




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

August 9, 2021

TO: Tom Hucker, President, County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Veto Explanation of Bill 3-21, Special Taxing Area Laws – Silver Spring Business Improvement District – Established

Downtown Silver Spring offers much of what is best about Montgomery County. It is a thriving and diverse business center, exhibiting the rich tapestry of people, culture, and places which make Montgomery County a great place in which to live and do business. Bill 3-21 is not the correct vehicle to provide enhanced services in Downtown Silver Spring. It has divided the community and runs contrary to our expressed desire for inclusive governance. For that and other reasons, I am vetoing Bill 3-21, Special Taxing Area Laws – Silver Spring Business Improvement District – Established.

Below is a description of the bill and my explanation of the veto.

Description of Bill

Bill 3-21 would establish a business improvement district (BID) in Silver Spring; establish guidelines for the district and authorize a BID corporation to manage the district; and authorize a tax on nonexempt property located in the district to finance the operations of the BID corporation. Nonexempt property means all real property in the district that is not exempt from paying real property taxes except a: condominium unit or cooperative housing corporation unit that exists on or before the date this law takes effect; homeowner’s association; and residential property with fewer than 4 dwelling units.

The State law (MD Code, Economic Development, §§ 12-601 through 12-612) authorizes the County to establish a business improvement district in Montgomery County. Section 12-602 states the purpose of a business improvement district must be to promote the general welfare of the residents, employers, employees, property owners, commercial tenants, consumers, and the general public within the geographic area of the business improvement districts. The State law provides that the County must consider a BID application from a group of private property owners in the proposed

district. The Council must find the application meets the needs of the district for a BID to be established.

The application for the BID came as a result of a request from a majority of property owners, based on the assessed value of their property and the total property they owned. In other words, only property owners were able to initiate a BID and the wealthier, larger properties had the largest vote. Business owners are not included in the application process if they are not property owners.

Bill 3-21, as amended, would establish a BID that would cover the entire current Silver Spring Urban District created by Chapter 68A of the County Code. The district would be operated by a BID corporation organized by the property owners in the district. The County would impose a BID tax on all nonexempt property owners in the district. The BID corporation would be required to provide marketing services to serve the property and persons within the district.

Bill 3-21 runs contrary to County goals on racial equity and social justice

Bill 3-21 is the wrong option for Silver Spring. The BID, which would be financed by a mandatory tax on all businesses, is structured to give power to property owners with the largest and most expensive property. BID members would have one vote per \$500,000 dollars of assessed value of nonexempt property to elect members of the BID board of directors. (Property owners with property assessed less than \$500,000 have one vote.) Residents, businesses, and the Silver Spring Chamber of Commerce will be excluded from selecting board members and therefore not have a meaningful say in governing decisions.

The Racial Equity and Social Justice Impact statement from the Council's Office of Legislative Oversight explained:

“The exclusion of residents from the SS BID Board, and the concentration of voting power for board members with the largest assets, shifts the power of public district decision-making from a stakeholder group representing diverse culture and income backgrounds to a stakeholder group that predominantly represents the interests of medium and large businesses. Granting greater voting power to board members with larger businesses also shifts decision-making power from People of Color-owned businesses to White-owned businesses as the later [sic] on average are larger than the former.”

It does not make sense in a democracy to create a public entity with a mandatory tax that vests control with people and businesses based on their wealth. If private businesses voluntarily chose to combine their efforts and raise money within their group for promotion of their businesses and the area, that would be of no concern. However, extending the power to tax others based on wealth and to apportion decision making based on wealth is not consistent with democratic principles of governance. I believe we can have an organization that represents and values the diversity of Silver Spring and that we can work together to address the issues in the area.

The costs of Bill 3-21 will be borne by small businesses

Bill 3-21 was strongly opposed by many small property owners and businesses. The BID will be financed by a mandatory property tax that, as is common in leases, will be passed through to businesses. As described above, these businesses would not have the ability to select members of the BID board of directors. That is why I have been urged to veto this bill by many, including the African American Advisory Group, the Silver Spring Citizens Advisory Board and the Fenton Village business association.

A familiar, inclusive model exists to provide enhanced services

The correct path for enhanced services in Downtown Silver Spring is the creation of an urban district corporation under Chapter 68a of the County Code. A Silver Spring urban district corporation would serve all sectors of downtown Silver Spring while striving to capture, enhance and promote what makes Silver Spring wonderful. Urban District Corporations are not new to the County and the County already has an example of a highly successful urban district corporation in Bethesda. Governing decisions for an urban district corporation would be made by property owners, businesses, the County, and residents. No one would be excluded.

A Silver Spring urban district corporation would be an independent entity that would provide services to benefit residents and businesses in the Silver Spring Urban District. These services would include promotion; organization; support of cultural, recreational, and business activities; and other initiatives that advance the business and residential environment and sense of community.

The Council process lacked sufficient public transparency

The hastily scheduled final worksessions on Bill 3-21 did not provide sufficient transparency for the public or allow Councilmembers an opportunity to hear from constituents or fully consider amendments to the bill. The Monday, July 26 PHED/GO committee worksession was publicly announced Friday, July 23 in the afternoon. A packet was not available until later that day at 5:00 p.m. Additionally, the July 27 Council worksession/action on the bill was announced late in the day on Monday, July 26. A packet was not ready until Council was in session on July 27. During the Council session multiple Councilmembers expressed the wish that there was more time for consideration and expressed their fatigue at the end of a long Council day.

There was no urgency to this controversial legislation that required such a rushed process with so little notice. It is my hope that this veto offers an opportunity to re-start the process; I strongly believe we can achieve a better solution that works for the entire community. I look forward to working with you on that effort.

cc: Councilmembers
Marlene Michaelson, Council Executive Director
Bob Drummer, Council Legislative Attorney
Carlos Camacho, Council Legislative Analyst

Bill No. 3-21
Concerning: Special Taxing Area Laws –
Silver Spring Business Improvement
District – Established
Revised: 7-26-2021 Draft No. 9
Introduced: January 12, 2021
Enacted: July 27, 2021
Executive: Vetoed
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmember Riemer and Council President Hucker
Co-Sponsors: Councilmembers Friedson, Katz, Navarro and Rice

AN ACT to:

- (1) establish a business improvement district in Silver Spring;
- (2) establish guidelines for the District and authorize a district corporation to manage the District;
- (3) authorize a tax on nonexempt property located in the District to finance the operations of the district corporation; and
- (4) generally amend the laws governing a business improvement district in Silver Spring.

By adding

Montgomery County Code
Chapter 62, Silver Spring Business Improvement District
Sections 62-1, 62-2, 62-3, 62-4, 62-5, 62-6, 62-7, 62-8, and 62-9

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

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

1 **Sec. 1. Sections 62-1, 62-2, 62-3, 62-4, 62-5, 62-6, 62-7, 62-8, and 62-9 are**
2 **added as follows:**

3 **Chapter 62. [Reserved] Silver Spring Business Improvement District.**

4 **62-1. Definitions. As used in this Chapter:**

5 Board means the board of directors of the Silver Spring Business Improvement
6 District corporation.

7 Commercial tenant means a lessee or other lawful occupant, other than the
8 owner, of nonexempt property within the District.

9 Condominium means property subject to a condominium regime as stated in
10 §11-101 of the Real Property Article of the Annotated Code of Maryland.

11 Cooperative housing corporation means a corporation where each stockholder
12 or member, by virtue of such ownership or membership, has a cooperative
13 interest in the corporation as defined in §5-6B-01 of the Corporations and
14 Associations Article of the Annotated Code of Maryland.

15 Department means the Department of Transportation or another County
16 department or office designated by the Executive to perform functions under
17 this Chapter.

18 District means the Silver Spring Business Improvement District established
19 under this Chapter and covering the geographic area of the County described in
20 Section 62-2.

21 District corporation means the Downtown Silver Spring Business Improvement
22 District, Inc. which was formed to operate the Silver Spring Business
23 Improvement District in accordance with this Chapter.

24 Homeowners association means an incorporated or unincorporated association
25 with the authority to enforce the provisions of a declaration imposing a
26 mandatory fee for the benefit of some or all of the lots in a development as
27 defined in §11B-101 of the Real Property Article.

28 [[Maintaining streetscape amenities means cleaning, repairing rehabilitating, or
 29 replacing streetscape amenities.]]

30 [[Maintaining the streetscape includes cleaning sidewalks, driveways, streets,
 31 and other public areas; collecting trash; and caring for trees and other plantings.
 32 Maintaining the streetscape includes streetscaping of the medians and street
 33 sweeping but does not include maintaining the road or the curbs.]]

34 Members of the district means the owners of nonexempt property in the District.

35 Nonexempt property means all real property in the District that is not exempt
 36 from paying real property taxes except a:

37 (1) condominium unit or cooperative housing corporation unit that
 38 exists on or before the date this law takes effect;

39 (2) homeowner’s association; and

40 (3) residential property with fewer than 4 dwelling units.

41 [[Streetscape amenity includes such items as bulletin boards and electronic
 42 displays; communication systems; containers for growing things; fountains and
 43 pools; drinking fountains; functional and decorative lighting; outdoor seating;
 44 restrooms; seating and other street furniture; shelters for pedestrians and persons
 45 using public transportation; non-standard paving; sidewalks; trees and other
 46 plantings; trash containers; vending booths and kiosks; works of art; any outdoor
 47 item that an optional method developer agreed to install and maintain as a
 48 condition of site plan approval; and other items of a similar character or
 49 purpose.]]

50 **62-2. Silver Spring Business Improvement District – Established.**

51 (a) Findings. The Council, after receiving an application to establish a
 52 district corporation and conducting a public hearing on the application, as
 53 required by §§12-608 and 12-609 of the Economic Development Article
 54 of the Annotated Code of Maryland, finds that a business improvement

55 district would promote the general welfare of the residents, employers,
 56 employees, property owners, commercial tenants, consumers and the
 57 general public within the downtown area of Silver Spring.

58 (b) Established. The Silver Spring Business Improvement District is
 59 established pursuant to §§12-601 to 12-612 of the Economic
 60 Development Article of the Annotated Code of Maryland.

61 (c) Boundary. The Silver Spring Business Improvement District includes all
 62 land in the thirteenth election district of the County within the area
 63 described as follows:

64 [(1) beginning at a point on the Maryland-District of Columbia
 65 boundary line at the intersection of the west right-of-way of
 66 Georgia Avenue with the Maryland-District of Columbia
 67 boundary line, and running in a northwesterly direction along the
 68 Maryland-District of Columbia boundary line, and crossing
 69 Sixteenth Street along an extension of that boundary line to its
 70 intersection with the west right-of-way line of Sixteenth Street;

71 (2) then in a northerly direction along the west right-of-way line of
 72 Sixteenth Street, crossing East-West Highway to its intersection
 73 with a southwesterly extension of the northerly right-of-way line
 74 of Spring Street;

75 (3) then in a northeasterly direction along that extension crossing
 76 Sixteenth Street to its intersection with the east right-of-way line
 77 of Sixteenth Street;

78 (4) then in a northeasterly direction along the northern right-of-way
 79 line of Spring Street, crossing Second Avenue, First Avenue,
 80 Georgia Avenue, and Alton Parkway, then continuing

- 81 southeasterly crossing Fairview Road and Cameron Street, to its
82 intersection with Colesville Road;
- 83 (5) then in a southeastern direction along the extension of the
84 northeastern boundary of Spring Street across Colesville Road,
85 crossing Roeder Road and across its intersection with Ellsworth
86 Drive;
- 87 (6) then in a southwesterly direction along the southeast right-of-way
88 line of Cedar Street;
- 89 (7) then in a southeasterly direction along the northeast right-of-way
90 line of Cedar Street, crossing Wayne Avenue, to its intersection
91 with the southeast right-of-way line of Wayne Avenue;
- 92 (8) then in a southwesterly direction along the southeast right-of-way
93 line of Wayne Avenue to its intersection with Fenton Street;
- 94 (9) then in a southern direction along the eastern right-of-way of
95 Fenton Street crossing Bonifant Street, Easley Street, Thayer
96 Avenue, and Silver Spring Avenue, Sligo Avenue, to its
97 intersection with Gist Avenue;
- 98 (10) then in a southern direction along the extension of the eastern right-
99 of-way of Fenton Street crossing Gist Avenue to the extension of
100 its intersection with the south right-of-way line of Gist Avenue;
- 101 (11) then in a western direction along the extension of the south right-
102 of-way of Gist Avenue crossing Fenton Street to its intersection
103 with the west right-of-way line of Fenton Street;
- 104 (12) then in a western direction approximately 260 feet to the extension
105 of the northeast corner of Lot 44, Block C-1, Blair, as shown in
106 Plat No. 23916, recorded November 20, 2008, among the land
107 records of Montgomery County, Maryland;

- 108 (13) then in a south and southwesterly direction along the east line of
109 Lot 44, as shown in Plat No. 23916, recorded November 20, 2008,
110 among the land records of Montgomery County, Maryland, to the
111 northeast right-of-way line of Philadelphia Avenue;
- 112 (14) then crossing Philadelphia Avenue to the intersection of the
113 southwestern right-of-way line of Philadelphia Avenue and the
114 east corner of Lot 58, Block H, Blair Section One, as shown in Plat
115 No. 7074, recorded June 20, 1963, among the land records of
116 Montgomery County, Maryland;
- 117 (15) then in a southwesterly direction along the lot line, which is the
118 southeast line of Lot 58, Block H Blair section One as shown in
119 Plat No. 7974, recorded June, 20, 1963, among the land records of
120 Montgomery County, Maryland, to its intersection with the
121 northeast lot line of Lot 34, Block H, Blair as shown in Plat No.
122 229, recorded June, 7, 1922, among the land records of
123 Montgomery County, Maryland;
- 124 (16) then in a northwesterly direction along the northeast property line
125 of Lot 34 to its intersection with the common lot line, which is the
126 east line of Lot 35 and the west lot line of Lot 34, Block H, Blair,
127 as shown in Plat 229, recorded June 7, 1922, among the land
128 records of Montgomery County, Maryland;
- 129 (17) then in a southwesterly direction along the common line of Lot 35
130 and Lot 34, Block H, as shown in, Plat 229, recorded June 7, 1922,
131 among the land records of Montgomery County, Maryland, to the
132 intersection of the northeast right-of-way line of Selim Road;

- 133 (18) then in a southeasterly direction along the northeastern right-of-
 134 way line of Selim Road to its intersection with the northern right-
 135 of-way line of Burlington Avenue;
- 136 (19) then in a southwesterly direction along the extension of the
 137 northern right-of-way line of Burlington Avenue crossing Selim
 138 Avenue;
- 139 (20) then in a southwesterly direction along the northern right-of-way
 140 of Burlington Avenue to its intersection with the east right-of-way
 141 of Georgia Avenue;
- 142 (21) then in a western direction crossing Georgia Avenue to the western
 143 right-of-way;
- 144 (22) then in a southerly direction along the western right-of-way of
 145 Georgia Avenue to the point of beginning; and
- 146 (23) any lot that is partially within and partially outside of the areas
 147 under paragraphs (1) through (22).]]
- 148 (1) Beginning at a point on the Maryland-District of Columbia
 149 boundary line at the intersection of the west right-of-way of
 150 Georgia Avenue with the Maryland-District of Columbia
 151 boundary line, and running in a northwesterly direction along the
 152 Maryland-District of Columbia boundary line, and crossing
 153 Sixteenth Street along an extension of that boundary line to its
 154 intersection with the west right-of-way line of Sixteenth Street;
- 155 (2) Then in a northerly direction along the west right-of-way line of
 156 Sixteenth Street, crossing East-West Highway to its intersection
 157 with a southwesterly extension of the northerly right-of-way line
 158 of Spring Street;

- 159 (3) Then in a northeasterly direction along that extension crossing
160 Sixteenth Street to its intersection with the east right-of-way line
161 of Sixteenth Street;
- 162 (4) Then in a northeasterly direction along the northern right-of-way
163 line of Spring Street, crossing Second Avenue, First Avenue,
164 Georgia Avenue, and Alton Parkway, then southeasterly to its
165 intersection with the northwest right-of-way line of Fairview
166 Road;
- 167 (5) Then in a northeasterly direction approximately 390 feet along the
168 northwest right-of-way line of Fairview Road to its intersection
169 with the westward extension of the southwest line of Lots 1 and 2,
170 Block B, Section 4, Woodside Park, as recorded January 30, 1923,
171 in Plat Book 3, Plat 244, among the land records of Montgomery
172 County, Maryland;
- 173 (6) Then crossing Fairview Road in a southeasterly direction along the
174 southwest line of Lots 1 and 2, Block B, Section 4, Woodside Park,
175 to its intersection with the southwest right-of-way line of Noyes
176 Drive;
- 177 (7) Then in a southeasterly direction along the southwest right-of-way
178 line of Noyes Drive to its intersection with the northwest right-of-
179 way line of Colesville Road;
- 180 (8) Then crossing Colesville Road in a southeasterly direction to the
181 intersection of the southeast right-of-way line of Colesville Road
182 and the southwest line of the Silver Spring Public Library site,
183 Parcel No. P959;
- 184 (9) Then along that line to the southeast right-of-way line of Ellsworth
185 Drive;

- 186 (10) Then in a southwesterly direction along the southeast right-of-way
187 line of Ellsworth Drive to its intersection with the common line of
188 the Academy of the Holy Names site and the northeast line of
189 Evanswood Sec. 1 Subdivision, also shown as the common lot line
190 of Lot 9 and Lot 10, Evanswood Section One, as recorded March
191 2, 1932, in Plat Book 5, Plat 439 among the land records of
192 Montgomery County, Maryland;
- 193 (11) Then in a southeasterly direction along the northeast lot lines of
194 Lots 1 through 9 as shown in Plat Book 5, Plat 439, recorded
195 March 2, 1932, among the land records of Montgomery County,
196 Maryland, crossing Pershing Drive along an extension of that line
197 to its intersection with the southeast right-of-way line of Pershing
198 Drive;
- 199 (12) Then in a southwesterly direction along the southeast right-of-way
200 line of Cedar Street;
- 201 (13) Then in a southeasterly direction along the northeast right-of-way
202 line of Cedar Street, crossing Wayne Avenue, to its intersection
203 with the southeast right-of-way line of Wayne Avenue;
- 204 (14) Then in a southwesterly direction along the southeast right-of-way
205 line of Wayne Avenue for approximately 750 feet, to its
206 intersection with the east lot line of Lot 24, Block 4, in Jordan's
207 and Smith's Addition to Silver Spring Park, as recorded June 2,
208 1925, in Plat Book 4, Plat 301, among the land records of
209 Montgomery County, Maryland;
- 210 (15) Then in a southeasterly direction along the east line of Lot 24 to
211 the southeast corner of Lot 24;

- 212 (16) Then in a southwesterly direction approximately 15 feet to the
213 northeast corner of Lot 14, Block 4, Jordan's and Smith's Addition
214 to Silver Spring Park, as shown in Plat Book 4, Plat 301, recorded
215 June 2, 1925, among the land records of Montgomery County,
216 Maryland;
- 217 (17) Then in a southeasterly direction along the east line of Lot 14, as
218 shown in Plat Book 4, Plat 301, recorded June 2, 1925, among the
219 land records of Montgomery County, Maryland, to the northwest
220 right-of-way line of Bonifant Street;
- 221 (18) Then in a southerly direction crossing Bonifant Street to the
222 intersection of the southeastern right-of-way line of Bonifant
223 Street and the northeast corner of Lot 5, Block U, Silver Spring
224 Park, as shown in Plat Book 1, Plat 99, recorded April 4, 1909,
225 among the land records of Montgomery County, Maryland, which
226 is also the same as the northeast corner of Montgomery County
227 Public Parking Facility 29;
- 228 (19) Then in a southerly direction along the common lot line, which is
229 the east line of Lot 5 and the west line of Lot 6 as shown in Plat
230 Book 1, Plat 99, recorded April 4, 1909, among the land records of
231 Montgomery County, Maryland, crossing Easley Street along the
232 southern extension of that line to its intersection with the south
233 right-of-way line of Easley Street;
- 234 (20) Then in a westerly direction along the south right-of-way line of
235 Easley Street approximately 50 feet to its intersection with the
236 common lot line, which is the west line of Lot 7 and the east lot
237 line of Lot 28, Block P, Silver Spring Park, as shown in Plat Book

238 1, Plat 99, recorded April 4, 1909, among the land records of
239 Montgomery County, Maryland;

240 (21) Then in a southerly direction along the common line of Lot 7 and
241 Lot 28, Block P and the common line of Lot 18 and Lot 19, Block
242 P, Silver Spring Park, as shown in Plat Book 1, Plat 99, recorded
243 April 4, 1909, among the land records of Montgomery County,
244 Maryland, crossing Thayer Avenue to the intersection of the south
245 right-of-way line of Thayer Avenue and the common lot line which
246 is the east lot line of Lot 5 and the west lot line of Lot 6, Block G,
247 as shown on a "Map of Building Sites for Sale at Silver Spring,"
248 as recorded May 23, 1904, in Plat Book 1, Plat 54, among the land
249 records of Montgomery County, Maryland;

250 (22) Then in a southerly direction along the common lot line of Lot 5
251 and Lot 6, Block G, and with an extension of that line to the south
252 right-of-way line of a 20-foot alley dividing Block G and Block H,
253 as shown on the "Map of Building Sites for Sale at Silver Spring;"

254 (23) Then in a westerly direction approximately 50 feet along the south
255 line of that alley to its intersection with the common lot line, which
256 is the east line of Lot 4 and the west line of Lot 5, Block H, as
257 shown on the "Map of Building Sites for Sale at Silver Spring;"

258 (24) Then in a southerly direction along the common lot line of Lot 4
259 and Lot 5, Block H, to its intersection with the northern right-of-
260 way line of Silver Spring Avenue;

261 (25) Then crossing Silver Spring Avenue to the intersection of the
262 southern right-of- way line of Silver Spring Avenue and the
263 common lot line, which is the east line of Lot 4 and the west line

264 of Lot 5, Block I, as shown on the "Map of Building Sites for Sale
265 at Silver Spring;"

266 (26) Then in a southerly direction along the common lot line of Lot 4
267 and Lot 5, Block I, crossing a 20-foot alley dividing Block I and
268 Block J, as shown on the "Map of Building Sites for Sale at Silver
269 Spring," to its intersection with the south right-of-way line of that
270 alley and the common lot line, which is the east line of Lot 4 and
271 the west line of Lot 5, Block J, as shown on the "Map of Building
272 Sites for Sale at Silver Spring;"

273 (27) Then in a southerly direction along the common lot line of Lot 4
274 and Lot 5, Block J, to its intersection with the northern right-of-
275 way line of Sligo Avenue;

276 (28) Then along a southern extension of that common lot line of Lot 4
277 and Lot 5, Block J, to its intersection with the southern right-of-
278 way line of Sligo Avenue;

279 (29) Then in a northwesterly direction along the southern right-of-way
280 line of Sligo Avenue to its intersection with the northeast corner of
281 Lot 19, Block A, shown on a plat of Blair Section 1, recorded June
282 7, 1922, in Plat Book 3, Plat 229 among the land records of
283 Montgomery County, Maryland;

284 (30) Then in a southerly direction along the east line of Lot 19, Block
285 A, to its intersection with the remainder of Lot 25, Block A, as
286 shown on the plat of Blair Section 1, recorded June 7, 1922, in Plat
287 Book 3, Plat 229, among the land records of Montgomery County,
288 Maryland;

289 (31) Then in an easterly direction approximately 15 feet to its
290 intersection with the northwest corner of Lot 51, Block A, as

291 shown on a plat of Blair Section 1, recorded November 16, 1935,
292 in Plat Book 8, Plat 626, among the land records of Montgomery
293 County, Maryland;

294 (32) Then in a southerly direction along the west line of that Lot 51 to
295 its intersection with the northern right-of-way line of Gist Avenue;

296 (33) Then along a southerly extension of the west line of that Lot 51 to
297 the southern right-of-way line of Gist Avenue;

298 (34) Then in a westerly direction along the southern right-of-way line
299 of Gist Avenue to its intersection with the eastern right-of-way line
300 of Fenton Street;

301 (35) Then in a southerly direction along the eastern right-of-way line of
302 Fenton Street crossing Philadelphia Avenue, Isington Street, and
303 New York Avenue to its intersection with the corporated limit line
304 of the City of Takoma Park;

305 (36) Then in a southwesterly direction with the corporate limit line of
306 the City of Takoma Park crossing the northeast right-of-way line
307 of the B & O Railroad to its intersection with the southwest right-
308 of-way line of the B & O Railroad;

309 (37) Then in a southeasterly direction with the southwest right-of-way
310 line of the B & O Railroad to its intersection with the northeast
311 right-of-way line of Blair Road;

312 (38) Then in a northwesterly direction along the northeast right-of-way
313 line of Blair Road to its intersection with an extension of the
314 southeast line of Parcel One, Yost's Addition to Silver Spring, as
315 shown in Plat Book 85, Plat 8874, recorded March 13, 1968,
316 among the land records of Montgomery County, Maryland;

317 (39) Then in a southwesterly direction along that line to its intersection
 318 with the northeast line of Eastern Avenue, which is also the
 319 Maryland-District of Columbia boundary line;

320 (40) Then in a northwesterly direction along the Maryland-District of
 321 Columbia boundary line to the point of beginning; and

322 (41) Any lot that is partially within and partially outside of the areas
 323 under paragraphs (1) through (40).

324 **62-3. District Corporation.**

325 (a) Establishment. The owners of nonexempt property in the District
 326 established a district corporation called the Downtown Silver Spring
 327 Business Improvement District, Inc. located at 8757 Georgia Avenue,
 328 Silver Spring, MD 20910, and applied to the County to manage the
 329 District. The application included:

330 (1) a statement setting forth:

331 (A) the proposed name and address of the district corporation;
 332 and

333 (B) the street address of each owner of nonexempt property
 334 within the District;

335 (2) a statement expressing the intent to establish a district corporation
 336 that is signed by:

337 (A) owners of at least 51% interest in the assessed value of the
 338 nonexempt property and, subject to subsection (b) of this
 339 section, a designated board member of a condominium or
 340 cooperative housing corporation within the proposed
 341 district; and

342 (B) owners of at least 51% of the total number of parcels of
 343 nonexempt property and, subject to subsection (b) of this

344 section, a designated board member of a condominium or
 345 cooperative housing corporation within the District;

346 (3) a proposed 3-year business plan that contains:

347 (A) the goals and objectives of the District;

348 (B) the annual proposed business improvement district tax for
 349 the proposed district's common operations and the formula
 350 used to determine each member's district tax; and

351 (C) the maximum amount and the nature of start-up costs
 352 incurred before the District's establishment;

353 (4) a tax assessor's map of the geographic area of the District;

354 (5) a list of the proposed initial board of the proposed district
 355 corporation;

356 (6) the proposed articles of incorporation and the bylaws of the district
 357 corporation; and

358 (7) for all nonexempt property within the District:

359 (A) the name and mailing address of each owner; and

360 (B) the most recent assessed value.

361 (b) *Condominiums or cooperative housing corporation may petition.*

362 (1) Notwithstanding any other provision of this Chapter, subject to
 363 paragraph (2) of this subsection, a condominium or cooperative
 364 housing corporation that is located in the District may petition to
 365 join the district corporation.

366 (2) A condominium or cooperative housing corporation described
 367 under paragraph (1) of this subsection may petition to join the
 368 District only if:

369 (A) the condominium or cooperative housing corporation is
 370 governed by a board;

371 (B) the board votes to join the district corporation; and
 372 (C) the board has a representative member of the board sign the
 373 appropriate documents required under subsection (b)(2) of
 374 this section.

375 (3) For the purposes of the votes cast under subsection (b)(2) of this
 376 section:

377 (A) a condominium or cooperative housing corporation shall be
 378 considered a single parcel; and

379 (B) the decision reached by the board shall constitute the vote
 380 of the condominium or cooperative housing corporation.

381 **62-4. Board of directors.**

382 (a) *In general.* A board of directors must govern the district corporation.

383 (b) *Membership.*

384 (1) Subject to paragraph (2) of this subsection, the board of a district
 385 corporation consists of [[at least five members, but no more than]]
 386 nine members, appointed by the members of the District.

387 (2) Appointment procedures.

388 (A) Until the first meeting of the board of directors, the entire
 389 board must consist of the 8 directors constituting the initial
 390 board of directors, as set forth in the district corporation's
 391 articles of incorporation. Thereafter, the entire board must
 392 be comprised of [[such number of]] 9 directors [[that may
 393 be specified by resolution of the board. The directors must
 394 be classified by the time the directors hold office by dividing
 395 them into three classes, each of which shall contain the same
 396 number of directors (if necessary, one (1) class may contain
 397 one (1) more or one (1) less director than the other two (2)

398 classes)]]]. After the initial members, the directors must be
 399 elected by the members. At the time of election, the Board
 400 must be comprised of:

- 401 (i) 3 representatives of an owner of property in the
 402 District assessed at more than \$20 million;
- 403 (ii) 2 representatives of an owner of property in the
 404 District assessed at \$20 million or less;
- 405 (iii) 1 representative of a business employing more than
 406 50 full-time equivalent employees in the District; and
- 407 (iv) 3 representatives of a business employing 50 or less
 408 full-time equivalent employees in the District.

409 The Board must not include both an owner and a tenant of
 410 the same property in the District at the same time.

411 (B) The first election of directors by the members must be held
 412 within 120 days after the date this law takes effect.
 413 Subsequent elections must be held annually as provided in
 414 subparagraph C.

415 (C) The board must appoint a nominating committee, which
 416 must nominate a slate of candidates for each annual election.
 417 Members may nominate additional candidates at the
 418 meeting called for the purpose of electing directors.
 419 Members and persons other than members are eligible to
 420 become directors. Only directors may serve on a committee.

- 421 (i) Prior to the first election of directors, the nominating
 422 committee must nominate three slates of candidates:
 423 one slate to serve as the first class of directors for the
 424 term of 3 years; one slate to serve as the second class

425 of directors for the term of 2 years and one slate to
 426 serve as the third class of directors for the term of 1
 427 year. At the first election of directors, the members
 428 must hold a separate election to elect each class of
 429 directors.

430 (ii) At each annual election of directors thereafter, the
 431 successors to the class of directors whose term
 432 expires that year must be elected for the term of 3
 433 years, so that the term of office of one class of
 434 directors expires in each year.

435 (iii) For each election of directors, each member may cast
 436 no more than their total number of votes for any one
 437 candidate. Directors must not be elected through
 438 cumulative voting.

439 (iv) Each director elected by the members must serve
 440 until his or her successor is elected, or until his or her
 441 earlier death, resignation or removal in accordance
 442 with the district's bylaws.

443 (c) Chair; officers. From among its members, the board must elect a chair
 444 and other officers.

445 (d) Quorum.

446 (1) A majority of the voting members of the board is a quorum.

447 (2) The board may act on a resolution only by the affirmative vote of
 448 a majority of the voting members.

449 (e) Compensation; reimbursement for expenses. A member of the board:

450 (1) must not receive compensation as a member of the board; but

451 (2) may be reimbursed for expenses incurred in performing the
 452 member's duties.

453 (f) Powers. The board must exercise its powers by resolution.

454 (g) Annual report. The board must file an annual report with the Executive
 455 and the Council that includes:

456 (1) a financial statement for the preceding year;

457 (2) a proposed operating budget for the current fiscal year;

458 (3) any proposed revisions to the business plan; and

459 (4) a narrative statement or chart showing the results of operations in
 460 comparison to stated goals and objectives.

461 **62-5. District corporation net earnings; powers.**

462 (a) Earnings. The net earnings of the district corporation must benefit only
 463 the district corporation.

464 (b) Powers.

465 (1) Except as limited by its articles of incorporation, the district
 466 corporation has all the powers set forth in §§12-601 to 12-612 of
 467 the Economic Development Article of the Annotated Code of
 468 Maryland and this Chapter.

469 (2) A district corporation may:

470 (A) receive money from the County, the State, other
 471 governmental units, or nonprofit organizations;

472 (B) charge fees for its services;

473 (C) have employees and consultants as it considers necessary;
 474 and

475 (D) use the services of other governmental units.

476 (c) Use of powers. A district corporation must operate and exercise its
 477 powers solely to accomplish one or more of the legislative purposes of

478 §§12-601 to 12-612 of the Economic Development Article of the
 479 Annotated Code of Maryland and this Chapter.

480 **62-6. Funding.**

481 (a) Preliminary business improvement district tax roll. Within 10 days after
 482 the effective date of this law, the district corporation must provide the
 483 Executive and Council with a preliminary business improvement district
 484 tax roll.

485 (b) Imposition of business improvement district tax.

486 (1) The Council must impose a business improvement district tax to
 487 provide funds for the operation of the District.

488 (2) The Council must impose on members of the District the district
 489 tax at a rate specified by the board and approved by the Council.

490 (3) The tax imposed under this subsection must not count against the
 491 limits on the ad valorem weighted tax rate on real property [[tax
 492 revenue]] in Section 305 of the County Charter.

493 (c) Collection. The district tax must be collected in the same manner as real
 494 property taxes are collected and distributed each quarter to the District.

495 (d) Reimbursement for collection costs. The district corporation must
 496 reimburse the County for the costs incurred in collecting the district tax.

497 (e) [[Parking Lot District fees.

498 (1) The Council may transfer revenue from parking fees to the district
 499 corporation received from the fees that are collected in the District.

500 (2) The amount of revenue from parking fees transferred to the district
 501 corporation must not exceed the amount calculated by multiplying:

502 (A) the number of parking spaces in the District by

503 (B) the number of enforcement hours per year by

504 (C) 20 cents.]]

505 Miscellaneous Revenue. All other revenues collected by a business
 506 improvement district corporation, including charges for services and
 507 private contributions, must be used to benefit the district corporation.

508 **62-7. District corporation duties.**

509 (a) In general. The district corporation must provide public services and
 510 facilities in the District that are:

511 (1) primarily of benefit to the property and persons within the District
 512 rather than to the County as a whole; and

513 (2) in addition to services and facilities that the County provides
 514 generally.

515 (b) Services. The district corporation must provide services that include []:

516 (1) maintaining the streetscape and streetscape amenities on:

517 (A) public rights-of-way; and

518 (B) any property that is used by the general public;

519 (2)] promoting and programming public interest activities that benefit
 520 both residential and commercial interests of the District (and which
 521 may incidentally benefit neighboring communities) [];

522 (3) providing additional streetscape amenities and facade
 523 improvements; and

524 (4) monitoring activities to enhance the safety and security of persons
 525 and property in public areas of the District]].

526 (c) [[Allocation of duties. The Department is not responsible for
 527 streetscaping of the medians and street sweeping inside the curbs in the
 528 District. The Department is responsible for other maintenance inside, and
 529 including, the curbs. Outside of the curbs, the Department is only
 530 responsible for repair of standard concrete sidewalks. The district
 531 corporation is responsible for brick or other non-standard sidewalk

532 maintenance. This allocation of functions may be altered by written
 533 agreement between the Department and the district corporation.

534 (d)]] Insurance. The district corporation must secure reasonable and
 535 appropriate insurance for its activities

536 **62-8. Expansion of the District.**

537 (a) Expansion by the District. The District may expand the geographic area
 538 of the District if:

539 (1) a petition for inclusion is submitted from:

540 (A) owners of at least 51% interest in the assessed value of the
 541 nonexempt property and, subject to subsection (b) of this
 542 section, a designated board member of a condominium or
 543 cooperative housing corporation proposed for inclusion in
 544 the district; and

545 (B) owners of at least 51% of the total number of parcels of
 546 nonexempt property and, subject to subsection (b) of this
 547 section, a designated board member of a condominium or
 548 cooperative housing corporation proposed for inclusion in
 549 the district;

550 (2) the petition under paragraph (1) of this subsection is accepted by a
 551 majority vote of the board of the district corporation; and

552 (3) the appropriate documents, as applicable, are submitted under §12-
 553 608 of the Economic Development Article of the Annotated Code
 554 of Maryland and a hearing is held under §12-609 of the Economic
 555 Development Article.

556 (b) Expansion by condominium or cooperative housing corporation.

557 (1) Notwithstanding any other provision of this title and subject to
 558 paragraph (2) of this subsection, a condominium or cooperative

559 housing corporation that is in the proposed expanded geographic
 560 area of the District may petition to join the expansion.

561 (2) A condominium or cooperative housing corporation described
 562 under paragraph (1) of this subsection may petition to join the
 563 expansion only if:

564 (A) the condominium or cooperative housing corporation is
 565 governed by a board;

566 (B) the board votes to join the district corporation; and

567 (C) the board has a representative member of the board sign the
 568 appropriate documents required under §12-608 of the
 569 Economic Development Article.

570 (3) For the purposes of the votes cast under subsection (a)(1):

571 (A) a condominium or cooperative housing corporation must be
 572 considered a single parcel; and

573 (B) the decision reached by the board must constitute the vote
 574 of the condominium or cooperative housing corporation.

575 **62-9. Review and evaluation of the District.**

576 (a) Review; development of procedures for evaluation. The Executive must:

577 (1) review the effectiveness and desirability of continuing the district
 578 every 3 years beginning from the time this Act takes effect;

579 (2) develop by method 2 regulation policies and procedures for
 580 evaluating the desirability of continuing the District; and


581 (3) recommend to the Council whether the District should continue.

582 (b) Effect of disapproval. If the Council adopts a resolution disapproving of
 583 the continuing existence of the District:

584 (1) the District must cease to exist as directed by the Council; and

585 (2) the district corporation must continue its existence only as long as
586 necessary to terminate operation in a reasonable manner.

Approved:



Tom Hucker, President, County Council 7/28/2021
Date

Approved:

Disapproved 8/9/2021

Marc Elrich, County Executive Date

This is a correct copy of Council action.



Selena Mendy Singleton, Esq., Clerk of the Council 8/10/2021
Date