

**COUNTY COUNCIL OF FREDERICK COUNTY
MEETING MINUTES
Tuesday, October 4, 2016**

Council Members Bud Otis, President; M.C. Keegan-Ayer, Vice-President; Tony Chmelik, Kirby Delauter, Jerry Donald, Jessica Fitzwater, and Billy Shreve were present for the meeting.

Also present were Ragen Cherney, Council Chief of Staff; Wendy Kearney, County Attorney’s Office; Joyce Grossnickle, Office of the County Executive; and Patti Morrow, Recording Secretary.

Council Member Otis called the meeting to order at 4:30 p.m. in the first floor hearing room, Winchester Hall, 12 East Church Street, Frederick, Maryland.

The meeting began with a moment of silence followed by the Pledge of Allegiance.

Action on the Agenda

Council Member Keegan-Ayer moved to approve the agenda as amended moving Bill No. 16-15 – Nuisance - Noise Levels and Enforcement; and Bill No. 16-16 – Enforcement of County Laws and Regulations before the Budget Adjustments. Council Member Chmelik seconded the motion that passed 6-1 with Council Member Shreve opposed.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald	X		
District 2 - Chmelik	X		
District 3 - Keegan-Ayer	X		
District 4 - Fitzwater	X		
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve		X	
Presiding Officer - Otis	X		

Third Reading Calendar

Bill No. 16-15 – Nuisance - Noise Levels and Enforcement and Bill No. 16-16 – Enforcement of County Laws and Regulations – Council President Bud Otis (On Behalf of the County Executive)

Council Member Keegan-Ayer moved to approve and enact Bill No. 16-15. Council Member Donald seconded the motion.

Council Member Shreve moved to amend proposed Bill No. 16-15 as follows:

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§ 1-11-6. NUISANCE – NOISE LEVELS.

(A) ~~The County Council finds that excessive noise harms public health and welfare and impairs enjoyment of property. The intent of this Chapter is to limit noise sources to protect public health and welfare and to allow the peaceful enjoyment of property.~~

(B) Definitions.

- (1) dBA means abbreviation for the sound level in decibels determined by the A-weighting network of a sound level meter or by calculation from octave band or one-third octave band data. (COMAR 26.02.03.01.)
- (2) Daytime hours means 6:00 7:00 a.m. to 10:00 p.m., local time.
- (3) Nighttime hours mean 10:00 p.m. to 6:00 7:00 a.m., local time.

(C) Noise Standards for Residential Areas as Receiving Property.

- (1) Except as provided in paragraph (2) of this subsection and in subsection (F) of this section, a person may not cause or permit noise levels emanating from any property, such that the levels received on residential property exceed the levels contained in Table 1 below. (COMAR 26.02.03.023B.(1)).

Table 1
Maximum Allowable Noise Levels (dBA)
for Receiving Land Use Categories

Day/Night	Industrial	Commercial	Residential
Day	75	67	65
Night	75	62	55

~~(2) A person may not cause or permit noise levels emanating from construction or demolition-site activities that exceed:~~

- ~~(i) During daytime hours, 90 dBA; or~~
- ~~(ii) During nighttime hours, the levels specified in Table 1 above (COMAR 26.02.03.03B.(1))~~

(D) Measurement of Noise Levels.

- (1) The measurement of noise levels under this subsection shall be conducted at points on or within the property line of the receiving property (or the boundary of a land use area,) and may be conducted at any point for the determination of identity in multiple source situations.
- (2) Sound level meters used to determine compliance with this section shall meet or exceed the specifications for Type II sound level meters, and be certified quarterly.

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~~-(i) Operating Personnel shall be certified annually.~~

(E) Off-road Internal Combustion Vehicles –

- (1) A person may ~~not~~ operate or permit to be operated an off-road internal combustion engine powered recreational vehicle, including, but not limited to, a dirt bike, an ~~all-terrainall-terrain~~ vehicle, a go cart, a snowmobile, or a similar vehicle, on private property. ~~without the express written permission of a person owning an interest in the property.~~
- (2) A person may not operate or permit to be operated an off-road internal combustion engine powered recreational vehicle, including, but not limited to, a dirt bike, an ~~all-terrainall-terrain~~ vehicle, a go cart, a snowmobile, or a similar vehicle, on private property ~~closer than 300 feet to a neighboring residence, without the written permission of the affected resident,~~ unless the operator of the vehicle can demonstrate that the operation of the vehicle, ~~at all of its operating speeds, within 300 feet of the neighboring residence,~~ will ~~at~~ not cause the noise levels set forth in (C) 1 above to be exceeded at the receiving property line ~~over an average of any thirty minute period.~~-(COMAR 26.02.03.02 (B)(5)).

(F) Exemptions. The provisions of this section do not apply to:

- (1) Devices used solely for the purpose of warning, protecting, or alerting the public, or some segment thereof, of the existence of an emergency situation;
- (2) Household tools and portable appliances in normal usage;
- (3) Lawn care and snow removal equipment during daytime hours, when used and maintained in accordance with the manufacturer's specifications;
- ~~(4) Agricultural field machinery when used and maintained in accordance with manufacturer's specifications;~~
- ~~(5) Blasting operations for demolition, construction, and mining or quarrying, between the hours of 8:00 a.m. and 5:00 p.m.;~~
- ~~(6) Motor vehicles on public roads;~~
- ~~(7) Aircraft and related airport operations at airports licensed by the State Aviation Administration;~~
- ~~(8) Boats on State waters or motor vehicles on State lands under the jurisdiction of the Department of Natural Resources;~~
- ~~(9) Emergency operations;~~
- (10)Pile driving equipment, ~~between the hours of 8:00 a.m. and 5:00 p.m.;~~
- (11)Sound ~~not electronically amplified~~ created by sporting, amusement, and entertainment events and other public gatherings operating according to terms

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and conditions imposed by the County, between the hours of 7:00 a.m. and 10:00 p.m.12:00 midnight;

~~(12) Railroads;~~

(13) Construction and repair work on public and private property; and

~~(14) Air conditioning or heat pump equipment used to cool or heat housing on residential property. For this equipment, a person may not cause or permit noise levels which exceed 70 dBA for air-conditioning equipment at receiving residential property, and 75 dBA for heat pump equipment at receiving residential property.~~

(15) Trash and Recycling collection. between the hours of 7 a.m. and 10 p.m.;

(16) Carnivals, fairs and amusements; conducted by civic and service organizations.;

(17) Sporting events conducted by primary or secondary schools, colleges, or recreational leagues on Board of Education, County, private or municipally owned properties, between the hours of 7 a.m. and 11 p.m.;

(18) Trapshooting, skeet shooting, or other target shooting on any range or property approved by the Division of Planning and Permitting for such activities. (Envir. Art. §3-401.)

§1-11-7. ENFORCEMENT AND PENALTIES.

(A) A violation of Section 1-11-6 shall be subject to enforcement by the Director of the Division of Planning and Permitting or the Director's designees, the Zoning Administrator, or the Sheriff of Frederick County and the Sheriff's designees, ("Enforcement Official") pursuant to Section 1-1-9 of the Code.

(B) The Enforcement Official is not required to shall issue a written warning notice for a first time violation.

(C) After a written warning, a subsequent A first offense shall be deemed a Class E civil offense. Each subsequent offense by the same individual or property owner(s) shall be cited at the next highest Class of offense.

(D) The Enforcement Official may, in consultation with the County Attorney, seek additional legal remedies as appropriate as under the circumstances.

Council Member Delauter seconded the motion that failed 2-5 with Council Members Otis, Keegan-Ayer, Chmelik, Donald, and Fitzwater opposed.

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Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald		X	
District 2 - Chmelik		X	
District 3 - Keegan-Ayer		X	
District 4 - Fitzwater		X	
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve	X		
Presiding Officer - Otis		X	

Sheriff Jenkins indicated the purpose of the bill was to take the noise ordinance from a criminal citation to a civil infraction making it easier to enforce. Captain Ron Hibbard was present to comment on the proposed amendment.

Council Member Delauter moved to amend proposed Bill No. 16-15 as follows:

§1-11-6. Nuisance – Noise Levels

(C) Noise Standards for Residential Areas as Receiving Property.

(2) A person may not cause or permit noise levels emanating from construction of demolition site activities that exceed:

(i) During daytime hours, ~~90~~ 125 dBA; or

Council Member Chmelik seconded the motion that failed 3-4 with Council Members Otis, Keegan-Ayer, Donald, and Fitzwater opposed.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald		X	
District 2 - Chmelik	X		
District 3 - Keegan-Ayer		X	
District 4 - Fitzwater		X	
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve	X		
Presiding Officer - Otis		X	

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Council Member Delauter moved to amend proposed Bill No. 16-15 as follows:

§1-11-6. Nuisance – Noise Levels

(E) Exemptions. The provisions of this section do not apply to:

- (5) Blasting operations for demolition, construction, and mining or quarrying, between the hours of ~~8:00~~ 7:00 a.m. and 5:00 p.m.

Council Member Chmelik seconded the motion that passed 6-1 with Council Member Donald opposed.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald		X	
District 2 - Chmelik	X		
District 3 - Keegan-Ayer	X		
District 4 - Fitzwater	X		
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve	X		
Presiding Officer - Otis	X		

Ms. Kearney noted the proposed amendment was substantial enough to require another public hearing which would be scheduled for a future council meeting agenda.

Bill No. 16-16 – Enforcement of County Laws and Regulations – Council President Bud Otis (On Behalf of the County Executive)

Council Member Keegan-Ayer moved to approve and enact Bill No. 16-16 as presented. Council Member Donald seconded the motion that passed 6-1 with Council Member Shreve opposed.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald	X		
District 2 - Chmelik	X		
District 3 - Keegan-Ayer	X		
District 4 - Fitzwater	X		
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve		X	
Presiding Officer - Otis	X		

(A copy of the adopted/enacted bill can be obtained from the county’s website, www.FrederickCountyMD.gov.)

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Public Comments

- Marcia Bowers
- Ginny Wolf

Budget Adjustments – Rick Harcum, Budget Office, Office of the County Executive

- J-17-062 – Department of Aging, Citizens Services Division
- J-17-064 - Orphans Court
- J-17-066 – Frederick County Developmental Center, Health Services Division
- J-17-070 – Fire and Rescue Services Division

Council Member Keegan-Ayer moved to approve the budget adjustments as presented. Council Member Chmelik seconded the motion that passed 6-0-1 with Council Member Shreve abstained.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald	X		
District 2 - Chmelik	X		
District 3 - Keegan-Ayer	X		
District 4 - Fitzwater	X		
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve	X		X
Presiding Officer - Otis	X		

Approval of Minutes

Council Member Keegan-Ayer moved to approve the minutes for August 30, 2016, as presented. Council Member Donald seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald	X		
District 2 - Chmelik	X		
District 3 - Keegan-Ayer	X		
District 4 - Fitzwater	X		
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve	X		
Presiding Officer - Otis	X		

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Affirm the Confirmation of the County Executive’s Appointments and Reappointments to Boards and Commissions – Joyce Grossnickle, Office of the County Executive

Ms. Grossnickle presented the appointments and reappointments recently made by County Executive Gardner. Ms. Grossnickle requested the Council’s confirmation of the appointments and reappointments as presented.

Agricultural Business Council

Council Member Keegan-Ayer moved to approve the reappointment of Ms. Christine Demas with a new term to expire June 30, 2019, and the appointments of Mr. Robert Black and Mr. Gary Grossnickle with terms to expire June 30, 2019. Council Member Fitzwater seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald	X		
District 2 - Chmelik	X		
District 3 - Keegan-Ayer	X		
District 4 - Fitzwater	X		
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve	X		
Presiding Officer - Otis	X		

Commission For Women

Council Member Keegan-Ayer moved to confirm the appointments of Dr. Lois Jarman with a term to expire June 30, 2017; and Ms. Jaanai Priest and Ms. Margaret Teahan, Esq. with terms to expire June 30, 2019. Council Member Fitzwater seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald	X		
District 2 - Chmelik	X		
District 3 - Keegan-Ayer	X		
District 4 - Fitzwater	X		
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve	X		
Presiding Officer - Otis	X		

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Human Relations Commission

Council Member Keegan-Ayer moved to approve the reappointments of Mr. Adam Book, Ms. Mari Lee, and Ms. Irene Packer-Halsey with new terms to expire June 30, 2019; and the appointments of Mr. Roger Sobkowiak and Mr. V. Lee Whisner with terms to expire June 30, 2019. Council Member Fitzwater seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald	X		
District 2 - Chmelik	X		
District 3 - Keegan-Ayer	X		
District 4 - Fitzwater	X		
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve	X		
Presiding Officer - Otis	X		

Solid Waste Advisory Committee

Council Member Keegan-Ayer moved to confirm the appointment of Mr. Rolan Clark with a term to expire June 30, 2018. Council Member Fitzwater seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald	X		
District 2 - Chmelik	X		
District 3 - Keegan-Ayer	X		
District 4 - Fitzwater	X		
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve	X		
Presiding Officer - Otis	X		

Transportation Services Advisory Council

Council Member Keegan-Ayer moved to confirm the appointment of Mr. Michael Planz with a term to expire June 30, 2017. Council Member Fitzwater seconded the motion that passed 7-0.

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Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald	X		
District 2 - Chmelik	X		
District 3 - Keegan-Ayer	X		
District 4 - Fitzwater	X		
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve	X		
Presiding Officer - Otis	X		

Third Reading Calendar:

Bill No. 16-12 – To Allow “Medical Cannabis Grower” as a temporary special exception use in the Agricultural Zoning District; defining “Medical Cannabis Grower” and setting special exception criteria and setback requirements – Council Member M.C. Keegan-Ayer

Council Member Keegan-Ayer moved to approve and enact Bill No. 16-12. Council Member Fitzwater seconded the motion.

Council Member Keegan-Ayer then moved to lay the bill on the table indefinitely, which was approved by consensus of the members.

No further action was taken.

Bill No. 16-17 – Establishing a Clean Energy Program for Commercial Properties – Council President Bud Otis (On Behalf of the County Executive)

Council Member Keegan-Ayer moved to approve Bill No. 16-17 establishing a clean energy loan program for commercial properties. Council Member Fitzwater seconded the motion.

Ms. Shannon Moore, Planning and Permitting Division and Ms. Diane Fox, Finance Division, commented on the Property Assessed Clean Energy (PACE) program.

Council Member Keegan-Ayer moved to amend the bill as follows:

Section 1-8-453 Scope and Eligibility

(B) Eligibility

(2) Obtain an energy audit approved under program guidelines demonstrating the energy savings projected to be obtained from the improvements over the life of the

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loan equal or exceed the principal and aggregate interest to be paid over the term of the loan;

Council Member Donald seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 - Donald	X		
District 2 - Chmelik	X		
District 3 - Keegan-Ayer	X		
District 4 - Fitzwater	X		
District 5 - Delauter	X		
At-large - Otis			
At-large - Shreve	X		
Presiding Officer - Otis	X		

The amended Bill No. 16-17 would be scheduled for a future Council meeting.

Public Comments

- None

Council Member Comments

Comments were provided by the Council Members.

Adjourn

The meeting adjourned at 5:46 p.m.

Bud Otis, President
County Council