

MEMORANDUM

March 1, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Bill 5-19, Development Impact Tax for Transportation and Public School Improvements – Exemptions - Amendments

PURPOSE: Introduction – no Council votes required

Bill 5-19, Development Impact Tax for Transportation and Public School Improvements – Exemptions - Amendments, sponsored by Lead Sponsor Councilmember Riemer, is scheduled to be introduced on March 5, 2019. A public hearing is tentatively scheduled for March 26, 2019 at 1:30 p.m.¹

Bill 5-19 would amend the exemptions from the development impact tax for transportation and public school improvements for certain dwelling units. It would modify the impact tax exemption for all units in a development where at least 25% of the dwelling units are built under certain government regulations or agreements.

Background

The current law exempts a dwelling unit that is a moderately priced dwelling unit (MPDU), a dwelling unit built under a government regulation that limits the price or rent so that it is affordable to households earning less than 60% of the area median income, a personal living quarter with a price that meets the MPDU price standards, and a dwelling unit in an Opportunity Housing Project that meets the MPDU price standard. These exemptions provide a financial incentive for a developer to build an affordable dwelling unit. The current law also exempts all market priced dwelling units in a development if at least 25% of the units are in one of the exempt categories listed above.

Although each of the listed exempt categories produce an affordable dwelling unit, only an MPDU built under Chapter 25 would continue the price controls for 99 years. For example, the price restrictions for a Tax Credit unit serving people at 50% to 60% of area median income expire after 20 years. Once the restrictions expire, the dwelling unit may be rented at a market rate. The value of the benefit to the developer is increased significantly if affordability is only restricted to 15 or 20 years, compared to the 99-year MPDU agreement. Conversely, the value of the benefit to

¹#MoCoAffordableHousing

Other search terms: moderately priced housing, MPDU and development impact tax

the County is significantly decreased if the affordability restriction expires in only 15 to 20 years instead of 99 years. Bill 5-19 would limit this exemption for market rate units to a development with at least 25% MPDUs.

This packet contains:

Bill 5-19

Legislative Request Report

Circle #

1

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Bill No. 5-19
Concerning: Development Impact Tax for
Transportation and Public School
Improvements – Exemptions –
Amendments
Revised: February 27, 2019 Draft No. 3
Introduced: March 5, 2019
Expires: September 5, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Riemer

AN ACT to:

- (1) amend the exemptions from the development impact tax for transportation and public school improvements for certain dwelling units;
- (2) amend the impact tax exemption for all units in a development where at least 25% of the dwelling units are built under certain government regulations or agreements; and
- (3) generally amend the law governing the development impact tax.

By amending

Montgomery County Code
Chapter 52, Taxation
Sections 52-41 and 52-54

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:

Sec. 1. Sections 52-41 and 52-54 are amended as follows:

52-41. Imposition and applicability of development impact taxes.

* * *

(g) A development impact tax must not be imposed on:

- (1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville[,];
- (2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning less than 60% of the area median income, adjusted for family size;
- (3) any Personal Living Quarters unit built under [Sec. 59-A-6.15] Section 59-3.3.2.D, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
- (4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
- (5) any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1) [, (2), (3), or (4), or any combination of them];
- (6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone;
- (7) a house built by high school students under a program operated by the Montgomery County Board of Education; and

(8) a farm tenant dwelling.

* * *

52-54. Imposition and applicability of tax.

* * *

(c) The tax under this Article must not be imposed on:

- (1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville[,];
- (2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning equal to or less than 60% of the area median income, adjusted for family size;
- (3) any Personal Living Quarters unit built under Section 59-3.3.2.D, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
- (4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
- (5) any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1) [, (2), (3), or (4), or any combination of them];
- (6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone; or
- (7) a house built by high school students under a program operated by the Montgomery County Board of Education.

* * *

Sec. 2. Transition.

The amendments made in Section 1 must apply to any development impact tax that would be due or is paid after this Act takes effect.

Approved:

Nancy Navarro, President, County Council

Date

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Megan Davey Limarzi, Esq., Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 5-19

Development Impact Tax for Transportation and Public School Improvements – Exemptions - Amendments

DESCRIPTION:	Bill 5-19 would amend the exemptions from the development impact tax for transportation and public school improvements for certain dwelling units. It would modify the impact tax exemption for all units in a development where at least 25% of the dwelling units are built under certain government regulations or agreements.
PROBLEM:	The current law exempts market rate dwelling units from the impact tax in situations where the affordable units are not price controlled for a long time.
GOALS AND OBJECTIVES:	To limit the exemption of market rate dwelling units to situations where at least 25% of the units in a development are MPDUs with a long price restriction.
COORDINATION:	DHCA, County Attorney
FISCAL IMPACT:	To be provided
ECONOMIC IMPACT:	To be provided
EVALUATION:	To be provided
EXPERIENCE ELSEWHERE:	Unknown
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	N/A