



**MEMORANDUM**

November 4, 2019

TO: Transportation and Environment Committee

FROM:  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

**Expected attendees:**

Christopher Conklin, Director, Department of Transportation (DOT)  
Gary Erenrich, Special Assistant to the Director, DOT  
Sande Brecher, Chief, Commuter Services Section, DOT

Bill 36-18, Transportation Management - Transportation Demand Management Plan – Amendments, sponsored by Lead Sponsor Council President at the request of County Executive Leggett (the “Leggett” Bill), was introduced on November 13, 2018. A public hearing was held on December 4, 2018 at which five people testified on the Bill. In February County Executive Elrich transmitted his recommended amendments to the Bill as introduced (the “Elrich” Bill). On February 14 DOT briefed the Committee on how the current TDM system works and how this Bill would change the system. On June 20 the Committee was briefed on existing TDM programs in several neighboring jurisdictions.

On October 10 the Committee unanimously concurred with some changes suggested by Council staff to the Bill as introduced, highlighted in **yellow** in the attached draft on ©1-37. Also included in this draft are several non-substantive corrections or clarifications suggested in the Elrich Bill, highlighted in **gray**. **Council staff recommends approval of these corrections and clarifications.** Remaining issues between the two versions of the Bill, including some that were discussed but not resolved at the October 10 worksession, are described below.

The Department of Transportation (DOT) has transmitted its comment on the survey response rate (©38-39), and it has also provided the Committee’s requested summary comparison of Montgomery’s TDM programs with those in the District of Columbia, Arlington and Fairfax Counties, and the City of Alexandria (©40-43), as well as information regarding potential revenue from TDMs if expanded to include all Red, Orange, and Yellow Policy Areas (©44-45).

1. **Section 42A-23(a).** The Bill as introduced (the Leggett Bill) would state:

The County Council by resolution may create a transportation management district (TMD) in a policy area where the Subdivision Staging Policy requires transportation review. A district may be formed from one or more Subdivision Staging Policy areas, even if they are not contiguous. [See ©7, Lines 151-155.]

The Elrich Bill version would state:

The County Council by resolution may create a transportation management district (TMD). A District may be formed from one or more Policy Areas, even if they are not contiguous.

A goal of both the Leggett and Elrich Bill is to allow for TMDs to be established in the Red, Orange, and Yellow Policy Areas, but not in Green Policy Areas: the County's rural areas. However, since the Subdivision Staging Policy (SSP) requires transportation review in all areas, the Leggett Bill language would allow for TMDs to be established there. A problem with both versions of the Bill is that it is possible that the Council might choose to establish a TMD that overlaps more than one Policy Area. For example, the current North Bethesda TMD overlaps all or portions of five policy areas: Grosvenor, White Flint, Twinbrook, North Bethesda, and Potomac.

**Council staff recommends that recommends that Section 42A-23(a) be written as follows:**

**The County Council by resolution may create a transportation management district (TMD) in Red, Orange, or Yellow Policy Areas as defined in the Subdivision Staging Policy. A district may be formed from all, or portions of, one or more Policy Areas, even if they are not contiguous.**

Last winter DOT had shown a draft of possible TMD boundaries, which included generic TMDs for Orange and Yellow Policy Areas, neither of which were internally contiguous. Council staff recommended a different set of boundaries, which consisted of TMDs that were geographically coherent and internally contiguous. However, since the Bill itself will not set boundaries, leaving in the language "even if they are not contiguous" will give the Council the option to go either way when it finally does set the boundaries in a subsequent resolution.

2. **Section 42A-24(a)(1).** The Bill as introduced (the Leggett Bill) would state:

The Director must require an employer subject to this Section to submit a TDM Plan meeting the requirements of this Section if the Council by resolution or in the Subdivision Staging Policy has approved the use of traffic mitigation or TDM plans in a given district. [See ©9, Lines 208-213.]

The Elrich Bill version would simply state:

The Director must require an employer subject to this Section to submit a TDM Plan meeting the requirements of this Section.

**Council staff recommends the language in the Elrich Bill.** The purpose of the Bill is to authorize TMDs everywhere in the County, except in Green Policy Areas. The establishment of a

TMD should not be dependent on the SSP approving the use of traffic mitigation or TDM plans in a given district.

**3. Section 42A-24(a)(2).** The Bill as introduced (the Leggett Bill) would state:

Upon written request from the Director, an employer within a district must provide the Director with the number of full-time and part-time employees working for that organization at any workplace within the district. [See ©10, Lines 216-219.]

Mr. Elrich's version would state:

Upon written request from the Director, an employer must provide the Director with the number of full-time and part-time employees working for that organization by workplace in each Policy Area or District.

**Council staff recommends the language in the Elrich version.** Under the Elrich language an employer with offices or stores in more than one TMD might receive one request rather than multiple ones.

**4. Section 42A-26(a).** Regarding DOT's approval of a project-based TDM Plan, the Bill as introduced (Leggett Bill) would state:

This approval must be obtained prior to Planning Board approval of the application, or prior to Department of Permitting Services approval for projects not requiring Planning Board action. [See ©18-19, Lines 451-454.]

The Elrich Bill version would state:

This approval must be obtained prior to the issuance of any building permit by the Department of Permitting Services.

**Council staff recommends the language in the Elrich Bill.** One of the changes requested by the building industry is that TDM Plans, which still may involve some negotiation in some cases, should not be finalized until prior to issuance of a building permit, so as not to unduly slow down a subdivision approval. DOT concurs, which is why it is in the Elrich Bill. **The corollary change should be made in Section 42A-26(e).** [See ©27, Lines 678-681.]

**5. Section 42A-26(a)(3).** Under the Bill as introduced (Leggett Bill), a new development would be required to have a TDM plan:

where the Department decides, under standards adopted by the Council for the adequacy of transportation, including NADMS Goals and other commuting goals adopted in Master Plans, Sector Plans, and the Subdivision Staging Policy, that more transportation facilities or transportation demand management measures are necessary to meet the County's commuting goals. [See ©19, Lines 460-466.]

The Elrich Bill would add to this phrase the potential for a commuting goal set through an executive regulation. **Council staff concurs with the Leggett Bill language; the commuting goals for each area of the County should be set solely by the Council. The same**

**recommendation applies in Section 42A-26(c)(2).** [See ©22, Lines 547-549.] In another part of the Bill the Director is given the authority to set a project-level commuting goal, but it would be set within the context of a Council-approved Policy Area goal.

**6. Section 42A-16(c)(2).** The Leggett Bill requires that a project be considered as contributing to the area's NADMS goal if it is making measurable improvement toward that goal within the date established in the TDM plan. [See ©22, Lines 553-560.] The Elrich Bill aims higher, requiring that the project make such progress towards a goal 5% higher. **Council staff concurs with the Elrich Bill.** New development has a greater opportunity to reach higher NADMS goals than existing development, and this fact should be recognized if an area is to reach its overall NADMS goals.

The Elrich Bill also would insert text starting on ©22, Line 560 and in Section 42A-16(c)(2)(E) [starting on ©24, Line 597] stating that:

Once the NADMS goal or other commuting goals have been achieved, the owner must maintain the level necessary to continue achieving the goal.

**Council staff concurs with the Elrich Bill in both instances.**

**7. Section 42A-16(c)(2)(C).** Both versions of the Bill require owners or applicants of Level Two plans to self-monitor its achievement of its TDM goals. The Elrich Bill would add the following on ©23 after Line 579:

This self-monitoring must be conducted in addition to any monitoring conducted by the Department.

**Council staff concurs with the Elrich Bill language.**

**8. Section 42A-16(c)(3).** 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. [See ©25, Lines 620-622.] 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 to 5% lower than the NADMS for the area. Including parameters would provide a degree of predictability for a potential developer.

The proposed 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. The following is from a 2005 study by WMATA examining the transit mode share by walking distance to a Metro Station. The difference in mode share between an office or residence at a Metro Station is more than 20% higher than those a half-mile away. (Most Red Policy Areas have a radius of about a half-mile.)



Distance (Miles)	Metrorail	
	Office Commute	Residential
0	35%	54%
0.25	23%	43%
0.5	10%	31%

**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, a 20% spread. The text on ©25, Lines 620-622 would be replaced by:**

**The project plan may establish a project NADMS Goal that is up to ten percent higher or ten percent lower than the NADMS goals based on project-specific parameters, consistent with the executive regulation. When approving the Project-Based TDM Results Plan, the Director must determine that the commuting goals for the District or Policy Area will be attained with the established project NADMS Goal.**

**9. Section 42A-28(a).** This section lists the types of information to be included in the biennial report for the TMDs, to the extent feasible within the constraints of available resources. The Leggett Bill includes ten types of information, monitoring progress in all aspects of transportation, including commuting patterns, congestion relief, transit use and availability, carpool/vanpool rates, bicycle and bikeshare use, etc. [See ©32, Lines 809-825.] The Elrich Bill would delete two of the ten: (1) level of service measurements for each major intersection in the policy area and selected critical intersections outside the area; and (2) status of road of intersection improvements, signal automation, bicycle and pedestrian access and safety, and other traffic modifications in or near the district.

**Council staff concurs with the Leggett Bill.** For a holistic assessment of transportation management in an area, congestion levels and the status of traffic improvements should be included in the report, resources permitting. It should not be difficult to assemble this information. Data on congestion levels could be drawn by the Planning Board's biennial Mobility Assessment Report, which evaluates congestion levels at intersections and roadway sections throughout the County. DOT conducts as well as regularly tracks the progress of its traffic improvements, and it monitors such improvements by the State Highway Administration.

**10. Section 42A-28(e).** The existing law requires that employers make a good faith effort to generate responses from their employees to the commuting survey, with the objective of achieving at least an 80% compliance rate. [See ©18, Lines 441-443.] There is no penalty for not meeting this objective.

Both the Leggett and Elrich Bills recommend reducing the objective to 60%. [See ©29-30, Lines 746-750.] MNCBIA and NAIOP point out that the average response rate is 22%, and it believes even a 60% goal is unrealistic. DOT noted in a prior worksession that several firms have achieved a 100% response rate.

DOT has conducted more research on this issue and noted that for a statistically reliable result, surveys of smaller office and residential projects require a higher response rate, and surveys of larger projects can be reliable with a smaller response rate. DOT now recommends using Council staff's proposed 40% response as a general objective, but to give the Director the authority to set a smaller or larger response rate to achieve statistical reliability. **Council staff and DOT recommend the following:**

- **Amend the response rate goal on ©30, Line 749 to 40 percent; and**
- **Add the following sentences after ©30, Line 750: "Worksites, buildings, or projects with fewer than 100 employees or residents must use a good faith effort to achieve at least a 50% response rate. The Director may require a smaller or larger response rate from a given worksite, building, or project, based upon requirements for statistical viability."**

**11. Section 42A-29(c).** The Leggett Bill would require that if a TMD's commuting goals are not met within eight years of its creation or by June 30, 2027, whichever is later, the DOT Director must recommend corrective action to the Executive. [See ©33, Lines 830-833.] The Elrich Bill would amend to deadline to Year 2030 or dates established by master plans, whichever is later. **Council staff concurs with the Elrich Bill.** The rollout of the new TMDs may not occur right away, so setting a goal that is 11 years from now—or longer, should a master plan indicate so—seems more realistic.

Bill No. 36-18  
Concerning: Transportation  
Management - Transportation  
Demand Management Plan -  
Amendments  
Revised: 10/29/2019 Draft No. 5  
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:*

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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:

- 19           (1) the provision of parking spaces as a component of a sale or lease  
 20 when voluntarily requested by a prospective purchaser or lessee;  
 21 or
- 22           (2) a parking space physically integrated with an individual leasable  
 23 or sales unit if the parking space is dedicated to that unit and can  
 24 be directly accessed through that unit such that only occupants  
 25 of that unit are able to use the space or spaces.

26        *Carpool* means a motor vehicle occupied by 2 or more employees traveling  
 27 together.



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

*Date of final occupancy* means the earlier of:

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

*Department* means the Department of Transportation.

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

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

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

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

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



55            ~~[(5)]~~ (3)        any government agency not required by law to follow  
 56                            County regulations.

57        [Growth Policy means the most recently adopted Growth Policy under Section  
 58        33A-15.]

59        NADMS goal means the specific NADMS percentage goal for peak period  
 60        commuters in a District or a Policy Area that has been established through a  
 61        Master Plan, through the Subdivision Staging Policy, or through regulation.

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

67        Peak period means the hours of highest transportation use ~~[[in a district]]~~ each  
 68        workday, as defined in the resolution creating a ~~[[district]]~~ District, as  
 69        established in the Subdivision Staging Policy, or established through a  
 70        technical study.

71        Planning Board means the Montgomery County Planning Board of the  
 72        Maryland-National Capital Park and Planning Commission.

73        Policy Area means a Transportation Policy Area adopted by the County  
 74        Council through the Subdivision Staging Policy.

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

76        Resident means an adult domiciled in the relevant area.

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

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



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

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

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

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

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

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

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



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

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

- (a) New economic development is important to stimulate the local economy. Focusing new development in high transit-service areas is an important County land use and economic development objective.
- (b) Limited transportation infrastructure, traffic congestion, inadequate access to transit, bicycle and pedestrian [access] facilities, and safety issues impede the County's land use and economic development objectives.
- (c) Transportation demand management, in conjunction with adequate transportation facility review, planned capital improvement projects, and parking and traffic control measures, will:
  - (1) help provide sufficient transportation capacity to achieve County land use objectives and permit further economic development;
  - (2) reduce the demand for road capacity, [and] promote [traffic] safety for all users of transportation infrastructure, and improve access to transit, bicycle and pedestrian [access] facilities; and
  - (3) help reduce vehicular emissions, energy consumption, and noise levels.
- (d) Improved traffic levels and air quality, and a reduction in ambient noise levels will help create attractive and convenient places to live, work, visit, and conduct business.
- (e) Transportation demand management will equitably allocate responsibility for reducing single-occupancy vehicle trips among government, developers, employers, property owners, renters, and the public.



- (f) Transportation demand management should be consistent with any commuting goals set in the [Growth] Subdivision Staging Policy, Master Plans, and Sector Plans. TDM should [and] foster coordinated and comprehensive government, private industry, and public action to:
- (1) make efficient use of existing transportation infrastructure;
  - (2) increase transportation capacity as measured by numbers of people transported;
  - [(2)] (3) reduce existing and future levels of traffic congestion by moving more people in fewer vehicles;
  - [(3)] (4) reduce air and noise pollution; and
  - [(4)] (5) promote traffic safety together with transit, [and] pedestrian and bicycle safety and access for all users.
- (g) Transportation demand management will substantially advance public policy objectives. Adoption of this Article is in the best interest of the public health, safety, and general welfare of the County.

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

- (a) The County Council by resolution may create a transportation management district [in] (TMD) in a policy area where the Subdivision Staging Policy requires transportation review. A district may be formed from one or more Subdivision Staging Policy areas, even if they are not contiguous. [:
- (1) a Metro station policy area, which may include adjacent areas served by the same transportation network; or
  - (2) an area where transportation review applies under the Growth Policy.]
- (b) The Department may take actions necessary to achieve effective transportation demand management in each ~~[[district]]~~ District, on its



own or by contract with any employer, transportation management organization, or other party, including:

- (1) ~~[[regulating]]~~ controlling the use of or limiting public parking, by regulation adopted under method (2);
- (2) prohibiting bundling of parking in new developments;
- (3) monitoring and assessing traffic patterns and pedestrian access and safety;
- [(3)] (4) adopting traffic and parking control measures;
- [(4)] (5) providing transit, shuttles, circulator services, or other transportation services;
- (6) implementing approved transportation-related capital projects;
- [(5)] (7) promoting or implementing transit and ridesharing incentives;
- [(6)] (8) promoting regional cooperation between the County and other government agencies;
- [(7)] (9) creating cooperative County-private sector programs to increase ridesharing and transit use; and
- [(8)] (10) conducting surveys, studies, and statistical [analysis] analyses to determine the effectiveness of [traffic mitigation] transportation demand management plans and employer and building owner efforts.

- (c) In each ~~[[transportation management district]]~~ District, sole source contracts may be signed with, or funds granted to, one or more transportation management organizations to carry out transportation demand management programs that the Department could otherwise carry out, under Chapter 11B.



- (d) The Department and the Planning Board may, in accordance with this Article and other applicable law, jointly or separately impose transportation demand management measures as conditions on the Board's approval of development in any [[district]] District.
- (e) Each [[district]] District may have a Transportation Management District Advisory Committee if the Executive by regulation decides a Committee is necessary to carry out this Article or if the Council creates a Committee by resolution. The Executive or Council may designate any existing advisory body appointed by the Executive and confirmed by the Council to serve as a Transportation Management District Advisory Committee. The Executive must appoint, and the Council must confirm, members of any Advisory Committee. The County must not compensate members of an Advisory Committee for their services. Advisory Committee members, not otherwise public employees as defined in Chapter 19A, are not subject to the financial disclosure provisions of that Chapter.

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

- (a) Transportation Demand Management (TDM) Plans for an Individual Employer.
- (1) The Director must require an employer subject to this Section to submit a TDM Plan meeting the requirements of this Section [If an employer is subject to this Section, and] if the Council by resolution or in the [Growth] Subdivision Staging Policy has approved the use of traffic mitigation plans or TDM Plans in a given [[district]] District[, the Director must notify the employer



by letter that the employer must submit a traffic mitigation plan meeting the requirements of this Section].

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

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

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

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

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

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

Silver Spring TMD

Friendship Heights TMD

Bethesda TMD

North Bethesda TMD

Greater Shady Grove TMD



[[White Oak TMD]].

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

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

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

(1) An employer may submit a consolidated [traffic mitigation plan] TDM Plan with other employers in the same building or building complex. An owner of a nonresidential building in a [[district]]



District may submit a consolidated [traffic mitigation plan] TDM Plan on behalf of one or more employers in the building.

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

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

- (1) offer to help employers prepare TDM Plans;
- (2) decide if each proposed plan meets the requirements of this Section; and
- (3) help an employer revise a plan that the Director determines does not meet the requirements of this Section.

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

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

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

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

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

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

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

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

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

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

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

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

[(i) The Director must:

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

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

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

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

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

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

[(c) A traffic mitigation agreement may require:

- (1) naming a transportation coordinator;
- (2) limits on parking spaces;
- (3) peak period or single-occupancy vehicle parking charges;
- (4) preferential parking for carpools and vanpools;



- (5) subsidies for employees not using single-occupancy vehicles;
- (6) financial or other participation in building or operating on- or off-site transportation facilities or systems;
- (7) providing space on a periodic basis for marketing and promotional activities of the district;
- (8) designating permanent areas in prominent locations to display information on commuting options; or
- (9) other transportation demand management measures.]

[(d) A traffic mitigation agreement must be:

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

[(e) A traffic mitigation agreement may:

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

(a) Applicability. This Section applies to any owner or applicant for a new development or construction project that submits an application for a proposed subdivision or optional method development, site plan, conditional use or building permit in a [[district]] District, but excluding any project consisting solely of single family detached housing, townhouses, or a mixture of both. All such applicants must obtain approval from the Department for a Project-based Transportation Demand Management (TDM) Plan. This approval must be obtained prior to Planning Board approval of the application, or prior to



Department of Permitting Services approval for projects not requiring Planning Board action. Projects subject to this Section include developments:

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

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

(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 25,000 gross square feet, but]] less than or equal to [[100,000]] 40,000 gross square feet; and

(B) submit a Level 3 TDM Results Plan for a project with more than [[100,000]] 40,000 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 ~~[[50,000]]~~ 40,000 gross square feet, but less than or equal to ~~[[100,000]]~~ 80,000 gross square feet;

(B) submit a Level 2 TDM Action Plan for a project with more than ~~[[100,000]]~~ 80,000 gross square feet, but less than or equal to ~~[[200,000]]~~ 160,000 gross square feet; and

(C) submit a Level 3 TDM Results Plan for a project with more than ~~[[200,000]]~~ 160,000 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 ~~[[75,000]]~~ 60,000 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.

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

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

(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.

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

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

(2) Level Two: A Project-based TDM Action Plan requires a commitment by the owner or applicant to specific actions to help the County achieve district-wide commuting goals. The plan must include project-based strategies and demonstrate over time that the adopted strategies are contributing toward achievement of the [[district's]] commuting goals, in compliance with the Executive [[Regulations]] Regulation. A project must be considered to be contributing toward achievement of the district's commuting goals if the biannual surveys of building occupants demonstrate increased on-site Non-Auto Driver Mode Share, or a measurable improvement in an alternative Department-approved metric, if applicable, in proportion to the level necessary to achieve the goal by the date established in the project's TDM plan. A Project-based TDM Action Plan must



include the Project-based TDM Basic Plan components and the following:

(A) Selection of Strategies. The owner or applicant must propose a Project-based TDM Plan that includes required strategies and selected optional strategies from the “Sample Menu of TDM Strategies” identified in the Executive Regulation. Additional strategies may be proposed by the owner or applicant and may be included in the Project-based TDM Plan if approved by the Department.

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

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

(D) Biennial Report. Progress reports must be provided to the County in alternating years, in a format consistent with Department requirements.

(E) Addition and/or Substitution of Strategies. If the strategies initially selected from the “Sample Menu of TDM Strategies” by the owner or applicant do not result in the plan contributing toward achievement of [[district]] District goals by four years after Date of Final Occupancy,



the Department may require revisions in the project's plan using the "Sample Menu of TDM Strategies" or other strategies proposed by the owner or applicant. The owner or applicant must agree to implement these revised strategies if required by the Department at a level consistent with the owner's commitment to fund and implement the plan. This process may be repeated until the project demonstrates it is contributing toward achievement of district goals, consistent with the Executive Regulations.

(F) *Additional Funding Commitment.* If the project does not contribute toward achievement of **[[district]]** the **commuting** goals by six years after Date of Final Occupancy, the Department may require increased funding by the owner for existing or new TDM strategies to be implemented at the project. The owner must commit additional funds to supplement on-site strategies if required by the Department. The amount of the additional funding must be as established in the Executive Regulation.

(G) **[[Rewards]]** *Performance Incentives.* The owner may be eligible for annual **[[rewards]]** **performance incentives** established by the Department for continued contribution over multiple years toward achievement of **[[district]]** **commuting** goals, including reductions in TDM fees or other financial benefits, as established in the Executive Regulation.



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

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

(B) Addition and/or Substitution of Strategies. If the strategies initially selected by the owner or applicant do not result in the project achieving its goals by six years after Date of Final Occupancy, the Department may require revisions in the project's plan using the "Sample Menu of TDM Strategies" or other strategies proposed by the owner or applicant. The owner or applicant must agree to implement these revised strategies if required by the Department at a level consistent with the owner's commitment to fund and implement the plan. This process

may be repeated until the project demonstrates it is achieving its goals, in compliance with the Executive ~~[[Regulations]]~~ Regulation.

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

(D) ~~[[Rewards]]~~ *Performance Incentives.* The owner may be eligible for annual ~~[[rewards]]~~ performance incentives established by the Department for continued achievement of project goals over multiple years, including reductions in TDM fees or other financial benefits, as established by the Executive Regulation.

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

- (1) proposed by the owner or applicant and approved by the Department;
- (2) made an express condition of any approval for:
  - (A) subdivision or another plan approval under Chapter 50;
  - (B) site plan or another plan approval under Chapter 59; or



(C) building permit for a recorded lot;

(3) subject to all other review and approval requirements of Chapter 50 and Chapter 59, with approval of the Department required for any revisions to an approved TDM Program; and

(4) recorded in the County's land records.

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

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

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

[(a) By December 1 of each even-numbered year, the Director must submit to the appropriate Advisory Committee and the Planning Board a report on transportation demand management in each district. The report should include:

- (1) employee commuting patterns by employer;
- (2) auto occupancy rates by employer;
- (3) level of service measurements for each intersection in the policy area and selected critical intersections outside the area;



- (4) parking supply and demand;
- (5) status of road or intersection improvements, signal automation, improved bicycle and pedestrian access and safety, and other traffic modifications in or near the policy area;
- (6) transit use and availability;
- (7) carpool and vanpool use; and
- (8) the source and use of any funds received under this Article.]

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

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

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

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

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

(a) The Director, after consulting the appropriate Advisory Committee, must conduct a commuter survey, or obtain through other available mechanisms, data on commuting by employees and residents within a



defined area. The data must be obtained on a schedule determined by the Director.

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

(1) create an accurate data base of employee and resident commuting patterns ~~[[in the district]]~~; and

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

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

(d) Each notified employer, building owner or manager, Transportation Coordinator or other entity must distribute, collect, and return the completed surveys, or otherwise provide the required data through other Department-approved mechanisms. Data collected must be provided to the transportation management organization and the Department within the time period established by the Department.

(e) Any entity required to participate in the commuting survey, or to participate in data collection through another mechanism, must make a good faith effort to generate survey responses or other data from their

target population with the objective of achieving at least a 60 percent compliance rate.

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

[(a) *Authority.*

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

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

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

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

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

(1) administering the district, including review and monitoring of traffic mitigation plans under Section 42A-24 and traffic mitigation agreements under Section 42A-25; and



- 776 (2) any program implemented under Section 42A-23(b), including  
777 any vehicle or other equipment necessary to carry out the  
778 program.]

779 [(c) *Rate.* The rate of a transportation management fee must be set to  
780 produce not more than an amount of revenue substantially equal to the:

- 781 (1) portion of the cost of administering the district, including the  
782 review and monitoring of traffic mitigation plans under Section  
783 42A-24 and traffic mitigation agreements under Section 42A-25,  
784 reasonably attributable to the transportation effects of the  
785 development or property subject to the fee; and  
786 (2) portion of the cost of any program implemented under Section  
787 42A-23(b), including any vehicle or other equipment necessary  
788 to carry out the program, reasonably attributable to the  
789 transportation effects of the development or property subject to  
790 the fee.]

791 [(d) *Method.* A transportation management fee may be assessed on:

- 792 (1) the gross floor area, the maximum or actual number of  
793 employees, or the average number of customers, visitors, or  
794 patients, in a nonresidential building;  
795 (2) the number of dwelling units, or the gross floor area, in a  
796 residential building;  
797 (3) the number of parking spaces associated with a building; or  
798 (4) any other measurement reasonably related to transportation use  
799 by occupants of, employees located in, or visitors to a particular  
800 development or property.]

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

804 (a) By December 1 of each even-numbered year, the Director must submit  
 805 to the appropriate Advisory Committee and the Planning Board a report  
 806 on transportation demand management in each operating **[[district]]**  
 807 **District.** The report should include the following information to the  
 808 extent feasible within the constraints of available resources:

- 809 (1) employee commuting patterns by employer, building or project;  
 810 residential commuting patterns by building or project; other  
 811 commuting or travel patterns as appropriate;
- 812 (2) auto occupancy rates by employer, residential unit or other  
 813 appropriate measures;
- 814 (3) level of service measurements for each major intersection in the  
 815 policy area and selected critical intersections outside the area;
- 816 (4) parking supply and demand;
- 817 (5) status of road or intersection improvements, signal automation,  
 818 bicycle and pedestrian access and safety, and other traffic  
 819 modifications in or near the district;
- 820 (6) transit use and availability;
- 821 (7) carpool and vanpool use;
- 822 (8) bicycle and bikeshare use;
- 823 (9) use of other transportation modes relevant to analyzing  
 824 achievement of commuting goals; and
- 825 (10) the source and use of any funds received under this Article.

826 (b) By March 1 of each odd-numbered year, the Executive must forward  
 827 **[[each report]]** required reports to the Council. The Executive must



note any area of disagreement between the Director and an Advisory Committee.

- (c) If any commuting goals set in the Subdivision Staging Policy are not met eight years after a district is created or by June 30, 2027, whichever is later, the Director must recommend corrective action to the Executive. This action may include additional mitigation measures. If the Executive agrees that such action is necessary, the Executive should propose appropriate legislation or adopt appropriate regulations as authorized by law.

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

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

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

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

- (a) Authority.

(1) The Council may, by resolution adopted under Section 2-57A, set the transportation demand management fee that the Department must annually charge an applicant, and each successor in interest, for subdivision, optional method development approval, or a building permit.



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

(A) an applicant for subdivision or optional method approval, site plan approval or a building permit in a [[district]] District and

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

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

(1) administering the [[district]] District and TDM strategies, and coordinating with projects and occupants (including employees and residents) within that [[district]] District or Policy Area, including review and monitoring of TDM Plans; and

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

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

(1) portion of the cost of administering TDM in the [[district]] District, including the review and monitoring of TDM Plans, reasonably attributable to the transportation effects of the development project or property subject to the fee; and



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

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

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

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

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

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

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

#### **42A-32. Enforcement.**

(a) The Department must enforce this Article. An employer, owner, building or project manager or other responsible party subject to Section 42A-24 or 42A-25 that does not submit a TDM Plan or required report, comply with required provisions of a plan, or provide survey



data within 30 days after a second notice has committed a class C violation.

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

(c) Any party ~~[[required to]]~~ that does not submit required reports on numbers of employees, transportation demand management plans and strategies, Non-Auto Driver Mode Share, progress toward goals, survey results or other TDM-related provisions or measurements on a timely basis has committed a class C violation.

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

## **Sec. 2. Transition.**

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

(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.

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

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



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

937   *Approved:*

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Nancy Navarro, President, County Council	Date
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939   *Approved:*

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Marc Elrich, County Executive	Date
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941   *This is a correct copy of Council action.*

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Mary Anne Paradise, Acting Clerk of the Council	Date
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DEPARTMENT OF TRANSPORTATION

Marc Elrich  
*County Executive*

Al R. Roshdieh  
*Director*

**MEMORANDUM**

November 4, 2019

TO: Transportation & Environment (T&E) Committee:

FROM: *for* Christopher R. Conklin, Director *Σ 44 =*  
Department of Transportation

SUBJECT: Bill 36-18, Transportation Management – Transportation Demand Management (TDM)  
Plan - Amendments: MCDOT Recommendations on Remaining Issues

The purpose of this memorandum is to provide responses to several questions and requests raised in the prior T&E Worksession on the subject legislation.

1. Response rate objectives for Commuter Survey – Line 747

Response rate objectives should be based on a percentage necessary for statistical validity at the various worksites, development projects, buildings, etc. For new development projects – both commercial and multi-unit residential – the results from the survey will be used as a key determinant of whether that Project is contributing toward achievement of the Transportation Management District (TMD) Non-Auto Driver Mode Share (NADMS) goal (for “TDM Action Plans,” as referenced in the bill) or achieving that Project’s NADMS goal (for “TDM Results Plans,” as referenced in the bill). In addition, employer worksite survey results will be important contributors to assessing achievement of the overall goals for each TMD.

The response rate necessary to achieve statistical validity varies depending on the size of the population being surveyed – i.e., the number of employees or residents at that work site, project or multi-unit residential building. Typically, the larger the population, the smaller the required sample size needed for statistical validity. Given the importance of accurately determining mode share for each Project and for the TMD as a whole, we have further researched the ranges of response rates necessary to obtain a statistically valid sample and also obtained advice from a nationally-recognized survey consultant on the response rates needed given our objectives. Our research indicates the following groupings of response rates would be appropriate:

Worksites, Buildings or Projects with 100 employees/residents or fewer – 50%  
Worksites, Buildings or Projects with 100 – 200 employees/residents – 40%  
Worksites, Buildings or Projects with 200-400 employees/residents – 30%  
Worksites, Buildings or Projects with more than 400 employees/residents – 20%

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Office of the Director



Given these ranges, MCDOT accepts the 40% response rate requirement recommended by Council Staff for Line 747 as a simpler approach for incorporation into Code, but requests the following additional language be included:

“Worksites, buildings or projects with fewer than 100 employees or residents must use a good faith effort to achieve at least a 50% response rate. The Director may require a smaller or larger response rate from a given worksite, building or project, based upon requirements for statistical validity.”

2. Comparison of Montgomery County’s TDM Program with other TDM programs in the region.

Attachment A is a summary of the provisions included in other TDM programs in the region, comparing those with what is currently in Montgomery County Code and what is proposed to be added under Bill 36-18. As is evident from the chart, many of the provisions being implemented in other jurisdictions are either already in County Code or are being included in the revisions proposed by Bill 36-18.

3. Scenarios for TDM fee revenues

The Fiscal Impact Analysis prepared for Bill 36-18 included projections of revenues generated if the current fee structure were to be applied to a broader segment of new development in current and future TMDs. It also projected revenues in the event of a modest increase in TDM fees. A copy of that analysis was included in the October 10, 2019, T&E Worksession packet, at Circle 202. The table on Circle 204 displays the projected revenue from new development outside current TMDs over the next six years. That memorandum also discusses the uses of those revenues. Those analyses were not dependent upon any specific new TMD boundaries; rather they incorporated all of the areas where future TMDs could be created by Council under the proposed bill – i.e., all areas within the Red, Orange or Yellow Policy Areas. The boundary lines for future TMDs would be determined by Council following adoption of the legislation.

There was also a request for an estimate of the revenues generated by applying a lower fee to both “existing” and “new” development in the current and future TMDs. This approach is not being proposed in either the original version of the bill or in the amendments proposed by County Executive Elrich. However, to facilitate Council’s consideration of alternative funding approaches, Attachment B to this memorandum displays data compiled by M-NCPPC’s Research Division providing an estimate of existing building space (excluding single family and publicly-owned space) within all areas of the County where TMDs potentially could be created by Council under the proposed legislation (Red, Orange and Yellow Policy Areas).

Attachments

cc: Glenn Orlin, Deputy Director, County Council Staff  
Robert H. Drummer, County Council Senior Legislative Attorney  
Gary Erenrich, MCDOT  
Sandra L. Brecher, MCDOT

## ATTACHMENT A

### KEY ELEMENTS OF TDM ACROSS THE REGION (in order of size of geographic area)

#### *CITY OF ALEXANDRIA (15 square miles)*

Strategy provided for under <b>existing</b> County law or Resolution	Strategy incorporated into Bill 36-18 <b>proposal</b>	Strategy <b>not</b> in current County law and <b>not</b> <b>proposed</b> under Bill 36-18
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#### TDM Applies to:

New development approved or in pipeline for approval	X	X	
Multi-family residential and commercial uses	X	X	
Required as part of development review process	X	X	
Tiered approach, size of development determines required strategies		X	

#### Fees/Payments

Property must create fund for project-specific transportation program		X	
Rates vary by type of development	X	X	

#### Mode Share Goals

Mode share goals are project-specific		X	
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#### Monitoring

Surveys and other reporting required	X	X	
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#### Performance Incentives and Disincentives

No formal incentives		X	
Financial "contribution" required for non-compliance		X	

#### Employer Outreach

Staff engages with employers to promote TDM	X	X	
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**Arlington County, VA (26 square miles)**

Strategy provided for under existing County law or Resolution	Strategy incorporated into Bill 36-18 proposal	Strategy not in current County law and not proposed under Bill 36-18
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**New developments approved or in pipeline for approval**

Multi-family residential and commercial uses	X	X	
Required as part of development review process	X	X	
Tiered approach, size of development determines required strategies	X	X	

**Fees/Payments**

Annual financial contribution based on gross square footage	X	X	
Contributions last for 30 years only			X

**Mode Share Goals**

No mode share goals			X
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**Monitoring**

Monitoring is required	X	X	
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**Performance Incentives and Disincentives**

No formal incentives or disincentives			X
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**Employer Outreach**

Staff engages with employers to promote TDM	X	X	
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**DISTRICT OF COLUMBIA (63 square miles)**

Strategy provided for under <b>existing</b> County law or Resolution	Strategy incorporated into Bill 36-18 <b>proposal</b>	Strategy <b>not</b> in current County law and <b>not</b> <b>proposed</b> under Bill 36-18
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**TDM Applies to:**

Major developments that go through zoning review process	X	X	
Multifamily residential and commercial uses	X	X	
Campuses		X	X
Tiered approach, size of developmetn determines required strategies		X	

**Fees/Payments**

No fees or payments			X
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**Mode Share Goals**

Mode share goals are project-specific		X	
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**Monitoring**

Monitoring (including surveys) is required	X	X	
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**Performance Incentives and Disincentives**

No formal incentives or disincentives			X
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**Employer Outreach**

Staff engages with employers to promote TDM	X	X	
Commuter Law requires employers of 20 or more to offer at least one type of financial commuter benefit			X

**Other**

Parking management (including restrictions on supply)		X	
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**FAIRFAX COUNTY, VA (406 square miles)**

Strategy provided for under existing County law or Resolution	Strategy incorporated into Bill 36-18 proposal	Strategy not in current County law and not proposed under Bill 36-18
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**TDM Applies to:**

New development	X	X	
Multi-family residential and commercial	X	X	
Tiered approach, size of development and location (accessibility to transit) determines required strategies		X	

**Fees/Payments**

Annual recurring cost set by developer for TDM expenditures		X	
Some areas required to participate in or contribute to Transportation Management Association (e.g., Tysons)	X	X	

**Mode Share Goals**

Mode share goals are project-specific		X	
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**Monitoring**

Surveys, counts and other compliance and reporting required	X	X	
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**Performance Incentives and Disincentives:**

Incentive fund is a one-time contribution intended to incentivize participants in surveys or non-SOV travel.			X
Remedy funds are set aside for expenditures if TDM goals are not met; used to increase efforts to meet goals; included in all developments in Tysons and others w/in 1 mile of Metro		X	
Penalty fund contribution if trip reduction goals are not met after Remedy Funds are exhausted. Used to implement programs to reduce trips		X	

**Employer Outreach**

Staff engages with employers to promote TDM	X	X	
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## Attachment B

### Information on Existing Development in Red, Orange and Yellow Policy Areas

Compiled by M-NCPPC Research Division

Residential GFA	Office GFA	Retail GFA	Industrial GFA	Other GFA	Total GFA
106,404,815	51,433,426	25,456,661	17,966,887	23,078,266	224,340,055
47%	23%	11%	8%	10%	100%

#### Explanation of Parcel File – basis for this analysis

Each parcel in Montgomery County is assigned one use (or land use code) from SDAT (state department of assessments and taxation). Even mixed use parcels that have more than one use only get one land use code, usually the most predominant use. The GFA of uses on that parcel is broken down into different “buckets” – residential, office, industrial, and other- so it’s possible for a parcel with a land use classification of multifamily to have GFA in both residential and retail (think ground floor retail on a multifamily building).

Some of the older parcels (or really new), especially for residential, don’t have a GFA assigned to them. M-NCPPC used a factor of a 1000sf per unit to calculate a rough estimate of the GFA for residential parcels – so now only 2% of residential multifamily units don’t have a GFA assigned to them (those parcels also had no units attributed to them).

For other parcels missing their GFA, 9% for office, and 4% for retail are missing their GFA. “Other uses” gets a bit more complicated since it includes a lot of uses that don’t typically have GFA associated with them, like HOA playgrounds, golf courses, etc., so in the traditional sense they’re not “missing” a GFA, they just don’t have any built GFA.

#### Methodology:

1. prop poly parcel file with data (used GIS as method of analysis)
2. removed parcels inside AR zone
3. removed parcels inside "generalized" ag reserve boundary on GIS
4. removed parcels inside municipalities with zoning authority (rockville, gaithersburg, laytonsville, poolesville, barnesville, washington grove)
5. removed parcels with public ownership (Montgomery county, Montgomery college, mcps, hoc, mncppc, state of md, federal, wmata, wssc, etc.)
6. removed single family detached and attached parcels (lu codes 111, 116, 114, 112)



**residential sf uses** - multifamily (includes both multifamily rental and condominium residential), some office (residential units above office), residence halls, and some retail (residential units above retail)

**office sf** - most office uses (office, banks, medical and other health uses that are not hospitals), office uses in hotels, some industrial, some retail, office uses in multifamily, some warehouse

**retail sf** - most retail uses (regional shopping centers, convenience centers, lumberyards, department store, groceries, motor vehicles retail, gasoline services, restaurants, automobile trade, and other retail trade), retail uses in hotels, retail uses in multifamily, office uses in retail, some warehouse, some wholesale warehousing

**industrial sf** - most industrial uses, mini storage facilities, office uses in industrial, resource production, some retail uses, most warehouses, storage facilities

**other sf** – mostly a catch all for other uses – includes airports/flying fields, entertainment assembly (motion picture theaters, amphitheaters, etc.), farm and forestry uses that are not residential, some multifamily, cultural resources (museums, etc.), open space facilities (owned by an HOA), religious uses, swimming areas, sport assembly/activities (golf courses, tennis courts), private schools, nursery schools

**parking and parking facilities** – has its own category of GFA – but is excluded from this calculation