

ADDENDUM

Agenda Item #6
February 27, 2022
Worksession

MEMORANDUM

February 24, 2023

TO: Planning, Housing and Parks Committee
FROM: Khandikile Mvunga Sokoni, Legislative Attorney
SUBJECT: Bill 28-22; Common Ownership Communities – Duties, Requirements and Procedures
PURPOSE: Worksession – Committee recommendation expected

Expected Attendees:

The list of expected attendees is updated to include Ms. Cheryl Butler-Walker, Chair of the Common Ownership Communities Commission (CCOC).

- Aseem Nigam, Director, Department of Housing and Community Affairs (DHCA) – Invited
- Scott Bruton, Deputy Director, DHCA
- Mary Gentry, DHCA
- Nicolle Katrivanos, DHCA
- Ifeoluwapo (Ife) Fabayo, COC Investigator, DHCA (Invited)
- Janmarie Peña, Performance Management and Data Analyst, Office of Legislative Oversight (OLO) staffer (Invited).
- **Cheryl Butler-Walker, Chair of the Common Ownership Communities Commission (CCOC)**

Further, at the request of the Department of Housing and Community Affairs (DHCA) please find attached, by way of an addendum to the earlier staff packet, proposed amendments to the bill at lines 129-131 and at lines 152 to 169, and 198-200. The intent of the amendment is to ensure that after parties successfully enter a mediation agreement, that a breach of such agreement can be prosecuted as a Class A violation. According to DHCA without this, after all the time and effort spent on mediation, if a party to the mediation agreement breaches the agreement, then the aggrieved party has to go to court to seek enforcement.

Bill No. XX-22
Concerning: Common Ownership
Communities – Dispute
Resolution, Open Conduct
Revised: _____ Draft No. 1
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

- (1) require periodic retraining of members of a common ownership community’s governing body;
- (2) allow community association meetings via video and teleconference platforms;
- (3) clarify common ownership community voting procedures; and
- (4) generally revise County law regarding common ownership communities.

By amending

Montgomery County Code
Chapter 10B, Common Ownership Communities
Sections 10B-2, 10B-3, 10B-6, 10B-7, 10B-7A, 10B-8, 10B-9A, 10B-11, 10B-12, 10B-13, 10B-16, 10B-17, 10B-18, and 10B-19.

By adding

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

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

1 **Sec. 1. Sections 10B-2, 10B-3, 10B-6, 10B-7, 10B-7A, 10B-8, 10B-9A, 10B-**
2 **11, 10B-12, 10B-13, 10B-16, 10B-17, 10B-18 and 10B-19 are amended, and**
3 **Section 10B-9B is added, as follows:**

4 **10B-2. Definitions.**

5 * * *

6 *Common ownership community* includes:

- 7 (1) a residential development subject to a declaration enforced by a
8 homeowners' association, as those terms are used in state law;

9 * * *

10 **10B-3. Commission on Common Ownership Communities.**

11 * * *

- 12 (g) The Commission must elect one voting member as [chair] Chair
13 and another as [vice chair] Vice Chair, to serve at the pleasure of
14 the Commission, and may elect other officers as it determines.

- 15 (h) * * *

- 16 (i) The Commission meets at the call of the [chair] Chair as often as
17 required to perform its duties, but at least once each month. A
18 majority of the voting members are a quorum for the transaction
19 of business, and a majority of the voting members present at any
20 meeting may take any official action.

21 * * *

22 **10B-6. Duties of the Commission on Common Ownership Communities.**

23 The Commission must:

24 * * *

- 25 (f) provide training on the responsibilities of a board member for
 26 members of the governing body of a common ownership
 27 community by:
- 28 (1) developing an educational curriculum for new
 29 members; [and]
- 30 (2) offering training for Board Members, either in
 31 person, on-line, or by other electronic means; and
- 32 [(2)](3) approving an alternative educational curriculum for
 33 new members administered by other
 34 organizations[.]; and
- 35 (g) establish hearing panels to adjudicate cases on which the
 36 Commission accepts jurisdiction.

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

- 39 (a) Association registration.
- 40 (1) Each common ownership community must register with
 41 the Commission annually[,], and [identify its elected
 42 leadership and managing agents,] submit the information
 43 required on [a] the registration form provided by the
 44 Commission.
- 45 * * *
- 46 (c) Training.
- 47 (1) A member of the governing body of a common ownership
 48 community must successfully complete the educational
 49 curriculum approved by the Commission within 90 days

50 after being elected or appointed to the governing body for
 51 the first time. The governing body must:

52 (A) certify that each member has successfully completed
 53 this training to the Commission;

54 (B) retain a copy of the training certificate for inspection
 55 by the members of the association for the duration
 56 of the governing body member's service; and

57 (C) report to the Commission that each member has
 58 successfully completed the training within 90 days
 59 after each member has been appointed or elected.

60 (2) Each member of the governing body must maintain a
 61 training certificate. A training certificate issued under this
 62 Section is valid for 3 years.

63 (3) A failure to satisfy the training requirement in this
 64 subsection does not:

65 (A) remove the member from the governing body; or

66 (B) invalidate a vote made by the member.

67 (d) The Commission may ask the Director to exercise the
 68 Department's authority under Section 10B-19(a) to ensure
 69 compliance with the training required under this Section.

70 (e) A hearing panel or a hearing examiner may consider a board
 71 member's failure to complete the training required under this
 72 Section, if relevant, in deciding a dispute under Section 10B-13.

73 **10B-7A. Notification requirements.**

74 The governing body of a community association must, at least annually,
 75 distribute information [in a form reasonably calculated to notify] to all owners

76 about the availability of dispute resolution, education, and other services to
 77 owners and residents of common ownership communities through the
 78 Department and the Commission. The governing body may satisfy this
 79 requirement by including with any annual notice or other mailing to all
 80 members of the community association [any written materials] the form
 81 developed by the Department to describe the Commission’s services.

82 **10B-8. Defined terms.**

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

84 * * *

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

87 (A) * * *

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

- 90 (i) properly conduct an election;
- 91 (ii) give adequate notice of a meeting or other action;
- 92 (iii) properly conduct a meeting;
- 93 (iv) properly adopt a budget or rules;
- 94 (v) maintain or audit books and records;
- 95 (vi) allow inspection of books and records;
- 96 (vii) properly maintain or repair a common element if the
 97 failure results in significant personal injury or
 98 property damage; or

99 (viii) exercise its judgment in good faith concerning the
 100 enforcement of the association documents against
 101 any person that is subject to those documents.

102 * * *

103 **10B-9A. Request for relief from stay.**

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

110 (b) * * *

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

117 (d) * * *

118 (e) Except as provided in subsection (d), a request for relief from
 119 stay may only be granted if the assigned panel finds that:
 120 (1) enforcing the stay would result in undue harm to [the] a
 121 [community association] party; and
 122 (2) lifting the stay [will] would not result in undue harm to the
 123 rights or interests of any opposing party.

124 **10B-9B. Acceptance of jurisdiction of complaints.**

125 (a) If the Commission does not accept jurisdiction of a complaint, the
 126 Director must notify the parties of the decision and the reason for
 127 the Commission's denial of jurisdiction within 10 business days
 128 after the decision.

129 ~~(b) The Commission may accept jurisdiction of a complaint if a party~~
 130 ~~fails to comply with an agreement reached during mediation.~~

131 (eb) The Commission's decision not to accept jurisdiction of a
 132 complaint is not subject to judicial review.

133 **10B-11. Mediation; dismissal before hearing.**

134 * * *

135 (b) If the Director, after reviewing a dispute, finds that, assuming all
 136 facts alleged by the party that filed the dispute are true, there are
 137 no reasonable grounds to conclude that a violation of applicable
 138 law or any association document has occurred, the Director [may]
 139 must so inform the Commission. The Commission must dismiss
 140 a dispute if it finds that there are no reasonable grounds to
 141 conclude that a violation of applicable law or any association
 142 document has occurred, or it may order the Director to investigate
 143 further. The Commission may reconsider the dismissal of a
 144 dispute under this subsection if any party, in a motion to
 145 reconsider filed within 30 days after the dispute is dismissed,
 146 shows that:

- 147 (1) the Commission erroneously interpreted or applied
 148 applicable law or an association document; or
 149 (2) material issues of fact that are necessary to a fair resolution
 150 of the dispute remain unresolved.

* * *

151
152 (e) The Commission must promptly schedule a hearing under
153 Section 10B-13 if ~~{either}~~: (1) mediation has not occurred within
154 90 days after the Director found reasonable grounds to believe a
155 violation occurred; [or] (2) the Director decides at any time that
156 mediation would be fruitless; ~~or (3) the Commission has accepted~~
157 jurisdiction. The Director may extend the mediation deadline by
158 mutual consent of the parties.

159 (f) If a dispute is resolved by mediation, the terms of mediation
160 agreed to by the parties must be reduced to writing and
161 incorporated into a consent agreement to be signed by the parties.
162 The agreement must be for mediation purposes only and is not an
163 admission by any party that a violation of applicable law or an
164 association document has occurred.

165 (g) In addition to any other penalty allowed by law, failure to adhere
166 to any provision of a consent agreement is a class A violation.
167 Any failure by the Director to enforce any provision of a consent
168 agreement does not waive any private right of action against the
169 violating party.

170 **10B-12. Hearing panel.**

- 171 (a) If a hearing is scheduled, the [chair] Chair of the Commission
172 must convene a 3-member panel to hear the dispute.
- 173 (b) The [chair] Chair must choose two members of the panel from
174 the voting members of the Commission. The persons selected
175 must represent the two different membership groups of the
176 Commission. The [two] Chair of the Commission [members]

177 must designate the third member from a list of volunteer
 178 arbitrators trained or experienced in common ownership
 179 community issues maintained by the Commission. The third
 180 member must [chair] Chair the panel. If a suitable arbitrator is not
 181 available, the [chair] Chair of the Commission must designate the
 182 third panelist from among the voting members of the
 183 Commission, and must designate the [chair] Chair of the panel.

184 (c) * * *

185 (d) * * *

186 (e) If the Commission [chair] Chair decides that a hearing should be
 187 held by a hearing examiner instead of a hearing panel, the [chair]
 188 Chair, with the approval of the Commission, may designate the
 189 Office of Zoning and Administrative Hearings to conduct the
 190 hearing.

191 [(f) If the parties to a dispute agree that the hearing should be held
 192 and the dispute decided by a hearing examiner instead of a
 193 hearing panel, the chair must designate the Office of Zoning and
 194 Administrative Hearings or another hearing examiner to conduct
 195 the hearing and issue a decision.]

196 **10B-13. Administrative hearing.**

197 (a) * * *

198 (b) [Sections 2A-1 through 2A-11] The Administrative Procedures
 199 Act (Article I of Chapter 2A) [apply] applies to a hearing held
 200 under this Section. However, the parties need not be given more
 201 than 15 days' notice before the hearing is held, if the Commission

202 finds that an expedited hearing is necessary. At any hearing, a
 203 party or a witness may be advised by counsel.

204 (c) * * *

205 (d) The hearing panel may award costs, including reasonable
 206 attorney's fees, to any party if the other party:

207 (1) * * *

208 (2) refused to participate in mediation of a dispute[;],
 209 unreasonably withdrew from mediation, ~~or failed to~~
 210 ~~comply with the terms of an agreement reached in~~
 211 ~~mediation; or~~

212 (3) * * *

213 * * *

214 **10B-16. [Reserved] Video and teleconference meetings.**

215 An association may conduct meetings of the membership or of the governing
 216 body of the association using a video platform that allows all of the members
 217 of the association to attend the meeting by video and teleconference. If a
 218 video platform is used, the association must send all members the sign-in
 219 information via the same method used to notify members of an in-person
 220 meeting.

221 **10B-17. Voting procedures[; training].**

222 (a) * * *

223 (b) * * *

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

226 (1) received in a signed, sealed envelope, bearing the
 227 identification of the dwelling unit and proportional voting
 228 percent, if any, on the outside; and

229 (2) opened only at a meeting at which all candidates or their
 230 delegates have a reasonable opportunity to attend.

231 (d) *Proxy or power of attorney.* Any proxy or power of attorney valid
 232 under state law may be used at any association meeting.

233 However, [a] any proxy [and any] or power of attorney [created]
 234 containing votes for [the purpose of] candidates for a governing
 235 body's election [must] may be [appointed] counted only to meet a
 236 quorum or to vote on matters other than an election for a
 237 governing body unless the proxy or power of attorney contains a
 238 directed vote on the election. If a proxy or power of attorney form
 239 must be approved before it is cast, the approving authority must
 240 not unreasonably withhold its consent. A general power of
 241 attorney valid under state law may be used for any purpose at an
 242 association meeting that is consistent with the provisions of the
 243 general power of attorney, including for an election of the
 244 governing body.

245 (e) *Cumulative voting prohibited.* In an election for a governing
 246 body, for each unit that a [members] member owns the member
 247 must not cast more than one vote for each candidate.

248 (f) *Counting votes.* Until the time for voting closes, an association
 249 must not open or count election ballots, absentee ballots or
 250 directed proxies, and must keep all such documents in a sealed
 251 container which must not be opened or counted until the election.
 252 If an election is conducted electronically, the votes may not be

253 disclosed or counted by anyone until the election. The
 254 individuals counting absentee ballots or directed proxies shall
 255 insure that the individual who has been directed to cast the proxy
 256 vote was in fact in attendance at the meeting.

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

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

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

264 [(h) A member of the governing body of a common ownership
 265 community must successfully complete the educational
 266 curriculum developed by the Commission or a similar
 267 educational curriculum administered by another organization that
 268 is approved by the Commission within 90 days after being
 269 elected or appointed to the governing body for the first time. The
 270 governing body must:

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

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

276 (3) report to the Commission no later than December 31 of
 277 each year membership data required by the Commission,
 278 including

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

- 280 (B) the date each member completed the required
- 281 training;
- 282 (C) the number of vacancies on the board; and
- 283 (D) the length of time each vacancy existed.
- 284 (i) A failure to satisfy the training requirement in subsection (h) does
- 285 not:
- 286 (1) remove the member from the governing body; or
- 287 (2) invalidate a vote made by the member.
- 288 (j) The Commission may exercise its authority under Section 10B-
- 289 19(a) to ensure compliance with the training required by
- 290 Subsection (h).
- 291 (k) A hearing panel or a hearing examiner may consider a board
- 292 member's failure to complete the training required by Subsection
- 293 (h), if relevant, in deciding a dispute under Section 10B-13.]

294 **10B-18. Budget.**

295 Unless the association documents provide otherwise:

- 296 (a) * * *
- 297 (b) the governing body must provide members of the association
- 298 with any proposed amendment to the budget at least 30 days
- 299 before the governing body votes on the amendment, if the
- 300 amendment will result in an increase or decrease of more than 15
- 301 percent of the approved budget. This requirement does not apply
- 302 to expenditures made to respond to an imminent threat to health
- 303 or safety or of serious property damage, or to properly fund the
- 304 most recent reserve study conducted for the association.

305 **10B-19. Enforcement.**

306 (a) The Department may enforce this Article by appropriate legal
307 action, including issuing a citation for a Class A civil violation.

308 * * *

309 *Approved:*

310

Gabe Albornoz, President, County Council Date

311 *Approved:*

312

Marc Elrich, County Executive Date

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

314

Judy Rupp, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill XX-22

Common Ownership Communities – Dispute Resolution, Open Conduct

DESCRIPTION:	Bill XX-22 would mandate triennial retraining of members of a common ownership community’s governing body, establish criteria to be considered by members of the Commission on Common Ownership Communities to consider when deciding whether to accept jurisdiction of a complaint that involves a common ownership community, allow either party to a dispute to lift the automatic stay imposed when a dispute is filed, provide for community association meetings to be held remotely via video and teleconference platforms, and clarify certain common ownership community voting procedures.
PROBLEM:	The Commission is proposing changes Chapter 10B so that it may better assist the common ownership communities in Montgomery County. These changes address issues that have arisen in the conduct of elections, holding meetings during the Covid pandemic, the education of community association board members, what is to be considered in accepting jurisdiction of a dispute, and the registration of associations with the County.
GOALS AND OBJECTIVES:	The proposed amendments will require association board members to be re-educated every 3 years, streamline the registration process, summarize what is considered when the Commission accepts jurisdiction over disputes, and require that ballots be kept confidential until an election, as well as other technical amendments.
COORDINATION:	Department of Housing and Community Affairs
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EXPERIENCE ELSEWHERE:	None
SOURCE OF INFORMATION:	Frank Demarais, Department of Housing and Community Affairs, 240-701-7456.

APPLICATION
WITHIN

MUNICIPALITIES: Rockville

PENALTIES: Class A
