



Bill No. 17-10

Concerning: Continuation of the Payment in Lieu
Option for Moderately Priced Dwelling Units
and Adjustment to the Payment Amount.

Introduced: April 4, 2017

Revised: May 16, 2017 Draft No. 2

Enacted:

Effective:

Expires:

Frederick County Code, Chapter 1-6A

Section(s) 5 and 5.1

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council Member Jessica Fitzwater

AN ACT to: Amend Chapter 1-6A (Moderately Priced Dwelling Units) of the Frederick County Code to continue in effect the option to pay a per dwelling unit payment in lieu of building moderately priced dwelling units, to adjust the amount of the payment, and to provide for a triennial adjustment of the payment in lieu amount.

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

By amending:

Frederick County Code, Chapter, 1-6A Section(s) 5 and 5.1

Other: _____

Boldface

Underlining

[Single boldface brackets]

Heading or defined term.

Added to existing law.

Deleted from existing law.

Existing law unaffected by bill.

Bill No. 17-10

BACKGROUND

Chapter 1-6A of the Frederick County Code was codified in 2002 to increase the supply of affordable housing for moderate-income Frederick County residents. Section 1-6A-5 requires that every new residential development of 25 or more units construct a minimum of 12.5% of the dwelling units as moderately priced dwelling units (MPDUs).

In 2011, the Board of County Commissioners adopted Ordinance No. 11-20-586 to provide a payment in lieu option for developments in Section 1-6A-5.1. In May 2015 the County Council enacted Bill No. 15-06, which added Section 1-6A-5.2 to define conditions under which government programs may be used to satisfy MPDU requirements.

By its terms, Ordinance No. 11-20-586 expired on September 6, 2016. However, the County Council enacted Bill No. 16-08 on October 14, 2016, which extended the “sunset” (expiration) date of Ordinance No. 11-20-586 to midnight on June 30, 2017. This Bill continues (with no expiration date) the option to pay a per dwelling unit payment in lieu of building moderately priced dwelling units, changes the method for determining and the dollar amount of the payment in lieu, and provides for an triennial adjustment of the payment in lieu amount.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1, and

BE IT FURTHER ENACTED, that this Bill shall be construed to apply retroactively to and including July 1, 2017, in order to avoid a gap in the option to make a per dwelling unit payment in lieu of building moderately priced dwelling units.

Harold F. (Bud) Otis, President
County Council of Frederick County,
Maryland

§ 1-6A-5. REQUIREMENT TO BUILD MPDU'S; AGREEMENTS; ALTERNATIVES.

(A) *Except as provided in § 1-6A-5.1 below*, any applicant, in order to obtain a building permit, must submit to the Department of Permits and Inspections, with the application for a permit, a written MPDU agreement approved by the Director and the County Attorney. Each agreement must require that:

- (1) A specific number of MPDUs must be constructed on an approved time schedule;
- (2) In single-family dwelling unit subdivisions, each MPDU must have 2 or more bedrooms; and
- (3) In multi-family dwelling unit subdivisions, the number of efficiency and 1 bedroom MPDUs each must not exceed the ratio that market-rate efficiency and 1 bedroom units respectively bear to the total number of market-rate units in the subdivision.

[The balance of §1-6A-5 remains unchanged.]

§ 1-6A-5.1. PAYMENT IN LIEU OF BUILDING MPDU'S; AGREEMENTS.

(A) *In lieu of the option specified under § 1-6A-5, an applicant may elect to pay a "per dwelling unit payment in lieu" calculated as described below and included in a written MPDU agreement.*

(B) *Each MPDU agreement entered into pursuant to a payment in lieu election must include the following:*

(1) *The per dwelling unit [total MPDU] payment in lieu for the development, which shall be [calculated] determined by multiplying [\$17,500] the "Affordability Gap" described in subsection (C) below) by the number that is equal to 12.5% of the total number of dwelling units approved for the development as part of the site plan, preliminary plan, or Phase II plan approval, which result is then divided by the total number of dwelling units approved for the development as part of the site plan, preliminary plan or Phase II plan approval; and*

(2) *The agreement shall specify that the per dwelling unit payment in lieu will be paid at the time of building permit application, based on the then-current Affordability Gap[, which shall be calculated by dividing the total MPDU payment in lieu calculated under subsection (B)(1) above by the total number of dwelling units approved as part of the site plan, preliminary plan, or Phase II plan approval].*

(C) *The Affordability Gap is determined based on the following factors: (1) the Frederick County Median Home Price for the preceding calendar year; (2) the purchasing capacity of the moderate income buyer earning 70% of Area Median Income (AMI), based on prevailing FHA mortgage loan financing [[for the current year]] including down-payment requirements; at the end of the preceding calendar year; and (3) maintaining a monthly housing cost burden at or below 30% of*

ITALICS indicate matter that shall remain in effect.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

Double underlining indicates added by amendment.

[[Double boldface brackets]] and strikethrough indicate deleted by amendment.

Amended Bill No. 17-10

net monthly income for a household earning 70% of AMI. The Affordability Gap as of [[July 1, 2017]] December 31, 2016 is \$26,500.

(D) The MPDU agreement must be signed by the applicant, any other parties having an interest in the property and all other parties whose signatures are required by law for the effective and binding execution of deeds conveying real property. The MPDU agreement must be executed in a manner that will enable the agreement to be recorded in the land records of the county. Partnerships, associations or corporations shall not evade this chapter through voluntary dissolution. The MPDU agreement shall run with and bind the land and all subsequent owners of the land.

(E) An MPDU agreement that complies with this section must be approved by the Director and the County Attorney and recorded in the land records prior to signature and final approval of the site plan, preliminary plan or Phase II plan for the proposed development.

(F) All MPDU payments in lieu shall be deposited into the County Housing Initiative Fund.

(G) If the applicant chooses the payment in lieu option provided under this section, the County Department of Permits and Inspections shall not accept a building permit application for the development unless the applicant also submits the per dwelling unit payment in lieu required under the MPDU agreement.

~~(H) Any development with site plan, preliminary plan or PUD Phase II plan approval that includes the obligation to build MPDUs, but has not yet started construction of MPDUs as of August 16, 2011, may elect instead to remit the total MPDU payment in lieu described in subsection (A)(1) above. If an applicant making the election under this subsection has already entered into an MPDU agreement, the applicant shall request the Director to amend its MPDU agreement. The amended MPDU agreement shall comply with the requirements of this section, and shall provide that the total MPDU payment in lieu as calculated under subsection (B)(1) above are collected in connection with the balance of building permits issued for the development. All amended MPDU agreements must be approved by the Director and the County Attorney.]~~

(H) Triennial adjustment. On or before January 15, 2020, and on or before January 15 every three (3) years thereafter (2023, 2026, etc.), the County Executive shall provide to the County Council a report which [[proposes an adjustment to]] identifies the Affordability Gap [[by recalculating it]] recalculated as of December 31, in accordance with the factors discussed in subsection (C)[[, including the Median Home Price and Area Median Income in Frederick County in the 4th quarter of the preceding calendar year]]. The [[proposed triennial]] report may propose an adjustment [[will not take effect unless]] be made by the County Council [[enacts a bill adopting it]].

ITALICS indicate matter that shall remain in effect.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

Double underlining indicates added by amendment.

[[Double boldface brackets]] and ~~strikethrough~~ indicate deleted by amendment.

Amended Bill No. 17-10