

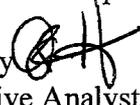
PHED Item 2&3
March 19, 2018
Worksession 3 (Bill 34-17)
Worksession 2 (Bill 38-17)

**Committee members should bring their packets from the
March 5 and March 12 Worksessions.**

M E M O R A N D U M

March 16, 2018

TO: Planning, Housing and Economic Development Committee

FROM: Josh Hamlin, Legislative Attorney 
Linda McMillan, Senior Legislative Analyst 

SUBJECT: Bill 34-17, Housing – Moderately Priced Dwelling Units (MPDUs) – Amendments;
and Bill 38-17 – Moderately Priced Dwelling Units (MPDUs) – Requirement to
Build

PURPOSE: **Consider new issues of: resales of MPDUs, effective date(s), policy and
provisions regarding increased density for additional MPDUs, fiscal impact
statement for Bill 34-17, alternative map to consider in context of Bill 38-17**

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
- Stacy Spann, Executive Director, Housing Opportunities Commission (HOC)
- 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. Bill 38-17, Housing – Moderately Priced Dwelling Units (MPDUs) - Amendments, sponsored by Lead Sponsor then-Council Vice-President Riemer and Co-Sponsor Councilmember Katz, was introduced on November 14. A public hearing on both Bills was held on December 5, 2017 and Planning, Housing and Economic Development (PHED) Committee worksessions were held on March 5 and March 12.

Bill 34-17 would make several changes to the County MPDU law to enhance administrative flexibility and clarify provisions of the law. Bill 38-17 would expressly provide in the Code that the minimum MPDU requirement Countywide is 12.5 percent, with 15 percent required in any development in an MCPS High School Service Area with an eligibility rate for free and reduced meals (“FARMS rate”) of 15 percent or less at the time the applicant submits a preliminary plan of subdivision.

Prior Committee Discussion on Bills 34-17 and 38-17

The PHED Committee held worksessions on Bill 34-17 on March 5 and March 12, and discussed Bill 38-17 on March 12. At the first worksession, 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 possible amendments to each section. It was within this context that the Committee discussed Bill 38-17. The Committee also considered several technical amendments recommended by DHCA and Council staff at the March 12 worksession. Remaining issues to be discussed at this worksession include: resales of MPDUs; policy and provisions regarding increased density for additional MPDUs; fiscal impact statement for Bill 34-17; effective date(s) of the Bills; and alternative map to consider in context of Bill 38-17.

Issues for Committee Discussion

1. Section 25A-8. Sale or rental of units, starts at Line 759, ©31

DHCA Right of First Refusal

Bill 34-17 continues to allow DHCA, HOC, and any housing development agency or nonprofit designated by the Executive to buy or lease for its own programs up to 40% of MPDUs offered that are not sold or rented under another federal, state, or local program. DHCA and HOC are limited to purchasing or leasing no more than one-third of these MPDUs.

The amendments contained in Lines 822-825 would require, “Any unit purchased under this subsection that is offered for sale within five years after initial purchase must first be offered for sale at the initial purchase price to the Department in accordance with Executive regulation.”

The purpose of the priority sale or rental period is to allow affordable housing partners to gain access to MPDUs that can then serve their clients, often by renting the units to very low-income clients. The amendment was offered to prevent an agency or non-profit from purchasing a MPDU only with the intent to re-sell, potentially at a higher price than would have been the price at the initial offering (but within the constraints of the MPDU control period rules). DHCA shared its concern that buyers purchasing a MPDU through HOC’s Homeownership Program were paying a higher price than if they purchased directly through the initial offering.

HOC has provided comments on Bill 34-17 (©64-70) that includes a history of the Homeownership Program. They note:

- Since 1987, HOC has helped more than 347 customers purchase a home through this MPDU resale program.
- HOC is uniquely positioned to work with families that are transitioning from one of its affordable housing programs to homeownership.
- It is a misconception that HOC resale results in a higher price for the MPDU homeowner in part because the seller receives a 3.5% closing cost seller credit.
- HOC has provided a listing of MPDUs resold through this program which shows that in some cases the variance between the HOC acquisition cost and the adjusted price paid by the purchaser can be positive or negative. Rarely is the positive variance more than \$1,200.

As written, the amendment is a right-of-first refusal for DHCA and so DHCA could agree that HOC or the other organization could move forward with the sale, but it would also give DHCA an option to reclaim the unit.

2. Section 25A-9. Control of rents and resale prices; foreclosures, starts at Line 1013, ©41

When a MPDU is sold or refinanced during the control period, it cannot be sold for a price greater than the original selling price plus:

- an increase based on the Consumer Price Index;
- the fair market value of improvements made;
- an allowance for closing costs paid by the initial buyer for the benefit of a later buyer; and
- a reasonable sales commission for units not sold during the priority sales period.

The bill as introduced changes the “fair market value” of an improvement to “an allowance.” (Line 1021, ©41) and the Director can disallow an improvement determined to be unnecessary for the maintenance and upkeep (Lines 1029-1032, ©41). DHCA explained that there have been instances of owners adding marble tile or very expensive bathrooms and when the cost of these is allowed, the unit becomes unaffordable for a MPDU income household. An owner could still do as they wish but would only get an allowance for the improvement. The method for calculating the allowable resale price would be set in method (1) regulation.

DHCA has requested changes in subsection (b) *Resale requirements during the control period*, that starts on Line 1042, ©42. This section provides a 60-day period for DHCA or HOC to decide to purchase the resale MPDU. If this does not occur, then DHCA can establish a priority order for eligible households interested in purchasing at the resale price or notify the owner that they may sell directly to an eligible household. If it is not sold, it may then be offered for sale to the general public. DHCA’s requested changes are as follows:

1. Clarify that if DHCA and HOC decide in less than 60 days that they do not want to purchase the MPDU, the period can end before 60 days.
2. Allow DHCA to assign its priority right to a designated affordable housing agency or non-profit.

3. Clarify that HOC may not purchase a resale MPDU in a particular development if it would then own more than one-third of the MPDUs. (This is in the current regulation but not specifically in the law.)
4. DHCA would like authority that if it determines that the resale price is no longer affordable to a MPDU eligible household, is in poor condition, or is no longer a design that meets the needs of MPDU purchasers and DHCA and HOC do not want to purchase the MPDU, the owner can sell at market price, terminate the controls, and share profits with the county.
5. Specify that in the case of foreclosure the MPDU covenant must be released. (This was requested by the County Attorney.)

Council staff does not agree with DHCA's proposal to allow a MPDU to be sold at market price and have covenants removed because it has become unaffordable or because it is in need of repair. This is because once the MPDU is lost as an income-restricted unit, it is lost to the inventory. Just as DHCA used some funds to make new condominiums affordable, it could use funds to buy down the price of a resale unit or to perform maintenance that should be completed before the home is sold to an eligible household. **Council staff would agree to a provision that this release could occur if the unit type is no longer allowed for a new MPDU.**

DHCA will provide examples to the Committee of when they would prefer to remove a home from the MPDU program.

3. Increased Density for Additional MPDU (Density Bonus), starts Line 371, ©16

The current law and bill as introduced include a table that shows the additional density provided when the percent of MPDUs exceeds 12.5% or another base requirement. It is based on the long-standing provision of a maximum 22% density bonus for provide 15% MPDUs.

At the March 12 session, the Committee reviewed Ms. Floreen's amendment that would remove the table from Chapter 25A and would replace it with language that acknowledges that there must be a method for zones where density is established by unit count and where density is calculated by floor area.

Council staff is requesting the Committee discuss the following issues.

How specific should Chapter 25A be?

Council staff agrees with Planning Board staff that provisions about density are zoning provisions and belong in Chapter 59, the Zoning Ordinance. As mentioned at the first worksession, a Zoning Text Amendment is needed under any circumstances to make sure that Chapter 25A and Chapter 59 are in agreement.

If the PHED Committee agrees, then staff will propose an amendment to Bill 34-17 that will refer to Chapter 59 in all parts of Chapter 25A that refer to a density bonus.

Is the 22% Density Bonus for 15% MPDU the ratio that should continue and should it end at 22%?

Currently, a developer can receive up to a 1% increase in additional density for each 0.1% increase in MPDUs. The maximum allowed is 22% bonus density for 15% MPDUs. In a hypothetical 100 unit building it results in the following:

By UNIT	TOTAL	MPDU	MARKET
100 Unit Building @ 12.5% MPDU	100	13	87
Same Building at 15% with 22% bonus	122	18.3	103.7
Rounding up MPDU	122	19	103
Percent Total Unit increase = 22%	22.0%		
Percent MPDU increase = 46%		46.2%	
Percent Market Unit increase = 18%			18.4%

Bill 34-17 allows MPDU agreements to be calculated on residential floor area. If the Council believes that the current bonus ratio is appropriate, Council staff will continue to work with Planning Board staff to find a formula that provides closest to this same result but would be expressed as X% increase in residential floor area for every Y% increase in MPDU floor area.

As noted, the current table stops at 15% MPDUs but the calculation could continue to 20% or 25% MPDUs.

What latitude is needed for translating floor area to units?

If an agreement is developed based on 15% residential floor area being dedicated to MPDUs, eventually this floor area must be translated into units. It may be that the MPDUs appropriately sized and approved by DHCA do not use all the floor area that was dedicated. This predicament does not occur when the density is based on unit count.

Bill 34-17 has two provisions regarding the number of units that must be provided. With regard to units, the Bill says that to obtain a density bonus, an applicant must provide at least one more MPDU that would have been required if there was no density bonus. In the case of floor area, Councilmember Floreen’s amendment provides that the Director may approve a MPDU agreement that does not increase the number of MPDUs but approximates the floor area and can alter the bedroom mix.

What latitude should the Director have to reduce the MPDU floor area as part of a MPDU agreement? Should there be a limit, for example, the Director cannot reduce the total floor area dedicated to MPDUs by more than 3% or 5% if it is not needed to achieve the number of MPDUs or bedrooms required.

Would a new MPDU bonus formula replace MPDU bonus that currently apply to the CR Zone/floor area zones?

The CR Zone (without a “T”) provides the following incentives to produce more than 12.5% MPDUs:

- For a project providing less than 15% MPDUs, the gross floor area of any MPDU provided above 12.5% is exempt from the calculation of FAR.
- For a project providing a minimum of 15% MPDUs, the gross floor area of all MPDUs provided is exempt from the calculation of FAR.

Developers have shared concerns that the exemption of FAR for all MPDUs at 15% MPDUs is not as beneficial as the 22% density bonus for 15% MPDUs. This is a reason for developing a new formula as a part of the Zoning Text Amendment. It is Council staff’s view that such a formula would replace these current incentives. This would not directly impact other CR requirements regarding benefit points required.

4. Fiscal impact of Bill 34-17

The Executive has provided a Fiscal Impact Statement which is included at ©51-55. It estimates that DHCA will need 3.5 FTEs at an estimated annual cost of \$345,000 to implement the changes in the legislation.

- A 0.5FTE (\$37,160) to track any developments with less than 20 units to ensure they comply with a requirement for payment to the HIF.
- Two Planning Specialists (\$210,720) and a Program Manager (\$97,210) to work with developers early in the process to comply with MPDU requirements based on FAR and to determine types of MPDUs and layout once authority is given to negotiate for a different mix of bedroom types. Based on the past three years, DHCA estimates that 14 to 18 projects may have to be evaluated on a FAR basis annually.

Council staff was struck with the estimate of new staff required to move to a FAR calculation. The development approval process has time constraints and DHCA must be able to approve MPDU agreements in a timely manner so that the Planning Board can confirm compliance. DHCA has not been recommended for new staff associated with the MPDU program during the past few years as more complex projects have come for evaluation and as the number of projects where the County has used land or other means to leverage production of affordable housing has increased. Council staff suggests the Committee discuss with DHCA how much of this fiscal impact is specifically tied to the changes in Bill 34-17 and how much is in response to existing changes in workload for the Department.

5. When should the Bill(s) take effect?

As introduced, the Bill includes no special effective date or transition provisions, and would take effect 91 days after it becomes law. There are several reasons to provide for a later effective date. First, if the enacted Bill includes its current provisions requiring substantial new and revised regulations, a later effective date would be desirable. Also, the Bill should clearly state that it applies to applications submitted on or after a specific date, and include any necessary grandfathering provisions. Finally, a later effective date would allow action on amendments to the Zoning Ordinance that will be necessary to give full effect to the Bill's objectives.

Council staff recommends that the effective date for Bill 34-17 and/or Bill 38-17 should be November 1, 2018. This should also be the effective date for the Zoning Text Amendment. Executive Regulations should be transmitted to Council by September 15, 2018 so that they can be reviewed and also have an effective date of November 1, 2018.

6. Alternative map for Bill 38-17

At the March 12 worksession on Bill 38-17, Councilmember Leventhal asked if an alternative to the use of FARMS rates might be to look at median income in a Planning Area and how it compares to the County as a whole.

Planning staff is working to develop such a map and if available it will be provided to the Committee at the Monday worksession.

This packet contains:	<u>Circle #</u>
Bill 34-17	1
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Bill No. 34-17
Concerning: Housing – Moderately Priced Dwelling Units (MPDUs) - Amendments
Revised: 10/31/2017 Draft No. 6
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,

- 28 all adversely affecting the health, safety and welfare of and resulting in
 29 an added financial burden on the citizens of the County;
- 30 (5) A careful study of market demands shows that approximately one-third
 31 of the new labor force in the County for the foreseeable future will
 32 require moderately priced dwelling units;
- 33 (6) Demographic analyses indicate that public policies which permit
 34 exclusively high-priced housing development discriminate against
 35 young families, retired and elderly persons, single adults, female heads
 36 of households, and minority households; and such policies produce the
 37 undesirable and unacceptable effects of exclusionary zoning, thus
 38 failing to implement the Montgomery County housing policy and the
 39 housing goal of the general plan for the County;
- 40 (7) Experience indicates that the continuing high level of demand for more
 41 luxurious housing, with a higher profit potential, discourages developers
 42 from offering a more diversified range of housing; and the production of
 43 moderately priced housing is further deterred by the high cost of land,
 44 materials, and labor;
- 45 (8) Actual production experience in the County indicates that if land costs
 46 can be reduced, houses of more modest size and fewer amenities can be
 47 built to be sold at a profit in view of the existing ready market for such
 48 housing;
- 49 (9) Every indication is that, given the proper incentive, the private sector is
 50 best equipped and possesses the necessary resources and expertise
 51 required to provide the type of moderately priced housing needed in the
 52 County;

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

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

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

86 (c) In 2017, the County Council finds that:

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

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

93 (3) The 2017 Montgomery County Rental Housing Study reports that
94 68% of households with incomes between 50% and 80% of area
95 median income report paying more than 30% of income for rent
96 and 15% report being extremely rent burdened, paying more than
97 50% of income for rent.

98 (4) The creation of income-restricted affordable housing through
99 construction and preservation is critical as market rents continue
100 to increase. The American Community Survey reports that there
101 were 9,189 fewer rental units with rents between \$750 and
102 \$1,499 from 2010 to 2014.

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

- 107 (6) Additional density can offset the cost of constructing MPDUs. It
 108 is appropriate to consider different base requirements for MPDUs
 109 in conjunction with the approval of different densities and heights
 110 in master plans and sector plans.
- 111 (7) There is unmet demand for MPDUs with two, three, and four
 112 bedrooms. Providing flexibility that allows MPDU agreements
 113 based on floor area or square footage, rather than requirements
 114 based on the number of bedrooms in market rate units, can help
 115 to address this need.
- 116 (8) Appropriate alternative payments to the Housing Initiative Fund
 117 can, in certain circumstances, be used to create more MPDUs in
 118 the same Policy Area than providing the MPDUs on site.
- 119 (9) Montgomery County is committed to its policy of providing
 120 affordable housing in all areas of the County to provide
 121 opportunity to households of all incomes in each Policy Area.
- 122 (10) MPDUs can be used in partnership with other housing supports to
 123 provide affordable housing to households with very low incomes
 124 such as those with incomes below 50% or 30% of area median
 125 income.

126 **25A-2. Declaration of public policy.**

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

- 129 [(1) Implement the Montgomery County housing policy and the general plan
 130 goal of providing for a full range of housing choices, conveniently
 131 located in a suitable living environment, for all incomes, ages and
 132 family sizes;

- 133 (2) Provide for low- and moderate-income housing to meet existing and
 134 anticipated future employment needs in the County;
- 135 (3) Assure that moderately priced housing is dispersed within the County
 136 consistent with the general plan and area master plans;
- 137 (4) Encourage the construction of moderately priced housing by allowing
 138 optional increases in density in order to reduce land costs and the costs
 139 of optional features that may be built into such moderately priced
 140 housing;
- 141 (5) Require that all subdivisions of 35 or more dwelling units include a
 142 minimum number of moderately priced units of varying sizes with
 143 regard to family needs, and encourage subdivisions with fewer than 35
 144 units to do the same;
- 145 (6) Ensure that private developers constructing moderately priced dwelling
 146 units under this Chapter incur no loss or penalty as a result thereof, and
 147 have reasonable prospects of realizing a profit on such units by virtue of
 148 the MPDU density bonus or public benefit provisions of Chapter 59
 149 and, in certain zones, the optional development standards; and
- 150 (7) Allow developers of residential units in qualified projects more
 151 flexibility to meet the broad objective of building housing that low- and
 152 moderate-income households can afford by letting a developer, under
 153 specified circumstances, comply with this Chapter by contributing to a
 154 County Housing Initiative Fund.]
- 155 (1) encourage and maintain a wide choice of housing types and
 156 neighborhoods for people of all incomes ages, lifestyles, and physical
 157 capabilities at appropriate locations and densities and to implement
 158 policies to bridge housing affordability gaps;

- 159 (2) make housing that is affordable to low, moderate, and middle income
 160 households a priority in all parts of the County;
- 161 (3) ensure that all master plan and sector plan amendments address the need
 162 for housing for low, moderate, and middle income households and
 163 promote specific strategies to meet that need including height and
 164 density incentives and flexibility;
- 165 (4) implement policies that increase the long-term supply of rental housing
 166 affordable to low and moderate income households, particularly in areas
 167 that are easily accessible to transit;
- 168 (5) require all subdivisions of 20 or more dwelling units include a minimum
 169 number of moderately priced units on-site, or under certain specified
 170 circumstances, provide appropriate units off-site or make a payment to
 171 the Housing Initiative Fund; and
- 172 (6) allow the Department of Housing and Community Affairs and
 173 developers flexibility to enter into affordable housing agreements that
 174 address the needs for housing units of different sizes and bedroom
 175 counts to better meet the needs of low and moderate income
 176 households.

177 **25A-3. Definitions.**

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

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

182 Area median income means the median household income for
 183 Montgomery County as estimated by the U.S. Department of Housing
 184 and Urban Development.

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

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

189 (1) The property lines are contiguous or nearly contiguous at any
 190 point; or

191 (2) The property lines are separated only by a public or private street,
 192 road, highway or utility right-of-way, or other public or private
 193 right-of-way at any point; or

194 (3) The property lines are separated only by other land of the
 195 applicant which is not subject to this Chapter at the time of any
 196 permit, site plan, development or subdivision application by the
 197 applicant.

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

199 (1) Owned by, or under contract to, the applicant;

200 (2) Zoned for any type of residential development to which an
 201 optional density bonus provision applies;

202 (3) Which will use public water and sewerage; and

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

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

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

- 211 [(f)] *Consumer Price Index* means the latest published version of the
212 Consumer Price Index for All Urban Consumers (CPI-U) of the U.S.
213 Department of Labor for the Washington metropolitan area, or any
214 similar index selected by the County Executive.
- 215 [(g)] *Control period* means the time an MPDU is subject to either resale price
216 controls and owner occupancy requirements or maximum rental limits,
217 as provided in Section 25A-9. The control period is 30 years for sale
218 units and 99 years for rental units, and begins on the date of initial sale
219 or rental. If a sale MPDU is sold to an eligible [person] household
220 within 30 years after its initial sale, and if (in the case of a sale MPDU
221 that is not bought and resold by a government agency) the unit was
222 originally offered for sale after March 1, 2002, the unit must be treated
223 as a new sale MPDU and a new control period must begin on the date of
224 the sale.
- 225 [(h)] *Date of original sale* means the date of settlement for purchase of a
226 moderately priced dwelling unit.
- 227 [(i)] *Date of original rental* means the date the first lease agreement for a
228 moderately priced dwelling unit takes effect.
- 229 [(j)] *Department* means the Department of Housing and Community Affairs.
- 230 [(k)] *Director*, except as otherwise indicated, means the head of the
231 Department of Housing and Community Affairs, or the Director's
232 designee.
- 233 [(l)] *Dwelling unit* means a building or part of a building that provides
234 complete living facilities for one family, including at a minimum,
235 facilities for cooking, sanitation and sleeping.
- 236 [(m)] *Eligible [person] household* means a [person or] household whose
237 income qualifies the [person or] household to participate in the MPDU

238 program, and who [holds a valid certificate of eligibility from the
239 Department which entitles the person or household] is eligible to buy
240 [or rent] an MPDU during the priority marketing period.

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

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

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

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

256 (1) offered for sale or rent to eligible [persons] households through
257 the Department, and sold or rented under this Chapter; or

258 (2) sold or rented under a government program designed to assist the
259 construction or occupancy of housing for families of low or
260 moderate income, and designated by the Director as an MPDU.

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

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

266 [(s)] *Planning Board* means the Montgomery County Planning Board.

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

270 **25A-4. [Income] Household income and eligibility standards.**

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

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

- 281 (1) [the price established for the sale or rental of MPDUs under this
 282 Chapter,] income levels relative to area median income; and
 283 (2) [the term and interest rate that applies to the financing of
 284 MPDUs,
 285 (3) the estimated levels of income necessary to carry a mortgage on
 286 an MPDU, and
 287 (4)] family size and number of dependents.

288 (c) A person who rents an MPDU and lawfully occupies it when the unit is
 289 offered for sale may buy the unit, regardless of the person's income at

290 the time of sale, if the person met all eligibility standards when the
 291 person first rented the unit.

292 (d) A person who rents an MPDU after meeting all eligibility standards
 293 may continue to occupy the unit for the term of the lease even if the
 294 person ceases to meet the income eligibility standards.

295 (e) A person who buys an MPDU after meeting all eligibility standards may
 296 retain ownership of the MPDU even if the person ceases to meet income
 297 eligibility standards during the term.

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

302 **25A-5. Requirement to build MPDUs; payment to Housing Initiative Fund;**
 303 **agreements**

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

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

312 (2) submits to the Planning Board or to the Director of Permitting
 313 Services a plan of housing development for any type of site
 314 review or development approval required by law, which proposes
 315 construction or development of 20 or more dwelling units at one
 316 location; or

317 (3) with respect to land in a zone not subject to subdivision approval
318 or site plan review, applies for a building permit to construct a
319 total of 20 or more dwelling units at one location.

320 (b) An applicant for an approval or permit identified in subsection (a) who
321 proposes development of fewer than 20 dwelling units is not required to
322 provide MPDUs, but must make a payment to the Housing Initiative
323 Fund, as provided by regulation.

324 (c) In calculating whether a development contains a total of 20 or more
325 dwelling units for the purposes of this Chapter, the development
326 includes all land at one location in the County available for building
327 development under common ownership or control by an applicant,
328 including land owned or controlled by separate corporations in which
329 any stockholder or family of the stockholder owns 10 percent or more
330 of the stock. An applicant must not avoid this Chapter by submitting
331 piecemeal applications or approval requests for subdivision plats, site or
332 development plans, floating zone plans, or building permits. Any
333 applicant may apply for a preliminary plan of subdivision, site or
334 development plan, floating zone plan, record plat, or building permit for
335 fewer than 20 dwelling units at any time; but the applicant must agree in
336 writing that the applicant will comply with this Chapter when the total
337 number of dwelling units at one location reaches 20 or more.

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

- 343 (1) a specific number of MPDUs must be constructed on an
 344 approved time schedule;
- 345 (2) in subdivisions with single-family dwelling [unit subdivisions]
 346 units, including townhouses, each MPDU must have 3 or more
 347 bedrooms; and
- 348 (3) in subdivisions with multi-family dwelling [unit subdivisions]
 349 units, the [number] ratio of efficiency [and one- bedroom]
 350 MPDUs to total MPDUs [each] must not exceed the ratio [that]
 351 of market-rate efficiency [and one-bedroom] units [respectively]
 352 [bear] to [the] total [number of] market-rate units in the
 353 subdivision.

354 The Director [must not] may approve an MPDU agreement that
 355 [reduces the number of bedrooms required by this subsection in any
 356 MPDU] approximates the total floor area for the units required, but
 357 alters the bedroom mix of the units or the number of units.

358 [(c)](e) When [the] a development with more than 20 units at one
 359 location is in a zone where a density bonus is allowed; and

- 360 (1) is covered by a plan of subdivision;
- 361 (2) is covered by a plan of development, site plan, or floating zone
 362 plan; or
- 363 (3) requires a building permit to be issued for construction, the
 364 required number of [moderately priced dwelling units] MPDUs is
 365 a variable percentage that is not less than a base requirement of
 366 12.5% of the total number of dwelling units or equivalent floor
 367 area at that location, not counting any workforce housing units
 368 built under Chapter 25B. The Council may establish a higher
 369 base requirement, up to 15% of the total number of dwelling units

370 or equivalent floor area at a location, as part of a master plan
 371 approval. The required number of MPDUs must vary according
 372 to the amount by which the approved development exceeds the
 373 normal or standard density for the zone in which it is located.
 374 Chapter 59 may permit bonus densities over the presumed base
 375 density where MPDUs are provided. If the use of the optional
 376 MPDU development standards does not result in an increase over
 377 the base density, the Director must conclude that the base density
 378 could not be achieved under conventional development standards,
 379 in which case the required number of MPDUs must not be less
 380 than the 12.5% or higher base requirement established by the
 381 Council, of the total number of units in the subdivision. To obtain
 382 a density bonus, an applicant must provide at least one more
 383 MPDU than would have been required if there was no density
 384 bonus. The amount of density bonus achieved in the approved
 385 development determines the percentage of total units that must be
 386 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%]		Up to 14%	[13.9%]

	<u>Base plus 0.3%</u>		<u>Base plus 1.4%</u>
Up to 4%	[12.9%] <u>Base plus 0.4%</u>	Up to 15%	[14.0%] <u>Base plus 1.5%</u>
Up to 5%	[13.0%] <u>Base plus 0.5%</u>	Up to 16%	[14.1%] <u>Base plus 1.6%</u>
Up to 6%	[13.1%] <u>Base plus 0.6%</u>	Up to 17%	[14.2%] <u>Base plus 1.7%</u>
Up to 7%	[13.2%] <u>Base plus 0.7%</u>	Up to 18%	[14.3%] <u>Base plus 1.8%</u>
Up to 8%	[13.3%] <u>Base plus 0.8%</u>	Up to 19%	[14.4%] <u>Base plus 1.9%</u>
Up to 9%	[13.4%] <u>Base plus 0.9%</u>	Up to 20%	[14.5%] <u>Base plus 2.0%</u>
Up to 10%	[13.5%] <u>Base plus 1.0%</u>	Up to 22%	[15.0%] <u>Base plus 2.5%</u>

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

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

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

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

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

405 (2) If the Planning Board approves a density bonus of at least 20
 406 percent for a development which consists of 20 or more but fewer
 407 than 50 units at one location, the number of ~~[MPDU's]~~ MPDUs
 408 required must be governed by subsection ~~[(c)](e)~~ unless the
 409 formula in subsection ~~[(c)](e)~~ would not allow the development
 410 to have one bonus market rate unit. In that case, the Board must
 411 reduce the required number of ~~[MPDU's]~~ MPDUs by one unit
 412 and approve an additional market rate unit.

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

414 (1) allows an applicant to reduce the number of MPDUs in a
 415 subdivision only if the agreement meets all requirements of
 416 Section 25A-5A for an alternative payment agreement; or

417 (2) allows an applicant to build the MPDUs at another location only
 418 if the agreement meets all requirements of Section 25A-5B for an
 419 alternative location agreement.

420 ~~[(f)](h)~~(1) An applicant may satisfy this Section by obtaining approval from
 421 the Director to transfer land to the County before applying for a
 422 building permit. [The applicant must sign a written land transfer

423 agreement approved by the Director and by the County Attorney.
424 For the Director to consider the request and take timely action, a
425 written notice of the applicant's intent to submit an agreement
426 should be served upon the Director at least 90 days before the
427 application for a building permit is filed. The land transfer
428 agreement must covenant that so much of the land, designated in
429 the approved preliminary plan or site plan as land to which the
430 optional zoning provisions for MPDUs apply, as is necessary in
431 order to construct the number of MPDUs required by subsection
432 (a) will be transferred, as finished lots, to Montgomery County or
433 to the County's designee before the building permit is issued, so
434 that the County might cause MPDUs to be constructed on the
435 transferred land. After the submission of supporting
436 documentation and review and approval by the County for the
437 transfer of finished lots, the County must reimburse the applicant
438 for the costs the applicant actually incurred, which are directly
439 attributable to the finishing of the MPDU lots so transferred.
440 Reimbursable costs include but are not limited to engineering
441 costs; clearing, grading, and paving streets, including any
442 required bonds and permits; installation of curbs, gutters and
443 sidewalks; sodding of public right-of-way; erection of barricades
444 and signs; installation of storm sewers and street lighting; and
445 park and other open space and recreational development directly
446 benefiting the MPDU lots transferred. The County must not
447 reimburse an applicant for the cost or value of the transferred
448 lots.]

- 449 (2) [If an applicant transfers land to the County under this subsection
450 and no funds have been appropriated to reimburse the applicant
451 for his finishing costs, the County may accept from the applicant
452 undeveloped land rather than finished lots, or the applicant may
453 transfer the finished lots to the County without requiring payment
454 for finishing the lots.] The Director may only approve a transfer
455 of land under this subsection after a making a written
456 determination that the value of the land transferred is at least
457 equal to the value of the MPDUs not constructed by the
458 applicant.
- 459 (3) [Notwithstanding any other provisions of the subsection, the
460 County may reject an election by an applicant to transfer land to
461 the County in whole or in part whenever the public interest would
462 best be served thereby. Any rejection and the reasons for the
463 rejection may be considered by the Planning Board or the
464 Director of Permitting Services in deciding whether to grant the
465 applicant a waiver of this Chapter under Section 25A-7(b).] The
466 Executive must establish procedures for transferring land under
467 this subsection by method (1) regulation.
- 468 [(4) Any transfer of land to the County hereunder is not subject to
469 Section 11B-33, and any land so transferred is not property
470 subject to Section 11B-31A regulating the disposal of surplus
471 land. The Director may dispose of the lots in a manner that
472 furthers the objectives of this Chapter.]
- 473 [(g)(i) The MPDU agreements must be signed by the applicant and all
474 other parties whose signatures are required by law for the effective and
475 binding execution of contracts conveying real property. The agreements

476 must be executed in a manner that will enable them to be recorded in the
477 land records of the County. If the applicant is a corporation, the
478 agreements must be signed by the principal officers of the corporation
479 individually and on behalf of the corporation. Partnerships, associations
480 or corporations must not evade this Chapter through voluntary
481 dissolution. The agreements may be assigned if the County approves,
482 and if the assignees agree to fulfill the requirements of this Chapter.

483 [(h)](j) The Department of Permitting Services must not issue a building
484 permit in any subdivision or housing development in which MPDUs are
485 required until the applicant submits a valid MPDU agreement which
486 applies to the entire subdivision or development. The applicant must
487 also file with the first application for a building permit a statement of all
488 land the applicant owns in the County that is available for building
489 development. In later applications, the applicant need only show
490 additions and deletions to the original landholdings available for
491 building development.

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

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

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

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

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

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

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

514 ~~[(k)]~~(n) The applicant must execute and record covenants assuring that:

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

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

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

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

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

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

528 (p) (1) In any purchase and sale agreement and any deed or instrument

529 conveying title to an MPDU, the grantor must clearly and
 530 conspicuously state, and the grantee must clearly and
 531 conspicuously acknowledge, that:

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

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

538 (i) the owner has notified the Department under
 539 Section 25A-8 or 25A-9, as applicable, that the unit
 540 is for sale;

541 (ii) the Department and, where applicable, the
 542 Commission, have notified the owner that they do
 543 not intend to buy the unit; and

544 (iii) The Department has notified the owner of the unit's
 545 maximum resale price.

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

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

552 [(m)](q) Nothing in this Chapter prohibits an applicant from voluntarily
 553 building MPDUs, as calculated under subsection [(c)](e), in a
 554 development with fewer than 20 dwelling units at one location, and in
 555 so doing from qualifying for an optional method of development under

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

563 **25A-5A. Alternative payment agreement.**

564 (a) The Director may approve an MPDU agreement that allows an
 565 applicant, instead of building some or all of the required number of
 566 MPDUs in the proposed subdivision, to pay to the Housing Initiative
 567 Fund an amount computed under subsection (b)[, only if an Alternative
 568 Review Committee composed of the Director, the Commission's
 569 Executive Director, and the Director of Park and Planning, or their
 570 respective designees, by majority vote finds] upon a finding that:

571 (1) either:

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

576 (B) [environmental constraints at a particular site would render
 577 the building of all required MPDUs at that site
 578 economically infeasible]
 579 the public benefit of affordable housing throughout the
 580 County outweighs the value of locating MPDUs in each
 581 subdivision throughout the County; and

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

587 (b) [Any payment to the Housing Initiative Fund under this Section must
 588 equal or exceed 125% of the imputed cost of land for each unbuilt
 589 MPDU. Except as further defined by Executive regulation, the imputed
 590 land cost must be calculated as 10% (for high-rise units) or up to 30%
 591 (for all other housing units) of the actual sale price charged for each
 592 substituted unit. If the substituted unit will be a rental unit, the Director
 593 must calculate an imputed sale price under applicable regulations, based
 594 on the rent actually charged.] A payment under this section must be
 595 calculated as provided in method (1) regulation.

596 (c) [Any] A payment to the Housing Initiative Fund under this Section
 597 (1) must not be used to reduce the annual County payment to the
 598 Fund; and
 599 (2) may be used [only] to buy or build more MPDUs in [the same
 600 planning policy area] a Policy Area (as defined in the County
 601 [Growth] Subdivision Staging Policy) [as] other than that of the
 602 development for which the payment was made only after:
 603 (A) notice is provided to the Council; and
 604 (B) the Council is given at least 30 days to comment.
 605 [and must not be used to reduce the annual County payment to the
 606 Fund.]

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

610 **25A-5B. Alternative location agreement.**

- 611 (a) The Director may approve an MPDU agreement that allows an
612 applicant for development of a high-rise residential building, instead of
613 building some or all of the required number of MPDUs on-site, to
614 provide [at least the same number of] MPDUs at another location in the
615 same [planning policy area] Policy Area, only if the Director finds that:
- 616 (1) the public benefit of locating MPDUs at the proposed alternative
617 location outweighs the value of locating MPDUs in each
618 subdivision throughout the County; [and]
- 619 (2) building the MPDUs at the proposed alternative location will
620 further the objective of providing a broad range of housing
621 opportunities throughout the County; and
- 622 (3) the alternative location agreement will increase the number of
623 MPDUs provided as a result of the development.
- 624 (b) To satisfy the requirements of this Section, an applicant may:
- 625 (1) build, or convert from non-residential use, the required number of
626 new MPDUs at a site approved by the Director;
- 627 (2) buy, encumber, or transfer, and rehabilitate as necessary, existing
628 market rate housing units that meet all standards for use as
629 MPDUs; or
- 630 (3) return to MPDU use, and rehabilitate as necessary, existing
631 MPDUs for which price or rent controls have expired.

632 (c) Each agreement under this Section must include a schedule, binding on
633 the applicant, for timely completion or acquisition of the required
634 number of MPDUs.

635 **25A-6. Optional zoning provisions[; waiver of requirements].**

636 [(a) *Optional zoning provisions.*] The County Council, sitting as a District
637 Council for the Maryland-Washington Regional District within the
638 County, to assist in providing moderately priced housing has enacted
639 zoning standards in Chapter 59, establishing in certain zones optional
640 density bonus provisions which increase the allowable residential
641 density above the maximum base density of the zoning classification
642 and permit alternative dwelling unit types other than those allowed
643 under the standard method of development. Land upon which the
644 applicant must build MPDUs may, at the applicant's election, be subject
645 to optional zoning provisions. If the applicant elects the optional density
646 provisions, permitting the construction of an increased number of
647 dwelling units, the requisite percentage and number of MPDUs must
648 apply to the total number of dwelling units as increased by application
649 of the optional density provisions or by the approval of a special
650 exception that increases the density above the otherwise permitted
651 density of the zoning classification in which the property is situated.

652 [(b) *Waiver of requirements.* Any applicant who presents sufficient evidence
653 to the Director of Permitting Services in applying for a building permit,
654 or to the Planning Board in submitting a preliminary plan of subdivision
655 for approval or requesting approval of a site or other development plan,
656 may be granted a waiver from part or all of Section 25A-5. The waiver
657 must relate only to the number of MPDUs to be built, and may be
658 granted only if the Director of Permitting Services or the Board, after

659 consulting with the Department of Housing and Community
660 Development Affairs, finds that the applicant cannot attain the full
661 density of the zone because of any requirements of the zoning ordinance
662 or the administration of other laws or regulations. When any part of the
663 land that dwelling units cannot be built on for physical reasons is used
664 to compute permitted density, the applicant's inability to use the
665 optional density bonus provisions is not in itself grounds for waiving the
666 MPDU requirements. Any waiver must be strictly construed and
667 limited.]

668 **25A-7. Maximum prices and rents.**

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

671 (a) *Sales.*

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

676 (2) [The County Executive in issuing MPDU sale price regulations
677 must seek appropriate information, such as current general
678 market and economic conditions and the current minimum sale
679 prices of private market housing in the County, and must consult
680 with the building industry, employers, and professional and
681 citizen groups to obtain statistical information which may assist
682 in setting a current maximum sale price. The County Executive
683 must, from time to time, consider changes in the income levels of
684 persons of low and moderate income and their ability to buy
685 housing. The County Executive must also consider the extent to

686 which, consistent with code requirements, the cost of housing can
 687 be reduced by the elimination of amenities, the use of cost-
 688 reducing building techniques and materials, and the partial
 689 finishing of certain parts of the units.] The regulations adopted to
 690 implement this Section must allow the Director to:

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

696 (B) approve an increase of up to 10% over the base sale price
 697 of an MPDU upon a finding that the increase is justified to
 698 cover the cost of a modification of the external design of
 699 the MPDU necessary to reduce excessive marketing
 700 impact of the MPDU on the market rate units in the
 701 subdivision.

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

711 (4) The County Executive may make interim adjustments in
 712 maximum MPDU sale prices when sufficient changes in costs

713 justify an adjustment. Any interim adjustment must be based on
714 the maximum MPDU sale prices previously established, adjusted
715 by the percentage change in the relevant cost elements indicated
716 in the Consumer Price Index.

717 (5) If the Director finds that other conditions of the design,
718 construction, pricing, or amenity package of an MPDU project
719 will lessen the ability of eligible persons to afford the MPDUs,
720 the Director, under executive regulations, may restrict those
721 conditions that will impose excessive mandatory homeowner or
722 condominium fees or other costs that reduce the affordability of
723 the MPDUs.

724 (6) The Director may let an applicant increase the sale price of a
725 MPDU when the Director, under executive regulations, finds in
726 exceptional cases that a price increase is justified to cover the cost
727 of modifying the external design of the MPDUs when a
728 modification is necessary to reduce excessive marketing impact
729 of the MPDUs on the market rate units in the subdivision. The
730 Director must approve the amount of any increase for this
731 purpose, which must not exceed 10 percent of the allowable base
732 price of the unit.]

733 (b) *Rents.*

734 [(1)] The rent, including surface parking but excluding utilities when
735 they are paid by the tenant, for any MPDU must not exceed a
736 maximum rent for the dwelling unit set by Executive regulations.
737 Different rents must be set for units when utility costs are paid by
738 the owner and included in the rent. Different rents may be set for
739 age-restricted units. Different rents also may be set for high-rise

740 rental units], but those rents must not apply unless the Director
 741 finds that no other reasonable means is available to finance the
 742 building of all required MPDUs at a specific development].

743 [(2) The County Executive, in setting the maximum rent, must
 744 consider the current cost of building MPDUs, available interest
 745 rates and debt service for permanent financing, current market
 746 rates of return or investments in residential rental properties,
 747 operating costs, vacancy rates of comparable properties, the value
 748 of the MPDU at the end of the control period, and any other
 749 relevant information. The County Executive must consult with
 750 the rental industry, employers and professional and citizen groups
 751 to obtain statistical information and current general market and
 752 economic conditions which may assist in setting a current
 753 maximum rent. The County Executive must consider the extent
 754 to which, consistent with County codes and housing standards,
 755 the cost of rental housing can be reduced by the elimination of
 756 amenities. The County Executive must also consider from time to
 757 time changes in the income levels of persons of low and
 758 moderate income and their ability to rent housing.]

759 **25A-8. Sale or rental of units.**

760 (a) Sale or rental to government agencies or nonprofit corporations.

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

- 767 (2) The Department or Commission may buy or lease up to 33.3
768 percent of the MPDUs not sold or rented under any other federal,
769 state, or local program.
- 770 (3) Any other designated agency or corporation may buy or lease:
771 (A) any MPDU in the first 33.3 percent that the Department or
772 Commission has not bought or leased; and
773 (B) the remainder of the 40 percent specified in subsection
774 (a)(1).
- 775 This option may be assigned to persons who are clients of the
776 Department of Health and Human Services or to persons of low
777 or moderate income who are eligible for assistance under any
778 federal, state, or local program identified in Executive regulation.
- 779 (4) The Executive must, by regulation, adopt standards and priorities
780 for designating nonprofit corporations under this subsection.
781 These standards must require the corporation to demonstrate its
782 ability to operate and maintain MPDUs satisfactorily on a long-
783 term basis.
- 784 (5) The Department must notify the Commission or other designated
785 agency or corporation promptly after receiving notice from the
786 applicant under subsection (b) of the availability of MPDUs. If
787 the Department, the Commission, or any other designated agency
788 or corporation exercises its option, it must submit to the
789 applicant, within 21 calendar days after the Department notifies
790 the Commission under this subsection, a notice of intent to
791 exercise its option for specific MPDUs covered by this option.
792 Any MPDUs not bought or leased under this subsection must be
793 sold or rented only to eligible households under subsection (b)

794 during the priority marketing period for eligible households to
795 buy or lease.

796 (6) In exercising this option, the Department, the Commission, and
797 any designated agency or corporation must designate the units by
798 reference to number, type, size and amenities of the units selected
799 if the designation does not result in any type of unit exceeding by
800 more than 40 percent the total units of that type which are sold or
801 rented under this Section, unless the applicant agrees otherwise.
802 The notice required under subsection (a)(5) must state which
803 MPDUs are to be offered for sale and which are to be offered for
804 rent, and the Department, the Commission, and any designated
805 agency or corporation may buy only units which are offered for
806 sale and may lease only units which are offered for rent. The
807 Department, the Commission, and any designated agency or
808 corporation must decide whether it will exercise its option within
809 45 days after it receives the original notice.

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

- 813 (A) the Department prevails over any other buyer or renter;
814 (B) The Commission prevails over any buyer or renter other
815 than the Department;
816 (C) any other government agency prevails over any nonprofit
817 corporation;
818 (D) the first government agency to file a notice prevails over
819 any later agency; and

820 (E) the first nonprofit corporation to file a notice prevails over
 821 any later corporation.

822 (8) Any unit purchased under this subsection that is offered for sale
 823 within five years after initial purchase must first be offered for
 824 sale at the initial purchase price to the Department in accordance
 825 with Executive regulation.

826 (b) *Sale or rental to general public.*

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

836 (2) Before offering any moderately priced dwelling units, the
 837 applicant must notify the Department of the proposed offering
 838 and the date on which the applicant will be ready to begin the
 839 marketing to eligible [persons] households. The notice must set
 840 forth the number of units offered, the bedroom mix, the floor area
 841 for each unit type, a description of the amenities offered in each
 842 unit and a statement of the availability of each unit for sale or
 843 rent, including information regarding any mortgage financing
 844 available to buyers of the designated unit. The applicant must
 845 also give the Department a vicinity map of the offering, a copy of
 846 the approved development, subdivision or site plan, as

847 appropriate, and such other information or documents as the
848 Director finds necessary. The Department must maintain a list of
849 eligible households [persons of moderate income and], in
850 accordance with procedures established by the County Executive,
851 must notify eligible [persons] households of the offering.

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

861 (4) The Executive may by regulation establish a buyer and renter
862 selection system which considers household size, County
863 residency, employment in the County, and length of time since
864 the person was certified for the MPDU program. Each eligible
865 [person] household must be notified of the availability of any
866 MPDU which would meet that person's housing needs, and be
867 given an opportunity to buy or rent an MPDU during the priority
868 marketing period in the order of that person's selection priority
869 ranking.

870 (5) The priority marketing period for new units ends not less than 90
871 days after the initial offering date approved by the Department.
872 The priority marketing period for resold or rented units ends
873 not less than 60 days after the Department notifies the seller of

874 the approved resale price or vacancy of the rental unit. The
875 Department may extend a priority marketing period when eligible
876 [persons] households are interested in buying or renting a unit.

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

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

886 (B) In a subdivision containing both single-family and
887 multiple-family dwellings, the proportion of rental single-
888 family MPDUs to all one-family MPDUs must not exceed
889 the proportion of market rate rental single-family units to
890 all market rate single-family units; and the proportion of
891 rental multiple-family MPDUs to all multiple-family
892 MPDUs must not exceed the proportion of market rate
893 rental multiple-family units to all market rate multiple-
894 family units.

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

898 (i) offering more rental MPDUs in that subdivision
899 would advance the purpose of the County housing
900 policy and the objectives of any applicable land use

901 plan, be consistent with local housing market
 902 conditions, and avoid excessive mandatory
 903 condominium or homeowners' association fees or
 904 other costs that would reduce the affordability of
 905 sale MPDUs; and

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

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

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

923 (8) An owner of an MPDU, except the Commission or a housing
 924 agency or nonprofit corporation designated by the Director, must
 925 not rent the unit to another party unless the Director finds
 926 sufficient cause to allow temporary rental of the unit under
 927 applicable regulations, which may include maximum rental

928 levels. [Any MPDU owner who is allowed to rent a unit
929 temporarily must agree to amend the applicable MPDU
930 covenants to extend the control period for a time equal to the
931 temporary rental period.]

932 (9) Any rent obtained for an MPDU that is rented without the
933 Director's authorization must be paid into the Housing Initiative
934 Fund by the owner within 90 days after the Director notifies the
935 owner of the rental violation. Any amount unpaid after 90 days is
936 grounds for a lien against the unit[,]. [and the] The Director may
937 obtain a judgment and record the lien or may reduce the resale
938 price of the MPDU or pursue other remedies provided by law.

939 (10) An applicant must not sell or lease any [unit] MPDU without first
940 [obtaining a certificate of] verifying the eligibility [from] of the
941 prospective buyer or lessee. A copy of each certificate must be
942 furnished to the Department and maintained on file by the
943 Department. Before the sale by an applicant or by the
944 Commission or a designated housing agency or nonprofit
945 corporation to any buyer of any MPDU who does not possess a
946 certificate of eligibility, the applicant, the Commission, or the
947 agency or corporation must ask the Department whether the
948 certificates on file show that the proposed buyer had previously
949 bought another MPDU. A person must not buy a second MPDU
950 unless no first-time buyer is qualified to buy that unit. The
951 Director may waive this restriction for good cause.

952 (11) If an MPDU owner dies, at least one heir, legatee, or other person
953 taking title by will or by operation of law must occupy the

954 MPDU during the control period under this Section, or the owner
955 of record must sell the MPDU as provided in Section 25A-9.

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

957 (1) In view of the critical, long-term public need for housing for
958 families of low and moderate income, the Department, the
959 Commission, or any other housing development agency or
960 nonprofit corporation designated by the County Executive may
961 buy or lease, for its own programs or programs administered by
962 it, up to 40 percent of all MPDUs which are not sold or rented
963 under any other federal, state, or local program. The Department
964 or Commission may buy or lease up to 33 percent of the MPDUs
965 not sold or rented under any other federal, state, or local program.
966 Any other designated agency or corporation may buy or lease (A)
967 any MPDU in the first 33 percent that HOC has not bought or
968 leased, and (B) the remainder of the 40 percent. This option may
969 be assigned to persons of low or moderate income who are
970 eligible for assistance under any federal, state, or local program
971 identified in regulations adopted by the Executive. The Executive
972 must, by regulation, adopt standards and priorities for designating
973 nonprofit corporations under this subsection. These standards
974 must require the corporation to demonstrate its ability to operate
975 and maintain MPDUs satisfactorily on a long-term basis.

976 (2) The Department must notify the Commission or other designated
977 agency or corporation promptly after receiving notice from the
978 applicant under subsection (a) of the availability of MPDUs. If
979 the Department, the Commission, or any other designated agency
980 or corporation exercises its option, it must submit to the

- 981 applicant, within 21 calendar days after the Department notifies
982 the Commission under subsection (b), a notice of intent to
983 exercise its option for specific MPDUs covered by this option.
984 Any MPDUs not bought or leased under this subsection must be
985 sold or rented only to eligible persons under subsection (b) during
986 the priority marketing period for eligible persons to buy or lease.
- 987 (3) In exercising this option, the Department, the Commission, and
988 any designated agency or corporation must designate the units by
989 reference to number, type, size and amenities of the units selected
990 if the designation does not result in any type of unit exceeding by
991 more than 40 percent the total units of that type which are sold or
992 rented under this Section, unless the applicant agrees otherwise.
993 The notice required under subsection (b)(2) must state which
994 MPDUs are to be offered for sale and which are to be offered for
995 rent, and the Department, the Commission, and any designated
996 agency or corporation may buy only units which are offered for
997 sale and may lease only units which are offered for rent. The
998 Department, the Commission, and any designated agency or
999 corporation must decide whether it will exercise its option within
1000 45 days after it receives the original notice.
- 1001 (4) If more than one government agency or nonprofit corporation
1002 files a notice of intent under subsection (b)(2) with respect to a
1003 particular MPDU:
- 1004 (A) the Department prevails over any other buyer or renter;
1005 (B) The Commission prevails over any buyer or renter other
1006 than the Department;

- 1007 (C) any other government agency prevails over any nonprofit
- 1008 corporation;
- 1009 (D) the first government agency to file a notice prevails over
- 1010 any later agency; and
- 1011 (E) the first nonprofit corporation to file a notice prevails over
- 1012 any later corporation.]

1013 **25A-9. Control of rents and resale prices; foreclosures.**

1014 (a) *Resale price and terms.* Except for foreclosure proceedings, any MPDU
 1015 constructed or offered for sale or rent under this Chapter must not be
 1016 resold or refinanced during the control period for a price greater than the
 1017 original selling price plus:

- 1018 (1) [A] a percentage of the unit's original selling price equal to the
- 1019 increase in the cost of living since the unit was first sold, as
- 1020 determined by the Consumer Price Index;
- 1021 (2) [The fair market value of] an allowance for improvements made
- 1022 to the unit between the date of original sale and the date of resale;
- 1023 (3) [An] an allowance for closing costs which were not paid by the
- 1024 initial seller, but which will be paid by the initial buyer for the
- 1025 benefit of the later buyer; and
- 1026 (4) [A] a reasonable sales commission if the unit is not sold during
- 1027 the priority marketing period to an eligible [person] household
- 1028 from the Department's eligibility list.

1029 In determining the amount of the allowance for improvements under
 1030 paragraph (2), the Director may disallow the value of improvements
 1031 determined to be unnecessary for the maintenance and upkeep of the
 1032 unit. The resale price of an MPDU may be reduced if the physical
 1033 condition of the unit reflects abnormal wear and tear because of neglect,

1034 abuse, or insufficient maintenance. Any personal property transferred
1035 in connection with the resale of an MPDU must be sold at its fair market
1036 value. [In calculating the allowable resale price of an MPDU which
1037 was originally offered for rent, the Department must estimate the price
1038 for which the unit would have been sold if the unit had been offered for
1039 sale when it was first rented.] The Executive must establish procedures
1040 for calculating the allowable resale price of an MPDU under this
1041 subsection by method (1) regulation.

1042 (b) *Resale requirements during the control period.*

1043 (1) Any MPDU offered for resale during the control period must first
1044 be offered exclusively for 60 days to the Department and the
1045 Commission, in that order. The Department or the Commission
1046 may buy a unit when funds are available. The Department may
1047 buy a unit when the Director finds that the Department's or a
1048 designated agency or corporation's buying and reselling the unit
1049 will increase opportunities for eligible [persons] households to
1050 buy the unit. If the Department or the Commission does not buy
1051 the unit, the Department must notify eligible [persons]
1052 households of the availability of a resale MPDU. The unit may be
1053 sold through either of the following methods:

1054 (A) The Department may [by lottery] establish a priority order
1055 under which eligible [persons] households who express
1056 interest in buying the unit may buy it at the approved
1057 resale price.

1058 (B) The Department may notify the MPDU owner that the
1059 owner may sell the unit directly to any eligible [person]
1060 household under the resale provisions of this Chapter.

- 1061 (2) A resale MPDU may be offered for sale to the general public
 1062 only after:
- 1063 (A) the priority marketing period expires; and
 1064 (B) all eligible [persons] households who express an interest in
 1065 buying it have been given an opportunity to do so.
- 1066 (3) The Executive by regulation may adopt requirements for reselling
 1067 MPDUs. The regulations may require a seller to submit to the
 1068 Department for approval:
- 1069 (A) a copy of the proposed sales contract, including a list and
 1070 the price of any personal property included in the sale;
 1071 (B) a signed copy of the settlement sheet; and
 1072 (C) an affidavit signed by the seller and buyer attesting to the
 1073 accuracy of all documents and conditions of the sale.
- 1074 (4) A transfer of an MPDU does not comply with this Chapter until
 1075 all required documents and affidavits have been submitted to and
 1076 approved by the Department.
- 1077 (c) *First sale after control period ends.*
- 1078 (1) If an MPDU originally offered for sale or rent after March 21,
 1079 1989, is sold or resold after its control period ends, upon the first
 1080 sale of the unit the seller must pay to the Housing Initiative Fund
 1081 one-half of the excess of the total resale price over the sum of the
 1082 following:
- 1083 (A) The original selling price;
 1084 (B) A percentage of the unit's original selling price equal to the
 1085 increase in the cost of living since the unit was first sold, as
 1086 determined by the Consumer Price Index;

1087 (C) [The fair market value of] An allowance for capital
 1088 improvements made to the unit between the date of
 1089 original sale and the date of resale; and

1090 (D) A reasonable sales commission.

1091 The Director must adjust the amount paid into the fund in each case so
 1092 that the seller retains at least \$10,000 of the excess of the resale price
 1093 over the sum of the items in (A)--(D).

1094 (2) The Director must find that the price and terms of a sale covered
 1095 by subsection (c)(1) are bona fide and accurately reflect the entire
 1096 transaction between the parties so that the full amount required
 1097 under subsection (c)(1) is paid to the fund. When the Director
 1098 finds that the amount due the fund is accurate and the Department
 1099 of Finance receives the amount due, the Department must
 1100 terminate the MPDU controls and execute a release of the
 1101 restrictive covenants.

1102 (3) The Department and the Commission, in that order, may buy an
 1103 MPDU at any time during the control period, and may resell the
 1104 unit to an eligible [person] household. A resale by the
 1105 Department or Commission starts a new control period.

1106 [(4) The Commission and any partnership in which the Commission
 1107 is a general partner need not pay into the Housing Initiative Fund
 1108 any portion of the resale price of any MPDU that it sells.]

1109 (d) *Initial and later rent controls.* Unless previously sold under subsection
 1110 (c)(1), MPDUs built or offered for rent under this Chapter must not be
 1111 rented for 99 years after the original rental at a rent greater than that
 1112 established by Executive regulations. Any MPDU (other than those
 1113 built, sold, or rented under any federal, state, or local program offered

1114 by the Commission) offered for rent during the control period must be
1115 offered exclusively for 60 days to one or more eligible [persons]
1116 households, as determined by the Department, for use as that person's
1117 residence, and to the Commission. The Commission may assign its right
1118 to rent such units to persons of low or moderate income who are eligible
1119 for assistance under any federal, state, or local program identified in
1120 Executive regulations.

1121 (e) *Foreclosure or other court-ordered sales.* If an MPDU is sold through a
1122 foreclosure or other court-ordered sale, a payment must be made to the
1123 Housing Initiative Fund as follows:

1124 (1) If the sale occurs during the control period, any amount of the
1125 foreclosure sale price which exceeds the total of the approved
1126 resale price under subsection (a), reasonable foreclosure costs,
1127 and liens filed under the Maryland Contract Lien Act, must be
1128 paid to the Housing Initiative Fund. If the remaining balance
1129 under the original first deed of trust or mortgage exceeds the
1130 resale price under subsection (a), then the difference between the
1131 foreclosure sales price and the balance of the original first deed of
1132 trust (plus reasonable foreclosure costs) must be paid to the Fund.

1133 (2) If the sale occurs after the control period, and the unit was
1134 originally offered for sale or rent after March 20, 1989, the
1135 payment to the Fund must be calculated under subsection (c).

1136 (3) If the MPDU is a rental unit, the resale price under subsections
1137 (a) and (c) must be calculated [using the maximum sales price in
1138 effect when the unit was originally offered for rent] as provided
1139 in regulation.

1140 (4) If the MPDU is sold subject to senior liens, the lien balances must
 1141 be included in calculating the sale price.

1142 All MPDU covenants must be released after the required payment is
 1143 made into the Housing Initiative Fund.

1144 (f) *Waivers.* The Director may waive the restrictions on the resale and re-
 1145 rental prices for MPDUs if the Director finds that the restrictions
 1146 conflict with regulations of federal or state housing programs and thus
 1147 prevent eligible [persons] households from buying or renting units
 1148 under the MPDU program.

1149 (g) *Bulk transfers.* This section does not prohibit the bulk transfer or sale of
 1150 all or some of the sale or rental MPDUs in a subdivision within 30 years
 1151 after the original rental or offering for sale if the buyer is bound by all
 1152 covenants and controls on the MPDUs.

1153 (h) *Compliance.* The County Executive must adopt regulations to promote
 1154 compliance with this section and prevent practices that evade controls
 1155 on rents and sales of MPDUs.

1156 * * *

1157 **25A-12. Annual report.**

1158 Each year by March 15 the Director must report to the Executive and Council,
 1159 for the previous calendar year:

- 1160 (a) the number of MPDUs approved and built;
- 1161 (b) each alternative payment agreement approved under Section 25A-5A or
 1162 alternative location agreement approved under Section 25A-5B, and the
 1163 location and number of MPDUs that were involved in each agreement;
- 1164 (c) [each approval of a different rent for a high-rise rental unit under
 1165 Section 25A-7(b)(1)] each land transfer completed under Section 25A-
 1166 5(h); and

1167 (d) the use of all funds in the Housing Initiative Fund that were received as
1168 a payment under Section 25A-5A.

1169

* * *

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:	N/A

Bill 34-17: substantive revisions to Chapter 25A, Housing – Moderately Priced

Lines	Description of Changes
62-125	Revise Legislative Findings
155-176	Revise Declaration of Public Policy
180-184, 236-240, 251-253	Definitions: Add “age-restricted unit” and “area median income;” amend “eligible person” to be “eligible household;” provide that County “moderate income” must not be less than HUD “low income”
270-287	Expressly tie MPDU eligibility to household income
292-294	Expressly provide that tenant may remain in MPDU for lease term notwithstanding change in eligibility
295-297	Expressly provide that MPDU purchaser may retain ownership notwithstanding change in eligibility
298	Eliminate the prohibition on residential property ownership for the prior five years <i>for age-restricted units</i>
320-323	Require a payment to the HIF for housing developments with less than 20 units
340	Delete requirement that written MPDU agreement be submitted <i>with the application for a permit</i> (it is still required, just not at the time of permit application)
348-352	Delete MPDU agreement requirement that one-bedroom MPDUs not exceed the ratio of one-bedroom market rate units
354-357	Permit the Director to approve an MPDU agreement that is based on the floor area or square footage of required units, but alters the bedroom mix of units or number of units
364-371, 380-381, Table on pp. 16-17	Add language to clarify that the Council may adjust the base requirement for MPDUs from 12.5% to 15% as part of a master plan approval. County-wide base requirement will remain at 12.5%
381-384	Add requirement that to receive density bonus, applicant must provide at least one more MPDU than would have been required if there was no density bonus
401-404	Require that, when the Director allows fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location, the applicant must make 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
416, 418-419	Clarify references to §25A-5A and §25A-5B
420-472	Modify language to allow DHCA Director to accept a land transfer if its value is equal to the value of the MPDU that are not constructed
507-509	Require MPDU agreement provide for any requirement of age-restricted units to be offered for sale to be satisfied by a payment to the Housing Initiative Fund under Section 25A-5A(b)
526-527	Prohibit an applicant from establishing a condominium or homeowners’ association consisting solely of MPDUs

bt

567-586	Delete reference to Alternative Review Committee and provide that the Director may enter an alternative payment agreement upon making certain findings
587-595	Delete Code requirements for calculating alternative payments and provide that the payments must be calculated as provided in method (1) regulation
596-609	Update references to County Growth Policy and provide that payments to the HIF may be used outside the Policy Area for which the payment was made only after: (A) notice is provided to the Council; and (B) the Council is given at least 30 days to comment
607-609	Delete prohibition on alternative payment agreements for developments where the applicant receives a density bonus
614-623	Add requirement that acceptance of alternative location agreement will increase the number of MPDUs provided as a result of the development
635-667	Delete provisions for granting a waiver of MPDU requirements – alternative payment agreements must be used when not constructing otherwise-required MPDUs
676-732	Simplify criteria for MPDU sale price regulations
733-758	Simplify criteria for MPDU rent regulations
769-825, 830, 956-1012	Flip subsections on priority offering for HOC and non-profits and public offering to clarify that priority offering is first
775-778	Allow assignment of the purchase/rental option, held by certain government agencies or nonprofit corporations, to clients of the Department of Health and Human Services
822-825	Require that any unit purchased under §25A-8(a) that is offered for sale within five years after initial purchase first be offered for sale to the Department in accordance with Executive regulation
852-859, 1054	Eliminate references to lottery as a method of administering MPDU offerings
1021, 1029-1032	Resale within control period: change permitted increase over original sale price for improvements made to unit from “fair market value of improvements made” to an allowance, excluding the value of improvements determined to be unnecessary for the maintenance and upkeep of the unit
1165-1166	Annual Report: require report to include each land transfer complete in the subject year



ROCKVILLE, MARYLAND

MEMORANDUM

December 4, 2017

TO: Roger Berliner, President, County Council

FROM: ^{for} Jennifer A. Hughes, Director, Office of Management and Budget
FOR Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 34-17, Housing - Moderately Priced Dwelling Units

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Clarence Snuggs, Director, Department of Housing and Community Affairs
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Pofen Salem, Office of Management and Budget
Felicia Zhang, Office of Management and Budget

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 ration 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 ration (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.

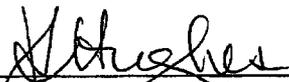
Not Applicable.

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).

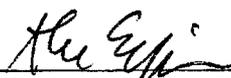
3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

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



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

NANCY FLOREEN
COUNCILMEMBER AT-LARGE

March 2, 2018

TO: Councilmembers

FROM: Councilmember ~~Nancy Floreen~~ Nancy Floreen

SUBJECT: Bill No. 34-17, Moderately Priced Dwelling Unit Amendments

I proposed Bill No. 34-17 because I want to strengthen our MPDU program. Our housing development world has changed significantly since 1974 and since our last substantial changes in 2004. Housing is now much more likely to be in the form of high-rise or other multi-family buildings. We've learned that the original MPDU law faces challenges in this context. Like you, I want to be sure that our housing programs continue to produce as many affordable places for our families to live as possible.

With that goal in mind, Bill 34-17, as introduced, proposes some significant changes, one of the most significant of which is providing DHCA with considerable flexibility to work with applicants to achieve the most productive outcome. The bill gives additional authority to DHCA to approve MPDUs based on floor area to achieve units with a greater number of bedrooms. Another gives DHCA authority to reach agreements that permit alternative payments or alternative locations for the MPDUs and removes the prohibition of such agreements when a density bonus is used. Alternative MPDUs need to be in the same Planning Area as the development using these options unless the Council is notified with a compelling reason.

I conferred extensively with providers, public sector partners and advocates prior to drafting the bill. After its introduction on October 31, those conversations have continued. This memo contains some amendments to the bill that I will propose. At our March 5 worksession, I expect we will only have time to review the provisions of the bill as introduced, and then at our March 12 session we will begin to consider specific amendments. However, as lead sponsor, I want to make you aware of my thoughts and proposals now.

I have also determined through these ongoing conversations that, once the Council concludes its work on this bill, we will need to conform Chapter 59, the Zoning Ordinance, to our new requirements and goals.

The amendments I am describing are arranged in the order that they appear in the bill.

Section 25A-2. Declaration of public policy.

- We want to promote MPDUs throughout the county, therefore I propose deleting the phrase “particularly in areas that are easily accessible to transit.” (Lines 166-167 in the bill as introduced.)
- Every development is unique and flexibility is critical for DHCA to take advantage of the broad range of possibilities. I propose inserting the following language after 25-A-2(6):

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.

Section 25A-5. Requirement to build MPDUs; add “payment to Housing Initiative Fund; agreements.”

- Developments with fewer than 20 units.

The introduced bill proposed that housing developments with fewer than 20 units pay a fee into the Housing Initiative Fund in lieu of including MPDUs in their developments (the new 25A-5(b)). Under current law, those smaller developments are exempt from either building MPDUs or paying a fee.

Conversations with homebuilders in that category have persuaded me that this requirement fails to recognize the economic realities for building developments of 10 or fewer homes. Those builders can build as few as one home at a time, many build no more than four in a year. Like me, perhaps you are impressed with the high price tag that many of these homes carry. I am reminded, however, that our recordation tax captures these very expensive single-family homes, and they do contribute to the Housing Initiative Fund in that way. They also pay the other fees and taxes that we require of all construction.

Accordingly, I will offer an amendment to require developments of 11 to 19 units to pay a fee and exempt developments with 10 or fewer units.

- Number of Bedrooms in Townhouse Developments
Section 25(A)5(d)(2) requires that all MPDU townhouses must have three or more bedrooms. It has been brought to my attention that there is now a demand for townhomes that have two owner’s suite type bedrooms. I will offer an amendment to allow DHCA to waive the three-bedroom requirement in subdivisions where the market product has only two bedrooms.

- Floor area as the basis for calculation of MPDU requirement.

In this section (starting at line 354), the bill provides the option to calculate the MPDU requirement by floor area rather than by unit count for the purpose of creating MPDUs with a greater number of bedrooms (not for the purpose of density increases). DHCA would work with the applicant on the arrangement. I propose amending the bill to clarify that, when using this approach, the applicant will not be required to provide more MPDUs than required by unit count.

- Early agreement with DHCA

Applicants want certainty as early as possible in the development approval process. Early discussions between developers and DHCA are critical to the choice between unit count versus FAR, alternative locations, and alternative payments. I will provide language that says DHCA may provide an applicant and the Planning Board with a letter stating its preliminary agreement on how a development meets its MPDU requirements. The letter should specify the conditions that are the basis for the agreement and should specify the length of time this preliminary agreement is valid. As DHCA cannot bind the Planning Board, should the number of total units, FAR, or another substantial condition change, DHCA or the applicant could withdraw from this preliminary approval.

- Determination of requirement to build on-site

The bill as introduced clarifies that the Council may establish a higher MPDU base requirement, up to 15%, as part of a master plan approval (lines 368-371). I understand that there is some confusion about whether master plan language gives the Planning Board the authority to require on-site MPDUs rather than letting DHCA determine if an alternative payment or location agreement may be in the best interest of the county. I will propose language that DHCA determines whether the MPDUs must be provided on-site or by an appropriate alternative.

- Bonus density calculation.

Chapter 25A currently includes a table (between lines 386 and 387) which contains the bonus density calculation if the developer provides more than 12.5% MPDUs. The table has bedeviled applicants, staff and the public for years and it is not applicable to the CR Zones. I propose deleting it and replacing it with a formula that states the relationship between extra MPDUs provided and the increased density allowed for those extra MPDUs.

Some zones express the maximum density allowed in units per acre, and other zones express maximum density in floor area. My amendment will propose that the ratio between additional MPDUs, or floor area of MPDUs, is the same. For each 0.1% of MPDUs or floor area of MPDUs provided beyond the required 12.5%, the applicant receives a bonus of 1.1% of market rate units or floor area, whichever applies.

This is one of the critical issues that must also be addressed in Chapter 59, the Zoning Ordinance.

- Land donation as alternative

With respect to an alternative agreement based on a land donation (starts line 420), additional language will clarify that the land must be used to produce or preserve MPDUs or, if the land is sold, proceeds from the sale must be allocated to the Affordable Housing and Preservation CIP portion of the Housing Initiative Fund. The Council must be notified of the agreement.

25A-5A. Alternative payment agreement (starts line 563)

This section outlines the conditions under which the Director may approve an alternative payment. My amendment here will clarify that the alternative payment agreement applies only to for-sale residential units, developed new or through conversion. Experience has shown us that the issues about fitting the MPDU program into a housing development occur in the for sale, multi-family developments, primarily high-rise. The rental side of the MPDU program appears to be functioning quite well.

As introduced, DHCA must find that either the services cost in the development makes the MPDU unaffordable or the public benefit from the payment outweighs the benefit of providing the units in the subdivision. I also propose to add the following condition as 25A-5A(a)(1)(B):

‘Regulatory development constraints at a particular site would render the building of approved density and all required MPDUs at the site infeasible.’

In answer to the question of what the payment should be, I propose amending the bill so that it requires a payment of 3% of the price each market rate unit sold. This has been the basis for agreements with the Octave (a high-rise condo) and Courts at Clarksburg (an age-restricted community).

I want the legislation to specify that alternative payments must be deposited into the Affordable Housing Acquisition and Preservation CIP project to buy or build MPDUs.

The bill as introduced gives priority to buy or build more MPDUs in the same Policy Area as the development subject to the agreement. It may only be used in another Policy Area after (1) notice is provided to the Council, and (2) the Council is given 30 days to comment. I want to add that the notice provided to the Council must include compelling reasons for not using the funds in the same Policy Area and that the Council must receive notice of all alternative payment agreements.

25A-5B. Alternative location agreement (starts line 610)

One of the conditions of approval of an alternative location agreement is that it will result in an increase in the number of MPDUs. I would add that it could also increase the total number of bedrooms in the same or fewer MPDUs than would be required if the units are provided on site.

Another amendment would require DHCA to notify the Council of any alternative location agreement. Consistent with my views on alternative payments, DHCA may approve an alternative location in a different Policy Area but only for a compelling reason.



10400 Detrick Avenue
Kensington, MD 20895-2484
(240) 627-9400



March 15, 2018

The Honorable Nancy Floreen
Chair, PHED Committee
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Councilmember Floreen:

Thank you for the opportunity to provide comments on proposed changes to the County's Moderately Priced Dwelling Units (MPDU) program, Bill 34-17.

The Housing Opportunities Commission (HOC) recognizes the many hours of work the Council and staff have dedicated to updating the County's MPDU law. As your affordable housing partner, HOC believes this law and its implementing regulations are vitally important to ensuring that Montgomery County continues to be the nation's greatest example of inclusionary zoning best practices. The County's law is the country's oldest and has set the bar for what is best practice for creating economically integrated communities that expand opportunities for all County residents. However, we do have concerns over some of the changes proposed in Bill 34-17.

1. Alternative payment agreements (Lines 596 – 604)

HOC appreciates the amendments recently proposed that narrow the circumstances under which an alternative payment may be used outside the Planning Area. However, HOC believes strongly that alternative payments should always remain within the Planning Area. The unintentional consequence of the change to alternative payments is naturally occurring affordability nodes may cause a concentration of affordable units. Any change that results in the concentration of affordable housing runs counter to the central premise of the law, which is to require economically inclusive development in all parts of the County. HOC feels that sufficient opportunities exist in each Planning Area to find a use for Alternative Payment proceeds that will produce MPDUs within the originating Planning Area.

To be clear, priority should remain with on-site development of MPDUs. In lieu of on-site production, units produced using an alternative payment belong in the same Planning Area.

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Furthermore, the intent of allowing an alternative payment in place of on-site production of MPDUs is to address the rare occasion when on-site production is infeasible. In that case, the alternative payment should be used to produce at least the same, if not more MPDUs than would have otherwise been required. The purpose of an alternative payment is not to write down the cost of a unit already required to be produced in another development but rather to create a new unit where one was not built on-site.

2. Alternative location agreements (Lines 622 – 623)

We believe that the flexibility intended by this change is warranted. HOC supports the amendment to allow approval of an alternative location agreement that provides additional bedrooms in the same number or fewer MPDUs. This change would help produce more developments with multi-bedroom units able to accommodate families.

However, the full impact to opportunity access for families could be diminished when coupled with an alternative location agreement. HOC remains opposed to the amendment permitting an alternative location agreement in a different Planning Area. Once again, the unintentional consequence of this change is naturally occurring affordability nodes may cause a concentration of affordable units. Any change that results in the concentration of affordable housing runs counter to the goal to provide for economically inclusive development in all parts of the County.

3. Resale of units (Lines 822 -825)

HOC is concerned that creating a right of first refusal for DHCA on units purchased and sold by designated housing development agencies and nonprofits during the first five years would effectively eliminate HOC's Homeownership Program (HOC/HOP). The HOC/HOP serves households who are current HOC renters allowing opportunities to move through the continuum of housing from rental or subsidized housing to home ownership as they become more self-sufficient.

Since 1987, HOC has successfully administered its Homeownership Program, helping more than 347 customers invest in this County, create community and purchase their own home. Because of our relationship with our buyers, HOC is uniquely positioned to work closely with families, many of whom are transitioning out of our affordable housing programs. HOC helps to prepare buyers for the responsibility of homeownership by assessing their buying readiness, offering credit counseling, homeownership education, and support throughout the mortgage application and purchase process. Furthermore, we place the exact same covenants on the units as the County and are committed to coordinating with DHCA to provide settlement statements and ensure proper tracking of all MPDU sales to eligible buyers.

A substantial part of our mission to provide affordable housing is enhancing the lives of our customers to help them reach their fullest potential. That support includes helping families achieve their goals for themselves and their families, including the dream of homeownership. If HOC were subject to the proposed DHCA right of first refusal and no longer able to offer the

opportunity of homeownership, we would do a great disservice to our customers and the residents of Montgomery County.

To address the issue directly, we understand that there is a widespread misconception that HOC's HOC/HOP program, or our ability to sell MPDUs, results in a higher purchase price for the buyer. To dispel that notion, we've attached data on MPDU sales completed between HOC and eligible MPDU purchasers over the past five years (2013 through 2017). The table includes HOC's purchase price, the resale price to the customer and closing cost assistance provided.

Over the last five years, HOC's Homeownership Program has sold 85 MPDUs. On average our customers receive a 3.5% closing cost seller credit, which adjusts the average MPDU resale price down to \$165,458.

These data demonstrate the considerable impact HOC has for first-time homebuyers in the County. We are deeply engaged in real estate markets across Montgomery County and are uniquely positioned to connect families with units that meet their needs. While HOC's practice for selling MPDUs follows DHCA's guidelines, we offer to remove the off-setting closing cost allowance and seller credit to eliminate any future potential for mark-up of MPDU resales.

Again, HOC appreciates and supports the Council's resolve to enhance the MPDU program and expand affordable housing in the County. We look forward to working with the Council and PHED Committee on this and other issues in the coming year.

Respectfully,

Stacy L. Spann
Executive Director

Cc: Planning, Housing, and Economic Development (PHED) Committee

Enclosed: "Housing Opportunities Commission of Montgomery County HOC/HOP MPDU Resale Activity"



Housing Opportunities Commission of Montgomery County
Homeownership Program (HOC/HOP)
MPDU Resale Activity
as of 12/31/17

When HOC purchases an MPDU from DHCA, the total contract price to HOC is made up of:

- Base MPDU sales price (set by DHCA)
- Less 1.5% of the base MPDU sales price BEFORE architectural compatibility
- Plus any upgrades or options purchased from builder (i.e. washer/dryer)

When an MPDU is sold through the HOC/HOP program, the sales contract price is equivalent to:

- Base MPDU sales price
- Plus any upgrades or options
- Plus 3.5% for closing cost allowance

At closing, the HOC/HOP purchaser is granted a credit allowance based upon financing, which is typically 3.5%. Conventional financing of 95% or better allows for a maximum credit of 3%.

Over the last five (5) years from 2013 through 2017, the HOC/HOP has sold **85** MPDUs to its program participants. The average MPDU resale contract price for HOC/HOP residents has been **\$171,398** with an average credit of **3.5%** given to each borrower at closing, adjusting the average MPDU resale price to **\$165,458** for the period.

HOC's practice for selling MPDUs purchased for its Homeownership Program follows DHCA's MPDU guidelines and does not significantly impact the price for an MPDU resale. HOC offers to remove the added allowance for closing costs, along with the seller credit, thereby eliminating any mark-up of future resales for the HOC/HOP.



HOC HOMEOWNERSHIP PROGRAM
(HOC/HOP)
MPDU Resale Activity
as of 12/31/2017

3/13/2018

SUBDIVISION	STREET ADDRESS	LOT BLOCK	UNIT TYPE	HOC ACQUISITION DATE	HOC CONTRACT PRICE ¹	TOTAL SETTLEMENT COSTS ²	HOC/HOP RESALE DATE	HOC/HOP CONTRACT PRICE ³	HUD-1 CREDIT TO BORROWER ⁴	% CREDIT	ADJUSTED PRICE (LESS CREDIT)	VARIANCE
LAYHILL OVERLOOK	14421 CLAY ROCK LANE, SILVER SPRING 20906	16	3BR TH/GARAGE	11/29/12	\$170,427	\$171,470	01/15/13	\$178,935	(\$6,262)	3.5%	\$172,673	\$1,204
POPLAR RUN - III	13516 TIVOLI LAKE BLVD., SILVER SPRING 20906	K081	3BR TH/GARAGE	12/10/12	\$153,620	\$154,890	01/18/13	\$161,880	(\$5,666)	3.5%	\$156,214	\$1,324
POPLAR RUN - III	13517 TIVOLI LAKE BLVD., SILVER SPRING 20906	V041	3BR TH/GARAGE	11/28/12	\$153,748	\$154,999	01/24/13	\$162,013	(\$5,670)	3.5%	\$156,343	\$1,343
POPLAR RUN - III	13532 TIVOLI LAKE BLVD., SILVER SPRING 20906	K074	3BR TH/GARAGE	11/28/12	\$160,442	\$162,489	01/24/13	\$168,994	(\$5,915)	3.5%	\$163,079	\$590
TOWNS AT OAK HILL	142 LULLABY COURT, SILVER SPRING 20906	9	3BR Back-to-Back TH	11/15/12	\$119,697	\$121,568	01/30/13	\$126,353	(\$4,422)	3.5%	\$121,931	\$362
LAYHILL OVERLOOK	14423 CLAY ROCK LANE, SILVER SPRING 20906	15	3BR TH/GARAGE	11/29/12	\$161,011	\$162,018	03/13/13	\$169,141	(\$5,920)	3.5%	\$163,221	\$1,203
FAIRWOOD CROSSING @ BLACKBURN VILLAGE	3806 CULLINGWORTH ROAD, BURTONSVILLE 20866	37	3BR TH/Garage	01/03/13	\$124,306	\$125,429	06/04/13	\$130,489	(\$4,567)	3.5%	\$125,922	\$493
PRESERVE AT ROCK CREEK	17607 TOBOGGAN LANE, ROCKVILLE 20855	K004	3BR TH/GARAGE	06/17/13	\$167,440	\$168,761	08/01/13	\$176,524	(\$6,178)	3.5%	\$170,346	\$1,585
POPLAR RUN - IV	13429 DEER HIGHLANDS WAY, SILVER SPRING 20906	T012	3BR TH/GARAGE	08/30/13	\$163,995	\$167,083	10/09/13	\$172,746	(\$6,046)	3.5%	\$166,700	(\$383)
ORCHARDS OF SANDY SPRING	100 WHISPERING WILLOW WAY, SANDY SPRING 20860	1/D	3BR TH/GARAGE	09/30/13	\$142,348	\$144,449	10/28/13	\$150,159	(\$5,256)	3.5%	\$144,903	\$454
QUINCE TRACE	11804 MANGO LANE, GAITHERSBURG 20878	28	3BR TH/GARAGE	09/30/13	\$144,711	\$146,399	10/31/13	\$152,666	(\$5,343)	3.5%	\$147,323	\$923
SHADY GROVE CROSSING	8223 CASTANEA LANE, DERWOOD 20855	18/B	3BR TH/Garage	09/27/13	\$134,091	\$135,934	11/26/13	\$141,377	(\$4,948)	3.5%	\$136,429	\$495
ORCHARDS OF SANDY SPRING	112 WHISPERING WILLOW WAY, SANDY SPRING 20860	6/D	3BR TH/GARAGE	09/16/13	\$142,348	\$144,559	12/12/13	\$150,159	(\$5,256)	3.5%	\$144,903	\$344
OLNEY SPRINGS	18267 HICKORY MEADOW DRIVE, OLNEY 20832	9/B	3BR TH	11/18/13	\$167,154	\$168,342	01/09/14	\$175,510	(\$6,143)	3.5%	\$169,367	\$1,025
PRESERVE AT ROCK CREEK - II	202 HARBINGER DRIVE, ROCKVILLE 20855	16/K	3BR TH/GARAGE	11/14/13	\$164,184	\$165,925	01/29/14	\$172,402	(\$6,034)	3.5%	\$166,368	\$443
DARNESTOWN AT TRAVILAH	14736 WOOTTON CROSSING CT, ROCKVILLE 20850	27	3BR TH/GARAGE	12/17/13	\$155,362	\$157,171	02/04/14	\$163,729	(\$5,731)	3.5%	\$157,998	\$828
OLNEY SPRINGS	18524 HICKORY MEADOW DRIVE, OLNEY 20832	29/A	3BR TH	10/24/13	\$164,247	\$165,430	02/11/14	\$172,477	(\$6,037)	3.5%	\$166,440	\$1,010
PRESERVE AT ROCK CREEK	204 HARBINGER DRIVE, ROCKVILLE 20855	15/K	3BR TH/GARAGE	11/14/13	\$149,520	\$152,014	02/14/14	\$156,898	(\$5,491)	3.5%	\$151,407	(\$608)
CROWN FARM	221 HEMINGWAY DRIVE, GAITHERSBURG 20878	11/N	3BR TH/GARAGE	12/02/13	\$149,215	\$150,432	04/02/14	\$156,640	(\$5,482)	3.5%	\$151,158	\$725
OLNEY SPRINGS	4806 WILLOW STEAD DRIVE, OLNEY 20832	4/C	3BR TH	12/19/13	\$165,745	\$167,414	04/30/14	\$174,052	(\$6,092)	3.5%	\$167,960	\$546
PRESERVE AT ROCK CREEK - II	16813 HEARTWOOD DRIVE, ROCKVILLE 20855	14/G	3BR TH	03/28/14	\$139,530	\$141,222	06/23/14	\$147,257	(\$5,154)	3.5%	\$142,103	\$881
BATCHELLORS FOREST	2225 VICTORIA PLACE, OLNEY 20832	16/A	3BR TH	12/20/13	\$130,154	\$132,258	06/25/14	\$136,640	(\$4,782)	3.5%	\$131,858	(\$400)
BATCHELLORS FOREST	2227 VICTORIA PLACE, OLNEY 20832	17/A	3BR TH	12/20/13	\$135,998	\$138,124	06/30/14	\$142,743	(\$4,996)	3.5%	\$137,747	(\$377)
OLNEY SPRINGS II	4814 BRIGHTWOOD CIRCLE, OLNEY 20832	51/A	3BR TH	06/13/14	\$167,698	\$169,067	08/29/14	\$176,049	(\$6,162)	3.5%	\$169,887	\$820
PRESERVE AT ROCK CREEK	16805 HEARTWOOD DRIVE, ROCKVILLE 20855	17/H	3BR TH/GARAGE	05/22/14	\$139,530	\$141,032	09/19/14	\$147,257	(\$5,154)	3.5%	\$142,103	\$1,071
OLNEY SPRINGS II	4835 BRIGHTWOOD CIRCLE, OLNEY 20832	59/A	3BR TH	05/27/14	\$167,909	\$169,379	09/26/14	\$176,268	(\$6,169)	3.5%	\$170,099	\$719
GERMANTOWN PARK	12834 LONGFORD GLEN DRIVE, GERMANTOWN 20874	94	4BR TH/GARAGE	08/11/14	\$161,083	\$162,497	11/14/14	\$169,190	(\$5,922)	3.5%	\$163,268	\$771
OLNEY SPRINGS II	4806 BRIGHTWOOD CIRCLE, OLNEY 20832	49/A	3BR TH	06/27/14	\$175,769	\$177,455	12/09/14	\$184,467	(\$6,456)	3.5%	\$178,011	\$556
PRESERVE AT ROCK CREEK (Stanley Martin)	16803 HEARTWOOD DRIVE, ROCKVILLE 20855	18/H	3BR TH/GARAGE	05/22/14	\$137,511	\$138,839	12/10/14	\$145,112	(\$4,987)	3.44%	\$140,125	\$1,286
GERMANTOWN PARK	12832 LONGFORD GLEN DRIVE, GERMANTOWN 20874	95	4BR TH/GARAGE	08/11/14	\$158,831	\$160,232	12/16/14	\$166,860	(\$5,840)	3.5%	\$161,020	\$788
TOWNS OF TANGLEWOOD	13207 GUILFORD TUN LANE, SILVER SPRING 20906	19	3BR TH/GARAGE	09/25/14	\$165,846	\$167,957	01/02/15	\$174,078	(\$6,093)	3.5%	\$167,985	\$28
OLNEY SPRINGS II	4843 BRIGHTWOOD CIRCLE, OLNEY 20832	55/A	3BR TH	05/27/14	\$175,769	\$177,274	03/10/15	\$184,467	(\$6,456)	3.5%	\$178,011	\$736
NORBECK CROSSING	3626 MAVEN STREET, SILVER SPRING 20906	4/E	3BR TH/GARAGE	12/15/14	\$147,699	\$149,517	03/11/15	\$155,860	(\$5,455)	3.5%	\$150,405	\$887

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HOC HOMEOWNERSHIP PROGRAM
(HOC/HOP)
MPDU Resale Activity
as of 12/31/2017

3/13/2018

SUBDIVISION	STREET ADDRESS	LOT BLOCK	UNIT TYPE	HOC ACQUISITION DATE	HOC CONTRACT PRICE ¹	TOTAL SETTLEMENT COSTS ²	HOC/HOP RESALE DATE	HOC/HOP CONTRACT PRICE ³	HUD-1 CREDIT TO BORROWER ⁴	% CREDIT	ADJUSTED PRICE (LESS CREDIT)	VARIANCE
OLNEY SPRINGS II	4816 BRIGHTWOOD CIRCLE, OLNEY 20832	52/A	3BR TH	06/13/14	\$165,278	\$166,689	03/30/15	\$173,545	(\$6,074)	3.5%	\$167,471	\$782
CLARKSBURG VILLAGE - PHASE II	22375 BRIGHT SKY DRIVE, CLARKSBURG 20871	15/II	3BR TH	12/18/14	\$191,267	\$193,177	04/30/15	\$200,706	(\$7,025)	3.5%	\$193,681	\$504
LITTLE FALLS PLACE	5202 WILLET BRIDGE COURT, BETHESDA 20816	2	3BR TH/GARAGE	02/24/15	\$188,801	\$190,197	06/01/15	\$197,993	(\$6,930)	3.5%	\$191,063	\$866
CROWN FARM II	245 HEMINGWAY DRIVE, GAITHERSBURG 20878	16/N	3BR TH/GARAGE	07/18/14	\$149,854	\$151,661	06/02/15	\$157,223	(\$5,503)	3.5%	\$151,720	\$59
NORBECK CROSSING	3624 MAVEN STREET, SILVER SPRING 20906	3/E	3BR TH/GARAGE	12/15/14	\$147,699	\$149,517	07/08/15	\$155,860	(\$5,455)	3.5%	\$150,405	\$887
CLARKSBURG VILLAGE - PHASE II	22387 BRIGHT SKY DRIVE, CLARKSBURG 20871	21/II	3BR TH	12/18/14	\$180,927	\$182,789	07/30/15	\$189,939	(\$6,648)	3.5%	\$183,291	\$502
CROWN FARM (Pulte Homes)	9748 FIELDS ROAD, GAITHERSBURG 20878	28/H	3BR TH/GARAGE	07/20/15	\$159,971	\$161,730	08/28/15	\$169,063	(\$5,917)	3.5%	\$163,146	\$1,415
CHELSEA HEIGHTS	28 ELLSWORTH HEIGHTS STREET, SILVER SPRING 20910	39	3BR TH/GARAGE	07/31/15	\$182,190	\$183,333	09/25/15	\$191,235	(\$6,693)	3.5%	\$184,542	\$1,208
CLARKSBURG TOWN CENTER 10 (Miller & Smith)	12915 SUGARLOAF CHAPEL DRIVE, CLARKSBURG 20871	12/N	4BR TH/GARAGE	06/30/15	\$155,452	\$157,982	09/29/15	\$163,215	(\$5,713)	3.5%	\$157,502	(\$480)
GERMANTOWN PARK	12812 LONGFORD GLEN DRIVE, GERMANTOWN 20874	103	4BR TH/GARAGE	04/30/15	\$158,831	\$160,367	11/18/15	\$166,860	(\$5,851)	3.5%	\$161,009	\$642
CLARKSBURG TOWN CENTER 10 (Miller & Smith)	12939 SUGARLOAF CHAPEL DRIVE, CLARKSBURG 20871	62/N	4BR TH/GARAGE	06/30/15	\$155,529	\$158,059	11/18/15	\$163,341	(\$5,717)	3.5%	\$157,624	(\$435)
CROWN FARM (Ryland)	526 COPLEY PLACE, GAITHERSBURG, 20878	4/A	3BR PGBK CONDO	03/30/15	\$131,744	\$133,190	11/20/15	\$138,980	(\$4,864)	3.5%	\$134,116	\$926
POPLAR RUN - VII (a)	13321 TIVOLI LAKE BLVD., SILVER SPRING 20906	21/P	3BR TH/GARAGE	09/30/15	\$167,585	\$170,616	11/23/15	\$175,882	(\$6,156)	3.5%	\$169,726	(\$890)
POPLAR RUN - VII (a)	13315 TIVOLI LAKE BLVD., SILVER SPRING 20906	18/P	3BR TH/GARAGE	09/30/15	\$158,580	\$161,532	11/30/15	\$166,488	(\$5,827)	3.5%	\$160,661	(\$871)
CLARKSBURG TOWN CENTER 10 (Miller & Smith)	12935 SUGARLOAF CHAPEL DRIVE, CLARKSBURG 20871	60/N	4BR TH/GARAGE	06/30/15	\$160,922	\$163,474	12/01/15	\$168,924	(\$5,912)	3.5%	\$163,012	(\$462)
PRESERVE AT ROCK CREEK (Stanley Martin) 2	16804 HEARTWOOD DRIVE, ROCKVILLE 20855	19/D	3BR TH/GARAGE	09/18/15	\$144,027	\$147,305	12/17/15	\$152,166	(\$5,326)	3.5%	\$146,840	(\$465)
POPLAR RUN - VII (a)	13494 TIVOLI LAKE BLVD., SILVER SPRING 20906	11/L	3BR TH/GARAGE	09/30/15	\$158,580	\$160,275	01/08/16	\$166,488	(\$5,827)	3.5%	\$160,661	\$386
POPLAR RUN - VII (a)	13492 TIVOLI LAKE BLVD., SILVER SPRING 20906	10/L	3BR TH/GARAGE	09/30/15	\$158,580	\$160,275	02/29/16	\$166,488	(\$5,827)	3.5%	\$160,661	\$386
CLARKSBURG VILLAGE - PHASE II (Craftmark 2)	22366 SWEETSPIRE DRIVE, CLARKSBURG 20871	22/FF	3BR TH	12/18/15	\$182,816	\$184,304	03/28/16	\$191,897	(\$6,716)	3.5%	\$185,181	\$877
CROWN FARM (Pulte Homes)	9766 FIELDS ROAD, GAITHERSBURG 20878	20/H	3BR TH/GARAGE	02/18/16	\$159,971	\$161,972	05/02/16	\$169,063	(\$5,072)	3.0%	\$163,991	\$2,019
SHADY GROVE STATION	15912 CHIEFTAIN AVENUE, ROCKVILLE 20855	5	3BR SF DETACHED	12/22/15	\$195,917	\$197,963	05/11/16	\$205,552	(\$7,194)	3.5%	\$198,358	\$394
GROSVENOR HEIGHTS	5313 MERRIAM STREET, BETHESDA 20814	9	3BR TH/GARAGE	03/14/16	\$189,355	\$191,155	05/20/16	\$198,627	(\$6,952)	3.5%	\$191,675	\$520
WATERFORD HILLS - II	13230 WATERFORD HILLS BLVD., GERMANTOWN 20874	81/B	3BR TH/GARAGE	12/17/15	\$163,969	\$166,265	05/20/16	\$172,080	(\$6,023)	3.5%	\$166,057	(\$208)
PRESERVE AT ROCK CREEK (Stanley Martin) 2	105 HARBINGER DRIVE, ROCKVILLE 20855	4/H	3BR TH/GARAGE	11/23/15	\$144,027	\$145,254	05/26/16	\$152,166	(\$5,326)	3.5%	\$146,840	\$1,586
GERMANTOWN PARK	12814 LONGFORD GLEN DRIVE, GERMANTOWN 20874	102	4BR TH/GARAGE	04/30/15	\$161,083	\$162,632	07/14/16	\$169,190	(\$4,663)	2.8%	\$164,527	\$1,894
GROSVENOR HEIGHTS	5303 MERRIAM STREET, BETHESDA 20814	4	3BR TH/GARAGE	03/29/16	\$189,355	\$191,050	07/19/16	\$198,627	(\$6,952)	3.5%	\$191,675	\$625
POPLAR RUN - VII (b)	1405 AUTUMN BROOK AVENUE, SILVER SPRING 20906	15/M	3BR TH/GARAGE	12/16/15	\$158,580	\$159,637	08/01/16	\$166,488	(\$5,827)	3.5%	\$160,661	\$1,023
WATERFORD HILLS - II	13224 WATERFORD HILLS BLVD., GERMANTOWN 20874	84/B	3BR TH/GARAGE	12/17/15	\$163,969	\$166,266	08/19/16	\$172,080	(\$5,593)	3.3%	\$166,487	\$221
CHELSEA HEIGHTS	56 ELLSWORTH HEIGHTS STREET, SILVER SPRING 20910	51	3BR TH/GARAGE	01/07/16	\$182,190	\$184,229	08/26/16	\$191,235	(\$6,693)	3.5%	\$184,542	\$313
POPLAR RUN - VIII (b)	13757 FOGGY GLEN DRIVE, SILVER SPRING 20906	X008	3BR TH/GARAGE	03/18/16	\$159,781	\$161,021	09/23/16	\$167,759	(\$5,872)	3.5%	\$161,887	\$866
BENTLEY PARK - II	14726 SADDLE CREEK DRIVE, BURTONSVILLE 20866	28/H	3BR TH	06/09/16	\$163,274	\$164,798	09/30/16	\$171,462	(\$6,001)	3.5%	\$165,461	\$663
WATERFORD HILLS - II	13236 WATERFORD HILLS BLVD., GERMANTOWN 20874	78/B	3BR TH/GARAGE	12/17/15	\$177,288	\$180,184	09/30/16	\$185,920	(\$6,507)	3.5%	\$179,413	(\$772)
CABIN BRANCH - II	13820 ESTUARY DRIVE, CLARKSBURG 20871	D013	3BR TH/GARAGE	02/17/16	\$146,173	\$148,496	11/08/16	\$153,509	(\$5,373)	3.5%	\$148,136	(\$360)

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**HOC HOMEOWNERSHIP PROGRAM
(HOC/HOP)
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3/13/2018

SUBDIVISION	STREET ADDRESS	LOT BLOCK	UNIT TYPE	HOC ACQUISITION DATE	HOC CONTRACT PRICE ¹	TOTAL SETTLEMENT COSTS ²	HOC/HOP RESALE DATE	HOC/HOP CONTRACT PRICE ³	HUD-1 CREDIT TO BORROWER ⁴	% CREDIT	ADJUSTED PRICE (LESS CREDIT)	VARIANCE
WESTSIDE AT SHADY GROVE	16624 CRABBS BRANCH WAY, ROCKVILLE 20855	20/L	3BR TH/GARAGE	08/17/16	\$191,310	\$192,738	11/30/16	\$200,729	(\$7,026)	3.5%	\$193,703	\$966
POPLAR RUN - IX	1039 GUILLEMOT DRIVE, SILVER SPRING 20906	W006	3BR TH/GARAGE	04/28/16	\$159,400	\$160,376	12/22/16	\$167,348	(\$5,857)	3.5%	\$161,491	\$1,115
POPLAR RUN - VIII (b)	13755 FOGGY GLEN DRIVE, SILVER SPRING 20906	X009	3BR TH/GARAGE	03/18/16	\$158,438	\$159,674	02/09/17	\$166,349	(\$5,822)	3.5%	\$160,527	\$853
PRESERVE AT ROCK CREEK (Winchester) 3	16628 HEARTWOOD DRIVE, ROCKVILLE 20855	C007	3BR TH/GARAGE	09/28/15	\$159,314	\$160,718	02/27/17	\$167,186	(\$5,852)	3.5%	\$161,334	\$616
CLARKSBURG VILLAGE = PHASE II	12319 JUNIPER BLOSSOM PLACE, Clarksburg 20871	38/H	3BR TH	10/28/16	\$182,646	\$184,322	02/28/17	\$191,721	(\$6,231)	3.2%	\$185,490	\$1,168
POPLAR RUN - VII (b)	1401 AUTUMN BROOK AVENUE, SILVER SPRING 20906	13/M	3BR TH/GARAGE	12/16/15	\$171,027	\$172,742	03/16/17	\$179,452	(\$6,281)	3.5%	\$173,171	\$429
GLENMONT METROCENTER	167 KANDINSKY LOOP, SILVER SPRING 20906	71	3BR TH/GARAGE	02/03/17	\$161,307	\$163,511	04/26/17	\$169,376	(\$5,928)	3.5%	\$163,448	(\$63)
MONTGOMERY ROW AT ROCK SPRING - II	10409 FERNWOOD ROAD, BETHESDA 20814	70/A	3BR TH/GARAGE	02/10/17	\$208,022	\$210,040	05/19/17	\$218,396	(\$7,644)	3.5%	\$210,752	\$712
CABIN BRANCH - II	13822 ESTUARY DRIVE, CLARKSBURG 20871	D014	3BR TH/GARAGE	02/17/16	\$156,410	\$157,811	05/15/17	\$164,168	(\$5,746)	3.5%	\$158,422	\$611
BENTLEY PARK - II	14718 SADDLE CREEK DRIVE, BURTONSVILLE 20866	24/H	3BR TH	06/09/16	\$167,780	\$169,321	05/25/17	\$176,126	(\$6,164)	3.5%	\$169,962	\$641
POPLAR RUN - IX	1033 GUILLEMOT DRIVE, SILVER SPRING 20906	W009	3BR TH/GARAGE	04/28/16	\$160,134	\$161,114	07/05/17	\$168,121	(\$5,884)	3.5%	\$162,237	\$1,123
WESTSIDE AT SHADY GROVE METRO - II	16312 DECKER PLACE, ROCKVILLE 20855	23/M	3BR TH/GARAGE	04/20/17	\$196,248	\$197,972	07/14/17	\$205,923	(\$7,207)	3.5%	\$198,716	\$743
POPLAR RUN - VII (b)	1402 AUTUMN BROOK AVENUE, SILVER SPRING 20906	03/N	3BR TH/GARAGE	12/16/15	\$158,032	\$159,089	08/25/17	\$165,921	(\$5,392)	3.2%	\$160,529	\$1,439
CLOVERLY FOREST	315 CLOVERLY FOREST DRIVE, SILVER SPRING 20905	32	3BR TH/GARAGE	05/26/17	\$173,967	\$175,370	08/25/17	\$182,626	(\$6,392)	3.5%	\$176,234	\$864
MONTGOMERY ROW AT ROCK SPRING - II	10352 JACOBSEN STREET, BETHESDA 20814	11/C	3BR TH/GARAGE	05/01/17	\$208,022	\$209,770	08/31/17	\$218,396	(\$7,098)	3.3%	\$211,298	\$1,529
CHEVY CHASE LAKE STATION	3607 CHEVY CHASE LAKE DRIVE, CHEVY CHASE 20815	61	3BR TH/GARAGE	06/13/17	\$211,010	\$212,448	09/01/17	\$221,396	(\$7,195)	3.3%	\$214,201	\$1,753
POPLAR RUN - VIII (b)	13753 FOGGY GLEN DRIVE, SILVER SPRING 20906	X010	3BR TH/GARAGE	03/18/16	\$164,092	\$165,354	09/22/17	\$172,221	(\$5,597)	3.2%	\$166,624	\$1,270
MONTGOMERY ROW AT ROCK SPRING - II	6666 EAMES WAY, BETHESDA 20817	59/A	3BR TH/GARAGE	08/21/17	\$208,022	\$210,008	11/22/17	\$218,396	(\$7,644)	3.5%	\$210,752	\$744
CABIN BRANCH - V	22421 EGRET ALLEY, CLARKSBURG 20871	20/F	3BR TH/GARAGE	01/30/17	\$157,744	\$159,845	12/14/17	\$165,545	(\$5,794)	3.5%	\$159,751	(\$94)
2013-2017 AVERAGES ---->					\$163,099	\$164,838		\$171,398	(\$5,940)	3.5%	\$165,458	\$620

NOTES:

¹HOC MPDU contract price is determined by DHCA MPDU office and includes a credit of 1.5% for sales and marketing off the base MPDU sales price before architectural compatibility and an add for any options (washer/dryer, etc.)

²All costs to settle HOC acquisition of MPDU.

³HOC/HOP contract price is equivalent to MPDU base sales price plus options plus 3.5% closing cost allowance.

⁴Credit given to HOC/HOP purchaser at closing for closing costs is based upon financing - typically 3.5%. Conventional financing of 95% or higher allows for a max credit of 3%.