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AFFORDABLE HOUSING

5.1 GENERAL GOALS

The section is hereby adopted consistent with the goals adopted by the Town Board as follows:

- A.** At any point in time, a minimum of 12½% of the housing units in Davidson shall be affordable as defined by this Ordinance.
- B.** The Town is willing to assist in the provision of affordable housing in order to secure the benefits from a diverse housing stock.
- C.** The owners/occupants of such affordable housing will also participate in the provision of the affordable housing, although the means of that participation will vary with the method of its provision. For example, the property owner may accept less-than-market rate property appreciation or a tenant may accept fewer amenities.
- D.** The Town, affordable housing providers, and developers will employ a variety of tools to meet the affordability goals, to match the characteristics of each project, to fulfill the town's housing needs, to maintain the Town's investment, and to eliminate substandard housing.
- E.** Affordable housing will be dispersed throughout the Town.
- F.** The location of affordable housing should be supported by pedestrian & bicycle facilities and public transit that connect the owners/occupants to activity centers that may include places for employment, shopping, recreation, and/or education. It is acknowledged that very low income individuals/families are statistically the most transit- dependent population.

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- G. Affordable housing will be designed to be complementary to the neighborhood.
- H. The affordable housing program will acknowledge the value of homeownership; accommodate the need for rental housing; and direct development in order to maintain stable neighborhoods.

5.2 COVERED DEVELOPMENT PROJECTS

The provisions of this ordinance apply to all new developments that result in or contain two (2) or more residential lots or dwelling units, which includes the subdivision of an existing lot which results in one or more lots.

A. Development Options

There are two options for the provision of affordable housing based on the number of units proposed in the development that do not qualify as affordable units.

1. Seven (7) or Fewer Units

Developments with 7 or fewer residential units must either provide one affordable unit or make a payment in lieu to the Town. The payment in lieu must be paid at the time an application for a building permit on any of the lots or units is made. If the payment is in lieu of providing a fraction of one unit, the calculation shall be prorated as appropriate.

a. Subdivision to Evade Requirement Not Permitted

For purposes of determining whether an applicant may make a payment in lieu pursuant to this subsection, all adjacent parcels under common ownership shall be considered. Parcels shall not be subdivided in order to avoid compliance with this Section.

2. Eight (8) or More Units

Developments with 8 or more units shall provide all required affordable units in accordance with Section 5.2.

- 3. When the use of the property is for single-family residential and does not meet the definition of subdivision as described in Section 23, it is excluded from the provisions of Section 5.

B. Compliance with this requirement shall be demonstrated as follows:

1. Master Plan

The applicant shall include notes on the Master Plan showing compliance with the requirements of this section and indicating the total number and distribution of required affordable units in accordance with Section 5.2 B.

2. Site Construction Documents/Preliminary Plat

The submittal shall include either an affordable housing plan with the details described

in Section 5.3.A or an agreement signed by the developer and the authorized representative of an approved affordable housing provider with the details described in Section 5.3 B.

3. Final Plat

The final plat, as defined in Section 8.10, shall indicate which lots or units are to be constructed as affordable units. Except as provided in Section 5.2.A.1, any payment in lieu fees shall be paid to the Town prior to each final plat approval, for the affordable units in that plat, unless otherwise specified in the affordable housing plan approved by the Town.

C. Percentage and Distribution of Affordable Units

Required affordable housing units will be provided as follows.

1. General Requirement

Except as otherwise provided, 12.5% of the total number of residential units within any development shall be affordable housing units and shall be located on the site of the development.

2. Calculation

To calculate the number of affordable housing units, the total number of proposed units, including the affordable units, shall be multiplied by 12.5%. If the product contains a fraction, a fraction of .5 or more shall be rounded up, and a fraction of less than .5 shall be rounded down, except as provided in Section 5.2.A.1.

Table 5-1: Distribution Table	
5 of Area Median Income (AMI)	Percentage
Total Required Amount	12.5%
Very Low Income (Between 50% of AMI)	30% - 100%
Low Income (Between 50% and 80% of AMI)*	0 - 70%
Moderate Income (Between 80% and 120% of AMI)	0 - 20%

*Income limits can be exceeded by 10% upon approval of the Town Manager.

3. Distribution

Affordable housing units shall be distributed as follows below:

A copy of the Adjusted Median Income by Income Status, revised annually, is available upon request from the Planning Director or any Approved Affordable Housing Provider.

Example: A development with a total of 125 proposed units shall ensure that 16 of the 125 are affordable units (125 x .125 =16) In this example; no more than 109 units shall

be market rate. ($109 + 16 = 125$) (Affordable units do not count towards maximum density standards in Section 4). An example of possible distribution of these units:

- Required number of Affordable Units: 16
- Very Low Income Units: $30\% \times 16 = 4.8$ rounded to 5
- Low Income Units: $30\% \times 16 = 4.8$ rounded to 5
- Moderate Income Units: $20\% \times 16 = 3.2$ rounded to 3
- Middle Income Units: $20\% \times 16 = 3.2$ rounded to 3

D. Payment in Lieu (PIL)

Where permitted by this ordinance, the applicant may make a cash payment in lieu of providing some or all of the required affordable housing units. The Town shall establish the in-lieu per-unit cash payment on written recommendation of the Town Manager and adopt it as part of the Town's fee schedule. At least once every three years, the Town Board shall, with the written recommendation of the Town Manager, review the per unit payment and, if necessary, amend the fees.

E. Town Reservation of Funds

The Town shall receive payments in lieu and place them in a separate fund that shall be used solely and exclusively for affordable housing activities including the acquisition of land for, or the construction and marketing of, affordable dwelling units.

These funds shall not be commingled with the Town's General Fund.

5.3 AFFORDABLE HOUSING PLAN

The developer shall provide an affordable housing plan either as a private transaction or as a contract with an approved affordable housing provider to be approved by the Town Board prior to the release of the Preliminary Plat.

A. Private Plan

If provided as a private plan, the plan shall contain the following:

1. A general description of the development, including whether the development will contain rental units or individually owned units, or both.
2. The total number of market rate units and affordable units in the development.
3. The number of bedrooms in each affordable unit. The bedroom mix of affordable units shall be in equal proportion to the bedroom mix of the market rate units.
4. The square footage of each affordable unit.
5. The location within any multiple-family residential structure and any single-family residential development of each market rate unit and each affordable unit. Affordable housing units shall not be segregated and should be interspersed among the market rate units throughout the development.
6. The pricing for each affordable unit and the income classes served. Pricing of units shall comply with the following:

a. Pricing Schedule.

The Town, through the Town Manager, shall publish a pricing schedule of rental and sales prices for affordable units in accordance with the following provision that shall be updated annually:

i. In calculating the rental and sales prices of affordable units, the following relationship between unit size and household size shall apply:

- Efficiency units: 1-person
- One-bedroom units: 2-person
- Two bedroom units: 3- person
- Three bedroom units: 4-person
- Four bedroom and larger units: 5-person

ii. With respect to affordable units offered for sale, prices will be calculated on the basis of:

- An available fixed rate thirty year mortgage, consistent with the average rate published from time to time by Freddie Mac;
- A down payment of no more than 5 percent of the purchase price;
- A calculation of property taxes;
- A calculation of homeowner insurance;
- A calculation of condominium or homeowner association fees.

iii. With respect to affordable units offered for rent, rental prices will be calculated on the basis of 30 percent of gross monthly income, adjusted for household size, minus a utility allowance. The rental amount shall be determined on an annual basis and shall be in accordance with the rental schedule published by the Department of Housing and Urban Development (HUD) and incorporated herein by reference.

- 7.** The phasing and construction schedule for each market rate unit and each affordable unit. The phasing of the affordable units should be proportional to the market rate units and the certificates of occupancy (CO) for the last 20% of the market rate units will not be issued until the CO's have been issued for all of the affordable units. The phasing plan shall also provide that the affordable units shall not be the last units to be built in the development.
- 8.** A description of how the affordable housing will be designed to be complementary to the neighborhood.
- 9.** A description of the marketing plan that the applicant proposes to utilize and implement to promote the sale or rental of the affordable units within the development.
- 10.** The total amount of the payment in lieu, if any and the estimated date the payment will be made.
- 11.** Deed restrictions that ensure that the affordable units are and remain available for occupancy by eligible households for a minimum of 99 years. The deed to the property shall state that the property is income and price restricted.
- 12.** The restrictive covenants for the subdivision should include language that provides for reduction of homeowners dues in order to comply with the definition of affordable housing. Capital assessments shall be paid by the developer.

B. Contract with Approved Affordable Housing Provider.

The following components will be required in the agreement between the developer and the Approved Affordable Housing Provider:

1. Provider to Assume Ordinance Obligations

The Approved Affordable Housing Provider agrees to assume the obligations of the developer to provide affordable housing under this ordinance.

2. Financial Arrangement

The terms of financial arrangement shall be disclosed to ensure that the Developer will compensate the Provider adequately for meeting those obligations including but not limited to property acquisition, unit construction, unit subsidy, marketing expenses, and homeowner education.

3. Penalty for Failure to Perform

Upon the determination that the Developer has failed to fulfill the agreement with the Provider, in addition to any other legal consequences, the Town has the right to deny issuance of building permits or revoke certificates of occupancy for any unoccupied units. The Planning Director for the Town may determine whether the Developer has failed to comply with this section.

C. Completeness Review

Neither the affordable housing plan or the contract with an affordable housing provider shall be accepted by the Planning Director unless it contains all of the information that is necessary for the Town to determine whether or not the development, if completed as proposed, will comply with all of the requirements of this section.

5.4 APPROVED AFFORDABLE HOUSING PROVIDERS

Non-profit organizations, governmental agencies, or quasi-governmental agencies may be certified by the Town Board as an "Approved Affordable Housing Provider" subject to the following provisions:

- A.** They shall be a non-profit organization under section 501(c)(3) of the US Tax Code or shall be a directly funded agency of a unit of government; and
- B.** They shall present a plan indicating how the organization will participate in meeting the Town's affordable housing goals as stated in Section 5.1 above; and
- C.** On an annual basis, they shall report to the Town Board their progress in meeting the plan in (b) above as well as its progress in fulfilling the obligations it has undertaken under contracts with developers under Section 5.3.

5.5 GENERAL PROVISIONS

These provisions are applicable to affordable units provided under an affordable housing private plan.

A. Minimum Standards for Affordable Units

1. Functionally Equivalent

Affordable units shall be “functionally equivalent” to market rate units. This means that when features are included in market rate units, such as kitchen cabinets, countertops, dishwasher, etc., then equivalent features are included in the permanently affordable units. This does not mean that the features need to be identical. The Town will consider variations that result in an equivalent livability outcome.

2. Affordable Housing Guidelines and Standards

The Town shall adopt written guidelines and standards from time to time in order to provide objective, enforceable construction requirements for affordable units. The Affordable Guidelines and Standards, adopted by the Town Board, are hereby incorporated by this reference.

B. Affordable Units for Eligible Households Only

No person shall sell, rent, purchase, or lease an affordable unit created pursuant to this Ordinance except to eligible households and in compliance with the provisions of this Ordinance. The Town shall adopt and review, at least every three years, asset limitations.

1. A “certificate of qualification” must be provided to the Town of Davidson confirming that eligibility guidelines have been met.
2. Priority will be given to households in which the head of the household or the spouse or domestic partner is a former Davidson resident, or who works, lives or has relatives in Davidson.
3. A developer or owner may select a low income purchaser after completing a good faith marketing and selection process approved by the Town Manager. Upon request, the Town may provide the developer or owner of an affordable unit with a list of households certified by the Town as eligible to purchase the unit. However, a developer or property owner may select a low-income purchaser who is not on a furnished list so long as the Town can verify that eligibility guidelines have been met, as evidenced by the certificate of qualification, and that the unit is sold at an affordable price as described in this Ordinance.
4. A non-eligible household may occupy an affordable unit if an eligible household is not available to purchase or rent the unit on the date which is the later of 120 days after the Town’s receipt of the Notice of Availability or 60 days after the issuance of the Certificate of Occupancy on the unit or if the unit is being resold, within 90 days after the Town’s receipt of the Resale Notice or if the unit is being offered for lease, within 60 days of the Town’s receipt of the Release Notice.
5. A homebuyer education and counseling fee shall be paid by the developer to the Town at the time of the closing of each affordable unit if the purchaser of the unit is required to participate in homebuyer education and counseling services provided through the Town’s approved non-profit affordable housing provider.

C. Rental Restrictions for Affordable Units

No person shall rent an affordable unit, except as follows:

1. Notice

The owner shall provide notice to the Town prior to renting of the affordable unit of its intent to rent the unit.

2. Lease Documentation

Any lease or rental agreement for the lease or rental of an affordable unit pursuant to this Section shall be in writing. The lease or rental agreement shall state the monthly rent charged.

3. Prior Approval:

Before the date upon which it becomes effective, a copy of any lease or rental agreement for an affordable unit shall be provided to the Town, along with those documents which the Town finds to be reasonably necessary in order to determine compliance with this Section.

4. Rental Rates

Rents charged for an affordable unit must not exceed the rental rate limitations published annually by HUD for the Charlotte-Gastonia-Concord NC-SC HUD Metro FMR Area.

5. Maximum Income for Tenants

Except as otherwise provided in this Ordinance, a household renting an affordable unit shall not have an income which exceeds 80% of the Area Median Income. A "certificate of qualification" must be provided to the Town confirming that eligibility guidelines have been met.

6. Scope

The provisions of this Section shall apply to all rental or lease arrangements under which any person, other than the owner, his or her spouse, his or her domestic partner and dependent children or parents, occupies any part of the property for any period of time.

D. Affordability Controls

1. For Sale Affordable Housing Units

a. Town of Davidson Purchases

The Town, or a not-for-profit agency designated by the Town, shall have the preemptive option and right, but not an obligation, to purchase each of the for-sale affordable housing units prior to any sale of any such unit. If the Town, or the designated not-for-profit, exercises the option and purchases the affordable housing unit, the affordable housing unit shall be subject to such documents deemed necessary by the Town, including without limitation, restrictive covenants and other related instruments, to ensure the continued affordability of the affordable housing units in accordance with this Ordinance.

b. Private Party Purchases

In all other sales of for-sale affordable housing units, the parties to the transaction shall execute and record such documentation as required by Section 5.5.F to ensure

the provision and continuous maintenance of the affordable housing units. The affordable housing unit shall be available for sale to an eligible household.

2. Rental Affordable Units

- a. For developments that contain affordable rental units, the owner of the development shall execute and record such documentation as required by this Ordinance to ensure the provision and continuous maintenance of the affordable housing units. The affordable rental units must be leased and occupied by eligible households. Subleasing of affordable units shall not be permitted without the express written consent of the Town Manager area median income over the term of ownership.

3. Affordable Housing Capital Improvement and Update Policy

The Town desires to encourage homeowners to improve and update the affordable housing units while, concurrently, the Town recognizes the need to retain affordability of the homes. Therefore, the Town shall adopt a written policy to provide a means for homeowners to improve and update an affordable housing unit. As set forth in the deed restrictions, only those capital improvements that have been previously approved by the Town may be included in the resale price. The Affordable Housing Capital Improvement and Update Policy, adopted by the Town Board is incorporated by this reference.

E. Resale Price for Affordable Units

The resale price of any affordable unit shall not exceed the purchase price paid by the owner of that unit with the following additions:

1. Customary closing costs and costs of sale initially paid by the buyer (now seller) of the unit;
2. Costs of real estate commissions paid by the seller if a licensed real estate agent is employed and if that agent charges commissions at a rate customary in Mecklenburg County;
3. Cost of permanent capital improvements installed by the seller and previously approved by the Town Manager; and
4. An inflationary factor equal to the percentage increase in the area median income over the term of ownership.

F. Deed Restriction Required

Every person selling an affordable unit shall reference in the Deed conveying title to any such unit, and record with the county recorder, a Covenant or Declaration of Restrictions in a form approved by the Town. Such Covenant or Declaration of Restrictions shall reference applicable contractual arrangements, restrictive covenants, and resale restrictions as are necessary to carry out the purposes of this chapter. The Deed shall state that the property is income and price restricted.

G. Monitoring of Resale

The resale of an affordable unit shall be monitored by the Town to ensure compliance with the provisions of this chapter and the deed restrictions.