

MEMORANDUM

TO: County Council

FROM: ~~JK~~ Michael Faden, Senior Legislative Attorney
AT Aron Trombka, Legislative Analyst

SUBJECT: **Introduction:** Bill 24-04, Moderately Priced Dwelling Units (MPDU) - Amendments

Bill 24-04, Moderately Priced Dwelling Units - Amendments, sponsored by Councilmembers Floreen, Silverman, Subin, Knapp, and Leventhal, is scheduled to be introduced on July 20, 2004. A public hearing is tentatively scheduled for September 23 at 7:30 p.m., along with other bills and zoning text amendments related to MPDUs.

Bill 24-04 revises certain provisions of law governing the moderately priced dwelling unit (MPDU) program. Specifically, the bill would:

- increase the sale and rent control periods for MPDUs from 10 and 20 years to 30 years, and require better notice of the controls to future buyers;
- require eligibility standards for MPDU buyers and renters to be updated annually;
- further restrict when MPDUs can be built at an alternate location and when the Department of Housing and Community Affairs (DHCA) can accept a payment to the Housing Initiative Fund ("buyout") instead of an applicant building all required MPDUs; and
- require MPDUs in single-family developments to have the same numbers of bedrooms as the market-rate units.

The lead sponsors of this bill have also asked the DHCA Director to review certain regulations in conjunction with the Council's consideration of this and related legislation (see memo, ©12).

This packet contains:

| | <u>Circle #</u> |
|-------------------------------------|-----------------|
| Bill 24-04 | 1 |
| Legislative Request Report | 11 |
| Memo from sponsors to DHCA Director | 12 |

Bill No. 24-04
Concerning: Moderately Priced Dwelling
Units Amendments
Revised: 7-19-04 Draft No. 4
Introduced: July 20, 2004
Expires: January 20, 2006
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Floreen, Council President Silverman, and Councilmembers Subin, Knapp,
and Leventhal

AN ACT to:

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

By amending

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

By adding

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

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

3

income eligibility standards for buyers and renters.

* * *

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

* * *

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

- (1) a specific number of MPDUs must be constructed on an approved time schedule;
- (2) in single-family dwelling unit subdivisions, [each MPDU must have 2 or more bedrooms] the number of MPDUs with a given number of bedrooms must have the same ratio (rounded to the nearest whole number) to the total number of MPDUs in the subdivision as the number of market-rate units with the same number of bedrooms has to the total number of market-rate units in the subdivision; and
- (3) in multi-family dwelling unit subdivisions, the number of efficiency and one- bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.

* * *

[(e) (1) In exceptional cases, instead of building the required number of MPDUs, an applicant may offer to:

- (A) Build significantly more MPDUs at one or more other sites in the same or an adjoining planning area;

- 55 (B) Convey land in the same or an adjoining planning area that
56 is suitable in size, location and physical condition for
57 significantly more MPDUs;
58 (C) Contribute to the Housing Initiative Fund an amount that
59 will produce significantly more MPDUs; or
60 (D) Do any combination of these alternatives that will result in
61 building significantly more MPDUs.

62 (2) If the Director finds that:

- 63 (A) In the project or subdivision originally proposed by the
64 applicant, an indivisible package of resident services and
65 facilities to be provided to all households would cost the
66 occupants of the MPDUs so much that it is likely to make
67 the MPDUs effectively unaffordable by eligible
68 households; and
69 (B) An offer made by an applicant under subsection (e)(1) will
70 achieve significantly more MPDUs or units which low-
71 and moderate-income households can more easily afford;
72 and
73 (C) These public benefits outweigh the benefit of constructing
74 MPDUs in each subdivision throughout the County, and
75 acceptance of the applicant's offer will achieve the
76 objective of providing a broad range of housing
77 opportunities throughout the County;

78 the Director must accept the offer made by the applicant instead
79 of requiring the construction of MPDUs by the applicant. If the
80 applicant can feasibly build significantly more MPDUs at another

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81 site, the Director must not approve any other alternative under
82 subsection (e)(1).

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

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

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

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

93 * * *

94 (1) *Later deeds.* The grantor must clearly and conspicuously state, in any
95 purchase and sale agreement and any deed or instrument conveying title
96 to an MPDU, that:

97 (1) the conveyed property is a MPDU and is subject to the
98 restrictions contained in the covenants required under this
99 Chapter during the control period until the restrictions are
100 released; and

101 (2) any later owner must not sell the MPDU until:

102 (A) the owner has notified the Department under Section 25A-
103 8 or 25A-9, as applicable, that the unit is for sale; and

104 (B) the Department and, where applicable, the Commission,
105 have notified the owner that they do not intend to buy the
106 unit.

107 (m) Voluntary MPDUs. Nothing in this Chapter prohibits an applicant from
 108 voluntarily building MPDUs, as calculated under subsection (c), in a
 109 development with fewer than 35 dwelling units at one location, and in
 110 so doing from qualifying for an optional method of development under
 111 Chapter 59. A development with fewer than 35 dwelling units where an
 112 applicant voluntarily builds MPDUs must comply with any procedures
 113 and development standards that apply to a larger development under
 114 this Chapter and Chapter 59. [Subsection (e) and Section] Sections
 115 25A-5A, 25A-5B, and 25A-6(b) do not apply to an applicant who
 116 voluntarily builds MPDU's under this subsection and in so doing
 117 qualifies for an optional method of development.

118 **25A-5A. Alternative payment agreement.**

119 (a) The Director may approve an MPDU agreement that allows an
 120 applicant, instead of building some or all of the required number of
 121 MPDUs in the proposed subdivision, to pay to the Housing Initiative
 122 Fund an amount computed under subsection (b), only if the Director
 123 finds that:

- 124 (1) an indivisible package of services and facilities available to all
 125 residents of the proposed subdivision would cost MPDU buyers
 126 or tenants so much that it is likely to make the MPDUs
 127 effectively unaffordable by eligible buyers or tenants; and
 128 (2) the public benefit of additional affordable housing outweighs the
 129 value of locating MPDUs in each subdivision throughout the
 130 County, and accepting the payment will further the objective of
 131 providing a broad range of housing opportunities throughout the
 132 County.

133 (b) Any payment to the Housing Initiative Fund under this Section, to be
 134 acceptable by the Director, must equal 125% of the profit made by
 135 building the substituted units as market-rate units rather than MPDUs.
 136 This profit must be calculated by subtracting the maximum sale price
 137 that could have been charged under Section 25A-7 for each unbuilt
 138 MPDU from the actual sale price charged for each substituted unit. If
 139 the substituted unit will be a rental unit, the Director must calculate an
 140 imputed sale price under regulations issued by the Executive, based on
 141 the rent actually charged.

142 (c) Any payment to the Housing Initiative Fund under this Section must not
 143 be used to reduce the annual County payment to the Fund.

144 **25A-5B. Alternative location agreement.**

145 (a) The Director may approve an MPDU agreement that allows an
 146 applicant, instead of building some or all of the required number of
 147 MPDUs in the proposed subdivision, to provide at least the same
 148 number of MPDUs at another location in the same planning policy area,
 149 only if:

150 (1) (A) the Director finds that an indivisible package of services
 151 and facilities available to all residents of the proposed
 152 subdivision would cost MPDU buyers or tenants so much
 153 that it is likely to make the MPDUs effectively
 154 unaffordable by eligible buyers or tenants; or

155 (B) the Planning Board, in reviewing an application for a
 156 preliminary plan of subdivision, finds that limits on
 157 development at that site would not allow the applicant to
 158 achieve the otherwise allowable density while building all
 159 required MPDUs; and

(2) the Director or Board, as applicable, finds that the public benefit of locating MPDUs at the proposed alternative location outweighs the value of locating MPDUs in each subdivision throughout the County, and building the MPDUs at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County.

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

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

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

* * *

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

* * *

- (3) The Department and the Commission, in that order, may buy an MPDU the first time the MPDU is offered for sale after [10] 30 years after the original sale or rental, and may resell the unit to an eligible person. A resale by the Department or Commission starts a new control period.
- (4) The Commission and any partnership in which the Commission is a general partner need not pay into the Housing Initiative Fund any portion of the resale price of any MPDU that it sells after [10] 30 years after the original sale or rental.

187 (d) *Initial and [subsequent] later rent controls.* Unless previously sold
 188 under subsection (c)(1), [moderately priced dwelling units] MPDUs
 189 built or offered for rent under this Chapter must not be rented for [20]
 190 30 years after the original rental at a rent greater than that established by
 191 Executive regulations [adopted by the County Executive under method
 192 (1)]. [Whenever any moderately priced dwelling unit] Any MPDU
 193 (other than those built, sold, or rented under any federal, state, or local
 194 program offered by the Commission) [is] offered for rent during the
 195 [20] 30-year control period[, it] must be offered exclusively for 60 days
 196 to one or more eligible persons, as determined by the Department, for
 197 use as [his or her own] that person's residence, and to the Commission.
 198 The Commission may assign its right to rent such units to persons of
 199 low or moderate income who are eligible for assistance under any
 200 federal, state, or local program identified in Executive regulations
 201 [adopted by the County Executive under method (1)].

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

- 205 (1) If the sale occurs during the first [10] 30 years after the original
 206 sale or rental, any amount of the foreclosure sale price which
 207 exceeds the total of the approved resale price under subsection
 208 (a), reasonable foreclosure costs, and liens filed under the
 209 Maryland Contract Lien Act, must be paid to the Housing
 210 Initiative Fund. If the remaining balance under the original first
 211 deed of trust or mortgage exceeds the resale price under
 212 subsection (a), then the difference between the foreclosure sales

price and the balance of the original first deed of trust (plus reasonable foreclosure costs) must be paid to the Fund.

- (2) If the sale occurs after the first [10] 30 years after the original sale or rental, and the unit was originally offered for sale or rent after March 20, 1989, the payment to the Fund must be calculated under subsection (c).
- (3) If the MPDU is a rental unit, the resale price under subsections (a) and (c) must be calculated using the maximum sales price in effect when the unit was originally offered for rent.
- (4) If the MPDU is sold subject to senior liens, the lien balances must be included in calculating the sale price.

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

* * *

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

* * *

Sec. 2. Applicability.

The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before (effective date of Act).

Approved:

Steven A. Silverman, President, County Council

Date

238 *Approved:*

239

Douglas M. Duncan, County Executive

Date

240 *This is a correct copy of Council action.*

241

Mary A. Edgar, CMC, Clerk of the Council

Date



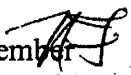

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

OFFICE OF THE COUNCIL PRESIDENT

MEMORANDUM

July 15, 2004

To: Elizabeth Davison, Director
Department of Housing and Community Affairs

From: Nancy Floreen, Councilmember 
Steve Silverman, Council President 

Subject: MPDU Executive Regulations

As you know, this fall the Council will consider a number of changes related to the Moderately Priced Dwelling Unit Program. We look forward to your participation, comments and suggestions at the Public Hearing and our worksessions.

Since income eligibility limits and price/rental rates are set via executive regulation, we request that any revisions you are preparing be provided to the Council so that they may be considered at the same time as other potential changes to the MPDU program.

In addition, we would ask that you evaluate establishment of different income eligibility limits and corresponding rent/prices for certain types of units, for example, rental vs. sale, garden apartments vs. high-rise apartments, and other units with relatively high production costs. We would appreciate your advice on this issue, elements of which were raised in the County Council Staff Report of February 2004.

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