



COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

APPROVED

Tuesday, November 10, 2020

The County Council for Montgomery County, Maryland convened via video conference at 9:05 A.M. on Tuesday, November 10, 2020.

PRESENT

Councilmember Sidney Katz, President
Councilmember Gabe Albornoz
Councilmember Evan Glass
Councilmember Nancy Navarro

Councilmember Tom Hucker, Vice President
Councilmember Andrew Friedson
Councilmember Will Jawando
Councilmember Craig Rice

Councilmember Hans Riemer

The President in the Chair.

PRESENTATIONS

- A. Proclamation was presented by Mr. Rice and County Executive Elrich recognizing Carbon Monoxide Awareness Month.
- B. Proclamation was presented by Mr. Riemer recognizing Heroes of NIH and FDA.
- C. Proclamation was presented by Mr. Katz and County Executive Elrich Celebrating Veterans Day.

GENERAL BUSINESS

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

Ms. Singleton, Clerk of the Council, announced an addendum to the agenda, adding introduction of a supplemental appropriation to the County Government's FY21 Capital Budget and amendment to the FY21-26 Capital Improvements Program (CIP), Department of Health and Human Services(DHHS) - \$1,000,000 for Emergency Homeless Shelter; adding a briefing on Inspector General Report - Department of Permitting Services

(DPS) Report and Investigation: DPS Inspectors were Overpaid COVID Differential Pay; postponing the Annual Meeting with Commission on Health; adding introduction, public hearing, and action on a Board of Health Regulation to adopt Executive Order 122-20AM, COVID-19 Local Order Amending and Restating Order dated September 29, 2020; and adding introduction and action on a resolution to approve Executive Order 122-20AM, COVID-19 Local Order Amending and Restating Order dated September 29, 2020, as the County Council; and adding an action date of November 16, 2020, on a Resolution to amend Development Impact Tax Rates for Transportation and Public School Improvements.

(1) [The Council is seeking applicants for a vacancy on the County's Charter Review Commission. The deadline to apply is Wednesday, November 25, 2020, at 5:00 P.M.](#)

(2) B. **Acknowledgement - [Receipt of Petitions](#)**

Acknowledged receipt of a petition from residents of Montgomery County opposing **Bill 29-20**, Taxation - Payments in Lieu of Taxes - WMATA Property - Established.

C. **Action - Approval of Minutes**

Approved the minutes of September 15, 22, 29, and October 1, 2020, without objection.

(3.5) **BRIEFING - [Inspector General Report - DPS Report and Investigation: DPS Inspectors were Overpaid COVID Differential Pay](#)**

Participating in the discussion were Ms. Limarzi, Inspector General; Mr. Madaleno, Chief Administrative Officer (CAO); Ms. Kassiri, Deputy Chief Administrative Officer; Ms. Pedoeem, Director, DPS; Mr. Gottesman, Office of Management and Budget (OMB); and Dr. Stoddard, Director, Office of Emergency Management and Homeland Security (OEMHS).

Received a summary of the subject report from Ms. Limarzi, including background information, investigative findings, and recommendations; and the County Executive's response to the report and steps being taken to ensure that all County Departments comply with rules for applying COVID differential pay.

Mr. Katz expressed the view that there is a need for an independent, rather than internal, investigation to make certain all concerns raised in the report and by others are properly addressed.

Ms. Navarro, Chair of the Government Operations and Fiscal Policy (GO) Committee, expressed concern about the misapplication of differential pay, and about the September Office of the Inspector General (OIG) report on data breaches on government systems that exposed sensitive information on vulnerable minors. She noted that last year, the GO Committee made it a priority to ensure the OIG had the needed resources to conduct audits and investigations to help guide internal reform and provide added oversight. Noted that the Council now requires the Executive Branch to provide weekly reports of Coronavirus Aid, Relief, and Economic Security (CARES) Act funding, and Ms. Navarro stated that it must be ensured that misapplied differential pay funds are returned and processes are revamped to ensure this does not happen again. She agreed with Mr. Katz on the need for an independent review and audit of the situation, and suggested there should be a broader look at enhancement of data processes and security.

Mr. Friedson stated that there must be an outside review to ensure all COVID differential pay is claimed in accordance with County policy, every taxpayer dollar wrongfully paid out must be returned immediately, and there must be an acknowledgment of what this egregious act has done to the public trust. He requested and received information pertaining to when the County Executive and CAO were made aware of the issue, why the Council was not made aware at that time, why responsible parties were not placed on administrative leave, what action was taken to stop the misappropriation of funds, and what oversight mechanisms were established in advance to monitor use of COVID differential pay.

Mr. Jawando inquired if reimbursement for differential pay has been submitted to FEMA, if an external audit should be done as Ms. Limarzi reported there are challenges with the data. He asked that the OIG stay in touch with Councilmembers and to inform them if additional resources are needed.

Ms. Pedoem estimated \$103,000 in differential pay was paid erroneously and expressed the view that it was not deliberate but due to a lack of oversight.

Mr. Glass commented on the need for the OIG and encouraged residents to call the fraud hotline if they see something of concern. Ms. Limarzi reviewed the timeline of events from when the initial complaint was received on May 8, 2020, and noted that the reporting process is in statute and allows the administration to respond prior to the report's release to assure the accuracy of the report. Ms. Limarzi could not confirm or deny if other County departments were under investigation.

Mr. Albornoz noted budget issues associated with legitimate differential pay and supported an outside audit. He expressed the view that this was a systemic failure and the checks and balances were overwhelmed due to the pandemic. He also said not enough bandwidth is available and should be included in the scope of the

audit, and the County Executive must determine exactly what needs to be done to support County agencies and departments to carry out their duties. He supported an independent audit, questioned how long it would take to complete an audit, and whether it would review the system of checks and balances within departments.

Mr. Riemer said the Council should review the underlying agreement and asked the County Executive to work with the Council on the issue of employee compensation and the needs to the community.

Mr. Hucker supported a full independent audit and questioned whether it would impact the ability to meet the December 30, 2020, deadline for federal reimbursement requests. He suggested a review of whether police not engaging with the public are receiving differential pay.

Mr. Rice said he views this situation as wrongful judgement and reflects a bad attitude among some employees regarding use of taxpayer funds.

Mr. Madaleno said Executive Branch staff would meet to determine appropriate subject matter for an outside auditor.

(4) **COUNCIL SITTING AS BOARD OF HEALTH**

D. [Introduced Board of Health Regulation to adopt an Executive Order 122-20AM, COVID-19 Local Order Amending and Restating Order dated September 29, 2020](#)

and Public Hearing - [Board of Health Regulation to adopt an Executive Order 122-20AM, COVID-19 Local Order Amending and Restating Order dated September 29, 2020](#)

Introduced the subject Board of Health Regulation. Mr. Drummer, Senior Legislative Attorney, stated that last Thursday, the Council deferred action on and requested changes to Executive Order 122-20, and reviewed the changes as described on page 5 of the staff report.

The public hearing was held and the record closed. Councilmembers spoke in support of the Executive Order, the need to increase communication efforts, the need for a regional strategy, and for more State and federal support.

(4.5) **INTRODUCTION/ACTION** - [Resolution to approve an Executive Order 122-20AM, COVID-19 Local Order Amending and Restating Order dated September 29, 2020, as the County Council](#)

Introduced and adopted **Resolution 19-641**, approving Executive Order 122-20AM, COVID-19 Local Order Amending and Restating Order dated September 29, 2020, as the County Council.

Mr. Rice made the motion, which carried unanimously.

(4) E. [Resolution to adopt an Executive Order 122-20AM, COVID-19 Local Order Amending and Restating Order dated September 29, 2020, as a Board of Health Regulation](#)

Adopted Resolution **19-642**, approving Executive Order 122-20AM, COVID-19 Local Order Amending and Restating Order dated September 29, 2020, as a Board of Health Regulation.

Mr. Rice made the motion and the Resolution was adopted by a roll call vote:

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

The meeting recessed at 12:55 P.M. and reconvened at 1:34 P.M.

(5) **PUBLIC HEARING** - [Forest Glen/Montgomery Hills Sectional Map Amendment](#)

The public hearing was conducted. Mr. Friedson was temporarily absent. Additional material for the Council's consideration should be submitted by the close of business on November 13, 2020. A Planning, Housing and Economic Development (PHED) Committee worksession will be scheduled at a later date.

(6) **PUBLIC HEARING** - [Zoning Text Amendment \(ZTA\) 20-03, Townhouse Living - Conditional Use Standards](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on November 23, 2020. A PHED Committee worksession is tentatively scheduled for November 30, 2020.

(7) **PUBLIC HEARING** - Resolution to amend Development Impact Tax Rates for Transportation and Public School Improvements

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on November 10, 2020. Action is tentatively scheduled for November 16, 2020.

(8) **PUBLIC HEARING/ACTION** - Supplemental appropriation to Montgomery College's FY21 Current Fund Budget - \$4,497,874 for CARES Act Higher Education Emergency Relief Fund

The public hearing was conducted and the record closed.

Adopted **Resolution 19-643**, approving the subject supplemental appropriation.

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

(9) **PUBLIC HEARING/ACTION** - Special Appropriation to the County Government's FY21 Operating Budget Children's Opportunity Fund Non-Departmental Account (NDA) - \$1,800,000 for COVID-19 Educational Enrichment and Equity Hubs and Amendment to FY21 Operating Budget Resolution 19-472 Section G, FY21 Designation of Entities for Non-Competitive Contract Award Status: Greater Washington Community Foundation

The public hearing was conducted and the record closed.

Adopted **Resolution 19-644**, approving the subject special appropriation and amendment to FY21 Operating Budget Resolution 19-472 Section G Designation of Entities for Non-competitive Award Status: Greater Washington Community Foundation.

Ms. Navarro made the motion, which carried without objection.

(10) **PUBLIC HEARING/ACTION** - Special Appropriation to the County Government's FY21 Operating Budget, Arts and Humanities Council of Montgomery County (AHCMC) NDA - [\$334,500] \$406,190 for Arts COVID-19 Relief Fund

The public hearing was conducted and the record closed.

Adopted **Resolution 19-645**, approving the subject special appropriation in the amount of \$406,190.

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

- (11) **PUBLIC HEARING/ACTION** - [Special Appropriation to the County Government's FY21 Operating Budget, Office of the County Executive - \\$5,050,000 for Support for COVID-19 Response - Tourism Stabilization Grant Program; and Amendment to FY21 Operating Budget Resolution 19-472, Section G, Designation of Entities for Non-Competitive Contract Award Status: Conference and Visitors Bureau](#)

The public hearing was conducted and the record closed.

Participating in the discussion were Ms. Benjamin, Office of the County Executive; and Ms. Groff, Visit Montgomery.

Amended the resolution to explicitly state that the Council approves the reduced spending of \$5,050,000 in the Economic Development Fund, as recommended by the Executive to fund this appropriation; and to reduce the minimum number of annual visitors in paragraph 10 of the resolution from 40,000 to 25,000.

Adopted **Resolution 19-646**, approving the subject special appropriation and amendment to FY21 Operating Budget Resolution 19-472, Section G Designation of Entities for Non-Competitive Contract Award Status: Conference and Visitors Bureau, as amended.

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

- (4) **COUNCIL SITTING AS BOARD OF HEALTH** (*continued*)

- A. Annual Meeting with Commission on Health

This will be rescheduled for a future date.

- B. [Novel Coronavirus \(COVID-19\) and County Public Health Planning](#)

Participating in the discussion were Dr. Gayles, County Health Officer and Chief, Public Health Services, DHHS; and Dr. Stoddard.

Dr. Gayles stated that multiple jurisdictions are taking action similar to the Executive Order adopted earlier today to address the increase in the number of COVID-19 cases, pointing out that the local hospitalization rate and use of emergency room services for COVID and COVID-like illness has increased and that more young people are being hospitalized. The Department completed 412 investigations of childcare and/or school-related COVID or COVID-like cases, including reports of outbreaks related to youth sports, particularly ice hockey. They are continuing to work with the State regarding the availability of rapid testing. The Pfizer

vaccine is in Phase III trials, is moving forward and showing good results. Dr. Gayles expressed the hope that the State and Federal governments would provide guidance related to public health platforms and for providing additional assistance to local businesses. Dr. Stoddard indicated they would look at providing reasonable accommodations for certain activities over the 25-person threshold, and are continuing to meet with representatives from non-public schools and local businesses. Steps are being taken to continue to stockpile personal protective equipment (PPE) supplies, and they will continue to work with nursing homes and other group facilities to ensure they have enough PPEs to operate safely. Regarding contact tracing, a State contact tracing app is being launched, and there are increased communication efforts targeted in high-impact areas stressing the need for precautionary measures to limit transmission of the virus.

Regarding the reopening of schools, Dr. Gayles said the County won't meet the State criteria for reopening if the test positivity rate continues to be above five percent. Dr. Stoddard added that if the current trend continues, there would be no substantial in-school education programs for those students most in need. Mr. Rice noted that the Council recently approved additional funding for educational enrichment and equity hubs.

Dr. Gayles and Dr. Stoddard discussed vaccination dissemination plans and indicated a regional assessment of storage and possible venues for vaccine distribution was being conducted. They indicated that in addition to vaccination against the virus, the reopening of schools is also dependent upon residents wearing face coverings and minimizing interactions with others to reduce the transmission rate of the virus. Mr. Albornoz suggested that people should quarantine themselves after visiting other regions.

Mr. Hucker, commenting on the challenge to the Affordable Care Act at the Supreme Court, noted that states could lose funding and suggested the Council receive a briefing from the County Attorney's Office and the Office of Intergovernmental Relations on impacts to the County's uninsured population and Montgomery Cares programs.

C. [Coronavirus Relief Fund \(CRF\)](#)

Participating in the discussion were Mr. Madaleno; Dr. Crowel, Director, Dr. Andrews, Early Childhood Services, and Ms. Arnaiz, DHHS.

Received information that all of the \$10 million appropriation for the Early Childcare Education Initiative NDA was expended and that Nonprofit Montgomery and the Maryland Women's Business Center were

contracted to provide support and technical assistance to applicants. Regarding the special appropriation for School-Age Child Care During Distance Learning, they are doing outreach to the community and childcare providers in multiple languages.

Ms. Navarro requested information on how many childcare providers have applied for a grant, geographic locations of these providers, and how this program is connecting with other efforts, such as the equity hubs, and asked that the Council be kept updated.

Mr. Friedson requested additional information by next Tuesday on how the remaining funds (funds not used toward differential pay) of the initial \$80 million special appropriation for the CRF would be utilized.

Regarding the special appropriation for short-term assistance to distressed, affordable common ownership communities, Mr. Madaleno indicated only eight eligible applications were received, and that Executive Branch staff would provide recommendations to the Council on use for the remaining funds.

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
IN LEGISLATIVE SESSION - Day #33**

(12) Call of Bills for Final Reading:

A. [Bill 35-20, Human Rights and Civil Liberties - Fair Criminal Record Screening Standards - Amendments](#)

Mr. Stowe, Director, Office of Human Rights, participated in the discussion. Mr. Albornoz, Chair of the Health and Human Services (HHS) Committee, Mr. Jawando, Lead Sponsor of the bill, and Ms. Wellons, Legislative Attorney, reviewed the purpose of the bill and the recommendation of the joint Public Safety (PS)/HHS Committee, as contained in the staff report. Noted that this bill is an expansion of the 2014 “Ban the Box” legislation which prohibited employers from conducting a criminal background check of an applicant, or otherwise inquiring about the criminal or arrest history of an applicant, prior to completion of a first interview.

Supported without objection Mr. Jawando’s motion to amend the definition of Employer as follows: Employer means any person, individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity operating and doing business in the County that employs [15] 1 or more persons [[full-time]] in the County.

Reviewed the recommendation of the Joint Committee to specify that an employer may not consider a first misdemeanor (as opposed to a felony) conviction of second-degree assault. Ms. Wellons provided clarification of the differences between first- and second-degree assault, stating that second-degree assault includes a battery, attempted battery, or attempt to frighten. Mr. Albornoz commented that a number of domestic violence cases involve misdemeanor second-degree assault because that is all that can be proven.

Amended the bill to allow employers to inquire about an applicant's first conviction of assault in the second degree. Mr. Albornoz made the motion, which carried by a vote of 5 to 4. Councilmembers Jawando, Glass, Riemer, and Hucker voted in the negative.

Enacted draft #3 of **Bill 35-20**, as amended and shown at the end of these minutes.

The PS/HHS Committee made the motion and the bill was enacted by a roll call vote:

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

(13) **DISTRICT COUNCIL SESSION**

A. [Zoning Text Amendment 20-05, Commercial/Residential Zones - Additional Height](#)

Introduced draft #2 of the subject ZTA, sponsored by Mr. Hucker and Mr. Riemer. A public hearing will be scheduled at a future date.

B. [Zoning Text Amendment 20-06, Surface parking - Residential Zones](#)

Introduced draft #1 of ZTA 20-06, sponsored by Mr. Hucker and Mr. Riemer. A public hearing will be scheduled at a future date.

(14) **WORKSESSION/ACTION - [Planning Board Draft Amendment for the Mesrobian House: Amendment to the Master Plan for Historic Preservation](#)**

Senior Legislative Analyst Dunn stated that this amendment would add the Mesrobian House to the Master Plan for Historic Preservation.

Adopted **Resolution 19-647**, approving the subject amendment to the Master Plan for Historic Preservation.

Mr. Riemer made the motion, which carried unanimously.

(3) **CONSENT CALENDAR**

Approved the following consent calendar items listed below.

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

- A. **Introduced** a resolution designating Montgomery County Economic Development Corporation (MCEDC) as the County's Economic Development Corporation.
- B. **Introduced** a supplemental appropriation to the County Government's FY21 Operating Budget, Department of Correction and Rehabilitation - \$543,000 for the Inmate Advisory Council Fund. A public hearing and action are scheduled for December 1, 2020 at 1:30 P.M.
- C. **Adopted Resolution 19-648**, Economic Development Revenue Bonds for Georgetown Preparatory School.
- D. **Adopted Resolution 19-649**, Amendment to the FY21-26 Capital Improvements Program (CIP), Department of Environmental Protection (DEP)- \$4,700,000 for Transfer Station Fire Detection and Suppression System.
- E. **Adopted Resolution 19-650**, resolution to endorse a Maryland Economic Development Assistance Authority and Fund (MEDAAF) loan: Supernus Pharmaceuticals, Inc.
- F. **Adopted Resolution 19-651**, onfirming the County Executive's appointments to the Advisory Committee on Consumer Protection: Phillip Robinson, Tinuade Akinshola, Ingmar Goldson, Ira Rheingold.
- G. **Adopted Resolution 19-652**, onfirming the County Executive's appointments to the Commission on Health: Jonathan Arias, Alana Aronin, Marcela Campoli, Amy Gyau-Moyer, Kendra Harris, Desiree de la Torre, Rosemary Payne.
- H. **Introduced/Adopted Resolution 19-653**, amendment to Resolution 19-506, Support for COVID-19 Response - Montgomery County Food Security Fund.
- I. **Introduced** a special appropriation to the FY21 Operating Budget, Montgomery County Economic Development Corporation Non-Departmental Account, Restaurant Relief Grant Program, \$8,230,497 and Amendment to the FY21 Operating Budget Resolution 19-472, Section G, Designation of Entities for Non-Competitive Contract Award Status: Montgomery County Economic Development Corporation. A public hearing and action are scheduled for November 17, 2020 at 1:30 P.M.

- J. **Introduced** a special Appropriation to the County Government's FY21 Operating Budget, - \$35,636,325 for Federal Coronavirus Relief Fund NDA and Amendment to Resolution 19-498, Special Appropriation to the County Government's FY20 Operating Budget, Federal Coronavirus Relief Fund NDA. A public hearing and action are scheduled for November 17, 2020 at 1:30 P.M.
- K. **Introduced** a special Appropriation to the FY21 Capital Budget and Amendment to the FY21-26 Capital Improvements Program (CIP) - Montgomery County Public Schools (MCPS) - Major Capital Projects - Elementary (No. 652101) (South Lake ES) - \$5,853,000. A public hearing and action are scheduled for December 1, 2020 at 1:30 P.M.
- L. **Introduced** a special appropriation to the FY21 Capital Budget and Amendment to the FY21-26 CIP - MCPS -\$3,000,000 for HVAC (Mechanical Systems) Replacement: MCPS (No. 816633). A public hearing and action are scheduled for December 1, 2020 at 1:30 P.M.
- M. **Introduced** amendments to the FY21-26 CIP -
- Clarksburg Cluster ES (Clarksburg Village Site #2) (No. 651713)
 - Clarksburg HS Addition (No. 116505)
 - Kensington-Parkwood ES Addition - (P651505)
 - S. Christa McAuliffe ES Addition - (P651502)
 - Judith Resnick ES Addition - (P651507)
 - Shady Grove Transportation Depot Replacement - (P651641)
 - Blair G. Ewing Center Relocation - (P651515)
- A public hearing and action are scheduled for December 1, 2020 at 1:30 P.M.
- N. **Introduced** a resolution to Approve Disposition of a certain portion of the Oaks Landfill, located at 6010 Riggs Road, Gaithersburg. A public hearing and action are scheduled for December 1, 2020 at 1:30 P.M.
- O. **Introduced/Adopted Resolution 19-654**, amendment to Resolution 19-535, COVID-19 Human Services and Community NDA, Assistance to Community Clinics, Medical and Dental Practices.
- P. **Introduced** a supplemental appropriation #13-S21-CMCG-5 to the County Government's FY21 Capital Budget and Amendment to the FY21-26 Capital Improvements Program, DHHS - \$1,000,000 for Emergency Homeless Shelter (No. P602103).

(15) **WORKSESSIONS:**

- A. [2020-2024 Subdivision Staging Policy \(SSP\)](#)
- B. [Bill 37-20, Subdivision - Preliminary Plan - Adequate Public Facilities - Amendments](#)
- C. [Bill 38-20, Taxation - Development Impact Taxes for Transportation and Public School Improvements - Amendments](#)
- D. [Expedited Bill 39-20, Taxation - Recordation Tax - Amendments](#)

Participating in the discussion were Mr. Sartori, Chief, Division of Countywide Planning, and Ms. Wright, Director, Planning Department; Ms. Beck, Office of Management and Budget; Mr. Anderson, Chair, Montgomery County Planning Board; Dr. Orlin, Senior Analyst; Mr. Drummer, Senior Legislative Attorney; and Ms. Dunn, Senior Legislative Analyst.

Mr. Riemer began the discussion by expressing concern that the proposed impact tax would significantly increase the cost of housing in Greenfield areas in Clarksburg. Mr. Rice urged the Council to not make housing in Clarksburg more unaffordable.

Councilmembers considered Mr. Riemer's motion to limit an increase in the school impact tax to not more than three percent, which would apply to all areas but would come into play only for single-family detached and townhouses. Mr. Riemer later amended his motion to apply the three percent impact tax cap only to Greenfield areas. Mr. Rice offered a substitute amendment, which was supported by Mr. Riemer, the maker of the original motion, to calculate school impact taxes for single-family detached homes in Greenfield areas at a 0.8 factor.

Defeated Mr. Riemer's amended motion to calculate school impact taxes in Greenfield areas at a factor of 0.8, by a vote of 4 to 5:

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

Considered Mr. Jawando's motion to have only two school impact areas: Infill and Turnover, eliminating Greenfield, and his view that it would be revenue positive and is based on pipeline data. Mr. Anderson cautioned that eliminating the Greenfield area would result in increased rates for all other areas.

Approved Mr. Jawando's motion to have two school impact areas: Infill and Turnover, by a vote of 5 to 4:

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

Ms. Dunn reviewed the *Utilization Premium Payment: Percentage of impact tax to levy at each threshold and exemptions*, beginning on page 3 of the staff report.

Mr. Friedson put forward a motion to establish a Utilization Premium Payment (UPP) threshold of 30 percent utilization (first tier), 60 (second tier), and 90 (third tier), thereby amending the Committee proposal. He later accepted as amendments to his proposal Mr. Rice's suggestion to establish thresholds of 40-80-120, and Mr. Jawando's suggestion to include the schools test as conducted today. Ms. Navarro, seconder of the motion, concurred with the amendments. Mr. Sartori noted that because now the moratorium has been eliminated and there are multiple tiers, the schools test would not be exactly the same, but would be applied in the same manner as the test is applied today treating each application uniformly. Mr. Friedson and Ms. Navarro accepted this as an amendment to the motion,

Unanimously approved Mr. Friedson's motion, as amended to establish a UPP threshold of 40-80-120, to include the application of the schools test as conducted today.

Unanimously approved Mr. Jawando's motion to exempt Moderately Priced Dwelling Units (MPDUs) from the requirement to make a UPP.

Ms. Dunn reviewed the Transition language for implementation of the SSP and Bill 37-20, Bill 38-20, and Expedited Bill 39- 20, as shown beginning on page 12 of the staff report.

Unanimously approved Mr. Riemer's motion to accept the transition language as contained in the staff report.

The Council agreed to schedule discussion of the recordation tax on November 12, 2020, at 4:00 P.M.

The meeting adjourned at 7:13 P.M.

This is a correct copy of Council action.

Approved/Signed by Clerk of the Council

Selena Mendy Singleton, Esq.
Clerk of the Council

Bill No. 35-20
 Concerning: Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments
 Revised: 11/10/2020 Draft No. 4
 Introduced: July 29, 2020
 Enacted: November 10, 2020
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
 FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Councilmember Jawando

AN ACT to:

- (1) alter definitions regarding fair criminal record screening standards;
- (2) prohibit certain inquiries regarding criminal records;
- (3) prohibit consideration of certain arrests and convictions in employment decisions; and
- (4) generally amend the law regarding criminal record screenings.

By amending

Montgomery County Code
 Chapter 27, Human Rights and Civil Liberties
 Sections 27-71, 27-72, and 27-75

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

1 **Sec. 1. Sections 27-71, 27-72, and 27-75 are amended as follows:**
2 **27-71. Findings and purpose; definitions.**

3 * * *
4 (c) *Definitions.* As used in this Article:

5 * * *
6 *Conditional offer* means an offer of employment or an offer of a promotion that is conditioned
7 solely on:

- 8 (1) the results of the employer’s later inquiry into the applicant’s criminal record; or
9 (2) another contingency expressly communicated to the applicant at the time of the offer.
10 * * *

11 *Employer* means any person, individual, proprietorship, partnership, joint venture, corporation,
12 limited liability company, trust, association, or other entity operating and doing business in the
13 County that employs [15] 1 or more persons [[full-time]] in the County. Employer includes the
14 County government, but does not include the United States, any State, or any other local
15 government.
16 * * *

17 *Inquiry or Inquire* means any direct or indirect conduct intended to gather information, using any
18 mode of communication.

19 *Inquiry or Inquire* does not include:

- 20 (1) a question about an applicant’s conviction record or arrest record when the existence of
21 the record is [voluntarily] disclosed by the applicant voluntarily and not in response to a
22 question by the employer; or
23 (2) a question about an applicant’s employment history shown on the application or the
24 applicant’s resume.

25 *Interview* means any direct contact by the employer with the applicant, whether in person or by
26 telephone or internet communication, to discuss:

- 27 (1) the employment being sought; or
28 (2) the applicant’s qualifications.

29 *Interview* does not include:

- 30 (1) written correspondence or email; or
31 (2) direct contact made for the purpose of scheduling a discussion.]
32 * * *

33 **27-72. Prohibited inquiries; retaliation.**

34 * * *
35 (b) *Preliminary inquiry into criminal record.* In connection with the proposed employment of an
36 applicant, an employer must not, at any time before the [conclusion of a first interview] extension
37 of a conditional offer to the applicant:

- 38 (1) require the applicant to disclose whether the applicant has an arrest record or conviction
39 record, or otherwise has been accused of a crime;
40 (2) conduct a criminal record check on the applicant; or
41 (3) inquire of the applicant or others about whether the applicant has an arrest record or
42 conviction record or otherwise has been accused of a crime.

43 (c) *Prohibition against inquiry into certain criminal records.* In connection with the proposed
44 employment of an applicant, an employer must not at any time require an applicant to disclose,
45 conduct a criminal record check to determine, or otherwise inquire of the applicant or others,
46 whether:

- 47 (1) the applicant has been arrested for, or has an arrest record for, a matter that did not result
48 in a conviction; or
49 (2) the applicant has an arrest record or a conviction record for, or otherwise has been
50 accused of:
51 (A) a first conviction of:
52 (i) trespass under §§ 6-402 or 6-403 of the Criminal Law Article of the
53 Maryland Code; or
54 (ii) disturbance of the peace under § 10-201 of the Criminal Law Article of
55 the Maryland Code;]] or

- 56 (iii) assault in the second degree under § 3-203 of the Criminal Law Article
- 57 of the Maryland Code;]]
- 58 (B) a conviction of a misdemeanor if at least 3 years have passed since:
- 59 (i) the date of the conviction; and
- 60 (ii) the date that any period of incarceration for the misdemeanor ended; or
- 61 (C) a matter for which records:
- 62 (i) are confidential under § 3-8A-27 of the Courts and Judicial
- 63 Proceedings Article of the Maryland Code; or
- 64 (ii) have been expunged under §§ 10-101 – 10-110 of the Criminal
- 65 Procedure Article of the Maryland Code.
- 66 (d) Consideration of Certain Records Prohibited. An employer must not base a hiring or promotion
- 67 decision upon any item in an arrest record or a conviction record described under subsection (c).
- 68 [(c)] (e) Retaliation. An employer must not:
- 69 (1) retaliate against any person for:
- 70 (A) lawfully opposing any violation of this Article;
- 71 (B) filing a complaint, testifying, assisting, or participating in any manner in an
- 72 investigation, proceeding, or hearing under this Article; or
- 73 (2) obstruct or prevent enforcement or compliance with this Article.

74 **Sec. 27-74. Exemptions.**

- 75 (a) The prohibitions and requirements of this Article do not apply if the inquiries prohibited by this
- 76 Article are expressly authorized by an applicable federal, State, or County law or regulation.
- 77 (b) The prohibitions and requirements of this Article do not apply to the County Police Department,
- 78 the County Fire and Rescue Service, or the County Department of Corrections and Rehabilitation.
- 79 (c) The prohibitions and requirements of this Article do not apply to an employer that provides
- 80 programs, services, or direct care to minors or vulnerable adults.
- 81 (d) The prohibitions and requirements of this Article do not apply to an employer hiring for a position
- 82 that requires a federal government security clearance.

83 **27-75. Enforcement and Regulations.**

- 84 (a) A person aggrieved by an alleged violation of this Article may file a complaint with the Director
- 85 under Section 27-7.
- 86 (b) The Executive must adopt Method (2) regulations to implement the provisions of this Article,
- 87 including regulations necessary to inform prospective employees and employers of their rights and
- 88 responsibilities under Section 27-72.

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