



Executive Regulation

Office of the County Executive
Montgomery County, Maryland

Subject	REQUIREMENTS FOR THE MODERATELY PRICED HOUSING PROGRAM	Number	75-92
Originating Department	DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT	Effective Date	June 17, 1993

Montgomery County Regulation on:

MODERATELY PRICED HOUSING
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

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Regulation No. 75-92

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Effective Date: June 17, 1993
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SUMMARY:

This regulation establishes the requirements and procedures for the administration of the Moderately Priced Housing Program.

ADDRESSES:

Additional information and copies of this regulation are available from the Department of Housing and Community Development, Division of Housing 51 Monroe Street, Rockville, Maryland 20850.

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BACKGROUND INFORMATION:

The proposed executive regulation establishes the procedures for the implementation of the Moderately Priced Housing Law, Montgomery County Code, 1984, as amended Section 25A.

Section 1 Applicability

- 1.1 The provisions of this executive regulation are applicable to houses sold or leased through the Moderately Priced Housing program and to those people applying for eligibility to purchase or lease these houses.

Section 2 Definitions

2.1 Applicant

Any person, firm, partnership, association, joint venture, or corporation required to construct and sell or lease moderately priced housing units.



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2.2 Eligibility Certificate

A certificate, which is valid for a specified period of time, issued by the Department of Housing & Community Development (DHCD) to those people who meet the income requirement for eligibility for the moderately priced housing program and are placed on the eligibility list maintained by DHCD.

2.3 Moderately Priced Housing Law

Chapter 25A of the Montgomery County Code, 1984, as amended (MPH Law).

2.4 Moderately Priced Dwelling Unit (MPDU)

A housing unit which is constructed and sold or rented in accordance with the provisions of the MPH Law.

Section 3

Eligibility and Occupancy Requirements

3.1 Application and Certification

A person seeking to purchase or rent an MPDU must apply to DHCD for placement on the eligibility list maintained by that department. In order to become eligible under this program, an interested person must satisfy the maximum MPH Program income limits published periodically in executive regulations. It is the responsibility of the individual or household to demonstrate eligibility under the requirements of the MPH Program. In order to verify that an individual or household satisfies these requirements, DHCD may request information and documentation that is appropriate, including, but not limited to, copies of federal and state income tax returns, W-2 forms, and copies of pay checks.



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- (a) A person determined to be eligible is placed on the eligibility list and issued a non-transferable certificate valid for a specified period of time, usually one year. This certificate is used to demonstrate eligibility for the purchase or lease of available MPDUs. When new MPDUs are offered for sale or lease by an applicant, certificate holders are notified by DHCD of the availability of units with sufficient bedrooms to satisfy their needs. Certificate holders have the opportunity to purchase or lease the available MPDUs. Those who contract for an MPDU are required to turn in their eligibility certificates to the applicant who will submit these certificates to DHCD along with copies of the sales contracts and settlement sheets, or rental contracts as appropriate. Certificate holders must be income eligible at the time they contract to purchase or lease an MPDU. Certificate holders who are determined to be over the maximum income limit established by executive regulations will not be permitted to contract for an MPDU.
- (b) An eligibility certificate may be renewed when it expires if the person demonstrates that he or she is eligible under the income limits in effect at the time of renewal.

3.2 Income

In order to determine eligibility of a person or family for the MPH program, DHCD will consider the factors listed below.

- (a) The maximum permitted moderate income is defined as the gross income received annually from all sources by all wage earners in a family or household unit. Sources of income include, but are not necessarily limited to, the following:



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- (1) wages and salary (full and part-time employment)
- (2) child support
- (3) alimony
- (4) interest on savings and checking accounts
- (5) dividends from stocks, bonds, and certificates of deposit
- (6) social security benefits
- (7) V.A. benefits
- (8) overtime and bonus payments
- (9) unemployment insurance
- (10) pension/retirement payments
- (11) disability benefits
- (12) any other annuities or stipends received
- (13) Income from real estate investments (losses generated from investments in real estate will not be used to reduce gross annual income)
- (14) Income from business or partnership owned, associated with, or operated.

(b) When the requirement to provide moderately priced housing is met through the construction of public housing or through housing built under other Federal, State, or local programs to assist low and moderate income families, the income limits of the appropriate program must prevail.

3.3 Occupancy of MPDUs

The purchaser or lessee of an MPDU must occupy the unit as his or her primary place of residence and must sign an affidavit certifying that he or she will occupy the unit during the term of the MPDU Control or until the unit is relinquished in accordance with the MPH law or these regulations.

3.4 Rental of Units Previously Sold Under the MPDU Program

The following procedures will govern the rental of units previously sold under the MPDU program.



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(a) Owners of MPDUs, except the Housing Opportunities Commission (HOC), are not permitted to relinquish the MPDU as their primary place of residence and rent MPDUs to other parties unless the owner can demonstrate sufficient cause to DHCD to have this restriction waived. The following procedures govern the requests for waivers:

- (1) MPDU owners must prove that they are forced to temporarily vacate and rent their unit due to circumstances beyond their control. The fact that there might be a loss of appreciation resulting from the owner having to sell the MPDU does not constitute an economic hardship to justify a waiver.
- (2) Owners must certify that they will reoccupy their MPDU at the earliest feasible time, but not later than 24 months from the date the owner first vacates the unit.
- (3) If DHCD denies a request by an owner to temporarily rent the unit, the owner has the right of appeal to the Chief Administrative Officer (CAO) or a designee. If not satisfied after a determination by the (CAO) or the designee, the owner has the right of appeal to the Circuit Court of Maryland in accordance with Section 25A-9 of the Moderately Priced Housing Law.

(b) If the request to rent temporarily is granted, the following procedures will be followed to establish the maximum allowable rent.

- (1) The owner must request a rental rate determination in writing from DHCD and provide the information required by DHCD to carry out the rental rate determination described in 4.4(b)(2).

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(2) DHCD must make a rental rate determination which will be based on the fixed costs associated with maintaining the unit, including but not necessarily limited to principal and interest payments on the mortgage, real estate taxes, homeowner insurance, water/sewer front foot benefit and deferred connection charges, and homeowners association fees. Appropriate allowances will be made if the owner retains responsibility for the payment of some or all of the utility charges. In such an event, a record of prior monthly utility expenses must be submitted so that an allowance for these charges can be included in the rental rate determination.

(c) Additional requirements for rental of MPDUs previously sold are as follows:

- (1) The owner must send a copy of the lease agreement and the name of the managing agent to DHCD.
- (2) The owner has the right to rent the unit without restrictions on the income of the tenant after first ascertaining from DHCD that there are no certificate holders seeking to rent the unit.

3.5 Price and Rent Control Periods

All controls and requirements pertaining to the original or subsequent sales or rentals of MPDUs are effective for the following control periods:

(a) Ten Year Control Period

MPDUs in subdivisions where the developer qualified as an applicant on or after October 1, 1981, are subject to a control period of ten (10) years from the date of original sale or rental.



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(b) Five Year Control Period

MPDUs in subdivisions where the developer qualified as an applicant prior to October 1, 1981, are subject to a control period of five (5) years from the date of original sale or rental.

(c) Optional Election of Control Period

For MPDUs in subdivisions where the developer qualified as an applicant prior to October 1, 1981, the applicant has the option to elect the 10 year control period in accordance with the procedures contained in this regulation.

Section 4

Standards for MPDU Developers and Builders

4.1 Number of MPDUs Required

Chapter 25A of the Montgomery County Code, 1984, as amended, requires that a minimum percentage of the dwelling units in subdivisions of 50 or more units be provided as moderately priced housing. The MPDU requirement for such developments is as follows:

- (a) In the town sector, planned neighborhood, planned development, transit station, central business district-residential, and in the non-age restricted portion of planned retirement community zones, the MPDU requirement is equal to the number of bonus dwelling units permitted under the optional zoning provisions contained in Chapter 59 of the County Code; or 12.5% of the total number of dwelling units in the entire development, whichever is greater.

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- (b) In all other zones, the minimum percentage of the total project density to be provided as MPDUs is as follows:
- (1) 12.5% where the developer of the subject subdivision qualified as an applicant on or after October 1, 1981;
 - (2) 15% where the developer of the subject subdivision qualified as an applicant prior to October 1, 1981, unless the applicant made the election described in "3", below;
 - (3) 12.5% where the developer qualified as an applicant prior to October 1, 1981, but elected the 12.5% MPDU requirement together with all of the other provisions applicable to subdivisions approved after October 1, 1981.
- (c) Where the application of the percentage MPDU requirement results in a fraction of a unit, the required number of MPDUs is rounded up to the next whole number.
- (d) In a sales subdivision, when requested by an MPDU purchaser, the applicant must make the unit handicapped accessible. The applicant, however, will not be required to make more than four percent of the total number of units in the subdivision handicapped accessible. The additional costs of making the unit handicapped accessible will be added to the MPDU allowable sales price. In a rental subdivision, the applicant must comply with the Maryland Handicapped Code requirements.



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4.2 Review of Development Plans

Where the review of plans by the Montgomery County Planning Board (MCPB) is required by zoning, subdivision, or other regulations, the review should include among other items:

- (a) The number of MPDUs to be provided, dwelling unit type, location in the subdivision, community facilities, and other plan features;
- (b) The number and location of bonus units and their impact with regard to site plan, density of development, topography, and other physical features;
- (c) The conformity of the project to the optional zoning provisions under the zoning and subdivision regulations, where such optional provisions apply;
- (d) Consideration of requests for a full or partial waiver of the MPDU requirements.

4.3 MPDU Construction Agreement Procedures

- (a) At the time of building permit application, all applicants who are required to provide MPDUs must enter into a written agreement with DHCD which contains:
 - (1) The number and type of MPDUs;
 - (2) The identifying designation for each MPDU (e.g., subdivision name, apartment or condominium name; location; and address, lot and block as applicable);
 - (3) A plan for the staging of construction of all dwellings so that MPDUs are constructed along with or preceding other units and at least one half of the MPDUs must be under construction before the second half of the market units are granted construction permits.



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- (b) The MPDU agreement will require that the applicant provide a statement in the sales contract or lease that the applicant has or will record a covenant, running with the land for each MPDU sold or rented, which states that the dwelling unit will not be resold or re-rented for an amount that exceeds the limits set by the County for a period of five or ten years, as is appropriate, from the date of original sale or rental of the unit.
- (c) The applicant must file with the MPDU agreement a statement identifying all land owned and available for development in Montgomery County. Available for development means:
- (1) Any land owned or under contract to the applicant, presently zoned for any type of development to which the optional MPDU zoning provisions apply;
 - (2) Any land which is within the area that is to be served by public water and sewerage as defined in the Ten-Year Water and Sewerage Plan for Montgomery County, and
 - (3) Any land for which an application for subdivision, development, or building permit has been submitted to the appropriate County agency. The applicant need only update the original statement when additional MPDU agreements are submitted.
- (d) MPDU agreement forms may be obtained from DHCD. After completing the agreement, the applicant must submit the agreement to the Director of DHCD for approval. DHCD will ascertain that the agreement satisfies the terms of the MPH Law, and this executive regulation. DHCD will submit the agreement to the Office of the County Attorney for review and approval prior to execution of the agreement by the Director of DHCD.



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(e) After DHCD has approved the MPDU agreement, it is forwarded to the Department of Environmental Protection (DEP) for submission along with the request of the applicant for building permits. Permits may only be issued by DEP for those units covered by the agreement and then only after all other requirements necessary for the issuance of permits are satisfied.

(f) Revisions to the agreement may be negotiated, but must be approved by DHCD.

4.4 Housing Programs Which May be Used to Fulfill MPDU Requirements

Certain Federal, State, or local housing programs, including those specifically listed in the MPH Law, may be used to fulfill MPDU requirements when such programs are approved by the County Executive in written regulations.

(a) In determining whether programs submitted should be approved, the following factors should be considered:

- (1) Incomes for eligible households are at or below the MPDU maximum income limits;
- (2) Sales prices or rental rates that are equal to or less than those maximum prices or rents approved for the MPDU program;
- (3) Controls on the sales prices or rents which are deemed to contribute to the long term availability of moderately priced units as determined by the Director of DHCD.

(b) The HOC Mortgage Purchase Program and the State Community Development Administration's Homeownership Development Program do not in and of themselves necessarily meet the MPDU requirement.

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4.5 MPDU Land Transfer Decision

Subject to the approval of DHCD, an applicant may satisfy the MPDU requirements of a development by transferring land to the County for the construction of these units. Land transferred to the County must be conveyed in the form of finished lots unless otherwise agreed to by DHCD. The applicant will receive compensation for only those costs directly attributable to the finishing of the transferred lots. The transferred land must be designated in the approved site plan as land to which the MPDU zoning provisions apply and of sufficient area to construct the number of MPDUs required.

(a) Conditions for Transfer

Land offered to the County will be evaluated by DHCD for meeting the following minimum conditions:

- (1) The lots must be capable of being built upon without undue difficulty or excessive costs;
- (2) In single--family detached developments, land may be transferred as individual scattered lots, as several groups of lots, or as a single subdivided parcel;
- (3) In ~~semi-detached~~ developments, land may be transferred as scattered pairs of lots for adjoining homes, as a single parcel, or as multiple parcels;
- (4) In fourplex or townhouse developments, land may be transferred as a group of lots sufficient in number to develop a fourplex building or a group of townhouses;



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(5) In multi-family apartment projects, land may be transferred if it is of sufficient size to support the development of an independent rental or sales project including parking, open space, amenities, and access via an improved public highway.

(6) Title to the property is good of record and that the applicant can transfer a fee simple, unencumbered title.

(b) Notification Process

At least 90 days prior to filing an application for building permit(s), unless the notice period is waived by DHCD, the applicant must file a written request to transfer land to the County with the Director of DHCD. The transfer request must include:

- (1) description of the property to be transferred;
- (2) available development plans, record plats, topographical maps, and title reports; and
- (3) an itemized estimate of the development costs for such lots.

(c) Review Process

DHCD will consult with MCPB, HOC, the County Attorney, and other agencies as may be appropriate. DHCD will take into consideration the following factors:

- (1) The feasibility of constructing housing on the property to be transferred based upon a comprehensive examination of the soils, slopes, and other physical characteristics;

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- (2) Whether sufficient land is available to meet the MPDU requirement; and
- (3) The availability of funds for reimbursement of the estimated lot finishing and settlement costs.

(d) Transfer Agreement

DHCD must render a decision concerning the transfer request within 90-days of a request for transfer. DHCD should concurrently provide a copy of the decision to the applicant, MCPB and DEP. If DHCD approves the transfer request, the applicant and DHCD must negotiate the transfer agreement. The agreement must be approved by the County Attorney and signed by the director of DHCD or designee on behalf of the County. The applicant will furnish a copy of the executed agreement to DEP with the application for building permits.

DHCD may reject any offer by an applicant to transfer land either in part or in whole if DHCD determines that it does not serve the public interest. DHCD will arrange for preparation of the necessary deeds, arrange for settlement, and ensure that the deeds are properly recorded. The DHCD may enter into an agreement to sell the transferred property to a builder who will construct housing that will achieve the objectives of the MPH law. The prices to be charged for the transferred land should take into consideration the County's contribution to lot finishing costs, and the necessity for the transferee to construct units within the MPDU controlled price.



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(e) Compensation

The applicant will be compensated for transferring finished lots to the County in accordance with the provisions described in the following paragraphs. A finished lot is defined as one that has been adequately prepared to allow the construction of a dwelling without major additional site preparation.

- (1) The applicant will be compensated for all reasonable costs directly attributable to the finishing of lots to be transferred. Allowable costs may include, but are not limited to, the following:
 - (A) Land planning and site engineering.
 - (B) Clearing, grading, and street improvements.
 - (C) Water and sewer connection charges.
 - (D) Open space and recreational development.
 - (E) Taxes and transfer fees.
 - (F) Interest on development loan.
- (2) If for any reason funds do not exist for the reimbursement of lot finishing costs, the County, or its designee, may elect to accept from the applicant undeveloped land rather than finished lots. When funds are not available, the applicant may offer to defer receiving reimbursement for lot finishing costs until the County is able to resell the lots.
- (3) Closing costs will be paid by the County.

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(f) Inspection of Land

The County, or its agents, will have the right to enter onto all or any part of the the property at any time prior to closing for the purposes of surveying, engineering, soil testing and boring, and such other studies as may be desirable or necessary. The costs for this work will be borne by the County and will not result in a change in the present character of the property.

(g) Disposition of Land by County

The County may cause MPDUs to be constructed on the transferred land by selling these lots to one or more builders under terms that will carry out the objectives of the MPH Law or to contract directly for the construction of the units. Since this transferred land is not surplus County land, DHCD is not subject to the provisions of Chapter 11B, Section 31 of the County Code, and may dispose of the transferred land in any manner which will achieve the objective of the MPH Law.

4.5 Waiver of MPDU Requirements

The MPH Law allows waivers from the requirements for only limited reasons and specific conditions. Requests for waivers from requirements of the MPH Law should be made as early in the development review process as possible.

- (a) Requests for waivers for projects in zones requiring site or development plan review should be directed to the MCPB. All others are to be submitted to the Director of DEP. Such requests must be in writing and clearly state the reason for such a waiver and should be substantiated with documentation, plans, and all other pertinent material that will assist in making a decision on the request.



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- (b) Developers requesting MPDU waivers must send copies of their requests to DHCD. DHCD staff will consult with the staff of MCPB or DEP, as appropriate, and make recommendations to the appropriate body prior to their granting or denying of waivers. The respective decisions of these agencies are final on applications made directly to them, and the applicant must not attempt to circumvent this decision by reapplication for a waiver to the alternate agency.

Section 5

Sale or Rental Procedures

The MPH Law regulates the sale and rental of units built according to its requirements, both in the method of sale or rental and the price at which they can be offered. The current sales prices and rents are available from DHCD. The maximum sales prices and rental rates are revised semi-annually February 1st and August 1st.

5.1 Sales Price Limits for MPDUs

The total price for which an MPDU may be sold must not exceed the applicable maximum limits established by the County Executive. Sales prices are calculated to include applicable real estate brokerage fees, builder-paid permanent mortgage placement and buy-down fees, and closing costs. Pre-paid expenses such as property taxes will not be included.

- (a) The following closing costs are calculated in the MPDU pricing process and included in the maximum allowable sales prices:

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- (1) one half of the loan origination fee.
- (2) county tax certificates, transfer charges, revenue stamps and recordation charges.
- (3) title examination, settlement and attorney's fees.
- (4) notary fees, document preparation (which will include only: deed of conveyance, deed of trust/mortgage and note/bond) and house location plat.
- (5) FNMA review charges and the amount escrowed for WSSC water bill.

(b) The following items are considered to be prepaid expenses or financing-associated fees and are not included in the maximum sales price. These charges must be paid by the purchaser:

- (1) one half the loan origination fee.
- (2) real estate taxes and front foot benefit charges.
- (3) hazard and mortgage insurance.
- (4) prepaid interest on mortgage loans.
- (5) homeowners association or condominium fees.
- (6) title insurance and binder fees.
- (7) lender's inspection and other fees required by the lender.
- (8) appraisal fees and credit report charges.

(c) The sale price limits for MPDUs are those in effect at the time of acceptance of the offering agreement by the County. This 90-day priority sales offering period commences in accordance with the procedures described in Section 6.3. In the event that MPDUs offered in this manner have not been sold to eligible persons during the 90-day priority offering period and the applicant then markets the units to the general public, the price limits may be adjusted upward by DHCD to reflect the increased carrying costs incurred by the applicant beyond the actual completion date.



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The units, however, must be completed and available for occupancy and the applicant must demonstrate that a good-faith effort was made to market the units to eligible households during the 90-day offering period. The monthly carrying cost allowance is based upon the cost of interest on the construction financing and real estate taxes accrued.

- (d) MPDUs developed under the programs identified in section 5.4 of this regulation must be offered and marketed according to the procedures established for those programs.

5.2 Rental Limits for MPDUs

The rental rates for housing constructed as a requirement of the MPH Law must not exceed the applicable maximum limits established by the County Executive. The rents must be explicit by dwelling unit type and number of bedrooms for detached, semi-detached, townhouse, piggyback townhouse, back-to-back townhouse, non-elevator multi-family and elevator multi-family dwelling units.

- (a) The rents are those in effect at the time the 90-day priority offering period to the County's eligibility list commences. This 90-day priority offering period commences in accordance with the procedures described in section 6.3.
- (b) MPDUs developed under the programs identified in section 5.4 of this regulation are to be offered and marketed according to the procedures established for those programs.

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5.3 Offering of MPDUs for Sale or Rent

At least ninety (90) days prior to the marketing of any MPDUs to the general public, the applicant must have received approval by DHCD of the proposed sale or rental of such units, the date when marketing begins to persons on the eligibility list, and the date on which MPDUs not sold or rented to the eligibility list will be marketed to the general public. DHCD must receive written notification from the applicant before marketing begins to the general public. Offerings must be made in accordance with the standards described below.

- (a) The notice to DHCD of the offering of rental MPDUs will not be considered a bona fide offering unless the rental units are available for occupancy in compliance with all County Code requirements, within 120 days of the acceptance of the offering by the DHCD.
- (b) The notice to DHCD of the offering of sale MPDUs will not be considered a bona fide offering unless the sale units are available for occupancy in compliance with all County Code requirements, within one year of the date of acceptance of the offering by DHCD.
- (c) Applicants must use the agreement form supplied by DHCD when offering units for sale or rent. The following information must be included in the agreement:
 - (1) Number, type, and size (square footage) of units
 - (2) Addresses, legal descriptions and tax account number of MPDUs
 - (3) Recorded subdivision plat and 2 copies of the site development plan designating the MPDUs
 - (4) Completed Declaration of Covenants
 - (5) Other information the Director of DHCD may deem necessary



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- (d) MPDUs may not be offered for sale or lease prior to the submission and approval of an MPDU agreement as defined in Section 5.3 of this regulation.
- (e) DHCD is responsible for:
 - (1) Taking applications from households and individuals to determine their eligibility for MPDUs;
 - (2) Maintaining a waiting list of eligible people according to their housing needs;
 - (3) Notifying certificate holders of the availability of MPDUs adequate to meet their housing needs.
 - (4) Determining that intended buyers have not previously owned an MPDU. A person may not buy an MPDU if the person has previously owned one unless there are no other qualified first-time buyers available.
- (f) Purchasers will be selected by lottery to be conducted by DHCD in conjunction with the applicant in order to establish a priority, order of right to purchase. Those certificate holders selected by the lottery process have the exclusive right to enter into a contract for the purchase of an MPDU until the date of public marketing, subject to the HOC option described in Section 6.4. The 90 day priority offering period will begin on the date of the lottery drawing or other approved marketing method. For offerings of units containing three or more bedrooms, DHCD will conduct two lotteries. One person households will be separated from families of two or more persons and a lottery will be conducted for each group. The applicant will first negotiate for the sale of the units with families on the lottery list of two persons or more before negotiating with those on the one-member household lottery list.

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(g) The Director of DHCD has the option to waive the requirement for lotteries for certain geographic areas of the county. For areas given a waiver, certificate holders must contact the applicant directly to arrange for the purchase of the available unit. The applicant may decide how to process those seeking the units; however, the applicant may not begin marketing or reserving MPDUs before the date established by DHCD for marketing the units, and the applicant must comply with all applicable fair housing legislation.

(h) MPDUs offered for rent by the applicant may be leased without using the lottery process. The applicant, however, must comply with all applicable fair housing legislation and must rent the available MPDUs only to certified eligible persons during the 90-day priority offering period which begins on the date the offering agreement is approved by DHCD. The initial rental and each subsequent rental must be in accordance with section 6.7 and 6.8 of this regulation.

(i) Within 14 days following the sale or rental of each MPDU, the applicant must submit to DHCD a copy of the initial sales contract and settlement sheet, or rental contract and the Certification of Personal Use Form.

5.4 Units Available to the Housing Opportunities Commission (HOC)

Under the MPH Law, HOC is entitled to purchase or lease, for its own programs, up to one-third of all MPDUs to be sold or rented in each development. DHCD must notify HOC of the availability of MPDUs. HOC has 21 days from the date of receiving this notice to designate to the applicant those units, if any, it is considering acquiring or renting. For the units designated for consideration, HOC has the remainder of the 45-day period to notify the applicant of its final decision. Units not designated by HOC by the appropriate time limits may be marketed by the applicant according to the provisions of this regulation. If the HOC decides to purchase the MPDUs it must select a mixture of the available units in proportion to the offering.



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(a) For the units under consideration, HOC is considered to have exercised its option and to have the exclusive right to those units designated if HOC has within the 45-day period provided the applicant with a written notification of its decision to purchase or rent.

After receipt of notification, the applicant must deliver all necessary documents to HOC in order that HOC or its assigns might contract to purchase or lease the available MPDUs as expeditiously as possible.

(b) HOC should negotiate the acquisition or rental of MPDUs directly with the applicant. In selling to HOC, the applicant is subject to the sales prices or rental rates included in regulations issued by the County Executive.

(c) The HOC may assign all or a portion of its one-third option described above to group home providers or persons of low or moderate income who are eligible for assistance under any Federal, State, or local program identified in Section 25A-3 of the MPH Law, as amended, or in executive regulations. If HOC assigns its option in this manner, it must notify DHCD and the applicant of the person to whom the option has been assigned together with HOC's certification of income, and must inform DHCD of the exercise of the option so assigned.

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5.5 Control of Sale Price and Rental Rate of MPDUs

The price at which MPDUs may be sold or rented will be controlled by covenants recorded with the deeds of those properties for a period of ten (10) years from the date of original sale or rental of such unit. However, if the developer qualified as an applicant prior to October 1, 1981, and did not elect the option under the procedures authorized by Section 25A-10 of the MPH Law for the new requirements, the sales price and rent control period is five (5) years.

5.6 Restriction on Rental of MPDUs

MPDUs, other than those specifically described in Section 5.4 must not be offered for rent by an applicant during the priority offering period, except when located in subdivisions consisting entirely of rental units. Applicants must make a good faith effort to enter into contracts with those having the exclusive right to contract.

- (a) Applicants who make a good faith effort to sell their MPDUs, but are unable to do so during the priority offering period, may, after notifying DHCD, re-offer the unsold units for rent. These units must then be marketed and leased in accordance with the procedures and requirements imposed by this regulation.
- (b) In any subdivision in which the applicant designates one or more sections of the subdivision or a particular housing type to be marketed as rental units, the applicant may elect to meet the MPDU requirement for the rental section with rental MPDUs in accordance with all of the following provisions:



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- (1) A plan for the entire subdivision, which designates the location and number of units in the rental section and the location of the MPDUs, must be attached and made part of the agreement.
- (2) The number of rental MPDUs as a proportion of the total number of rental units must not exceed (but may be less than) the proportion of total MPDUs to the total number of dwelling units in the subdivision. Rental MPDUs must be the same housing type as the market rate rental units.
- (3) The designation of rental sections must be made at the time of submission of either the MPDU construction agreement or the offering agreement to the County for approval.
- (4) DHCD may consider an amendment to previously submitted designations or changes in the subdivision upon a written request of the applicant.

5.7 Requirements for MPDU Rentals

Rental MPDUs are administered in the following manner:

- (a) Every lease for a rental MPDU must include a provision which states that "the rental price may not exceed the maximum rental rate as established by executive regulation from time to time pursuant to the MPH Law, as amended." The rent established for each MPDU may not be modified except as permitted by executive regulation or by approval of DHCD.

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(b) If the owner of any rental MPDU decides to sell the unit at any time during the control period, the owner must notify DHCD in writing of such intent. The sale of the unit will be treated as if it were an original offer to sell and the sale and purchase of the unit will be governed by sections 25A-6 and 25A-7 of the MPH Law and appropriate executive regulations. The sales price will be the price listed in the current executive regulation governing the initial sales price of MPDUs.

(c) If the unit is converted to condominium or cooperative status during the control period, it is subject to the requirements of Chapter 11A of the Montgomery County Code, 1984, as amended.

5.8 Re-rental of MPDUs by Applicants

During the control period, if an applicant has rental MPDUs to be re-rented, the applicant must offer them to persons determined by DHCD to be of moderate income for 60 days prior to marketing to the general public.

Section 6

Subsequent Sale of MPDUs

The County exercises control over resale prices of previously sold MPDUs in accordance with the procedures contained in this section.

6.1 Request for Price Determination

An owner of an MPDU must notify DHCD in writing of the intent of the owner to sell and request a resale price determination. The owner must provide DHCD with an itemized list of all capital improvements for which credit is requested as part of the resale price determination. All improvements claimed must be documented with receipts or contract. The owner must permit DHCD to inspect the improvements.



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6.2 Establishment of Maximum Resale Price

Upon receiving a request for a resale price determination, DHCD will establish a maximum resale price which will include the following factors:

- (a) The original price paid for the unit plus an allowance for the increase in value of the unit during the period between the date of original settlement and the date of resale; however, fees paid for placement of permanent financing which were added to the purchase price will be deducted. The allowance is based upon the rate of increase in the U.S. Department of Labor Consumer Price Index for the Washington, D.C. metropolitan area.
- (b) The fair market value of capital improvements made to a unit subsequent to the date of purchase as determined by the DHCD. Fair market value is defined as the actual and reasonable costs of materials, professional fees, contractor fees, and permit fees associated with furnishing and installing improvements that increase the value of the property.

The fair market value of improvements may include reimbursement for the value of labor performed by the owner, but not for the purchase of tools and equipment used to install the improvements.

- (c) Upgrades of existing house components, normal owner maintenance, general repair work and decorative items or work will not be included in the resale price determination. Improvements must be permanent in nature and clearly add to the market value of the house or property.

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- (d) Any personal property including equipment, not considered an improvement by DHCD, may be sold as an option; however, the value of such options may not be added to the final sales price of the dwelling unit. The purchaser of an MPDU is under no obligation to purchase personal property or equipment. Household appliances purchased as an option at original sale or added subsequent to the original sale will be depreciated over a ten-year life cycle.

6.3 Closing Costs

Closing costs are treated as follows:

- (a) The seller must pay all closing costs when such costs were included in the original purchase price and the seller has accepted a sales contract for the base price or greater.
- (b) When the seller has paid some or all closing costs as may be required by some mortgage financing lenders, then the purchaser must pay those same closing costs on the resale.
- (c) Prepaid items are not considered closing costs.
- (d) No increase in the resale price is allowed for the payment of brokerage fees associated with the sale of a unit.
- (e) If Veterans Administration (VA) financing is used to finance the purchase of an MPDU resale, the loan discount financing points will be added to the established maximum resale price. These points however, will not be included in any future resale price determination unless the purchaser uses VA financing.



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- (f) Loan discount financing points may be negotiated between the buyer and seller. These points have not been included in the maximum resale price determination.

6.4 Notification

DHCD will notify the owner, in writing, of the approved resale price within 21 days of receipt of the request for a price determination. Items not approved will be noted with the reason given for the disapproval.

6.5 Offering an MPDU for Resale

During the control period, MPDU resales must be offered in accordance with the following procedures:

- (a) An MPDU cannot be offered, advertised, or sold for a price greater than the maximum resale price determined by DHCD. The seller must notify DHCD whenever a sales contract is executed by forwarding a copy to DHCD. The seller must also furnish DHCD with an executed copy of the settlement sheet.
- (b) An MPDU may only be sold to a purchaser who will occupy the unit as a primary place of residence for the balance of the existing control period. The seller will be given a "certificate of personal use" form which must be completed by the intended purchaser and returned to DHCD.
- (c) Upon establishing a maximum resale price, the unit must be offered to persons determined by DHCD to be of moderate income. These persons will have an exclusive opportunity to contract for the unit for 60 days. DHCD has permission to inform certificate holders of the availability of these units.
- (d) If the unit has not been sold during the 60 days after DHCD established the maximum resale price, the MPDU owner may offer the unit to the general public at the price previously determined by DHCD.



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6.6 Appeal of Resale Price

If a seller does not agree with the determination issued by DHCD regarding the eligibility of improvements and their value, the seller will have 14 days from the date of the determination to appeal to the Director of DHCD. The appeal must cite the basis for the appeal and should include documentation that the seller wishes to use in support of the appeal. If a seller does not agree with the determination made by DHCD as to the fair market value of eligible improvements, the seller has the right to have an appraisal conducted by a certified appraiser; the cost of which is borne by the seller. Upon submission of such appraisal, DHCD must make a final determination as to the fair market value of improvements. The Director of DHCD must send a written final determination of the approved maximum resale price to the seller within 30 days of the receipt of the appeal.

Section 7

Foreclosures

7.1 Foreclosure of MPDU Sale Units

MPDUs originally built and offered for sale under the MPH Law which contain covenants controlling the resale of the units and which are subsequently the subjects of a foreclosure proceeding must be sold subject to the MPDU controls and restrictions; except that when MPDUs are financed with government guaranteed loans that prohibit continuation of the controls or restrictions, the action of the foreclosure will cause the covenants to terminate. If a foreclosure of an MPDU results in a sale in which the sale price exceeds the MPDU controlled resale price, then the amount of the proceeds which exceed the controlled price plus the expenses incurred in the foreclosure proceedings must be paid to the County fund designated for moderate priced housing.



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7.2 Foreclosure of MPDU Rental Units

An MPDU originally built and offered for rent under the MPH Law rental guidelines that are subjects of foreclosure proceedings will be sold subject to the MPDU price control restrictions and the rental restrictions for the remainder of the control period.

Section 8

Enforcement

The County Executive exercises enforcement of the provisions of the MPH Law and executive regulations in accordance with the conditions listed below:

8.1 Revisions to MPDU Agreements

DHCD and DEP are responsible for enforcing the provisions of the MPH Law. In the event that an applicant does not construct the MPDUs according to the terms of an approved MPDU agreement, DHCD will contact the applicant to determine the reasons for such noncompliance. If the applicant can demonstrate sufficient reason why the MPDUs have not been constructed, DHCD may agree to renegotiate the applicant's MPDU agreement. The justification may include, but is not necessarily limited to the following factors:

- (a) Economic conditions have caused the applicant to postpone the development of the entire project including both the MPDUs and market-rate units. An applicant may not postpone the construction of the MPDUs unless DHCD has given prior approval to such a change in the approved agreement.
- (b) Sewer and water service has been delayed for all or a portion of the subdivision.



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- (c) Unusal weather conditions or physical site conditions have rendered part or all of the site temporarily undevelopable.
- (d) A failure by a public agency has forced a deviation from the approved staging plan.
- (e) Such other good reasons as may be accepted by the director of DHCD on a case-by-case basis.

Revisions to an approved MPDU agreement are the responsibility of the applicant and should be requested as soon as the applicant recognizes that the terms of an approved MPDU agreement cannot be met.

8.2 Withholding of of Building Permits

If the applicant cannot demonstrate sufficient reason why the terms of the approved MPDU agreement have not been met, or can demonstrate good cause but is unwilling to negotiate an amended agreement with DHCD, DHCD may request that DEP take formal action against the applicant to ensure that the MPDUs are constructed along with or preceding the market-rate units in the subdivision. The Director of DEP is authorized to withhold the issuance of subsequent building or occupancy permits to the applicant until the MPDUs contained in the currently approved agreement are constructed, or until the applicant has amended his agreement. Such action by DEP may be taken upon receiving a written request from DHCD. Once the issuance of building permits for a subdivision has been halted, or existing building or occupancy permits suspended or revoked, the issuance of permits by DEP may not be resumed until both DHCD and DEP are satisfied that the terms of the approved MPDU agreement are being met.

APPROVED AS TO FORM AND LEGALITY.

OFFICE OF COUNTY ATTORNEY

BY *Wendy H. Heston*

DATE 8.6.92

Neal Potter

Neal Potter
County Executive

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