



Albemarle County
Administrative Regulations for the
Affordable Dwelling Unit Program

Adopted:

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Introduction

The purpose of this Administrative Manual ("manual") is to provide guidance and information for the effective and efficient implementation and administration of Chapter 18, Section XX of the Albemarle County Zoning Ordinance. This manual is to be used as a guide for administrators of the County's Affordable Dwelling Unit (ADU) Program, developers and builders of affordable homes, county agents for affordable housing services and other interested parties.

The Board of Supervisors may update this manual periodically to reflect updates in the ADU program, the annual release of Area Median Income (AMI) by the Department of Housing and Urban Development (HUD), or make other administrative edits to correct errors in the manual.

Applicability

The requirements of the Affordable Dwelling Unit (ADU) Program applies to the following:

- sites with an approved owner initiated application for a zoning map amendment proposing more than 10 dwelling units located in an area served by a central water and central sewer system;
- approved special use permit applications yielding more than 10 dwelling units located in an area served by a central water and central sewer system; or
- developments seeking to use incentives to develop affordable housing.

ADUs also may be provided in developments where they may not be required.

Number of Required Affordable Dwelling Units

The number of ADUs a developer/builder is required to build is a minimum of 20% of the total number of subject units under development. This requirement applies even if the development is phased in over time. If phased site plans and/or subdivision plats are submitted a maximum of 105% of the required number of affordable units may be provided in any phase. The surplus affordable units may be counted in later phases.

Designation of Affordable Dwelling Units on Subdivision/Plans

Each initial and final site plan and/or preliminary or final subdivision plat submitted shall identify the specific number of units that are to be regulated as affordable units. All plans or plats for developments containing affordable dwelling units shall identify specific units which are for sale or the percentage of units for rent as affordable units. All developments containing affordable dwelling rental units shall include information concerning the number of each type of unit, by bedroom count, which shall be maintained as affordable.

Affordable Dwelling Unit Specifications and Distribution of Units

Design and construction standards are intended to meet the ADU Program requirement to 'ensure livability and compatibility with nearby market-rate homes in the development'. At a minimum, ADUs must:

- be designed, built and landscaped at a quality equal to or greater than the market rate homes in the development;
- be of the same square footage as the market rate units in the development;

- represent a mix of bedrooms per unit similar to the mix of bedrooms in the market-rate units in the development;
- at minimum included a new kitchen ranges and refrigerator, hookups for clothes washer, dryer, a built-in dishwasher, and central heating/cooling system to meet the same standards as the market-rate units in the development;
- be dispersed among the market rate units in the development as evidenced on the recorded plat;
- have the same amenities as the market rate units in the development, including the same access to and enjoyment of common open spaces and facilities.

Timing of Construction/Delivery of Affordable Dwelling Units

In a development which contains ADUs, occupancy permits for no more than fifty percent (50%) of the market rate dwelling units shall be issued prior to the issuance of occupancy permits for fifty percent (50%) of the ADUs.

Occupancy permits for no more than seventy-five percent (75%) of the market rate dwelling units shall be issued until occupancy permits have been issued for seventy-five percent (75%) of the ADUs for the development.

Occupancy permits for no more than ninety percent (90%) of the market rate dwelling units shall be issued until occupancy permits have been issued for one hundred percent (100%) of the ADUs for the development.

The following information shall be submitted with each occupancy permit application for a market rate dwelling unit within the development:

- the total number of dwelling units, market rate dwelling units, and ADUs in the development;
- the number of occupancy permits issued for market rate dwelling units within the development;
- the number of occupancy permits issued for ADUs within the development; and
- the lot number or unit number of each ADU for which an occupancy permit has been issued.

Incentives

The following incentives may be available to developers to support the provision of on-site ADUs.

Affordable Housing Grant program

For rental housing developments that provide a minimum of 20% of the total residential units as affordable housing, the developer/builder may apply for financial support through the Affordable Housing Grant program.

Modifications to the Affordable Dwelling Unit Program

The required number of ADUs will be provided on site. In exceptional cases, the Board of Supervisors may permit an applicant to build the required number of ADUs at a different site located within the county that is served by public water and sewer, contribute to the Albemarle County Housing Fund Reserve, or provide a combination of ADUs, and a contribution to the

housing fund. Requests for modifications to the requirements of the ADU Program must be submitted in writing concurrently with applications for a rezoning, or special use permit.

The developer must demonstrate that it is not feasible to provide the required ADUs, or a portion of the required ADUs on site per the required findings of the Code. The required alternative payment amount must comply with Section XXX of the Code. The payment is 50% of the federal HOME program sales price limit for 1-unit new construction at the time of application for each ADU not being provided on site.

Administration of the For-Sale Affordable Dwelling Unit Program

Sales Price Control Period

For ADU's designated for-sale, the prices for subsequent resales must be controlled for a period of 40 years from the date of initial sale.

Covenants Required for For-Sale Affordable Dwelling Units

In developments containing affordable dwelling units offered for sale, ADU Program covenants applicable to the affordable dwelling units, running in favor of and in the form prescribed by the County, must be recorded simultaneously with the final subdivision plat. All covenants must provide the following:

- The ADU may not be resold during the sale price control period for an amount that exceeds the limits set by the County Executive or his/her designee. Before offering the ADU for sale, the sales price must be approved by the Office of Housing;
- Each time an ADU is offered for resale during the control period, the ADU must first be offered exclusively to the County's listing of Certified Purchasers. The owner of each such ADU to be resold must provide the Office of Housing with written notification sent by certified mail that the affordable dwelling unit is being offered for sale.
- The covenants are senior to all instruments securing financing, and are binding upon all assignees, mortgagees, purchasers, and other successors in interest.
- Any and all financing documents must require every Eligible Lender and every other lender secured by an individual for-sale ADU to provide to the County Executive or his/her designee written notice of any delinquency or other event of default under the deed of trust or mortgage.
- No sale, transfer or foreclosure affects the validity of the covenants.
- Each Eligible Lender and any other lender secured by an interest in the affordable dwelling unit must provide written notice of foreclosure to the County Executive or his/her designee at least 90 days before foreclosure.
- The total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling units may not exceed the owner's purchase price (as adjusted in accordance with subsection D below). Any financing in excess of the owner's purchase price (as adjusted in accordance with subsection D below) may not be secured by any interest in the applicable individual for sale affordable dwelling unit.

Buyer's Notice of Covenants and Restrictions

At the time of the initial sale of an individual ADU, and all subsequent resales of an ADU during the control period, the owner or applicant must provide in the sales contract for each ADU offered for sale a copy of the recorded covenant running with the land in favor of the County. The owner or applicant must include in the deed for each ADU sold an express statement that the ADU is subject to the terms and conditions of the ADU Program covenants recorded in accordance with this section with a specific reference to the deed book and page where such covenants are recorded.

Initial Sale of Affordable Dwelling Units

Establishing Initial Sales Price

The sales prices for affordable dwelling units offered for sale will be equal to or less than 65% of the federal HOME Program's 1-Unit Purchase Price Limit for New Housing for Albemarle County. HOME Program price limits are established by the federal Department of Housing and Urban Development on annual basis. Copies of the current price limits can be found on the HUD Exchange [website](#).

Marketing of For-Sale ADUs

The for-sale affordable dwelling units within a development must be offered for sale exclusively for a 90-day period to persons who meet the income criteria established by Albemarle County, and who have been issued a Certificate of Qualification by the Albemarle County Office of Housing (ACOH). This 90-day period begins on the date that a complete Notice of Availability, submitted by the developer/owner, is executed by the Office of Housing.

The written Notice of Availability may be sent by the developer/owner at any time after the issuance of a building permit for the for-sale ADU, and approval of the ADU sales price by the County Executive. The Notice of Availability must be in the form prescribed by ACOH and include the following information:

- Include the number of bedrooms;
- floor area (in square feet);
- amenities;
- the target date for ADU availability;
- number of ADUs available and their location within the development;
- the address/tax map parcel/lot number for each ADU;
- any type of special financing available;
- Provide marketing materials concerning the units and the development to be used in the sale of the units.

After the first 60-days of the 90-day marketing period, any ADUs not sold to or under contract for sale to income qualified buyers, must be offered for sale to nonprofit housing groups as designated by the County Executive. The ADUs must be offered to the nonprofits at the established ADU sales prices. Once notified, the nonprofit housing groups have a 30-day period within which to commit to purchasing the ADUs. This 30-day period begins on the date of receipt of written

notification from the owner, sent by registered or certified mail, that ADUs are or will be ready for purchase. The Notice of Availability must be in the form prescribed by ACOH and include the following information:

- the number of bedrooms;
- floor area (in square feet);
- amenities;
- the target date for ADU availability;
- number of ADUs available and their location within the development;
- the address/tax map parcel/lot number for each ADU;
- any type of special financing available;
- Provide marketing materials concerning the units and the development to be used in the sale of the units.

If a nonprofit housing group chooses to purchase an ADU, it must notify the developer/owner in writing, and an all-cash closing must occur within 30-days after the end of the 30-day marketing period, provided a Certificate of Occupancy has been issued for the ADU prior to closing.

After the expiration of the initial 90-day period, any ADUs not sold may be offered to the general public at the established ADU sales price, and remain subject to the affordability terms of the ADU Program.

Procedures and Conditions Following Initial Sale of Affordable Dwelling Units During the Price Control Period

Annual Certification of Occupancy

Owners of for-sale ADUs will submit an annual certification confirming they continue to occupy their respective ADU as their primary residence

Establishing Resale Price

An affordable dwelling unit owner who wishes to sell an affordable dwelling unit during the control period must request, in writing, a resale price determination from the Office of Housing. The maximum resale price for affordable dwelling units will be calculated according to the following factors:

- 1) The base is the affordable dwelling unit owner's purchase price plus an allowance equal to the rate of increase in the U. S. Department of Labor's Consumer Price-Urban Area Index for the Southern Region between the month and year of the affordable dwelling unit owner's purchase and the current month and year.
- 2) To this base, the Office of Housing will add an allowance for capital improvements, as determined by the Office of Housing, made to an affordable dwelling unit after the date of purchase by the affordable dwelling unit owner. This allowance must not exceed 10% of the affordable dwelling unit owner's purchase price. Improvements must be permanent in nature and clearly add to the market value of the affordable dwelling unit. Normal maintenance, general repair work, luxury items, and decorative items or work must not be

included in the resale price determination. The ACOH will maintain a list of eligible capital improvements.

The affordable dwelling unit owner must provide an itemized list of all capital improvements for which credit is requested as part of the resale price. All improvements claimed must be documented with paid receipts, contracts or other evidence supporting their value. The Office of Housing may establish standard allowances for certain capital improvements, and these values may be used by the Office of Housing rather than receipts for the capital improvements submitted by the affordable dwelling unit owner.

Where there is evidence of physical deterioration, abnormal wear and tear, or obsolescence because of neglect, abuse, or insufficient maintenance, the value allowed for the capital improvements may be reduced to account for the depreciation of the capital improvements. If the affordable dwelling unit is in sub-par condition, no allowance for capital improvements will be granted.

- 3) An increase of 6% of the resale price is allowed as a fee to be paid to a real estate broker or agent licensed to conduct residential real estate transactions in the State. The 6% fee must be paid to the real estate broker or agent by the seller at the time of settlement of the resale of the affordable dwelling unit as part of the disbursement of settlement proceeds.

Marketing of ADUs for Resale

The for-sale affordable dwelling units within a development must be offered for sale exclusively for a 90-day period to persons who meet the income criteria established by Albemarle County, and who have been issued a Certificate of Qualification by the ACOH. This 90-day period begins on the date that a complete Notice of Availability, submitted by the developer/owner, is executed by the Office of Housing.

The written Notice of Availability may be sent by the developer/owner at any time after the issuance of a building permit for the for-sale ADU, and approval of the ADU sales price by the County Executive. The Notice of Availability must be in the form prescribed by ACOH and include the following information:

- Include the number of bedrooms;
- floor area (in square feet);
- amenities;
- the target date for ADU availability;
- number of ADUs available and their location within the development;
- the address/tax map parcel/lot number for each ADU;
- any type of special financing available;
- Provide marketing materials concerning the units and the development to be used in the sale of the units.

After the first 60-days of the 90-day marketing period, any ADUs not sold to or under contract for sale to income qualified buyers, must be offered for sale to nonprofit housing groups as designated by the County Executive or his/her designee. The ADUs must be offered to the nonprofits at the

established ADU sales prices. Once notified, the nonprofit housing groups have a 30-day period within which to commit to purchasing the ADUs. This 30-day period begins on the date of receipt of written notification from the owner, sent by registered or certified mail, that ADUs are or will be ready for purchase. The Notice of Availability must be in the form prescribed by ACOH and include the following information:

- the number of bedrooms;
- floor area (in square feet);
- amenities;
- the target date for ADU availability;
- number of ADUs available and their location within the development;
- the address/tax map parcel/lot number for each ADU;
- any type of special financing available;
- Provide marketing materials concerning the units and the development to be used in the sale of the units.

If a nonprofit housing group chooses to purchase an ADU, it must notify the developer/owner in writing, and an all-cash closing must occur within 30-days after the end of the 30-day marketing period, provided a Certificate of Occupancy has been issued for the ADU prior to closing. After the expiration of the initial 90-day period, any ADUs not sold may be offered to the general public at the established ADU sales price, and remain subject to the affordability terms of the ADU Program.

After the expiration of the initial 90-day period, any ADUs not sold may be offered to the general public at the established ADU sales price, and remain subject to the affordability terms of the ADU Program.

Resale of Affordable Dwelling Units After Expiration of Price Control Period

ADU Owner's Notification to the County

For the first sale of an ADU after the expiration of the Price Control Period, the ADU owner must provide the following information to the ACOH at least 30 days prior to settlement:

- A copy of the signed sales contract which clearly states the agreed upon purchase price;
- A copy of the real estate broker's listing agreement;
- An itemized list of capital improvements made by the current ADU owner including actual or estimated value of the improvements with documentation of the value in a form acceptable to the ACOH; and
- The name and contact information for the settlement agent.

Payment of Excess Proceeds to the Housing Fund Reserve

For the first resale of an ADU for which the price control period has expired, the ADU owner must pay to the Housing Fund Reserve one-half of the excess proceeds earned through the sale of the unit. Excess proceeds are defined as the amount by which a bona fide resale price exceeds the sum of the following:

- The ADU owner's purchase price;
- An allowance equal to the rate of increase in the U. S. Department of Labor's Consumer Price-Urban Area Index for the Southern Region between the month and year of the ADU owner's purchase of the unit to the date of settlement;
- An allowance for capital improvements, as determined by the ACOH, made to an ADU subsequent to the date of the ADU owner's purchase of the unit; and
- The actual brokerage fee at the prevailing commission rate if a licensed realtor under an arms-length contract to sell the ADU is used; however, the commission must not exceed 6% of the sales price.

The ACOH must notify the ADU owner of the calculation of excess proceeds to be paid to the Housing Fund Reserve within 21 days of receiving complete information from the MPDU owner.

The required portion of the excess proceeds must be collected at the time of settlement. The ADU owner is responsible for ensuring that the payment is made to the Housing Fund Reserve. A copy of the settlement sheet for the transfer of ownership must be sent to the ACOH within 14 days of the date of settlement. The County must release the ADU covenants and liens recorded in the land records after the County has received the required payment to the Housing Fund Reserve and the settlement documents.

Divorce

If one ADU owner buys out the other owner's interest in the ADU as part of a divorce settlement, without selling the ADU on the open market, such transfer of ownership will not be considered as the first sale of the ADU, and does not relieve the remaining ADU owner of the obligation to pay the required portion of the exceeds to the Housing Fund Reserve.

Administration of the Rental Affordable Dwelling Unit Program

Rental Price Control Period

For ADU's designated for rent, the prices for subsequent re-rentals must be controlled for a period of 30 years from the date of the initial leasing.

Covenants Required for Rental Affordable Dwelling Units

In developments containing ADUs offered for rent, the developer/owner must record a covenant running with the land in favor of the County, which provides that for 30 years from the date of issuance of the first Certificate of Occupancy for the ADUs that:

- No ADU may be rented for an amount that exceeds the limits set by the Office of Housing;
- The project is subject to the provisions of the ADU Program as set forth in the Albemarle County Zoning Ordinance;
- The covenant is senior to all instruments securing permanent financing; AND
- The covenant is binding upon all assignees, mortgagees, purchasers and other successors interest.

The covenants remain in full force and effect in the event of the foreclosure sale of a rental property by an eligible lender.

Rental of an Affordable Dwelling Unit

For-rent ADUs must be offered to individuals or households whose incomes are no greater than 60% of the area medium income current at the time of leasing.

Establishing Initial Rent Prices

The maximum gross rent to be charged for initial rental of an ADU will be equal to or less than one-fourth of 65% of the annual median income adjusted for unit size. Maximum gross rents are calculated by multiplying the area median income for the Charlottesville metropolitan statistical area by the following factors, and rounded to the nearest whole number, inclusive of utilities:

Unit Size	Rent Factor
Efficiency	0.009479
1 bedroom	0.010833
2 bedroom	0.013542
3 bedroom	0.016927
4 bedroom	0.018958
5 bedroom	0.021802
6 bedroom	0.024646

Annual Rent Increases for Occupied Affordable Dwelling Units

Rental rate increases for ADU lease renewals may not exceed 3% annually.

Rental Prices for Subsequent Re-Leasing of Affordable Dwelling Units

For each subsequent releasing of a rental ADU, the maximum gross rent charged will be determined using the same method as the method used to determine the maximum gross rent amount for the initial lease. If, however, the area median income established for the current year is less than the previous year, the maximum gross rent for the new lease shall be 3% higher than the most recent rent rate charged for the ADU.

Marketing of Rental Affordable Dwelling Units

The for-rent ADUs within a development must be offered for rent exclusively for a 15-day period to persons who meet the income criteria established by Albemarle County, and who have been issued a Certificate of Qualification by the ACOH. This 15-day period begins on the date that a complete Notice of Availability, submitted by the developer/owner, is executed by the Office of Housing.

The written Notice of Availability may be sent by the developer/owner at any time after the issuance of a building permit for the for-rent ADUs, and approval of the ADU rental price by the County Executive. The Notice of Availability must be in the form prescribed by ACOH and include the following information:

- the number of bedrooms;
- floor area (in square feet);
- amenities provided;
- the target date for ADU availability; AND
- Marketing materials concerning the units and the development to be used in the rental of the units.

Lease Term and Conditions

The ADUs must be leased for a period of at least one year, and the lease agreements for rental ADUs must include conditions that:

- a. Require the tenant to occupy the unit as his or her principle place of residence;
- b. Prohibit the subleasing of the unit;
- c. Require continued compliance with the eligibility criteria established by the Office of Housing;
- d. Require the tenant to annually certify, on a form approved by the Office of Housing, their household income in order to ensure the tenant continues to meet the eligibility criteria established by Albemarle County; and
- e. 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.

Continued Tenant Eligibility Requirement

Eligible tenants must continue to meet the income criteria established by the Office of Housing in order to continue occupancy of the ADU. However, a tenant who no longer meets such criteria may continue to occupy an ADU until the end of their lease term. ADUs may not be subleased.

Annual Certification of Rental ADUs

By the end of each calendar year, the owner of a development containing rental ADUs must provide the Office of Housing with a report which contains the following information:

- The unit address and bedroom count;
- Tenant's name and household size;
- The effective date of the lease;
- Tenant's household income as of the date of the lease; AND
- Current monthly rent for each ADU.

Annual Tenant Recertification of Income

Tenants of ADUs must recertify their program eligibility. Tenants must submit to the ACOH, 90 days prior to lease renewal, a completed ADU Program Certification packet along with all required documentation.

If at the time of recertification, the tenant's income exceeds the maximum allowable limit by 30 percent the tenant must vacate the unit at the end of the current lease term. The property owner may permit the tenant to occupy the unit at an agreed upon market rent, but the owner must substitute another unit with the same number of bedrooms for the existing ADU. A new covenant must be recorded, subjecting the subsequent unit to the applicable ADU restrictions, laws, and regulations.

Sale of Affordable Dwelling Units by Foreclosure

A mortgagee or other secured party who has initiated foreclosure proceedings on a debt secured by a mortgage or deed of trust on an ADU property must notify the ACOH in writing at least 30

days prior to the date of the foreclosure sale.

Enforcement

Any fines or penalties imposed by the County for a violation of ADU Program guidelines, and any fees collected under this Program, shall be deposited into the Housing Fund Reserve.

Developers

If a developer/owner fails to comply with any provision of the Administrative Guidelines, including but not limited to failure to provide the affordable units required by this program; to pay the required fee in lieu; to sell the affordable units to an income eligible household, or at the establish affordable pricing; or to record the ADU covenants against the applicable properties will be in violation of the ADU program requirements, and punishable by a fine in an amount up to two times the payment of fees in lieu.

Upon rental of any affordable unit at a rental price that is not affordable, or to a household that does not meet the eligibility criteria, the owner shall pay a fee of \$250 per unit per day for each day the owner is in noncompliance.

Owners of Affordable Dwelling Units

Owners of affordable dwelling units who fail to submit executed annual certifications, will be fined \$50.00 per day, up to a maximum of \$3,000.00 per unit, until an executed annual certification is filed, but only after written notice and a ten-day compliance period is provided. Fines levied pursuant to this section shall become liens upon the real property and shall accumulate interest at the judgment rate of interest.

Tenants of Rental Affordable Dwelling Units

Any tenant who fails to provide recertification information within 30 days of the date on which the information is required, must vacate the ADU at the end of their current lease term.