

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 25-04, Moderately Priced Dwelling Units (MPDU) – Amendments.

Bill 25-04, Moderately Priced Dwelling Units (MPDU) – Amendments, sponsored by Councilmember Praisner, is scheduled to be introduced on July 20. A public hearing is tentatively scheduled for September 23 at 7:30 p.m., along with Bill 24-04, also introduced today, and other MPDU-related bills and Zoning Text Amendments.

Bill 25-04 incorporates the recommendations from the staff report submitted to the County Council in February 2004. More specifically, this bill: increases the sale and rent control periods for MPDUs from 10 and 20 years to 99 years; requires eligibility standards for MPDU buyers and renters to be updated annually; lowers the minimum size of subdivisions where moderately priced dwelling units must be built, and allows the Director of the Department of Housing and Community Affairs to waive the requirement in certain circumstances; allows a smaller percentage of MPDUs in certain high-rise buildings; requires an applicant, in an MPDU agreement, to separate, and limit the payment of, certain nonessential recurring fees by owners and renters of moderately priced dwelling units; further restricts 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; requires MPDUs in single-family developments to have the same numbers of bedrooms as the market-rate units, and prohibits the waiver of those standards; and authorizes an MPDU Preservation Fund and MPDU Rehabilitation Fund to be set up, using funds in the County Housing Initiative Fund.

As Councilmember Praisner, lead sponsor of this bill, has indicated, she is introducing it to place all these issues on the table, and its sponsors are not necessarily committing themselves ultimately to support every provision. Councilmember Praisner also intends to propose amendments to require Planning Board concurrence in any buyout for environmental reasons (where not already required) and the Housing Opportunities Commission Director’s concurrence in any buyout for economic reasons.

This packet contains:

Bill 24-04

Legislative Request Report

Circle #

1

16

Bill No. 25-04
Concerning: Moderately Priced Dwelling
Units Amendments
Revised: 7-16-04 Draft No. 2
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: Councilmembers Praisner, Leventhal, Perez, and Andrews

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) lower the minimum size of subdivisions where moderately priced dwelling units must be built, and allow the Director of the Department of Housing and Community Affairs to waive the requirement in certain circumstances;
- (4) allow a smaller percentage of moderately priced dwelling units in certain high-rise buildings;
- (5) require an applicant, in an MPDU agreement, to separate, and limit the payment of, certain nonessential recurring fees by owners and renters of moderately priced dwelling units;
- (6) 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;
- (7) revise the standards for numbers of bedrooms in certain moderately priced dwelling units, and prohibit the waiver of those standards; and
- (8) 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

Chapter 25A, Housing, Moderately Priced
Sections 25A-5A and 25A-5B
Chapter 25B, Housing Policy
Sections 25B-23 and 25B-24

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

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

17

1 **Sec. 1. Sections 25A-3, 25A-4, 25A-5, and 25A-9 are amended, and**
2 **Sections 25A-5A, 25A-5B, 25B-23, and 25B-24 are added, as follows:**

3 **25A-3. Definitions.**

4 The following words and phrases, as used in this Chapter, have the following
5 meanings:

6 * * *

7 (g) Control period means the time an MPDU is subject to either resale price
8 controls and owner occupancy requirements or maximum rental limits,
9 as provided in Section 25A-9. The control period is [10] 99 years for
10 sale units and [20] 99 years for rental units, and begins on the date of
11 initial sale or rental. [If a sale or rental MPDU is sold to an eligible
12 person within 10 years after its initial sale or rental, and if (in the case of
13 a sale MPDU that is not bought and resold by a government agency) the
14 unit was originally offered for sale after March 1, 2002, the unit must be
15 treated as a new sale MPDU and a new control period must begin on the
16 date of the sale.]

17 * * *

18 **25A-4. Income and eligibility standards.**

19 (a) The County Executive must establish and annually revise standards of
20 eligibility for the MPDU program in regulations adopted under method
21 (1)[, and must revise the standards when changes in market conditions
22 affect the ability of moderate-income households to buy or rent
23 housing]. These standards must establish moderate-income levels for
24 varying sizes of households which will qualify a person or household to
25 buy or rent an MPDU. The Executive [may] must establish different
26 income eligibility standards for buyers and renters.

27 * * *

18

28 **25A-5. Requirement to build MPDU's; agreements[; alternatives].**

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

31 (1) submits for approval or extension of approval a preliminary plan
32 of subdivision under Chapter 50 which proposes the development
33 of a total of [35] 20 or more dwelling units at one location in one
34 or more subdivisions, parts of subdivisions, resubdivisions, or
35 stages of development, regardless of whether any part of the land
36 has been transferred to another party;

37 (2) submits to the Planning Board or to the Director of Permitting
38 Services a plan of housing development for any type of site
39 review or development approval required by law, which proposes
40 construction or development of [35] 20 or more dwelling units at
41 one location; or

42 (3) with respect to land in a zone not subject to subdivision approval
43 or site plan review, applies for a building permit to construct a
44 total of [35] 20 or more dwelling units at one location.

45 In calculating whether a development contains a total of [35] 20 or more
46 dwelling units for the purposes of this Chapter, the development
47 includes all land at one location in the County available for building
48 development under common ownership or control by an applicant,
49 including land owned or controlled by separate corporations in which
50 any stockholder or family of the stockholder owns 10 percent or more
51 of the stock. An applicant must not avoid this Chapter by submitting
52 piecemeal applications or approval requests for subdivision plats, site or
53 development plans, or building permits. Any applicant may apply for a
54 preliminary plan of subdivision, site or development plan, record plat or

55 building permit for fewer than [35] 20 dwelling units at any time; but
 56 the applicant must agree in writing that the applicant will comply with
 57 this Chapter when the total number of dwelling units at one location
 58 reaches [35] 20 or more.

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

- 63 (1) a specific number of MPDUs must be constructed on an
 64 approved time schedule;
- 65 (2) in single-family dwelling unit subdivisions, each MPDU must
 66 have [2] 3 or more bedrooms; and
- 67 (3) in multi-family dwelling unit subdivisions, the number of
 68 efficiency and one- bedroom MPDUs each must not exceed the
 69 ratio that market-rate efficiency and one-bedroom units
 70 respectively bear to the total number of market-rate units in the
 71 subdivision.

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

74 (c) When the development at one location is in a zone where a density
 75 bonus is allowed; and

- 76 (1) is covered by a plan of subdivision,
- 77 (2) is covered by a plan of development or a site plan, or
- 78 (3) requires a building permit to be issued for construction,

79 the required number of moderately priced dwelling units is a variable
 80 percentage that is not less than 12.5 percent of the total number of
 81 dwelling units at that location. The required number of MPDUs must

82 vary according to the amount by which the approved development
 83 exceeds the normal or standard density for the zone in which it is
 84 located. Chapter 59 permits bonus densities over the presumed base
 85 density where MPDUs are provided. If the use of the optional MPDU
 86 development standards does not result in an increase over the base
 87 density, the Director must conclude that the base density could not be
 88 achieved under conventional development standards, in which case the
 89 required number of MPDUs must not be less than 12.5 percent of the
 90 total number of units in the subdivision. However, with respect to a
 91 high-rise building located in any zone where the height of such
 92 buildings is limited by a master or sector plan provision below the
 93 maximum height otherwise applicable in the zone, and the use of
 94 applicable MPDU development standards do not allow including the
 95 required number of MPDUs to be economically feasible, the Director
 96 may reduce the required number of MPDUs to not less than 10 percent
 97 of the total number of dwelling units in that building. The amount of
 98 density bonus achieved in the approved development determines the
 99 percentage of total units that must be MPDUs, as follows:

100 * * *

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

109 [(A)] (1) would not allow compliance with applicable
 110 environmental standards and other regulatory
 111 requirements, or

112 [(B)] (2) would significantly reduce neighborhood compatibility.

113 [(2) If the Planning Board approves a density bonus of at least 20
 114 percent for a development which consists of more than 34 but
 115 fewer than 50 units at one location, the number of MPDU's
 116 required must be governed by subsection (c) unless the formula
 117 in subsection (c) would not allow the development to have one
 118 bonus market rate unit. In that case, the Board must reduce the
 119 required number of MPDU's by one unit and approve an
 120 additional market rate unit.]

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

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

125 (B) Convey land in the same or an adjoining planning area that
 126 is suitable in size, location and physical condition for
 127 significantly more MPDUs;

128 (C) Contribute to the Housing Initiative Fund an amount that
 129 will produce significantly more MPDUs; or

130 (D) Do any combination of these alternatives that will result in
 131 building significantly more MPDUs.

132 (2) If the Director finds that:

133 (A) In the project or subdivision originally proposed by the
 134 applicant, an indivisible package of resident services and
 135 facilities to be provided to all households would cost the

136 occupants of the MPDUs so much that it is likely to make
 137 the MPDUs effectively unaffordable by eligible
 138 households; and

139 (B) An offer made by an applicant under subsection (e)(1) will
 140 achieve significantly more MPDUs or units which low-
 141 and moderate-income households can more easily afford;
 142 and

143 (C) These public benefits outweigh the benefit of constructing
 144 MPDUs in each subdivision throughout the County, and
 145 acceptance of the applicant's offer will achieve the
 146 objective of providing a broad range of housing
 147 opportunities throughout the County;

148 the Director must accept the offer made by the applicant instead
 149 of requiring the construction of MPDUs by the applicant. If the
 150 applicant can feasibly build significantly more MPDUs at another
 151 site, the Director must not approve any other alternative under
 152 subsection (e)(1).

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

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

158 (1) allows an applicant to reduce the number of MPDUs in a
 159 subdivision only if the agreement meets all requirements of

160 Section 25A-5A; or

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

* * *

163
164 (l) *Later deeds.* The grantor must clearly and conspicuously state, in any
165 purchase and sale agreement and any deed or instrument conveying title
166 to an MPDU, that:

167 (1) the conveyed property is a MPDU and is subject to the
168 restrictions contained in the covenants required under this
169 Chapter during the control period until the restrictions are
170 released; and

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

172 (A) the owner has notified the Department under Section 25A-
173 8 or 25A-9, as applicable, that the unit is for sale; and

174 (B) the Department and, where applicable, the Commission,
175 have notified the owner that they do not intend to buy the
176 unit.

177 (m) *Voluntary MPDUs.* Nothing in this Chapter prohibits an applicant from
178 voluntarily building MPDUs, as calculated under subsection (c), in a
179 development with fewer than [35] 20 dwelling units at one location, and
180 in so doing from qualifying for an optional method of development
181 under Chapter 59. A development with fewer than [35] 20 dwelling
182 units where an applicant voluntarily builds MPDUs must comply with
183 any procedures and development standards that apply to a larger
184 development under this Chapter and Chapter 59. [Subsection (e) and
185 Section] Sections 25A-5A, 25A-5B, and 25A-6(b) do not apply to an
186 applicant who voluntarily builds MPDUs under this subsection and in
187 so doing qualifies for an optional method of development.

188 (n) Mandatory recurring fees. Each MPDU agreement must require the
 189 applicant, in any document creating a condominium or homeowners'
 190 association or otherwise, to:

191 (1) limit mandatory recurring fees to be paid by MPDU owners or
 192 tenants to those necessary to maintain essential common services
 193 and facilities; and

194 (2) separate mandatory fees for nonessential services and facilities,
 195 such as recreation facilities, so that MPDU owners and tenants
 196 are not obligated to pay them.

197 **25A-5A. Alternative payment agreement.**

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

203 (1) the subdivision consists entirely of senior citizen and special
 204 needs housing, specifically:

205 (A) multifamily housing and related facilities for elderly or
 206 handicapped persons, as defined in Section 59-A-2.1, with
 207 occupancy restricted as provided in Section 59-G-2.35(b);

208 (B) multifamily housing units located in the age-restricted
 209 section of a planned retirement community, as defined in
 210 Section 59-C-7.441; or

211 (C) a domiciliary care home, as defined in Section 59-A-2.1
 212 and subject to Section 59-G-2.37, which consists of
 213 separate assisted living units;

- 214 (2) an indivisible package of services and facilities available to all
 215 residents of the proposed subdivision would cost MPDU buyers
 216 or tenants so much that it is likely to make the MPDUs
 217 effectively unaffordable by eligible buyers or tenants; and
 218 (3) the public benefit of additional affordable senior and special
 219 needs housing outweighs the value of locating MPDUs in each
 220 subdivision throughout the County, and accepting the payment
 221 will further the objective of providing a broad range of housing
 222 opportunities throughout the County.

223 (b) Any payment to the Housing Initiative Fund under this Section, to be
 224 acceptable by the Director, must equal the cost to produce the number
 225 of MPDUs that would have been required on-site, calculated under
 226 regulations issued by the Executive, without considering any further
 227 contribution from any other source.

228 (c) Any payment to the Housing Initiative Fund under this Section may be
 229 used for any purpose that the Fund may otherwise be used for, and must
 230 not be used to reduce the annual County payment to the Fund.

231 **25A-5B. Alternative location agreement.**

232 (a) The Director may approve an MPDU agreement that allows an
 233 applicant for development of a high-rise residential building, instead of
 234 building some or all of the required number of MPDUs on-site, to
 235 provide at least the same number of MPDUs at another location within
 236 ½ mile, only if the Director finds that:

- 237 (1) the public benefit of locating MPDUs at the proposed alternative
 238 location outweighs the value of locating MPDUs in each
 239 subdivision throughout the County; and

240 (2) building the MPDUs at the proposed alternative location will
241 further the objective of providing a broad range of housing
242 opportunities throughout the County.

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

244 (1) build, or convert from non-residential use, the required number of
245 new MPDUs at a site approved by the Director;

246 (2) buy or transfer, and rehabilitate as necessary, existing market rate
247 housing units that meet all standards for use as MPDUs; or

248 (3) return to MPDU use, and rehabilitate as necessary, existing
249 MPDUs for which price or rent controls have expired.

250 **25A-7. Maximum prices and rents of moderately priced dwelling units.**

251 * * *

252 (b) Rental.

253 (1) The rent, including parking but excluding utilities when they are
254 paid by the tenant, for any MPDU must not exceed a maximum
255 rent for the dwelling unit [established] set by [the County]
256 Executive [in] regulations [adopted under method (1)]. Different
257 rents must be [established] set for units when utility costs are paid
258 by the owner and included in the rent. Different rents also may
259 be set for high-rise and other rental units.

260 * * *

261 **25A-9. Control of rents and resale prices; foreclosures.**

262 * * *

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

264 * * *

265 (3) The Department and the Commission, in that order, may buy an
266 MPDU [the first time the MPDU is offered for sale after 10 years

267 after the original sale or rental] at any time during the control
 268 period, and may resell the unit to an eligible person. A resale by
 269 the Department or Commission starts a new control period.

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

274 (d) *Initial and [subsequent] later rent controls.* Unless previously sold
 275 under subsection (c)(1), [moderately priced dwelling units] MPDUs
 276 built or offered for rent under this Chapter must not be rented for [20]
 277 99 years after the original rental at a rent greater than that established by
 278 Executive regulations [adopted by the County Executive under method
 279 (1)]. [Whenever any moderately priced dwelling unit] Any MPDU
 280 (other than those built, sold, or rented under any federal, state, or local
 281 program offered by the Commission) [is] offered for rent during the
 282 [20-year] control period[, it] must be offered exclusively for 60 days to
 283 one or more eligible persons, as determined by the Department, for use
 284 as [his or her own] that person's residence, and to the Commission. The
 285 Commission may assign its right to rent such units to persons of low or
 286 moderate income who are eligible for assistance under any federal,
 287 state, or local program identified in Executive regulations [adopted by
 288 the County Executive under method (1)].

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

292 (1) If the sale occurs during the [first 10 years after the original sale
 293 or rental] control period, any amount of the foreclosure sale price

294 which exceeds the total of the approved resale price under
 295 subsection (a), reasonable foreclosure costs, and liens filed under
 296 the Maryland Contract Lien Act, must be paid to the Housing
 297 Initiative Fund. If the remaining balance under the original first
 298 deed of trust or mortgage exceeds the resale price under
 299 subsection (a), then the difference between the foreclosure sales
 300 price and the balance of the original first deed of trust (plus
 301 reasonable foreclosure costs) must be paid to the Fund.

302 * * *

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

308 * * *

309 **25B-23. MPDU Preservation Fund.**

310 (a) The Director of the Department of Housing and Community Affairs,
 311 using funds allocated to the Housing Initiative Fund, must establish an
 312 MPDU Preservation Fund.

313 (b) The purpose of the Preservation Fund is to provide a lump sum cash
 314 payment, based on a percentage of the unit's increase in value, to
 315 MPDU owners who sell their units during the control period.

316 (c) The County Executive must adopt regulations under method (1) to
 317 administer the Fund, including minimum ownership periods and other
 318 qualifications.

319 **25B-24. MPDU Rehabilitation Fund.**

320 (a) The Director of the Department of Housing and Community Affairs,
321 using funds allocated to the Housing Initiative Fund, must establish an
322 MPDU Rehabilitation Fund.

323 (b) The purpose of the Rehabilitation Fund is to make low-interest loans to
324 owners of rental MPDUs to enable them to rehabilitate properties
325 during the control period.

326 (c) The County Executive must adopt regulations under method (1) to
327 administer the Fund, including minimum ownership periods and other
328 qualifications.

329 **Sec. 2. Applicability.**

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

333 *Approved:*

334

Steven A. Silverman, President, County Council

Date

335 *Approved:*

336

Douglas M. Duncan, County Executive

Date

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

338

Mary A. Edgar, CMC, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 25-04

Moderately Priced Dwelling Units - Amendments

- DESCRIPTION:** Increases the sale and rent control periods for MPDUs from 10 and 20 years to 99 years; requires eligibility standards for MPDU buyers and renters to be updated annually; lowers the minimum size of subdivisions where moderately priced dwelling units must be built, and allows the Director of the Department of Housing and Community Affairs to waive the requirement in certain circumstances; allows a smaller percentage of moderately priced dwelling units in certain high-rise buildings; requires an applicant, in an MPDU agreement, to separate, and limit the payment of, certain nonessential recurring fees by owners and renters of moderately priced dwelling units; further restricts 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; requires MPDUs in single-family developments to have the same numbers of bedrooms as the market-rate units, and prohibits the waiver of those standards; and authorizes an MPDU Preservation Fund and MPDU Rehabilitation Fund to be set up, using funds in the County Housing Initiative Fund.
- PROBLEM:** The rate of producing moderately priced dwelling units has slowed while the need for affordable housing has increased, and certain aspects of the MPDU program should be updated.
- GOALS AND OBJECTIVES:** To stimulate the production of more MPDUs and keep them affordable for a longer period.
- COORDINATION:** Department of Housing and Community Affairs, Housing Opportunities Commission, Planning Board
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** To be researched.
- SOURCE OF INFORMATION:** Michael Faden, Senior Legislative Attorney, 240-777-7905; Aron Trombka, Legislative Analyst, 240-777-7897
- APPLICATION WITHIN MUNICIPALITIES:** Applies where County land use authority applies. City of Rockville has own MPDU program.
- PENALTIES:** Class A penalties and civil remedies for violation of MPDU law