

## IN OPPOSITION to Bill 18–23; IN SUPPORT of funding the OPC

### Bill 18–23 coverup to cover over (residents)

In [Bill 18–23](#), Community Zoning and Land Use and Resources Office, a Montgomery County Councilmember (CM) proposes to "keep" the Office of People's Council (OPC), BUT "change" the OPC by removing the requirement that the Officer must be an attorney —**and**— prohibiting the Officer from serving as an advocate, or participating, in administrative proceedings. Further, there's much more to this bill than its sponsor would like other CMs and residents to believe. By code, the Council has been **REQUIRED** to have funded the [Office of the People's Counsel \(OPC\)](#) to act as an independent lawyer integral to advocating, facilitating, protecting, serving, and encouraging the public's effective participation in land use decisions — as well as providing technical assistance and full exploration of the complex County land use process. **As evidence, please note the highlights in *just these two OPC-related code excerpts below*** from [Part I. Process for the Introduction and Consideration Of Amendments to the Text of the Zoning Ordinance for the Maryland-Washington Regional District Within Montgomery County, Maryland](#).

*(c) Council staff **must** forward all zoning text amendments to the Zoning Text Amendment Advisers **before** its introduction by the Council. The Advisers' recommendations **must** be communicated back to the author of the ZTA as soon as Council staff can do so... " ([Appendix Part I.1.\(c\)](#))*

*(b) The staff representative of the Office of the County Council, within a reasonable time after an amendment to the Zoning Ordinance is drafted, **must** forward the proposed draft to the Zoning Text Amendment Advisers. The **method** of consultation with the Advisers **must** be determined by Council staff. An impact assessment of **any** proposed amendment **must** be requested from the Montgomery County Planning Board staff. Council staff **must** consult with designated Zoning Text Amendment Advisers **before** drafting **any** staff reports. ([Appendix Part I.2.\(b\)](#))*

In sum,

**"must"** is NOT an option —  
nor is **"must"** up for debate —  
nor does **"must"** need changing --  
nor does **"must"** indicate limiting --  
nor has **"must"** ever been worthy of defunding —  
nor does **"must"** signify replacing —  
nor does **"must"** indicate abolishing!

## Memory lane (of legislatively slippery slopes)

- Council hasn't funded the OPC since 2010.
- Yet, Council has enacted a whopping **174 ZTAs** since that time as follows: [2023](#) x3, [2022](#) x13, [2021](#) x13, [2020](#) x10, [2019](#) x10, [2018](#) x16, [2017](#) x13, [2016](#) x22, [2015](#) x16, [2014](#) x14, [2013](#) x12, [2012](#) x22, [2011](#) x10.
- CMs convince themselves during every budget season — as they did last year — to leave the OPC remain without funding. County Executive Elrich advocated putting the Office of the People's Counsel (OPC) into the [FY23 budget](#) at [\\$224,598](#) for two full-time positions by mid-March 2022, but Council ignored his and resident and organization pleas for re-funding. Letters were written to Council by [CCCCFH](#), [MCCF](#), [Aspen Hill Civic Assoc.](#), [West Montgomery County Citizens Assoc.](#), and the [Action Network](#) — **just to name a few**.
- **An additional epic failure** is/was that a 14-year-old [Office of Legislative Oversight \(OLO\)](#) report has not been touched in three Council presidencies — questions **unanswered**. The [May 2nd, 2022](#) Planning, Housing, and Economic Development (PHED) Committee. video starts [here](#) re the OPC — this being [the OLO report from 2008](#). It's [tough to watch how collective/consolidated Committee items 1–38 got run over](#) nine days later on [May 11th, 2022](#). This is the [Budget Consent Calendar](#) -- [including the OPC](#) -- **all items (falsely) alleged as if there were no pushback or questions**.
- Despite the above, in addition to eliminating the requirement that the OPC Officer be an attorney and lose its advocacy role, Bill 18-23 proposes a Community Zoning and Land Use Resource Office as a community resource to facilitate community participation in the land use process — but **without directly participating as an advocate for the public's interest in that process**. In fact, the Bill removes the requirement that an attorney staff the Office and prohibits the Office from participating in administrative proceedings with the County Council, Board of Appeals, Planning Board, Hearing Examiner, and Court of Appeals! With the PHED Committee not having recommended appropriating funds or the OPC since 2010, a **Community Zoning and Land Use Resource Office would not help residents. Residents fear** there's a sleight of hand or a bait 'n' switch forthcoming: **"change" the OPC → defund the OPC again → approve a Resource Office that won't advocate FOR the public.**

## Cleanup up on aisle 174!

Failure to fund the OPC is not only a lack of due process to residents — but potentially violates a **whopping 174 ZTAs** from not being **subservient TO the master plan (instead of subservient to Councilmembers' whims and to lobbyists' wishes)** — and in major violation of the hierarchy of the plan as "constitution" or "charter," if you will. No ZTA can/should be inconsistent or incompatible or conflicting [WITH the plans \(of which there are many\)](#). **Of major import** is that a zoning ordinance that conflicts with the general plan or impedes achievement of its policies is invalid and cannot be given effect. Moreover, even in the absence of a direct conflict, an ordinance or development project may not be approved if it interferes with or frustrates the general plan's policies and objectives.

It's of **no comfort regarding Council's "clarity" on zoning requirements** that [ZTA 19-07](#) was **intended to be codified** by Telecommunications Towers via [Section 59.3.5.2.C.2.b](#) whereby a Telecommunications Tower is allowed on a pre-existing pole [for which] the replacement tower must be at least 30 feet from any building intended for human occupation. **Instead, ZTA 19-07 was adopted/enacted for Antenna on Existing Structures** [Section 59.3.5.14.C.2.e.iii](#) where the structure is at least 60 feet from a dwelling in a Rural Residential, Residential, or Planned Unit Development zone. In sum, **utility poles are separately defined under County wireless zoning code and not subject to ZTA 19-07**. The sponsor of the former [PHED Committee](#) (now branched off into [PHP](#) and [ECON](#)) *wanted* 30-foot setbacks (as a telecom giveaway) — but *legislatively* adopted 60-foot setbacks. So, then he needed a new [ZTA 22-01](#) at 30-foot setbacks to make his and lobbyists' zoning wishes come true. The Executive Director of [MC4T.org](#) [stated what went wrong](#) — despite the code issue having been brought to the PHED Committee's attention on 1/23/2020 (see pp11-12 of [this County document](#)).

Without the OPC, **frankly, it seems as though all 174 ZTAs need re-visited!** Wouldn't some outside attorney love that job (and the publicity)! With [County plans back to the early 90s](#), it'd be hard to believe that each and every Council's foresight was collectively prescient enough to allow for cell towers anywhere and everywhere three decades ago, for example — especially in residential neighborhoods at 25 million times the  $\mu\text{W}/\text{m}^2$  of power of RF microwave radiation needed for strong cellular service in a residential neighborhood! [Anybody run their lives wirelessly in 1982 or 1994](#) (4:59-min. mark)? Yes, changing times require Zoning Text Amendments (key word being **amendment**) — but not without due process and not without master plan and code consistencies, compatibilities, and compliance.

## Wonder why Montgomery County people are moving OUT of MoCo?

Realize that [new evidence from the U.S. Census Data shows more people are moving out of Montgomery County and into Frederick County](#) -- and then ask whether or not CMs have themselves to blame. **Taxes and schools are just two of the top reasons why people decided to move into Frederick.**

### property taxes —

As an example, (my) [property taxes](#) are UP 11.8% for 2023–2025 with an additional \$100,100 assessed value such that there's no possibility to substantiate -- never mind sell — in the current r.e. climate in this economy. Worse, the property “work sheets” I was given by SDAT Montgomery include properties that aren't even a single family (SF) dwelling and/or indicate less square footage and amenities for dwelling and land. THIS makes no sense — and is quite easily construed as a trap to a bona fide appeal. **Meanwhile**, next year's County budget submission states "[greater than forecasted year-end reserves \[that have\] resulted in a reserve of 14 percent of revenue](#)" and "[recommend\[s\] a ten-cent increase in the County's property tax rate.](#)"

### schools —

As for schools -- [parents, teachers are decrying overcrowding, lack of security cameras, outdated infrastructure at the 89-year-old Silver Spring International Middle School](#) (SSIMS) amidst violence and weapons scares. **Meanwhile**, 1,250 students navigate the SSIMS building not only with water damage, air quality problems, mold, asbestos, unfinished renovations, and tricky modes of egress -- but also with 338 identified barriers that defy ADA compliance regarding accessibility — as identified in a [2019 on-site review and assessment](#).

### taxes and schools —

Given the current and proposed property tax increases, know that \$60.2 million of our tax dollars have paid for an all-around toxic MCPS litany -- an environmental issue. [Poolesville High School's ongoing construction is seemingly allowed to harm students and teachers/staff](#) — with an inordinate number of school administrative and County agency and even CM folk involved to-date to effectively address relief and remedy from carcinogenic effects of bitumen-based roofing materials and tar, fireproofing materials, and potential lead dust risks — or to honor a plan for Interior Air Quality (IAQ) approved by DPS to mitigate fumes, sealing of duct work, changing of filters, and general precautionary containment of work areas -- or to inform students and parents of work during school hours -- or to have an independent consultant monitor the construction work — or to cease work during school hours to prevent exposure to fumes or toxic chemicals. **Meanwhile**, PHS students have been asked to fill out [this google form](#) sent by the principal so that the administration can see how many students are being affected. *(However, this form can only be viewed by users in the owner's organization.)*

### **County show 'n' tell —**

Noteworthy is that the CEX and two CMs were on an international trip to Taiwan through end-March representing Montgomery County at the [Smart City Summit & Expo](#) — all on taxpayer dollars, residents assume — and all under the guise of “*let[ting] others know that Montgomery County is a great place to live and do business.*” **Meanwhile**, residents “live” and “work” without legal and zoning guidance for the land use decisions and process because the County has failed to follow its own code and master plans for 174 ZTAs since 2010!

### **bad zoning — Council wanting it all ways**

Now consider an opposing stance in **ZTA 22-01, for example**, whereby Council refused to exhort its **non-preempted power and authority** by [federal law regarding code compliance](#) or [state law regarding board of health duties and policing authority](#).

### **Council can't have it all ways —**

- by failing to exhort requirements and procedural mandates in code — *AS if these conditions were optional or debatable or worth violating — when they're not — as per [Appendix Part 1.1.\(c\)](#), [Appendix Part 1.2.\(b\)](#)*
- by exhorting authority it assigns to itself — like taking away (residents') legal representation in code, left in code — *but failing to fund the office that supplies that advocacy and protection (the OPC -- [Section 2-150](#))*
- by failing to exhort power it does have — *despite law or code confirming authority and/or duty to act — as in ¶202 of the [FCC's Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting; 2012 Biennial Review of Telecommunications Regulations, 29 FCC Rcd 12865, 122951 \(exhibit\)](#) and/or [Sec. 2-65. Board of health designated \(exhibit\)](#), for example.*

## Lessons that need learned "by law" versus "by right"

Ultimately, residents would like to know there's enough money in a [\\$6.8 billion operating budget](#) to democratically make a few things right! Instead, this County seems to operate "**by right.**" This email speaks for many residents who are **not content to remain blissfully unaware of oh-so-many things** — and then continue to remain ignorant under — and beholden to -- multiple "masks" (literally and figuratively) of falsely alleged "green," of "growth," of "safety," of "thriving," of "growing," of "affordable," of "effective," of "sustainable," of "safe," until

- they (their and their children's lives and bodily autonomies) **and**
- their pieces of the planet (their properties and their rights) **and**
- their wallets (their hard-earned monies and financial stabilities)

are **tyrannically devoured to their objection or surprise!**

Montgomery County government has become an **obfuscator, amender, and/or offender** of one code after another **instead of** exhibiting full force adherence and enforcement to existing code — "**by law.**" Council sweeping dirt under the rug has become the equivalent of Council sweeping resident representation under the legislative rug. Wanting to potentially eviscerate the **OPC** — and the very reasons for it — is a **prime example.**

## Time to reckon

Council must abolish self-appointed pretension and self-appointed power and authority — and arrive at decisions that are legislatively worthy and meaningful to a quality of life. Remember that **YOU** are residents, too. **You** wanted to be elected to this job and **you** campaigned for it -- but do you want (to be living —and— paying for) this kind of life (or lack thereof) for yourselves and your families **as others move out?**

**The bottom line** is that Council **has failed to follow OPC code** since 2010 — and residents need the Council to not get off another (legislative) hook.

## Time to trash 18–23!

### Written/submitted by

Irene Polansky, Silver Spring; Montgomery County resident since 1981

*Co-signers (next page)*

**Co-signers** *(in alphabetical order via last name)*

Dana Alzouma, Rockville; Montgomery County resident since 2004

Kyle and Lauren Bacon; Silver Spring; parents of two grade-school daughters in private school the last two school years

Don Baumblatt, Silver Spring; owner of business in operation since 2000 now located in Ashton since 2019

Krisna Becker, Clarksburg; parent of two Poolesville HS students

Ted Berry, moved to PG County after living in Takoma Park for 7 years; DC and PG County real estate investor

Sabrina Carter, Silver Spring

Bryan Fletcher, Crownsville; owner/president of two-generation family business in Burtonsville in operation since 1972

Kathryn Howard, Frederick; recently moved out of Montgomery County after living in Olney after 25 years

Karen Freeland, Takoma Park

Robert Janku, North Potomac; Treasurer of North Potomac Citizens Association; Secretary of Westliegh HOA

Butch Mann, Rockville; Olney business owner since 1986

Joseph Nicholson, Frederick; Rockville business owner since 1993

Jaclyne White Nnawuchi, Silver Spring; parent who has transferred four (of five) children out of MCPS since 2015 so that all of their high school education years are spent in private school

Brenda Perry, Germantown; native resident of Montgomery County

Christine Perry, Silver Spring

Linda Provost, moved to PG County after living in Silver Spring for 20 years

Natalie Rosser, Silver Spring; parent of one Wheaton HS student

Janice Smith, Chevy Chase; Montgomery County resident since 1999

Pam Wallenstein, Olney

Tony Willis, West Friendship; VP of Operations of Burtonsville business in operation since 1972

