



Office of the General Counsel
Maryland-National Capital Park and Planning Commission

2425 Reedie Drive
14th floor
Wheaton, Maryland 20902
(301) 495-4646

To: The Montgomery County Planning Board
From: Office of the General Counsel - Caleen Kufera and Matt Mills
Date: December 8, 2021
RE: Proposed Legislation 2022

2022 Annapolis Session - Legislative Update

Please find attached for your review:

- PGMC 100-22** (County Council Voting Threshold) - recommend no position
- PGMC 101-22** (Open Meetings) - recommend no position
- PGMC 103-22** (Ethics Certification) - recommend no position
- PGMC 107-22** (Perjury Certification) and 2020 position paper - recommend oppose

We will be happy to answer any questions you might have.

Thank you for your consideration.

Bill No.: _____
Requested: _____
Committee: _____

Drafted by: Moriarty
Typed by: Lynn
Stored – 10/25/21
Proofread by _____
Checked by _____

By: **Prince George’s County Delegation and Montgomery County Delegation**
Requested by: Delegate Carr

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland–National Capital Park and Planning Commission – Montgomery**
3 **County – County Council and District Council – Voting Thresholds**

4 **PG/MC 100–22**

5 FOR the purpose of adjusting the voting thresholds necessary for the Montgomery County
6 Council or the Montgomery County District Council to take certain actions related
7 to the Maryland–National Capital Park and Planning Commission; and generally
8 relating to the votes of the Montgomery County Council and District Council
9 members.

10 BY repealing and reenacting, with amendments,
11 Article – Land Use
12 Section 15–103(a), 15–106(b), 15–108(b)(1), 18–107, 18–116, 22–209(c), and
13 23–104(b)
14 Annotated Code of Maryland
15 (2012 Volume and 2021 Supplement)

16 BY repealing and reenacting, without amendments,
17 Article – Land Use
18 Section 15–106(a)
19 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2012 Volume and 2021 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
3 That the Laws of Maryland read as follows:

4 **Article – Land Use**

5 15–103.

6 (a) (1) In Montgomery County, the County Council shall make an appointment
7 to the Commission from a list of applicants.

8 (2) The list shall be:

9 (i) completed at least 3 weeks before an appointment is made; and

10 (ii) made available to the public.

11 (3) If the County Council does not appoint an individual whose name
12 appears on the list or if no name appears on the list, the County Council shall provide for
13 the preparation of a second list and follow the procedures under paragraph (2) of this
14 subsection.

15 (4) Within 3 days after making an appointment, the County Council shall
16 submit the name of the appointee to the County Executive.

17 (5) Within 30 days after the appointment is submitted, the County
18 Executive shall approve or disapprove the appointment.

19 (6) An appointment that is not disapproved by the County Executive in
20 accordance with this subsection is deemed to be approved.

21 (7) If the County Executive disapproves an appointment, the County
22 Executive shall return the appointment to the County Council with the reasons for the
23 disapproval stated in writing.

24 (8) By the affirmative vote of [seven] NINE of its members, the County
25 Council may appoint a commissioner over the disapproval of the County Executive.

1 15-106.

2 (a) The County Executive of Prince George's County, with the approval of a
3 majority of the members of the County Council, and the Montgomery County Council, with
4 the approval of the County Executive in accordance with subsection (b) of this section, shall
5 each designate a commissioner for the position of chair or vice chair.

6 (b) (1) Within 3 days after making a designation, the Montgomery County
7 Council shall submit the name of the designee to the County Executive.

8 (2) Within 30 days after the designation is submitted, the County
9 Executive shall approve or disapprove the designation.

10 (3) If the County Executive disapproves a designee, the County Executive
11 shall return the name of the designee to the County Council with the reasons for the
12 disapproval stated in writing.

13 (4) By the affirmative vote of **[six] EIGHT** of its members, the County
14 Council may designate a commissioner for the position of chair or vice chair over the
15 disapproval of the County Executive.

16 (5) A designation that has not been disapproved by the County Executive
17 in accordance with this subsection is deemed to be approved.

18 15-108.

19 (b) (1) (i) With the approval of the County Executive of Montgomery
20 County, the County Council may authorize an appropriate supplementary salary for the
21 commissioner designated by Montgomery County to serve on a full-time basis.

22 (ii) If the County Executive fails to approve a supplementary salary
23 authorization by the County Council within 30 days after the authorization is submitted,
24 the County Council, by an affirmative vote of **[six] EIGHT** of its members, may authorize
25 the supplementary salary without the approval of the County Executive.

26 18-107.

1 (a) Within 3 calendar days after approval of the budgets, each county council shall
2 submit the budgets to the respective county executive.

3 (b) Within 10 days after delivery of the budgets by the county council, the county
4 executive may disapprove or reduce any item contained in the budgets or the planning work
5 program.

6 (c) If the county executive disapproves or reduces any item in the budgets, the
7 county executive shall return the budgets to the respective county council with the reasons
8 for the county executive's disapproval or reduction stated in writing.

9 (d) (1) [Within] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
10 **SUBSECTION, WITHIN 30** days after the respective county executive returns the budgets,
11 each county council may, by affirmative vote of six of its members, reapprove or restore any
12 item over the disapproval of the county executive.

13 (2) **IN MONTGOMERY COUNTY, WITHIN 30 DAYS AFTER THE COUNTY**
14 **EXECUTIVE RETURNS THE BUDGETS, THE COUNTY COUNCIL MAY, BY AFFIRMATIVE**
15 **VOTE OF EIGHT OF ITS MEMBERS, REAPPROVE OR RESTORE ANY ITEM OVER THE**
16 **DISAPPROVAL OF THE COUNTY EXECUTIVE.**

17 18–116.

18 In Montgomery County, the County Council may amend an approved 6–year capital
19 improvements program at any time by an affirmative vote of [six] **EIGHT** of its members.

20 22–209.

21 (c) (1) Except as provided in paragraph (2) of this subsection, an application
22 that seeks a zoning classification not shown as appropriate or suitable in the text or on the
23 land use map of a master plan that the district council has approved under § 21–107 of this
24 article may be granted only by the affirmative vote of [six] **EIGHT** members of the district
25 council.

26 (2) If the Commission recommends approval of the application for
27 reclassification or if the application is for a zoning classification created after the district
28 council approves the master plan, the affirmative vote of [five] **SIX** members of the district
29 council is required to grant the application.

1 23-104.

2 (b) (1) In Montgomery County:

3 (i) within 3 days after adopting a subdivision regulation or
4 amendment, the district council shall submit the regulation or amendment to the County
5 Executive; and

6 (ii) within 10 days after the subdivision regulation or amendment is
7 submitted, the County Executive shall approve or disapprove the regulation or amendment.

8 (2) If the County Executive disapproves the subdivision regulation or
9 amendment, the County Executive shall return the regulation or amendment to the district
10 council with the reasons for the disapproval stated in writing.

11 (3) By the affirmative vote of [six] EIGHT of its members, the district
12 council may enact the subdivision regulation or amendment over the disapproval of the
13 County Executive.

14 (4) A subdivision regulation or amendment that has not been disapproved
15 by the County Executive in accordance with this subsection is considered to be approved.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
17 apply only prospectively and may not be applied or interpreted to have any effect on or
18 application to the voting threshold necessary to take any action by the Montgomery County
19 Council or the Montgomery County District Council before December 5, 2022.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2022.

Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Moriarty

Typed by: Julia

Stored – 10/15/21

Proofread by _____

Checked by _____

By: **Prince George’s County Delegation and Montgomery County Delegation**
Requested by: Delegate Carr

A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County Planning Board – Open Meetings – Video and Audio**
3 **Streaming and Minutes**

4 **PG/MC 101–22**

5 FOR the purpose of requiring the Montgomery County Planning Board to stream live video
6 or teleconference audio or other audio of the open meetings of the Board and to
7 prepare minutes of each open meeting; requiring the Board to maintain on its
8 website complete and unedited archived recordings of livestreamed open meetings
9 and the minutes of its open meetings; providing that the inability of the Board to
10 comply with the livestreaming requirements due to technical issues does not affect
11 the validity of actions taken by the Board at an open meeting; and generally relating
12 to meetings of the Montgomery County Planning Board.

13 BY repealing and reenacting, with amendments,
14 Article – Land Use
15 Section 20–202
16 Annotated Code of Maryland
17 (2012 Volume and 2021 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
19 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 **Article – Land Use**

2 20–202.

3 (a) (1) Subject to paragraph (2) of this subsection, a county planning board:

4 (i) is responsible for planning, subdivision, and zoning functions
5 that are primarily local in scope; and

6 (ii) shall exercise, within the county planning board’s jurisdiction,
7 the following powers:

- 8 1. planning;
- 9 2. zoning;
- 10 3. subdivision;
- 11 4. assignment of street names and house numbers; and
- 12 5. any related matter.

13 (2) The functions under paragraph (1) of this subsection do not include the
14 regional planning functions of the Commission relating to or affecting the regional district
15 as a planning unit.

16 (b) (1) A county planning board has exclusive jurisdiction over:

17 (i) local functions, including:

- 18 1. the administration of subdivision regulations;
- 19 2. the preparation and adoption of recommendations to the
20 district council with respect to zoning map amendments; and
- 21 3. the assignment of street names and house numbers in the
22 regional district; and

1 (ii) mandatory referrals made in accordance with Subtitle 3, Part I
2 of this title by the county planning board's respective county government or any unit of the
3 county government.

4 (2) The Montgomery County Planning Board has exclusive jurisdiction
5 over a mandatory referral made in accordance with Subtitle 3, Part I of this title by the
6 County Board of Education, a municipal corporation or special taxing district, or a publicly
7 owned or privately owned public utility.

8 (c) (1) Subject to paragraph (2) of this subsection, the Montgomery County
9 Planning Board shall:

10 (i) review the annual capital budgets of the county and future
11 capital budget projections; and

12 (ii) submit recommendations to the county council.

13 (2) The county government shall have sole responsibility for the
14 preparation of the capital budgets and programs of public works.

15 (d) Each county planning board shall:

16 (1) meet from time to time with its respective county council; and

17 (2) perform surveys, studies, and other planning duties the county council
18 assigns to the county planning board.

19 **(E) (1) THIS SUBSECTION APPLIES ONLY TO THE MONTGOMERY COUNTY**
20 **PLANNING BOARD.**

21 **(2) THE BOARD SHALL:**

22 **(I) STREAM LIVE VIDEO OR LIVE TELECONFERENCE AUDIO OR**
23 **OTHER AUDIO OF THE OPEN MEETINGS OF THE BOARD;**

24 **(II) MAINTAIN ON ITS WEBSITE A COMPLETE AND UNEDITED**
25 **ARCHIVED RECORDING OF EACH OPEN MEETING THAT IS LIVESTREAMED IN**

1 ACCORDANCE WITH THIS SUBSECTION; AND

2 (III) NOTWITHSTANDING § 3-306(B)(2)(I) OF THE GENERAL
3 PROVISIONS ARTICLE:

4 1. PREPARE MINUTES OF EACH MEETING AS SOON AS
5 PRACTICABLE AFTER THE MEETING; AND

6 2. PUBLISH AND MAINTAIN ON ITS WEBSITE THE
7 MINUTES OF EACH OPEN MEETING PREPARED IN ACCORDANCE WITH THIS
8 SUBSECTION.

9 (3) THE INABILITY OF THE BOARD TO COMPLY WITH PARAGRAPH
10 (2)(I) AND (II) OF THIS SUBSECTION DUE TO TECHNICAL FAILURE THAT ENTIRELY
11 PREVENTS OR OTHERWISE AFFECTS THE QUALITY OF THE LIVE VIDEO OR AUDIO
12 STREAMING OF A MEETING OF THE BOARD DOES NOT AFFECT THE VALIDITY OF ANY
13 ACTION TAKEN BY THE BOARD DURING THE MEETING IF:

14 (I) THE BOARD OTHERWISE COMPLIES WITH THIS SUBSECTION
15 AND THE OPEN MEETINGS ACT; AND

16 (II) THE INABILITY TO COMPLY IS NOT DUE TO WILLFUL ACTION
17 BY THE BOARD.

18 (4) IN ADDITION TO COMPLYING WITH THE MINUTES REQUIREMENTS
19 OF THE OPEN MEETINGS ACT UNDER § 3-306 OF THE GENERAL PROVISIONS
20 ARTICLE, IF THE BOARD IS UNABLE TO COMPLY WITH PARAGRAPH (2)(I) OF THIS
21 SUBSECTION, THE BOARD SHALL MAKE GOOD-FAITH EFFORTS TO RECORD AN OPEN
22 MEETING BY VIDEO OR AUDIO AND MAINTAIN ON ITS WEBSITE A COMPLETE AND
23 UNEDITED ARCHIVED RECORDING OF THE MEETING.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2022.

Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Kufera

Typed by: Julia

Stored – 10/20/21

Proofread by _____

Checked by _____

By: Prince George’s County Delegation and Montgomery County Delegation

Requested by: Delegate Carr

A BILL ENTITLED

1 AN ACT concerning

2 **Bicounty Commissions – Ethics – Certification of Compliance**

3 **PG/MC 103–22**

4 FOR the purpose of requiring each bicounty commission to certify to the Ethics Commission
5 that the bicounty commission is in compliance with requirements relating to conflicts
6 of interest, financial disclosure, and lobbying; and generally relating to bicounty
7 commissions and ethics.

8 BY repealing and reenacting, with amendments,

9 Article – General Provisions

10 Section 5–823, 5–829, and 5–830

11 Annotated Code of Maryland

12 (2019 Replacement Volume and 2021 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

14 That the Laws of Maryland read as follows:

15 **Article – General Provisions**

16 5–823.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) Each bicounty commission shall adopt regulations relating to conflicts of
2 interest of its employees.

3 (b) At a minimum, the conflict of interest standards applicable to public officials
4 under Subtitle 5 of this title shall apply to the employees of each bicounty commission.

5 (c) Each bicounty commission shall file with the Ethics Commission a copy of its
6 regulations relating to conflicts of interest.

7 (d) On or before April 30 each year, each bicounty commission shall:

8 (1) (I) prepare an annual report on its conflict of interest issues and
9 regulations during the previous calendar year;

10 [(2)] (II) submit the report to the governing body of each county in which
11 the bicounty commission operates; and

12 [(3)] (III) publish the report on the website of the bicounty commission;
13 AND

14 (2) CERTIFY TO THE ETHICS COMMISSION THAT THE BICOUNTY
15 COMMISSION IS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

16 5-829.

17 (a) Each bicounty commission shall adopt regulations relating to financial
18 disclosure by its employees.

19 (b) The regulations required by this section:

20 (1) shall be substantially similar to the State financial disclosure
21 provisions of Subtitle 6 of this title; and

22 (2) may not conflict with the financial disclosure provisions for
23 commissioners and applicants specified in §§ 5-824 through 5-828 of this subtitle.

24 (c) Each bicounty commission shall submit the regulations adopted under this
25 section, and any amendments to the regulations, to:

1 (1) the Ethics Commission; and

2 (2) the governing body of each county in which the bicounty commission
3 operates.

4 **(D) ON OR BEFORE APRIL 30 EACH YEAR, EACH BICOUNTY COMMISSION**
5 **SHALL CERTIFY TO THE ETHICS COMMISSION THAT THE BICOUNTY COMMISSION IS**
6 **IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.**

7 5-830.

8 (a) Each bicounty commission shall adopt regulations relating to lobbying of that
9 bicounty commission.

10 (b) At a minimum, the regulations adopted by a bicounty commission shall be
11 similar to the provisions of Subtitle 7 of this title.

12 (c) Each bicounty commission shall submit to the Ethics Commission a copy of its
13 regulations relating to lobbying.

14 (d) On or before April 30 each year, each bicounty commission shall:

15 (1) **(I)** prepare an annual report on the lobbying before the bicounty
16 commission and regulation of that lobbying by the bicounty commission for the previous
17 calendar year;

18 **[(2)] (II)** submit the report to the governing body of each county in which
19 the bicounty commission operates; and

20 **[(3)] (III)** publish the report on the website of the bicounty commission;

21 **AND**

22 **(2) CERTIFY TO THE ETHICS COMMISSION THAT THE BICOUNTY**
23 **COMMISSION IS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.**

24 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect
25 **October 1, 2022.**

Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Morgan

Typed by: Fran

Stored – 10/20/21

Proofread by _____

Checked by _____

By: Prince George’s County Delegation and Montgomery County Delegation

Requested by: Senator Kramer

A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County – Land Use Documents – Certification**

3 **PG/MC 107–22**

4 FOR the purpose of requiring certain land use regulations applicable in Montgomery
5 County to require that an applicant sign a certification for certain documents
6 submitted to the county planning board; and generally relating to the certification of
7 certain land use documents in Montgomery County.

8 BY repealing and reenacting, without amendments,
9 Article – Land Use
10 Section 23–102(a) and (c), 23–103(a), and 23–104(a)(1)
11 Annotated Code of Maryland
12 (2012 Volume and 2021 Supplement)

13 BY adding to
14 Article – Land Use
15 Section 23–109
16 Annotated Code of Maryland
17 (2012 Volume and 2021 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 That the Laws of Maryland read as follows:

2 **Article – Land Use**

3 23–102.

4 (a) (1) Except as provided in subsection (c) of this section, a subdivision plat of
5 land in the regional district may not be admitted to the land records of Montgomery County
6 or Prince George’s County, or received or recorded by the clerks of the courts of the
7 respective county, unless:

8 (i) the plat has been submitted to and approved by the applicable
9 county planning board; and

10 (ii) the chair of the county planning board and the
11 secretary–treasurer of the Commission endorse an approval in writing on the plat.

12 (2) The recordation of a subdivision plat without the approval of the county
13 planning board is void.

14 (c) A subdivision in a municipal corporation with subdivision authority under
15 Division II of the Local Government Article that is in the regional district may be recorded
16 in the land records of Montgomery County or Prince George’s County if:

17 (1) the subdivision plat has been submitted to and approved by the
18 municipal corporation; and

19 (2) the appropriate official of the municipal corporation endorses an
20 approval in writing on the plat.

21 23–103.

22 (a) Except as provided in subsection (b) of this section, in connection with the
23 approval of a subdivision plat, the appropriate county planning board may require a
24 dedication of land for:

25 (1) an interior subdivision road;

1 (2) a road that abuts the subdivision for the purpose of creating a new road
2 as part of the plan of subdivision to provide for traffic access to another subdivision road;
3 and

4 (3) the widening of an existing or public road that abuts the subdivision for
5 the purpose of providing additional right-of-way adequate to serve additional traffic that
6 will be generated by the subdivision.

7 23-104.

8 (a) (1) In exercising the subdivision powers under §§ 23-102 and 23-103 of
9 this subtitle, the Commission or the governing body of Montgomery County or Prince
10 George's County may adopt subdivision regulations and amendments governing a
11 subdivision in:

12 (i) the regional district; or

13 (ii) the respective portion of the regional district in the county.

14 **23-109.**

15 **(A) THIS SECTION APPLIES ONLY IN MONTGOMERY COUNTY.**

16 **(B) THE SUBDIVISION REGULATIONS SHALL REQUIRE AN APPLICANT TO**
17 **SIGN A CERTIFICATION UNDER THE PENALTY OF PERJURY FOR:**

18 **(1) A FOREST CONSERVATION PLAN EXEMPTION APPLICATION;**

19 **(2) A NATURAL RESOURCES INVENTORY/FOREST STAND**
20 **DELINEATION, INCLUDING ANY REQUIRED MAPS OR DRAWINGS;**

21 **(3) A FOREST MITIGATION BANK APPLICATION; AND**

22 **(4) A CONCEPT PLAN OR ANY OTHER LOCAL DEVELOPMENT PLAN**
23 **THAT DOES NOT REQUIRE EITHER A NATURAL RESOURCES INVENTORY/FOREST**
24 **STAND DELINEATION OR A FOREST CONSERVATION PLAN EXEMPTION.**

25 **(C) A CERTIFICATION REQUIRED UNDER THIS SECTION SHALL BE IN THE**

1 FOLLOWING FORM:

2 **“I (WE) CERTIFY, UNDER THE PENALTY OF PERJURY, THAT THIS DOCUMENT,**
3 **INCLUDING ANY ACCOMPANYING FORMS, STATEMENTS, MAPS, OR DRAWINGS, HAS**
4 **BEEN EXAMINED BY ME (US) AND THE INFORMATION CONTAINED HEREIN, TO THE**
5 **BEST OF MY (OUR) KNOWLEDGE, INFORMATION, AND BELIEF, IS TRUE, CORRECT,**
6 **AND COMPLETE.”.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2022.



POSITION STATEMENT

Bill: PG/MC 104-20 Montgomery County - Land Use Documents – Certification

Position: Opposed

Date: February 10, 2020

Contact: Adrian R. Gardner, General Counsel

(REVISED2)

What The Bill Does: This bill would require an applicant seeking approval of a land use plan to certify, subject to the penalties of perjury, that: (1) they have personally examined the application and accompanying material and (2) those documents are “true, correct and complete” – to the best of their knowledge, information and belief.

Discussion: After reviewing this legislation during its February 6, 2020 meeting, the Commission’s Montgomery County Planning Board and its staff decided to oppose the enactment for a number of reasons. (See **Attachment A.**) Several highlights of their concerns are summarized as follows:

- The potential unfairness of requiring a layperson (e.g., homeowner) to assume the risk of a perjury charge for the factual assertions embedded in a professional survey.
- In contrast to subject matter that requires professional or lay opinions, laypeople should only be exposed to criminal penalties for misrepresenting information about which they are legally competent to testify – for example, whether they own a property or the number of general location of trees on a lot. For that reason, a penalty of perjury statement is not appropriate for more complex development plan approvals.
- The potential to create more serious legal exposure for then unwitting layperson than for a licensed professional (surveyor, engineer, etc.) who is actually at fault in a case.
- The potential to transform an administrative compliance process -- that sometimes includes collaborative and creative dialogue with staff -- into a serious criminal matter.
- The staff is not aware of a pressing need for the proposed law.

The Commission accordingly opposes the bill.

#

Office of the General Counsel

221 Prince George Street, First Floor, Annapolis, Maryland 21401
410.263.1930 tel. • 410.263.3745 fax

6611 Kenilworth Avenue, Suite 200, Riverdale, Maryland 20737
301.454.1670 tel. • 301.454.1674 fax




**Office of the General Counsel
Maryland-National Capital Park and Planning Commission**

Reply To
Matthew T. Mills
Acting Principal Counsel
8787 Georgia Avenue - Suite 205
Silver Spring, Maryland 20910
(301)495-4646 (301)495-2173 (fax)

MEMORANDUM

TO: Adrian Gardner
General Counsel

FROM: Matthew Mills
Acting Principal Counsel 

DATE: February 6, 2020

RE: PG/MC 104-20 – Montgomery County – Land Use Documents - Certification

This bill would require most land use applications in Montgomery County to be submitted under the penalty of perjury.

The Planning Board opposes this bill for multiple reasons.

Md. Code, Criminal Law §9-101(a)(2), (b) provides the penalty for perjury. We believe a violation of MC/PG104-20, would engage the provision speaking to “an affidavit required by any state, federal, or local law.” Md. Code, Criminal Law §9-101(a)(2). To that end, 9-101(b) applies; making any such statement a misdemeanor under Maryland law, and subject to a criminal penalty not to exceed ten years imprisonment. The statute does not provide an alternate or additional penalty of a monetary fine. As such, any sentence for perjury would include an assessment of jail time (whether or not such sentence was suspended in whole or in part). This would seem excessive.

Md. Code, Criminal Law §8-606(b)(1) provides a potential alternative or companion charge. We believe the language of 104-20 would apply equally to the definition of Public Record under §8-606(a)(3). Public record is defined as “an official book, paper, or record, kept on a manual or automated basis, that is created, received, or used by a unit of ... (ii) a political subdivision of the State; or (iii) a multicounty agency.” By statute, the Commission is a bi-county agency of the State of Maryland, and is defined in statute as “a body politic and corporate and is an agency of the State.” Md. Code, Land Use §15-101.

Criminal Law §8-606(b)(1) provides that “A person may not or may not attempt to (1) willfully make a false entry in a public record.” The penalty for which is a misdemeanor, subject to a term of imprisonment not exceeding three years, and/or a fine not to exceed

Re: MC/PG 104-20

\$1,000.00. Md. Code, Criminal Law §8-606(c). The activity in question would therefore also be covered by this provision.

As indicated by Staff, the Montgomery County Planning Department has taken measures to ensure information submitted on regulatory applications is complete. Applications are typically submitted by licensed professionals whose licenses are at stake should an intentional falsehood be submitted by said professional. Should such a falsehood be submitted, Staff would report the individual to their respective licensing authority.

All applications submitted to the Planning Department go through an intake process with Staff to ensure completeness. One of the necessary completeness items for regulatory applications is a Certificate of Compliance with which the Applicant certifies to the best of their knowledge that the information provided is accurate. In addition, the applicant recognizes that submitted plans may be rejected or returned by Staff if they are found to be inaccurate, false or misleading. A rejection and required resubmittal is an expensive and onerous process.

The last time that Staff is aware that a subdivision plan was submitted that contained purposefully incorrect information was 2006. Since then, with changes to the intake process, Staff is not aware of a single instance where an applicant submitted an application where the information contained within a regulatory application was intentionally wrong. During the review of regulatory applications, Staff does find instances where information is incorrect but unintentionally so. Once that information is discovered, the document is revised. For example, if an applicant submits a Natural Resource Inventory/Forest Stand Delineation and labels a tree as a 24-inch willow tree, but it is a 24-inch willow oak tree, Staff requests the change in species. There is no reason to believe the current system is not working.

Furthermore, the Planning Board is unaware of any situations where any claim of intentional falsification of representations made in a development application has occurred for at least the last decade.

It should be noted the County Council also opposes the bill as “overkill” and in order to prevent the potential criminalization of mistakes.