

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

September 21, 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 type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution
<input checked="" 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	08/03/09
Advertised	08/05/09
Hearing Date	08/17/09
Record Held Open	08/27/09
Policy Discussion	09/21/09

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 (Article 4 of Chapter 18A). 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 Article 4 of Chapter 18A of the County Code. 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 public hearing was held on August 17, 2009. The only speaker was Karen Rainbolt who testified in favor of the ordinance on behalf of the Environmental Affairs Committee. The record closed at 5:00 PM on August 27, 2009.
Attachments
1. Article 4 of Chapter 18A of the County Code 2. Draft amendment to Section 2-6 of City Code

DESIRED OUTCOME:
Ordinance is ready for final action.

***Editor's note**—2009 L.M.C., ch. 8, § 2, states in part: (a) Unless the Council grants an extension, the County Executive must adopt and submit to the County Council, not later than (date 6 months after enactment of bill [October 14, 2009]), regulations to implement Article 4 of Chapter 18A, as added by Section 1 of this Act.

Sec. 18A-24. Definitions.

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

Certified energy auditor means any individual who:

- (a) is a participating contractor/auditor with the Maryland Home Performance with ENERGY STAR Program; or
- (b) meets other equivalent requirements approved by the Director.

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

Department means the Department of Environmental Protection.

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

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

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

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

- (1) caulking and weatherstripping doors and windows;
- (2) heating and cooling system efficiency modifications, including:

- (A) replacing a burner, furnace, heat pump, or boiler, or air conditioner with a high efficiency model;

- (B) a device to modify flue openings that increases the energy efficiency or the heating system;

- (C) any electrical or mechanical furnace ignition system which replaces a standing gas pilot;

and

- (D) any tune-up that increases the operating efficiency;
 - (3) a programmable thermostat;
 - (4) ceiling, attic, wall, or floor insulation;
 - (5) whole house air sealing;
 - (6) water heater tune-up, water heater insulation, pipe insulation, or change out to ENERGY STAR qualified water heater;
 - (7) storm windows or doors or ENERGY STAR qualified window or door replacement;
 - (8) air distribution system improvements, including duct insulation and air sealing;
 - (9) any device which controls demand of appliances and aids load management; and
 - (10) any other conservation device, renewable energy technology, and specific home improvement that the Director finds reduces the consumption of energy in the home; and
- (b) meets safety and performance standards set by a nationally recognized testing laboratory for that kind of device, if these standards are available.

Energy efficiency improvement does not include a standard household appliance, such as a washing machine or clothes dryer.

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

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

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

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

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

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

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

- (a) the County's current cost of borrowing funds or the cost, if any, of federal funds made available to the County for this purpose; and

- (b) the cost of administering the Program.

Renewable energy means the following energy sources or technology:

- (a) solar;
- (b) wind;
- (c) geothermal; and

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

Renewable energy device means a device that:

- (a) creates, converts, or actively uses renewable energy;
- (b) is permanently installed on the home or property; and

(c) meets safety and performance standards set by a nationally recognized testing laboratory for that kind of device, if these standards are available.

Single-family home means a single-family detached or attached residential building. A single-family home includes a condominium. (2009 L.M.C., ch. 8, § 1.)

Sec. 18A-25. Established; purpose.

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

- (a) improve energy efficiency;
- (b) promote energy conservation;
- (c) reduce greenhouse gas emissions; and
- (d) reduce consumption of fossil fuels by County residents; and
- (e) create jobs. (2009 L.M.C., ch. 8, § 1.)

Sec. 18A-26. Eligibility; use of funds.

(a) The Director may loan funds to an owner of a single-family home to fund eligible costs to make an energy efficiency improvement that is projected to be cost effective or install a renewable energy device in the single-family home, up to the maximum loan amount set by regulation.

- (b) To be eligible for a loan under this Program, a property owner must:

(1) have a home energy audit performed on the owner's single-family home by a certified energy auditor, as required under Section 18A-27; and

(2) have the energy efficiency improvement completed or renewable energy device installed in the time frame set by regulation; and

(3) agree to repay the loan amount borrowed through the County tax bill for that home, as required by Section 18A-28.

(c) The Department of Permitting Services must certify that the improvement or device for which the funds were loaned has been properly installed. The Department must accept a certification by another government agency, including a municipality, that the improvement or device has been properly installed. The County Executive may assign the responsibility under this subsection to another entity, including a third party. However, the entity responsible for certifying that the improvement or device has been properly installed must not be the entity that installed the improvement or device.

(d) The term of the loan must be 15 years. However, the Director may set a longer loan term by regulation.

(e) *Use of funds for an energy efficiency improvement.*

(1) A person may borrow funds for eligible costs to make an energy efficiency improvement, less any amount received from a public or private program because the improvement is or will be made.

(2) Except as provided by subsection (e)(3), funds must be loaned only for an energy efficiency improvement that is projected to be cost effective.

(3) Funds may be loaned for an energy efficiency improvement that is not cost effective if that improvement is part of a package of improvements financed under the Program that cumulatively is cost effective.

(f) *Use of funds for a renewable energy device.*

(1) Except as provided in (f)(2), a person may borrow funds for eligible costs to install a renewable energy device only if the single-family home meets energy efficiency criteria established by the Department.

(2) A person may borrow funds to install a renewable energy device on a single-family home that does not meet the energy efficiency criteria in (f)(1) if the device is cost effective.

(3) A person may borrow funds for eligible costs to install a renewable energy device, less any amount received from a public or private program because the device is or will be installed. (2009 L.M.C., ch. 8, § 1.)

Sec. 18A-27. Home energy audit.

(a) An applicant for a loan under this Program must have an submit to the County a home energy audit performed on the owner's home by a certified energy auditor.

(b) The auditor must prepare a written report that:

(1) contains findings and recommendations to improve the home's energy efficiency;

(2) identifies those cost effective energy efficiency improvements which would generate projected annual energy cost savings, based on projected energy costs set by Method (3) regulations, that are equal to or more than the estimated cost of the improvements to be financed under the County program when the cost of the improvements are amortized over 15 years; and

(3) identifies any public or private financing mechanisms known to the auditor that could be used to implement energy efficiency improvements.

(c) The cost of the audit may be included in the amount of the loan. (2009 L.M.C., ch. 8, § 1.)

Editor's note—2009 L.M.C., ch. 8, § 2, states in part: (a) Unless the Council grants an extension, the County Executive must adopt and submit to the County Council, not later than (date 6 months after enactment of bill [October 14, 2009]), regulations to implement Article 4 of Chapter 18A, as added by Section 1 of this Act.... (c) Within 6 months, the Executive must: (1) report to the Council on whether the cost of the home energy audit required under § 18A-27 is likely to be a significant barrier to participation in the Program; and (2) provide recommendations to address any barrier that the Executive identifies.

Sec. 18A-28. Repayment of funds; lien.

(a) The owner of single-family home must agree to repay the loan amount borrowed, amortized over 15 years, through the County property tax bill for that home.

(b) If the owner of the single-family home sells the home, the seller must disclose that the buyer must continue to repay the loan through the property tax bill.

(c) The loan amount and any accrued interest constitute a first lien on the real property to which the loan applies until paid. The loan amount and accrued interest are collectable by suit or tax sale like all other real property taxes, to the extent allowed by State law. If the property owner does not pay the loan and accrued interest as required, the property may be certified to the Department of Finance and the lien may be sold at the tax sale conducted by the County. (2009 L.M.C., ch. 8, § 1.)

Editor's note—2009 L.M.C., ch. 8, § 2, states in part: (a) Unless the Council grants an extension, the County Executive must adopt and submit to the County Council, not later than (date 6 months after enactment of bill [October 14, 2009]), regulations to implement Article 4 of Chapter 18A, as added by Section 1 of this Act. (b) Within 6 months, the Executive must: (1) report to the Council if the Executive believes that the repayment provisions of § 18A-28 are likely to unduly burden the lending industry or hinder homeowners from obtaining financing to refinance or purchase a home; and (2) provide alternative recommendations, if appropriate, that would achieve the policy objective of assuring that the remaining loan payments will be assumed by the buyer of a property....

Sec. 18A-29. Regulations.

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

- (a) lending standards and priorities;
- (b) minimum and maximum loan amounts;
- (c) interest rates, terms, and conditions;
- (d) application procedures, including necessary supporting documentations;
- (e) criteria for adequate security;
- (f) procedures to refer applicants to other sources of funds, and to cooperate with other public and private sources of funds;
- (g) procedures to ask the Director to reconsider any denial of a loan or any decision on interest rates, terms, and conditions;
- (h) procedures for nonpayment or default;
- (i) procedures and requirements for post-installation inspection;
- (j) disclosure requirements for real estate transactions; and
- (k) criteria for loan disbursement. (2009 L.M.C., ch. 8, § 1.)

Sec. 18A-30. Revolving loan fund.

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

Department means the Department of Finance.

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

- (b) The Fund consists of:
- (1) money appropriated in the County budget for the Program;
 - (2) money received from any public or private source;
 - (3) interest and investment earnings on the Fund;
 - (4) repayments and prepayments of principal and interest on loans made from the Fund; and
 - (5) any other available funds to support the Program.
- (c) The Department must:
- (1) disburse funds and collect payments for a loan made under the Program; and

(2) maintain loan records and provide an annual report to the Department of Environmental Protection. (2009 L.M.C., ch. 8, § 1.)

Sec. 18A-31. Annual report.

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

- (a) the number of recipients of loans;
- (b) the amount of funds loaned; and
- (c) any activities during the previous fiscal year to market the Program. (2009 L.M.C., ch. 8, § 1.)

Sec. 18A-32. Third party contract.

(a) The County may contract with a non-profit or for-profit organization to take any action necessary to fulfill the purposes of this Article, including:

- (1) prepare and review, evaluate, and approve applications;
- (2) execute loan agreements;
- (3) secure and service loans;
- (4) collect loan payments; and
- (5) conduct collections for defaulted loans.

(b) The County, or a contractor for the County, may charge an applicant or borrower usual and customary fees that the Department finds is consistent with the overall goals of the Program and will not inhibit utilization of the Program, including:

- (1) application fees;
- (2) loan origination fees;
- (3) delinquency fees;
- (4) costs of collection; and
- (5) other program fees to support verification of program requirements. (2009 L.M.C., ch. 8, § 1.)

Notes

[Note] *Cross references—Buildings, ch. 8; electricity, ch. 17; fuel-energy tax, § 52-14.

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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 21st day of September, 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 21st day of September, 2009. APPROVED/VETOED by the Mayor of the City of Gaithersburg, this 21st day of September, 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 21st day of September, 2009, and that the same was approved by the Mayor of the City of Gaithersburg on the 21st day of September, 2009. This Ordinance will become on the 11th day of October, 2009.

Angel L. Jones, City Manager