

MEMORANDUM

September 30, 2016

TO: County Council

FROM: Jeffrey L. Zyontz,  Senior Legislative Attorney

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

Bill 41-16, Community Zoning and Land Use Resource Officer, sponsored by Lead Sponsor Councilmember Berliner and Co-Sponsor Councilmember Hucker, is scheduled to be introduced on October 4, 2016. A public hearing is tentatively scheduled for October 25 at 1:30 p.m.

Bill 41-16 would replace provisions for a Peoples Counsel with provisions for a Community Zoning and Land Use Resource Officer. In the sponsor's opinion, the development approval process can be overwhelming for those responding to the plans of others. A Community Zoning and Land Use 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.

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.

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-Sponsor: Councilmember Hucker

AN ACT to:

- (1) replace provisions for a Peoples 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
Section 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:

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

2 **1A-203. Establishing other offices.**

3 * * *

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

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

6 Office of the Inspector General

7 Office of Legislative Oversight [section 29A-5]

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

10 Office of Zoning and Administrative Hearings

11 * * *

12 **1A-204. Supervision of offices and appointment of heads.**

13 * * *

14 **(b) Legislative Branch.**

15 * * *

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

18 (A) The County Council may employ, as a term merit system
19 employee, a [Office of the People's Counsel] Community
20 Zoning and Land Use Resource Officer. The Council may,
21 by a resolution adopted by an affirmative vote of six
22 Councilmembers, remove a [People's Counsel] Community
23 Zoning and Land Use Resource Officer during the
24 Counsel's term for good cause. Alternatively, the County
25 Council may retain as an independent contractor [one or
26 more attorneys, along with support staff, consultants, and
27 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.