

*Clerk's Note: The minutes of April 19, 2022 have been edited to reflect the addition of item 6L, previously omitted from the minutes.*



## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

**APPROVED**

Tuesday, April 19, 2022

The County Council for Montgomery County, Maryland convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland at 9:01 A.M. on Tuesday, April 19, 2022.

### PRESENT

Councilmember Gabe Albornoz, President	Councilmember Evan Glass, Vice President
Councilmember Andrew Friedson	Councilmember Tom Hucker
Councilmember Will Jawando	Councilmember Sidney Katz
Councilmember Nancy Navarro	Councilmember Craig Rice
Councilmember Hans Riemer	

The President in the Chair.

Mr. Albornoz provided a Montgomery History minute: the Noyes Library in Kensington founded by Crosby Noyes and Brainard Warner in 1893 was the first Library in Montgomery County and is now one of only eight libraries in the United States focused solely on children.

### PRESENTATIONS

- A. Proclamation was presented by Council President Albornoz and Councilmembers Hucker and Katz honoring the service of County Police Officer Rich Reynolds.

The Council recessed at 9:13 A.M. and reconvened at 9:30 A.M.

### GENERAL BUSINESS

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

Ms. Singleton, Clerk of the Council, announced that public hearings on the FY23 Operating Budget will be held on April 20, 2022, at 1:30 P.M. and April 20 and 21, 2022, at 7:00 P.M.; noted corrections to the agenda and introduction of a supplemental appropriation to the County Government's FY22 Operating Budget, Department of Transportation, \$75,000 for Transportation Services Improvement fund Fuel Relief Disbursement.

(1) B. **Acknowledgement** – [Receipt of Petitions](#)

No petitions were received this week.

C. **Action** – Approval of Minutes

Approved the closed session minutes of March 22, 2022, without objection.

(2) **BRIEFING** - [FY23 Budget Overview](#)

Participating in the discussion were Ms. Michaelson, Council Executive Director; Mr. Howard, Deputy Director; and Mr. Smith, Legislative Analyst; Ms. Bryant, Director, Office of Management and Budget; and Mr. Coveyou, Director, Department of Finance.

Received an overview of the FY23 budget, noting the greater than anticipated revenue and concerns associated with the long-term sustainability of the County Executive's recommended budget. Received information on racial equity measures, estimated tax-supported revenues, changes in the County Government's workforce and proposed pay adjustments, fiscal policies for reserves and PAYGO (pay as you go), one-time revenues, and the County Executive's recommendation to draw down the Other Post Employment Benefits (OPEB) trust by \$20 million to pay current year claims.

Noted four target options included in the staff packet to address concerns regarding the fiscal sustainability of the FY23 budget, and the goal to reduce additions to the base budget while meeting critical service needs in the County.

Received comments from Ms. Bryant and Mr. Coveyou on the goals and assumptions reflected in the County Executive's proposed budget and the rationale for the creation of new positions; they responded to questions from Councilmembers.

Ms. Navarro, Chair of the Government Operations and Fiscal Policy (GO) Committee, requested Ms. Singleton provide a definition of the term "marginalized community" regarding racial equity and social justice (RESJ) considerations, and information on how the proposed budget addresses the

County's equity principles, noting the need to ensure prioritization of RESJ in the budget.

Mr. Friedson requested a future GO Committee include discussion on how the revenue estimating group will function and the level of expected collaboration with the Council, and information on what the County's level of reserves would be if there had not been an infusion of federal funds.

Mr. Hucker requested staff provide a breakdown of new positions included in this year's proposed budget and on positions created in the last three years.

Supported without objection Mr. Riemer's motion to not accept the County Executive's proposed draw down of \$20 million OPEB funds to support current expenditures. Noted that staff will work on a policy for consideration by the Council later in the year regarding the use and funding of OPEB funds.

(3) **UPDATE - [American Rescue Plan Act \(ARPA\)](#)**

Received an update from Mr. Howard on proposed ARPA funding uses, as shown on page 2 of the staff report, for Council consideration.

Ms. Navarro requested, without objection, that funding for the Bel Pre Educational Equity and Enrichment hub be included in the ARPA package.

Mr. Katz expressed concern about the lack of small business assistance programs included in the ARPA funding package and expressed the hope that a way to provide assistance to businesses that did not previously apply for help can be accommodated.

Mr. Jawando requested the business rental assistance program be reworked to allow for additional businesses to participate.

Mr. Hucker suggested the Council look at opportunities to consider transportation demand management measures to help reduce traffic congestion now that more people are back to in-person work. Mr. Howard suggested this issue be considered in the context of the overall FY23 budget rather than through ARPA funding.

(4) **Introduction of Bills:**

A. [Expedited Bill 7-22, Fire and Rescue Services - Credited Service for Group G Members](#)

Introduced draft #1 of the subject expedited bill sponsored by the Council President at the request of the County Executive. A public hearing is scheduled for May 10, 2022, at 1:30 P.M.

B. [Expedited Bill 8-22, Fire and Rescue Services - Length of Service Awards Program for Volunteers - Amendments](#)

Introduced draft #1 of the subject expedited bill sponsored by the Council President at the request of the County Executive. A public hearing is scheduled for May 10, 2022, at 1:30 P.M.

(5) **Call of Bills for Final Reading:**

A. [Expedited Bill 49-21, Police - Police Accountability Board - Administrative Charging Committee - Established](#)

Received an overview from Senior Legislative Attorney Wellons on the General Assembly's expansion of the scope of complaints subject to ACC/PAB review, which would include internal as well as public complaints.

Supported without objection Mr. Riemer's motion to amend lines 11-23 of **Expedited Bill 49-21** to align it with the new State law, as follows:

Complaint means an allegation of police misconduct [[filed by]] involving a member of the public and a police officer, regardless of whether the allegation originated from within the law enforcement agency or from an external source.

Ms. Wellons clarified that beginning on line 28 of the Expedited Bill, the word "and" on line 32 is essentially an "and/or" scenario and mirrors the State enabling legislation and should not be changed.

Mr. Albornoz, in summary, expressed appreciation for feedback received from all sides on this critically important issue, and said that the Council has reached an outcome consistent with the General Assembly's intent but also takes into account the unique situations in our community.

Enacted draft #11 of **Expedited Bill 49-21**, as amended and shown at the end of these minutes.

Mr. Katz made the motion and the Expedited Bill was enacted by a roll call vote:

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

B. [Bill 16-21, Environmental Sustainability - Building Energy Use Benchmarking and Performance Standards - Amendments](#)

Mr. Hucker, Chair of the Transportation and Environment (T&E) Committee, reviewed the purpose of **Bill 16-21** and the Committee's recommendations, as contained in the staff report.

Legislative Attorney McCartney-Green noted that State Bill 528, Climate Solutions Now Act, does not include express preemption language that would preclude the County's ability to establish its own benchmarking and performance standards.

Enacted draft #3 of **Bill 16-21**, as shown at the end of these minutes.

The T&E Committee made the motion and the Bill was enacted by a roll call vote:

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

(6) **CONSENT CALENDAR**

Approved the following consent calendar items listed below.

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

- A. [Introduced a supplemental appropriation #22-75 to the FY22 Operating Budget, Montgomery County Public Schools \(MCPS\), ARPA Individuals with Disabilities Act Comprehensive Coordinated Early Intervening Services Plan Grant, \\$1,370,888 \(Source of Funds: Federal Funds\)](#). A public hearing and action is scheduled for May 3, 2022, at 1:30 P.M.
- B. [Introduced supplemental appropriation #22-76 to the FY22 Operating Budget, MCPS, ARPA Transitional Supplemental Instruction, \\$2,378,575 \(Source of Funds: Federal Funds\)](#). A public hearing and action is scheduled for May 3, 2022, at 1:30 P.M.

- C. [\*\*Introduced\*\* supplemental appropriation #22-77 to the FY22 Operating Budget, MCPS, ARPA Individuals with Disabilities Act Part B Grant, \\$6,985,349 \(source of Funds: Federal Funds\).](#) A public hearing and action is scheduled for May 3, 2022, at 1:30 P.M.
- D. [\*\*Introduced\*\* supplemental appropriation #22-78 to the FY22 Operating Budget, MCPS, ARPA Individuals with Disabilities Part B Preschool Grant, \\$623,924 \(Source of Funds: Federal Funds\).](#) A public hearing and action is scheduled for May 3, 2022, at 1:30 P.M.
- E. [\*\*Introduced\*\* a resolution in Support of the Francis G. Newlands Memorial Removal Act.](#) Action is scheduled for April 26, 2022.
- F. [\*\*Introduced\*\* supplemental appropriation #22-69 to the County Government's FY22 Operating Budget, Montgomery County Fire and Rescue Service \\$1,937,314 for Senator Amoss Fire, Rescue, and Ambulance Fund \(State 508\) Grant \(Source of Funds: State Grant\).](#) A public hearing is scheduled for May 10, 2022, at 1:30 P.M.
- G. [\*\*Adopted Resolution 19-1214\*\*, amendment to FY22 Operating Budget Resolution 19-872, Section G, FY22 Designation of Entities for Non-Competitive Contract Award Status: Department of Permitting Services: New Buildings Institute, Climate Action Plan.](#)
- H. [\*\*Adopted Resolution 19-1215\*\*, approving a supplemental appropriation to the County Government's FY22 Capital Budget and Amendment to the FY21-26 Capital Improvements Program \(CIP\), Department of Health and Human Services \(DHHS\) - \\$100,000 for Affordable Living Quarters \(Source of Funds: Federal Funds\).](#)
- I. [\*\*Adopted Resolution 19-1216\*\*, approving an amendment to FY22 Operating Budget Resolution 19-872, Section G, FY22 Designation of Entities for Non-Competitive Contract Award Status: Department of Health and Human Services Contracts: UpTogether; Cornerstone Montgomery, Inc.; Family Services, Inc.; and Interfaith Works, Inc.](#)
- J. [\*\*Received and Released OLO Report 2022-4: Mental Health Services for Employees in Montgomery County First Responder Departments\*\*](#)
- K. [\*\*Adopted Resolution 19-1217\*\*, confirming the County Executive's appointment to the Commission for Women, Kimberly Mouzon.](#)

- L. **Introduced** [Supplemental Appropriation #22-82 to the FY22 Operating Budget, Montgomery County Government, Department of Transportation, Transportation Services Improvement fund Fuel Relief Disbursement \\$75,000 \(Source of Funds: Transportation Services Improvement Fund\)](#). A Transportation and Environment (T&E )Committee worksession is scheduled for April 25, 2022 and a public hearing/action is scheduled for May 3, 2022 at 1:30 P.M.

The Council recessed at 12:20 P.M. and reconvened at 1:34 P.M.

- (7) **PUBLIC HEARING** - [Resolution to Set FY23 Transportation Fees, Charges, and Fares](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 18, 2022. A T&E Committee worksession is scheduled for April 25, 2022.

- (8) **PUBLIC HEARING** - [Amendment to the FY21-26 Capital Improvements Program \(CIP\) and Supplemental Appropriation to the FY22 Capital Budget, Montgomery County Government Department of Transportation - \\$3,500,000 for Bridge Renovation \(No. 509753\) \(Source of Funds: GO Bonds\)](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 14, 2022. A T&E Committee worksession is scheduled for April 21, 2022.

- (9) **PUBLIC HEARING** - [Amendment to the FY21-26 CIP and Supplemental Appropriation #22-72 to the FY22 Capital Budget, Montgomery County Government, Department of Environmental Protection - \\$1,300,000 for Flood Control Study \(No. 802202\) \(Source of Funds: Current Revenue General\)](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 28, 2022. A T&E Committee worksession will be scheduled for a future date.

- (10) **PUBLIC HEARING** - [Amendment to the FY21-26 CIP and Supplemental Appropriation #22-74 to the FY22 Capital Budget, Montgomery County Government Department of Housing and Community Affairs - \\$40,000,000 for Preservation of Naturally Occurring Affordable Housing Fund \(No. 762201\) \(Source of Funds: Current Revenue: General\)](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 18, 2022. A Planning, Housing, and Economic Development (PHED) Committee worksession is scheduled for April 25, 2022.

- (11) **PUBLIC HEARING** - [Recommendation on Proposed Amendments to the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 26, 2022. A T&E Committee worksession will be scheduled for a future date.

- (12) **PUBLIC HEARING** - [Resolution to Establish Water Quality Protection Charge for FY23](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 26, 2022. A T&E Committee worksession will be scheduled for a future date.

- (13) **PUBLIC HEARING** - [Resolution to Establish FY23 Solid Waste Service Charges](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 26, 2022. A T&E Committee worksession will be scheduled for a future date.

- (14) **PUBLIC HEARING** - [Bill 5-22, Economic Development Corporation - Board of Directors - Membership](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on June 6, 2022. A PHED Committee worksession is tentatively scheduled for June 13, 2022.

- (15) **PUBLIC HEARING** - [Bill 6-22, Recreation - Montgomery County Sports Commission - Established](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on June 9, 2022. A joint PHED and Health and Human Services (HHS) Committee worksession is tentatively scheduled for June 16, 2022.

Mr. Rice requested to be added as a co-sponsor.

- (16) **PUBLIC HEARING** - [Special Appropriation #22-68 to the FY22 Operating Budget Montgomery County Government Department of Health and Human Services Ending the Human Immunodeficiency Virus Epidemic Grant \\$1,172,584 \(Source of Funds: Federal Grant Funds\)](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 19, 2022. Action is scheduled for April 26, 2022.

- (17) **PUBLIC HEARING** - [Resolution to Set FY23 Property Tax Credit for Income Tax Offset](#)

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business on April 15, 2022. A GO Committee worksession is tentatively scheduled for April 22, 2022.

- (18) **PUBLIC HEARING/ACTION** - [Supplemental Appropriation 22-70 to the FY22 Capital Budget -Montgomery County Public Schools - \\$5,000,000 for Relocatable Classrooms \(No. 846540\) \(Source of Funds: Current Revenue: General\)](#)

The public hearing was conducted and the record closed.

Adopted **Resolution 19-1218**, approving the subject supplemental appropriation.

Mr. Rice made the motion, and the resolution passed unanimously.

- (19) **PUBLIC HEARING/ACTION** - [Special Appropriation to the FY22 Capital Budget and Amendment to the FY21-26 Capital Improvements Program, Montgomery County Public Schools - \\$3,000,000 for Relocatable Classrooms \(No. 846540\) \(Source of Funds: Current Revenue: General\)](#)

The public hearing was conducted and the record closed.

Adopted **Resolution 19-1219**, approving the subject special appropriation.

Ms. Navarro made the motion, and the resolution passed unanimously.

- (20) **PUBLIC HEARING/ACTION** - [Special Appropriation to the FY22 Capital Budget and Amendment to the FY21-26 Capital Improvements Program,](#)

Montgomery County Government, \$2,000,000 for High School Wellness Centers (Source of Funds: G.O. Bonds, Current Revenue General)

The public hearing was conducted and the record closed.

Adopted **Resolution 19-1220**, approving the subject special appropriation.

Ms. Navarro made the motion, and the resolution passed unanimously.

- (21) **PUBLIC HEARING/ACTION** - Special Appropriation to the FY22 Operating Budget, Montgomery County Government, Department of Health and Human Services, \$3,000,000 to Implement Mental Health and Positive Youth Development Services in Montgomery County Public Schools (Source of Funds: General Fund Reserves)

The public hearing was conducted and the record closed.

Adopted **Resolution 19-1221**, approving the subject special appropriation.

Ms. Navarro made the motion, and the resolution passed unanimously.

- (22) **PUBLIC HEARING/ACTION** - Special Appropriation #22-79 to the County Government's FY22 Operating Budget, COVID-19 Human Services and Community Assistance Non-Departmental Account (NDA) - \$1,710,000 for COVID-19 Response: Montgomery County Food Security Fund (Source of Funds: American Rescue Plan Act Funds)

The public hearing was conducted and the record closed.

Adopted **Resolution 19-1222**, approving the subject special appropriation.

Mr. Rice made the motion, and the resolution passed unanimously.

- (23) **PUBLIC HEARING/ACTION** - Supplemental Appropriation to the County Government's FY22 Capital Budget, Department of Recreation; and amendment to the FY21-26 Capital Improvements Program - \$109,000 for Public Arts Trust (Source of Funds: Current Revenue)

The public hearing was conducted and the record closed.

Adopted **Resolution 19-1223**, approving the subject supplemental appropriation.

Mr. Rice made the motion, and the resolution passed unanimously.

(24) **PUBLIC HEARING - [FY23 Operating Budget](#)**

The public hearing was conducted.

(25) **DISTRICT COUNCIL SESSION**

A. Introduction - [ZTA 22-03, Downtown Silver Spring Overlay Zone](#)

Introduced draft #1 of **ZTA 22-03**, sponsored by the Council President at the request of the Planning Board. A public hearing is scheduled for May 24, 2022, at 1:30 P.M.

B. Action - [Potomac Overlook - Amendment to the Plan for Historic Preservation](#)

Participating in the discussion were Chair Anderson, Planning Board.

Adopted **Resolution 19-1224**, approving the subject amendment to the Potomac Overlook Master Plan.

The PHED Committee made the motion, which carried without objection.

C. Worksession: [Silver Spring Downtown and Adjacent Communities Plan](#)

Participating in the discussion were Chair Anderson and Ms. Wright, Director, Planning Department.

Mr. Riemer shared the PHED Committee's recommendations on the Plan as reviewed thus far, including zoning updates, transparent development height guidelines, density guidelines and available support from the County, and innovative development and walkability strategies.

Supported without objection the Committee's recommendations as contained in the staff report.

The PHED Committee will hold another worksession on April 20, 2022, and a Council worksession is tentatively scheduled for April 26, 2022.

The meeting adjourned at 3:38 P.M. and reconvened at 7:01 P.M.

(26) **PUBLIC HEARING** - [FY23 Operating Budget](#)

The public hearing was conducted.

The meeting adjourned at 8:48 P.M.

This is an accurate account of the meeting:



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Judy Rupp  
Clerk of the Council

Expedited Bill No. 49-21  
Concerning: Police – Police  
Accountability Board –  
Administrative Charging Committee -  
Established  
Revised: 4-19-22 Draft No. 12  
Introduced: December 14, 2021  
Enacted: April 19, 2022  
Executive: May 2, 2022  
Effective: May 2, 2022  
Sunset Date: none  
Ch. 12, Laws of Mont. Co. 2022

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President at the request of the County Executive

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**AN EXPEDITED ACT** to:

- (1) establish the Police Accountability Board for the County;
- (2) define the membership and duties of the Board;
- (3) establish the Administrative Charging Committee for the County;
- (4) define the membership, duties, and compensation for members of the Committee; and
- (5) generally amend the law governing police accountability and discipline.

By adding

Montgomery County Code  
Chapter 35, Police  
Article IV, Police Discipline  
Sections 35-23, 35-24 and 35-25

<b>Boldface</b>	<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. Article IV, Sections 35-23, 35-24 and 35-25 are added as follows:**

2                               **ARTICLE IV. POLICE DISCIPLINE**

3       **35-23. Definitions.**

4               *Definitions.* In this Article, the following terms have the meanings indicated.  
5               *Administrative Charging Committee or Committee* means the Committee  
6               established in Section 35-25 to serve Countywide law enforcement agencies  
7               and local law enforcement agencies within the County pursuant to Section 3-  
8               104 of the Public Safety Article of the Annotated Code of Maryland, as  
9               amended.

10              *Administratively charged* means that a police officer has been formally  
11              accused of misconduct in an administrative proceeding.

12              *Complaint* means an allegation of police misconduct [[filed by]] involving a  
13              member of the public and a police officer, regardless of whether the allegation  
14              originated from within the law enforcement agency or from an external  
15              source.

16              *Disciplinary matrix* means a written, consistent, progressive, and transparent  
17              tool or rubric that provides ranges of disciplinary actions for different types  
18              of misconduct prepared by the Maryland Police Training and Standards  
19              Commission.

20              *Exonerated* means that a police officer acted in accordance with the law and  
21              agency policy.

22              *Law enforcement agency* means the County police force, Sheriff's office, or  
23              other security force or law enforcement organization of the County or a  
24              municipal corporation that by statute, ordinance, or common law is authorized  
25              to enforce the general criminal laws of the State.

26 Not administratively charged means that a determination has been made not  
 27 to administratively charge a police officer in connection with alleged  
 28 misconduct.

29 Police Accountability Board or Board means the Police Accountability Board  
 30 for the County established in Section 35-24 pursuant to Section 3-102 of the  
 31 Public Safety Article of the Annotated Code of Maryland, as amended.

32 Police misconduct means a pattern, a practice, or conduct by a police officer  
 33 or law enforcement agency that includes:

- 34 (1) depriving persons of rights protected by the Constitution or laws  
 35 of the State or the United States;
- 36 (2) a violation of a criminal statute; and
- 37 (3) a violation of law enforcement agency standards and policies.

38 Police officer means an individual who:

- 39 (1) is authorized to enforce the general criminal laws of the State;  
 40 and
- 41 (2) is a member of one of the following law enforcement agencies:
  - 42 (a) the County police department;
  - 43 (b) a municipal police department;
  - 44 (c) the office of the County Sheriff; or
  - 45 (d) a County fire and explosive investigator.

46 A police officer does not include the Sheriff, a chief of police, a deputy  
 47 or assistant chief of police, or another individual with an equivalent title  
 48 who is appointed or employed by a government to exercise equivalent  
 49 supervisory authority.

### 50 **35-24. Police Accountability Board.**

- 51 (a) Establishment. There is a Police Accountability Board for the County.  
 52 The Executive must appoint the ~~[[five]]~~ nine voting members of the

53 Board, including the Chair, subject to confirmation by the Council. The  
 54 Executive may appoint one or more non-voting members to the Board.  
 55 At least one voting member must reside in a municipality operating a  
 56 police department that is within the jurisdiction of the Board.

57 (b) Composition and qualifications of members. The members of the Board  
 58 must reflect the racial, gender, gender-identity, sexual orientation, and  
 59 cultural diversity of the County. Each member must reside in the  
 60 County and [[have experience:

61 (1) managing or evaluating the management of a law enforcement  
 62 agency;

63 (2) evaluating citizen complaints against a police officer; or

64 (3) in personnel disciplinary proceedings as a manager, employee  
 65 representative, mediator, or arbitrator]] be able to demonstrate  
 66 through professional or lived experience the ability to balance  
 67 effective oversight, perform objective analysis of an  
 68 investigation report, and practice procedural fairness.

69 An active police officer must not be a member of the Board. A Board  
 70 member must also meet all qualifications mandated by State law and  
 71 implementing regulations while serving on the Board.

72 (c) Chair. The members of the Board may elect a Vice-Chair to serve as  
 73 Chair in the absence of the Chair.

74 (d) Term of office. Each member serves a 3-year term. A member must not  
 75 serve more than 2 consecutive full terms. A member appointed to fill a  
 76 vacancy serves the rest of the unexpired term. Members continue in  
 77 office until their successors are appointed and qualified.

78 (e) Meetings, budget, and compensation for members.

- 79           (1)   The Board meets at the call of the Chair. The Board must meet  
80           as often as necessary to perform its duties, but not less than [[4  
81           times each year]] one time each month.
- 82           (2)   The Executive must recommend, and the Council must  
83           appropriate funds necessary for the Board and the Administrative  
84           Charging Committee to operate in the County's annual operating  
85           budget. The annual appropriation for the Board and the  
86           Administrative Charging Committee must include funding for  
87           training of members provided by:
- 88                    (A)   the County Police Department in cooperation with the  
89                    Sheriff and each municipal police department within the  
90                    jurisdiction of the Board; and
- 91                    (B)   appropriate outside organizations.
- 92           (3)   The [[Board members]] Chair or another Board member  
93           designated to serve on the Administrative Charging Committee  
94           must serve without compensation except for the reimbursement  
95           of expenses incurred in attending meetings or carrying out other  
96           duties, including travel and dependent care costs at rates  
97           established by the County, subject to appropriation. The annual  
98           salary for each other Board member is \$10,000. The salary for  
99           each member must be adjusted on the first Monday in December  
100           by the Consumer Price Index for All Urban Consumers (CPI-U)  
101           for the Washington-Arlington-Alexandria Core Based Statistical  
102           Area (CBSA), as published by the United States Department of  
103           Labor, Bureau of Labor Statistics, or a successor index.
- 104           (f)   Staff. The Chief Administrative Officer must provide appropriate  
105           dedicated full-time staff to the Board and make available to the Board

106 services and facilities that are necessary or appropriate for the proper  
 107 performance of its duties. The County Attorney must retain special  
 108 legal counsel approved by the Council to serve as counsel to the Board.

109 (g) Duties. The Board must:

110 (1) hold quarterly meetings with the directors of one or more law  
 111 enforcement agencies operating in the County who employ one  
 112 or more police officers;

113 (2) appoint civilian members to the Administrative Charging  
 114 Committee and trial boards;

115 (3) receive complaints of police misconduct filed by a member of  
 116 the public;

117 (4) review the outcomes of disciplinary matters considered by the  
 118 Administrative Charging Committee on a quarterly basis;

119 (5) advise the Executive and the Council on policing matters; and

120 (6) refer each complaint of police misconduct filed with the Board  
 121 to the appropriate law enforcement agency within 3 days after  
 122 receipt for investigation.

123 (h) Removal of a member. The Executive with the approval of at least 6  
 124 members of the Council may remove a member for:

125 (1) neglect of duty, including failure to complete mandatory  
 126 training;

127 (2) misconduct in office;

128 (3) a member's inability or unwillingness to perform the duties of  
 129 the office;

130 (4) conduct that impairs a member from performing the duties of the  
 131 office; or

132 (5) [[violation of law; or

(6)] inability to meet the qualifications for a Board member mandated by State law or implementing regulations.

(i) Reports. The Board must submit an annual report to the Executive and the Council each December 31 that:

(1) identifies any trends in the disciplinary process of police officers in the County;

(2) recommends changes to policy that would improve police accountability in the County; and

(3) describes the activities of the Board and the numbers of complaints received.

### **35-25. Administrative Charging Committee.**

(a) Establishment. There is an Administrative Charging Committee for the County.

(b) Membership. The Committee has 5 voting members. The members are:

(1) the Chair of the Police Accountability Board or another member of the Board designated by the Chair;

(2) 2 civilian members appointed by the Police Accountability Board; and

(3) 2 civilian members appointed by the Executive.

(c) Composition and qualifications of members. The Committee consists of a chair and 4 additional members. The members of the Committee must reflect the racial, gender, gender-identity, sexual orientation, and cultural diversity of the County. Each member must [[:

(1)] reside in the County [[: and have

(2) experience managing or evaluating the management of a law enforcement agency;

- 159           (3)   experience evaluating citizen complaints against a police officer;  
160                   or
- 161           (4)   experience in personnel disciplinary proceedings as a manager,  
162                   employee representative, mediator, or arbitrator]] and be able to  
163                   demonstrate through professional or lived experience the ability  
164                   to balance effective oversight, perform objective analysis of an  
165                   investigation report, and practice procedural fairness.
- 166    (d)   Training. Each member of the Committee must complete training on  
167           matters relating to police procedures from the Maryland Police  
168           Training and Standard Commission before serving as a member.
- 169    (e)   Staff. The Chief Administrative Officer must provide appropriate  
170           dedicated full-time staff to the Committee and make available to the  
171           Committee services and facilities that are necessary or appropriate for  
172           the proper performance of its duties. The County Attorney must retain  
173           special legal counsel approved by the Council to serve as counsel to the  
174           Committee.
- 175    (f)   Compensation. The annual salary for the Chair is \$22,000 and the  
176           annual salary for each member is \$16,000. The salary for the Chair and  
177           each member must be adjusted on the first Monday in December by the  
178           Consumer Price Index for All Urban Consumers (CPI-U) for the  
179           Washington-Arlington-Alexandria Core Based Statistical Area  
180           (CBSA), as published by the United States Department of Labor,  
181           Bureau of Labor Statistics, or a successor index.
- 182    (g)   Meetings. The Committee must meet at least one time each month or  
183           [[as]] more frequently if needed.
- 184    (h)   Term of office. Each member serves a 3-year term. A member must not  
185           serve more than 2 consecutive full terms. A member appointed to fill a

186 vacancy serves the rest of the unexpired term. Members continue in  
187 office until their successors are appointed and qualified.

188 (i) Duties. The Committee must:

189 (1) review the findings of each law enforcement agency's  
190 investigation forwarded by the agency to the Committee;

191 (2) review any body camera footage that may be relevant to the  
192 matters covered in the complaint of misconduct;

193 (3) authorize a police officer called before the Committee to be  
194 accompanied by a representative;

195 (4) determine if the police officer who is the subject of the  
196 investigation should be administratively charged or not  
197 administratively charged within 30 days after receipt of the law  
198 enforcement agency's investigatory file unless the Committee  
199 requests further review under subsections (j)(1) or (2);

200 (4) if the Committee determines that a police officer should be  
201 administratively charged, recommend discipline pursuant to the  
202 disciplinary matrix;

203 (5) if the Committee determines that a police officer should not be  
204 administratively charged, determine if:

205 (A) the allegations against the police officer are unfounded,  
206 including situations where existing departmental policy  
207 fails to properly address the situation for which the officer  
208 was charged; or,

209 (B) the police officer is exonerated;

210 (6) issue a written opinion for each complaint describing in detail the  
211 Committee's findings, determinations, and recommendations;  
212 and

213           (7) forward the written opinion to the director of the appropriate law  
214           enforcement agency, the accused police officer, and the  
215           complainant.

216       (j) Authority of the Committee. The Committee may:

217           (1) request information or action from the law enforcement agency  
218           that conducted the investigation, including requiring additional  
219           investigation;

220           (2) issue subpoenas for documents or witnesses necessary to execute  
221           the Committee's duties; and

222           (3) record, in writing, any failure of supervision that caused or  
223           contributed to a police officer's misconduct.

224       (k) Confidentiality. Each member of the Committee must maintain  
225           confidentiality relating to a matter being considered by the Committee  
226           until final disposition of the matter.

227       (l) Duties of the law enforcement agency. The law enforcement agency  
228           must investigate and submit a written investigation report to the  
229           Administrative Charging Committee for each complaint received by the  
230           agency or referred to the agency by the Police Accountability Board.  
231           Each law enforcement agency must submit a monthly report to the  
232           Administrative Charging Committee detailing complaints received and  
233           the status of each investigation.

234       (m) Removal of a member. The Executive with the approval of at least 6  
235           members of the Council may remove a member for:

236           (1) neglect of duty, including failure to complete mandatory  
237           training;

238           (2) misconduct in office;

- 239           (3)    a member’s inability or unwillingness to perform the duties of  
 240                    the office;
- 241           (4)    conduct that impairs a member from performing the duties of the  
 242                    office; or
- 243           (5)    [[violation of law; or  
 244           (6)]] inability to meet the qualifications for a Board member mandated  
 245                    by State law or implementing regulations.

246           **Sec. 2. Transition.** Notwithstanding Sections 35-24(d) and 35-25(h) in  
 247 Section 1, the Executive must stagger the initial terms of the members of the Board  
 248 and the Committee so that the terms of approximately one-third of the members  
 249 expires each year.

250           **Sec. 3. Expedited Effective Date, Transition.**

251           The Council declares that this legislation is necessary for the immediate  
 252 protection of the public interest. This Act takes effect on the date on which it  
 253 becomes law and must apply to eligible complaints based on an incident occurring  
 254 on or after:

- 255           (a)    July 1, ~~[[2022]]~~ 2023 against a police officer who is covered by a  
 256                    collective bargaining agreement entered into before June 30, 2022, that  
 257                    includes a different disciplinary system; and
- 258           (b)    July 1, 2022, against any other police officer.

*Approved:*

/s/ 4/21/2022  
\_\_\_\_\_  
Gabriel Albornoz, President, County Council Date

*Approved:*

/s/ 5/2/2022  
\_\_\_\_\_  
Marc Elrich, County Executive Date

*This is a correct copy of Council action.*

/s/ 5/6/2022  
\_\_\_\_\_  
Judy Rupp, Clerk of the Council Date

Bill No. 16-21  
Concerning: Environmental  
Sustainability - Building Energy Use  
Benchmarking and Performance  
Standards – Amendments  
Revised: 4/19/2022 Draft No. 4  
Introduced: May 4, 2021  
Enacted: April 19, 2022  
Executive: May 2, 2022  
Effective: August 1, 2022  
Sunset Date: None  
Ch. 13, Laws of Mont. Co. 2022

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN ACT** to:

- (1) expand the number of buildings covered by benchmarking requirements;
- (2) amend certain definitions;
- (3) establish energy performance standards for covered buildings with certain gross floor area;
- (4) create a Building Performance Improvement Board; and
- (5) generally revise County law regarding environmental sustainability.

By amending

Montgomery County Code  
Chapter 18A, Environmental Sustainability  
Sections 18A-38A, 18A-38B, 18A-39, 18A-42, and 18A-43

By adding

Montgomery County Code  
Chapter 18A, Environmental Sustainability  
Sections 18A-38, 18A-42A, 18A-42B, 18A-42C, 18A-43A, 18A-43B and 40-10B

<b>Boldface</b>	<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~~



27 not exceed that of a moderately-priced dwelling unit under Chapter 25A. [[or  
 28 group senior assisted housing.]]

29 *Benchmark* means to track and input a building's energy consumption data  
 30 and other relevant building information for 12 consecutive months, as  
 31 required by the benchmarking tool, to quantify the building's energy use.

32 *Benchmarking tool* means the website-based software, commonly known as  
 33 ENERGY STAR Portfolio Manager, or any successor system, [developed and  
 34 maintained] approved by the United States Environmental Protection Agency  
 35 to track and assess the relative energy use of buildings nationwide.

36 *Building* means:

37 (1) any single structure utilized or intended for supporting or  
 38 sheltering any occupancy, except if a single structure contains two  
 39 or more individually metered units operating independently that  
 40 have stand-alone heating, cooling, hot water, and other  
 41 mechanical systems, and no shared interior common areas, or;

42 (2) two or more structures utilized or intended for supporting or  
 43 sheltering any occupancy, that:

44 (A) are serviced by a common energy meter;

45 (B) have a common heating or cooling system;

46 (C) share interior common areas; or

47 (D) whose configuration otherwise prevents an accurate  
 48 determination of the energy consumption attributable to  
 49 each individual structure.

50 *Building energy performance standard* means a policy that sets a minimum  
 51 required level of energy performance for covered buildings.

52 Building performance improvement plan means a document in a format  
53 approved by the Director submitted by a covered building owner and  
54 approved by the Director as described in this Article.

55 Building type means a category of covered buildings subject to the same final  
56 performance standards.

57 \* \* \*

58 County-owned covered building means [any] a building owned by the  
59 County[, or any group of buildings owned by the County that have the same  
60 property identification number, that] whose gross floor area equals or exceeds  
61 [50,000] 25,000 [in total building] square [footage] feet.

62 Covered building means [any] a County-owned [building], Group 1 [covered  
63 building], [or] Group 2, Group 3, Group 4, or Group 5 covered  
64 building. [Covered building does not include any building with more than  
65 10% of total building square footage which is used for

- 66 (1) public assembly in a building without walls;
- 67 (2) warehousing;
- 68 (3) self storage; or
- 69 (4) a use classified as manufacturing and industrial or transportation,  
70 communication, and utilities.]

71 \* \* \*

72 [Energy use intensity or EUI means a numeric value calculated by the  
73 benchmarking tool that represents the energy consumed by a building relative  
74 to its size.]

75 Final performance standard means the numeric value of site EUI that each  
76 covered building must ultimately achieve [[or exceed]].

77 Gross floor area means the total building square footage measured between  
78 the principal exterior surfaces of the enclosing fixed walls of a building. Gross

79 floor area consists of all areas inside the building, including lobbies, tenant  
 80 areas, common areas, meeting rooms, break rooms, the base level of atriums,  
 81 restrooms, elevator shafts, stairwells, mechanical equipment areas,  
 82 basements, and storage rooms. Gross floor area does not include exterior  
 83 spaces, balconies, patios, exterior loading docks, driveways, covered  
 84 walkways, outdoor play courts (e.g., tennis, basketball), parking, the  
 85 interstitial space between floors (which house pipes and ventilation), and  
 86 crawl spaces. Gross floor area is not the same as rentable space, but rather  
 87 includes all areas inside the building(s).

88 *Group 1 covered building* means [any] a privately owned nonresidential  
 89 covered building [, or any group of nonresidential buildings that have the same  
 90 property identification number, not owned by the County that] whose gross  
 91 floor area equals or exceeds 250,000 [in total building] square [footage] feet.

92 *Group 2 covered building* means [any] a privately owned nonresidential  
 93 covered building [, or any group of nonresidential buildings that have the same  
 94 property identification number, not owned by the County that] whose gross  
 95 floor area equals or exceeds 50,000 square feet [gross floor area] but is less  
 96 than 250,000 [in total building] square [footage] feet.

97 *Group 3 covered building means:*

- 98 (1) a privately owned nonresidential covered building whose gross floor area  
 99 equals or exceeds 25,000 square feet but is less than 50,000 square feet,  
 100 or  
 101 (2) a privately owned nonresidential covered building whose gross floor  
 102 area equals or exceeds 50,000 square feet and whose use type was  
 103 previously exempted under this Article.

104 Group 4 covered building means a privately owned multifamily residential or  
105 mixed-use covered building whose gross floor area equals or exceeds 250,000  
106 square feet.

107 Group 5 covered building means a privately owned multifamily residential or  
108 mixed-use building whose gross floor area equals or exceeds 25,000 square  
109 feet but is less than 250,000 square feet.

110 Interim performance standard means the numeric value of site EUI which  
111 covered buildings must achieve or exceed by a fixed date every [[five (5)]]  
112 four (4) years from a covered building's performance baseline.

113 Interior common area means shared space within a building such as hallways,  
114 lobbies, stairwells, and other shared amenities (e.g., gyms, laundry rooms,  
115 party rooms).

116 Mixed-use building means a building that contains both residential units and  
117 commercial space.

118 Net site EUI means site energy use minus energy generated from [[onsite solar  
119 sources]] the renewable energy allowance divided by the total gross floor area  
120 of the building expressed in thousands of British thermal units per gross  
121 square feet (kBtu/GSF).

122 Newly constructed covered building means a covered building whose owner  
123 has completed construction, received a use and occupancy permit, and is able  
124 to begin benchmarking the building's energy use and other characteristics.

125 Normalized net site energy means the site energy use by the covered building  
126 normalized for weather and other characteristics within the limits of the  
127 capabilities of the benchmarking tool and normalized for other factors as  
128 determined by the Department minus energy generated from [[onsite solar  
129 sources]] the renewable energy allowance.

130 Normalized net site EUI means the total normalized net site energy use  
 131 consumed by a covered building in one year divided by the total gross floor  
 132 area of the building expressed in kBtu/GSF.

133 Owner means an individual or legal entity in whose name a building is titled,  
 134 or in the case of a community association, the governing body of either a  
 135 condominium or a cooperative housing corporation.

136 Performance baseline means the normalized net site EUI for a covered  
 137 building averaged over two calendar years.

138 Performance metric means an objectively verifiable numeric measure of  
 139 normalized site EUI to determine building performance.

140 Process load means energy consumed for bona fide purposes other than  
 141 heating, cooling, ventilation, domestic hot water, lighting, appliances, office  
 142 equipment, data centers, or other plug loads.

143 \* \* \*

144 *Reported benchmarking information* means the descriptive information about  
 145 a building, its operating characteristics, and information generated by the  
 146 benchmarking tool regarding the building’s energy consumption, [and]  
 147 efficiency, and performance. *Reported benchmarking information* includes  
 148 the building identification number, address, gross floor area, energy  
 149 performance score, site energy use intensity, and annual greenhouse gas  
 150 emissions.

151 [*Residential occupancy* means the occupancy of dwelling units in any  
 152 building that includes one or more dwellings.]

153 Site energy use means all energy used onsite by a covered building to meet  
 154 the energy loads of a building, including electricity delivered to the building  
 155 through the electric grid and generated onsite with renewable sources; natural  
 156 gas; district steam; district hot and chilled water; diesel; propane; fuel oil;

157 wood; coal; and other fuels used onsite. Site energy use does not include  
 158 electricity used to charge vehicles.

159 Site energy use intensity or site EUI means a numeric value calculated by the  
 160 benchmarking tool that represents the energy consumed by a covered building  
 161 relative to its size in terms of energy used per square foot of gross floor area  
 162 per year.

163 Tenant means a person or legal entity occupying or holding possession of a  
 164 building, part of a building, or premises under a rental agreement.

165 [*Total building square footage* means the sum of the gross horizontal area of  
 166 the several floors of a building or structure measured from the exterior faces  
 167 of the exterior walls or from the center line of party walls. In a covered but  
 168 unenclosed area, such as a set of gasoline pumps or a drive-through area, total  
 169 building square footage means the covered area. Total building square  
 170 footage does not include any:

- 171 (1) basement or attic area with a headroom less than 7 feet 6 inches;
- 172 (2) area devoted to unenclosed mechanical, heating, air conditioning, or  
 173 ventilating equipment;
- 174 (3) parking structure; or
- 175 (4) accessory structure to a residential building.]

176 **18A-38B. Applicability.**

177 This Article does not apply to a covered building for which more than 50% of  
 178 the total gross floor area is used for:

- 179 (a) public assembly in a building without walls;
- 180 (b) industrial uses where the majority of energy is consumed for  
 181 manufacturing, the generation of electric power or district thermal  
 182 energy to be consumed offsite, or for other process loads; or
- 183 (c) transportation, communications, or utility infrastructure.

184 **18A-39. Energy use benchmarking.**

185 (a) *County-owned covered buildings.*

186 (1) No later than June 1, 2015, and every June 1 thereafter, the  
 187 County must benchmark any County-owned covered building[s]  
 188 whose gross floor area equals or exceeds 50,000 square feet for  
 189 the previous calendar year and report the benchmarking  
 190 information to the Department.

191 (2) No later than June 1, ~~[[2022]] 2023~~, and every June 1 thereafter,  
 192 the County must benchmark any County-owned covered  
 193 building whose gross floor area equals or exceeds 25,000 square  
 194 feet but is less than 50,000 square feet for the previous calendar  
 195 year and report the benchmarking information to the Department.

196 (b) \* \* \*

197 (c) \* \* \*

198 (d) *Group 3 and Group 4 covered buildings.* No later than June 1, ~~[[2022]]~~  
 199 2023, and every June 1 thereafter, the owner of any Group 3 or Group  
 200 4 covered building must benchmark the building for the previous  
 201 calendar year and report the benchmarking information to the  
 202 Department.

203 (e) *Group 5 covered buildings.* No later than June 1, ~~[[2023]]~~ 2024, and  
 204 every June 1 thereafter, the owner of any Group 5 covered building  
 205 must benchmark the building for the previous calendar year and report  
 206 the benchmarking information to the Department.

207 (f) *Newly constructed covered building.* Following the first full calendar  
 208 year that energy data can be collected and that the building was  
 209 occupied, on average, by at least one full-time-equivalent employee (40  
 210 person-hours per week) exclusive of security guards, janitors,

211 construction workers, landscapers, and other maintenance personnel  
 212 throughout the calendar year being reported, the owner of any newly  
 213 constructed covered building must benchmark the building and report  
 214 to the Department no later than June 1 of that following year, and every  
 215 June 1 thereafter.

216 [(d)] (g) *Waiver.* [The Director may waive the benchmarking  
 217 requirements of this Section if] For any time period for which the owner  
 218 of a covered building documents, in a form required by regulation, [that  
 219 the building] any of the conditions below, the Director may waive the  
 220 benchmarking requirements of this Section[:].

221 (1) [is in financial] Financial distress, defined as a building that:

222 (A) is the subject of a tax lien sale or public auction due to  
 223 property tax arrearages;

224 (B) is controlled by a court appointed receiver; or

225 (C) was recently acquired by a deed in lieu of foreclosure;

226 (2) [had average physical occupancy of less than 50% throughout the  
 227 calendar year for which benchmarking is required] On average,  
 228 less than one full-time-equivalent employee occupied the  
 229 building during the calendar year being reported; [or]

230 (3) The covered building is [new] newly [construction] constructed  
 231 and has received its certificate of use and occupancy during the  
 232 calendar year for which benchmarking is required[.]; or

233 (4) The covered building was demolished or received its demolition  
 234 permit during the calendar year for which benchmarking is  
 235 required.

236 **18A-42. Establishment of building energy performance standards.**

237 (a) Requirement. The Department must develop and implement building  
238 energy performance standards for covered buildings. The standards  
239 must:

240 (1) increase the energy efficiency of existing covered buildings and  
241 expedite the reduction of greenhouse gas emissions from the  
242 building sector;

243 (2) use normalized net site EUI as a performance metric wherever  
244 feasible or net site EUI if the Director determines that  
245 normalization is not practical as performance metric;

246 (3) account for [[onsite solar generation]] the renewable energy  
247 allowance in the performance metric;

248 (4) use the benchmarking tool to report building energy performance  
249 to the County; and

250 (5) utilize available data sources and best practices to establish  
251 interim and final performance standards.

252 (b) Building types.

253 (1) No later than [[June 1, 2022]] December 31, 2023, the County  
254 Executive must issue Method (2) regulations establishing building  
255 types for every covered building.

256 (2) Covered buildings within each building type must have shared  
257 characteristics that facilitate the implementation and enforcement  
258 of this Article. The Department may define one or more building  
259 types to be identical to ENERGY STAR property type categories.

260 (3) All covered buildings within the same building type category must  
261 be subject to the same final performance standards that facilitate  
262 the implementation and enforcement of this Article.

263 (c) Performance baseline. The performance baseline for each covered  
 264 building must be calculated as follows:

265 (1) County-owned covered buildings whose gross floor area equals or  
 266 exceeds 50,000 square feet, Group 1 covered buildings, and Group  
 267 2 covered buildings: Average of the 2 complete years with the  
 268 highest normalized net site EUI between calendar year 2018 and  
 269 calendar year ~~[[2021]] 2022.~~

270 (2) County-owned covered buildings whose gross floor area is at least  
 271 25,000 square feet but not greater than 50,000 square feet, Group  
 272 3, and Group 4 covered buildings: Average of the 2 complete years  
 273 with the highest normalized net site EUI between calendar year  
 274 ~~[[2021]] 2022 and calendar year ~~[[2023]] 2024.~~~~

275 (3) Group 5 covered buildings: Average of the 2 complete years with  
 276 the highest normalized net site EUI between calendar year ~~[[2022]]~~  
 277 2023 and calendar year ~~[[2024]] 2025.~~

278 (4) Newly constructed covered buildings: Average of the 2 complete  
 279 years with the highest normalized net site EUI over the first 3 years  
 280 of benchmarking reporting.

281 (d) Interim and final performance standards.

282 (1) No later than ~~[[June 1, 2022]] December 31, 2023,~~ the County  
 283 Executive must issue Method (2) regulations establishing final  
 284 performance standards for each building type using the normalized  
 285 site EUI performance metric wherever feasible or site EUI if the  
 286 Director determines that normalization is not practical.

287 (2) The Department must calculate ~~[[each]] interim performance~~  
 288 standards for each covered building with the starting point set at

289 the covered building’s performance baseline and continuing to the  
 290 final performance standard.

291 (3) Each covered building must demonstrate progress towards the  
 292 final performance standard by complying with interim  
 293 performance standards every ~~[[4]]~~ 5 years after the performance  
 294 baseline year as follows:

295 (A) County-owned covered buildings whose gross floor area  
 296 equals or exceeds 50,000 square feet, Group 1, and Group 2  
 297 covered buildings:

298 (i) Interim performance standard: December 31,  
 299 ~~[[2027]]~~ 2028, and evaluated with June 1, ~~[[2027]]~~  
 300 2029, benchmarking.

301 (ii) Final performance standard: December 31, ~~[[2034]]~~  
 302 2033, and evaluated with June 1, ~~[[2035]]~~ 2034,  
 303 benchmarking.

304 (B) County-owned covered buildings whose gross floor area is  
 305 at least 25,000 square feet but not greater than 50,000 square  
 306 feet, Group 3, and Group 4 covered buildings:

307 (i) Interim performance standard: December 31,  
 308 ~~[[2028]]~~ 2030, evaluated with June 1, ~~[[2029]]~~ 2031.

309 (ii) Final performance standard: December 31, ~~[[2036]]~~  
 310 2035, evaluated with June 1, ~~[[2037]]~~ 2036.

311 (C) Group 5 covered buildings:

312 (i) Interim performance standard: December 31,  
 313 ~~[[2029]]~~ 2031, evaluated with June 1, ~~[[2030]]~~ 2032,  
 314 benchmarking.

315 (ii) Final performance standard: December 31, [[2037]]  
 316 2036, evaluated with June 1, [[2038]] 2037.

317 (D) Newly constructed buildings will be added to a coverage  
 318 group (Group 1, Group 2, Group 3, Group 4, or Group 5)  
 319 based on gross floor area and building type:

320 (i) Interim performance [[standard]] standards:  
 321 Evaluated with the [[first]] interim standard of the  
 322 building’s coverage group following creation of the  
 323 performance baseline.

324 (ii) Final performance standard: Evaluated with the final  
 325 performance standard of the building’s coverage  
 326 group, if the performance baseline is created before  
 327 the final performance standard.

328 (4) Covered buildings must maintain the final performance standards  
 329 established by regulation.

330 (5) Covered buildings must demonstrate compliance with the interim  
 331 and final performance standards by reporting building energy  
 332 benchmarking data to the Department using the benchmarking  
 333 tool. The Department must determine compliance by comparing  
 334 the performance metric against the interim or final performance  
 335 standards for the applicable building type.

336 **18A-42A. Building Performance Improvement Board.**

337 (a) Established. The County Executive must appoint, subject to  
 338 confirmation by the Council, a Building Performance Improvement  
 339 Board comprised of 15 voting members. Designees of the Department of  
 340 Environmental Protection, Department of General Services, Department  
 341 of Housing and Community Affairs, Department of Housing and

342 Community Development, and Department of Permitting Services are ex  
 343 officio nonvoting members of the Board.

344 (b) Membership. Each voting member of the Board must be a resident of the  
 345 County or a member of the governing body or staff of an entity doing  
 346 business in the County. The Board should include:

347 (1) Representatives of local electricity or natural gas utilities;

348 (2) Providers of energy efficiency, building resilience and/or  
 349 renewable energy services or consulting;

350 (3) Owners or managers of affordable housing;

351 (4) Owners or managers of multi-family residential buildings  
 352 containing market-rate units;

353 (5) Nonresidential building owners or managers;

354 (6) Nonprofit building owners or managers;

355 (7) Technical building design or operations professionals;

356 (8) Providers of facilities, mechanical, or similar engineering services;

357 (9) Commercial or multi-family residential construction finance or  
 358 investment professionals;

359 (10) Representatives of nonprofit organizations dedicated to climate  
 360 action, resiliency, public health, green building, economic  
 361 development, or building decarbonization; and

362 (11) Representatives of nonprofit organizations dedicated to racial  
 363 equity or environmental justice.

364 (c) Terms. Each voting member serves a 3-year term beginning on January

365 1. Of the members first appointed, one-third must be appointed for 1-

366 year terms, one-third must be appointed for 2-year terms, and one-third

367 must be appointed for 3-year terms. A member must not serve more than

368 2 consecutive full terms. A member appointed to fill a vacancy serves

369 the rest of the unexpired term. Members continue in office until their  
 370 successors are appointed and qualified. The Board must elect one of its  
 371 members as Chair to be who must serve as such for one calendar year or  
 372 until a successor is elected.

373 (d) Procedures. The Board must adopt rules to govern its procedures  
 374 including meeting frequency, managing Chair elections, establishing  
 375 committees, and other issues that pertain to Board governance.

376 (e) Duties and responsibilities. The Board must generally advise the  
 377 Department on implementation of building energy performance  
 378 standards. This includes providing recommendations to the Director on:

379 (1) Building type groupings;

380 (2) Interim and final performance standards for each building type;

381 (3) Managing situations where ownership of a building is transferred  
 382 or a building's type changes;

383 (4) Building performance improvement plan technical review and  
 384 approval processes;

385 (5) Complementary programs or policies, with particular attention to  
 386 assistance or accommodations for challenged or under-resourced  
 387 sectors, such as affordable housing, non-profit organizations, and  
 388 small businesses; and

389 (6) Enforcement of benchmarking requirements and performance  
 390 standards.

391 (f) Compensation. The members of the Board serve without compensation.

392 **18A-42B. Building performance improvement plans.**

393 (a) If a covered building owner cannot reasonably meet one or more of the  
 394 applicable interim or final performance standards due to economic  
 395 infeasibility or other circumstances beyond the owner's control, based on

396 guidelines established by regulation, the owner may submit a proposed  
397 building performance improvement plan to the Department for review  
398 and approval by the Director in consultation with the Building  
399 Performance Improvement Board.

400 (b) A building performance improvement plan must include:

401 (1) documentation of economic infeasibility or other circumstances  
402 beyond the owner's control such that interim or final performance  
403 standards are not met;

404 (2) a list of potential improvement measures, including engineering  
405 calculations of energy savings and a cost-benefit analysis of each  
406 potential improvement measure;

407 (3) a plan and timeline for achieving energy improvements to the  
408 building's performance that will provide cost-effective energy  
409 savings based on guidelines established by regulation, including  
410 the estimated savings to be realized by implementing all of the  
411 cost-effective measures identified in the plan; and

412 (4) procedures for correcting any noncompliance or deviation from the  
413 plan.

414 (c) The owner must submit a building performance improvement plan to the  
415 Department at least 90 days before the deadline for submitting  
416 documentation of compliance with interim or final performance  
417 standards.

418 (d) If, after consulting with the Building Performance Improvement Board,  
419 the Director approves the building performance improvement plan, the  
420 owner must record the building performance improvement plan as a  
421 covenant in the County land records and deliver a certified copy of the  
422 recorded plan to the Department. After the Director receives the certified

423 copy of the recorded plan, the covered building will be deemed to be in  
 424 compliance with the applicable interim or final performance standards as  
 425 long as the owner fulfills the terms of the building performance  
 426 improvement plan within the timeline specified in the plan.

427 **18A-42C. Extensions and adjustments.**

428 (a) The Department may establish additional criteria recommended by the  
 429 Building Performance Improvement Board for qualified affordable  
 430 housing, non-profit buildings, and other buildings as appropriate to  
 431 modify compliance with interim or final performance standards by  
 432 regulation.

433 (b) The Director, in consultation with the Building Performance  
 434 Improvement Board, may grant an extension or adjustment to an interim  
 435 or final performance standard for a covered building whose owner  
 436 submits a request along with documentation at least 90 days before the  
 437 deadline for submitting documentation of compliance with an interim or  
 438 final performance standard if any of the following conditions apply:

439 (1) A demolition permit has been issued or a demolition of the  
 440 building is planned before the deadline to comply with the next  
 441 interim performance standard;

442 (2) The building is in financial distress under Section 18A-39 (g)(1);

443 (3) The building is exempt from real property taxes and the owner is  
 444 able to certify by the statement of a certified public accountant or  
 445 by sworn affidavit that the owner's revenue less expenses for the  
 446 previous 2 years was negative; [[or]]

447 (4) The Director determines that strict compliance with those  
 448 standards would be economically infeasible, as defined by

- 449 regulation, due to circumstances beyond the owner’s control [(.)];
- 450 or
- 451 (5) Other acceptable conditions as determined by the Director through
- 452 regulation.

453 **18A-[42]43. Annual report; disclosure of benchmarking and energy**

454 **performance information.**

455 (a) *Annual report required.* By October 1 of each year, the Director must

456 submit a benchmarking and building performance report to the County

457 Executive and County Council. The report must review and evaluate

458 energy efficiency in covered buildings, including:

- 459 (1) summary statistics on the most recent reported energy
- 460 benchmarking information, including information on the
- 461 completeness and level of data quality of the building energy data
- 462 being reported by building type;
- 463 (2) discussion of any energy efficiency trends, cost savings, and job
- 464 creation resulting from energy efficiency improvements; [and]
- 465 (3) for County-owned covered buildings:
- 466 (A) the scores of County-owned covered buildings
- 467 benchmarked; and
- 468 (B) whether the Director recommends any energy efficiency
- 469 improvements for specific buildings; and
- 470 (4) building energy performance summary statistics, if an interim or
- 471 final performance standard occurs for a covered building type in
- 472 the current reporting cycle.

473 (b) *Disclosure of benchmarking and building energy performance*

474 *standards [information] data.* The Director must make reported

475 aggregated benchmarking and building energy performance standard

[information] data readily available to the public, including on the open data website created under Section 2-154, and the Director may exempt information from disclosure only to the extent that disclosure is prohibited under federal or state law.

(c) *Exceptions to disclosure.* To the extent allowable under state law, the Director must not make the following readily available to the public:

(1) any individually [-] attributable reported benchmarking information from the first calendar year that a covered building is required to benchmark; [and]

(2) any individually [-] attributable reported benchmarking or building energy performance standards information relating to a covered building if the disclosure of the covered building's energy use would be harmful to the public interest and national security [that contains a data center, or television studio that together exceeds 10% of the total building square footage of the individual building until the Director finds that the benchmarking tool can make adequate adjustments for these facilities. When the Director finds that the benchmarking tool can make adequate adjustments, the Director must report this data in the annual report]; and

(3) building performance improvement plans and associated documentation attributable to an individual covered building.

**18A-[43]43A. Regulations[; penalties].**

[(a)] The County Executive may issue Method (2) regulations to administer this Article.

[(b)] Any violation of this Article is a Class A violation.]

**18A-43B. Penalties; enforcement.**

503 (a) A building owner must not knowingly provide false information  
 504 required under this Article to the Department. The Director may revoke  
 505 or modify an extension, adjustment, building performance  
 506 improvement plan, or compliance with benchmarking or the interim or  
 507 final performance standards in response to any false information  
 508 provided by the building owner.

509 (b) Any violation of this Article is a Class A violation.

510 **40-10B. Disclosure of covered building benchmarking and performance**  
 511 **standards information.**

512 (a) Before a buyer signs a contract for the sale of a covered building as  
 513 defined in Section 18A-38A, the seller must:

514 (1) disclose to the prospective buyer that the building is subject to  
 515 building energy performance standards in Chapter 18A, Article  
 516 6;

517 (2) transfer the following records to the prospective buyer:

518 (A) the benchmarking property record from the benchmarking  
 519 tool;

520 (B) documentation of data verification; and

521 (C) any other related records relevant to maintain compliance  
 522 with Chapter 18A, Article 6; and

523 (3) provide to the prospective buyer the following information:

524 (A) performance baseline;

525 (B) interim and final performance standards; and

526 (C) building performance improvement plan.

527 (b) The prospective buyer must indicate, by signing an addendum to the  
 528 contract or a separate section of the contract printed in boldface type, that

529           the seller has made the disclosures and provided the information required  
530           by subsection (a).

*Approved:*

<i>s/</i>	<i>4/22/2022</i>
Gabriel Albornoz, President, County Council	Date

*Approved:*

<i>s/</i>	<i>5/2/2022</i>
Marc Elrich, County Executive	Date

*This is a correct copy of Council action.*

<i>s/</i>	<i>5/6/2022</i>
Judy Rupp, Clerk of the Council	Date

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