



City of Fairfax, Virginia

City Council Regular Meeting

Agenda Item # 4f

City Council Meeting 6/23/2020

TO: Honorable Mayor and Members of City Council

FROM: Robert A. Stalzer, City Manager *RA Stalzer*

SUBJECT: Public hearing and Council actions on proposed amendments to the Code of the City of Fairfax, Chapter 110 (Zoning) to amend portions of articles and sections contained therein, including, but not limited to: Zoning Districts and Regulations, Decision-Making Bodies and Officials, Development Review, Enforcement and Penalties, and Definitions to include provisions for affordable dwelling units.

ISSUE(S):

1. To conduct a public hearing and consider adoption of proposed amendments to the Code of the City of Fairfax, Chapter 110 (Zoning) to include provisions for affordable dwelling units;
2. To consider whether to approve a Memorandum of Understanding (“MOU”) with the Fairfax County Redevelopment & Housing Authority (“FCRHA”) for FCRHA to administer the ADU Program; and
3. To consider whether to approve Administrative Regulations for the purpose of the administration and day-to-day operation of the City’s ADU Program by the FCRHA.

SUMMARY: The Code of Virginia authorizes localities to provide for “optional increases in density” in a zoning ordinance in order to support the provision of affordable housing through an affordable dwelling unit (ADU) ordinance. Instituting an ADU ordinance is voluntary on the part of the locality. The City of Fairfax is included in the more flexible (§15.2-2304) of two state code sections (§15.2-2305) authorizing the adoption of an ADU ordinance. The Planning Commission held a public hearing on June 8, 2020 and recommended an amendment to the City’s Zoning Ordinance to include provisions for affordable dwelling units. Administrative regulations have also been prepared to guide the day-to-day operation of the program. The program is proposed to be administered by the FCRHA under a memorandum of understanding, which the FCRHA approved on March 5, 2020.

FISCAL IMPACT: The memorandum of understanding with the FCRHA provides for the administration of 50 dwelling units each year at no charge. Costs following the first 50 units are estimated at \$725 per unit for rental units and \$1,450 per unit for ownership units annually.

RECOMMENDATION: Adopt the proposed amendments, approve the MOU with the FCRHA, and approve the Administrative Regulations.

ALTERNATIVE COURSE OF ACTION: Further amend, defer action, or do not adopt the proposed amendments. In the event the proposed amendments are not adopted, Staff recommends that the City Council defer taking any action on the MOU and the Administrative Regulations.

RESPONSIBLE STAFF/POC: Community Development & Planning

COORDINATION: City Attorney

ATTACHMENTS: Staff Memo; Ordinance Amendments; Administrative Regulations; Memorandum of Understanding; Sample Motions

MEMORANDUM

To: Honorable Mayor and Members of the City Council

From: Brooke Hardin, Director of Community Development & Planning

Subject: Proposed amendments to the Code of the City of Fairfax, Chapter 110 (Zoning) to amend portions of articles and sections contained therein, including, but not limited to: Zoning Districts and Regulations, Decision-Making Bodies and Officials, Development Review, Enforcement and Penalties, and Definitions to include provisions for affordable dwelling units.



Meeting

Date: June 23, 2020

Background

The Code of Virginia authorizes localities to provide for “optional increases in density” in a zoning ordinance in order to support the provision of affordable housing through an affordable dwelling unit (ADU) ordinance. Instituting an ADU ordinance is voluntary on the part of the locality. The City of Fairfax is included in the more flexible (§15.2-2304) of two state code sections (§15.2-2305) authorizing the adoption of an ADU ordinance.

Prior to changes by the Virginia General Assembly in 2016 to the state enabling legislation for proffers, the City negotiated affordable housing proffers in conjunction with new residential development proposals seeking City Council approval through a housing policy resolution (R15-42). The changes to the proffer legislation effectively nullified the City’s housing policy resolution as it pertained to future actions of the City Council. The City of Fairfax 2035 Comprehensive Plan adopted on February 12, 2019, included recommendations that the City pursue amendments to the Zoning Ordinance to include ADUs as well as a contractual partnership with the Fairfax County Department of Housing and Community Development to administer elements of a housing affordability program for the City.

The City Council held work sessions on November 27, 2018, April 9, 2019, January 28, 2020, and May 26, 2020, to discuss the inclusion of provisions for ADUs in the City’s Zoning Ordinance, as well as administrative regulations to guide the day-to-day operation of the program and a memorandum of understanding with the Fairfax County Redevelopment & Housing Authority (“FCRHA”) for program administration. On February 24, 2020, the Planning Commission adopted a motion to initiate amendments to the Zoning Ordinance to

include provisions for affordable dwelling units and to schedule a public hearing. Approval of that motion did not signify approval of any amendments, but instead authorized staff to prepare the amendments for City Council and Planning Commission consideration following public hearings. The Planning Commission held a public hearing on the proposed amendments on June 8, 2020, and recommended approval of the amendments to the City Council.

Affordable Dwelling Unit Program

The proposed ADU program is comprised of zoning regulations that outline the requirements for new residential development as well as administrative regulations that guide the day-to-day operations of the program. For program administration, a partnership with the FCRHA has been proposed as housing authority staff has expertise and experience in administering the County's program, which has included nearly 2,900 dwelling units that have been produced since the County adopted its ADU program in 1990. A memorandum of understanding between the City and the FCRHA would establish and facilitate the partnership.

Proposed Zoning Text Amendments

The proposed zoning text amendments incorporate the ADU provisions into various sections of the Zoning Ordinance. The ADU provisions would be applicable to any new development with a minimum of 30 dwelling units that is seeking a rezoning, special use permit, special exception, or has filed a site plan or subdivision. Single-family developments, which would include detached, attached, townhouse, and duplex units, would provide 10% of the total units as affordable, while multifamily developments, would provide 6% of the total units as affordable. ADUs available for purchase would be affordable to households with incomes of 70% or less of the area median income. Rental ADUs developed under the program would be affordable to households with incomes of 60% or less of the area median income. ADU developments would be provided an approximately 20% bonus density based on the modification of certain dimensional requirements of the applicable zoning district.

The sections of the Zoning Ordinance that include the proposed zoning text amendments include the following:

- §3.6 Dimensional Standards – The Dimensional Standards section includes tables that provide the feature requirements for each zoning district within the Zoning Ordinance (residential and nonresidential). These features include items such as required yards (setbacks), height, building coverage, lot coverage, and density.
- §3.9 Affordable Dwelling Units – The Affordable Dwelling Units section is proposed as a new section of the ordinance that would contain most of the proposed provisions related to ADUs. Article 3 of the Zoning Ordinance, of which this would be a subsection, includes Zoning Districts and Regulations.
- §5.5 Director of Community Development & Planning – The Director of Community Development & Planning section outlines the role of the Director in terms of the Zoning Ordinance, including actions for which the director makes recommendations or final decisions.
- §6.1 Summary of Review Authority – The Summary of Review Authority section includes a table that summarizes the review and approval authority for the actions

taken in accordance with the Zoning Ordinance. These include actions taken by the governing body, staff, and boards and commissions.

- §6.2 Common Review Procedures – The Common Review Procedures section outlines the procedures by which all applications in the Zoning Ordinance are reviewed.
- §6.19 Affordable Dwelling Unit Modifications – The Affordable Dwelling Unit Modifications section is proposed as a new section that would outline the procedures and approval considerations for requests for modifications from the ADU provisions.
- §8.3 Remedies and Penalties – The Remedies and Penalties section includes the measures that may be taken to enforce various types of violations of the Zoning Ordinance.
- Article 9 Definitions – The Definitions article includes the definition of terms used in the Zoning Ordinance.

Summaries of the proposed zoning text amendments within each of the applicable sections of the Zoning Ordinance are provided below:

§3.6 Dimensional Standards

The proposed amendments add dimensional standards for ADU developments that are relaxed in order to facilitate the additional density that would result from the establishment of ADUs as well as any related optional density increase (the standards generally reflect a 20% bonus density). The bonus density provisions apply to all dwelling units in the development, both affordable and market rate.

§3.9 Affordable Dwelling Units

The proposed amendments incorporate the purpose of the ADU ordinance and ordinance regulations. The amendments contain the requirements for items including: the minimum thresholds to which the ordinance applies (developments with thirty (30) or more residential units), the percentage of ADUs that would be provided by various unit types (10% for single family developments and 6% for multifamily developments), the income levels of participants in the program (generally, no more than 70% of AMI for any for sale units and no more than 60% of AMI for any rental units), procedures for rental and ownership units, how the dwelling units are documented and calculated, comparability and compatibility of affordable and market rate units, references to the administrative regulations and modification provisions, and the relationship between the City's program and other state/federal programs.

A revision to the originally drafted comparability and compatibility provisions (§3.9.6 E-G) was presented by Staff to the City Council at its May 26, 2020 work session (shown as Option 1 below). Some concern was expressed by some Councilmembers regarding the proposed change to these provisions, as well as the clarity of the provisions. In response to these comments, staff presented four potential options for the comparability and compatibility provisions (shown below) to the Planning Commission at its June 8, 2020 public hearing. Following discussion of the options, the Planning Commission included Option 1 in its recommended approval of the zoning text amendments to the City Council. Staff continues to recommend the adoption of Option 1 by the City Council.

OPTION 1 [LANGUAGE PRESENTED AT MAY 26 CITY COUNCIL WORK SESSION]:

E. Specifications for prototype Affordable Dwelling Units

The city may, at its discretion, administratively establish specifications for prototypical Affordable Dwelling Units based on the numbers of bedrooms in various dwelling unit types. In the event the city establishes such specifications, every Affordable Dwelling Unit provided under the city's Program shall satisfy all specified requirements for the applicable dwelling unit type. In addition, all Affordable Dwelling Unit developments shall satisfy the Affordable Dwelling Unit Development Regulations set forth in § 3.6.1 and §3.6.2 of this Ordinance.

F. Comparability of units

Any Affordable Dwelling Units provided under the provisions of the city's Program shall be comparable with respect to the number of bedrooms for the unit when compared to equivalent market rate units in the same development. In general, dwelling dimensions of a multi-family ADU shall be comparable to equivalent market rate units in the same development.

G. Similarity and compatibility of units

Affordable Dwelling Units shall be similar to and compatible with the dwelling unit types and architectural styles of market-rate units provided in the same development, provided, however, that the requirement of similarity and compatibility of Affordable Dwelling Units with market rate units may be achieved, if permitted in the underlying zoning district, by the provision of single-family attached, duplex, or townhouse Affordable Dwelling Unit in a development comprised of homes whose size would otherwise make that determination of similarity and compatibility infeasible. If permitted by the Zoning Ordinance, the use of single-family attached, duplex, or townhouse Affordable Dwelling Unit, which would provide homes for no more than three Affordable Dwelling Unit households, may, in comparison to one market-rate unit household, serve to provide the compatibility required by this section.

OPTION 2 [LANGUAGE THAT PRECEDED THE MAY 26 WORKSESSION]:

E. Specifications for prototype Affordable Dwelling Units

The city may, at its discretion, adopt specifications for a prototypical Affordable Dwelling Unit. In the event the city adopts such specifications, every Affordable Dwelling Unit provided under the city's Program shall satisfy all specified requirements.

F. Comparability of units

Any Affordable Dwelling Units provided under the provisions of the city's Program shall be comparable with respect to the number of bedrooms the dimensions of the rooms, the overall dimensions and square footages of the living spaces, and the furnishings, finishings, and appliances provided for the unit when compared to market rate units in the same development.

G. Similarity and compatibility of units

Affordable Dwelling Units shall be similar to and compatible with the dwelling unit types and architectural styles of market-rate units provided in the same development,

provided, however, that the requirement of similarity and compatibility of Affordable Dwelling Units with market rate units may be achieved, if permitted in the underlying zoning district, by the provision of single-family attached, duplex, or townhouse Affordable Dwelling Unit in a development comprised of homes whose size would otherwise make that determination of similarity and compatibility infeasible. If permitted by the Zoning Ordinance, the use of single-family attached, duplex, or townhouse Affordable Dwelling Unit, which would provide homes for no more than three Affordable Dwelling Unit households, may, in comparison to one market-rate unit household, serve to provide the compatibility required by this section.

OPTION 3 [MINIMUM SQUARE FOOTAGES FOR ADUS]:

E. Specifications for prototype Affordable Dwelling Units

Affordable Dwelling Units in a development shall satisfy the following minimum square footage requirements:

- 0-1 bedroom units (multifamily) shall be at least 300 square feet
- 0-1 bedroom units (single family) shall be at least 480 square feet
- 2 bedroom units shall be at least 725 square feet
- 3 bedroom units shall be at least 925 square feet
- 4 bedroom units shall be at least 1,200 square feet
- 5+ bedroom units shall be at least 1,300 square feet

The city may, at its discretion, administratively establish additional minimum specifications for prototypical Affordable Dwelling Units. In the event the city establishes such additional minimum specifications, every Affordable Dwelling Unit provided under the city's Program shall satisfy all specified requirements for the applicable dwelling unit type. In addition, all Affordable Dwelling Unit developments shall satisfy the Affordable Dwelling Unit Development Regulations set forth in §3.6.1 and §3.6.2 of this Ordinance.

F. Comparability of units

The number of bedrooms in Affordable Dwelling Units provided in a particular development under the provisions of the city's Program shall be comparable to the percentage of market rate units in the same development with respect to the number of bedrooms provided in various dwelling unit types. Whenever the ratios of units with a particular number of bedrooms in various dwelling unit types cannot be made directly proportional between Affordable Dwelling Units and market rate units with the same number of bedrooms, the Zoning Administrator shall have the discretion to decide how many bedrooms must be provided in each of the Affordable Dwelling Units provided under the provisions of the city's Program.

G. Similarity and compatibility of units

Affordable Dwelling Units shall be similar to and compatible with the dwelling unit types and architectural styles of market-rate units provided in the same development, provided, however, that the requirement of similarity and compatibility of Affordable Dwelling Units with market rate units may be achieved, if permitted in the underlying

zoning district, by the provision of single-family attached, duplex, or townhouse Affordable Dwelling Unit in a development comprised of homes whose size would otherwise make that determination of similarity and compatibility infeasible. If permitted by the Zoning Ordinance, the use of single-family attached, duplex, or townhouse Affordable Dwelling Unit, which would provide homes for no more than three Affordable Dwelling Unit households, may, in comparison to one market-rate unit household, serve to provide the compatibility required by this section.

OPTION 4 [MINIMUM WIDTHS AND DEPTHS FOR ADUS]:

E. Specifications for prototype Affordable Dwelling Units

1. All Affordable Dwelling Units in a development shall have a width that is no less than 70% of the mean width of all market-rate units in that development.
2. All Affordable Dwelling Units in a development shall have a depth that is no less than 70% of the mean depth of all market-rate units in that development.

The city may, at its discretion, administratively establish additional minimum specifications for prototypical Affordable Dwelling Units. In the event the city establishes such additional minimum specifications, every Affordable Dwelling Unit provided under the city's Program shall satisfy all specified requirements for the applicable dwelling unit type. In addition, all Affordable Dwelling Unit developments shall satisfy the Affordable Dwelling Unit Development Regulations set forth in §3.6.1 and §3.6.2 of this Ordinance.

F. Comparability of units

The number of bedrooms in Affordable Dwelling Units provided in a development under the provisions of the city's Program shall be comparable to the percentage of market rate units in that development with respect to the number of bedrooms provided in various dwelling unit types. Whenever the ratios of units with a particular number of bedrooms in various dwelling unit types cannot be made directly proportional between Affordable Dwelling Units and market rate units with the same number of bedrooms, the Zoning Administrator shall have the discretion to decide how many bedrooms must be provided in each of the Affordable Dwelling Units provided under the provisions of the city's Program.

G. Similarity and compatibility of units

Affordable Dwelling Units shall be similar to and compatible with the dwelling unit types and architectural styles of market-rate units provided in the same development, provided, however, that the requirement of similarity and compatibility of Affordable Dwelling Units with market rate units may be achieved, if permitted in the underlying zoning district, by the provision of single-family attached, duplex, or townhouse Affordable Dwelling Unit in a development comprised of homes whose size would otherwise make that determination of similarity and compatibility infeasible. If permitted by the Zoning Ordinance, the use of single-family attached, duplex, or townhouse Affordable Dwelling Unit, which would provide homes for no more than

three Affordable Dwelling Unit households, may, in comparison to one market-rate unit household, serve to provide the compatibility required by this section.

§5.5 Director of Community Development & Planning

The proposed amendments propose that the director provides a recommendation to the City Council regarding any requested modifications from the ADU requirements. This approach would be similar to the current approach for a special use permit application.

§6.1 Summary of Review Authority

The proposed amendments would add Affordable Dwelling Unit Modifications to the table that summarizes the review and approval authority in the Zoning Ordinance.

§6.2 Common Review Procedures

The proposed amendments would add Affordable Dwelling Unit Modifications to the common review procedures, by which all applications in the Zoning Ordinance are reviewed.

§6.19 Affordable Dwelling Unit Modifications

The proposed amendments add a procedure to the Zoning Ordinance for modifications from the ADU provisions of the ordinance. The application requirements and review procedures by staff and the City Council are included. The proposed amendments identify the approval considerations, the limitations on dwelling unit reductions, and the formula for cash contributions for affordable housing. Members of the community have expressed concern regarding the inclusion of a cash contribution provision in the ordinance, as well as the clarity of the proposed formula (§6.19.3.B.1). Staff has provided an alternate approach to the formula (Option 2) for City Council consideration.

OPTION 1:

1. Any cash contributions made in conjunction with a modification request shall be determined using the following formula:

CASH CONTRIBUTION FORMULA	
$\frac{\text{Construction Price of Prototypical Affordable Dwelling Unit}}{.50}$	$\times .25 \times \# \text{ of Affordable dwelling units not provided} = \text{cash contribution}$

OPTION 2:

1. Any cash contributions made in lieu of the provision of affordable dwelling units in conjunction with a modification request shall be a per unit cash contribution of 100% of the construction cost of a prototypical affordable dwelling unit based on the numbers of bedrooms in various dwelling unit types.

§8.3 Remedies and Penalties

The proposed amendments outline the civil penalties associated with violations of the ADU ordinance by owners and renters, as well as criminal penalties for owners that knowingly execute false affidavits.

Article 9 Definitions

The proposed amendments add terms from the ADU provisions of the ordinance that were not previously included in the Zoning Ordinance definitions.

Recommendations

Following the public hearing, staff recommends that the City Council approve the ordinance to amend portions of articles and sections contained in the City of Fairfax Zoning Ordinance to include provisions for affordable dwelling units.

Staff also recommends that the City Council approve the MOU, authorize the City Manager to execute it on behalf of the City for program administration, and approve the Administrative Regulations.

Sample motions are provided for City Council action.

Attachment A: Ordinance

Attachment B: Administrative Regulations

Attachment C: Memorandum of Understanding

Attachment D: Sample Motions

AN ORDINANCE AMENDING CHAPTER 110 (ZONING) TO AMEND PORTIONS OF ARTICLES AND SECTIONS CONTAINED THEREIN PERTAINING TO AFFORDABLE DWELLING UNITS.

BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 3, §3.6 of the Code of the City of Fairfax, Virginia, is hereby amended as follows:

§ 3.6. DIMENSIONAL STANDARDS

The dimensional standards of §3.6 apply to all general district development. Methods of measurement and exceptions are found in §1.5.

§ 3.6.1. Residential districts

A. General provisions

RESIDENTIAL DISTRICTS DIMENSIONAL STANDARDS	RL	RM	RH	RT-6	RT	RMF
DENSITY (UNITS/ACRE), MAXIMUM	--	--	--	6	12	20
SITE AREA (ACRES), MINIMUM	--	--	--	3	0.4	0.5
LOT AREA/ UNIT, MINIMUM (SQ. FT.)	20,000	7,500	6,000	1,600 [3]	1,500	1,800
REQUIRED YARDS, MINIMUM (FT.) [1]						
Front	40	25	20	10	10	25
Side (street)	30	20	15	20	20	25
Side (interior)	15	12-10[2]	12-10[2]	0	0	25
Rear	25	25	25	20	20	35
LOT WIDTH, MINIMUM (FT.)						
Interior lots	100	75	60	18	18	--
Corner lots	125	95	80	18	18	--
HEIGHT, MAXIMUM (STORIES/FEET) [2]						
Adjacent to RL, RM or RH district	3/35	3/15-35[2]	3/15-35[2]	3/35	3/35	3/35
Not adjacent to RL, RM or RH district	3/35	3/35	3/35	3/35	4/45	4/45
BUILDING COVERAGE, MAXIMUM (%)		25	35	60	60	60
LOT COVERAGE, MAXIMUM (%)		40	50	80	80	80

NOTES:

[1] Special building line requirements apply where narrow right-of-way areas are found, see §1.5.12.F.

[2] Some exceptions apply. See §1.5.11.A.2(a).

[3] Or, an average of 1,800 square feet.

1 B. Affordable Dwelling Unit Development Regulations

RESIDENTIAL DISTRICTS DIMENSIONAL STANDARDS	RL	RM	RH	RT-6	RT	RMF
DENSITY (UNITS/ACRE), MAXIMUM	=	=	=	7.2	14.4	24
SITE AREA (ACRES), MINIMUM	=	=	=	3	0.4	0.5
LOT AREA/ UNIT, MINIMUM (SQ. FT.)	16,000	6,000	4,800	1,280 [3]	1,200	1,440
REQUIRED YARDS, MINIMUM (FT.) [1]						
Front	32	20	20	8	8	25
Side (street)	24	18	12	16	16	25
Side (interior)	12	10-8[2]	10-8[2]	0	0	25
Rear	20	20	20	15	15	35
LOT WIDTH, MINIMUM (FT.)						
Interior lots	80	60	48	16	16	=
Corner lots	100	76	64	16	16	=
HEIGHT, MAXIMUM (STORIES/FEET) [2]						
Adjacent to RL, RM or RH district	3/35	3/15-35[2]	3/15-35[2]	3/35	3/35	4/48
Not adjacent to RL, RM or RH district	3/35	3/35	3/35	3/35	4/45	5/60
BUILDING COVERAGE, MAXIMUM (%)		30	42	70	70	70
LOT COVERAGE, MAXIMUM (%)		48	60	90	90	90

NOTES:

[1] Special building line requirements apply where narrow right-of-way areas are found, see §1.5.12.F.

[2] Some exceptions apply. See §1.5.11.A.2(a).

[3] Or, an average of 1,440 square feet.

2
3 § 3.6.2. Nonresidential districts

NONRESIDENTIAL DISTRICTS DIMENSIONAL STANDARDS	CL	CO	CR	CU	CG	IL	IH
DENSITY (UNITS/ACRE), MAXIMUM	RESERVED 20 (General) / 24 (Affordable Dwelling Unit)					=	=
LOT AREA, MIN. (SQ. FT.)	--	20,000	20,000	30,000	22,000	--	--
REQUIRED YARDS (FT.)							
Front and side (street)							
Maximum	--	--	93[1]	15	--	--	--
Minimum	20[1]	20[1]	20[1]	0	20	20	25
Side (interior), min. adjacent to a residential district	25	25	25	25	25	50	50
Side (interior), min. not adjacent to a residential district	12	0/10[2]	0/10[2]	0/10[2]	25	0	0
Rear, min. adjacent to a residential district	25	25	25	25	25	50	50
Rear, min. not adjacent to a residential district	0	0	0	0	25	0	0
BUILD-TO LINE, MANDATORY (PERCENT)	--	--	--	50	--	--	--
LOT WIDTH, MINIMUM (FT.)	--	--	--	--	150	--	--
BULK PLANE REQUIREMENTS (DEGREES)							
Front	--	--	--	--	--	--	--
Side (interior), adjacent to a residential district	--	45	45	45	45	45	45
Side (interior), not adjacent to a residential district	--	--	--	--	--	30	30
Rear, adjacent to a residential district	--	45	45	45	45	45	45
Rear, not adjacent to a residential district	--	--	--	--	--	30	30
HEIGHT, MAXIMUM (STORIES/FEET)	3/35	5/60	5/60	5/60	5/60	3/35	6/60
BUILDING COVERAGE, MAXIMUM (%)	25	50	60	80	--	50	50
LOT COVERAGE, MAXIMUM	50	85	85	100	90	90	90
FLOOR AREA, MAXIMUM (SQ. FT.)	17,500	--	--	--	--	--	--

NOTES:

[1] Special building line requirements apply where narrow right-of-way areas are found, see §1.5.12.F.1(a).

[2] No side (interior) yard is required, but if a building is not built to the lot line, a minimum 10 foot side (interior) yard shall be required.

1 **BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that**
2 **Chapter 110, Article 3, of the Code of the City of Fairfax, Virginia, is hereby amended as**
3 **follows:**

4 §3.9. AFFORDABLE DWELLING UNITS

5 §3.9.1. Purpose and intent

6 Provisions of the city of Fairfax Zoning Ordinance regarding affordable dwelling units are
7 hereby established to assist in the provision of affordable housing in the city. These provisions
8 are designed to provide affordable housing in the city by: (a) promoting the development of a full
9 range of housing choices; (b) encouraging the construction and continued existence of dwelling
10 units that are affordable for purchase by households whose collective income is 70% or less of
11 the area median income (“AMI”) of households in the Washington-Arlington-Alexandria, DC-
12 VA-MD-WV Metropolitan Statistical Area (“WMSA”); and (c) encouraging the construction
13 and continued existence of dwelling units that are affordable for rental by households whose
14 collective income is 60% or less of AMI. For purposes of determining whether a household’s
15 income qualifies for participation in the city’s Program, the income of a household shall include
16 the income of all household members 18 years or older who are not full-time students. The
17 city’s Program gives priority for affordable housing to households that have members who live
18 and/or work in the city. The effective date of the City’s ADU Program shall be specified by the
19 City Council upon the adoption of these provisions.

20 §3.9.2. General provisions

21 A. Administration

22 The administration of the city’s Program shall be undertaken in accordance with any
23 rules, regulations and procedures that may be adopted and/or approved by the city council
24 for the purpose of supporting and administering the provision of affordable dwelling units
25 in the city. The city may appoint an agent for the purpose of administering the city’s
26 Program and, if the city appoints an agent for such purposes, any reference herein to “the
27 city” shall mean, if applicable, “the city or its agent.”

28
29 B. Applicability

- 30 1. The provisions of this Chapter requiring the provision of affordable dwelling units
31 shall apply to any site, or any portion thereof, at one location which is the subject of a
32 complete Land Use Application submitted after the effective date of the city’s
33 Program, whenever such an application includes, upon approval, a total of 30 or more
34 dwelling units. Any Affordable Dwelling Unit Development is allowed to apply the
35 Affordable Dwelling Unit Development Regulations to that development as set forth
36 in §3.9.3 of this Ordinance.
- 37 2. The provisions of the city’s Program shall apply to any Land Use Application
38 approved by or on behalf of the city council before the effective date of the city’s
39 Program in which the owner and/or Zoning Applicant agreed to provide affordable

1 dwelling units or otherwise support the provision of affordable housing in the city as
2 a consequence of the approval of such application. Notwithstanding the foregoing, an
3 owner and/or Zoning Applicant's obligation to provide affordable dwelling units or
4 otherwise support the provision of affordable housing in the city with respect to any
5 such application is limited to whatever the owner and/or Zoning Applicant agreed to
6 and the city council approved.

7 3. An owner and/or Zoning Applicant may voluntarily provide affordable dwelling units
8 in a development, including those with fewer than thirty (30) dwelling units, to which
9 the Affordable Dwelling Unit Development Regulations would not otherwise apply in
10 accordance with §3.9.3 of this Ordinance .

11 4. An owner and/or Zoning Applicant may provide Affordable Dwelling Units in
12 accordance with §3.9.7 of this Ordinance.

13
14 C. Piecemeal land use applications

15 An owner and/or Zoning Applicant shall not avoid the requirements of this Article by
16 submitting separate Land Use Applications for less than thirty (30) dwelling units at any
17 one time. However, an owner and/or Zoning Applicant may submit a site plan or
18 subdivision plat for less than thirty (30) dwelling units if the owner and/or Zoning
19 Applicant agrees in writing that the next land use application or submission for the site or
20 portion thereof shall meet the requirements of the city's Program when the total number
21 of dwelling units in such development has reached thirty (30). The owner and/or Zoning
22 Applicant for an application shall affirm, under oath, that they neither have nor have had
23 any financial interest and/or participation in any prior application for land adjacent to the
24 subject property. Prior to the approval of a site plan or subdivision, the owner and/or
25 Zoning Applicant shall cause this written statement to be recorded among the land
26 records of Fairfax County and indexed in the names of all owners of the site or portion
27 thereof, as such terms are defined herein.

28
29 D. Affidavit

- 30 1. As part of the filing of a Land Use Application to which the city's Program applies,
31 the owner and/or Zoning Applicant(s) shall submit an affidavit that includes:
32 (a) The names of the owners of each parcel or portions thereof that comprise the
33 site described in §3.9.2.E.1.
34 (b) The city of Fairfax tax map number, parcel size, and zoning district
35 classification for each parcel or part thereof that is included as part of the site
36 in such application or submission.

37
38 E. Economic interests

- 39 1. For purposes of the city's Program, "site, or any portion thereof, at one location" shall
40 include all adjacent land of the owner and/or Zoning Applicant, under common
41 ownership and/or control of the owner and/or Zoning Applicant, including, but not
42 limited to, land owned and/or controlled by separate partnerships, land trusts,
43 corporations, or similar business entities in which the owner and/or Zoning Applicant
44 (including members of the immediate family of the owner and/or Zoning Applicant)
45 is a partner, beneficiary, or owns 1% or more of the stock of such forms of business
46 entities.

2. Immediate family members shall include the owner's and/or Zoning Applicant's spouse, children, parents and siblings.
3. When a financial institution has acquired, or acquires, an equity interest in property solely by virtue of its agreement to provide financing, such equity interest shall not be considered by the city in making a determination of applicability of the city's Program to that property. However, the acquisition of a fee interest by such lending institution due to foreclosure or project participation shall be considered an ownership interest by the city in making a determination of applicability of the city's Program to that property.

F. Exemptions

Unless otherwise specified, the requirements of the city's Program shall not apply to the following:

1. Any Land Use Application approved before the effective date of the city's Program for a specific development that does not itself provide for Affordable Dwelling Units or any monetary contribution made to support the provision of Affordable Dwelling Units in the city.
2. Any Land Use Application filed in accordance with a rezoning approved before the effective date of the city's Program wherein the city council accepted a proffer in which the owner and/or Zoning Applicant agreed to provide Affordable Dwelling Units or other specific and express contributions to affordable housing, such as money dedicated to the city of Fairfax housing trust fund. Notwithstanding the fact that terms and conditions of the approval of any such application may differ from the provisions of the city's Program, any such development shall comply with the terms and conditions of the approval of such application.
3. To the extent it may differ from the provisions of the city's Program, any Land Use Application approved before the effective date of the city's Program in which the owner and/or Zoning Applicant agreed in a manner other than through the submission of a rezoning proffer to provide Affordable Dwelling Units or other specific and express contributions to affordable housing, such as money dedicated to the city of Fairfax 's housing trust fund. Notwithstanding the fact that terms and conditions of the approval of any such application may differ from the provisions of the city's Program, any such development shall comply with the terms and conditions of the approval of such application and all other applicable provisions of the city's Program.
4. Any Land Use Application that does not seek to either change the dwelling unit type of any residential units existing on or approved for the site or increase the number of residential dwelling units permitted on the site that is the subject of that application.

§3.9.3 Development regulations

A. Dimensional standards

All Affordable Dwelling Unit Developments shall comply, if applicable, with the minimum requirements and the maximum density requirements of §3.6.1(B), which allows for modifications of certain dimensional standards for Affordable Dwelling Unit Developments.

1 B. Use types

2 For purposes of the city's Program, single-family detached homes, single-family attached
3 homes, townhouses, and duplexes shall be deemed single-family uses. With respect to
4 upper story residential/mixed use homes, those uses shall be deemed single-family uses
5 when they are consistent with the definition of single-family uses listed above. When
6 upper story residential/mixed use homes bear the characteristics of and are more similar
7 to multifamily homes such as apartments, then those uses shall be deemed multifamily
8 uses under the terms of the city's Program.

9
10 C. Single-family

- 11 1. Any additional single-family dwelling units an owner and/or Zoning Applicant is
12 authorized to construct under the Affordable Dwelling Unit Development Regulations
13 shall be deemed optional density under the terms of the city's Program. Regardless
14 of whether any optional density increase is requested for a particular site, the
15 provision of Affordable Dwelling Units shall be required in all single-family
16 developments to which the city's Program applies.
- 17 2. All single-family residential developments, whether detached, attached, townhouse,
18 duplex, or upper story residential/mixed use homes, to which the city's Program
19 applies shall provide no less than 10 percent of the total single-family units in that
20 development as Affordable Dwelling Units or a modification approved by city
21 council shall be necessary in order to reduce the number of required single-family
22 Affordable Dwelling Units, except where modified under § 6.19.

23
24 D. Multifamily

- 25 1. Any additional multifamily dwelling units an owner and/or Zoning Applicant is
26 authorized to construct under the Affordable Dwelling Unit Development
27 Regulations shall be deemed optional density under the terms of the city's Program.
28 Regardless of whether any optional density increase is requested for a particular site,
29 the provision of Affordable Dwelling Units shall be required in all multifamily
30 developments to which the city's Program applies.
- 31 2. All multifamily residential developments to which the city's Program applies shall be
32 required to provide no less than 6 percent of the total units in that multifamily
33 development as Affordable Dwelling Units or a modification approved by city
34 council shall be necessary in order to reduce the number of required multifamily
35 Affordable Dwelling Units.
- 36 3. Different unit types (e.g., studio/efficiency, one-bedroom, two-bedroom, and three-
37 bedroom) shall be provided throughout all multifamily developments to which the
38 city's Program applies in approximate proportion to the ratio of units provided
39 throughout the entire development to market-rate tenants. Compliance with the
40 foregoing requirement shall be determined through the exercise of reasonable
41 discretion by the zoning administrator.

42
43 E. Mixed unit types

44 In the event an Affordable Dwelling Unit Development includes both single-family
45 residential units and multifamily residential units, no less than 10 percent of the single-
46 family units shall be Affordable Dwelling Units and no less than 6 percent of the

1 multifamily units shall be Affordable Dwelling Units or a modification approved by city
2 council shall be necessary in order to reduce the number of required single-family or
3 multifamily Affordable Dwelling Units.

4
5 F. Fractional units

6 When the percentage requirements set forth in the city's Program yield a fractional unit,
7 any such fraction shall be rounded down from .49 and below so that no additional
8 Affordable Dwelling Unit shall be required and any such fraction shall be rounded up
9 from .50 and above so that one additional Affordable Dwelling Unit shall be required.

10
11 G. Voluntary affordable dwelling units

12 For a development to which the City's Program does not apply, an owner and/or Zoning
13 Applicant may, at his or her discretion, voluntarily agree to provide the number of
14 Affordable Dwelling Units that would be required for that development if the city's
15 Program applied thereto. In the event an owner and/or Zoning Applicant agrees to
16 voluntarily provide such Affordable Dwelling Units in accordance with the city's
17 Program, the development in which such Affordable Dwelling Units are provided may
18 utilize the Affordable Dwelling Unit Development Regulations.

19
20 H. Limits on permits in developments containing affordable dwelling units

21 At any time after the issuance of a building permit for an Affordable Dwelling Unit (or
22 permits for groups of Affordable Dwelling Units) but before the issuance of the first
23 zoning permit for use and occupancy of an Affordable Dwelling Unit, the owner and/or
24 Zoning Applicant must send a notice of availability to the city advising that a particular
25 Affordable Dwelling Unit (or group of Affordable Dwelling Units) is now or will be
26 completed and ready for sale or rental. The city's Affordable Dwelling Unit
27 Administrative Regulations (see § 2(D)) regarding the notice of availability shall specify
28 its form and the office to which it must be submitted.

- 29 1. No zoning permit for use and occupancy may be issued until the declaration of
30 covenants referenced in §3.9.3.I is recorded.
31 2. No zoning permit for use and occupancy may be issued until the rents or sales
32 prices for the Affordable Dwelling Units are approved by the city.

33
34 I. Developer's covenants

35 Affordable dwelling unit covenants, which are applicable to Affordable Dwelling Units
36 and which run in favor of and are in the form prescribed by the city, shall be recorded
37 simultaneously with the recordation of the final subdivision plat or, in the case of a
38 condominium, recorded simultaneously with the condominium declaration. The
39 covenants must be recorded and delivered to the city before the Control Period may begin
40 and shall meet the requirements as set forth by the city's Program. (See, e.g., §3.9.8).
41 Prior to the approval of a site plan or subdivision, the owner and/or Zoning Applicant
42 shall cause the affordable dwelling unit covenants to be recorded among the land records
43 of Fairfax County and indexed in the names of all owners of the site or portion thereof, as
44 such terms are defined herein. In the event neither a site plan nor a subdivision plat is
45 required by a particular situation, the affordable dwelling unit covenants shall be
46 recorded before the approval of a zoning permit for use and occupancy.

1 §3.9.4 Procedures for Affordable Dwelling Units offered for sale

2 A. Sales of Affordable Dwelling Units regulated by the city

3 The sale of affordable dwelling units shall be regulated by the city. The city may adopt
4 reasonable rules and regulations to assist in the regulation and monitoring of the sale and
5 resale of affordable dwelling units, which may include, among other things, giving a
6 priority to persons who live or work in the city.
7

8 B. Exclusive right of city to purchase Affordable Dwelling Units

9 The city or its designee shall have the exclusive right to purchase up to one-third of the
10 for-sale Affordable Dwelling Units in a development within ninety (90) days after a
11 dwelling unit is completed and ready for purchase. The remaining two-thirds of such
12 units shall be offered for sale exclusively for a ninety-day period to persons who qualify
13 to purchase such units under the city's Program. The sales of Affordable Dwelling Units
14 shall be administered in accordance with the provisions of the city's Affordable Dwelling
15 Unit Development Regulations.
16

17 C. Affordable Dwelling Unit cost factors

18 A schedule of city-wide cost factors and the cost calculation formula used to determine
19 sales prices shall be established initially and may be amended periodically by the city,
20 based upon a determination of all ordinary, necessary and reasonable costs required to
21 construct the various affordable dwelling unit prototype dwellings by private industry in
22 the city, after consideration by the city of written comments from the public and other
23 information which may be available, such as the area's current general market and
24 economic conditions.
25

26 D. Sales price review

27 The city may conduct a review of affordable dwelling unit sales prices on an annual basis
28 to determine if the price needs an adjustment.
29

30 E. No economic loss

31 The sales prices for Affordable Dwelling Units within a development shall be established
32 such that the owner and/or Zoning Applicant shall not suffer economic loss as a result of
33 providing the required Affordable Dwelling Units. "Economic loss" shall mean that result
34 that would occur if the owner and/or Zoning Applicant of a development were to fail to
35 recoup the cost of construction and certain allowances as may be determined by the city
36 manager for the Affordable Dwelling Units, exclusive of the land acquisition cost and
37 costs voluntarily incurred, but not authorized, under the city's Program, upon sale of an
38 Affordable Dwelling Unit.
39

40 F. Timeline for who can purchase an Affordable Dwelling Unit

41 The timeline for who can purchase an Affordable Dwelling Unit under the city's Program
42 and when such purchases can be made is set forth in the city's Affordable Dwelling Unit
43 Administrative Regulations (see 3(B-F)).
44

45 G. Requirements for certificate of qualification

1 In order to secure the approval of a certificate of qualification, an individual or household
2 must establish satisfaction of the applicable requirements, which are set forth in the city's
3 Affordable Dwelling Unit Administrative Regulations (see 3(A), including, but not
4 limited to, the requirement that the individual or household must be a first-time
5 homebuyer in accordance with the definition of that term as set forth in the city's
6 Affordable Dwelling Unit Administrative Regulations.

7
8 H. Sales price limits for Affordable Dwelling Units

9 No Affordable Dwelling Unit in the city may be sold without the city first determining a
10 reasonable and affordable maximum price at which each such unit may be sold.

11
12 I. Request for approval of proposed maximum sales price

13 On or before the date of issuance of a zoning permit for use and occupancy of an
14 Affordable Dwelling Unit offered for sale, the owner of the Affordable Dwelling Unit
15 shall submit to the city a request for the approval of a proposed maximum sales price for
16 that unit in accordance with Section 3(B) of the city's Affordable Dwelling Unit
17 Administrative Regulations.

18
19 J. City may request additional information

20 After the owner of a for-sale Affordable Dwelling Unit submits a justification and
21 documentation to the city regarding the proposed maximum sales price, the city may, in
22 its sole discretion, request additional information or documentation from said owner.

23
24 K. City may establish reasonable criteria

25 The city may establish reasonable criteria and guidelines to apply in its determination of a
26 reasonable and affordable proposed maximum sales price for any Affordable Dwelling
27 Unit under the provisions of the city's Program.

28
29 L. City acts within 60 days

30 Upon submission to the city of all requested information related to an owner's proposed
31 maximum sales price, the city shall, within 60 days:

- 32 1. Determine a reasonable and affordable maximum sales price for the Affordable
- 33 Dwelling Unit; and
- 34 2. Inform the owner in writing of the city's determination.

35
36 M. Order of priority for buyers of Affordable Dwelling Units

37 The order of priority for prospective buyers of units under the city's Program shall be the
38 number of priority points each household has on the date of the city's determination of a
39 reasonable and affordable maximum sales price in accordance with the priority point
40 system set forth in the city's Affordable Dwelling Unit Administrative Regulations.

41
42 N. Notification to city of proposal to sell Affordable Dwelling Unit to a qualified buyer

43 Once the city has determined a reasonable and affordable maximum sales price for an
44 Affordable Dwelling Unit, the owner of that Affordable Dwelling Unit must, within 60
45 days of the date of said determination, inform the city in writing whether it wishes to sell

1 the unit to an applicant to purchase an Affordable Dwelling Unit who has qualified for
2 participation in the city's Program in accordance with the following:

- 3 1. If the owner of an Affordable Dwelling Unit decides to sell such Affordable Dwelling
4 Unit and informs the city in writing, then the city or its designee shall have the right
5 of first refusal to purchase such unit at an all cash closing within sixty (60) days;
- 6 2. The city may assign its right to purchase such unit to either its agent and/or a
7 nonprofit selected by the city for such purposes;
- 8 3. In the event the city, its agent or a designated nonprofit does not exercise its right of
9 first refusal within the 60-day period set forth above, the owner shall offer the unit to
10 only applicants that possess a certificate of qualification at no more than the
11 maximum sales price set by the city; and
- 12 4. In the event the city, its agent or a designated nonprofit does not exercise its right of
13 first refusal within the 60-day period set forth above, the owner may, at any time
14 before the owner has sold said unit to an applicant who has qualified to participate in
15 the city's Program, sell the unit to the city, its agent or a designated nonprofit at a
16 lower price that may be mutually agreed upon by the owner and the city, its agent or a
17 designated nonprofit.

18
19 O. Unit must be used as an Affordable Dwelling Unit

20 Any Affordable Dwelling Unit sold under the terms and conditions of the city's Program
21 shall be used by the owner of that unit as an Affordable Dwelling Unit in accordance with
22 the terms and conditions of the city's Program until such time as the applicable 30-year
23 control period has expired in accordance with §3.9.8.B. Once an Affordable Dwelling
24 Unit has been established in accordance with the city's Affordable Dwelling Unit
25 Ordinance, no interest in such unit may be transferred by the owner by deed, gift, or in
26 any other manner without the approval of the city.

27
28 P. Sale documents must be approved by the city

29 Any and all documents related to the sale of any Affordable Dwelling Unit under the
30 terms and conditions of the city's Program shall be approved by the city prior to the
31 consummation of any such sale in order to ensure that the transaction is being carried out
32 in accordance with the city's Affordable Dwelling Unit and that any such Affordable
33 Dwelling Unit remains as an Affordable Dwelling Unit.

34
35 Q. City must verify prospective owner's income, employment and any additional
36 qualification

37 The city shall be responsible with respect to any for-sale Affordable Dwelling Unit for
38 verifying the gross household income, employment of any applicant seeking to purchase
39 an Affordable Dwelling Unit. The city shall also be responsible for verifying any
40 qualification that applies to any priority that such applicant has received under the terms
41 of the city's Program.

42
43 R. Unit resales during Control Period

44 Units offered for resale during any Control Period shall be offered in accordance with the
45 city's Program.

46

1 S. Initial sale of Affordable Dwelling Unit after the Control Period expires
2 The initial sale of an Affordable Dwelling Unit after the expiration of any Control Period
3 shall be transacted in accordance with the city's Program.
4

5 T. City entitled to half of sales price
6 In all instances, whether or not the city, its agent or a designated nonprofit elects to
7 purchase such unit, the seller shall pay the housing trust fund equity share, as defined in
8 the city's Affordable Dwelling Unit Regulations (see § 3(K)(4)(C), to promote affordable
9 housing in the city of Fairfax.
10

11 U. Eligible lenders for Affordable Dwelling Units offered for sale
12 Eligible lenders for Affordable Dwelling Units offered for sale shall be defined and
13 regulated by the city's Affordable Dwelling Unit Administrative Regulations (see 3(L).
14

15 §3.9.5 Procedures for Affordable Dwelling Units offered for rent

16 The rental rates of any Affordable Dwelling Unit provided pursuant to the city's Program
17 shall be determined and controlled by the city consistent with the provisions of the city's
18 Affordable Dwelling Unit Ordinance in accordance with the following:
19

20 A. Maximum rental rate calculations
21 The city will determine maximum rental rate calculations in accordance with the city's
22 Affordable Dwelling Unit Administrative Regulations with the limitation that the
23 maximum rental rate for Affordable Dwelling Units shall be established such that the
24 owner and/or Zoning Applicant shall not suffer economic loss as a result of providing
25 rental Affordable Dwelling Units.
26

27 B. Annual review
28 The city shall review Affordable Dwelling Unit rental prices annually in order to assure
29 that such rental prices approved by the city are fair and reasonable. In conducting this
30 review of Affordable Dwelling Unit rental prices, the city shall take into account changes
31 in various cost elements as indicated by the U. S. Department of Commerce's Composite
32 Construction Cost Index and/or such other comparable index or indices that may be
33 selected by the city. The city may also take into account, when reasonable and
34 appropriate, any changes in rental prices approved by public agencies in nearby localities
35 when the city deems the applicable circumstances to be reasonably comparable to those
36 found in the city.
37

38 C. Quarterly statements
39 The landlord/owner of any Affordable Dwelling Unit rental unit(s) shall provide
40 quarterly statements to the city in accordance with the city's Affordable Dwelling Unit
41 Administrative Regulations.
42

43 D. Verifications
44 The landlord/owner of any Affordable Dwelling Unit rental unit shall be responsible for
45 providing verifications to the city regarding an Affordable Dwelling Unit tenant
46 household's income, employment, and possession of a certificate of qualification.

- 1
2 E. Affordable Dwelling Units must be used as Affordable Dwelling Units
3 Any Affordable Dwelling Unit leased under the terms and conditions of the city's
4 Affordable Dwelling Unit Ordinance shall be used as an Affordable Dwelling Unit in
5 accordance with the terms and conditions of the city's Program until such time as the
6 applicable 30-year Control Period expires.
7
8 F. Approval of documents by the city
9 Any and all documents related to the lease of any Affordable Dwelling Unit under the
10 terms and conditions of the city's Program shall be approved by the city prior to the
11 execution of any such lease agreement in order to ensure that the transaction is being
12 carried out in accordance with the city's Affordable Dwelling Unit Program and that any
13 such Affordable Dwelling Unit remains as an Affordable Dwelling Unit.
14
15 G. Subletting not allowed
16 No affordable dwelling unit leased under the terms and conditions of the city's Program
17 shall be sublet for any purpose.
18
19 H. City must approve all Affordable Dwelling Unit leases
20 Any lease agreement for an Affordable Dwelling Unit shall be approved in advance by
21 the city.
22
23 I. Designation by applicant households of purchase and/or rental units
24 Each applicant household seeking to participate in the city's Program shall signify on its
25 application for such participation whether it wishes to be considered for rental and/or
26 ownership of an Affordable Dwelling Unit under the city's Program. If such an applicant
27 household indicates on the application that it wishes to be considered solely for rental of
28 an Affordable Dwelling Unit, then such applicant household shall be evaluated only with
29 respect to Affordable Dwelling Units that become available for rental under the terms of
30 the city's Program. If such an applicant household indicates on the application that it
31 wishes to be considered solely for ownership of an Affordable Dwelling Unit, then such
32 applicant household shall be evaluated only with respect to Affordable Dwelling Units
33 that become available for ownership under the terms of the city's Program. If such an
34 applicant household indicates on the application that it wishes to be considered for both
35 rental and ownership of an Affordable Dwelling Unit, then such applicant household
36 shall be evaluated with respect to Affordable Dwelling Units that become available for
37 both types of Affordable Dwelling Units and for which such applicant qualifies under the
38 terms of the city's Program.
39
40 J. Proof of qualification of applicants
41 All applicant households seeking to rent an Affordable Dwelling Unit through the city's
42 Program, including existing Affordable Dwelling Unit tenants, shall be required to apply
43 each year for such participation by filing the applicable application for a certificate of
44 qualification with the city. The landlord/owner shall verify the income of all households
45 seeking to participate in the city's Program and shall be responsible for determining
46 whether any such applicant household meets the criteria for such participation.

1
2 K. Eligible lenders for rental Affordable Dwelling Units
3 Eligible lenders for Affordable Dwelling Units offered for rent shall be defined and
4 regulated by the city's Affordable Dwelling Unit Administrative Regulations.
5

6 L. Exclusive right of city to lease Affordable Dwelling Units
7 The city or its designee shall have the exclusive right to lease up to one-third of the for-
8 lease Affordable Dwelling Units in a development within ninety (90) days of a dwelling
9 unit being completed and ready for lease. The remaining two-thirds of such units shall be
10 offered for lease exclusively for a ninety-day period to persons who qualify to lease such
11 units under the city's Program. The lease of Affordable Dwelling Units shall be
12 administered in accordance with the provisions of the city's Affordable Dwelling Unit
13 Administrative Regulations (see 4(C)(1)).
14

15 §3.9.6 Designation of Affordable Dwelling Units on plats, plans, land use applications, or other
16 applicable zoning permits
17

18 A. For-sale units

19 All site plans, subdivision plats, land use applications, or other applicable zoning permits
20 for developments that include for-sale Affordable Dwelling Units under the provisions of
21 the city's Program shall identify:

- 22 1. The specific number of for-sale units that are to be provided as Affordable Dwelling
23 Units under the provisions of the city's Program;
- 24 2. The specific lots or units that will be for-sale Affordable Dwelling Units under the
25 city's Program;
- 26 3. The mixture of Affordable Dwelling Unit and market-rate units based on the number
27 of bedrooms; and
- 28 4. The number of bedrooms and the dimensions of the living spaces, including
29 bedrooms, bathrooms, kitchens, living rooms, dining rooms, and any other rooms,
30 and the total square footage of all units that will be for-sale units, whether affordable
31 or market-rate units.
32

33 B. Rental units

34 All site plans, subdivision plats, land use applications, or other applicable zoning permits
35 for developments that include rental Affordable Dwelling Units under the provisions of
36 the city's Program shall identify:

- 37 1. The specific number of units that are to be provided as rental Affordable Dwelling
38 Units under the provisions of the city's Program;
- 39 2. The number of bedrooms and the dimensions of the living spaces, including
40 bedrooms, bathrooms, kitchens, living rooms, dining rooms, and any other rooms,
41 and the total square footage of all units that will be rental units, whether affordable or
42 market-rate units;
- 43 3. The specific lots or units which are rental Affordable Dwelling Units on approved
44 plans, provided, however, that, upon the request of the landlord/owner of an
45 Affordable Dwelling Unit, a unit designated as an Affordable Dwelling Unit on a site
46 plan, subdivision plat, or other Land Use Application may be undesignated as an

1 Affordable Dwelling Unit so long as another Affordable Dwelling Unit that is
2 substantially equivalent is designated in lieu thereof, and further provided, however,
3 that the specific locations of affordable dwelling units in a development may change
4 from those locations shown on a site plan, as long as the approved ratios of affordable
5 dwelling units to market-rate units and conditions relating to those affordable
6 dwelling units stay the same; and

- 7 4. For all multifamily developments, the number of Affordable Dwelling Units by
8 bedroom count and the number of market-rate units by bedroom count, which
9 notation shall be a condition of approval of the approved site plan or building plan.

10
11 C. Multiple Section developments

12 For multiple section developments where all the required Affordable Dwelling Units are
13 not to be provided in the first section of the development, the site plan and/or record
14 subdivision plat for the first section and all subsequent sections shall contain a notation
15 identifying in which section(s) the affordable dwelling units will be or have been
16 provided and a total of all Affordable Dwelling Units for which such site plan(s) and/or
17 subdivision plat(s) have been approved.

18
19 D. Qualifications for bedrooms

20 The number of bedrooms provided in an Affordable Dwelling Unit shall be determined
21 by the city's zoning administrator after reviewing, among other things, the plans
22 submitted to the city for the particular development, the size and functionality of the
23 living space in such units, and the existence of windows, closets, and doors providing
24 privacy from other areas in the Affordable Dwelling Units.

25
26 OPTION 1 [LANGUAGE PRESENTED AT MAY 26 CITY COUNCIL WORK SESSION]:

27
28 E. Specifications for prototype Affordable Dwelling Units

29 The city may, at its discretion, administratively establish specifications for prototypical
30 Affordable Dwelling Units based on the numbers of bedrooms in various dwelling unit
31 types. In the event the city establishes such specifications, every Affordable Dwelling
32 Unit provided under the city's Program shall satisfy all specified requirements for the
33 applicable dwelling unit type. In addition, all Affordable Dwelling Unit developments
34 shall satisfy the Affordable Dwelling Unit Development Regulations set forth in § 3.6.1
35 and §3.6.2 of this Ordinance.

36
37 F. Comparability of units

38 Any Affordable Dwelling Units provided under the provisions of the city's Program shall
39 be comparable with respect to the number of bedrooms for the unit when compared to
40 equivalent market rate units in the same development. In general, dwelling dimensions
41 of a multifamily ADU shall be comparable to equivalent market rate units in the same
42 development.

43
44 G. Similarity and compatibility of units

45 Affordable Dwelling Units shall be similar to and compatible with the dwelling unit types
46 and architectural styles of market-rate units provided in the same development, provided,

1 however, that the requirement of similarity and compatibility of Affordable Dwelling
2 Units with market rate units may be achieved, if permitted in the underlying zoning
3 district, by the provision of single-family attached, duplex, or townhouse Affordable
4 Dwelling Unit in a development comprised of homes whose size would otherwise make
5 that determination of similarity and compatibility infeasible. If permitted by the Zoning
6 Ordinance, the use of single-family attached, duplex, or townhouse Affordable Dwelling
7 Unit, which would provide homes for no more than three Affordable Dwelling Unit
8 households, may, in comparison to one market-rate unit household, serve to provide the
9 compatibility required by this section.

10
11 OPTION 2 [LANGUAGE THAT PRECEDED THE MAY 26 WORKSESSION]:

12
13 E. Specifications for prototype Affordable Dwelling Units

14 The city may, at its discretion, adopt specifications for a prototypical Affordable
15 Dwelling Unit. In the event the city adopts such specifications, every Affordable
16 Dwelling Unit provided under the city's Program shall satisfy all specified requirements.

17
18 F. Comparability of units

19 Any Affordable Dwelling Units provided under the provisions of the city's Program shall
20 be comparable with respect to the number of bedrooms the dimensions of the rooms, the
21 overall dimensions and square footages of the living spaces, and the furnishings,
22 finishings, and appliances provided for the unit when compared to market rate units in the
23 same development.

24
25 G. Similarity and compatibility of units

26 Affordable Dwelling Units shall be similar to and compatible with the dwelling unit types
27 and architectural styles of market-rate units provided in the same development, provided,
28 however, that the requirement of similarity and compatibility of Affordable Dwelling
29 Units with market rate units may be achieved, if permitted in the underlying zoning
30 district, by the provision of single-family attached, duplex, or townhouse Affordable
31 Dwelling Unit in a development comprised of homes whose size would otherwise make
32 that determination of similarity and compatibility infeasible. If permitted by the Zoning
33 Ordinance, the use of single-family attached, duplex, or townhouse Affordable Dwelling
34 Unit, which would provide homes for no more than three Affordable Dwelling Unit
35 households, may, in comparison to one market-rate unit household, serve to provide the
36 compatibility required by this section.

37
38 OPTION 3 [NEW LANGUAGE---MINIMUM SQUARE FOOTAGES FOR ADUS]:

39
40 E. Specifications for prototype Affordable Dwelling Units

41 Affordable Dwelling Units in a development shall satisfy the following minimum square
42 footage requirements:

43
44 0-1 bedroom units (multifamily) shall be at least 300 square feet

45 0-1 bedroom units (single family) shall be at least 480 square feet

46 2 bedroom units shall be at least 725 square feet

- 3 bedroom units shall be at least 925 square feet
- 4 bedroom units shall be at least 1,200 square feet
- 5+ bedroom units shall be at least 1,300 square feet

The city may, at its discretion, administratively establish additional minimum specifications for prototypical Affordable Dwelling Units. In the event the city establishes such additional minimum specifications, every Affordable Dwelling Unit provided under the city’s Program shall satisfy all specified requirements for the applicable dwelling unit type. In addition, all Affordable Dwelling Unit developments shall satisfy the Affordable Dwelling Unit Development Regulations set forth in §3.6.1 and §3.6.2 of this Ordinance.

F. Comparability of units

The number of bedrooms in Affordable Dwelling Units provided in a particular development under the provisions of the city’s Program shall be comparable to the percentage of market rate units in the same development with respect to the number of bedrooms provided in various dwelling unit types. Whenever the ratios of units with a particular number of bedrooms in various dwelling unit types cannot be made directly proportional between Affordable Dwelling Units and market rate units with the same number of bedrooms, the Zoning Administrator shall have the discretion to decide how many bedrooms must be provided in each of the Affordable Dwelling Units provided under the provisions of the city’s Program.

G. Similarity and compatibility of units

Affordable Dwelling Units shall be similar to and compatible with the dwelling unit types and architectural styles of market-rate units provided in the same development, provided, however, that the requirement of similarity and compatibility of Affordable Dwelling Units with market rate units may be achieved, if permitted in the underlying zoning district, by the provision of single-family attached, duplex, or townhouse Affordable Dwelling Unit in a development comprised of homes whose size would otherwise make that determination of similarity and compatibility infeasible. If permitted by the Zoning Ordinance, the use of single-family attached, duplex, or townhouse Affordable Dwelling Unit, which would provide homes for no more than three Affordable Dwelling Unit households, may, in comparison to one market-rate unit household, serve to provide the compatibility required by this section.

OPTION 4 [NEW LANGUAGE---MINIMUM WIDTHS AND DEPTHS FOR ADUS]:

E. Specifications for prototype Affordable Dwelling Units

1. All Affordable Dwelling Units in a development shall have a width that is no less than 70% of the mean width of all market-rate units in that development.

1. All Affordable Dwelling Units in a development shall have a depth that is no less than 70% of the mean depth of all market-rate units in that development.

1
2
3
4 The city may, at its discretion, administratively establish additional minimum
5 specifications for prototypical Affordable Dwelling Units. In the event the city
6 establishes such additional minimum specifications, every Affordable Dwelling Unit
7 provided under the city's Program shall satisfy all specified requirements for the
8 applicable dwelling unit type. In addition, all Affordable Dwelling Unit developments
9 shall satisfy the Affordable Dwelling Unit Development Regulations set forth in §3.6.1
10 and §3.6.2 of this Ordinance.

11
12 F. Comparability of units

13 The number of bedrooms in Affordable Dwelling Units provided in a development under
14 the provisions of the city's Program shall be comparable to the percentage of market rate
15 units in that development with respect to the number of bedrooms provided in various
16 dwelling unit types. Whenever the ratios of units with a particular number of bedrooms
17 in various dwelling unit types cannot be made directly proportional between Affordable
18 Dwelling Units and market rate units with the same number of bedrooms, the Zoning
19 Administrator shall have the discretion to decide how many bedrooms must be provided
20 in each of the Affordable Dwelling Units provided under the provisions of the city's
21 Program.

22
23 G. Similarity and compatibility of units

24 Affordable Dwelling Units shall be similar to and compatible with the dwelling unit types
25 and architectural styles of market-rate units provided in the same development, provided,
26 however, that the requirement of similarity and compatibility of Affordable Dwelling
27 Units with market rate units may be achieved, if permitted in the underlying zoning
28 district, by the provision of single-family attached, duplex, or townhouse Affordable
29 Dwelling Unit in a development comprised of homes whose size would otherwise make
30 that determination of similarity and compatibility infeasible. If permitted by the Zoning
31 Ordinance, the use of single-family attached, duplex, or townhouse Affordable Dwelling
32 Unit, which would provide homes for no more than three Affordable Dwelling Unit
33 households, may, in comparison to one market-rate unit household, serve to provide the
34 compatibility required by this section.

35
36 H. Interspersing of units

37 Affordable Dwelling Units shall be interspersed among market-rate units in the same
38 development in order to assure that the Affordable Dwelling Units are reasonably spread
39 throughout the development and throughout each section of any multiple-section
40 development and are not concentrated in the same building, area, or on the same floor of
41 any building in that development.

42
43 I. Zoning permits for use and occupancy of Affordable Dwelling Unit Developments

44 In Affordable Dwelling Unit Developments that are required by the city's Program,
45 zoning permits for use and occupancy for no more than 60% of the market-rate dwelling
46 units in that development shall be issued prior to the issuance of zoning permits for use

1 and occupancy for at least 50% of the Affordable Dwelling Units in that development.
2 Zoning permits for use and occupancy for no more than 85% of the market-rate dwelling
3 units in such developments shall be issued until after zoning permits for use and
4 occupancy have been issued for 100% of the Affordable Dwelling Units in that
5 development.

6
7 §3.9.7 State and federal affordable housing programs
8

9 A. Full satisfaction of city's Program requirements with equivalent units

10 A development that provides the same number or more equivalent Affordable Dwelling
11 Units under a local, state or federal housing program as the number and type of
12 Affordable Dwelling Units required under the terms of the city's Affordable Dwelling
13 Unit shall be deemed to satisfy the requirements of the city's Affordable Dwelling Unit
14 Program so long as that development complies with all of the terms and conditions of
15 said local, state or federal housing program.

16
17 B. Partial satisfaction of city's Program if fewer units provided

18 In the event a development provides fewer equivalent Affordable Dwelling Units under a
19 state or federal housing program than the number of Affordable Dwelling Units required
20 under the terms of the city's Program, then said development must provide additional
21 Affordable Dwelling Units in compliance with all of the terms and conditions of the
22 city's Program to make up the shortage.

23
24 C. Rents and sales prices

25 The rents and sales prices for Affordable Dwelling Units provided pursuant to federal,
26 state or local programs shall be in accordance with the rules and regulations governing
27 such programs and these units shall be marketed in accordance with such rules and
28 regulations provided that rents and sale prices shall not exceed those set pursuant to the
29 terms of the city's Program.

30
31 D. Designation of Affordable Dwelling Units on plats, plans, land use applications, or other
32 applicable zoning permits

33 Any development that relies, in whole or in part, on the provisions of this Section to
34 satisfy the requirements of the city's Program shall be required to comply with the
35 provisions of §3.9.6 with respect to all Affordable Dwelling Units provided in that
36 development.

37
38 §3.9.8 Miscellaneous provisions
39

40
41 A. Control Periods for Affordable Dwelling Units

42 Any Affordable Dwelling Unit created under the city's Program shall have a Control
43 Period of thirty (30) years. For rental Affordable Dwelling Units, the Control Period for
44 an Affordable Dwelling Unit shall commence on the date on which a zoning permit for
45 use and occupancy is approved by the city for that particular unit. As to for-sale

1 Affordable Dwelling Units, the Control Period shall commence on the date of the deed
2 conveying the Affordable Dwelling Unit to the owner.

3
4 B. Affordable Dwelling Units converted to market-rate units

5 In the event the city approves a request to convert an Affordable Dwelling Unit to a
6 market-rate unit, a different market-rate unit that is substantially similar to the former
7 Affordable Dwelling Unit in the same development must be converted to an Affordable
8 Dwelling Unit. The thirty (30) year Affordable Dwelling Unit term will not start to run
9 again for the newly created Affordable Dwelling Unit until that unit is occupied as an
10 Affordable Dwelling Unit. With respect to the thirty (30) year term, if such a conversion
11 is approved by the city, the city will credit the newly created Affordable Dwelling Unit
12 for any time it was previously occupied as an Affordable Dwelling Unit.

13
14 C. Relocation assistance

- 15 1. At the conclusion of the thirty (30) year period described above, the landlord/owner
16 of an Affordable Dwelling Unit shall provide relocation assistance to the tenants of
17 any rental Affordable Dwelling Unit at the time of the expiration of the affordability
18 restrictions. The landlord/owner of any such Affordable Dwelling Unit shall, no later
19 than one year prior to the expiration of the affordability restrictions required by the
20 city's Program, submit a relocation assistance plan ("RAP") to the city for approval.
21 The RAP shall, at a minimum, include a contribution of 50% of the reasonable market
22 costs that will be incurred by the tenant of each such Affordable Dwelling Unit in
23 moving the tenant's physical property from the subject property. The landlord/owner
24 submitting the RAP to the city shall provide the tenant of such Affordable Dwelling
25 Unit with a copy of the proposed RAP in order to enable the tenant to provide
26 comments to the city regarding the proposed RAP.
- 27 2. The city shall act on the landlord's/owner's proposed RAP within sixty (60) days of
28 the filing of such plan.
- 29 3. If the landlord/owner of an Affordable Dwelling Unit fails to submit a RAP to the
30 city no later than one year prior to the expiration of the thirty (30) year affordability
31 period, or fails to secure the approval of such RAP by the city manager no later than
32 six (6) months prior to the expiration of the thirty (30) year affordability period, the
33 period of required affordability under the city's Program shall be extended one (1)
34 day for every day the landlord/owner has been late in submitting or securing the
35 approval of such RAP as set forth above.
- 36 4. Upon approval of a RAP for an Affordable Dwelling Unit, the approved RAP shall be
37 presented by the landlord/owner to the tenant of such unit no less than six (6) months
38 prior to the conclusion of the thirty (30) year affordability period.

39
40 D. No proffers allowed for Affordable Dwelling Units, Affordable Dwelling Unit-related
41 contributions of land or other property interests, or monetary contributions to the city of
42 Fairfax housing trust fund

43 No Affordable Dwelling Unit, Affordable Dwelling Unit-related contribution involving
44 the dedication of land or other property interests, or monetary contribution to the city of
45 Fairfax housing trust fund will be accepted by the city council as part of a proffered
46 condition in conjunction with any rezoning application acted upon by the city council

1 after the effective date of the city's Program. Any such Affordable Dwelling Unit,
2 Affordable Dwelling Unit-related contribution involving the dedication of land or other
3 property interests, or monetary contribution to the city's housing trust fund shall be
4 provided either as part of an owner and/or Zoning Applicant's compliance with the
5 requirements of the city's Program or through a request for modifications under §6.19.
6

7 E. Condominium conversions

8 In the event the owner of an Affordable Dwelling Unit wishes to convert such unit to
9 condominium ownership, such conversion may take place only after the owner has
10 submitted and the city has approved a plan to ensure the continued provision of
11 Affordable Dwelling Units on the site. Any such plan must ensure the provision of
12 affordable rental or for-sale units under the terms of the Affordable Dwelling Unit
13 Program for the balance of the thirty (30) year affordability period or provide a cash-in-
14 lieu contribution that meets the approval of the city council under §6.19.

15 1. The owner of an Affordable Dwelling Unit may elect to sell any Affordable Dwelling
16 Unit that are converted to condominiums under the regulations of §3.9.4. Any plan
17 for the sale of Affordable Dwelling Units after being converted to condominiums
18 must provide the tenants of any such Affordable Dwelling Units the right to purchase
19 any such condominium unit before such unit may be sold to any other person who
20 qualifies to purchase such Affordable Dwelling Unit under the terms of the city's
21 Program.

22 2. The owner of Affordable Dwelling Units may elect to rent those Affordable Dwelling
23 Units that are converted to condominiums under the regulations of §3.9.5. Any plan
24 for the rental of Affordable Dwelling Units after being converted to condominiums
25 must provide that all Affordable Dwelling Units in the development will be
26 transferred to the owner of the Affordable Dwelling Units before the conversion and
27 that all covenants applicable to the Affordable Dwelling Units remain in full force
28 and effect after the conversion.

29 **BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that**
30 **Chapter 110, Article 5, §5.5 of the Code of the City of Fairfax, Virginia, is hereby amended**
31 **as follows:**

32 §5.5. DIRECTOR OF COMMUNITY DEVELOPMENT AND PLANNING

33 §5.5.1. Designation

34 The director of community development and planning, as appointed by the city manager,
35 shall administer and enforce these zoning regulations, except as otherwise specified. In the
36 performance of his or her duties, the director may request the assistance of any appropriate
37 officer or agency of the city.
38

39 §5.5.2. Powers and duties

40 A. General

41 The director shall have powers and duties as may be described elsewhere in this chapter.
42

- 1 B. Recommendations
 2 The director shall be responsible for making recommendations regarding the following:
 3 1. Text amendments (§6.3);
 4 2. Map amendments (rezoning) (§6.4);
 5 3. Certificates of appropriateness, major (§6.5);
 6 4. Planned development reviews (§6.6); ~~and~~
 7 5. Special use reviews (§6.7); ~~and~~
 8 6. Affordable dwelling unit modifications (§6.19).
 9
- 10 C. Final decisions
 11 The director shall be responsible for making final decisions regarding the following:
 12 1. Certificates of appropriateness, minor (§6.5).

13 **BE IT FURTHER ORDAINED, by the City Council of the City of Fairfax, Virginia,**
 14 **that Chapter 110, Article 6, of the Code of the City of Fairfax, Virginia, is hereby amended**
 15 **as follows:**

16 §6.1. SUMMARY OF REVIEW AUTHORITY

17 The following table summarizes review and approval authority under this chapter.

PROCEDURE	DIRECTOR OF COMMUNITY DEVELOPMENT AND PLANNING	DIRECTOR OF PUBLIC WORKS	ZONING ADM.	PLANNING COMMISSION	CITY COUNCIL	BOARD OF ARCHITECTURAL REVIEW	BOARD OF ZONING APPEALS	REF.
Text Amendments	Review			<Review>	<Decision>			§6.3
Map Amendments (Rezoning)	Review			<Review>	<Decision>			§6.4
Certificates of Appropriateness	Minor							§6.5
	Major				Decision*	Decision		
Planned Development Reviews	Review			<Review>	<Decision>			§6.6
Special Use Reviews	Review				<Decision>			§6.7
Site Plan Reviews		Review	Decision					§6.8
Sign Permits			Decision					§6.9
Tree Removal Permits			Decision					§6.10
Floodplain Permits		Review	Decision					§6.11
Erosion/Sediment Control Permits		Review	Decision					§6.12
Chesapeake Bay Preservation Reviews		Review	Decision					§6.13
Stormwater Permit		(VSMP Authority) Decision						§6.14
Temporary Use Permits			Decision					§6.15
Administrative Adjustments			Decision					§6.16
Special Exceptions			Review		<Decision> *		<Decision>	§6.17
Variances			Review		<Decision> *		<Decision>	§6.18

<u>Affordable Dwelling Unit Modifications</u>	<u>Review</u>				<Decision>			<u>§6.19</u>
Written Interpretations			Decision					<u>§6.1920</u>
Zoning Permits			Decision					<u>§6.2021</u>
Administrative Appeals							<Decision>	<u>§6.2422</u>
Appeals to City Council					<Decision>			<u>§6.2223</u>
Appeals to Court								<u>§6.2324</u>

<Public Hearing Required>

* Alternative City Council approval procedure available. The board of zoning appeal approves all special exceptions in the RL, RM and RH districts.

1 §6.2. COMMON REVIEW PROCEDURES

2 §6.2.1. Pre-application meeting

3

4 A. Before submitting an application required by this chapter, each Zoning Applicant may
5 hold a pre-application meeting with the zoning administrator, the director of community
6 development and planning, or other applicable review official(s), or with decision-
7 making bodies (separately or jointly) to discuss the procedures, standards and regulations
8 required for development approval in accordance with this chapter. There shall be no
9 discussion of proffers at any pre-application meeting.

10 B. No official action shall be taken at such meeting and no commitments shall be made by
11 the city or any agency thereof at such meeting.

12 C. A pre-application meeting shall be required for each of the following:

- 13 1. Map amendments (rezoning) (§6.4);
- 14 2. Planned development reviews (§6.6);
- 15 3. Special use reviews (§6.7);
- 16 4. Site plan reviews (§6.8);
- 17 5. Certificates of appropriateness (§6.5); ~~and~~
- 18 6. Special exceptions (§6.17); ~~and~~
- 19 7. Affordable Dwelling Unit modifications (§6.19).

20

21 §6.2.4. Application processing

22

23

24 G. Decisions

25 Unless specifically provided elsewhere, all final decisions by decision-making bodies,
26 including map amendments (rezoning), text amendments, planned development reviews,
27 special use reviews, special exceptions, variances, affordable dwelling unit modifications,
28 administrative appeals and appeals to city council, shall require an affirmative vote. Tie
29 votes shall be considered denials of any requested change.

1

2 §6.2.5. Notice and public hearings

3

4 A. Summary of notice requirements

5 Notice shall be required for applications as shown below, except as otherwise specified.

6 Unless otherwise stated, all notice requirements shall be the city’s responsibility.

DEVELOPMENT REVIEW TYPE		PUBLISHED	MAILED	POSTED	REFERENCE
Text amendments	Affecting more than 25 parcels	■			§6.3
	Decreasing density	■	■		
	Affecting 25 or fewer parcels	■	■		
Map amendments (rezoning)	Affecting more than 25 parcels	■	■		§6.4
	Decreasing density	■	■	■	
	Affecting 25 or fewer parcels	■	■	■	
Planned development reviews	Affecting more than 25 parcels	■			§6.6
	Affecting 25 or fewer parcels	■	■	■	
Special use reviews		■	■	■	§6.7
Special exceptions		■	■	■	§6.17
Variances		■	■	■	§6.18
Affordable Dwelling Unit Modifications		■	■	■	§6.19
Administrative appeals		■			§6.24 22
Appeals to city council		■			§6.22 23

7

8 §6.19. AFFORDABLE DWELLING UNIT MODIFICATIONS

9 §6.19.1. Applicability

10 A. For single-family and multifamily Affordable Dwelling Unit developments and any
11 residential component of a mixed use Affordable Dwelling Unit Development,
12 modifications to the requirements of the city’s Program may be allowed by the city
13 council with the approval of a separate application for such modifications under the
14 provisions of the city’s Program.

15 §6.19.2. Pre-application meeting

16 Zoning Applicants requesting modifications to the requirements of the city’s Program shall
17 hold a pre-application meeting in accordance with §6.2.1.

18 §6.19.3. Application requirements

1 Applications for modifications to the requirements of the city’s Program shall be submitted
2 in accordance with §6.2.3.

3 A. Support for city’s goal to provide Affordable Dwelling Units

4 The Zoning Applicant shall provide the city with sufficient justification regarding how
5 the proposed modification supports the city’s goal of providing Affordable Dwelling
6 Units throughout the city. The Zoning Applicant shall provide sufficient justification
7 explaining why the proposed modification is necessary and preferable to the application
8 of the requirements of the city’s Program to the proposed development with no
9 modification.

10 B. Cash contributions to the city’s housing trust fund

11 Any request to modify the provisions of §3.9.3.C, §3.9.3.D, or §3.9.3.E shall include, but
12 need not necessarily be limited to, a cash contribution to the city of Fairfax housing trust
13 fund and/or the dedication of land or other property rights to the city to support the
14 provision of affordable housing in the city. In the event a dedication of land or other
15 property rights is proposed, the Zoning Applicant and the city must agree on the cash
16 value of such dedication or rights in order for that type of modification to be allowed. If
17 such modification based on the provision of a cash contribution or the dedication of land
18 or other property rights is requested, any such contribution or dedication shall be the
19 equivalent of the owner and/or Zoning Applicant’s obligation to provide affordable
20 dwelling units themselves and the following criteria shall apply to any such payment or
21 contribution:

22 _____
23
24 [OPTION 1]

- 25
26 1. Any cash contributions made in conjunction with a modification request shall be
27 determined using the following formula:
28

CASH CONTRIBUTION FORMULA

Construction Price of Prototypical
Affordable Dwelling Unit

$$\frac{\text{Construction Price of Prototypical Affordable Dwelling Unit}}{.50} \times .25 \times \# \text{ of Affordable dwelling units not provided} = \text{cash contribution}$$

29 [OPTION 2]

- 30 1. Any cash contributions made in lieu of the provision of affordable dwelling units in
31 conjunction with a modification request shall be a per unit cash contribution of 100%
32 of the construction cost of a prototypical affordable dwelling unit based on the
33 numbers of bedrooms in various dwelling unit types.
34
35 _____
36

- 1 2. All cash contributions made in conjunction with a modification request shall be
2 calculated in terms of current dollars, adjusted by the consumer price index, at the
3 time the contribution is actually received by the city.
4 3. All cash contributions made in conjunction with a modification request shall be paid
5 to the city before the first zoning permit for use and occupancy is issued for any part
6 of the development.

7 §6.19.4. Notice and hearings

8 The city shall hold all required public hearings and give notice in accordance with §6.2.5.

9 §6.19.5. Action by the director of community development and planning

10 The director of community development and planning, in consultation with the city manager
11 and the city's agent, if any, shall review each application for modifications to the
12 requirements of the city's Program in accordance with the approval considerations of
13 §6.19.7, and distribute the application to appropriate agencies and reviewers. Prior to the
14 approval of any such modification by city council, the director of community development
15 and planning, after consulting with the city manager and the city's agent, if any, shall provide
16 a recommendation regarding the proposed modification.

17 §6.19.6. Action by city council

18 After receiving the recommendation from the director of community development and
19 planning in consultation with the city manager, the city council shall review the proposed
20 modification to the requirements of the city's Program, in a public hearing and in accordance
21 with the approval considerations of §6.19.7, and approve, approve with modifications or
22 conditions, table or defer, or disapprove the requested modification.

23 §6.19.7. Approval considerations

24 An application for such modifications may be approved upon a finding by the city council
25 that the proposed alternative will positively impact the city's goal of providing a broad range
26 of affordable housing opportunities throughout the city. In determining whether to approve a
27 request for a modification to the requirements of the city's Program, the city council shall
28 consider the following:

- 29
30 A. The number of Affordable Dwelling Units regulated by the provisions of the city's
31 Program and other types of affordable housing that exist or are in the process of being
32 provided in the city;
33 B. The extent to which existing Affordable Dwelling Units in the city have remained on the
34 market unoccupied by persons who satisfied the provisions of this Article;

- 1 C. The extent to which public facilities and services are available or will be available within
- 2 a reasonably foreseeable period of time to accommodate the densities in those
- 3 developments in the city that include or will include Affordable Dwelling Units;
- 4 D. Existing unique or unusual site constraints that would result in potential adverse impacts
- 5 on environmental resources on the subject property or nearby or adjacent parcels,
- 6 including, but not limited to, difficult soil or drainage conditions;
- 7 E. Unusual costs associated with the development of the site; and
- 8 F. The extent to which the proposed modification would support a specific program or goal
- 9 of the city in providing Affordable Dwelling Units.

10
11 §6.19.8. Limitation on Reduction of Affordable Dwelling Units

12 The number of required Affordable Dwelling Units for any particular single-family or

13 multifamily development, or any residential component of a mixed-use development, under

14 the provisions of the city’s Program shall not be reduced by more than 50%. However,

15 multifamily Affordable Dwelling Unit developments that are specifically designed and

16 intended primarily for college and/or university student residents and multifamily

17 components of mixed-use Affordable Dwelling Unit developments that are specifically

18 designed and intended primarily for college and/or university student residents, may request

19 modifications of more than 50% of the number of required Affordable Dwelling Units.

20
21 §6.19.9. Transfer of Affordable Dwelling Unit modification approvals

22 Affordable dwelling unit modification approvals, and any attached conditions, run with the

23 land and are not affected by changes in tenancy or ownership.

24
25 §6.19.10. Appeals to court

26 Final decisions by the city council on modifications to the requirements of the city’s Program

27 may be appealed within 30 days of the decision in accordance with §6.23.

28

29 [the existing 6.19 through 6.23 will need to slide one number back]

30 §6.20. ZONING PERMITS

31 §6.20.1. Applicability

- 32 A. Zoning permits shall be reviewed in accordance with the provisions of §6.20.
- 33 B. No building permit shall be issued prior to the approval of a zoning permit. It shall be
- 34 unlawful to move, construct, or alter, or to commence moving, constructing or altering,
- 35 except for making ordinary repairs, any building or other structure on a site, including an
- 36 accessory structure, until the zoning administrator has issued a zoning permit.
- 37 C. It shall be unlawful to use any land or building, or to change tenancy or ownership or any
- 38 use, or to change the type of use of land, or to change the type of use or type of
- 39 occupancy of any building; or to extend any use on any lot, until the zoning administrator
- 40 has issued a zoning permit for such intended use.

- 1 D. It shall be unlawful to undertake any land-disturbing activity until the zoning
- 2 administrator has issued a zoning permit for such work.
- 3 E. Zoning permits are not required for permitted temporary uses (*See* §3.5.6) or for tree
- 4 removal (*See* §6.10).

5

6 **BE IT FURTHER ORDAINED, by the City Council of the City of Fairfax, Virginia,**
7 **that Chapter 110, Article 8, §8.3, of the Code of the City of Fairfax, Virginia, is hereby**
8 **amended as follows:**

9 § 8.3. REMEDIES AND PENALTIES

10

11 § 8.3.6. Civil penalties

- 12 A. Violation of the provisions of this chapter, whether by act or omission, shall be
- 13 punishable by a civil penalty of \$200 per day and each day that a violation remains
- 14 uncorrected after receiving notice of the violation from the city shall constitute a separate
- 15 offense of this chapter. In addition, repeat violations, meaning violations of the same
- 16 section that are repeated after resolution of the initial violation, shall be subject to the
- 17 following penalties:
- 18 1. \$500 for the second violation,
- 19 2. \$500 for the third violation and
- 20 3. \$500 for each additional violation to a maximum \$2,500.

21 B. The following provisions shall apply whenever any person violates any provision of the
22 city's Program, participates in the violation of any provision of the city's Program,
23 permits any violation of any provision of the city's Program, or fails to comply with any
24 of the requirements of the city's Program:

- 25 1. Any landlord/owner of an Affordable Dwelling Unit who fails to submit executed and
26 complete affidavits, certifications, or any other documentation required by or under
27 the city's Program shall be fined from two hundred dollars (\$200.00) per day per unit,
28 up to a maximum of two thousand five hundred dollars (\$2,500.00) per day per unit,
29 until such time as the required affidavit, certification, or documentation is filed with
30 the city, but any such fine will apply only after written notice and a ten-day
31 compliance period is provided. Any fines levied under the provisions of this
32 paragraph shall become liens against the real property and shall accumulate interest at
33 the judgment rate of interest.
- 34 2. Tenants of Affordable Dwelling Units who fail to submit executed and complete
35 affidavits, certifications, or other documentation required by or under the city's
36 Program shall be subject to lease termination and/or eviction procedures.

1 C. The violation by any person of any other provision of the City's program, whether by act
2 or omission, shall be punishable in accordance with the terms of Section 8.3.6(A).

3 D. The designation of a particular violation of this chapter as a civil penalty shall preclude
4 criminal prosecution or sanctions, except for any infraction also resulting in injury or
5 death to any person or persons.

6 § 8.3.7. Criminal penalties

7 A. Any violation of the following provisions, or any provision of proffers accepted pursuant
8 thereto shall be deemed a misdemeanor and, upon conviction, shall be fined not more
9 than \$1,000 for each offense:

- 10
11 1. §3.7.2, Historic overlay districts;
12 2. §3.9, Affordable dwelling units, for falsely swearing to an affidavit, as specified in
13 §8.3.7.F;
14 23. §4.6, Signs, only as applied to signs placed in the right of way or on public property;
15 34. §4.15, Floodplains;
16 45. §4.16, Storm drainage facilities;
17 56. §4.18, Chesapeake Bay preservation; and
18 67. §6.8, Site plan review.

19
20 B. Failure to remove or abate a zoning violation within the time period established by the
21 court shall constitute a separate misdemeanor offense punishable by a fine of not more
22 than \$1,000; and

23 C. Failure to remove or abate a zoning violation during a succeeding 10-day period shall
24 constitute a separate misdemeanor offense punishable by of fine of not more than \$1,500;
25 and

26 D. Continued failure during any succeeding 10-day period shall constitute a separate
27 misdemeanor offense for each 10-day period punishable by a fine of not more than
28 \$2,000.

29 E. The remedy provided for in this §8.3 shall be in addition to any other remedies provided
30 by law; however, the designation of a particular violation of this chapter as a civil penalty
31 shall preclude criminal prosecution or sanctions, except for any infraction also resulting
32 in injury or death to any person or persons.

33 F. Any landlord/owner or tenant of an Affordable Dwelling Unit who shall falsely swear to
34 or who executes an affidavit or certification required by or under the city's Program,
35 knowing the statements therein are false, shall be guilty of a misdemeanor.

- 36 1. Fines levied against landlords/owners of Affordable Dwelling Units under the
37 provisions of this Section shall become liens against the real property and shall
38 accumulate interest at the judgment rate of interest.
39 2. Tenants of Affordable Dwelling Units who shall falsely swear to or who execute an
40 affidavit or certification required by the city's Program knowing the statements
41 contained in that affidavit or certification to be false shall also be subject to lease

1 termination and/or eviction procedures as provided under the terms of the city's
2 Program (see ADU Administrative Regulations § 4(F)(2)(f)).

- 3 3. Owners of individual Affordable Dwelling Units who falsely swear that they continue
4 to occupy any such Affordable Dwelling Unit as their primary place of domicile shall
5 forfeit any right they may have had to occupy such Affordable Dwelling Unit as their
6 primary place of domicile, the city shall have an exclusive right to purchase any such
7 Affordable Dwelling Unit and the owners shall be required to sell any such
8 Affordable Dwelling Unit to the city at a cash closing as set forth herein within 60
9 days or as soon thereafter as possible after the city learns of any such false
10 affirmation. In such event, the owner of such Affordable Dwelling Unit shall offer to
11 sell the Affordable Dwelling Unit in question to the city for a price not to exceed the
12 control price of the unit at that time as established herein. The control price shall be
13 determined by the original selling price, plus any increase in the United States
14 Department of Labor's Consumer Price-Urban Area Index, plus the lesser of the
15 current fair market value or the actual original cost of certain improvements made
16 after the owner's purchase of the Affordable Dwelling Unit and the date of resale.

17
18 §8.3.8. Other penalties, remedies and powers

19 In addition to all other actions and penalties authorized in this article, the city attorney is
20 authorized to institute injunctive, abatement or any other appropriate judicial or
21 administrative actions or proceedings to prevent, enjoin, abate, or remove any violations of
22 this chapter. After due notice to the owner of the violation, the city may also issue a citation
23 for violation of this chapter requiring the presence of the violator in municipal court. In the
24 event a fine is levied against any such violator, any such fine(s) shall become a lien against
25 the real property pursuant to this Section, and shall accumulate interest at the judgment rate
26 of interest.

27
28 §8.3.9. Other violations of the city's Program

29 Any person who violates the city's Program in a manner not specified above in this Section
30 may be fined from \$100.00 per day per unit, up to a maximum of two thousand five-hundred
31 dollars (\$2,500.00) per incident, until such time as the situation is brought into conformance
32 with the applicable requirements. In the event a fine is levied against a landlord/owner of an
33 Affordable Dwelling Unit, any such fine(s) shall become a lien against the real property and
34 shall accumulate interest at the judgment rate of interest.

35
36 §8.3.910. Continuation of previous enforcement actions

37 Nothing in this chapter prohibits the continuation of previous enforcement actions,
38 undertaken by the city pursuant to previous valid ordinances and laws.

39
40 §8.3.4011. Remedies cumulative

41 The remedies and penalties established in this chapter are cumulative, and the city may
42 exercise them in any combination or order.

43
44 §8.3.412. Persons subject to penalties

45 The landlord/owner or tenant of any building, structure, premises, or part thereof, and any
46 architect, builder, contractor, or agent, or other person who commits, participates in, assists

1 in, or maintains such violations may each be found guilty of a separate offense and be subject
2 to penalties, remedies and enforcement actions.
3

4 **BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that**
5 **Chapter 110, Article 9, of the Code of the City of Fairfax, Virginia, is hereby amended as**
6 **follows:**

7 DEFINITIONS

8 Affordable Dwelling Unit : The term “Affordable Dwelling Unit” shall mean an affordable
9 dwelling unit for which the rental and/or sales price will be controlled in accordance with the
10 provisions of the city’s Program.

11 Affordable Dwelling Unit Development : The term “Affordable Dwelling Unit Development”
12 shall mean any development resulting from a Land Use Application that includes a total of 30 or
13 more dwelling units and, therefore, is required to provide affordable dwelling units or any
14 development that voluntarily agrees to provide Affordable Dwelling Units.

15 Affordable Dwelling Unit Development Regulations: The term “Affordable Dwelling Unit
16 Development Regulations” shall mean those provisions in Section 3.6.1(B) of this Ordinance
17 pertaining to Affordable Dwelling Unit Developments.

18 Control Period: The term “Control Period” shall mean the period during which an
19 Affordable Dwelling Unit is subject to the terms and conditions of the City’s Program.

20 The city’s Program: The term “the city’s Program” shall mean the provisions of the city of
21 Fairfax’s Zoning Ordinance pertaining to affordable dwelling units, and all rules, regulations and
22 other administrative provisions applicable thereto, including, but not limited to, the city’s
23 Affordable Dwelling Unit Administrative Regulations.

24 The city’s Affordable Dwelling Unit Administrative Regulations: The term “the city’s
25 Affordable Dwelling Unit Administrative Regulations” shall mean those administrative
26 regulations adopted by the city council under which the provisions of the city’s Zoning
27 Ordinance pertaining to affordable dwelling units are regulated.

28 Land Use Application: The term “Land Use Application” shall mean any rezoning, special
29 use permit, special exception, site plan, planned development, final subdivision plat, preliminary
30 subdivision plat, or other applicable zoning permit.

31 Zoning Applicant: The term “Zoning Applicant” shall mean any applicant for a Land Use
32 Application in the city.

1
2

3

4 This ordinance shall be effective on _____.

5

6 PLANNING COMMISSION PUBLIC HEARING: June 8, 2020

7 CITY COUNCIL PUBLIC HEARING: _____

8 ENACTED: _____

9

10

Mayor

11

12

Date: _____

13

14

15 ATTEST:

16

17 _____

18 City Clerk

19

20 Vote

21 Councilmember DeMarco _____

22 Councilmember Lim _____

23 Councilmember Miller _____

24 Councilmember Passey _____

25 Councilmember Stehle _____

26 Councilmember Yi _____

Updated to June 9, 2020

**City of Fairfax, Virginia
Administrative Regulations
Concerning the Sale and Rental of
Affordable Dwelling Units**

In accordance with the Provisions of the Affordable Dwelling Unit Program in the City of Fairfax Zoning Ordinance, as adopted by the City Council effective _____, 2020



Administrative Regulations adopted by the City Council of the City of Fairfax, Virginia on _____, 2020, pursuant to _____ of the City of Fairfax Zoning Ordinance:

Section 1

Applicability

Section 2

Development of ADUs and Notification Concerning Availability of ADUs for Sale or Rent

- A. Site Plans and Subdivision Plats for Developments which include ADUs
- B. ADU Specifications and Sales Prices/Rents
- C. ADU Covenants
- D. Notification of Availability of ADUs

Section 3

Procedures for Sales of ADUs

- A. Application and Certification of Eligible Purchasers
 - 1. Application
 - 2. Proof regarding Income Limits
 - 3. Priority Points in Selection Process for an ADU
 - 4. Eligibility to Apply to Purchase an ADU
- B. Sales Price Limits for ADUs
- C. Sale of ADUs to Eligible Purchasers with Certificates of Qualification
- D. Purchase of ADUs by Eligible Non-Profits
- E. Sale of ADUs to the General Public
- F. Sale Under Other Affordable Housing Programs
- G. Occupancy Requirements
- H. Prohibit Any Substantial Modification or Demolition of ADUs
- I. Control Period and Declaration
- J. Notice of Equity Interest
- K. Resales of ADUs
 - 1. Request for Resale Price Determination

2. Establishment of Maximum Resale Price
3. Offering an ADU for Resale
4. Sale Following Expiration of Control Period
5. Portion of Sale Proceeds to the City of Fairfax Housing Trust Fund in the Event of a Foreclosure Sale

L. Adding and Removing Persons as Owners on ADU Deed

Section 4

Procedures for Rental of ADUs

A. Eligible Renters of ADUs

1. Income Limits and Priority
2. Accessibility features

B. Allowed Rents for ADUs

1. Utilities and Fees
2. Facilities and Parking Privileges

C. Initial Offering of ADUs for Rent

1. Single Family Detached and Attached Rental Units
2. Multifamily Rental ADUs
3. General Provisions for Rental ADUs.

D. Occupancy of Rental ADUs

E. Control Period and Covenants

1. General
2. Multifamily Rental Developments

F. Lease Restrictions

1. Length of Lease
2. Terms of Lease

- G. Landlord/Owner Responsibilities
 - 1. Income Certification
 - 2. Third Party Verification of Income
 - 3. Landlord's Statement
- H. Rental Under Other Affordable Housing Programs
- I. ADUs in Condominiums; Rental ADUs in Condominium Conversions
 - 1. ADU Designation on Condominium Declaration
 - 2. Provisions for Condominium Conversions

ADDENDUM A: First Time Homebuyers Program Approved Replacements and Improvements Resale Credit Policy

City of Fairfax
Administrative Regulations Concerning the Sale and Rental of
Affordable Dwelling Units

Section 1

Applicability

Amendments to the City of Fairfax Zoning Ordinance for the City's Affordable Dwelling Unit (ADU) Program became effective _____. It applies to sites which are the subject of land use applications yielding 30 or more dwelling units. ADUs also may be provided in developments where they may not be required. In return for an optional increase in density, ADU developments are required to provide a specified percentage of affordable units to households whose incomes do not exceed 70% of the area median income ("AMI") for the Washington, D.C. Metropolitan Statistical Area, as adjusted for applicable household size, for ADUs available for purchase and do not exceed 60% of AMI, as adjusted for applicable household size, for ADUs for rental. The required percentages of ADUs are set forth in Section 3.9.3 of the City's Zoning Ordinance.

These regulations apply to the sale or rental of ADUs constructed in accord with the City's Zoning Ordinance. In the event of inconsistency or conflict between these Regulations and the provisions regarding ADUs in the City of Fairfax Zoning Ordinance, the City of Fairfax Zoning Ordinance shall prevail. These regulations, any forms implemented by or on behalf of the City, and the provisions of the City of Fairfax Zoning Ordinance pertaining to ADUs shall collectively be referred to herein as "the City's ADU Program."

The City may designate an agent for the purpose of administering its ADU Program. If the City designates an agent for such purposes, any reference herein to "the City" shall mean, if applicable, "the City or its agent."

Section 2

Development of ADUs and Notification Concerning Availability of ADUs for Sale or for Rent

A. Site Plans and Subdivision Plats for Developments Which Include ADUs

Section 3.9.6 of the City's Zoning Ordinance requires that certain information concerning ADUs be included on approved site plans, record subdivision plats and building plans for developments which include ADUs. In order to monitor the status of such developments and the number and types of ADUs to be provided, copies of each submission of site plans, plats or building plans to the City of Fairfax Department of Community Development and Planning shall also be submitted to the City's Zoning Administrator.

B. ADU Specifications and Sales Prices/Rents

Units constructed as ADUs must be similar, compatible, and comparable to the market-rate units in that development as required by the City's Zoning Ordinance. The sales price or rent for ADUs must be established by the City before an Offering Agreement (Notification of Availability of ADUs) can be approved.

C. ADU Covenants

The developer of property which is subject to the provisions of the City's ADU Program, either for-sale or for-rent, will be provided by the City with copies of the Declaration of Affordable Dwelling Unit Covenants (Covenants) in the form prescribed by the City that are to be recorded in the land records of Fairfax County. The Covenants describe both the developer's obligations under the City's ADU Program concerning the initial sale or rental of the ADUs and the long term controls on the sale or rental of the ADUs which govern subsequent owners or tenants.

In a for-sale ADU development, the Covenants shall describe the property subject to the ADU Program requirements as well as the property on which the ADUs will be located; the controls on the initial sale of the ADUs to qualified purchasers, the City and designated non-profit groups and the long term controls on the ADUs. The Covenants must be recorded simultaneously with, and immediately following, the recordation of the deed of subdivision and final subdivision plat or, in the case of a condominium, the recorded condominium declaration and before the first ADU in the development is offered for sale. A copy of the recorded deed of subdivision plat and ADU Covenants must be provided to the City within 10 days after recordation. Deeds that accomplish individual sales must reference the already recorded Covenants document in the deed.

In a rental ADU development the Covenants shall describe the property subject to the City's Zoning Ordinance requirements as well as the units subject to the ADU controls and the controls on the initial rental as well as subsequent rentals and occupancy of the ADUs. The City's Zoning Ordinance requires that Covenants be recorded prior to the issuance of the first Zoning Permit for any unit in the development. In practice, it must

be recorded before the first ADU is offered for rent (which may occur earlier than the issuance of the first Zoning Permit). Since the control period under the Declaration of Covenants does not begin until the first Zoning Permit for an ADU is issued, a rider to the Covenants, specifying the date the Zoning Permit is issued, must be filed when this occurs to establish the start of the control period.

D. Notification of Availability of ADUs

With respect to the Notice of Availability required by the City's Zoning Ordinance, it shall be in a form prescribed by the City and must identify each unit being offered and its number of bedrooms, floor area, amenities and accessibility features as well as the approved sales price or rent. In addition, the Notice of Availability shall include marketing materials for the unit and the development. The Notice of Availability shall be submitted by the owner to the City's agent as follows: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030. The City has developed a standard Notice of Availability and Offering Agreement for sales ADUs and one for rental ADUs, which will be provided to the owner for submission of such information. The Notice will not be considered complete and effective and the time periods concerning the initial marketing of an ADU development will not begin until all information required to determine compliance with the specifications for ADUs, approval of sales prices or rents by the City, recordation of the Declaration of Covenants and issuance of building permits has been received and the agreement has been executed by the City.

Section 3

Procedures for Sales of ADUs

A. Application and Certification of Eligible Purchasers

1. Application

Those seeking to purchase an ADU must apply to the City for placement on the eligibility list maintained by the City. In accordance with Section 3.9.1 of its Zoning Ordinance, the City has established income criteria for individuals and households seeking to purchase an ADU. In order to become eligible under the City's ADU Program to purchase an ADU, an interested individual or household must have an income that is seventy percent (70%) or less of the AMI for the Washington Standard Metropolitan Statistical Area. Individuals and households are required to show proof that they have at least the minimum annual income and assets necessary to be eligible under the program to purchase an available ADU, as set forth by the City in the eligibility requirements set forth herein. This minimum limit is reviewed and revised periodically by the City. Interested individuals or households must also satisfy other criteria established by the City and described below. It is the responsibility of the individual or household to demonstrate eligibility under the requirements of the City's ADU Program. In order to verify satisfaction of these requirements, the City may request information and documentation that is appropriate including, but not limited to, copies of Federal and State Income Tax Returns, W-2 forms and copies of the most recent pay checks or pay statements.

An individual or household determined by the City to be eligible to purchase an ADU is placed on the eligibility list and issued a non-transferable Certificate of Qualification valid for one year. This Certificate is used to demonstrate eligibility for the purchase of available ADUs.

Eligibility of an applicant to receive a Certificate of Qualification requires that the individual or household must show proof of satisfaction of the following requirements:

- a. First-Time Homebuyers.** Individual and household applicants must be first-time home buyers, subject to the following exceptions and specifications:
 - i.** A person or household shall be deemed a first-time homebuyer so long as they do not presently own any residential property and have not owned any residential property in the United States or anywhere else within the last three years.
 - ii.** Any displaced homemaker shall not be denied a Certificate of Qualification on the ground of not being a first-time homebuyer if

that individual, while a homemaker, owned residential property with his or her spouse, or resided in a home owned by a spouse. A displaced homemaker is defined as an adult individual who has not worked full-time in the past three years for more than one year, but has worked primarily without remuneration to care for the home and family during that time and no longer resides in that home.

- iii. Any single parent shall not be denied a Certificate of Qualification on the ground of not being a first-time homebuyer if that individual owned residential property while married or resided in a home owned by a spouse. A person will be considered a single parent if that person is unmarried or legally separated from a spouse, has one or more minor children for whom the individual has custody or joint custody, or is pregnant.
- iv. Seniors (where all household members are 55 or older) who are seeking to purchase in age-restricted communities may have owned residential property within the past three years, but must still not have any present ownership in a home.
- v. Any disabled person will not be denied a Certificate of Qualification on the ground of not being a first-time homebuyer if that individual, owned residential property prior to becoming disabled.

b. Current Owners of Residential Property Disqualified. Regardless of the status of the applicant, no person who currently owns or has any ownership interest in residential property shall qualify to purchase an ADU under the City's ADU Program.

c. Minimum And Maximum Income Requirements. Individual and household applicants must satisfy minimum and maximum income requirements that are utilized and adopted by the City. In order to qualify for the purchase of an ADU in the City's ADU Program, an applicant cannot have an income that exceeds 70% of AMI. Minimum income, which is determined from time to time by the City, is the minimum amount of household income plus assets necessary to purchase an ADU offered for sale in the City's ADU Program. Any such applicant seeking a Certificate of Qualification must satisfy the requirements established by the City regarding minimum and maximum income requirements. In the event the City has any reasonable doubt regarding whether an applicant satisfies the minimum and/or maximum income requirements of the City, any such application may be disapproved. The City may make an exception to the minimum income requirement for senior households (where all household members are 55 or older)

that wish to purchase in active-adult age-restricted communities if the applicant provides verification from a lender that they are pre-approved for the purchase price of an ADU they wish to purchase and meet all other eligibility requirements of the City's ADU Program.

d. Conditional Pre-Approval Letter From Preferred Lender. Individual and household applicants must present to the City a pre-approval letter from a preferred lender that provides verification of individual and/or household income and assets, stable employment and a satisfactory credit rating sufficient to sustain payment on an approved loan amount. The approved loan amount and family size of the applicant shall determine which offerings a household can apply for once a Certificate of Qualification is obtained.

e. Certified Homeownership Counseling Class. All applicants seeking a Certificate of Qualification to purchase an ADU under the City's ADU Program must have completed a Certified Homeownership Counseling Class approved by the City.

f. All Other Financial Criteria. Individual and household applicants seeking to purchase an ADU shall meet all other financial criteria that may be established periodically by the City for persons and households seeking to purchase an ADU.

2. Proof Regarding Income Limits and Assets.

a. Applicants must show proof that total household income does not exceed maximum income limits required to purchase an ADU. An exception to the minimum income requirement can be made by the City for senior households approved to purchase only in age-restricted communities if their household financial situation (including, but not limited to assets and income and liabilities) indicates they can afford the unit. The maximum permitted income will be determined from the gross income received annually from all sources by all wage earners over 18 years of age (who are not full-time students) in a family or household unit. A head of household or spouse who is a full-time student will always have their wages considered in determining household income.

Sources of income considered in determining eligibility include, but are not necessarily limited to, the following:

- wages and salary (full and part-time employment)
- child support

- alimony
 - interest on savings and checking accounts
 - dividends from stocks, bonds, and certificates of deposit
 - Social Security benefits
 - VA benefits
 - overtime, commissions/tips and bonus payments
 - unemployment insurance
 - pension/retirement payment
 - disability benefits
 - any other annuities or stipends received
 - income from real estate investments
 - income from a business or partnership owned, associated with or initiated by a member of the household.
 - regular gifts or contributions from persons not residing in the dwelling as long as there is a documented two-year history.
 - net income from business operations, exclusive of amortization of capital indebtedness. Depreciation based on straight line method is an acceptable expense. Three years federal tax returns are required to document such income.
- b.** Applicants must show proof that total household assets do not exceed \$500,000. Any applicant with assets in excess of \$500,000 is not eligible to obtain an ADU under the City’s ADU program.

Assets considered in determining eligibility include, but are not necessarily limited to, the following:

- the fair market value of any interest in real estate
- bank accounts, whether checking or savings
- certificates of deposit
- investment accounts, including mutual funds and similar assets
- stocks and bonds
- interest in a business through individual ownership, a partnership, or some other ownership mechanism
- the fair market value of any interest in any jewelry
- the fair market value of any interest in any automobile and any other motor vehicle(s)
- the fair market value of any interest in any boat

3. Priority Points in Selection Process for an ADU.

If an individual or household applicant qualifies for a Certificate of Qualification, then that individual’s or applicant’s priority with respect to other applicants seeking to purchase an ADU shall be determined by a selection process according to the following:

The selection process uses priority points to determine placement of qualified applicants on the selection list for each offering of an ADU for sale. The priority points applicable to each applicant shall be verified by the City and shall be disclosed on the Certificate of Qualification given to any qualified applicant. Priority Points shall be awarded to qualifying applicants in accordance with the following criteria:

- Live and/or work in the City of Fairfax:
 - Less than one year: 1 Point
 - Between 1 year and 5 years: 2 Points
 - More than 5 years: 3 Points
- Households with a member having a disability: 3 Points
- Households with a dependent child under 18: 3 Points
- Length of time in Program: 1 Point for each year a household has received a Certificate of Qualification (max. of 3 points).

The maximum number of priority points a household can have is 9 points.

4. Eligibility to Apply to Purchase an ADU.

- a. Households that receive a Certificate of Qualification are eligible to apply to purchase an ADU that satisfies the needs of such households, provided, however, that only households in possession of a pre-approval letter to purchase a home in the price range of the Offering Agreement will be allowed to apply for that offering. All holders of a Certificate of Qualification with the requisite pre-approval letter will be notified by the City of the availability of units with sufficient bedrooms for those households. The following guidelines will be used to determine whether unit and household size are suitably matched for initial marketing purposes:

Unit Size	Preferred Household Size
One Bedroom	1 to 2 persons
Two Bedrooms	2 to 4 persons
Three Bedroom	3 to 6 persons

Note: Household size is subject to certain restrictions in the Zoning Ordinance and the Virginia Uniform Statewide Building Code. Compliance with the Virginia Uniform Statewide Building Code is mandatory for all ADUs.

- b. **Screening Preferences for ADUs that include Accessibility Features.** In the event an ADU offered for sale includes certain accessibility features specified in this Section, then households that include a person with a disability shall receive a screening preference that provides those households with priority with regard to any such ADUs in accordance with the following:

- i. Special screening preferences are referenced in the Notice of Availability and ADU Sales Offering Agreement, which is submitted by the owner and executed by the City.
- ii. The accessibility features that must be included in an ADU unit in order to be eligible for such a preference are:
 - Public use and common areas of such dwellings must be readily accessible to and usable by persons with disabilities;
 - All the doors designed to allow passage into and within all premises within such dwellings must be sufficiently wide to allow passage by persons with disabilities in wheelchairs; and
 - All premises within such dwellings must contain the following features of adaptive design:
 - An accessible route into and through the dwelling;
 - Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - Reinforcements in bathroom walls to allow later installation of grab bars; and
 - Usable kitchens and bathrooms in which an individual in a wheelchair can maneuver.

The definition of a person with a disability for the purposes of this screening preference is a person having a physical impairment and/or traumatic brain injury that is expected to be of a long, continuing and indefinite duration that substantially impedes his or her ability to live independently in a residence without accessibility features provided in accordance with the standards listed above.

When the foregoing preference for persons with disabilities applies to a particular ADU, applicants who qualify for the preference will be ranked based on the number of priority points they have been certified to receive on their Certificate of Qualification. For those households that qualify for this preference, households with the same number of priority points will be ordered through a random selection process similar to a lottery. For example, all households with nine (9) priority points will be randomly selected to determine where each household will ultimately stand in order of priority for those having nine (9) priority points and then all households with eight (8) priority points will be randomly selected and so forth.

B. Sales Price Limits for ADUs

The sales prices for housing constructed as a requirement of the City’s ADU Program must not exceed the applicable maximum sales price limits established by the City.

Sales prices include all fixtures and equipment required by the City’s ADU Program. Sales prices also include provisions for builder-paid permanent mortgage placement costs and buy-down fees, certain closing costs and a marketing allowance. Any upgrades to the unit must be within the bounds of the City’s ADU Program.

In addition to the maximum sales price calculated pursuant to the City’s ADU Program, the final contract price for an ADU may also include pre-paid expenses such as lenders title insurance, pre-paid interest, etc. provided that the developer certifies that such charges have been paid from the seller’s proceeds at settlement and provides documentation for the charges incurred.

In order to establish the maximum sales price limit, the owner of the ADU shall submit to the City a request for the approval of a proposed maximum sales price for that unit on or before the date of issuance of a Zoning Permit for use and occupancy of an ADU offered for sale.

Any such request by the owner shall be accompanied by: (1) the owner’s maximum proposed sales price for the ADU in question; (2) the owner’s justification and documentation supporting the affordability of the unit at the proposed maximum sales price to persons who have qualified for participation in the City’s ADU Program; and (3) any other information and/or documentation requested by the City to enable it to reasonably determine the maximum price at which said unit may be offered for sale under the City’s ADU Program.

All such requests shall be sent to the City’s agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030.

C. Sale of ADUs to Eligible Purchasers with Certificates of Qualification

For-sale ADUs within a development shall be offered for sale for a 90-day period following execution of a Notice of Availability to persons who meet the income criteria established by the City and who have been issued a Certificate of Qualification, but not to the general public.

When the City receives an executed Notice of Availability, the opportunity to purchase an ADU during the first 90 days is limited to holders of Certificates of Qualification who meet all of the qualification criteria, including any applicable screening preference.

It will be the responsibility of the owner to contact the holders of Certificates of Qualification in the order in which their names are drawn to schedule negotiations for the purchase of an ADU. Those Certificate holders selected have the exclusive right to enter

into a contract for the purchase of an ADU until the date of public marketing at the end of the 90-day period.

The owner will have the purchaser sign a sales contract with the ADU Program Rider to Residential Contract of Sale provided by the City and approved by the City Attorney. This rider provides the deed provision text and the Statement of ADU Covenant Provisions, both of which must be included in the Deed conveying the property to the purchaser. By signing the rider, the purchaser and the seller acknowledge that they have read the deed provision text and the Statement of ADU Covenant Provisions that encompass the Zoning Ordinance provisions as they apply to the sale of the ADU unit.

As soon as a holder of a Certificate of Qualification has signed a contract to purchase a unit, the owner will submit a copy of the sales contract, with the attached ADU Program Rider to Residential Contract of Sale, to the City's agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030. Within 10 days after settlement, the settlement agent will submit a copy of the signed settlement sheet (HUD-1), and the original Certificate to the City's agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030.

D. Purchase of ADUs by Eligible Non-Profits

After 60 days from the effective date of the Notification of Availability/Offering Agreement, ADUs which have not been placed under contract with the holder of a Certificate of Qualification may be offered for sale to non-profit housing groups, as may be designated by the City. A list of eligible non-profit organizations will be established by the City and will be provided to owners. Purchases by non-profit housing groups are subject to the established ADU sales prices and all other applicable requirements of the City's ADU Program.

The owner shall give the designated non-profit groups written notice, sent by certified or registered mail, that a particular ADU is or will be ready to purchase. The owner shall, concurrently with his/her notification to the non-profits, send a copy of this notification to the City's agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030. Notification to the non-profit groups should be sent immediately after the 60th day of the offering period referenced above. The non-profit groups shall have 30 days within which to commit to purchase the units beginning on the date of receipt of the written Notice of Availability. If a non-profit housing group elects to purchase a particular ADU, it shall notify the owner in writing. An all-cash closing shall occur within 30 days from the end of the 30-day period allowed for commitment to purchase, provided a Zoning Permit has been issued for the unit prior to closing. The non-profit shall notify the City when closing occurs for the unit. The City will provide to the non-profit a copy of the ADU Program Rider to Residential Contract of Sale that must be executed with the sales contract.

E. Sale of ADUs to the General Public

After the expiration of the time periods established in the City's ADU Program for purchase of ADUs by holders of Certificates of Qualification and non-profit housing groups, ADUs which have not been sold to such purchasers may be offered for sale to the general public subject to the established sales prices for these ADUs as well as the income limits and all other requirements of the ADU Program. Alternately, the owner may offer such units for rent at the allowed rents for such units and subject to the income limits for eligible renters and other requirements of the ADU Program.

The owner shall notify the City whether the units have been sold or rented and shall provide appropriate documentation of compliance with the requirements of the ADU Program. This documentation shall include income information as is required from holders of Certificates of Qualification eligible to purchase or eligible renters, evidence of the sales price (signed settlement sheet) or rent, if the ADU is rented, and a copy of the recorded Covenants for the individual unit.

F. Sale Under Other Affordable Housing Programs

ADUs developed utilizing federal, state or local programs which are subject to terms and restrictions equivalent to the ADU program shall be sold at prices determined in accordance with the rules and regulations of such programs (provided these sales prices shall not exceed those set pursuant to the City's ADU administrative regulations) and shall be marketed in accordance with the rules and regulations of such programs.

G. Occupancy Requirements

Purchasers must occupy the unit as their primary place of residence and must annually sign and have notarized an affidavit (in a form specified by the City) certifying to their occupancy of the unit. Affidavits must be submitted to the City's agent by June 1 of each year at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030. Failure to submit an executed affidavit or submission of a false affidavit will subject the purchaser to penalties as provided in Section 8.3.7 of the City's Zoning Ordinance.

H. Prohibit Any Substantial Modification or Demolition of ADUs

Owners may not purposely remove, replace with a different structure, make uninhabitable or otherwise destroy an ADU without written permission of the City. For any structural changes, owners must obtain proper building permits and associated inspections and for substantial improvements, replacement or demolition, permission of the City. The purpose of this requirement is to protect both the homeowner's and the City's interest in both the property and program.

I. Control Period and Covenants

The price control period for the initial sale of an ADU under the City's ADU Program is thirty (30) years. For any subsequent re-sale or transfer of an ADU during the initial thirty (30) year control period, the price of an ADU shall be controlled for a new thirty (30) year period, starting on the date of re-sale or transfer. Control periods shall be similarly renewable during any control period generated by a re-sale or transfer.

Simultaneously with, and immediately following the recordation of the deed of subdivision and final subdivision plat for a development containing ADUs, the ADU Covenants in the form prescribed by the City shall be recorded by the developer. Provisions specified in the City's Zoning Ordinance shall be included in the deed. In the case of a condominium, Affordable Dwelling Unit Program covenants shall be recorded simultaneously with the condominium declaration.

The aggregate amount of any transfer or loan occurring within the covenanted control period shall not exceed the then control sales price. All such initial and any subsequent or revised Affordable Dwelling Unit Program Covenants thereafter recorded shall expressly provide all of the following:

1. The dwelling unit may not be resold during any applicable control period for an amount that exceeds the limits set by the City and, prior to offering the dwelling unit for sale, the sales price shall be approved by the City.
2. Each time the unit may be offered for resale during any applicable control period, it shall first be offered exclusively through the City for sixty (60) days.
3. For the initial sale of the affordable dwelling unit after the expiration of any control period, one-half (1/2) of the difference between the net sales price paid by the purchaser at such sale and the owner's purchase price shall be contributed to the City of Fairfax Housing Trust Fund to promote housing affordability in the City.
4. The unit is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the City's Zoning Ordinance.

J. Notice of Equity Interest

The City may record in the land records of Fairfax County for all ADU's with covenants recorded in said land records, a notice of equity interest to be contributed to the City of Fairfax Housing Trust Fund with the first sale that occurs during the period after the control period has expired (the "extended control period")

K. Resales of ADUs

1. Request for Resale Price Determination

During the control period, an owner of an ADU must notify the City in writing of the owner's intent to sell and must request a resale price determination. The owner must provide the City with receipts for any eligible items to be considered for credit in the price determination. If there are improvements to be included in the sales price, the owner must permit the City to inspect the improvements.

2. Establishment of Maximum Resale Price

The resale price will be determined by the original selling price plus a percentage of the unit's original selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the City to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of original sale and the date of resale. An allowance for payment of closing costs on behalf of the subsequent purchaser, which shall be paid by the seller, will also be included in the resale price determination. Pre-paid items are not considered closing costs. Those features deemed to be substantial and appropriate replacements or improvements of housing components and structural components are set forth in a policy statement used by the City as part of these regulations in Addendum A hereto.

Fair market value of structural improvements is defined as the actual and reasonable costs of materials, professional fees, contractor fees and permit fees associated with furnishing and installing the improvements. The fair market value of improvements does not include reimbursement for labor performed by the owner nor reimbursement for the purchase of tools and equipment used to install the improvements. Upgrades of existing house components, normal owner maintenance, and general repair work will be included in the resale price determination when they clearly add to the market value of the property. Value of the improvements will be determined by the remaining use of the improvement such as an appliance or as determined by the age and condition of the improvement such as carpet.

No increase in sales price shall be allowed for the payment of brokerage fees associated with the sales of the unit, except that with respect to re-sales by owners, an increase of one and one-half (1½) percent of the sales price shall be allowed as a fee to be paid to a real estate broker or agent licensed to conduct residential real estate transactions in the Commonwealth of Virginia who meets the qualifications determined by the City and who serves as a dual agent for both the qualified buyer and the seller in the resale of the ADU under an agreement with the City.

The one and one-half (1½) percent fee shall be paid to such real estate broker or agent by the seller at the time of settlement of the resale of the ADU as part of the

disbursement of settlement proceeds. The owner will be notified in writing of the approved resale price.

3. Offering an ADU for Resale During Control Period

The owner of an ADU being re-sold shall provide the City with written notice that the owner wishes to offer the ADU for sale. This written notice must be sent by certified mail to the City's agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030.

Units offered for resale during any control period shall not be offered for a price greater than the original selling price plus a percentage of the unit's original selling price equal to the increase in the U. S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the City, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the City to be (a) substantial and appropriate replacements of improvements of existing housing components and/or (b) structural improvements made to the unit between the date of original sale and the date of resale, plus an allowance for payment of closing costs on behalf of the subsequent purchaser which shall be paid by the seller. No increase in the sales price shall be allowed for brokerage fees associated with the sale of the unit.

The City or a designated nonprofit shall have the exclusive right to purchase such ADU at a price not in excess of the control price established at the time of offering for re-sale. The City shall notify the owner in writing within thirty (30) days to advise the owner whether or not it or a designated nonprofit will purchase the unit, using the form approved by the City, and subject to conditions such as the condition of the title and the physical condition of the unit. An all-cash closing shall occur within ninety (90) days after the City receives the sale offer from the owner, in the event all such conditions of the contract are satisfied. The City may take title to the ADU and amend the covenants to make them consistent with the current provisions of the City's Zoning Ordinance, or may assign the contract to a qualified homebuyer, with the condition that the assignment include amended and restated covenants to renew the thirty (30) year control period and otherwise comply with the City's Zoning Ordinance. ADUs acquired by the City as the result of a re-sale shall be re-sold to qualified buyers who hold a Certificate of Qualification issued by the City. The City will notify Certificate holders on the eligibility list of the availability of the resale unit. Only Certificate holders with the appropriate household size and income and assets as determined in their conditional pre-approval from a preferred lender will be able to apply through the selection process for the offering. The selection process for the resale offering will be conducted in the same manner specified for the initial sale of an ADU.

The purchaser must sign a sales contract with the ADU Program Rider to Residential Contract of Sale and the Monetary Liens and City of Fairfax Affordable Dwelling Unit Purchasers Certificate approved by the City Attorney.

By signing the rider, the purchaser acknowledges that they have read the deed provision text and the Statement of ADU Covenant Provisions that encompass the Zoning Ordinance provisions, as they apply to the resale of the ADU. Purchasers of ADU re-sales will have to show proof of obtaining and paying for a home inspection from a certified home inspector who is a member of the American Society of Home Inspectors (ASHI) before settlement.

4. Sale Following Expiration of Control Period

- a.** With respect to the initial sale of an ADU after the expiration of any control period, the homeowner must first offer the ADU to the City in accordance with the following.
 - i.** The homeowner must provide the City with written notification by registered or certified mail of the homeowner's intention to sell the ADU. The notice must (A) be signed by all owners listed on the deed to the unit, (B) include a statement that the ADU is for sale, (C) include a proposed sale price, and (D) include a list of the improvements, if any, that the homeowner believes should factor into the calculation of the City of Fairfax Housing Trust Fund Equity Share (defined below) according to Addendum A of these regulations. The notice must be mailed to the City's agent at the following address: Attention: Affordable and Workforce Housing Program Administrator—ADU Extended Control Period, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030.

If the homeowner does not identify any such improvements in this notice, then no improvements shall be factored into the calculation of the Housing Trust Fund Equity Share (defined below) for the unit. The City, in accordance with Addendum A to these regulations, shall make the final determination as to whether any such improvements factor into the calculation of the City of Fairfax Housing Trust Fund Equity Share (defined below).
 - ii.** The City shall be offered the exclusive right to purchase the unit and the City reserves the right to assign its exclusive right to purchase the unit to its agent or a nonprofit designated by the City. If the City, its agent or a designated nonprofit elects to purchase the unit at the owner's proposed sale price, it shall notify the owner within 30 calendar days of its receipt of owner's notification and an all-cash closing shall occur within 60 days of the City's receipt of the owner's notification.
 - iii.** If the City elects not to purchase the unit at the homeowner's proposed sale price, the homeowner may sell the ADU to a third party for no less than eighty-five percent (85%) of the sale price at which the homeowner proposed to sell the ADU to the City.

- If the owner enters into a contract to sell the ADU to a third party for at least 85% of the price offered to the City, the owner shall send another notice, also by certified or registered mail, to the City at the above address that provides the contract purchase price, the anticipated closing date, and contact information for the settlement company.
 - Using the information provided by the owner, the City shall then calculate the City of Fairfax Housing Trust Fund Equity Share (as defined below) to be paid to the City at closing and notify the owner and the settlement company of such amount.
- iv.** Before the owner may sell the ADU for less than 85% of such price, the homeowner must first offer the ADU to the City, in writing via registered or certified mail, for such lower price, and the City or its designated nonprofit may elect to purchase the unit at such lower price within 30 days of its receipt of such notice and to close within 60 days. If the City elects not to purchase the unit at such lower price, the process shall continue until the City or its designated nonprofit purchases the unit or a third party purchases the unit for no less than 85% of the price most recently declined by the City. If the owner elects to withdraw the ADU from the market, the owner cannot later sell the ADU for less than 85% of the price most recently declined by the City without first offering the ADU to the City for such lower price in accordance with these regulations.
- b.** The "initial sale" after the expiration of any control period shall not be deemed to include any of the following:
- i. The addition of the name of the new spouse to the deed upon marriage of the homeowner; or
 - ii. Upon the death of any party named on the deed to the unit, the passing of title pursuant to the will of the deceased or the laws of intestacy;

provided, however, that the subsequent owner of the ADU pursuant to any of the transactions described above shall still have the obligation to offer the ADU to the City and, upon such subsequent owner's initial sale of the unit, to pay the City of Fairfax Housing Trust Fund Equity Share (as defined below).

- c.** Upon the initial sale of an ADU after the expiration of any control period – whether to the City or a third party—the seller shall pay one-half (1/2) of the difference between the Net Sales Price and Adjusted Original Purchase Price to the Housing Trust Fund to promote affordable housing in the City of Fairfax (the "Housing Trust Fund Equity Share"). Such equity interest of the City of Fairfax Housing Trust Fund shall apply to each ADU. Notice of such equity interest of the City of Fairfax Housing Trust Fund may be evidenced by a document recorded among the land records of Fairfax County, Virginia, encumbering any ADU. All other liens, judgments, deeds of trust, and other encumbrances on the unit shall be paid from seller's remaining proceeds from such sale (after

accounting for the Housing Trust Fund Equity Share), or otherwise be paid by seller; in no event shall any such amounts required to be paid by seller reduce the amount owed to the City of Fairfax Housing Trust Fund.

- i. "Net Sales Price" shall mean the sale price paid by the purchaser at such initial sale after the expiration of any control period, minus reasonable closing costs paid by the seller (e.g., title charges, transfer charges, recording charges, commission fees, points, etc.), but excluding any seller subsidy paid to or on behalf of the purchaser.
- ii. "Adjusted Original Purchase Price" shall mean the purchase price originally paid by the seller for the ADU (or, if the seller did not acquire the ADU in an arms-length transaction, then the purchase price paid by the most recent owner in the chain of title who acquired the ADU in an arms-length transaction), plus a percentage of such original purchase price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index, plus the lesser of the then-current fair market value or the actual original cost of certain improvements made and determined by the City in accordance with Addendum A hereto to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of original sale and the resale date.

5. Buyout option:

The owner may request to buy out the Housing Trust Fund Equity Share by paying an amount equal to the Housing Trust Fund Equity Share (as defined above) to the City at any point during the extended control period. In the event the owner wishes to request such a buy out, the owner of an ADU must provide the City with written notification of the owner request to buy out the Housing Trust Fund Equity Share. The notice must: (A) be signed by all owners listed on the deed to the ADU; (B) include a clear statement that the owner wishes to buy out the Housing Trust Fund Equity Share; (C) include a proposed market value of the ADU, supported by at least one appraisal that includes a listing of comparable bona fide sales in the area; and (D) include a list of the improvements, if any, that the owner believes should factor into the calculation of the Housing Trust Fund Equity Share according to Addendum A of these regulations. The notice must be mailed to the City's agent at the following address: Attention: Affordable and Workforce Housing Program Administrator—ADU Extended Control Period, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030.

If the owner does not identify any such improvements in this notice, then no improvements shall be factored into the calculation of the Housing Trust Fund Equity Share for the ADU. The City, in accordance with Addendum A to these regulations, shall make the final determination as to whether any such improvements factor into the calculation of the Housing Trust Fund Equity Share.

Upon receipt of the owner's application to buy out the Housing Trust Fund Equity Share, the City shall evaluate the application and notify the owner of its decision on that application. The approval of any such application shall be at the sole discretion of the City. Upon the approval of any such buy out application by the City, the owner shall deliver payment of the Housing Trust Fund Equity Share to the City and the City shall endorse all necessary documents to release the ADU from its involvement in the City's ADU program.

6. Portion of Sale Proceeds to the City of Fairfax Housing Trust Fund in the Event of a Foreclosure Sale:

In the event of a foreclosure sale of any ADU, the following shares of the proceeds of such foreclosure sale shall be paid to the City of Fairfax Housing Trust Fund to promote housing affordability in the City:

In the event that an individual for sale ADU is sold at a foreclosure sale for an amount greater than the Outstanding First Trust Debt, as such term is defined above, one-half (1/2) of the amount in excess of the Outstanding First Trust Debt shall be paid to the City of Fairfax Housing Trust Fund as part of the disbursement of settlement proceeds.

L. Eligible Lenders for ADUs Offered for Sale.

1. An Eligible Lender is defined as an institutional lender holding a first priority purchase money deed of trust on an individual for sale ADU or a refinancing of such institutionally financed purchase money deed of trust by an institutionally lender, provided that such refinancing does not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the unit at the time of refinancing.
2. Each Eligible Lender with respect to an individual for sale ADU shall also provide a right to cure any delinquency or default (Right to Cure), and a right to acquire an individual for sale ADU subject to the foreclosure notice given pursuant to Paragraph 3(K)(5) above (Right to Acquire). The Right to Cure and/or the Right to Acquire, as applicable, may be exercised by the City or by a nonprofit agency designated by the City in the event the City elects not to exercise its right, at any time during such ninety (90) day period after the City has received notice of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale. An ADU so acquired shall be acquired for the purpose of resale of such unit to persons qualified under the City's Affordable Dwelling Unit Program and not for the conversion of the ADU to a rental unit. The Right to Acquire shall entitle the City or the nonprofit agency designated by the City to acquire the ADU at or before any foreclosure sale for which such notice has been given upon payment in full of the outstanding indebtedness on the ADU owed to the Eligible Lender including principal, interest, and fees that together in the aggregate do not exceed the amount

of the owner's purchase price (as adjusted in accordance with Paragraph 3(K)(4)(c)(ii) above), and other reasonable and customary costs and expenses (the Outstanding First Trust Debt), with no owner, prior owner or other party, whether secured or not, having any rights to compensation under such circumstances.

3. In the event that neither the City, its agent nor a nonprofit agency designated by the City exercises the Right to Acquire and the individual for sale ADU is sold for an amount greater than the Outstanding First Trust Debt, one-half (1/2) of the amount in excess of the Outstanding First Trust Debt shall be paid to the City of Fairfax Housing Trust Fund to promote housing affordability in the City as part of the disbursement of settlement proceeds.
4. Each Eligible Lender and any other lender secured by an interest in an individual for sale ADU shall be required prior to foreclosing to provide the City at least ninety (90) days prior written notice thereof.
5. All financing documents for financing secured by an individual for sale ADU shall state that the Eligible Lender's financing provides the Right to Cure and Right to Acquire which may be exercised by the City, the City's agent or by a nonprofit agency designated by the City if the City elects not to exercise its rights, at any time during the such ninety (90) day period after the City has received notice, as applicable, of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale.

M. Adding and Removing Persons as Owners on ADU Deeds

The transfer of ownership interest in an ADU is only permitted in accordance with the following:

1. That the person proposed to be added as an owner is a member of the household and that the ADU is that person's domicile and residence and remains as the primary domicile and residence of the owner;
2. That the ADU subject to the addition of an owner does not have financing secured by such ADU in an amount in principal and accrued interest which, in the aggregate, exceeds the current control price of the unit, as calculated by the City;
3. That the property is not in default in the payment of any property owners or condominium association fee(s), is not delinquent in taxes, is not subject to any liens such as a mechanics lien, and the property has not been obligated in any way that would place a lien on the property;

4. That the owner of the ADU obtain the prior written consent of the lender(s) to add the person to the deed;
5. That the owner of the ADU and the person proposed to be added as an owner pledge to abide by all requirements of the City’s ADU program; and
6. No consideration of any kind shall be exchanged for such addition.

The change of a name of an existing owner on a deed, or removal of a party from a deed, is subject to the conditions set forth in the following chart:

Circumstance	Description	Requirements
<i>Legal Name Change of ADU Owner</i>	ADU owner seeks deed change due to a legal change in name.	Change may occur with proper official documentation evidencing name change provided to the City, such as a court order and the prior written consent of the lender.
<i>Change required due to court order or decree, including divorce</i>	1. Removal of an owner from the title <i>or</i> 2. Former spouse is not on the title and is being added due to a divorce.	Change may occur with proper official documentation provided to City, such as a court order, divorce decree, approved official and final settlement agreement, or other similar decree, and with the prior written consent of the lender.
<i>Removal of a Name from Title</i>	ADU owner seeks to remove a party from the deed as an owner, due to 1) an owner leaving the household; and/ or 2) mutual agreement of existing co-owners.	Deletions are permitted only if 1) the ADU does not have financing in an amount which, in the aggregate, exceeds the current control price of the unit, as calculated by the City; and 2) the lender provides prior written consent.

ADU owners wishing to add or remove parties from a deed or transfer ownership of an ADU must obtain prior written permission from the City. The request for permission must clearly state the reason the title change is requested and any required or appropriate documentation. The request must be sent to the City’s agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030.

The City will review and must approve the new deed before it is executed and recorded. The City will provide a form of deed that will include an express statement that the property is an ADU and as such is subject to the terms and conditions of the City’s ADU Program Covenants recorded with a specific reference to the Deed Book and Page Number of the land records of Fairfax County. Such deed shall also include an express

statement that the total aggregate amount of indebtedness that may be secured by the ADU is limited and that other terms and conditions apply, including, but not limited to, a right for the City or a non-profit agency designated by the City to acquire the ADU on certain terms in the event of a pending foreclosure sale, as set forth in the City's ADU Program Covenants and/or in the ADU Program set forth in the City of Fairfax Zoning Ordinance and/or these regulations.

Section 4.

Procedures for Rental of ADUs

A. Eligible Renters of ADUs

- 1. Income Limits and Priorities.** Any household seeking to rent an ADU under the City's ADU Program must have an income that is 60% or less of AMI, as adjusted for the applicable household size, and cannot have assets that exceed \$500,000, as adjusted for the applicable household size. The asset limit of \$500,000 shall be adjusted up by \$20,000 for each dependent under 18 and each dependent over 18 that has a documented disability. Thus, if a household has three dependents under 18 and one dependent over 18 with a documented disability, the adjusted asset limit for that household would be \$580,000. It is the responsibility of the individual or household applying for an ADU to demonstrate eligibility under the requirements of the City's ADU Program.
 - a. The first priority in the rental of ADUs (whether through the City or directly from the owner) in the City's ADU Program will be given to persons who live or work in the City of Fairfax. In addition, within this first priority, when an ADU rental unit is built to incorporate accessibility features at least equivalent to the features described below, applicant households that live or work in the City of Fairfax and have one or more persons with a handicap/disability, as defined below, who request it, shall have a preference to rent the ADU.
 - b. The second priority in the rental of ADUs (whether through the City or directly from the owner) in the City's ADU Program will be given to persons who live or work in Fairfax County. In addition, within this second priority, when an ADU rental unit is built to incorporate accessibility features at least equivalent to the features described below, applicant households that live or work in Fairfax County and have one or more persons with a handicap/disability, as defined below, who request it, shall have a preference to rent the ADU.
 - c. In demonstrating that their income is 60% or less of AMI, as adjusted for the applicable household size, applicants for ADU rentals must do so using the same sources of income that are set forth in Section 3 above for the purchase of an ADU.
 - d. In demonstrating that their assets do not exceed \$500,000, or a higher amount as adjusted for dependents as set forth herein, applicants for ADU rentals must do so using the same assets that are listed in Section 3 above for the purchase of an ADU.
 - e. If a resident household leasing an ADU in the City has a household income that exceeds 80% of AMI, as adjusted herein for household size, that household will no longer qualify for participation in the City's ADU Program, but will be entitled to remain in the ADU until the end of the applicable lease ends. Under such circumstances, that household may, at the option of the landlord/owner, remain in

the unit as a market-rate tenant, with a different unit in the same development being converted to an ADU unit, or that household may be moved to a market-rate unit in the same development.

- 2. Accessibility Features.** The accessibility features that must be included in an ADU unit eligible for such a priority preference for handicapped/disabled persons are:
- a. public use and common use portions of such dwellings must be readily accessible to and usable by handicapped persons;
 - b. all the doors designed to allow passage into and within all premises within such dwellings must be sufficiently wide to allow passage by handicapped persons in wheelchairs;
 - c. all premises within such dwellings must contain the features of adaptive design listed below;
 - d. an accessible route into and through the dwelling;
 - e. light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - f. reinforcements in bathroom walls to allow later installation of grab bars; and
 - g. usable kitchen and bathrooms such that an individual in a wheelchair can maneuver in the space.

The definition of a person with a handicap/disability for the purposes of this preference is a person having a physical impairment and/or traumatic brain injury that is expected to be of a long, continuing and indefinite duration that substantially impedes his or her ability to live independently without a residence with accessibility features provided in accordance with the standards above.

Such a priority preference for handicapped/disabled persons shall apply to otherwise eligible individuals or households. The City will verify the eligibility of tenants in ADUs leased by the City and will verify only the income eligibility of potential tenants referred to multifamily rental ADUs. It is the landlord's responsibility to verify the eligibility of tenants in all other ADU rental units.

B. Allowed Rents for ADUs

The rents for housing constructed as a requirement of the ADU Program must not exceed the applicable maximum limits established periodically by the City. Rents will be initially established by the City for single family detached, single family attached and multifamily dwelling units with various numbers of bedrooms.

Maximum rental rates for ADUs required by the City’s ADU Ordinance shall be established by first determining the base income figure of 60% of AMI and adjusting that base figure for different dwelling units based on the number of bedrooms in the dwelling units as follows:

Number of Bedrooms:	Adjustment of 60% of AMI
Studio/Efficiency	70%
1-Bedroom	80%
2-Bedroom	90%
3-Bedroom	100%

Once the foregoing adjustment is made, the resulting calculation shall be divided by twelve (12) and then multiplied by .30 to establish the maximum monthly rental rate for each unit, rounded to the nearest whole dollar amount. The following is an example of how the foregoing adjustment and calculation shall be made to determine the maximum rental rate for a hypothetical unit:

Assuming that 60% of AMI is \$50,000, the maximum rental rate for a one-bedroom unit will be determined as follows:

$$\$50,000 \times 80\% = \$40,000 \div 12 = \$3,333 \times .30 = \$999.99, \text{ rounded to } \$1,000 = \text{maximum monthly rental rate}$$

1. **Utilities and Fees.** The maximum monthly rental rate for any ADU shall include all utilities and fees as defined by the Federal Housing Administration.
2. **Facility and Parking Privileges.** The maximum monthly rental rate for any ADU shall also include all facility and parking privileges available to market-rate tenants, provided that such amenities shall be roughly comparable in proximity and space and size to those facility and parking privileges available to market-rate tenants and, provided further that pet fees and gym fees need not be included. Compliance with the foregoing requirement shall be determined through the exercise of reasonable discretion by the Zoning Administrator.

C. Initial Offering of ADUs for Rent

1. **City’s Option to Lease Rental ADUs.** Upon receipt of a Notice of Availability from the owner that a particular ADU is or will be available for rent, the City will determine whether the City, its agent, or a nonprofit designated by the City wishes to lease up to one-third of such units in the development pursuant to its exclusive right to lease such units during the control period. The City will notify the owner in writing within 30 days from receipt of the owner’s notice, if the City, its agent or a designated nonprofit elects to lease any units.
2. **Referral of Rental ADU Tenants by City.** Upon receipt of a Notice of Availability from the owner that an ADU is or will be available for rent, the City may refer to the

owner potential tenants of the ADUs to be rented at rents affordable to households with qualifying incomes. These households will be certified as income eligible by the City. The owner will determine whether the household meets the owner's normal rental criteria other than income. Households may not be rejected for such units if they are receiving state or local rental subsidy assistance.

3. **Direct Leasing of ADUs by Owners.** Units not leased pursuant to the provisions of Paragraph 1 or 2 above shall be offered by the owner to persons who meet the income and other criteria established by the City in the City's ADU Program. In addition to any applicable priority preference for handicapped/disabled persons, first priority for such units shall be given to persons who live or work in the City of Fairfax and second priority shall be given to persons who live or work in Fairfax County. If, after applying the foregoing priorities to the persons who have applied to lease such ADUs, any ADUs that have not been leased may be leased to members of the general public who qualify under the requirements of the City's ADU Program.

D. Occupancy of Rental ADUs

1. Tenants of rental ADUs must meet the eligibility criteria established by the City for ADUs in the City's ADU Program. In addition, the owner shall use the guidelines below to determine the household size appropriate for various size units:

Unit Size	Minimum Number of Persons	Maximum Number of Persons
Efficiency	1	1
One Bedroom	1	2
Two Bedroom	2	4
Three Bedroom	3	6

2. Tenants of ADUs must occupy the unit as their residence and domicile and must annually provide an executed affidavit (in a form specified by the City), certifying their continuing occupancy of the unit. This affidavit shall be submitted by the tenant on or before the date specified in their lease.
3. If the tenant of an ADU fails to provide an executed affidavit to their landlord/owner within thirty (30) days after a written request for such affidavit, then the lease shall automatically terminate, become null and void and the tenant must vacate the unit within thirty (30) days after written notice from the landlord/owner.
4. In the event an ADU tenant fails to occupy a unit for a period in excess of 60 days, unless approval was granted in advance and in writing by the City, the lease shall automatically terminate and the tenant must vacate the unit within thirty (30) days after written notice from the landlord/owner.
5. Notwithstanding the provisions of paragraphs 3 and 4 above, if the landlord/owner shall immediately designate an additional comparable unit as an ADU to be leased under the controlled rental price and the requirements of the

City's ADU Program, the tenant of such unit referenced in paragraphs 3 and 4 above may continue to lease such unit at the market rate.

6. **ADU Residents' Right to Remain in Rental Unit.** If an Applicant Household that qualifies for participation in the City's ADU Program leases a residential unit through the City's ADU Program, and the income of that household remains at or below 80% of AMI as adjusted herein for household size, that household will be entitled to remain in that ADU so long as the members of that household designated for ADU qualification purposes remain as members of that household and continue to satisfy all other qualification criteria under which that household secured its residence. If any such household occupying an ADU complies with the foregoing criteria and remains in compliance with any applicable lease or other applicable agreement, that household shall be entitled to continue leasing said affordable residential unit.

E. **Control Period and Covenants**

1. **General.** For all rental ADUs, prior to offering ADUs for rent but no later than the issuance of the first Zoning Permit for a rental development which includes ADUs, the owner shall record Covenants running with the land in favor of the City. The Covenants shall subsequently have specified in them the date of issuance of the first Zoning Permit for an ADU and shall include the provisions of the City's Zoning Ordinance including restrictions on the rental of the ADUs during the thirty (30) year control period. The Covenants shall be senior to all instruments securing permanent financing and shall be binding on assignees, mortgagees, purchasers and other successors in interest.

For initial and revised covenants, the covenants shall remain in full force and effect in the event of a foreclosure sale of a rental project by an eligible lender.

The City will provide the owner with standard Covenants for rental ADUs to be recorded in the land records.

2. **Multifamily Rental Developments.** For multifamily dwelling re-rentals, a 30-year control period shall apply.

F. **Lease Restrictions**

1. **Length of Lease.** Any rental ADU shall be leased for a minimum of six (6) months with a maximum lease term of one (1) year for tenants who meet the eligibility criteria.
2. **Terms of Lease.** The lease agreement for any such unit shall include the following provisions:
 - a. Minimum lease term is six (6) months and the maximum lease term is one (1) year.

- b. The tenant must occupy the unit as their domicile and residence.
- c. Subleasing of the unit is prohibited.
- d. The tenant must continue to comply with the eligibility criteria.
- e. The tenant must annually verify under oath, on a form approved by the City that the tenant continues to meet the income and other eligibility criteria established by the City.
- f. The lease will be automatically terminated if there is any false certification or failure to provide the executed affidavit of continued occupancy or failure to occupy the unit for a period greater than 60 days unless such failure is approved in advance and in writing by the City.

G. Landlord/Owner Responsibilities

1. **Income Certification.** The landlord/owner of a development containing rental ADUs shall be responsible for obtaining from renters of ADUs (other than the City) an annual income certification that certifies the income eligibility of that household and other facts in order to insure the tenant continues to meet the eligibility criteria established by the City.
2. **Third Party Verification of Income.** The landlord/owner will also be responsible for obtaining third party verification of the income of tenant households.
3. **Landlord's Statement.** By the end of each quarter, the landlord/owner shall provide the City with a statement verified under oath which certifies the following:
 - a. The address and name of the development and the name of the landlord/owner.
 - b. The number of affordable dwelling units by bedroom count, other than those leased to the City, which are vacant.
 - c. The number of affordable dwelling units by bedroom count which are leased to residents other than the City. For each unit the statement shall have the following information:
 - d. That, to the best of the landlord's/owner's information and belief, the tenants who lease ADUs meet the eligibility criteria established by the City.
 - e. The landlord/owner shall provide the City with a copy of each new or revised annual tenant verification obtained from the renters of ADUs.
 - i. The unit address and bedroom count.
 - ii. The tenant's name and household composition.

- iii. The effective date of the lease.
 - iv. The tenant's household income as of the date of the lease.
 - v. The current monthly rent.
- f. That, to the best of the landlord's/owner's information and belief, the tenants who lease ADUs meet the eligibility criteria established by the City.
 - g. The landlord/owner shall provide the City with a copy of each new or revised annual tenant verification obtained from the renters of ADUs.

H. Rental Under Other Affordable Housing Programs

ADUs developed using federal, state or local programs which are subject to terms and restrictions equivalent to the City's ADU Program shall be rented at rents determined in accordance with the rules and regulations of such programs (provided that the rents do not exceed those set pursuant to the City's ADU Program) and shall be marketed in accordance with the rules and regulations of such programs.

I. Eligible Lenders for Rental ADUs

- A. An Eligible Lender is defined as an institutional lender holding a first priority purchase money deed of trust on a rental project or a refinancing of such institutionally financed purchase money deed of trust by an institutionally lender, provided that such refinancing does not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the unit at the time of refinancing.
- B. An Eligible Lender shall have the right to foreclose on a rental project or an ADU and the covenants on the rental project or ADU shall terminate upon such foreclosure by the Eligible Lender in the event that the rental project or the ADU is sold by a trustee on behalf of the Eligible Lender to a bona fide purchaser for value at a foreclosure sale and all the requirements of the Affordable Dwelling Unit Program as set forth herein, the covenants, and applicable regulations with respect to such foreclosure sale are satisfied. Such requirements include, but are not limited to, the Eligible Lender with respect to an individual for sale ADU having provided the City written notice of the foreclosure sale proposed and having provided the Right to Cure and the Right to Acquire, as those terms are defined in Paragraph 3(L)(2) above.
- C. An Eligible Lender with respect to a rental project shall not be required to provide the Right to Cure and the Right to Acquire.
- D. Each Eligible Lender and any other lender secured by an interest in a rental ADU shall be required prior to foreclosing to provide the City at least ninety (90) days prior written notice thereof.

J. ADUs in Condominiums; Rental ADUs in Condominium Conversions

- 1. ADU Designations on Condominium Declaration.** If a development is initially built as a condominium and such development is subject to the requirements of the City’s ADU Program, then the ADUs required pursuant to the Ordinance shall be specifically identified on the approved site plan, building plans and designated as part of the recorded condominium declaration.
- 2. Provisions of Condominium Conversions.** If a development initially built as a rental project under single ownership is subject to the requirements of the City’s ADU Program and then subsequently converts to a condominium:

 - a.** The provisions of the City’s ADU Program shall apply to such condominium developments.
 - b.** The ADUs required pursuant to the City’s ADU Program shall be specifically identified by unit number as part of the recorded condominium declaration.
 - c.** The sales price for such ADUs being converted shall be established by the City pursuant to the City’s ADU Program. If the owner of such condominium conversion elects to renovate the ADUs, the City shall consider the reasonable cost of labor and materials associated with such renovation, which costs shall be factored into any decision of the City to establish permissible sales prices for such renovated ADUs.
 - d.** For any condominium conversion development, ADUs may not be retained as rental units within a condominium conversion development if such units are also subject to condominium conversion. The term of sales price control for ADUs located within a condominium conversion development shall be for a period of thirty (30) years and the units shall be priced in accordance with the provisions of the City’s ADU Program. However, upon any resale and/or transfer to a new owner of such ADU within the initial thirty (30) year period of sales price control, the sales prices for each subsequent resale and/or transfer for each such ADU to a new owner shall be controlled for a new thirty (30) year period commencing on the date of such resale or transfer of the ADU. Each initial thirty (30) year control period and each subsequent thirty (30) year control period may be referred to as the renewable sale price control period or control period.
 - e.** For any condominium conversion development for which an application for registration of the condominium conversion was filed with the Virginia Real Estate Commission pursuant to Sect. 55-79.89 of the Code of Virginia, as amended, the ADUs may be retained as rental units within the

development. The condominium declaration and an amended covenant associated with the ADUs shall specifically set forth:

- i.** All rental ADUs within the development shall be transferred to the same entity or individual.
 - ii.** The ADUs shall be rented in accordance with the rental provisions of the City's ADU Program, including but not limited to, pricing and monthly reporting, and no additional condominium or homeowner association fees shall be assessed to the tenants of the ADUs.
 - iii.** Parking for the ADUs shall be provided in accordance with the applicable provisions of the City's Zoning Ordinance with at least the minimum number of required spaces retained and made available for use by the affordable dwelling unit tenants.
 - iv.** The ADUs shall be provided in substantially the same bedroom mix as the market rate units in the development.
 - v.** The tenants of the rental ADUs shall have access to all the site amenities that were provided when the ADUs were originally established in the development.
 - vi.** All other covenants set forth in the original covenants and all applicable regulations set forth in the City's Zoning Ordinance shall remain in full force and effect.
- f.** The rental tenant occupants of ADUs subject to a condominium conversion shall have the right to purchase the dwelling unit they occupy at the sales price established by the City pursuant to the terms of the City's ADU Program. Subsequently, the City shall have the right to purchase any or all of the ADUs that are not purchased by such rental tenant occupants at the sales price established for such units by the City pursuant to the City's ADU Program. Such units shall be offered to the City and purchased by it, its agent, or its designated nonprofit in accordance with the terms and provisions of the City's ADU Program. The owner shall notify the City prior to filing for condominium conversion, and request pricing for any ADUs subject to the condominium conversion. Such notice shall be submitted by the owner to the City's agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030. The City shall establish the prices for such units, which will be included in the 120-day formal notice to tenants in the ADUs subject to the conversion. The tenant's first right to purchase, as provided for in Title 55 of the Code of Virginia, shall be for the first sixty (60) days of the 120-day formal notice period. Thereafter, as stated above, the City shall have the exclusive right

to purchase any or all of the units not purchased by the rental tenants, at the sale price established by the City.

ADDENDUM A

First-Time Homebuyers Program Approved Replacements and Improvements Resale Credit Policy

Purpose:

To provide a resale credit to increase the allowable sale price of ADU units by the lower of the actual original cost or value of major repairs or items which are required to make the unit safe, sanitary, energy efficient and marketable, while maintaining the price of the unit within the range of affordability for First-Time Homebuyers Program participants as referenced in Section Three of the Fairfax City ADU Administrative Regulations. Resale credit will only be given as in accord with the City's ADU Program and as follows:

- A. All replacements and improvements are required to be performed or purchased from licensed contractors with a Class A or Class B contractor license to do business in the state of Virginia at the time that the work is completed. The owner must provide valid dated receipts. The item must be in the home at the time of settlement and occupancy by the new purchaser.
- B. Owners seeking resale credit must provide proof that all applicable Fairfax City codes and Homeowners Association or Condominium Association restrictions and regulations are met.
- C. No resale credit will be given for items that were paid for or reimbursed from other sources, such as insurance claims; for removable fixtures such as ceiling fans; and for upgrades to carpeting, cabinets, appliances, or any other fixtures that were purchased and/or installed before the date of the original sale.
- D. No resale credit shall be given for the cost of normal maintenance and upkeep, including but not limited to, items such as power washing, seasonal maintenance, landscaping, cleaning, or sealing any surface, for eradication of insects or other pests, for moving expenses, or the removal of trash or debris.
- E. No resale credit shall be given for any items installed or work done outside of the period of ownership of the owner seeking resale credit.
- F. Resale credit will be given for the following items:
 - 1. Appliances: Resale credit shall be given for appliances that meet all of the following criteria:
 - a. were purchased by the owner requesting credit;
 - b. remain in the unit;
 - c. are less than five years old; and
 - d. are of a similar type and quality of appliance that came with the unit at the time of the original purchase.

Appliances include: range or cook top and oven; refrigerator/freezer; dishwasher; hot water heater; garbage disposal. The credit shall be no greater than the owner's actual cost and shall be reduced by 20% per year for each such appliance. No owner shall receive resale credit for more than one of the same type of appliance.

2. Permanent structural additions such as finished basements and added bathrooms. The credit for permanent improvements will be the lesser of the amount of the increase in the fair market value as a result of the improvement or the owner's actual cost.
 3. Decks, patios and fences less than ten (10) years old. The credit shall be at the owner's actual cost and shall be reduced by 10% per year.
 4. Major structural repairs necessary to comply with state and local codes. The credit shall be at the owner's actual cost. The code violation remedied by the repair must be documented by the contractor.
 5. Minor structural improvements (windows, doors, walls) necessary to comply with state and local codes or necessary to maintain health and safety or improve energy efficiency shall receive resale credit at the owner's actual cost. Any code violation or increase in health, safety or efficiency must be documented by the contractor.
 6. Replacement of major HVAC system components necessary to comply with state and local codes, or necessary to maintain health and safety or improve energy efficiency. The resale credit shall be at the owner's actual cost for such items and shall be reduced by 10% per year.
 7. Energy conservation improvements for the following items that remain with the property such as storm doors or windows, water saving improvements, weather stripping (as it relates to making other energy improvements), and additional insulation. The resale credit shall be the owner's actual cost.
 9. Major plumbing repairs necessary to meet state or local codes as documented by a licensed plumbing contractor, or associated with an approved permanent improvement such as an added bathroom. The resale credit shall be the owner's actual cost.
 10. Replacement of major roof components. The resale credit for all components shall be amortized over the period of the manufacturer's or contractor's guarantee.
 11. Exterior painting done within one (1) year of the resale that remains in good condition at the time of the resale shall receive resale credit at the owner's actual cost.
 12. Flooring installed within two (2) years of the resale. The resale credit shall be at the owner's actual cost and shall be reduced by 5% per month.
- G. The maximum total amount of resale credit for all replacements and improvements that will be allowed under this First-Time Homebuyers Program Approved

Replacements and Improvement Resale Credit Policy for any home shall not increase the allowable resale price of the home to be in excess of the maximum amount affordable to First-Time Homebuyers Program participants at the time of the resale offering of the unit.

6/23/20

MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding (“MOU”), dated this ____ day of _____ 2020, is by and between THE CITY OF FAIRFAX, VIRGINIA (“the City”), a municipal corporation of the Commonwealth of Virginia, acting by and through its City Council (“Council”), and THE FAIRFAX COUNTY REDEVELOPMENT & HOUSING AUTHORITY (“the FCRHA”) (also collectively referred to herein as “the Parties”).

WITNESSETH:

WHEREAS, the City desires to establish an affordable dwelling unit program within the City for the purpose of addressing housing needs, promoting a full range of housing choices, and encouraging the construction and continued existence of moderately priced housing by providing for optional increases in density to reduce land costs for such moderately priced housing; and

WHEREAS, the need for decent, safe, and sanitary living accommodations for persons of low and moderate income crosses regional boundaries and requires inter-jurisdictional cooperation; and

WHEREAS, the City proposes to adopt certain amendments to its zoning ordinance to implement its authority to adopt an affordable dwelling unit program within the City; and

WHEREAS, the FCRHA has operated an affordable dwelling unit program within the Fairfax County for many years; and

WHEREAS, it is the desire of the City to have the FCRHA serve as the City’s agent in the administration of the City’s affordable dwelling unit program; and

WHEREAS, the FCRHA is willing to serve as the City’s agent in the administration of the City’s affordable dwelling unit program; and

WHEREAS, the Parties agree that the establishment of an affordable dwelling unit program within the City will assist and complement the FCRHA’s ongoing efforts to provide affordable housing within Fairfax County; and

WHEREAS, in coordination with the FCRHA, the City proposes to adopt Administrative Regulations for the administration of the City’s affordable dwelling unit program, a copy of which is attached hereto and made a part hereof; and

WHEREAS, the proposed Administrative Regulations are similar to the administrative regulations under which the FCRHA administers its own affordable dwelling unit program; and

WHEREAS, the Parties are committed to share information with each other regarding the provision of affordable housing in the City and any means by which the Parties can improve the City's ADU program and the administration of that program by the FCRHA; and

WHEREAS, the Parties are of the opinion that, by serving as the City's agent in the administration of the City's ADU program, the FCRHA will be able to enhance the provision of affordable housing in both the City of Fairfax and Fairfax County.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the Parties agree that:

1. The FCRHA agrees to serve as the agent for the City by administering the City's affordable dwelling unit program in accordance with the proposed Administrative Regulations, provided that the City's program does not exceed 50 units. If the City's program exceeds 50 units that are administered by the FCRHA, then the Parties agree that the City will annually reimburse the FCRHA for its reasonable administrative costs for the number of units by which the City's program exceeds 50 units.

2. If the City proposes in the future to amend the Administrative Regulations, then the City agrees to provide the language of any such proposed amendments to the FCRHA at least 90 days before their proposed adoption. Upon the receipt of any such proposed amendments to the City's Administrative Regulations for the administration of its affordable dwelling unit program, the FCRHA shall have 45 days to notify the City in writing of any objections it may have to the proposed amendments to the City's Administrative Regulations. If the FCRHA does not timely object in writing to any such proposed amendments, then the FCRHA agrees that, if any such proposed amendments are adopted by the City, then the FCRHA's administration of the City's affordable dwelling unit program shall incorporate any such amendments.

3. If the FCRHA timely objects in writing to any such proposed amendments, but the FCRHA provides in writing alternative language that, if adopted, would be acceptable to the FCRHA, then any such alternative language proposed by the FCRHA may be adopted by the City. In such event, the FCRHA's administration of the City's affordable dwelling unit program shall incorporate any such amendments.

4. If the FCRHA timely objects in writing to any such proposed amendments and the FCRHA does not provide any alternative language that, if adopted, would be acceptable to the FCRHA, then this MOU shall be deemed void and of no effect in the event the City adopts any such proposed amendments to its Administrative Regulations for the administration of its affordable dwelling unit program.

5. This MOU shall continue for a period of one year from the Execution Date and shall automatically renew on every anniversary of that date for an additional one-year period. Either Party may, however, terminate this MOU upon at least one year of written notice to the other Party, unless a shorter or longer period is mutually agreed to by the Parties.

6. The Parties agree that their designees shall meet at least twice per year, unless they mutually agree in writing that such a meeting is not required.

7. The City will endeavor to provide the FCRHA with reasonable notice of any increases in the number of units that are subject to the City's program.

8. This MOU may be amended from time to time by written agreement of the Parties.

9. This MOU shall take effect as of the last date that any party executes the same and such date shall be inserted in the first paragraph of this MOU (the "Execution Date").

10. All communications and notices given under this MOU with respect to any proposed amendment of the City's Administrative Regulations for the administration of its affordable dwelling unit program or any other notification under this MOU shall be in writing, and hand-delivered, or sent by overnight mail, to the addresses set forth below:

Director, Fairfax County Department of Housing and Community Development
3700 Pender Drive, Suite 300
Fairfax, Virginia 22030

City Manager, City of Fairfax
10455 Armstrong Street
Fairfax, Virginia 22030

With a copy to:

County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035

City Attorney
10455 Armstrong Street
Fairfax, Virginia 22030

10. The terms of this MOU will be applied, construed, and interpreted without any regard to any rule or principle of construction concerning the drafting or authorship of the MOU.

WITNESS the following signatures and seals:

FAIRFAX COUNTY REDEVELOPMENT AND
HOUSING AUTHORITY

By _____
_____ Chairman
Fairfax County Redevelopment and
Housing Authority

ATTEST:

CITY OF FAIRFAX, VIRGINIA

By _____
Robert A. Stalzer, City Manager
City of Fairfax, Virginia

ATTEST:

Clerk, City of Fairfax, Virginia

APPROVED AS TO FORM:

City Attorney

Sample Motion – Zoning Ordinance Amendment

APPROVAL OF AN ORDINANCE AMENDING CHAPTER 110 (ZONING) TO AMEND PORTIONS OF ARTICLES AND SECTIONS CONTAINED THEREIN TO INCLUDE PROVISIONS FOR AFFORDABLE DWELLING UNITS.

I MOVE THAT THE CITY COUNCIL APPROVE THE PROPOSED ORDINANCE AMENDING CHAPTER 110, ZONING, OF THE CODE OF THE CITY OF FAIRFAX, VIRGINIA, TO AMEND PORTIONS OF ARTICLES AND SECTIONS CONTAINED THEREIN TO INCLUDE PROVISIONS FOR AFFORDABLE DWELLING UNITS, INCLUDING:

- THE APPROVAL OF OPTION___ RELATING TO PROPOSED SECTIONS 3.9.6, PARAGRAPH E, ENTITLED SPECIFICATIONS FOR PROTOTYPE AFFORDABLE DWELLING UNITS, PARAGRAPH F, ENTITLED COMPARABILITY OF UNITS, AND PARAGRAPH G, ENTITLED SIMILARITY AND COMPATIBILITY OF UNITS,

AND

- THE APPROVAL OF OPTION___ RELATING TO PROPOSED SECTION 6.19.3, ENTITLED APPLICATION REQUIREMENTS, PARAGRAPH B.1, REGARDING CASH CONTRIBUTIONS IN CONJUNCTION WITH REQUESTS FOR MODIFICATIONS,

BECAUSE THE PUBLIC NECESSITY, CONVENIENCE, GENERAL WELFARE, AND GOOD ZONING PRACTICE REQUIRE SUCH AMENDMENTS.

Sample Motion – Zoning Ordinance Amendment

DENIAL OF AN ORDINANCE AMENDING CHAPTER 110 (ZONING) TO AMEND PORTIONS OF ARTICLES AND SECTIONS CONTAINED THEREIN TO INCLUDE PROVISIONS FOR AFFORDABLE DWELLING UNITS.

(Deny Zoning Ordinance Amendment)

I MOVE THAT THE CITY COUNCIL NOT APPROVE THE PROPOSED ORDINANCE, AS AMENDED, AMENDING CHAPTER 110, ZONING, OF THE CODE OF THE CITY OF FAIRFAX, VIRGINIA, TO AMEND PORTIONS OF ARTICLES AND SECTIONS CONTAINED THEREIN TO INCLUDE PROVISIONS FOR AFFORDABLE DWELLING UNITS:

(City Council to provide reasons)

Sample Motion – Memorandum of Understanding

I MOVE THAT THE CITY COUNCIL APPROVE THE MEMORANDUM OF UNDERSTANDING WITH THE FAIRFAX COUNTY REDEVELOPMENT & HOUSING AUTHORITY DATED JUNE 23, 2020, AND AUTHORIZE THE CITY MANAGER TO EXECUTE IT ON BEHALF OF THE CITY FOR THE ADMINISTRATION OF THE CITY'S AFFORDABLE DWELLING UNIT PROGRAM.

Sample Motion – Administrative Regulations

I MOVE TO APPROVE ADMINISTRATIVE REGULATIONS CONCERNING
THE SALE AND RENTAL OF AFFORDABLE DWELLING UNITS, DATED
JUNE 9, 2020.