Resolution No.: 15-1148
Introduced: September 27, 2005
Adopted: September 27, 2005

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: County Executive

SUBJECT: Approval of Executive Regulation 13-05AM, Requirements and Procedures for the Moderately Priced Dwelling Unit Program

Background

1. On September 27, 2005, the County Council received Regulation 13-05AM, Requirements and Procedures for the Moderately Priced Dwelling Unit Program, from the County Executive.

2. The regulation must be reviewed under method (1) of Section 2A-15 of the Code.

3. Under method (1), this regulation does not take effect until the County Council approves it.

Action

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

Executive Regulation 13-05 AM, Requirements and Procedures for the Moderately Priced Dwelling Unit Income Program, is approved.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject	**Number**
Moderately Priced Dwelling Unit Program	13-05AM
Originating Department	**Effective Date**
Department of Housing and Community Affairs	September 27, 2005

Department of Housing and Community Affairs

Montgomery County Regulation on:

REQUIREMENTS AND PROCEDURES FOR THE

MODERATELY PRICED DWELLING UNIT PROGRAM

DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Issued by: County Executive
Regulation No. 13-05AM

Authority: Code Section: 25A
Supersedes: Executive Regulation No. 75-92, 19-02, 11-02, 5-94, 7-94, and 14-04
Council Review: Method One (1) Under Code Section 2A-15
Register Vol. 22 No. 5

Comment Deadline: May 30, 2005
Effective Date: September 27, 2005
Sunset Date: None

SUMMARY:

This Executive Regulation repeals and replaces the provisions of Executive Regulation 75-92 which established the policies and procedures for the Administration of the Moderately Priced Dwelling Unit Program, Executive Regulation 7-94 which established Alternative Methods of Meeting the MPDU Requirements, Executive Regulation 14-04 which established the Maximum Income Limits for MPDU Program, Executive Regulation 11-02 which Established Maximum Rental Rates for Garden Apartments, and Executive Regulation 19-02 which Established a Priority System for the Sale of MPDUs

MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject	**Number**
Moderately Priced Dwelling Unit Program	13-05AM
Originating Department	**Effective Date**
Department of Housing and Community Affairs	

ADDRESSES:

Information and copies of this regulation are available from the Department of Housing and Community Affairs, (DHCA), Division of Housing and Code Enforcement, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850

STAFF CONTACT:

Christopher J. Anderson, Program Administrator, Telephone Number 240-777-3600

BACKGROUND INFORMATION:

Chapter 25A of the Montgomery County Code, 2004, as amended, established the provisions of the Moderately Priced Housing (MPH) Law. This regulation establishes the policies and procedures for the administration of the MPH Law. The regulation is applicable to subdivisions having a moderately priced dwelling unit (MPDU) requirement, to MPDUs which are sold, resold, or rented through the program, and to persons or households applying for eligibility to purchase or rent an MPDU.

INDEX

25A.00.01 Definitions

25A.00.02 Eligibility for Purchasing or Renting MPDUs and Occupancy Requirements

2.1 Application and Certification
2.2 Requirements for Eligibility – Income
2.3 Special Income Exemption for Conversion of Rental MPDUs to Condominiums
2.4 Requirements for Eligibility – Restrictions on Ownership of Residential Property
2.5 Homebuyer Certifications
2.6 Occupancy Requirements for MPDUs

25A.00.03 Requirement to Provide MPDUs

3.1 Requirements of the Agreement to Build Moderately Priced Dwelling Units
3.2 Housing Programs Which Satisfy the MPDU Requirement

25A.00.04 Options for Providing Less Than the Required Number of MPDUs

4.1 MPDU Land Transfer Option

4.2 Waiver of an Applicant's MPDU Requirements
4.3 Approval to Provide MPDUs at an Alternative Location in the Same Policy Area
4.4 Request to Make an Alternative Payment to the Housing Initiative Fund
4.5 Alternative Payment
4.6 Request for Fewer or No MPDUs to be built in certain developments with more than 20 but fewer than 50 units at one location

25A.00.05 Establishing Sale and Rental Prices

5.1 Maximum Allowable Sales Prices of MPDUs
5.2 Maximum Rental Rates for MPDUs
5.3 Rental MPDUs Sold as For Sale MPDUs

25A.00.06 Sale and Rental Procedures

6.1 Offering MPDUs for Sale or Rent
6.2 Lottery Selection Process
6.3 Offering MPDUs for Rent
6.4 MPDU Covenants
6.5 Sales and Rental Documentation

25A.00.07 Procedures for Purchase and Rental of MPDUs by the Commission and Designated Housing Providers

7.1 Qualification and Designation of Housing Providers by the County Executive
7.2 Notifying the Commission
7.3 Purchase Requirements

25A.00.08 Resale of MPDUs During the Control Period

8.1 Requesting a Resale Price Determination
8.2 Establishing the Maximum Resale Price
8.3 Resale Procedures

25A.00.09 Resale of MPDUs After the Control Period

9.1 Seller's Notification of the Department
9.2 Commission's Right to Purchase MPDUs
9.3 Payment of Excess Proceeds to Housing Initiative Fund
9.4 Divorce

MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject Moderately Priced Dwelling Unit Program	**Number** 13-05AM
Originating Department Department of Housing and Community Affairs	**Effective Date**

25A.00.10 Sale of MPDU by Foreclosure

25A.00.11 Enforcement

EXECUTIVE REGULATION

25A.00.01 Definitions

1.1 "Alternative Compliance Measure" means a method of providing MPDUs other than under the standard requirement, including land transfer, alternative location, waiver, and alternative payments to the Housing Initiative Fund.

1.2 "Alternative Review Committee" means a committee composed of the Director, the Executive Director of the Commission, and the Director of Park and Planning, or their designees.

1.3 "Applicant" means any person, firm, partnership, association, joint venture, or corporation required to construct and sell or lease moderately priced dwelling units.

1.4 "Certificate of Eligibility" means a certificate which is effective for a specified period of time, which is issued by the Department to persons meeting the Program's minimum eligibility criteria, and which enables them to be placed on an eligibility list maintained by the Department.

1.5 "Commission" refers to the Montgomery County Housing Opportunities Commission, or its successor agency.

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

1.7 "Control period" means the time an MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits as provided herein.

(a) For an MPDU originally offered for sale or rent before March 1, 2002, the control period for sale MPDUs is 10 years from the date of the original sale; for rental MPDUs the control period is 20 years from that date of original rental.

(b) For an MPDU originally offered for sale or rent in an Annual Growth Policy (AGP) policy area before March 1, 2002, the control period for sale MPDUs is 15 years from the date of the original sale.

(c) For an MPDU originally offered for sale or rent between March 1, 2002 and March 31,

2005, the control period for sale MPDUs is 10 years from the date of the original settlement date, and 10 years from the settlement date of each subsequent sale if such sale occurs during the existing control period; for rental MPDUs the control period is 20 years from the date of original rental.

(d) For an MPDU originally offered for sale or rent on or after April 1, 2005, the control period for sale MPDUs is 30 years from the date of the original sale, and 30 years from the settlement date of each subsequent sale if such sale occurs during the existing control period; the control period for rental units is 99 years from the date of original rental.

1.8 "Date of Original Sale" means the date of settlement for purchase of an MPDU

1.9 "Date of Original Rental" means the date of the first lease agreement for an MPDU takes effect.

1.10 "Department" refers to the Montgomery County Department of Housing and Community Affairs, or its successor agency.

1.11 "Designated housing providers" means housing development agencies and nonprofit corporations, as may be periodically designated by the County Executive, as entities which are eligible to purchase or lease MPDUs under Section 25-A 8(b) of the Montgomery County Code, 2004, as amended.

1.12 "Development application" means submitting an original application for a development approval to the Planning Board (including, but not limited to, a preliminary plan of subdivision, site plan, development plan, or project plan) for approval, or applying to DPS for a building permit when there is no site plan, whichever is applicable.

1.13 "Director" refers to the Director of the Department of Housing and Community Affairs.

1.14 "Eligible person" means a person who has been found eligible to participate in the Program by the Department, and who possesses a Certificate of Eligibility to purchase or rent an MPDU.

1.15 "Fair market value of capital improvements" is defined as the actual and reasonable costs of materials, professional fees, contractor's costs, and permit fees associated with furnishing and installing improvements. 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.

1.16 "Financially Infeasible" means a finding by the Alternative Review Committee regarding an MPDU development, based upon information provided by the applicant, used to evaluate a request to provide less than the required number of MPDUs.

1.17 "Finished lot" means one which has been prepared in accordance with the subdivision requirements set forth in Chapter 59 and is ready for the construction of a dwelling unit without major additional on-site, off-site, or public

space preparation or where a bond has been provided indemnifying against the applicant's failure to complete the public improvements.

1.18 "Garden Apartment" means a multi-family dwelling unit structure that is four (4) stories or fewer in height.

1.19 "High Rise Building" means any residential dwelling unit located in a multifamily residential or mixed use building that is higher than four (4) stories.

1.20 "Housing Initiative Fund" means a fund established by the County Executive to achieve the purposes of Section 25B-9.

1.21 "Median Income" means the area median income for the Washington, DC Primary Metropolitan Statistical Area (PMSA) as published annually by the U.S. Department of Housing and Urban Development (HUD).

1.22 "Moderately Priced Dwelling Unit (MPDU) means a dwelling unit produced in accordance with Chapter 25A of the Montgomery County Code, 2004, as amended.

1.23 "Moderately Priced Housing Law" (MPH) means Chapter 25A of the Montgomery County Code, 2004, as amended.

1.24 "Planning Board" refers to the Montgomery County Planning Board, or its successor agency.

1.25 "Planning Policy Area" means a geographic area defined in the County's Annual Growth Policy.

1.26 "Priority marketing period" means a period of no more than 90 days from the date the Department gives the Applicant an approved list of eligible certificate holders to whom the units may be marketed, during which time the MPDU must be available exclusively to persons holding a Certificate of Eligibility under the program.

1.27 "Program" for this part, refers to the Moderately Priced Dwelling Unit program administered by the Department.

1.28 "Purchaser's or Renter's Certification Form" means a certificate that the purchaser and/ or renter of an MPDU signs which states that they must occupy the unit in accordance with the provisions of Chapter 25A.

25A.00.02 Eligibility for Purchasing or Renting MPDUs and Occupancy Requirements

2.1 Application and Certification.

(a) A person who wants to purchase or rent an MPDU must apply to the Department to be certified as eligible for participation in the program and to be placed on the eligibility list. To determine whether an individual or household meets the minimum eligibility requirements, the following information and documentation must be provided to the Department: for persons seeking rental certificates only: copies of the two most recent previously filed Federal income tax returns, the applicant's two most recent W-2 forms, copies of divorce or separation agreements (if applicable or if most recent tax return was filed as "married"), and copies of employment pay check stubs from each current employer. For persons seeking a certificate of eligibility to purchase, the applicant must also supply a credit report which is no more than thirty (30) days old. All the required information and documentation listed above must be provided for every wage earner in the household. The Department reserves the right to require certified copies of a household's IRS tax forms.

(b) Persons who do not have the required Federal tax information because they did not live in the United States at any time during the applicable time period must supply a copy of their passport and the passports of each family member indicating their dates of entry. In addition, these persons must supply evidence from the United States Internal Revenue Service verifying that they have not filed Federal income taxes in the previous one or two years, whichever is applicable.

(c) A household which includes a person who is self-employed must demonstrate that they are within the Program's income guidelines by providing evidence and documentation in a form acceptable to the Department.

(d) The Department may set defined time periods during which applications for sales certificates will be accepted.

(e) A household determined to be eligible is issued a non-transferable Certificate of Eligibility which contains an expiration date. The expiration date of rental certificates generally shall be twenty-four months from the date of issuance. The expiration date for certificates for sale units shall generally be the last day of the month, twelve months from the date of application. If a certificate for sale units expires prior to the next open application period, the Department may honor the certificate until the holder re-applies and is determined to be eligible. Prior to its expiration date, the Certificate of Eligibility remains valid as long as the household's income does not exceed the income limits of the MPDU program at the time the holder's mortgage loan application is submitted for underwriting by a lender or a lease for the rental of an MPDU. A certificate of eligibility may be renewed upon expiration if the certificate holder re-applies and demonstrates that the household continues to meet all eligibility requirements in effect at the time of renewal.

(f) In the case of issuing certificates of eligibility for MPDU rental units, the Department may assign its responsibility for accepting applications and certifying an individual's or household's eligibility under the Program to individual apartment complexes containing MPDUs. In such cases, the Department must annually notify the apartment complexes of the applicable income limits and other eligibility criteria. In addition, upon the Department's request, the complexes must submit their application, lease, and leasing procedures to the Department for review and approval.

2.2 Requirements for Eligibility – Income. To determine a household's eligibility for the Program, except in

circumstances described in subsection (e) below, the Department must determine that the household's total income is at least equal to the approved minimum and does not exceed the approved maximum income limits for sale or rental housing in effect at that time. The Department may adopt uniform policies for determining how household annual gross income must be calculated.

(a) Maximum Income – MPDU Sales. By June 15th of each year, the Director of the Department must set the maximum incomes allowed under the rental and sales programs according to the following procedures. The maximum income required to purchase an MPDU is set at seventy percent (70%) of the median income for a household size of four (4). The 70% percent figure for a household of four is then multiplied by the following adjustment factors to determine the maximum income allowed for various household sizes. The resulting figure is rounded to the nearest $500.

Household Size	1	2	3	4	5
Adjustment Factor	.70	.80	.90	1.00	1.08

(b) Maximum Income – MPDU Rental. The maximum income to rent an MPDU is set at sixty-five percent (65%) of the median income for a household size of four (4). The 65% percent figure for a household of four is then multiplied by the following adjustment factors to determine the maximum income allowed for various household sizes. The resulting figure is adjusted to the nearest $500.

Household Size	1	2	3	4	5
Adjustment Factor	.70	.80	.90	1.00	1.08

(c) The Director may set the maximum income to rent an MPDU in a high rise building at seventy percent (70%) of the median income for a household size of four (4).

(d) If the change in median income from the preceding year is negative, the Director may adjust the maximum income by the percentage change in the consumer price index for the preceding 12 month period.

(e) At the time the new income limits are set each year, the Department shall compare the maximum income needed to purchase for household size of one with the starting salary for a teacher (Bachelor degree) in the Montgomery County Public School System. If the Department determines that the maximum income figure under the Program would preclude the participation of a first year teacher in the school system, the Director may adjust the income limits accordingly to allow the participation of first year teachers.

(f) Minimum Annual Incomes. Each year the Department may determine and set a minimum annual income for participation in the program. If a minimum is set, it must be set at the minimum annual income needed to qualify for a mortgage to purchase an MPDU, or to make a rental payment for an MPDU, as determined by the Department. In setting this minimum, the Department must consider the availability of any mortgage assistance or rental assistance programs that may be used to meet these payments. To determine this minimum, the Department must consult with lenders and leasing agents familiar with industry standards.

(g) In the Department's annual report to the Council regarding the MPDU program, the Director shall report on the income limits in effect for the year and the methodology used to arrive at the figures.

(h) Income is defined as the gross income received annually from all sources by all wage earners in a household. Sources of income include, but are not limited to, the following:

(1) Wages and salary;

(2) Child support;

(3) Alimony;

(4) Interest from savings and checking accounts;

(5) Dividends from stocks and bonds, and interest from certificates of deposit;

(6) Social Security benefits;

(7) Veterans Administration benefits;

(8) Overtime pay;

(9) Unemployment insurance benefits;

(10) Bonus payments;

(11) Pension and retirement payments;

(12) Long-term Disability benefits; and

(13) Any other annuities or stipends received.

(i) When an applicant fulfills the MPDU requirement for a particular development through the construction of housing under other federal, state, or specific local programs to assist low and moderate income families, the income limits and other requirements of that particular housing program must apply rather than the requirements set forth herein.

2.3 Special Income Exception for Conversion of Rental MPDUs to Condominiums. A household that rents an MPDU and lawfully occupies the unit at the time it is offered for sale must be offered the right-of-first refusal to

purchase the MPDU regardless of the household's income as long as the household qualifies for the financing necessary to purchase the unit, and if at the time of the offering, the household met all eligibility standards at the date of original rental. This right-of-first refusal is effective for 60 days from the date the tenant is given notice that the unit is to be offered for sale. If the tenant does not sign a contract and secure financing during that time, the unit must be offered to eligible certificate holders on the lottery list maintained by the Department.

2.4 Requirements for Eligibility – Restrictions on Ownership of Residential Property. To be eligible to buy or rent an MPDU, a person and members of that person's household must not have owned residential property during the previous 5 years, and can never have owned an MPDU. The Director may waive this restriction for good cause.

2.5 Homebuyer Certification. To be eligible to purchase an MPDU, a certificate holder must attend a homebuyer seminar approved by the Department, and be awarded a certificate of completion.

2.6 Occupancy Requirement for MPDUs.

(a) Except for the Commission or designated housing providers who obtain MPDUs under Chapter 25A, tenants and owners of MPDUs must occupy the MPDU as their primary residence and must execute and submit to the Department a Purchaser's or Renter's Certification Form provided by the Department at the date of original sale or rental, which certifies that he/she must occupy the MPDU during the entire control period or until the unit is sold or is relinquished in accordance with the MPDU law and these regulations. If an MPDU owner dies, at least one heir, legatee, or other person taking title by will or by operation of law must occupy the MPDU during the control period in order to fulfill the occupancy requirements of this Section.

(b) Before the owner of an MPDU purchases other residential property in the Washington PMSA during the applicable control period, the owner must first sell the MPDU under the Program as specified in these regulations. Before the renter of an MPDU purchases residential property in the Washington PMSA, the renter must surrender their MPDU Certificate of Eligibility to the Department.

(c) An MPDU owner who wishes permission to temporarily waive the MPDU occupancy requirement in order to rent his/her unit for cause must send a written request to the Director to obtain permission and a written waiver. The request must contain the reason(s) the owner desires to rent the unit and the period of time that the unit will be rented. The owner must demonstrate that he/she is required to move out of the Washington PMSA for employment or health reasons for a period not to exceed 24 months. The Director may extend this time limit for good cause. The MPDU owner must certify that he/she will reoccupy the MPDU within the term of the waiver, which shall begin on the date the owner vacates the unit. If the owner fails to reoccupy the MPDU within 30 days of the expiration of the term of the waiver, the MPDU must be sold in accordance with the terms of this regulation.

(d) When granting a waiver to allow an owner to rent an MPDU, the Director must establish the allowable rent that the owner may charge during the temporary rental period. This rent must not exceed the total of principal and interest payments on a mortgage amount that is not in excess of the resale control price, real estate taxes,

homeowner's insurance, reasonable management fees, homeowners association or condominium fees, and reasonable expenses attendant to the maintenance of the MPDU. If the owner retains responsibility for the payment of some or all of the utility expenses and maintenance costs, these expenses may be added to the rental rate. An increase in the rent may be permitted after one year, if the owner shows that there has been an increase in the listed costs used to determine the rent. The rent increase must be approved by the Department in writing.

(e) MPDU owners who temporarily rent their units must extend the MPDU covenants for a period of time equal to the rental period. The owner must execute a new covenant in the form provided by the Department before the final written approval from the Department may be granted. The Department must record the covenants among the land records of Montgomery County.

(f) MPDU owners who temporarily rent their units must sign a lease with the tenant. The owner must use the appropriate model lease approved by the Department. The term of the lease must not exceed the term of the waiver granted by the Department.

(g) If an MPDU owner fails to occupy the MPDU and has not received written permission from the Director to rent or vacate the unit temporarily, the MPDU must be sold in accordance with Chapter 25A.

25A.00.03 Requirements to Provide MPDUs

3.1 Requirements of the Agreement to Build Moderately Priced Dwelling Units.

(a) Once the Planning Board has set the MPDU requirements for the subdivision, an applicant must enter into a written Agreement to Build Moderately Priced Dwelling Units with the Department in a form approved by the Department. This Agreement must be executed before any building permits within the subdivision may be issued by the Department of Permitting Services (DPS). The Agreement must contain at least the following information:

(1) The name of the subdivision, the marketing name if different than the subdivision, the apartment or condominium name, when applicable. A copy of the approved preliminary plan or the record plat must be provided with the agreement.

(2) A plan for the staging of construction of all dwelling units that is consistent with Chapter 25A and any approved applicable land use, subdivision, or site plan.

(3) A copy of the applicable covenants, either rental or sales covenants.

(4) The Agreement must identify all land which is owned by or under contract of sale to the applicant, or, will be available, or is being processed for development and individually or collectively will be subject to Chapter 25A. For subsequent MPDU construction agreements, it will be necessary only to update this statement.

(b) The Department must determine that the Agreement meets the requirements of Chapter 25A and these regulations. Any revisions to the Agreement must be requested in writing from the developer, and approved in writing by the Director.

(c) A copy of the executed Agreement must be submitted to DPS with the first building permits application in the subdivision. DPS must not issue building permits in a subdivision having an MPDU requirement unless those units are included in the signed Agreement.

3.2 Housing Programs Which Satisfy the MPDU Requirement. Federal, state, or local housing programs may be used to fulfill MPDU requirements. When federal, state or local housing programs are used to comply with the requirements of Chapter 25A, the following conditions must be met:

(a) Sales prices or rental rates must be affordable to moderate income households.

(b) The Director must determine that the controls on the sales prices and/or rents will contribute to the long term availability of moderately priced units and that the covenants on these units contain provisions for the County's recapture of excess profits realized by an MPDU owner as required in Chapter 25A.

25A.00.04 Options for providing less than the required number of MPDUs

Under certain conditions as specified in Chapter 25A, it may be possible to provide less than the required number of MPDUs in any development.

4.1 MPDU Land Transfer Option.

(a) If an applicant wishes to request a land transfer option to fulfill an MPDU requirement in accordance with Section 25A-5(f)(1) the applicant must submit a written request to the Director to transfer land or finished lots to the County not less than 45 days prior to the submission of a development application for the project for which the land transfer option is being requested. The Director must communicate a decision on a request prior to the filing so that the applicant may include the Director's approval in the application, if applicable. The transfer request must include:

(1) Justification why the applicant is requesting the land transfer and how this satisfies the Department's requirements;

(2) A title report showing ownership or purchase contract signed by the applicant and description of the property to be transferred;

(3) Preliminary subdivision plans or site plans, record plats;

(4) Topographical maps, and soil tests if they have been performed; and

(5) An itemized statement of actual costs incurred or estimated costs to finish the lots that are o be transferred.

(b) Conditions for Transfer. Lots or land offered to the County must meet the following minimum standards:

(1) The title must be good and marketable and the lots or land must be transferred in fee simple;

(2) The lots must be served by public water, sewer, and other necessary utilities, must be accessible from an improved public street; and the Department, in its sole discretion, must determine that development of the lots is economically feasible as an MPDU development:

(3) In single-family developments, the land may be transferred as individual scattered lots, as several groups of lots, or as a single subdivided parcel; and

(4) In multi-family projects, the land must be large enough to support the development of an independent rental or sales project including parking, open space, and amenities.

(c) Review Process. The Department or consultants may consult with the Planning Board, the County Attorney, and other agencies as appropriate. The Director must take the following factors into consideration when evaluating the request to transfer land:

(1) The feasibility of constructing the required number of MPDUs on the property to be transferred;

(2) The cost of developing the lots; and

(3) The availability of funds for reimbursement of the estimated lot finishing and settlement costs if required.

(d) Transfer Decision and Agreement. The decision to approve or deny a land transfer must be made by the Director taking into consideration how the public interest will best be served. Any decision regarding the transfer must be made in accordance with the following conditions:

(1) The Department must make a decision within 90 days of receiving the request for the

land transfer. A copy of the decision must be provided to the applicant, the Planning Board, and DPS.

(2) The Department may reject any offer to transfer land, either in part or in whole, if the Director determines that the transfer will not serve the public interest or if no funds are available to reimburse the applicant for the lot finishing costs.

(3) If the Department approves the transfer request, the applicant and the Department must enter into an agreement for the land transfer with the County. This agreement must replace or modify the MPDU construction agreement.

(4) The applicant is responsible for preparing and executing the necessary warranty deed(s); arranging for settlement, ensuring that the deeds are properly recorded and delivering evidence of good title to the transferred lots or land.

(e) Compensation. The applicant must be compensated for the allowable costs for finishing the lots. The County's payment for lot finishing costs must be made at the time the applicant conveys the lots or land or at such later time as may be agreed to by the applicant and the Department.

(1) The applicant may be compensated for the reasonable costs directly attributable to finishing the lots to be transferred. Allowable costs may include, but are not limited to the following:

(A) Site engineering;

(B) Clearing, grading, and street improvements;

(C) Water and sewer connection charges;

(D) Street lighting and installation of other utilities;

(E) Bonds and permits; and

(F) Recreational development directly benefiting the transferred MPDU lots.

(2) If funds are not available for the reimbursement of lot finishing costs, the County may:

(A) Reject the transfer of lots or land as a means of fulfilling the subdivision's MPDU requirement;

(B) Elect to accept the lots or land when the applicant agrees to a deferral of the

reimbursement until the County is able to resell the land either to a builder or an MPDU purchaser;

(C) Elect to accept undeveloped land or partially finished lots rather than finished lots; or

(D) Accept the finished lots from the applicant without reimbursement if the applicant agrees.

(f) Disposition of Land by County. The County may cause MPDUs to be constructed on the land by conveying the lots or land to one or more builders or to the Commission under terms that must fulfill the objectives of the MPH Law, or the County may contract directly to have the units constructed. The sale of the land must take into consideration the County's contribution to the finishing costs and the necessity for the County or a subsequent transferee to construct and sell or lease the units within the MPDU approved sale price or rental limits.

4.2 Waiver of an Applicant's MPDU Requirement. If an applicant wishes to request a full or partial waiver under Section 25A-6(b), such a request must be made when submitting a preliminary plan of subdivision, site plan, or development plan approval to the Planning Board, or when applying to DPS for a building permit.

(a) Requests must be made in writing stating the reasons that the full density of the zone cannot be attained because of requirements of the Zoning Ordinance, master plan, or other laws or regulations. The request must contain substantiation in the form of plans, plats, and all other pertinent material which will assist in evaluating the conditions.

(b) The applicant must send a copy of the waiver request to the Department who must consult with the Planning Board or DPS as appropriate. The Department's recommendation must be considered by that Planning Board and DPS in determining whether to grant or deny the applicant's request for a waiver.

4.3 Approval to Provide MPDUs at an Alternative Location in the Same Policy Area.

(a) If an applicant wishes to provide MPDUs for development of a high-rise residential building at an Alternative Location in the same policy area under the provisions of Section 25A-5B, the applicant must submit a written request to the Director not less than 45 days prior to the submission of a development application for the project for which the Alternative Location approval is being requested. The Director must communicate a decision on a request prior to the filing so that the applicant may include the Director's approval in the application, if applicable. In order to grant such a request, the Director must find that:

(1) The public benefit of locating MPDUs at the proposed alternative location outweighs the value of locating MPDUs in each subdivision throughout the County; and

(2) Building the MPDUs at the proposed alternative location shall further the objective of

providing a broad range of housing opportunities throughout the County.

(b) The Director must submit a determination of whether the approval shall be granted prior to the time that the Planning Board or Director of Permitting Services considers its approval request for the application.

(c) To satisfy the requirements of this Section, an applicant may:

(1) Build, or convert from non-residential use, the required number of MPDUs at a site approved by the Director;

(2) Buy, encumber, or transfer, and rehabilitate as necessary, existing MPDUs for which price or rent controls have expired;

(3) Return to MPDU use, and rehabilitate as necessary, existing MPDUs for which price or rent controls have expired; or

(4) Buy or encumber other residential units to meet the MPDU requirement.

(d) Each agreement under this Section must include a schedule, binding on the applicant, for timely completion or acquisition of the required number of MPDUs.

4.4 Request to Make an Alternative Payment to the Housing Initiative Fund. If an applicant wishes to make an alternative Payment to the Housing Initiative Fund instead of building some or all of the required number of MPDUs in the proposed subdivision under the provision of Section 25A-5A, the applicant must submit a written request to the Director to make an alternative payment to the Housing Initiative Fund not less than 45 days prior to the submission of a development application for the project for which the payment option is being requested. The Director must communicate a decision on a request prior to the filing so that the applicant may include the Director's approval in the application, if applicable.

4.5 Alternative Payment. The Director may approve an Alternative Payment agreement only if the Alternative Review Committee, by majority vote, finds that either:

(a) An indivisible package of services and facilities available to all residents of the proposed subdivision would cost MPDU buyers so much that it makes the MPDUs unaffordable to eligible buyers; or

(b) Environmental constraints at a particular site renders the building of all required MPDUs at that site economically infeasible; and

(c) The public benefit of additional affordable housing outweighs the value of locating MPDUs in each subdivision throughout the county, and accepting the payment will further the objective of providing a broad range

of housing opportunities throughout the County.

(d) In establishing the amount of an alternative payment for a rental facility, the Director must take into account the following factors:

(1) Construction costs

(2) Market rate rents for comparable units

(3) The MPDU rent level

(4) Prevailing capitalization rate

(e) Any payment to the Housing Initiative Fund for agreements under this Section may be used only to buy or build more MPDUs in the same policy planning area (as defined in the Annual Growth Policy), as the development for which the payment was made, and must not be used to reduce the annual payment to the Housing Initiative Fund.

(f) Any subdivision for which a payment is made under this Section is not eligible for any density bonus for which it would otherwise be eligible under Chapter 59.

4.6 Request for Fewer or No MPDUs to be built in certain developments with more than 20 but fewer than 50 units at one location

(a) The Director may allow fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location in accordance with Section 25A-5(d)(1) if the Planning Board, in reviewing a subdivision or site plan submitted by the applicant, and based on the lot size, product type, and other elements of the plan as submitted, finds that building the required number of MPDUs at that location:

(1) Would not allow compliance with applicable environmental standards and other regulatory requirements, or

(2) Would significantly reduce neighborhood compatibility.

(b) If an applicant wishes to make a request for approval to build fewer or no MPDUs in accordance with Section 25A-5(d)(1), the applicant must submit a written request to the Director following the review of the subdivision by the Planning Board.

(c) The Director must notify the Planning Board of a determination of whether the request to build fewer or no units will be approved in accordance with their findings.

25A.00.05 Establishing Sale and Rental Prices

5.1 Maximum Allowable Sales Prices of MPDUs.

(a) The Department must set and disseminate the pricing standards and minimum specifications to be used to determine the maximum allowable sales prices of MPDUs. The schedule maintained by the Department must indicate the basic unit size and the approved maximum cost per square foot construction price, component prices, and adjustments that are used to establish the maximum allowable sales prices of MPDUs. This schedule must include the maximum allowable closing costs and sales commission fees for dwelling units sold in accordance with the requirements of Chapter 25A. These prices are subject to change, as described below.

(b) The MPDU Pricing Standards and provisions of this regulation apply to all MPDUs offered for sale through the Department on or after the effective date of this regulation. The maximum allowable sales price for the MPDUs must be fixed when the offering agreement is signed by the Department.

(c) For units differing in size (square foot area) from the basic unit size, the structure cost must be increased or decreased at one-half the unit type square foot cost. Minimum and maximum sizes of units are as shown on the schedule.

(d) The following costs are included in the allowable sales price and are expressed as a percentage of the base sales price as follows:

(1) Construction loan expenses - (prime rate + 2%) x .50 x .75 x .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/Sales commission – 1.5 percent;

(5) Overhead – 8 percent;

(6) Engineering and architectural design fees – 5 percent; and

(7) General requirements (utilities, permits, etc.) – 3 percent.

(e) The allowable sales price includes the following closing costs which are to be paid by the seller:

(1) One-half of one percent for the permanent loan origination fee;

(2) County tax certificate, transfer charges, revenue stamps and recordation charges;

(3) Title examination, settlement, and attorney fees;

(4) Notary fees and fees for preparation of a deed of conveyance, a deed of trust or mortgage, and the deed of trust or mortgage note;

(5) Appraisal fee and credit report fee; and

(6) House location survey plat.

(f) The maximum allowable sales price for new MPDUs sold to the Commission or to an eligible non-profit must be reduced by 1.5 percent to reflect the reduced sales and marketing costs associated with these units.

(g) Fees required to place permanent financing that are paid by the seller must be permitted to be added to the allowable sales price to determine the final sales price to the purchaser. These fees may include the seller's permanent loan fees (points) which are in excess of one-half percent and any buy-down fees paid to a financial institution to reduce mortgage interest rates on the purchaser's loan below current market interest rates. There must be no additions if the buyer secures their own permanent financing.

(h) The allowable sales prices may be adjusted for dwellings where space for future living areas that can be finished by the purchaser is provided. The minimum area, height, lighting, and ventilation as defined by the Montgomery County Code must be provided in an MPDU. Expandable space must include the installation of heating and air conditioning duct work, rough electrical wiring, rough-in plumbing, and insulation. The cost of this work may be approved by the Department upon submission of acceptable cost estimates or contracts for performing the work as described. Walkout basements are not considered as expandable space.

(i) Water and sewer house connection fees are not included in the calculation of the MPDU base sales price. In any instance where water and sewer connection charges are not deferred, the allowable sales price may be adjusted to reflect this increased cost to the seller.

(j) When permitted by the Director, significant items included in the minimum MPDU specifications, but which are not constructed in a unit, may result in an adjustment to the allowable sales prices to reflect these omissions. Minimum specifications for MPDUs which exceed building code requirements are as shown on the schedule maintained by the Department. It is the responsibility of the applicant to provide these items, or otherwise to obtain permission from the Department not to meet the minimum standards.

(k) When a gas heating and air-conditioning (HVAC) system is substituted for an electrical heat pump in an MPDU, the allowable sales price may be adjusted by the Department to compensate for this expense.

(l) When the buyer and seller of an MPDU agree to modify the unit structurally to facilitate access or use by a person with mobility or sensory impairments, 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.

(m) 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 included in the allowable structure or lot development costs) which are directly attributable to and benefit the MPDUs and which are the result of:

(1) Conditions or fees imposed by a government agency or as a condition for building permit approval;

(2) Additional considerations or fees as a condition of obtaining government financing programs; or

(3) Additional fees or costs imposed by public utilities.

Documentation for such costs must accompany the sales offering agreement submitted to the Department. Requests for price adjustments must be initiated by the applicant.

(n) Architectural compatibility. 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.

(1) The exterior design elements requested must be similar to those elements used on the market-rate housing units in order to reduce substantial difference 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.

(2) 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 builder is requesting compensation. Cost estimates or construction bids that document the difference in cost must be submitted. The Department may establish standard costs for approved design elements. The final determination of the amount of the compensation shall be made by the Department.

(3) 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:

(i) Construction loan interest – (prime rate plus 2 percent;)x .50 x .75 x .75;

(ii) Construction loan placement fee – 1.5 percent;

(iii) Overhead and general requirement expenses – 8 percent; and

(iv) Engineering and architectural expenses – 5 percent.

(o) The loan amount, but not the final sales price, shall be increased to cover the cost of amortizing the mortgage insurance premium on Federal Housing Administration (FHA) and Commission/FHA loans.

(p) The maximum, allowable sales prices of MPDUs must be revised annually by June 15 of each year by adjusting the prior year's maximum prices by the percentage change in the consumer price index for urban consumers (CPI-U) for the Washington Metropolitan Area for the preceding 12 month period. Alternately, the prices may be re-estimated using actual current prices and costs, or through the use of commercially available standard building industry cost estimating products. Interim adjustments in the maximum sales prices may be made when a change in the relevant cost elements of the CPI-U for the Washington Metropolitan Area exceeds 2 percent, or when significant changes in government or other costs are imposed between periods of price adjustment.

(q) The Director may restrict facilities, services or design costs which will cause excessive mandatory homeowner or condominium fees to be imposed on the MPDUs in a particular subdivision. The inclusion of swimming pool, recreation, or health club membership and maintenance fees may be offered only as an option to MPDU purchasers if it is determined by the Director that obligatory participation or inclusion of these items will significantly reduce the affordability of the MPDU.

(r) The Director may set different maximum sales prices for units in age-restricted buildings if the Director determines that to do so will contribute to the long term availability and affordability of moderately priced units for eligible certificate holders, and other households with moderate incomes. The Director may exercise this option upon the conclusion of the priority marketing period if there are MPDUs that can not be sold to eligible certificate holders at the approved MPDU rents.

5.2 Maximum Rental Rates for MPDUs.

(a) The maximum allowable rents that may be charged for the MPDUs are those in effect at the time the Department approves the rental offering agreement; MPDU rents must be based on the maximum income permitted under the program, as revised by June 15 of each year.

(b) Rental rates established for MPDUs must distinguish units which are inclusive and exclusive of utilities paid by the tenant and those utilities paid by the applicant.

(c) MPDUs developed under the programs designated in accordance with Section 25A.00.03.2 of this regulation are to be offered and marketed in accordance with the procedures established for those programs.

(d) The method for computing the maximum allowable monthly rents for garden apartment MPDUs is described below. The income for the rent calculation is based on one and one half (1½) people per bedroom. Rental rates must be computed based on the income limits for the MPDU program in effect at the time the MPDUs are offered for rent.

(1) The maximum rent for an efficiency unit is based on the income for one person household.

(2) The maximum rent for a one (1) bedroom unit is based on mid-point between the income for a one person household and a two person household (eg. 1.5 people per bedroom).

(3) The maximum rent for a two (2) bedroom unit is based on the income for a three person household.

(4) The maximum rent for a three bedroom unit is based on the mid-point between the income for a four person household and a five person household (eg. 4.5 people per bedroom).

(5) Based on the appropriate household size and corresponding maximum income, the income for each unit size is multiplied by twenty-five percent (25%) then divided by 12 and rounded to the next highest whole number which is evenly divided by five (5) to establish the rent for the unit, excluding utilities.

(6) When the applicant pays utilities, the appropriate household size and corresponding maximum income, the income for each unit size is multiplied by thirty percent (30%) then divided by 12 and rounded to the next highest whole number which is evenly divided by five (5) to establish the rent for the unit. Alternatively, the Department may, at its discretion, use "Allowances for Tenant-Furnished Utilities and Other Services" for the Washington PMSA, as determined by the U.S. Department of Housing and Urban Development.

(e) The Director may set different maximum rent limits for rental units in high rise buildings if the Director determines that there is no other reasonable means available to finance the building of all required MPDUs at a specific development.

(f) The Director may set different maximum rent limits for rental units in age-restricted buildings if the Director determines that to do so will contribute to the long term availability and affordability of moderately priced units for eligible certificate holders, and other households with moderate incomes. The Director may exercise this option upon the conclusion of the priority marketing period if there are MPDUs that can not be rented to eligible certificate holders at the approved MPDU rents.

(g) The maximum rental rate for new garden apartment MPDUs that contain unusual amenities, site conditions or construction costs may be adjusted based on a determination by the Director of all the ordinary, necessary, and reasonable costs to construct, market, and operate the MPDU rental units.

(h) The rental rate for currently rented MPDUs must be adjusted annually by the Director in accordance with the County's voluntary rent guidelines. If the apartment development is financed through a Federal or state affordable housing program, then the requirements of that program must supercede this regulation.

(i) Utility charges that are paid by the applicant may be added to the MPDU rental rate. The Department may use the annual utility allowances published by the U.S. Department of Housing and Urban Development (HUD) to calculate these charges. Any request by the applicant for a variance from these rates may only be granted by the Department upon receipt of a certified report from a registered engineer or by the appropriate utility company. After the first year of operation, utility charges may be based on the actual, average cost of the utility expenses for the previous 12 months.

(j) Laundry washer and dryer equipment must be provided in each MPDU unit unless this equipment is not provided in the market rate units. No increase in rent is allowed for laundry washer and dryer equipment unless the market rate units are separately charged and the increase is limited to the same fee that the market rate apartments are charged.

(k) The applicant must not be permitted to charge a fee for non-structured, automobile parking to MPDU tenants. Structured parking, garage or other enclosed spaces may be offered as an option to the MPDU occupants at the monthly rate normally charged by the applicant.

(l) The Director may adjust the rental rates for rental apartment developments that provide services, amenities, or design features to all tenants which cannot be made optional to the tenants of the MPDUs on a fee basis.

(m) In the Department's annual report to the Council regarding the MPDU program, the Director shall report on the maximum sales prices and rent limits in effect for the year and the methodology used to arrive at the figures.

5.3 Rental MPDUs Sold as For Sale MPDUs. In the event a rental MPDU is sold as a sale MPDU, the MPDU must not be sold at any time during the applicable rental control period for a price greater than the controlled, approved resale price for the unit. The resale price must be established in accordance with this regulation as if the unit had been "for sale" MPDU at the time of the original rental agreement. A new control period for the unit must be established according to the control period in effect at that time for sale MPDUs. This control period must begin on the date of settlement. The existing rental covenants must be released, and new sale covenants recorded on the property.

25A.00.06 Sale and Rental Procedures

6.1 Offering MPDUs for Sale or Rent.

(a) The applicant must offer MPDUs for sale or rent through the Department by completing and submitting an offering agreement on the form provided by the Department. The following information and documentation must be provided:

(1) A description of the MPDUs including the number, unit types, and size by area and number of bedrooms, and other relevant details of the MPDUs:

(2) The addresses, legal descriptions, and tax account numbers of the MPDUs;

(3) A recorded subdivision plat, a copy of the approved preliminary plan, and two copies of the site development plan designating the location of the MPDUs;

(4) The Declaration of Covenants, in recordable form;

(5) A copy of the floor plans of each unit type , and if the units are to be sold, a completed sale price calculation sheet and price list of options;

(6) The date(s) when MPDUs shall be delivered for settlement or rental occupancy; and

(7) Any other information the Department deems necessary.

(b) MPDU sale units must be available for settlement and occupancy in compliance with all County building and occupancy code requirements within 365 days of acceptance of the offering agreement by the Department.

(c) MPDU rental units must be available for rental occupancy in compliance with all County building and occupancy code requirements within 120 days of acceptance of the offering agreement by the Department.

(d) The applicant may not require from an MPDU purchaser a deposit that exceeds one percent (1%) of the established MPDU sales price.

6.2 Lottery Selection Process. After the Department has approved the Offering Agreement, eligible persons who are interested in purchasing MPDUs, other than the Commission, and designated, non-profit housing providers must be selected through a lottery process conducted by the Department in cooperation with the applicant. This process must be used to establish a lottery list of eligible certificate holders to whom the available MPDUs must be offered for sale.

(a) The Department must notify the applicant and eligible certificate holders of the proposed offering. A lottery entry form may be included with the offering notice sent to eligible certificate holders. This form must be completed and returned to the Department by the date indicated on the form in order to be entered into the lottery drawing. At the time a household is determined to be eligible under the Program, the Department awards points according to the factors listed below:

(1) One (1) point for each consecutive year (12 month period) the person has held a Certificate of Eligibility for the MPDU sales program, up to a maximum of three (3) points;

(2) One (1) point for living in the County at the time of application to the lottery, for a maximum of one (1) point;

(3) One (1) point for working in the County at the time of application to the lottery, for a maximum of one (1) point; and

(4) The maximum number of points that may be assigned to an eligible certificate holder is five (5) points.

(5) Points awarded under items (2) and (3) must be revoked if the eligible certificate holder does not meet the applicable criteria at the time of the drawing.

(b) One person households may only be permitted to participate in lottery drawings for one and two bedroom units; two person households may be eligible to participate in lottery drawings for dwelling units containing up to three bedrooms. One person households may not be permitted to purchase any MPDUs with three (3) or more bedrooms or conventional townhouses with two (2) bedrooms unless the lottery list of eligible households containing two (2) or more people has been completely exhausted. The Director may waive this limitation for good cause

(c) The lottery drawing shall commence by drawing first from among those eligible certificate holders who have been assigned the highest number of points. A lottery list of names must be developed, with the order determined by the order in which the names were drawn. The applicant must offer those eligible certificate holders highest on the list the first opportunity to purchase the available MPDUs.

(d) If there are MPDUs remaining in excess of the number of eligible certificate holders on the lottery list, the lottery drawing shall continue and shall be conducted among those eligible certificate holders assigned the next highest number of priority points. This process shall continue until the Department determines that there are a sufficient number of eligible certificate holders to whom the available MPDU may be made available for sale.

(e) Eligible certificate holders selected by a lottery must have the exclusive right to enter into a contract for the purchase of an MPDU. The priority marketing period begins the day the Offering Agreement is approved

by the Department, or the date of the Department's approval of other marketing methods, and must end 90 days after the date of commencement.

(f) The applicant must not offer MPDUs to the general public unless the priority marketing period has ended, the lottery list of all eligible certificate holders has been exhausted, and a written notice has been obtained from the Department authorizing sale to the general public. The priority marketing period is automatically extended unless the Department determines that no additional eligible persons are available to purchase the MPDUs. MPDUs that become available for sale after the priority marketing period because of the disapproval of permanent loan financing must be offered to eligible certificate holders on the lottery list. MPDUs that are offered to the general public remain subject to all the regulations and laws governing the Program, except the income limitations.

(g) If an applicant offers MPDUs for sale within 6 months after the date of acceptance by the Department of a previous offering of MPDUs in the same subdivision, then the lottery priority list established for the previous offering may be used until all eligible households on the list have been exhausted. The following provisions apply to the subsequent offering:

(1) The applicant's offering must contain the same type(s) of unit(s) with the same number of bedrooms per unit as were in the prior offering; and

(2) Purchasers must have a valid MPDU certificate of eligibility and not exceed the approved maximum MPDU income limits at the time the purchaser applies for mortgage financing.

(3) The priority marketing period for subsequent offerings begins on the date of approval of the Offering Agreement.

6.3 Offering MPDUs for Rent.

(a) MPDUs offered for rent by the applicant may be leased without utilizing the lottery process unless otherwise required by the Director. The applicant must comply with all applicable local, state, and Federal fair housing laws and must rent the available MPDUs only to eligible certificate holders during the priority marketing period. If a lottery process is used to rent the MPDUs, the same point system described in this regulation may be used for ranking eligible certificate holders. The Department must notify the applicant of the date on which the first lease for the property may be written. The priority marketing period must begin on that date, and shall end 90 days after the date of commencement unless the Department extends it for good cause.

(b) During the priority marketing period the applicant must rent the MPDUs to eligible certificate holders.

(c) If a lottery drawing is held to determine a marketing list of eligible persons, the priority marketing period begins on the date of the lottery drawing.

(d) If the MPDU units are not rented to eligible persons during the priority marketing period and the applicant has demonstrated to the Department's satisfaction that a good faith effort was made to rent the units to eligible persons, the applicant may then rent the units to the general public at the MPDU rental rate after receiving prior written approval from the Department.

(e) The priority marketing period is automatically extended unless the Department determines that no additional eligible persons are available to purchase the MPDUs. If construction or occupancy of the MPDUs is phased over a period of time, the priority marketing period begins when the MPDU is offered for rent. Each phase of the development must have its own priority marketing period.

(f) The MPDUs must be ready for occupancy within 120 days of the beginning of the priority marketing period.

(g) The applicant must use the multi-family model lease approved by the Department subject to the additions listed below.

(h) The lease agreements for MPDUs, other than those leased to the Commission or a designated nonprofit housing provider, must include the provisions listed below:

(i) The tenant must occupy the unit as his or her primary place of residence and must not sublet the unit.

(j) The tenant must provide income and household composition information to the applicant every year for recertification purposes. The documents that must be provided are federal income tax forms for the last two years and a copy of a current pay check for all employed household members and the current household composition.

(1) The tenant must provide the recertification information within 30 days of receiving the recertification form from the applicant. If the tenant fails to provide the recertification information within the 30 day period the tenant must vacate the unit within 60 days of receiving notification from the applicant that the recertification form and required documentation was not received.

(2) The tenant must vacate the MPDU if, at the time of re-certification, the tenant's income exceeds by thirty percent (30%) the maximum eligible income necessary to qualify as an eligible person. The applicant must take action necessary to have the tenant vacate the MPDU within 90 days of receiving information that the tenant's income exceeds the maximum permitted income limit. The applicant may substitute another unit with the same number of bedrooms for the existing MPDU and permit the tenant to occupy their present unit at a rent higher than the approved MPDU rent. A new covenant form must be recorded subjecting the substitute unit to the MPDU covenants. If the development is subject to a regulatory agreement as part of a federal financing program, the provisions contained in that

agreement supersede this regulation.

(k) The applicant must send a copy of the initial and all renewal leases to the Department within 30 days of signing the lease. In addition, the applicant must supply the information listed below in a format acceptable to the Department on an annual basis:

(1) The number of MPDUs, by bedroom count, that are leased to eligible persons, the Commission, and designated nonprofit housing corporations.

(2) For each MPDU, the tenant's name, household size, and total household income as of the date of the lease.

(3) A statement that to the best of the applicant's information and knowledge, the tenants who are leasing the MPDUs meet the eligibility criteria.

(4) A copy of each new or revised MPDU Renter Certification Form obtained since the last annual report.

(l) If the applicant is required to report tenant occupancy information pursuant to a governmental financing regulatory agreement, then that report may be substituted for the information required in these regulations.

(m) If the applicant has an MPDU to be re-rented, the applicant must offer the unit to eligible persons for a period of sixty (60) days before renting the MPDU to the general public at the MPDU rental rate. The sixty (60) day period must commence when the Department receives written notice from the applicant of the unit's availability to be leased.

6.4 MPDU Covenants.

(a) The applicant must sign and forward MPDU covenants in recordable form to the Department before selling or renting any MPDUs. The covenants must be in the form required by the Department and include the restrictions contained in Chapter 25A. The covenants must run with the land for the entire control period and until all requirements of Chapter 25A have been met. The covenants must be binding on the applicant, all assignees, mortgagees, buyers, and all other parties that receive title to the property.

(b) MPDU covenants must be recorded by the Department and must be recorded so that they are senior to all instruments securing permanent financing. Every deed transferring the MPDU must reference the MPDU covenants citing where they are recorded in the land records by liber and folio. If the covenants cannot be recorded on the MPDU in conformance with this regulation, then the unit must not be considered as having met the requirements of Chapter 25A.

(c) The applicant must provide a copy of the recorded sales covenants to the purchaser at settlement. The purchaser must acknowledge in writing that they have been given a copy of the covenants.

6.5 Sales and Rental Documentation.

(a) Not less than 30 days prior to settlement, the applicant must submit to the Department the following information in correct form for the unit to fulfill the requirements of Chapter 25A:

(1) A copy of the initial sales contract or agreement;

(2) A copy of the financing statement recorded against the proceeds of sale;

(3) The purchaser's certificate of eligibility;

(4) The MPDU Purchaser's Certification Form;

(5) The purchaser's homebuyer seminar certificate; and

(6) The purchaser's acknowledgement of receipt of covenants

(b) In addition, within 45 days after the date of settlement, the applicant must submit to the Department the final settlement sheet and a copy of the two party deed. The deed transferring title must reference the recorded MPDU covenants by the date the covenants were recorded and their liber and folio.

(c) Within 14 days of the date of lease ratification for an MPDU rental unit, the applicant must submit to the Department the following information in correct form for the unit to fulfill the requirements of Chapter 25A:

(1) A copy of the lease;

(2) The renter's certificate of eligibility; and

(3) The MPDU Renter's Certification Form.

25A.00.07 Procedures for Purchase and Rental of MPDUs by the Commission And Designated Housing Providers

7.1 Qualification and Designation of Housing Providers by the County Executive.

(a) From time to time, the Director may recommend to the County Executive that certain housing development agencies and nonprofit corporations be approved to purchase MPDUs. To be eligible for such a designation, the housing provider must demonstrate its financial ability to acquire, operate, maintain and manage an MPDU satisfactorily on a long term basis. The County Executive may consider the relative needs and requirements of the housing providers and their clientele, readiness and ability of the housing provider to purchase and manage an MPDU, and the number of units previously obtained by the designated housing provider. The County Executive shall designate the housing providers approved to purchase MPDUs by Executive Order.

(b) Designated housing providers must submit a report on a bi-annual basis to the Department, or its designee, that provides the following information: number of units currently in the housing provider's program and the monthly rental rate for each unit, information concerning the tenant's gross household income, household composition, and names of employers, unit operating expenses and revenues received by the housing provider. The Director must evaluate the designated housing provider and make a recommendation to the County Executive to extend or terminate the housing provider's right to purchase MPDUs.

7.2 Notifying the Commission.

(a) The Department must notify the Commission within 5 days of approving the Offering Agreement of the availability of MPDUs and must provide the Commission with detailed information about the development and the MPDUs. The Commission has the responsibility of notifying the designated housing providers of the offering and forwarding descriptive information about the MPDUs and the development. The Commission has 21 calendar days from the date of the Department's notification to make a preliminary decision and to identify to the applicant and the Department any units it or the other designated housing provider want to reserve for possible acquisition. This time period may be extended at the Department's discretion if the Commission requires more time in which to make its decision. The Commission and the designated housing providers have the remainder of a 45 day period, which began on the date of the initial notice from the Department, to notify the applicant and the Department of its final decision on the acquisition of the units that were reserved.

(b) During the 45 day period following an offering, all decisions on unit selections, readiness and priority of the designated housing providers, resolution of disputes among the designated housing providers, and communications with the applicant shall be the responsibility of the Commission. After the expiration of this time period, any subsequent contract negotiations on units to be purchased by designated housing providers must be handled directly between the designated housing provider and the applicant.

(c) After receipt of the final notice on the units that will be acquired by the Commission or other designated housing providers, the applicant must deliver sales contracts or lease agreements at least 90 days before the estimated delivery of the units. The Commission and the designated housing providers must execute the contracts for the MPDUs directly with the applicant. The contracts or lease agreements must be returned to the applicant within 30 days of receipt but no later than 60 days before the estimated date of delivery of the unit.

7.3 Purchase Requirements. The Commission and the designated housing providers may not collectively purchase or lease more than 40 percent of the units being offered; of this percentage, the Commission may not purchase or lease more than 33.3 percent of the units being offered. In addition, the Commission and designated housing providers may not purchase or lease more than 40 percent of each type of unit which is being offered unless the applicant and the Department agree to other ratios. The term "type of unit" refers to substantial differences such as end and interior units, the number of bedrooms in a particular unit, and the presence of architectural compatibility materials, such as brick. The Commission may purchase resale MPDUs in a particular development only if it did not previously purchase its full allotment of units at the initial offering. In no case, may the Commission own more than 33.3 percent of the MPDUs in a particular development.

25A.00.08 Resale of MPDUs During the Control Period

8.1 Requesting a Resale Price Determination.

(a) For purpose of resale. An owner who wishes to sell an MPDU during the applicable control period must notify the Department in writing of their intent to sell, and request a resale price determination.

(b) For purposes of refinancing. During the applicable control period, the owner of an MPDU may not refinance their MPDU for more than the approved resale price, as determined by the Department. Owners wishing to refinance must request a resale price determination, in writing, from the Department. Such a refinancing must in no way relieve the owner of the responsibility to pay to the Housing Initiative Fund one half of the excess proceeds.

8.2 Establishing the Maximum Resale Price. The Department must calculate the maximum resale price for the MPDU according to the following factors:

(a) The base must be the original price paid for the MPDU, plus an allowance equal to the rate of increase in the consumer price index between the month and year of initial sale and the current month and year. Fees or points paid for permanent mortgage financing that were added to the original purchase price may be deducted from the base price used to calculate the resale price unless the terms of the resale include an assumption of the mortgage.

(b) To this base, the Department must add the current fair market value of capital improvements, as determined by the Department, made to a unit after the date of purchase. Improvements must be permanent in nature and clearly add to the market value of the house or property. Normal owner maintenance, general repair work, and decorative items or work must not be included in the resale price determination.

(1) The owner must provide an itemized list of all capital improvements and upgrades for which credit is requested as part of the resale price. All improvements claimed must be documented with receipts, contracts or other evidence supporting their value. The Department may establish standard fair market values for certain improvements, and this value may be used by the Department rather than cost data records of the improvements submitted

by the owner.

(2) Where there is evidence of physical deterioration, abnormal wear and tear, or obsolescence because of neglect, abuse, or insufficient maintenance, the value allowed for the improvements may be reduced to account for the depreciation of the improvements or equipment.

(c) Appliances shall be depreciated on a 10 year straight-line basis from the initial purchase price.

(d) The owner must permit a representative of the Department to inspect the MPDU upon request to verify the existence and value of any improvements that are being claimed by the owner.

(e) The Department may approve a closing cost credit to be added to the base price on behalf of the purchaser. This credit of 3.5 percent of the maximum resale price may be used by the purchaser to pay for eligible closing costs. The seller must permit the purchaser to choose to purchase the MPDU at the base price, or at the base price plus the closing cost credit.

(f) No allowance is included in the resale price for the payment of real estate brokerage fees associated with the sale of the unit. A brokerage fee may be added to the resale price only if the unit is not sold during the priority marketing period. The unit must have been actively marketed and included on the Department's resale information list and the resale telephone information line. Failure by the seller to accept a bona-fide offer may be justification for the Department's extending the priority marketing period.

(g) If Veterans Administration (VA) financing is used to finance the purchase of a resale MPDU, the loan discount financing points shall be added to the established maximum resale price. These points must not be included in any future resale price determination unless the purchaser utilizes VA financing or assumes the existing VA mortgage.

8.3 Resale Procedures.

(a) The Department, its designee, or the Commission has the right to purchase any resale MPDU. The owner must offer the MPDU for resale only to the Department, or to eligible certificate holders, during the first 60 days following the owner's notification to the Department. The County may assign its right to purchase the unit to a designated housing provider or to an eligible certificate holder.

(b) The Department must notify the owner within 21 days of receiving a request for a resale price determination containing all the required information of the approved resale price.

(c) The Department must notify the owner within the 60 day period whether or not the Department intends to purchase the unit, and of any other conditions of the sale. If the MPDU is not purchased by the Department, its designee, or the Commission, the Department must notify the owner of the method that must be used to sell the unit.

(d) If the resale MPDU is purchased by the Department or its designee, or the Commission, these agencies may retain the MPDU or make it available to eligible certificate holders through a lottery or other means as may be approved by the Department.

(e) If a lottery is used, the Department, its designee or the Commission must notify eligible certificate holders of the availability of the MPDU and the date of the lottery. A lottery form must be made available before or on the day of, and at the location, of the lottery. Interested certificate holders must complete the form, and present it for the drawing. Also at the time of the lottery, the eligible certificate holder must present to the Department or its representative:

(1) their Certificate of Eligibility, which indicates the number of points that the certificate holder has been awarded;

(2) a pre-approval letter for mortgage financing from a lender, which indicates the maximum loan amount for which the certification holder is eligible;

(3) a certificate indicating the eligible certificate holder has attended a homebuyer seminar.

(f) One person households may only be permitted to participate in lottery drawings for one and two bedroom units; two person households may be eligible to participate in lottery drawings for dwelling units containing up to three bedrooms. One person households may not be permitted to purchase any MPDUs with three or more bedrooms or conventional townhouses with two bedrooms unless no lottery participants are present who meet the applicable eligibility criteria. The Director may waive this limitation for good cause.

(g) The lottery drawing shall commence by drawing first from among those eligible certificate holders present who have been assigned the highest number of points. The first eligible certificate holder drawn must be given the exclusive right to enter into a contract for the purchase of the MPDU.

(h) When the MPDU is sold to an eligible certificate holder, the required documents listed in Section 25A.00.06.5(a) of this regulation must be executed and sent to the Department.

(i) The MPDU may be offered to the general public at the approved maximum resale price only after the 60 day marketing period to the Department, its designee, the Commission, and all eligible certificate holders has expired. The owner must not offer MPDUs to the general public unless the priority marketing period has ended, the lottery list of all eligible certificate holders has been exhausted, and a written notice has been obtained from the Department authorizing sale to the general public. The priority marketing period is automatically extended unless the Department determines that no additional eligible persons are available to purchase the MPDUs.

25A.00.09 Resale of MPDUs After the Control Period

9.1 Seller's Notification of the Department. For the first sale of an MPDU after the expiration of the applicable control period, the owner must provide the following information to the Department 30 days prior to settlement:

(a) A copy of the signed sales contract which clearly states the agreed upon sales price;

(b) A copy of the real estate broker's listing agreement;

(c) An itemized list of improvements including actual or estimated value of the improvements with documentation of the value in a form acceptable to the Department; and

(d) The name and contact information for the settlement agent, once it has been determined.

9.2 Commission's Right to Purchase MPDUs. The Department must immediately notify the Commission of the offer, and the Commission must have the right to match the purchase offer. The Commission must notify the Department and the owner within 14 days of the Department's receipt of notification of the offer, whether or not it intends to purchase the unit. If the Commission decides to exercise its right to purchase the MPDU, it must tender a purchase contract to the owner within 21 days from the date it notifies the Department and owner of its decision. The offer must contain substantially the same terms and conditions, and a deposit must be made, payable to an escrow agent. If within 14 days of the Department's receipt of the offering notice, the owner does not receive written notice from the Commission that it intends to purchase the unit, or if after receiving such notice, the owner does not receive from the Commission a purchase contract at the price and terms substantially comparable to the offer within 21 days, the owner shall be free to execute the prior contract at the price and terms originally offered.

9.3 Payment of Excess Proceeds to Housing Initiative Fund. For the first sale of an MPDU which was originally offered for sale or rent after March 20, 1989, and for which the applicable control period has expired, the seller must pay to the Housing Initiative Fund one half of the excess proceeds.

(a) Excess proceeds are defined as the amount by which a bona fide resale price exceeds the sum of the following:

(1) The original sale price, or a subsequently approved resale price made during the control period, or the price that a rental unit would have been permitted to be sold for if it had been a sale unit at the time of the original rental;

(2) An allowance for the increase in the cost of living as determined by consumer price index (CPI-U) for the Washington, D.C. PMSA from the date of the initial sale or the latest resale or rental;

(3) The value of capital improvements made to a unit subsequent to the most recent date of purchase, as determined by the Department.

(4) The amount of the real estate sales commission at the average prevailing commission rates; however, the commission must not exceed 6 percent of the sales price.

(5) An allowance for applicable transfer taxes and recordation charges.

(b) The Department must notify the owner of the calculation of the excess profit and the amount that must be paid to the Housing Initiative Fund within 21 days of receiving the complete information from the owner.

(c) The required portion of the excess proceeds of the sale must be paid to the Housing Initiative Fund and must be collected at the time of settlement. The seller is responsible for ensuring that the payment is disbursed in accordance with this regulation. A copy of the final settlement sheet for the transfer of ownership must be sent to the Department within 14 days of the date of settlement on the property transfer. The Department must release the MPDU covenants and liens recorded in the land records after the County has received the required payment to the Housing Initiative Fund and the settlement documents.

(d) Failure of the owner to notify the Department of a sale, obtain a determination of excess proceeds, and pay the required portions of the excess proceeds to the Housing Initiative Fund constitutes a default under the covenants, these regulations, and Chapter 25A.

9.4 Divorce. If one owner buys out the other owner's interest in the unit as part of a divorce settlement, without selling the unit on the open market, then this does not constitute the first sale of the unit, and does not relieve the remaining owner of the shared profit obligation.

25A.00.10 Sale of MPDU by Foreclosure

A mortgagee or other secured party who has initiated foreclosure proceedings on a debt secured by a mortgage or deed of trust on an MPDU must notify the Department in writing not later than 21 days prior to the date of the foreclosure sale.

25A.00.11 Enforcement

The Department and DPS are responsible for enforcing the provisions of Chapter 25A. Complying with Chapter 25A and an approved MPDU Agreement to Build is the responsibility of the applicant; revisions or amendments should be requested as soon as the applicant recognizes that meeting the terms of an approved MPDU Agreement to Build may

not be feasible. The Director of DPS is authorized by law to deny, suspend, or revoke, any building or occupancy permit for a violation of Chapter 25A. Such action must be taken by DPS upon receiving a written request from the Department or the agency finding non-compliance to exist. After issuance of building permits for a subdivision has been halted or existing building or occupancy permits suspended or revoked, issuance of permits by DPS may not be resumed until both the Department and DPS are satisfied that the applicant is in compliance with terms of the approved MPDU Construction Agreement and Chapter 25A. An occupancy permit must not be issued for any unit in a subdivision when the subdivision does not comply with Chapter 25A or this Executive Regulation.

Approved as to Form and Legality
Office of the County Attorney

By: Eileen T. Brasmer

Date: 9/27/2005

Douglas M. Duncan
County Executive

Date: 9/28/05

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