Montgomery County Council

Committee: Joint
Staff: Pam Dunn, Senior Legislative Analyst; Glenn Orlin, Senior Analyst; Robert Drummer, Senior Legislative Attorney
Purpose: To make preliminary decisions – straw vote expected
Keywords: #subdivision staging policy, impact tax, recordation tax

AGENDA ITEM #15
November 10, 2020
Worksession

SUBJECT

2020-2024 Subdivision Staging Policy
Bill 37-20, Subdivision - Preliminary Plan - Adequate Public Facilities – Amendments
Bill 38-20, Taxation - Development Impact Taxes for Transportation and Public School Improvements - Amendments
Expedited Bill 39-20, Taxation - Recordation Tax - Amendments

EXPECTED ATTENDEES

Casey Anderson, Planning Board Chair
Gwen Wright, Tanya Stern, Jason Sartori, Lisa Govoni, Hye-Soo Baek, Eric Graye and David Anspacher, Planning Department
Meredith Wellington, Office of the County Executive
Essie McGuire and Adrienne Karamihas, Montgomery County Public Schools (MCPS)
Christopher Conklin, Gary Erenrich, and Andrew Bossi, Department of Transportation (DOT)
Mary Beck, Pofen Salem, and Veronica Jaua, Office of Management and Budget (OMB)
David Platt and Estela Boronat de Gomes, Department of Finance

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

There have been 11 Committee worksessions and five Council worksessions. This is the last scheduled worksession on the Planning Board Draft Subdivision Staging Policy and related bills. Final action is tentatively scheduled for November 16.

DESCRIPTION/ISSUE

The issues are described in detail in the attached staff report.

This report contains:

Staff report

AGENDA ITEM #15
November 10, 2020

M E M O R A N D U M

November 6, 2020

TO: County Council

FROM: Pamela Dunn, Senior Legislative Analyst
Glenn Orlin, Senior Analyst
Robert H. Drummer, Senior Legislative Attorney

SUBJECT: 2020-2024 Subdivision Staging Policy (SSP), Bill 37-20 – Subdivision, APF Amendments, Bill 38-20 - Development Impact Taxes for Public School Improvements, and Expedited Bill 39-20 - Recordation Tax Amendments

PURPOSE: Worksession

Expected Attendees for this Worksession:
Casey Anderson, Planning Board Chair
Gwen Wright, Jason Sartori, Lisa Govoni, and Eric Graye, Planning Department
Meredith Wellington, Office of the County Executive
Christopher Conklin, Gary Erenrich, and Andrew Bossi, Department of Transportation (DOT)
Mary Beck, Pofen Salem, and Veronica Jaua, Office of Management and Budget (OMB)
David Platt, and Estela Boronat de Gomes, Finance Department

Councilmembers: Please bring your copies of the SSP Draft and Appendices to this worksession.

This worksession will provide a summary of all Council straw-vote recommendations and an overview of the potential fiscal impact of all straw-votes. It will also cover two elements of the Utilization Premium Payment (UPP) that did not yet receive a Council straw vote: the UP payment (based on a percentage of the impact tax) to apply at each threshold, and exemptions to the required payment. The Planning Board's recommended changes to the recordation tax, and transition language to implement the SSP resolution and Bills 37-20, 38-20, and 39-20 will also be addressed. Final action is tentatively scheduled for November 16.

A. ***Summary of Council straw votes and potential fiscal impact***

To date, the Council has conducted five worksessions on the Subdivision Staging Policy and related bills. Before that, 11 Committee worksessions were held. Attached on © 1-18 is a chart showing the Planning Board, Committee, and Council straw-vote recommendations[1]. Below are two tables showing the relative revenue impacts of the various recommendation scenarios. It is important to note that these estimates are based on the pipeline of approved development. These estimates are not a forecast of revenue. It's simply a tool that allows comparison of the relative impacts (magnitude and direction) of different decisions across different scenarios using one consistent dataset. The pipeline, which changes on a weekly basis, includes projects that may never be built, and has no set timeframe for development, is not a forecast tool. However, the analysis below does provide useful information regarding the nature of change that can be expected by the recommended scenarios.

The first table focuses on the school impact tax – comparing the pipeline using current impact tax rates and exemptions with proposed changes made by the Planning Board, the Committees and the Council straw votes to date. The Utilization Premium Payment revenue included below is based on the Committee majority recommendation to set the UPP at 20, 40, and 60 percent of the applicable impact tax at the 105, 120, and 135 percent utilization thresholds, respectively. It should also be noted that potential revenue from the UPP will change annually with the adoption of the Annual School Test and corresponding change in school adequacy.

SCHOOL IMPACT TAX PIPELINE REVENUE ESTIMATES UNDER DIFFERENT PROPOSED SCENARIOS

	Current	Planning Board	Committee	Council Straw-Vote
Standard Impact Tax Rates	$448,159,659	$337,141,846	$280,273,507	$280,273,507
MPDU Exemption	($57,808,228)	($43,487,173)	($35,642,636)	($35,642,636)
Desired Growth and Investment Areas	$0	($66,153,496)	$0	$0
AR Zone	$0	$178,433	$0	$0
Active Enterprise Zone Exemption	($13,186,738)	($5,498,475)	($7,966,941)	($7,966,941)
Former Enterprise Zone Exemption	($21,834,108)	$0	$0	$0
Opportunity Zone Exemption	$0	($30,286,285)	($29,936,340)	($27,687,045)
25% Affordable Exemption - Additional MPDUs	($2,694,758)	($2,356,714)	($2,301,508)	($2,301,508)
25% Affordable Exemption - Market Rate Units	($16,572,920)	($10,572,602)	($10,293,041)	($10,579,802)
IMPACT TAX REVENUE	**$336,062,908**	**$178,965,533**	**$194,133,041**	**$196,095,576**
Utilization Premium Payments	$0	$32,191,791	$19,293,460	$19,293,460
IMPACT TAX + UPP REVENUE	**$336,062,908**	**$211,157,324**	**$213,426,501**	**$215,389,036**
Moratorium Impact Tax Loss	($29,010,428)	$0	$0	$0
Moratorium UPP Loss	$0	$0	$0	$0
MORATORIUM ADJUSTED REVENUE	**$307,052,479**	**$211,157,324**	**$213,426,501**	**$215,389,036**
Annual Amount 10yr Buildout (3683 units/year)	$30,705,248	$21,115,732	$21,342,650	$21,538,904
Annual Large Home Premium	$1,663,385	$0	$0	$0
ANNUAL REVENUE	**$32,368,633**	**$21,115,732**	**$21,342,650**	**$21,538,904**
DIFFERENCE FROM CURRENT		**($11,252,901)**	**($11,025,983)**	**($10,829,729)**

The second table focuses on the transportation impact tax. The Council Straw-Vote equals Councilmember Friedson's modified proposal, reviewed by the Council at the worksession held on

[1] Attached on ©57-58 is a summary of potential incentives to construct family-sized units as requested by CP Katz.

November 5. Council and Planning staff will be prepared to provide real-time updates to the revenue-estimate tables during the worksession should the Council want to evaluate the impact of modifying a straw-vote recommendation.

TRANSPORTATION IMPACT TAX PIPELINE REVENUE ESTIMATES UNDER DIFFERENT PROPOSED SCENARIOS

	Current	Committee	Council Straw-Vote
Standard Impact Tax Rates	$682,204,845	$681,042,928	$550,206,267
MPDU Exemption	($35,310,750)	($35,196,556)	($30,703,359)
Active Enterprise Zone Exemption	($5,960,931)	($5,960,931)	($5,510,807)
Former Enterprise Zone Exemption	($23,803,977)	$0	$0
Opportunity Zone Exemption	$0	($128,301,945)	($86,539,214)
25% Affordable Exemption - Additional MPDUs	($1,917,879)	($1,917,879)	($1,917,879)
25% Affordable Exemption - Market Rate Units	($11,742,836)	($4,559,055)	($4,559,055)
IMPACT TAX REVENUE	**$603,468,472**	**$505,106,562**	**$420,975,954**
Annualize/Correct for Credits (/60)*	**$10,057,808**	**$8,418,443**	**$7,016,266**
DIFFERENCE FROM CURRENT		**($1,639,365)**	**($3,041,542)**

* Current annual transportation impact tax revenue after credits is about $10 million per year. To get this into consumable/relatable numbers, it's been divided by 60 here.

B. *Utilization Premium Payment: Percentage of impact tax to levy at each threshold and exemptions*

The Council discussed the Planning Board's recommendation to establish a Utilization Premium Payment (UPP) at its worksession on October 27. At that worksession, the Council voted in support of establishing a three-tiered Utilization Premium Payment, setting the first-tier UPP threshold at 105 percent utilization, the second-tier UPP threshold at 120 percent utilization, and the third-tier threshold at 135 percent utilization.

In addition, the Council supported the Committee recommendation to pair the utilization threshold with a seat deficit measure (adjusted for program capacity). The table below shows the applicable revision to the Adequacy Standards Table under Rec. 4.5 of the Planning Board Draft.

School Adequacy Standards		Adequacy Status			
Projected Utilization	**Projected Seat Deficit**	**Greenfield Impact Areas**	**Turnover Impact Areas**	**Infill Impact Areas**	**Rec.**
> 105%	≥ 85 seats for ES ≥ 126 seats for MS ≥ 180 seats for HS	Utilization Premium Payment Required			Rec. 4.16
> 120%	≥ 102 seats for ES ≥ 151seats for MS ≥ 216 seats for HS	Utilization Premium Payment Required			

> 135%	≥ 115 seats for ES ≥ 170 seats for MS ≥ 243 seats for HS	Moratorium or Utilization Premium Payment Required	

The proposed UPP, like the prior School Facility Payment (SFP), is calculated based on a percentage of the impact tax. Impact taxes are paid by dwelling unit type, and under the proposed SSP, by School Impact Area. The UPP must be apportioned to school level so that it can be implemented to match the adequacy test that is applied to each school.

Following the discussion of possible UPP rates, several Councilmembers requested clarification of how the UPP is calculated. As stated above, the UPP is calculated based on a percentage of the impact tax, which is paid by dwelling unit type. The impact tax is the per student seat cost of the students associated with each dwelling unit of development – it is the sum of the student generation rate of each school level (elementary, middle, and high) multiplied by the per student seat cost of that school level. The UPP must be apportioned to school level so that it can be implemented to match the adequacy test that is applied to each school.

Below is a table showing the effective percentages at each school level.

UPP Percentage	ES	MS	HS	Total, if all 3 Schools Inadequate
20%	8.3%	5.0%	6.7%	20.0%
30%	12.5%	7.5%	10.0%	30.0%
40%	16.7%	10.0%	13.3%	40.0%
50%	20.8%	12.5%	16.7%	50.0%
60%	25.0%	15.0%	20.0%	60.0%
70%	29.2%	17.5%	23.3%	70.0%
80%	33.3%	20.0%	26.7%	80.0%
90%	37.5%	22.5%	30.0%	90.0%
100%	41.7%	25.0%	33.3%	100.0%
110%	45.8%	27.5%	36.7%	110.0%
120%	50.0%	30.0%	40.0%	120.0%
130%	54.2%	32.5%	43.3%	130.0%
140%	58.3%	35.0%	46.7%	140.0%
150%	62.5%	37.5%	50.0%	150.0%

It is not uncommon for multiple school levels within a cluster to be above a UPP threshold thus requiring a payment for each level that is inadequate. Below are the proposed impact tax rates and various UPP rates that could apply by dwelling unit type and school impact area.

Proposed Impact Taxes	Single-family		Multifamily	
	Detached	**Attached**	**Low-Rise**	**High-Rise**
Infill Impact Areas	$20,130	$18,063	$6,448	$3,193
Turnover Impact Areas	$21,530	$23,884	$11,555	$2,326
Greenfield Impact Areas	$33,809	$28,691	$15,582	$5,279

Util. Premium Payments (20%)		Single-family		Multifamily	
		Detached	Attached	Low-Rise	High-Rise
Infill Impact Areas	Elementary	$1,678	$1,505	$537	$266
	Middle	$1,007	$903	$322	$160
	High	$1,342	$1,204	$430	$213
Turnover Impact Areas	Elementary	$1,794	$1,990	$963	$194
	Middle	$1,077	$1,194	$578	$116
	High	$1,435	$1,592	$770	$155
Greenfield Impact Areas	Elementary	$2,817	$2,391	$1,299	$440
	Middle	$1,690	$1,435	$779	$264
	High	$2,254	$1,913	$1,039	$352

Util. Premium Payments (40%)		Single-family		Multifamily	
		Detached	Attached	Low-Rise	High-Rise
Infill Impact Areas	Elementary	$3,355	$3,011	$1,075	$532
	Middle	$2,013	$1,806	$645	$319
	High	$2,684	$2,408	$860	$426
Turnover Impact Areas	Elementary	$3,588	$3,981	$1,926	$388
	Middle	$2,153	$2,388	$1,156	$233
	High	$2,871	$3,185	$1,541	$310
Greenfield Impact Areas	Elementary	$5,635	$4,782	$2,597	$880
	Middle	$3,381	$2,869	$1,558	$528
	High	$4,508	$3,825	$2,078	$704

Util. Premium Payments (50%)		Single-family		Multifamily	
		Detached	Attached	Low-Rise	High-Rise
Infill Impact Areas	Elementary	$4,194	$3,763	$1,343	$665
	Middle	$2,516	$2,258	$806	$399
	High	$3,355	$3,011	$1,075	$532
Turnover Impact Areas	Elementary	$4,485	$4,976	$2,407	$485
	Middle	$2,691	$2,986	$1,444	$291
	High	$3,588	$3,981	$1,926	$388
Greenfield Impact Areas	Elementary	$7,044	$5,977	$3,246	$1,100
	Middle	$4,226	$3,586	$1,948	$660
	High	$5,635	$4,782	$2,597	$880

Util. Premium Payments (100%)		Single-family		Multifamily	
		Detached	Attached	Low-Rise	High-Rise
Infill Impact Areas	Elementary	$8,388	$7,526	$2,686	$1,330
	Middle	$5,032	$4,516	$1,612	$798
	High	$6,710	$6,022	$2,150	$1,064
Turnover Impact Areas	Elementary	$8,970	$9,952	$4,814	$970
	Middle	$5,382	$5,972	$2,888	$582
	High	$7,176	$7,962	$3,852	$776

Greenfield Impact Areas	**Elementary**	$14,088	$11,954	$6,492	$2,200
	Middle	$8,452	$7,172	$3,896	$1,320
	High	$11,270	$9,564	$5,194	$1,760

The Council did not vote on the UPP rates that should apply at each utilization threshold. The Planning Board Draft proposes the UPP be based on 60 percent of the impact tax (and apply to any school service area at or above 120 percent utilization). The PHED Committee recommends (2-1), the following UPP rates at the agreed-upon thresholds[2]:

Utilization Premium Payment Rates	
Utilization Threshold	% of the Proportional Impact Tax Rate per Overutilized School Level
105 percent	**20 percent**
120 percent	**40 percent**
135 percent	**60 percent**

Councilmember Jawando, dissenting, recommends the following UPP rates at the agreed-upon thresholds:

Utilization Premium Payment Rates	
Utilization Threshold	% of the Proportional Impact Tax Rate per Overutilized School Level
105 percent	**50 percent**
120 percent	**100 percent**
135 percent	**150 percent**

In addition to the UPP rates, the Council did not vote on exemptions to the requirement to make a Utilization Premium Payment. The Planning Board recommends exempting MPDUs and other affordable units from the requirement to make a Utilization Premium Payment. The Planning Board did not recommend a UPP exemption for development in an Enterprise zone or an Opportunity zone, nor does the Board recommend an exemption for market rate units receiving an impact tax discount.
Council staff supports the Planning Board recommendation with respect to exemptions from the UPP.

C. *Recommended Changes to the Recordation Tax*

General history of recordation taxes for the CIP. Recordation taxes are levied under Md. Tax-Property Code §§12-101 to 12-118, as amended. The tax applies to the principal amount of the debt secured by a mortgage or deed of trust. When a mortgage is refinanced, the tax applies to the amount of the principal debt that is greater than the principal remaining on the original debt.

The County has levied a recordation tax for many decades, with the proceeds used to supplement the General Fund. At the beginning of this century the rate was $2.20 per $500, with the first $50,000 of a recordation exempt. In 2004, the County began to levy a $1.25 per $500 increase to the tax that could be used for any MCPS capital project or a Montgomery College information technology capital project; this has been referred to as the School Increment to the recordation tax.

[2] On © 19 is a table showing the school service areas that fall under each utilization threshold.

In 2008, the Council began to levy a third tier—the so-called Recordation Tax Premium—at $1.55 per $500 on the amount a recordation exceeded $500,000. Half of the Premium's revenue is allocated to the County Government CIP (e.g., transportation, public safety, library, recreation, and general government projects) and the other half for rental assistance programs for low-to-moderate income households. During the recession years of FYs10-11, the Premium funds were directed to the General Fund instead.

In 2016, the Council reduced the rate associated with the General Fund allocation from $2.20 to $2.08 and increased the School Increment rate from $1.25 to $2.37. It also increased the Premium rate from $1.55 to $2.30. Revenue collected since FY13 from the School Increment and Premium is shown below:

Revenue from Recordation Taxes since FY 2013

Year	School Increment	Premium[3]
FY13	27,640,951	18,601,744
FY14	24,948,565	15,993,814
FY15	26,147,938	17,147,580
FY16	28,930,069	19,158,439
FY17	57,826,469	30,836,056
FY18	55,495,916	25,872,555
FY19	62,274,141	32,049,271
FY20	65,652,722	36,751,680

The Planning Board recommendation for changes to the recordation tax, Rec. 6.9 (pp. 101-103; App. Q, pp. 122-124), proposes that the County incorporate progressive modifications into the calculation of the tax to provide additional funding for school construction and the County's Housing Initiative Fund. As noted above, the recordation tax is a progressive tax paid on the sale of a property by the purchaser. The tax is progressive in that the amount paid is based on the sales price of the property and the rate paid increases at higher sales prices. Below is a copy of Table 18 in the Planning Board Draft. It highlights the current recordation tax steps and rates and the respective funding targets and compares these to the Planning Board's recommended modifications.

[3] Half is used for funding County Government CIP projects and half for funding rental assistance programs.

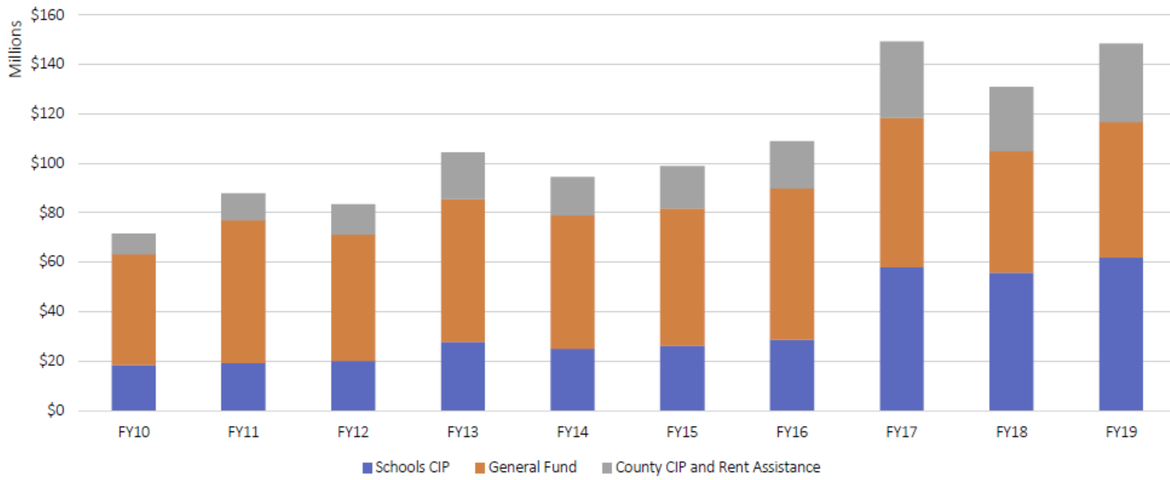
Table 18. Past, Current and Proposed Changes to the Recordation Tax.

	Prior to September 1, 2016	Current Recordation Tax	Proposed Recordation Tax
Exemptions	• First $50,000 of consideration payable, if it's the homebuyer's principal residence	• First $100,000 of consideration payable, if it's the homebuyer's principal residence	• First $100,000 of consideration payable, if it's the homebuyer's principal residence • First $500,000 of consideration payable, if the purchaser is a first-time homebuyer and it's the homebuyer's principal residence
For each $500 that the sales price exceeds $100,000	• $1.25 to the CIP for schools[51] • $2.20 to the county's general fund	• $2.37 to the MCPS CIP • $2.08 to the county's general fund	• $2.87 to the MCPS CIP • $2.08 to the county's general fund
For each $500 that the sales price exceeds $500,000	• $1.55 split evenly between the county CIP and rental assistance	• $2.30 split evenly between the county CIP and rental assistance	• $2.30 split evenly between the county CIP and rental assistance • $0.50 to the MCPS CIP
For each $500 that the sales price of a single-family home exceeds $1 million	• Not applicable	• Not applicable	• $1.00 to the county's Housing Initiative Fund

Currently, the recordation tax provides $2.37 to the Montgomery County Public Schools (MCPS) Capital Improvements Program (CIP) for every $500 interval (or part thereof) above $100,000 in the sales price of a home. The Planning Board recommends increasing that component by 50 cents to $2.87. Additionally, the Board recommends adding a new 50 cent charge earmarked for the MCPS CIP for every $500 interval above $500,000. The Board is also recommending a charge of $1.00 for every $500 interval in excess of $1 million allocated to the Housing Initiative Fund (HIF) to support rental assistance. And finally, the Planning Board is proposing an exemption from the recordation tax for the first $500,000 in consideration for first-time home buyers.

In May 2016, the County Council adopted Bill 15-16, which dedicated more recordation tax revenue to the MCPS CIP; the portion dedicated to schools was increased from $1.25 for each $500 increment in sales price to $2.37. The impact of this change can be seen in Figure 44 in the Planning Board Draft, copied below.

Figure 44. Recordation Tax Revenue, FY2010 to FY2019.



It shows recordation tax funding for the schools CIP increased from approximately $29 million in FY2016 to almost $58 million in FY2017.

Since 2017, when the recordation tax rate was raised, the recordation tax has consistently generated much more revenue for the schools CIP than development impact taxes. Table 17 below shows the collections of each for the past four years.

Collections		
Year	Recordation Tax	School Impact Tax
	$ millions	
2017	$57.8	$39.3
2018	$55.5	$20.8
2019	$62.3	$27.7
2020	$65.7	$22.9
Total	**$241.3**	**$110.7**
Source: Montgomery County Department of Finance		

In fact, the relative school impact tax collections from 2017-2020 was about 31 percent of the combined impact tax and recordation tax collections from this period (thus making recordation tax collections approximately 69 percent of the total). This is generally equivalent to the proportion of student enrollment growth from new development compared to student enrollment growth from the turnover of existing homes, suggesting, perhaps, that the relative revenue from these funding sources lines up fairly well with their relative impact on school facilities. In fact, the Approved FY21-26 CIP assumes that $447.2 million of resources for the MCPS CIP will be derived from the recordation tax, while only $121.3 million will come from the impact tax, thus making the recordation tax collections about 79% of the total of the two, and the school impact tax 21%.

The following tables are from the Fiscal Impact Analysis prepared by OMB and Finance (see ©7-12).

Recordation Tax	Funding Allocation	Current Rate	Proposed Rate Changes		
		FY19 Tax Collection	Additional Revenue for School CIP	Additional Revenue for MHI	Increases Related to Rate Increase
BASE - for each $500 that the sales price <$500K	General Fund	$ 54,465,614			$ -
	MCPS Capital Improvement	$ 62,038,090	$ 13,088,205		$ 13,088,205
PREMIUM -for each $500 that the sales price >$500K	MCPS Capital Improvement	$ 15,904,800	$ 6,915,087		$ 6,915,087
	Rent Assistance	$ 15,904,599			
MHI - for $500 that the sales price >$1M	Montgomery Housing Initiative (MHI)	$ -		$ 2,027,000	$ 2,027,000
	Total	**$ 148,313,103**	**$ 20,003,291**	**$ 2,027,000.00**	**$ 22,030,292**

The above table shows that the two 50 cent increases (one for sales prices less than $500,000 and one for sales prices greater than $500,000) for the MCPS CIP result in approximately $20 million in additional revenue based on FY19 collections. It shows the $1 increase for sales prices over $1 million results in just over $2 million in funding for the HIF.

Adding the first-time homebuyer exemption reduces the potential gains from the increases noted above. It should be noted that OMB's estimation of first-time home buyers is based on a study by The Housing Center of the American Institute that reported a 44.9 percent share of first-time homebuyers for Montgomery County in 2019. The Housing Center's report uses the U.S. Department of Housing and Urban Development (HUD) definition of a first-time homebuyer, "an individual who has not had an ownership interest in a principal residence (anywhere) for the previous three (3) years" as the basis for its estimation. However, Maryland Tax-Property Code Ann. §12-103 authorizes the County to exempt a first-time homebuyer from paying the recordation tax as follows:

> ***(3)*** *The governing body of a county or Baltimore City may provide for an exemption from the recordation tax for an instrument of writing for residentially improved owner-occupied real property if the instrument of writing is accompanied by a statement under oath signed by each grantee that:*
>
> ***(i)***
>
> ***1.*** *the grantee is an individual who has never owned in the State residential real property that has been the individual's principal residence; and*
>
> ***2.*** *the residence will be occupied by the grantee as the grantee's principal residence; or*
>
> ***(ii)***
>
> ***1.*** *the grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of this title for the property; and*
>
> ***2.*** *the grantee will not occupy the residence as the co-maker's or guarantor's principal residence.*

Thus, the HUD definition used in OMB's analysis may lead to a much larger first-time homebuyer group than the Maryland definition above limiting a first-time home buyer to someone who has never owned a principal residence in Maryland, but it is difficult to know. At the least, OMB's estimate of the revenue lost due to the proposed first-time homebuyer credit should be viewed with caution as the County is required to follow the State definition of a first-time homebuyer for this exemption. That said, below is a table that shows the estimated loss in revenue from the first-time homebuyer exemption.

2019 Home Sales	# of Sales	Average Sold Price (Est.)	Current Rate	Proposed Rate Changes			% Change
			Amount	Estimated Amount	Est. Exemption (1st $500K for 1st Homebuyer)	Total Amount	
>$100,000 to <$499,999	7,290	$ 330,062	$ 14,926,635	$ 16,603,785	$ (13,005,007)	$ 3,598,778	-76%
>$500K to <$999,999	4,247	$ 689,958	$ 26,010,445	$ 29,322,745	$ -	$ 29,322,745	13%
>$1M	1,180	$ 1,858,898	$ 25,848,050	$ 31,554,050	$ -	$ 31,554,050	22%
Total Residential	**12,717**	**$ 554,555**	**$ 66,785,130**	**$ 77,480,580**	**$ (13,005,007)**	**$ 64,475,573**	**-3%**

Of course, a decrease in revenue due to an exemption is not unexpected; however, one consequence of the first-time homebuyer's exemption (regardless of magnitude) is a decrease to the General Fund. The table below shows the impact of the first-time homebuyer exemption by fund.

Recordation Tax Proposed Bill 39-20 - Annual Estimated Revenue changes by Fund Type		Forecast-"Proposed Rates" FY21-FY26
MCPS Capital Improvement increase	$ 12,463,015	$ 74,778,088
Montgomery Housing Initiative increase	$ 2,027,000	$ 12,162,000
General Fund Operating decrease	$ (5,464,730)	$ (32,788,381)
Grand Total Revenue increase	**$ 9,025,285**	**$ 54,151,707**

Several stakeholders weighed in regarding the proposed changes to the recordation tax. The Executive expressed concern with the motivation for raising the tax and the impact on the General Fund as a result of the first-time homebuyers exemption. Others whose testimony expresses concern or opposition to the proposed changes include the Apartment and Office Building Association of Metropolitan Washington, the Greater Capital Area Association of Realtors, and Lerch, Early and Brewer. However, several others, such as the League of Women Voters and several area residents, expressed support for the proposed changes, both the increase that could provide more funding for MCPS and the exemption for first-time homebuyers.

In Council staff's opinion, there is no clear answer. Any first-time homebuyer exemption will decrease funding for both the General Fund and MCPS. Given the recent relative collection of impact taxes and recordation taxes, 31 percent to 69 percent, and the projected relative collection of 21 percent to 79 percent, there is no apparent need to raise the recordation tax to better align these funding sources with their relative impact on enrollment growth. However, the capital infrastructure needs of MCPS could always benefit from more funding. Attached on ©22 are several scenarios showing possilbe changes to the Planning Board recommendations and the resulting MCPS CIP and HIF estimates – without the first-time home buyer exemption. Below is a summary of the scenario results.

Summary of Scenarios (without first-time home buyer)	**MCPS- CIP**	**HIF**	**Total Revenue Increase**
Planning Board Recommendation	$20,003,248	$2,027,000	**$22,030,248**
Scenario 1	$6,075,163	$1,013,500	**$7,088,663**
Scenario 2	$4,000,650	$506,750	**$4,507,400**
Scenario 3	$10,001,624	$1,013,500	**$11,015,124**

D. Transition language for implementation of the SSP and Bills 37-20, 38-20, and 39-20

Neither the PHED Committee nor the GO Committee reviewed the proposed transition text during their review of the SSP and/or impact taxes[4]. The SSP resolution includes the following language regarding the effective date for implementation:

> **AP1 Effective dates**
> This resolution takes effect on January 1, 2021 and applies to any application for a preliminary plan of subdivision filed on or after that date.
>
> **AP2 Transition**
> For any complete application for subdivision approval submitted before January 1, 2021, the rules of the 2016-2020 Subdivision Staging Policy continue to apply.

The Council did not receive any testimony in opposition to this date. There was limited testimony requesting amendments to approved plan be provided sufficient grandfathering. However, under Chapter 50, any major amendment to an approved preliminary plan must follow the same procedures, meet the same criteria, and satisfy the same requirements as the original preliminary plan. Thus, any preliminary plan approved before the January 1, 2021 effective date can be amended under the SSP in effect at the time of the original approval.

For Bill 37-20, which includes changes related to the extension of an approved finding of Adequate Public Facilities, the effective date language is as follows:

> **Sec. 2. Transition.**
> The amendments made in Section 1 must apply to any requests to extend the validity period for a determination of adequate public facilities received by the Planning Board on or after January 1, 2021.

There was no correspondence regarding this transition process.

For Bill 38-20, the following amended text would implement changes to development impact taxes:

> **Sec. 2. Effective date -Transition**.
> This Act takes effect on February 26, 2021. The amendments in Section 1 [[take effect on March 1, 2021 and]] must apply to:
>
> (1) any application for a building permit filed on or after February 26, 2021; except for
>
> (2) [[that the amendments related to discounts or exemptions for projects with 25% MPDUs must only apply to]] any dwelling unit in a development for which a preliminary plan application is filed [[and accepted on or after]] prior to February 26, 2021 that includes at least 25% affordable units as defined in Sections 52-41(g)(1) through 52-41(g)(4) or 52-54(d)(1) through 52-54(d)(4).

[4] Recommendations related to the recordation tax have not yet been reviewed by either the GO Committee nor the Council.

The Planning Board draft of Bill 38-20 proposes an effective date of March 1, 2021. This revised date shortens the window for filing by two (weekend) days to accommodate the owner of an agricultural facility required to meet a February 26, 2021 deadline related to its application for a building permit and required impact tax payment.

Last, the expedited effective date for changes to the recordation tax, Bill 39-20, is noted below:

> **Sec. 2. Expedited Effective Date**.
> The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on January 1, 2021 and must apply to any transaction which occurs on or after January 1, 2021.

The GO Committee did not review proposed changes to the recordation tax during its worksessions. This transition language should be considered in conjunction with a review of the recordation tax.

SSP Rec #	Current SSP	Planning Board Recommendation	Committee Recommendations	Council Straw Votes
3.1	Name: Subdivision Staging Policy	Recommendation 3.1: Change the name of the Subdivision Staging Policy to the County Growth Policy.	PHED Committee: (3-0) in favor of changing the name to *Growth and Infrastructure Policy*.	(9-0) in favor of the PHED Committee recommendation.
4.1	Student Generation Rates are calculated for three regions in the County based on school cluster as determined by MCPS.	Recommendation 4.1: Classify county neighborhoods into School Impact Areas based on their recent and anticipated growth contexts. Update the classifications with each quadrennial update to the County Growth Policy.	Joint Committee: (4-1) in favor of Planning Board recommended School Impact Areas, with the exception of adding White Oak RDA as a separate Planning Areas changing its categorization from Turnover to Infill. CM Jawando supports reevaluation of criteria specifying two School Impact Areas (Turnover and Infill), not three.	(8-1) in favor of Committee recommendation, CM Jawando dissenting in favor of 2 School Impact Areas.
4.2	Metro Station and Purple Line Station areas are categorized by the school cluster and MCPS region (noted above) in which they're located.	Recommendation 4.2: Classify all Red Policy Areas (Metro Station Policy Areas and Purple Line Station Policy Areas) as Infill Impact Policy Areas.	Joint Committee: (5-0) in favor of Planning Board recommendation.	(9-0) in favor of Planning Board recommendation.
4.3	N/A	Recommendation 4.3: By January 1, 2021, the Planning Board must adopt a set of Annual School Test Guidelines which outline the methodologies used to conduct the Annual School Test and to evaluate the enrollment impacts of development applications and master plans.	PHED Committee: (3-0) in favor of the Planning Board recommendation.	(9-0) in favor of Planning Board recommendation.

4.4	Cluster level adequacy test and an individual adequacy test for each middle and elementary school.	Recommendation 4.4: The Annual School Test will be conducted at the individual school level only, for each and every elementary, middle, and high school, for the purposes of determining school utilization adequacy.	PHED Committee: (3-0) in favor of Planning Board recommendation for an individual school test.	(9-0) in favor Planning Board recommendation.
4.5	Annual School Test evaluates projected school utilization five years in the future. (Moratorium threshold covered under Recommendation 4.9).	Recommendation 4.5: The Annual School Test will evaluate projected school utilization three years in the future using the certain school utilization adequacy standards. (Moratorium threshold covered under Recommendation 4.9, UPP covered under Recommendation 4.16)	PHED Committee: (3-0) in favor of motion by CM Riemer to use a 4-year projection horizon. (Moratorium threshold covered under Recommendation 4.9, UPP covered under Recommendation 4.16)	(9-0) in favor of Committee recommendation.
4.6	For each application yielding net new residential dwellings, the number of students generated by the application, by school level, is compared to the available capacity under the most recent school test.	Recommendation 4.6: The Annual School Test will establish each school service area's adequacy status for the entirety of the applicable fiscal year.	PHED Committee: (2-1) in favor of the Planning Board recommendation. CM Jawando dissenting in favor of the current review process.	(8-1) in favor of the Planning Board recommendation, CM Jawando dissenting in favor of Planning Depts current process.
4.7	Annual School Test provides cluster and school level utilization analyses.	Recommendation 4.7: The Annual School Test will include a Utilization Report that will provide a *countywide* analysis of utilization at each school level.	PHED Committee: (3-0) in favor of the Planning Board recommendation.	(9-0) in favor of Planning Board recommendation.

4.8	N/A	Recommendation 4.8: The Utilization Report will also provide additional utilization and facility condition information for each school, as available.	PHED Committee: GO Committee (3-0) against Planning Board recommendation to allow credits for non-capacity improvements. In light of this, requiring school conditions in a report on utilization seems unnecessary. Planning Board has authority to place information in the Annual School Test Guidelines, as they see fit.	(9-0) against Planning Board recommendation.
4.9	Moratoria apply to any High School cluster, individual middle, or elementary school based on the following criteria. Moratorium if: any cluster above 120% utilization, or any middle school above 120% with a seat deficit ≥ 180 student seats, or any elementary school above 120% with a seat deficit ≥ 110 student seats.	Recommendation 4.9: Moratoria will only apply in Greenfield Impact Areas. The Planning Board cannot approve any preliminary plan of subdivision for residential uses in an area under a moratorium unless it meets certain exceptions. Moratoria if: In the Greenfield Impact Area, projected utilization is greater than 125% at any school, and for any middle school the seat deficit ≥188 seats, or for any elementary school the seat deficit ≥ 115 seats.	PHED Committee: (2-1) in favor of eliminating moratoria Countywide. CM Jawando dissenting, recommending Countywide moratorium at 135% utilization.	(9-0) in favor of Committee recommendation to eliminate moratorium countywide.
4.10	Allow approval in areas under moratorium if application is for no more than 3 residential dwellings or units restricted to senior living.	Recommendation 4.10: Exceptions to residential development moratoria will include projects estimated to net fewer than one full student at any school in moratorium, and projects where the residential component consists entire of senior living units.	PHED Committee: (3-0) in favor of Planning Board recommendation.	N/A

4.11	N/A	Recommendation 4.11: Establish a new exception that allows the Planning Board to approve residential development in an area under a moratorium if a school (at the same level as any school causing the moratorium) is located within 3, 5, or 10 network miles (ES, MS, or HS, respectively) of the proposed subdivision and has a projected utilization less than or equal to 105 percent.	PHED Committee: (3-0) in favor of sufficient adjacent capacity concept. Limit combined utilization to no greater than 100%. Physical extent of adjacency requirement TBD. MCPS to provide language reflecting their geographic area of consideration for capital planning.	N/A
4.12	Allow approval for projects providing a minimum of 50% affordable housing and generating less than 10 students. Also allow approval for projects replacing condemned buildings.	Recommendation 4.12: Eliminate the moratorium exception adopted in 2019 pertaining to projects providing high quantities of deeply affordable housing or projects removing condemned buildings.	PHED Committee: (3-0) against Planning Board recommendation. Retain exemptions if moratorium remains.	N/A
4.13	For all unit types, Student Generation Rates are calculated using all residential structures regardless of year built.	Recommendation 4.13: Calculate countywide and School Impact Area student generation rates by analyzing all single-family units and multifamily units built since 1990, without distinguishing multifamily buildings by height.	Joint Committee: (5-0) against Planning Board recommendation to combine multifamily into one unit type (5-0) in favor of Planning Board recommendation to use multifamily data from 1990 on	(9-0) against Planning Board recommendation to combine multifamily into one unit type (9-0) in favor of Planning Board recommendation to use multifamily data from 1990 to present.

4.14	Extension request does not require retesting.	Recommendation 4.14 Amend Chapter 50, Article II, Section 4.3.J.7. of the County Code to require a development application to be retested for school infrastructure adequacy when an applicant requests an extension of their Adequate Public Facilities validity period.	PHED Committee: (3-0) in favor of the Planning Board recommendation, however, the Committee recommends limiting the retest to projects with certain characteristics. In response, Planning recommends projects generating more than 10 students.	(9-0) in favor of the Committee recommendation.
4.15	Under the Subdivision Regulations (Ch. 50 of the County Code), MCPS is required to submit a recommendation regarding Montgomery County Public Schools, for application involving school site planning.	Recommendation 4.15: Require MCPS to designate a representative to the Development Review Committee to better tie the development review process with school facility planning. Ensure this representative has appropriate authority to represent MCPS' official positions.	PHED Committee: (3-0) in favor of the Planning Board recommendation.	(9-0) in favor of the Planning Board recommendation.

4.16	N/A	Recommendation 4.16: Require applicants to pay a Utilization Premium Payment when a school's projected utilization three years in the future exceeds 120 percent.	PHED Committee: Under Rec. 4.5 Committee (3-0) in favor of motion by CM Riemer to use a 4-year projection horizon. PHED Committee: (3-0) in favor of including a second measure of adequacy equal to seat deficit (based on program capacity) starting at 105 percent. PHED Committee: (3-0) in favor of CM Jawando recommendation to start at 105 percent overutilization At 105 percent: (2-1) in favor of the UPP set at 20 percent of the proportional impact tax for the overutilized school level. CM Jawando would set at 50 percent. Council Staff recommended 30 percent. (3-0) in favor of a second tier UPP charge at 120 percent threshold. At 120 percent: (2-1) in favor of the UPP set at 40 percent of the proportional impact tax for the overutilized school level. CM Jawando would set at 100 percent. Council	(9-0) in favor of Committee recommendation on 4-year projections. (9-0) in favor of Committee recommendation to add seat deficit adequacy measure. (9-0) in favor of Committee recommendation set first adequacy threshold at 105%. TBD (9-0) in favor of Committee recommendation set second adequacy threshold at 120%. TBD

			Staff recommended 60 percent.	
			(3-0) in favor of a third tier 135 percent threshold.	(9-0) in favor of Committee recommendation set third level adequacy threshold at 135%.
			At 135 percent: (2-1) in favor of a third tier charge set at 60 percent of the proportional impact tax for the overutilized school level. CM Jawando and Council Staff recommend moratorium.	TBD
			(3-0) in favor of specifying that revenue from the UPP can be spent on any project at the same school level that adds capacity that alleviates overutilization in the school service area from which the funds are collected.	(9-0) in favor of Committee recommendation.
			Exemptions need to be clarified. Planning Board exempted MPDUs. Council Staff agrees. Planning Board would not exempt Enterprise zone nor Opportunity zone market rate units. It would also not exempt market rate units receiving an impact tax discount.	TBD

SSP Rec. #	Current SSP	Planning Board Recommendation	Committee Recommendations	Council Straw Votes
5.1	N/A	Recommendation 5.1: Design roads immediately adjacent to new development to account for all identified recommendations from applicable planning documents including Functional Plans, Master Plans and Area Plans.	PHED Committee: (3-0) in favor of Planning Board's recommendation, except to require developers to report information to update all transportation databases.	(9-0) in favor of the PHED Committee recommendation.
5.2	N/A	Recommendation 5.2: Prioritize motor vehicle mitigation strategies designed to improve travel safety.	PHED Committee: (3-0) In Orange, Yellow, and Green Policy Areas, the priority order for motor vehicle test mitigation is: (1) transportation demand management; (2) operational improvements; and (3) roadway improvements that do not decrease safety.	(9-0) in favor of the PHED Committee recommendation.
5.3	Under the Subdivision Regulations (Ch. 50 of the County Code), DOT is required to review sufficiency of all travel modes.	Recommendation 5.3: Given the additional focus on Vision Zero principles in the development review process, designate a Vision Zero representative to the Development Review Committee to review the development application and Vision Zero elements of LATR transportation impact studies and to make recommendations regarding how to incorporate the conclusions and safety recommendations of LATR transportation impact studies.	PHED Committee: (2-0) recommend amending the Subdivision Ordinance to achieve this, which is where DRC representation and roles are stipulated in the County Code. (CM Jawando was not present for this item due to a prior commitment.)	(9-0)in favor of the PHED Committee recommendation.

5.4	N/A	Recommendation 5.4: Introduce a Vision Zero Impact Statement for all LATR studies pertaining to subdivisions that will generate 50 or more peak-hour person trips.	PHED Committee: (2-0) in favor of the Planning Board's recommendation, with revised language. (CM Jawando was not present for this item due to a prior commitment.)	(9-0) in favor of the PHED Committee recommendation.
5.5	Local Area Transportation Review (LATR) tests exist for Motor Vehicle, Bicycle, Pedestrian, and Transit (see staff report for details).	Recommendation 5.5**:** For LATR studies of new development generating 50 or more peak-hour weekday person trips, couple current multi-modal transportation adequacy tests with options that can be implemented over time utilizing Vision Zero-related tools and resources currently available and under development. When the appropriate set of tools (described in the Vision Zero Resources section above) are operational, the current multi-modal transportation adequacy tests should be updated as described below.	PHED Committee: (3-0) recommend major revisions to the Final Draft's proposed LATR Motor Vehicle, Bicycle, and Bus Transit System Adequacy Tests (see staff report). The Committee will review a proposed, broadened Pedestrian Test on October 22. It recommends taking up a proposed new Safety Test next summer/fall in an SSP amendment.	(9-0) in favor of the PHED Committee recommendations.
5.6	The Motor Vehicle System Adequacy Test standard is 120 seconds/vehicle of delay in peak periods in Metro Station (Red) Policy Areas.	Recommendation 5.6: Eliminate the LATR study requirement for motor vehicle adequacy in Red Policy Areas (Metrorail Station Policy Areas and Purple Line Station Areas).	PHED Committee: (2-1) in favor of the Planning Board's recommendation. CM Jawando dissenting, concurring with Council staff to retain the current 120 seconds/vehicle delay standard in Red Policy Areas.	(7-2) in favor of the Planning Board's recommendation. CMs Albornoz and Jawando dissenting, concurring with Council staff to retain the current 120 seconds/vehicle delay standard in Red Policy Areas.

5.7	Critical Lane Volume (CLV) must be worse than 1,350 for the more robust Highway Capacity Manual (HCM) methodology to be used to analyze traffic congestion.	Recommendation 5.7: Expand the application of the Critical Lane Volume (CLV) analysis methodology as a screening tool to determine the necessity for the application of the more robust Highway Capacity Manual (HCM) analysis methodology for the motor vehicle transportation adequacy analysis.	PHED Committee: (3-0) oppose the Planning Board's recommendation.	(9-0) concur with the PHED Committee to oppose the Planning Board's recommendation.
5.8	Current intersection congestion standards are not loosened because of an eventual Bus Rapid Transit line.	Recommendation 5.8: Increase the intersection delay standards to 1,700 CLV and 100 seconds/vehicle for transit corridor roadways in Orange and Yellow policy areas to promote multi-modal access to planned Bus Rapid Transit service in transit corridors.	PHED Committee: (3-0) oppose the Planning Board's recommendation.	(9-0) concur with the PHED Committee to oppose the Planning Board's recommendation.
N/A	N/A	N/A	PHED Committee: (3-0) in favor of CM Riemer's proposal to exempt bioscience facilities from all Local Area Transportation Review (LATR) tests, sunsetting it after 4 years.	(9-0) in favor of the PHED Committee recommendation.

5.9	Three existing policy areas around planned Purple Line stations (Chevy Chase Lake, Long Branch, and Woodside) are in the Orange category.	Recommendation 5.9: Place all Purple Line Station policy areas (existing and proposed) in the Red policy area category.	Joint Committee: (3-2) in favor of placing these areas in the Red Policy Area category. CMs Jawando and Katz dissenting, in favor of placing these areas in a new Purple Policy Area category, with impact tax rates and an intersection congestion standard midway between the Red and Orange Policy Area category rates and standards.	(6-3) in favor of the Joint Committee recommendation. CMs Glass, Jawando, and Katz dissenting, in favor of placing these areas in a new Purple Policy Area category, with impact tax rates and an intersection congestion standard midway between the Red and Orange Policy Area category rates and standards.
5.10	Not mentioned in the SSP, but the Mobility Assessment Report/Travel Monitoring Report has been produced every few years for about 15 years.	Recommendation 5.10: Continue producing the Travel Monitoring Report (formerly the Mobility Assessment Report) on a biennial schedule as a key travel monitoring element of the County Growth Policy.	PHED Committee: (2-0) in favor of the Planning Board's recommendation. (CM Jawando was not present for this item due to a prior commitment.)	(9-0) in favor of the PHED Committee recommendation.
5.11	N/A	Recommendation 5.11: The proposed auto and transit accessibility metric is the average number of jobs that can be reached within a 45-minute travel time by automobile or walk access transit.	Recommendations 5.11-15 are about measuring master plan adequacy, and so are not in the draft SSP resolution. The PHED Committee will take up these recommendations in the late fall/winter.	This matter will be taken up by the PHED Committee on December 9.
5.12	N/A	Recommendation 5.12: The proposed metric for auto and transit travel times is average time per trip, considering all trip purposes.	(See above.)	(See above.)

5.13	N/A	Recommendation 5.13: The proposed metric for vehicle miles traveled per capita is daily miles traveled per "service population," where "service population" is the sum of population and total employment for a particular TAZ.	(See above.)	(See above.)
5.14	N/A	Recommendation 5.14: The proposed metric for non-auto driver mode share is the percentage of non-auto driver trips (i.e., HOV, transit and nonmotorized trips) for trips of all purposes.	(See above.)	(See above.)
5.15	N/A	Recommendation 5.15: The proposed metric for bicycle accessibility is the Countywide Connectivity metric documented in the 2018 Montgomery County Bicycle Master Plan (page 200).	(See above.)	(See above.)
5.16	Forest Glen is in the Kensington-Wheaton Policy Area, and Montgomery Hills is in the Silver Spring-Takoma Park Policy Area. Both are in the Orange Policy Area category.	Recommendation 5.16: Create and define boundary of a Forest Glen Metro Station Policy Area.	Joint Committee: (5-0) create a Forest Glen Policy Area in the Red Policy Area category. Joint Committee: (3-2) in favor of the Planning Board's recommended boundary, CMs Jawando and Katz dissenting.	(9-0) in favor of creating a Forest Glen Policy Area in the Red Policy Area category. (8-1) in favor of the Planning Board recommendation, CM Jawando dissenting.

N/A	Half-mile walksheds around the Medical Center and Takoma Metro Stations are in the Bethesda-Chevy Chase and Silver Spring-Takoma Policy Areas, respectively; both are Orange Policy Areas.	Council staff Recommendation: Create and define boundaries of Medical Center and Takoma Metro Station Policy Areas.	Joint Committee: (5-0) in favor of Council staff's recommendations.	(9-0) in favor of the Joint Committee recommendations.
5.17	The Academy of the Holy Cross and St. Angela Hall properties are in the North Bethesda Policy Area, in the Orange category. Both properties are within the half-mile walkshed of the Grosvenor-Strathmore Metro Station.	Recommendation 5.17: Expand the boundary of the Grosvenor-Strathmore Metro Station Policy Area.	Joint Committee: (5-0) in favor of the Planning Board's recommendation to move these properties from the North Bethesda Policy Area to the Grosvenor-Strathmore Policy Area.	(9-0) in favor of the Planning Board and Joint Committee recommendation.
5.18-5.19	Policy Areas exist around the planned Chevy Chase Lake, Long Branch, and Takoma/Langley Purple Line Stations. All are in the Orange Policy Area category.	Recommendations 5.18-19: Create and set the boundaries for Purple Line Policy Stations at Lyttonsville/Woodside and Dale Drive/Manchester Place.	Joint Committee: (5-0) revise the boundary of the Chevy Chase Lake Policy Area, create Lyttonsville and Woodside Policy Areas, and create a Purple Line East Policy Area that encompasses the existing Takoma/Langley and Long Branch Policy Areas and the proposed Dale Drive/Manchester Place Policy Area. The boundaries of these areas roughly correspond to the half-mile walksheds around planned Purple Line Stations.	(9-0) in favor of the Joint Committee recommendation.

SSP Rec #	Current SSP	Planning Board Recommendation	Committee Recommendations	Council Straw Votes
6.1	For all unit types, Student Generation Rates are calculated using all residential structures regardless of year built.	Recommendation 6.1: Change the calculation of school impact taxes to include one tax rate for all multifamily units, in both low-rise and high-rise buildings, based on the student generation rate for multifamily units built since 1990.	Joint Committee: (5-0) in favor of Planning Board recommendation to use multifamily data since 1990 for calculation of student generation rates. (5-0) against Planning Board recommendation to combine low-rise and high-rise units into one category.	(9-0) against Planning Board recommendation to combine multifamily into one unit type. (9-0) in favor of Planning Board recommendation to use multifamily data from 1990 on.
6.2	School impact taxes are set at 120% of the cost of student seat using countywide Student Generation Rates. No discount based on geographic location.	Recommendation 6.2: Calculate standard school impact taxes at 100% of the cost of a student seat using School Impact Area student generation rates. Apply discount factors to single-family attached and multifamily units to incentivize growth in certain desired growth and investment areas and maintain the current 120% factor within the Agricultural Reserve Zone.	(a) Joint Committee: (4-1) in favor of regional student generation rates based Planning Board recommended School Impact Areas. CM Jawando dissenting, in favor of two School Impact Areas following re-evaluation using additional criteria.	(8-1) in favor of Committee recommendation, CM Jawando dissenting in favor of 2 School Impact Areas.
			(b) GO Committee: (3-0) in favor of Planning Board recommendation to set tax at 100% cost of a student seat.	(9-0) in favor of Planning Board recommendation.
			(c) GO Committee: (3-0) against Planning Board recommendation to discount impact taxes in desired growth areas.	(9-0) against Planning Board recommendation to discount desired growth areas (CM Riemer in favor of general idea to support more development in these areas).
			(d) GO Committee: (3-0) against Planning Board recommendation to retain higher cost calculation (120%) for AR zone.	(9-0) against Planning Board recommendation to retain higher per student seat cost in AR zone.

N/A	N/A	N/A	Proposal by CM Friedson to apply the Planning Board recommended discount for Desired Growth Areas (DGAs) to the transportation impact tax instead of the school impact tax, exempting DGAs in Rockville and Red Policy Areas. The discount would be 40% for DGAs in Orange Policy Areas and 32% for DGAs in Yellow Policy Areas.	(6-3) in favor of Councilmember Friedson's proposal, CMs Jawando, Hucker and Glass dissenting.
N/A	N/A	N/A	Proposal by CMs Riemer and Friedson to create a transportation impact tax category for Agritourism storage and processing facilities, and assigning them a $0/sf rate.	(9-0) in favor of CMs Riemer's and Friedson's proposal.
6.3	Credits are allowed for improvements that add capacity or for the dedication of land under certain circumstances.[1]	Recommendation 6.3: Allow a school impact tax credit for any school facility improvement constructed or funded by a property owner with MCPS's agreement.	GO Committee: (3-0) against Planning Board recommendation to allow impact tax credit for providing non-capacity adding improvements	(9-0) against Planning Board recommendation to allow credit for non-capacity adding improvements.
6.4	Single-family units are charged an additional $2.00 for each square foot of gross floor area that exceeds 3,500 square feet, to a maximum of 8,500 square feet.	Recommendation 6.4: Eliminate the current school impact tax surcharge on residential units larger than 3,500 square feet.	GO Committee: (3-0) in favor of the Planning Board recommendation.	(8-1) in favor of Committee recommendation, CM Glass dissenting in favor of retaining the surcharge.

[1] Where the density calculated for the dedication area is excluded from the density calculation for the development site, and the Montgomery County School Board agrees to the site dedication.

6.5	Residential development in an Enterprise zones or former Enterprise zones re exempt from payment if the school impact tax.	Recommendation 6.5: Eliminate the current impact tax exemptions for development in former Enterprise Zones.	GO Committee: (2-0) in favor of the Planning Board recommendation. (CM Katz recused himself from vote)	(8-0) in favor of Planning Board recommendation, CM Katz recused himself from the vote.
6.6	N/A	Recommendation 6.6: Any development located in a Qualified Opportunity Zone certified by the United States Treasury Department is exempt from development impact taxes.	GO Committee: (2-0) in favor of the Planning Board recommendation. (CM Katz recused himself from vote)	(7-1) in favor of the Planning Board recommendation with the modification to remove the Opportunity zone in the City of Rockville, CM Jawando dissenting, CM Katz recused himself from the vote.
N/A	N/A	N/A	Proposal by CM Jawando to allow a per unit 40 percent impact tax credit for construction of 2-bedroom units and a 60 percent credit for 3-bedroom units in Infill School Impact Areas to encourage family accessible multifamily housing near transit. GO Committee discussed but did not reach a recommendation. Requested relative construction cost information from Planning.	(7-2) in favor of CM Jawando's proposal as amended by CM Rice to limit credit to 3-bedroom units only, CM Katz and CM Friedson dissenting in favor of additional information on other possible incentives for construction of three bedroom units.

6.7	All residential units in a project providing a minimum of 25% of the units as affordable to households earning below 60% of AMI are exempt from the school impact tax.	Recommendation 6.7: Modify the current impact tax exemptions applied to all housing units when a project includes 25% affordable units to: require the affordable units be placed in the county's or a municipality's MPDU program, and limit the exemption amount to the lowest standard impact tax in the county for the applicable dwelling type.	GO Committee: (3-0) in favor of both parts of the Planning Board recommendation.	(9-0) in favor of the Planning Board recommendation regarding MPDU requirement. (9-0) in favor of the Planning Board recommendation modified to discount equal to the applicable structure type rate in the Infill School Impact Area and Red Policy Area.
6.8	Impact taxes are levied on net new units. Units that replace demolished units are exempt from the school impact tax if the reconstruction occurs within 1 year.	Recommendation 6.8: Continue to apply impact taxes on a net impact basis, providing a credit for any residential units demolished.	GO Committee: (3-0) in favor of retaining application of impact taxes on a net new basis. CM Riemer proposed changing time limit from one year to 4 years, and changing trigger from construction to application for a building permit. CM Friedson requested addition of a waiver for applicants whose delay is the through no action of their own.	(9-0) in favor of the Committee recommendation.
N/A	Transportation impact taxes can be used—and credit can be granted—for adding roadway capacity.	DOT recommendation: Define clearly that adding roadway capacity means adding through travel lanes or turning lanes at intersections.	GO Committee: (3-0) in favor of DOT's recommendation.	(9-0) in favor of DOT's recommendation.
N/A	N/A	N/A	Rockville's proposal to combine the King Buick parcel in Shady Grove Policy Area with an adjacent parcel in the Rockville City Policy area, and to treat the combined parcels as Red Policy Area for transportation impact tax purposes.	(9-0) in favor of implementing Rockville's proposal by establishing the combined parcel as a satellite of the Rockville Town Center Policy Area, effective when and if the City annexes the King Buick parcel.

6.9	For each \$500 that the sale price of a residential unit exceeds \$100,000: • \$2.37 to MCPS CIP and • \$2.08 to the General Fund. For each \$500 that the sale price of a residential unit exceeds \$500,000: • \$2.30 split evenly between the County CIP and rental assistance. Exempt: • First \$100,000 of consideration payable if unit is the homebuyer's principal residence.	Recommendation 6.9: Incorporate progressive modifications into calculation of the Recordation Tax to provide additional funding for school construction and the county's Housing Initiative Fund. For each \$500 that the sale price of a residential unit exceeds \$100,000: • \$2.87 to MCPS CIP and • \$2.08 to the General Fund. For each \$500 that the sale price of a residential unit exceeds \$500,000: • \$2.30 split evenly between the County CIP and rental assistance and • \$0.50 to MCPS CIP. For each \$500 that the sale price of a residential unit exceeds \$1 million: \$1 to HIF. Exempt: • First \$100,000 of consideration payable if unit is the homebuyer's principal residence. • First \$500,000 of consideration payable if purchaser is a first-time home buyer and it's the home buyer's principal residence.	GO Committee: Did not discuss this recommendation.	TBD

PHED Committee Threshold Recommendations 4-year Projection Horizon		
Utilization Threshold		
105%	**120%**	**135%**
Utilization Premium Payment 20% of Impact Tax – CMs Friedson and Riemer 50% of Impact Tax – CM Jawando	**Utilization Premium Payment** 40% of Impact Tax – CMs Friedson and Riemer 100% of Impact Tax – CM Jawando	**Utilization Premium Payment** 60% of Impact Tax – CMs Friedson and Riemer Moratorium – CM Jawando
High Schools		
J. H. Blake	M. Blair	Walter Johnson
Gaithersburg	W. Churchill	Quince Orchard
Northwest	Clarksburg	
	Albert Einstein	
	R. Montgomery	
Middle Schools		
	Argyle	
Elementary Schools		
Ashburton	Bethesda	Bannockburn
L. Barnsley	Burning Tree	Highland View
Burtonsville	Diamond	Mill Creek
Capt. Daly	Greencastle	
Farmland	J. A. Resnik	
S. Matsunaga	Watkins Mill	
R. C. Forest		
Snowden Farm		
South Lake		

Proposed School Impact Tax Rates

	CURRENT	JOINT COMMITTEE			PLANNING BOARD							
	Countywide	Infill	Turnover	Greenfield	Infill		Turnover			Greenfield		
					Standard	DGA	Standard	DGA	AR Zone	Standard	DGA	AR Zone
Single-Family Detached	$26,207	$20,130	$21,530	$33,809	$19,707	$19,707	$21,582	$21,582	$25,898	$33,809	$33,809	$40,571
Single-Family Attached	$27,598	$18,063	$23,884	$28,691	$17,311	$10,387	$23,928	$14,357	$28,714	$28,691	$28,691	$34,429
Multifamily Low-rise	$21,961	$6,448	$11,555	$15,582	$4,370	$2,622	$9,688	$5,813	$11,626	$24,898	$24,898	$29,878
Multifamily High-rise	$6,113	$3,193	$2,326	$5,279	$4,370	$2,622	$9,688	$5,813	$11,626	$24,898	$24,898	$29,878

Rate changes from Current Rates

	CURRENT	JOINT COMMITTEE			PLANNING BOARD							
	Countywide	Infill	Turnover	Greenfield	Infill		Turnover			Greenfield		
					Standard	DGA	Standard	DGA	AR Zone	Standard	DGA	AR Zone
Single-Family Detached		-6,077	-4,677	7,602	-6,500	-6,500	-4,625	-4,625	-309	7,602	7,602	14,364
Single-Family Attached		-9,535	-3,714	1,093	-10,287	-17,211	-3,670	-13,241	1,116	1,093	1,093	6,831
Multifamily Low-rise		-15,513	-10,406	-6,379	-17,591	-19,339	-12,273	-16,148	-10,335	2,937	2,937	7,917
Multifamily High-rise		-2,920	-3,787	-834	-1,743	-3,491	3,575	-300	5,513	18,785	18,785	23,765

% Change from Current Rates

	CURRENT	JOINT COMMITTEE			PLANNING BOARD							
	Countywide	Infill	Turnover	Greenfield	Infill		Turnover			Greenfield		
					Standard	DGA	Standard	DGA	AR Zone	Standard	DGA	AR Zone
Single-Family Detached		-23%	-18%	29%	-25%	-25%	-18%	-18%	-1%	29%	29%	55%
Single-Family Attached		-35%	-13%	4%	-37%	-62%	-13%	-48%	4%	4%	4%	25%
Multifamily Low-rise		-71%	-47%	-29%	-80%	-88%	-56%	-74%	-47%	13%	13%	36%
Multifamily High-rise		-48%	-62%	-14%	-29%	-57%	58%	-5%	90%	307%	307%	389%

1. Example of Committee Impact Tax Rates plus UPP of 20% at the Elementary Level and 40% at the High School Level												
	Infill				Turnover				Greenfield			
	sfd	sfa	low	high	sfd	sfa	low	high	sfd	sfa	low	high
Impact Tax	$20,130	$18,063	$6,448	$3,193	$21,530	$23,884	$11,555	$2,326	$33,809	$28,691	$15,582	$5,279
20% UPP ES Level	$1,678	$1,505	$537	$266	$1,794	$1,990	$963	$194	$2,817	$2,391	$1,299	$440
40% UPP HS Level	$2,684	$2,408	$860	$426	$2,871	$3,185	$1,541	$310	$4,508	$3,825	$2,078	$704
Impact Tax + UPP	$24,492	$21,976	$7,845	$3,885	$26,195	$29,059	$14,059	$2,830	$41,134	$34,907	$18,959	$6,423
Difference from current	($1,715)	($5,622)	($14,116)	($2,228)	($12)	$1,461	($7,902)	($3,283)	$14,927	$7,309	($3,002)	$310

2. Example of Committee Impact Tax Rates plus UPP of 50% at the Elementary Level and 100% at the High School Level												
	Infill				Turnover				Greenfield			
	sfd	sfa	low	high	sfd	sfa	low	high	sfd	sfa	low	high
Impact Tax	$20,130	$18,063	$6,448	$3,193	$21,530	$23,884	$11,555	$2,326	$33,809	$28,691	$15,582	$5,279
50% UPP ES Level	$4,194	$3,763	$1,343	$665	$4,485	$4,976	$2,407	$485	$7,044	$5,977	$3,246	$1,100
100% UPP HS Level	$6,710	$6,022	$2,150	$1,064	$7,176	$7,962	$3,852	$776	$11,270	$9,564	$5,194	$1,760
Impact Tax + UPP	$31,034	$27,848	$9,941	$4,922	$33,191	$36,822	$17,814	$3,587	$52,123	$44,232	$24,022	$8,139
Difference from current	$4,827	$250	($12,020)	($1,191)	$6,984	$9,224	($4,147)	($2,526)	$25,916	$16,634	$2,061	$2,026

1. For each School Impact Area, the first example shows the change in the impact tax plus the added UPP for a project where the elementary school serving the development is over the 105 % utilization threshold requiring a UPP of 20% of the applicable impact tax at the elementary level and where the high school is over the 120% utilization threshold requiring a UPP of 40% of the applicable impact tax at the high school level.

2. For each School Impact Area, the second example shows the change in the impact tax plus the added UPP for a project where the elementary school serving the development is over the 105% utilization threshold requiring a UPP of 50% of the applicable impact tax at the elementary level and where the high school is over the 120% utilization threshold requiring a UPP of 100% of the applicable impact tax at the high school level.

Planning Board Recommendation ($0.50, $0.50, $1.00)						
	FY19	Total Number of Intervals of $500 above $100,000	Additional Revenue from $0.50 increase	Total Number of Intervals of $500 above $500,000	Additional Revenue from $0.50 increase to MCPS	Total Additional Revenue
Schools CIP	$62,038,090	26,176,409.28	$13,088,204.64			
General Fund	$54,671,817					
County CIP and Rent Assistance	$31,809,200			13,830,086.96	$6,915,043.48	
	$86,481,017				**Total MCPS CIP**	$20,003,248.12
					Total HIF $1	$2,027,000.00
					Total Recordation Tax Increase	**$22,030,248.12**

Scenario 1. ($0.10, $0.25, $0.50)						
	FY19	Total Number of Intervals of $500 above $100,000	Additional Revenue from $0.10 increase	Total Number of Intervals of $500 above $500,000	Additional Revenue from $0.25increase to MCPS	Total Additional Revenue
Schools CIP	$62,038,090	26,176,409.28	$2,617,640.93			
General Fund	$54,671,817					
County CIP and Rent Assistance	$31,809,200			13,830,086.96	$3,457,521.74	
	$86,481,017				**Total MCPS CIP**	$6,075,162.67
					Total HIF $0.50	$1,013,500.00
					Total Recordation Tax Increase	**$7,088,662.67**

Scenario 2. ($0.10, $0.10, $0.25)						
	FY19	Total Number of Intervals of $500 above $100,000	Additional Revenue from $0.10 increase	Total Number of Intervals of $500 above $500,000	Additional Revenue from $0.10 increase to MCPS	Total Additional Revenue
Schools CIP	$62,038,090	26,176,409.28	$2,617,640.93			
General Fund	$54,671,817					
County CIP and Rent Assistance	$31,809,200			13,830,086.96	$1,383,008.70	
	$86,481,017				**Total MCPS CIP**	$4,000,649.62
					Total HIF $0.25	$506,750.00
					Total Recordation Tax Increase	**$4,507,399.62**

Scenario 3. ($0.25, $0.25, $0.50)						
	FY19	Total Number of Intervals of $500 above $100,000	Additional Revenue from $0.25 increase	Total Number of Intervals of $500 above $500,000	Additional Revenue from $0.25 increase to MCPS	Total Additional Revenue
Schools CIP	$62,038,090	26,176,409.28	$6,544,102.32			
General Fund	$54,671,817					
County CIP and Rent Assistance	$31,809,200			13,830,086.96	$3,457,521.74	
	$86,481,017				**Total MCPS CIP**	$10,001,624.06
					Total HIF $0.50	$ 1,013,500.00
					Total Recordation Tax Increase	**$11,015,124.06**

Fiscal Impact Statement
Bill 38-20, Taxation – Development Impact Taxes for Transportation and Public School Improvements - Amendments

1. Legislative Summary

Bill 38-20 would amend transportation and school impact tax district designations and the impact tax rates that apply in these districts. Bill 38-20 would also modify the applicability of development impact tax exemptions for certain uses and in certain locations, and generally amend the law governing transportation and school development impact taxes. This Bill is part of the Planning Board's recommended changes to the Subdivision Staging Policy.

The Planning Board recommends tax changes to be included in Bill 38-20 as follows:

- Apply one tax rate for all multifamily units in both low-rise and high-rise buildings;
- calculate the standard school impact taxes at 100% of the cost of a student seat using the newly created School Impact Area student generation rates, but apply a discount to single-family attached and multifamily units to incentivize growth in certain Desired Growth and Investment Areas (DGA), and maintain the current 120% factor within the Agricultural Reserve Zone; Type text here
- allow a school impact credit for any school facility improvement constructed or funded by a property owner if the Montgomery County School Board agrees to the improvement;
- eliminate the school impact tax surcharge of $2 for each square foot of gross floor area that exceeds 3,500 s.f. to a maximum of 8,500 s.f.;
- eliminate the current impact tax exemptions from development in former Enterprise Zones;
- exempt any development in a qualified Opportunity Zones certified by the U.S. Treasury Department; and
- limit the exemption for any non-exempt dwelling unit in a development with 25% MPDUs to require paying the applicable tax discounted by an amount equal to the lowest standard impact tax rate by housing type.

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.

Bill 38-20 does not impact County expenditures related to the reporting and collection of impact taxes to reflect the proposed changes. The Office of Management and Budget (OMB) assumed the impact tax collection and reporting administered and managed by the Department of Permitting Services would be implemented within existing appropriations.

To estimate the potential changes in County revenues, OMB and the Department of Finance collaborated with Planning staff to collect data and then develop a systematic approach to evaluate each component in those proposed tax changes. We evaluated the historical/actual impact tax collections between FY15 and FY20 under the newly proposed school impact area framework, analyzed the macro-level effects on school and transportation impact tax collections resulting from the rate and structure changes, and then utilized a forecasting model developed by Finance and evaluated the pipeline data of unbuilt residential projects in the County to provide an illustrative example of the potential financial implications of the proposed impact tax rate and structure changes based on specific pipeline project locations in the County. A detailed analysis of anticipated tax changes related to the Planning Board's Subdivision Staging Policy recommendations, including changes in Bill 38-20, is presented in Attachment 1(©1-30). This analysis was included in the County Executive's comments on the proposed Subdivision Staging Policy.

Below (Table 1) summarizes the projected changes in County revenues that could be expected. Note that the forecasting analysis assumes that existing development patterns continue over the next six years, and the pipeline analysis also assumes that projects currently submitted or approved will be fully built out as is. However, future development may significantly shift as a result of the pandemic or changes in the housing market or overall economy.

Table 1. Estimated Revenue Changes from Planning Board's Recommendations on Impact Taxes and Related Fees

	No.	Planning Board's Recommendations	Estimated Revenue Changes	Annual Estimate
School Impact Taxes	6.1	Apply one tax rate for all multifamily units in both low-rise and high-rise buildings.	Forecast data shows an average $4.4M in revenue loss per year if using one-rate for multifamily units. (This amount is incorporated into the figures in 6.2 below.)	
	6.2	•Calculate the standard school impact taxes at 100% of the cost of a student seat using "new" School Impact Area student generation rates. •Apply a discount (60%) to single-family attached and multifamily units to incentivize growth in certain desired growth and investment areas (DGA). •Maintain the current 120% factor within the Agricultural Reserve Zone.	Forecasting indicates a loss of $4M in revenue loss per year if using the proposed rates. The estimate includes all unit types in all school impact areas. For Pipeline analysis, the revenue loss could be greater, estimated at $7.3M. The annual estimate uses the average between $4M and $7.3M.	(5,650,000)
	6.3	Allow school impact tax credit for any school facility improvement constructed or funded by a property owner with MCPS' agreement	No fiscal impact analysis can be performed due to data limitation.	
	6.4	Eliminate School Impact Tax Surcharge on units larger than 3,500 sf	Surcharge generated from single-family units was $1.66M per year between FY15 and FY20. If eliminated, it would likely result in approximately $1.66M in revenue loss if historical development patterns are maintained.	(1,660,000)
	4.16	Require Utilization Premium Payments for a school projected utilization exceeds 120% three years in the future	If the UPP was applied over the past six years, $3M in revenue per year could have been generated. If UPP are applied to Pipeline projects, it's estimated that $4M or more could be generated per year.	4,000,000
Tax Exemptions	6.5	Enterprise Zone Exemptions - Eliminate the current tax exemptions in former EZ	If eliminating exemption for former EZ, pipeline analysis suggested that County could gain $4.4M per year under the current rate, but only collect $2.5M from proposed rates.	2,500,000
	6.6	Opportunity Zone Exemptions - Exempt any development in Opportunity Zones	Pipeline analysis suggests that revenue loss would be $3.6M per year under current rates compared to $2.2M under proposed rates. Due to the drastic rate changes, the exemption effect in OZ would be less under proposed rates.	(2,200,000)
	6.7	25% Affordable Housing Exemptions - Limit the exemption amount to the lowest standard impact tax by housing type and place the affordable units in the MPDU Program.	Using the case study of 14 projects, the proposed rates and 25% MPDU limitation are likely to generate an additional $31.5M for all projects. Assuming those projects would take 5 years to build out, the average revenue generated per year would be $6.3M. If take 10 years to build out, the average revenue would be only $3.15M.	3,150,300

NOTE: Additionally, the Planning Board proposed a new Utilization Premium Payment (UPP) fee that developers would pay when a school's projected utilization three years in the future exceeds 120%. Although this requirement is not part of the Bill 38-20 amendments, the potential payments collected from the UPP charges were developed based on a percentage of the proposed impact tax rates, and they would have a fiscal impact on County revenues. For this reason, they are included here.

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

   As discussed in Question #2, OMB and Finance used the historical FY15-FY20 data to estimate future revenues over the next six fiscal years with the following steps:

   - Utilizing Finance's forecasting model to establish a "baseline" under the assumption of development patterns to be continued over the next six years in similar trends and under current rate structure;
   - applying a differential between the proposed rates and the average historical rates to each school impact area; and
   - forecasting the potential revenue that could have been generated if the recommended rate changes were applied, and the resulting difference indicates the likelihood of change in macro tax collections projected over the next six years.

   The forecasting under the proposed rates indicates that the County is likely to collect $24M (or 12.7%) less in school impact taxes than that of the baseline forecast under the current tax rates over the next six fiscal years. This could represent an average of $4M in revenue loss per year. When analyzing 416 projects currently existing in Planning's pipeline dataset, OMB estimated that those projects, if fully built out within a 10-year timeframe, the average revenue collected per year within the proposed rates would be $7.3M less than the current rates. Additionally, the elimination of the surcharge for single-family units would likely result in an average of $1.66M in revenue loss per year based on the historical data analysis. Without taking into consideration other changes in exemptions and new funding sources, the proposed rate structure changes with reduced and discounted taxes would likely result in a loss of $43.9M dollars from FY21-FY26.

   These reductions in impact tax revenues are partially offset by proposed changes in existing impact tax exemptions ($3.5 million/year on net). These exemption changes relate to reductions in the 25% MPDU exemption ($3,150,300/year) and elimination of impact tax exemptions in former enterprise zones ($2,500,000/year). However, the revenue increase related to the elimination of the former enterprise zone exemption is almost fully negated by the proposed new exemption for Opportunity Zones – some of which are former Enterprise Zones ($2,200,000).

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

   Not applicable.

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

   Not applicable.

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

   Bill 38 – 20 does not authorize future spending.

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

   Not applicable.

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

   Not applicable.

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

   Not applicable.

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

    Estimating impact taxes is very challenging. Impact tax revenues would vary depending on how the currently approved projects move forward and how, or if, developers respond to the amended tax rates for newly established school impact areas and desired growth areas, exemption changes, and the new UPP requirement. It is difficult to predict future shifts in market demand and individual developer's decision-making.

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

    Revenue generated from impact tax collections is generally difficult to project due to market volatility or other conditions which can impact the timing and scope of individual projects. As previously noted, it is difficult to estimate how many developers may adjust their development plans as each project's cost/benefit analysis is unknown to the County.

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

    Not applicable.

13. **Other fiscal impacts or comments.**

    Not applicable.

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

    Dennis Hetman, Department of Finance
    Mary Beck, Office of Management and Budget
    Pofen Salem, Office of Management and Budget
    Estela Boronat de Gomes, Office of Management and Budget

Jennifer Bryant, Acting Director
Office of Management and Budget

09/11/20
Date

Fiscal Impact Statement
Expedited Bill 39-20, Taxation - Recordation Tax - Amendments

1. Legislative Summary

Expedited Bill 39-20 will increase the rate of the recordation tax levied under the state law for certain transactions involving the transfer of property and would establish a partial exemption from the recordation tax for a first-time home buyer. Bill 39-20 would also amend the allocation of revenue received from the recordation tax to capital improvements for schools and to the Montgomery Housing Initiative Fund.

Table 1. Rate changes under the current law vs. the Planning Board's proposal

(1) For each $500 of Debt to $499,999		**Current Rate**		**Proposed Rate**	
General Fund	$	2.08	$	2.08	
MCPS Capital Improvement	$	2.37	$	2.87	a)
Subtotal	**$**	**4.45**	**$**	**4.95**	
(2) for each $500 of Debt Between $500,000 to $999,999					
(A) Premium $2.30					
Capital Improvement	$	1.15	$	1.15	
Rent assistance	$	1.15	$	1.15	
(B) MCPS Capital Improvement			$	0.50	b)
Subtotal (cumulative)	**$**	**6.75**	**$**	**7.75**	
(3) for each $500 of Debt over $1,000,000					
Montgomery Housing Initiative			$	1.00	c)
Total Recordation Tax Pay (cumulative)	**$**	**6.75**	**$**	**8.75**	
Exemptions 52-16B (b):		**Current**		**Proposed**	
(1) owner-occupied residential property 7 month of 12 month after the property is conveyed.		$100,000		$100,000	
(2) If the buyer of the property is a first time home buyer.		N/A		$500,000	d)

Current Rates Sec 52-16B (a) and 52-16B (b) County Code

Proposed rate changes:

a) Increase the current tax rate of $2.37 by $0.50 to $2.87 for each $500 interval of which net revenue is reserved or allocated to capital improvements to schools;

b) Increase of another $0.50 for each $500 or fraction of $500 of the amount over $500,000 of which the net revenue is reserved or allocated to the cost of capital improvements to schools;

c) Increase of an additional $1.00 for each $500 or fraction of $500 of the amount over $1,000,000 of which net revenue is reserved for and allocated to the Montgomery Housing Initiative under Section 25B-9; and

d) Exempt from the recordation tax the first $500,000 of the consideration payable if the buyer of that property is a first-time home buyer. (Exemption applies only to recordation tax for residential units.)

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.

With the exception of the one-time cost for software modification and testing outlined in item #7, Bill 39-20 does not impact County expenditures related to the reporting and collection of recordation tax required by the proposed changes.

Table 2. Analysis of Recordation Tax Collections

Office of Management and Budget (OMB) and Department of Finance (Finance) calculated the proposed rate collection based on FY2019 actual collections and home sale data from Market Statistics, and assumed all first-time homebuyers purchased homes with cost of less than $500,000 to estimate the potential exemption.

Recordation Tax	Funding Allocation	Current Rate	Proposed Rate Changes		
		FY19 Tax Collection	Additional Revenue for School CIP	Additional Revenue for MHI	Increases Related to Rate Increase
BASE - for each $500 that the sales price <$500K	General Fund	$ 54,465,614			$ -
	MCPS Capital Improvement	$ 62,038,090	$ 13,088,205		$ 13,088,205
PREMIUM -for each $500 that the sales price >$500K	MCPS Capital Improvement	$ 15,904,800	$ 6,915,087		$ 6,915,087
	Rent Assistance	$ 15,904,599			
MHI - for $500 that the sales price >$1M	Montgomery Housing Initiative (MHI)	$ -		$ 2,027,000	$ 2,027,000
	Total	**$ 148,313,103**	**$ 20,003,291**	**$ 2,027,000.00**	**$ 22,030,292**

Calculation of the additional revenue for schools CIP is based on Montgomery Planning (Planning) staff's estimate as validated by the Department of Finance. Planning applied the historical recordation tax collection data for FY19 from the Treasury Division (Department of Finance) to the proposed new tax rates related to MCPS Capital Improvement. With this approach, the proposed change would have generated $20M more in revenues for MCPS CIP.

Calculation of the additional revenue for MHI ($2.03M), and the First-Time Homebuyers exemption (-$13M) was calculated based on data published by MarketStat in the Market Statistics Report for 2019. Using this data, Finance and OMB were able to group home sales into tiers that matched the recordation tax tiers. The 2019 Montgomery County home sales data was then used to calculate revenues under the current and proposed rates to determine the additional revenues for home sales over $1M. Then, based on the assumption that first time homebuyers would fall into the lowest tier of home sales (<$500K), the calculated number of first-time homebuyers was multiplied by the average sales price in the lower tier of home sales. (Table 3)

Table 3. First Time Homebuyers Exemption

2019 Home Sales	# of Sales	Average Sold Price (Est.)	Current Rate	Proposed Rate Changes			% Change
			Amount	Estimated Amount	Est. Exemption (1st $500K for 1st Homebuyer)	Total Amount	
>$100,000 to <$499,999	7,290	$ 330,062	$ 14,926,635	$ 16,603,785	$ (13,005,007)	$ 3,598,778	-76%
>$500K to <$999,999	4,247	$ 689,958	$ 26,010,445	$ 29,322,745	$ -	$ 29,322,745	13%
>$1M	1,180	$ 1,858,898	$ 25,848,050	$ 31,554,050	$ -	$ 31,554,050	22%
Total Residential	**12,717**	**$ 554,555**	**$ 66,785,130**	**$ 77,480,580**	**$ (13,005,007)**	**$ 64,475,573**	**-3%**

Notes

1. The data source is the 2019 home sales reported by Market Statistics; the calculation reflects the existing tax exemption for the first $100,000 of the sales price if it is the homebuyer's principal residence.
2. The Housing Center of the American Enterprise Institute reported a 44.9% 2019 share of first-time homebuyers for Montgomery County in 2019. The calculated exemption by OMB and Finance assumes the proposed policy change of exempting the first $500K of the sales price for first-time homebuyers.
3. Market Statistics home sales data reports FHA first time homebuyers. First time home buyer definition: (HUD, FHA) "an individual who has had no ownership in a **principal residence** during the **3-year** period ending on the date of purchase of the property. This includes a spouse (if either meets the above test, they are considered first-time homebuyers). NOTE: In an effort to find first time homebuyer data more consistent with state definitions, OMB and Finance requested information from the Circuit Court. This data was not available.
4. Using 2019 data, we estimate that the exemption for the first-time homebuyers whose sales price is less than $500K would yield a loss of approximately $13.01M.

Table 4: Summary of Recordation Tax Resulting from Proposed Rate Changes

Proposed Rate changes applied to FY19 collection	
Additional Revenue for School CIP	$ 20,003,292
Additional Revenue for MHI	$ 2,027,000
Exemption for First-time Homebuyers (<$500)	$ (13,005,007)
Total Estimated Revenue	$ 9,025,285

Based on FY19/CY19 data, we could expect to receive an additional $22M or 14.8% increase in recordation tax revenues without the new first-time homebuyer exemption. However, with the new exemption, we expect a $13M loss in revenue, for a net increase of $9.03M in recordation tax revenues.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**
If the proposed changes are approved, the direct impact of the estimated tax exemption for first-time homebuyers will have a negative revenue impact ($5.5M loss estimated) on the General Fund, though additional revenue generated for the Schools CIP and MHI would

more than offset these losses across all funds. Table 5 shows the revenue estimated for the next 6 years by fund, assuming development and housing markets do not deviate from historical trends.

Table 5: Summary of Estimated Revenue Changes by Fund Type

Recordation Tax Proposed Bill 39-20 - Annual Estimated Revenue changes by Fund Type		Forecast-"Proposed Rates" FY21-FY26
MCPS Capital Improvement increase	$ 12,463,015	$ 74,778,088
Montgomery Housing Initiative increase	$ 2,027,000	$ 12,162,000
General Fund Operating decrease	$ (5,464,730)	$ (32,788,381)
Grand Total Revenue increase	**$ 9,025,285**	**$ 54,151,707**

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.
Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.
Not applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.
Finance, which administers this tax, does not expect later actions that may affect future revenue and expenditures nor does this bill authorize future spending

7. An estimate of the staff time needed to implement the bill.
There are additional one-time costs required of Finance to implement Bill 39-20. Changes will have to be made in Oracle, the recordation tax system adopted in June 2020, and in the County's own recently developed system for administering transfer and recordation taxes for transactions that cannot be processed by Simplifile. Testing should precede the implementation when developing changes for any of the mentioned systems. Implementation will require the equivalent of at least 0.5 workyears in total- comprised of roughly 50-50 split between technical and functional staff, and will also require coding by the proprietary software companies. Finance estimates at least 1,040 work-hours will be needed to reconfigure the IT system to track and monitor recordation tax collections at an estimated cost of $65,000.

8. An explanation of how the addition of new staff responsibilities would affect other duties.
Not applicable.

9. An estimate of costs when an additional appropriation is needed.
Not applicable.

10. **A description of any variable that could affect revenue and cost estimates.**
The variables that could affect the revenue estimates are:
    - Overall recordation tax activity (purchases of homes and commercial properties, refinancing, etc.)
    - Real estate market conditions;
    - The percent of first-time home buyers and price of homes they purchase.

11. **Ranges of revenue or expenditures that are uncertain or difficult to project.**
Not applicable.

12. **If a bill is likely to have no fiscal impact, why that is the case.**
Not applicable.

13. **Other fiscal impacts or comments.**
Not applicable.

14. **The following contributed to and concurred with this analysis:**
David Platt, Department of Finance
Mary Beck, Office of Management and Budget
Estela Boronat de Gomes, Office of Management and Budget
Pofen Salem, Office of Management and Budget

______________________________________ **10/2/20**

Jennifer Bryant, Acting Director — Date
Office of Management and Budget

Bill No. 37-20
Concerning: Subdivision – Preliminary Plan – Adequate Public Facilities – Amendments
Revised: 10/14/2020 Draft No. 3
Introduced: July 29, 2020
Expires: January 29, 2022
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: None
Ch. ____, Laws of Mont. Co. ______

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the Planning Board

AN ACT to:

(1) **[[**require an applicant**]]** authorize the Planning Board, when reviewing an application for an extension of the validity period of an adequate public facilities determination, to **[[**provide**]]** require an updated determination of school adequacy for the remaining unbuilt units; and

(2) generally amend the law governing a determination of adequate public facilities

By amending
Montgomery County Code
Chapter 50, Subdivision of Land
Division 50.4, Section 4.3

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

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

Sec. 1. Division 50.4, Section 4.3 is amended as follows:

4.3. Technical Review

* * *

J. *Adequate Public Facilities Ordinance (APFO).*

* * *

7. *Extensions*.

a. *Application*. Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.

* * *

iii. For each extension of an adequate public facilities determination:

(a) the applicant must not propose any additional development above the amount approved in the original determination;

(b) the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;

(c) the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest;**[**and**]**

(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot**[.]**; and

(e) if the remaining unbuilt units would generate more than 10 students at any school serving the development, the **[[**applicant**]]** Board must **[[**provide**]]** make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.

*   *   *

g. If a new adequate public facilities determination is required under this Subsection, the procedures in Chapter 8, Section 8-32 apply.

Sec. 2. Transition.

The amendments made in Section 1 must apply to any requests to extend the validity period for a determination of adequate public facilities received by the Planning Board on or after January 1, 2021.

Approved:

____

Sidney Katz, President, County Council Date

Approved:

____

Marc Elrich, County Executive Date

This is a correct copy of Council action.

____

Selena Mendy Singleton, Clerk of the Council Date

Bill No. 38-20
Concerning: Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments
Revised: 11/06/2020 Draft No. 10
Introduced: July 29, 2020
Expires: January 29, 2022
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. _____, Laws of Mont. Co. _________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the Planning Board

AN ACT to:

(1) update transportation and school impact tax districts;
(2) establish impact tax rates by school impact tax districts;
(3) eliminate the school impact tax premium on certain types of dwelling units;
(4) modify the applicability of development impact tax exemptions for certain uses and in certain locations; **[[**and**]]**
(5) establish a Utilization Premium Payment for certain developments to reduce school overcapacity; **[[**and**]]**
(6) define an agricultural facility;
(7) provide a discount on certain impact tax rates for certain types of developments and for developments in certain areas; and
(8) generally amend the law governing transportation and school development impact taxes.

By amending
Montgomery County Code
Chapter 52, Taxation
Sections 52-39, 52-41, 52-49, 52-50, 52-52, 52-54, 52-55, **[[**and**]]** 52-58, and 52-59

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

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

Sec. 1. Sections 52-39, 52-41, 52-49, 52-50, 52-52, 52-54, 52-55, [[and]] 52-58, and 52-59 are amended as follows:

52-39. Definitions.

In this Article the following terms have the following meanings:

Additional capacity means a new road, **[[**widening an existing road,**]]** adding an additional lane or turn lane to an existing road, or another transportation improvement that:

(1) increases the maximum theoretical volume of traffic that a road or intersection can accommodate, or implements or improves transit, pedestrian and bike facilities or access to non-auto modes of travel; and

(2) is classified as a minor arterial, arterial, parkway, major highway, controlled major highway, or freeway in the County's Master Plan of Highways, or is similarly classified by a municipality. The Director of Transportation may find that a specified business district street or industrial street also provides additional capacity as defined in this provision.

Adequate Public Facilities Ordinance policy area transportation adequacy standards means standards by which the area-wide adequacy of transportation facilities serving a proposed development are judged. APFO policy area transportation adequacy standards do not include requirements for other on-site or off-site transportation improvements that may be separately required or standards relating to local area review which may be independently required.

Agricultural facility means a building or structure, or portion of a building or structure that is used exclusively for the storage or processing of an agricultural product to prepare the product for market and is located in the Agricultural Reserve, Rural Residential, RE-1 or RE-2 Zones.

Applicant means the property owner, or duly designated agent of the property owner, of land on which a building permit has been requested for development.

* * *

52-41. Imposition and applicability of development impact taxes.

* * *

(c) The following impact tax districts are established:

(1) *White Flint:* The part of the White Flint Metro Station Policy Area included in the White Flint Special Taxing District in Section 68C-2;

(2) *Red Policy Areas:* Bethesda CBD, Chevy Chase Lake, **[[**Dale Drive/Manchester Place,**]]** Forest Glen, Friendship Heights, Grosvenor, Glenmont, **[[**Long Branch, Lyttonsville/Woodside**]],** Lyttonsville, Medical Center, Purple Line East, Rockville Town Center, Shady Grove **[[**Metro Station**]]**, Silver Spring CBD, **[[**Takoma/Langley**]]** Takoma, Twinbrook, **[[**and**]]** Wheaton CBD and Woodside;

(3) *Orange Policy Areas:* Bethesda/Chevy Chase, Burtonsville Crossroads, **[**Chevy Chase Lake,**]** Clarksburg Town Center, Derwood, Gaithersburg City, Germantown Town Center, Kensington/Wheaton, **[**Long Branch,**]** North Bethesda, R&D Village, Rockville City, Silver Spring/Takoma Park, **[**Takoma/Langley,**]** White Flint, except the portion that is included in the White Flint Special Taxing District in Section 68C-2, and White Oak Policy Areas;

(4) *Yellow Policy Areas:* Aspen Hill, Clarksburg, Cloverly, Fairland/Colesville, Germantown East, Germantown West, Montgomery Village/Airpark, North Potomac, Olney, and Potomac Policy Areas; and

(5) *Green Policy Areas:* Damascus, Rural East, and Rural West Policy Areas.

* * *

(g) A development impact tax must not be imposed on:

(1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville**[**,**]**<u>;</u>

(2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning less than 60% of the area median income, adjusted for family size;

(3) any Personal Living Quarters unit built under **[**Sec. 59-A-6.15**]** <u>Section 59-3.3.2.D</u>, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(5) **[**any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1), (2), (3), or (4), or any combination of them;

6] any development located in an enterprise zone designated by the State **[**or in an area previously designated as an enterprise zone**]**;

(6) except for a development located in the City of Rockville, any development located in a Qualified Opportunity Zone certified by the United States Treasury Department;

(7) a house built by high school students under a program operated by the Montgomery County Board of Education; **[**and**]** or

(8) a farm tenant dwelling.

* * *

52-49. Tax rates.

* * *

(g) Any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are exempt under Section 52-41(g)(1) must pay the tax discounted by an amount equal to the **[[**lowest standard**]]** impact tax rate applicable in the **[[**County**]]** Red Policy Area for that unit type.

(h) Except for a development located in the City of Rockville, any development located in a Desired Growth and Investment Area, as defined in the 2020-2024 Subdivision Staging Policy, must pay the tax at:

(1) 40% of the otherwise applicable rate if located in an Orange Policy Area; or

(2) 32% of the otherwise applicable rate if located in a Yellow Policy Area.

52-50. Use of impact tax funds.

Impact tax funds may be used for any:

(a) new road**[[**, widening of an existing road,**]]** or total reconstruction of all or part of an existing road **[[**required as part of widening of an existing road,**]]** that adds an additional lane or turn lane **[[**highway or intersection capacity**]]** or improves transit service or bicycle commuting, such as bus lanes or bike lanes;

*   *   *

52-52. Definitions.

In this Article all terms defined in Section 52-39 have the same meanings, and the following terms have the following meanings:

*   *   *

Public school improvement means any capital project of the Montgomery County Public Schools that adds to the number of teaching stations in a public school.

School service area means the geographically defined attendance area for an individual school.

52-54. Imposition and applicability of tax.

*   *   *

(c) The following public school impact tax districts are established, as identified in the County Growth Policy:

(1) Infill Impact Areas;

(2) Turnover Impact Areas; and

(3) Greenfield Impact Areas.

(d) The tax under this Article must not be imposed on:

(1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville**[**,**]**;

(2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to

households earning equal to or less than 60% of the area median income, adjusted for family size;

(3) any Personal Living Quarters unit built under Section 59-3.3.2.D, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(5) **[**any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1), (2), (3), or (4), or any combination of them;

(6)**]** any development located in an enterprise zone designated by the State; **[**or in an area previously designated as an enterprise zone; or**]**

(6) except for a development located in the City of Rockville, any development located in a Qualified Opportunity Zone certified by the United States Treasury Department; or

(7) a house built by high school students under a program operated by the Montgomery County Board of Education.

[[(d)**]]** (e) The tax under this Article does not apply to:

(1) any reconstruction or alteration of an existing building or part of a building that does not increase the number of dwelling units of the building;

(2) any ancillary building in a residential development that:

(A) does not increase the number of dwelling units in that development; and

(B) is used only by residents of that development and their guests, and is not open to the public; and

(3) any building that replaces an existing building on the same site or in the same project (as approved by the Planning Board or the equivalent body in Rockville or Gaithersburg) to the extent of the number of dwelling units of the previous building, if:

(A) **[[**construction begins**]]** an application for a building permit is filed within four years **[[**one year**]]** after demolition or destruction of the previous building was substantially completed; **[[**or**]]**

(B) the Director of the Department of Permitting Services or the Director's designee finds that the applicant was unable to apply for a building permit or commence construction within four years after demolition or destruction of the previous building was substantially completed due to circumstances beyond the control of the applicant or the applicant's agents; or

(C) the previous building is demolished or destroyed, after the replacement building is built, by a date specified in a phasing plan approved by the Planning Board or equivalent body.

However, if in either case the tax that would be due on the new, reconstructed, or altered building is greater than the tax that would have been due on the previous building if it were taxed at the same time, the applicant must pay the difference between those amounts.

[[(e)**]]** (f) If the type of proposed development cannot be categorized under the residential definitions in Section 52-39 and 52-52, the Department must use the rate assigned to the type of residential development which generates the most similar school enrollment characteristics.

[[(f)**]]** (g) A Clergy House must pay the impact tax rate that applies to a place of worship under Section 52-41(d) if the house:

(1) is on the same lot or parcel, adjacent to, or confronting the property on which the place of worship is located; and

(2) is incidental and subordinate to the principal building used by the religious organization as its place of worship.

The place of worship tax rate does not apply to any portion of a Clergy House that is nonresidential development.

52-55. Tax rates.

(a) The Council must establish the **[**Countywide**]** rates for each school impact tax district **[**the tax under this Article**]** by resolution after a public hearing advertised at least 15 days in advance.

(b) **[**The tax on any single-family detached or attached dwelling unit must be increased by $2 for each square foot of gross floor area that exceeds 3,500 square feet, to a maximum of 8,500 square feet.**]**

[[Any non-exempt single-family attached or multifamily unit located in a Desired Growth and Investment Area, as defined in the County Growth Policy, must pay the tax at 60% of the otherwise applicable rate.

(c)**]]** Any Productivity Housing unit, as defined in Section 25B-17(j), must pay the tax at 50% of the otherwise applicable rate.

[[(d)**]]** (c) The County Council by resolution, after a public hearing advertised at least 15 days in advance, may increase or decrease the rates established under this Section.

[[(e)**]]** (d) The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section effective on July 1 of each odd-numbered year in accordance with the update to the Subdivision Staging Policy using the latest student generation rates and school construction cost data. The Director must calculate the adjustment to the nearest multiple of one dollar. The Director must publish the amount of this adjustment not later than May 1 of each odd-numbered year.

[[(f)**]]** (e) Any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are exempt under Section **[[**52-41(g)(1)**]]** 52-54(d)(1) must pay the tax discounted by an amount equal to the **[[**lowest standard**]]** impact tax rate applicable in the **[[**County**]]** Infill School Impact Area for that unit type up to the amount of the impact tax otherwise applicable.

(f) A three-bedroom multi-family dwelling unit located in an Infill Impact Area must pay the tax at 40% of the otherwise applicable rate.

52-58. Credits.

(a) Section 52-47 does not apply to the tax under this Article.

(b) A property owner must receive a credit for constructing or contributing to an improvement of the type listed in Section 52-56(d), including costs of site preparation.

(c) **[[**A property owner may receive credit for constructing or contributing to other physical school facility improvements not listed in Section 52-56(d) if the Montgomery County School Board agrees to the improvement.

(d)**]]** A property owner may receive credit for land dedicated for a school site, if:

(1) the density calculated for the dedication area is excluded from the density calculation for the development site; and

(2) the Montgomery County School Board agrees to the site dedication.

[(b)**]** **[[**(e)**]]** (d) If the property owner elects to make a qualified improvement or dedication, the owner must enter into an agreement with the Director of Permitting Services, or receive a development approval based on making the improvement, before any building permit is issued. The agreement or development approval must contain:

(1) the estimated cost of the improvement or the fair market value of the dedicated land, if known then**[**,**]**;

(2) the dates or triggering actions to start and, if known then, finish the improvement or land transfer;

(3) a requirement that the property owner complete the improvement according to Montgomery County Public Schools standards; and

(4) such other terms and conditions as MCPS finds necessary.

[(c)**]** **[[**(f)**]]** (e) MCPS must:

(1) review the improvement plan or dedication;

(2) verify costs or land value and time schedules;

(3) determine whether the improvement is a public school improvement of the type listed in Section 52-56(d)**[[**, meets the requirements of subsection (c),**]]** or meets the dedication requirements in subsection **[**(a)**]** **[[**(d)**]]** (c);

(4) determine the amount of the credit for the improvement or dedication; and

(5) certify the amount of the credit to the Department of Permitting Services before that Department or a municipality issues any building permit.

[(d)**]** **[[**(g)**]]** (f) An applicant for subdivision, site plan, or other development approval from the County, Gaithersburg, or Rockville, or the owner of property subject to an approved subdivision plan, development plan, floating zone plan, or similar development approval, may seek a declaration of allowable credits from MCPS. MCPS must decide, within 30 days after receiving all necessary materials from the applicant, whether any public school improvement which the applicant has constructed, contributed to, or intends to construct or contribute to, will receive a credit under this subsection. If during the initial 30-day period after receiving all necessary materials, MCPS notifies the applicant that it needs more time to review the proposed improvement, MCPS may defer its decision an additional 15 days. If MCPS indicates under this paragraph that a specific improvement is eligible to receive a credit, the Director of Permitting Services must allow a credit for that improvement. If MCPS cannot or chooses not to perform any function under this subsection or subsection (c), the Department of Permitting Services must perform that function.

[(e)**]** **[[**(h)**]]** (g) (1) A property owner must receive a credit for constructing or contributing to the cost of building a new single family residence that meets Level I Accessibility Standards, as defined in Section 52-107(a).

(2) The credit allowed under this Section must be as follows:

(A) If at least 5% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of $250 per residence.

(B) If at least 10% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of $500 per residence.

(C) If at least 25% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of $750 per residence.

(D) If at least 30% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of $1,000 per residence.

(3) Application for the credit and administration of the credit must be in accordance with Subsections 52-107(e) and (f).

(4) A person must not receive a tax credit under this Section if the person receives any public benefit points for constructing units with accessibility features under Chapter 59.

[(f)**]** **[[**(i)**]]** (h) The Director of Finance must not provide a refund for a credit which is greater than the applicable tax.

[(g)**]** **[[**(j)**]]** (i) Any credit issued under this Section before December 31, 2015 expires 6 years after the Director certifies the credit. Any credit issued under this Section on or after January 1, 2016 expires 12 years after the Director certifies the credit.

[(h)**]** **[[**(k)**]]** (j) After a credit has been certified under this Section, the property owner or contract purchaser to whom the credit was certified may transfer all or part of the credit to any successor in interest of the same property. However, any credit transferred under this subsection must only be applied to the tax due under this Article with respect to the property for which the credit was originally certified.

52-59. [[Reserved]]. Utilization Premium Payment

(a) In addition to the tax due under this Article, an applicant for a building permit must pay to the Department of Finance a Utilization Premium Payment if such payment was required under the Annual School Test in effect at the time the building was approved.

(b) The Council by resolution, after a public hearing advertised at least 15 days in advance, must establish the rates for the Utilization Premium Payment.

(c) The Director of Finance, after advertising and holding a public hearing, must adjust the rates set in or under this Section effective on July 1 of each odd-numbered year in accordance with the update to the Subdivision Staging Policy using the latest student generation rates and school construction cost data. The Director must calculate the adjustment to the nearest multiple of one dollar. The Director must publish the amount of this adjustment not later than May 1 of each odd-numbered year.

(d) The Payment must be paid at the same time and in the same manner as the tax under this Article.

(e) The Department of Finance must retain funds collected under this Section in an account to be appropriated for any public school improvement that adds capacity designed to alleviate overutilization in the school service area from which the funds were collected.

(f) The Utilization Premium Payment must not be imposed on any:

(1) Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville;

(2) other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning equal to or less than 60% of the area median income, adjusted for family size;

(3) Personal Living Quarters unit built under Section 59-3.3.2.D, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A; or

(4) dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A.

Sec. 2. Effective date -Transition.

This Act takes effect on February 26, 2021. The amendments in Section 1 **[[**take effect on March 1, 2021 and**]]** must apply to:

(1) any application for a building permit filed on or after **[[**March 1**]]** February 26, 2021; except for

(2) **[[**that the amendments related to discounts or exemptions for projects with 25% MPDUs must only apply to**]]** any dwelling unit in a development for which a preliminary plan application is filed **[[**and accepted on or after**]]** prior to **[[**March 1**]]** February 26, 2021 that includes 25% affordable units as defined in Sections 52-41(g)(1) through 52-41(g)(4) or 52-54(d)(1) through 52-54(d)(4).

Approved:

____

Sidney Katz, President, County Council Date

Approved:

____

Marc Elrich, County Executive Date

This is a correct copy of Council action.

____

Selena Mendy Singleton, Clerk of the Council Date

Expedited Bill No. 39-20
Concerning: Taxation - Recordation Tax – Amendments
Revised: 7/24/2020 Draft No. 1
Introduced: July 29, 2020
Expires: January 29, 2022
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the Planning Board

AN EXPEDITED ACT to:

(1) increase the rate of the recordation tax levied under state law for certain transactions;
(2) amend the exemptions from the recordation tax for certain transactions;
(3) allocate the revenue received from the recordation tax for certain uses; and
(4) generally amend the law governing the recordation tax

By amending
Montgomery County Code
Chapter 52, Taxation
Section 52-16B

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

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

Sec. 1. Section 52-16B is amended as follows:

52-16B. Recordation Tax.

(a) *Rates.* The rates and the allocations of the recordation tax, levied under Md. Tax- Property Code §§12-101 to 12-118, as amended, are:

(1) for each $500 or fraction of $500 of consideration payable or of the principal amount of the debt secured for an instrument of writing, including the amount of any mortgage or deed of trust assumed by a grantee;

(A) $2.08, of which the net revenue must be reserved for and allocated to the County general fund; and

(B) **[**$2.37**]** $2.87, of which the net revenue must be reserved for and allocated to the cost of capital improvements to schools; and

(2) if the consideration payable or principal amount of debt secured exceeds $500,000**[**,**]**:

(A) an additional $2.30 for each $500 or fraction of $500 of the amount over $500,000, of which the net revenue must be reserved for and allocated equally to:

[(A)**]** (i) the cost of County government capital improvements; and

[(B)**]** (ii) rent assistance for low and moderate income households, which must not be used to supplant any otherwise available funds**[**.**]**; and

(B) an additional $0.50 for each $500 or fraction of $500 of the amount over $500,000, of which the net revenue must be reserved for and allocated to the cost of capital improvements to schools; and

(3) if the consideration payable or principal amount of debt secured for a single-family dwelling unit exceeds $1,000,000, an additional $1.00 for each $500 or fraction of $500 of the amount over $1,000,000, of which the net revenue must be reserved for and allocated to the Montgomery Housing Initiative under Section 25B-9.

(b) *Exemptions*.

(1) The first $100,000 of the consideration payable on the conveyance of any owner-occupied residential property is exempt from the recordation tax if the buyer of that property is an individual and intends to use the property as the buyer's principal residence by actually occupying the residence for at least 7 months of the 12-month period immediately after the property is conveyed.

(2) The first $500,000 of the consideration payable on the conveyance of any owner-occupied residential property is exempt from the recordation tax if the buyer of that property is a first-time home buyer.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on January 1, 2021 and must apply to any transaction which occurs on or after January 1, 2021.

Approved:

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Sidney Katz, President, County Council Date

Approved:

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Marc Elrich, County Executive Date

This is a correct copy of Council action.

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Selena Mendy Singleton, Clerk of the Council Date

Incentive	Description	Type	Existing Policy?	Mechanism for Implementation
CR Incentive Density Points	Currently, up to 10 points are awarded for integrating a mix of residential market-rate unit types with at least 7.5 percent efficiency units, 8 percent one and two-bedroom units, and 5 percent three or-more bedroom units; the proportional number of moderately priced dwelling units (MPDUs) for each unit type must satisfy Chapter 25A of the county zoning ordinance. Points could be increased to further incent three-bedroom units.	Production	Yes; modification to existing policy	Zoning Text Amendment
FAR-Based Method	A recommendation in the Rental Housing Study, the MPDU law was updated in 2018, to allow developers to meet their MPDU requirement by calculating the requirement based on floor area ratio instead of a percentage of total units. The FAR-based method permits market-rate projects to satisfy the MPDU requirement as a percentage of square feet of the building, allowing units to be larger than are offered as a percentage of total market-rate units. No developer has used the FAR method yet, but this could be a requirement for certain master planned properties that meet certain criteria or modified as more of a requirement in certain scenarios than an option.	Production	Yes; modification to existing policy	Amendments to chapter 25A, master plans
Bonus Density	Provide additional or increased density in exchange for affordable large family-sized units.	Production	Yes; modification to existing policy	Zoning Text Amendment
FAR Discount	Discount or exempt FAR used toward building three-bedroom units. The county could allow developments to exceed their maximum residential gross floor area if a certain percentage of units with 3 or more bedrooms are provided. Similar to the bonus density incentive, this would allow an increase in density.	Production	No	Zoning Text Amendment
Optional Method Requirement	Potential future changes to the Optional Method of Development to allow Missing Middle types of housing could have a provision requiring three-bedroom units.	Production	No	Zoning Text Amendment
Height Bonus	Provide an additional height bonus for buildings with a certain percentage of affordable family sized units.	Production	Yes; modification to existing policy	Zoning Text Amendment
Conduct a Cost Analysis	Conduct a cost analysis to determine an appropriate portfolio of incentives that will enable the production of family-sized units. The analysis will inform the extent to which tools such zoning and financial tools will need to be expanded to incent the development of family-sized units without impacting the overall production of housing.	Production	No	Work program item; implementation type TBD

Assessment of the Need for Family Sized Units	In 2019, Washington DC commissioned an Assessment of the Need for Large Units in the District Columbia to investigate the need for large family rental housing units (greater than three bedrooms) families with low incomes are not being well-addressed. The Assessment includes recommendations based on the projected need for family sized units. The county could include a recommendation to complete a similar assessment in Thrive Montgomery 2050 and include it as a future work program item that would lead to future implementation.	Production	No	Work program item; implementation type TBD
Redevelopment with Preservation Incentives	Another recommendation in the Rental Housing Study, the Zoning Code could be modified with a tool that allows density to be shifted from one part of a site with an existing affordable multifamily rental building(s) to another part of that site in exchange for a portion of the existing affordable housing to be preserved as part of the redevelopment. This would help preserve existing family-sized units.	Preservation	Yes; as part of certain master plans (example: Lyttonsville), but not countywide policy	Zoning Text Amendment
Demolition fees	A recommendation from the Rental Housing Study, a demolition fee or tax could be implemented on property owners for every demolished unit in a multi-family rental building to preserve three-bedroom units. The money could go to the Housing Initiative Fund (HIF) and used for preservation and production of family-sized units.	Preservation	No	Bill
No-Net-Loss of Affordable Housing	Create a policy that requires no net loss of affordable housing in the event of redevelopment, including a one-to-one replacement of family-sized units.	Preservation	Yes; as part of certain master plans (example: Veirs Mill), but not countywide policy	Bill
Financial Subsidies	Provide subsidies or reduce expenses to match losses in income to equalize the lower rent per square foot for larger units. Implementation could come via real property tax exemptions for 3-bedroom units, or through operating subisides, or increasing housing subsidy contract or voucher reimbursement rates through the provision of new or existing tenant-based subsidies.	Financial; Production	No	Bill

Montgomery County Council

Committee: Joint
Staff: Pam Dunn, Senior Legislative Analyst; Glenn Orlin, Senior Analyst; Robert Drummer, Senior Legislative Attorney
Purpose: To make preliminary decisions – straw vote expected
Keywords: #subdivision staging policy, impact tax, recordation tax

ADDENDUM
AGENDA ITEM #15
November 10, 2020
Worksession

SUBJECT

2020-2024 Subdivision Staging Policy
Bill 37-20, Subdivision - Preliminary Plan - Adequate Public Facilities – Amendments
Bill 38-20, Taxation - Development Impact Taxes for Transportation and Public School Improvements - Amendments
Expedited Bill 39-20, Taxation - Recordation Tax - Amendments

EXPECTED ATTENDEES

Casey Anderson, Planning Board Chair
Gwen Wright, Tanya Stern, Jason Sartori, Lisa Govoni, Hye-Soo Baek, Eric Graye and David Anspacher, Planning Department
Meredith Wellington, Office of the County Executive
Essie McGuire and Adrienne Karamihas, Montgomery County Public Schools (MCPS)
Christopher Conklin, Gary Erenrich, and Andrew Bossi, Department of Transportation (DOT)
Mary Beck, Pofen Salem, and Veronica Jaua, Office of Management and Budget (OMB)
David Platt and Estela Boronat de Gomes, Department of Finance

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

DESCRIPTION/ISSUE

N/A

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AGENDA ITEM #15
November 10, 2020
ADDENDUM

M E M O R A N D U M

November 9, 2020

TO: County Council

FROM: Pamela Dunn, Senior Legislative Analyst
Glenn Orlin, Senior Analyst
Robert H. Drummer, Senior Legislative Attorney

SUBJECT: 2020-2024 Subdivision Staging Policy (SSP); Bill 37-20 - Subdivision, APF Amendments; Bill 38-20 - Development Impact Taxes for Public School Improvements; and Expedited Bill 39-20 - Recordation Tax Amendments

PURPOSE: Worksession

This addendum provides revised transition language for the Subdivision Staging Policy resolution. The modified text provides any project with a complete preliminary plan application the flexibility to choose to be reviewed under the updated 2020-2024 SSP with respect to schools rather than the 2016-2020 SSP. The effect of this would allow a project in a school service area currently under a staging ceiling limit for moratorium, where there is insufficient capacity for approval, to move forward under the new SSP standards where a Utilization Premium Payment may be required. For projects providing at least 25 percent affordable units working to file an application prior to February 26, 2021, the amended language is consistent with the grandfathering provision of Bill 38-20.

The SSP resolution regarding the transition for implementation would be modified as follows:

AP2 Transition

For any complete application for subdivision approval submitted before January 1, 2021 or any preliminary plan application filed prior to February 26, 2021 that includes at least 25% affordable units as defined in Sections 52-41(g)(1) through 52-41(g)(4) or 52-54(d)(1) through 52-54(d)(4) of the County code, the rules of the 2016-2020 Subdivision Staging Policy continue to apply, unless an applicant elects to be reviewed under the 2020-2024 Subdivision Staging Policy for schools (Sections S-1 through S-6) and the 2016-2020 Subdivision Staging Policy for transportation.