

MEMORANDUM

September 4, 2019

TO: Planning, Housing and Economic Development Committee

FROM: Christine M.H. Wellons, Legislative Attorney
Wellons

SUBJECT: Bill 20-19, Landlord-Tenant Relations – Licensing of Rental Housing – Fee Exemption

PURPOSE: Worksession – Committee to make recommendations on Bill

Expected attendees:

Aseem Nigam, DHCA Director
Tim Goetzinger, Finance and Administration Chief

Bill 20-19, Landlord-Tenant Relations – Licensing of Rental Housing – Fee Exemption, sponsored by Lead Sponsor Councilmember Friedson and Co-Sponsors, Councilmembers Jawando, Riemer, Albornoz, Council President Navarro, Councilmember Rice, Council Vice President Katz and Councilmember Glass, was introduced on June 25, 2019. A public hearing was held on July 16, 2019, at which Timothy Goetzinger on behalf of the County Executive, as well as several organizations, provided oral and written testimony.¹

Bill 20-19 would eliminate any license fee required to operate an accessory apartment as rental housing if the apartment is occupied by an individual with disabilities.

In order to qualify for the fee exemption, the license applicant would be required to certify annually to the Department of Housing and Community Affairs (DHCA) that an occupant of the accessory apartment meets one or more criteria establishing that the occupant is an individual with disabilities. The criteria include that the occupant: (1) receives certain disability benefits under the Social Security Act; (2) receives disability compensation from the U.S. Department of Veterans Affairs; (3) is the beneficiary of an ABLE account; or (4) has a physician's certification of certain severe impairments or blindness. DHCA would be required to protect individuals' health information to the maximum extent permitted by law.

Public Hearing

A representative of the County Executive, Acting Housing Director Timothy Goetzinger, provided testimony that the Department of Housing and Community Affairs (DHCA) "agrees

¹#AccessoryAptFeeExemption

Other search terms: rental housing fee, landlord-tenant relations, accessory apartments, rental housing licensing, license applicant

with and is sympathetic with the intent of this legislation” and looks “forward to working with the Council on this legislation.” (©10). Mr. Goetzinger noted that DHCA initially was concerned that “this Bill may trigger HIPPA liability.” However, “after a more thorough review” by the County Attorney’s Office, “it does not appear to do so.” (©11).

Karen Morgret, speaking on behalf of the Commission on People with Disabilities, expressed concern that individuals with disabilities are often priced out of the rental market, and stated the Commission’s strong support for Bill 20-19.

Two organizations – Habitat for Humanity Metro Maryland, Inc. and the Coalition for Smarter Growth – provided testimony in support of the Bill. On behalf of Habitat for Humanity Metro Maryland, CEO John Paukstis stated: “A number of residents who have children with a disability have approached us to build an ADU so that their child can remain close but live independently. We’ve also heard from a number of seniors looking to build and move into accessible ADUs and rent out their homes so that they can age in place. We believe that Bill 20-19 encourages the development of accessible ADUs by exempting license applicants from fee requirements....” (©12-13).

Similarly, Jane Lyons testified on behalf of the Coalition for Smarter Growth that accessory apartments can be a great benefit to individuals with disabilities by enabling them to live closer to their caretakers. (©14).

Discussion

Health Insurance Portability and Accountability Act (HIPAA). In its Fiscal Impact Statement, the Office of Management and Budget and the Department of Finance noted a concern that DHCA would need to handle individuals’ confidential medical records consistent with HIPAA “liability and protocol.” (©8). During the public hearing, however, DHCA clarified that HIPAA will not apply to DHCA’s handling of the records. (©11). Council staff agrees with DHCA that HIPAA is not implicated by the Bill. Under federal law, HIPAA requirements apply only to certain covered entities, such as health care providers and insurers. 42 USCS § 1320d-1(a). DHCA is not a covered entity subject to the HIPAA requirements. The Bill does require DHCA to protect individuals’ medical privacy consistent with the law, but the particular requirements of HIPAA are not applicable.

Council Staff Recommendation

Council staff recommends approval of Bill 20-19 as introduced.

This packet contains:	<u>Circle #</u>
Bill 20-19	1
Legislative Request Report	4
Fiscal and Economic Impact Statement	5
DHCA Testimony	10
Habitat for Humanity Testimony	12
Coalition for Smarter Growth Testimony	14

Bill No. 20-19
Concerning: Landlord-Tenant Relations –
Licensing of Rental Housing – Fee
Exemption
Revised: 06/19/2019 Draft No. 4
Introduced: June 25, 2019
Expires: December 26, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Friedson
Co-Sponsors: Councilmembers Jawando, Riemer, Alborno, Council President Navarro,
Councilmember Rice, Council Vice President Katz and Councilmember Glass

AN ACT to:

- (1) exempt a license applicant from any license fee requirement to operate an accessory apartment as rental housing in certain circumstances; and
- (2) generally amend the law related to the licensing of rental housing.

By amending

Montgomery County Code
Chapter 29, Landlord-Tenant Relations
Section 29-20

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. Section 29-20 is amended as follows:**

2 **29-20. Fees.**

3 (a) [The] Except as provided in subparagraph (b), the annual license fee per
4 dwelling unit is:

5 [(a)] (1) for a Class 1 multi-family rental facility license:

6 [(1)] (A) \$44.00 per dwelling unit in an apartment complex or an
7 accessory apartment approved by special exception; and

8 [(2)] (B) \$59.00 per dwelling unit for all others;

9 [(b)] (2) for a Class 2 single-family rental facility license, \$101.00 per
10 dwelling unit;

11 [(c)] (3) for a Class 3 accessory apartment license \$101.00 per unit.

12 (b) Fee exemption.

13 (1) A license applicant is exempt from any fee associated with the
14 licensure of an accessory apartment occupied by an individual with
15 disabilities.

16 (2) To establish that an individual with disabilities occupies an
17 accessory apartment, a license applicant annually must certify, on
18 a form provided by the Director, that an occupant of the accessory
19 apartment:

20 (A) receives Social Security Disability benefits based on
21 blindness or disability under Title II of the Social Security
22 Act, as amended;

23 (B) receives Supplemental Security Income benefits based on
24 blindness or disability under Title XVI of the Social
25 Security Act, as amended;

26 (C) receives disability compensation from the U.S. Department
27 of Veterans Affairs;

- 28 (D) is the beneficiary of an ABLE account under Section 529A
- 29 of the Internal Revenue Code, as amended; or
- 30 (E) has a written certification, signed by a physician licensed in
- 31 the State of Maryland, that the individual:
- 32 (i) has a severe medically determinable impairment that
- 33 results in marked and severe functional limitations,
- 34 which have lasted, or can be expected to last, for at
- 35 least 12 months or to result in death; or
- 36 (ii) is blind, which means the individual has central
- 37 visual acuity of 20/200 or less in the better eye with
- 38 the use of a correcting lens.
- 39 (3) If the Director requests evidence sufficient to verify the
- 40 information certified under this subsection, the license applicant or
- 41 licensee must provide such evidence.
- 42 (4) The Director must protect the confidentiality of any individual
- 43 health information received under this Section to the maximum
- 44 extent permitted by law.
- 45 (c) [The] By method (3) regulation, the Executive may establish [a higher
- 46 annual fee by method (3) regulation] annual fees that are:
- 47 (1) higher than those specified in subparagraph (a); and
- 48 (2) in [an amount] amounts sufficient to pay the costs of administering
- 49 this Chapter.

50 *Approved:*

51

Nancy Navarro, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Bill 20-19

Landlord-Tenant Relations – Licensing of Rental Housing – Fee Exemption

DESCRIPTION: Bill 20-19 would exempt a license applicant from any fee to operate an accessory apartment as rental housing if the apartment is occupied by an individual with disabilities.

PROBLEM: A license fee is required to rent an accessory apartment occupied by an individual with disabilities.

GOALS AND OBJECTIVES: Eliminate any license fee associated with operating an accessory apartment as rental housing if the apartment is occupied by an individual with disabilities.

COORDINATION: Department of Housing and Community Affairs

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: Finance

EVALUATION: To be done.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Christine M.H. Wellons, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: N/A



OFFICE OF MANAGEMENT AND BUDGET

Marc Elrich
County Executive

Richard S. Madaleno
Director

MEMORANDUM

July 12, 2019

TO: Nancy Navarro, President, County Council

FROM: Richard S. Madaleno, Director, Office of Management and Budget *RSM*
Michael Coveyou, Acting Director, Department of Finance *Michael Coveyou*

SUBJECT: FEIS for Bill 20-19, Landlord-Tenant Relations – Licensing of Rental
Housing – Fee Exemption

Please find attached the Fiscal and Economic Impact Statements for the
above-referenced legislation.

RSM:cm

cc: Andrew Kleine, Chief Administrative Officer
Fariba Kassiri, Deputy Chief Administrative Officer
Debbie Spielberg, Special Assistant to the County Executive
Dale Tibbitts, Special Assistant to the County Executive
Lisa Austin, Office of the County Executive
Barry Hudson, Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Monika Coble, Office of Management and Budget
Chrissy Mireles, Office of Management and Budget
Pofen Salem, Office of Management and Budget

Office of the Director

101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800
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Fiscal Impact Statement

Bill 20-19, Landlord-Tenant Relations - Licensing of Rental Housing- Fee Exemption

1. Legislative Summary

Bill 20-19 would exempt a license applicant from any fee requirement to operate an accessory apartment (ADU) as rental housing if the apartment is occupied by an individual with disabilities.

To be eligible for the fee exemption, the license applicant would be required to certify annually to the Department of Housing and Community Affairs (DHCA) that an occupant of the accessory apartments meets one or more criteria establishing that the occupant:

- receives certain disability benefits under the Social Security Act;
- receives disability compensation from the U.S. Department of Veterans Affairs;
- is the beneficiary of an ABLE (Achieving a Better Life Experience) account; or
- has a physician's certification of certain severe impairments or blindness.

DHCA would be required to protect individuals' health information to the maximum extent permitted by law.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Bill 20-19 may impact County expenditures and will impact County revenue.

In terms of expenditures, some tasks such as creating applicable forms can be absorbed by current staff. However, DHCA does not have the professional capacity to review, approve, store, and protect confidential medical records associated with this Bill. These records would most likely convey Health Insurance Portability and Accountability Act (HIPPA) liability and protocol, with which DHCA is not familiar. As Bill 20-19 is written, it would be difficult to estimate the costs associated with the tasks required to protect individuals' health information that need to be implemented by DHCA.

The County currently has 203 Class 1 (special exception) ADUs and 211 Class 3 ADUs. Each ADU type carries with it a certain licensing fee (see table below for the fee). In FY20, DHCA projects collecting approximately \$33,000 in ADU licensing revenue. Under Bill 20-19, the licensing fee would be waived for ADUs occupied by an individual with disabilities. It is difficult to project how many residents with disabilities currently reside or will reside in ADUs; however, if 10% of ADUs house disabled residents, revenue would decrease by \$3,300. If 50% of ADUs house disabled residents, revenue would decrease by \$16,000.

ADU Type	Total Units	Annual Licensing Fee	Total Revenue	10% ADUs for Disabled	25% ADUs for Disabled	50% ADUs for Disabled
Class 1 ADU	203	\$47	\$9,541	\$954	\$2,385	\$4,771
Class 3 ADU	211	\$111	\$23,421	\$2,342	\$5,855	\$11,711
Total	414		\$32,962	\$3,296	\$8,241	\$16,481

Note that rental licensing fees are charged in amounts sufficient to pay the costs of administering various landlord-tenant programs, including licensing, landlord tenant mediation, code enforcement, and some administrative costs. Depending on the number of ADUs occupied by residents with disabilities per year, eliminating fees could negatively impact the County's ability to administer these programs.

In addition, the licensing fee exemption can only be applied to the annual licensing fee. Any license applicant is still expected to pay the one-time costs associated with applying for the initial licensing, including a \$250 filing fee and a \$220 sign fee, which are paid to cover the cost of reviewing ADU applications and that would be paid prior to leasing an ADU to a disabled resident.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Per Question #2, Bill 20-19 may not impact County expenditures, but if DHCA is required to ensure HIPPA compliance, the expenditure impact would be difficult to estimate.

This Bill will impact County revenue. A range of estimated revenue impacts is provided below.

Revenue Impact	10% Scenario	25% Scenario	50% Scenario
Year 1	-\$3,296	-\$8,241	-\$16,481
Year 2	-\$3,296	-\$8,241	-\$16,481
Year 3	-\$3,296	-\$8,241	-\$16,481
Year 4	-\$3,296	-\$8,241	-\$16,481
Year 5	-\$3,296	-\$8,241	-\$16,481
Year 6	-\$3,296	-\$8,241	-\$16,481
Total	-\$19,777	-\$49,443	-\$98,886

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable; Bill 20-19 does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

Implementing the licensing fee waiver for an ADU occupied by an individual with disabilities would have little impact on staff time. However, it is difficult to estimate the staff time needed to protect individuals' health information as DHCA does not have experience or expertise in ensuring HIPPA compliance.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

9. An estimate of costs when an additional appropriation is needed.

No additional appropriation is needed to implement Bill 20-19.

10. A description of any variable that could affect revenue and cost estimates.

See Question #2.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

It is difficult to estimate costs associated with reviewing, approving, storing and protecting confidential medical records associated with this Bill. These records would most likely convey Health Insurance Portability and Accountability Act (HIPPA) liability and protocol. As Bill 20-19 is written, DHCA is responsible for these tasks; however, DHCA does not have experience or expertise in ensuring HIPPA compliance.

12. If a bill is likely to have no fiscal impact, why that is the case.


Not applicable

13. Other fiscal impacts or comments.

Not applicable.

14. The following contributed to and concurred with this analysis:

Tim Goetzinger, Department of Housing and Community Affairs
Pofen Salem, Office of Department Management and Budget


Richard S. Madaleno, Director
Office of Management and Budget

7/11/19
Date

Economic Impact Statement
Bill 20-19, Landlord – Tenant Relations – Licensing of Rental Housing – Fee Exemption

Background:

Bill 20-19 would exempt a license applicant from any fee requirement to operate an accessory apartment (ADU) as rental housing if the apartment is occupied by an individual with disabilities.

1. The sources of information, assumptions, and methodologies used.

The source of information in the preparation of the economic impact statement was the Department of Housing and Community Affairs (DHCA). There were no assumptions or methodologies used by the Department of Finance (Finance) in the preparation of this economic impact statement.

2. A description of any variable that could affect the economic impact estimates.

As noted in the fiscal impact statement, DHCA projects collecting \$33,000 in accessory apartment licensing revenue in FY20. The department estimates that the number of residents with disabilities who currently reside or will reside in an ADU to range from 10% to 50% of available units resulting in a projected range of lost fee revenue of \$20,000 to \$100,000 over six years.

3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.


The bill is not anticipated to have an impact on employment, spending, savings, investment, incomes, and property values in the County beyond the marginal loss in fee revenue that is difficult to project with specificity given a lack of data enumerating the number of current and future individuals residing in accessory dwelling with disabilities.

4. If a Bill is likely to have no economic impact, why is that the case?

See number 2.

5. The following contributed to or concurred with this analysis:

David Platt and Dennis Hetman, Finance.



Michael Coveyou, Acting Director
Department of Finance

7/10/19

Date

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE MARC
ELRICH ON Bill 20-19, LANDLORD-TENANT RELATIONS –
LICENSING OF RENTAL HOUSING- FEE EXEMPTION**

July 16, 2019

Good afternoon Council President and Councilmembers, my name is Tim Goetzinger and I am the Acting Director of the Department of Housing and Community Affairs. It is a pleasure for me to appear before you on behalf of the County Executive in support Bill 20-19, which amends Chapter 29 – Landlord-Tenant Relations of the Montgomery County Code.

The proposed Bill amends licensing provisions, which would to exempt a license applicant from any fee requirement to operate an accessory apartment (ADU) as rental housing if the apartment is occupied by an individual with disabilities.

DHCA agrees with and is sympathetic with the intent of this legislation, which seeks to foster and incentivize special needs and/or disabled housing. Over the past ten years, DHCA has provided \$50 million in direct support to develop and maintain special needs and/or disabled housing. This includes \$44 million for 37 multifamily loans, providing affordable housing to nearly 500 households, and over \$6 million for 140 group home rehabilitation

Testimony

Bill 20-19, Landlord-Tenant Relations – Licensing of Rental Housing – Fee Exemption

Page 2

loans. We believe there is a continued need for this housing, which is why we work closely with the Department of Health and Human Services (HHS) to continually monitor the County for opportunities.

Initially there were concerns that this Bill may trigger HIPPA liability and protocol; however, after a more thorough review, it does not appear to do so.

We look forward to working with the Council on this legislation.

Thank you.



July 16, 2019

Montgomery County Council
Stella Warner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Testimony regarding Bill 20-19, Landlord-Tenant Relations – Licensing of Rental Housing – Fee Exemption

Good Afternoon,

My name is John Paukstis, President and CEO of Habitat of Humanity Metro Maryland, a non-profit affordable homeownership provider working in Montgomery County since 1982.

I would like to thank Lead Sponsor, Councilmember Friedson, for introducing this important legislation, Co-Sponsors Albornoz, Glass, Jawando, Katz, Navarro, Rice, and Riemer for their support and to voice Habitat for Humanity's strong support for Bill 20-19.

Habitat for Humanity Metro Maryland has worked in Montgomery County for 37 years, providing opportunities for low-income families to purchase homes in an otherwise unaffordable market. As a builder we are committed to building new homes that are universal design; homes that are accessible and can accommodate families at all stages of life. We also complete home repairs for existing homeowners, many of which include large-scale accessibility modifications so that owners can remain in their homes.

We are all too familiar with the inaccessible housing stock in our County. According to AARP's livability index, fewer than 45% of the housing units in Montgomery County have a zero step entry, meaning that someone in a wheelchair cannot enter 55% of the housing units in our County without assistance. That figure does not consider whether the interior of the home is visitable or accessible.

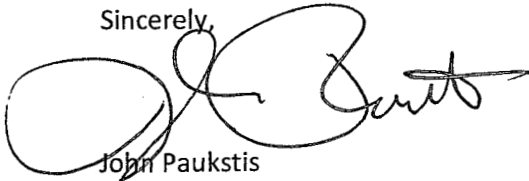
As you know, Habitat for Humanity Metro Maryland has strongly supported the expansion of ADUs through ZTA 19-01. One of the reasons we support ADUs, particularly detached units, is because they can be developed as an accessible unit to accommodate both younger and aging residents with disabilities.

A number of residents who have children with a disability have approached us to build an ADU so that their child can remain close but live independently. We've also heard from a number of seniors looking to build and move into accessible ADUs and rent out their homes so that they can age in place.

we believe that Bill 20-19 encourages the development of accessible ADUs by exempting license applicants from fee requirements when ADUs are rented to individuals with disabilities. This important legislation will also encourage owners of ADUs to rent to individuals with disabilities, a group that has a more difficult time finding housing. We are excited to see this legislation move forward and hope to see additional legislation in the future that encourages the development of accessible and affordable housing units in Montgomery County.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paukstis". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

John Paukstis
President & CEO
Habitat for Humanity Metro Maryland, Inc.

July 12, 2019

Montgomery County Council
Council Office Building
100 Maryland Ave.
Rockville, MD 20850

**Bill 18-19 – Landlord Tenant Relations – Relation Expenses (Support)
and
Bill 20-19 – Landlord Tenant Relations – Licensing of Rental Housing – Fee Exemption (Support)**

Testimony for July 16, 2019

Jane Lyons, Maryland Advocacy Manager

President Navarro and Councilmembers, thank you for the opportunity to speak today. I am here to urge your support for two bills, both of which advance the Coalition for Smarter Growth's mission of creating more inclusive, livable communities.

First, **Bill 18-19** requires that if a tenant's housing is condemned as unfit for human habitation, a landlord must make a relocation payment to the tenant and provide a tenant with right of first refusal. Given the current housing crisis, low-income tenants often have few choices but to locate in housing that is substandard but affordable. When that housing is condemned due to poor conditions for which the tenant is not responsible, the tenant must then face the expensive task of moving, possibly to a more expensive home.

Further, the right of first refusal provision ensures that tenants have the option to return to their homes after repairs. To truly have mixed-income, inclusive communities, we must protect renters, especially those at the highest risk of displacement due to health and safety violations. This is common sense legislation that would make Montgomery County a more welcoming place for low-income renters.

Next, **Bill 20-19** is linked to a familiar issue: accessory dwelling units. CSG and partner organizations that care about providing a diverse and affordable supply of housing have highlighted the numerous benefits of ADUs. One of the greatest benefits is allowing individuals with disabilities to live closer to caretakers or relatives – whether that be parents, siblings, children, or extended family. Similarly, individuals with disabilities can also benefit from the lower rents often offered for ADUs.

One of the biggest barriers to providing ADUs as a housing option for disabled individuals is the cost of licensing and constructing an ADU. Exempting the license fee for ADUs occupied by disabled individuals will help lower the overall cost of providing an ADU. In addition, we hope that the Council will pursue opportunities to assist homeowners, especially low-income homeowners, with ADU financing. Financing assistance can include partnering with banks, providing interest-free loans, and creating a financing guide.

This is a population that stands to benefit the most from ADUs; therefore, I urge you to help incentivize ADUs as a housing solution for individuals with disabilities, while also enabling greater integration into neighborhoods and community life.

Thank you for your time.