Montgomery County Council

Committee: GO
Committee Review: At a future date
Staff: Amanda Mihill, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #PublicLandforAffordableHousing

AGENDA ITEM #12
July 7, 2020
Public Hearing

SUBJECT

Bill 13-20, County Property – Disposition – Affordable Housing
Lead Sponsor: Councilmember Jawando

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Public Hearing – no vote expected

DESCRIPTION/ISSUE

Bill 13-20 would require a disposition of property that will be used primary for housing development to include a certain number of moderately priced dwelling units and exempt certain dispositions from certain requirements if the disposition will include a certain percentage of moderately priced dwelling units and lower income dwelling units.

SUMMARY OF KEY DISCUSSION POINTS

- None

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AGENDA ITEM 12
July 7, 2020
Public Hearing

M E M O R A N D U M

July 2, 2020

TO: County Council

FROM: Amanda Mihill, Legislative Attorney

SUBJECT: Bill 13-20, County Property – Disposition – Affordable Housing

PURPOSE: Public Hearing – no Council vote required[1]

Bill 13-20, County Property – Disposition – Affordable Housing, sponsored by Lead Sponsor Councilmember Jawando, was introduced on March 10. A Government Operations and Fiscal Policy Committee worksession will be scheduled at a later date.

Bill 13-20 would require a disposition of property that will be used primary for housing development to include a certain number of moderately priced dwelling units and exempt certain dispositions from certain requirements if the disposition will include a certain percentage of moderately priced dwelling units and lower income dwelling units. A memorandum from the Lead Sponsor is on ©5.

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[1] #PublicLandforAffordableHousing

Bill No. 13-20
Concerning: County Property – Disposition – Affordable Housing
Revised: 2/27/2020 Draft No. 1
Introduced: March 10, 2020
Expires: September 10, 2021
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ________

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Jawando

AN ACT to:

(1) require a disposition of property that will be used primary for housing development to include a certain number of moderately priced dwelling units;
(2) exempt certain dispositions from certain requirements if the disposition will include a certain percentage of moderately priced dwelling units and lower income dwelling units; and
(3) generally amend the County law regarding disposition of County property.

By amending
Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 11B-45

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*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:

Sec. 1. Section 11B-45 is amended as follows:

11B-45. Disposition of real property.

* * *

(e) * * *

[(5)**]** (f) *Dispositions related to affordable housing.*

(1) Any disposition of property that will be used primarily for housing development must require that 30% of the housing units built on the property be income restricted under an agreement with the Department of Housing and Community Affairs.

(2) (A) **[**This subsection and subsection (c)**]** Subsections (c) and (e) do not apply to any disposition of property that will be used primarily for housing development if the recipient legally commits to the Director of the Department of Housing and Community Affairs that:

(i) at least **[**30%**]** 15% of the housing units built on the property will be moderately priced dwelling units **[**or other units that are exempt from the development impact tax under Section 52-41(g)(1)-(4)**]**; and

(ii) at least 15% of the housing units built on the property will be for residents with an income of 50% or less of area median income. In this subsection, area median income means the median household income for the Washington, DC metropolitan area as estimated by the U.S. Department of Housing and Urban Development adjusted for family size.

(B) A disposition of property exempt from Subsections (c) and (e) under (f)(2)(A) must comply with the requirements of Subsection (d).

(3) The income restricted units under subsection (f)(1) and (f)(2) must abide by the income control period applicable to the moderately priced dwelling unit program established in Chapter 25A.

* * *

[(f)] (g) * * *

[(g)] (h) * * *

[(h)] (i) * * *

Approved:

Sidney Katz, President, County Council Date

Approved:

Marc Elrich, County Executive Date

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 13-20
County Property – Disposition – Affordable Housing

DESCRIPTION:	Bill 13-20 would require a disposition of property that will be used primary for housing development to include a certain number of moderately priced dwelling units and exempt certain dispositions from certain requirements if the disposition will include a certain percentage of moderately priced dwelling units and lower income dwelling units.
PROBLEM:	The availability of affordable housing continues to be a challenge in Montgomery County
GOALS AND OBJECTIVES:	To increase the availability of affordable housing in the County.
COORDINATION:	Office of Procurement
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	Office of Legislative Oversight
EVALUATION:	To be researched.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Amanda Mihill, Legislative Attorney (240) 777-7815
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	N/A

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

TO: Councilmembers, Chiefs of Staff
FROM: Will Jawando, Councilmember
DATE: March 5, 2020
SUBJECT: County Property Disposition

The availability of affordable housing continues to be a challenge in Montgomery County. As the cost of housing continues to rise and wages remain stagnant, it becomes an even greater issue. According to a recent American Community Survey, 49.5% of renters and 23.3% of homeowners are housing burdened in our county.

As you are aware, under current law, a Property Disposition that will be used primarily for housing development does not need to comply with the fair market value requirement or the declaration of no further need process if 30% of the units are MPDUs. The County Executive is required to send over the material terms of the disposition contract for a comment period.

The attached draft would do the following:

- Require dispositions that will be used primarily for housing development to include 30% income restricted units (in other words, these dispositions will no longer be exempt from the fair market value requirement or declaration of no further need process);
- Exempt from the declaration of no further need process and the fair market value requirement any disposition that will be used primarily for housing development if 15% of the units are MPDUs and 15% of the units are for residents with an income of less than 50% of area median income. The County Executive would still be required to send over material terms for a comment period.

We must continue to find innovative ways to increase affordable housing in our county. Leveraging opportunities like Property Dispositions to maximize affordable housing stock is critical. It is even more important when it comes to increasing housing that is deeply affordable.

If you have any questions or if you would like to co-sponsor the draft bill, please contact Pamela Luckett in my office. Thanks in advance for your consideration.

STELLA B. WERNER OFFICE BUILDING • 100 MARYLAND AVENUE • ROCKVILLE, MARYLAND 20850
240/777-7811 OR 240/777-7900 • TTY 24/777-7914 • FAX 240/777-7989
WWW.MONTGOMERYCOUNTYMD.GOV/COUNCIL

Economic Impact Statement

Office of Legislative Oversight

Bill 13-20

County Property – Disposition – Affordable Housing

SUMMARY

Given the acute need for affordable housing, especially among lower income households, the Office of Legislative Oversight (OLO) expects Bill 13-20 to have a positive, yet small, impact on the Montgomery County economy. However, it is possible that the bill could create minor costs for housing developers, as well as renters and buyers of housing units who are ineligible for affordable units.

BACKGROUND

Bill 13-20 is intended to address the lack of affordable housing in the County. To increase the availability of affordable housing, the bill would amend the law regarding the disposition of property owned or controlled by Montgomery County Government (MCG) that will be used primarily for housing developments.[1] Under current law, the process for the County Executive to dispose of County-owned land involves three requirements: (1) verifying to the Council that the sale will not fall below the full market value[2]; (2) attaining Council approval for a declaration of no further need for the property;[3] and (3) providing the Council with the material terms of the disposition.[4] Requirements (1) and (2), however, do not apply for any disposition of property in which the housing development will include 30% or more of moderately priced dwelling units (MPDUs).[5]

Bill 13-20 would make two changes to current law governing the disposition of County-owned property that will be used primarily for housing developments. First, it would "require that 30% of the housing units built on the property be income restricted under an agreement with the Department of Housing and Community Affairs."[6] The second change modifies the conditions in which dispositions are exempt from the full market value and declaration for no further need requirements, respectively (1) and (2) above. To waive these requirements, the recipient of County-land must commit to what is referred to here as the "15-15 split." Under this rule, the housing developer must ensure

[1] According to Montgomery County Code, "*Disposition* means a sale, a lease or license for a term of 2 years or longer, or a lease or other document which includes an option to buy." The disposition process does not apply to "surplus school facilities and property of nominal value identified in the regulation." Montgomery County Code § 11B-45(b)(2) [hereinafter "MCC"].

[2] Full market value is established "by at least one professional appraisal of the property obtained by the Director within 12 months before a declaration is submitted to the Council." MCC § 11B-45(c).

[3] MCC § 11B-45(e)(1)(C)(ii).

[4] MCC § 11B-45(d)(1).

[5] MCC § 11B-45(e)(5).

[6] County Council for Montgomery County, Maryland. Bill No. 13-20. County Property – Disposition – Affordable Housing. February 27, 2020. 2.

that "at least 15% of the housing units built on the property will be moderately priced dwelling units," and that "at least 15% of the housing units built on the property will be for residents with an income of 50% or less of area median income."[7]

Ultimately, the goal of Bill 13-20 would be to encourage the County Executive to include the 15-15 split in negotiations with housing developers, thereby increasing the stock of affordable housing in the County.

INFORMATION, ASSUMPTIONS and METHODOLOGIES

No methodologies were used in this statement. The assumptions underlying the claims made in the subsequent sections are based on the judgment of OLO staff. Data used in this statement come from publicly and non-publicly available sources. All publicly available data sources are cited.

VARIABLES

The variables that could affect economic impacts in the County are the following:

- Rate of inclusion of the 15-15 split in deals between County Executive and housing developers
- Stocks of MPDUs and other affordable housing units in the County
- Demand for MPDUs and affordable housing among County residents
- Percentage of households with annual incomes of $60,650 or less[8]
- Number of per year dispositions for housing developments
- Number of housing units built in these developments per year

IMPACTS

Businesses, Non-Profits, Other Private Organizations

Workforce, operating costs, property values, capital investment, taxation policy, economic development, competitiveness, etc.

OLO believes that Bill 13-20 could create costs for housing developers. Increasing income-restricted housing units in their developments could result in lower rents and per sale profit margins, thereby reducing the overall profits of housing development companies. However, OLO believes these costs would be minimal for three reasons.

First, affordable housing units on County-disposed land will likely make up a small portion of all new housing units constructed in the near future. This much is suggested by available data on the contribution of housing units on disposed land to the development of new units in the County. From 2014 to 2019, 866 housing units have been constructed on County-disposed land, only

[7] Ibid.

[8] The area median income (AMI) for Montgomery County is $121,300. U.S. Department of Housing and Urban Development. FY 2019 Median Family Income Documentation System. HUD.gov. https://www.huduser.gov/portal/datasets/il/il2019/select_Geography.odn (accessed on March 25, 2020).

220 of which were MPDUs. During this time, an estimated 5,909 new housing units have been constructed in the County.[9] Thus, while housing units on County-disposed land contributed to approximately 15 percent of all new units, MPDUs on disposed land made up only 4 percent of all new units. Based on these figures, OLO expects affordable housing units on disposed land to continue to be a small portion of housing developers' product portfolios, even if Bill 13-20 increases the number of affordable units built on disposed land.

Second, the potential costs to housing developers could be offset by benefits they would receive from other inclusionary zoning policies, such as fee waivers, tax reductions, density bonuses, and other devises that lower the cost of building affordable housing for developers.[10] Note that aggregating the financial incentives from all such policies that developers could be eligible for is beyond the scope of this statement.

Third, it is theoretically possible that housing developers would pass additional costs created by Bill 13-20 onto customers who are ineligible for affordable housing by increasing rents and/or asking prices for non-MPDU units. This claim assumes that the rental and for-sale housing markets are sufficiently non-competitive to give developers some degree of pricing power.[11]

In brief, Bill 13-20 could potentially create minimal costs for housing developers. OLO does not anticipate that these costs would be sufficiently high to reduce developers' capital investments, to drastically cut into their operating costs, or to negatively impact their workforce compensation. In addition, OLO does not anticipate that the bill would have a significant impact on the County's competitiveness in the residential housing sector or overall economic development.

Residents

Employment, property values, taxes paid, etc.

OLO believes that residents, particularly those in lower income households, would benefit from Bill 13-20.

The need for affordable housing in the county, especially for lower income households, is acute. There has long been a growing demand for accordable

[9] Housing unit data for 2019 from the U.S. Census Bureau is unavailable. To estimate the number of new housing units constructed from 2014 to 2019, OLO added the per year average of new units during the 2014 to 2018 period to the total number of new housing units constructed during this period. U.S. Census Bureau. 2014-2018 American Community Survey 5-Year Estimates. Census.gov. https://data.census.gov/cedsci/table?q=%202014-2018%20American%20Community%20Survey%20%28ACS%29%205-year%20estim&tid=ACSDP1Y2018.DP05&y=2018 (accessed March 25, 2020).

[10] Urban Ventures. Final Report on MPDU Program: Analysis of Current Program and Research on Other Localities' Inclusionary Zoning Programs. June 7, 2018. 24.

[11] Indeed, there has been considerable consolidation in the housing development sector since the Great Recession, leading some industry experts to express concern over the "creeping oligopolies." Andrew Van Dam. "Economists identify an unforeseen force holding back affordable housing." *Washington Post*. October 17, 2019. https://www.washingtonpost.com/business/2019/10/17/economists-identify-an-unseen-force-holding-back-affordable-housing/ (accessed March 26, 2020).

housing among County residents. The percentage of households spending 35 percent or more of their income on housing costs has steadily increased over the last thirty years, especially for renters.[12] While the demand for affordable housing has been increasing, the supply, especially for lower income households, has not kept up. As the 2019 Montgomery County Trends report states, "Reaching the low-(50 percent AMI) to very low-(30 percent AMI) income population remains a challenge in this county as these populations have grown faster than the supply of housing affordable to them." The report adds, "MPDUs – the most reliable source of affordable housing production – are often out of reach for them, and often Low Income Housing Tax Credit (LIHTC) projects do not include a large share of low – to very low-income units, due to their expense."[13]

The unmet demand for affordable housing carries economic costs. For the households directly affected, burdensome housing costs can create difficult trade-offs among important household expenses, such as healthcare and childcare. For other residents and businesses in the County, they lose out on the stimulating effects from consumer spending that burdensome household costs reduce. By increasing the supply of affordable housing, Bill 13-20 has the potential to reduce the burden of housing costs for lower income households in the County, assuming the affordable units would be occupied by current Montgomery County residents. Indeed, there is evidence to support this assumption. In 2017, a survey of all properties participating in the MPDU rental program found that seventy-three percent of residents in the program had previously lived in Montgomery County.[14] Moreover, reducing housing costs for lower income households would stimulate the economy due to increased consumer spending. However, as discussed above, OLO expects these potential benefits to be modest, given the small share of affordable housing units on County-disposed land to the total stock of affordable housing in the County.

Despite these beneficial economic impacts, Bill 13-20 could theoretically impose costs on County residents who do not need affordable housing. As mentioned in the previous section, the bill could lead to housing developers passing costs onto buyers of non-MPDUs. However, OLO does not expect that these costs would be substantial. For one, they would be small due to the low share of affordable units constructed on disposed land and the diffusion of these costs across many buyers of non-MPDUs. Secondly, they would be offset by the stimulating effects described above.

[12] Montgomery County Planning Department. 2019 Montgomery County Trends: A Look at People, Housing and Jobs Since 1990. January 2019. 64.
[13] Ibid. 65.
[14] Urban Ventures. Final Report on MPDU Program. 5.

WORKS CITED

Andrew Van Dam. "Economists identify an unforeseen force holding back affordable housing." *Washington Post*. October 17, 2019.

County Council for Montgomery County, Maryland. Bill No. 13-20. County Property – Disposition – Affordable Housing. February 27, 2020.

Montgomery County Code.

Urban Ventures. Final Report on MPDU Program: Analysis of Current Program and Research on Other Localities' Inclusionary Zoning Programs. June 7, 2018.

U.S. Department of Housing and Urban Development. FY 2019 Median Family Income Documentation System. HUD.gov.

U.S. Census Bureau. 2014-2018 American Community Survey 5-Year Estimates. Census.gov.

Montgomery County Planning Department. 2019 Montgomery County Trends: A Look at People, Housing and Jobs Since 1990. January 2019.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does <u>not</u> represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

This economic impact statement was drafted by Stephen Roblin (OLO), with assistance from Stephanie Killing (DHCA), Greg Ossont (DGS), and Ronnie Warner (DGS).

Fiscal Impact Statement
Bill 13-20, County Property – Disposition – Affordable Housing

1. **Legislative Summary**
Bill 13-20 would require a disposition of County-owned property that will be used primarily for housing development to include a certain number of moderately-priced dwelling units (MPDUs) and exempt dispositions from certain requirements if the disposition will include a certain percentage of moderately-priced dwelling units and lower income dwelling units.

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.**
Under current laws and regulations governing the disposition process[1], the County Executive may dispose of real property (including transfers of ownership, leases, or licenses) that will primarily be used for housing development *without* requiring the developer to commit beyond the 12.5 to 15.0 percent MPDU requirement.

The Bill would now require that 30 percent of the housing units built on the property be "income restricted under an agreement with the Department of Housing and Community Affairs[2]."

In addition, current regulations allow for disposition of County-owned property to occur at *less* than full market value (FMV) and without Council review of a Declaration of No Further Need (DNFN) *if at least 30 percent of the units are MPDUs or another type of affordable unit* (as defined under the County's impact tax laws). The County Executive must still submit the material terms of the disposition to the Council for review.

The Bill would provide the FMV and DNFN exemptions only to those transactions where the following terms are met:

- 15 percent of the units are designated as MPDUs (income-restricted at 70 percent of area median income (AMI)); *and*
- 15 percent are income restricted at or below 50 percent of AMI.

The Bill effectively requires the County Executive to seek at least 30 percent income-restricted units and creates incentives for the County Executive to seek more affordable units in order to expedite the disposition process.

Impacts on County revenues and expenditures are difficult to estimate as each property disposition may be unique in its terms, scope, and financial structure determining the level of support requested to meet the requirements. Increasing the number of affordable or income-restricted units under this bill results in reduced cashflow to pay debt, and increased financing subsidy needed to offset reduced rents/sale prices. If the County is selling the land (for example, land owned by a Parking Lot District), the County's

[1] See Executive Regulation 11-13 here: https://www.montgomerycountymd.gov/exec/Resources/Files/11-13AM.pdf
[2] "Income restricted" means that the control period of affordability must be equivalent to the MPDU program, generally a 99-year control period.

proceeds will be reduced by the value reduction represented by the increased affordable unit requirement.

These types of costs may be passed onto the County under several potential types of scenarios:

a) a housing development project may request additional County financial assistance (e.g., tax expenditures/waivers, grants, etc.) in order to provide 30 percent of the total units as income-restricted (noting that a developer that meets the 30 percent requirement is eligible for impact tax exemptions on all of its units, including market-rate, under the current impact tax laws); and/or

b) a project may also request additional County financial assistance in order to provide housing units at 50 percent of AMI. Developers can borrow less money from conventional lenders as housing units are targeted to lower income ranges; a developer may need to offset the income loss by increasing market-rate rents, or by requesting additional County financing or subsidies.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**
Without additional data on the types and number of residential development projects that would be affected, it is difficult to estimate revenues for the next six fiscal years. Similarly, without this information, it is difficult to estimate the amount of loans that might be requested as a result. While loans are not expenditures, they do represent a use of resources.

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.

7. **An estimate of the staff time needed to implement the bill.**
No staff time is needed to implement the Bill.

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.**
Not applicable.

10. A description of any variable that could affect revenue and cost estimates.
Revenue and loan cost estimates may be affected by:

- amount of subsidy/County assistance needed by the developer to meet the bill's requirements; and/or
- number of parcels suitable for housing development.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.
The Bill is intended to incentivize the production of housing units for income ranges below 70 percent of AMI (the MPDU program household income limit). However, as housing financing needs increase at lower income ranges, more financial incentives are likely to be requested by developers. The amount of the incentives is difficult to estimate and may vary by individual project.

12. If a bill is likely to have no fiscal impact, why that is the case.
Not applicable.

13. Other fiscal impacts or comments.
Executive branch notes that the current laws and regulations governing the disposition process affords greater flexibility than the requirements of this bill.

14. The following contributed to and concurred with this analysis:
Greg Ossont, Department of General Services
Stephanie Killian, Department of Housing and Community Affairs
Lisa Schwartz, Department of Housing and Community Affairs
Naeem Mia, Office of Department Management and Budget
Pofen Salem, Office of Department Management and Budget

Richard Madaleno

4/08/20

Richard S. Madaleno, Director
Office of Management and Budget

Date