



Committee: Directly to Council
Committee Review: At a future date
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #GrowthPolicy2020

AGENDA ITEM 13A
January 12, 2021
Introduction

SUBJECT

Expedited Bill 1-21, Growth and Infrastructure Policy – Renamed – Expedited Development Approval
Excise Tax - Repealed
Lead Sponsor: County Council

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To introduce Bill – no vote expected

DESCRIPTION/ISSUE

Expedited Bill 1-21 would rename the Subdivision Staging Policy the Growth and Infrastructure Policy and repeal the Expedited Development Approval Excise Tax.

SUMMARY OF KEY DISCUSSION POINTS

This report contains:

Expedited Bill 1-21

©1

Legislative Request Report

©29

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M E M O R A N D U M

January 7, 2021

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Expedited Bill 1-21, Growth and Infrastructure Policy – Renamed – Expedited Development Approval Excise Tax - Repealed

PURPOSE: Introduction – No Council vote required

Expedited Bill 1-21, Growth and Infrastructure Policy – Renamed – Expedited Development Approval Excise Tax - Repealed, sponsored by Lead Sponsor County Council, is scheduled to be introduced on January 12, 2021. A public hearing is tentatively scheduled for February 2, 2021 at 1:30 p.m.¹

Last November, the Council decided to rename the Subdivision Staging Policy the Growth and Infrastructure Policy. There are many references to the Subdivision Staging Policy throughout the County Code. Bill 1-21 would rename the Subdivision Staging Policy the Growth and Infrastructure Policy throughout the Code.

In addition, while preparing this Bill, Council staff noticed that the Expedited Development Approval Excise Tax provisions remain in the Code despite the Council’s decision to eliminate the Alternative Review Procedure for Expedited Development Approval from the Subdivision Staging Policy more than 10 years ago. Finance and the Planning Board staff each confirmed that there are no open developments that were approved under this process and that the County has not collected this excise tax in recent years. Both Finance and the Planning Board staff agreed that these provisions of the Code are obsolete and should be repealed. Bill 1-21 would repeal these provisions.

This packet contains:	<u>Circle #</u>
Expedited Bill 1-21	1
Legislative Request Report	29

¹#GrowthPolicy2020

Expedited Bill No. 1-21
Concerning: Growth and Infrastructure
Policy – Renamed – Expedited
Development Approval Excise Tax -
Repealed
Revised: 1/4/2021 Draft No. 5
Introduced: January 12, 2021
Expires: July 12, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: County Council

AN EXPEDITED ACT to:

- (1) rename the Subdivision Staging Policy the Growth and Infrastructure Policy;
- (2) repeal the Expedited Development Approval Excise Tax; and
- (3) generally amend the law governing the County Growth and Infrastructure Policy.

By amending

Montgomery County Code
Chapter 33A, Planning Procedures
Section 33A-15

Chapter 42A, Ridesharing and Transportation Management
Sections 42A-21, 42A-22, 42A-23, 42A-24, 42A-26, 42A-28, and 42A-29

Chapter 50, Subdivision of Land
Sections 50.2.2, 50.4.3, 50.7.1, and 50.10.3

Chapter 52, Taxation
Sections 52-39, 52-40, 52-47, 52-51, 52-55, 52-60, 52-61, 52-62, 52-63, 52-64, 52-65, and
52-111

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

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

1 **Sec. 1. Sections 33A-15, 42A-21, 42A-22, 42A, 42A-24, 42A-26, 42A-**
 2 **28, 42A-29, 50.2.2, 50.4.3, 50.7.1, 50.10.3, 52-39, 52-40, 52-47, 52-51, 52-55, 52-60,**
 3 **52-61, 52-62, 52-63, 52-64, 52-65, and 52-111 are amended as follows:**

4 **33A-15. [Subdivision Staging] Growth and Infrastructure Policy.**

5 (a) *Purpose; Policy.*

6 (1) The purpose of this Article is to establish a process by which the
 7 County Council can give policy guidance to agencies of
 8 government and the public on matters concerning:

9 (A) land use development;

10 (B) growth management; and

11 (C) related environmental, economic, and social issues.

12 (2) The policy guidance will be provided through the adoption by the
 13 County Council of a [subdivision staging policy] Growth and
 14 Infrastructure Policy, which is intended to be an instrument that
 15 facilitates and coordinates the use of the powers of government to
 16 limit or encourage growth and development in a manner that best
 17 enhances the general health, welfare, and safety of the residents of
 18 the County.

19 (3) The County Council must adopt a [subdivision staging policy]
 20 Growth and Infrastructure Policy every 4 years. The policy must
 21 include guidelines for the Planning Board, and other agencies as
 22 appropriate, for their administration of Section 50-35(k) and other
 23 laws and regulations which affect the adequacy and timing of
 24 public facilities needed to support growth and development. This
 25 policy is the growth policy referred to in Article 28 of the Maryland
 26 Code and in Section 50-35(k) and elsewhere in the County Code.

27 (b) *Duties of the County Planning Board.*

28 Every fourth year, in the second year of a Council term, the Planning
29 Board must produce a recommended [subdivision staging policy] Growth
30 and Infrastructure Policy.

31 (1) By June 15, the Board must send to the Council a staff draft
32 [subdivision staging policy] Growth and Infrastructure Policy
33 which includes:

34 (A) a status report on general land use conditions in the county,
35 including the remaining growth capacity of zoned land,
36 recent trends in real estate transactions, the level of service
37 conditions of major public facilities and environmentally
38 sensitive areas, and other relevant monitoring measures;

39 (B) a forecast of the most probable trends in population,
40 households, and employment for the next 10 years,
41 including key factors that may affect the trends;

42 (C) a recommended set of guidelines for the Board, and other
43 agencies as appropriate, with respect to subdivision staging
44 and administration of related laws and regulations which
45 affect growth and development; and

46 (D) any other information or recommendations relevant to
47 [subdivision staging policy] the Growth and Infrastructure
48 Policy [,] or requested by the Council in the course of
49 adopting the [subdivision staging policy] Growth and
50 Infrastructure Policy or by a later resolution.

51 (2) By August 1, the Board must approve and send to the Council a
52 recommended [subdivision staging policy] Growth and
53 Infrastructure Policy.

54 (3) The Board must promptly make available to the County Executive,
 55 other agencies (including the Office of Zoning and Administrative
 56 Hearings and the People’s Counsel), and the public copies of the
 57 staff draft and the Board’s recommended [subdivision staging
 58 policy] Growth and Infrastructure Policy.

59 (c) *Duties of the County Executive.*

60 (1) Every fourth year, in the second year of a Council term, the
 61 Executive must send to the Council by September 15 any revisions
 62 to the [subdivision staging policy] Growth and Infrastructure
 63 Policy recommended by the Planning Board in the form of specific
 64 additions and deletions.

65 (2) The Executive must promptly make available to the Planning
 66 Board, other agencies, and the public copies of the Executive's
 67 recommendations.

68 (3) The Executive must assist the Planning Board to compile its status
 69 report for the recommended [subdivision staging policy] Growth
 70 and Infrastructure Policy by making available monitoring data
 71 which is routinely collected by executive branch departments.

72 (d) *Duties of the County Board of Education.*

73 (1) Every fourth year, in the second year of a Council term, the Board
 74 of Education must send to the Council by September 15 any
 75 comments on the recommended [subdivision staging policy]
 76 Growth and Infrastructure Policy submitted by the Planning Board
 77 and the Executive’s recommendations, including any proposed
 78 revisions in the form of specific additions or deletions.

79 (2) The Board of Education must promptly make available to the
80 Planning Board, the Executive, and the public copies of these
81 comments and revisions.

82 (3) The Board of Education must assist the Planning Board to compile
83 its status report for the [subdivision staging policy] Growth and
84 Infrastructure Policy by making available monitoring data which
85 is routinely collected by Montgomery County Public Schools staff.

86 (e) *Duties of the County Council.*

87 (1) After receiving the recommended [subdivision staging policy]
88 Growth and Infrastructure Policy, the recommendations of the
89 Executive, and any other agency comments, the Council must hold
90 a public hearing on the recommendations and comments.

91 (2) Every fourth year, in the second year of a Council term, the
92 Council must adopt by November 15 a [subdivision staging policy]
93 Growth and Infrastructure Policy to be effective until November
94 15 four years later. If the Council does not adopt a new
95 [subdivision staging policy] Growth and Infrastructure Policy, the
96 [subdivision staging policy] Growth and Infrastructure Policy
97 adopted most recently remains in effect.

98 (f) *Amending the [subdivision staging policy] Growth and Infrastructure*
99 *Policy.*

100 (1) The County Council, the County Executive, or the Planning Board
101 may initiate an amendment to the [subdivision staging policy]
102 Growth and Infrastructure Policy.

103 (2) If the Executive initiates an amendment:

- 104 (A) the Executive must send it to the Council, the Planning
 105 Board, and other agencies, and make copies available to the
 106 public;
- 107 (B) the Planning Board must send any comments on the
 108 proposed amendment to the Council and the other agencies
 109 within 45 days after receiving the amendment (unless the
 110 Council requests an earlier response), and must make copies
 111 of any comments available to the public; and
- 112 (C) the Council may amend the [subdivision staging policy]
 113 Growth and Infrastructure Policy after giving the Planning
 114 Board and Board of Education an opportunity to comment
 115 and holding a public hearing.
- 116 (3) If the Planning Board initiates an amendment:
- 117 (A) the Planning Board must send it to the Council, the
 118 Executive, and other agencies, and make copies available to
 119 the public;
- 120 (B) the Executive must send any comments on the proposed
 121 amendment to the Council and other agencies within 45
 122 days after receiving the amendment (unless the Council
 123 requests an earlier response), and must make copies of any
 124 comments available to the public; and
- 125 (C) the Council may amend the [subdivision staging policy]
 126 Growth and Infrastructure Policy after giving the Executive
 127 and Board of Education an opportunity to comment and
 128 holding a public hearing.
- 129 (4) If the Council initiates an amendment:

130 (A) the Council must send it to the Executive, the Planning
131 Board, and other agencies, and make copies available to the
132 public;

133 (B) the Executive and the Planning Board must send any
134 comments on the proposed amendment to the Council and
135 other agencies within 45 days after receiving the
136 amendment (unless the Council requests an earlier
137 response), and must make copies of any comments available
138 to the public; and

139 (C) the Council may amend the [subdivision staging policy]
140 Growth and Infrastructure Policy after a public hearing.

141 (5) If it finds that an emergency so requires, the Council may hold the
142 public hearing and adopt an amendment before receiving
143 comments under subparagraphs (2)(B), (3)(B), or (4)(B).

144 **42A-21. Definitions.**

145 In this Article, unless the context indicates otherwise:

146 * * *

147 *Employer* means any business or government entity, including the County,
148 employing 25 or more employees including contractors assigned to a worksite.

149 Employer does not include:

- 150 (1) a home-based business;
- 151 (2) a business with no employees housed at that work site; or
- 152 (3) any government agency not required by law to follow County
153 regulations.

154 Growth and Infrastructure Policy means the most recent policy adopted under
155 Section 33A-15.

156 *NADMS goal* means the specific NADMS percentage goal for peak period
 157 commuters in a District or a Policy Area that has been established through a
 158 Master Plan, through the [Subdivision Staging] Growth and Infrastructure
 159 Policy, or through regulation.

160 *Non-Auto Driver Mode Share or NADMS* means the percent of commuters who
 161 travel by modes other than driving an automobile. NADMS includes commuters
 162 who travel by transit, vanpool, biking, walking, or connecting to the workplace
 163 electronically. NADMS does not include carpool or vanpool drivers, but it does
 164 include carpool and vanpool passengers.

165 *Peak period* means the hours of highest transportation use each workday, as
 166 defined in the resolution creating a District, as established in the [Subdivision
 167 Staging] Growth and Infrastructure Policy [,] or established through a technical
 168 study.

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

171 *Policy Area* means a Transportation Policy Area adopted by the County Council
 172 through the [Subdivision Staging] Growth and Infrastructure Policy.

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

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

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

177 [*Subdivision Staging Policy* means the most recent policy adopted under Section
 178 33A-15.]

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

183 * * *

184 **42A-22. Findings and purposes.**

185 * * *

186 (f) Transportation demand management should be consistent with any
187 commuting goals set in the [Subdivision Staging] Growth and
188 Infrastructure Policy, Master Plans, and Sector Plans. TDM should foster
189 coordinated and comprehensive government, private industry, and public
190 action to:

- 191 (1) make efficient use of existing transportation infrastructure;
- 192 (2) increase transportation capacity as measured by numbers of people
193 transported;
- 194 (3) reduce existing and future levels of traffic congestion by moving
195 more people in fewer vehicles;
- 196 (4) reduce air and noise pollution, and address climate change; and
- 197 (5) promote traffic safety together with transit, pedestrian and bicycle
198 safety and access for all users.

199 * * *

200 **42A-23. Districts; authority of the Department and Planning Board.**

201 (a) The County Council by resolution may create a transportation
202 management district (TMD) in Red, Orange, or Yellow Policy Areas as
203 defined in the [Subdivision Staging] Growth and Infrastructure Policy. A
204 district may be formed from all, or portions of, one or more Policy areas,
205 even if they are not contiguous.

206 * * *

207 **42A-24. Transportation Demand Management Plans for Employers.**

208 (a) *Transportation Demand Management (TDM) Plan for an Individual*
209 *Employer.*

- 210 (1) The Director must require an employer subject to this Section to
 211 submit a TDM Plan meeting the requirements of this Section
 212 District.
- 213 (2) Upon written request from the Director, an employer must provide
 214 the Director with the number of full-time and part-time employees
 215 working for that organization by workplace in each Policy Area or
 216 District.
- 217 (3) An employer must submit a TDM Plan to the Director if:
- 218 (A) the employer is in a Red Policy Area under the [Subdivision
 219 Staging] Growth and Infrastructure Policy and has 25 or
 220 more employees reporting to or assigned to that workplace;
- 221 (B) the employer is in an Orange Policy Area under the
 222 [Subdivision Staging] Growth and Infrastructure Policy and
 223 has 100 or more employees reporting to or assigned to that
 224 workplace;
- 225 (C) the employer is in a Yellow Policy Area under the
 226 [Subdivision Staging] Growth and Infrastructure Policy and
 227 has 200 or more employees reporting to or assigned to that
 228 workplace; or
- 229 (D) the employer is in one of the following Districts and has 25
 230 or more employees reporting to or assigned to a workplace:
 231 Silver Spring TMD
 232 Friendship Heights TMD
 233 Bethesda TMD
 234 North Bethesda TMD
 235 Greater Shady Grove TMD.

- 236 (4) The TDM Plan must be consistent with and contribute to the
 237 achievement of any NADMS Goal or other commuting goals set
 238 in the [Subdivision Staging] Growth and Infrastructure Policy,
 239 Master Plans, Sector Plans, and any individual project-based goals
 240 or goals established in the regulations implementing this Article.
 241 The TDM Plan must include strategies required by regulation and
 242 other strategies selected by the employer from those permitted by
 243 regulation or proposed by the employer and approved by the
 244 Director. A TDM Plan may include an alternative work hours
 245 program, carpool or vanpool incentives, subsidized transit passes,
 246 preferential parking for carpools and vanpools, parking
 247 management strategies, peak period or single-occupancy vehicle
 248 parking charges, improved transit, bicycle and pedestrian access
 249 and safety, telework, and other transportation demand
 250 management measures approved by the Director.
- 251 (5) Each employer must submit its TDM Plan within 90 days after
 252 receiving written notice from the Director that it is required. The
 253 Director may extend an employer’s time to file a TDM Plan for
 254 good cause.

255 * * *

256 **42A-26. Transportation Demand Management Plans for New Development**
 257 **Projects (Project-based TDM Plans).**

- 258 (a) *Applicability.* This Section applies to any owner or applicant for a new
 259 development or construction project that submits an application for a
 260 proposed subdivision or optional method development, site plan,
 261 conditional use or building permit in a District, but excluding any project
 262 consisting solely of single family detached housing, townhouses, or a

263 mixture of both. All such applicants must obtain approval from the
 264 Department for a Project-based Transportation Demand Management
 265 (TDM) Plan. This approval must be obtained prior to the issuance of any
 266 building permit by the Department of Permitting Services. Projects
 267 subject to this Section include developments:

268 (1) in a Red, Orange or Yellow [Subdivision Staging] Growth and
 269 Infrastructure Policy Area and larger than the minimum sizes
 270 shown in subsection (b);

271 (2) that do not have a fully-executed traffic mitigation agreement in
 272 effect; and

273 (3) where the Department decides, under standards adopted by the
 274 Council for the adequacy of transportation, including Non-Auto
 275 Driver Mode Share goals and other commuting goals adopted in
 276 Master Plans, Sector Plans and the [Subdivision Staging] Growth
 277 and Infrastructure Policy, that more transportation facilities or
 278 transportation demand management measures are necessary to
 279 meet the County's commuting goals.

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

284 (1) An owner or applicant for a project located in a Red Policy Area
 285 under the [Subdivision Staging] Growth and Infrastructure Policy
 286 must:

287 (A) submit a Level 1 TDM Basic Plan for a project with less
 288 than or equal to 40,000 gross square feet; and

- 289 (B) submit a Level 3 TDM Results Plan for a project with more
 290 than 40,000 gross square feet;
- 291 (2) An owner or applicant for a project located in an Orange Policy
 292 Area under the [Subdivision Staging] Growth and Infrastructure
 293 Policy must:
- 294 (A) submit a Level 1 TDM Basic Plan 493 for a project with at
 295 least 40,000 gross square feet, but less than or equal to
 296 80,000 gross square feet;
- 297 (B) submit a Level 2 TDM Action Plan for a project with more
 298 than 80,000 gross square feet, but less than or equal to
 299 160,000 gross square feet; and
- 300 (C) submit a Level 3 TDM Results Plan for a project with more
 301 than 160,000 gross square feet;
- 302 (3) An owner or applicant for a project located in a Yellow Policy
 303 Area under the [Subdivision Staging] Growth and Infrastructure
 304 Policy must:
- 305 (A) submit a Level 1 TDM Basic Plan for a project with at least
 306 60,000 gross square feet, but less than or equal to 150,000
 307 gross square feet; and
- 308 (B) submit a Level 2 TDM Action Plan for a project with more
 309 than 150,000 gross square feet.
- 310 (4) If an adopted Master Plan or Sector Plan requires a higher Level
 311 of Project-based TDM Plan, those Master Plan or Sector Plan
 312 requirements override those described in paragraphs (1), (2), or (3).
- 313 (5) An owner or applicant for a project with a gross square feet size
 314 disproportionate to its impact on traffic (e.g., large floor area
 315 warehouses with lower impacts; small floor area food or beverage

316 establishments with higher impacts) may be required to adhere to
317 a Project-based TDM Plan Level that is either lower or higher than
318 otherwise required by its size and location, in accordance with the
319 development approval and consistent with the Executive
320 Regulation implementing this Article.

321 * * *

322 **42A-28. Commuter survey and related data collection.**

323 (a) The Director, after consulting the appropriate Advisory Committee, must
324 conduct a commuter survey, or obtain through other available
325 mechanisms, data on commuting by employees and residents within a
326 defined area. The data must be obtained on a schedule determined by the
327 Director.

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

- 331 (1) create an accurate data base of employee and resident commuting
- 332 patterns; and
- 333 (2) monitor progress toward reaching any commuting goals set in the
- 334 [Subdivision Staging] Growth and Infrastructure Policy, Master
- 335 Plans or Sector Plans, as implemented by the Department through
- 336 Executive Regulations or other adopted policies and procedures.

337 * * *

338 **42A-29. Executive report on Transportation Demand Management.**

339 * * *

340 (c) If any commuting goals set in the [Subdivision Staging] Growth and
341 Infrastructure Policy are not met eight years after a district is created or
342 by June 30, 2028, whichever is later, the Director must recommend

343 corrective action to the Executive. This action may include additional
344 mitigation measures. If the Executive agrees that such action is necessary,
345 the Executive should propose appropriate legislation or adopt appropriate
346 regulations as authorized by law.

347 **DIVISION 50.2. INTERPRETATION AND DEFINED TERMS**

348 **2.2. Definitions**

349 All terms used in this Chapter that are defined in Chapter 59 or Chapter 49 have
350 the same meanings as the definitions in those Chapters, unless otherwise defined
351 here. In this Chapter, the following words and phrases have the meanings
352 indicated.

353 * * *

354 **G.**

355 Growth and Infrastructure Policy: The resolution or guidelines adopted by the
356 District Council to determine the adequacy of public facilities and services.

357 * * *

358 **S.**

359
360 *Subdivision Regulations*: Chapter 50 of the Montgomery County Code, also
361 referred to as this Chapter.

362 [*Subdivision Staging Policy*: The resolution or guidelines adopted by the District
363 Council to determine the adequacy of public facilities and services.]

364 * * *

365 **DIVISION 50.4. PRELIMINARY PLAN**

366 * * *

367 **4.3. Technical Review**

368
369 **J. Adequate Public Facilities Ordinance (APFO).**

* * *

- 370 1. *Definitions.* Words and phrases used in this Subsection have the
371 meanings indicated in Chapter 8, Section 8-30.
- 372 2. *Applicability.* The Board may only approve a preliminary plan
373 when it finds that public facilities will be adequate to support and
374 service the subdivision. Public facilities and services to be
375 examined for adequacy include roads and transportation facilities,
376 sewer and water service, schools, police stations, firehouses, and
377 health clinics.
- 378 3. *Exemptions.* The following developments are exempt from the
379 requirements of this Subsection:
- 380 a. exclusively residential development on a lot or parcel
381 recorded by plat before July 25, 1989, or otherwise recorded
382 in conformance with a preliminary plan approved before
383 that date;
- 384 b. any place of worship or use associated with a place of
385 worship that does not generate peak hour vehicle trips that
386 exceed the limits of the [Subdivision Staging] Growth and
387 Infrastructure Policy traffic test; and
- 388 c. any addition to a school associated with a place of worship
389 that existed before July 25, 1989.
- 390 * * *
- 391 4. *Approval procedure.*
- 392 a. Each applicant for a preliminary plan must submit sufficient
393 information for the subdivision to demonstrate the expected
394 impact on and use of public facilities and services by the
395 subdivision.

396 b. The Board must consider the recommendations of the
397 Executive and other agencies in determining the adequacy
398 of public facilities and services under the [Subdivision
399 Staging] Growth and Infrastructure Policy or other
400 applicable guidelines.

401 c. If the Board finds, under criteria and standards adopted by
402 the Council, that additional transportation facilities or traffic
403 mitigation measures are necessary to ensure that
404 transportation facilities will be adequate to serve the
405 subdivision and to meet the transportation goals established
406 by a master plan or the [Subdivision Staging] Growth and
407 Infrastructure Policy for that portion of the County, the
408 subdivision plan may also be subject to the execution of a
409 Traffic Mitigation Agreement (TMAg) at the discretion of
410 the Board.

411 * * *

412 **DIVISION 50.7. MINOR SUBDIVISION**

413 **7.1. Applicability**

414 The submission of a preliminary plan or administrative subdivision plan under
415 Sections 4.1 and 4.2, and Sections 6.1 and 6.2, is not required for:

416 * * *

417 B. Conversion of an outlot into a lot. An outlot may be converted into a lot
418 if:

- 419 1. the outlot is not required for open space or green area, or is
420 otherwise constrained in a manner that prevents it being converted
421 into a buildable lot;

- 422 2. there is adequate sewerage and water service to accommodate
- 423 development on the lot;
- 424 3. all applicable requirements or agreements under the Adequate
- 425 Public Facilities Ordinance in Subsection 4.3.J and the
- 426 [Subdivision Staging] Growth and Infrastructure Policy are
- 427 satisfied before recording the plat;
- 428 4. all applicable conditions or agreements applicable to the original
- 429 subdivision approval creating the outlot apply to the new lot. The
- 430 conditions and agreements may include, but are not limited to, any
- 431 adequate public facilities agreement, conservation easement, or
- 432 building restriction lines; and
- 433 5. if the outlot is located within a special protection area, all
- 434 applicable special protection area requirements and guidelines,
- 435 including the approval of a water quality plan, are satisfied before
- 436 recording the plat.

437 * * *

438 **DIVISION 50.10. ADMINISTRATIVE PROCEDURES**

439 * * *

440 **10.3. Establishment of Adequate Public Facilities Guidelines**

441 A. The Council must establish by resolution, after public hearing, the

442 process to determine the adequacy of public facilities and services. A

443 [subdivision staging policy] Growth and Infrastructure Policy approved

444 by the Council may serve this purpose if it contains those guidelines. To

445 provide the basis for the Council resolution, the Board and the County

446 Executive must provide the following information and recommendations

447 to the Council:

448 * * *

449 **52-39. Definitions.**

450 In this Article the following terms have the following meanings:

451 * * *

452 *Growth policy* means the [subdivision staging policy] Growth and Infrastructure
453 Policy most recently adopted under Chapter 33A to provide guidelines for the
454 administration of the Adequate Public Facilities Ordinance.

455 * * *

456 **52-40. Findings; purpose and intent.**

457 (a) The master plan of transportation indicates that certain transportation
458 facilities are needed in planning policy areas. Furthermore, the
459 [Subdivision Staging] Growth and Infrastructure Policy indicates that the
460 amount and rate of growth projected in certain planning policy areas will
461 place significant demands on the County for provision of transportation
462 facilities necessary to support and accommodate that growth.

463 * * *

464 **52-47. Credits.**

465 * * *

466 (d) Any credit for building or contributing to an impact transportation
467 improvement does not apply to any development that has been previously
468 approved under the Alternative Review Procedure for Metro Station
469 Policy Areas in the [County Subdivision Staging] Growth and
470 Infrastructure Policy.

471 * * *

472 **52-51. Local Area Transportation Review Mitigation Payment.**

473 (a) In addition to the tax due under this Article, an applicant for a building
474 permit for any building must pay to the Department of Finance a
475 Mitigation Payment if this payment is required for a building included in

476 a preliminary plan of subdivision that was approved under the Local Area
477 Transportation Review provisions in the [County Subdivision Staging]
478 Growth and Infrastructure Policy.

479 * * *

480 **52-55. Tax rates.**

481 (a) The Council must establish the Countywide rates for the tax under this
482 Article by resolution after a public hearing advertised at least 15 days in
483 advance.

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

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

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

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

500 **ARTICLE VI. [EXPEDITED DEVELOPMENT APPROVAL EXCISE TAX]**

501 **Reserved.**

502 **52-60. [Payment] Reserved.**

503 [Any person who applies for approval of a preliminary plan of subdivision under
 504 the Alternative Review Procedure for Expedited Development Approval
 505 adopted in the Growth Policy must pay an expedited development approval
 506 excise tax to the Director of Finance. The applicant, or the applicant's successor
 507 in interest, must pay:

- 508 (a) 10% of the applicable expedited development approval excise tax before
 509 the preliminary plan of subdivision is approved by the Montgomery
 510 County Planning Board under the Alternative Review Procedure for
 511 Expedited Development Approval; and
 512 (b) 90% of the applicable expedited development approval excise tax before
 513 a building permit is released for any building in the area covered by the
 514 subdivision plan.]

515 **52-61. [Rates] Reserved.**

516 [(a) As used in this Section, a moratorium policy area is any policy area
 517 created under the Growth Policy in which the amount of previously
 518 approved development exceeds the applicable jobs or housing staging
 519 ceiling, as defined under the Policy, when the applicant files a completed
 520 application for a preliminary plan of subdivision with the Planning Board.

521 (b) In any area that is not a moratorium policy area, the rate of the payment
 522 required under Section 52-60 is:

523 (1) \$0.25 per square foot of gross floor area in any building or part of
 524 a building that is:

525 (A) owned by a nonprofit organization that is exempt from
 526 federal income taxes under Section 501(c)(3) of the Internal
 527 Revenue Code;

528 (B) intended to be used primarily for the direct provision of
 529 charitable services; and

- 530 (C) not intended to be used as a permanent residence;
- 531 (2) \$0.50 per square foot of gross floor area in any building or part of
- 532 a building that is used for offices by a nonprofit organization that
- 533 is exempt from federal income taxes under Section 501(c)(3) of
- 534 the Internal Revenue Code;
- 535 (3) \$2 per square foot of gross floor area in any building or part of a
- 536 building that is intended to be used primarily for storage, industrial
- 537 or manufacturing, or research and development purposes,
- 538 (4) \$2.50 per square foot of gross floor area in any other nonresidential
- 539 building or part of a building;
- 540 (5) \$1500 for each dwelling unit in any multi-family residential
- 541 building;
- 542 (6) \$2250 for each townhouse; and
- 543 (7) \$3000 for each single-family detached residential building.
- 544 (c) In any moratorium policy area, the rate of the payment required under
- 545 Section 52-60 is:
- 546 (1) \$0.50 per square foot of gross floor area in any building or part of
- 547 a building that is:
- 548 (A) owned by a nonprofit organization that is exempt from
- 549 federal income taxes under Section 501(c)(3) of the Internal
- 550 Revenue Code;
- 551 (B) intended to be used primarily for the direct provision of
- 552 charitable services; and
- 553 (C) not intended to be used as a permanent residence;
- 554 (2) \$1 per square foot of gross floor area in any building or part of a
- 555 building that is used for offices by a nonprofit organization that is

556 exempt from federal income taxes under Section 501(c)(3) of the
557 Internal Revenue Code:

558 (3) \$3 per square foot of gross floor area in any building or part of a
559 building that is intended to be used primarily for storage, industrial
560 or manufacturing, or research and development purposes,

561 (4) \$3.50 per square foot of gross floor area in any other nonresidential
562 building or part of a building;

563 (5) \$2500 for each dwelling unit in any multi-family residential
564 building;

565 (6) \$3500 for each townhouse; and

566 (7) \$4500.00 for each single-family detached residential building.

567 (d) If, within 5 years after a building permit is issued, any person changes the
568 use of all or part of a building to a use for which a higher tax would have
569 been due under this Section when the building permit was issued
570 (including a change from a status, use, or ownership that is exempt from
571 payment to a status, use, or ownership that is not so exempt), the owner
572 of the building must within 10 days after the change in status, use, or
573 ownership pay all additional taxes that would have been due if the
574 building or part of the building had originally been used as it is later used.
575 If the building owner does not pay any additional tax when due, each later
576 owner is liable for the tax, and any interest or penalty due, until all taxes,
577 interest, and penalties are paid.

578 (e) Each year the County Council by resolution, after a public hearing
579 advertised at least 15 days in advance, may increase or decrease the rates
580 set in this Section.

581 (f) (1) "Gross floor area", "dwelling unit", "building", and "person", as
582 used in this Article, have the same meanings as in Chapter 59.

- 583 (2) "Gross floor area", however, does not include any:
- 584 (A) unfinished basement or attic area with a clear height less
- 585 than 7 feet 6 inches;
- 586 (B) interior amenity space required to obtain approval of a site
- 587 plan;
- 588 (C) area occupied by an atrium or other multi-story space other
- 589 than the first floor of the space;
- 590 (D) area occupied by unenclosed mechanical, heating, air
- 591 conditioning, or ventilating equipment;
- 592 (E) parking garage or area; or
- 593 (F) other accessory structure that is not a separate building.]

594 **52-62. [Exemptions] Reserved.**

595 [The tax required under Section 52-60 does not apply to:

- 596 (a) (1) any reconstruction or alteration of an existing building or part of a
- 597 building that does not increase the gross floor area of the building;
- 598 and
- 599 (2) any building that replaces an existing building on the same site to
- 600 the extent of the gross floor area of the previous building, if
- 601 construction begins within one year after demolition or destruction
- 602 of the previous building was substantially completed;
- 603 (b) the first 1200 square feet of gross floor area of:
- 604 (1) a new nonresidential building, or
- 605 (2) an addition to an existing nonresidential building;
- 606 (c) (1) any Moderately Priced Dwelling Unit built under Chapter 25A,
- 607 (2) any Productivity Housing Unit, as defined in Section 25B-17, and
- 608 (3) any other dwelling unit built under a government regulation or
- 609 binding agreement that limits for at least 15 years the price or rent

- 610 charged for the unit in order to make the unit affordable to
 611 households earning less than the income levels set by regulation
 612 for Moderately Priced Dwelling Units, adjusted for family size;
- 613 (d) a nonresidential building owned, and used primarily, by any agency or
 614 instrumentality of federal, state, County or municipal government;
- 615 (e) a building or part of a building owned by an accredited college or
 616 university and used exclusively for instruction, instruction-related
 617 research, and administration of higher education programs;
- 618 (f) a building owned by a nonprofit organization that is exempt from federal
 619 income taxes under Section 501(c)(3) of the Internal Revenue Code, used
 620 primarily for educational or religious activities, and not used for any
 621 substantial commercial activity.]

622 **52-63. [Credits] Reserved.**

623 [Any person who pays an expedited development approval tax under Section
 624 52-60 may reduce that tax by:

- 625 (a) any amount the person paid under Article IV (development impact tax)
 626 for any building that is the subject of this tax; and
- 627 (b) any amount the person paid or is required to pay for any development
 628 district tax levied under County law on account of the building which is
 629 the subject of this tax, to the extent that the development district tax is in
 630 addition to (and not a part of or substitute for) the ad valorem real property
 631 tax applicable to the property.]

632 **52-64. [Payments] Reserved.**

633 [(a) Before the Department of Permitting Services releases a building permit
 634 for any building subject to this Article, the applicant must show that all
 635 taxes due under Section 52-60 have been paid. If the Department releases
 636 a building permit before the applicant pays all taxes due under Section

637 52-60, and the applicant does not promptly pay the entire amount due
 638 when notified by the Department, the Department must immediately
 639 revoke the building permit and issue a stop work order if work under the
 640 permit has begun.

641 (b) When a person applies to a city or town in the County for a building
 642 permit, the applicant must show that all taxes due under Section 52-60
 643 with respect to the building or unit have been paid. The Director of
 644 Finance must promptly refund any tax paid for any building for which a
 645 building permit is not issued by the city or town.

646 (c) Before the Planning Board approves a preliminary plan of subdivision for
 647 all or any part of a subdivision under the Alternative Review Procedure
 648 for Expedited Development Approval, the applicant must show that all
 649 taxes then due under Section 52-60 have been paid.

650 (d) An applicant may pay the tax due under subsection 52-60(a) by posting a
 651 payment bond, in a form and amount approved by the Director of
 652 Finance, when the payment is due.

653 (e) The Director of Finance may refund any tax paid under subsection 52-
 654 60(b) only if:

- 655 (1) the amount of the tax was calculated incorrectly;
- 656 (2) the applicant cancels the building permit before any work begins;
- 657 (3) the building permit lapses; or
- 658 (4) the building permit is revoked by the Department of Permitting
 659 Services or a city or town agency that issued the permit.

660 The Director must not refund any tax paid under subsection 52-60(a).]

661 **52-65. [Collection and administration; interest and penalties; violation; lien;
 662 annual report; use of funds] Reserved.**

- 663 [(a) The provisions of Section 52-42, except subsection (c), apply to the
 664 payment and collection of the expedited development approval excise tax
 665 as if it were the development impact tax.
- 666 (b) By September 1 of each year in which expedited development approval
 667 excise tax payments are received under this Article, the Director of
 668 Finance must report to the County Council for the preceding fiscal year:
- 669 (1) the amount collected under this Article, by policy area and building
 670 use type;
- 671 (2) the amount of property exempted under Section 52-62; and
- 672 (3) the amount of credits granted under Section 52-63.
- 673 (c) In each fiscal year the Council must appropriate the revenue received
 674 under this Article to fund transportation projects in the annual capital
 675 improvements program and the expenses of any transportation
 676 management district established under Chapter 42A. Unless the Council
 677 by resolution directs otherwise, revenue under this Article must not be
 678 appropriated to any project that is eligible for federal or state funding,
 679 except for the County's matching share of the project costs.]

680 **52-111. Urban Agricultural Tax Credit.**

- 681 (a) Definitions. In this Section:
- 682 *Gross income* means the revenue received from the sale of products
 683 grown or raised on the property, including the fair market value of food
 684 products grown or raised on the property donated to an organization
 685 registered as a charitable organization with the Maryland Secretary of
 686 State.
- 687 *Urban agricultural property* means real property in a residential zone that
 688 is:
- 689 (1) at least one-half of an acre and not more than 3 acres;

- 690 (2) located within 1000 feet of or in a Metro Station Policy Area, as
691 defined in the most recent [Subdivision Staging] Growth and
692 Infrastructure Policy adopted under Section 33A-15, including the:
693 (A) Bethesda Central Business District;
694 (B) Friendship Heights;
695 (C) Glenmont;
696 (D) Grosvenor;
697 (E) Rockville Town Center;
698 (F) Shady Grove;
699 (G) Silver Spring Central Business District;
700 (H) Twinbrook;
701 (I) Wheaton Central Business District; and
702 (J) White Flint; and
703 (3) used for urban agricultural purposes.

704 * * *

705 **Sec. 2. Expedited Effective Date.**

706 The Council declares that this legislation is necessary for the immediate
707 protection of the public interest. This Act takes effect on the date on which it becomes
708 law.

LEGISLATIVE REQUEST REPORT

Expedited Bill 1-21

Growth and Infrastructure Policy – Renamed – Expedited Development Approval Excise Tax – Repealed

DESCRIPTION:	Expedited Bill 1-21 would rename the Subdivision Staging Policy the Growth and Infrastructure Policy and repeal the Expedited Development Approval Excise Tax.
PROBLEM:	The Council decided to change the name of the Subdivision Staging Policy to the Growth and Infrastructure Policy. Also, the Expedited Development Approval Excise Tax is no longer used.
GOALS AND OBJECTIVES:	To change references in the Code to the Subdivision Staging Policy to the Growth and Infrastructure Policy and repeal the obsolete Expedited Development Approval Excise Tax.
COORDINATION:	Planning Board
FISCAL IMPACT:	To be provided
ECONOMIC IMPACT:	To be provided
EVALUATION:	To be provided
EXPERIENCE ELSEWHERE:	To be researched
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	N/A