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Concerns and Questions about New TDM Program

This memorandum contains Smart Growth’s primary concerns and questions about the latest version of the proposed new Transportation Demand Management (TDM) program for Madison. Smart Growth appreciates that the latest version of the proposed TDM program includes changes made in response to some of the concerns voiced by Smart Growth.

Smart Growth raised some of the concerns in this memorandum with Transportation Department staff more than a year ago and has reiterated those concerns multiple times. Transportation Department staff and Smart Growth are continuing to work together in an effort to find solutions to these concerns.

Smart Growth raised some of the concerns in this memorandum more recently because only recently it became apparent that the new TDM program is intended to apply, under certain circumstances, to buildings constructed before the new TDM program is adopted. Again, Transportation Department staff and Smart Growth are continuing to work together in an effort to find solutions to these concerns.

This memorandum will be updated as the Transportation Department staff makes changes to the proposed new TDM program.

For your reference, this memorandum also contains a summary of the proposed program, based on the August 2022 Distribution Draft about the program, following Smart Growth’s concerns. The program summary starts on page 3 of this memorandum.

If you have questions about Smart Growth’s concerns, please contact Bill Connors, Executive Director, at 608-228-5995 (mobile) or bill@smartgrowthgreatermadison.com.

Smart Growth’s Concerns

Smart Growth’s high-level concerns are as follows.

- The new TDM program will make it more challenging for developers to bring new business with good paying jobs to Madison.
- Residential and commercial tenants will pay higher rents to cover the costs imposed by the new TDM program.

- The new TDM program's positive impact will be modest because many people who work in Madison live in areas where they have no access to transit or other shared transportation services, so they have no choice but to drive to their jobs.
- The new TDM program's encouraging building owners to require employees working in their buildings to pay to park at work will be a hardship on people like single mothers, who must drive to work because they must drop off their kids at day care or school on the way to work and pick them up after work, regardless of whether transit is available to them.
- The new TDM program's encouraging building owners to require employees working in their buildings (e.g., employees of the commercial tenants in their buildings) to pay to park at work will exacerbate the challenges Madison businesses are experiencing to hire and retain employees, because many current and potential new employees who live where transit is not available will choose to work where there is no charge to park at work.
- Concerns about how to avoid triggering the application of the new TDM program to existing buildings or managing the situation if it is triggered will delay the leasing of open commercial space on the ground floors of mixed-use buildings, resulting in decreased in street-level activity.

Smart Growth's other primary concerns are as follows.

In a proposed large multi-tenant office building (or a mixed-use building where most of the space will be occupied by multiple tenants with office uses), it is unlikely that the TDM plan will contain the required points unless the plan includes TDM mitigation measures that require tenants/employers to implement TDM mitigation measures for their employees and/or require employees of tenants to pay for parking.

- In this situation, the employees who work in the building are employees of the tenants, not employees of the developer or building owner.
- The program is written with the assumption that the building owner can compel employers/tenants to implement TDM mitigation measures for their employees.
- The competition between developers for commercial tenants is intense and the amount of future demand for commercial space is uncertain in the aftermath of the COVID-19 pandemic.
- Commercial tenants are in a battle for talent, and providing parking at no cost to their employees in areas of the city where the prevailing practice is to charge for parking is an attractive benefit.
- In areas of the city where the prevailing practice is not to charge for parking at office buildings, it is not practical for a developer of a new office building to include TDM mitigation measures that involve charging for parking in its TDM plan because of competitive concerns.
- Many other metro areas and other cities and villages in Dane County do not impose on commercial tenants the obligation to implement TDM mitigation measures for their employees.
- It will be extremely challenging for a developer to obtain the commitments from commercial tenants needed to obtain financing to construct a multi-tenant office building when the developer must attempt to persuade potential tenants to agree to perform TDM mitigation measures during lease negotiations or refuse to include no-charge parking for the tenants' employees in their leases.
- If financing is obtained and the new multi-tenant office building is constructed, it will be extremely challenging for the building owner to find commercial tenants to lease up the rest of the space in the building when the building owner must attempt to persuade potential tenants

to agree to perform TDM mitigation measures during lease negotiations and/or require the potential tenants' employees to pay for parking.

- It will be extremely challenging for a building owner to keep a building leased up when existing commercial tenants can be lured away when their leases expire to other metro areas or other cities or villages in Dane County where commercial tenants are not required to perform TDM measures and building owners can include in leases parking at no charge to the tenants' employees.
- The negative impact of the TDM program on the ability to retain tenants and sign new tenants to leases will make it more challenging for building owners to refinance mortgages.
- The process to seek a reduction in TDM points that is provided for existing buildings that become subject to the new TDM program is not available for buildings constructed after the new TDM ordinance is enacted.
- Smart Growth questions how the city government has legal authority to essentially require developers and building owners, during lease negotiations, to attempt to persuade potential tenants to agree to lease provisions that must be performed by the tenants in order for the building owner to have enough points in its TDM plan to meet the requirements of the new TDM program, and to fine the developers and building owners if the tenants refuse.

If a sub-use in an existing building is changed or expanded on or after May 1, 2023 (or six months after enactment of the ordinance), the new TDM program will apply to the tenant space for the new use, and in many cases, it will be extremely challenging to produce a TDM plan for that tenant space which contains enough TDM points. For example, if part of a building that was used for professional or general office is changed to a research laboratory or vice versa in response to available tenants, or if part of an existing building that was used for a retail shop is changed to a restaurant or vice versa in response to available tenants, the owner of the existing building would be required to submit a TDM plan for the tenant space where the new use is located.

- Many of the TDM measures involve physical improvements to the building or site (or nearby area), and those will be more expensive or impractical to retrofit in existing buildings and sites.
- The owner of an existing building cannot relocate the building to be nearer to transit or shared transportation services in order to obtain TDM points and the building owner does not have the power to bring these services nearer to the existing building if the service providers chooses not to locate there.
- If an existing building has no controls on entering the parking lot or structure to enable charging for parking, the building owner cannot block off part of the parking lot or structure and require employees of the new tenant to pay to park in the separate parking area.
- In many cases, the owner of an existing building will not be able to assemble a TDM plan that even comes close to containing the required number of TDM points, which will put the building owner in the position of choosing between two harmful options, either (a) passing up on the opportunity to lease space to a new commercial tenant if doing so would change or expand a sub-use in the building or (b) leasing space to the tenant and being subject to fines for not being able to submit a TDM plan that contains the required number of points.
- Uncertainty for owners of existing buildings and potential commercial tenants will be created when building owners must put potential tenants "on hold" while they seek a reduction in required TDM points from Transportation Department staff or the Transportation Commission

(predictable requirements are supposed to be one of the advantages of the new TDM program). Many commercial lease deals are time sensitive, and building owners will lose many potential tenants if they attempt to put them on hold while they seek a reduction in TDM points.

- There will be less street-level activity in Madison. Owners of mixed-use buildings will be reluctant to fill vacant ground-floor commercial space with a new tenant if that new tenant would be a new or enlarged sub-use, which would trigger application of the new TDM program to the tenant space-- unless the building owner can obtain a large enough reduction in TDM points to be able to submit a TDM plan that city staff will approve and the potential tenant will wait for the completion of that process. Often the potential tenant will not wait.
- The new TDM program currently is drafted so that if a tenant space in an existing building increases in size, that would trigger the new TDM program's applying to that larger tenant space, even if the total area of the sub-use in the building does not change (e.g., one retail space increases in size while another retail space becomes smaller).
- Smart Growth questions how the city government has legal authority to require the owner of an existing building to construct improvements qualifying for TDM points or to impose on potential commercial tenants, during lease negotiations, the obligation for the commercial tenants to perform TDM mitigation measures when the building owner attempts to replace an existing tenant with a new tenant and the use by the new tenant complies with the existing zoning.

It appears that the TDM mitigation measures and the points assigned to each mitigation measure will not be in the ordinance enacting the new TDM program, but instead will be in a separate program document, enabling the Transportation Commission to change the mitigation measures and points assigned to each measure over time without approval by the Common Council. This flexibility creates the potential for hardship to owners of buildings subject to the new TDM program.

- In the future, the Transportation Commission could reduce the points given for physical improvements a developer constructed to obtain points in the TDM plan, forcing the building owner to find and implement new (likely programmatic) TDM mitigation measures to replace the points the Transportation Commission took away.

Smart Growth's questions are as follows.

- For commercial, employment and institutional uses, a tenant space is exempt from having a TDM plan if the number of shared parking spaces allocated to that tenant space for purposes of the new TDM program is less than a number multiplied by the minimum parking requirement (Base Parking or BP) (except employment-use spaces under 10,000 sq ft are exempt regardless parking). If there is no minimum parking requirement for that use in that location (e.g., it is located in the Transit-Oriented Development Overlay District, which probably will eliminate minimum parking requirements), is the result that if even one parking space is allocated to that tenant space, the tenant space is not exempt?
- Two the TDM measures refer to the "market cost of parking" and the "market value for parking?" Does that mean the price that is charged for parking in that particular part of the city or the cost to construct and maintain the parking? Who decides what the market cost or market value is?

- A new office or other commercial building could have 10 or more tenants. A TDM plan must be filed for each tenant. Is the fee that must be paid with the filing of TDM plans one fee for an entire building or one fee for each TDM plan?
- Where can we find a comprehensive list of all of the sub-uses and definitions of the sub-uses referred to in the new TDM program?

Summary of Proposed TMD Program (based on August 2022 Distribution Draft)

Determining Number of TDM Points Required for a Building

TDM requirements are assigned using a point-based system and depend on the development's

- land use(s),
- size,
- proposed parking capacity (parking ratio),
- and location.

Further, measures related to transit and share mobility will have their point values adjusted based on the proposed developments proximity to the service areas of those transportation options.

Once the raw TDM target have been determined, the value is multiplied by a location-based modifier. The location-based modifier seeks to acknowledge that different amounts of TDM measures are available and feasible within different locations of the city.

The TDM requirements for a proposed development can be determined by using the city-provided Transportation Demand Management Plan Creation Tool, which is an excel-based spreadsheet that automatically generates the TDM requirement and based on the aforementioned characteristics of the proposed use.

Examples:

Office Building in Downtown

- Location: 100 block of E. Main Street
- Use: Office
- Floor area: 110,000 sq. ft.
- Proposed parking capacity: 220 stalls
- Required TDM points: 19

Office Building Near the Edge of Madison

- Location: The American Center east of I-90/94, north of USH 151
- Use: Office
- Floor area: 105,000 sq. ft.
- Proposed parking capacity: 493
- Required TDM points: 19

- Note: It is much easier for the Office Building in Downtown to obtain 19 TDM points than the Office Building Near the Edge of Madison.

Residential Use Near Edge of Madison

- Location: 7400 block of Raymond Road
- Use: Residential (20 percent units at or below 60 percent of annual median income)—not a common scenario due to funding sources for income-based housing
- Number of dwelling units: 100
- Proposed parking capacity: 150 stalls
- Required TDM points: 19

Mixed-Use Near Commercial Corridor

- Location: 2900 block of University Ave
- Use: Commercial (retail) on ground floor and Residential on upper floors
- Number of dwelling units: 50
- Commercial Floor area: 10,000 sq. ft.
- Proposed parking capacity: 110 stalls (residential: 70 stalls; commercial: 40 stalls)
- Retail parking minimum, or base parking: 25 stalls (1 per 400 sq. ft.)
- Required TDM points: 14 for Residential use and 15 for Commercial use

Creating a TDM Plan that Contains the Required Number of Points

The next step requires developers or building owners to choose TDM measures from a menu to meet the assigned point target. They would then need to prepare a TDM plan with descriptions of the selected measures and submit it for review and approval, along with a nominal fee to cover administrative review of the plan.

The TDM menu comprises of 43 measures in 9 categories – Active Transportation, Transit, Parking Management, Shared Mobility, Information & Communication, Delivery, Land Use, Employer Policies, and Other measures. Under each of these broad categories, there are multiple measures to choose from. Each measure is worth points ranging from one to ten, which are based on efficacy in reduction of vehicle miles traveled (VMT), documented best practices, cost of implementing the measure, and contextual relevance for Madison.

Once the TDM plan is approved, building owners are required to implement the measures specified in their plans. As a condition of initial TDM plan approval, building owners are required to add a record to the title of the property indicating that “This property is subject to City of Madison Transportation Demand Management requirements. Please contact the City of Madison Department of Transportation for more details.”

Ongoing Responsibilities Imposed on Building Owners, Including Imposing Requirements on Tenants

TDM Plans shall be recertified bi-annually, by resubmitting a TDM plan spreadsheet, along with nominal administrative fee, to the Department of Transportation.

For mixed use or multitenant developments, TDM requirements for each are considered and met separately for each use or tenant space. Measures being jointly implemented for the development can be counted towards the point target for each use, provided they are accessible for each use. Parking is allocated for all uses to determine use specific TDM targets. If parking is shared amongst the different uses, their respective parking maximums would be considered for determining their targets.

Because of the possibility for shared TDM amenities, zoning certificate applicant are responsible for the ensuring TDM program compliance. Similar to building and zoning compliance issues, the zoning certificate applicant is responsible for non-compliance related to certification and/or recertification of TDM plans. These responsibilities and obligations may, however, be passed along to tenants in lease agreements.

For “white box” developments, or multitenant developments for which one or more users have not yet been identified, the developer will be responsible for drafting and submitting the initial TDM plan. This plan should reflect the proposed or assumed occupant and contain mitigation measures demonstrating compliance with the plan. These can include both programmatic measures (which a potential tenant would be expected to implement) as well as infrastructure-based measures (which the developer would be responsible for implementing at that time).

Buildings Constructed Before TDM Program Was Adopted Can Become Subject to the Program

TDM requirements are applicable to all existing structures within the City that are expanded or for which uses change or parking is modified as determined by a zoning compliance review, beginning May 1, 2023. For all existing structures in which uses do not change, the structure is not expanded, and parking is not modified, the TDM requirements outlined in this plan would not apply.

For existing properties brought into the TDM program that are unable to meet the mitigation point requirements for either cost of physical constraint reasons, the applicant may appeal to the Department of Transportation staff review for relief from up to five (5) mitigation points, which can be provided at the discretion of the staff member. If the applicant requests further relief, they may request elevation of the relief request to the Transportation Commission.

The applicant will be required to share the following information with the Transportation Commission: site information, required TDM mitigation point, proposed TDM mitigation measures, requested point reduction, rationale for reduction. The Transportation Commission will have the final determination on the point reduction. If staff and/or the Commission grant mitigation points reductions, these reductions will continue in perpetuity until uses are expanded, changed, or parking is modified.