

Bill No. 22-19
Concerning: Accessory Dwelling Unit –
Licensing – Requirements –
Amendments
Revised: 09/11/2019 Draft No. 9
Introduced: July 16, 2019
Enacted: September 24, 2019
Executive: September 30, 2019
Effective: December 31, 2019
Sunset Date: None
Ch. 18, Laws of Mont. Co. 2019

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

Boldface

Heading or defined term.

Underlining

Added to existing law by original bill.

[Single boldface brackets]

Deleted from existing law by original bill.

Double underlining

Added by amendment.

[[Double boldface brackets]]

Deleted from existing law or the bill by amendment.

* * *

Existing law unaffected by bill.

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

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

* * *

29-26. Appeals, Waivers, and Objections.

* * *

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

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

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

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

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

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

(4) The Hearing Examiner must send notice of an adjudicatory 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.

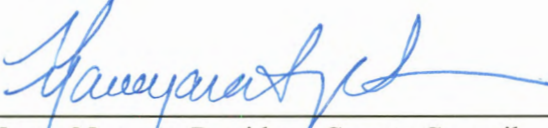
- 234 (1) This subsection does not apply to:
 - 235 (A) a rental unit located in a common ownership community
 - 236 if an applicable legal restriction prohibits a 2-year lease;
 - 237 (B) an accessory [apartment] dwelling unit;
 - 238 (C) a mobile home under Section 29-66; or
 - 239 (D) an individual living unit.

240 * * *

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

242 This Act takes effect on December 31, 2019.

Approved:



Nancy Navarro, President, County Council
Date 9/24/19

Approved:



Marc Elrich, County Executive
Date 9/30/19

This is a correct copy of Council action.



Mary Anne Paradise, Acting Clerk of the Council
Date 10/7/19