

**MEMORANDUM**

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *Mihill*  
Michael Faden, Senior Legislative Attorney *MW*

SUBJECT: **Action:** Bill 39-12, Technical Corrections

Bill 39-12, Technical Corrections, sponsored by the County Council, was introduced on December 4, 2012. A public hearing was held on January 22.

Bill 39-12 corrects technical, typographical, grammatical, and codification errors in, and makes stylistic, clarifying, and conforming amendments to, several provisions in County law. This bill represents an accumulation of technical and stylistic errors that individually were not significant enough to warrant separate corrective legislation, but which now cumulatively justify a technical corrections bill. This legislation is largely a result of the continuous vigilance and technical skills of Sharon Gemperle of the County Attorney's Office, who is responsible for editing the County Code.

**Financial Disclosure Statements** Bill 39-12 would specify that each employee in a non-merit position is required to file a public financial disclosure statement to the extent that they are not already required to do so. In 2007, the Council enacted Expedited Bill 6-07, Structure of County Government – Non-merit Positions, which increased the number of non-merit positions in the Executive Branch. Bill 6-07 failed to expressly require that the holder of each new non-merit position would be required to file a public disclosure statement. This Bill makes this conforming change. Ethics Commission and County Attorney staff questioned whether the language on ©9, line 181, would unintentionally cover employees who would not otherwise file disclosure statements, such as temporary and seasonal employees. To clarify the scope of this provision, Council staff recommends the following amendment on ©9, line 181:

(D) any [[employee in]] officer holding a position designated by law as a non-merit position;

**Council Administrator** Bill 39-12 would replace the title “Council Staff Director” with “Council Administrator” throughout County law. This amendment would align the position title

with the actual duties being performed for the Legislative Branch and with the title used in comparable Maryland counties.

***Retirement System amendment*** The County Attorney recommended an amendment to County Code §33-35 to correct an omission in a 1996 bill affecting the statutory limits on compensation for purposes of pension contributions that certain County employees can make. See County Attorney memorandum on ©29. Council staff concurs with the County Attorney and recommends this amendment.

This packet contains:

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Bill No. 39-12  
Concerning: Technical Corrections  
Revised: 1/30/2013 Draft No. 5  
Introduced: December 4, 2012  
Enacted: June 4, 2014  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: County Council

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**AN ACT** to correct technical, typographical, grammatical, reference, and codification errors in, and make stylistic, clarifying, and conforming amendments to, various provisions of County law.

By amending

Montgomery County Code  
Chapter 1, General Provisions  
Sections 1-18 and 1-203

Chapter 1A, Structure of County Government  
Sections 1A-101, 1A-102, 1A-105, 1A-108, 1A-109, 1A-204

Chapter 2, Administration  
Sections 2-42A, 2-76, 2-128, and 2-140

Chapter 19, Erosion, Sediment Control and Storm Water Management  
Sections 19-21 and 19-22

Chapter 19A, Ethics  
Sections 19A-17 and 19A-32

Chapter 20, Finance  
Section 20-32

Chapter 22, Fire Safety Code  
Sections 22-3 and 22-37

Chapter 22A, Forest Conservation – Trees  
Section 22A-3

Chapter 24A, Historic Resources Preservation  
Section 24A-9

Chapter 29, Landlord-Tenant Relations  
Section 29-47

Chapter 33, Personnel and Human Resources  
Sections 33-37, 33-42, 33-42A, 33-59, 33-120, and 33-128

Chapter 42, Revenue Authority  
Section 42-28

Chapter 44, Schools and Camps  
Section 44-3

Chapter 49, Streets and Roads  
Section 49-33

Chapter 51, Swimming Pools  
Sections 51-1 and 51-16A.

Chapter 52, Taxation  
Section 52-11A, 52-18Q, 52-21, and 52-53

1992 Laws of Montgomery County, Chapter 4  
Section 3

2011 Laws of Montgomery County, Chapter 1  
Section 2

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



28 \* \* \*

29 (B) County revenue or tax legislation, subject to [the

30 provisions of] the Tax-Property Article [or Article 81,

31 Annotated Code of Maryland 1957, as amended] of the

32 Maryland Code.

33 **1A-101. Scope of article.**

34 \* \* \*

35 (c) List of appointed officials.

36 \* \* \*

37 (4) [Staff Director of the County Council] Council administrator

38 (optional).

39 \* \* \*

40 **1A-102. Process for appointing and confirming officials.**

41 \* \* \*

42 (d) [*Staff Director of the*] Council Administrator.

43 (1) There is a position of [Staff Director] Council Administrator.

44 The Council may appoint someone to fill this position.

45 (2) The [Staff Director] Council Administrator must be a

46 professionally qualified administrator.

47 (3) The [Staff Director] Council Administrator is not a merit

48 system employee.

49 (4) An appointment must be by a majority vote of Councilmembers

50 in office.

51 **1A-105. Acting officials.**

52 (a) *Scope.* This Section applies to acting:

53 \* \* \*

54 (5) [Staff directors of the council] Council Administrators.

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(f) *[Acting Staff Director of the] Council Administrator.*

(1) If the position of [Staff Director] Council Administrator is vacant, the Council may appoint an acting [Staff Director] Council Administrator.

(2) [a.] (A) If the [Staff Director] Council Administrator becomes temporarily absent or disabled, the Council may appoint an acting [Staff Director] Council Administrator.

(b.) (B) If the Council does not appoint an acting [Staff Director] Council Administrator under this paragraph, the [Staff Director] Council Administrator may appoint an acting [Staff Director] Council Administrator.

(3) An acting [Staff Director] Council Administrator, who is not a merit system employee, must be a professionally qualified administrator.

\* \* \*

(h) *Removal.*

\* \* \*

(2) The [council] Council may remove an acting [staff director] Council Administrator at any time.

**1A-108. Salaries of Planning Board members.**

The annual salary of each member of the Planning Board, other than the member designated as the full-time member under Division II of the Land Use Article of the Maryland Code [Art. 28,] Section [2-104] 15-107, is \$24,400, in addition to any salary the member receives under Section [2-104] 15-108 as a member of the Maryland-National Capital Park and Planning Commission.

**1A-109. Delegation of Authority; Sub-delegation.**

\* \* \*

(j) Section 1A-105 exclusively governs the appointment of an acting:

\* \* \*

(5) Council [Staff Director] Administrator.

**1A-204. Supervision of offices and appointment of heads.**

\* \* \*

(b) *Legislative Branch.*

(1) Office of the County Council.

[a.] (A) The Council appoints the [Staff Director] Council Administrator as provided for in Section 1A- 102(d), and may give direction to members of the Council's staff. In the absence of direction from the Council, officers of the Council may give directions to the Council's staff.

[b.] (B) Except for the Clerk of the Council, the [Staff Director of the County] Council Administrator or another person designated by the Council appoints and supervises all merit system employees of the Office.

[c.] (C) Under the merit system laws, the County Council appoints and removes the Clerk of the Council by a resolution approved by a majority of all councilmembers in office. The [Staff Director] Council Administrator supervises the Clerk on all matters.

(2) Office of Legislative Oversight.

[a.] (A) \* \* \*

[b.] (B) \* \* \*

[c.] (C) \* \* \*

[d.] (D) \* \* \*

[e.] (E) \* \* \*

110 (4) Office of Zoning and Administrative Hearings.

111 [A.] (A) The County Council, by a majority vote of  
112 Councilmembers in office, may appoint one or more  
113 hearing examiners of the Office of Zoning and  
114 Administrative Hearings, and designate a hearing  
115 examiner or the Council [Staff Director] Administrator as  
116 Director of the Office.

117 [B.] (B) \* \* \*

118 [C.] (C) \* \* \*

119 [D.] (D) \* \* \*

120 **2-42A. Functions, powers, and duties.**

121 \* \* \*

122 (d) Duties of the Department.

123 \* \* \*

124 (3) The Department provides staff support to:

125 \* \* \*

126 (C) the Community Action [Committee] Board;

127 \* \* \*

128 **2-76. Exercise of zoning, planning and subdivision powers.**

129 The procedures for the Council to exercise its powers of zoning, planning or  
130 subdividing shall be as prescribed by [the Regional District Act, article 28 of the  
131 Annotated Code of Maryland] Division II of the Land Use Article of the Maryland  
132 Code; by other applicable law enacted by the General Assembly of Maryland; by  
133 the zoning or subdivision [ordinances] laws; or otherwise as prescribed by the  
134 Council by law.

135 **2-128. Appointment of County Attorney as Assistant State's Attorney; powers,**  
136 **duties.**

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\* \* \*

(b) Assistant State's Attorneys so appointed have the same powers as an Assistant State's Attorney appointed under other applicable law and must assist the State's Attorney in prosecuting violations of:

(10) any other[,] law, rule, regulation, or ordinance adopted by the Council.

\* \* \*

**2-140. Powers, duties and functions.**

\* \* \*

(b) The Office may act as an administrative office or agency designated by the District Council, as prescribed in [the Regional District Act (Article 28 of the Maryland Code)] Division II of the Land Use Article of the Maryland Code.

\* \* \*

**19-21. Definitions.**

In this Article, the following words and phrases have the following meanings unless the context indicates otherwise:

\* \* \*

*Administrative waiver:* A decision by the Department to allow the construction of a development to be governed by the County stormwater management law in effect as of May 4, 2009. An administrative waiver is distinct from a waiver granted under Section [19-25] 19-24.

\* \* \*

**19-22. Watershed management plans.**

\* \* \*

(b) The Board should prepare functional master plans under [Article 28] Division II of the Land Use Article of the Maryland Code to preserve, conserve, and manage natural resources in each of the County's

165 watersheds for the County Council’s review and approval. Each  
 166 functional master plan should address land use, impervious impact on  
 167 streams and waterways, stream buffers, wildlife and stream habitat,  
 168 forest preservation, and other issues related to the permitting of  
 169 stormwater management facilities and the development of watershed  
 170 management plans

171 **19A-17. Who must file a financial disclosure statement.**

172 (a) The following persons must file a public financial disclosure  
 173 statement under oath:

174 \* \* \*

- 175 (2) the following public employees:
- 176 (A) Chief Administrative Officer and any Deputy Chief  
 177 Administrative Officer;
- 178 (B) special assistants to the County Executive;
- 179 (C) director and deputy director of each department, principal  
 180 office, and office in the County government;
- 181 (D) any employee in a non-merit position;
- 182 [~~(D)~~] (E) members of the County Board of Appeals;
- 183 [~~(E)~~] (F) members of the Commission; and
- 184 [~~(F)~~] (G) members of the Merit System Protection Board;

185 \* \* \*

186 **19A-32. Removal for failure to file financial disclosure statement.**

187 (a) If a public employee does not file a complete financial disclosure  
 188 statement when required to under Section 19A-18, the Chief  
 189 Administrative Officer (for employees in the Executive [branch]  
 190 Branch) or the [County] Council [staff director] Administrator (for  
 191 employees in the [legislative branch] Legislative Branch) may remove

192 the employee from employment with a County agency or from  
 193 membership on a board, commission or similar body, paid or unpaid.  
 194 Before an employee is removed for failing to file a financial  
 195 disclosure statement, the County Attorney must give the employee 30  
 196 days notice of the proposed removal. The Chief Administrative  
 197 Officer and the Council [staff director] Administrator must not  
 198 remove an employee if the employee files the required financial  
 199 disclosure statement within the time specified in the notice. This  
 200 Section does not apply to an elected public employee.

201 \* \* \*

202 **20-32. Legislative purpose.**

203 (a) Under the authority of ~~[[Article 44A]]~~ Title 16 of the Housing and  
 204 Community Development Article of the Maryland Code, Montgomery  
 205 County, may, at any time and from time to time, guarantee, upon its  
 206 full faith and credit, revenue bonds of the Housing Opportunities  
 207 Commission in a total amount not exceeding \$50,000,000 to finance  
 208 the acquisition, provision, development, or rehabilitation of housing at  
 209 rental rates and prices not being offered in adequate quantity by the  
 210 private sector, or to finance in whole or in part mortgage loans  
 211 secured by such housing, and to fund related reserves and costs  
 212 approved under Title 16 of the Housing and Community Development  
 213 Article [44A] of the Maryland Code and this Chapter.

214 \* \* \*

215 **22-3. Construction and scope of chapter.**

216 \* \* \*

217 (e) This Chapter does not render any other applicable law or regulation  
 218 invalid. If a conflict arises between this Chapter and another law or

219 regulation, the fire marshal and the head of the agency responsible for  
 220 enforcing the conflicting law or regulation must agree which applies.  
 221 If they cannot agree, any remaining conflict must be referred to the  
 222 Fire Chief. The decision of the Fire Chief in any matter relating to  
 223 fire safety is final. [However, any person aggrieved by the decision  
 224 may appeal to the County Board of Appeals under Chapter 2.] Within  
 225 30 days after any remaining conflict has been resolved, the Fire Chief  
 226 and the head of the agency responsible for enforcing the conflicting  
 227 law or regulation must forward to the County Executive a joint  
 228 proposal to amend a law or regulation to eliminate the conflict.

229 **22-37. Regulating fire extinguisher service.**

230 The Fire Chief must:

231 \* \* \*

232 [(4)] (d) [To] issue certificates of registration for those firms that qualify  
 233 under these regulations to engage in the business of servicing portable  
 234 fire extinguishers, and issue licenses, apprentice permits, and  
 235 authority to perform hydrostatic testing to the qualified persons.

236 **22A-3. Definitions.**

237 In this Chapter, the following terms have the meanings indicated:

238 \* \* \*

239 *District Council* means the County Council in its capacity, under [Article  
 240 28] Division II of the Land Use Article of the Maryland Code, to act on planning  
 241 [the] and zoning [matters] for the Maryland-Washington Regional District.

242 \* \* \*

243 *Mandatory referral* means the required review by the Planning Board of  
 244 projects or activities to be undertaken by [governmental] government agencies and  
 245 private and public utilities under Section [7-112 of Article 28] 20-301 of the Land

246 Use Article of the Maryland Code.

247 \* \* \*

248 **24A-9. Demolition by neglect.**

249 In [the event of] a case of demolition by neglect of an historic resource on  
250 public or private property, the following provisions shall apply:

251 \* \* \*

252 (b) If the historic resource is listed in the "Locational Atlas and Index of  
253 Historic Sites in Montgomery County, Maryland," or the microfilmed  
254 addenda to [such] that atlas, published by the Maryland-National  
255 Capital Park and Planning Commission, the Director shall advise the  
256 Planning Board which, after receiving the recommendation of the  
257 Commission, shall conduct a public hearing to determine whether the  
258 historic resource will be designated as an historic site or historic  
259 district in the master plan for historic preservation.

260 \* \* \*

261 (2) Where the Planning Board determines that the historic resource  
262 in all likelihood will be included in the master plan for historic  
263 preservation, the Planning Board shall initiate an amendment to  
264 the master plan for historic preservation [pursuant to the  
265 provisions of article 28] under Division II of the Land Use  
266 Article of the [Annotated Code of] Maryland Code.

267 \* \* \*

268 **29-47. Commission action when violation found.**

269 \* \* \*

270 (b) If the Commission or panel finds that a landlord has caused a  
271 defective tenancy, it may award each party to the complaint one or  
272 more of the following remedies:

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\* \* \*

(3) An award under Section [29-10(c)] 29-10(b) of up to three times the amount of any security deposit that the landlord has wrongfully withheld. When making this award, the Commission must consider the egregiousness of the landlord's conduct in wrongfully withholding all or part of the deposit, whether the landlord acted in good faith, and any prior history by the landlord of wrongful withholding of security deposits;

\* \* \*

**33-37. Membership requirements and membership groups.**

\* \* \*

(f) *Membership groups and eligibility.* Any full-time or part-time employee is eligible for membership in the appropriate membership group if the employee meets all of the requirements for the group:

\* \* \*

(4) Group E: The Chief Administrative Officer, the Council [Staff Director] Administrator, the hearing examiners, the County Attorney and each head of a principal department or office of the County government, if appointed to that position before July 30, 1978, or a member having held that position on or before October 1, 1972. Any sworn deputy sheriff and any County correctional staff or officer as designated by the chief administrative officer. Any group E member who has reached elective early retirement date may retain membership in group E if the member transfers from the position which qualified the member for group E. Any group E member who is temporarily transferred from the position which qualified the member for

group E may retain membership in group E as long as the temporary transfer from the group E position does not exceed 3 years. Notwithstanding the foregoing provisions in group E, any employee who is eligible for membership in group E must participate in the guaranteed retirement income plan or the retirement savings plan under Article VIII if the employee:

\* \* \*

(k) *Election to join the guaranteed retirement income plan.*

[(5)] (6) An individual who is an elected official after December 6, 2010 who participates in the elected officials' plan may make a one-time irrevocable decision to terminate participation in the elected officials' plan and participate in the guaranteed retirement income plan. An elected official must make this decision during the first 150 days after becoming an elected official. If an eligible elected official decides to participate, participation must begin on the first pay period after the elected official has been in office for 180 days. An elected official who decides to participate must have his or her elected officials' plan account balance transferred to the guaranteed retirement income plan. The amount transferred into the guaranteed retirement income plan must become the participant's initial guaranteed retirement income plan account balance. An elected official who does not participate in the guaranteed retirement income plan must continue to participate in the elected officials' plan.

**33-42. Amount of pension at normal retirement date or early retirement date.**

\* \* \*

327 (i) *Retirement incentive Program.*

328 \* \* \*

329 (5) *Approval.* The Chief Administrative Officer must approve a  
 330 request to participate in the program from a member employed  
 331 in the Executive Branch. The Council [Staff Director]  
 332 Administrator must approve a request to participate in the  
 333 program from a member employed in the Legislative Branch.  
 334 If more than 20% of members eligible to participate in the  
 335 Executive Branch, either Countywide or by department, apply  
 336 to participate in the program, the Chief Administrative Officer  
 337 may limit the number of participants, either on a Countywide or  
 338 department basis. If more than 20% of members eligible to  
 339 participate in the Legislative Branch apply to participate in the  
 340 program, the Council [Staff Director] Administrator may limit  
 341 the number of participants. The Chief Administrative Officer  
 342 and the Council [Staff Director] Administrator must base any  
 343 limits on the number of participants on years of service with the  
 344 County. Years of service with the County must not include  
 345 service with a participating agency, purchased service, or sick  
 346 leave.

347 **33-42A. 2010 Retirement Incentive Program.**

348 \* \* \*

349 (g) *Approval.* The Chief Administrative Officer must approve a request  
 350 to participate in the program from a member employed in the  
 351 Executive Branch. The Council [Staff Director] Administrator must  
 352 approve a request to participate from a member employed in the  
 353 Legislative Branch. The Chief Administrative Officer and the

354 Council [Staff Director] Administrator must not approve more  
 355 applications from an affected class than the number of positions that  
 356 are abolished in the affected class. The Chief Administrative Officer  
 357 and the Council [Staff Director] Administrator may disapprove an  
 358 application if a vacancy created by a member participating in the  
 359 program cannot be filled by a member of an affected class. If more  
 360 members apply to participate in the program than the number of  
 361 positions abolished, the participants must be approved in order of  
 362 County seniority calculated under the RIF personnel regulation in the  
 363 following order:

364 \* \* \*

365 **33-59. Board of investment trustees.**

366 \* \* \*

367 (b) *Membership.*

368 \* \* \*

369 (2) The County Executive must appoint 4 voting, ex officio  
 370 members of the Board, subject to County Council confirmation  
 371 as members, who serve indefinitely while each holds the  
 372 respective office. These ex officio trustees should be:

373 \* \* \*

374 (D) the [Staff Director of the County] Council Administrator.

375 **33-120. Distribution of Benefit.**

376 \* \* \*

377 (g) Direct rollover distributions. Notwithstanding any provision of this  
 378 Division that would otherwise limit a participant's election under this  
 379 Section, a participant or beneficiary may elect in any manner  
 380 prescribed by the Chief Administrative Officer at any time to have

381 any portion of an eligible rollover distribution paid directly to an  
382 eligible retirement plan specified by the participant in a direct  
383 rollover. As used in this subsection:

- 384 (1) [a] direct rollover means a payment from the retirement savings  
385 plan to the eligible retirement plan specified by the participant.

386 \* \* \*

387 **33-128. Definitions.**

388 \* \* \*

389 Residual functional capacity means what the individual can still do, despite  
390 the individual's impairment. The County must give the term residual  
391 functional capacity the same meaning as the term is given by the Social  
392 Security Administration.

393 Substantial gainful activity means a level of productive work that requires  
394 significant physical or mental duties, or a combination of both, performed  
395 for pay or profit on a full- time or part-time basis. An individual is able to  
396 perform a substantial level of work if the individual is able to earn more than  
397 the Social Security Administration's current monthly earnings limit for a  
398 disabled person. The County must give the term substantial gainful activity  
399 the same meaning as the term is given by the Social Security Administration.

400 \* \* \*

401 **42-28. Projects subject to planning, subdivision, and zoning laws.**

402 Construction of any project by the Authority is subject to County planning,  
403 subdivision, and zoning laws and regulations and those of any planning  
404 commission with jurisdiction over the facility or project to the same extent as those  
405 laws and regulations apply to a project owned and built by a government agency.  
406 The Authority must refer each project that it intends to build to the County  
407 Planning Board for its review and comment, as required by Section [7-112] 20-

408 301, et. seq., of [Article 28] the Land Use Article of the Maryland Code, before the  
409 Authority includes the project in its capital budget under Section 42-13.

410 **44-3. Interagency Coordinating Board.**

411 \* \* \*

412 (b) *Membership.* The Board consists of voting members and nonvoting,  
413 ex officio members.

414 (1) The voting members are:

415 \* \* \*

416 (E) a Councilmember or the [staff director] Council  
417 Administrator or a senior staff member of the County  
418 Council, who represents the Council;

419 \* \* \*

420 **49-33. Road construction requirements.**

421 \* \* \*

422 (k) *Ground cover.*

423 (1) A property owner may plant and maintain ground cover in a  
424 public right-of-way adjacent to the owner's property if the  
425 owner:

426 (A) complies with [regulations] guidelines issued under  
427 paragraph (3);

428 \* \* \*

429 **51-1. Definitions.**

430 \* \* \*

431 *Lifeguard* means a person who:

432 [(1)] (a) is at least 15 years old; and

433 [(2)] (b) has a valid lifeguard certificate from the American Red Cross, the  
434 Young Men's Christian Association, or a comparable program

435 approved by the Director of the Department of Health and Human  
436 Services.

437 \* \* \*

438 *Pool management company* means any person, cooperative, association,  
439 partnership, firm, or corporation, excluding a pool operator, who is  
440 responsible by contract or other agreement with the owner of a public  
441 swimming pool for the operation of the public swimming pool, including:

442 [(1)] (a) assuring compliance with all operating standards [set forth] in this  
443 Chapter and all [rules and] applicable regulations [promulgated  
444 hereunder];

445 [(2)] (b) providing for the physical maintenance, supplies, and personnel as  
446 required by this Chapter and all [rules and] applicable regulations  
447 [promulgated hereunder]; and

448 [(3)] (c) obtaining all necessary permits and licenses.

449 \* \* \*

450 *Private spa* means any outdoor bathing structure that is:

451 [(1)] (a) a self-contained unit in which all control, water heating, and water  
452 circulating equipment is an integral part of the unit;

453 [(2)] (b) built on the grounds of a single-family private residence;

454 [(3)] (c) used solely by the owner, immediate family, tenants, and guests;  
455 and

456 [(4)] (d) not used for swimming, diving, or wading.

457 *Private swimming pool* means any swimming pool that is:

458 [(1)] (a) built on the grounds of a single-family private residence; and

459 [(2)] (b) used solely by the owner, immediate family, tenants, and guests.

460 *Public spa* means any public swimming pool that is:

461 [(1)] (a) intended for public recreational and therapeutic uses other than  
462 swimming, diving, or wading; and

463 [(2)] (b) is not drained, cleaned, or refilled for each user.

464 \* \* \*

465 **51-16A. Defibrillators**

466 [(d)] (c) \* \* \*

467 [(e)] (d) \* \* \*

468 **52-11A. Homeowners property tax credit.**

469 (a) *Definitions.* In this section, the following words have the meanings  
470 indicated.

471 (1) The following words have the meanings defined in Section  
472 9-104 of the Tax-Property Article of the Maryland Code:

473 \* \* \*

474 **52-18Q. Property tax credit -energy and environmental design.**

475 \* \* \*

476 (d) Amount of credit

477 (1) For a covered building, the amount of the credit is:

478 \* \* \*

479 (C) 10% of the property tax owed on the building for 3 years,  
480 if the building achieves a gold rating for LEED-EB or an  
481 equivalent standard; [and] or

482 \* \* \*

483 **52-21. Levied; amount.**

484 There is hereby levied a tax on (1) all transfers in the county of a fee simple  
485 interest in real property, except by way of mortgage, deed of trust or deed of trust  
486 for the benefit of creditors, (2) the initial transfer of stock or other evidence of  
487 ownership in a cooperative housing corporation or similar entity, and (3) all

488 transfers of a leasehold interest in real property where the lease or instrument by  
 489 which a leasehold interest is demised contains a covenant for perpetual renewal,  
 490 known as ground rent. The tax shall be computed on the value of the full  
 491 consideration for such transfer at the following rates:

492 \* \* \*

493 (f) On condominium property, four (4) percent of the value of the  
 494 consideration for the initial transfer of a residential unit subject to a  
 495 condominium regime, which unit was offered for rent for residential  
 496 purposes prior to the establishment of the condominium regime.

497 \* \* \*

498 (2) No transfer of any interest in real property shall be taxed under  
 499 this subsection where:

500 [a.] (A) \* \* \*

501 [b.] (B) The transfer is of a unit in a condominium regime  
 502 established by recording a declaration, bylaws and  
 503 condominium plat, [prior to] before July 28, 1980,  
 504 [pursuant to the provisions and requirements of the  
 505 Horizontal Property] under the Maryland Condominium  
 506 Act, [title] Title 11,] of the Real Property Article,] of  
 507 the Maryland Code [Annotated]. For purposes of this  
 508 subsection, residential units contained in an expanding  
 509 condominium regime established by recording a  
 510 declaration, bylaws and condominium plat [prior to]  
 511 before July 28, 1980, but not added to the established  
 512 condominium regime by [said] that date, shall continue to  
 513 be exempt from taxation under this subsection [provided]  
 514 if the unit becomes a condominium unit in an established

515 condominium regime by the last date for establishment of  
516 units in the expanded condominium as contained in the  
517 declaration filed [prior to] before July 28, 1980, either as  
518 a part of the original expanding condominium or as a part  
519 of a separate condominium.

- 520 (g) \* \* \*
- 521 (2) \* \* \*
- 522 [a.] (A) \* \* \*
- 523 [b.] (B) \* \* \*
- 524 [c.] (C) \* \* \*

525 **52-53. Restrictions on use and accounting of development impact tax funds.**

526 (a) The funds collected by the development impact tax must be used  
527 solely to fund County or municipal transportation improvements of  
528 the types listed in Section 52-58 located anywhere in the County,  
529 except as provided in subsections (c)[,] and (h)[, and (i)]. In  
530 appropriating funds collected by the development impact tax, the  
531 Council should, to the extent feasible, designate funds to be used for  
532 transportation improvements in the policy area from which the funds  
533 were collected or an adjacent policy area.

534 \* \* \*

535 **Sec. 2. Section 3 of Chapter 4 of the 1992 Laws of Montgomery County**  
536 **is amended as follows:**

537 **Sec. 3. Contingency on Commission resolution.**

538 Until express authority for Planning Board administration and enforcement  
539 of Article II, as enacted in Section 1 of this Act, is provided under State law, this  
540 Act is contingent on and does not become effective until the Maryland-National  
541 Capital Park and Planning Commission adopts a resolution under Section [7-111(f)

542 of Article 28] 20-207 of the Land Use Article of the Maryland Code allocating the  
 543 functions provided under this Act to the Montgomery County Planning Board.

544 **Sec. 3. Section 2 of Chapter 1 of the 2011 Laws of Montgomery County**  
 545 **is amended as follows:**

546 **Sec. 2.** The Council declares that this Act is necessary for the immediate  
 547 protection of the public interest. This Act takes effect on [the date when it  
 548 becomes law] December 1, 2010, and applies to any development located in the  
 549 White Flint impact tax district for which a building permit is issued on or after  
 550 December 1, 2010. If any development impact tax was collected under Article VII  
 551 of County Code Chapter 52 before this Act took effect for any development to  
 552 which this Act applies, the Director of Finance must promptly refund that tax as if  
 553 a refund were due and claimed under County Code Section 52-54.

554 *Approved:*

555  
 556  
 557 \_\_\_\_\_  
 Nancy Navarro, President, County Council Date

558 *Approved:*

559  
 560  
 561 \_\_\_\_\_  
 Isiah Leggett, County Executive Date

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

563  
 564  
 565 \_\_\_\_\_  
 Linda M. Lauer, Clerk of the Council Date

## LEGISLATIVE REQUEST REPORT

### Bill 39-12, *Technical Corrections*

**DESCRIPTION:** Makes technical, typographical, grammatical, and other non-substantive corrections to County law.

**PROBLEM:** Codifying several new laws revealed several technical and other non-substantive errors that could confuse a person trying to follow or enforce County law.

**GOALS AND OBJECTIVES:** To correct technical and other non-substantive errors in the County Code.

**COORDINATION:** Council legal staff and County Attorney's Office.

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** Not applicable.

**EXPERIENCE ELSEWHERE:** Not applicable.

**SOURCE OF INFORMATION:** Amanda Mihill, Council Staff (240) 777-7815  
Sharon Gemperle, Office of the County Attorney (240) 777-6753

**APPLICATION WITHIN MUNICIPALITIES:** The applicability of other provisions in municipalities follows the applicability of the underlying provision of the County Code.

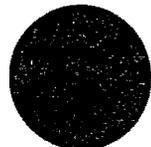
**PENALTIES:** Not applicable.

AM  
CC  
SBF  
LL  
MF



ROCKVILLE, MARYLAND

071298



MEMORANDUM

January 3, 2013

TO: Nancy Navarro, President County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
 Joseph F. Beach, Director, Department of Finance *JAH*

SUBJECT: Council Bill 39-12, Technical Corrections

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

JAH:pw

- c: Kathleen Boucher, 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
- Joseph F. Beach, Director, Department of Finance
- Michael Coveyou, Department of Finance
- Nancy Moseley, Department of Finance
- Linda Herman, Montgomery County Retirement Plans
- Dennis Via, Office of the County Attorney
- Karen Federman-Henry, Office of the County Attorney
- Philip Weeda, Office of Management and Budget
- Amy Wilson, Office of Management and Budget
- Ayo Apollon, Office of Management and Budget

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**Fiscal Impact Statement**  
**Council Bill 39-12, Technical Corrections**

1. Legislative Summary.

Council Bill 39-12 provides technical, typographical, grammatical, reference, and codification errors in, and makes stylistic, clarifying, and conforming amendments to various provisions in the law.

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.

The Ethics Commission, Department of Environmental Protection, Department of Fire and Rescue Service, Department of Finance, Office of Human Resources, and the County Attorney's Office do not believe the proposed legislation, that revises certain chapters in the County Code, will pose a fiscal impact on their respective budgets.

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

Not Applicable

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

Not Applicable

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

Not Applicable

6. An estimate of the staff time needed to implement the bill.

Additional staff time is not required.

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

Not Applicable

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

Not Applicable

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

Not Applicable

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

Not Applicable

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

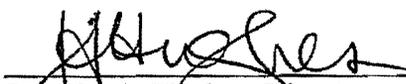
The bill provides technical, typographical, grammatical, reference, and codification errors in, and makes stylistic, clarifying, and conforming amendments to various provisions in the law.

12. Other fiscal impacts or comments.

None

13. The following contributed to and concurred with this analysis:

Robert Cobb, Ethics Commission  
Bryan Hunt, Department of Environmental Protection  
Linda Herman, Montgomery County Retirement Plans  
Dennis Via, County Attorney's Office  
Karen Federman-Henry, County Attorney's Office  
Nancy Moseley, Department of Finance  
Philip Weeda, Office of Management and Budget.

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

1/3/13  
\_\_\_\_\_  
Date

**Economic Impact Statement**  
Council Bill 39-12, Technical Corrections

**Background:**

Council Bill 39-12 corrects technical, typographical, grammatical, reference, and codification errors in, and makes stylistic, clarifying, and conforming amendments to various provisions in the law.

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

The bill only corrects technical, typographical, grammatical, reference, and codification errors in, and makes stylistic, clarifying, and conforming amendments to various provisions in the law. It has no substantive impact beyond clarifying the law.

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

See #3 below.

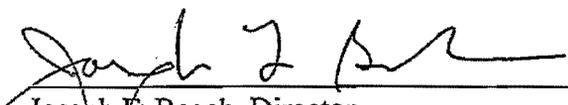
3. The bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property value in the County.

Not applicable. The bill only corrects technical, typographical, grammatical, reference, and codification errors in, and makes stylistic, clarifying, and conforming amendments to various provisions in the law. It has no substantive impact beyond clarifying the law.

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

See #3 above.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance.

  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

12/12/12  
Date



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett  
*County Executive*

Marc P. Hansen  
*County Attorney*

**MEMORANDUM**

TO: Mike Faden  
Senior Legislative Attorney

FROM: Marc Hansen *Marc Hansen*  
County Attorney

DATE: January 22, 2013

RE: Technical Correction Bill 39-12

I request that Bill 39-12 be amended to make a technical correction to § 33-35. The requested correction is:

County Code Section 33-35

*Regular earnings:* Except as otherwise provided, gross pay for actual hours worked, including paid leave, but not including overtime. To calculate regular earnings, for FY10 only, a Group A, E, or H member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4.5% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. To calculate regular earnings, for FY10 only, for a Group F member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4.25% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. To calculate regular earnings, for FY10 only, for a Group G member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. If a member is required to take any furlough, as defined in personnel regulations adopted under Section 33-7(b), or a collective bargaining agreement, regular earnings must include any amount the member

would have received if the member had not been required to take any furlough. Regular earnings for an elected official is gross pay for services rendered to the County. Regular earnings must not exceed the limit under Internal Revenue Code Section 401(a)(17), as adjusted by the Internal Revenue Service. For a member who first became a member in this retirement system before July 1, 1996, the limits as in effect before July 1, 1993, and as adjusted by the Internal Revenue Service, shall continue to apply. Gross pay must be used to determine benefits even if the County implements a pick-up plan under Section 414 of the Internal Revenue Code. Gross pay must be used to determine benefits even if a member has agreed to a reduction in earnings under:

- (a) The County's deferred compensation plan under Section 457 of the Internal Revenue Code; or
- (b) Any statutory fringe benefit program sponsored by the County and permitted by the Internal Revenue Code.

The explanation for this requested technical correction follows.

#### Explanation

##### Federal Tax Law

Internal Revenue Code Section 401(a)(17) limits the annual compensation used to calculate qualified plan retirement benefits. Before 1996, the limit was \$200,000. In August 1993, in the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Congress lowered the compensation limit to \$150,000. Congress included in OBRA, a grandfather rule for certain participants of governmental plans. Under the grandfather rule, the annual compensation limit contained in OBRA '93 would not apply to those who became plan participants before January 1, 1996 and instead the pre OBRA limits would apply (i.e., \$200,000 as indexed). In order to apply the grandfather rule, the government had to timely adopt the rule by amending their plan.

If a plan adopted the grandfather rule, the following compensation limits apply for the years indicated:

2012:	\$375,000
2011:	\$360,000
2010	\$360,000
2009	\$360,000
2008	\$345,000
2007	\$335,000

##### County Council Action

On June 11, 1996, the County Council introduced Bill 23-96 legislation to incorporate the lowered compensation limits in the County's retirement law. Before introduction, the Council's attorney sent the proposed language to an outside employee benefits attorney. When introduced the Bill contained language stating that individuals becoming members after June 30, 1996 were

subject to the new limits and those individuals who were members before July 1, 1996 could use the prior limits. The Bill packet contained letters from two employee benefits attorneys recommending including the grandfather rule, although each doubted it would apply or be meaningful.

At the Council's June 18 Management and Fiscal Policy Committee meeting, the Bill was amended with a "proposed staff technical amendment". The Committee report recommended approval of the Bill with technical amendments. Likewise, the final Bill packet also stated that the Committee recommended approval of the Bill with technical amendments. While the amended Bill provided that individuals becoming members would be subject to the new provisions, the amendment deleted the language specifying that members before July 1, 1996 could use the prior limits. Generally, the IRS requires specific language.

To comply with subsequent changes to the compensation limit in Internal Revenue Code Section 401(a)(17), Bill 36-06 further amended the provision by deleting reference to \$150,000 and the 1996 effective date reference.

#### Analysis

It is a reasonable interpretation to conclude that Council intended the Bill to provide that members before July 1, 1996 could use the prior limits. The letters in the Bill packet from outside counsel recommending the inclusion of the rule supports this interpretation. In addition, the introduced legislation contained the language. Finally, although it is unclear why the Committee amended the Bill, the Council staff labeled the amendment as "technical" and the Committee's report and the final Bill packet also labeled the changes as "technical".

#### Conclusion

The legislative history, on the whole, shows a legislative intent to allow the prior limits to apply to eligible members. Therefore, I have advised, for members who were participants in the ERS before July 1, 1996, using the pre OBRA limits in calculating their benefits. I recommend, therefore, that an amendment to Technical Correction Bill 39-12 be made to conform the language in § 33-35 to conform to the legislative intent of Bill 23-96.

cc: Kathleen Boucher, Assistant Chief Administrative Officer  
Karen Federman Henry, Chief, Division of Finance and Procurement  
Linda Herman, Executive Director, Montgomery County Employee Retirement Plans  
Amy Moskowitz, Associate County Attorney