



COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

APPROVED

Tuesday, February 5, 2019

The County Council for Montgomery County, Maryland convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:34 A.M. on Tuesday, February 5, 2019.

PRESENT

Councilmember Nancy Navarro, President	Councilmember Sidney Katz, Vice President
Councilmember Gabe Albornoz	Councilmember Andrew Friedson
Councilmember Evan Glass	Councilmember Tom Hucker
Councilmember Will Jawando	Councilmember Craig Rice
Councilmember Hans Riemer	

The President in the Chair.

The invocation was given by Reverend Dr. Christopher Zacharias, John Wesley AMEZ Church.

PRESENTATIONS

- A. Proclamation was presented by Ms. Navarro recognizing Chinese Lunar New Year.
- B. Proclamation was presented by Mr. Riemer and Mr. Rice recognizing the 2018 Milken Award Recipient for Maryland, Brian Quinn from East Silver Spring Elementary School.
- C. Proclamation was presented by Mr. Friedson recognizing the Montgomery County Chamber of Commerce's 60th Anniversary.

GENERAL BUSINESS

(1.5) A. **Announcements** - Agenda and Calendar Changes

Ms. Limarzi, Clerk of the Council, announced an addendum to the agenda, adding a closed session for the purpose of consulting with counsel to obtain legal advice, and to consult about pending or potential litigation, pursuant to Maryland Code, General Provisions Article, §3-305 (b)(7) and (8). The topic is pending litigation; and that a [public hearing is scheduled for March 12, 2019 at 1:30 p.m. on Corrective Map Amendment: H-130 for the Takoma Park Master Plan.](#)

Clerk's Note: Typographical error corrected.

(2) B. **Acknowledgement** - [Receipt of Petitions](#)

There were no petitions received this week.

C. **Approved** the minutes of January 15 and 22, 2019, and the closed session minutes of January 15 and 22, 2019, without objection.

(3) **CONSENT CALENDAR**

Approved the following consent calendar items listed below.
Mr. Katz made the motion, which carried unanimously.

A. **Introduced** a resolution to authorize the issuance of special obligation refunding bonds payable from certain revenues of the Department of Liquor Control. Action is tentatively scheduled for Tuesday, February 12, 2019, at 1:30 p.m.

B. Adopted **Resolution 19-31**, approving repeal of Executive Regulation 66-89, [Cave-In Team Response](#). Public Safety (PS) Committee recommends repeal.

C. Adopted **Resolution 19-32**, approving repeal of Executive Regulation [65-89](#), [First Response for Trench Rescue Incidents](#). PS Committee recommends repeal.

Clerk's Note: Clerical numerical correction made.

D. Adopted **Resolution 19-33**, to appoint Michael Mezey to fill the vacancy on the Friendship Heights Village Council.

(4) **ACTION** - [Spending Affordability Guidelines for the FY20 Capital Budget and other general CIP assumptions](#)

Participating in the discussion were Deputy Director Orlin; Ms. Beck, Office of Management and Budget (OMB); Mr. Hagedoorn and Mr. Hetman, Department of Finance.

Ms. Navarro, Chair of the Government Operations and Fiscal Policy (GO) Committee, reviewed the Committee's recommendations, as contained in the analyst packet.

Discussed School Impact Tax revenue assumptions, as shown on page 11 of the analyst packet. Mr. Friedson expressed the view that the assumption of a 45% or 50% reduction in School Impact Tax revenue was too drastic, and suggested revisiting the issue when new CIP information becomes available.

Mr. Jawando made a motion, to assume school impact tax revenue of \$19,604,000 in FY19, \$18,720,000 in FY20, \$25,000,000 in FY21, and \$32,000,000 in FY22-24, as set forth in Mr. Friedson's minority GO Committee recommendation. The motion was seconded by Mr. Hucker. Mr. Riemer suggested an amendment to Mr. Jawando's motion using Council staff's recommendations for FY19 and FY20, \$19,604,000 and \$25,000,000 respectively. Mr. Rice suggested a further amendment to assume \$25,000,000 in FY21 and \$27,500,000 for FY22-24. The total assumed reduction is \$152,104,000, a change of 36.8% from the assumption in the approved CIP. Mr. Jawando accepted these amendments to his motion.

Approved Mr. Jawando's motion, as amended by Mr. Rice, for School Impact Tax revenue assumptions. Mr. Albornoz, Mr. Katz and Ms. Navarro were opposed, and supported the GO Committee's recommendation.

Adopted **Resolution 19-34**, setting Spending Affordability Guidelines for the FY20 Capital Budget, as amended. The GO Committee made the motion, which carried unanimously.

(5) **ACTION** - [2018 National Pollutant Discharge Elimination System \(NPDES\) Municipal Separate Storm Sewer System \(MS4\) Permit Financial Assurance Plan](#)

Mr. Hucker and Senior Legislative Analyst Levchenko reviewed highlights of the subject Plan, as contained in the analyst packet.

Adopted **Resolution 19-35**, approving the 2018 NPDES MS4 Permit Financial Assurance Plan.

Mr. Hucker made the motion, which carried unanimously.

(6) **ACTION - Appointment to the Board of Appeals**

Adopted **Resolution 19-36**, appointing Mr. Jon Cook to the Board of Appeals. Mr. Katz made the motion, which carried unanimously.

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
IN LEGISLATIVE SESSION - Day #3**

(7) **Introduction of Bills:**

A. **Bill 2-19, Health - Lead in Drinking Water - Schools**

Introduced draft #3 of **Bill 2-19**, sponsored by Councilmember Hucker and co-sponsored by Councilmembers Riemer, Katz and Albornoz. A public hearing is scheduled for February 26, 2019, at 1:30 P.M.

Councilmembers Navarro, Jawando, Rice, Friedson, and Glass requested to be added as co-sponsors of the subject bill.

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

A. **Bill 31-18, New Home Warranty and Builder Licensing - Amendments**

Mr. Katz, Chair of the Public Safety (PS) Committee, reviewed the Committee's recommendation, as contained in the analyst packet.

Enacted draft #9 of **Bill 31-19**, as contained at the end of these minutes.

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

YEAS: Glass, Jawando, Hucker, Riemer, Albornoz, Rice, Friedson, Katz, Navarro.

B. **Expedited Bill 37-18, Transient Housing - Short Term Rental License - Appeals**

Mr. Riemer, Chair of the Planning, Housing, and Economic Development (PHED) Committee, reviewed the Committee's recommendation, as contained in the analyst packet.

Enacted draft #2 of **Expedited Bill 37-18**, as contained at the end of these minutes.

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

YEAS: Glass, Jawando, Hucker, Riemer, Albornoz, Rice, Friedson, Katz, Navarro.

C. **Bill 40-18, Secondhand Personal Property Dealers - License**

Mr. Katz reviewed the PS Committee's recommendation, as contained in the analyst packet.

Approved unanimously Mr. Katz's motion to amend the bill to require an estate or downsizing sale held at the property owner's residence to comply with State and Federal reporting requirements if the sale includes a firearm, as shown on page 5 of the analyst packet.

Enacted draft #3 of **Bill 40-18**, as amended and contained at the end of these minutes.

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

YEAS: Glass, Jawando, Hucker, Riemer, Albornoz, Rice, Friedson, Katz, Navarro.

(9) **DISTRICT COUNCIL SESSION**

A. **Introduction - Zoning Text Amendment (ZTA) 19-03, Commercial/Residential Zones - Animal Boarding and Care**

Introduced draft #1 of ZTA 19-03, sponsored by the Council President at the request of the County Executive. A public hearing is scheduled for March 12, 2019, at 1:30 P.M.

B. **Action - ZTA 18-12, Setback Exemptions - Fences**

Mr. Riemer reviewed the PHED Committee's recommendation, as contained in the analyst packet.

Enacted **Ordinance 19-01**, approving draft #1 of ZTA 18-12.

The PHED Committee made the motion and the Ordinance was enacted by a roll call vote:

YEAS: Glass, Jawando, Hucker, Riemer, Albornoz, Rice, Friedson, Katz, Navarro.

C. **Action** - [ZTA 18-13, Regional Shopping Center Overlay Zone - Standards](#)

Mr. Riemer reviewed the PHED Committee's recommendation, as contained in the analyst packet.

Enacted **Ordinance 19-02**, approving draft #3 of ZTA 18-13.

The PHED Committee made the motion and the Ordinance was enacted by a roll call vote:

YEAS: Glass, Jawando, Hucker, Riemer, Albornoz, Rice, Friedson, Katz, Navarro.

Motion to Close

The Council adjourned the open session at 11:38 A.M. and reconvened in closed session from 11:41 A.M. to 11:50 A.M. in the Council Conference Room. Mr. Riemer made the motion, which carried without objection.

The Council recessed from closed session at 11:50 A.M. and reconvened in open session in the Council Hearing Room at 7:30 P.M.

PUBLIC HEARING - FY20 Capital Budget and amendments to FY19-24 Capital Improvements Program (CIP) for County Government, Montgomery County Public Schools (MCPS), Montgomery College, Maryland-National Capital Park and Planning Commission (M-NCPPC), Revenue Authority, and Housing Opportunities Commission (HOC), and WSSC's FY20-25 CIP

The public hearing was held and the record closed. Mr. Riemer was temporarily absent.

The meeting adjourned at 8:42 P.M.

Report of Closed Session of February 5, 2019

In compliance with Section 3-306(c)(2), General Provisions Article, Maryland Code, the following is a report of the County Council's closed session of Tuesday, February 5, 2019. The Council convened in closed session at 11:41 A.M. in the 3rd floor Council Conference Room for the purpose of consulting with counsel to obtain legal advice, pursuant to Maryland Code, General Provisions Article §3-305 (b)(7) and (8). The topic was pending litigation.

The meeting was closed on a motion by Mr. Riemer, which carried without objection. The following persons were present: Councilmembers Navarro, Katz, Albornoz, Friedson, Glass, Hucker, Rice and Riemer; Confidential Aides Silverman, Mandel-Trupp, Gibson, Nurmi, Goldstein, Ikheloa, Carranza, Kunes and Thorne; Ms. Michaelson, Council Executive Director; Mr. Drummer, Senior Legislative Attorney; Ms. Mihill, Legislative Attorney; Mr. Zyontz and Ms. Dunn, Senior Legislative Analysts; Mr. Hansen, County Attorney, and Mr. Markovs, Deputy County Attorney; Mr. Tibbitts, Office of the County Executive; Ms. Limarzi, Clerk; and Ms. Brown, Deputy Clerk.

Action: Provided direction to counsel.

This is a correct copy of Council action.

Approved/Signed by the Clerk

Megan Davey Limarzi, Esq.
Clerk of the Council

Bill No. 31-18
 Concerning: New Home Warranty and
 Builder Licensing - Amendments
 Revised: 1/18/2019 Draft No. 9
 Introduced: September 18, 2018
 Enacted: February 5, 2019
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
 FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Councilmember Rice

AN ACT to:

- (1) require new home builders and new home sellers to register with the Office of Consumer Protection;
- (2) require new home builders and new home sellers to provide buyers with a new home warranty;
- (3) require the Office of Consumer Protection to administer and enforce County law related to new home builders and new home sellers; and
- (4) generally amend County law related to new home builders and new home sellers.

By amending

Montgomery County Code
 Chapter 2A, Administrative Procedures Act
 Section 2A-2

By repealing

Chapter 31C, New Home Warranty and Builder Licensing
 Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8, 31C-9, 31C-10, 31C-11, 31C-12, 31C-13, and 31C-14

By adding

Chapter 31C, New Home Builder and Seller Registration and Warranty
 Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8, 31C-9, 31C-10, and 31C-11

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 31C (Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8, 31C-9, 31C-**
2 **10, 31C-11, 31C-12, 31C-13, and 31C-14) is repealed and Chapter 31C (Sections 31C-1, 31C-2, 31C-**
3 **3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8, 31C-9, 31C-10, and 31C-11) is added as follows:**

4 **[Chapter 31C. New Home Warranty and Builder Licensing.**

5 **31C-1. Definitions.**

6 *In this Chapter, the following words have the meanings indicated:*

- 7 (1) *Board. "Board" means the board of registration.*
- 8 (2) *Builder. "Builder" means any person or business organization:*
9 *a. That is engaged in the business of erecting or otherwise creating a new home; or*
10 *b. To whom a completed new home is conveyed for resale in the course of the business*
11 *of the person or business organization.*
- 12 (3) *Director. "Director" means the Director of the Office of Consumer Protection.*
- 13 (4) *Dispute settler. "Dispute settler" means an independent contractor with building*
14 *construction expertise hired by the Office.*
- 15 (5) *The fund. "The fund" means the new home warranty security fund, which is moneys*
16 *contributed by participating builders in the warranty program administered by the County.*
- 17 (6) *Load-bearing portions of the home. "Load-bearing portions of the home" means:*
18 *a. Foundation system and footings;*
19 *b. Beams;*
20 *c. Girders;*
21 *d. Lintels;*
22 *e. Columns;*
23 *f. Walls and partitions;*
24 *g. Floor systems; and*
25 *h. Roof framing system.*
- 26 (7) *Major structural defect. "Major structural defect:"*
27 *a. Means any actual damage to load-bearing portions of the home that:*
28 *(i) Affects its load-bearing function; and*
29 *(ii) Vitally affects or is immediately likely to vitally affect use of the home for*
30 *residential purposes;*
31 *b. Includes damage due to subsidence, expansion, or lateral movement of the soil;*
32 *and*
33 *c. Does not include damage caused by movement of the soil caused by flood or*
34 *earthquake.*
- 35 (8) *New home. "New home" means every newly constructed private dwelling unit and the*
36 *fixtures and structure that are made a part of a newly constructed private dwelling unit at*
37 *the time of construction.*
- 38 (9) *Office. "Office" means the Office of Consumer Protection.*
- 39 (10) *Owner. "Owner:"*
40 *a. Means any person for whom the new home is built or to whom the home is sold for*
41 *residential occupation by:*
42 *(i) That person or the family of that person as a home; and*
43 *(ii) The successors of that person in title to the home or mortgage in*
44 *possession;*
45 *b. Does not mean:*
46 *(i) Any development company, association, or subsidiary company of the*
47 *builder; or*
48 *(ii) Person or organization to whom the home may be conveyed by the builder*
49 *for any purpose other than residential occupation by that person or*
50 *organization.*

51 (11) *Warranty date. "Warranty date" means the first day that the owner occupies or settles on*
52 *the new home, whichever first occurs.*

53 **31C-2. Licensing.**

- 54 (a) *Requirement.*
 - 55 (1) *A builder must not engage in the business of constructing new homes or act in the*
 - 56 *capacity of a building contractor in the County unless the builder is licensed by*
 - 57 *the Office.*
 - 58 (2) *The Office must provide application forms for licensing and prescribe the*
 - 59 *information to be included.*
 - 60 (3) *Each application must be accompanied by:*
 - 61 a. *A reasonable fee sufficient to cover the cost of administration of this*
 - 62 *Chapter; and*
 - 63 b. *Additional information as the County Executive requires by executive*
 - 64 *regulations.*
 - 65 (4) *Within 60 days after submission of a complete application for a license, unless the*
 - 66 *time is extended for good cause, the Board must certify to the Director whether:*
 - 67 a. *The applicant and the organization of the applicant are qualified to*
 - 68 *comply with the building code and laws of the County and State, and to*
 - 69 *fully perform building contracts; and*
 - 70 b. *The applicant should be licensed.*
 - 71 (5) *The Director must notify the applicant of the certification or denial of certification*
 - 72 *within 75 days of submission of a completed application. If the Director fails to*
 - 73 *notify the applicant within 75 days of submission, the applicant is deemed certified.*
 - 74 (6) *If the applicant is denied certification, the Director must:*
 - 75 a. *In writing notify the applicant of the denial and the reasons for the denial;*
 - 76 *and*
 - 77 b. *Mail the denial by certified mail to the address on the application.*
 - 78 (7) *An applicant may appeal a denial to the County Board of Appeals.*
 - 79 (b) *Licensing. Each license is valid for a period of 2 years from the date of issue.*
 - 80 (c) *Amendment. A builder must amend the license within 30 days of any material change in*
 - 81 *the information provided in the most recent application or amendment.*
 - 82 (d) *Building permits. The Department of Permitting Services must not issue building permits*
 - 83 *for a residence to any builder who does not possess a valid license under this Chapter.*
 - 84 (e) *Denial of license. The Office must not issue a license to a builder who has or had any legal*
 - 85 *interest in a previously licensed firm who has or had a license revoked or suspended for*
 - 86 *any reason listed in Section 31C-8.*
 - 87 (f) *Register of applicants. The Director must maintain a register for the Board of all*
 - 88 *applicants and licenses.*
 - 89 (g) *Certificate of inspection. A builder must provide to a purchaser at the time of occupancy*
 - 90 *or settlement, whichever first occurs, a statement signed by the builder, that all county-*
 - 91 *required inspections have been performed.*

92 **31C-3. New home warranty.**

- 93 (a) *Warranty required. A builder must give an owner a written warranty that provides the*
- 94 *warranty coverage required by this Chapter before entering into a contract to sell or build*
- 95 *a new home. The Executive may issue regulations governing the form and content of the*
- 96 *warranty.*
- 97 (b) *Performance standards.*
 - 98 (1) *The terms of a new home warranty are established by executive regulation.*
 - 99 (2) *The warranty must include minimum performance standards for the construction*
 - 100 *and quality of the components of a new home.*

- 101 (3) *When minimum performance standards are not provided, industry standards for*
- 102 *good building practice determine compliance with the new home warranty.*
- 103 (c) *Duration of warranty. The builder must warrant the new home that:*
- 104 (1) *For one year, starting on the warranty date, the new home must be free from any*
- 105 *defect in materials or workmanship as defined in the minimum performance*
- 106 *standards.*
- 107 (2) *For 2 years, starting on the warranty date, the new home must be free from any*
- 108 *defect in the electrical, plumbing, heating, cooling, ventilating, and mechanical*
- 109 *systems.*
- 110 (3) *For 5 years, starting on the warranty date, the new home must be free from any*
- 111 *major structural defect.*

- 112 (d) *Exclusions.*
- 113 (1) *The written warranty may exclude:*
- 114 a. *Damage to real property which is not part of the home covered by the*
- 115 *warranty and which is not included in the purchase price of the home;*
- 116 b. *Bodily injury or damage to personal property;*
- 117 c. *Any defect in, or caused by, materials or work supplied by anyone other*
- 118 *than the builder, or its employees, agents, or subcontractors; and*
- 119 d. *Any loss or damage which the owner has not taken timely action to*
- 120 *minimize.*
- 121 (2) *The Executive may issue regulations permitting additional exclusions.*
- 122 (e) *Statutory warranties. The statutory warranties required by this Chapter are in addition to*
- 123 *all other implied or express warranties imposed by law or agreement. Each builder must*
- 124 *disclose the information required by, and otherwise comply with, Sections 10-601 through*
- 125 *10-610 of the Real Property Article of the Maryland Code.*

- 126 (f) *Financial security.*
- 127 (1) *Before entering into a contract to sell or build a new home, a builder must:*
- 128 (A) *inform the buyer in writing whether any bond, insurance, or other*
- 129 *financial security is responsible for or guarantees the builder's*
- 130 *performance under the warranty required by this Chapter;*
- 131 (B) *provide proof of any such bond, insurance, or security to any buyer on*
- 132 *request; and*
- 133 (C) *include the following notice in the sales contract immediately before the*
- 134 *disclosure required by subparagraph (A):*

NOTICE TO BUYER

Montgomery County law does not require this builder to furnish any bond, insurance, or other financial security to guarantee the builder's performance of its warranty obligations. If a builder has promised you any other bond, insurance, or security to guarantee the performance of its warranty obligations, that bond, insurance, or security must be listed here:

- 140 (2) *The buyer must acknowledge in writing that the buyer has read and understands the notice*
- 141 *required under paragraph (1)(C).*

31C-4. Board of registration.

- 143 (a) *Appointment of board.*
- 144 (1) *This section creates the board of registration.*
- 145 (2) *The board consists of five (5) members that the county executive appoints and the*
- 146 *county council confirms.*
- 147 (3) *No more than two (2) members of the board must be active in the residential*
- 148 *construction field at the time of their appointment.*
- 149 (b) *Voting. A simple majority vote is required for all board decisions.*

- 150 (c) *Term. The term for each member is 3 years. A vacancy is filled for the remainder of the*
- 151 *unexpired term. Unless a member is removed for good cause, each member holds office*
- 152 *until the term of the member expires or a successor is appointed and confirmed.*
- 153 (d) *Operation of the board.*
- 154 (1) *The board must elect from its members a chairperson, vice-chairperson, and*
- 155 *secretary.*
- 156 (2) *In exercising the powers and duties of the board, three (3) members constitute a*
- 157 *quorum.*
- 158 (3) *The board must:*
- 159 *a. Keep minutes of its proceedings and meetings;*
- 160 *b. Put its decisions in writing; and*
- 161 *c. Submit an annual report of its proceedings to the director.*
- 162 (4) *The county attorney serves as counsel to the board.*
- 163 (5) *Board members do not receive compensation for serving on the board.*

164 **31C-5. New home warranty security fund.**

- 165 (a) *Establishment.*
- 166 (1) *This Section establishes the County new home warranty security fund.*
- 167 (2) *The Department of Finance maintains the fund, and the Director administers the*
- 168 *fund.*
- 169 (b) *Purpose. The purpose of the fund is to provide sufficient funds to pay claims by owners*
- 170 *against builders who participate in the fund for any defect in new homes covered by the*
- 171 *new home warranty.*
- 172 (c) *Amount.*
- 173 (1) *The Director must establish the amount payable by participating builders and may*
- 174 *change the amount from time to time.*
- 175 (2) *Participating builders must pay the amount to the Department of Finance.*
- 176 (3) *The Department of Finance must:*
- 177 *a. Account for the amounts;*
- 178 *b. Credit the amounts to the fund;*
- 179 *c. Hold, manage, and invest the fund; and*
- 180 *d. Credit earned income to the fund.*
- 181 (d) *Termination. If the fund is terminated, all money remaining in the fund must revert to the*
- 182 *County general fund.*
- 183 (e) *Processing of claims. The Executive must issue regulations for the implementation and*
- 184 *processing of claims under the fund.*
- 185 (f) *Phaseout.*
- 186 (1) *The Director must not enroll any new home in the fund after December 31, 1995.*
- 187 (2) *The Director must not enroll a new home in the fund if the buyer signed the*
- 188 *contract to build the home on or after April 1, 1995.*

189 **31C-6. Private new home warranty security programs.**

190 *The Executive may issue regulations for the operation of private programs for homes enrolled in*

191 *any program before April 1, 1995.*

192 **31C-7. Warranty claims.**

- 193 (a) *Notification.*
- 194 (1) *Before making a claim against the fund for any defect covered by the warranty, an*
- 195 *owner must notify the builder of the defect and allow a reasonable time for its*
- 196 *repair.*
- 197 (2) *If the repair is not made within a reasonable time or does not correct the defect,*
- 198 *an owner may file a claim against the fund in the form and manner as the Director*
- 199 *prescribes.*
- 200 (b) *Conciliation.*

- 201 (1) *The Office must administer a dispute settlement procedure between the owner and*
- 202 *the builder.*
- 203 (2) *Any claim submitted by an owner to the Office must first be reviewed through a*
- 204 *conciliation procedure.*
- 205 (3) *If the owner and the builder cannot reach a conciliation agreement, or do not*
- 206 *comply with an agreement, the owner or the builder may submit a request for a*
- 207 *dispute settler to handle the claim.*
- 208 (c) *Dispute settler procedure.*
- 209 (1) *The dispute settler must investigate each claim that an owner or builder submits*
- 210 *to determine the validity of the claim and the extent of builder responsibility.*
- 211 (2) *If the dispute settler determines that repairs are to be made, the dispute settler*
- 212 *must notify the builder.*
- 213 (3) *If the builder is unable or refuses to make the necessary repairs within a*
- 214 *reasonable time, the dispute settler must determine the exact amount of the award*
- 215 *to be paid out of the fund to the owner based on actual bids for completion of the*
- 216 *repairs.*
- 217 (4) *The total amount of payments from the fund for any new home must not exceed the*
- 218 *purchase price of the home.*
- 219 (5) *After the Director certifies the amount of the award, the Director must notify the*
- 220 *Department of Finance. The Department of Finance must make payment to the*
- 221 *owner from the fund.*
- 222 (d) *Payment from fund.*
- 223 (1) *A claim may not be brought against the fund after 3 years from the date that the*
- 224 *owner occupies or settles on the new home, whichever first occurs.*
- 225 (2) *A claim may not be brought against the fund by a spouse or other immediate*
- 226 *relative of a licensed builder if the claim involves a new home constructed by that*
- 227 *builder.*
- 228 (3) *A claim may not be for payment of consequential, personal injury, or punitive*
- 229 *damages, attorney fees, court costs, or interest.*
- 230 (4) *When the Department of Finance makes a payment from the fund, the Director*
- 231 *may:*
- 232 *a. Proceed against the builder under Section 31C-8 of this Chapter; and*
- 233 *b. Request the office of the County Attorney to initiate legal action against*
- 234 *the builder.*
- 235 (5) *If the fund is insufficient to satisfy outstanding awards and anticipated awards for*
- 236 *the succeeding year, the Director may:*
- 237 *a. Require participating builders to pay additional amounts to replenish the*
- 238 *fund; and*
- 239 *b. Require payment of surcharges by the builders who are responsible for an*
- 240 *unreasonable number of awards against the fund.*
- 241 (6) *If the fund is insufficient to satisfy any award, when sufficient money has been*
- 242 *deposited in the fund, the Director may satisfy the unpaid awards in the order in*
- 243 *which the claims were originally filed.*
- 244 (7) *When the Department of Finance makes a payment from the fund, the builder*
- 245 *responsible for the award must fully compensate the fund the full amount paid to*
- 246 *the owner plus interest from date of payment. The rate of interest is the amount*
- 247 *that the County Executive designates by executive order.*
- 248 (8) *The County is not required to contribute money to the fund. The County does not*
- 249 *have any liability to a person who has received an award when the amount in the*
- 250 *fund is insufficient to pay the award.*

- 251 (9) *The fund does not limit the availability of other legal or equitable remedies but*
- 252 *provides an additional and cumulative remedy for owners.*
- 253 (e) *Private new home warranty program.*
- 254 (1) *An owner who has a warranty claim against a builder who is participating in a*
- 255 *private new home warranty program must make the claim under the procedures*
- 256 *established by that program.*
- 257 (2) *The Director may investigate any complaints against a private program for failing*
- 258 *to honor the terms of the warranty.*
- 259 (3) *This subsection does not limit the investigative power of the Director under any*
- 260 *other law.*

31C-8. Investigation and hearings.

- 262 (a) *Investigation.*
- 263 (1) *The Director may conduct an investigation into allegations made against any*
- 264 *builder who is required to be licensed under this Chapter.*
- 265 (2) *The Office may:*
- 266 *a. Hold hearings;*
- 267 *b. Subpoena the attendance of witnesses;*
- 268 *c. Administer oaths;*
- 269 *d. Require the production of evidence relating to any matter under*
- 270 *investigation;*
- 271 *e. Inspect relevant books, papers, records, or documents of the builder at the*
- 272 *place of business of the builder during business hours; and*
- 273 *f. Conduct inspections of new home construction sites and models.*
- 274 (b) *Conduct of hearings. After giving a builder the opportunity for a hearing under subsection*
- 275 *(c), the Board may deny, suspend, refuse to renew, or revoke the license of the builder, if*
- 276 *the Board finds that the builder:*
- 277 (1) *Made a misstatement of material fact in the application for license or renewal;*
- 278 (2) *Committed fraud in connection with any building activity conducted under the*
- 279 *requirements of this Chapter;*
- 280 (3) *Committed gross negligence in connection with any building activity conducted*
- 281 *under the requirements of this Chapter;*
- 282 (4) *Violated the building code or laws of the County or State;*
- 283 (5) *Did not provide the new home warranty required by this Chapter;*
- 284 (6) *Did not correct or settle a claim arising out of a defect that is covered by the*
- 285 *warranty required by this Chapter;*
- 286 (7) *Did not file an amendment to a license application within 30 days of any material*
- 287 *change in the information provided in the most recent application or amendment;*
- 288 (8) *Incurred an excessive number of awards against the fund;*
- 289 (9) *Aided, abetted, or knowingly combined or conspired with an unlicensed person*
- 290 *with the intent to evade this Chapter;*
- 291 (10) *Abandoned or willfully failed to perform, without justification, a contract for*
- 292 *construction of a building that is to be used as a residence;*
- 293 (11) *Willfully deviated from or disregarded plans or specifications in any material way*
- 294 *without consent of the owner;*
- 295 (12) *Did not comply with this Chapter in any material way;*
- 296 (13) *Diverted funds or property that were received for the completion of a construction*
- 297 *project, and used the funds or property for another project, operation, obligation,*
- 298 *or purpose, with intent to defraud or deceive creditors or the owners; or*
- 299 (14) *Served as an officer, Director, or stockholder for a builder whose license was*
- 300 *revoked or suspended under this Chapter.*
- 301 (c) *Notification.*

- 302 (1) Before revoking or suspending any license, the Board must afford the builder an
- 303 opportunity for a hearing under the Administrative Procedures Act.
- 304 (2) The builder may appeal a decision of the Board to the Montgomery County Board
- 305 of Appeals.

306 **31C-9. Liability of builder.**

- 307 (a) A builder of a new home is liable to the owner during the period when the new home
- 308 warranty is in effect.
- 309 (b) The builder is liable for any defect in the home which is covered by the warranty.
- 310 (c) The liability of a builder under the new home warranty is limited to the purchase price of
- 311 the home in the first good faith sale.
- 312 (d) The owner may recover any damages due from a builder under this Section by filing a civil
- 313 action in any court with jurisdiction.

314 **31C-10. Administration.**

- 315 (a) The Director administers this Chapter.
- 316 (b) Reasonable costs for administration of the fund must be covered through both licensing
- 317 fees and the fund.

318 **31C-11. Applicability of chapter.**

- 319 (a) This chapter applies only to construction work under the building code and laws of the
- 320 county and state.
- 321 (b) Fees paid may not be refunded for any reason.
- 322 (c) A license is not required by a person who constructs a building that is to be used as a
- 323 residence for use of that person or the immediate family of that person. The person must
- 324 sign a statement that the work for which the permit is to be used is for that person or the
- 325 immediate family of that person.
- 326 (d) If a builder grants an improvement to an intermediate purchaser to evade liability to an
- 327 owner under this chapter, the builder is liable on the subsequent sale of the improvement
- 328 by the intermediate owner as if the builder sold the improvement without regard to the
- 329 intervening grant. (1986 L.M.C., ch. 49, § 1.)

330 **31C-12. Compliance with building code generally.**

331 This chapter does not exempt any construction work in the county from the requirement that it
332 comply with the building code.

333 **31C-13. Violations and penalties.**

- 334 (a) A builder is subject to punishment for a class A violation under section 1-19 of this Code
- 335 if that builder violates any provision of this chapter.
- 336 (b) Each day a violation continues to exist is a separate offense.

337 **31C-14. Regulations.**

338 The county executive may adopt regulations to implement this chapter under method (2) of section
339 2A-15 of this Code.]

340 **Chapter 31C. New Home Builder and Seller Registration and Warranty.**

341 **31C-1. Definitions.**

- 342 In this Chapter, the following words have the meanings indicated:
- 343 Board means the Board for Registration of Building Contractors.
- 344 Consumer means a consumer as defined in Chapter 11 or a contract purchaser of a new home for
- 345 use as a personal family residence or rental.
- 346 Contract purchaser means a person [[or legal entity]] who has entered into a contract with a new
- 347 home builder or a new home seller to purchase a new home, but who has not yet settled on the
- 348 purchase of the new home.
- 349 Director means the Director of the Office of Consumer Protection or the Director’s designee.
- 350 Homeowner or owner means:
- 351 (1) any person for whom a new home is built or to whom a new home is sold for residential
- 352 occupation; and

- 353 (2) the successors of that person in title to the home or mortgage in possession;
354 Homeowner does not mean:
355 (1) any development company, association, or subsidiary company of the builder; or
356 (2) a person [[or organization]] to whom the home may be conveyed by the builder for any
357 purpose other than use by that person [[or organization]].
358 Load-bearing portions of the home means:
359 (1) foundation system and footings;
360 (2) beams;
361 (3) girders;
362 (4) lintels;
363 (5) columns;
364 (6) walls and partitions;
365 (7) floor systems; and
366 (8) roof framing systems.
367 Major structural defect means any actual damage to load-bearing portions of the home that:
368 (1) affects its load-bearing function; and
369 (2) vitally affects or is immediately likely to vitally affect use of the home for residential
370 purposes.
371 Major structural defect includes damage due to subsidence, expansion, or lateral movement of the
372 soil. Major structural defect does not include damage caused by movement of the soil caused by
373 flood or earthquake.
374 Maryland Home Builder Guaranty Fund means the Home Builder Guaranty Fund in Title 4.5 of
375 the Business Regulation Article of the Maryland Code.
376 New home means a newly constructed residential dwelling unit and the fixtures and structure that
377 are made a part of a newly constructed private dwelling unit at the time of construction. New home
378 includes any detached house, custom home as defined in Section 10-501 of the Real Property
379 Article of the Maryland Code, townhouse, modular home, condominium unit, or cooperative
380 apartment.
381 New home builder or builder means any person[[, sole proprietor, business organization, or legal
382 entity, including but not limited to, a corporation, limited liability corporation, or trust]]:
383 (1) that is engaged in the business of erecting, constructing, or otherwise creating a new home;
384 (2) to whom a completed new home is conveyed for resale in the course of the business of the
385 person [[or business organization]];
386 (3) that undertakes to sell a new home in Montgomery County;
387 (4) that applies for a building permit to construct a new home in Montgomery County;
388 (5) that is engaged as a general contractor in the business of erecting, constructing, or
389 otherwise creating a new home; or
390 (6) that enters into a contract with a contract purchaser under which the seller agrees to provide
391 the contract purchaser with a new home.
392 New home builder does not include:
393 (1) a subcontractor or other vendor hired by a new home builder or a consumer to perform
394 services or supply materials for the construction of a new home if the subcontractor or
395 vendor does not otherwise meet the requirements of this Chapter;
396 (2) the manufacturer of a residential mobile home, unless the manufacturer also installs the
397 mobile home;
398 (3) a real estate developer who does not construct or enter into contracts with a consumer to
399 sell or construct new homes;
400 (4) a financial institution that lends funds for the construction or purchase of residential
401 dwelling in Montgomery County;
402 (5) a buyer's agent when representing a prospective buyer in the purchase of a new home; or
403 (6) a person who is conducting a foreclosure sale.

404 New home seller or seller means a person[[, sole proprietor, or legal entity]] that:
 405 (1) has legal title to the property on which the new home is constructed; and
 406 (2) is the person [[or legal entity]] listed on the sales contract with the contract purchaser to
 407 whom the property and new home are being sold and conveyed.

408 New home seller includes a corporation, limited liability [[corporation]] company, or trust.

409 Office means the Office of Consumer Protection.

410 Person has the same meaning as in Section 1-302.

411 Warranty date means the first day that the homeowner occupies or settles on the new home,
 412 whichever first occurs.

413 **31C-2. Applicability of Chapter.**

414 (a) This Chapter applies only to construction work under the building code and laws of the
 415 County and [[state]] State.

416 (b) This Chapter does not apply to a person who constructs a building that is to be occupied as
 417 a personal residence for use of that person, if the person:

418 (1) receives a waiver from the Office to apply for and obtain any permits from the
 419 Montgomery County Department of Permitting Services to construct a new home
 420 without being registered as a new home builder or a new home seller;

421 (2) signs a statement affirming that any permits issued by the Department of
 422 Permitting Services are issued solely for the purpose of that person performing
 423 work on that person’s own property; and

424 (3) signs a statement that the work for which the permit is issued is for that person.

425 **31C-3. Compliance with building code generally; building permits.**

426 (a) Compliance with building code. This Chapter does not exempt any construction work in
 427 the County from the requirement that it comply with the building code.

428 (b) Building permits. The Department of Permitting Services must not issue any building
 429 permit for a residence to any new home builder or new home seller who is not registered
 430 with the Office under this Chapter.

431 (c) Certificate of inspection. A new home builder and new home seller must provide to a
 432 contract purchaser at the time of occupancy or settlement, whichever first occurs, a
 433 statement signed by the builder and seller, that all County-required inspections have been
 434 performed.

435 **31C-4. Board of Registration.**

436 (a) Appointment of Board.

437 (1) There is a Board of Registration.

438 (2) The Board consists of 5 members appointed by the County Executive and
 439 confirmed by the County Council.

440 (3) No more than 2 members of the Board may be active in the residential construction
 441 field at the time of their appointment.

442 (b) Term. The term for each member is 3 years. A vacancy is filled for the remainder of the
 443 unexpired term. Unless a member is removed for good cause, each member holds office
 444 until the term of the member expires or a successor is appointed and confirmed.

445 (c) The Director may designate up to 2 Office employees as ex officio, nonvoting members to
 446 promote coordination with the Office’s activities.

447 (d) Operation of the Board; powers and duties of the Board.

448 (1) The Board must elect from its members a chairperson, vice-chairperson, and any
 449 other officers it deems necessary.

450 (2) The Board must:

451 (A) make recommendations to the Director whether a registration applicant,
 452 including a renewal applicant, should be registered with the Office;

453 (B) put its recommendations in writing; and

454 (C) by July 1 each year, submit an annual report of its proceedings to the
455 Director.

456 (e) The County Attorney or the County Attorney’s designee serves as counsel to the Board.

457 (f) Board members do not receive compensation for serving on the Board.

458 **31C-5. Registration process; fees.**

459 (a) Registration required. A new home builder or a new home seller must not engage, or offer
460 to engage, in the business of constructing, selling, or advertising a new home for sale or
461 act in the capacity of a building contractor in the County unless the builder or seller are
462 first registered by the Office.

463 (b) Application. Each application for registration must be on a form the Director requires and:

464 (1) provide information as to character, references, experience, education, and training
465 in or related to erecting, constructing, or otherwise creating a new home or selling
466 a new home;

467 (2) [[disclose that the applicant agrees that any service of process from the Office to
468 the applicant will be satisfied by mailing via regular mail and certified mail, to the
469 applicant at the most current address listed on the application form]] require that
470 the applicant agree to provide the warranty required in Section 31C-8; and

471 (3) include any additional information required by regulation.

472 (c) Fees.

473 (1) Each application must be accompanied by an application fee.

474 (2) Any application fee paid is not refundable.

475 (d) Board recommendation. Within 60 days after receiving a completed registration
476 application, the Board must recommend to the Director whether:

477 (1) the applicant is qualified to comply with the building code and laws of the County
478 and State, and to fully perform new home building and new home sales contracts;
479 and

480 (2) the applicant should be registered or receive a conditional registration that
481 stipulates specific requirements to which the applicant must comply before the
482 applicant’s registration can be fully recommended to the Director.

483 (e) Director decision.

484 (1) Within 75 days after receiving a completed application, the Director must notify
485 the applicant of the [[of the]] Board’s recommendation and the Director’s final
486 action regarding registration, conditional registration, or denial of registration. If
487 the Director fails to notify the applicant within 75 days of submission, the
488 application is deemed approved.

489 (2) If the applicant is denied registration approval, the Director must[[:

490 (A) notify]] send the applicant [[in writing]] written notification of the denial
491 and the reasons for the denial[[; and

492 (B) mail the denial by certified mail to the address on the application]].

493 (3) The Director must not approve a registration for a builder or seller who has or had
494 any legal interest in a previously licensed firm who has or had a license or
495 registration revoked or suspended for any reason listed in Section [[31C-10]] 31C-
496 9.

497 (f) Expiration of license. Unless renewed under the procedures in 31C-6, a registration expires
498 on the second anniversary of its effective date. Once a registration expires, it cannot be
499 renewed. The former registrant must submit a new application for registration.

500 (g) Amendment. A new home builder or a new home seller must amend the registration within
501 30 days of any material change in the information provided in the most recent application
502 or amendment.

503 **31C-6. Registration Renewal.**

- 504 (a) A registered new home builder or new home seller may apply to renew their registration
- 505 before the current registration expires by:
- 506 (1) submitting a completed renewal application;
- 507 (2) paying the required renewal fee; and
- 508 (3) making a payment to the Maryland Home Builder Guaranty Fund as required under
- 509 State law.
- 510 (b) At least 60 days before a new home builder or new home seller registration is set to expire,
- 511 the Office must [[provide notice to the registrant by electronic mail or regular mail sent to
- 512 the last known address of]] send written notification to the registrant. This notice must
- 513 contain:
- 514 (1) a renewal application form or online link to the renewal form;
- 515 (2) the date on which the current registration expires;
- 516 (3) the date by which the Office must receive the renewal application; and
- 517 (4) information regarding the required fees associated with the renewal.
- 518 (c) A registrant must submit a completed renewal application to the Office no later than 30
- 519 days before the registration is set to expire.
- 520 (d) The Director may request that the Board review any renewal application to ensure the
- 521 applicant continues to meet the criteria in Section 31C-5.
- 522 (e) By the date on which a registration is set to expire, the Director must [[notify]] send the
- 523 applicant written notification of the of the Board’s recommendation, if any, and the
- 524 Director’s final action regarding renewal of a registration. If the Director fails to notify the
- 525 applicant by this date, the renewal application is deemed approved.
- 526 (f) If the applicant is denied registration approval, the Director must[[:
- 527 (1) notify]] send the applicant [[in writing]] written notification of the denial and the
- 528 reasons for the denial[; and
- 529 (2) mail the denial by certified mail to the address on the application]].
- 530 (g) A renewal registration is valid for 2 years.

31C-7. Enforceability of contracts.

A contract for the performance of any act for which a home builder registration is required is [[not enforceable]] void unless the home builder was registered at the time that the contract was signed by the contract purchaser.

31C-8. New home warranty.

- 536 (a) Warranty required. [[A]] As a condition to being registered under this Chapter, a new home
- 537 builder [[or]] and a new home seller must give a consumer a written warranty that provides
- 538 the warranty coverage required by this Chapter [[before entering into a contract to sell or
- 539 build a new home]] no later than the execution of the contract to sell the home.
- 540 (b) Liability. The new home builder and new home seller [[are jointly and severally liable for
- 541 honoring]] must honor the terms of the warranty and cannot discharge this warranty
- 542 obligation by providing a third-party new home warranty plan to the homeowner.
- 543 (c) Performance standards.
- 544 (1) The warranty must include minimum performance standards for the construction
- 545 and quality of the components of a new home.
- 546 (2) If specific minimum performance standards are not provided, industry standards
- 547 for good building practice determine compliance with the new home warranty.
- 548 (d) Duration of warranty. The new home builder and the new home seller [[are jointly and
- 549 severally liable and]] must warrant to the homeowner, and all subsequent homeowners
- 550 during the warranty period, [[the new home]] that:
- 551 (1) For 1 year, starting on the warranty date, the new home must be free from any
- 552 defect in materials or workmanship as defined in the minimum performance
- 553 standards.

554 (2) For 2 years, starting on the warranty date, the new home must be free from any
555 defect in the electrical, plumbing, heating, cooling, ventilating, and mechanical
556 systems.

557 (3) For 5 years, starting on the warranty date, the new home must be free from any
558 major structural defect.

559 (e) Exclusions. The written warranty may exclude:

560 (1) damage to real property which is not part of the home covered by the warranty and
561 which is not included in the purchase price of the home;

562 (2) bodily injury or damage to personal property;

563 (3) any defect in, or caused by, materials or work supplied by anyone other than the
564 builder, or its employees, agents, or subcontractors;

565 (4) any loss or damage which the homeowner has not taken timely action to minimize;
566 and

567 (5) any additional exclusions permitted by Regulation.

568 (f) Statutory warranties. The statutory warranties required by this Chapter are in addition to
569 all other implied or express warranties imposed by law or agreement. Each new home
570 builder or new home seller must disclose the information required by, and otherwise
571 comply with, Sections 10-601 through 10-610 of the Real Property Article of the Maryland
572 Code.

573 (g) Financial security.

574 (1) Before entering into a contract to sell or build a new home, a new home builder or
575 a new home seller must:

576 (A) inform the consumer in writing whether any bond, insurance, or other
577 financial security is responsible for or guarantees the builder's
578 performance under the warranty required by this Chapter;

579 (B) provide proof of any such bond, insurance, or security to any buyer on
580 request; and

581 (C) include the following notice in the sales contract immediately before the
582 disclosure required by subparagraph (A):

583 **NOTICE TO BUYER**

584 Montgomery County law does not require this builder to furnish any bond, insurance, or other financial
585 security to guarantee the builder's performance of its warranty obligations. If a builder has promised you
586 any other bond, insurance, or security to guarantee the performance of its warranty obligations, that bond,
587 insurance, or security must be listed here:

588 (2) The buyer must acknowledge in writing that the buyer has read and understands
589 the notice required under paragraph (1)(C).

590 (3) A new home builder or new home seller may be required to post a bond if the
591 Director determines that the builder constructed and sold a home without being
592 registered.

593 **[[31C-9. Liability of builder and seller.**

594 (a) A new home builder and new home seller are jointly liable to the homeowner during the
595 period when the new home warranty is in effect.

596 (b) The builder and seller are jointly liable for any defect in the home which is covered by the
597 warranty.

598 (c) The liability of a builder and seller under the new home warranty is limited to the purchase
599 price of the home in the first good faith sale.

600 (d) The homeowner may recover any damages due from a builder or seller under this Section
601 by filing a civil action in any court with jurisdiction.]]

602 **[[31C-10]] 31C-9. Complaints, investigations, and administrative hearings.**

603 (a) Complaint. A consumer or homeowner may file a written complaint with the Director. A
604 complaint should state the name and address of the builder or seller alleged to have

605 committed a violation of this Chapter, describe the violation, and provide any other
606 information that the Office requires. The Director may act on a complaint that is not
607 complete.

608 (b) Investigation. The Office may:

- 609 (1) investigate any complaint made against any person [[or legal entity]] who is
610 operating as a new home builder or new home seller and who is or should be
611 [[required to be]] registered under this Chapter;
- 612 (2) investigate any potential violation of and enforce this Chapter without receiving a
613 complaint;
- 614 (3) hold hearings or refer any matter to a hearing officer designated by the Chief
615 Administrative Officer for an administrative hearing;
- 616 (4) subpoena the attendance of witnesses and documents;
- 617 (5) administer oaths;
- 618 (6) require the production of evidence relating to any matter under investigation;
- 619 (7) inspect relevant books, papers, records, or documents of the builder or seller at the
620 place of business of the builder and seller during business hours; and
- 621 (8) conduct inspections of new home construction sites and models.

622 (c) Hearing.

- 623 (1) Before denying, suspending, refusing to renew, or revoking any registration, the
624 Director must afford the builder or seller an opportunity for a hearing before a
625 hearing officer designated by the Chief Administrative Officer for an
626 administrative hearing.
- 627 (2) After giving a builder or seller the opportunity for a hearing, the Director may
628 deny, suspend, refuse to renew, or revoke the registration of a new home builder
629 or new home seller if the Director finds that the builder or seller:
 - 630 (A) made a misstatement of material fact in the application for registration or
631 renewal;
 - 632 (B) committed fraud or misrepresentation in connection with any building
633 activity conducted under the requirements of this Chapter;
 - 634 (C) committed gross negligence in connection with any building activity
635 conducted under the requirements of this Chapter;
 - 636 (D) violated the building code or laws of the County or State;
 - 637 (E) did not provide the new home warranty required by this Chapter;
 - 638 (F) did not correct or settle a claim arising out of a defect that is covered by
639 the warranty required by this Chapter;
 - 640 (G) did not file an amendment to a registration application within 30 days of
641 any material change in the information provided in the most recent
642 application or amendment;
 - 643 (H) aided, abetted, or knowingly combined or conspired with an unregistered
644 person [[or legal entity]] to evade this Chapter;
 - 645 (I) abandoned or willfully failed to perform, without justification, a contract
646 for construction of a building that is to be used as a residence;
 - 647 (J) willfully deviated from or disregarded plans or specifications in any
648 material way without consent of the consumer or homeowner;
 - 649 (K) did not comply with this Chapter in any material way;
 - 650 (L) diverted funds or property that were received for the completion of a
651 construction project, and used the funds or property for another project,
652 operation, obligation, or purpose, with intent to defraud or deceive
653 creditors or the contract purchaser;

- 654 (M) served as an officer, Director, owner, member, principal, or stockholder
- 655 for a builder or seller whose registration was revoked or suspended under
- 656 this Chapter;
- 657 (N) engaged in a pattern of unfair or deceptive trade practices in violation of
- 658 Chapter 11;
- 659 (O) obtained or attempted to obtain a residential home construction permit by
- 660 falsely representing that the applicant was seeking a permit to construct a
- 661 home to be occupied by the applicant as a personal residence;
- 662 (P) [[failure]] failed to satisfy final judgments or liens in favor of a contract
- 663 purchaser, homeowner, subcontractor, or government;
- 664 (Q) engaged in fraud, deception, misrepresentation, or knowing omissions of
- 665 material facts related to new home building contracts;
- 666 (R) engaged in a pattern of poor workmanship as evidenced by unresolved
- 667 building code violations or unsatisfied arbitration awards or judgments in
- 668 favor of a consumer; or
- 669 (S) violated a term or condition of a conditional registration.

670 (3) The Director may refer a complaint or a violation to a hearing officer designated
 671 by the Chief Administrative Officer for an administrative hearing.

672 [[4] Service of process must be by regular and certified mail to the new home builder,
 673 new home seller, or the applicant's most current address provided on their
 674 application form.]]

675 (d) Hearings, generally. Any hearing held under this Section must be conducted under the
 676 Administrative Procedures Act.

677 (e) Appeals. A person aggrieved by a decision of the hearing examiner or Director to deny,
 678 suspend, refuse to renew, or revoke a registration may seek judicial review of the decision
 679 in the Circuit Court under the applicable Maryland Rules of Procedure governing judicial
 680 review of administrative agency decisions. A party aggrieved by the decision of the Circuit
 681 Court may appeal that decision to the Court of Special Appeals.

682 **[[31C-11]] 31C-10. Violations and penalties.**

683 Any violation of this Chapter is a Class A violation.

684 **[[31C-12]] 31C-11. Administration; regulations.**

685 (a) The Director administers and enforces this Chapter.

686 (b) The Executive must adopt Method (2) regulations to implement this Chapter. The
 687 regulations must:

- 688 (1) set one or more fees appropriate to cover the cost of administering this Chapter;
- 689 (2) provide for the form and content of the warranty required by Section 31C-8;
- 690 (3) set forth the terms of the warranty required by Section 31C-8;
- 691 (4) describe other allowable warranty exclusions the Executive deems necessary;
- 692 (5) include standards under which a person may receive a waiver under Section 31C-
 693 2; and
- 694 (6) includes standards by which a person may be deemed qualified to comply with
 695 County and State law, as required in Section 31C-5.

696 **Sec. 2. Section 2A-2 is amended as follows:**

697 **2A-2. Applicability.**

698 This Chapter governs the following administrative appeals and proceedings and applies whether a
 699 hearing is conducted by a hearing examiner or another designated official.

700 * * *

701 (g) Complaints and actions filed with or by the Office of Consumer Protection under Chapter
 702 [[31C-10]] 31C-9 when a hearing is required or provided.

703 (h) Such other hearings as hereinafter provided for by law or executive regulations which are
 704 specifically designated as being governed hereby. In this regard, the County Executive is

705
706

hereby authorized to add or delete additional quasi-judicial authorities from time to time by executive regulation adopted under method (2) of section 2A-15 of this Code.

Expedited Bill No. 37-18
 Concerning: Transient Housing – Short-Term Rental License Appeals
 Revised: 1/17/2019 Draft No. 2
 Introduced: November 13, 2018
 Enacted: February 5, 2019
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
 FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Councilmember Floreen

AN EXPEDITED ACT to:

- (1) amend the appeal process for Short-Term Rental Licenses

By amending

Montgomery County Code
 Chapter 54, Transient Lodging Facilities
 Sections 54-48

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. Sections 54-48 is amended as follows:**

2 **54-48. Appeals.**

3 Any person aggrieved by an approval, denial, revocation or suspension of a bed and breakfast
4 license or short-term rental license may appeal the decision to the Board of Appeals. The Board of
5 Appeals must hold a hearing on the appeal within ~~[[30]]~~60 days after the notice of appeal has been
6 filed, and must act on the appeal within 30 days after the hearing.

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

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

Bill No. 40-18
 Concerning: Secondhand Personal
Property – Dealers – License
 Revised: 2/5/2019 Draft No. 4
 Introduced: December 11, 2018
 Enacted: February 5, 2019
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
 FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsors: Councilmember Friedson and Council Vice-President Katz
 Co-Sponsors: Councilmember Alborno, Council President Navarro, and Councilmember Riemer

AN ACT to:

- (1) exclude certain personal property from the definition of secondhand personal property;
- (2) provide that a secondhand personal property dealer license expires one year from the date of issuance; and
- (3) generally amend County laws related to secondhand personal property.

By amending

Montgomery County Code
 Chapter 44A, Secondhand Personal Property
 Sections 44A-1, ~~[[and]] 44A-11, and 44A-18~~

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:

