

FINAL

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2021, Legislative Day No. 14

Bill No. 64-21

Introduced by Ms. Lacey, Chair
(by request of the County Executive)

By the County Council, June 21, 2021

Introduced and first read on June 21, 2021
Public Hearing set for and held on July 19, 2021
Bill Expires September 24, 2021

By Order: Laura Corby, Administrative Officer

A BILL ENTITLED

1 AN ORDINANCE concerning: Payment in Lieu of Taxes – The Housing Authority of the
2 City of Annapolis

3
4 FOR the purpose of replacing a certain payment in lieu of taxes agreement for exemptions
5 from County real property taxes for properties owned by the Housing Authority of the
6 City of Annapolis; authorizing the County Executive to enter into a payment in lieu of
7 taxes agreement with the Housing Authority of the City of Annapolis; and providing
8 for the time and terms under which the payment in lieu of taxes and tax exemptions
9 will take effect.

10
11 WHEREAS, the Housing Authority of the City of Annapolis (“Housing
12 Authority”) and Anne Arundel County (“County”) are parties to a PILOT
13 Agreement dated April 15, 2009 (the “County PILOT Agreement”); and

14
15 WHEREAS, the County Council recognizes there is a significant need for quality
16 low income housing in the County for households of limited income; and

17
18 WHEREAS, based upon a change in funding by the United States Department of
19 Housing and Urban Development, the Housing Authority has changed the
20 ownership and control structure for certain affordable housing properties it
21 operates, and, while the properties must still benefit a designated affordable housing
22 market client base established by income guidelines and involve a fixed number of
23 units for a fixed period of time, the properties are increasingly re-financed to allow
24 private ownership in which the Housing Authority has an ownership or control
25 interest; and

26
27 WHEREAS, the Housing Authority has restructured the ownership arrangements
28 for certain properties, under which ownership of the buildings have been or may be

1 transferred to third-party entities or under which the land is owned by the Housing
2 Authority and is subject to a ground lease of 99 years between the Housing
3 Authority and the third-party entities, such ownership structures not being
4 addressed in the County PILOT Agreement; and

5
6 WHEREAS, based on the foregoing change in ownership and control structure for
7 certain Housing Authority properties, an update to the County PILOT Agreement
8 is necessary; and

9
10 WHEREAS, exemptions from County real property taxes for certain properties
11 owned by the Housing Authority that provide rental housing is authorized by
12 § 7-215 of the Tax-Property Article and § 12-104(c)(2)(i) of the Housing and
13 Community Development Article of the State Code, provided that the County and
14 the property owner enter into an agreement for the payment of a negotiated amount
15 in lieu of the County real property tax; and

16
17 WHEREAS, exemptions from County real property taxes for certain properties
18 owned or operated by the Housing Authority is authorized by § 7-503(a)(2)(ii) of
19 the Tax-Property Article of the State Code, if the real property or improvements
20 constructed or maintained on such real property are owned by a limited partnership
21 for which the Housing Authority is the managing general partner, so long as the
22 limited partnership is engaged in the operation, construction, or management of a
23 qualified low income housing project as defined in the Internal Revenue Code, and
24 provided that the County and the property owner enter into an agreement for the
25 payment of a negotiated amount in lieu of the County real property tax; and

26
27 WHEREAS, pursuant to § 6-102 of the Tax-Property Article of the State Code, a
28 leasehold of less than 99 years or other limited interest in property is not subject to
29 a property tax; now, therefore,

30
31 SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,*
32 That, in accordance with § 7-215 of the Tax-Property Article and § 12-104(c)(2)(i) of the
33 Housing and Community Development Article of the State Code, there is an exemption
34 from County real property taxes for the real properties described in the PILOT Agreement
35 between Anne Arundel County and the Housing Authority of the City of Annapolis being
36 appended to this Ordinance as Exhibit A and incorporated by reference as if fully set forth
37 in this Ordinance.

38
39 SECTION 2. *And be it further enacted,* That the April 15, 2009 PILOT Agreement
40 between the County and the Housing Authority of the City of Annapolis is hereby
41 rescinded and shall be of no further force and effect upon the execution of the PILOT
42 Agreement authorized by this Ordinance.

43
44 SECTION 3. *And be it further enacted,* That the County Executive is hereby authorized
45 to enter into the PILOT Agreement between Anne Arundel County and the Housing
46 Authority of the City of Annapolis, for a payment in lieu of real property taxes for those
47 properties.

1 SECTION 4. *And be it further enacted*, That these exemptions and payment in lieu of
2 taxes may not take effect until the requirements of § 7-503 of the Tax-Property Article of
3 the State Code are met, and shall take effect in accordance with the terms of the PILOT
4 Agreement between Anne Arundel County and the Housing Authority of the City of
5 Annapolis.

6
7 SECTION 5. *And be it further enacted*, That this Ordinance shall take effect 45 days
8 from the date it becomes law.

READ AND PASSED this 19th day of July, 2021

By Order:



Laura Corby
Administrative Officer

PRESENTED to the County Executive for his approval this 21st day of July, 2021



Laura Corby
Administrative Officer

APPROVED AND ENACTED this 26th day of July, 2021



Matthew Power
Signing as Acting County Executive for
Steuart Pittman
County Executive

EFFECTIVE DATE: **SEP 9 2021**

**I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF
BILL NO. 64-21. THE ORIGINAL OF WHICH IS RETAINED IN THE
FILES OF THE COUNTY COUNCIL.**

A handwritten signature in black ink, appearing to read "Laura Corby". The signature is written in a cursive, flowing style.

**Laura Corby
Administrative Officer**

**PAYMENT IN LIEU OF TAXES AGREEMENT BETWEEN
ANNE ARUNDEL COUNTY, MARYLAND AND
THE HOUSING AUTHORITY OF THE CITY OF ANNAPOLIS**

This Payment in Lieu of Taxes Agreement (“Agreement”) is made this _____ day of _____, 2021, by and between Anne Arundel County, Maryland (the “County”), a body corporate and politic of the State of Maryland, and The Housing Authority of the City of Annapolis (the “Housing Authority”).

WITNESSETH:

WHEREAS, the Housing Authority is a public body corporate and politic of the State of Maryland (“State”) pursuant to the provisions of the Constitution of the State and under the Housing and Community Development Article of the Annotated Code of Maryland (the “Housing and Community Development Article”);

WHEREAS, the Housing Authority is authorized and empowered, among other things to (a) lease to others any or all of its projects, to charge and collect rent and to terminate any lease; (b) sell, exchange, contract and convey to others any or all of its projects or properties upon terms and conditions as its Board may deem advisable, including the power to receive for any sale the note or notes of the purchaser of the project or property, whenever its Board finds the action to further advance the interest of the Housing Authority; (c) contract with and employ others to provide and to pay compensation for professional services and other services as the Board deems necessary for the financing of the project; and (d) enter into contracts and execute any agreements or instruments and do any other act necessary or appropriate to carry out its purposes;

WHEREAS, real property owned by the Housing Authority is exempt from State and County property taxes pursuant to Section 7-215 of the Tax-Property Article of the Annotated Code of Maryland (the “Tax-Property Article”) and Section 12-104(c)(2)(i) of the Housing and Community Development Article;

WHEREAS, the Housing Authority and the City of Annapolis (the “City”) are parties to a Cooperation Agreement dated March 5, 1965, as amended on January 8, 1968 and February 6, 2009 (collectively referred to as the “City Cooperation Agreement”), pursuant to which the Housing Authority is required to make Payments in Lieu of Taxes (“PILOT payments”) in the amount of 10% of the shelter rent charged by the Housing Authority or amount permitted to be paid by applicable state law in effect at the time payment is made, whichever is lower, and 50% of which the City is obligated to distribute to the County;

WHEREAS, the Housing Authority and the County are parties to a PILOT Agreement dated April 15, 2009 (the “County PILOT Agreement”), pursuant to which the Housing Authority is required to make PILOT payments in the amount of \$1.00 to the County for certain properties;

WHEREAS, based upon a change in funding by the United States Department of Housing and Urban Development, public housing authorities have increasingly changed the ownership and control structure for the affordable housing properties they operate, and, while the properties must

still benefit a designated affordable housing market client base established by income guidelines and involve a fixed number of units for a fixed period of time, the properties are increasingly re-financed to allow private ownership in which the public housing authority has an ownership or control interest;

WHEREAS, pursuant to the foregoing and subsequent to the execution of the City Cooperation Agreement and County PILOT Agreement, the Housing Authority restructured the ownership arrangements for certain of its properties, under which ownership of the buildings was transferred to third party entities or under which the land is owned by the Housing Authority and is subject to a ground lease of 99 years between the Housing Authority and the third party entities, such ownership structures not being addressed in the City Cooperation Agreement or the County PILOT Agreements;

WHEREAS, the parties to this Agreement are desirous of replacing the County PILOT Agreement with this Agreement for the Housing Authority properties that are defined by and subject to this Agreement and to set forth the parties' agreement as to future PILOT payments to the County;

WHEREAS, the parties desire to enter into this Agreement to address the change in ownership structure of the Housing Authority's properties fulfilling the need for low-income housing, to set forth the responsibility of the Housing Authority for PILOT payments for the properties that are defined by and the subject of this Agreement, and to provide for a new payment in lieu of taxes for the Housing Authority's properties;

WHEREAS, pursuant to Anne Arundel County Council Bill No. _____, adopted _____, the County Council of Anne Arundel County, Maryland, approved the terms and conditions for the PILOT, and authorized the County Executive to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions hereof, and subject to Section 12-104 of the Housing and Community Development Article, the parties hereto hereby agree as follows:

1. Definitions.

a. "Property" or "Properties" means all those real properties, except for the ones described in paragraph 1.b herein, for which the Housing Authority is the fee simple owner and also includes the real property known as Obery Court, Phase I as identified with more detail, and the real property known as Newtowne Twenty as identified with more detail in Exhibit A to the Leasehold Deed of Trust, Security Agreement and Assignment of Leases and Rents filed in the Land Records for Anne Arundel County at Book 36733, Page 646.

i. "Property" or "Properties" shall also, pursuant to § 7-503 (a)(2)(ii)1A of the Tax-Property Article of the Maryland Annotated Code, include all real property or improvements, now or in the future, of which the Housing Authority is the fee simple owner, and any improvements constructed or maintained on such real property owned by a limited partnership for which the Housing Authority is the managing general partner, so long as the limited

partnership is engaged in the operation, construction, or management of a qualified low-income housing project, as defined in the Internal Revenue Code.

ii. “Properties” shall also, pursuant to § 6-102 of the Tax-Property Article of the Maryland Annotated Code, include any real property, now or in the future, that is or becomes subject to a leasehold interest of less than 99 years by an entity other than the Housing Authority and to any improvements owned by entities other than the Housing Authority that are constructed or maintained on such real property so long as the property is a qualified low income housing project, as defined in the Internal Revenue Code, and the Housing Authority is engaged in the operation, construction, or management of the real property and improvements.

iii. “Properties” shall also include any real property described in paragraphs 1a (i), (ii), or 1b that may, in the future, become subject to the United States Housing and Urban Development Department’s rental assistance demonstration (“RAD”) process.

b. “Annapolis Gardens, Obery Court, Phases II and III” means all those properties known as Annapolis Gardens, Obery Court, Phase II and Obery Court, Phase III. Annapolis Gardens is further described in Exhibit A to a Memorandum of Lease filed in the Land Records for Anne Arundel County at Book 21607, Page 258. Obery Court, Phases II and III are further described in an Agreement filed in the Land Records for Anne Arundel County at Book 28771, Page 206.

c. “Shelter Rent” shall mean the “the total of all charges to all tenants of a Project for dwelling rents and non-dwelling rents (excluding all other income of such Project), less the cost to the Housing Authority of all dwelling and non-dwelling utilities.”

d. “Utilities” shall mean the costs of utilities paid to the County and/or City, including water service and sewer service and electric and gas utility costs paid to third parties, but excludes the cost of trash removal and recycling.

2. PILOT Payments – the “Properties”.

a. For each Property bearing a separate tax account number falling within the definition of Paragraph 1.a, commencing with the tax year starting July 1, 2020 (fiscal year 2021), the Housing Authority or the property management agent acting on behalf of the Housing Authority shall pay the County, and the County agrees to accept, the amount of One Dollar (\$1.00) annually in lieu of all real property taxes.

b. This paragraph applies so long as any Property is used for the affordable housing purposes set forth in this Agreement and in accordance with State and Federal law.

c. Payments under this paragraph shall be made within ninety (90) days of July 1 of each tax year as long as this Agreement remains in effect.

3. PILOT Payments – Annapolis Gardens and Obery Court Phases II and III.

a. For Annapolis Gardens, Obery Court, Phases II and III, commencing with the tax year starting July 1, 2020 (fiscal year 2021), the Housing Authority or the property management agent acting on behalf of the Housing Authority shall pay the County, and the County agrees to accept, a payment in lieu of taxes in the amount of 5% of the shelter rents.

b. This paragraph applies so long as any Property is used for the affordable housing purposes set forth in this Agreement and in accordance with State and Federal law.

c. Payments under this paragraph shall be made within ninety (90) days of July 1 of each tax year as long as this Agreement remains in effect. Payments submitted under this Agreement for fiscal years 2020 and 2021 shall be made within ninety (90) days of execution of this Agreement, and shall be accompanied with the documentation required under paragraph 6 for the relevant time periods.

d. In the event that Annapolis Gardens or Obery Court, Phases II or III in the future become subject to the RAD process, payment shall be made in accordance with paragraph 2 of this Agreement.

4. Prior Agreements. Upon execution of this Agreement, this Agreement shall replace the County PILOT Agreement for the Properties defined herein, as well as replace any other prior agreements among the parties regarding any PILOT payments not heretofore mentioned.

5. Application. This Agreement shall not be construed to apply to any real property taxes owed to the State of Maryland or the City, and pertains only to County taxes.

6. Documentation. No later than sixty days after the end of each quarter, the Housing Authority or the property management agent acting on behalf of the Housing Authority shall provide data to the County Office of Finance with financial documentation supporting the calculation of the payment under the paragraph 3 of this Agreement for Annapolis Gardens, Obery Court, Phases II and III. The Office of Finance reserves the right to conduct an independent audit or verification of the financial information and make its own calculation of the amount of the PILOT payment due, and the Housing Authority shall pay the PILOT payment determined by the Office of Finance.

7. Covenants of the Housing Authority. The Housing Authority covenants that all times during the term of this Agreement, the Housing Authority shall:

a. Be in compliance with the Housing and Community Development Article as now or hereafter amended and all applicable regulations and rulings thereunder; and

b. Notify in writing the County of the sale, assignment or other transfer of any real property owned by the Housing Authority within thirty (30) days of the effective date of such event.

8. Late Payments. Payments due hereunder will be considered delinquent after the September 30 due date. Interest and penalties at the rate as set forth in the County Code for overdue property taxes per month shall be charged and collected by the County on all amounts remaining unpaid after the due date.

9. Default. If the Housing Authority is in default for one hundred eighty (180) days for any payments required under any of the provisions of this Agreement, the County may, at its option, declare a default by providing written notice of the default to the Owner and to the holders of all mortgages or deeds of trust. If within thirty (30) days of such notice, the payments have not been brought current, then the County may, at its option, declare all amounts due as follows: a sum equal to the total real property taxes which would have been due from the Owner in the absence of this Agreement, plus all penalties and interest, if any, less all amounts actually paid under this Agreement. To enforce its rights under this Paragraph, the County may renegotiate this Agreement, foreclose, or seek any other remedy available at law or in equity. Notwithstanding anything to the contrary which is or might be contained in this Agreement, payments due under this Paragraph shall be considered a first lien against the Property and superior to any other liens placed upon the Property.

10. Termination. This Agreement may be terminated, either in full or with respect to individual parcels, as of June of any tax year (the "Termination Date") by either party if the terminating party provides at least six (6) months written notice to the other parties that a default of this Agreement has occurred and the defaulting party fails to cure such default prior to the Termination Date.

11. Effective Date. This Agreement shall be construed to be effective retroactive to July 1, 2020.

12. Counterparts. This Agreement may be executed in any number of Counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the parties shall be preserve undestroyed, shall together constitute but one and the same instrument.

13. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or Sections in this Agreement.

14. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision hereof.

15. Miscellaneous.

a. No obligation or right under this Agreement other than set forth in this Agreement may be assigned, transferred, conveyed, or undertaken by any other party without the express written consent of the County.

b. For the purpose of this Agreement, all official notices shall be mailed, certified mail, return receipt requested, unless otherwise agreed in writing by the party, as follows:

TO THE COUNTY: Anne Arundel County Controller
Anne Arundel County, Maryland
Office of Finance
44 Calvert Street
Annapolis, MD 21401

WITH A COPY TO: Anne Arundel County Attorney
Anne Arundel County, Maryland
Office of Law
2660 Riva Road, 4th Floor
Annapolis, MD 21401

TO THE HOUSING AUTHORITY: Housing Authority of the City of Annapolis
1217 Madison Street
Annapolis, MD 21403

c. This Agreement shall be governed by the laws of the State of Maryland and any lawsuit commenced as a result of this Agreement shall be brought in the Courts of Maryland and more specifically, venue shall lie solely in the Circuit Court for Anne Arundel County.

d. This Agreement contains the full and final Agreement between the parties and no other matter or variation therefrom, unless in writing, duly executed by the parties hereto, shall be considered as part of this Agreement.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the date and year written above.

THE HOUSING AUTHORITY OF THE CITY OF ANNAPOLIS

By: _____(SEAL)
Melissa Maddox-Evans
Title: Executive Director/Chief Executive Officer

STATE OF MARYLAND, COUNTY OF _____, to wit:

I HEREBY CERTIFY, That on this _____ day of _____, 2021, before me, the subscriber, a Notary Public, in and for the State and County aforesaid, personally appeared Melissa Maddox-Evans, who acknowledged her/himself to be the Authorized Representative of The Housing Authority of the City of Annapolis, and that s/he, as such Authorized Representative, being authorized so to do, executed the foregoing instrument for the purposes contained therein.

AS WITNESS my hand and seal notarial.

Notary Public

(NOTARY SEAL)

My commission expires: _____

ANNE ARUNDEL COUNTY, MARYLAND

By: _____(SEAL)
Matthew Power
Title: Chief Administrative Officer

APPROVED FOR FORM AND LEGAL SUFFICIENCY
ANNE ARUNDEL COUNTY, MARYLAND
GREGORY J. SWAIN, COUNTY ATTORNEY

By: _____

STATE OF MARYLAND, COUNTY OF _____, to wit:

I HEREBY CERTIFY, That on this _____ day of _____, 2021, before me, the subscriber, a Notary Public, in and for the State and County aforesaid, personally appeared Matthew Power, who acknowledged her/himself to be the Chief Administrative Officer of Anne Arundel County, Maryland, and that s/he, being authorized so to do, executed the foregoing instrument for the purposes contained therein.

AS WITNESS my hand and seal notarial.

Notary Public

(NOTARY SEAL)

My commission expires: _____