

MEMORANDUM

March 2, 2017

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Senior Legislative Analyst

SUBJECT: Bill 41-16, Community Zoning and Land Use Resource Officer

Background

Bill 41-16, Community Zoning and Land Use Resource Officer, sponsored by Lead Sponsor Councilmember Berliner and Co-Sponsors Councilmembers Huckler and Katz, was introduced on October 4, 2016. Under Bill 41-16, the primary function of the Community Zoning and Land Use Resource Officer would be to: 1) meet with community members to inform them of critical decision points in the development approval process; 2) educate community members individually or in group meetings on how to develop effective testimony before decision-making bodies; and 3) answer questions concerning zoning and land use from community members or community organizations. Bill 41-16 would prohibit the Resource Officer from being a direct participant in any proceeding in the development process. Bill 41-16, as introduced, would replace provisions for a People's Counsel with provisions for a Community Zoning and Land Use Resource Officer (Resource Officer).

In the sponsor's opinion, the development approval process can be overwhelming for those responding to the plans of others. A Resource Officer would provide an independent source of information to educate residents on how, when, and where they may participate in the public approval process for sketch plans, subdivisions, site plans, conditional use applications, and variances.

Public Hearing

The Council held a public hearing concerning Bill 41-16 on November 1, 2016. The Lead Sponsor stated his intention to propose an amendment to Bill 41-16 to retain the Office of the People's Counsel. The proposed amendment would retain all of the provisions for the Office of the People's Counsel without otherwise changing the content of Bill 41-16 as introduced.

Four residents testified at the Council's hearing. The Montgomery County Civic Federation objected to the abolition of the Office of the People's Counsel and its replacement with a Resource Officer. In their view, the County's retention of White Flint and White Oak Development Coordination Officers (in addition to a Development Ombudsman and a Small Business navigator) tilted the County's balance in favor of development interests and away from residents.

The Citizens Coordinating Committee for Friendship Heights endorsed Bill 41-16. In their view, the Resource Officer could aid in getting new people involved in the development process and would provide a way to educate residents on how to present timely and meaningful testimony. Mr. Max Bronstein believes that the restrictions on the Resource Officer's participation in development cases makes the representation of public interests less effective than the Office of the People's Counsel. Ms. Natalie Goldberg supported the proposed Resource Officer but would like the Officer's educational role to include minor master plan amendments.

County Executive's recommendation

The Executive urged the Council to postpone action on Bill 41-16 until it has the opportunity to consider the FY18 budget. In any event, the Executive recommends strengthening the current provisions for the People's Counsel position to allow the Counsel's intervention in development applications as an advocate or as an expert witness.

Planning Board comments

The Planning Board took no position on Bill 41-16. It did take the opportunity to highlight the Planning Department's existing efforts toward public education through meetings, its website, blogs, social media, and personal contact.

Fiscal Impact

The Office of Management and Budget put the possible range of annual expenditures for a new Resource Officer (or contractor) between \$104,000 and \$210,000 per year. The difference between the low and the high end of the range reflects different levels of effort. At that low end of the possible range, the County may hire a part-time consultant as the Resource Officer. The highest expenditure in the range would allow for a full-time consultant. The cost for a County employee with or without an administrative aide would be within the \$104,000 to \$210,000 range. The actual fiscal impact of Bill 41-16 will depend upon the Council's appropriation of funds.

The Office of the People's Counsel was last funded in FY10. The funding level during that fiscal year was \$246,520. The incumbent's tenure and the fact that the People's Counsel was required to be an attorney explains the difference between the estimated fiscal impact and the last expenditure for the Office of the People's Counsel.

Issues

Should any action on Bill 41-16 be deferred to the Council's consideration of the FY 2018 budget?

A delay in Council action on Bill 41-16 was recommended by the County Executive. Bill 41-16 creates the opportunity to fund the proposed Resource Officer. It would not mandate expenditures by the Council. The Office of the People's Counsel is an example of a position that exists in law but currently has no authorized expenditures. A delay would foreclose the opportunity to fund the proposed position.

Council staff finds no legal or financial reason to delay action.¹ **If the Council proceeds, staff would like the authority to make some non-substantive amendments to the Bill.²**

Should the authority of the proposed Resource Officer be revised?

Testimony suggested expanding the role of the Resource Officer to include educating individuals and groups about the process of approving work program changes for minor master plans. The start of a minor master plan amendment is the Council's approval of the Planning Board's work program. It is not the subject of a public hearing.

Unless the Council introduces a public hearing requirement for Planning Board work program changes, Council staff finds little practical value to increasing the scope of the Resource Officer to include this topic.³

The supervision of the Resource Officer is not clear in Bill 16-41 as introduced. **Staff recommends adding a provision to authorize the Council Staff Administrator to supervise the position.**

Should the Office of the People's Counsel be retained in addition to the position of Resource Officer?

As introduced, Bill 41-16 would delete the Office of the People's Counsel. The lead sponsor of Bill 41-16 now recommends retaining the People's Counsel position (with revisions to reflect the Zoning Ordinance approved in 2014) and adding a Resource Officer's position.

The presence of the described position in the County Code does not require that the Council fund the position. The Council's decision to remove the funding for the People's Counsel position without removing the opportunity to hire that position in code is an example of that point.

The existence of two positions in the code would allow the Council to fund both positions, fund one of the positions, or to fund neither of the positions. Certainly, between the two positions, the People's Counsel has broader authority in that Counsel may be a participant in proceedings and appeal decisions of the Planning Board and the Board of Appeals. There is an overlap between the two positions in providing technical assistance to individuals and community groups. For the People's Counsel, it is a secondary assignment; for the Resource Officer, it is a primary assignment. If the Council wants both positions, there should be a requirement to coordinate efforts and avoid duplication.

If the Council has aspirations to fund both positions than both positions should be retained. The only potential downside to retaining both positions with an intent to only fund one position is that it may foster expectations in the civic community that may not be realized.

¹ "Delay is the deadliest form of denial." C. Northcote Parkinson

² Amendments are identified in the attached draft Bill in section 2-160.

³ In April 10, 2012, the Planning Department proposed and the Council accepted using the criteria for selecting which applications to recommend for a minor master plan amendment. Since that time, the Planning Board has recommended minor master plan amendments when development was imminent, in their opinion. Currently there are no "applications" for minor master plan amendments.

Should the Office of the People's Counsel be retained and increased in scope?

The Executive recommends amending the current provision for the People's Counsel position to allow the Counsel's intervention in development applications as an advocate or as an expert witness.

The Council may find this recommendation problematic. There can be a tendency for the Office of the People's Counsel to have its own agenda. Harford County has an advisory board to guard against this problem. There is no such constraint on Montgomery County's People's Counsel.

If the Council wants to retain and expand the scope of the People's Counsel, it should do so by introducing a new Bill. The scope of Bill 41-16, as advertised is not sufficiently broad as to include an expanded scope of duties.

How would the authority of the People's Counsel and the Resource Officer compare to other jurisdictions?

In Harford County, the People's Counsel's function is to "represent the interests of the public in all matters and proceedings preliminary to, arising out of, or affecting the zoning classification or reclassification of land in the county." The People's Counsel is "free to make an independent determination as to the matters and proceedings in which he shall participate and the conduct of the affairs of his position in performing his duties and functions." The Counsel's authority extends to local map amendments and actions before the Board of Appeals (special exceptions and variances), but it does not include subdivision issues.

There is a People's Counsel Citizens Advisory Board in Harford County. This is a group of seven citizens appointed by the County Council. The Board has the authority to "provide guidance and make recommendations to the People's Counsel regarding any matter referred to them by the People's Counsel, County Council, or as requested by any citizen or group of citizens of Harford County."

Baltimore County gives very broad authority to the People's Counsel. He may be a party before the Commissioners, the Board of Appeals, the Planning Board, state agencies, federal agencies, and the courts on behalf of the interests of the public, to defend any duly enacted master plan or comprehensive zoning maps, and in any matter or proceeding involving zoning reclassification, special exception or variance under the Baltimore County Zoning Regulations. In addition, the People's Counsel may prosecute an application before any state or federal court for injunctive and other relief.

Howard County has a part-time Zoning Counsel who is a party at all Zoning Board hearings on local map amendments to produce evidence and testimony supporting comprehensive rezoning and facilitating the compilation of a complete record. The Zoning Counsel may attend certain pre-submission community meetings, as determined by the County Council, to advise any person or group of procedural matters.

In Prince George's County, the People's Zoning Counsel is an attorney appointed by the Executive. The duties of the People's Zoning Counsel are to appear at all hearings on zoning to protect the public interest and to insure the compilation of a full and complete record. The People's Zoning Counsel may summon, examine and cross-examine witnesses, introduce documentary evidence into the record, file exceptions, and make such argument to the Hearing Examiner or the Council.

Montgomery County's People's Counsel has less authority than Baltimore County's Counsel in that the Counsel's court activity is limited to appeal of administrative decisions. The Montgomery County People's Counsel has more authority than Counsels in Harford County and Prince George's County in that the Counsel can be involved in subdivision approvals. In all respects, the proposed Resource Officer would have less authority than any People's Counsel in that the Officer could not be a party in any proceeding.

This packet contains:	<u>Circle #</u>
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Bill No. 41-16
Concerning: Community Zoning and
Land Use Resource Officer
Revised: 9/24/16 Draft No: 1
Introduced: October 4, 2016
Expires: April 4, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council Vice President Berliner
Co-Sponsors: Councilmembers Huckler and Katz

AN ACT to:

- (1) replace provisions for a People's Counsel with provisions for a Community Zoning and Land Use Resource Officer; and
- (2) generally amend the law relating to a Community Zoning and Land Use Resource Officer.

By amending

Montgomery County Code
Chapter 1A, Structure of County Government
Sections 1A-203 and 1A-204

Chapter 2, Administration
Section 2-150

Chapter 33A, Planning Procedures
Section 33A-15

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 1A-203, 1A-204, and 33A-15 are amended as follows:

1A-203. Establishing other offices.

* * *

(b) Legislative Branch. These are the offices of the Legislative Branch:

Office of the County Council (Charter section 101 et seq.)

Office of the Inspector General

Office of Legislative Oversight [section 29A-5]

[Office of the People's Counsel] Community Zoning and Land Use Resource Officer

Office of Zoning and Administrative Hearings

* * *

1A-204. Supervision of offices and appointment of heads.

* * *

(b) Legislative Branch.

* * *

(3) [Office of the People's Counsel] Community Zoning and Land Use Resource Officer.

(A) The County Council may employ, as a term merit system employee, a [Office of the People's Counsel] Community Zoning and Land Use Resource Officer. The Council may, by a resolution adopted by an affirmative vote of six Councilmembers, remove a [People's Counsel] Community Zoning and Land Use Resource Officer during the Counsel's term for good cause. Alternatively, the County Council may retain as an independent contractor [one or more attorneys, along with support staff, consultants, and expert witnesses,] to provide the services of the [People's

28 Counsel] Community Zoning and Land Use Resource
29 Officer under Section 2-150. The contract may be canceled
30 at any time by a resolution adopted by an affirmative vote
31 of six Councilmembers.

32 (B) [Any attorney employed or retained as the People's Counsel
33 must:

34 (i) be a member of the bar of the Court of Appeals of
35 Maryland;

36 (ii) have at least five years experience in the practice or
37 teaching of law; and

38 (iii) have substantial experience with land use legal issues
39 and procedures.]

40 [(C) Any attorney employed or retained as the People's Counsel
41 must not represent any client, other than as People's
42 Counsel, in any matter involving land use in Montgomery
43 or Prince George's County.]

44 [(D)] Any [attorney] person employed or retained as the [People's
45 Counsel] Community Zoning and Land Use Resource
46 Officer must not, within one year after [the attorney's]
47 service as [People's Counsel] the Community Zoning and
48 Land Use Resource Officer ends, represent any party in any
49 proceeding involving zoning or land use in the County.

50 * * *

51 **Article XII [People's Counsel] Community Zoning and Land Use Resource**
52 **Officer**

53 **2-150. [People's Counsel] Community Zoning and Land Use Resource**
54 **Officer-Functions.**

55 (a) *Purpose.* [Informed public actions on land use matters require a full
 56 exploration of often complex factual and legal issues. An independent
 57 People's Counsel can protect the public interest and promote a full and
 58 fair presentation of relevant issues in administrative proceedings in order
 59 to achieve balanced records upon which sound land use decisions can be
 60 made. In addition, a People's Counsel who provides technical assistance
 61 to citizens and citizen organizations will encourage effective participation
 62 in, and increase public understanding of and confidence in, the County
 63 land use process.] The development approval process can be
 64 overwhelming for those responding to the plans of others. Meaningful
 65 participation by affected neighbors can lead to better decision making by
 66 public bodies. A Community Zoning and Land Use Resource Officer
 67 will provide an independent source of information to educate residents on
 68 how, when, and where they may participate in the public approval process
 69 for sketch plans, subdivisions, site plans, conditional use applications,
 70 and variances.

71 (b) *Authority; duties.* [To protect the public interest and achieve a full and
 72 fair presentation of relevant issues, the People's Counsel may participate
 73 in a proceeding before:]

74 [(1) the Board of Appeals if the proceeding involves a variance or a
 75 special exception;]

76 [(2) the County Council (solely for oral argument) or the Hearing
 77 Examiner for the County Council if the matter involves a local map
 78 amendment, a development or schematic development plan
 79 approved under the zoning process or a special exception; and]

80 [(3) the Planning Board if the proceeding involves action on an
 81 optional method development, a subdivision plan including a
 82 subdivision plan for a cluster development, or a site plan.]

83 [The People's Counsel may also file a complaint under Section 59-G-
 84 1.3(b) alleging failure to comply with a special exception, or may seek a
 85 modification of a special exception under Section 59-G-1.3(c) or a
 86 revocation of a special exception under Section 59-G-1.3(e).]

87 The Community Zoning and Land Use Resource Officer must:

- 88 (1) keep informed on pending development decisions;
- 89 (2) keep informed on changes to the development process;
- 90 (3) attend pre-application community meetings concerning significant
 91 projects when the Officer becomes aware of such meetings;
- 92 (4) meet with community members to inform them of critical decision
 93 points in the process;
- 94 (5) educate community members individually or in group meetings on
 95 how to develop effective testimony before decision making bodies;
 96 and
- 97 (6) answer questions concerning zoning and land use from community
 98 members or community organizations.

99 (c) *Restrictions.* [The People's Counsel must not participate in any
 100 legislative proceeding, or in any proceeding before a board or agency of
 101 any municipality in the County.] The Community Zoning and Land Use
 102 Resource Officer must not:

- 103 (1) give testimony in any proceeding before any public body either as
 104 a representative or in individual capacity;
- 105 (2) act as personal attorney for any community member or association;
 106 or

- 107 (3) represent the County, any government agency, or any private party
108 in any proceeding.
- 109 (d) [*Participation.* The People's Counsel is a party in a proceeding under
110 subsection (b) once the People's Counsel files a notice of intention to
111 participate. After the notice is filed, the People's Counsel is entitled to all
112 notices to a party and may participate by making motions, introducing
113 evidence, calling witnesses, examining and cross-examining witnesses,
114 and making arguments as the law and the evidence in the proceeding
115 warrant. The People's Counsel may file and argue an appeal the same as
116 any other party to the proceeding.]
- 117 [(e)] *Independent status.* [The People's Counsel must not represent the
118 County, any government agency, or any private party in any proceeding.]
119 The [People's Counsel] Community Zoning and Land Use Resource
120 Officer is not subject to the authority of the County Attorney of any
121 County Department or State Agency.
- 122 [(f)] *Notice.* If the People's Counsel intends to participate in a proceeding, the
123 People's Counsel must give all parties a notice of intention to participate.]
- 124 [(g)] *Discretion.* In the People's Counsel's discretion, the People's Counsel
125 may withdraw from, or decline to participate in, any proceeding in which
126 the Counsel may participate under subsection (b). The People's Counsel
127 is not liable to any person for participating in, or declining to participate
128 in, any proceeding.]
- 129 [(h)] *Technical assistance.* Without becoming a party to any judicial or
130 administrative proceeding, and subject to available time and resources,
131 the People's Counsel may provide technical assistance to any person
132 about a proceeding listed in subsection (b). When providing technical
133 assistance under this subsection, the People's Counsel must inform the

134 recipient that the People's Counsel is not acting and cannot act as a
135 personal attorney for the recipient.]

136 [(i)] (e) *Coordination.* The [People's Counsel] Community Zoning and Land
137 Use Resource Officer must coordinate the services of its office with those
138 offered by land use information staff in the Council, Board of Appeals,
139 and Planning Board, to avoid inconsistency and duplication and to
140 maximize the assistance offered to citizens.

141 [(j)] (f) *Annual report.* The [People's Counsel] Community Zoning and Land
142 Use Resource Officer must annually report to the Council on the activities
143 of the office.

144 * * *

145 **33A-15. Subdivision Staging Policy.**

146 * * *

147 (b) *Duties of the County Planning Board.*

148 Every fourth year, in the second year of a Council term, the Planning
149 Board must produce a recommended subdivision staging policy.

150 * * *

151 (3) The Board must promptly make available to the County Executive,
152 other agencies (including the Office of Zoning and Administrative
153 Hearings [and the People's Counsel] Community Zoning and Land
154 Use Resource Officer), and the public copies of the staff draft and
155 the Board's recommended subdivision staging policy.

156 * * *

157 *Approved:*

158

159

160

Nancy Floreen, President, County Council

Date

LEGISLATIVE REQUEST REPORT

41-16

Community Zoning and Land Use Resource Officer

DESCRIPTION:	This Bill would replace current provisions for a People's Counsel with provisions for a Community Zoning and Land Use Resource Officer position.
PROBLEM:	The County's development approval, zoning code, and master plan process is complex. Residents living in proximity to proposed development or a new master plan need assistance in understanding and communicating relevant facts to decision makers at the appropriate time and place.
GOALS AND OBJECTIVES:	The amendment will create a position that serves as a community resource and facilitates participation in the development process without adding a direct participant in that process.
COORDINATION:	Planning Department, the Office of Zoning and Administrative Hearings, and the Board of Appeals
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Planning Department, the Office of Zoning and Administrative Hearings, and the Board of Appeals
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Not applicable.



ROCKVILLE, MARYLAND

MEMORANDUM

October 24, 2016

TO: Nancy Floreen, President, County Council

FROM: *JAW* Jennifer A. Hughes, Director, Office of Management and Budget
AE Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 41-16, Community Zoning and Land Use Resource Officer

Please find attached the fiscal and economic impact statements for the above-referenced legislations.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Jed Millard, Office of Management and Budget
Jennifer Nordin, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Bill 41-16 – Community Zoning and Land Use Resource Officer

1. Legislative Summary

The Bill would abolish the Office of People’s Counsel and establish in its place a Community Zoning and Land Use Resource Officer. The primary function of the Community Zoning and Land Use Resource Officer would be to meet with community members to inform them of decision points in the process; educate community members on how to develop effective testimony; and answer questions concerning zoning and land use from community members and community organizations.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

No revenues are proposed by the Bill.

The Office of People’s Counsel was last funded in FY10 at \$246,520 and 1.8 workyears. Abolishing the Office does not offset expenditures related to the establishment of the Community Zoning and Land Use Resource Officer.

Expenditures would include personnel and operating costs of the Community Zoning and Land Use Resource Officer. There are provisions in the Bill that would allow for the Officer to be a term merit system position or a consultant. The position is not required to be full-time.

	FTEs	Salary	Benefits	Operating Expenses	Total
Scenario 1 –Full-time Officer (G28) and Part-time Support Staff (G16)	1.5	\$122,340	\$37,555	\$6,000	\$165,894
Scenario 2 –Part-time Officer (G28) and Part-time Support Staff (G16)	1.0	\$74,755	\$32,011	\$6,000	\$112,766
Scenario 3- On-Site Full-time Consultant @ 2,080 hours	1.0 Equivalent	N/A	N/A	\$210,500	\$210,500
Scenario 4 – On-Site Part-time Consultant @ 1,040 hours	0.50 Equivalent	N/A	N/A	\$106,500	\$106,500
Scenario 5- Off-Site Full-time Consultant @ 2,080 hours	1.0 Equivalent	N/A	N/A	\$208,000	\$208,000
Scenario 6 – Off-Site Part-time Consultant @ 1,040 hours	0.50 Equivalent	N/A	N/A	\$104,000	\$104,000

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Estimated expenditures:

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Scenario 1*	\$165,894	\$166,236	\$171,223	\$176,360	\$181,650	\$187,100
Scenario 2*	\$112,766	\$111,514	\$114,859	\$118,305	\$121,854	\$125,510
Scenario 3**	\$210,500	\$213,616	\$219,384	\$225,307	\$231,390	\$237,638
Scenario 4**	\$106,500	\$106,808	\$109,692	\$112,653	\$115,695	\$118,819
Scenario 5***	\$208,000	\$213,616	\$219,384	\$225,307	\$231,390	\$237,638
Scenario 6***	\$104,000	\$106,808	\$109,692	\$112,653	\$115,695	\$118,819

* Elimination of one-time expenses in Year 2. Personnel Costs increase annually.

** Elimination of one-time expenses in Year 2. CPI estimated at 2.7 percent

*** CPI estimated at 2.7 percent

Note: Support staff costs are not included in scenarios 3,4,5, and 6

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable

7. An estimate of the staff time needed to implement the bill.

1.0 to 1.50 FTEs or 1,040 to 2,080 consultant hours

8. An explanation of how the addition of new staff responsibilities would affect other duties.

Planning Staff, the Hearing Examiner, and Board of Appeals staff may be able to refer inquiries to the Community Zoning and Land Use Resource Officer.

9. An estimate of costs when an additional appropriation is needed.

See Question #2.

10. A description of any variable that could affect revenue and cost estimates.

Not applicable

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable

12. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

13. Other fiscal impacts or comments.

Not applicable

14. The following contributed to and concurred with this analysis:

Jeff Zyontz, Council Staff

Jennifer Nordin, OMB


Jennifer A. Hughes, Director
Office of Management and Budget


Date



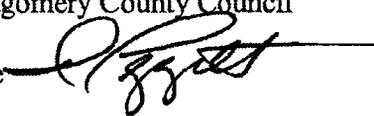
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

November 16, 2016

TO: Nancy Floreen, President, Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Bill 41-16, Community Zoning and Land Use Resource Officer

Thank you for considering my views on Bill 41-16, Community Zoning and Land Use Resource Officer. When I was on the Council, I initially proposed a fully functioning Office of People's Counsel. As originally drafted, the office was intended to function as a legal resource, employing an experienced attorney who would represent residents in land use proceedings to promote full and fair presentation of issues and to assure sound land use decisions. As envisioned in the original legislation, the OPC would be empowered to:

- Participate in proceedings before the County Council, Board of Appeals, Planning Board, and Hearing Examiner and court appeals.
- Obtain highly qualified experts to provide technical assistance and expert testimony;
- Represent residents before Park and Planning, Council and Board of Appeals as an advocate and as an expert witness.
- File complaints alleging failure to comply with a special exception grant; seek modification or revocation of special exceptions when such action is necessary.

However, the then County Executive and some Councilmembers did not support such a strong legislative mandate for the proposed People's Counsel, and as a compromise, what was ultimately adopted was essentially what the proposed Community Zoning and Land Use Resource Officer would now do, which I believe is inadequate. I had always envisioned revisiting and strengthening the powers of the OPC. When I became the County Executive, and the County and nation were plunged into extraordinary financial circumstances that still reverberate today, I held off out of fiscal prudence.

As introduced, Bill 41-16 would replace provisions for a People's Counsel with provisions for a Community Zoning and Land Use Resource Officer who would provide an independent source of information to educate residents on how, when, and where they may participate in the public approval process for sketch plans, subdivisions, site plans, conditional use applications, and variances. That is essentially what the People's Counsel did after we

Nancy Floreen, President, Montgomery County Council
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November 16, 2016

compromised the original bill in order to ensure passage. Since introduction, I have been informed that the sponsor will offer an amendment that would retain the provisions for the Office of People's Counsel while retaining the Resource Office provisions. Under Bill 41-16, the primary function of the Community Zoning and Land Use Resource Officer would be to 1) meet with community members to inform them of critical decision points in the process; 2) educate community members individually or in group meetings on how to develop effective testimony before decision making bodies; and 3) answer questions concerning zoning and land use from community members or community organizations. Bill 41-16 would prohibit the Resource Officer from being a direct participant in any proceeding in the development process.

While I believe that Bill 41-16 is well intentioned, I also believe it lacks the robust mandate of a true People's Counsel. A true and fully functional Office of People's Counsel could easily provide the service envisioned for the Resource Officer and fully represent residents before appropriate bodies considering land use decisions. To that extent, the legislation would create a potentially unnecessary and duplicative entity. Therefore, I do not support the legislation. I believe that the majority of our residents are either well versed in how to participate in the public processes that are available to them at Park and Planning, Council and the Board of Appeals or are able to access the widely available, comprehensive information on how to do so. I remain committed to adopting a full-fledged People's Counsel that can fully represent our residents, as well as perform the function of a resource officer when the County's financial outlook is more certain, and at that time I would recommend amendments to the current language to strengthen the role of the Office of People's Counsel.

Finally, I urge the Council to postpone action on this bill until it has an opportunity to consider the FY 18 budget. Revenue projections and the outlook for FY 18 are still challenging. Additionally, the Council has adopted or is considering adopting initiatives that increase expenditures (e.g., \$8 million for road resurfacing) or decrease revenue (the property tax credit in Bill 42-16). These types of actions, taken out of the context of the full fiscal picture, decrease our flexibility and make it more challenging to act on other County priorities.

Thank you for your consideration.

IL:bk

Bill No. 41-16
Concerning: Community Zoning and
Land Use Resource Officer
Revised: 2/16/16 Draft No: 3
Introduced: October 4, 2016
Expires: April 4, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Berliner

AN ACT to:

- (1) [[replace retain provisions for a Peoples Counsel with provisions for]] establishes a Community Zoning and Land Use Resource Officer;
- (2) defines the duties and responsibilities of the officer and
- (3) generally amend the law relating to a Community Zoning and Land Use Resource Officer.

By amending

Montgomery County Code
Chapter 1A, Structure of County Government
Sections 1A-203 and 1A-204

[[Chapter 2, Administration
Section 2-150]]

Chapter 33A, Planning Procedures
Section 33A-15

And adding

Chapter 2, Administration
Section 2-160

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

Sec. 1. Sections 1A-203, 1A-204, and 33A-15 are amended as follows:

1A-203. Establishing other offices.

* * *

(b) Legislative Branch. These are the offices of the Legislative Branch:

Office of the County Council (Charter section 101 et seq.)

Office of the Inspector General

Office of Legislative Oversight [section 29A-5]

[Office of the People's Counsel] [[Community Zoning and Land Use Resource Officer]] Office of the People's Counsel

Office of Zoning and Administrative Hearings

Community Zoning and Land Use Resource Officer

* * *

1A-204. Supervision of offices and appointment of heads.

* * *

(b) Legislative Branch.

* * *

(3) [Office of the People's Counsel] [[Community Zoning and Land Use Resource Officer]] Office of the People's Counsel.

(A) The County Council may employ, as a term merit system employee, a [Office of the People's Counsel] [[Community Zoning and Land Use Resource Officer]] Office of the People's Counsel. The Council may, by a resolution adopted by an affirmative vote of six Councilmembers, remove a [People's Counsel] [[Community Zoning and Land Use Resource Officer]] Office of the People's Counsel during the Counsel's term for good cause. Alternatively, the County Council may retain as an independent contractor

28 [one or more attorneys, along with support staff,
 29 consultants, and expert witnesses,] one or more attorneys,
 30 along with support staff, consultants, and expert witnesses,
 31 to provide the services of the [People's Counsel]
 32 [[Community Zoning and Land Use Resource Officer]]
 33 Office of the People's Counsel under Section 2-150. The
 34 contract may be canceled at any time by a resolution
 35 adopted by an affirmative vote of six Councilmembers.

36 (B) [Any attorney employed or retained as the People's Counsel
 37 must:

- 38 (i) be a member of the bar of the Court of Appeals of
 39 Maryland;
- 40 (ii) have at least five years experience in the practice or
 41 teaching of law; and
- 42 (iii) have substantial experience with land use legal issues
 43 and procedures.]

44 Any attorney employed or retained as the People's Counsel
 45 must:

- 46 (i) be a member of the bar of the Court of Appeals of
 47 Maryland;
- 48 (ii) have at least five years experience in the practice or
 49 teaching of law; and
- 50 (iii) have substantial experience with land use legal issues
 51 and procedures.

52 [(C) Any attorney employed or retained as the People's Counsel
 53 must not represent any client, other than as People's

54 Counsel, in any matter involving land use in Montgomery
 55 or Prince George’s County.]

56 (C) Any attorney employed or retained as the People’s Counsel
 57 must not represent any client, other than as People’s
 58 Counsel, in any matter involving land use in Montgomery
 59 or Prince George’s County.

60 [(D)] (D) Any [attorney] [[person]] attorney employed or retained
 61 as the [People’s Counsel] [[Community Zoning and Land
 62 Use Resource Officer]] Office of the People’s Counsel must
 63 not, within one year after [the attorney’s] service as [People
 64 ’s Counsel] [[the Community Zoning and Land Use
 65 Resource Officer]] People’s Counsel ends, represent any
 66 party in any proceeding involving [[zoning or]] land use in
 67 the County.

68 * * *

69 (5) Community Zoning and Land Use Resource Officer.

70 (A) The County Council may employ, as a term merit system
 71 employee, a Community Zoning and Land Use Resource
 72 Officer. The Council may, by a resolution adopted by an
 73 affirmative vote of six Councilmembers, remove a
 74 Community Zoning and Land Use Resource Officer during
 75 the Counsel’s term for good cause. Alternatively, the
 76 County Council may retain as an independent contractor to
 77 provide the services of the Community Zoning and Land
 78 Use Resource Officer under Section 2-150. The contract
 79 may be canceled at any time by a resolution adopted by an
 80 affirmative vote of six Councilmembers.

81 (B) Any person employed or retained as the Community Zoning
 82 and Land Use Resource Officer must not, within one year
 83 after service as the Community Zoning and Land Use
 84 Resource Officer ends, represent any party in any
 85 proceeding involving zoning or land use in the County.

87 **Article XII [People’s Counsel] [Community Zoning and Land Use Resource**
 88 **Officer] People’s Counsel**

89 **2-150. [People's Counsel] [Community Zoning and Land Use Resource**
 90 **Officer] People’s Counsel.**

91 (a) *Purpose.* [Informed public actions on land use matters require a full
 92 exploration of often complex factual and legal issues. An independent
 93 People's Counsel can protect the public interest and promote a full and
 94 fair presentation of relevant issues in administrative proceedings in order
 95 to achieve balanced records upon which sound land use decisions can be
 96 made. In addition, a People's Counsel who provides technical assistance
 97 to citizens and citizen organizations will encourage effective participation
 98 in, and increase public understanding of and confidence in, the County
 99 land use process.] [The development approval process can be
 100 overwhelming for those responding to the plans of others. Meaningful
 101 participation by affected neighbors can lead to better decision making by
 102 public bodies. A Community Zoning and Land Use Resource Officer
 103 will provide an independent source of information to educate residents on
 104 how, when, and where they may participate in the public approval process
 105 for sketch plans, subdivisions, site plans, conditional use applications,
 106 and variances.]] Informed public actions on land use matters require a full
 107 exploration of often complex factual and legal issues. An independent

108 People's Counsel can protect the public interest and promote a full and
 109 fair presentation of relevant issues in administrative proceedings in order
 110 to achieve balanced records upon which sound land use decisions can be
 111 made. In addition, a People's Counsel who provides technical assistance
 112 to citizens and citizen organizations will encourage effective participation
 113 in, and increase public understanding of and confidence in, the County
 114 land use process.

115 (b) *Authority; duties.* [To protect the public interest and achieve a full and
 116 fair presentation of relevant issues, the People's Counsel may participate
 117 in a proceeding before:] To protect the public interest and achieve a full
 118 and fair presentation of relevant issues, the People's Counsel may
 119 participate in a proceeding before:

120 [(1) the Board of Appeals if the proceeding involves a variance or a
 121 special exception;]

122 (1) the Board of Appeals or the Hearing Examiner if the proceeding
 123 involves an amendment to a special exception, a conditional use,
 124 or a variance;

125 [(2) the County Council (solely for oral argument) or the Hearing
 126 Examiner for the County Council if the matter involves a local map
 127 amendment, a development or schematic development plan
 128 approved under the zoning process or a special exception; and]

129 (2) the County Council (solely for oral argument) or the Hearing
 130 Examiner for the County Council if the matter involves a local map
 131 amendment, a binding elements or amendments to binding
 132 elements approved under the zoning process; and

133 [(3) the Planning Board if the proceeding involves action on an
134 optional method development, a subdivision plan including a
135 subdivision plan for a cluster development, or a site plan.]

136 (3) the Planning Board if the proceeding involves action on an
137 optional method development, a subdivision plan including a
138 subdivision plan for a cluster development, or a site plan.

139 [The People's Counsel may also file a complaint under Section 59-G-
140 1.3(b) alleging failure to comply with a special exception, or may seek a
141 modification of a special exception under Section 59-G-1.3(c) or a
142 revocation of a special exception under Section 59-G-1.3(e).]

143 [[The Community Zoning and Land Use Resource Officer must:

- 144 (1) keep informed on pending development decisions;
- 145 (2) keep informed on changes to the development process;
- 146 (3) attend pre-application community meetings concerning significant
147 projects when the Officer becomes aware of such meetings;
- 148 (4) meet with community members to inform them of critical decision
149 points in the process;
- 150 (5) educate community members individually or in group meetings on
151 how to develop effective testimony before decision making bodies;
152 and
- 153 (6) answer questions concerning zoning and land use from community
154 members or community organizations.]]

155 The People's Counsel may also file a complaint under Section 59-7.3.1.L
156 alleging failure to comply with a special exception or a conditional use,
157 or may seek a modification of a special exception or conditional use under
158 Section 59-7.3.1.K or a revocation of a special exception or conditional
159 use under Section 59-7.3.1.L.

- 160 (c) *Restrictions.* [The People's Counsel must not participate in any
 161 legislative proceeding, or in any proceeding before a board or agency of
 162 any municipality in the County.] [[The *Community Zoning and Land*
 163 *Use Resource Officer* must not:
- 164 (1) give testimony in any proceeding before any public body either as
 165 a representative or in individual capacity;
 - 166 (2) act as personal attorney for any community member or association;
 167 or
 - 168 (3) represent the County, any government agency, or any private party
 169 in any proceeding.]]

170 The People's Counsel must not participate in any legislative proceeding,
 171 or in any proceeding before a board or agency of any municipality in the
 172 County.

- 173 (d) [*Participation.* The People's Counsel is a party in a proceeding under
 174 subsection (b) once the People's Counsel files a notice of intention to
 175 participate. After the notice is filed, the People's Counsel is entitled to all
 176 notices to a party and may participate by making motions, introducing
 177 evidence, calling witnesses, examining and cross-examining witnesses,
 178 and making arguments as the law and the evidence in the proceeding
 179 warrant. The People's Counsel may file and argue an appeal the same as
 180 any other party to the proceeding.] *Participation.* The People's Counsel
 181 is a party in a proceeding under subsection (b) once the People's Counsel
 182 files a notice of intention to participate. After the notice is filed, the
 183 People's Counsel is entitled to all notices to a party and may participate
 184 by making motions, introducing evidence, calling witnesses, examining
 185 and cross-examining witnesses, and making arguments as the law and the

186 evidence in the proceeding warrant. The People's Counsel may file and
 187 argue an appeal the same as any other party to the proceeding.

188 [(e)] (e) *Independent status.* [The People's Counsel must not represent the
 189 County, any government agency, or any private party in any proceeding.]
 190 The People's Counsel must not represent the County, any government
 191 agency, or any private party in any proceeding. The [People's Counsel]
 192 [[Community Zoning and Land Use Resource Officer]] People's Counsel
 193 is not subject to the authority of the County Attorney of any County
 194 Department or State Agency.

195 [(f)] *Notice.* If the People's Counsel intends to participate in a proceeding, the
 196 People's Counsel must give all parties a notice of intention to participate.]

197 (f) Notice. If the People's Counsel intends to participate in a proceeding, the
 198 People's Counsel must give all parties a notice of intention to participate.

199 [(g)] *Discretion.* In the People's Counsel's discretion, the People's Counsel
 200 may withdraw from, or decline to participate in, any proceeding in which
 201 the Counsel may participate under subsection (b). The People's Counsel
 202 is not liable to any person for participating in, or declining to participate
 203 in, any proceeding.]

204 (g) Discretion. In the People's Counsel's discretion, the People's Counsel
 205 may withdraw from, or decline to participate in, any proceeding in which
 206 the Counsel may participate under subsection (b). The People's Counsel
 207 is not liable to any person for participating in, or declining to participate
 208 in, any proceeding.

209 [(h)] *Technical assistance.* Without becoming a party to any judicial or
 210 administrative proceeding, and subject to available time and resources,
 211 the People's Counsel may provide technical assistance to any person
 212 about a proceeding listed in subsection (b). When providing technical

213 assistance under this subsection, the People's Counsel must inform the
214 recipient that the People's Counsel is not acting and cannot act as a
215 personal attorney for the recipient.]

216 (h) Technical assistance. Without becoming a party to any judicial or
217 administrative proceeding, and subject to available time and resources,
218 the People's Counsel may provide technical assistance to any person
219 about a proceeding listed in subsection (b). When providing technical
220 assistance under this subsection, the People's Counsel must inform the
221 recipient that the People's Counsel is not acting and cannot act as a
222 personal attorney for the recipient.

223 [(i) [(e)] (i) Coordination. The [People's Counsel] [Community Zoning and
224 Land Use Resource Officer]] People's Counsel must coordinate the
225 services of its office with those offered by the Community Zoning and
226 Land Use Resource Officer and land use information staff in the Council,
227 Board of Appeals, the Office of Zoning and Administrative Hearings, and
228 Planning Board, to avoid inconsistency and duplication and to maximize
229 the assistance offered to citizens.

230 [(j) (f) Annual report. The [People's Counsel] Community Zoning and Land
231 Use Resource Officer must annually report to the Council on the activities
232 of the office.

233 * * *

234 **Article XV Community Zoning and Land Use Resource Officer**

235 **2-160. Community Zoning and Land Use Resource Officer-Functions.**

236 (a) Purpose. The development approval process can be overwhelming for
237 those responding to the plans of others. Meaningful participation by
238 affected neighbors can lead to better decision making by public bodies.
239 A Community Zoning and Land Use Resource Officer will provide an

24

240 independent source of information to educate residents on how, when,
 241 and where they may participate in the public approval process for sketch
 242 plans, subdivisions, site plans, conditional use applications, and
 243 variances.

244 (b) Authority; duties.

245 The Community Zoning and Land Use Resource Officer must:

- 246 (1) keep informed on pending development decisions;
- 247 (2) keep informed on changes to the development process;
- 248 (3) attend pre-application community meetings concerning significant
 249 projects when the Officer becomes aware of such meetings;
- 250 (4) meet with community members to inform them of critical decision
 251 points in the process;
- 252 (5) educate community members individually or in group meetings on
 253 how to develop effective testimony before decision making bodies;
 254 and
- 255 (6) answer questions concerning zoning and land use from community
 256 members or community organizations.

257 (c) Restrictions. The Community Zoning and Land Use Resource Officer
 258 must not:

- 259 (1) testify testimony in any proceeding before any public body either
 260 representing a party or as an individual;
- 261 (2) act as the attorney for any community member or association; or
- 262 (3) represent the County, any government agency, or any private party
 263 in any proceeding.

264 (d) Independent status. The Community Zoning and Land Use Resource
 265 Officer is not subject to the authority of the County Attorney, or any
 266 County Executive branch department, or the Planning Board.

267 (e) Coordination. The Community Zoning and Land Use Resource Officer
268 must coordinate the services of its office with those offered by Council
269 Staff, the Board of Appeals staff, the Office of Zoning and
270 Administrative Hearings, the Planning Department Staff, and the
271 People’s Counsel, to avoid inconsistency and duplication and to
272 maximize the assistance offered to citizens.

273 (f) Annual report. The Community Zoning and Land Use Resource Officer
274 must annually report to the Council on the activities of the office.

275 * * *

276 **33A-15. Subdivision Staging Policy.**

277 * * *

278 (b) *Duties of the County Planning Board.*
279 Every fourth year, in the second year of a Council term, the Planning
280 Board must produce a recommended subdivision staging policy.

281 * * *

282 (3) The Board must promptly make available to the County Executive,
283 other agencies (including the Office of Zoning and Administrative
284 Hearings [and the People’s Counsel] the People’s Counsel and the
285 Community Zoning and Land Use Resource Officer), and the
286 public copies of the staff draft and the Board’s recommended
287 subdivision staging policy.

288 * * *