

Bill No. 38-07
Concerning: Moderately Priced Housing
- Amendments
Revised: 12-6-07 Draft No. 2
Introduced: December 11, 2007
Expires: June 11, 2009
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) revise the standards for setting sales prices for moderately priced dwelling units (MPDUs);
- (2) repeal the authority of the Director of the Department of Housing and Community Affairs to allow an applicant to pay into the Housing Initiative Fund instead of building MPDUs in a proposed subdivision;
- (3) revise the control periods for the sale or rent of MPDUs;
- (4) revise the standards for building certain MPDUs in alternative locations; and
- (5) revise other standards and procedures for, and generally amend County law governing, the moderately priced dwelling unit program.

By amending

Montgomery County Code
Chapter 25A, Housing, Moderately Priced
Sections 25A-2, 25A-3, 25A-4, 25A-5, 25A-5B, 25A-6, 25A-7, 25A-8, 25A-9, 25A-10, and
25A-12

By repealing

Section 25A-5A

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

1 **Sec. 1. Sections 25A-2, 25A-3, 25A-4, 25A-5, 25A-5B, 25A-6, 25A-7, 25A-**
2 **8, 25A-9, 25A-10, and 25A-12 are amended, and Section 25A-5A is repealed, as**
3 **follows:**

4 **25A-2. Declaration of Public Policy.**

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

7 (1) Implement the [Montgomery] County housing policy and the general
8 plan goal of providing for a full range of housing choices,
9 conveniently located in a suitable living environment, for all incomes,
10 ages and [family] household sizes;

11 * * *

12 (3) Assure that moderately priced housing is dispersed within the County
13 consistent with the general plan and area master plans, and dispersed
14 within each individual subdivision;

15 (4) Encourage the construction of moderately priced housing by allowing
16 optional increases in density in order to reduce land costs and the
17 costs of optional features that may be built into [such] moderately
18 priced housing; and

19 (5) Require that all subdivisions of [35] 20 or more dwelling units include
20 a minimum number of moderately priced units of varying sizes with
21 regard to [family] household needs, and encourage subdivisions with
22 fewer than [35] 20 units to do the same[;].

23 [(6) Ensure that private developers constructing moderately priced
24 dwelling-units under this Chapter incur no loss or penalty as a result

25 thereof, and have reasonable prospects of realizing a profit on such
 26 units by virtue of the MPDU density bonus provision of Chapter 59
 27 and, in certain zones, the optional development standards;

28 (7) Allow developers of residential units in qualified projects more
 29 flexibility to meet the broad objective of building housing that low-
 30 and moderate-income households can afford by letting a developer,
 31 under specified circumstances, comply with this Chapter by
 32 contributing to a County Housing Initiative Fund.]

33 **25A-3. Definitions.**

34 * * *

35 (g) Control period means the time an MPDU is subject to either resale
 36 price controls and owner occupancy requirements or maximum rental
 37 limits, as provided in Section 25A-9. [The control period is 30 years
 38 for sale units and 99 years for rental units, and begins on the date of
 39 initial sale or rental. If a sale MPDU is sold to an eligible person
 40 within 30 years after its initial sale, and if (in the case of a sale MPDU
 41 that is not bought and resold by a government agency) the unit was
 42 originally offered for sale after March 1, 2002, the unit must be
 43 treated as a new sale MPDU and a new control period must begin on
 44 the date of the sale.]

45 (1) For an MPDU originally offered for sale or rent before March 1,
 46 2002:

47 (A) the control period for each sale MPDU is 10 years after
 48 the date of the original purchase; and

49 (B) the control period for each rental MPDU is 20 years after
50 the date of original rental.

51 (2) For an MPDU originally offered for sale or rent in a Growth
52 Policy area before March 1, 2002:

53 (A) the control period for each sale MPDU is 15 years after the
54 date of the original purchase; and

55 (B) the control period for each rental MPDU is 15 years after
56 the date of original rental.

57 (3) For an MPDU originally offered for sale or rent between March
58 1, 2002 and March 31, 2005:

59 (A) the control period for each sale MPDU is 10 years after the
60 original settlement date and 10 years after the settlement
61 date of each later sale if that sale occurs during the existing
62 control period; and

63 (B) the control period for each rental MPDU is 20 years after
64 the date of original rental.

65 (4) For an MPDU originally offered for sale or rent on or after April
66 1, 2005:

67 (A) the control period for each sale MPDU is 30 years after the
68 date of the original purchase and 30 years after the
69 settlement date of each later sale if that sale occurs during
70 the existing control period; and

71 (B) the control period for each rental unit is 99 years after the
72 date of original rental.

73 (h) Date of original [sale] purchase means the date of settlement [for
74 purchase of a moderately priced dwelling unit].

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- (l) Dwelling unit means a building or part of a building that provides complete living facilities for one [family] household, including at a minimum facilities for cooking, sanitation, and sleeping.
- (m) Eligible [person] buyer means a [person or] household whose income qualifies the [person or] household to [participate] buy a sale unit in the MPDU program, and who holds a valid certificate of eligibility from the Department which entitles the [person or] household to buy [or rent] an MPDU during the priority marketing period.
- (n) Eligible renter means a household whose income qualifies the household to rent a unit in the MPDU program.
- (o) High rise building means any multiple-family residential or mixed-use building that is higher than 4 stories.
- [(n)] (p) Housing Initiative Fund means a fund established by the County Executive to achieve the purposes of Section 25B-9.
- [(o)] (q) Low income means levels of income within the income range for "very-low income families" established from time to time by the U.S. Department of Housing and Urban Development for the Washington metropolitan area, under federal law, or as defined by [executive regulations] regulation.
- [(p)] (r) Moderate income means those levels of income, established [in executive regulations] by regulation, which prohibit or severely limit the financial ability of persons to buy or rent housing in [Montgomery] the County.

99 ~~[(q)]~~(s) Moderately priced dwelling unit or MPDU means a dwelling unit
 100 which is:

101 (1) offered for sale or rent to eligible [persons] buyers or renters
 102 through the Department, and sold or rented under this Chapter;
 103 or

104 (2) sold or rented under a government program designed to assist
 105 the construction or occupancy of housing for [families]
 106 households of low or moderate income, and designated by the
 107 Director as an MPDU.

108 ~~[(r)]~~(t) Optional density bonus provision means any increase in density
 109 under Chapter 59, in a zoning classification that allows residential
 110 development, above the amount permitted in the base or standard
 111 method of development density, whether by exercise of the optional
 112 provisions of Chapter 59 or by any special exception.

113 ~~[(s)]~~(u) Planning Board means the Montgomery County Planning Board.

114 (v) Planning Area means a geographic area of the County defined in the
 115 County's Growth Policy.

116 (w) Policy Area means a geographic area of the County defined in the
 117 County's Growth Policy.

118 ~~[(t)]~~ (x) Priority marketing period is the period an MPDU must be offered
 119 exclusively for sale or rent to eligible [persons] buyers or renters, as
 120 provided in Section 25A-8.

121 **25A-4. Income and eligibility standards.**

122 (a) The County Executive must set and annually revise standards of
123 eligibility for the MPDU program by regulation. These standards
124 must specify moderate-income levels for varying sizes of households
125 which will qualify a [person or] household to buy or rent an MPDU.
126 The Executive [must] may set different income eligibility standards
127 for buyers and renters and for age-restricted housing. [The Executive
128 may set different income eligibility standards for buyers and renters of
129 higher-cost or age-restricted housing, as defined by regulation.]

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

132 [(1) the price established for the sale or rental of MPDUs under this
133 Chapter,]

134 [(2)] (1) the term and interest rate that applies to the financing of
135 MPDUs,

136 [(3)] (2) the estimated levels of income necessary to carry a mortgage
137 on an MPDU, and

138 [(4) family] (3) household size and number of dependents.

139 * * *

140 **25A-5. Requirement to build MPDU's; agreements.**

141 * * *

142 (b) Any applicant, in order to obtain a building permit, must submit to the
143 Department of Permitting Services, with the application for a permit, a
144 written MPDU agreement approved by the Director and the County
145 Attorney. Each agreement must require that:

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(3) in [multi-family] multiple-family dwelling unit subdivisions, the number of efficiency and one-bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.

(4) The Director must not approve an MPDU agreement that reduces the number of bedrooms required by this subsection in any MPDU, or that does not meet minimum specifications for MPDUs established by regulation from time to time.

* * *

(e) The Director may approve an MPDU agreement that[:]

[(1) allows an applicant to reduce the number of MPDUs in a subdivision only if the agreement meets all requirements of Section 25A-5A; or]

(2)] allows an applicant to build the MPDUs at another location only if the agreement meets all requirements of Section [25A-5B] 25A-5A.

* * *

(f) * * *

(3) Notwithstanding any other provisions of [the] this subsection, the County may reject an election by an applicant to transfer land to the County in whole or in part whenever the public interest would best be served thereby. [Any rejection and the

170 reasons for the rejection may be considered by the] The
171 Planning Board or the Director of Permitting Services may
172 consider any rejection and the reasons for it in deciding whether
173 to grant [the applicant] a waiver [of this Chapter] under Section
174 [25A-7(b)] 25A-6(b).

175 (4) Any transfer of land to the County [hereunder] under this
176 subsection is not subject to [Section 11B-33] Chapter 11B, and
177 any land so transferred is not property subject to [Section 11B-
178 31A] Chapter 11B regulating the disposal of surplus land. The
179 Director may dispose of the [lots] land in a manner that furthers
180 the objectives of this Chapter.

181 * * *

182 (k) The applicant must execute and [record] cause to be recorded
183 covenants assuring that:

184 * * *

185 (l) (1) In any purchase and sale agreement and any deed or instrument
186 conveying title to an MPDU, the grantor must clearly and
187 conspicuously state, and the grantee must clearly and conspicuously
188 acknowledge, that:

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

193 * * *

194 (3) When a deed or other instrument conveying title to an MPDU is
 195 recorded in the land records, the grantor must cause to be filed
 196 in the land records a notice of sale for the benefit of the County
 197 in the form provided by [state] State law.

198 (m) Nothing in this Chapter prohibits an applicant from voluntarily
 199 building MPDUs, as calculated under subsection (c), in a development
 200 with fewer than 20 dwelling units at one location, and in so doing
 201 from qualifying for an optional method of development under Chapter
 202 59. A development with fewer than 20 dwelling units where an
 203 applicant voluntarily builds MPDUs must comply with any
 204 procedures and development standards that apply to a larger
 205 development under this Chapter and Chapter 59. Sections 25A-5A[,
 206 25A-5B,] and 25A-6(b) do not apply to an applicant who voluntarily
 207 builds MPDU[']s under this subsection and in so doing qualifies for an
 208 optional method of development.

209 **[25A-5A. Alternative payment agreement.]**

210 (a) The Director may approve an MPDU agreement that allows an
 211 applicant, instead of building some or all of the required number of
 212 MPDUs in the proposed subdivision, to pay to the Housing Initiative
 213 Fund an amount computed under subsection (b), only if an Alternative
 214 Review Committee composed of the Director, the Commission's
 215 Executive Director, and the Director of Park and Planning, or their
 216 respective designees, by majority vote finds that:

217 (1) either:

218 (A) an indivisible package of services and facilities available
 219 to all residents of the proposed subdivision would cost
 220 MPDU buyers so much that it is likely to make the
 221 MPDUs effectively unaffordable by eligible buyers; or

222 (B) environmental constraints at a particular site would
 223 render the building of all required MPDUs at that site
 224 economically infeasible; and

225 (2) the public benefit of additional affordable housing outweighs
 226 the value of locating MPDUs in each subdivision throughout
 227 the County, and accepting the payment will further the
 228 objective of providing a broad range of housing opportunities
 229 throughout the County.

230 (b) Any payment to the Housing Initiative Fund under this Section must
 231 equal or exceed 125% of the imputed cost of land for each unbuilt
 232 MPDU. Except as further defined by Executive regulation, the
 233 imputed land cost must be calculated as 10% (for high-rise units) or
 234 up to 30% (for all other housing units) of the actual sale price charged
 235 for each substituted unit. If the substituted unit will be a rental unit,
 236 the Director must calculate an imputed sale price under applicable
 237 regulations, based on the rent actually charged.

238 (c) Any payment to the Housing Initiative Fund under this Section may
 239 be used only to buy or build more MPDUs in the same planning
 240 policy area (as defined in the County Growth Policy) as the
 241 development for which the payment was made, and must not be used
 242 to reduce the annual County payment to the Fund.

243 (d) Any subdivision for which a payment is made under this Section is
 244 not eligible for any density bonus for which it would otherwise be
 245 eligible under Chapter 59.]

246 **[25A-5B.] 25A-5A. Alternative location agreement.**

247 (a) The Director may approve an MPDU agreement that allows an
 248 applicant for development of a high-rise residential building, instead
 249 of building some or all of the required number of MPDUs [on-site,]
 250 within the boundaries of the project plan, preliminary plan, or site
 251 plan for the development, to provide [at least the same number of]
 252 MPDUs at another location in the same planning or policy area, only
 253 if the Director finds that:

254 [(1) the public benefit of locating MPDUs at the proposed
 255 alternative location outweighs the value of locating MPDUs in
 256 each subdivision throughout the County; and

257 (2) building the MPDUs at the proposed alternative location will
 258 further the objective of providing a broad range of housing
 259 opportunities throughout the County.]

260 (1) the applicant has agreed to provide a number of MPDUs equal
 261 to at least 20 percent of the approved units in the high-rise
 262 building;

263 (2) no more than 30 percent of the number of units at the proposed
 264 alternative location will be MPDUs; and

265 (3) the MPDUs at the proposed alternative location have at least as
 266 many bedrooms as would have been required under Section

267 25A-5(b)(3) if all MPDUs had been located on the site of the
 268 high-rise building.

269 * * *

270 **25A-6. Optional zoning provisions; waiver of requirements.**

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272 (b) *Waiver of requirements.* Any applicant who presents sufficient
 273 evidence to the Director of Permitting Services in applying for a
 274 building permit, or to the Planning Board in submitting a preliminary
 275 plan of subdivision for approval or requesting approval of a site or
 276 other development plan, may be granted a waiver from part or all of
 277 Section 25A-5. The waiver must relate only to the number of MPDUs
 278 to be built, and may be granted only if the Director of Permitting
 279 Services or the Board[, after consulting with the Department of
 280 Housing and Community Development Affairs,] finds that the
 281 applicant cannot attain the full density of the zone because of any
 282 requirements of [the zoning ordinance] Chapter 59 or the
 283 administration of other laws or regulations. When any part of the land
 284 that dwelling units cannot be built on for physical reasons is used to
 285 compute permitted density, the applicant's inability to use the optional
 286 density bonus provisions is not in itself grounds [for waiving the] to
 287 waive any MPDU [requirements] requirement. Any waiver must be
 288 strictly construed and limited.

289 **25A-7. Maximum prices and rents.**

290 Moderately priced dwelling units must not be sold or rented at prices or rents
 291 that exceed the maximum prices or rents established under this Section.

292 (a) *Sales.*

293 [(1)] The sale price of any MPDU, [including closing costs and
294 brokerage fees,] including any closing costs paid by the builder,
295 must not exceed an applicable maximum sale price established
296 from time to time [by the County Executive in regulations
297 adopted under method (1)] in accordance with Executive
298 regulations.

299 [(2)] The County Executive in issuing MPDU sale price regulations
300 must seek appropriate information, such as current general
301 market and economic conditions and the current minimum sale
302 prices of private market housing in the County, and must
303 consult with the building industry, employers, and professional
304 and citizen groups to obtain statistical information which may
305 assist in setting a current maximum sale price. The County
306 Executive must, from time to time, consider changes in the
307 income levels of persons of low and moderate income and their
308 ability to buy housing. The County Executive must also
309 consider the extent to which, consistent with code requirements,
310 the cost of housing can be reduced by the elimination of
311 amenities, the use of cost-reducing building techniques and
312 materials, and the partial finishing of certain parts of the units.

313 (3) The County Executive must issue maximum sale prices for
314 MPDUs which continue in effect until changed by later
315 regulation. The maximum sale prices must be based on the
316 necessary and reasonable costs required to build and market the
317 various kinds of MPDUs by private industry. The sale prices

318 for any succeeding year must be based on a new finding of cost
319 by the County Executive, or on the prior year's maximum
320 MPDU price adjusted by the percentage change in the relevant
321 cost elements indicated in the Consumer Price Index.

322 (4) The County Executive may make interim adjustments in
323 maximum MPDU sale prices when sufficient changes in costs
324 justify an adjustment. Any interim adjustment must be based
325 on the maximum MPDU sale prices previously established,
326 adjusted by the percentage change in the relevant cost elements
327 indicated in the Consumer Price Index.

328 (5) If the Director finds that other conditions of the design,
329 construction, pricing, or amenity package of an MPDU project
330 will lessen the ability of eligible persons to afford the MPDUs,
331 the Director, under executive regulations, may restrict those
332 conditions that will impose excessive mandatory homeowner or
333 condominium fees or other costs that reduce the affordability of
334 the MPDUs.

335 (6) The Director may let an applicant increase the sale price of a
336 MPDU when the Director, under executive regulations, finds in
337 exceptional cases that a price increase is justified to cover the
338 cost of modifying the external design of the MPDUs when a
339 modification is necessary to reduce excessive marketing impact
340 of the MPDUs on the market rate units in the subdivision. The
341 Director must approve the amount of any increase for this

342 purpose, which must not exceed 10 percent of the allowable
343 base price of the unit.]

344 (b) *Rents.*

345 [(1) The rent, [including parking but] excluding utilities and parking
346 when they are paid by the tenant, for any MPDU must not
347 exceed a maximum rent for the dwelling unit set [by] in
348 accordance with Executive regulations. Different rents must be
349 set for units when utility costs are paid by the owner and
350 included in the rent. Different rents may be set for age-
351 restricted units. [Different rents also may be set for high-rise
352 rental units, but those rents must not apply unless the Director
353 finds that no other reasonable means is available to finance the
354 building of all required MPDUs at a specific development.]

355 [(2) The County Executive, in setting the maximum rent, must
356 consider the current cost of building MPDUs, available interest
357 rates and debt service for permanent financing, current market
358 rates of return or investments in residential rental properties,
359 operating costs, vacancy rates of comparable properties, the
360 value of the MPDU at the end of the control period, and any
361 other relevant information. The County Executive must consult
362 with the rental industry, employers and professional and citizen
363 groups to obtain statistical information and current general
364 market and economic conditions which may assist in setting a
365 current maximum rent. The County Executive must consider
366 the extent to which, consistent with County codes and housing

367 standards, the cost of rental housing can be reduced by the
 368 elimination of amenities. The County Executive must also
 369 consider from time to time changes in the income levels of
 370 persons of low and moderate income and their ability to rent
 371 housing.]

372 **25A-8. Sale or rental of units.**

373 (a) *Sale or rental to general public.*

374 (1) [Every] During the priority marketing period, every moderately
 375 priced dwelling unit required under this Chapter must be
 376 offered to [the general public for sale or rental to a good-faith
 377 purchaser] an eligible buyer or renter to be used for his or her
 378 own residence, except units offered for sale or rent with the
 379 assistance of, and subject to the conditions of, a subsidy under a
 380 federal, state or local government program, identified in
 381 regulations, [adopted by the County Executive under method
 382 (1)] whose purpose is to provide housing for persons of low or
 383 moderate income.

384 (2) Before offering any moderately priced dwelling units, the
 385 applicant must notify the Department of the proposed offering
 386 and the date on which the applicant will be ready to begin the
 387 marketing to eligible [persons] buyers or renters. The notice
 388 must [set forth] specify the number of units offered, the
 389 bedroom mix, the floor area for each unit type, [a description
 390 of] the amenities offered in each unit, and [a statement of] the
 391 availability of each unit for sale or rent, including information

392 regarding any mortgage financing available to buyers of the
393 designated unit. The applicant must also give the Department a
394 vicinity map of the offering, a copy of the approved
395 development, subdivision or site plan, as appropriate, and such
396 other information or documents as the Director finds necessary.
397 The Department must maintain a list of eligible [persons]
398 buyers of moderate income and, in accordance with procedures
399 established by the County Executive, must [notify eligible
400 persons] post a notice of the offering for eligible buyers and
401 renters.

402 (3) After receiving the offering notice, the Department must notify
403 the Commission of the offering. If the Department finds that
404 the offering notice is complete, it must decide whether the
405 offering of the units to eligible [persons] buyers or renters will
406 be administered by [lottery] random selection drawing or by
407 another method that will assure eligible [persons] buyers or
408 renters an equitable opportunity to buy or rent [a] an MPDU.
409 The Department must notify the applicant of the method and
410 when the 90-day priority marketing period for the MPDUs may
411 begin.

412 (4) The Executive may by regulation establish a buyer [and renter]
413 selection system which considers household size, County
414 residency, employment in the County, and length of time since
415 the person was certified for the MPDU program. Each eligible
416 [person] buyer must be [notified of the availability of any
417 MPDU which would meet that person's housing needs, and be]

418 given an opportunity to buy [or rent] an MPDU during the
 419 priority marketing period in the order of that person's selection
 420 priority ranking.

421 (5) The priority marketing period for new units ends 90 days after
 422 the initial offering date approved by the Department. The
 423 priority marketing period for resold or rerented units ends 60
 424 days after the Department notifies the seller of the approved
 425 resale price or vacancy of the rental unit. The Department may
 426 extend a priority marketing period when eligible [persons]
 427 buyers or renters are interested in buying or renting a unit.

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

434 * * *

435 (D) [Applicants] Each applicant must make a good-faith
 436 effort to enter into contracts with eligible [persons]
 437 buyers or renters during the priority marketing period and
 438 for an additional period necessary to negotiate with
 439 eligible [persons] buyers or renters who indicate a desire
 440 to buy or rent an MPDU during that period.

441 (7) Every buyer or renter of an MPDU must occupy the unit as his
 442 or her primary residence during the control period. Each buyer

443 and renter must certify before taking occupancy that he or she
 444 will occupy the unit as his or her primary residence during the
 445 control period. The Director may require an owner who does
 446 not occupy the unit as his or her primary residence to offer the
 447 unit for resale to an eligible [person] buyer under [the resale
 448 provisions of Section 25A-9] Section 25A-10.

449 * * *

450 (10) [An] During the priority marketing period, an applicant must
 451 not sell [or lease] any unit without first obtaining a certificate of
 452 eligibility from the buyer [or lessee]. A copy of each certificate
 453 must be furnished to the Department and maintained on file by
 454 the Department. The Director may waive this requirement in an
 455 age-restricted development for good cause. Before the sale by
 456 an applicant or by the Commission or a designated housing
 457 agency or nonprofit corporation to any buyer of any MPDU
 458 who does not possess a certificate of eligibility, the applicant,
 459 the Commission, or the agency or corporation must ask the
 460 Department whether the certificates on file show that the
 461 proposed buyer had previously bought another MPDU. A
 462 person who previously bought and owned an MPDU must not
 463 buy a second MPDU unless no first-time buyer is qualified to
 464 buy that unit. The Director may waive this restriction for good
 465 cause.

466 (11) If an MPDU owner dies, at least one heir, legatee, or other
 467 person taking title by will or by operation of law must occupy
 468 the MPDU during the control period under this Section, or the

469 owner of record must sell the MPDU as provided in Section
470 25A-9. After the control period expires, the owner of record
471 must comply with Section 25A-9(c).

472 (b) *Sale or rental to government agencies or nonprofit corporations.*

473 (1) In view of the critical, long-term public need for housing for
474 [families] households of low and moderate income, the
475 Department, the Commission, or any other housing
476 development agency or nonprofit corporation designated by the
477 County Executive, may buy or lease, for its own programs or
478 programs administered by it, up to 40 percent of all MPDUs
479 which are not sold or rented under any other federal, state, or
480 local program. The Department or Commission may buy or
481 lease up to 33 percent of the MPDUs not sold or rented under
482 any other federal, state, or local program. Any other designated
483 agency or corporation may buy or lease:

484 (A) any MPDU in the first 33 percent that HOC has not
485 bought or leased, and

486 (B) the remainder of the 40 percent.

487 This option may be assigned to persons of low or moderate
488 income who are eligible for assistance under any federal, state,
489 or local program identified in regulations [adopted by the
490 Executive]. The Executive must, by regulation, adopt standards
491 and priorities for designating nonprofit corporations under this
492 subsection. These standards must require the corporation to

493 demonstrate its ability to operate and maintain MPDUs
 494 satisfactorily on a long-term basis.

495 (2) The Department must notify the Commission or other
 496 designated agency or corporation promptly after receiving
 497 notice from the applicant under subsection (a) of the availability
 498 of MPDUs. If the Department, the Commission, or any other
 499 designated agency or corporation exercises its option, it must
 500 submit to the applicant, within 21 calendar days after the
 501 Department notifies the Commission under this subsection
 502 [(b)], a notice of intent to exercise its option for specific
 503 MPDUs covered by this option. Any MPDUs not bought or
 504 leased under this subsection must be sold or rented only to
 505 eligible [persons] buyers or renters [under subsection (b)]
 506 during the priority marketing period for eligible [persons]
 507 buyers or renters to buy or lease.

508 * * *

509 **25A-9. Control of rents and resale prices; foreclosures.**

510 (a) *Resale price and terms.* Except for foreclosure proceedings, any
 511 MPDU constructed or offered for sale or rent under this Chapter must
 512 not be resold or refinanced during the control period for a price
 513 greater than the original [selling] purchase price plus:

514 (1) A percentage of the unit's original [selling] purchase price equal
 515 to the increase in the cost of living since the unit was first sold,
 516 as determined by the Consumer Price Index;

- 517 (2) The [fair market value] documented cost of improvements
 518 made to the unit between the date of original [sale] purchase
 519 and the date of resale;
- 520 (3) An allowance for closing costs which were not paid by the
 521 initial seller, but which will be paid by the initial buyer for the
 522 benefit of the later buyer; and
- 523 (4) A reasonable sales commission if [the unit is not sold during the
 524 priority marketing period to an eligible person from the
 525 Department's eligibility list] a third-party licensed real estate
 526 agent is used.

527 The resale price of an MPDU may be reduced if the physical
 528 condition of the unit reflects abnormal wear and tear because of
 529 neglect, abuse, or insufficient maintenance. Any personal property
 530 transferred in connection with the resale of an MPDU must be sold at
 531 its fair market value. In calculating the allowable resale price of an
 532 MPDU which was originally offered for rent, the Department must
 533 [estimate the price for which the unit would have been sold if the unit
 534 had been offered for sale when it was first rented] calculate the current
 535 affordable sales price as defined under Section 25A-7(a).

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

- 537 (1) Any MPDU offered for resale during the control period must
 538 first be offered exclusively for up to 60 days to the Department
 539 and the Commission, in that order. The Department or the
 540 Commission may buy a unit when funds are available. The
 541 Department may buy a unit when the Director finds that the

542 Department's or a designated agency or corporation's buying
 543 and reselling the unit will increase opportunities for eligible
 544 [persons] buyers to buy the unit. If the Department or the
 545 Commission does not buy the unit, the Department must [notify
 546 eligible persons of the availability of a resale MPDU] post a
 547 notice for eligible buyers of the availability of a resale MPDU.

548 The unit may be sold through either of the following methods:

549 (A) The Department may by [lottery] random selection
 550 drawing establish a priority order under which eligible
 551 [persons] buyers who express interest in buying the unit
 552 may buy it at the approved resale price.

553 (B) The Department may notify the MPDU owner that the
 554 owner may sell the unit directly to any eligible [person]
 555 buyer under the resale provisions of this Chapter.

556 (2) A resale MPDU may be offered for sale to the general public
 557 only after:

558 * * *

559 (B) all eligible [persons] buyers who express an interest in
 560 buying it have been given an opportunity to do so.

561 (3) The Executive by regulation may adopt requirements for
 562 reselling MPDUs. The regulations may require a seller to
 563 submit to the Department for approval:

564 * * *

565 (B) a signed copy of the settlement sheet; [and]

566 (C) an affidavit signed by the seller and buyer attesting to the
 567 accuracy of all documents and conditions of the sale[.];
 568 and

569 (D) an affidavit signed by the buyer agreeing to comply with
 570 all requirements of this Chapter.

571 * * *

572 (c) *First sale after control period ends.*

573 (1) If an MPDU originally offered for sale or rent after March 21,
 574 1989, is sold or resold after its control period ends, upon the
 575 first sale of the unit the seller must pay to the Housing Initiative
 576 Fund one-half of the excess of the total [resale] fair market
 577 sales price over the sum of the following:

578 (A) The original [selling] purchase price;

579 (B) A percentage of the unit's original [selling] purchase
 580 price equal to the increase in the cost of living since the
 581 unit was first sold, as determined by the Consumer Price
 582 Index; and

583 (C) The [fair market value] documented cost of capital
 584 improvements made to the unit between the date of
 585 original [sale] purchase and the date of resale; and

586 (D) A reasonable sales commission if a third-party licensed
 587 real estate agent was used.

588 (2) The Director must adjust the amount paid into the fund in each
589 case so that the seller retains at least \$10,000 of the excess of
590 the resale price over the sum of the items in subsection
591 (c)(1)(A)-(D).

592 [[2]] (3) The Director must find that the price and terms of a sale
593 covered by subsection (c)(1) are bona fide and accurately
594 reflect the entire transaction between the parties so that the full
595 amount required under subsection (c)(1) is paid to the fund.
596 When the Director finds that the amount due the fund is
597 accurate and the Department of Finance receives the amount
598 due, the Department must terminate the MPDU controls and
599 execute a release of the restrictive covenants.

600 [[3]] (4) The Department and the Commission, in that order, may buy
601 an MPDU at any time during the control period, and may resell
602 the unit to an eligible [person] buyer. A resale by the
603 Department or Commission starts a new control period.

604 [[4]] (5) The Commission and any partnership in which the
605 Commission is a general partner need not pay into the Housing
606 Initiative Fund any portion of the resale price of any MPDU
607 that it sells.

608 (d) *Initial and later rent controls.* Unless previously sold under
609 subsection (c)(1), [MPDUs] any MPDU built or offered for rent under
610 this Chapter must not be rented for 99 years after the original rental at
611 a rent greater than that established by [Executive regulations]
612 regulation. Any MPDU (other than those built, sold, or rented under

613 any federal, state, or local program offered by the Commission)
 614 offered for rent during the control period must be offered exclusively
 615 for 60 days to one or more eligible [persons] renters, as determined by
 616 the Department, for use as that person's residence, and to the
 617 Commission. The Commission may assign its right to rent such units
 618 to persons of low or moderate income who are eligible for assistance
 619 under any federal, state, or local program identified [in Executive
 620 regulations] by regulation.

621 (e) *Foreclosure or other court-ordered sales.* If an MPDU is sold
 622 through a foreclosure or other court-ordered sale, a payment must be
 623 made to the Housing Initiative Fund as follows:

624 (1) If the sale occurs during the control period, any amount of the
 625 foreclosure sale price which exceeds the total of the approved
 626 resale price under subsection (a), reasonable foreclosure costs,
 627 and [liens filed under the Maryland Contract Lien Act] tax liens
 628 or other liens superior to the foreclosed lien, must be paid to the
 629 Housing Initiative Fund. [If the remaining balance under the
 630 original first deed of trust or mortgage exceeds the resale price
 631 under subsection (a), then the difference between the
 632 foreclosure sales price and the balance of the original first deed
 633 of trust (plus reasonable foreclosure costs) must be paid to the
 634 Fund.]

635 * * *

636 (3) If the MPDU is a rental unit, the resale price under subsections
 637 (a) and (c) must be calculated using the [maximum sales price

638 in effect when the unit was originally offered for rent] current
639 affordable sales price as defined under Section 25A-7(a).

640 * * *

641 (f) *Waivers.* The Director may waive the restrictions on the resale and re-
642 rental prices for MPDUs if the Director finds that the restrictions
643 conflict with regulations of federal or state housing programs and thus
644 prevent eligible [persons] buyers or renters from buying or renting
645 units under the MPDU program.

646 (g) *Bulk transfers.* This section does not prohibit the bulk transfer or sale
647 of all or some of the sale or rental MPDUs in a subdivision within 30
648 years after the original rental or offering for sale if the buyer is bound
649 by all covenants and controls on the MPDUs.

650 * * *

651 **25A-10. [Executive regulations] Regulations; enforcement.**

652 (a) The Department must maintain a list of all moderately priced dwelling
653 units constructed, sold or rented under this Chapter. [; and the] The
654 County Executive may, from time to time, adopt regulations under
655 method [(1) necessary] (2) to administer this Chapter.

656 * * *

657 (e) In addition to or instead of any other available remedy, the Director
658 may take legal action to:

659 * * *

660 (2) require an owner to sell an MPDU owned or occupied in
661 violation of this Chapter to the County, the Commission, or an
662 eligible [person] buyer.

663 **25A-12. Annual report.**

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

- 666 (a) the number of MPDUs approved and built; and
- 667 (b) each [alternative payment agreement approved under Section 25A-5A
668 or] alternative location agreement approved under [Section 25A-5B,
669 Section 25A-5A, and the location and number of MPDUs that were
670 involved in each agreement[;].
- 671 [(c) each approval of a different rent for a high-rise rental unit under
672 Section 25A-7(b)(1); and
- 673 (d) the use of all funds in the Housing Initiative Fund that were received
674 as a payment under Section 25A-5A.]

675 *Approved:*

676

Michael J. Knapp, President, County Council	Date
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677 *Approved:*

678

Isiah Leggett, County Executive	Date
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This is a correct copy of Council action.

679

Linda M. Lauer, Clerk of the Council	Date
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