

Bill No. 30-05
Concerning: Housing – Workforce
Housing Program
Revised: 10-4-05 Draft No. 4
Introduced: October 11, 2005
Expires: April 11, 2007
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Silverman

AN ACT to:

- (1) establish a workforce housing program, administered by the Department of Housing and Community Affairs;
- (2) define the purposes of the program and the population who the program is intended to serve, and establish procedures to administer the program;
- (3) authorize the County Executive to set certain program parameters, including income eligibility standards, sale and rent control periods, and maximum sale prices and rents, by regulation;
- (4) define, by reference to certain mandatory and optional zoning provisions, where workforce housing must be located; and
- (5) generally provide for the operation of a County workforce housing program.

By adding

Montgomery County Code
Chapter 25B. Housing Policy
Article V, Workforce Housing

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

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

1 **Sec. 1. Chapter 25B is amended by adding Article V, Workforce**
2 **Housing:**

3 **Article V. Workforce Housing.**

4 **25B-23. Definitions.**

5 In this Article, the following words have the following meanings:

6 (a) Area-wide median income means the latest published income level
7 determined to represent the median income for the Washington area by
8 the U.S. Department of Housing and Urban Development, adjusted for
9 household size.

10 (b) Consumer Price Index means the latest published version of the
11 Consumer Price Index for all Urban Consumers (CPI-U) of the U.S.
12 Department of Labor, or any similar index designated by regulation.

13 (c) Date of original sale means the date of settlement for purchase of a
14 workforce housing unit.

15 (d) Date of original rental means the date that the first lease of a workforce
16 housing unit takes effect.

17 (e) Department means the Department of Housing and Community Affairs.

18 (f) Developer means a person or other legal entity that seeks to develop a
19 workforce housing project.

20 (g) Director means the Director of the Department or the Director's
21 designee.

22 (h) Dwelling unit means a building or part of a building that provides
23 complete living facilities for one family, including at a minimum
24 facilities for cooking, sanitation, and sleeping.

25 (i) Housing Initiative Fund means the fund established under Section 25B-
26 9.

27 (j) Workforce housing project means a project where at least 10 percent of

28 the dwelling units, not counting any moderately priced dwelling units
 29 (MPDUs) and any resulting bonus density units, are sold or rented to
 30 households with incomes at or below 120% of the area-wide median
 31 income.

32 (k) Workforce housing unit means a dwelling unit in a workforce housing
 33 project that is subject to rent limits or sales controls under this Article.

34 (l) Program means the workforce housing program.

35 **25B-24. Workforce housing program.**

36 (a) Establishment. The Department must establish and administer a
 37 workforce housing program.

38 (b) Purpose. The purpose of the program is to promote the construction of
 39 housing affordable to households with incomes at or below 120% of the
 40 area-wide median income. The construction of that housing is intended
 41 to:

42 (1) allow households with incomes at or below 120% of the area-
 43 wide median income to have greater housing choices in the
 44 County;

45 (2) increase the availability of housing in the County for public
 46 employees and other workers whose income cannot support the
 47 high cost of housing that is located close to their workplace and
 48 who, as a result, are increasingly priced out of housing
 49 opportunities;

50 (3) assist County employers in reducing critical labor shortages of
 51 skilled and semi- skilled workers by providing housing that will
 52 be accessible to the workers' workplaces; and

53 (4) reduce traffic congestion by shortening commute distances for
 54 employees who work in the County but who otherwise would

55 live elsewhere.

56 (c) Relationship to other affordable housing programs. This program is
 57 intended to complement the moderately priced dwelling unit (MPDU)
 58 program under Chapter 25A and other County programs designed to
 59 promote affordable housing.

60 (d) Requirement. A developer of any subdivision with 35 or more dwelling
 61 units at one location must build the number of workforce housing units
 62 that are expressly required in any zone under Chapter 59.

63 (e) Regulations. The County Executive must adopt regulations under
 64 method (1) to administer this program. These regulations:

65 (1) must set maximum sale prices and annual rent limits, sale price
 66 and rent ranges (which must promote a variety of different prices
 67 or rents at each workforce housing location), minimum unit type
 68 and bedroom requirements, and income eligibility standards;

69 (2) must govern notice to the Department of sales and rentals,
 70 foreclosures, and other relevant procedural matters; and

71 (3) should, wherever possible, be similar to or at least consistent with
 72 the regulations that govern the MPDU program.

73 **25B-25. Execution of agreement; building permit issuance.**

74 (a) Agreement.

75 (1) After the developer of a workforce housing project has obtained
 76 approval from the Planning Board of a site plan that includes the
 77 number of workforce housing units required under any applicable
 78 provision of Chapter 59 and all other necessary regulatory
 79 approvals, the Director and the developer must execute an
 80 agreement assuring compliance with this Article by the developer
 81 and any successor in interest. The Director must attach a copy of

82 the approved site plan to the this agreement.

83 (2) The agreement must incorporate a staging plan for the
 84 construction of workforce housing units, the mix of dwelling unit
 85 sizes and types, and the selling price or annual rent for each unit.
 86 The staging plan must require all workforce housing units to be
 87 built before or at the same time as the other dwelling units.
 88 Where appropriate, the agreement must reflect conditions
 89 required as part of other regulatory approvals.

90 (b) Issuance of building permit. The Director of Permitting Services must
 91 not issue a building permit for any development where workforce
 92 housing units are required under Chapter 59 until the agreement
 93 required by subsection (a) is executed. After an agreement is executed
 94 under subsection (a), the Director must certify to the Director of
 95 Permitting Services before a building permit is issued that all applicable
 96 requirements of this Article have been met. If all workforce housing
 97 units are not built before or at the same time as other dwelling units as
 98 required in the staging plan, the Director of Permitting Services may:

99 (1) withhold any later building permit for any part of the same
 100 development until all workforce housing units designated in the
 101 staging plan are built;

102 (2) issue a stop work order, effective until all workforce housing
 103 units designated in the staging plan are built; or

104 (3) withhold any use and occupancy permit for other units in the
 105 development until all workforce housing units designated in the
 106 staging plan are built.

107 **25B-26. Alternative location agreement.**

108 (a) The Director may approve a workforce housing agreement, in addition

109 to the agreement required by Section 25B-25, that allows an applicant
 110 for development of a high-rise residential building, instead of building
 111 some or all of the required number of workforce housing units on-site,
 112 to provide at least the same number of units at another location in the
 113 same planning policy area (as defined in the County Growth Policy),
 114 only if the Director finds that:

- 115 (1) the public benefit of locating at the proposed alternative location
 116 outweighs the value of locating workforce housing units in each
 117 applicable development; and
 118 (2) building the workforce housing units at the proposed alternative
 119 location will further the objective of providing a broad range of
 120 housing opportunities throughout the County.

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

- 122 (1) build, or convert from non-residential use, the required number of
 123 new workforce housing units at a site approved by the Director;
 124 (2) buy, encumber, or transfer, and rehabilitate as necessary, existing
 125 market rate housing units that meet all standards for use as
 126 workforce housing units; or
 127 (3) return to workforce housing unit use, and rehabilitate as
 128 necessary, existing workforce housing units for which price
 129 controls have expired.

130 (c) Each agreement under this Section must include a schedule, binding on
 131 the applicant, for timely completion or acquisition of the required
 132 number of workforce housing units.

133 **25B-27. Control of sale prices; rent limits; income eligibility; foreclosures.**

134 (a) Sales; control period. The sale price of a workforce housing unit must
 135 be controlled under this subsection for 10 years after the date of original

136 sale. During the applicable control period, a workforce housing unit
137 must only be sold to an individual with a household income that does
138 not exceed 120% of the area-wide median income or a lower amount set
139 by regulation.

140 (b) Resale price during control period. Except in a foreclosure proceeding,
141 a workforce housing unit constructed or offered for sale under this
142 Article must not be resold during the applicable control period for a
143 price greater than the original selling price plus:

144 (1) a percentage of the unit's original selling price equal to the
145 increase in the cost of living, as determined by the metropolitan
146 area Consumer Price Index;

147 (2) the fair market value of capital improvements made to the unit
148 between the date of original sale and the date of resale;

149 (3) an allowance for closing costs which were not paid by the initial
150 seller, but which will be paid by the initial buyer for the benefit of
151 the later buyer;

152 (4) a percentage, set by regulation, of the unit's price appreciation
153 since its most recent sale, which must not exceed 50% of the total
154 price appreciation; and

155 (5) a reasonable sales commission.

156 (c) Resale price after control period ends.

157 (1) For the first sale of a workforce housing unit after the applicable
158 control period ends that exceeds the allowable price specified
159 under subsection (a), the seller must pay to the Housing Initiative
160 Fund one-half of the excess of the total resale price over the sum
161 of:

162 (A) the original selling price;

163 (B) a percentage of the unit's original selling price equal to the
 164 increase in the cost of living as determined by the
 165 metropolitan area Consumer Price Index;

166 (C) the fair market value of capital improvements made to the
 167 unit between the date of original sale and the date of resale;
 168 and

169 (D) a reasonable sales commission.

170 The Director must adjust the amount paid into the Housing
 171 Initiative Fund in each case so that the seller retains at least
 172 \$10,000 of the excess of the resale price over the sum of the
 173 items in subparagraphs (A)-(D).

174 (2) The Director must find that the price and terms of a sale covered
 175 by paragraph (1) are bona fide and accurately reflect the entire
 176 transaction between the parties so that the full amount required
 177 under paragraph (1) is paid to the Fund. When the Director finds
 178 that the amount due the Fund is accurate and the Director of
 179 Finance receives the amount due, the Director must terminate the
 180 controls imposed by this section and execute a release of all
 181 restrictive covenants.

182 (d) *Limits on rents.* Unless the unit was previously sold under subsection
 183 (c), any workforce housing unit built or offered for rent under this
 184 Chapter must not be rented for 99 years after the date of original rental
 185 at a rent greater than the rent allowed for workforce housing units under
 186 this Article and applicable regulations. Rent may include parking but
 187 does not include utilities when they are paid by the tenant. Different
 188 rents must be set when utility costs are paid by the owner and included
 189 in the rent. During the applicable control period, a workforce housing

190 unit must only be rented to an individual with a household income that
 191 does not exceed the limits set under this Article.

192 (e) Foreclosure. If a workforce housing unit is sold in a foreclosure
 193 proceeding begun by a lending institution, the Director must terminate
 194 the workforce housing controls and execute a release of all restrictive
 195 covenants if all proceeds of the sale, if any, that must be paid to the
 196 Housing Initiative Fund have been paid. If a foreclosure sale of a
 197 workforce housing unit occurs during the applicable control period, any
 198 price paid at the foreclosure sale that exceeds the price established under
 199 subsection (b), plus any reasonable costs and fees of foreclosure, must
 200 be paid into the Housing Initiative Fund. If a workforce housing unit is
 201 foreclosed after the control period, subsection (c) applies. If the unit
 202 sold was a rental unit, the Department must calculate the sale price that
 203 would have been permitted at the date of original rental as if the unit
 204 had been originally offered for sale.

205 (f) Bulk sales. This section does not prohibit the bulk sale or transfer of all
 206 or some rental workforce housing units if the buyer is bound by all
 207 covenants and controls on the workforce housing units.

208 **25B-28. Compliance.**

209 (a) Covenants.

210 (1) This Article applies to the owner, any successor in interest,
 211 assignee, or other person with a legal or equitable interest in the
 212 workforce housing unit. Before recording the plat for a
 213 workforce housing project, the owner must execute and record
 214 covenants assuring that:

215 (A) the restrictions of this Article run with the land;

216 (B) the covenants are binding on the owner, any assignee,

217 mortgagee, or later purchaser, and any other party that
218 receives title to the property; and

219 (C) the County may create a lien to collect that portion of the
220 sale price or foreclosure sale price of a workforce housing
221 unit which exceeds the approved resale price.

222 (2) Any covenant executed to satisfy paragraph (1) must be senior to
223 all instruments securing permanent financing.

224 (b) Later deeds. The grantor must clearly and conspicuously state, in any
225 purchase and sale agreement and any deed or instrument conveying title
226 to a workforce housing unit, and the grantee must clearly and
227 conspicuously acknowledge, that the unit is subject to this Article and
228 the restrictions in the covenants until all restrictions are released under
229 Section 25B-27 or another provision of law. Any deed or other
230 instrument conveying title to a workforce housing unit during the
231 control period must be signed by both the grantor and grantee. When a
232 deed or other instrument conveying title to a workforce housing unit is
233 recorded in the land records, the grantor must cause to be filed in the
234 land records a notice of sale for the benefit of the County in the form
235 provided by state law.

236 (c) Violations; enforcement.

237 (1) Any violation of this Article or regulations adopted under it is a
238 class A violation.

239 (2) An occupancy permit must not be issued for any building to any
240 applicant, or a successor or assign of any applicant, for any
241 construction which does not comply with this Chapter. The
242 Director of Permitting Services may deny, suspend, or revoke
243 any applicable building or occupancy permit if the Director finds

244 that the applicant or permittee has committed a violation of this
 245 Article. The Planning Board may revoke any previously
 246 approved preliminary plan of subdivision, site plan, or
 247 development plan, if the Board finds a violation of this Article.

248 (3) The Director may take legal action to stop or cancel any transfer
 249 of a workforce housing unit if any party to the transfer does not
 250 comply with all requirements of this Article. The Director may
 251 recover any funds improperly obtained from any sale or rental of
 252 a workforce housing unit in violation of this Article, plus costs
 253 and interest at the rate prescribed by law from the date a violation
 254 occurred.

255 (4) In addition to or instead of any other available remedy, the
 256 Director may take legal action to:

257 (A) enjoin a workforce housing unit owner who violates this
 258 Article, or any covenant signed or order issued under this
 259 Article, from continuing the violation; or

260 (B) require an owner to sell a workforce housing unit owned or
 261 occupied in violation of this Article to the County, the
 262 Housing Opportunities Commission, or an eligible person.

263 **Sec. 2. Applicability.**

264 Article V of Chapter 25B, as inserted by Section 1 of this Act, does not apply
 265 to any development for which a preliminary plan of subdivision was approved before
 266 this Act took effect.

267 *Approved:*

268

269

Thomas E. Perez, President, County Council

Date

270 *Approved:*

271

272

Douglas M. Duncan, County Executive

Date

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

274

275

Linda M. Lauer, Clerk of the Council

Date