



Committee: PHED
Committee Review: At a future date
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #AffordableHousingPilot

AGENDA ITEM #18C
June 29, 2021
Introduction

SUBJECT

Bill 26-21, Taxation – Payments in Lieu of Taxes – Affordable Housing - Amendments
Lead Sponsors: Councilmembers Riemer and Friedson

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- The Bill would require the Director of Finance to offer payments in lieu of taxes for all housing developments with at least 25% of the dwelling units built under a government regulation or binding agreement limiting the rent charged for at least 15 years.
- The Bill would also repeal the annual maximum aggregate amount of all payments in lieu of taxes approved under this law.

DESCRIPTION/ISSUE

- Is the potential loss of tax revenue a reasonable tradeoff for the increase in affordable housing?

SUMMARY OF KEY DISCUSSION POINTS

- The amount of the payment in lieu of taxes necessary to increase affordable housing.
- The areas of the County where affordable housing is most needed.

This report contains:

Staff Report	Pages 1-2
Expedited Bill 26-21	©1
Legislative Request Report	©5

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MEMORANDUM

June 24, 2021

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Bill 26-21, Taxation – Payments in Lieu of Taxes – Affordable Housing - Amendments

PURPOSE: Introduction – No Council vote required

Bill 26-21, Taxation – Payments in Lieu of Taxes – Affordable Housing – Amendments, sponsored by Lead Sponsors Councilmembers Riemer and Friedson, is scheduled to be introduced on June 29, 2021. A public hearing is tentatively scheduled for July 20 at 1:30 p.m.¹

Bill 26-21 would establish a minimum payment in lieu of taxes for a housing development owned or operated by the Housing Opportunities Commission (HOC) and for any other housing development with at least 25% of the dwelling units built under a government regulation or binding agreement limiting the rent charged for at least 15 years. The Bill would also repeal the annual maximum aggregate amount of all payments in lieu of taxes approved under this law.

Background

Code §52-24 currently authorizes the Director of Finance to accept a negotiated payment in lieu of real property taxes (PILOT) for a qualifying housing development in which the owner is eligible for a PILOT. State laws authorize a PILOT for properties owned or controlled by the Housing Opportunities Commission or for other housing developments where the owner agrees to limit the rent on certain dwelling units under a government affordable housing program. The law also requires the Council to establish an aggregate amount of all PILOTs that can be approved under this law. PILOTs for HOC properties are excluded from the aggregate maximum established by the Council. In addition, both the decision to offer a PILOT for a qualifying housing development and the amount of the PILOT is discretionary with the Director. In practice, the Department of Housing and Community Development negotiates the PILOTs.

¹ #AffordableHousingPilot

Bill 26-21 would amend this law by mandating a PILOT for HOC projects and establishing the following minimum PILOT for other affordable housing developments. If at least 50% of the dwelling units limit the rent charged for at least 15 years to an amount affordable to households earning less than 65% of the area median income, the PILOT must be 100% of the property tax for at least 15 years.

The Director would be required to offer a partial PILOT for a qualifying housing development with at least 25% but less than 50% of the units rent restricted:

- (1) for each dwelling unit affordable for residents at 51% to 65% of area median income, the project must receive a payment in lieu of taxes for one unit;
- (2) for each dwelling unit affordable for residents at 31% to 50% of area median income, the project must receive a payment in lieu of taxes for 2 units; and
- (3) for each dwelling unit affordable for residents at 30% or less of area median income, the project must receive a payment in lieu of taxes for 3 units.

Finally, Bill 26-21 would eliminate the annual maximum aggregate amount for all payments in lieu of taxes approved under this law.

This packet contains:

Expedited Bill 26-21

Legislative Request Report

Circle #

1

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Bill No. 26-21
Concerning: Taxation – Payments in Lieu
of Taxes – Affordable Housing -
Amendments
Revised: 6-16-2021 Draft No. 2
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Riemer and Friedson

AN ACT to:

- (1) establish a minimum payment in lieu of taxes for certain qualifying housing developments;
- (2) eliminate the annual maximum aggregate amount of all payments in lieu of taxes approved under this Section; and
- (3) generally amend the law governing a payment in lieu of real property taxes for certain housing developments.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-24

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

1 **Sec. 1. Section 52-24 is amended as follows:**

2 **52-24. Payments in lieu of taxes for certain housing developments.**

3 (a) Definitions. In this Section, the following words have the following
4 meanings.

5 Area median income means the median household income for the
6 Washington, DC metropolitan area as estimated by the U.S. Department
7 of Housing and Urban Development, adjusted by household size based
8 on the occupancy standard for the unit.

9 Director means the Director of Finance or the Director's designee.

10 Payment in lieu of taxes means an authorized payment made by the owner
11 of a qualifying housing development instead of paying the County real
12 property tax, including a County real property tax levied under a special
13 area taxing law, that would otherwise be due.

14 (b) When authorized by state law, the Director [of Finance] may agree to
15 accept a negotiated payment in lieu of the real property tax that would
16 otherwise be levied on a qualifying housing development. A qualifying
17 housing development is any housing development of which the owner is
18 expressly eligible under state law to make payments in lieu of taxes.

19 (c) The Director must offer a payment in lieu of taxes for a qualifying
20 housing development:

21 (1) owned or operated by the Housing Opportunities Commission that
22 exempts 100% of the real property tax that would otherwise be
23 levied; and

24 (2) if at least 50% of the dwelling units are built under a government
25 regulation or binding agreement limiting the rent charged for the
26 unit for at least 15 years to make the unit affordable to households
27 earning less than 65% of the area median income. The offer must

28 exempt 100% of the real property tax that would otherwise be
 29 levied for a period of at least 15 years, but no more than the number
 30 of years that rents charged for 50% of the dwelling units must
 31 remain restricted.

32 [(b)] (d) The Director must offer a partial payment in lieu of taxes for a
 33 qualifying housing development with at least 25% but less than 50% of
 34 the dwelling units built under a government regulation or binding
 35 agreement limiting the rent charged for the unit for at least 15 years but
 36 no more than the number of years that the rents charged for affordable
 37 units must remain restricted:

38 (1) for each dwelling unit affordable for residents at 51% to 65% of
 39 area median income, the project must receive a payment in lieu of
 40 taxes for one unit;

41 (2) for each dwelling unit affordable for residents at 31% to 50% of
 42 area median income, the project must receive a payment in lieu of
 43 taxes for 2 units; and

44 (3) for each dwelling unit affordable for residents at 30% or less of
 45 area median income, the project must receive a payment in lieu of
 46 taxes for 3 units.

47 (e) Any payment accepted by the Director [of Finance] must conform to
 48 guidelines included in a regulation adopted by the [County] Executive
 49 under method (1). Before the Director [of Finance] accepts a payment in
 50 lieu of taxes, the Director must consult the Director of the Department of
 51 Housing and Community Affairs on whether:

52 (1) the subject of the payment is a qualifying housing development;
 53 and

54 (2) the amount of the payment complies with applicable guidelines.

55 [(c)] (f) [The aggregate amount of all payments in lieu of taxes under this
56 Section (other than payments for a housing development owned or
57 operated by the Housing Opportunities Commission) must not exceed an
58 amount set annually by Council resolution for the following 10-year
59 period. The Council by separate resolution may approve a payment
60 which exceeds the aggregate amount previously set.] The Executive, in
61 each annual operating budget submitted to the Council, must calculate the
62 amount of pending payments in lieu of taxes already approved under this
63 Section, including payments for housing developments owned or
64 operated by the Housing Opportunities Commission.

65 *Approved:*

66

Tom Hucker, President, County Council	Date
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67 *Approved:*

68

Marc Elrich, County Executive	Date
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69 *This is a correct copy of Council action.*

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Selena Mendy Singleton, Esq., Clerk of the Council	Date
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LEGISLATIVE REQUEST REPORT

Bill 26-21, Taxation – Payments in Lieu of Taxes – Affordable Housing - Amendments

DESCRIPTION:	Bill 26-21 would establish a minimum payment in lieu of taxes for a housing development owned or operated by the Housing Opportunities Commission (HOC) and for any other housing development with at least 25% of the dwelling units built under a government regulation or binding agreement limiting the rent charged for at least 15 years. The Bill would also repeal the annual maximum aggregate amount of all payments in lieu of taxes approved under this law.
PROBLEM:	The County needs to encourage developers to build more affordable housing.
GOALS AND OBJECTIVES:	To increase the stock of affordable housing in the County.
COORDINATION:	Finance, Department of Housing and Community Affairs
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
RACIAL EQUITY AND SOCIAL JUSTICE IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	None