

**PAYMENT IN LIEU OF TAX POLICY FOR
LOW AND MODERATE INCOME RENTAL HOUSING PROGRAMS
(UPDATED 10-24-22)**

Frederick County, Maryland, a body corporate and politic of the State of Maryland (“County”) hereby revises its policy for Payment in Lieu of Tax (“PILOT”) agreements required to support housing Projects located within Frederick County (both within and outside of municipalities) that provide decent, safe, and sanitary housing to low or moderate income citizens when that housing cannot be provided without waiving a portion of real property taxes.

Nothing herein shall be deemed to require the County to enter into a PILOT Agreement in support of an eligible housing Project. The decision as to whether or not to enter into any particular PILOT Agreement is completely at the discretion of the County Executive and the County Council.

This revised policy replaces the “Policy for Frederick County for Payment in Lieu of Taxes in Support of Low/Moderate Income Housing” adopted by the County on June 24, 2008.

1. Definitions

a. *Project* - A housing development complying with the requirements and intent of this Policy, which, by virtue of a County Council resolution and a PILOT Agreement by and between the County and the Project owner, is authorized to pay a negotiated or discounted amount in lieu of Frederick County real property tax.

b. *Frederick County Real Property Tax* - That real property tax which would normally be collected by Frederick County Government based on the full-assessed value of a property and its improvements at the tax rate in effect at the time of collection. State of Maryland and municipal real property taxes, County fire and rescue tax, other special taxing district and community development agreement taxes and assessments, and other fees or charges from government entities shall not be subject to a PILOT Agreement and shall be paid by the Project or property owner.

c. *Payment in Lieu of Tax (“PILOT”) Agreement* - An agreement between the County and Project owner for the payment of a negotiated or discounted amount in lieu of full payment of Frederick County real property tax for an approved housing development, either new construction or rehabilitation, that provides rental housing for low or moderate income County residents.

d. *Low to Moderate Income Household* - A household whose gross income is at or below the income limit established by the U.S. Department of Housing and Urban Development (HUD), the Maryland Community Development Administration (CDA), or other funding agency, at the time of PILOT Agreement. Unless otherwise required or appropriate, HUD limits will be used rather than those of another agency.

e. *Regulatory Agreement* - A recorded agreement between a public agency

lender and the Project owner covering administrative, occupancy, and financial requirements of the loan from the public agency.

2. Procedures Required for PILOT Agreement

a. The applicant shall submit a request to enter into a PILOT Agreement to the County Executive, with a copy to the Department of Housing and Community Development (DHCD). The DHCD, in consultation with staff from Treasury, Finance, and the County Attorney's Office (and the municipality if a joint County-municipality PILOT Agreement is requested), will draft a PILOT Agreement for approval by the County Executive.

b. After receiving approval from the County Executive, the DHCD will present the draft PILOT Agreement to the County Council at a public meeting.

c. The County Council may, by resolution, authorize the County Executive to enter into a PILOT Agreement if permitted by Maryland law, and if one or more of the following applies:

- The proposed housing Project will serve the public purpose of providing decent, safe, and sanitary housing for low to moderate income citizens, at rents that are not attainable on the open market, and where the granting of tax relief through the PILOT program is essential to the attainment of those rents;
- A principal funding agency, such as HUD or CDA, requires a significant local contribution from the County before it will finance a qualifying Project, and the PILOT program will be acceptable as that contribution;
- The PILOT Agreement is essential to the success of a County funded Project, such as one funded with Community Development Block Grant funds; or
- The PILOT Agreement will provide sufficient savings to a Project to permit qualifying housing to be created without the utilization of HUD, CDA, or other public agency's financing.

3. Project Eligibility

Any Project that the County determines facilitates or fulfills the public purpose of providing low to moderate income housing may be eligible for a PILOT Agreement. Eligible Projects may be located anywhere within Frederick County, within or outside of municipalities, on Property that is properly zoned and served, or eligible to be served, by public water and sewer.

4. Approval by Municipality

For projects located within a Frederick County municipality, the County will not authorize

a PILOT Agreement unless there is approval of the Project by the municipality within which the Project is located.

5. Annual Audit Required

Within ninety (90) days after December 31 of the year in which a PILOT Agreement is entered into, and within 90 days of each subsequent December 31 thereafter, the Project owner shall submit to the Frederick County Division of Finance and to the Frederick County Department of Housing and Community Development a complete operating financial report in such detail as may be required by the Division of Finance. This financial report shall be based on an examination of the Project's and Project owner's books and records, prepared in accordance with generally accepted accounting principles, and shall be prepared and certified to by a Certified Public Accountant registered to practice in the State of Maryland. The Project Owner shall also submit to the County within the time period noted above and as further specified in the PILOT Agreement, the following: Certification of Continued Need, and copies of Year End LIHTC Reporting provided to Maryland CDA.

6. Cash Distributions Limited

The Project owner shall not be entitled to any cash distribution except as permitted in accordance with the Regulatory Agreement and the PILOT Agreement.

7. Transfer or Exchange of the Property

a. The Project owner shall not transfer or exchange ownership of the Project or property or otherwise change the use of the Project from a residential low or moderate income rental Project while the Project is subject to a PILOT Agreement, except as permitted by the Regulatory Agreement and with the advance written consent of the County.

b. In the event the Project owner wishes to transfer or exchange ownership of the property or Project or change the use of the Project while the Project is subject to a PILOT Agreement, the owner shall notify the County (and the municipality if applicable), in writing, at least ninety (90) days prior to undertaking any such action, and must obtain advance written consent of the County (and the municipality if applicable) for such transfer, exchange or change in the nature of the Project. Absent such advance written consent, the Project owner shall be deemed to be in material default under the Project PILOT Agreement and the County may exercise all rights under the PILOT Agreement, at law and in equity.

8. PILOT Payments

a. In the case of Projects involving the County and any Frederick County municipality, since both County and municipality real property taxes would otherwise be collected, the Applicant must negotiate the required payments in lieu of taxes (if any) with the municipality separately.

b. Payments in lieu of tax for rehabilitation Projects shall be determined

considering a Project's assessed value and the tax rate in effect immediately after rehabilitation, so that no rehabilitation Project shall pay less in taxes after entering into a PILOT Agreement with the County than were paid before entering into the PILOT Agreement.

9. Term of PILOT Agreement

Each PILOT Agreement shall remain in effect for a predetermined number of years; "evergreen" agreements are not permitted. The term of a PILOT Agreement may, with the County's consent, coincide with the term(s) set by another agreement, including but not limited to Frederick County Deferred Loan Program documents, Internal Revenue Service low income housing tax credit agreements, or CDA regulatory agreements.

10. Termination Prior to Expiration of the Term

If, during the term of a PILOT Agreement, the Project owner removes any or all of the qualifying housing units from service as low to moderate income rental housing, and does not return the unit to service within a reasonable time period (as further detailed in the PILOT Agreement), then all Frederick County real property tax that would have been imposed for the unit(s) as of the date the unit is taken out of service, less any payments previously made, will be immediately due and payable to the County.

11. Recordation of Agreement

PILOT Agreements shall be recorded in the Frederick County land records and shall constitute a lien on the Project and real property.

12. Payment in Lieu Amount

The maximum amount of property taxes waived under each PILOT Agreement shall not exceed Five Hundred and Twenty Dollars (\$520.00) per unit, per fiscal year.

13. Notification Requirement

While the Project is subject to a PILOT Agreement, written notification from the Project owner must be given to the County in writing at least eighteen (18) months, but no more than twenty-four (24) months, prior to the termination of any agreement that requires the Project to remain as low or moderate income rental housing.

14. Right of First Refusal

If the PILOT Agreement is coterminous with a Regulatory Agreement, the County must have the right of first refusal to purchase a PILOT Agreement Project at the end of the service period at a cost reflecting the value established by the primary lender, Regulatory Agreement, or Project fair market rate, or the minimum purchase price provided in Section 42(i)(7) of the Internal Revenue Code of 1986, as amended, whichever is lowest. The County shall have ninety (90) days from receipt of notification from the Project owner of the owner's intention to sell and presentation

of a bona fide offer to decide.

15. Incorporation into PILOT Agreements

All PILOT Agreements must incorporate this Payment In Lieu of Tax Policy for Low and Moderate Income Rental Housing Programs as part of its terms and conditions.

Approved on this 24 day of October, 2022.

ATTEST:

FREDERICK COUNTY, MARYLAND

DocuSigned by:
Rick Harcum
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Rick Harcum
Chief Administrative Officer

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Jan Gardner
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By: Jan H. Gardner
County Executive