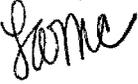


**MEMORANDUM**

September 5, 2013

TO: Planning, Housing, and Economic Development Committee

FROM: Linda McMillan, Senior Legislative Analyst 

SUBJECT: **Executive Regulation 4-13, Establishment of Procedures for Processing Class 3 Accessory Apartment License** (Department of Housing and Community Affairs)

**Background**

On February 5, 2013 the Council enacted Bill 31-12, Accessory Apartments – Licensing (© 29-38). The bill was effective May 20, 2013. The bill established the standards for the issuance of an Accessory Apartment license by the Department of Housing and Community Affairs if the apartment meets certain requirements. In these instances, a special exception is not required. An excerpt from Ordinance 17-28 with a table summarizing the approval conditions is attached at © 39-41.

On July 23, 2013 the Council received proposed Executive Regulation 4-13, *Establishment of Annual Rental Facility License Fees and Procedures for Processing Class 3 Accessory Apartments*. The regulation is promulgated under Method 2. Under Method 2, the Council may approve or disapprove a regulation with 60 days or may extend the time for consideration. If the Council does not approve or disapprove or extend the time for consideration within 60 days the regulation automatically takes effect.

Executive Regulation 4-13 is the proposed permanent regulation to replace Temporary Executive Regulation 4-13T which was received on April 30, 2013 with an effective date of May 20, 2013. The Council approved an extension of Temporary Executive Regulation 4-13T on July 30, 2013. Temporary Regulation 4-13T expires on November 13, 2013.

## **Executive Regulation 4-13**

Proposed Executive Regulation 4-13 (underlined) is attached at © 2-7. Some of the provisions that may be of interest to the Committee are:

- The annual license fee for a Class C Accessory Apartment is \$98.00 which is the same as the fee for a Class 2 single-family rental license. The Executive is recommending that the rental license fee for an Accessory Apartment approved by special exception remain \$38.00 which is the same as dwelling unit in an apartment complex. The Executive and DHCA believe this lower fee is appropriate because the homeowner must also pay the \$112.00 annual fee that is required with the special exception.
- The application filing fee for a Class C Accessory Apartment is \$250.00. The Department will refund \$125.00 if it determines that the proposed Accessory Apartment does not meet the zoning requirements prior to a Departmental inspection.
- The fee for the required sign is \$220.00 with \$110.00 refunded when the sign is returned undamaged.
- The regulation provides the process for application. It requires that the required sign informing the public of the pending Accessory Apartment application must be put up within 5 days of DHCA accepting the application and remain posted for at least 30 days.
- The DHCA Director will issue a report within 30 days of accepting the application regarding compliance with zoning and housing code requirements. The Director will issue or deny the license 30 days after issuing the report. If new construction is required before the license can be approved, it must be completed within 180 days.
- The Director may transfer a Class 3 Accessory Apartment license. The fee for a transfer is \$250.00.

The fiscal impact statement (© 27-28) indicates that DHCA is estimating there will be 20 new applications a year and that this level of work will not require new staff.

## **Public Comments**

The information forwarded by the Executive includes the public comments received during the review period (© 17-26). A summary of the response to these comments is included at © 14-16.

Council staff notes that there were comments asking DHCA to include guidelines about on-street parking in this regulation. DHCA has responded that they do not have authority to establish such guidelines.

The proposed regulation was revised to clarify that the Department **will** inspect the property for compliance. In response to comments about the need for regular re-inspection, DHCA responds that Class 3 Accessory Apartments will be inspected at least every three years unless waived by the Director.

In response to a comment from the Hillandale Citizens Association, DHCA says that this regulation does not need to specify that a kitchen will be removed when a license is not renewed or is terminated as this is already included in the Housing Code regulations. It is also noted that requirements regarding lead paint are already addressed in standard licensing procedures for all properties built before 1950.

### **Council staff recommendation**

**Council staff recommends approval of the regulation as proposed by the County Executive.** While the PHED Committee has previously discussed the issue of inspections, how often they should occur, and how much of the cost should be covered through the licensing fee, Council staff suggests that any change to current practice or the inspection schedule should be a discussion about all rental properties/units and not specific only to a Class C Accessory Apartments.



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
*County Executive*

MEMORANDUM

July 23, 2013

RECEIVED  
MONTGOMERY COUNTY  
EXECUTIVE

2013 JUL 23 AM 11:51

TO: Nancy Navarro, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Executive Regulation 4-13 Establishment of Procedures for  
Processing Class 3 Accessory Apartment License

Attached for the Council's consideration is Executive Regulation 4-13 which establishes procedures for processing Class 3 Accessory Apartment licenses. The proposed regulation was advertised in the May 2013 issue of the *Montgomery County Register* and the comment period expired May 31, 2013. Six comments were received and, as a result, we made several revisions to the proposed regulation. Copies of the comments and the department's responses to the comments are attached. A copy of the fiscal impact statement is also enclosed.

This proposed regulation is being promulgated under Method 2 of Section 2A-15 of the Montgomery County Code. Please contact Richard Y. Nelson, Jr., Director, Department of Housing and Community Affairs at 240-777-3611 if you have any questions or would like additional information.

RYN:cg

Attachments



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Accessory Apartment License – Class 3	<b>Number</b> 4-13
<b>Originating Department</b> Department of Housing and Community Affairs	<b>Effective Date</b>

Montgomery County Regulation on:

## ESTABLISHMENT OF ANNUAL RENTAL FACILITY LICENSE FEES AND PROCEDURES FOR PROCESSING CLASS 3 ACCESSORY APARTMENT LICENSE

Issued By: County Executive  
Regulation No. 4-13

Authority: Code Sections 29-80  
Supersedes: 11-04

Method (2) Code Section 2A-15  
Register: Vol. 30, Issue 5

Comment Deadline: May 30, 2013

Effective Date:

**SUMMARY:** The proposed regulation establishes procedures for the issuance of Class 3 accessory apartment licenses and establishes the license fees for Class 3 accessory apartment licenses.

**ADDRESSES:** Additional information and copies of the regulation are available from Cynthia Gaffney, Division of Housing, 100 Maryland Avenue, 4<sup>th</sup> Floor, Rockville, Maryland 20850 (240-777-3665).

2



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Establishment of Procedures for Class 3 Accessory Apartment License	Number 4-13
Originating Department Department of Housing and Community Affairs	Effective Date

COMCOR 29.20.01.01 Section 1. Definitions.

The following words or phrases are defined as follows for use in this regulation:

Class 3 accessory apartment license means a license issued by the Department for an accessory apartment that does not have a special exception approved before May 20, 2013.

Department means the Department of Housing and Community Affairs.

Director means the Director of the Department of Housing and Community Affairs or the Director's designee.

Owner means any person who holds legal title to a one-family detached dwelling unit.

Primary Residence means a one-family detached dwelling unit where the owner regularly resides and is the location designated by the owner for legal purposes of obtaining a driver's license and filing tax returns.

COMCOR 29.20.01.02 Section 2. Fees.

(a) The annual license fees for rental dwelling units are hereby established as follows:

(1[.]) For a Class 1 multi-family rental facility license[, ] \$38.00 per dwelling unit in an apartment complex or an accessory apartment approved by special exception [;] and \$56.00 per dwelling unit for all others.

(2[.]) For a Class 2 single-family rental facility license \$98.00 per dwelling unit.

(3) For a Class 3 accessory apartment license \$98.00 per unit.

(b) The annual [L]license fee [payments] shall not be prorated [pro-rated] and must be made payable to Montgomery County Maryland.

(c) Failure to obtain a rental facility license is a Class A violation under Section 1-19 of the Montgomery County Code.

(d) In addition to the annual license fee, the following fees for a Class 3 accessory apartment license are hereby established as follows:

3



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Establishment of Procedures for Class 3 Accessory Apartment License	Number 4-13
Originating Department Department of Housing and Community Affairs	Effective Date

- (1) The application filing fee is \$250.00 of which \$125.00 is refundable if the Director finds the proposed accessory apartment does not meet the zoning requirements in Section 59-A-6.20 prior to the Department's inspection of the proposed accessory apartment to ascertain whether it complies with Chapter 26 of the Montgomery County Code.
- (2) The sign fee is \$220.00 of which \$110.00 is refundable if the sign is returned to the Department within 15 days of the end of the posting period.
  - (A) The sign fee is not refundable if the sign is not returned or is returned but damaged.
  - (B) If the sign is lost during the posting period, the original sign fee of \$220.00 will not be refunded and a new sign fee of \$220.00 will be charged.
- (3) The fee for the transfer of an accessory apartment license is \$250.00.

## COMCOR 29.20.01.03 Section 3. Procedure for a Processing a Class 3 Accessory Apartment License.

- (a) An owner must file a completed license application on a form provided by the Department which will require at least the following supporting documents to be submitted with the application form:
  - (1) Evidence of primary residence as specified in Section 29-19(b)(1)(B).
  - (2) A drawing of the dimensions of the single family dwelling, including the dimensions and location of the proposed accessory apartment.
  - (3) A drawing or photograph with the dimensions and locations of the proposed parking spaces.
  - (4) An affidavit from the owner attesting that the owner will continue to use the property as the owner's primary residence after obtaining an accessory apartment license.

4



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Establishment of Procedures for Class 3 Accessory Apartment License	Number 4-13
Originating Department Department of Housing and Community Affairs	Effective Date

(5) An affidavit from the owner attesting that the total number of occupants residing in the accessory apartment who are 18 years or older will be limited to 2.

(6) The filing fee, license application fee, and sign fee established by this Regulation.

(b) The Director will review the application for completeness and will send a notification by regular mail or electronic mail about whether the application was accepted by the Department or whether the application will be returned to the applicant. Returned applications will contain all filing fees and an explanation about why the application is being returned.

(c) The Director will inspect the property and the proposed accessory apartment for compliance with the provisions of Chapter 26 and in Section 59-A-6.20 of the Montgomery County Code.

(d) When the Department has determined the application is complete, the owner must erect a sign furnished by the Department. A determination by the Director that an application is complete is not a determination about whether the proposed accessory apartment satisfies the zoning requirements in Section 59-A-6.20 or the requirements of Chapter 26.

(1) Unless otherwise provided by the Department, the sign must be erected on the property in a place visible from each public road which abuts the property, as determined by the Department.

(2) Unless otherwise provided by the Department, the sign must be erected so that the bottom of the sign is at least 2 ½ feet from the ground. The sign will be of such material and color or colors as the Department specifies, with the height and width of not less than 2 and 3 feet, respectively, and must contain in conspicuous lettering not less than 2 1/2 inches in height the following:

(A) Inform the public of a pending accessory apartment application with the application's reference number.

(B) Provide the Department's website address for information about the application and information on filing an objection to the application.

5



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Accessory Apartment License – Class 3	<b>Number</b> 4-13
<b>Originating Department</b> Department of Housing and Community Affairs	<b>Effective Date</b>

(C) Provide a telephone number to contact the Department regarding the status of the application.

(3) The sign must be posted within 5 days of the acceptance of the application by the Department and remain posted for at least 30 days after the issuance of the Director’s report with the Director’s findings concerning the application .

(4) Before a Class 3 accessory apartment license is issued, the owner must provide a signed affidavit attesting that the sign was posted in compliance with this Regulation.

(5) The sign must be returned to the Department within 15 days after the end of the posting period for a partial refund of the sign fee.

(6) Failure to post the sign in accordance with this Regulation will result in the return of the application and filing fees and the Director denying the proposed accessory apartment.

(e) The Director will issue a report on all findings required by this Regulation concerning the proposed accessory apartment within 30 days of the Department’s acceptance of the application. A copy of the report will be sent to the owner by regular mail or electronic mail and posted on the Department’s website. The owner or any aggrieved party may file objections to the Director’s report with the Office of Zoning and Administrative Hearings within 30 days under the provisions of Chapter 29-26(b)(3).

(f) The Director will issue or deny a new license 30 days after the issuance of the Director’s report.

(1) If any repairs or improvements are required before the license may be approved, they must be completed within 30 days of the Director’s report or the application may be denied and the license and application fees forfeited. The Director may waive or extend the 30 day requirement at the Director’s discretion. Any waiver or extension of the 30 day period must be in writing.

6



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Establishment of Procedures for Class 3 Accessory Apartment License	Number 4-13
Originating Department Department of Housing and Community Affairs	Effective Date

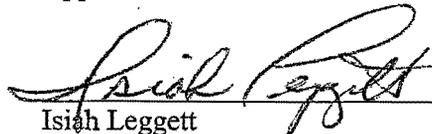
(2) If new construction is required before the license may be approved, it must be completed within 180 days or the application may be denied and the license and application fees forfeited. The Director may waive or extend the 180 day requirement at the Director's discretion. Any waiver or extension of the 180 day period must be in writing.

(g) The Director may renew a license only if the requirements of Chapter 29-19(b)(3) are met.

(h) The Director may transfer an accessory apartment Class 3 license once the requirements of Chapter 29-19(b)(5) are met.

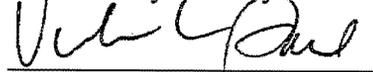
(i) The Director may revoke an accessory apartment Class 3 license under the provisions of Chapter 29-25.

Approved:

  
 Isiah Leggett  
 County Executive

July 22, 2013  
 Date

Approved as to Form and Legality  
 Office of the County Attorney

By: 

Date: 7-16-13

7



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Accessory Apartment License – Class 3	<b>Number</b> 4-13
<b>Originating Department</b> Department of Housing and Community Affairs	<b>Effective Date</b>

Montgomery County Regulation on:

## ESTABLISHMENT OF ANNUAL RENTAL FACILITY LICENSE FEES AND PROCEDURES FOR PROCESSING CLASS 3 ACCESSORY APARTMENT LICENSE

Issued By: County Executive  
Regulation No. 4-13

Authority: Code Sections 29-80  
Supersedes: 11-04

Method (2) Code Section 2A-15  
Register: Vol. 30, Issue 5

Comment Deadline: May 30, 2013

Effective Date:

**SUMMARY:** The proposed regulation establishes procedures for the issuance of Class 3 accessory apartment licenses and establishes the license fees for Class 3 accessory apartment licenses.

**ADDRESSES:** Additional information and copies of the regulation are available from Cynthia Gaffney, Division of Housing, 100 Maryland Avenue, 4<sup>th</sup> Floor, Rockville, Maryland 20850 (240-777-3665).

8



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Establishment of Procedures for Class 3 Accessory Apartment License	Number 4-13
Originating Department Department of Housing and Community Affairs	Effective Date

## COMCOR 29.20.01.01 Section 1. Definitions.

The following words or phrases are defined as follows for use in this regulation:

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Department means the Department of Housing and Community Affairs.

Director means the Director of the Department of Housing and Community Affairs or the Director's designee.

Owner means any person who holds legal title to a one-family detached dwelling unit.

Primary Residence means a one-family detached dwelling unit where the owner regularly resides and is the location designated by the owner for legal purposes of obtaining a driver's license and filing tax returns.

## COMCOR 29.20.01.02 Section 2. Fees.

- (a) The annual license fees for rental dwelling units are hereby established as follows:
- (1) For a Class 1 multi-family rental facility license \$38.00 per dwelling unit in an apartment complex or an accessory apartment approved by special exception and \$56.00 per dwelling unit for all others.
  - (2) For a Class 2 single-family rental facility license \$98.00 per dwelling unit.
  - (3) For a Class 3 accessory apartment license \$98.00 per unit.
- (b) The annual license fee shall not be prorated and must be made payable to Montgomery County Maryland.
- (c) Failure to obtain a rental facility license is a Class A violation under Section 1-19 of the Montgomery County Code.

9



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Establishment of Procedures for Class 3 Accessory Apartment License	Number 4-13
Originating Department Department of Housing and Community Affairs	Effective Date

- (d) In addition to the annual license fee, the following fees for a Class 3 accessory apartment license are hereby established as follows:
- (1) The application filing fee is \$250.00 of which \$125.00 is refundable if the Director finds the proposed accessory apartment does not meet the zoning requirements in Section 59-A-6.20 prior to the Department's inspection of the proposed accessory apartment to ascertain whether it complies with Chapter 26 of the Montgomery County Code.
  - (2) The sign fee is \$220.00 of which \$110.00 is refundable if the sign is returned to the Department within 15 days of the end of the posting period.
    - (A) The sign fee is not refundable if the sign is not returned or is returned but damaged.
    - (B) If the sign is lost during the posting period, the original sign fee of \$220.00 will not be refunded and a new sign fee of \$220.00 will be charged.
  - (3) The fee for the transfer of an accessory apartment license is \$250.00.

## COMCOR 29.20.01.03 Section 3. Procedure for a Processing a Class 3 Accessory Apartment License.

- (a) An owner must file a completed license application on a form provided by the Department which will require at least the following supporting documents to be submitted with the application form:
- (1) Evidence of primary residence as specified in Section 29-19(b)(1)(B).
  - (2) A drawing of the dimensions of the single family dwelling, including the dimensions and location of the proposed accessory apartment.
  - (3) A drawing or photograph with the dimensions and locations of the proposed parking spaces
  - (4) An affidavit from the owner attesting that the owner will continue to use the property as the owner's primary residence after obtaining an accessory apartment license.

10



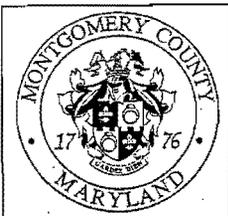
# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Establishment of Procedures for Class 3 Accessory Apartment License	Number 4-13
Originating Department Department of Housing and Community Affairs	Effective Date

- (5) An affidavit from the owner attesting that the total number of occupants residing in the accessory apartment who are 18 years or older will be limited to 2.
- (6) The filing fee, license application fee, and sign fee established by this Regulation.
- (b) The Director will review the application for completeness and will send a notification by regular mail or electronic mail about whether the application was accepted by the Department or whether the application will be returned to the applicant. Returned applications will contain all filing fees and an explanation about why the application is being returned.
- (c) The Department will inspect the property and the proposed accessory apartment for compliance with the provisions of Chapter 26 and Section 59-A-6.20 of the Montgomery County Code.
- (d) When the Department has determined the application is complete, the owner must erect a sign furnished by the Department. A determination by the Director that an application is complete is not a determination about whether the proposed accessory apartment satisfies the zoning requirements in Section 59-A-6.20 or the requirements of Chapter 26.
  - (1) Unless otherwise provided by the Department, the sign must be erected on the property in a place visible from each public road which abuts the property, as determined by the Department.
  - (2) Unless otherwise provided by the Department, the sign must be erected so that the bottom of the sign is at least 2 ½ feet from the ground. The sign will be of such material and color or colors as the Department specifies, with the height and width of not less than 2 and 3 feet, respectively, and must contain in conspicuous lettering not less than 2 1/2 inches in height the following:

11



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Establishment of Procedures for Class 3 Accessory Apartment License	Number 4-13
Originating Department Department of Housing and Community Affairs	Effective Date

- (A) Inform the public of a pending accessory apartment application with the application's reference number.
  - (B) Provide the Department's website address for information about the application and information on filing an objection to the application.
  - (C) Provide a telephone number to contact the Department regarding the status of the application.
- (3) The sign must be posted within 5 days of the acceptance of the application by the Department and remain posted for at least 30 days after the issuance of the Director's report with the Director's findings concerning the application .
- (4) Before a Class 3 accessory apartment license is issued, the owner must provide a signed affidavit attesting that the sign was posted in compliance with this Regulation.
- (5) The sign must be returned to the Department within 15 days after the end of the posting period for a partial refund of the sign fee.
- (6) Failure to post the sign in accordance with this Regulation will result in the return of the application and filing fees and the Director denying the proposed accessory apartment.
- (e) The Director will issue a report on all findings required by this Regulation concerning the proposed accessory apartment within 30 days of the Department's acceptance of the application. A copy of the report will be sent to the owner by regular mail or electronic mail and posted on the Department's website. The owner or any aggrieved party may file objections to the Director's report with the Office of Zoning and Administrative Hearings within 30 days under the provisions of Chapter 29-26(b)(3).
- (f) The Director will issue or deny a new license 30 days after the issuance of the Director's report.

12



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Accessory Apartment License – Class 3	<b>Number</b> 4-13
<b>Originating Department</b> Department of Housing and Community Affairs	<b>Effective Date</b>

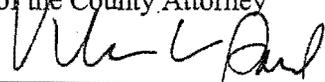
- (1) If any repairs or improvements are required before the license may be approved, they must be completed within 30 days of the Director’s report or the application may be denied and the license and application fees forfeited. The Director may waive or extend the 30 day requirement at the Director’s discretion. Any waiver or extension of the 30 day period must be in writing.
- (2) If new construction is required before the license may be approved, it must be completed within 180 days or the application may be denied and the license and application fees forfeited. The Director may waive or extend the 180 day requirement at the Director’s discretion. Any waiver or extension of the 180 day period must be in writing.
- (g) The Director may renew a license only if the requirements of Chapter 29-19(b)(3) are met.
- (h) The Director may transfer an accessory apartment Class 3 license once the requirements of Chapter 29-19(b)(5) are met.
- (i) The Director may revoke an accessory apartment Class 3 license under the provisions of Chapter 29-25.

Approved:

  
 Isiah Leggett  
 County Executive

July 22, 2013  
 Date

Approved as to Form and Legality  
Office of the County Attorney

By: 

Date: 7-16-13

(13)

## Response to Comments on Regulation 4-13

### Eleanor Duckett---Lead Paint Inspection Requirement

**Response:** An accessory apartment located in a house built before 1950 is required to be in compliance with the Maryland Lead Poisoning Prevention laws. The owner must provide a copy of a Maryland Department of Environment Lead Inspection Certificate showing the property has passed an inspection before a Class 3 Accessory Apartment license will be issued. Prior to the issuance of a renewal license, the owner will need to complete a Lead Poisoning Protection Checklist with updated information regarding lead paint compliance.

No change to Regulation 4-13 is required as verification of compliance with Maryland Lead Poisoning Protection laws is already part of standard licensing procedures for all properties built before 1950.

### Jim Humphrey MCCF

**Item 1-Response:** Section 3 of the regulation will be revised to include a reference to the procedure for filing objections. Section 3. Procedure for Processing a Class 3 Accessory Apartment License---(e) The owner or any aggrieved party may fill objections to the Director's report with the Office of Zoning and administrative Hearings within 30 days under the provisions of Chapter 29-26(b)(3).

**Item 2-Response:** Section 3 of the regulation will be revised to state the license will not be renewed if any provisions of Section 29-19(b)(3) are not met. Section 3. Procedure for Processing a Class 3 Accessory Apartment License--- (g) The Director may renew a license only if the requirements of Chapter 29-19(b)(3) are met.

### Andy Leon Harney

**Item 1-Response:** DHCA does not have the authority under the provisions of Section 29 to establish guidelines for on-street parking. These concerns should be addressed to the Office of Zoning and Administrative Hearing. No action to be taken by DHCA.

**Item 2-Response:** DHCA housing code staff will be measuring the driveway and the proposed accessory apartment to verify the information provided by the owner. There is no need for the owner to provide a drawing to scale. No action to be taken by DHCA.

**Item 3-Response:** The license application and affidavits will be revised to require the signatures of all owners. I am not sure the regulation needs to be revised to address this issue.

**Item 4-Response:** Section 3 will be revised to remove the words “may inspect”. Section 3. (c) The Department will inspect the property and the proposed accessory for compliance with the provisions of Chapter 26 and Section 59-A-6.20 of the Montgomery County Code.

**Item 5-Response:** Class 3 accessory apartments will be inspected at least every three years unless waived by the Director. A detailed checklist of housing code requirements is currently being used by the DHCA staff and is available on the DHCA website. No action to be taken.

**Item 6-Response:** Information regarding applications and inspections are currently available on the Department website. I am not sure we want to show the date of scheduled reinspections. As all rental licenses expire on June 30, I do not think we need to show expiration dates.

**Hillandale Citizens Association, Inc.**

**Item 1-Response:** Class 1 Accessory Apartment will be identified in Section 2. Fees as an accessory apartment approved by special exception. (a) (1) For a Class 1 multi-family rental facility license \$38.00 per dwelling unit in an apartment complex or an accessory apartment approved by special exception and \$56.00 per dwelling unit for all others.

**Item 2-Response:** No change in the license fee for Class 1 accessory apartment is needed at this time. Revenues are sufficient to cover the cost of the current accessory apartment inspection program.

**Item 3-Response:** See Item 4-Response under Andy Leon Harney

**Item 4-Response:** No change in the section regarding the sign is recommended. Council members requested detailed language regarding the placement of the sign.

**Item 5-Response:** See Item 1-Response under Jim Humphrey MCCF

**Item 6-Response:** Chapter 29-25 allows the revocation of a rental license if the landlord does not eliminate or initiate bona efforts to eliminate violations of applicable laws within 10 days of written notification. In Section 3, we may want to add a reference to revocation. (i) The Director may revoke an accessory apartment Class 3 license under the provisions of Section 29-25.

**Item 7-Response:** The requirements for the elimination of an accessory apartment are covered on Housing Code regulations. The housing code staff will conduct an inspection to confirm the apartment has been eliminated when a Class 3 license is being revoked or not renewed. No changes to Regulation 4-13 required.

**Marilyn Piety**

**Item 1 Response:** See Item 3 Response Andy Leon Harney

**Item 2 Response:** The issues raised would require a change to the ZTA. If the neighbors have an objection related to the on street parking, they can file an objection with the Office of Zoning and Administrative Hearing.

**Item 3 Response:** See Item 1 Response Andy Leon Harney

**Item 4 Response:** See Item 5 Response Andy Leon Harney

**Item 5 Response:** See Item 3 Response for Hillandale Citizens Association

**Martin Grossman---Office of Zoning and Administrative Hearing**

**Item 1 Response:** Section 3 (c) should be revised to include wording regarding referral to the Office of Zoning and Administrative Hearing if the property does not meet zoning standards for distance from another accessory apartment or parking. See Item 4 Response Andy Leon Harney for proposed revised regulation.

**Item 2 Response:** Section 3 (f) should be revised to reference objection process. See Item 3-Response Jim Humphrey MCCF for proposed revised regulation.

May 24, 2013

Montgomery County Council  
Cynthia Gaffney - Department of Housing and Community Affairs

Dear Sirs/Madams,

In reviewing the draft regulations for Class 3, Accessory Apartments, I did not see any mention of the Maryland Department of Environment Lead Poisoning Prevention Program and I wonder how lead paint will be treated on these units. According to the Lead Paint law in Maryland below, any unit with a separate bedroom is not exempt.

**Types of Housing Exempted from Title X's Requirement Are**

Zero bedroom units, such as efficiencies, lofts, and dormitories; housing leased for less than 100 days, such as vacation houses or short-term rentals; housing for the elderly (unless children live there); housing for the handicapped (unless children live there); rental housing that has been inspected by a certified inspector and found to be free of lead-based pain; and housing sold at a foreclosure sale.

(<http://www.peoples-law.org/node/442>)

The DHCA rental license for a single-family home in Montgomery County states:

**“MARYLAND DEPARTMENT OF ENVIRONMENT LEAD POISONING PREVENTION**

Maryland State law requires all owners renting residential properties to register the rental property with MDE. If the property was built before January 1, 1950, it is required to be tested for lead paint. [Statutory requirements of *Article 24, Political Subdivisions, 19-103*]

I am not sure whether DHCA needs to address this issue in it's regulations (perhaps by adding a requirement under Section 3 (a) requesting the year the home was built) and/or on the actual application, but believe it should be addressed. Many of the homes that are expected to add these units (Down County) were built prior to 1950 and may contain lead-paint.

Thank you,

Signed by Eleanor Duckett  
11111 Midvale Road  
Kensington, MD 20895  
301-942-2253

Montgomery County Civic Federation Comments on Executive Regulation 4-13, re Accessory Apartment Licensing - emailed to Cynthia Gaffney, DHCA on May 29, 2013

**1) Right of an applicant or an aggrieved person to file an objection and a request for hearing should be spelled out in the regulations**

The right of an applicant or an aggrieved person to file an objection and a request for a hearing with the Office of Zoning and Administrative Hearings (OZAH) is within the scope of the law approved by the County Council. The law also states the request for review by the Hearing Examiner must be submitted to OZAH "within 30 days after the date of the Director's report and must state the basis for the objection."

The right of an applicant to file an objection and a request for a hearing with OZAH, based on "an adverse finding of fact by the Director", is contained in Sec.29-26. *Appeals and Objections*. (b)(1). The right of an aggrieved person to file an objection and a request for a hearing with OZAH, based on "any finding of fact by the Director" or "alleging that on-street parking is inadequate", is contained in Sec.29-26.(b)(2)(A) and (B).

MCCF Recommendation: Add a Subsection (1) to Section 3(f) of the proposed regulations stating (1) "Within 30 days after the date of the Director's report an applicant may file an objection and a request for hearing with the Office of Zoning and Administrative Hearings, challenging an adverse finding of fact by the Director. Such request must state the basis for the objection."; and add a Subsection (2) to Section 3(f) stating "Within 30 days after the date of the Director's report an aggrieved person may file an objection and a request for hearing with the Office of Zoning and Administrative Hearings, based on any finding of fact by the Director or alleging that on-street parking is inadequate. Such request must state the basis for the objection."

**2) Regulations should state that failure to grant DHCA the "right to inspect" will result in license not being renewed**

The right of DHCA to inspect accessory apartment units is within the scope of the law. The right to inspect before granting an accessory apartment license is contained in Section 29-19. *Licensing procedures*. (b)(1)(C)(i), and the right to make follow-up inspections of already approved units is contained in Section 29-19.(b)(3)(A)(iii).

MCCF Recommendation: Add a Subsection (1) to Section 3(h) of the proposed regulations stating "If, for any reason, the Department is prevented from exercising its right to inspect a unit then the license will not be renewed until such right is granted."

MCCF contact: Jim Humphrey (MCCF Planning & Land Use Chair), 5104 Elm St., Bethesda MD 20814; tele.#(301)652-6359; email address - theelms518@earthlink.net

cc: Councilmember Nancy Floreen, PHED Committee Chair  
Councilmember George Leventhal, PHED Committee member  
Councilmember Marc Elrich, PHED Committee member  
Jeff Zyontz, Council Legislative Attorney

**Gaffney, Cynthia**

**From:** Andy Leon Harney [villagemanager@chevychase3.org]  
**Sent:** Thursday, May 30, 2013 11:07 AM  
**To:** Gaffney, Cynthia  
**Subject:** Comments on the proposed Accessory Apt. Regulations

Comments to DCHA and the County Council from Section 3 of the Village of Chevy Chase regarding the proposed County Regulations on:

Establishment of Annual Rental Facility License Fees and Procedures for Processing Class 3 Accessory Apt. License

- <!--[if !supportLists]-->1. <!--[endif]-->Section 3 of the Village of Chevy Chase is one of the County's most densely populated communities with narrow roads and joint driveways, making parking for our residents a challenge in the best of times. Therefore the standards for parking are our greatest concern as these new regulations are drafted. **There should be guidelines developed and available for determination of adequacy of on-street parking.** Dead ends, joint driveways, narrow streets all should be taken into account when the hearing examiner makes decisions about adequacy of parking, otherwise judgments are simply subjective.
- <!--[if !supportLists]-->2. <!--[endif]-->The requirements for drawings of the property do not indicate that they should be to scale, which can be handled with ease by applicants using ¼" grid paper representing 1 foot. **All submissions should be to scale. A standard of ¼" to a foot is the easiest scale for laymen to use.** Without to scale drawings, it seems that it would be easy for DHCA to misinterpret proportions by looking at a drawing which may have the right numbers but the wrong proportions.
- <!--[if !supportLists]-->3. <!--[endif]-->**All owners should sign the completed license application** so that they are all aware of and bound by the rules and regulations governing their license.
- <!--[if !supportLists]-->4. <!--[endif]-->In Section 3 (c) it indicates that the Director "will review the application and supporting documents and MAY inspect the property to determine whether the proposed accessory apartment satisfies the zoning requirements in Section 59-A-6.20. "**We feel very strongly that the word "may" should be changed to MUST so that we don't have DHCA approving paperwork without seeing the actual site in the flesh.** This is crucial to avoid violations that neighbors would be unaware of, tenants would not know that there are violations and it endangers the health, safety and welfare of the entire community if these properties are not physically inspected. Drawings and applicant filings are simply not enough—trust but verify should be the rule.
- <!--[if !supportLists]-->5. <!--[endif]-->There should be **a program of regular re-inspections of accessory apartments spelled out in the Executive Regulations.** The frequency of these required re-inspections **after the initial pre-license inspection should be every three years.** Inspectors cannot be expected to know all the necessary standards for the entire housing code and the zta as well, so **a detailed check list should be developed by DHCA (and circulated to the public prior to its use for comment) to make certain that health (including lead based paint certification), safety and other standards are all properly reviewed at each inspection including the first and the inspector held accountable if those standards are not as observed in the signed check-list report. If necessary to sustain the inspection program, a fee should be charged to the landlord for each inspection, including the first.**
- <!--[if !supportLists]-->6. <!--[endif]-->**Results of all inspections and applications should be made public on a website** along with renewal dates and scheduled dates for re-inspections so that neighbors can be made aware of these upcoming dates and see the inspection results on line.

We look forward to seeing the final regulations in hopes that these suggestions will be embraced by the staff and included.

--  
Andy Leon Harney  
Village Manager  
Section 3 of the Village of Chevy Chase  
cell 202 361-3801

**Hillandale Citizens Association, Inc.**  
**Silver Spring, Maryland**

**Comments on Montgomery County Executive Regulation 4-13**  
**Procedures for Class 3 Accessory Apartment License**  
**May 30, 2013**

Suggested Modifications and Additional Detail Required:

- **Section 1 Definitions:** Please clarify that a Class 1 Accessory Apartment is one approved by the Special Exception process.
- **Section 2 Fees: Subsection (a.):** Increase the Class 1 Accessory Apartment License Fee to \$98 per year. Although Special Exception Accessory Apartments also pay an annual DPS-billed Special Exception Fee that covers the support and the continuing monitoring required by the Board of Appeals, DHCA needs to fund the management and inspection of these units. A uniform charge for both classes of Accessory Apartments by DHCA is the reasonable approach.
- **Section 3: Procedure:**
  - **Subsection (c):** Please replace MAY inspect to WILL inspect to make sure the property complies with Zoning Code, Chapter 59. This has been an issue with DHCA for sometime — DHCA inspectors insist that DHCA only does Chapter 26 and not Chapter 59. Since the gross square footage of the apartment etc, is in Chapter 59, there needs to be an inspection which specifically reviews the “zoning” details regarding the property.
  - **Subsection (e) 1 & 2:** Since the Department (DHCA) is supplying the sign and the Department is stipulating where the sign should be erected, these subsections should be modified to simply require the applicant to erect the DHCA-provided sign as directed by DHCA.
- **New Sections or Subsections Required**
  - **Objection/Hearing Examiner Process:** The proposed procedure does not inform the applicant, the public or the Department as to how and when the “Objection “ process defined in Bill 31-12 is to be incorporated into the procedure of issuing a license. This is a serious deficiency in the regulation since in its current form there is NO recognition of any potential action being required outside of the Department.
  - **Revoking a License:** The proposal defines renewal or transfer of the License, but fails to note what if any conditions will result in the revocation of the License. Will licenses be revoked for those enlarging apartments? Renting to more than two adults? Renting rooms in addition to an apartment? Renting out both the home and apartment?
  - **Removal of the Apartment:** If an apartment is no longer licensed, will DHCA inspect to ensure that the apartment—normally the kitchen—has been eliminated?

**Gaffney, Cynthia**

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**From:** Marilyn Piety [marilynpiety@yahoo.com]  
**Sent:** Thursday, May 23, 2013 9:05 AM  
**To:** Gaffney, Cynthia  
**Subject:** Exec Regs Comments

Cynthia,

Following are comments on the proposed Executive Regulations for Accessory Apartments from the Sligo-Branview Community Association.

Marilyn Piety, Vice-President and  
Zoning and Land Use Chair  
301-585-8583  
9406 Mintwood St.  
Silver Spring 20901

**Points Needing Adjustment or Clarification in the  
Proposed Executive Regulations  
for licensing Accessory Apartments**

**1. In instances of multiple owners, require all owners to sign all affidavits required by Sec. 3 (a).**

Currently only one owner is required to apply for the license and sign all documents. However, this can lead to situations where other owners who did not sign for the license refuse to abide the agreement. This is particularly true today with the many different types of multiple ownerships that exist today that can complicate and impede code enforcement.

**2. Adjust or clarify the required distance from another accessory apartment to total 600 ft., when 300 ft. on each side is not possible. Or, alternatively, deny the license because the 300 ft. requirement in the law cannot be met.**

The law says there can be no accessory apartment within 300 ft. of each side of the property with an accessory apartment along that block face. There are two reasons for this: to prevent an overconcentration of apartments in one area and to allow for adequate on-street parking from the unit and/or the main house (not only for automobiles owned by the residents but also for guests.)

However, what happens when there is not 300 ft. available? For instance, home is on a dead end street so that there is only one house or 60 feet to the dead end. Currently this would mean the total space available for parking and to avoid overconcentration would total only 360 ft., not 600 ft., yet the accessory apartment and its parking requirements and potential for overcrowding would be the same as those units that have 600 ft.

Or what if two streets form a "Y" intersection with the same block? Would two parts of the "Y" both count for parking available on the same third part of the "Y"?

Is this home not eligible for an accessory apartment because there is not 300 ft. available to each side?

**3. Guidelines should be developed and available for determination of adequacy of on-street parking.**

Older communities have major reliance with on-street parking to meet their total parking needs. Streets are narrower than today's standards and constructing off-street parking is not always feasible because of significant terrain issues. They are likely to run into dead ends and "Y" streets discussed in No. 3 above. Without some kind of guidelines, it is not known how the Hearing Examiner will be able to be making decisions on the adequacy of parking.

**4. There should be a program of regular re-inspections of accessory apartments that is spelled out in the Executive Regulations. The frequency of these required re-inspections should also be annual for new owners and can then be extended to every two or three years if a record of no violations is established. Inspection policy should be the same for the County and Takoma Park.**

There is no mention of the expected frequency of regular inspections of accessory apartments once they have been licensed. Currently units in Takoma Park receive more frequent inspections than do other parts of the county. There is no basis for this disparate treatment.

**5. Fees for licensing and inspections should be the same for all parts of the county and should be calculated to be sufficient to support the inspection program.**

Accessory apartments are income-producing endeavors. At a time when many formerly free or low-cost services provided by the county now have significant charges (such as fees for rental of library meeting rooms and other county facilities, etc.), in a time of budget shortages for many vital county services, and given the currently long time between re-inspections because of a lack of inspectors, it is reasonable that the program of regular inspections of these income-producing facilities be self-supporting.

The proposed Exec Regs do show the same fee for both county and Takoma Park but, given the history of preferential treatment to Takoma Park, it would be good to make that a policy.

**Gaffney, Cynthia**

**From:** Grossman, Martin  
**Sent:** Friday, May 31, 2013 4:30 PM  
**To:** Gaffney, Cynthia  
**Cc:** Zyontz, Jeffrey; Robeson, Lynn; Behanna-Moseley, Sara; Forbes, Ellen  
**Subject:** RE: Proposed Regulations for Class 3 Accessory Apartment License

Thank you; have a great weekend, Cynthia.

Martin L. Grossman  
Director  
Office of Zoning and Administrative Hearings

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**From:** Gaffney, Cynthia  
**Sent:** Friday, May 31, 2013 4:28 PM  
**To:** Grossman, Martin  
**Cc:** Zyontz, Jeffrey; Robeson, Lynn; Behanna-Moseley, Sara; Forbes, Ellen  
**Subject:** RE: Proposed Regulations for Class 3 Accessory Apartment License

Marty,

Thank you for your comments. I will be revising the permanent reg in response to the comments which have been received. I will be including the referral process for SE's and the objection process in the revised reg. I will send you a draft when it is available.

We are finishing the revision to our handouts to include reference to referral to OZAH if the property does not meet statutory requirement and to provide information regarding objection procedures. The update handouts will be available early next week.

Cynthia Gaffney  
Program Manager  
Licensing and Registration Unit  
Department of Housing & Community Affairs  
240-777-3665

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**From:** Grossman, Martin  
**Sent:** Friday, May 31, 2013 1:03 PM  
**To:** Gaffney, Cynthia  
**Cc:** Robeson, Lynn; Behanna-Moseley, Sara; Forbes, Ellen; Zyontz, Jeffrey  
**Subject:** RE: Proposed Regulations for Class 3 Accessory Apartment License

Thanks, Cynthia.

As I stated at our meeting, OZAH will refer all new accessory apartment applicants to DHCA (4<sup>th</sup> Floor, COB) for the initial screening. I understand that if DHCA's preliminary review reveals that the proposed accessory apartment doesn't meet the statutory setback and/or on-site parking requirements,

DHCA will give the applicant a form referring him/her to OZAH to file a special exception application.

Will DHCA be adding the notations we discussed at our meeting to the regs and/or your handouts?  
These included:

1. A note about the requirement to seek a special exception from OZAH if DHCA preliminarily determines that the proposed accessory apartment doesn't meet the statutory setback and/or on-site parking requirements; and
2. A note that an applicant or an aggrieved party may file an objection and request a hearing with OZAH within 30 days after the DHCA Director's findings in cases that go through the full DHCA procedures.

Martin L. Grossman  
Director  
Office of Zoning and Administrative Hearings

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**From:** Gaffney, Cynthia  
**Sent:** Friday, May 31, 2013 12:39 PM  
**To:** Grossman, Martin  
**Subject:** RE: Proposed Regulations for Class 3 Accessory Apartment License

No.

Cynthia

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**From:** Grossman, Martin  
**Sent:** Friday, May 31, 2013 11:55 AM  
**To:** Gaffney, Cynthia  
**Cc:** Robeson, Lynn  
**Subject:** RE: Proposed Regulations for Class 3 Accessory Apartment License

Thank you, Cynthia. Are there any differences between the temporary regs and the permanent ones?

Martin L. Grossman  
Director  
Office of Zoning and Administrative Hearings

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**From:** Gaffney, Cynthia  
**Sent:** Friday, May 31, 2013 11:03 AM  
**To:** Grossman, Martin  
**Subject:** Proposed Regulations for Class 3 Accessory Apartment Licenses

Marty,

Attached are copies of the proposed regulations for the Class 3 Accessory Apartment license. I apologize for the delay in forwarding them to you. I just really this morning I had failed to take care of this matter after our Tuesday meeting.

Cynthia Gaffney  
Program Manager  
Licensing & Registration Unit

7/9/2013

26

## **Fiscal Impact Statement**

### **Executive Regulation 4-13 Establishment of Procedures for Class 3 Accessory Apartment License**

**1. Executive Regulation Summary**

Executive Regulation 4-13 establishes a process for accessory apartment licensing including: notices, standards for issuance and renewal, objections and appeals.

**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.**

Operating expenses for accessory apartment licensing are not projected to significantly increase. Any additional workload impact resulting from this regulation is projected to be absorbed by the current staff complement.

Current revenue assumptions are \$9,160 for the first year based on the projected demand of twenty new applications and the new fee structure (\$98/unit plus \$250 application fee plus \$110 non-refundable portion of sign fee).

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

This regulation is not likely to result in the need for additional staffing and will, therefore, not result in increased expenditures. The Department of Housing and Community Affairs (DHCA) projects approximately twenty new licenses per year, thus annual revenue would increase by \$9,160 per year, or \$54,960 over six years.

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

Not applicable.

**5. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.**

Not applicable.

**6. An estimate of the staff time needed to implement the regulation.**

Given the small increase in the expected number of applications the amount of staff time involved to implement the regulation will be insignificant.

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

Given the historic trend of approximately twenty new applications per year, there would be minimal effect on DHCA employees other duties.

**8. An estimate of costs when an additional appropriation is needed.**

Not applicable.

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

There may be an initial increase in applications after this regulation is enacted. The impact from a potential initial increase in applications is indeterminate.

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

Not applicable.

**11. If a regulation is likely to have no fiscal impact, why that is the case.**

See responses to numbers 2 and 3.

**12. Other fiscal impacts or comments.**

None.

**13. The following contributed to and concurred with this analysis:**

Richard Y. Nelson, Director, DCHA

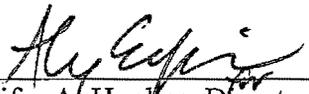
Luann Korona, Chief, Division of Community Development, DHCA

Jay Greene, Division of Housing, DHCA

Cynthia Gaffney, Manager, Licensing and Registration Section, DHCA

Tim Goetzinger, Budget and Finance Manager, DHCA

Jennifer Bryant, Office of Management and Budget

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

5/29/2013  
\_\_\_\_\_  
Date

Bill No. 31-12  
Concerning: Accessory Apartments  
Licensing  
Revised: January 16, 2013 Draft No. 4  
Introduced: November 13, 2012  
Enacted: February 5, 2013  
Executive: February 12, 2013  
Effective: May 20, 2013  
Sunset Date: None  
Ch. 2, Laws of Mont. Co. 2013

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: The Planning Housing, and Economic Development Committee

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**AN ACT** to:

- (1) require an accessory apartment rental license issued by the Department of Housing and Community Affairs;
- (2) establish the standards for the issuance of an accessory apartment license;
- (3) require notice of the proposed accessory apartment;
- (4) authorize the Hearing Examiner to hear objections to the Department's findings concerning an accessory apartment rental license; and
- (5) generally amend the law governing an accessory apartment and appeals for rental licenses.

By amending

Montgomery County Code  
Chapter 2, Administration  
Sections 2-112 and 2-140  
Chapter 29, Landlord-Tenant Relations  
Sections 29-16, 29-19, and 29-26

<b>Boldface</b>	<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. Sections 2-140, 29-16, 29-19, and 29-26 are amended as follows:**

2 **2-140. Powers, duties and functions.**

3 (a) The Office of Zoning and Administrative Hearings must:

- 4 (1) schedule and conduct public hearings on any appeal or other  
5 matter assigned by law or by the County Council, County  
6 Executive, or other officer or body authorized to assign matters to  
7 a hearing examiner;
- 8 (2) issue a subpoena, enforceable in any court with jurisdiction, when  
9 necessary to compel the attendance of a witness or production of  
10 a document at any hearing, and administer an oath to any witness;
- 11 (3) allow each party in any hearing a reasonable opportunity to cross  
12 examine each witness not called by that party on matters within  
13 the scope of that witness' testimony;
- 14 (4) forward a written report, with a recommendation for decision, to  
15 the body that assigned the matter, including findings of fact and  
16 conclusions of law where required or appropriate;
- 17 (5) adopt regulations, subject to Council approval under method (2),  
18 to govern the conduct of public hearings and other activities of  
19 the Office.

20 (b) The Office may act as an administrative office or agency designated by  
21 the District Council, as prescribed in the Regional District Act (Article  
22 28 of the Maryland Code).

23 (c) The Office may hear, and submit a written report and recommendation  
24 to the specified officer or body on, any:

- 25 (1) petition to the County Council to grant, modify, or revoke a  
26 special exception, as provided in Chapter 59;
- 27 (2) designation by the County Council of a geographic area as a  
28 community redevelopment area; [or]

- 29 (3) matter referred by the Board of Appeals under Section 2-112(b);  
 30 or  
 31 (4) objection to a finding made by the Director of the Department of  
 32 Housing and Community Affairs concerning an application for  
 33 an accessory apartment rental housing license under Section 29-  
 34 26.

35 (d) When the County Executive or a designee must conduct an  
 36 administrative hearing under any law, the Executive may authorize the  
 37 Office of Zoning and Administrative Hearings to conduct the hearing or  
 38 any particular class of hearings.

39 **29-16. Required.**

- 40 (a) The owner of a dwelling unit must obtain a rental housing license before  
 41 operating the dwelling unit as rental housing. If the owner is a  
 42 corporation, the corporation must be qualified to do business in  
 43 Maryland under state law. Each owner must certify to the Department  
 44 the name, address and telephone number of an agent who resides in  
 45 Maryland and is qualified to accept service of process on behalf of the  
 46 owner.
- 47 (b) The Director must issue [two] three classes of rental housing licenses.  
 48 Class 1 is a multifamily rental housing license. Class 2 is a single-family  
 49 rental housing license. Class 3 is a single-family accessory apartment  
 50 license.
- 51 (c) A Class 1 rental housing license is required for each apartment complex  
 52 and personal living quarters building, and for each multifamily dwelling  
 53 unit operated as rental housing. A Class 2 rental housing license is  
 54 required for each single-family dwelling unit operated as rental housing.  
 55 A Class 3 license is required for each single-family residence with an

56 accessory apartment that does not have a special exception approved  
57 before May 20, 2013.

58 \* \* \*

59 **29-19. Licensing procedures.**

60 (a) To obtain a rental housing license, the prospective operator must apply  
61 on a form furnished by the Director and must pay the required fee. If the  
62 Director notifies the applicant of any violation of law within 30 days,  
63 the Director may issue a temporary license for a period of time the  
64 Director finds necessary to achieve compliance with all applicable laws.

65 (b) Accessory apartment rental license.

66 (1) An owner of [an accessory apartment] a lot or parcel in a zone  
67 that permits accessory apartments may obtain [and keep] a  
68 license to operate an accessory apartment if [the occupancy of the  
69 accessory apartment is limited to]:

70 [(1) One or more individuals who live and cook together as a single  
71 housekeeping unit and are related by:

72 (A) Blood;

73 (B) Marriage; or

74 (C) Adoption; or

75 (2) No more than 2 individuals who live and cook together as a  
76 single housekeeping unit.]

77 (A) the owner places a sign provided by the Director on the lot  
78 of the proposed accessory apartment within 5 days after  
79 [[applying for]] the Director accepts an application license,  
80 unless a sign is required as part of an application for a  
81 special exception. [[The sign must:

- 82 (i) be constructed of any durable material approved by
- 83 the Director;
- 84 (ii) be at least 30 inches above the ground at its lowest
- 85 level;
- 86 (iii) be at least 24 inches high and 36 inches wide;
- 87 (iv) have only letters and numbers that are at least 4
- 88 inches high; and
- 89 (v) include information that an application for an
- 90 accessory apartment license was filed, the internet
- 91 address of a web site to find the status of the
- 92 application, and any other facts required by the
- 93 Director.]] The sign provided by the Director must
- 94 remain in place on the lot for a period of time and in
- 95 a location determined by the Director.
- 96 (B) the principal dwelling on the lot or parcel required for the
- 97 proposed accessory apartment is the owner's primary
- 98 residence. Evidence of primary residence includes:
- 99 (i) the owner's most recent Maryland income tax
- 100 return;
- 101 (ii) the owner's current Maryland driver's license[[,]];
- 102 or
- 103 (iii) the owner's real estate tax bill for the address of the
- 104 proposed accessory apartment; and
- 105 (C) the Director finds that:
- 106 (i) the accessory apartment satisfies the standards for
- 107 an accessory apartment in Section 59-A-6.19; or

108 (ii) the accessory apartment was approved under Article  
 109 59-G as a special exception.

110 ~~[(3)]~~ (2) Upon receipt of an application for an accessory apartment  
 111 license, the Director must:

112 (A) send a copy of the application to the Office of Zoning and  
 113 Administrative Hearings within 5 days after the date the  
 114 application was ~~[[filed]]~~ accepted by the Director;

115 (B) inspect the lot or parcel identified in the application and  
 116 the proposed accessory apartment;

117 (C) complete a report on any repairs or improvements needed  
 118 to approve the application;

119 (D) issue a report on all required findings within 30 days after  
 120 the date the application was ~~[[filed]]~~ accepted by the  
 121 Director;

122 (E) post a copy of the Director's report on findings on the  
 123 internet web site identified on the applicant's sign; and

124 (F) issue or deny a new license 30 days after the issuance of  
 125 the Director's report unless:

126 (i) a timely objection is filed under Section 29-26; or

127 (ii) improvements to the property are required before  
 128 the license may be approved.

129 ~~[(4)]~~ (3) The Director may renew a license for an accessory  
 130 apartment at the request of the applicant if :

131 (A) the applicant:

132 (i) attests that the number of occupants will not exceed  
 133 the requirements of Section 26-5 and there will be

134 no more than 2 residents in the apartment who are  
 135 older than 18 years;

136 (ii) attests that one of the dwelling units on the lot or  
 137 parcel will be the primary residence of the owner;  
 138 and

139 (iii) acknowledges that by obtaining a license the  
 140 applicant gives the Director the right to inspect the  
 141 lot or parcel including the accessory apartment.

142 ~~[(5)]~~ (4) The Director may renew a Class 1 license for an accessory  
 143 apartment that was approved as a special exception, as a Class 1  
 144 license if the conditions of the special exception remain in effect  
 145 and the applicant is in compliance with those conditions~~[[.]],~~

146 (5) The Director may transfer an accessory apartment license to a  
 147 new owner of a licensed apartment if the new owner applies for  
 148 the transfer. The conditions and fees for any transfer are the same  
 149 as the conditions and fees for a license renewal.

150 (6) The Director must maintain a public list and map showing each  
 151 Class 3 license and each accessory apartment with a Class 1  
 152 license.

153 (c) Where a rental building has not been completely constructed or  
 154 renovated, the Director may issue a temporary license for that part of the  
 155 building that has been completely constructed or renovated if the  
 156 landlord has:

157 (1) obtained a temporary certificate of occupancy under Chapter 8;  
 158 and

159 (2) complied with all other applicable laws.



- 187                    (A) objecting to any finding of fact by the Director; or  
 188                    (B) alleging that on-street parking is inadequate when a special  
 189                               exception is not required.
- 190           (3) A request for a review by the Hearing Examiner must be  
 191                    submitted to the Office of Zoning and Administrative Hearings  
 192                    within 30 days after the date of the Director's report and must  
 193                    state the basis for the objection.
- 194           (4) The Hearing Examiner must send notice of an adjudicatory  
 195                    hearing to the applicant and any aggrieved person who filed an  
 196                    objection within 5 days after the objection is received and  
 197                    conduct any such hearing within 20 days of the date the objection  
 198                    is received unless the Hearing Examiner determines that  
 199                    necessary parties are unable to meet that schedule.
- 200           (5) The Hearing Examiner may only decide the issues raised by the  
 201                    objection.
- 202           (6) The Hearing Examiner may find that on-street parking is  
 203                    inadequate if:
- 204                    (A) the available on-street parking for residents within 300 feet  
 205                               of the proposed accessory apartment would not permit a  
 206                               resident to park on-street near his or her residence on a  
 207                               regular basis; and
- 208                    (B) the proposed accessory apartment is likely to reduce the  
 209                               available on-street parking within 300 feet of the proposed  
 210                               accessory apartment.
- 211           (7) The Hearing Examiner may find that more than the minimum on-  
 212                    site parking must be required as a condition of the license.

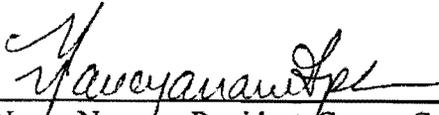
213 (8) The Hearing Examiner must issue a final decision within 30 days  
214 after the close of the adjudicatory hearing.

215 (9) The Director must issue or deny the license based on the final  
216 decision of the Hearing Examiner.

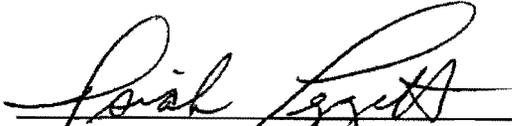
217 ~~[[iii]]~~ (10) Any aggrieved party who objected under subsection 29-  
218 26(b) may request the Circuit Court to review the Hearing  
219 Examiner's final decision under the Maryland Rules of Procedure.  
220 An appeal to the Circuit Court does not automatically stay the  
221 Director's authority to grant a license.

**Sec. 2. Effective date. This Act takes effect on May 20, 2013.**

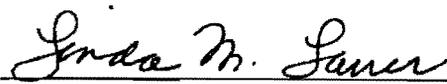
222 *Approved:*

223  2/6/13  
Nancy Navarro, President, County Council Date

224 *Approved:*

225  2/12/13  
Isiah Leggett, County Executive Date

226 *This is a correct copy of Council action.*

227  2/13/13  
Linda M. Lauer, Clerk of the Council Date

DIVISION 59-A-2.	“DEFINITIONS AND INTERPRETATION.”
DIVISION 59-A-6.	“USES PERMITTED IN MORE THAN ONE CLASS OF ZONE.”
Adding Section <del>[[59-A-6.19]]</del> <u>59-A-6.20.</u>	“Attached <u>or detached</u> accessory <del>[[apartments]]</del> <u>apartment.</u> ”
<del>[[Adding Section 59-A-6.20.</del>	“Detached accessory apartments.” <del>]]</del>
DIVISION 59-C-1.	“RESIDENTIAL ZONES, ONE-FAMILY.”
Section 59-C-1.3.	“Standard development.”
Section 59-C-1.5.	“Cluster development.”
Section 59-C-1.6.	“Development including moderately priced dwelling units.”
DIVISION 59-C-9.	“AGRICULTURAL ZONES.”
Sec. 59-C-9.3.	“Land uses.”
Sec. 59-C-9.4.	“Development standards.”
<u>DIVISION 59-G-1.</u>	<u>“SPECIAL EXCEPTIONS—AUTHORITY AND PROCEDURE.”</u>
<u>Sec. 59-G-1.12.</u>	<u>“Hearing Examiner.”</u>
DIVISION 59-G-2.	“SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.”
Sec. 59-G-2.00.	“Accessory apartment.”
Adding Sec. 59-G-2.00.6.	“Attached <u>or detached</u> accessory apartment.”
<del>[[Adding Sec. 59-G-2.00.7.</del>	“Detached accessory apartment.” <del>]]</del>

**EXPLANATION:** *Boldface indicates a Heading or a defined term.*  
*Underlining indicates text that is added to existing law by the original text amendment.*  
*[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

**OPINION**

Zoning Text Amendment No. 12-11, sponsored by the District Council at the request of the Planning Board, was introduced on July 24, 2012.

In its report to the Council, the Montgomery County Planning Board recommended that the text amendment be approved.

The Council conducted a public hearing on September 11, 2012. There was extensive testimony, some in support and some in opposition. Some testimony recommended specific changes. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held worksessions to review the amendment on October 8, October 22, and November 5, 2012. The Committee recommended approval of ZTA 12-11 with amendments. The Committee agreed with the core concept of ZTA 12-11 that makes accessory apartments a permitted use under certain circumstances; however, under the Committee's recommendation, if an applicant wanted a waiver of the minimum distance requirement or the on-site parking requirement, a special exception would be required. Such a special exception would be decided by the Hearing Examiner, with an appeal allowed to the Board of Appeals. In some instances, the Committee also recommended the following zoning standards for all future accessory apartments:

Approval conditions	Committee's recommendation
<i>Limit one unit per one-family detached dwelling (non-agricultural zone)</i>	Allowed without regard to age of the house
<i>Additions to existing structure</i>	Allowed
<i>Separate structure</i>	Allowed if the lot is 1 acre or more in RE-2, RE-2C, and RE-1
<i>Occupancy of principal house</i>	Require the address to be the primary residence of the owner as a licensing requirement under Bill 31-12
<i>Registered living units or additional rentals</i>	An accessory apartment is prohibited if an RLU or other rental is occurring
<i>External attributes</i>	Allow a separate side or rear yard entrance, a separate front entrance if it pre-existed the application, and a common front entrance
<i>Street address</i>	Must be the same as the main dwelling
<i>Development standards</i>	Zoning classification controls; no minimum lot size
<i>Maximum number of people</i>	2 adults; no limit on minors except housing code
<i>Unit size</i>	Limit floor area to less than 50% of main dwelling but no larger than 2,500 square feet
<i>Excessive concentration</i>	300 feet from another accessory apartment on the same block face in the R-90, R-60, and RNC zones; 500 feet in the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones, but subject to waiver by special exception; no prohibition on back-to-back apartments

Approval conditions	Committee's recommendation
<i>Parking</i>	If there is an existing driveway, 1 on-site space required in addition to any required on-site space required for the main dwelling; if new driveway is required, 2 spaces in addition to main dwelling spaces
<i>Reporting requirement</i>	Require a report by DHCA after the 2,000th license is issued

The District Council reviewed Zoning Text Amendment No. 12-11 at a worksession held on January 15, 2013. The Council amended ZTA 12-11 to:

- 1) repeat the standards in Bill 31-12 for the Hearing Examiner and the Board to find inadequate on-street parking in the course of the special exception process;
- 2) limit the amount of a new addition that could be used for an accessory apartment to no more than 800 square feet of floor area;
- 3) limit the total floor area of an accessory apartment to a maximum 1,200 square feet without regard to the floor area in the principal dwelling;
- 4) require the principal dwelling to be at least 5 years old when any application for an accessory apartment is made; and
- 5) make the effective date of the ZTA May 20, 2013, to coincide with the effective date of Bill 31-12.

In all other respects, the Council agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 12-11 will be approved as amended.

**ORDINANCE**

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

Resolution No.: 17-834  
Introduced: July 30, 2013  
Adopted: July 30, 2013

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: County Council

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**SUBJECT:** Extension of Temporary Executive Regulation 4-13T, Establishment of Procedures for Class 3 Accessory Apartment License

**Background**

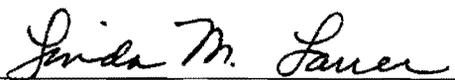
1. The Council received Temporary Executive Regulation 4-13T, *Establishment of Procedures for Class 3 Accessory Apartment License*, on April 30, 2013. The Temporary Executive Regulation has an effective date of May 20, 2013 and it will expire on August 20, 2013.
2. County Code section 2A-15(j) establishes the procedures for issuing and extending a temporary regulation. Among other things, the section says that: a temporary regulation may be issued for a period of up to 90 days; the issuer may ask the Council once to extend the effective period for an additional 90 days; the issuer must provide a compelling reason for the extension; the Council must not extend a temporary regulation more than once.
3. The Executive has requested an extension of Temporary Regulation 4-13T to enable it to remain effective while the Council reviews a permanent regulation to supersede the temporary one.

**Action**

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

The effective period for Temporary Executive Regulation 4-13T, *Establishment of Procedures for Class 3 Accessory Apartment License*, is extended until November 13, 2013.

This is a correct copy of Council action.

  
Linda M. Lauer, Clerk of the Council