

Emergency Bill No. 15-00  
Concerning: Hearing Examiner -  
Amendments  
Revised: 7-18-00 Draft No. 4  
Introduced: June 6, 2000  
Enacted: July 18, 2000  
Executive: July 28, 2000  
Effective: July 28, 2000  
Sunset Date: None  
Ch. 20, Laws of Mont. Co. 2000

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President

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### AN EMERGENCY ACT to:

- (1) revise the law governing the appointment of hearing examiners and the Director of the Office of Zoning and Administrative Hearings and the retirement status of hearing examiners; and
- (2) clarify the jurisdiction of the Office of Zoning and Administrative Hearings, repeal obsolete and repetitive language, and generally amend the law regarding hearing examiners.

#### By retitling

Montgomery County Code  
Chapter 1A, Establishing the Structure of County Government

#### By amending

Chapter 1A, Establishing the Structure of County Government  
Section 1A-204

Chapter 2, Administration  
Sections 2-112 and 2-140

Chapter 33, Personnel and Human Resources  
Section 33-37

<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:*



28 (b) The Board may, [upon the affirmative] by vote of 3 members [of the  
 29 Board], refer any [application, petition or order of appeal on any  
 30 specific case involving any of the matters set forth in paragraphs (2)  
 31 through (19) of subsection (a) of this Section, or any other] matter  
 32 pending before it, to be heard by a hearing examiner [appointed  
 33 pursuant to Chapter 2, Article X of this Code, and to be scheduled for  
 34 hearing and heard by the hearing examiner in accordance with] in the  
 35 Office of Zoning and Administrative Hearings under the rules of  
 36 procedure of [the office of the hearing examiner] that Office. The  
 37 hearing examiner [shall] must submit a written [reports and  
 38 recommendations on any such matter] report and recommendation to  
 39 the [County] Board [of Appeals] for the Board's final decision.

40 **ARTICLE X. OFFICE OF [HEARING EXAMINER] ZONING AND**  
 41 **ADMINISTRATIVE HEARINGS.**

42 **2-139. Reserved.**

43 **2-140. Powers, duties and functions.**

44 (a) The [office of the hearing examiner shall have the following powers,  
 45 duties and functions] Office of Zoning and Administrative Hearings  
 46 must:

47 [(1) To conduct public hearings on all appeals, petitions or other  
 48 matters which are or may hereafter become subject to the  
 49 provisions of this article. The hearing examiner must, in any  
 50 hearing, allow each party a reasonable opportunity to cross-  
 51 examine each witness not called by that party on matters within  
 52 the scope of that witness' direct testimony.

53 (2) To read and examine the record pertaining to the appeals,  
 54 petitions or matters which are subject to the provisions of this

55 article, and to render written reports and recommendations  
56 thereon, which shall include findings of fact and conclusions of  
57 law, and to recommend appropriate decisions and forms of  
58 relief from any decision or order from which an appeal or  
59 petition has been filed, including orders either affirming,  
60 reversing, modifying or remanding to the appropriate office or  
61 agency.

62 (3) Where appropriate, to conduct public hearings and submit  
63 written reports and recommendations to either the county  
64 council, county executive, or other county agencies specified by  
65 law or ordinance and administrative matters certified to the  
66 office by direction and designation of such council and/or  
67 executive.

68 (4) To schedule for public hearing, in accordance with applicable  
69 notice and time requirements, any appeal, petition or matter  
70 authorized to be heard by the office pursuant to this article or  
71 other law, ordinance, resolution or executive order; to extend  
72 the time for the closing of the record either to a time certain or  
73 for a reasonable period of time; to suspend, defer, postpone or  
74 continue public hearings when requested by a party to a  
75 proceeding or for the purposes of obtaining evidence material to  
76 any decision or recommendation or where the pendency of  
77 other governmental action may materially bear on the decision  
78 or recommendation.

79 (5) To issue subpoenas, enforceable in a court of competent  
80 jurisdiction, to compel the attendance of witnesses and

- 81 production of documents at any public hearing, and to  
 82 administer oaths to witnesses appearing before the examiner.
- 83 (6) To recommend regulations to the county council to be adopted  
 84 under method (2) of section 2A-15 of this Code to govern the  
 85 conduct of public hearings and other functions of the office of  
 86 the hearing examiner.]
- 87 (1) schedule and conduct public hearings on any appeal or other  
 88 matter assigned by law or by the County Council, County  
 89 Executive, or other officer or body authorized to assign matters  
 90 to a hearing examiner;
- 91 (2) issue a subpoena, enforceable in any court with jurisdiction,  
 92 when necessary to compel the attendance of a witness or  
 93 production of a document at any hearing, and administer an  
 94 oath to any witness;
- 95 (3) allow each party in any hearing a reasonable opportunity to  
 96 cross examine each witness not called by that party on matters  
 97 within the scope of that witness' testimony;
- 98 (4) forward a written report, with a recommendation for decision,  
 99 to the body that assigned the matter, including findings of fact  
 100 and conclusions of law where required or appropriate;
- 101 (5) adopt regulations, subject to Council approval under method  
 102 (2), to govern the conduct of public hearings and other activities  
 103 of the Office.
- 104 (b) The [office shall have and exercise those functions and powers of]  
 105 Office may act as an administrative office or agency designated by the  
 106 District Council, as prescribed in the [Maryland-Washington]  
 107 Regional District Act[, being] (Article 28 of the [Annotated Code of]

108 Maryland Code) [and any amendments thereto and in the zoning  
 109 ordinance for the Maryland-Washington Regional District in  
 110 Montgomery County, and any amendments thereto].

111 [(c) The office of the hearing examiner shall schedule for hearing, hear  
 112 and submit written reports and recommendations on the following  
 113 petitions and administrative appeals:

114 (1) *Petitions for certain special exceptions.* The office shall hear  
 115 the petitions for those special exceptions as are now or may  
 116 hereafter be delineated in subsections (g), (h) and (i) of this  
 117 section and in subsections (2)a, (2)b and (2)c of section 59-3A  
 118 of this Code and shall render written reports and  
 119 recommendations thereon to the County Council for final action  
 120 in accordance with subsections (g), (h) and (i) of this section  
 121 and Section 59-3A of this Code.

122 (2) *Referrals from Board of Appeals.* The office shall hear such  
 123 other matters as may hereafter be designated by the Board of  
 124 Appeals for hearing by the office of the hearing examiner. The  
 125 office shall in each such case render a written report and  
 126 recommendation thereon to the Board of Appeals for final  
 127 action thereon by the Board.]

128 (c) The Office may hear and submit a written report and recommendation  
 129 to the specified officer or body on any:

130 (1) petition to the County Council to grant, modify, or revoke a  
 131 special exception, as provided in Chapter 59;

132 (2) designation by the County Council of a geographic area as a  
 133 community redevelopment area; or

134 (3) matter referred by the Board of Appeals under Section 2-  
 135 112(b).

136 (d) [Whenever an administrative hearing or class of hearings is required  
 137 to be conducted by] When the County Executive or [his] a designee  
 138 must conduct an administrative hearing under any [provision of this  
 139 Code] law, the [County] Executive may authorize [that] the Office of  
 140 Zoning and Administrative Hearings to conduct the hearing or any  
 141 particular class of hearings [shall be conducted by the office of the  
 142 hearing examiner and that appropriate written findings and  
 143 recommendations be submitted in accordance with applicable law or  
 144 regulation for decision by the County Executive or such other  
 145 authorized authority].

146 [(e) The office of the hearing examiner shall schedule and conduct public  
 147 hearings and render written reports and recommendations to the  
 148 County Board of Appeals on specific classes or types of special  
 149 exceptions which the District Council may, by appropriate legislative  
 150 enactment, designate. Upon request of the Board of Appeals, and  
 151 with the approval of three (3) of its members, the office shall schedule  
 152 and conduct public hearings and render written reports and  
 153 recommendations to the County Board of Appeals on specific matters  
 154 pending before the Board. The County Board of Appeals shall have  
 155 the sole authority to render a decision upon the merits of such  
 156 petitions for special exceptions or other matters referred to the office  
 157 by the Board.]

158 [(f) The office of the hearing examiner shall schedule and conduct  
 159 hearings and render written reports and recommendations to the  
 160 County Council on the merits of designating a geographic area as a

161 community redevelopment area and of granting, revoking or  
162 modifying a special exception for a community redevelopment area as  
163 provided by Section 59-137 of this Code. The County Council shall  
164 have the sole authority to designate a geographic area as a community  
165 redevelopment area, and to grant, revoke or modify a community  
166 redevelopment area special exception.]

167 [(g) The office of the hearing examiner shall schedule and conduct  
168 hearings and render written reports and recommendations to the  
169 County Council on the merits of granting, revoking or modifying a  
170 special exception for a cemetery as provided by Section 59-G-2.12 of  
171 this Code, and issuing, revoking or suspending a permit to establish or  
172 operate a cemetery, graveyard or burial ground as provided by  
173 Chapter 9 of this Code. The County Council shall have the sole  
174 authority to grant, revoke or modify a special exception for a  
175 cemetery, and to issue, revoke or suspend a permit to establish or  
176 operate a cemetery, graveyard or burial ground.]

177 [(h) The office of the hearing examiner shall schedule and conduct  
178 hearings and render written reports and recommendations to the  
179 County Council on the merits of granting, revoking or modifying a  
180 special exception for an outdoor theater as provided by Section 59-G-  
181 2.61 of this Code, and issuing, denying, revoking, suspending or  
182 renewing a license to construct, operate or maintain an outdoor theater  
183 as provided by Chapter 4, Division 2, of this Code. The County  
184 Council shall have the sole authority to grant, revoke or modify a  
185 special exception for an outdoor theater, and to issue, deny, revoke,  
186 suspend or renew a license to construct, operate or maintain an  
187 outdoor theater.]

188 **33-37. Membership requirements and membership groups.**

189 \* \* \*

190 (d) *Appointed officials.* Each person appointed by the County Executive  
191 or County Council [as a hearing examiner or] to head a department,  
192 office, or agency of the county government [shall] must be subject to  
193 all [of the retirement] regulations and laws governing full-time  
194 members of the retirement system. Any person appointed by the  
195 Executive or Council to serve as a hearing examiner must be treated  
196 as a full-time employee under the laws and regulations governing  
197 members of the retirement system if that person serves full time as a  
198 hearing examiner, and must be treated as a part-time employee under  
199 the laws and regulations governing members of the retirement system  
200 if that person serves less than full time as a hearing examiner.

201 \* \* \*

202 **Sec. 2. Emergency Effective Date.**

203 The Council declares that an emergency exists and that this legislation is  
204 necessary for the immediate protection of the public health and safety. This Act  
205 takes effect on the date on which it becomes law.

206 *Approved:*

207 /S/ 7/20/00  
\_\_\_\_\_  
Michael L. Subin, President, County Council Date

208 *Approved:*

209 /S/ 7/28/00  
\_\_\_\_\_  
Douglas M. Duncan, County Executive Date

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

211 /S/

7/31/00

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Mary A. Edgar, CMC, Clerk of the Council

Date