

**CITY OF CHARLOTTESVILLE  
STANDARD OPERATING PROCEDURE**



Type of Policy: <b>ZONING REGULATIONS</b>	Department: NDS
Subject: Implementation of City Code 34-12 (Affordable Dwelling Units)	
Authorization: Charlottesville City Code Sec. 34-12(g)	
Approval by City Council: February 18 2014 Revised by City Council: June 15, 2015	Effective Date: July 1, 2015

**I. PURPOSE OF REGULATIONS**

The purpose of these zoning regulations is to assure the performance of affordable dwelling unit obligations by developers who obtain approval of rezonings and special use permits subject to the provisions of Sec. 34-12 of the Charlottesville City Code (“City Code”). These regulations may be referred to as the City’s “Affordable Dwelling Unit Regulations”.

**II. ENABLING ORDINANCES/LEGISLATION**

These provisions of these zoning regulations are authorized and enabled by Sec. 34-12 of the Charlottesville City Code, enacted pursuant to authority granted within Chapter 693 of the Acts of the Virginia General Assembly (2008), as amended by Chapter 527 of the Acts of the Virginia General Assembly (2013) and by Chapter 225 of the Acts of the Virginia General Assembly (2015); by Sec. 15.2-2200 *et seq.* of the Virginia Code; by Sec. 50.7 of the Charter of the City of Charlottesville; and by Chapter 34 (Zoning), Sec. 34-12(g) of the City Code.

**III. DEPARTMENTS/DIVISIONS AFFECTED**

These regulations will primarily affect the employees and officials of the City’s Department of Neighborhood Development Services, but may also affect the City Attorney’s Office.

**IV. REGULATIONS AND PROCEDURES**

A. Definitions

1. For the purpose of these regulations, the term “affordable dwelling units” shall have the meaning set forth in Sec. 34-12(c) of the City Code. The acronym “ADU” shall mean “affordable dwelling unit.”
  2. The acronym “HDS” shall mean the City’s Housing Development Specialist employed within the Department of Neighborhood Development Services.
  3. The acronym “CAU” shall mean “committed affordable dwelling units”, i.e., the number of dwelling units committed, by legally binding agreements and reservations, for rent or for sale as ADUs.
  4. For the purpose of these regulations, the term “Project” shall mean the approved residential project or residential portion of a mixed-use project subject to the requirements set forth in Sec. 34-12(a).
  5. Supported Affordable Housing are units with various sources of public funding and mechanisms ensuring their affordability including, but not limited to: HUD, VHDA, the City of Charlottesville, Housing Choice (Section 8) vouchers, and/or deed restrictions. Support may be project-based for multiple units (i.e., Friendship Court), be attached to individual locations (deed restrictions and land trusts), or reside with individual households (Housing Choice Vouchers or downpayment assistance).
  6. Term of Affordability is the duration of time during which the CAUs must be maintained as ADUs. This term may vary by project; however, in no instance shall this term be greater than 30 years. The Owner shall collaborate and work with the HDS to determine the number of years for this term and the specific proposal for establishment of ADUs, and the specific Term of Affordability shall be set forth within a written CAU Commitment.
- B. The City’s HDS shall be responsible for administering and enforcing these regulations, under the direction of the City’s Director of Neighborhood Development Services (“Director”). An applicant aggrieved by a decision of the HDS may request a review by the Director, by submitting a written request for review within 5 days of the HDS’ decision.
1. Following receipt of a written request for review, the Director shall render a written decision 5 days.
  2. In the event an applicant is aggrieved by a decision of the Director, the applicant shall have the right of appeal to the City’s Board of Zoning Appeals (BZA), pursuant to the authority of Virginia Code § 15.2-2309(1) and 15.2-2311. The person aggrieved by the Director’s decision shall have 30 days from the date of the Director’s written decision to file a written notice of appeal with the BZA.

- C. **Cash Contributions to City's Affordable Housing Fund:** Regulations applicable to Cash Contributions made pursuant to Sec. 34-12(d)(2) of the City Code are as follows:
1. Prior to approval of any building permit authorizing construction of improvements on land subject to the requirements of Sec. 34-12(a) of the City Code, the person seeking the building permit shall provide evidence satisfactory to the City that the cash contribution required by Sec. 34-12(d)(2) and 34-12(e) has been paid. Satisfactory evidence shall include, without limitation, cancelled check(s); written receipts; written acknowledgement letter(s) received from a city official, etc.
  2. The required evidence of payment shall be submitted to the HDS.
  3. In the event that a building permit should be approved prior to the City's receipt of the required evidence of payment, issuance of such permit shall not be deemed or construed as proof or evidence of payment. The owner of the property shall be and remain obligated to make payment of the cash contribution, until such time as satisfactory [documentary] evidence of actual payment is received by the HDS.
- D. **On-Site ADUs for Rent:** regulations applicable to On-Site ADUs provided pursuant to Sec. 34-12(a) of the City Code are set forth within **Schedule 1** appended to these Affordable Dwelling Unit Regulations.
- E. **On-Site ADUs for Sale:** regulations applicable to On-Site ADUs provided pursuant to Sec. 34-12(a) of the City Code are set forth within **Schedule 2** appended to these Affordable Dwelling Unit Regulations.
- F. **Off-Site ADUs for Rent or for Sale:** regulations applicable to Off-Site ADUs provided for rent or for sale, pursuant to Sec. 34-12(d)(1), are as follows:
1. Prior to the issuance of any building permit authorizing construction of improvements on land subject to the requirements of Sec. 34-12(a) of the City Code, the person seeking the building permit shall provide evidence satisfactory to the City that an off-site location has been reserved for the number of ADUs required pursuant to Sec. 34-12(d)(1) of the City Code. Satisfactory evidence may include, without limitation, written instruments recorded within the chain of title for the off-site location. The proposed off-site units must be located in the City.
  2. The required evidence of a reserved off-site location for ADUs shall be submitted to the HDS.
  3. In the event that a building permit should be approved prior to the City's receipt of the required evidence of the reserved off-site location, issuance of

the building permit shall not be deemed or construed as evidence of compliance with Sec. 34-12(d)(1). The owner of the property that is subject to the requirements of Sec. 34-12(a) shall be and remain obligated to provide ADUs in accordance with Sec. 34-12(d)(1) until such time as satisfactory [documentary] evidence of a reserved off-site location is received and determined by the HDS to be satisfactory.

4. Requirements may be met through the preservation of existing Supported Affordable Housing units where it can be demonstrated that those units are at risk of losing the existing support mechanism within the next 5 years.
5. In all other respects, **(i)** off-site ADUs for rent shall be subject to the requirements of Paragraph (D), above, and **(ii)** off-site ADUs for sale shall be subject to the requirements of Paragraph (E), above.

## **V. CONSEQUENCES OF VIOLATION OF REGULATIONS**

Pursuant to Sec. 34-82(b)(1) of the City Code, a violation of these regulations shall constitute unlawful conduct in violation of the City's zoning ordinance.

## **VI. RELATED FORMS; INTERPRETIVE GUIDELINES; SCHEDULES**

- A. Subject to approval by the City Attorney, the City's Director of Neighborhood Development Services is hereby authorized to develop forms, agreements, deeds and other written instruments, and to identify related federal and state indexes and guidelines, necessary for the proper administration and interpretation of the provisions of these regulations, subject to approval by the City Attorney.
- B. The following Schedules are appended to these regulations:
  1. Schedule 1—requirements for CAUs for-rental
  2. Schedule 2—requirements for CAUs for-sale

## **SCHEDULE 1 To City's ADU Regulations:**

### **Regulations Applicable to On-Site ADUs provided pursuant to Sec. 34-12(a) of the City Code, for Rental**

(1) **Owner's CAU Commitment.** The Owner shall construct and reserve within the Project a mixture of 1-, 2-, and 3-bedroom CAUs (as appropriate to the planned development), as follows:

(a) **Square Footage of ADUs**--The Owner and the HDS shall calculate the minimum square footage of gross floor area (GFA) to be reserved within the Project for CAUs, based on the requirements of Sec. 34-12(a) ("CAU Commitment"), which shall be set forth within a written CAU Commitment executed by the Owner prior to approval of any site plan or subdivision plat for the Project, or if no such approval is required, then prior to issuance of any building permit. The square footage reserved for CAUs shall be configured and designed as follows:

- (i) The CAU Commitment shall specify a total square footage to be devoted to CAUs as well as a minimum number of bedrooms to be provided within the reserved CAUs. Further, the CAU Commitment shall identify how many of those bedrooms will be in 1-, 2-, 3-, and 4- bedroom units. Based on current market need, the HDS has discretion to express preference for projects that contain a mixture of units that accommodate seniors/singles as well as families.
- (ii) CAUs shall be dispersed throughout the Project, with no more than 25% of the CAUs located on any one floor of a building, or within any one section or development phase of the Project, except in cases where the Owner demonstrates to the satisfaction of the HDS that requirements of a federal or state funding program necessitate alternate arrangements, or if by reason of lot configuration or other circumstances of the development render such dispersal unachievable, undesirable, or impractical.
- (iii) Each CAU shall have substantially similar exterior quality and appearance as other dwelling units within the Project. Also, to the maximum extent possible, CAUs will incorporate energy efficient design to increase durability, and operational efficiency—thereby promoting continued affordability.

#### **(b) Minimum Term of Affordability**

- (i) The written CAU Commitment shall specify a specific Term during which the required square footage of affordable dwelling units, and the minimum length of the required term shall be: (i) a period determined by the HDS as being the period over which the dollar amounts expended by the Owner to provide the

CAUs, in the aggregate, will be the equivalent of a cash contribution calculated pursuant to this policy for the same development, or (ii) a period of 5 years, whichever is greater. If the Owner desires a Term of less than 5 years, then the CAU Commitment for the project, including the proposed Term of Affordability, must be approved by the City Council. Nothing in this paragraph shall preclude the HDS from accepting a Term of Affordability that is longer than the minimum specified by this paragraph.

- (ii) To facilitate the determination specified by clause (b)(i), above, and to assure that proposals are evaluated consistently, the HDS shall establish a method of calculation that utilizes a comparison of proposed market rents for the proposed development to the maximum monthly rents that can be charged according to clause (2)(b) below. The minimum Term of Affordability will be determined by the timing of the point at which the loss of monthly rental income from all proposed CAUs equals or exceeds the value of the required cash contribution pursuant to Sec. 34.-12(d)(2). As an example: CAU rents provide \$100,000 less in rental income per year than market rate rents for the same sized units. With a required cash contribution of \$650,000, the applicant would be expected to provide a Term of Affordability for a minimum of 6.5 years or 78 months. If the calculation produces a Term of Affordability less than 5 years, the applicant must commit to at least a 5 year Term of Affordability or obtain City Council approval to utilize the reduced Term of Affordability.
- (c) The details of the CAU Commitment shall be noted by the Owner on the final building construction plans prepared for submission in connection with an application for final building permit approval (“Final Proposed Construction Plans”). Specific CAUs do not have to be identified on the construction plans. The Owner will submit the Final Proposed Construction Plans to the HDS for review, *prior to* submission to the Building Official. The HDS will review the Final Proposed Construction Plans within five (5) business days of receipt, for compliance with the requirements of Paragraph (1)(a), above. If the Final Proposed Construction Plans include adequate notation of the CAU Commitment as set forth within Paragraph (1)(a), above, then the HDS shall provide written verification to the Owner and to the Building Official. Before a CO is issued, the Owner must specify which units will be designated as affordable for the purposes of the CAU Commitment.
- (d) If the Final Proposed Construction Plans do not include a notation that meets the specifications set forth within Paragraph (1)(a) above, or if the Building Official does not have written verification from the HDS that the CAU Commitment is adequately set forth within the plans, then the Building Official shall not approve a building permit.
- (e) Prior to the issuance of the first certificate of occupancy for any building or unit within the Project, the Owner shall specify to the HDS which specific dwelling units

will be designated as CAUs, and the Owner shall cause to be recorded among the land records of the City of Charlottesville, Virginia, a written instrument sufficient to (i) give third parties notice of the Owner's obligations under Sec. 34-12 and the Owner's CAU Commitment within the development, and (ii) to assure that Owner's CAU Commitment within the development will be binding on the Owner and his heirs, successors and assigns, in a manner that will implement the requirement of Sec. 34-12(c) for each CAU to be and remain an affordable unit for the duration of the Term of Affordability which may vary by project up to a maximum of 30 years.

- (f) Following approval of a certificate of occupancy, and from time to time throughout the Term of Affordability, the Owner shall have the right to change the units designated as being reserved as CAUs, following advance written notice to the HDS and a determination by the HDS that the change will not lessen or remove the CAU Commitment. Alternative units proposed should be consistent with the initial CAU Commitment per Paragraph (1)(a)(i), above, based on a determination by the HDS.
- (g) If an otherwise qualified tenant residing in a CAU has an increase in income that exceeds the HUD guidelines specified in Paragraph (2)(a)(i), that CAU unit will still be considered as meeting the CAU Commitment for a period of three (3) years commencing on January 1 of the calendar year succeeding the year in which the income increased subject to the rent provisions at 2(a)(iii)(A).
- (h) The Owner must keep current records for CAUs at all times and the HDS must be provided access to such records at reasonable times, at the location where the records are kept, upon request by the HDS.
- (i) If at any time prior to the end of the Term of Affordability, the Project is converted to a condominium, or other form of individual ownership, the CAU Commitment shall continue in full force and effect and the required number of CAUs shall be leased to Qualified Tenants throughout the Term of Affordability, or, in the alternative, the CAUs may be sold to buyers meeting the current HUD Guidelines, as specified in Paragraph (2)(a)(i). Upon a sale of any such converted CAU, the requirements set forth in Schedule 2 to these Regulations shall apply to the remaining Term of Affordability.

(2) **Terms and Conditions for Rentals.** Owner shall offer the CAUs for rental to Qualified Tenants, subject to Owner's standard form lease agreement. These regulations are not intended to conflict with State and Federal requirements. The HDS has the option of subordinating the following if in conflict. Otherwise, terms and conditions applicable to such rentals shall be as follows:

(a) **Qualified Tenants.**

- (i) For the purposes of these regulations, the term "Qualified Tenant" shall mean a tenant whose household income is 80 percent or less of the area median income for Charlottesville, Virginia, adjusted for household size ("Median

Income”) as published annually by the U.S. Department of Housing and Urban Development<sup>1</sup> (“HUD Guidelines”).

- (ii) In determining whether or not to approve a Qualified Tenant for a lease agreement, the Owner may apply its typical credit (including any minimum income requirement) and background check requirements to tenants of CAUs; however, any requirement for a minimum income shall be suspended: (i) for participants in the Housing Choice Voucher program, or (ii) if Owner’s typical minimum income requirement exceeds 80 percent of Median Income.
- (iii) Upon the commencement of each tenancy of a CAU, the Owner shall document that the tenant meets the criteria for a “Qualified Tenant.” Thereafter, Owner shall document the tenant’s continued eligibility for status of a Qualified Tenant on an annual basis.
  - A. If a CAU tenant’s household income increases above the limit for a Qualified Tenant, then such tenant may be permitted a grace period by the Owner to remain in the same unit for a period of up to three (3) additional years, subject to yearly increases in the current rent (as of the beginning of the grace period) based on the percentage increase in HUD fair market rents for the most recent calendar year. After the three (3) year period, the Owner may allow the tenant to remain in the same unit; however, the Owner shall provide the City with notice that they are amending the prior CAU designation to transfer the CAU status of that particular unit to a different unit within the Project. Nothing within these regulations shall preclude the Owner from allowing a tenant whose household income increases above the limit to move to a different, non-CAU designated unit within the Project, subject to a lease at market rent at the conclusion of the three (3) year grace period.
  - B. Each lease agreement for a CAU shall contain a provision stating that the tenant’s failure to meet the criteria for a Qualified Tenant, or the Tenant’s failure or refusal to provide information necessary for recertification, will constitute non-compliance with the lease and that the lease may be terminated for such non-compliance.
  - C. In the event that a previously qualified tenant is being evicted or removed for non-compliance, the Owner will continue to be considered in compliance with these regulations if the Owner is diligently pursuing possession of the CAU through available legal means.
  - D. No later than January 31 of each year, the Owner shall provide to the HDS a Committed Affordable Unit Occupancy Annual Report that includes data

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<sup>1</sup> For HUD Guidelines for income limits see <http://www.huduser.org/portal/datasets/il.html>. Determination of household income is subject to 24 CFR Part 5.



on each CAU (“Annual Report”). The Annual Report shall include tenant identification information showing name, address, date and term of current lease, current household size, and current income level. There is no specified format; therefore, any report generated to meet a similar requirement may be used as long as the CAUs are identified and required information is included. . Upon request the HDS or other authorized representative of the City shall be permitted by the Owner to inspect the owner’s books and records that are the source of information contained in the Annual Report, including, without limitation:

- (i) tenant's rental application;
- (ii) tenant’s signed lease agreement;
- (iii) tenant’s income verification and supporting documentation;
- (iv) tenant’s Occupancy Affidavit to verify use as primary domicile.

E. The City or its designee shall have the right, following reasonable notice to the Owner and subject to the rights of the tenants under their leases and applicable law, to inspect the CAUs.

(b) Maximum Monthly Rent.

- (i) The maximum monthly rent for a CAU will be established based on the household income level for each Qualified Tenant. If household income is 50% or less of area median income for Charlottesville, Virginia, adjusted for household size, the low HOME rent limits must be used. If household income is between 51% and 80% of area median income for Charlottesville, Virginia, adjusted for household size, the lesser of the high HOME rent limits, the HUD Fair Market Rent, or 30% of the imputed household income for 80% AMI will apply.<sup>2</sup>
- (ii) If Owner requires tenants to pay their own utility charges, the maximum monthly rent will be reduced by a Utility Allowance. The Utility Allowance shall be determined with reference to the federal guidelines titled “*Allowances for Tenant Furnished Utilities and Other Services*”, published by HUD for the Charlottesville, Virginia/Central Virginia Region.
- (iii) It is the responsibility of the Owner (and not the City) to establish rents for the CAUs in accordance with these regulations. Upon request, the HDS will review

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<sup>2</sup> Low and high HOME rent levels are established by HUD annually for the Charlottesville, Virginia MSA. These may be accessed at <https://www.hudexchange.info/manage-a-program/home-income-limits/>. Fair Market Rents are also established by HUD annually for the Charlottesville, Virginia MSA. These may be accessed at <http://www.huduser.org/portal/datasets/fmr.html>. Calculation for households with incomes at 51 to 80% AMI, will utilize the most current HOME High rents and the HUD Fair Market Rents. For the purposes of calculating 30% of the imputed income for 80% AMI for the Charlottesville VA MSA, imputed household size for various bedroom units will be used based on 1.5 persons for 1 bedroom, 3 persons for 2 bedrooms, 4.5 persons for 3 bedrooms and 6 persons for 4 bedrooms.

Owner's maximum monthly rent calculations for compliance with these regulations.

- (iv) Owner shall not increase the maximum monthly rent for any CAU more frequently than once per year of a lease term. Annual rent increases (adjustments) for CAUs shall be based on the household income of a Qualified Tenant and subject to current HUD Guidelines, as applicable, minus any applicable Utility Allowance. Tenants shall be given a minimum of 30 days' advance written notice of any proposed rent increase.
- (v) When a CAU becomes vacant, maximum monthly rent shall be determined in accordance with these regulations, as of the Median Income per HUD guidelines and other regulations/procedures in effect as of the date of commencement of the new Qualified Tenant's lease.
- (c) Acceptance of Vouchers. Owner must accept HUD Housing Choice Vouchers from otherwise Qualified Tenants. However, Owner shall not be required to give any preference or priority to prospective tenants with such vouchers over other applicants for the same CAU.
- (d) Occupancy Requirements. Owner may establish rental occupancy requirements for CAUs, if such occupancy requirements have been established for the other units within the Project. However, for any Qualified Tenant who relies on federal or state vouchers or other funding to cover some or all of his maximum monthly rent, Owner's occupancy requirements shall not be more restrictive than any federal or state guidelines applicable to the tenant's funding source (for example, the guidelines of section 3-23 of the 4350.3 HUD Occupancy Handbook, applicable to certain Housing Vouchers).
- (e) Lease Terms. Initial leases for the CAUs shall provide for a minimum term of one (1) year, after which time the lease term may be done on an annual, bi-annual, or monthly basis.
- (f) Access to amenities. Occupants of the CAUs shall have full access and right to use all amenities and facilities available to other tenants within the Project, subject to any rules, regulations and conditions established by the Owner to govern such use and access.
- (g) Customary Fees. Tenants of a CAU may be required to pay any customary fees and charges imposed on Owner's other tenants, such as fees for garage or other parking spaces (if applicable), security deposit, move-in fee, move-out deposit, utility deposit, pet fees, etc.

### **(3) Marketing Plan.**

- (a) Marketing, "Initial Lease Up". Owner shall conduct a pre-occupancy marketing

program for the CAUs (the “Pre-Occupancy Marketing Program”), commencing at least 45 days prior to the issuance of any certificate of occupancy for any building containing a CAU or for any individual dwelling unit within such building. This Program does not have to be separate and distinct from marketing initiatives undertaken for other efforts, as long as the information is consistent with CAU requirements noted at 3(a)(i)(B) below.

- (i) Information regarding the Pre-Occupancy Marketing Program shall be submitted to the HDS for approval.
  - A. At a minimum, the Pre-Occupancy Marketing Program shall identify a schedule of advertisements/outreach efforts that are intended to reach the target market. If the City of Charlottesville develops a program / database for listing CAUs, the Owner will be required to utilize it. If any of the CAUs are handicapped accessible, those Accessible units shall be advertised on websites targeted to individuals and agencies seeking information on the availability of such units within the City of Charlottesville.
  - B. Any advertisement/outreach effort shall include the following information:
    - 1. The rental price range of the CAUs;
    - 2. The income ranges needed to qualify for the CAUs;
    - 3. A note that HUD Housing Choice Vouchers are accepted;
    - 4. If the CAUs include any handicapped accessible units or incorporate universal design; and
    - 5. The Equal Housing Opportunity logo.
  - C. The HDS’s approval shall be given upon a finding that the written Pre-Occupancy Marketing Program includes the minimum requirements and has otherwise been reasonably designed to effectively reach prospective tenants who may meet the criteria of a Qualified Tenant.
- (ii) The Pre-Occupancy Marketing Program shall contain a component specifically designed to reach potentially Qualified Tenants with physical disabilities, who may be interested in leasing the accessible CAUs, (if applicable).

(b) Duration of Pre-Occupancy Marketing Program. Owner may cease its Pre-Occupancy Marketing Effort once all CAUs are leased to Qualified Tenants.

#### **(4) Processing of Lease Applications**

- (a) Owner shall process applications for leases of the CAUs on a first-come, first-served basis, except for the preference described following below.
- (b) If any accessible CAUs (if applicable) are vacant, despite Pre-Occupancy Marketing

Program efforts, then those accessible CAUs may be leased to Qualified Tenants without disabilities. Thereafter, individuals with disabilities who apply to become tenants of the CAUs shall be given preference in leasing the accessible units until such time as no other CAU non-accessible units, of the same unit type, are available. Upon initial lease-up, the units shall be the last CAUs of each unit type (one-bedroom, two-bedroom, etc.) held vacant if they are not leased to persons with disabilities. Upon subsequent vacancy of the units, the re-marketing effort shall conform to section (3)(a)(i), with the further stipulation that the accessible units shall be marketed for 30 days before being released to a non-disabled household.

**(5) Remarketing**

- (a) After the conclusion of the first and each subsequent tenancy of a CAU,
  - (i) Owner shall re-market the CAU using the same efforts described in the Pre-Occupancy Marketing Plan (section 3 herein), or
  - (ii) Owner shall lease the CAU to a Qualified Tenant on its Waiting List. (Owner shall not be required to maintain any Waiting List; however, if Owner maintains a Waiting List that includes prospective Qualified Tenants for the CAUs, and re-lets a vacant CAU to a Qualified Tenant on the waiting list, then the Owner shall not be required to re-market the CAU).
- (b) Any re-marketing effort shall continue for a period of 60 days following the conclusion of the prior tenancy, or until a Qualified Tenant has obtained a lease for the CAU, whichever first occurs.

**(6) [Reserved]**

**SCHEDULE 2 To City's ADU Regulations:**

**Regulations Applicable to On-Site ADUs provided pursuant to Sec. 34-12(a) of the City Code, for Sale**

- (1) Owner's CAU Commitment.** The Owner shall collaborate and work with the HDS to outline the components of the CAU Commitment as provided for at Sec. 34.12, and to provide a plan for implementation of the CAU Commitment within the Project. All units committed will need to be incorporated into the written CAU Commitment based on the following:
  - (a) The Owner and HDS shall calculate the minimum square footage of GFA to be reserved within the Project for CAUs, based on the requirements of Sec. 34-12(a), and that minimum GFA shall be specified within the CAU Commitment.
  - (b) The CAU Commitment shall describe the terms, conditions and arrangements by

which the affordable dwelling requirements of Sec. 34-12 and the zoning approvals for the Project will be committed as affordable: (i) to households with incomes at 80 percent or less of the area median income during the Term of Affordability, and (ii) the specific length of the Term of Affordability for the required CAUs, which shall not be less than ten (10) years. If a Term of Affordability of less than 10 years is desired, then the written CAU Commitment must be approved by City Council.

- (c) The written CAU Commitment will need to be approved by the HDS and executed by the Owner, prior to approval of any site plan or subdivision plat, or if no such approval is required for the Project, then prior to issuance of any building permit. The HDS will approve a proposed CAU Commitment Agreement, upon a determination that the Agreement sets forth an implementation plan adequate to meet the obligations set forth in (1)(a) and (1)(b), above.

**(2) Terms and Conditions for Sale of CAUs.** Owner shall offer the CAUs for sale to Qualified Purchasers. It is the intention of the City within these Regulations to allow maximum flexibility to the Owner and the HDS for creating a plan for the successful implementation of the CAU Commitment within the development. Therefore, specific terms and conditions applicable to such sales are not prescribed by these Regulations, but should be tailored to the specific Project, as outlined within a written CAU Commitment.

Final details of the Owner's plan for pricing and financing may be submitted to the HDS for approval as an addendum to the CAU Commitment, prior to issuance of any certificate(s) of occupancy for the development, if sufficient data is not available to establish these details prior to site plan or subdivision approval.

**(a) Qualified Purchasers.**

- (i) For the purposes of these regulations, the term "Qualified Purchaser" shall mean a purchaser whose household income is 80 percent or less of the area median income for Charlottesville, Virginia, adjusted for household size ("Median Income") as published annually by the U.S. Department of Housing and Urban Development<sup>3</sup> ("HUD Guidelines").
- (ii) For each sale of a CAU, it shall be the obligation of the Owner to verify the Purchaser meets the requirements of paragraph (2)(a)(i), above. Receipt of information sufficient for Owner to make this verification shall be a condition of the Owner's obligation to close the sale, and this condition shall be stated in the written purchase/sale agreement between owner and any prospective Qualified Purchaser.

**(b) Sales/Purchase Price and Financing Arrangements.**

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<sup>3</sup> For HUD Guidelines for income limits see <http://www.huduser.org/portal/datasets/il.html>. Determination of household income is subject to 24 CFR Part 5.

The Sales Price and the Financing Arrangements shall be detailed within an Addendum to the CAU Commitment, which must be approved by the HDS prior to issuance of any certificate(s) of occupancy for any buildings or dwelling units within the development. It is the intention of these regulations to allow maximum flexibility for the Owner and prospective Qualified Purchasers to arrange for the purchase and financing of a CAU through arrangements that are best suited to the circumstances of a particular transaction. Any number of financing and sales arrangements may satisfy the Owner's obligations under City Code Sec. 34-12 and the provisions of these regulations.

**(3) Re-Sale of CAUs.** The CAU Commitment will describe how re-sale of CAUs will be handled so that the Term of Affordability can be satisfied.

**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



Agenda Date:	June 15, 2015
Action Required:	Approval of Resolution
Presenter:	Kathy McHugh, Housing Development Specialist
Staff Contacts:	Kathy McHugh, Housing Development Specialist Lisa Robertson, Chief Deputy Chief Attorney
Title:	<b>Affordable Dwelling Unit Ordinance Standard Operating Procedures/Regulations Revision</b>

**Background:**

Section 34-12 of the Code of the City of Charlottesville, 1990, as amended (Zoning Ordinance), allows for the provision of on-site or off-site "Affordable Dwelling Units" or a cash contribution to the City's affordable housing fund, in lieu of such units, as a condition of approval of a rezoning or special use application for residential or the residential portion of mixed use projects with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre.

On February 18, 2014, initially City Council approved standard operating procedures/regulations to provide for implementation of the current code (Sec. 34-12) in place at that time. City Council is currently considering an ordinance to amend Sec. 34-12 to change the definition of affordable dwelling units such that the qualifying income level is increased from 60% to 80% of area median income and the term during which committed affordable dwelling units must remain affordable will be reduced from the current 30 year requirement to a term of not more than 30 years. The ordinance change will also allow the City to establish a minimum term as it deems necessary to ensure the establishment of committed affordable dwelling units. If this ordinance is approved under separate action, the standard operating procedures/regulations will also need to be modified to incorporate approved changes to the code.

**Discussion:**

Changes have been incorporated into the standard operating procedures/regulations to address the proposed revisions to Sec. 34-12. In addition, guidelines for a minimum term have been incorporated for both schedule 1 and 2 which deal with rental and for sale units respectively.

The proposed revisions to schedule 1 outline a method by which the minimum term for rental units can be determined. Specifically, staff would compare the proposed cash in lieu payment to the value of reduced rents (over time) associated with leasing properties at affordable rent levels. The minimum term would be established by the point in time at which reduced rents meet or exceed the cash contribution required. As an example: if affordable rents provide \$100,000 less in rental income per year than market rate rents for the same sized units. With a required cash contribution of

\$650,000, the applicant would be expected to provide a minimum term of 6.5 years or 78 months. In the event that such term equates to 5 years or less, City Council approval would be required.

In considering schedule 2 related to for sale units, terms will have to be determined on a case by case basis pursuant to the proposed development. In the event that such a term equates to 10 years or less, City Council approval would be required.

### **Alignment with Council Vision Areas and Strategic Plan:**

Approval of this agenda items aligns directly with Council's vision for Charlottesville to provide *Quality Housing Opportunities for All* and Goal 1, Objective 1.3 of the Strategic Plan to *increase affordable housing options*.

### **Community Engagement:**

Concern over the need for changes to §34-12 originated from discussions with the Housing Advisory Committee (HAC) regarding development of the initial implementing standard operating procedures/regulations. The HAC specifically expressed concern over the lack of provision of affordable units as a result of the ordinance being too prescriptive. This initial public engagement was the impetus for seeking a legislative change to amend the ordinance.

A joint public hearing of the Planning Commission and City Council was held at the regularly scheduled May 12, 2015 meeting of the Planning Commission. At this hearing, there was concern expressed over establishing a minimum commitment period for affordability; however, since the revisions to the Virginia Code expressly authorize the City to establish a minimum term for affordability, staff has incorporated a minimum term within the implementing regulations. By taking this approach, rather than specifying this commitment term within the ordinance, changes can be more easily amended to reflect market conditions and local goals for affordable housing over time.

During this same public hearing, the issue of whether proposed changes would impact the ability of teachers as well as police and fire department officers to have access to affordable dwelling units created under §34-12 was raised. Staff has subsequently consulted with both the school board and the City's Department of Human Resources to determine what impact this might have. Looking at entry level teachers (0-5 years' experience), the average salary is currently \$47,531. Starting base pay for entry level police officers and firefighters is approximately \$35,350 annualized. For Charlottesville police department, the average 2014 gross wages for police officers employed for the entire year was \$48,090.01. For Charlottesville fire department, the average 2014 gross wages of firefighters employed the entire year was \$50,476.27. Based on 80% area median income (\$46,100 for one person), 31% of firefighters and 37% police officers would qualify for affordable dwelling units under the new regulations. As for teachers, only entry level employees (i.e., those making below the average of \$47,531) would be eligible. Of course, area median income levels are adjusted by household size so officers and teachers making more than the lower salary ranges would potentially qualify depending upon the number of persons in their household. Ultimately, the increase from 60% area median income is viewed as having a positive impact on making affordable dwelling units potentially available to persons working in these various occupations.

Lastly, the proposed changes to the standard operating procedures/regulations were discussed with the Housing Advisory Committee at its regularly scheduled meeting on May 20, 2015. At this meeting the group indicated their support for the proposed changes, with one concern noted over the



potential loss of leverage that comes from private investment of affordable dwelling unit cash payments made into the Charlottesville Affordable Housing Fund. Staff recognizes that this is a potential factor; however, it should be noted that construction of affordable dwelling units will also leverage private funds in the form of the capital investment associated with constructing the actual units. In consideration of this, the leverage is thought to be a non-factor in determining the minimum term for units to remain affordable.

**Budgetary Impact:**

As the regulations could potentially encourage on-site or off-site development of affordable dwelling units, the City could see a reduction of cash payments in lieu; however, increased property taxes associated with new construction should help offset this and gains in affordable housing would potentially reduce the need for additional investments into the affordable housing fund, dependent upon the level of construction provided as a result.

**Recommendation:**

Staff recommends that the resolution revising the standard operating procedures/regulations be approved.

**Alternatives:**

Council could suggest alternative language and/or changes to the proposed draft; however, revisions to the standard operating procedures/regulations need to be in place to provide guidance for applicants/developers.

**Attachments:**

Resolution  
Proposed Regulations

## **RESOLUTION**

**BE IT RESOLVED** by the Council for the City of Charlottesville, Virginia, that this Council hereby approves the attached revised Affordable Dwelling Unit Regulations (as revised June 15, 2015), and the City Manager is hereby authorized to sign the following document, in form approved by the City Attorney or his designee.

Standard Operating Procedure (SOP) providing regulations governing the affordable dwelling unit requirements of City Code Sec. 34-12 on residential housing projects that are approved for rezoning or special use permit.