

AGENDA ITEM #8  
November 1, 2016  
**Public Hearing**

**MEMORANDUM**

October 28, 2016

TO: County Council

FROM: Jeffrey L. Zyontz  Senior Legislative Analyst

SUBJECT: **Public Hearing:** 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-Sponsors Councilmembers Huckler and Katz, was introduced on October 4, 2016. A Planning, Housing and Economic Development Committee worksession will be scheduled at a later date.

Bill 41-16 would replace provisions for a People's Counsel with provisions for a Community Zoning and Land Use Resource Officer. Since the introduction of Bill 41-16, the sponsor has come to believe that the Council should not remove the provisions for the Office of People's Counsel. The sponsor will offer an amendment to Bill 41-16 at the Planning, Housing, and Economic Development Committee worksession. The amendment would retain all of the provisions for the Office of the People's Counsel without otherwise changing the content of Bill 41-16 as introduced.

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.

With regard to the fiscal impact of Bill 41-16, the Office of Management and Budget put the possible range of annual expenditures between \$104,000 and \$210,000 per year. The difference between the low and the high end of the range reflects different levels of effort. That low end of the possible range, the County may hire a part time consultant as the Resource Officer. The highest expenditure in the range would allow for a full time consultant. The cost for a County employee with or without an administrative aide would be within the \$104,000 to \$210,000 range. The actual fiscal impact of Bill 41-16 will depend upon the Council's appropriation of funds.

The People's Counsel Office was last funded in FY10. The funding level during that fiscal year was \$246,520. The incumbent's tenure and the fact that the People's Counsel was required to be an attorney explains the difference between the estimated fiscal impact and the last expenditure for the Office of the People's Counsel.

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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

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Lead Sponsor: Council Vice President Berliner  
Co-Sponsors: Councilmembers Hucker and Katz

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**AN ACT to:**

- (1) replace provisions for a People’s 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  
Sections 1A-203 and 1A-204

Chapter 2, Administration  
Section 2-150

Chapter 33A, Planning Procedures  
Section 33A-15

<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 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:*

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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.



ROCKVILLE, MARYLAND

MEMORANDUM

October 24, 2016

TO: Nancy Floreen, President, County Council

FROM: *JAW* Jennifer A. Hughes, Director, Office of Management and Budget  
*AE* Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 41-16, Community Zoning and Land Use Resource Officer

Please find attached the fiscal and economic impact statements for the above-referenced legislations.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
David Platt, Department of Finance  
Dennis Hetman, Department of Finance  
Jed Millard, Office of Management and Budget  
Jennifer Nordin, Office of Management and Budget  
Naeem Mia, Office of Management and Budget

**Fiscal Impact Statement**  
**Bill 41-16 – Community Zoning and Land Use Resource Officer**

1. Legislative Summary

The Bill would abolish the Office of People’s Counsel and establish in its place a Community Zoning and Land Use Resource Officer. The primary function of the Community Zoning and Land Use Resource Officer would be to meet with community members to inform them of decision points in the process; educate community members on how to develop effective testimony; and answer questions concerning zoning and land use from community members and community organizations.

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.

No revenues are proposed by the Bill.

The Office of People’s Counsel was last funded in FY10 at \$246,520 and 1.8 workyears. Abolishing the Office does not offset expenditures related to the establishment of the Community Zoning and Land Use Resource Officer.

Expenditures would include personnel and operating costs of the Community Zoning and Land Use Resource Officer. There are provisions in the Bill that would allow for the Officer to be a term merit system position or a consultant. The position is not required to be full-time.

	FTEs	Salary	Benefits	Operating Expenses	Total
Scenario 1 – Full-time Officer (G28) and Part-time Support Staff (G16)	1.5	\$122,340	\$37,555	\$6,000	\$165,894
Scenario 2 – Part-time Officer (G28) and Part-time Support Staff (G16)	1.0	\$74,755	\$32,011	\$6,000	\$112,766
Scenario 3- On-Site Full-time Consultant @ 2,080 hours	1.0 Equivalent	N/A	N/A	\$210,500	\$210,500
Scenario 4 – On-Site Part-time Consultant @ 1,040 hours	0.50 Equivalent	N/A	N/A	\$106,500	\$106,500
Scenario 5- Off-Site Full-time Consultant @ 2,080 hours	1.0 Equivalent	N/A	N/A	\$208,000	\$208,000
Scenario 6 – Off-Site Part-time Consultant @ 1,040 hours	0.50 Equivalent	N/A	N/A	\$104,000	\$104,000

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

Estimated expenditures:

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Scenario 1*	\$165,894	\$166,236	\$171,223	\$176,360	\$181,650	\$187,100
Scenario 2*	\$112,766	\$111,514	\$114,859	\$118,305	\$121,854	\$125,510
Scenario 3**	\$210,500	\$213,616	\$219,384	\$225,307	\$231,390	\$237,638
Scenario 4**	\$106,500	\$106,808	\$109,692	\$112,653	\$115,695	\$118,819
Scenario 5***	\$208,000	\$213,616	\$219,384	\$225,307	\$231,390	\$237,638
Scenario 6***	\$104,000	\$106,808	\$109,692	\$112,653	\$115,695	\$118,819

\* Elimination of one-time expenses in Year 2. Personnel Costs increase annually.

\*\* Elimination of one-time expenses in Year 2. CPI estimated at 2.7 percent

\*\*\* CPI estimated at 2.7 percent

Note: Support staff costs are not included in scenarios 3,4,5, and 6

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

Not applicable

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable

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

Not applicable

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

1.0 to 1.50 FTEs or 1,040 to 2,080 consultant hours

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

Planning Staff, the Hearing Examiner, and Board of Appeals staff may be able to refer inquiries to the Community Zoning and Land Use Resource Officer.

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

See Question #2.

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

Not applicable

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

Not applicable

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

Not applicable.

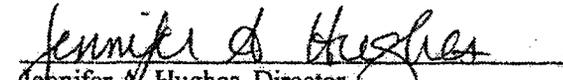
13. Other fiscal impacts or comments.

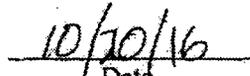
Not applicable

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

Jeff Zyontz, Council Staff

Jennifer Nordin, OMB

  
Jennifer A. Hughes, Director  
Office of Management and Budget

  
Date