

**Action**

**MEMORANDUM**

June 19, 2009

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: **Action** - Amendment to Chapter 33A, Planning Procedures;  
Master Plan Process – Public Hearing Time Period

**PHED Committee Recommendation.** On June 23, 2008 the Committee recommended (3-0) the approval of the amendment with revisions to establish a public hearing, under the Council Rules of Procedure, any time within 105 days after receipt of a Master Plan from the Planning Board. The Committee was persuaded by Council President Andrews that the Council needed more flexibility to schedule multiple master plans submitted close to the Council's recess periods.

After the meeting, staff recommended technical changes to each member of the Committee. Staff recommends using the advertisement date to determine the outside date to hold a public hearing. It also repeated the provisions of Article 28 of the Maryland Code that requires a minimum 30 day period between the advertisement and the public hearing. Councilmember Floreen agreed with staff's recommendations. Councilmember Elrich did not express any opinion. The attached draft reflects those technical amendments.

Background

The amendment to Chapter 33A, sponsored by Councilmember Leventhal, was introduced on April 21, 2009. This amendment would revise the time period in which the Council must establish a public hearing on a master plan or master plan amendment.

Currently, the Council may establish a public hearing on a master plan as soon as the Council receives a fiscal impact report from the Executive, or 105 days from the day the Planning Board sent the report to the Council. The Executive has 60 days in which to draft a fiscal impact statement.

The attached ordinance would allow the Council to establish a public hearing 30 days after the Council receives the amendment from the Planning Board. It would still allow the Council to set the hearing earlier if the Council receives the Executive's fiscal impact statement earlier. If the Executive uses 60 days to complete a fiscal impact statement, the draft ordinance would allow a public hearing

immediately after the Executive produces his report. This ordinance would take effect when it is adopted.

The Council held a public hearing on this Amendment to Chapter 33A on June 9, 2009. The County Executive supported the amendment with a suggestion to schedule the Council's public hearing after the fiscal impact analysis and department comments are due. The Planning Board and Planning Staff recommended approval of the amendment as introduced.

### Issues

#### 1) When should the Council establish a public hearing on a Master Plan?

Article 28 §7-108(d)(2) of the Maryland Code requires a 30 day period between the advertisement for a public hearing and holding the public hearing. It does not require that the Council wait for the Executive's comments to hold its public hearing. Currently, Chapter 33A requires waiting for the Executive's comments before even advertising a public hearing. The current process is unworkable when the Council anticipates multiple plans near the time of the Council's summer or holiday recess. More flexibility will help the Council maintain an orderly schedule. Council should be able to set the date for a public hearing after receipt of the Executive's comments if it chooses to do so.

Article 28 §7-108(d)(2) of the Maryland Code also requires the Council to act or to extend the time for action within 180 days from receipt of the Executive's comments. If the Council fails to act or extend that time period, the plan is approved as submitted by the Planning Board. This suggests the merits of establishing a public hearing date as soon as possible. The Committee and Council President Andrews recommend this approach.

Currently, the "outside" date for establishing a public hearing is 105 days after the Council receives the plan. That time period equals 45 days from the 60 days allowed for Executive comment. That outside date is important, to retain time for Council action on the plan without the need for an extension of time.

#### 2) How should the Council establish a public hearing?

Traditionally, the Council establishes public hearing dates for master plans by resolution. This is not required by State or County law. This procedure is a waste of the Council's time and can lead to unnecessary scheduling problems when the Council is on recess. The public hearing date for a bill is established by the Council's Rules of Procedure; the Council President may establish the date without a resolution by the Council. The Committee and Council President Andrews recommend that the procedure for establishing the public hearing date for bills and master plans be the same.

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Amendment to Chapter 33A  
Concerning: Planning Procedures –  
Master Plan Public Hearings  
Revised: 6/17/09  
Draft No.: 3  
Introduced: April 21, 2009  
Effective:  
Ordinance No:

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

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By: Councilmember Leventhal

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An Amendment to the Planning Procedures of Montgomery County to:

- amend the time period within which the Council may schedule a public hearing on a Master Plan or a Master Plan Amendment

By amending

Montgomery County Code  
Chapter 33A, Planning Procedures  
Section 33A-8

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

The amendment to Chapter 33A, sponsored by Councilmember Leventhal, was introduced on April 21, 2009. This amendment would revise the time period in which the Council must establish a public hearing on a master plan or master plan amendment.

Currently, the Council may establish a public hearing on a master plan as soon as the Council receives a fiscal impact report from the Executive, or 105 days from the day the Planning Board sent the report to the Council. The Executive has 60 days in which to draft a fiscal impact statement.

The Council held a public hearing on this Amendment to Chapter 33A on June 09, 2009. The County Executive supported the amendment with a suggestion to schedule the Council's public hearing after the fiscal impact analysis and department comments are due. The Planning Board and Planning Staff recommended approval of the amendment as introduced. The Council referred the matter to the Planning, Housing, and Economic Development Committee.

On June 23, 2008 the Planning, Housing, and Economic Development Committee recommended (3-0) the approval of the amendment with revisions to establish a public hearing, under the Council Rules of Procedure, any time within 105 days after receipt of a Master Plan for the Planning Board. The Committee was persuaded by Council President Andrews that the Council needed more flexibility to schedule multiple master plans submitted close to the Council's recess periods.

After the meeting, staff recommended technical changes to each member of the Committee. Staff recommends using the advertisement date to determine the outside date to hold a public hearing. It also repeated the provisions of Article 28 of the Maryland Code that requires a minimum 30 day period between the advertisement and the public hearing. Councilmember Floreen agreed with staff's recommendations. Councilmember Elrich did not express any opinion.

On June 22, the District Council reviewed the amendment to Chapter 33A and agreed with the Committee's recommendation.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, this amendment to Chapter 33A will be approved as amended.

#### *ORDINANCE*

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



27           **Sec. 2. Effective Date.** This ordinance takes effect immediately upon the  
28 date of Council adoption.

29 This is a correct copy of Council action.

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32 Linda M. Lauer, Clerk of the Council

LU & ZONING



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

7/30/09  
MCP  
MCP

OFFICE OF THE CHAIRMAN 049434

**MONTGOMERY COUNTY PLANNING BOARD**

The Maryland-National Capital Park and Planning Commission

June 1, 2009

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Resolution No. 16-930

2009 JUN 3 PM 1:32  
MCP  
MCP

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Resolution No. 16-930 at its regular meeting on May 28, 2009. By a vote of 3:0, the Board recommends approval of the resolution as proposed and included in the technical staff report.

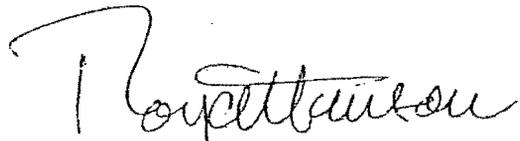
The Resolution No. 16-930 proposes to amend Chapter 33A-8 of the Montgomery County Code which specifies when the District Council can set public hearings for master plans or master plan amendments. Under the current procedure, the District Council must set a public hearing date within 45 days after receipt of the County Executive's fiscal impact analysis of a master plan or within 105 days after the Planning Board draft is submitted to the Council, if the Executive does not submit a fiscal impact analysis. Once the Council receives the County Executive's fiscal analysis, they initiate the required 30-day notice for their public hearing. Under this procedure, the time period for setting a master plan or master plan amendment public hearing could be as long as 105 days.

The Planning Board will be sending four draft master plans to the Council shortly. Under Resolution No. 16-930 the notification and review period will be shortened and will permit the Council to schedule a public hearing 30 days after receiving the draft plan from the Planning Board, even if the County Executive's fiscal analysis has not been received. The remainder of the County Executive's 60-day review period would then occur concurrently with the 30-day public hearing notice. The Planning Board believes this resolution will allow the District Council to hold public hearings and work sessions in an efficient manner and recommends approval.

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## CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on a motion by Commissioner Alfandre, seconded by Commissioner Cryor, with Commissioners Alfandre, Cryor and Chairman Hanson voting in favor of the motion, and with Vice-Chairman Robinson not present and Commissioner Presley absent from the meeting, at its regular meeting held in Silver Spring, Maryland, on Thursday, May 28, 2009.



Royce Hanson  
Chairman

RH: KAR





**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item #  
5/28/09

**MEMORANDUM:**

**DATE:** May 15, 2009  
**TO:** Montgomery County Planning Board  
**VIA:** Glenn Kreger, Acting Chief, Vision Division *GK*  
Bill Barron, Team Leader, South Central Transit Corridor Team *[Signature]*  
**FROM:** Kathleen A. Reilly, AICP, Planner Coordinator (301.495.4614) *[Signature]*  
South Central Transit Corridor Team  
**PURPOSE:** To amend Section 33A-8 of the Montgomery County Code on  
Planning Procedures

**RESOLUTION NO:** 16-930  
**REVIEW BASIS:** Advisory to the County Council, sitting as the District  
Council, Chapter Section 33-A of the County Code  
**INTRODUCED BY:** Councilmember Leventhal  
**INTRODUCTION DATE:** April 21, 2009

**PLANNING BOARD REVIEW:** May 28, 2009  
**PUBLIC HEARING:** June 9, 2009 at 1:30 p.m.

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**STAFF RECOMMENDATION:** **APPROVAL** to transmit comments to the  
County Council

**SUMMARY**

Resolution No. 16-930 proposes revisions to Chapter 33A of the Montgomery County Code on Planning Procedures. Specifically, this resolution seeks to amend the time period in which the District Council can schedule a public hearing on a master plan or master plan amendment (Attachment 1).

**ANALYSIS**

Chapter 33A of the County Code pertains to Planning Procedures that must be followed in the production of land use plans. Chapter 33A-8 specifies when the District Council can set public hearings for master plans or master plan amendments (Attachment 2). As written, Chapter 33A-8 (a) of the County Code states:

*Within 45 days after the District Council receives the fiscal impact analysis of the plan or amendment from the County Executive, or within 105 days after the planning board draft is transmitted to the County Council if the Executive does not submit a fiscal impact analysis, the District Council must set the date for a public hearing on the Planning Board draft plan. The Council's hearing on the planning board draft plan must be held within 60 days after the date is set. A public hearing is not required if the District Council does not intend to propose any revisions, modifications, or amendments to the Planning Board draft plan.*

*[Signature]*

**Testimony on Behalf of the County Executive Before the County Council Sitting as the  
District Council  
on the Proposed Amendment to Chapter 33A, Planning Procedures – Master Plan**

June 9, 2009

Good afternoon Council President Andrews and members of the Council. For the record, my name is Diane Schwartz Jones and I am pleased to testify on behalf of County Executive Isiah Leggett. The County Executive supports Councilmember Leventhal's proposal to amend Chapter 33A, to modify the time period within which the Council must establish a public hearing on a master plan or a master plan amendment. This proposal will allow the advertisement of hearing to run while the Executive Branch is concluding its review of a proposed plan or amendment.

Article 28, section 7-108 of the Maryland Code requires that the County Executive provide the District Council with a fiscal impact analysis for a proposed master plan or amendment, along with any comments, within 60 days of the Planning Board's transmission of the plan or amendment. The Executive Branch has historically worked with the Council to shorten the time frame for its review to facilitate the Council's need to fit its hearing into specific windows of time. However, with the overlapping reviews of the White Flint Master Plan, Gaithersburg West Master Plan, Kensington Master Plan, Growth Policy and other complex planning matters looming on the horizon, and despite our sincere desire to accommodate such requests, we may not be able to provide expedited reviews for all of the upcoming plans without jeopardizing substantive review or deferring other work obligations.

The proposal to amend Chapter 33A is a simple solution to enable the Council to move forward with advertisement for a hearing while the Executive Branch is conducting its fiscal impact analysis and coordinating Department comments on the proposed plan. Both the fiscal impact and departmental comments are important information for the Council as it deliberates a plan.

The amendment will allow the Council greater flexibility to schedule around certain time windows, such as budget sessions, recesses and other administrative events affecting the Council.

Allowing for the concurrent advertisement of the Council's hearing on a proposed plan so that the hearing can proceed after the County Executive transmits the fiscal impact and the department comments is efficient to the timely processing of plans without harming the process. One thing that we suggest though is that hearings be scheduled to occur after the fiscal impact analysis and department comments are due to the Council so that the public has the opportunity to factor that information into any comments to be made.

Again, we support this amendment and commend Councilmember Leventhal and the Council for devising this solution rather than pressing to diminish the time for the work of the Executive Branch. Thank you for the opportunity to testify on the proposed amendment to Chapter 33A.

