

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 33-11, Urban Renewal and Community Development –
Community Benefits Agreements – Large Retail Stores

Bill 33-11, Urban Renewal and Community Development – Community Benefits Agreements – Large Retail Stores, sponsored by Council President Ervin and Councilmembers Navarro, Rice, and Riemer, was introduced on October 11, 2011. A Planning, Housing and Economic Development Committee worksession is tentatively scheduled for November 7 at 9:30 a.m.

Bill 33-11 would require each large retail store located in the County to enter into a community benefits agreement with 3 or more recognized civic organizations or demonstrate to the County Executive or the Executive's designee that it has made a good faith effort to negotiate such an agreement.

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Bill No. 33-11
Concerning: Urban Renewal and
Community Development --
Community Benefits Agreements -
Large Retail Stores
Revised: 10-6-11 Draft No. 4
Introduced: October 11, 2011
Expires: April 11, 2013
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Ervin and Councilmembers Navarro, Rice, and Riemer

AN ACT to:

- (1) require certain retail businesses to enter into, or negotiate in good faith with certain organizations for, community benefits agreements;
- (2) prohibit the operators of certain retail stores from opening the stores to the public under certain circumstances;
- (3) direct certain departments of County government to furnish assistance to certain organizations regarding community benefits agreements;
- (4) prohibit County financial assistance to certain businesses under certain circumstances; and
- (5) generally provide for the formation and enforcement of community benefits agreements.

By adding

Montgomery County Code
Chapter 56. Urban Renewal and Community Development
Article VIII, Community Benefits Agreements

Boldface	<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. Chapter 56 is amended by adding Article VIII, Community**
2 **Benefits Agreements:**

3 **Article VIII, Community Benefits Agreements.**

4 **56-35 Definitions.**

5 As used in this Article:

6 **Community benefits agreement** means a document that binds a party to take
7 one or more actions for the mutual benefit of the parties regarding any of the
8 following subjects:

- 9 (1) hiring practices and training programs for County residents,
10 including potential preferences or incentives to hire residents
11 within a certain distance of the store;
- 12 (2) design, operating hours, deliveries, security, traffic mitigation,
13 environmental impacts, use of open spaces, noise and lighting;
14 and other operating effects;
- 15 (3) assistance to community organizations and programs;
- 16 (4) affordable and workforce housing; and
- 17 (5) any other issue that is relevant to the operation of a large retail
18 store or the community near that store.

19 **Large retail store** means any single site of a business that:

- 20 (1) derives more than 50% of its revenue from the sale of goods
21 directly to the public; and
- 22 (2) is the primary occupant of a building with a footprint of at least
23 75,000 square feet.

24 **Recognized civic organization** means an organization, including an
25 unincorporated association, that:

- 26 (1) is composed of residents of and businesses located within 5 miles
27 of a large retail store, or other organizations that represent those

28 residents or businesses; and
 29 (2) is not controlled or funded by, or otherwise affiliated with, the
 30 operator or owner of any large retail store.

31 **56-36** **Requirement.**

32 (a) The operator of each large retail store that is located in the County must,
 33 before the store is open to the public, either:

34 (1) enter into a community benefits agreement with 3 or more
 35 recognized civic organizations; or

36 (2) demonstrate to the County Executive, or the head of a County
 37 Department designated by the Executive, that it has made a good
 38 faith effort to negotiate a community benefits agreement with at
 39 least 3 recognized civic organizations.

40 (b) If the Executive or the Executive's designee finds that the operator has
 41 not made a good faith effort to negotiate a community benefits
 42 agreement, the Executive or the Executive's designee must:

43 (1) so notify the County Council and the Directors of the
 44 Departments of Housing and Community Affairs and Economic
 45 Development; and

46 (2) order the operator of the store to delay opening the store to the
 47 public until the operator has met either requirement of subsection
 48 (a).

49 (c) The Directors of the Departments of Economic Development and
 50 Housing and Community Affairs must provide, on request, advice or
 51 support to any recognized civic organization that will facilitate the
 52 negotiation and implementation of a community benefits agreement.

53 (d) Each community benefits agreement must be treated by all parties as a
 54 binding contract, for which consideration has been rendered, that is

55 enforceable in any court with jurisdiction. Each agreement is binding
 56 on any successor in interest of any party. Each agreement is a public
 57 document which is disclosable under the state Public Information Act.

58 (e) Each community benefits agreement must have an initial term of at least
 59 5 years, and must be renewable for an additional 5 years.

60 (f) Each community benefits agreement must require the operator of the
 61 large retail store to report annually to all other parties and to the
 62 Directors of Economic Development and Housing and Community
 63 Affairs on the implementation of the agreement.

64 **56-37. Financial Assistance.**

65 If the operator of a large retail store has not entered into a community benefits
 66 agreement with 3 or more recognized civic organizations; the Department of
 67 Economic Development and any other Department of County government must not:

68 (a) offer the operator any financial assistance from the Economic
 69 Development Fund or any other applicable program; or

70 (b) continue any financial assistance from the Fund or other program to that
 71 operator, or any other entity involved in the operation of the store,
 72 unless the County is contractually obligated to continue that assistance.

73 **Section. 2. Effective date.** This Act takes effect 91 days after it becomes law,
 74 and applies to any large retail store, as defined in County Code Section 56-35, added
 75 by Section 1 of this Act, which first opens to the public on or after that date.

76 *Approved:*

77

Valerie Ervin, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Bill 33-11

*Urban Renewal and Community Development --
Community Benefits Agreements –
Large Retail Stores*

DESCRIPTION:	Require the operator of a large retail store to make a good faith effort to enter into a community benefits agreement with 3 or more recognized civic organizations.
PROBLEM:	Large stores generally have large community impacts, some of which may be negative, on residents and businesses in the surrounding area.
GOALS AND OBJECTIVES:	To require the operators of new large retail stores to make a good faith effort to negotiate community benefits agreements that will lessen negative impacts, and promote positive impacts, on the surrounding community.
COORDINATION:	Department of Economic Development, Department of Housing and Community Affairs
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Not applicable.



**MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND**

OFFICE OF THE COUNCIL PRESIDENT

Memorandum

To: Councilmembers
From: Council President Valerie Ervin *VSE*
Date: September 30, 2011
Subject: Community Benefits Legislation

I am requesting your cosponsorship of the attached bill that would require community benefits agreements for retailers locating in Montgomery County that have indoor retail space of 75,000 square feet or larger. This bill would also codify community benefits coalitions, which are broad-based community groups made up of individuals and entities that reflect the interests of the neighboring communities where "big box" retail stores are seeking to locate.

As you may know, a community benefits agreement is a legally binding contact between a community benefits coalition and a developer or a specific retail store that establishes the benefits that the community will receive from the development. Benefits can include provisions covering living wages, local hiring and training programs, affordable housing, environmental remediation, funds for community programs, open space designations, operating hours, security, deliveries, traffic mitigation and other items.

Community benefit agreements ensure that development is equitable and benefits the community, which eventually contributes to stronger local economies, livable neighborhoods and an increase in public participation in the planning process. Once an agreement is reached, community benefits coalitions often agree to support a project through public hearing attendance and testimony and releasing any administrative claims regarding a project.

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Michael Siegel from Public and Environmental Finance Associates in Washington, DC recently completed an evaluation of “big box” retailers in Montgomery and Prince George’s County. He identifies 35 “big box” retail stores currently located in the County.

Siegel details how “big box” retailers, such as Walmart, attempt to be the preeminent retailers in specific areas, and how this impacts surrounding businesses and communities. “While this strategy may be directed primarily at other large competitors, any retailer in the area, large or small, offering similar goods can be forced away from offering similar merchandise, to downsize or close, and/or shift their focus.” In discussing the impact on mid-sized and local small businesses, Siegel notes, “Such stores have little ability to compete against far larger companies with the resources and ability to saturate a particular market area or distribution center territory.”

Community benefit agreements are not a new concept. The first community benefits agreements were negotiated in California in the early 2000s. Successful models have been developed in Seattle, Pittsburgh and San Francisco. Closer to home, a similar bill to the one I am proposing is currently before the Council of the District of Columbia.

In addition, I have explored the option of including community benefit agreements in the zoning ordinance as part of the CR Zone discussion and zoning ordinance rewrite. Legal staff has informed me that these types of agreements must be done through legislation and not through the zoning ordinance.

The goal of this bill is to create a broadly inclusive and focused process that involves key stakeholder groups, creates quality jobs and generates community benefits in areas where “big box” retailers are looking to locate. Please note, that requiring community benefits agreements would not prevent any company from locating in the County but would instead ensure that such “big box” operations are compatible with the needs of the surrounding neighborhoods.

I hope you will cosponsor this important piece of legislation. I welcome your suggestions on the attached draft bill, which is scheduled to be introduced on October 11.

Attachments:

Draft Bill

Selected Issues Affecting the Potential Impact of “Big Box” Retail Stores on Montgomery and Prince George’s County, Maryland, Michael Siegel, Public and Environmental Finance Associates, Washington DC.

c: Mike Faden, Council Senior Legislative Attorney
Jeff Zyontz, Council Legislative Attorney