


**MEMORANDUM**

July 13, 2018

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: Bill 34-17, Housing – Moderately Priced Dwelling Units (MPDUs) – Amendments

PURPOSE: Worksession-Action - make recommendations on Bill and roll call vote required

**Planning, Housing and Economic Development Committee recommendation (3-0):**  
Enact Bill 34-17 with amendments.

Expected Attendees:

- Clarence Snuggs, Director, Department of Housing and Community Affairs (DHCA)
- Stephanie Killian, Affordable Housing Programs Manager, DHCA
- Casey Anderson, Chair, Montgomery County Planning Board
- Gwen Wright, Director, Montgomery County Planning Department
- Carol Rubin, Acting Deputy Director, Montgomery County Planning Department
- Pamela Dunn, Chief, Functional Planning and Policy, Montgomery County Planning Department
- Lisa Govoni, Housing Planner, Montgomery County Planning Department

Bill 34-17, Housing – Moderately Priced Dwelling Units (MPDUs) - Amendments, sponsored by Lead Sponsor Councilmember Floreen and Co-Sponsor Councilmember Rice, was introduced on October 31. A public hearing on the Bill was held on December 5, 2017 and Planning, Housing and Economic Development (PHED) Committee worksessions were held on March 5, March 12, March 19, June 11 and June 18.

Bill 34-17 would make several changes to the County MPDU law to enhance administrative flexibility and clarify provisions of the law.

## Committee Discussion on Bills 34-17

The PHED Committee held worksessions on Bill 34-17 on March 5, March 12, March 19, June 11 and June 18. At the first worksession,<sup>1</sup> the Committee received an overview of Bill 34-17's proposed changes to the existing MPDU law, and discussed many of those changes with representatives from DHCA and the Planning Department. That overview was organized with the broader purposes of the Bill and the specific changes proposed to effectuate each purpose. At the second worksession, the Committee took a section-by-section look at Bill 34-17 and recommended several amendments. The Committee also considered and accepted recommendations from DHCA and Council staff for several technical amendments at the March 12 worksession.<sup>2</sup> At the March 19 worksession,<sup>3</sup> the Committee discussed several issues and gave staff direction on provisions related to: resales of MPDUs; density bonuses for providing MPDUs; and the effective date(s) of the Bill. At the June 11 worksession,<sup>4</sup> the Committee reviewed a redraft of the Bill, which incorporated all of the amendments discussed and approved at the earlier worksessions, directed staff to include several additional amendments to the Bill. On June 18,<sup>5</sup> the Committee reviewed a redraft that included all Committee-recommended amendments and recommended enactment (3-0) with amendments.

### Zoning Text Amendment

Substantial discussion in the early Committee worksessions was devoted to resolving issues surrounding the amount of density bonus allowed for provision of MPDUs. Under current law, the amount of density bonuses allowed is provided in a table (©19-20, following line 456). At the March 19 worksession Council staff and Planning Board staff expressed agreement that provisions relating to density bonuses are zoning provisions and belong in Chapter 59, the Zoning Ordinance. The Committee was advised at the first worksession that a Zoning Text Amendment (ZTA) is needed under any circumstances to make sure that Chapter 25A and Chapter 59 are consistent. ZTA 18-06<sup>6</sup> will be the vehicle to provide for density bonuses in the Zoning Ordinance. It was introduced on June 19, and has a public hearing scheduled for September 11. The effective dates of this Bill and the ZTA should be synchronized so that both take effect on October 31, 2018.

### A Note on Timing

In addition to the need to synchronize the effective dates of this Bill and the ZTA mentioned above, there is another matter of timing of which the Council should be aware. Several new and revised Executive regulations will be necessary to implement the changes that would be made by Bill 34-17. Council action on this Bill prior to the August recess will allow sufficient time for the

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<sup>1</sup>[https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5700\\_1460\\_Committee\\_03022018.pdf](https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5700_1460_Committee_03022018.pdf)

<sup>2</sup>[https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5720\\_1460\\_Committee\\_03092018.pdf](https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5720_1460_Committee_03092018.pdf)

<sup>3</sup>[https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5729\\_1460\\_Committee\\_03192018.pdf](https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5729_1460_Committee_03192018.pdf)

<sup>4</sup>[https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5859\\_1460\\_Committee\\_06112018.pdf](https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5859_1460_Committee_06112018.pdf)

<sup>5</sup>[https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5876\\_1460\\_Committee\\_06182018.pdf](https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5876_1460_Committee_06182018.pdf)

<sup>6</sup> <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/zta/2018/ZTA%2018-06.pdf>

Executive to develop, publish, and deliver these regulations to the Council for consideration and approval prior to the end of the Council term.

### **Overview of Bill 34-17 with PHED Committee Amendments**

Below is a section-by-section overview of all changes that would be made to the existing law by Bill 34-17, other than purely technical amendments.<sup>7</sup>

#### ***Sec. 25A-1. Legislative Findings.***

The legislative findings in §25A-1 are rewritten under Bill 34-17 to reflect and account for changes since they were last amended in 1989. The new legislative findings are at ©4-6. lines 62-127. The amended legislative findings provide historical background of the MPDU program, including a summary of the 2004 amendments. The new findings reference the 2015 report “The Greater Washington Region’s Housing Needs 2023,” and the 2017 Montgomery County Rental Housing Study, and use current numbers to demonstrate the need for affordable housing in the County. The new findings acknowledge the utility of alternative payments in certain circumstances, identify the role of MPDUs in providing affordable housing to very-low income households, and reiterate the County’s commitment to providing affordable housing in all areas of the County.

#### ***Sec. 25A-2. Declaration of public policy.***

As with the legislative findings, Bill 34-17 would comprehensively revise Chapter 25A’s declaration of public policy (see ©7-8, lines 157-184). The revised declaration states that it is the County’s policy to encourage a diverse housing stock in the County, with a priority on housing that is affordable to low, moderate, and middle-income households in all parts of the County. The amended language also identifies, as a priority, increasing the long-term supply of rental housing affordable to low and moderate-income households, particularly in areas that are easily accessible to transit. The importance of flexibility in affordable housing agreements to best meet the needs for specific types and sizes of affordable housing, and in the administration of the MPDU program, are also identified.

#### ***Sec. 25A-3. Definitions.***

Bill 34-17 would amend §25A-3 to:

- add definitions of “age-restricted unit” (©9, lines 188-189), “area median income” (©9, lines 190-192), “designated agency” (©11, lines 242-245), “multi-family dwelling unit” (©12, lines 286-287), “Planning Area” (©13, lines 293-296), and “single-family dwelling unit” (©13, lines 302-304);
- add reference to “age 55 and older” as the specific minimum age for at least one resident, for consistency with the Zoning Ordinance (©9, line 189);

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<sup>7</sup> Examples of the purely technical amendments omitted from the overview include: changing references to “planning policy area” to “Planning Area” throughout the Chapter; changing references to “unit” or “moderately priced dwelling unit” to “MPDU” throughout; changing references to “person” and “family” to “household” throughout; and changing references to “corporations” to “business entities” throughout.

- change reference in the definition of “Area median income” from median household income for “Montgomery County” to “Washington DC metropolitan area” (©9, lines 190-192);
- amend the defined term “eligible person” to be “eligible household” (©11, lines 252-257);
- provide that County “moderate income” levels must not exceed HUD “low income” levels (©12, lines 267-269); and
- clarify in the definition of “Moderately Priced Dwelling Unit” that when a dwelling unit designated as an MPDU is first sold or leased under another government program, once the initial restrictions end, MPDU requirements apply for the balance of the MPDU control period (©12, lines 277-285).

***Sec. 25A-4. Household income and eligibility standards.***

Bill 34-17 would expressly tie MPDU eligibility to household income (©13, lines 314-322), which is a more appropriate measure than MPDU sale price and financing information that is the current basis for eligibility. The remaining changes that Bill 34-17 would make to §25A-4 are primarily clarifying amendments, and include:

- expressly providing that a tenant may remain in MPDU for a lease term notwithstanding change in eligibility (©14, lines 328-331);
- expressly providing that an MPDU purchaser may retain ownership notwithstanding change in eligibility (©14, lines 332-335); and
- eliminating the prohibition on residential property ownership for the prior five years to be eligible for an age-restricted unit only (©14, line 336).

***Sec. 25A-5. Requirement to build MPDUs; payment to Housing Initiative Fund; agreements.***

Bill 34-17 would make several substantive changes to §25A-5. Most notably, it would eliminate the density bonus provisions and table; all provisions related to density bonus are more appropriately located in the Zoning Ordinance, and are the subject of ZTA 18-06, discussed above. The Bill would also require a payment to the Housing Initiative Fund (HIF), calculated as set in regulation, for developments of between 11 and 19 units. Currently, developments of fewer than 20 units are not subject to any MPDU requirements. It would also give the DHCA Director greater flexibility in determining the bedroom mix of MPDUs, and would require that requirements of for-sale age-restricted MPDUs be satisfied by payment to the HIF. This would allow the phasing-out of for-sale age-restricted MPDUs in the program.

Bill 34-17’s changes to this section would:

- expressly provide that the conversion of an existing property from a non-residential use to a residential use which results in the development of 20 or more dwelling units is subject to the MPDU requirements (©15, lines 355-359);
- require a HIF payment, but not the provision of MPDUs, for developments of between 11 and 19 units (but not for developments of 10 or fewer units) (see ©15, lines 364-367);

- permit the DHCA Director to waive the requirement that single-family MPDUs have three-bedroom in certain limited circumstances (see ©16, lines 390-394);
- provide that, in subdivisions with multi-family dwelling units, the bedroom mix of the MPDUs must match the bedroom mix of the market-rate units in the subdivision, unless the Director approves an MPDU agreement that does not increase the number of MPDUs required, but approximates the total floor area for the MPDUs required and alters the bedroom mix of the MPDUs or the number of MPDUs (see ©16-17, line 395-405);
- require developers who are constructing both single-family and multi-family units to distribute the MPDUs between both in the same proportions as the market-rate units, unless the DHCA Director agrees to a different distribution. (©17, lines 406-419);
- add “residential floor area,” in addition to number of units, as a measure of MPDUs (©18, lines 433, 436, 439-441);
- delete the density bonus table and language relating to the calculation of density bonuses (this will be provided through ZTA 18-06, as discussed above) (see ©18-20, lines 444-457);
- delete obsolete provisions permitting the Director to reduce or waive the number of MPDUs required in certain developments of between 20 and 50 units (©20-21, lines 458-483);
- expressly provide that the DHCA Director determines whether or not required MPDUs must be provided on-site in all cases (including where the Council sets a higher base MPDU requirement in the master plan approval process) (see ©21, lines 484-485);
- require procedures for land transfers to the County in satisfaction of MPDU requirements to be established by Executive regulation, rather than be set in the law, and in any event, require the value of any land transferred to be at least equal to the value of the MPDU that are not constructed (©21-23, lines 493-544);
- require notice to Council of approval of a land transfer, and restrict the use of land transferred to increasing the supply of MPDUs (see ©23, lines 546-552);
- permit a property within a preliminary plan or site plan that has multiple owners to have more than one MPDU agreement (©24, lines 568-571);
- require that MPDUs be reasonably dispersed throughout a development (©24, lines 579-580);
- require that an MPDU agreement provide for any requirement of for-sale age-restricted MPDUs to be satisfied by a payment to the HIF (©25, lines 592-594);
- prohibit the establishment of a condominium or homeowners’ association consisting solely of MPDUs (©25, lines 612-613); and
- permit an applicant to request a letter of preliminary agreement with DHCA (see ©27, lines 649-654).

***Sec. 25A-5A. Alternative payment agreement.***

As recommended by the Committee, Bill 34-17 would make several changes to the law governing alternative payment agreements, by which an applicant may satisfy MPDU requirements via a payment to the Housing Initiative Fund rather than construction of MPDUs themselves. Most significant is the elimination of the provision that any subdivision for which an alternative payment is made is not eligible for any density bonus that it would be eligible for under the Zoning Ordinance. This would permit, provided that the section’s requirements for approving

an alternative payment agreement are met, a developer to obtain a density bonus for a development by making a payment to the HIF, but not constructing MPDUs.

In this section, Bill 34-17, as amended, would:

- limit the use of alternative payments by providing that only requirements for for-sale newly constructed or newly-converted MPDUs may be satisfied through alternative payment agreements (©27, lines 658-659);
- delete reference to the “Alternative Review Committee” and instead provide that the Director may enter an alternative payment agreement upon the Director making certain findings (©27, lines 660-663);
- add “regulatory development constraints” that would render the building of approved density and all required MPDUs at the site infeasible (©28, lines 672-675), and greater public benefit (©28, lines 676-678) as justifications for an alternative payment agreement;
- set the amount of the alternative payment as three percent of the sale price of each market rate unit in the development (©28-29, lines 691-696);
- specify that alternative payments to the HIF be deposited into the Affordable Housing Acquisition and Preservation Capital Improvement Project;
- allow use of a payment in a different Planning Area than that of the development, but only after notice, “good cause” and a 30-day comment period are provided to Council (see ©29, lines 700-714);
- delete the provision making any subdivision for which an alternative payment is made ineligible for any density bonus for which it is eligible under the Zoning Ordinance (©29, lines 717-719); and
- require Council notice of all alternative payment agreements (©29, lines 758-759).

***Sec.25A-5B. Alternative location agreement.***

Committee-recommended Bill 34-17 would add requirements on approval of alternative location agreements, which allow applicants to satisfy MPDU requirements by building MPDUs at a different location that development for which they are required. The Bill would:

- require an alternative location agreement to increase the number of MPDUs provided or provide additional bedrooms in the same number or fewer MPDUs (©30, lines 735-738);
- require an alternative location to be in the same Planning Area as the development, unless notice, “good cause” and a 30-day comment period to be provided to Council (©30, lines 739-745); and
- require Council notice for any alternative location agreement (©31, lines 758-759).

***Sec. 25A-6. Optional Zoning Provisions; waiver of requirements.***

Bill 34-17 would delete the provisions in this Section for granting a waiver of MPDU requirements under certain circumstances – alternative payment agreements or alternative location agreements *must* be used when not constructing otherwise-required MPDUs (© 32, lines 779-794).

***Sec. 25A-7. Maximum prices and rents.***

Bill 34-17 would simplify the provisions relating to maximum sale prices and rents of MPDUs. Existing law provides that maximum sale prices of MPDUs must be set by method (1) regulation, but is very prescriptive as to what the Executive must consider in setting the sale prices and the circumstances under which the prices may be adjusted. Bill 34-17 would retain method (1) regulation as the manner in which sale prices are set, but would simplify criteria for MPDU sale price regulations (©33-35, lines 804-860). The specific requirements of sale price regulations under the Bill are at ©33-34, lines 817-829. The Bill would also simplify criteria for MPDU rent regulations required under current law in a similar fashion (©35-36, lines 861-887).

***Sec. 25A-8. Sale or rental of MPDUs.***

Bill 34-17 would make a number of changes to the law's provisions governing MPDU sales and rentals. It would transpose subsections 25A-6(a) and (b), dealing with the sale and rental of MPDUs to clarify that the offering for sale or rent of up to 40% of the MPDUs to DHCA, HOC, and other housing development agencies or non-profits occurs *before* the public offering. This change is purely a reference to reordering the two subsections without substantive change.

Two amendments to this section are the most significant. First, the Bill would add language to permit the option to purchase or rent new MPDUs held by a government agency or designated agency to be assigned to clients of the Department of Health and Human Services. Currently, non-profits make use of the purchase provision but rarely the rental provision because it would require them to sublet to their clients. The amendment would allow a client to directly hold the lease, and could increase MPDU housing opportunities for them.

Second, the Bill would give DHCA a right of first refusal on the resale of certain MPDUs. The Bill would add a provision requiring that any unit purchased by HOC or other government agency or designated agency that is offered for resale within five years after initial purchase first be offered for sale to the Department in accordance with Executive regulation. It would also allow DHCA to assign this right to a designated affordable housing agency or non-profit.

The substantive changes made to this section by Bill 34-17, as recommended by the PHED Committee, would:

- add a provision to allow the purchase/rental option held by a government agency or designated agency to be assigned to clients of the Department of Health and Human Services. (©36, lines 906-907);
- add a provision requiring that any unit purchased by HOC or other designated housing development agency or non-profit corporation that is offered for resale within five years after initial purchase first be offered for sale to the Department in accordance with Executive regulation, and allow DHCA to assign this right to a designated affordable housing agency or non-profit (lines ©38-39, lines 960-968);
- clarify certain notice provisions related to the offering of MPDUs to conform with DHCA practice (©40, lines 1002-1003; ©40-41, lines 1014-1020);
- allow DHCA to reduce the required 90-day priority marketing period for resold MPDUs for good cause (©41, 1028-1029); and

- delete obsolete language that was added to the law in 1989, before the institution of the 99-year control period on rental MPDUs, to prevent developers from offering MPDUs as rentals when similar units were being sold as market units, only to evict the MPDU tenants when the rental control period expired and sell the formerly rental MPDUs as for-sale market units (©41-42, lines 1030-1062).

***Sec. 25A-9. Control of rents and resale prices; foreclosures.***

The changes that Bill 34-17 would make to §25A-9 are generally clarifying amendments and changes to allow DHCA to more effectively and efficiently administer the program. The Bill's changes to this section would:

- allow the use of alternative index to the CPI to be used for the calculation of MPDU resale prices, provided the alternative is identified in Executive regulation (©47, lines 1183-1184; ©50, lines 1275-1276);
- clearly provide that closing costs to be factored into the calculation of MPDU resale prices are subject to DHCA approval (©47, line 1188);
- delete the specific conditions under which a reasonable sales commission may be included in the resale price of an MPDU, and allow the inclusion of sales commissions generally (©47, lines 1192-1194);
- for resale of an MPDU within the control period, change the allowed increase over original sale price for improvements made to unit from "fair market value of improvements made" to an allowance, excluding the value of costs attributable solely to the maintenance and upkeep of the unit and luxury items (©47, lines 1185, 1195-1198);
- clarify that if DHCA and HOC decide in less than 60 days that they do not want to purchase an MPDU offered for resale during the control period, the "exclusive offer" period can end before 60 days (©48, line 1212);
- clarify that HOC may not purchase a resale MPDU in a particular development if HOC would then own more than one-third of the MPDUs in that development. (©49, lines 1233-1237);
- add a new subsection allowing DHCA, under certain conditions, to release a resale MPDU from covenants if it is too expensive or the design does not meet the needs of MPDU purchasers (©49-50, lines 1254-1264);
- clarify that HOC may not lease an MPDU in a particular development after the original rental if HOC would then lease more than one-third of the MPDUs in that development. (©51-52, 1309-1313); and
- amend certain provisions of the law governing payments to the HIF and the sale price of units sold through foreclosure or other court-ordered sale as recommended by the Office of the County Attorney to avoid conflict with State law governing foreclosures (©52, lines 1326-1330 and 1334-1335; ©53, lines 1340-1341).

***Sec. 25A-12. Annual report.***

Bill 34-17 would require each land transfer completed under §25A-5(h) to be reported to the Council in the annual report on the MPDU program due March 15 of each year.



## Possible Amendments to Bill 34-17

### *Regulations:*

Bill 34-17 currently has a Section 2 (see ©54, lines 1370-1372) requiring the Executive to submit regulations required by the Bill not later than September 15, 2018. Because that date does not permit enough time to publish draft regulations for public comment, Council staff recommends amending the provision as follows:

**Sec. 2. Regulations.** The County Executive must submit the regulations required by Sections 25A-5, 25A-7, 25A-8, and 25A-9, as amended by this Act, to the Council for approval not later than [[September]] October 15, 2018.

### *Effective date:*

The Bill also includes a Section 3, providing that the effective date for Bill 34-17 is November 1, 2018 (see ©54, lines 1373-1375). Since the last PHED worksession, it has become clear that additional clarity in the effective date provision would be desirable. The effective date provision below has been distributed to the PHED Committee members, and they may wish to include it as part of their Committee recommendation. This provision would make the law effective on October 31, 2018, which is anticipated to be the effective date of the accompanying ZTA. It would also make clear that if an applicant is made subject to MPDU requirements prior to the effective date of the law, the old law's requirements apply through the development process *for that development*, unless the applicant opts into the new law's requirements.

### **Sec. 3. Effective Date.**

- (a) This Act takes effect on October 31, 2018, and applies to any applicant made subject to the provisions of Chapter 25A by a submission or application under Section 25A(5)(a) made on or after that date.
- (b) Unless an applicant elects to be reviewed under the standards and procedures of Chapter 25A in effect on or after October 31, 2018, any such application submitted for approval or approved before October 31, 2018 must be approved or amended in a manner that satisfies Chapter 25A as it existed on October 30, 2018. The approval of any of these applications, or amendments to these applications, will allow the applicant to proceed through any other required application or step in the process

within the time allowed by law or plan approval, under the standards and procedures of Chapter 25A in effect on October 30, 2018.

This packet contains:	<u>Circle #</u>
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Bill No. 34-17  
Concerning: Housing – Moderately  
Priced Dwelling Units (MPDUs) -  
Amendments  
Revised: 06/13/2018 Draft No. 7  
Introduced: October 31, 2017  
Expires: May 1, 2019  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Floreen  
Co-Sponsor: Councilmember Rice

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**AN ACT** to:

- (1) clarify certain provisions of law related to moderately priced dwelling units (MPDUs);
- (2) amend certain provisions of law related to the satisfaction of MPDU requirements;
- (3) amend certain provisions of law related to the sale and rental of MPDUs; and
- (4) generally amend the laws governing moderately priced housing

By amending

Montgomery County Code  
Chapter 25A, Housing – Moderately Priced  
Sections 25A-1, 25A-2, 25A-3, 25A-4, 25A-5, 25A-5A, 25A-5B, 25A-6, 25A-7, 25A-8,  
25A-9, and 25A-12

<b>Boldface</b>	<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 25A-1, 25A-2, 25A-3, 25A-4, 25A-5, 25A-5A, 25A-5B,**  
2 **25A-6, 25A-7, 25A-8, 25A-9, and 25A-12 are amended as follows:**

3 **25A-1. Legislative findings.**

4           [The County Council hereby finds that a severe housing problem exists within  
5 the County with respect to the supply of housing relative to the need for housing for  
6 residents with low and moderate incomes. Specifically, the County Council finds  
7 that:

- 8           (1) The County is experiencing a rapid increase in residents of or  
9           approaching retirement age, with consequent fixed or reduced incomes;  
10           young adults of modest means forming new households; government  
11           employees in moderate income ranges; and mercantile and service  
12           personnel needed to serve the expanding industrial base and population  
13           growth of the County;
- 14           (2) A rising influx of residents into higher priced housing in the County  
15           with resultant demands for public utilities, governmental services, and  
16           retail and service businesses has created an increased need for housing  
17           for persons of low and moderate income who are employed in the stated  
18           capacities;
- 19           (3) The supply of moderately priced housing was inadequate in the mid-  
20           1960's and has grown since then at a radically slower pace than the  
21           demand for such housing;
- 22           (4) The inadequate supply of housing in the County for persons of low and  
23           moderate income results in large-scale commuting from outside the  
24           County to places of employment within the County, thereby overtaxing  
25           existing roads and transportation facilities, significantly contributing to  
26           air and noise pollution, and engendering greater than normal personnel  
27           turnover in the businesses, industry and public agencies of the County,

- 28 all adversely affecting the health, safety and welfare of and resulting in  
29 an added financial burden on the citizens of the County;
- 30 (5) A careful study of market demands shows that approximately one-third  
31 of the new labor force in the County for the foreseeable future will  
32 require moderately priced dwelling units;
- 33 (6) Demographic analyses indicate that public policies which permit  
34 exclusively high-priced housing development discriminate against  
35 young families, retired and elderly persons, single adults, female heads  
36 of households, and minority households; and such policies produce the  
37 undesirable and unacceptable effects of exclusionary zoning, thus  
38 failing to implement the Montgomery County housing policy and the  
39 housing goal of the general plan for the County;
- 40 (7) Experience indicates that the continuing high level of demand for more  
41 luxurious housing, with a higher profit potential, discourages developers  
42 from offering a more diversified range of housing; and the production of  
43 moderately priced housing is further deterred by the high cost of land,  
44 materials, and labor;
- 45 (8) Actual production experience in the County indicates that if land costs  
46 can be reduced, houses of more modest size and fewer amenities can be  
47 built to be sold at a profit in view of the existing ready market for such  
48 housing;
- 49 (9) Every indication is that, given the proper incentive, the private sector is  
50 best equipped and possesses the necessary resources and expertise  
51 required to provide the type of moderately priced housing needed in the  
52 County;

- 53 (10) Rapid regional growth and a strong housing demand have combined to  
 54 make land and construction costs very high and to have an effect on the  
 55 used housing market by causing a rise in the prices of those units;
- 56 (11) In past years efforts have been made to encourage moderately priced  
 57 housing construction through zoning incentives permitting greater  
 58 density and through relaxation of some building and subdivision  
 59 regulations. Very little moderately priced housing had resulted; and
- 60 (12) In some instances existing housing for persons of low and moderate  
 61 income is substandard and overcrowded.]
- 62 (a) The County enacted the Moderately Priced Dwelling Unit (MPDU) law  
 63 in 1973 to:
- 64 (1) help meet the goal of providing a full range of housing choices  
 65 for all incomes, ages and household sizes;
- 66 (2) meet the existing and anticipated need for low and moderate-  
 67 income housing;
- 68 (3) ensure that moderately priced housing is dispersed throughout the  
 69 County consistent with the General Plan and area master plans;  
 70 and
- 71 (4) encourage the construction of moderately priced housing by  
 72 allowing optional increases in density including the MPDU  
 73 density bonus to offset the cost of construction.
- 74 (b) In 2004, the County Council amended the MPDU program to:
- 75 (1) Reduce the loss of MPDUs by extending the control period for  
 76 for-sale MPDUs from 10 years to 30 years and for rental MPDUs  
 77 from 20 years to 99 years;
- 78 (2) Allow different income eligibility standards in recognition of the  
 79 higher cost of construction of certain types of housing;

- 80           (3) Increase the number of developments required to provide  
81           MPDUs by lowering the base requirement from any development  
82           with 35 or more units to 20 or more units; and
- 83           (4) Place additional requirements and structure on the approval of an  
84           alternative payment made to the Housing Initiative Fund in place  
85           of providing MPDUs.

86       (c) In ~~[[2017]] 2018, the County Council finds that:~~

- 87           (1) The availability of affordable housing continues to be a problem  
88           for low and moderate income households.
- 89           (2) The 2015 report “The Greater Washington Region’s Housing  
90           Needs 2023” projects that Montgomery County will need 14,960  
91           new housing units for households earning less than 80% of area  
92           median income.
- 93           (3) The 2017 Montgomery County Rental Housing Study reports that  
94           68% of households with incomes between 50% and 80% of area  
95           median income report paying more than 30% of income for rent  
96           and 15% report being extremely rent burdened, paying more than  
97           50% of income for rent.
- 98           (4) The creation of income-restricted affordable housing through  
99           construction and preservation is critical as market rents continue  
100           to increase. The American Community Survey reports that there  
101           were 9,189 fewer rental units with rents between \$750 and  
102           \$1,499 from 2010 to 2014.
- 103           (5) MPDUs are one important element for providing income-  
104           restricted affordable housing. There were ~~[[681]] 664~~ new  
105           MPDUs offered for sale or rent in 2015 and 2016. As of 2017  
106           there are about 5,300 MPDUs county-wide.

- 107           (6) Additional density can offset the cost of constructing MPDUs. It  
 108           is appropriate to consider different base requirements for MPDUs  
 109           in conjunction with the approval of different densities and heights  
 110           in master plans and sector plans.
- 111           (7) There is unmet demand for MPDUs with two, three, and four  
 112           bedrooms. Providing flexibility that allows MPDU agreements  
 113           based on floor area or square footage, rather than requirements  
 114           based on the number of bedrooms in market rate units, can help  
 115           to address this need.
- 116           (8) Appropriate alternative payments to the Housing Initiative Fund  
 117           can, in certain circumstances, be used to create more MPDUs in  
 118           the same [[Policy]] Planning Area than providing the MPDUs on  
 119           site.
- 120           (9) Montgomery County is committed to its policy of providing  
 121           affordable housing in all areas of the County to provide  
 122           opportunity to households of all incomes in each [[Policy]]  
 123           Planning Area.
- 124           (10) MPDUs can be used in partnership with other housing supports to  
 125           provide affordable housing to households with very low incomes  
 126           such as those with incomes below 50% or 30% of area median  
 127           income.

128 **25A-2. Declaration of public policy.**

129           The County Council hereby declares it to be the public policy of the County  
 130 to:

- 131           [(1) Implement the Montgomery County housing policy and the general plan  
 132           goal of providing for a full range of housing choices, conveniently



- 133 located in a suitable living environment, for all incomes, ages and  
 134 family sizes;
- 135 (2) Provide for low- and moderate-income housing to meet existing and  
 136 anticipated future employment needs in the County;
- 137 (3) Assure that moderately priced housing is dispersed within the County  
 138 consistent with the general plan and area master plans;
- 139 (4) Encourage the construction of moderately priced housing by allowing  
 140 optional increases in density in order to reduce land costs and the costs  
 141 of optional features that may be built into such moderately priced  
 142 housing;
- 143 (5) Require that all subdivisions of 35 or more dwelling units include a  
 144 minimum number of moderately priced units of varying sizes with  
 145 regard to family needs, and encourage subdivisions with fewer than 35  
 146 units to do the same;
- 147 (6) Ensure that private developers constructing moderately priced dwelling  
 148 units under this Chapter incur no loss or penalty as a result thereof, and  
 149 have reasonable prospects of realizing a profit on such units by virtue of  
 150 the MPDU density bonus or public benefit provisions of Chapter 59  
 151 and, in certain zones, the optional development standards; and
- 152 (7) Allow developers of residential units in qualified projects more  
 153 flexibility to meet the broad objective of building housing that low- and  
 154 moderate-income households can afford by letting a developer, under  
 155 specified circumstances, comply with this Chapter by contributing to a  
 156 County Housing Initiative Fund.]
- 157 (1) encourage and maintain a wide choice of housing types and  
 158 neighborhoods for people of all incomes, ages, lifestyles, and physical

- 159           capabilities at appropriate locations and densities and to implement  
 160           policies to bridge housing affordability gaps;  
 161           (2)   make housing that is affordable to low, moderate, and middle-income  
 162           households a priority in all parts of the County;  
 163           (3)   ensure that all master plan and sector plan amendments address the need  
 164           for housing for low, moderate, and middle-income households and  
 165           promote specific strategies to meet that need including height and  
 166           density incentives and flexibility;  
 167           (4)   implement policies that increase the long-term supply of rental housing  
 168           affordable to low and moderate-income households, particularly in areas  
 169           that are easily accessible to transit;  
 170           (5)   require that all subdivisions of 20 or more dwelling units include a  
 171           minimum number of moderately priced dwelling units on-site, or under  
 172           certain specified circumstances, provide appropriate units off-site or  
 173           make a payment to the Housing Initiative Fund; [[and]]  
 174           (6)   allow the Department of Housing and Community Affairs and  
 175           developers flexibility to enter into affordable housing agreements that  
 176           address the needs for housing units of different sizes and bedroom  
 177           counts to better meet the needs of low and moderate-income  
 178           households; and  
 179           (7)   allow developers of residential units more opportunity to comply with  
 180           this Chapter and meet the County’s objective of building housing  
 181           affordable to low- and moderate-income households by contributing to  
 182           the Housing Initiative Fund, alternative location agreements, and  
 183           flexible development standards that promote production and diversity of  
 184           housing units.

185   **25A-3. Definitions.**

186 The following words and phrases, as used in this Chapter, have the following  
 187 meanings:

188 Age-restricted unit means a dwelling unit, the occupancy of which is  
 189 conditioned on at least one resident being ~~[[a certain]]~~ age 55 or older.

190 Area median income means the median household income for  
 191 ~~[[Montgomery County]]~~ the Washington, DC metropolitan area as  
 192 estimated by the U.S. Department of Housing and Urban Development.

193 [(a)] *Applicant* means any person, firm, partnership, association, joint  
 194 venture, ~~[[corporation]]~~ business entity, or any other entity or  
 195 combination of entities, and any transferee of all or part of the land at  
 196 one location.

197 [(b)] *At one location* means all adjacent land of the applicant if:

198 (1) The property lines are contiguous or nearly contiguous at any  
 199 point; or

200 (2) The property lines are separated only by a public or private street,  
 201 road, highway or utility right-of-way, or other public or private  
 202 right-of-way at any point; or

203 (3) The property lines are separated only by other land of the  
 204 applicant which is not subject to this Chapter at the time of any  
 205 permit, site plan, development or subdivision application by the  
 206 applicant.

207 [(c)] *Available for building development* means all land:

208 (1) Owned by, or under contract to, the applicant;

209 (2) Zoned for any type of residential development to which an  
 210 optional density bonus provision applies;

211 (3) Which will use public water and sewerage; and

- 212 (4) Which is already subdivided or is ready to be subdivided for  
 213 construction or development.
- 214 [(d)] *Closing costs* means statutory charges for transferring title, fees for  
 215 obtaining necessary financing, title examination fees, title insurance  
 216 premiums, house location survey charges and fees for preparation of  
 217 loan documents and deed of conveyance.
- 218 [(e)] *Commission* means the Housing Opportunities Commission of  
 219 Montgomery County.
- 220 [(f)] *Consumer Price Index* means the latest published version of the  
 221 Consumer Price Index for All Urban Consumers (CPI-U) for the  
 222 Washington-Arlington-Alexandria Core Based Statistical Area (CBSA),  
 223 as published by the United States Department of Labor, Bureau of  
 224 Labor Statistics, or any similar index selected by the County Executive.
- 225 [(g)] *Control period* means the time an MPDU is subject to either resale price  
 226 controls and owner occupancy requirements or maximum rental limits,  
 227 as provided in ~~[[Section]]~~ Sections 25A-8 and 25A-9. The control  
 228 period is 30 years for sale ~~[[units]]~~ MPDUs and 99 years for rental  
 229 ~~[[units]]~~ MPDUs, and begins on the date of ~~[[initial]]~~ original sale or  
 230 rental. If a sale MPDU is sold ~~[[to an eligible]]~~ [person] ~~[[household]]~~  
 231 within 30 years after its ~~[[initial]]~~ original sale, and if (in the case of a  
 232 sale MPDU that is not bought and resold by a government agency) the  
 233 ~~[[unit]]~~ MPDU was originally offered for sale after March 1, 2002, the  
 234 ~~[[unit]]~~ MPDU must be treated as a new sale MPDU and a new control  
 235 period must begin on the date of the sale.
- 236 [(h)] *Date of original sale* means the date of settlement for purchase of ~~[[a~~  
 237 moderately priced dwelling unit]] an MPDU.

- 238 [(i)] *Date of original rental* means the date [[the first lease agreement for a  
239 moderately priced dwelling unit takes effect]] that MPDU rental  
240 covenants are recorded on the property.
- 241 [(j)] *Department* means the Department of Housing and Community Affairs.  
242 Designated agency means a non-governmental housing development  
243 agency or nonprofit business entity designated by the County Executive  
244 as eligible to purchase or lease MPDUs under Section 25A-8, following  
245 standards established in Executive regulation.
- 246 [(k)] *Director*, except as otherwise indicated, means the head of the  
247 Department of Housing and Community Affairs, or the Director's  
248 designee.
- 249 [(l)] *Dwelling unit* means a building or part of a building that provides  
250 complete living facilities for one [[family]] household, including at a  
251 minimum, facilities for cooking, sanitation and sleeping.
- 252 [(m)] *Eligible [person] household* means a [person or] household whose  
253 income qualifies the [person or] household to participate in the MPDU  
254 program, and who [holds a valid certificate of eligibility from the  
255 Department which entitles the person or household] is eligible to buy  
256 [or rent] or rent an MPDU during the priority marketing period.
- 257 [(n)] *Housing Initiative Fund* means a fund established by the County  
258 Executive to achieve the purposes of Section 25B-9.
- 259 [(o)] *Low income* means levels of income within the income range for “very-  
260 low income families” established from time to time by the U.S.  
261 Department of Housing and Urban Development for the Washington  
262 metropolitan area, under federal law, or as defined by executive  
263 regulations.

264            [(p)] *Moderate income* means those levels of income, established in  
 265            executive regulations, which prohibit or severely limit the financial  
 266            ability of ~~[[persons]]~~ households to buy or rent housing in Montgomery  
 267            County. Moderate income levels must not exceed the “low income”  
 268            limits set by the U.S. Department of Housing and Urban Development  
 269            to determine eligibility for assisted housing programs.

270            [(q)] *Moderately priced dwelling unit* or *MPDU* means a dwelling unit which  
 271            is:

- 272            (1) offered for sale or rent to eligible ~~[[persons]]~~ households through  
 273            the Department, and sold or rented under this Chapter; or
- 274            (2) sold or rented under a government program designed to assist the  
 275            construction or occupancy of housing for ~~[[families]]~~ households  
 276            of low or moderate income, and designated by the Director as an  
 277            MPDU. When such a dwelling unit is designated as an MPDU,  
 278            the income limits and other requirements of that particular  
 279            housing program must apply during the compliance period for  
 280            that program rather than the requirements set forth herein. If the  
 281            compliance period for that program is shorter than the MPDU  
 282            control period, the MPDU requirements must apply for the  
 283            balance of the MPDU control period, unless the Director  
 284            determines that the affordability term of the other program is  
 285            equivalent to the MPDU requirement.

286            *Multi-family dwelling unit* means a dwelling unit in an apartment,  
 287            condominium, or mixed-use building type.

288            [(r)] *Optional density bonus provision* means any increase in density under  
 289            Chapter 59, in a zoning classification that allows residential  
 290            development, above the amount permitted in the base or standard

291 method of development, whether by exercise of the optional provisions  
292 of Chapter 59 or by any special exception or conditional use.

293 Planning Area means one of 37 subareas of the County defined in the  
294 earliest planning documents by the Maryland-National Capital Park and  
295 Planning Commission and whose boundaries have not changed over  
296 time.

297 [(s)] Planning Board means the Montgomery County Planning Board of the  
298 Maryland-National Capital Park and Planning Commission.

299 [(t)] Priority marketing period is the period an MPDU must be offered  
300 exclusively for sale or rent to eligible [persons] households, as provided  
301 in Section 25A-8.

302 Single-family dwelling unit means a single-family detached dwelling  
303 unit or single-family attached dwelling unit, such as a townhouse or  
304 duplex.

305 **25A-4. [Income] Household income and eligibility standards.**

306 (a) The County Executive must set and annually revise standards of  
307 eligibility for the MPDU program by regulation. These standards must  
308 specify moderate-income levels for varying sizes of households which  
309 will qualify a person or household to buy or rent an MPDU. The  
310 Executive must set different income eligibility standards for buyers and  
311 renters. The Executive may set different income eligibility standards for  
312 buyers and renters of higher-cost or age-restricted [housing] [[units]]  
313 MPDUs, as defined by regulation.

314 (b) In establishing standards of eligibility and moderate-income levels, the  
315 Executive must consider:

316 (1) [the price established for the sale or rental of MPDUs under this  
317 Chapter,] income levels relative to area median income; and

- 318 (2) [the term and interest rate that applies to the financing of  
 319 MPDUs,  
 320 (3) the estimated levels of income necessary to carry a mortgage on  
 321 an MPDU, and  
 322 (4)] [[family]] household size and number of dependents.
- 323 (c) A [[person who]] household that rents an MPDU and lawfully occupies  
 324 it when the [[unit]] MPDU is offered for sale may buy the [[unit]]  
 325 MPDU, regardless of the [[person's]] household's income at the time of  
 326 sale, if the [[person]] household met all eligibility standards when the  
 327 [[person]] household first rented the [[unit]] MPDU.
- 328 (d) A [[person who]] household that rents an MPDU after meeting all  
 329 eligibility standards may continue to occupy the [[unit]] MPDU for the  
 330 term of the lease even if the [[person]] household ceases to meet the  
 331 income eligibility standards.
- 332 (e) A [[person who]] household that buys an MPDU after meeting all  
 333 eligibility standards may retain ownership of the MPDU even if the  
 334 [[person]] household ceases to meet income eligibility standards during  
 335 the [[term]] time that the household owns the MPDU.
- 336 (f) To be eligible to buy or rent an MPDU other than an age-restricted unit,  
 337 [[a person and]] members of [[that person's]] a household must not have  
 338 owned any residential property during the previous [5] five years. The  
 339 Director may waive this restriction for good cause.

340 **25A-5. Requirement to build MPDUs; payment to Housing Initiative Fund;**  
 341 **agreements**

- 342 (a) The requirements of this Chapter to provide MPDUs apply to any  
 343 applicant who:



- 344 (1) submits for approval or extension of approval a preliminary plan  
 345 of subdivision under Chapter 50 which proposes the development  
 346 of a total of 20 or more dwelling units at one location in one or  
 347 more subdivisions, parts of subdivisions, resubdivisions, or stages  
 348 of development, regardless of whether any part of the land has  
 349 been transferred to another party;
- 350 (2) submits to the Planning Board or to the Director of Permitting  
 351 Services a plan of housing development for any type of site  
 352 review or development approval required by law, which proposes  
 353 construction or development of 20 or more dwelling units at one  
 354 location; ~~[[or]]~~
- 355 (3) submits to the Planning Board or to the Director of Permitting  
 356 Services a plan to convert an existing property from non-  
 357 residential use to residential use for any type of site review or  
 358 development approval required by law, which results in the  
 359 development of 20 or more dwelling units at one location; or
- 360 (4) with respect to land in a zone not subject to subdivision approval  
 361 or site plan review, applies for a building permit to construct a  
 362 total of 20 or more dwelling units at one location, including a  
 363 conversion from non-residential to residential use.
- 364 (b) An applicant for an approval or permit identified in subsection (a) who  
 365 proposes development of ~~[[fewer than 20]] between 11 and 19 dwelling~~  
 366 units is not required to provide MPDUs, but must make a payment to  
 367 the Housing Initiative Fund, as provided by regulation.
- 368 (c) In calculating whether a development contains a total of 20 or more  
 369 dwelling units for the purposes of this Chapter, the development  
 370 includes all land at one location in the County available for building

371 development under common ownership or control by an applicant,  
 372 including land owned or controlled by separate ~~[[corporations]]~~ business  
 373 entities in which any stockholder or family of the stockholder owns 10  
 374 percent or more of the stock. An applicant must not avoid this Chapter  
 375 by submitting piecemeal applications or approval requests for  
 376 subdivision plats, site or development plans, floating zone plans, or  
 377 building permits. Any applicant may apply for a preliminary plan of  
 378 subdivision, site or development plan, floating zone plan, record plat, or  
 379 building permit for fewer than 20 dwelling units at any time; but the  
 380 applicant must agree in writing that the applicant will comply with this  
 381 Chapter when the total number of dwelling units at one location reaches  
 382 20 or more.

383 ~~[(b)]~~(d) Any applicant subject to subsection (a), in order to obtain a  
 384 building permit, must submit to the Department of Permitting Services[,  
 385 with the application for a permit,] a written MPDU agreement approved  
 386 by the Director and the County Attorney. Each agreement must require  
 387 that:

- 388 (1) a specific number of MPDUs must be constructed on an  
 389 approved time schedule;
- 390 (2) in subdivisions with single-family dwelling [unit subdivisions]  
 391 units, ~~[[including townhouses,]]~~ each MPDU must have ~~[[3]]~~  
 392 three or more bedrooms, unless this requirement is waived by the  
 393 Director in a subdivision with only two-bedroom market rate  
 394 units; and
- 395 (3) in subdivisions with multi-family dwelling [unit subdivisions]  
 396 units, the [number] ~~[[ratio of efficiency]]~~ [and one- bedroom]  
 397 bedroom mix of the MPDUs ~~[[to total MPDUs]]~~ [each] must

398                   [[not exceed the ratio]] [that] match the bedroom mix of  
 399                   [[market-rate efficiency]] [and one-bedroom] [[units]]  
 400                   [respectively] [bear] [[to]] [the] [[total]] [number of] the market-  
 401                   rate units in the subdivision unless the Director approves an  
 402                   MPDU agreement that does not increase the number of MPDUs  
 403                   required, but approximates the total floor area for the MPDUs  
 404                   required, and alters the bedroom mix of the MPDUs or the  
 405                   number of MPDUs; and

406                   (4) in subdivisions with both single-family and multi-family  
 407                   dwelling units, the ratio of single-family MPDUs to total MPDUs  
 408                   must not be less than the ratio of market-rate single-family units  
 409                   to total market-rate units in the subdivision, unless the Director  
 410                   finds that:

411                   (A) offering more multi-family MPDUs in that subdivision  
 412                   would advance the purpose of the County housing policy  
 413                   and the objectives of any applicable land use plan, be  
 414                   consistent with local housing market conditions, and avoid  
 415                   excessive mandatory condominium or homeowners'  
 416                   association fees or other costs that would reduce the  
 417                   affordability of sale MPDUs; and

418                   (B) if rental MPDUs are proposed, the applicant has  
 419                   demonstrated that it is qualified to manage rental housing.

420                   [[The Director]] [must not] [[may approve an MPDU agreement that]]  
 421                   [reduces the number of bedrooms required by this subsection in any  
 422                   MPDU] [[does not increase the number of MPDUs required, but  
 423                   approximates the total floor area for the]] [[units]] [[MPDUs required,]]

424           ~~[[but]]~~ ~~[[and alters the bedroom mix of the]]~~ ~~[[units]]~~ ~~[[MPDUs or the~~  
 425           ~~number of]]~~ ~~[[units]]~~ ~~[[MPDUs.]]~~

426       ~~[(c)](e)~~       When [the] a development ~~[[with more than]]~~ of 20 units or more  
 427           at one location is in a zone where a density bonus is allowed under  
 428           Chapter 59; and

429           (1)   is covered by a plan of subdivision;

430           (2)   is covered by a plan of development, site plan, or floating zone  
 431           plan; or

432           (3)   requires a building permit to be issued for construction,  
 433           the required number or residential floor area of [moderately priced  
 434           dwelling units] MPDUs is a variable percentage that is not less than a  
 435           base requirement of 12.5% of the total number of dwelling units or  
 436           ~~[[equivalent]]~~ residential floor area at that location, not counting any  
 437           workforce housing units built under Chapter 25B. The Council may  
 438           establish a higher base requirement, up to 15% of the total number of  
 439           dwelling units or ~~[[equivalent]]~~ residential floor area at a location, as  
 440           part of a master plan approval. The required number or residential floor  
 441           area of MPDUs must vary according to the amount by which the  
 442           approved development exceeds the normal or standard density for the  
 443           zone in which it is located. Chapter 59 may permit bonus densities over  
 444           the presumed base density where MPDUs are provided. ~~[[If the use of~~  
 445           the optional MPDU development standards does not result in an  
 446           increase over the base density, the Director must conclude that the base  
 447           density could not be achieved under conventional development  
 448           standards, in which case the required number or residential floor area of  
 449           MPDUs must not be less than the 12.5% or higher base requirement  
 450           established by the Council, of the total number of units in the

451 subdivision. To obtain a density bonus, an applicant must provide at  
 452 least one more MPDU than would have been required if there was no  
 453 density bonus.]] [[The amount of density bonus achieved in the  
 454 approved development determines the percentage of total units that  
 455 must be MPDUs, as follows:]]

456 [[

<i>Achieved Density Bonus</i>	<i>MPDUs Required</i>	<i>Achieved Density Bonus</i>	<i>MPDUs Required</i>
Zero	[12.5%] <u>Base requirement</u>	Up to 11%	[13.6%] <u>Base plus 1.1%</u>
Up to 1%	[12.6%] <u>Base plus 0.1%</u>	Up to 12%	[13.7%] <u>Base plus 1.2%</u>
Up to 2%	[12.7%] <u>Base plus 0.2%</u>	Up to 13%	[13.8%] <u>Base plus 1.3%</u>
Up to 3%	[12.8%] <u>Base plus 0.3%</u>	Up to 14%	[13.9%] <u>Base plus 1.4%</u>
Up to 4%	[12.9%] <u>Base plus 0.4%</u>	Up to 15%	[14.0%] <u>Base plus 1.5%</u>
Up to 5%	[13.0%] <u>Base plus 0.5%</u>	Up to 16%	[14.1%] <u>Base plus 1.6%</u>
Up to 6%	[13.1%] <u>Base plus 0.6%</u>	Up to 17%	[14.2%] <u>Base plus 1.7%</u>
Up to 7%	[13.2%] <u>Base plus 0.7%</u>	Up to 18%	[14.3%] <u>Base plus 1.8%</u>
Up to 8%	[13.3%] <u>Base plus 0.8%</u>	Up to 19%	[14.4%] <u>Base plus 1.9%</u>

Up to 9%	[13.4%] <u>Base plus 0.9%</u>	Up to 20%	[14.5%] <u>Base plus 2.0%</u>
Up to 10%	[13.5%] <u>Base plus 1.0%</u>	Up to 22%	[15.0%] <u>Base plus 2.5%</u>

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 [(d)][[(f)(1) Notwithstanding subsection]] [(c)][[(e), the Director may allow fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location if:  
 (A) the Planning Board, in reviewing a subdivision or site plan submitted by the applicant and based on the lot size, product type, and other elements of the plan as submitted, finds that achieving a bonus density of 20 percent or more at that location:]]  
 [(A)][[(i) would not allow compliance with applicable environmental standards and other regulatory requirements]][,][[(i) or]]  
 [(B)][[(ii) would significantly reduce neighborhood compatibility; and  
 (B) the applicant makes a payment to the Housing Initiative Fund, as provided by regulation, based on the square footage of MPDU units that would otherwise have been required.  
 (2) If the Planning Board approves a density bonus of at least 20 percent for a development which consists of 20 or more but fewer than 50 units at one location, the number of]] [MPDU's]  
 [[MPDUs required must be governed by subsection]] [(c)][[(e) unless the formula in subsection]] [(c)][[(e) would not allow the

480 development to have one bonus market rate unit. In that case, the  
 481 Board must reduce the required number of]] [MPDU's]  
 482 [[MPDUs by one unit and approve an additional market rate  
 483 unit.]]

484 ~~[(e)]~~[[~~(g)~~]]~~(f)~~The Director may determine whether an MPDU requirement may  
 485 be satisfied by an alternative payment or location agreement, and may  
 486 approve an MPDU agreement that:

- 487 (1) allows an applicant to reduce the number of MPDUs in a  
 488 subdivision only if the agreement meets all requirements of  
 489 Section 25A-5A for an alternative payment agreement; or
- 490 (2) allows an applicant to build the MPDUs at another location only  
 491 if the agreement meets all requirements of Section 25A-5B for an  
 492 alternative location agreement.

493 ~~[(f)]~~[[~~(h)~~]]~~(g)~~(1) An applicant may satisfy this Section by obtaining  
 494 approval from the Director to transfer land to the County before  
 495 applying for a building permit. [The applicant must sign a written  
 496 land transfer agreement approved by the Director and by the  
 497 County Attorney. For the Director to consider the request and  
 498 take timely action, a written notice of the applicant's intent to  
 499 submit an agreement should be served upon the Director at least  
 500 90 days before the application for a building permit is filed. The  
 501 land transfer agreement must covenant that so much of the land,  
 502 designated in the approved preliminary plan or site plan as land to  
 503 which the optional zoning provisions for MPDUs apply, as is  
 504 necessary in order to construct the number of MPDUs required  
 505 by subsection (a) will be transferred, as finished lots, to  
 506 Montgomery County or to the County's designee before the

507 building permit is issued, so that the County might cause MPDUs  
 508 to be constructed on the transferred land. After the submission of  
 509 supporting documentation and review and approval by the  
 510 County for the transfer of finished lots, the County must  
 511 reimburse the applicant for the costs the applicant actually  
 512 incurred, which are directly attributable to the finishing of the  
 513 MPDU lots so transferred. Reimbursable costs include but are not  
 514 limited to engineering costs; clearing, grading, and paving streets,  
 515 including any required bonds and permits; installation of curbs,  
 516 gutters and sidewalks; sodding of public right-of-way; erection of  
 517 barricades and signs; installation of storm sewers and street  
 518 lighting; and park and other open space and recreational  
 519 development directly benefiting the MPDU lots transferred. The  
 520 County must not reimburse an applicant for the cost or value of  
 521 the transferred lots.]

522 (2) [If an applicant transfers land to the County under this subsection  
 523 and no funds have been appropriated to reimburse the applicant  
 524 for his finishing costs, the County may accept from the applicant  
 525 undeveloped land rather than finished lots, or the applicant may  
 526 transfer the finished lots to the County without requiring payment  
 527 for finishing the lots.] The Director may only approve a transfer  
 528 of land under this subsection after a making a written  
 529 determination that the value of the land transferred is at least  
 530 equal to the value of the MPDUs not constructed by the  
 531 applicant.

532 (3) [Notwithstanding any other provisions of the subsection, the  
 533 County may reject an election by an applicant to transfer land to



534 the County in whole or in part whenever the public interest would  
 535 best be served thereby. Any rejection and the reasons for the  
 536 rejection may be considered by the Planning Board or the  
 537 Director of Permitting Services in deciding whether to grant the  
 538 applicant a waiver of this Chapter under Section 25A-7(b).] The  
 539 Executive must establish procedures for transferring land under  
 540 this subsection by method (1) regulation.

541 [(4) Any transfer of land to the County hereunder is not subject to  
 542 Section 11B-33, and any land so transferred is not property  
 543 subject to Section 11B-31A regulating the disposal of surplus  
 544 land. The Director may dispose of the lots in a manner that  
 545 furthers the objectives of this Chapter.]

546 (4) When land is transferred to the County under this Section:  
 547 (A) the land must be used to produce or preserve MPDUs; or  
 548 (B) if sold, proceeds from the sale must be allocated to the  
 549 Affordable Housing Acquisition and Preservation CIP  
 550 portion of the Housing Initiative Fund; and  
 551 (C) the Director must notify the Council within 30 days of  
 552 approving a land transfer under this subsection.

553 ~~[(g)]~~~~[(i)]~~(h)The MPDU agreements must be signed by the applicant and all  
 554 other parties whose signatures are required by law for the effective and  
 555 binding execution of contracts conveying real property. ~~[[The~~  
 556 ~~agreements must be executed in a manner that will enable them to be~~  
 557 ~~recorded in the land records of the County.]]~~ If the applicant is a  
 558 ~~[[corporation]]~~ business entity, the agreements must be signed by the  
 559 ~~[[principal officers]]~~ authorized signatories of the ~~[[corporation]]~~  
 560 business entity individually and on behalf of the ~~[[corporation]]~~ business

561 entity. Partnerships, associations or [[corporations]] business entities  
 562 must not evade this Chapter through voluntary dissolution. The  
 563 agreements may be assigned if the County approves, and if the  
 564 assignees agree to fulfill the requirements of this Chapter.

565 ~~[(h)]~~~~[[i)]~~(i) The Department of Permitting Services must not issue a building  
 566 permit in any subdivision or housing development in which MPDUs are  
 567 required until the applicant submits a valid MPDU agreement which  
 568 applies to the entire ~~[[subdivision or development]]~~ preliminary plan or  
 569 site plan, unless the property within the preliminary plan or site plan has  
 570 multiple owners, in which case the development may have more than  
 571 one MPDU agreement. The applicant must also file with the first  
 572 application for a building permit a statement of all land the applicant  
 573 owns in the County that is available for building development. In later  
 574 applications, the applicant need only show additions and deletions to the  
 575 original landholdings available for building development.

576 ~~[(i)]~~~~[[k)]~~(i) The MPDU agreement must include the number, type, location,  
 577 and plan for staging construction of all dwelling units and such other  
 578 information as the Department requires to determine the applicant's  
 579 compliance with this Chapter. MPDUs must be reasonably dispersed  
 580 throughout the development, and the ~~[[The]]~~ MPDU staging plan must  
 581 be consistent with any applicable land use plan, subdivision plan, or site  
 582 plan. The staging plan included in the MPDU agreement for all  
 583 dwelling units must be sequenced so that:

- 584 (1) MPDUs are built along with or before other dwelling units;  
 585 (2) no or few market rate dwelling units are built before any MPDUs  
 586 are built;

587 (3) the pace of MPDU production must reasonably coincide with the  
 588 construction of market rate units; and

589 (4) the last building built must not contain only MPDUs.

590 This subsection applies to all developments, including any development  
 591 covered by multiple preliminary plans of subdivision.

592 ~~[(j)]~~~~[(1)]~~~~[(k)]~~ The MPDU agreement must provide for any requirement of age-  
 593 restricted ~~[[units]]~~ MPDUs to be offered for sale to be satisfied by a  
 594 payment to the Housing Initiative Fund under Section 25A-5A(b).

595 ~~[[m)]~~~~[(l)]~~ If an applicant does not build the MPDUs contained in the  
 596 staging plan along with or before other dwelling units, the Director of  
 597 Permitting Services must withhold any later building permit to that  
 598 applicant until the MPDUs contained in the staging plan are built.

599 ~~[(k)]~~~~[(n)]~~~~[(m)]~~ The applicant must execute and ~~[[record]]~~ provide to the  
 600 Department in recordable form, covenants assuring that:

601 (1) The restrictions of this Chapter run with the land for the entire  
 602 period of control;

603 (2) The County may create a lien to collect:

604 (A) that portion of the sale price of an MPDU which exceeds  
 605 the approved resale price; and

606 (B) that portion of the foreclosure sale price of an MPDU  
 607 which exceeds the approved resale price; and

608 (3) The covenants will bind the applicant, any assignee, mortgagee,  
 609 or buyer, and all other parties that receive title to the property.

610 These covenants must be senior to all instruments securing  
 611 permanent financing.

612 ~~[(l)]~~~~[(o)]~~~~[(n)]~~ An applicant must not establish a condominium or homeowners'  
 613 association consisting solely of MPDUs.

614 ~~[[p]]~~(o) (1) In any purchase and sale agreement and any deed or  
615 instrument conveying title to an MPDU, the grantor must clearly  
616 and conspicuously state, and the grantee must clearly and  
617 conspicuously acknowledge, that:

618 (A) the conveyed property is [a] an MPDU and is subject to the  
619 restrictions contained in the covenants required under this  
620 Chapter during the control period until the restrictions are  
621 released; and

622 (B) any MPDU owner, other than an applicant, must not sell  
623 the MPDU until:

624 (i) the owner has notified the Department under  
625 Section 25A-8 or 25A-9, as applicable, that the  
626 ~~[[unit]]~~ MPDU is for sale;

627 (ii) the Department and, where applicable, the  
628 Commission, have notified the owner that they do  
629 not intend to buy the ~~[[unit]]~~ MPDU; and

630 (iii) The Department has notified the owner of the  
631 ~~[[unit's]]~~ MPDU's maximum resale price.

632 (2) Any deed or other instrument conveying title to an MPDU during  
633 the control period must be signed by both the grantor and grantee.

634 (3) When a deed or other instrument conveying title to an MPDU is  
635 recorded in the land records, the grantor must cause to be filed in  
636 the land records a notice of sale for the benefit of the County in  
637 the form provided by state law.

638 ~~[[m]]~~~~[[q]]~~(p) Nothing in this Chapter prohibits an applicant from  
639 voluntarily building MPDUs, as calculated under subsection ~~[(c)]~~(e), in  
640 a development with fewer than 20 dwelling units at one location, and in

641 so doing from qualifying for an optional method of development under  
 642 Chapter 59. A development with fewer than 20 dwelling units where an  
 643 applicant voluntarily builds MPDUs must comply with any procedures  
 644 and development standards that apply to a larger development under  
 645 this Chapter and Chapter 59. Sections 25A-5A[[,]] and 25A-5B[[, and  
 646 25A-6(b)]] do not apply to an applicant who voluntarily builds  
 647 [MPDU's] MPDUs under this subsection and in so doing qualifies for  
 648 an optional method of development.

649 [[r)](q) Upon request by the applicant, the Director may provide an applicant  
 650 and the Planning Board with a letter indicating the Director's  
 651 preliminary agreement on how the applicant will meet its MPDU  
 652 requirements, including:

- 653 (1) the conditions of the agreement; and  
 654 (2) the time period that the agreement is valid.

655 **25A-5A. Alternative payment agreement.**

656 (a) The Director may approve an MPDU agreement that allows an  
 657 applicant, instead of building some or all of the required [[number of]]  
 658 for-sale MPDUs in [[the]] a proposed subdivision or conversion of  
 659 existing property from non-residential use to residential use, to pay to  
 660 the Housing Initiative Fund an amount computed under subsection (b)[,  
 661 only if an Alternative Review Committee composed of the Director, the  
 662 Commission's Executive Director, and the Director of Park and  
 663 Planning, or their respective designees, by majority vote finds] upon a  
 664 finding that:

- 665 (1) either:  
 666 (A) an indivisible package of services and facilities available to  
 667 all residents of the proposed subdivision would cost

- 668 MPDU buyers so much that it is likely to make the  
 669 MPDUs effectively unaffordable by eligible buyers; [[or]]
- 670 (B) [environmental constraints at a particular site would render  
 671 the building of all required MPDUs at that site  
 672 economically infeasible] regulatory development  
 673 constraints at a particular site would render the building of  
 674 approved density and all required MPDUs at that site  
 675 infeasible; or
- 676 (C) the public benefit of providing affordable housing  
 677 throughout the County outweighs the value of locating  
 678 MPDUs in each subdivision throughout the County; and
- 679 (2) [the public benefit of additional affordable housing outweighs the  
 680 value of locating MPDUs in each subdivision throughout the  
 681 County, and] accepting the payment will further the objective of  
 682 providing a broad range of housing opportunities throughout the  
 683 County.
- 684 (b) [Any payment to the Housing Initiative Fund under this Section must  
 685 equal or exceed 125% of the imputed cost of land for each unbuilt  
 686 MPDU. Except as further defined by Executive regulation, the imputed  
 687 land cost must be calculated as 10% (for high-rise units) or up to 30%  
 688 (for all other housing units) of the actual sale price charged for each  
 689 substituted unit. If the substituted unit will be a rental unit, the Director  
 690 must calculate an imputed sale price under applicable regulations, based  
 691 on the rent actually charged.] A payment under this section in full  
 692 satisfaction of MPDU requirements must be [[calculated as provided in  
 693 method (1) regulation]] three percent of the sale price of each market  
 694 rate unit in the development. A payment made in partial satisfaction of

695 MPDU requirements must be adjusted based on the percentage of  
 696 required MPDUs provided.

- 697 (c) [Any] A payment to the Housing Initiative Fund under this Section;  
 698 (1) must not be used to reduce the annual County payment to the  
 699 Fund; [[and]]  
 700 (2) must be deposited into the Affordable Housing Acquisition and  
 701 Preservation CIP project; and  
 702 (3) [[may]] must be used [only] only to buy, [[or]] build, or preserve  
 703 more MPDUs, or more bedrooms in the same number or fewer  
 704 MPDUs, in [the same planning policy area] [[a Policy Area]] the  
 705 same Planning Area [[(as defined in the County)] [Growth]  
 706 [[Subdivision Staging Policy]]] [as] [[other than that of]] as the  
 707 development for which the payment was made [[only after]]  
 708 unless:

- 709 (A) the Council is first provided with:  
 710 (i) notice of the intent to use the payment in a different  
 711 Planning Area [[is provided to the Council]]; and  
 712 (ii) [[a compelling reason]] good cause for the use of the  
 713 payment in a different Planning Area; and  
 714 (B) the Council is given at least 30 days to comment.

715 [and must not be used to reduce the annual County payment to the  
 716 Fund.]

717 [(d) Any subdivision for which a payment is made under this Section is not  
 718 eligible for any density bonus for which it would otherwise be eligible  
 719 under Chapter 59.]

720 (d) The Director must notify the Council in writing within ten days of  
 721 approving an alternative payment agreement under this Section.

722 **25A-5B. Alternative location agreement.**

723 (a) The Director may approve an MPDU agreement that allows an  
 724 applicant for development of a high-rise residential building, instead of  
 725 building some or all of the required number of MPDUs on-site, to  
 726 provide [at least the same number of] MPDUs at another location [[in  
 727 the same]] [planning policy area] [[Policy Area]], only if the Director  
 728 finds that:

- 729 (1) the public benefit of locating MPDUs at the proposed alternative  
 730 location outweighs the value of locating MPDUs in each  
 731 subdivision throughout the County; [and]
- 732 (2) building the MPDUs at the proposed alternative location will  
 733 further the objective of providing a broad range of housing  
 734 opportunities throughout the County; and
- 735 (3) the alternative location agreement will increase:  
 736 (A) the number of MPDUs; or  
 737 (B) the number of bedrooms in the same number or fewer  
 738 MPDUs, provided as a result of the development.

739 (b) The alternative location must be in the same Planning Area unless:

- 740 (1) the Council is first provided with:  
 741 (A) notice of the intended alternative location in a different  
 742 Planning Area; and  
 743 (B) [[a compelling reason]] good cause for the alternative  
 744 location in a different Planning Area; and
- 745 (2) the Council is given at least 30 days to comment.

746 ~~[[b]]~~(c) To satisfy the requirements of this Section, an applicant may:



- 747 (1) build, or convert from non-residential use, the required number or  
 748 percentage of residential floor area of new MPDUs at a site  
 749 approved by the Director;
- 750 (2) buy, encumber, or transfer, and rehabilitate as necessary, existing  
 751 market rate housing units that meet all standards for use as  
 752 MPDUs; or
- 753 (3) return to MPDU use, and rehabilitate as necessary, existing  
 754 MPDUs for which price or rent controls have expired.
- 755 ~~[(c)]~~(d) Each agreement under this Section must include a schedule,  
 756 binding on the applicant, for timely completion or acquisition of the  
 757 required number of MPDUs.
- 758 (e) The Director must notify the Council in writing within ten days of  
 759 approving an alternative location agreement under this Section.

760 **25A-6. Optional zoning provisions[; waiver of requirements].**

761 [(a) *Optional zoning provisions.*] The County Council, sitting as a District  
 762 Council for the Maryland-Washington Regional District within the  
 763 County, to assist in providing moderately priced housing has enacted  
 764 zoning standards in Chapter 59, establishing in certain zones optional  
 765 density bonus provisions which increase the allowable residential  
 766 density above the maximum base density of the zoning classification  
 767 and permit alternative dwelling unit types other than those allowed  
 768 under the standard method of development. Land upon which the  
 769 applicant must build MPDUs may, at the applicant's election, be subject  
 770 to optional zoning provisions. If the applicant elects the optional density  
 771 provisions, permitting the construction of an increased number of  
 772 dwelling units or increased percentage of residential floor area, the  
 773 ~~[[requisite percentage and number of MPDUs]]~~ MPDU requirement

774 must apply to the total number of dwelling units or percentage of  
775 residential floor area as increased by application of the optional density  
776 provisions or by the approval of a special exception that increases the  
777 density above the otherwise permitted density of the zoning  
778 classification in which the property is situated.

779 [(b) *Waiver of requirements.* Any applicant who presents sufficient evidence  
780 to the Director of Permitting Services in applying for a building permit,  
781 or to the Planning Board in submitting a preliminary plan of subdivision  
782 for approval or requesting approval of a site or other development plan,  
783 may be granted a waiver from part or all of Section 25A-5. The waiver  
784 must relate only to the number of MPDUs to be built, and may be  
785 granted only if the Director of Permitting Services or the Board, after  
786 consulting with the Department of Housing and Community  
787 Development Affairs, finds that the applicant cannot attain the full  
788 density of the zone because of any requirements of the zoning ordinance  
789 or the administration of other laws or regulations. When any part of the  
790 land that dwelling units cannot be built on for physical reasons is used  
791 to compute permitted density, the applicant's inability to use the  
792 optional density bonus provisions is not in itself grounds for waiving the  
793 MPDU requirements. Any waiver must be strictly construed and  
794 limited.]

795 **25A-7. Maximum prices and rents.**

796 [[Moderately priced dwelling units]] MPDUs must not be sold or rented at  
797 prices or rents that exceed the maximum prices or rents established under this  
798 Section.

799 (a) *Sales.*

- 800 (1) The sale price of any MPDU, including closing costs and  
801 brokerage fees, must not exceed an applicable maximum sale  
802 price established from time to time by the County Executive in  
803 regulations adopted under method (1).
- 804 (2) [The County Executive in issuing MPDU sale price regulations  
805 must seek appropriate information, such as current general  
806 market and economic conditions and the current minimum sale  
807 prices of private market housing in the County, and must consult  
808 with the building industry, employers, and professional and  
809 citizen groups to obtain statistical information which may assist  
810 in setting a current maximum sale price. The County Executive  
811 must, from time to time, consider changes in the income levels of  
812 persons of low and moderate income and their ability to buy  
813 housing. The County Executive must also consider the extent to  
814 which, consistent with code requirements, the cost of housing can  
815 be reduced by the elimination of amenities, the use of cost-  
816 reducing building techniques and materials, and the partial  
817 finishing of certain parts of the units.] The regulations adopted to  
818 implement this Section must allow the Director to:
- 819 (A) restrict those conditions of the design, construction,  
820 pricing, or amenity package of an MPDU project that will  
821 impose excessive mandatory homeowner or condominium  
822 fees or other costs that reduce the affordability of the  
823 MPDUs; and
- 824 (B) approve an increase of up to 10% over the base sale price  
825 of an MPDU upon a finding that the increase is justified to  
826 cover the cost of a modification of the external design of

827                    the MPDU necessary to reduce excessive marketing  
828                    impact of the MPDU on the market rate units in the  
829                    subdivision.

- 830                    [(3) The County Executive must issue maximum sale prices for  
831                    MPDUs which continue in effect until changed by later  
832                    regulation. The maximum sale prices must be based on the  
833                    necessary and reasonable costs required to build and market the  
834                    various kinds of MPDUs by private industry. The sale prices for  
835                    any succeeding year must be based on a new finding of cost by  
836                    the County Executive, or on the prior year's maximum MPDU  
837                    price adjusted by the percentage change in the relevant cost  
838                    elements indicated in the Consumer Price Index.
- 839                    (4) The County Executive may make interim adjustments in  
840                    maximum MPDU sale prices when sufficient changes in costs  
841                    justify an adjustment. Any interim adjustment must be based on  
842                    the maximum MPDU sale prices previously established, adjusted  
843                    by the percentage change in the relevant cost elements indicated  
844                    in the Consumer Price Index.
- 845                    (5) If the Director finds that other conditions of the design,  
846                    construction, pricing, or amenity package of an MPDU project  
847                    will lessen the ability of eligible persons to afford the MPDUs,  
848                    the Director, under executive regulations, may restrict those  
849                    conditions that will impose excessive mandatory homeowner or  
850                    condominium fees or other costs that reduce the affordability of  
851                    the MPDUs.
- 852                    (6) The Director may let an applicant increase the sale price of a  
853                    MPDU when the Director, under executive regulations, finds in

854 exceptional cases that a price increase is justified to cover the cost  
 855 of modifying the external design of the MPDUs when a  
 856 modification is necessary to reduce excessive marketing impact  
 857 of the MPDUs on the market rate units in the subdivision. The  
 858 Director must approve the amount of any increase for this  
 859 purpose, which must not exceed 10 percent of the allowable base  
 860 price of the unit.]

861 (b) *Rents.*

862 [(1)] The rent, including surface parking but excluding utilities when  
 863 they are paid by the tenant, for any MPDU must not exceed a  
 864 maximum rent for the [[dwelling unit]] MPDU set by Executive  
 865 regulations. Different rents must be set for [[units]] MPDUs  
 866 when utility costs are paid by the owner and included in the rent.  
 867 Different rents may be set for age-restricted [[units]] MPDUs.  
 868 Different rents also may be set for high-rise rental [[units]]  
 869 MPDUs [, but those rents must not apply unless the Director  
 870 finds that no other reasonable means is available to finance the  
 871 building of all required MPDUs at a specific development].

872 [(2)] The County Executive, in setting the maximum rent, must  
 873 consider the current cost of building MPDUs, available interest  
 874 rates and debt service for permanent financing, current market  
 875 rates of return or investments in residential rental properties,  
 876 operating costs, vacancy rates of comparable properties, the value  
 877 of the MPDU at the end of the control period, and any other  
 878 relevant information. The County Executive must consult with  
 879 the rental industry, employers and professional and citizen groups  
 880 to obtain statistical information and current general market and

881 economic conditions which may assist in setting a current  
 882 maximum rent. The County Executive must consider the extent  
 883 to which, consistent with County codes and housing standards,  
 884 the cost of rental housing can be reduced by the elimination of  
 885 amenities. The County Executive must also consider from time to  
 886 time changes in the income levels of persons of low and  
 887 moderate income and their ability to rent housing.]

888 **25A-8. Sale or rental of [[units]] MPDUs.**

889 (a) Sale or rental to government agencies or [[nonprofit corporations]]  
 890 designated agencies.

891 (1) The Department, the Commission, or any other [[housing  
 892 development]] government agency or [[nonprofit corporation  
 893 designated by the County Executive]] designated agency may  
 894 buy or lease, for its own programs or programs administered by  
 895 it, up to 40 percent of all MPDUs which are not sold or rented  
 896 under any other federal, state, or local program.

897 (2) The Department or Commission may buy or lease up to 33.3  
 898 percent of the MPDUs not sold or rented under any other federal,  
 899 state, or local program.

900 (3) Any other government agency or designated agency [[or  
 901 corporation]] may buy or lease:

902 (A) any MPDU in the first 33.3 percent that the Department or  
 903 Commission has not bought or leased; and

904 (B) the remainder of the 40 percent specified in subsection  
 905 (a)(1).

906 This option may be assigned to [[persons who]] households that  
 907 are clients of the Department of Health and Human Services or to

908 [[persons of]] low or moderate-income households who are  
909 eligible for assistance under any federal, state, or local program  
910 identified in Executive regulation.

911 (4) The Executive must, by regulation, adopt standards and priorities  
912 [[for designating nonprofit corporations]] to approve designated  
913 agencies under this subsection. These standards must require the  
914 [[corporation]] agency to demonstrate its ability to operate and  
915 maintain MPDUs satisfactorily on a long-term basis.

916 (5) The Department must notify the Commission, other government  
917 agency, or [[other]] designated agency [[or corporation]]  
918 promptly after receiving notice from the applicant under  
919 subsection (b) of the availability of MPDUs. If the Department,  
920 the Commission, or any other designated agency [[or  
921 corporation]] exercises its option, it must submit to the applicant,  
922 within 21 calendar days after the Department notifies the  
923 Commission under this subsection, a notice of intent to exercise  
924 its option for specific MPDUs covered by this option. Any  
925 MPDUs not bought or leased under this subsection must be sold  
926 or rented only to eligible households under subsection (b) during  
927 the priority marketing period for eligible households to buy or  
928 lease.

929 (6) In exercising this option, the Department, the Commission, and  
930 any government agency or designated agency [[or corporation]]  
931 must [[designate]] reserve the [[units]] MPDU by reference to  
932 number, type, size and amenities of the units selected if the  
933 designation does not result in any type of unit exceeding by more  
934 than 40 percent the total units of that type which are sold or

935 rented under this Section, unless the Department and the  
 936 applicant [[agrees otherwise]] agree to a different selection. The  
 937 notice required under subsection (a)(5) must state which MPDUs  
 938 are to be offered for sale and which are to be offered for rent, and  
 939 the Department, the Commission, and any government agency or  
 940 designated agency [[or corporation]] may buy only units which  
 941 are offered for sale and may lease only units which are offered  
 942 for rent. The Department, the Commission, and any government  
 943 agency or designated agency [[or corporation]] must decide  
 944 whether it will exercise its option within 45 days [[after it  
 945 receives the original notice]] of the date of the notice provided  
 946 under subsection (a)(5).

947 (7) If more than one government agency or [[nonprofit corporation]]  
 948 designated agency files a notice of intent under subsection (a)(5)  
 949 with respect to a particular MPDU:

950 (A) the Department prevails over any other buyer or renter;

951 (B) The Commission prevails over any buyer or renter other  
 952 than the Department;

953 (C) any other government agency prevails over any [[nonprofit  
 954 corporation]] designated agency;

955 (D) the first government agency to file a notice prevails over  
 956 any later agency; and

957 (E) the first [[nonprofit corporation]] designated agency to file  
 958 a notice prevails over any later [[corporation]] designated  
 959 agency.

960 (8) Any [[unit]] MPDU purchased by the Commission, a government  
 961 agency, or a designated agency under this subsection that is



962 offered for [[sale]] resale within five years after [[initial]] original  
 963 purchase must first be offered for sale to the Department at the  
 964 [[initial]] purchase price paid by the Commission, government  
 965 agency, or designated agency [[to the Department]] in accordance  
 966 with Executive regulation. The Department may assign its right  
 967 to purchase the MPDU to an eligible household or to a designated  
 968 agency.

969 (b) *Sale or rental to [[general public]] eligible households.*

970 (1) Every [[moderately priced dwelling]] MPDU unit required under  
 971 this Chapter must be offered to [[the general public]] eligible  
 972 households for sale or rental to a good-faith purchaser or renter to  
 973 be used for his or her own residence, except [[units]] MPDUs  
 974 sold or rented under subsection (a) or offered for sale or rent with  
 975 the assistance of, and subject to the conditions of, a subsidy under  
 976 a federal, state or local government program, identified in  
 977 [[regulations adopted]] [by the County Executive] [[under  
 978 method (1)]] Executive regulation, whose purpose is to provide  
 979 housing for [[persons of]] low or moderate income households.

980 (2) Before offering any [[moderately priced dwelling units]] MPDUs  
 981 for sale or rent, the applicant must [[notify]] submit and receive  
 982 approval of an agreement notifying the Department of the  
 983 proposed offering and the date on which the applicant will be  
 984 ready to begin the marketing to eligible [persons] households.  
 985 The [[notice]] agreement must set forth the number of [[units]]  
 986 MPDUs offered, the bedroom mix, the floor area for each [[unit]]  
 987 MPDU type, a description of the amenities offered in each  
 988 [[unit]] MPDU and a statement of the availability of each [[unit]]

989 MPDU for sale or rent, including information regarding any  
 990 mortgage financing available to buyers of the designated [[unit]]  
 991 MPDU. The applicant must also give the Department a vicinity  
 992 map of the offering, a copy of the approved development,  
 993 subdivision or site plan, as appropriate, and such other  
 994 information or documents as the Director finds necessary. The  
 995 Department must maintain a list of eligible households [persons  
 996 of moderate income and] for sale MPDUs and, in accordance  
 997 with procedures established by the County Executive, must notify  
 998 eligible [persons] households of [[the offering]] sale or rental  
 999 offerings.

1000 (3) After [[receiving]] approving the [[complete]] offering [[notice]]  
 1001 agreement, the Department must notify the Commission of the  
 1002 offering. [If the Department finds that the offering notice is  
 1003 complete, it must decide whether the offering of the units to  
 1004 eligible persons will be administered by lottery or by another  
 1005 method that will assure eligible persons an equitable opportunity  
 1006 to buy or rent a MPDU.] The Department must notify the  
 1007 applicant of the method by which the MPDUs will be offered and  
 1008 when the 90-day priority marketing period for the MPDUs may  
 1009 begin.

1010 (4) The Executive may by regulation establish a buyer and renter  
 1011 selection system which considers household size, County  
 1012 residency, employment in the County, and length of time since  
 1013 the [[person]] household was certified for the MPDU program.  
 1014 [[Each eligible]] [person] [[household must]] Eligible households  
 1015 will be notified [[of the availability of any MPDU which would

1016 meet that]] [[person's]] [[household's housing needs,]] when  
 1017 MPDUs are available for sale or rent and will be given an  
 1018 opportunity to buy or rent an MPDU during the priority  
 1019 marketing period in the order of [[that person's]] their selection  
 1020 priority ranking.

1021 (5) The priority marketing period for new [[units]] MPDUs ends not  
 1022 less than 90 days after the initial offering date approved by the  
 1023 Department. The priority marketing period for resold or rerented  
 1024 [[units]] MPDUs ends not less than 60 days after the Department  
 1025 notifies the seller of the approved resale price or vacancy of the  
 1026 rental unit. The Department may extend a priority marketing  
 1027 period when eligible [persons] households are interested in  
 1028 buying or renting a unit, or may reduce the priority marketing  
 1029 period for resold MPDUs for good cause.

1030 (6) [[Moderately priced dwelling units, except those built, sold, or  
 1031 rented under a federal, state, or local program designated by  
 1032 regulation, must not be offered for rent by an applicant during the  
 1033 priority marketing period, except in proportion to the market rate  
 1034 rental units in that subdivision as follows:

1035 (A) In a subdivision containing only single-family dwellings,  
 1036 the proportion of rental MPDUs must not exceed the  
 1037 proportion of market rate rental units to all market rate  
 1038 units.

1039 (B) In a subdivision containing both single-family and  
 1040 multiple-family dwellings, the proportion of rental single-  
 1041 family MPDUs to all one-family MPDUs must not exceed  
 1042 the proportion of market rate rental single-family units to

1043 all market rate single-family units; and the proportion of  
 1044 rental multiple-family MPDUs to all multiple-family  
 1045 MPDUs must not exceed the proportion of market rate  
 1046 rental multiple-family units to all market rate multiple-  
 1047 family units.

1048 (C) The Director may allow an applicant to offer a higher  
 1049 proportion of multiple-family MPDUs for rent in a  
 1050 subdivision if the Director finds that:

1051 (i) offering more rental MPDUs in that subdivision  
 1052 would advance the purpose of the County housing  
 1053 policy and the objectives of any applicable land use  
 1054 plan, be consistent with local housing market  
 1055 conditions, and avoid excessive mandatory  
 1056 condominium or homeowners' association fees or  
 1057 other costs that would reduce the affordability of  
 1058 sale MPDUs; and

1059 (ii) the applicant has demonstrated that it is qualified to  
 1060 manage rental housing]] [and has submitted an  
 1061 effective management plan for the rental units in  
 1062 that subdivision][[.]

1063 Applicants must make a good-faith effort to enter into contracts  
 1064 with eligible [persons] households during the priority marketing  
 1065 period and for an additional period necessary to negotiate with  
 1066 eligible [persons] households who indicate a desire to buy or rent  
 1067 an MPDU during that period.

1068 (7) Every buyer or renter of an MPDU must occupy the [[unit]]  
 1069 MPDU as his or her primary residence during the control period.

1070 Each buyer and renter must certify before taking occupancy that  
 1071 he or she will occupy the [[unit]] MPDU as his or her primary  
 1072 residence during the control period. The Director may require an  
 1073 owner who does not occupy the [[unit]] MPDU as his or her  
 1074 primary residence to offer the [[unit]] MPDU for resale to an  
 1075 eligible [person] household under the resale provisions of Section  
 1076 25A-9.

1077 (8) An owner of an MPDU, except the Commission or a [[housing  
 1078 agency or nonprofit corporation designated by the Director]]  
 1079 government agency or designated agency, must not rent the  
 1080 [[unit]] MPDU to another party unless the Director finds  
 1081 sufficient cause to allow temporary rental of the [[unit]] MPDU  
 1082 under applicable regulations, which may include maximum rental  
 1083 levels. [Any MPDU owner who is allowed to rent a unit  
 1084 temporarily must agree to amend the applicable MPDU  
 1085 covenants to extend the control period for a time equal to the  
 1086 temporary rental period.]

1087 (9) Any rent obtained for an MPDU that is rented without the  
 1088 Director's authorization must be paid into the Housing Initiative  
 1089 Fund by the owner within 90 days after the Director notifies the  
 1090 owner of the rental violation. Any amount unpaid after 90 days is  
 1091 grounds for a lien against the [[unit]] MPDU[,]. [and the] The  
 1092 Director may obtain a judgment and record the lien or may  
 1093 reduce the resale price of the MPDU by the amount owed to the  
 1094 Housing Initiative Fund, or pursue other remedies provided by  
 1095 law.

- 1096 (10) An applicant must not sell or lease any [unit] MPDU without first  
 1097 [obtaining a certificate of] obtaining a certificate of eligibility  
 1098 from the prospective buyer or verifying the eligibility [from] of  
 1099 the prospective [[buyer or]] lessee. [[A]] For sale MPDUs, a  
 1100 copy of each certificate must be furnished to the Department and  
 1101 maintained on file by the Department. Before the sale by an  
 1102 applicant or by the Commission, [[or]] a government agency, or a  
 1103 designated [[housing]] agency [[or nonprofit corporation]] to any  
 1104 buyer of any MPDU who does not possess a certificate of  
 1105 eligibility, the applicant, the Commission, or the agency, [[or  
 1106 corporation]] must [[ask the Department]] determine whether  
 1107 [[the certificates on file show that]] the proposed buyer had  
 1108 previously [[bought]] owned another MPDU. [[A person]] The  
 1109 proposed buyer must not [[buy a second MPDU unless]]  
 1110 participate in the MPDU program a second time unless the  
 1111 proposed buyer meets the household income criteria and no  
 1112 longer owns an MPDU, and there is no first-time buyer [[is]]  
 1113 qualified to buy that [[unit]] MPDU. The Director may waive  
 1114 this restriction for good cause.
- 1115 (11) If an MPDU owner dies, at least one heir, legatee, or other person  
 1116 taking title by will or by operation of law must occupy the  
 1117 MPDU during the control period under this Section, or the owner  
 1118 of record must sell the MPDU as provided in Section 25A-9.
- 1119 [(b) *Sale or rental to government agencies or nonprofit corporations.*
- 1120 (1) In view of the critical, long-term public need for housing for  
 1121 families of low and moderate income, the Department, the  
 1122 Commission, or any other housing development agency or

1123 nonprofit corporation designated by the County Executive may  
1124 buy or lease, for its own programs or programs administered by  
1125 it, up to 40 percent of all MPDUs which are not sold or rented  
1126 under any other federal, state, or local program. The Department  
1127 or Commission may buy or lease up to 33 percent of the MPDUs  
1128 not sold or rented under any other federal, state, or local program.  
1129 Any other designated agency or corporation may buy or lease (A)  
1130 any MPDU in the first 33 percent that HOC has not bought or  
1131 leased, and (B) the remainder of the 40 percent. This option may  
1132 be assigned to persons of low or moderate income who are  
1133 eligible for assistance under any federal, state, or local program  
1134 identified in regulations adopted by the Executive. The Executive  
1135 must, by regulation, adopt standards and priorities for designating  
1136 nonprofit corporations under this subsection. These standards  
1137 must require the corporation to demonstrate its ability to operate  
1138 and maintain MPDUs satisfactorily on a long-term basis.

1139 (2) The Department must notify the Commission or other designated  
1140 agency or corporation promptly after receiving notice from the  
1141 applicant under subsection (a) of the availability of MPDUs. If  
1142 the Department, the Commission, or any other designated agency  
1143 or corporation exercises its option, it must submit to the  
1144 applicant, within 21 calendar days after the Department notifies  
1145 the Commission under subsection (b), a notice of intent to  
1146 exercise its option for specific MPDUs covered by this option.  
1147 Any MPDUs not bought or leased under this subsection must be  
1148 sold or rented only to eligible persons under subsection (b) during  
1149 the priority marketing period for eligible persons to buy or lease.

- 1150           (3) In exercising this option, the Department, the Commission, and  
 1151           any designated agency or corporation must designate the units by  
 1152           reference to number, type, size and amenities of the units selected  
 1153           if the designation does not result in any type of unit exceeding by  
 1154           more than 40 percent the total units of that type which are sold or  
 1155           rented under this Section, unless the applicant agrees otherwise.  
 1156           The notice required under subsection (b)(2) must state which  
 1157           MPDUs are to be offered for sale and which are to be offered for  
 1158           rent, and the Department, the Commission, and any designated  
 1159           agency or corporation may buy only units which are offered for  
 1160           sale and may lease only units which are offered for rent. The  
 1161           Department, the Commission, and any designated agency or  
 1162           corporation must decide whether it will exercise its option within  
 1163           45 days after it receives the original notice.
- 1164           (4) If more than one government agency or nonprofit corporation  
 1165           files a notice of intent under subsection (b)(2) with respect to a  
 1166           particular MPDU:
- 1167           (A) the Department prevails over any other buyer or renter;
  - 1168           (B) The Commission prevails over any buyer or renter other  
 1169           than the Department;
  - 1170           (C) any other government agency prevails over any nonprofit  
 1171           corporation;
  - 1172           (D) the first government agency to file a notice prevails over  
 1173           any later agency; and
  - 1174           (E) the first nonprofit corporation to file a notice prevails over  
 1175           any later corporation.]

1176 **25A-9. Control of rents and resale prices; foreclosures.**



1177 (a) *Resale price and terms.* Except for foreclosure proceedings, any MPDU  
 1178 constructed or offered for sale or rent under this Chapter must not be  
 1179 resold or refinanced during the control period for a price greater than the  
 1180 original selling price plus:

1181 (1) [A] a percentage of the [[unit's]] MPDU's original selling price  
 1182 equal to the increase in the cost of living since the [[unit]] MPDU  
 1183 was first sold, as determined by the Consumer Price Index or  
 1184 other index as identified in Executive regulation;

1185 (2) [The fair market value of] an allowance for capital improvements  
 1186 made to the [[unit]] MPDU between the date of original sale and  
 1187 the date of resale;

1188 (3) [An] if approved by the Director, an allowance for closing costs  
 1189 which were not paid by the [[initial]] original seller, but which  
 1190 will be paid by the [[initial]] original buyer for the benefit of the  
 1191 later buyer; and

1192 (4) [A] a reasonable sales commission [[if the]] [[unit]] [[MPDU is  
 1193 not sold during the priority marketing period to an eligible]]  
 1194 [person] [[household from the Department's eligibility list]].

1195 In determining the amount of the allowance for improvements under  
 1196 paragraph (2), the Director may disallow the value of [[improvements  
 1197 determined to be unnecessary for]] costs attributable solely to the  
 1198 maintenance and upkeep of the [[unit]] MPDU, or for luxury items. The  
 1199 resale price of an MPDU may be reduced if the physical condition of  
 1200 the unit reflects abnormal wear and tear because of neglect, abuse, or  
 1201 insufficient maintenance. Any personal property transferred in  
 1202 connection with the resale of an MPDU must [[be sold at its fair market  
 1203 value]] not be included in the resale price of the MPDU. [In calculating

1204 the allowable resale price of an MPDU which was originally offered for  
 1205 rent, the Department must estimate the price for which the unit would  
 1206 have been sold if the unit had been offered for sale when it was first  
 1207 rented.] The Executive must establish procedures for calculating the  
 1208 allowable resale price of an MPDU under this subsection by method (1)  
 1209 regulation.

1210 (b) *Resale requirements during the control period.*

1211 (1) Any MPDU offered for resale during the control period must first  
 1212 be offered exclusively for up to 60 days to the Department and  
 1213 the Commission, in that order. The Department or the  
 1214 Commission may buy ~~[[a unit]]~~ an MPDU when funds are  
 1215 available. The Department may buy ~~[[a unit]]~~ an MPDU, or may  
 1216 assign its right to buy an MPDU to a designated agency, when  
 1217 the Director finds that the Department's or a designated ~~[[agency~~  
 1218 ~~or corporation's]]~~ agency's buying and reselling the ~~[[unit]]~~  
 1219 MPDU will increase opportunities for eligible ~~[persons]~~  
 1220 households to buy the ~~[[unit]]~~ MPDU. If the Department or the  
 1221 Commission does not buy the ~~[[unit]]~~ MPDU, the Department  
 1222 must notify eligible ~~[persons]~~ households of the availability of a  
 1223 resale MPDU. The ~~[[unit]]~~ MPDU may be sold through either of  
 1224 the following methods:

1225 (A) The Department may [by lottery] establish a priority order  
 1226 under which eligible ~~[persons]~~ households who express  
 1227 interest in buying the ~~[[unit]]~~ MPDU may buy it at the  
 1228 approved resale price.

1229 (B) The Department may notify the MPDU owner that the  
 1230 owner may sell the ~~[[unit]]~~ MPDU directly to any eligible

- 1231 [person] household under the resale provisions of this  
 1232 Chapter.
- 1233 (2) The Commission may purchase resale MPDUs in a particular  
 1234 development only if it did not previously purchase its full  
 1235 allotment of units at the initial offering. In no case may the  
 1236 Commission own more than 33.3 percent of the MPDUs in a  
 1237 particular development.
- 1238 (3) A resale MPDU may be offered for sale to ~~[[the general public]]~~  
 1239 non-eligible households only after:
- 1240 (A) the priority marketing period expires; and  
 1241 (B) all eligible [persons] households who express an interest in  
 1242 buying it have been given an opportunity to do so.
- 1243 ~~[[3]]~~(4) The Executive by regulation may adopt requirements for  
 1244 reselling MPDUs. The regulations may require a seller to submit  
 1245 to the Department for approval:
- 1246 (A) a copy of the proposed sales contract~~[[, including a list and~~  
 1247 ~~the price of any personal property included in the sale]]~~;  
 1248 (B) a signed copy of the settlement sheet; and  
 1249 (C) an affidavit signed by the seller and buyer attesting to the  
 1250 accuracy of all documents and conditions of the sale.
- 1251 ~~[[4]]~~(5) A transfer of an MPDU does not comply with this Chapter  
 1252 until all required documents and affidavits have been submitted  
 1253 to and approved by the Department.
- 1254 (c) Payments to HIF during the control period. During the control period, if  
 1255 the Department determines that the design of the MPDU offered for  
 1256 resale would no longer comply with requirements for construction of a  
 1257 new MPDU or that the allowable resale price and fees associated with a

1258 multi-family condominium offered for resale would result in a monthly  
 1259 payment that is estimated to be at least 20% more than would be  
 1260 affordable to the maximum size MPDU household, the Director may  
 1261 permit the owner of the MPDU to sell the MPDU at market price, and  
 1262 the procedures for resale, including termination of the MPDU controls  
 1263 and release of restrictive covenants will be the same as for resale of an  
 1264 MPDU after the control period, as described in subsection (d).

1265 (d) First sale after control period ends.

1266 (1) If an MPDU originally offered for sale or rent after March 21,  
 1267 1989, is sold or resold after its control period ends, upon the first  
 1268 sale of the [[unit]] MPDU the seller must pay to the Housing  
 1269 Initiative Fund one-half of the excess of the total resale price over  
 1270 the sum of the following:

1271 (A) [[The]] the original selling price;

1272 (B) [[A]] a percentage of the [[unit's]] MPDU's original selling  
 1273 price equal to the increase in the cost of living since the  
 1274 [[unit]] MPDU was first sold, as determined by the  
 1275 Consumer Price Index or other index as identified in  
 1276 Executive Regulation;

1277 (C) [The fair market value of] [[An]] an allowance for capital  
 1278 improvements made to the [[unit]] MPDU between the  
 1279 date of original sale and the date of resale; and

1280 (D) [[A]] a reasonable sales commission.

1281 The Director must adjust the amount paid into the fund in each case so  
 1282 that the seller retains at least \$10,000 of the excess of the resale price  
 1283 over the sum of the items in (A)--(D).

- 1284 (2) The Director must find that the price and terms of a sale covered  
 1285 by subsection ~~[(c)]~~(d)(1) are bona fide and accurately reflect the  
 1286 entire transaction between the parties so that the full amount  
 1287 required under subsection ~~[(c)]~~(d)(1) is paid to the fund. When  
 1288 the Director finds that the amount due the fund is accurate and  
 1289 the Department of Finance receives the amount due, the  
 1290 Department must terminate the MPDU controls and execute a  
 1291 release of the restrictive covenants.
- 1292 (3) The Department and the Commission, in that order, may buy an  
 1293 MPDU at any time during the control period, and may resell the  
 1294 ~~[[unit]]~~ MPDU to an eligible [person] household. A resale by the  
 1295 Department or Commission starts a new control period.
- 1296 [(4) The Commission and any partnership in which the Commission  
 1297 is a general partner need not pay into the Housing Initiative Fund  
 1298 any portion of the resale price of any MPDU that it sells.]
- 1299 ~~[(d)]~~(e) ~~[[Initial]]~~ Original and later rent controls. Unless previously sold  
 1300 under subsection ~~[(c)]~~(d)(1), MPDUs built or offered for rent under  
 1301 this Chapter must not be rented for 99 years after the original rental at a  
 1302 rent greater than that established by Executive regulations. Procedures  
 1303 for original rentals of MPDUs are described in Section 25A-8. ~~[[Any]]~~  
 1304 After the original rental, any MPDU (other than those built, sold, or  
 1305 rented under any federal, state, or local program offered by the  
 1306 Commission) offered for rent during the control period must be offered  
 1307 exclusively for 60 days to one or more eligible [persons] households, as  
 1308 determined by the Department, for use as that ~~[[person's]]~~ household's  
 1309 residence~~[[, and to the Commission]]~~. After the original rental, the  
 1310 Commission may lease MPDUs in a particular development only if it

1311 did not previously lease its full allotment of MPDUs at the initial  
 1312 offering. In no case may the Commission lease more than 33.3 percent  
 1313 of the MPDUs in a particular development. The Commission may  
 1314 assign its right to rent such ~~[[units]]~~ MPDUs to ~~[[persons of]]~~ low or  
 1315 moderate-income households who are eligible for assistance under any  
 1316 federal, state, or local program identified in Executive regulations.

1317 ~~[[e]]~~(f) *Foreclosure or other court-ordered sales.* If an MPDU is sold  
 1318 through a foreclosure or other court-ordered sale, all MPDU covenants  
 1319 must be released, and a payment must be made to the Housing Initiative  
 1320 Fund as follows:

1321 (1) If the sale occurs during the control period, any amount of the  
 1322 foreclosure sale price which exceeds the total of the approved  
 1323 resale price under subsection (a), reasonable foreclosure costs,  
 1324 and liens ~~[[filed under the Maryland Contract Lien Act]]~~ recorded  
 1325 against the MPDU among the land records, must be paid to the  
 1326 Housing Initiative Fund. ~~[[If the remaining balance under the~~  
 1327 ~~original first deed of trust or mortgage exceeds the resale price~~  
 1328 ~~under subsection (a), then the difference between the foreclosure~~  
 1329 ~~sales price and the balance of the original first deed of trust (plus~~  
 1330 ~~reasonable foreclosure costs) must be paid to the Fund.]]~~

1331 (2) If the sale occurs after the control period, and the ~~[[unit]]~~ MPDU  
 1332 was originally offered for sale or rent after March 20, 1989, the  
 1333 payment to the Fund must be calculated under subsection  
 1334 ~~[[c]]~~(d), less reasonable foreclosure costs and liens recorded  
 1335 against the MPDU among the land records.

1336 (3) If the MPDU is a rental unit, the resale price under subsections  
 1337 (a) and ~~[[c]]~~(d) must be calculated [using the maximum sales

1338 price in effect when the unit was originally offered for rent] as  
 1339 provided in regulation.

1340 ~~[(4) If the MPDU is sold subject to senior liens, the lien balances must~~  
 1341 ~~be included in calculating the sale price.]]~~

1342 ~~[[All MPDU covenants must be released after the required payment is~~  
 1343 ~~made into the Housing Initiative Fund.]]~~

1344 ~~[[~~(f)~~]](g) *Waivers.* The Director may waive the restrictions on the resale~~  
 1345 ~~and re-rental prices for MPDUs if the Director finds that the restrictions~~  
 1346 ~~conflict with regulations of federal or state housing programs and thus~~  
 1347 ~~prevent eligible [persons] households from buying or renting [[units~~  
 1348 ~~under the MPDU program]] MPDUs.~~

1349 ~~[[~~(g)~~]](h) *Bulk transfers.* This section does not prohibit the bulk transfer or~~  
 1350 ~~sale of all or some of the sale or rental MPDUs in a subdivision within~~  
 1351 ~~30 years after the original rental or offering for sale if the buyer is bound~~  
 1352 ~~by all covenants and controls on the MPDUs.~~

1353 ~~[[~~(h)~~]](i) *Compliance.* The County Executive must adopt regulations to~~  
 1354 ~~promote compliance with this section and prevent practices that evade~~  
 1355 ~~controls on rents and sales of MPDUs.~~

1356 \* \* \*

1357 **25A-12. Annual report.**

1358 Each year by March 15 the Director must report to the Executive and Council,  
 1359 for the previous calendar year:

- 1360 (a) the number of MPDUs approved and built;
- 1361 (b) each alternative payment agreement approved under Section 25A-5A or
- 1362 alternative location agreement approved under Section 25A-5B, and the
- 1363 location and number of MPDUs that were involved in each agreement;

- 1364 (c) [each approval of a different rent for a high-rise rental unit under  
1365 Section 25A-7(b)(1)] each land transfer completed under Section 25A-  
1366 5(h); and
- 1367 (d) the use of all funds in the Housing Initiative Fund that were received as  
1368 a payment under Section 25A-5A.

1369 \* \* \*

1370 Sec. 2. Regulations. The County Executive must submit the regulations  
1371 required by Sections 25A-5, 25A-7, 25A-8, and 25A-9, as amended by this Act, to  
1372 the Council for approval not later than September 15, 2018.

1373 Sec 3. Effective Date. This Act takes effect on November 1, 2018, and  
1374 applies to any submission or application under Section 25A(5)(a) made on or after  
1375 that date.



## LEGISLATIVE REQUEST REPORT

Bill 34-17

### *Housing – Moderately Priced Dwelling Units (MPDUs) – Amendments*

<b>DESCRIPTION:</b>	The Bill would: clarify existing provisions of the law; require developments of less than 20 homes to make a payment to the Housing Initiative Fund; broaden the authority of the Director of the Department of Housing and Community Affairs to accept payments into the Housing Initiative Fund in lieu of including MPDUs in a development, when it serves the goal of increasing the availability of affordable housing; and increase the flexibility of the Director in determining MPDU obligations to better serve the demands for affordable units.
<b>PROBLEM:</b>	Despite the County having a longstanding law requiring the construction of affordable housing with new residential development, the County's supply of affordable housing continues to lag demand.
<b>GOALS AND OBJECTIVES:</b>	Increase the efficiency of the existing MPDU program to increase the availability of affordable housing and improve the process of making it available to families who need it.
<b>COORDINATION:</b>	Department of Housing and Community Development
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Josh Hamlin, Legislative Attorney, 240-777-7892
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	Class A violation

**Bill 34-17: substantive revisions to Chapter 25A, Housing – Moderately Priced**

Lines	Description of Changes
62-125	Revise Legislative Findings
155-176	Revise Declaration of Public Policy
180-184, 236-240, 251-253	Definitions: Add “age-restricted unit” and “area median income;” amend “eligible person” to be “eligible household;” provide that County “moderate income” must not be less than HUD “low income”
270-287	Expressly tie MPDU eligibility to household income
292-294	Expressly provide that tenant may remain in MPDU for lease term notwithstanding change in eligibility
295-297	Expressly provide that MPDU purchaser may retain ownership notwithstanding change in eligibility
298	Eliminate the prohibition on residential property ownership for the prior five years <i>for age-restricted units</i>
320-323	Require a payment to the HIF for housing developments with less than 20 units
340	Delete requirement that written MPDU agreement be submitted <i>with the application for a permit</i> (it is still required, just not at the time of permit application)
348-352	Delete MPDU agreement requirement that one-bedroom MPDUs not exceed the ratio of one-bedroom market rate units
354-357	Permit the Director to approve an MPDU agreement that is based on the floor area or square footage of required units, but alters the bedroom mix of units or number of units
364-371, 380-381, Table on pp. 16-17	Add language to clarify that the Council may adjust the base requirement for MPDUs from 12.5% to 15% as part of a master plan approval. County-wide base requirement will remain at 12.5%
381-384	Add requirement that to receive density bonus, applicant must provide at least one more MPDU than would have been required if there was no density bonus
401-404	Require that, when the Director allows fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location, the applicant must make a payment to the Housing Initiative Fund, as provided by regulation, based on the square footage of MPDU units that would otherwise have been required
416, 418-419	Clarify references to §25A-5A and §25A-5B
420-472	Modify language to allow DHCA Director to accept a land transfer if its value is equal to the value of the MPDU that are not constructed
507-509	Require MPDU agreement provide for any requirement of age-restricted units to be offered for sale to be satisfied by a payment to the Housing Initiative Fund under Section 25A-5A(b)
526-527	Prohibit an applicant from establishing a condominium or homeowners’ association consisting solely of MPDUs

567-586	Delete reference to Alternative Review Committee and provide that the Director may enter an alternative payment agreement upon making certain findings
587-595	Delete Code requirements for calculating alternative payments and provide that the payments must be calculated as provided in method (1) regulation
596-609	Update references to County Growth Policy and provide that payments to the HIF may be used outside the Policy Area for which the payment was made only after: (A) notice is provided to the Council; and (B) the Council is given at least 30 days to comment
607-609	Delete prohibition on alternative payment agreements for developments where the applicant receives a density bonus
614-623	Add requirement that acceptance of alternative location agreement will increase the number of MPDUs provided as a result of the development
635-667	Delete provisions for granting a waiver of MPDU requirements – alternative payment agreements must be used when not constructing otherwise-required MPDUs
676-732	Simplify criteria for MPDU sale price regulations
733-758	Simplify criteria for MPDU rent regulations
769-825, 830, 956-1012	Flip subsections on priority offering for HOC and non-profits and public offering to clarify that priority offering is first
775-778	Allow assignment of the purchase/rental option, held by certain government agencies or nonprofit corporations, to clients of the Department of Health and Human Services
822-825	Require that any unit purchased under §25A-8(a) that is offered for sale within five years after initial purchase first be offered for sale to the Department in accordance with Executive regulation
852-859, 1054	Eliminate references to lottery as a method of administering MPDU offerings
1021, 1029-1032	Resale within control period: change permitted increase over original sale price for improvements made to unit from “fair market value of improvements made” to an allowance, excluding the value of improvements determined to be unnecessary for the maintenance and upkeep of the unit
1165-1166	Annual Report: require report to include each land transfer complete in the subject year

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ROCKVILLE, MARYLAND

MEMORANDUM

December 4, 2017

TO: Roger Berliner, President, County Council

FROM: <sup>for</sup> Jennifer A. Hughes, Director, Office of Management and Budget  
~~FOR~~ Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 34-17, Housing - Moderately Priced Dwelling Units

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

JAH:fz

cc: 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  
Clarence Snuggs, Director, Department of Housing and Community Affairs  
David Platt, Department of Finance  
Dennis Hetman, Department of Finance  
Pofen Salem, Office of Management and Budget  
Felicia Zhang, Office of Management and Budget

**Fiscal Impact Statement**  
**Bill 34-17**  
**Housing - Moderately Priced Dwelling Units - Amendments**

**1. Legislative Summary**

Bill 34-17 would clarify certain provisions of law related to moderately priced dwelling units (MPDUs), amend certain provisions of law related to the satisfaction of MPDU requirements, and amend certain provisions of law related to the sale and rental of MPDUs.

This Bill would clarify existing provisions of the law, require developments of less than 20 homes to make a payment to the Housing Initiative Fund, broaden the authority of the Director of the Department of Housing and Community Affairs to accept payments into the Housing Initiative Fund in lieu of including MPDUs in a development, when it serves the goal of increasing the availability of affordable housing, and increase the flexibility of the Director in determining MPDU obligations to better serve the demands for affordable units.

**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.**

The proposed amendments on Bill 34-17 would require developments with fewer than 20 units to make a payment to the Housing Initiative Fund (HIF), and it would increase the number of MPDUs in master plan areas with increased MPDU requirements around the County if the required MPDUs are calculated on floor area ration or square footage basis, rather than as a proportion of the market-rate units that is the current practice. The proposed methodology would significantly impact existing MPDU operations and practices as MPDU staff currently has very little involvement in the design of a building, and they would now be presumed to do more in-depth analysis of amended MPDU requirements that would occur much earlier in the land use and subdivision process. It is estimated that Bill 34-17 would require approximately \$345,090 in new expenditures based on a need of up to 3.5 new FTEs to administer and implement the amended requirements. However, DHCA cannot provide any estimated changes in revenues at this time. Research is needed to determine the applicable rate used as appropriate alternative payments to the HIF. Details are provided below.

**Section 25A-5(b): Payment to the Housing Initiative Fund for development of fewer than 20 units**

- **Result:** Requires developments with fewer than 20 units to make a payment to the HIF.
- **Revenue:** To be determined. To determine the amount of new revenue, information from the Department of Permitting Services has been requested to better ascertain the number of developments of fewer than 20 units in prior years. Additionally, the Bill does not define the payment amount to the HIF, more research is needed to determine the applicable rate.
- **Expenditures:** The Bill would have an impact on DHCA's personnel costs with an increase of \$37,160 annually. This amount represents a need of 0.5 FTE for administrative services to assist with new administrative tasks, including tracking

projects with fewer than 20 units, tracking funds, and providing technical assistance. The cost estimate is based on an Office Services Coordinator position (Grade 16).

**Section 25A-5(e): Council may establish through the master plan process a higher base requirement up to 15%; Required MPDUs to be calculated on floor area ration (FAR) or square footage basis, not as a proportion of the market-rate units**

- **Result:** Bill 34-17 proposes to amend MPDU agreements to be based on floor area or square footage, rather than the number of bedrooms in market rate units as previously stated. This amendment would increase the number of MPDUs in various master plan areas with increased MPDU requirements around Montgomery County. It would also significantly impact current MPDU operations and practices as MPDU staff currently has very little involvement in the design of a building. If the implementation of MPDU agreements is based on a floor area ratio or square footage, MPDU development reviews will become substantially more complex. Additionally, it will need to occur earlier in the subdivision process to negotiate with the developer and work closely with the Planning Department to determine the number and type of MPDUs to be included in the layout and design of the building.

Using the past three years as guidance, between 14 to 18 projects each year may have to be evaluated on an FAR basis. It is estimated that the proposed amendment may double the review work of MPDU staff currently undertaken.

- **Revenue:** Not applicable.
- **Expenditures:** The amended Section 25-A-5(e) may have an impact on DHCA's personnel costs up to \$307,930 annually if the Bill is implemented to calculate MPDUs based on an FAR basis. The estimate is based on the following:
  - \$210,720 for two Planning Specialists (2.0 FTEs) to negotiate and review projects early in the land use process, calculate number of units and unit types, evaluate Alternative Proposal requests (see below), and analyze MPDU proposals; and
  - \$97,210 for one Program Manager I (1.0 FTE) to enhance the Program's ability to monitor and enforce MPDU requirements on developers and on MPDU households.

**Section 25A-5A. Alternative Payment Agreements: The bill would allow Alternative Payments on sites receiving a density bonus, and require Alternative Payments on senior housing projects.**

- **Result:** Additional Alternative Payments for senior housing projects, and it may allow DHCA to approve Alternative Payments for condominium developments (such as Piggy-Back townhouse developments with higher condominium fees.)
- **Revenue:** To be determined. The amount would fluctuate year to year based on real estate market trends.
- **Expenditures:** Not applicable.

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

The total expenditures for the next six fiscal years are estimated at approximately \$2.07M if the Bill is implemented to calculate MPDUs based on an FAR basis and require developments with fewer than 20 units to make a payment to the HIF. However, the

estimated revenue changes are not available at this time due to limited information to determine an applicable rate.

	Expenditures*	Revenue
Year 1	\$345,090	TBD
Year 2	\$345,090	TBD
Year 3	\$345,090	TBD
Year 4	\$345,090	TBD
Year 5	\$345,090	TBD
Year 6	\$345,090	TBD
<b>Total</b>	<b>\$2,070,540</b>	<b>TBD</b>

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.**

Not Applicable.

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.**

As indicated in #2, Bill 34-17 may require up to 3.5 new FTEs in staff time to administer the proposed amendments based on the assumption of 14 to 18 development projects to be evaluated on an FAR basis per year. The cost estimate is based on the following:

- 2.0 FTEs for two Planning Specialists (estimated at \$210,720)
- 1.0 FTEs for a Program Manager I (\$97,210)
- 0.5 FTEs for a part-time Office Services Coordinator (\$37,160)

Note: Staffing needs could be adjusted based on the actual number of development projects and housing units to be evaluated.

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

This bill would significantly impact current MPDU program operations and practices if the calculation of MPDUs is based on an FAR basis, not as a proportion of the market-rate units. MPDU development reviews would be substantially more complex and would need to occur earlier in the subdivision process. Additionally, DHCA would need to more closely monitor

and enforce MPDU requirements on developers and on MPDU households. These new responsibilities cannot be absorbed by existing staff.

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

It is estimated that \$345,100 would be needed in the first full year of implementation.

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

Several variables could affect revenue estimates, including:

- Number of developments with fewer than 20 units,
- Per-unit payment amount for developments with fewer than 20 units,
- General real estate market conditions, and
- Number of alternative payments accepted.

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

Revenue generated by developments with fewer than 20 units and the total amount of alternative payments are difficult to project at this time.

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

Not Applicable.

**13. Other fiscal impacts or comments.**

Not Applicable.

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

Clarence Snuggs, Director, Department of Housing and Community Affairs (DHCA)  
Jay Greene, DHCA  
Stephanie Killian, DHCA  
Tim Goetzinger, DHCA  
Pofen Salem, Office of Management and Budget

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

12/4/17  
Date



**Economic Impact Statement**  
**Bill 34-17, Housing – Moderately Priced Dwelling Units**

**Background:**

This legislation would clarify certain provisions of law related to moderately priced dwelling units (MPDUs), amend certain provisions of law related to the satisfaction of MPDU requirements, and amend certain provisions of law related to the sale and rental of MPDUs. Bill 34-17 has thirty-two substantive revisions for Chapter 25A, Housing – Moderately Priced.

Some of the revisions include:

- The addition of the definition of “area median income” as estimated by the U.S. Department of Housing and Urban Development for Montgomery County. Currently the area median income (AMI) is \$110,300 for a family of four effective June 15, 2017;
- The addition of language that clarifies that the County Council may adjust the base requirement for MPDUs from 12.5 percent to 15.0 percent as part of a master plan. However, the County-wide base requirement will remain at 12.5 percent;
- The addition of a requirement that acceptance of alternative payment will increase the number of MPDUs provided as a result of the development;
- Require a payment to the Housing Initiative Fund (HIF) for housing developments with less than 20 units and require that, when the Director of the Department of Housing and Community Affairs (DHCA), allows fewer or no MPDUs to be built in a development with more than 20 units but fewer than 50 units at one location, the applicant must make a payment to the HIF based on the square footage of MPDU units that would otherwise be required.

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

Sources of information include the American Community Survey (ACS), U.S. Census Bureau; McGraw-Hill Dodge Analytics (Dodge Analytics); and DHCA. According to ACS, of the total number of occupied housing units in Montgomery County an average of 67.7 percent from CY2005 to CY2016 were owner-occupied, and 32.3 percent were renter-occupied. This share of the number occupied housing units in the County contrasts to the share of the number of MPDUs produced for sale or rent. From CY2005 to CY2016, the average number of MPDUs for sale was 50.9 percent while the average number of rental units was 49.1 percent. Therefore, compared to the distribution of countywide occupied units, the distribution of MPDUs produced was greater for rental units than units for sale. That is, in CY2016, the share of MPDUs produced for sale represented 0.03 percent of the total owner-occupied housing units and the share of MPDUs produced as rental units represented 0.19 percent of total renter-occupied units.

Finally, comparing the construction starts for new residential units from Dodge Analytics with the number of MPDUs produced, the Department of Finance (Finance) estimates that the average of MPDUs for sale from CY2005 to CY2016 was 14.2 percent and 10.6 percent for multi-family units for a combined average of 9.7 percent. Therefore, these percentages provide a better comparison because they compare new residential construction for all types

**Economic Impact Statement**  
**Bill 34-17, Housing – Moderately Priced Dwelling Units**

of housing units (Dodge Analytics) with the production of MPDUs (DHCA). While the averages over the twelve-year period may suggest the production of MPDUs are close to meeting the policy target, there is great variability from year to year.

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

The variable that could affect the economic impact estimates are the number of new construction starts for residential properties and the production of MPDUs as a share of the new construction starts. Since an economic impact of Bill 34-17 is based on the target percentage on new construction allotted to MPDUs, the economic impact is driven by the growth in new construction of residential property and the share of MPDUs of those properties. The second variable that could affect the economic impact is the definition of area median income (AMI).

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

Bill 34-17 would have a positive effect on the number of MPDUs for sale and rent for those families seeking affordable housing. This conclusion is based on the substantive revisions to Chapter 25A. While it would be difficult to analyze the economic impact of each substantive revision, the objective of Bill 34-17 is to increase the efficiency of the current MPDU program and, therefore, increase the availability of affordable housing. Such an increase in efficiency would have an economic benefit to those families who are eligible for affordable housing.

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

Please see item #3.

**5. The following contributed to or concurred with this analysis: David Platt and Robert Hagedoorn, Finance.**

  
\_\_\_\_\_  
Alexandre A. Espinosa, Director  
Department of Finance

12/1/2017  
Date

**Notes from DHCA MPDU Program Report 2013-2016**  
(summarized by Linda McMillan, Council staff)

**From 2013-2016 (4 years):**

53 agreements to build approved including 1,484 MPDUs (13.4% of total units)

461 in 2013

258 in 2014

491 in 2015

274 in 2016

103 MPDU offering agreements for 60 developments. Total MPDUs offered was 1,576; 544 for-sale and 1,032 rental.

1 Alternative Location Agreement was signed – 12 MPDUs were provided off-site in the same planning area (Bethesda) in place of 9 MPDUs on site.

2 Alternative Payment Agreements were signed:

One was for an age-restricted community (Courts at Clarksburg)

One was for a condominium with high fees (Octave)

**As of January 2018:**

- There are 1,644 MPDUs for-sale under price controls.
- There are 2,303 MPDUs under rent controls in 61 properties (73 are in 2 LIHTC properties).
- 321 of the 1,644 for-sale MPDUs are owned by non-profit organizations
- HOC owns 1,400 MPDUs not included in the 1,644. They are used as rental properties.
- There are 46 rental high-rise properties where the rent may be calculated at 70% of area median income (rather than 65%).

**Use of Alternative Payments during 2013-2015:**

Park Potomac (signed 2005) - \$2,655,988 total or \$85,677 per 31 MPDUs.

- \$1,275,000 to preserve 20 expiring MPDUs at Morgan Apartments for 15 years (\$4,250 per apartment per year or \$63,750 per unit)
- \$591,149 to make MPDUs at Stonehall condominiums affordable
- \$1,250,000 to MCCH to purchase one small apartment building in Bethesda

Octave (signed 2014) - \$856,675 total or \$65,898 per 13 MPDUs.

- \$716,164 used to fund a portion of The Bonifant to increase affordability

Quarry Springs Potomac (signed 2005) \$1,700,000 total or \$113,333 per 15 MPDUs.

- \$900,000 was used as a portion of \$1,555,000 provided to MCCH to buy a second small apartment building in Bethesda