

AGENDA ITEM 8G

March 3, 2015

Action

MEMORANDUM

February 28, 2015

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: **Action:** Expedited Bill 58-14, Administration – Non-merit Positions – Development Ombudsman

Planning, Housing and Economic Development Committee recommendation (3-0): enact Bill 58-14 with technical amendments.

The development ombudsman would provide a high level contact to guide developers and facilitate the resolution problems in the development process. In the Committee's opinion the proposed non-merit position ombudsman would enhance customer service for developers.

The Committee recognized that the Executive does not intend for the Development Ombudsman to be in a position to give developers an exemption from any law or regulation required for a development's approval. Under Bill 58-14 the authority of independent agencies and County departments would not change.

Background

Expedited Bill 58-14, Administration – Non-merit Positions – Development Ombudsman, sponsored by the Council President at the request of the County Executive, was introduced on November 25, 2014. Bill 58-14 would create a non-merit position of Development Ombudsman in the Office of the County Executive. The position description is not in the Bill but is included in draft Executive Regulations that were submitted with the Bill.

Public Hearing

The Council held a public hearing on January 13, 2015. Five people testified in addition to the Executive's representative. Other people submitted written testimony. The Executive called the ombudsman "critical to the successful implementation of major development projects in our community that will unlock our economic potential and improve quality of life by creating walkable, transit-friendly places that attract jobs, workers and residents." Those who have processed development applications thought that an ombudsman would be helpful as long as the position is given the authority to resolve problems. Supporters believe that at a minimum the person in the position would facilitate consensus building among various agencies. In one

supporter's opinion, an ombudsman would keep the County economically competitive in the Washington D.C. area.

Those who testified from a civic perspective thought that the position was an "unnecessary, superfluous, expensive, and unneeded addition" without enforcement powers. In one person's opinion, approving the Bill would be an admission of failed management oversight; it would not hold existing staff and departments accountable. A civic association representative noted the proposed ombudsman would have a built-in bias in favor of business interests and would be in sharp contrast to the Council's decision not to fund the legislatively authorized People's Counsel position.

Issues

1. Is an ombudsman needed?

The draft responsibilities for the proposed ombudsman position have 3 components. Each of those components is currently being addressed by the Director of DPS.

Facilitating commercial and residential development projects is the first responsibility of the proposed ombudsman. This responsibility is currently addressed by the Green Tape Program¹, the Case Management Program², or the identification of the project as a Strategic Economic Development Project.³ The latter 2 programs require DPS to resolve problems with WSSC and Planning Staff. In addition to these other programs, DPS instituted the "Overtime Off-Set Program" for the expedited review of building permits.⁴ This program is available to applicants who pay a fee for overtime work performed by DPS staff.

In 2011, MNCPPC and the CAO signed a MOU to resolve conflicts between agencies and departments. WSSC and PEPCO were in the working group that recommended the conflict

¹ The mission of the Green Tape Program is to facilitate the issuance of building permits for commercial construction in the Enterprise Zones (Silver Spring, Wheaton, and Long Branch) involving new construction, additions, structural alterations, or changes in use. The Green Tape Team, headed by a "Permit Technician" case facilitator, assists an applicant with the various filing requirements, regulatory reviews, and inspections, including pre-design consultations and assessment inspections.

² The Case Management Program manages high profile projects such as complex commercial construction projects, expedited Green Tape projects, projects with new building design concepts, and places of worship. The program is designed to educate applicants about the permit process for their specific project before they begin. The Case Management Program strategically guides applicants from the preliminary design concept to the issuance of permits to final inspection. It allows all DPS stakeholders to jointly review the project as a whole, address the use, land and building codes and collectively identify and resolve impeding or conflicting issues. The program provides a systematic approach to proactively guide and timely resolve land and building permitting issues before becoming major obstacles.

³ A project that creates or retains jobs in the County, particularly in knowledge-based high paying industries; leverages substantial private capital investment; helps the County achieve strategic redevelopment objectives; or otherwise advances the economic goals of the County may be designated as a Strategic Economic Development Project by Executive order. Once designated, the project gets priority treatment in the development process and preferred tax treatment.

⁴ Executive Regulation 20-07AM.

resolution procedure.⁵ Since that MOU was signed, no conflicts have been raised to the Department head level.

Promoting regulatory efficiency, accessibility, transparency, predictability and consistency, the second responsibility of the ombudsman, is the objective of both DPS and Planning Staff. An Executive employee outside of those agencies would not have the authority to force actions in those agencies.

The identification of systematic changes in the development process, the third of the ombudsman's draft responsibilities, is already in process. The Committee's next agenda item describes the progress the Directors of DPS and the Planning Department are making toward streamlining the record plat approval process. The scope of their streamlining task includes the entire development process.

The PHED Committee believes that the proposed ombudsman would enhance customer service for developers.

Staff does not recommend filling the ombudsman position as the position's functions are already being performed.

2. Does the Executive need additional authority to hire an ombudsman?

Existing law would allow the Executive to appoint a Development Ombudsman without enacting Bill 58-14. The provisions in current law include the intended functions of the ombudsman:

Chapter 2. Administration

* * *

Sec. 2-27A. Procedures to monitor, review and coordinate the county housing and development authorization process.

* * *

(e) Ombudsman and expediter functions. The County Executive shall designate an organization unit or official with responsibility for serving as an ombudsman and expediter on behalf of builders, developers and other business enterprises with regard to the development authorization process, including such activities as:

- (1) Representing the County Executive in obtaining the cooperation of County, bi-County, and state agencies in expediting permit applications;
- (2) Expediting individual permit applications in accord with the County's economic development policies. This may include at the request of the applicant and as an initial step in the entire development process, the convening of representatives of all offices and departments of the County, public agencies, boards and commissions likely to require public takings, construction or extension of public facilities, dedications or easements, for the purpose of ascertaining the general scope and nature of such public requirements;

⁵ The signed MOU prompted the PHED Committee to recommend deferral of SRA 09-02 to the Council.

- (3) Conferring with agency liaison staffs and developers and builders to facilitate understanding of responsibilities and to eliminate processing obstacles.

The only difference between the Executive's existing authority and Bill 58-14 is the fact that the position would be a non-merit position. Under current law, the ombudsman could be an existing employee assigned to this role. The enactment of Bill 58-14 would require funding for a new position in the Executive's office and would create authority for a second Development Ombudsman.

The Committee recommended amending Subsection 2-27A(e) to accomplish the Executive's goal without creating the legislative possibility of 2 ombudsmen. The Committee specifically recommends:

1) Delete all proposed changes to Subsection 2-26

2) Amending Sec. 2-27A(e) as follows:

Ombudsman and expediter functions. The County Executive [[shall]] must designate an organization unit or official with responsibility for serving as an ombudsman and expediter on behalf of builders, developers and other business enterprises with regard to the development authorization process [[, including]]. The designated ombudsman may be filled by a non-merit position in the Office of the County Executive. The ombudsman may perform such activities as:

* * *

3. Is the new position worth the \$200,000 projected cost?

In December 2014 Executive staff projected a FY16 budget gap that would require a 6 percent reduction in County Government spending. This assumed funding for MCPS at the State maintenance of effort level. The Board of Education has requested \$83 million above that level. Under these circumstances, the question is whether the proposed position is supportable.

Ultimately, this will be a budget issue for the Council.

| This packet contains: | <u>Circle #</u> |
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Expedited Bill No. 58 -14
Concerning: Administration – Non-merit
Positions – Development
Ombudsman
Revised: 2/24/2015 Draft No. 2
Introduced: November 25, 2014
Expires: May 25, 2016
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. , Laws of Mont. Co.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) create a non-merit position of Development Ombudsman in the Office of the County Executive; and
- (2) generally amend the laws governing non-merit positions in the Executive Branch.

By amending

Montgomery County Code
Chapter 2, Administration
Section 2-26
Section 2-27A

| | |
|-------------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| Underlining | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| Double underlining | <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 2-26 is amended as follows:**

2 **2-26. Non-merit positions.**

3 The following positions in the Office of the County Executive are non-merit
4 positions:

5 * * *

6 (e) Special Projects Manager[.] [; and]]

7 [[(f) Development Ombudsman]].

8 * * *

9 **Sec. 2. Section 2-27A is amended as follows:**

10 Sec. 2-27A. Procedures to monitor, review and coordinate the county housing and
11 development authorization process.

12 * * *

13 (e) Ombudsman and expediter functions. The County Executive [[shall]] must
14 designate an organization unit or official with responsibility for serving as
15 an ombudsman and expediter on behalf of builders, developers and other
16 business enterprises with regard to the development authorization process
17 [[, including]]. The designated ombudsman may be filled by a non-merit
18 position in the Office of the County Executive. The ombudsman may
19 perform such activities as:

20 (1) Representing the County Executive in obtaining the cooperation of
21 County, bi- County, and state agencies in expediting permit
22 applications;

23 (2) Expediting individual permit applications in accord with the
24 County's economic development policies. This may include at the
25 request of the applicant and as an initial step in the entire
26 development process, the convening of representatives of all offices
27 and departments of the County, public agencies, boards and

commissions likely to require public takings, construction or extension of public facilities, dedications or easements, for the purpose of ascertaining the general scope and nature of such public requirements;

- (3) Conferring with agency liaison staffs and developers and builders to facilitate understanding of responsibilities and to eliminate processing obstacles.

* * *

36 **Sec. 3. Expedited Effective Date.** The Council declares that this legislation is
37 necessary for the immediate protection of the public interest. This Act takes effect
38 on the date when it becomes law.

39 *Approved:*

40

41

George Leventhal, President, County Council Date

42 *Approved:*

43

44

Isiah Leggett, County Executive Date

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

46

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill -14, Structure of County Government – Non-merit Positions – Development Ombudsman

DESCRIPTION: The requested legislation creates a non-merit position of Development Ombudsman in the Office of County Executive.

PROBLEM: This new position is needed to facilitate the approval process of commercial and residential development projects deemed high priorities by the County and to resolve conflicts that arise related to the entitlement process, permitting, and general regulatory procedures.

GOALS AND OBJECTIVES: To act as a facilitator for commercial and residential development projects, by working as an intermediary to address challenges, issues and concerns during development; to promote regulatory efficiency, accessibility, transparency, predictability and consistency across agencies and departments; to identify systemic challenges in the entitlement process, permitting, and general regulatory procedures and to facilitate necessary changes that bring about tangible improvements that save both time and costs.

COORDINATION: Office of Human Resources

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: n/a

EVALUATION: n/a

EXPERIENCE ELSEWHERE: n/a

SOURCE OF INFORMATION: Stuart Weisberg OHR (7-5154)

APPLICATION WITHIN MUNICIPALITIES: n/a

PENALTIES: n/a



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

October 31, 2014

TO: Craig Rice, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Expedited Bill to Create Non-merit Position of Development Ombudsman

I am attaching for Council introduction an Expedited Bill to create a non-merit position of Development Ombudsman.

The purpose of this bill is to create a position to more efficiently facilitate the approval process of commercial and residential development projects and to help resolve conflicts that arise related to the entitlement process, permitting, and general regulatory procedures. This position would serve to promote regulatory efficiency, accessibility, transparency, predictability and consistency across agencies and departments. The Development Ombudsman would also act to identify systemic challenges in the entitlement process, permitting, and general regulatory procedures and to facilitate necessary changes that bring about tangible improvements that save both time and costs.

I am also attaching for your information a draft copy of Executive Regulation 18-14, Position Description for Development Ombudsman, which includes a definition of the work, examples of duties and responsibilities, and the recommended qualifications, knowledge, skills, and abilities for the position.

Attachments

IL: sw

(5)



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland

| | |
|--|-------------------|
| Subject | Regulation Number |
| Position Description for Development Ombudsman | 18-14 |
| Originating Department | Effective Date |
| Office of Human Resources | |

Position Description for Development Ombudsman in the Office of the County Executive

Executive Regulation No. 18-14
Issued by: County Executive

Authority: Montgomery County Code, 2004, Sections 1A-204 and 2-26(f)

Supersedes: none

Council review: Method (1)

Montgomery County Register, Volume xx, Issue xx

Comment deadline:

Effective date: _____

Summary: This regulation provides a position description for the non-merit position of Development Ombudsman in the Office of the County Executive. It includes a definition of the work, examples of duties and responsibilities, and the recommended qualifications, knowledge, skills, and abilities for the position. Montgomery County Code Section 2-26(f) designates this position as a non-merit position. Under County Code Section 1A-104(b)(2), a person holding a position in the Executive Branch designated by law as a non-merit position must be professionally qualified under a position description established by regulation under method (1).

Address for Comments: Office of Human Resources, Executive Office Building, 7th Floor

101 Monroe Street, Rockville, Maryland 20850

Staff contact: Stuart Weisberg, 240-777-5154, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

Boldface

Heading or defined term.

Underlining

Added to existing regulation by proposed regulation.

[Single boldface brackets]

Deleted from existing regulation by proposed regulation.

Double underlining

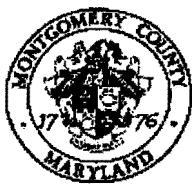
Added by amendment.

[[Double boldface brackets]]

Deleted from existing or proposed regulation by amendment.

* * *

Existing language unchanged by executive regulation.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Position Description for Development Ombudsman

DEFINITION OF CLASS:

This is senior staff level work dedicated to facilitating the approval process of commercial and residential development projects deemed high priorities by the County and to resolving conflicts that arise related to the entitlement process, permitting, and general regulatory procedures. The position is located in the Offices of the County Executive. As this is a non-merit position within Montgomery County Government, the employee will be appointed by the County Executive and confirmed by the County Council. The employee reports to the Chief Administrative Officer (CAO). Key responsibilities of the position include:

- Acting as a facilitator for commercial and residential development projects, by working as an intermediary to address challenges, issues and concerns during development;
- Promoting regulatory efficiency, accessibility, transparency, predictability and consistency across agencies and departments both internal and external to County Government; and
- Serving as a catalyst by identifying systemic challenges in the entitlement process, permitting, and general regulatory procedures and facilitating with the agencies and departments to make necessary changes that bring about tangible improvements that save both time and costs.

The work is primarily sedentary, performed primarily in office settings subject to usual everyday risks, although the employee may make occasional on-site visits to various on-going development projects.

EXAMPLES OF DUTIES:

- Assists with the process of obtaining commercial and residential real estate development approvals and permits necessary for construction by acting as a problem-solving liaison between the County and State agencies and those affected by their rules and processes.
- Brings systemic concerns to the attention of the County leadership for resolution.
- Recommends improvements in procedures and processes to agencies and the County Executive.
- Facilitates communication and coordination between the public, individuals, groups, businesses and various County and State agencies (e.g., WSSC, M-NCPPC, SHA, DEP, MMCDOT, MDOT, MDE, MHT, DBED and DPS).
- Works across government agencies to address systemic problems and reduce regulatory burdens while promoting transparency and predictability regarding regulatory activity, consistency of business regulation within the County, appropriate flexibility, and a reasonable balance between



MONTGOMERY COUNTY EXECUTIVE REGULATION

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the underlying regulatory objectives and the burdens imposed by the regulatory activity.

KNOWLEDGE, SKILLS AND ABILITIES:

- Extensive knowledge of the principles and practices of land development, construction, and master planning (i.e., transportation needs, resource protection, and public facilities) and current issues affecting building and land regulation and development.
- Knowledge of the County's real estate regulatory processes and real estate development matters.
- Knowledge of infrastructure matters related to development projects including financing permitting and capital project schedules.
- Skill in identifying, analyzing and evaluating information concerning highly complex and often politically sensitive technical and conceptual information.
- Skill in negotiating agreements which accommodate the conflicting interests and viewpoints of numerous groups and organizations.
- Ability to express facts, conclusions and recommendations clearly and concisely, both orally and in writing.
- Ability to establish and maintain effective working relationships with government and elected officials, community and business groups, builders and developers.
- Ability to provide high level subject matter input, expertise, and advice regarding the development of land use planning policies.
- Ability to attend meetings and perform work assignments at locations outside the office.

RECOMMENDED QUALIFICATIONS:

Experience: Seven (7) years of progressively responsible experience involving development review, permitting, zoning, economic development, community planning, and land use planning processes, monitoring and tracking, three (3) years of which are in a supervisory or executive capacity.

Education: Possession of a Bachelor's Degree from an accredited college or university in real estate, engineering, business administration, construction management, architecture, economics, urban planning or in an appropriate planning specialization or related field.

Equivalency: An equivalent combination of education and experience may be substituted.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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MEDICAL PROTOCOL: Medical History Review:

Approved:

Isiah Leggett, County Executive

Date _____

Approved as to form and legality:

Anne T. Wimberly
Office of the County Attorney

10/15/14
Date

Fiscal Impact Statement

Bill XX-14

Position Description for Development Ombudsman in the Office of the County Executive

1. Summary.

This bill will create the non-merit position of Development Ombudsman in the Office of the County Executive.

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.

The estimated annualized compensation costs for this position are \$198,600, based on the average salary paid to other Question A employees within Montgomery County Government.

Assuming this position will be filled for the second half of FY15, the total cost for the current fiscal year will be approximately \$99,300 in compensation for a total six-year estimated cost of \$1,092,300.

Key responsibilities of the ombudsman position include the promotion of regulatory efficiency and consistency, both internal and external to County Government. Successful execution of these and other responsibilities will likely result in budgetary savings over what would be achieved without the position. The amount of that savings is, however, indeterminate.

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

See the response to item 2.

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

N/A

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

N/A

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

Staff time will be spent by participants in the hiring process. The total time needed is indeterminate and will vary based on the number and qualifications of the applicants.

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

N/A

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

See response to item 2.

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

The salary for a new hire can vary from the estimate based on the credentials of the selected candidate.

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

N/A

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

N/A

12. Other fiscal impacts or comments.

N/A

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

Lori O'Brien, OHR Compensation Manager

Corey Orlosky, OMB Management and Budget Specialist

Jennifer A. Hughes

Jennifer A. Hughes, Director
Office of Management and Budget

10/29/14

Date

Economic Impact Statement
Expedited Bill ##-14, Structure of County Government
Non-merit Positions – Development Ombudsman

Background:

This legislation would create a non-merit position of Development Ombudsman in the Office of the County Executive. This position would facilitate the approval process of commercial and residential development projects deemed a high priority by the County. The position would resolve conflicts that arise related to the entitlement process, permitting, and general regulatory process.

1. The sources of information, assumptions, and methodologies used.

Not applicable.

2. A description of any variable that could affect the economic impact estimates.

There are no variables that could affect the economic impact estimates.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

Expedited Bill ##-14 establishes a position that would facilitate commercial and residential development projects and thereby encourage economic development in the County. By promoting regulatory efficiency, accessibility, transparency, predictability and consistency across agencies and departments, this position would expedite the development process thereby reducing both time and costs of development projects. Therefore Bill ##-14 would have a positive impact on economic development and the County's economy.

4. If a Bill is likely to have no economic impact, why is that the case?

This bill would have an economic impact because its purpose is to facilitate the approval process and resolve conflicts and thereby reduce the costs and time for specific development projects.

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance.


Joseph F. Beach, Director
Department of Finance

10 / 15 / 14
Date