

Bill No. 38-17  
Concerning: Housing – Moderately Priced Dwelling Units (MPDUs) – Requirement to Build  
Revised: 07/24/2018 Draft No. 6  
Introduced: November 14, 2017  
Enacted: July 24, 2018  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Vice-President Riemer  
Co-Sponsor: Councilmember Katz

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**AN ACT** to:

- (1) require a minimum rate of MPDUs to be constructed for certain new residential development; and
- (2) generally amend the laws governing moderately priced housing

By amending

Montgomery County Code  
Chapter 25A, Housing – Moderately Priced  
[[Section]] Sections 25A-5 and 25A-12

<b>Boldface</b>	<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. Section 25A-5 and 25A-12 [[is]] are amended as follows:**

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

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

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

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

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

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

26          (b) An applicant for an approval or permit identified in subsection (a) who  
 27          proposes development of between 11 and 19 dwelling units is not

28 required to provide MPDUs, but must make a payment to the Housing  
 29 Initiative Fund, as provided by regulation.

30 (c) In calculating whether a development contains a total of 20 or more  
 31 dwelling units for the purposes of this Chapter, the development  
 32 includes all land at one location in the County available for building  
 33 development under common ownership or control by an applicant,  
 34 including land owned or controlled by separate business entities in  
 35 which any stockholder or family of the stockholder owns 10 percent or  
 36 more of the stock. An applicant must not avoid this Chapter by  
 37 submitting piecemeal applications or approval requests for subdivision  
 38 plats, site or development plans, floating zone plans, or building  
 39 permits. Any applicant may apply for a preliminary plan of subdivision,  
 40 site or development plan, floating zone plan, record plat, or building  
 41 permit for fewer than 20 dwelling units at any time; but the applicant  
 42 must agree in writing that the applicant will comply with this Chapter  
 43 when the total number of dwelling units at one location reaches 20 or  
 44 more.

45 (d) The minimum number of MPDUs required under this Chapter, as a  
 46 percentage of the total number of dwelling units at that location, not  
 47 counting any workforce housing units built under Chapter 25B, is:

48 (1) for development in [[an MCPS High School Service Area with an  
 49 eligibility rate for free and reduced meals of 15 percent or less]] a  
 50 Planning Area designated by the Planning Board in which at least  
 51 45 percent of the United States Census Tracts have a median  
 52 household income of at least 150 percent of the County-wide  
 53 median household income, at the time the [[applicant submits a  
 54 preliminary plan of subdivision]] Planning Board accepts as

55 complete the applicant’s application or plan under subsection (a),  
 56 15 percent; or  
 57 (2) for any other development subject to this Chapter, 12.5 percent.  
 58 The Planning Board must update the Planning Area designations under  
 59 this subsection at least annually.

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

- 64 (1) a specific number of MPDUs must be constructed on an  
 65 approved time schedule;
- 66 (2) in subdivisions with single-family dwelling units, each MPDU  
 67 must have three or more bedrooms, unless this requirement is  
 68 waived by the Director in a subdivision with only two-bedroom  
 69 market rate units;
- 70 (3) in subdivisions with multi-family dwelling units, the bedroom  
 71 mix of the MPDUs must match the bedroom mix of the market-  
 72 rate units in the subdivision unless the Director approves an  
 73 MPDU agreement that does not increase the number of MPDUs  
 74 required, but approximates the total floor area for the MPDUs  
 75 required, and alters the bedroom mix of the MPDUs or the  
 76 number of MPDUs; and
- 77 (4) in subdivisions with both single-family and multi-family  
 78 dwelling units, the ratio of single-family MPDUs to total MPDUs  
 79 must not be less than the ratio of market-rate single-family units  
 80 to total market-rate units in the subdivision, unless the Director  
 81 finds that:

- 82 (A) offering more multi-family MPDUs in that subdivision
- 83 would advance the purpose of the County housing policy
- 84 and the objectives of any applicable land use plan, be
- 85 consistent with local housing market conditions, and avoid
- 86 excessive mandatory condominium or homeowners’
- 87 association fees or other costs that would reduce the
- 88 affordability of sale MPDUs; and
- 89 (B) if rental MPDUs are proposed, the applicant has
- 90 demonstrated that it is qualified to manage rental housing.

91 ~~[(e)]~~(f) When a development of 20 units or more at one location is in a  
92 zone where a density bonus is allowed under Chapter 59; and

- 93 (1) is covered by a plan of subdivision;
- 94 (2) is covered by a plan of development, site plan, or floating zone
- 95 plan; or
- 96 (3) requires a building permit to be issued for construction,
- 97 the required number or residential floor area of MPDUs is a variable
- 98 percentage that is not less than a base requirement of 12.5~~[[%]]~~ percent
- 99 or the higher base requirement under subsection (d), of the total number
- 100 of dwelling units or residential floor area at that location, not counting
- 101 any workforce housing units built under Chapter 25B. The Council
- 102 may establish a higher base requirement, up to 15~~[[%]]~~ percent of the
- 103 total number of dwelling units or residential floor area at a location, as
- 104 part of a master plan approval. The required number or residential floor
- 105 area of MPDUs must vary according to the amount by which the
- 106 approved development exceeds the normal or standard density for the
- 107 zone in which it is located. Chapter 59 may permit bonus densities over
- 108 the presumed base density where MPDUs are provided.

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

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

118            ~~[(g)]~~(h)        (1)    An applicant may satisfy this Section by obtaining  
 119                            approval from the Director to transfer land to the County before  
 120                            applying for a building permit.

121                            (2)    The Director may only approve a transfer of land under this  
 122                            subsection after making a written determination that the value of  
 123                            the land transferred is at least equal to the value of the MPDUs  
 124                            not constructed by the applicant.

125                            (3)    The Executive must establish procedures for transferring land  
 126                            under this subsection by method (1) regulation.

- 127                            (4)    When land is transferred to the County under this Section:
  - 128                            (A)    the land must be used to produce or preserve MPDUs; or
  - 129                            (B)    if sold, proceeds from the sale must be allocated to the  
 130                            Affordable Housing Acquisition and Preservation CIP  
 131                            portion of the Housing Initiative Fund; and
  - 132                            (C)    the Director must notify the Council within 30 days of  
 133                            approving a land transfer under this subsection.

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

136 binding execution of contracts conveying real property. If the applicant  
137 is a business entity, the agreements must be signed by the authorized  
138 signatories of the business entity individually and on behalf of the  
139 business entity. Partnerships, associations or business entities must not  
140 evade this Chapter through voluntary dissolution. The agreements may  
141 be assigned if the County approves, and if the assignees agree to fulfill  
142 the requirements of this Chapter.

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

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

162 (1) MPDUs are built along with or before other dwelling units;

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

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

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

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

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

- 179 (1) The restrictions of this Chapter run with the land for the entire
- 180 period of control;
- 181 (2) The County may create a lien to collect:
  - 182 (A) that portion of the sale price of an MPDU which exceeds
  - 183 the approved resale price; and
  - 184 (B) that portion of the foreclosure sale price of an MPDU
  - 185 which exceeds the approved resale price; and
- 186 (3) The covenants will bind the applicant, any assignee, mortgagee,
- 187 or buyer, and all other parties that receive title to the property.
- 188 These covenants must be senior to all instruments securing
- 189 permanent financing.



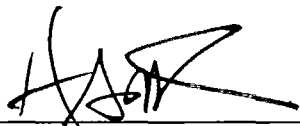




243 as complete before October 31, 2018, applies to any submission or  
244 application under Section 25A(5)(a) accepted as complete on or after  
245 that date.

246 (b) Unless an applicant elects to be reviewed under the standards and  
247 procedures of Chapter 25A in effect on or after October 31, 2018, any  
248 such application accepted as complete or approved before October 31,  
249 2018 and any sketch plan accepted as complete before October 31,  
250 2018, must be approved or amended in a manner that satisfies Chapter  
251 25A as it existed on October 30, 2018. The approval of any of these  
252 applications, or amendments to these applications, will allow the  
253 applicant to proceed through any other required application or step in  
254 the process within the time allowed by law or plan approval, under the  
255 standards and procedures of Chapter 25A in effect on October 30, 2018.

*Approved:*



*July 26, 2018*

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Hans D. Riemer, President, County Council

Date

*Approved:*

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Isiah Leggett, County Executive

Date

*This is a correct copy of Council action.*

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Megan Davey Limarzi, Esq., Clerk of the Council

Date