

Action

MEMORANDUM

April 2, 2010

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: **Action** - Bill 4-10; Workforce Housing – Voluntary, and
Zoning Text Amendment 10-01, Workforce Housing - Voluntary

PHED Committee Recommendation: On March 17, 2010 the Committee (3-0) recommended approval of Bill 4-10 with the following revisions:

- 1) Delete the requirement for a minimum of 10 percent of dwelling units to be workforce housing (lines 18-21); and
- 2) Delete the provisions to calculate the amount of workforce housing required (lines 30-46).

These changes would allow a developer to provide any amount of Workforce Housing at the developer's option. Without a minimum requirement, the provision that describes how to calculate the minimum previously required is unnecessary.

The Committee (3-0) also recommended approval of ZTA 10-01 with the following revisions:

- 1) Replace the phrase "on-site" with more specific language (lines 11-12);
- 2) Delete the phrase "not less than" on line 17;
- 3) Delete the requirement for a minimum of 10 percent of dwelling units to be workforce housing, consistent with the changes in Bill 4-10 (lines 18-21); and
- 4) Add a provision to ease the burdens of amending recently approved plans with a workforce housing requirement (lines 38-41).

These changes would make ZTA 10-01 consistent with the Committee's recommendations on Bill 4-10 and would otherwise make the ZTA more concise and precise.

Background

Zoning Text Amendment (ZTA) 10-01 and Bill 4-10 were sponsored by the Planning, Housing, and Economic Development Committee. ZTA 10-01 was introduced on January 26, 2010. Bill 4-10 was introduced on February 2, 2010.

The Committee believes that the Workforce Housing program should be changed to a voluntary program. ZTA 10-01 would accomplish that objective within the Zoning Ordinance. Bill 4-10, to amend Chapter 25B, would also be required.

A public hearing was held on ZTA 10-01 and Bill 4-10 on March 2, 2010.

The Planning Staff report to the Planning Board included the following background:

Since the inception of the workforce housing program in December 2006, only three project plans and one site plan have been approved with workforce housing units. Two of the project plans were public/private partnerships with the County (Lot 31 in the Bethesda Central Business District Metro Station Policy area and the Studio Plaza project in the Silver Spring Central Business District Metro Station Policy area.) The only private project that has received approval is the Woodmont Central project in the Bethesda Central Business District Metro Station Policy area. To date, none of these projects have been constructed. According to the development community, providing workforce housing is cost prohibitive...

A key Housing Policy goal in the County encourages that steps be taken each year to increase the supply of affordable housing in those areas where the proportion of affordable housing in the entire housing stock is below the County-wide average proportion of affordable housing. In order to achieve this goal, the Council, the Executive, the Planning Board, and other appropriate agencies must give the policy of locating a fair share of affordable housing units in each area of the County high priority in all planning, zoning, and land use decisions. As stated previously, the position of the County Council is that residents of all incomes should have the opportunity to live near metro stations. An argument can be made that the workforce housing requirement has actually reduced the construction of new moderately-priced dwelling units in metro station areas as well because new projects are deemed to be financially infeasible altogether.

Planning Staff recommended the following:

Changing the workforce housing requirement from a mandatory to voluntary program could make sense as a temporary measure while the County takes a fresh look at the overall affordable housing initiative. *Establishing a working group to address overall affordable housing goals, including potential new provisions to encourage private developer construction of workforce housing and moderately-priced dwelling units, would be a good first step in this process.*

The Planning Board did not have a majority to support staff's recommendation. In voting against a motion to support voluntary workforce housing, the Chairman expressed concern about how a voluntary program would work with the CR zones. Another Planning Board member was concerned about lowering the County's commitment to affordable housing. Two other members would support making workforce housing voluntary.¹

¹ In a February 7, 2010 memorandum to the Committee from Chairman Hanson, the Planning Board expressed the opinion that workforce housing should be a requirement in the LSC zone. That provision is in ZTA 09-07, concerning the LSC zone.

Issues

Housing policy

The County still has more jobs than resident workers. As such, it is a net labor importer. Additions to the housing stock help that situation. More housing makes housing less scarce and can also have a moderating effect on housing prices. To the extent that mandated workforce housing has been an impediment to new multi-family approvals, it does not help the County's housing policy, and should be made voluntary.²

Defining the site on which workforce housing must be constructed

ZTA 10-01 would not allow off-site workforce housing. The Ordinance would be amended as follows:

All workforce housing units must be constructed on the **site** that uses the FAR and building height flexibility under this Section.

The "site" was intended to include the area regulated by a single project plan or preliminary plan application. Either of those approvals could result in multiple site plans, record plats, and lots. *The Committee recommended amending ZTA 10-01 to avoid any confusion:*

All workforce housing units must be constructed [on the site] in the area regulated by a single project plan, preliminary plan application, or a lot that uses the FAR and building height flexibility under this Section.

Minimum percentage of units in a project

ZTA 10-01 would retain the minimum percentage of workforce housing units in a project. DHCA requested the retention of this provision to make sure that the number of units at one location was worth their administrative efforts. *The Committee recommended removing the requirement for a minimum amount of workforce housing.*

Grandfathering provisions

The Council's approval of workforce housing only applied to projects approved before December 1, 2014. Bill 4-10 would remove that limitation. As a voluntary program, there is no need to sunset the program after that date. *The Committee recommended adding a provision to ease the burdens of amending recently approved plans with a workforce housing requirement.*

This Packet Contains

ZTA 10-01

Bill 4-10

© number

1 – 17

18 – 25

² Multi-family preliminary plan approvals peaked at just above 5,000 units in 2007, before workforce housing was required. In 2008, multi-family preliminary plan approvals dropped to 2,700 units.

Zoning Text Amendment No: 10-01
Concerning: Workforce Housing -
Voluntary
Draft No. & Date: 2 – 3/23/10
Introduced: January 26, 2010
Public Hearing: March 2, 2010
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Planning, Housing, and Economic Development Committee

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- defining the term “workforce housing unit”;
- allowing any residential development at or above a certain density, located in a metro station policy area, to include a certain percentage of workforce housing units; and
- generally providing standards for the development of workforce housing units.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-6	“USES PERMITTED IN MORE THAN ONE CLASS OF ZONE”
Section 59-A-6.18	“Workforce Housing”
DIVISION 59-C-2	“RESIDENTIAL ZONES, MULTIPLE-FAMILY”
Section 59-C-2.4	“Development standards”
Section 59-C-2.418.	“Maximum Density of Development (Dwelling Units per Acre of Net Lot Area)”
Section 59-C-2.442	“General provisions”
DIVISION 59-C-4	“COMMERCIAL ZONES”
Section 59-C-4.357	“C-2 zone—purpose and development standards”
DIVISION 59-C-6	“CENTRAL BUSINESS DISTRICT ZONES”
Section 59-C-6.215	“Method of development and approval procedures”
Section 59-C-6.23	“Development standards”
DIVISION 59-C-7	“PLANNED UNIT DEVELOPMENT ZONES”
Section 59-C-7.14	“Density of residential development”
DIVISION 59-C-8	“TRANSIT STATION DEVELOPMENT AREA ZONES”
Section 59-C-8.4	“Development standards”
DIVISION 59-C-13	“TRANSIT ORIENTED, MIXED-USE ZONES (TOMX)”
Section 59-C-13.215	“Methods of development and approval procedures”

- DIVISION 59-C-14 “TRANSIT MIXED-USE (TMX) ZONE”
 Section 59-C-14.213 “General Requirements”
 Section 59-C-14.27 “Special regulations for use of a Building Lot Termination (BLT) Development Right”
- DIVISION 59-D-1 “DEVELOPMENT PLAN”
 Section 59-D-1.6 “Approval by district council”

EXPLANATION: *Boldface* indicates a Heading or a defined term.
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
 * * * indicates existing law unaffected by the text amendment.

OPINION

Zoning Text Amendment No. 10-01 was introduced on January 26, 2010 at the request of the Planning, Housing, and Economic Development Committee.

Planning Staff recommended the following:

Changing the workforce housing requirement from a mandatory to voluntary program could make sense as a temporary measure while the County takes a fresh look at the overall affordable housing initiative. *Establishing a working group to address overall affordable housing goals, including potential new provisions to encourage private developer construction of workforce housing and moderately-priced dwelling units, would be a good first step in this process.*

The Planning Board did not have a majority to support staff’s recommendation. In voting against a motion to support voluntary workforce housing, the Chairman expressed concern about how a voluntary program would work with the CR zones. Another Planning Board member was concerned about lowering the County’s commitment to affordable housing. Two other members would support making workforce housing voluntary.

The County Council held a public hearing on March 2, 2010 to receive testimony concerning the proposed text amendment. Testimony favored approval. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

On March 17, 2010 the Planning, Housing, and Economic Development Committee held a worksession to review the amendment. The Committee recommended approval of ZTA 10-01 with the following revisions:

- 1) Replace the phrase “on-site” with more specific language (lines 11-12);
- 2) Delete the phrase “not less than” on line 17;
- 3) Delete the requirement for a minimum of 10 percent of dwelling units to be workforce housing, consistent with the changes in Bill 4-10 (lines 18-21); and
- 4) Add a provision to ease the burdens of amending recently approved plans with a workforce housing requirement (lines 38-41).

These changes would make ZTA 10-01 consistent with the Committee’s recommendations on Bill 4-10 and would otherwise make the ZTA more concise and precise.

The District Council reviewed Zoning Text Amendment No. 10-01 at a worksession held on April 6, 2010 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 10-01 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. DIVISION 59-A-6 is amended as follows:**

2 **DIVISION 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF**
3 **ZONE.**

4 * * *

5 **59-A-6.18. Workforce housing.**

6 **59-A-6.18.1. Generally.**

7 The workforce housing program complements the Moderately Priced Dwelling
8 Unit [(MPDUs)] MPDU Program, the Productivity Housing Program, and other
9 County programs designed to promote affordable housing. Under Chapter 25B, a
10 developer [must] may build the number of workforce housing units [required]
11 allowed in any zone under this Chapter. All workforce housing units must be
12 constructed [[on the site]] in the area regulated by a single project plan,
13 preliminary plan, or lot that uses the FAR and building height flexibility under this
14 Section.

15 **59-A-6.18.2. [Requirements] Allowances.**

16 (a) Any subdivision that would contain 35 or more market dwelling units, and
17 that would be located in a zone with a maximum permitted residential
18 density at or above 40 dwelling units per acre and in a Metro Station Policy
19 Area, [must] may include [an amount] a number of workforce housing units
20 [[that is not less than at least 10 percent of the total number of proposed
21 market dwelling units, not including any MPDUs or resulting bonus density
22 units, or dwelling units excluded]] under Chapter 25B.

23 (b) A site plan is required under Division 59-D-3 for any project that includes a
24 workforce housing unit.

25 (c) To allow the construction of [all] workforce housing units on site, the
26 Planning Board must permit:

- 27 (1) any residential density or residential FAR limit of the applicable zone
 28 to be exceeded to the extent required for the number of workforce
 29 housing units that are constructed, but not by more than 10 percent of
 30 the total FAR or number of dwelling units;
- 31 (2) any residential density or residential FAR limit established in a master
 32 or sector plan to be exceeded to the extent required for the number of
 33 workforce housing units that are constructed, but not to more than the
 34 maximum density and FAR of the zone, except as provided in
 35 paragraph (1)[,] ; and
- 36 (3) any building height limit established in a master or sector plan to be
 37 exceeded to the extent required for the number of workforce housing
 38 units that are constructed, but not to more than the maximum height of
 39 the zone.

40 **59-A-6.18.3. Amendments.**

41 An application to amend a project plan or preliminary plan approved before
 42 {effective date} may be made concurrently with an application for a site plan or a
 43 site plan amendment, for the purpose of removing the previously required
 44 workforce housing units.

45 * * *

46 **Sec. 2. DIVISION 59-C-2 is amended as follows:**

47 **DIVISION 59-C-2. RESIDENTIAL ZONES, MULTIPLE-FAMILY.**

48 * * *

49 **59-C-2.4. Development standards.**

50 **59-C-2.41. Standard method of development.**

51 * * *

	R-30	R-20	R-10	R-H
59-C-2.418. Maximum Density of Development (Dwelling Units per Acre of Net Lot Area):	14.5	21.7	43.5 ³	³

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³ Workforce housing units [must] may be provided [as required by] under Section 59-A-6.18 and Chapter 25B.

* * *

59-C-2.44 Special regulations for optional method development using transferable development rights.

* * *

59-C-2.442. General provisions.

* * *

(d) A property developed with development rights must include Moderately Priced Dwelling Units (MPDUs) [as required by] under Chapter 25A and may include workforce housing units [as required by] under Section 59-A-6.18 and Chapter 25B. The number of MPDUs and any resulting bonus density must be calculated after the base density of a property has been increased by a transfer of development rights. [[The calculation of the number of workforce housing units must be based on the total number of market dwelling units in the development, including any transfer of development rights[,] but not counting any MPDUs or resulting bonus density units.]] The MPDU density bonus does not require the acquisition of additional development rights.

* * *

Sec. 3. Division 59-C-4 is amended as follows:

DIVISION 59-C-4. COMMERCIAL ZONES.

* * *

Sec. 59-C-4.357. C-2 zone-purpose and development standards.

77 Residential development in the C-2 zone under Section 59-C-4.351(b) must
78 include Moderately Priced Dwelling Units (MPDUs) as required by Chapter 25A
79 and may include workforce housing units [as required by] under Section 59-A-6.18
80 and Chapter 25B.

81 * * *

82 **Sec. 4. DIVISION 59-C-6 is amended as follows:**

83 **DIVISION 59-C-6. CENTRAL BUSINESS DISTRICT ZONES.**

84 * * *

85 **59-C-6.2. Provisions of CBD zones.**

86 * * *

87 **59-C-6.215. Methods of development and approval procedures.** Two methods
88 of development are possible in each of these zones.

89 (a) **Standard method of development.** The standard method requires
90 compliance with a specific set of development standards and permits a range
91 of uses and a density compatible with these standards. If residential uses are
92 included in a development, Moderately Priced Dwelling Units (MPDUs)
93 must be provided as required by Chapter 25A, and workforce housing units
94 [must] may be provided [as required by] under Section 59-A-6.18 and
95 Chapter 25B. The maximum dwelling unit density or residential FAR may
96 be increased in proportion to any MPDU density bonus provided on-site and
97 under Section 59-A-6.18.2.

98 (b) **Optional method.** Under the optional method, greater densities may be
99 permitted and there are fewer specific standards, but the developer must
100 provide certain public facilities and amenities. The presence of these
101 facilities and amenities is intended to make possible the creation of an
102 environment capable of supporting the greater densities and intensities of
103 development permitted. The Planning Board may, under Division 59-D-2:

104 (1) authorize a payment instead of all or some of the required public
105 facilities and amenities, or any required public use space; or (2) permit any
106 required public use space to be provided off-site on private or public
107 property in the same CBD. If residential uses are included in a development,
108 Moderately Priced Dwelling Units must be provided under Chapter 25A and
109 [Workforce Housing Units must] workforce housing units may be provided
110 under Section 59-A-6.18 and Chapter 25B. The maximum dwelling unit
111 density or residential FAR may be increased in proportion to any MPDU
112 density bonus provided on-site and under Section 59-A-6.18.2. The
113 procedure for approval of an optional method project is specified in Division
114 59-D-2, and the procedure for approval of a site plan is specified in Division
115 59-D-3.

116 * * *

117 **59-C-6.23. Development standards.**

118 * * *

	CBD-0.5		CBD-R1 ²		CBD-1		CBD-2		CBD-3		CBD-R2	
	S	O	S	O	S	O	S	O	S	O	S	O
* * *												
59-C-6.233. Minimum Public Use Space (percent of net lot area):	10	20	10	20 ¹⁶	10	20 ^{20,22}	10	20 ²²	10	20 ²²	10	20
(a) Standard Method — The public use space requirement may be reduced to accommodate the construction of MPDUs, including any resulting bonus density units, and workforce housing units, provided on-site to:	5		5		5		5		5		5	
* * *												
59-C-6.235. Maximum Building Heights (in feet).												
* * *												
(b) Optional method of development.												
—Normally:		60		60		60		143		143		143
—If approved by the Planning Board in the process of site plan or combined urban renewal project plan approval as not adversely affecting surrounding properties, height may be increased to:		60 ¹²		143		90 ¹		200 ¹¹		200		200

119 ¹ For projects using the optional method of development, the Planning Board
 120 may approve height over 90 feet, but not more than 143 feet, if the

121 additional height is necessary for the project to [comply with the]
122 accommodate workforce housing [requirements of] under Section 59-A-
123 6.18; however, the additional height must not be more than required for the
124 number of workforce housing units that are constructed. For projects using
125 the optional method of development involving more than one lot under
126 Section 59-C-6.2351, the Planning Board may approve height over 90 feet,
127 but not more than 143 feet, if the additional height is specifically
128 recommended for the property in the applicable sector plan or urban renewal
129 plan. In order to approve additional height for property where the additional
130 height is specifically recommended for the property in a sector plan or urban
131 renewal plan, the Planning Board must find that: [(1) The] (i) the additional
132 height is consistent with the criteria and guidelines for the property as
133 contained in the applicable sector plan or urban renewal plan; [(2) Except]
134 (ii) except as recommended in an urban renewal plan, the portion of the
135 property upon which the additional height is to be used is on all sides
136 abutted by or adjacent to property recommended in the applicable sector
137 plan or urban renewal plan for classification in the CBD-0.5, CBD-1, CBD-
138 2, or CBD-3 zones; [(3) The] (iii) the proposed development is compatible
139 with the surrounding development, considering but not limited to the
140 relationship of the building or buildings to the surrounding uses, the need to
141 preserve light and air for the residents of the development and residents of
142 surrounding properties, and any other factors relevant to the height of the
143 building; and [(4) The] (iv) the proposed development will produce a
144 substantial amount of consolidated public open space in excess of that which
145 would be required if this process were not used. The public open space must
146 be designated as public amenity space and be accessible to and usable by the

147 public in accordance with the applicable sector or master plan, or urban
148 renewal plan.

149 * * *

150 ¹¹ Under the optional method of development process, the Planning Board may
151 approve height over 143 feet, but not more than 200 feet, if: (i) the
152 additional height is necessary for the project to [comply with the]
153 accommodate workforce housing [requirements of] under Section 59-A-
154 6.18[;][,]; however, the additional height must not be more than required
155 for the number of workforce housing units that are constructed[,]; or (ii) the
156 additional height is specifically recommended for the property in the
157 applicable sector plan or urban renewal plan, or the property is within a
158 revitalization area designated in the applicable sector plan and is located
159 fully or partially within 800 feet of an entrance to a metro station. In order
160 to approve additional height for property recommended in a sector plan or
161 urban renewal plan or within a designated revitalization area, the Planning
162 Board must find that: [(1) The] (i) the additional height is consistent with
163 the criteria and guidelines for the property as contained in the applicable
164 sector plan or an urban renewal plan approved by the County Council under
165 Chapter 56, or in the case of a site outside an urban renewal area,
166 accomplishing the objectives of incorporating residential development with
167 commercial development in a mixed use project in close proximity to a
168 metro station otherwise unobtainable due to site conditions, proximity of
169 adjacent non-residential buildings, or other physical constraints [which] that
170 prevent the achievement of sector plan objectives; [(2) The] (ii) the proposed
171 development is compatible with the surrounding development, considering
172 but not limited to the relationship of the building or buildings to the
173 surrounding uses, the need to preserve light and air for the residents of the

174 development and residents of surrounding properties, and any other factors
175 relevant to the height of the building; and [(3) The] (iii) the proposed
176 development will provide additional public facilities and amenities beyond
177 what could otherwise have been provided if the excess height were not
178 approved. Such facilities must be accessible to and usable by the public in
179 accordance with the applicable sector or master plan or urban renewal plan.
180 ¹² The Planning Board may approve height over 60 feet, but not more than 90
181 feet, if: (i) [if] the additional height is consistent with an applicable sector
182 plan or an approved urban renewal plan; or (ii) the additional height is
183 needed to [comply with the] accommodate workforce housing [requirement
184 of] under Section 59-A-6.18; however, the additional height must not be
185 more than required for the number of workforce housing units that are
186 constructed.

187 * * *

188 **Sec. 5. DIVISION 59-C-7 is amended as follows:**

189 **DIVISION 59-C-7. PLANNED UNIT DEVELOPMENT ZONES.**

190 * * *

191 **59-C-7.1. P-D zone—Planned development zone.**

192 * * *

193 **59-C-7.14. Density of residential development.**

194 * * *

195 (c) The density of development is based on the area shown for residential use on
196 the master plan and must not exceed the density permitted by the density
197 category granted. However, the maximum density allowed under subsection
198 (a) may be increased to accommodate the construction of Moderately Priced
199 Dwelling [units] Units and workforce housing units as follows:

- 200 (1) For projects with a residential density of less than 28 dwelling units
 201 per acre, the number of Moderately Priced Dwelling Units must not be
 202 less than either the number of [density] bonus density units or 12.5
 203 percent of the total number of dwelling units, whichever is greater.
 204 (2) For projects with a residential density of more than 28 dwelling units
 205 per acre, the number of Moderately Priced Dwelling Units must be at
 206 least 12.5 percent of the total number of dwelling units [in accordance
 207 with] under Chapter 25A.
 208 (3) Any project with a residential density at or above 40 dwelling units
 209 per acre [must] may provide workforce housing units [as required by]
 210 under Section 59-A-6.18 and Chapter 25B.

211 * * *

212 **Sec. 6. DIVISION 59-C-8 is amended as follows:**

213 **DIVISION 59-C-8. TRANSIT STATION DEVELOPMENT AREA ZONES.**

214 * * *

215 **59-C-8.4. Development standards.**

	TS-R	TS-M
59-C-8.42. Density of Development.		
The density of development must not exceed any of the following:		
* * *		
(c) The density of development must not exceed the FAR or the dwelling units per acre allowed by the zone, except that the maximum density permitted may be increased to accommodate the construction of moderately priced dwelling units as required by Chapter 25A and the construction of workforce housing units [as required by] <u>under</u> Section 59-A-6.18 and Chapter 25B. The maximum number of dwelling units or residential FAR may be increased as needed for any MPDU density bonus and any workforce housing units provided on-site. The provision of MPDUs or workforce housing units does not authorize a reduction in any public facility and amenity or active or passive recreation space recommended in a master plan or sector plan.		

216 * * *

217 **Sec. 7. Division 59-C-10 is amended as follows:**

218 **DIVISION 59-C-10. RMX ZONES –RESIDENTIAL MIXED-USE**
219 **DEVELOPMENT**

220 * * *

221 **59-C-10.3.7. Maximum Residential Density.**

222 (a) The maximum residential density in an RMX zone must not exceed 30
223 dwelling units per acre for residential areas shown on the project plan. The
224 density approved by the Planning Board must not exceed the density shown
225 on the approved and adopted master plan, which must be no greater than the
226 density permitted by the RMX zone. Where residential development is
227 proposed to be located within a proposed commercial area, the maximum
228 residential density for such areas must not exceed 40 dwelling units per acre.
229 Any residential development must include Moderately Priced Dwelling units
230 (MPDUs) as required by Chapter 25A and may include workforce housing
231 units [as required by] under Section 59-A-6.18 and Chapter 25B.

232 * * *

233 (c) The density of residential development must comply with the density
234 recommended on the approved and adopted master plan; however, the
235 number of residential dwellings must be increased to accommodate the
236 construction of Moderately Priced Dwelling [units] Units (MPDUs) as
237 required by Chapter 25A and the construction of workforce housing units [as
238 required by] under Section 59-A-6.18 and Chapter 25B.

239 * * *

240 **Sec. 8. Division 59-C-13 is amended as follows:**

241 **DIVISION 59-C-13. TRANSIT ORIENTED, MIXED-USE ZONES (TOMX).**

242 * * *

243 **59-C-13.2. Provisions of the Transit Oriented, Mixed-Use Zones.**

244 **59-C-13.21. Description, purpose, intent and general requirements.**

245 * * *

246 **59-C-13.215. Methods of development and approval procedures.**

247 * * *

248 (b) **Optional Method of Development:** The Optional Method of Development
249 promotes additional densities[,] and supports innovative design and building
250 technologies to create a pedestrian-oriented and mixed-use development
251 pattern. Approval of the Optional Method of Development is dependent on
252 providing required public amenities and facilities. The public facilities and
253 amenities are intended to support the additional densities permitted under the
254 Optional Method of Development. The procedure for the approval of the
255 Optional Method of Development is set forth in Section 59-D-2. Site plans
256 must be approved in accordance with Section 59-D-3. If residential uses are
257 included in a development, Moderately Priced Dwelling Units must be
258 provided as required by Chapter 25A, and workforce housing units [must]
259 may be provided [as required by] under Section 59-A-6.18 and Chapter 25B.
260 The maximum dwelling unit density or residential FAR may be increased in
261 proportion to any MPDU density bonus provided on-site.

262 * * *

263 **Sec. 9. Division 59-C-14 is amended as follows:**

264 **DIVISION 59-C-14[,]. TRANSIT MIXED-USE (TMX) ZONE**

265 * * *

266 **59-C-14.213. General requirements.**

267 * * *

268 (b) **MPDUs and workforce housing.** If residential uses are included in a
269 development, Moderately Priced Dwelling Units must be provided under

270 Chapter 25A, and workforce housing units [must] may be provided under
271 Section 59-A-6.18 and Chapter 25B. The maximum residential FAR may be
272 increased in proportion to any MPDU [density] bonus density [and
273 workforce]. Workforce housing units [provided on-site] may increase the
274 maximum residential FAR under Section 59-A-6.18.2. Site plan review
275 under [section] Section 59-D-3 is required.

276 * * *

277 **59-C-14.27. Special regulations for use of a Building Lot Termination**
278 **(BLT) Development Right.**

279 [Except for residential development subject to the requirement of workforce
280 housing under Section 59-A-6.18, the] The approval of an application for any gross
281 floor area in an optional method of development project must be subject to the
282 following requirements:

283 * * *

284 **Sec. 10. Division 59-D-1 is amended as follows:**

285 **Sec. 59-D-1.6. Approval by [district council] District Council.**

286 **59-D-1.61. Findings.**

287 Before approving an application for classification in any of these zones, the
288 District Council must consider whether the application, including the development
289 plan, fulfills the purposes and requirements in Article 59-C for the zone. In so
290 doing, the District Council must make the following specific findings, in addition
291 to any other findings which may be necessary and appropriate to evaluate the
292 proposed reclassification:

293 (a) The proposed development plan substantially complies with the use and
294 density indicated by the master plan or sector plan, and does not conflict

295 with the general plan, the county capital improvements program, or other
296 applicable county plans and policies. However:

297 * * *

298 (2) To permit the construction of [all] workforce housing units [required]
299 under § 59-A-6.18 and Chapter 25B on site, the District Council may
300 permit:

301 (A) any residential density or residential FAR limit of the
302 applicable zone to be exceeded to the extent required for the
303 number of workforce housing units that are constructed, but not
304 by more than 10 percent.

305 (B) any residential density or residential FAR limit recommended
306 in a master or sector plan to be exceeded to the extent required
307 for the number of workforce housing units that are constructed,
308 but not to more than the maximum density and FAR of the
309 zone, except as provided in paragraph (1); and

310 (C) any building height limit recommended in a master or sector
311 plan to be exceeded to the extent required for the number of
312 workforce housing units that are constructed, but not to more
313 than the maximum height of the zone.

314 * * *

315 **Sec. 11. Effective date.** This ordinance becomes effective 20 days after the
316 date of Council adoption.

317

318 This is a correct copy of Council action.

319

320

321 _____
Linda M. Lauer, Clerk of the Council

Bill No. 4-10
Concerning: Workforce Housing-Voluntary
Revised: 3-25-10 Draft No.: 3
Introduced: February 2, 2010
Expires: August 2, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch.: _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Planning, Housing, and Economic Development Committee

AN ACT to:

- (1) modify the requirement for workforce housing to make the provision of workforce housing voluntary; and
- (2) generally amend the law governing the workforce housing program.

By amending

Montgomery County Code
Chapter 25A, Housing, Moderately Priced
Section 25A-5

Chapter 25B, Housing Policy
Sections 25B-23 through 25B-28

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. Section 25A-5 is amended as follows:**

2 **25A-5. Requirement to build [MPDU's] MPDUs; agreements.**

3 * * *

4 (c) When the development at one location is in a zone where a density
5 bonus is allowed; and

6 (1) is covered by a plan of subdivision,

7 (2) is covered by a plan of development or a site plan, or

8 (3) requires a building permit to be issued for construction,

9 the required number of moderately priced dwelling units is a variable
10 percentage that is not less than 12.5 percent of the total number of
11 dwelling units at that location, not counting any workforce housing
12 units [required] built under Chapter 25B.* * *

13 **Sec. 2. Sections 25B-23 through 25B-28 are amended as follows:**

14 **25B-23. Definitions.**

15 In this Article, the following words have the following meanings:

16 * * *

17 (j) *Workforce housing project* means a housing or mixed-use project where
18 [at least 10 percent of the] dwelling units[, as computed under Section
19 25B-24(e),] are sold or rented to households with incomes at or below
20 120% of the area-wide median income under an agreement between the
21 developer and the Director.

22 * * *

23 **25B-24. Workforce housing program.**

24 * * *

25 (d) [*Requirement*] Option. A developer of any subdivision with 35 or more
26 market-rate dwelling units at one location, as defined in Section 25A-
27 3(b), [must build the number of] may build workforce housing units [, if

28 any,] that are expressly [required] allowed in the applicable zone under
 29 Chapter 59.

30 [(e) *Exclusions.* In calculating the number of dwelling units in any
 31 subdivision to determine the number of workforce housing units
 32 [required] built under this Article, the Department must not count:

- 33 (1) any moderately priced dwelling units (MPDUs) and any resulting
 34 bonus density market-rate units;
- 35 (2) any Personal Living Quarters unit built under Section 59-A-6.15,
 36 which meets the price or rent eligibility standards for a
 37 moderately priced dwelling unit under Chapter 25A;
- 38 (3) any dwelling unit in an Opportunity Housing Project built under
 39 Sections 56-28 through 56-32, which meets the price or rent
 40 eligibility standards for a moderately priced dwelling unit under
 41 Chapter 25A; and
- 42 (4) any other dwelling unit built under a government regulation or
 43 binding agreement that limits for at least 15 years the price or rent
 44 charged for the unit in order to make the unit affordable to
 45 households earning less than 60% of the area median income,
 46 adjusted for family size.]]

47 [(f) *Exemption.* If the total number of units in a subdivision that are not
 48 counted under subsection (e)(4) is sufficient to qualify the entire
 49 subdivision to receive federal low-income housing tax credits, then no
 50 workforce housing units are required in that subdivision.]

51 [(g)] [(f)] (e) *Regulations.* The County Executive must adopt
 52 regulations under method (1) to administer this program. These
 53 regulations:

- 54 (1) must set maximum sale prices and annual rent limits, sale price

55 and rent ranges (which must promote a variety of different prices
56 or rents at each workforce housing location), minimum unit type
57 and bedroom requirements, and income eligibility standards;

58 (2) must govern notice to the Department of sales and rentals,
59 foreclosures, and other relevant procedural matters; and

60 (3) should, wherever possible, be similar to or at least consistent with
61 the regulations that govern the MPDU program.

62 The regulations governing eligibility must include some preference for
63 applicants who either reside in the County or work or have received a
64 job offer in the County.

65 * * *

66 **25B-25. Execution of agreement; building permit issuance.**

67 (a) *Agreement.*

68 (1) After the developer of a housing project has obtained approval
69 from the Planning Board of a site plan that includes the number
70 of workforce housing units [required] approved under any
71 applicable provision of Chapter 59 and all other necessary
72 regulatory approvals, the Director and the developer must execute
73 an agreement assuring compliance with this Article by the
74 developer and any successor in interest. The Director must attach
75 a copy of the approved site plan to this agreement.

76 (2) The agreement must incorporate a staging plan for the
77 construction of workforce housing units, the mix of dwelling unit
78 sizes and types, and the maximum selling price or annual rent for
79 each unit. The staging plan must require all workforce housing
80 units to be built before or at the same time as the other dwelling
81 units. Where appropriate, the agreement must reflect conditions

- 82 required as part of other regulatory approvals.
- 83 (3) The agreement must require that the number of efficiency and
 84 one-bedroom workforce housing units each must not exceed the
 85 ratio that market-rate efficiency and one-bedroom units
 86 respectively bear to the total number of market-rate units in the
 87 subdivision. The Director must not approve an agreement that
 88 reduces the number of bedrooms required by this subsection in
 89 any workforce housing unit.
- 90 (b) *Issuance of building permit.* The Director of Permitting Services must
 91 not issue a building permit for any development where workforce
 92 housing units are [required] approved under Chapter 59 until the
 93 agreement required by subsection (a) is executed. After an agreement is
 94 executed under subsection (a), the Director must certify to the Director
 95 of Permitting Services before a building permit is issued that all
 96 applicable requirements of this Article have been met. If all workforce
 97 housing units are not built before or at the same time as other dwelling
 98 units as required in the staging plan, the Director of Permitting Services
 99 may:
- 100 (1) withhold any later building permit for any part of the same
 101 development until all workforce housing units designated in the
 102 staging plan are built;
- 103 (2) issue a stop work order, effective until all workforce housing
 104 units designated in the staging plan are built; or
- 105 (3) withhold any use and occupancy permit for other units in the
 106 development until all workforce housing units designated in the
 107 staging plan are built.

108 **[25B-26. Alternative location agreement.]**

- 109 [(a) The Director may approve a workforce housing agreement, in addition
 110 to the agreement required by Section 25B-25, that allows an applicant,
 111 instead of building some or all of the required number of workforce
 112 housing units on-site, to provide at least the same number of units at
 113 another location in the same planning policy area (as defined in the
 114 County Growth Policy), only if the Director finds that:
- 115 (1) either:
- 116 (A) the public benefit of locating at the proposed alternative
 117 location is equivalent to the value of locating workforce
 118 housing units in each applicable development; or
- 119 (B) building a sufficient number of workforce housing units at
 120 the original site would require the applicant to change the
 121 type of building construction used; and
- 122 (2) building the workforce housing units at the proposed alternative
 123 location will further the objective of providing a broad range of
 124 housing opportunities throughout the County.
- 125 (b) To satisfy the requirements of this Section, an applicant may:
- 126 (1) build, or convert from non-residential use, the required number of
 127 new workforce housing units at a site approved by the Director;
 128 or
- 129 (2) return to workforce housing unit use, and rehabilitate as
 130 necessary, existing workforce housing units for which price
 131 controls have expired.
- 132 (c) Each agreement under this Section must include a schedule, binding on
 133 the applicant, for timely completion or acquisition of the required
 134 number of workforce housing units. Each agreement under this Section
 135 must also require that each workforce housing unit provided at an

136 alternative location under this Section must be identical in type of unit
137 and number of bedrooms to the workforce housing units that the
138 applicant would have built on site.]

139 **[25B-27] 25B-26. Control of sale prices; rent limits; income eligibility;**
140 **foreclosures.**

141 * * *

142 **[25B-28] 25B-27. Compliance.**

143 * * *

144 **Sec. 3. Expiration.**

145 Subsection (c) of Section 3 of Chapter 23, Laws of Montgomery County, 2006
146 is hereby repealed:

147 **Sec. 3. Effective date; Applicability; Expiration.**

148 * * *

149 [(c) Article V of Chapter 25B, as inserted by Section 1 of this Act, does not
150 apply to any development for which an application for a local map
151 amendment, development plan, project plan, site plan, or preliminary
152 plan of subdivision is filed after December 1, 2014.]

153 *Approved:*

154

155

Nancy Floreen, President, County Council

Date

156 *Approved:*

157

158

Isiah Leggett, County Executive

Date

159 *This is a correct copy of Council action.*

160

Linda M. Lauer, Clerk of the Council

Date