



## **Comments of the Apartment and Office Building Association of Metropolitan Washington on the Draft Montgomery County Action Plan**

March 3, 2021

The Apartment and Office Building Association of Metropolitan Washington (AOBA) is a non-profit trade association representing more than 133,000 apartment units and over 23 million square feet of office space in suburban Maryland. Here in the County, AOBA members own/manage over 60,000 of the [County's estimated 83,769 rental units](#) and 20,000,000 square feet of office space. AOBA submits this statement on the **Draft Montgomery County Action Plan**. *AOBA recommends that the County delay any consideration given the continuing economic effect of the COVID-19 virus on both the private and public sector.*

### **I. The COVID-19 pandemic continues to have a devastating financial impact on both the private and public sector.**

As a result of the continued economic fallout from COVID-19, residents and businesses, including housing providers, are facing an extended period of economic uncertainty. Many of our members' residents are facing unemployment as a result of furloughs and layoffs from, for example, the many closed retail, restaurant and other businesses unable to maintain their valued employees. Many commercial tenants are unable to meet their lease payments, and some have closed permanently. While early outreach by commercial and multifamily building owners to tenants at the beginning of this crisis has helped to stabilize the finances of those tenants affected by COVID-19, the continuing effects of the crisis threatens the County's real estate sector and ultimately the County's own fiscal health. The following highlights some of the challenges facing the real estate sector.

#### **A. Financial Impact of Pandemic on County's Rental Housing Stock**

Already, we are hearing reports of 20-30% rent payment default rates, a number expected to significantly increase the longer the economic fallout from the COVID-19 pandemic continues.<sup>i</sup> Most at risk are Class C properties for example, which include much of the County's affordable housing stock.<sup>ii</sup> Thus, we could also be facing an affordable housing crisis. Rent is the primary source of income for multifamily communities and as housing providers continue to face declining rent collections, they will struggle to retain their own employees and maintain and operate their communities. Housing providers' financial obligations include, for example, mortgage payments, rising utility costs (including from the spike in usage by residents), insurance expenses, and other

operating costs all while also facing *new costs* associated with protecting their communities from the spread of this highly contagious virus.

While there is limited federal relief for housing communities with federally backed mortgages, the vast majority of private lenders have offered no such relief to date and AOBA is unaware of any plans to follow Freddie Mac's lead despite ongoing pressure from both the private and public sectors. Further, mortgage payments represent only a percentage of operating expenses, so even assuming available broader mortgage forbearance relief for those that need it, housing providers remain responsible for other significant ongoing costs. Note, for example, that utility costs before COVID-19 averaged about 15-20% of operating expenses in master-metered apartments, a figure has spiked as residents across the region continue to shelter in place. In Pepco Maryland, Q2 electric sales showed an increase in residential usage by 4.8% offset by a decrease in commercial usage by 11.8%, a shift that Pepco blamed on stay-at home orders related to COVID-19.<sup>1</sup> While utility companies were previously barred from disconnecting utilities or assessing late fees for *residential* customers, all customers, including housing providers remain obligated to pay their utility bills. Compounding an already challenged housing market, are rising vacancy rates as residents make different housing choices given an uncertain economic future.<sup>iii</sup>

## **B. Financial Impact of Pandemic on County's Commercial Office Buildings**

Just as COVID-19 continues to threaten the financial stability of residential communities, it is also having a devastating impact on a commercial office building sector that struggled even before the catastrophic effects of the COVID-19 pandemic. The County should be concerned that *an already soft commercial real estate market may never fully recover* as the economy has essentially come to a screeching halt. Across a County with an average 17.4% vacant rate are near empty office buildings. Once vibrant restaurants, retail establishments, small businesses, and nonprofits are still shuttered (some permanently or as a result of widespread telecommuting), operating at limited capacity and many are struggling to meet payroll and pay any rent. No sector remains unscathed and [even law firms](#), that notably occupy significant commercial space, have announced layoffs.

The commercial office market is facing an unprecedented tsunami of tenants, small *and* large, that are unable to pay rent. See, for example, [Coronavirus is clobbering the real estate industry. From a frenzy of flex-office layoffs to big deals falling apart, here's everything you need to know](#). Each week, commercial owners/managers experience another aftershock as another tidal wave of commercial tenants call seeking to renegotiate leases, request payment plans or provide notice of their inability to pay *any* rent for the *foreseeable future*. See [Preventing the Pending Collapse of the Real Estate Market](#) (“[U]p to 90% of all commercial tenants in the US will not pay their rent next month. The domino effect of landlords not having rental revenue will potentially force property owners to default on their mortgages.”); [JBG Smith reports continued earnings slump amid ongoing pandemic. Its CEO expects the fallout to worsen](#), Feb. 24, 2021 (“In the short term, we expect the economic fallout from the pandemic to worsen and continue to adversely impact our business before a market recovery positively impacts fundamentals,” Kelly said. “We believe this recovery will likely commence during the second half of 2021 and continue for several years.”)

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<sup>1</sup>Pepco Holdings Response on August 11, 2020 in Maryland PSC Public Conference 53 (PC53) <https://www.psc.state.md.us/search-results/?q=pc53&x,x=15&x,y=11&search=all&search=rulemaking>

While commercial building operators are working with their tenants to the extent possible, there are limits on how much income shortfall they can sustain before taking drastic actions, such as laying off employees, and triggering another wave of economic fallout. As income decreases, property values will decline ultimately impacting local and state revenues.<sup>iv</sup>

Additionally, as with residential properties, commercial office buildings are facing new requirements necessary to prevent the spread of COVID-19. Notably, many of these COVID-19 safety requirements conflict with sustainability initiatives and goals and “amid fears of Covid-19, the disease caused by the new coronavirus, some building owners find that they face a choice between lowering their energy use and keeping tenants safer from infection.”<sup>v</sup> Commercial office buildings and multifamily residential properties are making significant investments in their buildings to make the buildings safer for the tenants and employees. These are new unforecasted costs that must be spent for the safety and well-being of the tenants in the building. Counter to conventional thought that less tenants would lead to less energy usage in the building, our members’ commercial buildings are running all of their air handling units for longer periods in their effort to provide a safe workspace for their tenants.

Finally, it is increasingly apparent that it is unlikely there will be an end to the COVID-19 pandemic. Instead, scientists now believe we are facing an endemic that residents and businesses will need to learn to live with for the foreseeable future.<sup>2</sup> This has long-term consequences for the County’s fragile office market and the future of rental housing. We already know, for example, that many of the businesses and jobs lost to COVID will never return thus creating an uncertain future for an office market and economy dependent on occupied buildings.

## II. AOBA COMMENTS ON THE DRAFT CLIMATE ACTION PLAN

**Costs: How do we pay for plan?** AOBA strongly supports dedicating the County’s annual fuel-energy tax revenues to financing energy efficiency and/or renewable energy improvement programs for existing commercial and multifamily communities.<sup>3</sup> For FY20, estimated fuel-energy tax revenues were \$193 million.<sup>4</sup> While the County has invested in sustainability initiatives, increasing available financing to such a large level would be a game-changer for the County’s efforts to reduce carbon dioxide and other harmful emissions from one of the leading energy categories – the built environment. While building owners have implemented cost-effective measures to reduce their energy costs, many energy-efficiency projects require a significant financial investment. The proposed investment will allow the County to meet stated sustainability goals by substantially increasing the amount of financing available to building owners seeking to move forward with various energy efficiency projects. The measure would also send a strong and important signal to current and prospective businesses and investors of the business-friendly environment in the County. AOBA looks forward to partnering with the County on this important initiative.

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<sup>2</sup><https://www.cnbc.com/2021/02/12/doctors-warn-covid-will-become-endemic-and-people-need-to-learn-to-live-with-it.html>

<sup>3</sup>Per Montgomery County Code Sec. 18A-33 Commercial *property* means any real property located in the County that is either not designed for or intended for human habitation, or that is used for human habitation as a multi-family dwelling of more than 4 rental units.

<sup>4</sup>FY20 Operating Budget and Public Services Program, Revenues, p. 5-13.

**CLEAN ENERGY ACTIONS**

<p><b>E-1 Community Choice Energy Program</b></p>	<p><b>The Community Choice Energy Program.</b> The intent of the Community Choice Energy Program is to provide clean energy to electric service customers in the County on the presumption that such customers are unable or unwilling to obtain a clean energy supply. This is not true; the residents and businesses of Montgomery County have a multitude of choices for renewable or green energy supply available from a host of retail electric suppliers.</p> <p>The customers who have switched to these clean energy supply options clearly want a renewable resource option and are able to make that choice and avail themselves of several options. The program would also allow a single aggregator to acquire a large number of residential, master metered apartments and small commercial accounts through a simple “opt-out” notification. In an “opt-out” scenario, the account holders would be notified by a direct mail or flyer that their electric service supplier will be switched to a community choice aggregator and, in order to prevent this “choice” from being forced upon them, the customer will have to take the affirmative steps to notify the aggregator that they do not want to switch.</p> <p>This opt-out scenario is inequitable for a number of reasons. Specifically, we know that the majority of these direct mail notifications will go unopened and those residents and businesses which did not open or read the notice will have unwittingly entered into to a contract that they did not sign. This is the equivalent of slamming, which all legislators, suppliers and customers have opposed for years and for the which the Maryland PSC has imposed strict guidelines and penalties related to slamming. To have these customers inadvertently enter into these contracts is the functional equivalent of slamming and, therefore, patently unfair.</p> <p>Modification of the pilot program to an “opt-in” opportunity, where the customers would affirmatively choose to join the aggregation group and would know what product and contract they were agreeing to, would be a fair and just amendment to the plan.</p>
<p><b>E-2 Private Building Solar Photovoltaic Code Requirements</b></p>	<p><b>OPPOSE.</b> While reducing the County’s greenhouse gas emissions is a shared and laudable goal, mandating the installation of solar panels even for new buildings is not the right approach. Rather than focusing on mandating specific tools, the County should continue efforts to facilitate the ability of sophisticated commercial building owners/managers to choose from a menu of options which are best suited for a specific community or portfolio. Note, for example, that funds from the County’s Green Bank can be used for a wide range of projects that are intended to decrease energy consumption or expand use of renewable energy sources.</p> <p>Generally, it is difficult in the current solar renewable energy certificates (SREC) environment to economically justify solar installations in Maryland given costs and corresponding utility rates. Requiring the installation of solar technologies in existing buildings also fails to take into consideration physical and structural constraints that might limit the feasibility of such installations. While the limited</p>

	<p>return on investment and lengthy payback period in the current market might discourage investment in solar, building owners should be able to pursue other initiatives which still achieve the desired goal of reduced energy consumption.</p> <p>Building owners/managers also face numerous competing demands for the use of rooftop space on commercial and multifamily buildings. Entertainment areas and other amenities, for example, serve to attract and retain tenants and enhance the market value of the asset – which benefits the county in tax revenues. Rooftop spaces must also accommodate antennas, mechanical and other equipment. The County should also be mindful of existing and potentially conflicting statutory or regulatory requirements governing the use of rooftop space. The Bethesda Sector Plan, for example, requires significant coordination and installation of various environmental practices.<sup>vi</sup> Urban areas typically have very small building footprints and associated roof structures, so complying with these many requirements on a small site can be difficult if not impossible while balancing tenant needs and market demands for amenity spaces. Building owners/managers’ ability to compete for tenants still contemplating if and when to return to a challenged office market (and likely using far less space), will be limited if the increasing number of requirements restricts their ability to utilize roofs for a variety of equally important uses.</p> <p>Additionally, if Building Energy Performance Standards are based on Site Energy Usage Intensity instead of Source Energy Intensity, the benefit to the owner of the electricity generated from the solar powers might not be realized and they would be penalized under certain BEPs rules instead of rewarded.</p>
<p><b>E-3 Promote Private Solar Photovoltaic Systems</b></p>	<p><b>Support.</b> In lieu of mandates, AOBA strongly supports creating a robust incentive program to increase investment in solar <i>and</i> other energy efficiency tools for building owners/managers.</p>
<p><b>E-5 Advocate for a 100% Renewable Portfolio Standard by 2030</b></p>	<p><b>AOBA:</b> Any plan to move to 100% renewable supply should be carefully considered based on the intermittent nature of renewable generation resources to avoid costly outages and failures on the grid. The reliability and resilience of the electric grid cannot be compromised for the sake of moving to 100% renewable energy in the County.</p>
<p><b>BUILDING ACTIONS</b></p>	
<p><b>Target</b></p>	<p><b>OPPOSE- All electric new construction starting in 2022. 100% electrification of existing buildings.</b></p> <p>AOBA is concerned about the ability of Pepco's grid to be able to handle the added load as it’s a big shift in demand requirements when you eliminate natural gas as a heating source and move all heating to electric. Such a move would result in serious strains on the system and create potential issues that have not been adequately addressed. See also comments below regarding AOBA’s concerns and recommendations.</p>
<p><b>B-1</b> Electrification code requirements for <i>existing commercial</i> and public buildings</p>	<p><b>OPPOSE.</b> AOBA opposes:</p> <ul style="list-style-type: none"> <li>• implementing a point-of-sale or lease ordinance</li> <li>• requiring building owners undertaking major renovations or HVAC water heating replacement electrify their equipment before being granted an occupancy or mechanical permit.</li> </ul>

	<p><b>Costs:</b> In order to make the move to full electrification, a commercial building would be required to electrify space heating and water heating. All existing fuel equipment needs to be replaced with electrically powered alternatives. The upfront costs for this could soar. Converting the fuel equipment might require an upgrade to a building’s entire electricity system. However, electrically-powered end uses are vulnerable to power outages. Plus, the cost of removing natural gas is not just a burden to typical commercial building needs. If a building houses a restaurant, there is both a financial and efficiency cost to removing gas from kitchens. In addition, giving one energy source a monopoly stifles competition and increases costs substantially.</p> <p><b>Energy choice matters:</b> Electrification may be a good option that can heavily reduce long-term costs in new developments. On the other hand, there are other options beyond it to achieve carbon neutrality.</p> <p><b>Renewable natural gas:</b> Implementing renewable natural gas (RNG), instead of electrification, is an efficient way to make buildings carbon neutral. This energy source is natural gas derived from organic waste material found in daily life or from degradable carbon sources.</p> <p>It is considered a carbon-neutral fuel because it comes from organic sources that once absorbed carbon dioxide from the atmosphere. When it is produced from organic waste that would otherwise decay and create methane emissions, it would be considered carbon negative. <i>Buildings should have a choice in what works best for them.</i></p>
<p><b>B-2</b> Electrification code requirements for existing residential buildings</p>	<p><b>OPPOSE.</b> AOBA opposes:</p> <ul style="list-style-type: none"> <li>• implementing a point-of-sale or lease ordinance</li> <li>• requiring building owners undertaking major renovations or HVAC water heating replacement electrify their equipment before being granted an occupancy or mechanical permit.</li> </ul> <p><b>RATIONALE:</b> AOBA agrees that the “costs associated with electrification may impact the availability or price of affordable housing.” Almost a year into the pandemic, housing providers continue to face declining rent collection rates, and increasing vacancy rates increase and operating costs. Rent is the primary source of income and as this revenue source remains unstable, housing providers will be limited in their ability to finance compliance with this costly mandate. <b>Tenant relocation:</b> Consider too that for buildings with lead-based paint, other environmental hazards, electrification will require temporary tenant relocation. How/where do we do this given the pandemic and discovery of new, more contagious strains?</p> <p><b>Energy choice matters:</b> Electrification may be a good option that can heavily reduce long-term costs in new developments. On the other hand, there are other options beyond it to achieve carbon neutrality.</p> <p><b>Renewable natural gas:</b> Implementing renewable natural gas (RNG), instead of electrification, is an efficient way to make buildings carbon neutral. This <a href="#">energy</a></p>



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<p><b>B-3 Energy performance standards for existing commercial and multifamily buildings</b></p>	<p>See also AOBA’s Aug. 2020 Comments on the Draft Stakeholder Report Building Energy Performance Standards in Montgomery County.</p> <p><b>Oppose. Display energy/water performance ratings.</b> AOBA opposes mandating displaying energy use information. Such displays could mislead tenants. A building’s score will be impacted by a number of factors, including for example, efforts to limit the spread of COVID-19 or plans for a major renovation. Further, private commercial buildings are currently reporting benchmarking data. As such, the public policy goal of making building energy consumption public is already being accomplished. Note too, that buildings that are Energy Star certified, for example, often display a plaque as evidence of their status. Additionally, EPA maintains a searchable, publicly available list of Energy Star-certified buildings.</p> <p><b>Application of International Green Construction Code:</b> The IGCC as adopted in Montgomery County does not mandate displaying energy information to existing buildings. IGCC Section 603.6 as adopted by the County only applies to all <i>new construction</i> of 5,000 sf or greater. Notably, the District of Columbia struck IGCC 603.6 in its entirety when it adopted its 2013 IGCC codes.</p> <p><b>Oppose. Lower threshold for benchmarking.</b> Lowering the threshold for applying benchmarking and other requirements could have a devastating impact on small businesses, many of which are reeling from the ongoing effects of the pandemic. Notably, many of those which have closed may never return with long-term consequences for the County’s commercial buildings.<sup>5</sup></p> <p><b>Oppose. Multifamily energy and water performance standards:</b> AOBA opposes mandatory benchmarking and labeling policies. Such policies expose apartment owners and operators to a community’s overly ambitious and aggressive climate goals. Policymakers should instead develop voluntary programs that remove financial and behavioral barriers to adoption. The County, consistent with its affordable housing goals should support robust financial incentives to support continued energy efficiency improvements in existing multifamily communities.</p>

<sup>5</sup>[Millions of jobs probably aren’t coming back, even after the pandemic ends](#), Seattle Times, Feb. 2021. (“The coronavirus pandemic has triggered permanent shifts in how and where people work. Businesses are planning for a future where more people are working from home, traveling less for business, or replacing workers with robots. All of these modifications mean many workers will not be able to do the same job they did before the pandemic, even after much of the U.S. population gets vaccinated against the deadly virus.”)

	<p><b>Oppose. Developing a Building Energy Performance Standard during a pandemic is not where the focus should be.</b> It will be impossible to accurately gauge what any sort of baseline energy usage for a building based on recent usage data during the pandemic. Building owners and managers have not had the time to fully assess what will be needed to run their buildings to provide a safe and healthy environment for tenants to come back into the office. The goal for Montgomery County should be to help all sectors in the business community to get back to levels before the pandemic. The commercial building sector is a significant piece of the County’s tax basis and if it leaves how will that money be recouped. Any consideration of BEPS should be delayed to a point no more than 12-18 months after declaration that the health emergency has been lifted. Building owners should not have to choose between providing a safe and healthy building by running its more equipment longer at the risk of being penalized afterwards because the building’s energy usage increased.</p>
<p><b>B-4 Electrification incentives for existing buildings</b></p>	<p>AOBA agrees with the statement that “upfront costs for existing building electrification can be daunting.” While AOBA opposes a goal of electrifying all existing buildings, AOBA does support the development of a “suite of technical assistance and incentives, such as grants, tax rebates, or fee reductions, to help pay for upfront costs and defray the ... costs associated with fossil fuel equipment replacement.”</p>
<p><b>B-5 All electric building code for new construction</b></p>	<p><b>Oppose.</b> If a jurisdiction has set an ambitious goal for carbon reduction, and that includes electrifying all new construction, resources must be made available to ensure that owners and developers are able to meet those goals in an affordable way. Housing policy and energy policy are often developed in silos and to the detriment of each other's goals. The two are intrinsically linked and often overlooked when developing public policy. <b>See also AOBA’s comments above regarding the need for choice and concerns with Pepco’s ability to handle such a requirement.</b></p>
<p><b>B-6 Ban natural gas in new construction.</b></p>	<p><b>Oppose.</b> See AOBA comments above.</p>
<p><b>B-7 Net zero energy building code for new construction</b></p>	<p><b>See AOBA comments above.</b> To the extent that a new zero energy building code will consider all forms of energy both gas and electric in supplying energy to the building, AOBA would support. Pepco/s system cannot handle it and Washington Gas would have billions in stranded costs.</p>



**TRANSPORTATION ACTIONS**

<p><b>T-4 Congestion pricing and limiting cars in urban areas</b></p>	<p>Montgomery County is not an island and not like London, or Stockholm or any of the cities that have implemented congestion pricing. It is not the only game in the DC metro area. If we tax people to come into the County to work, play or shop, will we lose those jobs, those sales, and those customers to our surrounding counties and cities that aren't so eager to tax their citizens? A congestion fee would also hurt the working poor, who can least afford another daily expense to keep their jobs. Notably, the draft CAP concurs, stating that “congestion pricing ...could also have a disproportionate financial burden on low-income communities.” This charge would disproportionately affect low-income individuals who have to live farther away from their place of employment in and outside of the county. Congestion pricing would simply enrage commuters who have no other option than driving and paying this fee. Others with children cannot take transit, or work in jobs that require a car.</p> <p>Let's improve traffic flow with better traffic management and enforcement, new technologies to help drivers find available parking, and better mass transit service. Let's ditch this idea of congestion pricing in the County once and for all.</p>
<p><b>T-7 Expand the Electric Vehicle Charging Network</b></p>	<p><b>EV charging mandate for existing buildings.</b></p> <ul style="list-style-type: none"> <li>• <b>Oppose.</b> The county should support incentives for private buildings to provide charging stations but avoid mandating installation of specific infrastructure. Consider too, the changing technology and continued developments in the technology used to charge electric vehicles. Available infrastructure today could be outdated in a few years.</li> <li>• <b>Oppose.</b> Extending new construction EV charging requirements to existing building that are sold, leased or undergo major renovations. Pre-sale requirements for residential and commercial buildings to install EV chargers or outlets before sale. Rental procedures that require buildings to install chargers in parking spaces upon all new or modified leases. Requiring buildings undergoing major renovations to install charging equipment.</li> </ul> <p><b>Costly requirements:</b> The CAP rightly recognizes that “EV charging equipment can be costly for building owners to install, especially if they must update their electrical panel or integrate extensive wiring.” This is especially the case for older buildings, especially older multifamily buildings with implications for the county’s equally critical housing affordability goals.</p> <ul style="list-style-type: none"> <li>• To further address cost-barriers, the County could develop its own financial incentive program to help property owners overcome the initial costs associated with EVSE purchasing and installation, including electrical outfits and permit fees. <b>Support.</b></li> <li>• Subsidizing [<i>with public funds</i>] the purchase of home charges in multiunit buildings is necessary to increase EV accessibility. <b>Support.</b></li> <li>• Program are currently being offered by utilities to reduce costs for installations but have had very limited success. These programs should be examined to determine how to make them more appealing to commercial and multiunit residential property owners. <b>Support.</b></li> </ul>

- To further address cost-barriers, the County should develop its own financial incentive program to help property owners overcome the initial costs associated with EVSE purchasing and installation, including electrical retrofits and permit fees. **Support.**

**BACKGROUND:**

- [MCDOT Electric Vehicle Infrastructure Program](#): Twenty (20) conveniently located EV charging stations are available at parking facilities in downtown Bethesda, Silver Spring and Wheaton.
- [Pepco Multifamily Property Rebate EV Program](#)
- According to the Electric Vehicle Association of Greater Washington, D.C.<sup>1</sup> “There are over 700 public charging stations in the DC & Baltimore area!” <http://evadc.org/charging/>. A review of the map shows that a significant number are located in Montgomery County.
- According to Charge Hub, [charging stations in Montgomery County include](#), for example: (1) **Rockville**: 105; (2) **Bethesda**: 79; (3) **Silver Spring**: 59;

**AOBA RECOMMENDATIONS:** To expedite the intent of the draft CAP for the deployment of additional PVCS throughout the County, AOBA recommends that the County consider the alternatives below. While AOBA’s list of alternative business ventures are not intended to be an exhaustive list of public partnerships with the private sector, AOBA nevertheless supports efforts by the private sector to invest in the County to achieve its carbon emission reduction goals. A combination of existing policies and creative business partnerships with the County can accelerate the deployment of PVCS by the private sector without burdening ratepayers and taxpayers with additional energy costs. We believe that this is a better way forward for the County.

- **Alternative #1: Municipality owns and operates the EV Charging Station(s) and deploys it on municipal property.** Deployment at a public parking lot is a typical scenario, or on municipal street-side parking. The municipality would typically fund the project through its capital budget, and may recover costs by charging a fee for the fueling service, or by providing other services (such as advertising). Alternatively, the municipality may view this purchase as part of a public service provided by the municipality. There are specific rules on how municipalities may procure goods and services, governed by Local Public Contracts Law. There are assigned staff in the municipality that work specifically on procurement that will need to be involved, should this alternative be chosen.
- **Alternative #2: A “sponsoring partner” funds the purchase and installation of a charger at a municipally designated location for public use.** The partner is allowed to recover costs by charging a fee for the fueling service or the provision of other services. In some cases, the sponsoring partner may justify the costs as part of a public relations strategy, a customer retention strategy, or providing a public service. Green team members or municipal officials should be involved to recruit sponsoring partners.

	<ul style="list-style-type: none"> <li>• <b>Alternative #3: Municipality provides land for a third party to own and operate an EV Charging Station.</b> The equipment could be owned and operated by the equipment provider, or an independent third party. As with Alternative #1, there are specific rules that govern the municipality’s leasing of land, and there will be assigned staff in the municipality that work on municipal land leasing projects. Those people will need to be involved, should this alternative be chosen.</li> <li>• <b>Alternative #4: Municipality works with private sector or not-for-profit entity in their town to build an EV charging station for public use.</b> Since this alternative does not involve any of the municipality’s assets, procurement rules would typically not apply. Green team or other volunteers that have relationships with potential partners should be involved. There also needs to be support from municipal officials and staff to formally encourage the construction of EV charging stations. That support could come in the form of publicity from the municipality, expediting of permits, providing “how to” support, or other potential “carrots,” that could be offered.</li> </ul>
<b>T-10 Electric Vehicle Car Share Program for Low-Income Communities</b>	The County could consider partnering with housing providers to incentivize the availability of shared EV parking especially at communities where the tenant populations depend on cars to commute. Careful consideration must be given to appropriate COVID and other healthy protocols.
<b>T-12 Advocate for a Vehicle Carbon Gas Tax</b>	<b>AOBA.</b> As individuals continue to work from home in significant numbers leaving most downtown office buildings empty and most retail establishments closed or with fewer customers, AOBA is concerned about a proposal that would further discourage the return to offices and other businesses in our downtown corridors. Careful consideration must also be given to vulnerable communities who depend on cars to commute to and from these corridors for employment. Any study must also consider the impact of such a proposal on efforts to reopen office buildings and other businesses in downtown and other areas especially considering COVID is projected to impact the economy well into 2022 and possibly beyond.
<b>CLIMATE ADAPTATION ACTIONS</b>	
<b>A-4 Extreme Weather Efficiency Code</b> <b>Energy Building</b>	<b>N/A Applicable to care/health facilities.</b>
<b>A-5 Climate-Adopted Incentives/Subsidies</b> <b>Housing</b>	AOBA supports creating substantial financial incentives to support reduced energy and water use in existing rental communities and climate adaptive technologies such as “electric backup power to air conditioning to maintain safe indoor temperatures.” See CAP, page 157 and <a href="#">Bill 24-19 - Landlord-Tenant Relations - Obligations of Landlord - Air Conditioning</a> requiring air-conditioning in rental communities.
<b>A-6 Green/Cool Roof and Pavement Code</b> <b>PV</b>	<b>OPPOSE.</b> While reducing the County’s greenhouse gas emissions is a shared and laudable goal, mandating the installation of solar panels or green roofs or permeable surfaces for <i>existing buildings</i> is not the right approach and <b>AOBA strongly opposes</b> these recommendations.

	<p>Rather than focusing on mandating specific tools, the County should continue efforts to facilitate the ability of sophisticated commercial building owners/managers to choose from a menu of options which are best suited for a specific community or portfolio. Note, for example, that funds from the County’s Green Bank can be used for a wide range of projects that are intended to decrease energy consumption or expand use of renewable energy sources.<sup>vii</sup></p> <p>It is difficult in the current solar renewable energy certificates (SREC) environment to economically justify solar installations in Maryland given costs and corresponding utility rates. Requiring the installation of solar technologies in existing buildings also fails to take into consideration physical and structural constraints that might limit the feasibility of such installations. While the limited return on investment and lengthy payback period in the current market might discourage investment in solar, building owners should be able to pursue other initiatives which still achieve the desired goal of reduced energy consumption.</p> <p>Building owners/managers face numerous competing demands for the use of rooftop space on commercial and multifamily buildings. Entertainment areas and other amenities, for example, serve to attract and retain tenants and enhance the market value of the asset – which benefits the county in tax revenues. Rooftop spaces must also accommodate antennas, mechanical and other equipment. The Council should also be mindful of existing and potentially conflicting statutory or regulatory requirements governing the use of rooftop space. The Bethesda Sector Plan, for example, requires significant coordination and installation of various environmental practices.<sup>viii</sup> Urban areas typically have very small building footprints and associated roof structures, so complying with these many requirements on a small site can be difficult if not impossible while balancing tenant needs and market demands for amenity spaces. Building owners/managers’ ability to compete for tenants who <i>might</i> return to a challenged office market (and likely using far less space), will be limited if the increasing number of requirements restricts their ability to utilize roofs for a variety of equally important uses.</p>
<p><b>A-9 Mold Protection and Remediation</b></p>	<p><b>AOBA OPPOSE:</b> Requiring landlords to install protections against basement flooding and to reduce mold issues in housing within a certain time frame after being notified by OLT.</p> <p><b>AOBA SUPPORT:</b> Provide financial assistance to landlords that demonstrate need.</p> <p>AOBA members are committed to ensuring that residents live in safe, habitable and mold free homes. As such, when dampness and mold are present or housing providers are notified about dampness or mold, they act immediately to remedy the situation. Housing providers want to prevent and promptly treat mold, as it hurts their communities, is required by the County as well as often by their insurers, but repair timelines are difficult to predict and mitigation strategies often involve large investments.</p> <p>The County is often very helpful with educational materials, so it would be great if they provided best practices training for housing provider team members could enroll</p>

in. It would also be great if they provided fact sheets for tenants as the biggest issues for housing providers in terms of mold is often tenant apathy, or where a small issue in a unit gets ignored by the tenant for long enough and it could become a huge issue, or a confused tenant sees a little bit of shower mildew because they don't allow adequate airflow after a shower and freaks out. More education is always a good thing.

AOBA also supports developing an incentive program for stormwater drainage or specific floodproofing measures, as these are issues that affect member assets and will get worse in a warming climate, but for the County to require certain specific actions across the board would be unreasonable and have a lot of unintended consequences.

**The County should adopt a building code that requires landlords to install protections against building flooding (particularly in basements).**

- **AOBA.** The definition of protections is not defined but AOBA is interpreting this as storm water management plans that reduce the risk of building flooding. This might be done, for example, throughout a portfolio which is documented in a physical asset manual, where a company tracks its infrastructure components, their age and condition, so they know when they last replaced them and can determine the next best time to do so.
- It is unclear what “flood-proofing” the draft CAP wants existing housing providers to actually do. Unfortunately, according to the U.S. Environmental Protection Agency there is no practical way to eliminate all mold and mold spores in the indoor environment; the way to control indoor mold growth is to control moisture and adapting existing buildings with basements to eliminate the possibility of mold as flooding becomes increasingly common due to climate change could be a huge, and complicated undertaking that the draft CAP seems to be hand-waving away as “flood-proofing.”

**Requiring dehumidification to maintain building humidity below 70%.**

- **AOBA:** This requirement could be very costly. Requiring humidity monitoring throughout the buildings and the installation of dehumidification equipment added to the existing equipment which would only address common areas. If they include the apartment homes, then it could become even more costly. All thermostats would have to include humidity readings and the apt units would need to have dehumidification abilities which again would be extremely expensive.
- **AOBA:** Furthermore, this is just not feasible in our climate with many of the legacy building systems across the County, which are especially prevalent in the naturally affordable buildings in the County. Forcing a dehumidification requirement like that means new HVAC systems would need to be installed, and the cost would ultimately be passed on through the rent, raising rates for new tenants.

	<p><b>Requiring construction with FEMA-approved flood-damage-resistant materials.</b></p> <ul style="list-style-type: none"> <li>• <b>AOBA:</b> This requirement would increase cost of new construction and should only pertain to basement level areas.</li> </ul> <p><b>To reduce mold within a specific time frame after flooding events.</b></p> <ul style="list-style-type: none"> <li>• <b>AOBA:</b> This requirement is already addressed in O&amp;M plans.</li> </ul> <p><b>HVAC system duct and filtration cleaning and maintenance.</b></p> <ul style="list-style-type: none"> <li>• <b>AOBA:</b> This requirement is worded so the interpretation could go two ways. One is normal prevention and filter replacement which satisfies the requirement. Two is on top of owners prevention and filter changes, it is required to have all duct work routinely cleaned which would become very costly.</li> </ul> <p><b>Requiring door and window sealants to protect against storm water intrusion.</b></p> <ul style="list-style-type: none"> <li>• <b>AOBA:</b> This requirement is not that unrealistic if the definition of sealants is the manufacture’s components and ensuring they are in place and functional which also includes the caulking or sealants around the doors and windows. This could also be interpreted as requiring storm windows and doors be installed to prevent flooding on lower levels of the buildings.</li> </ul> <p><b>BACKGROUND:</b></p> <p><a href="#">DEP Website:</a> Chapter 26 of the Montgomery County Code requires that property owners maintain a rental space free from water damage and mold. If tenants have concerns about mold in their rental property, they can contact their housing provider for assistance.</p> <p><b><u>Maryland Mold Remediation Services Act</u></b></p> <p><b>Industry practices:</b></p> <ul style="list-style-type: none"> <li>• Mold and mildew lease addendums: Examples include <ul style="list-style-type: none"> <li>○ Outlining importance of precautionary measures to prevent mold and mildew. Infestation of mold or mildew if premises not properly maintained.</li> <li>○ Tenant notification of housing provider of certain conditions, including, for example, water intrusion.</li> </ul> </li> </ul>
<p><b>A-10 Green infrastructure</b></p>	<p>AOBA opposes the proposal to mandate green infrastructures projects for existing commercial and multifamily communities. Near empty office buildings are struggling to retain existing and attract new tenants while facing an uncertain future on when and how many tenants will return to office buildings. That future might include increased office tenant vacancies and less retail tenants who depend on the office tenants for business. Reduced income from tenants will limit owners’ ability to finance compliance with green infrastructure mandates.</p>



<b>A-11 Climate-Adopted Building Code</b>	The County should limit application to new construction. However, requiring floodproofing, mechanical and electrical equipment to be located above the base flood elevation, and backup electrical and water feeds will also require the County to create incentives or grants. Such funding could be financed with fuel/energy tax revenues.
<b>A-12 Stormwater Retention Credit Trading</b>	
<b>A-13 Stormwater Management Requirement Waivers Ban</b>	
<b>A-14 Update Floodplain Maps</b>	
<b>A-17 On-site water reuse</b>	
<b>A-18 Community Gardens</b>	The County should consider opportunities to partner with multifamily communities and provide incentives for community gardens at/near such communities.
<b>A-20 Study potential for buildings in the County to flood and possible remedies</b>	Any such study will require input from AOBA members and will need to take into consideration relocation costs for tenants for some retrofits. Some work cannot be done with tenants in place due to environmental (ex. lead-based paint) and other concerns.

<sup>i</sup>[NMHC Rent Payment Tracker Finds 79.3 Percent of Apartment Households Paid Rent as of August 6](https://www.bloomberg.com/news/articles/2021-02-18/one-of-ten-in-u-s-may-have-to-switch-occupations-post-pandemic?utm_campaign=socialflow-organic&utm_content=business&utm_medium=social&cmpid=socialflow-linkedin-business+&utm_source=linkedin) (“Over the past few months apartment residents have largely been able to meet their housing obligations. In no small part, this is due to the enhanced unemployment benefits enacted under the CARES Act and significant steps by apartment owners and operators to help their residents. *These unemployment benefits that have proven so important to so many households have now lapsed, meaning greater financial distress for millions and the potential worsening of America’s housing affordability crisis,*” said David Schwartz, NMHC Chair, and CEO and Chairman of Chicago-based Waterton.); [https://www.bloomberg.com/news/articles/2021-02-18/one-of-ten-in-u-s-may-have-to-switch-occupations-post-pandemic?utm\\_campaign=socialflow-organic&utm\\_content=business&utm\\_medium=social&cmpid=socialflow-linkedin-business+&utm\\_source=linkedin](https://www.bloomberg.com/news/articles/2021-02-18/one-of-ten-in-u-s-may-have-to-switch-occupations-post-pandemic?utm_campaign=socialflow-organic&utm_content=business&utm_medium=social&cmpid=socialflow-linkedin-business+&utm_source=linkedin)

<sup>ii</sup>[Class C Residents Show Signs of Growing Financial Strain: Disproportionately impacted with many experiencing lower rent collection rates. Cheapest Apartments at Biggest Foreclosure Risk as Payments Fall](#) (“Tenants at so-called Class C buildings paid 54% of total rents due in June by the middle of the month, according to a [study](#) by LeaseLock. In July, even with emergency unemployment [relief](#) still flowing, the figure slipped to 37%.”)

[39% of younger millennials say the Covid-19 recession has them moving back home, CNBC, Aug. 5, 2020.](#) Some residential AOBA members report vacancy rates of 10% or more. *See also* [Montgomery County must fix its economic development woes to compete. The pandemic has made that even harder](#), Washington Business Journal, Aug. 21, 2020 (“Office vacancy rates have remained persistently high, reaching 17.5% last year per Cushman & Wakefield’s calculations, ensuring that new commercial construction has been hard to come by in what was once Maryland’s prevailing locality.”)

<sup>iv</sup>[Office Markets Under Pressure as Coronavirus Squeezes Cities, Wall Street Journal](#), Aug. 4, 2020 (“A big drop in profit tends to lead to an even bigger drop in property values during market downturns, when investors are skittish about any sign of distress. Victor Calanog, head of commercial real estate economics

at Moody's Analytics REIS, found that during past recessions, any 10% drop in an office building's net income before taxes and mortgage costs led to a 12.2% drop in property value on average. "Losing one tenant that occupies 30% of your space might have a very big multiplier effect on your income that puts you underwater really quickly," Mr. Calanog said.")

<sup>v</sup>[Why Covid-19 Makes It Harder for Cities to Fight Climate Change: Energy bills and carbon emissions rise as office buildings pull in more outside air to keep workers safe](#), Wall Street Journal, July 21, 2020.

<sup>vi</sup>Bethesda Sector Plan, page 60 "2.4.1 Urban Green. ... B. Recommendations. The following recommendations are important to achieving the urban green goals of this Sector Plan: ...

- On private property, provide a minimum of 35 percent green cover, which may include singularly or a combination of the following:
  - Intensive green roof (6 inches or deeper) on 35 percent of rooftop.
  - Tree canopy cover on 35 percent of landscape.
  - A combination of tree canopy and intensive green roof for a total green cover of 35 percent or greater\*.
- Install green roofs with at least 6 inches of soil depth allowing for greater stormwater treatment, possible urban agriculture and growth of native perennials and grasses to improve habitat, food, shelter and other ecological benefits.

<sup>vii</sup>Montgomery County Code §18A-45 *Clean energy technologies* includes renewable energy sources, renewable energy projects, energy efficiency projects, alternative fuels used for electricity generation, alternative fuel vehicles and related infrastructure such as electric vehicle charging station infrastructure, and smart grid and battery storage. **Energy efficiency project** means a permanent improvement made to an existing property that reduces consumption of energy.

**Energy efficiency and/or renewable energy improvement or improvement** means any equipment, device, or material that:

- (1) meets safety and performance standards set by a nationally recognized testing laboratory for that kind of device, if these standards are available, and
- (2) is intended to decrease energy consumption or expand use of renewable energy sources, including:
  - (A) heating, ventilation, and cooling and distribution system modification or replacement, such as:
    - (i) replacing existing equipment with a high efficiency model;
    - (ii) installing a device or retrofit to existing equipment that increase energy efficiency and conservation;
    - (iii) any electrical or mechanical furnace ignition system which replaces a standing gas pilot;
    - (iv) any tune-up or maintenance activity that increases the operating efficiency;
  - (B) a programmable thermostat;
  - (C) ceiling, attic, wall, roof, foundation, or floor insulation;
  - (D) whole house air sealing;
  - (E) water heater tune-up, water heater insulation, pipe insulation, or change out to an ENERGY STAR qualified water heater;
  - (F) storm windows or doors or ENERGY STAR-qualified window or door replacement;
  - (G) caulking and weather-stripping doors and windows;
  - (H) air distribution system improvements, including duct insulation and air sealing;
  - (I) any device or energy management system which controls demand of appliances or equipment and aides load management manually, remotely, and/or automatically;
  - (J) a measure that reduces the usage of water or increases the efficiency of water usage;
  - (K) an energy recovery system;
  - (L) electric vehicle infrastructure, such as installation of electric vehicle charging station(s) and any necessary installation or upgrades to electrical wiring or outlets;
  - (M) commercial-scale lighting upgrades or daylighting system;
  - (N) any measure or system that makes use of or expands a renewable source of energy, including solar thermal and solar electric, wind turbine, biomass, hydroelectric, geothermal electric, geothermal heat pumps, anaerobic digestion, tidal or wave produced energy, fuel cells using renewable fuels and geothermal direct-use; or
  - (O) any other installation or modification of equipment, device, infrastructure, structure, or other material necessary to:
    - (i) install, operate, or maintain the improvement being installed; or
    - (ii) resolve any structural, mechanical, electrical, or other issue that directly jeopardizes the well-being or safety of the building occupants, quality of the indoor environment, or the durability or longevity of the structure on which the project is being installed

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(L) electric vehicle infrastructure, such as installation of electric vehicle charging station(s) and any necessary installation or upgrades to electrical wiring or outlets;

(M) commercial-scale lighting upgrades or daylighting system;

(N) any measure or system that makes use of or expands a renewable source of energy, including solar thermal and solar electric, wind turbine, biomass, hydroelectric, geothermal electric, geothermal heat pumps, anaerobic digestion, tidal or wave produced energy, fuel cells using renewable fuels and geothermal direct-use; or

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<sup>viii</sup>Bethesda Sector Plan, page 60 “2.4.1 Urban Green. ... B. Recommendations. The following recommendations are important to achieving the urban green goals of this Sector Plan: ...

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