

T&E COMMITTEE #1
September 14, 2017

MEMORANDUM

September 12, 2017

TO: Transportation, Infrastructure, Energy, and Environment Committee

FROM: Glenn Orlin, Deputy Council Administrator
Amanda Mihill, Legislative Attorney *(AMihill)*

SUBJECT: Bill 22-17, Homeowner's Associations – Roadway Maintenance – Repeal

Bill 22-17, Homeowner's Associations – Roadway Maintenance – Repeal, sponsored by Lead Sponsor Transportation, Infrastructure, Energy, and Environment Committee (Council President Berliner and Councilmembers Floreen and Hucker) and Co-Sponsors, Councilmembers Katz, Rice, Navarro, Vice President Riemer and Elrich, was introduced on June 27, 2017. Bill 22-17 would repeal County law that provides for assistance to certain homeowners' associations to maintain certain association roadways or private maintenance roads. This program is supposed to reimburse HOAs for eligible roads at the cost that the County spends to maintain its own roads, subject to the availability of appropriations. However, a few years after inception of the program, funds amounting to only a small fraction of this cost was appropriated, and for the past eight years no funds have been recommended by the Executive or appropriated by the Council.

Testimony. The Council's public hearing was held on July 18, 2017. The only testimony received at the hearing was from the Montgomery Village Foundation, which opposes the bill. The Foundation notes:

We accept that availability of funding is a discretionary budget choice the Council must weigh each year, but we do not want to see the possibility of resumed funding extinguished by eliminating the program. (©12).

The Commission on Common Ownership Communities transmitted its position in opposition to Bill 22-17 on September 11, 2017. The CCOC "believes that moving forward with Bill 22-17 will deeply damage the relationship between the County and [common ownership communities].... Lack of currently available funding for this program is no excuse to eliminate the program" (©13).

Program funding history. When the program began in the late 1980s, the cost to maintain County roads was slightly higher than \$3,000/mile, and HOAs were reimbursed for eligible miles at that rate. By FY90, however, the Council reduced the reimbursement rate to about \$1,200/mile, less than 40% of the cost of maintaining County roads, and it remained at the level in FY91. In the FY92 budget

it was raised to more than \$1,700/mile, but when the full effect of the early-1990s recession hit the next year, the rate dropped below \$1,000/mile. A few years later that recession abated, but the reimbursement rate never again climbed above about \$1,000/mile, while the cost of maintaining a County road—upon which the reimbursement rate was meant to be based—continued to climb.

In 1997, Montgomery Village and a few other small HOAs received relief when the Foundation discovered that many of its roads could be eligible for State Highway User Revenue, which at the time was reimbursing for localities at more than \$5,000/mile. Starting in FY98 the State began counting this road mileage as part of Montgomery County’s allocation, and the County then passed the funds on to the Foundation through the Homeowners’ Association Road Maintenance Reimbursement Nondepartmental Account (NDA). Thenceforth the NDA consisted of two parts: the “State” program which includes the pass-through Highway User Revenue, and the “County” program which was the original County reimbursement program. (The “State” program is unaffected by Bill 22-17, since its funding is from the State and its authority derives from the portion of the Maryland Code describing Highway User Revenue.) In FY98 the budget for the “County” program dropped by more than half, since more than half of the road mileage that had been counted to that point was now eligible for the much higher reimbursement rate under the “State” program.

From FY98 through FY09, the “County” program reimbursement remained at or about \$1,000/mile, and thus as the unit costs for road maintenance continued to rise, it became a progressively smaller share of those costs. When the first effect of the Great Recession hit in the FY10 budget, the reimbursement rate for the “County” program was reduced to about \$250/mile, and starting in FY11 the “County” program was defunded entirely. For the past eight annual budgets, including several years since the passing of the Great Recession, funds have neither been recommended by the Executive nor appropriated by the Council.

Council staff recommendation: Approve Bill 22-17 as introduced. The issue centers on whether the Council realistically would ever again choose to fund the “County” program. It appears that since the Executive and Council are unable to fund most County programs to the level they wish—even in “good” budget years—then it is not plausible that the “County” program will ever be funded again. Montgomery Village would hardly be affected by its elimination: the Foundation’s member HOAs received about \$53,700 in FY17 from the “State” program, while if the “County” program had been funded at the FY10 level, they would have received only about \$500 more. The average reimbursement in FY10 to each of the 48 HOAs under the “County” program was only \$215. (©14-15)

This packet contains:

Bill 22-17	©1-6
Legislative Request Report	©7
Fiscal and Economic Impact statement	©8-11
Montgomery Village Foundation testimony	©12
Commission on Common Ownership Communities letter	©13
“County” program reimbursements in FY10	©14-15

Bill No. 22-17
 Concerning: Homeowners' Associations
- Roadway Maintenance - Repeal
 Revised: 05/31/2017 Draft No. 1
 Introduced: June 27, 2017
 Expires: December 27, 2018
 Enacted: _____
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Transportation, Infrastructure, Energy & Environment Committee

AN ACT to:

- (1) repeal County law that provides for assistance to certain homeowners' associations to maintain certain association roadways or private maintenance roads; and
- (2) generally amend County law regarding certain homeowners' association roadways and private maintenance roads.

By repealing

Montgomery County Code
 Chapter 24B, Homeowners' Associations
 Sections 24B-1, 24B-2, 24B-3, 24B-4, 24B-5, 24B-6, 24B-7, and 24B-8

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

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

1 **Sec. 1. Chapter 24B (Sections 24B-1, 24B-2, 24B-3, 24B-4, 24B-5, 24B-6,**
 2 **24B-7, and 24B-8) is repealed as follows:**

3 **[Chapter 24B. Homeowners' Associations.]**

4 **[24B-1. Definitions.]**

5 [The following definitions apply to this Chapter:

6 (a) *Association roadway* means those paved surfaces, except areas
 7 designated for parking, which:

- 8 (1) provide vehicular access to more than 4 dwelling units; and
 9 (2) are maintained by a homeowners' association.

10 (b) *Homeowners' association* means a body that has the authority to enforce
 11 a declaration under the state homeowners' association law.

12 (c) *Private maintenance road* means a road that:

- 13 (1) is owned by a homeowners' association;
 14 (2) has a right-of-way at least 30 feet wide (not including any portion
 15 of the right- of-way used for parking), and 2 travel lanes; and
 16 (3) provides a direct or indirect general vehicular traffic connection to
 17 the County road system.]

18 **[24B-2. Program of support for roadway maintenance.]**

19 [(a) There is created a program to assist qualifying homeowners associations
 20 to maintain association roadways that are continuously open to the public
 21 as if they were public roadways.

22 (b) Assistance provided under this Chapter is not subject to Chapter 11B.]

23 **[24B-3. Qualifying homeowners' associations.]**

24 [A homeowners' association qualifies for assistance under this Chapter if the
 25 homeowners' association:

- 26 (a) has at least one-quarter mile of association roadway;

- 27 (b) maintains its association roadways at a level of service satisfactory to the
- 28 County;
- 29 (c) finances the maintenance of its association roadways with funds collected
- 30 by the homeowners' association;
- 31 (d) has a financial officer that is bonded or meets the requirements of
- 32 financial responsibility that regulations under this Chapter prescribe; and
- 33 (e) agrees that eligible disputes to which the homeowners' association is a
- 34 party will be submitted by the homeowners' association to either:
- 35 (1) the dispute resolution process under Article 2 of Chapter 10B; or
- 36 (2) other mediation or arbitration approved by the Commission on
- 37 Common Ownership Communities.]

38 **[24B-4. Amount of assistance.]**

- 39 [(a) The annual amount that a qualifying homeowners' association may
- 40 receive under this Chapter is the number of its association roadway miles
- 41 that qualify for assistance under this Chapter, multiplied by the average
- 42 locally funded cost to the County of providing maintenance and street
- 43 lights for a mile of County roadway during the previous year.
- 44 (b) If an association roadway that qualifies for assistance under this Chapter
- 45 is initially open to the public for only part of a year, the annual amount of
- 46 assistance must be prorated for that part of the year for which the
- 47 association roadway was open.]

48 **[24B-5. Limitation on expenditure.]**

- 49 [(a) All expenditures of County funds under this Chapter are subject to the
- 50 limits of the funds appropriated by the County Council.
- 51 (b) If the County Council does not appropriate enough funds to cover the
- 52 number of miles of association roadways that qualify under this Chapter,

53 the amount of assistance for each mile of association roadway is reduced
 54 proportionally.]

55 **[24B-6. Regulations.]**

56 [The County Executive must adopt regulations under method (2) to implement
 57 this Chapter.]

58 **[24B-7. Amendment of bylaws.]**

59 [Notwithstanding any association document to the contrary, a homeowners'
 60 association, as defined in state law, may amend its bylaws by a vote of a majority of
 61 the lot owners. This section applies to bylaws adopted before or after this section
 62 became law.]

63 **[24B-8. Private maintenance roads.]**

64 [(a) *Requirements for assistance.* The County may provide maintenance
 65 funding assistance to a homeowners' association for a private
 66 maintenance road if the homeowners' association:

67 (1) grants an easement to the County for the general free public use of
 68 the private maintenance road, which must include a metes and
 69 bounds description of the easement certified by a registered land
 70 surveyor or a record plat or other legal description acceptable to
 71 the County Attorney; and

72 (2) signs an agreement with the County that the homeowners'
 73 association must build and maintain the private maintenance road
 74 to standards adopted by executive regulation for private
 75 maintenance roads.

76 (b) *Contents of agreement.* In each agreement signed under subsection (a)
 77 the homeowners' association must:

78 (1) acknowledge that:

- 79 (A) granting the easement does not relieve the association of the
80 obligation to maintain the private maintenance road or to
81 provide any other services, such as snow removal, which the
82 association is required to provide by any association
83 document or law; and
- 84 (B) the easement automatically reverts to the grantor if the
85 homeowners' association does not comply with all terms of
86 the easement and the agreement it signs with the County;
- 87 (2) indemnify the County against all claims arising from the use or
88 condition of the private maintenance road; and
- 89 (3) certify that the homeowners' association has obtained and will
90 continually maintain insurance or other surety, in an amount
91 acceptable to the County, covering claims arising from the use or
92 condition of the private maintenance road, and acknowledge that
93 the County may withdraw funds allocated under this section if the
94 insurance coverage lapses.
- 95 (c) *Documents to be recorded.* Any easement and agreement signed under
96 this section must be recorded in the County land records.
- 97 (d) *Costs of documents.* The homeowners' association must pay all costs of
98 preparing and recording any easement, agreement, or other document
99 required under this section.
- 100 (e) *Amount of assistance to homeowners' association.* The County may
101 allocate to a homeowners' association for maintenance of a private
102 maintenance road an amount that does not exceed the net amount, less
103 any inspection fee or any other County expense, of highway user
104 revenues received by the County as a result of the inclusion of that private
105 maintenance road in the State Highway Administration mileage

106 inventory. The homeowners' association must use these funds to maintain
107 that private maintenance road or place them in a reserve fund which can
108 be used only to maintain that road. The County must not assist under this
109 section any road for which it provides assistance under Section 24B-2
110 through 24B-5.

111 (f) *Termination of easement.* If the County finds that an easement granted
112 under this section is not in the public interest, or that a homeowners'
113 association has not complied with the terms of an easement or other
114 agreement under this section, the County may, in its sole discretion,
115 withhold or withdraw maintenance funds or reject and terminate the
116 easement, and record documentation of the termination in the County
117 land records. The abandonment procedures in Chapter 49 do not apply to
118 the termination of an easement under this section.

119 (g) *No County obligation.* Granting an easement under this section does not
120 obligate the County to maintain or pay for the maintenance of any private
121 maintenance road.]

122 *Approved:*

123 _____
Roger Berliner, President, County Council Date

124 *Approved:*

125 _____
Isiah Leggett, County Executive Date

126 *This is a correct copy of Council action.*

127 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 22-17

Homeowners' Associations – Roadway Maintenance - Repeal

DESCRIPTION:	Bill 22-17 would repeal County law that provides for assistance to certain homeowners' associations to maintain certain association roadways or private maintenance roads and generally amend County law regarding certain homeowners' association roadways and private maintenance roads.
PROBLEM:	This program is supposed to reimburse HOAs for eligible roads at roughly the cost that the County spends to maintain its own roads, subject to the availability of appropriations. However, for two decades the Council has limited the reimbursement to around \$1,000 per eligible mile, a fraction of the cost of maintaining a County road. For the FY10 budget, the Council reduced the appropriation to only about \$250 per eligible mile, and for FY11 through FY18 the Council suspended funding for this program altogether.
GOALS AND OBJECTIVES:	To repeal the program.
COORDINATION:	Department of Transportation
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Glenn Orlin, Deputy Council Administrator, 240-777-7936 Amanda Mihill, Legislative Attorney, 240-777-7815
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	N/A

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ROCKVILLE, MARYLAND

MEMORANDUM

July 14, 2017

TO: Roger Berliner, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 22-17, Homeowners' Associations - Roadway Maintenance - Repeal

Please find attached the fiscal and economic impact statements for the above-referenced legislations.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Brady Goldsmith, Office of Management and Budget
Felicia Zhang, Office of Management and Budget

Fiscal Impact Statement
Council Bill 22-17 Homeowners' Associations – Roadway Maintenance- Repeal

1. Legislative Summary.

The bill would repeal the County law that provides for assistance to certain homeowners' associations to maintain certain roadways or private maintenance roads. The County portion of this program has been suspended since FY11.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

There will be no change to revenues and expenditures as this program has been suspended since FY11.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

N/A

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

N/A

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

N/A

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

N/A

7. An estimate of the staff time needed to implement the bill. N/A

8. An explanation of how the addition of new staff responsibilities would affect other duties.

N/A

9. An estimate of costs when an additional appropriation is needed.

N/A

10. A description of any variable that could affect revenue and cost estimates.

N/A

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

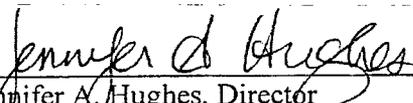
N/A

12. If a bill is likely to have no fiscal impact, why that is the case.

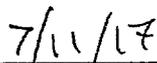
The bill is repealing a program that has been suspended since FY11.

13. Other fiscal impacts or comments.

14. The following contributed to and concurred with this analysis: Brady Goldsmith, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget



Date

Economic Impact Statement
Bill 22-17 Homeowners' Associations – Roadway Maintenance – Repeal

Background:

Bill 22-17 would repeal County law that provides for assistance to certain homeowners' associations to maintain certain association roadways or private maintenance roads and generally amend County law regarding certain homeowners' association roadways and private maintenance roads. This program was intended to reimburse HOAs for eligible roads at roughly the cost that the County spends to maintain its own roads, subject to the availability of appropriations. However, for two decades the Council has limited the reimbursement to around \$1,000 per eligible mile, a fraction of the cost of maintaining a County road. For the FY10 budget, the Council reduced the appropriation to only about \$250 per eligible mile, and for FY11 through FY18 the Council suspended funding for this program altogether.

1. The sources of information, assumptions, and methodologies used.

This legislation does not have an economic impact as it codifies the repealing of a program that has been suspended since FY11. As noted in the fiscal impact of the Bill, there will be no changes to County revenues and expenditures as the program has been suspended for seven consecutive fiscal years. There will also be no tangible economic impact to employment, spending, savings, investment, incomes, and property values as a result of this Bill.

2. A description of any variable that could affect the economic impact estimates.

This legislation does not have an economic impact.

3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Please see the answer to question 1.

4. If a Bill is likely to have no economic impact, why is that the case?

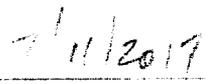
Please see the answer to question 1.

5. The following contributed to or concurred with this analysis:

David Platt, Dennis Hetman, and Robert Hagedoorn, Finance.



Alexandre A. Espinosa, Director
Department of Finance



Date



MONTGOMERY VILLAGE FOUNDATION, INC.

10120 APPLE RIDGE ROAD
MONTGOMERY VILLAGE, MARYLAND 20886-1000

(301) 948-0110 FAX (301) 990-7071 www.montgomeryvillage.com

July 17, 2017

The Hon. Roger Berliner, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850
Via Email:

Re: Repeal of Private Roadway Maintenance Programs (Bill 22-17)

Dear President Berliner:

I am the President of the Board of Directors of the Montgomery Village Foundation (MVF). I am writing to strongly oppose Bill 22-17 on behalf of MVF and the eleven homeowner associations in Montgomery Village that have participated in the County's Private Roadway Maintenance Program since it began.

MVF worked closely with the County to draft the legislation creating the program more than 20 years ago. It was established to recognize the vital contribution of HOA roads to the County road network and service to County travelers. The reimbursement program recognized that this service is not without substantial cost. The need for assistance to HOAs to maintain private roads was crucial then, and it remains crucial now, despite the progressive reduction of reimbursement funds from the County over the years.

We are dismayed at the proposal before the Council to repeal the program. The worthiness of the program has never been at issue. We accept that availability of funding is a discretionary budget choice the Council must weigh each year, but we do not want to see the *possibility* of resumed funding extinguished by eliminating the program.

We would be happy to answer any questions you have or provide additional information. Thank you for your continued attention to issues that affect Montgomery Village.

Sincerely,

Peter C. Young, President
MVF Board of Directors

cc: Council Members
Senator Nancy King
MVF Board of Directors
Glenn Orlin



Montgomery County Commission on Common Ownership Communities

1401 Rockville Pike, 4th floor, Rockville, Maryland 20852

Montgomery County Council Bill 22-17

Position: Oppose

On behalf of Montgomery County's Commission on Common Ownership Communities (CCOC), we request the Transportation, Infrastructure, Energy, and Environment Committee to strongly reconsider the repeal of the Homeowner's Association – Roadway Maintenance Program.

As background, the Commission was established in 1991 to advise the Montgomery County Executive and Council on ways to support common ownership communities (CoC); promote public awareness of the rights and obligations of living in common ownership communities; adjudicate disputes; and advise on appropriate legislative initiatives.

The CCOC believes that moving forward with Bill 22-17 will deeply damage the relationship between the County and CoCs. More than 136,000 homes fall under the jurisdiction of a common ownership community. This represents more than one-third of the County's total housing stock (including rental units). Outside of Chapter 10B (establishment of the CCOC and grievance procedures), this is the only County program designed to support these communities.

These homeowners are charged annual assessments by their association, in addition to paying property taxes at the same rate as their neighbors, not under CoC authority. Non-CoC residents can rely on the County to maintain and repair streets, provide adequate street lighting, remove snow, storm drain maintenance, and more. Many CoCs are responsible for these services through the annual assessments, without any property tax break. Roads, we should note, which are open to the public, and used by all. The Roadway Maintenance Program acknowledges this "double tax", and provides some financial relief to these communities. **Lack of currently available funding for this program is no excuse to eliminate the program.** We should be working to restore funding, and finding additional ways to support our communities.

The Montgomery County Commission on Common Ownership Communities (CCOC) thanks you for your reconsideration of this bill. Myself, our chair and vice-chair, or any of the commissioners would be happy to talk through this more.

Submitted by Ilana Branda, Chair of the Legislative Committee, CCOC Commissioner. Available at ibranda@mhpartners.org or 301-812-4139.

Cc: Clarence Snuggs, Director DHCA; Jay Greene, Division of Housing Chief, DHCA

HOA Reimbursement -- County Checks to be Cut for FY10

<u>Association Name</u>	<u>Payment</u>
Chadswood Homeowners Association	\$113.73
Churchill Village South Homeowners Association	\$344.47
Clopper's Mill Community Association	\$177.87
Crestberry Homeowners Association	\$55.86
Damascus Manor Townhouse Association, Inc.	\$63.09
Damascus Valley Park Townhouse Association	\$224.55
Decoverly I Homeowners Association	\$218.71
Devonshire East Homeowners Association	\$194.04
Devonshire Homeowners Association	\$119.12
East Gate II Homes Association, Inc.	\$215.60
East Village Homes Corporation	\$171.88
Esprit, A Condominium, Inc.	\$109.35
Farmingdale Condominium Inc.	\$254.07
Greencastle Lakes Community Association	\$540.28
Hamlet North Towne Association	\$69.42
Homeland Village Community Association	\$237.17
Kingsview Village Homeowners Association	\$289.92
Lake Hallowell Homeowners Association	\$208.90
Lakeview Condominium Association	\$69.40
Landing Glen Condominium Inc.	\$60.71
Longmead Crossing Community Services Assoc.	\$1,150.88
Manchester Farm Community Association	\$641.42
Marion Woods Homeowners Association	\$179.66
Meadows at North Lake Homeowners Association, Inc.	\$243.29
Meadowvale Homeowners Association, Inc.	\$99.18

HOA Reimbursement -- County Checks to be Cut for FY10

<u>Association Name</u>	<u>Payment</u>
Middlebridge Village Homeowners Association	\$87.79
Middlebrook Commons Townhouse Association	\$227.25
Mill Creek Townhouse Condominium Association	\$103.92
Norbeck Grove Community Association	\$204.46
Norbeck Hills Homeowners Association	\$236.63
North Lake Woods Homeowners Association	\$275.03
Oak Spring Townhome Owners Association	\$194.95
Overlook at North Lake Homeowners Association, Inc.	\$167.87
Potomac Crossing Homeowners Association	\$54.81
Rolling Acres Homeowners Association, Inc.	\$51.44
Seneca Park Homeowners Association, Inc.	\$171.90
Shores at North Lake Homeowners Association	\$214.38
Stonebridge Homeowners Association, Inc.	\$232.36
The Villages of James Creek Homeowners Association	\$254.20
Tivoli Community Association, Inc.	\$279.47
Walnut Creek Townhouse Association	\$225.85
Waterford Place Homeowners Association, Inc.	\$129.36
Waters House Condominium	\$323.41
Watkins Mill Homeowners Association	\$289.92
Whetstone Homes Corporation	\$99.85
Wickford Community Association	\$138.03
Williamsburg Square Community Council	\$191.84
Woodside Homeowners Association	\$112.70
Total Payments	\$10,320.00

AVERAGE

\$ 215.00