

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Tuesday, July 24, 2018

The County Council for Montgomery County, Maryland convened in the Council Conference Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:45 A.M. on Tuesday, July 24, 2018.

PRESENT

Councilmember Hans Riemer, President
Councilmember Roger Berliner
Councilmember Nancy Floreen
Councilmember Sidney Katz

Councilmember Nancy Navarro, Vice President
Councilmember Marc Elrich
Councilmember Tom Hucker
Councilmember George Leventhal
Councilmember Craig Rice

The President in the Chair.

SUBJECT: **Discussion - State Legislative Program**

Reference: Agenda Item 1

Received a summary of departmental legislative proposals, supported by the County Executive, from Ms. Wenger, Director, Ms. Morningstar and Ms. Samman, Office of Intergovernmental Relations (OIR), for inclusion in the legislative package for the 2019 session of the Maryland General Assembly.

Supported, without objection, legislation to change the name of the Department of Liquor Control (DLC) to Alcohol Beverage Services to more accurately reflect the services provided by DLC. Ms. Floreen and Mr. Rice were temporarily absent.

Supported, without objection, legislation that would allow a Class H beer and wine license holder in Damascus to obtain a Class 7 micro-brewery license in order to brew and bottle malt beverages. Ms. Floreen and Mr. Rice were temporarily absent.

Supported, without objection, legislation that would allow DLC to sell chilled draft beer at DLC dispensaries in refillable and non-refillable containers (growlers and crowlers). DLC intends to create a pilot program for local micro-breweries. Ms. Durbin, Chief of Licensure, Regulation and Education, DLC, participated in the discussion. Mr. Rice was temporarily absent.

Supported, without objection, statewide legislation to allow the Board of Elections to begin counting absentee ballots on Election Day. Mr. Rice was temporarily absent.

Supported, without objection, statewide legislation requiring the registration and serializing of “ghost” guns, guns that are sold that are not fully assembled. Mr. Rice was temporarily absent.

Ms. Wenger stated that she will email later today the Maryland Association of Counties’ (MACo) list of legislative initiatives for Councilmembers to review.

The Council recessed at 10:04 A.M. and reconvened in the Council Hearing Room at 10:30 A.M.

The invocation was given by Reverend Dr. Gareth E. Murray, First Baptist Church of Silver Spring.

SUBJECT: Proclamation recognizing Peace Day

The proclamation was not presented.

SUBJECT: Proclamation recognizing the R.E.A.L (Reading and Educating to Advance Lives) program by the Heyman Interages® Center

The proclamation was presented by Ms. Navarro recognizing the R.E.A.L program by the Heyman Interages® Center.

SUBJECT: Proclamation recognizing the 50th Anniversary of the Open Housing Law

The proclamation was presented by Mr. Riemer recognizing the 50th Anniversary of the Open Housing Law.

SUBJECT: General Business

Reference: Agenda Items 2A to 2C

Agenda and Calendar Changes

There were no agenda or calendar changes.

Receipt of Petitions

There were no petitions received this week.

Approval of Minutes

Approved the minutes of July 10, 2018, without objection.

SUBJECT: **Consent Calendar**

Reference: Agenda Items 3A to 3DD

Approved the following consent calendar items listed below:

Adopted **Resolution 18-1186**, confirming the County Executive appointments to the Housing Opportunities Commission: Pamela Byrd, Richard Nelson;

Adopted **Resolution 18-1187**, approving the Office of Legislative Oversight (OLO) FY19 Work Program;

Adopted **Resolution 18-1188**, approving the Declaration of No Further Need: Disposition of a portion of 100 Edison Park Drive, Gaithersburg, Maryland;

Adopted **Resolution 18-1189**, approving amendments to the Montgomery County Economic Development Corporation bylaws;

Adopted **Resolution 18-1190**, to amend the Council's contract for audit services;

Adopted **Resolution 18-1191**, approving the FY19 schedule of revenue estimates and appropriations;

Adopted **Resolution 18-1192**, confirming the County Executive appointment to the Adult Public Guardianship Review Board: Miriam Kelty;

Adopted **Resolution 18-1193**, confirming the County Executive appointment to the Commission on Aging: Beverly Rollins;

Adopted **Resolution 18-1194**, confirming the County Executive appointment to the Agricultural Advisory Committee: Angela McNally;

Adopted **Resolution 18-1195**, confirming the County Executive appointment to the Animal Matters Hearing Board: Alfred Ferruggiaro;

Adopted **Resolution 18-1196**, confirming the County Executive appointment to the Community Action Board: Myriam Paul;

Adopted **Resolution 18-1197**, confirming the County Executive appointments to the East County Citizens Advisory Board: William Bentley, Margruetta Hall, Wendy Johnson, Kimberly Price-Evans, Pamela Ruiz, John Smith;

Adopted **Resolution 18-1198**, confirming the County Executive appointments to the Board of Electrical Examiners: Mark Dols, Grant Gotlinger, Sanford Malakoff;

Adopted **Resolution 18-1199**, confirming the County Executive appointment to the Board of License Commissioners: Man Cho;

Adopted **Resolution 18-1200**, confirming the County Executive appointments to the Pedestrian, Bicycle and Traffic Safety Advisory Committee: George Branyan, Tomas Bridle, Marybeth Cleveland, Leah Walton;

Adopted **Resolution 18-1201**, confirming the County Executive appointment to the Commission on People with Disabilities: Angelisa Hawes;

Adopted **Resolution 18-1202**, confirming the County Executive appointment to the Revenue Authority: Jonathan Powell;

Adopted **Resolution 18-1203**, confirming the County Executive appointments to the Solid Waste Advisory Committee: Sara Ducey, Paula Jenson, Carol Jones, Heidi Lovett, Elaine Newton;

Adopted **Resolution 18-1204**, confirming the County Executive's Nominations for Property Tax Assessment Appeals Board - Regular Member: Emilio Cecchi, George Smithwick, Theodore Seale; Alternate Member: Kimberly King, Sara Vazer, Michael Carmel;

Adopted **Resolution 18-1205**, approving the Maryland Economic Development Assistance Authority and Fund Loan to assist Altimmune Inc.'s expansion in Montgomery County (\$150,000);

Adopted **Resolution 18-1206**, approving the Maryland Economic Development Assistance Authority and Fund Loan to assist Abt Associates, Inc.'s expansion in Montgomery County (\$750,000);

Adopted **Resolution 18-1207**, approving the Maryland Economic Development Assistance Authority and Fund Loan to assist HMSHost Corporation's retention in Montgomery County (\$1,200,000);

Adopted **Resolution 18-1208**, approving the Maryland Economic Development Assistance Authority and Fund Loan to assist Applied Biomimetic, Inc.'s expansion in Montgomery County (\$100,000);

Adopted **Resolution 18-1209**, approving Executive Regulation 3-18AM, Repair and Deduct;

Received Office of the Inspector General (OIG) Report, Council acknowledged receipt of OIG PIM #18-001, "Allegation of Improperly Handled Computer System Data Breach";

Adopted **Resolution 18-1210**, to appoint public member of the WSSC Inspector General Appointment Committee: Benjamin Smith;

Adopted **Resolution 18-1211**, reappointment of Council representative to Nominating Committee for the Board of Trustees of Montgomery College: Dwayne Leslie;

Adopted **Resolution 18-1212**, to amend Resolution 18-1144, Section G, FY19 Designation of Entities for Non-Competitive Award Status: Montgomery Housing Partnership, Inc.;

Adopted **Resolution 18-1213**, approving Executive Regulation 4-17AM, Police Outside Employment; and

Adopted **Resolution 18-1214**, approving Ethics Regulation 22-16AM, Ethics Commission.

Ms. Navarro made the motion, which carried without objection.

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

SUBJECT: Zoning Text Amendment (ZTA) 18-10, Townhouse Living - Accessibility Tax Credit

Reference: Agenda Item 4A

Introduced draft #2 of ZTA 18-10, sponsored by Councilmember Rice. A public hearing is scheduled for September 18, 2018, at 1:30 P.M.

SUBJECT: ZTA 18-11, Telecommunications Towers - Approval Standards

Reference: Agenda Item 4B

Introduced draft #1 of ZTA 18-11, sponsored by the Council President at the request of the County Executive. A public hearing is scheduled for September 25, 2018, at 7:30 P.M. (The date was changed from September 11 to September 25.)

SUBJECT: Technical Update to the Master Plan of Highways and Transitways

Reference: Agenda Item 4C

Mr. Berliner, Chair of the Transportation, Infrastructure, Energy and Environment (T&E) Committee, and Dr. Orlin, Deputy Director, reviewed the Committee's

recommendations as contained in the analyst packet. Mr. Aldrich, Maryland-National Capital Park and Planning Commission (MNCPPC), participated in the discussion.

Approved **Resolution 18-1215**, technical update to the Master Plan of Highways and Transitways, as recommended by the T&E Committee, without objection.

SUBJECT: **Resolution to place proposed amendments to County Charter on November ballot and approve ballot language**

Reference: Agenda Item 5A

Mr. Hamlin, Legislative Attorney, reviewed the proposed amendments to the County Charter, as contained in the analyst packet.

Mr. Riemer suggested requesting in the future that the Charter Review Commission (CRC) take a look at further amending Section 305, which is addressed in Question B, Property Tax Limit - Votes Needed to Override, to address what could be done when a Councilmember is incapacitated and unable to be physically present to vote.

Adopted **Resolution 18-1216**, without objection, approving the placement of the proposed amendments to the County Charter on the 2018 General Election ballot.

Mr. Rice made the motion, which carried without objection.

SUBJECT: **Resolution to certify qualification of Charter Amendment petitions for November ballot, if any**

Reference: Agenda Item 5B

Mr. Riemer advised that no petitions were submitted as of July 24, 2018, and therefore no action was required.

COUNTY COUNCIL SITTING AS BOARD OF HEALTH

SUBJECT: **Update from County Health Officer**

Reference: Agenda Item 6

Received a presentation from Dr. Gayles, County Health Officer, on the health of the County, summarizing information and statistics from "Health in Montgomery County 2008-2016, A Surveillance Report on Population Health," covering the overall good health outcomes for the County as well as areas of health disparities. Dr. Gayles responded to questions from Councilmembers.

Requested data on trends in childhood immunization rates broken down by region, Councilmanic districts, and neighborhoods. Requested that a Health and Human Services (HHS) Committee meeting be scheduled in the fall to allow time for further discussion on health disparities and root causes. Noted that Chairs from the different minority health initiatives should be included in the meeting and that notification be widespread to reach all County health partners.

The Council recessed at 12:27 P.M. and reconvened at 1:53 P.M.

SUBJECT: Public Hearing/Action on amendment to the FY19-24 Capital Improvements Program (CIP) and Supplemental Appropriation to the FY19 Capital Budget, Montgomery County Government, Department of Transportation (DOT) - \$7,000,000 for streetlighting

Reference: Agenda Item 7

The public hearing was held and the record closed.

Adopted Resolution **18-1217**, approving the subject CIP amendment and supplemental appropriation.

The T&E Committee made the motion, which carried without objection. Mr. Hucker was temporarily absent.

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
IN LEGISLATIVE SESSION - Day #17**

Call of Bills for Worksession and Final Reading

SUBJECT: Bill 34-17, Housing - Moderately Priced Dwelling Units (MPDU) (continued)

Reference: Agenda Item 8A

Participating in the discussion were Mr. Snuggs, Director, and Ms. Killian, Affordable Housing Programs Manager, Department of Housing and Community Affairs (DHCA); Ms. Rubin, Deputy Director, and Ms. Govoni, Montgomery County Planning Department, MNCPPC; Senior Legislative Analyst McMillan and Legislative Attorney Hamlin. Ms. Floreen, Chair of the Planning, Housing, and Economic Development (PHED) Committee, led the discussion.

Approved without objection Ms. Floreen’s motion to amend Sec. 3. Effective Date, of the bill as follows:

(a) This Act takes effect on ~~[[November 1]]~~ October 31, 2018, and except for an applicant who has submitted a sketch plan that the Planning Board has

accepted as complete before October 31, 2018, applies to any submission or application under Section 25A(5)(a) accepted as complete 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 accepted as complete or approved before October 31, 2018 and any sketch plan accepted as complete 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.

Approved without objection an amendment to the bill to change the date the County Executive must submit the regulations required by Sections 25A-5, 25A-7, 25A-8, and 25A-9, as amended, to the Council for approval no later than [[September]] October 15, 2018.

Considered Mr. Hucker's amendment to add a new subparagraph (A) after line 708 of the bill, to add a new paragraph after line 739 of the bill, and reletter remaining subsections, as follows:

After line 708:

- (A) The payment will be used:
 - (i) In a Planning Area designated by the Planning Board in which at least 45% of the United States Census Tracts have a median household income of at least 150% of the County-wide median household income; or
 - (ii) To buy, build or preserve MPDUs that are within one-half mile of a Metro or other rail station.

After line 739:

- (1) The alternative location will be:
 - (A) In a Planning Area designated by the Planning Board, in which at least 45% of the United States Census Tracts have a median household of at least 150% of the County-wide median household income; or
 - (B) Within one-half mile of a Metro or other rail station.

Mr. Hucker accepted Mr. Berliner's suggestion to amend the motion to add to the end of the sentences of (A)(ii) and 1(B) the words "if original project is within the same proximity." Later in the discussion, Mr. Hucker and Mr. Berliner agreed to remove (A)(ii) and 1(B) from the amendment.

Ms. Floreen sought clarification as to whether Mr. Hucker's proposed amendment was intended to be in addition to, or as an alternative to, the Bill's notice to Council, good cause, and comment period requirements. Mr. Hucker clarified that it was his intention that his proposal was as an alternative to the Bill's

existing provisions. Mr. Huckler's amendment, reflecting this intent and the agreement with Mr. Berliner to remove the above-mentioned provisions, was approved without objection as follows:

Amend lines 702-714 as follows:

- (3) [[may]] must be used [only] only to buy, [[or]] build, or preserve more MPDUs, or more bedrooms in the same number or fewer MPDUs, in [the same planning policy area] [[a Policy Area]] the same Planning Area [(as defined in the County)] [Growth] [[Subdivision Staging Policy]] [as] [[other than that of]] as the development for which the payment was made [[only after]] unless:
- (A) the payment is used in a Planning Area designated by the Planning Board in which at least 45% of the United States Census Tracts have a median household income of at least 150% of the County-wide median household income; or
 - (B) the Director first provides the Council [[is first provided]] with:
 - (i) notice of the intent to use the payment in a different Planning Area [[is provided to the Council]] that does not meet the requirement in subparagraph (A); [[and]]
 - (ii) [[a compelling reason]] good cause for the use of the payment in [[a]] the different Planning Area; and
 - [[B]] (iii) [[the Council is given]] at least 30 days to comment.

Amend lines 739-745 as follows:

- (b) The alternative location must be in the same Planning Area unless:
- (1) the alternative location is in a Planning Area designated by the planning Board in which at least 45% of the United States Census Tracts have a median household income of at least 150% of the County-wide median household income; or
 - (2) the Director first provides the Council [[is first provided]] with:
 - (A) notice of the intended alternative location in a different Planning Area that does not meet the requirement in paragraph (b); [[and]]
 - (B) [[a compelling reason]] good cause for the alternative location in [[a]] the different Planning Area; and
 - [[2]] (C) [[the Council is given]] at least 30 days to comment.

Enacted draft #7 of **Bill 34-17**, as amended, and shown at the end of these minutes.

The PHED Committee made the motion and the bill was enacted by a roll call vote:

YEAS: Elrich, Huckler, Rice, Berliner, Leventhal, Floreen, Katz, Navarro, Riemer.

SUBJECT: Bill 38-17, MPDU - Requirement to Build (continued)

Reference: Agenda Item 8B

Ms. Floreen reviewed the purpose of the bill and the goal to maximize the number of MPDU units. She noted that she would support the PHED Committee's recommendation to enact the bill (during the PHED Committee worksession, Ms. Floreen opposed the Committee recommendation).

Approved, without objection, Mr. Rice's motion to amend the bill, beginning on line 41 in draft #5 before them, as follows: at the time the [[applicant submits a preliminary plan of subdivision]] Planning Board accepts as complete the applicant's application of plan subsection (a), 15 percent; or...

Approved, without objection, Mr. Rice's motion to add language regarding the effective date of the bill as follows:

Sec. 2 Effective Date.

- (a) This Act takes effect on October 31, 2018, and except for an applicant who has submitted a sketch plan that the Planning Board has accepted as complete before October 31, 2018, applies to any submission or application under Section 25A(5)(a) accepted as complete 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 accepted as complete 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.

Enacted draft #5 of **Bill 38-17**, as amended, and shown at the end of these minutes.

Clerk's note: based on discussions with the County Attorney, final statute reflects changes in Bill 34-17 as enacted.

The PHED Committee made the motion and the bill was enacted by a roll call vote:

YEAS: Elrich, Hucker, Rice, Berliner, Leventhal, Floreen, Katz, Navarro, Riemer.

The Council adjourned at 3:40 P.M.

This is a correct copy of Council action.

Approved/Signed by the Clerk

Megan Davey Limarzi, Esq.
Clerk of the Council

Bill No. 34-17
 Concerning: Housing – Moderately Priced Dwelling Units (MPDUs) - Amendments
 Revised: 07/24/2018 Draft No. 8
 Introduced: October 31, 2017
 Enacted: July 24, 2018
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
 FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Councilmember Floreen
 Co-Sponsor: Councilmember Rice

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

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec 1. Sections 25A-1, 25A-2, 25A-3, 25A-4, 25A-5, 25A-5A, 25A-5B, 25A-6, 25A-7, 25A-8, 25A-9,**
2 **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 the County with respect to
5 the supply of housing relative to the need for housing for residents with low and moderate incomes. Specifically, the
6 County Council finds that:

- 7 (1) The County is experiencing a rapid increase in residents of or approaching retirement age, with
8 consequent fixed or reduced incomes; young adults of modest means forming new households;
9 government employees in moderate income ranges; and mercantile and service personnel needed
10 to serve the expanding industrial base and population growth of the County;
- 11 (2) A rising influx of residents into higher priced housing in the County with resultant demands for
12 public utilities, governmental services, and retail and service businesses has created an increased
13 need for housing for persons of low and moderate income who are employed in the stated
14 capacities;
- 15 (3) The supply of moderately priced housing was inadequate in the mid-1960's and has grown since
16 then at a radically slower pace than the demand for such housing;
- 17 (4) The inadequate supply of housing in the County for persons of low and moderate income results in
18 large-scale commuting from outside the County to places of employment within the County,
19 thereby overtaxing existing roads and transportation facilities, significantly contributing to air and
20 noise pollution, and engendering greater than normal personnel turnover in the businesses,
21 industry and public agencies of the County, all adversely affecting the health, safety and welfare
22 of and resulting in an added financial burden on the citizens of the County;
- 23 (5) A careful study of market demands shows that approximately one-third of the new labor force in
24 the County for the foreseeable future will require moderately priced dwelling units;
- 25 (6) Demographic analyses indicate that public policies which permit exclusively high-priced housing
26 development discriminate against young families, retired and elderly persons, single adults, female
27 heads of households, and minority households; and such policies produce the undesirable and
28 unacceptable effects of exclusionary zoning, thus failing to implement the Montgomery County
29 housing policy and the housing goal of the general plan for the County;
- 30 (7) Experience indicates that the continuing high level of demand for more luxurious housing, with a
31 higher profit potential, discourages developers from offering a more diversified range of housing;
32 and the production of moderately priced housing is further deterred by the high cost of land,
33 materials, and labor;
- 34 (8) Actual production experience in the County indicates that if land costs can be reduced, houses of
35 more modest size and fewer amenities can be built to be sold at a profit in view of the existing
36 ready market for such housing;
- 37 (9) Every indication is that, given the proper incentive, the private sector is best equipped and
38 possesses the necessary resources and expertise required to provide the type of moderately priced
39 housing needed in the County;
- 40 (10) Rapid regional growth and a strong housing demand have combined to make land and
41 construction costs very high and to have an effect on the used housing market by causing a rise in
42 the prices of those units;
- 43 (11) In past years efforts have been made to encourage moderately priced housing construction through
44 zoning incentives permitting greater density and through relaxation of some building and
45 subdivision regulations. Very little moderately priced housing had resulted; and
- 46 (12) In some instances existing housing for persons of low and moderate income is substandard and
47 overcrowded.]

48 (a) The County enacted the Moderately Priced Dwelling Unit (MPDU) law in 1973 to:

- 49 (1) help meet the goal of providing a full range of housing choices for all incomes, ages and
50 household sizes;
- 51 (2) meet the existing and anticipated need for low and moderate-income housing;
- 52 (3) ensure that moderately priced housing is dispersed throughout the County consistent with
53 the General Plan and area master plans; and
- 54 (4) encourage the construction of moderately priced housing by allowing optional increases
55 in density including the MPDU density bonus to offset the cost of construction.

56 (b) In 2004, the County Council amended the MPDU program to:

- 57 (1) Reduce the loss of MPDUs by extending the control period for for-sale MPDUs from 10
- 58 years to 30 years and for rental MPDUs from 20 years to 99 years;
- 59 (2) Allow different income eligibility standards in recognition of the higher cost of
- 60 construction of certain types of housing;
- 61 (3) Increase the number of developments required to provide MPDUs by lowering the base
- 62 requirement from any development with 35 or more units to 20 or more units; and
- 63 (4) Place additional requirements and structure on the approval of an alternative payment
- 64 made to the Housing Initiative Fund in place of providing MPDUs.
- 65 (c) In ~~[[2017]]~~ 2018, the County Council finds that:
- 66 (1) The availability of affordable housing continues to be a problem for low and moderate-
- 67 income households.
- 68 (2) The 2015 report “The Greater Washington Region’s Housing Needs 2023” projects that
- 69 Montgomery County will need 14,960 new housing units for households earning less
- 70 than 80% of area median income.
- 71 (3) The 2017 Montgomery County Rental Housing Study reports that 68% of households
- 72 with incomes between 50% and 80% of area median income report paying more than
- 73 30% of income for rent and 15% report being extremely rent burdened, paying more than
- 74 50% of income for rent.
- 75 (4) The creation of income-restricted affordable housing through construction and
- 76 preservation is critical as market rents continue to increase. The American Community
- 77 Survey reports that there were 9,189 fewer rental units with rents between \$750 and
- 78 \$1,499 from 2010 to 2014.
- 79 (5) MPDUs are one important element for providing income-restricted affordable housing.
- 80 There were ~~[[681]]~~ 664 new MPDUs offered for sale or rent in 2015 and 2016. As of
- 81 2017 there are about 5,300 MPDUs county-wide.
- 82 (6) Additional density can offset the cost of constructing MPDUs. It is appropriate to
- 83 consider different base requirements for MPDUs in conjunction with the approval of
- 84 different densities and heights in master plans and sector plans.
- 85 (7) There is unmet demand for MPDUs with two, three, and four bedrooms. Providing
- 86 flexibility that allows MPDU agreements based on floor area or square footage, rather
- 87 than requirements based on the number of bedrooms in market rate units, can help to
- 88 address this need.
- 89 (8) Appropriate alternative payments to the Housing Initiative Fund can, in certain
- 90 circumstances, be used to create more MPDUs in the same ~~[[Policy]]~~ Planning Area than
- 91 providing the MPDUs on site.
- 92 (9) Montgomery County is committed to its policy of providing affordable housing in all
- 93 areas of the County to provide opportunity to households of all incomes in each ~~[[Policy]]~~
- 94 Planning Area.
- 95 (10) MPDUs can be used in partnership with other housing supports to provide affordable
- 96 housing to households with very low incomes such as those with incomes below 50% or
- 97 30% of area median income.

25A-2. Declaration of public policy.

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

- 100 [(1) Implement the Montgomery County housing policy and the general plan goal of providing for a
- 101 full range of housing choices, conveniently located in a suitable living environment, for all
- 102 incomes, ages and family sizes;
- 103 (2) Provide for low- and moderate-income housing to meet existing and anticipated future
- 104 employment needs in the County;
- 105 (3) Assure that moderately priced housing is dispersed within the County consistent with the general
- 106 plan and area master plans;
- 107 (4) Encourage the construction of moderately priced housing by allowing optional increases in density
- 108 in order to reduce land costs and the costs of optional features that may be built into such
- 109 moderately priced housing;
- 110 (5) Require that all subdivisions of 35 or more dwelling units include a minimum number of
- 111 moderately priced units of varying sizes with regard to family needs, and encourage subdivisions
- 112 with fewer than 35 units to do the same;

- 113 (6) Ensure that private developers constructing moderately priced dwelling units under this Chapter
- 114 incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on
- 115 such units by virtue of the MPDU density bonus or public benefit provisions of Chapter 59 and, in
- 116 certain zones, the optional development standards; and
- 117 (7) Allow developers of residential units in qualified projects more flexibility to meet the broad
- 118 objective of building housing that low- and moderate-income households can afford by letting a
- 119 developer, under specified circumstances, comply with this Chapter by contributing to a County
- 120 Housing Initiative Fund.]
- 121 (1) encourage and maintain a wide choice of housing types and neighborhoods for people of all
- 122 incomes, ages, lifestyles, and physical capabilities at appropriate locations and densities and to
- 123 implement policies to bridge housing affordability gaps;
- 124 (2) make housing that is affordable to low, moderate, and middle-income households a priority in all
- 125 parts of the County;
- 126 (3) ensure that all master plan and sector plan amendments address the need for housing for low,
- 127 moderate, and middle-income households and promote specific strategies to meet that need
- 128 including height and density incentives and flexibility;
- 129 (4) implement policies that increase the long-term supply of rental housing affordable to low and
- 130 moderate-income households, particularly in areas that are easily accessible to transit;
- 131 (5) require that all subdivisions of 20 or more dwelling units include a minimum number of
- 132 moderately priced dwelling units on-site, or under certain specified circumstances, provide
- 133 appropriate units off-site or make a payment to the Housing Initiative Fund; [[and]]
- 134 (6) allow the Department of Housing and Community Affairs and developers flexibility to enter into
- 135 affordable housing agreements that address the needs for housing units of different sizes and
- 136 bedroom counts to better meet the needs of low and moderate-income households; and
- 137 (7) allow developers of residential units more opportunity to comply with this Chapter and meet the
- 138 County’s objective of building housing affordable to low and moderate-income households by
- 139 contributing to the Housing Initiative Fund, alternative location agreements, and flexible
- 140 development standards that promote production and diversity of housing units.

25A-3. Definitions.

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

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

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

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

[(b)] At one location means all adjacent land of the applicant if:
(1) The property lines are contiguous or nearly contiguous at any point; or
(2) The property lines are separated only by a public or private street, road, highway or utility right-of-way, or other public or private right-of-way at any point; or
(3) The property lines are separated only by other land of the applicant which is not subject to this Chapter at the time of any permit, site plan, development or subdivision application by the applicant.

[(c)] Available for building development means all land:
(1) Owned by, or under contract to, the applicant;
(2) Zoned for any type of residential development to which an optional density bonus provision applies;
(3) Which will use public water and sewerage; and
(4) Which is already subdivided or is ready to be subdivided for construction or development.

[(d)] Closing costs means statutory charges for transferring title, fees for obtaining necessary financing, title examination fees, title insurance premiums, house location survey charges and fees for preparation of loan documents and deed of conveyance.

[(e)] Commission means the Housing Opportunities Commission of Montgomery County.

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- 169 [(f)] *Consumer Price Index* means the latest published version of the Consumer Price Index for All
 170 Urban Consumers (CPI-U) for the Washington-Arlington-Alexandria Core Based Statistical Area
 171 (CBSA), as published by the United States Department of Labor, Bureau of Labor Statistics, or
 172 any similar index selected by the County Executive.
- 173 [(g)] *Control period* means the time an MPDU is subject to either resale price controls and owner
 174 occupancy requirements or maximum rental limits, as provided in [[Section]] Sections 25A-8 and
 175 25A-9. The control period is 30 years for sale [[units]] MPDUs and 99 years for rental [[units]]
 176 MPDUs, and begins on the date of [[initial]] original sale or rental. If a sale MPDU is sold [[to an
 177 eligible]] [person] [[household]] within 30 years after its [[initial]] original sale, and if (in the case
 178 of a sale MPDU that is not bought and resold by a government agency) the [[unit]] MPDU was
 179 originally offered for sale after March 1, 2002, the [[unit]] MPDU must be treated as a new sale
 180 MPDU and a new control period must begin on the date of the sale.
- 181 [(h)] *Date of original sale* means the date of settlement for purchase of [[a moderately priced dwelling
 182 unit]] an MPDU.
- 183 [(i)] *Date of original rental* means the date [[the first lease agreement for a moderately priced dwelling
 184 unit takes effect]] that MPDU rental covenants are recorded on the property.
- 185 [(j)] *Department* means the Department of Housing and Community Affairs.
 186 *Designated agency* means a non-governmental housing development agency or nonprofit business
 187 entity designated by the County Executive as eligible to purchase or lease MPDUs under Section
 188 25A-8, following standards established in Executive regulation.
- 189 [(k)] *Director*, except as otherwise indicated, means the head of the Department of Housing and
 190 Community Affairs, or the Director's designee.
- 191 [(l)] *Dwelling unit* means a building or part of a building that provides complete living facilities for one
 192 [[family]] household, including at a minimum, facilities for cooking, sanitation and sleeping.
- 193 [(m)] *Eligible [person] household* means a [person or] household whose income qualifies the [person or]
 194 household to participate in the MPDU program, and who [holds a valid certificate of eligibility
 195 from the Department which entitles the person or household] is eligible to buy [or rent] or rent an
 196 MPDU during the priority marketing period.
- 197 [(n)] *Housing Initiative Fund* means a fund established by the County Executive to achieve the
 198 purposes of Section 25B-9.
- 199 [(o)] *Low income* means levels of income within the income range for “very-low income families”
 200 established from time to time by the U.S. Department of Housing and Urban Development for the
 201 Washington metropolitan area, under federal law, or as defined by executive regulations.
- 202 [(p)] *Moderate income* means those levels of income, established in executive regulations, which
 203 prohibit or severely limit the financial ability of [[persons]] households to buy or rent housing in
 204 Montgomery County. Moderate income levels must not exceed the “low income” limits set by the
 205 U.S. Department of Housing and Urban Development to determine eligibility for assisted housing
 206 programs.
- 207 [(q)] *Moderately priced dwelling unit or MPDU* means a dwelling unit which is:
 208 (1) offered for sale or rent to eligible [persons] households through the Department, and sold
 209 or rented under this Chapter; or
 210 (2) sold or rented under a government program designed to assist the construction or
 211 occupancy of housing for [[families]] households of low or moderate income, and
 212 designated by the Director as an MPDU. When such a dwelling unit is designated as an
 213 MPDU, the income limits and other requirements of that particular housing program must
 214 apply during the compliance period for that program rather than the requirements set
 215 forth herein. If the compliance period for that program is shorter than the MPDU control
 216 period, the MPDU requirements must apply for the balance of the MPDU control period,
 217 unless the Director determines that the affordability term of the other program is
 218 equivalent to the MPDU requirement.
 219 Multi-family dwelling unit means a dwelling unit in an apartment, condominium, or mixed-use
 220 building type.
- 221 [(r)] *Optional density bonus provision* means any increase in density under Chapter 59, in a zoning
 222 classification that allows residential development, above the amount permitted in the base or
 223 standard method of development, whether by exercise of the optional provisions of Chapter 59 or
 224 by any special exception or conditional use.

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

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

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

232 Single-family dwelling unit means a single-family detached dwelling unit or single-family attached
233 dwelling unit, such as a townhouse or duplex.

234 **25A-4. [Income] Household income and eligibility standards.**

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

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

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

244 (2) [the term and interest rate that applies to the financing of MPDUs,

245 (3) the estimated levels of income necessary to carry a mortgage on an MPDU, and

246 (4) [[family]] household size and number of dependents.

247 (c) A [[person who]] household that rents an MPDU and lawfully occupies it when the [[unit]] MPDU
248 is offered for sale may buy the [[unit]] MPDU, regardless of the [[person's]] household's income
249 at the time of sale, if the [[person]] household met all eligibility standards when the [[person]]
250 household first rented the [[unit]] MPDU.

251 (d) A [[person who]] household that rents an MPDU after meeting all eligibility standards may
252 continue to occupy the [[unit]] MPDU for the term of the lease even if the [[person]] household
253 ceases to meet the income eligibility standards.

254 (e) A [[person who]] household that buys an MPDU after meeting all eligibility standards may retain
255 ownership of the MPDU even if the [[person]] household ceases to meet income eligibility
256 standards during the [[term]] time that the household owns the MPDU.

257 (f) To be eligible to buy or rent an MPDU other than an age-restricted unit, [[a person and]] members
258 of [[that person's]] a household must not have owned any residential property during the previous
259 [5] five years. The Director may waive this restriction for good cause.

260 **25A-5. Requirement to build MPDUs; payment to Housing Initiative Fund; agreements.**

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

262 (1) submits for approval or extension of approval a preliminary plan of subdivision under
263 Chapter 50 which proposes the development of a total of 20 or more dwelling units at one
264 location in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of
265 development, regardless of whether any part of the land has been transferred to another
266 party;

267 (2) submits to the Planning Board or to the Director of Permitting Services a plan of housing
268 development for any type of site review or development approval required by law, which
269 proposes construction or development of 20 or more dwelling units at one location; [[or]]

270 (3) submits to the Planning Board or to the Director of Permitting Services a plan to convert
271 an existing property from non-residential use to residential use for any type of site review
272 or development approval required by law, which results in the development of 20 or more
273 dwelling units at one location; or

274 (4) with respect to land in a zone not subject to subdivision approval or site plan review,
275 applies for a building permit to construct a total of 20 or more dwelling units at one
276 location, including a conversion from non-residential to residential use.

277 (b) An applicant for an approval or permit identified in subsection (a) who proposes development of
278 [[fewer than 20]] between 11 and 19 dwelling units is not required to provide MPDUs, but must
279 make a payment to the Housing Initiative Fund, as provided by regulation.

280 (c) In calculating whether a development contains a total of 20 or more dwelling units for the
 281 purposes of this Chapter, the development includes all land at one location in the County available
 282 for building development under common ownership or control by an applicant, including land
 283 owned or controlled by separate [[corporations]] business entities in which any stockholder or
 284 family of the stockholder owns 10 percent or more of the stock. An applicant must not avoid this
 285 Chapter by submitting piecemeal applications or approval requests for subdivision plats, site or
 286 development plans, floating zone plans, or building permits. Any applicant may apply for a
 287 preliminary plan of subdivision, site or development plan, floating zone plan, record plat, or
 288 building permit for fewer than 20 dwelling units at any time; but the applicant must agree in
 289 writing that the applicant will comply with this Chapter when the total number of dwelling units at
 290 one location reaches 20 or more.

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

294 (1) a specific number of MPDUs must be constructed on an approved time schedule;
 295 (2) in subdivisions with single-family dwelling [unit subdivisions] units, [[including
 296 townhouses,]] each MPDU must have [[3]] three or more bedrooms, unless this
 297 requirement is waived by the Director in a subdivision with only two-bedroom market
 298 rate units; [[and]]

299 (3) in subdivisions with multi-family dwelling [unit subdivisions] units, the [number] [[ratio
 300 of efficiency]] [and one- bedroom] bedroom mix of the MPDUs [[to total MPDUs]]
 301 [each] must [[not exceed the ratio]] [that] match the bedroom mix of [[market-rate
 302 efficiency]] [and one-bedroom] [[units]] [respectively] [bear] [[to]] [the] [[total]]
 303 [number of] the market-rate units in the subdivision unless the Director approves an
 304 MPDU agreement that does not increase the number of MPDUs required, but
 305 approximates the total floor area for the MPDUs required, and alters the bedroom mix of
 306 the MPDUs or the number of MPDUs; and

307 (4) in subdivisions with both single-family and multi-family dwelling units, the ratio of
 308 single-family MPDUs to total MPDUs must not be less than the ratio of market-rate
 309 single-family units to total market-rate units in the subdivision, unless the Director finds
 310 that:

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

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

318 [[The Director]] [must not] [[may approve an MPDU agreement that]] [reduces the number of
 319 bedrooms required by this subsection in any MPDU] [[does not increase the number of MPDUs
 320 required, but approximates the total floor area for the]] [[units]] [[MPDUs required,]] [[but]] [[and
 321 alters the bedroom mix of the]] [[units]] [[MPDUs or the number of]] [[units]] [[MPDUs,]]

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

324 (1) is covered by a plan of subdivision;
 325 (2) is covered by a plan of development, site plan, or floating zone plan; or
 326 (3) requires a building permit to be issued for construction,

327 the required number or residential floor area of [moderately priced dwelling units] MPDUs is a
 328 variable percentage that is not less than a base requirement of 12.5% of the total number of
 329 dwelling units or [[equivalent]] residential floor area at that location, not counting any workforce
 330 housing units built under Chapter 25B. The Council may establish a higher base requirement, up
 331 to 15% of the total number of dwelling units or [[equivalent]] residential floor area at a location, as
 332 part of a master plan approval. The required number or residential floor area of MPDUs must vary
 333 according to the amount by which the approved development exceeds the normal or standard
 334 density for the zone in which it is located. Chapter 59 may permit bonus densities over the
 335 presumed base density where MPDUs are provided. [[If the use of the optional MPDU

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development standards does not result in an increase over the base density, the Director must conclude that the base density could not be achieved under conventional development standards, in which case the required number or residential floor area of MPDUs must not be less than the 12.5% or higher base requirement established by the Council, of the total number of units in the subdivision. To obtain a density bonus, an applicant must provide at least one more MPDU than would have been required if there was no density bonus.]] [[The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:]]

[[

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

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

- 366 (1) allows an applicant to reduce the number of MPDUs in a subdivision only if the
367 agreement meets all requirements of Section 25A-5A for an alternative payment
368 agreement; or
369 (2) allows an applicant to build the MPDUs at another location only if the agreement meets
370 all requirements of Section 25A-5B for an alternative location agreement.
- 371 [(f)][(h)][(g)](1) An applicant may satisfy this Section by obtaining approval from the Director to transfer
372 land to the County before applying for a building permit. [The applicant must sign a
373 written land transfer agreement approved by the Director and by the County Attorney.
374 For the Director to consider the request and take timely action, a written notice of the
375 applicant's intent to submit an agreement should be served upon the Director at least 90
376 days before the application for a building permit is filed. The land transfer agreement
377 must covenant that so much of the land, designated in the approved preliminary plan or
378 site plan as land to which the optional zoning provisions for MPDUs apply, as is
379 necessary in order to construct the number of MPDUs required by subsection (a) will be
380 transferred, as finished lots, to Montgomery County or to the County's designee before
381 the building permit is issued, so that the County might cause MPDUs to be constructed
382 on the transferred land. After the submission of supporting documentation and review
383 and approval by the County for the transfer of finished lots, the County must reimburse
384 the applicant for the costs the applicant actually incurred, which are directly attributable
385 to the finishing of the MPDU lots so transferred. Reimbursable costs include but are not
386 limited to engineering costs; clearing, grading, and paving streets, including any required
387 bonds and permits; installation of curbs, gutters and sidewalks; sodding of public right-
388 of-way; erection of barricades and signs; installation of storm sewers and street lighting;
389 and park and other open space and recreational development directly benefiting the
390 MPDU lots transferred. The County must not reimburse an applicant for the cost or value
391 of the transferred lots.]
- 392 (2) [If an applicant transfers land to the County under this subsection and no funds have been
393 appropriated to reimburse the applicant for his finishing costs, the County may accept
394 from the applicant undeveloped land rather than finished lots, or the applicant may
395 transfer the finished lots to the County without requiring payment for finishing the lots.]
396 The Director may only approve a transfer of land under this subsection after making a
397 written determination that the value of the land transferred is at least equal to the value of
398 the MPDUs not constructed by the applicant.
- 399 (3) [Notwithstanding any other provisions of the subsection, the County may reject an
400 election by an applicant to transfer land to the County in whole or in part whenever the
401 public interest would best be served thereby. Any rejection and the reasons for the
402 rejection may be considered by the Planning Board or the Director of Permitting Services
403 in deciding whether to grant the applicant a waiver of this Chapter under Section 25A-
404 7(b).] The Executive must establish procedures for transferring land under this subsection
405 by method (1) regulation.
- 406 [(4) Any transfer of land to the County hereunder is not subject to Section 11B-33, and any
407 land so transferred is not property subject to Section 11B-31A regulating the disposal of
408 surplus land. The Director may dispose of the lots in a manner that furthers the objectives
409 of this Chapter.]
- 410 (4) When land is transferred to the County under this Section:
411 (A) the land must be used to produce or preserve MPDUs; or
412 (B) if sold, proceeds from the sale must be allocated to the Affordable Housing
413 Acquisition and Preservation CIP portion of the Housing Initiative Fund; and
414 (C) the Director must notify the Council within 30 days of approving a land transfer
415 under this subsection.
- 416 [(g)][(i)][(h)] The MPDU agreements must be signed by the applicant and all other parties whose
417 signatures are required by law for the effective and binding execution of contracts conveying real
418 property. [[The agreements must be executed in a manner that will enable them to be recorded in
419 the land records of the County.]] If the applicant is a [[corporation]] business entity, the
420 agreements must be signed by the [[principal officers]] authorized signatories of the
421 [[corporation]] business entity individually and on behalf of the [[corporation]] business entity.

422 Partnerships, associations or ~~[[corporations]]~~ business entities must not evade this Chapter through
423 voluntary dissolution. The agreements may be assigned if the County approves, and if the
424 assignees agree to fulfill the requirements of this Chapter.

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

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

- 439 (1) MPDUs are built along with or before other dwelling units;
- 440 (2) no or few market rate dwelling units are built before any MPDUs are built;
- 441 (3) the pace of MPDU production must reasonably coincide with the construction of market
442 rate units; and
- 443 (4) the last building built must not contain only MPDUs.

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

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

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

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

- 454 (1) The restrictions of this Chapter run with the land for the entire period of control;
- 455 (2) The County may create a lien to collect:
 - 456 (A) that portion of the sale price of an MPDU which exceeds the approved resale
457 price; and
 - 458 (B) that portion of the foreclosure sale price of an MPDU which exceeds the
459 approved resale price; and
- 460 (3) The covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other
461 parties that receive title to the property. These covenants must be senior to all
462 instruments securing permanent financing.

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

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

- 468 (A) the conveyed property is ~~[[a]]~~ an MPDU and is subject to the restrictions
469 contained in the covenants required under this Chapter during the control period
470 until the restrictions are released; and
- 471 (B) any MPDU owner, other than an applicant, must not sell the MPDU until:
 - 472 (i) the owner has notified the Department under Section 25A-8 or 25A-9,
473 as applicable, that the ~~[[unit]]~~ MPDU is for sale;
 - 474 (ii) the Department and, where applicable, the Commission, have notified
475 the owner that they do not intend to buy the ~~[[unit]]~~ MPDU; and
 - 476 (iii) The Department has notified the owner of the ~~[[unit's]]~~ MPDU's
477 maximum resale price.

- 478 (2) Any deed or other instrument conveying title to an MPDU during the control period must
- 479 be signed by both the grantor and grantee.
- 480 (3) When a deed or other instrument conveying title to an MPDU is recorded in the land
- 481 records, the grantor must cause to be filed in the land records a notice of sale for the
- 482 benefit of the County in the form provided by state law.

483 [(m)][(q)](p) Nothing in this Chapter prohibits an applicant from voluntarily building MPDUs, as

484 calculated under subsection [(c)](e), in a development with fewer than 20 dwelling units at one

485 location, and in so doing from qualifying for an optional method of development under Chapter

486 59. A development with fewer than 20 dwelling units where an applicant voluntarily builds

487 MPDUs must comply with any procedures and development standards that apply to a larger

488 development under this Chapter and Chapter 59. Sections 25A-5A~~[[,]]~~ and 25A-5B~~[[, and 25A-~~

489 6(b)] do not apply to an applicant who voluntarily builds ~~[MPDU's]~~ MPDUs under this

490 subsection and in so doing qualifies for an optional method of development.

491 [(r)](q) Upon request by the applicant, the Director may provide an applicant and the Planning Board with

492 a letter indicating the Director's preliminary agreement on how the applicant will meet its MPDU

493 requirements, including:

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

496 **25A-5A. Alternative payment agreement.**

497 (a) The Director may approve an MPDU agreement that allows an applicant, instead of building some

498 or all of the required ~~[[number of]]~~ for-sale MPDUs in ~~[[the]]~~ a proposed subdivision or

499 conversion of existing property from non-residential use to residential use, to pay to the Housing

500 Initiative Fund an amount computed under subsection (b)~~[[, only if an Alternative Review~~

501 Committee composed of the Director, the Commission's Executive Director, and the Director of

502 Park and Planning, or their respective designees, by majority vote finds] upon a finding that:

- 503 (1) either:
- 504 (A) an indivisible package of services and facilities available to all residents of the
- 505 proposed subdivision would cost MPDU buyers so much that it is likely to make
- 506 the MPDUs effectively unaffordable by eligible buyers; ~~[[or]]~~
- 507 (B) ~~[[environmental constraints at a particular site would render the building of all~~
- 508 ~~required MPDUs at that site economically infeasible]]~~ regulatory development
- 509 constraints at a particular site would render the building of approved density and
- 510 all required MPDUs at that site infeasible; or
- 511 (C) the public benefit of providing affordable housing throughout the County
- 512 outweighs the value of locating MPDUs in each subdivision throughout the
- 513 County; and
- 514 (2) ~~[[the public benefit of additional affordable housing outweighs the value of locating~~
- 515 ~~MPDUs in each subdivision throughout the County, and]]~~ accepting the payment will
- 516 further the objective of providing a broad range of housing opportunities throughout the
- 517 County.

518 (b) ~~[[Any payment to the Housing Initiative Fund under this Section must equal or exceed 125% of the~~

519 ~~imputed cost of land for each unbuilt MPDU. Except as further defined by Executive regulation,~~

520 ~~the imputed land cost must be calculated as 10% (for high-rise units) or up to 30% (for all other~~

521 ~~housing units) of the actual sale price charged for each substituted unit. If the substituted unit will~~

522 ~~be a rental unit, the Director must calculate an imputed sale price under applicable regulations,~~

523 ~~based on the rent actually charged.]~~ A payment under this section in full satisfaction of MPDU

524 requirements must be ~~[[calculated as provided in method (1) regulation]]~~ three percent of the sale

525 price of each market rate unit in the development. A payment made in partial satisfaction of

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

527 (c) ~~[[Any]]~~ A payment to the Housing Initiative Fund under this Section:

- 528 (1) must not be used to reduce the annual County payment to the Fund; ~~[[and]]~~
- 529 (2) must be deposited into the Affordable Housing Acquisition and Preservation CIP project;
- 530 and
- 531 (3) ~~[[may]]~~ must be used ~~[[only]]~~ only to buy, ~~[[or]]~~ build, or preserve more MPDUs, or more
- 532 bedrooms in the same number or fewer MPDUs, in ~~[[the same planning policy area]]~~ [[a
- 533 Policy Area]] the same Planning Area ~~[[as defined in the County]]~~ [[Growth

534 [[Subdivision Staging Policy]] [as] [[other than that of]] as the development for which

535 the payment was made [[only after]] unless:

536 (A) the payment is used in a Planning Area designated by the Planning Board in

537 which at least 45% of the United States Census Tracts have a median household

538 income of at least 150% of the County-wide median household income; or

539 (B) the Director first provides the Council [[is first provided]] with:

540 (i) notice of the intent to use the payment in a different Planning Area [[is

541 provided to the Council]] that does not meet the requirement in

542 subparagraph (A); [[and]]

543 (ii) [[a compelling reason]] good cause for the use of the payment in [[a]]

544 the different Planning Area; and

545 [[B]] (iii) [[the Council is given]] at least 30 days to comment.

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

547 (d) Any subdivision for which a payment is made under this Section is not eligible for any density

548 bonus for which it would otherwise be eligible under Chapter 59.]

549 (d) The Director must notify the Council in writing within ten days of approving an alternative

550 payment agreement under this Section.

551 **25A-5B. Alternative location agreement.**

552 (a) The Director may approve an MPDU agreement that allows an applicant for development of a

553 high-rise residential building, instead of building some or all of the required number of MPDUs

554 on-site, to provide [at least the same number of] MPDUs at another location [[in the same]]

555 [planning policy area] [[Policy Area]], only if the Director finds that:

- 556 (1) the public benefit of locating MPDUs at the proposed alternative location outweighs the
- 557 value of locating MPDUs in each subdivision throughout the County; [and]
- 558 (2) building the MPDUs at the proposed alternative location will further the objective of
- 559 providing a broad range of housing opportunities throughout the County; and
- 560 (3) the alternative location agreement will increase:

 - 561 (A) the number of MPDUs; or
 - 562 (B) the number of bedrooms in the same number or fewer MPDUs, provided as a
 - 563 result of the development.

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

- 565 (1) the alternative location is in a Planning Area designated by the Planning Board in which
- 566 at least 45% of the United States Census Tracts have a median household income of at
- 567 least 150% of the County-wide median household income; or
- 568 (2) the Director first provides the Council [[is first provided]] with:

 - 569 (A) notice of the intended alternative location in a different Planning Area that does
 - 570 not meet the requirement in paragraph (b); [[and]]
 - 571 (B) [[a compelling reason]] good cause for the alternative location in [[a]] the
 - 572 different Planning Area; and
 - 573 [[2]] (C) [[the Council is given]] at least 30 days to comment.

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

- 575 (1) build, or convert from non-residential use, the required number or percentage of
- 576 residential floor area of new MPDUs at a site approved by the Director;
- 577 (2) buy, encumber, or transfer, and rehabilitate as necessary, existing market rate housing
- 578 units that meet all standards for use as MPDUs; or
- 579 (3) return to MPDU use, and rehabilitate as necessary, existing MPDUs for which price or
- 580 rent controls have expired.

581 [[c]](d) Each agreement under this Section must include a schedule, binding on the applicant, for

582 timely completion or acquisition of the required number of MPDUs.

583 (e) The Director must notify the Council in writing within ten days of approving an alternative

584 location agreement under this Section.

585 **25A-6. Optional zoning provisions[; waiver of requirements].**

586 (a) *Optional zoning provisions.*] The County Council, sitting as a District Council for the Maryland-

587 Washington Regional District within the County, to assist in providing moderately priced housing

588 has enacted zoning standards in Chapter 59, establishing in certain zones optional density bonus

589 provisions which increase the allowable residential density above the maximum base density of

590 the zoning classification and permit alternative dwelling unit types other than those allowed under
 591 the standard method of development. Land upon which the applicant must build MPDUs may, at
 592 the applicant's election, be subject to optional zoning provisions. If the applicant elects the
 593 optional density provisions, permitting the construction of an increased number of dwelling units
 594 or increased percentage of residential floor area, the [[requisite percentage and number of
 595 MPDUs]] MPDU requirement must apply to the total number of dwelling units or percentage of
 596 residential floor area as increased by application of the optional density provisions or by the
 597 approval of a special exception that increases the density above the otherwise permitted density of
 598 the zoning classification in which the property is situated.

599 [(b) *Waiver of requirements.* Any applicant who presents sufficient evidence to the Director of
 600 Permitting Services in applying for a building permit, or to the Planning Board in submitting a
 601 preliminary plan of subdivision for approval or requesting approval of a site or other development
 602 plan, may be granted a waiver from part or all of Section 25A-5. The waiver must relate only to
 603 the number of MPDUs to be built, and may be granted only if the Director of Permitting Services
 604 or the Board, after consulting with the Department of Housing and Community Development
 605 Affairs, finds that the applicant cannot attain the full density of the zone because of any
 606 requirements of the zoning ordinance or the administration of other laws or regulations. When any
 607 part of the land that dwelling units cannot be built on for physical reasons is used to compute
 608 permitted density, the applicant's inability to use the optional density bonus provisions is not in
 609 itself grounds for waiving the MPDU requirements. Any waiver must be strictly construed and
 610 limited.]

611 **25A-7. Maximum prices and rents.**

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

614 (a) *Sales.*

615 (1) The sale price of any MPDU, including closing costs and brokerage fees, must not exceed
 616 an applicable maximum sale price established from time to time by the County Executive
 617 in regulations adopted under method (1).

618 (2) [The County Executive in issuing MPDU sale price regulations must seek appropriate
 619 information, such as current general market and economic conditions and the current
 620 minimum sale prices of private market housing in the County, and must consult with the
 621 building industry, employers, and professional and citizen groups to obtain statistical
 622 information which may assist in setting a current maximum sale price. The County
 623 Executive must, from time to time, consider changes in the income levels of persons of
 624 low and moderate income and their ability to buy housing. The County Executive must
 625 also consider the extent to which, consistent with code requirements, the cost of housing
 626 can be reduced by the elimination of amenities, the use of cost-reducing building
 627 techniques and materials, and the partial finishing of certain parts of the units.] The
 628 regulations adopted to implement this Section must allow the Director to:

629 (A) restrict those conditions of the design, construction, pricing, or amenity package
 630 of an MPDU project that will impose excessive mandatory homeowner or
 631 condominium fees or other costs that reduce the affordability of the MPDUs;
 632 and

633 (B) approve an increase of up to 10[[%]] percent over the base sale price of an
 634 MPDU upon a finding that the increase is justified to cover the cost of a
 635 modification of the external design of the MPDU necessary to reduce excessive
 636 marketing impact of the MPDU on the market rate units in the subdivision.

637 [(3) The County Executive must issue maximum sale prices for MPDUs which continue in
 638 effect until changed by later regulation. The maximum sale prices must be based on the
 639 necessary and reasonable costs required to build and market the various kinds of MPDUs
 640 by private industry. The sale prices for any succeeding year must be based on a new
 641 finding of cost by the County Executive, or on the prior year's maximum MPDU price
 642 adjusted by the percentage change in the relevant cost elements indicated in the
 643 Consumer Price Index.

644 (4) The County Executive may make interim adjustments in maximum MPDU sale prices
 645 when sufficient changes in costs justify an adjustment. Any interim adjustment must be

646 based on the maximum MPDU sale prices previously established, adjusted by the
 647 percentage change in the relevant cost elements indicated in the Consumer Price Index.
 648 (5) If the Director finds that other conditions of the design, construction, pricing, or amenity
 649 package of an MPDU project will lessen the ability of eligible persons to afford the
 650 MPDUs, the Director, under executive regulations, may restrict those conditions that will
 651 impose excessive mandatory homeowner or condominium fees or other costs that reduce
 652 the affordability of the MPDUs.
 653 (6) The Director may let an applicant increase the sale price of a MPDU when the Director,
 654 under executive regulations, finds in exceptional cases that a price increase is justified to
 655 cover the cost of modifying the external design of the MPDUs when a modification is
 656 necessary to reduce excessive marketing impact of the MPDUs on the market rate units in
 657 the subdivision. The Director must approve the amount of any increase for this purpose,
 658 which must not exceed 10 percent of the allowable base price of the unit.]

(b) *Rents.*

- 660 [(1)] The rent, including surface parking but excluding utilities when they are paid by the
 661 tenant, for any MPDU must not exceed a maximum rent for the [[dwelling unit]] MPDU
 662 set by Executive regulations. Different rents must be set for [[units]] MPDUs when utility
 663 costs are paid by the owner and included in the rent. Different rents may be set for age-
 664 restricted [[units]] MPDUs. Different rents also may be set for high-rise rental [[units]]
 665 MPDUs [, but those rents must not apply unless the Director finds that no other
 666 reasonable means is available to finance the building of all required MPDUs at a specific
 667 development].
- 668 [(2)] The County Executive, in setting the maximum rent, must consider the current cost of
 669 building MPDUs, available interest rates and debt service for permanent financing,
 670 current market rates of return or investments in residential rental properties, operating
 671 costs, vacancy rates of comparable properties, the value of the MPDU at the end of the
 672 control period, and any other relevant information. The County Executive must consult
 673 with the rental industry, employers and professional and citizen groups to obtain
 674 statistical information and current general market and economic conditions which may
 675 assist in setting a current maximum rent. The County Executive must consider the extent
 676 to which, consistent with County codes and housing standards, the cost of rental housing
 677 can be reduced by the elimination of amenities. The County Executive must also consider
 678 from time to time changes in the income levels of persons of low and moderate income
 679 and their ability to rent housing.]

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

- 681 (a) Sale or rental to government agencies or [[nonprofit corporations]] designated agencies.
- 682 (1) The Department, the Commission, or any other [[housing development]] government
 683 agency or [[nonprofit corporation designated by the County Executive]] designated
 684 agency may buy or lease, for its own programs or programs administered by it, up to 40
 685 percent of all MPDUs which are not sold or rented under any other federal, state, or local
 686 program.
- 687 (2) The Department or Commission may buy or lease up to 33.3 percent of the MPDUs not
 688 sold or rented under any other federal, state, or local program.
- 689 (3) Any other government agency or designated agency [[or corporation]] may buy or lease:
 690 (A) any MPDU in the first 33.3 percent that the Department or Commission has not
 691 bought or leased; and
 692 (B) the remainder of the 40 percent specified in subsection (a)(1).
 693 This option may be assigned to [[persons who]] households that are clients of the
 694 Department of Health and Human Services or to [[persons of]] low or moderate-income
 695 households who are eligible for assistance under any federal, state, or local program
 696 identified in Executive regulation.
- 697 (4) The Executive must, by regulation, adopt standards and priorities [[for designating
 698 nonprofit corporations]] to approve designated agencies under this subsection. These
 699 standards must require the [[corporation]] agency to demonstrate its ability to operate and
 700 maintain MPDUs satisfactorily on a long-term basis.

- 701 (5) The Department must notify the Commission, other government agency, or [[other]]
702 designated agency [[or corporation]] promptly after receiving notice from the applicant
703 under subsection (b) of the availability of MPDUs. If the Department, the Commission,
704 or any other designated agency [[or corporation]] exercises its option, it must submit to
705 the applicant, within 21 calendar days after the Department notifies the Commission
706 under this subsection, a notice of intent to exercise its option for specific MPDUs covered
707 by this option. Any MPDUs not bought or leased under this subsection must be sold or
708 rented only to eligible households under subsection (b) during the priority marketing
709 period for eligible households to buy or lease.
- 710 (6) In exercising this option, the Department, the Commission, and any government agency
711 or designated agency [[or corporation]] must [[designate]] reserve the [[units]] MPDU by
712 reference to number, type, size and amenities of the units selected if the designation does
713 not result in any type of unit exceeding by more than 40 percent the total units of that
714 type which are sold or rented under this Section, unless the Department and the applicant
715 [[agrees otherwise]] agree to a different selection. The notice required under subsection
716 (a)(5) must state which MPDUs are to be offered for sale and which are to be offered for
717 rent, and the Department, the Commission, and any government agency or designated
718 agency [[or corporation]] may buy only units which are offered for sale and may lease
719 only units which are offered for rent. The Department, the Commission, and any
720 government agency or designated agency [[or corporation]] must decide whether it will
721 exercise its option within 45 days [[after it receives the original notice]] of the date of the
722 notice provided under subsection (a)(5).
- 723 (7) If more than one government agency or [[nonprofit corporation]] designated agency files
724 a notice of intent under subsection (a)(5) with respect to a particular MPDU:
725 (A) the Department prevails over any other buyer or renter;
726 (B) The Commission prevails over any buyer or renter other than the Department;
727 (C) any other government agency prevails over any [[nonprofit corporation]]
728 designated agency;
729 (D) the first government agency to file a notice prevails over any later agency; and
730 (E) the first [[nonprofit corporation]] designated agency to file a notice prevails over
731 any later [[corporation]] designated agency.
- 732 (8) Any [[unit]] MPDU purchased by the Commission, a government agency, or a designated
733 agency under this subsection that is offered for [[sale]] resale within five years after
734 [[initial]] original purchase must first be offered for sale to the Department at the
735 [[initial]] purchase price paid by the Commission, government agency, or designated
736 agency [[to the Department]] in accordance with Executive regulation. The Department
737 may assign its right to purchase the MPDU to an eligible household or to a designated
738 agency.
- 739 (b) Sale or rental to [[general public]] eligible households.
- 740 (1) Every [[moderately priced dwelling]] MPDU unit required under this Chapter must be
741 offered to [[the general public]] eligible households for sale or rental to a good-faith
742 purchaser or renter to be used for his or her own residence, except [[units]] MPDUs sold
743 or rented under subsection (a) or offered for sale or rent with the assistance of, and
744 subject to the conditions of, a subsidy under a federal, state or local government program,
745 identified in [[regulations adopted]] [by the County Executive] [[under method (1)]]
746 Executive regulation, whose purpose is to provide housing for [[persons of]] low or
747 moderate income households.
- 748 (2) Before offering any [[moderately priced dwelling units]] MPDUs for sale or rent, the
749 applicant must [[notify]] submit and receive approval of an agreement notifying the
750 Department of the proposed offering and the date on which the applicant will be ready to
751 begin the marketing to eligible [persons] households. The [[notice]] agreement must set
752 forth the number of [[units]] MPDUs offered, the bedroom mix, the floor area for each
753 [[unit]] MPDU type, a description of the amenities offered in each [[unit]] MPDU and a
754 statement of the availability of each [[unit]] MPDU for sale or rent, including information
755 regarding any mortgage financing available to buyers of the designated [[unit]] MPDU.
756 The applicant must also give the Department a vicinity map of the offering, a copy of the

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approved development, subdivision or site plan, as appropriate, and such other information or documents as the Director finds necessary. The Department must maintain a list of eligible households [persons of moderate income and] for sale MPDUs and, in accordance with procedures established by the County Executive, must notify eligible [persons] households of [[the offering]] sale or rental offerings.

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

(4) The Executive may by regulation establish a buyer and renter selection system which considers household size, County residency, employment in the County, and length of time since the [[person]] household was certified for the MPDU program. [[Each eligible]] [person] [[household must]] Eligible households will be notified [[of the availability of any MPDU which would meet that]] [[person's]] [[household's housing needs,]] when MPDUs are available for sale or rent and will be given an opportunity to buy or rent an MPDU during the priority marketing period in the order of [[that person's]] their selection priority ranking.

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

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

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

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

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

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

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

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

- 812 (7) Every buyer or renter of an MPDU must occupy the [[unit]] MPDU as his or her primary
- 813 residence during the control period. Each buyer and renter must certify before taking
- 814 occupancy that he or she will occupy the [[unit]] MPDU as his or her primary residence
- 815 during the control period. The Director may require an owner who does not occupy the
- 816 [[unit]] MPDU as his or her primary residence to offer the [[unit]] MPDU for resale to an
- 817 eligible [person] household under the resale provisions of Section 25A-9.
- 818 (8) An owner of an MPDU, except the Commission or a [[housing agency or nonprofit
- 819 corporation designated by the Director]] government agency or designated agency, must
- 820 not rent the [[unit]] MPDU to another party unless the Director finds sufficient cause to
- 821 allow temporary rental of the [[unit]] MPDU under applicable regulations, which may
- 822 include maximum rental levels. [Any MPDU owner who is allowed to rent a unit
- 823 temporarily must agree to amend the applicable MPDU covenants to extend the control
- 824 period for a time equal to the temporary rental period.]
- 825 (9) Any rent obtained for an MPDU that is rented without the Director's authorization must
- 826 be paid into the Housing Initiative Fund by the owner within 90 days after the Director
- 827 notifies the owner of the rental violation. Any amount unpaid after 90 days is grounds
- 828 for a lien against the [[unit]] MPDU[,], [and the] The Director may obtain a judgment and
- 829 record the lien or may reduce the resale price of the MPDU by the amount owed to the
- 830 Housing Initiative Fund, or pursue other remedies provided by law.
- 831 (10) An applicant must not sell or lease any [unit] MPDU without first [obtaining a certificate
- 832 of] obtaining a certificate of eligibility from the prospective buyer or verifying the
- 833 eligibility [from] of the prospective [[buyer or]] lessee. [[A]] For sale MPDUs, a copy of
- 834 each certificate must be furnished to the Department and maintained on file by the
- 835 Department. Before the sale by an applicant or by the Commission, [[or]] a government
- 836 agency, or a designated [[housing]] agency [[or nonprofit corporation]] to any buyer of
- 837 any MPDU who does not possess a certificate of eligibility, the applicant, the
- 838 Commission, or the agency, [[or corporation]] must [[ask the Department]] determine
- 839 whether [[the certificates on file show that]] the proposed buyer had previously
- 840 [[bought]] owned another MPDU. [[A person]] The proposed buyer must not [[buy a
- 841 second MPDU unless]] participate in the MPDU program a second time unless the
- 842 proposed buyer meets the household income criteria and no longer owns an MPDU, and
- 843 there is no first-time buyer [[is]] qualified to buy that [[unit]] MPDU. The Director may
- 844 waive this restriction for good cause.
- 845 (11) If an MPDU owner dies, at least one heir, legatee, or other person taking title by will or
- 846 by operation of law must occupy the MPDU during the control period under this Section,
- 847 or the owner of record must sell the MPDU as provided in Section 25A-9.
- 848 [(b) *Sale or rental to government agencies or nonprofit corporations.*
- 849 (1) In view of the critical, long-term public need for housing for families of low and
- 850 moderate income, the Department, the Commission, or any other housing development
- 851 agency or nonprofit corporation designated by the County Executive may buy or lease,
- 852 for its own programs or programs administered by it, up to 40 percent of all MPDUs
- 853 which are not sold or rented under any other federal, state, or local program. The
- 854 Department or Commission may buy or lease up to 33 percent of the MPDUs not sold or
- 855 rented under any other federal, state, or local program. Any other designated agency or
- 856 corporation may buy or lease (A) any MPDU in the first 33 percent that HOC has not
- 857 bought or leased, and (B) the remainder of the 40 percent. This option may be assigned to
- 858 persons of low or moderate income who are eligible for assistance under any federal,
- 859 state, or local program identified in regulations adopted by the Executive. The Executive
- 860 must, by regulation, adopt standards and priorities for designating nonprofit corporations
- 861 under this subsection. These standards must require the corporation to demonstrate its
- 862 ability to operate and maintain MPDUs satisfactorily on a long-term basis.
- 863 (2) The Department must notify the Commission or other designated agency or corporation
- 864 promptly after receiving notice from the applicant under subsection (a) of the availability
- 865 of MPDUs. If the Department, the Commission, or any other designated agency or
- 866 corporation exercises its option, it must submit to the applicant, within 21 calendar days
- 867 after the Department notifies the Commission under subsection (b), a notice of intent to

- 868 exercise its option for specific MPDUs covered by this option. Any MPDUs not bought
- 869 or leased under this subsection must be sold or rented only to eligible persons under
- 870 subsection (b) during the priority marketing period for eligible persons to buy or lease.
- 871 (3) In exercising this option, the Department, the Commission, and any designated agency or
- 872 corporation must designate the units by reference to number, type, size and amenities of
- 873 the units selected if the designation does not result in any type of unit exceeding by more
- 874 than 40 percent the total units of that type which are sold or rented under this Section,
- 875 unless the applicant agrees otherwise. The notice required under subsection (b)(2) must
- 876 state which MPDUs are to be offered for sale and which are to be offered for rent, and the
- 877 Department, the Commission, and any designated agency or corporation may buy only
- 878 units which are offered for sale and may lease only units which are offered for rent. The
- 879 Department, the Commission, and any designated agency or corporation must decide
- 880 whether it will exercise its option within 45 days after it receives the original notice.
- 881 (4) If more than one government agency or nonprofit corporation files a notice of intent
- 882 under subsection (b)(2) with respect to a particular MPDU:
- 883 (A) the Department prevails over any other buyer or renter;
- 884 (B) The Commission prevails over any buyer or renter other than the Department;
- 885 (C) any other government agency prevails over any nonprofit corporation;
- 886 (D) the first government agency to file a notice prevails over any later agency; and
- 887 (E) the first nonprofit corporation to file a notice prevails over any later
- 888 corporation.]

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

- 890 (a) *Resale price and terms.* Except for foreclosure proceedings, any MPDU constructed or offered for
- 891 sale or rent under this Chapter must not be resold or refinanced during the control period for a
- 892 price greater than the original selling price plus:
- 893 (1) [A] a percentage of the [[unit's]] MPDU's original selling price equal to the increase in
- 894 the cost of living since the [[unit]] MPDU was first sold, as determined by the Consumer
- 895 Price Index or other index as identified in Executive regulation;
- 896 (2) [The fair market value of] an allowance for capital improvements made to the [[unit]]
- 897 MPDU between the date of original sale and the date of resale;
- 898 (3) [An] if approved by the Director, an allowance for closing costs which were not paid by
- 899 the [[initial]] original seller, but which will be paid by the [[initial]] original buyer for the
- 900 benefit of the later buyer; and
- 901 (4) [A] a reasonable sales commission [[if the]] [[unit]] [[MPDU is not sold during the
- 902 priority marketing period to an eligible]] [person] [[household from the Department's
- 903 eligibility list]].
- 904 In determining the amount of the allowance for improvements under paragraph (2), the Director
- 905 may disallow the value of [[improvements determined to be unnecessary for]] costs attributable
- 906 solely to the maintenance and upkeep of the [[unit]] MPDU, or for luxury items. The resale price
- 907 of an MPDU may be reduced if the physical condition of the unit reflects abnormal wear and tear
- 908 because of neglect, abuse, or insufficient maintenance. Any personal property transferred in
- 909 connection with the resale of an MPDU must [[be sold at its fair market value]] not be included in
- 910 the resale price of the MPDU. [In calculating the allowable resale price of an MPDU which was
- 911 originally offered for rent, the Department must estimate the price for which the unit would have
- 912 been sold if the unit had been offered for sale when it was first rented.] The Executive must
- 913 establish procedures for calculating the allowable resale price of an MPDU under this subsection
- 914 by method (1) regulation.
- 915 (b) *Resale requirements during the control period.*
- 916 (1) Any MPDU offered for resale during the control period must first be offered exclusively
- 917 for up to 60 days to the Department and the Commission, in that order. The Department
- 918 or the Commission may buy [[a unit]] an MPDU when funds are available. The
- 919 Department may buy [[a unit]] an MPDU, or may assign its right to buy an MPDU to a
- 920 designated agency, when the Director finds that the Department's or a designated
- 921 [[agency or corporation's]] agency's buying and reselling the [[unit]] MPDU will
- 922 increase opportunities for eligible [persons] households to buy the [[unit]] MPDU. If the
- 923 Department or the Commission does not buy the [[unit]] MPDU, the Department must

924 notify eligible [persons] households of the availability of a resale MPDU. The [[unit]]
925 MPDU may be sold through either of the following methods:

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

929 (B) The Department may notify the MPDU owner that the owner may sell the
930 [[unit]] MPDU directly to any eligible [person] household under the resale
931 provisions of this Chapter.

932 (2) The Commission may purchase resale MPDUs in a particular development only if it did
933 not previously purchase its full allotment of units at the initial offering. In no case may
934 the Commission own more than 33.3 percent of the MPDUs in a particular development.

935 (3) A resale MPDU may be offered for sale to [[the general public]] non-eligible households
936 only after:

937 (A) the priority marketing period expires; and
938 (B) all eligible [persons] households who express an interest in buying it have been
939 given an opportunity to do so.

940 [[(3)]](4) The Executive by regulation may adopt requirements for reselling MPDUs. The
941 regulations may require a seller to submit to the Department for approval:

942 (A) a copy of the proposed sales contract[, including a list and the price of any
943 personal property included in the sale];
944 (B) a signed copy of the settlement sheet; and
945 (C) an affidavit signed by the seller and buyer attesting to the accuracy of all
946 documents and conditions of the sale.

947 [[(4)]](5) A transfer of an MPDU does not comply with this Chapter until all required
948 documents and affidavits have been submitted to and approved by the Department.

949 (c) Payments to HIF during the control period. During the control period, if the Department
950 determines that the design of the MPDU offered for resale would no longer comply with
951 requirements for construction of a new MPDU or that the allowable resale price and fees
952 associated with a multi-family condominium offered for resale would result in a monthly payment
953 that is estimated to be at least 20% more than would be affordable to the maximum size MPDU
954 household, the Director may permit the owner of the MPDU to sell the MPDU at market price,
955 and the procedures for resale, including termination of the MPDU controls and release of
956 restrictive covenants will be the same as for resale of an MPDU after the control period, as
957 described in subsection (d).

958 (d) First sale after control period ends.

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

963 (A) [[The]] the original selling price;
964 (B) [[A]] a percentage of the [[unit's]] MPDU's original selling price equal to the
965 increase in the cost of living since the [[unit]] MPDU was first sold, as
966 determined by the Consumer Price Index or other index as identified in
967 Executive Regulation;
968 (C) [The fair market value of] [[An]] an allowance for capital improvements made
969 to the [[unit]] MPDU between the date of original sale and the date of resale;
970 and
971 (D) [[A]] a reasonable sales commission.

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

974 (2) The Director must find that the price and terms of a sale covered by subsection
975 [[(c)]](d)(1) are bona fide and accurately reflect the entire transaction between the parties
976 so that the full amount required under subsection [[(c)]](d)(1) is paid to the fund. When
977 the Director finds that the amount due the fund is accurate and the Department of Finance
978 receives the amount due, the Department must terminate the MPDU controls and execute
979 a release of the restrictive covenants.

- 980 (3) The Department and the Commission, in that order, may buy an MPDU at any time
- 981 during the control period, and may resell the [[unit]] MPDU to an eligible [person]
- 982 household. A resale by the Department or Commission starts a new control period.
- 983 [(4) The Commission and any partnership in which the Commission is a general partner need
- 984 not pay into the Housing Initiative Fund any portion of the resale price of any MPDU that
- 985 it sells.]
- 986 [[d)](e) [[Initial]] Original and later rent controls. Unless previously sold under subsection
- 987 [[c)](d)(1), MPDUs built or offered for rent under this Chapter must not be rented for 99 years
- 988 after the original rental at a rent greater than that established by Executive regulations. Procedures
- 989 for original rentals of MPDUs are described in Section 25A-8. [[Any]] After the original rental,
- 990 any MPDU (other than those built, sold, or rented under any federal, state, or local program
- 991 offered by the Commission) offered for rent during the control period must be offered exclusively
- 992 for 60 days to one or more eligible [persons] households, as determined by the Department, for
- 993 use as that [[person's]] household's residence[[, and to the Commission]]. After the original rental,
- 994 the Commission may lease MPDUs in a particular development only if it did not previously lease
- 995 its full allotment of MPDUs at the initial offering. In no case may the Commission lease more
- 996 than 33.3 percent of the MPDUs in a particular development. The Commission may assign its
- 997 right to rent such [[units]] MPDUs to [[persons of]] low or moderate-income households who are
- 998 eligible for assistance under any federal, state, or local program identified in Executive
- 999 regulations.
- 1000 [[e)](f) Foreclosure or other court-ordered sales. If an MPDU is sold through a foreclosure or
- 1001 other court-ordered sale, all MPDU covenants must be released, and a payment must be made to
- 1002 the Housing Initiative Fund as follows:
- 1003 (1) If the sale occurs during the control period, any amount of the foreclosure sale price
- 1004 which exceeds the total of the approved resale price under subsection (a), reasonable
- 1005 foreclosure costs, and liens [[filed under the Maryland Contract Lien Act]] recorded
- 1006 against the MPDU among the land records, must be paid to the Housing Initiative Fund.
- 1007 [[If the remaining balance under the original first deed of trust or mortgage exceeds the
- 1008 resale price under subsection (a), then the difference between the foreclosure sales price
- 1009 and the balance of the original first deed of trust (plus reasonable foreclosure costs) must
- 1010 be paid to the Fund.]]
- 1011 (2) If the sale occurs after the control period, and the [[unit]] MPDU was originally offered
- 1012 for sale or rent after March 20, 1989, the payment to the Fund must be calculated under
- 1013 subsection [[c)](d), less reasonable foreclosure costs and liens recorded against the
- 1014 MPDU among the land records.
- 1015 (3) If the MPDU is a rental unit, the resale price under subsections (a) and [[c)](d) must be
- 1016 calculated [using the maximum sales price in effect when the unit was originally offered
- 1017 for rent] as provided in regulation.
- 1018 [[4) If the MPDU is sold subject to senior liens, the lien balances must be included in
- 1019 calculating the sale price.]]
- 1020 [[All MPDU covenants must be released after the required payment is made into the Housing
- 1021 Initiative Fund.]]
- 1022 [[f)](g) Waivers. The Director may waive the restrictions on the resale and re-rental prices for
- 1023 MPDUs if the Director finds that the restrictions conflict with regulations of federal or state
- 1024 housing programs and thus prevent eligible [persons] households from buying or renting [[units
- 1025 under the MPDU program]] MPDUs.
- 1026 [[g)](h) Bulk transfers. This section does not prohibit the bulk transfer or sale of all or some of
- 1027 the sale or rental MPDUs in a subdivision within 30 years after the original rental or offering for
- 1028 sale if the buyer is bound by all covenants and controls on the MPDUs.
- 1029 [[h)](i) Compliance. The County Executive must adopt regulations to promote compliance with
- 1030 this section and prevent practices that evade controls on rents and sales of MPDUs.
- 1031 * * *

25A-12. Annual report.

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

- (a) the number of MPDUs approved and built;

1035

- 1036 (b) each alternative payment agreement approved under Section 25A-5A or alternative location
- 1037 agreement approved under Section 25A-5B, and the location and number of MPDUs that were
- 1038 involved in each agreement;
- 1039 (c) [each approval of a different rent for a high-rise rental unit under Section 25A-7(b)(1)] each land
- 1040 transfer completed under Section [[25A-5(h)] 25A-5(g); and
- 1041 (d) the use of all funds in the Housing Initiative Fund that were received as a payment under Section
- 1042 25A-5A.

* * *

1044 **Sec. 2. Regulations.** The County Executive must submit the regulations required by Sections 25A-5, 25A-
 1045 7, 25A-8, and 25A-9, as amended by this Act, to the Council for approval not later than [[September]] October 15,
 1046 2018.

1047 **Sec 3. Effective Date.**

- 1048 (a) This Act takes effect on [[November 1]] October 31, 2018, and except for an applicant who has
- 1049 submitted a sketch plan that the Planning Board has accepted as complete before October 31,
- 1050 2018, applies to any submission or application under Section 25A(5)(a) accepted as complete on
- 1051 or after that date.
- 1052 (b) Unless an applicant elects to be reviewed under the standards and procedures of Chapter 25A in
- 1053 effect on or after October 31, 2018, any such application accepted as complete or approved before
- 1054 October 31, 2018 and any sketch plan accepted as complete before October 31, 2018, must be
- 1055 approved or amended in a manner that satisfies Chapter 25A as it existed on October 30, 2018.
- 1056 The approval of any of these applications, or amendments to these applications, will allow the
- 1057 applicant to proceed through any other required application or step in the process within the time
- 1058 allowed by law or plan approval, under the standards and procedures of Chapter 25A in effect on
- 1059 October 30, 2018.

Bill No. 38-17
Concerning: Housing – Moderately Priced Dwelling Units (MPDUs) – Requirement to Build
Revised: 07/24/2018 Draft No. 6
Introduced: November 14, 2017
Enacted: July 24, 2018
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Vice-President Riemer
Co-Sponsor: Councilmember Katz

AN ACT to:

- (1) require a minimum rate of MPDUs to be constructed for certain new residential development; and
- (2) generally amend the laws governing moderately priced housing

By amending

Montgomery County Code
Chapter 25A, Housing – Moderately Priced
[[Section]] Sections 25A-5 and 25A-12

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

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Sec. 1. Section 25A-5 and 25A-12 ~~[[is]] are~~ amended as follows:

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

- (a) The requirements of this Chapter to provide MPDUs apply to any applicant who:
 - (1) submits for approval or extension of approval a preliminary plan of subdivision under Chapter 50 which proposes the development of a total of 20 or more dwelling units at one location in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development, regardless of whether any part of the land has been transferred to another party;
 - (2) submits to the Planning Board or to the Director of Permitting Services a plan of housing development for any type of site review or development approval required by law, which proposes construction or development of 20 or more dwelling units at one location;
 - (3) submits to the Planning Board or to the Director of Permitting Services a plan to convert an existing property from non-residential use to residential use for any type of site review or development approval required by law, which results in the development of 20 or more dwelling units at one location; or
 - (4) with respect to land in a zone not subject to subdivision approval or site plan review, applies for a building permit to construct a total of 20 or more dwelling units at one location, including a conversion from non-residential to residential use.
- (b) An applicant for an approval or permit identified in subsection (a) who proposes development of between 11 and 19 dwelling units is not required to provide MPDUs, but must make a payment to the Housing Initiative Fund, as provided by regulation.
- (c) In calculating whether a development contains a total of 20 or more dwelling units for the purposes of this Chapter, the development includes all land at one location in the County available for building development under common ownership or control by an applicant, including land owned or controlled by separate business entities in which any stockholder or family of the stockholder owns 10 percent or more of the stock. An applicant must not avoid this Chapter by submitting piecemeal applications or approval requests for subdivision plats, site or development plans, floating zone plans, or building permits. Any applicant may apply for a preliminary plan of subdivision, site or development plan, floating zone plan, record plat, or building permit for fewer than 20 dwelling units at any time; but the applicant must agree in writing that the applicant will comply with this Chapter when the total number of dwelling units at one location reaches 20 or more.
- (d) The minimum number of MPDUs required under this Chapter, as a percentage of the total number of dwelling units at that location, not counting any workforce housing units built under Chapter 25B, is:
 - (1) for development in ~~[[an MCPS High School Service Area with an eligibility rate for free and reduced meals of 15 percent or less]] a Planning Area designated by the Planning Board in which at least 45 percent of the United States Census Tracts have a median household income of at least 150 percent of the County-wide median household income, at the time the ~~[[applicant submits a preliminary plan of subdivision]] Planning Board accepts as complete the applicant’s application or plan under subsection (a), 15 percent;~~~~
or
 - (2) for any other development subject to this Chapter, 12.5 percent.The Planning Board must update the Planning Area designations under this subsection at least annually.
- ~~[[d]]~~(e) Any applicant subject to subsection (a), in order to obtain a building permit, must submit to the Department of Permitting Services a written MPDU agreement approved by the Director and the County Attorney. Each agreement must require that:
 - (1) a specific number of MPDUs must be constructed on an approved time schedule;
 - (2) in subdivisions with single-family dwelling units, each MPDU must have three or more bedrooms, unless this requirement is waived by the Director in a subdivision with only two-bedroom market rate units;
 - (3) 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

- 56 approximates the total floor area for the MPDUs required, and alters the bedroom mix of
57 the MPDUs or the number of MPDUs; and
58 (4) in subdivisions with both single-family and multi-family dwelling units, the ratio of
59 single-family MPDUs to total MPDUs must not be less than the ratio of market-rate
60 single-family units to total market-rate units in the subdivision, unless the Director finds
61 that:
62 (A) offering more multi-family MPDUs in that subdivision would advance the
63 purpose of the County housing policy and the objectives of any applicable land
64 use plan, be consistent with local housing market conditions, and avoid
65 excessive mandatory condominium or homeowners' association fees or other
66 costs that would reduce the affordability of sale MPDUs; and
67 (B) if rental MPDUs are proposed, the applicant has demonstrated that it is qualified
68 to manage rental housing.
- 69 [(e)](f) When a development of 20 units or more at one location is in a zone where a density bonus is
70 allowed under Chapter 59; and
71 (1) is covered by a plan of subdivision;
72 (2) is covered by a plan of development, site plan, or floating zone plan; or
73 (3) requires a building permit to be issued for construction,
74 the required number or residential floor area of MPDUs is a variable percentage that is not less
75 than a base requirement of 12.5 $[(%)]$ percent or the higher base requirement under subsection (d),
76 of the total number of dwelling units or residential floor area at that location, not counting any
77 workforce housing units built under Chapter 25B. The Council may establish a higher base
78 requirement, up to 15 $[(%)]$ percent of the total number of dwelling units or residential floor area at
79 a location, as part of a master plan approval. The required number or residential floor area of
80 MPDUs must vary according to the amount by which the approved development exceeds the
81 normal or standard density for the zone in which it is located. Chapter 59 may permit bonus
82 densities over the presumed base density where MPDUs are provided.
- 83 [(f)](g) The Director may determine whether an MPDU requirement may be satisfied by an alternative
84 payment or location agreement, and may approve an MPDU agreement that:
85 (1) allows an applicant to reduce the number of MPDUs in a subdivision only if the
86 agreement meets all requirements of Section 25A-5A for an alternative payment
87 agreement; or
88 (2) allows an applicant to build the MPDUs at another location only if the agreement meets
89 all requirements of Section 25A-5B for an alternative location agreement.
- 90 [(g)](h) (1) An applicant may satisfy this Section by obtaining approval from the Director to transfer
91 land to the County before applying for a building permit.
92 (2) The Director may only approve a transfer of land under this subsection after making a
93 written determination that the value of the land transferred is at least equal to the value of
94 the MPDUs not constructed by the applicant.
95 (3) The Executive must establish procedures for transferring land under this subsection by
96 method (1) regulation.
97 (4) When land is transferred to the County under this Section:
98 (A) the land must be used to produce or preserve MPDUs; or
99 (B) if sold, proceeds from the sale must be allocated to the Affordable Housing
100 Acquisition and Preservation CIP portion of the Housing Initiative Fund; and
101 (C) the Director must notify the Council within 30 days of approving a land transfer
102 under this subsection.
- 103 [(h)](i) The MPDU agreements must be signed by the applicant and all other parties whose signatures are
104 required by law for the effective and binding execution of contracts conveying real property. If the
105 applicant is a business entity, the agreements must be signed by the authorized signatories of the
106 business entity individually and on behalf of the business entity. Partnerships, associations or
107 business entities must not evade this Chapter through voluntary dissolution. The agreements may
108 be assigned if the County approves, and if the assignees agree to fulfill the requirements of this
109 Chapter.
- 110 [(i)](j) The Department of Permitting Services must not issue a building permit in any subdivision or
111 housing development in which MPDUs are required until the applicant submits a valid MPDU

112 agreement which applies to the entire preliminary plan or site plan, unless the property within the
 113 preliminary plan or site plan has multiple owners, in which case the development may have more
 114 than one MPDU agreement. The applicant must also file with the first application for a building
 115 permit a statement of all land the applicant owns in the County that is available for building
 116 development. In later applications, the applicant need only show additions and deletions to the
 117 original landholdings available for building development.

118 [(j)](k) The MPDU agreement must include the number, type, location, and plan for staging construction
 119 of all dwelling units and such other information as the Department requires to determine the
 120 applicant's compliance with this Chapter. MPDUs must be reasonably dispersed throughout the
 121 development, and the MPDU staging plan must be consistent with any applicable land use plan,
 122 subdivision plan, or site plan. The staging plan included in the MPDU agreement for all dwelling
 123 units must be sequenced so that:

- 124 (1) MPDUs are built along with or before other dwelling units;
- 125 (2) no or few market rate dwelling units are built before any MPDUs are built;
- 126 (3) the pace of MPDU production must reasonably coincide with the construction of market
 127 rate units; and
- 128 (4) the last building built must not contain only MPDUs.

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

131 [(k)](l) The MPDU agreement must provide for any requirement of age-restricted MPDUs to be offered
 132 for sale to be satisfied by a payment to the Housing Initiative Fund under Section 25A-5A(b).

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

136 [(m)](n) The applicant must execute and provide to the Department in recordable form, covenants
 137 assuring that:

- 138 (1) The restrictions of this Chapter run with the land for the entire period of control;
- 139 (2) The County may create a lien to collect:
 - 140 (A) that portion of the sale price of an MPDU which exceeds the approved resale
 141 price; and
 - 142 (B) that portion of the foreclosure sale price of an MPDU which exceeds the
 143 approved resale price; and
- 144 (3) The covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other
 145 parties that receive title to the property. These covenants must be senior to all
 146 instruments securing permanent financing.

147 [(n)](o) An applicant must not establish a condominium or homeowners' association consisting
 148 solely of MPDUs.

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

- 152 (A) the conveyed property is an MPDU and is subject to the restrictions contained in
 153 the covenants required under this Chapter during the control period until the
 154 restrictions are released; and
- 155 (B) any MPDU owner, other than an applicant, must not sell the MPDU until:
 - 156 (i) the owner has notified the Department under Section 25A-8 or 25A-9,
 157 as applicable, that the MPDU is for sale;
 - 158 (ii) the Department and, where applicable, the Commission, have notified
 159 the owner that they do not intend to buy the MPDU; and
 - 160 (iii) The Department has notified the owner of the MPDU's maximum
 161 resale price.

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

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

167 [(p)](q) Nothing in this Chapter prohibits an applicant from voluntarily building MPDUs, as
 168 calculated under subsection [(e)](f), in a development with fewer than 20 dwelling units at one
 169 location, and in so doing from qualifying for an optional method of development under Chapter
 170 59. A development with fewer than 20 dwelling units where an applicant voluntarily builds
 171 MPDUs must comply with any procedures and development standards that apply to a larger
 172 development under this Chapter and Chapter 59. Sections 25A-5A and 25A-5B do not apply to an
 173 applicant who voluntarily builds MPDUs under this subsection and in so doing qualifies for an
 174 optional method of development.

175 [(q)](r) Upon request by the applicant, the Director may provide an applicant and the Planning
 176 Board with a letter indicating the Director’s preliminary agreement on how the applicant will meet
 177 its MPDU requirements, including:

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

* * *

181 **25A-12. Annual report.**

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

* * *

- 185 (c) each land transfer completed under Section [(25A-5(g))] 25A-5(h); and

* * *

187 **Sec 2. Effective Date.**

188 (a) This Act takes effect on October 31, 2018, and except for an applicant who has submitted a sketch
 189 plan that the Planning Board has accepted as complete before October 31, 2018, applies to any
 190 submission or application under Section 25A(5)(a) accepted as complete on or after that date.

191 (b) Unless an applicant elects to be reviewed under the standards and procedures of Chapter 25A in
 192 effect on or after October 31, 2018, any such application accepted as complete or approved before
 193 October 31, 2018 and any sketch plan accepted as complete before October 31, 2018, must be
 194 approved or amended in a manner that satisfies Chapter 25A as it existed on October 30, 2018.
 195 The approval of any of these applications, or amendments to these applications, will allow the
 196 applicant to proceed through any other required application or step in the process within the time
 197 allowed by law or plan approval, under the standards and procedures of Chapter 25A in effect on
 198 October30,2018.

