

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2021 Legislative Session

Legislative Day No. 5

Bill No. 22 -2021

Introduced by: Christiana Rigby

Co-Sponsored by: Deb Jung and Liz Walsh

AN ACT requiring the developer of a TOD (Transit Oriented Development) District site to provide the required moderate income housing units on the TOD site; prohibiting certain actions by the developer relating to optional methods or alternative compliance to optional methods; and generally relating to Moderate-Income Housing Unit requirements.

Introduced and read first time _____, 2021. Ordered posted and hearing scheduled.

By order _____
Theodore Wimberly, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2021.

By order _____
Theodore Wimberly, Administrator

This Bill was read the third time on _____, 2021 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Theodore Wimberly, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ____ day of _____, 2021 at ____ a.m./p.m.

By order _____
Theodore Wimberly, Administrator

Approved/Vetoed by the County Executive _____, 2021

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; Text in small capitals indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **WHEREAS**, Council Bill No. 7-2021, that becomes effective on April 6, 2021, amends the Howard
2 County Zoning Regulations to require that at least 15% of the dwelling units on the site of a Transit
3 Oriented Development be Moderate Income Housing Units that must be developed on the site of the
4 development, and further prohibits the developer from providing the Moderate Income Housing Units at a
5 different location or paying a fee-in-lieu to the Department of Housing and Community Development for
6 the required Moderate Income Housing Units; and

7 **WHEREAS**, this bill codifies in Section 13.402(n) of the County Code the requirements for an
8 agreement for moderate income housing units for a development on a Transit Oriented Development
9 district site that were enacted by Council Bill No. 7-2021, with the purpose that the provisions of the
10 Zoning Regulations and the County Code relating to Moderate Income Housing Units requirements for a
11 development on a Transit Oriented Development district site are consistent.

12 **NOW THEREFORE,**

13 ***Section 1. Be it enacted by the County Council of Howard County, Maryland, that the Howard County***
14 *Code is hereby amended as follows:*

15 *By adding:*

- 16 *Title 13 – Housing and Community Development*
- 17 *Subtitle 4. Moderate Income Housing Units*
- 18 *Section 13.402(n)*

19
20 **HOWARD COUNTY CODE**

21 **Title 13 – Housing and Community Development**
22 **Subtitle 4. Moderate Income Housing Units.**

23
24 ***Sec. 13.402. Development procedures; moderate income housing unit agreement; alternative.***

- 25 (a) *Development Procedures:*
 - 26 (1) When a development is subject to this subtitle, the developer shall submit to the
27 Department of Planning and Zoning, concurrent with the submission of the original final
28 plat or original site development plan for approval; as applicable:
 - 29 (i) An agreement to meet moderate income housing unit requirements; and

- 1 (ii) Recordable covenants approved by the Department and the County Solicitor.
- 2 (2) Covenants under this subsection shall be recorded among the land records of Howard
3 County concurrently with the recordation of the final subdivision plat or site development
4 plan approval, as applicable.
- 5 (3) Covenants under this subsection shall be extinguished in accordance with the agreement
6 under subsection (b) of this section.
- 7 (b) *Moderate Income Housing Unit Agreement.* The moderate income housing unit agreement
8 under this section shall be in a form prescribed by the Department and shall include:
- 9 (1) A statement of the number of moderate income housing units required under the zoning
10 regulations;
- 11 (2) A requirement that the developer comply with the minimum specifications for moderate
12 income housing units established by the Department;
- 13 (3) A plan for construction of moderate income housing units offered for sale and rental
14 units, which shall, to the extent practicable, consider current market conditions, the needs
15 of eligible purchasers, and planning considerations, require that each phase of the
16 development contain its proportionate share of the total number of moderate income
17 housing units required under the approved final plan or site development plan; and
- 18 (4) A statement of how moderate income housing units will be provided that shall include
19 the number of units, types of units, and location of units.
- 20 (c) *Covenants.* The covenants under this section shall be in a form prescribed by the Department
21 and shall include provisions prohibiting the sale or rental of a moderate income housing unit
22 except to an eligible purchaser, the Commission, the County, or a designee in accordance with
23 this subtitle.
- 24 (d) *Requirements Applicable to Moderate Income Housing Units.* Except as provided in
25 subsections (e) and (f) of this section, and except as provided in section 13.402A of this
26 subtitle, a developer obligated to provide moderate income housing units in accordance with
27 the zoning regulations as part of a development shall provide all of the units:
- 28 (1) On the site of the development project;

1 (2) In the same ratio of unit types as proposed for the development; and

2 (3) Evenly distributed within each phase of development.

3 (e) *Optional Methods:*

4 (1) A developer required to provide moderate income housing units under the zoning
5 regulations may request permission to provide the required units:

6 (i) At a different location;

7 (ii) As a different ratio of unit types; or

8 (iii) As disability income housing units.

9 (2) A developer may use an optional method under this subsection if the Director, upon
10 recommendation from the Housing and Community Development Board and in
11 consultation with the Director of Planning and Zoning and the Director of Community
12 Resources and Services, determines that:

13 (i) a. The number of moderate income housing units to be constructed in the
14 development will render the development economically unfeasible; or

15 b. The development proposes an indivisible package of services and facilities to
16 all residents that would cost the moderate income housing unit owners so much
17 that the units would be rendered unaffordable to eligible purchasers; and

18 (ii) The optional method results in geographic distribution of moderate income housing
19 units throughout the County.

20 (3) A developer may use disability income housing units as an optional method under this
21 subsection if the Director, in consultation with the Administrator of the Office of
22 Transportation, the Director of Community Resources and Services and the Director of
23 Planning and Zoning, determines that there is a need for the proposed disability income
24 housing units.

25 (4) A developer who uses an optional method of providing moderate income housing units
26 in accordance with paragraph (1) of this subsection shall calculate the number of units to
27 be provided as set forth below:

1 (i) For every one moderate income single-family detached housing unit required by the
 2 zoning regulations, the requirement shall be increased by the multiplier in the
 3 following chart:

Type of Unit	On-site	Off-site
Single Family Detached	Not Applicable	1.5 Moderate Income Housing Units
Single Family Attached	1.5 Moderate Income Units	1.75 Moderate Income Housing Units
Apartment	1.75 Moderate Income Units	2.0 Moderate Income Housing Units

4 (ii) For every one single-family attached moderate income housing unit required by the
 5 zoning regulations, the requirement shall be increased by the multiplier in the following chart:

Type of Unit	On-site	Off-site
Single Family Attached	0.33 Disability Income Housing Units	1.5 Moderate Income Housing Units
Apartment	1.5 Moderate Income Housing Units or 0.4 Disability Income Housing Units	1.75 Moderate Income Housing Units

6
 7 (iii) For every one moderate income apartment required by the zoning regulations, the
 8 requirement shall be modified by the multiplier in the following chart:

Type of Unit	On-site	Off-site, Apartment Units

Apartment	0.4 Disability Income Housing Unit	1.5 Moderate Income Housing Units
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(f) *Alternative Compliance to Optional Methods.*

(1) A developer may request permission from the Director to use a method other than those set forth in subsection (e) of this section to provide moderate income housing units.

(2) A request shall include the following information:

(i) A description of the alternative compliance proposal, including a comparison of the required and proposed units, in terms of the location, numbers, types, bedrooms, and square footage; and

(ii) The projected fair market value of the required and proposed units.

(3) In determining whether to approve a request under this subsection, the Director, upon recommendation from the Housing and Community Development Board and in consultation with the Director of Planning and Zoning and the Director of Community Resources and Services, shall consider whether:

(i) The phasing of moderate income housing units will be provided sooner than would be required by the phasing of market rate units;

(ii) The units present innovative architecture or site design features that contribute to affordability;

(iii) The design reduces operating and maintenance costs;

(iv) The location of the proposed alternative is part of a mixed-use development with existing or potential transit service; and

(v) The development provides a package of services or amenities for the benefit of moderate income residents.

(4) In granting a request under this subsection, the Director may reduce the number of units that would have been required under subsection (e) of this section, but may not reduce the number of units below the number required by the zoning regulations.

1 (g) *Alternative of Providing Rehabilitated Existing Moderate Income Housing Units.* The
2 developer of a housing development subject to this subtitle may provide up to five
3 rehabilitated existing moderate income housing units if the developer's requirement is for 29
4 or fewer moderate income housing units or, if the developer's requirement is for 30 or more
5 moderate income housing units, the developer may provide a maximum of 20 percent of the
6 required moderate income housing units by providing rehabilitated existing moderate income
7 housing units provided that:

8 (1) Prior to approval of a final subdivision plat or, if the property is not being subdivided,
9 a site development plan:

10 (i) The developer provides:

11 a. One rehabilitated existing moderate income housing unit certificate approved
12 by the Department as provided below for each moderate income housing unit
13 required by this subtitle; or

14 b. Two rehabilitated existing moderate income housing unit certificates for
15 condominium apartment units approved by the Department as provided below
16 for each moderate income housing unit required by this subtitle; and

17 (ii) The developer executes all of the required agreements and covenants relating to the
18 provision of newly built moderate income housing units in this subtitle.

19 (2) (i) If a developer is required to provide age-restricted moderate income housing units
20 by the zoning regulations, the developer may use the alternative of providing
21 rehabilitated units as permitted by this subsection.

22 (ii) A developer may use a non-age-restricted rehabilitated unit instead of an age-
23 restricted rehabilitated unit under this subsection if the Director, with the concurrence
24 of the Chief Administrative Officer:

25 a. Has made a good faith effort to find, but is unable to find, any eligible purchaser
26 who meets the criteria for the age-restricted moderate income housing unit
27 consistent with Federal discrimination law exemptions; or

28 b. Has determined that the unit is not physically suited for use by an age-restricted
29 eligible purchaser.

1 (iii) The total number of non-age-restricted rehabilitated units that are substituted for
2 age-restricted units shall not exceed ten.

3 (3) Except as provided in subsection (i) of this section, the rehabilitated existing moderate
4 income housing units are subject to all of the requirements applicable to newly built
5 moderate income housing units in this subtitle.

6 (h) *Approval of Certificates for Rehabilitated Existing Moderate Income Housing Units; Sale*
7 *of Certificates.* The application, approval and sale of certificates for rehabilitated existing
8 moderate income housing units shall be governed by the following criteria and procedures:

9 (1) (i) The owner of a residential housing unit or units or an Applicant acting on their
10 behalf may apply to the Department for eligibility to apply for a certificate for a
11 rehabilitated existing moderate income housing unit.

12 (ii) Within 20 business days following application, the Department shall approve such
13 a unit as eligible for a certificate application if it finds:

14 a. That the unit is in need of substantial repairs based on an itemized estimate of
15 cost of repairs submitted by the Applicant;

16 b. That the unit shall not be or previously have been a moderate income housing
17 unit approved pursuant to this subtitle; and

18 c. That the unit will add to the stock of needed moderate income housing units in
19 the County.

20 (2) (i) If the Department approves a unit as being eligible for certificate application, the
21 owner of the unit or an Applicant acting in his behalf may apply for that certificate.

22 (ii) The Department shall approve the application and issue a certificate for a
23 rehabilitated existing moderate income housing unit if it finds that the Applicant has
24 executed the required moderate income housing unit covenants and agreements and
25 met the following rehabilitation requirements for the unit:

26 a. Kitchen and bath cabinets shall be new or updated in the last ten years and in
27 good condition; kitchen and bath fixtures shall conform to current maximum

- 1 water usage standards; and all major kitchen appliances shall be new and
2 warranted for at least one year;
- 3 b. All carpets and flooring shall be new except for hardwood flooring that is new
4 or newly refinished;
- 5 c. The heating and cooling systems shall be new or have been replaced in the last
6 ten years and be in good working order;
- 7 d. All drywall or other wall materials shall be in good condition with no outdated
8 finishes;
- 9 e. All doors and locks shall be in good working order;
- 10 f. All windows shall be new or replaced in the last ten years, have insulated glass
11 or storm windows and be in good condition;
- 12 g. The roof shall be new or replaced in the last ten years, be in good condition, and
13 have at least a 20-year manufacturer's warranty remaining at the time of sale;
- 14 h. Facia, gutters and downspouts shall be in good condition;
- 15 i. The Applicant shall certify that the unit complies with all applicable asbestos
16 and lead paint laws;
- 17 j. Exterior paint shall be new and siding shall be new or replaced in the last ten
18 years and be in good condition;
- 19 k. Decks shall be power washed and stained and be in good condition;
- 20 l. The yard shall be in good condition with adequate and appropriate ground cover,
21 trimmed trees and bushes, if any, fences in good condition, if any, and with any
22 sidewalks and driveways in good condition and not in need of repairs; and
- 23 m. The Applicant shall provide the following items for the purchaser of the
24 moderate income housing unit:
- 25 i. A new power mower, for units having a lawn;
- 26 ii. Pruning shears, for units having shrubs or other similar landscaping;
- 27 iii. A power edger, for units having a lawn;

- 1 iv. A rake, for units having a lawn;
- 2 v. One gallon of interior paint in each color used;
- 3 vi. One gallon of exterior paint in each color used, where appropriate; and
- 4 vii. Paint brushes and rollers for interior and exterior surfaces.

5 All rehabilitation done to the outside of apartment units pursuant to this section shall be
6 consistent with other units in the structure.

7 (3) The Department shall have the unit inspected by an independent inspector who will
8 certify that the unit meets the above rehabilitation requirements prior to the Departments
9 decision on the application. The Applicant shall pay the costs of this inspection before
10 the Department makes a decision on the application.

11 (4) The owner of the rehabilitated existing moderate income housing unit is the holder of
12 the certificate for that unit once it is issued by the Department and may:

13 (i) Receive credit for providing alternative moderate priced housing units pursuant to
14 subsection (g) of this section, which units shall be sold and, except as provided in
15 subsection (i) of this section, otherwise subject to all of the requirements applicable
16 to newly built moderate priced housing units in this subtitle; or

17 (ii) Sell the certificate and the unit to which it applies to a developer of moderate
18 income housing units at a price to be agreed to by the holder and developer who shall
19 then receive credit for providing alternative moderate income housing units pursuant
20 to subsection (g) of this section, which units shall be subject to all of the requirements
21 applicable to newly built moderate priced housing units in this subtitle.

22 (i) *Initial Sale Price for Units Sold through the Moderate Income Housing Unit Community*
23 *Revitalization Program.* The Housing and Community Development Board shall:

24 (1) Establish the initial sale price for rehabilitated units provided through the moderate
25 income housing unit community revitalization program; and

26 (2) Adopt regulations setting the standards to be used for establishing the initial sale price.

1 (j) *Annual Analysis of the Moderate Income Housing Programs.* The Director shall complete an
2 annual analysis of the moderate income housing unit programs and, subject to section 22.1000
3 of the County Code, shall submit the analysis to the County Executive and to the County
4 Council, along with a presentation in a public meeting to the County Council, by April 1 of
5 each year. The analysis shall include:

6 (1) The number, types, and location of moderate income housing units provided on-site and
7 as required by the zoning regulations;

8 (2) Moderate income housing units provided as an optional method under subsection (e) of
9 this section and as an alternative compliance under subsection (f) of this section;

10 (3) The number of moderate income housing units that have been renovated and the
11 financial costs of renovating the unit;

12 (4) The range of sale prices and rental rates, including the average sales price and rental-
13 rate;

14 (5) Income information on the home buyers and renters participating in the program;

15 (6) The number of applicants selected to purchase a moderate income housing unit and the
16 priority categories for which they qualify under section 13.406(e); and

17 (7) All marketing and outreach efforts of the department to each of the categories in section
18 13.406(e).

19 (k) *Alternative of Satisfying Moderate Income Housing Unit Requirement in Residential Mobile*
20 *Home Development.* The developer of a housing development in an R-MH zoning district
21 which is subject to this subtitle may satisfy all, or a portion of, its moderate income housing
22 unit requirement by providing for the sale of lots in an adjoining subdivision to the
23 Commission or designee as defined in this subtitle at below market price by an agreement
24 with the Commission or designee as defined in this subtitle provided that:

25 (1) The housing development and the adjoining subdivision were part of the same original
26 sketch plan;

27 (2) The adjoining subdivision shall be zoned residential-mobile home and shall consist of
28 previously leased pad sites in a mobile home park;

- 1 (3) The residential mobile home development and the adjoining subdivision share a
2 stormwater management facility;
- 3 (4) The lots shall be sold to the Commission or designee as defined in this subtitle at below
4 market price for either conveyance through shared equity financing to an eligible
5 purchaser or rental to an individual of moderate income;
- 6 (5) Each lot sold to the Commission or designee as defined in this subtitle shall equal one
7 moderate income housing unit required in the adjacent housing development;
- 8 (6) Concurrent with, prior to, or within 120 days subsequent to the approval of a site
9 development plan or the final plat of subdivision for the housing development, the
10 developer and the Commission or designee as defined in this subtitle shall execute an
11 agreement which satisfies the requirements of this section;
- 12 (7) The agreement shall provide that any covenant to provide moderate income housing
13 units which is already recorded shall be extinguished upon the sale of the same number
14 of lots to the Commission or designee as defined in this subtitle; and
- 15 (8) An existing resident in the adjoining subdivision who meets the eligibility requirements
16 of this subtitle shall be given first priority as an eligible purchaser of a lot or as a tenant
17 of a lot owned by the Commission or designee as defined in this subtitle.
- 18 (l) *Prohibited Transfers.* A developer using an optional or alternative method of compliance
19 may not provide the required moderate income housing units on property:
- 20 (1) Wholly owned by the Howard County Housing Commission;
- 21 (2) Owned by the County; or
- 22 (3) In a census tract block group where the poverty level is ten percent or greater according
23 to the most recent census.
- 24 (m) *Calculations—Fractions of a Unit.* If a calculation to determine the number of moderate
25 income housing units a developer is required to provide under the Zoning Regulations results
26 in a fraction of a moderate income housing unit, the developer shall provide an additional
27 moderate income housing unit.
- 28 (N) *TOD (TRANSIT ORIENTED DEVELOPMENT) DISTRICT – MODERATE INCOME HOUSING UNIT*

1 *REQUIREMENTS.*

2 (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, A DEVELOPER OF A TOD
3 (TRANSIT ORIENTED DEVELOPMENT) DISTRICT SITE SHALL PROVIDE THE MODERATE INCOME
4 HOUSING UNITS REQUIRED UNDER THE ZONING REGULATIONS AS PART OF THE DEVELOPMENT ON
5 THE SITE OF THE DEVELOPMENT PROJECT.

6 (2) THE DEVELOPER SHALL NOT:

- 7 (1) PROVIDE THE MODERATE HOUSING INCOME UNITS AT A DIFFERENT LOCATION;
- 8 (2) PAY A FEE-IN-LIEU OF TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT;
- 9 (3) USE AN OPTIONAL METHOD AS PROVIDED UNDER SUBSECTION (E) OF THIS SECTION; OR
- 10 (4) USE ALTERNATIVE COMPLIANCE TO OPTIONAL METHODS AS PROVIDED UNDER SUBSECTION

11 (F) OF THIS SECTION.

12

13 ***Section 2. Be it further enacted*** by the County Council of Howard County, Maryland, that this Act shall
14 *become effective 61 days after its enactment.*