



**ANNE ARUNDEL COUNTY
OFFICE OF THE COUNTY AUDITOR**

To: Members of the County Council

From: Susan L. Smith, County Auditor

Date: March 10, 2021

Subject: Legislation to be heard or eligible to vote on March 15, 2021: Bill Nos. 11-21, 14-21, 16-21, 17-21, 18-21, 19-21, 20-21, and 21-21; and Resolution Nos. 17-21, 18-21, and 19-21.

Bill No. 11-21: Planning and Zoning – General Development Plan – Plan2040 (Previously Held)

This bill repeals the 2009 General Development Plan (GDP) and related amendments and adopts the GDP set forth in “Plan2040,” an official policy document intended to guide future growth, development, resource management and protection, and provision of County services. This bill also eliminates a reference to the Glen Burnie Small Area Plan.

We commented on the bill in our letter dated February 24, 2021. At the March 1, 2021 Council meeting, the County Council voted to hold the vote on this bill. We have no additional comments.

Bill No. 14-21: Zoning and Construction Code – Setbacks and Permits for Certain Accessory Structures (As Amended)

This bill reduces the minimum front lot line setback in an R5 district for accessory structures other than sheds that do not exceed 64 square feet in area and 8 feet in height from 50 to 40 feet. Additionally, the bill increases the maximum floor area square footage of one-story detached accessory structures exempt from permit from 64 to 150 square feet.

We commented on this bill in our letter dated February 24, 2021. At the March 1, 2021 Council meeting, this bill was amended to only increase the maximum floor area square footage of one-story detached accessory structures to 150 square feet if it is an accessory to a residential structure. Thus, leaving the maximum floor area square footage of one-story detached accessory structures at 64 square feet for those that are accessory to a nonresidential structure.

This amendment has no fiscal impact to the County.

Bill No. 16-21: Personnel – Positions in the Exempt Service – Police Department

This bill adds one additional Police Major exempt service position and one Police Chief of Staff exempt service position in the Police Department’s fiscal year 2021 (FY2021) Approved Operating Budget. There are currently three Police Major exempt service positions and no Police Chief of Staff positions in the FY2021 Approved Operating Budget. The additional Police Major position will

command a new bureau created by the department that will focus on community relations, juvenile intervention, crisis intervention, youth diversion programs, adult re-entry programs, and other community-related missions. These initiatives are currently handled in the Patrol Services Bureau. The Police Chief of Staff position will be responsible for assisting the Police Chief with the daily operations by assisting with department programs, managing the department's media relations, and other duties as assigned by the Chief. The FY2015 Approved Operating Budget was the last budget the Police Chief of Staff position was budgeted.

According to the Police Department, the plan is to fill these positions before the end of the current fiscal year, and if so, there will be a FY2021 fiscal impact for the partial salaries and benefits. According to the Police Department and the Office of the Budget, if the positions are filled in FY2021, they will most likely request additional appropriations and the amount needed will be determined at that time.

Fiscal Impact: The Police Major position is in the E6 pay grade with an annual salary range of \$93,539 to \$171,184. The total annual fiscal cost for the Police Major position including FICA and benefits would range from \$114,500 to \$277,300. The FY2021 fiscal impact for two month's salary and benefits for this Police Major position would range from \$17,700 to \$33,700.

The Police Chief of Staff position is in the E5 pay grade with an annual salary range of \$84,739 to \$151,302. The total annual fiscal cost for the Police Chief of Staff position including FICA and benefits would range from \$104,400 to \$218,000. The FY2021 fiscal impact for two month's salary and benefits for the Police Chief of Staff position would range from \$16,100 to \$30,400.

This bill only requests the positions and does not increase the Police Department's FY2021 Approved Operating Budget. If the positions are filled in FY2021, a request for additional funding will be requested in a separate bill.

Bill No. 17-21: Personnel – Positions in the Classified Service – Job Classifications – Position Control – Fire Department and Police Department:

This bill changes the title of the Fire Communications Operator position to Fire Communications Operator I with the same LM10 paygrade, adds a Fire Communications Operator II at a LM11 paygrade to provide an additional level in a proficiency series for advancement, and a Fire Communications Operator III to provide a competitive promotion position at a NR14 paygrade. This bill also deletes 29 Fire Communications Operator positions and adds 29 Fire Communications Operator I positions in the Fire Department's FY2021 Approved Operating Budget. Further, this bill deletes one Secretary II position at an OS4 paygrade, and adds one Office Support Assistant II position at an OS4 paygrade in the Police Department's FY2021 Approved Operating Budget.

According to the Fire Department, there is a need for a proficiency advancement in the Fire Communication Operator position as currently employees in this position have no path for advancement, which has resulted in continuous turnover. The new Fire Communications Operator II position will have added administrative support functions and serve as trainers and mentors for newly hired entry level employees, and will require a communications training officer certification and a public safety telecommunicator II certification. The new Fire Communications Operator III position will be responsible for direct supervision of staff and act as a shift supervisor for one of the four shifts, lead training officer, or quality assurance and improvement officer. This will allow uniformed Fire Department personnel currently serving in this supervisory role to be reassigned to other fire and emergency medical service delivery roles.

Our review disclosed that there is currently one recently vacated position and 27 employees filling Fire Communications Operator positions. Of the filled positions, 8 have been in the position for under two years, 14 have been in the position at least two years but less than five years, and 5 have been in the position for more than five years. According to the Fire Department, none of them have met the certification requirements for advancement at this time, and the Fire Department does not expect to request any advancements during FY2021. However, the Fire Department does plan to request advancements in the FY2022 budget.

The annual fiscal cost of the Fire Communications Operator positions are as follows:

Title	Pay Grade	Salary Range	Salary, FICA & Benefits
Fire Communications Operator I	LM10D	\$41,974 - \$65,998	\$54,914 - \$107,671
Fire Communications Operator II	LM11D	\$44,096 - \$69,368	\$57,368 - \$112,061
Fire Communications Operator III	NR14D	\$48,020 - \$81,603	\$61,906 - \$128,003

This bill also deletes one vacant Secretary II (represented) position in an OS4 paygrade, and adds one Office Support Assistant II (represented) position in an OS4 paygrade in the Police Department's FY2021 Approved Operating Budget. According to the Police Department, it was determined that the Secretary II position was no longer needed in the unit for which it was previously filled, and that this position could provide support to another unit of the Police Department, and the Office Support Assistant II job description aligns more with the functional work that will be assigned in the new role. Since the paygrade is the same for both positions, there is no fiscal impact for this change.

Item to Note: During our review, we noted that the number of Fire Communications Operator positions in the Fire Department's FY2021 Approved Operating Budget is 28, not 29. We brought this to the attention of the Administration, and they agreed and will be requesting an amendment to change the number of positions being changed from Fire Communications Operator to Fire Communications Operator I from 29 to 28, on page 2, lines 6 and 8.

Bill No. 18-21: Budget – Department Personnel Summaries – Reclassifications of Positions

The bill allows the number of positions requested by position title and classification in the upcoming fiscal year's budget to include reclassifications of employee occupied positions in the current year's fiscal budget. Under this bill, these employees will remain in their current position title and classification and will be considered to be underfilling the reclassified position until the employee is reclassified or hired into the reclassified position title and classification in accordance with the Anne Arundel County Code and the *Employee Relations Manual*. Further, the bill requires the current expense budget to identify the positions that are occupied and that are being reclassified and considered underfilled. Underfilled means employment of a person in a classification lower than the level of the position allocated in the budget.

Anne Arundel County Code §§ 6-1-110(a) and 6-2-103 states that the number and classification of positions approved in the annual budget and appropriation ordinance (ABAO) cannot be changed except as approved by ordinance of the County Council. Anne Arundel County Code § 6-110(b) lists exceptions to this law to include reclassifying an occupied position based on an evaluation by the Personnel Officer of the duties, tasks, and responsibilities performed by the employee in the position or based on a proficiency advancement within a proficiency class series. Currently, according to Anne Arundel County Charter § 810, if an employee's current position is abolished, that employee would be suspended and placed on an eligibility list for the position for which the employee is qualified. Thus, if the department wanted to reclassify a filled position and avoid suspension of an employee, the budget must list the employee's current position, and then after the Personnel Officer completes their review and determines the employee should be reclassified, then that position is reclassified during the year and shown in the next budget.

Anne Arundel County Code § 6-110(b) refers to reclassifying a position based on an employee evaluation by the Personnel Officer. Currently, the employee's actual position would be in the approved budget at the start of the year, and this evaluation allows for the position to be reclassified in the budget during the year without Council approval. The new reclassified position would then show as an adjustment in the next proposed budget. Under this bill, the position will be reclassified in the budget and at the start of the fiscal year, and the employee is being reclassified or hired into the position during the year and until then is underfilling the position. Although Anne Arundel County Code § 6-110(b) refers to reclassifying a position, according to the Office of Law, the portion of this bill that states employee reclassifications under this bill will be required "to comply with the Code and *Employee Relations Manual*" requires employee reclassifications during the year to comply with the Anne Arundel County Code § 6-110(b) requirement that the reclassification be based on an evaluation by the Personnel Officer, even if the *Employee Relations Manual* is changed at a later date to eliminate that requirement.

According to the Office of the Budget, its intent is to only show those positions that are employee occupied that it is newly reclassifying as part of the proposed fiscal year budget, not positions that were reclassified in a prior budget that are still underfilled or otherwise underfilled positions. The Office of the County Auditor's Office currently obtains a list from the Office of Personnel of all employees that are currently underfilling positions as part of the review of the proposed budget and will continue to do so to identify existing underfilled positions.

Item of Note: We recommend amending line 17 after the first "the" to add "proposed and adopted." The current language could be misinterpreted to only identify these positions once the budget is approved and not in the proposed budget. Further, while the Office of the Budget has agreed to provide us with a list of the employee names, employee identification number, current position and job classification, and reclassified position and job classification, the County Council might want to amend the bill to codify as a requirement that this list be provided to the Office of the County Auditor.

Bill No. 19-21: Crimes, Civil Offenses, and Fines – Crimes – Littering

This bill provides that littering in violation of the law is subject to a Class D civil offense, which according to Anne Arundel County Code § 9-2-101, is \$125 for the first violation, \$500 for the second violation, and \$1,000 for the third or any subsequent violation. This bill defines litter and prohibits littering in accordance with Md. Code Ann., Criminal Law § 10-110, which prohibits littering on County roads, violation of State vehicle laws regarding littering, and littering on public or private property unless: (1) the property is designated by the State or political subdivision for the disposal of litter, and the person

is authorized to use the property; or (2) litter is placed into a garbage or solid waste container. These fines would be issued on citations and collected by the Police Department as County revenue.

Md. Code Ann., Criminal Law § 10-110(f) provides that a person who disposes of litter in violation of the State law is guilty of a misdemeanor and is subject to: (1) imprisonment not exceeding 30 days, a fine not exceeding \$1,500, or both, if the amount does not exceed 100 pounds or 27 cubic feet, and it is not for commercial gain; (2) imprisonment not exceeding one year, a fine not exceeding \$12,500, or both, if it exceeds 100 pounds or 27 cubic feet but does not exceed 500 pounds or 216 cubic feet and is not for commercial gain; or (3) subject to imprisonment not exceeding five years or a fine not exceeding \$30,000, if it exceeds 500 pounds or 216 cubic feet or was for commercial gain. Md. Code Ann., Criminal Law § 10-110(f) was recently amended to allow Anne Arundel County to adopt an ordinance itself prohibiting littering and establishing criminal and civil penalties.

The Police Department does not anticipate an increase workload as the result of this bill since it does not expect an increase in enforcement. Enforcement will continue to occur upon witnessing by an officer or, to a lesser extent, in response to complaint calls. This bill will provide the Police Department with more flexibility in the penalty assessed. These penalty options will result in County revenue. The Police Department expects minimal increases in County revenue as a result of these fines assessed.

Bill No. 20-21: Floodplain Management, Erosion and Sediment Control, and Stormwater Management – Subdivision and Development – Forest Conservation

This bill expands the definition of a standard grading plan used for minor grading in lieu of a grading permit to also authorize a clearing, grading, or disturbance of less than 5,000 square feet even if that grading is not associated with minor commercial and residential construction. This bill requires replanting at a ratio of one to one (unless another provision has a stricter requirement) or the payment of a set fee-in-lieu of planting for a standard grading plan approving a clearing. This bill also prohibits a person from clearing more than three trees or 1,000 square feet of forest, whichever is less, in five of the seven priority retention areas listed in Anne Arundel County Code §17-6-303(b) without a standard grading plan, grading permit, or approved forest management plan and establishes that a violation of this requirement is a Class A offense carrying a fine at \$4.50 per square foot of trees cleared not to exceed \$10,000. Further, this bill requires replanting at a ratio of three to one for all forest conservation violations and violations of Article 16, not just clearing violations, allows for a payment of a set fee-in-lieu of replanting, and requires the payment of a civil fine for violation of the critical area law at a rate of \$1.50 per square foot of mitigation in addition to the civil fines established for clearing in violation.

Currently, clearing or grading over 5,000 square feet without approval is a violation. Under current law, violations for clearing or grading more than 5,000 square feet outside of the critical area buffer without approval would be cited as grading without a permit and would be a Class C civil offense, which carries a fine of \$500 for the first violation and \$1,000 for the second or any subsequent violations. Clearing in the critical area violations are currently already a Class A civil offense. Currently, if the tree removal or clearing does not require a grading permit (less than 5,000 square feet of disturbance), there is currently no violation of the County Code. This bill creates a new class of fine (Forest Clearing Violations) for all clearing of three or more trees or 1,000 square feet in a forest within one of five priority retention areas as a Class A civil offense of \$4.50 per square feet, not to exceed \$10,000 per violation. The \$4.50 per square feet was chosen to align with the amount approved in Bill No. 68-19 for clearing in violation of the forest conservation statutes in Article 17. Maryland Annotated Code Environment Article § 4-116(c) allows a civil action against a person who violates any provision of the

Sediment Control Subtitle to include a civil penalty up to \$10,000 for each violation in addition to other sanctions allowed.

The primary purpose for this new class of fines for forest clearing violations is to close an unintended loophole in the forest conservation statutes that currently only apply after a developer has submitted a development application with the County. Thus, developers could cut down large numbers of trees on properties and then file their applications and would only be subject to a small grading fine of \$500, which was not sufficient to deter their behavior.

This bill also provides clarity and reflects the existing practice to require replanting at a ratio of three to one for all Article 16 violations, not just clearing violations, and clarifies that for any replanting that cannot be achieved in accordance with the Code, a person shall be required to pay a fee-in-lieu as set forth in Anne Arundel County Code § 17-11-101. This bill also requires that in addition to any civil fines or the fee-in-lieu, a person shall pay the fee for the clearing in violation of the critical area law as set forth in § 17-11-101 (\$1.50 per square foot of mitigation required) for the entire area cleared, graded, or disturbed. This bill also revises Anne Arundel County Code § 17-6-309 to be consistent and require replanting at a ratio of three to one for forest conservation violations versus the current ratio of two to one, continues the fee-in-lieu of replanting requirement, and clarifies that in addition to any civil fines and fees in-lieu of replanting, the person in violation of the forest conservation law shall also pay the clearing in violation of the forest conservation law of \$4.50 per square foot of area cleared.

This bill prohibits the clearing of more than three trees or 1,000 square feet of forest, whichever is less, from the following five priority retention areas listed in Anne Arundel County Code § 17-6-303(b):

- Trees, shrubs, and plants located in sensitive areas, including the 100-year floodplain, intermittent and perennial streams, and their buffers, steep slopes, non-tidal wetlands, and all associated buffers; and critical habitat areas, as defined in Maryland Annotated Code Natural Resources Article § 5-1601;
- Trees, shrubs, or plants determined to be rare, threatened, or endangered under the Federal Endangered Species Act of 1973 set forth in 16 U.S.C. §§ 1531 – 1544 and in 50 CFR Part 17; the Maryland Nongame and Endangered Species Conservation Act set forth in Maryland Annotated Code Natural Resources Article §§ 10-2A-01 et seq. and Code of Maryland Regulations Title 8;
- Trees that are champion trees, part of a historic site, or associated with a historic structure;
- A tree that has a diameter measured at 4.5 feet above the ground of 30 inches or more or that is 75% or more of the diameter of the current state champion tree of that species; or
- Habitats or potential habitats for forest interior dwelling birds and other wildlife species that consist of a minimum of 75 acres of contiguous forest with 10 or more acres of contiguous forest located more than 300 feet from the nearest forest edge, or a minimum of 75 acres of contiguous riparian forests along a perennial stream with an average width of at least 300 feet.

The other two priority retention areas in Anne Arundel County Code § 17-6-303 that are not included in the proposed bill are: (1) contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site, and (2) forested areas at least 35 feet wide with a total area of 10,000 square feet. They were not included because they describe forest in general, rather than the specific priority retention areas this bill seeks to protect.

Fiscal impact: The Department of Inspections and Permits (I&P) estimates that this change will result in an additional 40 to 50 additional applications for projects per year. I&P expects the increase in

workload to be minimal and does not expect a fiscal impact from this bill. In FY2020, I&P processed 432 Grading Permit applications, 275 Single Grading Plan applications, and 1,164 Vegetative Management Plan applications. For FY2021 to date, I&P has processed 268 Grading Permit applications, 136 Single Grading Plan applications, and 939 Vegetative Management Plan applications.

There have been multiple Class C violations over the recent years for clearing in excess of 5,000 square feet (outside of the critical area buffer) with a fine of \$500. During FY2020 and FY2021 to date, there were 10 and 29 Class C civil violations issued for grading violations, respectively. In one example case from FY2020, the Department of Inspections and Permits found 14 trees outside of the Critical Area and outside of the Priority Funding Area, totaling 16,351 square feet that were cleared without a grading permit, and the property owner replanted onsite at a ratio of three to one. If the trees could not have been replanted onsite, the property owner would have been required to pay a fee-in-lieu of \$1.50 per square foot, or \$24,527. Under Bill No. 20-21, this property owner would have been subject to a Class A civil fine capped at \$10,000, instead of \$500. The replanting requirements and fee-in-lieu of replanting would not have changed. Also, under Bill No. 20-21, the Class A violation, replanting, or fee-in-lieu of replanting would also apply to clearing in one of the specified five priority areas when it involved three or more trees or at least 1,000 square feet.

This bill will result in additional civil fines and fees-in-lieu of replanting, however, the amount will be dependent on the number of violations and the area covered.

Bill No. 21-21: Zoning – Landscaping and Tree Contracting with Accessory Recycling of Logs into Firewood

This bill allows landscaping and tree contracting with the recycling of logs into firewood as a special exception use in Rural Agricultural (RA) zones. The conditions for the special exception use are spelled out on p. 2, line 16 through p. 3, line 16 of the proposed bill.

Landscaping and tree contracting, without recycling of logs into firewood, is already a special exception use in RA and Residential Low Density (RLD) zones and the special exception requirements are listed in Anne Arundel County Code § 18-11-131.

The Office of Planning and Zoning does not expect a significant change in workload from this bill. This bill has no fiscal impact to the County.

Resolution No. 17-21: Endorsing Loan from the Maryland Economic Development Assistance Authority and Fund (MEDAFF) to L3 Technologies, Inc.

This resolution endorses a \$300,000 loan from Advantage Maryland (MEDAFF) to L3 Technologies, Inc. (a wholly owned subsidiary of L3Harris Technologies). The loan is being used to expand L3 Technologies, Inc.'s maritime sensor division in the County. The County is not responsible for the repayment of the loan, however, Anne Arundel Economic Development Corporation (AAEDC) must provide a 10% match as a requirement of the loan program. AAEDC will provide this match through a grant to L3 Technologies, Inc. for job training. AAEDC has sufficient funding in its FY2021 Approved Operating Budget to provide this match. The loan program requires County Council endorsement of this loan.

Item of Note: The bill has the parent company listed incorrectly with a space between L3 and Harris. The Office of Law has agreed that the correct parent name is L3Harris Technologies, Inc.

Resolution No. 18-21: Joint Initiative to Eliminate the Opportunity Gap Committee Report

This resolution provides Council support for the goals, strategies, and recommendations in the November 30, 2020 Joint Initiative to Eliminate the Opportunity Gap Committee Report (Report). This resolution also requests that the Joint Initiative to Eliminate the Opportunity Gap Committee provide the Council, at intervals of no less than six months, reports on the implementation of their recommendations and any progress made on reaching its goals.

The Report recommends that the following four priority recommendations be adopted and implemented by June 30, 2021:

1. Establish an independent coalition comprising of equal representation from all stakeholder communities to recommend changes to address equity issues in academics and discipline, and to define and track metrics with the County and the Anne Arundel County Public Schools (AACPS). The Committee also recommends that the coalition's mission and authority be codified and that, in the interim, a memorandum of agreement be entered into by the stakeholder committee, the County, and AACPS.
2. Engage government agencies and community partners to mitigate the effects of social determinants of education in low-income communities to increase readiness for school and achievements in school. This will include inventorying programs for children ages 0-5, identifying gaps, increasing proactive support services when needed, improving access to library and child development support programs, addressing transportation issues, addressing trauma related to poverty and systemic racism, and examine where disparity occurs in the implementation of discipline inside and outside of school.
3. Increasing transparency and accountability by improving the public's ability to locate, read and interpret available reports on progress toward opportunity gap goals. The coalition will be responsible for defining and tracking metrics disaggregated by race and ethnicity on a scheduled time schedule. The County and AACPS would increase communication and make the gap metrics easily accessible, including putting them on the Open Arundel website.
4. Establish a practice of preparing a documented equity analysis to accompany all proposed policies and decisions that includes the Board of Education, AACPS, the County, and the County Council. Further, it states that equity analysis should be weighted equally with legal and financial analyses when making decisions.

Additionally, this Report provides a number of more detailed subcommittee goals and strategies. This resolution in itself has no fiscal impact, as it is a statement of support. Many of the recommendations, goals, and strategies could have a significant fiscal impact either at the County or AACPS level. However, neither the Administration nor AACPS has had the opportunity to determine the fiscal impact at this time.

According to AACPS, the Report was only recently introduced to the Board of Education. The budget request for FY2022 has already been submitted and does not include funding specifically for these recommendations. AACPS intends to start the review of these recommendations with existing resources and determine what recommendations can be implemented with existing resources and possible grant funding.

According to the Administration, there will be no fiscal impacts for FY2022, but it will be requesting funds in FY2023. The Administration anticipates that the first priority recommendation will be completed by June 30, 2021. The Administration is in the process of looking at many variables,

including fiscal impact, and the coalition will be helping the Administration to determine the prioritization of the other recommendations and subcommittee goals and strategies.

Resolution No. 19-21: Statewide Comprehensive Plan to Divert Food Residuals from Landfills

This resolution provides Council support for the development of a comprehensive, statewide plan to divert food residuals from landfills within the County and across the State.

According to the Administration, the County's assistance in the development of a comprehensive, statewide plan to divert food residuals from landfills within the County and across the State will be done with existing personnel and does not have a fiscal impact, however, any legislative, regulatory, or programmatic changes arising from the implementation of the plan's recommendations may have a fiscal impact that will be addressed at that time.



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