



Howard County

Internal Memorandum

Subject: Testimony – CB 50-2019 – Moderate Income Housing Unit Program

To: Lonnie R. Robbins, Chief Administrative Officer

From: Kelly Cimino, Director, Department of Housing and Community Development *K. Cimino*

Date: October 11, 2019

PURPOSE

The purpose of Council Bill No. 50-2019 (“CB50”) is to revise and update several provisions of the County’s Moderate Income Housing Unit Program (the “Program” or “MIHU Program”) set forth in Title 13, Subtitle 4 of the Howard County Code. The Program was last revised in 2017. The revisions set forth in CB50 will define certain terms; provide for Disability Income Housing Units as an optional method of providing moderate income housing units; provide for certain numbers of units when Disability Income Housing Units are used; provide the unit type and minimum size for studio units that are used as Moderate Income Housing Units offered for sale or rent; amend the language regarding certain prohibited transfers; amend the fee in lieu; adopt rental rates for Disability Income Housing Units; establish the pricing for subsequent sale of previously occupied Moderate Income Housing Units; provide fines and penalties for non-compliance; add criteria for eligibility to rent or purchase Moderate Income Housing Units; require regulations to contain certain criteria related to Moderate Income Housing Units; and make certain technical corrections to enhance the Moderate Income Housing Unit program.

BACKGROUND

The Program was initially established by Council Bill 93-1996. The Program requires developers of new construction in certain zoning districts to set aside a percentage of units to be rented or sold as moderate income housing units (“MIHUs”) to households of moderate income through the Department of Housing and Community Development. Since 1996, there have been several legislative revisions to the Program.

PROPOSAL

Council Bill No. 50-2019 (“CB50”) is a comprehensive update to several provisions of the Program so that the Program can continue to operate at maximum efficiency.

The MIHU program provides rental and homeownership opportunities for moderate income individuals and families in the County. Council Bill 34-2013 introduced the Mixed Income Option to provide opportunities for developers to provide a mix of moderate income housing units and low income housing units as a percentage of total units to meet the MIHU requirement set in the Zoning Regulations. The Mixed Income Option allows developers to provide units for individuals and households of low income which is defined as 40% - 60% of Howard County Area Median Income (“HC AMI”). Title 13 of the Howard County Code contains several housing-related programs, aside from the MIHU Program, and each program defines “low income” differently. CB50 adds a definition for the term “low income” that will only pertain to the MIHU Program.

Section 13.402(e). Optional Methods. The Program is currently addressing the housing needs of moderate income and low income households through the MIHU and LIHU provisions. However, there is an additional need for units that are affordable to very low income households, particularly persons with disabilities that receive only Supplemental Security Income (SSI) or Social Security Disability Income (SSDI). CB50 proposes to amend Section 13.402(e) to provide an optional method of compliance for developers to meet a project’s MIHU requirement. This revision defines the Disability Income Housing Unit (DIHU), sets the rental rates for DIHUs at 30 % of household incomes up to 20% of the HC AMI and states the number of DIHUs that can be provided by developers as an optional method of compliance to meet a project’s MIHU requirement. Because the DIHU rents will be significantly less than the MIHU rental rates, developers that request to use this optional method of compliance will be allowed to meet the MIHU requirement with fewer units (ex. 1 DIHU on-site for every 3-4 MIHUs required by the zoning regulations). The unit reduction is necessary to incentivize developers to consider using this optional method of compliance.

Section 13.402(l). Prohibited Transfers. The prohibition against allowing the use of optional or alternative method of compliance on property owned by a LLC or LP, was added by Council Bill 74-2007. Currently a developer using an optional or alternative method of compliance may not provide the required MIHUs on property “owned by a limited partnership or limited liability company formed solely for the purpose of obtaining the benefit of low income housing tax credits under section 42 of the IRC and in which the Commission is a general partner or managing member.” The current provision set forth in Section 13.402(l) limits the County’s ability to work with the developers who form LPs and LLCs that are necessary to submit an LIHTC application and receive a funding award. CB50 proposes to amend this provision to allow future LIHTC projects, in which the Housing Commission is the general partner or managing member, to receive MIHUs and funds through an optional or alternative means of compliance to increase the number of affordable units above 20%, provide much needed gap funding and address the shortage of affordable rental units for low- and moderate income households.

Section 13.402(C). Timing of payment of the fee-in-lieu. Council Bill 35-2013 introduced the MIHU fee-in-lieu option for new construction in certain zoning districts, primarily for single family detached and age-restricted units. The fee-in-lieu is set annually

by Council Resolution. When initially created, the fee-in-lieu would be paid by the developer “before a use and occupancy permit may be issued for any unit in the development.” This is not realistic based on the process at the Department of Inspections, Licenses and Permits (“DILP”). Therefore, CB50 proposes to change when payment is made to more accurately reflect when the fee is collected by DILP.

Use of the fee-in-lieu. Regarding use of fee-in-lieu funds, we have reviewed the legislative history of Section 13.402C(e)(7) and have concluded that it is unclear what is meant by “other County entities.” Therefore, CB50 proposes to clarify which entities may receive fee-in-lieu funds and for what uses. The Department provides an annual report to the County Council detailing the revenue and expenditures associated with the MIHU fee-in-lieu. This report is available on the Department’s website.

Section 13.403. Prices for units offered for sale and rental rates for units offered for rent. The current code does not specify the base square footage calculation used by the Department to determine the base sale price for MIHUs. This revision proposes to clarify how the base square footage is calculated by the County based on the excise tax calculation on the building permit application. This revision also adds a studio unit type and sets the base square footage amount for calculating a sales price for studio units offered for sale as MIHUs. The additional changes are needed to specify what upgrades in size, design and amenities will be considered as necessary to ensure compatibility of the moderate income housing units with the market rate units and if the upgrades will result in an increase to the moderate income housing units offered for sale.

Section 13.404. Sale of moderate income housing unit. The base square footage calculation is specified for calculating the initial sales price of a MIHU offered to the program by the builder or developer. When a MIHU is first offered for sale, the Department has 120 days to award the unit to an income-eligible household who has applied to the MIHU program and is prequalified to purchase a home. If the Department is unable to award the unit within the 120-day period, the Department may ask the Housing Commission to purchase the unit to keep it in the MIHU program. If the unit is not occupied before it is sold to a pre-qualified MIHU applicant, the resale price is the same as the MIHU price paid by the Housing Commission to take initial ownership of the unit. This is known as a Subsequent Sale of Moderate Income Housing Unit After Priority Period.

MIHUs remain affordable in perpetuity; therefore, when the original or current homeowner of an MIHU is ready to sell their unit to another income-eligible MIHU applicant in the database, the transaction is known as a Subsequent Sale of a Previously Occupied Moderate Income Housing Unit. The resale price calculation and transaction requirements are different for previously occupied units. The unit is no longer new and needs to be priced accordingly. By adding a new subsection (e) to Section 13.404, CB50 establishes the method of determining the resale price calculation for existing moderate income housing units that will be resold through the MIHU program from the current homeowner to a new income-eligible MIHU applicant.

Section 13.405. Rental of moderate income housing units. Most property owners, property management companies and tenants follow the MIHU program rules and pass monitoring and compliance reviews each year. This revision will allow the Department to impose penalties and fines on property owners, management companies and/or tenants for those that do not comply with MIHU rental program rules.

Section 13.406. Eligibility to purchase or rent.

Subsection (b). This revision will prohibit applicants from purchasing an MIHU home if they already own a home. This revision will also prevent applicants with sufficient assets to acquire a market-rate home from purchasing an MIHU home. Most applicants are first-time homebuyers and have minimal assets to purchase their first home through the program. If an applicant has sufficient assets to purchase a market-rate home, then they should not be eligible to purchase an MIHU home from the limited inventory offered through the program. Also, the MIHU program is designed to help applicants purchase their first home, not to help applicants that already own a home to expand their real estate portfolio. The program requires that all applicants must live in the MIHU home as their primary residence. If they own more than one home, this requirement may not be met.

Subsection (c). The Department enters all applicant information into the MIHU database. The database is not a waiting list. Applicants are offered homeownership opportunities based on meeting the minimum household income required to qualify for available units, not the date when they applied. Pre-qualified applicants are entered in lottery drawings for available homeownership opportunities based on their priority point ranking.

Subsection (e). Applicants receive priority points when they are entered into the database. The Howard County Housing Commission is being added as an employer for purposes of earning a priority point since they are no longer a part of Howard County Government. Applicants also earn a priority point for each year they are in the database up to a maximum of 3 points.

Proposed Subsection (g). MIHU applicants are required to occupy the MIHU as their primary residence. The Department sends a letter to all MIHU homeowners to verify compliance with this requirement each year. Most homeowners occupy the home as their primary residence; however, sometimes there are a few that are not in compliance. This revision will allow the Department to impose penalties, and even ask the homeowner to resell their unit back through the program, for non-compliance. The program regulations will specify the penalties and process for homeowner non-compliance.

Section 13.408. Foreclosures, Waiver. The provisions regarding the termination of restrictions after the foreclosure of a development of rental units are not clear as currently written. The revision will clarify the requirement regarding the calculation of proceeds owed to the County in the event of a foreclosure on a development of rental units. The revision will also change the number of days for notice of sale from 10 to 20.

Section 13.409. Regulations. The Department will update the regulations necessary to implement and administer this subtitle, including regulations to enforce the owner occupancy requirement, including penalties, for MIHU homeownership units; to enforce the MIHU program requirements, including penalties, for MIHU rental units; and establish criteria for capital improvements and excessive damage for MIHU homeownership units at the time of resale. These regulation changes are necessary to maximize the effectiveness of the Moderate Income Housing Unit program for the County, developers and applicants.

FISCAL IMPACT

The Department does not expect any fiscal impact to the County as a result of this bill.

The Howard County Department of Housing and Community Development Board recommends approval of this bill.

cc: Calvin Ball, County Executive
Jennifer Sager, Legislative Coordinator