

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

August 17, 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)

	Presentation
	Proclamation/Certificate
	Appointment
X	Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

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

Introduced	08/03/09
Advertised	08/05/09
Hearing Date	08/17/09
Record Held Open	
Policy Discussion	

TITLE:
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.
The Mayor and City Council voted to introduce this ordinance on August 3, 2009.
<u>Attachments</u>
1. Montgomery County Expedited Bill No. 6-09
2. Draft amendment to Section 2-6 of City Code

DESIRED OUTCOME:
Conduct public hearing. Staff recommends that the Mayor and City Council vote to keep the record open until 5:00 PM on August 27, 2009, with policy discussion anticipated on September 21, 2009.

NOTICE OF PUBLIC HEARING

The Mayor and City Council of the City of Gaithersburg will hold a public hearing on:

Monday
August 17, 2009
7:30 P.M.

Or as soon thereafter as it can be heard in the Council Chambers at City Hall, 31 South Summit Avenue, Gaithersburg, Maryland on the following:

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.

Further information may be obtained from the City Managers Office, 31 South Summit Avenue between the hours of 8 a.m. and 5 p.m., Monday through Friday.

Angel L. Jones
City Manager

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

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

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

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

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:

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.

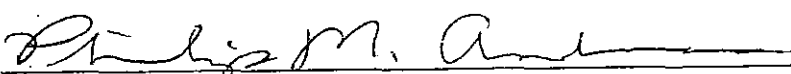
259 (c) Within 6 months, the Executive must:

- 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.

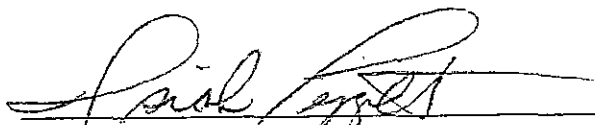
265 **Sec. 3. Expedited Effective Date.**

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