COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

APPROVED

Tuesday, September 24, 2019


PRESENT

Councilmember Nancy Navarro, President 
Councilmember Sidney Katz, Vice President
Councilmember Gabe Albornoz 
Councilmember Andrew Friedson
Councilmember Evan Glass 
Councilmember Tom Hucker
Councilmember Will Jawando 
Councilmember Craig Rice
Councilmember Hans Riemer

The President in the Chair.

The invocation was given by Rabbi Abbi Sharofsky, Jewish Community Relations Council of Greater Washington.

GENERAL BUSINESS

A. Announcements - Agenda and Calendar Changes

Ms. Lauer, Office of the Clerk of the Council, announced that the Council is seeking applicants for the Merit System Protection Board by the September 25, 2019, deadline.

(1) B. Receipt of Petitions

There were no petitions received this week.

C. Approved the minutes of September 4, 2019, and the closed session minutes of September 4, 2019, without objection. Mr. Rice was temporarily absent.
CONSENT CALENDAR

Approved the following consent calendar items listed below.
Mr. Katz made the motion, which carried without objection. Mr. Rice was temporarily absent. Later in the meeting, Mr. Rice stated that had he been present, he would have voted in the affirmative.

A. Introduced a supplemental appropriation to the County Government’s FY20 Capital Budget and amendment to the FY19-24 Capital Improvements Program (CIP), Department of Transportation (DOT) - $3,050,000 for Snouffer School Road.

B. Introduced transfer of funds within the Montgomery County Public School’s (MCPS) FY20 Capital Budget - $295,000 from the North Bethesda Middle School Addition project to the Capital Budget Unliquidated Surplus Account.

C. Introduced transfer of funds within the MCPS’ FY20 Capital Budget - $295,000 from MCPS’ Unliquidated Surplus Account to the Bethesda-Chevy Chase High School Addition project.

D. Adopted Resolution 19-234, approving an extension until March 30, 2020, of the appointment of Acting Director, Department of Finance: Michael Coveyou.


F. Adopted Resolution 19-236, confirming the County Executive’s appointments to the Alcohol and Other Drug Abuse Advisory Council: Evelyn Saim-Lobos, Elyse Grossman.

G. Adopted Resolution 19-237, confirming the County Executive’s appointments to the Citizens Review Panel for Children: Laura Coyle, George Gabel, Jane Steinberg.

H. Adopted Resolution 19-238, confirming the County Executive’s appointment to the Dickerson Area Facilities Implementation Group: Paula Jenson.

I. Adopted Resolution 19-239, confirming the County Executive’s appointments to the Domestic Violence Coordinating Council: Spencer Cantrell, Laurie Duker, Izola Shaw, Lilah Katz.

J. Adopted Resolution 19-240, confirming the County Executive’s appointments to the Early Childhood Coordinating Council: Kimberly Rusnak, Taniesha Myles.
K. Adopted Resolution 19-241, confirming the County Executive’s appointment to the Fire and Emergency Services Commission: Scott Emmons.

L. Adopted Resolution 19-242, confirming the County Executive’s appointments to the Committee Against Hate Violence: Patricia Alexander, Pablo Blank, Kelly Cooper, Sanjeet Dey, Samantha Jones, Stephanie Troyer.

M. Adopted Resolution 19-243, confirming the County Executive’s appointments to the Human Trafficking Prevention Committee: Patricia Polimadei, Marirose Ungerman.

N. Adopted Resolution 19-244, confirming the County Executive’s appointment to the Rustic Roads Advisory Committee: Kamran Sadeghi.

O. Adopted Resolution 19-245, confirming the County Executive’s appointments to the Solid Waste Advisory Committee: Adam Diamond, Gina Angiola, Paula Jenson, Jelena Krstic, Ellen Ryan, Candy Schimming, Sara Bixby.

P. Adopted Resolution 19-246, confirming the County Executive’s appointment to the Commission for Women: Adrienne Prentice.

Q. Adopted Resolution 19-247, confirming the County Executive’s appointments to the Board of Education Compensation Commission: Ting Chau, Jennifer Sawin, Mark Spradley, Jaye Espy, Jason Washington.

R. Received and Released the Office of Legislative Oversight (OLO) Report 2019-16 - Findings from 2019 Racial Equity and Social Justice Community Conversations.

(3) ACTION - Confirmation of the County Executive’s appointee, Director, Montgomery County Public Libraries: Anita Vassallo

Adopted Resolution 19-248, confirming the County Executive’s appointment of Anita Vassallo as Director, Montgomery County Public Libraries.

Mr. Jawando made the motion, which carried without objection. Mr. Rice was temporarily absent.

Later in the meeting, Mr. Rice stated that had he been present, he would have voted in the affirmative.
(7) **Introduction of Bills:**

A. **Bill 30-19, Human Rights and Civil Liberties - Race Discrimination - Protective Hairstyles (CROWN Act)**

Introduced draft #2 of the subject bill, sponsored by Councilmember Jawando and Council President Navarro, and co-sponsored by Councilmembers Riemer and Hucker. Councilmembers Albornoz and Glass requested to be added as co-sponsors. A public hearing is scheduled for October 15, 2019, at 1:30 P.M.

B. **Bill 31-19, Health and Sanitation - Electronic Cigarettes - Distribution, Use, and Possession**

Introduced draft #2 of the subject bill, sponsored by Councilmembers Hucker and Albornoz. Councilmembers Rice, Katz, Riemer, Glass, Jawando and Navarro requested to be added as co-sponsors. A public hearing is scheduled for November 5, 2019, at 7:30 P.M.

(8) **Call of Bills for Final Reading**

A. **Bill 22-19, Accessory Dwelling Units - Licensing - Requirements - Amendments**

Mr. Riemer, Chair of the Planning, Housing and Economic Development (PHED) Committee, reviewed the Committee’s recommendations, as contained in the staff report.

Enacted draft #9 of Bill 22-19, as contained at the end of these minutes.

The PHED Committee made the motion and the bill was enacted by a roll call vote:

**YEAS:** Glass, Jawando, Hucker, Riemer, Albornoz, Rice, Friedson, Katz, Navarro.

Because the meeting was ahead of schedule, the Council recessed at 9:55 A.M. until 11:05 A.M.
(4) **COMMEMORATION** - Hispanic Heritage Month

Council President Navarro and Councilmember Albornoz welcomed attendees and commented on the contributions made to the County by members of the Hispanic community. A video was presented celebrating the accomplishments of the following Montgomery County residents: Jonathan Acosta, singer and writer; Claudia Campos Galván, Program Director, Nueva Vida; the Honorable Ana Sol Gutiérrez, former Maryland State Delegate; Moisés Linares, Sports Anchor, Telemundo-NBC; Ricardo Loaiza, Executive Director, After School Dance Fund; the Honorable Maricé Morales, former Maryland State Delegate; Javier Solís, entrepreneur, Toro Taxes; and Maria Jose Solís, Toro Taxes. Mr. Acosta presented a musical performance.

Awards were presented to the interviewed in the video in appreciation for their service to the community.

The meeting recessed at 12:20 P.M. and reconvened at 1:30 P.M.

(5) **PUBLIC HEARING** - FY21 Washington Suburban Sanitary Commission (WSSC) Spending Control Limits

The public hearing was conducted. Mr. Albornoz, Mr. Hucker and Mr. Riemer were temporarily absent. Additional material for the Council’s consideration should be submitted by the close of business on October 7, 2019. A Transportation and Environment (T&E) Committee worksession is tentatively scheduled for October 10, 2019.

(6) **PUBLIC HEARING/ACTION** - Supplemental appropriation to the County Government’s FY20 Operating Budget, DOT - $98,150 for Streets and Roads - Roadside Trees - Protection

The public hearing was held and the record closed.

Adopted Resolution 19-249, approving the subject supplemental appropriation.

Mr. Katz made the motion, which carried without objection. Mr. Hucker and Mr. Riemer were temporarily absent.

The meeting adjourned at 1:42 P.M.

This is a correct copy of Council action.

*Approved/Signed by the Clerk*

Mary Anne Paradise
Acting Clerk of the Council
Concerning: Accessory Dwelling Unit – Licensing – Requirements – Amendments
Revised: 09/11/2019 Draft No. 9
Introduced: July 16, 2019
Enacted: September 24, 2019
Executive: __________
Effective: December 31, 2019
Sunset Date: None
Ch. , Laws of Mont. Co. _______

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Riemer, Friedson, Jawando and Council President Navarro
Co-sponsors: Councilmembers Albornoz, and Hucker

AN ACT to:
  (1) replace the phrase “accessory apartment” with “accessory dwelling unit”;
  (2) amend the standards for minimum ceiling heights for basements or cellars used for accessory dwelling;
  (3) amend the accessory dwelling unit licensing procedures concerning ownership and common ownership associations;
  (4) require information and notice concerning common ownership communities in the application and review of an accessory dwelling unit license;
  (5) require reporting by the Executive of accessory dwelling unit problems and planned solutions; and
  (6) generally amend the law governing accessory dwelling units and habitable space.

By amending
Montgomery County Code
Chapter 2, Administration
Section 2-140
Chapter 26, Housing and Building Maintenance Standards
Section 26-5
Section 26-18A
Chapter 29, Landlord–Tenant Relations
Sections 29-1, 29-19, 29-20, 29-24, 29-26, 29-27, and 29-28

### Boldface
Heading or defined term.

### Underlining
Added to existing law by original bill.

### [Single boldface brackets]
Added to existing law by original bill.

### Double underlining
Deleted from existing law by original bill.

### [[Double boldface brackets]]
Added by amendment.

### * * *
Deleted from existing law or the bill by amendment.
Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 2-140, 26-5, 26-18A, 29-1, 29-19, 29-20, 29-24, 29-26, 29-27, and 29-28 are amended as follows:

2-140. Powers, duties and functions.

* * *

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

(4) waiver or objection to a finding made by the Director of the Department of Housing and Community Affairs concerning an application for an accessory [apartment] dwelling unit rental housing license under Section 29-26.

* * *

26-5. Space, use, and location.

The owner of any dwelling or dwelling unit must assure compliance with the following standards during human habitation:

* * *

(d) Ceiling height. At least one-half of the floor area of every habitable room must have a ceiling height of at least [[7 feet]] 6 feet 8 inches, except that a beam, girder, duct or other obstruction may project to within 6 feet 4 inches of the finished floor.

* * *

26-18A. Outreach on Quality of Life Issues.

The Executive must submit quarterly reports to the Council that includes activities, plans, and objectives of Executive branch departments to address instances in which an aggregation of problems has led to diminished quality of life for affected residents in an affected community. Contents of the annual report can include recommendations to increase enforcement of violations of County laws related to housing maintenance standards, parking, and solid waste disposal. Every quarterly report must include a section on accessory dwelling units. The accessory dwelling unit section must identify any problems and actions taken or planned actions to eliminate those problems. The Executive, or the Executive’s designee, must hold semiannual meetings with County residents to discuss these problems.

* * *

29-1. Definitions.

In this Chapter, the following words and phrases have the following meanings:

Accessory apartment or accessory dwelling unit: A residential unit that is:

(a) Either:

(1) In or added to an existing one-family dwelling, or

(2) In a separate accessory structure on the same lot as an existing one-family dwelling; and

(b) For use as a complete, independent living facility with provision within the accessory [apartment] dwelling unit for cooking, eating, sanitation, and sleeping.

* * *

Dwelling unit: That portion of a building that is designated, intended, or arranged for use or occupancy as a residence by one or more persons. Dwelling unit includes:

* * *

Dwelling unit, multifamily:

(c) an accessory [apartment] dwelling unit; or

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

(b) Accessory dwelling unit rental license.

(1) An owner of a lot or parcel in a zone that permits accessory dwelling units must obtain a license to operate an accessory dwelling unit to live in or to rent if:

(A) the owner places a sign provided by the Director on the lot of the proposed accessory dwelling unit within 5 days after the Director accepts an application license. The sign must identify any requested waivers under Section 29-26(b). 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.

(B) the principal dwelling on the lot or parcel required for the proposed accessory apartment is the owner’s primary residence. The principal dwelling or accessory dwelling unit must be the primary residence of the applicant for an accessory dwelling unit rental license. Evidence of primary residence includes:

(i) the owner’s most recent Maryland income tax return;
(ii) the owner’s current Maryland driver’s license; or
(iii) the owner’s real estate tax bill for the address of the proposed accessory dwelling unit; [and]

(C) the applicant certifies to the Director that an accessory dwelling unit is not prohibited by any common ownership community bylaws or rules, or a rental lease governing documents and any common ownership community fees for the dwelling unit are no more than 30 days past due; and

(D) the Director finds that:

(i) the accessory dwelling unit satisfies the standards for an accessory dwelling unit in Section 59.3.3.3 and if needed, a Hearing Examiner granted a waiver under Section 29-26; or

(ii) the accessory dwelling unit was approved under Article 59-G as a special exception under the Zoning Ordinance applicable before October 30, 2014 or [or] under 2014 Zoning Ordinance §59.3.3.3 as a conditional use.

(2) Upon receipt of an application for an accessory dwelling unit license, the Director must:

(A) send a copy of the application to the Office of Zoning and Administrative Hearings and the governing body for any applicable common ownership community, within 5 days after the date the application was accepted by the Director;
(B) inspect the lot or parcel identified in the application and the proposed accessory [apartment] dwelling unit;

* * *

(3) The Director may renew a license for an accessory [apartment] dwelling unit at the request of the applicant if:

(A) the applicant:

(i) attests that the number of occupants will not exceed the requirements of Section 26-5 and there will be no more than 2 residents in the [apartment] dwelling unit who are older than 18 years;

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

(iii) acknowledges that by obtaining a license the applicant gives the Director the right to inspect the lot or parcel including the accessory [apartment] dwelling unit.

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

(5) The Director may transfer an accessory [apartment] dwelling unit license to a new owner of a licensed [apartment] dwelling unit 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.

(6) The Director must maintain a public list and map showing each Class 3 license and each accessory [apartment] dwelling unit with a Class 1 license.

* * *

29-20. Fees.

(a) Except as provided in subsections (b) and (c), the annual licensing fee per dwelling unit is:

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

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

(B) $59.00 per dwelling unit for all others;

(2) for a Class 2 single-family rental facility license, $101.00 per dwelling unit;

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

(b) Fee exemption for an accessory dwelling unit occupied by an individual with disabilities.

(1) A license applicant is exempt from any fee associated with the licensure of an accessory [apartment] dwelling unit occupied by an individual with disabilities.

(2) To establish that an individual with disabilities occupies an accessory [apartment] dwelling unit, a license applicant annually must certify, on a form provided by the Director, that an occupant of the accessory [apartment] dwelling unit:

* * *


* * *
(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] dwelling units.

* * *


* * *

(b) Waivers and objections concerning any new accessory [apartment] dwelling unit license.

(1) The applicant for a new license for an accessory [apartment] dwelling unit may request a waiver of a standard to the extent allowed by Section 59.3.3.3 or object to an adverse finding of fact by the Director by filing a waiver or an objection and a request for a hearing with the Office of Zoning and Administrative Hearings.

(2) Any other aggrieved person may file an objection and request for a hearing with the Office of Zoning and Administrative Hearings by:

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

(B) alleging that on-street parking is inadequate.

(3) A request for a waiver or an objection must be submitted to the Office of Zoning and Administrative Hearings within 30 days after the date of the Director’s report and must state the basis for the waiver or objection.

(4) The Hearing Examiner must send notice of an adjudicatory hearing to the applicant and any aggrieved person who filed an objection within 10 days after the waiver or objection is received and conduct any such hearing within 30 days of the date the objection is received unless the Hearing Examiner determines that necessary parties are unable to meet that schedule.

(5) The Hearing Examiner may only decide the issues raised by the waiver or objection.

(6) The Hearing Examiner may waive [on-street] on-site parking standards if:

(A) the available on-street parking for residents within 300 feet of the proposed accessory [apartment] dwelling unit would permit a resident to park on-street near his or her residence on a regular basis; and

(B) the proposed accessory [apartment] dwelling unit is not likely to reduce the available on-street parking within 300 feet of the proposed accessory apartment.

(7) The Hearing Examiner may find that more than the minimum on-site parking must be required as a condition of the license and may impose other conditions to assure adequate parking on granting the waiver.

[(8) The Hearing Examiner may waive the distance separation standards between Accessory Apartments when the separation does not result in an excessive concentration of similar uses, including other conditional uses, in the general neighborhood of the proposed Accessory Apartment.]

29-27. Contents of lease.
(q) Permit the tenant to sublease the dwelling unit with the landlord's written permission, which the landlord must not unreasonably withhold. This subsection does not apply to:
   (1) a rental dwelling unit in a common ownership community if a valid legal restriction prohibits subleasing;
   (2) an accessory [apartment] dwelling unit;
   (3) a mobile home under Section 29-66; or
   (4) an individual living unit.

   (a) A copy of each written lease form used by a landlord must be filed with the Director.
   (b) Each landlord must give each prospective tenant a copy of the proposed lease. Prospective tenants must have the right to examine the proposed lease at any location the tenant chooses.
   (c) The landlord must offer each lease for an initial term of two years, and a two-year term at each renewal, unless the landlord has reasonable cause to offer a different term.
      (1) This subsection does not apply to:
         (A) a rental unit located in a common ownership community if an applicable legal restriction prohibits a 2-year lease;
         (B) an accessory [apartment] dwelling unit;
         (C) a mobile home under Section 29-66; or
         (D) an individual living unit.

Sec. 2. Effective Date.
This Act takes effect on December 31, 2019.