



Committee: Directly to Council
Committee Review: N/A
Staff: Christine Wellons, Senior Legislative Attorney
Ludeen McCartney-Green, Legislative Attorney
Purpose: Receive briefing and have discussion – no vote expected

AGENDA ITEM #1
November 28, 2022
Discussion

SUBJECT

Briefing – Montgomery County Local and Bi-County Bills – 2023 General Assembly

EXPECTED ATTENDEES

Melanie Wenger, Director, Office of Intergovernmental Relations (OIR)
Kathleen Boucher, Deputy Director, OIR

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Receive a briefing from OIR and Council staff regarding local and bi-county bills for the 2023 General Assembly Session.

DESCRIPTION/ISSUE

2023 Montgomery County Local and Bi-County Bills are available at:

- [Current Legislation \(montgomerycountydelegation.com\)](http://montgomerycountydelegation.com)

SUMMARY OF KEY DISCUSSION POINTS

- The enclosed chart provides general information and analysis about each bill.
- The enclosed OIR memorandum provides in-depth descriptions of each bill.
- Public hearings on the local and bi-county bills are scheduled for:
 - December 8, 2023; and
 - December 15, 2023.
- The Council is tentatively scheduled to discuss further, and potentially take positions on, the bills on December 6 and December 12.

This report contains:

Chart of Legislation - Prepared by Council Staff	©1
Memorandum from OIR	©9
Letter from Sheriff-Elect	©16

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Chart of 2023 Local and Bi-County Bills – Prepared by Council Staff – November 25, 2022

Bill Number and Title	Sponsor(s) and Public Hearing Date	Category	Description	Council Staff Notes	County Executive Position
MC 3-23 Montgomery County – Voting Methods	Delegate Palakovich-Carr Hearing: Dec. 15	Voting	The bill would enable the County to enact a law providing for ranked choice voting in elections for the County Executive, County Council, Circuit Court Judges, Sheriff, State’s Attorney, and Board of Education Members.	The bill authorizes but does not require the Council to pass a law regarding ranked choice voting. (Mia)	Supports
MC 7-23 Voting Systems – Ranked Choice Voting and Inclusion of City of Takoma Park Municipal Elections on the State Ballot	Delegates Moon, Charkoudian, & Wilkins Hearing: Dec. 15	Voting	The bill would prohibit the State Board of Elections from certifying a voting system unless (among other requirements) the voting system is capable of tabulating ballots in ranked choice voting. The bill also would provide that, if the City of Takoma Park uses ranked choice voting, the State Board would provide additional voting machines in the City, and the City would not be required to reimburse the State or the County for the machines.	The Council might wish to receive information from the Board of Elections regarding how many voting machines would be required for Takoma Park and the associated costs. (Jeong)	No position at this time

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MC 15-23 Montgomery County – Village of Friendship Heights Special Taxing District - Procurement	Delegates Korman, Kelly, & Love & Senator Lee Hearing: Dec. 8	Village of Friendship Heights	The bill would raise from \$5,000 to \$20,000 the threshold for when competitive bidding must occur for procurement by the Village of Friendship Heights. The bill also would allow the Village Council to forego competitive bidding if the Village Council finds that the procurement is in response to an emergency.	This bill is limited to procurement processes for the Village of Friendship Heights. (Howard)	Supports
MC/PG 106-23 Montgomery County – Off-Street Parking Requirements Near Mass Transit Stations	Delegates Moon, Korman, & Stewart Hearing: Dec. 15	Off-Street Parking	The bill would prohibit Montgomery County from enacting or enforcing any local law that requires the provision of new off- street parking for a residential development located within a 0.25 mile radius of an existing or planned Metro Line or Purple Line station.	Council staff is concerned that this bill would restrict the authority of the County government regarding the provision of off-street parking. The opportunity to make decisions regarding parking should not be taken from the Council. (Orlin)	Opposes

Chart of 2023 Local and Bi-County Bills – Prepared by Council Staff – November 25, 2022

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MC 6-23 Montgomery County – Speed Monitoring Systems – Authorized Highways	Delegates Solomon, Charkoudian, Cullison, Foley, Lopez, Kaufman Shetty, Stewart & Senator Waldstreicher Hearing: Dec. 8	Speed Monitoring	The bill would increase from 35 mph to 45 mph the maximum posted speed limit where a speed monitoring system could be used.	The Council might wish to receive the MCPD’s and DOT’s analyses of this legislation. (Orlin / Farag)	Supports
MC 8-23 Montgomery County – Speed Monitoring Systems – Maryland Route 200 (Intercounty Connector)	Senator Kramer Hearing: Dec. 8	Speed Monitoring	The bill would require the placement and use of four speed monitoring systems in the Montgomery County portion of Maryland Route 200. The State Transportation Authority and the County would be required to enter into an MOU to implement the requirements of the bill.	The Council might wish to receive MCPD’s and DOT’s views on this legislation. While it does make sense to have speed cameras on the ICC, Council staff is concerned that the bill would mandate the monitoring systems. (Orlin / Farag)	Supports

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MC 1-23 Montgomery County - School Bus Monitoring Cameras - Distribution of Fines	Delegates Moon and Love Hearing: Dec. 8	School Bus Monitoring / Use of Funds	The bill would require that fines collected by the County as the result of school bus monitoring camera violations on State highways be remitted to the State. The funds would have to be used to enhance pedestrian safety at the site(s) of the violations.	Similar provisions of State law require certain school bus fines collected in Anne Arundel and Baltimore City to be remitted to the State and used for safety enhancements in those jurisdictions. (Orlin / Farag)	Not yet reviewed.
MC 4-23 Montgomery County – Alcohol Beverage Services – Advisory Board	Chair on behalf of Montgomery County Hearing: Dec. 8	Alcoholic Beverages	The bill would alter the membership of the Advisory Board of the Alcohol Beverage Services of Montgomery County. Instead of requiring the Director of ABS and the Police Chief to serve on the Board, the bill would allow designees of those individuals to serve on the Board.	This bill is administrative in nature and would allow the Director of ABS and the Police Chief to send their designees to the ABS Advisory Board. (Mia)	Supports

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<p>MC 5-23 Montgomery County – Alcoholic Beverages - Board of License Commissioners - Qualifications</p>	<p>Chair on behalf of Montgomery County Hearing: Dec. 8</p>	<p>Alcoholic Beverages</p>	<p>The bill would remove a requirement that not more than three members of the Board of License Commissioners be members of the same political party. The bill would require the County Executive, when making appointments to the Board, to consider the need for geographic, political, racial, ethnic, and gender diversity.</p>	<p>Council staff believes that this bill would align with the Council’s equity goals by promoting racial, ethnic, and gender diversity on commissions. (Mia)</p>	<p>Supports</p>
<p>MC 16-23 Holders of Class B-BWL (Clubhouse/Lodge) License and Class 7 Micro-Brewery License</p>	<p>Chair on behalf of Montgomery County Hearing: Dec. 8</p>	<p>Alcoholic Beverages</p>	<p>The bill would provide that a restriction against having a financial interest in other retail alcoholic beverages licenses that applies to holders of a Class 7 micro-brewery license does not apply to a holder of a Class B-BWL (clubhouse/lodge) license in Montgomery County that is issued a Class 7 micro-brewery license.</p>	<p>The bill would allow the Montgomery County Revenue Authority (MCRA) to hold more than one Class B-BWL (clubhouse/lodge) license and a Class 7 micro-brewery license at the same time. (Mia)</p>	<p>Supports</p>

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Bill Number and Title	Sponsor(s) and Public Hearing Date	Category	Description	Council Staff Notes	County Executive Position
MC/PG 101-23 Washington Suburban Sanitary Commission – Minority Business Enterprise Utilization Program – Revisions and Extension	Chair on behalf of Washington Suburban Sanitary Commission Hearing: Dec. 15	WSSC	The bill would revise the minority business enterprise utilization program of WSSC. Among other revisions, it would clarify that the purpose of the program is to remedy discrimination. In addition, the bill would extend WSSC’s MBE program for five years.	WSSC Water had to get a one-year extension on its MBE program last year due to its latest disparity study being delayed a year. Now with that study recently completed, WSSC is seeking the normal 5-year extension to the program. (Levehenko)	Supports
MC/PG 104-23 Montgomery County - Maryland-National Capital Park and Planning Commission Restructuring Task Force – Establishment	Senator Kramer Hearing: Dec. 15	MNCPPC	The bill would establish a task force to study the feasibility of transferring the Montgomery County-specific duties of the MNCPPC to the Montgomery County government.	Council staff notes that there has been a long history of respecting the separation of the Commission from the County government. (Dunn)	Supports

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Bill Number and Title	Sponsor(s) and Public Hearing Date	Category	Description	Council Staff Notes	County Executive Position
MC/PG 103-23 Maryland-National Capital Park and Planning Commission – Collective Bargaining Agreement Implementation – Dispute Resolution	Senator Kramer Hearing: Dec. 15	MNCPPC / Collective Bargaining	The bill would allow the HOC or its employees’ bargaining representative to declare an impasse in the bargaining process and to seek appointment of an arbitrator-mediator. The mediator-arbitrator would require the parties to follow a certain process, and the mediator-arbitrator would choose a final and best offer of one of the parties.	The Council might wish to obtain the MNCPPC’s and bargaining representatives’ views of this legislation. (Wellons)	Supports with clarifying amendments
MC 10-23 Montgomery County Housing Opportunities Commission – Collective Bargaining Agreement Implementation – Impasse Arbitration	Senator Kramer Hearing: Dec. 15	HOC / Collective Bargaining	The bill would allow the HOC or its employees’ bargaining representative to declare an impasse in the bargaining process and to seek appointment of an arbitrator-mediator. The mediator-arbitrator would require the parties to follow a certain process, and the mediator-arbitrator would choose a final and best offer of one of the parties.	The Council might wish to obtain the HOC’s and bargaining representatives’ views of this legislation. (Jeong / Wellons)	Supports with clarifying amendment(s)

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Bill Number and Title	Sponsor(s) and Public Hearing Date	Category	Description	Council Staff Notes	County Executive Position
MC 13-23 Montgomery County – Collective Bargaining for Sheriff’s Office Employees – Binding Arbitration Procedures	Senator Kramer Hearing: Dec. 8	Sheriff’s Office / Collective Bargaining	The bill would provide that if the Sheriff and a bargaining representative are unable to reach agreement during negotiations, the Montgomery County Code would govern the procedures for declaring an impasse and submitting the dispute to binding arbitration.	The Sheriff-Elect has raised the concern that this bill might be problematic under the State Constitution. He has submitted a letter outlining his concerns (©16). (Farag)	No position at this time



OFFICE OF INTERGOVERNMENTAL RELATIONS

Marc Elrich
County Executive

Melanie Wenger
Director

November 22, 2022

MEMORANDUM

TO: Montgomery County Council

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

SUBJECT: 2023 State Legislative Session Preparation

The purpose of the Office of Intergovernmental Relation’s meeting with the County Council scheduled for 12:30 p.m. on Monday, November 28, 2022, is to review the local and bi-county bills introduced by individual Montgomery County State Delegation members and three local bills requested by Montgomery County Alcoholic Beverage Services. The State Delegation will hold public hearings on these bills on December 8th and 15th, in preparation for their introduction in the 2023 State Legislative Session. Summaries of the bills follow:

LOCAL BILLS

MC 3-23 – *Montgomery County - Voting Methods* (Delegate Palakovich Carr)

This bill is a reintroduction of House Bill 362 (MC 13-22) from 2022, which was supported by both the County Executive and County Council. It authorizes the County to adopt a local law establishing a “ranked choice” or “approval rating” voting system for elections to County Executive, County Council, Circuit Court Judge, State’s Attorney, Register of Wills, Sheriff, and Board of Education. “Ranked choice voting” means a method of casting and tabulating votes in which voters rank candidates in order of preference and votes are tabulated in a manner that reflects voter preference. “Approval voting” means a method of casting and tabulating votes in which voters may choose any number of candidates and the candidate chosen most often is elected. House Bill 362 (MC 13-22) received a favorable report from the Delegation last year but never received a vote in the House Ways and Means Committee.

County Executive supports this bill.

MC 4-23 – *Montgomery County - Alcoholic Beverage Services - Advisory Board* (Chair on behalf of Montgomery County Government)

This bill authorizes the Alcohol Beverage Services director and the Chief of Police to each designate another person to serve in their respective places as members of the eight-member Alcoholic Beverages Advisory Board.

County Executive supports this bill.

MC 5-23 – *Montgomery County - Alcoholic Beverages - Board of License Commissioners - Qualifications* (Chair on behalf of Montgomery County Government)

This bill substitutes the requirement that not more than three members of the Board of License Commissioners may be members of the same political party with language requiring the County Executive to consider, when evaluating Board applicants, the need for geographic, political, racial, ethnic, and gender diversity. The statutes for Prince George’s County and Baltimore City reflect this approach.

County Executive supports this bill.

MC 6-23 – *Montgomery County - Speed Monitoring Systems - Authorized Highways* (Delegate Solomon)

The Maryland Transportation Article limits the placement and use of automated traffic enforcement units (ATEUs) to highways in residential districts with a maximum posted speed of 35 miles per hour. This bill authorizes Montgomery County to place ATEUs on all roadways in the County with a maximum posted speed limit of 45 miles per hour. Justification for the placement of ATEUs will continue to be determined through data analyses of speed surveys and collisions.

County Executive supports this bill.

MC 7-23 – *Voting Systems - Ranked Choice Voting and Inclusion of City of Takoma Park Municipal Elections on the State Ballot* (Delegate Moon)

Under current law, the State Board of Elections may not certify a voting system unless the system: (1) protects secrecy of the ballot; (2) protects security of the voting process; (3) counts and records all votes accurately; (4) accommodates any ballot form required under State law; (5) protects voter rights; (6) is capable of paper record of all votes; and (7) provides a voter-verifiable paper record. The bill adds an eighth factor by requiring that the system be capable of tabulating ballots cast in an election conducted using ranked choice voting without the necessity of modifying or upgrading the voting system to achieve that capability.

With a few exceptions, municipal elections are not conducted under, or subject to, the State Election Law. So, while the County would need to obtain express State enabling authority to require ranked choice voting for specified offices, a municipality does not need that express authority. Under current law, a municipality may request that the State Board include on a ballot the office and questions to be voted on in a municipal election. However, the municipality must reimburse the State Board and the applicable local board for any additional costs incurred as a result of including the municipal offices and questions on the ballot.

The bill adds several requirements that would be triggered if the State Board approves a request from the City of Takoma Park to include municipal offices or questions on the ballot subject to ranked choice voting. Specifically, the State must acquire additional voting machines for the Montgomery County Board of Elections to be used in Takoma Park to mitigate additional time added to the voting process by ranked choice voting and independent software to tabulate ranked choice voting results. The bill also specifies that Takoma Park is not required to reimburse the State or local board for the additional costs associated with ranked choice voting.

County Executive has no position on this bill at this time.

MC 8-23 – *Montgomery County - Speed Monitoring Systems - Maryland Route 200 (Intercounty Connector)* (Senator Kramer)

This bill requires the Maryland Department of Transportation Authority and Montgomery County to enter into a memorandum of understanding that requires the County to implement and administer speed monitoring systems placed and used on the Intercounty Connector, between the exit ramps on Shady Grove Road and Route 29. The legislation requires the placement of four systems, of which no more than two could be operational at a given time.

MC 8-23 is a reintroduction of a proposal from the 2022 Session that suffered from significant drafting and other technical deficiencies. After substantial amendments, the bill was passed by the House and Senate Delegations but was given an unfavorable report in the House Environment and Transportation Committee. The Executive supported the first draft of the bill in concept; the Council never took a position.

County Executive supports this bill.

MC 10-23 – *Montgomery County Housing Opportunities Commission - Collective Bargaining Agreement Implementation - Impasse Arbitration* (Senator Kramer)

This bill establishes a process to utilize a mediator-arbitrator during collective bargaining that occurs “out-of-cycle” – i.e., during the term of an existing collective bargaining agreement (CBA). The bill mirrors provisions of current State law that apply to “in-cycle” collective bargaining – i.e., when a new CBA is negotiated before an existing CBA terminates. The bill authorizes either party to a CBA to declare an impasse and request the services of a mediator-arbitrator and also authorizes the parties to jointly agree to request the services of a mediator-arbitrator without declaring an impasse. The bill establishes a binding arbitration process to be followed when the mediator-arbitrator determines that the parties are in a bona fide impasse. The bill includes requirements that: (1) the Labor Relations Administrator appoint a mediator-

arbitrator if the parties are unable to agree on one; (2) the mediator-arbitrator hold a nonpublic hearing on each party's last final offer; and (3) the mediator-arbitrator choose the final offer that is more reasonable when viewed as a whole.

The bill includes language that mirrors State law governing in-cycle collective bargaining under which certain economic provisions are subject to funding by the Montgomery County Housing Opportunities Commission (HOC). The HOC may accept or reject all or part of any term or condition regarding wages that requires an appropriation of funds or the adoption of regulations that may have a fiscal impact on the Commission. An existing provision of State law that is not included in the bill but nonetheless would apply in the circumstances addressed in the bill indicates that the County Council has final authority as to whether to appropriate funds for wages or other terms or conditions that may have a fiscal impact.

The procedures established in this bill are similar to existing provisions of County law that apply to out-of-cycle bargaining by employee unions. The Office of the County Attorney noted that it would be much simpler, from a bill drafting perspective, to simply add language to the existing State law governing impasse and arbitration for in-cycle bargaining to make those provisions applicable to out-of-cycle bargaining, rather than creating a new statutory section that restates the in-cycle mediation-arbitration process as applicable to out-of-cycle bargaining. OIR has discussed this technical issue with the sponsor, who indicated that he would consult with the Department of Legislative Services on a potential amendment.

The Office of Intergovernmental Relations has requested input from HOC but has not yet received feedback.

County Executive supports this bill with the technical and clarifying amendment referenced above.

MC 13-23 – Montgomery County Collective Bargaining for Sheriff's Office Employees - Binding Arbitration Procedures (Senator Kramer)

This bill makes existing provisions of County law that apply to the County and its unions regarding impasse and binding arbitration applicable to both in-cycle and out-of-cycle collective bargaining conducted by the Sheriff and its unions. County law allows either party to declare an impasse and request a mediator/arbitrator or both parties to jointly request a mediator/arbitrator before an impasse is declared. The County Council may accept or reject any term or condition that requires an appropriation or the enactment or adoption of a County law or regulation that would have a fiscal impact on the County. On November 22, 2022, Acting Sheriff Max Uy submitted a memorandum to the County Executive (copy attached) that outlines his opposition to the bill on the grounds that it violates the Maryland Constitution, primarily the separation of powers doctrine, because it imposes collective bargaining requirements on an independent official in the State judicial branch of government.

County Executive has no position on this bill at this time.

MC 15-23 – *Montgomery County - Village of Friendship Heights Special Taxing District - Procurement* (Delegate Korman)

This bill increases from \$5,000 to \$20,000 the maximum amount that the Friendship Heights Village Council can spend without competitively bidding for the purchase of the materials or work. The legislation also creates an exception, which would allow the Council to exceed the \$20,000 limit if the conditions under which a contract would be entered into is in response to an “emergency” as defined in the bill and is supported by a majority vote of the Council.

County Executive supports this bill.

MC 16-23 - *Montgomery County - Alcoholic Beverages - Holders of Class B-BWL (Clubhouse/Lodge) License and Class 7 Micro-Brewery License* (Chair on behalf of Montgomery County Government)

This bill removes Montgomery County from the application of a Statewide restriction in the Alcoholic Beverages Article that would prohibit the Montgomery County Revenue Authority (MCRA) from holding more than one Class B-BWL (clubhouse/lodge) license and a Class 7 micro-brewery license at the same time. Years ago, Montgomery County created a Class B-BWL (clubhouse/lodge) license, which may only be issued to the MCRA. Nine such licenses have been issued to the MCRA, one each for the nine golf courses it operates in the County. Legislation passed during the 2022 Session allowed the MCRA to be issued a Class 4 limited winery license and a Class 7 micro-brewery license, both issued by the State. The combination of these two licenses would allow the MCRA to produce wine (Class 4) and cider (Class 7) at its Crossvines project located at the Poolesville Golf Course. This existing restriction in current law prohibiting a licensee from holding more than one Class B-BWL license and a Class 7 micro-brewery license, however, was overlooked, until the MCRA applied for the Class 7 license. Passage of MC 16-23 will resolve this issue by allowing the MCRA to obtain a Class 7 micro-brewery license and hold its Class B-BWL (clubhouse/lodge) licenses at the same time.

County Executive supports this bill.

BI-COUNTY BILLS

MC/PG 101-23 – *Washington Suburban Sanitary Commission - Minority Business Enterprise Utilization Program - Revisions and Extensions* (Chair on behalf of Washington Suburban Sanitary Commission)

This bill, which has been requested by Washington Suburban Sanitary Commission (WSSC Water) in order to “update, modernize, streamline, and strengthen” State law governing WSSC Water’s Minority Business Enterprise (MBE) Utilization Program, including extending authority to implement an MBE program for five (5) years, ending on June 30, 2028. Current authority to conduct this program sunsets on June 30, 2023.

Authorization for WSSC Water’s MBE program is based on a disparity study conducted every five years. The disparity study determines the utilization and availability of minority and women owned firms within WSSC Water’s market area for construction, architectural and engineering, goods and services, and professional services. The study determines whether disparities exist and provides the factual predicate necessary to meet the legal requirements for the continuation of the MBE program. The latest disparity study was released in November 2022 and covers fiscal years 2015 through 2019.

Under current law, the MBE program is administered by WSSC Water’s Office of Supplier Diversity and Inclusion (OSDI), which facilitates the participation of certified MBEs in solicitations for goods and services and design/build construction contracts. The bill consolidates all procurement categories under one MBE program, clarifies that WSSC Water’s certification requirements must substantially duplicate State certification requirements, and modernizes the language of the statute to reflect current MBE best practices and legal requirements.

The bill includes legislative “findings” based on the disparity study, including a finding that there are substantial and statistically significant adverse disparities that are strong evidence of discrimination against minorities and nonminority women in wages, business formation, business owner earns, and access to capital in the same geographic markets and industry categories in which WSSC Water does business and a finding that WSSC Water will become a passive participant in private sector racial and gender discrimination if the authority to conduct its MBE Utilization Program is not extended.

County Executive supports this bill.

MC/PG 103-23 – Maryland-National Capital Park and Planning Commission - Collective Bargaining Agreement Implementation - Dispute Arbitration (Senator Kramer)

This bill is similar to ***MC 10-23 – Montgomery County Housing Opportunities Commission - Collective Bargaining Agreement Implementation - Impasse Arbitration***. It creates mostly identical binding arbitration procedures for collective bargaining that occurs “out-of-cycle” at the Maryland-National Capital Park and Planning Commission (M-NCPPC). The major difference is that the bill incorporates language taken from existing State law governing in-cycle bargaining at M-NCPPC that provides that the economic provisions of the final agreement are subject to funding by the Montgomery County Council and Prince George’s County Council. The same bill drafting issue discussed above regarding MC 10-23 applies to this bill. The Office of Intergovernmental Relations has requested input from M-NCPPC but has not yet received feedback.

County Executive supports this bill with the technical and clarifying amendment referenced under the discussion of MC 10-23.

MC/PG 104-23 – *Montgomery County - Maryland-National Capital Park and Planning Commission Restructuring Task Force - Establishment* (Senator Kramer)

This bill creates the Maryland-National Capital Park and Planning Commission (M-NCPPC) Restructuring Task Force and requires the Task Force to: (1) study the feasibility of transferring duties of the Montgomery County Planning Board, Planning Department, and Parks Department from M-NCPPC to County government; and (2) make recommendations on restructuring M-NCPPC to no longer include Montgomery County. The Task Force must submit a report to the County Executive, County Council, and State Delegation by December 1, 2024. The County Executive must provide staff for the Task Force and the Task Force may hire consultants.

The Task Force would include eighteen members or their designees: (1) one member appointed by Senate President; (2) one member appointed by the House Speaker; (3) Planning Board Chair; (4) County Executive; (5) County Council President; (6) Director of the Department of Permitting Services; (7) Director of the Parks Department; (8) Director of the Planning Department; (9) Director of the Department of Recreation; (10) Director of Office of Management and Budget; (11) President of the UFCW Local 1994 MCGEO; (12) two members of the public appointed by the County Executive; (13) one land use attorney appointed by the County Executive; (14) two members of the public appointed by the County Council; (15) one representative of the Maryland Building Industry Association; and (16) one representative of the Apartment and Office Building Association of Metropolitan Washington.

County Executive supports this bill.

MC/PG 106-23 – *Montgomery County - Off-Street Parking Requirements Near Mass Transit Stations* (Delegate Moon)

This bill prohibits the Montgomery County District Council from adopting or enforcing a local law that requires the creation of new off-street parking for a residential development that is located within a 0.25 radius of a present or planned Metro or Purple Line Station.

County Executive opposes this bill. The County has historically opposed any effort by the State to intrude on local autonomy over land use and zoning matters.



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50 Maryland Avenue
Rockville, Md. 20850
240-777-7000
240-777-7148 Fax

SHERIFF DARREN M. POPKIN

November 22, 2022

VIA E-MAIL

Honorable Marc Elich
Montgomery County Executive

Dear Marc:

While I have not had an opportunity to thoroughly review the proposed legislation in MC 13-23 (Montgomery County – Collective Bargaining for Sheriff's Office Employees – Binding Arbitration Procedures), the issue raised in the legislation is one that is familiar to the Montgomery County Sheriff's Office (MCSO). In that regard, the issue of whether collective bargaining disputes involving the MCSO and the Union representing certain employees in MCSO can be resolved by the Montgomery County Labor Relations Administrator (LRA) appointed under Chapter 33, Article VII of the Montgomery County Code, or third-party arbitrators under that procedure, has been disputed by the MCSO for more than fifteen (15) years for numerous reasons including most significantly for grounds under Maryland's state constitution. There are several flaws in the original 2006 legislation that authorized collective bargaining for MCSO employees, most notably the separation of powers flaw that is addressed in this letter, that have existed since the inception of the legislation authorizing collective bargaining for MCSO employees. The current proposed legislation does nothing to cure such constitutional flaws, but instead adds to them.

Third-party proceedings, including any binding arbitration under the auspices of Chapter 33, Article VII of the Montgomery County Code, violate the separation of powers doctrine since the proposed legislation would attempt to authorize imposing a collective bargaining agreement upon an independent judicial branch official – the Montgomery County Sheriff – by the legislature, as well as to unconstitutionally attempt to vest control of such in third-parties, including the LRA appointed by the County.

Article 8 of the Declaration of Rights in Maryland's Constitution states:

That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.

Typically, this provision prohibits the interchange of functions, such as the imposition of nonjudicial functions on the judiciary. *See, e.g., Cromwell v. Jackson*, 188 Md. 8 (1947) (court to issue liquor licenses); *Close v. Southern Maryland Agricultural Association*, 134 Md. 629 (1919) (circuit court to

issue license for race courses); *Board of Supervisors of Wicomico Co. v. Todd*, 97 Md. 247 (1903) (circuit court to certify petitions to hold election); *Beasley v. Ridout*, 94 Md. 641 (1902) (judiciary responsible for appointing board of visitors at county jail); *Robey v. County Commissioners*, 92 Md. 150 (1900) (judiciary to audit and approve accounts before payment). Conversely, it prohibits the usurpation of judicial functions by others. *See, e.g., Attorney General v. Waldron*, 289 Md. 683 (1981) (state statute that prohibited judicial pensioners from practicing law for compensation violates separation of powers).

Under Maryland's constitutional scheme, sheriffs are part of the Judicial Branch (or "Department") of government. The office is created in and by the Constitution's Article IV, "Judiciary Department". Both at common law and now, one of the principal duties of a sheriff is to provide security for and otherwise attend the courts. *Prince George's County v. Aluisi*, 355 Md. at 433. A county sheriff is thus "an essential part of the *judicial* machinery of the state". *Bowie v. Evening News*, 148 Md. 569, 576 (1925).

For the General Assembly to delegate to the executive branch of county government the authority to dictate – or, worse, to allow some third-party arbitrator or LRA to dictate – the authority of the Sheriff's Office to control its operations would unconstitutionally impair, if not usurp, the Sheriff's prerogatives. *See, e.g., Sugarloaf Citizens Ass'n v. Gudis*, 319 Md. 558 (1990) (county law that authorized court to void certain actions of county officials, if "in the best ... interest of the public", was invalid attempt to vest nonjudicial powers in the judiciary). It must be the Sheriff, and not some third party such as the County or an arbitrator, that decides whether to enter into an agreement and on what terms. *Freeman v. Local 1802*, 318 Md. 684, 695 (1990). Neither the legislature nor an arbitrator or the LRA acting pursuant to a legislative scheme can impose a collective bargaining agreement upon an independent judicial official. *Id.* This is consistent with other jurisdictions that have considered this issue and have rejected such legislative usurpation of judicial power. *See, for example, Barland v. Eau Claire County*, 216 Wis.2d, 560, 575 N.W.2d 691 (1998) (separation of powers doctrine violated by bumping provision in the collective bargaining agreement between the county government and its employees as applied to courthouse clerical employees since circuit court judges have exclusive inherent constitutional authority to prevent unilateral removal of their judicial assistants); and *Eshelman v. Commissioner of the County of Berks*, 62 Pa. Cmwlth. 310, 436 A.2d 710 (separation of powers doctrine violated where interest arbitration award included provisions that governed the hiring, supervision and discharge of court-appointed employees). Thus, to the extent the proposed legislation – MC 13-23 – legislatively attempts to permit the imposition of a collective bargaining agreement upon the Sheriff or, is claimed to authorize an arbitrator or Labor Relations Administrator to do the same, it violates the separation of powers doctrine and is unconstitutional.

In addition, to the extent that the Sheriff's bargaining law attempts to authorize the Labor Relations Administrator to make determinations with respect to the bargaining disputes, including impasses, it also violates the related delegation doctrine. While, Article IV, Section 44 of the Maryland Constitution provides that the Sheriff shall "exercise such powers and perform such duties as now are or may be hereafter fixed by law," it does not authorize the delegation of such legislative power to an administrative official such as the County Labor Relations Administrator, where sufficient safeguards are not present to guide such an administrative official. *See, e.g., Attorney General v. Waldron*, 289 Md. 683 (1981) (Legislature may not enact a statute that effectively denies attorneys the right to practice law since only the Judiciary may determine eligibility to practice law). Here, nothing in the Sheriff's bargaining law, including nothing in Md. Code Ann. Cts. & Jud. Proc. §2-329, provides *any* safeguards or directives that might otherwise guide the LRA in the exercise of his power. Accordingly, for this reason alone, as originally enacted, the Sheriff's bargaining law is

invalid and unconstitutional. Moreover, the proposed legislation – MC 13-23 – expressly attempts to expand the powers of the LRA and is therefore likewise unconstitutional.

For the foregoing reason, notably the serious constitutional flaw in MC 13-23 that does nothing to cure the original separation of powers flaw in CJP 2-329 and instead exacerbates that flaw, the MCSO cannot support this proposed legislation. The MCSO notes that there are other constitutional flaws in the original legislation, but given the limited time frame provided for responding to this proposed legislation, considers it appropriate to focus on the most obvious flaw in the proposed MC 13-23 bill authorizing binding arbitration. The MCSO welcomes the opportunity to further address these issues in an appropriate forum.

Sincerely,

A handwritten signature in black ink, appearing to read "Maxwell C. Uy". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

Maxwell C. Uy
Montgomery County Sheriff-Elect