

Bill No. 26-21  
Concerning: Taxation – Payments in Lieu  
of Taxes – Affordable Housing -  
Amendments  
Revised: 12-14- 2021 Draft No. 5  
Introduced: June 29, 2021  
Enacted: December 14, 2021  
Executive: December 27, 2021  
Effective: March 28, 2022  
Sunset Date: \_\_\_\_\_  
Ch. 37, Laws of Mont. Co. 2021

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsors: Councilmembers Riemer and Friedson

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**AN ACT** to:

- (1) establish a minimum payment in lieu of taxes for certain qualifying housing developments;
- (2) eliminate the annual maximum aggregate amount of all payments in lieu of taxes approved under this Section; and
- (3) generally amend the law governing a payment in lieu of real property taxes for certain housing developments.

By amending

Montgomery County Code  
Chapter 52, Taxation  
Section 52-24

<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:*

1           **Sec. 1. Section 52-24 is amended as follows:**

2   **52-24. Payments in lieu of taxes for certain housing developments.**

3           (a)   Definitions. In this Section, the following words have the following  
4                   meanings.

5                   Area median income means the median household income for the  
6                   Washington, DC metropolitan area as estimated by the U.S. Department  
7                   of Housing and Urban Development, adjusted by household size based  
8                   on the occupancy standard for the unit.

9                   Director means the Director of Finance or the Director's designee.

10                  Payment in lieu of taxes means an authorized payment made by the owner  
11                  of a qualifying housing development instead of paying the County real  
12                  property tax, including a County real property tax levied under a special  
13                  area taxing law, that would otherwise be due.

14                  Section 8 Project-Based Rental Assistance means a program operated by  
15                  the U.S. Department of Housing and Urban Development that provides  
16                  housing assistance payments under a contract with the owner of a multi-  
17                  family rental housing property to make up the difference between rent  
18                  affordable to a low income household earning between 50 and 80 percent  
19                  of the area median income and the approved rent for an adequate housing  
20                  unit pursuant to 42 U.S.C. §1437f, as amended.

21           (b)   When authorized by state law, the Director [of Finance] may agree to  
22                   accept a negotiated payment in lieu of the real property tax that would  
23                   otherwise be levied on a qualifying housing development. A qualifying  
24                   housing development is any housing development of which the owner is  
25                   expressly eligible under state law to make payments in lieu of taxes.

26           (c)   [[The]] When authorized by state law, the Director must offer a payment  
27                   in lieu of taxes for a qualifying housing development:

- 28           (1)   owned or ~~[[operated]]~~ controlled by the Housing Opportunities  
 29                   Commission that exempts 100% of the real property tax that would  
 30                   otherwise be levied; ~~[[and]]~~ ~~[[or]]~~
- 31           (2)   owned or controlled by a non-profit housing developer if at least  
 32                   50% of the dwelling units located on the property receiving the  
 33                   payment in lieu of taxes are built under a government regulation or  
 34                   binding agreement with the County limiting the rent charged for  
 35                   the unit for at least 15 years to make the unit affordable to  
 36                   households earning 60% or less ~~[[than 65%]]~~ of the area median  
 37                   income. The offer must exempt 100% of the real property tax that  
 38                   would otherwise be levied for a period of at least 15 years, but no  
 39                   more than the number of years that rents charged for 50% of the  
 40                   dwelling units must remain restricted to households earning 60%  
 41                   or less of the area median income; or
- 42           (3)   owned or controlled by a non-profit housing developer if all of the  
 43                   dwelling units are subject to a Section 8 Project-Based Rental  
 44                   Assistance Payment contract. The offer must exempt 100% of the  
 45                   real property tax that would otherwise be levied as long as the  
 46                   Section 8 Project-Based Rental Assistance Payment contract is in  
 47                   effect.
- 48           (d)   The Director must not offer a ~~[[partial]]~~ payment in lieu of taxes for a  
 49                   qualifying housing development under this Section for any property that  
 50                   has already received a payment in lieu of taxes under any Section ~~[[with~~  
 51                   at least 25% but less than 50% of the dwelling units built under a  
 52                   government regulation or binding agreement limiting the rent charged for  
 53                   the unit for at least 15 years but no more than the number of years that  
 54                   the rents charged for affordable units must remain restricted:

- 55           (1)    for each dwelling unit affordable for residents at 51% to 65% of  
 56                    area median income, the project must receive a payment in lieu of  
 57                    taxes for one unit;
- 58           (2)    for each dwelling unit affordable for residents at 31% to 50% of  
 59                    area median income, the project must receive a payment in lieu of  
 60                    taxes for 2 units; and
- 61           (3)    for each dwelling unit affordable for residents at 30% or less of  
 62                    area median income, the project must receive a payment in lieu of  
 63                    taxes for 3 units]].

64    **[(b)] (e)**    Any payment accepted by the Director [of Finance] must conform  
 65                    to guidelines included in a regulation adopted by the [County] Executive  
 66                    under method (1). Before the Director [of Finance] accepts a payment in  
 67                    lieu of taxes, the Director must consult the Director of the Department of  
 68                    Housing and Community Affairs on whether:

- 69           (1)    the subject of the payment is a qualifying housing development;  
 70                    and
- 71           (2)    the amount of the payment complies with applicable guidelines.

72    **[(c)] (f)**    [The aggregate amount of all payments in lieu of taxes under this  
 73                    Section (other than payments for a housing development owned or  
 74                    operated by the Housing Opportunities Commission) must not exceed an  
 75                    amount set annually by Council resolution for the following 10-year  
 76                    period. The Council by separate resolution may approve a payment  
 77                    which exceeds the aggregate amount previously set.] The Executive, in  
 78                    each annual operating budget submitted to the Council, must calculate the  
 79                    amount of pending payments in lieu of taxes already approved under this  
 80                    Section, including payments for housing developments owned or  
 81                    operated by the Housing Opportunities Commission.

82            **Sec. 2. Transition.** Except for Subsection (c)(3), [[The]] the amendments in  
83 Section 1 establishing a mandatory payment in lieu of taxes must only apply to a  
84 property that is eligible for a payment in lieu of taxes due to affordable dwelling units  
85 that come under a government regulation or binding agreement limiting the rent  
86 charged on or after this Act takes effect.

*Approved:*

  
\_\_\_\_\_  
Gabriel Albornoz, President, County Council 12/15/2021  
Date

*Approved:*

  
\_\_\_\_\_  
Marc Elrich, County Executive 12/27/2021  
Date

*This is a correct copy of Council action.*

  
\_\_\_\_\_  
Selena Mendy Singleton, Esq., Clerk of the Council 12/28/2021  
Date