffic  
 888 mitigation plan within 30 days after a second notice has committed a class C  
 889 violation. A party to a traffic mitigation agreement under Section 42A-26 who does  
 890 not comply with the agreement within 30 days after notice has committed a class A  
 891 violation.]

892 The Executive must adopt regulations under method (2) to implement this  
 893 Article. The regulations may implement the requirements of this Article in phases.

894 **42A-31. Transportation Demand Management Fee.**

895 (a) Authority.

896 (1) The Council may, by resolution adopted under Section 2-57A,  
 897 set the transportation demand management fee that the  
 898 Department must annually charge an applicant, and each  
 899 successor in interest, for subdivision, optional method  
 900 development approval, or a building permit.

901 (2) The Department is authorized to charge a transportation demand  
 902 management fee adopted by the Council to:

903 (A) an applicant for subdivision or optional method approval,  
 904 site plan approval or a building permit in a ~~district~~District;  
 905 and



906                    (B) an owner of existing commercial, industrial or multi-unit  
 907                    residential developed property in the ~~district~~District,  
 908                    including a property where the principal use is a  
 909                    commercial parking facility.

910                    (b) Use of revenue. The revenue generated by a transportation demand  
 911                    management fee must be used in the ~~transportation management~~  
 912                    ~~district~~District in which the development or property subject to the fee  
 913                    is located to cover the cost of:

914                    (1) administering the ~~district~~District and TDM strategies, and  
 915                    coordinating with projects and occupants (including employees  
 916                    and residents) within that ~~district~~District or Policy Area,  
 917                    including review and monitoring of TDM Plans; and

918                    (2) any program implemented under Section 42A-23(b), including  
 919                    any vehicle or other equipment necessary to carry out the  
 920                    program.

921                    (c) Rate. The rate of a transportation demand management fee must be set  
 922                    to produce not more than an amount of revenue substantially equal to  
 923                    the:

924                    (1) portion of the cost of administering TDM in the ~~district~~District,  
 925                    including the review and monitoring of TDM Plans, reasonably  
 926                    attributable to the transportation effects of the development  
 927                    project or property subject to the fee; and

928                    (2) portion of the cost of any program implemented under Section  
 929                    42A-23(b), including any vehicle or other equipment necessary  
 930                    to carry out the program, reasonably attributable to the  
 931                    transportation effects of the development project or property  
 932                    subject to the fee.

933 (d) Method. A transportation demand management fee may be assessed  
 934 on:

935 (1) the gross square feet, the gross floor area, the maximum or actual  
 936 number of employees, or the average number of customers,  
 937 visitors, or patients, in a nonresidential building;

938 (2) the number of dwelling units, the gross square feet or the gross  
 939 floor area, in a residential building;

940 (3) the number of parking spaces associated with a building; or

941 (4) any other measurement reasonably related to transportation use  
 942 by occupants of, employees located in, or visitors to a particular  
 943 development or property, including property where the principal  
 944 use is as a commercial parking facility.

945 (e) Variation. The transportation demand management fee and the basis  
 946 on which it is assessed may vary within each ~~district~~District, between  
 947 one ~~district~~District and another, and from one building category or land  
 948 use category to another.

949 **42A-32. Enforcement.**

950 (a) The Department must enforce this Article. An employer, owner,  
 951 building or project manager or other responsible party subject to  
 952 Section 42A-24 or 42A-25 that does not submit a TDM Plan or required  
 953 report, comply with required provisions of a plan, or provide survey  
 954 data within 30 days after a second notice has committed a class C  
 955 violation.

956 (b) A party to a Project-based Transportation Demand Management Plan  
 957 under Section 42A-26 who does not comply with the approved plan  
 958 within 30 days after notice of noncompliance has committed a class A  
 959 violation.



960 (c) Any party ~~required to~~ that does not submit required reports on numbers  
 961 of employees, transportation demand management plans and strategies,  
 962 Non-Auto Driver Mode Share, progress toward goals, survey results or  
 963 other TDM-related provisions or measurements on a timely basis has  
 964 committed a class C violation.

965 (d) Any party who falsifies any required data or reports has committed a  
 966 class A violation.

967 **Sec. 2. Transition.**

968 (a) *Existing agreements.* All traffic mitigation agreements executed under  
 969 this Chapter before this Act takes effect that have not expired or  
 970 terminated, remain in effect.

971 (b) *New building or project approvals.* No traffic mitigation agreement  
 972 must be required for any new building or development project approved  
 973 after this Act takes effect.

974 (c) *Projects with prior approvals.* Any building or development project  
 975 with an existing subdivision or optional method approval when this Act  
 976 takes effect where a traffic mitigation agreement was a condition of that  
 977 approval, may opt to be considered for re-approval of their application  
 978 under the amendments in Section 1 if:

- 979 (1) a traffic mitigation agreement has not yet been fully executed;  
 980 (2) the building or project approved is larger than the minimum sizes  
 981 designated for each Subdivision Staging Policy Area group in  
 982 Section 42A-26; and  
 983 (3) construction has not begun.

984

985 *Approved:*

986

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~~Hans D. Riemer~~ Nancy Navarro, President, County Council Date

987 *Approved:*

988

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~~Isiah Leggett~~ Marc Elrich, County Executive Date

989 *This is a correct copy of Council action.*

990

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Megan Davey Limarzi, Esq., Clerk of the Council Date

|991



**DRAFT**

Montgomery County Regulation on:  
Transportation Demand Management  
Department of Transportation

Issued by: County Executive  
Regulation No. 10 – 18

Authority: Montgomery County Code, 2018, Chapter 42A, Articles I and II (as revised 2018)

Council Review: Method (2) under Code Section \_\_\_\_\_

Register Vol. \_\_\_\_, Issue \_\_\_\_

Effective Date: \_\_\_\_\_

Comment Deadline: \_\_\_\_\_

Summary: The proposed regulation implements the County's Transportation Demand Management provisions of Chapter 42A, Article II of the County Code. The Regulation establishes standards on how the Department will work toward achievement of the Non-Auto Driver Mode Share goals established for various portions of the County; the Transportation Demand Management Plan requirements for employers and existing buildings in Transportation Management Districts; and the Transportation Demand Management Plan requirements for new development projects in those districts, as determined by the project size and location relative to the County's designated Subdivision Staging Policy Areas.

Address for comments: Montgomery County Department of Transportation  
Director's Office  
Executive Office Building  
101 Monroe Street, 10th Floor  
Rockville, MD 20850

Staff contact: Sandra L. Brecher, Chief, Commuter Services Section  
(240) 777-8383

**Background:** The Montgomery County Council has adopted an approach to managing growth in the County known as the Subdivision Staging Policy (SSP). Under this policy, the County has been divided the County into regions based upon the existing or planned level of transportation infrastructure and the resulting transportation capacity of each area, and any future development, to accommodate traffic through non-auto based alternatives. Chapter 42A – Article II Transportation Demand Management was amended by Bill 36-18 adopted by County Council on \_\_\_\_\_. The amended Article uses the color-coded Policy Areas and Transportation Management Districts) as a basis for actions designed to achieve commuting goals for each of these areas.

**Authority:** Pursuant to Chapter 42A-Article II of the Montgomery County Code, the County Executive hereby promulgates this Executive Regulation for the purpose of implementing Transportation Demand Management (TDM) in order to achieve the commuting goals established for each Policy Area and Transportation Management District (“district” or TMD) in the County. The County Department of Transportation (the Department or MCDOT) is the administrative division-lead department of the County primarily responsible for implementation of TDM in the County.

The SSP uses a color-coded system, with Red Areas being those with the highest potential for non-auto travel and thus the highest potential for urban development; Orange Areas surround those urban activity centers and are still planned for significant reliance on non-auto travel; Yellow Areas are planned for significantly lower, suburban densities with more expectation of reliance on auto travel; and Green Areas are planned to continue as rural portions of the County, including the Agricultural Reserve, and are designated for very limited new development at low densities. Non-Auto Driver Mode Share (NADMS) goals and related Transportation Demand Management (TDM) goals have been established for many of these areas, except for the Green Policy Areas. In addition, NADMS goals have been established for Transportation Management Districts (TMDs). Implementation of effective TDM strategies for both existing and new developments, and for employers and their employees, will be a key determinant of whether the transportation and development goals established for each of these areas can be achieved.

To incorporate this revised approach to evaluating and monitoring traffic impacts into the County’s TDM policies, and to streamline the process for ensuring new projects adopt strategies to achieve the goals for each of the SSP Areas, revisions are proposed to Chapter 42A, Article II. Transportation Demand Management. Accompanying these proposed revisions is this proposed Executive Regulation, intended to provide more specificity and guidance for implementation of Chapter 42A, Article II.

**Definitions:** The terms used are as defined in Chapter 42 of the Montgomery County Code.

## **I. Commuting Goals**

- A. Establishment of Overall Commuting Goals for Geographic Areas. Commuting goals for subareas within the County are based upon analyses conducted during master planning processes, which determine the amount and type of new development



permitted over the planning period, traffic generation, transportation infrastructure to be provided, and the amount of non-auto commuting required to limit traffic congestion and produce acceptable traffic flows.

Commuting goals are ~~usually primarily~~ expressed as a percent of Non-Auto Driver Mode Share (NADMS), ~~but can also include other measures such as~~ percent of transit use, ~~and average auto-occupancy rates, and other measures,~~ all of which are ~~typically~~ calculated based on conditions during the peak period ~~or peak hour~~. Commuting goals may be established for employees commuting into a given Policy Area or TMD; for residents living in that area who are commuting to jobs elsewhere; or for both employees and residents.

Commuting goals for Policy Areas and Transportation Management Districts (TMDs), and those adopted as part of the County's Master Plans and Sector Plans, are ~~usually included in the Subdivision Staging Policy (SSP) adopted by County Council every four years,~~ along with other objectives for growth and development within the County. Where explicit commuting goals have not been established for a given geographic area, MCDOT will proceed as follows:

- 1) Where NADMS or other commuting goals have not explicitly been adopted for a certain ~~district~~ TMD or Policy Area as part of the SSP, the goals established in Master Plans or Sector Plans will be ~~used by the Department~~ assumed to be the goals.
- 2) For Policy Areas where no numerical commuting goals have been established, the Department will ~~use set~~ a goal of a five percent improvement over the current NADMS. The current NADMS will be determined by M-NCPPC, using data available as part of the traffic modeling system.
- 3) If no explicit timeframe for achievement of commuting goals has been established for a certain area by County Council or Planning Board action, the Department will assume the goal for that area must be achieved by the end of the planning period for that Master Plan or Sector Plan. Where no explicit planning period has been identified, the Department will assume the goals must be achieved by the end of a 20-year period following adoption.

*Next SSP should establish NADMS when not existing*

B. Specificity and Phasing of Goal Achievement. Although overall targets for commuting goals ~~are have typically been~~ established for ~~districts~~ TMDs, and in Master ~~Plans~~ or Sector Plans and the ~~Subdivision Staging Policy~~ SSP, sub-areas within districts and ~~larger planning or~~ Policy areas ~~often do may~~ not have specific goals established. Overall goals are often not specific as to portions of goal achievement expected to come from various sources. And planning and policy documents do not always specify the incremental staging necessary over time to establish a realistic schedule for achievement of ultimate goals.

For example, within a given Master Plan area, projects with certain types of land uses located close to a Metrorail station might be expected to produce a higher percentage of NADMS than a project with a different land use in that same location, or a project with the same type of land use located several blocks away. Bill 36-18 provides discretion to the Director of MCDOT to adjust individual project goals by up to five



percent lower or five percent higher than the NADMS goal adopted for that Policy Area or TMD.

- 1) More detailed TDM goal targets based on geography and other factors within a certain ~~district~~TMD or Policy Area, and interim stages for TDM goal achievement, may be established by the Department to implement Chapter 42A, Article II, consistent with this Executive Regulation.
- C. Establishment and Achievement of Non-Auto Driver Mode Share (NADMS) Goals.
- 1) Commuting goals established for each of the ~~districts~~TMDs, and for the Policy Areas by the SSP, ~~are displayed in the chart below. In addition, e~~Communing, goals established and for individual Master Plan and/or Sector Plan areas also are indicated listed will be compiled by MCDOT and presented in a table of NADMS Goals maintained by MCDOT. of NADMS Goals.
  - 2) Where no commuting goals have been established under the SSP or by Master Plans, Sector Plans, ~~--~~ or where the Department has determined interim goals are needed while still remaining consistent with the SSP, Master Plan or Sector Plan longer term goals, ~~--~~ those additional commuting goals will be included in the ~~chart~~table of commuting goals below as maintained by the Department ~~makes those determinations~~, along with any additional goals established by County Council or the Planning Board ~~over time~~.
  - 3) ~~A~~The chart of current NADMS Goals and other commuting goals will be ~~maintained~~ available on the MCDOT website. The charts below provide a listing of NADMS goals for each Policy Area but the MCDOT website must be consulted for up-to-date figures. The printed chart included below will be updated when the new Subdivision Staging Policy SSP document is revised by County Council every four years.



CHART OFA: -ADOPTED NON-AUTO DRIVER MODE SHARE (NADMS)  
GOALS

<u>Policy Area</u>	<u>% NADMS Employees</u>	<u>% NADMS Residents</u>
<u>Silver Spring TMD</u>	46% existing 50% new	
<u>Bethesda TMD</u>	55% blended for residents and workers	
<u>Chevy Chase Lake Sector Plan</u>	36%	49%
<u>Long Branch Sector Plan</u>	36%	49%
<u>Rock Spring Master Plan</u>	23%	41%
<u>Lyttonsville Sector Plan</u>		50%
<u>North Bethesda TMD</u>	37%	30%
<u>Friendship Heights TMD</u>	39%	
<u>Grosvenor Strathmore Metro Area</u>	Blended goal 50%	
<u>Greater Shady Grove TMD</u>	12.5% transit	35% transit in Shady Grove Metro Station Policy Area 25% transit elsewhere
<u>Great Seneca Science Corridor Master Plan</u>	18% before Stage 2 23% before Stage 3 28% before Stage 4	
<u>White Oak Master Plan &amp; TMD</u>	25% all new development in the White Oak Center and Hillandale 30% Life Science/FDA Village Center	
<u>White Flint Sector Plan</u>	34% for Phase 1 for Plan area 42% for Phase 2 for Plan area 50% employees for Phase 3	51% for residents for Phase 3
<u>White Flint 2 Sector Plan</u>	34% phase 1 27% phase 1 east of tracks 42% phase 2 35% phase 2 east of tracks 50% phase 3 42% phase 3 east of tracks	34% phase 1 27% phase 1 east of tracks 42% phase 2 35% phase 2 east of tracks 51% phase 3 42% phase 3 east of tracks
<u>Germantown Master Plan</u>	25% (to be confirmed)	

Wheaton Sector Plan

30%

**NADMSCHART OFB: POLICY AREAS WITHOUT ADOPTED SPECIFIC NADMS GOALS**  
**Current Estimated NADMS – Goals TBD**

<b>Policy Area</b>	<b>% NADMS Employees*</b>	<b>% NADMS Residential**</b>
<b>MC Commuter Survey- Countywide East</b>	<b>43.0</b>	-
Aspen Hill	=	33.1
Burtonsville Town Center	=	no data
Cloverly	=	22.0
Fairland/Colesville	=	25.6
Glenmont	=	38.8
Kensington/Wheaton	=	38.3
Olney	=	21.4
Silver Spring/Takoma Park	=	45.9
Takoma/Langley	=	57.0
<b>MC Commuter Survey Countywide West</b>	<b>38.8</b>	-
Clarksburg	=	27.9
Clarksburg Town Center	=	no data
Derwood	=	37.5
Gaithersburg City	=	34.2
Montgomery Village/Airpark	=	31.0
North Potomac	=	26.1
Potomac	=	27.9
R&D Village	=	30.9
Rockville City	=	36.2
Rockville Town Center	=	45.1
Twinbrook	=	58.7

*\*NADMS Employees: Current NADMS for Countywide-East and Countywide-West is based on 3-year weighted average (FY14/FY16/FY18) using Montgomery County Commuter Survey journey to work data. Results shown are for during commuting during the AM peak period-1 and includes all commuters responding to the survey whose work destinations were within the policy areas shown. NADMS-Employees peak-period figures & goals for Policy Areas listed will be provided at a later date.*

*\*\*NADMS Residential: Current NADMS for each Policy Area based on analysis by M-NCPPC of available data based on from 2016 American Community Survey (ACS) census data provided by M-NCPPC. ACS journey-to-work data includes all 16+ commuters living in that area whose destination is outbound or within the policy area. Data reflects and is for all commute trips Monday – Friday throughout the day – not solely for peak period trips. NADMS-Residents figures & goals for peak-period commute trips in Policy Areas listed will be provided at a later date. all-day commuting Monday-Friday, not solely peak period.*



— 3) Individual Project Goals for New Projects.

D. New Projects: In the course of the Department's review of proposed new development projects, certain projects may be determined by their use and location to be able to contribute disproportionately to achievement of a given commuting goal, while other projects may be determined not to be able to contribute proportionately to achievement of a goal. For example, within a given Master Plan area, projects with certain types of land uses located close to a Metrorail station might be expected to produce a higher percentage of NADMS than a project with a different land use in that same location, or a project with the same type of land use located several blocks away. Bill 36-18 provides discretion to the Director of MCDOT to adjust individual project goals by up to five percent lower or five percent higher than the NADMS goal adopted for that Policy Area or TMD.

Based on these analyses, the Department may recommend to the Planning Board determine that a higher or lower level of achievement of TDM NADMS goals than that established for that district, or in the relevant SSP or Master or /Sector Plan, be required as a condition of development approval for a new project.

a. Existing Projects or Employers:

b. When the Department determines that a Transportation Demand Management TDM Plan submitted to the Department for approval is for an existing non-residential or multi-unit residential building, or an employer, that could be expected to contribute disproportionately to achievement of a given commuting goal based on use and location, or conversely that may not be able to contribute proportionately to achievement of a goal, the Department may determine that a higher or lower level of achievement of TDM NADMS goals is applicable than the goals established for that district or Policy Area.

D.E. Periodic Reexamination of NADMS Goals. NADMS and other TDM goals will be reassessed by the Department on a periodic basis, including examination of data on commuting patterns, traffic congestion, and other relevant factors. Recommendations for adjustments in the interim or longer-term goals will be made to the Planning Board and County Council, and amendments to this Executive Regulation made as needed to reflect those changes.

E.F. Goal Achievability. As part of the process for developing the biennial report for each district or Policy Area, the Department will make an assessment as to the achievability of the NADMS goals and other TDM-related goals, based on current infrastructure, reporting from projects, survey results and other relevant factors. After consulting with the Planning Board, ~~†~~ The Department may elect to use on an interim basis a reduced goal from the ultimate goal established in the SSP, may waive imposition of requirements for additional financial commitments on projects not achieving adopted goals, and ~~or~~ may reassess any other performance targets established for that TMD or Policy Area (e.g., peak period percentage of transit



ridership; average auto occupancy). The Department will report on any such modifications or waivers as part of the biennial report for each district or Policy Area.

## II. Transportation Demand Management Plans for Employers and Existing Buildings

### A. Employer Transportation Demand Management (TDM) Plans

- 1) Department to provide web-based form. TDM Plans must be submitted by all employers required to do so under the provisions of Section 42A-24 of the County Code. A web-based form will be provided to the employer by the Department. Employers must complete and submit the TDM Plan using the form through an online process, with assistance as needed from Department staff.
- 2) Required strategies. Employer TDM Plans must consist of the following six required strategies as indicated on the form:
  - a) Designate a contact person to receive and distribute information to the on-site population, including workers and residents.
  - b) Distribute information on transportation alternatives at least monthly to the on-site population. Information must include transit, pooling and other commuting alternatives. Information on emergency ride home programs, and information on transportation services available to people with disabilities in accordance with the American Disabilities Act, must be included on a periodic basis.
  - c) Facilitate periodic presentations to the on-site population of transportation information. Presentations will be conducted by the County or its representatives by prior arrangement.
  - d) Participate in the ~~Annual~~ County's Commuter Survey by providing information on the number of on-site populations of various types (e.g., residents, workers) and distributing survey instruments to the on-site population.- Follow up on completion of the survey to obtain at least a 60 percent response rate from the on-site population.
  - e) Provide a permanent display area on-site in a highly-visible location for materials that promote transportation alternatives (e.g., maps, brochures, transit schedules, announcements regarding outreach and other TDM events).
  - f) File an Annual Report on TDM Plan indicating how TDM strategies were implemented over the course of the prior year and their effectiveness.
- 3) Optional strategies. Employer TDM Plans may consist of additional strategies selected by the employer from the Sample Menu of TDM Strategies included hereimposted on the MCDOT website or other TDM strategies proposed by the employer and approved by the Department.



- 4) Commitment to implement TDM Plan. An authorized person must commit to implement the TDM Plan on behalf of the employer.

B. Consolidated Employer Transportation Demand Management (TDM) Plans

- 1) Requirements. A Consolidated Employer TDM Plan must be consistent with the requirements for an individual employer TMPTDM Plan, as indicated in II.A. above, and must commit all employers included in the Consolidated TDM Plan to implement all strategies included in the plan.

C. Transportation Demand Management (TDM) Plans for Existing Non-residential Buildings

- 1) Requirements. A TDM Plan for an existing non-residential building as required under Section 42A-25 of the County Code must be consistent with the requirements for an individual employer TDM Plan as indicated in II.A. above.
- 2) Commitment to implement TDM Plan. The owner of the building or a person authorized by the owner must commit to implement the plan.

D. Transportation Demand Management (TDM) Plans for Existing Multi-Unit Residential Buildings

- 1) Requirements. A ~~Transportation Demand Management (TDM)~~ Plan for an existing multi-unit residential building as required under Section 42A-25 of the County Code must be consistent with the requirements for an individual employer TDM Plan as indicated in II.A. above.
- 2) Commitment to implement TDM Plan. The owner of the building or a person authorized by the owner must commit to implement the plan.

E. Annual Transportation Demand Management (TDM) Plan Report

- 1) Department to provide form. The format of the annual TDM Plan Report an employer or building owner is required to submit to the transportation management organization and the Department will be provided by the Department as an online form to all those with approved TDM Plans on file.
- 2) TDM Plan Report Submission. Employers and building owners, or their authorized representatives, must complete and submit the annual TDM Plan Report through an online process established by the Department, with assistance as needed from Department staff. Annual TDM Plan Reports must be submitted to the Department by March 1 of each year.

**III. Transportation Demand Management Plans for New Development Projects**

- A. Applicability. These regulations apply to any new building or development project subject to Section 42A-26.
- B. Project-based TDM Plan Levels. Three Levels of Project-based ~~Transportation Demand Management (TDM)~~ Plans are described in the Code:
  - Level 1: TDM Basic Plan;
  - Level 2: TDM Action Plan; and
  - Level 3: TDM Results Plan.



The level of TDM Plan required of a building or project is dependent upon the size of the building or project and the ~~Subdivision Staging Policy~~ SSP Area in which it is located. However, some exceptions to that approach are permitted by the Code, and will be implemented as follows:

- (1) Projects with traffic impacts disproportionate to their size. Projects with gross floor areas disproportionate to their impact on traffic (e.g., large floor area warehouses with lower impacts; small floor area food or beverage establishments with higher impacts) may be required to adhere to a Project-based TDM Plan Level that is either up to five percent lower or five percent higher than that otherwise required by their size and location, in accordance with the development approval.

This determination will be made in part on the basis of typical trip generation rates in the County for that type of land use. The Department will consult with Maryland-National Capital Park & Planning Commission transportation planning staff to determine the appropriate trip generation rates to use and whether the project should be required to adhere to a higher or lower TDM Plan Level as a result of the total trip generation of the project than would otherwise be indicated.

- (2) Projects with site locations or uses variant from standard TDM assumptions. Consistent with the discussion of Commuting Goals in I. B. above, the Department may determine that certain types of site locations or land uses can be expected to produce a higher or lower level of non-auto travel than would be otherwise required given the Project-based TDM Level applicable to that project. These may include sites located either very close to or very distant from a transit station, or projects where due to characteristics specific to that site the occupants are more or less likely to adopt alternative modes. After obtaining input from the applicant or owner, from M-NCPPC transportation planning staff, and from other resources, the Department may make a determination that the project is required to adhere to a higher or lower TDM Plan Level than would otherwise be indicated.
- (3) For convenience of reference, the Project-based TDM Plan Levels included in the County Code, Section 42A-26, are shown below.



Subdivision Staging Policy Area	No Requirements	Level 1: Project-based TDM Basic Plan	Level 2: Project-based TDM Action Plan	Level 3: Project-based TDM Results Plan
Red Areas	<25K GSF	≤25K – 100K GSF	Not Applicable	>25100+K GSF
Orange Areas	<2550K GSF	2550K – 75100K GSF	>75100-150200K GSF	>150200+K GSF
Yellow Areas	<5075K GSF	5075K – 150K GSF	>150K GSF	TDM Results Plan not required – May be used upon request by Applicant

C. Components of Project-based TDM Plans. The required and optional components of each type of TDM Plans are detailed below and summarized in the table in IV. D. entitled “Sample Menu of TDM Strategies.”

1. Level One: Project-based TDM Basic Plan. This plan must include the components listed in the Code, as further detailed below:
  - a. Appointment of Transportation Benefits Coordinator and Facilitation of the Department’s Programs. ~~Within~~ At least 90 days of Planning Board approval of prior to occupancy a project ~~the~~ owner must designate an individual responsible to assist and facilitate the Department’s efforts to achieve the ~~Non-Auto Driver Mode Share~~ NADMS goals and other traffic mitigation and commuting goals established for that area. In furtherance of the responsibilities of outlined in the Code, the Transportation Coordinator will have the duties detailed below.

Transportation Benefits Coordinator Duties:

- i. Serve as a point of contact on commuting and other transportation issues
- ii. Participate in occasional training programs offered at no cost to the Owner or Coordinator by the Department or its designees related to performance of these duties and coordination with other TDM programs
- iii. Coordinate with the Department to promote use of alternatives to single occupant vehicles and to maximize participation of tenants, employees, residents and others on-site in programs to help meet transportation goals

- iv. Facilitate access to tenants, employees, residents, visitors and other members of the on-site population for purposes of informing and educating about available transportation-related programs and services
- v. Distribute information through use of displays, bulletins, brochures, email notices, listservs, social media and other mechanisms
- vi. Provide the Department with updated lists of on-site commercial tenants/employers on a semi-annual basis, which information will be used by MCDOT solely for transportation-related purposes
- vii. Assist in distribution, administration and related activities required for conducting commuting and other transportation surveys as requested by the Department; obtain no less than a 50 percent response rate from among the on-site population
- viii. Prepare and submit an annual TDM Plan report outlining the transportation demand management measures, programs and activities conducted during the previous year. The Department will provide the Coordinator with a template for use in preparing the report and notification of the due date
- ix. Other duties necessary to implement strategies selected from the Sample Menu of TDM Strategies or as later established in order to effectively implement TDM programs

- b. Notification. Each owner of a project is required to notify the Department in writing within 30 days of receipt of Final Use and Occupancy Certificate from the Department of Permitting Services of the designated Coordinator's contact information; and within 30 days of any subsequent change in that designation or contact information.

This notification must be in the form of a letter sent by U.S. Postal Service or overnight delivery, or by email, to the Department Director ~~or by email~~, with a copy to MCDOT Commuter Services. The full name, mailing address, email and telephone contact information for the new Coordinator must be provided.

An opportunity for Department representatives to meet with the new Coordinator to discuss the project's TDM implementation must be provided within 30 days of the date on which that individual assumes those duties.

- c. Access to the Project: Provision of on-site space for outreach and promotion of TDM.

- i. Transportation Coordinator must provide and facilitate use of space in the development on a periodic basis (by prior



arrangement) for outreach, marketing and promotional activities. Space provided need not be exclusively for this purpose but must be suitable in the Department's judgement for outreach and promotion of TDM.

- ii. Marketing and promotional activities will include periodic hosting of TDM-related events and contests prepared or conducted solely by the Transportation Coordinator or in concert with MCDOT.

d. TDM Information: Displays of Real Time Transit and other information

- i. The applicant/owner, in coordination with Transportation Coordinator, must provide a permanent, static information display in a highly-used location (e.g., the lobby of the building) containing commuter and general transportation information and promotional material on TDM programs available on-site, and in the district, the County and the region.
- ii. If the Project has primary access points for visitors and members of the public which are different from those access points for occupants of the building (e.g., residents and/or employees), a display must be provided in each of the primary access areas to reach each of these target markets.
- iii. Applicant/owner must provide space and equipment for at least one Real Time Transit Information sign at a highly-used location in the project to assist occupants and visitors, as appropriate, with transportation information. Applicant must provide conduit, electrical and internet connections, and must supply a monitor of at least 50 inches in diameter for this purpose. Transportation Coordinator must ensure displays on such monitor(s) include all relevant Real Time Transit Information and other commuter and general transportation information and promotional displays related to TDM programs.
- iv. As an alternative to item iii. above, applicant/owner may display County-provided transit information on monitor(s) applicant/owner uses to display other information related to the project (i.e., building directory, event announcements, location of specific sections or rooms in the project or building). Such monitor(s) must be at least 50 inches in diameter. Transportation Coordinator must ensure displays on such monitor(s) include all relevant Real Time Transit Information and other commuter and general transportation information and promotional displays related to TDM programs.



- e. Other. Additional components required for a TDM Basic Plan as indicated in the "Sample Menu of TDM Strategies," include the following:
- i. Provide fewer than the maximum number of parking spaces.  
Applicant/owner must provide fewer than the maximum number of parking spaces allowed by the Zoning Ordinance. The number must be determined through consultation with MCDOT and prior to approval of Site Plan or building permit, whichever is to be issued first.
  - ii. Unbundle Parking from Lease Arrangements.  
Applicant/owner must not require a prospective purchaser or tenant to commit to purchasing or leasing a minimum number of parking spaces as a precondition to buying or leasing space or renewing a lease in a commercial or residential building.
  - iii. Carpool/Vanpool Parking.  
Applicant/owner must provide carpool/vanpool parking in preferred, highly convenient locations. At least two spaces for every 100 parking spaces must be dedicated to car and vanpooling vehicles initially. Spaces must be in preferential locations, as proximate to main entrances, elevators, or stairs as possible.

2. Level Two: Project-based TDM Action Plan. This plan must include all components required for the Level One Project-based TDM Basic Plan, plus the following components:
- a. Selection of Strategies. Each TDM Action Plan must include certain required strategies along with optional strategies selected from the "Sample Menu of TDM Strategies" ~~included below~~ [posted on the MCDOT Commuter Services website](#). Additional strategies may be proposed by the project owner/applicant and may be included in the TDM Plan upon approval by the Department. The optional strategies will be selected by the owner/applicant with advice from the Department as requested and must be determined by the owner/applicant to be sufficient to contribute toward achieving the ~~Non-Auto Driver Mode Share (NADMS)~~ goals of that district or Policy Area.
  - b. Commitment to Fund and Implement the Plan. Each TDM Action Plan must be accompanied by a financial commitment by the owner/applicant to fund the program with adequate financial resources and at a level at least equivalent to that of 50 percent of the annual TDM fee level for the Project. While a Project is not required to expend the full amount of funding initially, there must be a commitment to increase funding to the full level of the commitment as

necessary to contribute toward achieving the district or Policy Area goals. This commitment to support the project's on-site program with these financial resources will be separate from and in addition to required payment of TDM fees to the County to support broader TDM-related infrastructure and programming for that district.

- c. Self-Monitoring. Beginning two years after Date of Final Occupancy, and at least every other year thereafter, the owner/applicant working through the Transportation Coordinator and/or with other resources or staff must collect data on the effectiveness and results of the TDM strategies included in the TDM Action Plan. This monitoring must determine if implementation of the TDM plan is contributing toward achievement of the district or Policy Area's goals. The Department will provide a template which must be used for the self-monitoring program, including certain survey instruments and other data collection methodologies.
- d. Biennial Report. The data collected regarding implementation of TDM strategies, contribution toward achievement of district or Policy Area goals, and any related findings must be included in a biennial report submitted to the Department. The Department will provide a template for use in compiling that report.

An accounting for funds expended on the project's TDM plan implementation must be provided. The Department and/or its representatives will be entitled to conduct spot checks or audits of information in the report including self-monitoring results. Owner/Applicant must provide any back-up documentation upon request by the Department.

The first Biennial Report is due two years after Date of Final Occupancy. The Department may specify a specific date each year or a specific schedule regarding when these reports are to be submitted.

- e. Addition and/or Substitution of Strategies. In the event the strategies initially selected from the Sample Menu of TDM Strategies by the owner/applicant do not result in the project contributing toward continued progress in achieving the district or Policy Area goals at a point four years after Date of Final Occupancy (i.e., following the Department's receipt of two biennial reports), the project may be required by the Department to add and/or substitute other TDM strategies at the project site, selected from the Menu or others suggested by the owner and approved by the Department.



No additional funding of the project's TDM Plan beyond the original commitment will be required; however, funds committed under paragraph b. above may be required to be shifted to alternative strategies to produce better results, and additional funds may be voluntarily provided. The Department shall have the option to waive this requirement.

The Department must approve the project's revised TDM Plan and any changes in funding allocations or structure. A copy of the approved revised TDM Plan must be provided to M-NCPPC.

- f. Additional Funding Commitment. In the event the project is not contributing toward progress in achieving the TMD goals at a point six years after Date of Final Occupancy, the project shall be required to allocate one multiple of TDM fees to augment their TDM Plan implementation. This additional funding for the project's on-site program will be in addition to the required payment of TDM fees to the County to support broader TDM-related infrastructure and programming.

Continued allocations of one multiple of TDM fees must continue each year until such point as the project demonstrates contribution toward achievement of the district or Policy Area's goals over a period of at least three years.

- g. Rewards Performance Incentives. When the project has contributed toward achievement of the district or Policy Area goals for a period of ten successive years, the Department will provide the project with a credit of 50 percent toward payment of its TDM fees on an annual basis for every additional year during which it continues to so contribute.
- h. Determination of Contribution Toward District or Policy Area Goals. Determination as to whether a project with a TDM Action Plan has contributed toward achievement of a ~~district's~~ district or Policy Area goals will be based on the project's annual average percentage improvement or total percentage improvement over multiple years in ~~Non-Auto Driver Mode Share (NADMS).~~

A Project-based TDM Action Plan will be considered to have contributed to achievement of the district or Policy Area goal if it is improving the on-site NADMS proportional to the level necessary to achieve the ~~district~~ goal by the target date established by the master plan, sector plan or SSP.



For example, if the NADMS goal for a district or Policy Area requires an improvement of 20 percentage points, and that target was established in a Master Plan with a 20-year horizon, the average annual percentage increase at a new project ~~in that district~~ to fill that gap should be one percent, and after four years a new project should have improved its NADMS by four percent.

If survey results of the district or Policy Area as a whole show that the gap between existing NADMS and the target NADMS has narrowed, the annual percentage needed to constitute contribution toward progress for the remaining years will decline; if survey results show the gap has increased, the annual percentage needed will increase.

In making this determination, the Department may take into account any relevant factors and will make the final determination as to whether a project is contributing after receiving project-based information and consulting with the owner and M-NCPPC staff.

3. Level Three: Project-based TDM Results Plan. This plan must include all components required for the Level Two Project-based TDM Action Plan, plus the following components:
  - a. Commitment to Highly Effective TDM Strategies. Each TDM Results Plan will include certain required strategies along with optional strategies selected from the "Sample Menu of TDM Strategies" included below or other strategies approved by MCDOT. The optional strategies will be selected by the owner/applicant with advice from the Department as requested and will be determined by the owner/applicant to be sufficient to achieve the ~~Non-Auto Driver Mode Share~~ (NADMS) goals established for that project. Owner/applicant must select highly effective strategies designed to achieve the results required at the project within six years of the Date of Final Occupancy.
  - b. Commitment to Fund and Implement the Plan. Each TDM Results Plan must be accompanied by a financial commitment by the owner/applicant to fund the plan at a level adequate to achieve the project's goals within a six-year period from Date of Final Occupancy. This commitment must be at least equivalent to that of the annual TDM fee level for the Project. This commitment to support the project's on-site program with these financial resources will be in addition to required payment of TDM fees to the County to support broader TDM-related infrastructure and programming for that district or Policy Area.

While a project is not required to expend the full amount of funding initially, there must be a commitment to increase funding to the full level of the commitment as necessary to accomplish the project's goals.

- c. Self-Monitoring. Same provisions as for TDM Action Plan.
- d. Biennial Report. Same provisions as for TDM Action Plan.
- e. Independent Monitoring. In the sixth year following Date of Final Occupancy the owner/applicant ~~shall~~must retain an independent consultant from a list of approved consultants provided by the Department and/or M-NCPPC to collect data, monitor program implementation, and otherwise provide a comprehensive review of the program in place at the project, including funds expended and results achieved.

This review shall determine whether the project is meeting its goals as established in the development approvals. The data collected, and any related findings and conclusions must be included in a report submitted to the Department by the consultant. The Department or its representatives shall be entitled to conduct spot checks, to meet with the consultants, and to conduct reviews or audits of these results.

If the independent monitoring indicates the project is not meeting its goals, independent monitoring must be repeated every two years until the project has met its goals for a period of six successive years (i.e. three cycles of independent monitoring).

If the independent monitoring indicates the project is meeting its goals, the project will be required to conduct independent monitoring only every four years. If after 12 years (i.e. three cycles of independent monitoring) the project has continually met its goals, independent monitoring must be conducted by the project only every six years. However, if two successive self-monitoring reports indicate the project is no longer meeting its goals, independent monitoring must be reinstated on an every other year basis until the project has again met its goals for a period of six successive years (three monitoring periods).

- f. Addition and/or Substitution of Strategies. Same provisions in effect as for TDM Action Plan, with the addition of the provision below:

Following addition or substitution of strategies, the project is required to conduct independent monitoring at the next monitoring cycle which



must continue every two years until the project's goals are achieved. Once the goal is achieved the project must maintain that level. Independent monitoring must be conducted every six years thereafter. If the independent monitoring indicates the project is not meeting its goals, the provisions of subsection (e) above will be implemented, requiring independent monitoring be conducted every two years until the project again meets its goals.

- g. Additional Funding Commitment. In the event the strategies selected by the owner/applicant for the TDM Results Plan do not result in achievement of the project goals at a point six years following Date of Final Occupancy (i.e., following the Department's receipt of the Independent Monitoring Report), the project shall be required to dedicate two times the level of the project's TDM fees to augment the resources dedicated to implementation of the project's TDM Results Plan.

In the event the project still is not meeting the established goals at a point eight years following Date of Final Occupancy, the project must dedicate four times the level of ~~TDM~~ fees to augment the resources used to implement the TDM Results Plan.

All additional funds committed under this provision must be used by the project to supplement funding of TDM programs to achieve the project's goals. This additional funding for the project's on-site programs will be in addition to the required payment of TDM fees to the County to support broader TDM-related infrastructure and programming. In the event a district-wide or Policy Area-wide program is determined to be a more effective use of a portion of those funds, the Director may approve the project contributing those additional funds originally intended for on-site programs toward ~~the district-wide~~ that broader program, but the project is still responsible for achieving its project-based goals.

The resources dedicated to the project's TDM Results Plan must remain at the level at which the goal is being achieved, or where substantial progress is evidenced, as determined by the Department Director.

The level of increased financial support and the specific components to be added, and any fines to be imposed consistent with the Enforcement provisions of the Code and these Regulations, will be determined by the Department in concert with the Planning Board.

- h. Rewards Performance Incentives. Same provisions are in effect as for TDM Action Plan.



4. Promotional Materials Reimbursement. For all levels of Project-based TDM Plans, the Department may require an owner/applicant to reimburse the Department for costs incurred in providing printed materials and other promotional items requested by the Project-based TDM Plans which the Department may provide to assist with implementation of TDM at the project. The amount of reimbursement must be consistent with actual Department costs and will be charged only in the event such materials or items would require expenditures beyond those the Department is able to fund during that budget year. The Department will provide an invoice to the owner/applicant and payment must be received within 30 days of the invoice date.

D. Sample Menu of TDM Strategies. The table below summarizes-provides a sample of required and optional TDM strategies that could be implemented within each Level of the Project-based TDM Plans: Basic, Action, and Results. This A Sample Menu of TDM Strategies is posted on the MCDOT Commuter Services website. That table will be revised and updated as TDM strategies and options evolve over time and as successful new strategies are implemented at various projects.

*Note: Table below is revised version - also available as separate document for easier readability.*

### Sample Menu of TDM Strategies\*

SIZE OF BUILDING/PROJECT: GSP	25K - 100K	100K +	50K - 100K	100K - 200K	200 +	75K - 100K	100K +	100K +
	GSP	GSP	GSP	GSP	GSP	GSP	GSP	GSP
COLOR CATEGORY OF SUBDIVISION STAGING POLICY AREA:	RED		ORANGE			YELLOW		
LEVEL OF TDM PLAN:	BASIC	RESULTS	BASIC	ACTION	RESULTS	BASIC	ACTION	RESULTS [Optional]
<b>TDM STRATEGIES</b>								
<b>A. Cooperation/Marketing &amp; Education</b>								
Participate in County-wide and Regional Events	X	X	X	X	X	X	X	X
Transportation Coordinator / Training + Responsibilities	X	X	X	X	X	X	X	X
Notification of Changes in Contacts	X	X	X	X	X	X	X	X
On-Site Space for TDM Outreach & Promotion	X	X	X	X	X	X	X	X
Displays of Real Time & Other TDM Information	X	X	X	X	X	X	X	X
<b>B. Parking</b>								
Provide Less than Max # of Spaces [use percentages?]	X	X	H	H	H	H	H	O
Unbundle Parking From Lease Arrangements	X	X	H	H	H	H	H	O
Unassigned/Unreserved Spaces (Except car/vanpool, carshare, Ev)	H	H	H	H	H	H	H	O
Market-Rate Parking Charges for Employees/Residents	H	H	O	H	H	O	O	O
Carpool/Vanpool Parking - Preferentially Located Spaces	X	X	X	X	X	X	X	X
Parking Cash-Out (Employer-owned projects)	O	O	O	O	O	O	O	O
<b>C. Onsite Bicycle &amp; Pedestrian Support</b>								
Bikeshare Participation (memberships, bikeshare stations, etc.)	H	H	O	O	H	O <sup>a</sup>	O <sup>a</sup>	O
Secure Bicycle Parking (> required under Zoning Ordinance)	O	X	O	X	X	O	O	O
Bicycle Repair Stations	O	O	O	O	O	O	O	O
Shower Availability/Lockers/Changing Rooms	O	X	O	O	X	O	O	O
Onsite Pedestrian Amenities (i.e., benches, sidewalks, etc.) > Req'd	O	H	O	H	H	O	O	O
<b>D. Amenities Supporting Commuting Alternatives</b>								
On-Site Amenities (refreshments, dry cleaning, convenience retail, etc.)	O	O	O	O	O	O	O	O
On-Site or Nearby Child Care	O	O	O	O	O	O	O	O
<b>E. Transit Support</b>								
Subsidized Transit Passes (e.g., SmartBenefits, etc.)	H	H	H	H	H	H	H	O
Provide Transit Passenger Amenities (e.g., shelters, waiting areas)	H	H	O	H	H	O	O	O
Shuttle Bus Services (e.g., Circulators, Microtransit)	O	H	O	O	H	O	O	O
Vanpool Services	H	H	O	H	H	O	H	O
Availability of Mid-Day Short-term Car Services (i.e., Zipcar memberships, Taxi, Uber/Lyft services) for Alt Commuters	O	H	O	H	H	O	O	O
<b>F. Employee &amp; Resident Incentives (Recommended Owner/Manager Funding Allocations)</b>								
>\$50 - \$100 per employee/resident per year	O	O	O	O	O	H	H	O
>\$100 - \$200 per employee/resident per year	O	O	H	H	H	O	O	O
>\$200 per employee/resident per year	H	H	O	O/H <sup>b</sup>	H	O	O	O
<p>NOTES: X = Required; O = Optional; H = Highly Effective-Recommended for Highly Effective Program</p> <p>Red Policy Areas: TDM Action Plan = Not Available</p> <p>Yellow Policy Areas: TDM Results Plan = Optional</p> <p><sup>a</sup> - Bikeshare in areas without existing program could provide own program or dockless bikeshare program support</p> <p><sup>b</sup> - If don't meet goals after 6 years, increase to \$200/employee/year</p> <p>* Note: Determination of which strategies are required or optional in each area to be discussed/further analyzed for evaluation of impacts. Additional/new strategies may be added by project owners, developers, employers, residential managers, MCOFF or others. Evaluation of impacts will be important to assess, but new approaches are welcome.</p>								

#### **IV. Implementation of Code Provisions**

The Department may determine an implementation process and phase-in period for the provisions of 42A, Article II, and for this Executive Regulation. The implementation process and phase-in timetable will be published on the Department website. Periodic updates on progress will be provided to the public through the website and other communication mechanisms.

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# NAIOP

COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION

DC|MD CHAPTER



February 19, 2019

The Honorable Nancy Navarro  
President, Montgomery County Council  
Stella R Werner Council Office Building  
100 Maryland Avenue  
Rockville, MD 20850

Re: Bill No. 36-18 (Transportation Demand Management Plan--Amendments)

Dear President Navarro:

On 12/4/18 the NAIOP DC/MD's Advocacy Committee testified to Counsel providing comments on the proposed Bill 36-18. Additionally the chair of the Maryland Building Industry Association also provided testimony. Many of our comments and concerns were similar in nature. Jointly we represent developers and builders who create communities in Montgomery County and the region that are needed for our ever growing population.

NAIOP and MBIA are supportive of smart growth, transit oriented development and the County's overall efforts to help reduce traffic congestion. We appreciate that the County Executive has heard our concerns in his February 13<sup>th</sup> redline to Council over Applicability (starting on page 18, lines 450-458); changing of the timing (page 19, lines 458-461) and the change from "and" to "or" on page 8, line 179). While these changes are helpful, additional modifications are needed to address and mitigate what we

believe are unintended consequences of the Bill as more generally discussed within our December 4<sup>th</sup> testimony.

We ask that the Council consider the unintended consequences of this legislation for its impact on economic growth and housing affordability. Particularly, we suggest that the Bill be evaluated in context with the Sage Policy Group recently published studies: "The Coming Storm" April 2018 and more recently "Restoring Economic Momentum in Montgomery County Maryland" December 2018.

On an economic level, as one example of the potential unintended consequences, this Bill would enable the Director to regulate commercial lease negotiations and limit a property owner's potential revenues from parking by prohibiting the bundling of parking spaces that the property owner constructs in compliance with County Code. In some areas of the County where commute options are abundant, this may already be a business practice, but in areas where transit and/or commute options are limited, this would be detrimental to not only the property owner, the lessee but also the commuter. Flexibility is important in application of this and other requirements.

In addition, we have concerns about some of the County Executive's proposed changes to the Bill. For example, we do not think that the Director should have the authority to require a property owner to cordon off its parking spaces during peak hour (Executive's proposal, p. 25, lines 619 – 21, p. 27, lines 680 – 82). Also, the County Executive's proposal would authorize the Director to set NADMS goals "by Regulation" (Executive's proposal, p. 4, line 64 and p. 19, line 472). We think that only the Council should have authority to set NADMS goals. For the same reason, we cannot support the County Executive's proposal to give the Director the discretion and authority to increase an applicable NADMS goal by an additional 5% over and above the Council legislated Non-Auto Driver Mode Share (NADMS) goals (Executive's proposal, p. 23, lines 573 – 583, p. 26, lines 655 – 662). The Council sets NADMS goals to reflect what the Council has determined to be the future infrastructure improvements and commuter options for a certain area. These future improvements and options are to be provided by the County. The County is already challenged in providing these improvement and options.

As an overarching policy, we think that the obligations of property owners to achieve NADMS goals should be appropriately conditioned on the full implementation of the

transportation improvements (pedestrian, bicycle, vehicular, and transit) contemplated by the master plans in the establishment of those NADMS goals. Put another way, is it fair and reasonable that individual projects be exposed to all of the potential violation notices, enforcement actions, and enhanced TDM requirements in the Bill if the contemplated transportation improvements have not been implemented to assist in the achievement of the NADMS goals set by Council?

Also, the County Executive's proposal to lower the minimum project size, required to provide a TDM plan, modifies the original intent of the Bill to apply to projects of at least 100 units or more and would apply to projects as small as approximately 10 units. This is extremely burdensome on small projects and will inevitably add to the cost of housing. The minimum project size should remain as originally proposed.

Finally, the County Executive proposes to remove, from the proposed Bill, the requirement for the Use of Revenues. Revenues, which are collected, should be required to be used in that District to further the goals of that District.

As previously testified in December, the law should not be mandatorily applied to existing businesses. Businesses depend on certainty and new requirements translate to unexpected, unbudgeted costs, which will serve as a deterrent for businesses. Furthermore, any requirement that the new TDM requirements could be triggered through anything but the subdivision process (and for projects that require full traffic studies), where adequate public facilities are reviewed, again provides uncertainty. In particular, there is a suggestion that TDM be reviewed at time of conditional use approval or building permit issuance. By way of example, a day care center, a conditional use in many parts of the County, could be subject to additional regulatory requirements and expenses, which would put another hurdle in its decision to locate in the County. We submit that this is an unintended consequence of the Bill, but could have broad economic and community impact.

Lastly, we submit that requiring survey responses of 60 percent, with penalties if this level is not met, is not-tenable. The County itself admits that its overall response rate averages 22% at best.



We wish to also acknowledge our support of other comments that are included in the record, including those submitted by William Kominers and C. Robert Dalrymple. In closing, we have attached our redline version of Bill 36-18 for your consideration and look forward to a continued discussion.

Sincerely,



Stacy Silber  
Chair  
NAIOP DC/MDs Advocacy Committee



Sylke Knuppel, PE  
Montgomery County Chair  
Maryland Building Industry Association

Enclosure

cc: The Honorable Thomas Hucker  
The Honorable Evan Glass  
The Honorable Hans Riemer  
Mr. Robert Drummer  
Mr. Glenn Orlin  
Mr. Casey Anderson  
Ms. Gwen Wright



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND NATIONAL APPLICABLE PARK AND PLANNING COMMISSION  
March 12, 2019

The Honorable Tom Hucker  
Chair, Transportation & Environment Committee  
Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

**RE: Comments regarding Bill No. 36 - 18 and changes recommended by the Executive**

Dear Chairman Hucker:

The Planning Department supports the intent and goals of Bill No. 36 – 18 and we believe it to be an effective framework to increase the efficiency of the County’s transportation system by encouraging the private sector to manage the demand for mobility services. By incentivizing a more balanced transportation system, Bill No. 36 -18 helps to address a variety of items of concern to the County, including rising facility costs, environmental degradation, equity and the health and safety of citizens. The Montgomery County Department of Transportation (MCDOT) should be commended for their work in leading the effort to bring this legislation forward. We believe the following comments and recommendations will make the legislation more implementable and equitable.

1. The Executive’s proposed changes mandate that MCDOT require the owner or applicant implement parking management strategies for a project that fails to achieve its non-auto driver mode share (NADMS) goal. This is a change from the introduced legislation that stipulates parking strategies *may* be a part of the TDM plan for new developments. This strategy may not be applicable in certain contexts (for example developments without any existing on-site parking, which are found in some of the red policy areas with Parking Lot Districts). Although parking management is an integral part of a TDM program, we recommend going back to the original language to maintain flexibility.
2. Although there is enabling language that exists today that allows MCDOT to require existing buildings to participate in a “traffic mitigation plan,” MCDOT has rarely, if ever, invoked its power to do so. Under the proposed changes, it is easy to conflate the requirements for “TDM plans for new development” and those for “TDM plans for existing buildings.” It should be noted that the requirements for the latter, formally known as a traffic mitigation plan, are far less comprehensive than the requirements for the former and are typically done as a collaborative effort with a property owner or employer. Making the clear distinction between TDM plans for new development and the traffic mitigation plans that are negotiated with existing property owners or employers earlier in the bill’s language (e.g., in the definition section) would be appropriate.

3. The Executive's proposal to shift the thresholds for new development are overly burdensome for multifamily developments. For example, a proposed multifamily residential development of 26,000 square feet in a red policy area would be required to participate in a TDM results-based program. Assuming an average apartment size of 1,000 square ft in Bethesda, this equates to 26 units. This seems overly burdensome for such a small project and these type of very small TDMs are very difficult to administer. We recommend either maintaining the thresholds as introduced or providing varying thresholds according to the type of land use.

Requiring a 26,000 square feet commercial development in a red policy area to participate in a TDM results-based program is more appropriate than requiring a residential development of the same magnitude to do the same.

- a. For your reference, attached are the thresholds used in the City of Alexandria. (See Table 1.) As shown, thresholds vary according to land use. We believe these thresholds to be very reasonable and could apply to the three recommended TDM tiers for new developments in the proposed legislation.
  - b. Also attached is an analysis conducted on the magnitudes of preliminary plans since 2015 in Montgomery County. (See Table 2). The "geometric intervals" data categorization methodology was used to determine the tier thresholds in each policy area. The geometric intervals methodology creates "buckets of data" by minimizing the deviation from the mean of elements in each class. This ensures that each class range has approximately the same number of values with each class and that the change between intervals is consistent. This method produced thresholds that nicely fall between what was originally introduced, and what was recommended by the Executive Office.
4. The Executive's recommendation to give MCDOT discretion regarding the setting of NADMS goals for specific projects should be carefully considered and runs counter to a comprehensive approach to looking at transportation management in a specific geographic area. If discretion is given to MCDOT to set NADMS goals, the best available tools to evaluate the NADMS impact of site specific TDM strategies should be leveraged. To ensure TDM strategies have a significant impact on mode share, MCDOT should recommend TDM strategies based on their quantified impacts on NADMS. TRIMMS is one tool that could be evaluated for this exercise, though it has limitations (including that the tool is focused on non-residential developments and the range of TDM strategies evaluated by this tool is limited). There are other available commercial tools that could be considered as well.
  5. Some of the methods for applying/calculating fees are overly complicated (see lines 857 – 868 of the introduced bill). Basing the TDM fee on "average number of customers, visitors, or patients" seems to be very difficult to calculate as these numbers may change due to economic conditions or other factors. We believe this language should be removed from the legislation. We recommend using number of units (for residential development) and square footage (for commercial development) as is used today as these numbers are clear and not subjective.



Thank you for your consideration of these comments and suggestions. We look forward to the opportunity to continue to work with the Council, its staff, MCDOT and other stakeholders to improve this legislation and move it forward.

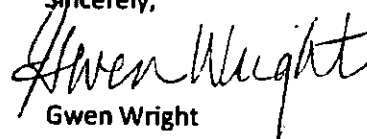
Sincerely,  
  
 Gwen Wright  
 Director

Table 1: Alexandria TMD Thresholds

<i>Land Use</i>	<i>Threshold</i>	<i>Requirement</i>
<b><i>Tier 1</i></b>		
Residential	> 20 Units < 99 Units	Join City TMP Program and pay into the city's TDM
Commercial	> 9,999 sf < 99,999 sf	
Retail	> 9,999 sf < 74,999 sf or > 3,000 sf > 10,000 sf with more than 50 peak hour trips	
Hotels	> 30 rooms	
Industrial or warehouse	>= 30,000 sf	
<b><i>Tier 2</i></b>		
Residential	> 99 Units < 349 Units	1. Join City TMP Program and pay into the city's TDM fund or 2. Create a stand-alone TMP a. May be encouraged to partner with adjacent TMP
Commercial	> 99,999 sf < 249,000 sf	
Retail	> 74,999 sf < 149,000 sf	
<b><i>Tier 3</i></b>		
Residential	> 349 Units	Create stand-alone TMP/ partner with adjacent TMP
Commercial	> 249,000 sf	
Retail	> 149,000 sf	

Table 2: Montgomery Planning Department's "geometrical interval" threshold methodology

Subdivision Staging Policy Area	No Requirements	TDM Basic Program (No TMAg)	TDM Action Program ("Action-Based TMAg")	TDM Results Program ("Results-Based TMAg")
Red Areas	<25K GSF <20K GSF	25K—100K GSF 20K – 80K GSF	Not Applicable	>100+K GSF >80+K GSF
Orange Areas	<50K GSF <25K GSF	50K—100K GSF 25K – 75K GSF	>100-200K GSF >75-200K GSF	>200+K GSF
Yellow Areas	<75K GSF <45K GS	75K—100K GSF 45K – 155K GSF	>100K GSF >155K GSF	Not required – May be used upon request

## TDM-Plan-Components-for-New-Development-Projects¶

Subdivision Staging Policy Area (Color Classification)	No Requirements	Level 1: TDM Basic Program (No TMAg)	Level 2: TDM Action Program ("Action- Based TMAg")	Level 3: TDM Results Program ("Results-Based TMAg")
Red Areas		≤25K	Not Applicable	>25K GSF
Orange Areas	<25K GSF	25K – 75K GSF	>75-150K GSF	>150K GSF
Yellow Areas	<50K GSF	50K – 150K GSF	>150K GSF	Not required – May be used upon request
Required TDM Plan Components				
<b>Appoint contact person</b>		X	X	X
<b>Facilitate outreach/information to on- site population</b>		X	X	X
<b>Provide Real Time and other TDM-related information</b>		X	X	X
<b>Coordinate/Cooperate with County program efforts</b>		X	X	X
<b>Commitment to Additional TDM Strategies Selected by Applicant (See Menu of Strategies)</b>			X	X
<b>Minimum Financial Commitment</b>			50% of Annual TDM Fee	100% of Annual TDM Fee
<b>Self-Monitoring – Every 2 years</b>			X	X
<b>Independent Monitoring – Beginning in 6<sup>th</sup> year</b>				X
<b>Biennial Report</b>			X	X

[Chart-Continued-Next-Page]¶

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<b>TDM Plan Components for New Development Projects (Continued)</b>				
<b>Subdivision Staging Policy Area (Color Classification)</b>	<b>No Requirements</b>	<b>Level 1: TDM Basic Program (No TMAg)</b>	<b>Level 2: TDM Action Program (*Action- Based TMAg*)</b>	<b>Level 3: TDM Results Program (*Results-Based TMAg*)</b>
Red Areas		≤25K	Not Applicable	>25K GSF
Orange Areas	<25K GSF	25K – 75K GSF	>75-150K GSF	>150K GSF
Yellow Areas	<50K GSF	50K – 150K GSF	>150K GSF	Not required – May be used upon request
<b>Required TDM Plan Components</b>				
<b>Biennial Report</b>			X	X
<b>Addition/Substitution of TDM Strategies</b>			X	X
<b>Added Funding for On-Site Program - Beginning 6th year if no progress/goal achievement</b>			<b>One Multiple of Annual TDM Fees to augment Project's program, or provided to County program</b>	<b>6<sup>th</sup> year = 2X Annual TDM Fees 8th year = 4X Annual TDM Fees To augment Project's program</b>
<b>Performance Incentives - For 10 years of ongoing progress/goal achievement</b>			<b>50% of Annual TDM Fee for contributing toward achievement of TMD goals</b>	<b>50% of Annual TDM Fee for achievement of TMD goal</b>



OFFICE OF MANAGEMENT AND BUDGET

Richard S. Madalen

## MEMORANDUM

March 15, 2019

TO: Nancy Navarro, President, County Council

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

SUBJECT: Fiscal Impact Statement for Bill 36-18, Transportation Demand Management "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

(201)

Office of the Director

100 Maryland Street, Room 300, Rockville, Maryland 20850-3000  
Tel: 301-287-3000 Fax: 301-287-3001

**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.

There are three Project-based TDM Plan Levels:

- 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:

**Table 1: Project-based TDM Plan Requirements for New Developments**

<u>Subdivision Staging Policy Area</u>	<u>No Requirements</u>	<u>Level 1: TDM Basic Plan</u>	<u>Level 2: TDM Action Plan</u>	<u>Level 3: TDM Results Plan</u>
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

Employers: 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.

Existing Buildings: 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”)

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

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	<b>4,320,000</b>	<b>5,400,000</b>
<i>Commercial – 4.4 M GSF over 6 years</i>	*2,640,000	*3,300,000
<i>Multi-unit Residential – 2.8 M GSF over 6 years</i>	1,680,000	2,100,000
Subtotal – “Non-TMDs” – Development Outside Current TMDs	<b>1,800,000</b>	<b>2,250,000</b>
<b>GRAND TOTAL</b>	<b>\$6,120,000</b>	<b>\$7,650,000</b>
<b>Total New Revenue from Projected New Completed Development</b> (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)	<b>\$3,480,000</b>	<b>\$4,350,000</b>
*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
<b>New Programs and Services to Meet NADMS Goals</b>	<b>314,160</b>
<b>Total</b>	<b>\$3,480,000</b>
* 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
<b>Total</b>		<b>\$1,127,999</b>	

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
Orange / 100+	195	267,150	801,450
Yellow / 200+	35	47,950	47,950
<b>Total</b>	<b>471</b>	<b>\$571,290</b>	<b>\$1,687,840</b>

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**

	<b>\$ .10 / sf</b>	<b>\$ .125 / sf</b>
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
<b>Subtotal Expenditures</b>	<b>3,480,000</b>	<b>4,350,000</b>
"Non-TMD" Revenue ( <i>Areas outside current TMDs</i> )	1,800,000	2,250,000
TMD Revenue - <i>Adding Multi-unit residential</i>	1,680,000	2,100,000
<b>Subtotal - New Revenue</b>	<b>3,480,000</b>	<b>4,350,000</b>
<b>Net Revenue to Expense</b>	<b>\$0</b>	<b>\$0</b>

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**

<b># of Staff</b>	<b>Salary (\$121,372 x 2)</b>	<b>Hourly Rate</b>	<b>Weekly Hrs. Spent</b>	<b>Cost Per Week</b>	<b>12 Month Project Span</b>
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**

(207)

**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, Jr., Director  
Office of Management and Budget



Date