

Resolution No.: 19-982
Introduced: September 21, 2021
Adopted: September 21, 2021

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: County Council

SUBJECT: Approval of Executive Regulation 9-21, Sales Prices of Moderately Priced Dwelling Units – Moderately Priced Housing (Department of Housing and Community Affairs)

Background

1. On August 31, 2021, the County Council received Executive Regulation 9-21, Sales Prices of Moderately Priced Dwelling Units – Moderately Priced Housing (Department of Housing and Community Affairs).
2. This regulation adjusts the sales price for Moderately Priced Dwelling Units, clarifies that previous credits will now be combined into a 3% closing credit, and reorganizes the regulation to be more user friendly.
3. The Council must review the regulation under Method (1) of Section 2A-15 of the County Code. Under Method (1), a regulation is not approved or disapproved until the Council acts.
4. On September 13, 2021, the Planning, Housing, and Economic Development Committee reviewed the proposed regulation and recommended approval.

Action

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

Executive Regulation 9-21, Sales Prices of Moderately Priced Dwelling Units – Moderately Price Housing, is approved and becomes effective seven days after this approval date.

This is a correct copy of Council action.


Seiena Mendy Singleton, Esq.
Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Moderately Priced Dwelling Unit Program	Number 9-21
Originating Department Department of Housing and Community Affairs	Effective Date September 28, 2021

Department of Housing and Community Affairs
Montgomery County Regulation on:

SALES PRICES OF MODERATELY PRICED DWELLING UNITS - MODERATELY PRICED HOUSING DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Issued by: County Executive
Regulation No. 9-21

Authority: Code Section: 25A

Supersedes: Executive Regulation No. 35-90, COMCOR 25A.00.01

Council Review: Method One (1) Under Code Section 2A-15

Register Vol. 38 No. 7

Comment Deadline: July 31, 2021

Effective Date: September 28, 2021

Sunset Date: None

SUMMARY:

This Executive Regulation repeals and replaces the provisions of Executive Regulation 35-90 which established the requirements and procedures for setting sales prices for the Moderately Priced Dwelling Unit (MPDU) Program

ADDRESSES:

Information and copies of this regulation are available from the Department of Housing and Community Affairs (Department), Division of Housing, 1401 Rockville Pike, 4th Floor, Rockville, MD 20852

STAFF CONTACT:

Lisa Schwartz, Manager, Affordable Housing Programs Section,
email: lisa.schwartz@montgomerycountymd.gov

BACKGROUND INFORMATION:

Chapter 25A of the Montgomery County Code, 2014, as amended, established the provisions of the Moderately Priced Housing (MPH) Law. This regulation establishes the requirements and procedures for setting sales prices for MPDUs created by the MPH Law.



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EXECUTIVE REGULATION

COMCOR 25A.00.01 Sales Prices for Moderately Priced Dwelling Units - Moderately Priced Housing

25A.00.01.01 Applicability

- 1.1 Purpose of Regulation. This regulation contains the prices and procedures for calculating the approved maximum allowable sales price, including closing costs and sales commission fees, of Moderately Priced Dwelling Units (MPDUs) offered for sale through the Department of Housing and Community Affairs (Department). The current sales prices for MPDUs are increased by 6.5% to accommodate increases in the Consumer Price Index and the cost of construction materials since the last price increase established by Executive Order in 2016.
- 1.2 Applicability of Regulation. The MPDU Pricing Standards and provisions of this regulation are applicable to new homes constructed and sold in accordance with the requirements of Chapter 25A of the Montgomery County Code, 2014 (Code), as amended (the MHP Law) on or after the effective date of this regulation.
- 1.3 Sales Price Establishment Date. The Final Unit Sales Price for the MPDUs will be fixed when the Offering Agreement is signed by the Department.

25A.00.01.02 Definitions

- 2.1 The following words and phrases have the following meanings, as used in this regulation:
 - (a) Applicant – Applicant has the meaning provided in Section 25A-3 of the Code; usually the developer or the builder of the MPDUs under Section 25A-5 of the Code.
 - (b) Base Unit - Base Unit MPDUs are standard sized units for each structure type that provide the minimum necessary amenities and features as described in Section 25A.00.01.03.
 - (c) Base Unit Structure Cost – The sales price of the building aspect of a Base Unit MPDU as provided in the table found in Section 4.2 of this regulation, prior to any adjustments in price or addition of Soft Costs.



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- (d) Development Impact Tax - Impact tax for transportation and schools under Sections 52-41 and 52-54 of the Code.
- (e) Final Unit Sales Price – The final sales price for which an Applicant can sell an MPDU as calculated under Section 4.1 of this regulation.
- (f) Lot Development Cost – The cost to prepare undeveloped land for development, including engineering inspection, permitting, road work, clearing, grading, earthwork, driveways, site drainage, and installation of utilities, excluding water and sewer house connection fees.
- (g) Moderately Priced Dwelling Unit or MPDU – A dwelling unit which meets the definition provided in Section 25A-3 of the Code.
- (h) Offering Agreement – A signed agreement between the Applicant and the Department identifying the MPDUs in a development, describing each MPDU, providing the price of each MPDU, and identifying the date on which the MPDUs will be marketed to eligible households.
- (i) Options – Amenities not included in the Final Unit Sales Price that may be voluntarily selected by a purchaser of an MPDU, including upgrades of standard features of the home, and which may be charged at market rate. Options are subject to the limitations in Section 5.9.
- (j) Soft Costs – Expense items for development that are not considered direct construction costs, as outlined in Section 5.5.
- (k) Square Foot – Square foot is calculated as finished square footage. Finished square footage is measured from the face of the interior wall, and includes any space with flooring, wall covering and ceilings, such as finished storage space, stairwells, and hallways inside the unit. Finished square footage does not include unfinished basement or attic storage areas, common stairwells, and common hallways.
- (l) System Development Charge – A fee imposed by the Washington Suburban Sanitary Commission (WSSC) on new development to connect to the water and sewer system and to pay for the construction of major water and sewer facilities needed to accommodate growth.

25A.00.01.03 Base Unit

3.1 Base Unit Standards. At a minimum, MPDUs must be constructed to provide the number of bedrooms required for each unit, as described in the table below, based on the type of dwelling unit constructed.



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The number of bathrooms and the hot water heater capacity must correspond with each unit's bedroom count.

Minimum Standards for MPDUs (For Sale and Rental)

Item	Single-Family Detached		Townhouse & Duplex		Piggyback Townhouse	
No. of Bedrooms	3	4	3	4	2	3
No. of Bathrooms	1 1/2	2	1 1/2	2	1	1 1/2
Electric Hot Water Heater (gallon)	50	50	50	50	40	40
Gas Hot Water Heater (gallon)	40	40	40	40	30	40

Item	Garden Condominium/Apt. (up to 4 stories)				High Rise (5+ stories)			
No. of Bedrooms	0	1	2	3	0	1	2	3
No. of Bathrooms	1	1	1	1 1/2	1	1	1	1 1/2
Electric Hot Water Heater (gallon)	30	30	30	50	30			
Gas Hot Water Heater (gallon)	30	30	30	40	30			

3.2 Required Features of a Base Unit MPDU. In addition to the requirements of Section 3.1 above, all MPDUs must also:

- (a) Be equipped with a refrigerator that is at least 15 cubic ft., frost-free, and meets "builders grade" specifications;



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- (b) Have a standard 30" electric or gas range/oven with clock/timer and a range hood;
- (c) Be equipped with a garbage disposal;
- (d) Have a rough-in connection for a dishwasher, except as provided in Section 3.5(g);
- (e) Have complete electrical and plumbing, as well as a dryer exhaust, for a clothes washer and a dryer, except as provided in Section 3.5(g);
- (f) Include a linen closet or storage shelf system within a clothes closet in the unit; and
- (g) Include a full bath within one floor of each level that includes a bedroom and the main bathroom must include a vanity.

3.3 Consistent Heating and Air Systems. The Square Foot prices for MPDUs are based upon heat pump systems for heating and air conditioning (HVAC) systems. However, if the market rate units in the development are equipped with gas appliances and systems, the MPDUs must be equipped in the same way.

3.4 Livability. Bedrooms in MPDUs are expected to have full height walls, doors that lock, and closets. The primary (master) bedroom must be able to accommodate a double bed, two nightstands and a chest of drawers. Secondary bedrooms must be able to accommodate a single bed, a nightstand, and a chest of drawers. The living/dining space is expected to be adequate to accommodate a dining room set and a sofa set appropriate for the number of occupants of the unit.

3.5 Additional Considerations for Multi-Family Buildings. In multi-family buildings, MPDUs must also meet the following standards:

- (a) The bedroom mix of the MPDUs must match the bedroom mix of the market-rate units in the subdivision unless the Director approves an MPDU agreement under Section 25A-5 of the Code that does not increase the number of MPDUs required, but approximates the total floor area for the MPDUs required, and alters the bedroom mix of the MPDUs or the number of MPDUs.
- (b) The minimum size of MPDUs in multi-family buildings is based on the type of structure as specified below. At the discretion of the Department, the minimum size of any type of unit, by bedroom size, may be reduced to the minimum size of comparable market rate units in the same building with the same number of bedrooms.



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- (1) Garden (up to 4 stories): The minimum sizes of MPDUs should be as follows: 0 BR = 500 SF; 1 BR = 650 SF; 2 BR = 800 SF; 3 BR = 1100 SF.
- (2) High Rise (5+ stories): The minimum size of MPDUs should be as follows: 0 BR = 450 SF; 1 BR = 575 SF; 2 BR = 725 SF; 3 BR = 1000 SF.
- (c) MPDUs are not required to be located on "premium" floors, and are not required to have "premium" locations on a floor (for example, in terms of view, access to building amenities, etc.).
- (d) No more than 40 percent of the total number of units on any floor should be MPDUs. This requirement does not apply to buildings that are sold or rented under an approved federal, state, or local housing program designed to assist the construction or occupancy of housing for households of low or moderate income.
- (e) Bedrooms without windows are only permitted if market rate units also have bedrooms without windows, and must have adequate artificial lighting per building code requirements.
- (f) Applicants must make parking available to MPDU tenants or owners according to the number of parking spaces approved for the MPDUs at certified site plan. MPDU residents must be charged no more than the regular market rate for parking, and must not be required to purchase or rent parking. No fee may be charged for non-structured parking in rental buildings.
- (g) Clothes washer and dryer equipment and a dishwasher must be provided in each rental MPDU unless this equipment is not provided in the market rate units.
- (h) Condominium developments must have FHA approval or approval of similar financing.

3.6 Omissions of Minimum Standards. Although every effort should be made to provide all Base Unit standards and features, the Department may waive any of the provisions found in Sections 3.1 through 3.5 if an Applicant shows good cause concerning why the Applicant cannot construct an MPDU to the minimum requirements. Examples include situations in which a development is a residential conversion of a non-residential building, rehabilitation of an existing residential unit that was not built to current standards, or other circumstances where there are physical constraints to providing the Base Unit requirements. The Applicant must obtain a written waiver from the Department to forego some of the minimum standards. When adjustments to the minimum standards are permitted by the Department, the sales price may be adjusted to reflect those omissions.



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25A.00.01.04 Calculation of Sales Prices for MPDUs and Base Unit Sales Prices

4.1 Final Unit Sales Price. The Final Unit Sales Price is calculated by adding together:

- (a) The Base Unit Structure Costs as calculated in Section 4.2 and adjusted under Sections 5.1 and 5.2;
- (b) The Lot Development Cost as calculated in Section 4.2 and adjusted under Section 5.3;
- (c) Additional Unusual Costs, if applicable, as specified in Section 5.4;
- (d) The Soft Costs as specified in Section 5.5;
- (e) Architectural Compatibility Costs, if applicable, as specified in Section 5.6; and
- (f) Builder's Extended Warranty and/or Condominium Financing Costs, if applicable, as specified in Section 5.7.

4.2 Base Unit Structure and Lot Development Costs. The following schedule contains the Base Unit Structure Costs and Lot Development Costs for MPDUs. These prices are subject to the adjustments contained in 25A.00.01.05.



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MPDU Pricing Standards									
UNIT DESCRIPTION					UNIT SIZE (SF=square feet)		COST		
Unit Type	No. of Stories	No. of BRs	No. of Baths	Base in SF	Min. in SF	Max. in SF	SF Cost	Base Unit Structure Cost	Lot Dev. Cost
Single-Family Detached	1-2	3-4	1 ½-2	1,400	1,100	2,000	\$77	\$107,360	\$23,010
Duplex	1-2	3-4	1 ½	1,200	1,100	1,900	\$71	\$84,350	\$18,860
Townhouse/ Four-plex	2-3	3	1 ½	1,200	1,050	1,800	\$67	\$79,240	\$16,190
Townhouse/ Four-plex	2-3	4	2	1,260	1,120	1,900	\$67	\$83,200	\$16,190
Piggyback Townhouse	1-2	2-3	1-1 ½	1,200	1,050	1,600	\$58	\$69,020	\$13,530
Garden Condo	2-4	0-3	1-1 ½	950	Based on bedroom size, see Section 25A.00.01.03.5.(b)(1)	1,400	\$64	\$60,710	\$12,150
High Rise 1	5-6	0-3	1-1 ½	850	Based on bedroom size, see Section 25A.00.01.03.5(b)(2)	1,100	\$118	\$99,580	\$16,830
High Rise 2	7+	0-3	1-1 ½	850	Based on bedroom size, see Section 25A.00.01.03.5(b)(2)	1,100	\$169	\$143,030	\$21,520

25A.00.01.05 Price Adjustments for Variations from Base Unit Standards and Other Costs

5.1 Base Unit Structure Cost Adjustments. Cost adjustments may be applied to the Base Unit Structure Cost of the MPDU as provided in Section 4.2 for variations in the size of the unit and additional structural amenities above the required Base Unit features found in Sections 3.1 thru 3.3 as follows:



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- (a) If garages are added to the unit, the additional cost per Square Foot may be added to the base sales price as provided in the table below.
- (b) Additional cost credit is only allowed for baths provided above the minimum specification for the unit as required in the table in Section 3.1, according to the adjustments provided in the table below. Roughed-in bath and powder rooms require that the plumbing and electrical installations meet the following conditions to qualify for a cost increase to the MPDU sales price:
 - (1) Plumbing rough-in: the installation of all parts of the plumbing system that can be completed prior to the installation of fixtures, appliances, or equipment must be included. This includes drainage, water supply, vent piping, and necessary supports and backboards. All piping must be tied in and capped off after penetrating the wall or floor surface. Duct work for the future installation of exhaust fans must be installed. Roughed-in plumbing must pass air or water tests by the applicable BOCA or WSSC Codes.
 - (2) Electrical rough-in: wiring must be installed from service panel box and terminated at an outlet of the appliance or fixture that is to be served.
- (c) For units differing in size (Square Foot area) from the Base Unit Square Footage under the unit description in Section 4.2., the structure cost will be increased or decreased at one-half the unit type Square Foot cost, as provided in the table below. If the size of the unit is different from the base in Square Footage, the Base Unit Structure Cost will be adjusted using the Square Foot change from base in the last column below. No additions will be made over the maximum floor areas shown in Section 4.2.



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Base Unit Structure Cost Adjustments						
Unit Type	ADDITION/SUBTRACTION ADJUSTMENTS					
	Garage (per SF)	Bath		Powder Room		SF Change from Base (+/-)
	Attached/Detached	Finished	Rough-In	Finished	Rough-In	
Single-Family Detached	\$16/\$32	\$3,780	\$1,260	\$2,520	\$920	\$39.00
Duplex	\$16/\$32	Prices for bath and powder room adjustments are the same for all units regardless of type				\$36.00
Townhouse/ Four-plex	\$16/\$32					\$34.00
Townhouse/ Four-plex	\$16/\$32					\$34.00
Piggyback Townhouse	\$16/\$32					\$29.00
Garden Condo	N/A					\$32.00
High Rise 1	N/A					\$59.00
High Rise 2	N/A					\$85.00

- (d) If a separate linen closet is provided, \$520 will be added to the price.
- (e) If additional vanities are provided to any bath, \$290 will be added to the base price for each vanity in excess of the first mandatory vanity.
- (f) In any instance where a townhouse MPDU is constructed as an end-unit dwelling, the allowable structure cost will be adjusted to reflect the increased costs associated with the construction of the end unit. The end unit credit may not be claimed for duplex units. For end unit townhouses, add \$2,980 for each unit; for end unit piggyback townhouses add \$2,290 for each unit.
- (g) Walkout basement with a 5-foot sliding glass door, add \$1,890; for a unit with a 6 foot sliding glass door, add \$2,170.
- (h) The allowable MPDU sales price may be increased based on the cost difference between electric and gas appliances and systems.
- (i) Cost credit is allowed when energy-efficient appliances are furnished to provide the required appliances listed in Section 3.2, and for other energy-saving measures.



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- (j) The cost to install a sprinkler system has not been included in the Square Foot prices. If the Code requires the installation of a sprinkler system, the allowable price will be increased for this expense.
- (k) A dishwasher may be added to the price.
- (l) If the structure is provided with a deck or terrace, the cost may be added to the price.

5.2 ADA Compliance. When the buyer and seller of an MPDU agree to modify the unit structurally to facilitate access or use by a disabled person(s), the Department may adjust the allowable sales price by the amount of the additional costs. The Applicant must obtain approval of the price from the Department prior to executing a sales contract.

5.3 Allowances and Considerations to Lot Development Cost. Additional cost adjustments provided below may be applied to the sales price of the MPDU for additional considerations of the Lot Development Cost:

- (a) The Lot Development Cost found in Section 4.2 does not include water and sewer house connection fees; the actual cost of the connection fees may be added to the allowable sales price in any instance where water and sewer connection charges are not deferred.
- (b) The Lot Development Cost found in Section 4.2 does not include the Development Impact Tax or the System Development Charge for water or sewer; these fees will be waived if permitted under applicable law. A letter to the County requesting the waiver, which must specifically identify the MPDUs in the development by street address, lot and block, must be sent by the Applicant to (a) the Department to the attention of its Affordable Housing Programs (AHP) Section, (b) WSSC and (c) the County's Department of Permitting Services.

5.4 Considerations for Additional Unusual Costs (Does not apply to garden buildings and high rises). The Department may adjust the allowable sales price of an MPDU if the Applicant can demonstrate that additional unusual costs have been incurred (i.e., costs not already allowed in the structure or Lot Development Costs) which are directly attributable to and benefit the MPDUs and which are the result of:

- (a) conditions or fees, such as impact or similar fees imposed by a governmental unit or as condition for building permit approvals;



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- (b) additional considerations or fees as a condition of obtaining governmental financing programs; or
- (c) additional fees imposed by public utilities.

A narrative explanation in addition to documentation required under Section 5.8 for such costs must accompany the Offering Agreement. Requests for price adjustments must be initiated by the Applicant. Additional costs for correcting or adapting the usability of marginal land, soils, or topography will not result in an increase in the allowable sales price.

5.5 Soft Costs Included in Sales Price.

- (a) The following costs are included in the allowable sales price for MPDUs, and are expressed as a percentage of the total price as follows:
 - (1) Construction loan financing expenses - $(\text{prime rate} + 2\%) \times .50 \times .75 \times .75$. This assumes an average take down rate over 6 months, the length of the loan is 9 months, and that 75% of the unit sales price was borrowed;
 - (2) Construction loan placement fee - 1.5 percent;
 - (3) Legal and closing costs - 3.5 percent;
 - (4) Marketing expenses and sales commissions – 1.5 percent;
 - (5) Builder's overhead expenses - 8 percent;
 - (6) Engineering and architecture fees – 5 percent
 - (7) General requirements – 3 percent; and,
 - (8) Buyer's closing costs – 3 percent, to be given as a credit to the buyer.
- (b) The construction loan interest rate used to calculate construction financing costs is based upon a prime interest rate of 3.25 percent plus two percentage points. Variations from this construction loan interest rate will be adjusted to the prime interest rate that exists at the time of the offering plus two percentage points.



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5.6 Architectural Compatibility Expenses (Does not apply to garden buildings and high rises).

The allowable sales price of an MPDU may be increased to compensate for the cost of modifying the exterior design (including site improvements) of the MPDU that is necessary to make the MPDUs compatible in exterior design with the market-rate units in the subdivision.

- (a) The exterior design elements requested must be similar to those elements used on the market-rate housing units in order to reduce substantial differences in appearance. Compensation may be allowed for exterior facades and the sides of end units, roofing structure and material, window and door treatments, materials for walkways, and similar architectural elements.
- (b) Compensation shall be based upon the cost difference between the exterior design elements included in the calculation of the MPDU allowable structure cost and those design elements for which the Applicant is requesting compensation. Cost estimates or construction bids that document the difference in cost must be submitted.
- (c) The increase approved for architectural compatibility shall be limited to 10 percent of the allowable base cost for each unit increased by the direct costs percentages listed below:
 - (1) Construction loan interest – (prime rate plus 2 percent) x .50 x .75 x .75;
 - (2) Construction loan placement fee– 1.5 percent;
 - (3) Overhead and general requirement expenses – 8 percent; and
 - (4) Engineering and architectural expenses– 5 percent.

5.7 Builder's Extended Warranty and Condominium Financing Costs.

- (a) The cost of a builder's extended warranty may be added to the sales price.
- (b) The expense of obtaining FHA approval for condominium developments may be added to the sales price.

5.8 Documentation. All cost additions that are not monetarily specified in these Pricing Standards must be documented with contracts, estimates, bids, or invoices verifying actual costs.

5.9 Options. If the Applicant intends to provide Options, a list of options and their respective prices must be submitted with the Offering Agreement. Selections of Options must be at the discretion of the purchaser



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and may not exceed 10% of the Final Unit Sales Price. Luxury items may not be included as Options. Options and their selling price must be listed on a separate addendum to the sales contract. Documentation verifying actual costs is not required for Options.

25A.00.01.06 Effective Date and Revisions

6.1 Effective Date. This Executive Regulation will become effective 7 days after the date of approval by the Montgomery County Council.

6.2 Revisions. The maximum allowable sales prices of MPDUs may be revised no more than annually by Method 1 regulation by adjusting the prior year's maximum prices by (a) the percentage change in the consumer price index for urban consumers (CPI-U) for the Washington Metropolitan Area for the preceding 12-month period; or alternatively, (b) the prices may be re-estimated using actual current prices and costs, or commercially available standard building industry cost estimating products.

Marc Elrich
County Executive

Date: 08/31/2021

Approved as to Form and Legality
Office of the County Attorney

By:
Date: 8/24/21