



## **SUBJECT**

Bill 22-19, Accessory Dwelling Unit – Licensing – Requirements - Amendments. Lead Sponsors: Councilmembers Riemer, Friedson, and Jawando, and Council President Navarro. Co-Sponsors: Councilmembers Albornoz and Hucker.

## **EXPECTED ATTENDEES**

Dan McHugh, Division Chief, Department of Housing and Community Affairs  
Hadi Mansouri, Acting Director, Department of Permitting Services

## **COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION**

- Final action on Bill 22-19 as amended. Roll call required.
- The Planning, Housing, and Economic Development (PHED) Committee has recommended (3-0) approval of Bill 22-19 with amendments to lower the ceiling height for habitable space and make technical changes.

## **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 dwellings; (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 application and review of an accessory dwelling unit license; and (5) require reporting by the Executive of accessory dwelling unit problems and planned solutions.

## **SUMMARY OF KEY DISCUSSION POINTS**

- Bill 22-19 is companion legislation to Zoning Text Amendment (ZTA) 19-01, which was adopted unanimously on July 23, 2019 and becomes effective on December 31, 2019.
- The bill would align the County Code with the new requirements of ZTA 19-01 and specify building standards for accessory dwelling units (ADUs).

### **This report contains:**

Staff Report to the Council

Page 1

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**MEMORANDUM**

September 19, 2019

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst

SUBJECT: Bill 22-19, Accessory Dwelling Unit – Licensing – Requirements - Amendments

PURPOSE: Action – Roll call vote required

**Planning, Housing, and Economic Development Committee recommendation (3-0):  
Approve Bill 22-19 with amendments.**

Bill 22-19, Accessory Dwelling Unit – Licensing – Requirements - Amendments, sponsored by Lead Sponsors, Councilmembers Riemer, Friedson, and Jawando, and Council President Navarro, and Co-Sponsors, Councilmembers Alborno and Hucker, was introduced on July 16, 2019. A public hearing was held on September 10, and a Planning, Housing and Economic Development Committee worksession was held on September 16.

The PHED Committed voted (3-0) to recommend approval of Bill 22-19 with amendments. Substantively, the Committee recommends an amendment from Bill 22-19 as introduced to reduce the minimum ceiling of habitable space from 7 feet to 6 feet 8 inches. The Committee also recommends the technical changes recommended by staff.

**Background**

Bill 22-19 is companion legislation to Zoning Text Amendment (ZTA) 19-01, which was adopted unanimously on July 23, 2019 and becomes effective on December 31, 2019. The bill would align the County Code with the new requirements of ZTA 19-01 and specify building standards for accessory dwelling units (ADUs).

Specifically, 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 dwellings;
- (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 application and review of an accessory dwelling unit license; and

- (5) require reporting by the Executive of accessory dwelling unit problems and planned solutions.

### **Public Hearing**

At the public hearing on September 10, 2019, four speakers shared their views on Bill 22-19. The Director of the Department of Housing and Community Affairs (DHCA), Aseem Nigam, testified on behalf of the County Executive in support of the bill. Mr. Nigam noted that the bill aligns the Code with the companion legislation, ZTA 19-01 (©16). DHCA requested an amendment to the bill in order to move a new reporting requirement from Chapter 26 to Chapter 29 of the Code. DHCA may wish to discuss this request further at the worksession.

The CEO of Habitat for Humanity Metro Maryland, John Paukstis, also provided testimony in support of the bill (©19-20). In particular, Habitat supports provisions of the bill allowing a homeowner to occupy an ADU instead of the main unit, as well as provisions allowing for lower ceiling heights in basements. Habitat also believes that a “grace period” should be provided for “current owners of illegal apartments to convert and license their accessory units.”

Mr. Ed Amatetti, President of the Montgomery County Taxpayers League, as well as County resident Ms. HESSIE L. HARRIS, spoke in opposition to the bill. Mr. Amatetti cited a University of Michigan study indicating that ADU construction in California did not increase affordable housing (©21-22). He indicated support for using publicly-funded housing vouchers, and for using direct incentives to developers to increase the amount of affordable housing in the County.

County resident Ms. HARRIS noted several concerns with the language of the bill and her belief that “[i]t is highly questionable that it will withstand judicial scrutiny.” (©17-18) With the exception of new language under Section 29-19(b)(1)(C) regarding an attestation requirement, all of the specific language noted by Ms. HARRIS already exists in current law. (In the opinion of Council staff, the language in the current law, as well as the language amended by Bill 22-19, is legally sufficient.) Ms. HARRIS further stated a concern that “[t]here is no penalty or sanction if the owner is found to have been untruthful.” (This is inaccurate; an owner who intentionally submits a false attestation would be subject to DHCA enforcement. Any violation of Chapter 29 is a Class A violation. *See* Section 29-8.)

### **Planning, Housing and Economic Development Worksession**

On September 16, the PHED Committee held a worksession on Bill 22-19. Participants in the discussion included: Aseem Nigam, Director, DHCA; Ehsan Motazed, Division Chief, Department of Permitting Services; Ivan Eloisa, Program Manager, DHCA; Chris Anderson, Chief of Community Development, DHCA; and Christine Wellons, Council Legislative Attorney.

The Committee discussed Bill 22-19 and the issues raised in the Council staff report to the Committee. The Committee noted that the purpose of Bill 22-19 is to align the code with ZTA 19-01 concerning accessory dwelling units.

- 1) Should the name “accessory apartment” be changed to “accessory dwelling unit” in the Montgomery County Code?

The bill would change the term “accessory apartment” to “accessory dwelling unit” throughout the Code. The Council made this same change in terminology in the Zoning Ordinance when it approved ZTA 19-01. “Accessory dwelling unit” is the phrase that is more descriptive of the type of housing that the bill contemplates. It is a dwelling unit that may be inside a single housing unit or detached on the same lot as a single dwelling unit. Apartments are multi-unit structures that have a common hallway between units.

The Committee recommends making this change in terminology, consistent with ZTA 19-01.

- 2) Should there be changes to the standards for habitable space?

At least half of the floor area of every habitable room must have a ceiling height of at least 7 feet. Currently, the Department of Permitting Services (DPS) would allow obstructions reducing the height to 6 feet, 8 inches. The proposed 6 feet, 4 inches standard provided for under the bill is consistent with the 2018 International Building Code (IBC). DPS, including the Fire Marshal, did not object to the proposed 6 feet, 4 inches standard. DPS raised the issue that the 2018 IBC also would change the minimum ceiling height from 7 feet to 6 feet 8 inches.

In order to update the County Code consistent with the IBC, the Committee voted (3-0) to recommend the following amendment to lines 16 through 19 of the bill:

- (d) *Ceiling height.* At least one-half of the floor area of every habitable room must have a ceiling height of at least ~~[[7 feet]] 6 feet 8 inches, except that a beam, girder, duct or other obstruction may project to within 6 feet 4 inches of the finished floor.~~

- 3) Should the Executive be required to report quarterly on any accessory dwelling unit problems and actions taken to eliminate problems?

Some of the testimony heard in the course of approving ZTA 19-01 included concerns that the quality of neighborhoods would go down due to parking, traffic, school overcrowding and other such observable issues. The bill’s requirement for frequent reporting and problems allows for legislative responses to those problems if necessary.

DHCA did not object to any aspect of the amendments proposed by Bill 22-19 during the Committee’s worksession. The Committee recommends approval of this provision in bill 22-19 as introduced.

- 4) Should the City of Takoma Park be relieved of County licensing requirements and have their own licensing and inspection requirements for accessory apartments?

A Resolution from the City of Takoma Park asked that:

Applications for ADUs within existing single family homes, not requiring review for setbacks or other external zoning issues, be exempt from the County permitting process provided they are inspected and approved for licensing through a comparable municipal licensing program.<sup>1</sup>

In order to maintain existing practices, the Committee recommends that ADUs within the City of Takoma Park continue to be under the purview of DHCA and DPS. The County approves the addition of a dwelling unit. Thereafter City licenses are required. The City of Takoma Park is free to exercise its jurisdictional authority. The Committee did not recommend any changes to Bill 22-19 based on the City of Takoma Park's resolution.

- 5) Should an ADU be barred for 27.5 years from being converted into a short-term rental property?

The following concern was submitted by the Citizens Coordinating Committee on Friendship Heights (©27):

We do not propose a permanent bar of licensing an ADU as a rental. Instead, we propose a bar of licensing an ADU as a short-term rental under Chapter 54 for 27.5 years. The basis relates to investments. A 27.5-year depreciation recover period can be used by an onsite landlord of a building in which at least one dwelling unit is rented out and 80% or more of the gross rental income is rental income from dwelling units within the building.

ADUs are a long-term housing option. The addition of an ADU, even if used for free housing for a family member, adds to the County's supply of housing. By contrast, short-term rentals allow for visitation but not new residents.

The County Code allows either an ADU or a short-term rental on a single property, but not both. In order to convert an ADU into a short-term rental, the owner would have to fundamentally change the structure so that it is not a complete dwelling unit (e.g., remove the kitchen) and then get a short-term rental license from HHS once the ADU license has expired.

The Committee did not recommend any changes to Bill 22-19 on the basis of the Coordinating Committee's testimony.

- 6) Should the Code allow an owner to live in either the principal dwelling or the ADU?

The Committee recommends retaining the bill's provision that allows an owner to occupy either the ADU or the principal unit. As noted by Habitat for Humanity (©19-20), providing this option would give greater flexibility to older adults and individuals with disabilities who wish to reside in the ADU and rent out the principal unit.

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<sup>1</sup> The City also asked for the ability of the City to waive parking requirements. That request was accommodated under ZTA 19-01.

- 7) Should the applicant certify the property's homeowners' association status?

The bill requires an applicant to certify that an ADU would not conflict with the requirements of a homeowners' association.

The Committee recommends retaining this language in the bill. The language is consistent with the certification requirement for short-term rental licenses. In the Committee's opinion, the purpose of the text in Bill 22-19 is to put an applicant on notice of possible covenants and to put the applicable home owners' association of a pending license application. It is up to that association to enforce its own covenants. The County does not enforce private covenants.

- 8) Should current owners of illegal apartments be given a "grace period" in which to convert and license their accessory units?

The Habitat for Humanity Metro Maryland believes that a "grace period" would "encourage owners to comply with County licensing laws, which means the units will be inspected for compliance and safety." (©19-20).

While this issue might warrant further study, the Committee believes that current DHCA enforcement mechanisms should be used to address non-compliant units. For purposes of this Bill, the Committee is not recommending adding a grace period. The DHCA process for giving a notice of violation allows time for an owner of an unlicensed unit to apply for a license and do the work necessary to meet the standards for an accessory dwelling unit.

- 8) Should the Hearing Examiners' review of objection to an accessory dwelling unit license delete the examination of distances from other accessory dwelling units?

ZTA 19-01 removed the distance requirement between accessory dwelling units. Lines 209-213 of the bill make the hearing examiner's review consistent with those changes. The Committee recommends enactment of Bill 22-19 as introduced.

- 10) Why is Bill 22-19 concerning Section 29-20 different from what was introduced?

Amendments reflected in lines 137-157 of the of the bill for Council action reflects the approval of Council Bill 20-19 on September 17, 2019. Bill 20-19 will be effective before December 31, 2019. Bill 22-19 will be effective on December 31, 2019. The text in bill 22-19 now reflects the text in bill 20-19.

The Committee voted (3-0) to recommend approval of the bill with the above-mentioned amendment, and the technical amendments recommended by staff. See the amended bill at ©1.

This packet contains:	<u>Circle #</u>
Bill 22-19 with PHED Amendments	1
Legislative Request Report	11
Fiscal and Economic Impact statement	12

Testimony	
Aseem Nigam, DHCA	16
Hessie L. Harris	17
Habitat for Humanity Metro Maryland	19
Montgomery County Taxpayers League	21
Montgomery County Civic Federation re: ZTA 19-01	23
City of Takoma Park Resolution re: ZTA 19-01	25
Letter from Citizens Coordinating Committee on Friendship Heights	27

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Bill No. 22-19  
 Concerning: Accessory Dwelling Unit –  
Licensing – Requirements –  
Amendments  
 Revised: 09/11/2019 Draft No. 9  
 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  
 Co-sponsors: Councilmembers Alborno, and Hucker

**AN 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 application and review of an 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 Relations  
 Sections 29-1, 29-19, 29-20, 29-24, 29-26, 29-27, and 29-28

<b>Boldface</b>	<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:*





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

33 \* \* \*

34 **29-1. Definitions.**

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

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

38 (a) Either:

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

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

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

45 \* \* \*

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

48 Dwelling unit includes:

49 \* \* \*

50 *Dwelling unit, multifamily:*

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

52 (d) an individual living unit.

53 \* \* \*

54 **29-19. Licensing procedures.**

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

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

62 (1) An owner of a lot or parcel in a zone that permits accessory  
63 [apartments]dwelling units ~~[[may]]~~ must obtain a license to  
64 operate an accessory [apartment]dwelling unit to live in or to rent  
65 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]]~~ is the primary residence of the applicant~~  
77 ~~for an 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

(iii) the owner’s real estate tax bill for the address of the proposed accessory [apartment]dwelling unit; [and]

(C) the applicant certifies to the Director that an accessory dwelling unit is not prohibited by any common ownership community [[bylaws or rules, or a rental lease]] governing documents and any common ownership community fees for the dwelling unit are no more than 30 days past due; and

(D) the Director finds that:

(i) the accessory [apartment]dwelling unit satisfies the standards for an accessory [apartment]dwelling unit in Section 59.3.3.3 and if needed, a Hearing Examiner granted a waiver under Section 29-26; or

(ii) the accessory [apartment]dwelling unit was approved under Article 59-G as a special exception under the Zoning Ordinance applicable before October 30, 2014 or [or] under 2014 Zoning Ordinance §59.3.3.3 as a conditional use.

(2) Upon receipt of an application for an accessory [apartment]dwelling unit license, the Director must:

(A) send a copy of the application to the Office of Zoning and Administrative Hearings and the governing body for any applicable common ownership community, within 5 days after the date the application was accepted by the Director;

(B) inspect the lot or parcel identified in the application and the proposed accessory [apartment]dwelling unit;

\* \* \*

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

136

\* \* \*

137 **29-20. Fees.**

138 (a) Except as provided in subsections (b) and (c), the annual licensing fee  
139 per dwelling unit is:

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

141 (A) \$44.00 per dwelling unit in an apartment complex or an  
142 accessory ~~[[apartment]]~~ dwelling unit approved by special  
143 exception; and

144 (B) \$59.00 per dwelling unit for all others;

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

147 (3) for a Class 3 accessory ~~[[apartment]]~~ dwelling unit license \$101.00  
148 per unit.

149 (b) *Fee exemption for an accessory dwelling unit occupied by an individual  
150 with disabilities.*

151 (1) A license applicant is exempt from any fee associated with the  
152 licensure of an accessory ~~[[apartment]]~~ dwelling unit occupied by  
153 an individual with disabilities.

154 (2) To establish that an individual with disabilities occupies an  
155 accessory ~~[[apartment]]~~ dwelling unit, a license applicant annually  
156 must certify, on a form provided by the Director, that an occupant  
157 of the accessory ~~[[apartment]]~~ dwelling unit:

158

\* \* \*

159 **29-24. Transferability.**

160

\* \* \*

161 (b) Any person who takes over the operation of licensed rental housing may  
162 transfer the license for the unexpired portion of the term for which it

163 was issued by applying to the Director within 15 days after taking over  
 164 operation and paying a license transfer fee of at least \$5 per dwelling  
 165 unit, but not exceeding \$25. Nothing in this Section affects the validity  
 166 of any sale, transfer, or disposition of any interest in real estate. This  
 167 subsection does not apply to accessory [apartments]dwelling units.

168 \* \* \*

169 **29-26. Appeals, Waivers, and Objections.**

170 \* \* \*

171 (b) Waivers and objections concerning any new accessory  
 172 [apartment]dwelling unit license.

173 (1) The applicant for a new license for an accessory  
 174 [apartment]dwelling unit may request a waiver of a standard to  
 175 the extent allowed by Section 59.3.3.3 or object to an adverse  
 176 finding of fact by the Director by filing a waiver or an objection  
 177 and a request for a hearing with the Office of Zoning and  
 178 Administrative Hearings.

179 (2) Any other aggrieved person may file an objection and request for  
 180 a hearing with the Office of Zoning and Administrative Hearings  
 181 by:

182 (A) objecting to any finding of fact by the Director; or

183 (B) alleging that on-street parking is inadequate.

184 (3) A request for a waiver or an objection must be submitted to the  
 185 Office of Zoning and Administrative Hearings within 30 days  
 186 after the date of the Director's report and must state the basis for  
 187 the waiver or objection.

188 (4) The Hearing Examiner must send notice of an adjudicatory  
 189 hearing to the applicant and any aggrieved person who filed an

190 objection within 10 days after the waiver or objection is received  
 191 and conduct any such hearing within 30 days of the date the  
 192 objection is received unless the Hearing Examiner determines  
 193 that necessary parties are unable to meet that schedule.

194 (5) The Hearing Examiner may only decide the issues raised by the  
 195 waiver or objection.

196 (6) The Hearing Examiner may waive [on-street] on-site parking  
 197 standards if:

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

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

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

209 [(8) The Hearing Examiner may waive the distance separation  
 210 standards between Accessory Apartments when the separation  
 211 does not result in an excessive concentration of similar uses,  
 212 including other conditional uses, in the general neighborhood of  
 213 the proposed Accessory Apartment.]

214 **29-27. Contents of lease.**

215 \* \* \*



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

- 219 (1) a rental dwelling unit in a common ownership community if a
- 220 valid legal restriction prohibits subleasing;
- 221 (2) an accessory [apartment] dwelling unit;
- 222 (3) a mobile home under Section 29-66; or
- 223 (4) an individual living unit.

224 \* \* \*

225 **29-28. Leasing requirements generally.**

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

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

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

234 (1) This subsection does not apply to:

- 235 (A) a rental unit located in a common ownership community
- 236 if an applicable legal restriction prohibits a 2-year lease;
- 237 (B) an accessory [apartment] dwelling unit;
- 238 (C) a mobile home under Section 29-66; or
- 239 (D) an individual living unit.

240 \* \* \*

241 **Sec. 2. Effective Date.**

242 This Act takes effect on December 31, 2019.

## LEGISLATIVE REQUEST REPORT

Bill 22-19

*Accessory Dwelling Unit – Licensing – Requirements - Amendments*

<b>DESCRIPTION:</b>	Bill 22-19 would <ol style="list-style-type: none"><li>(1) Replace the phrase “accessory apartment” with “accessory dwelling unit”.</li><li>(2) amend the standards for minimum ceiling heights for basements or cellars used for accessory dwelling;</li><li>(3) amend the accessory dwelling unit licensing procedures concerning ownership and common ownership associations;</li><li>(4) require information and notice concerning common ownership communities in the applicant and review of a accessory dwelling unit license; and</li><li>(5) generally amend the law governing accessory dwelling units and habitable space.</li></ol>
<b>PROBLEM:</b>	Zoning Text Amendment (ZTA) 19-01 failed to address all issues concerning accessory apartments.
<b>GOALS AND OBJECTIVES:</b>	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.
<b>COORDINATION:</b>	Department of Housing and Community Affairs
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Jeffrey L. Zyontz, Senior Legislative Analyst
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	N/A



OFFICE OF MANAGEMENT AND BUDGET

Marc Elrich  
County Executive

Richard S. Madaleno  
Director

MEMORANDUM

August 16, 2019

TO: Nancy Navarro, President, County Council

FROM: Richard S. Madaleno, Director, Office of Management and Budget *RSM*  
Michael Coveyou, Acting Director, Department of Finance *michaelcoveyou*

SUBJECT: FEIS for Bill 22-19, Accessory Dwelling Unit – Licensing – Requirements - Amendments

Please find attached the Fiscal and Economic Impact Statements for the above-referenced legislation.

RSM:cm

cc: Andrew Kleine, Chief Administrative Officer  
Fariba Kassiri, Deputy Chief Administrative Officer  
Debbie Spielberg, Special Assistant to the County Executive  
Dale Tibbitts, Special Assistant to the County Executive  
Lisa Austin, Office of the County Executive  
Barry Hudson, Director, Public Information Office  
David Platt, Department of Finance  
Dennis Hetman, Department of Finance  
Monika Coble, Office of Management and Budget  
Chrissy Mireles, Office of Management and Budget  
Pofen Salem, Office of Management and Budget

Office of the Director

101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800  
[www.montgomerycountymd.gov/omb](http://www.montgomerycountymd.gov/omb)

**Fiscal Impact Statement**  
**Bill 22-19, Accessory Dwelling Unit – Licensing – Requirements - Amendments**

**1. Legislative Summary**

Bill 22-19 is companion legislation to ZTA 19.01 and addresses the issues surrounding accessory dwelling units (ADU) that could not be addressed in a change to zoning. This legislation would do the following:

- Replace the phrase "accessory apartment" with "accessory dwelling unit",
- Amend the standards for minimum ceiling heights for basements or cellars used for accessory dwelling,
- Amend the accessory dwelling unit licensing procedures concerning ownership and common ownership associations,
- Require information and notice concerning common ownership communities by the applicant and review of an accessory dwelling unit license,
- Require reporting by the Executive of accessory dwelling unit problems and planned solutions, and
- Generally amend the law governing accessory dwelling units and habitable space.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

Bill 22-19 will not impact County expenditures or revenue. This is companion legislation to ZTA 19.01, which streamlines the ADU review process. Although this Bill requires a new quarterly reporting requirement, the reporting requirement can be automated. The cost associated with automating the required report can be absorbed with the existing resources.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

See Question #2, Bill 22-19 will not impact County expenditures or revenue.

**4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

**5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

Not applicable.

**6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Not applicable, Bill 22-19 does not authorize future spending.

**7. An estimate of the staff time needed to implement the bill.**

DHCA can implement this Bill with little impact on staff time.

**8. An explanation of how the addition of new staff responsibilities would affect other duties.**

Not applicable.

**9. An estimate of costs when an additional appropriation is needed.**

No additional appropriation is needed to implement Bill 22-19.

**10. A description of any variable that could affect revenue and cost estimates.**

See Question #2.

**11. Ranges of revenue or expenditures that are uncertain or difficult to project.**

Not applicable.

**12. If a bill is likely to have no fiscal impact, why that is the case.**

Not applicable.

**13. Other fiscal impacts or comments.**

Not applicable.

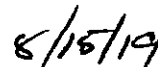
**14. The following contributed to and concurred with this analysis:**

Tim Goetzinger, Department of Housing and Community Affairs

Pofen Salem, Office of Department Management and Budget



Richard S. Madaleno, Director  
Office of Management and Budget



Date

**Economic Impact Statement**  
**Bill 22-19, Accessory Dwelling Unit – Licensing – Requirements – Amendments**

**Background:**

Bill 22-19 is companion legislation to ZTA 19.01 and would do the following:

- Replace the phrase "accessory apartment" with "accessory dwelling unit",
- Amend the standards for minimum ceiling heights for basements or cellars used for accessory dwelling,
- Amend the accessory dwelling unit licensing procedures concerning ownership and common ownership associations,
- Require information and notice concerning common ownership communities in the applicant and review of an accessory dwelling unit license, and
- Require reporting by the Executive of accessory dwelling unit problems and planned solutions.

**1. The sources of information, assumptions, and methodologies used.**

The source of information in the preparation of the economic impact statement was the Department of Housing and Community Affairs (DHCA). There were no other sources of information, assumptions, or methodologies needed by the Department of Finance (Finance) in the formulation of this economic impact statement.

**2. A description of any variable that could affect the economic impact estimates.**

As noted in the fiscal impact statement, Bill 22-19 will not impact County expenditures or County revenue. This is companion legislation to ZTA 19.01, which streamlines the accessory dwelling unit review process, and although this Bill requires a new quarterly reporting requirement, the reporting requirement can be automated. The goal of the legislation is 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.

**3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

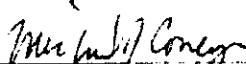
The Bill will have no measurable effect on employment, spending, savings, investment, incomes, and property values in the County.

**4. If a Bill is likely to have no economic impact, why is that the case?**

See number 2.

**5. The following contributed to or concurred with this analysis:**

David Platt and Dennis Hetman, Finance.

  
\_\_\_\_\_  
Michael Coveyou, Acting Director  
Department of Finance

8/14/19  
Date

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE MARC  
ELRICH ON BILL 22-19, ACCESSORY DWELLING UNIT –  
LICENSING – REQUIREMENTS - AMENDMENTS**

**September 10, 2019**

Good afternoon Council President and Councilmembers, my name is Aseem Nigam and I am the Director of the Department of Housing and Community Affairs. It is a pleasure for me to appear before you on behalf of the County Executive in support Bill 22-19, which amends Chapter 26 and Chapter 29 of the Montgomery County Code.

The proposed Bill is companion legislation to Zoning Text Amendment (ZTA) 19.01 and provides the appropriate amendments so that the ZTA and the County Code properly conform. The department appreciates the additional language regarding common ownership protections but does suggest a technical amendment to the Bill so that the reporting requirement proposed in Chapter 26 would be moved to Chapter 29. This would consolidate all ADU requirements in a single chapter, which would help to more streamline program administration.

We look forward to working with the Council on this legislation.

Thank you.

September 10, 2019

Hessie L. Harris

**Testimony in Opposition to Bill-22-19 (Accessory Dwelling Unit  
( Licensing – Requirement –Amendments) Before The  
Montgomery County Council**

**This bill is very poorly drafted and deceptive. It is highly questionable that it will withstand judicial scrutiny. It is lacking in many ways but time constraints will only allow me to address some of them. Section One states that a hearing may be held and a written report and decision issued on any waiver or objection.**

**The verb “may” is permissive. In contrast “shall” is mandatory. This language does not require anything to be done other than a stated decision. There is no requirement for explanation or the standards or analysis employed to reach the decision.**

**Section 28-18A requirement for quarterly reports speaks of an aggregation of problems that has led to diminished quality of life. Who determines the sufficient aggregation and what are the standards for judging a diminished quality of life. The language could be deemed void for vagueness as is the case with other provisions here. Also it states that the report can include recommendation to increase enforcement of violations which suggest that lack of enforcement is expected. It states that the report must identify problems and actions taken or planned to rectify them. But there is no statement of what what conditions will be considered to be problems.**

**Section 29-10(b) (1) (A) references the sign that the director instructs the owner to place five days after the application for license is accepted. That conflicts with the 30 days that the Director has to indicate that the owner’s property is out of compliance. Under this construct, the sign goes up whether there is violation or not. In addition, the bill requires that the Director determine the time length that a sign should remain in place. That is inconsistent application without a statement of standards which indicate why applicants can be so treated differently.**



**Provision "B" of that section states that the principal dwelling is the owner's primary residence. From the initial town hall meeting when the expansion of the ADU statute was "discussed" and throughout further written and verbal statements, the Council maintained that the owner had to live on the property but could live in either dwelling. Indeed Council Member Reimer stated and emphasized in a televised interview with Chris Plante, the local newscaster that the owner had to live on the property. That statement was made in response to several of the concerns that had been voiced by opponents of the then proposed legislation.**

**The primary residence statement indicates that the owner does not have to live there all the time. The evidence of primary residence that this bill requires allows for a ruse that has often been attempted and exposed. An income tax return, current driver's license and real estate tax bill at the address of the property does not prove that he dwells there most of the time. Indeed, they could own other real estate that he really lives in and pays the real estate tax for.**

**There are attestation requirements for the owner. One states that the rental is not prohibited by a Home Owners Association. Another is that the site is the owner's primary residence. Still another addresses the occupancy of the ADU. There is no penalty or sanction if the owner is found to have been untruthful. That means that the Council eschews its responsibilities at law with regard to occupancy.**

**Section 29-27 states that the landlord must not unreasonably withhold his permission for tenant to sublease the dwelling unit. Such provision is tortious interference with the right to contract. That lease is a private contract between the landlord and tenant. The government cannot interject itself into that contract unless the landlord's action is contrary<sup>to</sup> law such as Civil Rights or Open Housing statutes. Also, as noted earlier even if such was allowable the "unreasonably withheld" language is void for vagueness.**



5

September 10, 2019

Montgomery County Council  
Stella Warner Council Office Building  
100 Maryland Avenue  
Rockville, MD 20850

Testimony regarding Bill 22-19, Accessory Dwelling Unit – Licensing – Requirements - Amendments

Good Afternoon,

My name is John Paukstis, President and CEO of Habitat of Humanity Metro Maryland, a non-profit affordable homeownership provider working in Montgomery County since 1982.

I would like to thank Lead Sponsors, Councilmembers Riemer, Friedson, Jawando and Navarro for introducing this important legislation and Co-Sponsor Councilmember Alborno for his support. I am here today to voice Habitat for Humanity's strong support for Bill 22-19.

Habitat for Humanity Metro Maryland has worked in Montgomery County for 37 years, providing opportunities for low-income families to purchase homes in an otherwise unaffordable market and providing critical health and safety repairs to families struggling to maintain their homes. Over the years, we have met hundreds of families in desperate need of safe, decent and affordable housing in our County. Families that would love to live in single-family neighborhoods but who are generally priced out of those areas. We have also met hundreds of low-income homeowners who could greatly benefit from a second income stream that would come from an Accessory Dwelling Unit.

As you know, we strongly supported ZTA 19-01 and were thrilled to see the legislation unanimously approved by the Council. Habitat believes the Bill 22-19 is an important companion bill to that text amendment.

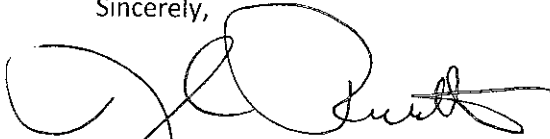
HFHMM believes that it is important to allow the homeowner to choose whether to live in the main unit or the accessory unit. This option provides important flexibility to older adults and residents living with disabilities to build accessible ADUs and rent the main unit. It also allows owners to downsize into a smaller unit while renting out the main house to a family that could otherwise not afford to purchase a home and live in that neighborhood.

Moreover, HFHMM supports the addition of language allowing for slightly lower heights in basements caused by beams, girders, ducts, and other obstructions typically found in basements. We believe this allowance drastically reduces cost and increases feasibility of converting basements without dramatically changing the livability of the space.

Lastly, Habitat hopes the council will consider a grace period for current owners of illegal apartments to convert and license their accessory units. We hope that this will encourage owners to comply with County licensing laws, which means the units will be inspected for compliance and safety.

We appreciate the Council's dedication to supporting housing that's affordable. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paukstis", written over a large, stylized circular flourish.

John Paukstis  
President & CEO  
Habitat for Humanity Metro Maryland, Inc.

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**Testimony on the proposed ZTA 19-01, September 10th, 2019**  
**Ed Amatetti, President, Montgomery County Taxpayers League**  
**eamatetti@comcast.net, 301.728,6505**

The MC Taxpayers League shares the County Council's deep concern for affordable housing. It is one of our organization's top priorities, and like you, we want to see our county get it right. Therefore, we recommend that the County Council hold off on the current ZTA. There is ample evidence that it is not the right approach as it is written. Based on the experiences of other jurisdictions, the proposed Amendment cannot be expected to achieve its objective of increasing affordable housing unless accompanied by financial incentives, such as a county loan program or vouchers for low-income residents. Even with these financial incentives, the evidence is decidedly mixed without other remedies.

A September 2018 study by the Univ of Massachusetts *Dept of Landscape Architecture & Regional Planning* of 759 ADUs constructed in California over a 15-year period beginning 2003 found no units marketed as low-income housing and that "ADUs did increase housing inventory, but ADUs as low-income housing remained a paper calculation." Another study in Portland by ADU Academy started by an ADU advocate found although nearly 20% of ADUs were FREE of rent, 80% of rentals were near or higher than market rate and that the overall average rental was not "cheaper" – meaning ADUs codified the construction of living space for "friends and family," but did nothing to increase the overall stock of affordable housing. The San Francisco experience does show some lower ADU rents, but the city offers low and no interest loans, small grants, forgivable construction loans, technical assistance, and property management support - none of which is included in the proposed ZTA.

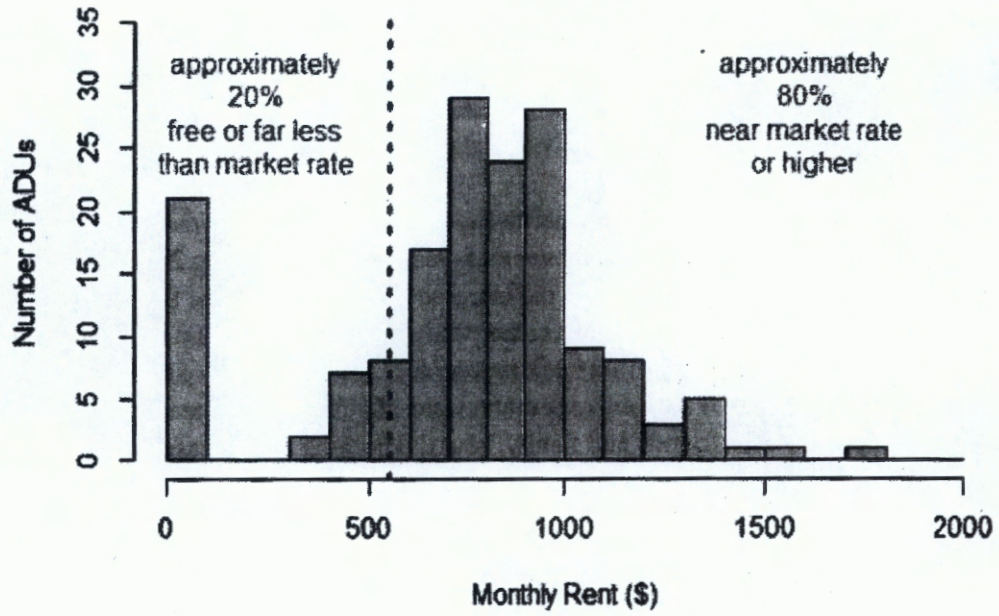
This evidence tells us to stop what we are proposing here and develop an evidence-based and economically sound strategy -- hopefully, one that does not also disregard impacts on school overcrowding or stormwater and other environmental concerns, or the cost of unnecessarily changing the character of established single-family neighborhoods: all to little or no benefit.

This doesn't mean we give up on affordable housing. It simply instructs to pursue other, more cost-effective and less disruptive, measures such as: 1) expanding publicly-funded vouchers using local and federal funding to directly help people who need housing, without disrupting neighborhoods; or 2) providing direct financial incentives to developers. Let's open ourselves up to such long-term solutions as real, comprehensive transit and road planning, instead of dokey, piecemeal, ineffective measures such as Bus Rapid Transit. This will allow us to build more multi-family dwellings far into the future – as would reducing the cost of school construction which has gotten completely out of control. High-cost schools means fewer classrooms, development moratoriums, and less affordable housing stock. We can loosen other restrictive zoning/growth regulations and mandates, for which our county is legendary.

And when assessing potential strategies, let's start to really quantify objectives/benefits expected to be realized, and address all associated costs and potential impacts, instead of covering them up, and compare their relative cost-effectiveness. The more efficient we are, the more we can do for those in need! This level of analysis is consistent with your pending Council Bill 10-19 requiring an Economic Impact Statement for every bill considered by this Council, to be prepared with Office of Legislative Oversight input. Let's put it to work on this ZTA.

You owe this to residents and those you seek to help. The Taxpayers League would be honored to help.

### ADU rents in Portland, circa 2013



Dear Council President Navarro and Members of the County Council:

*Rec'd 7/11<sup>o</sup>*

The Montgomery County Civic Federation (MCCF) has a strong record of supporting affordable housing. We have not received more questions and correspondence regarding any zoning, land use or master plan issue in the last 6 years as we have about the proposed ZTA 19-01 and the manner that it has been introduced and subsequently rushed. This includes 21 master, sector and functional plans, The Subdivision Regulations Rewrite, Amendments to the Subdivision Staging Policy and over 70 ZTAs.

Previous Council leaders called for robust public outreach regarding significant changes in Chapter 59, Zoning Ordinance including the last streamlining of Accessory Apartment regulations (ZTA 12-11), Short Term Rentals (16-03) and Cell Towers in Residential Zones (ZTA 16-05). ZTA 19-01 represents even more significant changes than those previous ZTAs, 12-11 and 16-03. For each of those undertakings, multiple separate public feedback meetings with the Planning Department were convened and they were helpful in sorting out the details and goals of Amendments to the Code. We request you do the same with this ZTA. Most of the speakers at the February 26 public hearing were opposed to the ZTA as written, not one speaker stated that they were denied an application due to regulations except for one who was from Rockville which has its own more restrictive regulations. The Council has a responsibility to ensure that adequate public input through public meetings is received.

This is the first time the program has been reviewed since the 2012-14 major streamlining and the 2 subsequent streamlinings of the program. There has been a lot of inaccurate information posted countywide and distributed via email from the Committee and the Council regarding this ZTA and current conditions. Without knowing the baseline and evaluating what happened during this time frame how can this proposal be advanced?

When looking at jurisdictions closer to home, the District of Columbia (~90), Arlington (20) and Fairfax (91) each have less than 100 registered units while Alexandria and Prince George's do not allow accessory units of any type. Fairfax, most similar in size to Montgomery, allows units by special exception but only for those 55+ or disabled. Howard County also only allows separate units for seniors and disabled persons.

So far the Council has failed to adequately discuss and address the issue of these proposed detached units in small lot zones converting to short term rentals for visitors. There is so much research available regarding the effect of Airbnb on available housing for long term tenants, the effect on rents and the effect on the cost of housing. There is no doubt that short term rentals have removed units from the long term rental market. If you approve this ZTA without prohibiting new detached units from converting to short term rentals, you will be continuing to undermine affordable housing. Jurisdictions around the world are implementing more restrictive regulations regarding short term rentals. A simple google search on this topic will provide a long list of research from independent institutions.

Regarding stormwater management, currently anything that does not require 5,000 sf of land disturbance is not required to obtain a sediment control permit or stormwater management concept approval. The Bill referred to in today's packet only requires a drainage device from roof (like a

downspout) and the applicant self certification. There is no inspection for drainage or stormwater management. It is obvious that most of the detached units would be built in downcounty unincorporated areas that already have inadequate infrastructure. If the Council passes this ZTA, the Council should ensure that these units which will remove trees and create more impervious surfaces have appropriate stormwater management on the property where they will be built.

As our previous testimony indicates the MCCF does not currently support the current ZTA and we respectfully request that

The Council refer the matter to the Planning Department for public feedback sessions as has been done for previous similar Amendments.

The Council request and post accurate data regarding accessory units and short term rentals and that any previous inaccurate data be clarified.

The Council address the issue of the effect of short term rentals on long term rental availability in Montgomery County by assigning this for separate study to the Office of Legislative Oversight. DC and Virginia have much more restrictive STR licensing than Montgomery because they recognized that the Airbnb market has distorted the market and is reducing the number of long term rentals.

Thank you for your consideration of these issues of great importance to the public interest.

Respectfully,  
Harriet Quinn, Chair  
Planning and Land Use Committee  
Montgomery County Civic Federation, Inc.

Introduced by:

**CITY OF TAKOMA PARK, MARYLAND**

**RESOLUTION 2019-16**

**RESOLUTION SUPPORTING MONTGOMERY COUNTY ZONING TEXT  
AMENDMENT 19-01 REGARDING ACCESSORY DWELLING UNITS**

- WHEREAS,** Zoning Text Amendment 19-01 was introduced on January 15, 2019, and concerns Sections 3.1.6 and 3.3.3 of the Montgomery County Zoning Ordinance dealing with Accessory Dwelling Units (ADUs); and
- WHEREAS,** the proposed ZTA removes the conditional use approval for all accessory dwelling units, as well as distance requirements, absolute size limits and other barriers to the building and approval of ADUs; and
- WHEREAS,** existing requirements that apply to the review of design and construction in designated historic districts would remain in effect under the ZTA; and
- WHEREAS,** as identified in the draft Housing and Economic Development Strategic Plan, the City of Takoma Park prioritizes the need to broaden access to affordable housing and facilitate aging in place; and
- WHEREAS,** ADUs can provide a mix of housing types and prices across the City; including homeownership and residential rental housing for families with and without children, seniors, persons with disabilities, singles, and multigenerational families; and
- WHEREAS,** in past decades, a number of homes in Takoma Park had additional units in them, helping provide housing options for residents; many of these homes were changed back to single-family homes because of zoning regulations; and
- WHEREAS,** because of the pattern of housing development across the City of Takoma Park, many properties do not meet the current County ADU distance and parking requirements; and
- WHEREAS,** the City of Takoma Park licenses County-approved ADUs as rental units resulting in annual or biennial inspections for health, safety, and property maintenance code compliance; and
- WHEREAS,** there is an unknown number of unlicensed ADUs in the City which could be brought into the licensing and inspection program under the proposed ZTA, allowing protections for both tenants and property owners; and



**WHEREAS,** many single-family homeowners have chosen not to pursue licensing for ADUs under the existing zoning requirements due to burdensome procedures, lack of on-site parking, and proximity to approved ADUs in the neighborhood; and

**WHEREAS,** all of the City of Takoma Park is within one mile of a public transit station (the Takoma Metro Station or the Takoma Langley Transit Center) and the City is also served by 18 bus routes and seven bike share stations; and

**WHEREAS,** additional housing opportunities located near public transit stations could reduce the number of personal vehicles used for daily commutes, resulting in a net reduction in traffic volume and greenhouse gas emissions; and

**WHEREAS,** approximately 14% of Takoma Park households have no cars, and 43% have only one vehicle; and

**WHEREAS,** on-street parking availability varies greatly by street, depending on the number of homes without driveways, width of the street and adjacency to uses that attract people in cars, such as commercial areas, parks and institutions; and

**WHEREAS,** in certain cases, it may be advantageous for municipal governments such as Takoma Park to assume some responsibilities now performed by Montgomery County regarding ADUs such as assessing off-street parking availability or facilitating the licensing and inspection of ADUs, and an option for this should be provided in the ZTA; and

**WHEREAS,** the proposed ZTA furthers the Council Priorities of A Livable Community For All, an Environmentally Sustainable Community, and Community Development for an Improved & Equitable Quality of Life.

**NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF TAKOMA PARK, MARYLAND** supports ZTA 19-01 with the following conditions:

1. That a municipality be allowed to reduce the number of required on-site parking spaces from the number required by Montgomery County or establish an alternative parking waiver process.
2. Applications for ADUs within existing single family homes, not requiring review for setbacks or other external zoning issues, be exempt from the County permitting process provided they are inspected and approved for licensing through a comparable municipal licensing program.

Adopted this 20th day of March, 2019

Attest:

\_\_\_\_\_  
Jessie Carpenter, CMC  
City Clerk

# Citizens Coordinating Committee on Friendship Heights

September 2019

Nancy Navarro, President  
Montgomery County Council  
100 Maryland Avenue, 6th Floor  
Rockville, MD 20850

Re: Bill 22-19, Accessory Dwelling Unit- Licensing- Requirements - Amendments

Dear Council President Navarro:

The Citizens Coordinating Committee on Friendship Heights (CCCFH), which represents 19 communities and over 20,000 residents, provides these comments on Bill 22-19.

The County Council has enacted ZTA 19-01, which expands allowances for accessory dwelling units (ADU). A companion bill, number 22-19, in the main would amend County Code Chapter 29, Landlord Tenant Relations. *See*

[https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2019/20190716/20190716\\_4A.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2019/20190716/20190716_4A.pdf). A public hearing on the bill is tentatively scheduled for September 10. Please include these comments in the legislative record.

At this juncture, we do not recommend any changes to bill 22-19's proposed amendments to Chapter 29.

Our principal concern is that if an ADU is built, the unit must be excluded from being licensed as a short-term rental under Chapter 54, Transient Lodging Facilities. This issue was raised in Jeffrey Zyontz/Pamela Dunn's June 14, 2019 memo for the June 18 Worksession on ZTA 19-01. The issue was: "Should an ADU be allowed to convert to a short-term rental license?" The Zyontz/Dunn's memo said:

"ADUs are a long-term housing option. The addition of an ADU, even if used for free housing for a family member, adds to the County's supply of housing. Short-term rentals are mini-hotels that allow for visitation but not new residents.

"Montgomery County Code allows either an ADU or a short-term rental on a single property, but not both. It is possible to get a construction permit or well/septic for an ADU approved by DPS, get licensed by DHCA as an ADU for 1 year, and then get a short-term rental license from HHS once the ADU license has expired."

Representing the Communities of Brookdale, Chevy Chase Village, Chevy Chase West, Drummond, Glen Echo Heights, Green Acres, Kenwood, Kenwood Condominium, Kenwood Forest II, Kenwood House Cooperative, Kenwood Place Condominium, Somerset, Somerset House Condominiums, Springfield, Sumner Village, Village of Friendship Heights, Westbard Mews, Westmoreland, Westwood Mews, and Wood Acres

The Council considered short-term rentals relative recently. On October 10, 2017, the County Council adopted ZTA 16-03 and Bill 2-16 to define short-term residential rentals and to establish limited use standards and licensing regulations. The ZTA became effective on July 1, 2018. The underlying testimony stated concerns that short-term residential rentals will, among others:

- create nuisances (noise, traffic, underage drinking, litter, public urination, drugs, and other illegal activities);
- bring an influx of strangers to the neighborhood on a regular basis;
- be unsafe because they do not meet fire and safety standards;
- destabilize and disrupt communities by driving out long-term residents;
- reduce the availability of affordable housing;
- be an enforcement problem;
- turn into party houses;
- create parking problems; and
- be overconcentrated in unincorporated areas of the County.

See [https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/zta/2017/20171010\\_18-30.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/zta/2017/20171010_18-30.pdf) at pp 2-3.

In the course of the hammering out of ZTA 16-03, housing advocates testified to their concerns that the short-term rentals would remove housing units from use by residents and turn them into units for transients (to use the word in the title of Chapter 54). The same concerns apply here if units built as ADUs become short term rentals. That would be totally inconsistent with the public rationales offered for ZTA 19-01. For example, as reported by [ggwash.org](http://ggwash.org): “‘We’re doing this because this is increasingly a way families want to live,” Councilmember Hans Riemer, the bill’s chief sponsor said to WTOP.’ ‘Adult children want to be able to live with their parents or grandparents. Families want to be able to invite grandparents or adult children to live with them or to take in a renter.’” <https://ggwash.org/view/73141/montgomery-county-just-made-it-easier-to-build-an-accessory-apartment>.

We do not propose a permanent bar of licensing an ADU as a rental. Instead, we propose a bar of licensing an ADU as a short-term rental under Chapter 54 for 27.5 years. The basis relates to investments. A 27.5-year depreciation recover period can be used by an onsite landlord of a building in which at least one dwelling unit is rented out and 80% or more of the gross rental income is rental income from dwelling units within the building.

Thank you for considering these comments.

Sincerely,

Melanie Rose White  
Chair, Citizens Coordinating Committee on Friendship Heights

Cc: Jeffrey Zyontz  
Pamela Dunn