

Bill No. 30-05
Concerning: Housing – Workforce
Housing Program
Revised: 7-11-06 Draft No. 8
Introduced: October 11, 2005
Enacted: July 11, 2006
Executive: _____
Effective: December 1, 2006
Sunset Date: ~~[[None]]~~ December 1, 2014
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Silverman, Floreen, and Subin

AN ACT to:

- (1) establish a workforce housing program, administered by the Department of Housing and Community Affairs;
- (2) define the purposes of the program and the population who the program is intended to serve, and establish procedures to administer the program;
- (3) authorize the County Executive to set certain program parameters, including income eligibility standards~~[[, sale and rent control periods,]]~~ and maximum sale prices and rents, by regulation;
- (4) define, by reference to certain mandatory and optional zoning provisions, where workforce housing must be located; and
- (5) generally provide for the operation of a County workforce housing program.

By adding

Montgomery County Code
Chapter 25B, Housing Policy
Article V, Workforce Housing

By amending

Chapter 25A, Housing, Moderately Priced
Section 25A-5

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. Chapter 25B is amended by adding Article V, Workforce**
2 **Housing:**

3 **Article V. Workforce Housing.**

4 **25B-23. Definitions.**

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

6 (a) Area-wide median income means the latest published income level
7 determined to represent the median income for the Washington area by
8 the U.S. Department of Housing and Urban Development, adjusted for
9 household size.

10 (b) Consumer Price Index means the latest published version of the
11 Consumer Price Index for all Urban Consumers (CPI-U) of the U.S.
12 Department of Labor, or any similar index designated by regulation.

13 (c) Date of original sale means the date of settlement for purchase of a
14 workforce housing unit.

15 (d) Date of original rental means the date that the first lease of a workforce
16 housing unit takes effect.

17 (e) Department means the Department of Housing and Community Affairs.

18 (f) Developer means a person or other legal entity that seeks to develop a
19 [[workforce]] housing project.

20 (g) Director means the Director of the Department or the Director's
21 designee.

22 (h) Dwelling unit means a building or part of a building that provides
23 complete living facilities for one family, including at a minimum
24 facilities for cooking, sanitation, and sleeping.

25 (i) Housing Initiative Fund means the fund established under Section 25B-
26 9.

27 (j) Workforce housing project means a housing or mixed use project where

at least 10 percent of the dwelling units, [[not counting any moderately priced dwelling units (MPDUs) and any resulting bonus density units,]] as computed under Section 25B-24(e), are sold or rented to households with incomes at or below 120% of the area-wide median income.

(k) *Workforce housing unit* means a dwelling unit in a workforce housing project that is subject to rent limits or sales controls under this Article.

(l) *Program* means the workforce housing program.

25B-24. Workforce housing program.

(a) *Establishment.* The Department must establish and administer a workforce housing program.

(b) *Purpose.* The purpose of the program is to promote the construction of housing affordable to households with incomes at or below 120% of the area-wide median income. The construction of that housing is intended to:

(1) allow households with incomes at or below 120% of the area-wide median income to have greater housing choices in the County;

(2) increase the availability of housing in the County for public employees and other workers whose income cannot support the high cost of housing that is located close to their workplace and who, as a result, are increasingly priced out of housing opportunities;

(3) assist County employers in reducing critical labor shortages of skilled and semi-skilled workers by providing housing that will be accessible to the workers' workplaces; and

(4) reduce traffic congestion by shortening commute distances for employees who work in the County but who otherwise would

55 live elsewhere and encouraging more employees to live in Metro
56 Station Policy Areas.

57 (c) Relationship to other affordable housing programs. This program is
58 intended to complement the moderately priced dwelling unit (MPDU)
59 program under Chapter 25A and other County programs designed to
60 promote affordable housing.

61 (d) Requirement. A developer of any subdivision with 35 or more market-
62 rate dwelling units at one location, as defined in Section 25A-3(b), must
63 build the number of workforce housing units, if any, that are expressly
64 required in [[any]] the applicable zone under Chapter 59.

65 (e) Exclusions. In calculating the number of dwelling units in any
66 subdivision to determine the number of workforce housing units
67 required under this Article, the Department must not count:

68 (1) any moderately priced dwelling units (MPDUs) and any resulting
69 bonus density market-rate units;

70 (2) any Personal Living Quarters unit built under Section 59-A-6.15,
71 which meets the price or rent eligibility standards for a
72 moderately priced dwelling unit under Chapter 25A;

73 (3) any dwelling unit in an Opportunity Housing Project built under
74 Sections 56-28 through 56-32, which meets the price or rent
75 eligibility standards for a moderately priced dwelling unit under
76 Chapter 25A; and

77 (4) any other dwelling unit built under a government regulation or
78 binding agreement that limits for at least 15 years the price or rent
79 charged for the unit in order to make the unit affordable to
80 households earning less than 60% of the area median income,
81 adjusted for family size.

82 [[If the total number of units in a subdivision that are not counted under
 83 paragraphs (2)-(4) of this subsection will exceed the number of
 84 workforce housing units required in the subdivision, then no workforce
 85 housing units are required.]]

86 (f) Exemption. If the total number of units in a subdivision that are not
 87 counted under subsection (e)(4) is sufficient to qualify the entire
 88 subdivision to receive federal low-income housing tax credits, then no
 89 workforce housing units are required in that subdivision.

90 [[e)] (g) Regulations. The County Executive must adopt regulations under
 91 method (1) to administer this program. These regulations:

92 (1) must set maximum sale prices and annual rent limits, sale price
 93 and rent ranges (which must promote a variety of different prices
 94 or rents at each workforce housing location), minimum unit type
 95 and bedroom requirements, and income eligibility standards;

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

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

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

103 (h) Annual report. Each year by March 15 the Director must report to the
 104 Executive and Council, for the previous calendar year:

105 (1) the number of workforce housing units approved and built; and

106 (2) each alternative location agreement approved under Section 25B-
 107 26, and the location and number of workforce housing units that
 108 were involved in each agreement.

109 **25B-25. Execution of agreement; building permit issuance.**

110 (a) Agreement.

111 (1) After the developer of a [[workforce]] housing project has
112 obtained approval from the Planning Board of a site plan that
113 includes the number of workforce housing units required under
114 any applicable provision of Chapter 59 and all other necessary
115 regulatory approvals, the Director and the developer must execute
116 an agreement assuring compliance with this Article by the
117 developer and any successor in interest. The Director must attach
118 a copy of the approved site plan to [[the]] this agreement.

119 (2) The agreement must incorporate a staging plan for the
120 construction of workforce housing units, the mix of dwelling unit
121 sizes and types, and the maximum selling price or annual rent for
122 each unit. The staging plan must require all workforce housing
123 units to be built before or at the same time as the other dwelling
124 units. Where appropriate, the agreement must reflect conditions
125 required as part of other regulatory approvals.

126 (3) The agreement must require that the number of efficiency and
127 one- bedroom workforce housing units each must not exceed the
128 ratio that market-rate efficiency and one-bedroom units
129 respectively bear to the total number of market-rate units in the
130 subdivision. The Director must not approve an agreement that
131 reduces the number of bedrooms required by this subsection in
132 any workforce housing unit.

133 (b) Issuance of building permit. The Director of Permitting Services must
134 not issue a building permit for any development where workforce
135 housing units are required under Chapter 59 until the agreement

136 required by subsection (a) is executed. After an agreement is executed
 137 under subsection (a), the Director must certify to the Director of
 138 Permitting Services before a building permit is issued that all applicable
 139 requirements of this Article have been met. If all workforce housing
 140 units are not built before or at the same time as other dwelling units as
 141 required in the staging plan, the Director of Permitting Services may:

142 (1) withhold any later building permit for any part of the same
 143 development until all workforce housing units designated in the
 144 staging plan are built;

145 (2) issue a stop work order, effective until all workforce housing
 146 units designated in the staging plan are built; or

147 (3) withhold any use and occupancy permit for other units in the
 148 development until all workforce housing units designated in the
 149 staging plan are built.

150 **25B-26. Alternative location agreement.**

151 (a) The Director may approve a workforce housing agreement, in addition
 152 to the agreement required by Section 25B-25, that allows an applicant
 153 [[for development of a high-rise residential building]], instead of
 154 building some or all of the required number of workforce housing units
 155 on-site, to provide at least the same number of units at another location
 156 in the same planning policy area (as defined in the County Growth
 157 Policy), only if the Director finds that:

158 (1) either:

159 (A) the public benefit of locating at the proposed alternative
 160 location [[outweighs]] is equivalent to the value of locating
 161 workforce housing units in each applicable development;

162 or

163 (B) building a sufficient number of workforce housing units at
 164 the original site would require the applicant to change the
 165 type of building construction used; and

166 (2) building the workforce housing units at the proposed alternative
 167 location will further the objective of providing a broad range of
 168 housing opportunities throughout the County.

169 (b) To satisfy the requirements of this Section, an applicant may:

170 (1) build, or convert from non-residential use, the required number of
 171 new workforce housing units at a site approved by the Director;
 172 or

173 (2) [[buy, encumber, or transfer, and rehabilitate as necessary,
 174 existing market rate housing units that meet all standards for use
 175 as workforce housing units; or]]

176 [[3]] return to workforce housing unit use, and rehabilitate as
 177 necessary, existing workforce housing units for which price
 178 controls have expired.

179 (c) Each agreement under this Section must include a schedule, binding on
 180 the applicant, for timely completion or acquisition of the required
 181 number of workforce housing units. Each agreement under this Section
 182 must also require that each workforce housing unit provided at an
 183 alternative location under this Section must be identical in type of unit
 184 and number of bedrooms to the workforce housing units that the
 185 applicant would have built on site.

186 **25B-27. Control of sale prices; rent limits; income eligibility; foreclosures.**

187 (a) Sales; control period. The sale price of a workforce housing unit must
 188 be controlled under this subsection for [[10]] 20 years after the date of
 189 original sale. During the applicable control period, a workforce housing

190 unit must only be sold to an individual with a household income that
 191 does not exceed 120% of the area-wide median income or a lower
 192 amount set by regulation. Any workforce housing unit offered for sale,
 193 or for resale during the control period, must first be offered exclusively
 194 for 60 days to the Department and the Housing Opportunities
 195 Commission, in that order. The Department and the Commission may
 196 buy a workforce housing unit at any time during the control period, and
 197 may resell the unit to an eligible person. A resale by the Department or
 198 Commission starts a new control period.

199 (b) *Resale price during control period.*

200 (1) *Resale price.* Except in a foreclosure proceeding, a workforce
 201 housing unit constructed or offered for sale under this Article
 202 must not be resold during the applicable control period for a price
 203 greater than the [[unit's original]] [[selling price]] [[appraised
 204 market value (as defined by applicable regulations)]] [[plus:]]
 205 maximum sale price for a similar new workforce housing unit
 206 under applicable regulations on the date of the resale.

207 [[(1) a percentage of the unit's original [[selling price]] appraised
 208 market value equal to the increase in the cost of living, as
 209 determined by the metropolitan area Consumer Price
 210 Index;]]

211 [[(2) the fair market value of capital improvements made to the
 212 unit between the date of original sale and the date of
 213 resale;]]

214 (2) *Return to seller.* The Department must supplement any bona fide
 215 price that the seller of a workforce housing unit receives from the

216 buyer under paragraph (1) so that the seller receives a total of the
 217 original sale price of the unit plus:

218 ~~[(3)]~~ (A) an allowance for closing costs which were not paid
 219 by the initial seller, but which will be paid by the initial
 220 buyer for the benefit of a later buyer;

221 (B) the fair market value of any capital improvement that the
 222 Director finds was needed to maintain the equity of the
 223 unit;

224 ~~[(4)]~~ (C) a percentage, set by regulation, of [the unit's price
 225 appreciation since its most recent sale,] the difference
 226 between the unit's appraised market value (as defined by
 227 applicable regulations) when the seller bought the unit and
 228 its appraised market value when the seller offered the unit
 229 for sale, which must not exceed 50% of the total price
 230 appreciation; and

231 ~~[(5)]~~ (D) a reasonable sales commission.

232 The Department may use funds in the Housing Initiative Fund to
 233 pay all or part of the amount returned to the seller under this
 234 paragraph, to the extent provided in applicable regulations.

235 (3) *Payment to Housing Initiative Fund.* If the bona fide price the
 236 seller receives is greater than the amount allowable under
 237 paragraph (2), the seller must pay the difference to the Fund. The
 238 Director must find that the price and terms of a sale covered by
 239 paragraph (1) are bona fide and accurately reflect the entire
 240 transaction between the parties so that the full amount required
 241 under this Section is paid to the Fund.

242 (c) *Resale price after control period ends.*

243 (1) For the first sale of a workforce housing unit after the applicable
 244 control period ends that exceeds the allowable price specified
 245 under subsection (a), the seller must pay to the Housing Initiative
 246 Fund one-half of the excess of the total resale price over the sum
 247 of:

248 (A) the original [[selling price]] appraised market value;

249 (B) a percentage of the unit's original [[selling price]]
 250 appraised market value equal to the increase in the cost of
 251 living as determined by the metropolitan area Consumer
 252 Price Index;

253 (C) the fair market value of capital improvements made to the
 254 unit between the date of original sale and the date of resale;
 255 and

256 (D) a reasonable sales commission.

257 The Director must adjust the amount paid into the Housing
 258 Initiative Fund in each case so that the seller retains at least
 259 \$10,000 of the excess of the resale price over the sum of the
 260 items in subparagraphs (A)-(D).

261 (2) The Director must find that the price and terms of a sale covered
 262 by paragraph (1) are bona fide and accurately reflect the entire
 263 transaction between the parties so that the full amount required
 264 under paragraph (1) is paid to the Fund. When the Director finds
 265 that the amount due the Fund is accurate and the Director of
 266 Finance receives the amount due, the Director must terminate the
 267 controls imposed by this section and execute a release of all
 268 restrictive covenants.

269 (d) Limits on rents. Unless the unit was previously sold under subsection

270 (c), any workforce housing unit built or offered for rent under this
 271 Chapter must not be rented for 99 years after the date of original rental
 272 at a rent greater than the rent allowed for workforce housing units under
 273 this Article and applicable regulations. Rent may include parking but
 274 does not include utilities when they are paid by the tenant. Different
 275 rents must be set when utility costs are paid by the owner and included
 276 in the rent. During the applicable control period, a workforce housing
 277 unit must only be rented to an individual with a household income that
 278 does not exceed the limits set under this Article.

279 (e) *Foreclosure.* If a workforce housing unit is sold in a foreclosure
 280 proceeding begun by a lending institution, the Director must terminate
 281 the workforce housing controls and execute a release of all restrictive
 282 covenants if all proceeds of the sale, if any, that must be paid to the
 283 Housing Initiative Fund have been paid. If a foreclosure sale of a
 284 workforce housing unit occurs during the applicable control period, any
 285 price paid at the foreclosure sale that exceeds the price established under
 286 subsection (b), plus any reasonable costs and fees of foreclosure, must
 287 be paid into the Housing Initiative Fund. If a workforce housing unit is
 288 foreclosed after the control period, subsection (c) applies. If the unit
 289 sold was a rental unit, the Department must calculate the sale price that
 290 would have been permitted at the date of original rental as if the unit
 291 had been originally offered for sale.

292 (f) *Bulk sales.* This section does not prohibit the bulk sale or transfer of all
 293 or some rental workforce housing units if the buyer is bound by all
 294 covenants and controls on the workforce housing units.

295 **25B-28. Compliance.**

296 (a) *Covenants.*

297 (1) This Article applies to the owner[[,]] and any successor in
 298 interest, assignee, or other person with a legal or equitable
 299 interest in [[the]] a workforce housing unit. Before recording the
 300 plat for a workforce housing project, the owner must execute and
 301 record covenants assuring that:

302 (A) the restrictions of this Article run with the land;

303 (B) the covenants are binding on the owner, any assignee,
 304 mortgagee, or later purchaser, and any other party that
 305 receives title to the property; and

306 (C) the County may create a lien to collect that portion of the
 307 sale price or foreclosure sale price of a workforce housing
 308 unit which exceeds the approved resale price.

309 (2) Any covenant executed to satisfy paragraph (1) must be senior to
 310 all instruments securing permanent financing.

311 (b) Later deeds. The grantor must clearly and conspicuously state, in any
 312 purchase and sale agreement and any deed or instrument conveying title
 313 to a workforce housing unit, and the grantee must clearly and
 314 conspicuously acknowledge, that the unit is subject to this Article and
 315 the restrictions in the covenants until all restrictions are released under
 316 Section 25B-27 or another provision of law. Any deed or other
 317 instrument conveying title to a workforce housing unit during the
 318 control period must be signed by both the grantor and grantee. When a
 319 deed or other instrument conveying title to a workforce housing unit is
 320 recorded in the land records, the grantor must cause to be filed in the
 321 land records a notice of sale for the benefit of the County in the form
 322 provided by state law.

323 (c) Violations; enforcement.

- 324 (1) Any violation of this Article or regulations adopted under it is a
325 class A violation.
- 326 (2) An occupancy permit must not be issued for any building to any
327 applicant, or a successor or assign of any applicant, for any
328 construction which does not comply with this Chapter. The
329 Director of Permitting Services may deny, suspend, or revoke
330 any applicable building or occupancy permit if the Director finds
331 that the applicant or permittee has committed a violation of this
332 Article. The Planning Board may revoke any previously
333 approved preliminary plan of subdivision, site plan, or
334 development plan, if the Board finds a violation of this Article.
- 335 (3) The Director may take legal action to stop or cancel any transfer
336 of a workforce housing unit if any party to the transfer does not
337 comply with all requirements of this Article. The Director may
338 recover any funds improperly obtained from any sale or rental of
339 a workforce housing unit in violation of this Article, plus costs
340 and interest at the rate prescribed by law from the date a violation
341 occurred.
- 342 (4) In addition to or instead of any other available remedy, the
343 Director may take legal action to:
- 344 (A) enjoin a workforce housing unit owner who violates this
345 Article, or any covenant signed or order issued under this
346 Article, from continuing the violation; or
- 347 (B) require an owner to sell a workforce housing unit owned or
348 occupied in violation of this Article to the County, the
349 Housing Opportunities Commission, or an eligible person.

350 **Sec. 2. Section 25A-5 is amended as follows:**

351 **25A-5. Requirement to build MPDU's; agreements.**

352 * * *

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

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

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

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

358 the required number of moderately priced dwelling units is a variable
359 percentage that is not less than 12.5 percent of the total number of
360 dwelling units at that location, not counting any workforce housing
361 units required under Chapter 25B.

362 * * *

363 **Sec. ~~[[2]]~~ 3. Effective date; Applicability; Expiration.**

364 (a) This Act takes effect on December 1, 2006. The County Executive
365 must submit all regulations necessary to implement Article V of
366 Chapter 25B, inserted by Section 1 of this Act, to the Council by
367 October ~~[[1]]~~ 11, 2006.

368 (b) Article V of Chapter 25B, as inserted by Section 1 of this Act, does not
369 apply to any development for which an application for a local map
370 amendment, development plan, project plan, site plan, or ~~[[a]]~~
371 preliminary plan of subdivision was ~~[[approved]]~~ filed before ~~[[this Act~~
372 took effect]] December 1, 2006, unless the applicant voluntarily
373 includes workforce housing units in that development.

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

378 *Approved:*

379

380

George L. Leventhal, President, County Council

Date

381 *Approved:*

382

383

Douglas M. Duncan, County Executive

Date

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

385

386

Linda M. Lauer, Clerk of the Council

Date