


MEMORANDUM

February 1, 2019

TO: County Council

FROM: Jeffrey L. Zyontz,  Senior Legislative Analyst

SUBJECT: Expedited Bill 37-18, Transient Housing – Short-Term Rental License Appeals

PURPOSE: Action on Bill – roll call vote required

<p>Planning, Housing and Economic Development Committee recommendation (2-0, Councilmember Jawando absent): enact the Bill with an amendment</p>

Background

Expedited Bill 37-18, Transient Housing – Short-Term Rental License Appeals, sponsored by Lead Sponsor then-Councilmember Floreen, was introduced on November 13, 2018. A public hearing was held on December 4 at which there were no speakers and a Planning, Housing and Economic Development Committee worksession was held on January 17. The Board of Appeals submitted testimony on November 29. The Board expressed concern about the requirement to hold hearings on an appeal within 30 days. It recommended a revision to allow more time for a Board decision.

Bill 37-18 would amend the appeal process for Short-Term Rental Licenses. It would allow any person aggrieved by an approval, denial, revocation or suspension of a short-term rental license to appeal the decision to the Board of Appeals. In the absence of this provision, an aggrieved party must bear the time and cost of an appeal to the Circuit Court.¹

Issues

Should the code allow an appeal to the Board of Appeals for short-term rentals?

An appeal to the Circuit is expensive and is generally handled by attorneys. Most appeals to the Board of Appeals are made by non-attorneys. It is a less expensive and fast way to come to a

¹Key search terms. #HomestayLicenses, homestays, short-term rentals, and home rental license appeal

decision on any disputed issue. The one instance where such an appeal is not advisable is when there is an imposed time limit on coming to a court appealable decision.² The fact that the code does not allow for an appeal to the Board of Appeals for short-term rental licenses is an oversight that should be corrected.

The Committee recommends allowing an appeal to the Board of Appeals for short-term rental issues.

How does the time allowed for a Board of Appeals decision compare to other time requirements?

Under Bill 37-18, the Board of Appeals must hold a hearing on the appeal within 30 days after the notice of appeal has been filed and must act on the appeal within 30 days after the hearing. This is the same timing currently allowed for an appeal of a bed and breakfast license issue.³

For appeals of administrative decisions, the Board of Appeals decisions must be rendered within forty-five (45) days after the closing of the record in the case; provided, however, it extends the time for a decision for an additional period upon written notification to all parties.⁴

The Board requires motions for summary disposition be filed at least 30 days before the hearing. The timing allows the County to submit statements 20 days before the hearing and appellants may submit comments 10 days before the hearing.

Should the time allowed to establish a hearing be extended?

Fast decisions benefit those who are appealing, if they win. Well considered opinions benefit everyone. The change required to allow the Board a reasonable time is an amendment to line 6 in the Bill as introduced.

The Committee recommends allowing the Board of Appeals to schedule a hearing within 60 days of a notice of appeal instead of 30 days.

This packet contains:	<u>Circle #</u>
Expedited Bill 37-18	1
Legislative Request Report	3
Fiscal and Economic Impact statement	4
Board of Appeals testimony	8

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² The FCC required a shot-clock for telecommunication issues. That is the sole example of such a time limit.

³ The only reason that this time period has not presented a challenge to the Board of Appeals is because there have not been any Bed and Breakfast license appeals.

⁴ Section 2A-10(d).

Expedited Bill No. 37-18
Concerning: Transient Housing – Short-Term Rental License Appeals
Revised: 1-17-2019 Draft No. 2
Introduced: November 13, 2018
Expires: May 13, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Floreen

AN EXPEDITED ACT to:

- (1) amend the appeal process for Short-Term Rental Licenses

By amending

Montgomery County Code
Chapter 54, Transient Lodging Facilities
Sections 54-48

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<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. Sections 54-48 is amended as follows:**

2 **54-48. Appeals.**

3 Any person aggrieved by an approval, denial, revocation or suspension of a
4 bed and breakfast license or short-term rental license may appeal the decision
5 to the Board of Appeals. The Board of Appeals must hold a hearing on the
6 appeal within ~~[[30]]~~60 days after the notice of appeal has been filed, and must
7 act on the appeal within 30 days after the hearing.

8 **Sec. 2. Expedited Effective Date.**

9 The Council declares that this legislation is necessary for the immediate
10 protection of the public interest. This Act takes effect on the date on which it
11 becomes law.

LEGISLATIVE REQUEST REPORT

Expedited Bill 37-18

Transient Housing – Short-Term Rental License Appeals

DESCRIPTION:	Expedited Bill 37-18 would allow any person aggrieved by an approval, denial, revocation or suspension of a short-term rental license to appeal the decision to the Board of Appeals.
PROBLEM:	In the absence of this provision, an aggrieved party must bear the time and cost of an appeal to the Circuit Court.
GOALS AND OBJECTIVES:	The goal of Bill 37-18 is to allow a more efficient appeal process for short-term rental issues.
COORDINATION:	Department of Health and Human Services
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Department of Health and Human Services
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Not applicable



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

MEMORANDUM

Jennifer A. Hughes
Director

November 30, 2018

TO: Hans Riemer, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 37-18 – Transient Housing – Short Term Rental Appeals

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:jw

c: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Clark Beil, Sr., Department of Health and Human Services
Alexandre Espinosa, Department of Finance
Dennis Hetman, Department of Finance
David Platt, Department of Finance
Joshua Watters, Office of Management and Budget
Helen Vallone, Office of Management and Budget

Office of the Director

101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800
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Fiscal Impact Statement
Bill 37-18 Transient Housing – Short-Term Rental Appeals

1. Legislative Summary

Expedited Bill 37-18 allows any person aggrieved by an approval, denial, revocation or suspension of a short-term rental license to appeal the decision to the Board of Appeals. Absent this provision, an aggrieved party must appeal to the Circuit Court.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

No changes in revenues or expenditures are anticipated as a result of this bill.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Not applicable.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

No additional expenditures for IT or ERP systems would be necessary.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable. The bill does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

No additional staff time is required to implement this bill.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

9. An estimate of costs when an additional appropriation is needed.

Not applicable.

10. A description of any variable that could affect revenue and cost estimates.

Not applicable.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

Bill 37-18 provides that an aggrieved party to a certain decision related to short-term rental licenses may appeal that decision to the Board of Appeals.

13. Other fiscal impacts or comments.

Not applicable.

14. The following contributed to and concurred with this analysis:

Clark Beil, Sr. Administrator, Licensure and Regulatory Services, Department of Health and Human Services.

Joshua Watters, Office of Management and Budget



**Jennifer A. Hughes, Director
Office of Management and Budget**

11/26/18
Date

Economic Impact Statement
Expedited Bill 37-18, Transient Housing – Short-term Rental License Appeals

Background:

Expedited Bill 37-18 would allow any person aggrieved by an approval, denial, revocation or suspension of a short-term rental license to appeal the decision to the Board of Appeals. In the absence of this provision, an aggrieved party must bear the time and cost of an appeal to the Circuit Court. The goal of Bill 37-18 is to allow a more efficient appeal process for short-term rental issues.

1. The sources of information, assumptions, and methodologies used.

There were no sources of information, assumptions, or needed methodologies in the formulation of this economic impact statement.

2. A description of any variable that could affect the economic impact estimates.

As noted in the fiscal impact statement for the bill, there will be no change in County revenues, expenditures, or staff time as the bill's provisions would not alter the existing licensing processes beyond the destination for appeals.

3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.


The bill will have no impact on employment, spending, savings, investment, incomes, and property values in the County.

4. If a Bill is likely to have no economic impact, why is that the case?

See number 2.

5. The following contributed to or concurred with this analysis:

David Platt, Dennis Hetman, and Robert Hagedoorn, Finance.



Alexandre A. Espinosa, Director
Department of Finance

11/29/2018
Date

BILL 37-18



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BOARD OF APPEALS

RECEIVED
November 29, 2018
MONTGOMERY COUNTY
GOVERNMENT

The Honorable Hans Riemer
President, Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear President Riemer:

On behalf of my fellow Board of Appeals' members, I wanted to submit brief comments regarding expedited Bill No. 37-18, Transient Housing – Short Term Rental License Appeals. As you are aware, this legislation would expand the Board's jurisdiction to include authority to hear appeals filed by any person aggrieved by the approval, denial, revocation or suspension of a short-term residential rental license. While the Board welcomes the addition of this type of administrative appeal to its portfolio, we are concerned about the requirement that we hold hearings on these appeals within 30 days,¹ and would request that this Bill be revised to treat these appeals like others under our jurisdiction.

As a policy matter, the truncated appeal period proposed in Bill No. 37-18 may have the unintended effect of limiting the ability of affected community members to participate in the appeal process, or of excluding them altogether. While this may be less of a concern when the appeal is from the denial, revocation, or suspension of a license, and thus it is likely the property owner (or lessee) who is appealing, the Board believes that this is a legitimate concern in cases where it is the issuance of a license that is being appealed, since those appeals would typically be brought by unhappy neighbors or community members.

On a technical level, the requirement that the Board hold a hearing within 30 days, while admittedly already applicable to bed and breakfast licenses, is inconsistent with other provisions in the County Code and Zoning Ordinance that govern administrative appeals. Section 2A-6 of the County Code and Section 59-7.6.1.C.5 of the Zoning Ordinance both require that the Board give at least 30 days' notice of administrative appeals. In addition, there are other timed submission requirements in the County Code that apply to administrative appeals. For example, Section 2A-7(d) of the County Code requires that motions for summary disposition in administrative appeals be filed at least 30 days before the date of the hearing. Also, the Board by custom holds prehearing conferences in administrative appeal cases so that it can better

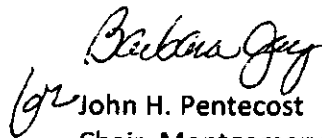
¹ The Board observes that while Section 54-48 of the County Code currently subject appeals of bed and breakfast licenses to this same expedited time frame, to the best of our staff's recollection, no such appeals have been filed with the Board in the past 10 years. The Board expects that appeals of short-term residential rental licenses may occur with more frequency.

understand the issues involved. It then schedules the hearing for at least three, usually four or more, weeks after that conference, to allow time for the submission of written prehearing statements (the County's prehearing submission is due 20 days before the hearing, and the Appellant's is due 10 days before the hearing, in accordance with Section 2A-7(a)(1) of the County Code). While this prehearing process is not statutorily mandated, it is very helpful to both the Board members and the parties to the case, in that it forces the parties to articulate their issues and arguments within the applicable legal framework. Finally, the Board notes that the requirement to act on one of these appeals (i.e. issue a written decision) within 30 days is shorter than the 45-day timeframe currently accorded the Board in these types of cases by Section 2A-10(d) of the County Code.

As a practical matter, the Board notes that because it has to schedule the other matters it handles a minimum of 30 days out, if it were to be required to hear these appeals within 30 days, it would have to add these matters to an existing docket, which may or may not already be substantial. Furthermore, the Board notes that because the Board only meets on Wednesdays, for appeals filed any day other than Monday, the proposed requirement that hearings be held within 30 days would result in hearings having to be held in less than 30 days. Finally, the Board questions how the 30-day requirement would square with its August recess.

All of the concerns I have detailed could be addressed by revising this Bill to require that an appeal of a short-term residential rental license follow the same procedures that the Board follows for the other types of administrative appeals it hears (e.g. building permit appeals). In FY18, the average processing time for administrative appeals by the Board was less than 90 days from the date of filing to the issuance of a written decision. While this is 30 days longer than the schedule proposed in Bill 37-18, it is not unreasonable, and would allow time for full participation by the public, would minimize the need to amend other provisions of law, and would better comport with the Board's current scheduling and operations. I hope that you will consider revising Bill No. 37-18 accordingly.

Sincerely,



John H. Pentecost
Chair, Montgomery County Board of Appeals

cc: Members, Board of Appeals
Members, Montgomery County Council
Jeff Zyontz, Senior Legislative Analyst

JHP:blj