



Date: November 16, 2020
To: Chair Lam, Chair Feldmark and Members of the Howard County Delegation
From: Kelly Cimino, Director of the Howard County Department of Housing *K. Cimino*
Re: Ho. Co. Bill 12-21

PURPOSE

FOR the purpose of prohibiting Howard County from authorizing payment of a fee-in-lieu of a requirement under local law that a developer provide moderate income housing units in a new residential development project under certain circumstances; and generally relating to moderate income housing unit requirements in Howard County.

BACKGROUND

Council Bill 35-2013 added the MIHU fee-in-lieu provisions for specific housing types in certain zoning districts. This bill was enacted to require developers in almost all zoning districts in the County to contribute to affordable housing solutions, even if it meant that units would not be built on site. Developers of single family detached, and age-restricted units may pay the MIHU fee-in-lieu if providing MIHU homes is economically unfeasible due to high land and/or construction costs. Developers of new townhouses, apartments and condominiums must provide MIHUs on site and cannot pay the MIHU fee-in-lieu.

Bill 12-21 would impact the County's authority to accept payment of the MIHU fee-in-lieu from developers of single family detached homes and age restricted units and would limit the County's ability to use this much needed revenue for the creation, rehabilitation and preservation of affordable housing units in the county.

PROPOSAL

Council Bill 50 was enacted on November 4, 2019. This legislation clarifies the use of the MIHU fee-in-lieu revenue and emphasizes the creation and preservation of affordable units. The Department used the criteria in this legislation to fund grant awards and housing initiatives beginning on July 1, 2020.

As of 9/30/20, the County has received MIHU fee-in-lieu revenue of \$12,264,964. To date, the County has budgeted or expended \$10,629,380 of this revenue to fund multiple affordable housing initiatives including, but not limited to, downpayment assistance programs for first-time homebuyers; financial education for potential renters and homeowners; emergency home repairs for low income seniors and families; rental subsidies and creation of affordable rental units to serve very low, low- and moderate-income households (see attached spreadsheet). These funds have created 234 new affordable housing units and provided resources for 503 low- and moderate-income households.

County Executive Ball appointed a task force and authorized the preparation of the Housing Opportunities Master Plan in October 2019. In January 2020, the County selected RCLCO to develop a comprehensive, strategic plan for expanding housing opportunities in Howard County. On November 5th, RCLCO and the Task Force released draft recommendations with the primary goal of identifying concrete strategies for expanding housing opportunities in the County, recognizing that some of the proposed recommendations need to be evaluated in the context of other County land use priorities during the General Plan process. There are several challenges in the draft recommendations related to the MIHU Fee in Lieu (excerpt from plan):

- 1) Identify new, ongoing funding resources for affordable housing investment that can generate a large upfront allocation of capital. Existing resources are insufficient to meet the need for income-restricted, lower cost housing in the County and available funding is unpredictable from year to year;
- 2) Establish an affordable housing trust fund, which is a formal, coordinated and predictable structure for allocating housing funding; and
- 3) Consolidate existing funding sources conducive to housing production with the trust fund.

FISCAL IMPACT

The land costs and construction costs associated with creating detached, single family MIHU homes is too high so developers/builders can choose to pay the fee-in-lieu on all new units in a development, not just 10 or 15% of the total number. Developers that pay the MIHU fee-in-lieu are providing funding for the County's affordable housing initiatives. Developers of small developments or minor subdivisions pay the fee-in-lieu because providing even 1 MIHU would create an undue hardship and result in an MIHU requirement greater than 25%. Even if the fee-in-lieu option is removed, it is unlikely that affordable units will be built in those zoning districts.

Ho. Co. Bill 12-21 will reduce the Department's revenue by approximately \$3 million a year and negatively impact the Department's ability to acquire, rehabilitate and preserve affordable rental and homeownership units throughout the County. The County is also anticipating much lower revenue from the state transfer tax (the Department's only dedicated source of revenue) due to the COVID crisis. Based on the County's current unemployment rate and number of pending evictions in the courts, reducing the Department's revenue by eliminating the MIHU fee-in-lieu will hinder the County's ability to provide funding to residents that need rent and mortgage assistance to stay in their homes.

The Department is proposing a \$2 million allocation in the FY22 budget to provide funding to Mission First Housing to construct a 76-unit, multi-generational housing project in Columbia. This funding will allow the developer to offer 34 units at or below MIHU rental rates to seniors and adults with disabilities that want to live in a supportive community. This flexible funding source is a critical piece of the project's LIHTC financing strategy. Without it, the project will not be able to provide as many affordable units.

SUMMARY

Council Bill 13 was enacted on July 6, 2020. This right of first refusal policy creates a legal window of opportunity when a market-rate rental property is put up for sale, during which the County or the Housing Commission can support the acquisition and preservation of property as affordable housing. This new tool requires proactive planning as well as resource development and prioritization to preserve existing units. It can also open opportunities for maintaining affordability even when a property is not acquired by a mission-driven entity or in zoning districts without an MIHU requirement.

The Housing Commission is negotiating its first contract on a 184-unit apartment and townhome community in Columbia under this legislation. The Housing Commission is requesting funding from the MIHU fee-in-lieu revenue to create 37 affordable rental units (20%) in an otherwise market rate development. This is an approved use of the MIHU fee-in-lieu revenue and will create affordable units where they do not currently exist.

The Housing Opportunities Master Plan Task Force and the public are currently reviewing the draft recommendations for the Housing Opportunities Master Plan. The MIHU fee-in-lieu revenue is critical to supporting many of the County's affordable housing initiatives and programs now and in the future. Therefore, we are requesting withdrawal of this legislation. Thank you.