



Montgomery  
County Council

**Committee:** PHED

**Committee Review:** At a future date

**Staff:** Ludeen McCartney-Green, Legislative Attorney

**Purpose:** To introduce agenda item – no vote expected

**Keywords:** #AffordableHousing

AGENDA ITEM #3B

November 15, 2022

**Introduction**

## SUBJECT

Bill 33-22, Capital Improvements Program – Affordable Housing Feasibility Study – Required  
Lead Sponsor: Councilmember Friedson

## EXPECTED ATTENDEES

None; introduction

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To introduce Bill – no vote expected

## DESCRIPTION/ISSUE

Bill 33-22 would:

- (1) require the County Executive to submit an affordable housing feasibility study to the Council for certain capital projects;
- (2) establish a review process for the Council to determine project feasibility for colocation of affordable housing; and
- (3) generally amend County law regarding the analysis of capital projects.

## SUMMARY OF KEY DISCUSSION POINTS

- None

### This report contains:

Staff Report

Bill 33-22

Legislative Request Report

Lead Sponsor Memorandum

Pages 1-3

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**M E M O R A N D U M**

November 10, 2022

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 33-22, Capital Improvements Program – Affordable Housing Feasibility Study – Required

PURPOSE: Introduction – no Council votes required

Bill 33-22, Capital Improvements Program – Affordable Housing Feasibility Study – Required, sponsored by Lead Sponsor Councilmember Friedson is scheduled to be introduced on November 15, 2022. A public hearing will be scheduled at a later date.<sup>1</sup>

Bill 33-22 would:

- (1) require the County Executive to submit an affordable housing feasibility study to the Council for certain capital projects;
- (2) establish a review process for the Council to determine project feasibility for co-location of affordable housing; and
- (3) generally amend County law regarding the analysis of capital projects.

**PURPOSE**

The purpose of this bill is to make the process of evaluating a project for co-location of affordable housing and County facilities more transparent between the Executive branch and the County Council.

**BACKGROUND**

Under the current law, the Office of Management and Budget is required to provide to the County Council during the transmission of the Capital Improvements Program (CIP) budget, an affordable housing assessment for each applicable capital project that is in facility planning.<sup>2</sup> The affordable housing assessment takes into consideration several factors in its evaluation: (1) the

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<sup>1</sup> #AffordableHousing

<sup>2</sup> County Code §25B-7

feasibility of including a significant amount of affordable housing in the project; (2) the effect of the project on the supply of affordable housing in the immediate area; (3) what capital or operating modifications, if any, would promote and maximize affordable housing in the project and the immediate area; and (4) what operating budget modifications, if any, would be needed to build and maintain affordable housing in the project.

The problem is by the time the capital project and housing assessment are included in the CIP for the Council's consideration of co-locating affordable housing with a new construction project, there are already barriers, *i.e.* site constraints, costs of construction, design elements, the program of requirements, etc., that prevents the feasibility of the project from moving forward, and as a result, a lost opportunity for affordable housing.

Bill 33-22 would seek to strengthen the evaluation of co-location of affordable housing and County facilities earlier in the capital project development process by requiring a robust feasibility study prior to facility planning and providing an opportunity for the Council to review the study and determine whether to support the findings or make further recommendations.

#### **BILL SPECIFICS**

Specifically, Bill 33-22 would require the County Executive to submit an affordable housing feasibility study *prior to* facility planning, development of the program of requirements, site selection, or land acquisition of any capital project. The study would include the following requirements, (lines 16-26 of the Bill):

(c) Contents of the feasibility study. The study must include, but is not limited to, the following:

- (1) a description of the proposed capital project;
- (2) outreach efforts and stakeholder input;
- (3) the program of requirements, if developed;
- (4) potential site and environmental constraints;
- (5) programmatic elements evaluated for co-location;
- (6) projected total cost of construction, including, if any, costs of co-location of affordable housing;
- (7) a statement of whether co-location is feasible; and
- (8) any other related components used for consideration to determine project feasibility.

After the Council receives the study submitted by the County Executive, within 30 days, the Council must review the analysis. The analysis will provide a basis for considering co-locating affordable housing on any new CIP project (this bill would not apply to refresh projects). The

Council must decide whether to approve or disapprove of the analysis presented in the feasibility study and depending on the Council's decision, this sets the direction of the project.

*Feasibility Study Approved by Council.* If the affordable housing feasibility study is approved, DGS moves forward with its normal capital project development process (planning, design, budget, and construction).

*Feasibility Study Disapproved by Council.* If the Council disapproves the Executive Branch analysis, the Council can direct the Executive Branch to go back and perform additional analysis, and within a reasonable timeframe come back to the Council, with a capital project plan that includes co-location. The Council can approve the Executive's plan for co-location, waive any requirements, or agree with the Executive Branch that housing is not feasible for a certain project. If the project is determined feasible, it would be included in the CIP for the normal budget review process to receive funding.

The bill also includes a waiver provision, if the Council determines the project would result in a loss of a site; require emergency appropriation; or experience further delay not in the best interest of the public.

The effective date of the bill would be July 1, 2023, after the CIP budget for FY 2023 is approved by the Council.

This packet contains:

Bill 33-22

Legislative Request Report

Lead Sponsor Memorandum

Circle #

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0Bill No. 33-22  
Concerning: Capital Improvements  
Program – Affordable Housing  
Feasibility Study – Required  
Revised: 11/7/2022 Draft No. 5  
Introduced: \_\_\_\_\_  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Friedson

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### **AN ACT** to:

- (1) require the County Executive to submit an affordable housing feasibility study to the Council for certain capital projects;
- (2) establish a review process for the Council to determine project feasibility for colocation of affordable housing; and
- (3) generally amend County law regarding the analysis of capital projects.

By amending

Montgomery County Code  
Chapter 25B, Housing Policy  
Section 25B-7

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<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. Section 25B-7 is amended as follows:**

2        **25B-7.        Affordable housing feasibility study and assessment.**

3        (a)    Definitions. As used in this Section:

4        Affordable housing feasibility study means an analysis of any applicable  
 5        capital project that includes an evaluation of co-location of affordable  
 6        housing at a library, recreation center, police station, fire station, or any  
 7        other general services building.

8        Applicable capital project means any proposed building project  
 9        administered by the Department of General Services or the Parking  
 10        Management Division of the Department of Transportation.

11        (b)    Affordable housing feasibility study. For any applicable capital project,  
 12        prior to facility planning, development of program of requirements, site  
 13        selection, or land acquisition, the County Executive must prepare and  
 14        transmit to the Council an affordable housing feasibility study.

15        (c)    Contents of the feasibility study. The study must include, but is not limited  
 16        to, the following:

- 17        (1)    a description of the proposed capital project;
- 18        (2)    outreach efforts and stakeholder input;
- 19        (3)    the program of requirements, if developed;
- 20        (4)    potential site and environmental constraints;
- 21        (5)    programmatic elements evaluated for co-location;
- 22        (6)    projected total cost of construction, including, if any, costs of co-  
 23        location of affordable housing;
- 24        (7)    a statement of whether co-location is feasible; and
- 25        (8)    any other related components used for consideration to determine  
 26        project feasibility.

27        (d)    County Council review; capital project plan.

- (1) Within 30 days after the Council receives the affordable housing feasibility study under subsection (b), the Council must:

  - (A) review the feasibility study; and
  - (B) determine by a vote whether to approve or disapprove the analysis provided in the feasibility study.
- (2) An analysis approved by the Council under subparagraph (1)(B) permits the project to proceed in its normal course of planning, design, and construction.
- (3) If the Council disapproves of the analysis under subparagraph (1)(B) and determines that co-location of affordable housing is feasible, the County Executive must, within a reasonable timeframe, develop and transmit to the Council a plan where the capital project identified in the study includes co-location of affordable housing.
- (e) Review of the Executive's plan. Unless waived by the Council, before appropriation in the Capital Improvements Program, the Council must review and approve the plan submitted by the Executive under subsection (d)(3). A plan that does not include co-location must contain a written explanation describing the circumstances as to why the requirements for co-location could not be fulfilled.
- (f) Waiver. The Council may waive any requirement under this Section if the Council determines the project would:

  - (1) result in a loss of a site;
  - (2) require emergency appropriation; or
  - (3) experience further delay not in the best interest of the public.
- [(a)] (g) Affordable Housing Assessment. For each applicable capital project in

the Capital Improvements Program during facility planning, the Office of Management and Budget must include in or transmit with the CIP an evaluation of:

- (1) the feasibility of including a significant amount of affordable housing in the project;
- (2) the effect of the project on the supply of affordable housing in the immediate area;
- (3) what capital or operating modifications, if any, would promote and maximize affordable housing in the project and the immediate area; and
- (4) what operating budget modifications, if any, would be needed to build and maintain affordable housing in the project.

[(b)] (h) \* \* \*

[(c) As used in this section, applicable capital project means any proposed building project administered by the Department of General Services or the Parking Management Division of the Department of Transportation.]

\* \* \*

**Sec. 2. Effective Date; Transition.** The amendments in Section 1 take effect on July 1, 2023.



## LEGISLATIVE REQUEST REPORT

Bill 33-22

*Capital Improvements Program – Affordable Housing Feasibility Study – Required*

**DESCRIPTION:** Bill 33-22 would: (1) require the County Executive to submit an affordable housing feasibility study to the Council for certain capital projects; (2) establish a review process for the Council to determine project feasibility for co-location of affordable housing; and (3) generally amend County law regarding the analysis of capital projects.

**PROBLEM:** Co-location allows the County to shift its focus away from stand-alone individual projects and toward either (a) making maximum use of its existing assets or (b) integrating the County's goal of increasing its stock of affordable housing into the objectives of new CIP projects. The purpose of this bill is to make the process of evaluating a project for co-location of affordable housing and County facilities more transparent between the Executive branch and the County Council.

**GOALS AND OBJECTIVES:** To strengthen the existing requirement for the Executive Branch to assess the viability of co-location of affordable housing with new or significantly renovated county facilities at a site for a potential library, recreation center, police station, fire station, or any general services building in the County.

**COORDINATION:** Department of General Services

**FISCAL IMPACT:** To be completed by OMB

**ECONOMIC IMPACT:** To be completed by OLO

**EVALUATION:** To be completed.

**EXPERIENCE ELSEWHERE:**

**SOURCE OF INFORMATION:** Ludeen McCartney-Green, Legislative Attorney

**APPLICATION WITHIN MUNICIPALITIES:** N/A

**PENALTIES:** N/A



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

ANDREW FRIEDSON  
COUNCILMEMBER  
DISTRICT 1

MEMORANDUM

TO: Colleagues  
FROM: Andrew Friedson *AF*  
SUBJECT: Colocation of Affordable Housing with County Facilities  
DATE: November 9, 2022

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On November 15, 2022, I will be introducing legislation (attached) to strengthen the [existing requirement](#) for the Executive Branch to assess the viability of colocation of affordable housing with new or significantly renovated county facilities.

We are all aware of the housing crisis we face. Bill 33-22, which helps ensure we make the highest and best use of county-owned property by collocating affordable housing with our own capital projects, provides another important tool to address our county's housing needs and allows us to lead by example. We have unfortunately missed countless opportunities for colocation in the past. Because our housing needs are great and our land is scarce, we must aggressively pursue each feasible project. This bill would accomplish that goal by ensuring a thorough and transparent analysis and review deserving of our shared commitment to increasing our affordable housing supply.

Specifically, this bill would add the following requirements/conditions:

- Require an affordable housing feasibility study prior to facility planning, development of the program of requirements, site selection, or land acquisition. This study would include eight requirements outlined on lines 19-28 of the draft and be submitted to the Council which would then review the analysis and approve or disapprove the assessment, setting the direction of the project.
- If the affordable housing feasibility study is approved, DGS moves forward with their normal capital project development process working with DHCA, HOC, and/or a private or nonprofit housing development partner.
- If the Council disapproves the Executive Branch assessment, the Council can direct the Executive Branch to go back, do additional analysis, and come back to the Council or the Council can concur with the Executive Branch that housing is not feasible for a given project.
- The colocation projects then make their way to inclusion in the CIP which the Council receives and reviews during the regular CIP review process. The Council President has the discretion to send the review of these projects to the appropriate Council committee(s) or to put a project on the full council agenda for review by the body.
- If anything has changed from the time of the Council's approval of the affordable housing assessment, the Executive Branch must come to the Council requesting a waiver to build a stand-alone county facility.

Please let us know if you would like to co-sponsor this legislation and of course, do not hesitate to reach out to me or Cindy with any questions.