

ANNE ARUNDEL COUNTY OFFICE OF THE COUNTY AUDITOR

To: Councilmembers, Anne Arundel County Council

From: Michelle Bohlayer, County Auditor

Date: October 3, 2024

Subject: Auditor's Review of Legislation for the October 7, 2024 Council Meeting

Bill 66-24: Approval of the Revised Amended and Restated Lease Between Anne Arundel County and Wiley Bates School LLC (As Amended)

Summary of Legislation

This bill approves an amended and restated lease (proposed lease) for part of County-owned property in Annapolis known and designated as Wiley H. Bates High School to Wiley Bates School LLC. The original lease term was March 18, 2005 through March 17, 2055. Bill 49-23 extended the lease term through March 17, 2097. This bill alters the lease term to 99 years from this bill's effective date, which is through 2123. The proposed lease reflects the rent payment remaining at \$1 per year. In addition, the proposed lease includes various changes, including changes to the tenant, altered intended financing sources, and expected building renovation work. The proposed renovations include improvements to 71 units of affordable senior housing and related site improvements, fixtures, and surrounding grounds.

We commented on this bill in our letters dated September 13, 2024 and August 30, 2024. At the September 16, 2024 Council meeting, this bill was amended to substitute a revised proposed lease to correct typographical errors and change an insurance provision. We have no further comments on this bill.

Bill 68-24: Payment in Lieu of Taxes – College Parkway Place, Annapolis, Maryland – Amendment

Summary of Legislation

This bill authorizes the County Executive to enter into the Amendment to Agreement Between RF College Parkway, LLC and Anne Arundel County, Maryland (Exhibit A) for the property known as College Parkway Place, 570 Bellerive Drive, Annapolis. Bill 13-23 approved the existing payment in lieu of taxes (PILOT) agreement. This amendment to the agreement makes the following modifications to the PILOT agreement:

Bill 68-24 (continued)

- Exempts the property from property taxes and authorizes a PILOT in fiscal year 2025 (FY25) if RF College Parkway, LLC acquires the property in FY25 and complies with specified provisions;
- Authorizes this agreement to take effect in fiscal year 2026 (FY26) if the property is not acquired in FY25 or specified conditions are not met; and
- Authorizes a refund of the property's FY25 property tax payment equal to the difference between the full amount of property taxes paid and the \$83,810 PILOT payment if specified conditions are met.

The Administration advised that certain provisions of this bill were necessary due to unanticipated delays with the closing schedule that delayed implementation of the original PILOT agreement; however, the agreement closed in September 2024 and is now in effect.

We identified typographical errors and informed the Office of the County Council staff, who noted that these errors would be corrected via amendment.

Review of Fiscal Impact

This bill authorizes a FY25 revenue decrease of \$107,938 (from \$191,748 to \$83,810) if RF College Parkway LLC acquires the property and is in compliance with specified provisions of the PILOT agreement in FY25. While we agree with the Administration that this bill has no fiscal impact, if this bill does not pass, County revenues would increase by the difference between the amount of the PILOT and the amount of property taxes owed for FY25.

The County's FY25 Approved Budget assumes revenue of \$83,810 associated with this PILOT agreement, consistent with the PILOT payment amount authorized by this bill; therefore, the decreased property tax revenue has already been absorbed by the remaining tax base.

Bill 69-24: Payment in Lieu of Taxes – The Villages at Marley Station, Glen Burnie, Maryland – Second Amendment

Summary of Legislation

This bill authorizes the County Executive to enter into the Second Amendment to Agreement between Fairfield Marley Station LP and Anne Arundel County, Maryland (Exhibit A) for the property known as the Villages at Marley Station located at 7841 Bruton Drive, Glen Burnie. Bills 67-22 and 17-23 approved the existing PILOT agreement and first amendment, respectively. This second

Bill 69-24 (continued)

amendment to the agreement makes the following modifications to the PILOT agreement:

- Changes income restrictions for at least 584 of the 757 units available to households earning 60% and below of the area median income (AMI) to households earning an average of 60% or below of the AMI as an aggregate group, with no single tenant earning over 80% of the AMI at the time of initial qualification after which any such tenant can earn up to 140% of the AMI;
- Defers the requirement to make 745 units available to income-eligible households from December 31, 2026 to December 31, 2027;
- Authorizes an additional exemption beginning July 1, 2028 from County property taxes in its entirety if 745 or more units (including vacant units) are made available to specified households. This is essentially a continuation of the existing PILOT amount but with the aforementioned 745-unit minimum requirement;
- Authorizes a specified partial exemption from County property taxes in proportion to the number of units below 745 units (including vacant units) made available to specified households if the 745 total unit threshold is not met for the full property tax exemption. This would result in an increase in property taxes due in addition to the existing PILOT payment beginning July 1, 2028 relative to the number of units below 745-unit minimum requirement;
- Reduces the PILOT payment for FY25 from \$235,919 to \$50,000 and retains a 4% annual adjustment factor for each subsequent year of the agreement term which ends in fiscal year 2062 (FY62); and
- Defers submittal of specified audited financial reports by the owner from July 1, 2023 to July 1, 2025.

In accordance with the current agreement, the owner was required to submit complete audited financial reports to the County by July 1, 2023. The Administration confirmed it has not received these audited financial reports from the property owner. If passed, this bill will defer the deadline until July 1, 2025.

All other terms of the agreement as amended remain in full force and effect.

The Administration advised that the provisions in this bill are based on the property owner's request for additional time to subject existing units to income restrictions in the current agreement in order to avoid displacement of residents who earn more than 60% of the AMI. The further reduction of the PILOT

Bill 69-24 (continued)

payment included in this bill will enable the property owner to qualify for additional tax-exempt bonds and the amount was based on the request of the property owner.

We identified a typographical error and informed the Office of the County Council staff, who noted that this error would be corrected via amendment.

Review of Fiscal Impact

The current agreement requires a PILOT payment of \$235,919 for FY25 which reflects the required 4% annual adjustment factor. This second amendment will reduce the FY25 PILOT amount from \$235,919 to \$50,000, which will result in a \$185,919 decrease in FY25 property tax revenue. This amount was not included in the FY25 Approved Budget.

The owner submitted the required fiscal year 2024 and FY25 PILOT payments based on the amount required by the current PILOT agreement; therefore, a partial refund will be required after the effective date of this bill. We do not agree with the Administration's fiscal note that this bill would reduce County revenue by \$168,101. The Office of the Budget (Budget) advised the fiscal note estimate was based on an outdated PILOT payment amount and concurs that County revenues decrease by \$185,919.

Based on the provisions of this bill, County revenues will also decrease in FY26 and future years due to the 4% annual adjustment factor being applied to a \$50,000 PILOT payment, rather than a \$235,919 PILOT payment. However, to the extent the owner fails to meet the required number of income-restricted units beginning in fiscal year 2029 (FY29), tax revenues would increase. For example, if 25 of the required 745 units do not meet income requirements in FY29 and assuming the July 1, 2024 assessed value and current real property tax rate of \$0.983 per \$100 of assessed value, the owner would be required to pay \$20,150 in addition to the PILOT payment for FY29.

Bill 70-24: Crimes, Civil Offenses, and Fines – Crimes – Miscellaneous Prohibited Act

Summary of Legislation

This bill prohibits an individual from using or occupying a recreational vehicle parked on a highway as a dwelling, residence, or accommodation between the hours of 9:00 p.m. and 6:00 a.m. and makes violations of this bill a Class E civil offense. The fine for a Class E civil offense is \$50 for the first violation, \$100 for the second violation, and \$500 for the third or any subsequent violation.

Bill 70-24 (continued)

We noted that the term camper vehicle was not defined in state law; however, the Office of the County Council staff advised that a new state law is in effect as of October 1, 2024 and they are in the process of reviewing the new law to determine if any amendments are needed.

Review of Fiscal Impact

The Police Department (Police) expects enforcement to be complaint based and the response will initially be addressed with education. Police anticipates the use of civil citations as a final resort; therefore, it does not anticipate a significant number of citations to be issued. They also do not expect an impact on workload; however, they advised that the change in law and public awareness could lead to an increase in citizen complaints and corresponding workload.

Bill 71-24: Licenses and Registrations – Second-Hand Dealer License – Second-Hand Sales

Summary of Legislation

This bill modifies the definition of second-hand dealer to exclude a business that deals primarily with the sale of children's clothing. There are currently two second-hand dealers who deal primarily in the sale of children's clothing with reporting requirements; however, only one of these businesses is licensed.

We noted that primarily is not clearly defined in the County Code and informed the Office of the County Council staff in case a clarification was needed.

Review of Fiscal Impact

This bill decreases County licensing revenue by \$500 annually, assuming this bill impacts two businesses and all affected businesses comply with licensing requirements. The removal of the license requirement will remove the related license revenue.

The Department of Inspections and Permits does not anticipate a change in workload from this bill. Police could not quantify the bill's potential impact on workload, but noted this bill exempts businesses that deal primarily with the sale of children's clothing from submitting reports on items received that may be used to conduct enforcement.

Bill 72-24: Finance, Taxation, and Budget – Public Works – Subdivision and Development – Zoning – Housing Attainability Act of 2024

Summary of Legislation

This bill establishes a Moderately Priced Dwelling Unit (MPDU) program administered by a community service entity with a specified County operating agreement. This MPDU program will require development of MPDUs as part of residential development projects.

This bill provides three main provisions related to the development of MPDUs that will have a direct fiscal impact: (1) A 50% reduction to Capital Facility Connection Charges (CFCC) for water and sewer, (2) Density bonuses (allowance for a greater number of dwelling units per acre than the underlying zoning) for developments that exceed the maximum density permitted by at least 15%, and (3) An exemption from development impact fees.

This bill establishes development conditions, requirements, and agreements for building MPDUs as well as requirements and procedures associated with the administration of the MPDU program. This bill requires specified new housing developments to designate at least 10% of dwelling units offered for sale and 15% of dwelling units offered for rent as MPDUs and to make these new MPDUs available to households with incomes of 75% of the median income adjusted for household size for the Baltimore Metropolitan Statistical Area (BMSA) or below for rental units or incomes of 100% of the median income adjusted for household size for the BMSA or below for homeownership.

This bill also modifies zoning uses and bulk regulations, including to reflect new multifamily dwelling types, reduce specified setbacks, increase maximum allowable coverage by structures, and increase maximum height limitations.

We identified various typographical errors and minor corrections needed and informed the Office of the County Council staff.

This bill takes effect July 1, 2025. A summary of this bill is provided in Appendix 1.

Review of Fiscal Impact

This bill's fiscal impact is largely based on the estimated number of new MPDUs annually. Budget estimates 197 new MPDUs annually, which uses the average number of units for projects over 10 units in size over the last five years (i.e., an average of 1,573 units per year per the Office of Planning and Zoning) multiplied by 12.5%, which is the average of the 10% requirement for ownership units and 15% requirement for rental units.

Bill 72-24 (continued)

Based on an estimate of 200 annual MPDUs, this bill will decrease annual County revenue by an estimated \$5.2 million. This amount is made up of a \$2.2 million decrease due to the CCFC reduction (\$10,800 * 200) and a \$3.0 million decrease due to the impact fee exemption (\$14,994 * 200). These estimates use current rates and assume all MPDU properties are 1,500-1,999 square feet in size; however, the actual revenue loss will be determined based on the size and number of units that are developed and the impact of the requirements and timeline of development projects.

The \$2.2 million decrease to the CFCC will reduce revenue collected by the County for the Water and Wastewater Sinking Fund (Fund). Any decrease in revenue to the Fund may require future rate increases to support the Fund. The impact could increase if the CFCC rate is increased, which would apply to future development applications, and if the Environmental Protection Fee is increased, which would apply to all usage for both water and wastewater service.

The \$3.0 million decrease to impact fee revenues will reduce revenue collected by three special funds (Transportation Impact Fee Special Fund, School Impact Fee Special Fund, and the Public Safety Impact Fee Special Fund) that must be used for capital improvements for expansion of public schools, roads, and public safety facilities. Any decrease in revenue to these special funds will need to be offset by reduced expenditures.

There are provisions in this bill that are new to the County and no estimates on the potential impact were provided by Budget. This includes the potential impact of the density bonus, fee-in-lieu payments, and certain foreclosure-related payments.

Budget advised this bill will increase Arundel Community Development Services, Inc's (ACDS) annual expenditures by \$404,200 for one new full-time position, and four part-time positions, including salary, fringe benefits, and the application of a 40% indirect cost rate, in order to implement the provisions of this bill. ACDS will include County funding to support these estimated personnel costs in their FY26 budget request.

Resolution 38-24: Supporting the Maryland Railway Safety Act

Summary of Legislation

This resolution supports the passage and enrollment of the Maryland Railway Safety Act.

The Maryland Railway Safety Act of 2024 was introduced but not passed during the 2024 Maryland General Assembly legislative session.

Review of Fiscal Impact

This resolution has no fiscal impact.

Bill 72-24: Finance, Taxation, and Budget – Public Works – Subdivision and Development – Zoning – Housing Attainability Act of 2024

Appendix 1

Topic	Section	Bill Provision	Change from Current Law
	Bill Section 1	Repeals provisions addressing parking design, the definition of site specific to the Odenton and Parole Town Center, and special exception uses for duplex and semi-detached dwelling units.	Repeals existing provisions §§ 17-6-604(e), 17-7-801(5), 17-7-901(5), and 18-11-123.
Fees and Charges	§4-11-124	Requires payments authorized under Title 12 Moderately Priced dwelling Units (MPDUs) to be deposited into the Housing Trust Special Revenue Fund.	New provisions.
	§13-5-813	MPDUs are exempt from 50% of the capital facility connection charges for water and wastewater for MPDUs.	
Open Area / Active Recreation Area	§13-6-103	Adds open areas to the exemptions from assessments established to recover the cost constructing water or wastewater facilities.	Adds new provisions and modifies existing provisions.
	§13-6-103	Adds open areas to the list of categories where rank vegetation and noxious weeds are not required to be prohibited.	
	Throughout	Replaces open space with open area throughout Bill 72-24.	
	§17-1-101 (17, 77, & 92)	Modifies definitions of cluster development, open area, and planned unit development areas. Adds definition of site.	
	§17-6-111	Modifies open and active recreation area requirements including reducing required open area from 30% to 20% of the gross area of a residential site, excluding any floodplain areas; reduces active recreation area size requirements for specified developments; and alters the general characteristics of active recreation areas.	
Grandfather	§17-2-	Applications for specified development and permits filed before	New provision.
Provisions	101(b)(19)	July 1, 2025 must be governed by the law as it existed prior to July 1, 2025.	

Bill 72-24: Finance, Taxation, and Budget – Public Works – Subdivision and Development – Zoning – Housing Attainability Act of 2024

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Topic	Section	Bill Provision	Change from Current Law
Subdivision	§17-3-201	Adds a MPDU worksheet to the sketch plan application and site	New provisions.
Application and Site Development	§17-4-201	development preliminary plan process.	
Process	§17-3-301 §17-4-202	Adds a requirement to identify each lot that will contain a MPDU unit(s) in the final plan application and site development plan.	
Open Area and Active Recreation Area Requirements	§17-6-111	Adds certain requirements for open area, modifies certain requirements for open area, authorizes active recreation area requirements to be fulfilled by an offsite public park if certain conditions are met, and replaces the recreation area characteristics with active recreation area.	New and modified provisions.
Parole Town Center	§17-7-905	Authorizes stacked townhouse and duplex dwellings.	Modifies existing provisions.
Fee-in-lieu	§17-6-111(g)	Authorizes developments containing 10 or less dwelling units to pay a fee-in-lieu of providing active recreation area.	Currently may require fee-in- lieu based on certain requirements.
	§17-12-103(a)	Authorizes developments containing 10 to 19 dwelling units to pay a fee-in-lieu of providing MPDUs.	New provision.
	§17-12-105	Authorizes Planning and Zoning Officer to permit specified developments of 10 to 19 lots to pay a fee-in-lieu in exceptional circumstances and specifies the amount of the contribution. Establishes application requirements, a definition of exceptional circumstances, and the amount of the contribution.	New provision.
Development Impact Fee Credit Agreements	§17-11-207	Deletes requirement that impact fee credit agreements be entered into prior to conveyance or construction and authorizes a credit against impact fees due that is equal to the impact fees otherwise due for each MPDU provided.	Adds new provision and modifies existing provisions.
MPDU Program Definitions	§17-12-101	Adds definitions including the following: The MPDU Administrator is the community services entity with which the County has an agreement pursuant to §3-5-102 to administer federal, state, and County community development programs;	New provisions.

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		an applicant is a person or entity that submits an application to develop 10 or more dwelling units at certain developments or 9 or less dwelling units if the person or entity voluntarily subjects the development or redevelopment to the terms of Title 12; the control period for units intended for ownership is a 20-year period commencing on the date of original sale in which a MPDU is subject to either resale price controls or owner occupancy requirements; the control period for units intended for rental is a 40-year period commencing on the date of original rental in which a MPDU is subject to either maximum rental limits or rental occupancy requirements; and a MPDU is a dwelling unit in a regulated development that is offered for sale or rent to eligible households through the MPDU Administrator.	
MPDUs Applicability and Exceptions	§17-12-102	Requires MPDUs in certain residential developments, rehabilitations, or conversions that permit construction of or increase of a total of 10 or more dwelling units; developments that will change an existing building from a non-residential use to a residential use that will contain a total of 10 or more dwelling units; or a development containing fewer than 10 dwelling units that voluntarily subjects to the terms of Title 12. Also establishes exceptions for development that is in the rural agricultural or residential low density zoning districts, provides an equal or greater number of income-restricted affordable units than is required, is financed by government financing programs, is financed or developed by Arundel Community Development Services, Inc., is workforce housing, and is housing for elderly of moderate means.	New provisions.
MPDU Development Requirements	§17-12-103	 MPDU requirements are as follows: 10-19 units – must pay fee-in-lieu or designate at least 10% of units as MPDUs for sale and at least 15% of units as MPDUs for rent. 	New provisions.

Bill 72-24: Finance, Taxation, and Budget – Public Works – Subdivision and Development – Zoning – Housing Attainability Act of 2024

Appendix 1

Topic	Section	Bill Provision	Change from Current Law
Application	§17-12-104	 20+ units – MDPUs are mandatory and at least 10% of units must be offered as MPDUs for sale and at least 15% of units must be offered as MPDUs for rent. Establishes rounding conventions for when dwelling unit percentages result in fractional units. Establishes MPDU application and agreement requirements. 	New provisions.
Requirements			
Eligibility to Rent or Purchase MPDUs	§17-12-106	Requires households seeking to purchase or rent MPDUs to apply for a certificate of eligibility that includes certain requirements. These requirements can include proof of at least six month of residency or employment in the County, proof that no adult household member has owned residential property within the last three years, certification that the household intends to occupy the MPDU as a primary residence, proof that household income does not exceed 75% of the median income adjusted for household size for the Baltimore Metropolitan Statistical Area (BMSA) for rentals, and proof that household income does not exceed 100% of the median income adjusted for household size for the BMSA for homeownership.	New provisions.
MPDU Administrator Authority	§17-12-106(d) §17-12-107	Authorizes the MPDU Administrator to adjust income requirements if there are not eligible households on MDPU waiting list. Authorizes the MPDU Administrator to establish initial sales price in accordance with specified requirements and establishes sales notice and sales process requirements.	New provisions.
	§17-12-115	Authorizes MPDU administrator to waive MPDU resale and rental requirements if they conflict with state or federal regulations and prevent MPDU purchases or rentals.	

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Topic	Section	Bill Provision	Change from Current Law
MPDU Sale	§17-12-107	Establishes sales notice and sales process requirements,	New provisions.
Procedures		including the process when there are no eligible households.	
MPDU Resale	§17-12-108	Establishes requirements for resale of MPDUs during the control	New provisions.
		period. Authorizes the MPDU Administrator to reduce resale	
		price to reflect abnormal wear and tear.	
MPDU Rentals	§17-12-109	Establishes requirements for rental of MPDUs that address	New provisions.
		issues including rental rates, required reviews, marketing, terms,	
		and landlord information.	
MPDU Foreclosure	§17-12-110	Establishes requirements with foreclosure of MPDUs that	New provisions.
		address notice and foreclosure proceeds. Requires certain	
		payments to the County of foreclosure sales proceeds.	
MPDU Covenants	§17-12-111	Establishes covenant requirements for sale dwelling units and	New provisions.
Required, Bulk	§17-12-112	rental complexes, provides that bulk transfers are not	
Transfers, and	§17-12-113	prohibited, and establishes requirements for conversion to	
Conversions		condominiums or cooperatives.	
Waiver	§17-12-114	Authorizes the MPDU Administrator to waive MPDU resale and	New provision.
		MPDU rental rate requirements if they conflict with housing	
		programs and will prevent eligible households from securing MPDUs.	
Appeals	§17-12-115	Authorizes appeal of final decisions of the MPDU Administrator	New provision.
		or Planning and Zoning Officer to the Board of Appeals.	
MPDU Report	§17-12-116	Requires the MPDU Administrator to submit a MPDU report with	New provisions.
		certain required information to the County Executive and County	
		Council on or before July 1, 2028 and every three years	
		thereafter.	
Dwelling Unit Types	§18-1-101	Repeals, modifies, and adds dwelling type definitions, including	Modifies existing provisions
		adding definitions of a fourplex, multiplex, stacked townhouse,	and adds new definitions.
		and triplex dwelling.	
Parking Space	§18-3-104	Modifies parking requirements, including to reflect additional	Modifies existing provision.
Requirements		new types of dwellings including stacked townhouses, triplexes,	
		fourplexes, and multiplexes.	

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Topic	Section	Bill Provision	Change from Current Law
Residential Zoning District Uses and Bulk	§18-4-106, §18- 4-301, §18-4-	Modifies the use chart for residential districts, including to reflect additional dwellings types. Modifies bulk regulations,	Modifies existing provisions.
Regulations	401, §18-4-501,	including to reduce specified setbacks, reduce minimum lot size,	
	§18-4-601, §18-	increase the maximum allowable coverage by structures, and	
	4-701, §18-4-	increase maximum height limitations.	
	801, §18-4-901,	G	
	and §18-4-1001		
Commercial and	§18-5-102, §18-	Modifies uses in commercial districts and mixed use districts,	Modifies existing provisions.
Mixed Use Zoning	8-301, §18-8-	including to reflect new types of dwellings. Removes net from	
Districts Uses	303	the maximum residential density requirement.	
Odenton Growth	§18-9-103	Modifies uses in Odenton Town Center districts and historic	Modifies existing provisions.
Management Area		village mix block district, including to reflect new types of	
Districts Uses		dwellings.	
Town Center District	§18-9-303	Modifies bulk regulations to reduce specified minimum coverage	Modifies existing provision.
Bulk Regulations		by open area from 30% to 20% of gross area.	
Small Business	§18-9-402	Removes certain multifamily dwellings as a permitted use.	Removes existing provision.
Districts Uses			
Conditional Use	§18-10-124	Modifies and adds density, utility, and minimum distance	Modifies and adds provisions.
Requirements	§18-10-125	conditional use requirements for adult independent dwelling	
	§18-10-126	units; duplexes, triplexes, fourplexes, and multiplexes dwellings;	
		and multifamily dwellings.	
Conditional Use -	§18-10-126	Adds bulk regulations for multifamily dwellings in commercial	Modifies and adds provisions.
Multifamily Dwelling		zoning districts. Modifies bulk regulations for multifamily	
Bulk Regulations		dwellings in residential zoning districts.	
Conditional Use -	§18-10-127	Modifies bulk regulations for townhouses.	Modifies existing provisions.
Townhouses			
Special Exception	§18-11-104	Modifies requirements applicable to an assisted living facility,	Modifies existing provisions.
Uses - Assisted Living		including modifying bulk regulations to reflect additional	
Facilities		dwelling types.	

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Topic	Section	Bill Provision	Change from Current Law
Special Exception Uses - Mobile Home Parks, Special Uses, and Other Overlays Density Requirements	§18-11-133 §18-12-203 §18-14-303 §18-14-503	Modifies density requirements for mobile home parks, planned unit developments, commercial revitalization areas, and BWI Mixed Use Overlay Area.	Modifies existing provisions.
Density Bonus	§18-12-701	 Establishes a density bonus for developments containing MPDUs to be awarded by the Planning and Zoning Officer as follows: for developments with up to 100% allowable density, no additional density; for developments with 100-115% allowable density, 25% of additional units must be MPDUs; for developments with more than 115% allowable density, 25%-40% of additional units must be MPDUs; R1 and R2 zoning district density may not exceed 125% of allowable density; and R5, R10, R15, and R22 zoning district density may not exceed 150% of allowable density. 	New provisions.
Delayed Effective Date	Bill Section 4	Bill 72-24 takes effect on July 1, 2025.	New provision.