PROPOSED REVISIONS TO

THE FAIRFAX COUNTY BOARD OF SUPERVISORS' COUNTYWIDE AND TYSONS URBAN CENTER WORKFORCE DWELLING UNIT ADMINISTRATIVE POLICY GUIDELINES

STAFF REPORT

February 18, 2025

Background

On September 10, 2024, the Fairfax County Board of Supervisors (Board) adopted revisions to the county's Workforce Dwelling Unit policies in the Comprehensive Plan Area Plans and Appendix 1 of the Policy Plan Housing Element, Guidelines for the Provision of Workforce Dwelling Units (WDU Policy), following recommendations by the WDU For-Sale Task Force. The revisions lowered the income levels served in the For-sale WDU program, expanded the geography to which the WDU Policy applies, and adjusted aspects of the WDU program, such as bedroom mix and room sizes. The Board also directed staff to modify the Board's Countywide and Tysons Urban Center WDU Administrative Policy Guidelines (the Administrative Guidelines), which serve as the administrative mechanism to implement the WDU Policy. The Administrative Guidelines address such aspects of the program as integration and dispersion of WDUs with a development; technical requirements for the units; WDU sale, resale, and rental requirements; and legal documentation for commitment of the WDUs.

Summary of the Proposed Revisions

The proposed revisions to the Administrative Guidelines in Attachment A incorporate and provide additional guidance on the recently adopted WDU Policy changes and would replace the current Administrative Guidelines, adopted February 23, 2021. The revisions also propose to clarify guidance to reflect current practices and interpretations of the guidance; translate the structure and language in the document into plain English making the document easier to read and chronological; remove overlaps with the WDU Policy; encourage earlier submission of the legal documents for county review; clarify the Department of Housing and Community Development (DHCD) involvement in development review and subsequent agreements; reflect adjustments to the initial and resale pricing formulas, as recommended by the WDU For-Sale Task Force and, for the initial sales price, approved by the County Executive; and address certain covenant

recordation issues. Editorial changes are also proposed. The following explanations provide summaries of significant changes to the Administrative Guidelines:

***Integration and Dispersion**:* Subject to adequate integration and dispersion, the current guidance allows for flexibility in the location of WDUs to be distributed across buildings, phases, and unit types, and when the flexibility furthers the WDU policy and offers appropriate controls. The proposed revisions would clarify this guidance to better define adequate integration and increase predictability in the expectations. For example, the ability to transfer for-sale WDUs as rental WDUs in high-rise condominium development where there is a high cost of construction and high condominium fees would be retained as well as the language regarding financing or other affordable housing opportunities. Other potential transfers, for example from for-sale WDUs to rental WDUs within developments with multiple unit types, would be defined at a maximum of 30% of the affordable units or the development will need to demonstrate that there would be a deleterious impact on the project if a greater number of transferred affordable units does not occur and that there are no reasonable alternatives, for example, adjustments to the land use mix.

***Unit Sizes and Finishes**:* The minimum sizes of the WDUs and their size expectations relative to the market-rate units would be removed due to the overlap with the WDU Policy. Guidance about bedroom and living room sizes and bedroom mix proportionality would be added per the recently adopted WDU Policy. In addition, guidance would be added about providing comparable finishes, appliances, and other features in the WDUs as the market rate units in the same development.

Covenants and Offering Agreements: Revisions are proposed to address an issue raised during the WDU For-Sale Task Force review, whereby the WDUs sales process could not progress until the condominium declarations and legal descriptions of the WDUs are available. Revisions propose covenant recordation in a manner that will move the WDUs to sale and closing more quickly. This process is generalized for condominiums in the case that the issue arises for other types of for-sale condominium units, such as triplexes. Furthermore, new guidance is added about the submission timing for the covenants for rental developments and timing of the rental and for-sale offering agreements concurrent with the covenants to encourage earlier submission.

First Rider: The current practice of using a First Rider to the Covenants to define the term of expiration of WDU rentals is added and no longer solely defined in covenants.

Sales/Rental: The initial and resale pricing formulas would be updated per the For-Sale Task Force recommendations, such that the initial sales price would be adjusted for WDUs with a homeowners or condominium association fee that exceeds 30% of the fees estimated in the Maximum Price Schedule, and the resale pricing would be based on the original sales price adjusted by a five-year compounded annual growth rate (CAGR) of the Area Median Income. In addition, the timeframes for the FCRHA's and non-profit organization's right to purchase is proposed to be removed or adjusted with a more realistic time to identify and close on the purchase. Further, the language about preferential treatment to those households already possessing a Certificate of Qualification has been adjusted to facilitate sales. Additionally, the FCRHA's ability to lease WDUs and then sublease to qualified applicants is clarified. Finally, the language allowing and limiting broker fees to 1.5% and requiring a dual agent has been removed.

Finance/Refinance: In order to allow for refinancing to take advantage of the equity gained on the WDUs, the proposed revisions would allow for owners to refinance their WDUs based on maximum control price at the time of refinance, rather than limiting the refinance to the outstanding first trust debt.

Stakeholder Outreach and Comments

Staff published the draft revisions online between October 23, 2024, and November 20, 2024, and shared the link with stakeholders involved in the WDU Task Force and Comprehensive Plan policy changes. This included the task force, business groups, developers, realtors, affordable housing advocacy groups, attorneys, and district committees. Staff also held two virtual information sessions to present the proposed revisions, gather feedback, and answer questions. The primary concern expressed during this stakeholder outreach related to the proposed revisions to the section describing the Integration and Dispersion of WDUs within a development with multiple unit types and the ability to transfer units among the unit types. Staff has revised the language from the October 22, 2024 draft to set more defined criteria for the flexibility regarding this transfer, as described previously.

Another comment recognized that there has been a lack of clarity in the past regarding the limits to refinancing amounts that a homeowner can attain. Section XII.B clearly states that the amount of refinancing cannot exceed the Maximum

Control Price of the WDU at the time of refinancing. Finally, regarding a comment about the original proposed removal of the language about preference for sale to prequalified buyers, new language has been added to encourage potential buyers to apply to the qualification process as soon as possible in their home search process.

Conclusion

The proposed revisions to the WDU Administrative Guidelines reflect a significant step toward enhancing the efficiency and sustainability of the WDU program. By integrating the updated WDU policy changes, streamlining the guidelines for clarity, and addressing stakeholder feedback, these revisions aim to keep the program flexible, equitable, and responsive to community needs. Key improvements, such as adjustments to technical expectations, pricing formulas, and administrative processes, will modernize the program and reaffirm the county's commitment to increasing the housing supply for diverse income levels through sound planning and inclusive practices. Attachment A contains the Proposed Revisions to the WDU Administrative Policy Guidelines. Attachment B contains a Tracking Table of the Revisions by section explaining where existing language from the the 2021 Administrative Guidelines would be relocated within the proposed Adminstrative Guidelines.

Staff Recommendation

Staff recommends that the Board approve the replacement of the Board's Countywide and Tysons Urban Center WDU Administrative Policy Guidelines, adopted February 23, 2021, with the proposed revisions in Attachment A of this document (Fairfax County's Board of Supervisors' Workforce Dwelling Unit Administrative Policy Guidelines). Following the Board's approval, staff will consider the best means to create a summary of the guidelines or other materials that would increase the accessibility and understanding for those invovled in the process. This would include possible translation into other languages.

REPLACE: Fairfax County Board of Supervisors' Countywide and Tysons Urban Center Workforce Dwelling Units Administrative Policy Guidelines, as adopted February 23, 2021, with:

"FAIRFAX COUNTY BOARD OF SUPERVISORS'
WORKFORCE DWELLING UNIT ADMINISTRATIVE POLICY GUIDELINES

The following Workforce Dwelling Unit Administrative Policy Guidelines (the "Administrative Guidelines") are hereby adopted by the Board of Supervisors (Board) as the preferred administrative tool for the implementation and administration of Workforce Dwelling Units that are proffered in conjunction with a rezoning application. It is the intent of the Board that proffered Workforce Dwelling Units ("WDUs") accepted in conjunction with a rezoning application include a proffer of compliance with these Administrative Guidelines.

If a specific development warrants consideration of an alternative scheme for the administration and continued availability of WDUs, the Board will consider such variations when the applicant can clearly demonstrate that the alternate proposal furthers the WDU policies set forth in the Comprehensive Plan and offers appropriate controls to properly regulate, monitor, administer, and manage such units. Such controls must be provided in sufficient detail to clearly demonstrate that the WDUs will function in the manner intended by the provisions of the preferred administrative tools set forth below.

On October 30, 2018, the Board delegated its authority to administer and regulate the sale and rental of WDUs to the Fairfax County Redevelopment and Housing Authority ("FCRHA"). The delegation includes the Board's right to acquire certain WDUs pursuant to the Guidelines for Provision of Workforce Dwelling Units, Appendix 1 in the Housing Element of the Comprehensive Plan's Policy Plan and the Area Plans ("the WDU Policy"). The FCRHA may adopt additional rules, policies, and guidelines to assist in the regulation and monitoring of the rental, sale, and resale of WDUs.

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I. Overview of the Administrative Guidelines

A. Purpose. The Countywide and Tysons Urban Center Workforce Dwelling Unit ("WDU") Administrative Policy Guidelines ("Administrative Guidelines") are adopted to establish a framework for the administration, monitoring, and long-term compliance of units proffered under the Guidelines for Provision of Workforce Dwelling Units, Appendix 1 in the Housing Element of the Comprehensive Plan's Policy Plan and the Area Plans ("the WDU Policy"). The Administrative Guidelines are designed to outline the process of establishing, approving, and administering the long-term affordability of housing for persons with low or moderate income within market-rate housing developments through proffers of WDUs in accordance with the WDU Policy.

B. Opt-In. For any WDUs proffered prior to the adoption of these Administrative Guidelines, the owner may elect to voluntarily comply with the provisions of these guidelines, to the extent that such election does not conflict with any proffered conditions associated with the subject WDUs. To facilitate such voluntary compliance, the owner must submit a request to the Director of the Zoning Evaluation Division of the Department of Planning and Development, who must determine, in consultation with the Department of Housing and Community Development ("DHCD"), whether such request conforms to the proffered conditions applicable to the property and complete the DHCD Opt-In Agreement.

II. Technical Requirements

A. Integration, Dispersion, and Equivalency.

1. WDUs should be integrated into and dispersed throughout a development to the extent feasible subject to the satisfaction of DHCD. It is recommended that developers provide unit locations and plans for review as early as possible in the development process for efficient compliance review.

   (a) WDUs should neither be overly concentrated by unit type or location, nor located in the least desirable locations within a building or on a site.

(b) Subject to adequate integration and disbursement within the development, WDUs may be distributed in a manner that permits smaller or larger percentage within a building, phase, or unit type.

(c) Transferring for-sale WDUs into rental WDUs in developments with multiple unit types is not highly desired. In the case of a development that has both a high-rise condominium and a rental component, WDUs generated by for-sale units in the high-rise building, as defined in the Virginia Construction Code Section 202, may be provided as rental units. Other developments with both for-sale and rental components may transfer up to 30% of the for-sale WDUs as rental WDUs. If a greater number of for-sale WDUs is proposed to be transferred as rental WDUs, the proposal must clearly demonstrate to the satisfaction of the departments of Housing and Community Development and Planning and Development that the project would not be possible without the WDU transfer and the transfer provides an equivalent or greater value toward affordable housing priorities, per the Plan policies. In this case, the developer must demonstrate that there is no other reasonable alternatives to the transfer, and that the transfer functions in a manner intended by these administrative guidelines. In all of these cases, the transferred WDUs in the rental component must be provided with the number of units and bedroom mix of WDUs based on the for-sale unit component but offered for rent at the income tiers applicable of the rental policy.

2. WDUs should include comparable finishes, fixtures, equipment, and appliances as market rate units within the same development. The provision of less expensive materials and appliances in WDUs, relative to the market rate units in the same development, must be durable, good quality, and consistent with contemporary standards for new residential development.

B. Unit Sizes and Types. The gross floor area for any WDU should be in accordance with the WDU Policy in terms of unit mix and size of the WDUs.

1. The floor area for WDUs must be in accordance with the gross floor area definition of the Zoning Ordinance and must comply with all applicable requirements in the Virginia Construction Code.

2. The WDU unit type mix should be proportional to the market rate unit type mix, in accordance with the WDU Policy. Units with more than three bedrooms will not be held to strict proportionality but may not be provided as a unit type smaller than a three-bedroom unit.

3. All single-family WDUs must have a primary bedroom of at least 100 square feet and all other bedroom and living room sizes must conform with the Virginia Construction and Property Maintenance codes. All bedroom sizes are exclusive of closets, which must be provided with each bedroom.

4. Neither the WDU Policy nor these Administrative Guidelines precludes the developer from providing WDUs as larger sized units, in terms of the square footage and/or the number of bedrooms.

C. Designation of For-Sale WDUs on Approved Plans.

1. For for-sale developments, each approved site plan, record subdivision plat, condominium plat/plan, and building plan (as applicable, the "Plans"), must identify the development as a for-sale project and must note, to the satisfaction of DHCD, (i) the total number of WDUs; (ii) the specific lots or units that are the for-sale WDUs; (iii) the AMI level, gross floor area, and unit type of each WDU lot and/or unit; (iii) the number of bonus market rate units and/or bonus floor area provided. In addition, the floor area of all non-WDUs by bedroom count must be noted on the Plans.

2. If there is any change in the location of a WDU after the original approval of the Plans, the developer must amend the approved Plans to reflect the designation of the alternate WDU prior to the issuance of a Residential Use Permit ("RUP") for the alternate WDU. Such change should be reviewed for compliance with these policy guidelines to the satisfaction of DHCD.

3. The location of the lots or units designated as for-sale WDUs should be noted in the zoning approval so that staff may review for compliance and note any adjustments that might be needed to meet the intent of these Administrative Guidelines as early as possible in the development process.

D. Designation of Rental WDUs on Approved Plans. For rental developments, the Plans must identify the development as a rental project and must note (i) the total number of WDUs, (ii) the number of bonus market rate units and/or bonus floor area provided, (iii) the average floor area of each WDU and market rate units by bedroom count, and (iv) the bedroom mix and count of WDUs.

E. Phased Developments/Multiple Locations. All Plans for multi-phased developments where the WDUs will be provided over a series of phases must contain a tabulation or table identifying in which phase(s) the WDUs will be provided and a total of all WDUs for which the Plans have been approved. If the WDUs are approved to be provided at a location that is not on the same building, land bay, or lot as the market rate dwelling units with which the WDUs are associated, the Plans for all associated properties must include a tabulation or table identifying the Plans that include the WDUs.

F. Building Permits and Residential Use Permits ("RUPs"). Building Permits may be issued at the same time or in phases for the dwelling units in a development; provided, however, that for any for-sale development, RUPs must not be issued for more than 75 percent of the total number of units in the development until such time as RUPs have been issued for at least 75 percent of the WDUs in the applicable phase of the development. A rental development is not subject to the limitation on the issuance of RUPs.

III. Determination of Sales Price and Rent

A. Initial Developer Sales Price.

1. The County Executive, or their designee, will publish a Maximum Price Schedule annually (or more frequently at their discretion) to set forth the maximum initial sales prices for for-sale WDUs.

2. The Maximum Price Schedule will be established based upon a maximum affordable monthly payment for households at the designated area median income ("AMI") levels. AMI is defined and updated periodically by the Department of Housing and Urban Development ("HUD"). Pricing will take into consideration household size and economic conditions such as interest rate, taxes, mortgage and

homeowners' insurance, and condominium and homeowner's association fees. The maximum sales price will be adjusted by HCD for WDUs with an association fee that exceeds 30% of the fees estimated in the Maximum Price Schedule.

3. The sales price formula may be amended periodically by the County Executive or their designee after consideration of written comment from the public and other information that may be available, such as the area's current real estate market and economic conditions.

B. Rental Pricing.

1. The County Executive, of their designee, will publish a Maximum Rent Schedule annually (or more frequent at their discretion).

2. Maximum rents for rental WDUs are calculated based on the annual AMI published annually by HUD, and adjusted by the following factors for different unit types:

Number of Bedrooms	Adjustment Factor
Efficiency (0 bedroom)	70%
1 Bedroom	85%
2 Bedrooms	100%
3 Bedrooms	115%
4 Bedrooms	130%

The result of this calculation for each size WDU is then divided by 12, then multiplied by 25 percent and rounded to the nearest whole number to establish the rent for the unit, excluding utilities.

3. Developments may rent units below the maximum WDU rental limits at their discretion.

IV. Declaration Of Workforce Dwelling Unit Covenants and Notice of Workforce Dwelling Unit Proffer

A. For-Sale Developments.

1. In for-sale developments containing WDUs, covenants that run with the land in favor of the FCRHA (the "For-Sale Covenants"), must be recorded

on the WDUs upon approval of the site plan or simultaneously with the recordation of the final subdivision plat. In the case of a condominium, covenants must be recorded simultaneously with the condominium declaration. The WDUs should be designated as part of the recorded condominium declaration and must be disclosed in the required public offering statement.

2. The For-Sale Covenants shall be in a form prescribed by DHCD and will provide that (i) the WDUs are subject to the provisions of these Administrative Guidelines, including the term of price control, and any other proffered conditions; (ii) the WDUs may not be sold for an amount that exceeds the Maximum Price Schedule; (iii) each unit may only be sold to a qualified household at the income level specified in the For-Sale Covenants; and (iv) the resale price and equity share of each unit shall be determined by DHCD, upon resale (Section VIII below).

3. In the case of a condominium where For-Sale Covenants are initially recorded before WDUs have been added to the Declaration of Condominium and created as individual legal entities, the legal description attached to the Declaration of Covenants must identify all of the WDUs, which have yet to be constructed. Prior to executing a contract on a WDU with a qualified homebuyer, the developer must have (a) recorded an amendment to the condominium declaration applicable to the property, establishing the WDU as an independent parcel of real property; and (b) recorded the Declaration of Covenants, in a form provided by DHCD, on the subject WDU, and (c) recorded any restatements of the previously recorded Declaration of Covenants as deemed necessary by DHCD.
4. The For-Sale Covenants must be senior to all instruments securing financing and binding upon all assignees, mortgagees, purchasers, and other successors in interest.

B. Rental Developments.

1. In rental developments containing WDUs, covenants that run with the land in favor of the FCRHA (the “Rental Covenants”), must be recorded on the property at least six months prior to the issuance of the first RUP for any dwelling unit in the development, concurrent with the submission of a Notice of Availability and Rental Offering Agreement (the “Rental

OA"), pursuant to Section V.B. The Rental Covenants shall be in a form prescribed by DHCD and will provide, among other things, that (i) the property is subject to the provisions of these Administrative Guidelines, including the term of price control, and any other proffered conditions; (ii) WDUs may not be rented for an amount that exceeds the Maximum Rent Schedule; and (iii) each unit may only be rented to a qualified household at the income level specified in the Covenant.

2. The Rental Covenants must be senior to all instruments securing financing and binding upon all assignees, mortgagees, purchasers, and other successors in interest.

V. Notice of Availability and Offering Agreement

A. For-Sale Developments.

1. After the issuance of the building permit for a property containing For-Sale WDUs, the developer must complete and submit to DHCD a Notice of Availability and For-Sale Offering Agreement (the "For-Sale OA") in the form provided by DHCD. The purpose of the For-Sale OA is to advise when WDU(s) will be completed and ready for purchase. The For-Sale OA must reflect the site and building plans and, at minimum, identify: (i) the unit or units being offered in the For-Sale OA; (ii) the unit type for each WDU, including number of bedrooms, the floor area, and amenities; (iii) the sales price and associated fees for each unit, in accordance with the Maximum Price Schedule; and (iv) the evidence of issuance of a building permit for the units. A For-Sale OA should be provided to DHCD concurrently with the For-Sale Covenants, pursuant to Section IV.A.

B. Rental Developments.

1. After the issuance of the building permit for a property containing Rental WDUs, the developer must complete and submit to DHCD Rental OA in the form provided by DHCD. The purpose of the Rental OA is to advise when WDUs will be completed and ready to rent. The notice must identify: (i) the unit or units being offered; (ii) the number of bedrooms, the floor area, and amenities for each unit; (iii) the rent, utilities, and other fees for each unit; and (iv) the evidence of issuance of a building permit for the units. The Rental OA should be provided to DHCD

concurrent with the Rental Covenants, pursuant to Section IV.B, at least six months prior to the issuance of the first RUP for any dwelling unit in the development.

2. The location of WDUs may be redesignated to a new location after the execution of the Rental OA, pursuant to Section X.B.3, provided that the developer must notify the FCRHA of such change in location, on a form prescribed by DHCD, to be reviewed and approved by the FCRHA for continued compliance with the WDU Policy and these Administrative Guidelines.

VI. Term of Price Control and First Rider

A. For-Sale Developments.

1. The price of WDUs and income levels of WDU owners must be controlled for a period of 30-years, beginning on the date of the deed from the developer to the initial owner. If a WDU is sold to a new owner prior to the expiration of the initial 30-year control period, a new 30-year control period will begin on the date of such resale. A new 30-year control period will begin on the date of each subsequent resale until the WDU is owned for an entire 30-year control period by the same individual(s), at which time the control period will expire.

2. During any 30-year control period, a WDU may not be sold or otherwise transferred or pledged as security for an amount higher than the Maximum Control Price approved by DHCD (Section VIII below).

B. Rental Developments.

1. The rents of WDUs and the income levels of WDU tenants must be controlled for a period of 50 years from the date of issuance of the first RUP of the WDUs in the development, in a form determined by DHCD.

2. A property owner, developer, or their designee must record a First Rider to the Rental Covenants (the “First Rider”) in a form provided by DHCD. The First Rider states, among other things, that the unit is part of the WDU program, is subject to the restrictions of the WDU Policy and the Declaration of Covenants, and defines the control period expiration date.

In developments with multiple buildings, separate riders will be recorded upon the issuance of the first RUP for each building.

VII. Initial Sale/Rental and Right to Purchase/Rent

A. Initial Sale.

1. It is a violation of the proffered conditions associated with a WDU to purchase a unit or to sell it or otherwise transfer or pledge it as security for an amount higher than the approved sales price during any period of price control.

2. The initial sale of a WDU, including the initial sale of a condominium conversion unit, must be for a price no greater than the Maximum Sales Price.

3. The initial sale of a WDU must be made only to a person or household that meets the applicable income qualifications for the occupancy of a WDU and has been issued a Certificate of Qualification by DHCD. It is the preference of HCD for potential buyers to complete the pre-qualification process as soon as possible, prior to searching for a WDU, in order to facilitate a more efficient sales process.

4. Developers are responsible for marketing the WDUs. All WDU marketing materials must include a statement clearly explaining the income restrictions and that the units will be encumbered by an affordability covenant. Marketing materials should be provided to DHCD for review and posting on its website.

5. At the time of the initial sale of an individual WDU, the developer must:

   (a) provide a copy of the recorded For-Sale Covenants to prospective purchasers with the sales contract;

   (b) include in the deed a statement that the WDU is subject to the For-Sale Covenants, with a specific reference to the deed book and page where the For-Sale Covenants are recorded; and,

   (c) include in the deed a statement that the total aggregate amount of indebtedness that may be secured by the WDU is limited and that

other terms and conditions apply, including, but not limited to, a right for the FCRHA or a nonprofit agency designated by the County Executive to acquire the WDU on certain terms in the event of a pending foreclosure sale.

6. Right to Purchase.

(a) For a period of 90 days from the date that the For-Sale OA is fully executed (the "90-Day Period"), the FCRHA has an exclusive right to elect to purchase up to one-third of the WDUs shown on the For-Sale OA (the FCRHA Purchase Right). If the FCRHA elects to exercise its purchase option, the FCRHA will notify the developer in writing of its intent to purchase all or a portion of the WDUs it has been offered. An all-cash closing must occur within 150 days from the date of the FCRHA notification of election to purchase, provided a RUP has been issued for the WDU(s) being purchased prior to closing.

(b) The remaining two-thirds of the WDUs and any WDUs that the FCRHA does not elect to purchase pursuant to the FCRHA Purchase Right are to be offered for sale to persons who have been issued a Certificate of Qualification by DHCD, or its designee, subject to Section VII.A. It is a violation of this WDU Policy for a developer to sell a WDU to a household who has not been issued a Certificate of Qualification. Developers must refer any potential buyers to DHCD, or its designee, for eligibility qualification.

(c) After the first 30 days of the 90-Day Period, the FCRHA may elect to purchase up to one-half of the remaining WDUs then available. The FCRHA must provide for an all-cash closing in accordance with Section VII.5.

(d) Upon expiration of the FCRHA Purchase Right, the WDUs not sold to the FCRHA or qualified purchasers may be sold to nonprofit housing groups, as designated by the County Executive or their designee, subject to the established WDU prices and the requirements of the applicable proffered conditions.

B. Rental Developments.

1. Lease Requirements.

   (a) Any WDUs not leased by the FCRHA, per Section VII.B.2 below, are to be leased for a minimum six-month period with a maximum renewable lease term of one year to a person or household who meets the eligibility criteria established by DHCD.

   (b) The lease agreements for such units must include conditions that require the tenant to occupy the unit as his or her domicile, that prohibit the subleasing of the unit, that require continued compliance with the applicable eligibility criteria, and that require the tenant to annually verify, on a form approved by the DHCD, his or her annual income and such other facts that the landlord may require in order to ensure that the tenant continues to meet the applicable eligibility criteria.

   (c) The landlord is responsible for determining that the individual or household meets the eligibility criteria applicable to tenants in rental WDUs. Eligible tenants must continue to meet the income criteria established by DHCD to continue occupancy of the WDU. However, a tenant who no longer meets such criteria may continue to occupy a WDU until the end of the lease term.

   (d) It is a violation of this WDU Policy for a landlord to rent or continue to rent a WDU to an individual or household who does not meet or fails to continue to meet the eligibility criteria established by DHCD, except for circumstances specifically set forth in the previous section and Section X.B.

2. Right to Rent. The FCRHA has an exclusive right to lease, and subsequently sublease, up to one-third of the WDUs within a development and must notify the developer in writing of its intent to lease all or a portion of such WDUs within 30 days from the date that the Rental OA is fully executed. The FCRHA may request to lease additional rental units at the WDU rent or market rent, as appropriate. The developer may lease the additional requested units to the FCRHA as their election under the terms of a mutually agreed upon lease form.

VIII. Resale of For-Sale WDUs

A. During the 30-Year Control Period.

1. If a WDU owner desires to sell their WDU prior to the expiration of the 30-year control period, they must first provide DHCD with written notification that the WDU is being offered for sale in a form prescribed by DHCD (the "Sale Notice"). In response to the Sale Notice, DHCD will provide the WDU owner with a resale price calculated according to Section VIII.A.4 (the "Maximum Control Price") and a notification of its election under Section VIII.A.2.

2. After receipt of the Sale Notice, the FCRHA has the exclusive right to purchase the WDU and must notify the WDU owner in writing within 45 days after receipt of the Sale Notice of its election. If the FCRHA elects to purchase the subject WDU, then the FCHRA will provide the WDU owner with a purchase contract for the WDU, on a form approved by DHCD and subject to certain conditions, such as acceptable condition of title and acceptable physical and environmental conditions. The purchase price of the WDU offered to the FCRHA shall not exceed the Maximum Control Price. An all-cash closing must occur within 120 days after DHCD's receipt of the Sale Notice, provided all conditions of the purchase contract are satisfied.

3. If the FCRHA does not elect to purchase a WDU pursuant to Section VIII.A.2 above, then the WDU is to be offered to households who have been issued a Certificate of Qualification by DHCD or their designee.

4. WDUs may not be offered for sale for a price greater than the Maximum Control Price. The Maximum Control Price is calculated as follows and will be determined by DHCD:

   (a) For properties purchased prior to [Adopted date of these Administrative Guidelines]: original sales price plus a percentage of the WDU's original sales price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index.

   (b) For properties purchased after [Adopted date of Administrative Guidelines], the original sales price adjusted by a five-year

compounded annual growth rate ("CAGR") of the Area Median Income, or such other index selected by the County Executive.

(c) The Maximum Control Prices for any WDUs may be adjusted to include the lesser of the current fair market value or the actual original cost of certain improvements made to the unit between the date of original sale and the date of resale. The value of such improvements shall be in accordance with the capital improvement policies as outlined in the For-Sale Covenants recorded on each WDU.

5. No increase in sales price is allowed for the payment of broker fees associated with the sale of the WDU, except as may be outlined in resale policies developed and updated periodically by DHCD.

B. <u>After Expiration of the 30-Year Control Period</u>.

1. For the sale of a WDU after the expiration of the 30-year control period under a single ownership, the FCRHA has the first right to purchase the WDU. The WDU owner must first provide DHCD with the Sale Notice. Within 45 days of DHCD's receipt of the Sale Notice from a WDU owner, DHCD will respond to the owner in writing advising whether or not the FCRHA elects to purchase the WDU. If the FCRHA elects to purchase the subject WDU, then the FCHRA will provide the WDU owner with a purchase contract on a form approved by DHCD and subject to certain conditions, such as acceptable condition of title and acceptable physical and environmental conditions. An all-cash closing must occur within 120 days after DHCD's receipt of the Sale Notice, provided all conditions of the purchase contract are satisfied.

2. In all instances, whether or not the FCRHA elects to purchase the WDU, one-half of the amount of the difference between the net sales price paid by the purchaser at such sale and the Maximum Control Price, pursuant to Section VIII.A.4 above, is to be contributed to the Fairfax County Housing Trust Fund as part of the disbursement of settlements proceeds. Notice of such Fairfax County Housing Trust Fund equity interest may be evidenced by a document recorded among the land records of Fairfax County, Virginia, encumbering any WDU. Net sales price must exclude closing costs such as title charges, transfer charges, recording charges,

commission fees, points, and similar charges related to the closing of the sale of the property paid by the seller. The final determination of the net sales price will be made by DHCD.

3. All amounts necessary to pay and satisfy any and all liens, judgments, deeds of trust, or other encumbrances on the WDU, other than the payment to the Fairfax County Housing Trust Fund, must be paid by the seller out of proceeds from such sale, as determined in accordance with this section, or must be paid otherwise by the seller. In no event may any such amounts required to be paid by the seller reduce the amount, as determined in accordance with this section, which is to be contributed to the Fairfax County Housing Trust Fund.

4. At the closing of the first sale of a WDU after the expiration of 30-year control period, the For-Sale WDU Covenant will be released from the WDU.

IX. Conversion of WDUs from Rental to Condominium

A. If a building is initially built as a rental project and subsequently converts to a condominium, then:

1. The development must provide for-sale WDUs in accordance with the for-sale guidelines set forth in this WDU Policy and the requirements of the applicable proffered conditions in terms of percentage of units and income tiers.

2. The WDUs must be specifically identified by unit number as part of the recorded condominium declaration. In addition, a new For-Sale OA must be submitted to DHCD through the process described in Section V.A. For-Sale WDU Covenants must be recorded on each For-Sale WDU prior to sale.

3. The initial sale of a condominium conversion WDU must be for a price no greater than the Maximum Sales Price.

4. The rental tenant occupants of the WDUs subject to the condominium conversion must have the right to purchase the unit they occupy at the price up to the Maximum Sales Price.

5. The FCRHA shall have the right to purchase some or all of the WDUs that are not purchased by the then-current rental WDU tenants, pursuant to the terms of Section VII.6 above.

B. For condominium conversion WDUs, regardless of the length of time the unit was offered as a rental WDU, the initial term of price control for the first sale of the unit after conversion must be for a period of 30 years from the date of the initial sale, per Section VI. Term of Price Control. Subsequent resale of such converted WDUs must be administered under the provisions of Section VIII above.

X. Occupancy Eligibility

A. For Sale Development.

1. Before an individual may purchase a WDU, he or she must obtain a Certificate of Qualification from DHCD, or their designee. Before issuing a Certificate of Qualification, the DHCD, or their designee, will make the determination that the applicant meets the criteria established by the DHCD for low- and moderate-income persons applicable to for-sale WDUs.

2. Except for circumstances specifically set forth in these Administrative Guidelines, it is a violation of these Administrative Guidelines for someone to sell a WDU to an individual who has not been issued a Certificate of Qualification by the DHCD, or its designee.

B. Rental Development.

1. Renters of WDUs must occupy the unit as their primary residence and must provide an executed affidavit on an annual basis certifying their continuing occupancy of the WDU. Renters must provide such affidavit to their landlords by the date specified in their lease or is otherwise be specified by the landlord. If the renter of a WDU fails to provide their landlord with an executed affidavit within 30 days of a written request for such affidavit, then the lease will automatically terminate, become null and void, and the renter will vacate the unit within 30 days of written notice from the landlord.

2. If a renter fails to occupy a WDU for a period in excess of 60 days, unless such failure is approved in writing by DHCD, then the lease will automatically terminate, become null and void and the renter will vacate the unit within 30 days of written notice from the landlord.

3. Designation of Replacement WDU.

   a. If a WDU tenant no longer meets the WDU eligibility or occupancy requirements and the landlord or property owner at its discretion elects to allow the tenant to remain in the unit as a market-rate unit, the landlord must immediately designate an additional comparable unit as a WDU to be leased under the Administrative Guidelines requirements. In such an event, the landlord must notify the FCRHA of the proposed changes in the location of a WDU, on a form prescribed by DHCD, to be reviewed and approved by DHCD for continued compliance with the WDU Policy and these Administrative Guidelines.

   b. If a landlord or property owner wants to redesignate a WDU for other tenant non-renewal reasons, the landlord or property owner must notify the FCRHA of the proposed changes in the location of a WDU, on a form prescribed by DHCD, to be reviewed and approved by DHCD for continued compliance with the WDU Policy and these Administrative Guidelines.

   c. In either circumstance, DHCD does not approve a proposed redesignation, the landlord or property owner must propose an alternative comparable WDU until compliance with WDU Policy and these Administrative Guidelines is achieved.

XI. Reporting and Monitoring

A. For-sale Developments. Purchasers of WDUs must provide an executed affidavit on an annual basis certifying their continuing occupancy of the units, as a form prescribed by DHCD. Owners of for-sale WDUs must forward such affidavit to the DHCD each year that they own the unit.

B. Rental Developments.

1. By the end of each month, the property owner, landlord, or their designee, of a development containing rental WDUs leased to individuals other than the FCRHA must provide DHCD with a statement signed by the property owner or their designee that certifies the following as of the first of such month (the "Compliance Certification"):

   (a) The property name, address, the name of the ownership entity, and points of contact for the owner entity and property manager;
   (b) The number of WDUs leased to the FCRHA by unit type and floor area;
   (c) The number of vacant WDUs by unit type and floor area, other than those leased to the FCRHA; and,
   (d) The number of WDUs leased directly to individuals and household. For each occupied unit, the statement must contain the following information:
      (1) The unit address/number;
      (2) Designated AMI level;
      (3) Unit type by bedrooms, bathrooms, and floor area;
      (4) Name of leaseholder(s) and household size;
      (5) The effective date of the lease;
      (6) The tenant's household income as of the date of the eligibility qualification of the current lease term, as confirmed by the landlord or their designee;
      (7) The current monthly rent; and,
      (8) Any required and optional fees paid by the household to the landlord;

   (e) That to the best of the owner's information and knowledge, the tenants who are leasing WDUs at the time of the Compliance Certification meet the eligibility criteria established by the DHCD and are qualified to lease the WDUs.

2. The property owner, landlord, or their designee will provide DHCD with copies of documentation related the Compliance Certificate detailing each new or revised annual tenant verification obtained from the renters of WDUs pursuant to Section XI.B.1 above.

XII. Financing Control and Foreclosure of WDUs

A. The total amount of financing secured by an individual for-sale WDU must not exceed the owner's purchase price, as adjusted in accordance with these Administrative Guidelines.

B. Refinancing of an individual for-sale WDU must not exceed the Maximum Control Price of the WDU at the time of refinancing. DHCD will issue a determination of the Maximum Control Price upon notice of intent to refinance.

C. No sale, pledge of a security interest, foreclosure or other transfer of a WDU will affect the validity of the For-Sale Covenants or the Rental Covenants, except as set forth in these Administrative Guidelines.

D. The For-Sale Covenant and the Rental Covenant must be senior to all instruments securing financing, and are binding upon all assignees, mortgagees, purchasers, and other successors in interest.

E. In the event of foreclosure of a development comprised solely of rental multi-family dwelling units, where such development contains WDUs, the Rental Covenants must not be released.

F. In the event of a foreclosure of an individual for sale WDU, the For-Sale Covenants recorded on that WDU may terminate upon a foreclosure by an institutional lender holding a first priority purchase money deed of trust on the subject for-sale WDU ("Eligible Lender") or upon the sale of the WDU by a trustee on behalf of the Eligible Lender to a bona fide purchaser for value at a foreclosure sale. All requirements set forth in these Administrative Guidelines, the applicable proffers, the covenants, and all other applicable regulations with respect to such foreclosure sale must be satisfied prior to the release of the For Sale Covenant. Such requirements include, but are not limited to, providing the FCRHA written notice of the foreclosure sale proposed and the FCRHA's right to acquire, as set forth in these Administrative Guidelines.

G. Each Eligible Lender and any other lender secured by an interest in the WDU must provide written notice of a foreclosure to the FCRHA at least 90 days prior to the foreclosure sale. At any time during such 90-day period, the

FCRHA or its designee will have the right to acquire the WDU at or before any foreclosure sale. The FCRHA's purchase price will be the lesser of (i) the outstanding indebtedness on the WDU owed to the Eligible Lender, including principal, interest, and reasonable and customary fees (the "Outstanding First Trust Debt") or (ii) the amount of the owner's Maximum Control Price, as adjusted in accordance with Section VIII.A.4, and other reasonable and customary costs and expenses. No owner, prior owner, or other party, whether secured or not, will have any rights to compensation under such circumstances.

H. If neither the FCRHA nor its designee exercises the right to acquire the WDU, and the WDU is sold for an amount greater than the Outstanding First Trust Debt, the remaining amount in excess of the Outstanding First Trust Debt must be paid to the Fairfax County Housing Trust Fund in Fairfax County as part of the disbursement of settlement proceeds."

Tracking Table by Section, 2021 Administative Guidelines to the Proposed Revisions

Section of 2021 Administrative Guidelines	Section in Proposed Administrative Guidelines
Introduction	Introduction and Section I. Overview of Administrative Guidelines
Section 1. Integration and Dispersion	Section II Technical Requirements (Sects. II.A.1)
Section 2. Workforce Dwelling Unit Floor Area	Section II. Technical Requirements (Sect. II.C.1; II.B.1; II.B.4)
Section 3. Designation of Workforce Dwelling Units on Approved Plans	Section II. Technical Requirements (Sect. II.B.4; II.C.1-2; II.D; II.E
Section 4. Condominium Developments	
Section 4.A	Section II. Technical Requirements (Sects. II.A and II.C)
Section 4.B	Section IX. Conversion of WDUs from Rental to Condominium (Sect. IX.A)
Section 5. Limitations on Building Permits and Residential Use Permits.	Section II Technical Requirements (Sect. II.F) and Section V. Notice of Availability and Offering Agreement
Section 6. Workforce Dwelling Unit Specifications	Deleted; superseded by Section II. Technical Requirements
Section 7. Administration of For Sale Workforce Dwelling Unit	
Section 7.A	Introduction
Section 7.B	Section VII. Initial Sale/Rental and Right to Purchase/Rent, Initial Sale (Sect. VII.A.6) and Section V. Notice of Availability and Offering Agreement, For-Sale Developments, (Sect. V.A)

Sections 7.C through 7.E	Section VII. Initial Sale/Rental and Right to Purchase/Rent, Initial Sale, Right to Purchase (Sect. VII.A.6)
Sections 7.F through 7.H	Section III. Determination of Sales Price and Rent, Initial Developer Sales Price (Sects. III.A.1-3)
Section 8. Administration of Rental Workforce Dwelling Units	
Sections 8.A through 8.C	Introduction; Section V. Notice of Availability and Offering Agreement, Rental Developments, (Sect. V.B.1); Section VII. Initial Sale/Rental and Right to Purchase/Rent, Rental Developments, (Sect. VII.B)
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Section 11. Financing Control and Foreclosure of WDUs	Section XII. Financing Control and Foreclosure of WDUs
Section 12. Covenants and Deed Notifications	
Section 12.A, 12B, and 12D	Section IV. Declaration of Workforce Dwelling Unit Covenants and Notice of Workforce Dwelling Unit Proffer
Section 12.C	Section VII. Initial Sale/Rental and Right to Purchase, Initial Sale (Sect. VII.A)
Section 13. Occupancy of WDUs	
Section 13.A, 13.B, 13.C, 13.E, 13.F, 13.h, 13.I	Section X. Occupancy Eligibility
Sections 13.D and 13.G	Sections VII Initial Sale/Rental and Right to Purchase, Rental Developments (Sect. VII.B)