AN ACT to:

(1) require a minimum rate of MPDUs to be constructed for certain new residential development; and

(2) generally amend the laws governing moderately priced housing

By amending

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

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Section 25A-5 and 25A-12 [[is]] are amended as follows:

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;

(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 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 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.

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

1. for development in [[an MCPS High School Service Area with an eligibility rate for free and reduced meals of 15 percent or less]] a Planning Area designated by the Planning Board in which at least 45 percent of the United States Census Tracts have a median household income of at least 150 percent of the County-wide median household income, at the time the [[applicant submits a preliminary plan of subdivision]] Planning Board accepts as
complete the applicant’s application or plan under subsection (a),
15 percent; or
(2) for any other development subject to this Chapter, 12.5 percent.
The Planning Board must update the Planning Area designations under
this subsection at least annually.

[(d)]](e) Any applicant subject to subsection (a), in order to obtain a
building permit, must submit to the Department of Permitting Services 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 units, each MPDU
must have three or more bedrooms, unless this requirement is
waived by the Director in a subdivision with only two-bedroom
market rate units;

(3) in subdivisions with multi-family dwelling units, the bedroom
mix of the MPDUs must match the bedroom mix of the market-
rate units in the subdivision unless the Director approves an
MPDU agreement that does not increase the number of MPDUs
required, but approximates the total floor area for the MPDUs
required, and alters the bedroom mix of the MPDUs or the
number of MPDUs; and

(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:
(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

(B) if rental MPDUs are proposed, the applicant has demonstrated that it is qualified to manage rental housing.

[[(e)]](f) When a development 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 MPDUs is a variable percentage that is not less than a base requirement of 12.5[[]%]] percent or the higher base requirement under subsection (d), of the total number of dwelling units or 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[[%]] percent of the total number of dwelling units or 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.
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.

(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.

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

(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.

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. If the applicant is a business entity, the agreements must be signed by the authorized signatories of the business entity individually and on behalf of the business entity. Partnerships, associations or 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.

[(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 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.

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

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

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

[(k)](l) 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).

[(l)](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.

[(m)](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.
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 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 MPDU is for sale;

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

(iii) The Department has notified the owner of the 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.
Nothing in this Chapter prohibits an applicant from voluntarily building MPDUs, as calculated under subsection [(e)](f), 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 do not apply to an applicant who voluntarily builds MPDUs under this subsection and in so doing qualifies for an optional method of development.

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.

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

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(c) each land transfer completed under Section [(25A-5(g))] 25A-5(h); and

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Sec 2. Effective Date.

(a) This Act takes effect on 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. Riemer, President, County Council

July 26, 2018

Approved:

Isiah Leggett, County Executive

Aug 1, 2018

This is a correct copy of Council action.

Approved:

Megan Davey Limarzi, Esq., Clerk of the Council

August 2, 2018