




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich  
County Executive

MEMORANDUM

August 9, 2021

TO: Tom Hucker, President, County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Veto Explanation of Bill 3-21, Special Taxing Area Laws – Silver Spring Business Improvement District – Established

Downtown Silver Spring offers much of what is best about Montgomery County. It is a thriving and diverse business center, exhibiting the rich tapestry of people, culture, and places which make Montgomery County a great place in which to live and do business. Bill 3-21 is not the correct vehicle to provide enhanced services in Downtown Silver Spring. It has divided the community and runs contrary to our expressed desire for inclusive governance. For that and other reasons, I am vetoing Bill 3-21, Special Taxing Area Laws – Silver Spring Business Improvement District – Established.

Below is a description of the bill and my explanation of the veto.

**Description of Bill**

Bill 3-21 would establish a business improvement district (BID) in Silver Spring; establish guidelines for the district and authorize a BID corporation to manage the district; and authorize a tax on nonexempt property located in the district to finance the operations of the BID corporation. Nonexempt property means all real property in the district that is not exempt from paying real property taxes except a: condominium unit or cooperative housing corporation unit that exists on or before the date this law takes effect; homeowner’s association; and residential property with fewer than 4 dwelling units.

The State law (MD Code, Economic Development, §§ 12-601 through 12-612) authorizes the County to establish a business improvement district in Montgomery County. Section 12-602 states the purpose of a business improvement district must be to promote the general welfare of the residents, employers, employees, property owners, commercial tenants, consumers, and the general public within the geographic area of the business improvement districts. The State law provides that the County must consider a BID application from a group of private property owners in the proposed

district. The Council must find the application meets the needs of the district for a BID to be established.

The application for the BID came as a result of a request from a majority of property owners, based on the assessed value of their property and the total property they owned. In other words, only property owners were able to initiate a BID and the wealthier, larger properties had the largest vote. Business owners are not included in the application process if they are not property owners.

Bill 3-21, as amended, would establish a BID that would cover the entire current Silver Spring Urban District created by Chapter 68A of the County Code. The district would be operated by a BID corporation organized by the property owners in the district. The County would impose a BID tax on all nonexempt property owners in the district. The BID corporation would be required to provide marketing services to serve the property and persons within the district.

**Bill 3-21 runs contrary to County goals on racial equity and social justice**

Bill 3-21 is the wrong option for Silver Spring. The BID, which would be financed by a mandatory tax on all businesses, is structured to give power to property owners with the largest and most expensive property. BID members would have one vote per \$500,000 dollars of assessed value of nonexempt property to elect members of the BID board of directors. (Property owners with property assessed less than \$500,000 have one vote.) Residents, businesses, and the Silver Spring Chamber of Commerce will be excluded from selecting board members and therefore not have a meaningful say in governing decisions.

The Racial Equity and Social Justice Impact statement from the Council's Office of Legislative Oversight explained:

“The exclusion of residents from the SS BID Board, and the concentration of voting power for board members with the largest assets, shifts the power of public district decision-making from a stakeholder group representing diverse culture and income backgrounds to a stakeholder group that predominantly represents the interests of medium and large businesses. Granting greater voting power to board members with larger businesses also shifts decision-making power from People of Color-owned businesses to White-owned businesses as the later [sic] on average are larger than the former.”

It does not make sense in a democracy to create a public entity with a mandatory tax that vests control with people and businesses based on their wealth. If private businesses voluntarily chose to combine their efforts and raise money within their group for promotion of their businesses and the area, that would be of no concern. However, extending the power to tax others based on wealth and to apportion decision making based on wealth is not consistent with democratic principles of governance. I believe we can have an organization that represents and values the diversity of Silver Spring and that we can work together to address the issues in the area.

**The costs of Bill 3-21 will be borne by small businesses**

Bill 3-21 was strongly opposed by many small property owners and businesses. The BID will be financed by a mandatory property tax that, as is common in leases, will be passed through to businesses. As described above, these businesses would not have the ability to select members of the BID board of directors. That is why I have been urged to veto this bill by many, including the African Affairs Advisory Group, the Silver Spring Citizens Advisory Board and the Fenton Village business association.

**A familiar, inclusive model exists to provide enhanced services**

The correct path for enhanced services in Downtown Silver Spring is the creation of an urban district corporation under Chapter 68a of the County Code. A Silver Spring urban district corporation would serve all sectors of downtown Silver Spring while striving to capture, enhance and promote what makes Silver Spring wonderful. Urban District Corporations are not new to the County and the County already has an example of a highly successful urban district corporation in Bethesda. Governing decisions for an urban district corporation would be made by property owners, businesses, the County, and residents. No one would be excluded.

A Silver Spring urban district corporation would be an independent entity that would provide services to benefit residents and businesses in the Silver Spring Urban District. These services would include promotion; organization; support of cultural, recreational, and business activities; and other initiatives that advance the business and residential environment and sense of community.

**The Council process lacked sufficient public transparency**

The hastily scheduled final worksessions on Bill 3-21 did not provide sufficient transparency for the public or allow Councilmembers an opportunity to hear from constituents or fully consider amendments to the bill. The Monday, July 26 PHED/GO committee worksession was publicly announced Friday, July 23 in the afternoon. A packet was not available until later that day at 5:00 p.m. Additionally, the July 27 Council worksession/action on the bill was announced late in the day on Monday, July 26. A packet was not ready until Council was in session on July 27. During the Council session multiple Councilmembers expressed the wish that there was more time for consideration and expressed their fatigue at the end of a long Council day.

There was no urgency to this controversial legislation that required such a rushed process with so little notice. It is my hope that this veto offers an opportunity to re-start the process; I strongly believe we can achieve a better solution that works for the entire community. I look forward to working with you on that effort.

cc: Councilmembers  
Marlene Michaelson, Council Executive Director  
Bob Drummer, Council Legislative Attorney  
Carlos Camacho, Council Legislative Analyst