



Montgomery County Government

A PROFILE OF DECISION AUTHORITY: THE COUNTY'S DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

EXECUTIVE SUMMARY

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EXECUTIVE SUMMARY

The County Government's Department of Housing and Community Development (DHCD) is responsible for a broad range of programs and functions related to: the development of affordable housing, rental assistance, community development, housing code enforcement, rental facility licensing, landlord-tenant relations, education and dispute settlement in common ownership communities, and fair housing.

This report identifies and describes the decision authority assigned to the DHCD Director or other DHCD staff by law, by regulation, or administrative/budget action. It includes discussion of: the types of decision authority delegated to DHCD; the criteria, process, and/or other limits placed on DHCD decisions; and provisions for appeal of DHCD decisions.

The report finds that the decision authority assigned to DHCD varies significantly in terms of scope and content. In some cases, the authority to make a decision comes with rules that guide or limit DHCD's decision-making; in other cases, the authority to make a decision comes without any caveats or limitations. In sum, using the terminology espoused by David Osborne and Ted Gaebler in Reinventing Government, this review of DHCD's decision authority finds that the Department is an amalgam of rule-driven and mission-driven government.

OLO recommends that the information compiled in this report be used as reference when the Council is enacting or amending a DHCD-related law or regulation. In particular, it can be used to answer basic questions such as:

- What type of decisions will implementation of the law/regulation involve?
- Who is the appropriate decision-maker for each decision, and how much discretion should this decision-maker have?
- Should there be mandated decision criteria (i.e., rules) for making each decision?
- Should there be a mandated process (i.e., citizen input, other agency input) for making each decision?
- Should there be a formal process for appealing each decision? and
- How will the decision process compare to similar decisions made in other DHCD programs and functions?

The data contained in this report can be used to identify places where rules should be made consistent with other rules, or used to help explain why decision procedures for one program should not be identical to those in another. Finally, when considering how the decision process for programs compare to one another, this report can assist the Council to determine where programs belong along the continuum of rule-driven vs. mission-driven government.

I. AUTHORITY, SCOPE, AND METHODOLOGY

A. Authority

Council Resolution No. 12-144, CY 1991 Work Program of the Office of Legislative Oversight, adopted March 26, 1991.

B. Scope

The County Government's Department of Housing and Community Development (DHCD) is responsible for a broad range of programs and functions related to: the development of affordable housing, rental assistance, community development, housing code enforcement, rental facility licensing, landlord-tenant relations, education and dispute settlement in common ownership communities, and fair housing.

This report identifies and describes the decision authority assigned by County law, regulation, or administrative/budget action to the DHCD Director and other DHCD staff. It includes discussion of: the different ways DHCD is authorized to make decisions; the types of decision authority delegated to DHCD; the criteria and/or other limits placed on specific DHCD decisions; provisions for appeal of DHCD decisions; and decision authority that is either shared or assigned jointly to DHCD and the Housing Opportunities Commission. The decision process in practice is examined in greater detail for selected types of decision authority.

C. Methodology

This project was conducted between January and March 1992 by Karen Orlansky, OLO Program Evaluator, with assistance from Debra Cammer, OLO Public Administration Intern.

The study included a review of the County Code, executive regulations, and budget documents for programs and functions administered by DHCD. Information obtained through written documents was supplemented through interviews with staff members from the Department of Housing and Community Development, the Office of the County Attorney, the Office of Management and Budget, the Office of Consumer Affairs, the Department of Environmental Protection, the Board of Appeals, the Housing Opportunities Commission, and the Maryland-National Capital Park and Planning Commission.

D. Acknowledgments

Throughout this study, OLO received full cooperation from all parties. In particular, OLO extends special thanks to Richard Ferrara, Director, DHCD; Victor Brescia, Deputy Director, DHCD; and the many other DHCD staff who spent time working with us throughout this study.

E. Organization of Report

This report is organized as follows:

Chapter II provides an overview of DHCD's responsibilities;

Chapter III discusses how decision authority is delegated to DHCD;

Chapter IV examines the types of decision authority delegated to DHCD and the criteria established for DHCD decisions;

Chapter V reviews the decision process mandated for DHCD decisions;

Chapter VI discusses the provisions for appeal of DHCD decisions;

Chapter VII offers a more detailed review of three different types of DHCD decision authority in practice: the authority to manage the Montgomery Housing Initiative fund; the authority to approve MPDU alternatives; and the authority to administer the federal CDBG program;

Chapter VIII uses the principles proffered in Reinventing Government to discuss the degree to which DHCD programs are rule-driven vs. mission-driven; and

Chapter IX summarizes OLO's findings, and **Chapter X** contains OLO's recommendations.

II. OVERVIEW OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S RESPONSIBILITIES

County Code Section 1A-201* establishes the Department of Housing and Community Development (DHCD) as one of the County Government's principal departments.** According to Section 215 of the County Charter, the heads of all principal departments of the Executive Branch are appointed by the County Executive and subject to confirmation by the Council. By law, all principal departments are under the general supervision of the County Executive and Chief Administrative Officer.

As head of a principal County Government department, the DHCD Director makes daily decisions regarding the general administration of the department and allocation of staff resources. Code Section 2-27 assigns DHCD the following functional responsibilities:

* Unless otherwise indicated, all Code citations reference the Montgomery County Code (1984), as amended.

** Code Section 1A-201 identifies the principal departments and offices of the County Government. A principal department is defined as an entity that directly serves the public; and a principal office is defined as entity that provides internal support to other parts of County Government.

- Housing;
- Community development;
- Housing standards code enforcement;
- Landlord-tenant relations; and
- Coordination of County efforts to prevent housing discrimination.

Consistent with the overall assignment of functional responsibilities to DHCD, individual County laws and associated executive regulations authorize the DHCD Director to establish, coordinate, or administer specific offices, programs, and activities. Authorizing the DHCD Director to "establish" or "administer" a program or function is a general delegation of authority.

The authority to administer a program or function carries with it some inherent decision authority. In most cases, for example, the authority to administer a program entails the authority to decide: the organization; the staffing; and the day to day operating procedures for the program. In addition, the administration of most programs involves making decisions that are unique to that program; these special decisions can be on either a routine or non-routine basis.

County law directly assigns the administration of the following offices, programs, and activities to DHCD:

- The Office of Common Ownership Communities (Chapter 10B);
- The Office of Landlord-Tenant Affairs (Chapter 29);
- The Moderately Priced Dwelling Unit (MPDU) program (Chapter 25A);
- The Montgomery Housing Initiative (Chapter 25B, Article II);
- The Productivity Housing Program (Chapter 25B, Article IV);
- The Rental Assistance Program (Chapter 41A, Article I);
- The Supplemental Rental Assistance Program for Families with Dependent Children (Chapter 41A, Article III);
- The inspection and annual renewal of rental facility licenses; (Chapter 29)
- The inspection and enforcement of property standards for mobile home parks (Chapter 29);
- The management of rental housing data surveys for the County (Chapter 29); and
- The coordination of the County's activities to prevent discrimination in housing (Chapter 2).

In addition to these activities assigned directly to DHCD by County law, the Department is responsible for administering a number of other legally mandated programs and functions:

- Although not explicitly named in the law, DHCD is responsible for performing the staff work associated with the County's Housing Policy (Chapter 25B, Article I). This function includes preparing the annual housing report and providing staff support to the Citizens Housing Advisory Committee.

- Chapter 26, the Housing and Building Maintenance Standards, authorizes the "enforcing agency" to administer the County's program to inspect and enforce the County's housing and building maintenance standards; the law defines "enforcing agency" as DHCD or any other County agency which the Chief Administrative Officer assigns. In practice, administration of Chapter 26 is assigned to DHCD's Division of Housing Code Enforcement. (Operating under several memorandums of understanding with the Department of Environmental Protection (DEP), DHCD Code Enforcement staff also inspect accessory apartments and registered living units).

- Chapter 53A, Tenant Displacement, assigns certain authority and responsibilities to the "County", the Office of Consumer Affairs, and the Housing Opportunities Commission. In practice, the Office of Consumer Affairs has the lead role for administering Chapter 53A, with DHCD staff becoming involved when a right of first refusal to purchase offer is presented to the County.

- Chapter 24A, Historic Resources Preservation, establishes the Historic Preservation Commission (HPC), and provides that staff support to the HPC shall be assigned as necessary by the Chief Administrative Officer. From the early 1980's through FY91, DHCD was assigned the responsibility of providing staff support to the HPC. This year, under contract to the County, M-NCPPC is providing staff support to the HPC. DHCD manages this contract, and also assists with the administration of the Historic Preservation Grant Fund. In addition, DHCD's Housing Code Enforcement staff assist with enforcement of the demolition-by-neglect provisions of Chapter 24A.

County law (Chapter 56, Urban Renewal and Community Development) authorizes the County Council to establish and maintain three additional housing-related loan funds. Administration of these three loan programs is delegated to the DHCD Director, either through executive regulations and/or the budget process:

- The Rehabilitation Loan Fund (Chapter 56, Article I): DHCD managed this loan program, which, in practice, has become part of the Homeowners' Replacement Loan Fund (see below);

- The Homeowners' Replacement Loan Fund (Chapter 56, Article II): method (2) executive regulations authorize the DHCD Director to administer this loan program, which is managed as a CIP project; and

- The Tenant Displacement Loan Fund (Chapter 56, Article VII): method (2) executive regulations authorize the DHCD Director to administer this loan and grant program, which has not been funded since 1987.

In addition to these three loan programs, Chapter 56 outlines the County's authority with respect to urban renewal projects. Although not identified in the law, in practice, DHCD serves as the County Government's lead department on urban renewal. Most recently, DHCD has been assigned the responsibility of preparing the urban renewal plan for the Silver Spring Central Business District.

Chapter 25B, Article III establishes the Settlement Expense Loan Program, and assigns administration of the program to "the County Executive or designee". Section 25B-13 specifically authorizes the County Executive to delegate any of the powers and duties in this article to either the DHCD Director or the Housing Opportunities Commission (HOC), or both. In practice, the County Executive has delegated administration of the Settlement Expense Loan Program to HOC.*

The Chief Administrative Officer has also delegated DHCD responsibility for a number of additional programs and functions not established by County law. In particular, DHCD is responsible for:

- Administering two federally-funded programs, the Community Development Block Grant (CDBG) program and the Home Investment Partnerships Program (HOME);**
- Managing commercial revitalization and community development CIP projects, which are funded through a combination of County bonds and CDBG funds;
- Serving as the County Executive's liaison with the Housing Opportunities Commission (HOC), a role which includes managing the County's contract with HOC and providing staff support for other County Government approvals requested by HOC;
- Administering a State grant weatherization program for County residents who meet Federal Poverty Guidelines; and
- Coordinating the Neighborhood Initiatives Program (a CIP project that is not yet active due to fiscal constraints).

* According to HOC staff, this program has not yet been implemented due to lack of funding. In FY91, HOC's contract with the County included approximately \$300,000 for the Settlement Loan Expense Program; these funds were later cut in response to the County's fiscal problems. HOC staff has developed draft regulations for the program, which were forwarded to the County Attorney for review in 1991.

** Montgomery County will receive HOME funds for the first time in FY93.

Finally, DHCD's responsibilities include providing staff support to four citizen commissions, whose members are appointed by the County Executive and confirmed by the County Council: the Commission on Common Ownership; the Landlord-Tenant Commission; the Citizens Housing Advisory Committee; and the Productivity Housing Committee. In addition to these commissions established by County law, DHCD provides staff support to the Housing and Community Development Advisory Committee, a citizen committee appointed by the County Executive to advise on the allocation of Community Development Block Grant funds. As coordinator of the County's activities to prevent discrimination in housing, DHCD also provides staff support to the Inter-Agency Fair Housing Committee.

III. THE DIFFERENT METHODS OF ASSIGNING DECISION AUTHORITY TO DHCD

The responsibility to administer individual programs and functions usually includes the authority to make specific decisions. This chapter summarizes the different methods used to assign decision authority to the DHCD Director and other DHCD staff.*

- County law;
- Executive regulations;
- Federal and State law/regulations;
- Inter-departmental memorandums of understanding;
- The capital and operating budget process; and/or
- The delegation of decision authority from the County Executive or Chief Administrative Officer (CAO).

County Law. Numerous sections of the County Code directly authorize the DHCD Director or the DHCD Director's designee to make certain decisions. There is a variety of statutory language that authorizes specific decisions to be made. The law includes examples of where the decision-maker is identified as:

- The DHCD Director;
- The DHCD Director or DHCD Director's designee;
- The Department of Housing and Community Development (not a specific person);

* For purposes of analysis, this report uses the term "decision authority" to mean the authority to make a decision that entails the exercise of discretion, e.g., the authority to approve, deny, or modify something, the authority to decide whether to commit County resources and at what level.

- The DHCD Director and another person, (e.g., the County Attorney); or
- The DHCD Director or another agency (e.g., DEP, HOC).

A number of other chapters and regulations (e.g., Chapter 2, Administration; Personnel Regulations) authorize all department directors to make certain personnel and other administrative decisions that affect their respective departments. For the most part, the focus of this OLO study is not on this second type of generic authority delegated to all department directors.

- Executive Regulations. Many of the County laws that DHCD administers include a provision for the County Executive to adopt executive regulations. While some regulations simply repeat a decision authority contained in law, others authorize DHCD to make additional decisions. Executive regulations often contain details about how decisions are to be made, including criteria to be followed and/or limits DHCD's decision authority.

By law (Section 2A-14), executive regulations are adopted under one of three methods: method (1) executive regulations require Council approval; method (2) executive regulations are submitted to the Council for review and become effective unless the Council disapproves them within a certain time limit; and method (3) executive regulations do not require Council review or approval. All regulations are published in The Register, with the opportunity for public comment.

Table 1 (page 7a) summarizes the executive regulations required by County laws administered by DHCD. Although the law formally requires the County Executive to promulgate these regulations, in practice, DHCD staff take the lead role in preparing them. As listed on Table 1, the County laws administered by DHCD require a combination of method (1), (2), and (3) regulations. The data contained in Table 1 also indicate that there are eight places where the law requires executive regulations to be adopted, but where executive regulations have yet to be promulgated; six of these eight regulations are in the process of being developed.

- State or Federal Law/Regulations. DHCD is charged with administering two major federal grant programs (Community Development Block Grant and HOME), and one State grant program (Weatherization). The regulations for these programs contain some delegation of specific decision authority to the administering agency. As will be discussed later in this report, the County's process for allocating CDBG funds is a multiple-step one that involves DHCD staff, members of the public, the County Executive, and the Council.

- Inter-Departmental Memorandums of Understanding. There are a number of inter-departmental Memorandums of Understanding (MOUs) between DHCD and the Department of Environmental Protection (DEP) that delegate certain decision authority from DEP to DHCD. These agreements relate to inspection of accessory apartments, registered living units, and concentrated code enforcement activities in targeted neighborhoods. The decision authority

Table 1

Executive Regulations
for County Code Chapters Administered by DHCD

Chapter/Article Title	Code Section Requiring Executive Regulation	Purpose	Method of Adoption	Number of Current ER
Commission on Common Ownership Communities	Sec. 10B-7	To establish fee for Common Ownership Communities.	2	ER56-90E
Dispute Resolution	Sec. 10B-15	To determine CCOC dispute resolution process.	2	•
Moderately Priced Housing	Sec. 25A-4	To establish MPDU eligibility standards.	1	ER74-91
	Sec. 25A-5	To establish procedures for considering and implementing the MPDU requirement.	1	ER57-89E
	Sec. 25A-7	To establish maximum sales prices for MPDUs.	1	ER35-90
	Sec. 25A-7	To establish maximum rents for MPDUs.	1	ER48-88
	Sec. 25A-7	To allow an applicant to increase the sales price of an MPDU up to 10% above the affordable base price.	1	ER35-90
	Sec. 25A-8	To establish the requirements and procedures for administering the MPDU program.	1	ER44-88
	Sec. 25A-8	To extend HOC's MPDU tax credi program as a local housing program until January 1994.	1	ER7-91E
	Sec. 25A-8	To specify eligibility for non-profits to buy or lease MPDUs.	1	•
	Sec. 25A-10	To promote compliance with MPDU law and prevent practices that evade controls on rent and sales of MPDUs.	1	•

Chapter/Article Title	Code Section Requiring Executive Regulation	Purpose	Method of Adoption	Number of Current ER
Montgomery Housing Initiative	Sec. 25B-9	To administer the Housing Initiative fund (MHI).	2	ER38-89E
Settlement Expense Loan Fund	Sec. 25B-13	To administer the Settlement Expense Loan Fund.	2	*
Housing and Building Maintenance Standards	Sec. 26-22	To establish lower civil fines for Chapter 26 violations.	1	ER50-88
	Sec. 26-22	To define housing standards for accessory apartments.	2	ER59-89
	Sec. 26-22	To revise existing standards for security measures at all dwelling units.	2	ER49-88
Landlord-Tenant Relations	Sec. 29-19	To establish an annual license fee for each dwelling unit.	3	ER46-91
	Sec. 29-28A	To provide financial assistance to tenants to reclaim their chattels from storage.	3	**
Rental Assistance Program	Sec. 41A-5	To implement this article.	1	ER69-91
Supplemental Rental Assistance Program	Sec. 41A-19	To establish the amount of rental assistance paid monthly.	1	*
	Sec. 41A-20	To implement this Article.	1	*
Tenant Displacement***	Sec. 53A-2	To establish the procedure so the tenant organizations are eligible to exercise the right of first refusal.	2	ER53-91
	Sec. 53A-3	To establish the procedure for interested groups (HOC, tenant organizations, County) to inspect rental housing.	2	ER52-91

<u>Chapter/Article Title</u>	<u>Code Section Requiring Executive Regulation</u>	<u>Purpose</u>	<u>Method of Adoption</u>	<u>Number of Current ER</u>
Tenant Displacement***	Sec. 53A-3	To give HOC and the County the right of first refusal to purchase a rental facility.	2	ER53-91
	Sec. 53A-3	To establish criteria to evaluate 3-year agreements to limit tenant displacement.	2	ER54-91
	Sec. 53A-4	To provide for the payment of relocation assistance to displaced tenants.	2	ER50-91
	Sec. 53A-8	To determine if tenant will receive reimbursement for relocation assistance.	3	ER58-81
Urban Renewal and Community Development	Sec. 56-1	To administer the Rehabilitation Loan Fund.	2	**
	Sec. 56-6	To administer the Homeowners Replacement Loan Fund.	2	ER45-89
	Sec. 56-34	To make loans and administer the Tenant Displacement Aid Fund.	2	ER47-88
Registered Living Unit Requirement	Sec. 59A-6	To administer registration and inspection functions for Registered Living Units. (This authority is delegated to DHCD by DEP.)	2	

* In process of being developed by Executive Branch.

** Executive Regulations for this purpose do not exist, and DHCD has no current plans to develop them.

*** Executive Regulations for Chapter 53A, Tenant Displacement, are promulgated by the Office of Consumer Affairs. This chapter is administered jointly by OCA and DHCD.

delegated from DEP to DHCD is quite specific; in particular, the inter-departmental MOUs authorize DHCD Housing Code Enforcement staff to act as DEP's agent to: identify violations; negotiate for corrective action; and/or issue civil citations for violations of Chapter 48, Solid Waste, Chapter 58, Weeds, and Chapter 59, Zoning.

- The Capital and Operating Budgets. Each year, the Council appropriates funds to DHCD through both the capital and operating budgets. The budget process provides the DHCD Director with the authority to make certain decisions concerning the expenditure of funds appropriated to the department. The specific type of decision authority that comes with receiving capital and operating budget funds is discussed in more detail later in this report, (see page 20).

- Delegation of Decision Authority from the County Executive and/or Chief Administrative Officer. In some areas for which DHCD has functional responsibility, the County Code authorizes the County Executive or Chief Administrative Officer to make specific decisions, which the County Executive has delegated to the DHCD Director. In addition to the delegation of statutory decision authority, in practice, there are other types of decisions the County Executive or Chief Administrative Officer has delegated largely to the DHCD Director to make. For the most part, the delegation of decision authority from the County Executive to the DHCD Director is not formalized.

IV. TYPES OF DHCD DECISION AUTHORITY AND CRITERIA FOR DECISION-MAKING

A. Overview

The decisions that the DHCD Director and other DHCD staff are authorized by law and regulation to make vary in terms of scope and content. In some cases, the law or regulation also establishes criteria and/or the process for making the decision. The decision authority granted to the DHCD Director also varies in terms of whether the DHCD Director is the sole decision-maker, and as to whether the decision can be formally appealed to another entity.

This chapter reviews the major types of decisions that the DHCD Director is authorized to make, and describes the criteria that are established for making these decisions. Subsequent chapters will examine other requirements imposed upon DHCD's decision authority and decision process.

The types of decision authority delegated to DHCD by law and regulation can be grouped into the following major categories:

- The authority to approve or deny;
- The authority to grant a waiver;
- The authority to decide whether and/or how to carry-out a specific task;

- The authority to inspect and enforce;
- The authority to appoint; and
- The authority to manage appropriated capital and operating budget funds.

Each of these types of authority is explored below in greater detail. For each type of decision, there is also discussion of the different criteria established for DHCD's decision-making.

B. The Authority to Approve or Deny

1. General. As part of DHCD's authority to administer programs, the DHCD Director or other DHCD staff are authorized to approve or deny certain types of loans, grants, assistance payments, licenses, agreements, projects, and proposals. The authority to approve or deny is granted explicitly to DHCD either by law, by executive regulation, or through the delegation of approval authority from the County Executive or Chief Administrative Office.

The DHCD Director is authorized to approve or disapprove applications for the following types of loans, grants, and payments:

- Grants/loans from the Tenant Displacement Aid Fund;
- Rental assistance payments from the Rental Assistance Program and Supplemental Rental Assistance Program for Families with Dependent Children;
- Financial assistance payments for the transportation and storage of evicted tenants' belongings;
- Loans from the Rehabilitation Loan Fund;
- Grants from the Weatherization Program;
- Payments from the Montgomery Housing Initiative;* and
- Payments related to the administration of programs funded through the Community Development Block Grant (CDBG) and Home Investment Partnership Program (HOME).

* Code Section 25B-9 authorizes the DHCD Director to administer the Montgomery Housing Initiative, pursuant to method (2) executive regulations. Executive Regulation 38-89E, Administration of the Montgomery Housing Initiative Funds, grants the DHCD Director authority to "approve the use of funds under this program, disapprove the use of funds, or authorize further negotiation with persons proposing to use the funds." See page 29 for more information about the MHI.

The authority to approve or deny loans from the Homeowners Replacement Loan Fund is delegated, by Executive Regulation 45-89, to the Chief of DHCD's Housing Division.

The DHCD Director is authorized to approve things other than loans, grant, and payments. For example, the MPDU law (Chapter 25A) authorizes the DHCD Director to approve or deny certain agreements and exceptions. In particular, the MPDU law authorizes the DHCD Director: to approve or disapprove an applicant's offer to transfer land to the County for purposes of constructing MPDUs; and "in exceptional cases, to accept an alternative method of meeting the MPDU requirement."* The MPDU law also authorizes the DHCD Director to approve the temporary rental of a privately-owned MPDU, and the termination of MPDU controls when MPDUs are sold after the 10-year control period ends. Finally, the MPDU law authorizes the DHCD Director and the County Attorney to jointly approve or disapprove written MPDU agreements that provide the required number of MPDU units.

The County's Housing Policy (Chapter 25B) authorizes DHCD to approve, approve with modifications, or disapprove proposals to develop or acquire a site for assisted-family housing; this authority is shared with the Housing Opportunities Commission, the Revenue Authority, and any other government entity sponsoring the development of assisted family housing. In addition, the Productivity Housing law authorizes the DHCD Director "to determine the feasibility" of the Productivity Housing Committee's recommendations for productivity housing sites.**

DHCD's authority to inspect and license rental facilities includes the specific authority for the DHCD Director to approve, revoke, deny, or suspend a license from a rental facility (Chapter 29). And, in connection with DHCD's authority to inspect and enforce the County's housing standards, executive regulations (No. 59-89) authorize the DHCD Director to act as the final authority in all matters pertaining to the approval of accessory apartments.

2. Criteria for DHCD's Approvals of Loans, Grants, and Other Payments. In most cases, the law or executive regulation that authorizes DHCD to approve something also establishes criteria that the DHCD Director must base his approval on. In some cases, a decision process involving citizen input is also mandated (see page 21).

* See page 31 for more detailed discussion of the DHCD Director's authority to approve MPDU alternatives.

** Although the Productivity Housing law does not use the word "approve", the DHCD's Director's authority to "determine the feasibility" is essentially the authority to approve or disapprove the Productivity Housing Committee's recommendations to pursue individual sites.

The criteria established by County law or executive regulation for DHCD's various approvals range from general guidance to detailed rules. In practice, when written criteria are not established, the authority to determine the conditions for approval or denial is delegated to the DHCD Director and other DHCD staff. This delegation is made explicit in regulations for the Montgomery Housing Initiative, which state the following:

The Director of Housing and Community Development may approve the use of funds under this program, disapprove the use of funds, or authorize further negotiation with persons proposing to use funds. When the use of funds is approved, the Director will determine the terms and conditions of the use of the funds and enter into contracts with approved sponsors. (Executive Regulation 38-89E, Section 2.5)

Table 2 (page 11a) lists the eight programs established by County law that are administered by DHCD, and that involve the approval or denial by DHCD of a loan, grant, or other assistance payment.* For each program, Table 2 indicates whether County law or executive regulations specify: eligibility requirements, the benefit or payment calculation, the minimum and/or maximum payment, and/or the terms of payment.

- Eligibility Requirements. For seven of these eight programs, the law establishes some kind of eligibility requirement(s), which range from a general outline of eligible activities (e.g., Montgomery Housing Initiative, Rehabilitation Loan Fund) to a detailed explanation of eligibility requirements (e.g., Rental Assistance Program, Homeowners' Replacement Loan Fund). For four of the programs, executive regulations repeat and/or expand upon the eligibility requirements established by law. Although not in law or executive regulations, eligibility requirements for the Historic Preservation Grant Fund have been established by written guidelines adopted by the Historic Preservation Commission.

- Amount of Payment. For six of these eight programs, the amount of loan, grant, or other payment that can be approved by DHCD is not established by County law or executive regulation. The benefit or payment calculation is, however, established by law for the Rental Assistance Program, and by regulation for the Tenant Displacement Aid Fund. A maximum payment allowed under the program is established by regulation for the Rental Assistance Program and Tenant Displacement Aid Fund. DHCD staff plan to promulgate executive regulations for the Supplemental Rental Assistance Program that will establish both a benefit calculation and a maximum payment.

- Terms of Payment. The terms of payment are established by law for half of these eight programs; in three cases, executive regulations expand upon the terms set forth in the law. Examples of payment terms

* The Settlement Expense Loan Program is not included because the County Executive has delegated responsibility for administration of this program to HOC. See footnote on page 5.

Table 2

**Criteria Established by Law and/or Executive Regulations for Grant, Loan,
and other Payment Programs, Established by County Law and Administered by DHCD**

<u>Program/Fund</u>	<u>Eligibility Requirement</u>	<u>Amount of Payment</u>	<u>Terms of Payment</u>
Rental Assistance Program	Law and Executive Regulations (ER)	Law (1) and ER (1,2)*	Law and ER
Supplemental Rental Assistance for Families with Dependent Children	Law	Not specified**	Law
Homeowners' Replacement Loan Fund	Law and ER	Not specified	Law and ER
Tenant Displacement Aid Fund	Law and ER	ER (1,2)	Law and ER
Rehabilitation Loan Fund***	Law	Not specified	Not specified
Transportation/Storage of Evicted Tenants' Chattels	Law	Not specified	Not specified
Historic Preservation Grant Fund	Not specified	Not specified	Not specified
Montgomery Housing Initiative Fund	Law and ER	Not specified	Not specified

* (1) indicates that law and/or ER outline the benefit or payment calculation; (2) indicates that law and or ER define a maximum payment.

** Executive Regulations for this program are being drafted. According to DHCD, the regulations will outline eligibility requirements, the amount of payment, and the terms of payment.

*** In practice, the Rehabilitation Loan Fund has become part of the Homeowners' Replacement Loan Fund.

established by law include: the Rental Assistance law requires that rental assistance payments will be in the form of 12 monthly joint payee checks; the Homeowners' Replacement Loan Fund law sets forth rules about the interest rate of loans; and the Tenant Displacement Aid Fund law sets forth rules about interest rates and loan/fund repayments.

Although not contained in law or regulation, as noted earlier, the Historic Preservation Commission has adopted written guidelines for administration of the Historic Preservation Loan Fund. These guidelines include some grant requirements, such as that the receiving organization must provide a 50 percent funding match, and that all grant awards must adhere to the County's standard procurement regulations.*

The decision process for allocating federal grant funds is outlined in federal law and regulations. The process surrounding the CDBG program is detailed later in this report, (see page 35).

3. Criteria for other types of DHCD approvals. As explained above, in addition to loans, grants, and other payments, the DHCD Director is authorized to approve or deny a number of other things, e.g., agreements, proposals, licenses. The criteria established by law and regulation for these other types of approvals also vary in terms of scope and detail.

Chapter 25A, Moderately Priced Housing. The MPDU law and its associated executive regulations contain numerous rules and criteria for DHCD approvals. For several decisions involving an official DHCD approval, the DHCD Director is provided with little or no discretion, and for several others, the DHCD Director is provided with a fair amount of discretion.

The law contains detailed criteria for the DHCD Director's approval of MPDU agreements and termination of MPDU controls. For these decisions, the DHCD Director is granted little discretion, i.e., either the agreement contains the required number of MPDUs or it does not; the MPDU control period is either completed or it is not.

The MPDU law also authorizes the DHCD Director to approve: an alternative method of meeting the MPDU requirement; and an applicants' transfer of land to the County. For both of these decisions, the law sets forth general criteria for approval; the law also requires the County Executive to promulgate method (1) executive regulations that establish procedures for considering and implementing MPDU alternatives. However, it is important to note that because the criteria established involve reaching subjective judgments about the "public benefit" of an alternative proposal, or whether the "public interest" would best be served with a land transfer, both of these approval authorities entail a fair amount of discretion.**

* It is expected that administration of the Historic Preservation Grant Fund will be transferred to M-NCPPC during FY93.

** For more about the approval of MPDU alternatives, see page 31.

Chapter 25B, Housing Policy. The Housing Policy law, as currently written, establishes both a decision process and criteria for DHCD (or any other public agency) to follow before approving a proposal to sponsor the development of a site for assisted-family housing, or to acquire a developed assisted family housing facility. In particular, current law requires that a public hearing be held and that certain findings be reached pursuant to the County's assisted-family housing distribution criteria.*

The Productivity Housing article of Chapter 25B authorizes the DHCD Director to determine the feasibility of the Productivity Housing Committee's recommendations for productivity housing sites. The law establishes procedures for the review of potential productivity housing projects, and criteria for the Productivity Housing Committee to consider in making its evaluation, e.g., compatibility with relevant master plan recommendations, development potential and constraints, available transportation and school capacity.

Rental Facility Licenses. Chapter 29 authorizes the DHCD Director to revoke, deny, or suspend a license from a rental facility. The law (Section 29-24) establishes the following general criteria for the DHCD Director to follow when approving or refusing to approve a rental facility license:

A license may be revoked, denied, or suspended at any time by the Director if the landlord after ten days written notice fails to eliminate or to initiate bona fide efforts to eliminate violations of applicable laws.

C. The Authority to Grant a Waiver

1. General. County law and regulations authorize the DHCD Director to waive the following restrictions, standards, requirements, and limitations:

- The restrictions on the resale and re-rental prices of MPDUs; and the restriction in the MPDU law (Chapter 25A) that previous MPDU buyers cannot buy a second MPDU unless no other first-time purchasers are qualified;
- The requirement in Executive Regulation 57-89E that an applicant must submit a request for an alternative MPDU method at least 90 days prior to the date (contained in the MPDU construction agreement) that the applicant is required to offer the MPDUs for sale or rent;

* Bill 3-92, Housing Policy, introduced February 4, 1992, proposes to modify this section of the law in order to address issues of compliance with the federal Fair Housing Act.

- The requirement in the Productivity Housing law (Chapter 25B, Article IV) that productivity housing located on County-owned land should have 100 percent productivity housing units on it;
- The limitations on the use of funds from the Montgomery Housing Initiative that are established by executive regulation (No. 38-89E);
- The housing and building maintenance standards established in Chapter 26;
- The property standards for mobile home parts established in Chapter 29, Article VII;
- The assets eligibility limits established by executive regulation for the Rental Assistance Program (Chapter 41A); and
- Any procedure or criterion established by Executive Regulation 45-89 for the Homeowners' Replacement Loan Fund.

2. Criteria for DHCD Waivers. In almost all cases, the law or executive regulation that authorizes the DHCD Director to grant a waiver also establishes some criteria for the waiver decision. The criteria established for granting a waiver range from quite general to very specific in nature. In one case, a time limit is placed on DHCD's waiver authority.

Comparatively, the Housing and Building Maintenance Standards law (Chapter 26) establishes the most detailed criteria for granting a waiver. The law dedicates a separate section (Section 26-16) to outlining conditions under which DHCD (as the enforcing agency), may grant a waiver; The law provides that a waiver can only be granted if no violation presents an immediate danger to the health, safety, or welfare of the occupants of a dwelling or the public, and some other condition exists, e.g., the property owner is experiencing extreme financial hardship, or conditions beyond the control of the owner make it impossible to bring the dwelling into compliance.

The MPDU law (Chapter 25A) outlines the conditions under which the DHCD Director can waive the restrictions on the resale and re-rental prices for MPDUs. In particular, the law provides that such a waiver can be granted if, "the Director finds that the restrictions conflict with regulations of federal or state housing programs and thus prevent eligible persons from buying or renting units under the MPDU program." In contrast, the only criterion established for the other waiver authorized in the MPDU law (waiver of the restriction that previous MPDU buyers not buy a second MPDU) is simply that the Director finds "good cause" for granting the waiver.

The authority to grant a waiver in the Rental Assistance Program is delegated to the Director's judgment of "undue hardship". In particular, Executive Regulation 69-91 provides that the DHCD Director can waive the asset eligibility limit if the tenant provides evidence that this limit would create "an undue hardship for the family."

The waiver authorized for the Homeowners' Replacement Loan Fund is very general. Specifically, Executive Regulation 45-89 provides that the DHCD Director can waive procedures when, in the Director's judgment, "it is in the public interest."

The law establishing property standards for mobile home parks (Chapter 29, Article VII) does not establish specific criteria for DHCD's waiver authority. However, the law (Section 29-78) does limit DHCD's waiver to a six month time period, and requires the Board of Appeals to approve any permanent waiver or variance from the established property standards for mobile homes.

No criteria are established by law or regulations for the DHCD Director's authority to waive the following: the limitations on the use of funds from the Montgomery Housing Initiative that are established by executive regulation; the requirement in the Productivity Housing law that productivity housing located on County-owned land should have 100% productivity housing units on it; and the 90-day application requirement established by executive regulation for approval of an MPDU alternative proposal.

D. The Authority to Decide Whether and/or How to Carry-out a Specific Task

1. General. County law and regulations identify a number of specific tasks which involve decisions by the DHCD Director. These specific tasks, which are listed below, involve making decisions beyond approving or denying something:

- The MPDU law (Chapter 25A) authorizes the DHCD Director to decide whether the offering of MPDUs will be administered by lottery or another method.
- The Productivity Housing law (Chapter 25B, Article IV) authorizes the DHCD Director to decide whether to enter into preliminary and final agreements for productivity housing projects.
- The Landlord-Tenant Relations law (Chapter 29) authorizes the DHCD Director to decide whether a complaint filed with the Office of Landlord-Tenant Affairs is a violation of the chapter or a defective tenancy.

The Tenant Displacement law (Chapter 53A) authorizes the County, the Housing Opportunities Commission, or a certified tenants' organization to exercise the right of first refusal to purchase rental units before they are sold and "converted". In practice, when right of first refusal opportunities have been presented, staff support for the County's decision has been provided by both DHCD and the Office of Consumer Affairs.

2. Criteria/Limits Established. The laws authorizing each of the above decisions include different types of criteria and limits to the DHCD Director's authority.

The law that authorizes the DHCD Director to decide how to administer a MPDU offering requires that the Director select a method that ensures eligible persons will have an equitable opportunity to buy or rent an MPDU. To date, the DHCD Director's decision has been to administer all MPDU offerings on a lottery basis. The lottery drawing is open to the public, with representatives present from the developer and DHCD.

In comparison, the law that authorizes the DHCD Director to enter into productivity housing agreements establishes the following criteria and limits on the Director's decision-making:

- The DHCD Director can only consider sites that are recommended by the Productivity Housing Committee;
- The DHCD Director is limited to entering into final agreements for a total of six productivity housing projects;
- The DHCD Director is limited to approving projects where the developer has obtained all regulatory approvals from the Planning Board, and a productivity housing special exception from the Board of Appeals;
- The DHCD Director must obtain approval from the County Executive if the project involves the sale, transfer, or lease of County property; and
- The DHCD Director's authority to enter into productivity housing agreements expires on January 1, 1994.*

The Landlord-Tenant Relations law (Chapter 29) authorizes the DHCD Director to decide whether a complaint filed with OLTA is a violation of the chapter or a defective tenancy. The criterion established by law is that the DHCD Director must have "reasonable grounds" to believe that a violation has occurred. If the DHCD Director determines the complaint is a violation of the Landlord-Tenant law, then DHCD is authorized to initiate investigations and conciliation of the complaint; the law requires DHCD "to attempt to conciliate" the matter before forwarding the complaint to the Landlord-Tenant Commission.

Finally, the Tenant Displacement law (Chapter 53A) outlines in detail the circumstances under which the County, the Housing Opportunities Commission, or a certified tenants' organization has the authority to exercise the right of first refusal to purchase a rental facility. Criteria for decision-making as well as the process are outlined through a combination of law and four associated executive regulations. (See Table 1, page 7b).

* Bill 15-92, Productivity Housing, introduced March 23, 1992, proposes a number of changes to the Productivity Housing law, including an extension of the DHCD Director's authority to enter into productivity housing agreements until January 1, 1996.

Executive Regulation 53-91, promulgated by the Office of Consumer Affairs, lists the following criteria to be taken into account when deciding whether to exercise the right of first refusal: total purchase price and conditions of financing; physical condition and location of the property; percentage of tenants who are either elderly, handicapped, or low income; and overall supply of affordable rental housing in the County. In addition, the Tenant Displacement law and associated executive regulations detail the process that must be followed for exercising the right of first refusal, to include: time limits on the offer, the decision, and the final sale, and a requirement to obtain the approval of the municipality's governing body if the property is located in a municipality.

E. The Authority to Inspect and Enforce

1. General. As reviewed earlier in this report, DHCD is responsible for several regulatory functions. The laws that establish these regulatory functions provide DHCD with the explicit authority to inspect and enforce.

As the department designated either directly by law or by the Chief Administrative Officer as the "enforcing agency" for the County's housing and building maintenance standards (Chapter 26) and the County's property standards for mobile home parks (Chapter 29, Article VII), DHCD is authorized:

- To enter, examine, and survey all dwellings and premises within the County in order to safeguard the health and safety of the occupants and the general public; and
- To issue notice of violations and orders to correct violations of the County's housing and building maintenance standards, or non-compliance with the County's mobile home park property standards.

As the department responsible for licensing rental facilities, Chapter 29, Article III, DHCD is authorized:

- To inspect each licensed rental facility every three years;
- To inspect each licensed accessory apartment annually; and
- To issue notices and orders to correct violations.

Pursuant to a number of Memorandums of Understanding (MOUs) between DHCD and the Department of Environmental Protection (DEP), DHCD is also authorized to inspect and enforce standards for accessory apartments and registered living units, and to act as DEP's agent in certain neighborhoods. In particular, for the neighborhoods identified in the MOUs, DHCD's Housing Code Enforcement staff is authorized to identify violations, negotiate for

corrective action, and/or issue civil citations for violations of Chapter 48, Solid Waste; Chapter 58, Weeds; and Chapter 59, Zoning. In addition, Housing Code Enforcement staff have assisted DEP with enforcement of the demolition-by-neglect provisions of Chapter 24A, which concern the condition of historic resources located on public or private property.

2. Criteria/Limits. Inherent in DHCD's authority to inspect and enforce the County's housing and building maintenance code is the discretion to decide:

- Which facilities to inspect;
- The frequency of inspection;
- Whether a situation constitutes a violation; and
- What action to take once it is decided that a violation exists.

Chapter 26, Housing and Building Maintenance Standards, provides DHCD (as the enforcing agency) with broad authority to "enter, examine, and survey all dwellings and premises within the County." By law, the inspection must be performed "in order to safeguard the health and safety of the occupants and the general public." Although the law does not establish criteria for deciding which facilities to inspect, the law requires DHCD to provide notice to the owner, operator, or occupant prior to the inspection, (see page 25).

For the most part, how often a facility is inspected is a decision delegated to DHCD's Code Enforcement Division. However, the law establishes two minimum residential inspection requirements:

- All licensed rental facilities are required to be inspected at least once every three years; and
- All licensed accessory apartments are required to be inspected once a year.

Chapter 26 and its associated executive regulations outline the County's minimum housing and building maintenance standards. These written standards constitute the written criteria used by Housing Code Enforcement staff to determine whether a violation exists. In some cases, the written standards provide little room for judgment, e.g., the property must be supplied with electric service where there is electric service available from power lines not more than 300 feet away. In contrast, there are other standards for which individual inspectors are required to exercise a fair amount of their own discretion, e.g., the electric service, outlets, and fixtures must be properly installed and maintained in good and safe working condition.

With respect to DHCD's authority to issue notices of violation and orders to correct, Chapter 26 requires that such notices and orders: be in writing; describe a remedial action which will effect compliance; allow a reasonable time for correction action to be taken; and be correctly served upon the owner, his agent, or occupant. As will be discussed later (see page 27), the law also provides for appeals of any order to correct to the Housing Board of Review.

Similarly, when DHCD staff is inspecting for compliance with other County laws (e.g., MPDU law, Landlord-Tenant Relations law), those laws and associated executive regulations set forth the criteria for determining whether a violation exists. How much discretion is delegated to the judgment of the individual staff also varies throughout these other laws and regulations.

The process that DHCD staff must follow when issuing civil citations is outlined in the general provisions of the County Code (Sections 1-18 and 1-19). Acting as agents of Montgomery County, DHCD staff are authorized to issue civil citations for specific violations.

F. The Authority to Appoint

The DHCD Director, like other department directors, has certain generic authority to make personnel decisions within his/her department. In addition, the County Code authorizes the DHCD Director to make a number of other decisions related to the selection or appointment of persons to perform a specific duty.

In particular, County law authorizes the DHCD Director to appoint the following persons:

- One ex-officio non-voting member of the Commission on Common Ownership Communities;
- A DHCD staff member to serve as the County's Fair Housing Coordinator; and
- A DHCD staff member to serve as the Department's representative on the Inter-Agency Fair Housing Coordinating Group.

By law the Housing Board of Review (established by Section 26-13) consists of the Chief Administrative Officer, the Fire Marshal, and the Director of the Department of Facilities and Services (DFS). In practice, the Housing Board of Review consists of the Chief of DHCD's Division of Community Planning and Development (the CAO's designee), a fire code inspector (the Fire Marshal's designee); and a DFS staff member.

As noted earlier, DHCD is responsible for providing staff support to a number of citizen committees and commissions, whose members are appointed by the County Executive and confirmed by the Council.* In addition, DHCD manages the County's contract with the Housing Opportunities Commission, and with M-NCPPC to provide staff support for the Historic Preservation Commission. Although the DHCD Director does not have a legislated role in any of these appointments, in practice, the DHCD Director frequently advises the County Executive about these appointments.

G. The Authority to Manage Appropriated Capital and Operating Budget Funds

In FY93, DHCD will be responsible for managing 12 CIP projects included in the County's approved capital budget. These projects are funded through a combination of Community Development Block Grant funds, County bonds, and County General Revenues. As manager of these CIP projects, DHCD can exercise the decision authority delegated to all CIP project managers. For each of the CIP projects assigned to DHCD, the Director:

- Decides when and how to proceed on the project;
- Has the authority to transfer funds between spending categories; and
- Has the authority to request approval from the County Executive to move up to ten percent of the total appropriated amount between projects within the same program category.

For FY93, DHCD's capital budget projects (which have a total six-year project cost of approximately \$54 million) include: the Montgomery Housing Initiative; the Homeowners Replacement Loan Fund; neighborhood improvement projects; and commercial improvement projects, including funds to be used in the revitalization of the Silver Spring Central Business District.

With respect to the operating budget, the Council appropriates funds to DHCD in three expenditure categories: personnel, operating, and capital. Within these categories, the DHCD Director has discretion to decide how the funds are spent. The Charter provides the Executive with the authority to transfer up to ten percent between expenditure categories.

In addition to managing funds appropriated to DHCD, the Department is responsible for managing two important County contracts with other public agencies. Specifically, DHCD manages the County's contract with the Housing Opportunities Commission (HOC), which will total approximately \$2.7 million in FY93; and the County's contract with the Planning Commission to provide staff

* The Commission on Common Ownership Communities, the Landlord-Tenant Commission, the Productivity Housing Committee, and the Citizen's Housing Advisory Committee. DHCD also provides staff support to the Housing and Community Development Advisory Committee, whose members are appointed by the Executive.

support for the Historic Preservation Commission, which will total \$156,350 in FY93. In both cases, the total contract amounts are explicitly appropriated by the County Council, during the annual budget process. The contract terms are negotiated at the staff level, with final approval required from the Office of the County Attorney. DHCD receives quarterly reports from both HOC and M-NCPPC, and approves contractual payments accordingly.

V. THE DECISION PROCESS MANDATED FOR SPECIFIC DHCD DECISIONS

In some instances, the law or executive regulation that authorizes the DHCD Director (or DHCD staff) to make a certain decision also mandates a process to be followed when making that decision. This chapter reviews DHCD decisions for which special requirements are imposed with respect to:

- Obtaining input from the general public;
- Consulting another government department or agency;
- Joint decision-making; or
- Providing notice to those who will be directly affected by a DHCD decision.

The final section of this chapter identifies Code sections that place a numerical or time limit on DHCD's decision authority.

A. Special Requirements for Citizen Input

A number of the County laws administered by DHCD mandate a decision process that requires input from County citizens. In addition, a number of related provisions have the effect of requiring public input prior to making certain decisions.

County law imposes a special requirement for citizen input related to the following DHCD decisions:

- The Productivity Housing law (Section 25B-21) requires that DHCD advertise any proposed transfer of County property intended for use as Productivity Housing. The law specifies that the advertisement must be in one or more newspapers of general circulation published in the County for three consecutive weeks with reasonable opportunity for comment by the public prior to any transfer.

- The MPDU law (Section 25A-7) requires DHCD to consult with the rental industry, employers, and professional and citizen groups before establishing MPDU sales prices and rents. The law does not specify the process for obtaining input from these outside groups.

• The Housing Policy law (Section 25B-6) requires DHCD to hold a public hearing (in the nature of a legislative, not an adjudicatory hearing) before giving final approval of a proposal to develop or acquire a site for assisted-family housing. The law requires that notice of the public hearing be published in at least one newspaper of general circulation in the County not less than 15 days before the public hearing. In addition, the law requires DHCD to make reasonable effort to give similar notice by mail to civic associations located in the area that the facility is to be located.*

Although not a requirement imposed on DHCD, the Housing Policy law (Section 25B-5) also requires the County Council to hold a public hearing on the annual housing report, a document that the law requires the County Executive to prepare and submit to the Council. After holding a public hearing, the Council's action is to designate by resolution, "which census tracts, other enumeration areas or aggregations thereof are limited priority for additional assisted family housing".**

Another requirement for the Council to hold a public hearing on a DHCD-related project is contained in the Urban Renewal law (Chapter 56, Article III). Specifically, the law outlines a review process for the Council, which includes holding a public hearing on any proposed urban renewal project. The law requires 15 days' public notice of the hearing and an opportunity for the public to review the plans. In addition, the law requires the Council to submit the plans to the Planning Board for its review and recommendations.

The law that establishes the Montgomery Housing Initiative (Chapter 25B, Article II) requires that the MHI be included in the County's Capital Improvement Program (CIP). Because the MHI is presented annually as part of the proposed capital budget, the public has the opportunity during the Council's capital budget public hearings to comment on the proposed appropriation of funds to the MHI. (For more about DHCD's decision authority related to the MHI, see page 29).

* These requirements for public input also apply to the Housing Opportunities Commission, the Revenue Authority, and any other government entity which receives any of its funding or other resources from or through the County Government, and who is approving a proposal to sponsor the development of assisted-family housing. It should be noted that Bill 3-92, Housing Policy, introduced February 4, 1992 proposes a number of changes to this section of the law.

** As noted earlier, Bill 3-92, Housing Policy, proposes a number of changes to this section of the law in order to address issues of compliance with the federal Fair Housing Act.

The federal regulations that outline the process for disbursing CDBG funds require the County to hold a public hearing on community development needs and the County's Housing Affordability Strategy (CHAS). In recent years, this public hearing has been held by the Housing and Community Development Advisory Committee. Additional public comment is received by the Council during its operating budget hearings. (For more detail about the CDBG decision process, see page 35).

Under the County Charter, the County Executive develops and presents recommended budget proposals to the Council. The Charter requires the Council to hold public hearings on the proposed capital and operating budgets. After holding public hearings and conducting review sessions, the Council authorizes expenditures for departments, agencies and capital projects, and establishes the tax rates necessary to fund the approved expenditures.

DHCD's budget is included in the Executive's proposed capital and operating budget, and is therefore subject to public comment each year as part of the Council's public hearing and budget review process. Although individual decisions made by the Department are generally not included in DHCD's budget, the funds allocated to DHCD to support its decision-making are subject to public hearing on an annual basis.

B. Special Requirements to Consult with Another Government Entity

A number of the County laws administered by DHCD require the DHCD Director, before rendering a final decision, to consult with a representative of a County-appointed commission, another County department, or another County or Bi-County agency.

A general requirement for DHCD to consult with other government agencies is included for DHCD's fair housing and rental survey responsibilities. Specifically:

- DHCD's Fair Housing Coordinator is required to consult with "appropriate County officials" (Section 2-27B); and
- The DHCD Director is required to coordinate the Department's rental housing survey activity with other County departments (Section 29-51).

When selecting staff to provide support to the Commission on Common Ownership Communities (CCOC), County law (Section 10B-4) requires the DHCD Director to consider the recommendations of the CCOC. Similarly, when selecting staff to provide support to the Landlord-Tenant Commission, the law (Section 29-5) requires the DHCD Director to consider the recommendations of the Landlord-Tenant Commission.

The executive regulation adopted for DHCD's approval of alternative MPDU methods requires the DHCD Director to obtain comments from the Planning Board if the proposed alternative includes development of MPDUs at an alternative site. In particular, the law requires the DHCD Director to transmit a copy of the proposal to the Planning Board; the Board then has 21 days to review the proposal and submit recommendations back to the DHCD Director.

The MPDU law also contains a requirement where DHCD must be consulted before a final decision is reached. Specifically, the MPDU law (Section 25A-6) delegates the authority to waive the number of MPDUs to the Director of the Department of Environmental Protection (DEP) or the Planning Board. DEP's authority is related to the issuance of a building permit; and the Planning Board's authority is related to the approval of a preliminary plan of subdivision or other development plan. The law requires that DHCD be consulted before a full or partial waiver is granted.

Another requirement to consult with the Planning Board before making a final decision is contained in the Urban Renewal law (Chapter 56, Article III). Specifically, this law authorizes the County Council to initiate an urban renewal plan upon making certain findings and preparing a plan. Section 56-12 requires that, prior to final approval, the Council must hold a public hearing and submit the proposed urban renewal plan to the Planning Board for its review and comment. The law provides the Planning Board with a 60-day review period. (As noted earlier, although DHCD is not specifically identified in the Urban Renewal law, in practice, DHCD serves as the County Government's lead department on urban renewal).

C. Joint Decision-Making

In several places, County law authorizes the DHCD Director to make a decision in conjunction with another entity. In contrast to the previous section which identified requirements for DHCD to consult with other entities before making a decision, these are decisions that the DHCD Director is not authorized to make alone.

The MPDU law (Section 25A-5) contains two requirements for a joint DHCD Director/County Attorney approval. In particular, the law requires written MPDU agreements to be approved by the DHCD Director and the County Attorney; and an applicants's offer to transfer land under the MPDU law must be approved by the DHCD Director and the County Attorney.

The Productivity Housing law (Chapter 25B, Article IV) authorizes the DHCD Director to enter into preliminary and final agreements for the construction of up to six Productivity Housing projects. The law, however, places the following parameters on the Director's decision-making:

- The Director can only consider sites that have been recommended by the Productivity Housing Committee; and
- The Director can only approve projects where the developer has obtained the necessary productivity housing special exception from the Board of Appeals, and regulatory approvals from the Planning Board.

Another example of joint decision-making is with the Supplemental Rental Assistance Program for Families with Dependent Children, which has been administered by DHCD's Housing Division since July 1991. (This program was implemented as a way to convert the County's AFDC supplement payment into a

rental assistance payment for recipients living in non-subsidized housing.) Although DHCD's Housing Division administers this program, the law authorizes the Department of Social Services (not DHCD) as the department to certify the eligibility of AFDC recipients to receive supplemental rental assistance benefits.

There are also a number of places where County law assigns authority to DHCD or another entity. For the following decisions, DHCD is authorized as one, but not the only, decision-maker:

- The law establishing the Settlement Expense Loan Program (Chapter 25A, Article III) authorizes the County Executive to delegate any of the powers and duties set forth in this article to either the DHCD Director or the Housing Opportunities Commission, or both.
- The decision process outlined in the Housing Policy (Chapter 25A, Article I) applies to DHCD, the Housing Opportunities Commission, the Revenue Authority, or any other government entity which receives any part of its funding or other resources from or through the County Government.
- The Tenant Displacement law (Chapter 53A) provides the right of first refusal to the County, the Housing Opportunities Commission, or a certified tenants' organization (As noted earlier, the County Government's administration of this chapter is shared between DHCD and the Office of Consumer Affairs.)
- The MPDU law (Section 25A-9) provides that any MPDU offered for resale during the first ten years must be first offered exclusively for 60 days through the department (to persons found eligible), and to the Housing Opportunities Commission.

D. Notice Requirements

The MPDU law, the Housing and Building Maintenance Standards law, and the Landlord-Tenant Relations law require DHCD to formally notify certain parties about a decision before specific action is taken to implement that decision.

- The MPDU law. The law (Chapter 25A) authorizes the DHCD Director to decide, after receiving an MPDU offering notice, whether the offering will be administered by lottery or another method. The DHCD Director is required to notify the applicant of the offering method and when the 90-day priority marketing period may begin. The MPDU law also requires DHCD to notify the Housing Opportunities Commission (HOC) and other designated housing development agencies or corporations promptly after receiving a notice of a MPDU offering. (This second notice requirement is to enable HOC or other designated entity to exercise their option, under the MPDU law, to buy or lease a certain number of MPDUs.)

- The Housing and Building Maintenance Standards law. The law (Chapter 26) authorizes the enforcing agency (DHCD's Division of Housing Code Enforcement) to enter, examine, and survey all dwellings and premises within the County. The law requires the enforcing agency to give notice, either orally or in writing, on the day of the inspection and to gain the consent of the owner, operator, or occupant. In addition, the law provides that if the owner, operator, or occupant refuses to consent, then the enforcing agency must obtain a warrant for the inspection.

The Housing and Building Maintenance Standards law also sets forth specific notice requirements for notices of violation and orders to correct (Section 26-14). In particular, the law requires such notices and orders to: be in writing; describe a remedial action which will effect compliance; allow a reasonable time for corrective action to be taken; and be correctly served upon the owner, his agent, or occupant.

In two particular housing code enforcement situations, County law establishes additional notice requirements. The law (Section 26-18) requires that DHCD provide 30 days written notice to the owner before ordering the demolition of a condemned building. The law (Section 26-19) also authorizes DHCD "to take any action reasonably necessary to correct a situation, which in the judgment of the enforcing agency constitutes a severe public health and safety emergency." In such cases, DHCD is required to give the owner, agent, or operator 24 hours to abate or correct the emergency after which DHCD can take any action "reasonably necessary".

- Landlord-Tenant Relations law. The law authorizes the DHCD Director to revoke, deny, or suspend a license from a rental facility. This law (Section 29-24) authorizes the DHCD Director to take such action only after 10 days' written notice to a landlord fails to eliminate or to initiate bona fide efforts to eliminate violations of applicable laws.

E. Numerical and Time Limits Placed on DHCD's Decision Authority

A number of the laws administered by DHCD place either a numerical or time limit on DHCD's authority to make certain decisions.

The Productivity Housing law (Chapter 25B, Article IV) authorizes the DHCD Director to enter into preliminary and final agreements for productivity housing projects. The law, however, limits the Director to entering into six productivity housing agreements. The Director's authority is also limited by a sunset provision, which states that the Director's authority to execute a preliminary agreement for productivity housing expires on January 1, 1994.*

* Bill 15-92, Productivity Housing, introduced March 24, 1992, proposes to extend this sunset date until January 1, 1996.

Two other laws administered by DHCD contain sunset provisions, or time limits on DHCD's authority. The Rental Assistance Program (Chapter 41A) was originally established with a two-year sunset provision; the sunset date for the Rental Assistance law has been extended four times, and is currently scheduled to sunset on August 1, 1992. The Tenant Displacement law (Chapter 53A) was originally enacted with a three year sunset date, which has been extended three times; it was most recently extended in April 1990 until June 30, 1995.

Another type of time limit is placed on the DHCD Director's authority to waive the mobile home property standards established by Chapter 29. In particular, the DHCD Director is authorized to waive or vary these standards, but only for a maximum time period of six months after making an investigation. The law requires approval of the Board of Appeals for a longer-term waiver or variance.

VI. PROVISIONS FOR APPEAL OF DHCD DECISIONS

County law and regulations contain explicit appeal procedures for certain decisions made by the DHCD Director or other DHCD staff. This section identifies which types of DHCD decisions can, by law or regulation, be appealed to: the Chief Administrative Officer; the Housing Board of Review; the Board of Appeals; the Landlord-Tenant Commission; the District Court; or the Circuit Court.

Two specific DHCD decisions are appealable to the Chief Administrative Officer (CAO):

- Section 41A-3 of the Rental Assistance law provides that the DHCD Director's decision to disapprove an application for Rental Assistance can be appealed to the CAO within 30 days of the Department's written notice of denial;* and
- Executive regulation (No. 47-88) for the Tenant Displacement Fund provide that the DHCD Director's decision regarding the use of the Fund can be appealed to the CAO.

Chapter 26, Housing and Building Maintenance Standards, provides that any order to correct, or any emergency order issued by the Housing Code Enforcement staff can be appealed to the Housing Board of Review. By law, (Code Section 26-13), the Housing Board of Review consists of the Chief Administrative Officer, the Fire Marshal, and the Director of the Department of Facilities and Services. The Housing Board of Review is authorized to sustain, modify, or grant a variance from DHCD's order.

* In practice, the CAO has delegated this authority back to the DHCD Director. It should also be noted that the section of law outlining the authority of the Board of Appeals (Section 2-112) provides that Rental Assistance decisions can be appealed to the Board of Appeals as an administrative appeal.

As amended in 1990 (Bill 2-90), the Board of Appeals can hear administrative appeals of Executive Branch actions only to the extent such appeals are authorized by law.* The following DHCD decisions can, by law, be appealed to the Board of Appeals:

- A demolition order issued by the Housing Code Enforcement staff;
- A notice to correct non-compliance with mobile home park property standards issued by the Housing Code Enforcement staff (but only after it has first been appealed from the Housing Code Enforcement Division to the DHCD Director); and
- A denial of an application for Rental Assistance (but only after it has first been appealed to the DHCD Director).

By law, one DHCD decision can be appealed to a citizen commission, appointed by the County Executive and confirmed by the Council. The Landlord-Tenant Relations law (Chapter 29) provides that the DHCD Director's decision to revoke, deny, or suspend a license from a rental facility can be appealed to the Landlord-Tenant Commission. Decisions of the Landlord-Tenant Commission (and Commission on Common Ownership Communities) can be appealed directly to Circuit Court.

A civil citation issued by DHCD staff can, like any other civil citation issued by the County, be appealed to the District Court. Code Section 1-18 outlines the procedures for issuing civil citations, which includes the right of the person receiving the citation to appear in District Court to contest the penalty.

VII. A MORE DETAILED REVIEW OF SELECTED DHCD DECISIONS

This chapter takes a closer look at the exercise of three different types of DHCD's decision authority in practice:

- Decisions related to the DHCD Director's authority to manage the Montgomery Housing Initiative;
- Decisions related to the DHCD Director's authority to approve alternative methods to meeting MPDU requirements; and
- Decisions related to DHCD's role as administrator of the federal Community Development Block Grant program.

These decisions were selected for a more detailed review because they represent three of the most visible areas of DHCD decision-making. For each of these, this chapter reviews: the source of decision authority; decision criteria; the decision process; and the exercise of this decision authority in practice.

* Prior to passage of Bill 2-90, the law authorized the Board of Appeals to hear "other appeals", which did not limit the Board's jurisdiction only to appeals specified by law.

A. Decisions Related to DHCD's Authority to Manage the Montgomery Housing Initiative

1. Source of Decision Authority. In May 1988, the Council enacted Bill 22-88 to establish the Montgomery Housing Initiative (MHI). Codified as Chapter 25B, Article II, the law requires the MHI to be included in the County's capital improvement program, and authorizes the DHCD Director to administer the MHI in accordance with method (2) executive regulations.

Emergency Executive Regulation 38-89E establishes procedures for the MHI. This emergency regulation was promulgated by DHCD,* and has been in effect since July 1989.* This regulation explicitly authorizes the DHCD Director to approve or disapprove the use of MHI funds, or to authorize further negotiation with persons proposing to use MHI funds. In addition, the regulation authorizes the DHCD Director to determine the terms and conditions of the use of the funds, and to enter into contracts with approved sponsors.

2. Decision Criteria. General criteria for the DHCD Director to follow when making decisions about MHI expenditures are contained in law and expanded upon in executive regulation.

The law provides that MHI funds may be spent on the following three activities:

- (1) To construct or acquire affordable housing units;
- (2) To buy and rehabilitate existing rental units that would otherwise be removed from the supply of affordable housing; and
- (3) To participate in housing or mixed-use developments that will include affordable housing.

Executive Regulation 38-89E expands upon the eligible uses of MHI funds; it repeats the three activities listed in the law, and adds three more:

- (4) To acquire land upon which affordable housing may be constructed;
- (5) To make loans for the development or rehabilitation of housing that will enhance the affordability of the units; and
- (6) To provide rent subsidies to low- and moderate-income tenants.

* Executive Regulations for the Montgomery Housing Initiative have never been promulgated on a non-emergency basis. This regulation has continued to be extended by Council Resolution, and is currently in effect until June 1992.

Executive Regulation 38-89E also establishes factors for the DHCD Director to consider when evaluating proposals for the use of MHI funds, including: existing commitments for the use of funds; suitability of the location and site for the facility; the degree to which the proposed use will further the housing policy goals of the County; and the degree to which the use of program funds will be leveraged by contributions from other sources. The list of factors is neither binding nor limiting, with the final factor listed as: "Other factors as determined by the DHCD Director."

Executive Regulation 38-89E establishes another type of limit on the DHCD Director's decisions regarding the use of funds, but also provides the DHCD Director with the authority to waive this limit. Specifically, the regulation states that the uses of MHI funds are limited as follows:

- No more than 20 percent of MHI funds appropriated in any fiscal year may be spent on activities other than the acquisition of land for new affordable housing construction or on activities which result in the construction of new affordable housing; and
- Rent subsidies to low- and moderate-income tenants may be provided from the MHI only to increase the affordability of newly constructed housing.

However, following each of these limitation is a caveat that states, "unless authorized by the DHCD Director." This language essentially provides the DHCD Director with the authority to waive the percentage limits set forth in the regulation.

3. Decision Process. By requiring that the MHI be included in the County's capital improvement program (CIP), the law establishes a decision process for the Fund. Similar to other CIP projects, a Project Development Form (PDF) for the MHI Fund is included each year in the County Executive's Recommended Six-Year Capital Program. As a CIP project, the MHI Fund is also subject to the public hearing and Council budget review and approval process.

Similar to other CIP projects, the Council's authority is to approve a total appropriation to the MHI. As manager of the project, the DHCD Director then has authority over how the funds are actually spent during the year. In particular, the DHCD Director can decide when and how to proceed on particular projects, and has the authority to transfer funds between spending categories.

4. The MHI Approval Process in Practice. For the first two fiscal years of the MHI (FY89 and FY90), the Project Development Form (PDF) for the Montgomery Housing Initiative included only a general description of the use of funds, and individual MHI projects were not listed in either the proposed or approved CIP. Beginning with the FY91 CIP budget, however, the Project Development Form for the MHI Fund has included an attachment, which lists actual and proposed project expenditures by fiscal year.

Since FY89, an estimated \$15.2 million has been spent out of the MHI Fund. Approximately \$12.7 million was spent on projects started in FY89 and FY90, and approximately \$2.5 million was spent on projects which began during the past two fiscal years (FY91 and FY92). This data indicate that almost 85 percent of all MHI expenditures were made before DHCD began its practice of listing specific MHI projects in the proposed CIP.

A review of CIP documents and a list of actual MHI expenditures for projects started since FY91 (when the PDFs began listing specific projects) indicates that:

- Six of the ten MHI projects initiated since FY91 were listed in either a proposed or approved CIP prior to expenditures being made; and
- Four of the ten MHI project initiatives since FY91 were opportunities that occurred during the fiscal year, after the CIP was approved.

According to DHCD staff, when the timing of projects has not coincided with the CIP process, the Council has been apprised of the projects either formally or informally. In several cases, the DHCD Director sent an information memorandum to Councilmembers, and in others, the DHCD Director consulted individually with Councilmembers.

Based upon OLO's review of documents and discussion with DHCD staff, it is evident that the nature of the MHI is such that it will unlikely ever fit neatly into the CIP process. While including the MHI as a CIP project allows for Council review of many MHI projects prior to actual expenditures, it is inevitable that not all proposals for use of MHI funds will occur in time to be submitted as part of the formal capital budget process.

B. Decisions Related to the DHCD Director's Authority to Approve Alternative MPDU Plans

1. Source of Decision Authority. As amended in 1988, the Moderately Priced Dwelling Unit (MPDU) law (Chapter 25A) contains statutory language that authorizes the DHCD Director to accept an alternative to meeting the MPDU requirement of a project by methods other than constructing the units within the subdivision. Section 25A-5(e)(3) requires that procedures for considering and implementing alternative offers must be established by executive regulation.*

* Although this section of Chapter 25A does not specify which method of executive regulation, a later section of the MPDU law (Section 25A-10) requires that executive regulations for this chapter should be adopted as method (1) regulations.

Code Section 25A-5(e)(1) provides that, in exceptional cases, instead of building the required number of MPDUs, an applicant may offer to:

- (a) Build significantly more MPDUs at one or more other sites in the same or an adjoining planning area;
- (b) Convey land in the same or an adjoining planning area that is suitable in size, location and physical condition for significantly more MPDUs;
- (c) Contribute to the Montgomery Housing Initiative Fund an amount that will produce significantly more MPDUs; or
- (d) Do any combination of these alternatives that will result in building significantly more MPDUs.

Section 25A-5(e)(2) designates the DHCD Director as the one authorized to accept an MPDU alternative offer. Executive Regulation 57-89E* expands upon this by explicitly stating that the DHCD Director will have final authority to make decisions with regard to acceptance, rejection, or modification of the applicant's offer. The regulation places the following limits on the DHCD Director's authority:

- The Director must not approve any other alternative if a bona fide offer is made by the applicant to build, in a timely manner, significantly more MPDUs at one or more acceptable sites in the same or adjoining planning area; and
- The applicant must sign an agreement with the Director not later than the time contained in the MPDU Construction Agreement for offering the MPDUs.

2. Decision Criteria. Criteria for the DHCD Director to follow when deciding whether to accept an MPDU alternative are established by law, and expanded upon in Executive Regulation 57-89E.

Code Section 25A-5(e)(2) and Section III of Executive Regulation 57-89E list factors that the Director must consider when deciding whether to accept an alternative proposal. By law and regulation, the primary factors that the DHCD Director must consider are:

* Emergency Executive Regulation 57-89E, titled "Alternative Methods of Meeting the MPDU Requirement", was adopted in October 1989. This executive regulation has never been promulgated on a non-emergency basis. By Council resolution, this emergency executive regulation has continued to be extended, and is currently in effect until June 1992.

- The amenities, facilities, and services to be provided will require condominium fees, homeowner's association fees, or rental fees that are likely to make the MPDUs unaffordable to eligible households;
- The number of housing units that will be achieved under the alternative will be significantly greater than the original number of MPDUs required, or the units to be produced will be more affordable;
- The alternative housing sites have access to necessary utilities and public facilities so that the units can be produced in a timely and cost-effective manner; and
- The developer's cash contribution to the Montgomery Housing Initiative Fund will be sufficient to acquire suitable sites and produce significantly more MPDUs than would be required on the subject site, or is capable of producing an equal number of housing units that are more affordable to low and moderate income households.

3. The Decision Process. Executive Regulation 57-89E also establishes the procedure for seeking approval from the DHCD Director for an alternative method. The regulation requires the applicant to apply to the Director at least 90 days prior to the date contained in the MPDU construction agreement that the applicant is required to offer the MPDUs for sale or rent. The regulation also authorizes the DHCD Director to waive the 90-day requirement.

Executive Regulation 57-89E lists the information that must be contained in the application, to include: the justification for the use of an alternative method; the proposal for the alternative; a schedule which indicates when the alternative will be produced; and supporting documentation as may be required by DHCD.

The regulation requires that if the proposal includes development of MPDUs at an alternative site, then the DHCD Director must transmit a copy of the proposal to the Planning Board for its evaluation and recommendations. The Planning Board is given 21 days to review the proposal and transmit the Board's recommendation to the DHCD Director.

4. The Exercise of this Decision Authority In Practice. To date, the DHCD Director has exercised the authority to accept an MPDU alternative method four times. There was also an additional case (Avenel), in which a preliminary acceptance of an alternative method was later withdrawn. Together, the four projects for which an alternative was approved represent a total MPDU obligation of 51 units; this equals 6.1 percent of the 830 MPDUs built since the amendment allowing alternative methods became effective in March 1989.

Table 3 (page 34a) summarizes the four cases where the DHCD Director approved an alternative MPDU proposal.* In one case (The Christopher), although an alternative method was approved, the developer later chose not to exercise the alternative and instead provided the full MPDU obligation within the building itself. According to DHCD staff, the alternatives have all involved situations where the mortgage payments plus additional fees (i.e., condo fees) were considered too high for MPDU qualified buyers.

The data contained in Table 3 also indicate that all four of the developments where an alternative was accepted are located in Bethesda. In three of the cases, the development is a high-rise luxury building. The fourth is a luxury townhouse development.

In all but one case, the approved alternative method involved a payment into the Montgomery Housing Initiative (MHI) Fund. The negotiated payments have ranged from \$280,000 to \$450,000; these payments into the MHI have equaled between \$34,500 and \$37,500 per MPDU unit obligation. In the one case of a rental property, the alternative method involved the developer providing a larger number (1.5X) of MPDUs at another nearby rental property owned by the same developer.

According to DHCD staff, the decision process surrounding each of the MPDU alternative method requests can be described as unique and complex. In all cases where a developer has requested approval of an alternative method, DHCD staff evaluates the proposal and makes a recommendation to the DHCD Director. In each case, many factors have affected the amount that is recommended as a reasonable alternative payment into the MHI, such as:

- The difference between the sales price of the MPDU sold as a market priced unit and its approved MPDU sales price;
- The value of the MPDU lots or land sold as if it were to be used for market priced housing; and
- The increased number and type (e.g., no. of bedrooms) of rental units being provided and the services which are offered within the MPDU rent levels.

* There was also one other case (8100 Connecticut Ave.) where a developer contributed funds (\$107,500) into the Montgomery Housing Initiative Fund as part of a negotiated agreement concerning the developer's MPDU obligation. This is excluded from Table 3 because, according to DHCD staff, this was a complex case where the developer's MPDU obligation was likely to be waived based on a waiver granted by the Planning Board under similar circumstances, and because it occurred prior to the formal amendment to the MPDU law that allowed alternative methods.

Table 3

MPDU Alternative Methods Approved 1989-1991

Year Alternative Approved	Name & Location of Development	Type of Building	MPDU Obligation	Alternative Approved	Parties Consulted by DHCD Director Prior to Approval of Alternative	Comments
1989	Madison Park, Bethesda	Hi-rise condo	8 units	Developer made \$280,000 payment into MHI. (Payment equaled \$35,000/unit.)	CE, Planning Board, Executive Director of HOC.	This alternative was approved after the building was already constructed to include 8 MPDUs, built as small one-bedroom units with a sales price of \$65-70,000. The condo fee was going to be \$170/month.
1989	Beacon Hill, Bethesda	Townhouse condo	12 units	Developer made \$450,000 payment into MHI. (Payment equaled \$37,500/unit.)	CE, Planning Board, Executive Director of HOC.	This alternative was approved after preliminary plan approval. The developer was going to provide 12-MPDUs as piggyback 1-bedroom town- houses. The condo fee was going to be \$300/month. At the time the alternative was approved, the lowest price market rate units at Beacon Hill were priced at \$450,000.
1990	Fairmont Plaza, Bethesda	Hi-rise rental	12 units	Developer provid- ed 18 MPDUs in a close-by rental building that was being renovated (The Seasons).	CE, Planning Board, Executive Director of HOC.	This alternative was negotiated after the initial MPDU agreement was signed. The Fairmont was going to have high monthly fees for special services including a parking fee.

MPDU Alternative Methods Approved, continued

Year Alternative Approved	Name & Location of Development	Type of Building	MPDU Obligation	Alternative Approved	Parties Consulted by DHCD Director Prior to Approval of Alternative	Comments
1991	The Christopher, Bethesda	Hi-rise condo	19 units	Developer would provide 10 MPDUs at The Christopher, and make \$310,500 payment into MHI for the other nine MPDUs. (Payment equaled \$34,500/unit.)	CE, Executive Director of HOC.	Although this alternative was approved, the developer later chose to provide all 19 MPDUs at The Christopher. The condo fee is \$165/month. The developer was unable to sell the MPDU's as market rate units. All of the MPDUs have sold but several purchasers required financing assistance to increase the downpayment, i.e., gifts from parents, mortgage co-signers.

As noted earlier, Executive Regulation 57-89E requires the DHCD Director to obtain the views of the Planning Board only if the alternative proposal includes the development of MPDUs at an alternative site. In practice, however, although not required by law or regulation, the DHCD Director has consistently consulted with the County Executive, the Planning Board, and the Executive Director of the Housing Opportunities Commission prior to making a final decision to approve or disapprove an alternative proposal, even when such consultation is not required. In a number of cases, according to DHCD staff, the Director has also discussed the situation with Councilmembers before rendering a final decision.

4. The Exercise of Discretion. The law authorizes the DHCD Director to accept or deny an alternative MPDU proposal, but also establishes criteria for the DHCD Director to consider and a decision process for the DHCD Director to follow. However, even with criteria and a process to adhere to, the decision authority granted to the DHCD Director still entails a fair amount of discretion.

The criteria established are not a simple list of yes/no items, but rather a set of conditions for the DHCD Director "to consider". The language "to consider" means that, in practice, the DHCD Director is authorized to exercise his subjective judgment. In addition, as discussed above, the most common alternative method has involved a payment into the MHI. The circumstances surrounding each alternative method proposal is different, and the DHCD Director has the authority to exercise his discretion when negotiating the amount and terms of these alternative payments.

C. Decisions Related to DHCD's Role as Administrator of the Federal Community Development Block Grant Program.

1. Overview. The federal Community Development Block Grant (CDBG) program is funded through the U.S. Department of Housing and Urban Development (HUD). Funds are awarded from HUD to local jurisdictions, including Montgomery County, for the general purpose of implementing community development activities. As stated in federal regulations, the purpose of the CDBG program is to provide local governments with:

. . . the opportunity to develop viable communities by funding activities that provide decent housing and a suitable living environment and by expanding the economic opportunities for low and moderate income persons.*

Community development is one of the functional areas of responsibility assigned by law to the County's Department of Housing and Community Development (DHCD), and DHCD is responsible for administering the CDBG funds awarded to the County.

* Entitlement Grant Regulations for Community Development Block Grants, HUD, September 1988, Federal Register.

Table 4 (page 36a) shows the total amount of CDBG funds received annually by the County since FY88. Part I shows the division of CDBG funds between the capital and operating budgets; and Part II shows the allocation of funds among DHCD, other County Government departments, HOC, municipalities, and private nonprofit organizations. The data indicate that:

- Since FY88, the County has received between \$4.0 and \$6.2 million each year in CDBG funds.
- CDBG funds are divided between the capital and operating budget, with the greater proportion consistently going towards projects and programs funded in the operating budget; since FY88, approximately 78 percent of all CDBG funds have gone to fund operating budget projects.
- The greatest proportion of CDBG funds has consistently been allocated to DHCD to support DHCD's community development projects and programs in both the capital and operating budgets. Since FY88, DHCD has received between 59 and 72 percent of all CDBG funds each year; the \$2.9 million budgeted to be received by DHCD in FY93 represents 64 percent of the total CDBG allocation of \$4.5 million.
- In addition to DHCD, CDBG funds have been allocated to other public sector entities, e.g., the municipalities of Gaithersburg, Rockville, and Takoma Park; the Housing Opportunities Commission; and other County Government departments, e.g., DFR, Health Dept., UpCounty Government Center. Since FY88, public sector entities other than DHCD have together received between 21 and 32 percent of the County's total CDBG allocation.
- Since the beginning of the program in the 1970's, CDBG funds have also been allocated to numerous nonprofit organizations. For the past four fiscal years, the funds allocated to outside groups have represented between five and eight percent of the County's total CDBG allocation.

As indicated above, DHCD receives CDBG funds in both the capital and operating budgets. Table 5 (page 36b) summarizes how DHCD proposes to allocate CDBG funds among specific DHCD projects and programs in the coming fiscal year. For FY93, approximately 40 percent of DHCD's CDBG funds will support capital budget projects while the remaining 60 percent will support operating budget programs.

2. The Process of Allocating CDBG Funds

a. Eligibility Requirements. Basic eligibility requirements for CDBG funds are established by federal law and regulations. In addition to federal requirements, the County has established some eligibility requirements of its own.

Table 4

**Part I: Division of CDBG Funds Between Capital
and Operating Budgets, FY88 - FY93**
(in 000's)

<u>FY</u>	<u>Total</u>	<u>CIP</u>	<u>% of Total</u>	<u>Operating Budget</u>	<u>% of Total</u>
88	\$6,170	\$2,710	44%	\$3,460	56%
89	4,882	1,066	22%	3,816	78%
90	4,992	1,541	31%	3,451	69%
91	4,044	960	24%	3,084	76%
92	4,361	1,204	28%	3,157	72%
93*	4,556	1,297	28%	3,259	72%

Part II: Allocation of CDBG Funds
FY88 - FY93
(in 000's)

<u>FY</u>	<u>DHCD</u>	<u>Other County Government**</u>	<u>HOC</u>	<u>Municipalities***</u>	<u>Nonprofit Organizations</u>
88	\$4,169	\$123	\$424	\$739	\$715
89	2,629	326	398	717	752
90	2,958	815	245	584	344
91	2,583	284	307	550	320
92	3,143	137	273	571	237
93***	2,908	543	236	601	268

* To be proposed in the final statement submitted to HUD in June after final Council approval of the CDBG budget.

** Includes: Department of Family Resources, Health Department, Up-County Government Center, Department of Addiction, Victim, Mental Health Services, Recreation Department, Police Department and Department of Social Services.

*** Includes Gaithersburg, Takoma Park, Rockville, Kensington, and Brookeville.

Source: County's Financial Accounting Management Information System Reports, through April 3, 1992.

TABLE 5

Recommended Allocation of FY 1993
CDBG Funding for DHCD

<u>Capital Budget</u>	<u>Dollar Amounts</u>
Long Branch Gateway	\$ 250,000
Silver Spring Rental Redevelopment	\$ 150,000
Housing & Community Development Facility Planning	\$ 50,000
Colonial Viers Mill Shopping Center	\$ 122,000
Homeless Center	\$ 450,000
Contingency Funds	\$ 50,000
Subtotal	\$ 1,072,000
<u>Operating Budget</u>	
Community Development Planning & Administration	\$ 650,000
Demolition Program	\$ 50,000
Group Home Rehabilitation Fund	\$ 75,000
Single-Family Rehabilitation Fund	\$ 600,000
Group Home Acquisition	\$ 95,000
Handicapped Accessibility	\$ 90,000
General Acquisition	\$ 55,000
Fair Housing Testing	\$ 40,000
Contingency Funds	\$ 181,000
Subtotals	\$1,836,000
DHCD total	\$2,908,000

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Federal regulations require that: at least 70 percent of CDBG funds must benefit low and moderate income persons; and that not more than 30 percent can be used to aid in the prevention of slums and blight.* Activities that do not meet one of these two broad objectives are not generally eligible for CDBG funds. However, federal regulations provide that CDBG funds may also be used, "to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, where other financial resources are not available to meet such needs."

To be considered an eligible CDBG activity, federal regulations also require that: certain environmental review procedures be completed for each activity; and the costs incurred must conform with OMB Circulars A-87, "Cost Principles Applicable to Grants and Contracts with State and local Governments" or A-122, "Cost Principles for Nonprofit Organizations".

In addition to the federal eligibility requirements, DHCD has developed local CDBG funding policy and priorities. As listed in DHCD's Community Development Block Grant Funding Policy and Evaluation Criteria, in order to be considered for CDBG funding, an application must meet one of the following objectives:

- Elimination of slums and blighting influences;
- Elimination of conditions detrimental to health, safety and public welfare;
- Stimulation of economic growth, development, and employment opportunities which will principally benefit persons of low and moderate income;
- Conservation and expansion of the county's housing stock for low and moderate income households;
- Restoration and preservation of properties of special value;
- Development and improvement of public facilities which contribute to the livability of residential areas; or
- Concentration of program activities within Housing Opportunities Commission and other assisted housing communities, areas of concentrated code enforcement, and/or selected Community Development target areas to maximize their impact.

These criteria were adopted by the Housing and Community Development Advisory Committee, and approved by the DHCD Director.

* These percentage allocations represent amendments made to the CDBG program by the National Affordable Housing Act of 1990.

b. Process Requirements. Certain advertising, public outreach, and reporting procedures for the CDBG program are established by federal regulation. Similar to the eligibility requirements, the County has chosen to supplement the federal requirements with additional local process requirements.

In accordance with federal regulations, DHCD (as the local department responsible for administering the CDBG program) is required to develop a proposed statement of community development objectives and projected use of funds. This statement must include the County's community development objectives and a list of activities that the County plans to carry out with awarded CDBG funds. In addition, the County must meet the following federal participation requirements:*

- Inform citizens of the amount of CDBG funds expected to be available;
- Hold at least one public hearing to obtain citizen views;
- Publish the County's proposed statement of community development objectives and projected use of funds;
- Prepare (and make available to the public) the County's final statement of community development objectives and projected use of funds after integrating public comments;
- Provide for appropriate citizen participation in the application and amendment process;
- Receive HUD approval of the County's Comprehensive Housing Affordability Strategy (CHAS);**
- Submit an annual performance report of progress made on previously funded grants.

As part of the County's CDBG process, the County Executive appoints a citizens advisory committee, the Housing and Community Development Advisory Committee (HCDAC). There are 16-20 members on the HCDAC, who each serve three-year rotating terms. The functions of the HCDAC are: to hold a public hearing on the County's community development needs; review CDBG funding applications; and make recommendations to the DHCD Director and County

* Federal participation requirements are set forth in HUD's Entitlement Grant Regulations for Community Development Block Grants.

** The requirement for a CHAS replaced a previous federal requirement for a Housing Assistance Plan (HAP). As required by HUD, the CHAS is an assessment of the housing needs of low- and moderate-income households within the community, and a strategy to meet those needs. DHCD submitted the County's first CHAS to HUD in October 1991, and is required to update and revise the CHAS annually.

Executive regarding the allocation of CDBG funds. (The HCDAC will also review the HOME program, a new federal grant program.)* Taking into account the HCDAC's recommendations, the DHCD Director recommends to the County Executive how CDBG funds should be allocated in the proposed capital and operating budgets.

The annual allocation of CDBG project funds in the County requires County Council approval. Although approval of the legislative branch is not required by the federal government, proposed expenditure of CDBG funds are included in the Executive's proposed capital and operating budget. In practice, this means that proposed CDBG allocations are part of the public hearing and annual budget review process.

Table 6 (page 39a) summarizes the annual process followed in the County for allocating CDBG funds.

3. Areas of DHCD Decision Authority and Discretion in the CDBG Program. The CDBG program provides the DHCD Director and other DHCD staff with a certain amount of decision authority and discretion. DHCD's decision authority derives from the department's dual role as: administrator of the CDBG funds for the County Government, and manager of specific projects and programs funded with CDBG funds.

a. The Authority to Recommend Funding Allocations. As part of the annual budget process, the DHCD Director recommends to the County Executive which projects and programs should be funded by CDBG. The DHCD Director's recommendation includes how much CDBG money should remain with DHCD to fund the CIP projects and other programs administered by DHCD, and how much CDBG money should be provided to other public and private entities for specific projects. As noted above, the HCDAC provides its recommendations to both the DHCD Director and County Executive.

Although the final authority to make CDBG funding decisions resides with the County Council and County Executive, the DHCD Director's authority to propose how CDBG funds should be allocated is significant. In practice, few changes are made to the DHCD Director's proposed allocation of CDBG funds.

b. The Authority to Manage CDBG-Funded Projects and Programs. The Director of DHCD exercises the same decision authority over CIP projects funded with CDBG money as he does over other CIP Projects. As discussed earlier, once the Council has appropriated funds to the CIP projects assigned to DHCD, the Director:

* The County will receive HOME funds for the first time in FY93. The total amount expected to be received is \$1.8 million. Although the process for allocating HOME funds is still in the process of being developed, according to federal regulations, HOME funds may be used to provide affordable rental and home-ownership housing through acquisition, rehabilitation, new construction, and tenant-based rental assistance.

Table 6

The Annual Process of Allocating CDBG Funds

JULY: DHCD advertises that the department is accepting CDBG applications for the following fiscal year.

SEPTEMBER: CDBG applications are due at the end of the month. DHCD staff review applications to determine whether they meet federal and County eligibility criteria.

OCTOBER: The Housing and Community Development Advisory Committee (HCDAC) holds a public hearing on community development needs. (This hearing also serves as the public hearing on the County's Comprehensive Housing Affordability Strategy.)

OCTOBER-MARCH: Applications are reviewed by the HCDAC. Applicants are invited to attend the October/November meetings held by subcommittees of HCDAC, and to make five minute presentations on their project. (Projects sponsored by DHCD are reviewed by the HCDAC, but the Committee makes no recommendations on these projects.)

DECEMBER: HCDAC submits its funding recommendation (both capital and operating budget) to the DHCD Director and the County Executive. The DHCD Director, in turn, submits the Department's CDBG recommendations to the County Executive.

JANUARY: The County Executive submits his Recommended CIP to the County Council. The Recommended CIP includes the allocation of CDBG funds to specific CIP projects.

FEBRUARY-MARCH: As part of their review of the Recommended CIP, the Council reviews the proposed allocation of CDBG funds to CIP projects. Tentative Council decisions are made regarding all CIP funding, including CDBG-funded projects.

MARCH 1: The County Executive's Recommended Operating Budget is submitted to the County Council. This budget incorporates the CE's recommended allocation of CDBG funds to outside groups as well as to County Government sponsored programs.

MARCH-APRIL: As part of their review of the Recommended Operating Budget, the Council reviews the CE's proposed allocation of CDBG funds. Tentative Council decisions are made regarding all Operating Budget funding, including CDBG funded projects.

MAY: By May 15th, the County Council makes final appropriation decisions on the Capital and Operating Budgets for the fiscal year beginning July 1. Also during May, DHCD publishes the County's proposed statement of community development objectives.

JUNE: In accordance with the County's procurement law, organizations approved as CDBG recipients are approved by Council as eligible to receive non-competitive grants. Also during June: DHCD publishes the County's final statement of community development objectives; submits the final statement to HUD; publishes a notice of finding of environmental assessment; and requests HUD to release CDBG funds to the County.

JULY 1: Start of the County's fiscal year. During July, HUD approves the County's request for release of CDBG funds.

AUGUST 1: Applicants that have been approved for funding can begin their projects.

OCTOBER 1: DHCD prepares the Annual Grantee Performance Report to be sent to HUD, and made available to the public.

- Decides when and how to proceed on the projects;
- Has the authority to transfer funds between spending categories within a capital project; and
- Has the authority to request OMB and Executive approval to transfer up to ten percent of the total appropriated amount between projects within the same program category.*

With respect to programs funded through the allocation of CDBG funds in the operating budget, the DHCD Director also has the authority to exercise certain discretion. As long as the program complies with the spending and reporting requirements established by the CDBG regulations, the DHCD Director has the authority to determine the level of staff effort and how the program is managed on a day to day basis.

CDBG-funded programs administered by DHCD are not established by law. As a result, the DHCD Director generally has a greater degree of discretion over how these programs are operated. For most of the non-statutory programs funded by CDBG, (e.g., Single Family Rehabilitation, Group Home Acquisition), DHCD has developed internal guidelines that establish basic operating procedures.

c. The Authority to Reallocate (within limits) CDBG Funds During the Fiscal Year. As explained earlier, as part of the County's annual capital and operating budget process, the Council approves the allocation of CDBG funds among government and private/non-profit agencies. Once the final list of projects is approved, DHCD assumes responsibility for implementing the approved program.

As CDBG program administrator, the DHCD Director has the authority to exercise some discretion over funding when: (1) a project that has been approved for funding can no longer be implemented for some reason; or (2) an approved project requires additional funding in order to be completed.

In the first case, the funds revert back to DHCD. The DHCD Director then has the authority to reallocate these funds to one or more of the organizations already approved by the Council to receive CDBG funds. If, however, the DHCD Director wishes to allocate these funds to an organization that has not previously been approved for a CDBG project, then DHCD must return to the County Council for approval of the organization proposed to receive CDBG funds.

In the case of cost overruns by approved projects, the DHCD Director has the authority to consider allocating the project additional funds. The source of additional funds is either CDBG-funded projects which were not able to be implemented, or funds that have been set-aside in a contingency fund.

* According to the County Charter, no transfer can be made between the operating and capital budget appropriations, and any transfer exceeding ten percent of the original appropriation requires Council approval.

VIII. DISCUSSION: IS THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT RULE-DRIVEN OR MISSION-DRIVEN?

A. Explanation of Rule-Driven vs. Mission-Driven Government

In Reinventing Government, David Osborne and Ted Gaebler argue that entrepreneurial government should be "mission-driven" rather than "rule-driven".* While recognizing that some rules are necessary to run any organization, Osborne/Gaebler maintain that the rules that were established to prevent bad things from happening are the same rules that prevent good things from happening. Osborne/Gaebler contend that one of the problems with government today is that too many rules limit government's ability to function efficiently, and in particular, make it impossible for government to respond to rapidly changing environments.

Instead of rule-driven government, Osborne/Gaebler advocate "mission-driven" government. According to Osborne/Gaebler, entrepreneurial governments should define their fundamental missions, and then turn their employees free to pursue the organization's mission with the most effective methods they can find. Their advice is to: deregulate the management of government; "scrape off the dead weight of accumulated rules, regulations, and obsolete activities"; and empower public sector employees to figure out the best way to achieve results.

B. The Continuum of DHCD's Decision Authority, Rules, and Discretion

DHCD is an amalgam of rule-driven and mission-driven government. With certain programs and functions, DHCD is assigned a basic mission to accomplish and DHCD staff are delegated a fair amount of decision authority and discretion with which to accomplish that mission. However, DHCD is also responsible for a number of programs that can be characterized as rule-driven, meaning that DHCD staff have relatively little decision authority and discretion over how the program is administered.

For purposes of analyzing the extent to which DHCD is a rule-driven as opposed to a mission-driven agency, the programs administered by DHCD can be placed along a continuum. At the rule-driven end of the continuum are programs for which the decisions of DHCD staff are largely controlled by legally mandated criteria and procedures. At the mission-driven end of the continuum are programs with minimal rules that allow DHCD staff to exercise a fair amount of discretion. In the middle are programs that have both rule-driven and mission-driven characteristics.

Comparatively, the most rule-driven program administered by DHCD is the Rental Assistance Program (RAP). For RAP, there are rules that mandate almost every aspect of the program, e.g., who is eligible; how the benefit is calculated; the maximum and minimum benefit amount; and the process for

* David Osborne and Ted Gaebler, Reinventing Government (Reading, Massachusetts: Addison-Wesley, 1992), Chapter 4.

providing the benefit (12 monthly joint payee checks). Some of the rules are outlined in law, with the remaining rules contained in method (1) executive regulations. In terms of deciding who is eligible, the DHCD Director's discretion is limited to waiving the asset eligibility limits. Although not formally appropriated as a line-item in the DHCD budget, the level of funding for RAP is discussed by the Council each year as part of DHCD's operating budget.

Although not as rule-driven as the Rental Assistance Program, the MPDU program must also be placed near the rule-driven end of the continuum. The lengthy MPDU law (25 pages) and its seven associated method (1) executive regulations establish many rules for how the MPDU program must operate. The law and regulations, for example, include rules for calculating a developer's MPDU requirements, maximum allowable sales prices (by unit size), income eligibility (by family size) and minimum specifications for MPDUs, such as the number of bathrooms and size of electric hot water heater by type of unit. However, in comparison to the Rental Assistance Program, it should be noted that in some areas, the rules for the MPDU program delegate authority to the DHCD Director to make certain decisions that involve a fair amount of discretion and judgment, e.g., the approval of MPDU alternatives, the waiver of certain requirements.

Compared to the Rental Assistance and MPDU programs, there are a number of DHCD programs and functions that can be characterized as largely mission-driven. The structure of these programs enable the DHCD Director and staff to exercise a fair amount of discretion:

- The Montgomery Housing Initiative: The MHI law and associated executive regulation establish the general parameters (i.e., mission) for this program. The law itself is only several paragraphs long, and as reviewed earlier in this report, the rules for the MHI provide the DHCD Director with a good deal of discretion over how to accomplish the basic purpose of the MHI, which as stated in the law, is "to promote a broad range of housing opportunities in the County."

- Administration of Commercial Revitalization and other CIP Projects. Most CIP projects are examples of mission-driven government. A sum of money is appropriated to accomplish a capital project, that is usually articulated on one piece of paper. As managers of CIP projects, DHCD staff have discretion in terms of how and when to complete the project, and the authority to transfer funds between spending categories within each project. The DHCD Director also has the authority to request County Executive approval to transfer of up to 10 percent of funds between projects in the same program category.

- Rental Housing Data. The law authorizes the DHCD Director to control rental housing data surveys for the County. There are no rules that dictate how the Director is to accomplish this mission, except that the law requires the Director to make a reasonable effort to minimize reporting requirements, and to share the information with other government agencies.

Examination of other DHCD programs and functions indicate that most fall somewhere in the middle of the continuum, meaning that they are blends of rule-driven and mission-driven government. A number of examples are described below.

Administration of Chapter 26, Housing and Building Maintenance Standards, is a good example of a program that is both rule-driven and mission-driven. Code enforcement is rule-driven to the extent that the law and associated regulations outline the standards that are required for housing and building maintenance. In practice, however, code enforcement is also mission-driven because DHCD staff is delegated the authority to decide how to deploy limited staff to accomplish the basic mission of code enforcement throughout the County. In addition, the application of the standards in practice and making decisions concerning how to obtain compliance in each particular case involve the judgment of individual inspectors.

Administration of the CDBG program is another good example of how a government activity can be both rule-driven and mission-driven. Federal regulations contain hundreds of rules regarding the CDBG program, to include: what activities are eligible; how funds are disbursed; and reporting requirements. However, within those federal guidelines, DHCD has the authority to exercise a fair amount of discretion over how the funds are allocated. In addition, most programs funded with CDBG funds have few County-imposed rules that dictate how the program must operate.

Two other examples of DHCD programs that are rule-driven in some respects, but mission-driven in others are the County's handling of landlord-tenant disputes and the implementation of the Productivity Housing Program:

- Landlord-Tenant Dispute Settlement. In some respects, the County's handling of landlord-tenant disputes appears largely rule-driven. The Landlord-Tenant Relations law (Chapter 29) is lengthy and complex, containing more than 50 sections dealing with subjects that range from licensing procedures to lease contents. In practice, however, the Office of Landlord-Tenant Affairs (OLTA) is mission-driven to the extent that DHCD staff are authorized to determine whether a complaint filed with OLTA constitutes a violation of the chapter; once a complaint is accepted, there are no rules that dictate how the staff is to approach their mission of investigating and resolving the complaint.

- Productivity Housing. The Productivity Housing law contains many rules that outline guidelines for the productivity housing program. Within these rules, however, the DHCD Director is given the bottom-line authority to enter into productivity housing agreements that fulfill the mission of the productivity housing program.

In sum, DHCD administers several programs that can be characterized as rule-driven, and several other programs that can be characterized as mission-driven. In practice, most DHCD programs and functions fall somewhere in the middle, meaning that they are blends of rule-driven and mission-driven government.

IX. SUMMARY OF FINDINGS

The Department of Housing and Community Development (DHCD) is responsible for numerous programs and functions related to: the development of affordable housing; rental assistance; community development; housing code enforcement; landlord-tenant relations; common ownership communities; and prevention of housing discrimination. DHCD is assigned responsibility for specific programs by law, by executive regulation, and through the delegation of authority from the County Executive or Chief Administrative Officer.

Each responsibility assigned to the Department carries with it a certain degree of decision authority that is exercised by the DHCD Director or other DHCD staff. This decision authority varies significantly in terms of scope and content. In some cases, the authority to make a decision comes with rules that guide or limit DHCD's decision-making; in others cases, the authority to make a decision comes without any caveats or limitations.

Using the terminology espoused by David Osborne and Ted Gaebler in Reinventing Government, DHCD is an amalgam of rule-driven and mission-driven government. With certain programs and functions, DHCD is assigned a basic mission to accomplish and DHCD staff is delegated a fair amount of decision authority and discretion with which to accomplish that mission. However, DHCD is also responsible for a number of programs that can be characterized as rule-driven, meaning that DHCD staff has relatively limited decision authority over how the program is administered. In practice, most programs administered by DHCD are blends of rule-driven and mission-driven government.

As outlined throughout this report, most rules for DHCD's decision-making are established either by law or regulation. The rules themselves vary in terms of how restrictive they are; some rules mandate either a decision process and/or specific decision criteria for DHCD to follow, while others serve only as recommended guidelines for DHCD's decision-making.

This chapter summarizes OLO's major findings concerning the decision authority assigned by County law, regulation, or administrative/budget action to the DHCD Director and other DHCD staff. It also summarizes the connections between DHCD and the Housing Opportunities Commission identified throughout this study.

A. Decision authority is granted to the DHCD Director and other DHCD staff in different ways.

The DHCD Director and other DHCD staff are granted authority to make specific decisions in a number of different ways: by County law or executive regulation; by Federal or State law/regulation; through inter-departmental memorandums of understanding; through the capital and operating budget process; or through the delegation of decision authority from the County Executive or Chief Administrative Officer. In practice, the DHCD Director in turn delegates certain decision authority to other senior DHCD staff.

B. The types of decision authority assigned to DHCD by law and regulation can be grouped into the following major categories:

- The authority to approve or deny;
- The authority to grant a waiver;
- The authority to decide whether and/or how to carry-out a specific task;
- The authority to inspect and enforce;
- The authority to appoint; and
- The authority to manage appropriated capital and operating budget funds.

C. In some cases, the law or regulation that authorizes DHCD to make specific decisions also establishes detailed criteria for DHCD's decision-making; in other cases, few or no decision criteria are established.

The laws and regulations that authorize DHCD to make decisions vary greatly with respect to the scope and content of criteria established for DHCD's decision-making. For example, the DHCD Director is authorized, by law and regulation, to approve certain loans, grants, assistance payments, licenses, agreements, projects, and proposals. The criteria established for DHCD's various approvals range from general guidance to binding rules that detail factors such as eligibility, payment amounts, and conditions under which approval can be granted.

County law and regulations authorize the DHCD Director to waive a number of different restrictions, standards, requirements, and limitations. In almost all cases, the law or executive regulation that authorizes the DHCD Director to grant a waiver also establishes some criteria for the waiver decision. Similar to the criteria established for DHCD's approvals, however, the criteria established for waivers also varies in terms of how much discretion is left to the Director; in one case, a time limit is placed on the DHCD Director's waiver authority.

Another area that exemplifies a combination of rules and discretion is DHCD's authority to inspect and enforce. By law, DHCD is the department responsible for licensing rental facilities and the department designated by the Chief Administrative Officer as the enforcing agency for the County's housing and building maintenance standards. County law establishes written standards (i.e., criteria) for inspection and enforcement; while some standards provide little room for judgment, other standards provide individual inspectors with the authority to exercise a fair amount of their own discretion.

- D. More often than not, the DHCD Director is authorized to make decisions without seeking public input. However, in some instances, the law and/or regulations require the DHCD Director to obtain citizen input before reaching a final decision.**

A number of County laws administered by DHCD mandate a decision process that requires input from County citizens. Specifically, special requirements for obtaining citizen input (e.g., through a newspaper advertisement, a public hearing) are included in sections of the Housing Policy law, the Productivity Housing law, the MPDU law, and the Urban Renewal law. In addition, federal regulations that outline the process for disbursing CDBG funds include a requirement for a public hearing on community development needs.

The law that establishes the Montgomery Housing Initiative requires that the MHI be included in the County's capital improvement program (CIP). This requirement also provides the opportunity for citizen input because public hearings are part of the County's annual budget process.

- E. Several DHCD decisions can only be implemented after certain parties are formally notified.**

The MPDU law, the Housing and Building Maintenance Standards law, and the Landlord-Tenant Relations law require DHCD to formally notify certain parties about a decision before specific action is taken to implement that decision. In particular:

- The MPDU law contains special requirements for the DHCD Director to notify the Housing Opportunities Commission and the developer;
- The Housing and Building Maintenance Standards law includes special requirements for DHCD (as the enforcing agency) to notify the owner, operator, or occupant before conducting an inspection, or taking certain enforcement actions; and
- The Landlord-Tenant Relations law authorizes the DHCD Director to revoke, deny, or suspend a license from a rental facility only after 10 days' written notice to a landlord fails to eliminate or initiate bona fide efforts to eliminate violations.

- F. A number of County laws administered by DHCD require the DHCD Director to consult with another government entity before rendering a final decision.**

Although it is the exception rather than the rule, several laws include a requirement for the DHCD Director to consult with a representative of a County-appointed commission, another County department, or another County or Bi-County agency. For example: before making a final decision on a proposed MPDU alternative that includes development of MPDUs at an alternative site, the law requires the DHCD Director to obtain comments from the Planning Board; and when selecting staff to provide support to the Landlord-Tenant Commission, the law requires the DHCD Director to consider the recommendations of the Landlord-Tenant Commission.

G. Several County laws require the DHCD Director to make a decision in conjunction with another entity.

In general, when County law designates the DHCD Director as the decision-maker, the DHCD Director is authorized to make decisions by himself. However, in several places, the law contains requirements for joint decision-making:

- The MPDU law contains two requirements for joint DHCD Director/County Attorney approval;
- The Productivity Housing law provides that the DHCD Director can only approve sites that have been recommended by the Productivity Housing Committee, and which have obtained the necessary approvals from the Board of Appeals and Planning Board; and
- The Supplemental Rental Assistance Program provides that DHCD can only provide benefits to individuals who have been deemed eligible by the Department of Social Services.

H. For selected DHCD decisions, the law outlines special appeal procedures. Appeals of various DHCD decisions are heard by: the Chief Administrative Officer, the Housing Board of Review, the Board of Appeals, the Landlord-Tenant Commission, or the District Court.

In most cases where the DHCD Director is authorized to make a decision, there is no formal process outlined for appealing whatever decision is made. However, there are certain decisions for which County law explicitly provides for appeal of a DHCD decision to another entity:

- The Chief Administrative Officer hears appeals related to assistance from the Tenant Displacement Fund;
- The Housing Board of Review hears appeals of orders to correct or any emergency order issued by the Housing Code Enforcement staff;
- The Board of Appeals hears appeals of demolition orders, orders to correct non-compliance with the mobile home property park standards, and denials of an application for Rental Assistance;
- The Landlord-Tenant Commission hears appeals of the DHCD Director's decision to revoke, deny, or suspend a rental facility license; and
- Any civil citation issued by DHCD can, like all other civil citations, be appealed to District Court.

Decisions of the Landlord-Tenant Commission and Commission on Common Ownership Communities can be appealed directly to Circuit Court.

I. A more detailed look at three different areas of DHCD's decision authority indicates that, in practice, the decision process is often more complex than the one mandated by law and/or regulation.

Chapter VII examined the exercise of three different types of DHCD decision authority: decisions related to the DHCD Director's authority to manage the Montgomery Housing Initiative; decisions related to the DHCD Director's authority to approve alternative methods to meeting MPDU requirements; and decisions related to DHCD's role as administrator of the CDBG program.

For these three areas of decision-making, the review indicated that the decision process, in practice, adheres to the rules established in law and regulation. However, in addition to the mandated process, the actual decision process is more complex; for example:

- The nature of projects funded by the Montgomery Housing Initiative are such that expenditures do not fit neatly into the CIP process. Although not required by law or regulation, when the timing of projects has not coincided with the CIP process, the DHCD Director has consistently apprised the Council of the opportunities either formally or informally.
- Although not required by law in every instance, the DHCD Director has consistently sought the advice of the Planning Board and the Executive Director of HOC before approving a proposal for a MPDU alternative.
- Although approval of the legislative branch is not required by the federal government, proposed expenditures of CDBG funds are included in the Executive's proposed capital and operating budget, which in practice means that proposed CDBG allocations are part of the County's public hearing and annual budget review process.

J. This review of DHCD's decision authority identified a number of connections between DHCD and the Housing Opportunities Commission (HOC).

1. In several places, County law assigns HOC and DHCD similar decision authority and decision-making procedures and criteria:

- Chapter 25B, Article I, Housing Policy, establishes standards and procedures for locating assisted-family housing. These standards and procedures apply equally to DHCD and HOC as agencies that receive funding from the County Government and which are authorized to approve proposals to sponsor the development of a site for assisted-family housing.

- Chapter 53A, Tenant Displacement, establishes the conditions under which an owner of rental housing must offer the County, HOC, and any certified tenant organization the right of first refusal to purchase the property. The decision process and decision criteria apply equally to the County, HOC, or any tenant organization that chooses to exercise their right of first refusal.*
- Chapter 25B, Article III, Settlement Loan Expense Program, establishes the basic eligibility requirements and terms of this loan program. Section 25B-13, Program Administration, provides that "the County Executive may delegate any of the powers and duties set forth in this Article to either the Director of DHCD or HOC or both." (In practice, the County Executive has delegated administration of the Settlement Loan Expense Program to HOC. Due to funding limitations, this program is not yet active.)

2. The MPDU law (Chapter 25A) assigns certain decision authority to DHCD and other decision authority to HOC. DHCD is designated as the program administrator, and is authorized to make major decisions related to management of the program (to include the approval of MPDU plans, alternative proposals, and how MPDUs are sold). In contrast, the MPDU law authorizes HOC to purchase or lease up to 1/3 of all new MPDUs, and to exercise the option of bidding on any MPDU unit offered for resale during the 10-year control period.

3. In addition to the legal connections, the following non-statutory connections between DHCD and HOC became apparent during this study of DHCD's decision authority:

- DHCD serves as the County Executive's liaison with HOC, a role which includes managing the County's contract with HOC, and providing staff support for other County Government approvals requested by HOC;
- HOC receives additional funds through the CDBG program and the Montgomery Housing Initiative Fund, both of which are managed by DHCD; and
- Although not required by law, in practice, the DHCD Director consults with HOC before approving a proposal for a MPDU alternative; in addition, HOC staff frequently assists DHCD staff evaluate proposals for use of the Montgomery Housing Initiative.

* As noted earlier in this report, in practice, the County Government's administration of Chapter 53A is shared between the Office of Consumer Affairs and DHCD.

X. RECOMMENDATIONS

This study of DHCD's decision authority documented: the various ways that authority is assigned to DHCD; the different types of decisions that the DHCD Director and other DHCD staff are authorized to make; and the range of criteria, caveats, and limitations placed on DHCD's decision authority. In sum, for the programs and functions administered by DHCD, the report identifies similarities and differences among the decision criteria and decision processes mandated by law and regulation.

Recognizing that each program and function has its unique characteristics, it would not be sensible to recommend that the decision process for all programs administered by DHCD be structured in the same way. However, OLO recommends that when the Council is enacting or amending a DHCD-related law or regulation, the Council should consider where the program or function in question appropriately belongs along the continuum of rule-driven vs. mission-driven government.

To help the Council determine how the decision process should be structured, the information compiled in this report can be used to help answer the following basic questions:

- What type(s) of decisions will implementation of the law/regulation involve?
- Who is the appropriate decision-maker for each decision, and how much discretion should this decision-maker have?
- Should there be mandated criteria (i.e., rules) for making each decision, and if so, should the criteria be written into law or regulation?
- If executive regulations are going to be required, what degree of Council review is appropriate, i.e., should the regulations be adopted as method (1), (2), or (3)?
- Should there be a mandated process (i.e., citizen input, other agency input, length of time) for making each decision, and if so, should this process be written into law or regulation?
- Should there be a formal process for appealing each decision, and if so, what entity is the appropriate appeal body? and
- How will the decision process compare to similar decisions made in other DHCD programs and functions?

When considering how the decision processes for DHCD programs and functions compare to one another, this report can be used as a reference document. In particular, it can be used to identify places where rules should be made consistent with other rules, or used to help explain why decision procedures for one program should not be identical to those in another.

XI. DEPARTMENT/AGENCY COMMENTS ON REPORT DRAFT

On April 24, 1992, OLO circulated a draft of this report to appropriate Executive Branch staff, the Planning Commission, the Housing Opportunities Commission, and Council staff. All technical corrections received either orally or in writing are incorporated into this final report.

Written comments received on the draft report are included in their entirety beginning on page 52. Written comments were received from the Department of Housing and Community Development, the Department of Environmental Protection, and the Montgomery County Planning Director. As indicated in the response from the County Attorney, that office's comments will be forwarded at some future date. The Housing Opportunities Commission also has no specific comments at this time.

Based upon the suggestions of the Montgomery County Planning Director, the section describing DHCD's role as urban renewal coordinator has been updated to include the Department's role in the revitalization of Silver Spring. In addition, DHCD's role with respect to monitoring the Historic Preservation Commission contract, and enforcement of the demolition by neglect provisions of Chapter 24A have been clarified.

OLO once again expresses thanks to the many individuals who contributed their time and effort to this study.




Montgomery County Government

ROCKVILLE, MARYLAND 20850

MEMORANDUM

May 22, 1992

TO: Andrew Mansinne, Jr., Director, Office of Legislative Oversight

FROM: William H. Hussmann, Chief Administrative Officer 

SUBJECT: DRAFT OLO Report #92-1, A Profile of Decision Authority: The County's Department of Housing and Community Development

Thank you for the opportunity to comment on the Draft OLO Report #92-1, A Profile of Decision Authority: The County's Department of Housing and Community Development. This report provides useful information for comparing the decision processes for DHCD programs and functions. The comments from the Department of Housing & Community Development, Department of Environmental Protection, and County Attorney are attached. The Directors of the Office of Management & Budget and the Office of Consumer Affairs stated that they have no comments.

The Executive Branch appreciates OLO's initiative to incorporate some of the principles from Reinventing Government into this report. We look forward to discussing OLO Report #92-1 upon its release by the County Council. Thank you again for the opportunity to comment.

WHH/rm

Attachments

M E M O R A N D U M

May 5, 1992

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Richard J. Ferrara, Director
Department of Housing & Community Development

SUBJECT: Response to OLO Report 92-1, A Profile of Decision
Authority: The County's Department of Housing and
Community Development

I would like to commend Karen Orlansky of your staff for another thorough and well researched report. The discussion of the question of "Mission-Driven vs. Rule-Driven" is both timely and helpful.

The report illustrates the difficulties involved in trying to determine precisely how, and by what criteria, decisions are made. Whenever the Council makes a decision to leave detailed decisions to the discretion of an individual department director, or the Executive or CAO, there is implicit in this delegation of authority a confidence in the ability of the official to render reasonable interpretations of the law.

Inevitably, there will be occasions when such decisions incur the disfavor of individual Councilmembers, or even of the entire Council. There is then the temptation to move in the direction of more explicit rules in the law, which then leads to paralysis in the bureaucracy, which in turn leads to the kind of insensitive governing that virtually everyone agrees is undesirable. It is, therefore, extremely important that the officials involved remain sensitive to the views and concerns of the elected officials and of the public.

As an example from the report, I would note the discretion which the Director of DHCD has in approving alternative means of complying with the MPDU program. It was clear from the original Council discussion that highrise buildings were the main focus of this provision, because it is virtually impossible to create units in these buildings which are substantially different from the others as MPDUs. Thus, I have generally approved requests from builders of highrise buildings without consultation.

When the request was received from Avenel for alternative means, however, I felt that this would be a matter of great controversy in the community, and I made a point to consult with the Planning Board, HOC, and all Councilmembers individually. Although I believed at the time that the arrangement proposed would have been in the best interests of the people who are most in need of housing assistance, I concluded that the damage which might be done to the MPDU program, by leaving the impression there are areas of the County which are more or less "red-lined" out of the affordable housing program, was a more compelling problem.

There are, of course, people, including the County Executive and some Councilmembers who disagree with that conclusion; however, it is important to recognize that discretion is essential in making such decisions. Adding more rules or "process" will serve to make the provision unworkable, and therefore useless. If the official cannot be relied upon to make reasonable decisions, a better solution would be to replace the official.

At the other end of the spectrum, as the report points out, is the Rental Assistance Program, which is heavily encumbered with rules, both in the law and in regulation. In this program, the rules serve well to limit the population to be served to those most in need. It is clear that the decision to deny benefits must be made strictly according to written rules. The provision allowing the Director the ability to waive certain restrictions to permit the approval of benefits in exceptional circumstances, however, is extremely important.

In conclusion, I agree with the overall tenor of the report that nothing appears to be "broken" here. There is a spectrum of decision making along which each law and program should fall, and the Executive and the Council should consider this specifically when enacting new laws or programs, or revisiting established ones.

RJF/rap:2002B



Montgomery County Government

MEMORANDUM

May 8, 1992

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

VIA: Karen Orlansky, Program Evaluator
Office of Legislative Oversight

VIA: Deborah Snead, Assistant for
Total Quality Management *DS*

FROM: *EG* Edward U. Graham, Director
Environmental Protection

SUBJECT: OLO Draft Report 92-1

This is in reply to your referral of the DRAFT Profile of Decision Authority: the County's Department of Housing and Community Development.

I have reviewed the report, with particular attention to the pages referring to the Department of Environmental Protection's Memoranda of Understanding with DHCD and find no problems or additional issues to raise.

Thank you for including me in the draft review process.



Montgomery County Government

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M E M O R A N D U M

May 15, 1992

TO: Andrew Mansinne, Jr, Director
Office of Legislative Oversight

FROM: Joyce R. Stern *joyce r. stern*
County Attorney

RE: Comments on OLO Report 92-1, A Profile of Decision
Authority: The County's Department of Housing and
Community Development

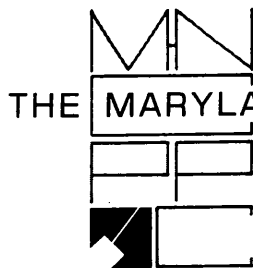
My office's workload has precluded our offering comments to the above-referenced report by the May 15th deadline you have set. Significant portions of the report deal with the Housing Initiative Fund and the development of alternative methods for meeting the MPDU requirements. Our office is currently reviewing the executive regulations for these programs and may have comments relevant to the report following this review.

Christopher Hitchens of my staff, who is assigned to DHCD, has discussed extending the deadline for comments with both Deborah Snead and Karen Orlansky, who have indicated that they would prefer to maintain the current schedule, but would accept our comments prior to issuing the final version of the report.

I will forward our comments as soon as the review of the relevant regulations is complete.

JRS:ban
0604.JRS

cc: Deborah Snead
Karen Orlansky
Christopher Hitchens



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

May 18, 1992

Ms. Karen Orlansky
Program Evaluator
Office of Legislative Oversight
County Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Dear Ms. ~~Orlansky~~ ^{KAREN}:

Thank you for sending me a draft copy of your report on the decision-making process at the Department of Housing and Community Development. Generally speaking, the report seems to be well organized and thorough. However, there are three omissions which are of concern to me.

First, the report does not fully describe DHCD's role as the urban renewal coordinator in the revitalization of the Silver Spring Central Business District. It may be that DHCD's role with regard to the Silver Triangle project was excluded from your report because your research was conducted before DHCD's role as the lead urban renewal agency had become clear. Nevertheless, this project is of such importance to the County that I believe your report should include this information; the brief reference to urban renewal on page 4 could be expanded.

As you may know, the County government will have a major financial exposure with regard to the urban renewal project. The Silver Triangle is the cornerstone of the revitalization of downtown Silver Spring. As such, it is of major importance to the community and the County. In order for the Silver Triangle project to come to fruition, there must be an effective decision-making process within the County government and clearly defined relationships with outside agencies such as M-NCPPC. I therefore hope that you will add DHCD's role with regard to the Silver Spring urban renewal project as a major focus of your report.

Secondly, I would appreciate some exploration of DHCD's decision-making process for monitoring contracts such as the one related to the Historic Preservation Commission. As you may know, the HPC is staffed by M-NCPPC and the staffing contract is monitored by DHCD. A brief discussion of this relationship and the associated decision-making process would be useful.

Finally, the draft OLO report should note one additional task performed by DHCD: the Housing Code Enforcement Division assists the HPC with the monitoring of the condition of historic sites and with the enforcement of the demolition-by-neglect provision of Chapter 24A (the Historic Preservation Ordinance in the County Code).

Please feel free to contact Perry Berman or Glenn Kreger in the Community Planning Division if you have any questions concerning my comments. Thank you for your consideration.

Sincerely,



Robert W. Marriott, Jr.
Montgomery County
Planning Director

RWM:CHL:el



Montgomery County Government


MEMORANDUM

May 8, 1992

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

VIA: Karen Orlansky, Program Evaluator
Office of Legislative Oversight

VIA: Deborah Snead, Assistant for
Total Quality Management

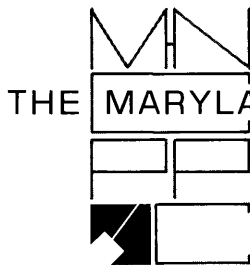
FROM:  Edward U. Graham, Director
Environmental Protection

SUBJECT: OLO Draft Report 92-1

This is in reply to your referral of the DRAFT Profile of Decision Authority: the County's Department of Housing and Community Development.

I have reviewed the report, with particular attention to the pages referring to the Department of Environmental Protection's Memoranda of Understanding with DHCD and find no problems or additional issues to raise.

Thank you for including me in the draft review process.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
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May 18, 1992

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Program Evaluator
Office of Legislative Oversight
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