

Subject: Bill 22-19, Accessory Dwelling Unit – Licensing – Requirements - Amendments	
Purpose: To introduce agenda item – no vote expected	
Analyst: Jeff Zyontz, Senior Legislative Attorney	Committee: PHED
Keywords: #Accessory dwelling unit Other Search Terms: Accessory Apartment, DHCA licensing	

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATIONS

None

DESCRIPTION/ISSUE

Bill 22-19 would:

- (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 applicant and review of a 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.

SUMMARY OF KEY DISCUSSION POINTS

None

This report contains:

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MEMORANDUM

July 11, 2019

TO: County Council *JZ*
FROM: Jeffrey L. Zyontz, Senior Legislative Analyst
SUBJECT: Bill 22-19, Accessory Dwelling Unit – Licensing – Requirements - Amendments
PURPOSE: Introduction – no Council votes required

Bill 22-19, Accessory Dwelling Unit – Licensing – Requirements - Amendments, sponsored by Lead Sponsors Councilmembers Riemer, Friedson, Jawando and Council President Navarro, is scheduled to be introduced on July 16, 2019. A public hearing is tentatively scheduled for September 10 at 1:30 p.m.

Bill 22-19 would:

- (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 applicant and review of a accessory dwelling unit license; and¹
- (5) require reporting by the Executive of accessory dwelling unit problems and planned solutions.

This packet contains:	<u>Circle #</u>
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¹Accessory dwelling unit
Other Search Terms: Accessory Apartment, DHCA licensing

Bill No. 22-19
Concerning: Accessory Dwelling Unit –
Licensing – Requirements –
Amendments
Revised: 07/11/2019 Draft No. 5
Introduced: July 16, 2019
Expires: January 16, 2021
Enacted: _____
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

AN EXPEDITED 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 applicant and review of a 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 Relation
Sections 29-1, 29-19, 29-20, 29-24, 29-26, 29-27, and 29-28

Boldface	<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, 26-5, 26-18A, 29-1, 29-19, 29-20, 29-24, 29-26, 29-27,**
2 **and 29-28 are amended as follows:**

3 **2-140. Powers, duties and functions.**

4 * * *

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

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

11 * * *

12 **26-5. Space, use, and location.**

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

15 * * *

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

20 * * *

21 **26-18A. Outreach on Quality of Life Issues.**

22
23 The Executive must submit quarterly reports to the Council that includes
24 activities, plans, and objectives of Executive branch departments to address
25 instances in which an aggregation of problems has led to diminished quality of
26 life for affected residents in an affected community. Contents of the annual
27 report can include recommendations to increase enforcement of violations of

28 County laws related to housing maintenance standards, parking, and solid waste
29 disposal. Every quarterly report must include a section on accessory dwelling
30 units. The accessory dwelling unit section must identify any problems and
31 actions taken or planned actions to eliminate those problems. The Executive, or
32 the Executive’s designee, must hold semiannual meetings with County residents
33 to discuss these problems.

34 * * *

35 **29-1. Definitions.**

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

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

39 (a) Either:

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

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

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

46 * * *

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

49 Dwelling unit includes:

50 * * *

51 *Dwelling unit, multifamily:*

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

53 (d) an individual living unit.

54 * * *

55 **29-19. Licensing procedures.**

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

62 (b) Accessory [apartment]dwelling unit rental license.

63 (1) An owner of a lot or parcel in a zone that permits accessory
 64 [apartments]dwelling units may obtain a license to operate an
 65 accessory [apartment]dwelling unit if:

66 (A) the owner places a sign provided by the Director on the lot
 67 of the proposed accessory [apartment]dwelling unit within
 68 5 days after the Director accepts an application license.
 69 The sign must identify any requested waivers under
 70 Section 29-26(b). The sign provided by the Director must
 71 remain in place on the lot for a period of time and in a
 72 location determined by the Director.

73 (B) [the principal dwelling on the lot or parcel required for the
 74 proposed accessory apartment is the owner's primary
 75 residence.] the principal dwelling or accessory dwelling
 76 unit must be the primary residence of the applicant for an
 77 accessory dwelling unit rental license. Evidence of
 78 primary residence includes:

79 (i) the owner's most recent Maryland income tax
 80 return;

81 (ii) the owner's current Maryland driver's license; or

- 82 (iii) the owner’s real estate tax bill for the address of the
- 83 proposed accessory [apartment]dwelling unit; [and]
- 84 (C) the applicant certifies that an accessory dwelling unit is not
- 85 prohibited by any common ownership community bylaws
- 86 or rules, or a rental lease and any common ownership
- 87 community fees for the dwelling unit are no more than 30
- 88 days past due; and
- 89 (D) the Director finds that:
- 90 (i) the accessory [apartment]dwelling unit satisfies the
- 91 standards for an accessory [apartment]dwelling unit
- 92 in Section 59.3.3.3 and if needed, a Hearing
- 93 Examiner granted a waiver under Section 29-26; or
- 94 (ii) the accessory [apartment]dwelling unit was
- 95 approved under Article 59-G as a special exception
- 96 under the Zoning Ordinance applicable before
- 97 October 30, 2014 or [or] under 2014 Zoning
- 98 Ordinance §59.3.3.3 as a conditional use.
- 99 (2) Upon receipt of an application for an accessory
- 100 [apartment]dwelling unit license, the Director must:
- 101 (A) send a copy of the application to the Office of Zoning and
- 102 Administrative Hearings and the governing body for any
- 103 applicable common ownership community, within 5 days
- 104 after the date the application was accepted by the Director;
- 105 (B) inspect the lot or parcel identified in the application and
- 106 the proposed accessory [apartment]dwelling unit;

* * *

- 108 (3) The Director may renew a license for an accessory
109 [apartment]dwelling unit at the request of the applicant if:
110 (A) the applicant:
111 (i) attests that the number of occupants will not exceed
112 the requirements of Section 26-5 and there will be
113 no more than 2 residents in the [apartment]dwelling
114 unit who are older than 18 years;
115 (ii) attests that one of the dwelling units on the lot or
116 parcel will be the primary residence of the owner;
117 and
118 (iii) acknowledges that by obtaining a license the
119 applicant gives the Director the right to inspect the
120 lot or parcel including the accessory
121 [apartment]dwelling unit.
- 122 (4) The Director may renew a Class 1 license for an accessory
123 [apartment]dwelling unit that was approved as a special
124 exception, as a Class 1 license if the conditions of the special
125 exception remain in effect and the applicant is in compliance
126 with those conditions.
- 127 (5) The Director may transfer an accessory [apartment]dwelling unit
128 license to a new owner of a licensed [apartment]dwelling unit if
129 the new owner applies for the transfer. The conditions and fees
130 for any transfer are the same as the conditions and fees for a
131 license renewal.
- 132 (6) The Director must maintain a public list and map showing each
133 Class 3 license and each accessory [apartment]dwelling unit with
134 a Class 1 license.

135

* * *

136 **29-20. Fees.**

137 The annual license fee per dwelling unit is:

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

139 (1) \$44.00 per dwelling unit in an apartment complex or an
140 accessory [apartment]dwelling unit approved by special
141 exception; and

142 (2) \$59.00 per dwelling unit for all others;

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

145 (c) for a Class 3 accessory [apartment]dwelling unit license, \$101.00 per
146 unit.

147 The Executive may establish a higher annual fee by method (3) regulation in
148 an amount sufficient to pay the costs of administering this Chapter.

149 **29-24. Transferability.**

150

* * *

151 (b) Any person who takes over the operation of licensed rental housing may
152 transfer the license for the unexpired portion of the term for which it
153 was issued by applying to the Director within 15 days after taking over
154 operation and paying a license transfer fee of at least \$5 per dwelling
155 unit, but not exceeding \$25. Nothing in this Section affects the validity
156 of any sale, transfer, or disposition of any interest in real estate. This
157 subsection does not apply to accessory [apartments]dwelling units.

158

* * *

159 **29-26. Appeals, Waivers, and Objections.**

160

* * *

- 161 (b) Waivers and objections concerning any new accessory
162 [apartment]dwelling unit license.
- 163 (1) The applicant for a new license for an accessory
164 [apartment]dwelling unit may request a waiver of a standard to
165 the extent allowed by Section 59.3.3.3 or object to an adverse
166 finding of fact by the Director by filing a waiver or an objection
167 and a request for a hearing with the Office of Zoning and
168 Administrative Hearings.
- 169 (2) Any other aggrieved person may file an objection and request for
170 a hearing with the Office of Zoning and Administrative Hearings
171 by:
- 172 (A) objecting to any finding of fact by the Director; or
173 (B) alleging that on-street parking is inadequate.
- 174 (3) A request for a waiver or an objection must be submitted to the
175 Office of Zoning and Administrative Hearings within 30 days
176 after the date of the Director's report and must state the basis for
177 the waiver or objection.
- 178 (4) The Hearing Examiner must send notice of an adjudicatory
179 hearing to the applicant and any aggrieved person who filed an
180 objection within 10 days after the waiver or objection is received
181 and conduct any such hearing within 30 days of the date the
182 objection is received unless the Hearing Examiner determines
183 that necessary parties are unable to meet that schedule.
- 184 (5) The Hearing Examiner may only decide the issues raised by the
185 waiver or objection.
- 186 (6) The Hearing Examiner may waive [on-street] on-site parking
187 standards if:

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

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

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

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

204 **29-27. Contents of lease.**

205 * * *

206 (q) Permit the tenant to sublease the dwelling unit with the landlord's
207 written permission, which the landlord must not unreasonably
208 withhold. This subsection does not apply to:

- 209 (1) a rental dwelling unit in a common ownership community if a
210 valid legal restriction prohibits subleasing;
- 211 (2) an accessory [apartment] dwelling unit;
- 212 (3) a mobile home under Section 29-66; or
- 213 (4) an individual living unit.

214 * * *

215 **29-28. Leasing requirements generally.**

216 (a) A copy of each written lease form used by a landlord must be filed with
217 the Director.

218 (b) Each landlord must give each prospective tenant a copy of the proposed
219 lease. Prospective tenants must have the right to examine the proposed
220 lease at any location the tenant chooses.

221 (c) The landlord must offer each lease for an initial term of two years, and
222 a two-year term at each renewal, unless the landlord has reasonable
223 cause to offer a different term.

224 (1) This subsection does not apply to:

225 (A) a rental unit located in a common ownership community
226 if an applicable legal restriction prohibits a 2-year lease;

227 (B) an accessory [apartment] dwelling unit;

228 (C) a mobile home under Section 29-66; or

229 (D) an individual living unit.

230 * * *

231 **Sec. 2. Effective Date.**

232 This Act takes effect on December 31, 2019.

233
234 *Approved:*

235

Nancy Navarro, President, County Council Date

236 *Approved:*

237

Marc Elrich, County Executive Date

LEGISLATIVE REQUEST REPORT

Bill 22-19

Accessory Dwelling Unit – Licensing – Requirements - Amendments

DESCRIPTION:	Bill 22-19 would <ol style="list-style-type: none">(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 applicant and review of a accessory dwelling unit license; and(5) generally amend the law governing accessory dwelling units and habitable space.
PROBLEM:	Zoning Text Amendment (ZTA) 19-01 failed to address all issues concerning accessory apartments.
GOALS AND OBJECTIVES:	To conform the County Code to the changes made by ZTA 19-01 and address the issues surrounding accessory dwelling units that could not be addressed in a change to zoning.
COORDINATION:	Department of Housing and Community Affairs
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Jeffrey L. Zyontz, Senior Legislative Analyst
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	N/A