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Montgomery County Business Legislative Update

Volume 2, Issue 4



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April 2009

**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@srgpe.com

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of Maryland and/or
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HIGHLIGHTS

Below are the highlights that are featured in the April 2009 edition of the Montgomery County Business Legislative Update:

- * The County Council introduced Bill 12-09, Ethics - Ex Parte Communications which places limitations on the communications which decision makers may consider when basing decisions on the record. See details below in the *Management & Fiscal Policy (MFP) Section*.
- * The County Council has established a special primary election for April 21, 2009 for the vacancy in Council District 4. See details below in *Special Notes*.
- * Please visit our new Councilmember Corner Section. This month's Councilmember Corner is featuring Council Vice President Roger Berliner.

COUNCILMEMBER CORNER



Originally elected to the Montgomery County Council in 2006, Roger Berliner was elected Council Vice President on December 2, 2008. Formerly a

Congressional Aide, Mr. Berliner represents the First District, an area that stretches from Potomac through Bethesda and Chevy Chase. He currently serves on the following committees: *Health and Human Services Committee; Transportation, Infrastructure, Energy & Environment Committee, Lead member for Energy & Environment.*

Councilmember Berliner has worked as an energy lawyer, having obtained his law degree from McGeorge School of Law in Sacramento, California, and his undergraduate degree from Dartmouth College in Hanover, New Hampshire. He lives in Potomac with his wife and their two children. He is a soccer dad

Melissa Bernstein
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Archives:Enacted Legislation

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and a former B-CC baseball coach.

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
- Resolution to extend expiration date until 08/31/09

Management & Fiscal Policy (MFP)

Ethics - Ex Parte Communications **NEW**

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

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 **NEW**

Finance - Spending Disclosure

Requires the County to develop and operate a website that includes information on certain County payments to contractors and grantees; providing guidelines for public access to the information on the website; and generally amend the County law governing public access to information about county payments – [Bill 1-09](#)

- Introduced January 13, 2009 by Andrews and Berliner
- Public Hearing: February 3, 2009; 1:30pm
- MFP Worksession: February 9, 2009; 2:00pm
- MFP Committee recommends approval with amendments: February 24, 2009

Planning, Housing & Economic Development (PHED)

Adequate Public Facilities - Validity Period

Extends the standard validity period for a determination of adequate public facilities under the subdivision regulations from 5 to 7 years and extend by 2 years the validity period of any preliminary subdivision plan approved since January 1, 2004 - [SRA 09-01](#)

- Introduced February 10, 2009 by Andrews at the request of the County Executive
- Public Hearing: March 17, 2009; 1:30pm; April 21, 2009; 1:30pm **NEW**
- MFP Worksession: February 9, 2009; 2:00pm; March 23, 2009; 2:00pm

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](#)

- Introduced February 10, 2009 by Andrews at the request of the County Executive
- Public Hearing: March 3, 2009; 1:30pm
- Worksession: March 9, 2009; 2:00pm

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
-

Transit Mixed-Use Zone (TMX)

Establishes a Transit Mixed-Use (TMX) zone and establishes allowable land uses, development standards, use of buildable transferable development rights, and approval procedures for development under the Transit Mixed-Use zone; intended to implement the land use and density recommendations of the Draft Twinbrook Sector Plan by replacing the Transit-Oriented Mixed Use (TOMZ) zoning recommendation – [ZTA 08-14](#)

- Introduced June 24, 2008 by Knapp at the request of the Planning Board
- Public Hearing: July 29, 2008; 1:30pm
- PHED Worksession: September 8, 2008; 2:00pm; September 22, 2008; 2:00pm; October 6, 2008; 2:00pm; October 28, 2008; 10:15am; November 25, 2008; 10:30am

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

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

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

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
-

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 **NEW**
-

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
-

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
-

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
-

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

Public Safety (PS)

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

Local Small Business Reserve Program **NEW**

Increases the minimum percentage of the combined dollar value of certain contracts that each using department must award to local small businesses - Expedited [Bill 3-09](#)

- Introduced February 10, 2009 by Andrews at the request of the County Executive
- Public Hearing: March 3, 2009; 1:30pm
- T&E Worksession: March 26, 2009; 3:00pm

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

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

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

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

**BUSINESS LEGISLATION ENACTED
WITHIN THE LAST 30 DAYS**
See Also [archives](#)

BILLS

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](#)

- Enacted - Ordinance No. 16-816

Motor Vehicles and Traffic – Parking Regulations – Commercial Vehicles, Recreational Vehicles, and Buses

Prohibits the parking of commercial vehicles, buses, and recreational vehicles in certain areas and generally amends the law regarding vehicle parking – [Bill 27-08](#)

- LMC 2009 - Chap. 1

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](#)

- Enacted - Ordinance No. 16-816

ZONING TEXT AMENDMENTS

Wheaton Central Business Districts

Amendment revising the boundaries of the Wheaton Central Business District - [ZTA 08-17](#)

- Enacted - Ordinance No. 16-34

Workforce Housing – Findings, Subdivision Regulations

Allows certain preliminary plans to exceed density or building height limits to permit the construction of all Workforce Housing units on-site; and generally amends provisions relating to preliminary plans – [SRA 08-04](#)

- Enacted - Ordinance No. 16-33

Workforce Housing - Findings

Allows certain development plans or project plans to exceed density or building height limits to permit the construction of all Workforce Housing units on-site and generally amends provisions relating to Development Plans and Project Plans – [ZTA 08-16](#)

- Enacted - Ordinance No. 16-32
-

SPECIAL NOTES

- On February 12, 2009, the County Council approved Resolution 16-847 to hold a special primary election on April 21, 2009 and a special general election on May 19, 2009 to fill the Councilmember vacancy in District 4. **NEW**
- The newly adopted Rockville Zoning Ordinance and Zoning Map went into effect on March 16, 2009. The Zoning Ordinance implements new notice, pre-submission, and development review requirements that may impact car dealerships, hotels, commercial properties, retail businesses and some residential properties. **NEW**
- Park and Planning has introduced its Semi-Annual Report which alters its Master Plan and Sector Plan schedules. Email GovernmentRelations@srgpe.com to learn of any current or upcoming Master Plans or Sector Plans affecting your property.

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 April 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@montgomerycountymd.gov) or [Anne Marie Vassallo](mailto:Anne.Marie.Vassallo@montgomerycountymd.gov) at 301-230-5200 or send an email to us at GovernmentRelations@srgpe.com

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