

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2017 Legislative Session

Bill No. CB-64-2017

Chapter No. 75

Proposed and Presented by The Chairman (by request – County Executive)

Introduced by Council Members Davis, Lehman, Turner, Harrison, Glaros, Franklin,
Taveras and Patterson

Date of Introduction October 10, 2017

BILL

1 AN ACT concerning

2 Administrative Hearings

3 For the purpose of establishing the provisions for administrative hearings.

4 BY adding:

5 SUBTITLE 13. HOUSING AND PROPERTY
6 STANDARDS.

7 Sections 13-1121, 13-1122, 13-1123, 13-1124, 13-
8 1125, 13-1126, 13-1127, 13-1128, 13-1129, 13-1130,
9 13-1131, 13-1132, 13-1133, 13-1134, 13-1135, 13-
10 1136, 13-1137, 13-1138, 13-1139, 13-1140, 13-1141,
11 13-1142, 13-1143, 13-1144, 13-1145, 13-1146, 13-
12 1147, 13-1148, 13-1149, 13-1150, 13-1151, 13-1152,
13 13-1153, 13-1154, 13-1155, 13-1156, 13-1157., 13-
14 1158, 13-1159, 13-1160, 13-1161, 13-1162, 13-1163,
15 and 13-1164.

16 The Prince George's County Code
17 (2015 Edition; 2016 Supplement).

18 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
19 Maryland, that Sections 13-1121, 13-1122, 13-1123, 13-1124, 13-1125, 13-1126, 13-1127, 13-
20 1128, 13-1129, 13-1130, 13-1131, 13-1132, 13-1133, 13-1134, 13-1135, 13-1136, 13-1137, 13-
21 1138, 13-1139, 13-1140, 13-1141, 13-1142, 13-1143, 13-1144, 13-1145, 13-1146, 13-1147, 13-

1 1148, 13-1149, 13-1150, 13-1151, 13-1152, 13-1153, 13-1154, 13-1155, 13-1156, 13-1157,, 13-
 2 1158, 13-1159, 13-1160, 13-1161, 13-1162, 13-1163, and 13-1164 of the Prince George's
 3 County Code be and the same are hereby added:

4 **SUBTITLE 13. HOUSING AND PROPERTY STANDARDS.**

5 **DIVISION 15. ADMINISTRATIVE HEARINGS.**

6 **SUBDIVISION 1. GENERAL PROVISIONS.**

7 **Sec. 13-1121. Definitions.**

8 (a) In this Division, the following terms shall have the meanings indicated:

9 (1) **Administrative hearing officer** means an individual nominated by the Director,
 10 but shall be approved by the Board to conduct hearings or proceedings pursuant to this Division.

11 (2) **Board** means the Prince George’s County Nuisance Abatement Board under
 12 Section 14-173 of the County Code.

13 (3) **Chairperson** means the Chairperson of the Board or the Chairperson’s designee.

14 (4) **Charging agency** means the Department of Permitting, Inspections and
 15 Enforcement.

16 (5) **Citation** means a prepayable citation issued for the violation of the law or
 17 regulations under the jurisdiction of an administrative hearing officer, which requires the
 18 Respondent to pay a fine and abate the infraction.

19 (6) **Violation notice** means a document issued by a department inspector, or
 20 enforcement officer informing a party of non-compliance with the law that requires abatement.

21 (7) **Inspector** means a County employee of the Department of Permitting,
 22 Inspections, and Enforcement who has been authorized by the employee’s agency to issue
 23 citations, or violations, under this Subtitle, or any other relevant provisions of the County Code.

24 (8) **Day**, in this Division, shall mean calendar days.

25 (9) **Department** means the Department of Permitting, Inspections, and Enforcement

26 (10) **Director** means the Director of the Prince George’s County Department of
 27 Permitting, Inspections and Enforcement or the Director’s designee.

28 (11) **Party** means a charging agency or a respondent.

29 (12) **Hearing Board Administrator** means an individual nominated by the Director,
 30 but shall be approved by the board to conduct hearings or proceedings. The Hearing Board
 31 Administrator is responsible for issuing decisions where reconsideration of an Administrative

1 Hearing Officer’s decision if requested.

2 (13) **Person** means:

3 (A) an individual;

4 (B) a receiver, trustee, guardian, personal representative, fiduciary, or
 5 representative of any kind; or

6 (C) a partnership, firm, association, corporation, governmental agency, or other
 7 entity of any kind.

8 (14) **Prima facie evidence** means evidence sufficient to establish a fact or facts that
 9 are not rebutted or contradicted is sufficient to sustain a judgment in favor of the issue of which
 10 it supports.

11 (15) **Probative** means tending to prove or disprove a point in a dispute.

12 (16) **Respondent** means the person to whom a citation is issued.

13 **Sec. 13-1122. Scope.**

14 (a) These rules shall govern all proceedings under this Division and any other relevant
 15 provisions of the County Code.

16 (b) The requirements of Subtitle 28 of the Prince George’s County Code do not apply to
 17 this Division.

18 (c) The issuance of a citation under this Division does not preclude the pursuit of any other
 19 remedy or enforcement action under any other provisions of the County Code.

20 **Sec. 13-1123. General jurisdiction of the Board.**

21 The Board has full authority to enforce the provisions of this Division, including any rules
 22 and regulations adopted under them.

23 **Sec. 13-1124. Rulemaking authority.**

24 (a) **In general.** The Director shall recommend rules and regulations to the Board. The
 25 Board may accept or reject the recommendations as it deems appropriate. The Board shall adopt
 26 rules and regulations necessary to carry out its powers and duties, which they may amend, under
 27 this Division.

28 (b) **Matters included.** The rules and regulations shall include:

29 (1) procedures for the issuance and enforcement of citations;

30 (2) procedures for the adjudication of contested citations, including the conduct of
 31 hearings and appeals by administrative hearing officers, panels of the Board, or the full Board;

1 (3) procedures for the enforcement of any abatement order that is contained in a
 2 citation or made part of an order or decision of an administrative hearing officer, panel of the
 3 Board, or the full Board; and

4 (4) procedures for authorizing, but not mandating electronic filing.

5 **Sec. 13-1125. Citations.**

6 (a) **Board to prescribe.** The Board shall prescribe the form and wording of citations. The
 7 Director shall make recommendations, which the Board may accept or reject.

8 (b) **Required contents.** In addition to any other matters that the Board prescribes, a
 9 citation shall include:

10 (1) the name and/or address, of the person and/or the property cited;

11 (2) the violation with which the person is cited, including a reference to the specific
 12 law in question;

13 (3) the manner and time in which the person shall either:

14 (A) pay the prepayable fine prescribed for the violation; or

15 (B) request a hearing on the violation;

16 (4) the time within which the violation, if ongoing, shall be abated; and

17 (5) a notice that failure to act in the manner and time stated in the citation may result
 18 in a default decision and order entered against the person or entity.

19 (c) **Service of citations.** A citation shall be:

20 (1) issued by an Inspector; and

21 (2) served on the person or property and the property owner cited by one of the
 22 following methods:

23 (A) in person;

24 (B) certified mail, return receipt requested;

25 (C) delivery to a person 18 years or older who resides at the cited person's last
 26 known address; or

27 (D) posting on the front door of the property;

28 (3) if applicable, mailed to the property owner and registered management agent for
 29 multifamily property.

30 (d) **Effect of citation.** When properly issued and served, the citation or a copy of it shall:

31 (1) constitute full and complete notice of the violation cited in it;

1 (2) constitute full and complete notice of an order of abatement, if abatement is
 2 ordered; and

3 (3) constitute prima facie evidence of the facts contained in it, if sworn to or affirmed
 4 under the penalties of perjury.

5 a. Prima facie evidence is evidence sufficient to establish a fact or facts that if not
 6 rebutted or contradicted is sufficient to sustain a judgment in favor of the issue of which it
 7 supports.

8 (e) **Single document permissible.** A single document may be used to issue two or more
 9 separately numbered citations.

10 (f) **Electronic signature.** An electronic signature may be used to execute a citation and to
 11 serve as an affirmation, under the penalties of perjury, that the facts stated in the citation are true.

12 (g) **Records of citation to be kept.** The original or a copy of the citation shall be filed and
 13 retained in the records of the Board.

14 **Sec. 13-1126. Default of citation.**

15 (a) **Failure to respond constitutes an admission of liability.** Any person cited under a
 16 citation is conclusively considered to have admitted liability for the violation cited and
 17 responsibility for abating the violation if, after thirty (30) days of service of the violation, the
 18 person:

19 (1) fails to pay the prescribed prepayable fine and abate the violation; or

20 (2) fails to request a hearing on the violation; or

21 (2) fails to appear on the designated hearing date, if the party has requested a hearing.

22 (b) **Order of an administrative hearing officer, default penalty.** Under any of the
 23 circumstances described in subsection (a) of this section, an administrative hearing officer may:

24 (1) render a default decision and order against the person or property cited; and

25 (2) impose a civil penalty, after consideration of certain factors, which may include,
 26 the nature and severity of the underlying violation, history of past violations, mitigating or
 27 aggravating circumstances, that is:

28 (A) no less than the amount of the prepayable fine specified for the violation in
 29 question; and

30 (B) a maximum of:

31 (i) one thousand dollars (\$1,000); or

(ii) three times the prepayable fine specified for the violation in question.

(c) **Notice of default order.** Before an order based on a default becomes final, an administrative hearing officer shall notify the respondent, by first-class mail, of:

(1) the default decision and order;

(2) the amount of all penalties imposed; and

(3) the right of the respondent, within thirty (30) days of the notice, to avoid a final judgment and collection proceedings by requesting a stay of default for good cause shown and a hearing on the request.

Sec. 13-1127. Administrative adjudications.

(a) **In general.** The Board, acting through its administrative hearing officers, panels of the Board, and other authorized agents shall:

(1) conduct hearings and other proceedings for adjudicating violations of the laws, rules, and regulations enforced by the Board; and

(2) have full authority to render decisions and orders, as well as impose civil penalties provided by law for those violations.

(b) **Unappealed decision of a hearing officer.** Unless otherwise specified by the Board, every decision of an administrative hearing officer or panel of the Board from which no timely appeal is taken to the full Board constitutes a final decision of the Board.

Sec. 13-1128 Reconsideration.

(a) A person found liable at a hearing conducted pursuant to Section 13-1127 shall be entitled to reconsideration of the matter if a written application is received by the Department or is postmarked within 10 calendar days of the date of a finding of liability;

(1) A person must first seek a reconsideration of the hearing decision conducted pursuant to Section 13-1207 before filing an appeal pursuant to Section 13-1156.

(b) The application for reconsideration shall set forth one or more of the following grounds:

(1) Newly discovered or newly available relevant evidence;

(2) Need for additional evidence to establish a defense;

(3) Probable error committed by the hearing examiner in the proceeding, including failure to judicially notice a fact on which the decision of the hearing examiner rests or failure to inform the respondent of a judicially noticed fact on which the decision of the hearing examiner rests; or

1 (4) A clear need for further consideration of the issues.

2 (c) An application for reconsideration shall contain all documents or evidence in support of
 3 reconsideration.

4 (d) On reconsideration, the matter may be reviewed by the Hearing Board Administrator.

5 (e) If an application for reconsideration is timely submitted, the 30-day time for filing an
 6 appeal to the appeals board shall begin on the date that the reconsideration decision is served.

7 (f) A person shall not have an opportunity to appeal a finding of liability by a hearing
 8 examiner to the appeals board unless the person’s liability is affirmed upon reconsideration.

9 (g) Failure by a hearing examiner to issue a decision within 30 calendar days after receipt of
 10 an application for reconsideration shall be deemed a decision in favor of the applicant.

11 **Sec. 13-1129. Judicial and appellate review.**

12 (a) **Judicial review.**

13 (1) Any person who, after having exhausted all administrative remedies available is
 14 aggrieved by a final decision of the Board may seek judicial review of that decision by petition
 15 to the Circuit Court for Prince George’s County in accordance with the Maryland Rules.

16 (2) The filing of an appeal does not stay a Board’s order, unless the Circuit Court for
 17 Prince George’s County grants a stay.

18 (b) **Appellate review.** A party to the judicial review may appeal the court’s final
 19 judgment to the Court of Special Appeals in accordance with the Maryland Rules.

20 **Sec. 13-1130. Fines and penalties.**

21 (a) **Penalty as debt and lien.** Any civil penalty imposed on a person by the Board,
 22 whether on hearing, on default, or otherwise:

23 (1) is a personal debt owed by that person to the County; and

24 (2) if the offense involves real property owned by that person, creates a lien on that
 25 property in favor of the County.

26 (b) **Collection of penalties and liens.** All penalties and liens incurred under this Division:

27 (1) are collectible from and enforceable against any of the assets of the person who
 28 incurred the penalty; and

29 (2) may be collected and enforced in the same way that the County collects and
 30 enforces other debts due to it or liens in its favor.

31 (c) **Priority over other liens and encumbrances.** All penalties and liens incurred under

1 this Division have priority over all other liens and encumbrances, except taxes or other
 2 government assessments.

3 **Sec. 13-1131. Abatement orders.**

4 (a) **Payment does not relieve obligation to correct.**

5 (1) Payment of a fine does not relieve the respondent of the obligation to correct
 6 ongoing violations by the date specified in the citation.

7 (2) Additional citations may be issued for uncorrected violations by the date specified
 8 in the citation.

9 (b) **Correction does not relieve obligation to pay.** The correction of a violation does not
 10 relieve the respondent of the obligation to pay the prescribed fine.

11 **Sec. 13-1132. Judicial assistance in enforcement.**

12 The Board may apply to a court of competent jurisdiction for enforcement of any decision,
 13 order, or subpoena issued by the Board.

14 **Sec. 13-1133. Violations to which subtitle applies.**

15 (a) **In general.** The jurisdiction and authority of the Board extends to each of the
 16 provisions of the Prince George's County Code that are specified in subsection (e) of this
 17 section, as those provisions may be amended, including any rules and regulations adopted under
 18 them. The issuance of a citation does not preclude pursuit of any other remedy or enforcement
 19 action authorized by law.

20 (b) **Prepayable fines.**

21 (1) The basic prepayable civil fine for a violation of a provision is specified next to
 22 the listing of that provision in subsection (e) of this section.

23 (2) The basic prepayable fines is doubled, however, on any citation that is issued to a
 24 person or property if, within the past twelve (12) months:

25 (A) a final order of an administrative hearing officer, whether issued on hearing,
 26 on default, or otherwise, imposed a penalty on that person or property for a violation of the same
 27 provision; or

28 (B) that person prepaid a citation for violation of the same provision.

29 (c) **Continuing violations.** If a provision of law provides that the continuation or
 30 reoccurrence of a violation constitutes a separate offense, a separate citation may be issued for
 31 each separate offense.

1 (d) **Prior notice not required.** Notwithstanding any other provision of the Prince
 2 George’s County Code to the contrary, notice need not be given before the issuance and
 3 enforcement of a citation for any of the provisions listed in subsection (e) of this section.

4 (e) **Provisions and penalties enumerated.** In Section 13-101 of the County Code, the
 5 County adopted the International Property Maintenance Code, as amended in Subtitle 13 and
 6 known as the “Housing Code.” An inspector may issue and an administrative hearing officer
 7 may adjudicate citations issued pursuant only to Sections 108, 301, 302, 303, 304, 305, 306, and
 8 404 of the Housing Code, and all of the respective subsections thereunder. The penalty for
 9 violation of any of the enumerated sections is \$300.00 per violation.

10 **SUBDIVISION 2. GENERAL RULES FOR PROCEEDINGS.**

11 **Sec. 13-1134. Scope.**

12 (a) These rules and regulations in conjunction with the Boards promulgated rules and
 13 regulations shall govern all proceedings under this Division.

14 **Sec. 13-1135. Filing with the Chairperson.**

15 (a) All documents permitted or required to be filed with the Board shall be filed with the
 16 Chairperson.

17 **Sec. 13-1136. Form and Service of Documents.**

18 (a) **Captions.** Each document filed with the Board shall contain a caption that sets forth:

- 19 (1) the title of the action;
- 20 (2) the citation number or the docket number assigned to the proceeding; and
- 21 (3) a brief descriptive title of the document that indicates its nature.

22 (b) **Signature – By attorney.**

23 (1) Every document of a party represented by an attorney shall be signed by at least
 24 one attorney who has been admitted to practice law in the State of Maryland.

25 (2) The signature of an attorney constitutes a certification that:

- 26 (i) the attorney has read the document;
- 27 (ii) to the best of the attorney’s knowledge, information and belief, there is good
 28 ground to support it; and
- 29 (iii) it is not interposed for delay.

30 (c) **Signature – By party.**

31 Every document of a party who is not represented by an attorney shall be signed by the

1 party.

2 (d) **Signature – Sanctions.**

3 If a document is not signed as required (except an inadvertent omission to sign, if promptly
 4 corrected) or is signed with intent to defeat the purpose of this rule, it may be stricken, and the
 5 action may proceed as though the document had not been filed.

6 (e) **Service.**

7 (1) This subsection applies to all documents, except for citations, that are required to
 8 be served on other parties.

9 (2) If service is required on a party represented by an attorney, service shall be made
 10 on the attorney unless the party is pro-se, then service shall be made upon the party.

11 (3) Each document shall be accompanied by a signed certificate of service that
 12 specifies the date, manner of service and copies were provided to all parties.

13 **Sec. 13-1137. Appearances.**

14 (a) **In general.** Persons are permitted to participate in proceedings before the Board as
 15 provided in this section.

16 (b) **Individuals.** An individual respondent may appear:

17 (1) in person, in his or her own behalf;

18 (2) by an attorney licensed to practice in the State of Maryland; or

19 (c) **Businesses.** A business, non-profit organization, or government agency may appear:

20 (1) by an attorney licensed to practice in the State of Maryland; or

21 (2) to the extent allowed by law, by any officer, employee, or authorized agent.

22 **Sec. 13-1138. Records.**

23 (a) **Chairperson to keep.** The Chairperson shall maintain files containing all documents,
 24 evidence, and other items and information submitted to or produced by an administrative hearing
 25 officer or the Board during the course of a proceeding.

26 (b) **Files to be public.** These files shall be available for public inspection in accordance
 27 with the Maryland Public Information Act, Section 4-101 et seq. of the General Provisions
 28 Article of the Annotated Code of Maryland.

29 **SUBDIVISION 3. PRE-HEARING PROCEDURES.**

30 **Sec. 13-1139. Pre-Hearing Requests to Reschedule.**

31 (a) **Chairperson may grant.** On written application to the Chairperson and for good

1 cause shown, the Chairperson may postpone a scheduled hearing for a brief period or reschedule
 2 the hearing.

3 (b) Subsequent requests. In case of a request for a subsequent postponement or
 4 rescheduling, the Chairperson may:

5 (1) deny the request;

6 (2) require that the respondent appear at the scheduled hearing; or

7 (3) allow the respondent to present a request for rescheduling.

8 **Sec. 13-1140. Consolidation.**

9 In the interest of the convenient, expeditious, and complete determination of cases
 10 involving the same or similar issues or the same parties, an administrative hearing officer may
 11 consolidate two or more citations for adjudication at one hearing.

12 **Sec. 13-1141. Discovery by Respondent.**

13 (a) **In general.**

14 (1) On timely, written request, a respondent is entitled to receive from the charging
 15 agency:

16 (A) a list of the names of witnesses intended to be called; and

17 (B) copies of documents intended to be submitted into evidence.

18 (2) To be timely, the request must be submitted to the Chairperson at least fifteen
 19 (15) days before the scheduled hearing.

20 (3) The Chairperson shall forward the request to the charging agency within forty
 21 eight (48) hours of submission.

22 (4) Within seven (7) days after it receives the request from the Chairperson, the
 23 charging agency shall serve a written response on the respondent, with a copy sent to the
 24 Chairperson.

25 (b) **Limitations.**

26 (1) Pre-hearing discovery is limited to the matters enumerated in subsection (a) of
 27 this section.

28 (2) All other applications or motions for discovery, including depositions on oral
 29 examinations shall be made to the administrative hearing officer at the start of the hearing, and
 30 the administrative hearing officer may order further discovery, as appropriate.

31 (c) **Supplementation.** If a party has responded to a request for discovery, and before the

1 hearing obtains further material information, the party shall supplement the response promptly.

2 (d) **Sanctions.** If any party fails to properly respond to a lawful discovery request or order
 3 or wrongfully refuses to answer questions or produce documents, an administrative hearing
 4 officer may take appropriate action, including, but not limited to, precluding evidence or
 5 witnesses of the offending party or striking the pleadings or defenses of that party.

6 **SUBDIVISION 4. HEARING PROCEDURES.**

7 **Sec. 13-1142. Scheduling notice.**

8 (a) **In general.** If a respondent timely requests a hearing, an administrative hearing officer
 9 shall:

- 10 (1) set the date, time, and place for the hearing;
 11 (2) provide the parties with at least twenty (20) days' notice of the hearing.

12 (b) **Contents of notice.** The notice shall state:

- 13 (1) the date, time, place, and nature of the hearing;
 14 (2) the right of a party to be represented, at the party's own expense, by an attorney
 15 or, if permitted by law, another representative;
 16 (3) the right of a party to seek discovery under Section 13-1141 of the Prince
 17 George's County Code;
 18 (4) the right of party to call witnesses and submit documents or other evidence under
 19 Section 13-1231 of the Prince George's County Code; and
 20 (5) that failure to appear for the scheduled hearing may result in an adverse action
 21 against the party.

22 **Sec. 13-1143. Timing of hearing.**

23 (a) **In general.** Absent a showing of good cause, the hearing date shall be within one
 24 hundred eighty (180) days of proper service of the citation.

25 (b) **Accelerated hearing.** If the respondent waives the twenty (20) days' notice and
 26 requests an accelerated hearing, the Chairperson may assign the case for an immediate hearing,
 27 on appropriate notice to the charging agency and opportunity for the charging agency to appear.
 28 By requesting an accelerated hearing, respondent waives any right to discovery.

29 **Sec. 13-1144. General nature of hearing.**

30 (a) **Orderly but informal.** All hearings shall be conducted in an orderly but informal
 31 manner.

1 **(b) Expedition.**

2 (1) Hearings shall proceed with all reasonable expedition and, to the extent
 3 practicable, shall be held at one place and continue without suspension, except for brief recesses,
 4 until concluded.

5 **Sec. 13-1145. Record.**

6 The Board shall arrange for a stenographic, mechanically, and/or digitally-created record of
 7 all hearings.

8 **Sec. 13-1146. Order of proceedings.**

9 Subject to modification by an administrative hearing officer for good cause, all hearings
 10 shall be conducted in the following order:

- 11 (a) presentation and argument of motions preliminary to a hearing on the merits;
 12 (b) presentation of opening statements, if any;
 13 (c) charging agency's case in chief;
 14 (d) respondent's case in chief;
 15 (e) charging agency's case in rebuttal;
 16 (f) charging agency's closing argument;
 17 (g) respondent's closing argument; and
 18 (h) charging agency's rebuttal closing, if necessary.

19 **Sec. 13-1147. Oaths.**

20 (a) In general. Before testifying, a witness is required to declare that the witness will
 21 testify truthfully and under the penalties of perjury.

22 (b) Administration. The declaration shall be by oath or affirmation, administered:

- 23 (1) in the form of Maryland Rule 1-303; or
 24 (2) in special circumstances, in some other form or affirmation calculated to impress
 25 on the witness the duty to tell the truth.

26 **Sec. 13-1148. General duties and powers of administrative hearing officer.**

27 (a) General duties. An administrative hearing officer has the duty to:

- 28 (1) conduct a fair and impartial hearing;
 29 (2) take all necessary action to avoid delay in the disposition of proceedings;
 30 (3) maintain order; and
 31 (4) ensure the hearing provides fundamental fairness.

1 **(b) General powers.** An administrative hearing officer has all powers necessary to these
 2 ends, including the power to:

3 (1) administer oaths and affirmations;

4 (2) issue discovery orders and rule on objections to those orders;

5 (3) receive evidence and rule on offers of proof;

6 (4) regulate the course of the hearing and the conduct of the parties and their
 7 representatives;

8 (5) hold conferences for simplification of issues or for any other proper purposes;

9 (6) interrogate witnesses;

10 (7) consider and rule on all procedural and other motions, including requests for
 11 adjournment; and

12 (8) make and file recommended decisions and orders.

13 **Sec. 13-1149. Ex-parte communications.**

14 An administrative hearing officer may not receive any ex-parte communication from any
 15 party, including the charging agency, or from individual members of the Board about a
 16 proceeding.

17 **Sec. 13-1150. Impartiality.**

18 **(a) In general.** An administrative hearing officer should disqualify [himself] him- or
 19 herself from any hearing in which the administrative hearing officer's impartiality might
 20 reasonably be questioned, including any instances in which the administrative hearing officer:

21 (1) has a personal bias or prejudice about a party;

22 (2) has personal knowledge of disputed evidentiary facts in the proceeding;

23 (3) served as a lawyer in the matter in controversy or was professionally associated
 24 with another person while that person served as a lawyer in the matter in controversy;

25 (4) has been a material witness to the matter;

26 (5) has a financial interest in the subject matter in controversy or in a party to the
 27 proceeding;

28 (6) has any other interest that could be substantially affected by the outcome of the
 29 proceeding;

30 (7) knows that his or her spouse or dependent child:

31 (A) is serving as a lawyer in the matter in controversy or is professionally

1 associated with another person who is serving as a lawyer in the matter in controversy;

2 (B) is likely to be a material witness in the proceeding;

3 (C) has a financial interest in the subject matter in controversy or in a party to
4 the proceeding; or

5 (D) has any other interest that could be substantially affected by the outcome of
6 the proceeding; or

7 (8) any other reason creating a conflict of interest.

8 **(b) Motion to disqualify.**

9 (1) A party may request that an administrative hearing officer disqualify him- or
10 herself for good cause shown. The request shall be ruled on by the administrative hearing officer
11 in the proceeding.

12 (2) If the administrative hearing officer denies the request, the party may obtain a
13 brief adjournment to seek review by the Chairperson.

14 (c) **Notice of disqualification.** When an administrative hearing officer disqualifies him-
15 or herself from a proceeding, the administrative hearing officer shall do so on the record and
16 shall notify the Chairperson of the recusal.

17 (d) **Replacement.** On disqualification of an administrative hearing officer, the
18 Chairperson shall appoint another administrative hearing officer to conduct the hearing.

19 **Sec. 13-1151. Amendments to citations.**

20 (a) **Administrative hearing officer may allow.** If doing so will facilitate the
21 determination of a controversy on the merits, an administrative hearing officer may allow, upon
22 written motion by the applicable party and leave of the administrative hearing officer,
23 appropriate amendments to a citation, subject to conditions necessary to avoid injustice,
24 prejudice or unfair surprise to a party.

25 (1) **Without Leave of the Administrative Hearing Officer.** A charging agency may
26 file an amendment to citation without leave of the administrative hearing officer by the date set
27 forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a
28 scheduled hearing date. Within 15 days after service of an amendment, any other party to the
29 action may file a motion to strike setting forth reasons why the court should not allow the
30 amendment. If an amendment introduces new facts or varies the case in a material respect, an
31 adverse party who wishes to contest new facts or allegations shall file a new or additional answer

1 to the amendment within the time remaining to answer the original citation or within 15 days
 2 after service of the amendment, whichever is later. If no new or additional answer is filed within
 3 the time allowed, the answer previously filed shall be treated as the answer to the amendment.

4 (c) **Conformance to evidence.** When issues reasonably within the scope of a citation, but
 5 not expressly raised by the citation, are tried with both parties present:

6 (1) the issues shall be treated in all respects as if they had been raised by the citation;

7 and

8 (2) provided it is not prejudicial, amendments of the citation may be made at any time
 9 necessary to make it conform to the evidence, with leave or permission of the administrative
 10 hearing officer.

11 **Sec. 13-1152. Burden of proof.**

12 (a) **In general.** The charging agency has the burden of proof in establishing by a
 13 preponderance of the evidence that the respondent has committed the violations charged in the
 14 citation.

15 (b) **Citation as prima facie evidence.** If a citation is sworn to or affirmed under the
 16 penalties of perjury, the citation constitutes prima facie evidence of the facts stated in it. Prima
 17 facie evidence is evidence sufficient to establish a fact or facts that if not rebutted or contradicted
 18 is sufficient to sustain a judgment in favor of the issue of which it supports.

19 **Sec. 13-1153. Evidence.**

20 (a) **In general.** Unless otherwise provided by these rules and regulations, the proceedings
 21 shall be conducted in an informal manner and the strict rules of evidence shall not apply.

22 (b) **Right to submit.** On a genuine issues of fact, a party is entitled to:

23 (1) call witnesses;

24 (2) offer evidence; including rebuttal evidence;

25 (3) cross-examine any witness that another party calls; and

26 (4) present summation and argument.

27 (c) **Scope.** The administrative hearing officer:

28 (1) may admit probative evidence that reasonable and prudent individuals commonly
 29 accept in the conduct of their affairs and give probative effect to that evidence.

30 (A) Probative means tending to prove or disprove a point in a dispute.

31 (2) may not exclude evidence solely on the basis that it is hearsay;

1 (3) shall give effect to a privilege recognized by law;

2 (4) may take official notice of a fact that is judicially noticeable or that is general,
 3 technical or scientific and within the specialized knowledge of an administrative hearing officer;
 4 and

5 (5) may exclude evidence that is:

6 (A) incompetent;

7 (B) irrelevant;

8 (C) immaterial;

9 (D) unduly repetitious;

10 (E) unduly prejudicial.

11 (d) **Exceptions.** Formal objections to an adverse ruling are not required at the time of the
 12 ruling to preserve a matter for appeal before the Board.

13 **Sec. 13-1154. Stipulation instead of hearing.**

14 (a) **Stipulation authorized.** At any time before the administrative hearing officer issues a
 15 recommended decision and order, the charging agency may offer the respondent a settlement of
 16 the matter by stipulation instead of a further hearing.

17 (b) **Required elements.** The stipulation shall:

18 (1) be in the manner and form set by the Chairperson; and

19 (2) contain:

20 (A) an admission of the violation;

21 (B) the facts stipulated to;

22 (C) the amount of the penalty to be imposed; and

23 (D) the compliance to be ordered, if any.

24 (c) **Before initial hearing.**

25 (1) If the stipulation is entered into and filed with the Board before the initial hearing
 26 on the matter, the stipulation shall be reviewed by an administrative hearing officer.

27 (2) Within a reasonable time after the stipulation has been filed, the Administrative
 28 Hearing Officer shall:

29 (A) issue a final written decision and order that incorporates the terms of the
 30 stipulation; or

31 (B) order the matter to be rescheduled for a hearing by an administrative hearing

1 officer, if the stipulation is not acceptable to the Administrative Hearing Officer .

2 (d) **During hearing.** If the stipulation is entered into during the course of a hearing and if
 3 an administrative hearing officer approves the stipulation, it shall be incorporated into an
 4 administrative hearing officer’s written decision and order.

5 (e) **Stipulation not appealable.** Decisions and orders based on stipulations are not
 6 appealable.

7 **Sec. 13-1155. Decisions and Orders.**

8 (a) **Administrative hearing officer to prepare.** An administrative hearing officer shall
 9 prepare a written decision and order within thirty (30) days of the completion of a hearing.

10 (b) **Decision.** An administrative hearing officer’s written decision shall set forth:

- 11 (1) finding of fact and conclusions of law; and
- 12 (2) the administrative hearing officer’s reasons for its findings on all material issues.

13 (c) **Order.** If an administrative hearing officer finds that the charges in the citation should
 14 be upheld, the administrative hearing officer shall prepare a written order that sets forth:

- 15 (1) the penalty; and
- 16 (2) the remedial relief or sanctions, if authorized by law to impose such remedial
 17 relief or other sanctions.

18 (d) **Filing.** The decision and order shall be filed with the Chairperson and properly served
 19 on all parties.

20 (e) **Finality.** If a timely appeal is not filed under Section 13-1156 of the Prince George’s
 21 County Code, the administrative hearing officer’s recommended decision and order:

- 22 (1) shall be adopted by the Board, without further action; and
- 23 (2) constitutes the Board’s final action in the matter.

24 **SUBDIVISION 5. ADMINISTRATIVE REVIEW.**

25 **Sec. 13-1156. Appeal of decision and order.**

26 (a) **Filing.**

27 (1) Any party aggrieved by the decision and order may file a written appeal with the
 28 Board.

29 (2) Except as otherwise provided in Sections 13-1128 and 13-1156 of the County
 30 Code, an appeal shall be filed within thirty (30) days after the final decision and order is
 31 delivered or mailed to the parties.

1 (3) The appeal shall contain:

2 (A) a concise statement of the issues presented;

3 (B) specific objections to the findings of fact and conclusions of law set forth in
4 the decision and order; and

5 (C) arguments that clearly present the points of law and facts relied on in support
6 of the position taken on each issue.

7 (4) The appeal must be accompanied by payment in full of both of the following, to
8 the extent not previously paid:

9 (A) the fine imposed by the decision and order; and

10 (B) the fee for any transcript requested under Section 13-1156 of the County
11 Code.

12 (b) **Answer.**

13 (1) Within twenty (20) days after the appeal has been served on a party, that party
14 may file an answer.

15 (2) The answer must comply with the requirements of subsection (a) of this section
16 for contents and service.

17 (c) **Replies.** Further briefing is not permitted unless the Board otherwise directs.

18 **Sec. 13-1157. Transcripts.**

19 (a) **In general.** A party may apply in writing for a written copy of the transcript of the
20 hearing at any time:

21 (1) within the period allowed for filing an appeal; or

22 (2) if later, within thirty (30) days after the other party has filed an appeal.

23 (b) **Extension of time.** If an application is timely made under subsection (a) of this
24 section, the time within which an appeal shall be filed is extended to twenty (20) days from the
25 date when the transcript is delivered or mailed to the party who requested it.

26 (c) **Fee.** The Board may charge the person who requested the transcript a fee for the
27 transcript, including the expense of transcription.

28 **Sec. 13-1158. Applications to extend time.**

29 An application to extend the time for filing appeals or answers for any reason shall be:

30 (a) made in writing to the Chairperson; and

31 (b) supported by evidence of impossibility or other explanation of inability to file timely.

1 **Sec. 13-1159. Review to be on record.**

2 (a) **In general.** When an appeal has been filed, the Board shall consider the entire matter
 3 on the basis of the record before it.

4 (b) **Records elements.** The record shall include:

5 (1) the citation;

6 (2) the transcript of the hearing; and

7 (3) all briefs filed and exhibits received in evidence during the proceedings before the
 8 administrative hearing officer;

9 (4) All briefs and exhibits filed in support of the appeal; and

10 (5) the administrative hearing officer’s decision.

11 (c) **Witness credibility.** The Board shall give due regard to an administrative hearing
 12 officer’s opportunity to judge the credibility of any witnesses.

13 (d) **Additional evidence or argument.** If the Board considers it necessary or appropriate,
 14 it may:

15 (1) order further testimony or evidence to be taken or submitted; or

16 (2) order oral argument on any or all the questions raised on appeal.

17 **Sec. 13-1160. Decision and order on Appeal.**

18 (a) **In general.**

19 (1) After review, the Board shall issue its decision and order resolving the appeal.

20 (2) In its decision and order, the Board may:

21 (i) uphold, concur with, reverse, or modify the administrative hearing officer’s
 22 decision and order; or

23 (ii) remand the matter for further proceedings.

24 (b) **Decision.** The Board’s decision shall contain findings of fact and conclusions of law.

25 (c) **Order.** The Board shall issue an order that:

26 (1) is consistent with its decision; and

27 (2) exercises those powers of the Board that the Board considers appropriate and is
 28 pursuant to Division 15 of this Subtitle.

29 **Sec. 13-1161. Corrections to the Board’s decision and order.**

30 (a) **In general.** Any party may apply to the Board in writing to correct ministerial errors
 31 or errors due to mistake of fact or law, fraud, irregularity or clerical error.

SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect on April 1, 2018.
Adopted this 7th day of November, 2017.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Derrick Leon Davis
Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Rushern L. Baker, III
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.