Attachment B – ~~Draft~~ Revised Changes to MPDU Regulations

SECTION 5. STANDARDS FOR MPDU DEVELOPERS AND BUILDERS

A. Number of MPDUs Required

Chapter 13.5 of the Rockville City Code requires that a minimum percentage of the dwelling units in subdivisions of 50 or more units be provided as moderately priced housing. Where the application of the percentage of MPDU requirement results in a fraction of a unit, the required number of MPDUs is rounded up to the next whole number.

B. Review of Development Plans

Where the review of plans by the City Planning Commission is required by zoning, subdivision, or other ordinance, the review should include among other items:

1. The number of MPDUs to be provided, dwelling unit type, location in the subdivision, community facilities, and other plan features;

2. The number and location of bonus units and their impact with regard to site plan, density of development, topography, and other physical features;

3. The conformity of the project to ~~the optional~~ zoning provisions under the zoning and subdivision regulations.

C. Waivers of MPDU Requirements

Requests for full or partial waiver of MPDU requirements shall be made to the Mayor and Council in accordance with Section 13.5-6(b) of the Moderately Priced Housing Ordinance.

D. MPDU Construction Agreement Procedures

1. At the time of building permit application, all applicants who are required to provide MPDUs must file a written agreement with ~~the~~ CPDS that contains:

   a. The number and type of MPDUs;
   b. The identifying designation for each MPDU (e.g., subdivision, apartment or condominium name; location; and address, lot and block as applicable);
   c. A plan for the staging of construction of all dwellings that must be arranged so that MPDUs are constructed along with or preceding other units. If the applicant proposes single-family attached or detached development, o~~O~~ne-half of the MPDUs must be under construction before the second half of the market units are granted permits.
   ~~c.~~

2. The MPDU agreement requires that the applicant provide in the sales contract or lease and to record with the deed for each MPDU sold or rented, a covenant running with the land stating that the dwelling unit will not be resold or re-rented for an amount that exceeds the limits set by the City for a period of thirty years from the date of original sale or rental of the unit.

~~2. In the event the applicant elects to transfer an amount of land sufficient to satisfy the MPDU requirements to the City, the applicant must indicate this intention at the time of submission of the agreement to the CPDS. All of the land to be transferred must be part of the property to which the optional MPDU zoning provisions apply.~~

3. The applicant must file with the MPDU agreement a statement of all land owned and available for development. Available for development means:

   a. Any land owned or under contract to the applicant, presently zoned for any type of development to which the optional MPDU zoning provisions apply;
   b. Any land which is within the area that is to be served by public water and sewerage as defined in the Ten Year Water and Sewerage Plan for Montgomery County; and
   c. Any land for which an application for subdivision, development, or building permit has been submitted to the appropriate City agency. The applicant need only update the original statement when additional MPDU agreements are submitted.

4. MPDU agreement forms may be obtained from ~~the~~ CPDS. After approval, ~~the~~ CPDS will verify that the agreement satisfies the terms of the MPDU Ordinance and these regulations. CPDS will submit the agreement to the Office of the City Attorney for review and approval prior to execution of the agreement by the City Manager~~Director of CPDS~~.

5. After the MPDU agreement is approved, it is forwarded to the Division of Inspection Services for submission along with the applicant's request for building permits. The Division of Inspection Services may then issue permits for those units covered by the agreement provided that all other requirements necessary for the issuance of permits are satisfied.

6. Any revisions to the agreement must be ~~negotiated between the CPDS and the applicant~~approved by Mayor and Council and must be in writing and signed by both the applicant and the City Manager.

E. Housing Programs That May be Used to Fulfill MPDU Requirements

1. Certain Federal, State, or local housing programs may be used to fulfill MPDU requirements when the Mayor and Council approve such programs. Programs submitted for approval include but are not necessarily limited to those housing programs that require:

   a. Incomes for eligible households at or below the MPDU income limits;
   b. Prices which are at or below the maximum MPDU sales prices or rents; and
   c. Long-term controls over the sales prices or rents that are deemed to be appropriate by the Director of CPDS.

2. The Montgomery County HOC Mortgage Purchase Program and the State Community Development Administration's Homeownership Development Program do not satisfy MPDU obligations.

F. Procedures for Considering and Implementing Alternative MPDU Offers

In accordance with the provisions of Chapter 13.5-5(f) of the City Code, an applicant may propose an alternative to building the required percentage of MPDUs onsite.

1. Request for alternative MPDU agreement. The applicant must submit a request for an alternative MPDU agreement to the CPDS Director in writing along with the submission of a development application for the project for which the alternative agreement is being requested. The request should include:

    a. The applicant's justification and need for an alternative MPDU agreement. The justification shall contain all pertinent material and analysis that will assist in evaluating the request, including relevant zoning and site conditions, and financial feasibility.
    b. The applicant's request for an alternative offer shall include one or more of the following options:

        i. Building Significantly More MPDUs (as defined in Chapter 13.5-3) at one or more other sites in the city. See Section 5G.
        ii. Conveying land in the city that is suitable in size, location, and physical condition for Significantly More MPDUs (as defined in Chapter 13.5-3). See Section 5H.
        iii. Contributing a payment in lieu of MPDUs to the Moderately Priced Housing Fund that will result in building Significantly More MPDUs (as defined in Chapter 13.5-3). See Section 5I.

2. Review of alternative offer.

    ~~1.~~a. ~~The CPDS must render an opinion concerning the transfer request prior to the end of the 90-day notification period. The CPDS should provide a copy of the opinion to the applicant. If the CPDS recommends approval of the transfer request, t~~The applicant and ~~the~~ CPDS must negotiate ~~the transfer~~the terms of the alternative MPDU agreement to present to and be approved by Mayor and Council. The final agreement must be in a form acceptable to ~~reviewed by~~ the City Attorney and ~~approved by the Mayor and Council. It~~ will be signed by the City Manager on behalf of the City. The applicant will furnish a copy of the executed agreement with the application for building permits.
    b. The Mayor and Council may reject any offer by an applicant for an alternative MPDU offer either in part or in whole if the Mayor and Council determines that the public interest would best be served in that manner.

3. Alternative MPDU agreements for Senior or Special Needs Housing with Services.

    a. Required alternative agreement. When an applicant proposes Senior or Special Needs Housing with Services as defined in Chapter 13.5-3 the applicant must request an alternative agreement.
    b. When a project proposes Senior or Special Needs Housing with Services as defined in

Chapter 13.5-3, the maximum monthly fee must be calculated using the then current income levels established for qualifying households for the City of Rockville MPDU Program.

i. The maximum monthly fee for a one-bedroom unit is based on the then current income range for a one person household. The maximum monthly fee for a two-bedroom unit is based on the then current income range for a two person household.

ii. The maximum monthly fee is calculated as follows:

1) The difference between the then current minimum gross income and maximum gross income levels is divided into three equal income tiers.
2) For each income tier, the monthly fee must not exceed 75 percent of the average of the monthly minimum gross income and maximum gross income for each tier.

The following example illustrates a calculation for a one-bedroom unit:

MPDU Minimum Gross Annual Household Income for One Person: $22,000

MPDU Maximum Gross Annual Household Income for One Person: $45,100

Tier	**Income Range**	**Average Income of the Minimum and Maximum**	**Maximum Monthly Fee at 75%**
1	$22,000 – $29,700	$25,850	$1,616
2	$29,701 – $37,400	$33,551	$2,097
3	$37,401 – $45,100	$41,251	$2,578

iii. The Applicant must offer:

1) At least one unit in each tier; and
2) At least 30% of the MPDUs must be offered in a combination of Tier 1 and 2 units, but the Applicant is not required to provide an equal number of units in each tier.

iv. The monthly fee for services for an additional occupant must not exceed the lesser of:

3. 75% of that portion of the monthly fee which is attributed to services and charged to the initial occupant; or
4. The monthly fee charged to an additional occupant of a market-rate unit.

c. Options for providing less than the required number of MPDUs onsite. As part of the applicant's request for an alternative agreement and only when MPDUs are provided onsite, the applicant may request permission to provide a lower percentage of MPDUs 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 percentage points (2.5%) from the required percentage of MPDU units. The justification must be documented by verifiable data and is subject to review and approval by the Mayor and Council.

G. MPDU Off-Site Development Option

An applicant may satisfy a project's MPDU requirements by providing Significantly More MPDUs as defined in Chapter 13.5-3 at an alternative location.

1. An applicant may:
    a. Build or convert from nonresidential use, the required number of MPDUs at a site approved by Mayor and Council;
    b. Buy or encumber, and rehabilitate as necessary, other existing residential units to meet the MPDU requirement.
2. Each agreement under this option must include a schedule, binding on the applicant, for timely completion or acquisition of the required number of MPDUs.
3. In reviewing an alternative location proposal, CPDS will take into consideration the following factors:
    a. Whether the proposed site has comparable access to amenities and services as onsite MPDUs would have had.
    b. Whether the proposed units will be of comparable quality to MPDUs that would have been provided onsite.

~~F.~~H. MPDU Land Transfer Option

~~1. In the event the applicant elects to transfer an amount of land sufficient to satisfy the MPDU requirements to the City, the applicant must indicate this intention at the time of submission of the agreement to the CPDS. All of the land to be transferred must be part of the property to which the optional MPDU zoning provisions apply.~~

~~2. The MPDU agreement requires that the applicant provide in the sales contract or lease and to record with the deed for each MPDU sold or rented, a covenant running with the land stating that the dwelling unit will not be resold or re-rented for an amount that exceeds the limits set by the City for a period of ten years from the date of original sale or rental of the unit.~~

An applicant may satisfy the MPDU requirements of a development by transferring land to the City which is suitable for the construction of ~~these units~~ Significantly More MPDUs as defined in Chapter 13.5-3. Land transferred to the City must be conveyed in the form of finished lots unless otherwise agreed to by the Mayor and Council. The transferred land must be ~~designated in the approved site plan as and to which the optional MPDU zoning provisions apply and~~ of sufficient area to construct the number of MPDUs required. A request to transfer land to the City is considered an alternative MPDU agreement and must follow the timeline and procedures in Section 5F of these regulations.

1. Conditions for Transfer:

    Land offered to the City will be evaluated by ~~the~~ CPDS for meeting the following minimum conditions:

    a. The lots must be capable of being built upon without undue or excessive costs;
    b. In single-family detached developments, land may be transferred as individual scattered lots, as several groups of lots, or as a single parcel;
    c. In semi-detached developments, land may be transferred as scattered pairs of lots for

adjoining homes, as a single parcel, or as multiple parcels;

d. In fourplex or townhouse developments, land may be transferred as a group of lots sufficient in number to develop a fourplex building or group of townhouses.
e. In multi-family apartment projects, land may be transferred if it is of sufficient size to support the development of an independent rental or sales project including parking, open space, and amenities.

2. Notification Process

~~At least 90 days prior to filing an application for building permit(s), the applicant must file a written request to transfer land to the City with the City Clerk. The~~A land transfer request must include:

a. A description of the property to be transferred;
b. Available development plans, record plats, topographical maps, and title reports; and
c. An itemized estimate of the development costs for such lots.

3. Review Process

~~T~~For a land transfer proposal,~~he~~ CPDS will consult with other ~~agencies~~ departments as may be appropriate. ~~The~~ CPDS will take into consideration the following factors:

a. The feasibility of constructing housing on the property to be transferred based upon a comprehensive examination of the soils, slopes, and other physical characteristics.
b. Whether sufficient land is available to meet the MPDU requirements; and
c. The availability of funds for reimbursement of the estimated lot finishing and settlement costs.

~~4.~~ Land Transfer Agreement
4.

~~1. The CPDS must render an opinion concerning the transfer request prior to the end of the 90-day notification period. The CPDS should provide a copy of the opinion to the applicant. If the CPDS recommends approval of the transfer request, the applicant and the CPDS must negotiate the transfer agreement. The agreement must be reviewed by the City Attorney and approved by the Mayor and Council. It will be signed by the City Manager on behalf of the City. The applicant will furnish a copy of the executed agreement with the application for building permits.~~

~~2. The Mayor and Council may reject any offer by an applicant to transfer land either in part or in whole if the Mayor and Council determines that the public interest would best be served in that manner.~~

a. ~~The~~ CPDS will arrange for preparation of the necessary deeds, arrange for settlement, and ensure that the deeds are properly recorded.

~~3.~~ The Mayor and Council may enter into an agreement to sell the transferred property to a builder who will construct housing that will achieve the objectives of the Moderately Priced Housing Ordinance. The prices to be charged for the transferred land should take into consideration any City costs, and must reflect the concept that little or no raw land cost is

included in the MPDU price.

b.

5. Compensation

a. A finished lot is defined as one that has been adequately prepared to allow the construction of a dwelling without major additional site preparation. After the submission of supporting documentation and review and approval by the city for the transfer of finished lots, the City shall reimburse the applicant for the costs the applicant actually incurred, which are directly attributable to the finishing of the MPDU lots so transferred. Reimbursable costs include but are not limited to engineering costs; clearing, grading, and paving streets, including any required bonds and permits; installation of curbs, gutters and sidewalks; sodding of public right-of-way; erection of barricades and signs; installation of storm sewers and street lighting; and park and other open space and recreational development directly benefitting the MPDU lots transferred. The City shall not reimburse an applicant for the cost or value of the transferred lots.

~~a.~~b. Closing costs shall be paid by the City.

~~b.~~c. If no funds have been appropriated to reimburse the applicant for finishing costs, the City may elect to accept from the applicant undeveloped land rather than finished lots.

6. Inspection of Land

The City, or its agents, will have the right to enter onto all or any part of the property at any time prior to closing for the purposes of surveying, engineering, soil testing and boring, and such other studies as may be desirable or necessary. The costs for this work will be borne by the City and will not result in a change in the present character of the property.

7. Disposition of Land by City

The City may cause MPDUs to be constructed on land transferred by selling these lots to one or more builders under terms that will carry out the objectives of the Moderately Priced Housing Ordinance or to contract directly for the construction of the units.

I. MPDU Fee-in-Lieu to the Moderately Priced Housing Fund

An applicant may satisfy the MPDU requirement by making a cash contribution to the city's Moderately Priced Housing Fund instead of building some or all of the required number of MPDUs in the proposed development. The fee per unit will be paid for each MPDU that was required to be built onsite, plus an additional 15% of the number of MPDUs that were required to be built onsite. For example, if 20 MPDUs are required onsite, the fee-in-lieu payment is calculated for 23 MPDUs.

a. For-sale units: The fee per unit will be 90 percent of the difference between the market rate purchase price of a dwelling unit and the sales price affordable to an MPDU household earning the maximum MPDU household income. The amount affordable to a household shall be based on common definitions of affordability, such as that provided by the U.S. Department of Housing And Urban Development, and the standard costs of ownership, such as principal, interest, taxes, insurance, and homeowner association dues. City staff will use the following assumptions to

determine affordability: the most recent average regional 30-year fixed mortgage rate as reported by the Freddie Mac Primary Mortgage Market Survey or similar reputable source at the time of the applicant's request, local property tax rates, a reasonable estimate for insurance costs based on unit construction type, and a 5 percent borrower downpayment.

b. Rental units: The fee per unit will be calculated using the same basis for the for-sale units. Instead of sales prices, alternative payments will be based on appraisals of individual rental market units of each required bedroom type, as if the units were for-sale units. The necessary appraisals will be at the applicant's expense.

c. The affordability gap will be calculated on a case-by-case basis by City staff. One-half of the total fee will be due upon the applicant's application for building permits and the remaining fee will be due before issuance of the certificate of occupancy for the project.

~~G.~~J. Waiver of MPDU Requirements

Requests for waivers from requirements of the Moderately Priced Housing Ordinance ~~should~~ must be ~~made~~ submitted concurrently with the submission of an application for ~~as early in the~~ development review ~~process as possible~~. All requests for waivers shall be submitted to the Director of CPDS for referral to the Mayor and Council. Such requests must be in writing and clearly state the reason for such a waiver and should be substantiated with documentation, plans, and all other pertinent material that will assist in making a decision on the request.

~~The~~ CPDS staff will make recommendations to the Mayor and Council prior to the granting or denying of waivers. All waiver requests are considered individually and granting of waivers will be kept to a minimum.