



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org**Memorandum**

July 5, 2007

To: Montgomery County Planning Board

Via: Karl Moritz, Chief, Research & Technology Center
Roselle George, Research Manager *RG*

From: Sharon K. Suarez, AICP, Housing Coordinator *KS*

Re: Workforce Housing Program Executive Regulations 18-06AM

Background

In the spring of 2005, housing staff began a concerted research and analysis effort to develop a workforce housing policy proposal. During that summer, drafts were reviewed by a working team consisting of staff from DHCA, HOC, and the Office of the County Executive. The draft policy and technical supplement were shared with the County Councilmember Steve Silverman and his staff, as well. Subsequently, Councilmember Silverman requested additional information, which was provided.

The Workforce Housing program will ensure the construction of housing in developments of 35 units or more that is affordable to households with incomes at or below 120 percent of the area-wide median income, adjusted for household size. The legislation applies only to developments of 35 units or more in zones that could achieve 40 dwelling units per acre within Metro Station Policy Areas. The legislation will allow additional building height and reduce the green space requirement, if needed, to build workforce units on site. Under certain circumstances, developers may build the workforce units off site, but they may not "buy-out" of the requirement. The control period for sale units is 20 years and for rental units is 99 years. Planning staff estimates that about 2,500 workforce units will be created over the next 20 to 30 years in these areas, which will broaden the range of housing options for many households.

After adoption of the enabling legislation during the summer of 2006, staff of the Department of Housing and Community Affairs (DHCA) proposed Executive Regulation 18-06 to govern the operation of the workforce housing program. The regulations were presented to the Planning, Housing, and Economic Development (PHED) Committee and County Council in their regular sessions on October 16 and October 25 of 2006. The Planning Board discussed the possibility that prices might be set up to a level affordable to households earning 120 percent of the area median income. At that level, workforce units become market rate units, albeit at the lower end of the market.

Subsequently, the PHED sent the first set of proposed regulations back to DHCA for other reasons. The PHED did not like the proposed use of the Housing Initiative Fund (HIF) to underwrite the gap between the sales price of a WFH unit and the amount actually paid by most workforce families. The PHED did not think that was a wise use of the HIF. Nor did the PHED

believe it was appropriate to provide such a subsidy for workforce housing, especially when we do not do so in the Moderately Priced Dwelling Unit program. Additionally, the PHED did not like the DHCA proposal to impute the cost of the unit, based on the amount a specific lottery-winner could afford. The PHED believed that units should be produced within price ranges, as is done for the MPDUs. For these reasons and others the PHED instructed DHCA staff to rewrite the regulations to more closely parallel the regulations of the Moderately Priced Dwelling Unit (MPDU) program. WFH Executive Regulations 18-06AM are the result.

On Monday, July 23, members of the County Council's Planning, Housing, and Economic Development (PHED) Committee will review Executive Regulations 18-06AM, which incorporate changes requested last fall. The Planning Board's comments will facilitate this review.

Staff is including two memo written to the Planning Board in 2006 (Attachment A), which provide an overview of the development of the WFH legislation and answer key questions. Staff invites Planning Board members to contact us if they would like more detailed information on the WFH program.

Recommendation: *Support the regulations, with modifications.*

The amended version of the regulations (18-06AM) is attached (Attachment B) and corrects some of the substantive issues identified in the original version (18-06). Specifically, there is no longer a portion of Section 5 entitled "Amount Developer is to Receive from Sale Proceeds," nor do the amended regulations attempt to close the price gap with money from the HIF. In the amended version of the regulations, the price of the workforce units is determined objectively, based on prices affordable to ranges of workforce households. Therefore, staff urges the Board to support the regulation 18-06AM, as corrected or clarified by the following changes.

Suggested Changes

The following comments refer to the pages and specific paragraphs of the attached ***Workforce Housing Regulations 18-06AM***. For example, the first comment is in Section 3 of the regulations and can be located on page 12 of the regulations, as indicated in brackets. The second comment is on page 13, and so forth. While reading the regulations, please note that the term "Department" signifies the DHCA and the title "Director" signifies the Executive Director of DHCA, unless stated otherwise.

Comment 1. (See page 12.)

Section 3 discusses the agreements to build WFH units. Once the Planning Board has set the WFH Unit requirements for the Workforce Housing Project, a developer must enter into a written Agreement to Build WFH Units with the DHCA. Agreements to build must be executed before any building permits may be issued by the Department of Permitting Services (DPS). Agreements to build must contain information, such as staging of construction, and a list of street addresses, unit numbers, and tax numbers for all units – WFH units, MPDUs, and market units.

In paragraph 3.1(d), DHCA is directed to send a copy of these agreements to the Department of Permitting Services (DPS), but not to the Planning Board. Staff thinks that the success of the WFH program will depend, at least in part, upon the ability of DHCA, DPS and the Planning Board to coordinate information related to these agreements. Specifically, the Planning Board needs to have the ability to compare the agreements the developers make with DHCA against the commitments and covenants set forth in development applications. For that reason, paragraph 3.1(d) should be changed to read: “The Department must forward a copy of the executed agreement to the Planning Board and to DPS...”

Comment 2. (See page 13.)

Paragraph 3.1(e) needs to clarify which developers may volunteer to build workforce units in order to obtain additional height, in terms of which zones, what density, and what height limitations are included in the development application. At issue here is that not all transit station development meets the criteria for workforce housing. For example, a developer of a small parcel within a transit area recently offered to voluntarily participate in the workforce housing program. The developer was denied. Why? The zoning did not allow enough density. Does that mean that the developer is forbidden to offer units affordable to households earning workforce incomes? The answer is “no.” What the decision does mean is that the developer cannot access the additional height allowed in the workforce housing program.

While it is true that any developer may build units affordable to the workforce, only certain developers may gain the benefit of additional height. Grandfathered development applications are those that would ordinarily be required to comply with the ordinance, save that the applications were received prior to the effective date of the legislation. At the time of the passage of the legislation, the County Council foresaw that some grandfathered projects might seek to voluntarily participate in the WFH program in order to gain the additional height. As an example, the developer of Lot 31 wanted to waive its right to grandfathering.

Staff believes that it is very important to clarify that the “voluntary” program includes the potential opportunity for more height and to make it available to those parcels that meet the location AND density requirements of the workforce housing program. **Staff recommends that paragraph 3.1(e) be changed to read:**

“The Department may enter into and execute voluntary agreements to build WFH Units with certain Developers. Developers who may volunteer workforce units are those whose development applications were filed prior to the effective date of the workforce housing program legislation, but whose projects would otherwise have been required to build workforce housing units.”

Comment 3. (See page 13.)

Section 4 of the regulations addresses the issue of “Alternative Compliance Measures.” “Alternative Compliance Measures” are those methods of providing WFH Units other than under the standard requirement. Alternatives to building the WFH units on-site include: building the WFH Units at an alternative location within the same planning policy area, building or converting the required number of units from non-residential uses, or buying WFH Units for which the rental or for sale control period has expired.

Paragraph 4.2 (A) stipulates that the developers must submit a request for alternative compliance 90 days before the submission of a development application. This seems confusing to staff. The applicants will not likely know whether alternative sites for WFH units will be needed during the period before the development applications are submitted and the range of problems are identified. Therefore, staff suggests that the language be changed to allow for at least an initial review of the development application prior to submitting a written request for an alternative location for WFH units. Additionally, the use of the term “Planning Area” is not specific enough, and should reflect the language of the executive regulations of the MPDU program, which specify “planning policy area” throughout. **Staff suggests that this paragraph be changed to read:**

“If a Developer wishes to provide WFH Units at an Alternative location, they must be provided in the same Planning Policy Area under the provisions of Section 25B-26. The Developer must submit a written request to the Director not less than 90 days prior to the submission of a Development Application for the Project for which the alternative location approval is being requested. The Director must communicate a decision on a request prior to the filing, so that the Developer may include the Director’s approval in the Development application, if applicable.”

Comment 4. (See page 17.)

Section 5, pages 15 through 19, discusses the methodologies for determining sales prices and rental rates for WFH units. **In paragraph 5.1(g)**, the methodology appears to set three sales tiers for three difference sized units, but the proportionality is not spelled out. Please indicate whether the proportion WFH units by bedroom size will be similar to the proportion of market units by bedroom count, as for the MPDUs.

Comment 5. (See page 32.)

Section 11 describes which department or office will be responsible for enforcing the executive regulations. Here again staff found a missed opportunity for interagency coordination. **In paragraph 11.1** the planning board needs to be informed of the DHCA’s decisions related to denial, suspension, revocation, etc., of any building or occupancy permit for violation of Chapter 25B, the Agreement to Build WFH Units, or the WFH Covenants. Therefore, staff recommends the fourth sentence be changed to ensure that the planning board is made aware of enforcement decisions:

“...The decision to approve a revision or amendment is within the director’s sole discretion. **Any such decision must be communicated in writing to the Developer and copied to the Planning Board...**”



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Subject

Workforce Housing Program

Number

18-06AM

Originating Department

Department of Housing and Community Affairs

Effective Date

Department of Housing and Community Affairs

Montgomery County Regulation on:

REQUIREMENTS AND PROCEDURES FOR THE

WORKFORCE HOUSING PROGRAM

DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Issued by: County Executive

Regulation No. 18-06AM

Authority: Code Section: 25B

Supersedes: New Regulation

Council Review: Method One (1) Under Code Section 2A-15

Register Volume 23 Issue 9

Comment Deadline: September 29, 2006

Effective Date: _____

Sunset Date: December 1, 2014

SUMMARY:

This Executive Regulation establishes the policies and procedures for the Administration of the Workforce Housing Program.

ADDRESSES:

Information and copies of this regulation are available from the Department of Housing and Community Affairs, (DHCA), Division of Housing and Code Enforcement, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850



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STAFF CONTACT:

Manager, Single Family Housing Programs, Telephone Number 240-777-3600

BACKGROUND INFORMATION:

Chapter 25B of the Montgomery County Code, 2004, as amended, established the provisions of the Workforce Housing Law. This regulation establishes the policies and procedures for the administration of the Workforce Housing Law. The regulation is applicable to subdivisions having a Workforce Housing requirement, to Workforce Housing Units (WFH Units) which are sold, resold, or rented through the program, and to persons or households applying for eligibility to purchase or rent a WFH Unit.

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EXECUTIVE REGULATION

Section 1 Definitions

1.1 "Alternative Compliance Measure" means a method of providing WFH Units other than under the standard requirement by building the WFH Units at an alternative location within the same planning policy area, building or converting the required number of units from non-residential uses, or buying WFH Units for which the rental or for sale control period has expired.

1.2 "Capital Improvement" means permanently affixed improvements, excluding luxury and cosmetic items such as painting, interior decorating, temporary improvements, and non-fixed improvements.

1.3 "Certificate of Eligibility" means a non-transferable certificate which is effective for a specified period of time, and which is issued by the Department to persons meeting the Program's minimum eligibility criteria.



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- 1.4 “Certified Household” means a household that has a Certificate of Eligibility to purchase or rent a WFH Unit.
- 1.5 “Change in Type of Building Construction” means a change in the type, method and materials of construction from a Garden Style building to a High Rise building:
- a) “Garden Style Building” means a multi-family dwelling unit structure that is four (4) stories or fewer in height, and is constructed primarily of wood and/or metal frame materials and associated methods.
 - b) “High Rise Building” means any multi-family residential or mixed use (residential and commercial) building that is higher than four (4) stories, and is constructed primarily of steel reinforced concrete materials and associated methods.
- 1.6 “Commission” refers to the Montgomery County Housing Opportunities Commission, or its successor agency.
- 1.7 “Consumer Price Index” means the latest published version of the Consumer Price Index for All Urban Consumers (CPI-U) of the U.S. Department of Labor, or any similar index designated by regulation.
- 1.8 “Control period” means the time a WFH Unit is subject to either resale price controls and owner occupancy requirements or maximum rental limits as provided herein. For a WFH Unit originally offered for sale or rent after December 1, 2006, the control period for sale WFH Units is 20 years from the Date of Original Sale; for rental WFH Units the control period is 99 years from the Date of Original Rental. For sale WFH Units, such control period is re-initiated upon each sale that occurs within the initial or subsequent control periods.
- 1.9 “Date of Original Rental” means the date that the first lease of a WFH Unit takes effect.
- 1.10 “Date of Original Sale” means the date of settlement for purchase of a WFH Unit.
- 1.11 “Department” means the Department of Housing and Community Affairs.
- 1.12 “Developer” means a person or other legal entity that seeks to develop a housing project.
- 1.13 “Development Application” means submitting an original application for a development approval to the Planning Board (including, but not limited to, a preliminary plan of subdivision, site plan, development plan, or project plan), or applying to DPS for a building permit when there is no site plan, whichever is applicable.
- 1.14 “Director” means the Director of the Department or the Director’s designee.
- 1.15 “Disabled Individual” means an individual who has a physical or mental impairment that substantially limits one or more major life activity.



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1.16 “Eligibility List” means a list of Interested Households maintained by the Department.

1.17 “Fair Market Value of Capital Improvements” is defined as the actual and reasonable costs of materials, professional fees, contractor’s costs, and permit fees associated with furnishing and installing Capital Improvements.

1.18 “Housing Initiative Fund” means the fund established under Section 25B-9.

1.19 “Interested Households” means households who have completed and submitted an application, including a self-certification form, to the Department, in order to be placed on the Eligibility List to purchase a WFH Unit.

1.20 “Moderately Priced Dwelling Unit,” or “MPDU,” means a dwelling unit produced in accordance with Chapter 25A of the Montgomery County Code, 2004, as amended.

1.21 “Median Income” means the area-wide median income for the Washington, DC Primary Metropolitan Statistical Area (PMSA) as published annually by the U.S. Department of Housing and Urban Development (HUD).

1.22 “Offering Agreement” means a written agreement prepared by the Developer and submitted to the Department, and which is subject to the review and approval of the Department, in which the Developer makes WFH Units available to Certified Households.

1.23 “Planning Board” means the Montgomery County Planning Board, or its successor agency.

1.24 “Planning Policy Area” means a geographic area defined in the County's Annual Growth Policy.

1.25 “Primary Residence” means the place where a person spends 51% or more of their time and, at a minimum, the address at which a person is registered to vote, and the address indicated on their drivers license and vehicle registration.

1.26 “Priority Marketing Period” means a period of no more than 90 days during which time the WFH Unit must be available exclusively for sale or rent to Certified Households.

1.27 “Program” means the Workforce Housing Program.

1.28 “Purchaser’s or Renter’s Agreement” means a form issued by the Department and signed by the purchaser and/or renter of a WFH Unit in which the purchaser and/or renter agrees that they must occupy the unit as their primary residence and otherwise comply with the provisions of Chapter 25B.

1.29 “Title 11” means Title 11, Maryland Condominium Act, Real Property Article, Annotated Code of Maryland.

1.30 “Workforce Housing Law” means Chapter 25B of the Montgomery County Code, 2004, as amended.



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1.31 “Workforce Housing Unit (WFH Unit)” means a dwelling unit in a workforce housing project that is subject to rent limits or sales controls under Chapter 25B of the Montgomery County Code, 2004, as amended.

Section 2 Eligibility for Purchasing or Renting WFH Units and Occupancy Requirements

2.1 Rental Certification.

(a) To be certified to rent a WFH Unit, a household must apply to the Department and be determined by the Department to be eligible for participation in the program. Alternately, the Department may delegate to the individual apartment complexes the responsibility for certifying households as eligible to occupy WFH Units. To determine whether an individual or household meets the eligibility requirements, the following information and documentation for every wage earner in the household must be provided to the Department or the apartment complex:

- (1) An original signed application,
- (2) Copies of the two most recent previously filed federal income tax returns,
- (3) The applicant’s two most recent W-2 forms,
- (4) Copies of divorce or separation agreements (if applicable),
- (5) Copies of the two most recent employment pay check stubs from each current employer.

(6) The Department reserves the right to require certified copies of a household’s federal tax forms and other documentation it deems necessary.

(b) Persons who do not have the required federal tax information because they did not live in the United States at any time during the previous one or two tax years must supply a copy of their passport and the passports of each adult family member indicating their dates of entry into the United States. In addition, these persons must supply evidence from the United States Internal Revenue Service verifying that they have not filed federal income taxes in the previous one or two years, whichever is applicable.

(c) A household which includes a person who is self-employed must demonstrate that they are within the Program’s income guidelines by providing evidence and documentation in a form acceptable to the Department.

(d) To be eligible to rent a WFH Unit an applicant must be a County resident and employed at an establishment located in the County, or have a written job offer to work at an establishment in the County. The Department may require additional documentation to verify eligibility if the foregoing documentation is not sufficient.

(e) A household determined to be eligible to rent a WFH Unit will be issued a Certificate of Eligibility which



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contains an expiration date. The expiration date of rental Certificates of Eligibility generally will be twenty-four months from the date of issuance.

(f) In the case of issuing Certificates of Eligibility for WFH Unit rental units, the Department may assign its responsibility for accepting applications and certifying an individual's or household's eligibility under the Program to individual apartment complexes containing WFH Units. In such cases, the Department must annually notify the apartment complexes of the applicable income limits and other eligibility criteria. In addition, the complexes must submit their application, lease, and leasing procedures to the Department for review and approval.

2.2 Purchaser Certification.

(a) A Certificate of Eligibility to purchase a for sale WFH Unit will only be issued to persons selected in the lottery (described in Section 6.2 of this regulation) and who, after further verification, are found to be eligible by the Department.

(1) Eligibility List of Interested Households. The first step in being certified to purchase a WFH Unit, is for a household to apply to be placed on an Eligibility List (thereby becoming an "Interested Household"). To apply to become an Interested Household, households are required to provide self-certification of income, assets, residence, employment, proof of attendance at a County approved home buyer seminar, and other information as required by the Department in a form acceptable to the Department.

(2) Becoming a Certified Household.

(A) Interested Households selected by lottery must provide in a timely manner as determined by the Department all the documentation required of renters in Section 2.1(a) above, and also supply a pre-qualification letter from a mortgage lender in a form acceptable to the Department that includes the maximum loan amount for which the Interested Household would qualify, as well as verification of assets, and other information as required by the Department.

(B) Interested Households, selected through the lottery and found eligible by the Department will receive a Certificate of Eligibility to purchase a WFH Unit from the Department, thereby becoming a Certified Household. A Certificate of Eligibility will be applicable only to the project for which the lottery was held, with the following exception: a Certified Household who is selected in a subsequent lottery that is held within six months of the date of becoming a Certified Household will not need to be re-certified by the Department unless a change in household size, income, or some other factor affecting a household's eligibility for the Program necessitates a re-certification. The Certified Household must notify the Department whenever such a change occurs; failure to do so will result in that household's disqualification from the Program.

(b) When the Department determines that an Interested Household has knowingly supplied false information to qualify for purchase or rental of a WFH Unit, that Interested Household will be barred from the Program.

(c) The Department may set defined time periods during which applications to the Eligibility List will be



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accepted, and the Department may determine if and when the Eligibility List may be temporarily closed.

(d) Homebuyer Seminar. Before a household may apply to become an Interested Household, a household must submit a certificate of completion of a Department approved home buyer seminar.

2.3 Requirements for Eligibility – Income. To determine a household’s eligibility for the Program, except in circumstances described in subsection (f) below, the Department must determine that the household’s total income is at least equal to the approved minimum and does not exceed the approved maximum income limits for sale or rental housing in effect at that time. The Department may adopt uniform policies for determining how household annual gross income must be calculated.

(a) Minimum Income – The minimum income for the Program will be the current maximum income for the MPDU Program (currently 70 percent of area median).

(b) Maximum Income. By June 15th of each year, the Director must set the maximum incomes allowed under the rental and sales programs according to the following procedures. The maximum income allowed in order to be eligible for a WFH Unit is set at one hundred and twenty (120%) of the median income for a household size of four (4). These income figures for a household of four are then multiplied by the following adjustment factors to determine the maximum income allowed for various household sizes. The resulting figure is rounded to the nearest \$500.

Household Size	1	2	3	4	5
Adjustment Factor	.70	.80	.90	1.00	1.08

(c) If the change in median income from the preceding year is negative, the Director may adjust the maximum income by the percentage change in the consumer price index for the preceding 12 month period.

(d) In the Department’s annual report to the Council regarding the Program, the Director will report on the income limits in effect for the year and the methodology used to arrive at the figures.

(e) Income is defined as the gross income received annually from all sources by all wage earners in a household. Sources of income include, but are not limited to, the following:

- (1) Wages, salary, and tip income;
- (2) Child support;
- (3) Alimony;
- (4) Interest from savings and checking accounts;
- (5) Dividends from stocks and bonds, and interest from certificates of deposit;



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- (6) Social Security benefits;
- (7) Veterans Administration benefits;
- (8) Overtime pay;
- (9) Unemployment insurance benefits;
- (10) Bonus payments;
- (11) Pension and retirement payments;
- (12) Long-term Disability benefits; and
- (13) Any other annuities or stipends received.

(f) A Developer may fulfill the Workforce Housing Program requirement for a particular development through the construction of housing under other federal, state, or specific local programs to assist low and moderate income families. In such a case, the income limits and other requirements of that particular housing program must apply rather than the requirements set forth herein.

2.4 Special Income Exception for Conversion of Rental WFH Units to Condominiums. A household that rents a WFH Unit and lawfully occupies the unit at the time it is offered for sale must be offered the right-of-first refusal to purchase the WFH Unit under Title 11 as long as the household qualifies for the financing necessary to purchase the unit, and so long as the household met all eligibility standards at the date of original rental. This right-of-first refusal is governed by Title 11. If the tenant does not sign a contract and secure financing during that time, the unit must be offered to Certified Households through a method to be determined by the Department. A tenant eligible to exercise an extended tenancy right as provided in Title 11 may continue to occupy the WFH Unit through the term of the extended tenancy. Upon conclusion of the extended tenancy, the WFH Unit must be made available to a Certified Household through a method determined by the Department.

2.5 Eligibility for Purchase – Restrictions on Ownership of MPDUs. To be eligible to buy or rent a WFH Unit, a person and members of that person's household who currently own a Moderately Priced Dwelling Unit (MPDU) in the County that is still under the MPDU occupancy and resale price controls, must sell the MPDU in accordance with that Program's requirements. The Director may waive this restriction for good cause. The sale must occur before, or simultaneously, with the settlement on the WFH Unit.

2.6 Eligibility for Purchase - Asset limit. To be eligible to purchase a WFH Unit, an Interested Household must not have combined assets that exceed 25% of the amount for which the household is prequalified by a lender.



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- (a) Assets are defined as amount of money in, or value of:
- (1) Paid downpayment;
 - (2) Checking accounts;
 - (3) Savings accounts;
 - (4) Certificates of deposit and /or money market accounts;
 - (5) Stocks and/or mutual funds;
 - (6) Bonds;
 - (7) Real property, less outstanding debt; and
 - (8) Trust Funds.
- (b) Assets not included in this definition include:
- (1) Amount in tax deferred retirement savings;
 - (2) Amount in tax deferred college savings plans;
 - (3) Cash value of whole life insurance;
 - (4) Automobiles, (up to one per adult); and
 - (5) Cash value of Household furnishings and jewelry

2.7 Primary Residence Requirement for WFH Units.

(a) Except for the Department and Commission, tenants and owners of WFH Units must occupy the WFH Unit as their Primary Residence and must execute and submit to the Department a signed Purchaser's or Renter's Agreement provided by the Department at the date of original sale or rental, which certifies that he/she must occupy the WFH Unit during the entire control period or until the unit is sold or is relinquished in accordance with the Workforce Housing Law and these regulations. The tenant or owner must submit an annual recertification stating, under the penalty of perjury, that the WFH Unit is their primary residence. If a WFH Unit owner dies, at least one heir, legatee, or other person taking title by will or by operation of law must occupy the WFH Unit as their Primary Residence during the control period in order to fulfill the occupancy requirements of this Section.

- (b) During the applicable control period, before the owner of a WFH Unit purchases other residential



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property in the Washington Primary Metropolitan Statistical Area (PMSA), as defined by the federal Office of Management and Budget (OMB), to be used as the owner's primary residence, the owner must first sell the WFH Unit as specified in these regulations. Before the renter of a WFH Unit purchases residential property in the Washington PMSA, the renter must surrender their WFH Unit and their Certificate of Eligibility to the Department.

(c) A WFH Unit owner who wishes permission to temporarily waive the WFH Unit occupancy requirement in order to rent his/her unit for cause must send a written request to the Director to obtain permission and a written waiver. The request must contain the reason(s) the owner desires to rent the unit and the period of time that the unit will be rented. The owner must demonstrate that he/she is required to move out of the Washington PMSA for employment or health reasons for a period not to exceed 24 months (the Director may approve a longer time period for good cause, as determined by the Department). The WFH Unit owner must certify that he/she will reoccupy the WFH Unit upon expiration of the term of the waiver, which will begin on the date the owner vacates the unit. If the owner fails to reoccupy the WFH Unit within 30 days of the expiration of the term of the waiver, the WFH Unit must be sold in accordance with the terms of this regulation.

(d) When granting a waiver to allow an owner to rent a WFH Unit, the Director must establish the allowable rent that the owner can charge during the temporary rental period. This rent must not exceed the total of principal and interest payments on a mortgage amount that is not in excess of the resale control price, real estate taxes, homeowner's insurance, reasonable management fees, homeowners association or condominium fees, and reasonable expenses attendant to the maintenance of the WFH Unit. If the owner retains responsibility for the payment of some or all of the utility expenses and maintenance costs, these expenses may be added to the rental rate. An increase in the rent may be permitted after one year, if the owner shows that there has been an increase in the listed costs used to determine the rent. The rent increase must be approved by the Department in writing.

(e) WFH Unit owners who temporarily rent their units must extend the WFH Unit covenants for a period of time equal to the rental period. The owner must execute a new covenant in the form provided by the Department before the final written approval from the Department may be granted. The Department must record the covenants among the land records of Montgomery County.

(f) WFH Unit owners who temporarily rent their units must sign a lease with the tenant. The owner must use the applicable model lease approved by the Department. The term of the lease must not exceed the term of the waiver granted by the Department.

(g) If a WFH Unit owner fails to occupy the WFH Unit as their primary residence and has not received written permission from the Director to rent or vacate the unit temporarily, the WFH Unit must be sold in accordance with Chapter 25B.



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Section 3 Requirement to Provide WFH Units

3.1 Requirements of the Agreement to Build WFH Units.

(a) Once the Planning Board has set the WFH Unit requirements for the Workforce Housing Project, a Developer must enter into a written Agreement to Build WFH Units with the Department in a form approved by the Department. This Agreement must be executed before any building permits may be issued by the Department of Permitting Services (DPS). This Agreement must contain at least the following information:

(1) The name of the project, the marketing name if different than the name submitted to the Planning Board, the apartment or condominium name, and the site plan, preliminary plan and project plan numbers, when applicable. A copy of the approved preliminary plan, site plan, project plan, or the record plat must be provided with the agreement.

(2) A plan for the staging of construction of all dwelling units that is consistent with Chapter 25B and any approved applicable land use, subdivision, or site plan.

(3) A copy of the applicable covenants, either rental or sales covenants.

(4) The Agreement must identify all land which is owned by or under contract of sale to the Developer, or, will be available, or is being processed for development and individually or collectively will be subject to Chapter 25B. For subsequent WFH Unit construction agreements, it will be necessary only to update this statement.

(5) A list showing the street addresses, unit numbers, and tax identification numbers, if known, for the WFH units, MPDUs and market rate units.

(b) The Department must determine that the Agreement meets the requirements of Chapter 25B and these regulations. The Department will not enter into an agreement where the sizes of the individual WFH Units are less than 90% of the number of square feet of the average size of individual market rate units containing the same number of bedrooms.

(c) Any revisions to the Agreement must be requested in writing from the Developer, and if approved by the Department, the approval must be in writing from the Director and affixed to the Agreement as an amendment in a form approved by the Department.

(d) A copy of the executed Agreement must be submitted to DPS with the first building permit application for the project. DPS must not issue building permits in a project having a WFH Unit requirement unless those units are included in the signed Agreement.



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(e) The Department may enter into and execute agreements to build WFH Units with Developers who are not required to build WFH Units, but who want to enter into such an agreement voluntarily.

3.2 Housing Programs Which Satisfy the WFH Unit Requirement. Federal, state, or local housing programs may be used to fulfill WFH Unit requirements. When federal, state or local housing programs are used to comply with the requirements of Chapter 25B, the following conditions must be met:

(a) Sales prices or rental rates must be affordable to households within the WFH Unit income ranges.

(b) The Director must determine that the controls on the sales prices and/or rents will contribute to the long term availability of WFH Units and that the covenants on these units contain provisions for the County's recapture of excess profits realized by a WFH Unit owner as required in Chapter 25B.

Section 4 Alternative Compliance Measures for providing WFH Units.

4.1 Requesting Alternative Compliance Measures. Under certain conditions as specified in Chapter 25B, it may be possible to request an alternative method of providing the required number of WFH Units. To satisfy the requirements of this Section, a Developer may request to:

(a) Build, or convert from non-residential use, the required number of WFH Units at an alternative site in the same Planning Area, approved by the Director; and/or

(b) Buy, encumber, or transfer, and rehabilitate as necessary, existing WFH Units for which price or rent controls have expired;

4.2 Approval to Provide WFH Units at an Alternative Location in the Same Planning Policy Area.

(a) If a Developer wishes to provide WFH Units at an alternative location, they must be provided in the same Planning Area under the provisions of Section 25B-26. The Developer must submit a written request to the Director not less than 90 days prior to the submission of a Development Application for the Project for which the alternative location approval is being requested. The Director must communicate a decision on a request prior to the filing so that the Developer may include the Director's approval in the Development Application, if applicable.

(b) In order to make such a request to the Director, the Developer must submit in writing, at a minimum:

(1) Justification as to how the public benefit of locating WFH Units at the proposed alternative location, or converting non-residential property to WFH Units, is equivalent to the value of locating WFH Units in each applicable Project throughout the County; or



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(2) Documentation in a form acceptable to the Department demonstrating that building a sufficient number of WFH Units at the original site would require a Change in Type of Building Construction;

(3) Justification that building or converting the WFH Units at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County; and

(4) Proof of control of alternative sites for building or conversion; such proof may include a title report showing ownership, an executed purchase contract for the site(s) which includes a description of the property, or other documentation acceptable to the Department.

(5) Any legal and descriptive information about the proposed alternative sites as the Department may require.

(c) Transfer Decision and Agreement. The decision to approve a request for an Alternative Compliance Measure must take into consideration how the public interest will best be served. Any decision regarding the transfer must be made in accordance with the following conditions:

(1) The Director must make a decision within 90 days of receiving the request. A copy of the decision must be provided to the Developer, the Planning Board, and the Montgomery County Department of Permitting Services.

(2) The Director may reject any request, either in part or in whole, if the Director determines that the transfer will not serve the public interest.

(3) After the Director has made a determination regarding the request, the Director must submit the determination prior to the time that the Planning Board or Director of the Department of Permitting Services considers its approval request for the original Development Application.

(4) If the Director approves the request for an Alternative Compliance Measure for the WFH Unit, the Developer and the Department must enter into an Agreement to Build WFH Units which guarantees, at a minimum, that the WFH Units will be completed in the same time frame as the market rate units. This agreement must replace the Agreement to Provide WFH Units. Each agreement must include a schedule, binding on the Developer, for timely completion or acquisition of the required number of WFH Units.

(5) The Developer must prepare and execute the necessary warranty deed(s); arranging for settlement, ensuring that the deeds are properly recorded and delivering evidence of good title to the transferred lots or land.

(6) The Department may, at its discretion, require that the Developer post a bond in order to guarantee that the required WFH Units are built in accordance with the terms of the agreement.



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Section 5 Establishing Initial Sale and Rental Prices

5.1 Maximum Allowable Sales Prices of WFH Units.

(a) The Department will set the Sales Price based on an amount that is affordable to households eligible to participate in the WFH Program based on the households' verified income and household size, according to the procedures described below. The Director shall determine what portion of a household's monthly gross income it is expected to pay towards housing expenses (for example, a Certified Household might be expected to pay no more than thirty-three percent (33%) of its gross monthly household income towards housing expenses including mortgage principal, mortgage interest, real estate taxes, hazard insurance, private mortgage insurance, and condominium fee, but excluding utilities). The Department will then determine the sale price using the following pricing model and procedures described below.

(b) The income used to calculate the sales price is based on one and one half (1½) people per bedroom.
Therefore:

(1) The maximum sales price for an efficiency unit is calculated using the income for a one person household.

(2) The maximum sales price for a one bedroom unit is calculated using the mid-point between the income for a one person household and a two person household (e.g. 1.5 people per bedroom).

(3) The maximum sales price for a two bedroom unit is calculated using the income for a three person household.

(4) The maximum sales price for a three bedroom unit is based on the mid-point between the income for a four person household and a five person household (that is, 4.5 people per bedroom).

(c) To calculate the sales price for any unit by bedroom size, the corresponding total household "monthly income" is calculated by dividing the annual income set by the Department by 12;

(1) The maximum "monthly housing cost" is calculated by multiplying the resulting "monthly income" by the percentage of income towards housing as set by the Director as described in paragraph (a) above;

(2) From the maximum "monthly housing cost", subtract monthly condominium fees, hazard insurance, private mortgage insurance, and real estate taxes to calculate the "adjusted housing cost";

(3) The maximum allowable sales price is calculated as follows:



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(A) Divide the “adjusted housing cost” by the applicable annual mortgage loan constant for a 30 year, fixed rate conventional mortgage at the prevailing mortgage interest rate (The mortgage constant, or installment to amortize, represents the amount of each periodic loan payment expressed as a percentage of the original loan, necessary to pay the contract rate of interest (expressed as i) and the entire principal in equal periodic installments over the term of the loan (expressed as n). It is the periodic payment necessary to repay a loan of \$1 completely without resorting to a balloon payment. Thus, the mortgage constant is always the periodic payment for a loan of \$1 expressed on an annual basis. As a mathematical product, the applicable loan constant can be found on standard charts). The applicable mortgage interest rate will be determined by the prevailing interest rate for a 30 year, conventional mortgage as published by Freddie Mac (or such other source as determined by the Department). This figure represents the “maximum mortgage amount” the Certified Household can afford to support.

(B) Divide the “maximum mortgage amount” by 95% (.90) to calculate the “maximum allowable sales price” after accounting for a downpayment of 5%.

(d) At least annually, the Department will establish and publicize the assumptions and factors it will use under this pricing model, such as: the expected percentage a Certified Household is expected to pay towards its “maximum monthly housing cost”, the percentage a household is expected to pay as a downpayment, the prevailing mortgage interest rate, monthly real estate taxes, monthly private mortgage insurance premium, monthly hazard insurance, and other such factors). The prevailing mortgage interest rate may be adjusted as needed at the time the Offering Agreement is negotiated.

(e) The maximum allowable sales price includes the following closing costs which are to be paid by the Developer:

- (1) One-half of one percent for the permanent loan origination fee;
- (2) County tax certificate, transfer charges, revenue stamps and recordation charges;
- (3) Title examination, settlement, and attorney fees;
- (4) Notary fees and fees for preparation of a deed of conveyance, a deed of trust or mortgage, and the deed of trust or mortgage note;
- (5) Appraisal fee and credit report fee;
- (6) House location survey plat; and
- (7) Fees required to place permanent financing that are paid by the Developer.

(f) The “maximum affordable sales price” may be adjusted at the discretion of the Director to include closing costs if the purchaser wishes to finance closing costs. However, the initial sales price basis used to calculate subsequent sales prices for the unit must be calculated before the addition of any closing costs.

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(g) The Department must ensure that the WFH Units are affordable to the full range of Certified Households in the program, based on their total annual household income. Therefore, no later than the time the WFH Units are offered for sale within each project, and using the methodology to set affordable sales prices described in the preceding section, the Department will set three sales prices for each size of unit (by bedroom count) based on three different levels of income: a sales price affordable to households earning 75 percent of median, which shall be available for purchase for households earning between 71% and 80% of median; a sales price affordable to households earning 90 percent of median, which shall be available for purchase for households earning between 81% and 100% of median; and a sales price affordable to households earning 110 percent of median, which shall be available for purchase for households earning between 101% and 120% of median. The resulting sales prices shall be calculated for each income level and each unit according to bedroom size.

(h) When an Applicant requests that the Department estimate the sales prices earlier than at the time of offering for the purposes of project planning and financial underwriting, the Department may provide such an estimate using current variable inputs, such as income levels, prevailing mortgage interest rates, and the estimated condominium or homeowners association fee for the project, among other factors. Alternately, the Department may annually calculate and publish the maximum affordable sales prices by income level and bedroom size using current income levels, prevailing mortgage interest rates, tax rates, and with other assumed or estimated inputs, such as condominium or homeowner association fee. When the Department provides sales price estimates for a project, they are provided as estimates only. The actual sales prices shall be calculated at the time the Offering Agreement is approved by the County (which can be no more than 365 days from the estimated settlement date on the unit).

(i) When the Department provides sales price estimates for a project, the actual such an advance sales price estimate is provided, the Department

(j) In any instance where water and sewer connection charges are not waived, the “base amount of proceeds” may be adjusted to reflect this increased cost to the Developer.

(k) When the purchaser and Developer of a WFH Unit agree to modify the unit structurally to facilitate access or use by a Disabled Individual, the Department may adjust the sales price by the amount of the additional costs. The Developer must obtain approval of the price from the Department prior to executing a sales contract.

5.2 Maximum Rental Rates for WFH Units.

(a) The maximum allowable rents that may be charged for the WFH Units are those in effect at the time the Department approves the rental Offering Agreement; WFH Unit rents must be based on the maximum income permitted under the program, as revised by June 15 of each year. One third of the rental WFH Units must be allocated to each of three income categories designated by the Department: a rent affordable to households earning up to 75% of median income, a rent affordable to households earning up to 90% of median income, and a rent affordable to households earning up to 110% of median income. If the number of units of a particular size is not divisible by three, then the remainders



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must be assigned to the 90% category.

(b) Rental rates established for WFH Units must distinguish units which are inclusive and exclusive of utilities paid by the tenant and those utilities paid by the Developer.

(c) WFH Units developed under the programs designated in accordance with Section 3.2 of this regulation are to be offered and marketed in accordance with the procedures established for those programs.

(d) The method for computing the maximum allowable monthly rents for WFH Units is described below. The income for the rent calculation is based on one and one half (1½) people per bedroom. Rental rates must be computed based on the income limits for the Program in effect at the time the WFH Units are offered for rent. The resulting maximum allowable rent by this calculation must be adjusted by the Director, if necessary, to ensure that the maximum allowable rent for a WFH Unit is no more than 80 percent of the rental rate of market rate units of the same type listed below:

(1) The maximum rent for an efficiency unit is based on the income for a one person household.

(2) The maximum rent for a one (1) bedroom unit is based on mid-point between the income for a one person household and a two person household (e.g. 1.5 people).

(3) The maximum rent for a two (2) bedroom unit is based on the income for a three person household.

(4) The maximum rent for a three bedroom unit is based on the mid-point between the income for a four person household and a five person household (e.g. 4.5 people).

(5) The appropriate household size and corresponding maximum income each unit size is multiplied by twenty-five percent (25%) then divided by 12 and rounded to the next highest whole number which is evenly divided by five (5) to establish the rent for the unit, excluding utilities.

(6) When the Developer pays utilities, the appropriate household size and corresponding maximum income for each unit size is multiplied by thirty percent (30%) then divided by 12 and rounded to the next highest whole number which is evenly divided by five (5) to establish the rent for the unit. Alternatively, the Department may, at its discretion, use "Allowances for Tenant-Furnished Utilities and Other Services" for the Washington PMSA, as determined by the U.S. Department of Housing and Urban Development.

(e) The Director may set different maximum rent limits for rental units in age-restricted buildings if the Director determines that to do so will contribute to the long term availability and affordability of WFH Units for Certified Households. The Director may exercise this option upon the conclusion of the Priority Marketing Period if there are WFH Units that can not be rented to Certified Households at the approved WFH Unit rents.



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(f) The maximum allowable rental rate for currently rented WFH Units must be adjusted annually by the Director in accordance with the County's voluntary rent guidelines. If the apartment development is financed through a federal or state affordable housing program, then the requirements of that program must supercede this regulation.

(g) Utility charges that are paid by the Developer may be added to the WFH Unit rental rate, at the discretion of the Director. The Department may use the annual utility allowances published by the U.S. Department of Housing and Urban Development (HUD) to calculate these charges. Any request by the Developer for a variance from these rates may only be granted by the Department upon receipt of a certified report from a registered engineer or by the appropriate utility company confirming that the HUD utility allowance is not a valid utility factor for the Project. After the first year of operation, utility charges may be based on the actual, average cost of the utility expenses for the previous 12 months.

(h) Laundry washer and dryer equipment must be provided in each WFH Unit unless this equipment is not provided in the market rate units. No increase in rent is allowed for laundry washer and dryer equipment unless the market rate units are separately charged and the increase is limited to the same fee that the market rate apartments are charged.

(i) The Developer must not be permitted to charge a fee for non-structured, automobile parking to WFH Unit tenants. Structured parking, garage or other enclosed spaces may be offered as an option to the WFH Unit occupants at the monthly rate normally charged to market rate units by the Developer.

(j) In the Department's annual report to the Council regarding the Program, the Director will report on the maximum sales prices and rent limits in effect for the year and the methodology used to arrive at the figures.

5.3 Rental WFH Units Sold as For Sale WFH Units. In the event a rental WFH Unit is sold as a sale WFH Unit, the WFH Unit must not be sold at any time during the applicable rental control period for a price greater than the controlled, approved resale price for the unit. The resale price must be established in accordance with this regulation as if the unit had initially been a "for sale" WFH Unit based on household and bedroom size, and adjusted by the change in CPI since the date of the original rental agreement. The household occupying the unit has the right of first refusal to purchase the unit when it is offered for sale as long as the household is legally occupying the unit in accordance with the Workforce Housing Law and these executive regulations. The occupying household must exercise this right within 60 days of receiving notification of sale. A new control period for the unit must be established according to the control period in effect at that time for sale WFH Units. This control period must begin on the date of settlement of each unit. The existing rental covenants must be released, and new sale covenants recorded on the property.

Section 6 Sale and Rental Procedures

6.1 Offering WFH Units for Sale or Rent.



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(a) The Developer must offer WFH Units for sale or rent through the Department by completing and submitting an Offering Agreement in a form determined by the Department. The following information and documentation must be provided:

- (1) A description of the WFH Units including the number of units, unit types, and size by area and number of bedrooms, and other relevant details of the WFH Units;
- (2) The addresses, legal descriptions, and tax account numbers of the WFH Units;
- (3) A recorded subdivision plat, a copy of the approved preliminary plan, and two copies of the site development plan designating the location of the WFH Units;
- (4) The Declaration of Covenants, in recordable form;
- (5) A copy of the floor plans of each unit type,
- (6) The date(s) when WFH Units will be delivered for settlement or rental occupancy;
- (7) If the units are to be sold, a completed "maximum sale price" calculation; if the units are to be rented, a schedule of approved maximum allowable rents by unit type and bedroom size; and,
- (8) Any other information the Department deems necessary.

(b) WFH Units for sale must be available for settlement and occupancy in compliance with all County building and occupancy code requirements within 365 days of acceptance of the Offering Agreement by the Department

(c) WFH Units for rent must be available for rental occupancy in compliance with all County building and occupancy code requirements within 120 days of acceptance of the Offering Agreement by the Department.

(d) The Developer may not require from a WFH Unit purchaser a deposit that exceeds one percent (1%) of the established WFH Unit sales price.

6.2 Lottery Selection Process for WFH Unit Purchasers. After the Department has approved the Offering Agreement, Interested Households must be selected through a lottery process conducted by the Department. This process must be used to establish a lottery list of Interested Households who will be permitted to complete the verification process in order to be given a Certificate of Eligibility to purchase a WFH Unit.

(a) The Department must notify Interested Households of the offering in a form to be determined by the Department. The form chosen will require self certification of information as required by the Department to assign priority points and conduct the lottery. If the information provided by Interested Households is insufficient and/or



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inaccurate, those Interested Households will not be entered in the lottery. Based on the information provided, the Department awards points according to the factors listed below:

(1) One (1) point for primary employment of at least one household member as a public employee of the County, a municipality in the County, the County Public Schools, or of a local government sponsored enterprise serving Montgomery County, including, but not limited to the Housing Opportunities Commission, the Maryland-National Capital Park and Planning Commission, and the Washington Sanitary Sewer Commission, for a maximum of one (1) point;

(2) One (1) point for participation in an employer housing assistance program recognized by the Department, for a maximum of one (1) point;

(3) One (1) point for living in the County at the time of application to the lottery, for a maximum of (1) point;

(4) One (1) point for employment at an establishment located in the County, or for having a written job offer to work at an establishment in the County at the time of application to the lottery, for a maximum of one (1) point; and

(5) One (1) point for current owners or renters of Moderately Priced Dwelling Units (MPDUs) in the County.

(6) The maximum number of points that may be assigned to a lottery participant is five (5) points.

(b) One person households may only purchase efficiency and one bedroom WFH Units; two person households may purchase WFH Units containing up to two bedrooms. Three or four person households may only purchase two or three bedroom WFH Units. Five person households may only purchase WFH Units with three or more bedrooms. An exception may be made for a Certified Household when WFH Units remain after all Certified Households of a larger household size above them on the lottery list have already selected their units. The Director may waive this limitation for good cause.

(c) The lottery drawing will commence by drawing first from among those lottery participants who have been assigned the highest number of points. A lottery list of names must be developed, with the order determined by the order in which the names were drawn.

(d) If there are WFH Units remaining in excess of the number of participants on the lottery list, the lottery drawing will continue and will be conducted among those assigned the next highest number of priority points. This process must continue until the Department determines that there are a sufficient number of participants for whom the available WFH Unit may be made available for sale.



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(e) The Developer must offer the WFH units to Certified Households highest on the list drawn from the lottery the first opportunity to purchase the available WFH Units and must proceed in order according to the order indicated on the list.

(f) Certified Households selected by a lottery must have the exclusive right to enter into a contract for the purchase of a WFH Unit. The Priority Marketing Period begins the day the Department submits a list of Certified Households to the Developer and must end 90 days after the date of commencement, unless extended by the Department for cause.

(g) The Department may incrementally increase the maximum income for eligibility and extend the Priority Marketing Period in 30 day increments before opening the sales up to the general public.

(h) The Developer must not offer WFH Units to the general public unless the Priority Marketing Period has ended, the lottery list of all Certified Households has been exhausted, and a written notice has been obtained from the Department authorizing sale to the general public. The Priority Marketing Period is automatically extended unless the Department determines that no additional eligible persons are available to purchase the WFH Units. WFH Units that become available for sale after the Priority Marketing Period because the contract purchaser is not approved for permanent loan financing must be offered to Certified Households on the lottery list. WFH Units that are offered to the general public remain subject to all the regulations and laws governing the Program, except the income limitations.

(i) If a Developer offers WFH Units for sale within 6 months after the date of acceptance by the Department of a previous Offering Agreement for WFH Units in the same Project, then the lottery forms that were submitted for the previous offering may be used to generate a new lottery list through a new lottery drawing. The following provisions apply to the subsequent offering:

(1) The Developer's offering must contain the same type(s) of unit(s) with the same number of bedrooms per unit as were in the prior offering; and

(2) Interested Households must obtain a Certificate of Eligibility from the Department, and they must not exceed the approved maximum WFH Unit income limits at the time the purchaser applies for mortgage financing.

(3) The Priority Marketing Period for these subsequent offerings begins on the date the Department submits a list of Certified Households to the Developer.

6.3 Offering WFH Units for Rent.

(a) WFH Units offered for rent by the Developer may be leased without utilizing the lottery process unless otherwise required by the Director at the time the Department approves the Offering Agreement. The Developer must comply with all applicable local, state, and federal housing laws and must rent the available WFH Units only to Certified Households during the Priority Marketing Period. If a lottery process is used to rent the WFH Units, a similar point system as that described in this regulation may be used for ranking Certified Households. The Department must notify the



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Developer of the date on which the first lease for the property may be written. The Priority Marketing Period must begin on that date, and must end 90 days after the date of commencement unless extended by the Department.

(b) During the Priority Marketing Period the Developer must rent the WFH Units to Certified Households.

(c) If a lottery drawing is held to determine a marketing list of Certified Households, the Priority Marketing Period begins on the date of the lottery drawing.

(d) If the WFH Units are not rented to Certified Households during the Priority Marketing Period and the Developer has demonstrated to the Department's satisfaction that a good faith effort was made to rent the units to Certified Households, the Developer may then rent the units to the general public at the WFH Unit rental rate after submitting a written request to the Department and receiving written approval from the Department.

(e) The Priority Marketing Period is automatically extended unless the Department determines that no additional Certified Households are available to rent the WFH Units. If construction or occupancy of the WFH Units is phased over a period of time, the Priority Marketing Period begins when each WFH Unit is offered for rent. Each phase of the development must have its own Priority Marketing Period.

(f) One person households may only rent efficiency and one bedroom WFH Units; two person households may rent WFH Units containing up to two bedrooms. Three or four person households may only rent two or three bedroom WFH Units. Five person households may only rent WFH Units with three or more bedrooms.

(g) The WFH Units must be ready for occupancy within 120 days of the beginning of the Priority Marketing Period.

(h) The Developer must use the appropriate multi-family model lease approved by the Department subject to the additions listed below.

(i) The lease agreements for WFH Units, other than those leased to the Commission, must include the provisions listed below:

(1) The tenant must occupy the unit as his or her Primary Residence and must not sublet the unit.

(2) The tenant must provide income and household composition information to the Developer every year for recertification purposes.

(j) Rental Income Recertifications.

(1) At the time of annual income recertification the tenant must provide federal income tax forms for the most recent year and a copy of the two most recent pay checks for all employed household members and the current household composition.



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(2) The tenant must provide the recertification information within 30 days of receiving the recertification form from the Developer. If the tenant fails to provide the recertification information within the 30 day period the tenant must vacate the unit within 60 days of receiving notification from the Developer that the recertification form and required documentation was not received.

(3) The tenant must vacate the WFH Unit if, at the time of re-certification, the tenant's income exceeds by thirty percent (30%) the maximum eligible income necessary to qualify as an eligible person. After receiving information that a tenant's income exceeds the maximum permitted income limit, the Developer must take action necessary to have the tenant vacate the WFH Unit within 60 days of the Developer receiving the information, or by the end of the tenant's current lease term, whichever is later.

(k) Substitution of WFH Rental Units. The Developer may substitute another unit with the same number of bedrooms for the existing WFH Unit and permit the tenant to occupy their present unit at a rent higher than the approved WFH Unit rent. A new covenant form must be recorded subjecting the substituted unit to the WFH Unit covenants. If the development is subject to a governmental financing regulatory agreement, the provisions contained in that agreement supersede this regulation.

(l) Information to be Sent to the Department.

(1) The Developer must send a copy of the initial and all renewal leases to the Department within 30 days of signing the lease. In addition, the Developer must supply the information listed below in a format acceptable to the Department on an annual basis:

(A) The number of WFH Units, by bedroom count, that are leased to eligible persons, or the Commission,

(B) For each WFH Unit, the tenant's name, household size, and total household income as of the date of the lease.

(C) A signed affidavit stating that to the best of the Developer's information and knowledge, the tenants who are leasing the WFH Units meet the eligibility criteria.

(D) A copy of each new or revised WFH Unit Renter Agreement obtained since the last annual report.

(2) If the Developer is required to report tenant occupancy information pursuant to a governmental financing regulatory agreement, then that report may be substituted for the information required in these regulations.

(m) Renting WFH Units to the General Public. If the Developer has a WFH Unit to be re-rented, the Developer must notify the Department and offer the unit to Certified Households for a period of sixty (60) days before



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renting the WFH Unit to the general public at the WFH Unit rental rate. The sixty (60) day period must commence when the Department receives written notice from the Developer of the unit's availability to be leased. The Developer must not rent WFH Units to the general public unless permission has been granted in writing by the Department.

6.4 WFH Unit Covenants.

(a) The Developer must sign and forward WFH Unit covenants in recordable form to the Department before selling or renting any WFH Units. The covenants must be in the form required by the Department and include the restrictions contained in Chapter 25B. The covenants must run with the land for the entire control period and until all requirements of Chapter 25B have been satisfied. The covenants must be binding on the Developer, all assignees, mortgagees, buyers, and all other parties that receive title to the property.

(b) WFH Unit covenants must be recorded by the Department and must be recorded so that they are senior to all instruments securing permanent financing. Every deed transferring the WFH Unit must reference the WFH Unit covenants citing where they are recorded in the land records by liber and folio. If the covenants cannot be recorded on the WFH Unit in conformance with this regulation, then the unit must not be considered as having met the requirements of Chapter 25B.

(c) The Developer must provide a copy of the recorded WFH Unit covenants to the purchaser at settlement. The purchaser must acknowledge in writing that they have been given a copy of the covenants.

6.5 Sales and Rental Documentation.

(a) Not less than 30 days prior to settlement, the Developer must submit to the Department the following information in correct form:

- (1) A copy of the initial sales contract or agreement;
- (2) A fair market appraisal of the unit;
- (3) The purchaser's Certificate of Eligibility;
- (4) The WFH Unit Purchaser's Agreement;
- (5) Notice of liens in a format required by the Department and in accordance with state law; and
- (6) The purchaser's acknowledgement of receipt of covenants.

(b) In addition, within 15 days after the date of settlement, the Developer must submit to the Department the final settlement sheet and a copy of the two party deed. The deed transferring title must reference the recorded WFH Unit



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covenants by the date the covenants were recorded and their liber and folio.

(c) Within 15 days of the date of lease ratification for a WFH Unit rental unit, the Developer must submit to the Department the following information in correct forms:

- (1) A copy of the lease;
- (2) The renter's Certificate of Eligibility; and
- (3) The WFH Unit Renter's Agreement.

Section 7 Procedures for Purchase and Rental of WFH Units by the Commission

7.1 Notifying the Commission.

(a) The Department must notify the Commission within 5 days of approving the Offering Agreement of the availability of WFH Units and must provide the Commission with information about the development and the WFH Units. The Commission has 14 calendar days from the date of the Department's notification to make a preliminary decision and to identify to the Developer and the Department any units it wants to reserve for possible purchase or lease. This time period may be extended at the Department's discretion if the Commission requires more time in which to make its decision. During this time period, it is the responsibility of the Commission to deal directly with the Developer regarding the availability of their WFH Units. The Commission has the remainder of a 30 day period, which began on the date of the initial notice from the Department, to notify the Developer and the Department of its final decision on the purchase or lease of the units that were reserved.

(b) After receipt of the final notice on the units that will be acquired by the Commission, the Developer must deliver sales contracts or lease agreements at least 90 days before the estimated delivery of the units. The Commission must execute the contracts for the WFH Units directly with the Developer. The contracts or lease agreements must be returned to the Developer within 30 days of receipt but no later than 60 days before the anticipated date of delivery of the unit.

7.2 Purchase Restrictions. The Commission may not purchase or lease more than 33.3 percent of the units being offered. In addition, the Commission may not purchase or lease more than 33.3 percent of each type of unit which is being offered unless the Department agrees to other ratios. The term "type of unit" refers to substantial differences such as end and interior units, the number of bedrooms in a particular unit, and the presence of architectural compatibility materials, such as brick. The Commission may purchase resale WFH Units 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 WFH Units in a particular development. When calculating the number of units the Commission may purchase, if the resulting number has a remainder, the number of WFH Units the Commission may purchase is rounded down to the nearest whole number.



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Section 8 Resale of WFH Units During the Control Period

8.1 Requesting a Resale Price Determination.

(a) For Purpose of Resale. An owner who wishes to sell a WFH Unit during the applicable control period must notify the Department in writing of their intent to sell, and request a resale price determination.

(b) For Purposes of Refinancing. During the applicable control period, the owner of a WFH Unit must not refinance their WFH Unit for more than the approved resale price, as determined by the Department. Owners wishing to refinance must request a resale price determination, in writing, from the Department, and provide a copy of an appraisal of the WFH Unit indicating the current fair market value. Such a refinancing does not relieve the owner of the responsibility to pay to the Housing Initiative Fund the required amount of the excess proceeds as calculated under these regulations.

(c) The refinancing must not result in reducing the owner's equity below \$10,000.

8.2 Establishing the Maximum Resale Price and the Amount Returned to the Seller at Resale. The Department must calculate the maximum resale price and the amount returned to the seller for the WFH Unit according to the following procedures and factors:

(a) The base sales price is the original sales price paid for the WFH Unit, plus an allowance equal to the rate of increase in the consumer price index between the month and year of initial sale and the current month and year. Fees or points paid for permanent mortgage financing that were added to the original purchase price may be deducted from the base price used to calculate the resale price unless the terms of the resale include an assumption of the mortgage.

(b) The return to the seller is the base sales price, plus an appreciation allowance equal to 15% of the difference between the appraised fair market value at the time of the original purchase and the appraised fair market value at resale.

(c) To the above, the Department must add the current Fair Market Value of Capital Improvements, as determined by the Department, made to a unit after the date of purchase. Capital Improvements must be permanent in nature and clearly add to the market value of the house or property. Normal owner maintenance, general repair work, and decorative items or work must not be included in the resale price determination.

(1) The owner must provide an itemized list of all Capital Improvements and upgrades for which credit is requested as part of the resale price. All Capital Improvements claimed must be documented with receipts, contracts or other evidence supporting their value. The Department may establish standard fair market values for certain Capital Improvements, and this value may be used by the Department rather than cost data records of the Capital Improvements submitted by the owner.



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(2) Where there is evidence of physical deterioration, abnormal wear and tear, or obsolescence because of neglect, abuse, or insufficient maintenance, the Fair Market Value of Capital Improvements will be reduced to account for the depreciation of the WFH Unit.

(3) Appliances will be depreciated on a 10 year straight-line basis from the initial purchase price.

(4) The owner must permit a representative of the Department to inspect the WFH Unit upon request to verify the existence and value of any Capital Improvements that are being claimed by the owner.

(d) The Department may approve a closing cost credit up to 3.5 percent of the maximum resale price to be added to the base price on behalf of the purchaser to pay for eligible closing costs. The seller must permit the purchaser to choose to purchase the WFH Unit at the base price, or at the base price plus the closing cost credit.

(e) No allowance is included in the resale price for the payment of real estate brokerage fees associated with the sale of the unit. A brokerage fee may be added to the resale price only if the unit is not sold during the Priority Marketing Period. The unit must have been actively marketed and included on the Department's resale information list and the resale telephone information line. Failure by the seller to accept a bona-fide offer may be justification for the Department's extending the Priority Marketing Period.

(f) If Veterans Administration (VA) financing is used to finance the purchase of a resale WFH Unit, the loan discount financing points must be added to the established maximum resale price. These points must not be included in any future resale price determination unless the purchaser utilizes VA financing or assumes the existing VA mortgage.

(g) Department Subsidy. The Department may provide a subsidy from the Housing Initiative Fund, or other such source as determined by the Department, in a form determined by the Department to ensure that the seller receives the return due to them while also ensuring that the resale price remains affordable to Certified Households in the Program. Any subsidy is calculated by subtracting the resale price from the amount of return due to the seller.

8.4 Resale Procedures.

(a) The Department or its designee, or the Commission has the right-of-first-refusal to purchase any resale WFH Unit. The owner must offer the WFH Unit for resale only to the Department or the Commission, in that order, during the first 60 days following the owner's notification to the Department. The County may assign its right to purchase the unit to a third-party non-profit housing provider or to a Certified Household.

(b) The Department must notify the owner of the approved resale price within 21 days of receiving a request for a resale price determination containing all the required information.

(c) If the Department does not exercise its right to purchase, the Department will notify the Commission within 5 days and provide a description of the unit and the approved resale price. The Commission must notify the Department within 21 days if it wishes to purchase the WFH Unit. The Department must notify the owner within the 60



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day period whether or not the Department or its designee, or the Commission, intends to purchase the unit, and of any other conditions of the purchase. If the WFH Unit is not purchased by the Department, its designee, or the Commission, the Department must notify the owner of the method that must be used to sell the unit. If the Department or its designee, or the Commission decides to purchase the unit, the appropriate agency must execute the purchase contract with the owner within 60 days of receiving notification from the owner.

(d) If the resale WFH Unit is purchased by the Department or its designee, or the Commission, these agencies may retain the WFH Unit or make it available to Certified Households selected through a lottery or other means as may be approved by the Department.

(e) If the unit is not purchased by the Department, its designee or the Commission, the Department will establish methods to inform households of the availability of the WFH Unit and the method to be used to select purchasers. The unit must be offered exclusively to Interested Households for a period of 60 days.

(f) If a lottery is used, the lottery drawing will commence by drawing first from among those Interested Households who have been assigned the highest number of points. The first Interested Household drawn must provide documentation of eligibility to the Department within 45 days of the date of the lottery drawing, including:

- (1) copies of the two most recent previously filed federal income tax returns;
- (2) the applicant's two most recent W-2 forms;
- (3) copies of divorce or separation agreements (if applicable or if most recent tax return was filed as "married");
- (4) copies of the two most recent employment pay check stubs from each current employer;
- (5) a pre-approval letter for mortgage financing from a lender in a form acceptable to the Department that indicates the maximum loan amount for which the interested household is eligible; and
- (6) any other information as required by the Department.

(g) Once eligibility has been verified by the Department the lottery winner will be given the exclusive right to enter into a contract for the purchase of the WFH Unit.

(h) When the WFH Unit is sold to a Certified Household, the required documents listed in Section 6.5(a) of this regulation must be executed and sent to the Department within the established timeframes.

(i) The WFH Unit may be offered to the general public only after the 60 day period that the WFH Unit was available to Interested Households has expired. The owner must not offer WFH Units to the general public unless this period has ended, the Eligibility List of all Interested Households has been exhausted, and written approval has been



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obtained from the Department authorizing sale to the general public. The 60 day period is automatically extended unless the Department determines that no additional Interested Households are available to purchase the WFH Unit.

Section 9 Resale of WFH Units After the Control Period

9.1 Seller's Notification to the Department and the Commission. For the first sale of a WFH Unit after the expiration of the applicable control period, the owner must provide the following information to the Department 30 days prior to settlement:

- (a) A copy of the signed sales contract which clearly states the agreed upon sales price and which clearly indicates the Department's and the Commission's right of first refusal to purchase;
- (b) A copy of the real estate broker's listing agreement;
- (c) An itemized list of improvements including actual or estimated value of the improvements with documentation of the value in a form acceptable to the Department; and
- (d) The name and contact information for the settlement agent, once it has been determined.
- (e) An independent, third-party appraisal of the property no more than 60 days old.

9.2 The Department's and the Commission's Right to Purchase WFH Units with Expired Covenants. The Department must immediately notify the Commission of the offer, and the Commission must have the right to match the purchase offer. The Commission must notify the Department and the owner within 14 days of the Department's receipt of notification of the offer, whether or not it intends to purchase the unit. If the Commission decides to exercise its right to purchase the WFH Unit, it must tender a purchase contract to the owner within 21 days from the date it notifies the Department and owner of its decision. The offer must contain substantially the same terms and conditions as the contract offered by the third party, and a deposit must be made, payable to an escrow agent. If within 14 days of the Department's receipt of the offering notice, the owner does not receive written notice from the Commission that it intends to purchase the unit, or if after receiving such notice, the owner does not receive from the Commission a purchase contract at substantially the same terms and conditions as the contract offered by the third party within 21 days, the owner will be free to proceed to settlement on the third party contract.

9.3 Payment of Excess Proceeds to Housing Initiative Fund. For the first sale of a WFH Unit for which the applicable control period has expired, the seller must pay to the Housing Initiative Fund one half of the excess proceeds.

- (a) Excess proceeds are defined as the amount by which a bona fide sales price exceeds the sum of the following:
 - (1) The original appraised full market value, or the price that a rental unit would have been permitted



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to be sold for if it had been a sale unit at the time of the original rental;

(2) An allowance for the increase in the cost of living as determined by consumer price index (CPI-U) for the Washington, D.C. PMSA from the date of the initial sale or the latest resale or rental;

(3) The value of capital improvements made to a unit subsequent to the most recent date of purchase, as determined by the Department.

(4) If a licensed real estate agent is used, the amount of the real estate sales commission at the average prevailing commission rates; however, the commission must not exceed 6 percent of the sales price.

(5) An allowance for applicable transfer taxes and recordation charges.

(b) The Department must notify the owner of the calculation of the excess profit and the amount that must be paid to the Housing Initiative Fund within 21 days of receiving the required information from the owner. The Director may reduce the amount that must be paid in order to ensure that the seller retains at least \$10,000 of the excess profit.

(c) The required portion of the excess proceeds of the sale must be paid to the Housing Initiative Fund and must be collected at the time of settlement. The seller is responsible for ensuring that the payment is disbursed in accordance with this regulation. A copy of the final settlement sheet for the transfer of ownership must be sent to the Department within 14 days of the date of settlement on the property transfer. The Department must release the WFH Unit covenants and liens recorded in the land records after the County has received the required payment to the Housing Initiative Fund and the settlement documents.

(d) Failure of the owner to notify the Department of a sale, obtain a determination of excess proceeds, and pay the required portions of the excess proceeds to the Housing Initiative Fund constitutes a default under the covenants, these regulations, and Chapter 25B.

9.4 Divorce. If one owner buys out the other owner's interest in the unit as part of a divorce settlement, without selling the unit on the open market, then this does not constitute the first sale of the unit, and does not relieve the remaining owner of the shared profit obligation.

Section 10 Sale of WFH Unit by Foreclosure

10.1 A mortgagee or other secured party who has initiated foreclosure proceedings on a debt secured by a mortgage or deed of trust on a WFH Unit must notify the Department in writing not later than 45 days prior to the date of the foreclosure sale.



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Section 11 Enforcement

11.1 The Department and DPS are responsible for enforcing the provisions of Chapter 25B. Complying with Chapter 25B and an approved WFH Unit Agreement to Build is the responsibility of the Developer; revisions or amendments are to be requested as soon as the Developer recognizes that meeting the terms of an approved WFH Unit Agreement to Build may not be feasible. The decision to approve a revision or amendment is within the Director's sole discretion. Any such decision must be communicated in writing to the Developer. The Director of DPS is authorized by law to deny, suspend, or revoke, any building or occupancy permit for a violation of Chapter 25B, the Agreement to Build WFH Units, or the WFH covenants; such action must be taken upon DPS' receipt of a written request from the Department or any other agency having oversight of the Project's development if the Developer is found to be in violation of Chapter 25B, the Agreement to Build WFH Units, or the covenants. After issuance of building permits for a subdivision has been halted or existing building or occupancy permits suspended or revoked, issuance of permits by DPS may not be resumed until both the Department and DPS are satisfied that the Developer is in compliance with terms of Chapter 25B, the Agreement to Build WFH Units, and the covenants. An occupancy permit must not be issued for any unit in a subdivision when the subdivision does not comply with Chapter 25B or this Executive Regulation.

Approved as to Form and Legality
Office of the County Attorney

By: _____

Date: _____

Isiah Leggett
County Executive

Date: _____

M-NCPPC

**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION*8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org*

October 18, 2006

Memorandum

To: Montgomery County Planning Board

Via: Karl Moritz, Research & Technology Center, 301-495-1312

From: Sharon Suarez, AICP, Housing Coordinator

Re: Executive Regulation 18-06 - Workforce Housing Regulations

On Monday, October 16, members of the County Council's Planning, Housing, and Economic Development Committee (OHED) reviewed the proposed regulations for the Workforce Housing Program and directed the Department of Housing & Community Affairs (DHCA) to make revisions. The PHED Committee did not like DHCA's plan to underwrite the gap between the sales price of a condo and the amount actually paid by most workforce families with money from the Housing Initiative Fund (HIF).

- First, the PHED did not think that was a wise use of the HIF.
- Second, the PHED believes it is inappropriate to provide such a subsidy for workforce housing when we do not do so in the Moderately Priced Dwelling Unit program, which deals with an even larger gap.
- Finally, the PHED did not like the DHCA proposal to impute the cost of the unit, based on the amount a lottery-winner could afford. The PHED believed that units should be produced within price ranges, as is done for the MPDUs.

For all these reasons and others the PHED instructed DHCA staff to go back and rewrite the regulations to better parallel the Moderately Priced Dwelling Unit program. There is unlikely to be another PHED discussion of this item, as the PHED instructed the DHCA staff to present their rewrite to the County Council in November.

I shall stay abreast of this issue and will keep you informed of any new developments.

**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Memorandum

To: Montgomery County Planning Board

From: Sharon Suarez, AICP, Housing Coordinator, Research & Technology Center

Re: Workforce Housing

I am attaching a copy of the staff memo sent to the County Council last week, as well as a copy of the article in today's *Washington Post* that announced yesterday's passage of the County's Workforce Housing legislation.

Some highlights of yesterday's vote include:

- Increasing density for workforce housing, up to 10 percent more than is allowed in the zone, but not allowing any additional height for workforce housing over the height limits of the zone.
- A 20-year control period for sale units, and a 99-year control period for rental units. (Ms. Praisner's amendment for a 30-year control period did not pass.)
- Sunsetting the law in 2014.
- New regulations for the program by the end of the summer. DHCA has six weeks to pull together the new regulations.

As soon as we get a final draft of the legislation or the regulations, we will distribute copies.

Please, do not hesitate to call if you have additional questions.

M-NCPPC

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PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Memorandum

To: Linda McMillan, Legislative Analyst
Montgomery County Council

From: Karl Moritz, Chief, Research & Technology Center (RTC) 301-495-1312
Sharon K. Suarez, AICP, Housing Coordinator, 301-495-4720

Re: Response from Planning Board and Other Items

When the Planning Board considered the issue last fall, whether workforce housing would be required for rental development was still under discussion and the proposed control period for sale units was only 10 years.

On June 27, 2006, four members of the County Council requested that the Planning Board consider whether the proposed Workforce Housing density increase would be acceptable to the Planning Board, if the proposed control periods were longer:

On July 6, 2006, the Planning Board members Mr. Berlage, Ms. Wellington, Dr. Bryant, and Ms. Perdue took up the issue after receiving an update on the progress of the proposed workforce housing legislation at their regularly scheduled meeting. The difference between the results of the financial analyses for the density bonus and the board's preferred option was insufficient to justify the density bonus, for all but Dr. Bryant. The majority felt that if additional density is needed in Metro Station Policy Areas, that is a legitimate policy issue, which should be addressed through a master plan, and not through a zoning text amendment.

A motion was made to convey to the County Council the Board's response that the proposed longer control periods did not change the Planning Board's previously stated opinion that additional workforce density. Three of the Planning Board members voted in favor of the motion, with Dr. Bryant voting against it.

The County Council requested information on two subjects, as well:

Does the Planning Board determine the parking requirement? Can we make sure there is enough parking? What kind of parking complaints has the Planning Department received? Yes, the Planning Board determines the parking requirement. Because Metro Station Areas do allow flexibility in determining parking requirements, some County Council members are concerned as to whether there will be significant pressure for on street parking in surrounding neighborhoods. Research staff would like to spend some time on this issue. It will make a difference as to the

time of day, type of structure, and proximity to metro, to name a few variables. The most recent study was largely anecdotal, was related to MPDUs, and took place in 2001. In a memo to the PHED Committee (October 18, 2001, p.4), Aron Trombka reported that then Councilmember Berlage had asked the Planning Department to describe the source of parking complaints received by staff. The Planning Department staff reported that the complaints received at that time were about insufficient parking in a variety of townhouse communities, many of which did not contain MPDUs.

What has been the density achieved in transit zones in the past? The Land Capacity Study (MNCPPC, RTC, 2005) determined that the average density achieved in transit zones has been between 37 and 65 dwelling units per acre, which is approximately 28.5 to 35.4 percent of the maximum density allowed in the zone. CBD zones have achieved a higher percentage of the maximum density, with CBD-1 achieving over 62 percent of the maximum yield.

Zone	Theoretical Maximum	15-Year Yield	Percent of Maximum
CBD-1	152	94.4	62.1%
CBD-2	244	101.5	41.6%
CBD-3	244	97.1	39.8%
CBD-R1	244	30.6	12.5%
CBD-R2	244	126.4	51.8%
TS-M	131	37.3	28.5%
TS-R	183	64.8	35.4%



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THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
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301-495-4500, www.mncppc.orgMCPB
Item #21
July 6, 2006

June 30, 2006

Memorandum

To: Montgomery County Planning Board

From: Karl Moritz and Sharon Suarez, Research & Technology Center

Re: **Bill 30-05: Workforce Housing Program and ZTA 05-16: Workforce Housing** – Update on Status of Pending Legislation/Opportunity for Additional Comment by the Planning Board

Summary

The Montgomery County Planning Board last reviewed proposed Workforce Housing legislation on November 17, 2005. Since then, the County Council held a public hearing; the Planning, Housing and Economic Development Committee has held several worksessions; and the County Council has held two worksessions. A vote on the workforce housing bill and zoning text amendment is scheduled for July 11, 2006.

At the Council's worksession on Tuesday, June 27, Councilmember Subin noted the Planning Board's concern about the provision of the proposed program that allows the developer to exceed the current maximum density allowed on the parcel in order to provide the workforce units. The Board's concern is illustrated in the following quote from the Planning Board's testimony at the public hearing on this legislation:

A majority of the Planning Board also expressed serious reservations about an approach that relies on an added component of density. The Board notes that zoning in master plans is set at what is determined at the time to be the maximum that is appropriate for the area. Going above that maximum is a major issue, and the Board was not convinced that the added density is necessary to make the program work. The Board observed that, in the case of condominiums, the additional density will remain for the life of the building, while the price controls on the workforce units will expire in 10 years.

Councilmember Subin asked if the Planning Board's position would change if the price controls were to stay in place for a much longer period.

Since the Planning Board's review in November, additional analysis has been completed on the workforce housing program, especially on the financial feasibility issue. The Department of Housing and Community Affairs retained Eric Smart of the

consulting firm of Bolan Smart to prepare a number of pro forma analyses; a real estate economics consultant retained by Park and Planning to assist with Clarksburg issues reviewed Bolan Smart's figures.

Staff will be providing the Planning Board with a full presentation on the density bonus issue at your meeting on July 6, 2006, including a review of the financial analyses and related issues. We regret that there was not time for a complete analysis in this packet.

Recommendation

Planning staff believes that the main rationale for the workforce housing density bonus was the belief that the developers would need the density bonus to make the project financially feasible. Planning staff does not believe that the financial analyses make that case.

Staff also notes that there are potential problems with extending the control period of for-sale workforce units. DHCA has pointed out, and Planning staff agrees, that the potential buyers of workforce units will ask if the price advantage of a workforce unit is worth giving up the equity they could expect from purchasing a market rate unit. The price advantage of a workforce unit is, of course, less than that of an MPDU, and DHCA has suggested that the control period of MPDUs has discouraged buyers of MPDUs.

Background

The Workforce Housing program initiated by the legislation referenced above promotes the construction of housing in developments of 35 units or more that is affordable to households with incomes at or below 120 percent of the area-wide median income, adjusted for household size. The legislation applies only to developments of 35 units or more in zones that could achieve 40 dwelling units per acre within Metro Station Policy Areas, only. Planning staff estimates that about 2,500 workforce units would be created over the next 20 to 30 years in these areas, which will broaden the range of housing options for many households.

As crafted, the legislation would allow additional building height and reduce the green space requirement, if needed, to build workforce units on site. Under certain circumstances, developers could build the workforce units off site, but they could not "buy-out" of the requirement. The legislation has proposed that the control period for sale units is 20 years and for rental units is 99 years. The goal of the Council is to generally make the Workforce Housing program operationally similar to the MPDU program.

Among the issues that the Planning Board raised when reviewing this program in November 2005 are the target income levels for households who will live in the units and the density bonus permitted for the required workforce units. The Planning Board raised concerns about setting prices up to a level affordable to households earning 120 percent

of the area median income. At that level, workforce units become market rate units, albeit at the lower end of the market. The Planning Board expressed concern that, as proposed, the legislation could result in developments that exceed 132 percent of the density otherwise allowed, instead of the 122 percent already achievable via the maximum MPDU density bonus.

Discussion

The Planning Housing and Economic Development (PHED) Committee recommended the proposed legislation to the County Council on June 27th. During that meeting the Council discussed the following issues in preparation for a vote on the legislation on July 11th. Their comments and positions are discussed in detail in the attachments to this memo and are summarized below. The nature of the discussion has become more specific and certain issues may merit the Planning Board's reconsideration.

- *Should workforce housing be only available to certain types of employees?* The PHED recommends not limiting eligibility to any particular type of employee, and recommends the law focus on income and other eligibility issues. The Planning Board suggested that certain types of workers (teachers, firefighters, emergency service workers, or even retail workers) be given a preference.
- *What income eligibility limits should apply?* The Planning Board urged the Council to cap the workforce housing income limits to 100 percent of Area Median Income (AMI), because the marketplace did provide a choice in housing types to households earning 100 percent of AMI, as of the fall of 2005. Additionally, the Planning Board was concerned that a cap of 120 percent of AMI would result in all workforce housing being built for that income range. While the PHED recommends a cap of 120 percent of AMI, it now recommends that the implementing regulation assure that workforce housing is available to a range of incomes, not just those at or near 120 percent of AMI.
- *Should any preference be given to County residents or people employed in the County?* The PHED committee recommends that the same type of point system used in the MPDU program be used in the Workforce Housing program. That is, a preference would be given to applicants with a connection to the County — either they currently reside here, have a job here, or have a job offer here.
- *Should eligibility be limited to first-time homeowners?* The PHED Committee recommended that workforce families should not be restricted by previous homeownership. They may have owned a home elsewhere, but cannot afford one in Montgomery County.
- *In what size subdivision should workforce housing be required?* The Workforce Housing legislation will apply to developments of 35 units or more in Metro Station Policy Areas in those zones that can achieve 40 units or greater. The Committee reviewed the Planning Board's suggestion that the program apply to subdivisions

with as few as 20 units, but additional analysis showed that there are very few subdivisions of that size in the zones where the program would apply.

- *Should projects developed under an affordable housing tax credit program be exempt?* The majority of the PHED Committee recommends that dwelling units affordable to households earning 60 percent or less of AMI be exempt from the units used to determine the number of workforce housing units.
- *Should the law specify the proportion of bedroom sizes in workforce housing units?* The PHED Committee recommends that the law specify that the ratio of efficiency and one-bedroom apartments cannot be greater than it is for the market rate units, which is the same as for the MPDU law.
- *Should workforce-housing units add to current base density and MPDU requirements?* With Councilmember Praisner dissenting, the PHED Committee recommends that the workforce housing units be additional density – that is, added to the market rate units and MPDUs allowed by the zone and required by the MPDU law. In a 100-unit building with the minimum of 12.5% MPDUs, the building would have 87 market units, 13 MPDUs, and 8 workforce units. In a 100-unit building with the maximum 22.5% MPDU and market unit bonus, the building would have 103 market units, 19 MPDUs, and 10 workforce units.

The Planning Board recommended that the workforce units be accommodated within the market units, not as a density bonus. Staff will be reviewing the Board's position, additional analysis that has occurred since the Board's review, and related issues, at the Board's July 6 meeting.

- *Should the law allow alternatives to providing workforce-housing units on site?* The PHED Committee recommends no buyout alternative, while allowing for an off-site alternative, especially if the additional density might require changing from stick-built to concrete construction.
- *Should rental projects be exempt from providing workforce housing?* The PHED Committee does not believe that rental projects should be exempt from workforce housing.
- *What price/rent control periods should apply to workforce housing units?* The majority of the PHED committee recommends that the sales price control period be 20 years, though Ms. Praisner has stated that she will introduce an amendment to extend that period to 30 years, so that it is consistent with the MPDU control period for sale units. The rental control period will be 99 years, as it is for the MPDUs. As with the MPDUs, DHCA and the Housing Opportunities Program will have the right of first refusal for workforce housing units.
- *Equity Recapture?* The PHED recommends that the basis for equity sharing should be the original appraised market value rather than the original sales price. As is

similar for the MPDU program, the PHED Committee recommended that the owners of workforce housing units not refinance for more than the DHCA-approved sales price.

- *Definition of "built" – does it require the unit to be completed?* The PHED Committee recommends that all workforce housing be built before or at the same time as the other dwelling units.
- *Should workforce housing units pay County transportation and school impact taxes?* The PHED was split on whether workforce housing should be exempt from these impact taxes. Council staff Mike Faden pointed out that Metro Station Policy Area already have very low impact taxes and Enterprise Zones have none. Ms. Praisner recommends that workforce housing be taxed as productivity housing is taxed, which is at 50 percent of the normal rate.
- *Does the calculation for MPDUs include the workforce housing units?* No. The PHED has clarified that the total number of units to be used to determine the workforce housing requirement will not include MPDUs.
- *Annual Report?* DHCA will be required to submit an annual report to the Council and Executive.
- *Fiscal Impact?* The Council will consider any recommendations for additional staff and operating costs. The Executive Regulations will be submitted to the Council by October 1, 2006.
- *Grandfathering:* The ZTA requiring workforce units would go into effect December 1, 2006. The PHED Committee recommends that the grandfathering provision be broad enough to include pending zoning applications, development plans, project plans, preliminary plans of subdivision, and site plans.
- *Sunsetting?* The PHED Committee agreed to sunset this legislation, in order to reevaluate it. Council staff recommends six years, instead of five, as was originally recommended.



Memorandum

July 5, 2007

To: Montgomery County Planning Board

Via: Karl Moritz, Chief, Research & Technology Center
Roselle George, Research Manager

From: Sharon K. Suarez, AICP, Housing Coordinator

Re: Workforce Housing Program Executive Regulations 18-06AM

Background

In the spring of 2005, housing staff began a concerted research and analysis effort to develop a workforce housing policy proposal. During that summer, drafts were reviewed by a working team consisting of staff from DHCA, HOC, and the Office of the County Executive. The draft policy and technical supplement were shared with the County Councilmember Steve Silverman and his staff, as well. Subsequently, Councilmember Silverman requested additional information, which was provided.

The Workforce Housing program will ensure the construction of housing in developments of 35 units or more that is affordable to households with incomes at or below 120 percent of the area-wide median income, adjusted for household size. The legislation applies only to developments of 35 units or more in zones that could achieve 40 dwelling units per acre within Metro Station Policy Areas. The legislation will allow additional building height and reduce the green space requirement, if needed, to build workforce units on site. Under certain circumstances, developers may build the workforce units off site, but they may not “buy-out” of the requirement. The control period for sale units is 20 years and for rental units is 99 years. Planning staff estimates that about 2,500 workforce units will be created over the next 20 to 30 years in these areas, which will broaden the range of housing options for many households

After adoption of the enabling legislation during the summer of 2006, staff of the Department of Housing and Community Affairs (DHCA) proposed Executive Regulation 18-06 to govern the operation of the workforce housing program. The regulations were presented to the Planning, Housing, and Economic Development (PHED) Committee and County Council in their regular sessions on October 16 and October 25 of 2006. The Planning Board discussed the possibility that prices might be set up to a level affordable to households earning 120 percent of the area median income. At that level, workforce units become market rate units, albeit at the lower end of the market.

Subsequently, the PHED sent the first set of proposed regulations back to DHCA for other reasons. The PHED did not like the proposed use of the Housing Initiative Fund (HIF) to underwrite the gap between the sales price of a WFH unit and the amount actually paid by most workforce families. The PHED did not think that was a wise use of the HIF. Nor did the PHED

believe it was appropriate to provide such a subsidy for workforce housing, especially when we do not do so in the Moderately Priced Dwelling Unit program. Additionally, the PHED did not like the DHCA proposal to impute the cost of the unit, based on the amount a specific lottery-winner could afford. The PHED believed that units should be produced within price ranges, as is done for the MPDUs. For these reasons and others the PHED instructed DHCA staff to rewrite the regulations to more closely parallel the regulations of the Moderately Priced Dwelling Unit (MPDU) program. WFH Executive Regulations 18-06AM are the result.

On Monday, July 23, members of the County Council's Planning, Housing, and Economic Development (PHED) Committee will review Executive Regulations 18-06AM, which incorporate changes requested last fall. The Planning Board's comments will facilitate this review.

Staff is including two memo written to the Planning Board in 2006 (Attachment A), which provide an overview of the development of the WFH legislation and answer key questions. Staff invites Planning Board members to contact us if they would like more detailed information on the WFH program.

Recommendation: *Support the regulations, with modifications.*

The amended version of the regulations (18-06AM) is attached (Attachment B) and corrects some of the substantive issues identified in the original version (18-06). Specifically, there is no longer a portion of Section 5 entitled "Amount Developer is to Receive from Sale Proceeds," nor do the amended regulations attempt to close the price gap with money from the HIF. In the amended version of the regulations, the price of the workforce units is determined objectively, based on prices affordable to ranges of workforce households. Therefore, staff urges the Board to support the regulation 18-06AM, as corrected or clarified by the following changes.

Suggested Changes

The following comments refer to the pages and specific paragraphs of the attached ***Workforce Housing Regulations 18-06AM***. For example, the first comment is in Section 3 of the regulations and can be located on page 12 of the regulations, as indicated in brackets. The second comment is on page 13, and so forth. While reading the regulations, please note that the term "Department" signifies the DHCA and the title "Director" signifies the Executive Director of DHCA, unless stated otherwise.

Comment 1. (See page 12.)

Section 3 discusses the agreements to build WFH units. Once the Planning Board has set the WFH Unit requirements for the Workforce Housing Project, a developer must enter into a written Agreement to Build WFH Units with the DHCA. Agreements to build must be executed before any building permits may be issued by the Department of Permitting Services (DPS). Agreements to build must contain information, such as staging of construction, and a list of street addresses, unit numbers, and tax numbers for all units – WFH units, MPDUs, and market units.

In paragraph 3.1(d), DHCA is directed to send a copy of these agreements to the Department of Permitting Services (DPS), but not to the Planning Board. Staff thinks that the success of the WFH program will depend, at least in part, upon the ability of DHCA, DPS and the Planning Board to coordinate information related to these agreements. Specifically, the Planning Board needs to have the ability to compare the agreements the developers make with DHCA against the commitments and covenants set forth in development applications. For that reason, paragraph 3.1(d) should be changed to read: “The Department must forward a copy of the executed agreement to the Planning Board and to DPS...”

Comment 2. (See page 13.)

Paragraph 3.1(e) needs to clarify which developers may volunteer to build workforce units in order to obtain additional height, in terms of which zones, what density, and what height limitations are included in the development application. At issue here is that not all transit station development meets the criteria for workforce housing. For example, a developer of a small parcel within a transit area recently offered to voluntarily participate in the workforce housing program. The developer was denied. Why? The zoning did not allow enough density. Does that mean that the developer is forbidden to offer units affordable to households earning workforce incomes? The answer is “no.” What the decision does mean is that the developer cannot access the additional height allowed in the workforce housing program.

While it is true that any developer may build units affordable to the workforce, only certain developers may gain the benefit of additional height. Grandfathered development applications are those that would ordinarily be required to comply with the ordinance, save that the applications were received prior to the effective date of the legislation. At the time of the passage of the legislation, the County Council foresaw that some grandfathered projects might seek to voluntarily participate in the WFH program in order to gain the additional height. As an example, the developer of Lot 31 wanted to waive its right to grandfathering.

Staff believes that it is very important to clarify that the “voluntary” program includes the potential opportunity for more height and to make it available to those parcels that meet the location AND density requirements of the workforce housing program. **Staff recommends that paragraph 3.1(e) be changed to read:**

“The Department may enter into and execute voluntary agreements to build WFH Units with certain Developers. Developers who may volunteer workforce units are those whose development applications were filed prior to the effective date of the workforce housing program legislation, but whose projects would otherwise have been required to build workforce housing units.”

Comment 3. (See page 13.)

Section 4 of the regulations addresses the issue of “Alternative Compliance Measures.” “Alternative Compliance Measures” are those methods of providing WFH Units other than under the standard requirement. Alternatives to building the WFH units on-site include: building the WFH Units at an alternative location within the same planning policy area, building or converting the required number of units from non-residential uses, or buying WFH Units for which the rental or for sale control period has expired.

Paragraph 4.2 (A) stipulates that the developers must submit a request for alternative compliance 90 days before the submission of a development application. This seems confusing to staff. The applicants will not likely know whether alternative sites for WFH units will be needed during the period before the development applications are submitted and the range of problems are identified. Therefore, staff suggests that the language be changed to allow for at least an initial review of the development application prior to submitting a written request for an alternative location for WFH units. Additionally, the use of the term “Planning Area” is not specific enough, and should reflect the language of the executive regulations of the MPDU program, which specify “planning policy area” throughout. **Staff suggests that this paragraph be changed to read:**

“If a Developer wishes to provide WFH Units at an Alternative location, they must be provided in the same Planning Policy Area under the provisions of Section 25B-26. The Developer must submit a written request to the Director not less than 90 days prior to the submission of a Development Application for the Project for which the alternative location approval is being requested. The Director must communicate a decision on a request prior to the filing, so that the Developer may include the Director’s approval in the Development application, if applicable.”

Comment 4. (See page 17.)

Section 5, pages 15 through 19, discusses the methodologies for determining sales prices and rental rates for WFH units. **In paragraph 5.1(g)**, the methodology appears to set three sales tiers for three difference sized units, but the proportionality is not spelled out. Please indicate whether the proportion WFH units by bedroom size will be similar to the proportion of market units by bedroom count, as for the MPDUs.

Comment 5. (See page 32.)

Section 11 describes which department or office will be responsible for enforcing the executive regulations. Here again staff found a missed opportunity for interagency coordination. **In paragraph 11.1** the planning board needs to be informed of the DHCA’s decisions related to denial, suspension, revocation, etc., of any building or occupancy permit for violation of Chapter 25B, the Agreement to Build WFH Units, or the WFH Covenants. Therefore, staff recommends the fourth sentence be changed to ensure that the planning board is made aware of enforcement decisions:

“...The decision to approve a revision or amendment is within the director’s sole discretion. **Any such decision must be communicated in writing to the Developer and copied to the Planning Board...**”