

**MEMORANDUM**

July 29, 2016

TO: County Council *gr*  
FROM: Jeffrey L. Zyontz, Senior Legislative Analyst  
SUBJECT: **Introduction:** Expedited Bill 35-16, Building Permits - Amendments

Expedited Bill 35-16, Building Permits - Amendments, sponsored by Lead Sponsor Planning, Housing and Economic Development Committee, is scheduled to be introduced on August 2. A public hearing is tentatively scheduled for September 13 at 1:30 p.m.

Bill 35-16 is tied to the approval of Subdivision Regulation Amendment (SRA) 16-01 and Zoning Text Amendment (ZTA) 16-12. SRA 16-01 includes provisions for ownership units (previously called ownership lots). These ownership units may result in fire code violations when there is a use certificate or a building on the parent lot. Bill 35-16 would require a permit when this situation occurs to avoid violations. SRA 16-01 will also remove building permit provisions in the Subdivision Code. Bill 35-16 will include the building permit provisions deleted from that code.

Bill 35-16 would also include the building permit provisions currently in Chapter 59 which will be deleted from Chapter 59 by ZTA 16-12. The intent of these amendments is to consolidate building permit provisions to one chapter of the County Code.

This packet contains:

Expedited Bill 35-16  
Legislative Request Report

Circle #

1  
13

Expedited Bill No. 35-16  
Concerning: Building Permits --  
Amendments  
Revised: 7/27/2016 Draft No. 1  
Introduced: August 2, 2016  
Expires: February 2, 2018  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Planning, Housing, and Economic Development Committee

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**AN ACT** to:

- 1) include the building permit provisions currently in Chapter 50;
- 2) include the building permit provisions currently in Chapter 59; and
- 3) generally amend County law regarding building permits.

By amending

Montgomery County Code  
Chapter 8, Building Permits  
Sections 8-1, 8-8, 8-13, 8-14, 8-24, and 8-28

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<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. Chapter 8 is amended by amending Sections 8-1, 8-8, 8-13, 8-14, 8-**  
2 **24 and 8-28 as follows:**

3 **8-1. Scope and applicability.**

4           (a) *Generally.* This [chapter shall be construed to include those] Chapter  
5 includes the rules and regulations adopted [pursuant to] under [section]  
6 Section 8-13[, herein,] which [shall have] have the force [and effect] of  
7 law. It [shall be] is known as the building code of Montgomery County.  
8 It [shall control] controls all matters concerning the construction,  
9 alteration, addition, repair, removal, demolition, use, location, creation  
10 or alteration of any ownership unit, closure of any private road,  
11 occupancy and maintenance of all buildings and structures, on-site  
12 access facilities to such buildings and structures [and], their service  
13 equipment [as herein defined and shall apply]. This Chapter applies to  
14 existing or proposed buildings and structures in the county.

15           (b) *Intent.* [This chapter shall be construed to secure its expressed intent  
16 which] The intent of this Chapter is to [insure] assure public safety,  
17 health and welfare [insofar] as [they were] it is affected by building  
18 construction, [through] structural strength, [adequate] egress facilities,  
19 sanitary equipment, light, utilities and ventilation, occupancies, and fire  
20 safety [and in]. In general, the intent of this chapter is to secure safety to  
21 life and property from all hazards [incident to] associated with the  
22 design, erection, repair, removal, demolition or use and occupancy of  
23 buildings, structures or premises.

24           (c) *Applicability generally.*

25           (1) [The provisions of this chapter shall apply] This Chapter  
26 applies to the construction, raising, lowering, moving,  
27 demolition or occupancy of all buildings and structures and

28 their appurtenant construction, including vaults, area and street  
 29 projections, on-site access facilities, [and] accessory structures,  
 30 and additions [, and shall apply with equal force]. It applies to  
 31 public and private buildings, except where such buildings are  
 32 otherwise specifically [provided for] excluded by statute. It also  
 33 applies to the creation or alteration of any ownership unit, and the  
 34 closure of any private road.

35 (2) A building permit may only be issued for a building located on:

36 (A) a lot or parcel shown on a plat recorded in the County  
 37 Land Records or on a parcel exempt from recording  
 38 requirements under Section 50-3.3; and

39 (B) an area outside of any building restriction line and  
 40 outside the area restricted under Section 50-4.3.K.

41 (d) *Exemptions.* [No building] All buildings or structures [shall] must be  
 42 constructed, extended, repaired, removed or altered [in violation of  
 43 these provisions] under a permit that satisfies this Chapter, except for:

44 (1) ordinary repairs as defined in [section] Section 8-3;

45 (2) a building or structure used exclusively for agricultural  
 46 purposes on land used exclusively for agriculture; however, a  
 47 permit under this Chapter is required for:

48 (A) a building or structure used for a purpose that is not  
 49 exclusively agricultural, including conditional uses, even  
 50 though located on otherwise agricultural land;

51 (B) an equestrian facility, building, or structure intended for  
 52 use by participants or spectators at an equestrian event;

53 (3) the following public utility equipment:

54                   (A) any structure and its attached cross arms carrying overhead  
 55                   electric power and energy transmission and distribution  
 56                   lines that carry 69,000 volts or less;

57                   (B) equipment installed and maintained by a public utility  
 58                   under regulation by the State Public Service Commission;  
 59                   or

60                   (D) poles or structures used for street lights, fire alarm boxes,  
 61                   traffic signals, or similar municipal equipment installed by  
 62                   the State or a local municipality

63                   [and except further, that the raising or lowering or moving of a building  
 64                   or structure as a unit necessitated by a change in legal grade or widening  
 65                   of a street shall be permitted; provided that the building is not otherwise  
 66                   altered or its use or occupancy changed].

67                   (e) *Matters not provided for.* Any requirement essential for structural, fire  
 68                   or sanitary safety of an existing or proposed building or structure or  
 69                   essential for the safety of the building's occupants [thereof] and which  
 70                   is not specifically covered by this chapter, [shall] must be determined by  
 71                   the director [in accordance with procedures set forth in] under [section]  
 72                   Section 8-13.

73                   (f) *Zoning restrictions and referrals.*

74                   (1) When the provisions specified in this [chapter] Chapter for  
 75                   structural, fire, and sanitary safety are more restrictive than  
 76                   those [set forth] in [chapter] Chapter 59 [of this Code], this  
 77                   [chapter shall control] Chapter controls the erection or  
 78                   alteration of buildings in respect to location, use, permissible  
 79                   area and height; but [in any case,] the more rigid requirements

80 of either the building code or the zoning ordinance [shall apply]  
 81 applies whenever they [may be] are in conflict.

82 (2) The Director must submit the application to the Planning  
 83 Director for review for any building permit that requests:

84 (A) construction of a new principal structure; and

85 (B) construction that increases the gross floor area of an  
 86 existing commercial structure.

87 (3) The Planning Director must confirm in writing that the submitted  
 88 application satisfies Chapter 59 and that the property has all  
 89 necessary approvals and satisfied all necessary conditions  
 90 required by the Planning Department and Planning Board and  
 91 identify for each permit the amount of any school facility  
 92 payment, transportation mobility area review payment or other  
 93 development payment other than impact taxes that is required to  
 94 be paid as a condition of building permit.

95 (4) A building permit application for a child lot in the Agricultural  
 96 Reserve Zone may only be approved if the child for whom the lot  
 97 is created is owner of the lot in the County land records. A  
 98 building permit for a detached house on a child lot must be issued  
 99 only to:

100 (A) a child of the property owner;

101 (B) the spouse of a child of the property owner;

102 (C) a contractor for a child of the property owner; or

103 (D) a contractor for the spouse of a child of the property  
 104 owner.

105 **8-2. Definitions.**

106 \* \* \*

107 Ownership unit: An area of land shown on a record plat created only for the  
 108 convenience of the owner under Section 7.1.D of Chapter 50 that reflects a deed,  
 109 mortgage, or lease line but does not subdivide the underlying lot.

110 \* \* \*

111 Parent lot: a subdivided lot that is further divided by one or more ownership units.

112 \* \* \*

114 Private Road: Any street, highway, avenue, lane, alley, or viaduct, or any segment of  
 115 any of them, including any adjacent sidewalk that has not been deeded, dedicated or  
 116 otherwise permanently appropriated to the public for public use.

117 \* \* \*

118 **8-8. [Reserved] Site plan or conditional use approval.**

119 (a) For projects that do not require site plan approval or conditional use  
 120 approval and include more than 10 parking spaces, an application for  
 121 building permit must include a plan showing:

122 (1) the location and design of entrances and exits to public roads;

123 (2) the location and size of all buildings and structures;

124 (3) the location of parking spaces, directional markings, traffic-  
 125 control devices and signs; and

126 (4) that it satisfies Division 59-6.2 of Chapter 59.

127 (b) For a site with a conditional use:

128 (1) The Department may allow minor adjustments during  
 129 construction that the Planning Director has confirmed do not  
 130 substantially alter the size, location, or external appearance of  
 131 any approved building, structure, or use.

132 (2) Any change proposed during construction that would  
 133 substantially alter the location or external appearance of any

134 approved building, structure, or use requires an amendment  
 135 under Article 59-7 of this Code.

136 \* \* \*

137 **8-13. Regulations.**

138 (a) The [director] Director may recommend [written] regulations for the  
 139 administration [of the provisions] of this chapter including a schedule of  
 140 fees and may, at [his] the Director's discretion, hold public hearings as  
 141 part of this regulation-making process. [Such regulations and]  
 142 Regulations [amendments thereto shall], as amended, must not conflict  
 143 with [nor] or waive any provisions of this chapter [nor be less restrictive  
 144 than its provisions]. Such regulations must be at least as restrictive as  
 145 the requirements of this Chapter [and shall] All regulations must be  
 146 adopted by the [county executive] County Executive under method (2)  
 147 of [section] Section 2A-15 [of this Code]. [In the case of fees, the] The  
 148 [county executive shall] County Executive must promptly forward to  
 149 the [county council] County Council a copy of [the] any new fee  
 150 schedule for use in budgetary planning activities. Such fees [shall be in  
 151 accordance with formulas based upon criteria to include or] may be  
 152 based on area, estimated cost of construction, or a minimal set fee per  
 153 category[, not to exceed] The budget estimate of all fees must be equal  
 154 to the cost of administering [and enforcing] this Code.

155 (b) The Director must hold at least one public hearing, after adequate public  
 156 notice, before recommending to the Executive any regulations adopted  
 157 under this Chapter [adopting standards and requirements for the  
 158 construction, alteration, addition, repair, removal, demolition, use,  
 159 location, occupancy, and maintenance of all buildings and structures or  
 160 parts of either, on-site access facilities to buildings and structures, and

161 their service equipment]. [Those] All regulations [, adopted under  
 162 method (2)], related to the construction or demolition must be based on  
 163 the latest edition of the ICC International Building Code and any local  
 164 amendments to that Code.

165 **8-14. Standards applicable.**

166 (a) The edition of the ICC International Building Code designated under  
 167 Section 8-13 is the basic County building code. The construction,  
 168 alteration, addition, repair, removal, demolition, use, location,  
 169 occupancy, and maintenance of all buildings and structures or parts  
 170 thereof, on-site access facilities to buildings and structures, and their  
 171 service equipment must meet the standards and requirements [set  
 172 forth] in that Code, or as amended under Section 8-13.

173 (b) The closure of any private road must meet the standards and  
 174 requirements of Chapter 22 and Chapter 49.

175 \* \* \*

176 **8-24. Application for permit.**

177 (a) *When required.* It [shall be] is unlawful to construct, enlarge, alter,  
 178 remove or demolish a building or change the occupancy of a building  
 179 from one use group to another requiring greater strength, exitway or  
 180 sanitary provisions; or to change to a prohibited use; or create or alter  
 181 any ownership unit when a use under an occupancy certificate or a  
 182 structure exists on the parent lot; or to install or alter any equipment  
 183 for which provision is made or the installation of which is regulated  
 184 by this chapter, without first filing an application with the department  
 185 in writing and obtaining the required permit therefor; except, that  
 186 ordinary repairs as defined in [section] Section 8-3 which do not

187 involve any violation of this [chapter shall be] Chapter are exempt  
 188 from this provision.

189 \* \* \*

190 (d) *Description of work.* The application [shall] must contain a general  
 191 description of the proposed work, its location, the use and occupancy of  
 192 all parts of the building or structure and of all portions of the site or lot  
 193 not covered by the building, the location of any ownership units on the  
 194 lot, and such additional information as may be and such additional  
 195 information as may be required by the director.

196 **8-28. Certificate of use and occupancy.**

197 (a) *Applicability.*

198 (1) A use-and-occupancy permit is required before any building,  
 199 structure, or land can be used or can be converted, wholly or in  
 200 part, from one use to another.

201 (2) Exemptions from use-and-occupancy permit requirement:

202 (A) land or buildings used exclusively for agricultural  
 203 purposes;

204 (B) a use for which a valid occupancy permit was issued and  
 205 not revoked before June 1, 1958; and

206 (C) a Transitory Use.

207 (b) *Application Requirements.* Each application for a use-and-occupancy  
 208 permit must be accompanied by 2 copies of a plan drawn to scale  
 209 showing:

210 (1) the lot on which a use is proposed, lot dimensions, lot and block  
 211 numbers and subdivision name, if any;

212 (2) the location, extent, and layout for the proposed use and any other  
 213 pertinent information; and

- 214           (3) north point, date and scale of plan.
- 215    [[a)] (c) *New buildings.* It [shall be] is unlawful for any person to use or  
216           occupy a building hereafter erected in whole or in part until the  
217           certificate of use and occupancy [as provided in chapter 59 of this Code  
218           shall have been] is issued by the [director] Director in [accordance with  
219           the requirements] satisfaction of this [chapter] Chapter.
- 220    [[b)] (d) *Buildings hereafter altered.* It [shall be] is unlawful for any person to  
221           use or occupy a building hereafter enlarged, extended or altered to  
222           change from one use group to another, in whole or in part until a  
223           certificate of use and occupancy [shall have been] is issued by the  
224           director certifying that the work [has been] was completed in  
225           [accordance with the provisions of] satisfaction of the approved permit[;  
226           except, that any]. Any use or occupancy[, which] that was [not  
227           discontinued] continued during the work of alteration, [shall] must be  
228           discontinued within [thirty (30)] 30 days after the completion of the  
229           alteration unless the required certificate is secured from the director.
- 230    [[c)] (e) *Existing buildings.* Upon written request from the owner of an existing  
231           building, the [director shall] Director must issue a certificate of use and  
232           occupancy[; provided, that] if there are no violations of law or orders of  
233           the director pending [and it is established after inspection and  
234           investigation]. In addition, the director must establish that the alleged  
235           use of the building has heretofore existed. Nothing in this chapter [shall  
236           require] requires the removal, alteration, or abandonment of [or prevent  
237           the continuance of] the use and occupancy of a lawfully existing  
238           building, unless such use is deemed to endanger public safety and  
239           welfare.

240 [(d)] (f) Changes in use and occupancy. After a change of use [has been] is  
 241 made in a building, [it shall be unlawful for] a person [to reestablish] is  
 242 prohibited from reestablishing a prior use that is not lawful for a new  
 243 building of the same type of construction unless the owner complies  
 244 with all the applicable provisions of this [chapter are complied with]  
 245 Chapter.

246 [(e)] (g) Temporary occupancy. Upon the request of the holder of a permit, the  
 247 [director] Director may issue a temporary certificate of occupancy for a  
 248 building or structure or part thereof before the entire work covered by  
 249 the permit shall have been completed [; provided,] if that such portion or  
 250 portions may be occupied safely [prior to] before full completion of the  
 251 building without endangering life or public welfare.

252 (h) Necessary Findings.

253 (1) The Department must find the building complies with Chapter  
 254 59.

255 (2) Any building, structure, or land on a site with any previous  
 256 development approval must satisfy the requirements,  
 257 representations, plans, and conditions contained in the decision or  
 258 resolution of the deciding body.

259 (3) The Department must inspect construction or alteration for  
 260 completion under the applicable decision or resolution.

261 [(f)] (i) Contents of certificate. When a building or structure is entitled  
 262 [thereto] to a certificate of use and occupancy, the [director shall]  
 263 Director must issue a certificate [of use and occupancy within ten (10)]  
 264 10 days after written applications. The certificate [shall certify] certifies  
 265 compliance with [the provisions of] this [chapter] Chapter and the  
 266 purpose for which the building or structure may be used [in its several

267 parts]. The certificate of use and occupancy [shall] must specify the use  
268 group, the [maximum] allowable live load on all floors, the occupancy  
269 load in the building and all parts [thereof] of the building and any  
270 special stipulations and conditions of the building permit.

271 *Approved:*

272

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Nancy Floreen, President, County Council

Date

273 *Approved:*

274

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Isiah Leggett, County Executive

Date

275 *This is a correct copy of Council action.*

276

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Linda M. Lauer, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Expedited Bill 35-16  
*Building Permits - Amendments*

**DESCRIPTION:** This Bill would consolidate building permit provisions currently in Chapters 50 and 59. It would add provisions for ownership units consistent with changes proposed to Chapter 50.

**PROBLEM:** The rewrite of Chapter 50 requires amendments to Chapter 8 and Chapter 59.

**GOALS AND OBJECTIVES:** The amendment will allow code users to more easily find all building permit provisions and allow for improved coordination of ownership units that may cause fire code violations.

**COORDINATION:** Planning Department and Department of Permitting Services

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Planning Department and Department of Permitting Services

**APPLICATION WITHIN MUNICIPALITIES:** To be researched.

**PENALTIES:** Violates are treated as a class A violation.