



Committee: Directly to Council
Committee Review: N/A
Staff: Christine Wellons, Legislative Attorney
Carolyn Chen, Legislative Analyst
Purpose: Discuss state legislation/obtain Council positions.
Keywords: #stateleg

AGENDA ITEM #1
November 30, 2020

SUBJECT

Continued Discussion: 2021 State Legislative Session Review of Local and Bi-County Bills

EXPECTED ATTENDEES

Melanie Wenger, Director, Office of Intergovernmental Relations (OIR)
Kathleen Boucher, Special Assistant to Director, OIR
Leslie Frey, Legislative Analyst, OIR
Sara Morningstar, Federal Relations Coordinator and Legislative Analyst, OIR
Amy Samman, Legislative Analyst, OIR
State Delegation Member(s)
Executive department representatives

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Council positions on local and bi-county bills that have been filed to date.

DESCRIPTION/ISSUE

Continue to discuss state legislation and potential Council positions on local and bi-county bills.

SUMMARY OF KEY DISCUSSION POINTS

N/A

This report contains:

Council staff summary chart
OIR staff report

Pages A1-A3
Pages 1-17

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Montgomery County State Delegation
2021 State Legislative Review of Local and Bi-County Bills
November 30, 2020

#	Bill # Link	Bill Name Requesters	Bill Description	OIR Memo 11/13/2020	CE Position	Council Position	Staff Recommendation Status Notes	CCL Staff
1	MC 1-21	Montgomery County - Residential Property Sales - School District Information <i>Requested by Delegates Moon, Acevero, Charkoudian, Crutchfield, Cullison, Palakovich-Carr, Shetty & Stewart & Senator Smith</i>	Requires that a contract for the sale of a single-family real property in Montgomery County contain a notice "that school boundaries designated for the property may be subject to change."	p.1-2	Support	Support	12/1/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Wellons Input by J. Zyontz and C. Howard.
2	MC 2-21	Montgomery County - Speed Limits – Establishment <i>Requested by Delegates Moon, Carr, Charkoudian, Crutchfield, Cullison, Palakovich-Carr, Shetty, Stewart & Wilkins & Senator Smith</i>	Allows the County to decrease the maximum speed limit to not less than 15 mph on highways in an urban district <u>without conducting</u> an engineering and traffic study, and allows the County to decrease the maximum speed limit to not less than 15 mpg on highways outside an urban district <u>after conducting</u> an engineering and traffic study.	p.2-3	Support w/ amendment to require engineering and traffic study before reducing the speed limit on highways in urban districts.	Support	12/1/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Chen Input by G. Orlin
3	MC 3-21	Montgomery County - Cooperative Housing Corporations, Condominiums, and Homeowners Associations - Reserve Studies <i>Requested by Delegates Crutchfield & Stewart</i>	Requires the governing body of a common ownership community (COC) to commission a study of the COC's reserves every five years.	p. 3-4	Support	Hold	Staff recommends support. <i>Reflects a recommendation made of the County's COVID-19 COC Distress Workgroup to strengthen knowledge and expertise in COCs to budget and fund common area improvements. DHCA believes this bill will assist in determining appropriate reserve funding levels. Similar bill for Prince George's County passed in 2020. 12/8/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.</i>	Chen Input by L. McMillan
4	MC 4-21	Montgomery County - Speed Monitoring Systems - Implementing Agency <i>Requested by Delegate Stewart</i>	Allows County to transfer administration of its speed camera program from the police department (MCPD) to the transportation department (MCDOT). Requires a MCDOT employee to sign the required statement of a speed camera violation citation, not an MCPD officer.	p. 4-5	Support	Support with amendments re: red light and school bus cameras	12/1/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Chen Input by S. Farag
5	MC 6-21	Montgomery County - Public Ethics - Payments to Elected Officials <i>Requested by Delegates Acevero & Carr</i>	Requires financial disclosures by applicants of a variety of land use proceedings (e.g., variance, conditional use, sectional map amendment, master plan). Prohibits elected officials who receive contributions from developers and other individuals involved in land use and zoning matters from participating in certain District Council decisions.	p. 5	Support w/ amendments to address technical and legal issues raised by OCA, Council legal staff and MCEC.	Oppose	12/8/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Wellons Input from J. Zyontz
6	MC 7-21	Montgomery County - Housing Opportunities Commission - Closed Sessions <i>Requested by Delegate Carr</i>	Reduces the number of exceptions to the Open Meetings Act (OMA) from the 15 listed in current law to six, for the HOC. Under the bill, for the HOC, members may meet in closed session to: (1) discuss the appointment, employment, assignment, promotion, discipline, demotion, removal, or resignation of appointees, employees, or officials over whom the HOC has jurisdiction; (2) consider the acquisition of real property for a public purpose and matters directly related to the acquisition; (3) consult with counsel; (4) consult with staff, consultants, or other individuals about pending or potential litigation; (5) comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or (6) satisfy an exceptional reason, if at least two-thirds of the Commissioners present vote to find that the reason is so compelling that it overrides the general public policy in favor of open sessions. Clarifies that HOC Committees are subject to OMA.	p.5-6	Support	Oppose	12/8/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Wellons
7	MC 8-21	Montgomery County Stable Homes Act <i>Requested by Delegate Wilkins</i>	Prohibits a landlord in Montgomery County from evicting a tenant holding over in the absence of "just cause."	p.6-8	Support	Support	12/8/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Wellons Input by L. McMillan

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8	MC 10-21	Montgomery County - Interference with Electric Company's Vegetation Management Compliance - Exemption <i>Requested by Delegate Carr</i>	Exempts Montgomery County from State law prohibiting a county or municipality from adopting or enforcing a local law or regulation or taking any other action that interferes with or materially increases the cost of work that an electric company must undertake to comply with the vegetation management standards.	p.8	Has not yet taken a position	No position	12/8/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Wellons Input by K. Levchenko
9	MC 11-21	Montgomery County - Alcoholic Beverages - Seating Requirements <i>Requested by Chair on behalf of Montgomery County Government</i>	Alcohol Beverage Services requested this bill to eliminate minimum and maximum seating requirements for the Beer, Wine, Liquor (BWL) Community Performing Arts alcoholic beverage license.	p.8-9	Support [Reviewed Oct. 28]	Support [Reviewed Oct. 28]	CE and Council reviewed Oct. 28 to support. 12/1/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Chen Input by C. Howard
10	MC 12-21	Montgomery County - Alcoholic Beverages - Draft Beer for Off-Site Consumption in Damascus <i>Requested by Senator Zucker & Delegates Kaiser, Luedtke & Queen</i>	Authorizes Board of License Commissioners (BLC) to issue a refillable container (growler) permit for draft beer or a nonrefillable container (crowler) permit for draft beer to Homer's Nest Grille in Damascus.	p.9	Support	Not yet discussed	Staff recommends support. 12/1/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Chen Input by C. Howard
11	MC 13-21	Burtonsville Crossing - Acquisition by Montgomery County <i>Requested by Senator Zucker & Delegates Kaiser, Luedtke & Queen</i>	Requires Montgomery County, by December 31, 2021, to initiate proceedings to acquire Burtonsville Crossing, located on Old Columbia Pike in Burtonsville, either by purchase or through the use of condemnation powers, as quickly as is practicable.	p.10	Has not yet taken a position	Not yet discussed	Staff recommends oppose. <i>The bill would mandate that the County acquires a particular property. While staff takes no position on whether the County should acquire the property in question, staff believes that the decision should be made by the County. In addition, OCA believes that the bill is unconstitutional.</i> 12/8/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Wellons Input by J. Zyontz
12	MC 14-21	Montgomery County - Public Campaign Financing - Expansion <i>Requested by Delegates Luedtke & Moon</i>	Authorizes Montgomery County to include the following offices in public financing: (1) Clerk of the Circuit Court; (2) Register of Wills; (3) Sheriff; and (4) State's Attorney.	p.10	Support	Not yet discussed	Staff recommends hold. <i>Pending further information regarding costs.</i> 12/8/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Wellons
13	MC 15-21	Montgomery County - Deer Management Permit Pilot Program <i>Requested by Delegate Fraser-Hidalgo</i>	Establishes a deer management pilot program in the County to develop a commercial market for venison legally taken by a person holding a Deer Management Permit. Requires Maryland Department of Agriculture (MDA) and National Resources (DNR) to adopt regulations to implement the pilot.	p.11	Has not yet taken a position	Not yet discussed	Staff recommends no position. <i>Under current law, the sale or purchase of meat from wild venison is prohibited. Modeled after similar programs in Texas to create new incentives for deer management. Recommend reporting requirements and review of oversight capacity of agencies.</i>	Chen Input by L. McMillan; MDA; DNR
14	MC 17-21	Montgomery County - Community Choice Energy - Pilot Program <i>Requested by Delegate Charkoudian</i>	Authorizes County to establish a seven-year Community Choice Energy (CCE) pilot program where County government purchases or generates electricity for its residents and businesses and customers would need to "opt-out."	p.11-12	Support	Not yet discussed	Staff recommends support. <i>Council 2021 priority to support Community Choice Energy programs under fiscal health and economic development. Recommend reviewing advertising requirements and cost.</i> 12/8/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Chen Input by K. Levchenko
15	MC/PG 100-21	Washington Suburban Sanitary Commission - Video Streaming and Archiving Meetings and Late Payment Charges <i>Requested by Delegate Charkoudian</i>	Requires WSSC to stream live video of the open meetings of the Commission and to maintain on its website a complete and unedited archived video recording of each meeting. Alters the amount that the Commission can impose as a late payment charge for unpaid water and sewer bills by changing it from a mandatory charge of 5% of the unpaid bill to a charge of up to 5% of the unpaid bill.	p.13	Has not yet taken a position	Not yet discussed	Staff recommends no position. <i>WSSC advises that it already exceeds Open Meetings Act requirements, and that requiring video streaming may result in inadvertent violations when WSSC need to take emergency actions. In addition, WSSC notes that its late fees already are low compared with other local water utilities.</i> 12/1/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Wellons
16	MC/PG 101-21	Maryland-National Capital Park and Planning Commission - Mandatory Referral Review <i>Requested by Delegates Carr, Crutchfield, Moon, Shetty & Solomon & Senator Waldstreicher</i>	Establishes process for Commission to ensure a complete submission before the 60-day "must act" period.	p.13-14	Support	Not yet discussed	Staff recommends no position. <i>Near identical bill was introduced in 2020. CE and M-NCPPC supported; Council did not take a position.</i> 12/1/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Chen Input by P. Dunn
16.5	MC/PG 102-21	Washington Suburban Sanitary Commission - Board of Ethics - Financial Disclosure Statements - Late Fees <i>Requested by Chair on behalf of the WSSC</i>	Authorizes WSSC's Board of Ethics to impose a fee on individuals who file disclosures late or fail to file them.	p.14	Not yet discussed	Not yet discussed	Staff recommends support. 12/8/20: Montgomery County Delegation Bill Hearing - 7:00 p.m.	Wellons

Montgomery County State Delegation
 2021 State Legislative Review of Local and Bi-County Bills
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#	Bill # Link	Bill Name <i>Requesters</i>	Bill Description	OIR Memo 11/13/2020	CE Position	Council Position	Staff Recommendation <i>Status Notes</i>	CCL Staff
17	MC/PG 104-21	Maryland-National Capital Park and Planning Commission - Innovative Recreation Youth Program <i>Requested by Delegate Walker</i>	Requires the Maryland-National Capital Park and Planning Commission to develop and implement an “innovate recreation youth program” that integrates nontraditional recreational opportunities into the Commission’s existing recreational programs offered in Montgomery County and Prince George’s County.	p.14	Not yet discussed	Not yet discussed	Staff recommends hold pending further review by the Planning Board. 12/8/20: <i>Montgomery County Delegation Bill Hearing - 7:00 p.m.</i>	Wellons Input by P. Dunn
18	MC/PG 106-21	Maryland-National Capital Park and Planning Commission - Prince George’s County - Concrete Batching Plans - Setback Requirement <i>Requested by Delegate Ivey</i>	Applies only to Prince George’s County. Establishes setback requirement of 1,000 feet for concrete batching plants.	p.15	Not yet discussed	Not yet discussed	Staff recommends no position. <i>This bill affects Prince George’s County. □</i> 12/1/20: <i>Montgomery County Delegation Bill Hearing - 7:00 p.m.</i>	Chen
19	MC/PG 107-21	Bi-County Agencies - Prince George’s County - Use and Occupancy Permits - Notice Requirements <i>Requested by Delegate Holmes</i>	Applies only in Prince George’s County and prohibits the Maryland-National Capital Park and Planning Commission from making any recommendations regarding use and occupancy permits unless the permit application contains a statement that: (1) identifies whether the subject property is part of a common ownership community; and (2) for a property that is part of a common ownership community, the applicant has delivered a copy of the application to the governing body of the common ownership community.	p.15	Not yet discussed	Not yet discussed	Staff recommends no position. <i>This bill affects Prince George’s County. □</i> 12/1/20: <i>Montgomery County Delegation Bill Hearing - 7:00 p.m.</i>	Wellons



OFFICE OF INTERGOVERNMENTAL RELATIONS

Marc Elrich
County Executive

Melanie Wenger
Director

November 13, 2020

MEMORANDUM

TO: Montgomery County Council

FROM: Melanie L. Wenger, Director, Office of Intergovernmental Relations

SUBJECT: 2021 State Legislative Session Review of Local, Bi-County, and Statewide Bill Requests

The Montgomery County Delegation will hold public hearings on Montgomery County Local and Bi-County bills that will be introduced in the 2021 State Legislative Session on December 1st and 8th. The purpose of this memo is to provide information on the local and bi-county bills introduced by individual State Delegation members so that the Office of Intergovernmental Relations (OIR) can obtain your positions on the bills. OIR has also included summaries of three Statewide bills requested by County Councilmembers.

Summaries of the bills follow:

LOCAL

MC 1-21 - Montgomery County - Residential Property Sales - School District Information (Requested by Delegates Moon, Acevero, Charkoudian, Crutchfield, Cullison, Palakovich Carr, Shetty & Stewart & Senator Smith)

This bill requires that a contract for the sale of a single-family real property in Montgomery County contain a notice “that school boundaries designated for the property may be subject to change.” The contract for sale cannot be voided solely because: (1) the notice is not included in the contract or (2) the buyer does not initial the notice.

MC 1-21 is similar to the amended version of a bill that the County Executive supported and was approved by the House Delegation last year. The County Council did not take a position on last year’s bill.

The Office of the County Attorney advises that there is a possible First Amendment issue regarding compelled speech because it requires a certain disclosure in the contract for sale. However, it is possible that the disclosure may be allowed because the regulation of commercial speech requires a lower level of scrutiny.

CE Position: Support

MC 2-21 - Montgomery County - Speed Limits – Establishment (Requested by Delegates Moon, Carr, Charkoudian, Crutchfield, Cullison, Palakovich-Carr, Shetty, Stewart & Wilkins & Senator Smith)

This enabling legislation allows Montgomery County to decrease the maximum speed limit to not less than 15 mph on highways in an urban district **without conducting** an engineering and traffic study, and allows the County to decrease the maximum speed limit to not less than 15 mph on highways outside an urban district **after conducting** an engineering and traffic study.

Similar local bills to allow Montgomery County to lower speed limits on local roads in certain areas were introduced in 2017 and 2019 but did not pass. In 2017, HB 337/MC 22-17 would have allowed the County to change the default speed limit for “highways in a business district” and “undivided highways in a residential district” from 30 mph to “between 20 mph and 30 mph” **without conducting** an engineering and traffic study. The bill received an unfavorable report in the House Environment & Transportation Committee. A second speed limit bill, HB 332/MC 23-17, would have given the County the authority to change the speed limit “floor” for roads located “outside an urban district” from 25 mph to 20 mph **after conducting** an engineering and traffic study. That bill passed the House but did not advance beyond a hearing in the Senate Judicial Proceedings Committee (JPR). The County Executive took no position on either bill, while the County Council supported both bills, as amended by the Delegation.

In 2019, the County Delegation again introduced enabling legislation on speed limits, HB 203/MC 24-19, that would have reduced the speed limit “floor” for roads “outside an urban district” from 25 mph to 20 mph **after conducting** an engineering and traffic study. The County supported the bill. The legislation passed the House but did not advance in JPR. Much of the opposition to the previous speed limit bills focused on claims of an increased reliance on automated speed camera enforcement, fear of racial profiling by law enforcement, and questions about a perceived lack of data supporting the benefits of lower speed limits on pedestrian and traffic safety.

The Montgomery County Department of Transportation has reviewed MC 2-21 and recommends that engineering and traffic studies be required for **both** highways in an urban district as well as highways outside an urban district. The Department advises that, “A study does not need to be an overwhelming exercise, but there should be analysis of the need [for reduced speed limits] before it is done.”

The Office of the County Attorney also reviewed the local bill and noted differences in how “urban district” is defined in the State Transportation Article, §21-101(v) versus how “urban district” is defined in extensive detail in Section 68A-8 of the County Code. In the State statute, an “urban district means an area that: (1) adjoins and includes any street; and (2) is built up with structures that are: (i) devoted to business, industry, or dwelling houses; and (ii) situated at intervals of less than 100 feet, for a distance of at least a quarter of a mile. It would be assumed that the Transportation Article definition, which is much less precise, applies.

CE Position: Support with amendment that would require an engineering and traffic study before reducing the speed limit on highways that are in urban districts.

MC 3-21 – Montgomery County – Cooperative Housing Corporations, Condominiums, and Homeowners Associations – Reserve Studies (Requested by Delegates Crutchfield & Stewart)

This bill requires the governing body of a common ownership common ownership community (COC) to commission a study of the COC’s reserves every five years. The study would include an analysis of the amount of reserve funds needed to support future major repairs and replacement of the COC’s common elements and common areas. MC 3-21 reflects a recommendation made by the County’s Covid-19 COC Distress Workgroup, based on concerns that members of COC governing bodies often lack the knowledge and expertise necessary to identify the improvements that need to be made to common elements and common areas and a timeline for making those improvements. This may result in those improvements not being budgeted for in advance, requiring the need for unanticipated resident special assessments or the loss of use of common elements and common areas altogether. The bill applies to cooperative housing corporations, condominiums, and homeowners associations.

MC 3-21 requires that the study be prepared by a person with specified experience who would: (1) identify each structural, mechanical, electrical, and plumbing component of the common elements or common areas and any other components that are the responsibility of the cooperative, condominium, or homeowners association to repair and replace; (2) state the normal useful life and estimated remaining useful life of each identified component; (3) state the estimated cost of repair or replacement of each identified component; and (4) state the estimated annual reserve amount necessary to accomplish any identified future repair or replacement.

If the reserve study indicates a need to budget for reserves, the budget must include: (1) the current estimated replacement cost, remaining life and useful life for capital components; (2) the amount of accumulated cash reserves set aside for the repair, replacement or restoration of capital components as of the beginning of the fiscal year in which the reserve study is conducted and the amount of expected contribution to the reserve fund for the fiscal year; (3) a statement describing the procedures used for estimation and accumulation of cash reserves; and (4) a statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

Additionally, the governing body of the COC is required to “provide funds to the reserve in accordance with the most recent reserve study” and review the reserve study annually for accuracy. The bill authorizes the governing body of the COC to increase an assessment levied to cover the reserve funding required by the study regardless of any restrictions capping assessments found in the articles of incorporation, bylaws, or proprietary leases.

This bill would only apply to a COC responsible under its declaration for maintaining and repairing common areas. COCs will have until October 1, 2022 to complete a reserve study if they had not conducted a study on or after October 1, 2017. If the COC conducted a reserve study on or after October 1, 2017, then a reserve study is required within five years of the date of the last study.

The Department of Housing and Community Affairs believes this bill will assist governing bodies in determining the appropriate level of reserve funding necessary to avoid burdening residents with frequent special assessments which may help these communities maintain financial solvency.

A similar bill applying only to Prince George’s County passed during the 2020 Session and took effect on October 1.

CE Position: Support

MC 4-21 – Montgomery County – Speed Monitoring Systems – Implementing Agency (Requested by Delegate Stewart)

This enabling legislation allows Montgomery County to transfer the administration of its speed camera program from the Montgomery County Police Department (MCPD) to the Montgomery County Department of Transportation (MCDOT). If such a transfer would take place, the bill requires that a MCDOT employee – and not an officer from MCPD – sign the required statement on a speed camera violation citation.

Under the State Transportation Article, §21-809, speed camera use is allowed on residential streets with speed limits of 35 mph or less and in school zones, and further specifies that automated traffic enforcement programs be administered by a law enforcement agency of a local political subdivision. Apart from Baltimore City, which placed its speed camera program under the City’s transportation department but requires that all speed camera violation citations be signed by a police officer, speed camera programs across the State are administered by police departments.

The Office of the County Attorney (OCA), the Department of Transportation (MCDOT), and the Department of Police (MCPD) have expressed concerns about MC 4-21. Specifically, OCA explained that while the local bill is only enabling, “DOT is not a law enforcing agency and is not equipped to act as one.” It pointed out that the bill “would have Montgomery County as the only jurisdiction in the State where no law enforcement individuals are reviewing speed camera citations and signing off on violations.”

CE Position: Support

MC 6-21 – Montgomery County – Public Ethics – Payments to Elected Officials (Requested by Delegates Acevero and Carr)

Current State law generally requires an applicant for a local map amendment to make certain disclosures of campaign contributions to a successful candidate for County Executive or County Council. This bill significantly expands State law to make it applicable to a variety of land use proceedings (e.g., variance, conditional use, sectional map amendment, master plan) and prohibits elected officials who receive contributions from developers and other individuals involved in land use and zoning matters from participating in certain District Council decisions. Under current law, failure to comply with disclosure requirements does not invalidate an otherwise valid District Council decision, although it could lead to criminal charges. Under the bill, failure to comply with disclosure or participation requirements is a basis for invalidating a District Council decision.

The Office of the County Attorney (OCA), Council legal staff, and the Executive Director of the Montgomery County Ethics Commission (MCEC) reviewed this complex bill and identified numerous legal and technical issues to be addressed before they can fully understand the intended scope of the bill or make any recommendations to the County Executive or Council. These issues include, but are not limited to, the following: (1) First Amendment issues relating to contributions to political campaigns; (2) vagueness and confusion regarding a variety of terms that make it hard to understand the intent of the bill or its legal validity; (3) inconsistencies between the bill and County law governing land use and zoning (e.g., the District Council does not make decisions about variances and conditional uses); (4) the role of MCEC; and (5) the role of the State Ethics Commission.

OIR, OCA, MCEC and Council staff will be discussing these issues with Delegate Acevero on November 16.

CE Position: Support with amendments to address the technical and legal issues raised by OCA, Council legal staff, and MCEC.

MC 7-21 – Montgomery County – Housing Opportunities Commission – Closed Sessions (Requested by Delegate Carr)

This bill makes two changes to State law relating to the Housing Opportunities Commission (HOC) and its authority to meet in closed sessions.

First, MC 7-21 reduces the number of exceptions to the Open Meetings Act (OMA) from the 15 listed in current law to six, for the HOC. Under the bill, for the HOC, members may meet in closed session to: (1) discuss the appointment, employment, assignment, promotion, discipline,

demotion, removal, or resignation of appointees, employees, or officials over whom the HOC has jurisdiction; (2) consider the acquisition of real property for a public purpose and matters directly related to the acquisition; (3) consult with counsel; (4) consult with staff, consultants, or other individuals about pending or potential litigation; (5) comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or (6) satisfy an exceptional reason, if at least two-thirds of the Commissioners present vote to find that the reason is so compelling that it overrides the general public policy in favor of open sessions. While the first five exceptions listed above are included in the list of 15, the sixth is not.

Second, MC 7-21 clarifies that committees created by the HOC are subject to the OMA. According to the bill sponsor, the HOC has several committees that meet regularly in closed sessions, including the Budget, Finance and Audit Committee, the Development and Finance Committee, and the Legislative and Regulatory Committee. On November 2, 2020, the State's Open Meeting Compliance Board issued an opinion about the HOC's committees and concluded "that the committees in question are subject to the [Open Meetings] Act and that they violated Section 3-301 whenever they met in closed session to perform a function subject to the Act." Section 3-301 provides, "Except as otherwise expressly provided in this title, a public body shall meet in open session."

The City of Annapolis Housing Authority operates under requirements nearly identical to those reflected in MC 7-21.

CE Position: Support

MC 8-21 – Montgomery County Stable Homes Act (Requested by Delegate Wilkins)

MC 8-21 prohibits a landlord in Montgomery County from evicting a tenant holding over in the absence of "just cause." Under the bill, just cause exists if: (1) a tenant has caused a substantial breach of the lease or substantial damage to the leased premises or another area of the property and after receiving notice to cure or correct the breach or pay the cost of repair the tenant fails to comply within 30 days; (2) 30 days after receiving notice to cease, a tenant continues to engage in disorderly conduct; (3) a tenant has engaged in illegal activity on the leased premises or on a public right of way abutting the leased premises; (4) a tenant, without reasonable cause, refuses to grant the landlord access to the leased premises for repairs, improvements or inspection of the leased premises; (5) a landlord, in good faith seeks to recover possession of the premises for use by the landlord's family member; (6) a landlord in good faith seeks to permanently remove the leased premises from the rental market; (7) a landlord, after obtaining all necessary permits, seeks to undertake substantial repairs or renovations that cannot be completed if the premises are occupied; or (8) a tenant habitually fails to pay rent when due and is notified by the landlord in writing that the rent is more than 7 days late at least four times in a 12-month period.

Just cause is not required for eviction if: (1) the property is owner-occupied and the landlord leases out a single unit; (2) the tenant's initial lease was conditioned on employment for the

landlord and the tenant's employment is terminated; or (3) the landlord owns no more than two single-family rental properties.

Under current local law, in Montgomery County, a landlord must provide 60 days' notice if the landlord does not intend to offer the existing tenant a renewed lease term. If a tenant remains in possession of the leased premises after the expiration of the lease term and the landlord wants to repossess the premises, the tenant is considered to be "holding over" under current State law. If a tenant holds over, the tenant becomes a month-to-month tenant, but all other terms of the expired lease remain in effect (albeit monthly). A landlord may file a complaint in District Court if a tenant refuses to relinquish possession at the end of the lease term. If the landlord proves proper notice, the lease term fully expires, and the tenant remains in possession of the premises, the Court will issue a judgment for possession in favor of the landlord.

MC 8-21 makes significant changes to the tenant holding over process in Montgomery County. A landlord will no longer be able to evict a tenant for holding over, absent an enumerated just cause. Under the bill, a tenant could continue to stay in possession of the property indefinitely after expiration of the lease, as a month-to-month tenant, subject to eviction for just cause as long as the tenant continues to pay the required rent.

If a landlord believes that a just cause has occurred, then the landlord can file a complaint with the District Court to evict the tenant 60 days after providing the tenant written notice via certified mail. If the landlord proves to the Court that the specified just cause occurred, then the Court will grant the eviction.

This bill also requires the Montgomery County Executive to the extent practicable, to collect and report to the County Council, and members of the Montgomery County Delegation to the General Assembly the following: (1) The number of complaints filed by a landlord during the preceding calendar year to repossess the premises; (2) the number of warrants of restitution issued by the sheriff during the preceding calendar year; and (3) The number of tenants who were evicted during the preceding calendar year categorized by the basis for just cause. These reporting requirements pertain to cases where: (1) the tenant failed to pay rent; (2) the tenant was holding over beyond the expiration of the lease; and (3) the tenant breached the lease for reasons other than failure to pay rent.

Versions of this bill have been introduced for the past three years. During the 2020 Session, the House Delegation approved a bill similar to MC 8-21 with amendments that did the following: (1) added habitual failure to pay rent as a just cause; (2) struck the reporting requirements assigned to the Housing Opportunities Commission and reassign those requirements to the Montgomery County Executive; and (3) created an exemption for landlords that own two or fewer single-family rental properties. The County supported the bill with the amendments approved by the House Delegation. However, as it did in the 2019 Session, the House Environment and Transportation Committee gave the bill an unfavorable report.

OIR has contacted the sponsor about addressing the following questions raised by DHCA and County Council staff:

- (1) Does the single-family rental property exclusion include condominiums and town houses in addition to single family detached and if so, should there be additional language clarifying that?
- (2) For the just cause (VI) allowing “A landlord, in good faith, seeks to permanently remove the leased premises from the rental market” should there be a definition of permanent?
- (3) Could the reporting start in September 2023 for calendar year 2022 which would be the first full calendar year that Just Cause would be in effect?

CE Position: Support

MC 10-21 – Montgomery County – Interference with Electric Company’s Vegetation Management Compliance – Exemption (Requested by Delegate Carr)

As required by State law, the Public Service Commission (Commission) has adopted regulations that implement service quality and reliability standards for electric utilities, including standards relating to vegetation management. State law prohibits a county or municipality from adopting or enforcing a local law or regulation or taking any other action that interferes with or materially increases the cost of work that an electric company must undertake to comply with the vegetation management standards. This bill exempts Montgomery County from that prohibition.

The Office of the County Attorney noted that the Commission reviews its vegetation management standards each year along with all of other electric reliability standards. In that process, the Commission has expressed concern about the “relatively high” per-mile cost of Pepco’s vegetation management program. The Department of Environmental Protection (DEP) is not aware of any recent issues regarding tree trimming, tree removal, or stump removal. DEP staff participate in regular meetings of the Maryland Electric Reliability Tree Trimming Council and advised that no issues have been raised recently with the group. DEP staff noted that electric utilities have just started to develop the next tri-annual customer perception surveys regarding vegetation management, which are targeted to be sent out to customers in September 2021 and completed by April 2022.

The CE has not yet taken a position on this bill.

MC 11-21 – Montgomery County – Alcoholic Beverages – Seating Requirements (Requested by Chair on behalf of Montgomery County Government)

Alcohol Beverage Services has requested a bill eliminating the minimum and maximum seating requirements for the BWL Community Performing Arts alcoholic beverage license. This license authorizes an entity that owns or leases a performing arts facility used for art classes, banquets,

community-related activities, exhibits, live performances, shows, theater productions, visual art shows, and weddings to sell beer, wine, and liquor by the drink for on-premises consumption.

Under current law, the facility is required to have a minimum of 200 seats and a maximum of 1,499 seats in order to qualify for the BWL Community Performing Arts license. This bill would eliminate that requirement and allow additional venues to have the opportunity to obtain this license. VisArts and BlackRock Center for the Arts currently hold this license. In 2019, legislation was enacted to allow these license holders to obtain a special event permit to allow for off-site functions like the pop-up art events in Rockville Town Center.

Removing the seating requirements from this license would allow large venues like the Fillmore and Strathmore to obtain this license. Currently, these venues are required to obtain a Large Performing Arts license which can only be used for “artistic, corporate, and community related activities” and requires: (1) a minimum capital investment not including real property of \$1,000,000; (2) a food facility permit and (3) 40 seats in a food service area. Since the enactment of the Large Performing Arts license, these venues have expanded the types of events they sponsor and host. The Community Performing Arts license would provide these venues additional flexibility and also allow them to take advantage of the special event permit.

Additionally, removing the minimum seating requirement would allow smaller performing arts theaters to obtain this license as well.

This bill was previously reviewed on October 28th. The County Executive and County Council support the bill.

MC 12-21 – Montgomery County – Alcoholic Beverages – Draft Beer for Off-Site Consumption in Damascus (Requested by Senator Zucker & Delegates Kaiser, Luedtke & Queen)

This bill authorizes the Board of License Commissioners (BLC) to issue a refillable container (growler) permit for draft beer or a nonrefillable container (crowler) permit for draft beer to the holder of a Class H beer and wine license holder in Damascus. A Class H-BW license holder may sell beer and wine for on-premises consumption only.

Under current law, holders of Class B-BW, Class D-BW, and Class BD-BWL licenses may obtain a permit to sell refillable and nonrefillable containers of draft beer. While Governor Hogan’s Executive Order “Expanding Alcohol Beverage Delivery and Carryout Services” authorizes all license holders to sell alcohol for off-premises consumption, this order will eventually expire. According to the bill sponsor, Hornet’s Nest in Damascus requested this bill so that it may continue selling refillable and nonrefillable containers of draft beer for off-premises consumption after the expiration of Governor Hogan’s Executive Order. Alcohol Beverage Services supports this bill.

CE Position: Support

MC 13-21 – Burtonsville Crossing – Acquisition by Montgomery County (Requested by Senator Zucker & Delegates Kaiser, Luedtke & Queen)

This bill requires Montgomery County, by December 31, 2021, to initiate proceedings to acquire Burtonsville Crossing, located on Old Columbia Pike in Burtonsville, either by purchase or through the use of condemnation powers, as quickly as is practicable. The effective date of the bill is July 1, 2021.

This 15.6 acre property, where the Burtonsville Shopping Center is located, was sold in 2003 by Giant Food to Edens, a development company. In 2010, Giant Food, which was the anchor tenant in the Shopping Center, moved across the street to the Burtonsville Town Square but held on to its lease in the Shopping Center, leaving the former store location vacant and further accelerating the departure of other tenants. Currently, only a handful of tenants remain in the Shopping Center. After many meetings with County departments and Burtonsville community groups – and a proposal presented by Edens for a mixed-use redevelopment in 2015 – little progress has been made on plans for redevelopment of the Shopping Center. The adjacent six acre Park and Ride lot has also become a stop for the Route 29 Business Rapid Transit system.

The Office of the County Attorney (OCA) believes MC 13-21 violates Art. XI-A, §4 of the Maryland Constitution, which prohibits the State from enacting a local law (a law applicable to one county) on a subject covered by the Express Powers Act (EPA). Montgomery County’s authority to acquire land by purchase or condemnation is covered by the EPA, State Local Government Article, §10-312(b)(1).

The CE has not yet taken a position on this bill.

MC 14-21 – Montgomery County – Public Campaign Financing – Expansion (Requested by Delegates Luedtke & Moon)

Current State law authorizes counties throughout the State to create a system of public campaign financing for elected officials in the executive or legislative branches of county government. This bill authorizes Montgomery County to include the following offices: (1) Clerk of the Circuit Court; (2) Register of Wills; (3) Sheriff; and (4) State’s Attorney.

During the 2020 Session, a local bill ([HB 792/MC 8-20](#)) that would have authorized Montgomery County to include candidates for the Board of Education in the public campaign finance system was approved by the House Delegation but never voted on by the Senate Delegation. It received a hearing before the House Ways and Means Committee but was never voted on by the Committee. The County Executive supported the bill and the Council did not take a position on it.

CE Position: Support

MC 15-21 – Montgomery County – Deer Management Permit Pilot Program (Requested by Delegate Fraser-Hidalgo)

This bill establishes a deer management pilot program in Montgomery County, which would be created and regulated by the State. The purpose of the pilot program is “to develop a commercial market for venison legally taken by a person holding a Deer Management Permit.” The bill would allow the holder of a Deer Management Permit to sell the meat or carcass of the deer within the State. The bill requires the Maryland Departments of Agriculture (MDA) and Natural Resources (DNR) to adopt regulations to implement the pilot program and “establish the requirements for the processing, inspection, labeling, and sale of wild venison in the State.” Under current law, the sale or purchase of meat from wild venison is prohibited in the State Natural Resources Article, §10-404 e and (g).

A Deer Management Permit is issued by DNR. It allows a holder or the agent of the permit holder to hunt deer outside deer hunting season for the purpose of preventing damage to crops. To obtain a Deer Management Permit an individual must request the Wildlife and Heritage Service unit of DNR to investigate the damage caused by the deer population in the area. The investigator will consider type of damage, severity of damage, the time of year, and deer population surveys and estimates. The investigator will then issue a written recommendation whether action should be taken to reduce the deer population in the area. If reduction is deemed necessary, DNR will issue a permit describing the hunting device to be used as well as the number and type of deer that may be shot.

The Maryland Department of Health (MDH) has authority to control intrastate requirements for venison. For example, MDH regulates deer meat donation programs. MDA reports that it does not currently have authority to enforce a deer meat inspection and enforcement program.

In 2015, a similar Statewide bill ([SB 748](#)) was introduced to allow the holder of a crop damage permit to hunt deer outside hunting season for the purpose of preventing crop damage and sell or offer for sale in the State the meat or carcass of the deer in accordance with regulations adopted by DNR and MDA. The bill failed to advance from the Senate Education, Health and Environmental Affairs Committee. While the Maryland Horse Council testified in support of the bill, there was opposition from sportsman and wildlife conservation groups.

The CE has not yet taken a position on this bill.

MC 17--1 - Montgomery County – Community Choice Energy – Pilot Program (Requested by Delegate Charkoudian)

This bill authorizes Montgomery County to establish a Community Choice Energy (CCE) pilot program under which the County government purchases or generates electricity for its residents and businesses. The pilot program would have an anticipated duration of about seven years. It would be an “opt-out” program, meaning that customers are automatically enrolled in the program unless they notify the County otherwise.

The CCE model is intended to provide communities with additional control over their energy provider choices, by allowing a jurisdiction /the aggregator to amass demand for the purpose of negotiating better rates and choose cleaner energy sources. CCEs are a hybrid between municipal utilities and standard investor-owned utilities. Typically, utilities are responsible for purchasing and distributing power, grid maintenance, and customer service. While customers currently have the ability purchase power from other energy providers, most purchase from standard utilities often because they are unaware of their other options. Under a CCE program, the local government purchases or generates the power, while the incumbent investor-owned utility maintains the grid and provides customer service.

Under MC 17-21, Montgomery County must enact a local law to authorize the creation of a CCE pilot program. Additionally, the bill sets out numerous requirements for a CCE plan, including rules governing community outreach and education, rights and responsibilities of both the County and customers, the types of notice that must be provided to customers, the manner in which a customer may choose to opt-out of the program and the types of charges that may be imposed on customers. It also lays out the role of the Public Service Commission (PSC) in establishing the CCE including, but not limited to: (1) approval of the aggregation plan and proposed terms; (2) establishing of standards and procedures to protect consumer rights; (3) establishing a schedule by which the County may transfer customers from standard offer service to retail or wholesale contracts under the aggregation plan; and (4) establishing procedures for an electric customer who is receiving electricity supply from the community choice aggregator to receive a bill assistance credit or any other specified bill assistance to which the customer may be entitled. The bill also requires that the PSC establish and “seek the advice and recommendation of” the Community Choice Energy Workgroup when adopting regulations and the conducting the study required at the conclusion of the pilot program.

Members of the Workgroup include: (1) a representative of Montgomery County government; (2) a representative of the Office of the People’s Counsel; (3) a representative of an investor-owned electric company that serves all or part of the County; (4) a representative of a competitive electricity supplier; (5) a representative of residential and small commercial electric customers; (6) a representative of low-income communities; (7) a representative of minority residential communities; and (8) a representative with expertise in implementing community choice aggregation programs. The workgroup is required to submit an annual report on the status of the pilot program to the PSC. The annual report must include information regarding rates, charges, and fees for service, renewable energy, customer satisfaction, and enrollment in the program.

A similar bill supported by the County (HB 561) passed the House of Delegates last year.

CE Position: Support

BI-COUNTY

MC/PG 100--1 - Washington Suburban Sanitary Commission - Video Streaming and Archiving Meetings and Late Payment Charges (Requested by Delegate Charkoudian)

This bill requires WSSC to stream live video of the open meetings of the Commission and to maintain on its website a complete and unedited archived video recording of each meeting. It also alters the amount that the Commission can impose as a late payment charge for unpaid water and sewer bills by changing it from a mandatory charge of 5% of the unpaid bill to a charge of up to 5% of the unpaid bill. The Commission has not yet taken a position on this bill but is scheduled to discuss the bill at its next monthly meeting on.

The CE has not yet taken a position on this bill.

MC/PG 101--1 - Maryland-National Capital Park and Planning Commission – Mandatory Referral Review (Requested by Delegates Carr, Crutchfield, Moon, Shetty & Solomon & Senator Waldstreicher)

The Maryland-Washington Regional District Act includes a “mandatory referral” process that prohibits public entities from conducting the following activities unless the location, character, grade, and extent of the activity is referred to and approved by the Maryland-National Capital Park and Planning Commission (Commission): (1) acquiring or selling land; (2) locating, constructing, or authorizing a road, park, public way or ground, public building or structure, or public or private utility; and (3) changing the use of or widening, narrowing, extending, relocating, vacating, or abandoning any facility listed in item (2). Unless a longer period is granted by the entity submitting a project for mandatory referral, the project is deemed approved if the Commission fails to act within 60 days after submission. If the Commission disapproves a submission, the submitter may disregard the disapproval.

This bill establishes a process that allows the Commission to ensure that it has a complete submission before the 60-day shot clock begins to run. The term “complete submission” is defined to mean an explanatory narrative accompanied by engineering or architectural drawings that depict the proposed location, character, grade, and extent of the activities. The bill requires the Commission to notify the submitter within 3 business days after receiving a submission (or amendment) that the submission (or amendment) is: (1) complete and accepted by the Commission; or (2) rejected as incomplete by the Commission. If the submission is rejected as incomplete, the Commission must provide an itemized list of missing information.

The Commission must act on an amended submission within 60 days after receipt and notify the submitting entity of its completeness within 3 business days after receipt. If a submission is rejected as incomplete after amendments have been submitted at least three times, the submitter

may notify the Commission that it is unable to provide additional information through reasonable means. On receipt of such notice, the Commission must accept the submission as complete and act on it within 60 days.

An almost identical bill ([HB 394 - PG/MC 101-20](#)) was introduced in the 2020 Session. The County Executive and M-NCPPC supported the bill. The County Council did not take a position. The Montgomery County House Delegation approved the bill and it passed the House of Delegates. The bill did not receive a hearing in the Senate.

CE Position: Support

MC/PG 102--1 - Washington Suburban Sanitary Commission - Board of Ethics - Financial Disclosure Statements - Late Fees (Requested by Chair on behalf of the WSSC)

This bill was requested by WSSC. The Code of Regulations promulgated by WSSC currently requires annual financial disclosure statements to be filed by all employees under the executive salary schedule, Grade 12 or above under the general salary schedule, or those holding decision-making positions designated by the General Manager. This bill authorizes WSSC's Board of Ethics to impose a fee on individuals who file disclosures late or fail to file them. The fee is \$5 for every day the disclosure is late, not to exceed \$500. The bill has been requested by WSSC and an analysis of the bill prepared by WSSC staff is attached to this memorandum. It includes a comparison of fees imposed on late filers by the Maryland State Ethics Commission, Montgomery County Ethics Commission, and Prince George's County Board of Ethics.

Has not been discussed with the CE.

MC/PG 104-21 – Maryland-National Capital Park and Planning Commission - Innovative Recreation Youth Program (Requested by Delegate Walker)

This bill requires the Maryland-National Capital Park and Planning Commission (Commission) to develop and implement an “innovate recreation youth program” that integrates nontraditional recreational opportunities into the Commission's existing recreational programs offered in Montgomery County and Prince George's County. The term “nontraditional recreational opportunities” is not defined but the bill gives three illustrative examples: (1) skate parks; (2) lacrosse walls; and (3) remote-controlled car courses. The bill also requires an annual mandatory appropriation of \$2 million for the program in fiscal years 2023 through 2027. This bill must be approved by the Prince George's County Delegation before it is considered by the Montgomery County Delegation because it has been introduced by a Prince George's County delegate. The Commission has not yet taken a position on the bill.

Has not been discussed with the CE.

MC/PG 106-21 - Maryland-National Capital Park and Planning Commission - Prince George's County - Concrete Batching Plans - Setback Requirement (Requested by Delegate Ivey)

This bill applies only in Prince George's County and establishes a setback requirement of 1,000 feet for concrete batching plants. This bill must be approved by the Prince George's County Delegation before it is considered by the Montgomery County Delegation because it has been introduced by a Prince George's County delegate.

Has not been discussed with the CE.

MC/PG 107-21 – Bi-County Agencies - Prince George's County - Use and Occupancy Permits - Notice Requirements (Requested by Delegate Holmes)

This bill applies only in Prince George's County and prohibits the Maryland-National Capital Park and Planning Commission from making any recommendations regarding use and occupancy permits unless the permit application contains a statement that: (1) identifies whether the subject property is part of a common ownership community; and (2) for a property that is part of a common ownership community, the applicant has delivered a copy of the application to the governing body of the common ownership community. This bill must be approved by the Prince George's County Delegation before it is considered by the Montgomery County Delegation because it has been introduced by a Prince George's County delegate.

Has not been discussed with the CE.

STATEWIDE

Electronic Partitions

This bill would prohibit an employee of a public or nonpublic school from operating an electric retractable room partition unless: (1) no student is present in the building; (2) no student is present in the room where the partition is located; or (3) the partition includes a safety sensor that automatically stops the partition if a person crosses the plane between the partitioned rooms. The bill also requires the Maryland State Department of Education to develop and disseminate model safety guidelines to each local school board and nonpublic school, including publishing them on its website.

There have been several child fatalities in the last few decades, with one occurring in Fairfax County in 2018. In 2019, Virginia enacted a similar law prohibiting operation of electronic room partitions in public schools except under certain circumstances. New York state enacted a similar law in 2001 but included all nonpublic schools and educational institutions as well.

A similar bill, supported by the County, passed the Senate last year but did not receive a hearing in the House due to the early adjournment of the 2020 Session.

Has not been discussed with the CE.

Maryland Public Information Act – Investigatory Records – Inspector General (requested by the Office of the Inspector General)

A bill ([SB193/HB 380](#)) was introduced in the 2020 Session at the request of the County Executive and County Council to establish that investigatory records of an Inspector General created by State or local law are exempt from mandatory disclosure under the Maryland Public Information Act (MPIA). The bill would have added these officials to the illustrative list of officials who are expressly authorized to keep investigatory records confidential when it serves the public interest to do so. That list currently includes (1) the Attorney General; (2) a State’s Attorney; (3) a municipal or county attorney; and (4) a police department or sheriff.

The bill would have given any Inspector General the same authority to deny access to investigatory records that the General Assembly gave to the new State-level Education Inspector General and the existing Commissioner of Financial Regulation in legislation that was enacted in 2019. Senate Bill 1030 (Blueprint for Maryland’s Future) created an Education Inspector General and expressly exempted the Inspector General’s investigatory records from the MPIA. Senate Bill 67 (Financial Institutions – Disclosure of Information from Investigations) gave the existing Commissioner of Financial Regulation authority to deny requests for the Commissioner’s investigatory records.

The bill passed the Senate in the 2020 Session but was not voted on in the House Government and Operations Committee.

Has not been discussed with the CE.

Elections Law – Campaign Financing – Recounts

On [December 9, 2019](#) and [July 10, 2020](#) the Council’s Government Operations and Fiscal Policy Committee reviewed a variety of issues relating to the County’s public campaign finance law, including issues relating to the use of public funds in a recount situation. General Counsel to the State Elections Commission Jared Demarinis advised the Committee that this situation should be handled by authorizing candidates to create separate Recount Committees that must follow specific rules governing use of public versus private funds, reporting deadlines, and contribution limits, etc. He also advised the Committee that State law needs to be amended to give the County enabling authority to enact a local law governing Recount Committees for publicly financed candidates for local office.

Council legal staff subsequently advised OIR that Council would like to pursue legislation to obtain this type of enabling authority. OIR has discussed this issue with Mr. Demarinis, the Chair

of the House Ways and Means Committee (Anne Kaiser), and the Vice Chair of the Senate Education, Health, and Environmental Affairs Committee (Cheryl Kagan). Delegate Kaiser and Senator Kagan have agreed to sponsor a bill that would grant the requested enabling authority. In addition, they believe that the State campaign finance law needs to be amended to establish clear rules governing Recount Committees for all regular and publicly financed candidates. They have requested that the Department of Legislative Services draft a bill that addresses all of these situations.

Has not been discussed with the CE.

Attachment