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City Transportation Department staff have made a number of changes to the proposed new Transportation Demand Management (TDM) program in response to feedback from Smart Growth's members and other stakeholders, and Smart Growth's members greatly appreciate that. However, there still is considerable room for improving this proposal. To improve the proposal, Smart Growth requests the following changes to the ordinance and program.

**1. Add a required study and report and a “sunset” provision to the TDM ordinance.**

Rationale: Requiring the Transportation Department to gather information from those affected by the new TDM program after it has been effective for several years is needed to make visible to the future Transportation Commission and Common Council the positive and negative impacts of the new TDM program, especially the negative impacts on commercial tenants, employees of commercial tenants, and apartment residents. Without such a study and report, the positive impacts and the negative impacts on businesses, employees and residents will be invisible to the Transportation Commission, Common Council and most of Madison's residents. The review that will take place six months after the new TDM program becomes effective is not an adequate substitute for this future study report, because six months after the new program becomes effective, there will not yet be any new buildings subject to the new program that are complete and occupied by commercial tenants and their employees or residential tenants.

The “sunset” provision will ensure that the future Common Council can carefully consider this study report before deciding whether to keep the TDM program in place or take some other action to address the goals of the TDM program.

***Smart Growth's Response to Staff's Response***

Regarding the requested study and report, Transportation Department staff say there will be a review of the new TDM program by the Transportation Commission six months after the effective date of the new program (one year after enactment) and annually every year after that.

There is no indication that the annual reviews of the program in the future by the Transportation Commission will include gathering input from the commercial tenants, the employees of the commercial tenants, and the residential tenants who will be directly impacted by the new program. There is no indication that the annual review will include gathering input from commercial brokers who will know whether this program is pushing businesses out of Madison into other communities. The annual review

without these steps probably will confirm that the program is working great even if the program is, in fact, working very poorly. It will be a pseudo program evaluation while wearing blinders.

Every City of Madison meeting agenda contains the following questions:

Who is benefited?

Who is burdened?

Who does not have a voice at the table?

How can policymakers mitigate unintended consequences?

If policymakers are not willing to require Transportation Department staff to gather information from those who will be directly impacted by this new program or from people who will be able to inform them of businesses choosing locations outside of Madison because of this new program, perhaps these questions should be removed from the agendas, because they appear to be unimportant.

The more rigorous study Smart Growth requesting could be in addition to the annual reviews by the Transportation Commission. But the reality is that for the first year or two, for new buildings, there will be nothing meaningful to review, because the new buildings subject to the new program will not yet be constructed and occupied.

Transportation Department staff also say that by the time of the deadline to report the results of the study, three and a half years after the effective date (four years after enactment), it is likely that they will not have data showing the benefits of the new program, because it will take a decade or more for the new program to produce substantial benefits. This is confirmation of what Smart Growth has been saying all along: the benefits of the new program will be modest.

Regarding the “sunset” provision, Transportation Department staff say that provision will undermine the certainty the program is trying to create, make it challenging to recruit someone to administer the program, and if the program were not re-enacted before the sunset deadline, the current TDM requirements would be reinstated.

Smart Growth’s response it is better to be certain that the new program is worth retaining, or if modifications are needed, that the future Common Council will have an opportunity to require those modifications to be made. The sunset deadline would be four years after the effective date (four and a half years after enactment), and it should be possible to recruit of talented person to administer such a long pilot program. Finally, if the new TDM program were to lapse and the existing TDM requirements were resurrected, it is highly likely that all the buildings which were implementing the new TDM program would comply with the existing TDM requirements.

Finally, the Common Council could add the study and report requirement without the “sunset” provision. The two items can be separated.

Proposed ordinance text:

After three years after the effective date of this ordinance, the Transportation Department shall gather information from at least the following groups of people regarding their experience with the program implementing this ordinance:

- Owners of buildings subject to the program
- Commercial tenants in buildings subject to the program
- Employees who work in buildings subject to the program
- Residential tenants in buildings subject to the program
- Commercial brokers.

No later than three and a half years after the effective date of the ordinance, the Transportation Department shall submit to the Transportation Commission and Common Council a written report of the information gathered from people affected by the program. The report also shall include an appendix containing the addresses of all of the buildings subject to this program, the uses in each of the buildings subject to the program, the number of TDM plans submitted for each building, and a statistical summary of how many times each TDM measure was included in all of the TDM plans submitted to comply with the program.

This ordinance will be repealed effective four years from the date it became effective unless before the repeal date the Common Council extends the duration of the program.

- 2. Remove the provisions in the TDM program document which make the new TDM program apply to uses in existing buildings if the use or sub-use changes after the effective date of the TDM program.**

Rationale: The proponents of the proposed new TDM ordinance and program recognize that it will be extremely challenging for the owner of an existing building to propose a TDM plan for a changed use or sub-use that complies with the new TDM program. They have included a two-part “appeals process” to try to address this issue.

In the latest version of the TDM program document, the standard that staff must apply when deciding whether to grant the application for a point reduction (up to 5 points) now includes the word “impractical” rather than “impossible.” Smart Growth greatly appreciates this change.

But even though the word “impossible” has been changed to “impractical,” there is no assurance that city staff will act on an application for a point reduction in time to keep a potential new commercial tenant interested in the space in the applicant’s building.

### ***Smart Growth’s Response to Staff’s Response***

Transportation Department staff have said that the workload for the new staff member who will administer the new TDM program will be light to begin with, so decisions about applications should be

made promptly. But there is no assurance that will be the case when the new program is more mature. Finally, it is highly unlikely that a building owner could obtain a point reduction from the Transportation Commission in time to make a difference, unless the issue arose a few days before a Transportation Commission meeting and the Commission were willing to add to its agenda an application received only a couple of days before the meeting date.

Proposed TDM program document text:

TDM requirements are applicable to all existing structures within the City that are expanded or for which:

- ~~Uses change from one primary use category to another (e.g. changing from employment to commercial use)~~
- ~~Sub-uses change from one category to another (e.g. commercial—retail to commercial restaurant)~~
- The total parking on the site is increased
- The primary structure in which the use takes place is expanded.
- The overall composition of uses on the site changes (e.g. a building with 50% employment and 50% commercial, becomes 60% employment and 40% commercial)

**3. Clarify when the new TDM program applies to an expansion of an existing use or sub-use in an existing building.**

Rationale: Please adopt this change (Option A or Option B below) if you reject requested change #2 above. According to Transportation Department staff, the intent of the new TDM program is that if an existing use or sub-use is expanded, that should NOT trigger application of the new TDM program unless the expansion changes the overall composition of uses or sub-uses on the site. For example, if an entire floor of an existing building currently is divided among several general office uses (“general office” is a sub-use category) and one general office use becomes larger while another general office use becomes smaller on that floor, the expansion of the one general office use should NOT trigger application of the new TDM program, according to Transportation Department staff. It is not clear whether an expansion of an existing use or sub-use falls under the first two bullet points or the last bullet point as they are currently written in the new TDM program document. These bullet points are independent triggers, so if the new TDM program would apply under one bullet point but not under another bullet point, the new TDM program will apply. Consequently, the lack of clarity about which bullet point applies to an expansion of an existing use or sub-use will have a substantial impact depending on how future staff resolve this lack of clarity. The following two options for additional text would clarify that the new TDM program will apply to an expansion of an existing use or sub-use in an existing building only under the circumstances that it is intended to apply.

***Smart Growth’s Response to Staff’s Response***

Transportation Department staff say they think both Option A and Option B are confusing. However, they do not dispute that the following is the intent of the new program as it applies to expansion (i.e., enlargement) of an existing use or sub-use in an existing building: (a) If the expansion would change the

overall composition of uses or sub-uses in the existing building, then the new program should apply to the expansion, but (b) if the expansion would NOT change the overall composition of uses or sub-uses in the existing building, then the new program should NOT apply to the expansion (e.g., where one general office use space on a floor of a building became larger while another general office use on the same floor became smaller).

If policymakers are not willing to adopt Option A or Option B below because Transportation Department staff are not comfortable with them, please include in your motion to approve the new program a direction to the Transportation Department staff to add text to the TDM program document which explicitly states the intent of the program regarding the circumstances under which the new program would apply to an expansion of an existing use or sub-use in an existing building.

Proposed TDM document text:

#### Option A

TDM requirements are applicable to all existing structures within the City that are expanded or for which:

- Uses change from one primary use category to another (e.g. changing from employment to commercial use). This bullet point applies to an expansion of an existing use only if the expansion changes the overall composition of uses on the site.
- Sub-uses change from one category to another (e.g. commercial – retail to commercial restaurant). This bullet point applies to an expansion of an existing sub-use only if the expansion changes the overall composition of sub-uses on the site.
- The total parking on the site is increased
- The primary structure in which the use takes place is expanded.
- The overall composition of uses on the site changes (e.g. a building with 50% employment and 50% commercial, becomes 60% employment and 40% commercial)

#### Option B

TDM requirements are applicable to all existing structures within the City that are expanded or for which:

- Uses change from one primary use category to another (e.g. changing from employment to commercial use)
- Sub-uses change from one category to another (e.g. commercial – retail to commercial restaurant)
- The total parking on the site is increased
- The primary structure in which the use takes place is expanded.
- The overall composition of uses on the site changes (e.g. a building with 50% employment and 50% commercial, becomes 60% employment and 40% commercial). Expansion of an existing use or sub-use is governed by this bullet point rather than the first two bullet points.

- 4. Clarify that charging residential tenants separately to park a vehicle in the parking structure (e.g., underground parking garage) for an apartment building/complex is sufficient to satisfy the TDM mitigation measure called Unbundle Parking as long as a majority of the parking spaces for the apartment building/complex are contained within the parking structure.**

Rationale: In areas of the city outside the Downtown area, it is extremely unusual for the owner of an apartment building/complex to attempt to make tenants pay separately for surface parking spaces for a variety of reasons. In areas of the city outside the Downtown area, it is common for new apartment buildings/complex to provide most of the parking for the tenants in an underground garage while providing parking for visitors, deliveries and a small number of the tenants' vehicles in a small surface parking lot. If the developer/property owner must attempt to charge tenants for parking stalls in the surface parking lot for an apartment building/complex where most of the parking spaces are in a parking structure with controlled access in order to satisfy the Unbundle Parking mitigation measure, few if any TDM plans for new apartment buildings/complexes outside the Downtown area will contain the Unbundle Parking mitigation measure. This will make it more challenging for new apartment building/complexes to meet the requirements of the new TDM program, which could discourage housing construction in Madison. Furthermore, if a developer/building owner decided to attempt to charge residential tenants for parking in the surface parking lot in many areas of the city outside of the Downtown area, the tenants would respond by parking their vehicles on the streets in the surrounding neighborhood to avoid paying the parking fee.

#### ***Smart Growth's Response to Staff's Response***

Transportation Department staff say that allowing the owner of a new apartment building not to charge tenants to park in a surface parking lot that provides parking for visitors, deliveries, and a relatively small number of tenants would defeat the purpose of the Unbundle Parking mitigation measure.

Smart Growth disagrees, especially if the surface parking lot is quite small. It would make sense for Transportation Department staff and stakeholders to work out how small the surface parking lot should be in relation to the number of units in the building in order to still get credit for Unbundle Parking while not charging for surface parking that is primarily for visitors and deliveries. If this issue is not worked out and an owner of a new apartment building must charge tenants to park in a small surface parking lot that supplements the larger underground parking structure, then few owners of new apartment buildings will include this mitigation measure in their TDM plans—which means they might also not charge tenants separately for parking in the underground parking structure.

Transportation Department staff also say that a developer/building owner could propose a customized mitigation measure that would charge tenants separately for underground parking but not for parking in the small, supplemental surface parking lot, and the new staff person administering the new program would decide how many, if any, TDM points would be awarded for that customized measure. This would defeat the certainty that is supposed to be one of the primary benefits of the new program.

Proposed TDM program document text:

Unbundle Parking	Programmatic	Lease or sell parking separately from residential units or office spaces. Must be optional. Cannot be used in combination with parking fees or cash out. <u>Parking in a surface parking lot for residential units and visitors is exempt from leasing or selling parking separately as long as a majority of the parking spaces for the residential units are in a parking structure and are leased or sold separately.</u>	10
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**5. Double the points for certain TDM mitigation measures that the developer/property owner actually can control.**

Rationale: Many potential commercial tenants will not lease space in a building where their employees must pay to park (Unbundle Parking or Market Rate Parking), because it will make it harder for them to retain and recruit talented employees. In addition, many potential commercial tenants will not agree in the lease to perform TDM measures with their employees (Parking Cash-out). This makes it extremely challenging for a developer/owner of a new multi-tenant building that includes employment or commercial uses to be able to simultaneously sign commercial tenants to leases AND be able to submit TDM plan(s) containing enough points to meet the requirements of the new TDM program. This is true everywhere in the city, including the Downtown. Increasing the points for non-parking TDM measures which the developer/property owner actually can control would make it more feasible for the developer/property owner to be able to do both.

***Smart Growth’s Response to Staff’s Response***

Transportation Department staff says that many small- to medium-sized projects do not need to include any of the 10-point mitigation measures (Unbundle Parking, Market-rate Parking Fees or Parking Cash-out) to obtain the required number of TDM points, and a number of smaller-point mitigation measures can be substituted for one of the 10-point measures. This is true for small- to medium-sized projects, but not for large projects. The hypothetical of a large new Downtown employment-use building in the TDM program document shows this.

Alternative 1

MEASURE TYPE	TDM MEASURES	POINTS ACHIEVED
<b>Transit</b>	Offer transit passes to all employees (75% subsidy)	3
<b>Information</b>	Marketing & informational campaign	1
<b>Land Use</b>	Proximity to Public Transportation (BRT)	5
<b>Parking</b>	Market-rate Parking Fees	10
<b>TOTAL POINTS</b>		<b>19</b>

The TDM program document illustrates that if the parking ratio is reduced, the need for the 10-point measure can be avoided. But lowering the parking ratio will make it more challenging to obtain enough new commercial tenants to lease up the new building.

In addition, both alternative TDM plans for this hypothetical new building contain offering reduced-cost or free transit passes to employees, even though the employees in the building would work for the potential commercial tenants, not the developer/building owner. The developer would need to find potential commercial tenants that would be willing to pay higher rents to cover the cost of the transit passes (possibly in addition to paying for parking spaces for their employees).

The issue becomes starker for a large new employment-use building in the periphery of the city, for example, a large new employment-use, multi-tenant office building in The American Center business park on Madison's far east side, which would be required to have 19 points in its TDM plan.

Dedicated Access to Bike Parking	1
Bicycle Maintenance Facilities	1
Clothes Lockers and Showers	1
Carpool Preferential Parking	1
Marketing & Information Campaign	1
Active Transportation Wayfinding	1
Proximity to Public Transportation	3
Charge Market-Rate Parking	<u>10</u>
Total	19

In order to produce a TDM plan for this hypothetical situation which would avoid including the 10-point, it would have to include measures such as Emergency Ride Home for Employees, Flexible Work Schedule, Teleworking/Work from Home, which are not practical for a developer/building owner to implement in a multi-tenant building with ten commercial tenants, where all the employees work for the ten commercial tenants, not the developer/building owner.

Proposed change to TDM program document:

Double the number of points for the following TDM mitigation measures:

- Dedicated access to bike parking (currently 1 point)
- Indoor covered bike parking near entrance (currently 1 point)
- Bicycle maintenance facilities (currently 1 point)
- Clothes lockers and/or showers (currently 1 to 2 points)
- Secure storage room or bicycle lockers (currently 2 points)
- Carpool preferential or free parking (currently 1 point)
- Marketing & information campaign (currently 1 point)
- Active transportation, wayfinding, maps & signage (currently 1 point)
- Alternative transportation kiosk (currently 1 to 2 points)
- Delivery supportive amenities (currently 1 point)
- Package drop-off area (currently 2 points)

**6. Make the exemption for an “existing building” apply to any building that is approved prior to the effective date of the new TDM ordinance**

Rationale: The updated version of the proposed new TDM ordinance says that in order for a building to be exempt from the new TDM program as an existing building, it must be “completed or approved prior to enactment of this ordinance.” This means that a proposed development project that already has been in the development review and approval process for months but has not yet obtained approval as of the date that the new TDM ordinance is enacted (probably December 6, 2022) will be subject to the new TDM program. It would be grossly unfair to make the developer of a project that already is in the development review and approval process re-work the project to comply with the new TDM program.

This morning, Transportation Department staff informed me that the intent of this section is that if a new building is approved before the new TDM program becomes effective, which is six months after publication, then the building is exempt from the new program. The change below would make the words in the new TDM ordinance match this intent.

Proposed ordinance text:

- (8) Exemptions. Properties that were completed or approved prior to the ~~enactment of~~ date on which this ordinance becomes effective are exempt from TDM requirements until such a time when the following occurs:
- i. Expansion of the property.
  - ii. Expansion of the parking associated the property.
  - iii. Change of use from one land use category or sub-category to another, as defined in Appendix A of the “Transportation Demand Management Program”
- (9) Appeals. Program participants with properties completed or approved prior to the ~~enactment of~~ date on which this ordinance becomes effective may seek relief from TDM requirements. Department of Transportation staff may approve relief up to five (5) mitigation points, as outlined within section 2.6 of the Transportation Demand Management Program. Applicants that allege an error in staff determination or that require additional relief in the form of mitigation points may appeal to the Transportation Commission for adjustments to mitigation point requirements.