


**Committee members should bring their packets from the
March 5, March 12 and March 19 Worksessions.**

MEMORANDUM

June 8, 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

PURPOSE: Review Committee redraft of the Bill reflecting amendments already discussed, and make decisions on remaining issues regarding certain provisions of the Bill.

Expected Attendees:

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

Bill 34-17, Housing – Moderately Priced Dwelling Units (MPDUs) - Amendments, sponsored by Lead Sponsor Councilmember Floreen and Co-Sponsor Councilmember Rice, was introduced on October 31. A public hearing on the Bill was held on December 5, 2017 and Planning, Housing and Economic Development (PHED) Committee worksessions were held on March 5, March 12 and March 19.

Bill 34-17 would make several changes to the County MPDU law to enhance administrative flexibility and clarify provisions of the law.

Prior Committee Discussion on Bills 34-17

The PHED Committee has held worksessions on Bill 34-17 on March 5, March 12, and March 19. 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 recommended several amendments. The Committee also considered and accepted recommendations from DHCA and Council staff for several technical amendments at the March 12 worksession. At the March 19 worksession, the Committee discussed several issues and gave staff direction on provisions related to: resales of MPDUs; density bonuses for providing MPDUs; and the effective date(s) of the Bill.

Zoning Text Amendment

Substantial discussion in previous worksessions was devoted to resolving issues surrounding the amount of density bonus allowed for provision of MPDUs. Under current law, the amount of density bonuses allowed is provided in a table (©18-19, following line 437). At the March 19 worksession Council staff and Planning Board staff expressed agreement that provisions relating to density bonuses are zoning provisions and belong in Chapter 59, the Zoning Ordinance. The Committee was advised at the first worksession that a Zoning Text Amendment (ZTA) is needed under any circumstances to make sure that Chapter 25A and Chapter 59 are consistent. This ZTA will be the vehicle to provide for density bonuses in the Zoning Ordinance. It is expected to be introduced in the near future, and the effective dates of this Bill and the ZTA will be synchronized.

Amendments to the Bill previously recommended by the Committee and reflected in the Committee redraft of the Bill at ©1-52.

As mentioned above, the Committee has considered, and recommended, several potential amendments to the Bill. These amendments are discussed in the packets for the March 12¹ and March 19² worksessions, and are summarized below.

General, technical changes to be made throughout the Chapter:

The Committee accepted several DHCA-recommended technical and clarifying amendments to the Bill, including:

- Changing references to "Policy Area" to "Planning Area" throughout.
- Changing references to "unit" or "moderately priced dwelling unit" to "MPDU" throughout.

¹

https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5720_1460_Committee_03092018.pdf

²

https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2017/Committee/pdf/5729_1460_Committee_03192018.pdf

- Changing references to “person” and “family” to “household” throughout.
- Changing references to “corporations” to “business entities” throughout.
- Changing reference in the definition of “Area median income” from median household income for “Montgomery County” to “Washington metropolitan area” (©9, lines 190-192).
- Adding a definition for “Designated agency” which means a non-governmental housing development agency or non-profit business entity designated by the County Executive as eligible to purchase or lease MPDUs under Section 25A-8 and use later in provisions for sale or rental of MPDUs (©11, lines 242-245).
- Retaining “or rent” in the definition of Eligible household (©11, line 256).
- Clarifying that in the definition of “Moderately Priced Dwelling Unit” that when a dwelling unit designated as an MPDU is first sold or leased under another government program that once the initial restrictions end MPDU requirements apply for the balance of the MPDU control period (©12, lines 277-285).
- Adding definitions of “Multi-family dwelling unit” (©12, lines 286-287) and “Single-family dwelling unit” (©13, lines 302-304).
- Clarifying that MPDU requirements apply when an existing property is converted from non-residential use to residential use (©15, lines 355-359).
- Clarifying that there may be multiple MPDU agreements when a development has multiple owners (©23, lines 548-551).
- Including language clarifying that MPDUs must be reasonably dispersed throughout the development (©23, lines 559-560).
- Clarifying 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 (©47, line 1186).
- Clarifying 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) (©48, lines 1207-1211).

Specific, substantive changes:

In the prior worksessions, the Committee also directed staff to incorporate several substantive changes into the Bill. Below is a section-by-section summary of these changes.

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

- Add a subsection with language highlighting the importance of flexibility in administering the program (©8, lines 179-184).

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

- Require a HIF payment for developments of between 11 and 19 units (but not for developments of 10 or fewer units) (see ©15, lines 364-367).
- Permit the DHCA Director to waive the three-bedroom requirement in certain limited circumstances (see ©16, lines 390-394).
- Provide that floor area-based agreements will not require an applicant to provide more units than otherwise required (see ©17, line 403).

- Delete the density bonus table and language relating to the calculation of density bonuses (to be provided for in a forthcoming ZTA, as discussed above) (see ©18, lines 425-428).
- Provide that the DHCA Director determines whether or not required MPDUs must be provided on-site in all cases (including where the Council sets a higher base MPDU requirement in the master plan approval process) (see ©20, lines 464-465).
- Require notice to Council of approval of a land transfer, and restrict the use of land transferred to increasing the supply of MPDUs (see ©22, lines 526-532).
- Permit an applicant to request a letter of preliminary agreement with DHCA (see ©26, lines 629-634).

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

- Provide that only requirements for for-sale newly constructed or newly-converted MPDUs may be satisfied through alternative payment agreements (©26, lines 638-639).
- Add regulatory development constraints making building of approved density and all required MPDUs at the site infeasible as a justification for an alternative payment agreement (©27, lines 652-655).
- Set the amount of the alternative payment as three percent of the sale price of each market rate unit in the development (©28, lines 671-676).
- Specify that alternative payments to the HIF be deposited into the Affordable Housing Acquisition and Preservation Capital Improvement Project, and add a justification requirement for using payments in a different Policy (or Planning, if the Bill is so amended) area (see ©28, lines 677-693).
- Require Council notice of all alternative payment agreements (©29, lines 700-701).

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

- Allow approval of an alternative location agreement that provided additional bedrooms in the same number or fewer MPDUs (©29, lines 717-718).
- Permit alternative location in a different Policy (or Planning) Area, but only after notice and justification is provided to the Council (©29-30, lines 719-725).
- Require Council notice for any alternative location agreement (©30, lines 738-739).

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

- Allow DHCA to assign its priority right to a designated affordable housing agency or non-profit (©38, lines 946-948).

Effective date:

- The Committee redraft adds a Section 2, which requires Executive Regulations necessary to implement the Bill to be transmitted to Council by September 15, 2018 and a Section 3, providing that the effective date for Bill 34-17 is November 1, 2018 (see ©52, lines 1326-1331).

Remaining Issues for Committee Discussion

1. Section 25A-3. Definitions.

DHCA has requested that the definition of “Age-restricted unit” (©9, lines 188-189) include reference to age 55 as the specific minimum age for at least one resident, for consistency with the Zoning Ordinance. The Bill’s current definition references a requirement that at least one occupant be “a certain age or older.” Council staff agrees with this request. As amended, the definition would read:

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

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

Paragraph 25A-5(d)(3) and possible new paragraph 25A-5(d)(4 (starting at ©16, line 383):

DHCA has indicated that it is very important that the current language in the paragraph 25A-5(d)(3), dealing with permissible ratios of efficiency MPDUs be changed, or DHCA will receive very few (if any) two- or three-bedroom multi-family MPDUs. DHCA also proposes a new subparagraph 25A-5(d)(4), to require proportionality between single-family and multi-family units in subdivisions with both single- and multifamily dwelling units.

As currently drafted, the paragraph 25A-5(d)(3) in the Bill would allow developers of multi-family buildings to provide only efficiency and one-bedroom MPDUs, even in buildings that include two- and three-bedroom market units. The Bill would also give the option to developers and DHCA to negotiate the same or fewer but larger units in the same square footage that the MPDUs would have occupied. DHCA believes that, absent other incentives, no developer who holds rental buildings for the long term will want to do this, because it will result in less rental income per square foot. Developers who flip their buildings might be interested because they would be able to build fewer kitchens and baths. However, since they would not be required to provide two- or three-bedroom MPDUs in the standard case, the “footprint” of the MPDUs in the standard case would be much smaller to begin with, and that footprint would be the square footage that DHCA and the developer would be working with. If developers were instead given the choice of providing either (1) efficiency- and one-bedroom MPDUs with the MPDU requirement based on unit count, or (2) a different bedroom mix with the MPDU requirement based on percentage of square footage, even fewer developers would be interested.

DHCA does not believe that either current law or the proposed amendments give DHCA the authority to compel developers to provide MPDUs with more bedrooms than would be required otherwise, and expects that very few developers who would be interested in providing larger units unless other incentives are provided, such as zoning incentives. Moreover, the current trend in multi-family buildings is to provide more two- and three-bedroom units, not fewer. DHCA is already missing out on receiving three-bedroom MPDUs in many multi-family properties because

current law does not require developers of multi-family buildings to provide them. That is why DHCA believes that the best option is for the law to require developers to provide MPDUs in proportion to the market unit bedroom types as a base requirement, with the flexibility to negotiate for larger MPDUs.

DHCA's proposed new paragraph (d)(4) would require developers who are constructing both single-family and multi-family units to distribute the MPDUs equally between both, unless the DHCA Director agrees to a different distribution. This will ensure that DHCA continues to receive townhouses in these developments (which are very popular with the Department's purchasers) and is particularly important when the multi-family units will be condominiums. This is a re-working of language in Sec. 25A-8(b)(6), which DHCA requests be deleted (see issue # 3, below).

Subsection 25A-5(f):

DHCA requests deletion of this entire subsection for the following reasons:

- (1) it is not the Planning Board's current practice to allow developments of between 20 and 50 MPDUs to get out of their MPDU requirement if they can't achieve a density bonus (and hasn't been their practice for some time);
- (2) this language was adopted when the MPDU threshold was reduced from 35 units to 20 units in order to cushion the impact of the threshold change. Since the threshold has now been 20 units since 2005, this language is no longer needed; and
- (3) Bill 34-17's proposed changes to Section 25A-5A would allow Alternative Payment Agreements for developments with regulatory challenges, which would include developments of between 20 and 50 units.

3. Sections 25A-5A. Alternative payment agreement and 25A-5B. Alternative location agreement.

Council staff has been advised that there are concerns about the use of the word "compelling" in the justification that must be provided to Council prior to use of an alternative payment, or construction of MPDUs at an alternative location, outside the planning area of the subject development. To achieve the desired objective and alleviate these concerns, Council staff recommends that "good cause" be substituted as an alternative to the "compelling reason" currently required under the Bill at ©28, line 692 and ©30, line 723.

4. Section 25A-5B. Alternative location agreement.

Subsection 25A-5B(a) (starting at (29, line 703):

DHCA recommends substituting "multi-family" for high-rise. DHCA says that it is trying to preserve flexibility for unforeseen circumstances, noting that the issues around senior housing were not expected the last time the legislation was updated. Council staff recommends against this change. Alternative locations are not limited to a for-sale or condominium product and Council staff is not aware of any projects to date where MPDUs have not been able to be provided

in mid-rise or garden units. Council staff believes this requested change would provide too much latitude, given the lack of evidence of a problem.

5. 25A-8. Sale or rental of MPDUs.

Paragraph 25A-8(b)(3) (starting at ©39, line 980):

DHCA is requesting an amendment to this paragraph to conform with practice. The change would require the Department to notify HOC of an offering of MPDUs after “approving the offering agreement” rather than “after receiving the complete offering.”

Paragraph 25A-8(b)(4) (starting at ©40, line 989):

DHCA is requesting form changes to the provisions governing notification to eligible households of MPDU availability, based on the advice of the Office of the County Attorney. There are concerns that language in the existing law may create liability issues. The requested change would not affect the current notification practices.

Paragraph 25A-8(b)(5) (starting at ©40, line 998):

DHCA requests an amendment to allow DHCA to reduce the priority marketing period for resold MPDUs for good cause. DHCA would like to be able to end the required 90 day priority marketing period if there is good cause to believe that the unit will not be resold. Council staff agrees with this recommendation, but it is related to the request from DHCA to be able to terminate covenants (25A-9(c)).

Paragraph 25A-8(b)(6) (starting at ©40, line 1006):

DHCA requests deletion of all but the last sentence of the paragraph. This language was added to the MPDU law in 1989 to prevent developers from offering MPDUs as rentals when similar units were being sold as market units, only to evict the MPDU tenants when the rental control period expired and sell the formerly rental MPDUs as for-sale market units. Now that the MPDU rental control period is 99 years, this is no longer a problem, and this paragraph is no longer necessary.

DHCA recognizes that there is a need to require proportionality between single-family and multi-family units (as opposed to for-sale and rental) unless DHCA agrees otherwise. DHCA has proposed language to address this issue as a new paragraph 25A-5(d)(4) (see issue #1, above).

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

Paragraph 25A-9(a)(1) (starting at ©46, line 1157):

DHCA has requested the flexibility to consider using an index other than the CPI without having to change the law again. The CPI increase can vary substantially from year to year – in the past 10 years, it has ranged from 1.5% to 5.8%. Under DHCA’s proposal, any alternative index

used for the calculation of MPDU resale prices would have to be identified in Executive Regulation. DHCA has requested this same flexibility in subparagraph 25A-9(c)(1)(B), concerning the calculation of the payment to the HIF at the first sale after the control period ends.

Paragraph 25A-9(a)(3) (starting at ©46, line 1163):

Current law provides for the inclusion of certain closing costs in the calculation of an MPDU resale price. On most resales, DHCA is no longer approving an allowance for closing costs so that resale MPDUs will be more affordable. DHCA requests adding language (“if approved by the Department”) to avoid the expectation that DHCA will automatically approve this allowance. DHCA also requests that the allowable closing costs be set forth more generally, with further specificity in regulation.

Paragraph 25A-9(a)(4) (starting at ©46, line 1166):

Under current law, calculation of an MPDU resale price includes a “reasonable sales commission *if the MPDU is not sold during the priority marketing period to an eligible household from the Department's eligibility list.*” (emphasis supplied) Because the MPDU program now processes 50 to 70 resales per year, it is impossible for DHCA staff to handle all of the responsibilities involved in selling property (including holding open houses) without the assistance of realtors, even during the priority marketing period. Therefore, DHCA requests deletion of the conditions on inclusion of a reasonable sales commission in the resale price.

New paragraph 25A-9(c):

DHCA is recommending that they be allowed to release a resale MPDU from covenants if it is too expensive, in poor condition, or the design does not meet the needs of MPDU purchasers. This issue was discussed by the Committee at its March 19 worksession. DHCA explained that with the current allowable cost escalators for inflation, capital improvements, and real estate fees, MPDUs that are sold multiple times can be priced too high for households at MPDU eligible incomes. DHCA also noted that in some instances, an MPDU may be in poor condition or is no longer a design that meets the needs of MPDU purchasers. Under these circumstances, DHCA would like the authority to terminate the covenants and allow the unit to be sold at market price with any shared profits going to the HIF. DHCA has clarified that they would be looking for this authority only for condominiums and not for townhomes.

At the March 19 session, Council staff agreed that DHCA should have this authority if the unit type is longer a type that would be allowed for a developer building new MPDUs. Council staff share its concern about the loss of townhomes and the DHCA clarification is responsive to that concern.

A recent report completed by Urban Ventures for DHCA, discusses this issue with two examples. The first is a high-rise 1 bedroom condominium which has sold twice. The original price in 2008 was \$190,575 and the most recent sale price in 2016 was \$258,723; an increase of \$68,148, or 36%, over the two sales. These sale prices do not include the condominium fee or show any increase in the condominium fee. The current maximum income for a two person

household is \$65,500 (this is the maximum for a 1 bedroom unit). The second example is a townhouse with an original sales price of \$192,822 in 2011 and the most recent sales price of \$252,066 in 2017. This is an increase of \$59,244, or 31% in six years. It is important to note that some of the reforms in the bill, such as limiting the allowance for capital improvements and reducing real estate fees reduce the growth in MPDU resale prices.

The County is willing to invest tax dollars in both creating and preserving affordable units. The question here is, what protections should the Council include in the ordinance to make sure that units are not taken out of MPDU controls too easily while allowing the department to remove controls when a unit cannot be made affordable at a reasonable cost? Affordability could be a function of the resale price or escalating condominium fees. Council staff recommends the following language as a paragraph 25A-9(c) inserted after ©48, line 1227:

(c) *Payments to HIF during the control period.* During the control period, if the Department determines that the design of the MPDU offered for resale would no longer comply with requirements for construction of a new MPDU or that the allowable resale price and fees associated with a multi-family condominium offered for resale would result in a monthly payment that is estimated to be at least 20% more than would be affordable to the maximum size MPDU household, the Director may permit the owner of the MPDU to sell the MPDU at market price, and the procedures for resale, including termination of the MPDU controls and release of restrictive covenants will be the same as for resale of an MPDU after the control period, as described in subsection (d).

Subsection 25A-9(d) Original and later rent controls (starting at ©50, line 1261):

DHCA has requested language to clarify that HOC may not lease an MPDU in a particular development after the original rental if HOC would then lease more than one-third of the MPDUs in that development. This limitation is currently in regulation but not specifically in the law, and is similar to the change to paragraph 25A-9(b)(2), governing purchase and ownership, that was considered and recommended by the Committee at the March 19 worksession.

Subsection 25A-9(e) Foreclosure or other court-ordered sales (starting at ©50, line 1275):

DHCA requests changes to certain provisions of the law governing payments to the HIF and the sale price of units sold through foreclosure or other court-ordered sale. These changes were recommended by the Office of the County Attorney to avoid conflict with State law governing foreclosures. Council staff agrees with these requested changes.

This packet contains:

Committee redraft of Bill 34-17
Legislative Request Report

Circle #

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Bill No. 34-17
Concerning: Housing - Moderately
Priced Dwelling Units (MPDUs) -
Amendments
Revised: 06/06/2018 Draft No. 6c
Introduced: October 31, 2017
Expires: May 1, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Floreen
Co-Sponsor: Councilmember Rice

AN ACT to:

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

By amending

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

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

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

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

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

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

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

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

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

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

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

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

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

- 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;

- (3) Increase the number of developments required to provide MPDUs by lowering the base requirement from any development with 35 or more units to 20 or more units; and
- (4) Place additional requirements and structure on the approval of an alternative payment made to the Housing Initiative Fund in place of providing MPDUs.

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

- (1) The availability of affordable housing continues to be a problem for low and moderate income households.
- (2) The 2015 report “The Greater Washington Region’s Housing Needs 2023” projects that Montgomery County will need 14,960 new housing units for households earning less than 80% of area median income.
- (3) The 2017 Montgomery County Rental Housing Study reports that 68% of households with incomes between 50% and 80% of area median income report paying more than 30% of income for rent and 15% report being extremely rent burdened, paying more than 50% of income for rent.
- (4) The creation of income-restricted affordable housing through construction and preservation is critical as market rents continue to increase. The American Community Survey reports that there were 9,189 fewer rental units with rents between \$750 and \$1,499 from 2010 to 2014.
- (5) MPDUs are one important element for providing income-restricted affordable housing. There were ~~[[681]]~~ 664 new MPDUs offered for sale or rent in 2015 and 2016. As of 2017 there are about 5,300 MPDUs county-wide.

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

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

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

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

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

25A-2. Declaration of public policy.

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

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

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

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

- (2) make housing that is affordable to low, moderate, and middle income households a priority in all parts of the County;
- (3) ensure that all master plan and sector plan amendments address the need for housing for low, moderate, and middle income households and promote specific strategies to meet that need including height and density incentives and flexibility;
- (4) implement policies that increase the long-term supply of rental housing affordable to low and moderate income households, particularly in areas that are easily accessible to transit;
- (5) require that all subdivisions of 20 or more dwelling units include a minimum number of moderately priced dwelling units on-site, or under certain specified circumstances, provide appropriate units off-site or make a payment to the Housing Initiative Fund; [[and]]
- (6) allow the Department of Housing and Community Affairs and developers flexibility to enter into affordable housing agreements that address the needs for housing units of different sizes and bedroom counts to better meet the needs of low and moderate income households; and
- (7) allow developers of residential units more opportunity to comply with this Chapter and meet the County's objective of building housing affordable to low- and moderate-income households by contributing to the Housing Initiative Fund, alternative location agreements, and flexible development standards that promote production and diversity of housing units.

25A-3. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

286 *Multi-family dwelling unit* means a dwelling unit in an apartment,

287 condominium, or mixed-use building type.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) submits to the Planning Board or to the Director of Permitting Services a plan to convert an existing property from non-residential use to residential use for any type of site review or development approval required by law, which results in the development of 20 or more dwelling units at one location; or

(4) with respect to land in a zone not subject to subdivision approval or site plan review, applies for a building permit to construct a total of 20 or more dwelling units at one location, including a conversion from non-residential to residential use.

(b) An applicant for an approval or permit identified in subsection (a) who proposes development of ~~[[fewer than 20]]~~ between 11 and 19 dwelling units is not required to provide MPDUs, but must make a payment to the Housing Initiative Fund, as provided by regulation.

(c) In calculating whether a development contains a total of 20 or more dwelling units for the purposes of this Chapter, the development includes all land at one location in the County available for building

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

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

- (1) a specific number of MPDUs must be constructed on an approved time schedule;
- (2) in subdivisions with single-family dwelling [unit subdivisions] units, ~~[[including townhouses,]]~~ each MPDU must have ~~[[3]]~~ three or more bedrooms, unless this requirement is waived by the Director in a subdivision with only two-bedroom market rate units; and
- (3) in subdivisions with multi-family dwelling [unit subdivisions] units, the [number] ratio of efficiency [and one- bedroom] MPDUs to total MPDUs [each] must not exceed the ratio [that]

398 of market-rate efficiency [and one-bedroom] units [respectively]
 399 [bear] to [the] total [number of] market-rate units in the
 400 subdivision.

401 The Director [must not] may approve an MPDU agreement that
 402 [reduces the number of bedrooms required by this subsection in any
 403 MPDU] does not increase the number of MPDUs required, but
 404 approximates the total floor area for the [[units]] MPDUs required,
 405 [[but]] and alters the bedroom mix of the [[units]] MPDUs or the
 406 number of [[units]] MPDUs.

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

410 (1) is covered by a plan of subdivision;
 411 (2) is covered by a plan of development, site plan, or floating zone
 412 plan; or
 413 (3) requires a building permit to be issued for construction,
 414 the required number or residential floor area of [moderately priced
 415 dwelling units] MPDUs is a variable percentage that is not less than a
 416 base requirement of 12.5% of the total number of dwelling units or
 417 [[equivalent]] residential floor area at that location, not counting any
 418 workforce housing units built under Chapter 25B. The Council may
 419 establish a higher base requirement, up to 15% of the total number of
 420 dwelling units or [[equivalent]] residential floor area at a location, as
 421 part of a master plan approval. The required number or residential floor
 422 area of MPDUs must vary according to the amount by which the
 423 approved development exceeds the normal or standard density for the
 424 zone in which it is located. Chapter 59 may permit bonus densities over

the presumed base density where MPDUs are provided. [[If the use of the optional MPDU development standards does not result in an increase over the base density, the Director must conclude that the base density could not be achieved under conventional development standards, in which case the required number or residential floor area of MPDUs must not be less than the 12.5% or higher base requirement established by the Council, of the total number of units in the subdivision. To obtain a density bonus, an applicant must provide at least one more MPDU than would have been required if there was no density bonus.]] [[The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:]]

[[

<i>Achieved Density Bonus</i>	<i>MPDUs Required</i>	<i>Achieved Density Bonus</i>	<i>MPDUs Required</i>
Zero	[12.5%] <u>Base requirement</u>	Up to 11%	[13.6%] <u>Base plus 1.1%</u>
Up to 1%	[12.6%] <u>Base plus 0.1%</u>	Up to 12%	[13.7%] <u>Base plus 1.2%</u>
Up to 2%	[12.7%] <u>Base plus 0.2%</u>	Up to 13%	[13.8%] <u>Base plus 1.3%</u>
Up to 3%	[12.8%] <u>Base plus 0.3%</u>	Up to 14%	[13.9%] <u>Base plus 1.4%</u>
Up to 4%	[12.9%] <u>Base plus 0.4%</u>	Up to 15%	[14.0%] <u>Base plus 1.5%</u>
Up to 5%	[13.0%]	Up to 16%	[14.1%]

	<u>Base plus 0.5%</u>		<u>Base plus 1.6%</u>
Up to 6%	[13.1%] <u>Base plus 0.6%</u>	Up to 17%	[14.2%] <u>Base plus 1.7%</u>
Up to 7%	[13.2%] <u>Base plus 0.7%</u>	Up to 18%	[14.3%] <u>Base plus 1.8%</u>
Up to 8%	[13.3%] <u>Base plus 0.8%</u>	Up to 19%	[14.4%] <u>Base plus 1.9%</u>
Up to 9%	[13.4%] <u>Base plus 0.9%</u>	Up to 20%	[14.5%] <u>Base plus 2.0%</u>
Up to 10%	[13.5%] <u>Base plus 1.0%</u>	Up to 22%	[15.0%] <u>Base plus 2.5%</u>

]]

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

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

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

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

(B) the applicant makes a payment to the Housing Initiative Fund, as provided by regulation, based on the square

454 footage of MPDU units that would otherwise have been
 455 required.

456 (2) If the Planning Board approves a density bonus of at least 20
 457 percent for a development which consists of 20 or more but fewer
 458 than 50 units at one location, the number of [MPDU's] MPDUs
 459 required must be governed by subsection [(c)](e) unless the
 460 formula in subsection [(c)](e) would not allow the development
 461 to have one bonus market rate unit. In that case, the Board must
 462 reduce the required number of [MPDU's] MPDUs by one unit
 463 and approve an additional market rate unit.

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

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

473 [(f)](h)(1) An applicant may satisfy this Section by obtaining approval from
 474 the Director to transfer land to the County before applying for a
 475 building permit. [The applicant must sign a written land transfer
 476 agreement approved by the Director and by the County Attorney.
 477 For the Director to consider the request and take timely action, a
 478 written notice of the applicant's intent to submit an agreement
 479 should be served upon the Director at least 90 days before the
 480 application for a building permit is filed. The land transfer

481 agreement must covenant that so much of the land, designated in
482 the approved preliminary plan or site plan as land to which the
483 optional zoning provisions for MPDUs apply, as is necessary in
484 order to construct the number of MPDUs required by subsection
485 (a) will be transferred, as finished lots, to Montgomery County or
486 to the County's designee before the building permit is issued, so
487 that the County might cause MPDUs to be constructed on the
488 transferred land. After the submission of supporting
489 documentation and review and approval by the County for the
490 transfer of finished lots, the County must reimburse the applicant
491 for the costs the applicant actually incurred, which are directly
492 attributable to the finishing of the MPDU lots so transferred.
493 Reimbursable costs include but are not limited to engineering
494 costs; clearing, grading, and paving streets, including any
495 required bonds and permits; installation of curbs, gutters and
496 sidewalks; sodding of public right-of-way; erection of barricades
497 and signs; installation of storm sewers and street lighting; and
498 park and other open space and recreational development directly
499 benefiting the MPDU lots transferred. The County must not
500 reimburse an applicant for the cost or value of the transferred
501 lots.]

- 502 (2) [If an applicant transfers land to the County under this subsection
503 and no funds have been appropriated to reimburse the applicant
504 for his finishing costs, the County may accept from the applicant
505 undeveloped land rather than finished lots, or the applicant may
506 transfer the finished lots to the County without requiring payment
507 for finishing the lots.] The Director may only approve a transfer

of land under this subsection after a making a written determination that the value of the land transferred is at least equal to the value of the MPDUs not constructed by the applicant.

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

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

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

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

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

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

[(g)](i) The MPDU agreements must be signed by the applicant and all other parties whose signatures are required by law for the effective and

binding execution of contracts conveying real property. [[The agreements must be executed in a manner that will enable them to be recorded in the land records of the County.]] If the applicant is a [[corporation]] business entity, the agreements must be signed by the [[principal officers]] authorized signatories of the [[corporation]] business entity individually and on behalf of the [[corporation]] business entity. Partnerships, associations or [[corporations]] business entities must not evade this Chapter through voluntary dissolution. The agreements may be assigned if the County approves, and if the assignees agree to fulfill the requirements of this Chapter.

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

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

plan. The staging plan included in the MPDU agreement for all dwelling units must be sequenced so that:

- (1) MPDUs are built along with or before other dwelling units;
- (2) no or few market rate dwelling units are built before any MPDUs are built;
- (3) the pace of MPDU production must reasonably coincide with the construction of market rate units; and
- (4) the last building built must not contain only MPDUs.

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

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

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

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

- (1) The restrictions of this Chapter run with the land for the entire period of control;
- (2) The County may create a lien to collect:
 - (A) that portion of the sale price of an MPDU which exceeds the approved resale price; and
 - (B) that portion of the foreclosure sale price of an MPDU which exceeds the approved resale price; and

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

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

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

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

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

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

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

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

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

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

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

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

(1) the conditions of the agreement; and

(2) the time period that the agreement is valid.

25A-5A. Alternative payment agreement.

(a) The Director may approve an MPDU agreement that allows an applicant, instead of building some or all of the required ~~[[number of]]~~ for-sale MPDUs in ~~[[the]]~~ a proposed subdivision or conversion of existing property from non-residential use to residential use, to pay to the Housing Initiative Fund an amount computed under subsection (b)[,

only if an Alternative Review Committee composed of the Director, the Commission's Executive Director, and the Director of Park and Planning, or their respective designees, by majority vote finds] upon a finding that:

(1) either:

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

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

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

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

(b) [Any payment to the Housing Initiative Fund under this Section must equal or exceed 125% of the imputed cost of land for each unbuilt MPDU. Except as further defined by Executive regulation, the imputed land cost must be calculated as 10% (for high-rise units) or up to 30%

(for all other housing units) of the actual sale price charged for each substituted unit. If the substituted unit will be a rental unit, the Director must calculate an imputed sale price under applicable regulations, based on the rent actually charged.] A payment under this section in full satisfaction of MPDU requirements must be [[calculated as provided in method (1) regulation]] three percent of the sale price of each market rate unit in the development. A payment made in partial satisfaction of MPDU requirements must be adjusted based on the percentage of required MPDUs provided.

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

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

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

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

(A) the Council is first provided with:

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

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

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

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

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

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

25A-5B. Alternative location agreement.

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

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

(2) building the MPDUs at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County; and

(3) the alternative location agreement will increase:

(A) the number of MPDUs; or

(B) the number of bedrooms in the same number or fewer MPDUs, provided as a result of the development.

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

(1) the Council is first provided with:

(A) notice of the intended alternative location in a different Planning Area; and

(B) a compelling reason for the alternative location in a different Planning Area; and

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

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

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

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

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

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

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

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

[(a) *Optional zoning provisions.*] The County Council, sitting as a District Council for the Maryland-Washington Regional District within the County, to assist in providing moderately priced housing has enacted zoning standards in Chapter 59, establishing in certain zones optional density bonus provisions which increase the allowable residential density above the maximum base density of the zoning classification and permit alternative dwelling unit types other than those allowed

under the standard method of development. Land upon which the applicant must build MPDUs may, at the applicant's election, be subject to optional zoning provisions. If the applicant elects the optional density provisions, permitting the construction of an increased number of dwelling units or increased percentage of residential floor area, the ~~[[requisite percentage and number of MPDUs]]~~ MPDU requirement must apply to the total number of dwelling units or percentage of residential floor area as increased by application of the optional density provisions or by the approval of a special exception that increases the density above the otherwise permitted density of the zoning classification in which the property is situated.

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

25A-7. Maximum prices and rents.

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

(a) *Sales.*

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

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

(A) restrict those conditions of the design, construction, pricing, or amenity package of an MPDU project that will impose excessive mandatory homeowner or condominium

802 fees or other costs that reduce the affordability of the
803 MPDUs; and

804 (B) approve an increase of up to 10% over the base sale price
805 of an MPDU upon a finding that the increase is justified to
806 cover the cost of a modification of the external design of
807 the MPDU necessary to reduce excessive marketing
808 impact of the MPDU on the market rate units in the
809 subdivision.

810 [(3) The County Executive must issue maximum sale prices for
811 MPDUs which continue in effect until changed by later
812 regulation. The maximum sale prices must be based on the
813 necessary and reasonable costs required to build and market the
814 various kinds of MPDUs by private industry. The sale prices for
815 any succeeding year must be based on a new finding of cost by
816 the County Executive, or on the prior year's maximum MPDU
817 price adjusted by the percentage change in the relevant cost
818 elements indicated in the Consumer Price Index.

819 (4) The County Executive may make interim adjustments in
820 maximum MPDU sale prices when sufficient changes in costs
821 justify an adjustment. Any interim adjustment must be based on
822 the maximum MPDU sale prices previously established, adjusted
823 by the percentage change in the relevant cost elements indicated
824 in the Consumer Price Index.

825 (5) If the Director finds that other conditions of the design,
826 construction, pricing, or amenity package of an MPDU project
827 will lessen the ability of eligible persons to afford the MPDUs,
828 the Director, under executive regulations, may restrict those

conditions that will impose excessive mandatory homeowner or condominium fees or other costs that reduce the affordability of the MPDUs.

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

(b) *Rents.*

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

operating costs, vacancy rates of comparable properties, the value of the MPDU at the end of the control period, and any other relevant information. The County Executive must consult with the rental industry, employers and professional and citizen groups to obtain statistical information and current general market and economic conditions which may assist in setting a current maximum rent. The County Executive must consider the extent to which, consistent with County codes and housing standards, the cost of rental housing can be reduced by the elimination of amenities. The County Executive must also consider from time to time changes in the income levels of persons of low and moderate income and their ability to rent housing.]

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

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

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

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

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

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

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

This option may be assigned to [[persons who]] households that are clients of the Department of Health and Human Services or to [[persons of]] low or moderate income households who are eligible for assistance under any federal, state, or local program identified in Executive regulation.

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

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

(6) In exercising this option, the Department, the Commission, and any government agency or designated agency or [[corporation]] must [[designate]] reserve the [[units]] MPDU by reference to number, type, size and amenities of the units selected if the designation does not result in any type of unit exceeding by more than 40 percent the total units of that type which are sold or rented under this Section, unless the Department and the applicant [[agrees otherwise]] agree to a different selection. The notice required under subsection (a)(5) must state which MPDUs are to be offered for sale and which are to be offered for rent, and the Department, the Commission, and any government agency or designated agency [[or corporation]] may buy only units which are offered for sale and may lease only units which are offered for rent. The Department, the Commission, and any government agency or designated agency [[or corporation]] must decide whether it will exercise its option within 45 days [[after it receives the original notice]] of the date of the notice provided under subsection (a)(5).

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

(A) the Department prevails over any other buyer or renter;

(B) The Commission prevails over any buyer or renter other than the Department;

(C) any other government agency prevails over any [[nonprofit corporation]] designated agency;

- 935 (D) the first government agency to file a notice prevails over
 936 any later agency; and
- 937 (E) the first [[nonprofit corporation]] designated agency to file
 938 a notice prevails over any later [[corporation]] designated
 939 agency.
- 940 (8) Any [[unit]] MPDU purchased by the Commission, a government
 941 agency, or a designated agency under this subsection that is
 942 offered for [[sale]] resale within five years after [[initial]] original
 943 purchase must first be offered for sale to the Department at the
 944 [[initial]] purchase price paid by the Commission, government
 945 agency, or designated agency [[to the Department]] in accordance
 946 with Executive regulation. The Department may assign its right
 947 to purchase the MPDU to an eligible household or to a designated
 948 agency.
- 949 (b) Sale or rental to [[general public]] eligible households.
- 950 (1) Every [[moderately priced dwelling]] MPDU unit required under
 951 this Chapter must be offered to [[the general public]] eligible
 952 households for sale or rental to a good-faith purchaser or renter to
 953 be used for his or her own residence, except [[units]] MPDUs
 954 sold or rented under subsection (a) or offered for sale or rent with
 955 the assistance of, and subject to the conditions of, a subsidy under
 956 a federal, state or local government program, identified in
 957 [[regulations adopted]] [by the County Executive] [[under
 958 method (1)]] Executive regulation, whose purpose is to provide
 959 housing for [[persons of]] low or moderate income households.
- 960 (2) Before offering any [[moderately priced dwelling units]] MPDUs
 961 for sale or rent, the applicant must [[notify]] submit and receive

approval of an agreement notifying the Department of the proposed offering and the date on which the applicant will be ready to begin the marketing to eligible [persons] households. The [[notice]] agreement must set forth the number of [[units]] MPDUs offered, the bedroom mix, the floor area for each [[unit]] MPDU type, a description of the amenities offered in each [[unit]] MPDU and a statement of the availability of each [[unit]] MPDU for sale or rent, including information regarding any mortgage financing available to buyers of the designated [[unit]] MPDU. The applicant must also give the Department a vicinity map of the offering, a copy of the approved development, subdivision or site plan, as appropriate, and such other information or documents as the Director finds necessary. The Department must maintain a list of eligible households [persons of moderate income and] for sale MPDUs and, in accordance with procedures established by the County Executive, must notify eligible [persons] households of [[the offering]] sale or rental offerings.

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

- 989 (4) The Executive may by regulation establish a buyer and renter
990 selection system which considers household size, County
991 residency, employment in the County, and length of time since
992 the [[person]] household was certified for the MPDU program.
993 Each eligible [person] household must be notified of the
994 availability of any MPDU which would meet that [[person's]]
995 household's housing needs, and be given an opportunity to buy or
996 rent an MPDU during the priority marketing period in the order
997 of [[that person's]] their selection priority ranking.
- 998 (5) The priority marketing period for new [[units]] MPDUs ends not
999 less than 90 days after the initial offering date approved by the
1000 Department. The priority marketing period for resold or rerented
1001 [[units]] MPDUs ends not less than 60 days after the Department
1002 notifies the seller of the approved resale price or vacancy of the
1003 rental unit. The Department may extend a priority marketing
1004 period when eligible [persons] households are interested in
1005 buying or renting a unit.
- 1006 (6) Moderately priced dwelling units, except those built, sold, or
1007 rented under a federal, state, or local program designated by
1008 regulation, must not be offered for rent by an applicant during the
1009 priority marketing period, except in proportion to the market rate
1010 rental units in that subdivision as follows:
- 1011 (A) In a subdivision containing only single-family dwellings,
1012 the proportion of rental MPDUs must not exceed the
1013 proportion of market rate rental units to all market rate
1014 units.

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

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

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

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

Applicants must make a good-faith effort to enter into contracts with eligible [persons] households during the priority marketing period and for an additional period necessary to negotiate with

eligible [persons] households who indicate a desire to buy or rent an MPDU during that period.

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

- (8) An owner of an MPDU, except the Commission or a [[housing agency or nonprofit corporation designated by the Director]] government agency or designated agency, must not rent the [[unit]] MPDU to another party unless the Director finds sufficient cause to allow temporary rental of the [[unit]] MPDU under applicable regulations, which may include maximum rental levels. [Any MPDU owner who is allowed to rent a unit temporarily must agree to amend the applicable MPDU covenants to extend the control period for a time equal to the temporary rental period.]

- (9) Any rent obtained for an MPDU that is rented without the Director's authorization must be paid into the Housing Initiative Fund by the owner within 90 days after the Director notifies the owner of the rental violation. Any amount unpaid after 90 days is grounds for a lien against the [[unit]] MPDU [,]. [and the] The Director may obtain a judgment and record the lien or may

1069 reduce the resale price of the MPDU by the amount owed to the
 1070 Housing Initiative Fund, or pursue other remedies provided by
 1071 law.

- 1072 (10) An applicant must not sell or lease any [unit] MPDU without first
 1073 [obtaining a certificate of] obtaining a certificate of eligibility
 1074 from the prospective buyer or verifying the eligibility [from] of
 1075 the prospective [[buyer or]] lessee. [[A]] For sale MPDUs, a
 1076 copy of each certificate must be furnished to the Department and
 1077 maintained on file by the Department. Before the sale by an
 1078 applicant or by the Commission, [[or]] a government agency, or a
 1079 designated [[housing]] agency [[or nonprofit corporation]] to any
 1080 buyer of any MPDU who does not possess a certificate of
 1081 eligibility, the applicant, the Commission, or the agency, [[or
 1082 corporation]] must [[ask the Department]] determine whether
 1083 [[the certificates on file show that]] the proposed buyer had
 1084 previously [[bought]] owned another MPDU. [[A person]] The
 1085 proposed buyer must not [[buy a second MPDU unless]]
 1086 participate in the MPDU program a second time unless the
 1087 proposed buyer meets the household income criteria and no
 1088 longer owns an MPDU, and there is no first-time buyer [[is]]
 1089 qualified to buy that [[unit]] MPDU. The Director may waive
 1090 this restriction for good cause.

- 1091 (11) If an MPDU owner dies, at least one heir, legatee, or other person
 1092 taking title by will or by operation of law must occupy the
 1093 MPDU during the control period under this Section, or the owner
 1094 of record must sell the MPDU as provided in Section 25A-9.

1095 [(b) *Sale or rental to government agencies or nonprofit corporations.*]

- 1096 (1) In view of the critical, long-term public need for housing for
1097 families of low and moderate income, the Department, the
1098 Commission, or any other housing development agency or
1099 nonprofit corporation designated by the County Executive may
1100 buy or lease, for its own programs or programs administered by
1101 it, up to 40 percent of all MPDUs which are not sold or rented
1102 under any other federal, state, or local program. The Department
1103 or Commission may buy or lease up to 33 percent of the MPDUs
1104 not sold or rented under any other federal, state, or local program.
1105 Any other designated agency or corporation may buy or lease (A)
1106 any MPDU in the first 33 percent that HOC has not bought or
1107 leased, and (B) the remainder of the 40 percent. This option may
1108 be assigned to persons of low or moderate income who are
1109 eligible for assistance under any federal, state, or local program
1110 identified in regulations adopted by the Executive. The Executive
1111 must, by regulation, adopt standards and priorities for designating
1112 nonprofit corporations under this subsection. These standards
1113 must require the corporation to demonstrate its ability to operate
1114 and maintain MPDUs satisfactorily on a long-term basis.
- 1115 (2) The Department must notify the Commission or other designated
1116 agency or corporation promptly after receiving notice from the
1117 applicant under subsection (a) of the availability of MPDUs. If
1118 the Department, the Commission, or any other designated agency
1119 or corporation exercises its option, it must submit to the
1120 applicant, within 21 calendar days after the Department notifies
1121 the Commission under subsection (b), a notice of intent to
1122 exercise its option for specific MPDUs covered by this option.

Any MPDUs not bought or leased under this subsection must be sold or rented only to eligible persons under subsection (b) during the priority marketing period for eligible persons to buy or lease.

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

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

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

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

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

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

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

In determining the amount of the allowance for improvements under paragraph (2), the Director may disallow the value of [[improvements determined to be unnecessary for]] costs attributable solely to the maintenance and upkeep of the [[unit]] MPDU, or for luxury items. The resale price of an MPDU may be reduced if the physical condition of the unit reflects abnormal wear and tear because of neglect, abuse, or insufficient maintenance. Any personal property transferred in connection with the resale of an MPDU must [[be sold at its fair market

value]] not be included in the resale price of the MPDU. [In calculating the allowable resale price of an MPDU which was originally offered for rent, the Department must estimate the price for which the unit would have been sold if the unit had been offered for sale when it was first rented.] The Executive must establish procedures for calculating the allowable resale price of an MPDU under this subsection by method (1) regulation.

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

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

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

1203 (B) The Department may notify the MPDU owner that the
 1204 owner may sell the ~~[[unit]]~~ MPDU directly to any eligible
 1205 ~~[person]~~ household under the resale provisions of this
 1206 Chapter.

1207 (2) The Commission may purchase resale MPDUs in a particular
 1208 development only if it did not previously purchase its full
 1209 allotment of units at the initial offering. In no case may the
 1210 Commission own more than 33.3 percent of the MPDUs in a
 1211 particular development.

1212 (3) A resale MPDU may be offered for sale to ~~[[the general public]]~~
 1213 non-eligible households only after:

1214 (A) the priority marketing period expires; and

1215 (B) all eligible ~~[persons]~~ households who express an interest in
 1216 buying it have been given an opportunity to do so.

1217 ~~[[(3)]]~~ (4) The Executive by regulation may adopt requirements for
 1218 reselling MPDUs. The regulations may require a seller to submit
 1219 to the Department for approval:

1220 (A) a copy of the proposed sales contract~~[[, including a list and~~
 1221 ~~the price of any personal property included in the sale]]~~;

1222 (B) a signed copy of the settlement sheet; and

1223 (C) an affidavit signed by the seller and buyer attesting to the
 1224 accuracy of all documents and conditions of the sale.

1225 ~~[[(4)]]~~ (5) A transfer of an MPDU does not comply with this Chapter
 1226 until all required documents and affidavits have been submitted
 1227 to and approved by the Department.

1228 (c) *First sale after control period ends.*

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

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

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

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

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

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

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

(3) The Department and the Commission, in that order, may buy an MPDU at any time during the control period, and may resell the

1256 [[unit]] MPDU to an eligible [person] household. A resale by the
1257 Department or Commission starts a new control period.

1258 (4) The Commission and any partnership in which the Commission
1259 is a general partner need not pay into the Housing Initiative Fund
1260 any portion of the resale price of any MPDU that it sells.]

1261 (d) [[*Initial*]] Original and later rent controls. Unless previously sold under
1262 subsection (c)(1), MPDUs built or offered for rent under this Chapter
1263 must not be rented for 99 years after the original rental at a rent greater
1264 than that established by Executive regulations. Procedures for original
1265 rentals of MPDUs are described in Section 25A-8. [[Any]] After the
1266 original rental, any MPDU (other than those built, sold, or rented under
1267 any federal, state, or local program offered by the Commission) offered
1268 for rent during the control period must be offered exclusively for 60
1269 days to one or more eligible [persons] households, as determined by the
1270 Department, for use as that [[person's]] household's residence, and to
1271 the Commission. The Commission may assign its right to rent such
1272 [[units]] MPDUs to [[persons of]] low or moderate income households
1273 who are eligible for assistance under any federal, state, or local program
1274 identified in Executive regulations.

1275 (e) *Foreclosure or other court-ordered sales*. If an MPDU is sold through a
1276 foreclosure or other court-ordered sale, all MPDU covenants must be
1277 released, and a payment must be made to the Housing Initiative Fund as
1278 follows:

1279 (1) If the sale occurs during the control period, any amount of the
1280 foreclosure sale price which exceeds the total of the approved
1281 resale price under subsection (a), reasonable foreclosure costs,
1282 and liens [[filed under the Maryland Contract Lien Act]] recorded

against the MPDU among the land records, must be paid to the Housing Initiative Fund. If the remaining balance under the original first deed of trust or mortgage exceeds the resale price under subsection (a), then the difference between the foreclosure sales price and the balance of the original first deed of trust (plus reasonable foreclosure costs) must be paid to the Fund.

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

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

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

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

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

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

1309 (h) *Compliance.* The County Executive must adopt regulations to promote
 1310 compliance with this section and prevent practices that evade controls
 1311 on rents and sales of MPDUs.

1312 * * *

1313 **25A-12. Annual report.**

1314 Each year by March 15 the Director must report to the Executive and Council,
 1315 for the previous calendar year:

- 1316 (a) the number of MPDUs approved and built;
- 1317 (b) each alternative payment agreement approved under Section 25A-5A or
 1318 alternative location agreement approved under Section 25A-5B, and the
 1319 location and number of MPDUs that were involved in each agreement;
- 1320 (c) [each approval of a different rent for a high-rise rental unit under
 1321 Section 25A-7(b)(1)] each land transfer completed under Section 25A-
 1322 5(h); and
- 1323 (d) the use of all funds in the Housing Initiative Fund that were received as
 1324 a payment under Section 25A-5A.

1325 * * *

1326 **Sec. 2. Regulations.** The County Executive must submit the regulations
 1327 required by Sections 25A-5, 25A-7, 25A-8, and 25A-9, as amended by this Act, to
 1328 the Council for approval not later than September 15, 2018.

1329 **Sec 3. Effective Date.** This Act takes effect on November 1, 2018, and
 1330 applies to any submission or application under Section 25A(5)(a) made on or after
 1331 that date.

LEGISLATIVE REQUEST REPORT

Bill 34-17

Housing – Moderately Priced Dwelling Units (MPDUs) – Amendments

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