

**MEMORANDUM**

October 2, 2009

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney 

SUBJECT: **Introduction:** Subdivision Regulation Amendment (SRA) 09-03;  
Enforcement - Amendments

SRA 09-03, Forest Conservation - Enforcement, sponsored by the Council President at the request of the Planning Board, is scheduled to be introduced on October 6, 2009. A public hearing will be scheduled for November 17 at 7:30 p.m. if the Council approves the attached resolution.

SRA 09-03 would revise the procedures to enforce a Planning Board action and generally amend the provisions for issuance, enforcement, and appeals of Planning Board actions. This SRA, in addition to Zoning Text Amendment 09-09 and Bill 34-09, was recommended by the Planning Board to have a consistent set of procedures for zoning, subdivision, and forest conservation violations. The Planning Board's request to introduce SRA-03 is included in the packet for Bill 34-09.

This packet contains:

SRA 09-03  
Resolution

Circle #

1-13  
15

Ordinance No.  
Subdivision Regulation Amend. No. 09-03  
Concerning: Enforcement-Amendments  
Revised: 9-22-09; Draft No.  
Introduced:  
Public Hearing:  
Adopted:  
Effective:

**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: District Council at the Request of the Planning Board

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**AN AMENDMENT** to the Subdivision Regulations to:

- (1) revise the procedures to enforce a Planning Board action; and
- (2) generally amend the provisions for issuance, enforcement, and appeals of Planning Board actions.

By amending

Montgomery County Code  
Chapter 50, Subdivision of Land  
Section 50-41, Enforcement

<b>Boldface</b>	<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:*

1       **Sec. 1. Section 50-41 is amended as follows:**

2       **50-41.       Enforcement.**

3       (a) *Definitions.* In this section, these terms have the following meanings:

4       *Administrative Civil Penalty.* A requirement to pay a sum of money for violating a  
5       *Planning Board action.*

6       [(1)] *Citation.* A document noting a violation of a Planning Board [Action] action,  
7       seeking to impose a civil fine or [penalty] corrective action.

8       [(2)] *Civil Fine [or Penalty].* A requirement to pay a predetermined [monetary]  
9       sum of money [upon the issuance of a citation] for violating a Planning Board  
10       [Action] action.

11       [(3)] *Enforcement Agent.* The Planning Director, or the Director's designee  
12       responsible for determining compliance with a Planning Board [Action] action.

13       *Notice of Hearing.* An administrative notice issued by the Planning Director that  
14       notifies an alleged violator where and when an enforcement hearing will be held by  
15       the Planning Board or the Board's designee to address an alleged violation.

16       *Notice of Violation.* A notice issued by an enforcement agent that notifies a  
17       recipient of a violation and specifies the remedial action that the recipient must  
18       take to avoid further enforcement action.

19       [(4)] *Person.* An individual, partnership, corporation, organization, or other entity,  
20       or combination thereof, [whether singular or plural] that owns property or  
21       otherwise has an interest or responsibility for property that [was] is the subject of a  
22       Planning Board [Action] action.

23       [(5)] *Planning Board [Action] action.* A final decision on a preliminary plan, site  
24       plan, project plan, supplementary plan, water quality plan, or other plan, including  
25       all associated terms, conditions, requirements, and other obligations or limits,  
26       made by the Planning Board under state law and Chapters 50 and 59, including any  
27       regulations issued under state or County law. A Planning Board [Action] action  
28       does not include a decision made by the Board under Chapter 22A.

29 [(6)] *Planning Director*. The staff member in the [Department of Park and  
 30 Planning] Maryland-National Capital Park and Planning Commission who is in  
 31 charge of all planning, zoning, and land development approval activities [of the  
 32 Department] for the Commission in Montgomery County, and who reports directly  
 33 to the Planning Board, or the Director's designee.

34 [(7)] *Stop Work Order [or Corrective Order]*. An administrative order issued by an  
 35 [Enforcement Agent requiring] enforcement agent that requires a person to  
 36 discontinue any further development, construction, or other land disturbance  
 37 activity authorized by a Planning Board [Action] action until a violation has been  
 38 corrected.

39 [(b)] *Citation; Civil Fine or Penalty*.

40 (1) The Enforcement Agent may deliver a citation to a person believed to be in  
 41 violation of a Planning Board Action. The Planning Board will retain a copy  
 42 of the citation. The citation must include a certification by the Enforcement  
 43 Agent attesting to the truth of the matters set forth in the citation.

44 (2) The citation must contain at least the following information:

- 45 a. The name and address of the person charged;
- 46 b. The nature of the violation;
- 47 c. The place where and the approximate time that the violation occurred;
- 48 d. The amount of the fine assessed;
- 49 e. The manner, location, and time in which the fine may be paid and the  
 50 party to whom the fine should be paid;
- 51 f. The date by which the payment must be made; and
- 52 g. A statement advising the person of the right to elect to stand trial for  
 53 the violation.

54 The Planning Board may utilize any citation consistent with this Section,  
 55 including the State of Maryland Uniform Civil Citation form.]

56 [(b)] *Notice of Violation*.

- 57 (1) The Planning Director may issue a notice of violation to a person whom the  
58 Director believes to have committed a violation of a Planning Board action.  
59 The Director must retain a copy of the notice. A notice of violation issued  
60 under this subsection must be served on the alleged violator personally, on  
61 the alleged violator's agent at the activity site, or by certified mail to the  
62 alleged violator's last known address.
- 63 (2) The notice of violation must contain at least the following information:
- 64 (A) the name and address of the person charged;
- 65 (B) the nature of the violation;
- 66 (C) the place where and the approximate date when the violation  
67 occurred;
- 68 (D) a statement advising the alleged violator of the corrective or remedial  
69 action which must be taken and the date by which the corrective or  
70 remedial action must be completed. The corrective or remedial action  
71 may include a meeting with Commission staff to establish a  
72 compliance plan; and
- 73 (E) a statement advising the alleged violator of the right to a hearing  
74 before the Planning Board or its designee.

75 (c) Citation.

- 76 (1) The Planning Director may deliver a citation to a person whom the Director  
77 believes to have committed a violation of a Planning Board action. The  
78 Director must retain a copy of each citation. The Director must attest to the  
79 truth of the facts and allegations in the citation. A citation issued under this  
80 subsection must be served on the alleged violator personally, on the alleged  
81 violator's agent at the activity site, or by certified mail to the alleged  
82 violator's last known address.
- 83 (2) The citation must contain at least the following information:
- 84 (A) the name and address of the person charged;

- 85           (B) the nature of the violation;  
 86           (C) the place where and the approximate date when the violation  
 87                 occurred;  
 88           (D) the amount of fine assessed;  
 89           (E) where, when, and to whom the fine may be paid; and  
 90           (F) a statement advising the violator of the right to a hearing before the  
 91                 Planning Board or its designee.

92           The Planning Board may use any citation consistent with this Section,  
 93           including the State Uniform Civil Citation form.

94   (d) Notice of Hearing.

95       (1) The Planning Director may issue a notice of hearing, which must be served  
 96           on the alleged violator personally, on the alleged violator's agent at the  
 97           activity site, or by certified mail to the alleged violator's last known address.

98       (2) The notice of hearing must contain at least the following information:

99           (A) the name and address of the person charged;

100          (B) the nature of the violation;

101          (C) the place where and the approximate date when the violation  
 102                 occurred; and

103          (D) a statement advising the alleged violator of the date, time, and  
 104                 location of the hearing before the Planning Board or its designee.

105   [(c)] (e) [Imposition of] Civil [Fines and Penalties] Fine and Penalty.

106       (1) A citation may require the [payment of] recipient to pay a civil fine [or  
 107           penalty] for [the alleged] a violation of [the] a Planning Board [Action]  
 108           action.

109       (2) The maximum [amount of the] fine for each violation of a Planning Board  
 110           [Action] action is [set at \$500.00] the maximum allowed by Article 28 §7-  
 111           116(h) of the Maryland Code as amended for each day that the violation [has  
 112           occurred] continues.

- 113 (3) Each day that [the] a violation has not been corrected [shall] must be  
 114 [considered] treated as a separate violation, and the applicable fine [or  
 115 penalty will] must continue to accrue each day until the violation is  
 116 corrected[,] without [the need of] issuing a new citation each day.
- 117 (4) In addition to any other remedy under this Article, a person who violates a  
 118 Planning Board action, any applicable regulation, or any associated  
 119 agreement or restriction, may be subject to an administrative civil penalty.
- 120 (5) In setting the amount of the administrative civil penalty, the Planning Board  
 121 or its designee must consider:
- 122 (A) the willfulness of the violation;  
 123 (B) the degree of deviation from the approved Planning Board action;  
 124 (C) the cost of any needed corrective action or restoration;  
 125 (D) any adverse impact on the immediate neighborhood and the larger  
 126 community;  
 127 (E) the extent to which the subject violation is part of a recurrent pattern  
 128 of the same or similar violations committed by the violator;  
 129 (F) any economic benefit that accrued to the violator or any other person  
 130 as a result of the violation;  
 131 (G) the cost to implement any conditions in the applicable Planning Board  
 132 action;  
 133 (H) the degree of cooperation shown, or voluntary mitigation measures  
 134 taken, by the violator;  
 135 (I) the extent to which any other person contributed to the violation;  
 136 (J) the impact, if any, on the violator's ability to perform corrective  
 137 actions because of a change in ownership of the property; and  
 138 (K) any other relevant factor.
- 139 (6) The Board, after a public hearing on the violation, must adopt a resolution  
 140 which specifies the amount of any administrative civil penalty and the

141 Board’s reason to impose the penalty.

142 [(d)] (f) [Request for District Court Review] Hearing.

143 (1) A person who receives a citation imposing a civil fine or [penalty] a notice  
144 of violation may elect [to stand trial for the offense] a hearing before the  
145 Planning Board or its designee by filing a request for hearing with the  
146 [Planning] Board [a notice of intention to stand trial]. The [notice of  
147 intention] request for hearing must be [given to the Chairman of] received  
148 by the [Montgomery County Planning] Board [no less than 5 days before the  
149 date that the payment is due as established on the citation.] within 15 days  
150 after the citation or notice of violation was issued. The filing of a request for  
151 a hearing does not stay an administrative order to stop work, stabilize a site,  
152 or stop a violation.

153 (2) [Upon receipt of the notice of intention to stand trial, the Planning Board  
154 will forward to the District Court having venue a copy of the citation and the  
155 notice of intention to stand trial. On receipt of the citation, the District Court  
156 will schedule the case for trial and notify the defendant of the trial date]. If  
157 the Board or its designee receives a request to hold a hearing under this  
158 Article, the Board or its designee must promptly schedule a hearing, unless  
159 the requestor consents to a delay, and must issue a notice of hearing.

160 (3) The Board may assign a hearing officer, including a Hearing Examiner from  
161 the Office of Zoning and Administrative Hearings, to conduct a public  
162 hearing and submit a report and recommendation on any alleged violation of  
163 this Chapter or of a Planning Board action. The hearing officer must submit  
164 the required report and recommendation to the Board not later than 60 days  
165 after the hearing record closes, but the hearing officer may by order extend  
166 the time to file the report.

167 (4) All fines, penalties, or forfeitures collected by the Planning Board [or  
168 District Court for the violations will] under this Chapter must be remitted to

169 the Planning Board[, ] and placed in the general funds of the Maryland-  
 170 National Capital Park and Planning Commission, and may be [utilized] spent  
 171 by the Commission for project corrections, plan enforcement, or other  
 172 Commission purposes. The Commission, in its sole discretion, may [utilize]  
 173 spend collected fines or penalties to perform or correct some or all [of the]  
 174 violations noted in [the] a citation[, ] without obligating the Commission  
 175 instead of the person responsible to [undertake project corrections in lieu of  
 176 the developer] correct any violation.

177 [(e)] (g) [*Failure to Pay*] Nonpayment of Fine [or Penalty].

- 178 (1) If a person who receives a citation [for a violation,] does not timely pay the  
 179 fine by the [payment] due date [as established] listed in the citation [and fails  
 180 to] or file a [notice of intention to stand trial] request for hearing, a formal  
 181 notice of the violation [shall] must be sent to the person's last known  
 182 address. If the citation is not satisfied within 15 days [from the date of] after  
 183 the notice is issued, the [person] recipient is liable for an additional fine, as  
 184 specified in the notice, which must not [to] exceed twice the original fine.
- 185 (2) If, after 35 days after the notice under this subsection is issued, the [citation]  
 186 fine due is not [satisfied] paid, the Planning Board [may request adjudication  
 187 of the case through the District Court. The District Court will schedule the  
 188 case for trial and summon the defendant to appear.] must schedule and hold  
 189 a hearing and, after holding the hearing, may impose any civil fine or  
 190 administrative civil penalty authorized by this Section, and also may:
- 191 (A) suspend or revoke the plan that is the subject of a Planning Board  
 192 action;
- 193 (B) approve a compliance program that lists each remedial action that  
 194 must be taken;
- 195 (C) require the violator to post a bond or other surety to guarantee  
 196 completion of a compliance program;

197 (D) allow the violator to propose modifications to the plan; or

198 (E) take any combination of these actions.

199 [(f)] (h) [*Prosecution by*] Authority of the Office of the General Counsel. The [Office of  
200 the] General Counsel [for] of the Maryland-National Capital Park and Planning  
201 Commission [will] may prosecute [a] and take any other necessary legal action  
202 regarding any violation under this [section] Section.

203 [(g)] (i) Enforcement rules; Conduct of Hearing. [Proceedings before the District Court  
204 will be conducted in such manner as provided in Article 23A, Sections 3(b)(8)  
205 through (15) of the Maryland Code Annotated.] The Planning Board must:

206 (1) adopt rules to administer and enforce this Section as a method (2) regulation,  
207 subject to Council review as provided in Section 2A-15; and

208 (2) conduct any proceeding under this Section as provided in those rules.

209 [(h)] *Payment of Court Costs.* A person found by the District Court to be in violation of  
210 a Planning Board Action will pay the costs of the proceedings in the District  
211 Court.]

212 [(i)] (j) [*Issuance of*] Stop Work [Orders or Corrective Orders] Order.

213 (1) [In addition to the authority to impose civil fines and penalties, in instances  
214 where] The enforcement agent may issue a stop-work order if the  
215 [Enforcement Agent] enforcement agent reasonably [determines] finds that:

216 [a.] (A) a person is [in violation of] violating any element of a Planning  
217 Board [Action,] action; and

218 [b.] (B) the violation threatens or may threaten the public health, safety, or  
219 welfare [are threatened or may be threatened because of the violation;  
220 then Enforcement Agent may also issue a stop work order or  
221 corrective order].

222 (2) [An] A stop-work order must include the following information as [may be]  
223 applicable:

224 [a.] (A) [The] the name and address of the person charged;

- 225 [b.] (B) [The] the nature of the violation;
- 226 [c.] (C) [The] the place where and the approximate [time that] date when the
- 227 violation occurred; and
- 228 [d.] (D) [A] a clear statement [indicating] of the action that must be taken or
- 229 discontinued to cure the violation, including [the] any requirement to
- 230 prepare a plan of compliance, [; and]
- 231 [e. The date, approximate time, and location for the Planning Board
- 232 hearing to review the order.]
- 233 The [order must include a certification by the Enforcement Agent attesting]
- 234 enforcement agent must attest to the truth of the [matters set forth] facts and
- 235 allegations in the order.
- 236 (3) The [Enforcement Agent] enforcement agent must prominently display the
- 237 order in close proximity to the location where the violation has occurred. In
- 238 addition, the [Enforcement Agent] enforcement agent may deliver or mail,
- 239 as practical, a copy of the order to the last known address of the person [that]
- 240 who secured approval of the Planning Board [Action] action.
- 241 (4) When [an] a stop-work order has been posted, the recipient must
- 242 immediately discontinue any further development or construction activities
- 243 authorized [in accordance with the] by a Planning Board [Action] action
- 244 until [such time as] the order is rescinded. [An] A stop-work order [posted
- 245 by the Enforcement Agent has the effect of suspending] suspends the [entire
- 246 underlying] Planning Board [plan] approval of the entire underlying plan,
- 247 unless:
- 248 [a.] (A) the Planning Board, in [its consideration of] taking the Planning
- 249 Board [Action] action, approved phasing [for] of the project; and
- 250 [b.] (B) the [Enforcement Agent determines] enforcement agent finds that
- 251 the violation involves only [relates to either]:
- 252 (i) [a certain phase] one or more phases of [the] a project, but not

253 other phases of the same project; or

254 (ii) activities on a single lot or parcel.

255 In these instances, the order may only suspend the Planning Board's  
256 approval as it relates to those phases or lots [determined to be in] where the  
257 violation exists.

258 (5) [Upon posting an order, the Enforcement Agent will schedule a review  
259 hearing with the Planning Board at the Board's next available regular  
260 session.] The recipient of a stop-work order may request a hearing to  
261 contest the validity of the order. [In the event that] If the enforcement agent  
262 finds that a hearing before the Planning Board is not practical in a reasonable  
263 [period of] time, [as determined by the Enforcement Agent the matter may  
264 be reviewed by the Chairman] the Chair or Vice-Chair of the [Planning]  
265 Board [or Vice-Chair] may review the order. A determination by the Chair  
266 or Vice-Chair [will have] has the same effect as if the Board [acted under  
267 this section] reviewed the order. The [Planning] Board or [Chairman] Chair,  
268 if applicable, [will hear the case] must review the order de novo. [In the  
269 event] If the violation is corrected and a plan of compliance prepared by the  
270 [person prior to] recipient of the order before the hearing [as] is confirmed  
271 by the [Enforcement Agent] enforcement agent, the hearing [will] must be  
272 cancelled.

273 (6) At the Planning Board hearing, the [Enforcement Agent will indicate]  
274 enforcement agent must justify to the Board the grounds and reasoning [for  
275 issuing] to issue the order. The recipient must [state all grounds concerning]  
276 explain why the order should be discontinued, and may propose a plan of  
277 compliance indicating how and when the violations will be corrected. The  
278 [Planning] Board [will determine] must decide if the order should be  
279 continued, modified, or rescinded, and if a plan of compliance should be  
280 approved. The Board's [determination] decision that [the] a stop-work order

281 should continue [has the effect of revoking the] revokes any underlying  
 282 [Planning] Board approvals for the entire project or [portions] any part of the  
 283 project as [determined by] the Board specifies until [such time as] the  
 284 violation is corrected.

285 (7) [An appeal of a] A Board decision [of the Planning Board not] to continue or  
 286 modify [or rescind] an order [will be administered as an] may be appealed to  
 287 the Circuit Court under the rules for appeals of administrative [appeal filed  
 288 with the circuit court, not as a municipal infraction] agency actions. [The  
 289 Board of Appeals does not have jurisdiction to review an administrative  
 290 appeal arising from a decision of the Planning Board.]

291 (8) [An] A stop-work order [will] must be rescinded when the [Planning] Board  
 292 or [Enforcement Agent determines] the enforcement agent finds that [the  
 293 violation has] all violations specified in the order have been satisfactorily  
 294 corrected, which determination should not be unreasonably withheld, or the  
 295 Board approves a compliance plan that addresses any uncorrected violation.

296 [(j)] (k) Other Remedies. The authority in this Section to issue civil fines, administrative  
 297 civil penalties, and impose stop work orders are in addition to any other [rights or]  
 298 authority of the Planning Board to enforce its actions, including seeking injunctive,  
 299 declaratory, or other relief. The [election] decision to pursue one remedy does not  
 300 preclude the [Planning] Board from pursuing [such] any other available [remedies  
 301 as the Board deems appropriate] remedy.

302 [(k)] (l) Exclusive Authority. The Planning Board or its designee has exclusive authority  
 303 to enforce violations of a Planning Board [Action] action. The authority granted in  
 304 this Chapter supersedes any authority [for enforcing] to enforce a Planning Board  
 305 [Actions] action [that may have been] granted to the Planning Board or any other  
 306 [officer, agent, or] County or State agency [of Montgomery County or the State of  
 307 Maryland in Chapter 1 of the Code].

309 **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of Council  
310 adoption.

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312 *Approved:*

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315 Isiah Leggett, County Executive Date

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317 *This is a correct copy of Council action.*

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320 Linda M. Lauer, Clerk of the Council Date

Resolution No.: \_\_\_\_\_  
Introduced: October 6, 2009  
Adopted: \_\_\_\_\_

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: District Council

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Subject: Notice of Public Hearing on Subdivision Regulation Amendment 09-03

Background

1. §50-6A of the County Code requires that, within 30 days after any subdivision regulation amendment is introduced, the Council must by resolution set a date and time for public hearing on the proposed amendment.
2. Subdivision Regulation Amendment 09-03 was introduced on October 6, 2009.

Action

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 resolution:

Legal notice must be given of the public hearing to be held on November 17, 2009 at 7:30 p.m., in the Council Hearing Room, Stella Werner Council Office Building, Rockville, Maryland, to give the public an opportunity to comment on SRA 09-03.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council