



COMMUNITY DEVELOPMENT
CITY OF DURHAM

**RULES AND PROCEDURES
FOR THE AFFORDABLE HOUSING BONUS DESCRIBED IN
SECTION 6.6 OF THE UNIFIED DEVELOPMENT ORDINANCE**

As of April 21, 2020

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AFFORDABLE HOUSING BONUS UDO SECTION 6.6 RULES AND PROCEDURES

SECTION I: DEFINITIONS

Affordable Housing Bonus – the development rules and regulations described in Section 6.6. of the Durham Unified Development Ordinance.

Affordable Housing Contract (“Contract”) – a legal document by which the City will enforce the rules and procedures laid out in this document and assure compliance with the affordable housing requirements of the City of Durham’s Unified Development Ordinance (“UDO”). An Affordable Housing Contract (“Contract”) will be signed by both the City and the Owner and will stipulate the income, rent and/or sales price guidelines for the Affordable Units, steps for on-going monitoring and remedies for non-compliance during the life of the contract.

Affordability Requirement – the percentage of units that must be designated as Affordable Units in order for the Property to be eligible for the Affordable Housing Bonus.

Affordable Unit – a dwelling unit that meets the definition of Affordable Housing Dwelling Unit within the Durham Unified Development Ordinance, as amended.

Affordable Unit Mix – predetermined mix of bedroom sizes established by contract that make up the Affordable Units committed at a Property.

Annualized Gross Income - all amounts, monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member, or all amounts anticipated to be received from a source outside the family during the 12-month period following admission or Annual Recertification Effective Date.

Annual Recertification Effective Date – for annual recertification, the Effective Date is the original date the income determination was completed and signed.

Area Median Income (AMI) - the median income amounts established by U.S. Department of Housing and Urban Development (“HUD”) for the Durham Metro Area region under the HOME Investment Partnership Program, as most recently published by and as revised from time to time by HUD.

Comparable Unit – a unit with same number of bedrooms, similar square footage and same level of interior (cosmetic) finish and exterior appearance

Concern - deficiencies in Contract performance that, although they may not represent deviations from minimum compliance requirements, represent a pattern of oversights or errors in judgment. A Concern may include the use of documentation that does not provide adequate information for the Owner to reach a reliable conclusion; ignoring or overlooking indications of fraud such as not researching unusual activity in a bank statement. The Owner must provide a written action plan that will correct the Concerns and prevent them from recurring. City Staff must review and approve a written action plan and may request additional actions before a plan is approved.

Desk Audit - a review of tenant files for the Affordable Units to verify that information submitted as part of the annual certification process matches the tenant files. A Desk Audit may be performed when a Property has had no compliance issues during previous audits.

Finding - is an action or a decision that is not in compliance with the Contract or the City's rules and procedures. Findings may include allowing an ineligible tenant to take possession of an Affordable Unit or failing to fully certify a current Affordable Unit tenant's eligibility prior to lease renewal. Findings may also include allowing Concerns to continue without being corrected. If Findings are identified, the City will state them in the exit interview that is conducted at the conclusion of the monitoring, and the developer must provide a written action plan that will correct the Findings and prevent them from recurring. City Staff must review and approve written action plan and may request additional actions before such approval is granted.

HOME Program – is a federal program through the U.S. Department of Housing and Urban Development (HUD). The HOME Income and Rent guidelines will be used by the City as the basis for determining Household Income Eligibility and affordable rents.

Homeowner Income Certification (HIC) – a form used for certifying and recertifying income and assets for households to determine eligibility for Homeownership Affordable Units.

Household Income Eligibility - is based on the tenant's Annualized Gross Income and then compared to the effective Income Limits set by HUD. Initial Household Income Eligibility is set at 60% AMI for rental units and continuing eligibility for a household in a rental unit can increase up to 80% AMI. Initial Household Income Eligibility for homeownership units is set at 80% AMI and there are no limits on increases in household income after closing.

HUD – United States Department of Housing and Urban Development

HUD Effective Date - for HUD HOME Income and Rent Limits, the Effective Date is the date that starts the new set of limits. HUD has a publishing date and an Effective Date. The City follows the Effective Date for determining rent and income for leases beginning on or after Effective Date.

Initial Qualifying Household Income – the Annualized Gross Income originally determined for eligible households in Affordable Units. Initial Qualifying Household Income must be at or below 60% AMI for rental units and 80% AMI for homeownership units.

Maximum Allowable Sales Price – the highest price at which a homeownership Affordable Unit may be sold. The Maximum Allowable Sales Price will be set annually by the City.

Owner – the individual or entity with legal possession of a development making use of the density bonus provisions available in the UDO.

Period of Affordability – the time specified in the Contract for which the required percentage of Affordable Units must be maintained; the Period of Affordability begins on the date that the Certificate of Compliance (CoC) for the Property is issued.

Property – a development making use of the Affordable Housing Bonus provisions available in the UDO.

Restrictive Covenants – a legal document imposing a restriction on the use of land so that the affordability of the units will be preserved. The document will be executed by the Owner, notarized, and then recorded by the Owner.

Tenant Income Certification (TIC) – a form used for certifying and recertifying income and assets for households to determine eligibility for rental Affordable Units.

SECTION II: APPLICATION PROCESS

1. Developer completes *Application for Affordable Housing Bonus* at site plan stage. Completed application must be submitted to the City/County Planning Department with the site plan package.
2. Application is routed to Community Development Department (CDD) to review within thirty (30) days.
3. CDD sends comments to City/County Planning Department.
4. City/County Planning and CDD send approval/rejection to development review case planner via email.
5. City/County Planning notifies CDD when the site plan has been formally approved or denied.
6. CDD executes an Affordable Housing Contract (“Contract”) with developer and works with City Attorney’s Office (CAO) to assure that the applicant places the required Restrictive Covenant on the Property. Both the contract and the restrictive covenant must be in place before a Certificate of Compliance (CoC) will be issued.
7. CDD notifies City/County Planning Site Compliance that the contract has been fully executed and a Restrictive Covenant has been filed with the Durham County Register of Deeds. Planning will include documents in the project record.
8. Once City/County Planning Site Compliance receives the notification specified in III.7 above, a CoC can be issued for the Property.

SECTION III: GENERAL RENTAL PROGRAM REQUIREMENTS

A. Unit Requirements

1. At least 15% of the total units in the Property must be affordable to households earning 60% of AMI or less, based on HUD HOME income limits (“Affordability Requirement”).
2. Affordable Unit Mix shall mirror the distribution of bedroom sizes in the Property, and will be specified in the Contract. The Affordable Unit Mix shall remain unchanged during the Period of Affordability.

3. Affordable Units must meet the location, grouping, unit size, interior finishes and exterior design requirements specified in the Unified Development Ordinance.
4. Affordable Units must remain affordable for the period of time specified in the Unified Development Ordinance.

B. Allowable Rents on Affordable Units

1. The maximum monthly gross rent for an Affordable Unit will be based on the HOME Income and high HOME Rent Limits published annually by HUD. The income limits will be published annually by the City when HUD provides updated HOME Income Limits. No utility allowances will be required.
2. Annual rent increases will follow HUD HOME Income and Rent Limits. Rent increases can only be applied to leases signed or renewed after the HUD Effective Date.

C. Initial Lease-up and Eligible Households

1. Initial Qualifying Household Income must be at or below 60% of AMI, based upon the household size. At subsequent lease renewals, income will be verified by Owner and shall not exceed 80% AMI. At lease renewal, Affordable Units with tenant's income at 80% AMI or below will still qualify for affordable rents and count toward the Affordability Requirement. If the tenant's household income exceeds 80% AMI at lease renewal and the tenant remains in the unit, the unit will no longer be counted as an Affordable Unit and the Property may be in noncompliance until the required 15% Affordable Unit Mix is re-established. To meet the Affordability Requirement, the next available Comparable Unit must be rented to an eligible tenant whose income is 60% AMI or less.
2. During the term of the Contract, prior to executing a lease, the Owner shall obtain documentation of the current income for each prospective tenant that wishes to lease an Affordable Unit. The Owner shall determine the Annualized Gross Income for Affordable Unit tenants based on the information presented and shall have the tenant certify that determination prior to lease execution as part of the Tenant Income Certification (TIC).
3. The Owner should prepare a TIC for each tenant in an Affordable Unit documenting the tenant's Annualized Gross Income. The City of Durham follows 24 CFR Part 5 (Section 8) regulations for determining a household's income eligibility. For further explanation of verification methods, see Chapter 5 of the HUD Handbook 4350.3 titled Determining Income & Calculating Rent; provided online at the following website:
https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3.

Acceptable sources of documentation for income verification include:

- Current Social Security Benefit Letters
- Pension / Retirement Statements
- Pay Check Stubs (Minimum 6 - 8 Weeks of Consecutive Stubs)
- Verification of Employment form completed by HR or Payroll
- Child Support Verification
- Bank Statements
- Depository Cards

- Other Assets: Real Estate, Whole Life Insurance Policies, 401K/Retirement Savings, Personal Property Held as an Investment, etc.

In the event that a tenant has a Housing Choice Voucher issued by the Durham Housing Authority, or another form of rental assistance approved by the City, the Owner may present written proof of the voucher in lieu of a TIC.

4. To avoid the creation of student/dormitory housing, households shall meet the definition of independent student as defined by the U.S. Department of Education https://studentaid.ed.gov/sa/glossary#Independent_Student. Each tenant in an Affordable Unit should complete an Annual Student Certification.

D. Affordability Restrictions

1. At least 15% of the units must remain affordable for the designated Period of Affordability, which begin on the date the CoC for the Affordable Unit is issued by the City.
2. The Affordability Requirement will be memorialized through the Contract executed between the developer and the City of Durham and through recorded Restrictive Covenants.

E. Ongoing Compliance Requirements and Monitoring

1. Annual Tenant Certification

- Household income must be recertified annually during the Period of Affordability. Tenants must be given an initial notice of annual certification 90 days prior to the end of the lease term. If the tenant does not complete the certification within 30 days of the initial certification notice, a second notice must be sent. If the tenant does not comply within 30 days of the second notice, a final notice must be sent giving the tenant 30 days notice that they no longer qualify for the Affordable Unit due to the failure to complete annual certification. At this point, the Owner has the discretion to request that the tenant vacate the unit or to allow the tenant to remain in the unit. However, if the tenant remains in the unit without completing the certification, the unit can no longer be considered an Affordable Unit
- Tenant must complete an Annual Student Certification each year, prior to the execution of a new lease agreement.
- The Owner shall maintain complete and accurate records pertaining to the TIC and the Annual Student Certification for each tenant residing in an Affordable Unit on the Property and shall permit, upon five (5) business days' notice to the Owner, any duly authorized representative of the City to inspect such records.

2. Property Owner Annual Certification

Annually, throughout the Period of Affordability, the Owner must submit a rent roll for the Property's Affordable Units and certify Contract compliance utilizing the Owner's Certification of Continuing Compliance form provided by CDD. The initial annual certification will be required when 80% of the Affordability Requirement has been met or on the first anniversary of the issuance of the CoC,

whichever occurs first. In subsequent years, the Owner's certification will be due on the anniversary of the issuance of the CoC.

The Owner's Certification of Continuing Compliance requires the Owner to certify that the Property has met the following requirements for the 12 month period prior to the submission date:

- The Property is meeting the Affordability Requirement.
- At annual recertification, Owner has completed a TIC and tenants have completed Annual Student Certifications for each Affordable Unit.
- All Affordable Unit leases shall be for 12-month terms.
- No tenants in Affordable Units were evicted or had their tenancies terminated other than for breach of lease.
- All units are made available in accordance with local, State and Federal Fair Housing laws.
- No finding or charges of discrimination has occurred for the Property by local, State or Federal officials.
- All Affordable Units are suitable for occupancy, taking into consideration local and state health, safety, minimum housing codes, and building codes (or other habitability standards).
- There are no notices of violation issued by the Durham City-County Inspections Department or the Durham City County Planning Department that have not been remedied by the Owner.
- All tenant facilities such as swimming pools, recreational facilities, parking areas, washer/dryer hookups, and appliances are provided to Affordable Units on a comparable basis to market rate units.
- There has been no unreported change in the ownership or management of the Property.

3. Over-Income and Next Available Unit

Initial Qualifying Household Income must be at or below 60% of Area Median Income (AMI) as determined by HUD annually. At each lease renewal, income shall be verified by the Owner and a unit will no longer qualify as an Affordable Unit if the qualifying household income exceeds 80% AMI. At 81% AMI the unit can no longer be counted as affordable. When a unit that was formerly counted as an Affordable Unit is no longer occupied by an income qualifying household, the next available unit of the same or comparable size must be rented to an income qualifying household.

4. Compliance Monitoring

Owners must maintain tenant records utilizing forms prepared by the Owner and approved by the City. The forms shall document the record of qualifying household income compliance for each Affordable Unit.

Compliance monitoring by the City shall include, but is not limited to, a review of: (1) at least 20% of the Affordable Units, including the TIC and the Annual Student Certification, and (2) an inspection of the general physical condition of the Affordable Units on the Property. Owners will receive notice of planned monitoring visits at least 30 days in advance. The Owner shall have the following documentation available at the monitoring visit: current rent roll for the Affordable Units, Owner's Certification of Continuing Compliance, and tenant files for the Affordable Units. If the City is monitoring a sample of tenant files, files will be chosen as a mix of half chosen by the Owner and half selected by the City.

The City of Durham may elect to do a review of 100% of files for Affordable Units for the first two years of the Period of Affordability and/or the first two years after a property has changed ownership or property management company. If during those two years the Property has satisfactory performance (no Findings or repeated Concerns are noted), the City may elect to conduct Desk Audit reviews of only 20% of the Affordable Unit files. If Findings or repeated Concerns are found in the first two years, the City will continue to audit 100% of the Affordable Unit files until satisfactory performance is obtained. The City reserves the right to perform audits more frequently if complaints are received regarding the Property.

As necessary, the City will perform inspections of Affordable and market rate units to assure that units of both types are of substantially similar quality and condition.

At a minimum, 20% of the Affordable Units in a Property will be inspected during compliance monitoring and at times 100% of Affordable Units may be inspected until the Owner demonstrates a history of maintaining Affordable Units and market rates units so that they are substantially similar in quality and condition. The City will specify in the monitoring notice the list of units selected for physical inspection.

During a physical inspection the City will be ensuring that Affordable Units are being maintained in a "decent, safe and sanitary condition and in good repair" as required by local and state requirements.

If noncompliance with these policies and procedures is noted during either a tenant file audit or a physical inspection, the City may seek enforcement through any the methods permitted in Section V.

F. Record Keeping and Retention

The Owner must keep the following records for the Property for each year during the Period of Affordability:

- The total number of residential rental units in the Property (including the number of bedrooms and the size in square feet of each residential rental unit);
- The number of occupants in each Affordable Unit and the household's student status.
- The number and percentage of residential units in the Property that qualify as Affordable Units.
- The rent charged on each Affordable Unit as well as any additional charges. Documentation must include tenant ledgers and leases for the Affordable Units.
- The Affordable Unit vacancies in the building and documentation that shows when and to whom each of the next available units was rented.

- Documents to support each income certification including a TIC, application and all supporting documents.

All Affordable Unit tenant files must be retained for a minimum of three years after the tenant moves out of the unit or no longer qualifies for an Affordable Unit. Files should be stored to maintain the confidentiality of tenant information.

SECTION IV: GENERAL HOMEOWNERSHIP/FOR SALE PROGRAM REQUIREMENTS

A. Eligibility and Initial Sales Price

1. At initial application and at closing, households may earn no more than 80% of AMI, based upon household size. If closing takes place less than six months after initial application, income recertification is not required. In addition, households must meet any asset and gift caps established in the homeownership policies of the City of Durham's Community Development Department in effect at the time of closing.
2. The Owner shall determine the Initial Qualifying Household Income based on the information presented and have the homeowner certify their determined income prior to closing.
3. The Owner should prepare a Homeowner Income Certification (HIC) for each tenant in an Affordable Unit documenting the tenant's Annualized Gross Income. The City of Durham follows 24 CFR Part 5 (Section 8) regulations for determining a household's income eligibility. For further explanation of verification methods, see Chapter 5 of the HUD Handbook 4350.3 titled Determining Income & Calculating Rent; provided online at the following website:
https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3.

Acceptable sources of documentation for income verification include:

- Current Social Security Benefit Letters
 - Pension / Retirement Statements
 - Pay Check Stubs (Minimum 6 - 8 Weeks of Consecutive Stubs)
 - Verification of Employment form completed by HR or Payroll
 - Child Support Verification
 - Bank Statements
 - Depository Cards
 - Other Assets: Real Estate, Whole Life Insurance Policies, 401K/Retirement Savings, Personal Property Held as an Investment, etc.
4. Initial Qualifying Household Income must be 80% or less of AMI. Households must qualify at closing. Income will not be checked during the Period of Affordability as long as the unit remains the primary residence. If the unit is no longer the household's principal residence, then it must be sold or transferred to a household earning no more than 80% AMI at a price at or below the Maximum Allowable Sales Price established by the City at that time.

5. During the Period of Affordability, a qualifying household must continue to use the home as its principal residence. Income will not be verified after closing, but the City will monitor to ensure that the home is being used as the principal residence of the qualifying household.
6. Affordable Units must remain affordable for the period of time specified in the Unified Development Ordinance.

B. Unit Requirements

1. At least 15% of the total units in the Property must be affordable to households earning 80% of AMI or less, based on HUD HOME income limits ("Affordability Requirement").
2. Affordable Units must meet the location, grouping, unit size, interior finishes and exterior design requirements specified in the Unified Development Ordinance.

C. Initial Sales Prices

1. Homes must be sold at a price affordable to households earning no more than 80% AMI. The maximum sales price for homeownership Affordable Units will be published annually by the City.

D. Initial Closing and Eligible Households

1. At closing, households purchasing Affordable Units may earn no more than 80% of AMI, based upon their household size.
2. Prior to closing on Affordable Units, the Owner shall obtain from each prospective homeowner documentation of their current income. The Owner shall determine their Annualized Gross Income based on the information presented and have the prospective homeowner certify their determined income prior to closing.
3. The Owner should prepare a Homeowner Income Certification (HIC) for each prospective purchaser of an Affordable Unit documenting the household's Annualized Gross Income. The City of Durham follows 24 CFR Part 5 (Section 8) regulations for determining a household's income eligibility. For further explanation of verification methods, see Chapter 5 of the HUD Handbook 4350.3 titled Determining Income & Calculating Rent; provided online at the following website:
https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/4350.3.

Acceptable sources of documentation for income verification include:

- Current Social Security Benefit Letters
- Pension / Retirement Statements
- Pay Check Stubs (Minimum 6 - 8 Weeks of Consecutive Stubs)
- Verification of Employment form completed by HR or Payroll
- Child Support Verification
- Bank Statements
- Depository Cards
- Other Assets: Real Estate, Whole Life Insurance Policies, 401K/Retirement Savings, Personal Property Held as an Investment, etc.

E. Affordability Restrictions

3. 15% of the units must remain affordable for the designated Period of Affordability, which begin on the date the CoC for the Affordable Unit is issued by the City.
4. Affordability will be enforced by the Contract executed between the developer and the City of Durham and recorded Restrictive Covenants.

F. Ongoing Compliance Requirements and Monitoring

1. Annual Certification of Principal Residence

Income is not certified annually for homeowners during the Period of Affordability, but use of the unit as the homeowner's principal residence must be verified annually. Homeowner will certify annually via an affidavit that the home is the homeowner's principal residence and that the homeowner resided in the home at least nine months in the previous calendar year.

2. Unit is No Longer Principal Residence

When the Affordable Unit is no longer the principal residence of the qualifying homeowner, it must be sold or transferred to a household earning no more than 80% of AMI. The City will income qualify the next prospective homeowner.

G. Record Keeping and Retention

The Owner must collect the following items for the Property and submit to the City once all units are purchased:

- The total number of residential homeownership units in the Property (including the number of bedrooms and the size in square feet of each residential homeownership unit);
- The number of occupants in each Affordable Unit.
- The number and percentage of homeownership units in the Property that qualify as Affordable Units.
- The initial sales price charged on each Affordable Unit as well as any additional closing costs, fees and prepaid expenses.
- Documents to support each income certification including a HIC, application, and all supporting verifications.

The City will maintain files for all Affordable Units throughout their Period of Affordability and conduct the annual verification of principal residence.

SECTION V: ENFORCEMENT

If the Owner fails to comply with either the Contract or the rules set forth in these rules and procedures the City may seek enforcement through Article 15 of the City's Unified Development Ordinance or any of the methods provided in N.C. Gen. Stat. § 160A-175.