



CITY OF BALTIMORE  
MAYOR BRANDON M. SCOTT

<b>TO</b>	The Honorable President and Members of the Baltimore City Council
<b>FROM</b>	Alice Kennedy, Housing Commissioner
<b>DATE</b>	November 12, 2024
<b>SUBJECT</b>	<b>24-0608 - Real Property Tax - Affordable and Inclusionary Housing - Mandatory Reporting</b>

The Honorable President and  
Members of the City Council  
City Hall, Room 400

11/12/24

**Position: Unfavorable**

## Introduction

The Department of Housing and Community Development (DHCD) has reviewed City Council Bill 24-0608 Real Property Tax - Affordable and Inclusionary Housing - Mandatory Reporting for the purpose of requiring the Departments of Housing and Community Development and Planning to submit a joint report to the City Council prior to seeking the approval of the Board of Estimates of an agreement between the City and an owner or owners of a qualifying affordable or inclusionary housing development that provides for the payment to the City of a negotiated amount in lieu of the payment of City real property taxes for a set term of years. If approved, this Bill would come into effect on the 30<sup>th</sup> day following its enactment.

## Background

Maryland State law grants permission under certain conditions for local jurisdictions to enter into Payment-In-Lieu-of-Taxes agreements. In these agreements the City allows a property owner to pay an amount that is less than the full property tax rate in exchange for some public benefit. Proposed PILOT agreements are first analyzed and reviewed internally by a PILOT Committee and then require Board of Estimates approval. DHCD is responsible for overseeing the underwriting process. The most common uses of PILOTs are to spur economic development and to develop affordable housing:

### ***Affordable Housing PILOTS***

Affordable Housing PILOTS are authorized under State Code Property Tax Article, Sections 7-503. To be eligible for a PILOT the developer or property owner must be a non-profit corporation

or a local government housing authority. Due to the lower rental revenue generated by affordable housing projects, developers often need some combination of Federal, State, and local subsidies to make the project financially viable. Many of these PILOTs do not have a fixed end date as long as the property is used for low-income housing with qualifying tenants. This Bill would apply to new qualifying affordable or inclusionary housing developments and may apply to a property transfer or change of ownership.

### ***Request Process***

The request for an affordable housing PILOT is initiated with the Department of Finance. The request is forwarded to the Law Department to determine if the project satisfies the statutory requirements. Once complete, the Law Department will notify the Affordable Housing PILOT Coordinator of their findings and if a positive determination is made, the PILOT will proceed to Underwriting.

DHCD prepares an Underwriting Report with their analysis and recommendation to the Affordable Housing PILOT Committee. The Affordable Housing PILOT Committee is tasked with vetting requests prior to the presentation of these requests to the Board of Estimates. Once the Director of Finance has determined that the Affordable Housing PILOT will be submitted to the Board of Estimates for their consideration, the PILOT Agreement and legal opinion will be finalized and executed, and the necessary Board of Estimates materials will be submitted.

### **DHCD Analysis**

The Bill requires that prior to submission of an agreement to the Board of Estimates for an affordable or inclusionary housing tax exemption, DHCD and the Department of Planning submit a joint report to the City Council, along with a number of supporting documents.

The Law Department noted in their report that they cannot approve the Bill for form and legal sufficiency and that the Tax-Property Article of the Maryland Code specifies that for the Mayor and City Council of Baltimore, the “governing body” is the Board of Estimates. The Board of Estimates (BOE) approves any PILOT agreements and under the City Charter, it has the authority to determine what documents and information it wishes to review before granting such an agreement. It does not make legal or practical sense to report to the Council on PILOTS before they are adopted by the BOE and it is outside the authority of the Council.

In addition to the lack of legal sufficiency expressed in the Law department’s Bill report. DHCD has a number of concerns. Firstly, the provisions of Ordinance 24-308 provides for the review of plans for Inclusionary Housing projects prior to permit issuance, which is a separate process from the City’s Affordable Housing PILOT program, which is administered by the Commissioner of DHCD. (City Code, Art. 13, § 2A-3) Additionally, City Law already currently requires the Commissioner of DHCD to report to the Mayor and City Council annually about both the Affordable Housing and Inclusionary Housing Programs. (City Code, Art. 13, §§ 2A-6.; 2B-16)

Finally, the Department of Planning is not involved with Affordable Housing PILOTS nor are they in an appropriate position to submit a joint report to the City Council. The additional reporting requirement and submission to the Council would cause process delays and may have a chilling effect on the development of future Affordable Housing and Inclusionary Housing projects. The reporting requirements proposed in (6)(I)(A through F) and (6)(II)(A through C) of the Bill are unreasonably burdensome, duplicative of some of DHCD's current activities and would require additional staff.

- For instance, required documentation for the Council would include a “property inspection report of the qualifying development.” This is redundant, all residential rental units in Baltimore City are required to be registered, inspected, and licensed to ensure that they meet basic safety and maintenance requirements.
- The Council would require documentation of a “security plan.” It is unclear why we would hold these projects to a different standard than other residential rental units in Baltimore City. DHCD does not have security professionals on staff and is not in a position to determine what would be an acceptable security plan on a project-by-project basis. DHCD in conjunction with BPD is committed to enforcing all applicable laws in order to promote the health and safety of our communities throughout the City of Baltimore. The Bill also requires the submission of a “history of calls for public safety services in the 36 months preceding the pilot request.” While this information may be possible to pull it is unclear what purpose it will serve. All tenants and property owners are expected to adhere to City, State and Federal Law.
- The Bill requires the submission of documentation to the Council of the “planned accessibility improvements to units for residents with disabilities”. It is unclear why this is included in the Bill. The Americans with Disabilities Act requires reasonable accommodations which includes modifications to living space.
- The Bill requires the submission of a “maintenance and capital project plan.” The Building, Fire and Related Codes of Baltimore City and the International Property Maintenance Code, regulate the minimum maintenance requirements for basic equipment, light, ventilation, heating, sanitation and fire safety. DHCD's Code Enforcement Section can currently issue notices and citations for sanitation & maintenance concerns on all properties. Maintenance is not unique to Affordable Housing and Inclusionary Housing; it is unclear why this documentation requirement is included in the Bill.
- Additionally, Affordable Housing and Inclusionary Housing projects often require a combination of Federal, State, and local subsidies. It is unclear how the documentation of the capital project plan should be presented to the Council. DHCD defers to the Department of Finance on the appropriateness of this requirement.
- The Bill requires the “analysis of any applicable sections of the Zoning Code that may impact the qualifying the development.” DHCD defers to the Department of Planning on the appropriateness of this requirement. Plans are already reviewed during the design review and permitting process. It is unclear why this requirement is included in the Bill.
- For projects involving “vacant structures or new construction an environmental report for the proposed sites is required.” This requirement is vague, it is unclear what the proposed “environmental report” should include. The BFRC and the permitting review process

already include environmental review and other considerations.

## Conclusion

DHCD respectfully requests an **unfavorable** report on Council Bill 24-0608.