



ANNE ARUNDEL COUNTY OFFICE OF LAW

Legislative Summary

To: Members, Anne Arundel County Council

From: Lori L. Blair Klasmeier, Supervising County Attorney /s/

Date: September 23, 2024

Subject: Bill No. 72-24 – Finance, Taxation, and Budget – Public Works – Subdivision and Development – Zoning – Housing Attainability Act of 2024

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 72-24.

Background

It is well recognized that there is a shortage of housing opportunities in Anne Arundel County and other areas of the State for households at or below the median income established for the Baltimore Metropolitan Statistical Area (“BMSA”). Other jurisdictions, including the City of Annapolis, Frederick County, Howard County, and Montgomery County, have enacted subdivision and development ordinances requiring residential developments to include a prescribed number of moderately priced dwelling units for sale or rent to households at designated percentages of the median income for the BMSA.

Purpose

The purpose of the bill is to require residential developments that will create 10 or more dwelling units offered for sale or for rent to include a certain percentage of the units as “moderately priced dwelling units”. Those units will be offered for sale or rent to households with designated percentages of median incomes for the BMSA at prices established pursuant to formulas included in the bill. The units will be subject to certain restrictions related to price, ownership, and tenancy for control periods established in the bill. Among other things, Bill No. 72-24 adds the new Title 12 to Article 17 relating to moderately priced dwelling units and modifies other sections of the Code to comport with the new Title. The bill also defines new types of dwelling units and allows them in various zoning districts to assist in creating additional housing units in residential developments.

Bill No. 72-24

Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.

SECTION 1 repeals § 17-6-604(e) relating to adjustments for required parking when off-street parking is prohibited. Adjustments have been made to parking requirements in the bulk regulation provisions included in the legislation.

It also repeals the definitions of “site” specific to the Odenton Town Center (§ 17-7-801(5)) and the Parole Town Center (§ 17-7-901(5)). A new definition of site that applies to Article 17 generally and in those areas specifically is added to § 17-1-101(92) in Section 2 of the bill.

Section 18-11-123, which sets forth special exception requirements for duplex and semi-detached dwelling units, is repealed. Other provisions of the bill remove semi-detached as a dwelling type and change duplex from a special exception to a conditional use in the R2 zoning district.

SECTION 2 renumbers various Code sections to allow for changes to those sections shown in Section 3 of the bill.

SECTION 3.

Section 4-11-124 related to the Housing Trust Special Revenue Fund is amended to allow fee-in-lieu and other funds payable under the new Article 17, Title 12 to be paid into the Fund.

Item 13-5-603(h)(1) is amended to exempt “open areas” from the assessment established in § 13-5-603 to recover costs of County water and wastewater facilities.

Section 13-5-813 is amended to provide that moderately priced dwelling units, as defined in Article 17, Title 12, are exempt from 50% of capital facility connection charges.

Section 13-6-103 is modified to add “open areas” to the list of areas of which the Director of Public Works may modify provisions related to vegetation and weeds. The definition of “open area” in § 17-1-101(77) is modified, and references to that term and to the term “open space” in Articles 17 and 18 are changed throughout the bill. **See, §§ 17-1-101(17), 17-2-102(9), 17-3-302(6) and (9), 17-3-401(c), 17-6-104, 17-6-110(c), 17-6-111(h), 17-6-307(a), 17-7-604, 17-7-605, 17-7-606, 17-7-1002(3), 17-9-208(b)(1), 18-10-105(5)(iii), 18-10-127, 18-11-104, and 18-11-117(2).**

Section 17-2-101 is modified to provide for applicability of the provisions of the bill to pending and future proceedings. The bill’s effective date will be July 1, 2025.

Section 17-3-201 is modified to require a moderately priced dwelling unit worksheet be submitted with a sketch plan application.

Section 17-3-301 is amended to require a final plan application to include identification of each lot that will contain a moderately priced dwelling unit and a notation that each unit is subject to the recorded agreement required under § 17-12-104(b).

Section 17-4-201 is modified to require a moderately priced dwelling unit worksheet be submitted with a preliminary plan.

Section 17-4-202 is amended to require a site development plan to include identification

of each lot that will contain a moderately priced dwelling unit and a notation that each unit is subject to the recorded agreement required under § 17-12-104(b).

In § 17-6-111(b), “open space” is changed to “open area”, and the minimum required open area is changed from 30% of the gross area of a residential site to 20%. The features that must be located in the open area are also modified.

In § 17-6-111(c), the types of dwelling units are modified to align with changes to dwelling unit types made by the bill in Article 18. “Recreation area” is now referred to as “active recreation area”. The requirement is changed from 1,000 square feet of active recreation area per dwelling unit to 350 square feet for dwelling unit types other than multifamily and multiplex, and from 20% of the gross area of the site to 10% of the net area of the site provided for active recreation area for multifamily and multiplex dwelling types. Because recreation area is now “active”, the provision regarding the division between active and passive recreation area is removed. Active recreation area is required to be located within the open area, but cannot be located within the enumerated natural features.

Current § 17-6-111(d) relating to open area and recreation area for multifamily dwellings is repealed. Those matters are modified and included in subsection (c).

A new § 17-6-111(d) is added to allow the active recreation area requirement for a development with 20 units or less to be fulfilled with an offsite park if approved by the Planning and Zoning Officer after considering comments from the Department of Recreation and Parks. For a development of more than 20 units, the subsection allows the active recreation area requirement for a development to be fulfilled with an offsite park through the modification process after consideration of comments from the Department of Recreation and Parks. The subsection also lists requirements for all offsite parks.

Subsection 17-6-111(e) is modified to add requirements for active recreation area, including provisions related to location, shape, and suitability for recreational activities that are found in current § 17-6-111(h), which is repealed.

References to “open space” are changed to “open area” in § 7-6-111(f), and references to condominium associations and sole owners are added to recognize the governing bodies of various residential development types.

Subsection 17-6-111(g) is modified to allow a development of 10 or less dwelling units to pay a fee in lieu of providing active recreation area. A development of more than 10 dwelling units will continue to be able to pay a fee in lieu only under the specified circumstances.

Current § 17-6-111(j) is renumbered to be § 17-6-111(i), and a reference to “subdivision” is changed to “development”.

Subsections 17-7-905(a) and (c) are revised to align with changes to dwelling unit types made to Article 18 in the bill.

Subsections 17-11-207(a) and (f) are modified to provide that moderately priced dwelling units are entitled to a credit against impact fees due if some or all of the moderately priced dwelling units are not required under new Title 12.

Title 12 is new and provides as follows.

Section 17-12-101 defines terms used in the Title, including administrator, control period, moderately priced dwelling unit, and regulated development.

Section 17-12-102 provides that the Title applies to developments with residential components that will permit the construction of 10 or more new dwelling units, including new construction, rehabilitation of an existing multifamily residential structure, conversion of a rental property to a condominium or cooperative, and changing a non-residential structure to a residential structure. The developer of a project that will create fewer than 10 units may agree to be subject to the Title. Exceptions to the requirement to provide moderately priced dwelling units include development in the RA or RLD zoning district, development that is financed through certain income-restricted programs or Arundel Community Development Services, Inc. (“ACDS”), workforce housing as defined in Article 18, and housing for elderly of moderate means as defined in Article 18.

Section 17-12-103 provides that, for a development with between 10 and 19 units, the developer must make a contribution to the Housing Trust Special Revenue Fund in lieu of providing moderately priced dwelling units (if permitted by § 17-12-105) or designate at least 10% of dwelling units offered for sale and at least 15% of dwelling units offered for rent as moderately priced dwelling units. If the development contains 20 or more dwelling units, the developer is not permitted to make a contribution to the Housing Trust Special Revenue Fund, but must designate at least 10% of dwelling units offered for sale and at least 15% of dwelling units offered for rent as moderately priced dwelling units. The section provides for rounding the number of fractional units.

Section 17-12-104 provides that a development required to include moderately priced dwelling units cannot be approved until the developer enters into an agreement with the County or the designated program administrator that: the development will include a certain number of moderately priced dwelling units; moderately priced single-family dwelling units will have at least two bedrooms; the number of efficiency and one-bedroom moderately priced dwelling units may not exceed the overall ratio of market rate efficiency and one-bedroom units to the total number of units in the development; details sequencing, design aspects, and locations of the moderately priced dwelling units; and requires that the moderately priced dwelling units meet certain design standards established by the administrator. The agreement will also require compliance throughout the control period (20 years for sale units and 40 years for rental units), will run with the land during the control period, and will be noted on the final subdivision plat and recorded in the land records. The moderately priced dwelling units must be a dwelling type that is allowed in the underlying zoning district. The requirement to provide sale units may not be satisfied by providing rental units. Applicants have to comply with all applicable bulk regulations.

Section 17-12-105 allows the developer of a development containing between 10 and 19 units to make a contribution in lieu of providing moderately priced dwelling units under extraordinary circumstances. The Planning and Zoning Officer determines if the contribution in lieu may be made. “Exceptional circumstances” means that the costs of resident services and facilities would make the moderately priced dwelling units unaffordable to eligible households, or that compliance would make the developer unable to secure a reasonable return from the property or to make any reasonable use of the property. For sale units, the contribution in lieu is 2.5% of

the average sales price of all units multiplied by the number of required moderately priced dwelling unit. For each rental unit that would have been required to be a moderately priced dwelling unit, the fee in lieu is the difference between the annual rental income from a comparable market rate unit in the development and the maximum annual rental amount that would be permitted for a moderately priced dwelling units under the Title for each year of the 40-year control period. The rental unit contribution in lieu may be paid annually throughout the control period or in one payment covering all years of the control period on a present value basis.

Section 17-12-106 sets eligibility standards for buying or renting moderately priced dwelling units. Households must apply and prove that they meet the household income limits, and that at least one member of the household has been a resident of or employed in the County for at least six months before filing the application. If applying to purchase a unit, households must establish that they can qualify for and obtain financing. Households must also prove that no member of the household has owned property in the County for at least three years before filing the application, and must certify that the moderately priced dwelling unit will be their household's primary residence.

Households that meet the application requirements will be given a certificate of eligibility that is good for three years and that will be reviewed within 60 days of a sale or rental to ensure that income eligibility is still met. If there are more eligible households than units, a waiting list will be established. If there are no eligible households for available units, the administrator may adjust the income requirements for eligibility. Certificates of eligibility may be renewed for an additional year if the household proves to the administrator that it still qualifies for the certificate.

Section 17-12-107 provides that the administrator will annually set the initial sales price for the moderately priced dwelling units based on factors listed in the section. The price may be adjusted one time during the year if the administrator determines that market conditions warrant an adjustment. The developer is required to notify the administrator that a moderately priced dwelling unit is available for sale and to provide certain specified information about the unit. The unit shall be listed for sale in the same manner as market rate units. The unit shall be sold to an eligible household at the top of the waiting list. If there are no eligible households, ACDS or the Housing Commission of Anne Arundel County may purchase the unit for use in one of their programs. If one of them does not purchase the unit, then the developer may sell the unit to a household that is not eligible so long as the buyer complies with the requirements of Title 12 during the control period.

Section 17-12-108 relates to the resale of moderately priced dwelling units in other than a foreclosure situation. If a unit is resold during the control period, ACDS and the Housing Commission of Anne Arundel County shall have the first option to purchase the unit for use in their programs. If they do not purchase the unit, it shall be sold to an eligible household. If there are no eligible households willing or able to purchase the unit, then it may be sold to a household that is not eligible so long as the buyer complies with the requirements of Title 12 during the remainder of the control period. The resale price is required to be the prior sale price plus: a percentage of the original sale price equal to the increase in cost of living, calculated using CPI, during the ownership period, the fair market value of improvements during ownership, and a reasonable sales commission if paid by the seller. The resale price may be reduced by the administrator to reflect abnormal wear and tear, abuse, or insufficient maintenance.

Section 17-12-109 provides that rental rates for moderately priced dwelling units are set annually by the administrator based on factors listed in the section and may be adjusted one time during the year if market conditions warrant an adjustment. The administrator shall annually review income eligibility and rental rates for compliance. If household income increases above the eligibility amount while renting a moderately priced dwelling unit, the household may continue to reside in the unit and renew its lease until the end of a lease term during which the household income exceeds 120% of the median income adjusted for household size in the BMSA. When vacated, the moderately priced dwelling unit will be offered to an eligible household. Landlords must advertise and market moderately priced dwelling units in the same manner as market rate units in the same development. The term of a rental may be no more than one year but may include renewals. Landlords are required to provide the administrator with copies of certain records concerning leased units, including leases, income certifications, and rent increase notices.

Section 17-12-110 addresses foreclosure of moderately priced dwelling units. The party initiating the foreclosure action must notify the administrator at least 30 days before filing the action, and the administrator shall have the right to cure the default. If a moderately priced dwelling unit is sold at foreclosure during the control period, the covenants under the Title are released. If the sale price exceeds the price set for a unit, then the excess after satisfaction of liens and expenses of foreclosure must be paid into the Housing Trust Special Revenue Fund. If a rental complex containing moderately priced dwelling units is sold at foreclosure, the covenants required by the Title are released. If the sale price exceeds the fair market value of the complex on the date of the first rental, the excess after satisfaction of liens and expenses of foreclosure shall be paid into the Housing Trust Special Revenue Fund.

Section 17-12-111 provides that any deed, mortgage, or deed of trust conveying a moderately priced dwelling unit must contain a covenant running with the land declaring that the use, resale, and foreclosure of the dwelling unit is subject to the Title and that the covenant is enforceable by the administrator. Similarly, a lender whose lien is secured by one or more rental moderately priced dwelling units must provide the administrator with satisfactory proof that runs with the land and is recorded in the land records that the use of the units and the foreclosure of any lien is subject to the requirements of the Title.

Section 17-12-112 provides that bulk transfers of units are permitted so long as they are subject to the Title.

Section 17-12-113 states that, if all or part of a rental complex that contains moderately priced dwelling units is converted to a condominium or cooperative, then the requirements of the Title related to moderately priced dwelling units offered for sale apply for the remainder of the control period. In calculating the control period, the date of the original rental is considered to be the date of the original sale.

Section 17-12-114 provides that certain requirements relating to resale of moderately priced dwelling units or the establishment of rental rates may be waived by the administrator if they conflict with federal or State housing programs and will prevent eligible households from buying or renting units.

Section 17-12-115 provides that a person aggrieved by a final decision of the administrator or the Planning and Zoning Officer may appeal the decision to the Board of Appeals.

Section 17-12-116 provides that, every three years, the Administrator must fulfill certain specified reporting requirements, including the number of moderately priced dwelling units created and the amount of contributions to the Housing Trust Special Revenue Fund.

In **§ 18-1-101**, the definition of “dwelling, semi-detached” is repealed, and the definitions of “dwelling, duplex”, “dwelling, multifamily”, and “dwelling, townhouse” are modified. Definitions of new dwelling types are added: “dwelling, fourplex”, “dwelling, multiplex”, “dwelling, stacked townhouse”, and “dwelling, triplex”. The definition of “open area” is modified to refer to the definition in **§ 17-1-101**.

The parking requirements in the chart in **§ 18-3-104** are modified to add the requirements for the new dwelling types and to revise the number of spaces required for certain other dwelling types.

The use chart for residential districts in **§ 18-4-106** is modified to add the new dwelling types and their allowed uses and to revise the uses for duplex dwellings.

The bulk regulations for residential districts in **§§ 18-4-301, 18-4-401, 18-4-501, 18-4-601, 18-4-701, 18-4-801, 18-4-901, and 18-4-1001** are modified to include the requirements for the new dwelling types and to adjust certain requirements for existing dwelling types. “Maximum net density” is changed to “maximum density” where it appears.

The use charts for commercial districts in **§ 18-5-102** and for mixed use districts in **§ 18-8-301** are modified to add the new dwelling types and their allowed uses. The dwelling type “dwellings, adult independent units” is removed from the charts for consistency with Bill No. 17-24. Duplex dwellings are added as a permitted use in mixed use districts.

“Maximum residential net density” is changed to “maximum residential density” in the chart in **§ 18-8-303**.

The use chart for Odenton Town Center Districts and Historic Village Mix Block in **§ 18-9-103** is modified to add the new dwelling types and their allowed uses. The dwelling type “dwellings, adult independent units” is removed from the chart for consistency with Bill No. 17-24.

The bulk regulations for a Town Center District in **§ 18-9-303** are modified to reduce the minimum coverage by open area for multifamily residential uses from 30% to 20% of gross area.

The use chart for small business districts in **§ 18-9-402** is modified by removing “dwellings, multifamily in conjunction with another allowed use”.

“Maximum net density” is changed to “maximum density” in **§ 18-10-124(5)**.

Section 18-10-125, which provides conditions for the use of duplex and semi-detached dwellings is repealed and replaced with conditions for the use of duplex, triplex, fourplex, and multiplex dwellings.

In **§ 18-10-126**, the conditions for the use “dwellings, multifamily” are modified to include the addition of bulk regulations for commercial districts and revisions to the bulk regulations for

residential districts. “Maximum net density” is changed to “maximum density”.

In § 18-10-127, the conditions for townhouses and stacked townhouses are modified to include revisions to bulk regulations.

In § 18-11-104, the special exception requirements for assisted living facilities are modified to reflect the new dwelling types and to remove the term “net” when referring to units per acre and density.

Subsection 18-12-203(c) is modified to change “units per net acre” to “units per acre” when describing density for planned unit developments.

Subtitle 7 and § 18-12-701 are new and allow for a density bonus for developments that include moderately priced dwelling units.

Subsection 18-14-303(c) is modified to add multiplex and stacked townhouse dwelling units to the residential use provisions in a commercial revitalization area and change “acre of net area” to “acre of area” when describing density for certain dwelling types in a commercial revitalization area.

The chart in § 18-14-503(a) is modified to change “maximum net density” to “maximum density” when describing density for multifamily and townhouse dwellings in the BWI Mixed Use Overlay Area.

SECTION 4 provides that the Ordinance takes effect July 1, 2025.

The Office of Law is available to answer any additional questions regarding this Bill.