



Facts You Need to Understand Before You Participate in the City of Rockville

MPDU Purchase Program

1. The purpose of the MPDU program is to make homeownership in the City of Rockville available to households with moderate incomes.
2. To purchase an MPDU, you must be first time homebuyer and not have owned a home or been on the deed to a home somewhere else within the past five years
3. The owner of an MPDU cannot own a second home while owning the MPDU.
4. An MPDU has a legally enforceable control period of 30 years from the date of settlement.
5. Owners of an MPDU must live in the MPDU as their residence throughout the 30-year control period.
6. During the 30-year control period, owners may only sell their MPDU through the MPDU program at a price determined by the City. Receipts are required for credit for improvements.
7. MPDUs may be refinanced during the 30-year control period but the owner must obtain approval from the City to refinance.
8. Owners may not rent out their MPDU during the 30-year control period unless the City grants permission to do so.
9. If the same owner lives in a MPDU for the full 30-year period, the control period will expire. After it expires, the owner may rent out the unit or sell it on the open market at market price.
10. When the unit is sold for the first time following the expiration of the control period, the owner must pay **50% of the profit** to the City.
11. The City will take legal action against an MPDU owner who violates any of the rules.

I/we certify that I/we do not currently own another residence and that no one in our household who will living in our MPDU unit currently owns a residence.

Buyer: _____

Buyer: _____

Date _____

Date _____

I verify that _____ buyer(s) is/are approved to be buy the MPDU unit located at _____

MPDU Staff Signature _____

Date _____

PURCHASER AGREEMENT

**City of Rockville
Moderately Priced Dwelling Units Program (MPDU)**



Instructions: Purchaser(s) must complete Section 1 and affix their signature(s) in Section 4.
Developers/Builders/Seller must complete Sections 2.

1. Purchaser(s)

2. Developer/Builder/Seller

Name

Seller Name

Name

Name of Subdivision

Current Address

2a. _____
Lot/Block #

2b. MPDU Unit Address

2c. _____
Date of Settlement

2d. _____
MPDU Purchase Price

4. I/We, the undersigned, as the purchaser (s) ("Purchaser") of the Moderately Priced Dwelling Unit ("MPDU") identified above, do hereby acknowledge and agree that this MPDU is subject to a thirty (30) year Control Period. During the Control Period, the MPDU is subject to the MPDU Declaration of Covenants, City Code 13.5, as amended and the regulations promulgated thereunder. The expiration of the Control Period is identified below. As Purchaser, while I own the MPDU, I certify that:

1. I will occupy it as my primary residence during the entire Control Period and if I fail to occupy the MPDU as my Primary residents, the City may require that the MPDU be offered for sale to a person eligible to purchase an MPDU under Chapter 13.5 of the City Code.
2. I cannot rent the MPDU during the control period except in limited circumstances with the City's written permission and that if the MPDU is rented illegally, the City may take legal action to recover all rent collected.
3. I cannot purchase another residential property during the Control Period and that I must sell the MPDU in accordance with the MPDU Program regulations, before purchasing another residential property.
4. The improvements herein conveyed with the MPDU, and those that may subsequently be made to the MPDU, must not be sold or refinanced for a price greater than that determined and approved by the City prior to such sale or refinance.
5. If the MPDU is sold before the end of the Control Period, a new Control Period will commence (the clock will start again for 30 years).
6. I will be required, upon the first sale of the PDU after the expiration of the Control Period, to tender a payment to the City's Affordable Housing Fund in an amount equal to one-half (1/2) of the profits from the sale.
7. I have received a copy of the recorded MPDU covenants and copy of Chapter 13.5 of the City Code.
8. I have never owned an MPDU and neither I nor any members of my/our household, has owned any residential property during the past 5 years.

Buyer Signature

Date

Buyer Signature

Date

For all purposes of interpretation of this Agreement, the singular shall include the plural and the plural shall include the singular.





RECEIPT OF MPDU COVENANTS AND CHAPTER 13.5 OF THE CITY OF ROCKVILE CODE

**City of Rockville
Moderately Priced Dwelling Units Program (MPDU)**

I/We _____ (insert names) hereby acknowledge and agree that I am/we are in receipt of one (1) copy of the Declaration of Covenants for _____ (name of subdivision) which was recorded among the land records of Montgomery County, Maryland on _____ (date) in _____ (liber) at _____ (folio) (Covenants); and one (1) copy of Chapter 13.5 of the City of Rockville Code (Code).

I/We acknowledge and agree that these Covenants are binding upon my/our MPDU unit located at _____ (insert MPDU address) and that as owner(s) of the MPDU, I am/we are bound by the MPDU requirements as set forth in the Covenants and in Chapter 13.5 of the Code.

ACKNOWLEDGED AND AGREED ON THIS _____ DAY OF _____, 20 ____

WITNESS:

Signature

Print Name

Signature

Print Name

BUYER(s):

Signature

Print Name

Signature

Print Name

Chapter 13.5 - MODERATELY PRICED HOUSING

Sec. 13.5-1. - Legislative findings.

The Mayor and Council of Rockville hereby finds that a severe housing problem exists within the City with respect to the supply of housing relative to the need for housing for residents with low and moderate incomes. Specifically, the Mayor and Council finds:

- (1) The City is experiencing an increase in residents of or approaching retirement age, with consequent fixed or reduced incomes; young adults of modest means forming new households; government employees in moderate income ranges; and mercantile and service personnel needed to serve the expanding industrial and commercial base and population growth of the City;
- (2) The supply of moderately priced housing has grown at a radically slower pace than the demand for such housing;
- (3) The inadequate supply of housing in the City for persons of low and moderate income results in large scale commuting from outside the City to places of employment within the City thereby overtaxing existing roads and transportation facilities, significantly contributing to air and noise pollution all adversely affecting the health, safety and welfare of and resulting in an added financial burden on the citizens of the City;
- (4) Demographic analyses indicate that public policies which permit exclusively high priced housing development discriminate against young families, retired and elderly persons, single adults, female heads of households and minority households, and such policies produce the undesirable and unacceptable effects of exclusionary zoning, thus failing to implement the Rockville housing goals and objectives and the housing goal of the general plan for the City;
- (5) Experience indicates that the continuing high level of demand for more luxurious housing, with a higher profit potential, discourages developers from offering a more diversified range of housing, and the production of moderately priced housing is further deterred by the high cost of land, materials and labor;
- (6) Actual production experience in the City indicates that if land costs can be reduced, houses of a more modest size and fewer amenities can be built to be sold at a profit in view of the existing ready market for such housing;
- (7) Given the proper incentive, the private sector is equipped and possesses the necessary resources and expertise required to provide the type of moderately priced housing needed in the City;
- (8) Rapid regional growth and a strong housing demand have combined to make land and construction costs very high and to have an effect on the used housing market by causing a rise in the prices of those units;
- (9) In some instances, existing housing for persons of low and moderate income is of lower quality and overcrowded.

(Ord. No. 29-90, 9-10-90)

Sec. 13.5-2. - Declaration of public policy.

The Mayor and Council hereby declares it to be the public policy of the City to:

- (1) Implement the Rockville housing goals and objectives and the general plan goal of providing for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and family sizes;

- (2) Provide for low and moderate income housing to meet existing and anticipated future employment needs in the City;
- (3) Assure that moderately priced housing is dispersed within the City consistent with the general plan and neighborhood plans;
- (4) Encourage the construction of moderately priced housing by allowing optional increases in density in order to reduce land costs and costs of optional features that may be built into such moderately priced housing;
- (5) Require that all subdivisions of fifty (50) or more dwelling units include a minimum number of moderately priced units of varying sizes with regard to family needs;
- (6) Require that all moderately priced dwelling units be provided on-site unless the Mayor and Council approves an alternative agreement in certain limited circumstances as set forth in this chapter;
- (7) Ensure that private developers constructing moderately priced dwelling units under this chapter incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision of Chapter 25;
- (8) Allow developers of residential units in qualified projects more flexibility to meet the broad objective of building housing that low and moderate income households can afford by letting a developer, under specified circumstances, comply with this chapter by contributing to a Moderately Priced Housing Fund;
- (9) Encourage the construction of moderately priced housing by allowing certain governmental fees to be waived for a development that includes moderately priced housing.

(Ord. No. 29-90, 9-10-90; Ord. No. 5-14, 3-10-14)

Sec. 13.5-3. - Definitions.

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

Applicant means any person, firm partnership, association, joint venture, corporation, or any other entity for combination of entities, and any transferee of all or part of the land at one (1) location, who after this chapter takes effect:

- (1) Submits for approval or extension of approval a preliminary plan of subdivision under chapter 25 which plan provides for the development of a total of fifty (50) or more dwelling units at one (1) location in one (1) or more subdivisions, parts of subdivisions, resubdivisions, or stages of development, regardless of whether any part of the land has been transferred to another party or;
- (2) Submits to the City a plan of housing development for any type of site plan approval or other development approval required by law, which plan includes construction or development of fifty (50) or more dwelling units at one (1) location; or
- (3) With respect to all land not subject to subdivision approval or site plan approval, applies for a building permit or permits under chapter 5, which permit is or permits are for the construction of a total of fifty (50) or more dwelling units at one (1) location.

In determining whether a development contains a total of fifty (50) or more dwelling units for the purpose of applying this chapter, all land at one (1) location within the City available for building development under common ownership or control by an applicant, including land owned or controlled by separate corporations in which any stockholder or family of the stockholder owns ten (10) percent or more of the stock, must be included. An applicant shall not avoid this chapter by submitting piecemeal applications or approval requests for subdivision plats, site plan approval, development approvals or building permits. Any applicant may submit a preliminary plan of subdivision for approval, site plan for approval, recorded plat or request for building permit for less than fifty (50) dwelling units at any time, but

the applicant must agree in writing that upon the next such application or request, the applicant will comply with this chapter when the total number of dwelling units at one (1) location has reached fifty (50) or more. All applicants, with respect to land to which this chapter applies, have local official approval to participate in the federal rent supplement program.

At one (1) location means all adjacent land of the applicant if:

- (1) The property lines are contiguous or nearly contiguous at any point, or
- (2) The property lines are separated only by a public or private street, road, highway or utility right-of-way or other public or private right-of-way at any point, or
- (3) The property lines are separated only by other land of the applicant which is not subject to this chapter at the time of any permit, development or subdivision application by the applicant.

Available for building development means all land:

- (1) Owned by, or under contract to, the applicant,
- (2) Zoned for any type of residential development,
- (3) Which will use public water and sewerage, and
- (4) Which is already subdivided or is ready to be subdivided for construction or development.

Closing costs means statutory charges for transferring title, fees for obtaining necessary financing, title examination fees, title insurance premiums, house location survey charges and fees for preparation of loan documents and deed of conveyance.

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 City Manager.

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

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

Department means the Department of Community Planning and Development Services.

Director, except as otherwise indicated, means the head of the Department of Community Planning and Development Services, or the Director's designee.

Dwelling unit means building or part of a building that provides complete living facilities for one (1) family, including at a minimum facilities for cooking, sanitation and sleeping.

Eligible person means a person or household whose income qualifies the person or household to participate in the MPDU program.

Housing agency means the Rockville Housing Enterprises or such other agency or organization as the Mayor and Council may designate.

Life care facility means a facility housed in a single building or group of buildings that provides for continuing progressive care of residents. Occupancy is restricted as provided in Title 10 of the Human Services Article of the Annotated Code of Maryland, as amended, and any other applicable provisions issued by the Department of Aging. A life care facility must include dwelling units for either independent or assisted living, or both, plus a nursing home of a suitable size to provide treatment or care of the residents; it may include ancillary facilities for the further enjoyment, service or care of the residents.

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

Moderate income means those levels of income, established by the City Manager, which prohibit or severely limit the financial ability of persons to buy or rent housing in Rockville.

Moderately priced dwelling unit or MPDU means a dwelling unit which is constructed, sold or rented under a government program to assist the construction of housing for families of moderate income, if the sales prices or rental rates do not exceed the maximum sales prices or rental rates for MPDU's established in regulation by the Mayor and Council including:

- (1) "Conventional or "turnkey" construction for a housing agency or construction in reliance upon an agreement by a housing agency before construction begins to enter into a lease (commonly known as "turnkey leasing") or purchase contract after completion as authorized under federal law or
- (2) The deferral rent supplement program, or
- (3) Any federal program to assist housing for families under the programs for home ownership, rental and/or cooperative housing authorized in federal law, or
- (4) Any other federal, state or local government program identified by the Mayor and Council in regulations: (1) designed to assist housing for families of low or moderate income; or (2) is sold or rented at a sale price or rental rate that does not exceed the applicable maximum price or rental established from time to time by the Mayor and Council by regulation under this chapter.

Moderately Priced Housing Fund means a fund established by the City Manager to achieve the purpose of section 13.5-9.

Optional density bonus provision means any increase in the number of dwelling units permitted by chapter 25 (Zoning ordinance), subsection 25.11.04.b. in a residential medium density zone.

Planning Commission means the Rockville Planning Commission.

Senior or Special Needs Housing with Services means apartments and individual residential dwelling units along with common areas for communal dining, activities and socializing along with an indivisible package of services that meet the majority of needs of daily living, including, but not limited to utilities, apartment/grounds maintenance, property taxes, one or more meals per day, housekeeping, transportation, social and wellness activities, and emergency care.

Significantly More MPDUs means fifteen (15) percent more units than the number of MPDUs that are required to be built on the site of the proposed development.

(Ord. No. 29-90, 9-10-90; Ord. No. 20-00, 11-27-00; Ord. No. 7-09, 3-9-09; Ord. No. 5-14, 3-10-14; Ord. No. 9-19, 4-1-19)

Sec. 13.5-4. - Determination of income and eligibility standards.

The City Manager shall establish standards of eligibility for the MPDU program in regulations adopted and which shall be revised when changes in market condition affect the ability of moderate income households to buy or rent housing. These standards shall establish moderate income levels for varying sizes of households, which will qualify a person or household to participate in the MPDU program. In establishing standards of eligibility and moderate income levels, the City Manager shall consider the price established for the sale or rental of MPDU's under this chapter, the term and interest rate that applies to the financing of such dwelling units, the estimated levels of income necessary to carry a mortgage on such dwelling units, and family size and number of dependents.

(Ord. No. 29-90, 9-10-90)

Sec. 13.5-5. - Requirement.

- (a) Any applicant, in order to obtain a building permit must submit to the Division of Inspection Services, with the application of a permit, a written MPDU agreement approved by the Mayor and Council and by the City Attorney that provides the required number of moderately priced dwelling units.

- (b) Except as provided herein, the required number of MPDUs shall equal twelve and one-half (12.5) percent of the total units in the development.
- (c) When the development at one (1) location is in any zone which provides for an MPDU density bonus and (1) is covered by a plan of subdivision, or (2) is covered by a site plan approval, or (3) requires a building permit to be issued for construction, the required number of moderately priced dwelling units is a variable percentage that is not less than twelve and one-half (12.5) percent of the total number of dwelling units at that location. Except as specified in subsections (c) and (d), the required number of MPDUs shall vary according to the amount by which the approved development exceeds the normal or standard density for the zone in which it is located. Bonus density is permitted in zones designated as RMD-10, RMD-15 and RMD-25 over the presumed base density where MPDUs are provided. If the use of the optional MPDU development standards does not result in an increase over the base density, the City Manager shall conclude that the base density could not be achieved under conventional development standards, in which case the required number of MPDUs shall not be less than twelve and one-half (12.5) percent of the total number of units in the subdivision. The amount of density bonus achieved in the approved development determines the percentage of total unit that must be MPDUs.

Achieved Density Bonus	MPDU's Required
Zero	12.5%
Up to 1%	12.6%
Up to 2%	12.7%
Up to 3%	12.8%
Up to 4%	12.9%
Up to 5%	13.0%
Up to 6%	13.1%
Up to 7%	13.2%
Up to 8%	13.3%
Up to 9%	13.4%
Up to 10%	13.5%
Up to 11%	13.6%

Up to 12%	13.7%
Up to 13%	13.8%
Up to 14%	13.9%
Up to 15%	14.0%
Up to 16%	14.1%
Up to 17%	14.2%
Up to 18%	14.3%
Up to 19%	14.4%
Up to 20%	14.5%
Up to 22%	15.0%

- (d) In planned development zones, the number of MPDU's shall not be less than either the number of density bonus units or twelve and one-half (12.5) percent of the total number of units, whichever is greater. In addition, in approving the redevelopment of an existing public housing project, the Mayor and Council may authorize up to the same number of units that existed in the public housing project before redevelopment.
- (e) In the Mixed-Use Transit District (MXTD) and the Mixed-Use Corridor District (MXCD) zones, at least fifteen (15) percent of the total number of dwelling units must be MPDU's.
- (f) (1) Instead of building the required number of MPDUs an applicant may offer to:
- a. Build Significantly More MPDUs at one or more other sites in the City.
 - b. Convey land in the City that is suitable in size, location and physical condition for Significantly More MPDUs.
 - c. Contribute to the Moderately Priced Housing Fund an amount that will produce Significantly More MPDUs; or
 - d. Do any combination of these alternatives that will result in building Significantly More MPDUs.
- (2) The Mayor and Council has the option to accept the offer if it finds that:
- a. 1) In the project or subdivision originally proposed by the applicant, an indivisible package of resident services and facilities to be provided to all households would cost the occupants of the MPDUs so much that it is likely to make the MPDUs effectively unaffordable by eligible households; or

- 2) Extraordinary circumstances make building the required number of MPDUs as part of the project impractical; and
 - b. An offer made by an applicant under subsection (f)(1) will achieve Significantly More MPDUs or units which low and moderate-income households can more easily afford; and
 - c. Acceptance of the applicant's offer will achieve the objective of providing a broad range of housing opportunities throughout the City.
- (3) In the case of a Senior or Special Needs Housing with Services project, whether as a stand-alone project or as part of a mixed use development:
 - a. The applicant must request an alternative MPDU agreement.
 - b. Under such an alternative agreement, the maximum monthly fee for Senior or Special Needs Housing with Services units must be established annually using the method set forth in regulations adopted by the Mayor and Council.
 - c. As part of its request for an alternative MPDU agreement, and only when MPDUs are provided onsite, the applicant may request permission to provide a percentage of onsite MPDUs that is lower than otherwise required if the applicant can demonstrate that providing the reduction will result in furthering the objective of providing a broad range of housing opportunities throughout the City. The maximum percentage reduction is limited to two and one-half (2.5) percentage points from the required percentage of MPDUs.
- (4) The procedures for considering and implementing alternative offers shall be established by regulations adopted by the Mayor and Council. The City Manager or designee will work with the applicant to establish an alternative agreement to present to the Mayor and Council for approval. To implement an offer, the applicant must sign an agreement with the City Manager or designee not later than a time provided by the Mayor and Council in its approval of the offer.
- (5) Notwithstanding any other provisions of the subsection, the Mayor and Council may reject a request by an applicant to establish an alternative agreement to meet MPDU requirements in whole or in part whenever the public interest would best be served thereby.
- (g) In the case of a life care facility, whether as a stand-alone project or as part of a mixed-use development, the applicant must (i) set-aside five (5) percent of the total units in the life care facility as MPDUs, or (ii) contribute to the Moderately Priced Housing Fund an amount as determined by regulations adopted by the Mayor and Council.
- (h) The MPDU agreements shall be signed by the applicant and all other parties whose signatures are required by law for the effective and binding execution of contracts conveying real property. The agreements must be executed in a manner that will enable them to be recorded in the land records of Montgomery County. If the applicant is a corporation, the agreements must be signed by the principal officers of the corporation individually and on behalf of the corporation. Partnerships, associations or corporations shall not evade this chapter through voluntary dissolution. The agreements may be assigned if the City approves, and if the assignees agree to fulfill the requirements of this chapter.
- (i) The applicant shall file with the first application for a building permit hereunder the MPDU agreements and a statement of all land the applicant owns in the City that is available for building development. In later applications, the applicant need only show addition and deletions to the original landholdings available for building development.
- (j) The written agreement to build MPDU's must include the number, type, location and plan for staging construction of all dwelling units and such other information as may be required by the City to determine the applicant's compliance with this chapter. The staging plan for all dwelling units under the building permit must be so arranged that MPDU's will be built along with or before other dwelling units, so that no or few dwelling units that are not MPDU's are built before the applicant builds any MPDU's.

- (k) If an applicant does not build the MPDU's contained in the staging plan with or before other dwelling units, the City may withhold any later building permit to the applicant until the MPDU's contained in the staging plan are built.
- (l) Recording of covenants. The applicant must execute and record covenants assuring that:
 - (1) The restrictions of this chapter run with the land for the entire period of control, and
 - (2) The covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other parties that receive title to the property.These covenants must be senior to all instruments securing permanent financing.
- (m) Later deeds. The grantor must state, in any deed or instrument conveying title to an MPDU, that the conveyed property is an MPDU and is subject to the restrictions contained in the covenants required under this chapter during the control period until the restrictions are released.

(Ord. No. 29-90, 9-10-90; Ord. No. 8-02, 4-22-02; Ord. No. 7-09, 3-9-09; Ord. No. 5-14, 3-10-14; Ord. No. 9-19, 4-1-19)

Sec. 13.5-6. - Zoning provisions; waiver of requirements.

- (a) If the applicant elects the optional density provisions, permitting the construction of an increased number of dwelling units, the requisite percentage and number of MPDU's shall apply to the total number of dwelling units as increased by application of the optional density provisions that increases the density above the otherwise permitted density of the zoning classification in which the property is situated.
- (b) Waiver of requirements. Any applicant who presents sufficient evidence to the Mayor and Council in applying for a building permit, or in submitting a preliminary plan of subdivision for approval or requesting site plan or project plan approval, may be granted a waiver from part or all of section 13.5-5. The waiver must be related only to the number of MPDU's to be built and may be granted only if the Mayor and Council, after consulting with the Department, finds that the applicant cannot attain the full density of the zone, because of any requirements of the zoning ordinance or the administration of other laws or regulations. When any part of the land that dwelling units cannot be built on for physical reasons is used to compute permitted density, the applicant's inability to use the optional density bonus provisions is not in itself grounds for waiving the MPDU requirements. Any waiver must be strictly construed and limited.

(Ord. No. 29-90, 9-10-90; Ord. No. 7-09, 3-9-09; Ord. No. 9-19, 4-1-19)

Sec. 13.5-7. - Maximum prices and rents of moderately priced dwelling units.

Moderately priced dwelling units shall not be sold or rented at prices or rents that exceed the maximum prices or rents established under this section.

- (1) *Sales.*
 - a. The sale price of any MPDU, including closing costs and brokerage fees, shall not exceed an applicable maximum sale price established from time to time by the Mayor and Council.
 - b. The Mayor and Council in issuing MPDU sale price regulations shall seek appropriate information, such as current general market and economic conditions and the current minimum sale prices of private market housing in the City, and shall consult with the building industry, employers, and professional and citizen groups to obtain statistical information which may assist in setting a current maximum sale price. The City Manager, shall, from time to time, consider changes in the income levels of persons of low and moderate income and their ability to buy housing. The Mayor and Council shall also

consider the extent to which, consistent with code requirements, the cost of housing can be reduced by the elimination of amenities, the use of cost-reducing building techniques and materials, and the partial finishing of certain parts of the units.

- c. The Mayor and Council shall issue maximum sale prices for MPDU's which continue in effect until changed by later regulation. The maximum sale prices shall be based on the necessary and reasonable costs required to build and market the various kinds of MPDU's by private industry. The sale prices for any succeeding year must be based on a new finding of cost by the Mayor and Council, or on the prior year's maximum MPDU price adjusted by the percentage change in the relevant cost elements indicated in the consumer price index.
- d. The Mayor and Council may make interim adjustments in maximum MPDU sale prices when sufficient changes in costs justify an adjustment. Any interim adjustment shall be based on the maximum MPDU sale prices previously established, adjusted by the percentage change in the relevant cost elements indicated in the consumer price index.
- e. If the Mayor and Council finds that other conditions of the design, construction, pricing, or amenity package of an MPDU project will lessen the ability of eligible persons to afford the MPDU's, the Mayor and Council may restrict those conditions that will impose excessive mandatory homeowner or condominium fees or other costs that reduce the affordability of the MPDU's.
- f. The City Manager may allow an applicant to increase the sale price of an MPDU when the City Manager finds in an exceptional case that a price increase is justified to cover the cost of modifying the external design of the MPDU when a modification is necessary to reduce excessive marketing impact of the MPDU on the market rate units in the subdivision. The City Manager shall approve the amount of any increase for this purpose, which shall not exceed ten (10) percent of the allowable base price of the unit.

(2) *Rental.*

- a. The rent, excluding utilities when they are paid by the tenant, for any MPDU must not exceed a maximum rent for the dwelling unit in accordance with the formula for calculating the maximum rent set forth in regulations adopted by the Mayor and Council. Different rents must be established for units when utility costs are paid by the owner and included in the rent. The City Manager shall adjust the maximum rent annually in accordance with the formula set forth in the regulations. Sixty (60) days prior to implementing any such annual adjustment, the City Manager shall inform the Mayor and Council of the amount of the adjustment in the maximum rent.
- b. Subject to approval as part of the MPDU agreement, the Applicant shall be permitted to charge fees to MPDU tenants for amenities and services, as follows:
 1. Approved amenities and services must be offered to MPDU tenants in the same manner in which they are to all tenants.
 2. Fees charged to MPDU tenants must be equal to or less than the rates normally charged by the Applicant.
 3. The Applicant is not permitted to charge a fee for non-structured or surface automobile parking to MPDU tenants. The Applicant is permitted to charge a fee for structured or garage parking to MPDU tenants. The fee for the first parking space per MPDU household must not exceed one-half ($\frac{1}{2}$) the monthly rate charged to market-rate tenants. Additional parking spaces can be charged at the monthly market-rate.
- c. Notwithstanding the above, within sixty (60) days of being informed of any adjustment in the maximum rent for a dwelling unit, the Mayor and Council may establish a different maximum rent than provided by the aforesaid formula. In such a case, the Mayor and Council shall consider the current cost of building MPDUs, available interest rates and debt service for permanent financing, current market rates of return on investments in

residential rental properties, operating costs, vacancy rates of comparable properties, the value of the MPDU at the end of the control period, and any other relevant information.

(Ord. No. 29-90, 9-10-90; Ord. No. 5-01, 2-12-01; Ord. No. 10-15, 5-18-15)

Sec. 13.5-8. - Sale or rental of moderately priced dwelling units.

(a) *Sale or rental to general public.*

- (1) Every moderately priced dwelling unit required under this chapter must be offered to the general public for sale or rental to a good faith purchaser or renter to be used for his or her own residence, except units offered for sale or rent with the assistance of, and subject to the conditions of, a subsidy under a Federal, State or local government program, identified in regulations adopted by the Mayor and Council whose purpose is to provide housing for persons of low or moderate income.
- (2) Before offering any moderately priced dwelling units, the applicant shall notify the Department of the proposed offering and the date on which the applicant will be ready to begin the marketing to eligible persons. The notice shall set forth the number of units offered, the bedroom mix, the floor area for each unit type, a description of the amenities offered in each unit and a statement of the availability of each unit for sale or rent, including information regarding any mortgage financing available to buyers of the designated unit. The applicant shall also give the Department a vicinity map of the offering, a copy of the approved development, subdivision or site plan, as appropriate, and such other information or documents as the Director finds necessary. The department shall maintain a list of eligible persons who are seeking to purchase an MPDU and shall notify such eligible persons of the offering.
- (3) If the Department finds that the offering notice is complete, it shall decide whether the offering of the units to eligible persons will be administered by lottery or by another method that will assure eligible persons an equitable opportunity to buy or rent an MPDU. The Department must notify the applicant of the method and when the ninety (90) day priority marketing period for the MPDU's may begin.
- (4) In establishing notification and marketing procedures, the City Manager may, establish marketing priorities for persons or households who live or work in the City and for persons over age fifty-five (55), and priorities for marketing units with three (3) or more bedrooms to households of larger size, so that families may be notified of the availability of MPDU's that may meet their housing needs. The Department shall give persons to be notified information of the proposed offering, and shall furnish other appropriate assistance. Persons so notified have an exclusive right, until the proposed date of public offering, to contract with an applicant to buy or rent the available MPDU's except those MPDU's which are subsidized under subsection (b)(1).
- (5) Moderately priced dwelling units, except those built, sold, or rented under another Federal, State or local program, may not be offered for rent by an applicant during the ninety (90) day priority marketing period, except in proportion to the market rate rental units in that subdivision as follows:
 - a. In a subdivision containing only single unit dwellings, the proportion of rental MPDU's must not exceed the proportion of market rate rental units to all market rate units.
 - b. In a subdivision containing both single unit dwellings and multiple-unit dwellings, the proportion of rental single unit dwelling MPDU's to all single unit dwelling MPDU's must not exceed the proportion of market rate rental single unit dwellings to all market rate single unit dwellings; and the proportion or rental multiple-unit dwellings MPDU's must not exceed the proportion of market rate rental multiple-unit dwellings to all market rate multiple-unit dwellings.

- c. Applicants shall make a good faith effort to enter into contracts with eligible persons during the priority marketing period and for an additional period necessary to negotiate with eligible persons who indicate a desire to buy or rent an MPDU during that period.
- (6) Every buyer or renter of an MPDU shall certify on a certificate prescribed by the City Manager that he or she is buying or renting the unit for his or her own use, or as the primary residence for his or her family. Buyers of MPDU's except a housing agency, must not lease MPDU's to other parties unless the City Manager finds sufficient cause to allow temporary rentals of such units under regulations, which may include maximum rental levels, adopted by the Mayor and Council. An applicant must not sell or lease any unit without first obtaining such a certificate from the buyer or lessee. Copies of certificates to applicants from buyer or lessees must be furnished to the Department and must be maintained on file with the Department. Before the sale by an applicant or by the housing agency to any buyer of any MPDU who does not possess a certificate of eligibility, the applicant or the housing agency shall request a determination by the Department from the certificates on file whether the proposed buyer had previously bought another MPDU. Previous buyers must not buy a second MPDU unless no other first-time purchasers are qualified to buy that unit. The City Manager may waive this restriction for good cause.
- (b) *The designated housing agency or corporation.*
 - (1) In view of the critical long-term public need for housing for families of low and moderate income, the housing development agency or nonprofit corporation designated by the Mayor and Council has the option to buy or lease, for its own programs or programs administered by it, up to forty (40) percent of all MPDU's which are not sold or rented under any other Federal, State, or local program. The housing agency may buy or lease up to thirty-three and one-third (33 1/3) percent of the MPDU's not sold or rented under any other Federal, State or local program.

This option may be assigned to persons of low or moderate income who are eligible for assistance under any Federal, State or local program identified in regulations adopted by the City Manager or this option may be assigned to an entity, for the purchase or lease by the entity, to house eligible persons. The Mayor and Council shall designate housing authorities under this subsection. These standards must require the corporation to demonstrate its ability to operate and maintain MPDU's satisfactorily on a long-term basis.
 - (2) The Department shall notify the designated agency or corporation promptly after receiving notice from the applicant under subsection (a) of the availability of MPDU's. If the housing agency exercises its option, it must submit to the applicant, within twenty-one (21) calendar days after the Department notifies the housing agency under subsection (b), a notice of intent to exercise its option for specific MPDU's covered by this option. Any MPDU's not bought or leased under this subsection shall be sold or rented only to eligible persons under subsection (b) during the priority marketing period for eligible persons to buy or lease.
 - (3) In exercising this option, the housing agency shall designate the units by reference to number, type, size and amenities of the units selected if the designation does not result in any one (1) type of unit exceeding by more than forty (40) percent the total units of that type which are sold or rented under this section, unless the applicant agrees otherwise. The notice required under subsection (b)(2) must state which MPDU's are to be offered for sale and which are to be offered for rent and the housing agency may buy only units which are offered for sale and may lease only units which are offered for rent. The housing agency shall decide whether it will exercise its option within forty-five (45) days after it receives the original notice.

(Ord. No. 29-90, 9-10-90; Ord. No. 20-00, 11-27-00; Ord. No. 5-01, 2-12-01; Ord. No. 7-09, 3-9-09; Ord. No. 9-19, 4-1-19)

Sec. 13.5-9. - Control of rents and subsequent sale prices; foreclosures.

(a) *Subsequent sale price.* Except for foreclosure proceedings, moderately priced dwelling units constructed or offered for sale or rent under this chapter shall not be resold or refinanced during the first thirty (30) years after the original sale for a price greater than the original selling price plus:

- (1) A percentage of the unit's original selling price equal to the increase in the cost of living, as determined by the consumer price index;
- (2) An allowance for improvements made to the MPDU not to exceed ten (10) percent of the selling price calculated in accordance with Section 13.5-9(a)(1).
- (3) An allowance for closing costs which were not paid by the initial seller, but which will be paid by the initial buyer for the benefit for the later buyer; and
- (4) A reasonable sales commission if the unit is not sold within sixty (60) days to an eligible person from the department's eligibility list.

(b) *Subsequent sale requirements.*

- (1) Any moderately priced dwelling unit offered for resale during the first thirty (30) years after the original sale must be first offered exclusively to the housing agency. The Department shall notify the housing agency of any MPDU offered for resale. Upon receipt of such notice, the housing agency has twenty-one (21) days to indicate to the seller its interest in acquiring any such MPDU. For any MPDU that the housing agency has so indicated its intent, the housing agency then has twenty-four (24) days to notify the seller of its final decision.
- (2) If the housing agency does not exercise the rights provided for herein within the prescribed time frames set forth above, the MPDU then shall be offered exclusively for forty-five (45) days through the Department to persons found by the Department to be of eligible income. After this 45-day period expires, that unit may be offered for sale to the general public.
- (3) If the MPDU remains unsold one hundred eighty (180) days after the unit is offered for sale to the general public, the city manager may permit the owner of the MPDU to sell the MPDU at market price. If a unit is sold a market price, the seller must pay to the Moderately Priced Housing Fund all sales proceeds in excess of the price calculated in accordance with subsection (a). Once the sales proceeds are deposited in the Moderately Priced Housing Fund, the city will release the covenants applicable to the unit.

(c) *Sale after control period ends.*

(1) If an MPDU is sold or resold after thirty (30) years after its original sale or rental, the restrictions on resale in subsections (a) and (b) no longer apply. However, for the first sale of an MPDU after thirty (30) years after the original sale or rental, the seller shall pay to the Moderately Priced Housing Fund one-half ($\frac{1}{2}$) of the excess of the total resale price over the sum of the following:

- a. The original selling price;
- b. A percentage of the unit's original selling price equal to the increase in the cost of living as determined by the consumer price index;
- c. An allowance for improvements made to the MPDU unit not to exceed ten (10) percent of the selling price calculated in accordance with Section 13.59(c)(1)b.
- d. A reasonable sales commission.

The City Manager shall adjust the amount paid into the Fund in each case so that the seller retains at least ten thousand dollars (\$10,000.00) of the excess of the resale price over the sum of the items in a. through d.

(2) The City Manager shall find that the price and terms of a sale covered by subsection (c)(1) are bona fide and accurately reflect the entire transaction between the parties so that the full amount required under subsection (c)(1) is paid to the fund. When the City Manager finds that

the amount due the fund is accurate and the City receives the amount due, the City shall terminate the MPDU controls and execute a release of the restrictive covenants.

- (3) The housing agency shall have the right for forty-five (45) days after receiving notice that an offer has been made to match any bona fide offer to buy an MPDU when the MPDU is offered for sale after thirty (30) years after the original sale or rental. Upon receipt of such notice, the housing agency has twenty-one (21) days to indicate to the seller its interest in matching any bona fide offer to buy the MPDU. Thereafter, for any MPDU that the housing agency has so indicated its interest, the housing agency then has twenty-four (24) days to notify the seller that it will match any such bona fide offer.
- (4) The housing agency need not pay into the Moderately Priced Housing Fund any portion of the resale price of any MPDU that it sells after thirty (30) years after the original sale or rental.
- (d) *Initial and subsequent rent controls.* Unless previously sold under subsection (c)(1), moderately priced dwelling units built or offered for rent under this chapter shall not be rented for thirty (30) years after the original rental at a rent greater than that established by regulations adopted by the Mayor and Council. Whenever any moderately priced dwelling unit other than those built, sold or rented under any Federal, State or local program offered by the housing agency is offered for rent during the 30-year control period, it must be offered exclusively for sixty (60) days to eligible persons, as determined by the Department, for use as his or her own residence and to the housing agency. The housing agency may assign its right to rent such units to persons of low or moderate income who are eligible for assistance under any Federal, State or local program identified in regulations adopted by the City Manager.
- (e) *City foreclosure regulations.* Notwithstanding the foregoing provisions, the Mayor and Council may adopt written regulations dealing with foreclosure proceedings. If an MPDU is sold in foreclosure proceedings begun by a lending institution holding a note secured by a mortgage or deed of trust, the City shall terminate the MPDU controls and execute a release of the restrictive covenants if all proceeds of the sale, if any, that shall be paid to the Moderately Priced Housing Fund have been paid. If a foreclosure sale of an MPDU occurs during the first thirty (30) years after the original sale or rental, any price paid at the foreclosure sale that exceeds the price established under subsection (a) plus any reasonable costs and fees of foreclosure shall be paid into the Moderately Priced Housing Fund. If an MPDU is foreclosed after thirty (30) years after the original sale or rental, subsection (c) applies. If the unit sold by foreclosure was a rental unit, the Department shall calculate the sale price that would have been permitted at the time of original rental as if the unit had been originally offered for sale.
- (f) *Waivers.* The City Manager may waive the restriction on the resale and re-rental prices for MPDU's if the City Manager finds that the restrictions conflict with regulations of Federal or State housing programs and thus prevent eligible persons from buying or renting units under the MPDU program.
- (g) *Bulk transfers.* This section does not prohibit the bulk transfer or sale of all or some of the rental MPDU's in a subdivision within thirty (30) years after the original rental if the buyer is bound by all covenants and controls on the MPDU's.
- (h) *Compliance.* The City Manager shall adopt regulations to promote compliance with this section and prevent practices that evade controls on rents and sales of MPDU's.

(Ord. No. 29-90, 9-10-90; Ord. No. 5-01, 2-12-01; Ord. No. 9-19, 4-1-19)

Sec. 13.5-10. - Waiver of fees.

- (a) *Qualifications.* If a person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities, or transferee of all or part of the land at one (1) location:
 - (1) Submits for approval or extension of approval a preliminary plan of subdivision under Chapter 25 which plan provides for the development of a total of less than fifty (50) dwelling units at one (1) location in one (1) or more subdivision, parts of subdivisions, resubdivisions, or stages of

development, regardless of whether any part of the land has been transferred to another party or;

- (2) Submits to the City a plan of housing development for any type of site plan review or other development approval required by law, which plan includes construction or development of less than fifty (50) dwelling units at one (1) location; or
- (3) With respect to all land not subject to subdivision approval or site plan review, applies for a building permit or permits under chapter 5, which permit is or permits are for the construction of a total of less than fifty (50) dwelling units at one (1) location.

Such person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities, or transferee may apply for a waiver of all or some of the development fees, described in subsection (b) if MPDU's are included in the project.

(b) *Fees.* Fees which may be waived are:

- (1) Building application and permit fee;
- (2) Stormwater management fee and contributions;
- (3) Site plan review application fee;
- (4) Public Works application and permit fees.

(c) *Procedure.* The Mayor and Council may waive in whole or in part, all or some of the fees described in subsection (b) after considering the following factors:

- (1) The number of MPDU's provided;
- (2) The ratio of MPDU's to the entire project;
- (3) The financial burden upon the applicant of providing MPDU's;
- (4) The location of the MPDU's;
- (5) Such other factors as the Mayor and Council may deem appropriate.

(Ord. No. 29-90, 9-10-90; Ord. No. 7-09, 3-9-09)

Sec. 13.5-11. - Regulations; enforcement.

- (a) The Department shall maintain a list of all moderately priced dwelling units constructed, sold or rented under this chapter, and the City Manager may, from time to time, adopt regulations necessary to administer this chapter.
- (b) This chapter applies to all agents, successors and assigns of an applicant. A building permit shall not be issued, and a preliminary plan of subdivision, development plan, or site plan shall not be approved unless it meets the requirements of this chapter. The City Manager may deny, suspend or revoke any building or occupancy permit upon finding a violation of this chapter. Any prior approval of a preliminary plan of a subdivision, development plan or site plan approval or other previous development approval may be suspended or revoked upon the failure to meet any requirement of this chapter. An occupancy permit shall not be issued for any building to an application, or a successor or assign of any applicant, for any construction which does not comply with this chapter.
- (c) Any violation of this chapter or regulations adopted under it is a misdemeanor.

(Ord. No. 29-90, 9-10-90; Ord. No. 7-09, 3-9-09)

Sec. 13.5-12. - Appeals.

- (a) Any person aggrieved by any quasi-judicial decision of the City Manager pursuant to this chapter may appeal to the Board of Appeals as provided by Article 66B of the Annotated Code of Maryland.
- (b) Any person aggrieved by any decision of the Board of Appeals or the Mayor and Council pursuant to this chapter may appeal the same to the Circuit Court for Montgomery County. Such appeal shall be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.

(Ord. No. 29-90, 9-10-90; Ord. No. 5-01, 2-12-01)

Sec. 13.5-13. - Applicability.

This chapter applies to all applicants and units developed by applicants, except when:

- (1) A building permit has been issued prior to September 10, 1990; or
- (2) A special exception for housing for senior adults and persons with disabilities has been approved by the Board of Appeals; or
- (3) A preliminary subdivision plan or other development plan or proposal has been approved by the Planning Commission prior to September 10, 1990;
- (4) A development in a Planned Development Zone has been approved by the Mayor and Council or the Planning Commission under the applicable provisions of the Zoning Ordinance prior to September 10, 1990.

(Ord. No. 29-90, 9-10-90; Ord. No. 7-09, 3-9-09)