ANNE ARUNDEL COUNTY OFFICE OF LAW

Legislative Summary

To:	Members, Anne Arundel County Council
From:	Lori L. Blair Klasmeier, Supervising County Attorney /s/
Via:	Gregory J. Swain, County Attorney /s/
Date:	October 9, 2023
Subject:	Bill No. 78-23 – Finance, Taxation, and Budget – Subdivision and Development – Zoning – Essential Worker Housing Access Act of 2023

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. 78-23.

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"). Many of these affected households include workers who perform essential functions, including teachers, firefighters, police officers, and other government employees. 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. Bill No. 78-23 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.

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

<u>Bill No. 78-23</u>

<u>SECTION 1</u> renumbers **§ 17-4-202(27) through (38)** to allow for an addition to that section.

<u>SECTION 2</u>.

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

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 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 include a moderately priced dwelling unit.

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.

Section 17-11-203 is modified to provide that moderately priced dwelling units are exempt from development impact fees.

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 development with residential components that will permit the construction of 10 or more new dwelling units, including new construction, rehabilitation or conversion of existing multifamily residential structures, 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 include 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 modest means as defined in Article 18.

Section 17-12-103 provides that, for a development with between 10 and 19 units, the developer will make a contribution to the Housing Trust Special Revenue Fund in lieu of providing moderately priced dwelling units or designate at least 10% of each type of dwelling unit offered for sale and at least 15% of each type of dwelling unit 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 each type of dwelling unit offered for sale and at least 15% of each type of dwelling unit offered for rent as moderately priced dwelling units.

Section 17-12-104 provides that 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 certain numbers, sequencing, design aspects, and locations of the moderately priced dwelling units. 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.

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. The contribution in lieu is set at 1% of the cost of all units in the development. For each rental unit that would have been required to be a moderately priced dwelling units, the contribution in lieu is the difference between the annual rental income from a comparable market rate unit and the maximum annual rental amount that would be permitted for a moderately priced dwelling units under the Title. 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 12 months before filing the application, or is currently employed by the County, by the City of Annapolis, or as a teacher for the County Board of Education. 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 3 years before filing the application, and must certify that the moderately priced dwelling units 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 for County employees, employees of the City of Annapolis, and teachers employed by the County Board of Education. 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 sale 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. 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 20-year control period.

Section 17-12-108 relates to the resale of moderately priced dwelling units. 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 20-year 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 CPI during the ownership period, the fair market value of improvements during ownership, and a reasonable sales commission if paid by the seller.

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 the next available unit shall be leased to an eligible household, even if that unit was not designated as a moderately priced dwelling unit. The term of a rental must be no more than one year but may include renewals.

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, and the sale price exceeds the price set for a unit, then the excess must be paid into the Housing Trust Special Revenue Fund. If a rental complex containing moderately priced dwelling units is sold at foreclosure and the sale price exceeds the fair market value of the complex on the date of the first rental, the excess 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 unit 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 and 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 18-12-701 is new and provides for a density bonus for development containing moderately priced dwelling units.

SECTION 3 states that the Ordinance does not apply to a proposed development that received sketch plan approval, preliminary plan approval, final plan approval, or a building permit before July 1, 2024.

SECTION 4 provides that the Ordinance takes effect July 1, 2024.

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

cc: Honorable Steuart Pittman, County Executive
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