Learned Ms. Frances Kelleher, the County Executive’s appointment to the Housing Opportunities Commission.

The invocation was given by Mr. Lawrence Couch, Director, National Advocacy Center of the Sisters of the Good Shepard.

PRESENTATIONS

B. The proclamation was presented by Mr. Leventhal recognizing the 10th Annual Bethesda Green Gala.

A. The proclamation was presented by Ms. Floreen recognizing Breast Cancer Awareness Month.

C. The proclamation was presented by Mr. Katz recognizing 40 Years of Smoke Detector and Fire Safety.
(2) GENERAL BUSINESS

A. **Announcements** - Agenda and Calendar Changes

There were no announcements.

B. **Acknowledgement** - Receipt of Petitions

There were no petitions received this week.

C. **Approved** the minutes of October 2, 2018, and the closed session minutes of October 2, 2018, without objection.

(3) CONSENT CALENDAR

Approved the following consent calendar items listed below. Mr. Rice made the motion, which carried (Ms. Floreen voted in the negative on Item 3C).

A. **Introduced** a resolution to approve colocation of public facilities study. Action is tentatively scheduled for October 23, 2018.

B. **Adopted Resolution 18-1263**, approving supplemental appropriation to the County Government’s FY19 Operating Budget, Circuit Court - $200,000 for Maryland Electronic Courts (MDEC) Data Migration and Testing.


   *Ms. Floreen voted in the negative on this item.*

D. **Action** - Resolution to approve Memorandum of Understanding with the City of Gaithersburg regarding transportation improvements eligible for funding with Development Impact Tax for Transportation Improvements revenue collected in Gaithersburg.

   *This item was deleted.*

E. **Introduced** an amendment to the FY19-24 Capital Improvements Program (CIP) and Special Appropriation to the FY19 Capital Budget, Maryland-National Capital Park and Planning Commission (M-NCPPC), Department of Parks - $1,000,000 for Small Grant/Donor-Assisted Capital Improvements. A public hearing is tentatively scheduled for October 30, 2018, at 1:30 P.M.
F. **Introduced** an amendment to the FY19-24 CIP and Special Appropriation to the FY19 Capital Budget, M-NCPPC, Department of Parks - $116,562 for Acquisition: Local Parks. A public hearing is tentatively scheduled for October 30, 2018, at 1:30 P.M.

G. **Introduced** an amendment to the FY19-24 CIP and Special Appropriation to the FY19 Capital Budget, M-NCPPC, Department of Parks - $99,500 for ADA Compliance: Non-Local Parks. A public hearing is tentatively scheduled for October 30, 2018, at 1:30 P.M.

H. **Introduced** an amendment to the FY19-24 CIP Special Appropriation to the FY19 Capital Budget, M-NCPPC, Department of Parks - $180,000 for Minor New Construction - Non-Local Parks. A public hearing is tentatively scheduled for October 30, 2018, at 1:30 P.M.

I. **Introduced** a special appropriation to the County Government’s FY19 Operating Budget - Nondepartmental Account - $95,600 for Legislative Branch Communications Outreach. A public hearing is tentatively scheduled for October 30, 2018, at 1:30 P.M. A Government Operations and Fiscal Policy (GO) Committee worksession is tentatively scheduled for October 29, 2018.

J. **Adopted Resolution 18-1265**, to request a biennial report by the Office of Agriculture on the status of Farm Alcohol Production in Montgomery County.

K. **Introduced** a resolution to approve Rules of Procedure for Agency Referral and Accessory Apartment cases heard by the Office of Zoning and Administrative Hearings (OZAH). Worksession/action is tentatively scheduled for October 30, 2018.

L. **Introduced** a special appropriation to the County Government’s FY19 Operating Budget - $200,000 for the Economic Development Fund, Small Business Assistance Program. Councilmembers Leventhal, Berliner, Hucker, Katz and Floreen requested to be added as co-sponsors of the special appropriation. A public hearing is tentatively scheduled for October 23, 2018, at 1:30 P.M.
COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
IN LEGISLATIVE SESSION - Day #24

(4) **Call of Bills for Final Reading:**

A. **Expedited Bill 13-18, Taxicabs - Transportation Services Improvement Fund - Use of Fund**

Participating in the discussion was Mr. Hamlin, Legislative Attorney.

Mr. Berliner, Chair of the Transportation, Infrastructure, Energy and Environment (T&E) Committee, provided background on the subject expedited bill and reviewed the Committee’s recommendations, as contained in the analyst packet.

Enacted draft #2 of **Expedited Bill 13-18**, as contained at the end of these minutes.

The T&E Committee made the motion and the expedited bill was enacted by a roll call vote:

**YEAS:** Elrich, Hucker, Rice, Berliner, Leventhal, Floreen, Katz, Navarro, Riemer.

B. **Bill 6-18, Contracts - Labor Peace Agreements - Displaced Service Workers - Amendments (continued)**

Participating in the discussion were Ms. Branson, Director, Office of Procurement; Mr. Wainer, Chief, Division of Solid Waste Services, Department of Environmental Protection (DEP); and Mr. Drummer, Senior Legislative Attorney.

Ms. Navarro, Chair of the GO Committee, summarized the Committee’s recommendations.

Mr. Drummer reviewed the language in the bill as well as the two amendments proposed by Mr. Leventhal on Factors to Consider and Documentation of Wages Paid, and explained the Expansion of Price Increase Provision amendment. Agreed, without objection, to Mr. Leventhal’s motion in support of all three amendments, as contained in the analyst packet.
After discussing the concerns that were raised by Ms. Branson and Ms. Bubar, Director, DEP, as contained in the addendum, concluded that the major concerns were addressed by the amendments that were just considered.

Ms. Floreen raised several objections to the bill regarding costs and competitiveness.

Enacted draft #9 of Bill 6-18, as amended and contained at the end of these minutes.

The GO Committee made the motion and the bill was enacted by a roll call vote:

YEAS: Elrich, Hucker, Rice, Berliner, Leventhal, Katz, Navarro, Riemer
NAYS: Floreen.

(5) DISTRICT COUNCIL SESSION

A. Introduction - Resolution to approve amendments to the Office of Zoning and Administrative Hearings (OZAH) Rules of Procedure governing zoning, conditional uses and Board of Appeals referral cases

Introduced the subject resolution.

Council consideration is tentatively scheduled for October 30, 2018.

B. Worksession - Bicycle Master Plan

Participating in the discussion were Mr. Anderson, Chair, Montgomery County Planning Board; Dr. Orlin, Deputy Director; Mr. Anspacher, Project Manager, MNCPPC; and Mr. Conklin, Department of Transportation (DOT).

Acknowledged the request from the Mayor of the Town of Kensington to withhold from the Plan the section of Knowles Avenue within the Town (Summit Avenue to Armory Avenue) until the Town Council has the opportunity to review the Plan at its November meeting.

Agreed without objection to include in Tier 1 of the proposed bikeway tiers the section of the PEPCO Power Line Trail from Tuckerman Lane to Westlake Drive.

Mr. Rice commented that businesses should be encouraged to provide changing areas and shower facilities for employees who commute by bicycle.
Mr. Hucker requested staff look into bike path connections from Greenacres Drive to the Food and Drug Administration (FDA), and from the Cresthaven neighborhood through the Holly Hall site in Hillandale.

Ms. Navarro requested staff share information pertaining to bike path connectivity with the Intercounty Connector (ICC).

Agreed, without objection, to move from Tier 3 up to Tier 2 the proposed infrastructure on Connecticut Avenue from Kensington Parkway to Chevy Chase Lake Drive.

In a straw vote, unanimously approved the Bicycle Master Plan, as amended. Ms. Floreen was temporarily absent. Final action is tentatively scheduled for November 27, 2018.

(6) COUNCIL SITTING AS BOARD OF HEALTH

A. Update from Dr. Travis Gayles, County Health Officer

Received an update from Dr. Gayles on County health statistics, public health programs, including the Data Across Sectors for Health (DASH) initiative, and academic partnerships.

B. Annual Meeting with Commission on Health

Received an update on the Commission’s activities and priorities from Senior Legislative Analyst McMillan, the Council’s representative on the Commission.

The Council recessed at 1:05 P.M. and reconvened at 2:07 P.M.

(7) BRIEFING: Colocation of Public Facilities Study

Participating in the discussion were Ms. Bell-Pearson, Director, Office of Community Use of Public Facilities (formerly Assistant Chief Administrative Officer); Ms. Wright, Director, Ms. McCarthy and Mr. Holdzkom, Planning Department, MNCPPC.

Received a briefing on the findings and recommendations in the Montgomery County Colocation of Public Facilities Study.

Reviewed the resolution in Support of the Findings and Recommendations from the Montgomery County Colocation of Public Facilities Study and the Ongoing
Efforts of the Directors Oversight Committee. Action on the resolution is tentatively scheduled for October 23, 2018.

Ms. Floreen requested that a list of legal impediments to colocation be drawn up so that issues can be addressed and resolved at the state level if necessary.

(8) **SEMI-ANNUAL REPORT** of the Montgomery County Planning Board

Participating in the discussion were Commissioners Cichy and Patterson, and Chair Anderson, Planning Board; Ms. Wright, and Mr. Riley, Director, Department of Parks, MNCPPC.

Received an overview of the Semi-Annual Report highlighting the many accomplishments of the Planning and Parks Departments over the past several years.

The Council adjourned at 3:50 P.M.

This is a correct copy of Council action.

*Approved/Signed by the Clerk*

Megan Davey Limarzi, Esq.
Clerk of the Council
COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the County Executive

AN EXPEDITED ACT to:
(1) provide for disbursements from the Transportation Services Improvement Fund for specific purposes;
(2) require that the Fund be used to supplement, and not supplant, previously appropriated expenditures; and
(3) generally amend the law governing the licensing and regulation of taxicabs.

By amending
Montgomery County Code
Chapter 53, Taxicabs
Section 53-801

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The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Section 53-801 is amended as follows:

53-801. Transportation Services Improvement Fund.

(a) Definitions. In this section:

1. Fund means the Transportation Services Improvement Fund established in this Section.

2. Transportation Network Services means “Transportation Network Services” as defined in §10-101 of the Public Utilities Article of the Maryland Code.

(b) Fund established.

1. There is a Transportation Services Improvement Fund created to improve the delivery of:

   a. accessible transportation services in the County;
   b. transportation for eligible senior citizens; and
   c. transportation for persons of limited income.

   The Fund consists of:

   a. all revenue from the surcharge imposed on transportation network services under this Section;
   b. all funds appropriated to it by the County Council; and
   c. all funds received by the Fund from any other public or private entity.

(c) Per-ride surcharge. There is a $0.25 surcharge on Transportation Network Services for each trip originating in the County. The surcharge must be collected as provided in §10-406 of the Public Utilities Article of the Maryland Code.

(d) Use of the Fund. Disbursements from the Fund must only be used to: [for transportation purposes in the County.] to supplement, and must not supplant, Fiscal Year 2019 expenditures appropriated in the annual operating budget resolution to [):

   1. offset the higher operational costs of accessible taxicab services for owners and operators including, but not limited to:

      a. vehicle costs associated with purchasing and retrofitting an accessible vehicle;
      b. costs associated with receiving training in providing accessible transportation services; and
      c. additional time involved in providing accessible taxicab services;

   or

   2. provide incentives for improving or expanding transportation options for:

      a. eligible senior citizens; or
      b. persons of limited income.

(e) Disbursements from the Fund. The Executive must by regulation establish the procedure for determining when and how to make distributions from the Fund to taxicab owners and operators, including setting eligibility standards, imposing
conditions of reimbursement, imposing a maximum amount of reimbursement, and considering timely distribution of reimbursement to taxicab owners and operators.]

(1) **offset the higher operational costs of accessible taxicab services for**
owners and operators including, but not limited to:

(A) **vehicle costs associated with purchasing and retrofitting an**
accessible vehicle;

(B) **costs associated with receiving training in providing accessible**
transportation services; and

(C) **additional time involved in providing accessible taxicab services;**
or

(2) **provide incentives or program enhancements to improve or expand**
transportation options for:

(A) **persons with disabilities;**

(B) **eligible senior citizens; or**

(C) **persons of limited income.**

(e) **Disbursements from the Fund.** The Executive must by regulation establish the**
procedure for determining when and how to make distributions from the Fund to
taxicab owners and operators, including setting eligibility standards, imposing
conditions of reimbursement, imposing a maximum amount of reimbursement,
and considering timely distribution of reimbursement to taxicab owners and
operators.

**Sec. 2. Expedited Effective Date.**

The Council declares that this legislation is necessary for the immediate protection of the
public interest. This Act takes effect on the date on which it becomes law.
AN ACT to:

(1) require certain County contractors to enter into a labor peace agreement with a labor organization;
(2) establish minimum requirements for a labor peace agreement;
(3) require certain County multi-term contracts to include a minimum price increase provision;
(4) add certain workers performing services under a County residential solid waste collection contract to the County Displaced Service Workers Protection Act; and
(5) generally amend the laws governing County service contracts.

By amending

Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 11B-23
Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
[[Section]] Sections 27-64 and 27-65

By adding

Montgomery County Code
Chapter 11B, Contracts and Procurement
Article XX, Sections 11B-89, 11B-90, and 11B-91

___

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

___
Sec. 1. Sections 11B-23, [[and]] 27-64, and 27-65 are [[is]] amended and Sections 11B-89, 11B-90, and 11B-91 are added as follows:

11B-23. Multi-term contracts.

(a) Specified period. Unless otherwise provided by law or regulation, a contract for goods, services, or construction may be entered into for any period of time deemed to be in the best interest of the County. The term of the contract and conditions of extension should be included in the solicitation, if any. At a minimum, appropriated funds must be available for the first fiscal period at the time of entering the contract sufficient to defray the cost to which the County would become obligated under the contract. Payment and performance obligations for succeeding fiscal periods must be subject to the availability and appropriation of funds.

(b) Determination prior to use. Before using a multi-term contract, the Director must determine that:

1. estimated requirements over the period of the contract are reasonably firm and continuing; and
2. the contract will serve the best interests of the County by encouraging effective competition or otherwise promoting economies in County procurement.

(c) Termination due to unavailability of funds in succeeding fiscal periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be terminated without further cost to the County.

(d) Contract price increase provision. A multi-term contract [[with a labor peace provision required by Section 11B-89]] for residential solid waste, recycling, or yard waste collection and disposal must include a price increase provision for each year of the contract beginning after the end of the first year of the contract. A price increase provision must require the County to increase the contract price by [[at least the annual average increase, if any, in the Consumer Price Index for All Urban Consumers for the Washington-Arlington-Alexandria Core Based Statistical Area (CBSA), as published by the United States Department of Labor, Bureau of Labor Statistics, or a successor index, for the previous calendar year]] an amount sufficient to compensate the contractor for an increase in wages [[for]] paid to the employees performing work on a covered contract to the extent the increase in wages does not exceed the last general wage increase approved by the County for members of the service, labor, and trades bargaining unit established in Section 33-105(a)(1). A price increase provision must:

1. require the contractor to document that the increase in wages supporting the requested contract price increase are paid to the employees working on the contract during the year; and
2. permit the Director to audit the contractor’s payroll records to validate the increase in wages.

This subsection does not prohibit a contract provision that would permit an increase in the contract price due to an increase in costs incurred by the contractor other than an increase in wages paid to the contractor’s employees performing work on the contract.

Article XX. Labor Peace Agreements.

11B-89. Purpose.
This Article is intended to prevent the interruption of services to County residents provided by private contractors due to concerted economic action or a lock-out during a labor dispute.

11B-90. Definitions.
In this Section, the following words have the meanings indicated:

Concerted economic action means an attempt to resolve a labor dispute using economic pressure against an employer initiated or conducted by a labor organization, or a group of employees acting in concert with a labor organization, including striking, picketing, or boycotting.

Covered Contract means a County contract to provide residential solid waste, recycling, or yard waste collection and disposal services directly to County residents with a value equal to or greater than $250,000.

Director means the Director of the Office of Procurement or the Director’s designee.

Labor dispute means any dispute between an employer and its employees concerning wages, hours, and conditions of employment, or concerning the representation of employees for bargaining over wages, hours and conditions of employment.

Labor organization means an employee organization established for the principle purpose of engaging in collective bargaining with employers concerning wages, hours, and conditions of employment.

Labor peace agreement means a written contract between an employer and a labor organization that represents or is seeking to organize that employer’s employees that includes a provision:

(a) prohibiting the labor organization and all employees performing services under a covered contract from engaging in any concerted economic action with the employer for the duration of the County contract;

(b) prohibiting the employer from engaging in a lock-out of the employees performing services under a covered contract for the duration of the County contract; and

(c) requiring that all labor disputes between the employer and the employees performing services under a covered contract be resolved through final and binding arbitration.

Lock-out means the temporary closing of a business or the refusal by an employer to allow employees to work until a labor dispute is settled.

[Neutralty agreement means an agreement between an employer and a labor union where the employer promises to remain neutral to union organizing, grants union representatives access to the employer’s property in exchange for the union’s promise to forgo its right to picket, boycott, or otherwise pressure the employer's business.]

11B-91. Labor Peace Agreement.

(a) Determination. Before issuing a solicitation for a covered contract, the Director must determine if a labor peace agreement would be in the best interest of the County after considering:

(1) the duration of the contract;

(2) the adverse financial or economic impact of any disruption in services;

(3) the cost associated with finding replacement services;

(4) the risk of disruption of services;

(5) the history of strikes or lockouts disrupting County services provided by the contract;
(6) the potential adverse effect of a labor peace provision on competition for the contract; and

[[(5)]] [[(6)]] (7) any other factors affecting the public interest.

(b) Approval. If the Director finds that a labor peace provision is in the best interest of the County for this covered contract, the Director must recommend the inclusion of a labor peace provision to the Chief Administrative Officer in writing. If the Chief Administrative Officer approves a recommendation to include a labor peace provision in the contract, the Director must include a labor peace provision in the solicitation for bids or proposals.

(c) Implementation.

(1) If the covered contract documents require a labor peace agreement, the contractor awarded the contract must execute a labor peace agreement with a labor organization within sixty (60) days after the later of:

(A) receiving the notice of award from the County; or

(B) receiving a request for a labor peace agreement from a labor organization that already represents [[its employees]] or seeks to represent the employees performing [[the work]] services under the [[County]] covered contract.

(2) The contractor may satisfy this requirement by executing a:

(A) preliminary Labor Peace Agreement covering labor disputes over the representation of employees performing services under a covered contract by a labor organization [I, such as a neutrality agreement,] that is designed to be supplanted by a comprehensive collective bargaining agreement;

(B) comprehensive collective bargaining agreement; or

(C) documenting that no labor organization requested a labor peace agreement or that a labor organization refused to negotiate a labor peace agreement in good faith.

(d) Enforcement. The Director may impose appropriate sanctions and remedies against a contractor for a violation of this Article as provided in applicable regulations or by contract, including termination for default.

27-64. Definitions.

(a) As used in this Article:

Awarding authority means any person that awards or enters into a service contract or subcontract with a contractor to be performed in the County. Awarding authority includes the County, but does not include a Federal, State, or municipal government, or a common ownership community, as defined in Section 10B-2(b).

Contractor means any person, including a subcontractor, which enters into a service contract to be performed in the County and employs more than 20 service employees in the entire company.

Director means the Executive Director of the Office of Human Rights and includes the Executive Director’s designee.

Person means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ persons or enter into a service contract.

Service contract means a contract between an awarding authority and a contractor to provide security, janitorial, building maintenance, food preparation, or non-
professional health care services in a facility located in the County which is used
as a:
(1) private school;
(2) hospital, nursing care facility, or other health care provider;
(3) institution, such as a museum, convention center, arena, airport, or music
hall;
(4) multi-family residential building or complex with more than 30 units; or
(5) commercial building or office building occupying more than 75,000
square feet.

Service contract also includes a contract awarded by the County for residential
solid waste, recycling, or yard waste collection and disposal.

Service employee means an individual employed on a full or part-time basis by a
contractor as a:
(1) building service employee, including a janitor, security officer,
groundskeeper, door staff, maintenance technician, handyman,
superintendent, elevator operator, window cleaner, or building engineer;
(2) food service worker, including a cafeteria attendant, line attendant, cook,
butcher, baker, server, cashier, catering worker, dining attendant,
dishwasher, or merchandise vendor;
(3) non-professional employee performing health care or related service; or
(4) a driver, helper, or mechanic performing services on a County contract for
residential solid waste, recycling, or yard waste collection and disposal.
Service employee does not include:
(1) a managerial or confidential employee;
(2) an employee who works in an executive, administrative, or professional
capacity;
(3) an employee who earns more than $30 per hour; or
(4) an employee who is regularly scheduled to work less than 10 hours per
week.

Successor contractor means a contractor that:
(1) is awarded a service contract to provide, in whole or in part, services that
are substantially similar to those provided at any time during the previous
90 days;
(2) has purchased or acquired control of a property located in the County
where service employees were employed at any time during the previous
90 days; or
(3) terminates a service contract and hires service employees as its direct
employees to perform services that are substantially similar, within 90
days after a service contract is terminated or cancelled.

(b) This Article does not limit the ability of an awarding authority to terminate a
service contract or replace a contractor with another contractor.

27-65. Transition employment period.

(b) Successor contractor.

(1) Subject to [[paragraph]] paragraphs (3) and (4), each successor contractor
must offer to retain each affected service employee at an affected site for
90 days or until the successor contract is terminated, whichever is earlier.
(2) Each successor contractor must give each affected service employee a written offer of employment for the 90 day transition period and send a copy to the employee’s collective bargaining representative, if any. Each offer must:
   (A) state the date by which the service employee must accept the offer; and
   (B) allow the employee at least 10 days after receiving the notice to accept the offer.

(3) Each successor contractor may:
   (A) offer employment to less than all of the affected service employees during the 90 day transition period if the successor contractor:
      (i) finds that fewer service employees are required to perform the work than the terminated contractor had employed;
      (ii) maintains a preferential hiring list of those employees not retained; and
      (iii) hires any additional service employees from the list until all affected service employees have been offered employment; and
   (B) refuse to retain a service employee who fails a pre-employment ineligibility test administered by the successor contractor if the successor contractor:
      (i) routinely requires all service employees to undergo the ineligibility test as a condition of employment; and
      (ii) adopted the ineligibility test as part of a written employment policy prior to bidding on the successor contract.

(4) Notwithstanding any other provision in this Subsection, a successor contractor awarded a County contract for residential solid waste, recycling, or yard waste collection and disposal must offer employment to the affected service employees during the 90 day transition period only to the extent the successor contractor needs to hire new employees to perform work on the contract.

(5) Each successor contractor must not discharge a service employee retained under this Section without just cause during the transition period.