

Economic Impact Statement

Montgomery County, Maryland

Expedited Bill 38-23

Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Expedited Bill 38-23 would have an insignificant direct impact on economic conditions in the County in terms of the Council's priority economic indicators.

BACKGROUND AND PURPOSE OF EXPEDITED BILL 38-23

Right of first refusal (ROFR) is defined as a contractual right that allows an interested party, like a local government agency, the first right to purchase a property. Government agencies may use ROFR to acquire private property for sale as long as it matches the price of any third-party offer.¹ Governments often use this power to preserve affordable housing and prevent the conversion of subsidized rental properties for another use, if it is sold to another buyer.²

As established in the County Code, a rental housing owner must offer the County, Housing Opportunity Commission (HOC), and any tenant organization the right to buy the property before selling the rental housing to another party, barring certain exceptions as defined in the County Code.³ Expedited Bill 38-23 would amend the County Code to allow the County Executive to designate a qualified entity that may exercise ROFR.⁴ Housing developers are considered a qualified entity if they "demonstrate experience and commitment to owning and operating affordable housing through an application process."⁵

The proposed bill is intended to simplify the process by allowing the County, after exercising ROFR, to then assign the right to purchase to a qualified entity. According to the memorandum from the County Executive included in the Bill's introduction packet, the amendment would relieve the County of the necessity of purchasing a property and then having to sell it to a development partner, which requires the County to quickly have funds available for the purchase of the property.⁶ Further, Bill 38-23 would place a 5% cap on the deposit an owner can charge if ROFR.⁷

The Council introduced Expedited Bill 38-23, Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments, on behalf of the County Executive on September 26, 2023.⁸

¹ Damrosch, "Public Rights of First Refusal."

² "Rights of First Refusal."

³ Montgomery County Code § 53A-4, Accessed 9/27/2023.

⁴ Introduction Staff Report on Expedited Bill 38-23.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess, both, the impacts of Expedited Bill 38-23 on residents and private organizations in terms of the Council's priority economic indicators and whether the Bill would have a net positive or negative impact on overall economic conditions in the County.⁹

By allowing the County to assign ROFR to a qualified entity, the Bill could *indirectly* impact economic conditions. This will occur if the reform leads to ROFR being used more than it otherwise would under existing law. Given that the County has rarely acquired properties through ROFR in the past¹⁰ and the challenges with financing affordable housing projects, OLO is doubtful that the Bill would significantly increase the demand for acquiring properties among potential qualified entities.

However, if the Bill significantly increases the use of ROFR, the net indirect economic impact would be uncertain. For one, there is a small literature in theoretical economics on the effects of ROFR on sellers, rights-holders, and third-parties, with conflicting theoretical results.¹¹ Second, estimating the net impact would require weighing the Bill's uncertain effects on these market actors against the economic impacts of preserving more affordable rental units in the County than otherwise would occur in the absence of the Bill, which would include lowering the risk of foreclosure to certain resident households and increasing household spending.¹²

Thus, OLO concludes that the Bill would have an insignificant *direct* impact on the Council's priority economic indicators.

VARIABLES

Not applicable

IMPACTS

WORKFORCE ■ TAXATION POLICY ■ PROPERTY VALUES ■ INCOMES ■ OPERATING COSTS ■ PRIVATE SECTOR CAPITAL INVESTMENT ■ ECONOMIC DEVELOPMENT ■ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

Not applicable

Residents

Not applicable

⁹ Montgomery County Code, Sec. 2-81B.

¹⁰ It is worth noting that the County has rarely acquired properties through ROFR. See "Annual Report on the Montgomery County Right of First Refusal Program"; "Memorandum: Right of First Refusal," December 6, 2021; "Memorandum: Right of First Refusal," February 13, 2020.

¹¹ See, for example, Kahan, Leshem, and Sundaram, "First-Purchase Rights"; Brisset, Cochard, and Maréchal, "The Effect of a Right-of-First-Refusal Clause in a First-Price Auction with Heterogeneous Risk-Averse Bidders."

¹² Boyle et al., "The Regional Macroeconomic Impact of Projected Affordable Housing Developments."

Net Impact

Not applicable

DISCUSSION ITEMS

Given the information constraints in this analysis, Councilmembers may want to consider a more thorough assessment of the demand for acquiring properties through ROFR among potential qualified entities, the Bill's potential impacts on market transactions among sellers, rights-holders and third-parties, as well as the economic impacts to residents and businesses of preserving affordable housing.

WORKS CITED

- "Annual Report on the Montgomery County Right of First Refusal Program." Department of Housing and Community Affairs, Montgomery County Government, February 17, 2023.
- Boyle, Stephen, Kevin Connolly, Peter G McGregor, and Mairi Spowage. "The Regional Macroeconomic Impact of Projected Affordable Housing Developments: Facilitating the 'Levelling up' Agenda?" *Local Economy* 37, no. 5 (August 1, 2022): 384–402. <https://doi.org/10.1177/02690942221130022>.
- Brisset, Karine, François Cochard, and François Maréchal. "The Effect of a Right-of-First-Refusal Clause in a First-Price Auction with Heterogeneous Risk-Averse Bidders." *Journal of Institutional and Theoretical Economics: JITE* 176, no. 3 (September 2020): 526–48. <https://doi.org/10.1628/jite-2020-0034>.
- Damrosch, Peter. "Public Rights of First Refusal." *The Yale Law Journal* 129, no. 3 (January 2020): 812–64. <https://www.yalelawjournal.org/note/public-rights-of-first-refusal>
- "Introduction Staff Report on Expedited Bill 38-23, Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments." Montgomery County Council, September 26, 2023. <https://apps.montgomerycountymd.gov/ccllims/BillDetailsPage?RecordId=2816&fullTextSearch=38-23>.
- Kahan, Marcel, Shmuel Leshem, and Rangarajan K. Sundaram. "First-Purchase Rights: Rights of First Refusal and Rights of First Offer." *American Law and Economics Review* 14, no. 2 (December 1, 2012): 331–71. <https://doi.org/10.1093/aler/ahs014>.
- "Memorandum: Right of First Refusal." Planning, Housing, and Economic Development Committee, Montgomery County Council, February 13, 2020. https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2020/20200213/20200213_PHED4.pdf.
- "Memorandum: Right of First Refusal." Planning, Housing, and Economic Development Committee, Montgomery County Council, December 6, 2021. https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20211206/20211206_PHED3.pdf.
- "Rights of First Refusal." Local Housing Solutions. Accessed October 9, 2023. <https://localhousingsolutions.org/housing-policy-library/rights-of-first-refusal/>.

CAVEATS

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

AUTHOR

Stephen Roblin (OLO) prepared this report.