



Committee: PHP
Committee Review: At a future date
Staff: Ludeen McCartney, Legislative Attorney
Purpose: To receive testimony – no vote expected

AGENDA ITEM #4
October 10, 2023
Public Hearing

SUBJECT

Expedited Bill 38-23; Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments

Lead Sponsor: Council President Glass at the request of the County Executive

EXPECTED ATTENDEES

Members of the public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; to receive testimony

DESCRIPTION/ISSUE

Expedited Bill 38-23 would:

- (1) allow the County Executive to designate a qualified entity that may exercise the right of first refusal; and
- (2) generally amend the County law regarding the right of first refusal.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

Staff Report	Pages 1-2
Expedited Bill 38-23	© 1
Memorandum of the County Executive	© 8
Fiscal Impact Statement	© 10
Legislative Request Report	© 11
Climate Assessment	© 13
DHCA Annual Report on the Montgomery County ROFR	© 16

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M E M O R A N D U M

October 5, 2023

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Expedited Bill 38-23; Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments

PURPOSE: **Public Hearing** – to receive testimony

Expedited Bill 38-23; Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments, sponsored by Council President Glass on behalf of the County Executive, was introduced on September 26, 2023. A public hearing is scheduled for October 10, 2023. The bill will be considered by the Planning, Housing, and Parks (PHP) Committee on October 30, 2023.

Expedited Bill 38-23 would amend Sections 53A-2 and 53A4 of the Montgomery County Code to allow the County Executive to designate a qualified entity that may exercise the right of first refusal.

A resolution to approve companion regulations, Executive Regulation 16-23, Tenant Displacement, is forthcoming. The public comment period on the regulation under the County Register closed on September 30, 2023, [Montgomery County Register \(montgomerycountymd.gov\)](http://montgomerycountymd.gov).

The fiscal impact statement provides the Bill would not increase the County’s revenues or expenditures. (©10).

PURPOSE

The Executive has explained the purposes and mechanics of the bill in the enclosed memorandum and legislative request report. (©8).

BACKGROUND

In 1990, the Montgomery County Council enacted legislation that established the County’s Right of First Refusal to Buy Rental Housing Program (RORF) to expand the availability of affordable housing in the County.

The ROFR process¹ requires within 5 days after an owner enters a bona fide contract to sell a rental housing with a third-party buyer, a notice must be sent to each tenant, posted in the public area of the rental housing, and sent to DHCA.

¹ County Code §53A

The County, HOC, or any certified tenant organization (in that order) must be offered the opportunity to buy the rental housing before the owner sells to another party. The ROFR offer must remain open for 60 days for the County and HOC and 90 days for a tenant organization. The County and HOC may only accept an offer in a municipality if the municipality approves.

If the County exercises RORF to purchase the property, it must close and consummate the sale within 180 days, unless an extension is granted by the seller. If the County, HOC, or tenant organization does not exercise the ROFR the owner may sell the rental housing to a third party under substantially the same terms.

Annually, DHCA is required to report to the Council on all ROFR offers received the prior year, agreement not to convert (provides for the retention of affordable housing as an alternative to the ROFR process), and any conversion of rental housing in the County. The most recent report is at ©16.

Prince George’s County has a similar ROFR program that identifies qualified developers who may be assigned a right to purchase.²

BILL SPECIFICS

The Bill would require an owner to send a *copy* of the third-party offer to a qualified entity at the same time the County, HOC, and tenant organization are notified. (See lines 61-63 of the bill).

Followed by, the County may choose to accept the offer or assign its purchase right to a qualified entity. A qualified entity would have been previously identified and approved by the County as a buyer in good standing that has demonstrated, among other things, commitment to preserving affordable housing. Further requirements may be delineated via executive regulations. (See lines 125-155).

Lastly, the Bill requires a deposit to be capped at 5% of the contract price for any earnest money paid by the buyer as a condition of accepting the offer. The deposit is fully refundable in the event of a good faith failure by an ROFR buyer under the contract. (Lines 92-98).

A municipality may be assigned a right by the County as a designated qualified entity with an option to accept the assignment. The assignment of rights under an agreement with the County would not usurp or conflict with laws within a municipality but would still be subject to the municipality’s approval.

This packet contains:	<u>Circle #</u>
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² Prince George’s County DHCD Apartment & Multifamily Rental Properties (ROFR), <https://www.princegeorgescountymd.gov/984/Apartment-Multifamily-Rental-Owners-ROFR>

Expedited Bill No. 38-23
Concerning: Tenant Displacement –
Right of First Refusal to Buy Rental
Housing - Amendments
Revised: 9/21/23 Draft No. 1
Introduced: September 21, 2026
Expires: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) allow the County Executive to designate a qualified entity that may exercise the right of first refusal; and
- (2) generally amend the law regarding the right of first refusal.

By amending

Montgomery County Code
Chapter 53A, Tenant Displacement
Sections 53A-2 and 53A-4

Boldface	<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:

27 [(h)] (i) *Tenant organization* means an association of tenants of rental housing
28 that:

- 29 (1) represents tenants of at least 30 percent [(30%)] of the occupied
- 30 units in the rental housing; and
- 31 (2) is certified by the Department according to Executive regulations.

32 [(i)] (j) *Title* means:

- 33 (1) a legal or equitable ownership interest in rental housing; or
- 34 (2) a legal, equitable, or beneficial interest in a partnership, limited
- 35 partnership, corporation, trust or other person who is not an
- 36 individual, that has a legal or equitable ownership interest in rental
- 37 housing.

38 * * *

39 **53A-4. Right of first refusal to buy rental housing.**

40 (a) *Right of first refusal.* An owner must offer the County, HOC, and any
41 tenant organization the right to buy rental housing before selling the rental
42 housing to another party, except as provided under Section 53A-5.

43 (b) *Requirements for offer.* An offer required by subsection (a) must:

- 44 (1) be in writing;
- 45 (2) be sent by certified mail, return receipt requested, within 5 business
- 46 days after:
 - 47 (A) the execution of a bona fide contract of sale, for the County,
 - 48 HOC, and any existing tenant organization; or
 - 49 (B) the Department certifies a tenant organization, for a new
 - 50 tenant organization formed under Section 53A-3(b);
- 51 (3) include substantially the same terms and conditions as a pending
- 52 bona fide contract of sale from a third party to buy the rental
- 53 housing; [and]

- 54 (4) remain open for:
- 55 (A) 60 days after it is received, for the County, [and] HOC, and
- 56 any qualified entity that receives an assignment under 53A-
- 57 4(g); and
- 58 (B) 90 days after it is received by any tenant organization,
- 59 including a new tenant organization formed under Section
- 60 53A-3(b)[.]; and
- 61 (5) an owner must send a copy of the offer to all qualified entities
- 62 contemporaneously with providing the offer to the County, HOC,
- 63 and any tenant organization.
- 64 (c) *Information and inspection.* The owner must give the County, HOC,
- 65 [and] any tenant organization, and any qualified entity:
- 66 (1) any information about the rental housing relevant to exercising the
- 67 right of first refusal, such as architectural and engineering plans
- 68 and specifications, and operating data; and
- 69 (2) access to the rental housing to inspect the property and conduct
- 70 reasonable tests at reasonable times after reasonable notice.
- 71 The County, HOC, [and] any tenant organization, and any qualified entity
- 72 must pay the owner a reasonable deposit for any architectural and
- 73 engineering plans that the owner provides. The owner must refund the
- 74 deposit when the plans are returned to the owner. The County Executive
- 75 must issue regulations to implement this subsection.
- 76 (d) *Exercise of right of first refusal.*
- 77 (1) The County, HOC, [or a] any tenant organization, or any qualified
- 78 entity that receives an assignment under 53A-4(g) may exercise
- 79 the right of first refusal by accepting the offer within the applicable
- 80 period under subsection (b)(4). The County and HOC may accept

81 an offer to buy rental housing in a municipality only if the
82 municipality approves.

83 (2) The owner must sell the rental housing under the right of first
84 refusal if the acceptance includes substantially the same terms and
85 conditions contained in the owner's bona fide contract of sale with
86 the third party, including any contract term that provides for a bona
87 fide real estate commission payable to an independent broker.
88 Notwithstanding this general requirement or any term of the
89 contract, the County, HOC, [or] a tenant organization, or any
90 qualified entity may condition its acceptance on obtaining
91 financing at any time before the deadline in paragraph (3) for
92 completing the sale. The County, HOC, any tenant organization,
93 or any qualified entity must not be required to pay [to] the owner
94 a deposit of more than five percent [(5%)] of the contract price to
95 accept the offer and exercise its right of first refusal. The deposit
96 is refundable in the event of a good faith failure of the County,
97 HOC, any tenant organization, or any qualified entity to perform
98 under the contract.

99 (3) The owner and the County, HOC, [or] tenant organization, or any
100 qualified entity that receives an assignment under 53A-4(g) must
101 complete a sale under this subsection within 180 days after the
102 County, HOC, or tenant organization receives the owner's offer
103 unless the owner agrees to extend the 180-day period.

104 (4) Before a tenant organization completes a sale under paragraph (3),
105 a majority of all [of the] tenants must ratify the purchase.

106 (5) The right of first refusal applies in the following order of priority:

107 (A) the County;

- 108 (B) any qualified entity that receives an assignment under 53A-
 109 4(g);
 110 ~~[(B)] (C)~~ HOC; and
 111 ~~[(C)] (D)~~ any tenant organization.
- 112 (6) The Executive must issue regulations that establish procedures and
 113 guidelines for exercising the County's right of first refusal.
- 114 (e) *Expiration of right of first refusal.* If the County, HOC, [and] any tenant
 115 organization, or any qualified entity that receives an assignment under
 116 53A-4(g) do not exercise their rights of first refusal within the applicable
 117 period under subsection (b)(4), the owner may sell the rental housing to
 118 the third-party buyer under substantially the same terms and conditions
 119 offered to the County, HOC, and any tenant organization.
- 120 (f) *Immunity.* The County, HOC, [and] any tenant organization, or any
 121 qualified entity are not liable for any damages incurred by the owner, a
 122 third-party buyer, a tenant, or any other person in connection with a
 123 decision to exercise or not exercise a right of first refusal under this
 124 Section.
- 125 (g) *Assignment.*
- 126 (1) The County Executive may assign the right of first refusal, or a
 127 contract to purchase rental housing, to an entity qualified by the
 128 Department to receive such assignment that:
- 129 (A) has demonstrated expertise in acquiring, maintaining, and
 130 managing rental and affordable housing;
- 131 (B) is a bona fide nonprofit or a for-profit entity in good
 132 standing under the laws of the State of Maryland at the time
 133 of assignment;
- 134 (C) is registered and licensed to do business in Maryland; and

135 (D) commits in writing to maintain the affordability of housing
 136 acquired under this subsection.

137 (2) The County Executive must adopt regulations under Method (3) to
 138 establish a process for qualifying and selecting entities to receive
 139 an assignment under this subsection. The regulations must
 140 establish:

141 (A) a process that provides entities a fair opportunity to
 142 demonstrate to the County Executive or the County
 143 Executive's designee its qualifications to receive an
 144 assignment;

145 (B) factors that an entity must demonstrate to be deemed
 146 eligible to receive an assignment;

147 (C) affordable housing restrictions that an entity must commit
 148 in writing to maintain, if selected as an assignee; and

149 (D) criteria the County Executive or the County Executive's
 150 designee must use for selecting assignees from among
 151 qualified entities.

152 (3) An assignment by the County Executive of the County's right of
 153 first refusal must be accomplished by a written agreement with the
 154 assignee that includes an assignment of the County's rights and
 155 obligations under this Chapter as to its right of first refusal.

156 **Sec. 2. Expedited Effective Date.**

157 The Council declares that this legislation is necessary for the immediate
 158 protection of the public interest. This Act takes effect on the date on which it becomes
 159 law.



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

August 31, 2023

TO: Evan Glass, Council President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Bill XX-23, Tenant Displacement – Right of First Refusal to Buy Rental Housing
– Amendments

I am transmitting Bill XX-23, Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments. This bill seeks to address the growing need for affordable housing in Montgomery County by amending sections of the County Code (53A-2 & 53A-4) regarding the right of first refusal.

Under this bill, a County Executive, after exercising the right of first refusal, would be permitted to assign the right to purchase a property to a qualified entity. The purpose of permitting a County Executive to make such an assignment is to relieve the County of the necessity of purchasing a property and then having to sell it to a developer within less than twenty-four hours, which requires the County to have tens of millions of dollars available in accounts for the purpose of taking ownership of a property only to transfer it immediately. The ability to assign the right to purchase to a qualified entity will allow the County to use its funds to preserve or create long-term affordability without the need to reserve tens of millions of dollars solely to purchase and then transfer properties to affordable housing developers. To become a qualified entity, a housing developer must demonstrate experience and commitment to owning and operating affordable housing through an application process.

This proposed legislation also places a 5% cap on the deposit that an owner can charge if the right of first refusal is exercised. The purpose of limiting a required deposit to 5% is to prevent property owners from requiring deposits far in excess of industry norms for the purpose of thwarting the County's ability to exercise the right of first refusal. The draft Executive Regulation #16-23 (enclosed) will be advertised in the September 2023 Register.

Bill XX-23, Tenant Displacement – Right of First Refusal to Buy Rental Housing –
Amendments
August 31, 2023
Page 2 of 2

If you have any questions, please contact Scott Bruton, Director, Department of Housing and
Community Affairs at scott.bruton@montgomerycountymd.gov.

ME:sb

Enclosure

Fiscal Impact Statement

Office of Management and Budget

Executive Regulation XX-23

Tenant Displacement - Right of First Refusal to Buy Rental Housing - Amendments

Regulation Summary

This bill seeks to address the growing need for affordable housing in Montgomery County by amending sections of the county code (53A-2 & 53A-4) regarding the right of first refusal. Under this bill, the County Executive, after exercising the right of first refusal, would be permitted to assign the right to purchase a property to a qualified entity. To become a qualified entity, a housing developer must demonstrate experience and commitment to owning and operating affordable housing through an application process. Additionally, the bill specifies what is to be included in the executive regulations regarding it, and generally amends the procedure surrounding the right of first refusal. In particular, it places a 5% cap on the deposit that an owner can charge if the right of first refusal is exercised.

Fiscal Impact Summary

This bill will not increase County revenues or expenditures. The Department of Housing and Community Affairs (DHCA) already evaluates properties that issue a right of first refusal (ROFR) notice, makes decisions about when to exercise ROFR, and evaluates which development partners to choose in partnering to purchase a property. This bill will simplify that process by allowing the County, after exercising ROFR, to assign the right to purchase to a development partner without the complexity and significant labor and financial cost of having to purchase the property itself and then sell it within less than twenty-four hours to its partner.

Fiscal Impact Analysis

DHCA does not expect any changes on County revenues or expenditures over the next six years.

Staff Impact

The regulation is not expected to impact staff time or duties.

Actuarial Analysis

The regulation is not expected to impact retiree pension or group insurance costs.

Information Technology Impact

The regulation is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.

Other Information

Later actions that may impact revenue or expenditures if future spending is projected

The regulation does not authorize future spending.

Contributors

Scott Bruton, Pofen Salem, Department of Housing and Community Affairs
Anita Aryeetey, Office of Management and Budget



LEGISLATIVE REQUEST REPORT

BILL: XX-XX

Tenant Displacement – Right of First Refusal to Buy Rental Housing - Amendments

DESCRIPTION: The Bill would amend Sections 53A-2 and 53A-4 of the Montgomery County Code to allow the County Executive to designate a qualified entity that may exercise the right of first refusal in purchasing rental housing.

PROBLEM: Increasing access to affordable housing has become an increasingly important need for the County. Additionally, without the ability to delegate the right of first refusal, the County must keep large sums of money available to purchase and turn over this housing as it becomes available.

GOALS AND OBJECTIVES: Enable the County to more effectively evaluate and exercise the right of first refusal on the purchase of rental housing by delegating the ability to qualified entities.

COORDINATION: The Office of the County Executive, Department of Housing and Community Affairs

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: Office of Legislative Oversight

EVALUATION: Subject to general oversight of the County Executive and County Council. The Office of the County Attorney will evaluate for form and legality.

EXPERIENCE ELSEWHERE: The Montgomery County code already includes provisions for the right of first refusal to be exercised by the County, the HOC, and tenant organizations. Most of the amendments in this Bill serve to extend existing procedures to Executive-designated entities, adding them into an established framework.

SOURCE OF: Scott Bruton, Director, DHCA; Neal Anker, Assistant County Attorney, Division of Land Use, Zoning & Economic Development, Office of the County Attorney; Jake Weissman, Assistant Chief Administrative Officer, Office of the County Executive.

INFORMATION

APPLICATION WITHIN MUNICIPALITIES: Rockville, Gaithersburg, Takoma Park

PENALTIES: N/A

Climate Assessment

Office of Legislative Oversight

Expedited Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 38-23 will likely have an indeterminate impact on the County's contribution to addressing climate change as access to affordable housing increases community resilience and the proposed change is intended to simplify the process of buying rental housing for the purpose of creating affordable housing. However, it cannot be predicted how much affordable housing will be created by this change.

BACKGROUND AND PURPOSE OF EXPEDITED BILL 38-23

Right of first refusal is defined as a contractual right that allows an interested party, like a local government agency, the first right to purchase a property. Government agencies can use the right of first refusal to acquire private property for sale as long as it matches the price of any third-party offer.¹ Governments often use this power to preserve affordable housing and prevent the conversion of subsidized rental properties for another use, if it is sold to another buyer.²

As established in the County Code, a rental housing owner must offer the County, Housing Opportunity Commission (HOC), and any tenant organization the right to buy the property before selling the rental housing to another party, barring certain exceptions as defined in the County Code.³ Expedited Bill 38-23 would amend the County Code to allow the County Executive to designate a qualified entity that may exercise the right of first refusal.⁴ Housing developers are considered a qualified entity if they “demonstrate experience and commitment to owning and operating affordable housing through an application process.”⁵

The proposed bill is intended to simplify the process by allowing the County, after exercising its right of first refusal, to then assign the right to purchase to a qualified entity. In a memorandum from the County Executive included in the bill's introduction packet, it is stated that the amendment would relieve the County of the necessity of purchasing a property and then having to sell it to a development partner, which requires the County to quickly have funds available for the purchase of property.⁶ Further, Bill 38-23 would place a 5% cap on the deposit an owner can charge if the right of first refusal is exercised, consistent with industry norms.⁷

Expedited Bill 38-23, Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments, was introduced by the Council on behalf of the County Executive on September 26, 2023.⁸

ANTICIPATED IMPACTS

The affordability of a community's housing stock has a direct correlation to the overall resilience of a community, and on its ability to prepare for current and future risks.⁹ Affordable housing can improve community resilience through two ways: increasing housing stability and alleviating cost-burdened households. Housing stability can increase community resilience, through enhancing social cohesion by building community ties and enabling residents to stay better connected during emergencies. Cost-burdened households, which are households that spend over 30% of income on housing, generally have less cash on hand to weather shocks, such as extreme weather events, compared to households that are not cost-burdened.¹⁰

The bill proposes changes that are intended to simplify the process of acquiring rental housing for the purpose of creating affordable housing. Increased access to affordable housing increases community resilience; however it cannot be predicted how much affordable housing will be created by this change. OLO anticipates Expedited Bill 38-23 will have an indeterminate impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.¹¹ OLO does not offer recommendations or amendments as Expedited Bill 38-23 is likely to have an indeterminate impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptive capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

¹ ["Public Rights of First Refusal", The Yale Law Journal, 2020.](#)

² ["Rights of First Refusal", Local Housing Solutions, Accessed 9/27/2023.](#)

³ [Montgomery County Code § 53A-4, Accessed 9/27/2023.](#)

⁴ [Introduction Staff Report for Bill 38-23, Introduced September 26, 2023.](#)

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ ["The Community Resilience Benchmarks", Alliance for National and Community Resilience, 2019.](#)

¹⁰ ["Equitable Adaptation Legal and Policy Toolkit: Resilient Affordable Housing, Anti-Displacement, and Gentrification", Georgetown Climate Center, Accessed 10/2/23 ; "Community Resilience: A Social Justice Perspective", Community and Regional Resilience Initiative, 2008.](#)

¹¹ Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Marc Elrich
County Executive

Aseem K. Nigam
Director

MEMORANDUM

February 17, 2023

TO: Evan Glass, President
Montgomery County Council

FROM: Aseem Nigam, Director
Department of Housing and Community Affairs

SUBJECT: Annual Report on the Montgomery County Right of First Refusal Program

The Department of Housing and Community Affairs (DHCA) administers Montgomery County's Right of First Refusal (ROFR) Program. In effect for more than forty years, Section 53A-4 of the Montgomery County Code established that the owner of any rental housing property with four or more units must give the County, the Housing Opportunities Commission (HOC), and any certified tenant organization at the property a right of first refusal to purchase. The ROFR provides the County, the HOC, or a certified tenant organization with the right to match a contract in all executed significant terms.

When DHCA receives a ROFR notice, its Multifamily Housing Division uses five guiding principles to analyze the property:

- **Purpose:** Is there a public purpose associated with the purchase of the property that cannot be met otherwise?
- **Preservation:** Are units at risk of exiting the County's affordable housing stock, and what are the tools that can be used to preserve affordability including the capacity for the purchase be executed?
- **Property:** Does the property have redeeming or important facets to warrant a ROFR purchase, such as is it in a high-cost market area, is it near a metro or other resources, is it a rare vacant property that can meet a public purpose?
- **Price:** Is the price manageable for the County, given that the County must have cash available in the Housing Initiative Fund (HIF) for the full sales price and have HIF loan capacity to support long term affordability in addition to the current pipeline?
- **Partner:** As the County does not retain ownership in multifamily rental properties, does DHCA have a capable partner to whom to transfer ownership who can finance the property with minimal assistance; is fiscally capable and has experience managing/owning multifamily properties; and are the partner's goals compatible with those of DHCA?

Office of the Director

1401 Rockville Pike, 4th Floor • Rockville, Maryland 20852 • 240-777-0311 • 240-777-3791 FAX • www.montgomerycountymd.gov/dhca

DHCA received ROFR notices from 44 rental properties representing 6,696 units in 2022. The properties represented \$2,199,106,100 in total transactions and an average price of \$328,420.86 per unit. The following narrative explanations provide additional details about ROFR outcomes for 2022. Table 1 contains a list of all ROFR notices received in 2022. Table 2 contains comparative ROFR data for the years 2015-2022. Table 3 contains ROFR notices received by location for the years 2015-2022.

Total properties for which DHCA received ROFR notices in 2022: 44 with a total of 6,696 units

Exercised the Right of Refusal: 2 properties with a total of 466 units.

- **Scarborough Square Apartments and Townhouses**
 - The County partnered with the City of Rockville and Rockville Housing Enterprises (RHE) to exercise the ROFR for Scarborough Square Apartments and Townhouses, a 121-unit mixed-income apartment and townhouse complex located at 438 College Parkway in Rockville, MD. The property has 12 one-bedroom units, 36 two-bedroom units, 63 three-bedroom units, and 10 four-bedroom units.
 - The ROFR purchase transferred controlling interest in the Real Estate Investment Trust (REIT) that owns the property. The transfer was within related parties in the REIT. The transfer purchase price is \$40,000,000 or \$330,579 per unit.
 - The property qualified for a By Right PILOT, which requires RHE to keep at least 61 units (50%) affordable to households at 60% of Area Median Income (AMI) for 15 years.
 - RHE intends to add project-based vouchers to the property.
- **Westchester West Apartments**
 - The County received the ROFR notice for Westchester West Apartments (245 units) located at 3020 Hewitt Avenue in Silver Spring on December 21, 2022. The property has 62 one-bedroom units, 187 two-bedroom units, and 96 three-bedroom units.
 - The purchase price is \$67,000,000.
 - The County exercised ROFR for Westchester West on February 17, 2023. The County has 30 days to conduct due diligence at the property during which time the County may elect to terminate the purchase contract.

Issued Certificate of Compliance: 41 Properties with a total of 5947 units

A Certificate of Compliance is a document issued by DHCA that is recorded in the land records certifying that transaction has met the requirements of Chapter 53-A, which enables the planned sale to proceed. Before issuing a Certificate of Compliance, DHCA evaluates each property with the guiding principles detailed above and determined not to act.

Certificates of Compliance were not issued for three properties: one which the County exercised ROFR, one which the County is considering exercising ROFR, and one property for which the transaction did not close.

Preserved Existing Affordable Housing: 2 Properties with a total of 369 units.

The purchasers of 2 properties received short-term acquisition funding from the Affordable Housing Opportunity Fund (AHOF), which resulted in the following affordability restrictions:

- Rollingwood Apartments (283 units) purchased by Montgomery Housing Partnership (MHP)
 - AHOF: \$2 million
 - Amazon: \$28.3 million with the following unit affordability restrictions: 5% at 30% of AMI, 20% at 50% of AMI, 50% at 60% of AMI, and 25% at 70% of AMI for 99 years.
 - MHP plans to seek Low Income Housing Tax Credit financing for a major rehabilitation of the property.
- Parkside Terrace Apartments (87 units) purchased by Enterprise Community Development
 - AHOF: \$5 million
 - All 87 units affordable to households at 60% of AMI for 10 years.

Rental Agreements: 0 properties with a total of 0 units

No new Rental Agreements were signed in 2022.

The purchasers of the Milestone Apartments chose not to renew the property's rental agreement, which resulted in the termination of 50 MPDUs.

Agreement Not to Convert: 0 properties with a total of 0 units

An Agreement Not to Convert, allowed in Chapter 53-A, provides for the retention of affordable housing as an alternative to the ROFR process.

Properties With Current MPDUs: 4 properties with a total of 235 units

These are properties that were under contract with existing Moderately Priced Dwelling Units (MPDU) covenants.

- Ansel Apartments, 112 MPDUs, City of Rockville
- Galvan Apartments, 54 MPDUs, City of Rockville
- Arrowwood Apartments, 37 MPDUs, North Bethesda
- Solaire Apartments, 21 MPDUs, Wheaton

The purchasers of the Milestone Apartments chose not to renew the property's rental agreement, which resulted in the termination of 50 MPDUs.

Transactions Did Not Close: 1 property with a total of 283 units.

Rollingwood Apartments issued a ROFR notice on April 28, 2022, with a price of \$74,000,000; however, the transaction did not close. Another ROFR notice for this property was issued on August 3, 2022, at a price of \$70,500,000, which did close.

Attachments

Table 1: List of All ROFR Notices Received in 2022

Project Name	City	Total Units	Status
712 Maplewood Ave	Takoma Park	4	Certificate of Compliance
8515 Flower Avenue	Takoma Park	5	Certificate of Compliance
The Galaxy Apts.	Silver Spring	195	Certificate of Compliance; Assumed regulatory agreement for 82 units; Existing PILOT; Existing 27-unit Section 8 contract
The Lake Apts.	Chevy Chase	66	Certificate of Compliance
Preston Place	Chevy Chase	67	Certificate of Compliance
8318 Roanoke Avenue	Takoma Park	6	Certificate of Compliance
8324 Roanoke	Takoma Park	6	Certificate of Compliance
The Ansel Apts.	Rockville	250	Certificate of Compliance; 112 City of Rockville MPDUs offsite at HOC's Upton
The Centre at Silver Spring Ap	Silver Spring	256	Certificate of Compliance
Walker House Apts.	Gaithersburg	212	Certificate of Compliance
The Galvan Apts.	Rockville	356	Certificate of Compliance; 54 City of Rockville MPDUs
20 Ritchie Avenue	Silver Spring	9	Certificate of Compliance
12 Grant Avenue	Takoma Park	12	Certificate of Compliance
Villas at Rockville	Rockville	210	Certificate of Compliance
Milestone Apts.	Germantown	576	Certificate of Compliance; rental agreement terminated for 50 MPDUs
HOC ALDON	Bethesda	116	Certificate of Compliance
Willard Towers	Chevy Chase	518	Certificate of Compliance
Rollingwood Apts.	Silver Spring	283	Transaction did not close; owner reissued ROFR
Avalon Grosvenor Tower	North Bethesda	237	Certificate of Compliance
The Grand	North Bethesda	552	Certificate of Compliance; 110 existing LIHTC units
Hampton Point Apts.	Silver Spring	352	Certificate of Compliance
7044 Carroll Ave	Takoma Park	5	Certificate of Compliance
208 Lincoln	Takoma Park	4	Certificate of Compliance
8101 Flower Avenue, LLC	Takoma Park	6	Certificate of Compliance
17 Barkley Apts.	Gaithersburg	315	Certificate of Compliance
Rollingwood Apts.	Silver Spring	283	Certificate of Compliance; AHOF and Amazon w/ 5% at 30% AMI, 20% at 55% at 30% AMI, 20% at 50% AMI, 50% at 60% AMI, and 25% at 70% AMI for 99 years
Arrowwood Apartments	North Bethesda	294	Certificate of Compliance; 37 MPDUs
Scarborough Square Townhouses & Apts.	Rockville	121	ROFR exercised; By Right Pilot
Governor Square Apts.	Gaithersburg	238	Certificate of Compliance
1050/1054/1058 Ruatan Street	Silver Spring	12	Certificate of Compliance
8805 Plymouth	Silver Spring	7	Certificate of Compliance
8807 Plymouth	Silver Spring	6	Certificate of Compliance
Parkside Terrace Apts.	Silver Spring	86	Certificate of Compliance; AHOF w/ all units at 60% of AMI for 10 years
The Village at Gaithersburg Apts.	Gaithersburg	168	Certificate of Compliance; Existing 168 LIHTC units
Villas at Rockville	Rockville	210	Certificate of Compliance
908 Hudson Avenue	Takoma Park	6	Certificate of Compliance
8212 Houston Court	Takoma Park	4	Certificate of Compliance
49 West Diamond	Gaithersburg	35	Certificate of Compliance
20 East Diamond	Gaithersburg	8	Certificate of Compliance
1 Water Street	Gaithersburg	17	Certificate of Compliance
Solaire Apts.	Silver Spring	232	Certificate of Compliance; 32 MPDUs
617 Sligo Ave	Silver Spring	3 commercial units	617 Sligo/8101 Schrider comprise a 6-unit residential property with 3 commercial units
8101 Schrider St	Silver Spring	6	Certificate of Compliance
Westchester West Apts.	Silver Spring	345	ROFR exercise in process

Table 2: ROFR Data 2015-2022

Year	ROFRs Received	Total Units	Total Dollar Amount	Average Cost/Unit	Number of Properties on which ROFR was Exercised	Number of Agreements Not to Convert	Number of Rental Agreements Assumed of Created	Number of No Action Properties with MPDUs	Number of Capital Investments with Regulatory Agreement	PILOT Agreements	Transactions that did not Close
2022	44	6,696	\$2,199,106,100	\$328,421	2 ^a	0	2	4	2	1	1
2021	61	12,765	\$3,632,135,923	\$283,384	1	7	2	12	3	4	2
2020	57	6,243	\$1,366,172,038	\$281,133	1	2	5	0	0	7	6
2019	44 ^b	9,100	\$1,774,603,200	\$195,011	0	0	4	0	0	0	2
2018	36	7,022	\$1,502,158,278	\$220,581	4	0	0	1	3	0	1
2017	33	7,205	\$1,550,786,763	\$215,238	1	1	4	3	1	0	4
2016	39	8,013	\$1,930,850,996	\$240,965	2	0	4	3	1	0	2
2015	29	5,800	\$1,042,992,200 ^c	\$181,453 ^c	1	1	2	1	3	0	3

^a The County exercised ROFR for Scarborough Square Townhouses and Apts. and acquired it in partnership with City of Rockville and Rockville Housing Enterprises (RHE). The County exercised ROFR for Westchester West on February 17, 2023. The County has 30 days to conduct due diligence at the property during which time the County may elect to terminate the purchase contract.

^b DHCA received 48 ROFR notices in 2019 but 4 were determined to be exempt, so their information is not included in ROFRs Received, Total Units, Total Dollar Amount, and Average Cost/Unit.

^c The HOC property RAD6 Sandy Spring Meadows (52 units) filed a ROFR notice for its RAD conversion, which did not include a purchase price. Therefore, those 52 units are included in Total Units but not in Total Dollar Amount or Average Cost/Unit.

Table 3: ROFR Notices Received by Location 2015-2022

Location	2015	2016	2017	2018	2019	2020	2021	2022
Adelphi	0	0	1	0	1	0	0	0
Bethesda	3	4	0	1	0	3	7	1
Chevy Chase	0	0	4	0	1	0	4	3
Clarksburg	0	0	0	0	0	0	1	0
Coleville	0	0	0	0	0	1	0	0
Damascus	0	0	1	0	0	2	0	0
Derwood	0	0	0	0	0	0	1	0
Fairland	0	0	0	0	0	3	0	0
Gaithersburg	3	6	4	2	6	0	7	7
Germantown	0	2	1	6	4	0	7	1
Hillandale	0	0	0	0	0	1	0	0
Montgomery Village	0	0	2	0	0	0	0	0
North Bethesda	1	0	2	0	3	0	0	3
Rockville	0	5	1	0	3	5	8	5
Silver Spring	15	13	11	20	13	19	6	14
Olney	1	0	0	2	2	0	1	0
Takoma Park	6	9	6	5	12	19	17	10
Wheaton	0	0	0	0	3	1	2	0
White Oak	0	0	0	0	0	2	0	0
Total	29	39	33	36	48	57	61	44