

Bill No. 24-04/25-04/27-03
Concerning: Moderately Priced Dwelling
Units - Amendments
Revised: 11-30-04 Draft No. 6
Introduced: July 20, 2004/July 29, 2003
Enacted: November 30, 2004
Executive: December 11, 2004
Effective: April 1, 2005
Sunset Date: None
Ch. 29, Laws of Mont. Co. 2004

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Planning, Housing, and Economic Development Committee

AN ACT to:

- (1) increase sale and rent control periods for certain moderately priced dwelling units;
- (2) require certain eligibility standards for buyers and tenants of moderately priced dwelling units to be revised annually, and allow certain modifications of those standards;
- (3) further define when certain moderately priced dwelling units can be provided at an alternate location and when the Director of the Department of Housing and Community Affairs can accept a payment to the Housing Initiative Fund instead of requiring an applicant to build certain moderately priced dwelling units;
- (4) revise the standards for numbers of bedrooms in certain moderately priced dwelling units, and prohibit the waiver of those standards; and
- (5) require certain additional notices and procedures, and generally amend County law governing the moderately priced dwelling unit program.

By amending

Montgomery County Code
Chapter 25A, Housing, Moderately Priced
Sections 25A-3, 25A-4, 25A-5, 25A-7, 25A-8, and 25A-9

By adding

Sections 25A-5A and 25A-5B

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:

28 Executive [may] must [[establish]] set different income eligibility
29 standards for buyers and renters. The Executive may set different
30 income eligibility standards for buyers and renters of higher-cost
31 housing, as defined by regulation.

32 * * *

33 **25A-5. Requirement to build MPDU's; agreements[; alternatives].**

34 [[* * *]]

35 (a) The requirements of this Chapter to provide MPDU's apply to any
36 applicant who:

- 37 (1) submits for approval or extension of approval a preliminary plan
38 of subdivision under Chapter 50 which proposes the development
39 of a total of [[35]] 20 or more dwelling units at one location in
40 one or more subdivisions, parts of subdivisions, resubdivisions,
41 or stages of development, regardless of whether any part of the
42 land has been transferred to another party;
- 43 (2) submits to the Planning Board or to the Director of Permitting
44 Services a plan of housing development for any type of site
45 review or development approval required by law, which proposes
46 construction or development of [[35]] 20 or more dwelling units
47 at one location; or
- 48 (3) with respect to land in a zone not subject to subdivision approval
49 or site plan review, applies for a building permit to construct a
50 total of [[35]] 20 or more dwelling units at one location.

51 In calculating whether a development contains a total of [[35]] 20 or
52 more dwelling units for the purposes of this Chapter, the development
53 includes all land at one location in the County available for building
54 development under common ownership or control by an applicant,

55 including land owned or controlled by separate corporations in which
56 any stockholder or family of the stockholder owns 10 percent or more
57 of the stock. An applicant must not avoid this Chapter by submitting
58 piecemeal applications or approval requests for subdivision plats, site or
59 development plans, or building permits. Any applicant may apply for a
60 preliminary plan of subdivision, site or development plan, record plat or
61 building permit for fewer than ~~[[35]]~~ 20 dwelling units at any time; but
62 the applicant must agree in writing that the applicant will comply with
63 this Chapter when the total number of dwelling units at one location
64 reaches ~~[[35]]~~ 20 or more.

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

- 69 (1) a specific number of MPDUs must be constructed on an
70 approved time schedule;
- 71 (2) in single-family dwelling unit subdivisions, [each MPDU must
72 have 2 or more bedrooms] [[the number of MPDUs with a given
73 number of bedrooms must have the same ratio (rounded to the
74 nearest whole number) to the total number of MPDUs in the
75 subdivision as the number of market-rate units with the same
76 number of bedrooms has to the total number of market-rate units
77 in the subdivision]] each MPDU must have 3 or more bedrooms;
- 78 and
- 79 (3) in multi-family dwelling unit subdivisions, the number of
80 efficiency and one-bedroom MPDUs each must not exceed the
81 ratio that market-rate efficiency and one-bedroom units

82 respectively bear to the total number of market-rate units in the
83 subdivision.

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

86 * * *

87 (d) (1) Notwithstanding subsection (c), the [[requirements of this
88 Chapter do not apply to]] Director may allow fewer or no
89 MPDUs to be built in a development with more than [[34]] 20 but
90 fewer than 50 units at one location if the Planning Board, in
91 reviewing a subdivision or site plan submitted by the applicant
92 and based on the lot size, product type, and other elements of the
93 plan as submitted, finds that [[achieving a bonus density of 20
94 percent or more]] building the required number of MPDUs at that
95 location:

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

99 (B) would significantly reduce neighborhood compatibility.

100 (2) If the Planning Board approves a density bonus of at least 20
101 percent for a development which consists of 20 or more [[than
102 34]] but fewer than 50 units at one location, the number of
103 MPDU's required must be governed by subsection (c) unless the
104 formula in subsection (c) would not allow the development to
105 have one bonus market rate unit. In that case, the Board must
106 reduce the required number of MPDU's by one unit and approve
107 an additional market rate unit.

- 108 [(e) (1) In exceptional cases, instead of building the required number of
 109 MPDUs, an applicant may offer to:
- 110 (A) Build significantly more MPDUs at one or more other sites
 111 in the same or an adjoining planning area;
 - 112 (B) Convey land in the same or an adjoining planning area that
 113 is suitable in size, location and physical condition for
 114 significantly more MPDUs;
 - 115 (C) Contribute to the Housing Initiative Fund an amount that
 116 will produce significantly more MPDUs; or
 - 117 (D) Do any combination of these alternatives that will result in
 118 building significantly more MPDUs.
- 119 (2) If the Director finds that:
- 120 (A) In the project or subdivision originally proposed by the
 121 applicant, an indivisible package of resident services and
 122 facilities to be provided to all households would cost the
 123 occupants of the MPDUs so much that it is likely to make
 124 the MPDUs effectively unaffordable by eligible
 125 households; and
 - 126 (B) An offer made by an applicant under subsection (e)(1) will
 127 achieve significantly more MPDUs or units which low-
 128 and moderate-income households can more easily afford;
 129 and
 - 130 (C) These public benefits outweigh the benefit of constructing
 131 MPDUs in each subdivision throughout the County, and
 132 acceptance of the applicant's offer will achieve the
 133 objective of providing a broad range of housing
 134 opportunities throughout the County;

135 the Director must accept the offer made by the applicant instead
 136 of requiring the construction of MPDUs by the applicant. If the
 137 applicant can feasibly build significantly more MPDUs at another
 138 site, the Director must not approve any other alternative under
 139 subsection (e)(1).

140 (3) The procedures for considering and implementing alternative
 141 offers must be established by executive regulation. To
 142 implement an offer, the applicant must sign an agreement with
 143 the Director not later than a time provided in the regulations.]

144 (e) The Director may approve an MPDU agreement that:

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

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

150 * * *

151 (k) [[Recording of covenants.]] The applicant must execute and record
 152 covenants assuring that:

153 (1) The restrictions of this Chapter run with the land for the entire
 154 period of control; [[and]]

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

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

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

160 (3) The covenants will bind the applicant, any assignee, mortgagee,
 161 or buyer, and all other parties that receive title to the property.

162 These covenants must be senior to all instruments securing
 163 permanent financing.

164 (1) [[Later deeds.]]

165 (1) [[The grantor must clearly and conspicuously state, in]] In any
 166 purchase and sale agreement and any deed or instrument
 167 conveying title to an MPDU, the grantor must clearly and
 168 conspicuously state, and the grantee must clearly and
 169 conspicuously acknowledge, that:

170 [[1]] (A) the conveyed property is a MPDU and is subject to the
 171 restrictions contained in the covenants required under this
 172 Chapter during the control period until the restrictions are
 173 released; and

174 [[2]] (B) any [[later]] MPDU owner, other than an applicant, must
 175 not sell the MPDU until:

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

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

182 (iii) the Department has notified the owner of the unit's
 183 maximum resale price.

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

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

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

190 (m) [[Voluntary MPDUs.]] Nothing in this Chapter prohibits an applicant
 191 from voluntarily building MPDUs, as calculated under subsection (c), in
 192 a development with fewer than 35 dwelling units at one location, and in
 193 so doing from qualifying for an optional method of development under
 194 Chapter 59. A development with fewer than 35 dwelling units where an
 195 applicant voluntarily builds MPDUs must comply with any procedures
 196 and development standards that apply to a larger development under
 197 this Chapter and Chapter 59. [Subsection (e) and Section] Sections
 198 25A-5A, 25A-5B, and 25A-6(b) do not apply to an applicant who
 199 voluntarily builds MPDU's under this subsection and in so doing
 200 qualifies for an optional method of development.

201 **25A-5A. Alternative payment agreement.**

202 (a) The Director may approve an MPDU agreement that allows an
 203 applicant, instead of building some or all of the required number of
 204 MPDUs in the proposed subdivision, to pay to the Housing Initiative
 205 Fund an amount computed under subsection (b), only if an Alternative
 206 Review Committee composed of the Director, the Commission's
 207 Executive Director, and the Chair of the Planning Board, by majority
 208 vote finds that:

209 (1) either:

210 (A) an indivisible package of services and facilities available to
 211 all residents of the proposed subdivision would cost
 212 MPDU buyers [[or tenants]] so much that it is likely to
 213 make the MPDUs effectively unaffordable by eligible
 214 buyers [[or tenants]]; or

215 (B) environmental constraints at a particular site would render
 216 the building of all required MPDUs at that site
 217 economically infeasible; and

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

223 (b) Any payment to the Housing Initiative Fund under this Section[[, to be
 224 acceptable by the Director,]] must equal or exceed 125% of [[the profit
 225 made by building the substituted units as market-rate units rather than
 226 MPDUs. This profit must be calculated by subtracting the maximum
 227 sale price that could have been charged under Section 25A-7 for]] the
 228 imputed cost of land for each unbuilt MPDU. Except as further defined
 229 by Executive regulation, the imputed land cost must be calculated as
 230 10% (for high-rise units) or up to 30% (for all other housing units) of
 231 [[from]] the actual sale price charged for each substituted unit. If the
 232 substituted unit will be a rental unit, the Director must calculate an
 233 imputed sale price under applicable regulations [[issued by the
 234 Executive]], based on the rent actually charged.

235 (c) Any payment to the Housing Initiative Fund under this Section may be
 236 used [[for any purpose that the Fund may otherwise be used for]] only
 237 to buy or build more MPDUs in the same planning policy area (as
 238 defined in the County Growth Policy) as the development for which the
 239 payment was made, and must not be used to reduce the annual County
 240 payment to the Fund.

241 (d) Any subdivision for which a payment is made under this Section is not
 242 eligible for any density bonus for which it would otherwise be eligible
 243 under Chapter 59.

244 **25A-5B. Alternative location agreement.**

245 (a) The Director may approve an MPDU agreement that allows an
 246 applicant for development of a high-rise residential building, instead of
 247 building some or all of the required number of MPDUs on-site, to
 248 provide at least the same number of MPDUs at another location [[within
 249 ½ mile]] in the same planning policy area, only if the Director finds
 250 that:

- 251 (1) the public benefit of locating MPDUs at the proposed alternative
 252 location outweighs the value of locating MPDUs in each
 253 subdivision throughout the County; and
- 254 (2) building the MPDUs at the proposed alternative location will
 255 further the objective of providing a broad range of housing
 256 opportunities throughout the County.

257 (b) To satisfy the requirements of this Section, an applicant may:

- 258 (1) build, or convert from non-residential use, the required number of
 259 new MPDUs at a site approved by the Director [[or Board, as
 260 applicable]]:
- 261 (2) buy, encumber, or transfer, and rehabilitate as necessary, existing
 262 market rate housing units that meet all standards for use as
 263 MPDUs; or
- 264 (3) return to MPDU use, and rehabilitate as necessary, existing
 265 MPDUs for which price or rent controls have expired.

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

269 **25A-7. Maximum prices and rents [[of moderately priced dwelling units]].**

270 * * *

271 (b) [[Rental]] Rents.

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

282 * * *

283 **25A-8. Sale or rental of [[moderately priced dwelling]] units**

284 * * *

285 (b) [[Department of Housing and Community Affairs, Housing
286 Opportunities Commission or other designated housing development
287 agency or corporation.]] Sale or rental to government agencies or
288 nonprofit corporations.

289 * * *

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

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

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

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

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

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

302 **25A-9. Control of rents and resale prices; foreclosures.**

303 * * *

304 (c) *First sale after control period ends.*

305 * * *

306 (3) The Department and the Commission, in that order, may buy an
307 MPDU [the first time the MPDU is offered for sale after 10 years
308 after the original sale or rental] at any time during the control
309 period, and may resell the unit to an eligible person. A resale by
310 the Department or Commission starts a new control period.

311 (4) The Commission and any partnership in which the Commission
312 is a general partner need not pay into the Housing Initiative Fund
313 any portion of the resale price of any MPDU that it sells [after 10
314 years after the original sale or rental].

315 (d) *Initial and [subsequent] later rent controls.* Unless previously sold
316 under subsection (c)(1), [moderately priced dwelling units] MPDUs
317 built or offered for rent under this Chapter must not be rented for [20]
318 [[30]] 99 years after the original rental at a rent greater than that
319 established by Executive regulations [adopted by the County Executive

320 under method (1)]. [Whenever any moderately priced dwelling unit]
 321 Any MPDU (other than those built, sold, or rented under any federal,
 322 state, or local program offered by the Commission) [is] offered for rent
 323 during the [20] [[30-year]] control period[, it] must be offered
 324 exclusively for 60 days to one or more eligible persons, as determined
 325 by the Department, for use as [his or her own] that person's residence,
 326 and to the Commission. The Commission may assign its right to rent
 327 such units to persons of low or moderate income who are eligible for
 328 assistance under any federal, state, or local program identified in
 329 Executive regulations [adopted by the County Executive under method
 330 (1)].

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

- 334 (1) If the sale occurs during the [first 10 years after the original sale
 335 or rental] control period, any amount of the foreclosure sale price
 336 which exceeds the total of the approved resale price under
 337 subsection (a), reasonable foreclosure costs, and liens filed under
 338 the Maryland Contract Lien Act, must be paid to the Housing
 339 Initiative Fund. If the remaining balance under the original first
 340 deed of trust or mortgage exceeds the resale price under
 341 subsection (a), then the difference between the foreclosure sales
 342 price and the balance of the original first deed of trust (plus
 343 reasonable foreclosure costs) must be paid to the Fund.
- 344 (2) If the sale occurs after the [[first [10] 30 years after the original
 345 sale or rental]] control period, and the unit was originally offered

346 for sale or rent after March 20, 1989, the payment to the Fund
347 must be calculated under subsection (c).

348 (3) If the MPDU is a rental unit, the resale price under subsections
349 (a) and (c) must be calculated using the maximum sales price in
350 effect when the unit was originally offered for rent.

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

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

355 * * *

356 (g) *Bulk transfers.* This section does not prohibit the bulk transfer or sale of
357 all or some of the sale or rental MPDUs in a subdivision within [20] 30
358 years after the original rental or offering for sale if the buyer is bound by
359 all covenants and controls on the MPDUs.

360 * * *

361 **25A-10. Executive regulations; enforcement.**

362 * * *

363 (d) The Director may take legal action to stop or cancel any transfer of an
364 MPDU if any party to the transfer does not comply with all
365 requirements of this Chapter. The Director may recover any funds
366 improperly obtained from any sale or rental of an MPDU in violation of
367 this Chapter, plus costs and interest at the rate prescribed by law from
368 the date a violation occurred.

369 (e) In addition to or instead of any other available remedy, the Director may
370 take legal action to:

- 371 (1) enjoin an MPDU owner who violates this Chapter, or any
- 372 covenant signed or order issued under this Chapter, from
- 373 continuing the violation; or
- 374 (2) require an owner to sell an MPDU owned or occupied in
- 375 violation of this Chapter to the County, the Commission, or an
- 376 eligible [[buyer]] person.

377 **25A-12. Annual report.**

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

- 380 (a) the number of MPDUs approved and built;
- 381 (b) each alternative payment agreement approved under Section 25A-5A or
- 382 alternative location agreement approved under Section 25A-5B, and the
- 383 location and number of MPDUs that were involved in each agreement;
- 384 (c) each approval of a different rent for a high-rise rental unit under Section
- 385 25A-7(b)(1); and
- 386 (d) the use of all funds in the Housing Initiative Fund that were received as
- 387 a payment under Section 25A-5A.

388 ~~[[25A-12]]~~ **25A-13. Applicability.**

389 * * *

390 **Sec. 2. Effective date; Applicability.**

391 This Act takes effect on April 1, 2005. The amendments to Chapter 25A made
392 by Section 1 of this Act which extend the control period for sale and rental MPDUs
393 do not apply to any MPDU for which a sale contract or rental agreement was signed
394 before April 1, 2005. The amendments to Section 25A-5 made by Section 1 of this
395 Act which reduce the minimum size of a development where MPDUs must be
396 located do not apply to any development for which a preliminary plan of subdivision
397 was approved before April 1, 2005.

398

Sec 3. Executive proposal. By April 1, 2006, the County Executive, after

399

consulting the Planning Board and Housing Opportunities Commission, must

400

propose to the Council legislation or a regulation to limit alternative payment

401

agreements under Section 25A-5A, inserted by Section 1 of this Act, to:

402

(a) senior citizen and special needs housing with unaffordable services and

403

facilities; and

404

(b) environmental constraints that would render the building of required

405

MPDUs at a site economically infeasible.

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Approved:

407

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Dec. 3, 2004

Steven A. Silverman, President, County Council

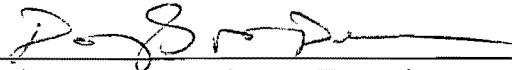
Date

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Approved:

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12/11/04

Douglas M. Duncan, County Executive

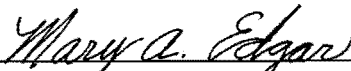
Date

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This is a correct copy of Council action.

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Dec. 13, 2004

Mary A. Edgar, CMC, Clerk of the Council

Date