



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Housing at Metrorail Stations Act: Payments in Lieu of Taxes - WMATA	Number 6-21
Originating Department Department of Finance	Effective Date June 29, 2021

Montgomery County Regulation on:
HOUSING AT METRORAIL STATIONS ACT

Department of Finance

Issued by: County Executive
Regulation No. 6-21
COMCOR No. 52.24A.00

Authority: Montgomery County Code, Chapter 52 Section 52-24A
Council Review: Method (1) under Code Section 2A-15
Register Vol. 38, Issue 3

Comment Deadline: March 31, 2020
Effective Date: June 29, 2021
Sunset Date: December 31, 2032

SUMMARY:

This regulation establishes the procedure to administer and implement the Housing at Metrorail Stations Act, pursuant to adoption of Bill 29-20 and specifies (a) requirement by the developer of the qualifying development, as a condition of receiving payment in lieu of taxes (“PILOT”) under subsection (c) of Bill 29-20, to agree in writing that to the best of its knowledge, information, and belief: (1) none of the contractors or subcontractors hired to perform work on the qualifying development site had three (3) or more final, non-appealable penalties assessed against it in the amount of \$5,000 or more in the three (3) years prior to being hired for the qualifying development for violations of applicable wage and hour laws, including the County’s prevailing wage law and any applicable Maryland wage and hour laws; and (2) at least 25% of the workers constructing the qualifying development were residents of the County while performing the work; (b) the requirement of the developer to provide quarterly reports to the Executive during construction demonstrating compliance with the conditions for receiving a PILOT; and (c) the requirement of the developer to provide annual reports to the Executive during the PILOT’s 15-year Covenant Period demonstrating compliance with the affordable housing requirements for receiving a PILOT.



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ADDRESS: Written comments on this regulation should be sent to:
 David Crow
 Fiscal Projects Manager, Division of Fiscal Management
 Department of Finance
 101 Monroe Street, 15th Floor
 Rockville, MD 20850

STAFF CONTACT: For further information or to obtain a copy of this regulation, please contact David Crow at (240) 777-8859 or david.crow@montgomerycountymd.gov.

**MONTGOMERY COUNTY CODE CHAPTER 52, ARTICLE I. GENERAL, SEC. 52-24A
 PAYMENTS IN LIEU OF TAXES FOR CERTAIN PROPERTY LEASED FROM WMATA –
 REGULATIONS**

COMCOR 52.24A.00 Payments in Lieu of Taxes for Certain Property Leased from WMATA

COMCOR 52.24A.00.01 General Provisions

- a. Authority. In accordance with the authority conferred under Chapter 52 Taxation, Article I, General of the Montgomery County Code, the County Executive hereby promulgates this regulation to administer and implement the Housing at Metrorail Stations Act (“Act”) in Montgomery County, Maryland.
- b. Applicability. The Act requires the Director of Finance to negotiate a PILOT for qualified development on Washington Metropolitan Area Transit Authority (“WMATA”) property. The PILOT must exempt 100% of the real property tax that would otherwise be levied for a period of 15 years but must not include an exemption for any tax levied under an applicable special taxing area law.

COMCOR 52.24A.00.02 Definitions

The definitions of terms used in this regulation are set out in Chapter 52, Section 52-24A, of the County Code. For purposes of this regulation, the following words and phrases have the following meanings unless the context clearly indicated otherwise:

- a. *Area median income* or “AMI” means the median household income for the Washington, DC, metropolitan area as estimated by the U.S. Department of Housing and Urban Development.



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- b. *Covenant period* means a period of 15 years during which each affordable unit in the qualifying development must be maintained as affordable housing under the requirements of Section 52-24A of the County Code and this regulation.
- c. *Developer* means a business entity that:
 - 1. is in good standing with the State of Maryland;
 - 2. leases land from WMATA at a metro station; and
 - 3. builds, owns, or manages a qualifying development on the leased land.
- d. *Property* means one or more parcels of real property which contain a qualifying development pursuant to Chapter 52-24A of the County Code.

COMCOR 52.24A.00.03 PILOT Agreement

For a developer to receive an abatement for property taxes on the leased property, as calculated at 100% of the County's real property tax due on the leased property for a period of 15 years, a developer must enter into a PILOT with the County. The PILOT must include the following requirements:

- a. The developer must not use a contractor or subcontractor for any part of the qualifying development if they have three (3) or more final penalties totaling at least \$5,000 each, for violations of applicable wage and hour laws over the past three (3) years.
- b. The developer must ensure that 25% of the workers constructing the qualifying development are residents of Montgomery County.
- c. The property must contain a qualifying development pursuant to 52-24A of the County Code.
- d. The qualifying development must be more than 8 stories above ground and located on land owned by WMATA and leased to the developer by WMATA.
- e. At least 50% of the square footage of the qualifying development must consist of residential apartment units located in high rise residential apartment buildings.
- f. At least 25% of the qualifying development's Moderately Priced Dwelling Units ("MPDUs") required under Chapter 25A of the County Code must be maintained and rented



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to persons or households whose income is not more than 50% of the area median income (“AMI”).

- g. The developer must execute, and the County must record among the land records, a covenant to maintain the affordable housing required under Section 52-24A of the County Code and these regulations which runs with the land for 15 years from the date that the qualifying development receives a use and occupancy permit for residential units. If the use and occupancy permit is issued on a per building or per floor basis, separate covenants will be recorded to accurately reflect the commencement date of the covenants. At the Director’s discretion, the affordable housing covenant required under this subsection g. may be included as part of the MPDU covenant required under Chapter 25A; however, nothing in Section 52-24A or these regulations alters the MPDU requirements and procedures under Chapter 25A of the County Code.
- h. The developer must notify the Director of the addition, sale, transfer, assignments, or other termination of the property as a qualifying development not less than thirty (30) days prior to the effective date of any such event.
- i. The developer must provide annually verified compliance certificates on a form approved by the Director, and supporting documentation, to the Director every year during the covenant period. Supporting documentation includes: (i) rent rolls, (ii) household income certifications, (iii) financial audits, and (iv) any other documentation that the director deems necessary to ensure the developer’s compliance with Section 52-24A of the County Code and this regulation.
- j. The developer must permit the County to examine its books and records upon reasonable notice and during normal business hours. The developer must retain its books and records for a period of five (5) years after the expiration of the covenant period.
- k. The developer must comply in all respects with the provisions of Section 7-501 of the Tax-Property Article and Section 52-24A of the County Code.

COMCOR 52.24A.00.04 Compliance Reporting

- a. *Quarterly Developer Compliance Report.* From the commencement of construction and until the issuance of a certificate of occupancy, the developer will submit to the County, on a calendar quarter basis or any applicable portion thereof, certified payroll reports for all contractors and subcontractors on the qualifying development. The certified payroll reports must list, for each employee on the qualifying development’s payroll: a unique employee/position identifier number; the employee’s initials; annual salary or hourly rate,



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as applicable; and zip code of residence. The general contractor must certify as to the accuracy of the information provided.

- b. *Annual Company PILOT Certification.* For the duration of the PILOT Agreement, the developer must provide an annual certification to the Director, signed by an appropriately authorized officer of the company, certifying that:
1. a minimum of 50% of the leasable square footage of the qualifying development consists of high-rise residential apartment units; and
 2. at least 25% of the qualifying development's MPDUs required under Chapter 25A of the County Code are maintained or rented to persons or households at 50% of the AMI.
- c. *Repayment of Unpaid Taxes.* If during the term of the PILOT the developer, or its successor or assign, fails to comply with the provisions of the PILOT, this regulation, or Section 52-24A of the County Code at any point during a tax levy year: upon the County's demand, the developer must immediately repay to the County the amount of any and all taxes, plus applicable interest for unpaid property tax and penalties, which would have been otherwise due and payable on the property for that tax levy year but for this PILOT Agreement.

The annual certification must be received by January 31 of each year following the calendar year being certified. The annual certification should be sent to:

Michael J. Coveyou, Director
Montgomery County Department of Finance
101 Monroe Street, 15th Floor
Rockville, Maryland 20850

COMCOR 52.24A.00.05 Severability

If a court holds that a portion of this regulation is invalid, the other portions remain in effect.



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COMCOR 52.24A.00.06 Effective Date

This regulation must be submitted to the Council and takes effect upon approval by the County Council.

Handwritten signature of Marc Elrich in cursive script.

5/27/21

Marc Elrich,
County Executive

Approved as to Form and Legality
Office of the County Attorney

By: Taggart Hutchinson
Date: May 14, 2021