

Affordable Housing Moderately Priced Dwelling Unit Program, Montgomery, MD

Chapter 25A Housing, Moderately Priced

§ [25A-1](#). Legislative findings.

§ [25A-2](#). Declaration of public policy.

§ [25A-3](#). Definitions.

§ [25A-4](#). Income and eligibility standards.

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

§ [25A-6](#). Optional zoning provisions; waiver of requirements.

§ [25A-7](#). Maximum prices and rents of moderately priced dwelling units.

§ [25A-8](#). Sale or rental of moderately priced dwelling units.

§ [25A-9](#). Control of rents and resale prices; foreclosures.

§ [25A-10](#). Executive regulations; enforcement.

§ [25A-11](#). Appeals.

§ [25A-12](#). Applicability.

Sec. 25A-1. Legislative findings.

The **County** Council 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 low and moderate incomes. Specifically, the **County** Council 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 industrial 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 low and moderate income who are employed in the stated capacities;

(3) The supply of moderately priced housing was inadequate in the mid-1960'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 low and 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) A careful study of market demands shows that approximately one-third of the new labor force in the County for the foreseeable future will require moderately priced dwelling units;

(6) Demographic analyses indicate that public policies which permit exclusively high-priced housing development discriminate against young families, retired and elderly persons, single adults, female heads of households, and minority households; and such policies produce the undesirable and unacceptable effects of exclusionary zoning, thus failing to implement the Montgomery County housing policy and the housing goal of the general plan for the County;

(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) Actual production 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;

(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;

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

(11) In past years efforts have been made to encourage moderately priced housing construction through zoning incentives permitting greater density and through relaxation of some building and subdivision regulations. Very little moderately priced housing had resulted; and

(12) In some instances existing housing for persons of low and moderate income is substandard and overcrowded. (1974 L.M.C., ch. 17, § 1; 1979 L.M.C., ch. 21, § 1; 1989 L.M.C., ch. 27, § 1.)

Sec. 25A-2. Declaration of public policy.

The **County** Council hereby declares it to be the public policy of the **County** to:

(1) Implement the **Montgomery County** housing policy and the general plan goal of providing for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and family sizes;

(2) Provide for low- and moderate-income housing to meet existing and anticipated future employment needs in the **County**;

(3) Assure that moderately priced housing is dispersed within the **County** consistent with the general plan and area master plans;

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

(5) Require that all subdivisions of 35 or more dwelling units include a minimum number of moderately priced units of varying sizes with regard to family needs, and encourage subdivisions with fewer than 35 units to do the same;

(6) Ensure that private developers constructing moderately priced dwelling units under this Chapter incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision of Chapter 59 and, in certain zones, the optional development standards; and

(7) Allow developers of residential units in qualified projects more flexibility to meet the broad objective of building housing that low- and moderate-income households can afford by letting a developer, under specified circumstances, comply with this Chapter by contributing to a **County** Housing Initiative Fund. (1974 L.M.C., ch. 17, § 1; 1989 L.M.C., ch. 27, § 1; [2003 L.M.C., ch. 1](#), § 1.)

Sec. 25A-3. Definitions.

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

(a) Applicant means 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.

(b) At one location means 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.

(c) Available for building development means all land:

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

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

(3) Which will use public water and sewerage; and

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

(d) Closing costs means 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.

(e) Commission means the Housing Opportunities Commission of **Montgomery County**.

(f) Consumer Price Index means the latest published version of the Consumer Price Index for All Urban Consumers (CPI-U) of the U.S. Department of Labor for the Washington metropolitan area, or any similar index selected by the **County** Executive.

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

(h) Date of original sale means the date of settlement for purchase of a moderately priced dwelling unit.

(i) Date of original rental means the date the first lease agreement for a moderately priced dwelling unit takes effect.

(j) Department means the Department of Housing and Community Affairs.

(k) Director, except as otherwise indicated, means the head of the Department of Housing and Community Affairs, or the Director's designee.

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

(m) Eligible person means a person or household whose income qualifies the person or household to participate in the MPDU program, and who holds a valid certificate of eligibility from the Department which entitles the person or household to buy or rent an MPDU during the priority marketing period.

(n) Housing Initiative Fund means a fund established by the **County** Executive to achieve the purposes of Section 25B-9.

(o) Low income means levels of income within the income range for "very-low income families" established from time to time by the U.S. Department of Housing and Urban Development for the Washington metropolitan area, under federal law, or as defined by executive regulations.

(p) Moderate income means those levels of income, established in executive regulations, which prohibit or severely limit the financial ability of persons to buy or rent housing in **Montgomery County**.

(q) Moderately priced dwelling unit or MPDU means 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 government program designed to assist the construction or occupancy of housing for families of low or moderate income, and designated by the Director as an MPDU.

(r) Optional density bonus provision means any increase in density under Chapter 59, in a zoning classification that allows residential development, above the amount permitted in the base or standard method of development density, whether by exercise of the optional provisions of Chapter 59 or by any special exception.

(s) Planning Board means the **Montgomery County** Planning Board.

(t) Priority marketing period is the period an MPDU must be offered exclusively for sale or rent to eligible persons, as provided in Section 25A-8. (1974 L.M.C., ch. 17, § 1; 1976 L.M.C., ch. 12, § 1; 1976 L.M.C., ch. 35, § 2; 1978 L.M.C., ch. 31, § 1; 1979 L.M.C., ch. 21, § 2; 1980 L.M.C., ch. 63, § 1; 1982 L.M.C., ch. 6, § 11; 1984 L.M.C., ch. 24, § 28; 1984 L.M.C., ch. 27, § 19; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29; 1996 L.M.C., ch. 13, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; [2001 L.M.C., ch. 14](#), § 1; [2001 L.M.C., ch. 25](#), § 1; 2002 L.M.C., ch. 16, § 2; [2002 L.M.C., ch. 27](#), § 1.)

Editor's note—2002 L.M.C., ch. 27, § 2, states: Applicability. The requirements of Chapter 25A, as amended by Section 1 of this Act, do not apply to any subdivision with more than 34 but fewer than 50 units at one location if the applicant applied for a preliminary plan of subdivision before this Act took effect [January 9, 2003], unless the applicant agrees that the requirements of Chapter 25A as amended should apply to that subdivision.

Sec. 25A-4. Income and eligibility standards.

(a) The **County** Executive must establish standards of eligibility for the MPDU program in regulations adopted under method (1), 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 Executive may establish different income eligibility standards for buyers and renters.

(b) In establishing standards of eligibility and moderate-income levels, the Executive 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 or rent an MPDU, a person and members of that person's household must not have owned any residential property during the previous 5 years.

The Director may waive this restriction for good cause. (1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29.)

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

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

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

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

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

In calculating whether a development contains a total of 35 or more dwelling units for the purposes of this Chapter, the development includes all land at one location in the **County** available for building development under common ownership or control by an applicant, including land owned or controlled by separate corporations in which any stockholder or family of the stockholder owns 10 percent or more of the stock. An applicant must not avoid this Chapter by submitting piecemeal applications or approval requests for subdivision plats, site or development plans, or building permits. Any applicant may apply for a preliminary plan of subdivision, site or development plan, record plat or building permit for fewer than 35 dwelling units at any time; but the applicant must agree in writing that the applicant will comply with this Chapter when the total number of dwelling units at one location reaches 35 or more.

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

(1) a specific number of MPDUs must be constructed on an approved time schedule;

(2) in single-family dwelling unit subdivisions, each MPDU must have 2 or more bedrooms; and

(3) in multi-family dwelling unit subdivisions, the number of efficiency and one-bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.

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

(1) is covered by a plan of subdivision,

(2) is covered by a plan of development or a site plan, or

(3) requires a building permit to be issued for construction, the required number of moderately priced dwelling units is a variable percentage that is not less than 12.5 percent of the total number of dwelling units at that location. The required number of MPDUs must vary according to the amount by which the approved development exceeds the normal or standard density for the zone in which it is located. Chapter 59 permits bonus densities over the presumed base density where MPDUs are provided. If the use of the optional 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 percent of the total number of units in the subdivision. The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:

<i>Achieved DensityBonus</i>	<i>MPDUs Required</i>		<i>Achieved Density Bonus</i>	<i>MPDUs Required</i>
Zero	12.5%		Up to 11%	13.6%
Up to 1%	12.6%		Up to 12%	13.7%
Up to 2%	12.7%		Up to 13%	13.8%
Up to 3%	12.8%		Up to 14%	13.9%
Up to 4%	12.9%		Up to 15%	14.0%
Up to 5%	13.0%		Up to 16%	14.1%
Up to 6%	13.1%		Up to 17%	14.2%
Up to 7%	13.2%		Up to 18%	14.3%

Up to 8%	13.3%		Up to 19%	14.4%
Up to 9%	13.4%		Up to 20%	14.5%
Up to 10%	13.5%		Up to 22%	15.0%

(d) (1) Notwithstanding subsection (c), the requirements of this Chapter do not apply to a development with more than 34 but fewer than 50 units at one location if the Planning Board, in reviewing a subdivision or site plan submitted by the applicant and based on the lot size, product type, and other elements of the plan as submitted, finds that achieving a bonus density of 20 percent or more at that location:

(A) would not allow compliance with applicable environmental standards and other regulatory requirements, or

(B) would significantly reduce neighborhood compatibility.

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

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

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

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

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

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

(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 significantly more MPDUs or units which low- and 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 must accept the offer made by the applicant instead of requiring the construction of MPDUs by the applicant. If the applicant can feasibly build significantly more MPDUs at another site, 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 executive regulation. To implement an offer, the applicant must sign an agreement with the Director not later than a time provided in the regulations.

(f) (1) An applicant may satisfy this Section by obtaining approval from the Director to transfer land to the **County** before applying for a building permit. The applicant must sign a written land transfer agreement approved by the Director and by the **County** Attorney. For the Director to consider the request and take timely action, a written notice of the applicant's intent to submit an agreement should be served upon the Director at least 90 days before the application for a building permit is filed. The land transfer agreement must covenant that so much of the land, designated in the approved preliminary plan or site plan as land to which the optional zoning provisions for MPDUs apply, as is necessary in order to construct the number of MPDUs required by subsection (a) will be transferred, as finished lots, to **Montgomery County** or to the County's designee before the building permit is issued, so that the **County** might cause MPDUs to be constructed on the transferred land. After the submission of supporting documentation and review and approval by the **County** for the transfer of finished lots, the **County** must reimburse the applicant for the costs the applicant actually incurred, which are directly attributable to the finishing of the MPDU lots so transferred. Reimbursable costs include but are not limited to engineering costs; clearing, grading, and paving streets, including any required bonds and permits; installation of curbs, gutters and sidewalks; sodding of public right-of-way; erection of barricades and signs; installation of storm sewers and street lighting; and park and other open space and recreational development directly benefiting the MPDU lots transferred. The **County** must not reimburse an applicant for the cost or value of the transferred lots.

(2) If an applicant transfers land to the **County** under this subsection and no funds have been appropriated to reimburse the applicant for his finishing costs, the **County** may accept from the applicant undeveloped land rather than finished lots, or the applicant may transfer the finished lots to the **County** without requiring payment for finishing the lots.

(3) Notwithstanding any other provisions of the subsection, the **County** may reject an election by an applicant to transfer land to the **County** in whole or in part

whenever the public interest would best be served thereby. Any rejection and the reasons for the rejection may be considered by the Planning Board or the Director of Permitting Services in deciding whether to grant the applicant a waiver of this Chapter under Section 25A-7(b).

(4) Any transfer of land to the County hereunder is not subject to Section 11B-33, and any land so transferred is not property subject to Section 11B-31A regulating the disposal of surplus land. The Director may dispose of the lots in a manner that furthers the objectives of this Chapter.

(g) The MPDU agreements must be signed by the applicant 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 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.

(h) The Department of Permitting Services must not issue a building permit in any subdivision or housing development in which MPDUs are required until the applicant submits a valid MPDU agreement which applies to the entire subdivision or development. The applicant must also file with the first application for a building permit a statement of all land the applicant owns in the County that is available for building development. In later applications, the applicant need only show additions and deletions to the original landholdings available for building development.

(i) 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 or before other dwelling units;
- (2) no or few market rate dwelling units are built before any MPDUs are built;
- (3) the pace of MPDU production must reasonably coincide with the construction of market rate units; and
- (4) 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.

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

(k) *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.

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

(m) Nothing in this Chapter prohibits an applicant from voluntarily building MPDUs, as calculated under subsection (c), in a development with fewer than 35 dwelling units at one location, and in so doing from qualifying for an optional method of development under Chapter 59. A development with fewer than 35 dwelling units where an applicant voluntarily builds MPDUs must comply with any procedures and development standards that apply to a larger development under this Chapter and Chapter 59. Subsection (e) and Section 25A-6(b) do not apply to an applicant who voluntarily builds MPDU's under this subsection and in so doing qualifies for an optional method of development. (1974 L.M.C., ch. 17, § 1; 1974 L.M.C., ch. 40, § 1; 1976 L.M.C., ch. 34, § 1; 1976 L.M.C., ch. 35, § 3; 1978 L.M.C., ch. 31, § 2; 1979 L.M.C., ch. 21, § 3; 1982 L.M.C., ch. 6, § 1; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; [2001 L.M.C., ch. 14](#), § 1; [2001 L.M.C., ch. 8](#), § 1; [2002 L.M.C., ch. 2](#), § 1; 2002 L.M.C., ch. 16, § 2; [2002 L.M.C., ch. 27](#), § 1; [2003 L.M.C., ch. 1](#), § 1.)

Editor's note—2002 L.M.C., ch. 27, § 2, states: Applicability. The requirements of Chapter 25A, as amended by Section 1 of this Act, do not apply to any subdivision with more than 34 but fewer than 50 units at one location if the applicant applied for a preliminary plan of subdivision before this Act took effect [January 9, 2003], unless the applicant agrees that the requirements of Chapter 25A as amended should apply to that subdivision.

The requirement of providing for moderately priced dwelling units contained in § 25A-5 is mentioned in connection with **Montgomery** County's growth policy in P. J. Tierney, *Maryland's Growing Pains: The Need for State Regulation*, 16 U. of Balt. L. Rev. 201 (1987) at pp. 236, 237.

Note-Formerly, § 25A-4.

Sec. 25A-6. Optional zoning provisions; waiver of requirements.

(a) *Optional zoning provisions.* The **County** Council, sitting as a District Council for the Maryland-Washington Regional District within the **County**, to assist in providing moderately priced housing has enacted zoning standards in Chapter 59, establishing in certain zones optional density bonus provisions which increase the allowable residential density above the maximum base density of the zoning classification and permit alternative dwelling unit types other than those allowed under the standard method of development. Land upon which the applicant must build MPDUs may, at the applicant's election, be subject to optional zoning provisions. If the applicant elects the optional density 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 optional density provisions or by the approval of a special exception 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 Permitting Services in applying for a building permit, or to the Planning Board 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 Section 25A-5. The waiver must relate only to the number of MPDUs to be built, and may be granted only if the Director of Permitting Services or the Board, after consulting with the Department of Housing and Community Development Affairs, 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 optional density bonus provisions is not in itself grounds for waiving the MPDU requirements. Any waiver must be strictly construed and limited. (1974 L.M.C., ch. 17, § 1; 1976 L.M.C., ch. 35, § 4; 1978 L.M.C., ch. 31, § 4; 1979 L.M.C., ch. 21, § 4; 1980 L.M.C., ch. 28, § 1; 1982 L.M.C., ch. 6, § 1; 1989 L.M.C., ch. 27, § 1; 1996 L.M.C., ch. 13, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; [2001 L.M.C., ch. 14](#), § 1; 2002 L.M.C., ch. 16, § 2.)

Sec. 25A-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 sale price of any MPDU, including closing costs and brokerage fees, must not exceed an applicable maximum sale price established from time to time by the County Executive in regulations adopted under method (1).

(2) The County Executive 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 County Executive must, from time to time, consider changes in the income levels of persons of low and moderate income and their ability to buy housing. The County Executive 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 County Executive 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 County Executive, 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.

(4) The County Executive may make interim adjustments in maximum MPDU sale prices when sufficient changes in costs justify an adjustment. Any interim adjustment must be based on the 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, under executive regulations, may restrict those conditions that will impose excessive mandatory homeowner or condominium fees or other costs that reduce the affordability of the MPDUs.

(6) The Director may let an applicant increase the sale price of a MPDU when the Director, under executive regulations, 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 percent of the allowable base price of the unit.

(b) *Rental.*

(1) The rent, including parking but excluding utilities when they are paid by the tenant, for any MPDU must not exceed a maximum rent for the dwelling unit established by the **County** Executive in regulations adopted under method (1). Different rents must be established for units when utility costs are paid by the owner and included in the rent.

(2) The **County** Executive, in setting the maximum rent, 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, operating costs, vacancy rates of comparable properties, the value of the MPDU at the end of the control period, and any other relevant information. The **County** Executive 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 **County** Executive must consider the extent to which, consistent with **County** codes and housing standards, the cost of rental housing can be reduced by the elimination of amenities. The **County** Executive must also consider from time to time changes in the income levels of persons of low and moderate income and their ability to rent housing. (1989 L.M.C., ch. 27, § 1.)

Sec. 25A-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 with the assistance of, and subject to the conditions of, a subsidy under a federal, state or local government program, identified in regulations adopted by the **County** Executive under method (1) whose purpose is to provide housing for persons of low or 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 unit 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 **County** Executive, must notify eligible persons of the offering.

(3) After receiving the offering notice, the Department must notify the Commission of the offering. If the Department finds that the offering notice is complete, it must decide whether the offering of the units to eligible persons will be administered

by lottery or by another method that will assure eligible persons an equitable opportunity to buy or rent a MPDU. The Department must notify the applicant of the method and when the 90-day priority marketing period for the MPDUs may begin.

(4) The Executive may by regulation establish a buyer and renter selection system which 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 rerented 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) Moderately priced dwelling units, except those built, sold, or rented under a federal, state, or local program designated by regulation, must not be offered for rent by an applicant during the priority marketing period, except in proportion to the market rate rental units in that subdivision as follows:

(A) In a subdivision containing only single-family dwellings, the proportion of rental MPDUs must not exceed the proportion of market rate rental units to all market rate units.

(B) In a subdivision containing both single-family and multiple-family dwellings, the proportion of rental single-family MPDUs to all one-family MPDUs must not exceed the proportion of market rate rental single-family units to all market rate single-family units; and the proportion of rental multiple-family MPDUs to all multiple-family MPDUs must not exceed the proportion of market rate rental multiple-family units to all market rate multiple-family units.

(C) The Director may allow an applicant to offer a higher proportion of multiple-family MPDUs for rent in a subdivision if the Director finds that:

(i) offering more rental MPDUs in that subdivision would advance the purpose of the County housing policy and the objectives of any applicable land use plan, be consistent with local housing market conditions, and avoid excessive mandatory condominium or homeowners association fees or other costs that would reduce the affordability of sale MPDUs; and

(ii) the applicant is qualified to manage rental housing and has submitted an effective management plan for the rental units in that subdivision.

Applicants must make a good-faith effort to enter into contracts with eligible persons during the priority marketing period and for an additional period necessary to negotiate with eligible persons who indicate a desire to buy or rent an MPDU during that period.

(7) 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 Section 25A-9.

(8) An owner of an MPDU, except the Commission or a housing agency or nonprofit 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 nonprofit corporation to any buyer of any MPDU who does not possess a certificate of eligibility, the applicant, the Commission, or the agency or 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 one 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 Section 25A-9.

(b) *Department of Housing and Community Affairs, Housing Opportunities Commission or other designated housing development agency or corporation.*

(1) In view of the critical, long-term public need for housing for families of low and moderate income, the Department, the Commission, or any other housing development agency or nonprofit corporation designated by the **County** Executive may

buy or lease, for its own programs or programs administered by it, up to 40 percent of all MPDUs which are not sold or rented under any other federal, state, or local program. The Department or Commission may buy or lease up to 33 percent of the MPDUs not sold or rented under any other federal, state, or local program. Any other designated agency or corporation may buy or lease (A) any MPDU in the first 33 percent that HOC has not bought or leased, and (B) the remainder of the 40 percent. This option may be assigned to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified in regulations adopted by the Executive. The Executive must, by regulation, adopt standards and priorities for designating nonprofit corporations under this subsection. These standards must require the 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 corporation promptly after receiving notice from the applicant under subsection (a) of the availability of MPDUs. If the Department, the Commission, or any other designated agency or corporation exercises its option, it must submit to the applicant, within 21 calendar days after the Department notifies the 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 Department, the Commission, and any designated agency or 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 type of unit exceeding by more than 40 percent 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 Department, the Commission, and any designated agency or corporation may buy only units which are offered for sale and may lease only units which are offered for rent. The Department, the Commission, and any designated agency or corporation must decide whether it will exercise its option within 45 days after it receives the original notice. (1974 L.M.C., ch. 17, § 1; 1976 L.M.C., ch. 35, § 4; 1978 L.M.C., ch. 31, § 4; 1979 L.M.C., ch. 21, § 4; 1980 L.M.C., ch. 28, § 1; 1982 L.M.C., ch. 6, § 1; 1984 L.M.C., ch. 24, § 28; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29, [2001 L.M.C., ch. 25](#), § 1; [2002 L.M.C., ch. 27](#), § 1.)

Editor's note—2002 L.M.C., ch. 27, § 2, states: Applicability. The requirements of Chapter 25A, as amended by Section 1 of this Act, do not apply to any subdivision with more than 34 but fewer than 50 units at one location if the applicant applied for a preliminary plan of subdivision before this Act took effect [January 9, 2003], unless the applicant agrees that the requirements of Chapter 25A as amended should apply to that subdivision.

Formerly, § 25A-6.

Sec. 25A-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 the 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; and

(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 and the Commission, in that order. The Department or the Commission may buy a unit when funds are available. The Department may buy a unit when the Director finds that the Department's or a designated agency or corporation's buying and reselling the unit will increase opportunities for eligible persons to buy the unit. If the Department or the Commission does not buy the unit, the Department must notify eligible persons 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 Executive by regulation may adopt requirements for reselling MPDUs. The regulations may require a seller to submit to the Department 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) a 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) If an MPDU originally offered for sale or rent after March 21, 1989, 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:

(A) The original selling price;

(B) 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;

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

(D) A reasonable sales commission.

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 (A)--(D).

(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.

(3) The Department and the Commission, in that order, may buy an MPDU the first time the MPDU is offered for sale after 10 years after the original sale or rental, and may resell the unit to an eligible person. A resale by the Department or Commission starts a new control period.

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

(d) *Initial and subsequent rent controls.* Unless previously sold under subsection (c)(1), moderately priced dwelling units built or offered for rent under this Chapter must not be rented for 20 years after the original rental at a rent greater than that established by regulations adopted by the **County** Executive under method (1). Whenever any moderately priced dwelling unit (other than those built, sold or rented under any federal, state or local program offered by the Commission) is offered for rent during the 20-year control period, it must be offered exclusively for 60 days to eligible persons, as determined by the Department, for use as his or her own residence and to the Commission. The Commission may assign its right to rent such units to persons of low or moderate income who are eligible for assistance under any federal, state or local program identified in regulations adopted by the **County** Executive under method (1).

(e) *Foreclosure or other court-ordered sales.* 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:

(1) If the sale occurs during the first 10 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.

(2) If the sale occurs after the first 10 years after the original sale or rental, and the unit was originally offered for sale or rent after March 20, 1989, the payment to the Fund must be calculated under subsection (c).

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

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

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

(f) *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 prevent eligible persons from buying or renting units under the MPDU program.

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

(h) *Compliance.* The **County** Executive must adopt regulations to promote compliance with this section and prevent practices that evade controls on rents and sales of MPDUs. (1974 L.M.C., ch. 17, § 1; 1978 L.M.C., ch. 31, § 5; 1979 L.M.C., ch. 21, § 5; 1982 L.M.C., ch. 6, § 1; 1984 L.M.C., ch. 24, § 28; 1989 L.M.C., ch. 27, § 1; 1990 L.M.C., ch. 46, § 1; 1994 L.M.C., ch. 29; [2001 L.M.C., ch. 25](#), § 1.)

Editor's Note—Section 25A-9(e) is interpreted in May Department Stores v. Montgomery County, 118 Md.App. 441, 702 A.2d 988 (1977), *affirmed*, 352 Md. 183, 721 A.2d 249 (1998), wherein this section is declared to be preempted by State law due to a conflict; the State provides for the priority of liens and the **County** may not change that priority.

Note—Formerly, § 25A-7.

Sec. 25A-10. Executive regulations; enforcement.

(a) The Department must maintain a list of all moderately priced dwelling units constructed, sold or rented under this Chapter; and the **County** Executive may, from time to time, adopt regulations under method (1) necessary to administer this Chapter.

(b) This Chapter applies to all agents, successors and assigns of an applicant. A building permit must not be issued, and a preliminary plan of subdivision, development plan, or site plan must not be approved unless it meets the requirements of this Chapter. The Director of Permitting Services may deny, suspend or revoke any building or occupancy permit upon finding a violation of this Chapter. Any prior approval of a preliminary plan of subdivision, development plan or site plan may be suspended or revoked upon the failure to meet any requirement of this Chapter. An occupancy permit must not be issued for any building to any applicant, or a successor or assign of any applicant, for any construction which does not comply with this Chapter.

(c) Any violation of this Chapter or regulations adopted under it is a class A violation.

(d) The Director may take legal action to stop or cancel any transfer of an MPDU if any party to the transfer does not comply with all requirements of this Chapter. The Director may recover any funds improperly obtained from any sale or rental of an MPDU in violation of this Chapter.

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

(1) enjoin an MPDU owner who violates this Chapter, or any covenant signed or order issued under this Chapter, from continuing the violation; or

(2) require an owner to sell an MPDU owned or occupied in violation of this Chapter to an eligible buyer. (1974 L.M.C., ch. 17, § 1; 1980 L.M.C., ch. 28, § 1; 1983 L.M.C., ch. 22, § 30; 1984 L.M.C., ch. 24, § 28; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29; 1996 L.M.C., ch. 20, § 1 1998 L.M.C., ch. 12, § 1; [2001 L.M.C., ch. 14](#), § 1; 2002 L.M.C., ch. 16, § 2.)

Note-Formerly, § 25A-8.

Sec. 25A-11. Appeals.

(a) Any person aggrieved by any denial, suspension or revocation of a building or occupancy permit or denial, suspension or revocation of approval of a preliminary plan of subdivision, development plan, or site plan may appeal to the official, agency, board, Commission or other entity designated by law to hear such appeal.

(b) Any person aggrieved by a final administrative action or decision under this Chapter may appeal to the Circuit Court for the [County](#) in accordance with the Maryland Rules of Procedure for a review of such action or decision. (1974 L.M.C., ch. 17; 1989 L.M.C., ch. 27, § 1.)

Note-Formerly, § 25A-9.

Sec. 25A-12. Applicability.

(a) This Chapter applies to all applicants and housing units developed by applicants, regardless of when an MPDU was originally offered for sale or rent, except as provided in subsections (b) and (c).

(b) Section 25A-9(c) does not apply to any MPDU originally offered for sale or rent on or before March 21, 1989.

(c) Section 25A-9(e) does not apply to any MPDU owned or transferred by the Commission directly or through a partnership and originally offered for sale or rent on or

before March 21, 1989. (1982 L.M.C., ch. 6, § 1; 1984 L.M.C., ch. 24, § 28; 1984 L.M.C., ch. 27, § 19; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29.)

Note-Formerly, § 25A-10.

Endnotes

[Note] *Editor's note-1989 L.M.C., ch. 27, § 1, amended ch. 25A to read as set out in §§ 25A-1--25A-12. In some cases, existing provisions were retained but were given different section numbers. In those cases, a complete history note has been retained, and a note giving the former section number has been included. Completely new material will carry reference only to 1989 L.M.C., ch. 27. Cross references-Consumer protection, ch. 11; condominiums, ch. 11A; cooperative housing, ch. 11C; moderate-income multifamily residential housing facilities real property tax deferral, § 52-18B; residential real property tax deferral, § 52-18C.

Disclaimer:

This Code of Ordinances and/or any other documents that appear on this site may not reflect the most current legislation adopted by the Municipality. American Legal Publishing Corporation provides these documents for informational purposes only. These documents should not be relied upon as the definitive authority for local legislation. Additionally, the formatting and pagination of the posted documents varies from the formatting and pagination of the official copy. The official printed copy of a Code of Ordinances should be consulted prior to any action being taken.

For further information regarding the official version of any of this Code of Ordinances or other documents posted on this site, please contact the Municipality directly or contact American Legal Publishing toll-free at 800-445-5588.

© 2003 American Legal Publishing Corporation
techsupport@amlegal.com
1.800.445.5588.