

Testimony Submitted in Opposition to Bill 18-23 (Structure of County Government - Community and Land Use Resource Office)

Lead Sponsor: Andrew Friedson

April 18, 2023

Councilmembers:

Please vote Bill 18-23 down and vote to restore and fully fund the Office of the People's Counsel as provided for in the County Executive's budget.

1. The Office of the People's Counsel is Important & a Resource Officer is Not the Same

As set out in the County's zoning code¹, the Office of the People's Counsel ("OPC") is required to provide input on zoning text amendments ("ZTAs"), but OPC currently has no staff after being defunded by the Council. As a result, residents' voice in the process has been eliminated.² The purpose of the OPC is "promoting a full and fair presentation of relevant issues in administrative proceedings in order to achieve balanced records upon which land use decisions can be made." The OPC is also tasked with providing "technical assistance to citizens and citizens associations [to] encourage effective participation in, and increased public understanding of and confidence in, the County land use process." The OPC has not been funded since 2010 despite written requests and public testimony to do so.

County Executive Elrich included funding of the OPC in his FY 2023 budget recommendation.³ In a May 2, 2022 meeting, the PHED Committee continued not to fund the OPC, citing a desire for more details about the position from the County Executive, despite the fact that OPC is a County Council position.

Zoning changes have been and continue to be made without a required voice for community input and discussion.⁴ Resident time to speak has been decreasing steadily over the years and a prime example of excluding residents' voices is THIS PUBLIC MEETING - SET AT 1:30 P.M. ON A WORKDAY WITH LIMITED SPEAKING SLOTS AND DEDICATED DISCUSSION TIME.

¹ See https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-64694 (noting that required staff consultations for a zoning text amendment must include one staff representative "each from the Montgomery County Planning Board; the Office of the County Attorney; the Office of Zoning and Administrative Hearings; the Department of Permitting Services; the Board of Appeals; the *People's Counsel*; and the Office of the County Executive." [emphasis added])

² See also https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-1896. Surrounding areas with an Office of the People's Counsel or similar resident advocate include Hartford County, Prince George's County, Baltimore, Washington D.C., and the state of Maryland.

³ https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2022/20220502/20220502_PHED2.pdf

⁴ While public hearings may be held on ZTAs, the time for those testifying for or against a ZTA has recently been reduced from 3 to 2 minutes. Further, there is no ability for a presenter to engage with and seek a response from a councilmember or someone with an opposing viewpoint - resulting in a less than democratic process. A recent Council trend has been to hold controversial ZTA hearings mid-day, automatically excluding working residents.

The OPC was quietly defunded in 2010 and in its absence the County Council passed nearly 100 ZTAs. Some were very unpopular with residents - *i.e.*, Thrive and Residential Cell Tower Zoning 19-07 and 22-01. ***Ignoring the County Code requirements not only disenfranchises residents but causes uncertainty and instability in the zoning process.***

A significant difference between the OPC and the proposed "Resource Officer" is that the Resource Officer would not have a codified role in ZTAs. (See footnote 1 for text from the current Code stating that a representative of the OPC is one of the required staff consultations for a ZTA). The Resource Officer would not be an attorney and would be unable to assist residents in the same manner as the OPC. Councilmember Friedson noted at a recent in-person Town Hall at Potomac Elementary School that zoning is complex and complicated - he is correct. This is why attorneys should fill the role of OPC and it should not be replaced with a Resource Officer. For example, when ZTAs 19-07 and 22-01 were passed allowing cell towers in residential zones residents not only had to understand the ZTAs but the Federal Telecommunications Act of 1996, relevant Federal district case law for the Fourth Circuit, the legal implication of "prohibition of service", other comparable jurisdictions' zoning on residential cell towers (if any), among other things. An attorney may be in a better position to navigate these issues for residents and offer solutions and information as part of required staff consultations on ZTAs. Another example with ZTA 19-07 and 22-01 - the Sponsor of these ZTAs was generally exempt from them as he resided in a historical district that was essentially carved out due to a combination of text in the ZTAs and relevant Maryland case law. A representative of the OPC may have been more effective than residents in trying to raise this issue to the Council for conflict consideration and suggest that the Sponsor recuse himself.

2. History Repeating

Councilmember Friedson's Bill has been tested and failed. He copied it from Councilmember Berliner's unsuccessful and unpopular Bill 41-16. Going back several years, Councilmember Ike Leggett supported strengthening the OPC, opposed 41-16, and opposed a combined OPC and land resource officer as his view was it was duplicative. Instead, Councilmember Leggett suggested the OPC be expanded to do both. (See page 18 for Councilmember Leggett's statements:

https://apps.montgomerycountymd.gov/ccllims/DownloadFilePage?FileName=1045_1_942_Bill_41-16_Committee_20160930.pdf

Councilmember Berliner's Bill 41-16 attempted to remove the OPC - he later expressed his regret at this approach. The Attachment contains Councilmember Berliner's letter and explanation.

For years, residents have lobbied for funding for this office. Funding finally was provided for the OPC in the budget by the County Executive. Councilmember Friedson's solution is to resurrect Bill 41-16 that its own sponsor noted was flawed and present this as his "solution" with nothing more.

Please get to work, listen to resident voices and staff the OPC.

3. Mr. Friedson Cannot Support his Arguments in Favor of this Bill

Mr. Friedson cites racial inequity as a reason for his Bill (or more accurately Councilmember Berliner's bill from 2016). He has not responded to residents' requests as to what his reference to racial inequity means and has provided no evidence of this from the Office of Legislative Oversight Report Number 2008-10 ("OLO") that he says indicate inequities.

When asked by constituents in a virtual Town Hall several months ago, Councilmember Friedson stated that the OPC does not exist as if it was not even codified. His view now is that it does exist and he would either like to: (i) punt it back to the County Executive to provide guidance or (ii) use a previously failed bill to remove it altogether. Councilmember Friedson has not been able to explain how the County Council has been able to pass ZTAs (without a representative from the OPC as required by the Code) for over 10 years in just by defunding a position required by the Code to be present at ZTA discussions.

At a recent in-person Town Hall at Potomac Elementary School, Councilmember Friedson incorrectly stated the OPC was "eliminated" in 2010 - it was not. Councilmember Friedson also stated that funding for the OPC was "unexpectedly" included in the budget. The inclusion of funding for the OPC was because the County Executive heard the requests from numerous community groups and residents and addressed them - this was not unexpected. Councilmember Friedson should have been aware of this significant outreach. Councilmember Friedson also stated that a "Resource Officer" as opposed to an attorney would be in the best position to help residents understand the "very complicated" zoning process. How is this so? He did not explain. Councilmember Friedson also incorrectly stated the OPC takes sides and represents one resident over another. However, this does not seem to be the case - the OPC is an independent party. The OLO discusses the main duties of the OPC and its main tasks - representing one resident against another resident did not seem to be a theme. Rather, the OLO notes that "the current People's Counsel estimates dividing his time as follows: 30% of his time is spent attending and participating in land use proceedings; the other 70% is spent providing technical assistance, conducting mediations, and attending Community Liaison Committee meetings" (OLO page 23). It was noted that the OPC, between 2002 and 2007 provided over 18,000 instances of technical assistance covering 135 subjects. (OLO page 30).

See residents ask him questions as the Potomac Elementary School at:

<https://youtu.be/JNNNoWPykBM?t=1568>

<https://youtu.be/JNNNoWPykBM?t=2117>

PLEASE VOTE DOWN THIS BILL

Thank you,
Cyndie Baughman
Resident - Councilmember Friedson's District

Attachment

October 11, 2016

Dear -----,

As someone who takes pride in legislative drafting, I am chagrined to have made a mistake with regard to Bill 41-16 - Community Zoning and Land Use Officer. When I asked for this bill to be drafted, it was not my intention to delete the Office of People's Counsel from our County Code. My sole purpose was provide our Council with an alternative means by which the legitimate needs of our community could be addressed given that we had not funded the Office of People's Counsel for many years. The bill was drafted in the manner it was at the discretion of our Council attorney, but I should have been more discerning as to the unintended consequences of the draft.

To rectify this situation, I have asked and already received from our Council attorney an amendment to the bill, completely separating the Community Resource Officer from the language referring to the Office of People's Counsel. This will preserve the ability of my colleagues or a future council to fund the Office of People's Counsel.

I apologize for the confusion this may have caused and hope that with the amendment that I will ask my colleagues to consider that you will be able to support the creation of the Community Zoning and Land Use Resource Officer. I continue to believe that such an office will be of great benefit to the residents of our county who need assistance understanding the complexities of our land use decisions and process.

Best regards,

Roger