



Date: July 13, 2020

To: Wendell Davis, County Manager

Through: Jay Gibson, General Manager

From: Patrick O. Young, AICP, Planning Director

Subject: *Unified Development Ordinance* Text Amendment, Affordable Housing Dwelling Unit Definition (TC1900005)

Summary

Text amendment TC1900005 would amend the current definition of an “affordable housing dwelling unit” within Sec. 17.3, Defined Terms, of the *Unified Development Ordinance* (UDO). The purpose of the amendment is to reflect differences between rental and for-sale units and allow for residents to remain in units as their income increases, while keeping the definition consistent with the federal definition of low-to-moderate income housing. The amendment will also refer to the new compliance rules and procedures, developed by the City Community Development Department, which were adopted by City Council, for tracking affordable housing units built under the UDO’s Affordable Housing Bonus Program (Sec. 6.6) and other incentives within the UDO.

Recommendation

That the Board of Commissioners approve the attached Ordinance to amend Article 17, Definitions, of the *Unified Development Ordinance*; and approve a consistency statement declaring the request consistent with the *Durham Comprehensive Plan* and that the request is reasonable and in the public interest. Information supporting these recommendations is found within this memo, attached documents, and any information provided through the public hearing.

Background

The definition of an “affordable housing dwelling unit” was first defined in the UDO through text amendment TC1500003, which also included revisions to the existing Affordable Housing Density Bonus Program, and was adopted by City Council and the Board of Commissioners in August 2015. The definition was consistent with an affordable housing resolution adopted in 2014 which focused on housing for families at 60% of Area Median Income (AMI) or less. The definition did not distinguish between rental and for-sale units, and set the commitment to a 15-year term.

In February 2018, the City Council and Board of Commissioners approved a text amendment that included a new interim density bonus for projects in Compact Neighborhood Tiers. At the time this text amendment was considered, it was discussed whether or not the AMI limit for the

definition of an “affordable housing dwelling unit” should be revised, but ultimately the 60% or less rule was maintained. However, the term of commitment was increased to 30-years.

The charter for the City of Durham includes specific requirements for affordable housing density incentive programs for “low and moderate income” households ([Sec. 94.2](#)). The definition for “low and moderate income” is established within Section 94.2(c)(2) of the charter:

- (2) Low and moderate income has the meaning prescribed by regulations of the United States Department of Housing and Urban Development applicable to the City of Durham's metropolitan area. In the absence of such regulations, the term "low and moderate income" shall have the meaning prescribed by the city council by ordinance or resolution. The term "low and moderate income" shall also be construed to mean low or moderate income.

The Community Development Department utilizes definitions from the federal HOME program of the Department of Housing and Urban Development (HUD), where the *low-income limit* is defined at 80% of AMI. The Home Investment Partnerships Program (HOME) further requires that rental assistance be targeted to households at or below 60% of AMI.

The Joint City-County Planning Committee (JCCPC) reviewed the proposed amendment at its October 3, 2019, meeting and indicated no concerns. Staff indicated that the policies and procedures being developed by the City's Community Development Department would accompany the text amendment when presented to both governing bodies, and that the policies and procedures would be a separate action item for City Council. The Planning Commission recommended approval 12-1, and determined that the Ordinance request is consistent with the adopted *Comprehensive Plan* and that the request is reasonable and in the public interest based on comments received at the public hearing and the information in the staff report. The Durham City Council heard this item at its June 24, 2020, special session.

Issues

The current definition established in 2015, then modified in 2018 as discussed above, does not allow for any functional differentiation between rental and for-sale dwelling units, especially with regard to for-sale affordable housing providers use of the Affordable Housing Bonus. Furthermore, the definition does not account for scenarios in which a households' earnings increase and the potential loss of housing due to the AMI limits.

In consultation with the Community Development Department and the City Attorney's Office, the following changes are proposed, coinciding with new compliance rules/procedures being established by the City Community Development Department for tracking affordable housing units built under the UDO's Affordable Housing Bonus program (Sec. 6.6) and other incentives for affordable housing dwelling units established within the UDO:

1. Clearer delineation between for-sale and rental units, where for-sale units are more likely to be generated at an 80% of AMI limit, rather than at a 60% AMI.
2. Specify that the income levels can increase by focusing on initial rental or sale. For rental units, the initial household income must be at 60% of AMI or lower, but the household earnings can increase to 80% AMI and the unit will continue to be considered an

“affordable” unit. If tenant income rises above 80% AMI, the unit would no longer be counted as an affordable unit, and the next available unit would need to be rented to an income eligible household. For for-sale units, initial income must be at 80% or less with no limit on future earnings, but resale must be to another household at 80% or less.

Subsequent to the Planning Commission hearing: Although the Planning Commission recommended approval of the amendment, concern was raised about the compliance rules and procedures concurrently being developed by the Community Development Department. As was discussed at the hearing, the rules were being finalized for review, and the intent was to have the rules officially adopted by City Council. These rules and procedures have been adopted by City Council at its June 1, 2020, meeting. Furthermore, the proposed definition amendment has been revised to specify “*adopted* rules and procedures.”

Consistency with the Comprehensive Plan; Reasonableness and in the Public Interest

The proposed revisions correspond with HUD’s income level definitions, are consistent the City’s charter requirement to utilize established HUD definitions, and provide opportunities for low income families to increase earnings and wealth building while maintaining an affordable place to live (i.e.: not penalizing a household for increased income). Therefore, staff has determined the proposed amendment is reasonable and in the public interest, and is consistent with the *Durham Comprehensive Plan*, specifically regarding the following objectives in Goal 3.1, Affordability:

- **Objective 3.1.1. Affordable Housing Enhancements**
Facilitate the provision of affordable housing by regulatory and incentive-based means.
- **Objective 3.1.2. Home Ownership**
Assist in expanding homeownership opportunities for low- and moderate-income households.
- **Objective 3.1.3. Rental Housing**
Expand affordable rental opportunities through new construction and preservation of existing rental units.

Contact. Michael Stock, AICP, Senior Planner, 919-560-4137 ext. 28227;
Michael.Stock@DurhamNC.gov.

Attachment:

Attachment A: Statement of Consistency Pursuant to NCGS § 153A-341

Attachment B: An Ordinance to Amend the *Unified Development Ordinance* Regarding the Definition for Affordable Housing Dwelling Unit (TC1900005)

Attachment C: Planning Commission comments

Attachment D: City of Durham Community Development Department Rules and Procedures