COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Floreen
Co-Sponsor: Councilmember Rice

AN ACT to:

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

By amending
Montgomery County Code
Chapter 25A, Housing – Moderately Priced
25A-9, and 25A-12

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

25A-1. Legislative findings.

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

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

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

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

(4) The inadequate supply of housing in the County for persons of low and moderate income results in large-scale commuting from outside the County to places of employment within the County, thereby overtaxing existing roads and transportation facilities, significantly contributing to air and noise pollution, and engendering greater than normal personnel turnover in the businesses, industry and public agencies of the County,
all adversely affecting the health, safety and welfare of and resulting in
an added financial burden on the citizens of the County;

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

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

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

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

(9) Every indication is that, given the proper incentive, the private sector is
best equipped and possesses the necessary resources and expertise
required to provide the type of moderately priced housing needed in the
County;
Rapid regional growth and a strong housing demand have combined to make land and construction costs very high and to have an effect on the used housing market by causing a rise in the prices of those units;

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

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

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

1. help meet the goal of providing a full range of housing choices for all incomes, ages and household sizes;
2. meet the existing and anticipated need for low and moderate-income housing;
3. ensure that moderately priced housing is dispersed throughout the County consistent with the General Plan and area master plans; and
4. encourage the construction of moderately priced housing by allowing optional increases in density including the MPDU density bonus to offset the cost of construction.

In 2004, the County Council amended the MPDU program to:

1. Reduce the loss of MPDUs by extending the control period for for-sale MPDUs from 10 years to 30 years and for rental MPDUs from 20 years to 99 years;
2. Allow different income eligibility standards in recognition of the higher cost of construction of certain types of housing;
(3) Increase the number of developments required to provide MPDUs by lowering the base requirement from any development with 35 or more units to 20 or more units; and

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

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

(1) The availability of affordable housing continues to be a problem for low and moderate-income households.

(2) The 2015 report “The Greater Washington Region’s Housing Needs 2023” projects that Montgomery County will need 14,960 new housing units for households earning less than 80% of area median income.

(3) The 2017 Montgomery County Rental Housing Study reports that 68% of households with incomes between 50% and 80% of area median income report paying more than 30% of income for rent and 15% report being extremely rent burdened, paying more than 50% of income for rent.

(4) The creation of income-restricted affordable housing through construction and preservation is critical as market rents continue to increase. The American Community Survey reports that there were 9,189 fewer rental units with rents between $750 and $1,499 from 2010 to 2014.

(5) MPDUs are one important element for providing income-restricted affordable housing. There were [[681]] 664 new MPDUs offered for sale or rent in 2015 and 2016. As of 2017 there are about 5,300 MPDUs county-wide.
(6) Additional density can offset the cost of constructing MPDUs. It is appropriate to consider different base requirements for MPDUs in conjunction with the approval of different densities and heights in master plans and sector plans.

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

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

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

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


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

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

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

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

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

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

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

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

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

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

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

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

(5) require that all subdivisions of 20 or more dwelling units include a minimum number of moderately priced dwelling units on-site, or under certain specified circumstances, provide appropriate units off-site or make a payment to the Housing Initiative Fund; [and]

(6) allow the Department of Housing and Community Affairs and developers flexibility to enter into affordable housing agreements that address the needs for housing units of different sizes and bedroom counts to better meet the needs of low and moderate-income households; and

(7) allow developers of residential units more opportunity to comply with this Chapter and meet the County’s objective of building housing affordable to low and moderate-income households by contributing to the Housing Initiative Fund, alternative location agreements, and flexible development standards that promote production and diversity of housing units.

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

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

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

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

2. **At one location** means all adjacent land of the applicant if:

   (1) The property lines are contiguous or nearly contiguous at any point; or

   (2) The property lines are separated only by a public or private street, road, highway or utility right-of-way, or other public or private right-of-way at any point; or

   (3) The property lines are separated only by other land of the applicant which is not subject to this Chapter at the time of any permit, site plan, development or subdivision application by the applicant.

3. **Available for building development** means all land:

   (1) Owned by, or under contract to, the applicant;

   (2) Zoned for any type of residential development to which an optional density bonus provision applies;

   (3) Which will use public water and sewerage; and
(4) Which is already subdivided or is ready to be subdivided for
construction or development.

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

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

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

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

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

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

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

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

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

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

[(o)] *Low income* means levels of income within the income range for “very-low income families” established from time to time by the U.S. Department of Housing and Urban Development for the Washington metropolitan area, under federal law, or as defined by executive regulations.
Moderate income means those levels of income, established in executive regulations, which prohibit or severely limit the financial ability of persons households to buy or rent housing in Montgomery County. Moderate income levels must not exceed the “low income” limits set by the U.S. Department of Housing and Urban Development to determine eligibility for assisted housing programs.

Moderately priced dwelling unit or MPDU means a dwelling unit which is:

1. offered for sale or rent to eligible persons households through the Department, and sold or rented under this Chapter; or
2. sold or rented under a government program designed to assist the construction or occupancy of housing for families households of low or moderate income, and designated by the Director as an MPDU. When such a dwelling unit is designated as an MPDU, the income limits and other requirements of that particular housing program must apply during the compliance period for that program rather than the requirements set forth herein. If the compliance period for that program is shorter than the MPDU control period, the MPDU requirements must apply for the balance of the MPDU control period, unless the Director determines that the affordability term of the other program is equivalent to the MPDU requirement.

Multi-family dwelling unit means a dwelling unit in an apartment, condominium, or mixed-use building type.

Optional density bonus provision means any increase in density under Chapter 59, in a zoning classification that allows residential development, above the amount permitted in the base or standard
method of development, whether by exercise of the optional provisions of Chapter 59 or by any special exception or conditional use.

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

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

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

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


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

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

(1) [the price established for the sale or rental of MPDUs under this Chapter.] income levels relative to area median income; and
(2) [the term and interest rate that applies to the financing of MPDUs,]

(3) the estimated levels of income necessary to carry a mortgage on an MPDU, and

(4) {[family]} household size and number of dependents.

(c) A [[person who]] household that rents an MPDU and lawfully occupies it when the [[unit]] MPDU is offered for sale may buy the [[unit]] MPDU, regardless of the [[person's]] household’s income at the time of sale, if the [[person]] household met all eligibility standards when the [[person]] household first rented the [[unit]] MPDU.

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

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

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

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

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

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

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

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

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

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

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

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

(2) in subdivisions with single-family dwelling [unit subdivisions] units, [[including townhouses,]] each MPDU must have [[3]] three or more bedrooms, unless this requirement is waived by the Director in a subdivision with only two-bedroom market rate units; [[and]]

(3) in subdivisions with multi-family dwelling [unit subdivisions] units, the [number] [[ratio of efficiency]] [and one- bedroom] bedroom mix of the MPDUs [[to total MPDUs]] [each] must
398 [[not exceed the ratio]] [that] match the bedroom mix of
399 [[market-rate efficiency]] [and one-bedroom] [[units]]
400 [respectively] [bear] [[to]] [the] [[total]] [number of] the market-
401 rate units in the subdivision unless the Director approves an
402 MPDU agreement that does not increase the number of MPDUs
403 required, but approximates the total floor area for the MPDUs
404 required, and alters the bedroom mix of the MPDUs or the
405 number of MPDUs; and
406 (4) in subdivisions with both single-family and multi-family
dwelling units, the ratio of single-family MPDUs to total MPDUs
must not be less than the ratio of market-rate single-family units
to total market-rate units in the subdivision, unless the Director
finds that:
411 (A) offering more multi-family MPDUs in that subdivision
would advance the purpose of the County housing policy
and the objectives of any applicable land use plan, be
consistent with local housing market conditions, and avoid
excessive mandatory condominium or homeowners’
association fees or other costs that would reduce the
affordability of sale MPDUs; and
418 (B) if rental MPDUs are proposed, the applicant has
demonstrated that it is qualified to manage rental housing.
420 [[The Director]] [must not] [[may approve an MPDU agreement that]]
[reduces the number of bedrooms required by this subsection in any
MPDU] [[does not increase the number of MPDUs required, but
approximates the total floor area for the]] [[units]] [[MPDUs required,]]
[but] [and alters the bedroom mix of the] [[units]] [[MPDUs or the number of]] [[units]] [[MPDUs.]]

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

(1) is covered by a plan of subdivision;

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

(3) requires a building permit to be issued for construction,

the required number or residential floor area of [moderately priced dwelling units] MPDUs is a variable percentage that is not less than a base requirement of 12.5% of the total number of dwelling units or [[equivalent]] residential floor area at that location, not counting any workforce housing units built under Chapter 25B. The Council may establish a higher base requirement, up to 15% of the total number of dwelling units or [[equivalent]] residential floor area at a location, as part of a master plan approval. The required number or residential floor area 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 or residential floor area of MPDUs must not be less than the 12.5% or higher base requirement established by the Council, of the total number of units in the]]
subdivision. To obtain a density bonus, an applicant must provide at least one more MPDU than would have been required if there was no density bonus.][[The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:]]

<table>
<thead>
<tr>
<th>Achieved Density Bonus</th>
<th>MPDUs Required</th>
<th>Achieved Density Bonus</th>
<th>MPDUs Required</th>
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<tr>
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<td>[14.4%] Base plus 1.9%</td>
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<td>Base plus 2.5%</td>
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</table>

[(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:

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

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

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

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

(2) If the Planning Board approves a density bonus of at least 20 percent for a development which consists of 20 or more but fewer than 50 units at one location, the number of MPDU’s 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.]]

The Director may determine whether an MPDU requirement may
be satisfied by an alternative payment or location agreement, and 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.

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

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

(3) [Notwithstanding any other provisions of the subsection, the County may reject an election by an applicant to transfer land to the County in whole or in part whenever the public interest would...]

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best be served thereby. Any rejection and the reasons for the rejection may be considered by the Planning Board or the Director of Permitting Services in deciding whether to grant the applicant a waiver of this Chapter under Section 25A-7(b).]
The Executive must establish procedures for transferring land under this subsection by method (1) regulation.

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

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

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

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

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

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

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

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

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

(2) no or few market rate dwelling units are built before any MPDUs are built;

(3) the pace of MPDU production must reasonably coincide with the construction of market rate units; and
the last building built must not contain only MPDUs.

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

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

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

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

1. The restrictions of this Chapter run with the land for the entire period of control;

2. The County may create a lien to collect:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. the conditions of the agreement; and
2. the time period that the agreement is valid.

25A-5A. Alternative payment agreement.

(a) The Director may approve an MPDU agreement that allows an applicant, instead of building some or all of the required [[number of]] for-sale MPDUs in [[the]] a proposed subdivision or conversion of existing property from non-residential use to residential use, to pay to the Housing Initiative Fund an amount computed under subsection (b)[, only if an Alternative Review Committee composed of the Director, the Commission's Executive Director, and the Director of Park and Planning, or their respective designees, by majority vote finds] upon a finding that:

1. either:
   
   (A) an indivisible package of services and facilities available to all residents of the proposed subdivision would cost MPDU buyers so much that it is likely to make the MPDUs effectively unaffordable by eligible buyers; [[or]]
(B) [environmental constraints at a particular site would render the building of all required MPDUs at that site economically infeasible] regulatory development constraints at a particular site would render the building of approved density and all required MPDUs at that site infeasible; or

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

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

(b) [Any payment to the Housing Initiative Fund under this Section must equal or exceed 125% of the imputed cost of land for each unbuilt MPDU. Except as further defined by Executive regulation, the imputed land cost must be calculated as 10% (for high-rise units) or up to 30% (for all other housing units) of the actual sale price charged for each substituted unit. If the substituted unit will be a rental unit, the Director must calculate an imputed sale price under applicable regulations, based on the rent actually charged.] A payment under this section in full satisfaction of MPDU requirements must be [[calculated as provided in method (1) regulation]] three percent of the sale price of each market rate unit in the development. A payment made in partial satisfaction of MPDU requirements must be adjusted based on the percentage of required MPDUs provided.
A payment to the Housing Initiative Fund under this Section; 

(1) must not be used to reduce the annual County payment to the Fund: [[and]]

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

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

(A) the payment is used in a Planning Area designated by the Planning Board in which at least 45% of the United States Census Tracts have a median household income of at least 150% of the County-wide median household income; or

(B) the Director first provides the Council [[is first provided]] with:

(i) notice of the intent to use the payment in a different Planning Area [[is provided to the Council]] that does not meet the requirement in subparagraph (A); [[and]]

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

((B)) (iii) [[the Council is given]] at least 30 days to comment.
[and must not be used to reduce the annual County payment to the
Fund.] [(d) Any subdivision for which a payment is made under this Section is not
eligible for any density bonus for which it would otherwise be eligible
under Chapter 59.] (d) The Director must notify the Council in writing within ten days of
approving an alternative payment agreement under this Section.

25A-5B. Alternative location agreement.

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

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

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

(3) the alternative location agreement will increase:

(A) the number of MPDUs; or

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

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

(1) the alternative location is in a Planning Area designated by the
Planning Board in which at least 45% of the United States
Census Tracts have a median household income of at least 150% of the County-wide median household income; or

(2) the Director first provides the Council [[is first provided]] with:

(A) notice of the intended alternative location in a different Planning Area that does not meet the requirement in paragraph (b); [[and]]

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

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

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

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

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

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

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

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

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

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

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


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

(a) Sales.

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

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

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finishing of certain parts of the units.] The regulations adopted to implement this Section must allow the Director to:

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

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

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

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

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

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

(b) **Rents.**

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

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

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

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

(1) The Department, the Commission, or any other [[housing
development]] government agency or [[nonprofit corporation
designated by the County Executive]] designated agency may
buy or lease, for its own programs or programs administered by
it, up to 40 percent of all MPDUs which are not sold or rented
under any other federal, state, or local program.
(2) The Department or Commission may buy or lease up to 33.3 percent of the MPDUs not sold or rented under any other federal, state, or local program.

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

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

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

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

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

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

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

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

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

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

(D) the first government agency to file a notice prevails over any later agency; and

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

(8) Any [[unit]] MPDU purchased by the Commission, a government agency, or a designated agency under this subsection that is offered for [[sale]] resale within five years after [[initial]] original purchase must first be offered for sale to the Department at the [[initial]] purchase price paid by the Commission, government agency, or designated agency [[to the Department]] in accordance with Executive regulation. The Department may assign its right to purchase the MPDU to an eligible household or to a designated agency.

(b) Sale or rental to [[general public]] eligible households.

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

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

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

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

(5) The priority marketing period for new [[units]] MPDUs ends not 
less than 90 days after the initial offering date approved by the 
Department. The priority marketing period for resold or rerented 
[[units]] MPDUs ends not less than 60 days after the Department 
notifies the seller of the approved resale price or vacancy of the 
rental unit. The Department may extend a priority marketing 
period when eligible [persons] households are interested in 
buying or renting a unit, or may reduce the priority marketing 
period for resold MPDUs for good cause.

(6) [[Moderately priced dwelling units, except those built, sold, or 
rented under a federal, state, or local program designated by] 

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regulation, must not be offered for rent by an applicant during the priority marketing period, except in proportion to the market rate rental units in that subdivision as follows:

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

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

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

(i) offering more rental MPDUs in that subdivision would advance the purpose of the County housing policy and the objectives of any applicable land use plan, be consistent with local housing market conditions, and avoid excessive mandatory condominium or homeowners’ association fees or other costs that would reduce the affordability of sale MPDUs; and
(ii) the applicant has demonstrated that it is qualified to manage rental housing] [and has submitted an effective management plan for the rental units in that subdivision]]

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

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

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

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

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

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

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

(1) In view of the critical, long-term public need for housing for families of low and moderate income, the Department, the Commission, or any other housing development agency or nonprofit corporation designated by the County Executive may buy or lease, for its own programs or programs administered by it, up to 40 percent of all MPDUs which are not sold or rented under any other federal, state, or local program. The Department or Commission may buy or lease up to 33 percent of the MPDUs not sold or rented under any other federal, state, or local program. Any other designated agency or corporation may buy or lease (A) any MPDU in the first 33 percent that HOC has not bought or leased, and (B) the remainder of the 40 percent. This option may be assigned to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified in regulations adopted by the Executive. The Executive must, by regulation, adopt standards and priorities for designating nonprofit corporations under this subsection. These standards must require the corporation to demonstrate its ability to operate and maintain MPDUs satisfactorily on a long-term basis.
(2) The Department must notify the Commission or other designated agency or corporation promptly after receiving notice from the applicant under subsection (a) of the availability of MPDUs. If the Department, the Commission, or any other designated agency or corporation exercises its option, it must submit to the applicant, within 21 calendar days after the Department notifies the Commission under subsection (b), a notice of intent to exercise its option for specific MPDUs covered by this option. Any MPDUs not bought or leased under this subsection must be sold or rented only to eligible persons under subsection (b) during the priority marketing period for eligible persons to buy or lease.

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

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

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

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

(D) the first government agency to file a notice prevails over any later agency; and

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

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

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

(1) [A] a percentage of the [[unit's]] MPDU’s original selling price equal to the increase in the cost of living since the [[unit]] MPDU was first sold, as determined by the Consumer Price Index or other index as identified in Executive regulation;

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

(3) [An] if approved by the Director, an allowance for closing costs which were not paid by the [[initial]] original seller, but which
will be paid by the [initial] original buyer for the benefit of the later buyer; and

(4) [A] a reasonable sales commission [[if the] [unit] [[MPDU is not sold during the priority marketing period to an eligible]] [person] [[household from the Department's eligibility list]].

In determining the amount of the allowance for improvements under paragraph (2), the Director may disallow the value of [improvements determined to be unnecessary for] costs attributable solely to the maintenance and upkeep of the [unit] MPDU, or for luxury items. The resale price of an MPDU may be reduced if the physical condition of the unit reflects abnormal wear and tear because of neglect, abuse, or insufficient maintenance. Any personal property transferred in connection with the resale of an MPDU must [[be sold at its fair market value]] not be included in the resale price of the MPDU. [In calculating the allowable resale price of an MPDU which was originally offered for rent, the Department must estimate the price for which the unit would have been sold if the unit had been offered for sale when it was first rented.] The Executive must establish procedures for calculating the allowable resale price of an MPDU under this subsection by method (1) regulation.

(b) Resale requirements during the control period.

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

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

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

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

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

(A) the priority marketing period expires; and

(B) all eligible [persons] households who express an interest in buying it have been given an opportunity to do so.
The Executive by regulation may adopt requirements for reselling MPDUs. The regulations may require a seller to submit to the Department for approval:

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

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

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

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

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

(d) First sale after control period ends.

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

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

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

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

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

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

(2) The Director must find that the price and terms of a sale covered by subsection [[(c)](d)(1) are bona fide and accurately reflect the entire transaction between the parties so that the full amount required under subsection [[(c)](d)(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]] MPDU to an eligible [person] household. A resale by the Department or Commission starts a new control period.
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)](e) [Initial] Original and later rent controls. Unless previously sold under subsection [(c)][(d)(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. Procedures for original rentals of MPDUs are described in Section 25A-8. [Any]]

After the original rental, any MPDU (other than those built, sold, or rented under any federal, state, or local program offered by the Commission) offered for rent during the control period must be offered exclusively for 60 days to one or more eligible [persons] households, as determined by the Department, for use as that [[person's]] household’s residence[[], and to the Commission]. After the original rental, the Commission may lease MPDUs in a particular development only if it did not previously lease its full allotment of MPDUs at the initial offering. In no case may the Commission lease more than 33.3 percent of the MPDUs in a particular development. The Commission may assign its right to rent such [[units]] MPDUs to [[persons of]] low or moderate-income households who are eligible for assistance under any federal, state, or local program identified in Executive regulations.

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

(1) If the sale occurs during the control period, any amount of the foreclosure sale price which exceeds the total of the approved
resale price under subsection (a), reasonable foreclosure costs, and liens [[filed under the Maryland Contract Lien Act]] recorded against the MPDU among the land records, must be paid to the Housing Initiative Fund. [[If the remaining balance under the original first deed of trust or mortgage exceeds the resale price under subsection (a), then the difference between the foreclosure sales price and the balance of the original first deed of trust (plus reasonable foreclosure costs) must be paid to the Fund.]]

(2) If the sale occurs after the control period, and the [[unit]] MPDU was originally offered for sale or rent after March 20, 1989, the payment to the Fund must be calculated under subsection [[(c)]][d], less reasonable foreclosure costs and liens recorded against the MPDU among the land records.

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

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

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

[[[f]]][g] Waivers. The Director may waive the restrictions on the resale and re-rental prices for MPDUs if the Director finds that the restrictions conflict with regulations of federal or state housing programs and thus prevent eligible [persons] households from buying or renting [[units under the MPDU program]] MPDUs.
Bulk transfers. This section does not prohibit the bulk transfer or sale of all or some of the sale or rental MPDUs in a subdivision within 30 years after the original rental or offering for sale if the buyer is bound by all covenants and controls on the MPDUs.

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


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

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


Sec. 3. Effective Date.

(a) This Act takes effect on [[November 1]] October 31, 2018, and except for an applicant who has submitted a sketch plan that the Planning
Board has accepted as complete before October 31, 2018, applies to any submission or application under Section 25A(5)(a) accepted as complete on or after that date.

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

Hans D. Riener, President, County Council

Approved:

Isiah Leggett, County Executive

This is a correct copy of Council action.

Megan Davey Limarzi, Esq., Clerk of the Council