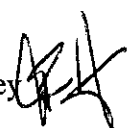


MEMORANDUM

July 20, 2018

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

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

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

<p>Planning, Housing and Economic Development Committee recommendation (3-0): Enact Bill 34-17 with amendments.</p>
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Expected Attendees:

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

Bill 34-17, Housing – Moderately Priced Dwelling Units (MPDUs) - Amendments, sponsored by Lead Sponsor Councilmember Floreen and Co-Sponsor Councilmember Rice, was introduced on October 31. A public hearing on the Bill was held on December 5, 2017 and Planning, Housing and Economic Development (PHED) Committee worksessions were held on March 5, March 12, March 19, June 11 and June 18. The full Council held a worksession on the Bill on July 17, in which members reviewed the provisions of the Bill, section-by-section, and engaged in dialogue with representatives of the Department of Housing and Community Affairs and the Planning Department.

Bill 34-17 would make several changes to the County MPDU law to enhance administrative flexibility and clarify provisions of the law. It would delete obsolete provisions and make a number of technical changes to the law as well.

Background

The Council enacted the County's Moderately Priced Dwelling Unit (MPDU) law in 1973 with several objectives. The law was aimed at furthering the objective of providing a full range of housing choices for all incomes, ages and household sizes. In particular, the law imposed requirements on the construction of affordable housing to meet the existing and anticipated needs for low and moderate-income housing, and ensure that moderately priced housing was dispersed throughout the County. It provided incentives to encourage the construction of moderately priced housing by allowing optional increases in density including the MPDU density bonus to offset the cost of construction.

The most recent substantial amendments to the MPDU law were made in 2004.¹ The 2004 amendments extended the control period for for-sale MPDUs from 10 to 30 years, and for rental MPDUs from 20 years to 99 years. The amendments also allowed different income eligibility standards in recognition of the higher cost of construction of certain types of housing, and increased the number of developments required to provide MPDUs by lowering the base requirement from any development with 35 or more units to 20 or more units. Additional requirements and structure on the approval alternative payments made to the Housing Initiative Fund in lieu of constructing MPDUs were also added. In 2007, the Office of Legislative Oversight issued Report No. 2007-9, A Study of Moderately Priced Dwelling Unit Program Implementation.²

Key components of Bill 34-17 include: clarification of existing provisions of the law; requiring developments of between 11 and 19 homes to make a payment to the Housing Initiative Fund; broadening the authority of the Director of the Department of Housing and Community Affairs to accept payments into the Housing Initiative Fund in lieu of including MPDUs in a development, when it serves the goal of increasing the availability of affordable housing; and increasing the flexibility of the Director in determining MPDU obligations to better serve the demands for affordable units.

Committee Discussion on Bills 34-17

The PHED Committee held worksessions on Bill 34-17 on March 5, March 12, March 19, June 11 and June 18. At the first worksession,³ the Committee received an overview of Bill 34-17's proposed changes to the existing MPDU law, and discussed many of those changes with representatives from DHCA and the Planning Department. That overview was organized with the broader purposes of the Bill and the specific changes proposed to effectuate each purpose. At the second worksession, the Committee took a section-by-section look at Bill 34-17 and recommended several amendments. The Committee also considered and accepted recommendations from DHCA

¹ <http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/bill/2003/24-04-25-04-27-03.pdf>

² <https://www.montgomerycountymd.gov/olo/resources/files/2007-9-mpdu.pdf>

³ https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5700_1460_Committ ee_03022018.pdf

and Council staff for several technical amendments at the March 12 worksession.⁴ At the March 19 worksession,⁵ the Committee discussed several issues and gave staff direction on provisions related to: resales of MPDUs; density bonuses for providing MPDUs; and the effective date(s) of the Bill. At the June 11 worksession,⁶ the Committee reviewed a redraft of the Bill, which incorporated all of the amendments discussed and approved at the earlier worksessions, directed staff to include several additional amendments to the Bill. On June 18,⁷ the Committee reviewed a redraft that included all Committee-recommended amendments and recommended enactment (3-0) with amendments.

Zoning Text Amendment

Substantial discussion in the early Committee worksessions was devoted to resolving issues surrounding the amount of density bonus allowed for provision of MPDUs. Under current law, the amount of density bonuses allowed is provided in a table (©19-20, following line 456). At the March 19 worksession Council staff and Planning Board staff expressed agreement that provisions relating to density bonuses are zoning provisions and belong in Chapter 59, the Zoning Ordinance. The Committee was advised at the first worksession that a Zoning Text Amendment (ZTA) is needed under any circumstances to make sure that Chapter 25A and Chapter 59 are consistent. ZTA 18-06⁸ will be the vehicle to provide for density bonuses in the Zoning Ordinance. It was introduced on June 19, and has a public hearing scheduled for September 11. The effective dates of this Bill and the ZTA should be synchronized so that both take effect on October 31, 2018.

A Note on Timing

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

Overview of Bill 34-17 with PHED Committee Amendments

Below is a section-by-section overview of all changes that would be made to the existing law by Bill 34-17, other than purely technical amendments.⁹

⁴https://www.montgomerycountymd.gov/council/resources/files/lims/bill/2017/Committee/pdf/5720_1460_Committ ee_03092018.pdf

⁵https://www.montgomerycountymd.gov/council/resources/files/lims/bill/2017/Committee/pdf/5729_1460_Committ ee_03192018.pdf

⁶https://www.montgomerycountymd.gov/council/resources/files/lims/bill/2017/Committee/pdf/5859_1460_Committ ee_06112018.pdf

⁷https://www.montgomerycountymd.gov/council/resources/files/lims/bill/2017/Committee/pdf/5876_1460_Committ ee_06182018.pdf

⁸ <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/zta/2018/ZTA%2018-06.pdf>

⁹ Examples of the purely technical amendments omitted from the overview include: changing references to “planning policy area” to “Planning Area” throughout the Chapter; changing references to “unit” or “moderately priced dwelling unit” to “MPDU” throughout; changing references to “person” and “family” to “household” throughout; and changing references to “corporations” to “business entities” throughout.

Sec. 25A-1. Legislative Findings.

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

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

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

Sec. 25A-3. Definitions.

Bill 34-17 would amend §25A-3 to:

- add definitions of “age-restricted unit” (©9, lines 188-189), “area median income” (©9, lines 190-192), “designated agency” (©11, lines 242-245), “multi-family dwelling unit” (©12, lines 286-287), “Planning Area” (©13, lines 293-296), and “single-family dwelling unit” (©13, lines 302-304);
- add reference to “age 55 and older” as the specific minimum age for at least one resident, for consistency with the Zoning Ordinance (©9, line 189);
- change reference in the definition of “Area median income” from median household income for “Montgomery County” to “Washington DC metropolitan area” (©9, lines 190-192);
- amend the defined term “eligible person” to be “eligible household” (©11, lines 252-257);
- provide that County “moderate income” levels must not exceed HUD “low income” levels (©12, lines 267-269); and
- clarify in the definition of “Moderately Priced Dwelling Unit” that when a dwelling unit designated as an MPDU is first sold or leased under another government program, once the initial restrictions end, MPDU requirements apply for the balance of the MPDU control period (©12, lines 277-285).

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

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

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

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

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

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

- expressly provide that the conversion of an existing property from a non-residential use to a residential use which results in the development of 20 or more dwelling units is subject to the MPDU requirements (©15, lines 355-359);
- require a HIF payment, but not the provision of MPDUs, for developments of between 11 and 19 units (but not for developments of 10 or fewer units) (see ©15, lines 364-367);
- permit the DHCA Director to waive the requirement that single-family MPDUs have three-bedroom in certain limited circumstances (see ©16, lines 390-394);
- provide that, in subdivisions with multi-family dwelling units, the bedroom mix of the MPDUs must match the bedroom mix of the market-rate units in the subdivision, unless the Director approves an MPDU agreement that does not increase the number of MPDUs required, but approximates the total floor area for the MPDUs required and alters the bedroom mix of the MPDUs or the number of MPDUs (see ©16-17, line 395-405);
- require developers who are constructing both single-family and multi-family units to distribute the MPDUs between both in the same proportions as the market-rate units, unless the DHCA Director agrees to a different distribution. (©17, lines 406-419);
- add "residential floor area," in addition to number of units, as a measure of MPDUs (©18, lines 433, 436, 439-441);

- delete the density bonus table and language relating to the calculation of density bonuses (this will be provided through ZTA 18-06, as discussed above) (see ©18-20, lines 444-457);
- delete obsolete provisions permitting the Director to reduce or waive the number of MPDUs required in certain developments of between 20 and 50 units (©20-21, lines 458-483);
- expressly provide that the DHCA Director determines whether or not required MPDUs must be provided on-site in all cases (including where the Council sets a higher base MPDU requirement in the master plan approval process) (see ©21, lines 484-485);
- require procedures for land transfers to the County in satisfaction of MPDU requirements to be established by Executive regulation, rather than be set in the law, and in any event, require the value of any land transferred to be at least equal to the value of the MPDU that are not constructed (©21-23, lines 493-544);
- require notice to Council of approval of a land transfer, and restrict the use of land transferred to increasing the supply of MPDUs (see ©23, lines 546-552);
- permit a property within a preliminary plan or site plan that has multiple owners to have more than one MPDU agreement (©24, lines 568-571);
- require that MPDUs be reasonably dispersed throughout a development (©24, lines 579-580);
- require that an MPDU agreement provide for any requirement of for-sale age-restricted MPDUs to be satisfied by a payment to the HIF (©25, lines 592-594);
- prohibit the establishment of a condominium or homeowners' association consisting solely of MPDUs (©25, lines 612-613); and
- permit an applicant to request a letter of preliminary agreement with DHCA (see ©27, lines 649-654).

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

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

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

- limit the use of alternative payments by providing that only requirements for for-sale newly constructed or newly-converted MPDUs may be satisfied through alternative payment agreements (©27, lines 658-659);
- delete reference to the "Alternative Review Committee" and instead provide that the Director may enter an alternative payment agreement upon the Director making certain findings (©27, lines 660-663);

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

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

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

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

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

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

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

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

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

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

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

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

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

- add a provision to allow the purchase/rental option held by a government agency or designated agency to be assigned to clients of the Department of Health and Human Services. (©36, lines 906-907);
- add a provision requiring that any unit purchased by HOC or other designated housing development agency or non-profit corporation that is offered for resale within five years after initial purchase first be offered for sale to the Department in accordance with Executive regulation, and allow DHCA to assign this right to a designated affordable housing agency or non-profit (lines ©38-39, lines 960-968);
- clarify certain notice provisions related to the offering of MPDUs to conform with DHCA practice (©40, lines 1002-1003; ©40-41, lines 1014-1020);
- allow DHCA to reduce the required 90-day priority marketing period for resold MPDUs for good cause (©41, 1028-1029); and
- delete obsolete language that was added to the law in 1989, before the institution of the 99-year control period on rental MPDUs, to prevent developers from offering MPDUs as rentals when similar units were being sold as market units, only to evict the MPDU tenants when the rental control period expired and sell the formerly rental MPDUs as for-sale market units (©41-42, lines 1030-1062).

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

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

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

Sec. 25A-12. Annual report.

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

Possible Amendments to Bill 34-17

Regulations:

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

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

Effective date:

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

Sec. 3. Effective Date.

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

This packet contains:

Bill 34-17
Legislative Request Report
Fiscal and economic impact statement
MPDU Program Report 2013-2016-Summary

Circle #

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Bill No. 34-17
Concerning: Housing -- Moderately
Priced Dwelling Units (MPDUs) -
Amendments
Revised: 06/13/2018 Draft No. 7
Introduced: October 31, 2017
Expires: May 1, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Floreen
Co-Sponsor: Councilmember Rice

AN ACT to:

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

By amending

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

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

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

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

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

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

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

all adversely affecting the health, safety and welfare of and resulting in an added financial burden on the citizens of the County;

(5) A careful study of market demands shows that approximately one-third of the new labor force in the County for the foreseeable future will require moderately priced dwelling units;

(6) Demographic analyses indicate that public policies which permit exclusively high-priced housing development discriminate against young families, retired and elderly persons, single adults, female heads of households, and minority households; and such policies produce the undesirable and unacceptable effects of exclusionary zoning, thus failing to implement the Montgomery County housing policy and the housing goal of the general plan for the County;

(7) Experience indicates that the continuing high level of demand for more luxurious housing, with a higher profit potential, discourages developers from offering a more diversified range of housing; and the production of moderately priced housing is further deterred by the high cost of land, materials, and labor;

(8) Actual production experience in the County indicates that if land costs can be reduced, houses of more modest size and fewer amenities can be built to be sold at a profit in view of the existing ready market for such housing;

(9) Every indication is that, given the proper incentive, the private sector is best equipped and possesses the necessary resources and expertise required to provide the type of moderately priced housing needed in the County;

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

(3) Increase the number of developments required to provide MPDUs by lowering the base requirement from any development with 35 or more units to 20 or more units; and

(4) Place additional requirements and structure on the approval of an alternative payment made to the Housing Initiative Fund in place of providing MPDUs.

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

(1) The availability of affordable housing continues to be a problem for low and moderate income households.

(2) The 2015 report “The Greater Washington Region’s Housing Needs 2023” projects that Montgomery County will need 14,960 new housing units for households earning less than 80% of area median income.

(3) The 2017 Montgomery County Rental Housing Study reports that 68% of households with incomes between 50% and 80% of area median income report paying more than 30% of income for rent and 15% report being extremely rent burdened, paying more than 50% of income for rent.

(4) The creation of income-restricted affordable housing through construction and preservation is critical as market rents continue to increase. The American Community Survey reports that there were 9,189 fewer rental units with rents between \$750 and \$1,499 from 2010 to 2014.

(5) MPDUs are one important element for providing income-restricted affordable housing. There were [[681]] 664 new MPDUs offered for sale or rent in 2015 and 2016. As of 2017 there are about 5,300 MPDUs county-wide.

(6) Additional density can offset the cost of constructing MPDUs. It is appropriate to consider different base requirements for MPDUs in conjunction with the approval of different densities and heights in master plans and sector plans.

(7) There is unmet demand for MPDUs with two, three, and four bedrooms. Providing flexibility that allows MPDU agreements based on floor area or square footage, rather than requirements based on the number of bedrooms in market rate units, can help to address this need.

(8) Appropriate alternative payments to the Housing Initiative Fund can, in certain circumstances, be used to create more MPDUs in the same [[Policy]] Planning Area than providing the MPDUs on site.

(9) Montgomery County is committed to its policy of providing affordable housing in all areas of the County to provide opportunity to households of all incomes in each [[Policy]] Planning Area.

(10) MPDUs can be used in partnership with other housing supports to provide affordable housing to households with very low incomes such as those with incomes below 50% or 30% of area median income.

25A-2. Declaration of public policy.

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

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

located in a suitable living environment, for all incomes, ages and family sizes;

(2) Provide for low- and moderate-income housing to meet existing and anticipated future employment needs in the County;

(3) Assure that moderately priced housing is dispersed within the County consistent with the general plan and area master plans;

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

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

(6) Ensure that private developers constructing moderately priced dwelling units under this Chapter incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus or public benefit provisions of Chapter 59 and, in certain zones, the optional development standards; and

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

(1) encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical

capabilities at appropriate locations and densities and to implement policies to bridge housing affordability gaps;

(2) make housing that is affordable to low, moderate, and middle-income households a priority in all parts of the County;

(3) ensure that all master plan and sector plan amendments address the need for housing for low, moderate, and middle-income households and promote specific strategies to meet that need including height and density incentives and flexibility;

(4) implement policies that increase the long-term supply of rental housing affordable to low and moderate-income households, particularly in areas that are easily accessible to transit;

(5) require that all subdivisions of 20 or more dwelling units include a minimum number of moderately priced dwelling units on-site, or under certain specified circumstances, provide appropriate units off-site or make a payment to the Housing Initiative Fund; [[and]]

(6) allow the Department of Housing and Community Affairs and developers flexibility to enter into affordable housing agreements that address the needs for housing units of different sizes and bedroom counts to better meet the needs of low and moderate-income households; and

(7) allow developers of residential units more opportunity to comply with this Chapter and meet the County's objective of building housing affordable to low- and moderate-income households by contributing to the Housing Initiative Fund, alternative location agreements, and flexible development standards that promote production and diversity of housing units.

25A-3. Definitions.

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

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

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

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

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

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

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

- (1) Owned by, or under contract to, the applicant;
- (2) Zoned for any type of residential development to which an optional density bonus provision applies;
- (3) Which will use public water and sewerage; and

(4) Which is already subdivided or is ready to be subdivided for construction or development.

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

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

[(f)] *Consumer Price Index* means the latest published version of the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Arlington-Alexandria Core Based Statistical Area (CBSA), as published by the United States Department of Labor, Bureau of Labor Statistics, or any similar index selected by the County Executive.

[(g)] *Control period* means the time an MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits, as provided in [[Section]] Sections 25A-8 and 25A-9. The control period is 30 years for sale [[units]] MPDUs and 99 years for rental [[units]] MPDUs, and begins on the date of [[initial]] original sale or rental. If a sale MPDU is sold [[to an eligible]] [person] household within 30 years after its [[initial]] original sale, and if (in the case of a sale MPDU that is not bought and resold by a government agency) the [[unit]] MPDU was originally offered for sale after March 1, 2002, the [[unit]] MPDU must be treated as a new sale MPDU and a new control period must begin on the date of the sale.

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

238 [(i)] *Date of original rental* means the date [[the first lease agreement for a
239 moderately priced dwelling unit takes effect]] that MPDU rental
240 covenants are recorded on the property.

241 [(j)] *Department* means the Department of Housing and Community Affairs.
242 Designated agency means a non-governmental housing development
243 agency or nonprofit business entity designated by the County Executive
244 as eligible to purchase or lease MPDUs under Section 25A-8, following
245 standards established in Executive regulation.

246 [(k)] *Director*, except as otherwise indicated, means the head of the
247 Department of Housing and Community Affairs, or the Director's
248 designee.

249 [(l)] *Dwelling unit* means a building or part of a building that provides
250 complete living facilities for one [[family]] household, including at a
251 minimum, facilities for cooking, sanitation and sleeping.

252 [(m)] *Eligible [person] household* means a [person or] household whose
253 income qualifies the [person or] household to participate in the MPDU
254 program, and who [holds a valid certificate of eligibility from the
255 Department which entitles the person or household] is eligible to buy
256 [or rent] or rent an MPDU during the priority marketing period.

257 [(n)] *Housing Initiative Fund* means a fund established by the County
258 Executive to achieve the purposes of Section 25B-9.

259 [(o)] *Low income* means levels of income within the income range for “very-
260 low income families” established from time to time by the U.S.
261 Department of Housing and Urban Development for the Washington
262 metropolitan area, under federal law, or as defined by executive
263 regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[[

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

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

]]

[(d)][[(f)(1) Notwithstanding subsection]] [(c)][[(e), the Director may allow fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location if:

(A) the Planning Board, in reviewing a subdivision or site plan submitted by the applicant and based on the lot size, product type, and other elements of the plan as submitted, finds that achieving a bonus density of 20 percent or more at that location:]]

[(A)][[(i) would not allow compliance with applicable environmental standards and other regulatory requirements]][,][[; or]]

[(B)][[(ii) would significantly reduce neighborhood compatibility; and

(B) the applicant makes a payment to the Housing Initiative Fund, as provided by regulation, based on the square footage of MPDU units that would otherwise have been required.

(2) If the Planning Board approves a density bonus of at least 20 percent for a development which consists of 20 or more but fewer than 50 units at one location, the number of]] [MPDU's] [[MPDUs required must be governed by subsection]] [(c)][[(e) unless the formula in subsection]] [(c)][[(e) would not allow the

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

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

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

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

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

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

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

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

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

(4) When land is transferred to the County under this Section:

(A) the land must be used to produce or preserve MPDUs; or

(B) if sold, proceeds from the sale must be allocated to the Affordable Housing Acquisition and Preservation CIP portion of the Housing Initiative Fund; and

(C) the Director must notify the Council within 30 days of approving a land transfer under this subsection.

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

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

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

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

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

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

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

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

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

~~[(m)]~~~~[(l)]~~ (1) If an applicant does not build the MPDUs contained in the staging plan along with or before other dwelling units, the Director of Permitting Services must withhold any later building permit to that applicant until the MPDUs contained in the staging plan are built.

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

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

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

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

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

(3) The covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other parties that receive title to the property. These covenants must be senior to all instruments securing permanent financing.

~~[(1)]~~~~[(o)]~~~~(n)~~ An applicant must not establish a condominium or homeowners' association consisting solely of MPDUs.

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

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

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

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

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

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

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

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

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

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

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

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

25A-5A. Alternative payment agreement.

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

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

MPDU buyers so much that it is likely to make the MPDUs effectively unaffordable by eligible buyers; [[or]]

(B) [environmental constraints at a particular site would render the building of all required MPDUs at that site economically infeasible] regulatory development constraints at a particular site would render the building of approved density and all required MPDUs at that site infeasible; or

(C) the public benefit of providing affordable housing throughout the County outweighs the value of locating MPDUs in each subdivision throughout the County; and

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

(b) [Any payment to the Housing Initiative Fund under this Section must equal or exceed 125% of the imputed cost of land for each unbuilt MPDU. Except as further defined by Executive regulation, the imputed land cost must be calculated as 10% (for high-rise units) or up to 30% (for all other housing units) of the actual sale price charged for each substituted unit. If the substituted unit will be a rental unit, the Director must calculate an imputed sale price under applicable regulations, based on the rent actually charged.] A payment under this section in full satisfaction of MPDU requirements must be [[calculated as provided in method (1) regulation]] three percent of the sale price of each market rate unit in the development. A payment made in partial satisfaction of

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

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

(1) must not be used to reduce the annual County payment to the Fund; [[and]]

(2) must be deposited into the Affordable Housing Acquisition and Preservation CIP project; and

(3) [[may]] must be used [only] only to buy, [[or]] build, or preserve more MPDUs, or more bedrooms in the same number or fewer MPDUs, in [the same planning policy area] [[a Policy Area]] the same Planning Area [[as defined in the County]] [Growth] [[Subdivision Staging Policy]] [as] [[other than that of]] as the development for which the payment was made [[only after]] unless:

(A) the Council is first provided with:

(i) notice of the intent to use the payment in a different Planning Area [[is provided to the Council]]; and

(ii) [[a compelling reason]] good cause for the use of the payment in a different Planning Area; and

(B) the Council is given at least 30 days to comment.

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

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

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

25A-5B. Alternative location agreement.

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

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

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

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

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

(1) build, or convert from non-residential use, the required number or percentage of residential floor area of new MPDUs at a site approved by the Director;

(2) buy, encumber, or transfer, and rehabilitate as necessary, existing market rate housing units that meet all standards for use as MPDUs; or

(3) return to MPDU use, and rehabilitate as necessary, existing MPDUs for which price or rent controls have expired.

~~[(c)]~~(d) Each agreement under this Section must include a schedule, binding on the applicant, for timely completion or acquisition of the required number of MPDUs.

(e) The Director must notify the Council in writing within ten days of approving an alternative location agreement under this Section.

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

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

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

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

25A-7. Maximum prices and rents.

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

(a) *Sales.*

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

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

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

(B) approve an increase of up to 10% over the base sale price of an MPDU upon a finding that the increase is justified to cover the cost of a modification of the external design of

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

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

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

(b) *Rents.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) the Department prevails over any other buyer or renter;
- (B) The Commission prevails over any buyer or renter other than the Department;
- (C) any other government agency prevails over any [[nonprofit corporation]] designated agency;
- (D) the first government agency to file a notice prevails over any later agency; and
- (E) the first [[nonprofit corporation]] designated agency to file a notice prevails over any later [[corporation]] designated agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (8) An owner of an MPDU, except the Commission or a [[housing agency or nonprofit corporation designated by the Director]] government agency or designated agency, must not rent the [[unit]] MPDU to another party unless the Director finds sufficient cause to allow temporary rental of the [[unit]] MPDU under applicable regulations, which may include maximum rental levels. [Any MPDU owner who is allowed to rent a unit temporarily must agree to amend the applicable MPDU covenants to extend the control period for a time equal to the temporary rental period.]
- (9) Any rent obtained for an MPDU that is rented without the Director's authorization must be paid into the Housing Initiative Fund by the owner within 90 days after the Director notifies the owner of the rental violation. Any amount unpaid after 90 days is grounds for a lien against the [[unit]] MPDU[,]. [and the] The Director may obtain a judgment and record the lien or may reduce the resale price of the MPDU by the amount owed to the Housing Initiative Fund, or pursue other remedies provided by law.

(10) An applicant must not sell or lease any [unit] MPDU without first [obtaining a certificate of] obtaining a certificate of eligibility from the prospective buyer or verifying the eligibility [from] of the prospective [[buyer or]] lessee. [[A]] For sale MPDUs, a copy of each certificate must be furnished to the Department and maintained on file by the Department. Before the sale by an applicant or by the Commission, [[or]] a government agency, or a designated [[housing]] agency [[or nonprofit corporation]] to any buyer of any MPDU who does not possess a certificate of eligibility, the applicant, the Commission, or the agency, [[or corporation]] must [[ask the Department]] determine whether [[the certificates on file show that]] the proposed buyer had previously [[bought]] owned another MPDU. [[A person]] The proposed buyer must not [[buy a second MPDU unless]] participate in the MPDU program a second time unless the proposed buyer meets the household income criteria and no longer owns an MPDU, and there is no first-time buyer [[is]] qualified to buy that [[unit]] MPDU. The Director may waive this restriction for good cause.

(11) If an MPDU owner dies, at least one heir, legatee, or other person taking title by will or by operation of law must occupy the MPDU during the control period under this Section, or the owner of record must sell the MPDU as provided in Section 25A-9.

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

(1) In view of the critical, long-term public need for housing for families of low and moderate income, the Department, the Commission, or any other housing development agency or

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

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

(3) In exercising this option, the Department, the Commission, and any designated agency or corporation must designate the units by reference to number, type, size and amenities of the units selected if the designation does not result in any type of unit exceeding by more than 40 percent the total units of that type which are sold or rented under this Section, unless the applicant agrees otherwise. The notice required under subsection (b)(2) must state which MPDUs are to be offered for sale and which are to be offered for rent, and the Department, the Commission, and any designated agency or corporation may buy only units which are offered for sale and may lease only units which are offered for rent. The Department, the Commission, and any designated agency or corporation must decide whether it will exercise its option within 45 days after it receives the original notice.

(4) If more than one government agency or nonprofit corporation files a notice of intent under subsection (b)(2) with respect to a particular MPDU:

- (A) the Department prevails over any other buyer or renter;
- (B) The Commission prevails over any buyer or renter other than the Department;
- (C) any other government agency prevails over any nonprofit corporation;
- (D) the first government agency to file a notice prevails over any later agency; and
- (E) the first nonprofit corporation to file a notice prevails over any later corporation.]

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

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

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

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

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

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

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

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

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

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

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

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

1231 [person] household under the resale provisions of this
 1232 Chapter.

1233 (2) The Commission may purchase resale MPDUs in a particular
 1234 development only if it did not previously purchase its full
 1235 allotment of units at the initial offering. In no case may the
 1236 Commission own more than 33.3 percent of the MPDUs in a
 1237 particular development.

1238 (3) A resale MPDU may be offered for sale to ~~[[the general public]]~~
 1239 non-eligible households only after:

1240 (A) the priority marketing period expires; and

1241 (B) all eligible [persons] households who express an interest in
 1242 buying it have been given an opportunity to do so.

1243 ~~[[(3)]]~~ (4) The Executive by regulation may adopt requirements for
 1244 reselling MPDUs. The regulations may require a seller to submit
 1245 to the Department for approval:

1246 (A) a copy of the proposed sales contract~~[[, including a list and~~
 1247 ~~the price of any personal property included in the sale]]~~;

1248 (B) a signed copy of the settlement sheet; and

1249 (C) an affidavit signed by the seller and buyer attesting to the
 1250 accuracy of all documents and conditions of the sale.

1251 ~~[[(4)]]~~ (5) A transfer of an MPDU does not comply with this Chapter
 1252 until all required documents and affidavits have been submitted
 1253 to and approved by the Department.

1254 (c) Payments to HIF during the control period. During the control period, if
 1255 the Department determines that the design of the MPDU offered for
 1256 resale would no longer comply with requirements for construction of a
 1257 new MPDU or that the allowable resale price and fees associated with a

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

(d) *First sale after control period ends.*

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

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

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

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

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

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

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

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

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

~~[(d)]~~(e) ~~[[Initial]]~~ Original and later rent controls. Unless previously sold under subsection ~~[(c)]~~(d)(1), MPDUs built or offered for rent under this Chapter must not be rented for 99 years after the original rental at a rent greater than that established by Executive regulations. Procedures for original rentals of MPDUs are described in Section 25A-8. ~~[[Any]]~~ After the original rental, any MPDU (other than those built, sold, or rented under any federal, state, or local program offered by the Commission) offered for rent during the control period must be offered exclusively for 60 days to one or more eligible [persons] households, as determined by the Department, for use as that ~~[[person's]]~~ household's residence~~[[, and to the Commission]]~~. After the original rental, the Commission may lease MPDUs in a particular development only if it

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

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

- 1321 (1) If the sale occurs during the control period, any amount of the
 1322 foreclosure sale price which exceeds the total of the approved
 1323 resale price under subsection (a), reasonable foreclosure costs,
 1324 and liens ~~[[filed under the Maryland Contract Lien Act]]~~ recorded
 1325 against the MPDU among the land records, must be paid to the
 1326 Housing Initiative Fund. ~~[[If the remaining balance under the~~
 1327 ~~original first deed of trust or mortgage exceeds the resale price~~
 1328 ~~under subsection (a), then the difference between the foreclosure~~
 1329 ~~sales price and the balance of the original first deed of trust (plus~~
 1330 ~~reasonable foreclosure costs) must be paid to the Fund.]]~~
- 1331 (2) If the sale occurs after the control period, and the ~~[[unit]]~~ MPDU
 1332 was originally offered for sale or rent after March 20, 1989, the
 1333 payment to the Fund must be calculated under subsection
 1334 ~~[[c]]~~(d), less reasonable foreclosure costs and liens recorded
 1335 against the MPDU among the land records.
- 1336 (3) If the MPDU is a rental unit, the resale price under subsections
 1337 (a) and ~~[[c]]~~(d) must be calculated [using the maximum sales

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

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

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

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

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

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

1356 * * *

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

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

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

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

* * *

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

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

LEGISLATIVE REQUEST REPORT

Bill 34-17

Housing – Moderately Priced Dwelling Units (MPDUs) – Amendments

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

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

1. Legislative Summary

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

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

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not Applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not Applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable. The bill does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

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

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

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

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

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

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

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

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

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

Several variables could affect revenue estimates, including:

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

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

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

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

Not Applicable.

13. Other fiscal impacts or comments.

Not Applicable.

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

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



Jennifer A. Hughes, Director
Office of Management and Budget

12/4/17
Date

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

Background:

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

Some of the revisions include:

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

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

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

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

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

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

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

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


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

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

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

Please see item #3.

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



Alexandre A. Espinosa, Director
Department of Finance

12/1/2017

Date

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

From 2013-2016 (4 years):

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

461 in 2013

258 in 2014

491 in 2015

274 in 2016

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

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

2 Alternative Payment Agreements were signed:

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

One was for a condominium with high fees (Octave)

As of January 2018:

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

Use of Alternative Payments during 2013-2015:

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

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

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

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

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

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