

Clerk's Note: The minutes of April 19, 2022 have been edited to reflect the addition of item 6L, previously omitted from the minutes.



COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

APPROVED

Tuesday, April 19, 2022

The County Council for Montgomery County, Maryland convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland at 9:01 A.M. on Tuesday, April 19, 2022.

PRESENT

Councilmember Gabe Alborno, 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.

Mr. Alborno provided a Montgomery History minute: the Noyes Library in Kensington founded by Crosby Noyes and Brainard Warner in 1893 was the first Library in Montgomery County and is now one of only eight libraries in the United States focused solely on children.

PRESENTATIONS

- A. Proclamation was presented by Council President Alborno and Councilmembers Hucker and Katz honoring the service of County Police Officer Rich Reynolds.

The Council recessed at 9:13 A.M. and reconvened at 9:30 A.M.

GENERAL BUSINESS

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

Ms. Singleton, Clerk of the Council, announced that public hearings on the FY23 Operating Budget will be held on April 20, 2022, at 1:30 P.M. and April 20 and 21, 2022, at 7:00 P.M.; noted corrections to the agenda and introduction of a supplemental appropriation to the County Government's FY22 Operating Budget, Department of Transportation, \$75,000 for Transportation Services Improvement fund Fuel Relief Disbursement.

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

No petitions were received this week.

C. **Action – Approval of Minutes**

Approved the closed session minutes of March 22, 2022, without objection.

(2) **BRIEFING - [FY23 Budget Overview](#)**

Participating in the discussion were Ms. Michaelson, Council Executive Director; Mr. Howard, Deputy Director; and Mr. Smith, Legislative Analyst; Ms. Bryant, Director, Office of Management and Budget; and Mr. Coveyou, Director, Department of Finance.

Received an overview of the FY23 budget, noting the greater than anticipated revenue and concerns associated with the long-term sustainability of the County Executive's recommended budget. Received information on racial equity measures, estimated tax-supported revenues, changes in the County Government's workforce and proposed pay adjustments, fiscal policies for reserves and PAYGO (pay as you go), one-time revenues, and the County Executive's recommendation to draw down the Other Post Employment Benefits (OPEB) trust by \$20 million to pay current year claims.

Noted four target options included in the staff packet to address concerns regarding the fiscal sustainability of the FY23 budget, and the goal to reduce additions to the base budget while meeting critical service needs in the County.

Received comments from Ms. Bryant and Mr. Coveyou on the goals and assumptions reflected in the County Executive's proposed budget and the rationale for the creation of new positions; they responded to questions from Councilmembers.

Ms. Navarro, Chair of the Government Operations and Fiscal Policy (GO) Committee, requested Ms. Singleton provide a definition of the term "marginalized community" regarding racial equity and social justice (RESJ) considerations, and information on how the proposed budget addresses the

County's equity principles, noting the need to ensure prioritization of RESJ in the budget.

Mr. Friedson requested a future GO Committee include discussion on how the revenue estimating group will function and the level of expected collaboration with the Council, and information on what the County's level of reserves would be if there had not been an infusion of federal funds.

Mr. Hucker requested staff provide a breakdown of new positions included in this year's proposed budget and on positions created in the last three years.

Supported without objection Mr. Riemer's motion to not accept the County Executive's proposed draw down of \$20 million OPEB funds to support current expenditures. Noted that staff will work on a policy for consideration by the Council later in the year regarding the use and funding of OPEB funds.

(3) **UPDATE - [American Rescue Plan Act \(ARPA\)](#)**

Received an update from Mr. Howard on proposed ARPA funding uses, as shown on page 2 of the staff report, for Council consideration.

Ms. Navarro requested, without objection, that funding for the Bel Pre Educational Equity and Enrichment hub be included in the ARPA package.

Mr. Katz expressed concern about the lack of small business assistance programs included in the ARPA funding package and expressed the hope that a way to provide assistance to businesses that did not previously apply for help can be accommodated.

Mr. Jawando requested the business rental assistance program be reworked to allow for additional businesses to participate.

Mr. Hucker suggested the Council look at opportunities to consider transportation demand management measures to help reduce traffic congestion now that more people are back to in-person work. Mr. Howard suggested this issue be considered in the context of the overall FY23 budget rather than through ARPA funding.

(4) **Introduction of Bills:**

A. [Expedited Bill 7-22, Fire and Rescue Services - Credited Service for Group G Members](#)

Introduced draft #1 of the subject expedited bill sponsored by the Council President at the request of the County Executive. A public hearing is scheduled for May 10, 2022, at 1:30 P.M.

B. [Expedited Bill 8-22, Fire and Rescue Services - Length of Service Awards Program for Volunteers - Amendments](#)

Introduced draft #1 of the subject expedited bill sponsored by the Council President at the request of the County Executive. A public hearing is scheduled for May 10, 2022, at 1:30 P.M.

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

A. [Expedited Bill 49-21, Police - Police Accountability Board - Administrative Charging Committee - Established](#)

Received an overview from Senior Legislative Attorney Wellons on the General Assembly's expansion of the scope of complaints subject to ACC/PAB review, which would include internal as well as public complaints.

Supported without objection Mr. Riemer's motion to amend lines 11-23 of **Expedited Bill 49-21** to align it with the new State law, as follows:

Complaint means an allegation of police misconduct [[filed by]] involving a member of the public and a police officer, regardless of whether the allegation originated from within the law enforcement agency or from an external source.

Ms. Wellons clarified that beginning on line 28 of the Expedited Bill, the word "and" on line 32 is essentially an "and/or" scenario and mirrors the State enabling legislation and should not be changed.

Mr. Alborno, in summary, expressed appreciation for feedback received from all sides on this critically important issue, and said that the Council has reached an outcome consistent with the General Assembly's intent but also takes into account the unique situations in our community.

Enacted draft #11 of **Expedited Bill 49-21**, as amended and shown at the end of these minutes.

Mr. Katz made the motion and the Expedited Bill was enacted by a roll call vote:

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

B. [**Bill 16-21, Environmental Sustainability - Building Energy Use Benchmarking and Performance Standards - Amendments**](#)

Mr. Hucker, Chair of the Transportation and Environment (T&E) Committee, reviewed the purpose of **Bill 16-21** and the Committee's recommendations, as contained in the staff report.

Legislative Attorney McCartney-Green noted that State Bill 528, Climate Solutions Now Act, does not include express preemption language that would preclude the County's ability to establish its own benchmarking and performance standards.

Enacted draft #3 of **Bill 16-21**, as shown at the end of these minutes.

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

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

(6) **CONSENT CALENDAR**

Approved the following consent calendar items listed below.

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

- A. [**Introduced a supplemental appropriation #22-75 to the FY22 Operating Budget, Montgomery County Public Schools \(MCPS\), ARPA Individuals with Disabilities Act Comprehensive Coordinated Early Intervening Services Plan Grant, \\$1,370,888 \(Source of Funds: Federal Funds\)**](#). A public hearing and action is scheduled for May 3, 2022, at 1:30 P.M.
- B. [**Introduced supplemental appropriation #22-76 to the FY22 Operating Budget, MCPS, ARPA Transitional Supplemental Instruction, \\$2,378,575 \(Source of Funds: Federal Funds\)**](#). A public hearing and action is scheduled for May 3, 2022, at 1:30 P.M.

- C. **Introduced** supplemental appropriation #22-77 to the FY22 Operating Budget, MCPS, ARPA Individuals with Disabilities Act Part B Grant, \$6,985,349 (source of Funds: Federal Funds). A public hearing and action is scheduled for May 3, 2022, at 1:30 P.M.
- D. **Introduced** supplemental appropriation #22-78 to the FY22 Operating Budget, MCPS, ARPA Individuals with Disabilities Part B Preschool Grant, \$623,924 (Source of Funds: Federal Funds). A public hearing and action is scheduled for May 3, 2022, at 1:30 P.M.
- E. **Introduced** a resolution in Support of the Francis G. Newlands Memorial Removal Act. Action is scheduled for April 26, 2022.
- F. **Introduced** supplemental appropriation #22-69 to the County Government's FY22 Operating Budget, Montgomery County Fire and Rescue Service \$1,937,314 for Senator Amoss Fire, Rescue, and Ambulance Fund (State 508) Grant (Source of Funds: State Grant). A public hearing is scheduled for May 10, 2022, at 1:30 P.M.
- G. **Adopted Resolution 19-1214**, amendment to FY22 Operating Budget Resolution 19-872, Section G, FY22 Designation of Entities for Non-Competitive Contract Award Status: Department of Permitting Services: New Buildings Institute, Climate Action Plan.
- H. **Adopted Resolution 19-1215**, approving a supplemental appropriation to the County Government's FY22 Capital Budget and Amendment to the FY21-26 Capital Improvements Program (CIP), Department of Health and Human Services (DHHS) - \$100,000 for Affordable Living Quarters (Source of Funds: Federal Funds).
- I. **Adopted Resolution 19-1216**, approving an amendment to FY22 Operating Budget Resolution 19-872, Section G, FY22 Designation of Entities for Non-Competitive Contract Award Status: Department of Health and Human Services Contracts: UpTogether; Cornerstone Montgomery, Inc.; Family Services, Inc.; and Interfaith Works, Inc.
- J. **Received and Released OLO Report 2022-4: Mental Health Services for Employees in Montgomery County First Responder Departments**
- K. **Adopted Resolution 19-1217**, confirming the County Executive's appointment to the Commission for Women, Kimberly Mouzon.

- L. **Introduced** [Supplemental Appropriation #22-82 to the FY22 Operating Budget, Montgomery County Government, Department of Transportation, Transportation Services Improvement fund Fuel Relief Disbursement \\$75,000 \(Source of Funds: Transportation Services Improvement Fund\)](#). A Transportation and Environment (T&E)Committee worksession is scheduled for April 25, 2022 and a public hearing/action is scheduled for May 3, 2022 at 1:30 P.M.

The Council recessed at 12:20 P.M. and reconvened at 1:34 P.M.

- (7) **PUBLIC HEARING** - [Resolution to Set FY23 Transportation Fees, Charges, and Fares](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 18, 2022. A T&E Committee worksession is scheduled for April 25, 2022.

- (8) **PUBLIC HEARING** - [Amendment to the FY21-26 Capital Improvements Program \(CIP\) and Supplemental Appropriation to the FY22 Capital Budget, Montgomery County Government Department of Transportation - \\$3,500,000 for Bridge Renovation \(No. 509753\) \(Source of Funds: GO Bonds\)](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 14, 2022. A T&E Committee worksession is scheduled for April 21, 2022.

- (9) **PUBLIC HEARING** - [Amendment to the FY21-26 CIP and Supplemental Appropriation #22-72 to the FY22 Capital Budget, Montgomery County Government, Department of Environmental Protection - \\$1,300,000 for Flood Control Study \(No. 802202\) \(Source of Funds: Current Revenue General\)](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 28, 2022. A T&E Committee worksession will be scheduled for a future date.

- (10) **PUBLIC HEARING** - [Amendment to the FY21-26 CIP and Supplemental Appropriation #22-74 to the FY22 Capital Budget, Montgomery County Government Department of Housing and Community Affairs - \\$40,000,000 for Preservation of Naturally Occurring Affordable Housing Fund \(No. 762201\) \(Source of Funds: Current Revenue: General\)](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 18, 2022. A Planning, Housing, and Economic Development (PHED) Committee worksession is scheduled for April 25, 2022.

- (11) **PUBLIC HEARING - [Recommendation on Proposed Amendments to the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan](#)**

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 26, 2022. A T&E Committee worksession will be scheduled for a future date.

- (12) **PUBLIC HEARING - [Resolution to Establish Water Quality Protection Charge for FY23](#)**

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 26, 2022. A T&E Committee worksession will be scheduled for a future date.

- (13) **PUBLIC HEARING - [Resolution to Establish FY23 Solid Waste Service Charges](#)**

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 26, 2022. A T&E Committee worksession will be scheduled for a future date.

- (14) **PUBLIC HEARING - [Bill 5-22, Economic Development Corporation - Board of Directors - Membership](#)**

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on June 6, 2022. A PHED Committee worksession is tentatively scheduled for June 13, 2022.

- (15) **PUBLIC HEARING - [Bill 6-22, Recreation - Montgomery County Sports Commission - Established](#)**

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on June 9, 2022. A joint PHED and Health and Human Services (HHS) Committee worksession is tentatively scheduled for June 16, 2022.

Mr. Rice requested to be added as a co-sponsor.

- (16) **PUBLIC HEARING - [Special Appropriation #22-68 to the FY22 Operating Budget Montgomery County Government Department of Health and Human Services Ending the Human Immunodeficiency Virus Epidemic Grant \\$1,172,584 \(Source of Funds: Federal Grant Funds\)](#)**

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 19, 2022. Action is scheduled for April 26, 2022.

- (17) **PUBLIC HEARING - [Resolution to Set FY23 Property Tax Credit for Income Tax Offset](#)**

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 15, 2022. A GO Committee worksession is tentatively scheduled for April 22, 2022.

- (18) **PUBLIC HEARING/ACTION - [Supplemental Appropriation 22-70 to the FY22 Capital Budget -Montgomery County Public Schools - \\$5,000,000 for Relocatable Classrooms \(No. 846540\) \(Source of Funds: Current Revenue: General\)](#)**

The public hearing was conducted and the record closed.

Adopted **Resolution 19-1218**, approving the subject supplemental appropriation.

Mr. Rice made the motion, and the resolution passed unanimously.

- (19) **PUBLIC HEARING/ACTION - [Special Appropriation to the FY22 Capital Budget and Amendment to the FY21-26 Capital Improvements Program, Montgomery County Public Schools - \\$3,000,000 for Relocatable Classrooms \(No. 846540\) \(Source of Funds: Current Revenue: General\)](#)**

The public hearing was conducted and the record closed.

Adopted **Resolution 19-1219**, approving the subject special appropriation.

Ms. Navarro made the motion, and the resolution passed unanimously.

- (20) **PUBLIC HEARING/ACTION - [Special Appropriation to the FY22 Capital Budget and Amendment to the FY21-26 Capital Improvements Program,](#)**

Montgomery County Government, \$2,000,000 for High School Wellness Centers (Source of Funds: G.O. Bonds, Current Revenue General)

The public hearing was conducted and the record closed.

Adopted **Resolution 19-1220**, approving the subject special appropriation.

Ms. Navarro made the motion, and the resolution passed unanimously.

- (21) **PUBLIC HEARING/ACTION** - Special Appropriation to the FY22 Operating Budget, Montgomery County Government, Department of Health and Human Services, \$3,000,000 to Implement Mental Health and Positive Youth Development Services in Montgomery County Public Schools (Source of Funds: General Fund Reserves)

The public hearing was conducted and the record closed.

Adopted **Resolution 19-1221**, approving the subject special appropriation.

Ms. Navarro made the motion, and the resolution passed unanimously.

- (22) **PUBLIC HEARING/ACTION** - Special Appropriation #22-79 to the County Government's FY22 Operating Budget, COVID-19 Human Services and Community Assistance Non-Departmental Account (NDA) - \$1,710,000 for COVID-19 Response: Montgomery County Food Security Fund (Source of Funds: American Rescue Plan Act Funds)

The public hearing was conducted and the record closed.

Adopted **Resolution 19-1222**, approving the subject special appropriation.

Mr. Rice made the motion, and the resolution passed unanimously.

- (23) **PUBLIC HEARING/ACTION** - Supplemental Appropriation to the County Government's FY22 Capital Budget, Department of Recreation; and amendment to the FY21-26 Capital Improvements Program - \$109,000 for Public Arts Trust (Source of Funds: Current Revenue)

The public hearing was conducted and the record closed.

Adopted **Resolution 19-1223**, approving the subject supplemental appropriation.

Mr. Rice made the motion, and the resolution passed unanimously.

(24) **PUBLIC HEARING - [FY23 Operating Budget](#)**

The public hearing was conducted.

(25) **DISTRICT COUNCIL SESSION**

A. Introduction - [ZTA 22-03, Downtown Silver Spring Overlay Zone](#)

Introduced draft #1 of **ZTA 22-03**, sponsored by the Council President at the request of the Planning Board. A public hearing is scheduled for May 24, 2022, at 1:30 P.M.

B. Action - [Potomac Overlook - Amendment to the Plan for Historic Preservation](#)

Participating in the discussion were Chair Anderson, Planning Board.

Adopted **Resolution 19-1224**, approving the subject amendment to the Potomac Overlook Master Plan.

The PHED Committee made the motion, which carried without objection.

C. Worksession: [Silver Spring Downtown and Adjacent Communities Plan](#)

Participating in the discussion were Chair Anderson and Ms. Wright, Director, Planning Department.

Mr. Riemer shared the PHED Committee's recommendations on the Plan as reviewed thus far, including zoning updates, transparent development height guidelines, density guidelines and available support from the County, and innovative development and walkability strategies.

Supported without objection the Committee's recommendations as contained in the staff report.

The PHED Committee will hold another worksession on April 20, 2022, and a Council worksession is tentatively scheduled for April 26, 2022.

The meeting adjourned at 3:38 P.M. and reconvened at 7:01 P.M.

(26) **PUBLIC HEARING** - [FY23 Operating Budget](#)

The public hearing was conducted.

The meeting adjourned at 8:48 P.M.

This is an accurate account of the meeting:



Judy Rupp
Clerk of the Council

Expedited Bill No. 49-21
Concerning: Police – Police
Accountability Board –
Administrative Charging Committee -
Established
Revised: 4-19-22 Draft No. 12
Introduced: December 14, 2021
Enacted: April 19, 2022
Executive: May 2, 2022
Effective: May 2, 2022
Sunset Date: none
Ch. 12, Laws of Mont. Co. 2022

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

AN EXPEDITED ACT to:

- (1) establish the Police Accountability Board for the County;
- (2) define the membership and duties of the Board;
- (3) establish the Administrative Charging Committee for the County;
- (4) define the membership, duties, and compensation for members of the Committee; and
- (5) generally amend the law governing police accountability and discipline.

By adding

Montgomery County Code
Chapter 35, Police
Article IV, Police Discipline
Sections 35-23, 35-24 and 35-25

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. Article IV, Sections 35-23, 35-24 and 35-25 are added as follows:**

2 **ARTICLE IV. POLICE DISCIPLINE**

3 **35-23. Definitions.**

4 Definitions. In this Article, the following terms have the meanings indicated.

5 Administrative Charging Committee or Committee means the Committee
6 established in Section 35-25 to serve Countywide law enforcement agencies
7 and local law enforcement agencies within the County pursuant to Section 3-
8 104 of the Public Safety Article of the Annotated Code of Maryland, as
9 amended.

10 Administratively charged means that a police officer has been formally
11 accused of misconduct in an administrative proceeding.

12 Complaint means an allegation of police misconduct [[filed by]] involving a
13 member of the public and a police officer, regardless of whether the allegation
14 originated from within the law enforcement agency or from an external
15 source.

16 Disciplinary matrix means a written, consistent, progressive, and transparent
17 tool or rubric that provides ranges of disciplinary actions for different types
18 of misconduct prepared by the Maryland Police Training and Standards
19 Commission.

20 Exonerated means that a police officer acted in accordance with the law and
21 agency policy.

22 Law enforcement agency means the County police force, Sheriff's office, or
23 other security force or law enforcement organization of the County or a
24 municipal corporation that by statute, ordinance, or common law is authorized
25 to enforce the general criminal laws of the State.

Not administratively charged means that a determination has been made not to administratively charge a police officer in connection with alleged misconduct.

Police Accountability Board or Board means the Police Accountability Board for the County established in Section 35-24 pursuant to Section 3-102 of the Public Safety Article of the Annotated Code of Maryland, as amended.

Police misconduct means a pattern, a practice, or conduct by a police officer or law enforcement agency that includes:

- (1) depriving persons of rights protected by the Constitution or laws of the State or the United States;
- (2) a violation of a criminal statute; and
- (3) a violation of law enforcement agency standards and policies.

Police officer means an individual who:

- (1) is authorized to enforce the general criminal laws of the State; and
- (2) is a member of one of the following law enforcement agencies:
 - (a) the County police department;
 - (b) a municipal police department;
 - (c) the office of the County Sheriff; or
 - (d) a County fire and explosive investigator.

A police officer does not include the Sheriff, a chief of police, a deputy or assistant chief of police, or another individual with an equivalent title who is appointed or employed by a government to exercise equivalent supervisory authority.

35-24. Police Accountability Board.

- (a) Establishment. There is a Police Accountability Board for the County. The Executive must appoint the ~~[[five]]~~ nine voting members of the

Board, including the Chair, subject to confirmation by the Council. The Executive may appoint one or more non-voting members to the Board. At least one voting member must reside in a municipality operating a police department that is within the jurisdiction of the Board.

(b) *Composition and qualifications of members.* The members of the Board must reflect the racial, gender, gender-identity, sexual orientation, and cultural diversity of the County. Each member must reside in the County and [[have experience:

(1) managing or evaluating the management of a law enforcement agency;

(2) evaluating citizen complaints against a police officer; or

(3) in personnel disciplinary proceedings as a manager, employee representative, mediator, or arbitrator]] be able to demonstrate through professional or lived experience the ability to balance effective oversight, perform objective analysis of an investigation report, and practice procedural fairness.

An active police officer must not be a member of the Board. A Board member must also meet all qualifications mandated by State law and implementing regulations while serving on the Board.

(c) *Chair.* The members of the Board may elect a Vice-Chair to serve as Chair in the absence of the Chair.

(d) *Term of office.* Each member serves a 3-year term. A member must not serve more than 2 consecutive full terms. A member appointed to fill a vacancy serves the rest of the unexpired term. Members continue in office until their successors are appointed and qualified.

(e) *Meetings, budget, and compensation for members.*

(1) The Board meets at the call of the Chair. The Board must meet as often as necessary to perform its duties, but not less than [[4 times each year]] one time each month.

(2) The Executive must recommend, and the Council must appropriate funds necessary for the Board and the Administrative Charging Committee to operate in the County's annual operating budget. The annual appropriation for the Board and the Administrative Charging Committee must include funding for training of members provided by:

(A) the County Police Department in cooperation with the Sheriff and each municipal police department within the jurisdiction of the Board; and

(B) appropriate outside organizations.

(3) The [[Board members]] Chair or another Board member designated to serve on the Administrative Charging Committee must serve without compensation except for the reimbursement of expenses incurred in attending meetings or carrying out other duties, including travel and dependent care costs at rates established by the County, subject to appropriation. The annual salary for each other Board member is \$10,000. The salary for each member must be adjusted on the first Monday in December by the Consumer Price Index for All Urban Consumers (CPI-U) 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.

(f) Staff. The Chief Administrative Officer must provide appropriate dedicated full-time staff to the Board and make available to the Board

services and facilities that are necessary or appropriate for the proper performance of its duties. The County Attorney must retain special legal counsel approved by the Council to serve as counsel to the Board.

(g) Duties. The Board must:

- (1) hold quarterly meetings with the directors of one or more law enforcement agencies operating in the County who employ one or more police officers;
- (2) appoint civilian members to the Administrative Charging Committee and trial boards;
- (3) receive complaints of police misconduct filed by a member of the public;
- (4) review the outcomes of disciplinary matters considered by the Administrative Charging Committee on a quarterly basis;
- (5) advise the Executive and the Council on policing matters; and
- (6) refer each complaint of police misconduct filed with the Board to the appropriate law enforcement agency within 3 days after receipt for investigation.

(h) Removal of a member. The Executive with the approval of at least 6 members of the Council may remove a member for:

- (1) neglect of duty, including failure to complete mandatory training;
- (2) misconduct in office;
- (3) a member's inability or unwillingness to perform the duties of the office;
- (4) conduct that impairs a member from performing the duties of the office; or
- (5) [[violation of law; or

(6)]] inability to meet the qualifications for a Board member mandated by State law or implementing regulations.

(i) Reports. The Board must submit an annual report to the Executive and the Council each December 31 that:

(1) identifies any trends in the disciplinary process of police officers in the County;

(2) recommends changes to policy that would improve police accountability in the County; and

(3) describes the activities of the Board and the numbers of complaints received.

35-25. Administrative Charging Committee.

(a) Establishment. There is an Administrative Charging Committee for the County.

(b) Membership. The Committee has 5 voting members. The members are:

(1) the Chair of the Police Accountability Board or another member of the Board designated by the Chair;

(2) 2 civilian members appointed by the Police Accountability Board; and

(3) 2 civilian members appointed by the Executive.

(c) Composition and qualifications of members. The Committee consists of a chair and 4 additional members. The members of the Committee must reflect the racial, gender, gender-identity, sexual orientation, and cultural diversity of the County. Each member must [[:

(1)]] reside in the County [[: and have

(2) experience managing or evaluating the management of a law enforcement agency;

(3) experience evaluating citizen complaints against a police officer;
or

(4) experience in personnel disciplinary proceedings as a manager,
employee representative, mediator, or arbitrator]] and be able to
demonstrate through professional or lived experience the ability
to balance effective oversight, perform objective analysis of an
investigation report, and practice procedural fairness.

(d) *Training.* Each member of the Committee must complete training on
matters relating to police procedures from the Maryland Police
Training and Standard Commission before serving as a member.

(e) *Staff.* The Chief Administrative Officer must provide appropriate
dedicated full-time staff to the Committee and make available to the
Committee services and facilities that are necessary or appropriate for
the proper performance of its duties. The County Attorney must retain
special legal counsel approved by the Council to serve as counsel to the
Committee.

(f) *Compensation.* The annual salary for the Chair is \$22,000 and the
annual salary for each member is \$16,000. The salary for the Chair and
each member must be adjusted on the first Monday in December by the
Consumer Price Index for All Urban Consumers (CPI-U) 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.

(g) *Meetings.* The Committee must meet at least one time each month or
[[as]] more frequently if needed.

(h) *Term of office.* Each member serves a 3-year term. A member must not
serve more than 2 consecutive full terms. A member appointed to fill a

vacancy serves the rest of the unexpired term. Members continue in office until their successors are appointed and qualified.

(i) Duties. The Committee must:

(1) review the findings of each law enforcement agency's investigation forwarded by the agency to the Committee;

(2) review any body camera footage that may be relevant to the matters covered in the complaint of misconduct;

(3) authorize a police officer called before the Committee to be accompanied by a representative;

(4) determine if the police officer who is the subject of the investigation should be administratively charged or not administratively charged within 30 days after receipt of the law enforcement agency's investigatory file unless the Committee requests further review under subsections (j)(1) or (2);

(4) if the Committee determines that a police officer should be administratively charged, recommend discipline pursuant to the disciplinary matrix;

(5) if the Committee determines that a police officer should not be administratively charged, determine if:

(A) the allegations against the police officer are unfounded, including situations where existing departmental policy fails to properly address the situation for which the officer was charged; or,

(B) the police officer is exonerated;

(6) issue a written opinion for each complaint describing in detail the Committee's findings, determinations, and recommendations; and

(7) forward the written opinion to the director of the appropriate law enforcement agency, the accused police officer, and the complainant.

(j) Authority of the Committee. The Committee may:

(1) request information or action from the law enforcement agency that conducted the investigation, including requiring additional investigation;

(2) issue subpoenas for documents or witnesses necessary to execute the Committee's duties; and

(3) record, in writing, any failure of supervision that caused or contributed to a police officer's misconduct.

(k) Confidentiality. Each member of the Committee must maintain confidentiality relating to a matter being considered by the Committee until final disposition of the matter.

(l) Duties of the law enforcement agency. The law enforcement agency must investigate and submit a written investigation report to the Administrative Charging Committee for each complaint received by the agency or referred to the agency by the Police Accountability Board. Each law enforcement agency must submit a monthly report to the Administrative Charging Committee detailing complaints received and the status of each investigation.

(m) Removal of a member. The Executive with the approval of at least 6 members of the Council may remove a member for:

(1) neglect of duty, including failure to complete mandatory training;

(2) misconduct in office;

(3) a member's inability or unwillingness to perform the duties of the office;

(4) conduct that impairs a member from performing the duties of the office; or

(5) [[violation of law; or

(6)]] inability to meet the qualifications for a Board member mandated by State law or implementing regulations.

Sec. 2. Transition. Notwithstanding Sections 35-24(d) and 35-25(h) in Section 1, the Executive must stagger the initial terms of the members of the Board and the Committee so that the terms of approximately one-third of the members expires each year.

Sec. 3. Expedited Effective Date, Transition.

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 and must apply to eligible complaints based on an incident occurring on or after:

(a) July 1, [[2022]] 2023 against a police officer who is covered by a collective bargaining agreement entered into before June 30, 2022, that includes a different disciplinary system; and

(b) July 1, 2022, against any other police officer.

Approved:

/s/ 4/21/2022

Gabriel Albornoz, President, County Council

Date

Approved:

/s/ 5/2/2022

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

/s/ 5/6/2022

Judy Rupp, Clerk of the Council

Date

Bill No. 16-21
Concerning: Environmental
Sustainability - Building Energy Use
Benchmarking and Performance
Standards – Amendments
Revised: 4/19/2022 Draft No. 4
Introduced: May 4, 2021
Enacted: April 19, 2022
Executive: May 2, 2022
Effective: August 1, 2022
Sunset Date: None
Ch. 13, Laws of Mont. Co. 2022

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) expand the number of buildings covered by benchmarking requirements;
- (2) amend certain definitions;
- (3) establish energy performance standards for covered buildings with certain gross floor area;
- (4) create a Building Performance Improvement Board; and
- (5) generally revise County law regarding environmental sustainability.

By amending

Montgomery County Code
Chapter 18A, Environmental Sustainability
Sections 18A-38A, 18A-38B, 18A-39, 18A-42, and 18A-43

By adding

Montgomery County Code
Chapter 18A, Environmental Sustainability
Sections 18A-38, 18A-42A, 18A-42B, 18A-42C, 18A-43A, 18A-43B and 40-10B

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

Sec. 1. Sections 18A-38A, 18A-38B, 18A-39, 18A-42, and 18A-43 are amended and Sections 18A-38, 18A-42A, 18A-42B, 18A-42C, 18A-43A, 18A-43B and 40-10B are added as follows:

Article 6. Building Energy Use Benchmarking and Performance Standards.
18A-38[A]. Intent.

The intent of this Article is to:

* * *

(b) engage the commercial and multi-family residential building sector with building energy information crucial to adopting energy conservation and efficiency opportunities;

* * *

(d) strengthen the local economy by encouraging more efficient business operations and providing new opportunities for local businesses that provide energy conservation and efficiency services; [and]

(e) recognize building owners that have made investments to improve their building energy performance and expand in-house capacity for energy management[.]; and

(f) improve the energy performance of covered buildings through established building energy performance standards, therefore, reducing greenhouse gas emissions from the built environment and helping the County achieve its climate action goal of zero greenhouse gas emissions by 2035.

18A-38[B]A. Definitions.

In this Article, the following words have the meanings indicated:

Affordable housing means a [[dwelling unit]] multi-family building that includes at least 50% of dwelling units whose sale or rental price [[does]] do

27 not exceed that of a moderately-priced dwelling unit under Chapter 25A. [[or
 28 group senior assisted housing.]]

29 *Benchmark* means to track and input a building's energy consumption data
 30 and other relevant building information for 12 consecutive months, as
 31 required by the benchmarking tool, to quantify the building's energy use.

32 *Benchmarking tool* means the website-based software, commonly known as
 33 ENERGY STAR Portfolio Manager, or any successor system, [developed and
 34 maintained] approved by the United States Environmental Protection Agency
 35 to track and assess the relative energy use of buildings nationwide.

36 *Building means:*

37 (1) any single structure utilized or intended for supporting or
 38 sheltering any occupancy, except if a single structure contains two
 39 or more individually metered units operating independently that
 40 have stand-alone heating, cooling, hot water, and other
 41 mechanical systems, and no shared interior common areas, or;

42 (2) two or more structures utilized or intended for supporting or
 43 sheltering any occupancy, that:

44 (A) are serviced by a common energy meter;

45 (B) have a common heating or cooling system;

46 (C) share interior common areas; or

47 (D) whose configuration otherwise prevents an accurate
 48 determination of the energy consumption attributable to
 49 each individual structure.

50 *Building energy performance standard* means a policy that sets a minimum
 51 required level of energy performance for covered buildings.

Building performance improvement plan means a document in a format approved by the Director submitted by a covered building owner and approved by the Director as described in this Article.

Building type means a category of covered buildings subject to the same final performance standards.

* * *

County-owned covered building means [any] a building owned by the County[, or any group of buildings owned by the County that have the same property identification number, that] whose gross floor area equals or exceeds [50,000] 25,000 [in total building] square [footage] feet.

Covered building means [any] a County-owned [building], Group 1 [covered building], [or] Group 2, Group 3, Group 4, or Group 5 covered building. [Covered building does not include any building with more than 10% of total building square footage which is used for

(1) public assembly in a building without walls;

(2) warehousing;

(3) self storage; or

(4) a use classified as manufacturing and industrial or transportation, communication, and utilities.]

* * *

[Energy use intensity or EUI means a numeric value calculated by the benchmarking tool that represents the energy consumed by a building relative to its size.]

Final performance standard means the numeric value of site EUI that each covered building must ultimately achieve [[or exceed]].

Gross floor area means the total building square footage measured between the principal exterior surfaces of the enclosing fixed walls of a building. Gross

floor area consists of all areas inside the building, including lobbies, tenant areas, common areas, meeting rooms, break rooms, the base level of atriums, restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, and storage rooms. Gross floor area does not include exterior spaces, balconies, patios, exterior loading docks, driveways, covered walkways, outdoor play courts (e.g., tennis, basketball), parking, the interstitial space between floors (which house pipes and ventilation), and crawl spaces. Gross floor area is not the same as rentable space, but rather includes all areas inside the building(s).

Group 1 covered building means [any] a privately owned nonresidential covered building [, or any group of nonresidential buildings that have the same property identification number, not owned by the County that] whose gross floor area equals or exceeds 250,000 [in total building] square [footage] feet.

Group 2 covered building means [any] a privately owned nonresidential covered building [, or any group of nonresidential buildings that have the same property identification number, not owned by the County that] whose gross floor area equals or exceeds 50,000 square feet [gross floor area] but is less than 250,000 [in total building] square [footage] feet.

Group 3 covered building means:

- (1) a privately owned nonresidential covered building whose gross floor area equals or exceeds 25,000 square feet but is less than 50,000 square feet,
or
- (2) a privately owned nonresidential covered building whose gross floor area equals or exceeds 50,000 square feet and whose use type was previously exempted under this Article.

Group 4 covered building means a privately owned multifamily residential or mixed-use covered building whose gross floor area equals or exceeds 250,000 square feet.

Group 5 covered building means a privately owned multifamily residential or mixed-use building whose gross floor area equals or exceeds 25,000 square feet but is less than 250,000 square feet.

Interim performance standard means the numeric value of site EUI which covered buildings must achieve or exceed by a fixed date every [[five (5)]] four (4) years from a covered building's performance baseline.

Interior common area means shared space within a building such as hallways, lobbies, stairwells, and other shared amenities (e.g., gyms, laundry rooms, party rooms).

Mixed-use building means a building that contains both residential units and commercial space.

Net site EUI means site energy use minus energy generated from [[onsite solar sources]] the renewable energy allowance divided by the total gross floor area of the building expressed in thousands of British thermal units per gross square feet (kBtu/GSF).

Newly constructed covered building means a covered building whose owner has completed construction, received a use and occupancy permit, and is able to begin benchmarking the building's energy use and other characteristics.

Normalized net site energy means the site energy use by the covered building normalized for weather and other characteristics within the limits of the capabilities of the benchmarking tool and normalized for other factors as determined by the Department minus energy generated from [[onsite solar sources]] the renewable energy allowance.

Normalized net site EUI means the total normalized net site energy use consumed by a covered building in one year divided by the total gross floor area of the building expressed in kBtu/GSF.

Owner means an individual or legal entity in whose name a building is titled, or in the case of a community association, the governing body of either a condominium or a cooperative housing corporation.

Performance baseline means the normalized net site EUI for a covered building averaged over two calendar years.

Performance metric means an objectively verifiable numeric measure of normalized site EUI to determine building performance.

Process load means energy consumed for bona fide purposes other than heating, cooling, ventilation, domestic hot water, lighting, appliances, office equipment, data centers, or other plug loads.

* * *

Reported benchmarking information means the descriptive information about a building, its operating characteristics, and information generated by the benchmarking tool regarding the building's energy consumption, [and] efficiency, and performance. *Reported benchmarking information* includes the building identification number, address, gross floor area, energy performance score, site energy use intensity, and annual greenhouse gas emissions.

[*Residential occupancy* means the occupancy of dwelling units in any building that includes one or more dwellings.]

Site energy use means all energy used onsite by a covered building to meet the energy loads of a building, including electricity delivered to the building through the electric grid and generated onsite with renewable sources; natural gas; district steam; district hot and chilled water; diesel; propane; fuel oil;

wood; coal; and other fuels used onsite. Site energy use does not include electricity used to charge vehicles.

Site energy use intensity or site EUI means a numeric value calculated by the benchmarking tool that represents the energy consumed by a covered building relative to its size in terms of energy used per square foot of gross floor area per year.

Tenant means a person or legal entity occupying or holding possession of a building, part of a building, or premises under a rental agreement.

[Total building square footage means the sum of the gross horizontal area of the several floors of a building or structure measured from the exterior faces of the exterior walls or from the center line of party walls. In a covered but unenclosed area, such as a set of gasoline pumps or a drive-through area, total building square footage means the covered area. Total building square footage does not include any:

- (1) basement or attic area with a headroom less than 7 feet 6 inches;*
- (2) area devoted to unenclosed mechanical, heating, air conditioning, or ventilating equipment;*
- (3) parking structure; or*
- (4) accessory structure to a residential building.]*

18A-38B. Applicability.

This Article does not apply to a covered building for which more than 50% of the total gross floor area is used for:

- (a) public assembly in a building without walls;
- (b) industrial uses where the majority of energy is consumed for manufacturing, the generation of electric power or district thermal energy to be consumed offsite, or for other process loads; or
- (c) transportation, communications, or utility infrastructure.

18A-39. Energy use benchmarking.

(a) County-owned covered buildings.

(1) No later than June 1, 2015, and every June 1 thereafter, the County must benchmark any County-owned covered building[s] whose gross floor area equals or exceeds 50,000 square feet for the previous calendar year and report the benchmarking information to the Department.

(2) No later than June 1, [[2022]] 2023, and every June 1 thereafter, the County must benchmark any County-owned covered building whose gross floor area equals or exceeds 25,000 square feet but is less than 50,000 square feet for the previous calendar year and report the benchmarking information to the Department.

(b) * * *

(c) * * *

(d) Group 3 and Group 4 covered buildings. No later than June 1, [[2022]] 2023, and every June 1 thereafter, the owner of any Group 3 or Group 4 covered building must benchmark the building for the previous calendar year and report the benchmarking information to the Department.

(e) Group 5 covered buildings. No later than June 1, [[2023]] 2024, and every June 1 thereafter, the owner of any Group 5 covered building must benchmark the building for the previous calendar year and report the benchmarking information to the Department.

(f) Newly constructed covered building. Following the first full calendar year that energy data can be collected and that the building was occupied, on average, by at least one full-time-equivalent employee (40 person-hours per week) exclusive of security guards, janitors,

construction workers, landscapers, and other maintenance personnel throughout the calendar year being reported, the owner of any newly constructed covered building must benchmark the building and report to the Department no later than June 1 of that following year, and every June 1 thereafter.

[(d)] (g) *Waiver.* [The Director may waive the benchmarking requirements of this Section if] For any time period for which the owner of a covered building documents, in a form required by regulation, [that the building] any of the conditions below, the Director may waive the benchmarking requirements of this Section[:].

(1) [is in financial] Financial distress, defined as a building that:

(A) is the subject of a tax lien sale or public auction due to property tax arrearages;

(B) is controlled by a court appointed receiver; or

(C) was recently acquired by a deed in lieu of foreclosure;

(2) [had average physical occupancy of less than 50% throughout the calendar year for which benchmarking is required] On average, less than one full-time-equivalent employee occupied the building during the calendar year being reported; [or]

(3) The covered building is [new] newly [construction] constructed and has received its certificate of use and occupancy during the calendar year for which benchmarking is required[.]; or

(4) The covered building was demolished or received its demolition permit during the calendar year for which benchmarking is required.

18A-42. Establishment of building energy performance standards.

(a) Requirement. The Department must develop and implement building energy performance standards for covered buildings. The standards must:

- (1) increase the energy efficiency of existing covered buildings and expedite the reduction of greenhouse gas emissions from the building sector;
- (2) use normalized net site EUI as a performance metric wherever feasible or net site EUI if the Director determines that normalization is not practical as performance metric;
- (3) account for [[onsite solar generation]] the renewable energy allowance in the performance metric;
- (4) use the benchmarking tool to report building energy performance to the County; and
- (5) utilize available data sources and best practices to establish interim and final performance standards.

(b) Building types.

- (1) No later than [[June 1, 2022]] December 31, 2023, the County Executive must issue Method (2) regulations establishing building types for every covered building.
- (2) Covered buildings within each building type must have shared characteristics that facilitate the implementation and enforcement of this Article. The Department may define one or more building types to be identical to ENERGY STAR property type categories.
- (3) All covered buildings within the same building type category must be subject to the same final performance standards that facilitate the implementation and enforcement of this Article.

(c) Performance baseline. The performance baseline for each covered building must be calculated as follows:

- (1) County-owned covered buildings whose gross floor area equals or exceeds 50,000 square feet, Group 1 covered buildings, and Group 2 covered buildings: Average of the 2 complete years with the highest normalized net site EUI between calendar year 2018 and calendar year [[2021]] 2022.
- (2) County-owned covered buildings whose gross floor area is at least 25,000 square feet but not greater than 50,000 square feet, Group 3, and Group 4 covered buildings: Average of the 2 complete years with the highest normalized net site EUI between calendar year [[2021]] 2022 and calendar year [[2023]] 2024.
- (3) Group 5 covered buildings: Average of the 2 complete years with the highest normalized net site EUI between calendar year [[2022]] 2023 and calendar year [[2024]] 2025.
- (4) Newly constructed covered buildings: Average of the 2 complete years with the highest normalized net site EUI over the first 3 years of benchmarking reporting.

(d) Interim and final performance standards.

- (1) No later than [[June 1, 2022]] December 31, 2023, the County Executive must issue Method (2) regulations establishing final performance standards for each building type using the normalized site EUI performance metric wherever feasible or site EUI if the Director determines that normalization is not practical.
- (2) The Department must calculate [[each]] interim performance standards for each covered building with the starting point set at

the covered building's performance baseline and continuing to the final performance standard.

(3) Each covered building must demonstrate progress towards the final performance standard by complying with interim performance standards every ~~[[4]]~~ 5 years after the performance baseline year as follows:

(A) County-owned covered buildings whose gross floor area equals or exceeds 50,000 square feet, Group 1, and Group 2 covered buildings:

(i) Interim performance standard: December 31, ~~[[2027]]~~ 2028, and evaluated with June 1, ~~[[2027]]~~ 2029, benchmarking.

(ii) Final performance standard: December 31, ~~[[2034]]~~ 2033, and evaluated with June 1, ~~[[2035]]~~ 2034, benchmarking.

(B) County-owned covered buildings whose gross floor area is at least 25,000 square feet but not greater than 50,000 square feet, Group 3, and Group 4 covered buildings:

(i) Interim performance standard: December 31, ~~[[2028]]~~ 2030, evaluated with June 1, ~~[[2029]]~~ 2031.

(ii) Final performance standard: December 31, ~~[[2036]]~~ 2035, evaluated with June 1, ~~[[2037]]~~ 2036.

(C) Group 5 covered buildings:

(i) Interim performance standard: December 31, ~~[[2029]]~~ 2031, evaluated with June 1, ~~[[2030]]~~ 2032, benchmarking.

(ii) Final performance standard: December 31, [[2037]] 2036, evaluated with June 1, [[2038]] 2037.

(D) Newly constructed buildings will be added to a coverage group (Group 1, Group 2, Group 3, Group 4, or Group 5) based on gross floor area and building type:

(i) Interim performance [[standard]] standards: Evaluated with the [[first]] interim standard of the building's coverage group following creation of the performance baseline.

(ii) Final performance standard: Evaluated with the final performance standard of the building's coverage group, if the performance baseline is created before the final performance standard.

(4) Covered buildings must maintain the final performance standards established by regulation.

(5) Covered buildings must demonstrate compliance with the interim and final performance standards by reporting building energy benchmarking data to the Department using the benchmarking tool. The Department must determine compliance by comparing the performance metric against the interim or final performance standards for the applicable building type.

18A-42A. Building Performance Improvement Board.

(a) Established. The County Executive must appoint, subject to confirmation by the Council, a Building Performance Improvement Board comprised of 15 voting members. Designees of the Department of Environmental Protection, Department of General Services, Department of Housing and Community Affairs, Department of Housing and

Community Development, and Department of Permitting Services are ex officio nonvoting members of the Board.

(b) Membership. Each voting member of the Board must be a resident of the County or a member of the governing body or staff of an entity doing business in the County. The Board should include:

- (1) Representatives of local electricity or natural gas utilities;
- (2) Providers of energy efficiency, building resilience and/or renewable energy services or consulting;
- (3) Owners or managers of affordable housing;
- (4) Owners or managers of multi-family residential buildings containing market-rate units;
- (5) Nonresidential building owners or managers;
- (6) Nonprofit building owners or managers;
- (7) Technical building design or operations professionals;
- (8) Providers of facilities, mechanical, or similar engineering services;
- (9) Commercial or multi-family residential construction finance or investment professionals;
- (10) Representatives of nonprofit organizations dedicated to climate action, resiliency, public health, green building, economic development, or building decarbonization; and
- (11) Representatives of nonprofit organizations dedicated to racial equity or environmental justice.

(c) Terms. Each voting member serves a 3-year term beginning on January 1. Of the members first appointed, one-third must be appointed for 1-year terms, one-third must be appointed for 2-year terms, and one-third must be appointed for 3-year terms. A member must not serve more than 2 consecutive full terms. A member appointed to fill a vacancy serves

the rest of the unexpired term. Members continue in office until their successors are appointed and qualified. The Board must elect one of its members as Chair to be who must serve as such for one calendar year or until a successor is elected.

(d) Procedures. The Board must adopt rules to govern its procedures including meeting frequency, managing Chair elections, establishing committees, and other issues that pertain to Board governance.

(e) Duties and responsibilities. The Board must generally advise the Department on implementation of building energy performance standards. This includes providing recommendations to the Director on:

(1) Building type groupings;

(2) Interim and final performance standards for each building type;

(3) Managing situations where ownership of a building is transferred or a building's type changes;

(4) Building performance improvement plan technical review and approval processes;

(5) Complementary programs or policies, with particular attention to assistance or accommodations for challenged or under-resourced sectors, such as affordable housing, non-profit organizations, and small businesses; and

(6) Enforcement of benchmarking requirements and performance standards.

(f) Compensation. The members of the Board serve without compensation.

18A-42B. Building performance improvement plans.

(a) If a covered building owner cannot reasonably meet one or more of the applicable interim or final performance standards due to economic infeasibility or other circumstances beyond the owner's control, based on

396 guidelines established by regulation, the owner may submit a proposed
397 building performance improvement plan to the Department for review
398 and approval by the Director in consultation with the Building
399 Performance Improvement Board.

400 (b) A building performance improvement plan must include:

401 (1) documentation of economic infeasibility or other circumstances
402 beyond the owner's control such that interim or final performance
403 standards are not met;

404 (2) a list of potential improvement measures, including engineering
405 calculations of energy savings and a cost-benefit analysis of each
406 potential improvement measure;

407 (3) a plan and timeline for achieving energy improvements to the
408 building's performance that will provide cost-effective energy
409 savings based on guidelines established by regulation, including
410 the estimated savings to be realized by implementing all of the
411 cost-effective measures identified in the plan; and

412 (4) procedures for correcting any noncompliance or deviation from the
413 plan.

414 (c) The owner must submit a building performance improvement plan to the
415 Department at least 90 days before the deadline for submitting
416 documentation of compliance with interim or final performance
417 standards.

418 (d) If, after consulting with the Building Performance Improvement Board,
419 the Director approves the building performance improvement plan, the
420 owner must record the building performance improvement plan as a
421 covenant in the County land records and deliver a certified copy of the
422 recorded plan to the Department. After the Director receives the certified

copy of the recorded plan, the covered building will be deemed to be in compliance with the applicable interim or final performance standards as long as the owner fulfills the terms of the building performance improvement plan within the timeline specified in the plan.

18A-42C. Extensions and adjustments.

(a) The Department may establish additional criteria recommended by the Building Performance Improvement Board for qualified affordable housing, non-profit buildings, and other buildings as appropriate to modify compliance with interim or final performance standards by regulation.

(b) The Director, in consultation with the Building Performance Improvement Board, may grant an extension or adjustment to an interim or final performance standard for a covered building whose owner submits a request along with documentation at least 90 days before the deadline for submitting documentation of compliance with an interim or final performance standard if any of the following conditions apply:

(1) A demolition permit has been issued or a demolition of the building is planned before the deadline to comply with the next interim performance standard;

(2) The building is in financial distress under Section 18A-39 (g)(1);

(3) The building is exempt from real property taxes and the owner is able to certify by the statement of a certified public accountant or by sworn affidavit that the owner's revenue less expenses for the previous 2 years was negative; [[or]]

(4) The Director determines that strict compliance with those standards would be economically infeasible, as defined by

regulation, due to circumstances beyond the owner's control [(.)];

or

(5) Other acceptable conditions as determined by the Director through regulation.

18A-[42]43. Annual report; disclosure of benchmarking and energy performance information.

(a) *Annual report required.* By October 1 of each year, the Director must submit a benchmarking and building performance report to the County Executive and County Council. The report must review and evaluate energy efficiency in covered buildings, including:

(1) summary statistics on the most recent reported energy benchmarking information, including information on the completeness and level of data quality of the building energy data being reported by building type;

(2) discussion of any energy efficiency trends, cost savings, and job creation resulting from energy efficiency improvements; [and]

(3) for County-owned covered buildings:

(A) the scores of County-owned covered buildings benchmarked; and

(B) whether the Director recommends any energy efficiency improvements for specific buildings; and

(4) building energy performance summary statistics, if an interim or final performance standard occurs for a covered building type in the current reporting cycle.

(b) *Disclosure of benchmarking and building energy performance standards [information] data.* The Director must make reported aggregated benchmarking and building energy performance standard

[information] data readily available to the public, including on the open data website created under Section 2-154, and the Director may exempt information from disclosure only to the extent that disclosure is prohibited under federal or state law.

(c) *Exceptions to disclosure.* To the extent allowable under state law, the Director must not make the following readily available to the public:

(1) any individually [-] attributable reported benchmarking information from the first calendar year that a covered building is required to benchmark; [and]

(2) any individually [-] attributable reported benchmarking or building energy performance standards information relating to a covered building if the disclosure of the covered building's energy use would be harmful to the public interest and national security [that contains a data center, or television studio that together exceeds 10% of the total building square footage of the individual building until the Director finds that the benchmarking tool can make adequate adjustments for these facilities. When the Director finds that the benchmarking tool can make adequate adjustments, the Director must report this data in the annual report]; and

(3) building performance improvement plans and associated documentation attributable to an individual covered building.

18A-[43]43A. Regulations[; penalties].

[(a)] The County Executive may issue Method (2) regulations to administer this Article.

[(b) Any violation of this Article is a Class A violation.]

18A-43B. Penalties; enforcement.

(a) A building owner must not knowingly provide false information required under this Article to the Department. The Director may revoke or modify an extension, adjustment, building performance improvement plan, or compliance with benchmarking or the interim or final performance standards in response to any false information provided by the building owner.

(b) Any violation of this Article is a Class A violation.

40-10B. Disclosure of covered building benchmarking and performance standards information.

(a) Before a buyer signs a contract for the sale of a covered building as defined in Section 18A-38A, the seller must:

(1) disclose to the prospective buyer that the building is subject to building energy performance standards in Chapter 18A, Article 6;

(2) transfer the following records to the prospective buyer:

(A) the benchmarking property record from the benchmarking tool;

(B) documentation of data verification; and

(C) any other related records relevant to maintain compliance with Chapter 18A, Article 6; and

(3) provide to the prospective buyer the following information:

(A) performance baseline;

(B) interim and final performance standards; and

(C) building performance improvement plan.

(b) The prospective buyer must indicate, by signing an addendum to the contract or a separate section of the contract printed in boldface type, that

529 the seller has made the disclosures and provided the information required
530 by subsection (a).

Approved:

<u>/s/</u>	<u>4/22/2022</u>
Gabriel Albornoz, President, County Council	Date

Approved:

<u>s/</u>	<u>5/2/2022</u>
Marc Elrich, County Executive	Date

This is a correct copy of Council action.

<u>s/</u>	<u>5/6/2022</u>
Judy Rupp, Clerk of the Council	Date

531