

## Montgomery County's Business Law Firm

  


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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@shulmanrogers.com](mailto:GovernmentRelations@shulmanrogers.com)

### Lobbyists in State of Maryland

Anne Marie Vassallo  
 Larry Gordon  
 Larry Shulman

## HIGHLIGHTS

BELOW ARE THE HIGHLIGHTS THAT ARE FEATURED IN THE DECEMBER 2009 EDITION OF THE MONTGOMERY COUNTY BUSINESS LEGISLATIVE UPDATE:

- **EXPEDITED BILL 44-09 - BUILDINGS - ENERGY EFFICIENCY - DEFERRAL -** DEFERS THE EFFECTIVE DATE FOR REQUIRING THAT CERTAIN RESIDENTIAL BUILDINGS MEET CERTAIN ENERGY STAR STANDARDS
- **ZTA 09-11 - RESIDENTIAL ZONES - AGRICULTURAL VENDING -** ALLOWS THE SALE OF FARM PRODUCE BY CERTIFIED AGRICULTURAL PRODUCERS IN RESIDENTIAL ZONES UNDER CERTAIN CIRCUMSTANCES
- **ZTA 09-13 - TRANSIT MIXED-USE (TMS) ZONE - PRIOR APPROVALS -** AMENDMENT TO ALLOW ANY APPROVED DEVELOPMENT PLAN, SUPPLEMENTARY PLAN OR SITE PLAN TO CONSTRUCT SUBJECT TO THE APPLICABLE APPROVAL AND ALLOW AMENDMENTS TO PRELIMINARY PLANS AND SITE PLANS APPROVED UNDER ANY PRIOR ZONE UNDER CERTAIN CIRCUMSTANCES

## COUNCILMEMBER CORNER



This month in the Councilmember Corner, we highlight Montgomery County Executive, Isiah Leggett. In November 2006, County Executive Leggett was elected to a four-year term as Montgomery County Executive. He was the first African American to be elected to the County Council. He served four terms as an At-Large Member (1986 - 2002), served as the Council's President three times (1991, 1998 and 1999) and as the Council's Vice-President three times (1990, 1997 and 2002).

County Executive Leggett has been an active board of directors member of a number of professional, civic and community organizations including: the Jewish Foundation for Group Homes, the Maryland College of Art and Design, Leadership Montgomery, the Montgomery Multiple Sclerosis Center, the Montgomery County Chapter of the NAACP, Impact Silver Spring, the Board of Directors of the Montgomery County Tennis Association, the Washington Area Housing Partnership, Montgomery County Boys and Girls Club, Metro PFLAG, and the African American Business Council. He is also a member of the Urban League, the Vietnam Veterans Leadership Forum, the National Bar Association, the American Bar Association, Phi Alpha Delta Legal Fraternity, Southern Christian Leadership Conference, Burtonsville Kiwanis, and the Alpha Phi Alpha Fraternity.

County Executive Leggett lives in Burtonsville with his wife, Catherine.

**Montgomery County:**

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 Tim Dugan  
 David Freishtat  
 Larry Gandal  
 Larry Gordon  
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**Archives:****Enacted Legislation**

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## 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; October 29, 2009; 9:30am
- Resolution to extend expiration date until 08/31/10
- Recommended approval with amendments on October 29, 2009 **NEW**

### Management & Fiscal Policy (MFP)

#### Buildings - Energy Efficiency - Deferral **NEW**

Defers the effective date for requiring that certain residential buildings meet certain Energy Star standards - [Expedited Bill 44-09](#)

- Introduced November 17, 2009 at the request of the County Executive
- Action tentatively scheduled for 12/01/09

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#### Property Tax Credit - Renewable Energy - Annual Aggregate Limit

Amends the annual aggregate limit for the property tax credit for solar and geothermal energy devices and energy conservation devices; and generally amends law relating to renewable energy property tax credit - [Bill 39-09](#)

- Introduced November 3, 2009 by the Councilmember Berliner
  - MFP Worksession: November 30, 2009; 2:00pm
  - Public Hearing: November 24, 2009; 1:30pm
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### **Taxation - Impact Taxes - Inflation Adjustment - Temporary Suspension**

Expected act to temporarily suspend requirement to adjust certain impact tax rates for inflation and generally amend the law governing impact tax rates - [Bill 32-09](#)

- Introduced June 16, 2009 by the Councilmember Elrich
- MFP Worksession: September 21, 2009; 2:00pm; September 29, 2009; 2:00pm
- Public Hearing: September 15, 2009; 1:30pm

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### **Ethics - Amendments**

Amends the County ethics law to conform to a State Ethics Commission requirement and clarify and update other provisions of the County law - [Bill 27-09](#)

- Introduced June 16, 2009 by the Council President at the request of the Ethics Committee
- MFP Worksession: September 21, 2009; 2:00pm; November 23, 2009; 2:00pm **NEW**
- Public Hearing: July 14, 2009; 1:30pm; September 15, 2009; 1:30pm

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### **Ethics - Ex Parte Communications**

Further defines which communications are allowed when a decision must be made on the basis of a hearing record; and generally amend the County law regarding communications to decision-makers - [Bill 12-09](#)

- Introduced March 31, 2009 by Andrews, Berliner, Floreen, Ervin and Leventhal
- Public Hearing: April 28, 2009; 1:30pm
- MFP Worksession: June 15, 2009; 2:00pm; June 22, 2009; 2:00pm; July 27, 2009; 2:00pm; September 21, 2009; 2:00pm; November 23, 2009; 2:00pm **NEW**

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### **Development Impact Tax - Deferral**

Authorizes the deferral of certain development impact tax payments for a certain period; and generally amend the law regarding payment of impact taxes - Expedited [Bill 4-09](#)

- Introduced February 10, 2009 by Andrews at the request of the County Executive
- Public Hearing: March 3, 2009; 1:30pm
- MFP Worksession: March 9, 2009; 2:00pm; April 14, 2009; 2:00pm; May 13, 2009; 9:00am; June 22, 2009; 2:00pm
- Committee recommends approval with amendments

## **Planning, Housing & Economic Development (PHED)**

### **Residential Zones - Agricultural Vending **NEW****

Allows the sale of farm produce by Certified Agricultural Producers in residential zones under certain circumstances - [ZTA 09-11](#)

- Introduced November 17, 2009 by Councilmember Berliner
- Public Hearing: January 12, 2010; 1:30pm

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### **Rural Service (RS) Zone - Development Standards NEW**

Exempts pre-existing lots or parcels in the Rural Service zone from minimum footage requirements - [ZTA 09-12](#)

- Introduced November 17, 2009 by Councilmember Berliner
- Public Hearing: January 12, 2010; 1:30pm

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### **Transit Mixed-Use (TMX) Zone - Prior Approvals NEW**

Allows any approved development plan, supplementary plan or site plan to construct subject to the applicable approval; allows amendments to preliminary plans and site plans approved under any prior zone under certain circumstances - [ZTA 09-13](#)

- Introduced December 1, 2009 by the Planning, Housing and Economic Development Committee
- Public Hearing: January 19, 2010; 1:30pm

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### **Growth Policy - Amendments**

Renames and modifies the County Growth Policy and revises the process to adopt and amend the County Growth Policy - [Bill 38-09](#)

- Introduced November 3, 2009 by Councilmembers Floreen and Knapp
- PHED Worksession: December 7, 2009; 2:00pm; January 21, 2010 NEW
- Public Hearing: December 1, 2009; 1:30pm; December 3, 2009; 7:30pm

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### **Sandy Spring/Ashton Overlay Zone - Prohibited Uses**

Amends the prohibited land uses in the Sandy Spring/Ashton Rural Village Overlay Zone - [ZTA 09-01](#)

- Introduced March 17, 2009 by Councilmember Elrich
- PHED Committee recommended approval with amendments on October 27, 2009

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### **Life Sciences Center (LSC) Zone - Revisions**

Amends the Zoning Ordinance to revise the LSC Zone to permit mixed-use development under certain circumstances - [ZTA 09-07](#)

- Introduced July 28, 2009 by District Council at Request of the Planning Board

- PHED Worksession: October 26, 2009; 2:00pm; November 9, 2009; 2:00pm; November 12, 2009; 9:30am

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### **Commercial Residence (CR) Zones NEW**

Establish Commercial/Residential (CR) zones; and establishes the intent, allowed land uses, development methods, general requirements, development standards, density incentives and approval procedures under the Commercial/Residential zones - [ZTA 09-08](#)

- Introduced September 22, 2009 by District Council at Request of the Planning Board
- PHED Worksession: November 2, 2009; 2:00pm; November 12, 2009; 9:30am; November 17, 2009; 2:30pm; November 23, 2009; 2:00pm NEW
- Public Hearing: October 27, 2009; 7:30pm

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### **Town Sector (TS) Zone - Minimum Area**

Allows, under certain circumstances, a reduction in the land area required for land currently zoned TS - [ZTA 09-06](#)

- Introduced July 28, 2009 by Councilmembers Knapp, Elrich and Floreen
- PHED Worksession: September 21, 2009; 2:00pm
- Public Hearing: September 15, 2009; 1:30pm

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### **Subdivision Approval - Conflict Resolution**

Resolves certain conflicts between departments and agencies concerning the conditions of the approval of a preliminary subdivision plan and generally revises the requirements for approval of a preliminary subdivision plan - [SRA 09-02](#)

- Introduced June 23, 2009 by Councilmember Floreen
- PHED Worksession: September 21, 2009; 2:00pm; October 13, 2009; 2:00pm
- Public Hearing: July 28, 2009; 1:30pm

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### **Burtonsville Overlay Zone - Allowed Uses**

Amends the land uses allowed in the Overlay zone; and generally amends the Overlay zone for the Burtonsville Employment Area of the Fairland Master Plan - [ZTA 09-05](#)

- Introduced June 22, 2009 by Councilmember Navarro
- PHED Worksession: September 21, 2009; 2:00pm; October 8, 2009; 2:00pm
- Public Hearing: July 28, 2009; 1:30pm
- PHED Committee recommended approval with amendments on October 27, 2009

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### **Zoning Text Amendment - Home Occupations and Residential Off-street Parking**

Amendment to County Zoning Ordinance to amend the provisions and definitions concerning home occupations; amend the provisions for violations; amend the definition of a commercial vehicle; add a definition of a light commercial vehicle; add definitions associated with off-street parking and home occupations; require a use-and-occupancy permit for a one-family detached dwelling; limit the amount of surfaced area in front yards for certain one-family zones; limit parking in front yards to surfaced area; limit off-street parking in clustered agricultural zones; amend the provisions for renewing a special exception for a home occupation; and generally amend the provisions related to home occupations, off-street parking; and violations of the Zoning Ordinance - [ZTA 09-03](#)

- Introduced May 5, 2009 at the request of the County Executive
- PHED Worksession: July 13, 2009; 2:00pm; September 14, 2009; 2:00pm
- Public Hearing: June 9, 2009; 7:30pm

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### **Land Use - Christmas Tree Sales**

Amendment to delete or revise the date restrictions for Christmas tree sales; and generally amend the provisions for Christmas tree sales and the sale of seasonal decoration - [ZTA 08-18](#)

- Introduced December 9, 2008 by the District Council at the request of County Executive
- PHED Worksession: February 23, 2009; 2:00pm; October 8, 2008; 2:00pm

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### **Landscape Contractors – General Commercial (C-2) Zone**

Allows a landscape contractor as a permitted use in the C-2 zone under certain circumstances – [ZTA 08-12](#)

- Introduced June 10, 2008 by Floreen
- Public Hearing: July 15, 2008; 1:30pm
- PHED Worksession: July 21, 2008; 9:30am

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### **Fenton Village Overlay Zone – Hotel Height**

Allows additional building height to accommodate hotels in mixed-use optional method of development projects in the Fenton Village Overlay Zone and generally amends building heights in the Fenton Village Overlay Zone – [ZTA 08-10](#)

- Introduced May 6, 2008 by Ervin and Elrich
- Public Hearing: June 17, 2008; 1:30pm
- PHED Worksession: June 26, 2008; 2:00pm; July 28, 2008; 2:00pm

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### **Transit-Oriented Mixed-Use Zones**

Establishes the Transit-Oriented Mixed-Use 1.0 (TOMX-1) and the Transit-Oriented Mixed Use 1.0/Transferable 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: June 16, 2008; 2:00pm

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### **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; June 26, 2008; 2:00pm

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### **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; 2:30pm; September 25, 2008; 2:00pm; October 13, 2008; 2:00pm; November 24, 2008; 2:00pm; December 1, 2008; 2:00pm; January 15, 2009; 2:00pm; February 5, 2009; 3:30pm; February 23, 2009; 2:00pm; March 30, 2009; 2:00pm; June 29, 2009; 2:00pm; September 14, 2009; 2:00pm; November 19, 2009; 3:00pm
- Action: Resolution to extend expiration date until December 31, 2009

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### **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

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### **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; March 10, 2009; 2:00pm
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### **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
- 

### **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
-

## Public Safety (PS)

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

### Forest Conversation - Enforcement

Amendment to the 10-yr Comprehensive Water Supply and Sewerage Systems Plan; water and sewer category change - [Bill 34-09](#)

- Introduced October 6, 2009 by the Council President at the request of the Planning Board
- Public Hearing: November 24, 2009; 1:30pm **NEW**
- T&E Worksession: November 17, 2009; 7:30pm; November 30, 2009; 9:30am

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### Buildings - Permits and Inspections

Revises the validity periods for building permits for certain dwelling units; revises inspection requirements for certain dwelling units; and generally amends County law governing building permits - [Bill 24-09](#)

- Introduced May 5, 2009 by the Council President at the request of the County Executive
- T&E Worksession: July 13, 2009; 2:00pm; September 14, 2009; 2:00pm
- Public Hearing: June 9, 2009; 7:30pm

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### Unused Vehicles - Storage

Amends the definition of rubbish in Chapter 26; limits the storage of unused vehicles on residential property; and generally amends County law governing the storage of unused vehicles - [Expedited Bill 23-09](#)

- Introduced May 5, 2009 by the Council President at the request of the County Executive
- T&E Worksession: July 13, 2009; 2:00pm; September 14, 2009; 2:00pm
- Public Hearing: June 9, 2009; 7:30pm

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### Enforcement of County Laws - Notice of Violation - Appeals

Authorizes an enforcement agency to issue a notice of violation to enforce certain County laws; limits the jurisdiction of the Board of Appeals regarding certain enforcement actions taken by certain enforcement agencies; clarifies when certain appeals may be taken and removes the right to appeal certain

orders and decisions; makes technical corrections and repeals obsolete provisions of law; and generally amends County law regarding enforcement - [Bill 22-09](#)

- Introduced by the Council President at the request of the County Executive
- T&E Worksession: July 13, 2009; 2:00pm; September 14, 2009; 2:00pm
- Public Hearing: June 9, 2009; 7:30pm

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### **Parking Lot Districts - Use of Revenue**

Expands the use of Parking Lot District revenues for transit service serving the Parking Lot District; and generally amends the law regarding the use of parking lot district funds - [Expedited Bill 17-09](#)

- Introduced April 14, 2009 by Councilmembers Floreen, Knapp, Elrich, Leventhal, and Council President Andrews
- Public Hearing: May 5, 2009; 7:30pm
- T&E Worksession: April 27, 2009; 9:00am; May 8, 2009; 11:00am; June 15, 2009; 9:30am

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### **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, postponed to July 14, 2008; 9:30am; July 28, 2008; 9:30am; September 8, 2008; 9:30am; September 22, 2008; 9:30am; October 6, 2008; 9:30am; November 24, 2008; 9:30am

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### **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: October 6, 2008; 9:30am

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### **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

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### 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

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### 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

**BUSINESS LEGISLATION ENACTED  
SINCE MARCH 1, 2009**  
See Also Archives

## **BILLS**

### **New Construction - Deferral**

Authorizes the deferral of certain permit, inspection, license, and engineering fee payments for a certain period; extend the time for abandonment of a building permit; extend the time for recording an initial building inspection; and generally amend the laws regarding permits and related fees - Expedited [Bill 5-09](#)

- Enacted - LMC 2009 - Ch. 10

## **ZONING TEXT AMENDMENTS/SUBDIVISION REGULATION AMENDMENTS**

### **Zoning Text Amendment - Special Provision - Parcel Consolidation**

Amends the Zoning Ordinance to allow 2 or more tracts of land created by deed or plat before June 1, 1958 to be consolidated by record plat into 1 buildable lot without regard to the width and size requirements of the underlying zone, if the tracts of land are under common ownership, and a habitable one-family dwelling crossed a property line created by a deed or plat - [ZTA 09-02](#)

- Enacted - Ordinance No. 16-37

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## SPECIAL NOTES

- Reassessment notices will be mailed to one-third of Maryland property owners at the end of December 2009. In a declining real estate market, there may be opportunities to reduce one's property tax payments by filing an appeal of the assessed value. Appeals must be filed within 45 days of the reassessment notice date. Contact [GovernmentRelations@shulmanrogers.com](mailto:GovernmentRelations@shulmanrogers.com) to determine if your property is being reassessed and your options for appeal. **NEW**
- The City of Rockville has proposed wide-ranging amendments to its building code, including a sweeping green building component. The City will re-release the revised ordinance in December 2009 and a public hearing will be held January 11, 2010, with public comment period closing on January 12, 2010. Email [GovernmentRelations@shulmanrogers.com](mailto:GovernmentRelations@shulmanrogers.com) to determine the impact this code may have on your building or project.
- Park and Planning has revised its Semi-Annual Report which continues to alter its Master Plan and Sector Plan schedules. Email [GovernmentRelations@shulmanrogers.com](mailto:GovernmentRelations@shulmanrogers.com) to learn of any current or upcoming Master Plans or Sector Plans affecting your property.

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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 December 1, 2009. 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) or [Anne Marie Vassallo](mailto:Anne.Marie.Vassallo) at 301-230-5200 or send an email to us at [GovernmentRelations@shulmanrogers.com](mailto:GovernmentRelations@shulmanrogers.com)

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