



Briefing on Proposed Amendments to Chapter 25A, Housing, Moderately Priced

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Overview

The Council enacted the County’s Moderately Priced Dwelling Unit (MPDU) law in 1973 with the aim of furthering the objective of providing a full range of housing choices for all incomes, ages, and household sizes. The MPDU law requires the construction of affordable housing with market rate housing to meet the existing and anticipated needs for low and moderate-income housing while ensuring that moderately priced housing is dispersed throughout the County consistent with the General Plan and Master Plans. The law also provided incentives to encourage the construction of moderately priced housing by allowing optional increases in density including MPDU density bonus to offset the cost of construction.

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

Staff will provide the Planning Board a brief overview of the components of both bill 34-17 and 38-17 and key changes to Chapter 25A. Staff will also provide analysis on the potential impact of both bill 34-17 and 38-17.

Key Components of Bill 34-17

Bill 34-17 finds that the availability of affordable housing continues to be a problem for low and moderate-income households. The 2017 Montgomery County Rental Housing Study reporting that 68 percent of households with incomes between 50 percent and 80 percent of area median income report paying more than 30 percent of income for rent and 15 percent report being extremely rent burdened, paying more than 50 percent for rent.

The bill proposes the following changes to the law:

- Requires a payment to HIF (Housing Initiative Fund) for developments with less than 20 units (lines 312-323).
- Permits the Director of Department of Housing and Community Affairs (DHCA) 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 (lines 354-357).
- Adds languages to clarify that the Council may adjust the base requirement for MPDUs from 12.5 percent to 15 percent as part of a master plan approval. County-wide base requirement will remain at 12.5 percent (lines 364-371, 380-381).
- Removes restrictions on Alternative of Payments. Alternative Payments would now be allowed for projects with density bonuses, and findings of a lack affordability for buyers or environmental constraints would no longer be required for an acceptance of alternative payments. (lines 563-586).
- Updates references to County Growth Policy and provides 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 as least 30 days to comment (lines 596-609).
- Adds requirement that the acceptance of alternative location/payment agreement (in same Policy Area) will increase the number of MPDUs as a result of the development (lines 614-623).

Key Components of Bill 38-17

Bill 38-17 would provide in the Code that the minimum MPDU requirement Countywide would remain 12.5 percent, but raise the requirement to 15 percent in MCPS High School Service areas with free and reduced meals (FARMS) eligibility rates of 15 percent or less at the time the applicant submits a preliminary plan of subdivision.


CM/RL/LG/aj

Agenda Item 4C
October 31, 2017
Introduction

MEMORANDUM

October 27, 2017

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Introduction:** 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 Council Vice-President Riemer, is scheduled to be introduced on October 31. A public hearing is tentatively scheduled for December 5 at 7:30 p.m.

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.

This packet contains:	<u>Circle #</u>
Bill 34-17	1
Legislative Request Report	48
Table of proposed changes to existing law	49

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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: 10/25/2017 Draft No. 5
 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

AN ACT to:

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

By amending

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

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

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

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

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

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

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

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

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

- 80 (3) Increase the number of developments required to provide
81 MPDUs by lowering the base requirement from any development
82 with 35 or more units to 20 or more units; and
- 83 (4) Place additional requirements and structure on the approval of an
84 alternative payment made to the Housing Initiative Fund in place
85 of providing MPDUs.
- 86 (c) In 2017, the County Council finds that:
- 87 (1) The availability of affordable housing continues to be a problem
88 for low and moderate income households.
- 89 (2) The 2015 report “The Greater Washington Region’s Housing
90 Needs 2023” projects that Montgomery County will need 14,960
91 new housing units for households earning less than 80% of area
92 median income.
- 93 (3) The 2017 Montgomery County Rental Housing Study reports that
94 68% of households with incomes between 50% and 80% of area
95 median income report paying more than 30% of income for rent
96 and 15% report being extremely rent burdened, paying more than
97 50% of income for rent.
- 98 (4) The creation of income-restricted affordable housing through
99 construction and preservation is critical as market rents continue
100 to increase. The American Community Survey reports that there
101 were 9,189 fewer rental units with rents between \$750 and
102 \$1,499 from 2010 to 2014.
- 103 (5) MPDUs are one important element for providing income-
104 restricted affordable housing. There were 681 new MPDUs
105 offered for sale or rent in 2015 and 2016. As of 2017 there are
106 about 5,300 MPDUs county-wide.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 199 (1) Owned by, or under contract to, the applicant;
- 200 (2) Zoned for any type of residential development to which an
 201 optional density bonus provision applies;
- 202 (3) Which will use public water and sewerage; and
- 203 (4) Which is already subdivided or is ready to be subdivided for
 204 construction or development.

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

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

211 [(f)] *Consumer Price Index* means the latest published version of the
212 Consumer Price Index for All Urban Consumers (CPI-U) of the U.S.
213 Department of Labor for the Washington metropolitan area, or any
214 similar index selected by the County Executive.

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

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

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

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

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

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

236 [(m)] *Eligible [person] household* means a [person or] household whose
237 income qualifies the [person or] household to participate in the MPDU

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

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

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

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

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

- 256 (1) offered for sale or rent to eligible [persons] households through
 257 the Department, and sold or rented under this Chapter; or
 258 (2) sold or rented under a government program designed to assist the
 259 construction or occupancy of housing for families of low or
 260 moderate income, and designated by the Director as an MPDU.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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:

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

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

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

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

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[(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

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

449 (2) [If an applicant transfers land to the County under this subsection
 450 and no funds have been appropriated to reimburse the applicant
 451 for his finishing costs, the County may accept from the applicant
 452 undeveloped land rather than finished lots, or the applicant may
 453 transfer the finished lots to the County without requiring payment
 454 for finishing the lots.] The Director may only approve a transfer
 455 of land under this subsection after a making a written
 456 determination that the value of the land transferred is at least
 457 equal to the value of the MPDUs not constructed by the
 458 applicant.

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

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

473 [(g)(i) The MPDU agreements must be signed by the applicant and all
 474 other parties whose signatures are required by law for the effective and
 475 binding execution of contracts conveying real property. The agreements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

571 (1) either:

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

576 (B) environmental constraints at a particular site would render
 577 the building of all required MPDUs at that site
 578 economically infeasible]

579 the public benefit of affordable housing throughout the County
 580 outweighs the value of locating MPDUs in each subdivision
 581 throughout the County; and

- 582 (2) [the public benefit of additional affordable housing outweighs the
 583 value of locating MPDUs in each subdivision throughout the
 584 County, and] accepting the payment will further the objective of
 585 providing a broad range of housing opportunities throughout the
 586 County.
- 587 (b) [Any payment to the Housing Initiative Fund under this Section must
 588 equal or exceed 125% of the imputed cost of land for each unbuilt
 589 MPDU. Except as further defined by Executive regulation, the imputed
 590 land cost must be calculated as 10% (for high-rise units) or up to 30%
 591 (for all other housing units) of the actual sale price charged for each
 592 substituted unit. If the substituted unit will be a rental unit, the Director
 593 must calculate an imputed sale price under applicable regulations, based
 594 on the rent actually charged.] A payment under this section must be
 595 calculated as provided in method (1) regulation.
- 596 (c) [Any] A payment to the Housing Initiative Fund under this Section
 597 (1) must not be used to reduce the annual County payment to the
 598 Fund; and
 599 (2) may be used [only] to buy or build more MPDUs in [the same
 600 planning policy area] a Policy Area (as defined in the County
 601 [Growth] Subdivision Staging Policy) [as] other than that of the
 602 development for which the payment was made only after:
 603 (A) notice is provided to the Council; and
 604 (B) the Council is given at least 30 days to comment.
 605 [and must not be used to reduce the annual County payment to the
 606 Fund.]

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

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

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

- 616 (1) the public benefit of locating MPDUs at the proposed alternative
617 location outweighs the value of locating MPDUs in each
618 subdivision throughout the County; [and]
- 619 (2) building the MPDUs at the proposed alternative location will
620 further the objective of providing a broad range of housing
621 opportunities throughout the County; and
- 622 (3) the alternative location agreement will increase the number of
623 MPDUs provided as a result of the development.

- 624 (b) To satisfy the requirements of this Section, an applicant may:
- 625 (1) build, or convert from non-residential use, the required number of
626 new MPDUs at a site approved by the Director;
- 627 (2) buy, encumber, or transfer, and rehabilitate as necessary, existing
628 market rate housing units that meet all standards for use as
629 MPDUs; or
- 630 (3) return to MPDU use, and rehabilitate as necessary, existing
631 MPDUs for which price or rent controls have expired.

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

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

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

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

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

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

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

671 (a) *Sales.*

- 672 (1) The sale price of any MPDU, including closing costs and
673 brokerage fees, must not exceed an applicable maximum sale
674 price established from time to time by the County Executive in
675 regulations adopted under method (1).
- 676 (2) [The County Executive in issuing MPDU sale price regulations
677 must seek appropriate information, such as current general
678 market and economic conditions and the current minimum sale
679 prices of private market housing in the County, and must consult
680 with the building industry, employers, and professional and
681 citizen groups to obtain statistical information which may assist
682 in setting a current maximum sale price. The County Executive
683 must, from time to time, consider changes in the income levels of
684 persons of low and moderate income and their ability to buy
685 housing. The County Executive must also consider the extent to

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

- 691 (A) restrict those conditions of the design, construction,
 692 pricing, or amenity package of an MPDU project that will
 693 impose excessive mandatory homeowner or condominium
 694 fees or other costs that reduce the affordability of the
 695 MPDUs; and
- 696 (B) approve an increase of up to 10% over the base sale price
 697 of an MPDU upon a finding that the increase is justified to
 698 cover the cost of a modification of the external design of
 699 the MPDU necessary to reduce excessive marketing
 700 impact of the MPDU on the market rate units in the
 701 subdivision.

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

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

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

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

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

733 (b) *Rents.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 847 appropriate, and such other information or documents as the
848 Director finds necessary. The Department must maintain a list of
849 eligible households [persons of moderate income and], in
850 accordance with procedures established by the County Executive,
851 must notify eligible [persons] households of the offering.
- 852 (3) After receiving the complete offering notice, the Department
853 must notify the Commission of the offering. [If the Department
854 finds that the offering notice is complete, it must decide whether
855 the offering of the units to eligible persons will be administered
856 by lottery or by another method that will assure eligible persons
857 an equitable opportunity to buy or rent a MPDU.] The
858 Department must notify the applicant of the method by which the
859 MPDUs will be offered and when the 90-day priority marketing
860 period for the MPDUs may begin.
- 861 (4) The Executive may by regulation establish a buyer and renter
862 selection system which considers household size, County
863 residency, employment in the County, and length of time since
864 the person was certified for the MPDU program. Each eligible
865 [person] household must be notified of the availability of any
866 MPDU which would meet that person's housing needs, and be
867 given an opportunity to buy or rent an MPDU during the priority
868 marketing period in the order of that person's selection priority
869 ranking.
- 870 (5) The priority marketing period for new units ends not less than 90
871 days after the initial offering date approved by the Department.
872 The priority marketing period for resold or rented units ends
873 not less than 60 days after the Department notifies the seller of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

981 applicant, within 21 calendar days after the Department notifies
982 the Commission under subsection (b), a notice of intent to
983 exercise its option for specific MPDUs covered by this option.
984 Any MPDUs not bought or leased under this subsection must be
985 sold or rented only to eligible persons under subsection (b) during
986 the priority marketing period for eligible persons to buy or lease.

987 (3) In exercising this option, the Department, the Commission, and
988 any designated agency or corporation must designate the units by
989 reference to number, type, size and amenities of the units selected
990 if the designation does not result in any type of unit exceeding by
991 more than 40 percent the total units of that type which are sold or
992 rented under this Section, unless the applicant agrees otherwise.
993 The notice required under subsection (b)(2) must state which
994 MPDUs are to be offered for sale and which are to be offered for
995 rent, and the Department, the Commission, and any designated
996 agency or corporation may buy only units which are offered for
997 sale and may lease only units which are offered for rent. The
998 Department, the Commission, and any designated agency or
999 corporation must decide whether it will exercise its option within
1000 45 days after it receives the original notice.

1001 (4) If more than one government agency or nonprofit corporation
1002 files a notice of intent under subsection (b)(2) with respect to a
1003 particular MPDU:

1004 (A) the Department prevails over any other buyer or renter;

1005 (B) The Commission prevails over any buyer or renter other
1006 than the Department;

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

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

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

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

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

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

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

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

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

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

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

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- (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

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

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

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

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

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

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

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

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

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

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

1156 * * *

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

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

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

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

1169

* * *

LEGISLATIVE REQUEST REPORT

Bill 34-17

Housing – Moderately Priced Dwelling Units (MPDUs) – Amendments

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

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

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

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.

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Agenda Item 4B
November 14, 2017
Introduction

MEMORANDUM

November 9, 2017

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Introduction:** Bill 38-17, Housing – Moderately Priced Dwelling Units (MPDUs)
– Requirement to Build

Bill 38-17, Housing – Moderately Priced Dwelling Units (MPDUs) - Amendments, sponsored by Lead Sponsor Council Vice-President Riemer, is scheduled to be introduced on November 14. A public hearing is tentatively scheduled for December 5 at 7:30 p.m.

Bill 38-17 would expressly provide in the Code that the minimum MPDU requirement Countywide is 12.5 percent, with 15 percent required in any development in an MCPS High School Service Area with an eligibility rate for free and reduced meals of 15 percent or less at the time the applicant submits a preliminary plan of subdivision.

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 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

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

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

Bill 34-17, Housing - Moderately Priced Dwelling Units (MPDU) – Amendments,³ which would make several significant changes to the MPDU law, was introduced on October 31, 2017. Among the key provisions of Bill 34-17 are: clarification of certain 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. Because there is substantial overlap in the subject matter of the two bills, the public hearing on Bill 38-17 is tentatively scheduled for the same time as the public hearing for Bill 34-17.

This packet contains:

Bill 38-17

Legislative Request Report

Circle #

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

³ https://apps.montgomerycountymd.gov/ccllms/bill_details.aspx?doc=1460&hl=3282

Bill No. 38-17
Concerning: Housing – Moderately Priced Dwelling Units (MPDUs) – Requirement to Build
Revised: 11/01/2017 Draft No. 3
Introduced: November 14, 2017
Expires: May 14, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Vice-President Riemer

AN ACT to:

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

By amending

Montgomery County Code
Chapter 25A, Housing – Moderately Priced
Section 25A-5

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

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

1 **Sec. 1. Section 25A-5 is amended as follows:**

2 **25A-5. Requirement to build MPDUs; agreements.**

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

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

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

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

19 In calculating whether a development contains a total of 20 or more
20 dwelling units for the purposes of this Chapter, the development
21 includes all land at one location in the County available for building
22 development under common ownership or control by an applicant,
23 including land owned or controlled by separate corporations in which
24 any stockholder or family of the stockholder owns 10 percent or more
25 of the stock. An applicant must not avoid this Chapter by submitting
26 piecemeal applications or approval requests for subdivision plats, site or
27 development plans, floating zone plans, or building permits. Any

28 applicant may apply for a preliminary plan of subdivision, site or
29 development plan, floating zone plan, record plat, or building permit for
30 fewer than 20 dwelling units at any time; but the applicant must agree in
31 writing that the applicant will comply with this Chapter when the total
32 number of dwelling units at one location reaches 20 or more.

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

36 (1) for development in an MCPS High School Service Area with an
37 eligibility rate for free and reduced meals of 15 percent or less at
38 the time the applicant submits a preliminary plan of subdivision,
39 15 percent; or

40 (2) for any other development subject to this Chapter, 12.5 percent.

41 (c) Any applicant, in order to obtain a building permit, must submit to the
42 Department of Permitting Services, with the application for a permit, a
43 written MPDU agreement approved by the Director and the County
44 Attorney. Each agreement must require that:

45 (1) a specific number of MPDUs must be constructed on an
46 approved time schedule;

47 (2) in single-family dwelling unit subdivisions, each MPDU must
48 have three or more bedrooms; and

49 (3) in multi-family dwelling unit subdivisions, the number of
50 efficiency and one-bedroom MPDUs each must not exceed the
51 ratio that market-rate efficiency and one-bedroom units
52 respectively bear to the total number of market-rate units in the
53 subdivision.

54 The Director must not approve an MPDU agreement that reduces the
55 number of bedrooms required by this subsection in any MPDU.

56 ~~[(c)]~~(d) When the development at one location is in a zone where a
57 density bonus is allowed; and

58 (1) is covered by a plan of subdivision;

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

61 (3) requires a building permit to be issued for construction, the
62 required number of [moderately priced dwelling units] MPDUs is
63 a variable percentage that is not less than [12.5%] 12.5 percent of
64 the total number of dwelling units at that location, not counting
65 any workforce housing units built under Chapter 25B. The
66 required number of MPDUs must vary according to the amount
67 by which the approved development exceeds the normal or
68 standard density for the zone in which it is located. Chapter 59
69 may permit bonus densities over the presumed base density
70 where MPDUs are provided. If the use of the optional MPDU
71 development standards does not result in an increase over the
72 base density, the Director must conclude that the base density
73 could not be achieved under conventional development standards,
74 in which case the required number of MPDUs must not be less
75 than [12.5%] 12.5 percent, or the higher base requirement under
76 subsection (b), of the total number of units in the subdivision.
77 The amount of density bonus achieved in the approved
78 development determines the percentage of total units that must be
79 MPDUs, as follows:
80

<i>Achieved Density Bonus</i>	<i>MPDUs Required</i>	<i>Achieved Density Bonus</i>	<i>MPDUs Required</i>
Zero	12.5%	Up to 11%	13.6%
Up to 1%	12.6%	Up to 12%	13.7%
Up to 2%	12.7%	Up to 13%	13.8%
Up to 3%	12.8%	Up to 14%	13.9%
Up to 4%	12.9%	Up to 15%	14.0%
Up to 5%	13.0%	Up to 16%	14.1%
Up to 6%	13.1%	Up to 17%	14.2%
Up to 7%	13.2%	Up to 18%	14.3%
Up to 8%	13.3%	Up to 19%	14.4%
Up to 9%	13.4%	Up to 20%	14.5%
Up to 10%	13.5%	Up to 22%	15.0%

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82

[(d)](e)(1) Notwithstanding subsection [(c)](d), 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 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:

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

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91

92

(B) would significantly reduce neighborhood compatibility.

93

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

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

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

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

108 [(f)](g)(1) An applicant may satisfy this Section by obtaining approval from
 109 the Director to transfer land to the County before applying for a
 110 building permit. The applicant must sign a written land transfer
 111 agreement approved by the Director and by the County Attorney.
 112 For the Director to consider the request and take timely action, a
 113 written notice of the applicant's intent to submit an agreement
 114 should be served upon the Director at least 90 days before the
 115 application for a building permit is filed. The land transfer
 116 agreement must covenant that so much of the land, designated in
 117 the approved preliminary plan or site plan as land to which the
 118 optional zoning provisions for MPDUs apply, as is necessary in
 119 order to construct the number of MPDUs required by subsection
 120 (a) will be transferred, as finished lots, to Montgomery County or

121 to the County's designee before the building permit is issued, so
122 that the County might cause MPDUs to be constructed on the
123 transferred land. After the submission of supporting
124 documentation and review and approval by the County for the
125 transfer of finished lots, the County must reimburse the applicant
126 for the costs the applicant actually incurred, which are directly
127 attributable to the finishing of the MPDU lots so transferred.
128 Reimbursable costs include but are not limited to engineering
129 costs; clearing, grading, and paving streets, including any
130 required bonds and permits; installation of curbs, gutters and
131 sidewalks; sodding of public right-of-way; erection of barricades
132 and signs; installation of storm sewers and street lighting; and
133 park and other open space and recreational development directly
134 benefiting the MPDU lots transferred. The County must not
135 reimburse an applicant for the cost or value of the transferred lots.

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

142 (3) Notwithstanding any other provisions of the subsection, the
143 County may reject an election by an applicant to transfer land to
144 the County in whole or in part whenever the public interest would
145 best be served thereby. Any rejection and the reasons for the
146 rejection may be considered by the Planning Board or the

147 Director of Permitting Services in deciding whether to grant the
148 applicant a waiver of this Chapter under Section 25A-7(b).

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

154 ~~[(g)]~~(h) The MPDU agreements must be signed by the applicant and all
155 other parties whose signatures are required by law for the effective and
156 binding execution of contracts conveying real property. The agreements
157 must be executed in a manner that will enable them to be recorded in the
158 land records of the County. If the applicant is a corporation, the
159 agreements must be signed by the principal officers of the corporation
160 individually and on behalf of the corporation. Partnerships, associations
161 or corporations must not evade this Chapter through voluntary
162 dissolution. The agreements may be assigned if the County approves,
163 and if the assignees agree to fulfill the requirements of this Chapter.

164 ~~[(h)]~~(i) The Department of Permitting Services must not issue a building
165 permit in any subdivision or housing development in which MPDUs are
166 required until the applicant submits a valid MPDU agreement which
167 applies to the entire subdivision or development. The applicant must
168 also file with the first application for a building permit a statement of all
169 land the applicant owns in the County that is available for building
170 development. In later applications, the applicant need only show
171 additions and deletions to the original landholdings available for
172 building development.

173 ~~[(i)]~~~~(j)~~ The MPDU agreement must include the number, type, location, and
 174 plan for staging construction of all dwelling units and such other
 175 information as the Department requires to determine the applicant's
 176 compliance with this Chapter. The MPDU staging plan must be
 177 consistent with any applicable land use plan, subdivision plan, or site
 178 plan. The staging plan included in the MPDU agreement for all
 179 dwelling units must be sequenced so that:

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

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

188 ~~[(j)]~~~~(k)~~ If an applicant does not build the MPDUs contained in the
 189 staging plan along with or before other dwelling units, the Director of
 190 Permitting Services must withhold any later building permit to that
 191 applicant until the MPDUs contained in the staging plan are built.

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

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

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

204 ~~(1)~~(m) (1) In any purchase and sale agreement and any deed or
 205 instrument

206 conveying title to an MPDU, the grantor must clearly and
 207 conspicuously state, and the grantee must clearly and
 208 conspicuously acknowledge, that:

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

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

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

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

221 (iii) ~~[T]~~the Department has notified the owner of the
 222 unit's maximum resale price.

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

225 (3) When a deed or other instrument conveying title to an MPDU is
 226 recorded in the land records, the grantor must cause to be filed in

227 the land records a notice of sale for the benefit of the County in
228 the form provided by state law.

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

LEGISLATIVE REQUEST REPORT

Bill 38-17

Housing – Moderately Priced Dwelling Units (MPDUs) – Requirement to Build

DESCRIPTION: The Bill would require a minimum MPDU requirement of 15 percent in any development in an MCPS High School Service Area with an eligibility rate for free and reduced meals of 15 percent or less at the time the applicant submits a preliminary plan of subdivision. The bill would also establish, in the Code, a Countywide minimum MPDU requirement of 12.5 percent.

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 in certain areas is lacking.

GOALS AND OBJECTIVES: Increase socio-economic integration in residential communities.

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: Class A violation