



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Payment in Lieu of Taxes	Number 3-22T
Originating Department Department of Housing and Community Affairs	Effective Date March 28, 2022

Department of Housing and Community Affairs
Montgomery County Regulation on:

PAYMENT IN LIEU OF TAXES DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Issued by: County Executive
Regulation No. 3-22T

Authority: Code Section: 52-24

Supersedes: Executive Regulation No. 18-02AM, 27-06, COMCOR 52.18M

Council Review: Temporary Regulations Under Code Section 2A-15

Effective Date: March 28, 2022

Sunset Date: None

SUMMARY: This temporary regulation amends the criteria under which the Director of Finance authorizes a payment in lieu of taxes (PILOT) for certain affordable housing developments.

ADDRESS: Information and copies of this regulation are available from the Department of Housing and Community Affairs (Department), Division of Housing, 1401 Rockville Pike, 4th Floor, Rockville, MD 20852

STAFF: Frank Demarais, Deputy Director
CONTACT email: frank.demarais@montgomerycountymd.gov

BACKGROUND: Chapter 52-24 of the Montgomery County Code, 2014, as amended, established the provisions for the approval of a payment in lieu of taxes (PILOT) for certain affordable housing developments. This temporary regulation establishes a minimum payment in lieu of taxes for certain qualifying housing developments and generally amends the provisions governing a payment in lieu of real property taxes for certain housing developments. This temporary regulation is needed to permit PILOT agreements to be executed under revisions to Chapter 52-24 taking effect on March 28, 2022.



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MONTGOMERY COUNTY CODE CHAPTER 52, ARTICLE I. IN GENERAL, 52-18M PAYMENTS IN LIEU OF TAXES FOR CERTAIN HOUSING DEVELOPMENTS -- REGULATIONS

COMCOR 52.18M.01 Payment in Lieu of Taxes

52.18M.01.01 Information Required in a Request for a PILOT

A property owner requesting a payment in lieu of taxes agreement (PILOT) must submit the following information to the Director of Housing and Community Affairs:



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A. Property Information.

1. Street address of the qualifying housing development, as defined under Section 52-24(b) of the County Code (“Property”).
2. Legal description of the Property.
3. The Property’s tax account numbers.

B. Property owner information.

1. Name of the Property owner of the qualifying housing development.
2. Legal status of the Property owner (individual, corporation, etc.), including tax status (nonprofit or for profit) under state law.
3. Copies of documents legally establishing the Property owner’s business entity, if applicable.
4. Federal tax identification numbers of the Property owner.

C. Project information.

1. Total number of rental dwelling units on the Property.
2. Total number of rental dwelling units that are considered to be affordable as a result of financial support or regulation by a public agency, and the level of affordability for each affordable dwelling unit.
3. Length of time the affordable dwelling units will remain affordable under the rent restrictions on the Property.
4. Description of the source or authority requiring the rent restrictions applicable to the affordable dwelling units.
5. Projected cash flow for the Property for the length of the proposed PILOT agreement.



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6. Copy of the proposed regulatory agreement and other documents establishing the rent restrictions on the Property’s affordable dwelling units.

D. Other information as requested by the Department of Housing and Community Affairs.

52.18M.01.02 Eligibility Criteria and Amount of PILOT

When authorized by state law and upon the recommendation of the Director of Housing and Community Affairs, the Director of Finance may agree to accept a PILOT, including special area taxes, that would otherwise be levied on a qualifying housing development. The eligibility criteria to qualify for a PILOT, and the maximum amount of PILOT that may be provided are as follows:

A. Group homes.

1. The Property owner must have nonprofit tax status under state law.
2. The group home must be constructed or substantially rehabilitated using public agency support as described in Title 7 of the Tax-Property Article of the Maryland Annotated Code.
3. The group home must provide housing to special populations as defined by the Department of Health and Human Services.
4. The PILOT provided for each affordable rental dwelling unit is an amount equal to the average Montgomery County homeowner tax credit authorized under Section 9-104 of the Tax-Property Article of the Maryland Annotated Code.

B. Affordable rental dwelling units owned or controlled by the Housing Opportunities Commission.

1. The Property must be owned or controlled by the Housing Opportunities Commission.
2. The PILOT must allow a 100 percent reduction of the Property’s real property tax liability.

C. Property owned or controlled by a non-profit housing developer, with at least 50% of the dwelling units affordable.



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1. To qualify for a PILOT:
 - (a) the Property must be owned or controlled by a non-profit housing developer;
 - (b) at least 50% of the affordable dwelling units located on the Property are built under a government regulation or binding agreement with the County on or after March 28, 2022;
 - (c) the rent for at least 50% of the Property’s dwelling units is limited so that it is affordable to households whose income is no more than 60% of the area median income; and
 - (d) the rent restrictions on the affordable dwelling units must be for a period of at least 15 years.
2. Under this Subsection C, the PILOT provided is for 100% reduction of the Property’s real property taxes for a period of at least 15 years (“Minimum Affordability Term”), but for no longer than the number of years that rents charged for 50% of the dwelling units remain restricted to households whose income is no more than 60% of the area median income.
3. Non-profits, or entities owned or controlled by non-profits, purchasing property already leased to tenants whose income does not meet the requirements of this Subsection C may have a period of up to 24 months to bring the rents into compliance (“Grace Period”). During the Grace Period, the non-profit, or the entity owned or controlled by a non-profit, may be permitted a 100% reduction of the Property’s real property taxes, but the Grace Period must not be included in calculating the Minimum Affordability Term.

D. Rental housing with project-based Section 8 units.

1. The Property must have project-based rental units developed under the Department of Housing and Urban Development’s (HUD) Section 8 Project-Based Rental Assistance Program (Section 8).
2. The original HUD contract for the Section 8 housing must have expired or is about to expire, and the Property’s owner voluntarily renews the contract.
3. The Property tax reduction provided by the PILOT is equal to the financial loss to the Property resulting from the Property owner’s participation in the Section 8 program.



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- 4. If a Property is owned or controlled by a non-profit housing developer and all of the dwelling units are subject to a Section 8 contract, the PILOT must exempt 100% of the Property’s real property tax that would otherwise be levied as long as the Section 8 contract is in effect.

E. Affordable elderly housing.

- 1. The affordable elderly housing must meet the requirements of Title 7 of the Tax-Property Article the Maryland Annotated Code.
- 2. The PILOT may provide up to a 100 percent reduction of the Property’s real property tax liability.

F. Other rental housing.

- 1. The affordable rental housing must be constructed or substantially rehabilitated using public agency support as described in Title 7 of the Tax-Property Article of the Maryland Annotated Code.
- 2. Except as provided in Subsection F.3, the PILOT provided is: a) equal to the average Montgomery County homeowner tax credit authorized under Section 9-104 of the Tax-Property Article of the Maryland Annotated Code multiplied by the number of affordable dwelling units; or b) a percentage reduction in the Property’s real property taxes equal to 80 percent in the first through fifth years, 70 percent in the sixth year, 60 percent in the seventh year, 50 percent in the eighth year, 40 percent in the ninth year, and 30 percent in the tenth year, and thereafter the PILOT expires.
- 3. The PILOT may provide up to a 100 percent reduction of the real property tax liability for a Property in which a HUD-designated community housing development organization (CHDO) is the owner, developer, or sponsor of the affordable housing.

52.18M.01.03 Severability

Each provision of these regulations is severable and if any provision, clause, sentence, section, word, or part is held illegal, unconstitutional, or inapplicable to any person or circumstance such illegality, invalidity, unconstitutionality, or inapplicability will not affect or impair any of the remaining provisions, clauses, sentences, sections, words, or parts of this regulation or its application to other persons or circumstances.



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52.18M.01.04 Effective Date

This regulation takes effect upon its receipt by the County Council and will remain in effect for the shorter of 90 days or the effective date of permanent regulations.

Marc Elrich
County Executive

Date: 3/24/2022

Approved as to Form and Legality
Office of the County Attorney

By:
Date: 3-14-22