

## **ARTICLE 3. COUNTY EASEMENTS.**

### **Sec. 2B-7. County Easement Application and Purchase.**

(a) A landowner seeking to place land under an agricultural easement must submit an easement sales application to the Department of Economic Development. The application must include a completed property description and specify the landowner's asking price.

(b) The County may buy an agricultural easement under this Article:

- (1) on land located in the Rural, Rural Density Transfer, or Rural Cluster zones; or
- (2) on land located in another zone if the land meets all requirements of subsection (e).

(c) The County must not buy an easement under this Article if further development is already precluded on that land.

(d) The County may buy an agricultural easement under this Article if the land:

- (1) is the least 50 contiguous acres;
- (2) meets United States Department of Agriculture's soil classification standards I, II, or III, or woodland classifications 1 and 2 on at least 50% of the acreage, as outlined in the Soil Survey for Montgomery County; and
- (3) is located outside water and sewer categories 1, 2, and 3, as defined in the County Ten-Year Comprehensive Water Supply and Sewerage Systems Plan.

(e) If any land does not meet all requirements of subsection (d), the County must not buy a County agricultural easement on that land unless:

(A) the Department finds that placing an agricultural easement on that land is in the public interest; and

(B) the Department concludes, after consulting local agricultural support agencies, that the land has significant agricultural resources. ([2008 L.M.C., ch. 37](#), § 1.)

### **Sec. 2B-8. Activities and uses permitted on land under a County agricultural easement.**

(a) *Permitted Uses.* Except as prohibited by Chapter 59 or the terms of an agricultural easement, the following activities are permitted on land under a County agricultural easement:

- (1) any agricultural use of land;

(2) operation of any machinery used in farm production or the primary processing of agricultural products, regardless of the time of operation;

(3) any normal agricultural operation, performed in accordance with good husbandry practices, that does not cause bodily injury or directly endanger human health; and

(4) operation of a farm market.

(b) *Relation to special exceptions.* Subsection (a) does not alter either the requirements in Chapter 59 for a special exception applicable to the zone where a County easement is located or the process to obtain a special exception. However, an agricultural easement may expressly limit the right of the landowner or any successor in interest to apply for a special exception that is inconsistent with the purposes of this Article.

(c) *Uses not permitted; release.*

(1) Land under a County agricultural easement must not be subdivided or used for any residential, commercial, or industrial purpose. However, the landowner may obtain a release from an agricultural easement for:

(A) 1 acre, or the minimum lot size required by Chapter 59 or applicable well and septic regulations, whichever is greater, to build a house for use by the landowner; and

(B) up to 3 1-acre lots, or the minimum lot size required by Chapter 59 or applicable well and septic regulations, whichever is greater, to build houses to be occupied by adult children of the landowner at a maximum density determined by the size of the land under easement and the following calculations;

(i) 1 lot for the first 25 acres;

(ii) 2 lots for land under easement greater than 50 acres but less than 120 acres; and

(iii) 3 lots for land under easement that is greater than 120 acres.

(2) (A) Any release issued under this Section must include a requirement that the landowner or the child, whichever is appropriate, must not transfer the lot released from an agricultural easement for 5 years after the release is recorded in the County land records unless:

(i) The APAB approves the transfer; or

(ii) the lot is subject to a bona fide foreclosure of a mortgage or deed of trust or to a deed in lieu of foreclosure.

(B) Noncompliance with subparagraph 2(A) is a violation of this Chapter and the agricultural easement, and may result in legal action to prevent the transfer or to obtain the proceeds of any sale collected by the landowner or the child if a unapproved transfer occurs.

(3) If land proposed for an agricultural easement does not contain a habitable dwelling house, the landowner may, as part of the application, request the right, which would run with the land, to build one single family dwelling house if:

(A) no viable residential structure exists on the land when the easement is bought;

(B) the easement requires that the residential structure must never be subdivided from the easement property; and

(C) the easement requires that the right to build a single family dwelling precludes the release of any lot from the easement for the landowner's children.

(4) A landowner may build housing for one or more tenants fully engaged in operating the farm. However:

(A) not more than one tenant house may be built for each 100 acres of land under easement;

(B) the land on which a tenant house is located must not be subdivided or conveyed to any third party;

(C) the tenant house must not be conveyed separately from the original parcel of land under the easement; and

(D) the square footage of the tenant house must not exceed the square footage of the principal dwelling on the land under the easement.

(d) *Reimbursement.* A landowner who obtains a release of a lot from an agricultural easement must first reimburse the Fund by an amount equal to the pro-rata purchase price the County paid for the easement. The County Attorney must, after the Fund is reimbursed, execute and record a partial release in the County land records. ([2008 L.M.C., ch. 37](#), § 1.)

#### **Sec. 2B-9. Purchase and value of agricultural easements.**

(a) The Fund is a special, non-lapsing revolving fund for agricultural land preservation purposes. It consists of:

(1) the County's share of the State agricultural transfer tax;

(2) payments received by the County for the repurchase, release, reimbursement, and termination of an agricultural easement; and

(3) any other funds available to buy agricultural easements under this Article.

(b) The County must use funds from the County's share of the State agricultural transfer tax and any other revolving funds for the purposes of this Article before using any other County funds for these purposes.

(c) The County may buy an agricultural easement to preserve agricultural land in the County. To buy an easement, the County may use:

(1) negotiations;

(2) competitive bidding; or

(3) any other method that is fair and equitable to the landowner and the County.

(d) The purchase price may be based on an appraisal or any other evidence of value under criteria in applicable regulations.

(e) Priority for buying easements must be given to any applicant who meets all of the following

criteria:

- (1) the proposed purchase price for the agricultural easement does not exceed either the appraised fair market value of the easement or a commercially reasonable value for the easement;
- (2) the land is designated in the applicable master plan as agricultural;
- (3) the land borders a municipality or other developing area and is likely to be developed in the foreseeable future; and
- (4) any other factor the Executive finds necessary to preserve agricultural land.

(f) The County Executive or the Executive's designee may agree in writing to buy an agricultural easement if the landowner:

- (1) files a good-faith application to the Foundation for the purchase of an agricultural easement by the State; and
- (2) accepts a Foundation offer if the price offered by the Foundation is equal to or higher than the price the County offered. If the Foundation does not agree to buy an easement subject to a conditional agreement under this subsection, the County must buy the easement at the price the County offered under the conditional agreement.

(g) In addition to its authority to buy agricultural easements under this Article, the County may accept the donation of an agricultural easement or another interest in property for agricultural land preservation purposes. ([2008 L.M.C., ch. 37](#), § 1.)

## **Sec. 2B-10. Termination and repurchase of agricultural easements.**

(a) *Process to Terminate and Repurchase an Easement.*

(1) Except as provided in subsection (c), a landowner may, in writing, at least 25 years after an agricultural easement bought by the County has been recorded in the County land records, request the County Council to terminate the agricultural easement. However, a landowner may request termination earlier if the land under easement is later zoned in a manner that precludes agricultural use as a matter of right.

(2) In approving a termination request, the County Council must find that the land is no longer suitable for agriculture and the public interest would be best served by terminating the easement.

(3) The landowner must submit an explanation, in a form acceptable to the APAB, why profitable farming is no longer feasible on the land under easement.

(4) The APAB must determine if profitable farming is feasible on the land and issue a written recommendation to the Department. In determining whether farming is profitable, the APAB must consider:

- (A) if the landowner has implemented a Soil Conservation and Water Quality Plan;
- (B) the location of the farm with respect to development; and
- (C) any other non-agricultural use that would otherwise impact profitability of the farm.

(5) After the APAB issues its recommendation, the Department must advise the landowner that the Department must order an appraisal of the land at the landowner's expense. The appraisal must consider the current fair market value of land and the current fair market value of the land encumbered by an agricultural easement. The difference between these values must represent the present value of the agricultural easement.

(6) The landowner must pay the Department for the cost of an appraisal. The Department must order the appraisal after receiving the funds from the landowner.

(7) After receiving the completed appraisal and APAB's recommendation, the County Council must hold a public hearing on the request to terminate the agricultural easement. The Department must notify each owner of land adjacent to the land where the easement is located of the public hearing.

(8) After the public hearing, the Council, by majority vote, must recommend to the Executive whether the Executive should agree to terminate the easement.

(9) If the Executive agrees to terminate the easement, the landowner must repurchase the easement by paying the present value of the easement as defined in this Section.

(10) The landowner must pay the required payment to the County within 180 days after the Executive agrees to terminate the easement. After receiving the required payment, the Department must prepare, execute, and deliver to the landowner for recording, a Deed of Termination and Release from Easement.

(11) If a request for termination is denied, or if the landowner does not repurchase the easement within 180 days after the Executive agrees to terminate the easement, the landowner must not request termination of the easement for 5 years after the Executive agreed or disagreed to the landowner's last request for termination.

(b) *Easement Properties Purchased or Condemned by Government.* If the federal government or the State or County buys or condemns land under an agricultural easement for park or any other nonagricultural use, the condemning authority must pay the present value of the easement to the Fund. After the Fund has received all payments due, the County Attorney must prepare, execute, and deliver to the condemning authority for recording, a Deed of Termination and Release from Easement.

(c) *No termination.* The County must not terminate and repurchase any agricultural easement which the County bought after December 31, 2008. ([2008 L.M.C., ch. 37](#), § 1.)

**Editor's note**—See County Attorney Opinion dated [4/26/99](#) explaining that a transfer of development rights easement continues to restrict development even when the underlying zoning of the property is changed. See County Attorney Opinion dated 10/2/90 explaining that, without a main dwelling or a transferable development right to support it, no farm-tenant house may be constructed.

### **Sec. 2B-11. Right to sell.**

This Article does not restrict the right of a landowner to sell land under a County agricultural easement. ([2008 L.M.C., ch. 37](#), § 1.)

### **Sec. 2B-12. Public access.**

The purchase of an agricultural easement by the County does not grant the public any right of access or right to use the land unless the easement expressly allows public access. ([2008 L.M.C., ch. 37](#), § 1.)

### **Sec. 2B-13. Easements on County-owned farmland.**

The County must not sell any productive agricultural land that the County owns until an agricultural easement is recorded to preserve the land for agricultural use. ([2008 L.M.C., ch. 37](#), § 1.)

### **Sec. 2B-14. Recordation.**

(a) The County Attorney must record each agricultural easement in the County land records. The recordation of an agricultural easement is not subject to any County transfer or recordation tax.

(b) Each agricultural easement must:

(1) be recorded in the form required by the Department;

(2) run with the land and bind the landowner and each assignee, transferee, mortgagee, and any other party who obtains title to the property; and

(3) be recorded so that the easement is senior in priority to all liens, including any instrument securing permanent financing.

(c) Each deed that transfers title to land on which an agricultural easement is recorded must:

(1) be a two-party deed; and

(2) expressly state that the property is subject to an agricultural easement and cite the recorded easement. ([2008 L.M.C., ch. 37](#), § 1.)

## **ARTICLE 4. BUILDING LOT TERMINATION EASEMENTS.**

### **Sec. 2B-15. Authority and Purpose.**

(a) A building lot termination (BLT) easement is a form of agricultural easement that generally terminates remaining development rights by extinguishing the right to build a dwelling unit on an eligible buildable lot.

(b) The County Executive or a designee may create and buy building lot termination easements to achieve the goals of the County Preservation of Agriculture and Rural Open Space Functional Master Plan to preserve remaining farmland in, prevent the further fragmentation of, and minimize residential use of the Agricultural Reserve. ([2008 L.M.C., ch. 37](#), § 1.)

## **Sec. 2B-16. Requirements for BLT easement.**

- (a) Except as expressly provided in this Article, Article 3 applies to any BLT easement.
- (b) A BLT easement may only be created on a buildable lot which is:
  - (1) located in the Rural Density Transfer (RDT) zone;
  - (2) zoned for residential density no higher than one dwelling unit per 25 acres; and
  - (3) capable of being served by an individual sewage treatment unit which meets the requirements of Chapter 27A and applicable regulations issued under that Chapter.
- (c) Notwithstanding Section 2B-7(d)(1), a BLT easement may be created on a buildable lot smaller than 50 contiguous acres.
- (d) In addition to the application process in Section 2B-7, the County may accept a gift of a BLT easement.
- (e) The County must be the grantee of each BLT easement.
- (f) Notwithstanding any other provision in this Chapter:
  - (1) each BLT easement, once created, must not expire or be terminated;
  - (2) land under a BLT easement must not be subdivided or used for any residential, commercial, or industrial purpose unless the BLT easement expressly allows that subdivision or use; and
  - (3) land under a BLT easement may contain non-residential accessory agricultural uses and structures, subject to the terms of each easement. ([2008 L.M.C., ch. 37](#), § 1.)

## **Sec. 2B-17. BLT Account.**

- (a) The Department must create a separate account under the Fund, entitled the BLT Account.
- (b) The BLT Account must contain payments made to comply with conditions of approval which the Planning Board has imposed for certain development plans, and may also contain funds received through donation, appropriation, bond proceeds, or any other source.
- (c) Funds in the BLT Account must be spent only on BLT easements. Funds in the BLT Account may be used in conjunction with other funds to buy BLT easements. ([2008 L.M.C., ch. 37](#), § 1.)

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