



**Committee:** PH  
**Committee Review:** At a future date  
**Staff:** Livhu Ndou, Legislative Attorney  
**Purpose:** To receive testimony – no vote expected  
**Keywords:** #VotingRequirements #TechnicalCorrections  
#Omnibus

AGENDA ITEM #6  
January 17, 2023  
**Public Hearing**

## SUBJECT

Zoning Text Amendment (ZTA) 22-11, Technical Corrections

Lead Sponsor: Councilmember Friedson

## EXPECTED ATTENDEES

Members of the public

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

## DESCRIPTION/ISSUE

ZTA 22-11 will change the voting requirements for map amendments and zoning text amendments and make other technical corrections to the Zoning Ordinance.

## SUMMARY OF KEY DISCUSSION POINTS

- On December 5, 2022, the number of Councilmembers increased from 9 to 11 Councilmembers. ZTA 22-11 will increase the number of affirmative votes required for map amendments and zoning text amendments consistent with State law.
- ZTA 22-11 will also make several technical corrections, including removing incorrect references, alphabetizing a section of the use table, and fixing grammatical errors.
- A Planning, Housing & Parks (PH) Committee session is tentatively scheduled for January 23, 2023.

### This report contains:

ZTA 22-11	© 1
PG/MC 100–22	© 10
Racial Equity & Social Justice (RESJ) Impact Statement	© 14

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Zoning Text Amendment No.: 22-11  
Concerning: Technical Corrections  
Draft No. & Date: 1 – 11/24/2022  
Introduced: December 13, 2022  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsor: Councilmember Friedson

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- correct technical, typographical, grammatical, reference, and codification errors in, and make stylistic, clarifying, and conforming amendments to, various provisions of the zoning ordinance.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division 3.1.	“Use Table”
Section 3.1.4.	“Temporary Uses”
Section 3.1.6.	“Use Table”
Division 3.3.	“Residential Uses”
Section 3.3.3.	“Accessory Residential Uses”
Division 3.7.	“Miscellaneous Uses”
Section 3.7.1.	“Noncommercial Kennel”
Division 4.2.	“Agricultural Zone”
Section 4.2.1.	“Agricultural Reserve Zone (AR)”
Division 7.2.	“District Council Approvals”
Section 7.2.1.	“Local Map Amendment”
Section 7.2.2.	“Corrective Map Amendment”
Section 7.2.3.	“Sectional and District Map Amendment”
Section 7.2.4.	“Zoning Text Amendment”

Division 7.3.  
Section 7.3.6.

“Regulatory Approvals”  
“Biohealth Priority Campus Plan”

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*  
*Underlining indicates text that is added to existing law by the original text amendment.*  
*[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

#### ORDINANCE

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

1           **Sec. 1. DIVISION 59-3.1 is amended as follows:**

2   **Division 3.1. Use Table**

3   \*   \*   \*

4   **Section 3.1.4. Temporary Uses**

5   **A.    In General**

6   Temporary uses

- 7           1.     are temporary in nature;
- 8           2.     are established for a fixed period of time with the intent to discontinue
- 9                 the use when that period of time is over;
- 10          3.     do not involve the construction or alteration of any permanent
- 11                 structure; and
- 12          4.     require a temporary use permit under [Section 7.4.2]Chapter 8, with
- 13                 the following exceptions.

14   \*   \*   \*

15   **Section 3.1.6. Use Table**

16   The following Use Table identifies uses allowed in each zone. Uses may be

17   modified in Overlay zones under Division 4.9.

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USE OR USE GROUP	Definitions and Standards	Ag  AR	Rural Residential  R   RC   RNC			Residential												Commercial / Residential  CRN   CRT   CR			Employment  GR   NR   LSC   EOF				Industrial  IL   IM   IH				
						Residential Detached							Residential Townhouse			Residential Multi-Unit													
						RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20											R-10	
*   *   *																													
COMMERCIAL																													
*   *   *																													
Office and Professional	3.5.8																												
<u>Biohealth Priority Campus</u>	<u>3.5.8.E.</u>																			L				L	L				
Life Sciences	3.5.8.A																						P						
Office	3.5.8.B								C	C	C								P	P	P	P	P	L	P	L	L		
Research and Development	3.5.8.C																			P	P			P	L	P	P		
Signature Business Headquarters	3.5.8.D																				L								
[Biohealth Priority Campus]	[3.5.8.E.]																				[L]			[L]	[L]				
*   *   *																													

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\* \* \*

**Sec. 2. DIVISION 59-3.3 is amended as follows:**

**Division 3.3. Residential Uses**

\* \* \*

**Section 3.3.3. Accessory Residential Uses**

\* \* \*

**G. Home Health Practitioner**

\* \* \*

**3. Home Health Practitioner (Low Impact)**

\* \* \*

**c. Registration**

Any Home Health Practitioner (Low Impact) must register with DPS.

**i. Application Requirements**

\* \* \*

(j) a copy of the use-and-occupancy permit required  
[under Section 7.4.2]under Chapter 8; and

\* \* \*

**Sec. 3. DIVISION 59-3.7 is amended as follows:**

**Division 3.7. Miscellaneous Uses**

\* \* \*

**Section 3.7.2. Solar Collection System**

\* \* \*

**B. Use Standards**

1. Where a Solar Collection System is allowed as a limited use, it must  
satisfy the following standards:

\* \* \*

b. In Rural Residential, Residential, Commercial/Residential,  
Employment, and Industrial zones, where a Solar Collection

System is allowed as a limited use, it must satisfy the following standards[ in either Subsection 59.3.7.2.B.2.a or 59.3.7.2.B.2.b]:

\* \* \*

**Sec. 4. DIVISION 59-4.2 is amended as follows:**

**Division 4.2. Agricultural Zone**

**Section 4.2.1. Agricultural Reserve Zone (AR)**

\* \* \*

**D. Special Requirements for the Transfer of Density**

**1. In General**

- a. Under Section [4.9.15.B]4.9.18.B and in conformance with a general plan, master plan, or functional master plan, residential density may be transferred at the rate of one development right per 5 acres minus one development right for each existing dwelling unit, from the AR zone to a TDR Overlay zone. A development right is not required for the following dwelling units on land in the AR zone as long as the dwelling unit remains accessory to Farming and the principal dwelling:

\* \* \*

**2. Recording of Development Right**

- a. A development right may be created, transferred, and extinguished only by an easement and appropriate release, in a recordable form approved by the Planning Board. Any easement must limit the future construction of detached houses on land zoned AR to the total number of development rights allowed by zoning minus all

development rights recorded prior to October 30, 2014,  
all development rights previously transferred under  
Section 4.2.1.D.1 and Section [4.9.15.B]4.9.18.B, the  
number of development rights to be transferred by the  
instant transaction, and the number of existing detached  
houses on the property.

\* \* \*

**Sec. 5. DIVISION 59-7.4 is amended as follows:**

**Division 7.2. District Council Approvals**

\* \* \*

**Section 7.2.1. Local Map Amendment**

\* \* \*

**F. Decision**

1. The District Council must make its decision to approve, deny, or remand the application to the Hearing Examiner on the record.
2. Generally, an affirmative vote of [5]6 members of the District Council is required to approve an application; however, an affirmative vote of [6]8 members of the District Council is required to approve an application if:
  - a. approval would be contrary to the recommendation of the municipality in which the property is located; or
  - b. the Planning Board does not recommend approval of the application.

If the required number of affirmative votes is not obtained, the application is denied.

\* \* \*

**Section 7.2.2. Corrective Map Amendment**



\* \* \*

**E. Decision**

\* \* \*

2. An affirmative vote of [5]6 members of the District Council is required to approve a Corrective Map Amendment. If the required number of affirmative votes is not obtained, the application is denied.

\* \* \*

**Section 7.2.3. Sectional and District Map Amendment**

\* \* \*

**D. Decision**

1. The District Council must conduct a public hearing and make its decision to approve with or without modification, deny, or remand the application to the Planning Board for additional analysis.
2. Generally, an affirmative vote of [5]6 members of the District Council is required to approve an application; however, an affirmative vote of [6]8 members of the District Council is required to approve an application if:
  - a. approval would be contrary to the recommendation of the municipality in which the property is located; or
  - b. the Planning Board does not recommend approval of the application.

\* \* \*

**Section 7.2.4. Zoning Text Amendment**

\* \* \*

**D. Decision**

\* \* \*

2. A minimum of [5]6 members of the District Council must vote in the affirmative to adopt a Zoning Text Amendment.

\* \* \*

**Sec. 6. DIVISION 59-7.3 is amended as follows:**

**Division 7.3. Regulatory Approvals**

\* \* \*

**Section 7.3.6. Biohealth Priority Campus Plan**

\* \* \*

**B. Application Requirements**

\* \* \*

2. A Biohealth Priority Campus plan application must include:

\* \* \*

1. plans of proposed development showing:

- i. use, ground-floor layout, building footprints, massing, and heights of all on-site buildings and structures, and approximate footprints and height for buildings located on abutting and confronting lots;

\* \* \*

**Sec. 7. Effective date.** This ordinance becomes effective 20 days after the date of Council adoption.

## Chapter 611

**(House Bill 397)**

AN ACT concerning

**Maryland–National Capital Park and Planning Commission – Montgomery  
County – County Council and District Council – Voting Thresholds****PG/MC 100–22**

FOR the purpose of adjusting the voting thresholds necessary for the Montgomery County Council or the Montgomery County District Council to take certain actions related to the Maryland–National Capital Park and Planning Commission; and generally relating to the votes of the Montgomery County Council and District Council members.

BY repealing and reenacting, with amendments,

Article – Land Use

Section 15–103(a), 15–106(b), 15–108(b)(1), 18–107, 18–116, 22–209(c), and  
23–104(b)

Annotated Code of Maryland

(2012 Volume and 2021 Supplement)

BY repealing and reenacting, without amendments,

Article – Land Use

Section 15–106(a)

Annotated Code of Maryland

(2012 Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
That the Laws of Maryland read as follows:

**Article – Land Use**

15–103.

(a) (1) In Montgomery County, the County Council shall make an appointment to the Commission from a list of applicants.

(2) The list shall be:

- (i) completed at least 3 weeks before an appointment is made; and
- (ii) made available to the public.

(3) If the County Council does not appoint an individual whose name appears on the list or if no name appears on the list, the County Council shall provide for the preparation of a second list and follow the procedures under paragraph (2) of this subsection.

(4) Within 3 days after making an appointment, the County Council shall submit the name of the appointee to the County Executive.

(5) Within 30 days after the appointment is submitted, the County Executive shall approve or disapprove the appointment.

(6) An appointment that is not disapproved by the County Executive in accordance with this subsection is deemed to be approved.

(7) If the County Executive disapproves an appointment, the County Executive shall return the appointment to the County Council with the reasons for the disapproval stated in writing.

(8) By the affirmative vote of **[seven] NINE** of its members, the County Council may appoint a commissioner over the disapproval of the County Executive.

15–106.

(a) The County Executive of Prince George’s County, with the approval of a majority of the members of the County Council, and the Montgomery County Council, with the approval of the County Executive in accordance with subsection (b) of this section, shall each designate a commissioner for the position of chair or vice chair.

(b) (1) Within 3 days after making a designation, the Montgomery County Council shall submit the name of the designee to the County Executive.

(2) Within 30 days after the designation is submitted, the County Executive shall approve or disapprove the designation.

(3) If the County Executive disapproves a designee, the County Executive shall return the name of the designee to the County Council with the reasons for the disapproval stated in writing.

(4) By the affirmative vote of **[six] EIGHT** of its members, the County Council may designate a commissioner for the position of chair or vice chair over the disapproval of the County Executive.

(5) A designation that has not been disapproved by the County Executive in accordance with this subsection is deemed to be approved.

15–108.

(b) (1) (i) With the approval of the County Executive of Montgomery County, the County Council may authorize an appropriate supplementary salary for the commissioner designated by Montgomery County to serve on a full-time basis.

(ii) If the County Executive fails to approve a supplementary salary authorization by the County Council within 30 days after the authorization is submitted, the County Council, by an affirmative vote of [six] **EIGHT** of its members, may authorize the supplementary salary without the approval of the County Executive.

18–107.

(a) Within 3 calendar days after approval of the budgets, each county council shall submit the budgets to the respective county executive.

(b) Within 10 days after delivery of the budgets by the county council, the county executive may disapprove or reduce any item contained in the budgets or the planning work program.

(c) If the county executive disapproves or reduces any item in the budgets, the county executive shall return the budgets to the respective county council with the reasons for the county executive's disapproval or reduction stated in writing.

(d) **(1) [Within] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,** WITHIN 30 days after the respective county executive returns the budgets, each county council may, by affirmative vote of six of its members, reapprove or restore any item over the disapproval of the county executive.

**(2) IN MONTGOMERY COUNTY, WITHIN 30 DAYS AFTER THE COUNTY EXECUTIVE RETURNS THE BUDGETS, THE COUNTY COUNCIL MAY, BY AFFIRMATIVE VOTE OF EIGHT OF ITS MEMBERS, REAPPROVE OR RESTORE ANY ITEM OVER THE DISAPPROVAL OF THE COUNTY EXECUTIVE.**

18–116.

In Montgomery County, the County Council may amend an approved 6-year capital improvements program at any time by an affirmative vote of [six] **EIGHT** of its members.

22–209.

(c) (1) Except as provided in paragraph (2) of this subsection, an application that seeks a zoning classification not shown as appropriate or suitable in the text or on the land use map of a master plan that the district council has approved under § 21–107 of this article may be granted only by the affirmative vote of [six] **EIGHT** members of the district council.

(2) If the Commission recommends approval of the application for reclassification or if the application is for a zoning classification created after the district council approves the master plan, the affirmative vote of [five] **SIX** members of the district council is required to grant the application.

23–104.

(b) (1) In Montgomery County:

(i) within 3 days after adopting a subdivision regulation or amendment, the district council shall submit the regulation or amendment to the County Executive; and

(ii) within 10 days after the subdivision regulation or amendment is submitted, the County Executive shall approve or disapprove the regulation or amendment.

(2) If the County Executive disapproves the subdivision regulation or amendment, the County Executive shall return the regulation or amendment to the district council with the reasons for the disapproval stated in writing.

(3) By the affirmative vote of [six] **EIGHT** of its members, the district council may enact the subdivision regulation or amendment over the disapproval of the County Executive.

(4) A subdivision regulation or amendment that has not been disapproved by the County Executive in accordance with this subsection is considered to be approved.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to the voting threshold necessary to take any action by the Montgomery County Council or the Montgomery County District Council before December 5, 2022.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.

**Enacted under Article II, § 17(c) of the Maryland Constitution, May 29, 2022.**

# Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

## ZTA 22-11: TECHNICAL CORRECTIONS

### SUMMARY

The Office of Legislative Oversight (OLO) finds that Zoning Text Amendment 22-11, Technical Corrections, will have a minimal, positive impact on racial equity and social justice (RESJ) as it helps implement Expedited Bill 41-21, Elections – Council Districts – Boundaries,<sup>1</sup> that increased political representation for Black and Latinx residents in the County.<sup>2</sup>

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### PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.<sup>3</sup> Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.<sup>4</sup>

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### PURPOSE OF ZTA 22-11

In December 2021, the County Council enacted Expedited Bill 41-21, Elections – Council Districts – Boundaries, replacing the Council’s former five district boundaries with seven new districts. This increased the total number of County Councilmembers from 9 to 11 with the 20<sup>th</sup> County Council.<sup>5</sup> If enacted, ZTA 22-11 will increase the number of affirmative votes required for zoning text amendments and zoning map amendments. ZTA 22-11 will also make several technical corrections to the Zoning Ordinance, including removing incorrect references, alphabetizing a section of the use table, and fixing grammatical errors.<sup>6</sup> ZTA -22-11 was introduced on December 13, 2022.

Of note, the Zoning Ordinance describes permissible land uses for property in the County outside of its municipalities.<sup>7</sup> It establishes zones that permits various uses such as agriculture, residential, commercial, and industrial. The Zoning also sets standards for permitted density of development, location of structures, building heights, setbacks, and lot area for each zone.<sup>8</sup> The Zoning Map describes the County’s zones visually. Changes to the Zoning Ordinance require Council approval via zoning text amendments (ZTAs) while changes to the Zoning Map require zoning map amendments.

On November 3, 2022, OLO published a RESJ impact statement (RESJIS) for Expedited Bill 29-22, Local Laws – Updates to Required Numbers of Councilmember Votes.<sup>9</sup> This RESJIS builds from the RESJ analysis described in the RESJIS for Bill 29-22. For background on voting rights, political representation, and the RESJ impact of redistricting, see the RESJIS for Expedited Bill 41-21.<sup>10</sup>

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### ANTICIPATED RESJ IMPACTS

Expedited Bill 41-21 created two new Council districts where Black and Latinx persons respectively comprise the largest group of residents: District 5 where Black residents are the largest racial group and District 6 where Latinx residents are the largest ethnic group. The addition of two new districts increased the political representation and power of Black and Latinx residents in the County and thus enhances RESJ.<sup>11</sup>

# RESJ Impact Statement

## Zoning Text Amendment 22-11

Since ZTA 22-11 helps to implement Expedited Bill 41-21, OLO anticipates that it will have a positive impact on RESJ in the County. Given this and the other technical changes included in this ZTA, OLO anticipates a minor RESJ impact.

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### RECOMMENDED AMENDMENTS

Bill 44-20 amending the County's Racial Equity and Social Justice Act<sup>12</sup> requires OLO to consider whether recommended amendments aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements for zoning text amendments. OLO finds ZTA 22-11 will have a positive impact on RESJ in the County. As such, OLO does not offer recommended amendments.

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### CAVEATS

Two caveats to this RESJ impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council's decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the ZTA under consideration.

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### CONTRIBUTIONS

Elsabett Tesfaye, OLO Performance Management and Data Analyst, drafted this RESJ impact statement.

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<sup>1</sup> Montgomery County Council Expedited Bill 41-21: Elections-Council Districts-Boundaries. Enacted December 7, 2021  
[Montgomery County Council - Legislative Information Management System – bill details \(montgomerycountymd.gov\)](https://montgomerycountymd.gov/legis/legisinfo/bills/2021/41-21)

<sup>2</sup> Racial Equity and Social Justice Impact Statement for Expedited Bill 41-21, Office of Legislative Oversight, Montgomery County, Maryland, December 7, 2021.

[Expedited Bill 41-21: Elections – Council Districts – Boundaries \(montgomerycountymd.gov\)](https://montgomerycountymd.gov/legis/legisinfo/bills/2021/41-21)

<sup>3</sup> Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools <https://www.racialequitytools.org/glossary>

<sup>4</sup> Ibid

<sup>5</sup> Bohnel, Steve. “Marc Elrich, 20th County Council laud historic inauguration day”. Bethesda Beat. December 5, 2022.

<https://bethesdamagazine.com/2022/12/05/marc-elrich-20th-county-council-laud-historic-inauguration-day-for-local-government/>

<sup>6</sup> Montgomery County Council. Introduction: Agenda Item #3A December 13, 2022

[Zoning Text Amendment No: 10-xx \(montgomerycountymd.gov\)](https://montgomerycountymd.gov/legis/legisinfo/bills/2022/10-xx)

<sup>7</sup> The Zoning Ordinance refers to Chapter 59 of the County Code,

[https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco\\_md\\_zone2014/0-0-0-1](https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-1). For description of the Zoning Ordinance, also see “Everything That You Always Wanted to Know About Planning, Zoning and Subdivision in Montgomery County, Maryland.” Montgomery County Planning Board. March 1991 (4th Edition).

<sup>8</sup> Ibid

<sup>9</sup> Montgomery County Council, Bill 29-22E, Local Laws-Updates to Required Numbers of Councilmember Votes. Racial Equity and Social Justice (RESJ) Impact Statement Office of Legislative Oversight: November 3, 2022.

[RESJIS Expedited Bill 29-22: Local Laws – Updates to Required Numbers of Councilmember Votes \(montgomerycountymd.gov\)](https://montgomerycountymd.gov/legis/legisinfo/bills/2022/29-22)

<sup>10</sup> Montgomery County Council Bill 41-21E: Elections-Council Districts-Boundaries.

<sup>11</sup> Montgomery County Council Bill 29-22E: Local Laws-Updates to Required Numbers of Councilmember Votes

<sup>12</sup> Racial Equity and Social Justice (RESJ) Impact Statement for Bill 44-20, Office of Legislative Oversight Montgomery County, Maryland, December 1, 2020.



# RESJ Impact Statement

## Zoning Text Amendment 22-11

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[Montgomery County Council - Legislative Information Management System – bill details \(montgomerycountymd.gov\)](https://montgomerycountymd.gov/legis/legisinfo/legisinfo.aspx?bill=22-11)