

Testimony on Behalf of County Executive Marc Elrich on

Expedited Bill 38-23: Tenant Displacement - Right of First Refusal to Buy Rental Housing - Amendments

October 10, 2023

1:30 p.m.

Good afternoon, Council President Glass and Councilmembers, my name is Scott Bruton. I am the Director of the Department of Housing and Community Affairs (DHCA). I am testifying on behalf of County Executive Mar Elrich in support of Expedited Bill 38-23: Tenant Displacement - Right of First Refusal to Buy Rental Housing - Amendments.

Bill 38-23 seeks to address the growing need for affordable housing in Montgomery County by amending sections of the County Code (53A-2 & 53A-4) regarding the right of first refusal (ROFR).

Current law creates significant impediments for the County to exercise ROFR to preserve affordable housing. If the County wishes to exercise ROFR, it must pay the full purchase price for a multifamily rental property, often totaling tens of millions of dollars, and then sell the property to its chosen development partner within a few hours. The County must sell the property immediately because it does not have the capacity to run a multifamily rental property with existing staffing and does not want to take on the liability of doing so for even a day. The requirement to purchase the property forces the County to hold tens of millions of dollars at the ready each year just for the purpose of purchasing a property for a few hours. Further, having to conduct two sales on the same day increases the financing and labor costs for both the County and its chosen development partner. For 2015-2022, the County received 347 ROFR notices but only exercised ROFR 12 times due significantly to these constraints.

Under this bill, a County Executive, after exercising the right of first refusal, would be permitted to assign the contract to purchase a property to an affordable housing developer. The ability to assign the contract would allow the County to expeditiously use the funds annually appropriated to preserve or create long-term affordability without the need to reserve tens of millions of dollars solely to purchase and then transfer properties to affordable housing developers.

To increase accountability and transparency of the ROFR process, a developer would have to become a qualified entity through a rolling application process by demonstrating experience with and commitment to owning and operating affordable housing. A pool of qualified entities thereby would be available to quickly partner with the County when it chooses to exercise ROFR.

DHCA recommends amending Bill 38-23 to include the Rockville Department of Housing and Community Development among the list of automatically prequalified developers. Rockville DHCD's omission from the list was unintentional.

Finally, Bill 38-23 places a 5% cap on the deposit that an owner can charge if the right of first refusal is exercised. The purpose of limiting a required deposit to 5% is to prevent property owners from requiring deposits far in excess of industry norms for the purpose of thwarting the County's ability to exercise the right of first refusal within its 60-day timeline.