
MPDU Process and Instructions for Developers and Builders

- 1 [Introduction](#)
- 2 [Planning and Development Review Process](#)
 - 2.1 [Minimum Threshold and Percentage Required](#)
 - 2.2 [Properties under Minimum Threshold](#)
- 3 [Alternative Payment and Alternative Location Agreements](#)
 - 3.1 [Alternative Payment Agreement](#)
 - 3.2 [Alternative Location Agreement](#)
- 4 [Required Agreements for MPDUs](#)
 - 4.1 [The Agreement to Build MPDUs](#)
 - 4.1.1 [Process](#)
 - 4.1.2 [Amendments](#)
 - 4.2 [MPDU Offering Agreement](#)
 - 4.2.1 [Process](#)
 - 4.2.2 [Notifying HOC](#)
 - 4.2.3 [MPDU Random Selection Drawing for Sale Units](#)
- 5 [Determining Sales Prices and Rents for MPDUs](#)
 - 5.1 [Sales Prices for MPDUs](#)
 - 5.2 [Rental Prices for MPDUs](#)
6. [The Sales/Rental Process for MPDUs](#)
 - 6.1 [Process](#)
 - 6.2 [Sales and Rental Forms](#)
7. [Contact Information](#)

1 Introduction

This summary briefly describes the regulatory process for developing Moderately Priced Dwelling Units (MPDUs) in Montgomery County. Please note that the actual laws implementing the MPDU program in Montgomery County are found in Chapter 25A (the Moderately Priced Housing Law) of the Montgomery County Code, 2004, as amended and Chapter 59 (the Zoning Ordinance), 2014, as amended. This summary is intended to supplement those sources - please refer to these laws and the related COMCOR Regulations (25A.00.01 and 25A.00.02) to fully reference and understand the requirements of the MPDU program. The Montgomery County Code can be referenced online [here](#).



2 Planning and Development Review Process

2.1 Minimum Threshold and Percentage Required

The requirement to provide a certain percentage of Moderately Priced Dwelling Units (MPDUs) applies to any new development in Montgomery County with 20 or more units. This requirement applies even if the development is phased in over time. The law specifically requires a developer to identify all land in the County that the developer owns or controls that is suitable for construction so that the law cannot be circumvented by breaking a development up in to separate fragments of 19 units or fewer.

The minimum percentage of MPDUs required varies from 12.5% to 15% of the total number of units in the development, depending on the area of the County where the development will be located. The actual percentage of MPDUs for any development is based upon the density bonus achieved, which can exceed the minimum required. To determine if a project is subject to the 15% minimum MPDU requirement, please reference the digital map provided [here](#). Developments that receive no density bonus are still required to provide 12.5% of the total number of units as MPDUs.

The actual percentage and number of MPDUs required is set by the Montgomery County Planning Board at the time it approves the preliminary plan and/or site plan for the development. Please contact the Maryland-National Capital Park and Planning Commission (M-NCPPC) for information on the development review and approval process. In addition, please review the [site plan guidelines](#) for developments with MPDUs and applicable regulations when locating and designing MPDUs.

2.2 Properties under Minimum Threshold

For properties providing 11-19 units, MPDUs are not required on site, but a payment must be made to the Housing Initiative Fund per County Code. At this time, the amount of payment required to the Housing Initiative Fund is equal to one-half (0.5) percent of the purchase price of each dwelling unit. The amount must be collected at settlement of each unit and forwarded to the County within three (3) business days of recordation of the deed. Phases of development are cumulative, and projects cannot be developed to circumvent the MPDU minimum threshold.

3 Alternative Payment and Alternative Location Agreements

Every effort should be made to provide the required number of MPDUs on site. If there are extraordinary circumstances where the development proposed cannot accommodate the required number of MPDUs in the same location, the developer may contact DHCA to propose an alternative payment or alternative location agreement. If an applicant wishes to pursue an alternative agreement, they must submit a written request to DHCA at least 90 days prior to the submission of a building permit application, and before an Agreement to Build is executed. The alternative agreement may be in place of or in coordination with an Agreement to Build and subsequent Offering Agreement, as described below. These agreements are authorized at the discretion of DHCA and should not be assumed that they will be approved.

3.1 Alternative Payment Agreements are only available to for-sale developments. No alternative agreement may be entered into for a rental development. To pursue an alternative payment agreement, the developer must demonstrate that it is infeasible to provide MPDUs on site per the required findings of the Code. The required alternative payment amount must comply with Section 25A of the Code. At this time, the payment is 3% of the sales price of each market rate unit in the development and may be prorated based on the number of MPDUs provided on site.

3.2 Alternative Location Agreements are only available for high rise buildings (5 stories and higher) but may be applied to either for-sale or rental developments. Alternative location agreements must increase the amount of MPDUs provided or increase the number of bedrooms to be provided; and must be in the same Planning Area as the development or a Planning Area designated by the Planning Board in which at least 45% of census tracts have a median household income of at least 150% County-wide median household income. New construction is not always necessary for alternative location agreements. The developer may consider buying, encumbering, or otherwise rehabilitating existing market rate housing units or expiring existing MPDUs that meet current MPDU standards.

4 Required Agreements for MPDUs

There are two agreements the developer/builder must execute with the Department of Housing and Community Affairs (DHCA) relating to MPDUs.

- The first is the **Agreement to Build Moderately Priced Dwelling Units**, which is required before building permits may be obtained.
- The second is an **Offering Agreement**, which is submitted to DHCA once the developer (or the builder) is ready to make the MPDUs available for sale or rent to eligible MPDU certificate holders.

When the developer and the builder(s) are separate, please note that the Agreement to Build is executed between DHCA and the developer, while individual Offering Agreements are executed between DHCA and the builder(s) offering the units. In all case, however, Montgomery County law recognizes the developer as the responsible entity for ensuring that the MPDUs are provided as required.

4.1 The Agreement to Build MPDUs

The Agreement to Build is the document that enforces the development requirements of Section 25A-5 of Chapter 25A (the Moderately Priced Housing law). Once the MPDU requirement has been set as part of the site plan or preliminary plan approval process, the developer must execute an Agreement to Build Moderately Priced Dwelling Units with DHCA. This agreement must be executed before building permits will be issued by the Department of Permitting Services (DPS).

Please reach out to the DHCA approximately 3 months before submitting applications for building permit as the Agreement to Build can take 2-3 months to finalize. Timing may be extended if the submission is incomplete.

4.1.1 Process

For a quick process checklist to assist with completing this document, please use [Agreement to Build Checklist](#). The process of submitting and executing an Agreement to Build is as follows:

- Applicant begins by downloading the template Agreement and template covenants from the DHCA MPDU development website ([Developer Agreements Templates](#)). The appropriate covenants template is based on whether the project will be a rental or a sales development. Please retain template language to maintain consistency among all agreements.
- Applicant should fill in all blanks provided on the Agreement to Build template, but do not execute it yet. Complete all blanks on the covenants template except the date, as the document will not be executed with the Agreement to Build. If the development plat is not yet recorded, please leave tax ID numbers and Plat number(s) blank. Once such information is available, however, Applicant must provide such information to DHCA within 30 days.

- To facilitate the review process, the applicant should confirm the following items prior to submission:
 - The applicant's name matches the owner's name listed on SDAT. If not, provide sufficient information (a copy of the deed) showing that the applicant / signatory is the owner of the property. If that is not available, include an additional page for the owner's signature along with the applicant's signature.
 - The construction schedule in Exhibit A shows that MPDUs will be built along with or prior to market rate units, but in no circumstance will be completed after market rate units. The last building must not contain only MPDUs.
 - Exhibit B is intended to prove compliance with Section 25A-5(c) of the Code, that the Property listed includes all the land at one location available for building development under common ownership. To do so, Schedule A requires a listing of all entities of the developer to show common ownership and Schedule B requires a listing of all land holdings of those entities including the subject property and abutting and confronting the subject property to show at one location.
 - The table in Exhibit C lists all units proposed for the project. MPDUs should be listed first (and designated in some way as MPDUs) and market units should be listed second. Header rows can be included to clearly identify the difference between MPDU and market rate units. Additional rows and pages may be added to the table, as needed, to accommodate all units. The MPDU list in Exhibit C should match the list of units provided in the covenants.
 - Bedroom counts are appropriate for the type of unit proposed.
 - In single-family dwelling unit subdivisions, each MPDU must have 3 or more bedrooms unless waived by the Director in a subdivision with only two-bedroom market rate units; and
 - In multi-family dwelling unit subdivisions:
 - For any application or amendment of a development application that was accepted as completed **before** October 31, 2018, 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.
 - For any application or amendment of an application that was accepted as complete **after** October 31, 2018, the bedroom mix of the MPDUs must match the bedroom mix of the market-rate units in the subdivision.
 - The certified site plan set is included. Individual MPDUs should be highlighted (circled or highlighted) on the site plan or floor plan, as applicable.
 - The MPDUs meet all minimum specifications in Executive Regulation 9-21.
 - Include floor plans of all floors and layout plans for all unit types that will be designated MPDUs. Unit layouts should show dimensions of unit including total square footage.
 - Show standard furniture on unit layouts (this can be a separate submission or shown on the unit layouts) to review for livability.

- Email documents to MPDU.Development@montgomerycountymd.gov with the name of the development as the subject of the email.
 - Agreement and covenants documents should be in WORD format.
 - Certified site plan and floor plans should be PDF format; and
 - If site plan does not include addresses or the most recent lot / block references, please include an addressing plan in PDF format.

- Staff will confirm that submission is complete and acknowledge receipt. If items are missing, or there are obvious concerns, staff will let the applicant know as soon as possible after receiving the initial submission.

- Staff will review the plans and agreement to ensure they conform with the law and development approval and will make every effort to respond with comments within 7-14 days of receipt of the final submission. If revisions are requested, staff will provide redlined versions of documents or plans. Staff may ask for an additional round of review.

- When the Agreement to Build is complete, staff will confirm it is ready for execution. Staff will also send an MPDU spreadsheet to be completed by the Applicant requesting information on each unit to be offered. Please follow the template to best fill this out using **the exact same format and wording as the example**. For example, use “1 bath” instead of “1 bathroom” to complete the finished bath column and use the term “efficiency” not “studio” when indicating that unit type. This information will be uploaded to the MPDU database to assist with sales and rental tracking as the MPDUs become available.

- Signed documents and a completed MPDU spreadsheet should be emailed to MPDU.Development@montgomerycountymd.gov with the name of the development as the subject for the email. The scanned Agreement should be sent in a high-resolution PDF format (150 dpi or higher). A hard copy is not required. Please note, **applicants do not need to re-send the certified site plan or floor plans with the final signed agreement unless there have been changes**.

- Staff will submit the document to the County Attorney’s office for their review and signature for legal sufficiency, and then to the DHCA Director for their signature. Staff will make every effort to obtain the necessary County signatures within two (2) weeks from the date the Applicant sends the complete and signed document. Once signed by the necessary County parties, staff will email the Applicant, the Department of Permitting Services (DPS), Planning Department, State Department of Assessments and Taxation (SDAT), and the Housing Opportunities Commission (HOC) an executed Agreement to Build with exhibits.

- Following the execution of the Agreement to Build, staff will inform DPS and the Washington Suburban Sanitary Commission (WSSC) of the development of future MPDUs to request that impact fees and service development charges not be applied to the MPDUs. Staff will inform the Applicant when such submission has been made. MPDUs also qualify for "green tape" processing status at DPS.

Please refer to Chapter 25A and Executive Orders 11-18AM and 9-21 to review the full requirements of the law.

4.1.2 Amendments - If at any time the MPDU requirement for a development change (due to a site plan amendment, for example), or if the construction schedule contained in the agreement changes, the developer must notify DHCA and request an amendment to the Agreement to Build to reflect the changes. Failure to do so may result in sanctions ranging from "stop work" orders to civil fines.

4.2 MPDU Offering Agreements

When the MPDUs are ready to be offered for sale or rent to eligible MPDU certificate holders, the developer/builder must submit an Offering Agreement to DHCA for review and approval.

- In for sale developments, the Offering Agreement may be approved **no more than 365 days before the expected delivery date** of the MPDUs. Larger developments, or developments that are built out over a greater length of time, may require more than one Offering Agreement to make all the required MPDUs available to certificate holders. DHCA staff will work with developer/builders to schedule multiple offerings in the most efficient manner.
- For rental developments, the Offering Agreement may be approved **up to 120 days from the date the first rental units will be available** for use and occupancy by qualified tenants (as determined under the county's building code requirements).

4.2.1 Process

Begin the process at least 3 months, but not more than 1 year, prior to first sale or rental. For a quick process checklist to assist with completing this document, please use [Sales Offering Agreement Checklist](#) or [Rental Offering Agreement Checklist](#)

- Applicant begins by downloading the template Offering Agreement form (either sales or rental), and either the Excel pricing worksheet for sales units or the current MPDU rental rate sheet from the MPDU website ([Developer Agreements Templates](#))

- Applicant should fill in all blanks provided on the Offering Agreement template but should **not sign it yet**. The agreement should reflect only the number of MPDUs to be offered at this time.

- Applicant should also complete any blank information in the draft covenants (either sales or rental) that were included with the Agreement to Build, including prices or rents. The covenants should not be signed until after MPDU staff has reviewed the document.

- For sales MPDUs, the Applicant should:
 - Complete a sales price calculation worksheet for each MPDU type in Excel format.
 - Attach any required cost documentation and narratives, as necessary.
 - Include a list of options to be offered to MPDU purchasers and their prices on a separate sheet or sheets, if the options cannot all be listed in Schedule C.
 - Send documents to MPDU.Development@montgomerycountymd.gov with the name of the development as the subject for the email. Include the following:
 - Offering Agreement and draft covenants in Word format.
 - Record Plat, Floor Plans and Elevations, and Certified Site Plan designating the location of the MPDUs should be sent in PDF format; and
 - Sales price calculation worksheets should be sent in Excel format.

- For rental units, the Applicant should:
 - Complete the schedules using the approved rent schedule for the year in which the MPDUs are offered. The annual rental rates can be found at this link - [MPDU Maximum Rents for New Developments](#)
 - Include unit layouts for each MPDU type showing standard furniture layout to meet livability requirements.
 - Provide either a copy of an executed subordination agreement from all lien holders on the property showing that the MPDU Covenants will hold a senior position for all liens or a statement by an attorney licensed to practice law in Maryland certifying that the MPDU Covenants are superior in recording order to any monetary encumbrances on the property.
 - Send completed documents to MPDU.Development@montgomerycountymd.gov with the name of the development as the subject for the email.
 - Offering Agreement and draft covenants should be sent in Word format; and
 - Floor Plans, Record Plat, and Certified Site Plan designating the location of the MPDUs should be sent in PDF format.

- Staff will confirm that the submission is complete and acknowledge receipt. If items are missing, or there are obvious concerns, staff will let the applicant know to re-submit as soon as possible after receiving the initial submission.
- Staff will review the plans and agreement and will make every effort to respond with comments within 21 days of receipt of the submission. If revisions are requested, staff will provide redlined versions of documents or plans. Staff may ask for an additional round of review.
- When the Offering Agreement is complete, staff will confirm it is ready for execution. Staff will also send a final version of the Covenants to be signed by the owner of the property.
 - Applicant will make necessary changes to the Offering Agreement and, unless an additional round of review is requested, will request that the agreement be signed by the property owner / developer.
 - Applicant will sign and the County will record the covenants with Montgomery County Land Records.
- Applicant will email a scan of the signed Offering Agreement to MPDU.Development@montgomerycountymd.gov with the name of the development as the subject for the email. The scanned Agreement should be sent in a high-resolution PDF format (150 dpi or higher). A hard copy of the signed Offering Agreement is not required. Please note, **applicants do not need to re-send the record plat, floor plan and elevations, or certified site plan** (unless there have been changes) with the final signed agreement.
- A hard copy of the signed Covenants must be mailed to MPDU Development Program Manager, Department of Housing and Community Affairs (DHCA), 1401 Rockville Pike, 4th Floor, Rockville, MD 20852. DHCA will record the Covenants.
- Staff will make every attempt to have the agreement signed and witnessed by the Montgomery County MPDU Manager within two weeks of receiving the final version from the developer and will return a copy soon after that.

4.2.2 Notifying HOC and Non-Profits

Once DHCA has approved the Offering Agreement, DHCA staff notifies the Montgomery County Housing Opportunities Commission (the County's public housing authority), the County's Department of Health and Human Services (DHHS), and certain non-profit organizations of the offering by emailing the completed Offering Agreement and exhibits.

- These agencies have 21 days from the date of the email to review the offering and make their selection of units, if any. (Under the MPDU law, HOC, DHHS, and the non-profits are eligible to reserve up to 40% of the MPDUs offered. HOC may

choose up to 33% of the MPDUs for itself.) If any of these agencies choose to reserve some of the MPDUs, that agencies' staff will work directly with the developer/builder's sales agent.

- When HOC, DHHS, and the non-profits have completed their review, HOC will send a reservation letter to the builder to inform them that remaining MPDUs may be sold or rented.
- Approximately 45 days after HOC is notified of MPDU reservation opportunities, HOC, DHHS, or non-profit staff will forward either a final confirmation or a cancellation of their reservations to the developer.

4.2.3 MPDU Random Selection Drawing for Sale Units

Once DHCA has approved the Offering Agreement, staff will work with the developer and hold a random selection drawing identifying qualified certificate holders who are eligible to purchase the MPDUs available in that development based on sales price, income, and the MPDU point system for qualified buyers.

- Staff will coordinate with the builder to develop a flyer advertising the MPDUs for the DHCA Random Selection Drawing (RSD).
- DHCA will hold an RSD for MPDUs within the subject development 2-3 weeks following the date the flyer is posted on the website, but not before the HOC 21-day reservation period has ended. The drawing is scheduled so that it will occur shortly after HOC, DHHS, and the non-profits announce their decision.
- The 90-day priority offering period required under the MPDU law begins on the date of the drawing (the "priority offering period" is that period of time during which the MPDUs may only be offered to eligible MPDU certificate holders).
- RSD results will be posted on the DHCA website after HOC, DHHS, and/or non-profit reservations, if any, are received. From the drawing, DHCA will generate a list of names that will be immediately forwarded to the developer's sales agent. DHCA usually picks 2 to 2.5 times as many names as there are MPDUs available to send to the sales agent. The sales agent then contacts the MPDU certificate holders in the order that their names appear on the list to arrange for a sales meeting. If the sales agent has MPDUs left over after the initial RSD list is exhausted, the agent must contact DHCA to request more names. This process is repeated as often as necessary during the 90-day priority marketing period.
- If, towards the end of the 90-day priority market period, it appears MPDUs will remain vacant after all the names provided by DHCA have been exhausted, the developer/builder must contact DHCA to discuss next steps.

5 Determining Sales Prices and Rents for MPDUs

Developers/builders may hold initial discussions with DHCA staff to explore sales prices and rents at any time during the development and planning phases (this is especially true in the case of high cost, high rise buildings). However, the final sales prices and rents for MPDUs are set at the time the developer/builder submits, and DHCA approves, an Offering Agreement for a specific number of MPDUs in a development. The methodology used to determine sales prices and rents for MPDUs is outlined in the Executive Regulations governing the MPDU program (specifically, COMCOR 25A.00.01 et seq.).

5.1 Sales Prices for MPDUs

Sales prices for MPDUs are developed according to DHCA's minimum specifications and price standards in effect at the time the prices are calculated for inclusion with the Offering Agreement. Prices are calculated using a sales price worksheet. DHCA must review the sales prices calculated using these standards and will compare the resulting price against the ability of MPDU certificate holders to afford the MPDU. If a resulting MPDU price is higher than MPDU households can afford, the specifications of the MPDU may need to be revised (such as leaving certain space unfinished, removing a deck, or reducing the grade of the interior finishes).

DHCA has established minimum specifications for base unit structure costs and lot development costs that may be adjusted per the regulations. DHCA has also set allowable soft costs and applicable soft cost percentages that may be attributable to the construction of an MPDU. Additional unusual costs and architectural compatibility costs may be included in the calculation of the sales price, per the regulations, if applicable. Additionally, the cost for a builder's extended warranty and/or condominium financing costs may be added to the sales price, as applicable.

Because the income of households participating in the MPDU sales program is capped at an annual maximum limit, DHCA must review its MPDU specifications and pricing to balance the need for compensating developers/builders against the ability of MPDU program participants to afford the MPDUs.

To help make MPDUs available at an affordable price, DHCA allows, among other things:

- MPDUs may be smaller in terms of square footage than market rate units, not to exceed maximum sizes specified in the applicable regulations.
- The finishes of MPDUs may be of a lower standard than for market rate units (for example, Formica countertops instead of granite, and/or standard builder grade cabinetry instead of hard wood finishes, standard builder grade plumbing fixtures instead of top-of-the-line fixtures, etc.).
- In single-family detached subdivisions, MPDUs may be single-family attached units.
- Some interior space, such as basements, third bedrooms, and lofts, may be left unfinished, and extra bathrooms may be roughed-in, and left unfinished, as long as minimum specifications are met per the applicable regulations.

New in 2021, sales prices will include a 3% buyer's closing cost credit. That credit is included in the sales price but provided back to the buyer at closing. It is the responsibility of the developer

to ensure that the full credit is provided to the buyer at closing. The amount of the credit is highlighted on Schedule A of the Offering Agreement.

5.2 Rental Prices for MPDUs

The rental rates for MPDUs are set according to a household's ability to pay.

The maximum household income for renters in the MPDU program is set at 65% (for garden apartments) and 70% (for high rises) of the Area Median Income (AMI) for the Washington MSA. DHCA then uses a housing cost standard under which a household pays no more than 25% of their gross monthly income towards rent. Rents may be adjusted to reflect utilities paid by the apartment complex.

For detailed information on calculating rental rates for MPDUs please reference [this form](#).

6 The Sales/Rental Process for MPDUs

6.1 Process

The sales or rental process for an MPDU is a private transaction between the developer/builder and the MPDU sales certificate holder or renter. While DHCA certifies sales program participants as eligible and provides names to the developer/builder, DHCA does not act as an intermediary, and does not become involved in the process except in the rare case of a dispute between the two parties.

DHCA does not provide financing, financial assistance, or rental assistance to MPDU purchasers or renters. Each MPDU purchaser must qualify for and secure their own mortgage financing. Every MPDU renter must meet the necessary credit checks and income tests as other rental applicants and must have the resources (which may include rental assistance from third parties) to pay the monthly rent.

Sales and leasing agents are partners in helping DHCA enforce the MPDU program rules. Each household certified as eligible for the MPDU sales program receives an MPDU Certificate of Eligibility. MPDU renters are certified by the leasing offices of the rental complexes, with training and oversight by DHCA staff. The primary eligibility criteria for the MPDU program are below.

MPDU purchasers must be first-time homebuyers (meaning they cannot currently own a home or have owned a home anywhere within the last 5 years), and MPDU renters must not have owned a home within the last 5 years.

- MPDU purchasers and renters must earn below the maximum MPDU income, adjusted for household size.
- MPDU renters are certified as income eligible each year; income verifications are conducted by the apartment complex. MPDU renters may continue to reside in their MPDU as long as they earn below 130% of the maximum MPDU rental income based on their family size.

6.2 Sales and Rental Forms

To enforce the MPDU program's rules and requirements, DHCA requires several forms for each MPDU purchaser or renter. Some of the forms are generated by the MPDU program, while others are copies of forms signed at contract signing, leasing date, or settlement.

- **Sales** - The following forms are required for each purchaser of an MPDU; some must be signed at contract signing, and others are due after settlement has occurred.
 - After Contract Signing, DHCA must receive within 15 days a copy of:
 - the signed Purchaser's Agreement form;
 - the purchaser's signed Acknowledgement of Receipt of Covenants;
 - the purchaser's original Certificate of Eligibility from the MPDU office; and

- the initial sales contract or agreement.
- After Settlement (within 45 days) DHCA must receive:
 - a copy of the final settlement sheet; and
 - a copy of the signed two-party deed.
- **Rental** - The following documents must be sent to the MPDU office within 30 days of the date of lease ratification on an MPDU rental unit:
 - a copy of the lease; and
 - the MPDU Renters Agreement form.

7 Contact Information

For more information on the MPDU program's requirements for developers, builders, and sales agents, please contact the MPDU Development inbox at MPDU.Development@montgomerycountymd.gov.