



Committee: PHED

Committee Review: At a future date

Staff: Livhu Ndou, Legislative Attorney

Purpose: To receive testimony – no vote expected

Keywords: #BiohealthPriorityCampus

AGENDA ITEM #6

November 30, 2021

Public Hearing

SUBJECT

Zoning Text Amendment (ZTA) 21-09, Office and Professional – Biohealth Priority Campus

Lead Sponsor: Councilmember Friedson

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

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

DESCRIPTION/ISSUE

ZTA 21-09 will create a streamlined regulatory process for biohealth facilities.

SUMMARY OF KEY DISCUSSION POINTS

- ZTA 21-09 will create a new definition for Biohealth Priority Campus that includes Life Sciences, Research and Development, or Medical/Scientific Manufacturing and Production.
- ZTA 21-09 will allow a speedier regulatory process for biohealth facilities of 150,000 square feet or more or existing biohealth facilities already located in the County that are expanding by 50,000 square feet or more.
- This new use will be allowed in the Commercial/Residential and Employment Office zones and for developments within or adjacent to a red policy area, within an opportunity zone, or within ½ mile of a planned or existing Bus Rapid Transit route.

This report contains:

ZTA 21-09
Map of Affected Areas

© 1-23

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Zoning Text Amendment No.: 21-09
Concerning: Office and Professional –
Biohealth Priority
Campus
Draft No. & Date: 1 – 10/13/2021
Introduced: October 19, 2021
Public Hearing:
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Councilmember Friedson
Co-Sponsors: Councilmember Riemer, Council President Hucker, and Councilmembers
Albornoz, Navarro, Katz, Glass, Jawando, and Rice

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- create a Biohealth Priority Campus use; and
- provide a process for approval of a Biohealth Priority Campus.

By amending the following sections of the Montgomery County Zoning Ordinance,
Chapter 59 of the Montgomery County Code:

DIVISION 1.4.	“DEFINED TERMS”
Section 1.4.2.	“Specific Terms and Phrases Defined”
DIVISION 3.1.	“USE TABLE”
Section 3.1.6.	“Use Table”
DIVISION 3.5.	“COMMERCIAL USES”
Section 3.5.8.	“Office and Professional”
DIVISION 4.5.	“COMMERCIAL/RESIDENTIAL ZONES”
Section 4.5.2.	“Density and Height Allocation”
Section 4.5.4.	“Optional Method Development”
DIVISION 4.6.	“EMPLOYMENT ZONES”
Section 4.6.2.	“Density and Height Allocation”
Section 4.6.4.	“Optional Method Development”
DIVISION 7.3.	“REGULATORY APPROVALS”
Section 7.3.3.	“Sketch Plan”
DIVISION 7.5.	“NOTICE STANDARDS”
Section 7.5.1.	“Noticed Required”

And by adding the following section:

Section 7.3.6. “Biohealth Priority Campus Plan”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-1.4 is amended as follows:

Division 1.4. Defined Terms

* * *

Section 1.4.2. Specific Terms and Phrases Defined

* * *

Biohealth Priority Campus: See Section 3.5.8.E

* * *

Sec. 2. DIVISION 59-3.1 is amended as follows:

Division 3.1. Use Table

* * *

Section 3.1.6. Use Table

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

15

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential				Residential												Commercial / Residential			Employment				Industrial		
							Residential Detached								Residential Townhouse			Residential Multi-Unit										
		AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM	IH
* * *																												
COMMERCIAL																												
* * *																												
Office and Professional	3.5.8																											
Life Sciences	3.5.8.A																						P					
Office	3.5.8.B								C	C	C							P	P	P	P	P	L	P	L	L		
Research and Development	3.5.8.C																		P	P			P	L	P	P		
Signature Business Headquarters	3.5.8.D																			L								
Biohealth Priority Campus	3.5.8.E																			L				L				
* * *																												

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Sec. 3. Division 3.5 is amended as follows:

Division 3.5. Commercial Uses

* * *

Section 3.5.8. Office and Professional

* * *

E. Biohealth Priority Campus

1. Defined

Biohealth Priority Campus means the headquarters or other primary place of business of a single commercial or industrial organization, including ancillary uses, that includes at least 150,000 square feet of new space to be constructed or 50,000 square feet of new space to be added to an existing building or group of buildings:

- a. that qualifies as a Life Sciences or Research and Development Use under Section 3.5.8 or as a Medical/Scientific Manufacturing and Production Use under Section 3.6.4.D; and
- b. is located within or adjacent to a red policy area, within an opportunity zone, or within ½ mile of a planned or existing Bus Rapid Transit route.

2. Exemptions

- a. A sketch plan and a site plan are not required for a Biohealth Priority Campus if the Planning Board approves a Biohealth Priority Campus plan under Section 7.3.6.
- b. Development of a Biohealth Priority Campus should proceed under the standards of the underlying zone and Chapter 50, except as modified by Section 3.5.8.E.
- c. After a Biohealth Priority Campus Plan is approved, subsequent additions or expansions of the Biohealth Priority Campus, in

any size or amount, will be processed under Section 7.3.6 as amendments.

3. Use Standards

- a. Commercial and residential FAR limits on the subject property may be reallocated if the total FAR does not exceed the maximum total mapped FAR of the property.
- b. A mechanical penthouse, and the roof structures listed in Section 4.1.7.C.3, may occupy a maximum of 50% of the roof area.
- c. The subject property may utilize FAR averaging under Sections 4.5.2.B. and 4.6.2.B.

* * *

Sec. 4. DIVISION 59-4.5 is amended as follows:

Division 4.5. Commercial/Residential Zones

* * *

Section 4.5.2. Density and Height Allocation

* * *

B. FAR Averaging

- 1. Only standard method development projects that require site plan approval or optional method development projects can average FAR between properties.
- 2. FAR may be averaged over 2 or more directly abutting or confronting properties in one or more Commercial/Residential zones[,] if:
 - a. the properties are under the same site plan, sketch plan, [or] Signature Business Headquarters plan, or Biohealth Priority Campus plan; however, if a sketch plan, [or] Signature Business Headquarters plan, or Biohealth Priority Campus plan is

- 71 required, density averaging must be shown on the applicable
 72 plan;
- 73 b. the resulting properties are created by the same preliminary
 74 subdivision plan or satisfy a phasing plan established by an
 75 approved sketch plan, [or] Signature Business Headquarters
 76 plan, or Biohealth Priority Campus plan;
 - 77 c. the maximum total, nonresidential, and residential FAR limits
 78 apply to the entire development, not to individual properties;
 - 79 d. the total allowed maximum density on a resulting property that
 80 is abutting or confronting a property in an Agricultural, Rural
 81 Residential, or Residential Detached zone that is vacant or
 82 improved with an agricultural or residential use does not exceed
 83 that allowed by the property's zone; and
 - 84 e. public benefits are required to be provided under any phasing
 85 element of an approved sketch plan, [or] Signature Business
 86 Headquarters plan, or Biohealth Priority Campus plan.
- 87 3. Density may be averaged over 2 or more non-contiguous properties in
 88 one or more CRT or CR zones[,] if:
- 89 a. [Each] each provision under Section 4.5.2.B.2 is satisfied;
 - 90 b. [The] the properties are within ¼ mile of each other, located in
 91 a designated master-planned density transfer area, or are part of
 92 a Signature Business Headquarters plan or Biohealth Priority
 93 Campus plan;
 - 94 c. [The] the minimum public benefit points required under
 95 Section 4.5.4.A.2 must be exceeded by at least 50%; and
 - 96 d. [The] the applicable master plan does not specifically prohibit
 97 the averaging of density between non-contiguous properties.

4. If the Planning Board approves a site plan [or], Signature Business Headquarters plan, or Biohealth Priority Campus plan for a development project using FAR averaging across two or more lots, the maximum density on certain lots in the development project will be less than or greater than the zone allows, as indicated in the applicable plan. To provide additional notice of the FAR averaging, before the Planning Board approves a certified site plan [or], certified Signature Business Headquarters plan, or Biohealth Priority Campus plan for such a project or, if plat approval is required, before plat approval, the applicant must state the gross square footage taken from any lot with reduced density in an instrument approved by the Planning Board and must record the instrument in the Montgomery County land records.

* * *

Section 4.5.4. Optional Method Development

The CRT and CR zones allow development under the optional method.

A. General Requirements

1. Procedure for Approval

A sketch plan must be approved under Section 7.3.3, unless a Signature Business Headquarters plan is approved under Section 7.3.5 or a Biohealth Priority Campus plan is approved under Section 7.3.6.

A site plan must be approved under Section 7.3.4 for any development on a property with an approved sketch plan.

* * *

Sec. 5. DIVISION 59-4.6 is amended as follows:

Division 4.6. Employment Zones

* * *

Section 4.6.2. Density and Height Allocation

* * *

B. FAR Averaging

1. Only standard method development projects that require site plan approval or optional method development projects can average FAR between properties.
2. FAR may be averaged over 2 or more directly abutting or confronting properties in one or more Employment zones[,] if:
 - a. the properties are under the same site plan, [or] sketch plan, or Biohealth Priority Campus plan; however, if a sketch plan or Biohealth Priority Campus plan is required, density averaging must be shown on the [sketch] applicable plan;
 - b. the resulting properties are created by the same preliminary subdivision plan or satisfy a phasing plan established by an approved sketch plan or Biohealth Priority Campus plan;
- * * *
- e. public benefits are required to be provided under the phasing element of an approved sketch plan or Biohealth Priority Campus plan.
3. Density may be averaged over 2 or more non-contiguous properties in one or more LSC or EOF zones[,] if:
 - a. [Each] each provision under Section 4.6.2.B.2 is satisfied;
 - b. [The] the properties are within ¼ mile of each other or in a designated master-planned density transfer area or part of a Biohealth Priority Campus plan;
 - c. [The] the minimum public benefit points required under Section 4.6.4.A.2 [must be] are exceeded by at least 50%; and

d. [The] the applicable master plan does not specifically prohibit the averaging of density between non-contiguous properties.

4. If the Planning Board approves a site plan or Biohealth Priority Campus plan for a development project using FAR averaging across two or more lots, the maximum density on certain lots in the development project will be less than or greater than the zone allows, as indicated in the [site]applicable plan. To provide additional notice of the FAR averaging, before the Planning Board approves a certified site plan or certified Biohealth Priority campus plan for such a project or, if plat approval is required, before plat approval, the applicant must state the gross square footage taken from any lot with reduced density in an instrument approved by the Planning Board and must record the instrument in the Montgomery County land records.

* * *

Section 4.6.4. Optional Method Development

The LSC and EOF [zone]zones allow development under the optional method.

A. General Requirements

1. Procedure for Approval

A sketch plan must be approved under Section 7.3.3 or a Biohealth Priority Campus plan must be approved under Section 7.3.6. A site plan must be approved under Section 7.3.4 for any development on a property with an approved sketch plan.

* * *

Sec. 6. DIVISION 59-7.3 is amended as follows:

Division 7.3. Regulatory Approvals

* * *

Section 7.3.3. Sketch Plan

A. Applicability and Description

1. Development under optional method in the CRT, CR, EOF, or LSC zone requires approval of a sketch plan, [or] Signature Business Headquarters plan, or Biohealth Priority Campus plan.

* * *

Section 7.3.6. Biohealth Priority Campus Plan

A. Applicability and Description

1. A Biohealth Priority Campus plan provides a detailed overview of a proposed Biohealth Priority Campus. A Biohealth Priority Campus plan review will be used to determine if the proposed development satisfies current laws, regulations, and this Chapter, and substantially conforms with the intent of the applicable master plan and approved guidelines.
2. A Biohealth Priority Campus plan may be phased, with each phase approved separately under this section.
3. A Biohealth Priority Campus plan may encompass all or part of any property on which the Biohealth Priority Campus will be located and must demonstrate its relation to and coordination with other applicable approvals or submittals. Any amendment to a previously approved plan may follow the timeframe for review under Section 7.3.6.B.3 through Section 7.3.6.B.6, Section 7.3.6.C, and Section 7.3.6.D.

B. Application Requirements

1. Ownership
 - a. An applicant must own the subject property or be authorized by the owner to file the application.

b. If any land or right-of-way encompassed by a Biohealth Priority Campus plan application is owned or controlled by the State, County, or any other entity or agency, a written agreement or authorization from that entity or agency must be submitted with the Biohealth Priority Campus plan application.

2. A Biohealth Priority Campus plan application must include:

- a. a legally binding commitment or other evidence accepted by the Planning Director that the Biohealth Priority Campus will meet the requirements of Section 3.5.8.E.1.
- b. an application form and fees required by the Planning Director;
- c. a site map showing existing buildings, structures, circulation routes, significant natural features, historic resources, and zoning and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;
- d. a list of abutting and confronting property owners in the County tax records;
- e. a list of any civic, homeowners, and renters associations that are registered with the Planning Department and located within ½ mile of the site;
- f. documentation of interest in the proposed development site under Section 7.3.6.B.1;
- g. a statement of justification outlining how the proposed development satisfies the standards and criteria required to grant the application;
- h. verification that the applicant has posted notice on the property, notified affected properties, and held a pre-submittal

- community meeting that followed the Planning Department’s
Administrative Procedures for Development Review process;
 i. a Traffic Statement or Study accepted by the Planning Director,
if not submitted with a previous or concurrent application;
 j. environmental documentation or exemption for:
 i. an approved Natural Resources Inventory/Forest Stand
 Delineation;
 ii. a Stormwater Management Concept Application or, if
 required, a Water Quality Plan Application; and
 iii. a final Forest Conservation Plan application;
 k. existing and proposed dry and wet utility plan;
 l. plans of proposed development showing:
 i. use, footprints, ground-floor layout, and heights of all
 buildings and structures;
 ii. required open spaces and recreational amenities;
 iii. detailed layout and dimensions for all sidewalks, trails,
 paths, roadways, parking, loading, and bicycle storage
 areas;
 iv. grading;
 v. landscaping and lighting; and
 m. a development program and inspection schedule detailing the
construction schedule for the project.
3. The applicant must submit an initial application to the Planning
Director for approval of completeness. The Planning Director must
review the application for completeness within 3 days after receipt.
An application is incomplete if any required element is missing or is
facially defective, e.g., a drawing that is not to scale or lacks proper

signatures. The assessment of completeness must not address the merits of the application.

4. The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness within 2 days after receipt.

5. After the Planning Director verifies that the application is complete, the applicant must file the final application with the Planning Director, who will accept the application and establish a hearing date under Section 7.3.6.C.

6. Public notice is required under Division 7.5.

C. Hearing Date

The Planning Board must schedule a public hearing to begin within 60 days after the date an application is accepted. The applicant may request an extension with Planning Director approval. Any extension of the public hearing must be noticed on the hearing agenda with the new public hearing date indicated.

D. Review and Recommendation

1. State and County Agencies

a. Reviewing State and County agencies and utilities must submit comments within 15 days after the date an application is accepted. If no comments are submitted within that time, the application is deemed approved.

b. The applicant must submit revised drawings to address the comments a minimum of 20 days before the date of the hearing. The Planning Director may extend the deadline if the applicant submits a written request within 5 days after the revised drawings were due.

2. Planning Director

The Planning Director must publish a report and recommendation a minimum of 10 days before the Planning Board hearing.

3. Withdrawal of an Application

The Planning Board must send a notice to all parties entitled to notice of the hearing when an applicant withdraws an application for a Biohealth Priority Campus plan.

E. Necessary Findings

1. When reviewing an application, the approval findings apply only to the site covered by the application.

2. To approve a Biohealth Priority Campus plan, the Planning Board must find that the proposed development:

a. satisfies any previous approval that applies to the site, unless exempt under Section 3.5.8.E.2 or amended;

b. satisfies the applicable use and development standards and general requirements of this Chapter;

c. satisfies the applicable requirements of Chapter 19 and Chapter 22A;

d. provides safe, well-integrated parking, circulation patterns, building massing, and site amenities;

e. substantially conforms with the intent of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan;

f. will be located within or adjacent to a red policy area, within an opportunity zone, or within ½ mile of a planned or existing Bus Rapid Transit route;

- g. on a property in a master plan area that requires staging based on Non-Auto Driver Mode Share (NADMS), is exempt from the staging requirement if:
- i. the applicant agrees to enter into a traffic mitigation agreement that provides an action plan for substantial achievement of the applicable NADMS goal;
 - ii. parking below the minimum required under Section 6.2.4 is provided; and
 - iii. transit, bicycle, and pedestrian infrastructure required by the applicable stage of the master plan is funded in the Capital Improvements Program or Consolidated Transportation Program, or provided by the applicant; and
- h. will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

F. Decision

- 1. The Planning Board must act upon the close of the record of the public hearing by majority vote of those present at the public hearing to approve, approve with modifications or conditions, or deny the application. The Planning Board must issue a resolution reflecting its decision within 7 days of the Planning Board vote.
- 2. Any party aggrieved by a decision of the Planning Board may file a petition for judicial review of the decision within 30 days after the Planning Board's action to the Circuit Court and thereafter to the Court of Special Appeals.

3. Within 30 days of submission, the final Biohealth Priority Campus plans must be certified by the Planning Director to confirm that the drawings reflect the Planning Board's approval. If no action is taken by the Planning Director within 30 days, the plan is deemed approved and certified.

G. Conforming Permits

For any development requiring a Biohealth Priority Campus plan, DPS must not issue a sediment control permit, building permit, or use-and-occupancy permit for any building, structure, or improvement unless the Planning Board has approved a Biohealth Priority Campus plan and a bond has been approved under Section 7.3.6.K.4.

H. Duration of Approval

1. A Biohealth Priority Campus plan expires unless a certified Biohealth Priority Campus plan is approved by the Planning Director within 24 months after the date the resolution is mailed.
2. A Biohealth Priority Campus plan does not become effective until a record plat, if otherwise needed, is recorded that satisfies any approved subdivision plan for the subject property. If no record plat is needed, then the Biohealth Priority Campus plan becomes effective upon certification under Section 7.3.6.F.3.
3. Development activities under Section 7.3.6 must satisfy the certified Biohealth Priority Campus plan and any conditions of approval.
4. If the Planning Board approves a Biohealth Priority Campus plan, the applicant must have a building permit application, accepted by the Department of Permitting Services, that includes the core and shell of the principal building within two years of the date of the Planning Board's resolution. Within two years after the Department of

Permitting Services accepts the building permit application that includes the core and shell of the principal building, the applicant must obtain that building permit.

I. Recording Procedures

The certified Biohealth Priority Campus plan and Planning Board resolution must be maintained in the permanent files of the Planning Department.

J. Amendments

Any property owner may apply for a Biohealth Priority Campus plan amendment to change a certified Biohealth Priority Campus plan. There are two types of amendments: a major and a minor amendment.

1. Major Amendment

a. A major amendment includes any request to:

i. increase density or height by more than that allowed under a minor amendment (Section 7.3.6.J.2);

ii. decrease open space;

iii. deviate from a condition of approval; or

iv. alter a basic element of the plan.

b. Public notice is required under Division 7.5.

c. A major amendment must follow the same hearing procedures and satisfy the same necessary findings as the original Biohealth Priority Campus plan.

2. Minor Amendment

a. A minor amendment includes any request to:

i. increase density by up to 25%, provided the increase is less than or equal to the total mapped density, including any density increases or bonuses;

- ii. increase height by up to 10%, provided the height is less than or equal to the height and any increases allowed under Section 3.5.8.D; or
- iii. change an ancillary use, a parking or loading area, landscaping, sidewalk, recreational facility or area, configuration of open space, or any other plan element that will have a minimal effect on the overall design, layout, quality or intent of the plan.

A minor amendment also includes a reduction in approved parking to satisfy Article 59-6. A minor amendment does not include any change that prevents circulation on any street or path.

b. Public notice is required under Division 7.5.

c. A minor amendment may be approved by the Planning Director without a public hearing if no objection to the application is received within 15 days after the application notice is sent. If an objection is received within 15 days after the application notice is sent, and the objection is considered relevant, a public hearing is required. A public hearing must be held under the same procedures as an original application.

K. Compliance and Enforcement

1. If the Planning Board finds, after holding a public hearing or designating a hearing officer to hold a public hearing, that a property under development is not in compliance with a certified Biohealth Priority Campus plan, it may:

- a. impose a civil fine or administrative civil penalty authorized by Chapter 50 (Section 50-10.6.D);

- b. suspend or revoke the non-compliant portion of the Biohealth Priority Campus plan approval;
- c. order a compliance program that would permit the applicant to take corrective action to satisfy the certified Biohealth Priority Campus plan;
- d. allow the applicant to propose modifications to the certified Biohealth Priority Campus plan; or
- e. take any combination of these actions.

2. If the Planning Board or its designee finds that the applicant has failed to comply with a compliance program approved under Section 7.3.6.K.1.c, the Planning Board may, without holding any further hearing, take any of the actions identified in Section 7.3.6.K.1.a through Section 7.3.6.K.1.e.

3. If the Planning Board suspends or revokes all or any portion of a Biohealth Priority Campus plan, DPS must immediately suspend any applicable building permit under which construction has not been completed or withhold any applicable use-and-occupancy permit, until the Planning Board reinstates the applicable portion of the Biohealth Priority Campus plan or approves a new plan for the development.

4. The Planning Board may require the applicant to post a commercially acceptable form of surety securing compliance with and full implementation of specified features of the certified Biohealth Priority Campus plan in an amount set by the Planning Board. If such surety is required, DPS must not issue a building permit or use-and-occupancy permit until such surety is accepted.

* * *

Sec. 7. DIVISION 59-7.5 is amended as follows:

Division 7.5. Notice Standards

Section 7.5.1. Notice Required

Notice is required for each application according to the following table:

Application	Newspaper	Pre-Submittal Meeting	Application Sign	Application Notice	Hearing Notice	Resolution Notice	Building Permit Sign Notice	Website Posting
* * *								
Regulatory Approvals								
* * *								
Site Plan		x	x	x	x	x		x
Signature Business Headquarters Plan		x	x	x	x	x		x
<u>Biohealth Priority Campus Plan</u>		<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>
* * *								
Amendments to Approvals								
* * *								
Minor Site Plan Amendment				x				x
Major Signature Business Headquarters Plan Amendment			x	x	x	x		x

Minor Signature Business Headquarters Plan Amendment				x				
<u>Major Biohealth Priority Campus Plan</u>			<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>
<u>Minor Biohealth Priority Campus Plan</u>				<u>x</u>				

KEY: x = Required

* * *

Sec. 7. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council

