

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

County Council of Howard County, Maryland

2024 Legislative Session

Legislative Day No. 1
Legislative Date: January 2, 2024

Bill No. 4 -2024

Introduced by: Liz Walsh

AN ACT repealing certain provisions of law that provide optional methods for a developer to provide moderate income housing units under the zoning regulations and that allow a developer to request permission from the Director of Housing to use alternative compliance to certain optional methods; repealing certain provisions of law relating to market-based required alternatives to the moderate income housing unit obligation; repealing certain provisions of law relating to alternatives to moderate income housing unit obligation in certain zones; repealing certain provisions of law relating to the sale of moderate income housing units; repealing certain provisions of law relating to the rental of moderate income housing units; altering certain definitions and certain regulations; and generally relating to the sale of moderate income housing units.

Introduced and read first time _____, 2024. Ordered posted and hearing scheduled.

By order _____
Michelle R. Harrod, 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 _____, 2024.

By order _____
Michelle R. Harrod, Administrator

This Bill was read the third time on _____, 2024 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ____ day of _____, 2024 at ____ a.m./p.m.

By order _____
Michelle R. Harrod, Administrator

Approved/Vetoed by the County Executive _____, 2024

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

3 By amending:

4 Title 13. Housing and Community Development.

5 Subtitle 4. Moderate Income Housing Units.

6 Section 13.401. Definitions.

7 Section 13.402. Development procedures; moderate income housing unit agreement;
8 alternative.

9 Section 13.402A. Market-based required alternatives to moderate income housing unit
10 obligation.

11 Section 13.402C. Alternatives to moderate income housing unit obligation in certain zones.

12 Section 13.404. Sale of moderate income housing unit.

13 Section 13.405. Rental of moderate income housing units.

14 Section 13.409. Regulations.

15

16 **Title 13. Housing and Community Development.**

17 **Subtitle 4. Moderate Income Housing Units**

18 **Sec. 13.401. Definitions.**

19 (a) *In General.* In this subtitle, the following words have the meanings indicated:

20 (b) *Commission* means the Howard County Housing Commission.

21 (c) *Department* means the Howard County Department of Housing and Community
22 Development.

23 (d) *Designee* means the Howard County Housing Commission, a nonprofit corporation, or a
24 quasi-public housing development organization designated by the Department as eligible to
25 operate and maintain moderate income housing units on a long-term basis.

26 (e) *Director* means the Director of the Department of Housing and Community Development.

27 (f) *Disability income* means an annual household income of up to 20 percent of the median
28 income in Howard County comprised, in part, from a cash payment of Supplemental
29 Security Income (SSI) or Social Security Disability Income (SSDI).

- 1 (g) *Disability income housing unit* (DIHU) means a dwelling unit offered for rent to a
2 household with an adult person receiving disability income.
- 3 (h) *Dwelling unit* has the meaning stated in the Howard County Zoning Regulations.
- 4 (i) *Eligible purchaser* means a holder of a certificate of eligibility under section 13.406 of this
5 subtitle who has been prequalified by the Department to obtain a mortgage in an amount
6 sufficient to enable the individual to purchase a moderate income housing unit. Eligible
7 purchasers cannot own any other real property at the time they are awarded a moderate-
8 income housing unit.
- 9 (j) *First-time home buyer* means an individual who, during the three years before receiving a
10 certificate of eligibility:
- 11 (1) Has not owned any property used or usable as a residence; or
- 12 (2) Has owned a personal residence but, because of the separation or divorce of the joint
13 tenants or the death of one of the joint tenants, needs to purchase a personal residence
14 without the former joint tenant.
- 15 (k) *Initial sale price* means the price set by the Housing and Community Development Board
16 under section 13.403 of this subtitle for the first sale of a type of moderate income housing
17 unit.
- 18 (l) *Low income* means an annual household income of up to 60 percent of the median income
19 in Howard County.
- 20 (m) *Low income housing unit* means a dwelling unit offered for sale or rent to households with
21 low incomes.
- 22 (n) *Median income* means the median annual income of Howard County as determined by the
23 U.S. Census Bureau.
- 24 (o) *Moderate income* means an annual household income of up to 80 percent of the median
25 income in Howard County.
- 26 (p) *Moderate income housing unit* (MIHU) means a dwelling unit offered for sale or rent to
27 households with moderate incomes.

1 (q) *Moderate income housing unit offered for sale* means a unit that is built on a subdivided lot
2 or subject to a condominium regime, as provided in a moderate income housing unit
3 agreement under subsection 13.402(b) of this subtitle.

4 (r) *Proffered unit* means a moderate income housing unit in a development for which the
5 provision of moderate income housing is proffered by the petitioner and made a condition
6 of approval in a preliminary development plan approved by the Zoning Board.

7 [[(s) *Rehabilitated existing moderate income housing unit* means an existing residential housing
8 unit that has been determined by the Department of Housing and Community Development
9 to have met the specified eligibility criteria and rehabilitation requirements for such units as
10 provided in this subtitle and that is subject to and bound to comply with all of the
11 requirements in this subtitle applicable to newly built moderate income housing units.]]

12 [[(t)] (s) *Rental unit* means a moderate income housing unit that is not a moderate income
13 housing unit offered for sale.

14 **Sec. 13.402. Development procedures; moderate income housing unit agreement;**
15 **DISABILITY INCOME HOUSING OPTION [[alternative]].**

16 (a) *Development Procedures:*

17 (1) When a development is subject to this subtitle, the developer shall submit to the
18 Department of Planning and Zoning, concurrent with the submission of the original
19 final plat or original site development plan for approval; as applicable:

20 (i) An agreement to meet moderate income housing unit requirements; and

21 (ii) Recordable covenants approved by the Department and the County Solicitor.

22 (2) Covenants under this subsection shall be recorded among the land records of Howard
23 County concurrently with the recordation of the final subdivision plat or site
24 development plan approval, as applicable.

25 (3) Covenants under this subsection shall be extinguished in accordance with the
26 agreement under subsection (b) of this section.

27 (b) *Moderate Income Housing Unit Agreement.* The moderate income housing unit agreement
28 under this section shall be in a form prescribed by the Department and shall include:

- 1 (1) A statement of the number of moderate income housing units required under the
2 zoning regulations;
 - 3 (2) A requirement that the developer comply with the minimum specifications for
4 moderate income housing units established by the Department;
 - 5 (3) A plan for construction of moderate income housing units offered for sale and rental
6 units, which shall, to the extent practicable, consider current market conditions, the
7 needs of eligible purchasers, and planning considerations, require that each phase of
8 the development contain its proportionate share of the total number of moderate
9 income housing units required under the approved final plan or site development plan;
10 and
 - 11 (4) A statement of how moderate income housing units will be provided that shall include
12 the number of units, types of units, and location of units.
- 13 (c) *Covenants*. The covenants under this section shall be in a form prescribed by the
14 Department and shall include provisions prohibiting the sale or rental of a moderate income
15 housing unit except to an eligible purchaser, the Commission, the County, or a designee in
16 accordance with this subtitle.
- 17 (d) *Requirements Applicable to Moderate Income Housing Units*. [[Except as provided in
18 subsections (e) and (f) of this section, and except as provided in section 13.402A of this
19 subtitle, a]] A developer obligated to provide moderate income housing units in accordance
20 with the zoning regulations as part of a development shall provide all of the units:
- 21 (1) On the site of the development project;
 - 22 (2) In the same ratio of unit types as proposed for the development; and
 - 23 (3) Evenly distributed within each phase of development.
- 24 (e) *Optional [[Methods]] METHOD FOR DISABILITY INCOME HOUSING:*
- 25 [[(1) A developer required to provide moderate income housing units under the zoning
26 regulations may request permission to provide the required units:
- 27 (i) At a different location;
 - 28 (ii) As a different ratio of unit types; or

1 (iii) As disability income housing units.

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

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

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

11 (ii) The optional method results in geographic distribution of moderate income
12 housing units throughout the County.]]

13 [[(3)]] (1) A developer may use disability income housing units as an optional method under
14 this subsection if the Director, in consultation with the Administrator of the Office of
15 Transportation, the Director of Community Resources and Services and the Director of
16 Planning and Zoning, determines that there is a need for the proposed disability income
17 housing units.

18 [[(4)]] (2) A developer who uses an optional method of providing moderate income housing
19 units in accordance with paragraph (1) of this subsection shall calculate the number of
20 units to be provided as set forth below:

21 [[(i) For every one moderate income single-family detached housing unit required by
22 the zoning regulations, the requirement shall be increased by the multiplier in the
23 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
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2 [[ii]] (i) For every one single-family attached moderate income housing unit required
3 by the zoning regulations, the requirement shall be increased by the multiplier [[in
4 the following chart]] OF 0.33 DISABILITY INCOME HOUSING UNITS. [[:

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

5]]

6 [[iii]] (ii) For every one moderate income apartment required by the zoning
7 regulations, the requirement shall be modified by the multiplier [[in the following
8 chart:]] OF 0.4 DISABILITY INCOME HOUSING UNITS. [[:

Type of Unit	On-site	Off-site, Apartment Units
Apartment	0.4 Disability Income Housing Unit	1.5 Moderate Income Housing Units

9]]

10 [[f) *Alternative Compliance to Optional Methods.*

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

14 (2) A request shall include the following information:

- 1 (i) A description of the alternative compliance proposal, including a comparison of
2 the required and proposed units, in terms of the location, numbers, types,
3 bedrooms, and square footage; and
- 4 (ii) The projected fair market value of the required and proposed units.
- 5 (3) In determining whether to approve a request under this subsection, the Director, upon
6 recommendation from the Housing and Community Development Board and in
7 consultation with the Director of Planning and Zoning and the Director of Community
8 Resources and Services, shall consider whether:
- 9 (i) The phasing of moderate income housing units will be provided sooner than
10 would be required by the phasing of market rate units;
- 11 (ii) The units present innovative architecture or site design features that contribute to
12 affordability;
- 13 (iii) The design reduces operating and maintenance costs;
- 14 (iv) The location of the proposed alternative is part of a mixed-use development with
15 existing or potential transit service; and
- 16 (v) The development provides a package of services or amenities for the benefit of
17 moderate income residents.
- 18 (4) In granting a request under this subsection, the Director may reduce the number of
19 units that would have been required under subsection (e) of this section, but may not
20 reduce the number of units below the number required by the zoning regulations.
- 21 (g) *Alternative of Providing Rehabilitated Existing Moderate Income Housing Units.* The
22 developer of a housing development subject to this subtitle may provide up to five
23 rehabilitated existing moderate income housing units if the developer's requirement is for 29
24 or fewer moderate income housing units or, if the developer's requirement is for 30 or more
25 moderate income housing units, the developer may provide a maximum of 20 percent of the
26 required moderate income housing units by providing rehabilitated existing moderate
27 income housing units provided that:

- 1 (1) Prior to approval of a final subdivision plat or, if the property is not being subdivided,
2 a site development plan:
- 3 (i) The developer provides:
- 4 a. One rehabilitated existing moderate income housing unit certificate approved by
5 the Department as provided below for each moderate income housing unit
6 required by this subtitle; or
- 7 b. Two rehabilitated existing moderate income housing unit certificates for
8 condominium apartment units approved by the Department as provided below for
9 each moderate income housing unit required by this subtitle; and
- 10 (ii) The developer executes all of the required agreements and covenants relating to
11 the provision of newly built moderate income housing units in this subtitle.
- 12 (2) (i) If a developer is required to provide age-restricted moderate income housing units by
13 the zoning regulations, the developer may use the alternative of providing rehabilitated
14 units as permitted by this subsection.
- 15 (ii) A developer may use a non-age-restricted rehabilitated unit instead of an age-
16 restricted rehabilitated unit under this subsection if the Director, with the
17 concurrence of the Chief Administrative Officer:
- 18 a. Has made a good faith effort to find, but is unable to find, any eligible purchaser
19 who meets the criteria for the age-restricted moderate income housing unit
20 consistent with Federal discrimination law exemptions; or
- 21 b. Has determined that the unit is not physically suited for use by an age-restricted
22 eligible purchaser.
- 23 (iii) The total number of non-age-restricted rehabilitated units that are substituted for
24 age-restricted units shall not exceed ten.
- 25 (3) Except as provided in subsection (i) of this section, the rehabilitated existing moderate
26 income housing units are subject to all of the requirements applicable to newly built
27 moderate income housing units in this subtitle.

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

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

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

- 9 a. That the unit is in need of substantial repairs based on an itemized estimate of cost
10 of repairs submitted by the Applicant;
11 b. That the unit shall not be or previously have been a moderate income housing unit
12 approved pursuant to this subtitle; and
13 c. That the unit will add to the stock of needed moderate income housing units in the
14 County.

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

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

- 21 a. Kitchen and bath cabinets shall be new or updated in the last ten years and in
22 good condition; kitchen and bath fixtures shall conform to current maximum
23 water usage standards; and all major kitchen appliances shall be new and
24 warranted for at least one year;
25 b. All carpets and flooring shall be new except for hardwood flooring that is new or
26 newly refinished;
27 c. The heating and cooling systems shall be new or have been replaced in the last ten
28 years and be in good working order;

- 1 d. All drywall or other wall materials shall be in good condition with no outdated
- 2 finishes;
- 3 e. All doors and locks shall be in good working order;
- 4 f. All windows shall be new or replaced in the last ten years, have insulated glass or
- 5 storm windows and be in good condition;
- 6 g. The roof shall be new or replaced in the last ten years, be in good condition, and
- 7 have at least a 20-year manufacturer's warranty remaining at the time of sale;
- 8 h. Facia, gutters and downspouts shall be in good condition;
- 9 i. The Applicant shall certify that the unit complies with all applicable asbestos and
- 10 lead paint laws;
- 11 j. Exterior paint shall be new and siding shall be new or replaced in the last ten
- 12 years and be in good condition;
- 13 k. Decks shall be power washed and stained and be in good condition;
- 14 l. The yard shall be in good condition with adequate and appropriate ground cover,
- 15 trimmed trees and bushes, if any, fences in good condition, if any, and with any
- 16 sidewalks and driveways in good condition and not in need of repairs; and
- 17 m. The Applicant shall provide the following items for the purchaser of the moderate
- 18 income housing unit:
 - 19 i. A new power mower, for units having a lawn;
 - 20 ii. Pruning shears, for units having shrubs or other similar landscaping;
 - 21 iii. A power edger, for units having a lawn;
 - 22 iv. A rake, for units having a lawn;
 - 23 v. One gallon of interior paint in each color used;
 - 24 vi. One gallon of exterior paint in each color used, where appropriate; and
 - 25 vii. Paint brushes and rollers for interior and exterior surfaces.

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

- 28 (3) The Department shall have the unit inspected by an independent inspector who will
29 certify that the unit meets the above rehabilitation requirements prior to the

1 Departments decision on the application. The Applicant shall pay the costs of this
2 inspection before the Department makes a decision on the application.

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

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

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

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

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

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

21 [[(j)] (F) *Annual Analysis of the Moderate Income Housing Programs.* The Director shall
22 complete an annual analysis of the moderate income, LOW INCOME, AND DISABILITY housing
23 unit programs and, subject to section 22.1000 of the County Code, shall submit the analysis
24 to the County Executive and to the County Council, along with a presentation in a public
25 meeting to the County Council, by April 1 of each year. The analysis shall include:

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

1 (2) Moderate]] LOW income AND DISABILITY INCOME housing units provided as an optional
2 method under SECTION 13.402B OF THIS SUBTITLE OR subsection (e) of this section
3 [[and as an alternative compliance under subsection (f) of this section]];

4 [[(3) The number of moderate income housing units that have been renovated and the
5 financial costs of renovating the unit;]]

6 [[(4)]] (2) The range of sale prices and rental rates, including the average sales price and
7 rental-rate;

8 [[(5)]] (3) Income information on the home buyers and renters participating in the program;

9 [[(6)]] (4) The number of applicants selected to purchase a [[moderate]] LOW INCOME AND
10 DISABILITY income housing unit and the priority categories for which they qualify
11 under section 13.406(e); and

12 [[(7)]] (5) All marketing and outreach efforts of the [[department]] DEPARTMENT to each of
13 the categories in section 13.406(e).

14 [[(k) *Alternative of Satisfying Moderate Income Housing Unit Requirement in Residential*

15 *Mobile Home Development.* The developer of a housing development in an R-MH zoning
16 district which is subject to this subtitle may satisfy all, or a portion of, its moderate income
17 housing unit requirement by providing for the sale of lots in an adjoining subdivision to the
18 Commission or designee as defined in this subtitle at below market price by an agreement
19 with the Commission or designee as defined in this subtitle provided that:

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

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

24 (3) The residential mobile home development and the adjoining subdivision share a
25 stormwater management facility;

26 (4) The lots shall be sold to the Commission or designee as defined in this subtitle at
27 below market price for either conveyance through shared equity financing to an
28 eligible purchaser or rental to an individual of moderate income;

- 1 (5) Each lot sold to the Commission or designee as defined in this subtitle shall equal one
2 moderate income housing unit required in the adjacent housing development;
- 3 (6) Concurrent with, prior to, or within 120 days subsequent to the approval of a site
4 development plan or the final plat of subdivision for the housing development, the
5 developer and the Commission or designee as defined in this subtitle shall execute an
6 agreement which satisfies the requirements of this section; (7) The agreement shall
7 provide that any covenant to provide moderate income housing units which is already
8 recorded shall be extinguished upon the sale of the same number of lots to the
9 Commission or designee as defined in this subtitle; and
- 10 (8) An existing resident in the adjoining subdivision who meets the eligibility
11 requirements of this subtitle shall be given first priority as an eligible purchaser of a lot
12 or as a tenant of a lot owned by the Commission or designee as defined in this subtitle.
- 13 (l) *Prohibited Transfers.* A developer using an optional or alternative method of compliance
14 may not provide the required moderate income housing units on property:
- 15 (1) Wholly owned by the Howard County Housing Commission;
- 16 (2) Owned by the County; or
- 17 (3) In a census tract block group where the poverty level is ten percent or greater
18 according to the most recent census.]]
- 19 [[(m)]] (G) *Calculations—Fractions of a Unit.* If a calculation to determine the number of
20 moderate income housing units a developer is required to provide under the Zoning
21 Regulations results in a fraction of a moderate income housing unit, the developer shall
22 provide an additional moderate income housing unit.
- 23 [[(n)]] (H) *TOD (Transit Oriented Development) and PGCC (Planned Golf Course
24 Community)—Moderate Income Housing Unit Requirements.*
- 25 (1) Notwithstanding any other provision of this subtitle, a developer of a TOD (Transit
26 Oriented Development) or a PGCC (Planned Golf Course Community) district site
27 shall provide the moderate income housing units required under the zoning regulations,
28 or disability income housing units or low income housing units as part of an optional

1 method of compliance, as part of the development on the site of the development
2 project.

3 (2) The developer shall not:

4 (i) Provide the moderate housing income units at a different location; OR

5 (ii) Pay a fee-in-lieu of to the Department of Housing and Community Development
6 [[;

7 (iii) Use an optional method as provided under subsection (e)(1)(i) of this section; or

8 (iv) Use alternative compliance to optional methods as provided under subsection (f)
9 of this section]].

10 **[[Sec. 13.402A. Market-based required alternatives to moderate income housing unit**
11 **obligation.**

12 (a) *Application.* This section shall apply when the base sales price for a moderate income
13 housing unit, as determined by the Department at the time the seller offers the unit for sale
14 pursuant to section 13.404 of this subtitle, is 90 percent or more of the market price. For
15 purposes of this section, market price is the net price offered to the public by the seller for a
16 comparable unit within the development. In this instance, instead of providing moderate
17 income housing units as required by section 13.402 of this subtitle, the developer shall
18 pursue one or a combination of the alternatives set forth in subsection (b), (c), or (d) of this
19 section.

20 (b) *Units in Foreclosure.* The developer shall substitute units by purchasing, rehabilitating, and
21 offering for sale existing housing units that are in foreclosure and are located throughout the
22 County as follows:

23 (1) A substitute unit is eligible under this option if it:

24 (i) Has had mortgage or tax foreclosure proceedings initiated;

25 (ii) Has not had a mortgage or tax payment made for at least 90 days; and

26 (iii) Has been offered for sale by the owner to the public;

- 1 (2) The Department must approve each substitute unit before purchase by the developer,
 2 and shall ensure that the developer provides the same number of bedrooms;
- 3 (3) The rehabilitation of each substitute unit shall meet the Department's minimum
 4 standards, as determined by regulation of the Department;
- 5 (4) Upon completion of rehabilitation, the Department must approve each completed unit;
- 6 (5) A developer shall purchase and rehabilitate the unit and request a priority period, as set
 7 forth in section 13.404 of this subtitle, within one year of the developer's initial
 8 notification of sale under section 13.404;
- 9 (6) The sales price for a substitute unit shall be the lowest of the following:
- 10 (i) The moderate income housing unit price determined by the Department at the
 11 time of the developer's request for a priority period for the substitute unit;
- 12 (ii) Ninety percent of the appraised value of the substitute unit, as rehabilitated; or
- 13 (iii) The developer's actual cost of purchasing, rehabilitating, and selling the substitute
 14 unit, including carrying costs; and
- 15 (7) A developer shall purchase substitute units of the following types and at the following
 16 ratio:

TYPE OF REQUIRED MIHU:	TYPE OF SUBSTITUTE UNIT:	RATIO:
Apartment	Apartment	1:1
Apartment	Single-family, attached	3:2
Apartment	Single-family, detached	2:1
Single-family, attached	Apartment	2:3
Single-family, attached	Single-family, attached	1:1
Single-family, attached	Single-family, detached	3:2
Single-family, detached	Apartment	1:2
Single-family, detached	Single-family, attached	2:3
Single-family, detached	Single-family, detached	1:1

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(c) *Offer to Low-Income Purchasers.* The developer shall substitute units by offering one-third of the moderate income housing units required under this subtitle to eligible low-income purchasers who shall have an annual household income of up to 60 percent of the median income. The purchase price for these units shall be established in the same manner as set forth in section 13.403 of this subtitle, except that the base price shall be affordable to a purchaser with a household income equal to the following percentages of median income, adjusted by family size appropriate to the size and number of bedrooms in the unit:

- (1) Fifty-five percent for proffered units and single-family homes;
- (2) Fifty percent for semi-detached (duplexes) and single-family attached (townhomes);
and
- (3) Forty-five percent for apartments (condominiums).

(d) *Fee-In-Lieu.* The developer shall pay a fee-in-lieu to the Department for each moderate income housing unit required by this subtitle as follows:

- (1) The fee-in-lieu shall be calculated as the difference between the prevailing market price for the same unit type and the sale price for the moderate income housing unit provided, however, the fee-in-lieu shall not be less than seven and one-half percent of the sale price for the moderate income housing unit;
- (2) The prevailing market price shall be determined by a survey of sales prices of units of the same type sold in the County within the previous 12 months;
- (3) Sales of the following units shall be excluded from the survey:
 - (i) Townhouses less than 1,200 square feet and more than 2,000 square feet;
 - (ii) Single-family detached homes less than 1,500 square feet and more than 2,800 square feet;
 - (iii) Apartments less than 650 square feet and more than 1,300 square feet;
 - (iv) Units in poor condition or in need of significant repair or renovation; and
 - (v) The three highest and three lowest sales prices;

1 (4) A developer shall pay the fee-in-lieu before use and occupancy permits may be issued
2 for the units designated as moderate income housing units by the development's
3 moderate income housing unit agreement; and

4 (5) The fee-in-lieu collected by the Department shall be used for housing programs
5 operated by the Department.]]

6 **[[Sec. 13.402C. Alternatives to moderate income housing unit obligation in certain zones.**

7 (a) *Application.* This section shall apply only to:

8 (1) Residential developments of single-family detached homes offered for sale in the RC,
9 RR, R-ED, R-20, R-12, and R-SC zoning districts;

10 (2) Age-restricted adult housing and planned senior communities;

11 (3) Single-family attached homes in R-H-ED; and

12 (4) Mixed use developments in MXD.

13 (b) *Alternative Compliance.* In these developments, instead of providing moderate income
14 housing units as required by section 13.402 of this subtitle, the developer may pursue one or
15 a combination of the alternatives set forth in subsection (c), (d) or (e) of this section.

16 (c) *Substitute Units.* The developer may substitute units by purchasing, rehabilitating, and
17 offering for sale existing housing units that are located throughout the County as follows:

18 (1) The Department must approve each substitute unit before purchase by the developer,
19 and shall ensure that the substitute unit provides the same number of bedrooms as
20 planned for the on-site unit;

21 (2) The rehabilitation of each substitute unit shall meet the Department's minimum
22 standards, as determined by regulation of the Department;

23 (3) Upon completion of rehabilitation, the Department must approve each completed unit
24 before resale;

25 (4) A developer shall purchase and rehabilitate the unit and request a priority period, as set
26 forth in section 13.404 of this subtitle, within one year of the developer's initial
27 notification of sale under section 13.404;

- 1 (5) The sales price for a substitute unit shall be the lowest of the following:
- 2 (i) The moderate income housing unit price determined by the Department at the
- 3 time of the developer's request for a priority period for the substitute unit; or
- 4 (ii) The developer's actual cost of purchasing, rehabilitating, and selling the substitute
- 5 unit, including actual and reasonable carrying costs; and
- 6 (6) A developer shall purchase substitute units of the following types and at the following
- 7 ratio:

TYPE OF REQUIRED MIHU	TYPE OF SUBSTITUTE UNIT	RATIO
Apartment	Apartment	1:1
Apartment	Single-family, attached	3:2
Apartment	Single-family, detached	2:1
Single-family, attached	Apartment	2:3
Single-family, attached	Single-family, attached	1:1
Single-family, attached	Single-family, detached	3:2
Single-family, detached	Apartment	1:2
Single-family, detached	Single-family, attached	2:3
Single-family, detached	Single-family, detached	1:1

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- 10 (d) *Offer to Low-Income Purchasers.* The developer may substitute units by offering one-third
- 11 of the moderate income housing units required under this subtitle to eligible low-income
- 12 purchasers who shall have an annual household income of up to 60 percent of the median
- 13 income. The purchase price for these units shall be established in the same manner as set
- 14 forth in section 13.403 of this subtitle, except that the base price shall be affordable to a
- 15 purchaser with a household income equal to the following percentages of median income,
- 16 adjusted by family size appropriate to the size and number of bedrooms in the unit:
- 17 (1) Fifty-five percent for proffered units and single-family detached homes;
- 18 (2) Fifty percent for semi-detached (duplexes) and single-family attached (townhomes);
- 19 and

- 1 (3) Forty-five percent for apartments (condominiums).
- 2 (e) *Fee-In-Lieu*. The developer may pay a fee-in-lieu to the Department for each unit in the
3 development or portion of the development that is not providing MIHUs onsite:
- 4 (1) The fee-in-lieu shall be based on the square footage calculated by the County for
5 purposes of determining a unit's building excise tax when applying for a building
6 permit for the development;
- 7 (2) The fee-in-lieu shall be set yearly by Council resolution based upon the percentage of
8 increase in the ENR Construction Cost Index for the Baltimore Region as reported in
9 ENR, Engineering News Record;
- 10 (3) The fee-in-lieu shall be published on the County's website together with the base sales
11 prices and rents for moderate income housing units;
- 12 (4) If the developer chooses to provide a portion of the required MIHUs on site, the fee
13 shall be prorated accordingly.
- 14 (5) Except as provided in paragraph (a) of this section, a developer may not pay a fee in
15 lieu of a single-family attached or apartment moderate income housing unit except in
16 an age-restricted adult housing or planned senior community;
- 17 (6) A developer shall pay the fee-in-lieu for each unit at the time a building permit is
18 issued;
- 19 (7) The fee-in-lieu collected by the Department shall be used for the following:
- 20 (i) The Settlement Downpayment Loan Program;
- 21 (ii) The Rehabilitation Loan Program;
- 22 (iii) Grants to other County entities, the Howard County Housing Commission or local
23 non-profits for rental housing subsidies, the purchase and rehabilitation of existing
24 properties for sale or rent to low or moderate income households, emergency
25 eviction support, or other housing opportunities for low and moderate income
26 households; and

1 (8) By February 1 of each year, the Department shall provide a detailed annual report to
2 the Council of each collection and expenditure of all fee-in-lieu funds for the prior
3 calendar year.

4 (9) In census tract block group where the poverty level is ten percent or greater according
5 to the most recent census, the fee-in-lieu collected by the Department shall be used
6 only for the Settlement Downpayment Loan Program and the Rehabilitation Loan
7 Program.

8 (f) *Multi-Plex Dwellings.* Notwithstanding section 13.402(d) of this subtitle, any development
9 of single-family detached dwelling units may provide moderate income housing units on
10 site in the form of multi-plex dwelling units in accordance with the applicable provisions of
11 the Zoning Regulations.]]

12 **Sec. 13.404. Sale of moderate income housing unit.**

13 (a) *Initial Sale of Moderate Income Housing Unit—Priority Period.*

14 (1) (i) Except as provided in section 13.407 of this subtitle, the seller of a moderate income
15 housing unit offered for sale shall offer the unit for initial sale for a 120-day priority
16 period through the Department to an eligible purchaser.

17 (ii) During the priority period, the price for the moderate income housing unit shall
18 not exceed the initial price established for the unit under section 13.403 of this
19 subtitle.

20 (iii) The sales price shall be based on the square footage as calculated by the County
21 for purposes of determining a unit's building excise tax when applying for a
22 building permit.

23 (2) (i) A seller shall notify the Department of the proposed offering and the proposed date
24 on which the priority period will begin.

25 (ii) The notice shall set forth the number of units offered, the location of each unit, a
26 description of the amenities offered in each unit, the sales price and information
27 regarding any mortgage financing available to buyers.

1 (iii) The seller shall also provide a vicinity map of the offering, a copy of the approved
2 subdivision or site development plan, and such other information as required by
3 the Department.

4 (iv) If the Department determines that the notice is incomplete, the Department shall
5 notify the seller within five business days of receipt of the notice. The seller shall
6 submit a complete notice before the priority period begins.

7 (3) Within the priority period, the Department shall provide the seller with the name of an
8 eligible purchaser for each unit.

9 (4) The seller shall make a good faith effort to enter into a contract with the eligible
10 purchaser within the priority period. The contract shall allow the purchaser at least 60
11 days from the date of the notice provided in paragraph (3) of this subsection to obtain a
12 financing commitment. The contract shall require the seller to make a good faith effort
13 to complete construction of the moderate income housing unit within the time set forth
14 in the purchaser's financing commitment.

15 (5) If the seller fails to make a good faith effort under paragraph (4) of this subsection, the
16 settlement date shall be extended until ten days after the date construction is actually
17 completed.

18 (6) If the eligible purchaser fails to comply with the conditions of the commitment for
19 mortgage financing or fails to enter into a purchase contract, the Department may
20 substitute another eligible purchaser.

21 (7) Any earnest money collected from an eligible purchaser may not exceed \$500.00.

22 (b) *Same—Settlement.*

23 (1) (i) An eligible purchaser who enters into a contract to purchase a moderate income
24 housing unit shall settle on the property after completion of the construction of the unit.

25 (ii) For purposes of this subsection, a moderate income housing unit shall be deemed
26 complete on the date that a use and occupancy permit for the unit is issued by the
27 Department of Inspections, Licenses and Permits.

28 (iii) The seller shall notify the purchaser at least ten days prior to the settlement date.

1 (iv) The purchaser shall settle on the property within two business days of the
2 settlement date, unless extended by the parties.

3 (v) The seller shall make a good faith effort to settle with the purchaser within the
4 time set forth in the notice.

5 (2) (i) If a purchaser fails to settle on the property by the agreed upon settlement date, the
6 seller shall notify the Department and offer to extend the priority period for 60 days
7 from the agreed upon settlement date.

8 (ii) The Department shall accept or reject the offer within five business days of
9 receipt of the notice.

10 (iii) If the Department accepts the offer to extend the priority period, the Department
11 shall pay to the seller the seller's reasonable and actual carrying costs, such as
12 interest, insurance, taxes, utilities, homeowners' association fees, and maintenance
13 costs for the moderate income housing unit for the period of the extension.

14 (iv) The Department shall notify eligible households and priority purchasers of the
15 availability of the moderate income housing unit in accordance with sections
16 13.406 and 13.407 of this subtitle.

17 *[(c) Same—Sale after Priority Period:*

18 (1) After the priority period or extension the seller may offer a moderate income housing
19 unit for sale to the general public without restriction as to price if:

20 (i) After the priority period expires an eligible purchaser has not signed a purchase
21 contract;

22 (ii) An eligible purchaser has not settled on the property by the settlement date and
23 the Department has not accepted the seller's extension offer under subsection
24 (b)(2)(i) of this section; or

25 (iii) The extension of the priority period expires and an eligible purchaser has not
26 signed a purchase contract.

1 (2) If the moderate income housing unit is offered for sale to the general public without
2 restriction as to price, the seller shall pay to the County an amount equal to 50 percent
3 of the difference between:

4 (i) The sale price of the moderate income housing unit, less a seven percent reduction
5 for the seller's cost of sale, and less the seller's reasonable and actual carrying
6 costs from the end of the initial priority period, if applicable; and

7 (ii) The initial price established for the moderate income housing unit under section
8 13.403 of this subtitle.]]

9 ~~[(d)]~~ (C) *Subsequent Sale of Moderate Income Housing Unit after priority period.* A subsequent
10 sale of a moderate income housing unit after the priority period shall be:

11 (1) Offered through the Department to an eligible purchaser at the sale price established
12 under section 13.403 of this subtitle;

13 (2) Subject to the covenants required under subsection 13.402(c) of this subtitle; and

14 (3) Subject to regulations adopted by the Department under this subtitle.

15 ~~[(e)]~~ (D) *Subsequent Sale of a Previously Occupied Moderate Income Housing Unit.* The
16 subsequent sale of a previously occupied moderate income housing unit shall be offered for
17 resale:

18 (1) Subject to the same conditions noted in subsection (d) of this section;

19 (2) Subject to a resale price limit, as stated in the program regulations as follows:

20 (i) Start with the original purchase price for which the owner purchased the property
21 according to the purchase contract;

22 (ii) Each year multiply the original purchase price by the percentage change in the
23 most recent CPI-U or in the most recent median income whichever is less—up to
24 a maximum increase for any given year of three and one-half percent or a
25 minimum increase for any given year of one percent;

26 (iii) Each year add the product of the multiplication above to the original purchase
27 price;

1 (iv) Add the cost of eligible capital improvements that have been approved by the
2 County up to the time of transfer; and

3 (v) Deduct the amount of any excessive damage assessment.

4 **Sec. 13.405. Rental of moderate income housing units.**

5 (a) *Duration of Rental Restrictions.* Except as provided in subsection (f) of this section, the
6 restrictions on the rental of moderate income housing units set forth in this subtitle shall
7 apply to each rental moderate income housing unit development in perpetuity beginning on
8 the date of initial offering as set forth in subsection (c) of this section.

9 (b) *Application of Rental Restrictions:*

10 (1) The owner of any rental development subject to this subtitle shall ensure that the
11 number of moderate income housing units required under the approved final plan or
12 site development plan are rented or available for rent as moderately priced dwelling
13 units to persons determined to be eligible under section 13.406 of this subtitle.

14 (2) The owner is not required to permanently designate particular units as moderate
15 income housing units in order to meet this requirement.

16 (3) The owner of any rental development that does not comply with the restrictions
17 required by this subtitle may be subject to fines and penalties, as stated in the program
18 regulations.

19 (c) *Rental [[During Priority Period]] OF A MODERATE INCOME HOUSING UNIT:*

20 (1) A moderate income housing unit offered for rent must [[first]] be offered [[for a 60-day
21 priority period]] to an eligible applicant or to a designee [[. During the priority period,
22 the moderate income housing unit shall be offered]] at a rent not to exceed the rent
23 established for the unit under section 13.403 of this subtitle.

24 (2) (i) Before offering a moderate income housing unit for rent, the owner must notify the
25 Department of the proposed offering [[and the proposed date on which the priority
26 period will begin]].

1 (ii) The notice must set forth the number of units offered, the location of each unit,
2 the unit type, bedroom size and floor area of each unit, a description of the
3 amenities offered in each unit and the rental rate.

4 (iii) The owner shall also provide a vicinity map of the offering, a copy of the
5 approved subdivision or site development plan, and such other information as the
6 Department finds necessary.

7 (iv) If the Department determines that the notice is incomplete, the Department shall
8 notify the owner within five business days of receipt of the notice. [[The owner
9 shall submit a complete notice before the priority period may begin.

10 (3) The owner shall make a good faith effort to enter into a lease with an eligible applicant
11 within the priority period.]]

12 *[[d) Rental after Priority Period:*

13 (1) After the priority period expires, a unit in the development may be offered for rent to
14 the general public without restriction as to rent if:

15 (i) An eligible applicant has not signed a lease agreement for the unit; and

16 (ii) As provided in the moderate income housing unit agreement, the required number
17 of units in the development are rented or, at the time the priority period expired,
18 were available for rent as moderate income housing units.

19 (2) If, because an owner rents one or more units under paragraph (1) of this subsection, the
20 number of units in the development that are rented as moderate income housing units is
21 below the number required in the moderate income housing unit agreement. The owner
22 shall offer to rent the next available unit to an eligible applicant and shall continue to
23 do so until:

24 (i) The number of rental units equals the number required under the agreement; or

25 (ii) The Department cannot provide the owner with the name of an eligible applicant
26 to rent the unit.]]

27 *[[e)] (D) Reports:*

1 (1) The owner of rental units shall submit a report to the Department, in a form prescribed
2 by the Department, listing the occupants of moderate income housing units in the
3 development and the rental rates charged, and certifying that the occupants are eligible
4 under section 13.406.

5 (2) A report under this subsection shall be submitted monthly until the required number of
6 moderate income housing units are occupied and annually thereafter.

7 ~~[(f)]~~ (E) *Condominium Conversions*:

8 (1) Before a rental development is converted to a condominium regime, the owner of the
9 development shall give notice to the Department.

10 (2) The notice shall be given concurrently with the registration of the public offering
11 statement with the Secretary of State under section 11-127 of the Real Property Article
12 of the Annotated Code of Maryland.

13 (3) The owner shall execute and record a revised moderate income housing unit agreement
14 governing the sale of the condominium units, which shall provide that the number of
15 units for sale as moderate income housing units will be at least the number required
16 under the approved final plan or site development plan.

17 ~~[(g)]~~ (F) *Authority to Assign*. When issuing a certificate of eligibility for a moderate income
18 housing unit offered for rent, the Department may assign its responsibility for accepting
19 applications and certifying eligibility under subsection 13.406(b) of this subtitle to an
20 apartment complex that contains moderate income housing units offered for rent.

21 ~~[(h)]~~ (G) *Duties upon Assignment*. When the Department assigns responsibility under
22 subsection (g) of this section:

23 (1) The Department shall annually notify the apartment complex of the applicable income
24 limits and other eligibility criteria; and

25 (2) The apartment complex shall, upon request of the Department, submit their application
26 form, lease form, and leasing procedures to the Department for review and approval.

1 **Sec. 13.409. Regulations.**

2 The Department shall adopt, in accordance with the Administrative Procedure Act, the
3 regulations necessary to implement and administer this subtitle, including regulations to
4 establish:

- 5 (1) The form of a co-ownership agreement;
- 6 (2) Criteria for determining the eligibility of prospective purchasers or renters of moderate
7 income housing units;
- 8 (3) A process for the selection and notification of eligible purchasers;
- 9 (4) Standard terms of moderate income housing unit agreements;
- 10 (5) Criteria for determining the resale price of a moderate income housing unit and
11 procedures for the subsequent resale;
- 12 (6) Criteria for enforcement of the owner occupancy requirement, including penalties, for
13 moderate income housing units;
- 14 (7) Criteria for enforcement, including penalties and fines for non-compliance, of the
15 moderate income housing unit rental requirements;
- 16 (8) Criteria for capital improvements and excessive damage for moderate income housing
17 units;
- 18 (9) Criteria for determining designees;
- 19 (10) Minimum specifications for moderate income housing units;
- 20 (11) Criteria governing allocation of units if more than one designee applies to exercise an
21 option under subsection 13.407(c) of this subtitle;
- 22 (12) A co-ownership program for designees in accordance with subsection 13.407(j) of this
23 subtitle;
- 24 (13) Criteria for the sale or rental of a moderate income housing unit under section 13.407
25 of this subtitle; AND
- 26 [(14) Criteria for administering the moderate income housing unit community revitalization
27 program; and

1 (15)] (14) Criteria for subsidy funds created by Continuing Care Retirement Communities
2 under subsection 13.406A of this subtitle.

3

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