

**SHULMAN
ROGERS
GANDAL
PORDY &
ECKER, P.A.**

Montgomery County Business Legislative Update

Volume 1, Issue 5



May 2008

**Montgomery
County's
Business Law
Firm**

**Also Available from
SRGPE:**

**Labor & Employment Alert
Immigration Alert**

Questions:

For questions, to testify, or to meet with Councilmembers about proposed legislation, please call or email your attorney or [Melissa G. Bernstein](#) or [Anne Marie Vassallo](#) at 301-230-5200 or send an email to us at GovernmentRelations@srgpe.com

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In This Issue

Legislation is organized by committee assignment

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Planning, Housing & Economic Development (PHED)

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Archives:

[Jan. 2008 - Volume 1, Issue 1](#)
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SPECIAL NOTES**ENACTED BUSINESS LEGISLATION SINCE JANUARY 1, 2007**

PENDING BUSINESS LEGISLATION

Health & Human Services (HHS)

Eating and Drinking Establishments – Nutrition Labeling

Requires certain eating and drinking establishments to post certain nutrition information on menu boards and menus – [Bill 19-07](#)

- Introduced July 31, 2007 by Leventhal
- Public Hearing: September 18, 2007; 7:30pm
- HHS Worksession: September 24, 2007

Management & Fiscal Policy (MFP)

Taxation – Arts and Entertainment District – Property Tax Credits

NEW

Amends the law allowing a property tax credit in arts and entertainment districts to conform to State law, clarifies that the property tax credit applies

to the portion of a building that is used by a qualifying residing artist or arts and entertainment enterprise, and generally amends County law regarding arts and entertainment districts – [Bill 13-08](#)

- Introduced April 15, 2008 by Knapp at the request of the Council Executive
- Public Hearing: May 6, 2008; 1:30pm
- MFP Worksession: TBD

Planning, Housing & Economic Development (PHED)

Alternative Review Committee – Functions Subdivision Standards

NEW

Removes the Alternative Review Committee from the preliminary plan approval process, allows certain preliminary plans to exceed density or building height limits to permit the construction of all MPDUs and bonus units on-site, and generally amends the provisions relating to preliminary plans – [SRA 08-02](#)

- Introduced April 29, 2008 by the District County at the request of the County Executive
- Public Hearing: June 17, 2008; 1:30pm
- PHED Worksession: TBD

Industrial Zones – Health Clubs **NEW**

Amends the Zoning Ordinance to remove the restrictions on health clubs in industrial zones and generally amends the provisions related to health clubs in industrial zones – [ZTA 08-09](#)

- Introduced April 29, 2008 by Knapp
- Public Hearing: June 17, 2008; 1:30pm
- PHED Worksession: TBD

Fenton Street Overlay Zone – Workforce Housing Heights **NEW**

Allows optional method of development projects in the Fenton Village Overlay Zone additional building height to accommodate workforce housing units and generally amends building heights in the Fenton Village Overlay Zone – [ZTA 08-08](#)

- Introduced April 29, 2008 by the District Council at the request of the County Executive
 - Public Hearing: June 17, 2008; 1:30pm
 - PHED Worksession: TBD
-

Alternative Review Committee – Functions NEW

Removes the Alternative Review Committee from the development plan and project plan approval processes, allows certain development plans or project plans to exceed density or building height limits to permit construction of all MPDUs and bonus units on-site, and generally amends provisions relating to Development Plans and Project Plans – [ZTA 08-07](#)

- Introduced April 29, 2008 by the District Council at the request of the County Executive
 - Public Hearing: June 17, 2008; 1:30pm
 - PHED Worksession: TBD
-

I-4 Zone – Transit Station Development Areas NEW

Defines an accessory residential unit, allows an accessory residential unit as a permitted use in the I-4 Zone if the use is located in a Transit Station Development Area, modifies the special regulations of the I-4 Zone to address development in a Transit Station Development Area and generally amends the I-4 Zone – [ZTA 08-06](#)

- Introduced April 15, 2008 by the District Council at the request of the Planning Board
 - Public Hearing: May 20, 2008; 7:30pm
 - PHED Worksession: TBD
-

Transit-Oriented Mixed-Use Zones NEW

Establishes the Transit-Oriented Mixed-Use 1.0 (TOMX-1) and the Transit-Oriented Mixed Use 1.0/Transferrable Development Rights (TOMX-1/TDR) Zones, established the allowable land uses, development standards, and approval procedures for development in these zones and amends the land uses, development standards, and approval procedures for development in the TOMX-2 and the TOMX-2/TDR Zones – [ZTA 08-05](#)

- Introduced April 8, 2008 by the District Council at the request of the Planning Board
 - Public Hearing: May 20, 2008; 7:30pm
 - PHED Worksession: TBD
-

Accessory Structures – Solar Panels

Amends the Zoning Ordinance to allow certain accessory structures in the side yard of one-family residential zones and amends the standards related to accessory structures in one-family residential zones – [ZTA 08-04](#)

- Introduced March 18, 2008 by Berliner
- Public Hearing: April 22, 2008; 1:30pm
- PHED Worksession: May 2, 2008

Landscape Contractors – Commercial, Transitional (CT) Zone

Amends the Zoning Ordinance to allow a landscape contractor as a permitted use in the CT if the site adjoins a railroad right-of-way and any property recommended for commercial, industrial or public use – [ZTA 08-02](#)

- Introduced February 26, 2008 by Knapp
 - Public Hearing: April 1, 2008; 1:30pm
 - PHED Worksession: TBD
-

Green Area Definition - Amendments

Generally amends the definition of “green area” and excludes any building roof area from such definition – [ZTA 08-01](#)

- Introduced January 15, 2008 by Elrich
 - Public Hearing: February 26, 2008; 1:30pm
 - PHED Worksession: March 6, 2008; 9:30am; April 7, 2008; 2:00pm
-

Moderately Priced Housing – Amendments

Revises the standards for setting sales prices for moderately priced dwelling units (MPDU) and revises the control periods and building standards of MPDU's. Also repeals the authority of the Director of the Department of Housing and Community Affairs to allow applicant to pay into the HIF instead of the MPDU subdivision – [Bill 38-07](#).

- Introduced December 11, 2007 by Knapp at the request of the County Executive
 - Public Hearing: February 5, 2008; 1:30pm
 - PHED Worksession: February 5, 2008; 1:30pm; Postponed to March 13, 2008; 2:30pm; March 17, 2008; 9:30am; March 31, 2008; 2:00pm
-

Moderately Priced Dwelling Units – Amendments

Allows the Director of the Department of Housing and Community Affairs to set aside certain specially-equipped moderately priced dwelling units for eligible people with disabilities, and repeals the authority of the Director to allow an applicant to pay into the Housing Initiative instead of building some or all of the required moderately priced dwelling units in a proposed subdivision – [Bill 13-07](#)

- Introduced June 26, 2007 by Leventhal
- Public Hearing: July 19, 2007; 1:30pm
- PHED Worksession: July 23, 2007

Planned Development Zones – Requirements

Allows Planned Development Zones on certain commercially zoned sites, provides a standard for commercial density in Planned Development Zones, and removes the requirement that in Planned Development Zones development in or adjoining a central business district must comply with the use recommended in a master plan – [ZTA 07-13](#)

- Introduced September 11, 2007 by Praisner at the request of the County Executive
 - Public Hearing: October 16, 2007; 1:30pm
 - PHED Worksession: January 22, 2008; 2:30pm
-

Accessory Structure Standards – Size

Authorizes the Board of Appeals to decide petitions to increase the size of accessory structures in one-family residential zones – [ZTA 07-12](#)

- Introduced July 31, 2007 by Ervin and Praisner
 - Public Hearing: September 11, 2007; 1:30pm
 - PHED Worksession: September 24, 2007, December 3, 2007, May 2, 2008
-

Rural Density Transfer – Child Lot Standards

Amends the density calculations in the Rural Density Transfer Zone to clarify that the number of child lots must not exceed the allowable base density – [ZTA 07-09](#)

- Introduced June 12, 2007 by Praisner on behalf of the Maryland-National Capital Park and Planning Commission
 - Public Hearing: July 19, 2007; 7:30pm
 - PHED Worksession: September 10, 2007
-

Transfer of Development Rights – Standards

Eliminates the requirement that a development must use at least two-thirds of the allowable number of transferable development rights in order to use any transferable development rights – [ZTA 07-08](#)

- Introduced June 12, 2007 by Praisner at the request of the Ad Hoc Agricultural Policy Working Group
 - Public Hearing: July 19, 2007; 7:30pm
 - PHED Worksession: TBD
-

Rural Density Transfer – Child Lot Standards

Amends the density calculations in the Rural Density Transfer Zone to exclude a lot for a child under specified conditions, and amends the standards to approve a child lot in the Rural Density Transfer Zone – [ZTA 07-06](#)

- Introduced June 12, 2007 by Praisner at the request of the Ad Hoc Agricultural Policy Working Group
 - Public Hearing: July 19, 2007; 7:30pm
 - PHED Worksession: September 10, 2007
-

Workforce Housing – Options

Clarifies that a developer in a Metro Station Policy Area may voluntarily provide workforce housing – [ZTA 07-03](#)

- Introduced March 27, 2007 by Floreen
 - Public Hearing: June 12, 2007; 1:30pm
 - PHED Worksession: June 18, 2007
-

Transferable Development Rights – Subdivision Standard

Eliminates the requirement that a development must use at least two-thirds of the allowable number of transferable development rights in order to use any transferable development rights – [SRA 07-02](#)

- Introduced June 12, 2007 by Praisner at the request of the Ad Hoc Agricultural Policy Working Group
 - Public Hearing: July 19, 2007; 7:30pm
 - PHED Worksession: TBD
-

Adequate Public Facilities – Validity Period

Revises the validity period of a finding of adequate public facilities by the Planning Board, and revises the process and standards to extend a finding of adequacy – [SRA 07-01](#)

- Introduced May 24, 2007 by Praisner at the request of the Planning Board Public
- Hearing: July 10, 2007; 1:30pm
- PHED Worksession: September 10, 2007

**Transportation, Infrastructure, Energy & Environment
(T & E)**

Forest Conservation – Amendments

Amends the County forest conservation law in various areas, including: the removal of certain exemptions from the Forest Conservation Law, establishes criteria for certain levels of review when applying for plans, revises requirements for reforestation, financial security, appeal procedures and variance requirements, and repeals provisions related to the Forest Conservation Advisory Committee and the County Arborists – [Bill 37-07](#)

- Introduced December 11, 2007 by Knapp at the request of the Planning Board
 - Public Hearing: January 22, 2008; 7:30pm
 - T & E Worksession: February 7, 2008; 9:30am; Postponed to February 19, 2008; 9:30am, postponed to March 17, 2008; 9:30am
-

Buildings – Energy Efficiency

Requires certain commercial, multi-family residential, and single family residential buildings to meet certain Energy Star standards, requires the Director of the Department of Public Works and Transportation to develop an energy baseline, energy unit savings plan, and energy cost savings plan for each County building, and requires a building owner to pay an Environmental Sustainability Fee if the building does not comply with certain energy efficiency and environmental design standards – [Bill 30-07](#)

- Introduced November 20, 2007 by Berliner, Praisner, Elrich, Floreen, and Trachtenberg
 - Public Hearing: January 31, 2008; 7:30pm
 - MFP Worksession: February 21, 2008; 1:30pm
 - T&E Worksession: March 20, 2008; 9:30am
-

Taxicabs – Passenger Vehicle Licenses

Authorizes the Department of Public Works and Transportation to award a certain number of passenger vehicle licenses under certain circumstances – Expedited [Bill 26-07](#)

- Introduced October 30, 2007 by Praisner at the request of the County Executive
 - Public Hearing: November 13, 2007; 1:30pm
 - T & E Worksession: TBD
-

Taxicab Driver Identification Cards

Allows the Department of Public Works and Transportation to issue temporary taxicab driver identification cards to an applicant without obtaining both a state and a federal background check in certain instances – Expedited [Bill 17-07](#)

- Introduced June 26, 2007 by Ervin and Floreen
- Public Hearing: July 24, 2007; 1:30pm
- T & E Worksession: July 26, 2007

Forest Conservation – Enforcement

Prohibits the Director of Permitting Services from issuing a building permit if land was cleared in violation of the forest conservation law, and allows an aggrieved party to file a private civil action to enforce the forest conservation law – Expedited [Bill 14-07](#)

- Introduced June 26, 2007 by Elrich and Praisner
- Public Hearing: July 10, 2007; 1:30pm
- T & E Worksession: TBD

Outdoor Lighting Standards – Established

Establishes outdoor lighting standards, including standards relating to shielding, aiming, efficacy, color rendition, power density, illuminance, luminance, controls, and off-site spill, and requires a person to obtain approval of a lighting plan from the Department of Permitting Services before applying to the Planning Board for site plan approval or to the Board of Appeals for a special exception – [Bill 4-07](#)

- Introduced February 13, 2007 by Praisner
- Public Hearing: March 20, 2007; 1:30pm
- T & E Worksession: March 12, 2007

Outdoor Lighting Standards

Makes standards and procedures governing outdoor lighting consistent with the County Light Control Law, and requires nonconforming lighting to comply with the County Light Control Law – [ZTA 07-01](#)

- Introduced February 13, 2007 by Praisner and Trachtenberg
- Public Hearing: March 20, 2007; 1:30pm
- T&E Worksession: TBD

**ENACTED BUSINESS LEGISLATION
SINCE JANUARY 1, 2007**

Taxes – Personal Property Tax – Electric Generating Equipment

Increases the percent of assessment for personal property tax purposes of certain machinery or equipment used to generate electricity, steam for sale, or hot or chilled water for sale that is used to heat or cool a building – [Expedited Bill 5-08](#)

- Enacted – LMC 2008 – Chap. Pending
-

Consumer Protection – Energy and Environmental Advocacy

Requires the Office of Consumer Protection to represent the County's interest in obtaining the lowest possible rates consistent with environmental stewardship for gas, electricity, and other energy sources by participating in matters pending before appropriate federal and state agencies – [Bill 35-07](#)

- Enacted – LMC 2008 – Chap. Pending
-

Planning Procedures – Greenhouse Gas Emissions

Requires the Montgomery County Planning Board, when preparing certain plans, to assess a plan's potential impact on greenhouse gas emission in the County and consider options that would minimize those emissions – [Bill 34-07](#)

- Enacted – LMC 2008 – Chap. Pending
-

Renewable Energy

Requires the Director of the Department of Environmental Protection to develop a Renewable Energy Action Plan after evaluating options for increasing the use of renewable energy in and by the County, including the feasibility of creating a Sustainable Energy Utility, prohibits enforcement of certain deed restrictions, covenant, rules, or regulations relating to renewable energy devices, and creates a property tax credit for installation of certain renewable energy devices – [Bill 33-07](#)

- Enacted – LMC 2008 – Chap. Pending
-

Environmental Sustainability – Climate Protection Plan

Establishes goals to reduce Countywide greenhouse gas emissions by certain amounts, requires the Director of the Department of Environmental Protection to prepare a Climate Protection Plan designed to achieve Countywide goals for greenhouse emissions, requires the Directors of the Department of Environmental Protection and Department of Finance to evaluate the costs and benefits of converting the fuel energy tax to a carbon tax, and requires the Director of the Department of Environmental Protection to recommend whether the County should join a cap and trade program – [Bill 32-07](#)

- Enacted – LMC 2008 – Chap. Pending
-

Real Property – Energy Performance Audits

Requires that a home energy audit be conducted as part of a home inspection completed in connection with the sale of a single-family residential building – [Bill 31-07](#)

- Enacted – LMC 2008 – Chap. Pending
-

Buildings – Energy Efficiency

Requires certain commercial, multi-family residential, and single family residential buildings to meet certain Energy Star standards, requires the Director of the Department of Public Works and Transportation to develop an energy baseline, energy unit savings plan, and energy cost savings plan for each County building, and requires a building owner to pay an Environmental Sustainability Fee if the building does not comply with certain energy efficiency and environmental design standards – [Bill 30-07](#)

- Enacted – LMC 2008 – Chap. Pending
-

Environmental Sustainability – Climate Protection – Motor Vehicles

Requires certain County vehicles to use biodiesel fuel, requires the Director of the Department of Public Works and Transportation to conduct an annual inventory of sport utility vehicles in the County fleet, requires certain fuel retailers to sell low carbon fuel within a certain time after the Director of the Department of Environmental Protection finds that the fuel is widely available in the County; and requires the Director of the Department of Human Resources to prepare a Telecommuting Action Plan – [Bill 29-07](#)

- Enacted – LMC 2008 – Chap. Pending
-

County Growth Policy - Recordation Tax – Rate

Increases the rate by \$3.10 per every \$1000 of sale price above \$500,000, with the additional revenue divided equally between rental assistance programs for low and moderate income tenants, and County government capital projects such as roads, libraries, and police/fire stations – [Bill 11-07](#)

- Enacted – LMC 2007 – Chap. 17
-

County Growth Policy - Impact Taxes – Amendments

Increases the tax rate by 125%, increases the large-house surtax from \$1.00 to \$2.00 per square foot, and applies the large large-house surtax to single-family dwelling units larger than 3500 square feet up to 8500 square feet – [Bill 10-07](#)

- Enacted – LMC 2007 – Chap. 16
-

Real Property – Property Tax – Disclosure

Requires certain material distributed in connection with the sale of residential real property to disclose the amount of property tax a buyer would be obligated to pay after purchase – [Bill 24-07](#)

- Enacted – LMC 2007 – Chap. 22
-

Non-discrimination – Gender Identity

Prohibits discrimination in housing, employment, public accommodations, cable television service, and taxicab service on the basis of gender identity – [Bill 23-07](#)

- Enacted – LMC 2007 – Chap. 18
-

Tenant Displacement – Sale of Mobile Home Park – Right of First Refusal

Requires the owner of a mobile home park to give the County, the Housing Opportunities Commission, and a tenant organization an opportunity to buy the mobile home park before it is sold to another person – Expedited [Bill 18-07](#)

- Enacted – LMC 2007 – Chap. 11
-

Admissions and Amusement Tax – Exemptions – Golf Course and Agricultural Tourism

Exempts certain private golf courses and agricultural tourism activities from the admissions and amusement tax – Expedited [Bill 16-07](#)

- Enacted – LMC 2007 – Chap. 9
-

Forest Conservation – Enforcement

Defines the application of certain forest conservation requirements to certain religious institutions – [Bill 15-07](#)

- Enacted – LMC 2007 – Chap. 10
-

Real Property – Agricultural Zones and Preservation Advisory Board

Requires sellers of real property in Agricultural Zones to notify potential buyers that state and county laws protect owners and operators of agricultural uses from certain lawsuits – [Bill 12-07](#)

- Enacted – LMC 2007 – Chap. 13
-

Tenant Displacement – Sale of Rental Housing – Right of First Refusal

Requires the owner of certain rental housing built after a certain date to give the County, the Housing Opportunities Commission, and any tenant organization the right to buy the rental housing before it is sold to another person – [Bill 7-07](#)

- Enacted – LMC 2007 – Chap. 6
-

Condominiums – Conversion of Rental Housing – Extended Tenancies

Clarifies the types of individuals with disabilities who are eligible for tenancies when certain rental housing is converted to condominiums – [Bill 1-07](#)

- Enacted – LMC 2007 – Chap. 4
-

Central Business District Zone Revisions – Amendments

Provides flexibility for Central Business District zoned projects, revises provisions for transfer of public use space in Overlay Zones, establishes standards and procedures for optional method projects to make payments, and revises requirements and standards for approval of a project plan – [ZTA 07-10](#)

- Enacted – Ordinance No. Pending
-

Growth Policy – Special Exceptions and Local Map - Amendments

Clarifies the provision for special exemptions to address Growth Policy issues through the deletion of redundant text and clarification of subject sections, updates to the process for review of special exemptions and adds the requirement for an application for a local zoning map amendment to address public facilities issues – [ZTA 07-17](#)

- Enacted – Ordinance No. 16-14
-

Signs – Permit Fees for Certain Nonprofit Organizations

Allows permit fees to be waived for all nonprofit organizations on the Planning Board's list of civic and homeowner organizations, and removes references to the content of any sign that may have waived or reduced sign permit fees – [ZTA 07-15](#)

- Enacted – Ordinance No. 16-13
-

Ripley/South Silver Spring Overlay Zone – Development Standards

Amends the definition of “radio and television broadcasting studio,” amends the height standards in the Ripley/South Silver Spring Overlay Zone, and deletes expired credit provisions – [ZTA 07-14](#)

- Enacted - Ordinance No. 16-12
-

Upper Paint Branch Special Protection Area – Standards

Amends development standards in the Overlay Zone for the Upper Paint Branch Special Protection Area – [ZTA 07-11](#)

- Enacted – Ordinance No. 16-09
-

Rural Density Transfer – Use Limitations

Limits the uses allowed in the Rural Density Transfer Zone when a property is under a transfer of development rights easement – [ZTA 07-07](#)

- Enacted – Ordinance No. 16-08
-

Site Plan Amendment – Procedures

Exempts minor building permits from a finding of conformance to an approved site plan, and establishes a procedure and standards for the approval of minor site plan amendments by the Planning Director – [ZTA 07-](#)

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- Enacted - Ordinance No. 16-11
-

Accessory Structure Standards

Establishes setbacks for accessory structures from national park property – [ZTA 07-04](#)

- Enacted – Ordinance 16-06
-

Buildable Lots – Clarification

Clarifies the text of the 1928 Zoning Ordinance, and generally amends the special provisions for conditions predating 1958 – [ZTA 07-02](#)

- Enacted – Ordinance No. 16-04
-

Preliminary Subdivision Plans – Approvals – Applicability of Growth Policy Amendments – Extension

Continues temporary provisions regarding the applicability of Growth Policy or adequate facilities requirements to subdivisions – [SRA 07-03](#)

- Enacted – Ordinance No. 16-07

SPECIAL NOTES

- On January 29, 2008 Councilmembers Elrich and Leventhal introduced Bill 2-08 which would (i) require an employer of certain domestic workers to sign a written contract of employment; (ii) authorize a domestic worker to file a complaint with the Office of Consumer Protection if an employer does not comply; and (iii) generally amends the County law regarding consumer protection, employment, and domestic workers. A Public Hearing was held on February 26, 2008. A Public Safety Committee Work session was held on April 10, 2008 at 9:00am. Email GovernmentRelations@srgpe.com for more information.
- The State legislature passed a measure (SB 522) requiring all Maryland homeowners to re-apply for Homestead Tax Credit at the time of re-assessment. Failure to do so could cause a significant increase in a homeowner's real property taxes.

- The Planning Board presented its Semi-Annual Report to the Montgomery County Council on April 8, 2008 which included a schedule for creating new Master Plans and/or Sector Plans throughout all parts of the County. Email GovernmentRelations@srgpe.com for more information.
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Here is the legal part: (1) The information contained in this publication should not be construed as legal advice. Please communicate with your attorney for legal advice. (2) This Business Legislative Update highlights legislation which the Government Relations Group believes to be relevant to the interests of the business community. (3) The legislation reported here is not exhaustive. Information is correct as of May 6, 2008. Dates are subject to change.

For questions, to testify, or to meet with Councilmembers about proposed legislation in Montgomery County, please call or email your attorney or [Melissa G. Bernstein](mailto:Melissa.G.Bernstein@srgpe.com) or [Anne Marie Vassallo](mailto:Anne.Marie.Vassallo@srgpe.com) at 301-230-5200 or send an email to us at GovernmentRelations@srgpe.com

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