MCPB
Item No. 4
Date: 03/21/2019

Bill 5-19, Development Impact Tax for Transportation and Public School Improvements – Exemptions - Amendments

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Completed:03/14/2019

Description

Bill 5-19 – Development Impact Tax for Transportation and Public School Improvements – Exemptions – Amendments would amend the exemptions from the development impact tax for transportation and public school improvements for certain dwelling units. It would modify the impact tax exemption for all units in a development where at least 25% of the dwelling units are built under certain government regulations or agreements.

Summary

Staff recommends transmitting comments to the County Council in support of Bill 5-19. The bill is not likely to have a major impact on the number of development projects that qualify for the impact tax exemption but will likely increase the number of affordable housing units included in the County's Moderately Price Dwelling Unit program.

Background/Analysis

On February 3, 2015 Councilmember Nancy Floreen introduced Bill 8-15, which would exempt the market-rate rental dwelling units in any development that consists of at least 25% affordable housing units from the transportation and school development impact taxes. Affordable units were defined as MPDUs, and other units if the rent was affordable to households earning less than 60% of the area median income, adjusted for family size for a minimum 15-year term.

There are generally two programs that create affordable units in Montgomery County, the Moderately Priced Dwelling Unit (MPDU) and the Low-Income Housing Tax Credit (LIHTC or Tax Credit). These programs vary in how they're administered, Area Median Income (AMI)[1] served, and control period.

[1] In 2018, the Area Median Income for a household of four is $117,200.

Affordable Program	*How It Works*	*Area Median Income (AMI) Served*	*Control Period*
Moderately Priced Dwelling Unit (MPDU)	Montgomery County specific policy; Mandatory set aside of 12.5%-15% of units in new developments greater than 20 units; rental or for-sale units	65%-70% AMI, dependent on construction type	30 years for-sale, 99 years for rental
Low-Income Housing Tax Credit (LIHTC)	Administered by state housing finance agencies; provides funding for the development costs of low-income housing; rental units only	Most have tiered income limits serving households 60% AMI and below	In Maryland[2], the building must remain in compliance and is subject to a covenant to enforce compliance for a minimum of 40 years (15-year compliance period and a 25-year extended use period).[3]

Bill 8-15 was signed into law on July 23, 2015 and was effective October 22, 2015.

Bill 36-17E was introduced by Councilmember Nancy Floreen on October 31, 2017 to amend the impact tax exemption so that previously approved projects that amend their plan to include additional dwelling units that meet the 25% exemption threshold would be allowed to take advantage of the exemption. Bill 36-17E was signed into law on February 15, 2018.

Councilmember Hans Riemer introduced Bill 5-19 on March 5, 2019. Bill 5-19 clarifies that to receive the impact tax exemption, a project must provide at least 25% MPDUs. The law, as introduced, does not preclude LIHTC projects from receiving the exemption, but in order to receive the exemption, the tax credit units must be placed in the MPDU program. The effect is to produce more units with a longer control period.

Since Bill 8-15 was passed, there have been five projects that have taken advantage of the impact tax exemption. Two are senior housing projects with a high percentage of affordable housing – one in Fairland (Willow Manor at Fairland) with 50 percent affordable units and one in Damascus (Victory Haven) providing 94 percent affordable units. Both projects had affordable units outside of MPDUs. Three projects qualified by providing 25 percent MPDUs, including a multi-family development in Clarksburg (Cabin Branch Multi-family), one in Germantown (Century) and one in the Olney area (Bradford's Landing). Together, these projects add 379 regulated affordable units to the County's housing stock.

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[2] https://dhcd.maryland.gov/HousingDevelopment/Pages/lihtc/default.aspx

[3] The credits are subject to "recapture" if the project fails to comply with the requirements of Section 42 of the Tax Code during the 15-year compliance period. State housing agencies still monitor compliance for LIHTC properties during the extended use period, however, noncompliance during the extended use period is not reported to the IRS and will generally not trigger LIHTC recapture.

There are also several projects in the pipeline that have either signaled their intent to use the waiver or are able to use their waiver given their higher percentage of affordable units. This includes three in Silver Spring, two in Bethesda, one in White Oak, one in Clarksburg and one in Kensington.

Of the thirteen projects that have either received the exemption or are eligible for it, five met the 25% threshold by including affordable units outside of the MPDU program.

Staff Recommendations

- **Staff recommends transmitting comments to the County Council in support of Bill 5-19.** The amendment is not likely to have an impact on the number of projects that qualify for the exemption since projects that would currently qualify using tax credit units could continue to qualify by entering the tax credit units in the MPDU program. No other affordable housing options (including "workforce housing") would qualify a project for this exemption under the law.

  Ultimately, the benefit of this amendment is that any tax credit units built to meet the 25% exemption threshold would need to be entered into the MPDU program, thus ensuring the longer, 99-year control period for the rental units.

- There are some who have questioned the value of this and other impact tax exemptions, and their effects on impact tax revenues relative to the costs of other efforts to incentivize or directly create more affordable housing. This bill does not address those concerns. Preliminary staff analysis suggests that the cost of the exemption varies by project, depending on the mix of unit types and location in the county. **Staff recommends that a more thorough analysis of these exemptions and their effects on impact tax revenue and, in the case of school impact taxes, the net capture rate of the cost of a student seat, be conducted and presented to the Board as part of the upcoming update to the Subdivision Staging Policy (SSP).** Impact tax policy recommendations resulting from the analysis can be transmitted to the County Council along with recommended revisions to the SSP in summer 2020.

Attachment: Bill 5-19 as introduced by Councilmember Hans Riemer on March 5, 2019. (https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2019/20190305/20190305_4B.pdf)

ATTACHMENT1

Agenda Item 4B
March 5, 2019
Introduction

MEMORANDUM

March 1, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Bill 5-19, Development Impact Tax for Transportation and Public School Improvements – Exemptions - Amendments

PURPOSE: Introduction – no Council votes required

Bill 5- 19,Development Impact Tax for Transportation and Public School Improvements – Exemptions - Amendments, sponsored by Lead Sponsor Councilmember Riemer, is scheduled to be introduced on March 5, 2019. A public hearing is tentatively scheduled for March 26, 2019 at 1:30 p.m.[1]

Bill 5-19 would amend the exemptions from the development impact tax for transportation and public school improvements for certain dwelling units. It would modify the impact tax exemption for all units in a development where at least 25% of the dwelling units are built under certain government regulations or agreements.

Background

The current law exempts a dwelling unit that is a moderately priced dwelling unit (MPDU), a dwelling unit built under a government regulation that limits the price or rent so that it is affordable to households earning less than 60% of the area median income, a personal living quarter with a price that meets the MPDU price standards, and a dwelling unit in an Opportunity Housing Project that meets the MPDU price standard. These exemptions provide a financial incentive for a developer to build an affordable dwelling unit. The current law also exempts all market priced dwelling units in a development if at least 25% of the units are in one of the exempt categories listed above.

Although each of the listed exempt categories produce an affordable dwelling unit, only an MPDU built under Chapter 25 would continue the price controls for 99 years. For example, the price restrictions for a Tax Credit unit serving people at 50% to 60% of area median income expire after 20 years. Once the restrictions expire, the dwelling unit may be rented at a market rate. The value of the benefit to the developer is increased significantly if affordability is only restricted to 15 or 20 years, copared to the 99-year MPDU agreement. Conversely, the value of the benefit to

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[1]#MoCoAffordableHousing
Other search terms: moderately priced housing, MPDU and development impact tax

the County is significantly decreased if the affordability restriction expires in only 15 to 20 years instead of 99 years. Bill 5-19 would limit this exemption for market rate units to a development with at least 25% MPDUs.

This packet contains:	Circle #
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Bill No. 5-19
Concerning: Development Impact Tax for Transportation and Public School Improvements – Exemptions - Amendments
Revised: February 27, 2019 Draft No. 3
Introduced: March 5, 2019
Expires: September 5, 2020
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: None
Ch. _____, Laws of Mont. Co. ______

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Riemer

AN ACT to:

(1) amend the exemptions from the development impact tax for transportation and public school improvements for certain dwelling units;
(2) amend the impact tax exemption for all units in a development where at least 25% of the dwelling units are built under certain government regulations or agreements; and
(3) generally amend the law governing the development impact tax.

By amending
Montgomery County Code
Chapter 52, Taxation
Sections 52-41 and 52-54

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:

Sec. 1. Sections 52-41 and 52-54 are amended as follows:

52-41. Imposition and applicability of development impact taxes.

* * *

(g) A development impact tax must not be imposed on:

(1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville[,];

(2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning less than 60% of the area median income, adjusted for family size;

(3) any Personal Living Quarters unit built under [Sec. 59-A-6.15] Section 59-3.3.2.D, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(5) any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1) [, (2), (3), or (4), or any combination of them];

(6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone;

(7) a house built by high school students under a program operated by the Montgomery County Board of Education; and

(8) a farm tenant dwelling.

* * *

52-54. Imposition and applicability of tax.

* * *

(c) The tax under this Article must not be imposed on:

(1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville**[**,**]**;

(2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning equal to or less than 60% of the area median income, adjusted for family size;

(3) any Personal Living Quarters unit built under Section 59-3.3.2.D, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(5) any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1) **[**, (2), (3), or (4), or any combination of them**]**;

(6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone; or

(7) a house built by high school students under a program operated by the Montgomery County Board of Education.

*   *   *

Sec. 2. Transition.

The amendments made in Section 1 must apply to any development impact tax that would be due or is paid after this Act takes effect.

Approved:

Nancy Navarro, President, County Council   Date

Approved:

Marc Elrich, County Executive   Date

This is a correct copy of Council action.

Megan Davey Limarzi, Esq., Clerk of the Council   Date

LEGISLATIVE REQUEST REPORT

Bill 5-19

Development Impact Tax for Transportation and Public School Improvements – Exemptions - Amendments

DESCRIPTION:	Bill 5-19 would amend the exemptions from the development impact tax for transportation and public school improvements for certain dwelling units. It would modify the impact tax exemption for all units in a development where at least 25% of the dwelling units are built under certain government regulations or agreements.
PROBLEM:	The current law exempts market rate dwelling units from the impact tax in situations where the affordable units are not price controlled for a long time.
GOALS AND OBJECTIVES:	To limit the exemption of market rate dwelling units to situations where at least 25% of the units in a development are MPDUs with a long price restriction.
COORDINATION:	DHCA, County Attorney
FISCAL IMPACT:	To be provided
ECONOMIC IMPACT:	To be provided
EVALUATION:	To be provided
EXPERIENCE ELSEWHERE:	Unknown
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	N/A

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