

Bill No. 6-18  
Concerning: Contracts – Labor Peace  
Agreements – Displaced Service  
Workers - Amendments  
Revised: September 17, 2018 Draft No.10  
Introduced: March 6, 2018  
Enacted: October 16, 2018  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsors: Councilmembers Elrich and Hucker  
Co-Sponsors: Councilmember Rice and Council Vice President Navarro

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**AN ACT** to:

- (1) require certain County contractors to enter in to a labor peace agreement with a labor organization;
- (2) establish minimum requirements for a labor peace agreement;
- (3) require certain County multi-term contracts to include a minimum price increase provision;
- (4) add certain workers performing services under a County residential solid waste collection contract to the County Displaced Service Workers Protection Act; and
- (5) generally amend the laws governing County service contracts.

By amending

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Section 11B-23  
Montgomery County Code  
Chapter 27, Human Rights and Civil Liberties  
[[Section]] Sections 27-64 and 27-65

By adding

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Article XX, Sections 11B-89, 11B-90, and 11B-91

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

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

1 **Sec. 1. Sections 11B-23, ~~[[and]] 27-64, and 27-65~~ are ~~[[is]]~~ amended and Sections**  
 2 **11B-89, 11B-90, and 11B-91 are added as follows:**

3 **11B-23. Multi-term contracts.**

4 (a) *Specified period.* Unless otherwise provided by law or regulation, a  
 5 contract for goods, services, or construction may be entered into for any  
 6 period of time deemed to be in the best interest of the County. The term  
 7 of the contract and conditions of extension should be included in the  
 8 solicitation, if any. At a minimum, appropriated funds must be available  
 9 for the first fiscal period at the time of entering the contract sufficient to  
 10 defray the cost to which the County would become obligated under the  
 11 contract. Payment and performance obligations for succeeding fiscal  
 12 periods must be subject to the availability and appropriation of funds.

13 (b) *Determination prior to use.* Before using a multi-term contract, the  
 14 Director must determine that:

15 (1) estimated requirements over the period of the contract are  
 16 reasonably firm and continuing; and

17 (2) the contract will serve the best interests of the County by  
 18 encouraging effective competition or otherwise promoting  
 19 economies in County procurement.

20 (c) *Termination due to unavailability of funds in succeeding fiscal periods.*  
 21 When funds are not appropriated or otherwise made available to support  
 22 continuation of performance in a subsequent fiscal period, the contract  
 23 must be terminated without further cost to the County.

24 (d) *Contract price increase provision.* A multi-term contract ~~[[with a labor~~  
 25 ~~peace provision required by Section 11B-89]]~~ for residential solid waste,  
 26 recycling, or yard waste collection and disposal must include a price  
 27 increase provision for each year of the contract beginning after the end of  
 28 the first year of the contract. A price increase provision must require the

29 County to increase the contract price by [[at least the annual average  
 30 increase, if any, in the Consumer Price Index for All Urban Consumers  
 31 for the Washington-Arlington-Alexandria Core Based Statistical Area  
 32 (CBSA), as published by the United States Department of Labor, Bureau  
 33 of Labor Statistics, or a successor index, for the previous calendar year]]  
 34 an amount sufficient to compensate the contractor for an increase in  
 35 wages [[for]] paid to the employees performing work on a covered  
 36 contract to the extent the increase in wages does not exceed the last  
 37 general wage increase approved by the County for members of the  
 38 service, labor, and trades bargaining unit established in Section 33-  
 39 105(a)(1). A price increase provision must:

- 40 (1) require the contractor to document that the increase in wages  
 41 supporting the requested contract price increase are paid to the  
 42 employees working on the contract during the year; and
- 43 (2) permit the Director to audit the contractor’s payroll records to  
 44 validate the increase in wages.

45 This subsection does not prohibit a contract provision that would permit  
 46 an increase in the contract price due to an increase in costs incurred by  
 47 the contractor other than an increase in wages paid to the contractor’s  
 48 employees performing work on the contract.

49 **Article XX. Labor Peace Agreements.**

50 **11B-89. Purpose.**

51 This Article is intended to prevent the interruption of services to County  
 52 residents provided by private contractors due to concerted economic action or a lock-  
 53 out during a labor dispute.

54 **11B-90. Definitions.**

55 In this Section, the following words have the meanings indicated:

56 Concerted economic action means an attempt to resolve a labor dispute using  
57 economic pressure against an employer initiated or conducted by a labor  
58 organization, or a group of employees acting in concert with a labor  
59 organization, including striking, picketing, or boycotting.

60 Covered Contract means a County contract to provide residential solid waste,  
61 recycling, or yard waste collection and disposal services directly to County  
62 residents with a value equal to or greater than \$250,000.

63 Director means the Director of the Office of Procurement or the Director's  
64 designee.

65 Labor dispute means any dispute between an employer and its employees  
66 concerning wages, hours, and conditions of employment, or concerning the  
67 representation of employees for bargaining over wages, hours and conditions of  
68 employment.

69 Labor organization means an employee organization established for the  
70 principle purpose of engaging in collective bargaining with employers  
71 concerning wages, hours, and conditions of employment.

72 Labor peace agreement means a written contract between an employer and a  
73 labor organization that represents or is seeking to organize that employer's  
74 employees that includes a provision:

75 (a) prohibiting the labor organization and all employees [[covered by the  
76 agreement]] performing services under a covered contract from engaging  
77 in any concerted economic action with the employer for the duration of  
78 the County contract;

79 (b) prohibiting the employer from engaging in a lock-out of the employees  
80 performing services under a [[County]] covered contract for the duration  
81 of the County contract; and

(c) requiring that all labor disputes between the employer and the employees performing services under a covered contract be resolved through final and binding arbitration.

Lock-out means the temporary closing of a business or the refusal by an employer to allow employees to work until a labor dispute is settled.

[[Neutrality agreement means an agreement between an employer and a labor union where the employer promises to remain neutral to union organizing, grants union representatives access to the employer's property in exchange for the union's promise to forgo its right to picket, boycott, or otherwise pressure the employer's business.]]

**11B-91. Labor Peace Agreement.**

(a) Determination. Before issuing a solicitation for a covered contract, the Director must determine if a labor peace agreement would be in the best interest of the County after considering:

- (1) the duration of the contract;
- (2) the adverse financial or economic impact of any disruption in services;
- (3) the cost associated with finding replacement services;
- (4) the risk of disruption of services;
- (5) the history of strikes or lockouts disrupting County services provided by the contract;
- (6) the potential adverse effect of a labor peace provision on competition for the contract; and

[[5]] [[6]] (7) any other factors affecting the public interest.

(b) Approval. If the Director finds that a labor peace provision is in the best interest of the County for this covered contract, the Director must recommend the inclusion of a labor peace provision to the Chief Administrative Officer in writing. If the Chief Administrative Officer

110 approves a recommendation to include a labor peace provision in the  
 111 contract, the Director must include a labor peace provision in the  
 112 solicitation for bids or proposals.

113 (c) Implementation.

114 (1) If the covered contract documents require a labor peace agreement,  
 115 the contractor awarded the contract must execute a labor peace  
 116 agreement with a labor organization within sixty (60) days after  
 117 the later of:

118 (A) receiving the notice of award from the County; or

119 (B) receiving a request for a labor peace agreement from a labor  
 120 organization that already represents [[its employees]] or  
 121 seeks to represent the employees performing [[the work]]  
 122 services under the [[County]] covered contract.

123 (2) The contractor may satisfy this requirement by executing a:

124 (A) preliminary Labor Peace Agreement covering labor  
 125 disputes over the representation of employees performing  
 126 services under a covered contract by a labor organization [[,  
 127 such as a neutrality agreement,]] that is designed to be  
 128 supplanted by a comprehensive collective bargaining  
 129 agreement;

130 (B) comprehensive collective bargaining agreement; or

131 (C) documenting that no labor organization requested a labor  
 132 peace agreement or that a labor organization refused to  
 133 negotiate a labor peace agreement in good faith.

134 (d) Enforcement. The Director may impose appropriate sanctions and  
 135 remedies against a contractor for a violation of this Article as provided in  
 136 applicable regulations or by contract, including termination for default.

137 **27-64. Definitions.**

138           (a)    As used in this Article:

139                   *Awarding authority* means any person that awards or enters into a service

140                   contract or subcontract with a contractor to be performed in the County.

141                   *Awarding authority* includes the County, but does not include a Federal,

142                   State, or municipal government, or a common ownership community, as

143                   defined in Section 10B-2(b).

144                   *Contractor* means any person, including a subcontractor, which enters

145                   into a service contract to be performed in the County and employs more

146                   than 20 service employees in the entire company.

147                   *Director* means the Executive Director of the Office of Human Rights

148                   and includes the Executive Director’s designee.

149                   *Person* means any individual, proprietorship, partnership, joint venture,

150                   corporation, limited liability company, trust, association, or other entity

151                   that may employ persons or enter into a service contract.

152                   *Service contract* means a contract between an awarding authority and a

153                   contractor to provide security, janitorial, building maintenance, food

154                   preparation, or non-professional health care services in a facility located

155                   in the County which is used as a:

156                   (1)   private school;

157                   (2)   hospital, nursing care facility, or other health care provider;

158                   (3)   institution, such as a museum, convention center, arena, airport, or

159                   music hall;

160                   (4)   multi-family residential building or complex with more than 30

161                   units; or

162                   (5)   commercial building or office building occupying more than

163                   75,000 square feet.

164                   *Service contract* also includes a contract awarded by the County for

165                   residential solid waste, recycling, or yard waste collection and disposal.

166 *Service employee* means an individual employed on a full or part-time  
 167 basis by a contractor as a:

- 168 (1) building service employee, including a janitor, security officer,  
 169 groundskeeper, door staff, maintenance technician, handyman,  
 170 superintendent, elevator operator, window cleaner, or building  
 171 engineer;
- 172 (2) food service worker, including a cafeteria attendant, line attendant,  
 173 cook, butcher, baker, server, cashier, catering worker, dining  
 174 attendant, dishwasher, or merchandise vendor;
- 175 (3) non-professional employee performing health care or related  
 176 service; or
- 177 (4) a driver, helper, or mechanic performing services on a County  
 178 contract for residential solid waste, recycling, or yard waste  
 179 collection and disposal.

180 *Service employee* does not include:

- 181 (1) a managerial or confidential employee;
- 182 (2) an employee who works in an executive, administrative, or  
 183 professional capacity;
- 184 (3) an employee who earns more than \$30 per hour; or
- 185 (4) an employee who is regularly scheduled to work less than 10 hours  
 186 per week.

187 *Successor contractor* means a contractor that:

- 188 (1) is awarded a service contract to provide, in whole or in part,  
 189 services that are substantially similar to those provided at any time  
 190 during the previous 90 days;
- 191 (2) has purchased or acquired control of a property located in the  
 192 County where service employees were employed at any time  
 193 during the previous 90 days; or



194 (3) terminates a service contract and hires service employees as its  
 195 direct employees to perform services that are substantially similar,  
 196 within 90 days after a service contract is terminated or cancelled.

197 (b) This Article does not limit the ability of an awarding authority to  
 198 terminate a service contract or replace a contractor with another  
 199 contractor.

200 **27-65. Transition employment period.**

201 \* \* \*

202 (b) *Successor contractor.*

203 (1) Subject to ~~[[paragraph]]~~ paragraphs (3) and (4), each successor  
 204 contractor must offer to retain each affected service employee at  
 205 an affected site for 90 days or until the successor contract is  
 206 terminated, whichever is earlier.

207 (2) Each successor contractor must give each affected service  
 208 employee a written offer of employment for the 90 day transition  
 209 period and send a copy to the employee’s collective bargaining  
 210 representative, if any. Each offer must:

211 (A) state the date by which the service employee must accept  
 212 the offer; and

213 (B) allow the employee at least 10 days after receiving the  
 214 notice to accept the offer.

215 (3) Each successor contractor may:

216 (A) offer employment to less than all of the affected service  
 217 employees during the 90 day transition period if the  
 218 successor contractor:

219 (i) finds that fewer service employees are required to  
 220 perform the work than the terminated contractor had  
 221 employed;

- 222 (ii) maintains a preferential hiring list of those employees  
 223 not retained; and
- 224 (iii) hires any additional service employees from the list  
 225 until all affected service employees have been  
 226 offered employment; and
- 227 (B) refuse to retain a service employee who fails a pre-  
 228 employment ineligibility test administered by the successor  
 229 contractor if the successor contractor:
- 230 (i) routinely requires all service employees to undergo  
 231 the ineligibility test as a condition of employment;  
 232 and
- 233 (ii) adopted the ineligibility test as part of a written  
 234 employment policy prior to bidding on the successor  
 235 contract.
- 236 (4) Notwithstanding any other provision in this Subsection, a  
 237 successor contractor awarded a County contract for residential  
 238 solid waste, recycling, or yard waste collection and disposal must  
 239 offer employment to the affected service employees during the 90  
 240 day transition period only to the extent the successor contractor  
 241 needs to hire new employees to perform work on the contract.
- 242 (5) Each successor contractor must not discharge a service employee  
 243 retained under this Section without just cause during the transition  
 244 period.

