

Bill No. 48-10
Concerning: Technical Corrections
Revised: 11/23/2010 Draft No. 3
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Executive: _____
Effective: _____
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Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

AN ACT to correct technical, typographical, grammatical, reference, and codification errors in, and make stylistic, clarifying, and conforming amendments to, various provisions of County law:

By amending

Montgomery County Code
Chapter 1, General Provisions
Section 1-301

Chapter 2, Administration
Sections 2-11A and 2-128

Chapter 2B, Agricultural Land Preservation
Article 6

Chapter 8, Buildings
Section 8-26

Chapter 8A, Cable Communications
Section 8A-23

Chapter 10B, Common Ownership Communities
Section 10B-5

Chapter 11B, Contracts and Procurement
Section 11B-49, 11B-67

Chapter 13, Detention Centers and Rehabilitation Facilities
Section 13-8

Chapter 17, Electricity

Section 17-38

Chapter 19, Erosion, Sediment Control and Storm Water Management
Sections 19-1 and 19-36

Chapter 20, Finance
Sections 20-3 and 20-32

Chapter 21, Fire and Rescue Services
Section 21-1

Chapter 22, Fire Safety Code
Sections 22-2, 22-3, 22-4A, 22-5, 22-6, 22-7, 22-8, 22-10, 22-23, and 22-37

Chapter 29A, Legislative Oversight
Section 29A-9

Chapter 30, Licensing and Regulations Generally
Section 30-12

Chapter 31, Motor Vehicles and Traffic
Section 31-22

Chapter 33, Personnel and Human Resources
Sections 33-15, 33-35, 33-38, 33-41, 33-42, 33-46, 33-52, 33-84, 33-103, 33-111, 33-118, 33-128 and 33-159

Chapter 35, Police
Section 35-13A, 35-13B, 35-18

Chapter 36A, Public Service Company Underground Facilities
Section 36A-2

Chapter 52, Taxation
Section 52-11, 52-16C, 52-18A, 52-18B, 52-18I, 52-18Q, 52-18R, 52-32, 52-35, 52-68, 52-96, 52-99

Chapter 54, Transient Lodging Facilities
Sections 54-20 and 54-26

Chapter 56, Urban Renewal and Community Development
Section 56-10

Chapter 60, Silver Spring, Bethesda, Wheaton and Montgomery Hills Parking Lot Districts
Section 60-2

2010 Laws of Montgomery County Chapter 20

By repealing:

Chapter 33, Personnel and Human Resources
Sections 33-48 and 33-49

Article VI
Sections 33-86 through 33-100

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

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

Sec. 1. Sections 1-301, 2-11A, 2-128, Article 6 of Chapter 2B, 8-26, 8A-23, 10B-5, 11B-49, 11B-67, 13-8, 17-38, 19-1, 19-36, 20-3, 20-32, 21-1, 22-2, 22-3, 22-4A, 22-5, 22-6, 22-7, 22-8, 22-10, 22-23, 22-37, 29A-9, 30-12, 31-22, 33-15, 33-35, 33-38, 33-41, 33-42, 33-46, 33-52, 33-84, 33-103, 33-111, 33-118, 33-128, 33-159, 35-13A, 35-18, 36A-2, 52-11, 52-16C, 52-18A, 52-18B, 52-18I, 52-18Q, 52-18R, 52-32, 52-35, 52-68, 52-96, 52-99, 54-20, 54-26, 56-10, and 60-2 are amended and Sections 33-48, 33-49, and Article VI of Chapter 33 (Sections 33-86 through 33-100) are repealed as follows:

1-301. Rules of interpretation.

The following rules of interpretation apply to resolutions adopted by the Council, [and to] laws enacted by the Council [in legislative session], and the County Charter:

- (a) *Bold face.* [There is] A word has no legal significance [to a word in this Code] solely because it appears in bold face. Bold face indicates that the term is defined [in the Code] or is a heading.

* * *

- (d) *Requirements to act by a specific date.* If the [law] Charter or Code or a resolution requires or allows a person to perform an act by a specific date, but the specific date is a Saturday, Sunday, or legal holiday, [the person may perform the act on the next day that is not a Saturday, Sunday, or legal holiday,] the person may perform the act on the next day that is not a Saturday, Sunday, or legal holiday.

* * *

- (h) *Title of sections.* Titles and captions are not part of the [law of the County] Charter or Code or a resolution. They only advise the reader of the content of each [section] provision.

2-11A. Evaluation of reorganization.

* * *

(c) Within [fifteen (15)] 15 days [following] after receipt of a written report from the [county executive] County Executive, the [council shall] Council must determine whether the report, or any part of the report, [shall] must not be made public. The only basis on which a report or any part of a report may not be made public is if the report or part contains information that would not be available for public inspection [pursuant to article 76A (public information) of the Annotated Code of Maryland] under Title 10, Subtitle 6 of the State Government Article of the Maryland Code.

* * *

2-128. Appointment of [county attorney] County Attorney as [assistant state's attorney] Assistant State's Attorney; powers, duties[, etc].

(a) The [state's attorney] State's Attorney for the [county] County [is hereby authorized and empowered to] may appoint the [county attorney] County Attorney and any [assistant county attorney] Assistant County Attorney as an assistant state's attorney.

(b) Assistant state's attorneys so appointed [shall] have the same powers as an assistant state's attorney appointed under other applicable law and [shall have the duty of assisting] must assist the [state's attorney] State's Attorney in [the prosecution of] prosecuting violations of:

[(a) The acts, ordinances, standards, codes, regulations, permits or licenses specified in section 2 of chapter 18, Laws of Montgomery County, 1949, or any amendment thereto,]

(1) Chapter 5 (Animal Control);

(2) Chapter 8 (Buildings);

54 [(b)] (3) Chapter 22 ([the fire code,] Fire Safety Code);

55 (4) Chapter 24A (Historic Preservation);

56 (5) Article 3 of Chapter 49 (Streets and Roads);

57 (6) Chapter 50 (Subdivision of Land);

58 (7) Chapter 59 (Zoning);

59 [(c)] (8) [ordinances, rules, or regulations heretofore adopted by the
60 board of county commissioners or hereafter adopted by the
61 council] any County law, and any regulation adopted by the
62 Council sitting as [a county board of health,] the County Board of
63 Health;

64 [(d)] (9) [article 97 of the Annotated Code of Maryland, 1957] Title 11
65 of the Agriculture Article of the Maryland Code, relating to
66 standards of weights and measures[,]; and

67 [(e)] (10) any other, law, rule, regulation, or ordinance [heretofore
68 adopted by the board of county commissioners or hereafter]
69 adopted by the [council] Council.

70 (c) [Assistant] Any assistant state's [attorneys] attorney appointed under
71 this [section shall] Section must serve without additional compensation.

72 (d) Nothing in this [section shall be held to limit] Section limits any
73 authority of the [county attorney] County Attorney or an assistant
74 county attorney to prosecute any [such violation in his capacity]
75 violation listed in this Section as [county attorney] County Attorney or
76 [assistant county attorney] Assistant County Attorney. [All such
77 prosecutions shall] Each prosecution must be brought in the name of the
78 [state] State or [county] County, as [may be] appropriate.

79 * * *

80 **Article [III] 6. Agricultural Advisory Committee**

2B-21. Agricultural Advisory Committee.

* * *

8-26. Conditions of permit.

(a) *Generally.* [No] A permit to begin work for new construction, alteration, removal, demolition, or other building operation [shall] must not be issued until the fees authorized in this [section] Section are paid to the [department] Department. [nor shall an] An amendment to a permit [necessitating] that requires an additional fee because of an increase in the estimated cost of the work involved must not be approved until the additional fee is paid. The [department] Department must not issue any building [permits] permit for a residence, except a building designed to be used as a residence for the person's own or immediate family use, under [the provisions of section 26A-12 of chapter 26A] Section 31C-1, to any person except a licensed building contractor or an authorized [agents] agent of the licensed building contractor.

* * *

8A-23. Transfers.

* * *

(b) An application to transfer a franchise must meet the requirements of [section] Section 8A-8(b) and provide complete information on the proposed transaction, including the legal, character, financial, technical, and other pertinent qualifications of the transferee, and on the potential impact of the transfer on subscriber services or rates. The proposed transferee must provide all information required in [section 8A-8(e)(1)] Section 8A-8(d)(1) through (3), (10), and (12) [must be provided by the proposed transferee]. The information

required in [section 8A-8(e)(4)] Section 8A-8(d)(4) through (9) must also be provided [whenever] if the proposed transferee expects material changes to occur in those areas as a result of the transfer.

- (c) An application for transfer of an interest in a franchisee must describe the proposed transaction in detail and identify the interest to be transferred, the transferor, and transferee. If the proposed transferee is not a current equity owner of the franchisee, the application must include the information required by Section [8A-8(e)(1)] 8A-8(d)(1) and (2).

* * *

10B-5. Duties of the Office of Consumer Protection.

* * *

- (h) advise common ownership communities and professional association managers of changes in the laws and regulations that affect their communities or operations; [and]
- (i) operate a dispute resolution process to furnish mediation and administrative hearings[.]; and

* * *

11B-49. Purchase of goods for non-profit organizations.

- (a) If goods are needed to perform a contract with the County, a non-profit organization that is exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code but which is not a public entity may:
- (1) subject to subsection (d), [purchase] buy the goods under an existing County requirements contract;
- (2) engage in cooperative procurement for the goods with the County under Section [11B-39] 11B-40; or

(3) [purchase] buy the goods from the County if [it is] all items are in stock and not otherwise needed.

* * *

11B-67. Procedures.

* * *

(d) A business must affirm and provide supporting documentation to the Director to show that it is a local small business as defined in Section [[11B-65(c)]] 11B-65(a). The Director may investigate and verify the information provided on the application.

* * *

13-8. ~~[Same-Same-]~~Diminution of sentence.

An inmate sentenced or held in a pre-trial or pre-sentence status is entitled to a diminution of the period of [his] confinement as specified by [section 704A to article 27 of the Annotated Code of Maryland 1957, as amended] Section 3-101 of the Correctional Services Article of the Maryland Code.

* * *

17-38. ~~[Generally]~~ Standards.

(a) [It shall be unlawful for anyone to] A person must not sell or install electrical equipment which does not [having] contain the certification of an inspection authority approved by the [department] Department.

* * *

(d) [It shall be unlawful to] A person must not occupy or offer to sell for occupancy any mobile home, prefabricated or modular dwelling, industrialized building, or [other like] similar structure as defined in the National Electrical Code, without having first obtained from the manufacturer [of such units] a certification by the State of Maryland [as having] that the structure has met standards contained in [state]

regulations adopted [pursuant to article 41, section 266EE-3, Annotated Code of Maryland] under Sections 12-301 through 12-313 of the Public Safety Article of the Maryland Code.

* * *

19-1. Definitions.

* * *

(21) Professional engineer[: An] means an engineer duly registered by the State of Maryland to practice professional engineering under the requirements of [Article 75 1/2 of the Annotated Code of Maryland] Title 14 of the Business Occupations and Professions Article of the Maryland Code.

(22) Professional land surveyor[: A] means a person who is duly registered and licensed under the requirements of [Article 56 of the Annotated Code of Maryland] Title 14 of the Business Occupations and Professions Article of the Maryland Code.

* * *

19-36. Definitions.

* * *

Wetland[: Any] means any land which is:

(1) considered private wetland or State wetland under [Title 9, Wetland and Riparian Rights, Natural Resources Article, Annotated Code of Maryland] Title 16 of the Environment Article of the Maryland Code; or

* * *

20-3. Disbursements from revolving fund of [department of liquor control] Department of Liquor Control.

The [county executive] County Executive, the [director of finance] Director of Finance, and the [director] Director of the [department of liquor control shall have authority] Department of Liquor Control may, by concurrent action, [to] designate [persons] one or more employees in the [department of liquor control] Department of Liquor Control who may disburse money from the revolving fund [to be] established [pursuant to subsection (e) of section 165 of article 2B of the Annotated Code of Maryland, 1957] under Section 15-207 of Article 2B of the Maryland Code. [; provided, that the] The signature of at least [two (2)] 2 persons [shall] must be required for any disbursement.

* * *

20-32. Legislative purpose.

(a) Under the authority of [article] Article 44A of the [Annotated] Maryland Code [of Maryland, as amended], Montgomery County, may, at any time and from time to time, guarantee, upon its full faith and credit, revenue bonds of the housing opportunities commission in a total amount not exceeding [fifty million dollars (\$50,000,000[.00])] to finance the acquisition, provision, development, or rehabilitation of housing at rental rates and prices not being offered in adequate quantity by the private sector, or to finance in whole or in part mortgage loans secured by such housing, and to fund related reserves and costs approved under [the provisions of section 15, article 44A, Annotated Code of Maryland] Title [[2]] 16 of the Housing and Community Development Article [[44A of the Maryland Code and this [chapter] Chapter.

(b) [Mortgage loans] Each mortgage loan so financed in part must be insured in part by the Federal Housing Administration, the Maryland Housing Fund, or a private mortgage insurer which is approved by

either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation[,] and [which private mortgage insurer] is authorized to do business in [the State of] Maryland, or by any combination of such insurers.

(c) The [housing opportunities commission shall adhere to adhere to the] Housing Opportunities Commission must comply with any terms and conditions imposed by the [county government] County in providing the guarantee of any bonds. [Where such] If guaranteed revenue bonds will finance the total cost of such housing or the total amount of the mortgage loans for such housing, the [housing opportunities commission shall] Commission must also [adhere to] comply with any requirements imposed by the [county government] County after the [issuance of the bonds] bonds are issued to assure or protect the financial solvency of the project.

(d) The issuance of such bonds [shall] must be subject to [procedures for] review and approval by the [county government] County as hereinafter provided.

21-1. Statement of policy; definitions.

* * *

(c) *Definitions.* As used in this Chapter, the following terms have the following meanings:

* * *

Fire Chief: the Fire Chief who is appointed under Section 21-3[, who serves] to serve as the Director of the Montgomery County Fire and Rescue Service. Fire Chief includes the Fire Chief's designee.

* * *

22-1. Short title.

[The provisions of this chapter shall constitute and shall hereafter be known]
This Chapter may be referred to as "The Montgomery County Fire Safety Code [of
 Montgomery County, Maryland.]".

22-2. Purpose; intent.

(a) The purpose and the intent of this [chapter] Chapter is to prescribe minimum requirements and controls to safeguard life, property, and the public welfare from the hazards of fire and explosion arising from the improper storage, handling, or use of substances, materials, or devices and from conditions hazardous to life, property, and the public welfare in the use or occupancy of buildings, structures, [sheds, tents, lots] or premises.

(b) Where no specific [standards or requirements are] standard or requirement is specified in this [chapter] Chapter, or [contained within] any other applicable [laws, regulations] law or [ordinances] regulation, compliance with [the] applicable standards of the National Fire Protection Association (NFPA), [Building Officials and Code Administrators (BOCA) and] International Code Council (ICC), American Insurance Association (AIA), or any other nationally recognized fire safety [standards as are] standard approved by the [director] Fire Chief [shall be deemed as] is prima facie evidence of compliance with this [intent] Chapter.

22-3. Construction and scope of Chapter.

(a) [The provisions of this chapter shall apply] This Chapter applies to existing conditions [as well as] and to conditions arising after [the adoption thereof, except that] this Chapter was adopted. However, a [conditions] condition legally [in existence at the adoption of this chapter and not in strict compliance therewith shall be permitted to

continue] existing when this Chapter was adopted, but not in strict compliance with this Chapter, may continue only if[, in the opinion of] the [director, they do] Fire Chief finds that the condition is not [constitute] a distinct hazard to life or property.

* * *

- (e) [Nothing in this chapter shall be construed as rendering] This Chapter does not render any other applicable [laws] law or regulation invalid. [In any situation where] If a conflict [exists] arises between [a provision of] this [chapter] Chapter and another [code] law or regulation, the fire marshal and [appropriate] the head of the agency responsible for enforcing the conflicting [code shall determine in concert] law or regulation must agree which [provisions shall apply] applies. [Conflicts which are unreconcilable shall] If they cannot agree, any remaining conflict must be referred to the [director of the department of fire and rescue services] Fire Chief. The decision of the [director of fire and rescue services] Fire Chief in any matter relating to fire safety [shall be] is final. [, except that] However, any person aggrieved by [such] the decision [shall have the right to] may appeal to the [county board of appeals in accordance with chapter] County Board of Appeals under Chapter 2 [of the County Code]. Within [thirty (30)] 30 days [following the discovery of] after any [serious] remaining conflict has been resolved, the [director] Fire Chief and the head of the agency responsible for enforcing the conflicting [code shall] law or regulation must forward to the [county executive] County Executive a joint [recommendations for the removal of] proposal to amend a law or regulation to eliminate the conflict [from the County Code or the regulations adopted pursuant thereto].

22-4A. Certification procedure.

* * *

- (b) The [Director of Fire and Rescue Services] Fire Chief may waive all or part of the regular field inspection of construction if the architect or engineer certifies to the [Director] Fire Chief that:

* * *

- (c) The [Director of Fire and Rescue Services] Fire Chief may waive any final inspection required under this Chapter which relates to the issuance of a certificate of use and occupancy if the registered engineer or architect who supervised the construction or reconstruction of the building certifies to the [Director] Fire Chief under oath that:

* * *

- (e) The [Director of Fire and Rescue Services] Fire Chief may grant a waiver related to construction inspection, and use and occupancy inspection under subsections (b) and (c), if the waiver is warranted in light of subsections (b) and (c) and:

* * *

- (f) The [Director of Fire and Rescue Services] Fire Chief and the Director of Permitting Services must issue a decision on a request for a waiver under subsections (a), (b), and (c), within 10 days after receiving the request. [Each Director] Either the Fire Chief or the Director of Permitting Services has complete discretion to approve or reject a waiver. The decision of [each Director] the Fire Chief or the Director of Permitting Services is final, and no appeal may be taken. If either [Director] the Fire Chief or the Director of Permitting Services grants a waiver, the [Director] Fire Chief or Director must

find in writing that the waiver complies with subsection (d) or (e), as applicable.

(g) The Director of Permitting Services may grant a waiver under this [section] Section only to the extent:

(1) permitted under State and local law; and

(2) delegated by the [Director of Fire and Rescue Services] Fire Chief.

22-5. Definitions.

In this Chapter, the following words have the following meanings:

[(a) Tenses. The present tense includes the past and future tenses, and the future, the past.

(b) Gender. The masculine gender includes the feminine and neuter.

(c) Number. The singular number includes the plural and the plural the singular.]

* * *

Alternative: [The term “alternative” means] a system, condition, arrangement, material, or equipment submitted to the [director] Fire Chief as a substitute for a code requirement.

Approved: [The term “approved” means] acceptable to the [director] Fire Chief. In determining the acceptability of installations or procedures, equipment, or materials, the [director] Fire Chief may base acceptance on compliance with the NFPA or other appropriate standards. In the absence of such standards, [such authority] the Fire Chief may require evidence of proper installation, procedure, or use. The [director] Fire Chief may also refer to the listings or labeling practices of any nationally recognized testing [laboratories] laboratory, inspection [agencies] agency, or other [organizations concerned with product evaluations which are in a position to] organization which evaluates products and can determine compliance

with appropriate standards for [the current production of listed items,] and the satisfactory performance of such equipment or materials in actual usage.

* * *

Authority having jurisdiction: [The phrase “authority having jurisdiction” means] the [director of fire and rescue services] Fire Chief.

* * *

Central fire communications center: [The phrase “central fire communications center” means] the public fire service communication facilities operated by the [department of fire and rescue services] Montgomery County Fire and Rescue Service as part of the [Montgomery] County emergency operations center. [The functions of this facility include receiving fire alarms or other emergency calls from the public, retransmitting these alarms and emergency calls to fire companies and other interested agencies, and the operation of the fire and rescue services radio base stations and land line communications equipment.]

* * *

[*Director:* The term “director” means the director of the department of fire and rescue services and shall include his authorized representatives.]

* * *

Fire Chief: the Fire Chief appointed under Section 21-3. Fire Chief includes the Fire Chief’s designee.

Fire department: [The phrase “fire department” means] the [fire and rescue services of] Montgomery County Fire and Rescue Service.

* * *

Fire Marshal [The phrase “Fire Marshal”] or [“County Fire Marshal”] *County Fire Marshal:* [means] a qualified employee of the Montgomery County Fire and Rescue Service designated by the Fire [Administrator] Chief as the

County Fire Marshal. [The phrase] Fire Marshal includes the Fire Marshal's designee, unless the context clearly indicates otherwise.

Fire official: [The phrase "fire official" means] any person serving as a designated employee, representative, or agent of the [fire and rescue services of] Montgomery County Fire and Rescue Service.

* * *

Representative: [The term "representative" means] a person duly appointed in the name of the [director for the purpose of administering or enforcing] Fire Chief to administer or enforce this [code] Chapter.

* * *

22-6. Administration [generally].

(a) *Authority of [director] Fire Chief generally.* The [director of the department of fire and rescue services] Fire Chief [is hereby authorized and directed to] must administer [the provisions of] this [chapter] Chapter. The [director] Fire Chief [shall have such other powers and] must perform [such] any other [duties as are set forth in other sections of] duty assigned under this [Code and as may be conferred and imposed from time to time by] Chapter or any other applicable law. The [director] Fire Chief may delegate any [of his powers or duties] power or duty under this [chapter] Chapter to [the division of fire prevention or to] any other County fire [officials of this jurisdiction] official.

(b) *Authority of [director] Fire Chief in emergencies.* In [a case of] an emergency[,] where [in the opinion of] the [director] Fire Chief finds that [,] life or property is in immediate danger of fire, the [director] Fire Chief [is hereby authorized to] may take any action [that he deems] necessary to protect [such] life or property.

(c) *Enforcement assistance.* Police and any other [agencies having authority in this jurisdiction shall render] authorized agency must provide necessary assistance [in the enforcement of this code] to enforce this Chapter when [requested to do so by] the [director] Fire Chief so requests.

(d) *Fire [prevention division] Code Compliance Section.* To assist [in the performance of the responsibilities and the duties placed upon] the [director] Fire Chief, the Chief may organize and supervise a [division of fire prevention] Fire Code Compliance Section [is established within] in the [department] Fire and Rescue Service. [This division shall operate under the supervision of the director.] Members of [the division of fire prevention are hereby authorized to] this Section may enforce all County laws and [ordinances of Montgomery County covering the following] regulations on:

- (1) [The prevention of fires.] fire prevention;
- (2) [The] storage, use, and handling of explosive, flammable, toxic, corrosive, and other hazardous gaseous, solid, and liquid materials[.];
- (3) [The] installation and maintenance of automatic, manual, and other private fire alarm systems and fire extinguishing equipment[.];
- (4) [The] maintenance and regulation of fire escapes[.];
- (5) [The] maintenance of fire protection and [the] elimination of fire hazards on land and in buildings, structures, and other property, including those under construction[.];
- (6) [The means and] adequacy of each fire exit [in the event of fire,] from [factories, schools, hotels, lodging houses, asylums,

hospitals, churches, halls, theatres, amphitheatres, and all other places in which people work, live, or congregate from time to time for any purpose.] any building; and

(7) [The] investigation of the cause[, origin and circumstances] of any fire.

(e) *Authorization for requirement changes.* A fire safety requirement proposed for imposition during the course of building construction that would change or substitute a material, feature, construction method, or any other [aspects] aspect of construction different from [those which were identifiably included in] the original or amended [submission of] subdivision, site, or construction plans and specifications, as approved by the [department of fire and rescue services shall] Fire and Rescue Service must only be imposed [following a written finding by the director] if the Fire Chief finds that the change or substitution is necessary to avoid a specific and demonstrable threat to public safety. [A] The Chief must provide a copy of the finding [shall be provided] to the affected person and [shall be available] to the public [upon] on request.

(f) *Administrative appeals.* [The director upon petition] When petitioned by [a] an aggrieved person [claiming to be aggrieved is authorized and directed to], the Fire Chief must promptly review [rulings] any ruling or [interpretations] interpretation of law or regulations made by Fire and Rescue Service staff [during the enforcement of the provisions of] while enforcing this [chapter] Chapter. [Such] A petition must be filed with the [director] Fire Chief in writing within [ten (10)] 10 days [of] after the [official administrative] ruling or interpretation. The [director] Fire Chief may review, modify, or affirm the initial

[administrative] ruling or interpretation with or without a hearing, and
must send a copy of the [director's] Fire Chief's decision [shall be
 provided] to the aggrieved party.

22-7. Right of entry.

(a) Generally.

(1) The [county executive, director and the superintendent of
 police] County Executive, Fire Chief, and Police Chief, or their
 authorized representatives, [upon] after exhibiting the proper
 credentials or proof of identity on request, [shall have the right
 to] may enter any building, structure, or premises (except [those
 areas] any area actually occupied as a dwelling unit) without
 consent of the occupants [at any time] during business or
 operating hours and at [such] other times [as may be necessary]
 in an emergency that immediately endangers life, property or
 public safety, [for the purpose of performing] to perform duties
 under this [chapter] Chapter or [enforcing the provisions
 thereof] enforce this Chapter.

(2) [In the case of] For a multi-family [dwellings, they shall have
 such right to] dwelling, the Executive, Fire Chief, and Police
Chief may only enter without consent [only] any space that is
not part of an individual dwelling unit, such [areas] as a storage
 [rooms, laundries,] room, laundry room, boiler [rooms] room,
 utility [rooms] room, [hallways, basements and similar spaces
 not part of individual dwelling units; provided, that such
 authorities] hallway, or basement. However, the Executive,
Fire Chief, and Police Chief may enter any individual dwelling
 unit;

(A) [for the purpose of enforcing] to enforce this [chapter] Chapter with the consent of the occupant [thereof,]; or

(B) without [such] the consent of the occupant if [they shall first obtain] the Executive, Fire Chief, or Police Chief obtains a search warrant [in accordance with] under prescribed legal procedure, or [if there is a present] during or immediately after an emergency such as a fire[,] or explosion [or the like, or immediately following such emergency].

* * *

22-8. Report of fire and rescue [incidents] incident.

* * *

(b) The Fire [Administrator] Chief, or the [Administrator's] Fire Chief's designee, is the custodian of each report submitted under this Section.

* * *

22-10. [General provisions applicable to permits] Permits and certificates.

* * *

(b) *Application for permit.* [All applications] Each application for a permit required by this Chapter must be made to the [Division of Fire Prevention] Fire and Rescue Service or [the] Department of Permitting Services, as applicable, in the form prescribed. [Applications for permits] Each application must be accompanied by [the] any plans, specifications, or details required by the [Director of Fire and Rescue Services] Fire Chief or the Director of Permitting Services, as applicable.

(c) *Inspection [prerequisite to] before issuance of permit.* Before a permit may be issued, the [Director of Fire and Rescue Services] Fire

Chief or the Director of Permitting Services, as applicable, [or their respective authorized representatives,] may inspect and approve [the receptacles, vehicles, buildings, devices, premises, storage spaces or areas to be used] any receptacle, vehicle, building, device, premises, storage space, or area to be used.

- (d) *Display of permits.* A copy of the permit must be posted at each place of operation or carried by the permit holder as specified by the [Director of Fire and Rescue Services] Fire Chief or the Director of Permitting Services, as applicable.

* * *

- (g) *Revocation.* Any permit or certificate issued under this Chapter may be suspended or revoked if the [Director of Fire and Rescue Services] Fire Chief or the Director of Permitting Services, as applicable, finds that:

* * *

- (h) *Authority to require exposure or stop work.*

(1) If any installation requiring a permit or inspection is covered or concealed without having first been inspected, the [Director of Fire and Rescue Services] Fire Chief must require by written notice that the work be exposed for inspection. The permittee must pay any cost of exposing and recovering the work.

(2) If any construction or installation work is performed in violation of the plans and specifications as approved by the [Director of Fire and Rescue Services] Fire Chief or the Director of Permitting Services, as applicable, the Chief or Director must issue a written notice [must be issued] to the responsible party to stop work on that portion of the work

which is in violation. The notice must state the nature of the violation, and any responsible party must not continue work [must not be continued] on that portion until the violation has been corrected.

- [(i) *Permits issued prior to effective date.* A license or permit validly issued prior to the effective date of this chapter shall remain valid until its expiration date unless sooner revoked for cause.]

22-23. Inspections.

- (a) The Fire [Administrator] Chief must designate in writing a qualified individual to serve as the County Fire Marshal. Under State law, the County Fire Marshal serves as an assistant State fire marshal [for the purpose of implementing and enforcing] to enforce State fire prevention laws. The County Fire Marshal may ask the State Fire Marshal to appoint one or more qualified employees of the Montgomery County Fire and Rescue Service to serve as a special assistant State fire marshal.

* * *

22-37. Regulating fire extinguisher service.

The [director of the department of fire and rescue services shall exercise the following functions, powers, and duties]] Fire Chief must:

- [(1)] (a) [To] administer [such] regulations [as may be determined] necessary [for the protection and preservation of] to protect life and property [in controlling] regarding:
- [i] (1).[The] registration of firms [engaging in the business of servicing] that service portable fire extinguishers;
- [ii.] (2) [The] registration of firms [engaging in the business of hydrostatically testing] that hydrostatically test U.S.

Department of Transportation specification gas cylinders used
for portable fire extinguishers;

[iii.] (3) [The] examination of persons applying for a license to service
portable fire extinguishers;

[iv.] (4) [The] licensing of persons to service portable fire
extinguishers; and

[v.] (5) [The] requirements for servicing of portable fire
extinguishers[.];

[(2)] (b) [To] evaluate the qualifications of firms or individuals for a
certificate of registration to engage in the business of servicing
portable fire extinguishers[.]; and

[(3)] (c) [To] conduct examinations to ascertain the qualifications and fitness
of applicants for a license to service portable fire extinguishers.

29A-9. Reports.

* * *

(b) Within [fifteen (15)] 15 days [following receipt of] after receiving a
written report from the [office] Office, the [council shall] Council
must determine whether the report, or any part of the report, [shall]
must not be made public. The only basis on which a report, or any
part of a report, [may] must not be made public is if the report or part
contains information that would not be available for public inspection
[pursuant to article 76A (public information) of the Annotated Code
of Maryland] under Subtitle 6, Title 10 of the State Government
Article of the Maryland Code.

* * *

30-12. Alcoholic beverages-Consumption on public property.

The [county executive is hereby authorized to] County Executive may, under Method 3, adopt [and from time to time amend] regulations[, under method (3) of section 2A-15 of this Code,] governing the consumption of alcoholic beverages on "public property" as that phrase is defined in [article 2B, section 210 of the Annotated Code of Maryland] Title 19, Subtitle 2 of Article 2B of the Maryland Code.

* * *

31-22. Applicability of Article.

* * *

[Nothing in this article, however, shall] This Article does not apply to any public [streets] street or parking [lots] lot acquired or operated [pursuant to chapter 86 of this Code] under Article 29 of the Maryland Code.

33-15. Judicial review and enforcement.

(a) Any aggrieved merit system employee, or applicant, or the chief administrative officer may obtain judicial review of a merit system protection board order or decision from the circuit court for the county in the manner prescribed under [[chapter 1100, subtitle B]] Chapter 200 of Title 7 of the Maryland Rules of Procedure. In addition, with respect to orders or opinions relating to personnel of Montgomery County fire and rescue corporations, the independent fire and rescue corporation affected by the merit system protection board order, as well as any aggrieved fire and rescue corporation employee, may obtain judicial review of the board's order or decision as provided in this section.

(b) The court, in hearing the case, shall apply the judicial review standards as set forth in the Maryland [[administrative procedures act]] Administrative Procedures Act, [[article 41, Maryland Code

Annotated, section 255]] Subtitle 2 of Title 10 of the State Government Article of the Maryland Code. The court review shall be on the basis of the record before the board. Judicial review of board decisions issued hereunder also includes appellate review by the [[special courts of appeals of Maryland]] Court of Special Appeals.

* * *

33-35. Definitions.

* * *

Employee organization: [An:]

(a) an employee organization defined in Section 33-76 that is certified under Section 33-79; [or]

(b) an employee organization defined in Section 33-102(5) that is certified under Section 33-106; or

(c) an employee organization defined in Section 33-148 that is certified under Section 33-151.

* * *

Membership: the period of time that a member is enrolled and has contributed to the Employees' Retirement System.

* * *

33-38. Normal retirement date, mandatory retirement date, early retirement date, and trial retirement.

* * *

(c) *Early retirement date.*

(1) A member, other than a group G member, who has not met the age and service requirements for a normal retirement may elect to [retire on the first day of a month and may elect to] receive pension payments beginning on an early retirement date the

first day of a month after [if] the following requirements are met:

* * *

33-41. Credited service.

(a) *Member's credited service.*

* * *

[(3) Credited service includes:

(A) The time during which a member receives service-connected disability benefits under Article VI of this chapter; and

(B) Half the time during which a member receives non-service-connected disability benefits under article VI of this chapter.

(4) An employee who is receiving disability benefits under article VI of this chapter will not be entitled to receive credited service for any period of time during which the employee participates in either the Montgomery County employees' retirement system or in another retirement system.]

[(5)] (3) * * *

[(6)] (4) * * *

[(7)] (5) * * *

* * *

(f) *Use of sick leave for credited service.* An employee [whose retirement is effective on or after May 1, 1970, or who becomes vested on or after October 1, 1971,] must receive credit toward retirement for any accumulated sick leave, up to a maximum of 4,224 hours. Each 176 hours of accumulated sick leave is equal to 1 month of credited service.

Accumulated sick leave totaling less than 11 days must not be credited for retirement purposes. Accumulated sick leave totaling 11 to 22 days must be credited as 1 month of service for retirement purposes. An employee who transfers to the Retirement Savings Plan must receive credit toward retirement under the optional plan or integrated plan under Section 33-37(i) for the employee's accumulated sick leave.

* * *

33-42. Amount of pension at normal retirement date or early retirement date.

* * *

[(g) *Calculation for members receiving benefits under the disability benefits program.*

(1) When a member who receives disability benefits under Article VI reaches the normal retirement date, the formula to calculate retirement benefits must be the same as in subsection (b)(1) and (b)(2)(A) and (B), except that the member's salary at the time of the disability, plus cost-of-living adjustments and annual increments, must be used to calculate the retirement benefits instead of average final earnings.

(2) If a member who receives disability benefits under article VI of this chapter returns to employment covered by the retirement system under this chapter, at the time of actual retirement, the member must choose to receive retirement benefits:

(A) Under this subsection;

(B) Under subsection (b) of this section.]

[(h)] (g)

* * *

(2) For purposes of this subsection [(h)] (g), the annual addition must be comprised of:

* * *

(3) In this subsection [(h)] (g), only:

* * *

(4) County elected officials' contributions that would be allocated to county elected officials' contributions accounts of elected officials' participants but for the limitations of this subsection [(h)] (g), must be carried over to subsequent years and allocated in order of time to the county elected officials' contributions accounts which would have received such contributions but for the limitations set forth in this subsection [(h)] (g). Amounts carried over must be allocated by the chief administrative officer to a suspense account that must be invested in a fixed income fund. Any earnings of the suspense account must be allocated ratably among the county elected officials' contributions accounts of all the elected officials' participants except as otherwise provided in this subsection [(h)] (g).

[(i)] (h) * * *

[(j)] (i) (1) * * *

(D) Any member employed by a participating agency is not eligible to participate.

* * *

33-46. Death benefits and designation of beneficiaries.

* * *

(b) *Spouse's, or domestic partner's, and children's benefits of a member whose death is service connected.*

- (1) (A) If a member other than a Group F or G member dies while employed by the County or a participating agency [on or after August 15, 1965,] and the employing department or agency, a beneficiary, or another person submits satisfactory proof to the Chief Administrative Officer that the employee's death resulted from injuries sustained in the line of duty or was directly attributable to the inherent hazards of the duties the employee performed and the death was not due to willful negligence, the County must pay benefits as follows:

* * *

33-48. [Disability retirement hearing board.] Reserved.

- [(a) *Establishment.* There is a disability retirement hearing board until the board makes a final decision on all disability retirement applications submitted to the board before the date on which the disability benefits program under article VI of chapter 33 takes effect.

- (b) *Composition, duties, and responsibilities.* The disability retirement hearing board has the composition, duties, and responsibilities as were provided by law to the board before August 11, 1985.]

33-49. [Medical review committees.] Reserved.

- [(a) *Establishment.* For each disability retirement application received by the disability retirement hearing board, the board must designate a medical review committee. Any committee established by the board exists until that committee makes a final report to the board on all medical examination referred to that committee based on applications submitted to the board before the date on which the disability benefits program under article VI of chapter 33 takes effect.

(b) *Composition, duties, and responsibilities.* A medical review committee has the composition, duties, and responsibilities as were provided by law to those committees before August 11, 1985.]

* * *

33-52. Payment of benefits.

* * *

(b) *Discontinuance of pension payments.* A member must not receive pension payments while serving in an appointed or elected County office that receives any compensation paid by the County. A member appointed to a full-time County position must become a member of the retirement system or the Retirement Savings Plan under Sections 33-37 and 33-115 and make member contributions until later separation under Article III or Article VIII. The retirement benefit of an employee who resumes membership in the optional or integrated plan must be recalculated when the employee later separates from service. The retirement benefit under the integrated or optional plans of Article III of an employee who becomes a member of the Retirement Savings Plan must resume when the employee later separates from service.

* * *

33-84. Strikes and lockouts.

* * *

(c) If an employee or employee organization [shall violate the provisions of] violates this Section, the employer, after adequate notice and a fair hearing before the permanent umpire who finds that the [aforesaid] alleged violations have occurred and [finds] that any or all of the following actions are necessary in the public interest, may, subject to

the law enforcement officer's bill of rights, [article 27, section 727 et seq., Annotated Code of Maryland.] Title 3, Subtitle 1 of the Public Safety Article of the Maryland Code:

* * *

ARTICLE VI. [DISABILITY BENEFITS.] RESERVED.

[33-86. Applicability.]

[The provisions of this article only apply to individuals who:

- (1) Are members of the retirement system under this chapter on or after May 15, 1986, and submitted an application for disability benefits on or after May 15, 1986, but before July 1, 1989, or is an elected official on July 1, 1989, and submitted an application for disability benefits on or after May 16, 1986, but before December 3, 1990;
- (2) Are members of the retirement system under this chapter before May 15, 1986, but who opted into the disability benefits program under this article and submitted an application for disability benefits on or after May 15, 1986, but before July 1, 1989; or
- (3) At any time chose to participate in the elected officials' plan and submitted an application for disability benefits on or after May 15, 1986, but before December 3, 1990.]

[33-87. Definitions.]

[(a) *In general.* In this article, the following words have the meanings indicated.

(b) *Administrator.* "Administrator" means:

- (1) The disability retirement hearing board, when the application for benefits under this chapter is filed by a member with the disability retirement hearing board before May 15, 1986, and there is no final decision from the disability retirement hearing board on the application before May 15, 1986.

- 806 (2) For all other applications for benefits under this chapter,
807 administrator means the entity that contracts with the county to
808 administer as a third part administrator:
- 809 a. The disability retirement program under section 33-43 of
810 this chapter; and
- 811 b. The disability benefits program under this article.
- 812 (c) *Employee*. "Employee" means an individual who participates in the
813 county retirement system under article III of this chapter.
- 814 (d) *Final earnings*. "Final earnings" means:
- 815 (1) The annual average of the regular salary of an employee less
816 any shift pay differential for the eighteen-month period
817 immediately preceding the disability or any consecutive
818 eighteen-month period, whichever is greater; or
- 819 (2) For an employee whose salary has been reduced as a result of a
820 disciplinary action, the annual average of the regular salary of
821 the employee for the eighteen-month period preceding the
822 disability.
- 823 (e) *Non-service-connected disability*. "Non-service-connected disability"
824 has the same meaning as "service-connected disability" except that it
825 is the result of an illness or injury that was incurred while away from
826 the performance of duty as an employee.
- 827 (f) *Service-connected disability*. "Service-connected disability" means a
828 condition of an employee that:
- 829 (1) Is the natural and proximate result of an accident occurring, an
830 occupational disease incurred, or a condition aggravated while
831 in the performance of duty as an employee;

- 832 (2) Is not due to the willful misconduct or willful negligence of the
- 833 employee;
- 834 (3) Makes the employee:
 - 835 a. Incapable of performing the job that the employee
 - 836 performed before the illness or injury; and
 - 837 b. Unable to engage in available employment
 - 838 commensurate with the training, education, and
 - 839 experience of the employee; and
- 840 (4) Is likely to be permanent.]

841 **[33-88. Non-service-connected disability benefits.]**

842 [An employee may receive non-service-connected disability benefits if the
843 employee:

- 844 (1) Has a non-service-connected disability;
- 845 (2) Has five (5) years of credited service under the county retirement
- 846 system of this chapter;
- 847 (3) Is not eligible for normal retirement under the county retirement
- 848 system of this chapter; and
- 849 (4) Is not eligible for service-connected disability benefits; and
- 850 (5) Has an injury or illness which occurred subsequent to enrollment in
- 851 the Montgomery County employees' retirement system.]

852 **[33-89. Service-connected disability benefits.]**

853 [An employee may receive service-connected disability benefits if the
854 employee has a service-connected disability and if the employee is not eligible for
855 normal retirement under the Montgomery County employees' retirement system of
856 this chapter.]

857 **[33-90. Temporary disability.]**

858 [(a) *Waiver.* In extenuating circumstances, the administrator may waive
859 the requirement that an employees' disability is likely to be
860 permanent.

861 (b) *Approval.* The administrator may approve temporary disability
862 benefits for one (1) or more one-year periods until the administrator
863 determines that the disability:

864 (1) Has ended; or

865 (2) Is permanent.]

866 **[33-91. Administrative application for benefits.]**

867 [(a) The chief administrative officer must notify an employee that an
868 application for disability benefits should be made if the employee:

869 (1) Becomes ill or injured; and

870 (2) Is unable to perform at an acceptable level of competence the
871 duties and responsibilities of the position to which the
872 employee is assigned.

873 (b) If the employee fails to apply for disability benefits, the chief
874 administrative officer may apply on behalf of the employee.]

875 **[33-92. Accrual of benefits.]**

876 [Disability benefits begin to accrue on the earliest of:

877 (1) The date that the employee exhausts all accrued sick and
878 compensatory leave in excess of eighty (80) hours; or

879 (2) The date that the application for disability benefits is approved.]

880 **[33-93. Amount of benefits.]**

881 [The annual amount of disability benefits payable equals two (2) percent of
882 the final earnings multiplied by the number of years of creditable service, up to
883 thirty-six (36) years, plus sick leave credits, but may no be less than:

(1) Thirty-three and one-third ($33 \frac{1}{3}$) percent of the final earnings for a non-service-connected disability; and

(2) Sixty-six and two-thirds ($66 \frac{2}{3}$) percent of the final earnings for a service-connected disability.]

[33-94. Cost-of-living adjustments.]

[(a) *Annual adjustment.* A cost-of-living adjustment must be made annually to the disability benefits awarded under this article.

(b) The cost-of-living adjustment must be the same as the annual adjustment made to the uniform pay plan for county employees.]

[33-95. Reduction of disability benefits.]

[(a) *Reduction by income received.* Disability benefits may be reduced after any cost-of-living adjustment made under section 33-94 by income received:

(1) As the sum of wages from employment and as the product of net earnings minus net losses from self-employment;

(2) From any other government group income maintenance insurance coverage for the disability;

(3) From social security disability benefits, including benefits payable to dependents on account of the disability;

(4) From any government disability plan; and

(5) From workers' compensation.

(b) *Amount of reduction.* The reduction must be determined according to the following offset formula:

(1) The first one hundred dollars (\$100.00) a month of income from a long-term disability plan to which the employee has contributed is exempt from the offset.

- 910 (2) The first three hundred dollars (\$300.00) a month of income
911 from employment is exempt from the offset unless the salary of
912 an employee receiving non-service-connected disability
913 benefits is equal to or greater than the salary the employee
914 would have received if the original employment had not been
915 interrupted.
- 916 (3) Income from employment between three hundred one dollars
917 (\$301.00) and six hundred dollars (\$600.00) a month has a one
918 dollar (\$1.00) offset for each four dollars (\$4.00) of income.
- 919 (4) Income from employment above six hundred dollars (\$600.00)
920 a month has a one dollar (\$1.00) offset for each two dollars
921 (\$2.00) of income.
- 922 (5) Income received under subsection (a)(2) through (5) of this
923 section has a one dollar (\$1.00) offset for each one dollar
924 (\$1.00) of income.
- 925 (c) *Refusal of employment.* If an employee refuses to accept two (2)
926 offers of employment offered under section 33-98, which were
927 commensurate with the training, education, experience, and physical
928 and mental capabilities of the employee, the amount that employment
929 would have paid if accepted will be offset from the disability benefits
930 of the employee in the same manner as income from employment
931 under subsection (b) of this section.
- 932 (d) *Refusal of training.* If an employee refuses to participate in retraining
933 offered under section 33-98, the disability benefits received by the
934 employee will be reduced by half.
- 935 (e) *Termination of employment.*

(1) If the employment offered by the county under section 33-98 terminates, the employee will continue to receive the amount of disability benefits, which were offset by the income received from the employment, that the employee received while in the employment.

(2) The administrator may restore the disability benefits in whole or in part:

a. To facilitate reemployment; or

b. If the administrator determines that the employee is unable to be employed.

(f) *Review of offset formula.* Every two (2) years, the county executive must review the offset formula and recommend changes to the dollar amounts to the county council in order to accommodate changes or no changes in general income levels.]

[33-96. Discontinuation or termination of disability benefits.]

[The administrator must terminate disability benefits granted under this article if the employee:

(1) Recovers from the disability as determined by the administrator;

(2) Fails or refuses to provide the administrator with the information that the administrator requires; or

(3) Reaches the normal retirement date under the county retirement system of this chapter.]

[33-97. Medical examination.]

[Unless the administrator determines that fewer medical examinations are needed, the administrator may require the employee to undergo annual medical examinations.]

[33-98. Retraining and employment of employees.]

- 963 [(a) *Program established.* By regulation adopted under method (1) of
 964 section 2A-15 of this Code, the county executive must develop a
 965 program for retraining, if retraining is necessary, and employment of
 966 employees who are receiving disability benefits under this article.
- 967 (b) *Implementation of program.* The administrator will implement the
 968 retraining and employment program.
- 969 (c) *Employment level.* Any employment offered to an employee under
 970 this section must be commensurate with the training, education,
 971 experience, and physical and mental capabilities of the employee.
- 972 (d) *Participation required.* Unless the chief administrative officer
 973 exempts an employee based on medical evidence that would preclude
 974 successful completion of the retraining program, the employee is
 975 required to participate in the program.]

976 **[33-99. Appeals of decisions.]**

- 977 [(a) If the county or an employee disagrees with a preliminary decision of
 978 the administrator, the county or the employee has a right to a hearing
 979 before the administrator. The contract between the county and the
 980 administrator must provide procedures to:
- 981 (1) Assure the impartiality of the hearing;
 982 (2) Notify the employee of the right to counsel at the hearing; and
 983 (3) Establish a record of the hearing that will be the basis for
 984 subsequent reviews.
- 985 (b) The county or the employee may appeal on the record the final
 986 decision of the administrator to the merit system protection board
 987 within thirty (30) days from the date that the employee receives
 988 written notice of the decision.

- (c) The county or the employee may appeal the final decision of the merit system protection board to a court of competent jurisdiction as provided in the Maryland Rules of Procedure, chapter 1100, subtitle B.]

[33-100. Regulations.]

[Before May 15, 1986, the county executive must adopt regulations under method (1) of section 2A-15 of this Code to implement this article.]

33-86 — 33-100. Reserved.

* * *

33-103. Labor relations administrator.

- (a) A Labor Relations Administrator must be appointed to effectively administer this Article as it governs selection, certification, and decertification procedures, prohibited practices, and the choice of a mediator/fact-finder. The Administrator must:

* * *

- (5) Investigate and attempt to resolve or settle, as provided in this article, charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure, the labor relations administrator [shall] must defer to that procedure [for the resolution of disputes] to resolve any dispute that properly [submissible] may be submitted to the procedure, absent a showing that the deferral results in the application of principles repugnant to this [article] Article. [Furthermore, the labor relations] The administrator [shall] must defer to state procedures in [those matters which are] any matter governed by the Law-Enforcement Officers' Bill of Rights, [article 27, sections 727--

734D, Annotated Code of Maryland] Title 3, Subtitle 1 of the Public Safety Article of the Maryland Code.

* * *

33-111. Strikes and lockouts.

* * *

- (c) If an employee or employee organization violates [the provisions of] this Section, the employer, after adequate notice and a fair hearing before the labor relations administrator who finds that the violations have occurred and [finds] that any or all of the following actions are necessary in the public interest, may impose any of the following sanctions, subject to the Law-Enforcement Officers' Bill of Rights, [article 27, sections 727--734D, Annotated Code of Maryland.] Title 3, Subtitle 1 of the Public Safety Article of the Maryland Code:

* * *

33-118. Maximum annual contribution.

- (a) Contribution limitations.

- (1) * * *

- (A) \$30,000, effective January 1, 1995, or \$40,000, effective January 1, 2002 (the "dollar limitation"); [or] as adjusted by the Internal Revenue Service from time to time to reflect cost of living increases; or

* * *

33-128. Definitions.

* * *

- (h) *Disability Arbitration Board* or *Board* means the 3 persons designated under Section [33-43A(m)] 33-43(m) to review an appeal of the final

decision of the Administrator regarding an application for disability benefits.

- (i) *Disability Review Panel* or *Panel* means the 4 medical doctors appointed as Panel members by the Chief Administrative Officer under Section [33-43A(c)] 33-43(c).

* * *

33-159. Establishment of Trust.

* * *

- (b) *Establishment of Trust.* An Other Post Employment Benefits Trust known as the Retiree Health Benefits Trust, effective July 1, 2007, is established to fund all or a portion of benefits provide under the County retiree benefit plans.

* * *

35-13A. Anti-Hate/Violence Fund.

* * *

- (b) The Department of Police may:

- (1) offer rewards for information that leads to the arrest of a person who commits any act in the County described in Section [27-26A] 27-22 or [Article 27, Section 10A or 470A, of the Annotated Code of Maryland] Sections 10-302 to 10-305 of the Criminal Law Article of the Maryland Code;

* * *

- (e) The County must deposit any money it receives under Section [27-26B] 27-8 into the Fund.

* * *

35-13B. Drug Enforcement Forfeitures Fund

* * *

- (e) The Chief of Police must provide [two] 2 reports on the Fund to the

1070 Executive and Council as follows:

1071 * * *

1072 (2) On December 15, a report including:

1073 * * *

1074 (B) [DEFF] Fund approved budget by category;

1075 * * *

1076 **35-18. County's right of subrogation against third parties causing**
1077 **disability.**

1078 [Where] If the accident, disease, disability, or death for which benefits are
1079 payable under this [article] Article was caused under circumstances creating a legal
1080 liability in a third party, the [county shall have] County has the right of subrogation
1081 and [shall have the right to] may enforce, for the [county's] County's benefit, the
1082 legal liability of [such] a third party, under the conditions and subject to the [same]
1083 provisions, when applicable, [which now exist] in [article 101, section 58 of the
1084 Annotated Code of Maryland, 1957,] Title 9 of the Labor and Employment Article
1085 of the Maryland Code [and the provisions of such article and section are hereby
1086 incorporated by reference as if set forth textually in this section]. Nothing [herein
1087 shall affect] in this Section affects the [county's] County's obligation to comply
1088 with [the provisions of section 19, article 101 of the Annotated Code of Maryland,
1089 1957] Title 9 of the Labor and Employment Article of the Maryland Code.

1090 * * *

1091 **36A-2. Definitions.**

1092 In this [chapter] Chapter, unless the context indicates otherwise:

1093 * * *

1094 (g) Public service company means:

1095 (1) any company as defined in [article 78 § 2 of the Annotated
1096 Code of Maryland] Section 1-101 of the Public Utility

1097 Companies Article of the Maryland Code and any successor
 1098 provision[, or];

1099 (2) the Washington Suburban Sanitary Commission[,]; or

1100 (3) any organization which is a member of the one-telephone-
 1101 number utility notification system.

1102 * * *

1103 **52-11. Real property tax [credits] credit for permanently and totally**
 1104 **disabled homeowners.**

1105 * * *

1106 (e) *Applicability of [state] State law.* The minimum tax credit provided
 1107 [in the tax credit program provided herein] for disabled homeowners
 1108 under this Section [shall in no case] must not be less than the
 1109 minimum tax credit [provided] in [section 12F-3, article 81,
 1110 Annotated Code of Maryland] Section 9-102 of the Tax-Property
 1111 Article of the Maryland Code.

1112 **[[52-16C. Real property tax recapture.]]**

1113 **[(a) *Tax levied; basis; rate.*** There is hereby imposed upon the occasion of
 1114 the transfer of real property located in the county a tax on the amount
 1115 by which the taxable value of such property on the date of recognition
 1116 exceeds the assessed valuation of that property. The tax shall be
 1117 calculated by multiplying the amount so determined by three dollars
 1118 and seventy cents (\$3.70) per one hundred dollars (\$100.00).

1119 **(b) *Assessed valuation.***

1120 (1) Subject to the provisions in paragraph (2) of this subsection,
 1121 "assessed valuation" shall mean the actual assessed valuation of
 1122 such property on which annual property taxes are payable as

determined on the date of finality immediately preceding the date of recognition.

- (2) If the boundary lines of a parcel of real property on which the tax imposed hereunder differ on the date of recognition from the boundary lines of the real property of which that parcel was a part on the date of finality immediately preceding the date of recognition, the assessed valuation of such parcel shall be determined by allocating to that parcel a pro rata share of the assessed valuation of that real property which, on the preceding date of finality, encompassed the parcel being transferred.

(c) *Taxable value of real property on the date of recognition.*

- (1) Taxable value of real property on the date of recognition [shall] must be determined by multiplying by 0.45 the consideration received for the transfer of such property and subtracting [eight thousand dollars (\$8,000.00)] \$8,000 from the resulting product. [Notwithstanding any of the foregoing provisions] However, the taxable value of real property classified [pursuant to state law] as "homestead property[.]" under [article 81, Maryland Code Annotated, section 14A(a)] Section 9-105 of the Tax-Property Article of the Maryland Code on the date of recognition [shall] must be determined by multiplying by 0.40 the consideration received for the transfer of such property and subtracting [eight thousand dollars (\$8,000.00)] \$8,000 from the resulting product.

- (2) If, subsequent to the date of finality immediately preceding the date of recognition, betterments have been made to real property subject to the tax imposed by this section, the cost of

such betterments incurred by the person transferring the property may be deducted from the consideration received for the transfer of that property prior to calculating the taxable value of such real property on the date of recognition.

(d) *Definitions.* For the purpose of this section, the following words and phrases shall have the meanings respectively ascribed to them:

Assessed Valuation. That valuation determined in accordance with subsection (b) of this section.

Betterments. All physical changes to the property which tend to increase the value thereof.

Consideration shall be determined as follows:

(1) In the case of a transfer of real property in fee simple, consideration shall be determined in accordance with section 52-19 of this chapter.

(2) In the case of a transfer of a partial interest in real property, the value of the interest transferred shall be used to construe the value of the entire property.

Date of Finality. January 1, the date as of which assessments of real property become final for the taxable year next following.

Date of Recognition. The date on which the transfer of real property takes place.

Major Betterments. Improvements which cause an increase in the value of improvements on the property by more than two hundred (200) percent.

New Construction. The improving of property on which no previous improvements existed.

Real Property. Land and improvements thereon.

Taxable Value of Real Property on the Date of Recognition. That value determined in accordance with subsection (c) of this section.

Transfer shall include:

(1) The transfer of real property in fee simple.

(2) The transfer of a partial interest in real property.

(e) *Exemptions from tax.*

(1) The tax imposed hereunder shall not apply to the initial transfer of property on which there is new construction or on which major betterments have been constructed subsequent to the date of finality immediately preceding the date of recognition.

(2) The tax imposed [hereunder shall] under this Section does not apply to any transfer of land:

(A) [transfers of land] assessed as agricultural land, under [section] Section 52-21(d) [of the Montgomery County Code, as amended; nor to];

(B) [transfers of land] classified as rezoned if [such transfers are] the transfer is taxed under [section] Section 52-21(e) [of the Montgomery County Code, as amended; nor to];
or

(C) [transfers of land] assessed as planned development [lands] land under [section 19(f) of article 81 of the Annotated Code of Maryland] Title 8, Subtitle 2 of the Tax-Property Article of the Maryland Code.

(3) The tax imposed hereunder shall not apply to the transfer of real property by any nonprofit hospital or nonprofit religious or charitable organization, association or corporation, nor by any municipality, county or state government or any

instrumentalities, agencies or political subdivisions thereof, nor to the transfer of real property by will or descent.

(4) The tax imposed hereunder shall not apply to the transfer of real property made pursuant to a bona fide written contract or agreement entered into prior to the date on which this section becomes law; provided, that the director of finance may require satisfactory proof that the contract or agreement was entered into prior to such date.

(5) In the event a parcel of real property is transferred more than once between dates of finality, the tax imposed hereunder shall be collected only once; provided, that no boundary lines have been changed or no improvements have been made subsequent to the initial date of recognition. In the event boundary lines changed, the assessed valuation shall be determined in accordance with paragraph (b)(2) of this section.

(f) *Payment of tax.*

(1) The transferor of property subject to the tax imposed hereunder shall be solely liable for the payment of the tax. The tax shall be paid at the time of or prior to the presentation of any instrument to the county supervisor of assessments for transfer of any interest in real property on the assessment records of the county. In the case of a transfer of an interest in real property which is not required by law or ordinance to be transferred on the assessment records of the county, the tax shall be paid before any instrument conveying such interest shall be presented to the clerk of the circuit court for recordation.

1230 (2) The tax shall be paid to the director and payment shall be
1231 evidenced by fixing an official stamp upon the deed or
1232 instrument by the director or his authorized representative
1233 showing the amount of the tax paid. Where the director, after
1234 payment, determines that a greater tax is due, the difference in
1235 tax shall then be immediately due and payable. Interest shall
1236 run at a rate of eight (8) percent per annum from the date of
1237 initial payment on the amount of the additional tax due.

1238 (3) Prior to the time of payment, the taxpayer shall submit to the
1239 director a report upon such forms and setting forth such
1240 information as the director may prescribe. The director may, at
1241 his discretion, require satisfactory proof of any information
1242 contained in such forms.

1243 (g) *Appraisal of property; additional tax due.* Where the director has
1244 reason to believe the consideration for an interest in real property has
1245 been incorrectly stated by the taxpayer, the director may cause to be
1246 made an appraisal of the property in question. If such appraisal shows
1247 a different value from that reported by the taxpayer, and if the director
1248 then determines that a greater tax is due, the greater tax shall
1249 immediately be due and payable. If, prior to such determination by the
1250 director, the property has been transferred and the tax imposed
1251 hereunder has been paid at the lesser amount, interest on the
1252 difference in tax due shall run at the rate of eight (8) percent per
1253 annum from the date of initial payment. The transferor and transferee
1254 shall be jointly and severally liable for payment of the difference in
1255 tax due.

(h) *Appeals.* In accordance with the jurisdictional approval of the state department of assessments and taxation, any decision made by the director under the provisions of this section may be appealed by any aggrieved party to the property tax assessment appeal board of the county not later than thirty (30) days following the mailing of the notice of such decision by the director. In the event the aforesaid appeal procedure is not approved by the state department of assessments and taxation, appeals from any decision of the director under the provisions of this section may be made by any interested or aggrieved party to the circuit court for the county, which shall have the power to affirm the decision, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing. Whenever any such appeal is taken, a copy thereof shall be served on the director by the appellant in accordance with the Maryland Rules of Procedure. The director shall, in accordance with the Maryland rules, file with the circuit court originals of all papers and evidence presented, together with a copy of his opinion. Any party to the proceeding may introduce additional evidence in the circuit court. Any party to the proceeding in the circuit court may appeal the decision of the circuit court to the court of special appeals within thirty (30) days of the decision. The review proceedings provided by this section shall be exclusive.]]

52-18A. Tax credit for certain nonprofit organizations.

(a) [There is hereby granted] The Director of Finance must grant a single tax credit against the amount of the ordinary [county] County taxes or any other special charges or assessments levied against:

- 1282 (1) the personal property owned by any nonprofit, nonstock
 1283 cooperative housing corporation;
- 1284 (2) leased real property and improvements in the [county] County
 1285 used exclusively as a theater by nonprofit community theatrical
 1286 organizations [in accordance with the conditions and provisions
 1287 of paragraphs (a) and (k-1), section 9C, article 81, Annotated
 1288 Code of Maryland] under Titles 6 and 9 of the Tax-Property
 1289 Article of the Maryland Code; and
- 1290 (3) tangible personal property used to improve, replace, or maintain
 1291 the roads, common areas, or other common facilities owned by
 1292 a nonprofit organization, association, or foundation which was
 1293 formed [for the sole purpose of improving, replacing, and
 1294 maintaining] solely to improve, replace, and maintain the roads,
 1295 common areas, or other common facilities established under the
 1296 town sector or planned retirement community zones of [the
 1297 county zoning ordinance] Chapter 59 where the common
 1298 facilities are dedicated for the use of all residents of the
 1299 development without payment of fees or admissions for their
 1300 use.
- 1301 (b) The [director] Director of [finance for the county is hereby designated
 1302 to] Finance must administer the tax credits granted under [paragraphs
 1303 (a) and (k-1), section 9C, article 81, Annotated Code of Maryland]
 1304 Titles 6 and 9 of the Tax-Property Article of the Maryland Code.
- 1305 (c) The [county executive is delegated authority to prepare such
 1306 regulations, adopted] County Executive may adopt regulations under
 1307 method (2) [of section 2A-15 of this Code, as the county executive
 1308 determines may be needed for the administration of] to administer the

tax credits [to the extent such regulations are not inconsistent]
consistent with [section 9C, article 81, Annotated Code of Maryland]
Titles 6 and 9 of the Tax-Property Article of the Maryland Code.

* * *

**52-18B. Moderate-income multifamily rental housing facility real property
tax deferral.**

* * *

(d) Interest [shall] must accrue on the deferred taxes at the rate specified
in [article 81, section 48(a) of the Annotated Code of Maryland]
Sections 8-421, 10-102, 14-602, and 14-603 of the Tax-Property
Article of the Maryland Code.

52-18I. Property tax credit – Leased property – Religious organizations.

* * *

(g) A denial of a tax credit may be appealed [in accordance with law] to the
Maryland Tax Court.

* * *

52-18Q. Property tax credit – energy and environmental design.

(a) *Definitions.* In this [section] Section the following words have the
meanings indicated:

* * *

(2) “*High performance building*” means:

(A) A covered building that achieves:

[1.] (1) * * *

[2.] (2) * * *

(B) Any other building that achieves:

[1.] (1) * * *

[2.] (2) An energy and environmental design standard that the Director of the Department of Permitting Services finds is equivalent to the silver, gold or platinum rating from the USGBC for LEED-NC, LEED-CS, or LEED-EB.

* * *

(d) *Amount of credit.*

(1) For a covered building, the amount of the credit is:

(A) 25% of the property tax owed on the building for 5 years, if the building achieves a gold rating for LEED-NC or LEED-CS or an equivalent standards; [or]

* * *

(C) 10% of the property tax owed on the building for 3 years, if the building achieves the gold rating for LEED-EB or an equivalent standard; or

* * *

52-18R. Property tax credit — renewable energy.

(a) *Definitions.* In this Section, the following words have the meanings indicated:

[“*Director*”] means the Director of the Department of Finance or the Director’s designee.

[“*Eligible cost*”] means the cost of buying or installing a solar or geothermal energy device or energy conservation device, including any part, component, or accessory necessary to operate the device, that is installed within 12 months before a property owner submits an application to the Department of Finance under subsection (f).

[“*Energy conservation device*”] means a device that:

* * *

["*Tax-Property Article*"] means the Tax-Property Article of the Maryland Code.

* * *

52-32. Determination and duration of tax credit.

The tax credit [shall] must be allowed as of the taxable year "date of finality" or "semi-annual date of finality," as defined in [section 2, article 81 of the Annotated Code of Maryland, 1957.] Section 1-101 of the Tax-Property Article of the Maryland Code [Such allowance shall be made upon notice being given by the county council to the director of finance that] if the Council notifies the Director of Finance that the property, by reason of a conveyance, assignment, deed, or other instrument recorded among the land records of the [county] County, [such real property] is affected and servient to a scenic easement which:

- (a) [Is] is irrevocable by its own terms;
- (b) [Creates] creates a perpetual servitude [upon] on the land [therein] described; and
- (c) [Meets] meets the basic requirements, together with the standards of one [(1) of two (2)] of the categories [provided for in the preceding section] in Section 52-31.

The tax credit [herein allowed, after having once been determined pursuant to this section, shall remain] authorized under this Article remains in [full force and] effect for all [subsequent] later tax levies made by the [county council] Council.

52-35. [Effective date and construction] Interpretation.

[This article and the regulations hereunder shall take effect as of the date of its passage. However, the tax credit herein provided for shall in no event affect any tax amount due until the levy made for the fiscal year beginning July 1, 1970.]

This [article] Article is [deemed to be enacted and passed] intended to comply with the intent and purpose of [section 12E, article 81, of the Annotated Code of Maryland, 1957] Section 9-208 of the Tax-Property Article of the Maryland Code, and any inconsistency [therewith] with that Section should be resolved in favor of that [law] Section. If a Court of competent jurisdiction declares any part [hereof shall be declared] of this Article legally ineffectual [by a court of competent jurisdiction], then [it is the intent of the county council] the Council intends that the [whole article shall become void and of no effect] entire Article becomes ineffective. In any event, any tax [credits] credit granted [hereunder shall not be recoverable, except where the same were] under this Article must not be recovered unless that credit was procured by fraud, misrepresentation, or intentional mistake.

52-68. Administration of tax credit.

* * *

- (c) A denial of a tax credit may be appealed [in accordance with State law] to the Maryland Tax Court.

* * *

52-96. Tax levied; rates.

* * *

- (e) As used in this Article:

- (1) *Ton*, when [applies] applied to carbon dioxide in gaseous form, means the amount of gas in cubic feet which is the equivalent of 2000 pounds on a molecular weight basis.

* * *

52-99. Collection; interest and penalties; violation; lien.

* * *

- (d) Any failure to pay the tax when due under Section ~~[[52-97]]~~ 52-98, and any violation of Section ~~[[52-97]]~~ 52-98 of this Section, is a Class

A violation. Each violation is a separate offense. A conviction under this subsection does not relieve any person from paying the tax.

* * *

54-20. Denial where operator has been convicted of certain state law violations.

[An] The Director may deny an initial or annual license [for the operation of] to operate an establishment under this [division] Division [may be denied by the director] if [he] the Director finds the owner or operator of the proposed establishment has been convicted of violating the following provisions of [article 27 of the Annotated Code of Maryland, 1957, as amended: Sections 15 to 17 inclusive (bawdy houses and houses of ill fame; prostitution, etc.), section 125 (disorderly houses), sections 237 to 264C inclusive (gaming), section 277 (illegal keeping of, or sale of narcotics), section 291 (opium joints), sections 121 and 122C disturbance of the peace)] the Criminal Law Article of the Maryland Code:

(a) Section 10-202 (keeping disorderly house);

(b) Title 12 (gaming);

(c) Title 5 (controlled dangerous substances, prescriptions, and other substances); or

(d) Section 10-201 (disturbing the public peace and disorderly conduct).

[Nor shall such a license be issued by the director, in his discretion,] The Director may deny an initial or annual license if the owner or operator has been convicted of any similar [offenses] offense outside [the territorial jurisdiction of the state] Maryland.

54-26. Revocation or suspension generally.

* * *

(b) The [director] Director may revoke or suspend any license issued under this [division upon a finding] Division if the Director finds that the establishment [is being so operated as to constitute] is a nuisance

[by reason] because of noise or indecent or immoral activity [on the part of the guests] by any guest, owner, operator, or [their employees] employee. The [director] Director may also revoke or suspend any license issued [hereunder] under this Chapter if the owner or operator of the establishment has, while operating the establishment, been convicted of violating:

- (1) the provisions of [article 27 of the Annotated Code of Maryland, 1957] the Criminal Law Article of the Maryland Code[, set forth] listed in [section] Section 54-20; or
- (2) [of violating section 123 or 124 (] the drunkenness and disorderly conduct)] of article 27] provisions of Section 10-201 of the Criminal Law Article of the Maryland Code while on the licensed premises.

Revocation or suspension of a license under this subsection [shall be in accordance with the provisions of subsection (b) of section] must follow the procedures in Section 54-21(b).

56-10. Powers and authority of council generally.

* * *

- (q) *Condemnation.* To condemn land or property, including improvements, and [all] any other rights, title, and interest therein, in the name of [Montgomery] the County for [such] an urban renewal project, [pursuant to Article Real Property, title 12, subtitle 1, Annotated Code of Maryland, 1957, as amended] under Title 12, Subtitle 1 of the Real Property Article of the Maryland Code.

* * *

60-2. Acquisition of land for parking lots; improvement, operation, maintenance and sale or lease thereof.

(a) [For the purpose of providing] To provide off-street parking facilities for the use of the public [within] in and for each district, the [county is hereby authorized to] County may acquire by purchase, lease, condemnation, or otherwise any land [within] in a district, or any land outside [of] any district, [provided that such] if the land is located in whole or in part within [six hundred (600)] 600 feet of the boundary of any [such] district as [now or hereafter defined] created or modified, after public hearing [pursuant to section 11B-33] under Section 11B-46. After acquiring [such] any land, the [county] County may improve the [same] land for use as off-street parking lots and operate and maintain [such] a parking [facilities in accordance with the provisions of] facility under this [chapter] Chapter.

* * *

Sec. 2. Section 3 of Chapter 20 of the 2010 Laws of Montgomery County is amended as follows:

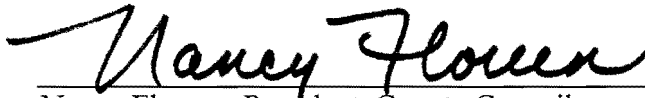
Sec. 3. Revenue Allocation Suspended.

Notwithstanding County Code Section 52-100, as enacted by Section 1 of this Act, the revenue received from the tax levied under County Code Section 52-96 in the first full fiscal year the tax is collected must be held in a special reserve account.

1491 *Approved:*

1492

1493



11/23/10

1494 Nancy Floreen, President, County Council

Date

1495 *Approved:*

1496

1497

1498 Isiah Leggett, County Executive

Date

1499 *This is a correct copy of Council action.*

1500

1501

1502 Linda M. Lauer, Clerk of the Council

Date