

MEMORANDUM

November 9, 2017

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

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

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

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

Background

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

The most recent substantial amendments to the MPDU law were made in 2004.¹ The 2004 amendments extended the control period for for-sale MPDUs from 10 to 30 years, and for rental MPDUs from 20 years to 99 years. The amendments also allowed different income eligibility standards in recognition of the higher cost of construction of certain types of housing, and increased the number of developments required to provide MPDUs by lowering the base requirement from any development with 35 or more units to 20 or more units. Additional

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

requirements and structure on the approval alternative payments made to the Housing Initiative Fund in lieu of constructing MPDUs were also added. In 2007, the Office of Legislative Oversight issued Report No. 2007-9, A Study of Moderately Priced Dwelling Unit Program Implementation.²

Bill 34-17, Housing - Moderately Priced Dwelling Units (MPDU) – Amendments,³ which would make several significant changes to the MPDU law, was introduced on October 31, 2017. Among the key provisions of Bill 34-17 are: clarification of certain existing provisions of the law; requiring developments of less than 20 homes to make a payment to the Housing Initiative Fund; broadening the authority of the Director of the Department of Housing and Community Affairs to accept payments into the Housing Initiative Fund in lieu of including MPDUs in a development, when it serves the goal of increasing the availability of affordable housing; and increasing the flexibility of the Director in determining MPDU obligations to better serve the demands for affordable units. Because there is substantial overlap in the subject matter of the two bills, the public hearing on Bill 38-17 is tentatively scheduled for the same time as the public hearing for Bill 34-17.

This packet contains:

Bill 38-17

Legislative Request Report

Circle #

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

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

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

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Vice-President Riemer

AN ACT to:

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

By amending

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

80

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

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[(d)](e)(1) Notwithstanding subsection [(c)](d), the Director may allow fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location if the Planning Board, in reviewing a subdivision or site plan submitted by the applicant and based on the lot size, product type, and other elements of the plan as submitted, finds that achieving a bonus density of 20 percent or more at that location:

- (A) would not allow compliance with applicable environmental standards and other regulatory requirements, or
- (B) would significantly reduce neighborhood compatibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LEGISLATIVE REQUEST REPORT

Bill 38-17

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

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

PROBLEM: Despite the County having a longstanding law requiring the construction of affordable housing with new residential development, the County's supply of affordable housing in certain areas is lacking.

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

COORDINATION: Department of Housing and Community Development

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Josh Hamlin, Legislative Attorney, 240-777-7892

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Class A violation