

Arundel Community Development Services, Inc.

Bill 72-24

Anne Arundel County Attainability Act

October 15, 2024

**POLICY FOR MAKING A CONTRIBUTION IN LIEU OF DEVELOPING
MODERATELY PRICED DWELLING UNITS ("MPDUS")**

Section 17-12-105 of the Housing Attainability Act (the "Act") permits a property owner to make a contribution in lieu of developing MPDUs. This policy outlines the requirements and processes for requesting and approving such a contribution (hereinafter referred to as a "Fee in Lieu").

The Fee in Lieu is only available for developments containing not less than 10 nor more than 19 units. Developments containing fewer than 10 units are not subject to the Act, and developments containing more than 19 units are not eligible for the Fee in Lieu.

The provisions of the Act applicable to a Fee in Lieu are attached hereto as Exhibit A and should be referred to for defined terms as used in this Policy.

A. The Fee in Lieu is only permitted in "Exceptional Circumstances" which are defined in the Act and summarized as follows:

1. In a proposed development, the cost of an individual package of resident services and facilities to be provided to all households would likely make the MPDUs effectively unaffordable to Eligible Households; or
2. Compliance with the Act would result in the owner being unable to secure a reasonable return from or make any reasonable use of the property and the hardship is unique to the property, is not due to the zoning of the property and is not the result of the owner's own actions.

B. If a property owner believes its property satisfies the conditions for Exceptional Circumstances, the property owner must apply to the Planning and Zoning Officer for permission to pay a Fee in Lieu. The property owner must provide any information that the Planning and Zoning Officer deems necessary to make a determination of Exceptional Circumstances, and must prove to the satisfaction of the Planning and Zoning Officer that Exceptional Circumstances exist. The Planning and Zoning Officer will consult with and receive a recommendation from Arundel Community Development Services, inc. ("ACDS"),

the “Administrator” identified in the Act, prior to making a determination to allow a Fee in Lieu.

C. If a determination is made by the Planning and Zoning Officer to approve a Fee in Lieu, the property owner will (i) enter into an Agreement for Contribution In Lieu Of Developing Moderately Priced Dwelling Units Agreement in the form attached hereto as Exhibit B ; and (ii) pay the Fee in Lieu approved in the amount calculated below, both prior to the earlier of approval of the record plat or issuance of a grading permit. The County Office of Law will prepare the final Agreement and will coordinate execution of the Agreement and payment of the Fee in Lieu.

D. The Fee in Lieu will be calculated as follows:

1. Developments with for-sale/homeownership units:

The property owner is obligated under the Act to pay 2.5% of the average sales price of all of the units in the development for each required MPDU that is foregone as a Fee in Lieu. If the number of foregone MPDU Units results in a fractional amount, the number of foregone MPDU units shall be calculated as follows: if the fractional amount is less than 0.50%, the result shall be rounded down to the next whole number and if the fractional amount is 0.50% or greater, the result shall be rounded up to the next whole number.

For example, if there are 16 units in a development, and the average sales prices of all the units is \$400,000, then the Fee in Lieu would be calculated as follows:

Average Sales Price Per Unit:	\$400,000
multiplied by	
Total Number of Units:	16 (= \$6,400,000)
multiplied by	
Fee in Lieu per MPDU percentage:	2.5% (= \$160,000)
multiplied by	
Required MPDUs Foregone:	2 (calculated as 10% of total units, rounded up)
Total Fee in Lieu	\$320,000

Because the final sales prices will not be known until final development and sale, the property owner shall provide to OPZ and ACDS a market analysis prepared by a third party analyst estimating the sales prices for all units in the development. ACDS will evaluate the market analysis and make a final determination on the sales prices

to be used in calculating the Fee in Lieu. After all units have been sold, if the final average sales prices are above or below the initial estimate agreed upon, ACDS shall advise the owner of any adjustments needed, which may result in a rebate to the property owner, if prices were lower than projected, or an additional payment to the County, if prices were higher than projected.

2. Developments with rental units:

The property owner is obligated under the Act to pay the difference between the actual annual rental income for a comparable market rate unit in the development and the maximum rental amount permitted by the Act for each year of the 40 year control period, payable on December 31 of each year; OR, if approved by ACDS, a single payment equivalent to the total amount that would be paid annually on a present value basis. ACDS shall use the rent calculator attached hereto as Exhibit C to determine the initial and projected rent differentials for the control period and the present value, and shall consult with ACDS as to which payment option will be required.

To determine market rents, if the property owner selects the annual payment option, the property owner is required to provide annual rent rolls of actual market rents, and, if the property owner selects, and ACDS approves, a single payment, the property owner is required to provide a market analysis, market study or appraisal prepared by a third party showing expected market rents. For MPDU rents, in either option, ACDS will provide the rents as set forth in the Program Policy Establishing Rental Rates and Household Income Limits for Rental Moderately Priced Dwelling Units.

EFFECTIVE DATE

The effective date of this Policy shall be July 1, 2026.



Erin Karpewicz, Chief Executive Officer

7/1/2026

Date

Exhibit A

Fee in Lieu Provisions from the Act

17-12-105. Contribution in lieu of developing moderately priced dwelling units.

(A) When allowed. IN EXCEPTIONAL CIRCUMSTANCES, THE PLANNING AND ZONING OFFICER MAY PERMIT AN APPLICANT THAT IS DEVELOPING OR REDEVELOPING A SUBDIVISION, IN WHOLE, IN PART, OR IN PHASES, OF NOT LESS THAN 10 NOR MORE THAN 19 LOTS TO MAKE A CONTRIBUTION TO THE HOUSING TRUST SPECIAL REVENUE FUND IN LIEU OF DEVELOPING MODERATELY PRICED DWELLING UNITS.

(B) Requirements. AN APPLICANT SHALL:

(1) APPLY TO THE PLANNING AND ZONING OFFICER FOR PERMISSION TO MAKE A CONTRIBUTION AUTHORIZED BY SUBSECTION (A);

(2) PROVIDE ANY INFORMATION OR DOCUMENTS THAT THE PLANNING AND ZONING OFFICER DEEMS NECESSARY TO DETERMINE WHETHER TO GRANT PERMISSION; AND

(3) PROVE TO THE SATISFACTION OF THE PLANNING AND ZONING OFFICER, AFTER CONSULTATION WITH AND RECOMMENDATION BY THE ADMINISTRATOR, THAT EXCEPTIONAL CIRCUMSTANCES EXIST.

(C) Definition of “exceptional circumstances”. FOR THE PURPOSES OF THIS SECTION, EXCEPTIONAL CIRCUMSTANCES MEANS:

(1) IN A PROPOSED DEVELOPMENT, THE COST OF AN INDIVIDUAL PACKAGE OF RESIDENT SERVICES AND FACILITIES TO BE PROVIDED TO ALL HOUSEHOLDS WOULD LIKELY MAKE THE MODERATELY PRICED DWELLING UNITS EFFECTIVELY UNAFFORDABLE TO ELIGIBLE HOUSEHOLDS; OR

(2) COMPLIANCE WITH THE REQUIREMENTS OF THIS TITLE WOULD RESULT IN THE APPLICANT BEING UNABLE TO SECURE A REASONABLE RETURN FROM OR MAKE ANY REASONABLE USE OF THE PROPERTY, AND THE HARDSHIP IS UNIQUE TO THE PROPERTY, IS NOT DUE TO THE ZONING CLASSIFICATION OF THE PROPERTY, AND IS NOT THE RESULT OF THE APPLICANT’S OWN ACTIONS.

(D) Amount of contribution. THE CONTRIBUTION BY AN APPLICANT PURSUANT TO SUBSECTION (A) OR § 17-12-103(A)(1) SHALL BE AS FOLLOWS:

(1) FOR MODERATELY PRICED DWELLING UNITS THAT WOULD BE OFFERED FOR SALE, 2.5% OF THE AVERAGE SALES PRICE OF ALL UNITS IN THE DEVELOPMENT FOR EACH REQUIRED MODERATELY PRICED DWELLING UNIT; AND

(2) FOR MODERATELY PRICED DWELLING UNITS THAT WOULD BE OFFERED FOR RENT, EITHER: (I) THE DIFFERENCE BETWEEN THE ACTUAL ANNUAL RENTAL INCOME FOR A COMPARABLE MARKET RATE UNIT IN THE DEVELOPMENT AND THE MAXIMUM ANNUAL RENTAL AMOUNT PERMITTED BY THIS TITLE FOR EACH YEAR OF THE 40-YEAR CONTROL PERIOD, PAID BY DECEMBER 31 OF EACH YEAR; OR (II) IF APPROVED BY THE ADMINISTRATOR, A SINGLE PAYMENT THAT IS EQUIVALENT TO THE TOTAL AMOUNT DUE UNDER SUBPARAGRAPH (I) ON A PRESENT VALUE BASIS

Exhibit B

Fee In Lieu Agreement

**AGREEMENT FOR
CONTRIBUTION IN LIEU OF DEVELOPING MODERATELY PRICED
DWELLING UNITS AGREEMENT**

AGREEMENT FOR CONTRIBUTION IN LIEU OF DEVELOPING MODERATELY PRICED DWELLING UNITS (this “Agreement”), is made as of the _____ day of _____, 20____, by and between ANNE ARUNDEL COUNTY, MARYLAND (the “County”) and _____ (“Owner”).

WHEREAS, on October 15, 2024, the County enacted Bill 72-24, the Housing Attainability Act of 2024, to regulate and require the development of moderately priced dwelling units (“MPDUs”) when any real property being developed for residential use would result in ten or more dwelling units; and

WHEREAS, the provisions of Bill 72-24 are codified in Articles 3, 13, 17, and 18 of the Anne Arundel County Code (2005, as amended) (the “County Code”); and

WHEREAS, the Owner owns, and is in the process of developing, certain property in Anne Arundel County, as more particularly described on Exhibit A, attached hereto and incorporated by reference herein (the “Property”), as a residential development, known or to be known as “_____” (the “Project”), which will include not less than ten (10) nor more than nineteen (19) dwelling units; and

WHEREAS, pursuant to § 17-12-105 of the County Code, in Exceptional Circumstances as defined in the Act, an owner who is required to provide MPDUs may make a contribution to the Housing Trust Special Revenue Fund in lieu of developing MPDUs, if authorized by the Planning and Zoning Officer; and

WHEREAS, the Planning and Zoning Officer has determined that Exceptional Circumstances exist in connection with the Property and the Project, and has agreed to accept a contribution lieu of developing MPDUs subject to the terms and conditions of this Agreement; and.

WHEREAS, pursuant to § 17-12-103 of the County Code, the number of MPDUs that would otherwise be required to be provided if Exceptional Circumstances did not exist would be ____ units (the “Required MPDUs”)

NOW, THEREFORE, pursuant to Article 17, Title 12 of the County Code, the parties agree as follows:

1. Amount of Contribution; Payment.

[Provisions to be used for homeownership projects]

(a) The Owner has provided the County with a market analysis prepared by a third party which estimates that the average sales price of the all the units in the Project will be _____ Thousand Dollars (\$_____) (the “Initial Average Sales Price”). The Act requires a contribution equal to two and half percent (2.5%) of the average sales price of all of the units in the project for each of the Required MPDUs, which amount is equal to _____ Thousand Dollars (\$_____) (the “Initial Payment”). The Initial Payment shall be due upon execution of this Agreement and prior to the earlier of approval of the record plat or issuance of a grading permit.

(b) Upon completion of the Project and sale of all units, the Owner shall provide the County with final documentation evidencing the final average sales price of the units (the “Final Average Sales Price”).

(i) If the Final Average Sales Price is higher than the Initial Average Sales Price, the Owner shall remit to the County the difference between the Initial Payment and two and half percent (2.5%) of the Final Average Sales Price.

(ii) If the Final Average Sales Price is lower than the Initial Average Sales Price, the County shall return to the Owner the difference between the Initial Payment and two and half percent (2.5%) of the Final Average Sales Price.

[Provisions to be used for rental projects]

(a) The Owner has provided the County with a rent analysis including its market rate rental rates for the Project and the rental rates that would be required under the Act for MPDUs, both projected for the 40 year control period required under the Act (the “Control Period”), and both including two percent (2%) increases each year. **[payment option 1:** The County has agreed to accept an annual payment from the Owner on or before December 31 of each year based on the actual rent differential between market rental rates and MPDU rental rates. For the first rental year, such payment shall be in the amount of _____ Thousand Dollars (\$_____) and shall be due in advance with the execution of this Agreement and prior to the earlier of approval of the record plat or issuance of a grading permit. Thereafter, on or before December 31 of each year, Owner shall provide to the County with the actual market rate rents for the Project for that year along with the rental rates that would be required under Act for MPDUs, along with payment in the amount of the difference, subject to review and approval by the County.] **[payment option 2:** The County has agreed to accept a single payment equivalent to rental rates that would be required under the Act for MPDUs, both projected for the 40 year control period required under the Act (the “Control Period”), and both including two percent (2%) increases each year on a present value basis. The Owner and the County agree that the present value basis payment is _____ Thousand Dollars (\$_____), which payment shall be made with the execution of this Agreement and prior to the earlier of approval of the record plat or issuance of a grading permit.

2. **Binding Agreement.** This Agreement, and the covenants required hereunder, shall be binding on the Owner and its successors and assigns.

3. **Survival.** The provisions of this Agreement shall survive execution and delivery of any deeds or leases and shall not be merged therein.

4. **Compliance.** Owner agrees to abide by and comply with all applicable laws regarding the subject matter of this Agreement, whether or not specifically referenced herein, including all the requirements for MPDUs as set forth in Bill 72-74 and the County Code, and agree to execute and deliver such additional documents as deemed necessary by the County to effectuate the intent and purpose of this Agreement.

5. **Notices.** Any notice required to be delivered under this Agreement shall be delivered to the parties by email and USPS mail according to the following contact information:

a. For Anne Arundel County:

Office of Law, 2660 Riva Road, 4th Floor, Annapolis, MD 21401

Law_All@aacounty.org

c. For Owner:

6. **Time.** Time is of the essence for this Agreement.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have signed, sealed and delivered this Agreement under seal as of the date below attested.

OWNER:

By: _____(SEAL)

Name:

Title:

State of _____, _____ County, ss:

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she has the full authority to execute and in fact executed, said Agreement for the purposes herein contained, and further acknowledged the foregoing Agreement, to be the act of said entity.

AS WITNESS: My hand and Notarial seal.

Notary Public

My commission expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ANNE ARUNDEL COUNTY,
MARYLAND

Christine M. Anderson
Chief Administrative Officer

State of Maryland, Anne Arundel County, ss:

I HEREBY CERTIFY, that on this ___ day of _____, 20___, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Christine M. Anderson, Chief Administrative Officer for Anne Arundel County, Maryland, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged to me that she has the full authority to execute and in fact executed, said Agreement for the purposes herein contained, and further acknowledged the foregoing Agreement to be the act of said entity.

AS WITNESS: My hand and Notarial seal.

Notary Public

My commission expires: _____

APPROVED FOR FORM
AND LEGAL SUFFICIENCY:

Gregory J. Swain, County Attorney

By: _____
Anne Arundel County Office of Law
Date: _____

Exhibit A
Legal Description

Exhibit C

Rent Calculator

[contact ACDS for the Excel calculator based on the following formula]

Market \$
MPDU Rent \$
Monthly Diff \$
Annual Diff \$

No. of MPDUs

Discount Rate 6.00%
Term 40 years
Rent Increase 2.00% per year

Years 1 -- 40
 \$ - \$

NPV \$0
Per Unit \$0