

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

August 3, 2009

**CALL TO PODIUM:**

**Fred Felton**  
**Assistant City Manager**

**RESPONSIBLE STAFF:**

**Fred Felton**  
**Assistant City Manager**

**Erica Shingara**  
**Environmental Services Director**

**AGENDA ITEM:**

(please check one)

|                                     |                              |
|-------------------------------------|------------------------------|
| <input type="checkbox"/>            | Presentation                 |
| <input type="checkbox"/>            | Proclamation/Certificate     |
| <input type="checkbox"/>            | Appointment                  |
| <input type="checkbox"/>            | Public Hearing               |
| <input type="checkbox"/>            | Historic District            |
| <input type="checkbox"/>            | Consent Item                 |
| <input checked="" type="checkbox"/> | Ordinance                    |
| <input type="checkbox"/>            | Resolution                   |
| <input type="checkbox"/>            | Policy Discussion            |
| <input type="checkbox"/>            | Work Session Discussion Item |
| <input type="checkbox"/>            | Other:                       |

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

|                   |  |
|-------------------|--|
| Introduced        |  |
| Advertised        |  |
|                   |  |
|                   |  |
|                   |  |
|                   |  |
|                   |  |
| Hearing Date      |  |
| Record Held Open  |  |
| Policy Discussion |  |

**TITLE:**

Introduction of an Ordinance to Amend Chapter 2 of the City Code, Entitled "Administration", Article II, Entitled "Municipal-County Relations", Section 2-6 Thereof, Entitled "Exemption From Montgomery County Legislation and Regulations Within the City" so as to Include the Provisions of Article 4 Entitled "Home Energy Loan Program" of Chapter 18A of the Montgomery County Code Entitled "Environmental Sustainability", as Being Applicable and Enforceable Within the City

**SUPPORTING BACKGROUND:**

On April 14, 2009, the Montgomery County Council enacted Expedited Bill No. 6-09. This bill establishes a Home Energy Loan Program to assist homeowners with the costs of making energy efficiency improvements or of installing renewable energy devices. Pursuant to this bill, the loan is repaid through the property tax bill, and will automatically transfer the obligation to repay to the purchaser in the event the property is sold.

The bill also requires that the Executive Branch develop regulations to implement the loan program. It is anticipated these regulations will be completed by October 2009.

For your review, we have attached a copy of Expedited Bill No. 6-09. Please note that this bill does not currently apply in the City of Gaithersburg so loans will not be available to City residents unless the City Council's takes action to remove the general exemption from County law pursuant to Section 2-6 of the City Code.

This program is consistent with the City's sustainability goals that include promoting energy conservation and reducing green house gas emissions from existing residential structures. Additionally, it could provide relief to our residents who are experiencing increasing utility costs.

The attached draft ordinance would make Article 4 of Chapter 18A of the Montgomery County Code applicable within the City of Gaithersburg.

**Attachments**

1. Montgomery County Expedited Bill No. 6-09
2. Draft amendment to Section 2-6 of City Code

**DESIRED OUTCOME:**

**Staff recommends that the City Council vote to introduce the ordinance, and notify the public that a hearing will be held on August 17, 2009.**

Expedited Bill No. 6-09  
Concerning: Home Energy Loan  
Program - Establishment  
Revised: 4/14/2009 Draft No. 8  
Introduced: February 24, 2009  
Expires: August 24, 2010  
Enacted: April 14, 2009  
Executive: April 22, 2009  
Effective: April 22, 2009  
Sunset Date: None  
Ch. 8, Laws of Mont. Co. 2009

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmembers Berliner, Elrich, Ervin, Trachtenberg, Floreen, and Leventhal

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**AN EXPEDITED ACT to:**

- (1) establish a Home Energy Loan Program to assist single-family homeowners to make an energy efficiency improvement or install a renewable energy device;
- (2) establish a revolving loan fund to provide homeowners loans under the Program;  
and
- (3) generally amend the environmental sustainability law.

By adding

Montgomery County Code  
Chapter 18A, Environmental Sustainability  
Article 4, Home Energy Loan Program

|                              |  |
|------------------------------|--|
| <b>Boldface</b>              | <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:*

1           **Sec. 1. Chapter 18A, Article 4 is added as follows:**

2                           **Chapter 18A. Environmental Sustainability**

3   \*       \*       \*

4   **Article 4. Home Energy Loan Program**

5           **18A-24. Definitions.**

6           In this Article, except as provided in Section 18A-30, the following words  
7 have the meanings indicated:

8           *Certified energy auditor* means any individual who:

9           (a) is a participating contractor/auditor with the Maryland Home  
10 Performance with ENERGY STAR Program; or

11 (b) meets other equivalent requirements approved by the Director.

12 *Cost effective* means the maximum estimated amount of time it takes for an  
13 energy efficiency improvement to pay for itself through reduced energy costs  
14 (the “payback” period), as determined by the Department.

15 *Department* means the Department of Environmental Protection.

16 *Director* means the Director of the Department or the Director’s designee.

17 *Eligible cost* means the net cost of buying or installing an energy efficiency  
18 improvement or renewable energy device, including any part, component, or  
19 accessory necessary to operate the improvement or device, less any amount  
20 received from a public or private program because the improvement or device  
21 is or will be made or installed.

22 *Energy efficiency improvement* means a permanent improvement made to an  
23 existing single-family home that:

24 (a) reduces the consumption of energy in the home, including:

25           (1) caulking and weatherstripping doors and windows;

26           (2) heating and cooling system efficiency modifications, including:

- 27 (A) replacing a burner, furnace, heat pump, or boiler, or air  
 28 conditioner with a high efficiency model;
- 29 (B) a device to modify flue openings that increases the energy  
 30 efficiency of the heating system;
- 31 (C) any electrical or mechanical furnace ignition system which  
 32 replaces a standing gas pilot light; and
- 33 (D) any tune-up that increases the operating efficiency;
- 34 (3) a programmable thermostat;
- 35 (4) ceiling, attic, wall, or floor insulation;
- 36 (5) whole house air sealing;
- 37 (6) water heater tune-up, water heater insulation, pipe insulation, or  
 38 [[charge-out]] change out to ENERGY STAR qualified water  
 39 heater;
- 40 (7) storm windows or doors or ENERGY STAR qualified window or  
 41 door replacement;
- 42 (8) air distribution system improvements, including duct insulation  
 43 and air sealing;
- 44 (9) any device which controls demand of appliances and aids load  
 45 management; and
- 46 (10) any other conservation device, renewable energy technology, and  
 47 specific home improvement that the Director finds reduces the  
 48 consumption of energy in the home; and
- 49 (b) meets safety and performance standards set by a nationally recognized  
 50 testing laboratory for that kind of device, if these standards are  
 51 available.
- 52 Energy efficiency improvement does not include a standard household  
 53 appliance, such as a washing machine or clothes dryer.

54 ENERGY STAR rating means the ENERGY STAR rating developed by the  
 55 federal Environmental Protection Agency which rates a product's energy  
 56 efficiency.

57 Home energy audit means an evaluation of the energy efficiency of a home  
 58 which includes any test or diagnostic measurement that the Department finds  
 59 necessary to:

- 60 (a) assure that a home's energy efficiency is accurately measured; and  
 61 (b) identify cost effective steps that can be taken to improve a home's  
 62 energy efficiency.

63 Home Energy Loan Fund or Fund means the revolving loan fund established  
 64 under Section 18A-30 to provide funding for the Home Energy Loan Program.

65 Home Energy Loan Program or Program means the program that provides  
 66 zero or low interest loans to install an energy efficiency improvement or  
 67 renewable energy device.

68 Home Energy Rating System or HERS means the energy efficiency rating  
 69 system for residential buildings developed by the Residential Energy Services  
 70 Network.

71 Low interest loan means a loan with an interest rate below prevailing rates for  
 72 residential home improvement loans, and which reflects:

- 73 (a) the County's current cost of borrowing funds or the cost, if any, of  
 74 federal funds made available to the County for this purpose; and  
 75 (b) the cost of administering the Program.

76 Renewable energy means the following energy sources or technology:

- 77 (a) solar;  
 78 (b) wind;  
 79 (c) geothermal; and

- 80 (d) any other energy source or technology which the Director finds is  
 81 derived from natural processes that do not involve the consumption of  
 82 exhaustible resources.

83 Renewable energy device means a device that:

- 84 (a) creates, converts, or actively uses renewable energy;  
 85 (b) is permanently installed on the home or property; and  
 86 (c) meets safety and performance standards set by a nationally recognized  
 87 testing laboratory for that kind of device, if these standards are  
 88 available.

89 Single-family home means a single-family detached or attached residential  
 90 building. A single-family home includes a condominium.

91 **18A-25. Established; purpose.**

92 The Director must create and administer a Home Energy Loan Program to:

- 93 (a) improve energy efficiency;  
 94 (b) promote energy conservation;  
 95 (c) reduce greenhouse gas emissions; and  
 96 (d) reduce consumption of fossil fuels by County residents[.]; and  
 97 (e) create jobs.

98 **18A-26. Eligibility; use of funds.**

- 99 (a) The Director may loan funds to an owner of a single-family home to  
 100 fund eligible costs to make an energy efficiency improvement that is  
 101 projected to be cost effective or install a renewable energy device in the  
 102 single-family home, up to the maximum loan amount set by regulation.  
 103 (b) To be eligible for a loan under this Program, a property owner must:  
 104 (1) have a home energy audit performed on the owner's single-  
 105 family home by a certified energy auditor, as required under  
 106 Section 18A-27; and

- 107           (2) have the energy efficiency improvement completed or renewable  
 108           energy device installed [[within 6 months after receiving the  
 109           loan]] in the timeframe set by regulation; and
- 110           (3) agree to repay the loan amount borrowed through the County tax  
 111           bill for that home, as required by Section 18A-28.
- 112       (c) The Department of Permitting Services must certify that the  
 113           improvement or device for which the funds were loaned has been  
 114           properly installed. The Department must accept a certification by  
 115           another government agency, including a municipality, that the  
 116           improvement or device has been [[property]] properly installed. The  
 117           County Executive may assign the responsibility under this subsection to  
 118           another entity, including a third party. However, the entity responsible  
 119           for certifying that the improvement or device has been properly installed  
 120           must not be the entity that installed the improvement or device.
- 121       (d) The term of the loan must be 15 years [[.]] [[unless]]. However, the  
 122           Director [[sets a different]] may set a longer loan term by regulation.
- 123       (e) *Use of funds for an energy efficiency improvement.*
- 124           (1) A person may borrow funds for eligible costs to make an energy  
 125           efficiency improvement, less any amount received from a public  
 126           or private program because the improvement is or will be made.
- 127           (2) Except as provided by subsection [[f(2)]] (e)(3), funds must be  
 128           loaned only for an energy efficiency improvement that is  
 129           projected to be cost effective.
- 130           (3) Funds may be loaned for an energy efficiency improvement that  
 131           is not cost effective if that improvement is part of a package of  
 132           improvements financed under the Program that cumulatively is  
 133           cost effective.

- 134 (f) Use of funds for a renewable energy device.
- 135 (1) [[A]] Except as provided in (f)(2), a person may borrow funds for
- 136 eligible costs to install a renewable energy device only if[[:
- 137 (A) the single-family home has a HERS score of 100 or below;
- 138 or
- 139 (B) the owner has a home energy audit performed on the
- 140 owner's home and, based on the audit recommendations,
- 141 makes energy efficiency improvements that result in a 30
- 142 percent increase in efficiency]] the single-family home
- 143 meets energy efficiency criteria established by the
- 144 Department.
- 145 (2) A person may borrow funds to install a renewable energy device
- 146 on a single-family home that does not meet the energy efficiency
- 147 criteria in (f)(1) if the device is cost effective.
- 148 (3) A person may borrow funds for eligible costs to install a
- 149 renewable energy device, less any amount received from a public
- 150 or private program because the device is or will be installed.
- 151 [[3) A person must not borrow funds to install a renewable energy
- 152 device if that person receives a property tax credit for renewable
- 153 energy devices under Section 52-18R.]]

154 **18A-27. Home energy audit.**

- 155 (a) An applicant for a loan under this Program must have and submit to the
- 156 County a home energy audit performed on the owner's home by a
- 157 certified energy auditor.
- 158 (b) The auditor must prepare a written report that:
- 159 (1) contains findings and recommendations to improve the home's
- 160 energy efficiency;

- 161           (2) identifies those cost effective energy efficiency improvements  
 162           which would generate projected annual energy cost savings,  
 163           based on projected energy costs set by Method (3) regulation, that  
 164           are equal to or more than the estimated cost of the improvements  
 165           to be financed under the County Program when the cost of the  
 166           improvements are amortized over 15 years; and
- 167           (3) identifies any public or private financing mechanisms known to  
 168           the auditor that could be used to implement energy efficiency  
 169           improvements.

170           (c) The cost of the audit may be included in the amount of the loan.

171 **18A-28. Repayment of funds; lien.**

- 172           (a) The owner of single-family home must agree to repay the loan amount  
 173           borrowed, amortized over 15 years, through the County property tax bill  
 174           for that home.
- 175           (b) If the owner of the single-family home sells the home, the seller must  
 176           disclose that the buyer must continue to repay the loan through the  
 177           property tax bill.
- 178           (c) The loan amount and any accrued interest constitute a first lien on the  
 179           real property to which the loan applies until paid. The loan amount and  
 180           accrued interest are collectable by suit or tax sale like all other real  
 181           property taxes, to the extent allowed by State law. [[In the event of a  
 182           failure to]] If the property owner does not pay the loan and accrued  
 183           interest as required, the property may be certified to the Department of  
 184           Finance and the lien may be sold at the tax sale conducted by the  
 185           County. [[The deferred fees constitute a personal liability of the owner  
 186           of the property.]]

187 **18A-29. Regulations.**

188 The Executive must adopt regulations under Method (2) to administer the  
 189 Program, including:

- 190 (a) lending standards and priorities;  
 191 (b) minimum and maximum loan amounts;  
 192 (c) interest rates, terms, and conditions;  
 193 (d) application procedures, including necessary supporting documentation;  
 194 (e) criteria for adequate security;  
 195 (f) procedures to refer applicants to other sources of funds, and to  
 196 cooperate with other public and private sources of funds;  
 197 (g) procedures to ask the Director to reconsider any denial of a loan or any  
 198 decision on interest rates, terms, and conditions;  
 199 (h) procedures for nonpayment or default;  
 200' (i) procedures and requirements for post-installation inspection; [[and]]  
 201 (j) disclosure requirements for real estate transactions[.]; and  
 202 (k) criteria for loan disbursement.

203 **18A-30. Revolving loan fund.**

204 (1) Definitions. In this Section, the following words have the meanings  
 205 indicated:

206 Department means the Department of Finance.

207 Revolving loan fund or Fund means the special, nonlapsing fund to  
 208 finance the Home Energy Loan Program established under this Article.

209 (b) The Fund consists of:

- 210 (1) money appropriated in the County budget for the Program;  
 211 (2) money received from any public or private source;  
 212 (3) interest and investment earnings on the Fund;

- 213                   (4) repayments and prepayments of principal and interest on loans  
 214                   made from the Fund; and  
 215                   (5) any other available funds to support the Program.
- 216           (c) The Department must:
- 217                   (1) disburse funds and collect payments for a loan made under the  
 218                   Program; and
- 219                   (2) maintain loan records and provide an annual report to the  
 220                   Department of Environmental Protection.

221 **18A-31. Annual report.**

222           Each August 15, the Director must submit a report to the County Executive  
 223 and County Council that identifies;

- 224           (a) the number of recipients of loans;  
 225           (b) the amount of funds loaned; and  
 226           (c) any activities during the previous fiscal year to market the Program.

227 **18A-32. Third party contract.**

- 228           (a) The County may contract with a non-profit or for-profit organization to  
 229 take any action necessary to fulfill the purposes of this Article,  
 230 including:
- 231                   (1) prepare and review, evaluate, and approve applications;  
 232                   (2) execute loan agreements;  
 233                   (3) secure and service loans;  
 234                   (4) collect loan payments; and  
 235                   (5) conduct collections for defaulted loans.
- 236           (b) The County, or a contractor for the County, may charge an applicant or  
 237 borrower usual and customary fees that the Department finds is  
 238 consistent with the overall goals of the Program and will not inhibit  
 239 utilization of the Program, including:

- 240 (1) application fees;  
 241 (2) loan origination fees;  
 242 (3) delinquency fees;  
 243 (4) costs of collection; and  
 244 (5) other program fees to support verification of program  
 245 requirements.

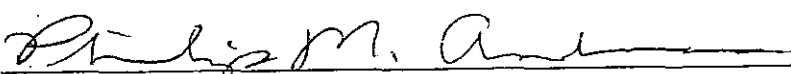
246 **Sec. 2. Initial regulations; repayment options; audit cost.**

- 247 (a) [[The]] Unless the Council grants an extension, the County Executive  
 248 must adopt and submit to the County Council, not later than (date [[3]] 6  
 249 months after enactment of bill), regulations to implement Article 4 of  
 250 Chapter 18A, as added by Section 1 of this Act.
- 251 (b) Within 6 months, the Executive must:
- 252 (1) report to the Council if the Executive believes that the repayment  
 253 provisions of §18A-28 are likely to unduly burden the lending  
 254 industry or hinder homeowners from obtaining financing to  
 255 refinance or purchase a home; and
- 256 (2) provide alternative recommendations, if appropriate, that would  
 257 achieve the policy objective of assuring that the remaining loan  
 258 payments will be assumed by the buyer of a property.
- 259 (c) Within 6 months, the Executive must:
- 260 (1) report to the Council on whether the cost of the home energy  
 261 audit required under §18A-27 is likely to be a significant barrier  
 262 to participation in the Program; and
- 263 (2) provide recommendations to address any barrier that the  
 264 Executive identifies.

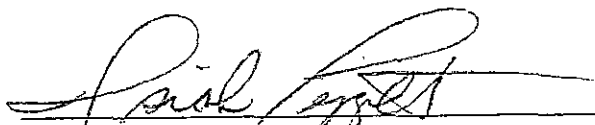
265 **Sec. 3. Expedited Effective Date.**

266 The Council declares that this legislation is necessary for the immediate  
267 protection of the public interest. This Act takes effect on the date on which it  
268 becomes law.

269 *Approved:*

270  April 16, 2009  
Philip M. Andrews, President, County Council Date

271 *Approved:*

272  April 22, 2009  
Isiah Leggett, County Executive Date

273 *This is a correct copy of Council action.*

274  April 24, 2009  
Linda M. Lauer, Clerk of the Council Date

Ordinance No. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 2 OF THE CITY CODE, ENTITLED "ADMINISTRATION", ARTICLE II, ENTITLED "MUNICIPAL-COUNTY RELATIONS", SECTION 2-6 THEREOF, ENTITLED "EXEMPTION FROM MONTGOMERY COUNTY LEGISLATION AND REGULATIONS WITHIN THE CITY" SO AS TO INCLUDE THE PROVISIONS OF ARTICLE 4 ENTITLED "HOME ENERGY LOAN PROGRAM" OF CHAPTER 18A OF THE MONTGOMERY COUNTY CODE ENTITLED "ENVIRONMENTAL SUSTAINABILITY", AS BEING APPLICABLE AND ENFORCEABLE WITHIN THE CITY

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that Chapter 2 of the City Code, entitled "administration", Article II, entitled "Municipal-County Relations", Section 2-6 thereof, is hereby amended to read as follows:

CHAPTER 2  
ADMINISTRATION

\* \* \* \*

ARTICLE II. MUNICIPAL-COUNTY RELATIONS

Sec. 2-6. Exemption from Montgomery County legislation and regulations within the City.

It is hereby ordained by the Mayor and City Council of the City of Gaithersburg, Maryland, that pursuant to the authority granted by Article 23A, Section 2B(a), of the Annotated Code of Maryland, as enacted by Chapter 398 of the Laws of Maryland, 1983, and further pursuant to Chapter 33 of the Laws of Montgomery County, 1984, as codified in Chapter 2, Section 2-96 of the Montgomery County Code (1972 edition, as amended), as may hereafter from time to time be amended, the City of Gaithersburg, Maryland, is hereby declared exempt from any and all legislation and regulations pertaining hereto, heretofore or hereafter enacted by Montgomery County, Maryland, relating to any subject or matter upon which the mayor and city council of the city, or the City of Gaithersburg, as a municipal corporation, has been heretofore or is hereafter granted legislative authority, with the following exceptions which shall hereafter be applicable to and within the City of Gaithersburg, Maryland:

*Chapter Title, Montgomery County Code 1984, as Amended*

Chapter 1 - General Provisions

\* \* \* \*

Chapter 18A – Environmental Sustainability, Article 4 of said chapter

\* \* \* \*

ADOPTED this \_\_\_\_ day of \_\_\_\_, 2009, by the City Council of Gaithersburg, Maryland.

\_\_\_\_\_  
Sidney A. Katz, Mayor and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this \_\_\_\_ day of \_\_\_\_, 2009. APPROVED/VETOED by the Mayor of the City of Gaithersburg, this \_\_\_\_ day of \_\_\_\_, 2009.

\_\_\_\_\_  
Sidney A. Katz, Mayor

THIS IS TO CERTIFY that the foregoing ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_ day of \_\_\_\_, 2009, and that the same was approved by the Mayor of the City of Gaithersburg on the \_\_\_\_ day of \_\_\_\_, 2009. This Ordinance will become on the \_\_\_\_ day of \_\_\_\_, 2009.

\_\_\_\_\_  
Angel L. Jones, City Manager