

*BALTIMORE COUNTY COUNCIL
NOTES TO THE AGENDA
LEGISLATIVE SESSION 2020*

*Issued: February 6, 2020
Work Session: February 11, 2020
Legislative Day No. 4: February 18, 2020*

*The accompanying notes are
compiled from unaudited
information provided by
the Administration and
other sources.*



OFFICE OF THE COUNTY AUDITOR

BALTIMORE COUNTY COUNCIL

February 18, 2020

NOTES TO THE AGENDA

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**AGENDA
BALTIMORE COUNTY COUNCIL
LEGISLATIVE SESSION 2020, LEGISLATIVE DAY NO. 4
FEBRUARY 18, 2020 6:00 P.M.**

CEB = CURRENT EXPENSE BUDGET
BY REQ. = AT REQUEST OF COUNTY EXECUTIVE

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CALL OF BILLS FOR FINAL READING AND VOTE

COUNCIL

- 1 Bill 2-20 – Mr. Patoka – Assembly Areas-Capital Improvement and Capital Construction-Assistive Listening System Requirements
- 3 Bill 3-20 – Councilmembers Bevins, Crandell, Patoka, Marks & Jones – Donation Bins
- 7 Bill 4-20 – Councilmembers Jones, Crandell, Kach, Quirk & Marks – Voluntary Private Security or Surveillance Camera Registration Program

APPROVAL OF FISCAL MATTERS/CONTRACTS

ED BLADES, DIRECTOR, OFFICE OF BUDGET AND FINANCE

- 8 1. Contract – Pension Benefit Information, LLC – Death audit services - OBF

MISCELLANEOUS BUSINESS

COUNCIL

- 12 1. Res. 21-20 – Councilmembers Kach, Marks & Patoka – Rules of Procedure – Baltimore County Council
- 2. Res. 23-20 – Mrs. Bevins – Property Tax Exemption – DAV – Carl Merchant
- 3. Res. 24-20 – Mr. Jones – Property Tax Exemption – DAV – Marlon Jordan
- 4. Res. 25-20 – Mr. Patoka – Property Tax Exemption – DAV – Malcolm Hamm
- 5. Res. 26-20 – Mr. Patoka – Property Tax Exemption – DAV – Bryant Fleischer
- 6. Res. 27-20 – Mr. Jones – Property Tax Exemption – DAV – Gerardo Laboy-Cruz
- 7. Res. 28-20 – Mr. Marks – Property Tax Exemption – DAV – Calvin Ross, Sr.

Bill 2-20

Council District(s) All

Mr. Patoka

**Assembly Areas – Capital Improvement and Capital Construction –
Assistive Listening System Requirements**

Bill 2-20 requires a recipient of County funds to install an assistive listening system during the construction or renovation of an assembly area if that area uses or requires the use of a public address system and a County contract has been executed to enable the construction or renovation. The bill also modifies the composition and duties of the Commission on Disabilities to include the deaf or hard of hearing community and their needs.

In 2019, the Governor signed SB 1014 and HB 1192 into law. The legislation requires any recipient of State funds to install an assistive listening system in an assembly area during the construction or renovation of the assembly area if it uses or requires the use of a public address system, if a State contract has been executed to enable the construction or renovation of the assembly area.

An “assistive listening system” (ALS) is an amplification system using transmitters to send sound from its source to the listener with a direct, wireless connection, such as a hearing induction loop system that couples to a personal hearing device or a hearing induction loop receiver. An “assembly area” is any indoor area in a building or facility that is used for entertainment, education, or civic gatherings that has a public address system.

The State legislation, while providing an excellent framework, is not broad enough in scope to encompass all government-funded capital improvement projects, particularly those that use only County funds. Bill 2-20 adapts several portions of the State legislation to existing County government and applies its requirements to capital improvement projects that use County funds.

Bill 2-20 also amends the composition of the Commission on Disabilities to require at least one, but no more than three, members who: (i) are deaf, hard of hearing, or require a personal hearing device; (ii) are a direct caregiver for or a family member of a person who is deaf, hard of hearing, or requires a personal hearing device; or (iii) have expertise in or special knowledge, training, or experience in assisting consumers who use an ALS. The bill also requires the Commission to

consult with County residents with hearing loss or advocates for disabled individuals generally who may or will use any County facility during its construction or renovation before the project is complete.

This item was deferred from the February 3, 2020 Council agenda.

With the affirmative vote of five members of the County Council, Bill 2-20 will take effect March 2, 2020.

Bill 3-20

Council District(s) All

Councilmembers Bevins, Crandell, Patoka, Marks & Jones

Donation Bins

Bill 3-20 proposes new requirements on donation bins, also known as collection bins, as set forth in the Baltimore County Zoning Regulations. A donation bin is defined in the bill as “an unattended stationary or freestanding container, receptacle, drop-off box, small trailer, or similar small device or facility that is placed outdoors and is used for the solicitation and donation of items of personal property to be donated or recycled for reuse.” The bill requires all donation bins to have an annually renewable permit issued by the Department of Permits, Approvals and Inspections (PAI).

Collection bins are regulated under Section 415B of the Zoning Regulations. The current law was created by Bill 43-17, which placed certain siting and upkeep requirements on collection bin operators. However, Bill 43-17 did not address all of the public safety and nuisance concerns that can be associated with these bins.

Statutory History and Case Law

Shortly after the enactment of Bill 43-17, a donation bin operator initiated a court challenge arguing the law placed unconstitutional restrictions on the operator’s freedom of speech in violation of the First Amendment. The speech at issue was the donation bin operator’s right to solicit charitable donations from the public, which was found to be entitled to First Amendment protection by the Sixth Circuit Federal Court of Appeals in *Planet Aid v. City of St. Johns* (6th Cir. 2014) 782 F.3d 318. Although the County case was resolved without any adverse finding on the merits, a brief review of the relevant case law gives context to the provisions of Bill 3-20.

At issue in the *Planet Aid* case was a local ordinance in the city of St. Johns, Michigan banning “donation boxes” within city limits to “protect the health, safety, and welfare of the citizens of the city by preventing blight, protecting property values and neighborhood integrity, avoiding the creation and maintenance of nuisances and insuring the safe and sanitary maintenance of properties.” Planet Aid argued its donation boxes constituted protected speech under the First Amendment. The Sixth Circuit agreed, finding that a ban on unattended boxes that ask for charitable donations was a “content-based” restriction of speech, subject to a strict scrutiny standard.

Under a strict scrutiny review, the government must prove the restriction on speech is narrowly tailored to promote a compelling government interest that could not be met by a less restrictive alternative. In applying strict scrutiny, the Sixth Circuit ruled that the ordinance failed because it was not narrowly tailored to promote the City's interest in aesthetics and preventing blight. The appeals court found the government lacked evidence that "charities would [fail] to conduct pickups or maintain the appearance of the bins" or that requiring frequent inspections would not suffice.

While the *Planet Aid* case discussed the constitutionality of a donation bin ban, a comprehensive licensing and regulation scheme was not examined until 2017, in *Recycle for Change v. City of Oakland* (9th. Cir 2017) 856 F.3d 666. In that case, the operator of an unattended donation bin challenged a local ordinance in the city of Oakland, California requiring the operator to obtain an annually renewable permit. The ordinance also required the operator to submit a site plan, obtain liability insurance, perform periodic maintenance, and adhere to restrictions on a donation bin's placement and size. While the Ninth Circuit Federal Court of Appeals recognized that charitable solicitations are protected speech, it disagreed with the Sixth Circuit's finding that a law regulating donation bins is a content-based restriction.

Generally, a content-based restriction is one that applies to particular speech because of the topic discussed or the idea or message expressed out of a concern for its likely communicative impact. In *Recycle for Change*, the Ninth Circuit found the ordinance was not a content-based restriction because it applied to any unattended structure that accepted personal items for distribution, resale, or recycling. In short, the city of Oakland ordinance was a "content-neutral" restriction because it did not matter why the bin operator was collecting the donations; the ordinance applied whether the collection was for charitable purposes or for-profit business. And because the ordinance was a content-neutral restriction on speech, the Ninth Circuit analyzed the ordinance under the intermediate scrutiny standard.

The Ninth Circuit concluded that the ordinance's stated purposes of combating blight, illegal dumping, graffiti, and traffic impediments constitute a substantial governmental interest that is unrelated to the suppression of the bin operator's speech. Further, the Ninth Circuit found that the restrictions further those interests because "by their nature, unattended bins invite blight, illegal dumping, and graffiti issues." Finally, the appeals court found that the restrictions, especially the 1,000 foot distance requirement, are "not substantially broader than necessary to achieve the goals" of the ordinance.

Bill 3-20

Bill 3-20 changes the name from “collection” bin to “donation” bin and adds a new title to Article 21 of the Code. The bill requires that an unattended bin meant to solicit and collect donations of personal property from the public must have an annually renewable permit issued by PAI. The provisions in Bill 3-20 are similar to the provisions that were upheld in the *Recycle for Change* case. To obtain a permit, a donation bin operator and the owner of the property where the donation bin will be located must:

- Provide a 24-hour contact service where the public may register complaints;
- Certify that they will be jointly and severally responsible for compliance with the County laws;
- Provide a site plan and a rendering of the bin;
- Provide a maintenance plan and pick-up schedule; and
- List the kind or type of items that may be donated at the bin.

Upon receiving a completed application, the Director of PAI may approve, deny, or conditionally approve an application; that decision is appealable to the Board of Appeals.

A permit issued for a donation bin will automatically expire on December 31st of the year it was issued unless a renewal has been approved by the Director. To renew the permit, a donation bin operator and property owner must certify that they are in compliance with all regulations and submit any changes to information required in the initial application. If a renewal application is not received by December 31st, the County may immediately remove the bin at the joint expense of the bin operator and property owner.

Only one donation bin is allowed on a property. A donation bin may not be located within 1,000 feet of another donation bin and may not be located on unimproved property or on property with a vacant building. A donation bin may only be placed on paved areas and may not block or impede routes for pedestrians, emergency vehicles, or trash pick-up. All donation bins must at all times have affixed to the front a special permit sticker with a warning that leaving donations or trash outside of the donation bin is a violation of County law. A donation bin may not have advertisements placed on it.

Bill 3-20 also requires that the donation bin operator must include a maintenance plan with their application. All donation bins must be serviced at least once per week, which includes donation pick-up, keeping the donation bin free from graffiti or blight, and cleaning up trash around the donation bin. The property owner and donation bin operator are jointly responsible for removing

any dumped material around the bin. If not picked up within 72 hours, the donation bin along with the dumped material is deemed a public nuisance and subject to civil penalties.

PAI has the right to inspect a donation bin at any time. If the bin operator or the property owner have violated any requirement in the law, PAI may order the donation bin be moved to another location or removed from the property, at the owner's and operator's expense. The donation bin operator and property owner may also be subject to fines of at least \$500 but no more than \$1,000 for each violation of the law. Each 24-hour period in which a violation persists constitutes a separate offense subject to fines and penalties. The donation bin operator and property owner are jointly responsible for paying all fines.

If a donation bin operator or property owner is found to be willfully violating or ignoring the requirements set forth in Bill 3-20, or to have made false or misleading statements on an application to PAI for a donation bin permit, the County may immediately remove any donation bin belonging to that operator at the joint expense of the operator and property owner.

With the affirmative vote of five members of the County Council, Bill 3-20 will take effect March 2, 2020.

Bill 4-20

Council District(s) All

Councilmembers Jones, Crandell, Kach, Quirk & Marks

Voluntary Private Security or Surveillance Camera Registration Program

Bill 4-20 creates a voluntary private security and surveillance camera registration program. The program encourages commercial and residential private property owners to register security cameras set up on their property with the County to aid potential law enforcement investigations.

Registration can be made on a written form provided by the Office of Budget and Finance or an online form on the County’s website. Registrants must certify that the camera is located wholly on their property and will not be positioned so as to monitor any private property other than the property on which it is located. The program is voluntary, and participants will receive the following incentives: a waiver of the alarm permit fee for installing a new alarm system or upgrading an existing system to include a registered camera, and two additional false alarm waivers in a calendar year.

The Office of Budget and Finance must keep all records confidential. All footage or data obtained under the program shall be treated as if it had been obtained from a County-owned camera and may only be used to further a legitimate law enforcement investigation. In its use of this program, the County may not violate a person’s privacy or try to circumvent State or federal privacy protections. Camera registrations must be renewed every two years to ensure the accuracy of the camera location and orientation.

With the affirmative vote of five members of the County Council, Bill 4-20 will take effect March 2, 2020.

FM-1 (Contract)

Council District(s) All

Office of Budget and Finance

Death Audit Services

The Administration is requesting approval of a contract with Pension Benefit Information, LLC to provide death audit services to identify deceased members of the Employees' Retirement System of Baltimore County in order to detect and prevent improper benefit payments. The contract commenced August 22, 2019, continues until February 28, 2020, and may not exceed \$25,000 unless approved by the Council. If approved, the contract will continue through August 21, 2022 and will renew automatically for two additional 1-year periods with the option to further extend the initial term or any renewal term an additional 90 days. The contract does not specify a maximum compensation for the initial 3-year term. Compensation may not exceed \$75,000 for the entire 5-year and 3-month term, including the renewal and extension periods. See Exhibit A.

Fiscal Summary

Funding Source	Maximum Compensation	Notes
County ⁽¹⁾	\$ 75,000	⁽¹⁾ Employees' Retirement System.
State	--	⁽²⁾ Maximum compensation for the entire 5-year and 3-month term, including the renewal and extension periods. The contract does not specify a maximum compensation for the initial 3-year term.
Federal	--	
Other	--	
Total	<u>\$ 75,000</u> ⁽²⁾	

Analysis

The contractor will provide death audit services to ensure that no benefit payments are made to deceased members of the Employees' Retirement System of Baltimore County. Services include a match of the County's file of retirees to the contractor's database of death records, which is derived from various sources, including governmental records and proprietary sources. The Office advised there are approximately 10,000 retired members, and the contractor will provide

constant monitoring with real-time access to information. The County will submit its files of retired members quarterly. The contractor will provide a written report of death matches.

The contractor will charge a flat annual fee of \$10,000 for up to 10,000 records and \$1.00 per additional record. If the County requests copies of death certificates, the contractor will charge \$65 to \$75 per certificate (depending on the state). Additionally, the contractor will charge \$0.10 per record and \$1.50 per data point (e.g., first name, last name, address) to remove or update incorrect County data.

The contract commenced August 22, 2019, continues until February 28, 2020, and may not exceed \$25,000 unless approved by the Council. If approved, the contract will continue through August 21, 2022 and will renew automatically for two additional 1-year periods with the option to further extend the initial term or any renewal term an additional 90 days on the same terms and conditions, unless the County provides notice of non-renewal. The contract does not specify a maximum compensation for the initial 3-year term. Compensation may not exceed \$75,000 for the entire 5-year and 3-month term, including the renewal and extension periods. The Office of Budget and Finance, Purchasing Division advised that the County will incur contract costs totaling approximately \$10,000 for services provided prior to Council approval (the first year's annual fee).

Prior to the commencement of each renewal period, the County may entertain a request for an escalation in unit prices in accordance with the Consumer Price Index – All Urban Consumers – United States Average – All Items (CPI-U), as published by the United States Department of Labor, Bureau of Labor Statistics at the time of the request, or up to a maximum 5% increase on the current pricing, whichever is lower. The County may terminate the agreement by providing 30 days prior written notice.

The County awarded the contract through a competitive procurement process (informal bids). The Office advised that because the sole respondent quoted a higher-than-anticipated price, the Office then negotiated a price with the County's current contractor for these services, who has been providing these services for the County since 1999.

On August 4, 2014, the Council approved a 5-year and 3-month contract with Pension Benefit Information, Inc. not to exceed \$25,000 for similar services. The County's financial system indicated that as of January 24, 2020, \$21,993 had been expended/encumbered under this contract.

County Charter, Section 715, requires that “any contract must be approved by the County Council before it is executed if the contract is...for services for a term in excess of two years or involving the expenditure of more than \$25,000 per year....”



COUNCIL ACTION REQUEST FORM EXECUTIVE SUMMARY

The Contractor shall provide the Office of Budget and Finance- Retirement Division (herein the County), with timely and accurate death audit services, of the County's file of approximately 10,000 retired members, in order to identify deceased members.

The frequency of data match services will be constant monitoring with web-based application, which provides real time access to information. The County will submit files quarterly: March, June, September and December.

The Contractor shall match the County's file to an extensive database of death records, from a variety of sources, including governmental records and their own proprietary sources. The research process shall be made on the Social Security Number (SSN) as well as, the name and date of birth, which are included in the County's file.

The Contractor shall provide a written report of death matches, which shall include the first name, last name, SSN, date of birth, date of death, sex, State of death and the name of the agency that reported the death to the Contractor. The Contractor may be required to provide additional related services at an added cost, such as obtaining death certificates.

Prepared by: Office of Budget and Finance

MB-1 (Res. 21-20)

Council District(s) All

Councilmembers Kach, Marks & Patoka

Rules of Procedure – Baltimore County Council

Resolution 21-20 amends Rule 2 of the Rules of Procedure for the Baltimore County Council in Appendix A of the Baltimore County Code, 2015.

Specifically, the resolution amends subsection D of Rule 2 that sets forth requirements for work session agendas. The existing “Contents of Agenda” provisions are re-numbered to Rule 2.D.1. The resolution also adds a new subsection, Rule 2.D.2, that requires all work sessions of the County Council to start at 6:00 p.m. or later as determined by the Chair. Prior to being deferred, an amendment to the resolution was passed by the Council at the Legislative Session on February 3, 2020, which changed the time specified in the resolution from 6:00 p.m. to 4:00 p.m.

Under the current Rules of Procedure, there is not a required start time for work sessions of the County Council. Currently, the Council holds work sessions on the Tuesday prior to a legislative session, starting at 2:00 p.m. Work sessions are not discussed in the County Charter or Code, unlike legislative sessions, which generally must occur on the first Monday of each month pursuant to Section 208 of the Charter. However, no start time for legislative sessions is mandated by the Charter, Code, or Rules of Procedure.

Traditionally, work sessions have been considered a proper time for the public to offer in-person testimony on a matter before the Council. However, members of the public may submit in-person testimony at a legislative session that occurs prior to a vote on a matter and written testimony at any time by mail, e-mail, fax, or hand delivery. All written testimony is forwarded to the Councilmembers and is placed in the meeting file along with any exhibits offered by an in-person affiant.

Resolution 21-20 as originally drafted indicated the resolution would take effect on the date of its adoption by the County Council. However, an amendment to the resolution passed by the Council prior to the above-referenced deferral, changed the effective date to July 1, 2020.