

MEMORANDUM

February 22, 2023

TO: Planning, Housing and Parks Committee
FROM: Khandikile Mvunga Sokoni, Legislative Attorney
SUBJECT: Bill 28-22; Common Ownership Communities – Duties, Requirements and Procedures
PURPOSE: Worksession – Committee recommendation expected

Expected Attendees:

- Aseem Nigam, Director, Department of Housing and Community Affairs (DHCA) – Invited
- Scott Bruton, Deputy Director, DHCA
- Mary Gentry, DHCA
- Nicolle Katrivanos, DHCA
- Ifeoluwapo (Ife) Fabayo, COC Investigator, DHCA (Invited)
- Janmarie Peña, Performance Management and Data Analyst, Office of Legislative Oversight (OLO) staffer (Invited).

BACKGROUND AND BILL SPECIFICS

Bill 28-22 Common Ownership Communities – Duties, Requirements and Procedures, sponsored by then Council President Albornoz at the request of the County Executive was introduced on October 18, 2022. The public hearing was held on December 6, 2022.

The bill would:

- (1) require regular periodic training of members of a governing board of a common ownership community (COC);
- (2) clarify common ownership community registration, voting and dispute resolution procedures;

- (3) outline criteria that the County's Commission on Common Ownership Communities (CCOC) considers in accepting jurisdiction over a dispute involving a common ownership community; and
- (4) generally, revise County law regarding COCs.

By transmittal memorandum dated August 30, 2022, the County Executive requested this bill to improve association governance of COCs by requiring periodic retraining of members of governing boards, clarifying voting and registration, and enhancing dispute resolution procedures. The proposed changes were recommended by the CCOC. In addition to the changes outlined above, the County Executive's proposed bill also included a provision that would enable COCs to hold meetings remotely via video and teleconferencing platforms. However, this latter recommendation of the CCOC has been rendered moot by State legislation that now allows for this. Therefore, that piece has been omitted from this bill.

The CCOC is appointed by the County Executive, subject to confirmation by the Council, and consists of 15 voting members. Eight members should be selected from unit or lot owners or residents of self-managed and professionally managed condominiums, self-managed and professionally managed cooperative housing corporations, and self-managed and professionally managed homeowners' associations and may include members or former members of governing boards. Seven members should be selected from persons who are members of professions associated with COCs (such as persons involved in housing development and real estate sales and attorneys who represent community associations, developers, housing management or tenants), including at least one person who is a professional community association manager. Designees of the County Council (if the Council selects a designee), Planning Board, Department of Environmental Protection, Department of Permitting Services, Department of Transportation, and Department of Housing and Community Affairs are ex-officio nonvoting members of the Commission. Voting members of the CCOC have term limits and have mandatory training requirements which include both the training that is required of COC board members under the Code and training in State and local laws on matters within the jurisdiction of Commission provided or otherwise approved by the County Attorney. Sec, 10B-3(d).

In summary Bill 28-22 which starts at © 1 of this packet:

1. **Enhances training requirements.** Although a training requirement for board members of COCs is not new, the bill (see lines 238-266¹), this training is being enhanced to require retraining every 3 years. A board member's training certificate is only valid for 3 years.
2. **Terms of office.** Unless association documents provide for a different term, COC board members serve a 3-year term which is being increased from 2. (See line 234).
3. **Budget:** The Code currently restricts a COC governing board's ability to make certain amendments to the COC budget with less than 30 days' notice. This bill seeks to ease this

¹ References to line numbers in this memo are references to the line numbers in the accompanying proposed bill which is part of the bill packet.

restriction in the case of a COC board needing to properly fund the most recent reserve study conducted for the association. (See lines 270-277).

4. **Voting.** The provisions at lines 206-210 and 224-230 seek to increase transparency in the voting procedures for COC board members.
5. **Dispute Resolution.** The dispute resolution provisions are contained in Article 2, starting at Sec. 10B-8 of the Code. Sec. 10B-9 of the Code provides a process for a party to file a complaint with the CCOC only after making good faith efforts to exhaust all the administrative procedures and remedies under the COC's governing documents. This section is not being amended by this bill. There is also an automatic stay provision which prevents a COC from enforcing its rules while the dispute resolution process outlined in the Code runs its course, although this does not prevent the COC from filing a lawsuit in court. Under current code provisions outlined in Sec 10B-9A, the COC can seek relief from this automatic stay. This bill proposes amendments to replace references to "the association" with "a party". The result is that any party to the dispute can now seek relief from an automatic stay. (See lines 98-118).
6. **Jurisdiction.** When an aggrieved party files a complaint with the Commission, firstly, a determination is made about whether there is a dispute that falls within the authority of CCOC to preside over. The Director may investigate the facts alleged and if in the Director's opinion a complaint was not properly filed with the Commission, the Director may warn the parties about sanctions that exist under Sec 10B-13(d). If the Director, after reviewing a dispute and any investigation, finds that reasonable grounds exist to conclude that a violation of law or association rules has occurred, the Director must attempt to resolve the matter through information negotiation including in the Director's discretion, mediation. Sec. 10B-11(c). If the Director at any stage determines that mediation would be fruitless or mediation does not occur within 90 days of the finding referenced above, then the Commission must promptly schedule an administrative hearing.
7. Under Sec 10B(13)(a)(2) the hearing panel will not hold an administrative hearing if it determines that the dispute is clearly not within the jurisdiction of the Commission. That is not being changed by this bill. This bill proposes to require that if the CCOC decides to not accept jurisdiction of a dispute, then it must notify the parties to the dispute of this decision within 10 business days after the decision. (See lines 119-123). The Commission may accept jurisdiction of a complaint if a party fails to comply with an agreement reached during mediation. (See lines 124-125), and the Commission's decision to not accept jurisdiction of a complaint is not subject to judicial review. (See lines 126-127).

IMPACT STATEMENTS

The Office of Legislative Oversight (OLO) submitted a Racial Equity and Social Justice (RESJ) Impact Statement dated October 30, 2022. OLO anticipates Bill 28-22 could have a minimal impact on racial equity and social justice (RESJ) in the County, and therefore did not

recommend any amendments. OLO, however, did point out that if Council wishes to improve the RESJ impact of Common Ownership Communities, it could restart the DHCA Task Force on Distressed COCs.

OLO also presented an Economic Impact Statement anticipating that Bill 28-22 would have an insignificant impact on economic conditions in the County in terms of the Council's priority indicators.

PUBLIC HEARING TESTIMONY AND SUBMISSIONS

Four people registered with the Clerk to testify at the public hearing on December 6, 2022, although only three appeared and spoke at the hearing:

1. Ben Smith², a former resident of a community subject to the jurisdiction of the CCOC, submitted that if Council is going to expand the authority of the CCOC it is important that Council also provide greater oversight over the DHCA and CCOC including appointment of an independent ombudsman and more deadlines. Ben Smith requested the following specific amendments to the language of the bill:
 - a) Strike the word "in-person" from the list of training options outlined in Sec. 10B-6(f) - see line 31 of the bill.
 - b) In Sec 10B-7A either explicitly outline what information must be provided on the registration form or provide that any changes to the form must be approved by the community representative on the CCOC.
 - c) Sec. 10B9A(e)(1) and (2) the word "undue" is too vague. "Material" or "substantial" would be preferable and there should be an appeal right for CCOC's failure to grant relief from a stay.
 - d) Sec. 10B-13(d)(2) should strike the phrase "unreasonably withdraw from mediation".
2. David Hampton, Executive Vice President of the Montgomery Village Foundation supports Bill 28-22 and advocated for the training requirements in the bill, but also raised a concern about a practice by the CCOC stating that this may not necessarily require an amendment to the bill and could possibly be addressed by a change in practice. The specific concern involves the intake of cases and automatic assignment to mediation. He testified that because not every dispute falls within the agency's jurisdiction, the CCOC should not order mediation until the Director of DHCD has investigated and determined that a complaint falls within the Commission's statutory jurisdiction for mediation.
3. Roxana Moslehi, Board Director, and former Board President for the Westlake Park Condominium B generally supports the bill but expressed concerns about the operations of the CCOC, citing instances of bias and conflicts of interest and specifically opposed the provision that penalizes a party that refuses to complete mediation.

² Supplemented in person submission with a written statement.

In addition, there were 4 written submissions (at © 26) regarding this bill: Patricia Hempstead, Chair of Leisure World Community Corporation Board of Directors strongly supports this bill, while Barry Jackson, President of King Farm Citizens Assembly and Michelle Rubinstein presented submissions that echo some of the earlier concerns about the CCOC. (© 26 & 30).

Staff Amendments

Sec. 10B-3(d)(1) requires voting members of the CCOC to complete specified training including the training that is required of COC board members. However, since the COC board member training provisions are being moved from Sec. 10B-17(h) to Sec. 10B-7(c) staff recommends amending the reference as follows:

Sec.10B-3. Commission on Common Ownership Communities.

* * *

(d) Prior to participation in any Commission matter, each voting member must complete:

(1) training required of common ownership community board members under Section [10-17(h)]10B-7(c); and

(2) training in the State and local laws on matters within the jurisdiction of the Commission provided or otherwise approved by the County Attorney.”

* * *

This packet contains:

Circle #

Bill 28-22	© 1
Memorandum of the County Executive	© 14
Legislative Request Report	© 15
Fiscal Impact Statement	© 17
Racial Equity and Social Justice (RESJ) Impact Statement	© 19
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Public Hearing Testimony/Submissions	© 26

Bill No. 28-22
Concerning: Common Ownership
Communities – Duties,
Requirements and Procedures
Revised: 10/13/2022 Draft No. 1
Introduced: 10/18/2022
Expires: April 17, 2024
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

- (1) require regular periodic training of members of a governing board of a common ownership community;
- (2) clarify common ownership community registration, voting and dispute resolution procedures;
- (3) outline criteria that the County’s Commission on Common Ownership Communities (CCOC) considers in accepting jurisdiction over a dispute involving a common ownership community; and
- (4) generally, revise County law regarding common ownership communities.

By amending

Montgomery County Code
Chapter 10B, Common Ownership Communities
Sections 10B-2, 10B-3, 10B-6, 10B-7, 10B-7A, 10B-8, 10B-9A, 10B-11, 10B-12, 10B-13, 10B-17, and 10B-18.

By adding

Montgomery County Code
Chapter 10B, Common Ownership Communities
Section 10B-9B.

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:

1 **Sec. 1. Sections 10B-2, 10B-3, 10B-6, 10B-7, 10B-7A, 10B-8, 10B-9A, 10B-**
2 **11, 10B-12, 10B-13, 10B-17, and 10B-18 are amended, and Section 10B-9B is**
3 **added, as follows:**

4 **10B-2. Definitions.**

5 * * *

6 *Common ownership community* includes:

- 7 (1) a residential development subject to a declaration enforced by a
8 homeowners' association, as those terms are used in state law;

9 * * *

10 **10B-3. Commission on Common Ownership Communities.**

11 * * *

- 12 (g) The Commission must elect one voting member as [chair] Chair
13 and another as [vice chair] Vice Chair, to serve at the pleasure of
14 the Commission, and may elect other officers as it determines.

- 15 (h) * * *

- 16 (i) The Commission meets at the call of the [chair] Chair as often as
17 required to perform its duties, but at least once each month. A
18 majority of the voting members are a quorum for the transaction
19 of business, and a majority of the [voting members] quorum
20 present at any meeting may take any official action.

21 * * *

22 **10B-6. Duties of the Commission on Common Ownership Communities.**

23 The Commission must:

24 * * *

25 (f) provide training on the responsibilities of a board member for
26 members of the governing body of a common ownership
27 community by:

28 (1) developing an educational curriculum for new
29 members; [and]

30 (2) offering training for Board Members, either in
31 person, on-line, or by other electronic means; and

32 [(2)](3) approving an alternative educational curriculum for
33 new members administered by other organizations.

34 (g) establish hearing panels to adjudicate cases on which the
35 Commission accepts jurisdiction.

36 **10B-7. Requirements for [Registration] registration; fees, and board**
37 **training.**

38 (a) Association registration.

39 (1) Each common ownership community must register with the
40 Commission annually, and [identify its elected leadership
41 and managing agents,] submit the information required on
42 [a] the registration form provided by the Commission.

43 * * *

44 (c) Training.

45 (1) Within 90 days after being elected or appointed to the
46 governing body for the first time, a member of the
47 governing body of a common ownership community must
48 successfully complete the educational curriculum approved
49 by the Commission. The governing body must:

- 50 (A) certify that each member has successfully completed
51 this training to the Commission;
52 (B) retain a copy of the training certificate for inspection
53 by the members of the association for the duration of
54 the governing body member's service; and
55 (C) report to the Commission that each member has
56 successfully completed the training within 90 days
57 after each member has been appointed or elected.
58 (2) Each member of the governing body must maintain a
59 training certificate. A training certificate issued under this
60 Section is valid for 3 years.
61 (3) A failure to satisfy the training requirement in this
62 subsection does not:
63 (A) remove the member from the governing body; or
64 (B) invalidate a vote made by the member.
65 (d) A hearing panel or a hearing examiner may consider a board
66 member's failure to complete the training required under this
67 Section, if relevant, in deciding a dispute under Section 10B-13.

68 **10B-7A. Notification requirements.**

69 The governing body of a community association must, at least annually,
70 distribute information [in a form reasonably calculated to notify] to all owners
71 about the availability of dispute resolution, education, and other services to
72 owners and residents of common ownership communities through the
73 Department and the Commission. The governing body may satisfy this
74 requirement by including with any annual notice or other mailing to all members

75 of the community association [any written materials] the form developed by the
76 Department to describe the Commission's services.

77 **10B-8. Defined terms.**

78 In this Article and Article 3, the following terms have the following meanings:

79 * * *

80 (4) *Dispute* means any disagreement between 2 or more parties that
81 involves:

82 * * *

83 (B) the failure of a governing body, when required by law or an
84 association document, to:

- 85 (i) properly conduct an election;
- 86 (ii) give adequate notice of a meeting or other action;
- 87 (iii) properly conduct a meeting;
- 88 (iv) properly adopt a budget or rules;
- 89 (v) maintain or audit books and records;
- 90 (vi) allow inspection of books and records;
- 91 (vii) properly maintain or repair a common element if the
92 failure results in significant personal injury or
93 property damage; or
- 94 (viii) exercise its judgment in good faith concerning the
95 enforcement of the association documents against
96 any person that is subject to those documents.

97 * * *

98 **10B-9A. Request for relief from stay.**

99 (a) At any time after a dispute is filed under Section 10B-9, a
100 [community association] party to the dispute may submit a request
101 to lift the automatic stay required under Section 10B-9(e) to a
102 hearing panel appointed under Section 10B-12, or if no hearing
103 panel has been appointed, a special standing panel authorized to
104 consider requests for relief from stays.

105 (b) * * *

106 (c) [An] A [association] party that requests relief from a stay must
107 serve a copy of its request on any other party named in the dispute
108 by certified mail or personal service. A certificate of service must
109 accompany any request submitted under this Section. A party
110 served with a copy of the request must file its opposition, if any,
111 within 10 days after receiving service.

112 (d) * * *

113 (e) Except as provided in subsection (d), a request for relief from stay
114 may only be granted if the assigned panel finds that:

115 (1) enforcing the stay would result in undue harm to [the] a
116 [community association] party; and

117 (2) lifting the stay [will] would not result in undue harm to the
118 rights or interests of any opposing party.

119 **10B-9B. Acceptance of jurisdiction of complaints.**

120 (a) If the Commission does not accept jurisdiction of a complaint, the
121 Director must notify the parties in writing of the decision and the
122 reason for the Commission's denial of jurisdiction within 10
123 business days after the decision.

150 would be fruitless[.]; or (3) the Commission has accepted
151 jurisdiction. The Director may extend the mediation deadline by
152 mutual consent of the parties.

153 **10B-12. Hearing panel.**

154 (a) If a hearing is scheduled, the [chair] Chair of the Commission must
155 convene a 3-member panel to hear the dispute.

156 (b) The [chair] Chair must choose two members of the panel from the
157 voting members of the Commission. The persons selected must
158 represent the two different membership groups of the Commission.
159 The [two] Chair of the Commission [members] must designate the
160 third member from a list of volunteer arbitrators trained or
161 experienced in common ownership community issues maintained
162 by the Commission. The third member must [chair] Chair the
163 panel. If a suitable arbitrator is not available, the [chair] Chair of
164 the Commission must designate the third panelist from among the
165 voting members of the Commission, and must designate the [chair]
166 Chair of the panel.

167 * * *

168 (e) If the Commission [chair] Chair decides that a hearing should be
169 held by a hearing examiner instead of a hearing panel, the [chair]
170 Chair, with the approval of the Commission, may designate the
171 Office of Zoning and Administrative Hearings to conduct the
172 hearing.

173 [(f) If the parties to a dispute agree that the hearing should be held and
174 the dispute decided by a hearing examiner instead of a hearing
175 panel, the chair must designate the Office of Zoning and

176 Administrative Hearings or another hearing examiner to conduct
177 the hearing and issue a decision.]

178 **10B-13. Administrative hearing.**

179 * * *

180 (b) [Sections 2A-1 through 2A-11] The Administrative Procedures
181 Act (Article I of Chapter 2A) [apply] applies to a hearing held
182 under this Section. However, the parties need not be given more
183 than 15 days' notice before the hearing is held, if the Commission
184 finds that an expedited hearing is necessary. At any hearing, a party
185 or a witness may be advised by counsel.

186 * * *

187 (d) The hearing panel may award costs, including reasonable
188 attorney's fees, to any party if the other party:

189 (1) filed or maintained a frivolous dispute, or filed or
190 maintained a dispute in bad faith;

191 (2) refused to participate in mediation of a dispute[;],
192 unreasonably withdrew from mediation, or failed to comply
193 with the terms of an agreement reached in mediation; or

194 (3) substantially delayed or hindered the dispute resolution
195 process without good cause

196 * * *

197 **10B-17. Voting procedures[; training].**

198 * * *

199 (c) *Absentee ballots* or directed proxies. Any unsigned absentee
200 ballot or directed proxy, to be valid, must be:

- 201 (1) received in a signed, sealed envelope, bearing the
202 identification of the dwelling unit and proportional voting
203 percent, if any, on the outside; and
- 204 (2) opened only at a meeting at which all candidates or their
205 delegates have a reasonable opportunity to attend.
- 206 (d) *Proxy or power of attorney.* Any proxy or power of attorney valid
207 under state law may be used at any association meeting. However,
208 [a] any proxy [and any] or power of attorney [created] containing
209 votes for [the purpose of] candidates for a governing body's
210 election [must] may be [appointed] counted only to meet a quorum
211 or to vote on matters other than an election for a governing body
212 unless the proxy or power of attorney contains a directed vote on
213 the election. If a proxy or power of attorney form must be approved
214 before it is cast, the approving authority must not unreasonably
215 withhold its consent. A general power of attorney valid under state
216 law may be used for any purpose at an association meeting that is
217 consistent with the provisions of the general power of attorney,
218 including for an election of the governing body.
- 219 (e) *Cumulative voting prohibited.* In an election for a governing body,
220 for each unit that a [members] member owns the member must not
221 cast more than one vote for each candidate.
- 222 (f) *Counting votes.* Until the time for voting closes, an association
223 must not open or count election ballots, absentee ballots or directed
224 proxies, and must keep all such documents in a sealed container
225 which must not be opened or counted until the election. If an
226 election is conducted electronically, the votes must not be
227 disclosed or counted by anyone until the election. The individuals

228 counting absentee ballots or directed proxies must insure that the
229 individual who has been directed to cast the proxy vote was in fact
230 in attendance at the meeting.

231 (g) *Terms of office.* Unless the association documents provide for
232 other terms of office:

233 (1) a member elected to the governing body of an association is
234 elected for a term of [two 2] three (3) years; and

235 (2) the individual terms of the entire governing body are
236 staggered, so that as close to one-third as possible are
237 elected each year.

238 [(h) A member of the governing body of a common ownership
239 community must successfully complete the educational
240 curriculum developed by the Commission or a similar educational
241 curriculum administered by another organization that is approved
242 by the Commission within 90 days after being elected or appointed
243 to the governing body for the first time. The governing body must:

244 (1) certify that each member has successfully completed this
245 training to the Commission;

246 (2) retain a copy of the certificate of completion for inspection
247 by the members of the association for the duration of the
248 governing body member's service; and

249 (3) report to the Commission no later than December 31 of each
250 year membership data required by the Commission,
251 including

252 (A) the name and address of each member of the board;

253 (B) the date each member completed the required
254 training;

- 255 (C) the number of vacancies on the board; and
256 (D) the length of time each vacancy existed.
- 257 (i) A failure to satisfy the training requirement in subsection (h) does
258 not:
259 (1) remove the member from the governing body; or
260 (2) invalidate a vote made by the member.
- 261 (j) The Commission may exercise its authority under Section 10B-
262 19(a) to ensure compliance with the training required by
263 Subsection (h).
- 264 (k) A hearing panel or a hearing examiner may consider a board
265 member's failure to complete the training required by Subsection
266 (h), if relevant, in deciding a dispute under Section 10B-13.]

267 **10B-18. Budget.**

268 Unless the association documents provide otherwise:

269 * * *

- 270 (b) the governing body must provide members of the association with
271 any proposed amendment to the budget at least 30 days before the
272 governing body votes on the amendment, if the amendment will
273 result in an increase or decrease of more than 15 percent of the
274 approved budget. This requirement does not apply to expenditures
275 made to respond to an imminent threat to health or safety or of
276 serious property damage, or to properly fund the most recent
277 reserve study conducted for the association.

278 **10B-19. Enforcement.**

279 (a) The Department may enforce this Article by appropriate legal
280 action.

281 * * *




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

August 30, 2022

TO: Gabe Albornoz, President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Introduction of Bill XX-22, Amendments to Common Ownership Communities –
Chapter 10B

I am transmitting the attached proposed Bill XX-22, *Amendments to Common Ownership Communities Dispute Resolution, Open Conduct* for the County Council's introduction. This proposed legislation will improve association governance by requiring periodic retraining of governing body members, clarifying voting procedures, streamlining annual registrations, and authorizing video and telephonic meetings.

The Commission on Common Ownership Communities (CCOC) has recommended these changes to support associations in understanding and adopting practices consistent with efficient and effective operations of the governing bodies that serve an association and its members. The clarification of the requirements for association practices and CCOC processing will enhance association operations and resolve disputes.

I appreciate your prompt consideration of this action.

Enclosures

cc: Richard S. Madaleno, Chief Administrative Officer, Office of the County Executive
Jake Weissmann, Assistant Chief Administrative Officer, Office of the County Executive
Ken Hartman, Director of Strategic Partnerships, Office of the County Executive
Debbie Spielberg, Special Assistant to the County Executive, Office of the County Executive
Nigam Aseem, Director, Department of Housing and Community Affairs

LEGISLATIVE REQUEST REPORT

Bill XX-22

Common Ownership Communities – Dispute Resolution, Open Conduct

DESCRIPTION:	Bill XX-22 would require periodic retraining of members of a common ownership community's governing body, establish criteria for members of the Commission on Common Ownership Communities to accept the jurisdiction of a complaint that involves a common ownership community, allow either party to a dispute to lift the automatic stay imposed when a dispute is filed, provide for community association meetings to be held remotely via video and teleconference platforms, and clarify certain common ownership community voting procedures.
PROBLEM:	The Commission is proposing changes to Chapter 10B so that it better assists the common ownership communities in Montgomery County. These changes address issues that have arisen during elections, holding meetings during the pandemic, training community association board members, determining what is to be considered in accepting the jurisdiction of a dispute, and registering associations with the County.
GOALS AND OBJECTIVES:	The proposed amendments will require association board members to be retrained every three years, streamline the registration process, summarize what is considered when the Commission accepts jurisdiction over disputes, and keep the ballots confidential until an election, as well as other technical amendments.
COORDINATION:	Department of Housing and Community Affairs
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	To be requested.
EXPERIENCE ELSEWHERE:	None
SOURCE OF INFORMATION:	Frank Demarais, Department of Housing and Community Affairs, 240-701-7456.

**APPLICATION
WITHIN**

MUNICIPALITIES: Rockville

PENALTIES: Class A

Fiscal Impact Statement
**Council Bill 22-XX, Common Ownership Communities – Dispute Resolution,
Open Conduct**

1. Legislative Summary.

This Bill requires periodic retraining of members of a common ownership community's governing body by establishing that the required training certification is only valid for three years. It allows an association to conduct meetings of the membership or of the governing body of the association using a video platform that allows all of the members of the association to attend the meeting by video and teleconference, and clarifies common ownership community voting procedures to define elements of proxy voting, ballot control and counting requirements.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The Bill is not expected to have an impact on County revenue or expenditures. The changes to the Commission on Common Ownership Communities are not expected to increase the number of complaints for processing, the complexity of complaints, nor the expenses associated with training or support of Commission activities.

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

The Bill is not expected to impact County revenues or expenditures.

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

The bill is not expected to impact retiree pension or group insurance costs.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

The bill is not expected to impact the County's IT or ERP systems.


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

Not applicable, the bill does not authorize future spending.

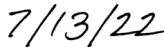
7. An estimate of the staff time needed to implement the bill.

Staff time of less than 40 hours will be required to implement the bill, including updating of webpages and training materials.

8. An explanation of how the addition of new staff responsibilities would affect other duties.
Staff responsibilities represent modest increase of activities the staff currently manage and will not materially delay or impact other duties.
9. An estimate of costs when an additional appropriation is needed.
No additional appropriation is needed.
10. A description of any variable that could affect revenue and cost estimates.
None.
11. Ranges of revenue or expenditures that are uncertain or difficult to project.
None.
12. If a bill is likely to have no fiscal impact, why that is the case.
The changes to the Commission on Common Ownership Communities are not expected to increase the number of complaints for processing, the complexity of complaints, nor the expenses associated with training or support of Commission activities.
13. Other fiscal impacts or comments.
None
14. The following contributed to and concurred with this analysis:
Frank Demarais, Chief Operating Officer, DHCA
Anita Aryeetey, Fiscal and Policy Analyst, OMB



Jennifer Bryant, Director
Office of Management and Budget



Date

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 28-22: COMMON OWNERSHIP COMMUNITIES – DUTIES, REQUIREMENTS AND PROCEDURES

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 28-22 could have a minimal impact on racial equity and social justice (RESJ) in the County. While Asian and White homeowners could disproportionately benefit from more efficiently operated Common Ownership Communities, this likely would not affect existing housing inequities for Black and Latinx residents. Further, no resources are devoted to this Bill.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 28-22

A Common Ownership Community (COC) is a group of homes with their own government and binding rules. COCs in Maryland can be homeowner associations, condominium associations, or cooperative housing associations:^{3,4}

- In a **homeowners' association (HOA)**, each homeowner individually owns their lot and home, while the association owns the common areas. Association fees and dues support the maintenance of common areas, with individual homeowners responsible for the cost of maintaining their property.
- In a **condominium (condo) association**, each homeowner owns his/her individual unit but maintains a joint ownership in the building and its grounds. Assessments paid by each unit owner cover the cost of maintaining the building and common areas.
- In a **cooperative housing (co-op) association**, a corporation owns the building and units, with residents purchasing stock in the corporation. The stock entitles the resident to live in the building owned by the cooperative. The resident does not own the unit but has an absolute right to occupy the unit. Corporations have the right to evict members who are in violation of their leases or not paying their fees.

The purpose of Bill 28-22 is to modify County law regarding COCs, as recommended by the Commission on Common Ownership Communities (CCOC). The changes would:⁵

- Require regular periodic training of members of a governing board of a common ownership community;
- Clarify common ownership community registration, voting and dispute resolution procedures;
- Outline criteria that the County's CCOC considers in accepting jurisdiction over a dispute involving a common ownership community; and
- Generally, revise County law regarding common ownership communities.

RESJ Impact Statement

Bill 28-22

Per the County Executive, the CCOC recommended these changes to support associations in understanding and adopting practices consistent with efficient and effective operations of the governing bodies that serve an association and its members. The CCOC also considered that changes clarifying the requirements for association practices and CCOC processing in particular would enhance association operations and resolve disputes.⁶

At the request of the County Executive, Bill 28-22 was introduced to the Council on October 18, 2022.

HOUSING INSECURITY AND RACIAL EQUITY

Government policies and practices have played a significant role in creating and sustaining housing inequities by race and ethnicity. As outlined below, Black and Latinx residents experience lower rates of homeownership and higher rates of housing insecurity. Please refer to the RESJIS for Expedited Bill 30-21, Landlord-Tenant Relations – Restrictions During Emergencies – Extended Limitations Against Rent Increases and Late Fees, for more on the government’s role in fostering racial segregation in housing and the racial wealth divide, major driving forces of housing inequities.⁷

Data on Housing Insecurity. Local data on three metrics of housing insecurity – rent-burdened households, rental assistance during the pandemic, and homelessness – demonstrate that Black and Latinx households in the County are especially housing insecure. More specifically, in the County:

- In 2019, 66 percent of Latinx renters and 60 percent of Black renters were rent-burdened (expending 30 percent or more of income on rent), compared to 43 percent of White renters and 33 percent of Asian renters.⁸
- Among recent COVID-19 Rent Relief Program clients, 45 percent were Black and 25 percent were Latinx, while 6 percent were White and 2 percent were Asian or Pacific Islander.⁹
- Among single adults experiencing homelessness in 2020, 60 percent were Black, 30 percent were White, 17 percent were Latinx, and 5 percent were Asian or Pacific Islander.¹⁰
- Among families experiencing homelessness in 2020, 78 percent were Black, 15 percent were White, 9 percent were Latinx, and 2 percent were Asian.¹¹

Local data on homeownership also confirms housing inequities by race and ethnicity. In 2019, 75 percent of White and 73 percent of Asian households in the County were owner-occupied, compared to 50 percent of Latinx households and 41 percent of Black households.¹²

Data on Common Ownership Communities. COCs are one component of the County’s complex housing landscape. As of January 2019, 34 percent of all COC units were within HOAs, 29 percent were within condo associations, and 38 percent had unknown association.¹³

A recent study from the Urban Institute found that condo and co-op prices were significantly lower than single-family home prices in every major city except New York and Philadelphia.¹⁴ Condos and co-ops could be a more affordable homeownership option for Black, Latinx, and Native American residents since they have lower median incomes relative to White and Asian residents (refer to Table 1).

RESJ Impact Statement

Bill 28-22

Table 1: Median Household Income by Race and Ethnicity, Montgomery County, Maryland¹⁵

Race and ethnicity	Median Household Income
Asian	\$121,323
Black	\$78,246
Native American	\$88,828
White	\$131,602
Latinx	\$79,981

Source: 2020 American Community Survey (Table S1903)

In 2018, the Council initiated a Task Force on Distressed COCs, which was responsible for developing an action plan to support affordable housing preservation in COCs.¹⁶ Part of the task force’s scope included conducting in-depth studies of financially distressed COCs.¹⁷ According to Department of Housing and Community Affairs (DHCA) staff, the task force stopped meeting in 2019, due in part to lack of funding.

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 28-22 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

For the first question, OLO considered the demographics of residents living in COC units. DHCA staff estimate that 70 percent of COC units are owner-occupied and 30 percent are renter-occupied.

Census data in Table 2 demonstrates that White households are overrepresented among owner households and Asian households are slightly overrepresented. Conversely, Black and Latinx households are underrepresented among owner households, while Native American households are proportionately represented.

Table 2: Percent of All Households and Owner Households by Race and Ethnicity, Montgomery County, Maryland

Race and ethnicity	All Households	Owner-Occupied Households
Asian	14.3	15.6
Black	17.7	11.2
Native American	0.3	0.3
White	57.3	64.8
Latinx	13.9	11.4

Source: 2020 American Community Survey (Table S2502)

For the second question, OLO considered how the Bill could address housing inequities in the County. Bill 28-22 could improve the efficiency and effectiveness of all COCs by requiring board members to engage in periodic training. However, periodic training would likely not change structural housing inequities affecting BIPOC residents.

Taken together, OLO anticipates Bill 28-22 could have a minimal impact on RESJ in the County. While Asian and White homeowners could disproportionately benefit from more efficiently operated COCs, this likely would not affect existing housing inequities for Black and Latinx residents. Further, no resources are devoted to this Bill.¹⁸

RESJ Impact Statement

Bill 28-22

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.¹⁹ OLO finds Bill 28-22 will have a minimal impact on RESJ in the County. As such, OLO does not offer recommended amendments. However, if the Council would like to improve the RESJ impact of COCs, OLO offers the following item for consideration:

- **Restart DHCA Task Force on Distressed COCs and expand the scope to include RESJ.** As discussed in ‘Housing Insecurity and Racial Equity,’ condos and co-ops could be a more affordable homeownership option for BIPOC residents. The Council could consider restarting the Task Force on Distressed COCs and funding studies that explore current BIPOC residence in COCs and opportunities to increase BIPOC homeownership, in addition to understanding financially distressed COCs.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffer Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

² Ibid

³ “What is a Common Ownership Community,” Montgomery County Department of Housing and Community Affairs, Accessed October 21, 2022. https://www.montgomerycountymd.gov/DHCA/housing/commonownership/what_is_a_coc.html

⁴ Natalia Carrizosa and Kristen Latham, OLO Report 2019-6, Common Ownership Communities, Office of Legislative Oversight, Montgomery County, Maryland, June 25, 2019.

<https://montgomerycountymd.gov/OLO/Resources/Files/2019%20Reports/OLOReport2019-6.pdf>

⁵ Bill 28-22, Common Ownership Communities, Montgomery County Council, Introduced October 18, 2022.

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20221018/20221018_4A.pdf

⁶ Memorandum from County Executive to Council President, Bill 28-22, Common Ownership Communities – Duties, Requirements and Procedures

⁷ Racial Equity and Social Justice Impact Statement for Expedited Bill 30-21, Office of Legislative Oversight, Montgomery County, Maryland, September 9, 2021. <https://montgomerycountymd.gov/OLO/Resources/Files/resjis/2021/Bill30-21RESJ.pdf>

⁸ Gross Rent as a Percentage of Household Income in the Past 12 Months, Table S0201: Selected Population Profile in the United States, 2019 American Community Survey, Census Bureau. <https://data.census.gov/cedsci/table?t=002%20-%20White%20alone%3A004%20-%20Black%20or%20African%20American%20alone%3A012%20-%20Asian%20alone%3A400%20-%20Hispanic%20or%20Latino%20%28of%20any%20race%29%3AIncome%20and%20Poverty%3ARace%20and%20Ethnicity&g=050000US24031>

⁹ “COVID-19 Rent Relief Update: Week of Jul 11 – 17,” DHHS Pulse Report: COVID-19 Impact and Recovery, Department of Health and Human Services, Montgomery County, Maryland, July 20, 2022.

<https://www.montgomerycountymd.gov/covid19/Resources/Files/pulse/DHHS-Pulse-220720.pdf>

RESJ Impact Statement

Bill 28-22

¹⁰ Memorandum from Linda McMillan to County Council, “FY22 Operating Budget: Homeless Services, Rental Assistance, and funding through Housing Initiative Fund,” May 11, 2021 (See PDF page 19).

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20210512/20210512_30.pdf

¹¹ Ibid

¹² “Percent of Owner-Occupied Households by Race/Ethnicity: Montgomery County, MD,” National Equity Atlas, Accessed July 22, 2022. <https://nationalequityatlas.org/indicators/Homeownership#/?geo=04000000000024031>

¹³ Carrizosa and Latham, calculated from Table 2.2 data (page 10). Refer to page 7 in report for limitations with data.

¹⁴ Michael Neal and Laurie Goodman, “The Housing Market Needs More Condos. Why are So Few Being Built?,” Urban Institute, January 31, 2022. <https://www.urban.org/urban-wire/housing-market-needs-more-condos-why-are-so-few-being-built>

¹⁵ Latinx is an ethnicity rather than a race. Therefore, Latinx people are included in multiple racial groups throughout this impact statement, unless where otherwise noted.

¹⁶ Carrizosa and Latham

¹⁷ Ibid

¹⁸ Fiscal Impact Statement for Bill 28-22, Common Ownership Communities – Duties, Requirements and Procedures

¹⁹ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

Economic Impact Statement

Office of Legislative Oversight

Bill 28-22

Community Ownership Communities – Duties, Requirements and Procedures

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 28-22 would have an insignificant impact on economic conditions in the County in terms of the Council's priority indicators.

BACKGROUND

As stated in the proposed legislation's text, Bill 28-22 would do the following:

- (1) require regular periodic training of members of a governing board of a common ownership community;
- (2) clarify common ownership community registration, voting and dispute resolution procedures;
- (3) outline criteria that the County's Commission on Common Ownership Communities (CCOC) considers in accepting jurisdiction over a dispute involving a common ownership community; and
- (4) generally, revise County law regarding common ownership communities.¹

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess the impacts of Bill 28-22 on County-based private organizations and residents in terms of the Council's priority economic indicators and whether the Bill would likely result in a net positive or negative impact on overall economic conditions in the County.² Because there are no clear connections between CCOC governance and the Council's priority indicators, OLO anticipates the Bill would have insignificant impacts on private organizations, residents, and overall economic conditions in the County.

VARIABLES

Not applicable

¹ [Bill 28-22](#).

² Montgomery County Code, [Sec. 2-81B](#).

Economic Impact Statement

Office of Legislative Oversight

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Not applicable

DISCUSSION ITEMS

Not applicable

WORKS CITED

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements.](#)

Montgomery County Council. [Bill 28-22, Common Ownership Communities – Duties, Requirements and Procedures.](#)

Introduced on October 18, 2022.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

To The County Councilmembers,

Thank you for allowing written testimony in regard to the Tuesday, December 6th hearing on “Bill 28-22, Common Ownership Communities - Duties, Requirements And Procedures.”

I want to share a recent experience with the CCOC that you should be aware of as you debate whether to expand its powers. This agency needs to be revamped and restructured and receive more oversight and supervision – similar to what was done with the Planning Commission staff and members.

A little on King Farm Citizens Assembly. Located in Rockville and bordering Gaithersburg this community of nearly 10,000 people is a mix of townhouses, single-family dwellings, condominiums and apartments. The HOA has an annual budget of over \$4 million and reserves that total approximately \$5 million. In short we are a large operation managed by a professional staff. We also follow the law closely as we have legal counsel to protect the homeowners assets – both monetarily and property-wise.

In 2015 Rockville opted in to the CCOC. I as a homeowner in an HOA supported that decision. I agreed with the mission of the CCOC and felt that there ought to be some neutral agency to help resolve disputes by serving as an arbiter and a panel that could decide cases swiftly instead of having to resort to a protracted court proceeding.

Sadly, that is not now what is in place. In the several years I have been President of King Farm what I have observed of the CCOC is an agency in disarray.

From missed mediation meetings, to missing agendas or missing minutes on the website, missing documents, being slow to provide documents to Circuit Court to head-scratching CCOC or panel decisions – King Farm’s experience is of an agency that has lost its mission and has become insular and error-prone.

The continuance of missing meeting agendas and minutes just point to what has become a, “Do as I say and not as I do” agency. If an HOA did not have meeting agendas or missing minutes they could be called on the carpet by the CCOC but the CCOC bears no consequence for its own haphazard management.

In one instance involving King Farm, the CCOC heard one of the complaints against King Farm and was deciding whether it had jurisdiction. The CCOC arbitrarily made up a reason to take up the case – with a reason that the complainant had not alleged and which was later dismissed by a panel. There should be a tightening up the CCOC’s leeway to take a case or not. The consequence in this case was to take resident’s money in legal fees and management time (not to mention volunteer’s time) for something that was not even alleged and something that was dismissed after a hearing.

Another example of the troubles with the CCOC occurred with a case which should have been decided rather quickly was allowed to drag on for nearly two years. This cost King Farm an untold amount of money in legal fees as well as time from our Management and volunteers. Not to mention the time of our resident who had the dispute in the first place.

Nearly two years after being filed this decision is now in the Circuit Court due to what we consider to be an arbitrary and capricious ruling with a truly headscratching order – it dismissed the complaint but ordered the lengthy decision be sent out to every homeowner in King Farm. \

If the CCOC can issue such rulings then it follows that they must also defend them in Circuit Court if necessary. This Order and Decision by the CCOC is not defended by the County, instead the plaintiff, a King Farm resident with no legal training or qualifications, must choose to defend it. This lets the agency off the hook too easily in defending its decisions in Circuit Court and means that its rulings are not subject to much legal or other scrutiny before issuance - or even afterwards.

The latest example of the CCOC's lack of attention to detail or sloppy staff work occurred in the past month and had real world consequences. A poster on the neighborhood list serv who also is a complainant in a CCOC case on appeal sent this erroneous post out to the entire community:

“On 10/27/2022, the CCOC through the Office of the County Attorney fined KFCA \$500 for the violation of the D&O. If KFCA pays the fine by 11/27/2022, this will be deemed an admission of guilt and the trial date will not be set. Alternatively, KFCA may elect to stand trial in court.”

This was not the case. Whether the poster was confused or deliberately misleading is unknown. But what is known is that the CCOC actions led directly to this post.

The CCOC staff knew about King Farm's appeal of the order. The CCOC knew, because they were apprised that the Court had stayed the order pending a ruling on the matter. The CCOC either ignored or forgot that order and tried to issue a violation. Only the intervention of KFCA's attorney and the County Attorney's office kept that “erroneous” violation from being filed.

When asked to reach out to both parties and clarify the CCOC finally did in grudging language that never acknowledged their error.

I realize no one feels sorry for an HOA – but it should be remembered that all costs to defend a case in the CCOC comes from residents HOA fees. That is an enormous waste that the insular CCOC seems to overlook.

I have expressed concerns over the conduct of the CCOC staff and volunteers before, repeatedly to various offices both in the DHCA and the County Council. To date it appears that the problems are not being rectified.

Unfortunately the CCOC has not improved and this latest incident indicates that things are actually becoming worse. I note that the CCOC's longtime Chair has now been brought on staff with a consulting contract to do work for the CCOC. I question how this deal was arrived at and urge the Council to ask questions of this arrangement.

I thought County Executive Marc Elrich said it best in a Press Release. These words could easily apply to the CCOC instead of the Planning Commission:

"It is clear that new people and new voices are needed on the Planning Board. Park and Planning has been run by a group of insiders for far too long. There needs to be a respectful balance of the views of developers and those of the community. I hope that the new Planning Board appointees reflect the demographics of this community and are committed to our residents, community input, and an efficient and transparent process."

I fear that we have yet another Planning Commission scenario.

I urge the Council to probe into whether the CCOC should be revamped. I fear that the CCOC is an agency that serves a real need between HOAs and homeowners/residents but it is not receiving proper supervision and has lost its way. I know that I am not alone in feeling that something is wrong at the CCOC.

I look forward to your debate and can answer any questions or concerns you might have.

Thank you for your time and attention.

Sincerely,

Barry Jackson
President
King Farm Citizens Assembly

I formerly lived in a community subject to a hearing before the CCOC. While the goal of the CCOC is a laudatory one, our experience shows that it oversteps its authority and allows any individual to paralyze an association's ability to govern the community.

If the County Council is going to improve the statute, it is critical that they take the opportunity to provide better oversight over DHCA and the CCOC. We had a roofing project delayed by a year while the CCOC processed a complaint by one unit owner of the 67 units in our complex. No other unit owners supported the complaint and the planned change to roofing shingles was clearly indicated in the Reserve Study prepared before the resident moved into the community.

Nevertheless, our community was forced to defend ourselves in litigation before CCOC in a process that cost our community tens of thousands of dollars. Compounding things is that the CCOC will not talk to either party while the process is ongoing. So, we were stuck in an information vacuum gambling that the complaint could be resolved in time to start a new contract the following summer. CCOC really needs an independent ombudsman to whom parties can direct questions and from whom they can obtain updates. There also need to be more deadlines to speed up CCOC actions.

Some specific comments on the current language follow.

6(f)(2)- Strike "in person". Many Board members work full-time. CCOC should not be able to require in person training.

7(a)- Proposes a new Registration Form to be completed each year by every community. This section should be very explicit about the information to be provided. At a minimum, changes to the Form should require the approval of the community association representatives on the CCOC.

9A(e)(1)&(2)- the word "undue" in these sections is pure folly. The term is so vague as to be arbitrary and capricious. "Material" or "Substantial" would be preferable. And, there needs to be an appeal right for CCOC's failure to grant relief from a stay.

13(d)(2)— should as a minimum strike "unreasonably withdraw from mediation". Once again, the CCOC proposes to give themselves vague and unchallengeable authority to decide when the process can move forward.

The Montgomery County CCOC

Thank you for allowing me to comment on the CCOC before the council. I am a 50-year resident of Montgomery County. I grew up here and moved to Gaithersburg in the mid 1980's and purchased my first home in 1988 in Gaithersburg. In 2006 I purchased a condominium in the Colonnade at Kentlands and would have loved for us to be a part of the CCOC as we had a developer who was keeping books and records in Florida and not allowing unit owners access to them, not having open meetings, not conducting required yearly independent Audits and other things as required by the Maryland Condominium Act. When I contacted the CCOC and was told that our community was not eligible to be a part of the CCOC because we were inside the City of Gaithersburg, I was disappointed and ended up filing my complaint with the State of Maryland Attorney General's Office.

Fast Forward 16 years and Gaithersburg has joined the CCOC as of July 1 of this year. The Colonnade is no longer under developer control, and I am on the governing board. It is regrettable after my high hopes for the CCOC that I now am compelled to say that I have never been so disappointed in a government commission. We have 2 owners with personal contacts with one of the Mediators for the CCOC (Mark Fine) and we believe their attorney (Matthew Skipper) is also a close personal contact of his.

This all plays into the disappointment I am currently experiencing. I would expect the commission to be neutral and to disengage from actions that violate the CCOC's charter, I am going to list where they have not followed their charter just in my recent CCOC interactions as a volunteer community leader.

1. The CCOC staff appears to back date letters and then email them late in an attempt to ensure they meet the dates in their charter, if they say they will give ample notice and they are late they are likely to backdate an email or mail
 - a. In one of the pending cases we have before the CCOC the notice of complaint letter was dated September 29, but the postmark date on the notice letter was October 5th and the notice was not received until October 7th. In the other case the date on the CCOC notice letter was August 11, 2022, but the postmark date was August 26th, which is two weeks from the notice date and very misleading and prejudicial to the Association's efforts to defend the claim.
 - b. When they state that they will give a minimum of 10 days' notice for all mediation then they tell us on the Tuesday before Thanksgiving that they will mediate on the Monday after Thanksgiving that is not even 10 days' notice never mind it is over a holiday weekend.
2. Gaithersburg Joined the CCOC on July 1st and they accepted the documentation for 2 owners who were assessed by our board prior to July 1st.
 - a. The incidents which involved hearings and official notices all happened several months prior to the Colonnade joining the CCOC.
 - b. The CCOC charter states that they do not deal with claims for delinquent assessments, yet one of the current complaints we are defending was filed to stay a lien action in the Circuit Court assessments
 - c. They ask if all avenues have been taken to resolve issues, yet these owners never appealed their fines to the Board of Directors or in the Circuit Court.
 - d. Has the CCOC even reviewed our documents? These assessments are in line with our CCA documents.

3. When the board questions the jurisdiction of the CCOC based on the issues occurring prior to July 1st they state that they will determine jurisdiction after they perform mediation of the issues?
 - a. Is this not backwards?
 - b. Shouldn't jurisdiction be determined first? Surely, with the new communities that are joining the CCOC the CCOC does not have the capacity to mediate each and every dispute even if there is later no CCOC jurisdiction. This would appear to be a waste of valuable County staff resources.
4. Mark Fine / the CCOC is having discussions with the owners and their counsel, or it seems that they are as any dates that are given to us, and our counsel are always fine with Matthew Skipper (owners counsel), but we are caught unaware. How is it that all the dates are fine with them?
 - a. There seems to be ex-parte communication on this, what else are they discussing? Putting the board and our management company at a disadvantage.
 - b. How can Mark Fine be a mediator when he owns a Proper Management company? He cannot be unbiased, is he looking for business for his company?
5. We have 2 cases before them from 2 different condos with 2 different owners, yet they are demanding that we mediate them together? How if they are not for the same things? From the same buildings? Each entity has a separate governing body who would have to approve of the mediation so how can they be mediated together?
6. Prior to receiving notification from the CCOC of one of the filings we filed a legal claim against one of the owners. The CCOC still claims it has jurisdiction even if the facts of the litigation all occurred prior to July 1, 2022, which would mean that the courts have jurisdiction.
7. In the course of dealing with these CCOC claims, a unit owner who is not a complainant advised our Board that she contacted the CCOC and the staff advised her that our community should not need legal counsel to defend itself before the CCOC; yet, the CCOC's own procedures manual encourages the involvement of legal counsel. The messaging between the staff and owners is inconsistent with written manuals published by the CCOC the DCRA.

I believe that the commission can be useful if proper oversight is provided to them, and the personnel is held accountable for abiding by the established charter. In their current form they are not providing that. The metrics we should be watching are how many of their cases are being appealed? Are the cases reviewed after the fact to see if the mediators are biased and engaging in ex-parte communications that are prohibited by their charter, back dating notices and are the staff provided the proper training on their own CCOC charter and procedures manual?

As a taxpayer I believe this could be a useful commission but not in its current form. There needs to be oversight and auditing done. When was the last audit? Are their surveys after the fact? All email systems keep logs have they been checked for back dates? Is this body aware of the number of pending petitions for review challenging CCOC orders that are currently before the Montgomery County Circuit Court?

Thank you for your time and attention to these important matters. If you need volunteers for auditing, I will volunteer my time.

Happy Holidays,

Michele Rubinstein

December 19, 2022

Montgomery County Council
Lead Sponsor, Councilor Albornoz
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Re: Bill 28-22 – Community Ownership Communities

The Board of Directors of the Leisure World Community Corporation strongly supports Bill 28-22 and urges you to consider enacting it when it comes to a County Council vote.

This bill will give the volunteers serving as Board members in their respective communities additional incentive to receive regular training. This has the potential to improve the general level of community oversight. It will also provide needed clarification of common ownership community registration, voting and dispute resolution procedures. Additional clarification of the criteria that the County's Commission on Common Ownership Communities (CCOC) considers in accepting jurisdiction over a dispute involving a common ownership community will also be welcome.

Leisure World is an age-restricted, planned senior community consisting of 5,660 housing units, with approximately 8,000 residents in 29 communities—which we call mutuals—including condominiums, a homeowner's association, and a housing cooperative. Each mutual is proportionately represented on the Board of Directors.



Patricia Hempstead, Chair
LWCC Board of Directors

Cc. county.council@montgomerycountymd.gov

ADDENDUM

Agenda Item #6
February 27, 2022
Worksession

MEMORANDUM

February 24, 2023

TO: Planning, Housing and Parks Committee
FROM: Khandikile Mvunga Sokoni, Legislative Attorney
SUBJECT: Bill 28-22; Common Ownership Communities – Duties, Requirements and Procedures
PURPOSE: Worksession – Committee recommendation expected

Expected Attendees:

The list of expected attendees is updated to include Ms. Cheryl Butler-Walker, Chair of the Common Ownership Communities Commission (CCOC).

- Aseem Nigam, Director, Department of Housing and Community Affairs (DHCA) – Invited
- Scott Bruton, Deputy Director, DHCA
- Mary Gentry, DHCA
- Nicolle Katrivanos, DHCA
- Ifeoluwapo (Ife) Fabayo, COC Investigator, DHCA (Invited)
- Janmarie Peña, Performance Management and Data Analyst, Office of Legislative Oversight (OLO) staffer (Invited).
- **Cheryl Butler-Walker, Chair of the Common Ownership Communities Commission (CCOC)**

Further, at the request of the Department of Housing and Community Affairs (DHCA) please find attached, by way of an addendum to the earlier staff packet, proposed amendments to the bill at lines 129-131 and at lines 152 to 169, and 198-200. The intent of the amendment is to ensure that after parties successfully enter a mediation agreement, that a breach of such agreement can be prosecuted as a Class A violation. According to DHCA without this, after all the time and effort spent on mediation, if a party to the mediation agreement breaches the agreement, then the aggrieved party has to go to court to seek enforcement.

Bill No. XX-22
Concerning: Common Ownership
Communities – Dispute
Resolution, Open Conduct
Revised: _____ Draft No. 1
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

- (1) require periodic retraining of members of a common ownership community's governing body;
- (2) allow community association meetings via video and teleconference platforms;
- (3) clarify common ownership community voting procedures; and
- (4) generally revise County law regarding common ownership communities.

By amending

Montgomery County Code
Chapter 10B, Common Ownership Communities
Sections 10B-2, 10B-3, 10B-6, 10B-7, 10B-7A, 10B-8, 10B-9A, 10B-11, 10B-12, 10B-13,
10B-16, 10B-17, 10B-18, and 10B-19.

By adding

Montgomery County Code
Chapter 10B, Common Ownership Communities
Section 10B-9B.

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:

- 25 (f) provide training on the responsibilities of a board member for
 26 members of the governing body of a common ownership
 27 community by:
- 28 (1) developing an educational curriculum for new
 29 members; [and]
- 30 (2) offering training for Board Members, either in
 31 person, on-line, or by other electronic means; and
 32 [(2)](3) approving an alternative educational curriculum for
 33 new members administered by other
 34 organizations[.]; and
- 35 (g) establish hearing panels to adjudicate cases on which the
 36 Commission accepts jurisdiction.

37 **10B-7. Requirements for [Registration] registration; fees, and board**
 38 **training.**

- 39 (a) Association registration.
- 40 (1) Each common ownership community must register with
 41 the Commission annually[,], and [identify its elected
 42 leadership and managing agents,] submit the information
 43 required on [a] the registration form provided by the
 44 Commission.
- 45 * * *
- 46 (c) Training.
- 47 (1) A member of the governing body of a common ownership
 48 community must successfully complete the educational
 49 curriculum approved by the Commission within 90 days

50 after being elected or appointed to the governing body for
 51 the first time. The governing body must:

52 (A) certify that each member has successfully completed
 53 this training to the Commission;

54 (B) retain a copy of the training certificate for inspection
 55 by the members of the association for the duration
 56 of the governing body member's service; and

57 (C) report to the Commission that each member has
 58 successfully completed the training within 90 days
 59 after each member has been appointed or elected.

60 (2) Each member of the governing body must maintain a
 61 training certificate. A training certificate issued under this
 62 Section is valid for 3 years.

63 (3) A failure to satisfy the training requirement in this
 64 subsection does not:

65 (A) remove the member from the governing body; or

66 (B) invalidate a vote made by the member.

67 (d) The Commission may ask the Director to exercise the
 68 Department's authority under Section 10B-19(a) to ensure
 69 compliance with the training required under this Section.

70 (e) A hearing panel or a hearing examiner may consider a board
 71 member's failure to complete the training required under this
 72 Section, if relevant, in deciding a dispute under Section 10B-13.

73 **10B-7A. Notification requirements.**

74 The governing body of a community association must, at least annually,
 75 distribute information [in a form reasonably calculated to notify] to all owners

76 about the availability of dispute resolution, education, and other services to
 77 owners and residents of common ownership communities through the
 78 Department and the Commission. The governing body may satisfy this
 79 requirement by including with any annual notice or other mailing to all
 80 members of the community association [any written materials] the form
 81 developed by the Department to describe the Commission’s services.

82 **10B-8. Defined terms.**

83 In this Article and Article 3, the following terms have the following meanings:

84 * * *

85 (4) *Dispute* means any disagreement between 2 or more parties that
 86 involves:

87 (A) * * *

88 (B) the failure of a governing body, when required by law or
 89 an association document, to:

- 90 (i) properly conduct an election;
- 91 (ii) give adequate notice of a meeting or other action;
- 92 (iii) properly conduct a meeting;
- 93 (iv) properly adopt a budget or rules;
- 94 (v) maintain or audit books and records;
- 95 (vi) allow inspection of books and records;
- 96 (vii) properly maintain or repair a common element if the
 97 failure results in significant personal injury or
 98 property damage; or

99 (viii) exercise its judgment in good faith concerning the
 100 enforcement of the association documents against
 101 any person that is subject to those documents.

102 * * *

103 **10B-9A. Request for relief from stay.**

104 (a) At any time after a dispute is filed under Section 10B-9, a
 105 [community association] party to the dispute may submit a
 106 request to lift the automatic stay required under Section 10B-9(e)
 107 to a hearing panel appointed under Section 10B-12, or if no
 108 hearing panel has been appointed, a special standing panel
 109 authorized to consider requests for relief from stays.

110 (b) * * *

111 (c) [An] A [association] party that requests relief from a stay must
 112 serve a copy of its request on any other party named in the
 113 dispute by certified mail or personal service. A certificate of
 114 service must accompany any request submitted under this
 115 Section. A party served with a copy of the request must file its
 116 opposition, if any, within 10 days after receiving service.

117 (d) * * *

118 (e) Except as provided in subsection (d), a request for relief from
 119 stay may only be granted if the assigned panel finds that:

120 (1) enforcing the stay would result in undue harm to [the] a
 121 [community association] party; and

122 (2) lifting the stay [will] would not result in undue harm to the
 123 rights or interests of any opposing party.

124 **10B-9B. Acceptance of jurisdiction of complaints.**

125 (a) If the Commission does not accept jurisdiction of a complaint, the
 126 Director must notify the parties of the decision and the reason for
 127 the Commission's denial of jurisdiction within 10 business days
 128 after the decision.

129 ~~(b) The Commission may accept jurisdiction of a complaint if a party~~
 130 ~~fails to comply with an agreement reached during mediation.~~

131 (eb) The Commission's decision not to accept jurisdiction of a
 132 complaint is not subject to judicial review.

133 **10B-11. Mediation; dismissal before hearing.**

134 * * *

135 (b) If the Director, after reviewing a dispute, finds that, assuming all
 136 facts alleged by the party that filed the dispute are true, there are
 137 no reasonable grounds to conclude that a violation of applicable
 138 law or any association document has occurred, the Director [may]
 139 must so inform the Commission. The Commission must dismiss
 140 a dispute if it finds that there are no reasonable grounds to
 141 conclude that a violation of applicable law or any association
 142 document has occurred, or it may order the Director to investigate
 143 further. The Commission may reconsider the dismissal of a
 144 dispute under this subsection if any party, in a motion to
 145 reconsider filed within 30 days after the dispute is dismissed,
 146 shows that:

- 147 (1) the Commission erroneously interpreted or applied
 148 applicable law or an association document; or
 149 (2) material issues of fact that are necessary to a fair resolution
 150 of the dispute remain unresolved.

* * *

151
152 (e) The Commission must promptly schedule a hearing under
153 Section 10B-13 if ~~{either}~~: (1) mediation has not occurred within
154 90 days after the Director found reasonable grounds to believe a
155 violation occurred; [or] (2) the Director decides at any time that
156 mediation would be fruitless; ~~or (3) the Commission has accepted~~
157 jurisdiction. The Director may extend the mediation deadline by
158 mutual consent of the parties.

159 (f) If a dispute is resolved by mediation, the terms of mediation
160 agreed to by the parties must be reduced to writing and
161 incorporated into a consent agreement to be signed by the parties.
162 The agreement must be for mediation purposes only and is not an
163 admission by any party that a violation of applicable law or an
164 association document has occurred.

165 (g) In addition to any other penalty allowed by law, failure to adhere
166 to any provision of a consent agreement is a class A violation.
167 Any failure by the Director to enforce any provision of a consent
168 agreement does not waive any private right of action against the
169 violating party.

170 **10B-12. Hearing panel.**

171 (a) If a hearing is scheduled, the [chair] Chair of the Commission
172 must convene a 3-member panel to hear the dispute.

173 (b) The [chair] Chair must choose two members of the panel from
174 the voting members of the Commission. The persons selected
175 must represent the two different membership groups of the
176 Commission. The [two] Chair of the Commission [members]

177 must designate the third member from a list of volunteer
 178 arbitrators trained or experienced in common ownership
 179 community issues maintained by the Commission. The third
 180 member must [chair] Chair the panel. If a suitable arbitrator is not
 181 available, the [chair] Chair of the Commission must designate the
 182 third panelist from among the voting members of the
 183 Commission, and must designate the [chair] Chair of the panel.

184 (c) * * *

185 (d) * * *

186 (e) If the Commission [chair] Chair decides that a hearing should be
 187 held by a hearing examiner instead of a hearing panel, the [chair]
 188 Chair, with the approval of the Commission, may designate the
 189 Office of Zoning and Administrative Hearings to conduct the
 190 hearing.

191 [(f) If the parties to a dispute agree that the hearing should be held
 192 and the dispute decided by a hearing examiner instead of a
 193 hearing panel, the chair must designate the Office of Zoning and
 194 Administrative Hearings or another hearing examiner to conduct
 195 the hearing and issue a decision.]

196 **10B-13. Administrative hearing.**

197 (a) * * *

198 (b) [Sections 2A-1 through 2A-11] The Administrative Procedures
 199 Act (Article I of Chapter 2A) [apply] applies to a hearing held
 200 under this Section. However, the parties need not be given more
 201 than 15 days' notice before the hearing is held, if the Commission

202 finds that an expedited hearing is necessary. At any hearing, a
 203 party or a witness may be advised by counsel.

204 (c) * * *

205 (d) The hearing panel may award costs, including reasonable
 206 attorney's fees, to any party if the other party:

207 (1) * * *

208 (2) refused to participate in mediation of a dispute[;],
 209 unreasonably withdrew from mediation, ~~or failed to~~
 210 ~~comply with the terms of an agreement reached in~~
 211 ~~mediation; or~~

212 (3) * * *

213 * * *

214 **10B-16. [Reserved] Video and teleconference meetings.**

215 An association may conduct meetings of the membership or of the governing
 216 body of the association using a video platform that allows all of the members
 217 of the association to attend the meeting by video and teleconference. If a
 218 video platform is used, the association must send all members the sign-in
 219 information via the same method used to notify members of an in-person
 220 meeting.

221 **10B-17. Voting procedures[; training].**

222 (a) * * *

223 (b) * * *

224 (c) *Absentee ballots or directed proxies.* Any unsigned absentee
 225 ballot or directed proxy, to be valid, must be:

226 (1) received in a signed, sealed envelope, bearing the
 227 identification of the dwelling unit and proportional voting
 228 percent, if any, on the outside; and

229 (2) opened only at a meeting at which all candidates or their
 230 delegates have a reasonable opportunity to attend.

231 (d) *Proxy or power of attorney.* Any proxy or power of attorney valid
 232 under state law may be used at any association meeting.

233 However, [a] any proxy [and any] or power of attorney [created]
 234 containing votes for [the purpose of] candidates for a governing
 235 body's election [must] may be [appointed] counted only to meet a
 236 quorum or to vote on matters other than an election for a
 237 governing body unless the proxy or power of attorney contains a
 238 directed vote on the election. If a proxy or power of attorney form
 239 must be approved before it is cast, the approving authority must
 240 not unreasonably withhold its consent. A general power of
 241 attorney valid under state law may be used for any purpose at an
 242 association meeting that is consistent with the provisions of the
 243 general power of attorney, including for an election of the
 244 governing body.

245 (e) *Cumulative voting prohibited.* In an election for a governing
 246 body, for each unit that a [members] member owns the member
 247 must not cast more than one vote for each candidate.

248 (f) *Counting votes.* Until the time for voting closes, an association
 249 must not open or count election ballots, absentee ballots or
 250 directed proxies, and must keep all such documents in a sealed
 251 container which must not be opened or counted until the election.
 252 If an election is conducted electronically, the votes may not be

253 disclosed or counted by anyone until the election. The
 254 individuals counting absentee ballots or directed proxies shall
 255 insure that the individual who has been directed to cast the proxy
 256 vote was in fact in attendance at the meeting.

257 (g) *Terms of office.* Unless the association documents provide for
 258 other terms of office:

259 (1) a member elected to the governing body of an association
 260 is elected for a term of [two 2] three (3) years; and

261 (2) the individual terms of the entire governing body are
 262 staggered, so that as close to one-third as possible are
 263 elected each year.

264 [(h) A member of the governing body of a common ownership
 265 community must successfully complete the educational
 266 curriculum developed by the Commission or a similar
 267 educational curriculum administered by another organization that
 268 is approved by the Commission within 90 days after being
 269 elected or appointed to the governing body for the first time. The
 270 governing body must:

271 (1) certify that each member has successfully completed this
 272 training to the Commission;

273 (2) retain a copy of the certificate of completion for inspection
 274 by the members of the association for the duration of the
 275 governing body member's service; and

276 (3) report to the Commission no later than December 31 of
 277 each year membership data required by the Commission,
 278 including

279 (A) the name and address of each member of the board;

- 280 (B) the date each member completed the required
- 281 training;
- 282 (C) the number of vacancies on the board; and
- 283 (D) the length of time each vacancy existed.
- 284 (i) A failure to satisfy the training requirement in subsection (h) does
- 285 not:
- 286 (1) remove the member from the governing body; or
- 287 (2) invalidate a vote made by the member.
- 288 (j) The Commission may exercise its authority under Section 10B-
- 289 19(a) to ensure compliance with the training required by
- 290 Subsection (h).
- 291 (k) A hearing panel or a hearing examiner may consider a board
- 292 member's failure to complete the training required by Subsection
- 293 (h), if relevant, in deciding a dispute under Section 10B-13.]

294 **10B-18. Budget.**

295 Unless the association documents provide otherwise:

- 296 (a) * * *
- 297 (b) the governing body must provide members of the association
- 298 with any proposed amendment to the budget at least 30 days
- 299 before the governing body votes on the amendment, if the
- 300 amendment will result in an increase or decrease of more than 15
- 301 percent of the approved budget. This requirement does not apply
- 302 to expenditures made to respond to an imminent threat to health
- 303 or safety or of serious property damage, or to properly fund the
- 304 most recent reserve study conducted for the association.

305 **10B-19. Enforcement.**

306 (a) The Department may enforce this Article by appropriate legal
307 action, including issuing a citation for a Class A civil violation.

308 * * *

309 *Approved:*

310

Gabe Albornoz, President, County Council Date

311 *Approved:*

312

Marc Elrich, County Executive Date

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

314

Judy Rupp, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill XX-22

Common Ownership Communities – Dispute Resolution, Open Conduct

DESCRIPTION:	Bill XX-22 would mandate triennial retraining of members of a common ownership community’s governing body, establish criteria to be considered by members of the Commission on Common Ownership Communities to consider when deciding whether to accept jurisdiction of a complaint that involves a common ownership community, allow either party to a dispute to lift the automatic stay imposed when a dispute is filed, provide for community association meetings to be held remotely via video and teleconference platforms, and clarify certain common ownership community voting procedures.
PROBLEM:	The Commission is proposing changes Chapter 10B so that it may better assist the common ownership communities in Montgomery County. These changes address issues that have arisen in the conduct of elections, holding meetings during the Covid pandemic, the education of community association board members, what is to be considered in accepting jurisdiction of a dispute, and the registration of associations with the County.
GOALS AND OBJECTIVES:	The proposed amendments will require association board members to be re-educated every 3 years, streamline the registration process, summarize what is considered when the Commission accepts jurisdiction over disputes, and require that ballots be kept confidential until an election, as well as other technical amendments.
COORDINATION:	Department of Housing and Community Affairs
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EXPERIENCE ELSEWHERE:	None
SOURCE OF INFORMATION:	Frank Demarais, Department of Housing and Community Affairs, 240-701-7456.

APPLICATION
WITHIN

MUNICIPALITIES: Rockville

PENALTIES: Class A
