



Montgomery  
County Council

**Committee GO**

**Staff:** Robert H. Drummer, Senior Legislative Attorney

**Purpose:** To receive testimony – no vote expected

**Keywords:** #EquityMattersinMoCo



AGENDA ITEM #7

October 29, 2019

Public Hearing

## **SUBJECT**

Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Committee - Established

Lead Sponsor: Council President Navarro

Co-Sponsors: Councilmembers Jawando, Rice, Hucker, Riemer, Council Vice President Katz, Councilmembers Alborno, Friedson and Glass

## **EXPECTED ATTENDEES**

None

## **COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION**

- Public Hearing – no vote expected

## **DESCRIPTION/ISSUE**

Bill 27-19 would:

- (1) establish a racial equity and social justice program;
- (2) establish an Office of Racial Equity and Social Justice in the Executive Branch;
- (3) remove the Chief Equity Officer position in the Office of the Executive as a non-merit position;
- (4) require the Executive to adopt, by Method 2 regulation, a racial equity and social justice action plan for the County;
- (5) require each Department and Office to develop a racial equity and social justice action plan;
- (6) require the Executive to submit a racial equity and social justice impact statement to the Council for each Bill and for each management initiative or program in the recommended budget;
- (7) establish a Racial Equity and Social Justice Committee and set forth the composition and duties of the Committee; and
- (8) require the Planning Board to consider racial equity and social justice impact when preparing a Master Plan.

## **SUMMARY OF KEY DISCUSSION POINTS**

- None

**This report contains:**


Staff Report	Page 1
Bill 27-19	©1
Legislative Request Report	©13
Council President Navarro memorandum	©15
County Attorney Bill Review memorandum	©17
Friedson Amendment 1	©21

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**MEMORANDUM**

October 24, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Committee - Established

PURPOSE: Public Hearing – no Council votes required

Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Committee - Established, sponsored by Lead Sponsor Council President Navarro, and Co-Sponsors Councilmembers Jawando, Rice, Hucker, Riemer, Council Vice President Katz, Councilmembers Alborno, Friedson and Glass, was introduced on September 17, 2019. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for November 4, 2019 at 2:00 p.m.<sup>1</sup>

Bill 27-19 would:

- (1) establish a racial equity and social justice program;
- (2) establish an Office of Racial Equity and Social Justice in the Executive Branch;
- (3) remove the Chief Equity Officer position in the Office of the Executive as a non-merit position;
- (4) require the Executive to adopt, by Method 2 regulation, a racial equity and social justice action plan for the County;
- (5) require each Department and Office to develop a racial equity and social justice action plan;
- (6) require the Executive to submit a racial equity and social justice impact statement to the Council for each Bill and for each management initiative or program in the recommended budget;
- (7) establish a Racial Equity and Social Justice Committee and set forth the composition and duties of the Committee; and
- (8) require the Planning Board to consider racial equity and social justice impact when preparing a Master Plan.

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<sup>1</sup>#EquityMattersinMoCo

The Council's Office of Legislative Oversight (OLO) released Report No. 2018-8, "Racial Equity in Government Decision-Making: Lessons from the Field" on September 25, 2018. The OLO Report can be viewed at:

[https://www.montgomerycountymd.gov/OLO/Resources/Files/2018%20Reports/OLOReport2018\\_8.pdf](https://www.montgomerycountymd.gov/OLO/Resources/Files/2018%20Reports/OLOReport2018_8.pdf).

The Council held a series of community meetings after the OLO Report 2018-8 was released about disparate outcomes among County residents in wealth, housing, criminal justice, education, and health due to race. OLO released Report No. 2019-16, "Findings from 2019 Racial Equity and Social Justice Community Conversations" on September 24, 2019. The second OLO Report can be viewed at:

<https://www.montgomerycountymd.gov/OLO/Resources/Files/2019%20Reports/OLOReport2019-16.pdf>.

Bill 27-19 would establish a formal process for the County to address these difficult issues that have persisted in the nation for at least 400 years. Council President Navarro's memorandum describing the need for this work is at ©15-16.

## Issues

### 1. What are the County Attorney's suggested amendments?

The County Attorney's October 7 Bill Review Memorandum did not find any legal impediments to the Bill's enactment but suggested several constructive amendments to clarify the Bill's intent. Most of their suggestions centered around ensuring that the defined terms of racial equity and social justice are consistent throughout the Bill. The County Attorney's Bill Review Memorandum and their suggested amendments are at ©17-20. The Government Operations and Fiscal Policy Committee will have the opportunity to review these suggested amendments at the worksession scheduled for November 4.

### 2. Does the Bill weaken the requirement for the Planning Board to consider environmental issues as part of a proposed master plan?

Surprisingly, most of the correspondence received to date about Bill 27-19 opposes a provision in the Bill that these correspondents mistakenly allege weakens the Planning Board's need to assess environmental issues as part of a proposed master plan. **The Bill does not change the Planning Board's requirement to assess the plan's potential impact on greenhouse gas conditions.** The Bill adds a new requirement for the Planning Board to consider the impact of a proposed master plan on racial equity and social justice in the County. The amendments to this section update the references to State law and change the style of the language to accommodate the addition of the new racial equity and social justice requirement. The Bill does not change the standard for evaluating the Planning Board's compliance with the environmental review.

However, in order to clarify the intent of Bill 27-19 and eliminate any confusion about a possible change in the requirement for the Planning Board to consider environmental issues when adopting a proposed master plan, Councilmember Friedson plans to introduce a clarifying amendment attached at ©21.

This packet contains:	<u>Circle #</u>
Bill 27-19	1
Legislative Request Report	13
Council President Navarro memorandum	15
County Attorney Bill Review memorandum	17
Friedson Amendment 1	21

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Bill No. 27-19  
Concerning: Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee - Established  
Revised: October 24, 2019 Draft No. 8  
Introduced: September 17, 2019  
Expires: March 17, 2021  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President Navarro  
Co-Sponsors: Councilmembers Jawando, Rice, Huckler, Riemer, Vice President Katz,  
Councilmembers Alborno, Friedson and Glass

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**AN ACT to:**

- (1) establish a racial equity and social justice program;
- (2) establish an Office of Racial Equity and Social Justice in the Executive Branch;
- (3) remove the Chief Equity Officer position in the Office of the Executive as a non-merit position;
- (4) require the Executive to adopt, by Method 2 regulation, a racial equity and social justice action plan for the County;
- (5) require each Department and Office to develop a racial equity and social justice action plan;
- (6) require the Executive to submit a racial equity and social justice impact statement to the Council for each Bill and for each management initiative or program in the recommended budget;
- (7) establish a Racial Equity and Social Justice Advisory Committee and set forth the composition and duties of the Committee;
- (8) require the Planning Board to consider racial equity and social justice impact when preparing a Master Plan; and
- (9) generally amend the law governing racial equity and social justice.

By amending

Montgomery County Code  
Chapter 1A, Structure of County Government  
Section 1A-201

Chapter 2, Administration

Sections 2-26 and 2-64A

Chapter 33A, Planning Procedures  
Section 33A-14

By adding

Montgomery County Code  
Chapter 2, Administration  
Section 2-81C

Article XIV.  
Chapter 27, Human Rights and Civil Liberties  
Section 27-83

<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 1A-201, 2-26, 2-64A, and 33A-14 are amended and**  
2           **Sections 2-81C and 27-83 are added as follows:**

3           **1A-201. Establishing departments and principal offices.**

4           (a)   Executive Branch.

5                   (1)   These are the departments and principal offices of the Executive  
6                               Branch.

7                                               \*               \*               \*

8                               Public Libraries (Section 2-45 et seq.)

9                               Racial Equity and Social Justice (Section 2-64A)

10                              Recreation (Section 2-58)

11                                               \*               \*               \*

12           **2-26. Non-merit positions.**

13           The following positions in the Office of the County Executive are non-merit  
14           positions:

- 15           (a)   5 Directors of the Regional Services Centers;
- 16           (b)   Director, Office of Community Partnerships;
- 17           (c)   Director, Criminal Justice Coordinating Commission;
- 18           (d)   4 Assistant Chief Administrative Officers;
- 19           (e)   Special Projects Manager;
- 20           (f)   Chief Labor Relations Officer; and
- 21           (g)   Chief Digital Officer [; and
- 22           (h)   Chief Equity Officer].

23           **Division 13. [Reserved] Office of Racial Equity and Social Justice.**

24           **2-64A. [Reserved] Office of Racial Equity and Social Justice.**

25           (a)   Findings.

26                   (1)   Although not unique to the County, many County residents suffer  
27                               from stark disparities linked to race.



- (2) These disparate outcomes among County residents include wealth, housing, criminal justice, education, and health.
- (3) Inequitable outcomes linked to race will persist in the County without intentional intervention.
- (4) The work to dismantle racial inequity must occur on an individual, institutional, and structural basis.

(b) Definitions. As used in this Division:

Director means the Director of the Office of Racial Equity and Social Justice or the Director’s designee.

Equity means fair and just opportunities and outcomes for all people.

Equity assessment means a systematic process of identifying policies and practices that may be implemented to identify and redress disparate outcomes on the basis of race.

Individual racism means explicit or implicit pre-judgment bias or discrimination by an individual based on race.

Inequity means systematic and patterned differences in well-being that disadvantage one group in favor of another caused by past and current decisions, systems of power and privilege, and policies.

Institutional racism means policies, practices, and procedures that work better for some members of a community than others based on race.

Office means the Office of Racial Equity and Social Justice.

Race means a social construct that artificially divides people into distinct groups based on characteristics such as physical appearance (including color), ancestral heritage, cultural affiliation, cultural history, ethnic classification, and the social, economic and political needs of a society at a given period.

54 Racial equity means changes in policy, practice and allocation of County  
 55 resources so that race does not predict one's success, while also  
 56 improving opportunities and outcomes for all people.

57 Racial equity action plan means a comprehensive plan to incorporate and  
 58 embed racial equity principles and strategies into operations, programs,  
 59 service policies, and community engagement.

60 Social justice means a social construct that artificially divides people into  
 61 distinct groups based on age, gender, sexual orientation, gender  
 62 identification, religion, or disability.

63 Structural racism means the history and current reality of institutional  
 64 racism across public and private institutions which combine to create a  
 65 system that negatively impacts certain groups based on race.

66 (c) Functions. After consulting with each department and office, the Office  
 67 must:

68 (1) perform an equity assessment to identify County policies and  
 69 practices that must be modified to redress disparate outcomes  
 70 based on race or social justice;

71 (2) develop metrics to measure progress in redressing disparate  
 72 outcomes based on race or social justice;

73 (3) work with each County department and office to develop a racial  
 74 and social justice equity action plan designed to remedy individual,  
 75 institutional, and structural racism or social justice issues adversely  
 76 impacting County residents;

77 (4) provide racial and social justice equity training to County  
 78 employees;

79 (5) develop short term and long term goals for success in redressing  
 80 disparate outcomes based on race or social justice issues;

- 81           (6) measure progress in meeting both short term and long term goals;
- 82                     and
- 83           (7) provide staff support for the Racial and Social Justice Equity
- 84                     Advisory Committee.
- 85       (d) Racial and Social Justice Equity Action Plan.
- 86           (1) The Executive must adopt, by Method 2 regulation, a racial and
- 87                     social justice equity action plan.
- 88           (2) The racial and social justice equity action plan must include:
- 89                     (A) a community engagement process;
- 90                     (B) mandatory racial equity training for managers and
- 91                             supervisors;
- 92                     (C) the use of a racial and social justice equity lens in
- 93                             establishing new programs and evaluating existing
- 94                             programs;
- 95                     (D) a requirement for the Executive to submit a racial equity and
- 96                             social justice impact statement to the Council for each
- 97                             management initiative or program that would be funded in
- 98                             the Executive’s annual recommended operating and capital
- 99                             budgets;
- 100                    (E) short term and long term goals for redressing inequity;
- 101                    (F) metrics for measuring progress in meeting these goals;
- 102                    (G) guidelines for each department and office to develop its own
- 103                             equity action plan;
- 104                    (H) recommended racial and social justice equity tools and
- 105                             strategies for a department or office to use in redressing
- 106                             disparities based on race or social justice issues; and
- 107                    (I) priority areas for additional County efforts.

108 (e) Reports. The Director must submit an annual report on the activities of  
 109 the Office to the Executive and the Council on or before each September  
 110 30. The report must include:

111 (1) the metrics used to measure the success of each short term and long  
 112 term goal of the approved racial and social justice equity action  
 113 plan;

114 (2) the progress toward meeting the goals of the approved racial and  
 115 social justice equity action plan; and

116 (3) any recommendations for changes in law, regulation, or operating  
 117 budget resources to assist in meeting the goals of the racial and  
 118 social justice equity action plan.

119 (f) Responsibilities of each department and office. Each Executive and  
 120 Legislative Branch department and office must:

121 (1) designate an employee to serve as the racial and social justice  
 122 equity lead for the department or office to coordinate work with  
 123 the Office;

124 (2) develop a department or office racial and social justice equity  
 125 action plan in coordination with the Office; and

126 (3) provide information to the Office as needed.

127 (g) Responsibility of the Council. The Council must establish a structure to  
 128 provide oversight of the County's progress in meeting its racial equity  
 129 and social justice goals. The Council may retain experts from academic  
 130 and scientific organizations to assist the Council with this oversight  
 131 responsibility.

132 **2-81C. Racial and Social Justice Equity Impact Statements.**

133 (a) Definitions. In this Section, the following words and phrases have the  
 134 following meanings:

135 Director means the Director of the Office of Racial Equity and Social  
 136 Justice or the Director's designee.

137 Race means a social construct that artificially divides people into distinct  
 138 groups based on characteristics such as physical appearance (including  
 139 color), ancestral heritage, cultural affiliation, cultural history, ethnic  
 140 classification, and the social, economic and political needs of a society at  
 141 a given period.

142 Racial equity means changes in policy, practice and allocation of County  
 143 resources so that race does not predict one's success, while also  
 144 improving opportunities and outcomes for all people.

145 Racial equity impact means an estimate of changes in racial equity in the  
 146 County attributable to a change in the law.

147 Social justice means a social construct that artificially divides people into  
 148 distinct groups based on age, gender, sexual orientation, gender  
 149 identification, religion, or disability.

150 (b) Racial and Social Justice Equity impact statement. The Director must  
 151 submit a statement to the Council describing the racial and social justice  
 152 equity impact, if any, of each bill under consideration by the Council.  
 153 The Director must submit a separate statement for each bill.

154 (c) Time for submission. A racial impact statement should be submitted to  
 155 the Council:

- 156 (1) no later than 7 days before the public hearing on each bill  
 157 introduced by the Council President at the request of the County  
 158 Executive; and  
 159 (2) no more than 21 days after a bill sponsored by a Councilmember  
 160 is introduced.

161 If the Director is unable to submit the statement within the time required  
 162 by paragraph (2), the Director must notify the Council President in  
 163 writing of the delay, the reason for the delay, and the revised delivery  
 164 date. If the Council President finds that the revised delivery date is  
 165 unreasonable, the Council President may set a different delivery deadline.

166 (d) Content of racial and social justice impact statement. Each racial and  
 167 social justice impact statement must include:

- 168 (1) the sources of information, assumptions, and methodologies used;
- 169 (2) an estimate of both positive and negative changes in racial and  
 170 social justice equity in the County as a result of the implementation  
 171 of the bill;
- 172 (3) recommended amendments that may promote racial and social  
 173 justice equity; and
- 174 (4) if a bill is likely to have no racial or social justice equity impact,  
 175 why that is the case.

176 (e) Compliance. Council action on a bill that is otherwise valid is not invalid  
 177 because of any failure to follow the requirements of this Section.

178 **ARTICLE XIV. RACIAL EQUITY AND SOCIAL JUSTICE ADVISORY**  
 179 **COMMITTEE.**

180 **27-83. Racial Equity and Social Justice Advisory Committee.**

181 (a) Members. The Executive must appoint, subject to confirmation by the  
 182 Council, a Racial Equity and Social Justice Advisory Committee. The  
 183 Committee must have 9 voting members. At least 6 of the voting  
 184 members must, when appointed, either reside in or be an employee of the  
 185 County.

- 186 (1) Voting members. The members must reflect a range of ethnicities,  
 187 professional backgrounds, socioeconomic status, and places of

188 origin to reflect the racial and economic diversity of the County's  
 189 communities, with an emphasis on those most proportionately  
 190 impacted by inequities. Each member should have some  
 191 experience in redressing disparate impacts based on race.

192 (A) One member should be an employee of the Montgomery  
 193 County Public Schools.

194 (B) One member should be an employee of the Housing  
 195 Opportunities Commission.

196 (C) One member should be a designee of the County Council.

197 (D) One member should be an employee of the County  
 198 Department of Health and Human Services.

199 (E) One member should be an employee of the County  
 200 Department of Correction and Rehabilitation.

201 (F) One member should be an employee of the Police  
 202 Department.

203 (G) Three members should be a public member with experience  
 204 in redressing disparate impacts based on race.

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

210 (3) Compensation. Members must receive no compensation for their  
 211 services. A public member may receive reimbursement for  
 212 expenses incurred in serving.

213 (4) Removal. The Executive, with the consent of the Council, may  
 214 remove a member for neglect or inability to perform the duties of

215 the office, misconduct in office, or a serious violation of law.  
 216 Before the Executive removes a member, the Executive must give  
 217 the member notice of the reason for removal and a reasonable  
 218 opportunity to reply.

219 (b) Chair and Vice Chair. The Committee must annually elect one member  
 220 as chair and another as vice chair and may elect other officers.

221 (c) Meetings. The Committee may meet at the call of the chair as often as  
 222 required to perform its duties, but at least 6 times each year. The  
 223 Committee must also meet if a majority of the members submit a written  
 224 request for a meeting to the chair at least 7 days before the proposed  
 225 meeting. A majority of the members are a quorum for the transaction of  
 226 business, and a majority of members present at any meeting with a  
 227 quorum may take an action.

228 (d) Staff. The Office of Racial Equity and Social Justice must provide the  
 229 Committee with staff, offices, and supplies as are appropriate.

230 (e) Duties. The Committee must:

- 231 (1) adopt rules and procedures as necessary to perform its functions;  
 232 (2) keep a record of its activities and minutes of all meetings, which  
 233 must be kept on file and open to the public during business hours  
 234 upon request;  
 235 (3) develop and distribute information about racial equity and social  
 236 justice in the County;  
 237 (4) promote educational activities that increase the understanding of  
 238 racial equity and social justice in the County;  
 239 (5) recommend coordinated strategies for reducing racial and social  
 240 justice inequity in the County;



241           (6) advise the Council, the Executive, and County agencies about  
 242           racial equity and social justice in the County, and recommend  
 243           policies, programs, legislation, or regulations necessary to reduce  
 244           racial and social justice inequity; and

245           (7) submit an annual report by December 1 of each year to the  
 246           Executive and Council on the activities of the Committee.

247           (f) Advocacy. The Committee must not engage in any advocacy activity at  
 248           the State or federal levels unless that activity is approved by the Office of  
 249           Intergovernmental Relations.

250   **33A-14. Greenhouse Gas Emissions and Racial Equity and Social Justice.**

251           As part of the factors and conditions outlined in [§7-108] Section 21-204 of the  
 252   Regional District Act and [§ 1.01 and § 1.03 of Article 66B,] Section 1-201 of the Land  
 253   Use Article of the Maryland Code in preparing the Plan, the Planning Board must:

- 254           (a) consider the environmental impact of the plan by:
  - 255           (1) [~~assess~~] assessing the Plan’s potential impact on greenhouse gas
  - 256           emissions in the County, including a carbon footprint analysis;
  - 257           (2) [(b) ~~consider~~] considering ways to reduce vehicle miles traveled
  - 258           in the County; and
  - 259           (3) [(c) ~~consider~~] considering options that would minimize
  - 260           greenhouse gas emissions; and
- 261           (b) consider the impact of the plan on racial equity and social justice in the  
 262           County.

263   **Sec. 2. Transition.**

264           The first report of the Office of Racial Equity and Social Justice required in  
 265   Section 1 must be submitted to the Council on or before September 30, 2020 and the  
 266   first report of the Racial Equity and Social Justice Committee required in Section 1  
 267   must be submitted to the Executive and the Council on or before December 1, 2020.

## LEGISLATIVE REQUEST REPORT

Bill 27-19

*Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Committee – Established*

**DESCRIPTION:** Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Committee - Established, would:

- (1) establish a racial equity and social justice program;
- (2) establish an Office of Racial Equity and Social Justice in the Executive Branch;
- (3) remove the Chief Equity Officer position in the Office of the Executive as a non-merit position;
- (4) require the Executive to adopt, by Method 2 regulation, a racial equity and social justice action plan for the County;
- (5) require each Department and Office to develop a racial equity and social justice action plan;
- (6) require the Executive to submit a racial equity and social justice impact statement to the Council for each Bill and for each management initiative or program in the recommended budget;
- (7) establish a Racial Equity and Social Justice Committee and set forth the composition and duties of the Committee; and
- (8) require the Planning Board to consider racial equity and social justice impact when preparing a Master Plan.

**PROBLEM:** Disparate outcomes for County residents in wealth, housing, criminal justice, education, and health due to race and other social justice issues.

**GOALS AND OBJECTIVES:** Establish a formal process for the County to work to eliminate these disparate outcomes.

**COORDINATION:** County Executive

**FISCAL IMPACT:**

**ECONOMIC IMPACT:** To be done.

**EVALUATION:** To be done.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Robert H. Drummer, Senior Legislative Attorney

**APPLICATION**

**WITHIN  
MUNICIPALITIES: N/A**

**PENALTIES: N/A**

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**MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND**

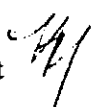
**COUNCIL PRESIDENT NANCY NAVARRO  
DISTRICT 4**

**CHAIR, GOVERNMENT OPERATIONS AND  
FISCAL POLICY COMMITTEE**

**EDUCATION AND CULTURE COMMIT**

**MEMORANDUM**

Wednesday, September 11, 2019

**TO:** Councilmembers  
**FROM:** Nancy Navarro, Council President   
**SUBJECT:** Bill 27-19, Racial Equity and Social Justice Legislation

I am proud to transmit for your consideration, the attached bill on racial equity and social justice which seeks to codify and institutionalize the consideration of norms of equity and social justice in the important work of county government. This draft bill is a result of our work as a team, alongside the County executive, his staff, and our constituents who provided valuable feedback during the County's community conversations on racial equity and social justice this summer, as well as through the application of our community engagement toolkit that was distributed online and in print to encourage residents to host their own community conversations on racial equity and social justice.

Below are key elements of the bill:

1. Establish a racial equity and social justice program;
2. establish an Office of Racial Equity and Social Justice in the Executive Branch;
3. remove the Chief Equity Officer position in the Office of the Executive as a non-merit position (this is consistent with merit system law and the way non-merit positions are classified in the Executive Branch);

STELLA B. WERNER COUNCIL OFFICE BUILDING • ROCKVILLE, MARYLAND 20850  
(240) 777-7968 • TTY (240) 777-7914  
COUNCILMEMBER.NAVARRO@MONTGOMERYCOUNTYMD.GOV • WWW.COUNCILMEMBERNAVARRO.COM

4. require the Executive to adopt, by Method 2 regulation, a racial equity and social justice action plan for the County;
5. require each Department and Office to develop a racial equity and social justice action plan;
6. require the Executive to submit a racial equity and social justice impact statement to the Council for each Bill and for each management initiative or program in the recommended budget;
7. establish a Racial Equity and Social Justice Advisory Committee and set forth the composition and duties of the Committee;
8. require the Planning Board to consider racial equity and social justice impact when preparing a Master Plan; and
9. generally amend the law governing racial equity and social justice.

Recognizing that the implementation of Bill 27-19 rests with the Executive Branch, this bill also calls for the creation of a structure at the Council to provide oversight of the County's progress in meeting its racial equity and social justice goals. After the introduction of this bill on Tuesday, September 17, in addition to soliciting feedback in writing, there is an afternoon and an evening public hearing scheduled for October 22 at 1:30 p.m. and 7:00 p.m. here at the Council. This bill has been assigned to the Government Operations and Fiscal Policy Committee and I look forward to continuing the work there alongside my colleagues. The plan is to have the final legislation adopted in late November. Please let me know if you would like to be a co-sponsor of this bill.



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich  
County Executive

Marc P. Hansen  
County Attorney

MEMORANDUM

TO: BB Otero, Special Assistant  
Office of the County Executive

VIA: Marc P. Hansen *MAH/EBJ*  
County Attorney

FROM: Edward B. Lattner, Chief *EBJ*  
Division of Government Operations

DATE: October 7, 2019

RE: **Bill 27-19, Administration - Human Rights - Office of Racial Equity and Social Justice - Racial Equity and Social Justice Committee - Established**

Bill 27-19 calls upon the County to employ an “equity lens” to identify and analyze class-based discrimination experienced by its residents with the ultimate goal of eliminating disparate and inequitable outcomes through a variety of remedial interventions (*e.g.*, action plans, impact statements, training, education). We believe the Bill is legally valid, as the County has broad discretion in identifying and analyzing class-based discrimination. Because the Bill does not impose any remedial interventions based upon suspect (*e.g.*, race) or quasi-suspect (*e.g.*, gender) classes, the Bill is not subject to strict or even heightened legal scrutiny.

We have a few suggested amendments to clarify, and in some cases strengthen, the Council’s stated desire to address racial equity and social justice issues in Montgomery County.

**Defined Terms.**

The largest group of suggested amendments seek to ensure that terms used throughout the Bill consistently match the defined terms. The key phrase in the bill is “**racial equity and social justice.**” To that end, the Bill creates an “Office of Racial Equity and Social Justice” and a “Racial Equity and Social Justice Advisory Committee.” But that phrase is not used consistently throughout the Bill. Also, while the Bill tasks these bodies with addressing racial equity and social justice issues,<sup>1</sup> it often does so though the use of defined terms that are limited to racial

<sup>1</sup> The Bill defines social justice as “a social construct that artificially divides people into distinct groups based on age, gender, sexual orientation, gender identification, religion, or disability.” The County’s human rights

equity issues and do not include social justice issues. For example:

- In several places (*e.g.*, lines 73-74, 86-87, 112, 114, 117, 121, and 124), the Bill speaks of the need to develop a “racial and social justice equity action plan,” but that term is not defined. The closest defined term, “racial equity action plan” (line 57), excludes social justice considerations. To achieve consistency, we suggest the following:
  - change the text in lines 73-74, 86-87, 112, 114, 117, 121, 124, and elsewhere to “racial equity and social justice [equity] action plan”
  - change the defined term “racial equity action plan” (line 57) to “racial equity and social justice action plan”
  - change the definition of “racial equity and social justice action plan” (line 58) to “a comprehensive plan to incorporate and embed racial equity and social justice principles . . .” to be consistent with the proposed text used elsewhere in the Bill.
- Line 77 speaks of the need to implement “racial and social justice equity” training, but again that term is not defined. The closest defined term, “racial equity” (lines 54 and 142), excludes social justice considerations. To achieve consistency, we suggest the following:
  - change the text in line 77 to “racial equity and social justice [equity] training”
  - change the defined term “racial equity” (lines 54 and 142) to “racial equity and social justice”
  - change the definition of “racial equity and social justice” to “changes in policy, practice and allocation of County resources so that race and social justice constructs do [does] not predict . . .” to be consistent with the proposed text used elsewhere in the Bill.
- Lines 132 and 151-52 require the Director to submit a “racial and social justice equity impact” statement for each bill the Council considers,<sup>2</sup> but that term is not defined. The closest defined term, “racial equity impact” (line 145), excludes

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law identifies additional groups whose status is protected from discrimination, including national origin, marital status, genetic status, source of income, family responsibilities, and presence of children. It is unclear why the definition of social justice does encompass these other groups.

<sup>2</sup> Other variations include “racial equity and social justice impact statement” (line 95) “racial impact statement” (line 154), and “Racial and social justice impact statement” (line 166).

social justice considerations. We suggest the term “racial equity and social justice” (impact statement) be used throughout the Bill for consistency. The definition should be amended to include social justice considerations.

- Line 68 requires the performance of an “equity assessment” based on race or social justice [issues]” but the defined term “equity assessment” (line 38) is limited to racial impacts and does not include social justice issues. This is particularly confusing given that the companion terms “equity” (defined in line 37) and “inequity” (defined in line 43) broadly include racial and social justice issues. We suggest the defined term “equity assessment” be amended to read “. . . to identify and redress disparate outcomes on the basis of race or social justice” to be consistent with the proposed text used elsewhere in the Bill.

### **Legislative Findings.**

Consistent with the defined terms’ focus on racial equity issues, the Council’s legislative findings (particularly findings nos. 1 and 3) are limited to racial equity issues. If the Bill is to address racial equity and social justice, the findings should include support for legislating social justice issues. This could be achieved by adding “and social justice issues” after the term “race” in lines 27 and 30.

### **Racial Equity and Social Justice Advisory Committee.**

Similarly, although the newly created Committee is to address racial equity and social justice issues, the Bill requires that members have experience in redressing disparate impacts based solely on race. The term “social justice issues” should be added.

### **Other Suggestions.**

- Clarify whether the newly created Office is to work solely within the executive branch or whether its work includes legislative branch offices. If the latter, the Bill should also clarify that the Council will adopt a resolution for the legislative branch mirroring the executive regulation, which adopts the racial and social justice equity plan (line 86).
- It seems inconsistent for the Office to provide “racial equity and social justice [equity]” training to all County employees (line 77) but training under the County-wide executive regulation is limited to managers and supervisors (line 90).
- While the Council can certainly provide a specific mechanism for removing the members of the Committee (lines 213-8), the Council might want to rely upon the procedures already existing in § 2-148 for removing committee members.
- The proposed amendment to § 33A-14 should include the definitions of race and social justice (or adopt the definition of those terms found elsewhere in the Bill).



BB Otero  
October 7, 2019  
Page 4

Finally, we note that the Bill's treatment of the Office's failure to submit a timely racial and social justice impact statement to the Council on proposed legislation differs from recently-enacted Bill 10-19's treatment of the Office of Legislative Oversight's failure to submit a timely economic impact statement to the Council on proposed legislation. Specifically, the Bill provides (lines 176-77) that Council action on proposed legislation that is otherwise valid is not invalid because of any failure of the Office to submit a timely racial and social justice impact statement. Bill 10-19, enacted on July 30, provides that council action on **an expedited bill** that is otherwise valid is not invalid because of the Office of Legislative Oversight's failure to submit an economic impact statement. This differing treatment is permissible, but we simply wanted to bring the issue to the Council's attention.

cc: Robert H. Drummer, Senior Legislative Attorney  
Dale Tibbitts, Special Assistant to the County Executive  
Tammy Seymour, OCA

19-008231

**Friedson Amendment 1**

*Amend lines 250-262 as follows:*

**33A-14. Greenhouse Gas Emissions and Racial Equity and Social Justice.**

As part of the factors and conditions outlined in [~~§7-108~~] Section 21-204 of the Regional District Act and [~~§ 1.01 and § 1.03 of Article 66B,~~] Section 1-201 of the Land Use Article of the Maryland Code in preparing the Plan, the Planning Board must:

- (a) ~~[[consider the environmental impact of the plan by:~~
  - (1) ~~[assess] assessing]]~~ assess the Plan's potential impact on greenhouse gas emissions in the County, including a carbon footprint analysis;
- (b) ~~[[2) [(b) consider] considering]]~~ consider ways to reduce vehicle miles traveled in the County; ~~[[and]]~~
- (c) ~~[[3) [(c) consider] considering]]~~ consider options that would minimize greenhouse gas emissions; and
- (d) ~~[[b)]]~~ consider the impact of the plan on racial equity and social justice in the County.