



INSIDE

Tax Extenders 3

Congressional leaders believe extenders will pass this fall.

State News Briefs 4-5

Community Relations 6

Investing in neighborhoods.

ICSC Responds to ADA Regulatory Proposal

In August ICSC filed comments with the Department of Justice (DOJ) on its Notice of Proposed Rulemaking (NPRM) dealing with Title III, the public accommodation section of the Americans with Disabilities Act (ADA). This opportunity for public comment comes as the final phase of a 14-year regulatory process approaches.

ICSC filed joint comments with the National Retail Federation and also participated as part of a multi-party effort with the U.S. Chamber of Commerce, the Asian-American Hotel Owners Association, the Food Marketing Institute, the National Restaurant Association and the North American Equipment Dealers Association.

In both instances, ICSC focused its comments on major shopping center/retail issues contained in the Proposed Rule. Specifically, the comments responded to a proposal for a “safe

harbor” for businesses, as well as new rules regarding employee work areas, food courts/restaurants, play areas, the classification and use of Segways and service animals.

In addition, the U.S. Chamber of Commerce submission cited the numerous proposals first published by the DOJ in 2004 that affect the number of ADA accessible entrances at a center, the number of handicapped parking spaces, fitting rooms, the height of customer service counters and more. The collective comments questioned the cost/benefits of many of the new proposed rules.

It is unclear when the DOJ may act on the NPRM and issue its final rule.

To view ICSC’s comments, go to: www.icsc.org/srch/government/issues.php and click the appropriate links under “Economic Issues.” ■

Members Battle County-Mandated Security Ordinance

ICSC members in Florida are battling a measure proposed by the Broward County Board of Commissioners that mandates parking areas in all county retail establishments be monitored 24/7 by security camera video systems. It requires that video systems be capable of retaining and retrieving recorded images for a minimum of 30 days.

ICSC Florida GR Chair Seth Layton and other ICSC members turned out in force to an August commission meeting to oppose the measure and the board agreed to continue the issue until Nov. 13 to allow time for a task force to form to research the issue in more detail. ICSC is working with the task force to ensure the concerns of the shopping center industry are considered. ■

ENVIRONMENT



ICSC Joins CREEA Steering Committee

ICSC is participating on a steering committee with the U.S. Department of Energy for the Commercial Real Estate Energy Alliance (CREEA) along with other trade associations including the Building Owners and Managers Association (BOMA) and the National Association for Industrial and Office Properties (NAIOP). CREEA is looking at specific energy-saving technologies (such as LED lighting for parking lots) that will be applicable to all shopping centers. The first official meeting of the CREEA will be held September 17.

UC Davis and ICSC To Collaborate on Energy Efficiency Study

University of California at Davis is seeking state funds for a comprehensive energy efficiency study (with a goal of technology testing and transfer) for the retail shopping industry. ICSC's role in the study will be to help UC Davis identify the best practice examples and distribute the information once it is generated.

California Bill Limits Transportation Expansion

ICSC is working with a coalition of business groups to modify a California proposal that would greatly restrict the ability of county and municipal governments to improve or expand infrastructure, particularly for transportation. The law, SB 375, would create numerous new opportunities for lawsuits aimed at blocking development. The measure is part of California's effort to reduce greenhouse gas emissions and comply with the state's existing climate change law (AB 32). If SB 375 is passed other states may consider similar legislation

Stockton Settlement Would Require LEED Silver Standards

The City of Stockton, CA recently released a settlement agreement as part of a lawsuit brought by the Sierra Club and the State Attorney General which would stipulate, among other things, that the city adopt LEED Silver standards. The standards, set by the US Green Building Council, would apply to private commercial projects over 5,000 square feet, posing a tremendous negative impact on all commercial real estate. There are currently no clear LEED standards for retail real estate industry, making implementation and compliance difficult to achieve.

The settlement measure was brought before the Stockton City Council in late August but held over so the council could further research the issue. There was understandable concern as the settlement, if approved, would be binding and would restrict the body from amending it in the future. ■

Tax Extenders Slowed By Election-Year Rhetoric

Congressional leaders promise extenders will be passed this fall.

ICSC and several other business groups suffering from the economic uncertainty of lingering tax provisions have created an ad hoc coalition to urge the Senate to move quickly on the tax extender package.

Many of the provisions in the package, including a 15-year depreciation schedule for leasehold depreciation and expensing for brownfields remediation, expired at the end of 2007, while the energy tax incentives such as solar panel credits and the commercial energy deduction credits will expire at the end this year.

ICSC Environmental Subcommittee Chairman Larry Kilduff (The Kilduff Company, LLC) is scheduled to testify before the House Small Business Committee in September to discuss the impact of the tax extenders on small businesses.

While the tax provisions themselves are relatively non-controversial, the legislation has been stalled over the debate regarding whether or not to offset the tax extenders. Changing the manner in which partnerships are taxed for their carried interest is one of the tax offsets included in the House passed tax extender package.

ICSC believes the carried interest provision, which would disproportionately impact commercial real estate, will be removed from the final compromise legislative package.

Many Congressional leaders have promised business groups that the extenders will be passed shortly after Congress returns from the political conventions, but House Democrats have threatened to remove the business tax provisions if they are not paid for by other means. ■



STATE NEWS BRIEFS STATE NEWS BRIEFS



- In Arizona, the transportation (TIME) initiative failed to garner enough valid signatures to make the November ballot. Proponents of

the initiative are currently appealing the ruling by the Secretary of State to the Arizona Supreme Court. The TIME initiative would increase Arizona's sales tax one-cent for 30 years in order to raise over \$40 billion to fund transportation improvements.

- The Arizona state land initiative also failed to acquire enough valid signatures to make the November ballot, according to the Secretary of State's Office. This measure would permanently conserve and protect approximately 580,000 acres of natural areas in Arizona and provide an opportunity for conserving additional lands. The ruling is expected to be appealed in court.



- The California Senate Committee on Appropriations failed to pass A.B. 2235 from the suspense file. (Bills with a fiscal

impact of over \$50,000 were placed on the suspense file, due to California's budget problems.) The bill makes a technical, non-substantive change in provisions to existing law which requires the Secretary of the Resources Agency to establish a central public registry of all conservation easements held or required by the state, or purchased with state grant funds provided by an agency, department, or division of the state. It is very unlikely this bill will receive any further consideration in the 2007-2008 legislative session.

- The California Legislature passed A.B. 3063, which prohibits an employer from asking an applicant for employment to disclose, or utilize in an employment-related decision, information concerning a criminal conviction that has been expunged. The bill provides exceptions to these prohibitions if state or federal law requires an employer to obtain information regarding an applicant's criminal convictions, requires the applicant to possess or use a firearm in the position applied for, precludes an individual convicted of a crime from holding the position applied for, or prohibits the employer from hiring an applicant who has been convicted of a crime. The bill next must be approved by Governor Arnold Schwarzenegger (R), who has indicated his support for the measure.



- Illinois Governor Rod Blagojevich (D) signed S.B. 2110 into law. The bill creates the Uniform Environmental Covenants Act, pro-

posed by the National Conference of Commissioners on Uniform State Laws. The bill also creates an interest in real estate called an "environmental covenant" that assures a plan of rehabilitation for contaminated real property (brownfields) and controls the use of the property.

- Gov. Blagojevich (D) also signed H.B. 3441 into law, which clarifies that a municipality's authority over water access does not authorize a municipality to exercise zoning power or use of private property outside of its corporate limits.



- Five major environmental bills proposed by Massachusetts

Governor Deval Patrick (D) have been enacted. The Green Communities Act, which promotes energy efficient products and encourages renewable energy technologies; the Oceans Act, which supports development of wind, wave and tidal power generation while protecting state waters; the Biofuels Act, which includes a tax exemption for biofuel, and establishes minimum percentages of biofuel in diesel and home heating oil; the Global Warming Act, requires 10-25 percent reduction in 1990 levels of greenhouse gases by 2020 and 80 percent reduction by 2050; and the Green Jobs Act, which appropriates \$68 million for research and development and training for jobs in the clean energy sector.

- Gov. Patrick has proposed new regulations for the Department of Health Care Financing and Policy (DHCFP) consisting of assessments for insurers and providers totaling about \$100 million. In order to raise more money from employers, the administration intends to change the carefully crafted compromise that led to the fair share assessment on employers. Employers currently have to insure 25 percent of their employees or pay 33 percent of insurance premiums. The pending regulations would make employers do both, insure 25 percent of their employees and pay 33 percent of insurance premiums. This revision of the fair-share assessment would add to employers' cost burdens. DHCFP has a public hearing on September 5 to gather testimony regarding the pending regulations.

STATE NEWS BRIEFS STATE NEWS BRIEFS



- In Michigan, ICSC members continued to meet with Legislators throughout the summer recess to discuss

proposed amendments to the recently enacted Michigan Business Tax. H.B. 6178 would provide a business tax incentive for certain expenditures in construction of an energy efficient residential property.

- Michigan Representative Bob Constan (D) has introduced H.B. 6386. The bill requires that if an unemployment insurance agency determines that a person who is not an employer at the time of a transfer acquires a trade or business, or a portion of a trade or business for the purpose of obtaining a lower contribution rate, the unemployment agency shall not transfer the unemployment experience, but shall assign that employer a new employer rate. Provides for a penalties for a person who knowingly transfers or acquires, attempts to transfer or acquire, or advises a person to transfer or acquire a trade or business or a portion of a trade or business to obtain a reduced contribution rate or reimbursement payment in lieu of contributions required.



- According to recent figures released by the Minnesota Department of Employment and Economic Development (DEED), Minnesota employ-

ers cut 8,600 jobs in July. The state's seasonally adjusted unemployment rate stood at 5.8 percent for the month, slightly over the national rate of 5.7 percent. The construction market lost 3,400 jobs and DEED Commissioner Dan

McElroy claims segments of the state economy are being tested by the nation's economic slowdown, including construction and other industries heavily exposed to the housing market.



- In Ohio, a ballot initiative has been filed for the November election, which would require would require companies with 25 or

more employees to provide seven paid sick days per year to full-time workers. Part-time employees could earn a pro-rated number of days depending on the number of hours worked. Employers would not be required to provide more than seven days, and employees would not be permitted to convert sick days into cash. The initiative is similar to H.B. 536. The Ohio Secretary of State has until September 25 to certify ballot signatures on the initiative. If supporters have fallen short, they have ten more days to gather additional signatures. Ohio Governor Ted Strickland (D) and Lieutenant Governor Lee Fisher (D) have publicly declared their opposition to the ballot initiative.



- Pennsylvania Representative Robert Godshall (R), minority chairman of the

Consumer Affairs Committee, has introduced two bills regarding gift cards and escheated property.

H.B. 2737 prohibits selling a gift card to a consumer that expires within a period of less than five years and charges an inactivity fee or other service fee. The bill prohibits, in the retail sale of goods, refusing to accept a gift certificate, altering the terms and conditions of the gift card after it is

used, refusing to redeem the gift card if the remaining balance is less than the purchase price, and failing to disclose and conspicuously print the terms of the gift card to a prospective buyer. The measure also defines a gift card, gift certificate, prepaid card and the terms of their use. This legislation excludes payroll cards.

The second bill, H.B. 2736, omits the definition of "general use prepaid cards," "gift card," and "gift certificate" and inserts the definitions provided in the aforementioned draft bill. The bill applies the new definitions to include property that can be escheated.



- Texas had its annual sales tax holiday from August 15 through August 17, 2008. Most clothing and footwear

priced under \$100 were exempt from sales and use taxes, saving shoppers about \$8 on every \$100 spent. Backpacks under \$100 and used by elementary and secondary students were also exempt. The Texas Comptroller's office estimated that shoppers would save \$54 million over the three days. During the 2007 tax free holiday, Texans saved \$52.1 million in sales taxes, and Texans have saved \$388.1 million since the holiday first started in 1999. Retailers are not required to participate in the holiday, but most do and many time their back-to-school sales to coincide with the sales tax holiday. The Comptroller's office also indicated that the state's sales tax collections for fiscal year 2008 were up 6.1 percent compared with the same period last year. ■



Opening Doors to Neighborhood Retail Investment

While retail attraction is one of the fundamental activities of a comprehensive urban corridor revitalization initiative, it's also one of the more challenging activities a community-based organization can take. Before local community developers can convince a drugstore, supermarket or sit-down restaurant to open a business on their local shopping street, they must become aware of and develop strategies to overcome the long list of reservations that retailers (many which have developed their business models based on suburban locations for the past 40 years) have about locating to urban markets, including, but not limited to: crime (or perception of crime); weak market demand (perceived or actual); theft/shrinkage; high rents; difficulty identifying sites; and inadequate parking.

Recognizing that these challenges occur in numerous communities that the Local Initiative Support Corporation (LISC) serves across the nation, this spring LISC's Commercial Markets Advisory Services (CMAS) forged a partnership with the ICSC to develop the Applied Training in Retail Attraction and Dealmaking program. The multi-month initiative was designed to provide several community-based organizations with tools and support to attract a retailer (or commercial developer) to a particular site within their commercial corridor. In tandem with their local LISC offices, five community development organizations were selected by LISC through a competitive application process to participate in the pilot program which began in January.

Looking Forward

The feedback ICSC and CMAS received from the five participant sites (and from the general public that have attended the online webcasts) has been extraordinarily positive, reinforcing the belief that the Applied Training in Retail Attraction program is a much-valued part of its growing portfolio of retail attraction and development services. As this year's program comes to a close, CMAS will be working with the participants, consultants and mentors to build upon this initiative and later this fall will select another round of community-based organizations in LISC cities to participate in this program. If you are interested in serving as a webinar presenter or a mentor in next year's program, please contact Community Development Director Cynthia Stewart at cstewart@icsc.org. ■

ICSC Hosts Events at RNC and DNC Conventions

ICSC joined with the Real Estate Roundtable and other national real estate organizations to co-host “Real Estate Celebrates Sustainability” in Denver during the Democratic National Committee Convention. Guests included Democratic members of Congress and their key staff.

At the Republican National Committee Convention in Minnesota, ICSC and the International Franchise Association (IFA) hosted “A Day of Fun and Fashion” at the Mall of America in honor of Republican women elected officials. The event included a fashion show hosted by television star Lisa Rinna and a charity raffle to benefit the Minnesota Coalition for Battered Women (MCBW). ■



Lisa Rinna, television star and owner of the Belle Gray retail stores in California, hosted the fashion show.

Lisa Rinna and ICSC Senior Staff Vice President Betsy Laird.





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