COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Berliner, Council President Praisner, and Councilmembers Elrich, Floreen, and Trachtenberg

AN ACT to:

[(1)] require certain commercial, multi-family residential, and single-family residential buildings to meet certain ENERGY STAR standards;]

[(2)] (1) require the [[Director of the Department of Public Works and Transportation]] Sustainability Working Group to develop an energy baseline, energy unit savings plan, and energy cost savings plan for each County building;

[(3)] (2) require that each energy unit savings plan and energy cost savings plan include a plan for using an energy performance contract unless the [[Director]] Sustainability Working Group finds that the cost of using an energy performance contract outweighs the benefit; [[and]]

[(4)] require a building owner to pay an Environmental Sustainability Fee if the building does not comply with certain energy efficiency and environmental design standards; and

[(5)] (3) require certain residential buildings to meet certain ENERGY STAR standards; and

(4) generally amend the law relating to buildings, energy, and environmental policy.

By adding
Montgomery County Code
Chapter 8, Buildings
Section 8-14B and 8-14C

By amending
Montgomery County Code
Chapter 8, Buildings
Artifice VII. Energy Efficiency and Environmental Design
Sections 8-48, 8-49, 8-50, and 8-51

[[By adding
Montgomery County Code
Chapter 8, Buildings

Clerk's Note: Paragraph numbers corrected to 1 and 2 in lines 303 and 304.
Article VIII. Energy Efficiency

By adding

Montgomery County Code
Charter 8, Buildings
Section 8-53

By adding

Montgomery County Code
Chapter 8, Buildings
Article VIII, Energy Efficiency

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Section 8-14B and Section 8-14C are added as follows:

8-14B. County buildings – energy unit savings plans, energy cost savings plans, and energy performance contracts.

(a) Definitions. In this Section, the following words have the meanings indicated:

"County building" means a building which is owned or leased by the County.

["Department" means the Department of [Public Works and]] Transportation.]

["Director" means the Director of the Department or the Director’s designee.]

"Energy baseline" means the amount of energy consumed each year by a County building based on historical metered data, engineering calculations, submetering of buildings or energy consuming systems, building load simulation models, statistical regression analysis, or any combination of those methods.

"Energy cost savings plan" means a plan to reduce a County building’s energy costs, including related operation and maintenance costs.

"Energy performance contract" means a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, maintenance, or repair of an identified energy conservation measure or series of measures in a County building.

"ENERGY STAR rating" means the ENERGY STAR rating developed by the federal Environmental Protection Agency which reflects a building’s energy efficiency.
"Energy unit savings plan" means a plan to reduce the amount of energy used by a County building, as measured in kilowatt hours or British thermal units.

"National energy performance rating system" means the rating system developed by the federal Environmental Protection Agency under which a building may obtain the ENERGY STAR rating.


(b) **Requirements.** The [[Director]] Sustainability Working Group must:

(1) develop an energy baseline, energy unit savings plan, and energy cost savings plan for each County building;

(2) submit an initial report to the County Executive and County Council by [[September 1, 2008]] January 15, 2009 which summarizes the energy baseline, energy unit savings plan, and energy cost savings plan for each County building; and

(3) submit an annual report to the County Executive and County Council by [[September 1]] January 15 of each year that summarizes the steps taken in the preceding fiscal year to implement the energy unit savings plan and energy cost savings plan for each County building.

(c) **Energy performance contracts.** Each energy unit savings plan and energy cost savings plan that the [[Director]] Sustainability Working Group prepares under subsection (b) must include a plan to use an energy performance contract unless the [[Director]] Sustainability Working Group finds that the cost of using an energy performance contract outweighs the benefit.
8-14C. **Private buildings - incentives**

(a) **Study.** The [[Director]] Sustainability Working Group must evaluate:

(1) options for creating incentives for the owners of commercial, multi-family residential, or single-family residential buildings to modify the buildings to increase their energy efficiency[[1]] and

(2) options to [[encourage builders of multi-family residential or single-family residential buildings to achieve]] minimize the impact on affordable housing of achieving the ENERGY STAR rating under the national energy performance rating system.

(b) **Report.** The [[Director]] Sustainability Working Group must submit a report to the County Executive and County Council by [[July 1, 2008]] January 15, 2009 regarding the [[Director]] Group's findings and recommendations.

Sec. 2. The title to Article VII of Chapter 8 and Section 8-48, Section 8-49, Section 8-50, and Section 8-51 are amended as follows:

[ARTICLE VII. ENERGY EFFICIENCY AND ENVIRONMENTAL DESIGN.] **Article VII. Energy Efficiency and Environmental Design.**

8-48. **Definitions.**

In this Article, in addition to any term defined elsewhere in this Chapter [or in regulations adopted under this Chapter], the following words have the meanings indicated:

* * *

["ENERGY STAR rating" means the ENERGY STAR rating developed by the federal Environmental Protection Agency which reflects a building's energy efficiency.]

* * *
"National energy performance rating system" means the rating system developed by the federal Environmental Protection Agency under which a building may obtain the ENERGY STAR rating.]

* * *

"Professional engineer" means an engineer who is licensed by the State of Maryland.]

"Temporary use and occupancy certificate" means a certificate that authorizes the use and occupancy of a building for up to 18 months.]

8-49. Standards and requirements.

(a) County buildings. Any County building must, in addition to any action required under Section 8-14A, achieve:

(1) a silver-level rating in the appropriate LEED rating system, as certified by the Green Building Council;

(2) a silver-level rating in the appropriate LEED rating system, as verified by the Director or a qualified person approved by the Director; or

(3) energy and environmental design standards that the Director identifies as equivalent to a silver-level rating in the appropriate LEED rating system, as verified by the Director or a qualified person approved by the Director.

(b) Other covered buildings. Any other covered building must achieve:

(1) a certified-level rating in the appropriate LEED rating system, as certified by the Green Building Council;

(2) a certified-level rating in the appropriate LEED rating system, as verified by the Director or a qualified person approved by the Director; or
(3) energy and environmental design standards that the Director
identifies as equivalent to a certified-level rating in the
appropriate LEED rating system, as verified by the Director or
a qualified person approved by the Director.

(c) [Energy efficiency. In addition to complying with subsection (a) or
(b), any covered building must achieve the ENERGY STAR rating
under the national energy performance rating system.

(d)] Additions. However, for any building for which an application for all
necessary building permits was filed before September 1, 2008, any
later addition to that building must achieve the requirements of a
subsection (a) or (b), whichever applies, [[and subsection (c)]] only if
the addition would increase the building’s:

(1) land coverage by at least 100%; and

(2) gross floor area by at least 10,000 square feet.

8-50. Building permits; [use-and-occupancy permit] [use and
occupancy certificates].

(a) Design plans. The applicant for a building permit for a covered
building must submit to the Department:

(1) design plans for the building which are likely to achieve the
applicable standard under[[i]]

[((A)] [Section 8-49] Section 8-49(a) or (b), whichever applies,
as certified or otherwise approved by the Green Building
Council or verified by the Director or a qualified person
designated by the Department; [[and

(B) Section 8-49(c), as verified by a professional engineer.]]
and
(2) any other document or information the Department finds necessary to decide whether the building will achieve the applicable [standard] [[standards]] standard under Section 8-49.

(b) **Building permit.** The Department must require compliance with Section 8-49 as a condition of any building permit issued for a covered building.

(c) **Final use and occupancy certificate.** The Department must not issue a final [certificate of] use and occupancy certificate for a covered building unless it finds that the building has achieved the applicable [standard] [[standards]] standard under Section 8-49.

[(d) **Temporary use and occupancy certificate.** If a covered building has not achieved the applicable standards under Section 8-49 but the Department finds that a process is in place to achieve those standards within 18 months, the Department may issue a temporary use and occupancy certificate which is valid for up to 18 months.]]

[(e) **Environmental Sustainability Fee.**

(1) If a temporary use and occupancy certificate expires before a covered building complies with the applicable standards under Section 8-49, the building owner must pay an Environmental Sustainability Fee that is equal to the cost of bringing the building into compliance.

(2) The fees collected under paragraph (1) must be used to fund programs that help mitigate the energy and environmental impacts of buildings.]]

8-51. **Regulations.**

The County Executive must adopt regulations under method (2) to administer this Article. Those regulations must specify:
(a) the LEED rating system, and any equivalent energy and environmental design standard, that applies to each type of covered building under [Section 8-49] Section 8-49(a) and (b).

(b) the process to verify that a covered building complies with any applicable standard under Section 8-49, including the types of persons who are qualified to verify compliance;

(c) any standards and procedures under which the Director may approve full or partial waivers of Section 8-49 when compliance would be impractical or unduly burdensome and the public interest would be served by the waiver; [and] and

(d) [[The methodology that the Department will use to determine the amount of the Environmental Sustainability Fee that must be paid under Section 8-50(e); and

(e)] standards and procedures for any enforcement mechanism[, such as a performance bond[, such as a performance bond, that the Department finds necessary to accomplish the purposes of this Article.

Sec. 3. [[Article VIII]] Section 8-53 is added to Chapter 8 as follows:

[[Article VIII. Energy Efficiency]]

[[8-53. Definitions.

In this Article, the following words have the meanings indicated:

"Covered building" means a newly constructed:

(1) Single-family residential building; or

(2) Multi-family residential building which is:

(A) Not a covered building under Section 8-48; and

(B) Eligible to earn the ENERGY STAR rating.

"Department" means the Department of Environmental Protection.

"Director" means the Director of the Department or the Director’s designee.
“ENERGY STAR rating” means the ENERGY STAR rating developed by the federal Environmental Protection Agency which measures a building’s energy efficiency.

“Home Energy Rating System” or “HERS” means the energy efficiency rating system for residential buildings developed by RESNET.

“Qualified home energy performance rater” means an individual who:

(1) Is certified by RESNET as a home energy performance rater; or

(2) Meets other equivalent requirements approved by the Director.

“RESNET” means the Residential Energy Services Network.

“Performance path” means the process developed by the federal Environmental Protection Agency under which a building may achieve the ENERGY STAR rating if it:

(1) Achieves the applicable HERS index score; and

(2) Is verified and field-tested by a qualified home energy performance rater.

“Prescriptive path” means the process developed by the federal Environmental Protection Agency under which a building may achieve the ENERGY STAR rating if it:

(1) Complies with the applicable ENERGY STAR Builder Option Package; and

(2) Is verified and field-tested by a qualified home energy performance rater.]

[8-54. ENERGY STAR standard.

A covered building must achieve the ENERGY STAR rating under the performance or prescriptive path.]

[8-55. Building permits; use and occupancy certificates.]
(a) **Design plans.** An applicant for a building permit for a covered building must submit to the Department:

1. Design plans for the building that are likely to achieve the standard under Section 8-54, as certified by a qualified home energy performance rater; and
2. Any other document or information the Department finds necessary to decide whether the building will achieve the standard under Section 8-54.

(b) **Building permit.** The Department must require compliance with Section 8-54 as a condition of any building permit issued for a covered building.

(c) **Final use and occupancy certificate.** The Department must not issue a final use and occupancy certificate for a covered building unless it finds that the building complies with Section 8-54.

(d) **Temporary use and occupancy certificate.** If a covered building does not comply with Section 8-54 but the Department finds that a process is in place to achieve compliance within 18 months, the Department may issue a temporary use and occupancy certificate which is valid for up to 18 months.

(e) **Environmental Sustainability Fee.**

1. If a temporary use and occupancy certificate expires before a covered building complies with Section 8-54, the building owner must pay an Environmental Sustainability Fee that is equal to the cost of bringing the building into compliance.
2. The fees collected under paragraph (1) must be used to fund programs that help mitigate the energy and environmental impacts of buildings.
[[8-56. Regulations.

The County Executive must adopt regulations under method (2) to administer this Article. Those regulations must specify:

(a) Any process for becoming a qualified home energy performance rater that the Director finds is equivalent to the RESNET certification process;

(b) Any standards and procedures under which the Director may approve full or partial waivers of Section 8-54 when compliance would be impractical or unduly burdensome and the waiver would serve the public interest;

(c) The methodology that the Department will use to determine the amount of the Environmental Sustainability Fee that must be paid under Section 8-55(e); and

(d) Standards and procedures for any enforcement mechanism that the Department finds necessary to accomplish the purposes of this Article.]]

8-53. ASHRAE/USGBC/IESNA standards.

(a) Definitions.


(b) The Sustainability Working Group must:

(1) evaluate the costs and benefits of adopting the ASHRAE/USGBC/IESNA Standard 189.1; and
recommend to the County Executive and County Council by January 15, 2009, whether the County should adopt the ASHRAE/USGBC/IESNA Standard 189.1, particularly the energy efficiency section, or any other building performance standard.

[Sec. 3. Applicability; initial regulations.]

(a) Section 8-49(c), as added by Section 2 of this Act, applies to any covered building, other than a County building, for which a building permit application is filed on or after January 1, 2009.

(b) Section 8-49(c), as added by Section 2 of this Act, applies to any County building for which design funding is first included in the appropriate capital budget for fiscal year 2009 or any later fiscal year, or, if design funding is not directly included in the capital budget, for which a building permit application is filed on or after January 1, 2009.

(c) Section 8-54, as added by Section 3 of this Act, applies to any covered building for which a building permit application is filed on or after January 1, 2009.

(d) By March 15, 2008, the County Executive must adopt, and submit to the Council under County Code Section 2A-15, regulations required by Section 8-51, as amended by Section 2 of this Act, and Section 8-56, as added by Section 3 of this Act.]

Sec. 4. Article VIII is added to Chapter 8 as follows:

Article VIII. Energy Efficiency

8-54. Definitions.

In this Article, the following words have the meanings indicated:

"Covered building" means a newly constructed:

(1) single-family residential building; or
(2) multi-family residential building which is:
   (A) not a covered building under Section 8-48; and
   (B) eligible to earn the ENERGY STAR rating.

"Department" means the Department of Permitting Services.

"Director" means the Director of the Department or the Director’s designee.

"ENERGY STAR rating" means the ENERGY STAR rating developed by the federal Environmental Protection Agency which measures a building’s energy efficiency.

"Home Energy Rating System" or "HERS" means the energy efficiency rating system for residential buildings developed by RESNET.

"Qualified home energy performance rater" means an individual who:
   (1) is certified by RESNET as a home energy performance rater; or
   (2) meets other equivalent requirements approved by the Director.

"RESNET" means the Residential Energy Services Network.

"Performance path" means the process developed by the federal Environmental Protection Agency under which a building may achieve the ENERGY STAR rating if it:
   (1) achieves the applicable HERS index score; and
   (2) is verified and field-tested by a qualified home energy performance rater.

"Prescriptive path" means the process developed by the federal Environmental Protection Agency under which a building may achieve the ENERGY STAR rating if it:
   (1) complies with the applicable ENERGY STAR Builder Option Package; and
   (2) is verified and field-tested by a qualified home energy performance rater.
8-55. ENERGY STAR standard.

A covered building must achieve the ENERGY STAR rating under the performance or prescriptive path.

8-56. Building permits; use and occupancy certificates.

(a) Design plans. An applicant for a building permit for a covered building must submit to the Department:

(1) design plans for the building that are likely to achieve the standard under Section 8-55, as certified by a qualified home energy performance rater; and

(2) any other document or information the Department finds necessary to decide whether the building will achieve the standard under Section 8-55.

(b) Building permit. The Department must require compliance with Section 8-55 as a condition of any building permit issued for a covered building.

(c) Final use and occupancy certificate. The Department must not issue a final use and occupancy certificate for a covered building, if a use and occupancy certificate is otherwise required, unless it finds that the building complies with Section 8-55.

8-57. Regulations.

The County Executive must adopt regulations under Method (2) to administer this Article. Those regulations must specify:

(a) any process for becoming a qualified home energy performance rater that the Director finds is equivalent to the RESNET certification process;

(b) any standards and procedures under which the Director may approve full or partial waivers of Section 8-55 when compliance would be
impractical or unduly burdensome and the waiver would serve the public interest; and

(c) standards and procedures for any enforcement mechanism that the Department finds necessary to accomplish the purposes of this Article.

Sec. 5. Applicability; initial regulations.

(a) (1) Except as provided in paragraph (2), Section 8-55, as added by Section 2 of this Act, applies to any covered building for which a building permit application is filed on or after April 22, 2009 January 1, 2010.

(2) The Director of the Department of Environmental Protection may suspend the applicability of Section 8-55 until July 22, 2009 April 1, 2010 if:

(A) the Director certifies by January 15, 2009 October 1, 2009, that an alternative approach would:

(i) achieve the same energy efficiency goals as Section 8-55; and

(ii) be less costly to builders and buyers of covered buildings[.]; or

(B) the Sustainability Working Group finds that there is an insufficient number of qualified home energy performance raters doing business in the County.

(b) By January 15, 2009 October 1, 2009, the County Executive must adopt, and submit to the Council under County Code Section 2A-15, regulations required by Section 8-57, as added by Section 2 of this Act.
Approved:

Michael J. Knapp, President, County Council

Approved:

Isiah Leggett, County Executive

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council