

Clerk's Note: Changed line 107 to read Section 59-A-6.20, not Section 59-A-6.19

CORRECTED BILL

Bill No. 31-12
Concerning: Accessory Apartments -
Licensing
Revised: January 16, 2013 Draft No. 4
Introduced: November 13, 2012
Enacted: February 5, 2013
Executive: February 12, 2013
Effective: May 20, 2013
Sunset Date: None
Ch. 2, Laws of Mont. Co. 2013

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: The Planning Housing, and Economic Development Committee

AN ACT to:

- (1) require an accessory apartment rental license issued by the Department of Housing and Community Affairs;
- (2) establish the standards for the issuance of an accessory apartment license;
- (3) require notice of the proposed accessory apartment;
- (4) authorize the Hearing Examiner to hear objections to the Department's findings concerning an accessory apartment rental license; and
- (5) generally amend the law governing an accessory apartment and appeals for rental licenses.

By amending

Montgomery County Code
Chapter 2, Administration
Sections 2-112 and 2-140
Chapter 29, Landlord-Tenant Relations
Sections 29-16, 29-19, and 29-26

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:

1 **Sec. 1. Sections 2-140, 29-16, 29-19, and 29-26 are amended as follows:**

2 **2-140. Powers, duties and functions.**

- 3 (a) The Office of Zoning and Administrative Hearings must:
- 4 (1) schedule and conduct public hearings on any appeal or other
- 5 matter assigned by law or by the County Council, County
- 6 Executive, or other officer or body authorized to assign matters to
- 7 a hearing examiner;
- 8 (2) issue a subpoena, enforceable in any court with jurisdiction, when
- 9 necessary to compel the attendance of a witness or production of
- 10 a document at any hearing, and administer an oath to any witness;
- 11 (3) allow each party in any hearing a reasonable opportunity to cross
- 12 examine each witness not called by that party on matters within
- 13 the scope of that witness' testimony;
- 14 (4) forward a written report, with a recommendation for decision, to
- 15 the body that assigned the matter, including findings of fact and
- 16 conclusions of law where required or appropriate;
- 17 (5) adopt regulations, subject to Council approval under method (2),
- 18 to govern the conduct of public hearings and other activities of
- 19 the Office.
- 20 (b) The Office may act as an administrative office or agency designated by
- 21 the District Council, as prescribed in the Regional District Act (Article
- 22 28 of the Maryland Code).
- 23 (c) The Office may hear, and submit a written report and recommendation
- 24 to the specified officer or body on, any:
- 25 (1) petition to the County Council to grant, modify, or revoke a
- 26 special exception, as provided in Chapter 59;
- 27 (2) designation by the County Council of a geographic area as a
- 28 community redevelopment area; [or]

- 29 (3) matter referred by the Board of Appeals under Section 2-112(b);
 30 or
 31 (4) objection to a finding made by the Director of the Department of
 32 Housing and Community Affairs concerning an application for
 33 an accessory apartment rental housing license under Section 29-
 34 26.
- 35 (d) When the County Executive or a designee must conduct an
 36 administrative hearing under any law, the Executive may authorize the
 37 Office of Zoning and Administrative Hearings to conduct the hearing or
 38 any particular class of hearings.

39 **29-16. Required.**

- 40 (a) The owner of a dwelling unit must obtain a rental housing license before
 41 operating the dwelling unit as rental housing. If the owner is a
 42 corporation, the corporation must be qualified to do business in
 43 Maryland under state law. Each owner must certify to the Department
 44 the name, address and telephone number of an agent who resides in
 45 Maryland and is qualified to accept service of process on behalf of the
 46 owner.
- 47 (b) The Director must issue [two] three classes of rental housing licenses.
 48 Class 1 is a multifamily rental housing license. Class 2 is a single-family
 49 rental housing license. Class 3 is a single-family accessory apartment
 50 license.
- 51 (c) A Class 1 rental housing license is required for each apartment complex
 52 and personal living quarters building, and for each multifamily dwelling
 53 unit operated as rental housing. A Class 2 rental housing license is
 54 required for each single-family dwelling unit operated as rental housing.
 55 A Class 3 license is required for each single-family residence with an

56 accessory apartment that does not have a special exception approved
 57 before May 20, 2013.

58 * * *

59 **29-19. Licensing procedures.**

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

65 (b) Accessory apartment rental license.

66 (1) An owner of [an accessory apartment] a lot or parcel in a zone
 67 that permits accessory apartments may obtain [and keep] a
 68 license to operate an accessory apartment if [the occupancy of the
 69 accessory apartment is limited to]:

70 [(1) One or more individuals who live and cook together as a single
 71 housekeeping unit and are related by:

- 72 (A) Blood;
- 73 (B) Marriage; or
- 74 (C) Adoption; or

75 (2) No more than 2 individuals who live and cook together as a
 76 single housekeeping unit.]

77 (A) the owner places a sign provided by the Director on the lot
 78 of the proposed accessory apartment within 5 days after
 79 [[applying for]] the Director accepts an application license,
 80 unless a sign is required as part of an application for a
 81 special exception. [[The sign must:

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- (i) be constructed of any durable material approved by the Director;
- (ii) be at least 30 inches above the ground at its lowest level;
- (iii) be at least 24 inches high and 36 inches wide;
- (iv) have only letters and numbers that are at least 4 inches high; and
- (v) include information that an application for an accessory apartment license was filed, the internet address of a web site to find the status of the application, and any other facts required by the Director.]] The sign provided by the Director must remain in place on the lot for a period of time and in a location determined by the Director.

(B) the principal dwelling on the lot or parcel required for the proposed accessory apartment is the owner’s primary residence. Evidence of primary residence includes:

- (i) the owner’s most recent Maryland income tax return;
- (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; and

(C) the Director finds that:

- (i) the accessory apartment satisfies the standards for an accessory apartment in Section 59-A-6.20; or

108 (ii) the accessory apartment was approved under Article
 109 59-G as a special exception.

110 ~~[(3)]~~ (2) Upon receipt of an application for an accessory apartment
 111 license, the Director must:

112 (A) send a copy of the application to the Office of Zoning and
 113 Administrative Hearings within 5 days after the date the
 114 application was ~~[(filed)]~~ accepted by the Director;

115 (B) inspect the lot or parcel identified in the application and
 116 the proposed accessory apartment;

117 (C) complete a report on any repairs or improvements needed
 118 to approve the application;

119 (D) issue a report on all required findings within 30 days after
 120 the date the application was ~~[(filed)]~~ accepted by the
 121 Director;

122 (E) post a copy of the Director's report on findings on the
 123 internet web site identified on the applicant's sign; and

124 (F) issue or deny a new license 30 days after the issuance of
 125 the Director's report unless:

126 (i) a timely objection is filed under Section 29-26; or

127 (ii) improvements to the property are required before
 128 the license may be approved.

129 ~~[(4)]~~ (3) The Director may renew a license for an accessory
 130 apartment at the request of the applicant if :

131 (A) the applicant:

132 (i) attests that the number of occupants will not exceed
 133 the requirements of Section 26-5 and there will be

134 no more than 2 residents in the apartment who are
 135 older than 18 years;

136 (ii) attests that one of the dwelling units on the lot or
 137 parcel will be the primary residence of the owner;
 138 and

139 (iii) acknowledges that by obtaining a license the
 140 applicant gives the Director the right to inspect the
 141 lot or parcel including the accessory apartment.

142 ~~[(5)]~~ (4) The Director may renew a Class 1 license for an accessory
 143 apartment that was approved as a special exception, as a Class 1
 144 license if the conditions of the special exception remain in effect
 145 and the applicant is in compliance with those conditions~~[[,]]~~.

146 (5) The Director may transfer an accessory apartment license to a
 147 new owner of a licensed apartment if the new owner applies for
 148 the transfer. The conditions and fees for any transfer are the same
 149 as the conditions and fees for a license renewal.

150 (6) The Director must maintain a public list and map showing each
 151 Class 3 license and each accessory apartment with a Class 1
 152 license.

153 (c) Where a rental building has not been completely constructed or
 154 renovated, the Director may issue a temporary license for that part of the
 155 building that has been completely constructed or renovated if the
 156 landlord has:

157 (1) obtained a temporary certificate of occupancy under Chapter 8;
 158 and

159 (2) complied with all other applicable laws.

- 187 (A) objecting to any finding of fact by the Director; or
188 (B) alleging that on-street parking is inadequate when a special
189 exception is not required.
- 190 (3) A request for a review by the Hearing Examiner must be
191 submitted to the Office of Zoning and Administrative Hearings
192 within 30 days after the date of the Director's report and must
193 state the basis for the objection.
- 194 (4) The Hearing Examiner must send notice of an adjudicatory
195 hearing to the applicant and any aggrieved person who filed an
196 objection within 5 days after the objection is received and
197 conduct any such hearing within 20 days of the date the objection
198 is received unless the Hearing Examiner determines that
199 necessary parties are unable to meet that schedule.
- 200 (5) The Hearing Examiner may only decide the issues raised by the
201 objection.
- 202 (6) The Hearing Examiner may find that on-street parking is
203 inadequate if:
- 204 (A) the available on-street parking for residents within 300 feet
205 of the proposed accessory apartment would not permit a
206 resident to park on-street near his or her residence on a
207 regular basis; and
- 208 (B) the proposed accessory apartment is likely to reduce the
209 available on-street parking within 300 feet of the proposed
210 accessory apartment.
- 211 (7) The Hearing Examiner may find that more than the minimum on-
212 site parking must be required as a condition of the license.


213 (8) The Hearing Examiner must issue a final decision within 30 days
214 after the close of the adjudicatory hearing.

215 (9) The Director must issue or deny the license based on the final
216 decision of the Hearing Examiner.

217 ~~[[iii]]~~ (10) Any aggrieved party who objected under subsection 29-
218 26(b) may request the Circuit Court to review the Hearing
219 Examiner's final decision under the Maryland Rules of Procedure.
220 An appeal to the Circuit Court does not automatically stay the
221 Director's authority to grant a license.

Sec. 2. Effective date. This Act takes effect on May 20, 2013.


222 *Approved:*

223  2/6/13
Nancy Navarro, President, County Council Date

224 *Approved:*

225  2/12/13
Isiah Leggett, County Executive Date

226 *This is a correct copy of Council action.*

227  2/13/13
Linda M. Lauer, Clerk of the Council Date