

Sayers, Margery

From: Tom Ballentine <tom.ballentine@naiop-md.org>
Sent: Wednesday, June 17, 2020 10:00 AM
To: Rigby, Christiana; CouncilMail
Cc: Williams, China; Harris, Michael; Gelwicks, Colette; Knight, Karen; Dvorak, Nicole; Yungmann, David; Jones, Opel; Walsh, Elizabeth; Jung, Deb
Subject: Follow up on CB 13-2020 Hearing Question and Answer re County Legal Authority
Attachments: Howard County - CB 13-2020 - Right of First Refusal - Hearing Question of Legal Authority - Followup - NAIOP Testimony Letter.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Good Morning Councilmember Rigby –

I am writing to follow up on the discussion about legal authority at the CB 13-2020 bill hearing on Monday.

The attached letter sets out some points to consider related to state law and CB 13-2020.

Sincerely –

tb

Tom Ballentine

Vice President for Policy and Government Relations

NAIOP Maryland Chapters – *The Association for Commercial Real Estate*

Phone: 410.977.2053

Email: tom.ballentine@naiop-md.org

U.S. Mail: P.O. Box 16280 Baltimore, Maryland 21210



The Maryland Chapters of NAIOP represent more than 700 companies involved in commercial, industrial and mixed use real estate. Established in 1967 as the National Association of Industrial and Office Properties, today NAIOP is the nation's leading advocate for companies involved in commercial construction, land development, brokerage, property management, finance, architecture, engineering and law. For more information, please visit www.naiopmd.org



June 17, 2020

The Honorable Christiana Rigby
Howard County Council
George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043

Via Email: crigby@howardcountymd.gov; councilmail@howardcountymd.gov;

CB 13-2020 Rental Property – County Right to Purchase – Follow up on Question of County Legal Authority

Dear Councilmember Rigby and Council Members:

I am writing to follow up on the question and answer exchange between you and James Knott at the CB 13 bill hearing on Monday June 15, 2020. During his testimony Mr. Knott questioned whether the county had the authority to do what is proposed. I recall your reply was that the bill had been found to be legally sufficient.

[NAIOP's concerns with the bill are explained in our hearing testimony](#) and are based primarily on the market disruptions caused by the timing and length of the Commission's contingency period. Putting aside broader legal concepts, we also see a sizable gap between the provisions of CB 13-2020 and both the General Assembly statement of legislative intent and the authority to intervene in apartment sales granted to local governments by Real Property Article 11-138 and 11-140 as well as the related language in Corporations and Associations Article 5-6B-08.

We acknowledge that the County generally has broad legal authority derived from multiple sources and that opposite positions can often be supported by statutory and legislative history. Nevertheless, these state code sections raise legitimate questions about preemption, the equity of the policies proposed in CB 13-2020 and the limits of Howard County's legal authority to intervene in apartment sales. For example, please consider the five questions and corresponding highlighted code sections below:

- 1) Does state law allow the county to apply ROFR to property with less than 10 units?
- 2) Does state law allow county intervention in apartment sales that are not intended to be converted to a condominium?
- 3) Can the county require the ROFR offer be valid for more than 60 days?
- 4) Is it appropriate for CB 13-2020 to require rent controls on 20% of the units for at least 40 years when the state law exemption from ROFR is based on the owner agreeing to retain the property as a rental facility for 3 years?
- 5) How does the statement of legislative intent in Real Property 11-140 apply to CB 13-2020?

Real Property § 11-138. Local government's right to purchase rental facility

(b) "Rental facility" defined. – In this section, **"rental facility" means property containing 10 or more dwelling units intended to be leased to persons who occupy the dwellings as their residences.**

(b) Local law requiring right of purchase; mandatory provisions. –

- (1) A county or an incorporated municipality may provide, **by local law or ordinance, that a rental facility may not be granted to a purchaser for the purpose of subjecting it to a condominium regime unless the county, incorporated municipality or housing agency has first been offered in writing the right to purchase the rental facility** on substantially the same terms and conditions offered by the owner to the purchaser. The local law

or ordinance shall designate the title and mailing address of the person to whom the offer to the county, incorporated municipality or housing agency shall be delivered.

- (2) The offer shall contain a contingency entitling the county, incorporated municipality or housing agency, to secure financing within 180 days from the date of the offer.
- (3) Unless written acceptance of the offer is sooner delivered to the owner by the county, incorporated municipality or housing agency, ³the offer shall terminate, without further act, 60 days after it is delivered to the county, incorporated municipality or housing agency. If the offer terminates, the owner may grant the rental facility to any person for any purpose on terms and conditions not more favorable to a buyer than those offered by the owner to the county, incorporated municipality or housing agency.
- (4) If the county, incorporated municipality, or housing agency purchases the rental facility, it shall retain or provide for the retention of:
 - (i) The property as a rental facility for at least 3 years from the date of acquisition; or
 - (ii) At least 20 percent of the units in the facility as rental units for 15 years from the date of acquisition for households that do not exceed the applicable income eligibility figure under § 11-137(n) of this title for the county or incorporated municipality in which the rental facility is located.

(c) Certain rental facility owner exempt. -- A local law or ordinance adopted under subsection (b) of this section may provide that ⁴the owner of a rental facility is exempt from the provisions of this section if the purchaser of the rental facility enters into an agreement with the county, incorporated municipality, or housing agency to retain the property as a rental facility for a period not to exceed 3 years after the date of acquisition of the property.

(d) Transfers to which right of purchase not applicable. -- The provisions of any local law or ordinance adopted under this section shall not apply to any of the following transfers of a rental facility:

- (1) Any transfer made pursuant to the terms of a bona fide mortgage or deed of trust agreement;
- (2) Any transfer to a mortgagee in lieu of foreclosure or any transfer pursuant to any other proceedings, arrangement or deed in lieu of foreclosure;
- (3) Any transfer made pursuant to a judicial sale or other judicial proceeding brought to secure payment of a debt or for the purpose of securing the performance of an obligation;
- (4) Any transfer of the interest of one co-tenant to another co-tenant by operation of law or otherwise;
- (5) Any transfer made by will or descent or by intestate distribution;
- (6) Any transfer made to any municipal, county or State government or to any agencies, instrumentalities or political subdivisions thereof;
- (7) Any transfer to a spouse, son or daughter;
- (8) Any transfer made pursuant to the liquidation of a partnership or corporation; or
- (9) Any transfer into a partnership or corporation wholly owned by the person(s) so contributing.

(e) Waiver of right. -- Any county, incorporated municipality or housing agency, by execution and delivery by the appropriate official to the grantor of an instrument in recordable form, may waive its right to purchase a particular rental facility under this section.

(f) Copy of local law to be forwarded to Secretary of State. -- Within 30 days of the enactment of a law or ordinance under this section, the county or incorporated municipality shall forward a copy of the law or ordinance to the Secretary of State.

§ 11-140. Legislative intent; local legislative finding and declaration of rental housing emergency; local laws and regulations to meet emergency; copies

(a) ⁵Legislative intent. -- The intent of the General Assembly of Maryland is to facilitate the orderly development of condominiums in Maryland. The General Assembly recognizes, however, that the conversion of rental dwellings to condominiums can have an adverse impact on the availability of rental units, resulting in the displacement of tenants.

(b) Local legislative finding and declaration of rental housing emergency. -- A county or incorporated municipality may, by legislative finding, recognize and declare that a rental housing emergency exists in all or part of its jurisdiction and has been caused by the conversion of rental housing to condominiums. The jurisdiction shall consider and make findings as to:

- (1) The nature and incidence of condominium conversions;
- (2) The resulting hardship to and displacement of tenants; and
- (3) The scarcity of rental housing.

(c) Local regulations and laws to meet emergency. -- Upon finding and declaration of a rental housing emergency caused by the conversion of rental housing to condominiums, a county or an incorporated municipality may by the enactment of laws, ordinances, and regulations, take the following actions to meet the emergency:

- (1) Grant to a designated family as defined in § 11-137 of this title a right to an extended lease for a period in addition to that period provided for in § 11-137 of this title. The right to an extended lease may not, in any event, result in a requirement that a developer set aside for an extended lease more than 20 percent of the total number of units.
- (2) Otherwise extend any of the provisions of § 11-137 of this title except that:
 - (i) More than 20 percent of the total number of units may not be required to be set aside; and
 - (ii) The term of an extended lease for any family made a designated family by a county or an incorporated municipality may not exceed 3 years.
- (3) Require that the notice required to be given under § 11-102.1 of this title be altered to disclose the effects of any actions taken under this section.

(d) Copies. -- Within 10 days of the enactment of a law, ordinance, or regulation under this section, a county or incorporated municipality shall forward a copy of the law, ordinance or regulation to the Secretary of State.

Thank you for your consideration. Please feel free to contact me directly with questions or for additional information from NAIOP and our member companies.

Sincerely,



Tom Ballentine, Vice President for Policy
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

Sayers, Margery

From: LINDA Wengel <lwengel@msn.com>
Sent: Monday, June 15, 2020 9:29 PM
To: CouncilMail
Subject: Fwd: LWVHC SUPPORTS CB 13-20

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

I am resending this originally sent March 10, 2020.

From: LINDA Wengel <lwengel@msn.com>
Sent: Tuesday, March 10, 2020 12:50 PM
To: councilmail@howardcountymd.gov
Subject: LWVHC SUPPORTS CB 13-20

The Board of Directors of the League of Women Voters of Howard County has voted to support CB 13-20 based on our housing position which recognizes the need to increase the supply of affordable housing throughout Howard County.

As buildable land becomes scarcer in Howard County this legislation provides an important tool for converting or maintaining existing rental housing as affordable units. Offering the seller the opportunity to guarantee that at least 20% of the units will stay or become affordable, in lieu of offering for sale to the County or Commission is reasonable and puts these units on a par with the MIHU requirement for new rental housing.

The League is encouraged to see the Council addressing this vital issue.

Linda Wengel
Columbia, MD
Action Chair
League of Women Voters of Howard County

Sayers, Margery

From: Thompson, Mark <Mark.Thompson@stronachgroup.com>
Sent: Monday, June 15, 2020 8:06 PM
To: CouncilMail
Subject: CB 13 Testimony
Attachments: CB 13 2020.docx

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Chairwoman Jung and Honorable Councilmembers,

My testimony is attached for your review. Thank you for your consideration.

Stay safe,

Mark

1/ST

MARK THOMPSON
Senior Vice President of Development
1/ST PROPERTIES
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June 15, 2020

Dear Chairwoman Jung and Members of the Howard County Council:

My name is Mark Thompson. I'm the Senior Vice President of Development for 1/ST Properties of The Stronach Group. I work at Laurel Park, in Laurel, Maryland. I'm here to testify in opposition of CB 13.

Before I get into the details of this bill, I'd like to provide a broader context. You are all aware of the health and economic devastation caused by COVID 19. Howard County hasn't been spared with over 2,300 cases and 75 deaths. I commend the County's efforts along with our healthcare providers to attack this pandemic.

Devastation has also occurred on the economic front. According to the Bureau of Labor Statistics, jobs held by Howard County residents fell by 28,000 from March to April of this year! The unemployment rate in 1 month went from 2.6% to 8.1%! That is higher than the 6.0% peak unemployment rate of the Great Recession in January of 2010. I was one of those that lost their job during that time period, but unlike now it took 20 months for unemployment to get that high, not one month.

Clearly now is not the right time to add to the long list of legislative efforts enacted by this Council that have made new housing and economic development more complicated and costly. CB 13 would do this by creating a chilling effect on the market. Investors will go elsewhere, following the many builders and developers that have already left the County. That's the last thing our local economy needs.

There's a saying in the real estate business that "Time and greed kills all deals". By inserting a requirement into a private transaction to enable the County to have a free look at a deal for three months is the same as telling a prospective purchaser that we are going to both work really hard and spend money to negotiate a deal that Howard County may then be able to jump in and have three months to consider taking it. Would you waste your time and money to pursue that? Of course not.

If Howard County wants to get into the private rental housing market, then let's make it an even playing field. Require private landlords of 20 plus units (make it worth the County's while) to provide notice to the County of their intent to sell. The County would have an exclusive right for 10 days to make an offer. If accepted, the County would then have a 45 day test and study period and close within 45 days of the expiration of that period. If the current owner refuses the County's offer and wants to seek other buyers they can, but if the County's price is fair, many owners will sell to a credit buyer on a normal transaction timeline.

CB13-2020 will create an unnecessary level of complexity into the market and impact economic recovery. I strongly encourage your opposition to the bill. Thank you for your consideration.

Cc:

Councilman Opel Jones
Councilmember Christiana Mercer Rigby
Councilman David Yungmann
Councilmember Elizabeth Walsh
County Executive Calvin Ball
Sameer Sidh, Chief of Staff to the County Executive

Sayers, Margery

From: Jessie Keller <jkeller@mmhaonline.org>
Sent: Monday, June 15, 2020 7:03 PM
To: CouncilMail
Cc: Aaron Greenfield
Subject: Cb13-2020 testimony
Attachments: MMHA-howard County-CB13-2020-right to purchase- testimony.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Members of the Howard County Council,

Please accept Maryland Multi-Housing Association's attached testimony for CB 13-2020.

Best Regards,

Jessie Keller
Government and Community Affairs Manager
Maryland Multi-Housing Association
410-413-1420
www.mmhaonline.org



TO: Howard County Council

FROM: Maryland Multi-Housing Association.

SUBJECT: Bill No. 13-2020

DATE: June 15, 2020

POSITION: Oppose

Background

This testimony is offered on behalf of Maryland Multi-Housing Association (MMHA). We are a professional trade association established in 1996, whose members consists of owners and managers of more than 210,000 rental housing homes in over 870 apartment communities. Our members house over 556,000 residents of the State of Maryland and we have 250 associate member companies who supply goods and services to the multi-housing industry. Lastly, MMHA members manage 93 apartment communities with over 22,300 units in Howard County.

Bill Summary

Council Bill 13-2020 requires an owner of rental housing to first provide notice and a written offer to purchase to the Department of Housing and Community Development, the Housing Commission, and a tenant organization when the owner of a rental housing dwelling with five or more units offers the rental housing for sale either in whole or in part to another party. The offer to purchase must remain open for 90 days after it is received, and if accepted the sale must be completed within 180 days after the County or Commission receives the owner's offer, unless the parties agree in writing to extend the 180-day period.

Position

MMHA understands that the intent of the bill is to address the shortage of affordable rental housing and expand the number of affordable units in the County. However, we are concerned about the prohibitive and time-consuming provisions of this legislation. CB13-2020 adds another three to six months to the sales of multifamily communities, creating uncertainty and risks for transactions, and rendering the market less predictable. As a result of the instability in the sales of these communities, buyers and investors may not be interested in purchasing in Howard County, which would reduce transfer and recordation tax revenue for the County.

CB13-2020 also is unlikely to increase the County's affordable housing inventory. Since these properties go on the market without asking prices, the purchase tends to go to the highest bidder. **This bill does not provide the County with a financial advantage to purchase properties, it only drastically slows the process down for transactions.**

The 90-day offer period required in the bill particularly hinders 1031 exchanges. In these deals, the Exchangor has 45 days from when they sell a property to nominate potential replacement properties, and 180 days to acquire the replacement property. Under CB13-2020, if



the Exchangor immediately identified a property and executed a contract of sale after it sold their previous property, the County could wait 90 days and decide it wants to purchase the property, leaving the 1031 Exchangor with only 90 days (or likely in practice, much less time) left to complete the entire transaction. Howard County properties would look far less appealing to buyers and investors, resulting in less deals and less tax revenue for Howard County.

In addition to harming business and its likely failure to achieve the goal of acquiring more affordable housing, we also believe that this bill is unnecessary. Howard County's existing Notice of Intent to sell law already works. The Housing Commission has purchased several properties in the past decade through it, including the Housing Commission purchased Columbia Landing, Azure Oxford Square, Gateway Village, Columbia Commons, and Verona at Oakland Mills. If properties have been purchased through the existing law, why does Howard County need to interfere with property transactions and add months to the process?

Amendments

To address our concerns, MMHA and the Maryland Building Industry Association, request the amendments below. These amendments would allow for timelier transactions and prevent County multifamily purchases from being completely unappealing.

Without these amendments, MMHA cannot support this bill.

Our suggested amendments importantly capture an idea that could achieve the goal of this bill while still making Howard County appealing to do deals in. A Right of First Offer process instead of a Right of Purchase process would prevent a private buyer's purchase from being interrupted by County decision while still giving the County the advantage of being the first to available to make an offer without drastically interrupting and holding up the process. Also if the County initially responded yes or no within 7 days (while still having 30 days to make an offer), the selling process is only lengthened by 7-30 days before a private market buyer could surely purchase the property without interruption from the County.

We request the following amendments:

Amendment No. 1

On page 1, in line 19, strike "five" and replace with "TWENTY".

This amendment changes the number of units for which this section would apply.

Amendment No. 2

On page 3, strike lines 1 through 11 in their entirety.

This amendment removes a requirement to notify the Department, the Commission, and Tenants with written notice of the execution of a bona fide contract of sale. Seller would still be required to notify the Department, the Commission, and Tenants of Seller's intent to sell.



Amendment No. 3

On page 4, strike lines 15 through 21 in their entirety.

This amendment removes the proposed enforcement provision that would have permitted the County to revoke a Seller's rental housing license for alleged violations of this section.

Amendment No. 4

On page 5, in line 8, strike "OR WHICH ARE CONTAINED IN A CONTINGENT BONA FIDE CONTRACT OF SALE EXECUTIVE BY THE OWNER AND A THIRD PARTY;"

This amendment removes mention of a bona fide contract of sale, since the Department, the Commission, and Tenants would have the option to purchase prior to the execution of such a contract.

Amendment No. 5

On page 5, in line 10, replace "90" with "30".

This amendment reduces the length of time for which an offer from Seller must remain open for the County and the Commission.

Amendment No. 6

On page 5, in line 11, insert ", UNLESS THE COUNTY OR THE COMMISSION DECLINES ITS RIGHT TO PURCHASE PURSUANT TO SUBSECTION (D)" after "COMMISSION".

This is a structural amendment referring to the proposal in Amendment 7.

Amendment No. 7

On page 5, in line 23, insert:

"(1) WITHIN SEVEN BUSINESS DAYS OF RECEIPT OF THE OFFER, THE COUNTY AND THE COMMISSION BOTH SHALL MAKE AN INITIAL EVALUATION WHETHER IT WILL EXERCISE ITS RIGHT OF FIRST REFUSAL OR WAIVER PURSUANT TO THIS SECTION AND SHALL NOTIFY THE OWNER IN WRITING.

"(2) IF THE COUNTY OR THE COMMISSION DETERMINES THAT IT WILL EXERCISE ITS RIGHT TO PURCHASE, THE OFFER SHALL REMAIN OPEN FOR 30 DAYS AFTER IT IS RECEIVED, PURSUANT TO SUBSECTION (B)."



MARYLAND MULTI-HOUSING ASSOCIATION, INC.

On page 5, in line 23, renumber existing “(1)” as “(3)”; on page 6, in line 1, renumber existing “(2)” as “(4)”; on page 6, in line 9, renumber existing “(3)” as “(5)”; on page 6, in line 12, renumber existing “(4)” as “(6)”.

This amendment requires the County and the Commission to notify the seller within 7 business days of receipt of notice of intent to sell whether the County or the Commission intends to exercise its right to purchase. If so, the offer remains open for 30 days. If not, the offer will terminate.

Amendment No. 8

On page 6, in line 21, insert: “(1) A MULTIFAMILY RENTAL FACILITY WITH LESS THAN TWENTY RENTAL DWELLING UNITS;”.

This amendment changes the number of units for which this section would apply.

Amendment No. 9

On page 7, in line 16, strike “40” and replace with “15”.

This amendment changes the length of time for which senior or affordable units must remain designated as such to qualify for the exception in subsection (G).

For these reasons, we respectfully oppose CB13-2020, unless the bill includes our amendments above and does not bring economic harm and instability to the industry.

For more information, please contact Jessie Keller at 410-413-1420

June 15, 2020

Re: OPPOSITION TO CB13 – Offer to Purchase Rental Housing

Dear Chairwoman Jung and Members of the Howard County Council:

The Howard County Chapter of the Maryland Building Industry Association (MBIA) writes in opposition to Council Bill 13, which establishes new procedures and requirements for providing an offer to the County and Housing Commission to purchase rental housing offered for sale.

Our industry shares the sponsors' concerns that the County lacks sufficient affordable housing; however, this measure is prohibitive and time-consuming. Under this measure, the Seller of rental housing must provide notice to the County, Housing Commission, and tenants of an intention to sell which includes an offer to purchase; that offer must remain open for 90 days, and if accepted, the sale must be completed within 180 days. That process adds three to six months to the sale of multifamily properties, which is far too long and significantly longer than competing jurisdictions. Potential purchasers will be unwilling to spend considerable time and money to negotiate with the Seller, just for the County to purchase the property instead. This will restrict the pool of buyers, which artificially depresses the value of the property. Additional restrictions will also disincentivize the building of new multifamily projects, which generate significant affordable housing units. The County will lose opportunities to collect recordation and transfer taxes, and to grow its tax base with new residents.

Instead, we should wait to see what the Housing Opportunities Master Plan Task Force recommends. The Task Force is currently working hard to examine and improve all types of housing opportunities for all income levels. Legislation addressing these concerns should be part of a holistic approach, based on research and recommendations from the Task Force. Until the Task Force's report is published later this year, any legislation is premature.

However, if the Council decides to move forward with this legislation, we respectfully request consideration of the attached amendments, which are the result of collaboration between NAIOP, MMHA, and MBIA. We believe these changes will improve this bill's efficacy, efficiency, and fairness, and we look forward to discussing them further with you. Absent the adoption of these amendments, we respectfully request the Council vote no on Council Bill 13-2020.

Thank you for your consideration and your continued support of the local home building industry. If you have any questions about these comments and would like to discuss MBIA's position further, please do not hesitate to contact me at abailey@marylandbuilders.org or (202) 815-4445.

Best regards,



Angelica Bailey, Esq., Vice President of Government Affairs

Cc: Councilman Opel Jones
Councilmember Christiana Mercer Rigby
Councilman David Yungmann
Councilmember Elizabeth Walsh

County Executive Calvin Ball
Sameer Sidh, Chief of Staff to the County Executive

Proposed Amendments to Council Bill 13-2020

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“(2) IF THE COUNTY OR THE COMMISSION DETERMINES THAT IT WILL EXERCISE ITS RIGHT TO PURCHASE, THE OFFER SHALL REMAIN OPEN FOR 30 DAYS AFTER IT IS RECEIVED, PURSUANT TO SUBSECTION (B).”

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Sayers, Margery

From: Tom Ballentine <tom.ballentine@naiop-md.org>
Sent: Monday, June 15, 2020 3:11 PM
To: CouncilMail; Jung, Deb; Walsh, Elizabeth; Jones, Opel; Rigby, Christiana; Yungmann, David
Cc: Williams, China; Harris, Michael; Gelwicks, Colette; Knight, Karen; Dvorak, Nicole
Subject: Testimony from NAIOP Maryland on CB 13-2020
Attachments: Howard County - CB 13-2020 - Right of First Refusal - NAIOP Testimony Letter.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Good Afternoon –

I am writing to forward the attached testimony from NAIOP's commercial real estate members on CB 13-2020.

All the Best

tb

Tom Ballentine

Vice President for Policy and Government Relations

NAIOP Maryland Chapters – *The Association for Commercial Real Estate*

Phone: 410.977.2053

Email: tom.ballentine@naiop-md.org

U.S. Mail: P.O. Box 16280 Baltimore, Maryland 21210



The Maryland Chapters of NAIOP represent more than 700 companies involved in commercial, industrial and mixed use real estate. Established in 1967 as the National Association of Industrial and Office Properties, today NAIOP is the nation's leading advocate for companies involved in commercial construction, land development, brokerage, property management, finance, architecture, engineering and law. For more information, please visit www.naiopmd.org



June 15, 2020

The Honorable Deb Jung, Chair
Howard County Council
George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043

Via Email: councilmail@howardcountymd.gov

Oppose - CB 13-2020 Rental Property – County Right to Purchase

Dear Chair Jung and Council Members:

The NAIOP Maryland Chapters represent more than 700 companies involved in all aspects of commercial, industrial, and mixed-use real estate, including many of the largest property owners in Howard County. On behalf of our member companies I am writing to oppose CB 13-2020.

CB 13-2020 would require sellers of apartment buildings of 5 units or more provide the Howard County Housing Commission the right to review a contract offer from for 90-days and purchase a property on “*substantially the same terms*” as a contract offer from a private buyer.

The proposed process would reduce the pool of eligible buyers and, in our opinion, further diminish the function of the Howard County housing market. For example:

1. Buyers utilizing a property exchange under Section 1031 of the IRS Tax Code must adhere to a strict time schedule that cannot accommodate the process proposed in CB 13-2020. These buyers represent nearly 40% of the buyer pool.
2. The bill would impose significant interest rate risk on the contract purchaser. A lender will not lock interest rates long enough to accommodate the buyer’s due diligence and the Commission’s 90-Day contingency period.
3. The notice to tenants implies a right to purchase on the part of any tenant group representing at least 30% of residents.
4. The right to review and purchase applies at resale for the contract purchaser and if the Commission declines or fails to close, would apply again to the current owner when the building is put back on the market.

NAIOP’s opposition is based on the experience of our member companies in this and other markets. Empirical evidence about the negative effects of right of first refusal [ROFR] was documented in [a study by the Finance Department of the National Taiwan University and the Department of Finance at the University of Iowa](#). The study found that a land auction with ROFR has significant negative impacts on auction success. The main findings of the report are that ROFR:

1. Discourages bidder entry into an auction.
2. Creates an incentive for bidders to bid less aggressively.
3. Forces the seller to set a lower offering price to offset the effects of the ROFR.
4. Ultimately reduces sales prices.

The bill proposes a questionable use of County legal authority. Language dating back to the 1980s in the Maryland Condominium Act authorizes local governments that have declared a housing state of emergency caused by the conversion of rental housing to condominiums to create a right to purchase rental property that is being sold to be converted to condominium regime. [Real Property 11-138 to 11- 140] Neither CB 13-2020 nor the facts on the ground today conform to that authority. Other examples of rights of first refusal authorized by state law relate to the sale of state subsidized housing units, franchised auto dealerships and state aquaculture leases all examples where the facts, relationship between the parties and therefore the justification for a right to purchase are far different than CB 13-2020.

For the reasons above NAIOP remains strongly opposed to CB 13-2020. The fundamental threat to market function posed by CB 13-2020 is that the bill provides the Commission with both the right to see a bona fide contract offer and a long [90-day] option period to review the terms and make a purchase decision. If the Commission wants an extended contingency period, it should do its due diligence concurrent to private market buyers when the property is first offered for sale and without the benefit of seeing a contract offer. If the commission wants to see a contract offer it should exercise its purchase right under an expedited timetable [7-days or less] that will reduce the deterrent effect on the pool of private buyers.

If the Council does determine that it wants to allow the Commission to intervene in apartment sales, we endorse the amendments proposed by MBIA and MMHA and circulated separately. The amendments provide the Commission with an opportunity purchase but attempt to limit the market disruptions that would result from the bill as introduced.

Thank you for your consideration. Please feel free to contact me directly with questions or for additional information from NAIOP and our member companies.

Sincerely,



Tom Ballentine, Vice President for Policy
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*



HCCA

Howard County Citizens Association

Since 1961...

The Voice Of The People of Howard County

Date: April 16, 2020

Re; CB13-2020 -- The Affordable Housing Retention Act

The HCCA strongly opposes this bill and requests that it either be withdrawn or voted down.

The County currently has an effort underway that addresses Affordable Housing in the County; the Housing Opportunities Master Plan Task Force (Task Force). For decades the County has not had a comprehensive approach to siting Affordable Housing. The approach has been piece meal and the outcome for current Affordable Housing reflects that piece meal approach. Affordable Housing is now concentrated in older Columbia Villages including, Oakland Mills, Owen Brown, Long Reach, and Wilde Lake. Those existing apartment complexes are now 30 to 50 years old and therefore can be cheaply bought and in many cases are owned by the Howard County Housing Commission. The result has been a concentration of poverty and Free and Reduced Meal recipients in the county schools. This has resulted in a very contentious school redistricting in the last year. If passed there will be bad consequences since this bill will allow more older apartment complexes to be bought in existing low income and poverty areas east of US29 thereby continuing to concentrate poverty and negatively affecting schools. For example, Oakland Mills has four apartment complexes totaling approximately 980 units.. Approximately 40% are currently Affordable Housing. Four years ago the Howard County Housing Commission (HCHC) attempted to also buy Columbia Pointe that contains 324 units. Fortunately, after many meetings with HCHC, they were dissuaded from buying the complex. If that had occurred, 70% of the apartments would have become Affordable Housing and would have added to the concentration of low income and poverty issues in redistricting. Columbia Pointe was subsequently bought by a private company and they invested \$11 million in upgrading the units.

The Routes 1 and 40 corridors have exploded in development with high density housing to meet the smart growth plans from the early 90s. Much of the density includes developments with 20 to as high as 50 percent affordable housing set aside. An example of this is the River Watch community in Elkridge. When you consider many of the developments along the corridors which consists of hundreds of units and at these percentages, the affordable housing has and will add up quickly. The county must be able to meet the needs of the social economic environment it is creating and thus far, it is struggling to do that.

The remainder of the County has not had much Affordable Housing even when new apartment complexes are built since developers can pay a Fee-in-Lieu instead of providing affordable units. The Fee-in-Lieu must stop. The result has been a concentration of Affordable Housing mainly east of US29. This bill would make this situation even worse under this Bill and not spread-out Affordable Housing throughout the County.

The established Task Force will hopefully provide a comprehensive approach to Affordable Housing. Let the Task Force come up with their recommendations especially considering the County Executive and the Council approved \$400,000 in consultant services. Although this will obviously take a longer to do, it will provide a much better outcome for Affordable Housing in our county then CB13-2020.

Please allow the Task Force to do its work and **WITHDRAW** or vote **AGAINST** this bill.

Paul Verchinski
HCCA Board of Director