

**MEMORANDUM**

February 1, 2013

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: **Action:** Bill 31-12, Accessory Apartments – Licensing

The Zoning Text Amendment (ZTA) 12-11 would allow accessory apartments under certain conditions without a special exception. The Planning, Housing, and Economic Development Committee after worksessions on October 8, October 22, and November 5, 2012, recommended Bill 31-12 and amending ZTA 12-11 to simplify and speed the review of most accessory apartments.

On November 5, 2012, the Committee endorsed the provisions of Bill 31-12 to create a separate licensing process for accessory apartments in combination with its recommendations on ZTA 12-11.<sup>1</sup> Bill 31-12 sponsored by the Planning, Housing, and Economic Development Committee, was introduced on November 13, 2012.

The Council held a public hearing on Bill 31-12 on December 4, 2012. The Council reviewed the issues raised in the testimony at its worksession on January 15, 2013.<sup>2</sup> The straw votes by the Council indicated support for 3 changes to the Bill:

- 1) Allow the Department of Housing and Community Affairs Director to determine the details of a sign an applicant must post on their property;
- 2) Make provisions for the transferability of an accessory apartment license; and
- 3) Establish an effective date of May 20, 2013.

---

<sup>1</sup> After the meeting, Committee members agreed with an amendment to use the date of acceptance of a license application by DHCA to determine subsequent deadlines. As introduced, Bill 31-12 uses the date of filing a license application to determine subsequent deadlines.

<sup>2</sup> The memorandum that was used by the Council is attached to that staff report for item #6(B) on Council's February 5, 2013 agenda.

*Issues that resulted in straw vote revisions*

**Is a sign sufficient notice of an accessory apartment license application without a mailed notice to neighbors?**

The Bill as introduced would require the posting of a sign on the site of an accessory apartment application. One municipality has requested a requirement for a mailed notice to the municipalities. Bill 31-12 as introduced would not require a mailed notice to anyone. Currently, building permits are required to be posted on a site (without sign requirements). Special Exception applicants are required to post a sign and mail notice. Bill 31-12, by requiring a sign with the same specifications as a sign for a special exception application, would require more notice than a building permit but less notice than a special exception. In the opinion of the Committee majority, a sign notice would be sufficient. (The DHCA Director indicated that DHCA staff will provide signs, just like the Board of Appeals staff provides for special exceptions.) Councilmember Elrich recommended requiring a mailed notice to adjoining and confronting property owners, the local civic association, and the municipality of the site, if any.

After considering the testimony and the provisions of Bill 31-12 as introduced, the Council indicated satisfaction with notice by a posted sign but thought the detailed provision for the sign's specification were best left up to the Department of Housing and Community Development Director. The attached revised Bill deleted the sign specification and added:

The sign provided by the Director must remain in place on the lot for a period of time and in a location determined by the Director. (lines 93-95, ©5)

**When a property with a licensed accessory apartment is sold, what are the obligations of the new owner?**

A new owner of an accessory apartment must notify DHCA of the change in ownership. The current obligations of a new owner of an accessory apartment do not include a requirement to apply for the transfer or pay a fee for the transfer:

Sec. 29-24. Transferability.

- (a) If an applicant for or the holder of a license transfers ownership or no longer is an agent for the licensed rental housing or changes address, the applicant or licensee must notify the Department within 10 days of the change. The Director may reject an application or suspend or revoke a license if the applicant or licensee does not notify the Department as required by this subsection.
- (b) Any person who takes over the operation of licensed rental housing may transfer the license for the unexpired portion of the term for which it was issued by applying to the Director within 15 days after taking over operation and paying a license transfer fee of at least \$5 per dwelling unit, but not exceeding \$25. Nothing in this Section affects the validity of any sale, transfer, or disposition of any interest in real estate. ***This subsection does not apply to accessory apartments. [emphases added]***
- (c) Whenever the ownership of any rental housing changes hands, the transferor must notify all tenants of the name, address and office location of the transferee. If the transferee is a corporation, the transferor must list the name and address of the resident agent of the transferee.

A straw vote of the Council indicated support for a new provision concerning the transferability of accessory apartment licenses. The attached revised Bill would add the following provision:

The Director may transfer an accessory apartment license to a new owner of a licensed apartment if the new owner applies for the transfer. The conditions and fees for any transfer are the same as the conditions and fees for a license renewal. (lines 145-148, ©7)

**What is the effective date of the Bill and the ZTA?**

The effective date of a Bill is 91 days after the Executive signs the Bill, unless a specific effective date is noted in an uncodified section of the Bill. The effective date of a ZTA is 20 days after Council approval, unless noted otherwise in the ZTA. If the Council approves the Bill and the ZTA, then the effective day for both actions should be the same. A straw vote of the Council indicated support for adding the following uncodified provision:

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

This packet contains:	<u>Circle #</u>
Bill 31-12	1
Legislative Request Report	11
Fiscal and Economic impact statements	12

Bill No. 31-12  
Concerning: Accessory Apartments -  
Licensing  
Revised: January 16, 2013 Draft No. 3  
Introduced: November 13, 2012  
Expires: May 13, 2014  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: May 20, 2013  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

---

By: The Planning Housing, and Economic Development Committee

---

**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 {EFFECTIVE DATE}.

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, or
- 102 (iii) the owner's real estate tax bill for the address of the  
 103 proposed accessory apartment; and
- 104 (C) the Director finds that:
- 105 (i) the accessory apartment satisfies the standards for  
 106 an accessory apartment in Section 59-A-6.19; or
- 107 (ii) the accessory apartment was approved under Article  
 108 59-G as a special exception.



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

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

141 ~~[(5)]~~ (4) The Director may renew a Class 1 license for an accessory  
 142 apartment that was approved as a special exception, as a Class 1  
 143 license if the conditions of the special exception remain in effect  
 144 and the applicant is in compliance with those conditions,

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

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

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

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

158 (2) complied with all other applicable laws.

159 However, the temporary license expires when a license to operate the  
 160 entire building is issued.

- 161 (d) The Director must not issue a rental housing license for a personal
- 162 living quarters building unless the applicant has submitted a satisfactory
- 163 management plan. The plan must specify who will manage the building
- 164 and explain what the manager will do to achieve acceptable levels of
- 165 safety, sanitation, and security in the building's common areas.
- 166 (e) Each licensee must give the Department a current address for the receipt
- 167 of mail. If the Department sends first class or certified mail to the
- 168 licensee at the designated address and the mail is returned as
- 169 undeliverable, the Department may treat the mail as having been
- 170 received.

171 \* \* \*

172 **29-26. Appeals and Objections.**

173 (a) Any person aggrieved by a final action of the Commission rendered

174 under this Article may appeal to the Circuit Court [in accordance with]

175 under the Maryland Rules of Procedure for [a review of the action]

176 judicial review of a final administrative agency decision. An appeal

177 does not stay enforcement of the Commission's order.

178 (b) Objections concerning any new accessory apartment license.

179 (1) The applicant for a new license for an accessory apartment may

180 object to an adverse finding of fact by the Director by filing an

181 objection and a request for a hearing with the Office of Zoning

182 and Administrative Hearings.

183 (2) Any other aggrieved person may file an objection and request for

184 a hearing with the Office of Zoning and Administrative Hearings

185 by:

186 (A) objecting to any finding of fact by the Director; or

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

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

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

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

221 *Approved:*

222

---

Nancy Navarro, President, County Council Date

223 *Approved:*

224

---

Isiah Leggett, County Executive Date

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

226

---

Linda M. Lauer, Clerk of the Council Date

## LEGISLATIVE REQUEST REPORT

Bill 31-12

### *Accessory Apartments - Licensing*

<b>DESCRIPTION:</b>	This Bill establishes a process for accessory apartment licensing including noticing, standards for issuance and renewal, objections and appeals
<b>PROBLEM:</b>	ZTA 12-11 as introduced, currently pending before the Council, would allow some accessory apartments to be approved without a special exception. All accessory apartments require a license. The current licensing process does not require any notice, specific standards, or an opportunity for objections or appeals.
<b>GOALS AND OBJECTIVES:</b>	This Bill would establish a process for accessory apartment licenses including noticing, standards for issuance and renewal, objections and appeals
<b>COORDINATION:</b>	DHCA, MNCPPC, BOA, OZHA
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Jeffrey Zyontz, (240) 777-7896
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	Class A violation



071132

NBRU  
CC  
SBF  
LL  
CZ

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Jennifer A. Hughes  
Director

MEMORANDUM

December 12, 2012

TO: Nancy Navarro, President County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Joseph F. Beach, Director, Department of Finance

SUBJECT: Council Bill 31-12, Accessory Apartments - Licensing

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:a2a

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Lisa Austin, Offices of the County Executive
- Joy Nurmi, Special Assistant to the County Executive
- Patrick Lacefield, Director, Public Information Office
- Joseph F. Beach, Director, Department of Finance
- Michael Coveyou, Department of Finance
- Richard Y. Nelson, Director, Department of Housing and Community Affairs
- Luann Korona, Department of Housing and Community Affairs
- Jay Greene, Department of Housing and Community Affairs
- Time Goetzinger, Department of Housing and Community Affairs
- Jennifer Bryant, Office of Management and Budget
- Ayo Apollon, Office of Management and Budget

RECEIVED  
MONTGOMERY COUNTY

2012 DEC 14 AM 8:28

Office of the Director

101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800  
www.montgomerycountymd.gov



**Fiscal Impact Statement**  
**Council Bill 31-12, Accessory Apartments - Licensing**

1. Legislative Summary.

Bill 31-12 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 increase. Any additional workload impact resulting from Bill 31-12 is projected to be absorbed by the current staff complement assuming no significant increase in accessory apartment applications.

Information provided by the Department of Housing and Community Development (DHCA) Licensing and Registration section, states that there are currently 405 licensed accessory apartments for rent in Montgomery County. Approximately half of these units are located in Takoma Park (205) in which Takoma Park collects the licensing fee. In the past twelve months, there were twenty-two new applications, nearly all of which were for non-Takoma Park properties. The current fee for an accessory apartment license is \$38. Current revenue assumptions are \$7,600 per year (200 x \$38).

Currently the average cost of obtaining a special exception and accessory apartment license is \$665. This cost is comprised of the following components:

- Filing Fee - \$295
- Sign Fee - \$220 (\$100 + \$110 deposit, returned when the sign is returned)
- DPS Annual Administration Fee - \$112 (This amount goes to Board of Appeals)
- DHCA Annual Rental License - \$38

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

This Bill is not likely to result in the need for additional staffing; therefore, there is no projection in increased expenditures. DHCA revenue is projected to be (\$7,600 per year + (20 new apps x 6 years x \$38 = \$4,560)), \$12,160 of revenue is projected over the next six fiscal years.

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

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

None

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

Not Applicable

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

The greatest impact would be in DHCA's responsibility to review the initial application and make a recommendation to the Director, which is a new business practice. There will be a minor secondary impact on staff time associated with the requirement to maintain a public list and map showing each Class 3 license, which is also a new business practice; however, it is not anticipated to result in a substantial time commitment. There will be some incremental additional staff time required to implement a regular three to five year code enforcement inspection program for accessory apartments.

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 affect on DHCA staff's 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.

Given the publicity and ease of obtaining an accessory apartment license created by Bill 31-12, DHCA anticipates an initial increase in applications after Bill 31-12 is enacted. The potential increase in applications represents a variable that is difficult to project. However, if the amount of new applications increase significantly and continues to increase above the current projections (20 applications per year) by DHCA on an annual basis; 1.0 FTE may be required to fulfill the administrative requirements promulgated under Bill 31-12.

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

Not Applicable

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

Not Applicable

12. Other fiscal impacts or comments.

None

13. The following contributed to and concurred with this analysis: (Enter name and department).

Richard Y. Nelson, Director, DHCA

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, Sr. Management and Budget Specialist, OMB

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

12/13/12  
Date

**Economic Impact Statement**  
Council Bill 31-12, Accessory Apartments - Licensing

**Background:**

Bill 31-12 establishes a Class 3 single-family accessory apartment license, which is required for every single-family home with an accessory apartment but no special exception. The bill also provides procedures to deal with objections by the homeowner who is not allowed a license, and by other aggrieved parties who believe the license should not be granted.

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

This bill has no economic impact. (See #4 below)

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

This bill has no economic impact. (See #4 below)

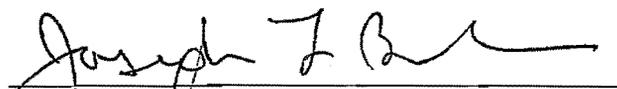
3. The bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property value in the County.

This bill has no economic impact. (See #4 below)

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

This bill has no economic impact because it applies to the use of property only at a homeowner's principal residence, and has no commercial application.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance.

  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

12/6/12  
\_\_\_\_\_  
Date