

MEMORANDUM

January 27, 2011

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Legislative Attorney
SUBJECT: Resolution to amend Council procedures for zoning text amendments

Section 59-H-9.1 of the Zoning Ordinance authorizes the District Council to prescribe procedures for the introduction and consideration of amendments to the Zoning Ordinance. Previous Councils adopted resolutions to document the process for introducing a zoning text amendment:

<u>Resolution Number</u>	<u>Date of approval</u>
7-854	September 5, 1972
12-432	October 22, 1991
16-63	February 27, 2007

On January 24, 2011 the Council introduced a draft resolution to update the procedures for zoning text amendments.

As introduced, the procedures would revise the last Council's procedures in 3 ways:

- 1) The People's Counsel is removed from the list of Zoning Text Amendment (ZTA) Advisers.
- 2) A summary of Zoning Text Amendment Advisers comments is not required if changes were made to the amendment by the sponsor before introduction.
- 3) The Council President's introduction of an amendment proposed by the Executive or the Planning Board is permitted (not required) unless 5 Councilmembers object to the introduction.

Should the People's Counsel be removed from the list of ZTA advisers?

The People's Counsel position was not funded in FY 2011. There is no expectation in the foreseeable future that the position will be filled. Even if the position were filled, the People's Counsel would not directly administer or interpret the Zoning Ordinance as do the other Advisers. The People's Counsel's position may have an opinion on policy questions; however, policy aspects of a ZTA are grist for the Council and not for the Advisers.

Staff recommends removing the People's Counsel from the list of ZTA Advisers.

Should the comments of Zoning Text Amendment Advisers always be included in staff reports?

The current resolution regarding ZTA procedures includes the following provision:

A written report must be included in staff's memorandum for the County Council containing the summarized comments and recommendations of the Zoning Text Amendment Advisers.

The PHED packet concerning a ZTA may recommend revisions by the advisers as a better alternative, but it will not include opinions on the legality of a ZTA. When the ZTA Advisers have concerns about the risks of a successful legal challenge to a proposed ZTA, those concerns are raised in individual staff consultations or in a closed session of the Committee or the Council.

Staff has not reported the comments of the Advisers when the sponsor revised the proposed ZTA to reflect the Advisers' comments. Staff recommends revising the ZTA procedures to more clearly reflect this practice.

Should a Council President be required to introduce amendments proposed by the Executive or the Planning Board?

The ZTA procedure resolution approved in 2007 states:

Unless five members of the Council object, text amendments submitted by the County Executive or the Planning Board must be introduced by the Council President.

When it comes to the proposals for bills or amendments to Subdivision Regulations, the Executive's and Planning Board's suggestions are only introduced by the voluntary sponsorship of the Council President or any other member of the Council. It is unclear why Executive and Planning Board ZTA proposals should have a unique status. The introduction of zoning text amendments is a legislative function.

As a matter of practice, the Council President may not solicit the objections of other members unless the Council President finds something objectionable about the proposal. The Council President can be persuasive in these matters. *To be more transparent and consistent with other procedures, staff recommends making the Council President's introduction of a ZTA proposed by the Executive or Planning Board as permissive, rather than mandatory.* Any Councilmember could still introduce the ZTA under his or her own sponsorship if the Council President is not inclined to do so.

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Resolution No.: _____
Introduced: January 25, 2011
Adopted: _____

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

By: District Council

SUBJECT: Revision to the Process for the Introduction and Consideration of Amendments to the Text of the Zoning Ordinance for the Maryland-Washington Regional District within Montgomery County, Maryland.

Background

1. Section 59-H-9.1 of the Zoning Ordinance authorizes the District Council to prescribe procedures for the introduction and consideration of amendments to the text of the Zoning Ordinance.
2. The District Council on September 5, 1972, by Resolution No. 7-854, established a legislative process for the introduction and consideration of amendments to the text of the Zoning Ordinance for Montgomery County, and on October 22, 1991, amended that process by Resolution No. 12-432, and on February 27, 2007 adopted a new process by Resolution No. 16-63.
3. The procedures for the introduction and consideration of amendments to the Zoning Ordinance have been revised from time to time since 1972 by the Council.
4. Council staff is directed to consult with the Office of the County Executive, Office of the County Attorney, the Office of Zoning and Administrative Hearings, Planning Board staff, Board of Appeals staff, and Department of Permitting Services staff.
5. Requests for a zoning text amendment by an individual or a group must be directed to Councilmembers.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, approves the following procedures for the introduction and consideration of proposed amendments to the text of the Montgomery County Zoning Ordinance and repeals Resolution No. 16-63:

1. Required Staff Consultations for a Zoning Text Amendment

- (a) All proposed text amendments must be transmitted to Council staff before introduction. Council staff must consult with designated Zoning Text Amendment Advisers before drafting any staff reports. The Zoning Text Amendment Advisers must include one representative from the staff of the Montgomery County Planning Board, the Office of the County Attorney, the Office of Zoning and Administrative Hearings, the Department of Permitting Services, the Board of Appeals, and the Office of the County Executive. Staff must be designated by the office or agency. Council staff must summarize the comments and recommendations of the Advisers.
- (b) The staff representative of the Office of the County Council, within a reasonable time after an amendment to the Zoning Ordinance is drafted, must forward the proposed draft to the Zoning Text Amendment Advisers. The method of consultation must be determined by Council staff. An impact assessment of any proposed amendment must be requested from the Montgomery County Planning Board staff.
- (c) A written report from Council staff must be included in staff's memorandum for the County Council containing the summarized comments and recommendations of the Zoning Text Amendment Advisers. The staff report to the Council must also include an analysis of the amendment and a recommendation as to whether the amendment should be adopted with or without revisions.

2. Zoning Text Amendments Submitted by the County Executive or the Planning Board

- (a) Zoning text amendments submitted by the County Executive or the Planning Board must contain:
 - (1) a short description of the requested amendment;
 - (2) a statement of the problem that the amendment addresses and the reasons for the amendment;
 - (3) the effect of the proposed amendment on existing law and procedures;
 - (4) any exigency related to the proposed amendment; and
 - (5) the new text to be added and existing text to be deleted from the Zoning Ordinance in a format provided by Council staff.
- (b) Zoning text amendments submitted by the County Executive or by the Planning Board must be forwarded for review by Council staff to the Zoning Text Amendment Advisers. The Council President may schedule the text amendment for introduction without a review by the Zoning Text Amendment Advisers, unless five members of the Council object to the text amendment submitted by the County Executive or the Planning Board.

3. Zoning Text Amendments Initiated by the County Council

- (a) Council staff must prepare zoning text amendments at the request of the Council. The Council must advise Council staff of the purpose and general provisions of the amendment to be drafted and a target date to complete the amendment.
- (b) Council staff, in consultation with the Council President, may recommend that a proposed amendment should be drafted by the County Attorney or by the Planning Board. If that recommendation is made, the Council President must send a memorandum or letter requesting the drafting of the amendment and a target date for its completion.
- (c) When Council staff has completed a draft text amendment, or has received a draft prepared by the County Attorney or the Planning Board, Council staff must prepare an explanatory statement.
- (d) The explanatory statement and the proposed text amendment must be distributed to Councilmembers for comments.
- (e) Once a majority of Councilmembers are satisfied with the draft text amendment, it must be placed on the next available Council agenda for introduction.
- (f) Each text amendment must be reviewed by the Zoning Text Amendment Advisers unless the Council determines otherwise.

4. Zoning Text Amendments Initiated by an Individual Councilmember

- (a) When a Councilmember desires to have a text amendment drafted, the Councilmember must request Council staff to draft the amendment. The Councilmember should provide Council staff with a statement of the purpose and general provisions of the amendment to be drafted and a target date to complete the amendment.
- (b) Council staff must work with the individual Councilmember to assure that the amendment conforms to the request of the Councilmember.
- (c) In addition to the draft text, Council staff must assist in preparing an explanatory statement.
- (d) The text amendment must be reviewed by the Zoning Text Amendment Advisers before introduction. Council staff must advise the initiating Councilmember of the concerns of the Advisers before the text amendment is introduced.
- (e) When the Councilmember is satisfied with the draft text amendment, the Councilmember may send the proposed amendment to the Council President with a request that it be scheduled for introduction.

5. Requests for Introduction by Individuals or Organizations

Any individual or organization may request that a Councilmember sponsor a text amendment. If a Councilmember agrees to do so, the Councilmember must follow the process for text amendments initiated by an individual Councilmember.

6. Introduction of Zoning Text Amendments

- (a) A zoning text amendment may be introduced at any time. The recommendation of the Zoning Text Amendment Advisers will not prevent any Councilmember or members from introducing any text amendment. The Advisers' recommendations must be reported in Council staff's memorandum to the appropriate Council Committee unless changes recommended by the Advisers were included in the ZTA as introduced.
- (b) Upon introduction, each text amendment must be made available for distribution to the public. After introduction, the Office of the County Council, the Department of Permitting Services, and the Planning Department must keep copies on file for distribution to the public on request.
- (c) Within 5 days after the introduction of each zoning text amendment, Council staff must transmit a copy to the Planning Board and the County Executive for review as required by Section 59-H-9.2 of the Zoning Ordinance.

7. Format for Introduction of Zoning Text Amendments

Zoning text amendments to be introduced must be in the form prescribed by the Montgomery County Plain Language Drafting Manual, adopted by the County Council in Resolution No. 10-1182, as amended.

This is a correct copy of Council action

Linda M. Lauer, Clerk of the Council