

**MEMORANDUM**

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Bill 37-03, Growth Policy - Process

Bill 37-03, Growth Policy - Process, sponsored by the Council President, was introduced on November 18, 2003.

Bill 37-03 makes the technical changes to the current law required to implement the Council's decision, made during its consideration of the 2003-5 Annual Growth Policy, to eliminate the ceiling element and convert the Policy fully to a biennial basis.

At the hearing on this bill, held on January 13, much of the testimony focused on substantive issues contained in the adopted Annual Growth Policy, rather than the process changes contained in this bill. One speaker, Mark Adelman, criticized the bill for a perceived lack of benchmarks for achievement and rules for collecting growth-related data.

Because this bill was solely technical and reflects the policy decisions the Council made last fall, it was not necessary to refer it to the Planning, Housing, and Economic Development Committee.

A staff conforming amendment (see ©12-19) removes references in other sections of the County Code to an "annual" Growth Policy. Two other conforming amendments will be necessary for the zoning and subdivision laws; those will be done later.

This packet contains:	<u>Circle #</u>
Bill 37-03	1
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Bill No. 37-03  
Concerning: Growth Policy - Process  
Revised: 11-14-03 Draft No. 2  
Introduced: November 18, 2003  
Expires: May 18, 2005  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President

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**AN ACT** to:

- (1) repeal the requirement to adopt a ceiling element of the annual growth policy;
- (2) revise the schedule and terminology for the policy element; and
- (3) generally amend the law governing the County growth policy.

By amending

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

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

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

1           **Sec. 1. Section 33A-15 is amended as follows:**

2   **33A-15.    [Annual] Growth Policy.**

3           (a) Purpose.

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

7           (A) land use development;

8           (B) growth management; and

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

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

17          (b) Simplified description.

18          [(1) The annual growth policy has 2 components: a ceiling element  
19          and a policy element.

20          (2) The ceiling element must be adopted annually by the County  
21          Council. It consists of:

22          (A) growth ceilings based on transportation capacity for each  
23          policy area in the County, for both residential and  
24          employment land uses, which must be consistent with  
25          relevant portions of state, county, and municipal capital  
26          improvement programs;

27 (B) the determination whether adequate capacity will exist for  
 28 public schools; and

29 (C) a list of any roads, transit, or school facilities that should  
 30 not be counted in calculating growth ceilings.

31 [(3)] The growth policy [element] must be adopted every 2 years by  
 32 the County Council. It consists of [other] policy guidelines for  
 33 the Planning Board, and other agencies as appropriate, for their  
 34 administration of Section 50-35(k) and other laws and regulations  
 35 which affect growth and development.

36 (c) Duties of the [Montgomery] County Planning Board.

37 [(1)] Each year, the Planning Board must produce a recommended  
 38 ceiling element.

39 (A) By November 7, the Board must make available a staff  
 40 draft ceiling element to the County Executive and other  
 41 county agencies for their use in preparing recommended  
 42 capital improvement programs for the next fiscal year.

43 (B) By May 1, the Board must:

44 (i) for each policy area, calculate the existing pipeline of  
 45 approved development permits, including preliminary  
 46 subdivision plans, sewer authorizations, record plats, and  
 47 building permits;

48 (ii) for each policy area, recommend growth ceilings based on  
 49 transportation capacity, for both residential and  
 50 employment land uses, consistent with the latest  
 51 information in relevant portions of the upcoming county,  
 52 state, and municipal capital improvement programs;

- 53 (iii) for each high school cluster, recommend whether public  
 54 school capacity will be adequate to serve planned growth;  
 55 and
- 56 (iv) list any roads, transit, and school facilities that should not  
 57 be counted in calculating growth ceilings.
- 58 (2) Every [2 years, beginning in 1995] odd-numbered year, the  
 59 Planning Board must produce a recommended growth policy  
 60 [element].
- 61 [(A)] (1) By [May 1] June 15, the Planning Board must send to the  
 62 County Council a staff draft growth policy [element] which  
 63 includes:
- 64 [(i)] (A) a status report on general land use conditions in the  
 65 county, including the remaining growth capacity of zoned  
 66 land, recent trends in real estate transactions, the level of  
 67 service conditions of major public facilities and  
 68 environmentally sensitive areas, and other relevant  
 69 monitoring measures;
- 70 [(ii)] (B) a forecast of the most probable trends in population,  
 71 households, and employment for the next 10 years,  
 72 including key factors that may affect the trends;
- 73 [(iii)] (C) a recommended set of policy guidelines for the  
 74 Planning Board, and other agencies as appropriate, with  
 75 respect to [their] administration of laws and regulations  
 76 which affect growth and development; and
- 77 [(iv)] (D) any other information or recommendations relevant to  
 78 growth policy, or requested by the County Council in the

79 course of adopting the [annual] growth policy or by a later  
80 resolution.

81 [(B)] (2) By [June 15] August 1, the Board must produce a  
82 recommended growth policy [element] which reflects the  
83 Planning Board's views [on the items in subsection (2)(A)(iii) and  
84 (2)(A)(iv)].

85 (3) The Planning Board must promptly make available to the County  
86 Executive, other agencies (including the Office of Zoning and  
87 Administrative Hearings and the People's Counsel), and the  
88 public copies of the staff draft and the Board's recommended  
89 [ceiling and] growth policy [elements].

90 (d) Duties of the County Executive.

91 [(1)] (1) By May 15 of each year, the County Executive must send to the  
92 County Council a recommended ceiling element, including:

93 (A) growth ceilings based on transportation capacity, for both  
94 residential and employment land uses, consistent with the  
95 latest information in relevant portions of the upcoming  
96 county, state, and municipal capital improvement  
97 programs;

98 (B) recommendations regarding whether public school  
99 capacity will be adequate to serve planned growth; and

100 (C) a list of any roads, transit, and other school facilities that  
101 should not be counted in calculating growth ceilings.]

102 [(2)] (1) Every [2 years, beginning in 1995] odd-numbered year, the  
103 County Executive must send to the County Council by [August  
104 1] September 15 any revisions to the [recommended] growth

105 policy [element of] recommended by the Planning Board in the  
 106 form of specific additions and deletions.

107 [(3)] (2) The County Executive must promptly make available to the  
 108 Planning Board, other agencies, and the public copies of the  
 109 County Executive's recommendations.

110 [(4)] (3) The County Executive must assist the Planning Board to  
 111 compile its status report for the recommended [annual] growth  
 112 policy by making available monitoring data which is routinely  
 113 collected by executive branch departments.

114 [(5) The County Executive should use the information in the Planning  
 115 Board staff's draft ceiling element as a reference document in  
 116 preparing the recommended capital improvement program for the  
 117 next fiscal year, particularly with respect to the linkage between  
 118 future capital construction schedules and policy area capacity  
 119 ceilings.]

120 (e) Duties of the [Montgomery] County Board of Education.

121 [(1) Each year, the Board of Education must:

122 (A) by February 15 send the County Council any comments on  
 123 the County Executive's recommended capital improvement  
 124 program as it pertains to the annual growth policy; and

125 (B) by June 1 send the County Council any comments on the  
 126 recommended ceiling elements submitted by the Planning  
 127 Board and the County Executive, including any revisions  
 128 in the form of specific additions or deletions.]

129 [(2)] (1) Every [2 years, beginning in 1995] odd-numbered year, the  
 130 Board of Education must send to the County Council by  
 131 [September 1] October 1 any comments on the recommended

132 growth policy [element] submitted by the Planning Board and the  
 133 Executive's recommendations, including any proposed revisions  
 134 in the form of specific additions or deletions.

135 [(3)] (2) The Board of Education must promptly make available to the  
 136 Planning Board, the County Executive, and the public copies of  
 137 these comments and revisions.

138 [(4)] (3) [During the year, the] The Board of Education must assist the  
 139 Planning Board to compile its status report for the [draft annual]  
 140 growth policy by making available monitoring data which is  
 141 routinely collected by Montgomery County Public Schools staff  
 142 [of the Board of Education].

143 (f) Duties of the Washington Suburban Sanitary Commission.

144 [(1)] Each year, the Washington Suburban Sanitary Commission must:  
 145 (A) by February 15 send the County Council any comments on  
 146 the County Executive's recommended capital improvement  
 147 program as it pertains to the annual growth policy; and  
 148 (B) by June 1 send the County Council any comments on the  
 149 recommended ceiling elements submitted by the Planning  
 150 Board and the County Executive, including any revisions  
 151 in the form of specific additions or deletions.]

152 [(2)] (1) Every [2 years, beginning in 1995] odd-numbered year, the  
 153 Washington Suburban Sanitary Commission must send to the  
 154 County Council by [September 1] October 1 any comments on  
 155 the recommended growth policy [element] submitted by the  
 156 Planning Board and the Executive's recommendations, including  
 157 any proposed revisions in the form of specific additions or  
 158 deletions.

159 [(3)] (2) The [Washington Suburban Sanitary] Commission must  
 160 promptly make available to the Planning Board, the County  
 161 Executive, and the public copies of these comments and  
 162 revisions.

163 [(4)] (3) During the year, the [Washington Suburban Sanitary]  
 164 Commission must assist the Planning Board to compile its status  
 165 report for the [draft annual] growth policy by making available  
 166 monitoring data which is routinely collected by Commission staff  
 167 [of the Washington Suburban Sanitary Commission].

168 (g) Duties of the County Council.

169 (1) After [receipt of either a ceiling element or a policy element]  
 170 receiving the recommended growth policy, the recommendations  
 171 of the County Executive, and [the] any other agency comments,  
 172 the County Council must hold a public hearing on the [draft,]  
 173 recommendations and comments.

174 [(2)] No later than July 15 of each year, the County Council must  
 175 adopt a ceiling element to be effective until the following July 15.  
 176 If the County Council does not adopt a new ceiling element, the  
 177 ceiling element adopted most recently remains in effect.]

178 [(3)] (2) Every [2 years, beginning in 1995] odd-numbered year, the  
 179 County Council must adopt by November [1] 15 a growth policy  
 180 [element] to be effective until November [1] 15 two years later.  
 181 If the County Council does not adopt a new growth policy  
 182 [element], the growth policy [element] adopted most recently  
 183 remains in effect.

184 (h) Amending the [annual] growth policy.

- 185 (1) The County Council, the County Executive, or the Planning  
186 Board may initiate an amendment to [either the ceiling element  
187 or] the growth policy [element].
- 188 (2) If the [County] Executive initiates an amendment:
- 189 (A) the [County] Executive must send it to the [County]  
190 Council, the Planning Board, and other agencies, and make  
191 copies available to the public;
- 192 (B) the Planning Board must send any comments on the  
193 proposed amendment to the [County] Council and the  
194 other agencies within 45 days after receiving the  
195 amendment (unless the Council requests an earlier  
196 response), and must make copies of any comments  
197 available to the public; and
- 198 (C) the [County] Council may amend [either the ceiling  
199 element or] the growth policy [element] after [receiving]  
200 giving the Planning [Board's comments] Board an  
201 opportunity to comment and holding a public hearing.
- 202 (3) If the Planning Board initiates an amendment:
- 203 (A) the Planning Board must send it to the [County] Council,  
204 the [County] Executive, and other agencies, and make  
205 copies available to the public;
- 206 (B) the [County] Executive must send any comments on the  
207 proposed amendment to the [County] Council and other  
208 agencies within 45 days after receiving the amendment  
209 (unless the Council requests an earlier response), and must  
210 make copies of any comments available to the public; and

- 211 (C) the [County] Council may amend [either the ceiling  
212 element or] the growth policy [element] after [receiving]  
213 giving the [County Executive's comments] Executive an  
214 opportunity to comment and holding a public hearing.
- 215 (4) If the County Council initiates an amendment:
- 216 (A) the [County] Council must send it to the [County]  
217 Executive, the Planning Board, and other agencies, and  
218 make copies available to the public;
- 219 (B) the [County] Executive and the Planning Board must send  
220 any comments on the proposed amendment to the [County]  
221 Council and other agencies within 45 days after receiving  
222 the amendment (unless the Council requests an earlier  
223 response), and must make copies of any comments  
224 available to the public; and
- 225 (C) the County Council may amend [either the ceiling element  
226 or] the growth policy [element] after a public hearing.
- 227 (5) If it finds that an emergency [exists] so requires, the County  
228 Council may hold the public hearing and adopt an amendment  
229 before receiving comments under subparagraphs (2)(B), (3)(B),  
230 or (4)(B).

231 **Sec. 2. Cross references.** Any reference in any other section of the County  
232 Code, or any other County document, to the Annual Growth Policy refers to the  
233 Growth Policy approved under Code Section 33A-15, as amended by Section 1 of  
234 this Act, with respect to any Growth Policy or amendment to a Growth Policy  
235 approved after this Act takes effect.

## LEGISLATIVE REQUEST REPORT

Bill 37-03

### *Growth Policy - Process*

<b>DESCRIPTION:</b>	Converts the Annual Growth Policy to a fully biennial process. Eliminates the annual ceiling element.
<b>PROBLEM:</b>	Without policy area ceilings, the Council in its adoption of the 2003-5 Annual Growth Policy decided that an annual ceiling element would be unnecessary.
<b>GOALS AND OBJECTIVES:</b>	To conform the law establishing the Growth Policy to the current policy structure.
<b>COORDINATION:</b>	Planning Board
<b>FISCAL IMPACT:</b>	Minimal.
<b>ECONOMIC IMPACT:</b>	Minimal.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Michael Faden, Senior Legislative Attorney, 240-777-7905; Glenn Orlin, Deputy Council Staff Director, 240-777-7936
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	Applies only to County Growth Policy.
<b>PENALTIES:</b>	Not applicable

**Bill 37-03**  
**Staff conforming amendment**

Insert the following on ©10, line 231, and renumber Section 2 as Section 3:

**Sec. 3. Sections 2-25, 8-30, 8-31, 8-34, 8-37, 14-3, 14-7, 25B-1, 33A-17, 42A-9A, 42A-21, 42A-22, 42A-23, 42A-24, 42A-25, 42A-26, 42A-27, 42A-29, 52-47, 52-48, 52-49, 52-60, 52-61, and 52-88 are amended as follows:**

**2-25. Planning implementation.**

\* \* \*

- (b) Duties. The Office of the County Executive has the following planning implementation functions:

\* \* \*

- (4) (A) Review the Planning Board's draft [[annual]] growth policy and recommend revisions to the Executive;
- (B) Coordinate the use of information in this draft with the formulation of capital improvements program recommendations;
- (C) Draft [[the Executive's recommended annual growth policy ceiling element, and]] comments on the Planning Board's [[draft]] proposed growth policy [[element,]] for submission to the County Council;

\* \* \*

**8-30. Purpose; definitions.**

- (a) Purpose. The purpose of this article is to avoid the premature development of land where public facilities, including transportation, are inadequate. It is intended to promote better timing of development with the provision of adequate public facilities.
- (b) Definitions. In this article, the following words and phrases have the meanings stated unless the context clearly indicates otherwise.

\* \* \*

- (5) Timely adequate public facilities determination means an adequate public facilities determination that is required as a prerequisite to the issuance of a building permit, or is within the time limits prescribed by law for the validity of an adequate public facilities determination, or both. It encompasses all standards and requirements of the adequate public facilities ordinance and any adopted [[annual]] growth policy, including standards for adequacy of transportation facilities [[using both policy area and local area transportation review]].

\* \* \*

**8-31. Requirement for timely adequate public facilities determination; special provisions for proposed non-residential development on pre-1982 recorded or approved lots or parcels.**

\* \* \*

- (b) Requirements for proposed non-residential development on pre-1982 recorded or approved lots or parcels. Until July 25, 2001, the Department of Environmental Protection may issue a building permit, without a timely adequate public facilities determination, for a proposed non-residential development on a lot or parcel recorded before January 1, 1982, or otherwise recorded in conformance with a preliminary plan of subdivision approved before January 1, 1982, that is registered under Section 8-32, if:
  - (1) the proposed non-residential development does not add 50 or more peak hour trips, in the aggregate; or
  - (2) the proposed non-residential development adds 50 or more peak hour trips, in the aggregate, but:
    - (i) will not produce excessive congestion, as determined under the [[legislative guidelines contained in the annual]] adopted growth policy and related [[administrative regulations]] guidelines for local area transportation review; or
    - (ii) received a partial exemption from local area transportation review requirements under Section 8-33.

A non-residential development under this paragraph that is located in a policy area with no net remaining transportation ceiling capacity under the [[annual]] growth policy must also be subject to a traffic mitigation agreement executed with the Department of Public Works and Transportation.

\* \* \*

**8-34. Administrative procedures.**

\* \* \*

- (f) Decision by Director.
  - (1) Administrative Decision. After receiving the recommendations of the Planning Board and the Director of the Department of Public Works and Transportation, the Director must decide on an application and any request for an exemption, using the criteria of this Article, the adequate public facilities ordinance, any adopted [[annual]] growth policy, and related administrative regulations, as appropriate. The Director may issue, deny, or condition any permit, as appropriate, including requiring the execution by the applicant of agreements with the Planning Board or the Department of Public Works and Transportation.

\* \* \*

**8-37. Payment.**

- (a) Any person who receives approval of a preliminary plan of subdivision under [[the]] any Alternative Review [[Procedures]] Procedure for Transportation Facilities adopted in the [[Annual]] Growth Policy which requires a Development Approval Payment must pay a Development Approval Payment to the Director of Finance.

\* \* \*

**14-3. Definitions.**

- (a) Adequate Public Facility means any infrastructure improvement required by the Planning Board as a condition of approving a preliminary plan of subdivision under Section 50-35(k) or identified in the [[Annual]] Growth Policy as necessary for adequate public facilities approval in a development district.

\* \* \*

**14-7. Planning Board Review; Compliance with Adequate Public Facilities and Annual Growth Policy Requirements.**

- (a) After the Council has adopted a resolution under Section 14-6, one or more owners of land located in the proposed district may submit an application for provisional adequate public facilities approval, covering the entire proposed district, to the Planning Board. The application must:
  - (1) explain how each development located in the proposed district will comply with all applicable zoning and subdivision requirements, including any action necessary under Section 50-35(k);
  - (2) identify any infrastructure improvement necessary to satisfy the [[Annual]] Growth Policy's adequate public facilities requirements for a development district; and
  - (3) estimate the cost to provide each such improvement.
- (b) Within a reasonable time, the Board must jointly review for compliance with Section 50-35(k) and the [[Annual]] Growth Policy all developments located in the proposed district as if they were one development. In that review, the Board must apply all otherwise applicable standards and procedures. The Board may conditionally approve an application if it finds that the proposed district will meet all requirements under Section 50-35(k) and any added requirements which apply to a district under the [[Annual]] Growth Policy. The Board may condition its approval on, among other things, the creation and funding of the district and the building of no more than the maximum number of housing units and the maximum nonresidential space listed in the petition filed under Section 14-6 or any later amendment to the petition.
- (c) In the aggregate, the applications approved must commit the applicants to produce (through the funding of the proposed development district or otherwise) the infrastructure improvements needed to meet the applicants' adequate public facility requirements in the proposed district and any added requirements which apply to an applicant under the [[Annual]] Growth Policy. In its approval, the Board must list those infrastructure improvements.

\* \* \*

- (e) (1) After a development district is created and the financing of all required infrastructure improvements is arranged, any development located in the district has for all purposes satisfied:
  - (A) the adequate public facility requirements of Section 50-35(k);
  - (B) any added requirements which apply to a district under the [[Annual]] Growth Policy; and
  - (C) any other requirement to provide infrastructure improvements which the County adopts within 12 years after the district is created.

- (2) This subsection does not relieve any taxpayer from paying a generally applicable County tax, assessment, fee, or charge.

\* \* \*

**25B-1. Legislative findings.**

\* \* \*

- (f) The County has well-developed processes for determining the need for facilities and amenities. These processes, which provide for extensive public participation, include the capital improvements program process, the master plan and sector plan processes, zoning, the development approval process, including subdivision regulation, adequate public facilities ordinance, [[annual]] growth policy, site plan review, and special exception and variance procedures. Nevertheless, stimulating public advocacy and participation in the development of affordable and assisted-family housing can have a beneficial effect on public understanding and support for such housing.

\* \* \*

**33A-17. Land use information functions.**

- (a) The Planning Board must provide informational and referral services on County land use and related regulatory functions to interested members of the public. The services to be provided include technical assistance and information on:

- (1) master plans, including pending amendments;
- (2) zoning, including pending cases and pending text amendments;
- (3) subdivision control, including pending applications and amendments to Chapter 50;
- (4) [[annual]] growth policy and related regulatory requirements;
- (5) federal, state, and local environmental regulations; and
- (6) related administrative, regulatory, or legislative procedures applicable to the Planning Board, Office of Zoning and Administrative Hearings [[Hearing Examiner]], Historic Preservation Commission, Board of Appeals, other County regulatory agencies, Washington Suburban Sanitary Commission, and County Council.

\* \* \*

**42A-9A. Traffic mitigation agreements for certain developments.**

- (a) \* \* \*

- (4) A traffic mitigation agreement executed under this Section is not intended to satisfy the requirements of the [[Annual]] Growth Policy for exceeding [[policy area]] staging ceiling limitations. Until the County Council adopts specific traffic mitigation or commuting goals in the [[Annual]] Growth Policy, the goal of a traffic mitigation agreement is to have the percentage of non-driver trips employees make during the peak period equal the percentage of home-based work trips non-drivers make within the policy area. The mitigation agreement should consider proximity to Metro and other relevant factors set forth in subsection (e). The percentage of non-

driver trips the employees make during the peak period must not be lower than 15 percent or the percentage of home-based work trips using transit, whichever is greater. The percentage must not be higher than 35 percent. In determining the appropriate percentage of home-based work trips for non-drivers under this paragraph, the Department of Public Works and Transportation must use data of commuting patterns from the most recent census update.

\* \* \*

**42A-21. Definitions.**

In this Article, unless the context indicates otherwise:

\* \* \*

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

\* \* \*

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

\* \* \*

- (f) Transportation demand management should be consistent with any commuting goals set in the [[Annual]] Growth Policy, and foster coordinated and comprehensive government, private industry, and public action to:
  - (1) increase transportation capacity;
  - (2) reduce existing and future levels of traffic congestion;
  - (3) reduce air and noise pollution; and
  - (4) promote traffic safety and pedestrian access.

\* \* \*

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

- (a) The County Council by resolution may create transportation management districts in any Metro station policy area, which may include adjacent areas served by the same transportation network, or in any area where [[policy area]] transportation review applies under the [[Annual]] Growth Policy.

\* \* \*

**42A-24. Traffic mitigation plans.**

- (a) If an employer is subject to this Section, and if the Council by resolution or in the [[Annual]] Growth Policy has approved the use of traffic mitigation plans in a given district, the Director must notify the employer by letter that the employer must submit a traffic mitigation plan meeting the requirements of this Section.
- (b) An employer who employs 25 or more employees in a district at any time within one year before receiving notice under subsection (a) must submit a traffic mitigation plan to the Director.
- (c) The traffic mitigation plan should be consistent with and contribute to the achievement of any commuting goals set in the [[Annual]] Growth Policy. A traffic mitigation plan may include an alternative work hours program, carpool or vanpool incentives, subsidized transit passes, preferential parking, peak period or

single-occupancy vehicle parking charges, improved bicycle and pedestrian access and safety, telework, and other transportation demand management measures.

\* \* \*

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

**42A-25. Traffic mitigation agreements.**

- (a) Any proposed subdivision or optional method development in a district must be subject to a traffic mitigation agreement if the Planning Board and the Director jointly decide, under standards adopted by the Council for the adequacy of public transportation, that more transportation facilities or transportation demand management measures are necessary to meet any commuting goals set in the [[annual]] Growth Policy.
- (b) A traffic mitigation agreement must specify transportation demand management measures that the applicant or a responsible party must carry out. The measures must be calculated to ensure that public transportation will be adequate to meet commuting goals set in the [[Annual]] Growth Policy.

\* \* \*

**42A-26. Annual survey.**

\* \* \*

- (b) The Director, after consulting the appropriate Advisory Committee, must prepare a survey that generates information to:
  - (1) create an accurate data base of employee commuting patterns in the district; and
  - (2) monitor progress toward reaching any commuting goals set in the [[Annual]] Growth Policy.

\* \* \*

**42A-27. Executive report.**

\* \* \*

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

**42A-29. Transportation Management Fee.**

- (a)(1) The Executive may by regulation adopted under method (2) set the amount of a transportation management fee that the Department may annually charge, under the Alternative Review Procedures in the [[Annual]] Growth Policy, an applicant

for subdivision or optional method development approval in a district and each successor in interest of that applicant.

\* \* \*

**52-47. Definitions.**

\* \* \*

*[[Annual growth]] Growth policy means the [[annual]] growth policy most recently adopted under Chapter 33A to provide guidelines for the administration of the Adequate Public Facilities Ordinance.*

\* \* \*

*Planning policy area means any geographic area designated as a transportation policy area in the [[annual]] growth policy.*

\* \* \*

**52-48. Findings; purpose and intent.**

- (a) The master plan of highways indicates that certain roads are needed in planning policy areas. Furthermore, the [[Annual]] Growth Policy indicates that the amount and rate of growth projected in certain planning policy areas will place significant demands on the County for provision of major highways necessary to support and accommodate that growth.

\* \* \*

**52-49. Imposition and applicability of development impact taxes.**

\* \* \*

- (c) The following impact tax districts are established, consisting of the listed Planning Policy Areas as defined in the [[Annual]] Growth Policy:

\* \* \*

**52-60. Payment.**

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

\* \* \*

**52-61. Rates.**

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

\* \* \*

**52-88 Findings; purpose and intent.**

\* \* \*

- (g) The County retains the power to determine the public school improvements to be funded by development impact taxes; estimate the cost of such improvements; establish the proper timing of construction of the improvements to meet school capacity needs as identified in the [[Annual]] Growth Policy; determine when changes, if any, may be necessary in the County CIP; and do all things necessary and proper to accomplish the purpose and intent of this Article.

\* \* \*