



Committee: GO
Committee Review: At a future date
Staff: Ludeen McCartney-Green, Legislative Attorney
Glenn, Orlin, Senior Analyst
Purpose: To receive testimony – no vote expected
Keywords: #CapOnImpactTax, #Development

AGENDA ITEMS#5&6
June 13, 2023
Public Hearing

SUBJECT

Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments

Resolution to Approve Development Impact Tax Rates for Transportation and Public School Improvements

Lead Sponsors: Councilmember Friedson, Glass, and Stewart
Co-sponsor: Councilmember Fani-González and Balcombe

EXPECTED ATTENDEES

Members of the Public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To receive testimony

DESCRIPTION/ISSUE

Expedited Bill 25-23 would:

- (1) modify the calculations for tax rate adjustments for transportation improvements by requiring cumulative increase or decrease in the construction cost index rather than an annual average every two years;
- (2) set a cap on the development impact tax rate for school and transportation improvements;
- (3) allow certain carryover increases of the biennial tax rate adjustments; and
- (4) generally amend the law governing transportation and school development impact taxes.

SUMMARY OF KEY DISCUSSION POINTS

- As required by County Code §52-49(e) and §52-55(d), the Council may, if it chooses to increase or decrease the impact tax rates for transportation and public school improvements, may do so by resolution after a public hearing.

This report contains:

Staff Report	Pages 1-3
Expedited Bill 25-23	©1
Draft Resolution to Approve Development Impact Tax Rates for Transportation and Public School Improvements	©4
Notice of New Tax Rates by Finance – Published May 1, 2023	©7

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MEMORANDUM

June 8, 2023

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney
Glenn Orlin, Senior Analyst

SUBJECT: Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments

Resolution to Approve Development Impact Tax Rates for Transportation and Public School Improvements

PURPOSE: Public Hearing – to receive testimony

Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public-School Improvements – Amendments, sponsored by Lead Sponsors Councilmembers Friedson Glass and Stewart, and co-sponsors Fani-González and Balcombe was introduced on May 18, 2023. A public hearing is tentatively scheduled for June 13 at 1:30 p.m.¹ A GO committee worksession is scheduled for June 15.

Expedited Bill 25-23 would modify the calculations for tax rate adjustments for transportation improvements by requiring a cumulative increase or decrease in the construction cost index rather than an annual average every two years. Expedited Bill 25-23 would also establish a cap on the development impact tax rate for school and transportation improvements, allow certain increases to the biennial tax rate adjustments, and generally amend the law governing transportation and school development impact taxes.

Accompanying Expedited Bill 25-23 is a resolution to approve the proposed tax rates that would be established with a 20% inflation cap. ©4 The resolution is required by County law² if the Council decides to make any updates to the impact tax rates for transportation and public school improvements after the Director of Finance has already published new rates on May 1, 2023. See page ©7. The resolution would become effective July 1, 2023, and override the published rates by Finance.

¹#CapOnImpactTax, #Development

² County Code §52-49(e) and §52-55(d),

BACKGROUND

Code §§52-49 and 52-55 require the Director of Finance to adjust and publish the tax rates automatically every two years (in odd-numbered years) for the development impact tax for transportation and public school improvements.

The law also requires the transportation improvement tax rates to be calculated based on the annual average or increase in the published construction cost index inflation over the most recent two calendar years. The school adjustment rate takes into calculation construction unit cost inflation over the past two years coupled with the student generation rate by household type.

On May 1, 2023, the Director of Finance published in the County Register the new rates for the period effective 7/1/2023 through 6/30/2025.³

Under the current law, the rates for transportation will increase by a rate of 9.47%. According to the Finance Department, the increase in the index in calendar 2021 over calendar 2020 was 6.05%, and the increase in the index in calendar 2022 over calendar 2021 was 12.89%, thus the average increase was calculated to be about 9.5%.

The rates for school impact tax rates will increase substantially. In part depending on the type of unit and whether it is in an “infill” or “turnover” area, the rate may go up by anywhere between 41.3% to 129.2%. The school impact tax rates are developed by the Montgomery County Planning Board staff, with input from Montgomery County Public Schools staff, and are based on 2021-2022 school year construction costs and enrollment data. The projected percentage increases by unit and area type are:

Infill Areas:

Single-family detached	+45.6%
Single-family attached	+44.2%
Multi-family low-rise	+69.0%
Multi-family high-rise	+57.8%

Turnover Areas:

Single-family detached	+41.3%
Single-family attached	+42.7%
Multi-family low-rise	+57.0%
Multi-family high-rise	+129.2%

The inflation rate increases for transportation, and especially, the school impact taxes are significantly larger than past biennial adjustment updates.

BILL SPECIFICS

³ Montgomery County Register.

<https://www.montgomerycountymd.gov/exec/register/regs/2023/May23Notices.html>

Expedited Bill 25-23 seeks to amend the law to address the flaw regarding the calculation of tax rate adjustments for development impact taxes for transportation improvements by using a cumulative approach over the prior two years rather than an annual average.

See lines 4-9, as follows:

Biennial tax rate adjustment. 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 on July 1 of each odd-numbered year by the [annual average] cumulative increase or decrease in a published construction cost index specified by regulation [for] over the [two most recent calendar years] prior two calendar years.

Bill 25-23 would also establish a 20% inflation cap on the biennial tax rate adjustments. In other words, if an increase in the construction cost index exceeds 20% in subsequent years, **the Director of Finance must limit the rate adjustments to 20% for transportation and public school impact taxes.** In addition, the Bill allows for the opportunity to recapture and carry over a percentage that exceeds 20% to be banked or reserved for future calculation. The carryover percentage may be used and added to the following biennial base tax rate, as long as, the excess carryover plus the base rate remains capped at 20%.

The net result of correcting the transportation impact tax biennial calculation and capping the transportation and school impact tax rate increases at 20% will result in a net revenue loss of about \$24.5 million in FYs24-28. The year-by-year impacts are shown below (\$000):

Impact Tax Bill - Inflation Caps	FY23-28	FY24	FY25	FY26	FY27	FY28
Impact Tax Transportation - Inflation Adj	4,255	851	851	851	851	851
Impact Tax Schools - Inflation Adj 20% cap Bill	(28,791)	(4,429)	(5,378)	(6,328)	(6,328)	(6,328)
change	(24,536)	(3,578)	(4,527)	(5,477)	(5,477)	(5,477)

This bill is an expedited bill because the published new tax rates by the Director of Finance will take effect on July 1, 2023, unless the Council enacts Bill 25-23 with the accompanying resolution to revise the rates by July 1.

This packet contains:	<u>Circle #</u>
Expedited Bill 25-23	1
Draft Resolution to Approve Development Impact Taxes for Transportation and Schools	4
Notice of New Tax Rates – Published May 1, 2023	7

Expedited Bill No. 25-23
Concerning: Taxation - Development
Impact Taxes for Transportation and
Public School Improvements -
Amendments
Revised: 6/6/2023 Draft No. 4
Introduced: May 18, 2023
Expiration: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Friedson, Glass, and Stewart
Co-sponsors: Councilmembers Fani-González and Balcombe

AN EXPEDITED ACT to:

- (1) modify the calculations for tax rate adjustments for transportation improvements by requiring cumulative increase or decrease in the construction cost index rather than an annual average every two years;
- (2) set a cap on the development impact tax rate for school and transportation improvements;
- (3) allow certain carryover increases of the biennial tax rate adjustments; and
- (4) generally amend the law governing transportation and school development impact taxes.

By amending

Montgomery County Code
Chapter 52, Taxation
Sections 52-49 and 52-55

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:

Sec. 1. Sections 52-49 and 52-55 are amended as follows:

52-49. Tax rates.

* * *

(f) Biennial tax rate adjustment. 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 on July 1 of each odd-numbered year by the [annual average] cumulative increase or decrease in a published construction cost index specified by regulation [for] over the [two most recent calendar years] prior two calendar years. The Director must calculate the adjustment to the nearest multiple of 5 cents for rates per square foot of gross floor area or one dollar for rates per dwelling unit. The Director must publish in the County Register the amount of this adjustment not later than May 1 of each odd-numbered year.

(1) Inflation cap on biennial tax rate increases. Notwithstanding subsection (f), the Director must cap the biennial tax rate adjustment not to exceed 20%.

(2) Carryover of biennial tax rate adjustments in excess of 20%. If the biennial tax rate adjustment exceeds 20%, the excess percentage must be carried over and added to the next biennial adjustment. If this total adjustment, which is also capped at 20%, again exceeds 20%, the excess percentage must be carried over and added to the following biennial adjustment.

* * *

52-55. Tax rates.

* * *

27 (d) The Director of Finance, after advertising and holding a public hearing
 28 as required by Section 52-17(c), must adjust the tax rates set in or under
 29 this Section effective on July 1 of each odd-numbered year in
 30 accordance with the update to the Growth and Infrastructure Policy
 31 using the latest student generation rates and school construction cost
 32 data. The Director must calculate the adjustment to the nearest multiple
 33 of one dollar. The Director must publish in the County Register the
 34 amount of this adjustment not later than May 1 of each odd-numbered
 35 year.

36 (1) Inflation cap on tax rate increases. Notwithstanding subsection
 37 (d), the Director must cap the biennial tax rate adjustment not to
 38 exceed 20%.

39 (2) Carryover of biennial tax rate adjustments in excess of 20%. If
 40 the biennial tax rate adjustment exceeds 20%, the excess
 41 percentage must be carried over and added to the next biennial
 42 adjustment. If this total adjustment, which is also capped at 20%,
 43 again exceeds 20%, the excess percentage must be carried over
 44 and added to the following biennial adjustment.

45 * * *

46 **Sec. 2. Expedited Effective Date.**

47 The Council declares that this legislation is necessary for the immediate protection
 48 of the public interest. This Act takes effect on July 1, 2023.

49 **Sec. 3. Transition.**

50 The amendments to the development impact tax for transportation improvements
 51 and the development impact tax for public school improvements added by Section 1
 52 of this Act, must apply to any application for a building permit filed on or after the
 53 effective date of this Act.

Resolution No.: _____
Introduced: May 18, 2023
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsors: Councilmembers Friedson, Glass, and Stewart
Cosponsors: Councilmembers Fani-González and Balcombe

SUBJECT: Development Impact Tax Rates for Transportation and Public School Improvements

Background

1. Under County Code §52-49(e), the County Council may, by resolution, after a public hearing advertised at least 15 days in advance, increase or decrease the development impact tax rates for transportation.
2. Under County Code §52-55(d), the County Council may, by resolution, after a public hearing advertised at least 15 days in advance, increase or decrease the development impact tax rates for public school improvements.
3. A public hearing is scheduled for this resolution on June 13, 2023.
4. This resolution is necessary to update the impact tax rates for transportation and public school improvements.

Action

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

1. The development impact tax rates for transportation, effective for any payments made on or after July 1, 2023, are:

Tax per Dwelling Unit or per Square Foot (SF) of Gross Floor Area (GFA)				
Land Use	Red Policy Areas	Orange Policy Areas	Yellow Policy Areas	Green Policy Areas
Residential Uses (\$/unit)				
Single-Family Detached	\$9,663	\$24,151	\$30,190	\$30,190
Single-Family Attached	\$7,905	\$19,761	\$24,702	\$24,702
Multi-Family Low Rise	\$6,146	\$15,366	\$19,208	\$19,208
Multi-Family High Rise	\$4,930	\$10,976	\$13,720	\$13,720
Multi-Family Senior	\$1,705	\$4,391	\$5,488	\$5,488
Student-Built Houses	\$0	\$0	\$0	\$0
Land Use	Red Policy Areas	Orange Policy Areas	Yellow Policy Areas	Green Policy Areas
Commercial Uses (\$/SF)				
Office	\$8.80	\$22.10	\$27.60	\$27.60
Industrial	\$4.45	\$10.95	\$13.85	\$13.85
Bioscience Facility	\$0.00	\$0.00	\$0.00	\$0.00
Retail	\$7.85	\$19.70	\$24.60	\$24.60
Place of Worship	\$0.00	\$0.00	\$0.00	\$0.00
Clergy House	\$0.00	\$0.00	\$0.00	\$0.00
Private School	\$0.70	\$1.80	\$2.25	\$2.25
Hospital	\$0.00	\$0.00	\$0.00	\$0.00
Charitable/Philanthropic Institution	\$0.00	\$0.00	\$0.00	\$0.00
Other Non-Residential	\$4.45	\$10.95	\$13.85	\$13.85
Agricultural Facility	\$0.00	\$0.00	\$0.00	\$0.00

2. The development impact tax rates for public school improvements, effective for any payments made on or after July 1, 2023, are:

Land Use (\$/unit)	Infill Impact Areas	Turnover Impact Areas
Single-Family Detached	\$25,004	\$26,084
Single-Family Attached	\$21,664	\$29,456
Multi-Family Low Rise	\$6,584	\$13,625
Multi-Family High Rise	\$3,739	\$6,073
Farm Tenant House	\$25,004	\$26,084
Senior Residential	\$0	\$0

This is a correct copy of Council action.

Sara R. Tenenbaum
Clerk of the Council

Montgomery County Register

May 1, 2023, Montgomery County Register Notice

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Pursuant to Chapter 52, Article IV and Article V of the Montgomery County Code (Development Impact Tax for Transportation Improvements and Development Impact Tax for Public School Improvements, respectively), the Director of Finance has adjusted the tax rates set under Sections 52-49, 52-55, and 52-59. As prescribed by law, the Director must adjust the Transportation Improvements tax rates by the annual average increase or decrease in a published construction cost index specified by regulation for the two most recent calendar years. The Director must calculate the adjustment to the nearest multiple of 5 cents for rates per square foot of gross floor area or one dollar for rates per dwelling unit. Based on the change in the Engineering-News Record's Baltimore Construction Cost Index for calendar years 2021 and 2022, the existing rates were increased by a rate of 9.47%. The rates were adjusted to the nearest 5 cents for rates calculated per square foot of gross floor area (GFA) or adjusted to the nearest dollar for rates calculated per dwelling unit.

The revised Public School Improvements Impact Tax Rates were developed by the Montgomery County Planning Board staff, with input from Montgomery County Public Schools staff, and are based on 2021-2022 school year construction costs and enrollment data.

TABLE 1		
Transportation Impact Taxes		
New Rates for the Period 7/1/2023 through 6/30/2025		
	Existing Rates	New Rates
<i>Residential Uses (\$/unit)</i>		
<i>Red Policy Areas</i>		
Single-Family Detached	\$8,071	\$8,835
Single-Family Attached	\$6,603	\$7,228

Multi-Family Low Rise	\$5,134	\$5,620
Multi-Family High-Rise	\$3,667	\$4,014
Multi-Family Senior	\$1,466	\$1,605
Student-Built Houses	\$0	\$0
<i>Orange Policy Areas</i>		
Single-Family Detached	\$20,173	\$22,084
Single-Family Attached	\$16,506	\$18,069
Multi-Family Low Rise	\$12,835	\$14,051
Multi-Family High-Rise	\$9,168	\$10,036
Multi-Family Senior	\$3,668	\$4,015
Student-Built Houses	\$0	\$0
<i>Yellow Policy Areas</i>		
Single-Family Detached	\$25,217	\$27,605
Single-Family Attached	\$20,633	\$22,587
Multi-Family Low Rise	\$16,044	\$17,563
Multi-Family High-Rise	\$11,460	\$12,545
Multi-Family Senior	\$4,584	\$5,018
Student-Built Houses	\$0	\$0
<i>Green Policy Areas</i>		
Single-Family Detached	\$25,217	\$27,605
Single-Family Attached	\$20,633	\$22,587
Multi-Family Low Rise	\$16,044	\$17,563
Multi-Family High-Rise	\$11,460	\$12,545
Multi-Family Senior	\$4,584	\$5,018
Student-Built Houses	\$0	\$0
<i>Commercial Uses (\$/SF)</i>		
<i>Red Policy Areas</i>		
Office	\$7.35	\$8.05
Industrial	\$3.70	\$4.05
Bioscience Facility	\$0.00	\$0.00
Retail	\$6.55	\$7.15
Place of Worship	\$0.00	\$0.00
Clergy House	\$0.00	\$0.00
Private Elementary and Secondary School	\$0.60	\$0.65
Hospital	\$0.00	\$0.00
Charitable/Philanthropic Institution	\$0.00	\$0.00
Other Non-Residential	\$3.70	\$4.05
Agricultural Facility	\$0.00	\$0.00

<i>Orange Policy Areas</i>		
Office	\$18.45	\$20.20
Industrial	\$9.15	\$10.00
Bioscience Facility	\$0.00	\$0.00
Retail	\$16.45	\$18.00
Place of Worship	\$0.00	\$0.00
Clergy House	\$0.00	\$0.00
Private Elementary and Secondary School	\$1.50	\$1.65
Hospital	\$0.00	\$0.00
Charitable/Philanthropic Institution	\$0.00	\$0.00
Other Non-Residential	\$9.15	\$10.00
Agricultural Facility	\$0.00	\$0.00
<i>Yellow Policy Areas</i>		
Office	\$23.05	\$25.25
Industrial	\$11.55	\$12.65
Bioscience Facility	\$0.00	\$0.00
Retail	\$20.55	\$22.50
Place of Worship	\$0.00	\$0.00
Clergy House	\$0.00	\$0.00
Private Elementary and Secondary School	\$1.90	\$2.10
Hospital	\$0.00	\$0.00
Charitable/Philanthropic Institution	\$0.00	\$0.00
Other Non-Residential	\$11.55	\$12.65
Agricultural Facility	\$0.00	\$0.00
<i>Green Policy Areas</i>		
Office	\$23.05	\$25.25
Industrial	\$11.55	\$12.65
Bioscience Facility	\$0.00	\$0.00
Retail	\$20.55	\$22.50
Place of Worship	\$0.00	\$0.00
Clergy House	\$0.00	\$0.00
Private Elementary and Secondary School	\$1.90	\$2.10
Hospital	\$0.00	\$0.00
Charitable/Philanthropic Institution	\$0.00	\$0.00
Other Non-Residential	\$11.55	\$12.65
Agricultural Facility	\$0.00	\$0.00

TABLE 2		
Public School Improvements Impact Taxes		
New Rates for the Period 7/1/2023 through 6/30/2025		
	Existing Rates	New Rates
<i>Infill Impact Areas</i>		
Single-Family Detached	\$20,837	\$30,343
Single-Family Attached	\$18,053	\$26,028
Multi-Family Low Rise	\$5,487	\$9,275
Multi-Family High Rise	\$3,116	\$4,911
Farm Tenant House	\$20,837	\$30,343
Senior Residential	\$0	\$0
<i>Turnover Impact Areas</i>		
Single-Family Detached	\$21,737	\$30,719
Single-Family Attached	\$24,547	\$35,018
Multi-Family Low Rise	\$11,354	\$17,827
Multi-Family High Rise	\$5,061	\$11,601
Farm Tenant House	\$21,737	\$30,719
Multi-Family Senior	\$0	\$0

TABLE 3						
Public School Utilization Premium Payments						
New Rates for the Period 7/1/2023 through 6/30/2025						
	Existing Rates			New Rates		
	Elementary	Middle	High	Elementary	Middle	High
<i>Residential TIER 1 UPP (per unit)</i>						
<i>Infill Impact Areas</i>						
Single-Family Detached	\$3,473	\$2,084	\$2,778	\$5,057	\$3,034	\$4,046
Single-Family Attached	\$3,009	\$1,805	\$2,407	\$4,338	\$2,603	\$3,470
Multi-Family Low Rise	\$915	\$549	\$732	\$1,546	\$928	\$1,237
Multi-Family High Rise	\$519	\$312	\$415	\$819	\$491	\$655

<i>Turnover Impact Areas</i>						
Single-Family Detached	\$3,623	\$2,174	\$2,898	\$5,120	\$3,072	\$4,096
Single-Family Attached	\$4,091	\$2,455	\$3,273	\$5,836	\$3,502	\$4,669
Multi-Family Low Rise	\$1,892	\$1,135	\$1,514	\$2,971	\$1,783	\$2,377
Multi-Family High Rise	\$844	\$506	\$675	\$1,934	\$1,160	\$1,547
Residential TIER 2 UPP (per unit)						
<i>Infill Impact Areas</i>						
Single-Family Detached	\$6,946	\$4,167	\$5,557	\$10,114	\$6,069	\$8,091
Single-Family Attached	\$6,018	\$3,611	\$4,814	\$8,676	\$5,206	\$6,941
Multi-Family Low Rise	\$1,829	\$1,097	\$1,463	\$3,092	\$1,855	\$2,473
Multi-Family High Rise	\$1,039	\$623	\$831	\$1,637	\$982	\$1,310
<i>Turnover Impact Areas</i>						
Single-Family Detached	\$7,246	\$4,347	\$5,797	\$10,240	\$6,144	\$8,192
Single-Family Attached	\$8,182	\$4,909	\$6,546	\$11,673	\$7,004	\$9,338
Multi-Family Low Rise	\$3,785	\$2,271	\$3,028	\$5,942	\$3,565	\$4,754
Multi-Family High Rise	\$1,687	\$1,012	\$1,350	\$3,867	\$2,320	\$3,094
Residential TIER 3 UPP (per unit)						
<i>Infill Impact Areas</i>						
Single-Family Detached	\$10,419	\$6,251	\$8,335	\$15,172	\$9,103	\$12,137
Single-Family Attached	\$9,027	\$5,416	\$7,221	\$13,014	\$7,808	\$10,411
Multi-Family Low Rise	\$2,744	\$1,646	\$2,195	\$4,638	\$2,783	\$3,710
Multi-Family High Rise	\$1,558	\$935	\$1,246	\$2,456	\$1,473	\$1,964
<i>Turnover Impact Areas</i>						
Single-Family Detached	\$10,869	\$6,521	\$8,695	\$15,360	\$9,216	\$12,288
Single-Family Attached	\$12,274	\$7,364	\$9,819	\$17,509	\$10,505	\$14,007
Multi-Family Low Rise	\$5,677	\$3,406	\$4,542	\$8,914	\$5,348	\$7,131
Multi-Family High Rise	\$2,531	\$1,518	\$2,024	\$5,801	\$3,480	\$4,640