



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Item # 19
MCPB
9/12/02

September 6, 2002

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Joseph R. Davis, Chief *JRD*
Development Review Division

REVIEW TYPE: Amendment to the County Code

PURPOSE: To amend the 1999 Laws of Montgomery County to repeal the sunset date for the position and office of the Peoples Counsel, making both permanent

COUNCIL BILL: Bill No. 25-02

REVIEW BASIS: Advisory to the County Council

INTRODUCED BY: Council President Silverman

PUBLIC HEARING: September 17, 2002, 1:30 PM

STAFF RECOMMENDATION: APPROVAL

BACKGROUND AND ANALYSIS

Council Bill 25-02 is a proposal to remove the sunset provision that would terminate the position and office of the People's Counsel, as established in Chapter 2, Article XII of the County Code. The current law, as amended in 1999, contains an uncodified provision that terminates the office of the People's Counsel on July 1, 2003. The subject legislation would delete the sunset provision, thus making the office and position of People's Council permanent. Staff supports enactment of this amendment because the Office of People's Counsel provides valuable service to the citizens of Montgomery County.

The Office of the People's Counsel was originally created through legislation enacted by the County Council in 1990. However, no funding was approved to create the position in the County's Operating Budget until 1999 when the law was amended and the office was funded. In the fall of 1999, the FY 00 Operating Budget was amended to fund the Office of the People's Counsel and the position was advertised and filled in December of 1999.

The legislative purpose for creating the Office of the People's Counsel is to:

“...Protect the public interest and promote a full and fair presentation of relevant issues in administrative proceedings in order to achieve balanced records upon which sound land use decisions can be made.”

The People's Counsel is also intended to assist citizens and citizen organizations to encourage effective participation in, to increase public understanding of and confidence in the County land use processes.

The People's Counsel is authorized to participate in hearings before the Board of Appeals in proceedings involving special exceptions or variances. The People's Counsel may participate in proceedings before the County Council (solely for oral argument) or the Hearing Examiner for the County Council for local map amendments and special exceptions. The People's Counsel may also participate in proceedings before the Planning Board involving action on an optional method development (project plans), subdivisions and site plans. The law also provides discretion to the People's Counsel to decline to participate or to withdraw from participation in any of the above proceedings.

An important provision of the law is the requirement that the People's Counsel must coordinate the services of its office with those provided by staff of the County Council, Board of Appeals and the Planning Board in order to avoid inconsistency and duplication. Such coordination is also intended to maximize the assistance offered to the public. The People's Counsel must annually report to the County Council on the activities of the office.

The Office of the People's Counsel is not involved in legislative processes including both zoning text amendments and subdivision regulations amendments. In addition the People's Counsel is not involved in the master or sector plan approval processes. The People's Counsel does take notice of master plan recommendations in the review of zoning applications, special exceptions, subdivision plans and site plans.

Staff recommends approval of the legislation to delete the sunset provision because the Office of the People's Counsel fulfills the Council's mandate, as established in the law. The People's Counsel has appeared before the Planning Board, the Board of Appeals and the Hearing Examiners to further the public interest in numerous public hearings. The People's Counsel has met with citizen associations and individual citizens to provide technical assistance to help them to better understand the development approval process. Staff has worked directly with the People's Counsel to produce two information brochures for the public. One describes the subdivision approval process and the other describes the site plan approval process. These brochures are mailed to all property owners who are adjacent to or immediately across a street from (confronting) land that is included in a new application. The People's Counsel has also served to mediate the resolution of specific issues in a number of the applications. His efforts have made the process work better for all involved.

Attachment #1 is a copy of Bill 25-02 and Attachment #2 is a copy of the provisions of Sec. 2-150 that describe the office of the People's Counsel.

Attachments

Bill No. 25-02
Concerning: People's Counsel - Sunset
Revised: 7-18-02 Draft No. 1
Introduced: July 23, 2002
Expires: January 23, 2004
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President Silverman

AN ACT to:

- (1) repeal the sunset date for the position and office of the People's Counsel; and
- (2) generally amend the law governing the People's Counsel.

By amending

Laws of Montgomery County 1999
Chapter 19

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

The County Council for Montgomery County, Maryland approves the following Act:

LEGISLATIVE REQUEST REPORT

Bill 25-02

People's Counsel - Sunset

DESCRIPTION: Repeals the sunset date for the position and office of the People's Counsel, making both permanent.

PROBLEM: The position and office of the People's Counsel are scheduled to expire on July 1, 2003.

GOALS AND OBJECTIVES: To make the People's Counsel permanent.

COORDINATION: Not applicable

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905

APPLICATION WITHIN MUNICIPALITIES: Not applicable

PENALTIES: Not applicable

§2-148

MONTGOMERY COUNTY CODE
Chapter 2

through absence and must explain any known extenuating circumstances. The presiding officer should send a copy of the notice to each member of the committee.

- (3) The appointing authority may waive the resignation for illness, emergency or other good cause. The appointing authority must notify the member whether a waiver has been granted.
- (4) If a waiver has not been granted, the appointing authority must appoint a successor to complete the unexpired term, subject to Council confirmation if the original appointment was subject to Council confirmation. (1979 L.M.C., ch. 22, § 1; FY 1991 L.M.C., ch. 9, § 1.)

Sec. 2-149. Procedures at meetings.

Unless a committee meeting is subject to Chapter 2A, a meeting may be conducted informally. The parliamentary procedures of Robert's Rules of Order govern when it is necessary to take formal action or decide controversial matters. Committee meetings must be open to the public in accordance with the state open meetings law. (1979 L.M.C., ch. 22, § 1; FY 1991, L.M.C., ch. 9, § 1.)

ARTICLE XII. PEOPLE'S COUNSEL.

Sec. 2-150. People's Counsel—Functions.

- (a) *Purpose.* Informed public actions on land use matters require a full exploration of often complex factual and legal issues. An independent People's Counsel can protect the public interest and promote a full and fair presentation of relevant issues in administrative proceedings in order to achieve balanced records upon which sound land use decisions can be made. In addition, a People's Counsel who provides technical assistance to citizens and citizen organizations will encourage effective participation in, and increase public understanding of and confidence in, the County land use process.
- (b) *Authority; duties.* To protect the public interest and achieve a full and fair presentation of relevant issues, the People's Counsel may participate in a proceeding before:
 - (1) the Board of Appeals if the proceeding involves a variance or a special exception;
 - (2) the County Council (solely for oral argument) or the Hearing Examiner for the County Council if the matter involves a local map amendment, a development or schematic development plan approved under the zoning process or a special exception; and

- (3) the Planning Board if the proceeding involves action on an optional method development, a subdivision plan including a subdivision plan for a cluster development, or a site plan.

The People's Counsel may also file a complaint under Section 59-G-1.3(b) alleging failure to comply with a special exception, or may seek a modification of a special exception under Section 59-G-1.3(c) or a revocation of a special exception under Section 59-G-1.3(e).

- (c) *Restrictions.* The People's Counsel must not participate in any proceeding before a board or agency of any municipality in the County.
- (d) *Participation.* The People's Counsel is a party in a proceeding under subsection (b) once the People's Counsel files a notice of intention to participate. After the notice is filed, the People's Counsel is entitled to all notices to a party and may participate by making motions, introducing evidence, calling witnesses, examining and cross-examining witnesses, and making arguments as the law and the evidence in the proceeding warrant. The People's Counsel may file and argue an appeal the same as any other party to the proceeding.
- (e) *Independent status.* The People's Counsel must not represent the County, any government agency, or any private party in any proceeding. The People's Counsel is not subject to the authority of the County Attorney.
- (f) *Notice.* If the People's Counsel intends to participate in a proceeding, the People's Counsel must give all parties a notice of intention to participate.
- (g) *Discretion.* In the People's Counsel's discretion, the People's Counsel may withdraw from, or decline to participate in, any proceeding in which the Counsel may participate under subsection (b). The People's Counsel is not liable to any person for participating in, or declining to participate in, any proceeding.
- (h) *Technical assistance.* Without becoming a party to any judicial or administrative proceeding, and subject to available time and resources, the People's Counsel may provide technical assistance to any person about a proceeding listed in subsection (b). When providing technical assistance under this subsection, the People's Counsel must inform the recipient that the People's Counsel is not acting and cannot act as a personal attorney for the recipient.
- (i) *Coordination.* The People's Counsel must coordinate the services of its office with those offered by land use information staff in the Council, Board of Appeals, and Planning Board, to avoid inconsistency and duplication and to maximize the assistance offered to citizens.

- (j) *Annual report.* The People's Counsel must annually report to the Council on the activities of the office. (1990 L.M.C., ch. 22, § 2.; 1999 L.M.C., ch. 19, § 1)

Editor's note—1999 L.M.C., ch. 19, § 2, states: Sunset. The position of People's Counsel, and the Office of the People's Counsel, are terminated on July 1, 2003.

ARTICLE XIII. INSPECTOR GENERAL.

Sec. 2-151. Inspector General.

- (a) *Goals.* The goals of the Inspector General are to:
- (1) review the effectiveness and efficiency of programs and operations of County government and independent County agencies;
 - (2) prevent and detect fraud, waste, and abuse in government activities; and
 - (3) propose ways to increase the legal, fiscal, and ethical accountability of County government departments and County-funded agencies.
- (b) *Appointment.* The County Council must appoint an Inspector General for a term of 4 years, as provided in subsection (c). Unless the Council reappoints the incumbent, the Council must select the Inspector General from a list of at least 3 qualified persons submitted by an Inspector General nominating panel, consisting of 3 County residents designated by the Council by resolution. If the Council does not select one of the persons submitted by the nominating panel, the panel must submit another list of at least 3 other qualified persons. The members of the nominating panel must not be employed by the County or any independent County agency during their service on the panel.
- (c) *Term.* The term of each Inspector General begins on July 1 of the third year after an Executive and Council are elected, and ends on June 30 of the third year after the next Executive and Council are elected. An Inspector General must not serve more than two full 4-year terms, not including any time served as Inspector General to complete an unexpired term. The Council must appoint an Inspector General to complete a term if the Inspector General resigns, dies, or is removed from office. If the term of the Inspector General expires or the position is otherwise vacant, the senior professional staff member, if any, in the Office of the Inspector General serves as acting Inspector General until an Inspector General is appointed.
- (d) *Qualifications.* The Inspector General must be professionally qualified, by experience or education, in auditing, government operations, or financial management, and must be selected solely on the basis of professional ability and personal integrity, without regard to political affiliation.