AGENDA ITEM #15.2
June 24, 2008

Introduction

MEMORANDUM

June 20, 2008

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: **Introduction**: Subdivision Regulation Amendment 08-03, Arts or Entertainment Use – Validity Period

Subdivision Regulation Amendment (SRA) 08-03 is sponsored by the District Council at the request of the County Executive. SRA 08-03 is scheduled to be introduced on June 24, 2008. A public hearing will be held on July 29, 2008 at 1:30 p.m. if the Council approves the attached resolution.

SRA 08-03 would extend the life of a preliminary plan approval and adequate public facilities findings for plans that transferred land or building space to the County for arts or entertainment uses. Optional method of development projects that satisfy the special standards for arts or entertainment use would have a 10 year life from the date the County receives the land or building space. Under certain circumstances, the Planning Board would be required to grant an additional 5 year extension. SRA 08-03 is dependent on the approval of ZTA 08-15 to establish the standards for projects transferring art or entertainment use land or building space to the County.

RESIVED for introduction (Line 41)
Ordinance No.: _____
Subdivision Regulation Amend. No. 08-03
Concerning: Arts or Entertainment Use – Validity Period
Revised: _____ Draft No. _2__
Introduced: June 24, 2008
Public Hearing: _____
Adopted: _____
Effective: _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN AMENDMENT to the Subdivision Regulations to:

(1) provide for an extension of the validity period for an adequate public facilities determination for certain properties;
(2) provide for the approval of a site plan to validate phases of a preliminary plan and project plan for certain properties under certain circumstances; and
(3) provide for the recordation of a final record plat to validate all phases of a multi-phase preliminary plan for certain properties under certain circumstances.

By amending the following sections of Montgomery County Code Chapter 50:
Section 50-20. Limits on issuance of building permits.
Section 50-34. Preliminary subdivision plans—Filing and specifications.
Section 50-35. Preliminary subdivision plan—Approval procedure.

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

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following Ordinance:

Sec. 1., Sections 50-20, 50-34 and 50-35 are amended as follows:

50-20. Limits on issuance of building permits.

* * *

(c) (3) A determination of adequate public facilities made under this Chapter is timely and remains valid:

* * *

(D) (i) For 10 years after the date of the conveyance of land to the County, or possession of building space by the County for an arts or entertainment use, under a preliminary plan for an optional method of development project approved under Section 59-C-6.2356.

(ii) The Board must grant an application to extend the validity period established under (D)(i) of this subsection for an additional 5 years if:

a. at least 20% of the approved development, excluding the arts or entertainment use, either separately or in combination:

1. has been built;
2. is under construction;
3. is subject to building permits that have been issued;
4. is subject to a valid lease; or

5. has had a site plan approved under Section 59-D-3; or

b. at any time during the 24 months before the application for extension being filed, the vacancy rate for class A office buildings in the Central Business District in which the project is located reaches 10% for direct and sublet space combined, as measured by CoStar or a similar commercial Multiple Listings Service benchmark; or

c. the applicant makes a binding commitment to the County to make a contribution, as compensation for potential loss of property tax revenues, an amount equal to $2 for each square foot of approved gross floor area and thereafter makes the contribution within 6 months of final approval of the extension.

(iii) The validity period is extended for the duration of any government imposed moratorium, or other government action resulting in a similar effect, that would prevent the applicant from:

a. completing the regulatory approvals necessary for obtaining a building permit; or

b. obtaining a building permit.

(iv) If the applicant proposes to change a use in a project that is approved under Section 59-C-6.2356 and the new use would have the same or lesser impact as the original determination of adequate public facilities, the adequate public facilities approval for the project remains valid.

* * *

50-34. Preliminary subdivision plans—Filing and specifications..

* * *

(h) *Staging schedule for land containing an arts or entertainment use as a public use space.* If a phasing plan for a preliminary plan of subdivision includes land or building space that the County has accepted for an arts or entertainment use under Section 59-C-6.2356, approval of a site plan under Section 59-D-3 for the phase containing that land or building space validates all remaining phases of the preliminary plan and the project plan for the purpose of Section 59-D-2.7(b).

[(h)] (i) * * *

[(i)] (j) * * *

[(j)] (k) * * *

Sec. 50-35. Preliminary subdivision plan—Approval procedure.

* * *

(h) *Duration of Validity Period and Actions Required to Validate the Plan.*

* * *

(2) *Duration of Validity Period.*

* * *

(D) An approved preliminary plan for a multi-phase project that includes land or building space to be conveyed or dedicated to the County for an arts or entertainment use under Section 59-C-6.2356 is validated for all phases of the approved preliminary plan by recordation of a final record plat for all property in the phase containing the land or building space to be conveyed or dedicated to the County for an arts or entertainment use if recordation occurs within 5 years after the final approval of the preliminary plan. After approval, an amendment or modification to the phasing plan or the preliminary plan will not affect the validations, if the requirements of this subsection have otherwise been met.

Sec. 2. Effective Date.

This Ordinance takes effect on the date of Council adoption.

Approved:

Isiah Leggett, County Executive Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council Date