



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Moderately Priced Dwelling Unit Program	Number 7-22
Originating Department Department of Housing and Community Affairs	Effective Date

Department of Housing and Community Affairs
Montgomery County Regulation on:

HIF PAYMENTS FOR DEVELOPMENTS OF 11-19 UNITS
MODERATELY PRICED HOUSING
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Issued by: County Executive
Regulation No. 7-22

Authority: Code Section: 25A-5(b) and 25A-10(b)
Supersedes: 11-18AM

Council Review: Method One (1) Under Code Section 2A-15
Register Vol. 39, No. 7

Comment Deadline: July 31, 2022

Effective Date: _____

Sunset Date: None

SUMMARY: This Executive Regulation requires that Applicants enter into an agreement with DHCA for rental and for-sale developments with 11-19 dwelling units and provides the calculation method for payments to the Housing Initiative Fund (HIF) for such developments.

ADDRESSES: Information and copies of this regulation are available from the Department of Housing and Community Affairs (Department), Division of Housing, 1401 Rockville Pike, 4th Floor, Rockville, MD 20852

STAFF CONTACT: Somer Cross, Manager, Affordable Housing Programs Section,
email: somer.cross@montgomerycountymd.gov

BACKGROUND: Section 25A-5(b) of the Montgomery County Code, 2014, as amended, establishes that
INFORMATION developments with 11 to 19 dwelling units are not required to provide MPDUs, but must make a payment to the Housing Initiatives Fund (HIF), as provided by regulation. This Regulation provides the HIF payment calculation for rental units in developments with 11-19 rental units and the method of notice to ensure collection of the HIF payments for for-sale developments.



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COMCOR 25A.00.02. Moderately Priced Dwelling Unit Program

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25A.00.02.01 Definitions

- 1.1 Terms not otherwise defined herein have the meaning provided in Chapter 25A of the Montgomery County Code, 2014, as amended (“Chapter 25A” or “Code”).
- 1.2 “Agreement to Build” or “MPDU Agreement to Build” means an agreement executed between an Applicant and the Department to construct MPDUs in a development as required by Section 25A-5 and this regulation.
- 1.3 “Alternative Compliance Agreement” means an agreement executed between an Applicant and the Department when the Department approves an Alternative Compliance Measure that satisfies some or all of [an] a MPDU requirement in accordance with Chapter 25A. The Alternative Compliance Agreement may either take the place of or supplement an Agreement to Build.
- 1.4 “Alternative Compliance Measure” means a method of providing MPDUs other than the standard requirement, including Land Transfers, Alternative Locations, and Alternative Payments to the Housing Initiative Fund.
- 1.5 “Alternative Location” means that an Applicant provides some or all required MPDUs at another location in accordance with Section 25A-5B and this regulation.
- 1.6 “Alternative Payment” means that an Applicant provides a payment to the Housing Initiative Fund instead of providing some or all required MPDUs in accordance with Section 25A-5A and this regulation.
- 1.7 “AMI” means Area Median Income as defined in Chapter 25A.
- 1.8 “Apartment Complex” means a multi-family building or group of buildings within a development managed by the same management company.
- 1.9 “Applicant” means any person, firm, partnership, association, joint venture, business entity, or any other entity or combination of entities, and any transferee of all or part of the land at one location, that constructs MPDUs or offers MPDUs for sale or rental.



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- 1.10 “Certificate of Eligibility” or “Certificate” means a certificate which is effective for a specified period of time, which is issued by the Department to households meeting the Program’s minimum eligibility criteria to purchase [an] a MPDU, and which enables them to be placed on an eligibility list maintained by the Department.
- 1.11 “Control Period” means the time [an] a MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits as provided in Sections 25A-8 and 25A-9 of the Code.
- (a) For [an] a MPDU originally offered for sale or rent before March 1, 2002, the Control Period for sale MPDUs is 10 years from the date of the original sale; for rental MPDUs the Control Period is 20 years from the date of original rental.
 - (b) For [an] a MPDU originally offered for sale in an Annual Growth Policy (AGP) policy area before March 1, 2002, the Control Period for sale MPDUs is 15 years from the date of the original sale.
 - (c) For [an] a MPDU originally offered for sale or rent between March 1, 2002 and March 31, 2005, the Control Period for sale MPDUs is 10 years from the date of the original settlement date, and 10 years from the settlement date of each subsequent sale if such sale occurs during the existing Control Period; for rental MPDUs the Control Period is 20 years from the date of original rental.
 - (d) For [an] a MPDU originally offered for sale or rent on or after April 1, 2005, the Control Period for sale MPDUs is 30 years from the date of the original sale, and 30 years from the settlement date of each subsequent sale if such sale occurs during the existing Control Period; the Control Period for rental MPDUs is 99 years from the date of original rental.
- 1.12 “Eligible Certificate Holder” or “Certificate Holder” means a household that has been issued a Certificate of Eligibility by the Department.
- 1.13 “Finished Lot” means one which has been prepared in accordance with the subdivision requirements set forth in Chapter 59 and is ready for the construction of a dwelling unit without major additional on-site, off-site, or public space preparation or where a bond has been provided indemnifying against the Applicant’s failure to complete the public improvements.
- 1.14 “Garden Apartment” means a multi-family dwelling unit structure that is four (4) stories or fewer in height.



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- 1.15 “Government Agency” means the Department of Health and Human Services (DHHS) and any other government agency that is approved to purchase or lease MPDUs according to the procedures for approving Designated Agencies in Section 25A.00.02.07.1.
- 1.16 “High Rise” means any residential dwelling unit located in a multi-family residential or mixed-use building that is higher than four (4) stories.
- 1.17 “Land Transfer” means that an Applicant provides land to the County in lieu of providing some or all required MPDUs in accordance with Section 25A-5(g) and this regulation.
- 1.18 “Moderately Priced Housing Law (MPH Law)” means Chapter 25A of the Montgomery County Code, 2014, as amended.
- 1.19 “Mortgage Constant” means the annual debt service amount per dollar of mortgage loan, including both principal and interest payments.
- 1.20 “MPDU Covenants” or “Covenants” means a Declaration of Covenants recorded in the Land Records of Montgomery County subjecting the MPDUs on a property to the restrictions required by Chapter 25A.
- 1.21 “MPDU Owner” means the persons whose names are on the title to [an] a MPDU.
- 1.22 “Offering Agreement” or “MPDU Offering Agreement” means an agreement executed between an Applicant and the Department to offer MPDUs in a development for sale or rental as required by Section 25A-8 and this regulation.
- 1.23 “Program” refers to the Moderately Priced Dwelling Unit program administered by the Department. “Purchase Program” means that part of the Program that concerns for-sale MPDUs, and “Rental Program” means that part of the Program that concerns rental MPDUs.
- 1.24 “Purchase Price” means consideration as defined in Section 52-29(a) of the Code.
- 1.25 “Purchaser’s or Renter’s Agreement” means an agreement form provided by the Department that the purchaser or renter of [an] a MPDU signs stating that the household must occupy the MPDU in accordance with the provisions of Chapter 25A and the MPDU Covenants.



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1.26 “Reoccupancy Certificate” means a form signed by [an] a MPDU Owner who has been granted permission by the Department to temporarily rent [an] a MPDU certifying that the Owner will either reoccupy the MPDU or will sell the MPDU in accordance with Chapter 25A at the end of the approved temporary rental period.

1.27 “Voluntary Rent Guidelines” is defined in Section 29-53 of the Code.

25A.00.02.02 Eligibility for Purchasing or Renting MPDUs and Occupancy Requirements

2.1 Application and Certification.

- (a) A household that wants to purchase [an] a MPDU must apply to the Department to be certified as eligible for participation in the Purchase Program. To determine whether a household meets the minimum eligibility requirements, the following information and documentation must be provided to the Department: a copy of the most recently filed federal income tax return and W-2 forms, copies of divorce or separation agreements (if applicable or if most recent tax return was filed as “married”), copies of the two most recent employment pay check stubs from each current employer, and a mortgage pre-qualification letter from a lender approved by the Department in the format required by the Department. All the required information and documentation listed above must be provided for every wage earner in the household. The Department reserves the right to require certified copies of a household’s United States Internal Revenue Service (IRS) tax forms.
- (b) A household that wants to rent [an] a MPDU in the Rental Program must apply directly to Apartment Complexes that include rental MPDUs. To determine whether a household meets the minimum eligibility requirements and has sufficient income to rent [an] a MPDU in the Apartment Complex, the Applicant must obtain and review the following information and documentation from the household: copies of the two most recently filed federal income tax returns and W-2 forms, copies of divorce or separation agreements (if applicable or if most recent tax return was filed as “married”), and copies of the two most recent employment pay check stubs from each current employer for every wage earner in the household. The Applicant may also require the household to submit other information typically collected for market-rate households. Prior to leasing any MPDUs, an Applicant must obtain training from the Department about the steps and documentation required to find a household eligible to participate in the Rental Program. The Department must annually notify Applicants of the



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applicable income limits and other eligibility criteria. Applicants must provide the Department with the documentation required in Section 25A.00.02.06.5(b).

- (c) Households who do not have the required federal tax information because they did not live in the United States at any time during the applicable time period must supply a copy of their passport and the passports of each household member indicating their dates of entry and exit to the United States. In addition, these households must supply evidence from the IRS verifying that they have not filed federal income taxes in the previous one (1) or two (2) years, whichever is applicable.
- (d) A household that includes a person who is self-employed must demonstrate that they meet the Program’s income guidelines by providing evidence and documentation in a form acceptable to the Department.
- (e) Based on demand, the Department may at times set defined time periods during which applications for sales certificates will be accepted.
- (f) Within 30 days of receiving a complete application, the Department will issue households determined to be eligible to purchase [an] a MPDU a non-transferable Certificate of Eligibility which contains an expiration date. The expiration date for Certificates of Eligibility is 12 months from the date of approval of the Certificate. In order for a Certificate Holder to continue to be eligible to participate in the Purchase Program, the Certificate Holder must apply to renew the Certificate of Eligibility no earlier than 60 days prior to the expiration date, and must demonstrate that their household continues to meet all eligibility requirements in effect at the time of renewal.

2.2. Requirements for Eligibility – Income. To determine a household’s eligibility for the Program, except in circumstances described in subsection (d) below, the Department (for sales MPDUs) or the Applicant (for rental MPDUs) must determine that the household’s total income is at least equal to the approved minimum and does not exceed the approved maximum income limits for sale or rental housing in effect at that time. The Department may adopt uniform policies for determining how household annual gross income must be calculated.

- (a) Maximum Income – MPDU Sales. The Director of the Department must annually set the maximum incomes allowed under the Rental and Purchase Programs according to the following procedures. The maximum income required to purchase [an] a MPDU or to rent a High-Rise MPDU is set at 70 percent of the AMI for a household size of four (4). The 70 percent figure for a household of four is then multiplied by the following adjustment factors to determine the



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maximum income allowed for various household sizes. The resulting figure is rounded to the nearest \$500.

Household Size	1	2	3	4	5	6	7	8
Adjustment Factor	.70	.80	.90	1.00	1.08	1.16	1.24	1.32

- (b) **Maximum Income – MPDU Rental.** The maximum income to rent [an] a MPDU in a Garden Apartment is set at 65 percent of the AMI for a household size of four (4). The 65 percent figure for a household of four is then multiplied by the following adjustment factors to determine the maximum income allowed for various household sizes. The resulting figure is adjusted to the nearest \$500.00.

Household Size	1	2	3	4	5	6	7	8
Adjustment Factor	.70	.80	.90	1.00	1.08	1.16	1.24	1.32

- (c) If the change in AMI from the preceding year is negative, the Director may either maintain the maximum income at the previous year’s level or adjust the maximum income by the percentage change in the Consumer Price Index for the preceding 12-month period.
- (d) At the time the new income limits are set each year, the Department shall compare the maximum income needed to purchase [an] a MPDU for a household size of one with the starting salary for a teacher (Bachelor’s degree) in the Montgomery County Public School System. If the Department determines that the maximum income figure under the Program would preclude the participation of a first year teacher in the school system, the Director may adjust the income limits accordingly to allow the participation of first year teachers.
- (e) **Minimum Annual Incomes.** Each year the Department may determine and set a minimum annual income for participation in the Program. If a minimum is set, it must be set at the minimum annual income needed to qualify for a mortgage to purchase [an] a MPDU, or to make a rental payment for [an] a MPDU, as determined by the Department.
- (f) Income is defined as the gross income received annually from all sources by all wage earners in a household. Sources of income include, but are not limited to, the following:

- (1) [wages] wages and salary;



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- (2) [Child] child support;
- (3) [Alimony] alimony;
- (4) [Interest] interest from savings and checking accounts;
- (5) [Dividends] dividends from stocks and bonds, and interest from certificates of deposit;
- (6) Social Security benefits;
- (7) Veterans Administration benefits;
- (8) [Overtime] overtime pay;
- (9) Unemployment insurance benefits;
- (10) [Bonus] bonus payments;
- (11) [Pension] pension and retirement payments;
- (12) Long-term Disability benefits;
- (13) [Any] any other annuities or stipends received; and
- (14) [Gifts] gifts from third parties, the value of which may be limited by Executive Order.

(g) When an Applicant fulfills the MPDU requirement for a particular development through the construction of housing under other federal, state, or specific local programs to assist low- and moderate-income households, the income limits and other requirements of that particular housing program apply rather than the requirements set forth herein during the term of the compliance period for that housing program.

2.3 **Special Income Exception for Conversion of Rental MPDUs to Condominiums.** A household that rents [an] a MPDU and lawfully occupies it at the time the MPDU is offered for sale must be offered to right-of-first refusal to purchase the MPDU regardless of the household’s income as long as the household qualifies for the financing necessary to purchase the MPDU, and the household was income-eligible at the time that the household first rented the MPDU. This right-of-first refusal is effective for 60 days



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from the date the household is given notice that the MPDU is to be offered for sale. If the household does not sign a contract and secure financing within the 60-day period, the MPDU must be offered to Eligible Certificate Holders.

- 2.4 Requirements for Eligibility – Restrictions on Ownership of Residential Property. To be eligible to buy or rent [an] a MPDU other than an age-restricted unit, members of a household must not have owned any residential property during the previous five (5) years[,] and can never have owned [an] a MPDU.
- 2.5 Requirements for Certificate of Eligibility. To be eligible to receive a Certificate of Eligibility to purchase [an] a MPDU, at least one adult member of the household must complete the following classes approved by the Department:
- (a) [A] a first-time homebuyer class;
 - (b) [An] a MPDU orientation seminar; and
 - (c) [An] a MPDU application session.
- 2.6 Occupancy Requirement for MPDUs.
- (a) Except for the Commission or Designated Agencies that purchase or lease MPDUs under Chapter 25A, MPDU renters and MPDU Owners must occupy the MPDU as their primary residence and must execute and submit to the Department a Purchaser's or Renter's Agreement Form provided by the Department, which certifies that the household must occupy the MPDU during the entire Control Period or until the MPDU is sold or is relinquished in accordance with the MPH Law and this regulation. If [an] a MPDU Owner dies, at least one heir, legatee, or other person taking title by will or by operation of law must occupy the MPDU as their primary residence during the Control Period in order to fulfill the occupancy requirements of this Section.
 - (b) Before [an] a MPDU Owner purchases other residential property during the Control Period, the owner must first sell the MPDU under the Purchase Program as specified in this regulation. Once the MPDU Owner has entered into a sales contract with a buyer for the MPDU and a settlement date has been scheduled, the MPDU Owner may enter into a sales contract for another property. When the renter of [an] a MPDU closes on another residential property, the renter must vacate the MPCU and may not rent another MPDU.



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- (c) MPDU Owners who are granted permission by the Department to temporarily rent their MPDUs must obtain a rental license from the Department, and must sign a lease with the tenant household. The MPDU Owner must use the appropriate model lease approved by the Department. The term of the lease must not exceed the time period granted by the Department as reflected in the Reoccupancy Certificate. Within 30 days of the date that the tenant household signs the lease, the MPDU Owner must provide the Department with a copy of the fully executed lease, a copy of the rental license, and the original of the Reoccupancy Certificate.
- (d) If [an] a MPDU Owner fails to occupy the MPDU as their primary residence and has not received written permission from the Director to rent or vacate the MPDU temporarily, the MPDU must be sold in accordance with Chapter 25A.

25A.00.02.03 Requirement to Provide MPDUs

3.1 Requirement for Payment to the Housing Initiative Fund.

- (a) An Applicant for an approval or permit identified in Section 25A-5(a) who proposes development of between 11 and 19 dwelling units is not required to provide MPDUs[,] but must make a payment to the Housing Initiative Fund [in the amount of] (HIF). An Applicant must complete a written HIF Payment Agreement and submit it to DHCA. Once the HIF Payment Agreement is approved by the Director and the County Attorney, the Applicant must submit the approved HIF Payment Agreement to the Department of Permitting Services (DPS) prior to obtaining building permits.
- (b) An Applicant subject to this regulation must make a payment to the Housing Initiative Fund calculated as follows:
 - (1) For sales units - one-half (0.5) percent of the Purchase Price of each dwelling unit, to be collected at settlement of each unit and forwarded to the County within three (3) business days of recordation of the deed. The payment must be accompanied by a copy of the signed settlement statement. A Covenant containing the Applicant's HIF payment requirement will be recorded in the Land Records of Montgomery County and each unit will be released from the operation of the Covenant upon the developer's payment of the HIF payment at the settlement of each unit.
 - (2) For rental units – one-half (0.5) percent of the estimated property value of the development once it is fully constructed based on a direct capitalization method appraised



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value of the development. To determine the appraised value, an appraisal must be completed at the cost of the developer and must be provided to DHCA to determine the amount of the HIF payment for the development. The amount due under this subsection must be paid to the County prior to the issuance of a Use and Occupancy permit by DPS.

- (3) Alternatively, the Applicant may provide MPDUs in the development in accordance with Chapter 25A.

3.2 Requirements of the Agreement to Build.

- (a) Once the Planning Board has set the MPDU requirements for the subdivision, an Applicant must enter into a written Agreement to Build with the Department in a form approved by the Department. The Agreement to Build must be executed before any building permits within the subdivision may be issued by [the Department of Permitting Services ([DPS])]. The Agreement to Build must contain at least the following information:

- (1) [The] the name of the subdivision, the marketing name if different than the subdivision, and the apartment or condominium name, when applicable. A copy of the approved site plan, or the preliminary plan if no site plan is required, must be provided with the Agreement to Build[.];
- (2) [A] a plan for the staging of construction of all dwelling units that is consistent with Chapter 25A and any approved applicable land use, subdivision, or site plan[.];
- (3) [A] a draft copy of the applicable MPDU Covenants, either rental or sales[.];
- (4) [The] the Agreement to Build must identify all land at one location which is owned by or under contract of sale to the Applicant, or, will be available, or is being processed for development and individually or collectively will be subject to Chapter 25A[.];
- (5) [A] a specific listing of the MPDUs and market rate units, including development phase, lot, block, street address, number of bedrooms, and (for multi-family units) building designations and unit numbers. Property tax account numbers must be provided for the MPDUs, if available[.]; and
- (6) [For] for a single-family dwelling units, a floor plan of each MPDU type with dimensions and square footage. For multi-family buildings, a floor plan of each MPDU type with



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dimensions and square footage, and a typical floor plan of the building(s) showing locations of MPDUs and market rate units on each floor, with a summary chart of location and bedroom compositions of the MPDUs and market rate units.

- (b) The Department must determine that the Agreement to Build meets the requirements of Chapter 25A and this regulation. Any revisions to the Agreement to Build must be requested in writing by the Applicant[,] and approved in writing by the Director.
- (c) A copy of the executed Agreement to Build must be submitted to DPS before the first building permit application in the subdivision is approved. DPS must not issue building permits in a subdivision having [an] a MPDU requirement unless those units are included in the signed Agreement to Build. DPS must not issue a building permit for the final market-rate units in the subdivision until the building permit for the final MPDU in the subdivision has been issued.

3.3 Housing Programs Which Satisfy the MPDU Requirement. Federal, state, or local housing programs may be used to fulfill some or all of the MPDU requirements. When federal, state, or local housing programs are used to comply with the requirements of Chapter 25A, the following conditions must be met:

- (a) [Sales] sales prices or rental rates must be affordable to Eligible Households[.];
- (b) [The] the Director must determine that the controls on the sale prices or rents will contribute to the long term availability of moderately priced units and that the [covenants] Covenants on these units contain provisions for the County's recapture of excess profits realized by [an] a MPDU Owner as required in Chapter 25A[.];
- (c) [When] when a dwelling unit produced under an approved federal, state, or local housing program is designated as [an] a MPDU, the income limits and other requirements of that particular housing program apply during the compliance period for that program rather than the requirements set forth herein. If the compliance period for that program is shorter than the MPDU Control Period, the MPDU requirements must apply for the balance of the MPDU Control Period, unless the Director determines that the affordability term of the other program is equivalent to the MPDU requirement.

25A.00.02.04 Alternative Compliance Measure for Providing MPDUs

Under certain conditions as specified in Chapter 25A, it may be possible to provide less than the required



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number of MPDUs on-site in any development.

4.1 MPDU Land Transfer Option.

- (a) If an Applicant wishes to request a Land Transfer option to fulfill some or all of [an] a MPDU requirement in accordance with Section 25A-5(g)(1), the Applicant must submit a written request to the Director to transfer land or Finished Lots to the County not less than 90 days prior to the submission of any building permit application for the development for which the Land Transfer option is being requested, and in any case before an Agreement to Build is executed. The Director must make a determination of whether the approval will be granted before the Applicant submits an application for a building permit for the development, and the Applicant must execute an Alternative Compliance Agreement with the Department in a form approved by the Department prior to the time that DPS approves a building permit for the development. The transfer request must include:
- (1) [Justification] justification why the Applicant is requesting the Land Transfer and how the public benefit of granting the Land Transfer proposal outweighs the value of providing MPDUs in each subdivision throughout the County;
 - (2) [A] a title report showing ownership, or a purchase contract signed by the Applicant for the land proposed to be transferred, and a description of the property;
 - (3) [Preliminary] preliminary subdivision plans or site plans, or record plats;
 - (4) [Topographical] topographical maps, and soil tests if they have been performed;
 - (5) [A] a Phase I Environmental Report; and
 - (6) [An] an itemized statement of actual costs incurred or estimated costs to finish the lots on the property proposed to be transferred.
- (b) Conditions for Transfer. Land offered to the County must meet the following minimum standards:
- (1) [The] the title must be good and marketable and the land must be transferred in fee simple by a special warranty deed;



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- (2) [The] the land must be served by public water, sewer, and other necessary utilities, must be accessible from an improved public street; and the Department, in its sole discretion, must determine that development of the land into lots is economically feasible as [an] a MPDU development;
- (3) [In] in single-family developments, the land may be transferred as individual scattered lots, as several groups of lots, or as a single subdivided parcel; and
- (4) [In] in multi-family projects, the land must be large enough to support the development of an independent rental or sales project including parking, open space, and amenities.

(c) Transfer Decision and Agreement. The decision to approve or deny a Land Transfer must be made by the Director taking into consideration how the public interest will best be served. Any decision regarding the transfer must be made in accordance with the following conditions:

- (1) [The] the Department must make a decision within 90 days of receiving the request and all required documents for the Land Transfer. A copy of the decision must be provided to the Applicant, the Planning Board, and DPS[.];
- (2) [The] the Department may only approve a Land Transfer under this subsection after 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) [The] the Department may reject any offer to transfer land, either in part or in whole, if the Director determines that the transfer will not serve the public interest or if no funds are available to reimburse the Applicant for the lot finishing costs[.];
- (4) [If] if the Department approves the transfer request, the Alternative Compliance Agreement must address compensation for the reasonable costs for Finished Lots[.]; and
- (5) [The] the Applicant is responsible for preparing and executing the necessary special warranty deed(s), arranging for settlement, ensuring that the deeds are properly recorded and delivering evidence of good title to the transferred lots or land.

4.2 Request to Provide MPDUs at an Alternative Location. If an Applicant wishes to provide some or all of the MPDUs for development of a High-Rise building at an Alternative Location under the provisions of Section 25A-5B, the Applicant must submit a written request to the Director not less than 90 days prior



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to the submission of any building permit for the development for which the Alternative Location approval is being requested, and in any case before an Agreement to Build is executed. The Director must make a determination of whether the approval will be granted before the Applicant submits an application for a building permit for the development, and the Applicant must execute an Alternative Compliance Agreement with the Department in a form approved by the Department prior to the time that DPS approves a building permit for the development.

- 4.3 Request to Make an Alternative Payment to the Housing Initiative Fund. If an Applicant wishes to make an Alternative Payment to the Housing Initiative Fund instead of building some or all of the required number of MPDUs in a proposed subdivision under the provision of Section 25A-5A, the Applicant must submit a written request to the Director to make an Alternative Payment to the Housing Initiative Fund not less than 90 days prior to the submission of any building permit for the development for which the payment option is being requested, and in any case before an Agreement to Build is executed. The Director must make a determination of whether the approval will be granted before the Applicant submits an application for a building permit for the development, and the Applicant must execute an Alternative Compliance Agreement with the Department in a form approved by the Department prior to the time that DPS approves a building permit for the development.
- 4.4 No Alternative Compliance if All Impact Fees are Waived. If an Applicant receives a waiver of all impact fees for a development in accordance with Section 52-41(g)(5) and Section 52-54(c)(5) of the Code, the Department must not approve a Land Transfer, an Alternative Payment or an Alternative Location for the development. The MPDUs must be provided on-site, and any for-sale MPDUs must be priced as provided in Section 25A.00.02.05.3 if the price calculated by that method is lower than the price calculated as provided in Section 25A.00.02.05.1.

25A.00.02.05 Establishing Sale and Rental Prices

- 5.1 Maximum Allowable Sales Prices of MPDUs.
 - (a) The Department must, by Method (3) regulation, annually set and disseminate a schedule of the pricing standards and minimum specifications to be used to determine the maximum allowable sales prices of MPDUs.
 - (b) The maximum allowable sales price for the MPDUs must be fixed according to the applicable MPDU pricing standards when the Offering Agreement is fully executed.
 - (c) When permitted by the Director, significant items included in the minimum MPDU



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specifications, but which are not constructed in a unit, may result in an adjustment to the allowable Purchase Price to reflect these omissions. Minimum specifications for MPDUs which exceed building code requirements are as shown on the schedule maintained by the Department. It is the responsibility of the Applicant to provide these items, or otherwise to obtain permission from the Department not to meet the minimum standards.

- (d) When the buyer and seller of [an] a MPDU agree to modify the unit structurally to facilitate access or use by a person with mobility or sensory impairments, the Department may adjust the allowable sales price by the amount of the additional costs. The Applicant must obtain approval of the price from the Department prior to executing a sales contract.
- (e) The Department may require front-foot benefit charges to be included in the price of the MPDU rather than being deferred.
- (f) Architectural compatibility. As described on the schedule maintained by the Department, the allowable sales price of [an] a MPDU may be increased by up to 10 percent over the base sales price of the MPDU upon a finding that the increase is justified to cover the cost of a modification to the external design of the MPDU necessary to reduce excessive marketing impact of the MPDU on the market-rate units in the subdivision.
- (g) The Director may restrict those conditions of the design, construction, pricing or amenity package of a development with MPDUs that will impose excessive mandatory homeowner or condominium fees or other costs that reduce the affordability of the MPDUs.

5.2 Maximum Rental Rates for MPDUs.

- (a) The maximum allowable rents that may be charged for the MPDUs are those in effect at the time the Department approves the rental Offering Agreement. MPDU rents must be based on the maximum income permitted under the Rental Program, as revised annually.
- (b) Rental rates established for MPDUs must distinguish units which are inclusive and exclusive of utilities paid by the household and those utilities paid by the Applicant.
- (c) MPDUs developed under the programs designated in accordance with Section 25A.00.02.03.3 of this regulation are to be offered and marketed in accordance with the procedures established for those programs.



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- (d) The method for computing the maximum allowable monthly rents for Garden Apartment and High-Rise MPDUs is described below. The income for the rent calculation is based on one and one-half (1½) people per bedroom. Rental rates must be computed based on the relevant income limits for the MPDU Rental Program in effect at the time the MPDUs are offered for rent.
- (1) The maximum rent for an efficiency unit is based on the income for a one-person household.
 - (2) The maximum rent for a one- (1) bedroom unit is based on the mid-point between the income for a one-person household and a two-person household (i.e., 1.5 people).
 - (3) The maximum rent for a one (1) bedroom plus den unit is based on the income for a two-person household.
 - (4) The maximum rent for a two (2) bedroom unit is based on the income for a three-person household.
 - (5) The maximum rent for a two (2) bedroom plus den unit or a two (2) bedroom unit with a second bath is based on the [midpoint] mid-point between the income for a three-person household and a four-person household (i.e., 3.5 people).
 - (6) The maximum rent for a three-bedroom unit is based on the mid-point between the income for a four-person household and a five-person household (i.e., 4.5 people).
 - (7) Based on the appropriate household size and corresponding maximum income, the income for each unit size is multiplied by 25 percent then divided by 12 and rounded to the next highest whole number which is evenly divided by five (5) to establish the rent for the unit, excluding utilities.
 - (8) When the Applicant pays for all utilities, based on the appropriate household size and corresponding maximum income, the income for each unit size is multiplied by 30 percent then divided by 12 and rounded to the next highest whole number which is evenly divided by five (5) to establish the rent for the unit. When the Applicant pays for some but not all utilities, the Department will add the "Allowances for Tenant-Furnished Utilities and Other Services" for the Washington PMSA, as determined by the U.S. Department of Housing and Urban Development, to the rent as calculated for MPDUs excluding utilities. When an Applicant pays for some utilities for [an] a MPDU, the total



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rent must not exceed the maximum rent for [an] a MPDU when an Applicant pays for all utilities.

- (e) The rental rate for currently rented MPDUs must be adjusted annually by the Director in accordance with the County’s Voluntary Rent Guidelines. If an Apartment Complex is financed through a federal, state or local affordable housing program, then the requirements of that program are considered to meet the requirements of this regulation during the compliance period for that affordable housing program.
- (f) Laundry washer and dryer equipment must be provided in each MPDU unless this equipment is not provided in the market rate units. No increase in rent is allowed for laundry washer and dryer equipment unless the market rate units are separately charged and the increase is limited to the same fee that the market rate apartments are charged.
- (g) The Applicant must not be permitted to charge a fee for non-structured automobile parking to MPDU tenants unless market-rate households are charged a fee for no-structured automobile parking. Structured parking, garage or other enclosed spaces, or unstructured parking where a fee is charged to all tenant households, may be offered as an option to the MPDU occupants at the monthly rate normally charged by the Applicant. At a minimum, the Applicant must make parking available to MPDU households according to the number of parking spaces approved for the MPDUs at certified site plan.
- (h) The Director may adjust the rental rates for rental apartments in age-restricted developments that provide services, amenities, or design features to all tenants which cannot be made optional to the MPDU tenant households on a fee basis.

5.3 Rental MPDUs Sold as For Sale MPDUs. In the event that [an] a MPDU originally offered as a rental MPDU is sold as a sale MPDU, the MPDU must not be sold at any time during the applicable rental Control Period for a price greater than the “maximum allowable resale price” for the MPDU, as described below:

- (a) [The] the income used to calculate the resale price is based on one (1) person per bedroom[.];
- (b) [To] to calculate the resale price by bedroom size, the corresponding total household “monthly income” is calculated by dividing by 12 the annual income limit set by the Department[.];
- (c) [The] the maximum “monthly housing cost” is calculated by multiplying the resulting “monthly



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income” by 30 percent[.];

- (d) [From] from the maximum “monthly housing cost”, subtract monthly condominium and HOA fees, hazard insurance, private mortgage insurance and real estate taxes to calculate the “adjusted housing cost”[.];
- (e) [Divide] divide the “adjusted housing cost” by the applicable Mortgage Constant for a 30-year, fixed-rate conventional mortgage at the prevailing mortgage interest rate. The “applicable mortgage interest rate” will be determined by the prevailing interest rate for a 30-year, conventional mortgage as published by Freddie Mac (or such other source as determined by the Department). This figure represents the “maximum mortgage amount” that an Eligible Household can afford to support[.] ; and
- (f) [Divide] divide the “maximum mortgage amount” by 97 percent (.97) to calculate the “maximum allowable resale price” after accounting for a [downpayment] down payment of three (3) percent.

A new Control Period for the MPDU must be established according to the Control Period in effect at that time for sale MPDUs. The existing rental Covenants must be released, and new sales Covenants recorded on the property prior to the first sale of any unit in the development.

25A.00.02.06 Sale and Rental Procedures

6.1 Offering MPDUs for Sale or Rent.

- (a) The Applicant must offer MPDUs for sale or rent through the Department by completing and submitting an Offering Agreement on the form provided by the Department. The Applicant must provide the documents required by Section 25A-8(b)(2) and the following:
 - (1) [A] a description of the MPDUs including the number, unit types, and size by area and number of bedrooms, and other relevant details of the MPDUs;
 - (2) [The] the addresses, legal descriptions, and property tax account numbers of the MPDUs;
 - (3) [A] a recorded subdivision plat and a copy of the site development plan designating the locations of the MPDUs;
 - (4) [The] the signed MPDU Covenants, in recordable form;



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- (5) [A] a copy of the building floor plans (for multi-family buildings) and the unit layouts of each MPDU unit type with dimensions and square footage;
- (6) [If] if the MPDUs are to be sold, a completed sale price calculation sheet for each unit type and a price list of options;
- (7) [The] the date(s) when MPDUs are expected to be delivered for settlement or rental occupancy; and
- (8) [Any] any other information the Department deems necessary.

- (b) MPDU sale units must be available for settlement and occupancy in compliance with all County building and occupancy code requirements within 365 days of the date when the MPDUs are marketed for sale to Eligible Certificate Holders.
- (c) The first MPDU rental units in a development must be available for rental occupancy in compliance with all County building and occupancy code requirements within 120 days of acceptance of the Offering Agreement by the Department.
- (d) For rental Offering Agreements, the Applicant must attach an executed subordination agreement from all lien holders on the property so that the MPDU Covenants will hold a senior position, or must attach a statement by an attorney licensed to practice law in Maryland certifying that the MPDU Covenants are superior in recording order to any monetary encumbrances on the property.
- (e) The Applicant may not require from [an] a MPDU purchaser a deposit that exceeds one (1) percent of the established MPDU sales price, including options if applicable. The selection of options must be at the discretion of the MPDU purchaser and may not exceed ten (10) percent of the base sales price.
- (f) Condominiums must have FHA approval or financing with similar terms.

6.2 Random Selection Drawing Process. After the Department has approved the Offering Agreement, Eligible Certificate Holders who are interested in purchasing MPDUs, other than the Commission and approved Government Agencies and Designated Agencies must be selected through a Random Selection Drawing (RSD) process conducted by the Department in cooperation with the Applicant. This process must be used to establish a list of Eligible Certificate Holders to whom the available MPDUs must be offered for sale.

- (a) The Department must notify the Applicant and Eligible Certificate Holders of the proposed offering by posting a flyer with information about the unit type, price, size, number of bedrooms, number of baths, HOA or condominium fee, and other details of the MPDUs on the Department's website, and scheduling



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of a Random Selection Drawing. At the time a household is determined to be an Eligible Certificate Holder under the Purchase Program, the Department awards points according to the factors listed below:

- (1) [One] one (1) point for each consecutive year (12-month period) the household has held a Certificate of Eligibility for the MPDU Purchase Program, up to a maximum of three (3) points;
 - (2) [One] one (1) point for living in the County, for a maximum of one (1) point;
 - (3) [One] one (1) point for working in the County, for a maximum of one (1) point; and
 - (4) [The] the maximum number of points that may be assigned to an Eligible Certificate Holder is five (5) points.
- (b) One-person and two-person households must only be permitted to participate in Random Selection Drawings for one- and two-bedroom MPDUs. One-person and two-person households may not be permitted to purchase any MPDUs with three (3) or more bedrooms unless the drawing list of Eligible Certificate Holders containing three (3) or more people has been completely exhausted.
 - (c) The Random Selection Drawing must give priority to Eligible Certificate Holders according to the number of points they have been awarded, in descending order. A list of names must be developed, with the order determined by the order in which the names were drawn during the Random Selection Drawing. The Applicant must contact the Eligible Certificate Holders and offer them the opportunity to purchase the available MPDUs according to the order of the list determined by the Random Selection Drawing.
 - (d) Eligible Certificate Holders selected by a Random Selection Drawing must have the exclusive right to enter into a contract for the purchase of an MPDU during the Priority Marketing Period, which begins on the date of the fully executed Offering Agreement, or the date of the Department's approval of other marketing methods, and, except as provided in subsection (e), ends 90 days thereafter.
 - (e) The Applicant must not offer an MPDU to non-income-eligible households unless the Priority Marketing Period has ended, the drawing list of all Eligible Certificate Holders has been exhausted, and a written notice has been obtained from the Department authorizing the Applicant to sell the MPDUs to non-income-eligible households. During the Priority Marketing Period, if the drawing list of all Eligible Certificate Holders has been exhausted, the Department may offer the MPDU to other Certificate Holders[,] and may waive the minimum household size requirement for that MPDU. If no Certificate Holders are interested in purchasing the MPDU, the Department may offer the MPDU to income-eligible households that are not Certificate Holders during the Priority Marketing Period. The Priority Marketing Period is automatically extended until the Department determines that no additional income-eligible households are available to purchase the MPDUs. The Department may incrementally increase the maximum income for eligibility and extend the Priority Marketing Period in 30-day increments before



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waiving all income restrictions. MPDUs that become available for sale after the Priority Marketing Period because of the disapproval of permanent loan financing must be offered to Eligible Certificate Holders on the drawing list. MPDUs that are offered to non-income-eligible households remain subject to the Covenants, the Code and the regulations governing the Program, except the income limitations for the initial purchaser.

- (f) If an Applicant offers MPDUs for sale within six (6) months after the date of acceptance by the Department of a previous offering of MPDUs in the same subdivision, then the priority list established by the Random Selection Drawing for the previous offering may be used until the list of all Eligible Certificate Holders has been exhausted. The following provisions apply to the subsequent offering:
 - (1) [The] the Applicant’s offering must contain the same type(s) of unit(s) with the same number of bedrooms per unit as were in the prior offering; and
 - (2) [Purchasers] purchasers must have a valid Certificate of Eligibility.
 - (3) The Priority Marketing Period for subsequent offerings begins on the date of the fully executed Offering Agreement, or the date of the Department’s approval of other marketing methods.

6.3 Offering MPDUs for Rent.

- (a) The Department will provide a notice on the Department’s website of the availability of rental MPDUs to Eligible Households. MPDUs offered for rent by the Applicant may be leased without utilizing the Random Selection Drawing process unless otherwise required by the Director. The Applicant must comply with all applicable local, state, and federal fair housing laws and must rent the available MPDUs only to Eligible Households during the Priority Marketing Period. If a Random Selection Drawing process is used to rent the MPDUs, the same point system described in Section 25A.00.02.06.2(a) of this regulation may be used for ranking Eligible Households. The Department must notify the Applicant of the date on which the first lease for the property may be written. The 90-day Priority Marketing Period must begin on that date[,] and is automatically extended until the Department determines that no additional Eligible Households are available to rent the MPDUs. If construction or occupancy of the MPDUs is phased over a period of time, each phase must have its own Priority Marketing Period, and the Priority Marketing Period begins when the MPDUs in each phase are available for rent.
- (b) During the Priority Marketing Period, the Applicant must rent the MPDUs to Eligible Households. An Eligible Household must have at least as many household members as the number of bedrooms in the MPDU.
- (c) If a Random Selection Drawing is held to determine a marketing list of Eligible Households, the Priority Marketing Period begins on the date of the drawing.



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- (d) If the MPDUs are not rented to Eligible Households during the Priority Marketing Period and the Applicant has demonstrated to the Department's satisfaction that a good faith effort was made to rent the MPDUs to Eligible Households, the Applicant may then rent the MPDUs to non-income-eligible households at the MPDU rental rate after receiving prior written approval from the Department.
- (e) The MPDUs must be ready for occupancy within 120 days of the beginning of the Priority Marketing Period.
- (f) The Applicant must use a lease form that complies with all federal, state and local laws, subject to the additions listed below.
- (g) The lease agreements for MPDUs, other than those leased to the Commission or a Government Agency or a Designated Agency, must include the provisions listed below:
- (h) The household must occupy the MPDU as its primary place of residence and must not sublet the MPDU.
- (i) The household must provide income and household composition information to the Applicant every year for recertification purposes. The documents that must be provided are federal income tax forms for the last two (2) years, a copy of a current pay check for all employed household members, and the current household composition.
 - (1) The household must provide the recertification information within 30 days of receiving the recertification form from the Applicant. If the household fails to provide the recertification information within the 30-day period, the household must vacate the MPDU within 60 days of receiving notification from the Applicant that the recertification form and required documentation were not received.
 - (2) The household must vacate the MPDU if, at the time of re-certification, the household's income exceeds by 30 percent the maximum eligible income necessary to qualify as an Eligible Household. The Applicant must take action necessary to have the household vacate the MPDU within 90 days of receiving information that the household's income exceeds the maximum permitted income limit. The Applicant may substitute another unit with the same number of bedrooms within the same Apartment Complex for the existing MPDU and permit the household to occupy their present unit at a rent higher than the approved MPDU rent. A new MPDU Covenant form must be recorded subjecting the substitute unit to the MPDU Covenants.
- (j) The Applicant must send a copy of each household's signed Renter's Agreement form to the Department within 30 days of signing the lease with the household. In addition, the Applicant must supply the information listed below in a format acceptable to the Department on an annual basis:



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- (1) [The] the number of MPDUs, by bedroom count, that are leased to Eligible Households, the Commission, Approved Government Agencies and Designated Agencies and their clients who have been assigned the option to lease MPDUs[.];
- (2) [For] for each MPDU, the current rent, the names of the members of the household, household size, and total household income as of the date of the lease[.];
- (3) [A] a statement that to the best of the Applicant’s information and knowledge, the households leasing the MPDUs meet the eligibility criteria[.]; and
- (4) [Notices] notices of rent increases for all MPDUs.

Upon the Department’s request, Applicants must also submit their application, lease, and leasing procedures to the Department for review and approval.

- (k) If the Applicant is required to report tenant occupancy information pursuant to a governmental financing regulatory agreement, then that report may be substituted for the information required in this regulation.
- (l) If the Applicant has [an] a MPDU available to be re-rented, the Applicant must offer the MPDU to Eligible Households for a period of sixty (60) days before renting the MPDU to a non-eligible household at the MPDU rental rate. The sixty (60) day period must commence when the Department receives written notice from the Applicant of the MPDU’s availability to be leased, and the Applicant must receive written approval from the Department before leasing the MPDU to a non-eligible household.

6.4 MPDU Covenants.

- (a) The Applicant must sign and forward MPDU Covenants in recordable form to the Department before selling or renting any MPDUs. The Covenants must be in the form required by the Department and include the restrictions contained in Chapter 25A. The Covenants must run with the land for the entire Control Period and until all requirements of Chapter 25A have been met. The Covenants must be binding on the Applicant and its assignees, mortgagees, buyers and transferees, and all other parties that receive title to the property.
- (b) MPDU Covenants must be recorded by the Department and must be recorded so that they are senior to all instruments securing permanent financing. Every deed transferring an MPDU must reference the MPDU Covenants on the first page of the deed citing where the Covenants are recorded in the land records by book and page. If the Covenants cannot be recorded on the MPDU in conformance with this regulation, then the unit must not be considered as meeting the requirements of Chapter 25A.



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- (c) The Applicant must provide a copy of the recorded sales Covenants and a copy of Chapter 25A to MPDU purchasers at settlement. The purchasers must acknowledge in writing that they have been given a copy of the Covenants and Chapter 25A.

6.5 Sales and Rental Documentation.

- (a) Sales Documentation. Within 14 days of signing the sales contract, the Applicant must submit to the Department the following information in correct form for the unit to fulfill the requirements of Chapter 25A:
 - (1) [A] a copy of the executed sales contract or agreement;
 - (2) [The] the purchaser's original Certificate of Eligibility;
 - (3) [The] the executed Purchaser's Agreement form; and
 - (4) [The] the executed acknowledgement of receipt of MPDU Covenants and Chapter 25A.

In addition, within 30 days after the date of settlement, the Applicant must submit to the Department the final settlement sheet and a copy of the recorded two-party deed. The deed transferring title must reference on the first page of the deed the recorded MPDU Covenants by the date the Covenants were recorded and the book and page recording references.

- (b) Rental Documentation. Within 30 days of the date of the fully executed lease for an MPDU rental unit, the Applicant must submit the executed MPDU Renter's Agreement form to the Department for the unit to meet the requirements of Chapter 25A.

25A.00.02.07 Procedures for Purchase and Rental of MPDUs by the Commission and Approved Government Agencies and Designated Agencies

7.1 Qualification and Designation of Housing Providers by the County Executive.

- (a) The Director may recommend to the County Executive that certain nonprofit business entities be approved to purchase or lease MPDUs. To be eligible for such a designation, the nonprofit business entity must demonstrate its financial ability to acquire, operate, maintain and manage MPDUs satisfactorily on a long-term basis. The County Executive may consider the relative needs and requirements of the nonprofit business entities and their clientele, readiness and ability of the nonprofit business entity to purchase or lease and manage MPDUs, and the number of units previously obtained by the nonprofit business entity. The County Executive shall designate the nonprofit business entities



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approved to purchase MPDUs by Executive Order (“Designated Agencies”).

- (b) The Department may require Approved Government Agencies and Designated Agencies to submit reports from time to time that provide information concerning the MPDUs in the agency’s program. The Director may recommend that the County Executive suspend or terminate a Government Agency’s or a Designated Agency’s right to purchase or lease MPDUs at any time for good cause.

7.2 Notifying the Commission.

- (a) The notice required under Section 25A-8(a)(5) of the Code from the Department to the Commission, Government Agencies and Designated Agencies of the availability of MPDUs for purchase or rental shall be provided within 5 days of the Offering Agreement being fully executed, and the notice shall include a copy of the executed Offering Agreement. The time period provided under Section 25A-8(a) to the Commission, Government Agencies and Designated Agencies to purchase or lease MPDUs may be extended at the discretion and approval of both the Applicant and the Department.
- (b) Priority for purchasing or leasing MPDUs is determined by Section 25A-8(a)(7) of the Code. The Commission, Government Agencies and Designated Agencies shall submit their options to purchase or lease directly to the Applicant, with a copy to the Department, and the Applicant, with the assistance of the Commission, shall ensure that the MPDUs are purchased or leased using the priorities under Section 25A-8(a)(7).
- (c) After the priorities for purchasing or leasing MPDUs have been determined, the Applicant must deliver sales contracts or lease agreements to the Commission, Government Agencies and Designated Agencies, as applicable, at least 60 days prior to the estimated delivery of the MPDUs. The contracts or lease agreements must be returned to the Applicant within 30 days of receipt, but no later than 30 days before the estimated date of delivery of the MPDU. The Applicant must provide the Department with the documents required in Section 25A.00.02.06.5 or such other documents as the Department may require.
- (d) The Commission may assign its option to participants in its Family Self Sufficiency program, and Government Agencies and Designated Agencies may assign their option to their client households. Households that are assigned the option to purchase or lease an MPDU must meet all eligibility requirements of the Program and must have sufficient income and credit history to independently purchase or lease an MPDU.

7.3 Purchase and Rental Requirements.

- (a) The selection by, and limitation of, the Commission, Government Agencies and Designated Agencies of “unit type” as provided under Section 25A-8(a)(6), refers to substantial differences in available MPDUs, such as end units and interior units, the number of bedrooms in each unit, and the use of architectural



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compatibility materials, such as brick exteriors.

- (b) The Commission may purchase resale MPDUs in a particular development only if it did not previously exercise its option for its full allotment of MPDUs after receiving the notice from the Department of the availability of for sale MPDUs at the initial offering or offerings under Section 25A-8(a)(5). The Commission must not own more than 33.3 percent of the MPDUs in a particular development at any one time.
- (c) The Commission, Government Agencies and Designated Agencies may not own more than five (5) percent of the MPDUs in any condominium association.
- (d) The Commission, Government Agencies and Designated Agencies must not record additional [covenants] Covenants on MPDUs, and must not lease their MPDUs to non-income-eligible households.
- (e) When an MPDU purchased by the Commission, a Government Agency or a Designated Agency is offered to the Department for sale, as provided in Section 25A-8(a)(8), the Commission, Government Agency or Designated Agency must provide the Department with 60 days' advanced notice of its intention to sell the MPDU. The Department must inform the Commission, Government Agency or Designated Agency whether the Department will:

[(i)](1) purchase the MPDU,

[(ii)](2) assign its right to purchase the MPDU to a Designated Agency or Eligible Certificate Holder, or

[(iii)](3) decline the right to purchase the MPDU.

If the Department declines the right to purchase the MPDU, the MPDU must be sold by the Commission, Government Agency or Designated Agency to an Eligible Certificate Holder or a Designated Agency.

25A.00.02.08 Resale of MPDUs During the Control Period

8.1 Requesting a Resale Price Determination.

- (a) For purpose of resale. An MPDU Owner who wishes to sell an MPDU during the Control Period must request a resale price determination from the Department in writing.
- (b) For purposes of refinancing, second mortgages and home equity lines of credit (HELOC). During the Control Period, [an] a MPDU Owner may not refinance their MPDU for more than the approved resale price, as determined by the Department, or take out a second mortgage or a HELOC that, when combined with their first mortgage, will exceed the approved resale price, as determined by the Department. MPDU



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Owners wishing to refinance or take out a second mortgage or a HELOC must request a resale price determination, in writing, from the Department. Such a refinancing, second mortgage or HELOC shall not relieve the MPDU Owner of the responsibility to pay to the Housing Initiative Fund one-half of the excess proceeds at the first resale after the expiration of the Control Period, as defined in Section 25A.00.02.09.2(a).

- (c) Reverse mortgages on MPDUs are prohibited.

8.2 Establishing the Maximum Resale Price. The Department must calculate the maximum resale price for the MPDU according to the following factors:

- (a) [The] the base is the MPDU Owner's Purchase Price, plus an allowance equal to the rate of increase in the Consumer Price Index between the month and year of the MPDU Owner's purchase of the MPDU and the current month and year. The Department may reduce the allowance of the increase in the Consumer Price Index for MPDU Owners who have owned their MPDU for less than three (3) years[.];
- (b) [To] to this base, the Department will add an allowance for capital improvements, as determined by the Department, made to [an] a MPDU after the date of purchase by the MPDU Owner. This allowance must not exceed ten (10) percent of the MPDU Owner's Purchase Price. Improvements must be permanent in nature and clearly add to the market value of the MPDU. Normal owner maintenance, general repair work, luxury items, and decorative items or work must not be included in the resale price determination. The Department will maintain a list of eligible capital improvements[.];
 - (1) [The] the MPDU Owner must provide an itemized list of all capital improvements for which credit is requested as part of the resale price. All improvements claimed must be documented with paid receipts, contracts or other evidence supporting their value. The Department may establish standard allowances for certain capital improvements, and these values may be used by the Department rather than receipts for the capital improvements submitted by the MPDU Owner[.];
 - (2) [Where] where there is evidence of physical deterioration, abnormal wear and tear, or obsolescence because of neglect, abuse, or insufficient maintenance, the value allowed for the capital improvements may be reduced to account for the depreciation of the capital improvements. If the MPDU is in sub-par condition, no allowance for capital improvements will be granted[.];
- (c) [Upon] upon the Department's request, the MPDU Owner must permit a Department representative to inspect the MPDU to verify the existence and value of any capital improvements that are being claimed by the MPDU Owner[.];



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- (d) [The] the actual brokerage fee paid by the MPDU Owner not to exceed six (6) percent, or as determined by Executive Order, may be added to the MPDU resale price if the MPDU Owner uses a licensed realtor under an arms-length contract to sell the MPDU[.]; and
- (e) [Resale] resale MPDUs not purchased by the Department, its designee, or the Commission must be actively marketed to Eligible Certificate Holders on the Department's website. Failure by the MPDU Owner to accept a bona-fide offer may be justification for the Department's extending the Priority Marketing Period.

8.3 Resale Procedures.

- (a) The Department or the Commission has the right to purchase any resale MPDU during the first 60 days following the MPDU Owner's notification to the Department. The County may assign its right to purchase the MPDU to a Designated Agency or to an Eligible Certificate Holder.
- (b) The Department must notify the MPDU Owner of the approved resale price within 21 days of receiving a request for a resale price determination containing all of the information required by the Department to determine the approved resale price.
- (c) The Department must notify the MPDU Owner within the 60-day period whether or not the Department intends to purchase the MPDU, and of any other conditions of the sale. If the MPDU is not purchased by the Department or the Commission, the Department must notify the MPDU Owner whether the MPDU must be sold by Random Selection Drawing following the procedures in Section 25A.00.02.06.2 of this regulation, or by some other method.
- (d) If the resale MPDU is purchased by the Department or the Commission, the Department or the Commission may retain the MPDU or make it available to Eligible Certificate Holders through a Random Selection Drawing or other means as may be approved by the Department.
- (e) When the MPDU is sold, the required documents listed in Section 25A.00.02.06.5(a) of this regulation must be executed and sent to the Department.
- (f) The MPDU may be offered to non-income-eligible households at the approved maximum resale price only after the 60-day Priority Marketing Period to the Department, the Commission, and all Eligible Certificate Holders has expired, unless the Director reduces the Priority Marketing Period for good cause. The MPDU Owner must not offer the MPDU to non-eligible households unless the Priority Marketing Period has ended, the Random Selection Drawing list of all Eligible Certificate Holders has been exhausted, and a written notice has been obtained from the Department authorizing a sale to non-eligible households. The Priority Marketing Period is automatically extended until the Department determines that no additional Eligible Households are available to purchase the MPDU.



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- (g) During the Control Period, if the Department determines that the design of the MPDU offered for resale would no longer comply with requirements for construction of a new MPDU, or that the allowable resale price and fees associated with a multi-family condominium offered for resale would result in a monthly payment that is estimated to be at least 20 percent more than would be affordable to the maximum size MPDU household, the Director may permit the MPDU Owner to sell the MPDU in accordance with the resale provisions of Section 25A-9(d) of the MPH Law and Section 25A.00.02.09 of this regulation. The Department will determine the affordability of the MPDU to Eligible Certificate Holders as provided in Section 25A.00.02.05.3 of this regulation.

25A.00.02.09 Resale of MPDUs After the Control Period

9.1 MPDU Owner's Notification to the Department. For the first sale of an MPDU after the expiration of the Control Period, the MPDU Owner must provide the following information to the Department at least 30 days prior to settlement:

- (a) [A] a copy of the signed sales contract which clearly states the agreed upon Purchase Price;
- (b) [A] a copy of the real estate broker's listing agreement;
- (c) [An] an itemized list of capital improvements made by the current MPDU Owner including actual or estimated value of the improvements with documentation of the value in a form acceptable to the Department; and
- (d) [The] the name and contact information for the settlement agent.

9.2 Payment of Excess Proceeds to the Housing Initiative Fund. For the first resale of an MPDU which was originally offered for sale or rent after March 20, 1989, and for which the Control Period has expired, the MPDU Owner must pay to the Housing Initiative Fund one-half of the excess proceeds.

- (a) Excess proceeds are defined as the amount by which a bona fide resale price exceeds the sum of the following:
 - (1) [The] the MPDU Owner's Purchase Price;
 - (2) [An] an allowance for the increase in the cost of living as determined by the Consumer Price Index from the date of the MPDU Owner's purchase of the MPDU to the date of settlement;
 - (3) [An] an allowance for capital improvements, as determined by the Department, made to an



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MPDU subsequent to the date of the MPDU Owner's purchase of the MPDU; and

- (4) [The] the actual brokerage fee at the average prevailing commission rates if a licensed realtor under an arms-length contract to sell the MPDU is used; however, the commission must not exceed six (6) percent of the sales price.
- (b) The Department must notify the MPDU Owner of the calculation of the excess proceeds, which is the amount that must be paid to the Housing Initiative Fund within 21 days of receiving complete information from the MPDU Owner.
- (c) The required portion of the excess proceeds must be collected at the time of settlement. The MPDU Owner is responsible for ensuring that the payment is made to the Housing Initiative Fund in accordance with this regulation. A copy of the final settlement sheet for the transfer of ownership must be sent to the Department within 14 days of the date of settlement on the transfer of the MPDU. The Department must release the MPDU Covenants and liens recorded in the land records after the County has received the required payment to the Housing Initiative Fund and the settlement documents.
- (d) Failure of the MPDU Owner to notify the Department of a sale, obtain a determination of excess proceeds, and pay the required portions of the excess proceeds to the Housing Initiative Fund constitutes a default under the MPDU Covenants, this regulation, and Chapter 25A.

9.3 Divorce. If one MPDU owner buys out the other owner's interest in the MPDU as part of a divorce settlement, without selling the MPDU on the open market, then such a transfer does not constitute the first sale of the MPDU[,] and does not relieve the remaining MPDU owner of the obligation to pay the required portion of the excess proceeds to the Housing Initiative Fund.

25A.00.02.10 Sale of MPDU by Foreclosure

A mortgagee or other secured party who has initiated foreclosure proceedings on a debt secured by a mortgage or deed of trust on [an] a MPDU must notify the Department in writing at least 30 days prior to the date of the foreclosure sale. If the MPDU is a rental unit, the resale price must be calculated as provided in Section 25A.00.02.05.3 of this regulation.

25A.00.02.11 Enforcement

The Department and DPS are responsible for enforcing the provisions of Chapter 25A. Complying with Chapter 25A and an approved MPDU Agreement to Build is the responsibility of the Applicant; revisions or amendments must be requested as soon as the Applicant recognizes that meeting the terms of an approved MPDU Agreement to Build may not be feasible. The Director of DPS is authorized by law to deny, suspend, or revoke any building or occupancy permit for a violation of Chapter 25A. Such action must be taken by DPS upon receiving a written request from the Department or the agency finding non-compliance to exist. After issuance of building permits for a subdivision has been halted or existing



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building or occupancy permits suspended or revoked, issuance of permits by DPS may not be resumed until both the Department and DPS are satisfied that the Applicant is in compliance with the terms of Chapter 25A and the construction schedule included in the approved Agreement to Build. An occupancy permit must not be issued for any unit in a subdivision when the subdivision does not comply with Chapter 25A or this Executive Regulation.

25A.00.02.12 Waiver Provision

The Director may waive in writing any requirement of this regulation for good cause upon consideration of a request submitted by an affected party.

Marc Elrich
County Executive

Date: _____

Approved as to Form and Legality
Office of the County Attorney

By: *[Signature]*
Date: 5-18-22