



## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

**APPROVED**

Tuesday, January 11, 2022

The County Council for Montgomery County, Maryland convened via video conference at 9:00 A.M. on Tuesday, January 11, 2022.

### PRESENT

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

The President in the Chair.

### PRESENTATIONS

- A. Proclamation Recognizing Radon Awareness Month, by Councilmember Rice.

This was postponed until January 25, 2022.

- B. Proclamation was presented by Mr. Katz recognizing the 73<sup>rd</sup> Anniversary of the Universal Declaration of Human Rights.
- C. Proclamation was presented by Mr. Albornoz and County Executive Elrich recognizing Human Trafficking Prevention Month.

The Council recessed at 9:21 A.M. and reconvened at 9:30 A.M.

Mr. Albornoz provided a "History Minute" profiling George Meads, the Town of Rockville's first fire chief.

### GENERAL BUSINESS

- A. Announcements and Calendar Changes

Ms. Singleton, Clerk of the Council, announced that public hearings on the FY23 Capital Budget and Capital Improvements Program will be held on Tuesday, February 8, 2022, at 1:30 P.M. and 7:30 P.M., and Wednesday, February 9, 2022, at 1:30 P.M.

Mr. Albornoz read the following statement regarding the December 29, 2021, Opinion of the Open Meetings Compliance Board:

“The Council appreciates the work of the Maryland Open Meetings compliance Board for their diligence in finding that the Council’s closed session discussions on March 9 and May 12 were properly held within the relied upon exceptions permitting a closed meeting under the Open Meetings Act. The Board in its decision dated December 29, 2021, also found deficiencies in the detail described in some of the closing statements for a closed meeting, some of the closed session minutes, some of the summary of the closed session in the open meeting minutes, and the timeliness of approving some meeting minutes. The Council takes these matters seriously, and we plan to use this decision as a learning experience. We have asked our attorneys to review these issues with Council staff to ensure they are promptly addressed and to provide as much transparency as appropriate for future closed sessions.”

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

No petitions were received this week.

C. **Action** - Approval of Minutes

There were no minutes for approval this week.

(2) **COUNCIL SITTING AS BOARD OF HEALTH**

A. **Update** - [Coronavirus \(COVID-19\) and Health Planning](#)

Participating in the discussion were Dr. Crowel, Director, Dr. Bridgers, Acting Chief Health Officer, and Mr. O’Donnell, Program Administrator, Public Health Emergency Preparedness and Response, Department of Health and Human Services (DHHS); and Dr. Stoddard, Assistant Chief Administrative Officer. Mr. Albornoz noted that Montgomery County Public Schools (MCPS) representatives were not available for today’s meeting and would participate in the January 18, 2022, update.

Dr. Bridgers noted that the Maryland Department of Health (MDH) daily reports would resume this week after technical issues are resolved and will include County and State-level metrics. DHHS will continue to meet with

area hospitals on a weekly basis and closely review hospitalization data. The omicron variant of the virus was present in 95% of samples tested; and residents are encouraged to get a flu vaccine, as cases of “flurona” have been identified.

Received an update on current Covid-related statistics from Mr. O’Donnell, noting the 25% positivity rate, the massive amount of testing being done throughout the County over the past seven days, hospital usage for Covid patients (34%); intensive care/acute care Covid patients (509), and vaccination rates in the County (83.5% fully vaccinated), and vaccination rates by zip code. Noted that the number of residents who have received booster shots continues to increase; over 50% of 5 to 11 year-olds have received a first dose, but vaccination rates for children have slowed. Rapid tests are being distributed to at-risk communities, including congregate living settings. Another 2.1 million additional rapid tests have been ordered from various vendors; distribution at libraries deemed a success with 93,645 test kits distributed on the first day.

Dr. Stoddard said the test reporting portal is being translated into Spanish. Beginning today, only 35,000 test kits will be distributed across the County due to limited supply. MCPS received 190,000 test kits and additional test kits and KN95 masks will be provided to public schools, private school partners, childcare providers, and other community partners. Municipal partners can also request test kits, but he acknowledged requests for kits will outpace the current supply. He encouraged those eligible to get a booster shot, which helps reduce the likelihood of serious illness and hospitalization. Dr. Stoddard noted that there are staffing issues due to Covid across all County agencies, but that the availability of Montgomery County Fire and Rescue Service (MCFRS) staff is improving.

Mr. Rice, sharing a personal experience, said critically ill residents are competing for hospital space with Covid patients, the majority of whom are unvaccinated, and encouraged people to get vaccinated noting that the unvaccinated are nine times more likely to be hospitalized.

Mr. Riemer requested the Council be kept updated on the hiring of the County’s new Chief Public Health Officer and noted that DHHS is interviewing candidates this week.

Mr. Hucker thanked DHHS staff for their response to Long Branch residents displaced by fire last week. He requested information on how often DHHS staff meet with MCPS administrators, how decisions are made, and requested minutes from meetings with the Board of Education be provided to Councilmembers. He expressed the view that students should be required to provide a negative Covid test to attend school in person.

Mr. Glass, noting that the Poolesville Library is under renovation, received information that a site would be identified shortly in the community for the distribution of rapid test kits. He inquired if National Guard personnel could be deployed to assist at County healthcare venues or as school bus drivers.

Mr. Friedson noted the great need for rapid test kits in Poolesville and Friendship Heights and requested DHHS staff provide information on communication and outreach strategies when test kits are available.

Mr. Katz commented on the need for clarity on the County's website regarding booster shots for children. He suggested places to pick up rapid test kits be designated in senior living communities such as Asbury and Leisure World.

Mr. Jawando acknowledged staffing shortages in MCPS, noted Dr. Stoddard's comment that a transition to virtual learning could become necessary in some cases, and expressed the view that making the Test to Stay program opt-out instead of opt-in would help keep students learning in person.

B. **Introduction** - [Resolution to adopt a Board of Health Regulation to prevent the spread of COVID-19 in the County - Vaccination Requirements to Enter Bars, Restaurants, Recreation Centers, and Other Covered Establishments](#)

Participating in the discussion were Ms. Wellons, Legislative Attorney; Dr. Bridgers, Dr. Stoddard, and Ms. Kinch, Division Chief, Office of the County Attorney.

Mr. Albornoz stated that a worksession and public hearing are scheduled for January 25. He noted that the proposed regulation follows what some cities around the country and the world have adopted to prevent the spread of the virus.

Ms. Wellons reviewed the subject regulation which would require patrons of certain businesses to provide proof of vaccination before entering indoor areas, and would be implemented in a phased-in approach beginning on January 22, 2022 (proof one dose required for patrons 12 years and older); effective February 15, proof of all doses (excluding boosters) required for patrons 12 years and older; and effective March 1, proof of all doses (excluding boosters) required for patrons 5 years-and-one-month and older.

Received information from the panel that extensive research was done and now that the District of Columbia has adopted a "vaccine passport" it is timely for the County to do so as part of a regional approach to limit spread of the virus; that they have been in conversations with other area

jurisdictions and noted that New York City saw a 9 percent increase in vaccinations in the weeks following adoption of the “passport” requirement, and that the regulation would encourage residents to obtain vaccines and booster shots. Noted that currently, private businesses can require proof of vaccination before providing services to patrons. The regulation targets business that are known transmission sites from contact tracing efforts, such as restaurants and fitness centers, but houses of worship are excluded from the regulation. The purpose of the regulation is to encourage vaccination while ensuring residents can still access County services and certain other essential services.

Mr. Friedson requested that research findings and details of meetings with stakeholder groups be shared with Councilmembers. He received confirmation that written responses to questions submitted by Councilmembers would be forthcoming.

Ms. Navarro requested as part of next week’s discussion the criteria utilized for identifying which establishments are included, updated engagement efforts with stakeholders, what proof of vaccination residents must provide, and data from jurisdictions similar to Montgomery County.

Mr. Riemer suggested removing the word “passport” from the lexicon as it may create confusion as to what would be required, as just the vaccination card is needed.

Mr. Glass requested Councilmembers be kept updated regarding conversations with other regional jurisdictions.

Mr. Katz requested information on guidelines for people exempt from getting the vaccine, noting the need to consider the burden placed on the staff person standing at the door of a business enforcing the regulation.

Mr. Albornoz said next week, the panel should be prepared to discuss the ultimate goal of the regulation, and what metrics would be used to determine the success of the regulation, if adopted.

(3) **CONSENT CALENDAR**

Approved the following consent calendar items listed below.

Mr. Katz made the motion, which carried without objection.

- A. **Introduced** Spending Affordability Guidelines for the FY23 Operating Budget. A public hearing is scheduled for January 25, 2022, at 1:30 P.M.

- B. **Introduced** a [Special Appropriation to the County Government's FY22 Operating Budget, Office of Emergency Management and Homeland Security - \\$586,500 for Metropolitan Washington Council of Government Funding \(Source of Funds: MWCOG Grant Funds\)](#). A public hearing is scheduled for January 18, 2022, at 1:30 P.M.
- C. **Introduced/Adopted Resolution 19-1121**, [amendment to FY22 Operating Budget Resolution 19-872, Section G, FY22 Designation of Entities for Non-Competitive Contract Award Status: Maryland MENTOR, Inc.](#)
- D. **Introduced/Adopted Resolution 19-1122**, [amendment to FY22 Operating Budget Resolution 19-872, Section G, Fiscal Year 2022 Designation of Entities for Non-Competitive Contract Award Status: Montgomery County Coalition for the Homeless.](#)
- E. **Introduced/Adopted Resolution 19-1123**, [amendment to FY22 Operating Budget Resolution 19-872, Section G, Fiscal Year 2022 Designation of Entities Contract Award Status: Blackwell Physicians LLC d/b/a AHC Imaging.](#)
- F. **Introduced** a [Resolution Supporting the Establishment of an Additional Early Voting Center in Montgomery County](#). A public hearing is scheduled for January 18, 2022, at 1:30 P.M.
- G. **Introduced** a [Supplemental Appropriation to the County Government's FY22 Operating Budget, \\$954,266 for Incubator Programs Non-Departmental Account \(NDA\) \(Source of funds: General Fund Reserves\)](#). A public hearing is scheduled for January 25, 2022, at 1:30 P.M.
- H. **Adopted Resolution 19-1124**, [confirming the County Executive's appointment to the Bethesda Urban Partnership, Inc. Board of Directors: Dan Schlaff.](#)
- I. **Adopted Resolution 19-1125**, [confirming the County Executive's appointment to the Board of Investment Trustees and Board of Trustees for Consolidated Retiree Health Benefits Trust: James Donaldson.](#)
- J. **Adopted Resolution 19-1126**, confirming the County Executive's appointment to the Victim Services Advisory Board: Wendy Ayala, Stephanie Ogorzalek, Meshon Watkins, Christine Dunn.

The Council recessed at 12:04 P.M. and reconvened at 1:30 P.M.

- (4) **PUBLIC HEARING** - [Supplemental Appropriation to the County Government's FY22 Operating Budget, Department of Transportation - \\$193,483 for Streets and Roads - Roadside Trees - Protection \(Source of Funds: Street Tree Planting Fund\)](#)

The public hearing was conducted. Mr. Friedson, Mr. Jawando, and Ms. Navarro were temporarily absent. Additional material for the Council's consideration should be submitted by the close of business on January 14, 2022. A Transportation and Environment (T&E) Committee worksession is tentatively scheduled for January 19, 2022.

- (5) **PUBLIC HEARING** - [Bill 46-21, Environmental Sustainability - Commercial Property Assessed Clean Energy Program - Amendments](#)

The public hearing was conducted. Mr. Jawando and Ms. Navarro were temporarily absent. Additional material for the Council's consideration should be submitted by the close of business on January 18, 2022. A T&E Committee worksession will be scheduled at a later date.

- (6) **PUBLIC HEARING** - [Expedited Bill 49-21, Police Accountability Board - Administrative Charging Committee - Established](#)

The public hearing was conducted. An additional public hearing is scheduled for January 18, 2022, at 7:30 P.M. Additional material for the Council's consideration should be submitted by the close of business on January 18, 2022. A Public Safety (PS) Committee worksession is tentatively scheduled for January 24, 2022.

- (7) **PUBLIC HEARING** - [Special Appropriation to the County Government's FY22 Operating Budget, Payments to Municipalities Non-Departmental Account \(NDA\), \\$5,000,000 \(Source of Funds: General Fund Reserves\)](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on January 18, 2022. A Government Operations and Fiscal Policy (GO) Committee worksession will be scheduled at a later date.

- (8) **PUBLIC HEARING/ACTION** - [Special Appropriations to Montgomery County Public Schools' FY22 Capital Budget and Amendments to the FY21-26 Capital Improvements Program - Clarksburg Cluster ES #9 \(New\) \(No. 651901\), \\$5,125,000 Major Capital Projects - Elementary, \\$16,725,000 \(for Burnt Mills ES, South Lake ES, Stonegate ES, and Woodlin ES\) \(Source of Funds: State Aid\)](#)

The public hearing was held and the record closed.

Adopted **Resolution 19-1127**, approving the subject special appropriation.  
Mr. Rice the motion, which carried without objection.

(9) **DISTRICT COUNCIL SESSION**

- A. **Action** - [Hearing Examiner's report and recommendation on Local Map Amendment \(LMA\) Application No. H-141 for amendment to the zoning ordinance map. Soo Lee-Cho, Attorney for Applicant, White Oak Apartments LLC, requests rezoning from the CR-0.75, C-0.75, R-0.25, H-75 Zone to the CRF-1.25, C-0.25, R-1.25, H-85 Zone of the property located at 2220 Broadbirch Drive, White Oak, Maryland, in the 5th Election District](#)

Received the subject report and recommendation from Ms. Robeson Hannan, Hearing Examiner, Office of Zoning and Administrative Hearings.

Mr. Hucker stated that the change will expand housing opportunities, help support the efforts of the Bus Rapid Transit (BRT) project, and help sustain the neighborhood retail, consistent with several Council priorities including racial equity/social justice efforts.

Adopted **Resolution 19-1129**, approving the subject LMA.

Mr. Riemer made the motion and the resolution was adopted by a roll call vote:

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

- B. **Action** - [Sectional Map Amendment \(SMA H-142\) to implement the Approved and Adopted Shady Grove Minor Master Plan Amendment](#)

Ms. Dunn, Senior Legislative Analyst, provided a summary of the subject SMA.

Adopted **Resolution 19-1130**, approving the subject SMA.

Mr. Riemer made the motion and the resolution was adopted by a roll call vote:

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

- C. **Announcement** - A public hearing on the Planning Board Draft of the Silver Spring Downtown and Adjacent Communities Plan is scheduled for February 17, 2022, at 7:30 P.M.



- D. **Announcement** - A public hearing on Corridor Forward: The I-270 Transit Plan is scheduled for February 15, 2022, at 7:30 P.M. For this hearing the Council also wishes to solicit public testimony on the choice of the priority transit project to be funded with ongoing toll revenue from Phase 1 South and Phase 1 North of the Maryland Department of Transportation's I-270 and I-495 Managed Lanes Study.

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND  
IN LEGISLATIVE SESSION - Day #2**

(10) **Introduction of Bills:**

- A. [Bill 1-22, Eating and Drinking Establishments - Healthy Meals for Children](#)

Introduced draft #3 of **Bill 1-22**, sponsored by Councilmember Rice. A public hearing is scheduled for February 1, 2022, at 1:30 P.M.

- B. [Expedited Bill 2-22, Montgomery County Municipal Revenue Program - Amendments](#)

Introduced draft #1 of **Expedited Bill 2-22**, sponsored by the Council President at the request of the County Executive. A public hearing is scheduled for February 1, 2022, at 1:30 P.M.

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

- A. [Bill 32-21, Personnel - Employee Settlement Agreements with No-Rehire Clause - Prohibited](#)

Ms. Navarro, Chair of the Government Operations and Fiscal Policy Committee (GO), reviewed the amendments made by the GO Committee and the rationale for each, as contained in the staff report.

Mr. Hucker expressed support for the Bill to allow the County managers to make appropriate job hiring decisions and more opportunities for employees.

Enacted draft #3 of **Bill 32-21**, as shown at the end of these minutes.

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

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

The meeting adjourned at 2:07 P.M.

This is a correct copy of Council action.



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Selena Mendy Singleton, Esq.  
Clerk of the Council

Bill No. 32-21  
 Concerning: Personnel – Employee Settlement Agreements with No-Rehire Clause – Prohibited  
 Revised: 12/13/21 Draft No. 3  
 Introduced: July 20, 2021  
 Enacted: January 11, 2022  
 Executive: \_\_\_\_\_  
 Effective: \_\_\_\_\_  
 Sunset Date: None  
 Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

**COUNTY COUNCIL  
 FOR MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsor: Council President Hucker

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**AN ACT** to:

- (1) prohibit the County from entering into an employee settlement agreement with a County employee in a personnel dispute that includes a “no-rehire” clause under certain circumstances;
- (2) provide the Chief Administrative Officer or agency head the authority to include a no-rehire clause under certain circumstances; and
- (3) establish a right to appeal the inclusion of a no-rehire clause.

By amending

Montgomery County Code  
 Chapter 33, Personnel and Human Resources  
 Section 33-22

<b>Boldface</b>	<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:*

**Sec. 1. Section 33-22 is added as follows:**

**33-22. [Reserved] County Employee Settlement Agreements; right to appeal - established.**

(a) Definitions. For purposes of this Section, the following terms have the meanings indicated:

Employment dispute means any grievance ~~[[claim or lawsuit]]~~ or appeal filed by the employee against the County where a dismissal action under COMCOR 33.07.01.33 or 33.07.01.35, is challenged.

No-rehire clause: a provision prohibiting, preventing, or otherwise restricting an employee from obtaining future employment.

(b) An agreement to settle an employment dispute must not contain a no-rehire clause from County employment.

(c) Except as provided in subsection (b), a settlement agreement may include a no-rehire clause if:

(1) the provision is mutually agreed upon to end the current employment relationship; ~~[[or]]~~

(2) the employee voluntarily resigns after a formal disciplinary action has been initiated by an agency head; or

(3) the Chief Administrative Officer or agency head has made a finding that there are sufficient grounds to ~~[[terminate the employment]]~~ dismiss the employee for cause.

(d) ~~[[Appeal. If an employee disagrees with the decision to include a no-rehire clause, within ten days from the receipt of the decision, the aggrieved employee may in writing, appeal to the County's Merit System Protection Board.]]~~ Appeal of No-Rehire Clause. An aggrieved employee may file an appeal with the County's Merit System Protection Board to challenge the decision of the Chief Administrative

Officer or agency head to include a no-rehire clause in a proposed settlement agreement under subsection (c)(3). The appeal must:

- (1) be in writing; and
- (2) filed within 10 working days from the employee's receipt of the proposed settlement agreement which included a no-rehire clause.

(e) *Burden of Proof.* The County, upon appeal, has the burden of proof by a preponderance of evidence to provide a legitimate, nondiscriminatory reason for its decision.

**Sec. 2. Transition.**

This Act does not apply to any County employee settlement agreement that was executed by all parties before this Act took effect.