Emergency Bill No. 15-00
Concerning: Hearing Examiner Amendments
Revised: 7-18-00 Draft No. 4
Introduced: June 6, 2000
Enacted: July 18, 2000
Executive: July 28, 2000
Effective: July 28, 2000
Sunset Date: None
Ch. 20, Laws of Mont. Co. 2000

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President

AN EMERGENCY ACT to:

(1) revise the law governing the appointment of hearing examiners and the Director of the Office of Zoning and Administrative Hearings and the retirement status of hearing examiners; and

(2) clarify the jurisdiction of the Office of Zoning and Administrative Hearings, repeal obsolete and repetitive language, and generally amend the law regarding hearing examiners.

By retitling
Montgomery County Code
Chapter 1A, Establishing the Structure of County Government

By amending
Chapter 1A, Establishing the Structure of County Government
Section 1A-204

Chapter 2, Administration
Sections 2-112 and 2-140

Chapter 33, Personnel and Human Resources
Section 33-37

| **Boldface** | Heading or defined term. |
| **Underlining** | Added to existing law by original bill. |
| [Single boldface brackets] | Deleted from existing law by original bill. |
| Double underlining | Added by amendment. |
| [[Double boldface brackets]] | Deleted from existing law or the bill by amendment. |
| * * * | Existing law unaffected by bill. |

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Chapter 1A is retitled, and Sections 1A-204, 2-112, 2-140, and 33-37 are amended as follows:

Chapter 1A.

[ESTABLISHING THE] STRUCTURE OF COUNTY GOVERNMENT.

1A-204. Supervision of offices and appointment of heads.

* * *

(b) Legislative Branch.

* * *

(4) Office of Zoning and Administrative Hearings.

[a.] (A) [Acting as the District Council under State law, the]

The County Council, by a majority vote of

Councilmembers in office, [appoints the] may appoint

one or more hearing examiners of the Office of Zoning

and Administrative Hearings, and [designates one of the

hearing examiners] designate a hearing examiner or the

Council Staff Director as Director of the Office.

(B) The County Council also may retain one or more hearing

examiners as independent contractors, and may designate

a contract hearing examiner as chief hearing examiner.

Chapter 11B does not apply to any contract for hearing

examiner services.

[b.] (C) The [Director and the other] hearing examiners are not

merit system employees.

[c.] (D) The Director [appoints and supervises] must appoint

and supervise the merit system employees of the Office.

2-112. Duties and powers.

* * *
(b) The Board may, [upon the affirmative] by vote of 3 members [of the Board], refer any [application, petition or order of appeal on any specific case involving any of the matters set forth in paragraphs (2) through (19) of subsection (a) of this Section, or any other] matter pending before it, to be heard by a hearing examiner [appointed pursuant to Chapter 2, Article X of this Code, and to be scheduled for hearing and heard by the hearing examiner in accordance with] in the Office of Zoning and Administrative Hearings under the rules of procedure of [the office of the hearing examiner] that Office. The hearing examiner [shall] must submit a written [reports and recommendations on any such matter] report and recommendation to the [County] Board [of Appeals] for the Board's final decision.

ARTICLE X. OFFICE OF [HEARING EXAMINER] ZONING AND ADMINISTRATIVE HEARINGS.

2-139. Reserved.

2-140. Powers, duties and functions.

(a) The [office of the hearing examiner shall have the following powers, duties and functions] Office of Zoning and Administrative Hearings must:

(1) To conduct public hearings on all appeals, petitions or other matters which are or may hereafter become subject to the provisions of this article. The hearing examiner must, in any hearing, allow each party a reasonable opportunity to cross-examine each witness not called by that party on matters within the scope of that witness' direct testimony.

(2) To read and examine the record pertaining to the appeals, petitions or matters which are subject to the provisions of this
article, and to render written reports and recommendations thereon, which shall include findings of fact and conclusions of law, and to recommend appropriate decisions and forms of relief from any decision or order from which an appeal or petition has been filed, including orders either affirming, reversing, modifying or remanding to the appropriate office or agency.

(3) Where appropriate, to conduct public hearings and submit written reports and recommendations to either the county council, county executive, or other county agencies specified by law or ordinance and administrative matters certified to the office by direction and designation of such council and/or executive.

(4) To schedule for public hearing, in accordance with applicable notice and time requirements, any appeal, petition or matter authorized to be heard by the office pursuant to this article or other law, ordinance, resolution or executive order; to extend the time for the closing of the record either to a time certain or for a reasonable period of time; to suspend, defer, postpone or continue public hearings when requested by a party to a proceeding or for the purposes of obtaining evidence material to any decision or recommendation or where the pendency of other governmental action may materially bear on the decision or recommendation.

(5) To issue subpoenas, enforceable in a court of competent jurisdiction, to compel the attendance of witnesses and
production of documents at any public hearing, and to
administer oaths to witnesses appearing before the examiner.

(6) To recommend regulations to the county council to be adopted
under method (2) of section 2A-15 of this Code to govern the
conduct of public hearings and other functions of the office of
the hearing examiner.

(1) schedule and conduct public hearings on any appeal or other
matter assigned by law or by the County Council, County
Executive, or other officer or body authorized to assign matters
to a hearing examiner:

(2) issue a subpoena, enforceable in any court with jurisdiction,
when necessary to compel the attendance of a witness or
production of a document at any hearing, and administer an
oath to any witness:

(3) allow each party in any hearing a reasonable opportunity to
cross examine each witness not called by that party on matters
within the scope of that witness' testimony:

(4) forward a written report, with a recommendation for decision,
to the body that assigned the matter, including findings of fact
and conclusions of law where required or appropriate:

(5) adopt regulations, subject to Council approval under method
(2), to govern the conduct of public hearings and other activities
of the Office.

(b) The [office shall have and exercise those functions and powers of]
Office may act as an administrative office or agency designated by the
District Council, as prescribed in the [Maryland-Washington]
Regional District Act[, being] [Article 28 of the [Annotated Code of]
[c] The office of the hearing examiner shall schedule for hearing, hear and submit written reports and recommendations on the following petitions and administrative appeals:

1. **Petitions for certain special exceptions.** The office shall hear the petitions for those special exceptions as are now or may hereafter be delineated in subsections (g), (h) and (i) of this section and in subsections (2)a, (2)b and (2)c of section 59-3A of this Code and shall render written reports and recommendations thereon to the County Council for final action in accordance with subsections (g), (h) and (i) of this section and Section 59-3A of this Code.

2. **Referrals from Board of Appeals.** The office shall hear such other matters as may hereafter be designated by the Board of Appeals for hearing by the office of the hearing examiner. The office shall in each such case render a written report and recommendation thereon to the Board of Appeals for final action thereon by the Board.

[c] The Office may hear and submit a written report and recommendation to the specified officer or body on any:

1. petition to the County Council to grant, modify, or revoke a special exception, as provided in Chapter 59;

2. designation by the County Council of a geographic area as a community redevelopment area; or
(3) matter referred by the Board of Appeals under Section 2-112(b).

(d) Whenever an administrative hearing or class of hearings is required to be conducted by the County Executive or designee, he must conduct an administrative hearing under any [provision of this Code] law, the County Executive may authorize [that] the Office of Zoning and Administrative Hearings to conduct the hearing or any particular class of hearings [shall be conducted by the office of the hearing examiner and that appropriate written findings and recommendations be submitted in accordance with applicable law or regulation for decision by the County Executive or such other authorized authority].

[(e) The office of the hearing examiner shall schedule and conduct public hearings and render written reports and recommendations to the County Board of Appeals on specific classes or types of special exceptions which the District Council may, by appropriate legislative enactment, designate. Upon request of the Board of Appeals, and with the approval of three (3) of its members, the office shall schedule and conduct public hearings and render written reports and recommendations to the County Board of Appeals on specific matters pending before the Board. The County Board of Appeals shall have the sole authority to render a decision upon the merits of such petitions for special exceptions or other matters referred to the office by the Board.]

(f) The office of the hearing examiner shall schedule and conduct hearings and render written reports and recommendations to the County Council on the merits of designating a geographic area as a
community redevelopment area and of granting, revoking or
modifying a special exception for a community redevelopment area as
provided by Section 59-137 of this Code. The County Council shall
have the sole authority to designate a geographic area as a community
redevelopment area, and to grant, revoke or modify a community
redevelopment area special exception.]

[(g) The office of the hearing examiner shall schedule and conduct
hearings and render written reports and recommendations to the
County Council on the merits of granting, revoking or modifying a
special exception for a cemetery as provided by Section 59-G-2.12 of
this Code, and issuing, revoking or suspending a permit to establish or
operate a cemetery, graveyard or burial ground as provided by
Chapter 9 of this Code. The County Council shall have the sole
authority to grant, revoke or modify a special exception for a
cemetery, and to issue, revoke or suspend a permit to establish or
operate a cemetery, graveyard or burial ground.]

[(h) The office of the hearing examiner shall schedule and conduct
hearings and render written reports and recommendations to the
County Council on the merits of granting, revoking or modifying a
special exception for an outdoor theater as provided by Section 59-G-
2.61 of this Code, and issuing, denying, revoking, suspending or
renewing a license to construct, operate or maintain an outdoor theater
as provided by Chapter 4, Division 2, of this Code. The County
Council shall have the sole authority to grant, revoke or modify a
special exception for an outdoor theater, and to issue, deny, revoke,
suspend or renew a license to construct, operate or maintain an
outdoor theater.]
Membership requirements and membership groups.

* * *

Appointed officials. Each person appointed by the County Executive or County Council [as a hearing examiner or] to head a department, office, or agency of the county government [shall] must be subject to all [of the retirement] regulations and laws governing full-time members of the retirement system. Any person appointed by the Executive or Council to serve as a hearing examiner must be treated as a full-time employee under the laws and regulations governing members of the retirement system if that person serves full time as a hearing examiner, and must be treated as a part-time employee under the laws and regulations governing members of the retirement system if that person serves less than full time as a hearing examiner.

* * *

Sec. 2. Emergency Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This Act takes effect on the date on which it becomes law.
This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council

D. L. 31. 2000

Date