Agenda Item 15A
December 5, 2017
Public Hearing

MEMORANDUM

December 1, 2017

TO: County Council

FROM: Josh Hamlin, Legislative Attorney

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

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 Planning, Housing and Economic Development Committee worksession will be scheduled at a later date.

Bill 34-17 would:

- clarify certain provisions of law related to moderately priced dwelling units (MPDUs);
- amend certain provisions of law related to the satisfaction of MPDU requirements; and
- amend certain provisions of law related to the sale and rental of MPDUs

Background

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

The most recent substantial amendments to the MPDU law were made in 2004.[1] The 2004 amendments extended the control period for for-sale MPDUs from 10 to 30 years, and for rental MPDUs from 20 years to 99 years. The amendments also allowed different income eligibility

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

standards in recognition of the higher cost of construction of certain types of housing, and increased the number of developments required to provide MPDUs by lowering the base requirement from any development with 35 or more units to 20 or more units. Additional requirements and structure on the approval alternative payments made to the Housing Initiative Fund in lieu of constructing MPDUs were also added. In 2007, the Office of Legislative Oversight issued Report No. 2007-9, A Study of Moderately Priced Dwelling Unit Program Implementation.[2]

Key components of Bill 34-17 include: clarification of existing provisions of the law; requiring developments of less than 20 homes to make a payment to the Housing Initiative Fund; broadening the authority of the Director of the Department of Housing and Community Affairs to accept payments into the Housing Initiative Fund in lieu of including MPDUs in a development, when it serves the goal of increasing the availability of affordable housing; and increasing the flexibility of the Director in determining MPDU obligations to better serve the demands for affordable units. A table showing the specific changes to existing law included in the Bill is at ©49-50.

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

Bill No. 34-17
Concerning: Housing – Moderately Priced Dwelling Units (MPDUs) - Amendments
Revised: 10/31/2017 Draft No. 6
Introduced: October 31, 2017
Expires: May 1, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Floreen
Co-Sponsor: Councilmember Rice

AN ACT to:

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

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

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

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

Sec 1. 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 are amended as follows:

25A-1. Legislative findings.

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

(1) The County is experiencing a rapid increase in residents of or approaching retirement age, with consequent fixed or reduced incomes; young adults of modest means forming new households; government employees in moderate income ranges; and mercantile and service personnel needed to serve the expanding industrial base and population growth of the County;

(2) A rising influx of residents into higher priced housing in the County with resultant demands for public utilities, governmental services, and retail and service businesses has created an increased need for housing for persons of low and moderate income who are employed in the stated capacities;

(3) The supply of moderately priced housing was inadequate in the mid-1960's and has grown since then at a radically slower pace than the demand for such housing;

(4) The inadequate supply of housing in the County for persons of low and moderate income results in large-scale commuting from outside the County to places of employment within the County, thereby overtaxing existing roads and transportation facilities, significantly contributing to air and noise pollution, and engendering greater than normal personnel turnover in the businesses, industry and public agencies of the County,

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

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

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

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

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

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

(10) Rapid regional growth and a strong housing demand have combined to make land and construction costs very high and to have an effect on the used housing market by causing a rise in the prices of those units;

(11) In past years efforts have been made to encourage moderately priced housing construction through zoning incentives permitting greater density and through relaxation of some building and subdivision regulations. Very little moderately priced housing had resulted; and

(12) In some instances existing housing for persons of low and moderate income is substandard and overcrowded.]

(a) The County enacted the Moderately Priced Dwelling Unit (MPDU) law in 1973 to:

(1) help meet the goal of providing a full range of housing choices for all incomes, ages and household sizes;

(2) meet the existing and anticipated need for low and moderate-income housing;

(3) ensure that that moderately priced housing is dispersed throughout the County consistent with the General Plan and area master plans; and

(4) encourage the construction of moderately priced housing by allowing optional increases in density including the MPDU density bonus to offset the cost of construction.

(b) In 2004, the County Council amended the MPDU program to:

(1) Reduce the loss of MPDUs by extending the control period for for-sale MPDUs from 10 years to 30 years and for rental MPDUs from 20 years to 99 years;

(2) Allow different income eligibility standards in recognition of the higher cost of construction of certain types of housing;

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

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

(c) In 2017, 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 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 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 Area.

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

25A-2. Declaration of public policy.

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

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

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

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

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

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

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

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

(1) encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes ages, lifestyles, and physical capabilities at appropriate locations and densities and to implement policies to bridge housing affordability gaps;

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

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

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

(5) require all subdivisions of 20 or more dwelling units include a minimum number of moderately priced 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.

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 as estimated by the U.S. Department of Housing and Urban Development.

[(a)] *Applicant* means any person, firm, partnership, association, joint venture, corporation, 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) of the U.S. Department of Labor for the Washington metropolitan area, 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 25A-9. The control period is 30 years for sale units and 99 years for rental units, and begins on the date of initial sale or rental. If a sale MPDU is sold to an eligible [person] household within 30 years after its initial sale, and if (in the case of a sale MPDU that is not bought and resold by a government agency) the unit was originally offered for sale after March 1, 2002, the unit 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.

[(i)] *Date of original rental* means the date the first lease agreement for a moderately priced dwelling unit takes effect.

[(j)] *Department* means the Department of Housing and Community Affairs.

[(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, 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] 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.

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

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

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

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

[(r)] *Optional density bonus provision* means any increase in density under Chapter 59, in a zoning classification that allows residential 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.

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

[(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.

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, 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 size and number of dependents.

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

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

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

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

(f) To be eligible to buy or rent an MPDU other than an age-restricted unit, a person and members of that person's 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) 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.

(b) An applicant for an approval or permit identified in subsection (a) who proposes development of fewer than 20 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 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 or more bedrooms; 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] of market-rate efficiency [and one-bedroom] units [respectively] [bear] to [the] total [number of] market-rate units in the subdivision.

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

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

(1) is covered by a plan of subdivision;

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

(3) requires a building permit to be issued for construction, the required number of [moderately priced dwelling units] MPDUs is a variable percentage that is not less than a base requirement of 12.5% of the total number of dwelling units or equivalent floor area at that location, not counting any workforce housing units built under Chapter 25B. The Council may establish a higher base requirement, up to 15% of the total number of dwelling units

or equivalent floor area at a location, as part of a master plan approval. The required number of MPDUs must vary according to the amount by which the approved development exceeds the normal or standard density for the 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 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:

Achieved Density Bonus	***MPDUs Required***	***Achieved Density Bonus***	***MPDUs Required***
Zero	[12.5%] Base requirement	Up to 11%	[13.6%] Base plus 1.1%
Up to 1%	[12.6%] Base plus 0.1%	Up to 12%	[13.7%] Base plus 1.2%
Up to 2%	[12.7%] Base plus 0.2%	Up to 13%	[13.8%] Base plus 1.3%
Up to 3%	[12.8%]	Up to 14%	[13.9%]

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

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

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

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

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

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

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

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

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

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

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

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

(2) [If an applicant transfers land to the County under this subsection and no funds have been appropriated to reimburse the applicant for his finishing costs, the County may accept from the applicant undeveloped land rather than finished lots, or the applicant may transfer the finished lots to the County without requiring payment 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.]

[(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, the agreements must be signed by the principal officers of the corporation individually and on behalf of the corporation. Partnerships, associations or corporations 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. 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. 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 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 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.

[(l)](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 is for sale;

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

(iii) The Department has notified the owner of the unit'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, 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.

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 MPDUs in the proposed subdivision, 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]

the public benefit of 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 must be calculated as provided in method (1) regulation.

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

(A) notice is provided to the Council; and

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

[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.]

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 the number of MPDUs provided as a result of the development.

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

(1) build, or convert from non-residential use, the required number 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) Each agreement under this Section must include a schedule, binding on the applicant, for timely completion or acquisition of the required number of MPDUs.

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, the requisite percentage and number of MPDUs must apply to the total number of dwelling units 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 must not be sold or rented at prices or rents that exceed the maximum prices or rents established under this Section.

(a) *Sales.*

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

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

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

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

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

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

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

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

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

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

(b) *Rents.*

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

rental units[, 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.

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

(1) The Department, the Commission, or any other housing development agency or nonprofit corporation designated by the County Executive 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 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 are clients of the Department of Health and Human Services or to persons of low or moderate income 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 under this subsection. These standards must require the corporation to demonstrate its ability to operate and maintain MPDUs satisfactorily on a long-term basis.

(5) The Department must notify the Commission 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 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 (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 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.

(7) If more than one government agency or nonprofit corporation 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;

(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.

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

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

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

(2) Before offering any moderately priced dwelling units, the applicant must notify 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 must set forth the number of units offered, the bedroom mix, the floor area for each unit type, a description of the amenities offered in each unit and a statement of the availability of each unit for sale or rent, including information regarding any mortgage financing available to buyers of the designated unit. 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], in accordance with procedures established by the County Executive, must notify eligible [persons] households of the offering.

(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.

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

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

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

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

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

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

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

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

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

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

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

(7) Every buyer or renter of an MPDU must occupy the unit 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 as his or her primary residence during the control period. The Director may require an owner who does not occupy the unit as his or her primary residence to offer the unit 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, must not rent the unit to another party unless the Director finds sufficient cause to allow temporary rental of the unit 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[,]. [and the] The Director may obtain a judgment and record the lien or may reduce the resale price of the MPDU or pursue other remedies provided by law.

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

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

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

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

(1) In view of the critical, long-term public need for housing for families of low and moderate income, the Department, the Commission, or any other housing development agency or nonprofit corporation designated by the County Executive 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. The Department or Commission may buy or lease up to 33 percent of the MPDUs not sold or rented under any other federal, state, or local program. Any other designated agency or corporation may buy or lease (A) any MPDU in the first 33 percent that HOC has not bought or leased, and (B) the remainder of the 40 percent. This option may be assigned to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified in regulations adopted by the Executive. The Executive must, by regulation, adopt standards and priorities for designating nonprofit corporations under this subsection. These standards must require the corporation to demonstrate its ability to operate and maintain MPDUs satisfactorily on a long-term basis.

(2) The Department must notify the Commission or other designated agency or corporation promptly after receiving notice from the applicant under subsection (a) 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 subsection (b), 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 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 original selling price equal to the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index;

(2) [The fair market value of] an allowance for improvements made to the unit 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 seller, but which will be paid by the initial buyer for the benefit of the later buyer; and

(4) [A] a reasonable sales commission if the unit 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 the maintenance and upkeep of the unit. 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. [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 60 days to the Department and the Commission, in that order. The Department or the Commission may buy a unit when funds are available. The Department may buy a unit when the Director finds that the Department's or a designated agency or corporation's buying and reselling the unit will increase opportunities for eligible [persons] households to buy the unit. If the Department or the Commission does not buy the unit, the Department must notify eligible [persons] households of the availability of a resale MPDU. The unit 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 may buy it at the approved resale price.

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

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

(A) the priority marketing period expires; and

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

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

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

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

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

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

(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 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 original selling price;

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

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

(D) 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 unit to an eligible [person] household. A resale by the Department or Commission starts a new control period.

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

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

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

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

(1) If the sale occurs during the control period, any amount of the foreclosure sale price which exceeds the total of the approved resale price under subsection (a), reasonable foreclosure costs, and liens filed under the Maryland Contract Lien Act, 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 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 re-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.

(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.

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

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25A-12. Annual report.

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

(a) the number of MPDUs approved and built;

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

(c) [each approval of a different rent for a high-rise rental unit under Section 25A-7(b)(1)] each land transfer completed under Section 25A-5(h); and

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

* * *

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

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

Lines	Description of Changes
62-125	Revise Legislative Findings
155-176	Revise Declaration of Public Policy
180-184, 236-240, 251-253	Definitions: Add "age-restricted unit" and "area median income;" amend "eligible person" to be "eligible household;" provide that County "moderate income" must not be less than HUD "low income"
270-287	Expressly tie MPDU eligibility to household income
292-294	Expressly provide that tenant may remain in MPDU for lease term notwithstanding change in eligibility
295-297	Expressly provide that MPDU purchaser may retain ownership notwithstanding change in eligibility
298	Eliminate the prohibition on residential property ownership for the prior five years ***for age-restricted units***
312-323	Require a payment to the HIF for housing developments with less than 20 units.
340	Delete requirement that written MPDU agreement be submitted *with the application for a permit* (it is still required, just not at the time of permit application).
348-352	Delete MPDU agreement requirement that one-bedroom MPDUs not exceed the ratio of one-bedroom market rate units
354-357	Permit the Director to approve an MPDU agreement that is based on the floor area or square footage of required units, but alters the bedroom mix of units or number of units.
364-371, 380-381, Table on pp. 16-17	Add language to clarify that the Council may adjust the base requirement for MPDUs from 12.5% to 15% as part of a master plan approval. County-wide base requirement will remain at 12.5%.
381-384	Add requirement that to receive density bonus, applicant must provide at least one more MPDU than would have been required if there was no density bonus.
401-404	Require that, when the Director allows fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location, the applicant must make a payment to the Housing Initiative Fund, as provided by regulation, based on the square footage of MPDU units that would otherwise have been required.
416, 418-419	Clarify references to §25A-5A and §25A-5B
420-472	Modify language to allow DHCA Director to accept a land transfer if its value is equal to the value of the MPDU that are not constructed.
507-509	Require MPDU agreement provide for any requirement of age-restricted units to be offered for sale to be satisfied by a payment to the Housing Initiative Fund under Section 25A-5A(b).
526-527	Prohibit an applicant from establishing a condominium or homeowners' association consisting solely of MPDUs.

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