

**A COMPARATIVE STUDY OF HOUSING AND ZONING  
CODE ENFORCEMENT PROGRAMS**

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## EXECUTIVE SUMMARY

This OLO project examines the operations and performance of two neighborhood code enforcement programs – the Housing Code Enforcement Program in the Department of Housing and Community Affairs (DHCA) and the Zoning Code Enforcement Program in the Department of Permitting Services (DPS).

The core services of the Housing Code Enforcement Program include triennial inspections of multifamily housing; complaint inspections; and intensive code enforcement in targeted, at-risk neighborhoods. The approved FY 2000 budget for Housing Code Enforcement is \$1.6 million.

The Zoning Code Enforcement Team investigates zoning and building complaints, administers the vendor-licensing program and the sign permit program, researches requests for nonconforming use certificates, and is responsible for conducting routine special exception inspections. The estimated approved FY 2000 budget for Zoning Code Enforcement is slightly more than \$1 million.

OLO found the two code enforcement programs differ in the uniformity and longevity of their regulatory laws and the records and sources of information used to determine whether a violation exists. OLO found complaint inspections in both programs have crowded out inspection programs required by law.

In FY 99, the Housing Code Enforcement program closed 6,900 cases, including 3,000 complaint cases, 2,235 triennial inspection cases and 1,150 cases associated with special projects. Solid waste and single family property complaints made up almost three-quarters of the complaint caseload. In one out of five complaint cases, DHCA found no violation existed. The property owner performed maintenance to bring the property into compliance in nine out of ten of the remaining cases.

In FY 99, the Zoning Code Enforcement program closed out 1,422 complaint cases. The top four complaint categories were illegal construction activities, illegal signs, “other” zoning violations such as auto repairs or sales from a residence, and home occupations. Almost 40 percent of the cases resulted in no violation being found and another 20 percent of the cases were resolved by the property owner obtaining a permit. The property owner discontinued the use in approximately ten percent of the cases.

OLO recommends keeping the Housing Code Enforcement program in DHCA and the Zoning Code Enforcement program in DPS so that inspectors can maintain access to departmental records and keep current on the regulations that they enforce. OLO recommends an informational brochure to provide a public roadmap to the code enforcement process, the establishment of a Zoning Administrator to increase the visibility of zoning decisions, consideration of a separate Zoning Division, the development of a plan and cost estimate for a shared code enforcement database, and Council actions to strengthen the oversight of legally required inspections.



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## **I. INTRODUCTION**

### **A. AUTHORITY**

Council Resolution No. 13-1388, Office of Legislative Oversight FY 1999 Work Program, adopted August 4, 1998.

### **B. PURPOSE AND SCOPE**

In 1996, the County reorganized the delivery of some of its code enforcement programs. Bill 20-96(E), Permitting Services - Reorganization, moved the Land Use Compliance Section (i.e., zoning code enforcement) from the Department of Environmental Protection to the Department of Permitting Services. Bill 11-96, Community and Consumer Affairs – Reorganization, merged some solid waste code enforcement functions (which had been in the Department of Environmental Protection) with the Housing Code Enforcement program in the newly organized Department of Housing and Community Affairs.

Since the 1996 reorganization, a number of individual citizens and community groups voiced concerns to the Council about the delivery of code enforcement services. Specifically:

- In December 1997, some community groups questioned what they perceived as ineffective zoning code enforcement. The solution proposed by the community groups at that time was to re-locate the Zoning Code Enforcement program from the Department of Permitting Services to the Department of Housing and Community Affairs.
- In May 1998, a different group of citizens questioned DHCA's strategy to inspect both owner and rental homes in select neighborhoods. These citizens believed this approach to neighborhood stabilization unfairly targeted certain areas for overly aggressive enforcement.

The purpose of this OLO project was to examine the structural location, operations and performance of two neighborhood code enforcement programs – the Zoning Code Enforcement program in the Department of Permitting Services (DPS) and the Housing Code Enforcement program in the Department of Housing and Community Affairs (DHCA). This OLO report provides a detailed understanding of the organization and operation of these two code enforcement programs and the code enforcement process.

Many concerns about the effectiveness of the code enforcement program may be traced to how clearly standards are worded in law, the time limits established to ensure due process protections, and the flexibility deliberately incorporated into the process to allow for discretion and negotiation. Although these issues affect the operations of the complaint inspection units and the outcomes of their enforcement actions, they are beyond the scope of this particular study.

### **C. METHODOLOGY**

This project was conducted from February 1999-September 1999 by Sue Richards, Program Evaluator, with assistance from Barry Bautista, Public Administration Intern. OLO reviewed legislative records, budget documents, financial statements and departmental files and records. OLO observed code enforcement investigations and district court cases. In addition, OLO interviewed staff and citizens involved with code enforcement issues.

### **D. ORGANIZATION**

The structure of the report is as follows:

**Chapter II** describes the generic steps in a code enforcement case and explains the County Attorney's role in code enforcement.

**Chapter III** describes the organization, operations and practices of the Housing Code Enforcement program.

**Chapter IV** presents the organization, operations and practices of the Zoning Code Enforcement program.

**Chapter V** and **Chapter VI** present OLO's findings and recommendations.

**Chapter VII** contains the written comments received from the Executive departments.

### **E. ACKNOWLEDGMENTS**

The Office of Legislative Oversight appreciates the excellent cooperation from everyone involved in this study. OLO worked with staff in the Department of Housing and Community Affairs, the Department of Permitting Services, and the Office of the County Attorney to understand the County's code enforcement operations and practices. OLO would like to acknowledge the contributions of Elizabeth Davison, Joe Giloley, and Linda Bird, in DHCA; Robert Hubbard, Bill Boyajy, Reggie Jetter, and Randy Wyrick in DPS; and Chuck Thompson and Sherry Leichman in the County Attorney's office. OLO especially appreciates the contributions of the inspectors who allowed OLO to accompany them on their inspections and observe code enforcement in action.

## **II. THE CODE ENFORCEMENT PROCESS AND THE ROLE OF THE COUNTY ATTORNEY**

This chapter examines the phases and actors in the code enforcement process. Section A presents a chart of the code enforcement complaint process from complaint intake to case resolution and Section B describes the role of the County Attorney.

### **A. THE CODE ENFORCEMENT COMPLAINT PROCESS**

A citizen who calls the County to complain about a questionable behavior or a property in disrepair initiates a process with many sequential decision points. The decision points include:

1. Register a complaint (intake)
2. Visit the site (inspection)
3. Achieve compliance through permitting
4. Issue a notice of violation
5. Bring property into compliance
6. Grant an extension to make repairs
7. File an administrative appeal
8. Resolve an appeal
9. Issue a citation
10. Decide to pay the fine or stand trial
11. District Court trial
12. Appeal to Circuit Court
13. Ongoing enforcement

A property owner who receives a notice of violation has the option of following the orders in the notice, ignoring the notice, or filing an administrative appeal with the Board of Appeals. In practice, most cases are resolved through permitting or voluntary compliance following an inspection and a notice of violation.

Less than five percent of all cases are appealed to the Board of Appeals and/or tried in District Court. Appeals must be filed within 30 days but may not be scheduled for a hearing for two or three months. The Board of Appeals may re-schedule a hearing at the request of either party. The Board may also continue a hearing indefinitely. It may take an additional month for the Board of Appeals to decide the case and issue a written opinion. If the owner chooses to appeal the notice, the investigator may not take further enforcement action until the appeal process is complete.

A property owner who receives a civil citation has the option of paying the fine or notifying the County of his or her intent to stand trial. If a person fails to pay the fine or request a trial, a formal notice of violation is sent to the owners last known address. If the fine is not paid within 35 days, the County may request adjudication through District Court. It typically takes four months to schedule a trial at District Court.

The chart on the next two pages illustrates the sequence of decisions in a code enforcement case. The chart identifies the decision maker(s) and the types of questions answered at each step.

**THE CODE ENFORCEMENT COMPLAINT PROCESS**

	<b>PROCESS PHASES</b>	<b>DECISION POINTS</b>	<b>WHO DECIDES/ COURSES OF ACTION</b>
1	<b>REGISTER A COMPLAINT (INTAKE)</b>	Is there a problem?	A citizen, adjacent property owner, neighbor, business associate, public official, municipal employee or County inspector in another department may talk to the property owner or may decide to register a complaint.
		Does the complaint warrant an investigation and does it fall within the County's jurisdiction?	This decision is initially made by the person taking the complaint.
		How quickly should the complaint be investigated?	This is determined by department policy, inspector resources, and scheduling decisions by the inspector. In some cases (e.g., home occupations) the law sets a timeframe.
2	<b>SITE VISIT (INSPECTION)</b>	Do the conditions described in the complaint exist?	Inspector judgment based on an interpretation of the Code and a site visit.
		Is there a code violation based on conditions described in the complaint or based on conditions not described in the complaint?	Inspector judgment based on an interpretation of the Code and a site visit.
3	<b>ACHIEVE COMPLIANCE THROUGH PERMITTING</b>	Would the code violation be resolved if the owner obtained a permit, license, registration, variance or special exception?	Inspector judgment.
4	<b>ISSUE A NOTICE OF VIOLATION</b>	Does the violation warrant a notice of violation? If yes, what code section or sections and how many violations should be issued?	Inspector judgment and departmental policy.
5	<b>BRING PROPERTY INTO COMPLIANCE</b>	How much time should the owner be given to achieve compliance?	This generally depends on inspector judgment with or without departmental policy guidelines.
6	<b>GRANT AN EXTENSION</b>	Should an owner be given an extension? If so, how long should it be?	Inspector judgment.
7	<b>FILE AN ADMINISTRATIVE APPEAL (OPTION)</b>	Appeal issuance of a notice of Violation to Board of Appeals	County law allows an alleged violator to appeal a notice of violation. The time limit to file an appeal varies by the type of appeal.

**THE CODE ENFORCEMENT COMPLAINT PROCESS (continued)**

	<b>PROCESS PHASES</b>	<b>DECISION POINTS</b>	<b>WHO DECIDES/ COURSES OF ACTION</b>
8	RESOLVE AN ADMIN. APPEAL	Did the department make a procedural or substantive error in issuing the notice of violation?	The law authorizes the Board of Appeals to hear and decide administrative appeal cases. In practice, cases may be settled before a hearing by department staff, the County Attorney, or an alleged violator. Further enforcement action by the department is stayed while an appeal is pending.
9	ISSUE A CITATION	What code violations to write a citation for and to whom?	An inspector makes this decision when a citation is issued. A county attorney will review this decision when preparing the case for trial.
		Should the County request an abatement order or not?	An inspector decides whether to request an abatement order when a citation is issued. The County Attorney prepares the actual order for court.
		Is there a witness?	An inspector may recruit a witness.
10	DECIDE TO PAY FINE OR STAND TRIAL	Should the defendant pay the fine or request a trial?	Defendant
		Ask District Court to schedule trial.	County Attorney on the code enforcement team.
		Prepare docket. Review cases with inspectors. Decide to dismiss, settle or try a case.	County Attorney on the code enforcement team.
		Decide to settle and/or reduce the fine.	County Attorney on the code enforcement team working with an inspector or investigator.
11	DISTRICT COURT TRIAL	Defendant shows up in court or not.	Defendant
		Defendant decides to plead guilty or not guilty.	Defendant
12	APPEAL TO CIRCUIT COURT	Defendant decides to appeal decision to Circuit Court	Defendant
13	ONGOING ENFORCEMENT	County files a consent order or abatement order with the District Court.	Departments rely on neighbors to monitor compliance with abatement or consent orders.
		Enforcing a consent order.	An inspector must prepare a request in writing to the County Attorney who must file in Court.

## **B. THE ROLES AND RESPONSIBILITY OF THE COUNTY ATTORNEY**

As the chief legal officer of the County, the County Attorney represents the County in all legal actions. How the Office of the County Attorney participates in the code enforcement process depends on the origin of the legal issue. The roles of the County Attorney include the following:

**Enforcement Advice and Code Interpretations** - The County Attorney advises the department on legal enforcement issues that arise in a particular case during the inspection phase. Because the department initiates an enforcement action, the department determines the legal issues are raised in the inspection phase. An inspector in the field may request advice from the lead attorney for the Code Enforcement Team or a program manager may prepare a written request for advice from the General Counsel division. In some cases, the lead attorney for the Code Enforcement Team may offer interpretations based on issues that have arisen from trying a particular case.

**Prosecution of Cases at the Board of Appeals** - If a property owner files an administrative appeal with the Board of Appeals, the County Attorney will represent the department whose decision is being appealed.

**Prosecution of Cases in District Court** - The County Attorney is responsible for processing and prosecuting civil citations issued in code enforcement cases. In 1996, the County Attorney restructured the Code Enforcement Team to increase the visibility and profile of code enforcement cases. Currently, the team consists of a lead attorney, five or six rotating staff attorneys, and administrative staff. The rotating staff attorneys include the County Attorney, seasoned attorneys, and participants in the scholar attorney training program. The team leader reports to the Chief of the General Counsel division.

The County Attorney has articulated five goals for the Code Enforcement Team and the Code Enforcement Team recently adopted a mission statement as well. The goals are:

- To aggressively and fairly prosecute cases,
- To provide continuing training,
- To work with the community,
- To increase the competency of support staff and provide file management, and
- To assure the legislative goals of code provisions are met.

The mission statement calls for the Code Enforcement Team to:

- (1) Promote the health, safety, welfare and quality of life of the citizens of Montgomery County by providing effective and proactive legal counsel to code enforcement agencies including fair, but aggressive prosecution of county code violators;
- (2) Provide legal and professional training to county enforcement officers and inspectors; and
- (3) Provide education to the community about county law and code enforcement policies and process.

The primary responsibility of the Code Enforcement Team is to manage the code docket at District Court. An attorney receives the file cases for a docket two weeks before the court date. Preparation for court varies from one attorney to the next but includes:

- Contacting or meeting with inspectors to review the case,
- Contacting defendants to find out their position and/or if they are interested in settling the case,
- Preparing abatement orders, and
- Preparing for trials.

The District Court convenes each Tuesday and hears an average of 50 cases in a morning. In court, the County attorney is responsible for speaking with defendants, witnesses, and inspectors, sequencing the order of cases, and presenting the County's cases.

### III. HOUSING CODE ENFORCEMENT

Housing law establishes occupancy and maintenance standards to ensure dwelling units are safe, sanitary, and habitable. The housing code is an exercise of the police power that protects public health and safety by imposing building and property maintenance requirements on landlords and tenants.

This chapter examines the substance and administration of the County's housing law with an emphasis on housing code enforcement activities. It describes minimum standards for residential and nonresidential structures, licensing and inspection requirements, and the operations of the Housing Code Enforcement section. The organization of this chapter is as follows:

- Part A describes the licenses, procedures and regulations in the County's housing code as well as the other chapters of the code that the Department of Housing and Community Affairs (DHCA) administers and enforces,
- Part B presents the organization and operations of the County's housing code enforcement program,
- Part C explains the housing code enforcement inspection services, and
- Part D reports data associated with the complaint program.

#### A. PROPERTY STANDARDS, INSPECTIONS, PROCEDURES AND LICENSES

The Housing Code Enforcement section in DHCA conducts inspections to enforce Chapters 26, 29, 48, and 58 of the Montgomery County Code. This section describes the housing standards, licensing requirements, and procedural requirements in these chapters that form the basis for the housing code enforcement program.

**Building and Property Maintenance Standards** - Chapter 26 of the County Code, Housing and Building Maintenance Standards, contains the standards that owners, tenants and landlords must follow to maintain properties in a safe and habitable condition. The chapter establishes two sets of standards: one for residential dwellings and one for nonresidential dwellings. The chapter also provides procedural guidelines for enforcing compliance with the law.

County law establishes six areas of standards for all residential dwellings plus specific requirements for mobile homes, hostels, boardinghouses, and tourist homes. The six areas of standards are –

Basic equipment and facilities – The law requires kitchen appliances, bathroom facilities, adequate garbage storage, a water heater, adequate egress, and independent access for any sleeping rooms. In addition, mobile homes must have two exit doors and at least one outside window in every sleeping room. Mobile homes must be placed on a permanent foundation and must be tied down.

Light, ventilation, and heating – The law requires adequate window area equal to at least 8 percent of the floor area, ventilated and lit bathrooms, electric service, heating and hot water heating, lit stairways for multiple dwellings, and screens.

Safe and Sanitary Maintenance – The law requires weather tight foundations, floors, walls, ceiling and roof; doors, stairs and porches in good repair; properly installed heating and plumbing, adequate drainage, protected wood, a general requirement that premises be “clean, sanitary and fit for human occupancy,” and painting or repainting every 5 years unless waived.

Space Use and Location – The law addresses floor area requirements for sleeping rooms, general living space requirements and ceiling height requirements.

Security – The law requires the owner to supply, install, and maintain deadbolt locks, viewers, and window locks.

Smoke Detectors – The law requires the owner to install and the tenant to maintain smoke detectors.

A non-residential property is defined as any structure, building, accessory structure, or any part thereof used for purposes other than human habitation. The standards in Chapter 26 require:

- ◆ Maintaining lawns, weeds and grass at 12 inches or less per Chapter 58, Weeds,
- ◆ Maintaining sound accessory structures in good repair,
- ◆ Storing trash in accordance with standards in Chapter 48, Solid Waste,
- ◆ Maintaining driveways, sidewalks, parking lots in good, serviceable, safe condition, and
- ◆ Maintaining all exterior surfaces in good condition and repaired with materials comparable to the original. Exterior surfaces include walls, windows, doors, roofs, canopy, steps, walkways, planters, and signs.

Section 26-23(g) requires the owner of each nonresidential structure and land ... “to eliminate every condition which creates a public nuisance in a manner that will prevent a repeated occurrence.” The definition of public nuisance in Section 26-1 lists several characteristics, which may apply to a nonresidential structure or its premises, such as vacant, unsecured buildings, open basements, unsafe fences, stairways or steps, abandoned appliances, and dilapidated structures.

**Inspections** – A housing or building inspection provides the government with an opportunity to observe the conditions in a property to determine whether a violation of the County’s housing standards exist. Section 26-4 of the County Code authorizes inspections of “the condition of dwellings, nonresidential structures and premises located in the county to safeguard the health and safety of the occupants and the general public.”

This section empowers the enforcing agency to enter, examine, and survey at all reasonable times, all dwellings, nonresidential structures, and premises. (The chapter defines “enforcing agency” as DHCA or any other agency of County government which the chief administrative officer assigns to enforce the chapter.) It requires the department to give notice either orally or in writing the day of the inspection and to obtain the consent of the operator or occupant to inspect. If the owner or occupant does not consent to an inspection, the department must obtain a warrant.

**Responsibilities** – Section 26-10 identifies the maintenance responsibilities of owners and tenants. The owner and occupant are jointly responsible for maintaining clean and sanitary conditions. The occupant must properly dispose of garbage, maintain the lawn, hang screens, and keep the plumbing in working order. The owner must maintain shrubbery, accessory structures and driveways. An owner must complete any renovation or new construction within one year after a building permit is first issued. An owner must also eliminate any condition which creates a public nuisance.

**Procedures** – Under Chapter 26, if DHCA determines there is a violation of the County’s housing standards, it must notify the responsible party and order action to be taken.

Section 26-12 establishes the procedures DHCA must follow to designate dwelling units as unfit for human habitation and nonresidential structures as unsafe for human occupancy or use. The law requires DHCA to notify the owner of every unit and structure and to post a warning on the property. Under the law, occupants must vacate within a “reasonable time.” Occupants of nonresidential structures must vacate immediately. The owner must secure the building. Before a building is re-occupied, DHCA must inspect to verify all defects are eliminated.

Section 26-14(a) establishes the procedural steps for serving a notice of violation and an order to repair. The law states that the notice and order must be in writing. It must describe the remedial action needed to come into compliance and it must establish a reasonable time for performance of the required action. This section also provides that DHCA must serve the notice on the owner, operator or occupant (as the case requires) either in person, by certified mail, posted or other method authorized in state law. If an historic structure is involved, DHCA must send a copy of the notice and order to the Historic Preservation Commission.

Section 26-14(b) establishes appeal rights for a person who receives a notice and order. Under the law, the person receiving a notice may appeal to the Board of Appeals within 15 days of service. The law gives DHCA the option of filing a written request asking the Board of Appeals to hold a hearing in less than 30 days if DHCA provides reasonable notice to all parties.

Section 26-16 authorizes the “enforcing agency” to waive the chapter provisions if no violation presents immediate danger to the health, safety and welfare of occupants and if the agency finds that:

- ◆ The owner has a financial hardship, or
- ◆ It is impossible to bring a property into compliance, or
- ◆ The dwelling units cannot economically be made to comply with the chapter without moving the occupants out and no other adequate housing is affordable.

The law also states that the enforcing agency may revoke the waiver if circumstances change or if a danger to the public health, safety, and welfare occurs.

Section 26-18 addresses the repair or removal of condemned structures. The law requires DHCA to give 30 days written notice to the owner. It authorizes DHCA to charge the cost of the demolition to the property owner and to collect the cost as taxes on real property or to charge it as a lien to the property. Section 26-18(b) empowers the property owner to appeal the order to the Board of Appeals.

Section 26-19 authorizes an “enforcing agency” to abate violations if an emergency exists. Specifically, DHCA may order the owner, agency or operator to take action to abate a “severe emergency which requires immediate action to protect public health and safety from violations of Chapters 26, 22, 8 and 17.” Sections 26-19 (b) and (c) establish the following procedural requirements. DHCA must hand deliver or post the order. It must give the property owner 24 hours to abate the violation. DHCA must “make best efforts” to consult with the Planning Board if there is an historic structure. The law states the property owner cannot file an appeal with the Board of Appeals.

Section 26-20 states that violations are punishable as class A violations and that each day a violation continues can be a separate offense.

**Rental Licenses** – Chapter 29 of the Montgomery County Code, the Landlord Tenant Relations Act, requires the owner of a dwelling unit to obtain a rental facility license before renting the dwelling unit. The law establishes two classes of rental facility licenses. A Class 1 license is required for an apartment complex or personal living quarters building. A Class 2 license is required for a single-family unit. The County issues licenses for a term of one year. Licenses are renewable for additional one-year terms and subject to all applicable laws.

Section 29-18 defines the licensing procedure. A prospective operator must apply for a license on a form furnished by DHCA. DHCA must determine whether the rental facility complies with all applicable laws. If DHCA finds a violation, it must notify the applicant within 30 days. If DHCA does not notify the applicant within 30 days, it must issue the license.

Section 29-19 requires the County Executive to establish an annual license fee sufficient to cover the administrative costs of the chapter.

Section 29-21 addresses inspections of rental facilities. Section 29-21(a) requires the DHCA Director to inspect each *apartment complex* and personal living quarters building licensed as a rental facility at least once every three years. Section 29-21(b) authorizes the Director to inspect any other rental facility in response to a complaint or if the Director believes the facility is not in compliance.

Section 29-24 gives DHCA the authority to revoke, deny or suspend a license from a rental facility “at any time by the Director if the landlord after ten days written notice fails to eliminate or to initiate bona fide efforts to eliminate violations of applicable laws.” The Director’s decision to revoke, deny, or suspend a license may be appealed to the Landlord Tenant Commission. Decisions of the Landlord Tenant Commission may be appealed to Circuit Court

**Complaints** - Chapter 29, Article V, Complaints, authorizes either a tenant or landlord who believes a defective tenancy exists to file a complaint in writing with the director.

Section 29-33 addresses complaints that fall under the jurisdiction of other departments. It states:

“Any complaints which allege ... any violation of Chapter 8, Chapter 22, Chapter 26, Chapter 59, or any other provision of law enforced by any other County department ... must be promptly referred to the appropriate department. The Department should be kept informed of the status of the action taken by the other department. If the complaint contains allegations which fall jointly within the jurisdiction of two or more County departments, and the allegations are nonseverable, the Department must investigate the complaint with the assistance of an inspection by the other department, agency or office.”

**Solid Waste** - The portion of Chapter 48 enforced by DHCA regulates the accumulation and storage of trash and debris on private property. The law defines solid waste as:

“All waste materials and debris, including any garbage, sludge, medical/pathological waste, debris from building construction, ashes, junk, industrial waste, dead animal, salvable waste, dead or felled tree, uprooted tree stump, slash, tree limb, bush, plant, leaves, grass, garden trimmings, street refuse, abandoned vehicle, machinery, bottle, can, waste paper, cardboard, sawdust and sawmill operations, and any other waste materials. Solid waste also includes any automobile, truck, box container,

tire appliance, furniture, or recreational equipment that is in a state of disrepair or dysfunction, unless the item is awaiting the removal or being repaired or renovated for the personal use of the owner or occupant and the repair ... is completed within 30 days."

Section 48-24(b)(6) provides that deficiencies observed in violation of the standards of the chapter shall constitute prima facie evidence that required maintenance is not adequate. This section also authorizes the director to remove or cause the removal of solid waste material upon written notice to the owner, occupant, lessee or agency and to charge the cost of removal (i.e., the so called "clean and lien" authority) as a debt due the County.

Section 48-30 states a violation of chapter 48 shall be punished as a class A violation and that each day the violation continues constitutes a separate offense.

Section 48-28 gives the Board of Appeals full authority to hear testimony and decide all appeals from decisions or orders of the Director under the chapter. Moreover, an aggrieved party may appeal within 10 days from an order or decision. An appeal shall not stay execution of the order unless the board, upon application, shall grant a stay of such order.

**Weeds** – Chapter 58 regulates the growth of weeds to protect the public health and safety. The law defines a weed as "poison ivy, ragweed, kudzu, Canada, musk, nodding, plumeless, and bull thistles; any plant, except another thistle, identified as a noxious weed under State law; and any other plant which Director finds by regulation endangers public health or safety if allowed to grow unchecked."

Section 58-4(a)(1) authorizes the director to notify an owner in writing of the conditions on the land and the requirements of the chapter and to direct the owner to comply within 10 days after receiving the notice.

Section 58-5 authorizes the County to remove any generalized growth of weeds or cut any generalized plant growth within 15 feet of the boundary of the land. The section authorizes the County to collect the cost as a lien against the land on the property tax bill or in any other way legally available for the collection of debt.

Section 58-6 authorizes the County Board of Appeals to decide all appeals of decisions or orders of the director under Chapter 58 and authorizes an appeal within 10 days after the order or decision is issued. The appeal does not stay the order unless the board grants a stay.

Section 58-7 states any violation of chapter 58 is a class B violation.

**Accessory Apartments** – An accessory apartment, as defined by the Zoning Ordinance, is "a second dwelling unit that is part of an existing one-family detached dwelling or is located in a separate existing accessory structure on the same lot as the main dwelling." An accessory apartment is a special exception and must meet specific ownership and land use requirements in the Zoning Ordinance. For example, the Zoning

Ordinance allows only one accessory apartment on the same lot. The owner must occupy one of the dwelling units. The minimum lot size must be 6,000 square feet and there must be a minimum of two off-street parking spaces.

Accessory apartment approvals are granted by the Board of Appeals. In addition to the physical requirements above, the Board of Appeals must also determine that the apartment will not be detrimental to the use and enjoyment of surrounding properties. As special exceptions accessory apartments are covered by Section 59-G-1.3 of the Zoning Ordinance which requires "the Department" to conduct regular ongoing inspections.

**Registered Living Units** - Registered Living Units are accessory dwelling units exclusively for use by family members. Although Registered Living Units do not require a special exception, they do need to be registered and inspected periodically to ensure compliance with the housing and building maintenance standards. Executive Regulation 1-90, Requirements for Registered Living Units, establishes procedures for registration, inspection and removal of Registered Living Units. Executive Regulation 1-90 delegates authority for the registration and inspection functions to DHCA.

Executive Regulation 1-90 requires an owner occupant to obtain an Affidavit of Compliance form from DHCA. The owner must complete this form and affirm that the Registered Living Unit meets the occupancy, property and ownership requirements in the Zoning Ordinance. The owner must also disclose to a prospective purchaser the existence of a Registered Living Unit and must inform DHCA if the property is sold.

DHCA inspects the Registered Living Unit for code compliance. When a final inspection has verified that all completed construction meets code requirements, DHCA issues a Certificate of Registration to the owner. Executive Regulation 1-90 also provides that "each RLU will be inspected annually and at such other times as may be appropriate." DHCA inspectors must be able to enter and inspect the property and interview all occupants of the dwelling. DHCA must notify the Department of Permitting Services when a violation of Chapter 59 occurs.

Executive Regulation 1-90 describes the standards for the removal of an Registered Living Unit and states DHCA may inspect the main dwelling and discontinue a Registered Living Unit to assure compliance with the code requirements.

## **B. Organization and Operations**

**Mission** - According to the County Executive's Recommended FY 00 Operating Budget and Public Services program, the mission of DHCA is "to plan and implement activities that prevent and correct problems that contribute to the physical decline of residential and commercial areas, to maintain a marketplace that is fair to all parties; ... to increase the supply of new affordable housing; and to maintain existing housing in a safe manner."

The Housing Code Enforcement Section is responsible for the preservation and improvement of housing and property standards through the enforcement of Chapter 26, Housing and Building Standards, Chapter 48, Solid Waste, and Chapter 58, Weeds. The web page for DHCA states the goal of housing code enforcement is to promote and maintain healthy, safe and desirable communities.

**Organization and Staffing** – The organizational chart on the next page shows the Department of Housing and Community Affairs consists of three divisions – Housing, Community Development, and Consumer Affairs. Code Enforcement is one of five sections in the Housing Division. The program manager of the Code Enforcement section reports to the Chief of the Housing Division who reports to the Director.

In FY 00, staffing for housing code enforcement consists of 23 authorized positions. The positions include:

- 1 Program Manager II – Grade 27
- 19 Code Enforcement Inspector IIIs – Grade 21
- 1 Program Specialist I – Grade 18
- 1 Office Services Coordinators – Grade 15
- 1 Principal Administrative Aide – Grade 13

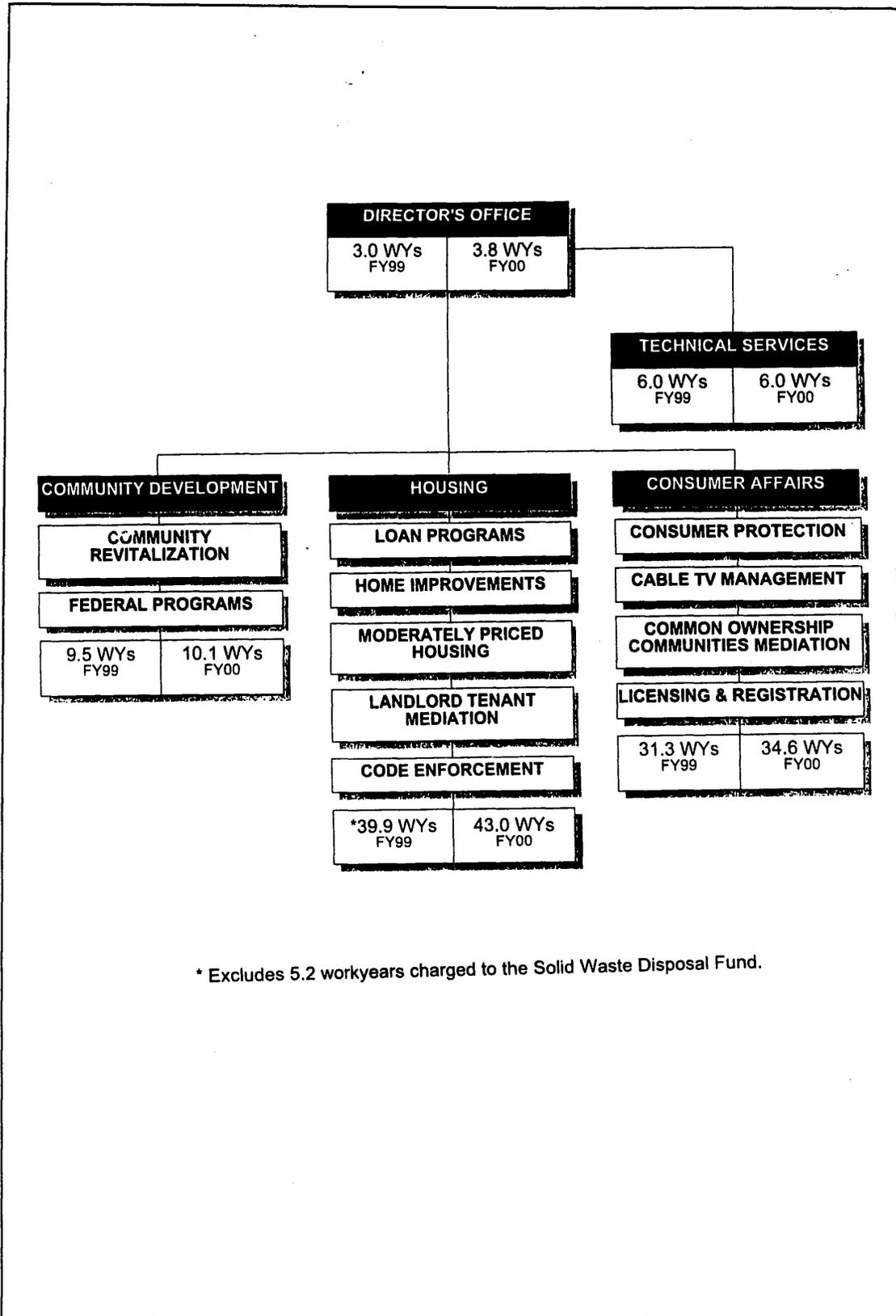
In the past, code enforcement inspectors were assigned to one of two teams – a multi-family inspection team or a single family inspection team. These teams were dissolved when the volume of single family complaints became too large. Today, the inspectors informally operate in two sections – multifamily inspections and single family complaints. However, inspectors in the multifamily section are available to handle single family complaints. Likewise, inspectors assigned to geographical areas of the county to handle single family complaints are called on to conduct multifamily inspections.

The program manager has established three inspector teams and designated three experienced inspectors as team leaders to provide technical assistance and advice on difficult cases. Each team has three to five people and includes a mix of multi-family and single family inspectors. The teams meet together informally to discuss cases and seek advice. The program manager expects to rotate the team leaders every six months.

**Training** - The Housing Code Enforcement inspectors receive a mix of in-house and professional training. When a new inspector is hired, he or she is partnered with a different senior inspector each week for a month. Typically, a newly hired inspector has housing inspection experience but needs to learn County practices. The inspector may also attend professional training classes. All inspectors also attend training classes offered by inspection units in other County departments such as stormwater management or well and septic inspections. Inspectors have also attended sessions offered by the County Attorney and regularly attend computer-training classes.

**Budget and Funding** – The approved budget for the housing code enforcement program in FY 00 is \$1,638,693. This includes the cost of personnel, equipment, vehicles, and supplies. The budget provides money for four new inspector positions

# DHCA ORGANIZATIONAL CHART



\* Excludes 5.2 workyears charged to the Solid Waste Disposal Fund.

(included in the 23 positions listed above.) Two of these inspectors will be hired in the first half of the year.

Three-quarters of the funding for Housing Code Enforcement comes from the Landlord Tenant Fund (\$1,254,550) and one-quarter comes from a charge-back to the Solid Waste Fund (\$384,143). The primary source of revenue for the Landlord Tenant Fund is licensing fees for rental units. In FY 00, the fees are \$30 for a multi-family unit and \$55 for a single family unit. The charge-back to the solid waste fund pays the cost of one administrative position and four inspectors.

Landlord Tenant Fund	\$1,254,550
Solid Waste Fund (Charge-back)	\$384,143
<b>TOTAL</b>	<b>\$1,638,693</b>

**Space** – Housing Code Enforcement offices are located on the second floor of the Council Office Building. Due to space constraints, two inspectors are temporarily located on the third floor. The Department expects to expand the code enforcement offices to accommodate all staff plus the four new inspectors after the Office of the Community Use of Public Facilities vacates its space on the second floor.

In 1997, when the Department initiated the concentrated code enforcement program in Silver Spring, inspectors were temporarily re-located to offices in downtown Silver Spring. Inspectors have remained at the office in Rockville for the more recent concentrated code enforcement programs.

**Equipment and Technology** – Inspectors are equipped with a desk, a personal computer, a landline phone, a car, and a cellular phone. The department created a computerized database of cases in FY97 and uses this system to track and monitor the enforcement caseload.

**Public Outreach and Education** – General information about Housing Code Enforcement services are available at the Department’s offices, at Regional Service Centers, over the telephone and through the Internet. The Department and the AOBA have jointly sponsored landlord training meetings. In addition, the Director, the Division Chief and the Program Manager regularly speak to community groups about code enforcement.

The Department has been improving its outreach to communities targeted for the Neighborhoods Alive! program which includes exterior inspections of both rental and owner units. (See page 19 for a description of this program.) In the early stages of the program, the Department would initiate inspections with only a minimal amount of notice to the public. Most recently, in the Long Branch community, the Department mailed letters co-signed by the program manager and the local civic association to inform residents about forthcoming inspections. The letter included a checklist to help residents determine the maintenance needs of their homes and an enclosure providing information about low cost rehabilitation loans.

## C. PROGRAMS AND SERVICES

The Housing Code Enforcement section investigates complaints, conducts inspections required by law, provides concentrated code enforcement services to select neighborhoods, administers The Registry and emergency utility payment programs, and educates the public about the code enforcement programs.

**Rental Licensing and Inspections** –Code enforcement staff in the Division of Housing and licensing staff in the Division of Consumer Affairs jointly administer the rental licensing program. Chapter 29 requires rental facilities to be licensed and requires triennial inspections of multifamily rental facilities. (There are no inspection requirements for single family rental units.) As of April 1999, there are 75,350 licensed rental units including 5,014 HOC owned units. The 70,337 privately owned units include:

- 52,787 multi-family rental units in 580 properties,
- 12,278 single family/townhouse rental units,
- 5,018 condominium/cooperative apartment rental units, and
- 254 accessory apartment rentals.

Multifamily Inspections - Before 1996, the DHCA triennial inspection program consisted of inspections of the common areas of an apartment complex and interior inspections of ten percent of the units in a development. In the spring of 1996, DHCA conducted inspections in response to the collapse of a roof of an apartment complex in south Silver Spring during a severe snowfall and complaints from tenants in an apartment complex in Bethesda. These inspections uncovered extensive housing code violations. These two events and the fact that the properties were in serious disrepair prompted DHCA to reassess its approach to the triennial inspection program. The Director charged a code enforcement program manager with developing an inventory of all multi-family rental properties that were deteriorating or in need of repair.

Using a set of screening factors that included the age of the building, the rent levels, the complaint history and previous inspections, the code enforcement staff compiled a list of 265 complexes with 6,000 units. For the most part, these properties were located in Silver Spring, Long Branch, and Wheaton. Using this inventory, DHCA:

- Surveyed the area twice daily to find and report solid waste violations,
- Inspected all of the units in an apartment complex and worked with landlords to obtain full code compliance, and
- Worked with the County Attorney's office to write consent orders requiring landlords to improve the property to meet or exceed code requirements within specified time frames.

Over the next 18 months the Housing Code Enforcement section inspected 6,000 at-risk multi-family units and brought 80 percent into compliance. In July 1997, DHCA initiated the second phase of its program – code enforcement targeted at areas with older deteriorated housing stock, a high concentration of rental units, and/or substantial social

problems. This concentrated code enforcement program, or Neighborhoods Alive!, is described in detail in the next section.

Single Family Inspections – The County issues approximately 13,000 single family rental licenses annually. In the summer of 1999, the program manager queried the licensing database to identify units that were owned by landlords with four or more properties. Code enforcement staff inspected 480 single family rental units and found virtually all of properties to be in good repair.

**Neighborhoods Alive!** - DHCA initiated a concentrated code enforcement program in 1997, following an extensive re-structuring of its multifamily triennial inspection program. Using screening factors that included a high concentration of rental units, substantial social problems, and older, deteriorated housing stock, DHCA developed a list of neighborhoods for concentrated code enforcement efforts.

DHCA established five goals for its Neighborhoods Alive Program. They are:

- To bring substandard housing into compliance,
- To increase home ownership opportunities,
- To improve neighborhood conditions and livability,
- To stabilize home values and improve the resale of homes, and
- To reduce criminal activities.

The Neighborhoods Alive! concentrated code enforcement program complements the inspection of multifamily complexes with windshield surveys of the neighborhood, exterior and interior inspections of single family rental properties, and exterior inspections of owner-occupied homes. DHCA hosts periodic community clean up days and works with civic associations to promote beautification programs. DHCA works with the Police Department to administer the Crime Prevention Through Environmental Design Program and to identify and close down properties where drug activities and other problems occur.

To increase homeownership opportunities, DHCA markets the homeowner rehabilitation loan program, state low cost mortgages, and the closing cost assistance program. DHCA provides grant money for lead paint abatement and weatherization funds. DHCA also provides federal loans that supplement privately funded repairs to older multifamily properties to keep rents affordable. Finally DHCA works with the Housing Opportunities Commission (HOC) and nonprofit housing organizations to acquire and renovate single family rental properties. These properties are resold with low cost loans so that rents will remain affordable after the properties are renovated. HOC and nonprofit organizations also acquire, renovate and hold multifamily rental properties.

As of fall 1999, DHCA has initiated Neighborhoods Alive! in three communities: Connecticut Avenue Estates, Veirs Mill Village and Long Branch. DHCA has received requests for assistance from other communities as well. DHCA has received requests from Montgomery Village, Cinnamon Woods, Avenshire Townhouse community and Rosemary Hills.

**Accessory apartment inspections** – Housing Code Enforcement jointly administers the accessory apartment program with licensing staff in the Division of Consumer Affairs. Code Enforcement is responsible for three types of accessory apartment inspections - an initial inspection of the unit to identify potential code violations, a re-inspection of the unit after the Board of Appeals has granted the special exception but before the rental license is issued, and an annual inspection to verify that the unit is still in compliance. Code Enforcement prepares a report documenting the initial inspection results. The Board of Appeals considers the report when it decides whether a special exception should be granted to allow the use. If an annual inspection identifies problems, the Code Enforcement section forwards that report to the Board of Appeals.

If Code enforcement identifies an illegal accessory apartment in response to a complaint, they provide the owner with three options – to remove the apartment, to apply for a registered living unit (if the apartment is occupied by a family member), or to apply for a special exception.

According to DHCA licensing records, there are 254 accessory apartments in the County. The code enforcement staff closed out 66 cases in FY 99 which included a mix of routine inspections and complaint cases. It typically took 90 days to close out a case.

**Registered Living Unit Inspections (RLU)** – This program is jointly administered by staff in the Division of Consumer Affairs and the Division of Housing. Staff in Consumer Affairs is responsible for licensing and registration of registered livings units. As of April 1999, there are 60 registered living units in the County with 416 pending applications.

The Housing Code Enforcement section conducts inspections associated with the RLU program. The inspections include an initial inspection, a final inspection, an annual inspection, other more frequent inspections as needed, and a close out inspection. Data from the licensing section indicates there are very few registered living units, although several applications are pending. In FY 99, the code enforcement staff inspected ten registered living units.

**Foster Care/Adoption Inspections** – The Code enforcement section conducts initial inspections of potential foster homes (required under Chapters 13 and 25 in State Law) to ensure that a home complies with the County's housing code. Applicants pay a \$60 inspection fee.

The Code enforcement staff inspected 213 homes in FY 98 and 424 homes in FY 99. Over 90 percent of the homes passed inspections in FY 99. Approximately five percent of the homes failed the inspection or were unable to resolve an issue. The remaining cases were closed administratively.

**The Registry** - The Registry is a private firm that landlords may use to check prospective tenants for the occupancy of rental units. DHCA has contracted with The Registry to do credit checks and landlord tenant history reports. This program was implemented in March 1998. Landlords can fax or mail an application to the Housing Code Enforcement section for processing. Staff forwards the information to Regaccess for processing, notifies the landlord of the results of the application, and bills the landlord \$10 for each application processed. The Registry bills Housing Code Enforcement monthly for its services. DHCA pays for the services out of a separate account in the Landlord/Tenant Fund.

**Emergency Utility Payments** - County law holds a landlord responsible for providing utility service although a lease will frequently require a tenant to make utility payments. To avoid an interruption in service, the utility providers (e.g.,- the Washington Suburban Sanitary Commission, Washington Gas or Pepco) will forward copies of collection notices sent to property owners to the Code Enforcement Section. The Housing Code Enforcement Section will sometimes make the payment to the utility and collect the payment from the property owner through a lien on the property tax bill.

**The Complaint Investigation Program** - DHCA receives complaints over two phone lines, a fax line, and also accepts complaints in writing or on a walk in basis. Complainants include neighbors, civic associations, referrals from the County Executive and County Council offices, and referrals from other County departments or other government agencies. The complaint unit received 1,040 calls in FY 98 and 3,000 calls in FY 99. The major complaint categories include:

- Overgrown grass and weeds (over 12 inches high),
- Overhanging tree limbs,
- Water runoff problems,
- Storage of inoperable or unlicensed cars,
- Accumulated solid waste – trash and debris,
- Deteriorated housing conditions,
- Unlicensed accessory apartments, and
- No heat.

**Inspection Service Areas** - DHCA has divided the County into ten geographic service areas to administer the complaint investigation services. (There is a map of the service areas at the end of this chapter.) Inspectors assigned to each area investigate complaints and issue notices of violations and citations as warranted to abate existing violations.

**The Intake Process** - DHCA asks the complainant to provide the exact address or location of the property (if possible), a description of the complaint, the property owner or occupant's name, if known and the name, address and phone number of the party

registering the complaint. The intake person gives each person filing a complaint the option of leaving his or her name or remaining anonymous. If the caller leaves a name, DHCA will keep each complainant name confidential.

After logging the requested information, the intake person checks to make sure the location of the complaint falls under the County's jurisdiction. The next steps in the intake process are to classify the type of complaint, to set up a file for each complaint, and to identify the inspector.

DHCA maintains a complaint database that lists over 50 individual types of complaints which are grouped into six categories. The complaint categories are – solid waste, multifamily, single family, public nuisance, commercial and condemned properties. An inspection file includes an inspector log form, a print out of the case from the intake database, tax records for the property, the complaint intake form and rental licensing information.

Every other day the intake processor sends out acknowledgement letters for those complainants who leave contact information. The letter provides the name of the inspector and their phone number, the case number and a request to call before 9:00 am or after 3:30 for information on the investigation.

***Priority Complaints*** - In practice, the Housing Code Enforcement section inspects a complaint no more than two or three days after it is called in. Some complaints receive priority attention. Complaints about no heat, no smoke detectors, backed up toilets or no cooking appliances are classified as emergencies. Staff sets up files for these complaints immediately and the program manager calls an inspector in the field to investigate immediately. Complaints referred from the County Executive, the Director's office, or the program manager also receive priority attention.

***The Inspection and Enforcement Process*** - After files for each complaint are set up, they are consolidated and passed to the program manager. The program manager reviews the files to verify that the complaint falls within the County's jurisdiction and checks that the correct inspector has received the assignment. Reviewing the files helps the program manager maintain a sense of the types of incoming calls.

Each inspector maps out a set of new inspections and re-inspections each day. An inspection consists of a visit to the property to observe the conditions, a conversation to discuss the conditions and explain the law if a property owner or occupant is available, and posting of a notice of violation if the inspector determines one is warranted.

In the case of violations that pose a clear public health or safety threat, the inspector gives 24 hours to address the condition. For non-emergency conditions, the inspector decides how many days are appropriate to bring the violation into compliance. The informal department guidelines are to allow a 15 day compliance period for a first notice of violation and a 30 day compliance period for a citation. In some cases, the inspector may allow only 10 days to comply to get the attention of the property owner. In

other cases, the inspector may give the owner 30 days to comply if it appears repairs are already underway.

The department has a standard that no case should be older than 90 days, calculated from the day a complaint is filed to the day a complaint is closed out. The program manager monitors the progress of cases using the computerized database. This includes flagging a case when a citation has been issued and the case is going to District Court. Taking a case to trial typically extends the life of a case by four months.

The inspector generally establishes a re-inspection date to coincide with the end of the repair period. At that time, the inspector will re-inspect the property to determine whether the condition has been corrected. If the property owner has been in contact with the inspector and has demonstrated a willingness to repair the condition but needs more time, the inspector may grant an extension. If the property owner has not contacted the inspector and has not abated the condition, the inspector will issue a citation.

At the completion of a case, DHCA will send out a survey form to complainants who have left their name and address. The survey form asks the complainant to rate the performance of the inspector and also requests additional comments. If a survey response indicates that the complainant did not believe the case was resolved or if it contains information about an additional violation, an inspector will follow-up with an additional inspection visit. DHCA estimates that approximately one-third of the survey response forms are returned. According to DHCA, most complainants are satisfied with the outcome of the case. The most common concern is lack of communication from the inspector in closing out a case. Very few cases are reopened because of unresolved complaints.

#### **D. PERFORMANCE MEASURES**

DHCA provided OLO with the database of the cases closed in FY 99 that OLO could develop a better understanding of DHCA's workload and activities. OLO analyzed the data to answer the following questions:

1. What was the profile of FY 99 cases by program type?
2. What was the distribution of FY 99 closed complaint cases by inspection area?
3. What outcomes did the FY 99 closed complaint cases represent?
4. How many days did it take to close a complaint case in FY 99?
5. What is the aging profile of complaint cases open as of October 1999?

**1. What was the profile of cases by program for FY 99?**

OLO grouped DHCA's database of FY 99 closed cases according to whether the case was initiated by a complaint, a requirement in law, or a special project. Table 1 presents the results of this analysis. It shows that approximately:

- 1,151 cases are for special projects initiated by DHCA,
- 2,757 cases are to fulfill legal requirements, and
- 3,000 cases are generated by complaints.

**TABLE 1 PROFILE OF FY 99 CLOSED CASES IN DHCA**

Required Programs	Triennial Units	2,235
	Foster Day Care	424
	Accessory Apts	66
	Condemned Structures	22
	Registered Living Units	10
Subtotal - Required Programs		2,757
Complaints	Solid Waste	1,313
	Single Family	865
	Multifamily	541
	Weeds	124
	Public Nuisance	88
	Commercial Properties	66
	Roomer	3
Subtotal - Complaints		3,000
Special Projects	Single Family Rental Survey	481
	Condemned & Vacant Survey	367
	Neighborhoods Alive!	208
	South Silver Spring	76
	Hyattstown	18
	Wheaton	1
Subtotal - Special Projects		1,151
GRAND TOTAL		6,908

Source: DHCA and OLO, 1999.

**2. What is the distribution of FY 99 closed complaint cases by inspection area?**

OLO analyzed the FY 99 closed complaint cases by type and inspection area to understand the geographic distribution of complaint cases. Table 2 presents the results of the analysis. In FY 99, complaints were concentrated in Silver Spring, Aspen Hill and Gaithersburg. Specifically, inspection areas 10 and 6 had 19 percent and 18 percent of all complaint cases respectively. Inspection areas 9 and 3 each had over 10 percent of all complaints.

**TABLE 2 FY 99 CLOSED COMPLAINT CASES BY AREA**

Area 10	552
Area 6	533
Area 9	404
Area 3	379
Area 8	261
Area 7	204
Area 4	176
Area 1	140
Area 2	129
Area 9	111
Total	2889

Source: DHCA and OLO, 1999.

**3. What outcomes do the FY 99 closed complaint cases represent?**

The DHCA complaint database identifies several outcomes and tracks resolutions of its cases. Table 3 below summarizes the outcomes of the FY 99 closed complaint cases. It shows the inspector found no violation in 545 cases or 18% of all cases. Maintenance was performed in 2,259 or 75% of the cases. DHCA took legal action in 23 cases – including issuance of a citation, an injunction or an order to clean and lien.

**TABLE 3 OUTCOMES FOR FY 99 CLOSED COMPLAINT CASES**

No Violation Found	545
Maintenance Performed	2,259
Legal Action	23
Other	182
TOTAL CASES	3,009

Source: DHCA and OLO, 1999.

**4. How many days did it take to close a complaint case in FY 99?**

OLO analyzed the number of days it took to close complaint cases in FY 99 to understand how long it takes to bring cases into compliance. Table 4 shows on average, it took 71 days to close out a complaint case. Commercial cases were closed out the quickest and roomer complaints took the longest. (Note - The number of cases closed is shown in parenthesis following the category.)

**TABLE 4 TIME TO CLOSE FY 99 CLOSED COMPLAINT CASES**

	Average Days to Close
Commercial (66)	49
Multifamily (541)	63
Solid Waste (1313)	63
Public Nuisance (88)	72
Weeds (124)	77
Single Family (865)	88
Roomer (3)	241
<b>AVERAGE</b>	<b>71</b>

Source: DHCA and OLO, 1999.

**5. What is the profile of open complaint cases?**

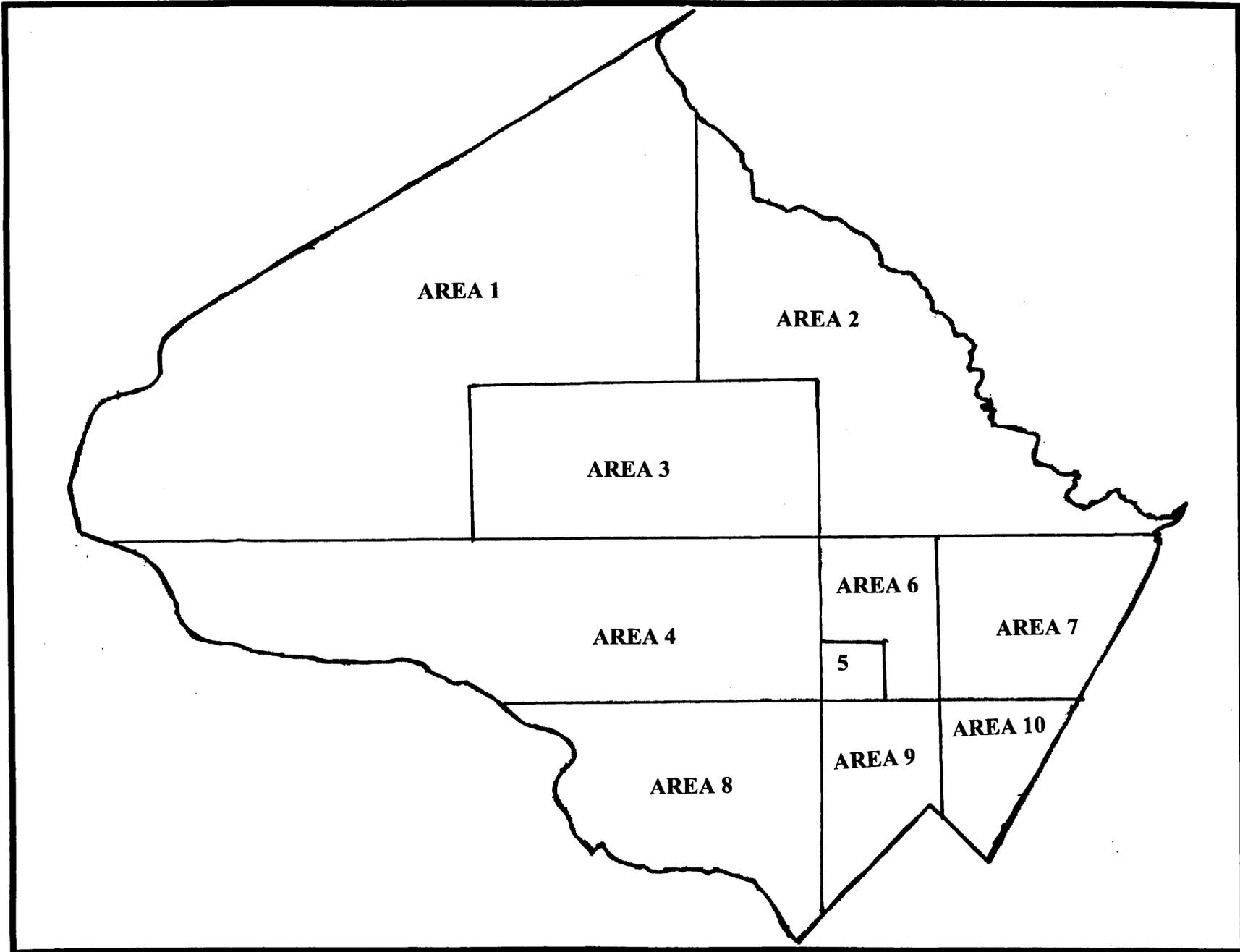
OLO examined a current database of open cases to understand the profile of open complaint cases. Table 5 presents the results of OLO's analysis. It shows that the concentration of open cases are in solid waste and single family cases. Approximately one fourth of the cases are less than thirty days old. Forty percent are 120 days or older. There are over 1,000 open complaint cases.

**TABLE 5 PROFILE OF OPEN COMPLAINT CASES**

	<30 days	<60 days	<90 days	<120 days	> 120 days	Total
Accessory Apartment	5	4	8	2	66	85
Commercial	2	3	4	1	9	19
Multifamily	62	33	17	11	24	147
Public Nuisance	7	3	2	2	14	28
Single Family	83	53	58	32	193	419
Solid Waste	61	64	34	27	98	284
Weeds	16	7	4	1	8	36
Solid Waste and Weeds	4	1	1	0	3	9
<b>TOTALS</b>	<b>240</b>	<b>168</b>	<b>128</b>	<b>76</b>	<b>415</b>	<b>1027</b>
	23%	16%	12%	7%	40%	100%

Source: DHCA and OLO, 1999.

***HOUSING INSPECTION AREAS***



#### IV. ZONING ENFORCEMENT

The government adopts zoning law to control the use and development of land in order to further public health, welfare and safety. Zoning is an exercise of the police power that strikes a balance between the public welfare and a landowner's development and use of his or her property. Zoning laws and regulations subordinate individual property rights for the good of the community as a whole.

This chapter examines the substance and administration of the County zoning ordinance with an emphasis on the zoning enforcement program:

- Part A describes the permits, certificates and registrations established in the zoning ordinance and other chapters of the code that DPS administers and enforces,
- Part B examines the organization and operations of the County's zoning program,
- Part C explains the zoning inspection services, and
- Part D presents data associated with the zoning complaint program.

##### A. PERMITS, LICENSES, CERTIFICATES AND REGISTRATIONS

**Building permits** – A building permit gives a building department the opportunity to review the location, height, construction specifications, parking, and landscaping of a proposed building plan. Chapter 8 and Chapter 59 of the Montgomery County Code establish the administrative structure for reviewing, issuing and enforcing building permits. The zoning/building complaint unit also responds to electrical complaints in Chapter 17, safety requirements for swimming pools in Chapter 51 and requirements of the American with Disabilities Act for buildings, parking lots and access routes. Specifically,

Section 8-12(a) authorizes the Director to “receive applications and issue permits for the erection and alterations of buildings and structures and inspect the premises for which permits have been issued and enforce compliance with this Chapter.”

Section 8-12 (b) authorizes the Director to issue all necessary notices and orders to remove illegal or unsafe conditions.

Section 8-12(c) requires the Director to make all required inspections.

Section 8-12(e) requires the Director to keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. The law states that file copies of all papers in connection with building operations shall be retained in the official records so long as the building or structure to which they relate remains in existence.

Section 8-12(f) authorizes the Director to hold hearings prior to the issuance of notices, orders and permits. The law states if the Director holds a hearing the time for appeal to the Board of Appeals shall be stayed until the Director has made a decision or acted on a request for reconsideration. Any party to a hearing may request reconsideration by filing a request in writing within ten days of the Director's decision.

Section 8-12(g) requires the Director to compile an annual written statement of all permits and certificates issued, orders promulgated and materials approved.

Section 8-20 authorizes the Director to issue a stop work order whenever he determines that work on a building or structure is in violation of Chapter 8.

Section 8-21 authorizes the Director to revoke a permit or approval in case of any false statement or misrepresentation of fact.

Section 8-26(g) states the building or structure must comply with all applicable zoning regulations, including all conditions and development standards attached to a site plan approved under Chapter 59.

Section 59-A-3 requires the Director to issue a building permit "before any building or other structure can be erected, moved, structurally altered, added to, or enlarged." The law does not require a permit for "buildings used exclusively for agriculture on land used exclusively for agriculture" and for some overhead electrical transmission lines.

Section 59-A-3.1 provides that the Director must not issue a building permit for a building subject to a special exception and or variance request unless the construction complies with the conditions of approval. The Director also must not issue a permit if a decision is pending to grant a map amendment or special exception.

**Use and Occupancy Permits** – A use and occupancy permit provides a mechanism to ensure that the existing or proposed use of a structure complies with the zoning regulations. Typically, the law requires a use and occupancy permit to be issued before the building is occupied and when a building changes from one use to another. If an owner or tenant changes the use of a building without obtaining a use and occupancy permit, the law typically authorizes the Department to order the occupant to vacate the building.

County Code Chapters 8 and 59 establish the administrative structure and enforcement authority for use and occupancy permits in Montgomery County. The law specifies when use and occupancy permits are required. It gives the Director the authority to issue permits and authorizes the Director to condemn and post a building deemed to be unsafe by reason of an illegal and improper use.

Section 8-28, Certificate of Use and Occupancy, addresses when use and occupancy permits are required, the contents of a use and occupancy certificate, the prohibition on re-establishment of prior uses, and the use of temporary certificates.

Section 59-A-3.2 requires the Director to issue a use and occupancy permit “before any building, structure or land can be used or converted from one use to another.” The law requires a special exception use to obtain a use and occupancy permit to ensure that the property conforms to the plans and conditions in the opinion of the Board of Appeals. The law exempts single family detached dwelling units, agricultural land and buildings, child day care facilities for up to eight children, and transitory uses from this requirement.

Section 8-10 authorizes the Director to condemn a building deemed to be unsafe and to serve the owner with a written notice describing the building as unsafe and specifying the required repairs. (Note: The law defines “unsafe” to include an illegal or improper use.) The law authorizes the Director to post the building if the owner cannot be served. The law also provides that if the person refuses to comply with the requirements of an order to abate the unsafe condition, the County Attorney shall be advised of all the facts and shall institute the appropriate action to compel compliance.

**Nonconforming use certificates** - The District Council creates nonconforming uses when it changes zoning law either through a text amendment or a map amendment. Nonconforming uses are uses that were legal under a previous law but no longer comply with a new law or regulation. Over time, as the value of land increases and surrounding buildings and uses change, the expectation is that nonconforming uses and structures will be replaced or redeveloped with buildings that meet current standards. In the interim, nonconforming uses are strictly regulated because they no longer comply with current law. Chapter 59 establishes the requirements for nonconforming uses in County law.

Section 59-G-4.16 requires the owner of a property who wishes to establish that the use of a property is nonconforming to obtain a certificate from the Director of the Department.

Section 59-G-4.1 states nonconforming uses must not be extended, altered, or converted to a less restricted use. The law also states that a nonconforming use that is abandoned, (i.e., not used for six months), cannot be re-established. If a structure is damaged or destroyed, it cannot be rebuilt.

Section 59- 4.2 establishes exceptions to the nonconforming use regulations called “not nonconforming uses.” Examples of not nonconforming uses include:

- Housing projects constructed before 1945 and opportunity housing projects,
- Repairs to dwellings in flood plains,
- Alterations, to one family dwellings, and
- Residential lots reclassified from the R-60 to the R-90 zone.

**Variations** - Variations are case by case exceptions to the strict application of the physical requirements in the zoning ordinance. Ideally, variations are granted before a permit is issued to proceed with construction. In practice, variations may also be granted after a project is completed to bring the project into compliance with the law. Under County law, the Board of Appeals, the Sign Review Board, and the DPS Director have the authority to grant variations from different sections of the ordinance.

The Board of Appeals has the authority to grant variations from most of the Zoning Code's physical requirements including setback and building height requirements. Under Section 59-G-3.1, the Board of Appeals may grant a variance if the evidence shows:

- The topography of the land creates an undue hardship for the owner,
- The variance is the minimum reasonably necessary to correct the hardship,
- The variance would not impair the integrity of the General Plan, and
- The variance will not be detrimental to the use and enjoyment of adjoining properties.

The Director of DPS is authorized to grant a variance from the setback and side yard requirements for a unit built under the County's Moderately Priced Development Units program and to grant a waiver from the parking requirements.

The Sign Review Board may grant a variance from the requirements of the sign law, including a variance for signs on special exception properties that are subject to the conditions of approval imposed by the Board of Appeals.

**Special Exceptions** – Special exceptions are permitted uses, approved subject to conditions that are designed to protect the neighborhood by lessening the impact of the use. Typically an administrative agency approves special exceptions after a public hearing and fact-finding process that demonstrates the operation of the use will comply with a set of general and specific conditions. The opinion of the administrative agency establishes the operating practices that are binding on the operator.

County law places the authority to review, hear, and decide special exceptions with the Board of Appeals and the Hearing Examiner. The authority to inspect and enforce compliance with the special exception conditions rests with the Department of Permitting Services and the Board of Appeals. Section 59-G gives DPS the following inspection and enforcement responsibilities related to special exceptions:

- To establish a "regular" inspection program for all special exception uses and conduct inspections according to the program,
- To conduct inspections in response to complaints,
- To initiate an abandonment proceeding if DPS determines a special exception has been abandoned or if DPS determines the special exception needs to be modified.

Section 59-G-1.3 establishes the requirements for the regular inspection program. It states:

The Department, in conjunction with the Board of Appeals, must annually establish a regular inspection program providing for inspection of special exception uses granted by the Board or the Director. All uses shall be inspected annually, except that the Board and the Department may specifically agree that a particular use or category of uses requires a more or less frequent inspection schedule. The Department must inspect all uses according to the agreed inspection program.

Section 59-G- establishes the following required tasks and time limits for the regular inspection program:

- Within 30 days of any required inspection, DPS must file written findings with the Board that state whether evidence exists of noncompliance. The findings must state no violation exists or must describe the nature of the violation, the corrective action, and the time period for compliance.
- DPS must direct the owner to correct a violation within 15 days unless there is an emergency that justifies a shorter time.
- DPS must re-inspect the premises to determine whether the violation has been corrected. DPS must file written findings within 30 days of a re-inspection.
- If the violation continues, DPS must notify the Board and may recommend modification of the terms and conditions, and/or propose remedial action.

Section 59-G-1.3(b) establishes the following requirements for the special exception complaint program.

- A concerned party may file a complaint with DPS or the Board of Appeals about the operation of a special exception or DPS may initiate complaints on its own. The complaint must be in writing.
- DPS must inspect the premises within 21 days to determine the validity of the complaint.
- If a violation exists, DPS must direct the holder to correct it within a minimum of 15 days.
- After at least 15 days, DPS must re-inspect the premises to determine whether the holder has brought the special exception into compliance.
- Within 14 days of any complaint inspection, DPS must submit written findings to the Board stating the nature of the complaint, the results of the inspection, and a description of the corrective action ordered.

- When the Board receives DPS' written findings, it may dismiss the complaint if the report indicates the complaint is without merit, or it may initiate action to modify the special exception, abandon the special exception, or hold a show cause hearing.

Section 59-G-1.3(d) sets forth the procedures to abandon a special exception use including the following provisions:

- A special exception use must cease operation for six months to be deemed abandoned.
- If the Department determines an operator has abandoned a use, it must notify the property owner of its finding. The owner has 60 days to confirm or challenge the Department's finding.
- After 60 days, the Department must notify the Board of the property owner's response. The law recognizes three possible outcomes:
  - (a) If the property owner confirms the Department's finding, the Board must adopt a written resolution finding the special exception to be abandoned and ordering the special exception revoked.
  - (b) If the property owner does not respond, the Board must order the property owner to appear before the Board for a show cause hearing to explain why the special exception should not be revoked.
  - (c) If the property owner challenges the department's findings, the Board must convene a hearing to determine whether or not the special exception was abandoned and whether or not the special exception should be revoked.

**Home Occupations or Home Health Practitioner's Offices** – Home occupations allow a resident to use his or her home as a place to work as well as a place to live. County law regulates the impacts of a home occupation but generally does not specify the uses that are or are not permitted. As some examples, residents use their homes as business offices, professional offices, beauty parlors, artist studios, landscape service offices, or dog grooming parlors.

County law establishes three classes of home occupations, with a different set of regulations to control the impact of home occupations in each class:

- Section 59-A-6.1 regulates no impact home occupations
- Section 59-A.3.43 prescribes the operations and procedures for registered home occupations, and
- Section 59-G- 2.29 establishes the regulations for major home occupations.

**No impact home occupations** are not required to register but must comply with a minimum level of regulation. The requirements state:

- Each operator must reside in the home for at least 220 days in a calendar year,
- Each operator must maintain a log of all visits made in connection with the use,
- The floor area used for the home occupation must not exceed 33 percent of the total floor area of the dwelling unit, and
- No equipment that creates a nuisance is allowed in connection with the operation of a home occupation.

**Registered home occupations** are accessory to the residential use of the dwelling unit and are subject to more requirements than no-impact home occupations. The law requires a home occupation operator to register their home occupation. The application for a certificate of registration must provide information about the operation of the home occupation and the location of the property. The applicant must sign an affidavit that the home occupation will comply with the regulations in Chapter 59.

There are specific procedures in law to respond to, inspect and enforce registered home occupation complaints. If DPS receives a complaint about a registered home occupation, an inspector must:

- Inspect and determine if there is a violation within 90 days,
- If a violation exists, then issue a warning stating that the violation must be corrected within 30 days, and
- If the violation is not corrected within 30 days, notify the operation to either cease operation immediately or file for a special exception within 10 days.

Lawmakers envisioned that registered home occupations might evolve to become special exceptions and made a special provision to accommodate these situations. Section 59-A-3.43(d)(2) states:

In the case of any violation that might be remedied with a special exception, a petition must be filed within 10 business days for a special exception for a major home occupation. Operation of the registered home occupation may continue until the Board has acted on the petition, provided the violation is corrected during this period. The home occupation or health practitioner's office must cease immediately if the Board denies the special exception.<sup>1</sup>

**Major home occupations** - meet the definition of a home occupation and are regulated in accordance with the special exception provisions of Section 59-G-2.29. This section states:

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<sup>1</sup> In practice, since decisions of the Board of Appeals can be appealed to Circuit Court within 30 days, the home occupation may not cease immediately if the special exception is denied.

- The use must be clearly subordinate to the use of the dwelling for residential purposes.
- The use must be conducted within the dwelling unit or within an existing accessory building.
- The home occupation office must be conducted only by members of the family and a maximum of 2 nonresident employees.
- Clients must visit by appointment only.
- No equipment that creates a nuisance beyond the lot line is allowed in connection with the operation of the home occupation.
- The display, storage and sale of goods is prohibited with certain exceptions.
- Off street parking must be provided on site and must be screened.
- Truck deliveries may be limited by the Board.

Section 59-G-2.29(n) states “A special exception for a major home occupation is granted for a one-year period; application for renewal must be made annually and the special exception may be renewed if it is operated in compliance with the findings and conditions of the Board in the initial grant and satisfies the compliance procedures specified by Section 59-G-1.3.” Although not clearly stated, this section implies that after a year, DPS must inspect the property to determine if the special exception has operated in compliance with its conditions of approval. The law states the Hearing Examiner may waive the public hearing for an annual renewal if the inspection of the premises indicates that the holder of the special exception has complied with the conditions of approval and if the parties entitled to notice “are given the opportunity to request a hearing and fail to do so.”

**Sign permits** – Like building permits, a sign permit gives a regulatory agency the opportunity to review the size, location, height, and materials before a sign is erected. The County’s sign law is found in Chapter 59, Article F. The Council adopted Zoning Text Amendment 97007 to comprehensively amend the County’s sign ordinance on November 18, 1997 and the amendment took effect December 8, 1997.

Section 59-F establishes five classes of signs: Permanent Signs, Limited Duration Signs, Temporary Signs, Prohibited Signs and Exempt Signs. Section 59-F-1.3 requires a sign in the permanent, limited duration or temporary class to have a permit issued by DPA. For these classes, the law prescribes an application procedure and regulates the number, location, size, and duration of the sign.

Section 59-F-10 establishes the authority of the Director to enforce the ordinance. The amended law modified the Director’s authority to enforce the ordinance in the following ways:

- The old law contained the authority to remove signs on public property. The new law expands this authority to include public and private property.
- The old law required the Director to remove noncompliant signs within 10 days. The new law adds a “clean and lien” authority to the Director’s

enforcement powers for signs that authorizes the Director to order the removal of signs at the expense of the responsible party.

- The old law required DPS to issue a warning before issuing a citation. The new law eliminates this language and gives DPS the discretion to issue either a notice of violation or a citation depending on the situation.
- The new law authorizes the Director to revoke, suspend, refuse to issue, or re-issue any permit or license in accordance with this Article.
- The new law gives the Director the authority to resolve any dispute or to interpret any ambiguity in this Article.

The Zoning Text Amendment also amended other sections of the ordinance to allow one sign for no impact home occupations, bed and breakfasts establishments, and elderly housing.

The sign law establishes the Sign Review Board and authorizes the Sign Review Board:

- To hear and decide variance applications,
- To approve right of way signs, and
- To conduct a show cause hearing for a previously granted variance.

When the Sign Review Board considers a variance for a sign on a property subject to a special exception issued by the Board of Appeals, the Sign Review Board may impose conditions that are more restrictive (but not less restrictive) than those set by the Board of Appeals.

Section 59-F-10.1 (d) of the law establishes the following administrative appeal rights. If the Director denies a sign permit, the law authorizes an applicant to file a request for a variance with the Sign Review Board. (There is no time limit on this appeal because only a permit has been denied.)

Under the law, the Sign Review Board must meet at least once a month at the call of the chairperson and must provide written decisions to the Director within 10 days of its decision or action. The law requires the Director to provide staff support to the Sign Review Board and the County Attorney to serve as counsel to the Board.

Section 59-F-10.3 authorizes the Board of Appeals to hear appeals of decisions made by the Director or the Sign Review Board. The Board of Appeals may hear:

- An appeal of any final action of the Director related to permits within 30 days of the action,
- An appeal of any final action of the Director with respect to Sign Review Board recommendations within 30 days, and
- An appeal of any final decision of the Sign Review Board.

The Board of Appeals must hear and decide an appeal de novo (i.e. not on the record). An appeal must be filed in writing within 30 days of the date of the action or decision appealed.

**Bed and Breakfast Lodging Registration** – A bed and breakfast lodging provides overnight accommodations in a single family residence. County law differentiates a bed and breakfast use from a hotel, motel, inn or country inn, which are also regulated under the Zoning Ordinance.

An owner who wishes to operate a bed and breakfast must obtain a special exception from the Board of Appeals. Section 59-G-2.09.2 establishes the minimum lot size, parking, signage and other regulatory requirements for this use. The law requires an owner to register the bed and breakfast lodging with DPS and to maintain a record of all transient visitors which must be made available on request.

**Benefit Performance Licenses** – Chapter 59 and Chapter 30 regulate benefit performances in the County. Section 30-4 of the County Code defines a benefit performance as an “outdoor or indoor carnival, fair, picnic, dance, card party, bazaar, concert, contest, horseshow, exhibition, lecture, barbecue, or dinner to which the public is invited or admitted, with or without charge for admission.”

Section 30-4 states that the members of the organization must personally manage and operate a benefit performance. The law permits an organization to award prizes in merchandise, conduct games of skill, or run an auction, bingo or wheel of fortune device. An organization must not do anything prohibited under State or County gaming laws. The net proceeds must benefit solely the non-profit organization. Violation of this law is a class A violation.

Before operating any benefit performance, an organization must obtain a written permit from the Director of DPS. Section 59-A-6.5 provides that benefit performances permitted under Section 30-4 may be conducted in any zone under certain conditions. No benefit performances may be conducted in any residential, C-O or C-1 zone for more than 15 days for any one performance. The performance must be located at least 600 feet from any dwelling unless 75 percent of the occupants of the dwellings within 600 feet provide permission in writing.

**Vendor Licenses** – A vendor is a person who sells or offers to sell goods or services. A vendor may operate on the public right of way, door to door, or from a vehicle or temporary structure on private property. Chapter 47 requires a vendor to apply for a license, provide written permission from the property owner where the vendor will be located, to file a surety bond, if required, and to pay an annual licensing fee.

Executive Regulation 9-96AM establishes a licensing process for vendor licenses, uniform procedures for enforcement, and operating requirements. The regulation states that a vendor may operate from 9:00 am to sunset, provide trash receptacles, supervise minors, operate with permanently registered vehicles, and repair any damage to the public right of way. A vendor must not locate on the sidewalk in the public right of way or interfere with traffic flow. The regulation defines three vendor classes with additional regulatory requirements for each class.

- A **site specific vendor** conducts a vending activity from a stationary location. To operate, a site specific vendor must be approved for a specific location at certain hours and days of the week, must comply with the sign ordinance and the use restrictions in the zoning ordinance, must provide adequate parking, must be in an area that provides adequate parking and safe ingress and egress, must maintain a notebook, and must have written permission from the property owner to operate. A vendor who wishes to sell cut flowers or fruit in the public right of way is a considered a site specific vendor. This type of site specific vendor must also be certified by DPS as a Certified Agricultural Producer.
- A **regular route vendor** conducts vending activity along streets on a repetitive schedule and stops only to dispense products. A regular route vendor must wear the operator permit visibly, must obey traffic regulations, must park safely, and must ensure that all sound-making devices comply with the Noise Ordinance.
- A **door to door vendor** travels from dwelling to dwelling or office to office. A door to door vendor must wear the operator permit visibly, must use only the obvious main entrance to enter a property, and must not enter a property that is posted for “no trespassing” or “no soliciting.”

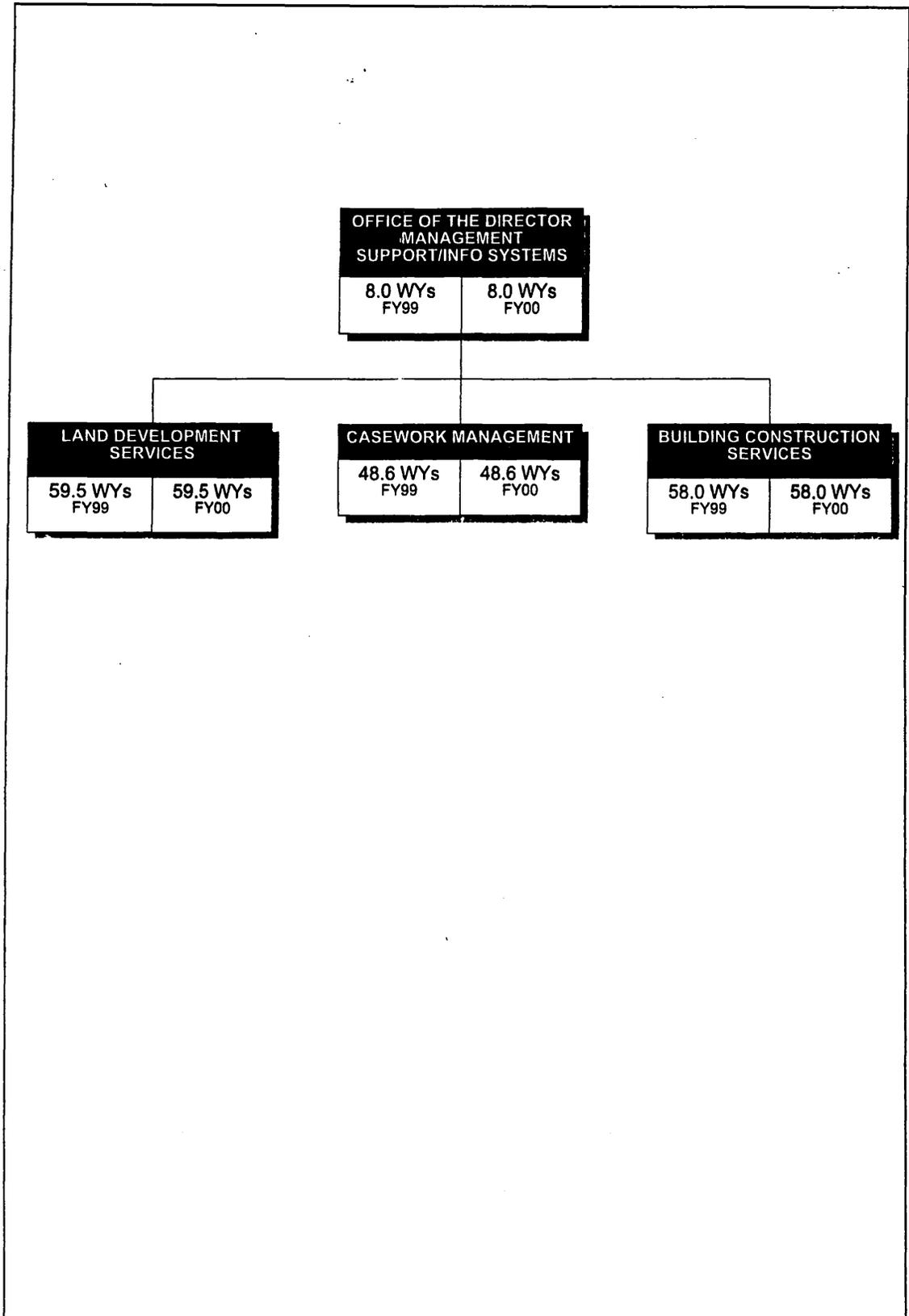
The regulation authorizes “enforcement personnel” to issue a warning or civil citation if he or she identifies a violation. If a citation is issued, the enforcement personnel must confiscate the point of sale license and issue a temporary point of sale license. A license must be revoked for one year.

## **B. ORGANIZATION, OPERATIONS AND RESOURCES**

**Mission** –The mission of the Department of Permitting Services is to provide the highest quality customer service while ensuring compliance with Montgomery County’s development and construction standards. The County Executive’s Recommended FY 00 Budget states the Casework Management Division is responsible for client reception, application processing, team development, interagency coordination, and inspection scheduling.

**Organization and Staffing** - The Director has organized the Department into three divisions: Land Development, Building Development, and Casework Management. The Licenses and Community Standards section (i.e., zoning enforcement) is one of five sections in the Casework Management division. The Director appointed the Chief of the Casework Management Division in January 1999.

**DPS ORGANIZATIONAL CHART**



The zoning enforcement program consists of 13 authorized positions plus one program manager II, who has been on temporarily assignment from the Building Development Division since July 1998. The staffing positions include:

- One Program manager II (Building Development Division) – Grade 25
- One Program manager II (Zoning Enforcement) – Grade 25
- Five Investigator IIIs – Grade 25
- One Planning Specialist III – Grade 23
- Two Construction Standards Specialists – Grade 21
- Four Permit Technicians – Grade 15.

The zoning enforcement team works closely with the zoning administration unit which consists of five positions – one program manager II and four Construction Plans Analysts. The program manager for zoning administration reports to the Division Chief for Casework Management. In FY 99, DPS abolished an Environmental Protection Manager position, which previously supervised both the zoning administration and zoning enforcement staffs.

**Training** – DPS records showed that inspectors in the complaint unit have attended computer classes and a customer service training course (offered to all DPS employees). The building complaint inspectors periodically attend courses to learn about updates to the national codes. Examples of these courses include the National Building Code Update offered by the Maryland Building Officials Association, One and Two Family Mechanical Inspection training, and a National Electrical Code Update. DPS also uses in-house classes and meetings to train inspectors on local code changes.

**Budget and Funding** - The estimated FY 00 budget for the zoning enforcement program and the program manager on temporary assignment is \$1,021,000. This includes \$961,000 in personnel costs (salary and benefits) and \$60,600 for operating expenses (i.e., vehicles, computers, phones, and supplies). The budget for the zoning administration staff is \$358,000.

The Permitting Services Fund pays for the operations of zoning enforcement program. The Enterprise Fund is a self-supporting fund supported by fees collected from the permits, certificates and licenses issued by the Department. The majority of the budget for zoning enforcement is paid for from fees and permits collected for building and electrical permits for new construction or homeowner renovations.

**Space** – Staff are housed on the second floor of the building at 255 Rockville Pike. The zoning administration and enforcement staff are dispersed throughout the floor. The Council approved funding for the renovations in June of 1998. After a delay due to cost estimating problems, the Division of Facilities and Services recently issued a notice to proceed in the fall of 1999. The project manager expects to complete the renovations in early 2001.

**Equipment and Technology** – Each zoning investigator has a desktop personal computer, a cellular phone, and a vehicle. In September 1999, the Department activated the first phase of a new computer system which will be phased in over the next two years. This system will eventually equip each inspector with laptop computers that will allow an inspector to print out notices of violation and research the status of a site in the field.

**Organization and Staffing** – Before the Council approved Bill 20-96 to reorganize DPS in July 1996, zoning administration and enforcement staff functioned as one organizational unit - Land Use Compliance - with two sections – enforcement and plan review. During the legislative debate on the reorganization, the Chief Administrative Officer argued strongly that zoning administration and zoning enforcement were inextricably linked and must be kept together to function effectively.

### **C. PROGRAMS AND SERVICES**

**Building permits** – The building permit program is collectively administered by staff throughout the department. Permit technicians and plan review staff are responsible for application intake and project review whereas the inspection staff are responsible for insuring that the projects as built are in compliance with State and County laws.

In zoning, the zoning administration unit must review each building permit application and use and occupancy permit application for compliance with the use, setback, height, parking, landscaping and other zoning ordinance requirements. The zoning administration staff reviews building permits for new commercial construction concurrently with the building and electrical plan review. Zoning tries to lead the permit review process for new single family construction.

The target plan review times are 30 days for new commercial construction, 20 days for new single family construction, same day service for small homeowner interior alterations, fences, decks or additions, and a five day turnaround for large homeowner projects. Although a site plan review of use, setback, height, placement sounds simple, in practice it may be complicated by several factors. Staff may have to research issues concerning easements, nonconforming uses, not nonconforming uses or regulations, interior lot lines, building height and stories.

The zoning enforcement unit investigates complaints about permits issued in error or complaints about construction without a building permit. Examples of the types of notice violations that may be issued are for violation of the setback line, for a zoning use violation, or for a height violation.

**Use and Occupancy permits** – The zoning administration unit reviews use and occupancy permit applications. The zoning enforcement section inspects approved special exception properties to verify compliance with the conditions of the special exception by zoning. Staff from the Fire Department, and other divisions of DPS must also conduct inspections to ensure field compliance before a use and occupancy permit is issued.

**Home Occupation Program** – The home occupation program is jointly administered by staff in zoning administration and zoning enforcement. A staff member in zoning administration distributes home occupation applications, reviews the completed application to determine whether the proposal complies with the Zoning ordinance, denies, approves or approves the application with conditions, and maintains the home occupation registry. (The registry is a database of the name, address, use and date of the approved application.) DPS also maintains the files of approved applications, disapproved applications, and applications which were determined to qualify as no impact home occupations.

Since the law was enacted, DPS has registered over 600 home occupations. The types of services include home offices, lawn maintenance services, beauty salons, and home health care practitioners. A review of the registry shows that registered home occupations are dispersed evenly throughout the county. DPS approved a majority of applications in the first few years of the program.

Since 1984, the Board of Appeals has received approximately 125 applications for major home occupations and approved 85 of them. The approved applications include the following types of services: beauty shops, dress making, dog grooming, lawn maintenance, roofing, printing, computer services, interior decorating, and dance studios.

**Home Occupation Complaint Cases** – In FY 99, zoning inspectors closed out 224 home occupation complaint cases. (Home occupation cases represented one-fourth of all closed cases.) Half of the complaints concerned vehicles in residential neighborhoods (e.g., vehicle sales, auto repair businesses, and commercial vehicles parked in residential zones). Another major set of complaints related to the operation of home businesses (e.g., dog grooming, a school, an invisible fence company, a social worker, a costume business and a carpet business). There were ten calls about alleged illegal construction businesses and four calls about home health practitioners. DPS closed out 188 cases (84 percent) within ninety days.

**Sign Program** – The sign program includes the issuance of sign permits and sign installer licenses, review of limited duration sign permit applications, managing the sign volunteer program, providing training programs and community outreach, providing staff support to the Sign Review Board, and complaint investigations and enforcement. Seven staff members in zoning administration and zoning enforcement share these responsibilities.

**Sign Volunteer Program** - DPS established the Sign Volunteer Program in 1996 as a vehicle to provide education and outreach about the sign ordinance. The purposes of the program are to educate the community about ways to solve potential problems, to provide citizens with an opportunity for community involvement, and to supplement the department's enforcement efforts.

To initiate the program, the Department sent out a press release and letters to all homeowner and civic associations registered with park and planning. The Department received a favorable response and sent out applications forms to interested citizens. The Department interviewed the applicants to be sure that they understood the educational purposes of the program. The Department also determined how much time they would like to spend and whether they preferred a certain geographic area. Over the last three years, the Department has trained 39 citizens and today, there are approximately 15 active volunteers throughout the County.

The volunteers survey their area periodically to identify violations and then contact the responsible parties either in person or on the phone. The volunteers are trained to inform merchants and owners about the County's sign ordinance and to help owners find an alternative signage approach that would be legal. If a volunteer cannot achieve compliance, they are supposed to pass the case on to DPS either by contacting an inspector directly or by calling the citizen complaint line.

The volunteers are authorized to look at all types of violations although some volunteers have special areas of concern such as right of way signs. DPS asks the volunteers to keep a log of their contacts and visits to establish a history. If a volunteer has made an effort to achieve voluntary compliance and failed, DPS may be less patient when the case is referred to DPS for enforcement.

At the outset of the program, some enforcement staff were concerned that the volunteers would increase the workload. In practice, DPS believes that the volunteers have resolved more cases than they have referred for enforcement.

DPS provides training for two types of sign installer licenses:

- Permanent sign licensees receive nine hours of training in the sign law and must pass an exam to become certified. There is a \$300 license fee which authorizes them to bypass plan review when they file a sign permit application. They must still pay the sign permit application fee. With this process they usually receive same day or next day turnaround on their sign permit applications. If DPS discovers a licensed installer has installed an illegal sign, the law requires the installer to correct the violation at his or her own expense.
- Limited Duration sign licensees receive a three-hour training course in the sign law and must take an examination at the end of the training. Licensees pay a \$150 fee annually. In return, they are able to install limited duration signs without paying the permit fee. The licensee calls a dedicated line to request a specific number of permits for a certain location. DPS provides the permit numbers (usually on the same day) and logs in the location of the sign.

**Sign Complaint Cases** – Zoning enforcement inspectors closed out 322 sign complaint investigations in FY 99. Approximately one-third of these were for signs without permits. Other major complaint calls included banners and pennants (70) and signs in the right of way (67). Illegal political signs (35), real estate signs (11) and other issues (19) (e.g. signs were too large or covered more than 20% of the window space) were also called in.

On average during FY 99, DPS investigated and closed out a sign case in 55 days. Eighty percent of the cases were closed out in three months or less. The remaining cases took from three months to one and one-half years to resolve. In many of these cases, the signs were either removed or permitted. In a few cases, the case was closed out after a year noting that no violation had been observed.

**The Special Exception Program** - There are approximately 2,200 existing special exception approvals on 2,007 sites in the County. The Board of Appeals, the Planning staff, the Hearing Examiner and DPS share administration of the special exception program. Under the law, DPS inspection responsibilities include:

- Preparation and execution of an inspection program for existing special exceptions,
- Inspections of complaints either from the Board of Appeals or the DPS complaint line, and
- Inspections of Use and Occupancy permits for special exceptions to be sure they comply with the conditions of the Board of Appeals approval.

Until the mid-1990's, DPS assigned all special exception inspections to a zoning inspector based on the location of the special exception. DPS did not differentiate between routine special exception inspections, special exception complaints, or special exception use and occupancy inspections. The Board of Appeals numbering system produced multiple case numbers for special exception sites that had multiple approvals and DPS files the cases by special exception number. Because DPS had no system to cross-reference the case number by property address, inspectors made multiple trips to investigate different approvals for the same address.

DPS has not prepared a formal regular inspection program as required by law for at least ten years. Instead, DPS conducted inspections of existing special exceptions as staff resources allowed on an ad hoc basis. Five years ago, DPS dropped the routine inspections when the volume of the other routine zoning complaints skyrocketed.

In May 1998, DPS initiated a pilot program and assigned a zoning investigator to address concerns about the special exception inspections program. The inspector worked full time on the special exception program for 10 months. (Since then, the inspector was reassigned to assist with programming for the new computer system.). In that time, the inspector:

- Established a new database management and numbering system that catalogues special exceptions by work number and address so that locations with more than one special exception are filed together;
- Worked with staff at the Board of Appeals and Park and Planning to ensure complete documentation of the special exception files;
- Conducted inspections of 299 addresses with 441 different special exceptions;
- Conducted 59 complaint investigations for special exceptions; and
- Assessed each special exception use category to determine whether it warrants re-inspection every year, every two years, or every three years. DPS expects this work will form the basis of a routine inspection program for special exceptions.

***Special Exception Complaint Data*** – Zoning investigators closed out 22 special exception complaint cases in FY 99. In one third of the cases, DPS found that the special exception was in compliance. In the other cases, the Board of Appeals approved modifications to the special exception approval or the special exception holder addressed the concern.

**Vendor Program** – The vendor program operates with two staff members – a program coordinator and a zoning investigator. The program coordinator processes and issues licenses and responds to public information requests. The zoning investigator reviews and approves site plans for vendor locations and enforces the compliance with the license conditions.

**Building and Zoning Complaint Program** – DPS maintains a 24-hour telephone hotline citizens and others may call to register complaints about suspected illegal construction activities (building without a permit), illegal signs, or suspected use (zoning) violations. People may also file complaints by fax, e-mail or letter. Complaint letters sent to elected officials are forwarded to DPS for a response. The complaint unit receives approximately 1,520 requests for information annually or, on average, 125 calls per month. A review of call volumes for the last three fiscal years shows that July, August, September, and October typically have the highest volume of calls (160) and the winter months typically have the lowest volume (90).

***Inspection Calls versus Inspection Cases*** - A small portion of the calls (5-10 each month) do not result in an investigation case. These cases fall into three general categories:

**Permitted/Allowable activities** – This category includes calls about an activity that the caller believes is illegal and has not been permitted. A check of the permitting or registration records shows that a permit has, in fact, been issued. The most common types of these calls include:

- Calls suspecting construction activity without a permit where, in fact, a permit has been issued,
- Calls about illegal uses where in fact the use is a registered home occupation or an approved special exception that has a use and occupancy permit, and
- Calls questioning an activity that under law does not require a permit – e.g. construction of backyard play equipment.

**Referrals** – This category includes calls about activities that are referred to other departments or other jurisdictions. Complaints about housing conditions are referred to DHCA. Complaints about construction noise are referred to the Department of Environmental Protection. Complaints about rats are referred to the Health Department and complaints about vehicles parked on the street are referred to the Police Department.

**Information Requests** – This category includes requests for information from other County staff, for example, a county attorney may request documentation from a file to prepare for a case or an inspector from another department may request a Maryland Information Law Enforcement System (MILES) run for a specific property.

***The Complaint Intake Process*** – For the purposes of this study, calls that are not referred to another department or found to be in compliance are defined as complaint cases. The permit technician enters information on an intake form, sets up a file for each complaint, and enters the complaint data in the computerized database. The file will include documentation for:

- Previous complaints for this property from the complaint database,
- The permit history for the property and a copy of the building, electrical or other permits,
- Car registration information for home occupation vehicle repair complaints,
- Corporate records to verify business registration with the state and to identify the corporate mailing address, and
- Relevant information from the Home Occupation Registry.

***Inspection Service Areas*** – DPS operates with two sets of inspection service areas. Maps 2 and 3 at the end of this Chapter show the inspection areas for building complaints and zoning complaints respectively. The permit technician responsible for the intake process assigns complaint cases daily to inspectors based on the category of complaint (building, zoning, or special exception) and the location of the complaint.

***The Inspection and Enforcement Process*** - When an investigator receives a case file, the investigator or the permit technician contacts the complainant by telephone or in writing. In many cases, the investigator must also compile and/or review documentation in the file to understand how the building code or zoning regulations apply to a particular property. For example, the investigator may need to review a site plan, a use and occupancy permit, or the conditions of an approved special exception.

An investigator maps out a set of new inspections and re-inspections each day. An inspection consists of a visit to the property to observe the conditions that are the basis of the complaint, a conversation with the complainant to discuss their concerns and observations, and a conversation to discuss the conditions and explain the law if a property owner or occupant is available.

Because many types of zoning violations concern the activity at a property – e.g., vehicle repairs or vehicle sales, in some cases it is difficult to observe a violation in progress. A zoning call may require multiple inspection visits at odd hours to obtain evidence of a violation. DPS has prepared guidelines for neighbors to assist with zoning and land use compliance in an effort to extend the “eyes and ears” of the enforcement staff.

An investigator allows 24 hours to address a priority complaint that poses a clear public health or safety threat. For non-emergency conditions, the investigator decides how many days are appropriate to bring the violation into compliance. The time may vary depending on whether the property owner needs to obtain a permit or take other action to modify the building or use. After the time period has elapsed, the investigator will re-inspect the property to determine whether the condition has been corrected. If the property owner has not contacted the investigator and has not abated the condition, the investigator may issue a citation.

When an investigator finds a code violation, he or she has the option of requiring the owner to obtain a permit, or issuing a notice of violation, a civil citation or a stop work order, depending on the nature of the violation. A zoning investigator also negotiates consent agreements with parties that become legally enforceable documents when signed by a judge. For the 1,422 cases closed in FY 99, the zoning enforcement staff issued 644 notices of violations, 86 stop work orders and 95 civil citations.

#### **D. PERFORMANCE MEASURES**

DPS provided OLO with a database of FY 99 closed inspection cases and with a database of open cases. OLO analyzed the data and prepared a set of program performance measures that answer the following questions:

1. What is the profile of FY 99 cases by program type?
2. What is the distribution of FY 99 closed complaint cases by inspection area?
3. What outcomes do the FY 99 closed complaint cases represent?
4. How many days did it take to close a complaint case in FY 99?
5. What is the profile of open complaint cases?

**1. What is the profile of FY 99 closed cases by program type?**

The zoning complaint database identifies the type of complaint in one of six categories. They are:

- No building permit – The types of alleged violations in this category include construction without a permit, an illegal fence or swimming pool, or a setback violation,
- No electrical permit – The types of alleged violations in this category include wiring without an electrical permit in a residential or commercial building,
- Home occupations – This category groups all home occupation complaints, including vehicle repair, commercial vehicles in residential zones, construction/building materials and vehicle sales,
- Signs – This category tracks alleged violations of the sign ordinance,
- Vendors – This category includes vendor licensing violations, and
- Other zoning violations – This category tracks miscellaneous zoning complaints violations that do not fit into the other categories; examples include number of people or animals in a home, occupancy without a use or an occupancy permit, and alleged violations of approved landscaping requirements.

The Zoning Enforcement unit closed 1,422 cases in FY 99. Table 6 shows the number of calls by the type of complaint. The data show the top four categories of complaints concerned building without a permit, illegal signs, other zoning violations, and home occupations.

**TABLE 6 PROFILE OF FY 99 CLOSED CASES IN DPS**

Building Permits	430
Signs	322
Other	282
Home Occupations	224
Electrical Permits	128
Special Exceptions	21
Vendors	14
Open Burning Permit	1
<b>TOTAL</b>	<b>1422</b>

Source: DPS and OLO, 1999

**2. What is the profile of FY 99 closed complaint cases and the average time to close by inspection area?**

Table 7 presents data for the closed cases in FY 99 by inspection area. DPS uses two inspections area maps – one for building complaints and one for zoning complaints. There are two building complaint areas and four zoning complaint areas.

The data show that the number of closed complaint investigations is distributed evenly between the two building inspection areas. For zoning, the number of closed inspections is concentrated in Areas 3 and 4. The investigators in these areas closed 60 percent of all complaints compared to 40 percent in the other two areas.

**TABLE 7 FY 99 CLOSED CASES BY AREA**

Building Complaints	# closed cases
Area 1	278
Area 2	279
<hr/>	
Zoning Complaints	# closed cases
Area 1	173
Area 2	154
Area 3	230
Area 4	240

Source: DPS and OLO, 1999

**3. What outcomes do the FY 99 closed complaint cases represent?**

OLO coded the DPS database of FY 99 closed cases to examine patterns in how cases are closed. OLO defined five disposition categories:

1. No Violation – This group represents those cases where the investigator determined, after research and inspection, that no violation existed.
2. Obtained a permit, certificate or license to bring the violation into compliance – This group represents those cases where the alleged violator was able to continue the use that had been originally reported by obtaining the necessary license or permit.
3. Modified, repaired, relocated – The alleged violator took a physical action to correct the violation such as relocating the shed out of the setback area or lowering a fence.

4. Discontinued Use- The alleged violator stopped the questioned activity or removed the illegal structure.
5. Miscellaneous - This category includes cases that were referred to other departments (after an inspection) or closed out administratively.

Table 8 summarizes the results of the coding. In approximately 40 percent of the cases, DPS found no violation existed. In another 20 percent of the cases, the property owner obtained a permit to achieve compliance. Twenty-three percent of the cases were brought into compliance by some action on the part of the alleged violator to modify the building or use. The use was discontinued or the structure was removed in ten percent of the cases. The remaining 12 percent of the cases were closed out for administrative reasons.

**TABLE 8 FY 99 CLOSED COMPLAINT CASE OUTCOMES**

Disposition	#	%
No violaton	521	37%
Obtained permit	274	19%
Modified building or us	321	23%
Use discontinued	133	9%
Other	173	12%
<b>TOTAL</b>	<b>1422</b>	<b>100%</b>

Source: DPS and OLO, 1999

**4. On average, how long did it take to close a complaint case in FY 99?**

OLO analyzed the number of days it took to close a complaint case in FY 99 by the type of complaint. The average of the time to close all 1,422 cases was 70 days. Table 9 shows that commercial burning, building permits, signs and home occupation complaints, on average, were closed out in less than 70 days. Other zoning violations, special exceptions and electrical permits took the longest to resolve.

**TABLE 9 FY 99 AVERAGE DAYS TO CLOSE A CASE**

Type of Complaint	Average Days To Close
Commercial Burning (1)	32
Building Permits (430)	46
Signs (322)	55
Home Occupations (224)	62
Vendors (14)	70
Other Zoning (282)	103
Special Exceptions (21)	108
Electrical(128)	120
<b>Average</b>	<b>70</b>

Source: DPS and OLO, 1999

**5. What is the aging profile of open complaint cases?**

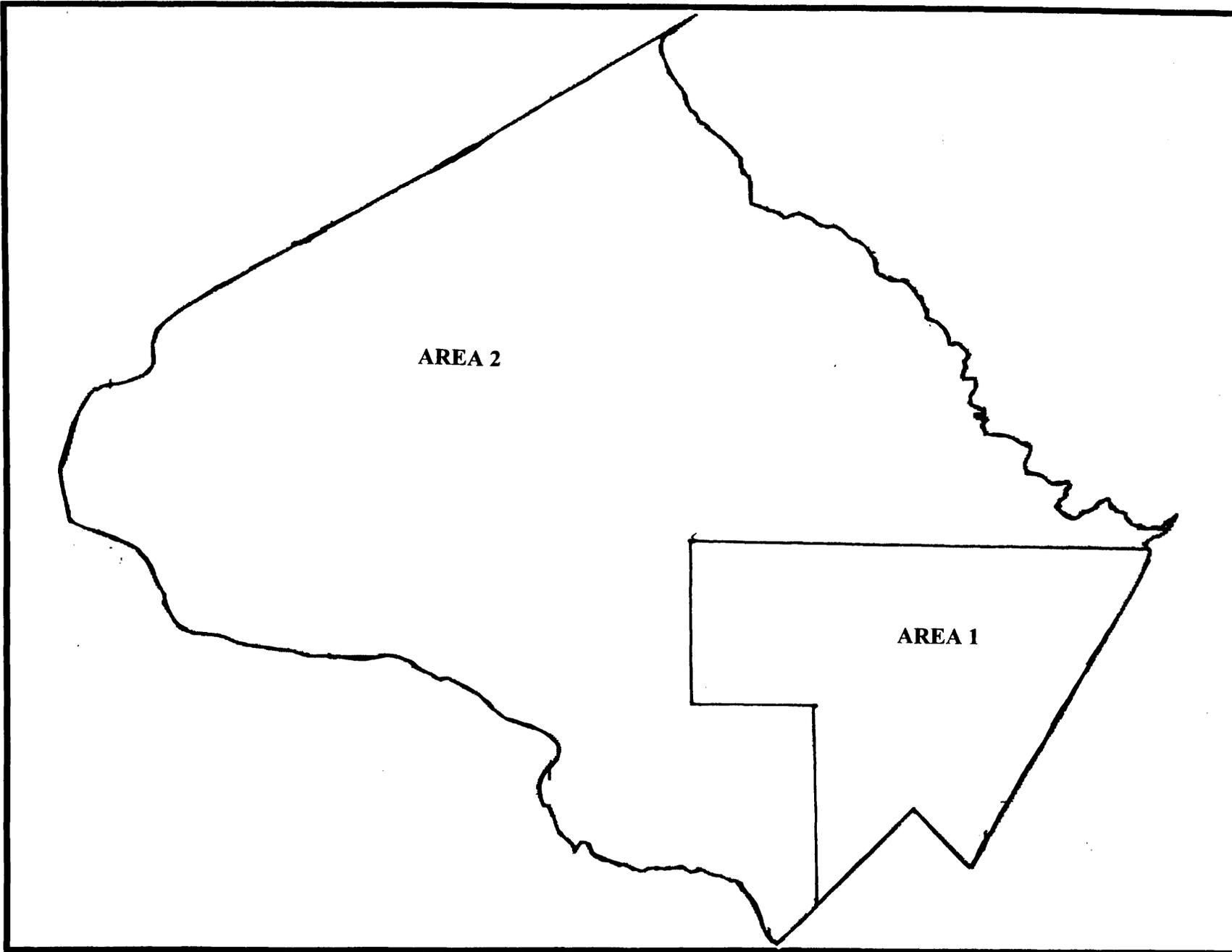
OLO examined a current database of open cases to understand the profile of open complaint cases. Table 10 presents the results of OLO's analysis. It shows that the concentration of open cases are in the building, signs and other zoning categories. Approximately 40 percent of the cases are less than ninety days old. Half of the cases have been open for 120 days or more. This group includes cases that are in court or cases that have been referred to the Board of Appeals.

**TABLE 10 PROFILE OF OPEN COMPLAINT CASES**

	<30	<60	<90	<120	>120	TOTAL
Building	22	9	7	2	23	63
Electrical	8	2	1	1	9	21
Home Occupations	9	2	4	4	23	42
Signs	9	4	6	4	40	63
Special Exceptions	0	1	3	1	14	19
Vendor	3	0	0	0	4	7
Other Zoning	15	4	7	4	47	77
<b>TOTAL</b>	<b>66</b>	<b>22</b>	<b>28</b>	<b>16</b>	<b>160</b>	<b>292</b>
	23%	8%	10%	5%	55%	100%

Source: DPS and OLO, 1999

**BUILDING INSPECTION AREAS**

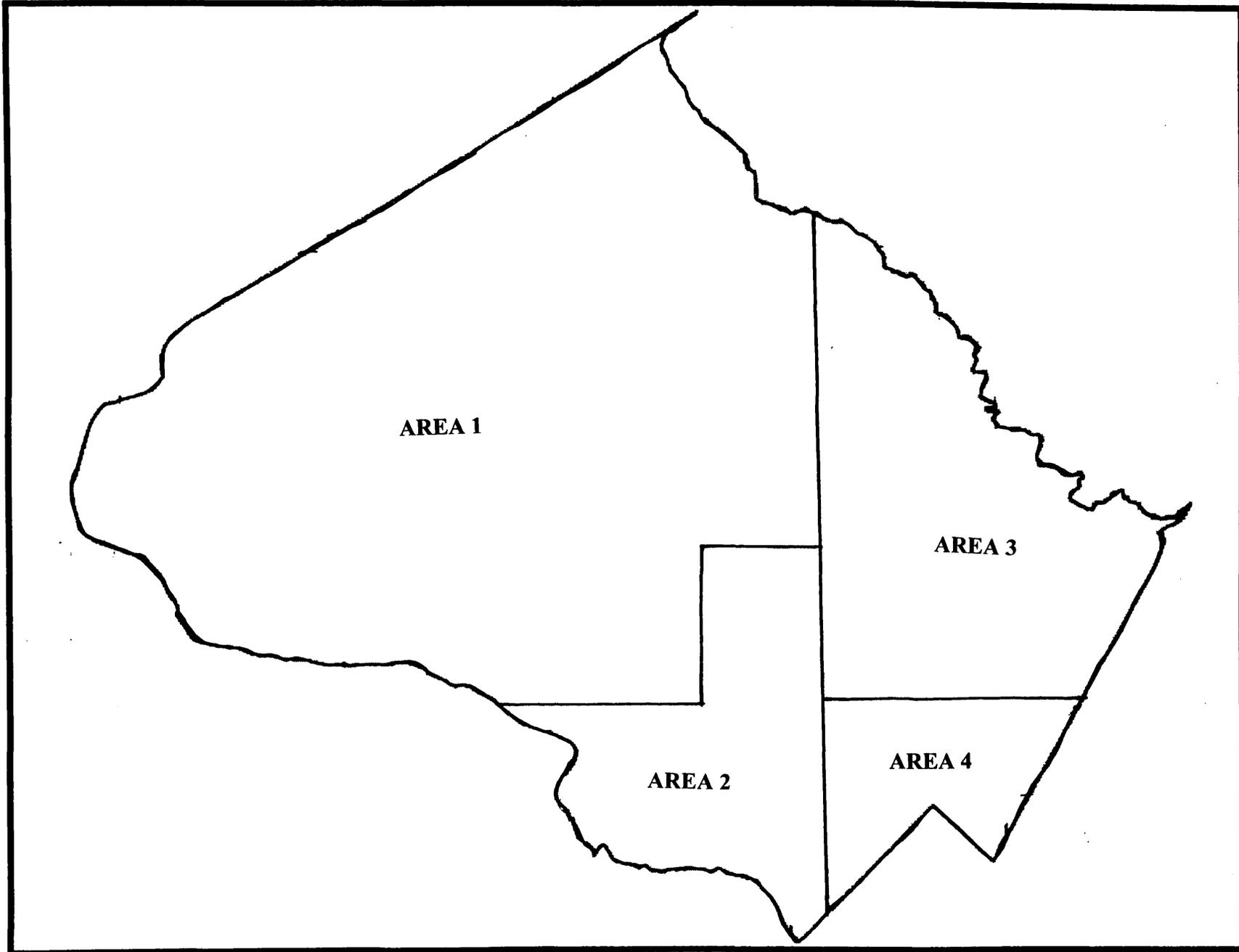


**AREA 2**

**AREA 1**

49a

*ZONING INSPECTION AREAS*



## V. FINDINGS

This OLO project examined the operations and performance of two neighborhood code enforcement programs – the Zoning Code Enforcement program in the Department of Permitting Services and the Housing Code Enforcement program in the Department of Housing and Community Affairs. This report portrays the operations of each program in detail to identify common patterns and overlapping issues. This information will assist the Council as it considers how best to organize the delivery of code enforcement services and address additional concerns raised by the community.

This chapter presents OLO's findings in three sections:

- Section A summarizes general findings about the operations of the Housing Code Enforcement program;
- Section B summarizes general findings about the operations of the Zoning Code Enforcement program; and
- Section C presents findings based on a comparative analysis of the two programs. This section presents findings on the organizational location, the efficiency and effectiveness and the consistency of the two program operations.

### A. Housing Code Enforcement Operations – In General

The Code Enforcement Section in the Housing Division of the Department of Housing and Community Affairs is responsible for the preservation and improvement of housing and property. The Code Enforcement Section conducts inspections required in Chapter 29, Landlord Tenant Affairs, and enforces the property and building maintenance standards in Chapter 26, Housing and Building Standards; Chapter 48, Solid Waste; and Chapter 58, Weeds of the County Code. The goal of the program is to promote and maintain healthy, safe and desirable communities.

The core services of the Housing Code Enforcement program include triennial inspections of multifamily housing; complaint inspections; and intensive code enforcement in targeted, at-risk neighborhoods. The Housing Code Enforcement program regularly undertakes special projects to supplement its core services. In FY 99, for example, staff conducted inspections of a sample of single family rental properties, surveyed condemned and vacant properties, and inspected historic properties in Hyattstown.

The FY 00 approved budget for the Housing Code Enforcement section is \$1.6 million, compared to an approved budget of \$1.2 million in FY 99. The approved budget allows the Housing Code program to hire four more inspectors, bringing the number of inspectors to 23. Three-quarters of the funding for the Housing Code Enforcement program comes primarily from the Landlord Tenant Fund which consists primarily of rental licensing fees. The remaining funding comes from the solid waste fund.

The program manager has organized the inspection staff into two groups. One group focuses on single family neighborhoods and the other on multifamily properties. In practice, inspectors in each group regularly conduct all types of inspections and participate in special projects. The Housing Code Enforcement Section operates with ten inspection areas to respond to complaint calls. The categories of complaints include calls about solid waste, the condition of single family homes, the condition of multifamily properties, weeds, and public nuisances.

In FY 99, the Housing Code Enforcement Section closed 6,908 cases. This total included:

- 3,000 complaint cases,
- 2,757 cases required by law or orders, including 2,235 triennial inspection cases, and
- 1,151 cases associated with special projects.

Tables 11, 12, and 13 present information about the complaint cases closed in FY 99. Table 11 shows the complaint cases by type of complaint. The greatest volume of complaints concerned solid waste, single family properties, and multifamily properties. Solid waste and single family properties made up almost three-quarters of the caseload.

**TABLE 11 FY 99 CLOSED COMPLAINT CASES BY TYPE**

Solid Waste	1,313
Single Family	865
Multifamily/Condominiums	541
Weeds	124
Public Nuisance	88
Commercial	66
Roomer	3
<b>Total</b>	<b>3,000</b>

Source: DHCA and OLO, 1999.

Table 12 shows the distribution of complaints by inspection areas. The complaints were unevenly distributed by size or population. Areas 10, 6, 9, and 3 received the largest volume of complaints.

**TABLE 12 FY 99 CLOSED COMPLAINT CASES BY AREA**

Area 10	552
Area 6	533
Area 9	404
Area 3	379
Area 8	261
Area 7	204
Area 4	176
Area 1	140
Area 2	129
Area 9	111
<b>Total</b>	<b>2889</b>

Source: DHCA and OLO, 1999.

Table 13 displays information about the outcomes of the closed FY 99 cases. In one out of five cases, DHCA inspected the property and found no violation existed. For the remaining 2,460 cases, the property owner performed the required maintenance to bring the property into compliance in nine out of ten cases. DHCA took legal action (i.e., issued a citation, a clean and lien order) in one percent of the cases. Three percent of the cases are unresolved. On average, DHCA took 70 days to inspect and close out a case.

**TABLE 13 OUTCOMES FOR FY 99 CLOSED COMPLAINT CASES**

No Violation Found	545
Maintenance Performed	2,259
Legal Action	23
Other	182
<b>TOTAL CASES</b>	<b>3,009</b>

Source: DHCA and OLO, 1999.

Table 14 shows the open complaint case profile in DHCA as of October 1999. The concentration of open cases are in solid waste and single family cases. Approximately one-fourth of the cases are less than thirty days old. Forty percent are 120 days or older. There are over 1,000 open complaint cases.

**TABLE 14 PROFILE OF OPEN COMPLAINT CASES**

	<30 days	<60 days	<90 days	<120 days	> 120 days	Total
Accessory Apartment	5	4	8	2	66	85
Commercial	2	3	4	1	9	19
Multifamily	62	33	17	11	24	147
Public Nuisance	7	3	2	2	14	28
Single Family	83	53	58	32	193	419
Solid Waste	61	64	34	27	98	284
Weeds	16	7	4	1	8	36
Solid Waste and Weeds	4	1	1	0	3	9
<b>TOTALS</b>	<b>240</b>	<b>168</b>	<b>128</b>	<b>76</b>	<b>415</b>	<b>1027</b>
	<b>23%</b>	<b>16%</b>	<b>12%</b>	<b>7%</b>	<b>40%</b>	<b>100%</b>

Source: DHCA and OLO, 1999.

## **B. Zoning Code Enforcement Operations – In General**

The Zoning Code Enforcement Team in the Casework Management Division of the Department of Permitting Services investigates zoning and building complaints. The Zoning Code Enforcement team inspects complaints arising from Chapter 8, Buildings; Chapter 47, Vendors; and Chapter 59, Zoning, of the Montgomery County Code.

In addition to zoning enforcement, the Zoning Enforcement Program also administers the vendor-licensing program and the sign permit program, and researches requests for nonconforming use certificates. The zoning program is also responsible for conducting routine special exception inspections. The Zoning Enforcement Program has not proposed an annual special exception program to the Board of Appeals, as the law requires, for at least ten years. In FY 99, however, the Zoning Enforcement Program significantly improved the database, administrative record keeping system, and documentation of the existing special exceptions. Staff also assessed each special exception use category to determine how often an inspection would be warranted.

The Zoning Code Enforcement staff consists of one program manager, five zoning investigators, one planning specialist, two construction standard specialists, and four permit technicians. An acting program manager from the Building Division has supervised the Zoning Code Enforcement program since July 1998.

The estimated FY 00 approved budget for the Zoning Code Enforcement Program is \$1,021,000. This includes \$961,000 in personnel costs (including the program manager temporarily assigned from the Building Division) and \$60,600 for operating expenses. The funding for the Zoning Code Enforcement program comes from the Permitting Services fund. The major sources of funds are fees for new construction and electrical permits.

The Zoning Code Enforcement program operates with two distinct sets of inspection areas – one map with two areas for building complaints and one map with four areas for zoning complaints. Six of the seven complaint inspectors are assigned to one of these specific inspection areas. The other inspector undertakes special assignments as requested, such as the special exception inspection project.

The remaining zoning code enforcement staff are assigned specific program responsibilities. Two staff members administer and enforce the vendor program and the nonconforming use program. One staff person administers and enforces the sign program and reviews landscaping requirements for certain permit applications and parking waiver requests.

The responsibilities of the Zoning Code Enforcement program routinely overlap the responsibilities of the Zoning Administration staff. The Zoning Administration staff consists of a program manager and four construction plans analysts with an approved FY 00 budget of \$358,000. This unit:

- Reviews proposed construction plans to verify that the Zoning Ordinance requirements are met before a permit is issued,
- Issues formal interpretations of the Zoning Ordinances, drafts zoning text amendments, and participates in the text amendment screening committee,
- Reviews applications for registered home occupations,
- Provides staff support to the Sign Review Board, and
- Staffs the zoning information line.

Zoning administration staff shares zoning interpretation policies and insights from drafting zoning text amendments to improve zoning enforcement. When the zoning administration staff participates in the drafting of a complicated text amendment, staff will conduct in-house sessions to train the enforcement staff on the nuances of the new ordinance. Alternatively, when the zoning enforcement staff inspectors see a pattern of the same complaint, they can bring it to the attention of the zoning administration staff who may draft a text amendment to address the issue.

Decisions and judgments of the zoning administration staff at the building permit stage may be the basis for a future zoning complaint. Thus, when a zoning inspector responds to a complaint about construction in a setback area, an illegal use, the operation of an illegal home occupation, or an illegal sign, the inspector must consult with zoning administration staff to understand the interpretation of the ordinance that led to the decision.

In early 1999, the Department abolished the Environmental Protection manager position, which had jointly supervised the zoning enforcement and zoning administration units. The manager of the land use compliance program had contributed many changes to the Zoning Ordinance, including the comprehensive sign amendment, the vendor law, and text amendments to improve the home occupation program, based on the day to day supervision of zoning administration and enforcement staffs.

In FY 99, the zoning enforcement program closed out 1,422 complaint cases. The profile of closed complaints shows that the top four complaint categories were:

- Illegal construction activities (558 cases),
- Illegal signs (322 cases),
- “Other” zoning violations (i.e., auto repair, sales from a residence, the number of people or animals in a home, illegal occupancy, or violation of approved landscaping requirements – 280 cases), and
- Home occupations (224 cases).

Table 15 shows the distribution of the FY 99 closed building and zoning complaint cases by inspection area. The data show that the closed building complaint cases are evenly distributed between the two inspection areas but that the closed zoning complaint cases are concentrated in Areas 3 and 4.

**TABLE 15 FY 99 CLOSED CASES BY AREA**

Building Complaint	# closed cases
Area 1	278
Area 2	279
<hr/>	
Zoning Complaints	# closed cases
Area 1	173
Area 2	154
Area 3	230
Area 4	240

Source: DPS and OLO, 1999

Table 16 shows information about the disposition of the cases closed in FY 99. The analysis shows that almost forty percent of the cases resulted in no violation and another twenty percent of the cases were resolved by the property owner obtaining a permit. The property owner modified the building or use in one fourth of the cases and discontinued the use in roughly 12 percent of the cases.

**TABLE 16 FY 99 CLOSED COMPLAINT CASE OUTCOMES**

Disposition	#	%
No violaton	521	37%
Obtained permit	274	19%
Modified building or us	321	23%
Use discontinued	133	9%
Other	173	12%
<b>TOTAL</b>	<b>1422</b>	<b>100%</b>

Source: DPS and OLO, 1999

OLO examined the profile of open cases in zoning enforcement as of July 1, 1999. Table 17 shows that the concentration of open cases are in building, signs, and "other" zoning issues. Approximately 40 percent of the cases are less than 90 days old. Over 50 percent of the cases have been open 120 days or longer, including cases that are being appealed or going to trial.

**TABLE 17 FY 99 PROFILE OF OPEN CASES**

	<30	<60	<90	<120	>120	TOTAL
Building	22	9	7	2	23	63
Electrical	8	2	1	1	9	21
Home Occupations	9	2	4	4	23	42
Signs	9	4	6	4	40	63
Special Exceptions	0	1	3	1	14	19
Vendor	3	0	0	0	4	7
Other Zoning	15	4	7	4	47	77
<b>TOTAL</b>	<b>66</b>	<b>22</b>	<b>28</b>	<b>16</b>	<b>160</b>	<b>292</b>
	23%	8%	10%	5%	55%	100%

Source: DPS and OLO, 1999

### C. Comparative Findings

1. **The laws that establish enforcement authority for the Department of Housing and Community Affairs (DHCA) and the Department of Permitting Services (DPS) are deliberately broad. In practice, DHCA and DPS have a shared understanding of their authority that limits the areas where their enforcement responsibilities overlap.**

***The Code*** - Chapter 2 of the Montgomery County Code assigns broad enforcement authority to specific departments. Section 2-27 assigns to DHCA “housing standards enforcement and related activities.” Chapter 2-24B states that the Department of Permitting Services (DPS) is responsible for “code enforcement, inspection and licenses,... including administering, interpreting and enforcing the zoning ordinance...”

***DHCA*** - Chapter 26 empowers the Department to inspect, require repairs, or abate conditions in all dwellings and nonresidential structures. The relevant sections of Chapter 26 include the following:

- Section 26-1 defines “enforcing agency” as (a) The Department of Housing and Community Affairs; or (b) Any other agency of County Government which the Chief Administrative Officer assigns to enforce this Chapter; or to an applicable municipal agency...”
- Section 26- 4 authorizes DHCA to conduct inspections of dwellings, nonresidential structures, and premises “to safeguard the health and safety of the occupants and the general public.”
- Sections 26-10(m) and 26-23(g) require the owners of residential property, or nonresidential property or land “to eliminate any condition which creates a public nuisance.” The definition of public nuisance in Section 26-1 encompasses the characteristics below, which may apply to any dwelling, dwelling unit, nonresidential structure and its premises. A public nuisance may be:
  - An attractive nuisance to children, including a vacant unsecured building, an unprotected or abandoned well, an open shaft, open basement, excavation, unsafe fence, or unsafe stairway;
  - Unsanitary, littered with rubbish or garbage, used for outdoor storage or abandonment of appliances for more than two days or of equipment that poses a threat of injury or danger to life;
  - Severely deteriorated, dilapidated, structurally unsafe or fire damaged;
  - Creating a condition than results in or potentially may result in substantial damage to another property; and
  - Unsafe, dangerous or unhealthful to occupants, neighbors, employees, or visitors, guests, and tradesmen.
- Section 26-19(a), emergency and corrective actions, states “Whenever, in the judgment of the enforcing agency, a severe emergency exists which requires immediate action to protect the public health and safety, resulting from violations of this chapter, Chapter 22, Chapter 8 or Chapter 17, the enforcing agency may without notice, conference or hearing, order the owner, agent or operator to take action to correct or abate the emergency.”

Chapter 48, Solid Waste, and Chapter 58, Weeds, make up the “related activities” that DHCA enforces in addition to housing standards. These laws give the Director the authority to issue notices and orders, and to correct the problem, and collect the cost as a property lien. The laws do not explicitly recognize DHCA as the enforcing department.

**DPS** - Chapter 8, Buildings, designates the Director as the Chief Building Official and enumerates the enforcement authority of the Director to enforce the Building Code. Specifically:

- Chapter 8-12 authorizes the Director to issue all notices and orders to remove illegal or unsafe conditions and to issue a stop work order if work on a building violates Chapter 8.
- Section 8-10 authorizes the Director to condemn a building deemed to be unsafe and to serve the owner with a written notice deeming the building as unsafe and specifying the required repairs.

Chapter 59, the Zoning Ordinance, regulates development standards, off-street parking, signs, and special exceptions, variances and nonconforming uses. Chapter 59 addresses the Director’s authority to issue permits. It has only one section (Section 59-F-10, Signs) that establishes the Director’s authority to enforce the Zoning Ordinance. Several sections give the Director limited authority to take specific enforce actions such as ordering the correction of a special exception or a home occupation violation. For example,

Section 59-A-3 requires the Director to issue a building permit “before any building or other structure can be erected, moved, structurally altered, added to, or enlarged.” The law does not require a permit for “buildings used exclusively for agriculture on land used exclusively for agriculture” and for some overhead electrical transmission lines.

Section 59-A-3.2 requires the Director to issue a use and occupancy permit “before any building, structure or land can be used or converted from one use to another.” The law requires a special exception use to obtain a use and occupancy permit to ensure that the property conforms to the plans and conditions in the opinion of the Board of Appeals. The law exempts single family detached dwelling units, agricultural land and buildings, child day care facilities for up to eight children, and transitory uses from this requirement.

An analysis of the complaint data shows that the areas where DHCA and DPS enforcement responsibilities overlap are limited. In practice, the most common areas of overlap include: (1) untagged vehicles as solid waste and vehicle repair activities permitted under the zoning ordinance; (2) overcrowding issues as defined in the housing standards and the definition of family in the zoning ordinance, and (3) the definition of public nuisance, including a vacant, unsecured building, and an unfinished construction project.

**2. The instances where DHCA and DPS enforcement activities overlap represent a small portion of the complaint cases.**

In practice, the activities of the Housing Code and Zoning Code Enforcement programs overlap when: (1) a citizen calls a complaint line, (2) an inspector responds to a complaint and finds a condition that is addressed under a different Chapter of the code, or (3) a property has multiple violations that cross departmental lines.

*Intake* - As part of the intake process, DPS tracks the calls that are referred to other departments. (DHCA does not currently track this information.) In FY 99, DPS data indicated that DPS referred approximately 25 incoming calls to another department. The receiving departments included DHCA (12), DEP (4), Police (3), and Health (1).

*Referrals* – In some cases, code enforcement staff cannot determine the nature of a violation until an inspection is made. If an inspector visits a site to investigate a complaint and finds a condition that must be enforced under another section of the County Code, the inspector will refer the case through a phone call or a memo, and inform the citizen of their action. In FY 99, DPS referred approximately 50 cases to other departments. In the same year, DHCA referred approximately 35 complaints to other departments.

*Multiple Violations* - If a property has multiple violations or a history of difficult enforcement, the managers in each department will convene an ad hoc staff team to work on the issues. The team may include enforcement staff from DHCA, DPS, DEP, and DPWT, representatives from the Police and the Regional Service Center, plus staff from the County Attorney's office. This interdepartmental team conducts joint inspections, develops a coordinated enforcement strategy, and meets to monitor the progress of the case.

In FY 99, DHCA and DPS referred a total of approximately 100 calls to other departments, either when the complaint was called in or after an inspection was made. In addition, managers worked on only a few cases with multiple violations. OLO finds that the referrals represent a small portion of the annual caseload of 4,500 complaints and that the informal referral and coordination practices are adequate.

**3. The laws that regulate building and property maintenance standards, building construction, and zoning development standards and activities, differ in their uniformity, their longevity, and their use of waivers and exceptions.**

The characteristics of the housing, building, and zoning codes differ in their uniformity, their longevity, and their use of exceptions and waivers. Housing code inspectors enforce Chapters 26, 48, and 58 of the County Code, which contain building and property maintenance standards. Chapters 48 and 58 establish two sets of rules, one for weeds and one for solid waste, which inspectors enforce uniformly in the unincorporated portions of the County. Chapter 26 establishes two sets of standards –

one for housing and one for nonresidential properties - that inspectors apply uniformly in the unincorporated areas of the County. (Note - The applicability of these County laws does vary from one municipal jurisdiction to another; however, this issue is typically addressed as part of the intake process.) The County Council has not amended the standards since the laws were enacted.

Building code inspectors enforce Chapter 8 of the County Code, and building and zoning inspectors enforce the development standards and use regulations in Chapter 59. Building and the Zoning Regulations, unlike housing standards, do not apply uniformly throughout the County. Instead, the standards vary, depending on the zoning of a particular piece of property or the building and zoning codes in effect at the time a building was constructed. A zoning inspector must have a working knowledge of how the use tables, development standards, and definitions apply in more than eighty zones that are officially mapped countywide. (Note: The Zoning Ordinance is the only law that has both a text and a map.) Similarly, a building inspector must apply standards that vary by the date of construction and the regulations in effect at that time.

Building and zoning regulations, unlike the housing code, change frequently. The standards in Chapter 8 are the "currently designated edition of the BOCA Basic Building Code." This code is updated regularly as building materials and construction standards evolve to meet changing conditions. The District Council also amends the Zoning Ordinance frequently, through a sectional map amendment, through a local map amendment, or through a text amendment.

The housing, building and zoning codes also differ in the level and use of waivers or exceptions. Only one section of Chapter 26 addresses waivers. Section 26-16 authorizes the Director to waive the enforcement provisions in limited circumstances. The Director must find that the violation does not present an immediate danger to public health, safety, or welfare and that another extenuating circumstance exists. The owner must demonstrate a financial hardship or must demonstrate that the dwelling units cannot be made to economically comply without moving the occupants. If conditions change, the law authorizes the Director to withdraw the waiver.

The concepts of exceptions, variances, and nonconforming uses form an integral part of Chapter 59, in contrast to the limited waiver provisions in Chapter 26. An entire article of Chapter 59, Article G, Special Exceptions, Variances and Nonconforming uses, addresses exceptions and waivers. Article G establishes several categories of special exceptions, each with a specific set of special conditions. Article G also establishes the concept of a variance and authorizes the Board of Appeals, the Hearing Examiner or the Director of Permitting Services to adjust the strict regulations to address hardship situations. Article G also permits nonconforming uses to protect existing property owners who have complied with regulations in effect at the time, when the District Council changes the zoning.

**4. The housing and zoning complaint programs differ in the records and sources of information an inspector must consult to determine whether a violation exists.**

The case file for a housing inspection includes the intake form, a printout of tax assessment information, a copy of the information from the licensing database (if relevant), and a case log.

The housing inspector acquires most of the information to determine whether a violation exists and the compliance required from a site inspection. During a visit to the site, the inspector will observe the physical condition of a building or property. In one out of four cases, the inspector will not find a violation. If the inspector does observe a violation, he or she will record the details, make notes about the required repairs, and take photographs. (Properties with multiple violations will produce an extensive list of repairs.) After an inspection, the inspector will prepare a letter of violation and repair order and establish a compliance deadline.

An inspector will also keep correspondence with the complainant or the alleged violator. If an inspector is investigating a complaint about overcrowding, it may be more difficult to document a violation. In some cases, a landlord will have a direct interest in helping the inspector to determine whether a violation exists.

The case file for a zoning investigation begins with the intake form, a printout of tax assessment information, and a copy of corporate records. At that point, depending on the nature of the complaint, the inspector must retrieve additional documentation from both current and historical files in the department to determine what code requirements apply to that specific site.

The Department of Permitting Services maintains extensive historic records, as required by law. These records include permit application files for building permits, use and occupancy permits, building plans and site plans for these permits, and approved certificates. An inspector must have access to all prior versions of the building and zoning codes plus the official historic zoning maps because the code requirements depend on the zoning that was in effect when a building was constructed.

If a permit application is under review, an inspector must also check with permit technicians or plan review staff to determine the status of a permit. Because permit reviews are ongoing, the status of a permit may change daily.

A building or zoning inspector visits a site to verify whether the condition identified in the complaint exists. If the complaint concerns an observable violation, the zoning inspector, like the housing inspector, may determine whether a violation exists from an initial visual inspection. If the complaint concerns the use of a property, an initial inspection may not yield information on the violation, particularly if there is no activity when the inspector visits. As a result, like the housing inspector, a zoning inspector may rely on information provided by a complainant or a concerned neighbor to help determine whether a violation exists.

**5. DHCA and DPS have effectively used the housing and zoning inspection staffs to address implementation issues or strengthen other departmental programs.**

In both DHCA and DPS, the inspection staff operates as part of a constant feedback loop between program ideas and results. This loop provides managers and other decision makers with up to date information that management can use to develop new programs or address existing issues.

Over the past three years, DHCA has continually assigned housing inspectors special projects to collect information. The department has current information and a complete picture of the condition of buildings in certain at-risk neighborhoods, the condition of single family rental properties, and the condition of historic properties in Hyattstown. In each instance, the Department has used the work of the inspection staff to improve its understanding of neighborhood conditions and to identify specific problems to be solved.

Over the last eight years, DPS has routinely analyzed the zoning complaint database to identify zoning issues that must be addressed to improve zoning enforcement. DPS has presented reports to the Council on the implementation of the home occupation program and the vendor program, and proposed amendments to the ordinance based on specific complaint data.

**6. There are benefits to locating Housing Code Enforcement in DHCA and Zoning Code Enforcement in DPS.**

Locating the Housing Code Enforcement function in DHCA and the Zoning Code Enforcement function in DPS has many benefits. First, the respective locations provide inspectors with convenient and ongoing access to relevant departmental records. Inspectors routinely must use these records to determine whether a code violation exists. Both programs must have access to current records that are created, administered and maintained by other divisions in each department. The building and zoning inspectors also need access to the extensive historical records that DPS must maintain by law.

Second, locating Housing Code Enforcement in DHCA and Zoning Code Enforcement in DPS gives the inspectors access to department staff who are knowledgeable about the codes to be enforced, and gives other program staff access to the inspectors. In particular, zoning investigators benefit from easy access to staff who are knowledgeable about the zoning ordinance, because it is a complex law that changes frequently. DHCA inspectors benefit from access to housing staff who are working on licensing, housing loan and community development programs.

Finally, locating Housing Code Enforcement in DHCA and Zoning Code Enforcement in DPS also maintains a dedicated inspection staff for each of these programs. This organizational arrangement allows the inspection staff to operate as an early identification system for the department as it identifies new enforcement problems or considers new program priorities.

**7. The complaint programs in each department are similar in the average time it takes to close a case and the profile of open cases. They differ in how cases are closed.**

OLO developed some performance measures to understand the operations of the complaint inspection programs in DHCA and DPS. In FY 99, OLO found that DHCA closed 3,000 complaint cases and DPS closed 1,422 cases. On average, DHCA closed a case in 71 days and DPS closed a case in 70 days.

OLO also prepared aging profiles of open complaint cases for each program. The profile of open complaint cases showed that 40 percent of the complaints in DHCA were four months or older and 55 percent of the complaints in DPS were four months or older.

OLO also examined the disposition of closed FY 99 complaint cases. OLO found that DHCA inspectors found no violation in 545 cases (18 percent). DPS, by comparison found no violation in 521 cases (37 percent). Property owners performed maintenance to bring a property into compliance in 2,259 cases for DHCA (75 percent of all cases). The outcomes to bring a property into compliance were more varied for DPS. Specifically, in 274 cases property owners obtained a permit. In 321 cases, property owners modified a building or use, and in 133 cases, property owners discontinued a use or removed a building.

**8. In practice, both DHCA and DPS have found it difficult to protect the inspection programs required by law from the volume of complaint inspections.**

Inspections required in law make up an important component of the inspection program in both DHCA and DPS. In concept, the law may require an initial inspection before a building or activity is licensed, and/or a follow-up inspection to check conditions later. In concept, requiring initial inspections as part of the licensing process or periodic inspections to monitor ongoing uses can be an effective regulatory practice. The purpose of an initial inspection is to verify that conditions in the field comply with the law, to require repairs, if needed, and to establish a written report of existing conditions. An initial inspection also provides an opportunity to answer questions an applicant may have about specific issues or conditions and to ensure that the citizen is clear about the requirements of the law.

A follow-up routine inspection will identify needed repairs or modifications. Ideally, a follow-up inspection will identify repairs before the volume of repairs accumulates or the maintenance of the property becomes a public safety issue. If the department receives a complaint about a property where the law requires a routine

inspection, an inspector will have access to an existing case file with the supporting documentation and case history.

Many County laws or regulations enforced by DHCA and DPS require initial inspections as part of a licensing process or follow-up inspections as part of an ongoing enforcement program. Specifically,

- Chapter 29 requires triennial inspections of multifamily housing units;
- Chapter 47 requires a site plan for certain types of vendor licenses;
- Chapter 59 requires an ongoing inspection program for existing special exceptions, including accessory apartments;
- Chapters 13 and 25 of State law require an inspection of a home for a foster child; and,
- Executive Regulation 1-90 requires inspections of a Registered Living Unit.

In practice, it is difficult to protect these required inspection activities from being crowded out by complaint inspection and other priorities. OLO found that both DHCA and DPS have a hard time maintaining the appropriate level of effort to conduct these initial and routine follow-up inspections. In 1996, DHCA responded to a complaint about a caved-in roof and found two multifamily apartment complexes in serious disrepair. This prompted DHCA to inventory other at-risk multifamily units, only to find extensive problems. Although DHCA had a multifamily inspection team dedicated to the triennial inspection program, the time needed to respond to complaints from the single-family team had crowded out the routine inspections.

OLO found DPS uses one team of inspectors to conduct both complaint investigations and the routine inspections of special exceptions required in Chapter 59. Through the mid-1990s, the inspectors integrated the special exception inspections with their other workload requirements. As the volume of complaint investigations increased, however, the inspectors dropped the routine inspections of special exceptions.

OLO found both DHCA and DPS have taken actions to re-establish the routine inspection requirements in law. Over the past three years, DHCA inventoried all multifamily units and conducted inspections of all at-risk units. DHCA has put some high-risk units on monthly inspections so inspectors can catch problems early and require repairs more quickly.

In the last 18 months, the Department of Permitting Services dedicated an inspector to the special exception program. Because inspectors had conducted routine inspections sequentially, the investigator had to spend a significant amount of time setting up a workable file management system. In ten months, the inspector completed inspections for 440 of the 2,000 existing special exceptions. In March 1999, work on routine special exceptions was halted because the inspector was reassigned to assist with programming for the new computer system.

## VI. RECOMMENDATIONS

### 1. **Maintain the Housing Code Enforcement program in DHCA and the Zoning Code Enforcement program in DPS.**

*OLO recommends that the complaint enforcement programs continue to operate in separate departments to achieve the benefits of locating each inspection unit with its parent department.* To operate efficiently and effectively, complaint inspectors need convenient and ongoing access to departmental records and a detailed understanding of multiple details and regulations in the codes that they enforce.

Efficiency requires the complaint enforcement staff to be co-located with their departmental records. Both housing and zoning code inspectors rely on records generated by staff in their respective departments on a daily basis. The inspectors assemble these records to make determinations about code violations and to provide documentation for their decisions. For the zoning complaint program, in particular, the records consist of extensive historical records that DPS must maintain by law, plus more current records that are created, administered and maintained by other divisions in the department.

The effectiveness of the housing and zoning programs benefit significantly from a dedicated inspection unit for each function. DHCA's use of special projects for the housing inspection staff has shifted the use of housing enforcement program from a reactive to a more focused, purposeful program. As a reactive program, housing code enforcement inadequately ensured minimal housing standards. As a purposeful tool, the program effectively markets landlord and tenant services and housing loan programs that strengthen and revitalize the County's aging neighborhoods.

The zoning program also profits from a dedicated inspection unit. The County Zoning Ordinance is a separately published volume of the County Code, comparable in size to the three other volumes of the Code. The District Council regularly amends the ordinance to implement master plan amendments, or to address unintended, site-specific interpretation issues. DPS has structured the zoning enforcement unit and the complaint database to provide feedback on these continual changes to the Zoning Ordinance. OLO believes that the nature of the zoning code as a problem solving document and its complex application justify a separate complaint unit.

*OLO recommends that DHCA and DPS brief the Council on the issues that arise when a permit for unfinished construction is administratively closed out, including any legislative changes to Chapters 8 and 26 that are needed to address these issues.* When DPS closes out a building permit administratively without a final inspection, a dwelling may remain vacant or become abandoned. DHCA receives complaints about vacant or abandoned buildings and under Chapter 26, DHCA must bring them into compliance. There are practical difficulties in finding the owner of an abandoned building and additional problems in forcing the owner to finish the building or demolish the structure. DPS and DHCA agree that it would be more effective for DPS to enforce these situations under its authority in Chapter 8.

- 2. Develop an informational brochure to provide a public roadmap for the code enforcement process, and to establish a set of predictable and consistent enforcement practices.**

Given the broadly defined enforcement authority in law, multiple decision points in the process, and multiple actors, the County should develop an informational brochure that explains the framework for code enforcement, including the housing and zoning code enforcement programs. OLO recommends that the brochure identify the lead departments for each phase of code enforcement administration and enforcement, beginning with Chapter 26, Chapter 48, Chapter 58 and Chapter 59.

The brochure should address the purpose of code enforcement and identify the departments, offices, boards and courts who deliver enforcement services. The brochure should outline the responsibilities of each actor, and specify the department or departments that make decisions at each step in the process. In OLO's opinion, developing this brochure will require the County to articulate a set of operating practices for a service that routinely crosses departments. It would also improve the public's understanding of the code enforcement process, and help alert citizens to the fact that the County's representation and position in a particular case may change as enforcement proceeds.

- 3. Develop a plan and cost estimate for a shared Geographic Information Systems database among code enforcement departments.**

OLO spoke to numerous inspectors and managers who indicated it would be useful to access information about code violations by property address. This would allow an inspector to know ahead of time whether a property owner had prior violations, the types of violations, and the enforcement action that was taken. In addition to providing case history information for complaint inspections, this database would generate valuable program data at the neighborhood level.

- 4. Strengthen oversight of legally required inspections in DHCA and DPS, and provide the resources to ensure that both the Housing Code and Zoning Code enforcement programs place higher priority on these inspections.**

*The Council should request both the Housing Code Enforcement and Zoning Code Enforcement staffs to brief them on their proposed routine inspection programs. The Council should schedule these discussions so that any resource issues can be identified and addressed during the budget process.* OLO found that DHCA has not maintained the required inspections for accessory apartments and that DPS has not maintained the required inspections for existing special inspections. Both DPS and DHCA said the volume of complaint inspections affected the County's capacity to conduct these routine inspections.

OLO found that DPS has made progress on re-establishing the special exception inspection program; however, much work remains to be done. Chapter 59 requires DPS

to propose a special exception program annually to the Board of Appeals. DPS has begun work to classify special exceptions according to their impact on the surrounding neighborhood (based on information from the complaint database) and to determine the number of inspections needed annually.

Given the level of interest about special exceptions, OLO recommends that DPS brief the Council on their implementation plans. DPS should address the proposed implementation schedule given current resources, as well as the resources that would be needed to accomplish the tasks more quickly.

OLO found that DHCA has not conducted the number of accessory apartment inspections to keep pace with an annual inspection schedule. Because accessory apartments are special exceptions, it makes sense for DHCA to address this issue when DPS examines the overall special exception program.

***The Council should request both DHCA and DPS to address the merits of amending the law to require additional routine inspections.*** In OLO's opinion, both the zoning and housing code enforcement programs would benefit from increasing the type of required inspections. OLO believes there is merit in requiring initial inspections for registered home occupations and initial inspections for single family rental licenses.

Currently, Chapter 59 requires an owner who is applies to register a home occupation to fill out application but does not require an initial inspection. OLO believes an initial inspection is warranted given the increasing number of home occupations, the potential impact home occupations can have in a neighborhood, and the difficulty inspectors have had in resolving home occupation complaint cases. An initial inspection would allow DPS to verify information on the application, to check field conditions and to provide baseline information that could make potential enforcement actions more efficient and effective. OLO also recommends that the Council establish a licensing fee for registered home occupations to defray the inspection cost.

Currently Chapter 29 requires multifamily and single-family rental units to obtain a rental facility license. The law requires a triennial inspection for multifamily apartment complexes but does not have a similar requirement for single family rental units. There are approximately 13,000 single family rental units in the County. As the housing stock in the County ages, many of these units will encounter increasing repair and maintenance issues. OLO believes that inspections for single family rental units would help maintain these properties over time and prevent some future complaint calls. OLO recommends that the licensing fee be modified, if needed, to cover the cost of the inspections and administrative responsibilities.

**5. Establish the position of a Zoning Administrator in law to increase the visibility of zoning decisions, to increase public access and accountability, and to strengthen the organizational relationship between zoning administration and enforcement.**

While zoning law is replete with innovative approaches to regulate use and density, the heart of zoning comes down to how local decisions are made. In Montgomery County, the level of community interest in zoning is high, the use of zoning is innovative, the structure of the zoning ordinance is complex, and the administrative structure is extensive. Given this system, OLO believes the County needs to clarify the enforcement authority for zoning in the County government.

***OLO recommends that the District Council establish a Zoning Administrator position in law and that DPS create a new Zoning Administrator position.*** - The law currently designates the Director of the Department of Permitting Services or his designee as the Chief Building Officer for the County. OLO recommends that a parallel structure designate the Director or his designee as the County's Zoning Administrator. Specifically, OLO recommends the District Council amend the Zoning Ordinance to establish a Zoning Administrator. The law should enumerate the duties of the Zoning Administrator (e.g., permit review, inspections, questions of interpretation and text amendments), and also specify the administrator's powers.

In OLO's opinion, a Zoning Administrator is justified in the Department of Permitting Services to improve the visibility of the function, to increase public access and accountability, and to improve coordination with other agencies in both zoning administration and code enforcement matters.

Creating a Zoning Administrator position will also help the Council receive feedback on enacted zoning text amendments based on an analysis of actual zoning complaint data. Given the frequency of amendments and the level of concern in the community about enforcement issues, this feedback is essential.

***OLO recommends that DPS also consider the merits of a separate division of Zoning in the Department of Permitting Services.*** OLO believes zoning does not function effectively in its current location in the Casework Management Division. In OLO's opinion, the zoning enforcement responsibilities do not fit well with the permitting, processing, and customer service tasks that are the focus of that division.

Organizing a separate Zoning Division could have important benefits. It would increase public visibility and access to the zoning function. It would also create a core team of staff familiar with the complexities of the zoning ordinance. Increasing the size of the staff jointly responsible for administration and enforcement would create opportunities for cross training and provide important staff backup for both administration and enforcement.

## **VII. EXECUTIVE BRANCH COMMENTS ON THE FINAL DRAFT**

In October, OLO sent a draft of this report to the Chief Administrative Officer for Executive branch comments. The written comments transmitted by the Chief Administrative Officer are included in their entirety beginning on the following page.

### **A. OLO's Response to Executive Branch Comments**

OLO's final report reflects all of the technical corrections received from Executive branch staff. In addition, based on the substantive comments received and discussions with Executive Branch staff, OLO modified some of the report's recommendations. In sum, with these changes, OLO and the Executive branch agree on the following recommendations:

- To maintain the Housing Code Enforcement program in DHCA and the Zoning Code Enforcement program to DPS,
- To amend the law to address enforcement related to issues of expired permits for unfinished construction,
- To amend the law to create a Zoning Administrator position and to designate the Director of Permitting Services or his designee as the County's Zoning Administrator,
- To develop an informational brochure that outlines the various steps in the code enforcement complaint process, and explains the roles and responsibilities of each of the actors,
- To develop a plan and cost estimate for a shared Geographic Information Systems database among code enforcement departments, and
- To use performance measures as part of the annual budget process to strengthen the oversight of routine inspection programs.

The Executive branch has also considered the merits of a separate Zoning Division and concludes that a separate division is not warranted at this time. Instead, as explained in the written comments, DPS plans to move the plan review function for zoning development standards to the Division of Building Construction and establish a Zoning Administrator to supervise the zoning investigators and the (remaining) zoning plan reviewers in the Division of Casework Management. While OLO appreciates the benefit of a combined zoning and building plan review, OLO is concerned that this arrangement will limit the supervisory control of the proposed Zoning Administrator and further disperse zoning responsibilities throughout the department.

OLO appreciates the Executive branch comments and looks forward to discussing these issues at the Committee worksession with Executive branch representatives.



OFFICES OF THE COUNTY EXECUTIVE

Douglas M. Duncan  
County Executive

Bruce Romer  
Chief Administrative Officer

MEMORANDUM

November 22, 1999

TO: Sue Richards, Program Evaluator  
Office of Legislative Oversight

FROM: Bruce Romer, Chief Administrative Officer

SUBJECT: DRAFT Office of Legislative Oversight Report 99-3, A Comparative Study of Housing and Zoning Code Enforcement Programs

Thank you for the opportunity to comment on the DRAFT Office of Legislative Oversight Report 99-3, A Comparative Study of Housing and Zoning Code Enforcement Programs. This report provides a comprehensive review of the legal standards and operations of the Housing Code Enforcement program in the Department of Housing and Community Affairs (DHCA) and the Zoning Code Enforcement program in the Department of Permitting Services (DPS).

We concur with OLO's recommendations to maintain the Housing Code Enforcement program in DHCA and the Zoning Code Enforcement program in DPS and that the law should be amended to designate the Director of Permitting Services or his designee as the County's Zoning Administrator. Our positions on the other recommendations are presented in the following paragraphs. We look forward to discussing them with Council.

We do not agree that it would be more effective for DPS to have enforcement authority for properties with building permits that are administratively closed out. The problem of construction that is not complete before the expiration of a building permit stems from the inadequate provisions currently contained in County law regarding this issue. In order to effectively address this issue, there is a need for changing the Montgomery County Code, Chapter 26, *Housing and Building Maintenance Standards*, or Chapter 8, *Buildings*. The solution is not to transfer responsibility for enforcement from one agency to another when the real shortcoming is the statute(s) itself. In addition, DHCA and DPS would like to discuss the current procedure of "administratively closing out" a permit. It seems prudent that before a permit is "closed out," an inspection of the building site be conducted. As a result of such an inspection,

issues of concerns to both DPS and DHCA could be more readily brought to the attention of the respective agencies so that appropriate action could be undertaken.

We agree that citizens need more information in order to understand the code enforcement process, including past and current enforcement practices. We would propose an informational brochure that outlines the process and the various steps in the complaint process.

We agree that a shared Geographic Information Systems database could be a very useful addition to the data on a property and neighborhood level. A proposal with cost estimates would need to be developed by the Department of Information Systems and Telecommunications and assessed for its cost effectiveness. This could go beyond code enforcement to include access by other departments and agencies. Allocating the cost of a shared database to each department could be considered.

With regard to Council oversight of these programs, we recommend that DHCA and DPS submit agreed upon performance measures as part of the annual budget and meet with the Council on an as needed basis.

Finally, we have considered the merits of a separate Zoning Division and determined that the change in the Zoning Administration and Enforcement programs effective 1/2/00 will provide the same benefits as a separate division. Specifically, the proposed reorganization plan for the Division of Casework Management includes the position of a "Zoning Administrator" which will report the Division Chief of Casework Management and supervise all zoning investigators and zoning plan reviewers in the Division of Casework Management. This position will increase public visibility and access to the zoning function. This position will also coordinate zoning plan review with the Division of Building Construction. DPS is working with the Office of Management and Budget and the Office of Human Resources to create this position.

Effective 1/2/00, there will be a change in Zoning Administration and Enforcement programs which will move the plan review function for zoning development standards to the plan review staff in the Division of Building Construction. Plan reviewers in the Division of Building Construction will review the complete building permit application submittal including site plans and structural drawings. Applicants will no longer have separate reviews for zoning and building. This change will increase the size of the staff jointly responsible for reviewing zoning development standards and building codes; enable the plan reviewer to resolve issues related to site plans and building permits; and allow the applicant to have one point of contact for the building application review. Cross training will take place prior to 1/2/00 and will continue on an on-going basis.

Sue Richards, Program Evaluator  
November 22, 1999  
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We appreciate the opportunity to comment on this draft report. We look forward to participating with the Council in its review of this report and in addressing these issues.

BR:rsd

cc: Elizabeth Davison, Director, Department of Housing and Community Affairs  
Robert Hubbard, Director, Department of Permitting Services  
Robert Kendal, Director, Office of Management and Budget  
Charles Thompson, Jr., County Attorney  
Anise Brown, Director, East County Regional Services Center  
Natalie Cantor, Director, Mid-County Regional Services Center  
Lori Gillen, Director, Silver Spring Regional Services Center  
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