Bill No. 22-27

Concerning: Requirements to Build MPDUs and Changes to Sale or Rentals

Introduced: September 20, 2022

Revised: ____________ Draft No. ________

Enacted: ______________________

Effective: ______________________

Expires: December 19, 2022

Frederick County Code, Chapter 1-6A

Section(s) 3, 4, 5, 5.1, 5.2, 6, 7, 8, 9

COUNTY COUNCIL
FOR FREDERICK COUNTY, MARYLAND

By: Council Member Jessica Fitzwater

AN ACT to: update and revise Chapter 1-6A (Moderately Priced Dwelling Units) ("MPDUs") of the County Code, including: requiring construction of MPDUs in order to earn bonus density; allowing one unit of bonus density for each MPDU constructed; to change the per dwelling unit payment in lieu of construction to a per square foot payment in lieu; and to make other changes to Chapter 1-6A for clarity and consistency.

Date Council Approved: ______________ Date Transmitted to Executive: ______________________

Executive: ______________________ Date Received: ______________

Approved: ______________________ Date: ______________

Vetoed: ______________________ Date: ______________

Date returned to Council by County Executive with no action: ______________________

By amending:

Frederick County Code, Chapter 1-6A Section(s)) 3, 4, 5, 5.1, 5.2, 6, 7, 8, 9

Other: ____

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

Bill No. 22-27

The County Council of Frederick County, Maryland, finds it necessary and appropriate to amend the Frederick County Code to update and revise Chapter 1-6A (Moderately Priced Dwelling Units)(“MPDUs”) of the County Code, including: requiring construction of MPDUs in order to earn bonus density; allowing one unit of bonus density for each MPDU constructed; to change the per dwelling unit payment in lieu of construction to a per square foot payment in lieu; and to make other changes to Chapter 1-6A for clarity and consistency.

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NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

AND BE IT FURTHER ENACTED, that the amendments shown on Exhibit 1 will be effective for building permits issued on or after the effective date of this Bill.

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M. C. Keegan-Ayer, President
County Council of Frederick County, Maryland

Exhibit 1

§ 1-6A-1. RESERVED [~~GOVERNMENTAL FINDINGS.~~

[~~(A) The county hereby finds that a severe housing problem exists within the county with respect to the supply of housing relative to the need for housing for residents with moderate incomes.~~

~~(B) Specifically, the county finds that:~~

~~(1) The county is experiencing a rapid increase in residents of or approaching retirement age, with consequent fixed or reduced incomes; young adults of modest means forming new households; government employees in moderate income ranges; and mercantile and service personnel needed to serve the expanding economic base and population growth of the county;~~

~~(2) A rising influx of residents into higher priced housing in the county with resultant demands for public utilities, governmental services, and retail and service businesses has created an increased need for housing for persons of moderate income who are employed in the stated capacities;~~

~~(3) The supply of moderately priced housing was inadequate in the 1990's and has grown since then at a radically slower pace than the demand for such housing;~~

~~(4) The inadequate supply of housing in the county for persons of moderate income results in large-scale commuting from outside the county to places of employment within the county, thereby overtaxing existing roads and transportation facilities, significantly contributing to air and noise pollution, and engendering greater than normal personnel turnover in the businesses, industry and public agencies of the county, all adversely affecting the health, safety and welfare of and resulting in an added financial burden on the citizens of the county;~~

~~(5) It is estimated that approximately one- third of the new labor force in the county for the foreseeable future will require moderately priced dwelling units;~~

~~(6) Rapid regional growth and a strong housing demand have combined to make land and construction costs very high and have an effect on the used housing market by causing a rise in the prices of those units;~~

~~(7) Experience indicates that the continuing high level of demand for more luxurious housing, with a higher profit potential, discourages developers from offering a more diversified range of housing; and the production of moderately priced housing is further deterred by the high cost of land, materials, and labor;~~

~~(8) Experience in the county indicates that if land costs can be reduced, houses of more modest size and fewer amenities can be built to be sold at a profit in view of the existing ready market for such housing; and~~

~~(9) Every indication is that, given the proper incentive, the private sector is best equipped and possesses the necessary resources and expertise required to provide the type of moderately priced housing needed in the county.~~**]**

Underlining *indicates matter added to existing law.*
[Single boldface brackets**]** *and* ~~*strikethrough*~~ *indicates matter deleted from existing law.*
****** - indicates existing law unaffected by bill.*
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§ 1-6A-2. RESERVED [~~DECLARATION OF PUBLIC POLICY~~.

[~~The county hereby declares it to be the public policy of the county to:~~

~~(A) Provide for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and family sizes;~~

~~(B) Provide for moderate-income housing to meet existing and anticipated future employment needs in the county;~~

~~(C) Assure that moderately priced housing is dispersed within the county consistent with the general plan and area master plans;~~

~~(D) Encourage the construction of moderately priced housing by allowing increases in density in order to reduce land costs and the costs of optional features that may be built into such moderately priced housing.~~

~~(E) Require that all developments on public water and sewer (with 25 or more dwelling units) include a minimum number of moderately priced units of varying sizes with regard to family needs;~~

~~(F) Strive to ensure that private developers constructing moderately priced dwelling units have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision;~~

~~(G) Allow developers of residential units in qualified projects more flexibility to meet the broad objective of building housing that moderate-income households can afford by letting a developer, under specified circumstances, comply with this chapter by contributing to a County Housing Initiative Fund.~~**]**

§ 1-6A-3. DEFINITIONS.

The following words and phrases, as used in this chapter, have the following meanings.

APPLICANT. Any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities, and any transferee of all or part of the land at one location, who after this chapter takes effect:

(1) Submits for approval or extension of approval a preliminary plan of subdivision or site development plan, which plan provides for the development of a total of 25 or more dwelling units (on public water and sewer) at one [~~1~~] location in 1 or more subdivisions, parts of subdivisions, resubdivisions, site development plans, or stages of development, regardless of whether any part of the land has been transferred to another party; or

(2) Submits to the Frederick County Planning Commission or to the Director of the Department of Planning and Development Review a plan of housing development for any type of site review or development approval required by law, which plan includes construction or development of 25 or more dwelling units (on public water and sewer) at 1 location**[**~~; or~~

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[Single boldface brackets**]** *and ~~strikethrough~~ indicates matter deleted from existing law.*
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~~(3) With respect to all land in zones not subject to subdivision approval or site plan review, applies for a building permit or permits, which permit is or permits are for the construction of a total of 25 or more dwelling units at one location on public water and sewer.~~**]**

AT ONE LOCATION. All adjacent land of the applicant if:

(1) The property lines are contiguous or nearly contiguous at any point; or

(2) The property lines are separated only by a public or private street, road, highway or utility right-of-way, or other public or private right-of-way at any point; or

(3) The property lines are separated only by other land of the applicant which is not subject to this chapter at the time of any permit, site plan, development or subdivision application by the applicant.

<u>AREA MEDIAN INCOME (AMI). The Area Median Income as determined by the Department of Housing and Urban Development (HUD) for the area that includes Frederick County.</u>

AVAILABLE FOR BUILDING DEVELOPMENT. All land:

(1) Owned by, or under contract to, the applicant;

(2) Zoned for any type of residential development to which a density bonus provision applies;

(3) Which is already subdivided or is ready to be subdivided for construction or development.

CLOSING COSTS. Statutory charges for transferring title, fees for obtaining necessary financing, title examination fees, title insurance premiums, house location survey charges and fees for preparation of loan documents and deed of conveyance.

[~~COMMISSION. The Affordable Housing Commission of Frederick County.~~**]**

CONSUMER PRICE INDEX. That latest published version of the Consumer Price Index for All Urban Consumers (CPI-U) of the U.S. Department of Labor for the Washington Metropolitan area.

CONTROL PERIOD. The time an MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits, as provided in § 1-6A-9. Except as provided in § 1-6A-5.2 , <u>the control period is 40 years for both sale units and rental units</u> **[**~~the control period is 15 years for sale units and 25 years for rental units~~**]**, and begins on the date of initial sale or rental. If a rental MPDU is sold to an eligible person within the control period, the unit must be treated as a new sale MPDU and a new control period must begin on the date of the sale.

COUNTY. Frederick County, Maryland.

DATE OF ORIGINAL SALE. The date of settlement for purchase of a moderately priced dwelling unit.

DATE OF ORIGINAL RENTAL. The date the first lease agreement for a moderately priced dwelling unit takes effect.

<u>Underlining</u> *indicates matter added to existing law.*
[Single boldface brackets**]** *and ~~strikethrough~~ indicates matter deleted from existing law.*
****** - indicates existing law unaffected by bill.*

DENSITY BONUS PROVISION. Any increase in density in a zoning classification that allows residential development above the amount permitted in the base, standard method or maximum allowable densities per acre under zoning for PUD's and other non-Euclidean zones.

DEPARTMENT. The Department of Housing and Community Development.

DEVELOPMENT. Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, dumping, extraction, dredging, grading, paving, storage of materials or equipment, land excavation, land clearing, land improvement, landfill operation, or any combination thereof. This term shall also include the subdivision of land as it applies to existing properties located totally within a designated floodplain.

DIRECTOR. Except as otherwise indicated, the head of the Department of Housing and Community Development, or the Director’s designee.

DWELLING UNIT. A building or part of a building that provides complete living facilities for 1 family, including at a minimum, facilities for cooking, sanitation and sleeping.

ELIGIBLE PERSON. A person or household who qualifies to participate in the MPDU program.

FREDERICK COUNTY MEDIAN INCOME (FCMI). The median income for Frederick County only, as determined by the Director based on timely U.S. Census Bureau data, which may be a percentage of the AMI determined by HUD.

HOUSING INITIATIVE FUND. A fund established by the county to facilitate affordable housing.

MODERATE INCOME. Except as provided in § 1-6A-5.2, those levels of income, established by the Housing Director and approved by the county, which prohibit or severely limit the financial ability of persons to buy or rent housing in Frederick County.

MODERATELY PRICED DWELLING UNIT or MPDU. A dwelling unit which is:

(1) Offered for sale or rent to eligible persons through the Department, and sold or rented under this chapter, or

(2) Sold or rented under a federal, state or local government affordable housing program designed to assist the construction or occupancy of housing for families of moderate income, and designated by the Director as an MPDU.

PLANNING COMMISSION. The Frederick County Planning Commission.

PRIORITY MARKETING PERIOD. The period an MPDU must be offered exclusively for sale or rent to eligible persons, as provided in § 1-6A-8.

§ 1-6A-4. INCOME AND ELIGIBILITY STANDARDS.

(A) The Director must establish standards of eligibility for the MPDU program in regulations adopted by the county and must revise the standards when changes in market conditions affect the ability of moderate-income households to buy or rent housing. These standards must establish moderate-income levels for varying sizes of households which will qualify a person or household to buy or rent an MPDU. The Director may establish different income eligibility standards for buyers and renters.

(B) In establishing standards of eligibility and moderate-income levels, the Director must consider:

(1) The price established for the sale or rental of MPDUs under this chapter;

(2) The term and interest rate that applies to the financing of MPDUs;

(3) The estimated levels of income necessary to carry a mortgage on an MPDU; and

(4) Family size and number of dependents.

(C) A person who rents an MPDU and lawfully occupies it when the unit is offered for sale may buy the unit, regardless of the person's income at the time of sale, if the person met all eligibility standards when the person first rented the unit.

(D) To be eligible to buy an MPDU, a person and members of that person's household must not have owned any residential property during the previous 3 years. The Director may waive this restriction for good cause.

§ 1-6A-5. REQUIREMENT TO BUILD MPDU'S; AGREEMENTS; ALTERNATIVES.

(A) Except as provided in § 1-6A-5.1 below, any applicant, in order to record a final plat of subdivision or obtain a building permit, must submit to the Division of Planning and Permitting[~~Department of Permits and Inspections~~], 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, not less than 12.5% of the total number of dwelling units in the development, must be constructed on an approved time schedule;

(2) **[**~~In single-family dwelling unit subdivisions, each MPDU must have 2 or more bedrooms; and~~

~~(3) In multi-family dwelling unit subdivisions, the number of efficiency and 1 bedroom MPDUs each must not exceed the ratio that market-rate efficiency and 1 bedroom units respectively bear to the total number of market-rate units in the subdivision.~~**]** In all developments MPDUs constructed must be equivalent in bedroom count to all market rate units constructed. For example, if the market rate units consist of 30% 3-bedroom units, 20% one-bedroom units, and 50% 2-bedroom units, then the constructed MPDUs must also include the same percentages of units with the same bedroom counts, to the extent practicable, as determined by the Director.

(B) (1) A one-to-one density bonus is provided [~~This subsection (B) applies~~] when the development at one [~~1~~] location includes construction of [~~is in a residential zone in which~~]at least 12.5% of the total number of dwelling units in the development[~~a density bonus is provided~~]; and

(a) Is covered by a plan of subdivision; or

(b) Is covered by a plan of development or a site plan[~~; or~~

~~(c) Requires a building permit to be issued for construction;~~].

(2) A two-to-one density bonus may be approved by the Planning Commission for MPDUs constructed in specified growth areas as identified in the Livable Frederick Master Plan. **[**~~The required number of moderately priced dwelling units is a variable percentage that is not less than 12.5% of the total number of dwelling units at that location.~~

~~(3) Except as specified in subsections (C) and (D), the required number of MPDUs must vary according to the amount by which the approved development exceeds the normal standard density for the zone in which it is located.~~

~~(4) If the use of the MPDU development standards does not result in an increase over the base density, the Director must conclude that the base density could not be achieved under conventional development standards, in which case the required number of MPDUs must not be less than 12.5% of the total number of units in the subdivision.~~

~~(5) The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:~~

~~***Achieved Density Bonus***~~	~~***MPDUs Required***~~
~~***Achieved Density Bonus***~~	~~***MPDUs Required***~~
~~Zero~~	~~12.5%~~
~~Up to 1%~~	~~12.6%~~
~~Up to 2%~~	~~12.7%~~
~~Up to 3%~~	~~12.8%~~
~~Up to 4%~~	~~12.9%~~
~~Up to 5%~~	~~13.0%~~
~~Up to 6%~~	~~13.1%~~
~~Up to 7%~~	~~13.2%~~
~~Up to 8%~~	~~13.3%~~
~~Up to 9%~~	~~13.4%~~
~~Up to 10%~~	~~13.5%~~
~~Up to 11%~~	~~13.6%~~
~~Up to 12%~~	~~13.7%~~
~~Up to 13%~~	~~13.8%~~

~~Up to 15%~~	~~14.0%~~
~~Up to 16%~~	~~14.1%~~
~~Up to 17%~~	~~14.2%~~
~~Up to 18%~~	~~14.3%~~
~~Up to 19%~~	~~14.4%~~
~~Up to 20%~~	~~14.5%~~
~~Up to 22%~~	~~15.0%~~

]

(C) Density bonuses are permitted as part of the MPDU program in the following districts: Residential (MXD), R1, R3, R5, R8, R12, R16, PUD, Village Center (VC), and MX. Density bonuses shall not be allowed if an applicant elects to pay a "per square foot payment in lieu" as outlined in § 1-6A-5.1.

(D) In planned development zones and mixed use zones containing flexible development standards, the number of MPDUs must not be less than either the number of density bonus units or 12.5% of the total number of dwelling units, whichever is greater.

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

(a) Build at least 10% more MPDUs at 1 or more other sites in the same or an adjoining area in the county;

(b) Contribute to the Housing Initiative Fund an amount that will produce at least 10% more MPDUs; or

(c) Do any combination of these alternatives that will result in building at least 10% more MPDUs than required hereunder.

(2) If the Director finds that:

(a) In the project or subdivision originally proposed by the applicant, an indivisible package of resident services and facilities to be provided to all households would cost the occupants of the MPDUs so much that it is likely to make the MPDUs effectively unaffordable by eligible households; and

(b) An offer made by an applicant under subsection (E)(1) will achieve at least 10% more MPDUs or units which moderate-income households can more easily afford; and

(c) These public benefits outweigh the benefit of constructing MPDUs in each subdivision throughout the county and acceptance of the applicant's offer will achieve the objective of providing a broad range of housing opportunities throughout the county; the Director may accept the offer made by the applicant instead of requiring the construction of MPDUs by the applicant.

If the applicant can feasibly build at least 10% more MPDUs at another site in the county, the Director must not approve any other alternative under subsection (E)(1).

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

(F) The MPDU agreements must be signed by the applicant, any other parties having an interest in the property and all other parties whose signatures are required by law for the effective and binding execution of contracts conveying real property. The agreements must be executed in a manner that will enable them to be recorded in the land records of the county. If the applicant is a corporation, the agreements must be signed by a duly authorized officer **[**~~the principal officers of the corporation individually and~~**]** on behalf of the corporation. Partnerships, associations or corporations must not evade this chapter through voluntary dissolution. The agreements may be assigned if the county approves and if the assignees agree to fulfill the requirements of this chapter.

(G) An MPDU agreement must be drafted prior to Planning Commission approval of preliminary plans and site plans. The preliminary plan and site plan must document the number, type, location, and staging of construction, or otherwise document how the requirements of this chapter will be met. The DPP[~~Department of Permits and Inspections~~] must not record final subdivision plats and must not issue a building permit in any subdivision or housing development in which MPDUs are required until the applicant submits an executed [~~valid~~] MPDU agreement which applies to the entire development[~~subdivision~~]. The MPDU agreement must include the number, type, location, and plan for staging construction of all dwelling units and such other information as the Department requires to determine the applicant’s compliance with this chapter. The MPDU staging plan must be consistent with any applicable land use plan, subdivision plan, or site plan. The staging plan included in the MPDU agreement for all dwelling units must be sequenced so that:

(1) MPDUs are built along with other dwelling units;

(2) The pace of MPDU production must reasonably coincide with the construction of market rate units;

(3) The constructed MPDUs must be equivalent in bedroom count to all market rate units constructed or to be constructed; and

(4**[**~~3~~**]**) The last building built must not contain only MPDUs. This subsection applies to all developments, including any development covered by multiple preliminary plans of subdivision.

(I) If an applicant does not build the MPDUs contained in the staging plan along with or before other dwelling units, the Director of the Department of Permits and Inspections must withhold any later building permit to that applicant until the MPDUs contained in the staging plan are built.

(J) Recording of covenants. The applicant must execute and record covenants assuring that:

(1) The restrictions of this chapter run with the land for the entire period of control; and

(2) The covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other parties that receive title to the property. These covenants must be senior to all instruments securing permanent financing except when MPDUs are built under §1-6A-5.2; and

(K) Later deeds. The grantor must state, in any deed or instrument conveying title to an MPDU, that the conveyed property is an MPDU and is subject to the restrictions contained in the covenants required under this chapter during the control period until the restrictions are released.

(L) Letter of credit. The applicant must submit a letter of credit at the time of permit application for 125% of the average value of 1 MPDU unit. Once all MPDUs are completed the letter of credit will be released. Failure to complete the MPDUs according to the staging plan will cause the letter of credit to be forfeited and the funds will be deposited in the Housing Initiative Fund.

(M) Subordinate lien. A lien must be placed on each individual MPDU property at settlement secured by a second position deferred principal mortgage in favor of the county. The dollar amount of the lien and mortgage will be 80% of the difference between the market rate value of the MPDU **[**~~unit~~**]** and the MPDU sale price (including settlement costs) at the time of initial purchase. (Example: Market rate value $150,000 minus MPDU price including settlement costs $100,000=$50,000 x 80% = $40,000).

§ 1-6A-5.1. PAYMENT IN LIEU OF BUILDING MPDU'S; AGREEMENTS.

(A) In lieu of the option specified under § 1-6A-5, an applicant may elect to pay a "per dwelling unit payment in lieu" calculated as described below and included in a written MPDU agreement.

(B) Each MPDU agreement entered into pursuant to a payment in lieu election must include the following:

(1) The per square foot [~~dwelling unit~~] payment in lieu for each dwelling unit in the development, which shall be determined as described in subsection (C) below[~~by multiplying the "Affordability Gap" described in subsection (C) below) by the number that is equal to 12.5% of the total number of dwelling units approved for the development as part of the site plan, preliminary plan, or Phase II plan approval, which result is then divided by the total number of dwelling units approved for the development as part of the site plan, preliminary plan or Phase II plan approval~~]; and

(2) The agreement shall specify that the per square foot [~~dwelling unit~~] payment in lieu will be paid at the time of building permit application, based on the then-current [~~Affordability Gap~~] per square foot payment in lieu.

(C) Determination of Per Square Foot Payment in Lieu: The per square foot [~~dwelling unit~~] payment in lieu for each dwelling unit in the development, which shall be determined as follows:

(1) Multiply the "Affordability Gap" determined in subsection (D) below by 12.5%, which results in the base fee per unit.

(2) The base fee per unit is then divided by the average square footage of new dwelling units sold in the county in the preceding three (3) calendar years.

(3) This results in the per square foot payment in lieu to be applied to all dwelling unit types in the development. The per square foot payment in lieu is $2.00 per square foot as of _______________, 2022 [the date of enactment of this Bill]. See subsection (I) below – Triennial adjustment.

(D[~~C~~]) The Affordability Gap is determined based on the following factors: (1) the Frederick County Median Home Price for attached homes (townhouses, multifamily) for the preceding three (3) calendar years; (2) the purchasing capacity of the moderate income buyer earning 70% of Frederick County [~~Area~~] Median Income (FC[~~A~~]MI), based on prevailing FHA mortgage loan financing including down-payment requirements for the preceding three (3) calendar years [~~at the end of the preceding calendar year~~]; and (3) maintaining a monthly housing cost burden at or below 30% of net monthly income for a household earning 70% of AMI. The Affordability Gap will be adjusted on a triennial basis. See subsection (I) below. [~~The Affordability Gap as of December 31, 2016 is $26,500.~~]

(E[~~D~~]) The MPDU agreement must be signed by the applicant, any other parties having an interest in the property and all other parties whose signatures are required by law for the effective and binding execution of deeds conveying real property. The MPDU agreement must be executed in a manner that will enable the agreement to be recorded in the land records of the county. Partnerships, associations or corporations shall not evade this chapter through voluntary dissolution. The MPDU agreement shall run with and bind the land and all subsequent owners of the land.

(F[~~E~~]) An MPDU agreement that complies with this section must be approved by the Director and the County Attorney and recorded in the land records prior to signature and final approval of the site plan, preliminary plan or Phase II plan for the proposed development.

(G[~~F~~]) All MPDU payments in lieu shall be deposited into the County Housing Initiative Fund.

(H[~~G~~]) If the applicant chooses the payment in lieu option provided under this section, the County Department of Permits and Inspections shall not accept a building permit application for the development unless the applicant also submits the per dwelling unit payment in lieu required under the MPDU agreement.

(I[~~H~~]) Tri[~~Bi~~]ennial adjustment. On or before April**[**~~January~~**]** 15, 2026[~~3~~], and on or before April[~~January~~] 15 every 3[~~2~~] years thereafter (2029[~~5~~], 2027, etc.), the per square foot payment in lieu and the Affordability Gap shall be recalculated as of December 31 of the previous year, in accordance with the factors discussed in subsections (C) and (D) above. The report may propose an adjustment be made by the County Council.

§ 1-6A-5.2. USE OF GOVERNMENT AFFORDABLE RENTAL HOUSING PROGRAMS TO SATISFY THE MPDU REQUIREMENTS.

Under certain circumstances, federal, state, or local government affordable rental housing programs may be used to fulfill the MPDU requirements. When these affordable rental housing programs are used to comply with the requirements of this chapter, the following conditions must be met:

(A) Rental rates must be affordable to moderate income households. Maximum household income for affordable rental units built under this section may not exceed 60% of the AMI [~~area median income~~] as determined by HUD.

(B) The Director must determine that:

(1) the controls on the rental rates will contribute to the long term availability of moderately priced dwelling units in the county; and

(2) recorded covenants on the rental units will require a control period of [~~99~~] 40 years.

(C) If a rental development is financed, in whole or in part, through the awarding of tax credits from the Maryland Department of Housing & Community Development's Low Income Housing Tax Credit (LIHTC) Program, then compliance with the requirements of the LIHTC Program, including eligibility, income limits, rental rates, and rules for operations, will be deemed to satisfy the eligibility, income and rental rate provisions of this chapter and the county's eligibility, rental rate and income regulations, except that the control period for the rental units subject to the LIHTC program shall be extended to [~~99~~] 40 years to ensure long term affordability. In addition, if the rental development is financed as provided in this subsection (C), an MPDU confirmation sheet, signed by the applicant and the Director, may be used in place of an MPDU agreement.

(D) Subject to the approval of the Director, other federal, state or local government affordable rental housing programs may be used to satisfy the eligibility, income and rental rate provisions of this chapter and the county's eligibility, rental rate and income regulations, provided that the control period for the rental units subject to the program shall be extended to **[**~~99~~**]** 40 years to ensure long term affordability.

§ 1-6A-6. WAIVER OF REQUIREMENTS.

(A) The county, in order to assist in providing moderately priced housing, has enacted zoning standards in §§ 1-19-8.620.1 through 8.620.6 **[**~~Chapter 19, Art. VI, Division 8~~**]** of this Code, establishing density bonus provisions which increase the allowable residential density above the maximum base density of the zoning classification if MPDUs are built. **[**~~If the applicant elects to utilize the density bonus provisions, permitting the construction of an increased number of dwelling units, the requisite percentage and number of MPDUs must apply to the total number of dwelling units as increased by application of the density bonus that increases the density above the otherwise permitted density of the zoning classification in which the property is situated~~**]**.

(B) Waiver of requirements. Any applicant who presents sufficient evidence to the Director of the Department of Permits and Inspections in applying for a building permit, or to the Planning Commission in submitting a preliminary plan of subdivision for approval or requesting approval of a site or other development plan, may be granted a waiver from part or all of § 1-6A-5. The waiver must relate only to the number of MPDUs to be built and may be granted only if the Director of the Department of Planning and Development Review, after consulting with the Department of Housing and Community Development, finds that the applicant cannot attain the full density of the zone, because of any requirements of the zoning ordinance or the administration of other laws or regulations. When any part of the land that dwelling units cannot be built on for physical reasons is used to compute permitted density, the applicant's inability to use the density bonus provisions is not in itself grounds for waiving the MPDU requirements. Any waiver must be strictly construed and limited.

§ 1-6A-7. MAXIMUM PRICES AND RENTS OF MODERATELY PRICED DWELLING UNITS.

Moderately priced dwelling units must not be sold or rented at prices or rents that exceed the maximum prices or rents established under this section.

(A) Sales.

(1) **[**~~The s~~**]** Sales [~~price~~] of MPDUs within each development subject to this section, [~~including closing costs and brokerage fees,~~]must meet the following requirements:[~~not exceed~~]

(a) One third of the MPDUs for sale in each development must be sold to a person whose income does not exceed 70% of the FCMI;

(b) One third of the MPDUs for sale in each development must be sold to a person whose income does not exceed 80% of the FCMI; and

(c) One third of the MPDUs for sale in each development must be sold to a person whose income does not exceed 90 % of the FCMI;

(2) The applicable sales price for each MPDU shall be determined based on the 70%, 80% and 90% FCMI thresholds to ensure that, within each threshold band, the respective buyer's[~~within each threshold band,~~]total monthly mortgage payment does not exceed 30% of their [~~respective~~]threshold monthly income. [~~an applicable maximum sale price established from time to time by the Director in regulations adopted by the county.~~]

[(~~2) The Director in issuing MPDU sale price regulations must seek appropriate information, such as current general market and economic conditions and the current minimum sale prices of private market housing in the county, and must consult with the building industry, employers, and professional and citizen groups to obtain statistical information which may assist in setting a current maximum sale price. The Director must, from time to time, consider changes in the income levels of persons of moderate income and their ability to buy housing. The Director must also consider the extent to which, consistent with code requirements, the cost of housing can be reduced by the elimination of amenities, the use of cost-reducing building techniques and materials, and the partial finishing of certain parts of the units.~~

~~(3) The Director must issue maximum sale prices for MPDUs which continue in effect until changed by later regulation. The maximum sale prices must be based on the necessary and reasonable costs required to build and market the various kinds of MPDUs by private industry. The sale prices for any succeeding year must be based on a new finding of cost by the Director, or on the prior year's maximum MPDU price adjusted by the percentage change in the relevant cost elements indicated in the Consumer Price Index.~~

Underlining *indicates matter added to existing law.*
[Single boldface brackets**]** *and ~~strikethrough~~ indicates matter deleted from existing law.*
****** - indicates existing law unaffected by bill.*

~~(4) The Director may make interim adjustments in maximum MPDU sale prices when sufficient changes in costs justify an adjustment. Any interim adjustment must be based on maximum MPDU sale prices previously established, adjusted by the percentage change in the relevant cost elements indicated in the Consumer Price Index.~~

~~(5) If the Director finds that other conditions of the design, construction, pricing, or amenity package of an MPDU project will lessen the ability of eligible persons to afford the MPDUs, the Director may restrict those conditions that will impose excessive mandatory homeowner or condominium fees or other costs that reduce the affordability of the MPDUs.~~**]**

(3[~~6~~]) The Director may allow [~~let~~] an applicant to pay an increased [~~the~~] sale price for [~~of~~] an MPDU when the Director finds, in exceptional cases, that a price increase is justified to cover the cost of modifying the external design of the MPDUs when a modification is necessary to reduce excessive marketing impact of the MPDUs on the market rate units in the subdivision. The Director must approve the amount of any increase for this purpose, which must not exceed 10% of the allowable base price of the unit.

(B) Rentals. Note that this section does not apply to rental of MPDUs under § 1-6A-5.2.

(1) The rent, [~~including parking but~~] excluding utilities when they are paid by the tenant, for any MPDUs within each development subject to this section, shall be set as follows:

(a) 1/3 of units must be rented at a rate equivalent to 30 percent of the monthly income of a household whose annual income does not exceed 60% FCMI;

(b) 1/3 of units must be rented at a rate equivalent to 30 percent of the monthly income of a household whose annual income does not exceed 70% FCMI; and

(c) 1/3 of units must be rented at a rate equivalent to 30 percent of the monthly income of a household whose annual income does not exceed 80% FCMI;

[~~must not exceed a maximum rent for the dwelling unit established by the Director in regulations adopted by the county. Different rents must be established for units when utility costs are paid by the owner and included in the rent.~~]

(2) The Director, in setting the maximum rent for the rental units, must consider the current cost of building MPDUs, available interest rates and debt service for permanent financing, current market rates of return or investments in residential rental properties, the value of the MPDU at the end of the control period, and any other relevant information. The Director must consult with the rental industry, employers and professional and citizen groups to obtain statistical information and current general market and economic conditions which may assist in setting a current maximum rent. The Director must consider the extent to which, consistent with county codes and housing standards, the cost of MPDU rental housing units can be reduced by the elimination of amenities. The Director must also consider from time to time changes in the income levels of persons of moderate income and their ability to rent housing.

§ 1-6A-8. SALE OR RENTAL OF MODERATELY PRICED DWELLING UNITS.

(A) Sale or rental to general public.

(1) Every moderately priced dwelling unit required under this chapter must be offered to the general public for sale or rental to a good-faith purchaser or renter to be used for his or her own residence, except units offered for sale or rent [~~through the Commission,~~] <u>by</u> a designated housing agency or non-profit corporation, whose purpose is to provide housing for persons of moderate income.

(2) Before offering any moderately priced dwelling units, the applicant must notify the Department of the proposed offering and the date on which the applicant will be ready to begin the marketing to eligible persons. The notice must set forth the number of units offered, the bedroom mix, the floor area for each type, a description of the amenities offered in each unit and a statement of the availability of each unit for sale or rent, including information regarding any mortgage financing available to buyers of the designated unit. The applicant must also give the Department a vicinity map of the offering, a copy of the approved development, subdivision or site plan, as appropriate, and such other information or documents as the Director finds necessary. The Department must maintain a list of eligible persons of moderate income and, in accordance with procedures established by the Director, must notify eligible persons of the offering.

(3) After receiving the offering notice, the Department must <u>determine whether the offering notice is complete</u> **[**~~notify the Commission of the offering~~**]**. If the Department finds that the offering notice is complete, it will offer the units to eligible persons on a lottery basis. The Department must notify the applicant when the 90 day priority marketing period for the MPDUs may begin.

(4) The Director may establish a buyer and renter selection system that considers household size, county residency, employment in the county, and length of time since the person was certified for the MPDU program. Each eligible person must be notified of the availability of any MPDU which would meet that person’s housing needs, and be given an opportunity to buy or rent an MPDU during the priority marketing period in the order of that person’s selection priority ranking.

(5) The priority marketing period for new units ends 90 days after the initial offering date approved by the Department. The priority marketing period for resold or re-rented units ends 60 days after the Department notifies the seller of the approved resale price or vacancy of the rental unit. The Department may extend a priority marketing period when eligible persons are interested in buying or renting a unit.

(6) Every buyer or renter of an MPDU must occupy the unit as his or her primary residence during the control period. Each buyer and renter must certify before taking occupancy that he or she will occupy the unit as his or her primary residence during the control period. The Director may require an owner who does not occupy the unit as his or her primary residence to offer the unit for resale to an eligible person under the resale provisions of § 1-6A-9.

(7) During the initial control period after the original sale, and for as long thereafter as the MPDU is owned by the initial MPDU owner, no liens will be permitted, without the written approval of the Director, on the MPDU property other than liens for unpaid real estate taxes or assessments for infrastructure improvements, except for the original purchase money mortgage and any liens validly recorded for unpaid homeowner association fees. Upon application to and

approval by the Director, subordinate liens may be placed, if not prohibited by the purchase money mortgagee's deed of trust, for improvements to the MPDU property which would enhance the market value of the property by at least 110% of the subordinate lien requested.

(8) An owner of an MPDU, except **[**~~the Commission or~~**]** a housing agency or non-profit corporation designated by the Director, must not rent the unit to another party unless the Director finds sufficient cause to allow temporary rental of the unit under applicable regulations, which may include maximum rental levels. Any MPDU owner who is allowed to rent a unit temporarily must agree to amend the applicable MPDU covenants to extend the control period for a time equal to the temporary rental period.

(9) Any rent obtained for an MPDU that is rented without the Director's authorization must be paid into the Housing Initiative Fund by the owner within 90 days after the Director notifies the owner of the rental violation. Any amount unpaid after 90 days is grounds for a lien against the unit, and the Director may obtain a judgment and record the lien.

(10) An applicant must not sell or lease any unit without first obtaining a certificate of eligibility from the buyer or lessee. A copy of each certificate must be furnished to the Department and maintained on file by the Department. Before the sale by an applicant or by [~~the Commission or~~] a designated housing agency or non-profit corporation to any buyer of any MPDU who does not possess a certificate of eligibility, the applicant, the [~~Commission, or the~~] agency or <u>non-profit</u> corporation must ask the Department whether the certificates on file show that the proposed buyer had previously bought another MPDU. A person must not buy a second MPDU unless no first-time buyer is qualified to buy that unit. The Director may waive this restriction for good cause.

(11) If an MPDU owner dies, at least 1 heir, legatee, or other person taking title by will or by operation of law must occupy the MPDU during the control period under this section, or the owner of record must sell the MPDU as provided in § 1-6A-9.

(B) [~~Affordable Housing Commission or other d~~]<u>D</u>esignated housing development agency or <u>nonprofit</u> corporation.

(1) In view of the critical, long-term public need for housing for families of moderate income, [~~the Commission or any other~~] <u>a</u> housing development agency or non-profit corporation designated by the Director has the option to buy or lease, for its own programs or programs administered by it, up to 40% of all MPDUs which are not sold or rented under any other federal, state, or local program.

(a) The <u>County</u>[~~Commission~~] may buy or lease up to 33-1/3% of the MPDUs not sold or rented under any other federal, state, or local program. Any [~~other~~] designated agency or <u>non-profit</u> corporation may buy or lease:

1. Any MPDUs in the first 33-1/3% that the <u>County</u>[~~Commission~~] has not bought or leased; and

2. The remainder of the 40%.

(b) This option may be assigned to persons of moderate income who are eligible for assistance under any federal, state, or local programs. The Director must adopt standards and priorities for designating non-profit corporations under this subsection. These standards must require the non-profit corporation to demonstrate its ability to operate and maintain MPDUs satisfactorily on a long-term basis.

(2) The Department must notify the [~~Commission or other~~] designated agency or non-profit corporation promptly after receiving notice from the applicant under subsection (A) of the availability of MPDUs. If the [~~Commission or other~~] designated agency exercises its option, it must submit to the applicant, within 30 calendar days after the Department notifies the agency [~~Commission~~] under subsection (B), a notice of intent to exercise its option for specific MPDUs covered by this option. Any MPDUs not bought or leased under this subsection must be sold or rented only to eligible persons under subsection (B) during the priority marketing period for eligible persons to buy or lease.

(3) In exercising this option, [~~the Commission and~~] any designated agency or non-profit corporation must designate the units by reference to number, type, size and amenities of the units selected if the designation does not result in any 1 type of unit exceeding by more than 40% the total units of that type which are sold or rented under this section, unless the applicant agrees otherwise. The notice required under subsection (B)(2) must state which MPDUs are to be offered for sale and which are to be offered for rent, and the [~~Commission and any~~] designated agency or non-profit corporation may buy only units which are offered for sale and may lease only units which are offered for rent. The [~~Commission and any~~] designated agency or non-profit corporation must decide whether it will exercise its option within 45 days after it receives the original notice.

(4) The [~~Commission and any~~] designated agency or non-profit corporation acquiring MPDUs for the purpose of renting these units are responsible to the Department for the management of these units so as not to adversely affect the community in which they are located. Homeowner Associations may file a complaint in writing with the Department. Complaints which are determined by the Department to be valid and which are not resolved may result in the [~~Commission,~~] designated agency or non-profit corporation forfeiture of the right to purchase future units.

§ 1-6A-9. CONTROL OF RENTS AND RESALE PRICES; FORECLOSURES.

(A) Resale price and terms. Except for foreclosure proceedings, any MPDU constructed or offered for sale or rent under this chapter must not be resold during the control period for a price greater than the original selling price plus:

(1) A percentage of the unit's original selling price equal to the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index;

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

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

(4) A reasonable sales commission if the unit is not sold during the priority marketing period to an eligible person from the Department's eligibility list. The resale price of an MPDU

may be reduced if the physical condition of the unit reflects abnormal wear and tear because of neglect, abuse, or insufficient maintenance. Any personal property transferred in connection with the resale of an MPDU must be sold at its fair market value. In calculating the allowable resale price of an MPDU which was originally offered for rent, the Department must estimate the price for which the unit would have been sold if the unit had been offered for sale when it was first rented.

(B) Resale requirements during the control period.

(1) Any MPDU offered for resale during the control period must first be offered exclusively for 60 days to the Department. The Department may buy a unit when funds are available and the Director finds that the Department's buying and reselling the unit will increase opportunities for eligible persons to buy the unit. If it does not buy the unit, the Department must notify eligible persons [~~, the Commission~~] and qualified non-profits of the availability of a resale MPDU. The unit may be sold through either of the following methods:

(a) The Department may by lottery establish a priority order under which eligible persons who express interest in buying the unit may buy it at the approved resale price;

(b) The Department may notify the MPDU owner that the owner may sell the unit directly to any eligible person under the resale provisions of this chapter.

(2) A resale MPDU may be offered for sale to the general public only after:

(a) The priority marketing period expires; and

(b) All eligible persons who express an interest in buying it have been given an opportunity to do so.

(3) The seller is required to submit to the Department, prior to sale, for approval:

(a) A copy of the proposed sales contract, including a list and the price of any personal property included in the sale;

(b) Signed copy of the settlement sheet; and

(c) An affidavit signed by the seller and buyer attesting to the accuracy of all documents and conditions of the sale.

(4) A transfer of an MPDU does not comply with this chapter until all required documents and affidavits have been submitted to and approved by the Department.

(C) First sale after control period ends.

(1) [~~(a) If an MPDU originally offered for sale or rent is sold or resold after its control period ends, upon the first sale of the unit the seller must pay to the Housing Initiative Fund one-half of the excess of the total resale price over the sum of the following:~~

~~1. The original selling price;~~

~~2. A percentage of the unit's original selling price equal to the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index;~~

~~3. The fair market value of capital improvements made to the unit between the date of original sale and the date of resale; and~~

~~4. A reasonable sales commission.~~

~~(b) The Director must adjust the amount paid into the fund in each case so that the seller retains at least $10,000 of the excess of the resale price over the sum of the items in 1- 4 above.~~

~~(2) The Director must find that the price and terms of a sale covered by subsection (C)(1) are bona fide and accurately reflect the entire transaction between the parties so that the full amount required under subsection (C)(1) is paid to the Fund. When the Director finds that the amount due the Fund is accurate and the Department of Finance receives the amount due, the Department must terminate the MPDU controls and execute a release of the restrictive covenants and subordinate lien.~~

~~(3)~~] If an MPDU originally offered for sale or rent is sold or resold after its control period ends, [~~T~~]the [~~Commission and~~] qualified non-profits have the right for 30 days after the offer is made to match any bona fide offer to buy an MPDU.[~~the first time the MPDU is offered for sale after the control period ends.~~]

(2) When an MPDU is sold or resold after its control period ends, the Department must terminate the MPDU controls and execute a release of the restrictive covenants and subordinate lien.

[~~(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 the control period ends.~~]

(D) Initial and subsequent rent controls. Except as provided in § 1-6A-5.2, moderately priced dwelling units built or offered for rent under this chapter must not be rented for 40[~~25~~] years after the original rental at a rent greater than that established by regulation adopted by the county. Whenever any moderately priced dwelling unit (other than those built, sold or rented under any federal, state or local program offered in the County [~~Commission~~]) is offered for rent during the 40[~~25~~] year control period, it must be offered exclusively for 90 days to eligible persons, as determined by the Department, for use as his or her own residence [~~and to the Commission~~]. The County [~~Commission~~] may assign its right to rent such units to persons of moderate income who are eligible for assistance under any federal, state or local program administered by an approved non-profit corporation or housing agency.

(E) Purchase money mortgages. Purchase money mortgages for MPDUs will be written such as to provide that in the event of foreclosure, pre- notification to the Director is required of the mortgagee. In such event, the Director shall have 30 days to determine whether to permit the foreclosure to occur in accordance with § 1-6A-9(F), or if the Director determines that the waiting list of eligible prospective MPDU purchasers warrants retaining the MPDU unit in inventory, the Director is authorized to notify the foreclosing mortgagee (if funding is available) that the Housing Initiative Fund (HIF) guarantees to the mortgagee payoff of the principal and interest due on the purchase money mortgage within 90 days, in return for the foreclosure action to be cancelled with concurrent enforceable eviction acceptance being obtained from the mortgagor MPDU owner. Should the latter not be obtainable, the foreclosure would be permitted to proceed but with the condition that upon successful foreclosure and eviction if necessary, the HIF pays the principal, interest and incurred fees to the mortgagee, whereupon the title to the MPDU property is passed to the HIF. The HIF will thereupon re-offer the property in accordance with the MPDU program to eligible persons, with the requirement that the HIF is made whole for monies spent in the process of retaining the property in the MPDU program.

(F) Foreclosures or other court-ordered sales.

(1) If an MPDU is sold through a foreclosure or other court-ordered sale, a payment must be made to the Housing Initiative Fund as follows.

(a) If the sale occurs during the first 15 years after the original sale or rental, any amount of the foreclosure sale price which exceeds the total of the approved resale price under subsection (A), reasonable foreclosure costs, and liens filed under the Maryland Contract Lien Act, must be paid to the Housing Initiative Fund. If the remaining balance under the original first deed of trust or mortgage exceeds the resale price under 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.

(b) If the sale occurs after the first 15 years after the original sale or rental, the payment to the Fund must be calculated under subsection (C).

(c) If the MPDU is a rental unit, the resale price under subsections (A) and (C) must be calculated using the maximum sale price in effect when the unit was originally offered for rent.

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

(2) All MPDU covenants and liens must be released after the required payment is made into the Housing Initiative Fund.

(G) Waivers. The Director may waive the restrictions on the resale and re-rental prices for MPDUs if the Director finds that the restrictions conflict with regulations of federal or state housing programs and thus prevents eligible persons from buying or renting units under the MPDU program.

(H) Bulk transfers. This section does not prohibit the bulk transfer or sale of all or some of the rental MPDUs in a subdivision within 25 years after the original rental if the buyer is bound by all covenants and controls on the MPDUs.

(I) Compliance. The county must adopt regulations to promote compliance with this section and prevent practices that evade controls on rents and sales of MPDUs.

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