

**MEMORANDUM**

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 38-09, Growth Policy - Amendments

Bill 38-09, Growth Policy - Amendments, sponsored by Councilmembers Floreen and Knapp, was introduced on November 3, 2009. A Planning, Housing and Economic Development (PHED) Committee worksession is tentatively scheduled for January 21.

Bill 38-09 would:

- rename the Growth Policy as the Subdivision Staging Policy to better reflect its actual primary function;
- repeal unused scope provisions in the current Growth Policy enabling law which mislead observers into concluding that the Growth Policy serves broader functions than it actually has;
- reduce the duties required of the Washington Suburban Sanitary Commission, which has not actively participated in the Growth Policy development; and
- change the current biennial review process to a quadrennial review, to be held in the second year of each Council's term. Amendments could still be considered at any time, as is now allowed.

The Bill also makes conforming changes to related laws.

This packet contains

Bill 38-09  
Legislative Request Report

Circle

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Bill No. 38-09  
 Concerning: Growth Policy -  
Amendments  
 Revised: 10-30-09 Draft No. 2  
 Introduced: November 3, 2009  
 Expires: May 3, 2011  
 Enacted: \_\_\_\_\_  
 Executive: \_\_\_\_\_  
 Effective: \_\_\_\_\_  
 Sunset Date: None  
 Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmembers Floreen and Knapp

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**AN ACT** to:

- (1) rename the County Growth Policy and modify its purposes; and
- (2) revise the process to adopt and amend the County Growth Policy, and conform related laws.

By amending

Montgomery County Code  
 Chapter 33A, Planning Procedures.  
 Section 33A-15, Growth Policy

Chapter 52, Taxation  
 Sections 52-47, 52-49, and 52-94

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

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Section 33A-15 is amended as follows:**

2       **33A-15.    [Growth] Subdivision Staging Policy.**

3       (a)    *Purpose.*

4           [(1) The purpose of this Article is to establish a process by which the  
5           County Council can give policy guidance to agencies of  
6           government and the public on matters concerning:

7                   (A) land use development;

8                   (B) growth management; and

9                   (C) related environmental, economic, and social issues.

10          (2) The policy guidance will be provided through the adoption by the  
11          County Council of a growth policy, which is intended to be an  
12          instrument that facilitates and coordinates the use of the powers  
13          of government to limit or encourage growth and development in a  
14          manner that best enhances the general health, welfare, and safety  
15          of the residents of the County.]

16       [(b)   *Simplified description.*]

17          The County Council must adopt a [growth] subdivision staging policy  
18          [must be adopted] every [2] 4 years [by the County Council]. [It  
19          consists of policy] The policy must include guidelines for the Planning  
20          Board, and other agencies as appropriate, for their administration of  
21          Section 50-35(k) and other laws and regulations which affect the  
22          adequacy and timing of public facilities needed to support growth and  
23          development. This policy is the growth policy referred to in Article 28  
24          of the Maryland Code and in Section 50-35(k) and elsewhere in the  
25          County Code.

26       [(c)] ~~(b)~~ *Duties of the County Planning Board.*

27          Every [odd-numbered] fourth year, in the second year of a Council

28 term, the Planning Board must produce a recommended [growth]  
29 subdivision staging policy.

30 (1) By June 15, the [Planning] Board must send to the [County]  
31 Council a staff draft [growth] subdivision staging policy which  
32 includes:

33 (A) a status report on general land use conditions in the county,  
34 including the remaining growth capacity of zoned land,  
35 recent trends in real estate transactions, the level of service  
36 conditions of major public facilities and environmentally  
37 sensitive areas, and other relevant monitoring measures;

38 (B) a forecast of the most probable trends in population,  
39 households, and employment for the next 10 years,  
40 including key factors that may affect the trends;

41 (C) a recommended set of [policy] guidelines for the  
42 [Planning] Board, and other agencies as appropriate, with  
43 respect to subdivision staging and administration of related  
44 laws and regulations which affect growth and  
45 development; and

46 (D) any other information or recommendations relevant to  
47 [growth] subdivision staging policy, or requested by the  
48 [County] Council in the course of adopting the [growth]  
49 subdivision staging policy or by a later resolution.

50 (2) By August 1, the Board must [produce] approve and send to the  
51 Council a recommended [growth] subdivision staging policy  
52 [which reflects the Planning Board's views].

53 (3) The [Planning] Board must promptly make available to the  
54 County Executive, other agencies (including the Office of Zoning

55 and Administrative Hearings and the People's Counsel), and the  
 56 public copies of the staff draft and the Board's recommended  
 57 [growth] subdivision staging policy.

58 [(d)] (c) *Duties of the County Executive.*

59 (1) Every [odd-numbered] fourth year, in the second year of a  
 60 Council term, the [County] Executive must send to the [County]  
 61 Council by September 15 any revisions to the [growth]  
 62 subdivision staging policy recommended by the Planning Board  
 63 in the form of specific additions and deletions.

64 (2) The [County] Executive must promptly make available to the  
 65 Planning Board, other agencies, and the public copies of the  
 66 [County] Executive's recommendations.

67 (3) The [County] Executive must assist the Planning Board to  
 68 compile its status report for the recommended [growth]  
 69 subdivision staging policy by making available monitoring data  
 70 which is routinely collected by executive branch departments.

71 [(e)] (d) *Duties of the County Board of Education.*

72 (1) Every [odd-numbered] fourth year, in the second year of a  
 73 Council term, the Board of Education must send to the [County]  
 74 Council by [October 1] September 15 any comments on the  
 75 recommended [growth] subdivision staging policy submitted by  
 76 the Planning Board and the Executive's recommendations,  
 77 including any proposed revisions in the form of specific additions  
 78 or deletions.

79 (2) The Board of Education must promptly make available to the  
 80 Planning Board, the [County] Executive, and the public copies of  
 81 these comments and revisions.

82 (3) The Board of Education must assist the Planning Board to  
 83 compile its status report for the [growth] subdivision staging  
 84 policy by making available monitoring data which is routinely  
 85 collected by Montgomery County Public Schools staff.

86 [(f) *Duties of the Washington Suburban Sanitary Commission.*

87 (1) Every odd-numbered year, the Washington Suburban Sanitary  
 88 Commission must send to the County Council by October 1 any  
 89 comments on the recommended growth policy submitted by the  
 90 Planning Board and the Executive's recommendations, including  
 91 any proposed revisions in the form of specific additions or  
 92 deletions.

93 (2) The Commission must promptly make available to the Planning  
 94 Board, the County Executive, and the public copies of these  
 95 comments and revisions.

96 (3) During the year, the Commission must assist the Planning Board  
 97 to compile its status report for the growth policy by making  
 98 available monitoring data which is routinely collected by  
 99 Commission staff.]

100 [(g)] (e) *Duties of the County Council.*

101 (1) After receiving the recommended [growth] subdivision staging  
 102 policy, the recommendations of the [County] Executive, and any  
 103 other agency comments, the [County] Council must hold a public  
 104 hearing on the recommendations and comments.

105 (2) Every [odd-numbered] fourth year, in the second year of a  
 106 Council term, the [County] Council must adopt by November 15  
 107 a [growth] subdivision staging policy to be effective until  
 108 November 15 [two] four years later. If the [County] Council

109 does not adopt a new [growth] subdivision staging policy, the  
110 [growth] subdivision staging policy adopted most recently  
111 remains in effect.

112 [(h)] (f) *Amending the [growth] subdivision staging policy.*

113 (1) The County Council, the County Executive, or the Planning  
114 Board may initiate an amendment to the [growth] subdivision  
115 staging policy.

116 (2) If the Executive initiates an amendment:

117 (A) the Executive must send it to the Council, the Planning  
118 Board, and other agencies, and make copies available to  
119 the public;

120 (B) the Planning Board must send any comments on the  
121 proposed amendment to the Council and the other agencies  
122 within 45 days after receiving the amendment (unless the  
123 Council requests an earlier response), and must make  
124 copies of any comments available to the public; and

125 (C) the Council may amend the [growth] subdivision staging  
126 policy after giving the Planning Board and Board of  
127 Education an opportunity to comment and holding a public  
128 hearing.

129 (3) If the Planning Board initiates an amendment:

130 (A) the Planning Board must send it to the Council, the  
131 Executive, and other agencies, and make copies available  
132 to the public;

133 (B) the Executive must send any comments on the proposed  
134 amendment to the Council and other agencies within 45  
135 days after receiving the amendment (unless the Council

- 136 requests an earlier response), and must make copies of any  
 137 comments available to the public; and
- 138 (C) the Council may amend the [growth] subdivision staging  
 139 policy after giving the Executive and Board of Education  
 140 an opportunity to comment and holding a public hearing.
- 141 (4) If the [County] Council initiates an amendment:
- 142 (A) the Council must send it to the Executive, the Planning  
 143 Board, and other agencies, and make copies available to  
 144 the public;
- 145 (B) the Executive and the Planning Board must send any  
 146 comments on the proposed amendment to the Council and  
 147 other agencies within 45 days after receiving the  
 148 amendment (unless the Council requests an earlier  
 149 response), and must make copies of any comments  
 150 available to the public; and
- 151 (C) the [County] Council may amend the [growth] subdivision  
 152 staging policy after a public hearing.
- 153 (5) If it finds that an emergency so requires, the [County] Council  
 154 may hold the public hearing and adopt an amendment before  
 155 receiving comments under subparagraphs (2)(B), (3)(B), or  
 156 (4)(B).

157 **Sec. 2. Sections 52-47, 52-49, and 52-94 are amended as follows:**

158 **52-47. Definitions.**

159 \* \* \*

160 *Growth policy* means the [annual growth] subdivision staging policy most  
 161 recently adopted under Chapter 33A to provide guidelines for the  
 162 administration of the Adequate Public Facilities Ordinance.

163 \* \* \*

164 [Planning policy] Policy area means any geographic area designated as a  
165 transportation policy area in the growth policy.

166 \* \* \*

167 **52-49. Imposition and applicability of development impact taxes.**

168 \* \* \*

169 (c) The following impact tax districts are established, consisting of the  
170 listed [Planning] Policy Areas as defined in the Growth Policy:

171 \* \* \*

172 (3) General: Any part of the County, including any municipality, not  
173 located in a listed [planning] policy area.

174 \* \* \*

175 **52-94. School Facilities Payment.**

176 (a) In addition to the tax due under this Article, an applicant for a building  
177 permit for any building on which a tax is imposed under this Article  
178 must pay to the Department of Finance a School Facilities Payment if  
179 that building was included in a preliminary plan of subdivision that was  
180 approved under the School Facilities Payment provisions in the County  
181 [Growth] Subdivision Staging Policy.

182 (b) The amount of the Payment for each building must be calculated by  
183 multiplying the Payment rate by the latest per-unit student yield ratio for  
184 any level of school found to be inadequate for the purposes of imposing  
185 the School Facilities Payment in the applicable [Growth] Subdivision  
186 Staging Policy and for that type of dwelling unit and geographic area  
187 issued by MCPS.

188 \* \* \*

## LEGISLATIVE REQUEST REPORT

Bill 38-09

*Growth Policy – Amendments*

**DESCRIPTION:** Renames the County Growth Policy and modifies its purposes. Converts the current biennial review to a quadrennial process. Reduces the duties required of the Washington Suburban Sanitary Commission, which has not actively participated in the Growth Policy development.

**PROBLEM:** Because of its name, many people perceive the Growth Policy as more sweeping and extensive than it actually has been – i.e. essentially a mechanism to implement the County’s adequate public facilities requirement. Review every 2 years has proven less necessary but takes valuable time of Councilmembers, Planning Board members, and staff. The Council which approves a Growth Policy in its first year is often reluctant to consider major changes in its third year.

**GOALS AND OBJECTIVES:** To rename the Growth Policy and redefine its purposes to better reflect its actual function. To avoid unnecessary but time-consuming reconsideration of an adopted Growth Policy every 2 years by converting the current biennial review process to a quadrennial review.

**COORDINATION:** Planning Board, County Executive, Council

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** Minimal.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Michael Faden, Senior Legislative Attorney, 240-777-7905; Glenn Orlin, Deputy Council Staff Director, 240-777-7936.

**APPLICATION IN MUNICIPALITIES:** Applies only to County Growth Policy.

**PENALTIES:** Not applicable.