



Committee: PHED
Committee Review: At a future date
Staff: Khandikile Mvunga Sokoni, Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #CommunityOwnershipCommunities

AGENDA ITEM #4A
 October 18, 2022
Introduction

SUBJECT

Bill 28-22, Community Ownership Communities

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

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Introduction

DESCRIPTION/ISSUE

Bill 28-22 would amend Chapter 10B of the Code to:

- (1) require regular periodic training of members of a governing board of a common ownership community;
- (2) clarify common ownership community registration, voting and dispute resolution procedures;
- (3) outline criteria that the County’s Commission on Common Ownership Communities (CCOC) considers in accepting jurisdiction over a dispute involving a common ownership community; and
- (4) generally, revise County law regarding common ownership communities.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

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MEMORANDUM

October 13, 2022

TO: County Council
FROM: Khandikile Mvunga Sokoni, Legislative Attorney
SUBJECT: Bill 28-22; Common Ownership Communities – Duties, Requirements and Procedures
PURPOSE: Introduction – No vote expected

Bill 28-22 Common Ownership Communities – Duties, Requirements and Procedures, sponsored by Council President Alborno at the request of the County Executive is scheduled for introduction on October 18, 2022. A public hearing will be scheduled at a later date.

The bill would:

- (1) require regular periodic training of members of a governing board of a common ownership community;
- (2) clarify common ownership community registration, voting and dispute resolution procedures;
- (3) outline criteria that the County’s Commission on Common Ownership Communities (CCOC) considers in accepting jurisdiction over a dispute involving a common ownership community; and
- (4) generally, revise County law regarding common ownership communities.

BACKGROUND AND BILL SPECIFICS

By transmittal memorandum dated August 30, 2022, the County Executive requested this bill to improve association governance of common ownership communities by requiring periodic retraining of members of governing boards, clarifying voting and registration, and enhancing dispute resolution procedures. The proposed changes were recommended by the CCOC. In addition to the changes outlined above, the County Executive’s proposed bill also included a provision that would enable common ownership communities to hold meetings remotely via video and teleconferencing platforms. However, this latter recommendation of the CCOC has been

rendered moot by State legislation that now allows for this. Therefore, that piece has been omitted from this bill.

This packet contains:

Circle #

Bill 28-22

© 1

Memorandum of the County Executive

© 14

Legislative Request Report

© 15

Fiscal Impact Statement

© 17

Bill No. 28-22
Concerning: Common Ownership
Communities – Duties,
Requirements and Procedures
Revised: 10/13/2022 Draft No. 1
Introduced: 10/18/2022
Expires: April 17, 2024
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

- (1) require regular periodic training of members of a governing board of a common ownership community;
- (2) clarify common ownership community registration, voting and dispute resolution procedures;
- (3) outline criteria that the County’s Commission on Common Ownership Communities (CCOC) considers in accepting jurisdiction over a dispute involving a common ownership community; and
- (4) generally, revise County law regarding common ownership communities.

By amending

Montgomery County Code
Chapter 10B, Common Ownership Communities
Sections 10B-2, 10B-3, 10B-6, 10B-7, 10B-7A, 10B-8, 10B-9A, 10B-11, 10B-12, 10B-13, 10B-17, and 10B-18.

By adding

Montgomery County Code
Chapter 10B, Common Ownership Communities
Section 10B-9B.

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

25 (f) provide training on the responsibilities of a board member for
26 members of the governing body of a common ownership
27 community by:

28 (1) developing an educational curriculum for new
29 members; [and]

30 (2) offering training for Board Members, either in
31 person, on-line, or by other electronic means; and

32 [(2)](3) approving an alternative educational curriculum for
33 new members administered by other organizations.

34 (g) establish hearing panels to adjudicate cases on which the
35 Commission accepts jurisdiction.

36 **10B-7. Requirements for [Registration] registration; fees, and board**
37 **training.**

38 (a) Association registration.

39 (1) Each common ownership community must register with the
40 Commission annually, and [identify its elected leadership
41 and managing agents,] submit the information required on
42 [a] the registration form provided by the Commission.

43 * * *

44 (c) Training.

45 (1) Within 90 days after being elected or appointed to the
46 governing body for the first time, a member of the
47 governing body of a common ownership community must
48 successfully complete the educational curriculum approved
49 by the Commission. The governing body must:

- 50 (A) certify that each member has successfully completed
51 this training to the Commission;
52 (B) retain a copy of the training certificate for inspection
53 by the members of the association for the duration of
54 the governing body member's service; and
55 (C) report to the Commission that each member has
56 successfully completed the training within 90 days
57 after each member has been appointed or elected.
58 (2) Each member of the governing body must maintain a
59 training certificate. A training certificate issued under this
60 Section is valid for 3 years.
61 (3) A failure to satisfy the training requirement in this
62 subsection does not:
63 (A) remove the member from the governing body; or
64 (B) invalidate a vote made by the member.
65 (d) A hearing panel or a hearing examiner may consider a board
66 member's failure to complete the training required under this
67 Section, if relevant, in deciding a dispute under Section 10B-13.

68 **10B-7A. Notification requirements.**

69 The governing body of a community association must, at least annually,
70 distribute information [in a form reasonably calculated to notify] to all owners
71 about the availability of dispute resolution, education, and other services to
72 owners and residents of common ownership communities through the
73 Department and the Commission. The governing body may satisfy this
74 requirement by including with any annual notice or other mailing to all members

75 of the community association [any written materials] the form developed by the
76 Department to describe the Commission's services.

77 **10B-8. Defined terms.**

78 In this Article and Article 3, the following terms have the following meanings:

79 * * *

80 (4) *Dispute* means any disagreement between 2 or more parties that
81 involves:

82 * * *

83 (B) the failure of a governing body, when required by law or an
84 association document, to:

- 85 (i) properly conduct an election;
- 86 (ii) give adequate notice of a meeting or other action;
- 87 (iii) properly conduct a meeting;
- 88 (iv) properly adopt a budget or rules;
- 89 (v) maintain or audit books and records;
- 90 (vi) allow inspection of books and records;
- 91 (vii) properly maintain or repair a common element if the
92 failure results in significant personal injury or
93 property damage; or
- 94 (viii) exercise its judgment in good faith concerning the
95 enforcement of the association documents against
96 any person that is subject to those documents.

97 * * *

98 **10B-9A. Request for relief from stay.**

99 (a) At any time after a dispute is filed under Section 10B-9, a
100 [community association] party to the dispute may submit a request
101 to lift the automatic stay required under Section 10B-9(e) to a
102 hearing panel appointed under Section 10B-12, or if no hearing
103 panel has been appointed, a special standing panel authorized to
104 consider requests for relief from stays.

105 (b) * * *

106 (c) [An] A [association] party that requests relief from a stay must
107 serve a copy of its request on any other party named in the dispute
108 by certified mail or personal service. A certificate of service must
109 accompany any request submitted under this Section. A party
110 served with a copy of the request must file its opposition, if any,
111 within 10 days after receiving service.

112 (d) * * *

113 (e) Except as provided in subsection (d), a request for relief from stay
114 may only be granted if the assigned panel finds that:

115 (1) enforcing the stay would result in undue harm to [the] a
116 [community association] party; and

117 (2) lifting the stay [will] would not result in undue harm to the
118 rights or interests of any opposing party.

119 **10B-9B. Acceptance of jurisdiction of complaints.**

120 (a) If the Commission does not accept jurisdiction of a complaint, the
121 Director must notify the parties in writing of the decision and the
122 reason for the Commission's denial of jurisdiction within 10
123 business days after the decision.

- 124 (b) The Commission may accept jurisdiction of a complaint if a party
125 fails to comply with an agreement reached during mediation.
- 126 (c) The Commission’s decision not to accept jurisdiction of a
127 complaint is not subject to judicial review.

128 **10B-11. Mediation; dismissal before hearing.**

129 * * *

- 130 (b) If the Director, after reviewing a dispute, finds that, assuming all
131 facts alleged by the party that filed the dispute are true, there are
132 no reasonable grounds to conclude that a violation of applicable
133 law or any association document has occurred, the Director [may]
134 must so inform the Commission. The Commission must dismiss a
135 dispute if it finds that there are no reasonable grounds to conclude
136 that a violation of applicable law or any association document has
137 occurred, or it may order the Director to investigate further. The
138 Commission may reconsider the dismissal of a dispute under this
139 subsection if any party, in a motion to reconsider filed within 30
140 days after the dispute is dismissed, shows that:
- 141 (1) the Commission erroneously interpreted or applied
142 applicable law or an association document; or
- 143 (2) material issues of fact that are necessary to a fair resolution
144 of the dispute remain unresolved.

145 * * *

- 146 (e) The Commission must promptly schedule a hearing under Section
147 10B-13 if [either]: (1) mediation has not occurred within 90 days
148 after the Director found reasonable grounds to believe a violation
149 occurred; [or] (2) the Director decides at any time that mediation

150 would be fruitless[.]; or (3) the Commission has accepted
151 jurisdiction. The Director may extend the mediation deadline by
152 mutual consent of the parties.

153 **10B-12. Hearing panel.**

154 (a) If a hearing is scheduled, the [chair] Chair of the Commission must
155 convene a 3-member panel to hear the dispute.

156 (b) The [chair] Chair must choose two members of the panel from the
157 voting members of the Commission. The persons selected must
158 represent the two different membership groups of the Commission.
159 The [two] Chair of the Commission [members] must designate the
160 third member from a list of volunteer arbitrators trained or
161 experienced in common ownership community issues maintained
162 by the Commission. The third member must [chair] Chair the
163 panel. If a suitable arbitrator is not available, the [chair] Chair of
164 the Commission must designate the third panelist from among the
165 voting members of the Commission, and must designate the [chair]
166 Chair of the panel.

167 * * *

168 (e) If the Commission [chair] Chair decides that a hearing should be
169 held by a hearing examiner instead of a hearing panel, the [chair]
170 Chair, with the approval of the Commission, may designate the
171 Office of Zoning and Administrative Hearings to conduct the
172 hearing.

173 [(f) If the parties to a dispute agree that the hearing should be held and
174 the dispute decided by a hearing examiner instead of a hearing
175 panel, the chair must designate the Office of Zoning and

176 Administrative Hearings or another hearing examiner to conduct
177 the hearing and issue a decision.]

178 **10B-13. Administrative hearing.**

179 * * *

180 (b) [Sections 2A-1 through 2A-11] The Administrative Procedures
181 Act (Article I of Chapter 2A) [apply] applies to a hearing held
182 under this Section. However, the parties need not be given more
183 than 15 days' notice before the hearing is held, if the Commission
184 finds that an expedited hearing is necessary. At any hearing, a party
185 or a witness may be advised by counsel.

186 * * *

- 187 (d) The hearing panel may award costs, including reasonable
188 attorney's fees, to any party if the other party:
- 189 (1) filed or maintained a frivolous dispute, or filed or
190 maintained a dispute in bad faith;
 - 191 (2) refused to participate in mediation of a dispute[;],
192 unreasonably withdrew from mediation, or failed to comply
193 with the terms of an agreement reached in mediation; or
 - 194 (3) substantially delayed or hindered the dispute resolution
195 process without good cause

196 * * *

197 **10B-17. Voting procedures[; training].**

198 * * *

199 (c) *Absentee ballots* or directed proxies. Any unsigned absentee
200 ballot or directed proxy, to be valid, must be:

- 201 (1) received in a signed, sealed envelope, bearing the
202 identification of the dwelling unit and proportional voting
203 percent, if any, on the outside; and
- 204 (2) opened only at a meeting at which all candidates or their
205 delegates have a reasonable opportunity to attend.
- 206 (d) *Proxy or power of attorney.* Any proxy or power of attorney valid
207 under state law may be used at any association meeting. However,
208 [a] any proxy [and any] or power of attorney [created] containing
209 votes for [the purpose of] candidates for a governing body's
210 election [must] may be [appointed] counted only to meet a quorum
211 or to vote on matters other than an election for a governing body
212 unless the proxy or power of attorney contains a directed vote on
213 the election. If a proxy or power of attorney form must be approved
214 before it is cast, the approving authority must not unreasonably
215 withhold its consent. A general power of attorney valid under state
216 law may be used for any purpose at an association meeting that is
217 consistent with the provisions of the general power of attorney,
218 including for an election of the governing body.
- 219 (e) *Cumulative voting prohibited.* In an election for a governing body,
220 for each unit that a [members] member owns the member must not
221 cast more than one vote for each candidate.
- 222 (f) *Counting votes.* Until the time for voting closes, an association
223 must not open or count election ballots, absentee ballots or directed
224 proxies, and must keep all such documents in a sealed container
225 which must not be opened or counted until the election. If an
226 election is conducted electronically, the votes must not be
227 disclosed or counted by anyone until the election. The individuals

228 counting absentee ballots or directed proxies must insure that the
229 individual who has been directed to cast the proxy vote was in fact
230 in attendance at the meeting.

231 (g) *Terms of office.* Unless the association documents provide for
232 other terms of office:

233 (1) a member elected to the governing body of an association is
234 elected for a term of [two 2] three (3) years; and

235 (2) the individual terms of the entire governing body are
236 staggered, so that as close to one-third as possible are
237 elected each year.

238 [(h) A member of the governing body of a common ownership
239 community must successfully complete the educational
240 curriculum developed by the Commission or a similar educational
241 curriculum administered by another organization that is approved
242 by the Commission within 90 days after being elected or appointed
243 to the governing body for the first time. The governing body must:

244 (1) certify that each member has successfully completed this
245 training to the Commission;

246 (2) retain a copy of the certificate of completion for inspection
247 by the members of the association for the duration of the
248 governing body member's service; and

249 (3) report to the Commission no later than December 31 of each
250 year membership data required by the Commission,
251 including

252 (A) the name and address of each member of the board;

253 (B) the date each member completed the required
254 training;

- 255 (C) the number of vacancies on the board; and
256 (D) the length of time each vacancy existed.
- 257 (i) A failure to satisfy the training requirement in subsection (h) does
258 not:
259 (1) remove the member from the governing body; or
260 (2) invalidate a vote made by the member.
- 261 (j) The Commission may exercise its authority under Section 10B-
262 19(a) to ensure compliance with the training required by
263 Subsection (h).
- 264 (k) A hearing panel or a hearing examiner may consider a board
265 member's failure to complete the training required by Subsection
266 (h), if relevant, in deciding a dispute under Section 10B-13.]

267 **10B-18. Budget.**

268 Unless the association documents provide otherwise:

269 * * *

- 270 (b) the governing body must provide members of the association with
271 any proposed amendment to the budget at least 30 days before the
272 governing body votes on the amendment, if the amendment will
273 result in an increase or decrease of more than 15 percent of the
274 approved budget. This requirement does not apply to expenditures
275 made to respond to an imminent threat to health or safety or of
276 serious property damage, or to properly fund the most recent
277 reserve study conducted for the association.

278 **10B-19. Enforcement.**

279 (a) The Department may enforce this Article by appropriate legal
280 action.

281 * * *




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

August 30, 2022

TO: Gabe Albornoz, President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Introduction of Bill XX-22, Amendments to Common Ownership Communities –
Chapter 10B

I am transmitting the attached proposed Bill XX-22, *Amendments to Common Ownership Communities Dispute Resolution, Open Conduct* for the County Council's introduction. This proposed legislation will improve association governance by requiring periodic retraining of governing body members, clarifying voting procedures, streamlining annual registrations, and authorizing video and telephonic meetings.

The Commission on Common Ownership Communities (CCOC) has recommended these changes to support associations in understanding and adopting practices consistent with efficient and effective operations of the governing bodies that serve an association and its members. The clarification of the requirements for association practices and CCOC processing will enhance association operations and resolve disputes.

I appreciate your prompt consideration of this action.

Enclosures

cc: Richard S. Madaleno, Chief Administrative Officer, Office of the County Executive
Jake Weissmann, Assistant Chief Administrative Officer, Office of the County Executive
Ken Hartman, Director of Strategic Partnerships, Office of the County Executive
Debbie Spielberg, Special Assistant to the County Executive, Office of the County Executive
Nigam Aseem, Director, Department of Housing and Community Affairs

LEGISLATIVE REQUEST REPORT

Bill XX-22

Common Ownership Communities – Dispute Resolution, Open Conduct

DESCRIPTION:	Bill XX-22 would require periodic retraining of members of a common ownership community's governing body, establish criteria for members of the Commission on Common Ownership Communities to accept the jurisdiction of a complaint that involves a common ownership community, allow either party to a dispute to lift the automatic stay imposed when a dispute is filed, provide for community association meetings to be held remotely via video and teleconference platforms, and clarify certain common ownership community voting procedures.
PROBLEM:	The Commission is proposing changes to Chapter 10B so that it better assists the common ownership communities in Montgomery County. These changes address issues that have arisen during elections, holding meetings during the pandemic, training community association board members, determining what is to be considered in accepting the jurisdiction of a dispute, and registering associations with the County.
GOALS AND OBJECTIVES:	The proposed amendments will require association board members to be retrained every three years, streamline the registration process, summarize what is considered when the Commission accepts jurisdiction over disputes, and keep the ballots confidential until an election, as well as other technical amendments.
COORDINATION:	Department of Housing and Community Affairs
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	To be requested.
EXPERIENCE ELSEWHERE:	None
SOURCE OF INFORMATION:	Frank Demarais, Department of Housing and Community Affairs, 240-701-7456.

**APPLICATION
WITHIN**

MUNICIPALITIES: Rockville

PENALTIES: Class A

Fiscal Impact Statement
**Council Bill 22-XX, Common Ownership Communities – Dispute Resolution,
Open Conduct**

1. Legislative Summary.

This Bill requires periodic retraining of members of a common ownership community's governing body by establishing that the required training certification is only valid for three years. It allows an association to conduct meetings of the membership or of the governing body of the association using a video platform that allows all of the members of the association to attend the meeting by video and teleconference, and clarifies common ownership community voting procedures to define elements of proxy voting, ballot control and counting requirements.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The Bill is not expected to have an impact on County revenue or expenditures. The changes to the Commission on Common Ownership Communities are not expected to increase the number of complaints for processing, the complexity of complaints, nor the expenses associated with training or support of Commission activities.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The Bill is not expected to impact County revenues or expenditures.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

The bill is not expected to impact retiree pension or group insurance costs.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

The bill is not expected to impact the County's IT or ERP systems.


6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable, the bill does not authorize future spending.

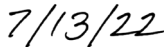
7. An estimate of the staff time needed to implement the bill.

Staff time of less than 40 hours will be required to implement the bill, including updating of webpages and training materials.

8. An explanation of how the addition of new staff responsibilities would affect other duties.
Staff responsibilities represent modest increase of activities the staff currently manage and will not materially delay or impact other duties.
9. An estimate of costs when an additional appropriation is needed.
No additional appropriation is needed.
10. A description of any variable that could affect revenue and cost estimates.
None.
11. Ranges of revenue or expenditures that are uncertain or difficult to project.
None.
12. If a bill is likely to have no fiscal impact, why that is the case.
The changes to the Commission on Common Ownership Communities are not expected to increase the number of complaints for processing, the complexity of complaints, nor the expenses associated with training or support of Commission activities.
13. Other fiscal impacts or comments.
None
14. The following contributed to and concurred with this analysis:
Frank Demarais, Chief Operating Officer, DHCA
Anita Aryeetey, Fiscal and Policy Analyst, OMB



Jennifer Bryant, Director
Office of Management and Budget



Date