

REGULATION NO. Reg-03-19

ADOPTION OF AFFORDABLE HOUSING PROGRAM
REGULATIONS AS PROVIDED BY CHAPTER 2
OF THE CITY CODE ENTITLED "ADMINISTRATION"

WHEREAS, Section 24-257 of the City Code requires the City Council to adopt regulations to implement the City's Affordable Housing Ordinance with respect to administration, enforcement, pricing, eligibility requirements for purchases and renters control period for ownership units, procedures governing waiver requests, and resale restrictions; and

WHEREAS, the City's Affordable Housing Regulations were most recently updated in 2009; and

WHEREAS, the Mayor and City Council have determined that modifications to the existing Regulations, as attached, are necessary and in the public interest:

NOW THEREFORE, BE IT RESOLVED that the Mayor and City Council of Gaithersburg hereby adopt the Gaithersburg Affordable Housing Program Regulations, as amended and attached hereto.

ADOPTED by the City Council this 18th day of March, 2019.



JUD ASHMAN, MAYOR and
President of the Council

THIS IS TO CERTIFY, that the foregoing
Resolution was adopted by the City
Council, in public meeting assembled on
the 18th day of March, 2019.



Tony Tomasello, City Manager

REGULATION NO. Reg-03-19

MODERATELY PRICED DWELLING UNIT (MPDU)
AND WORK FORCE HOUSING UNIT (WFHU) REGULATIONS

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AFFORDABLE HOUSING PROGRAM REGULATIONS

SECTION ONE: PURPOSE AND DEFINITIONS

1. **Purpose:** These regulations establish policies, procedures, and guidelines for the administration and implementation of the affordable housing requirements adopted by the City of Gaithersburg pursuant to Chapter 24 of the Gaithersburg City Code. It is the purpose and intent of the ordinance and regulations to ensure that new residential developments within the City of Gaithersburg offer affordable ownership and rental housing opportunities to households earning between 50 and 120 percent of Area Median Income. The regulations apply to all Moderately Priced Dwelling Units (“MPDU”) and Workforce Housing Units (“WFHU”) administered by the City of Gaithersburg in its affordable housing program, to all developers and Applicants required to construct said affordable units pursuant to Article XVI of Chapter 24 of the City Code, and to all persons and/or households participating in the program.
2. **Periodic Revision:** It is anticipated that these regulations will require additions and revisions from time to time in order to address evolving housing needs in the City of Gaithersburg and to respond to issues not specifically delineated herein.
3. **Definitions:**
 - (a) Area Median Income (“AMI”): the median income for the Washington, D.C. Metropolitan Area, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development (“HUD”) and updated from time to time.
 - (b) Affordable Housing Ordinance: Article XVI of Chapter 24 of the City Code and any amendments.
 - (c) Affordable Housing Fund: a fund established to support the creation and maintenance of affordable housing in the City of Gaithersburg.
 - (d) Affordable Unit: any residential unit purchased or rented pursuant to the Affordable Housing Ordinance and these Regulations.
 - (e) Applicant: any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities, and any transferee of all or part of the land at one location offering a total of 20 or more new residential dwelling units in the City of Gaithersburg.
 - (f) Approved Sales Price: price at which a for-sale unit is determined to be affordable. For Moderately Priced Dwelling Units, the approved sales price will be affordable to households earning 65 percent of AMI adjusted for household size. For Workforce Housing Units, the approved sales price will be affordable to households earning 90 percent of AMI adjusted for household size.
 - (g) Approved Rental Price: price at which rental units are determined to be affordable. For low-rise units, the approved rental price will be affordable to households earning

60 percent of Area Median Income adjusted for household size. For high-rise units, as defined in the International Building Code, adopted in Chapter 5 of the City Code, the approved rental price will be affordable to households earning 65 percent of Area Median Income.

- (h) Certificate of Eligibility: a certificate issued by the City of Gaithersburg to a Participant in the affordable housing program.
- (i) Consumer Price Index (“CPI”): the latest published version of the Consumer Price Index for all Urban Consumers (CPI-U) of the U.S. Department of Labor for the Urban Area that includes Washington DC or any similar index selected by the City Manager.
- (j) Control Period: the time a Moderately Priced Dwelling Unit or Workforce Housing Unit is subject to the restrictions of the Affordable Housing Ordinance. All rental units governed by the provisions of the Affordable Housing Ordinance 01-18 are subject to the restrictions of the affordable housing requirements from the date of initial occupancy until the property is no longer used as rental housing. Any rental property with an Offering Agreement in place prior to February 25, 2018 is subject to a 30-year control period to commence on the date of the original sale or lease of a property. For-sale MPDUs and WFHUs are subject to a control period of 30 years to commence on the date of the original sale for any unit. The control period shall not be reset during the term of ownership.
- (k) Date of Original Sale: the date of settlement for the first purchase of an affordable unit by a Participant.
- (l) Date of Original Lease: the date the first lease agreement for a moderately priced dwelling unit takes effect.
- (m) Dwelling Unit: a building or part of a building that provides complete living facilities for one household, including at a minimum, facilities for cooking, sanitation and sleeping.
- (n) Eligible Person: a person or household whose income qualifies that person or household to participate in the affordable housing program and who satisfies all requirements of eligibility as established by regulation.
- (o) Enterprise Zone: a geographic area designated as an enterprise zone pursuant to State law.
- (p) Fair Market Value of Capital Improvements: the actual and reasonable costs of materials, professional fees, contractor’s costs, and permit fees associated with furnishing and installing improvements.
- (q) Household: all the persons who occupy a housing unit. The occupants may be a single family, one person living alone or up to five unrelated individuals living together as a housekeeping unit.

- (r) Household Income: any and all sources of income from all adult wage earners, aged 18 and older, who occupy, or seek to occupy, an affordable unit.
- (s) Housing Costs: principal and interest, mortgage insurance, taxes, and common ownership fees.
- (t) Housing for the Elderly: a building or buildings containing residential units and related accessory facilities, such as dining, recreational services or therapy areas, where the occupancy of the dwellings is restricted to elderly persons as defined under Section 24-1. Such facilities may include independent living, assisted living, day care, skilled nursing facilities, memory care, or other services to the elderly persons of the community. Any combination of the foregoing uses may be allowed and still be considered as qualifying under this definition.
- (u) Location: all adjacent land of the Applicant if (1) the property lines are contiguous or nearly contiguous at any point; (2) the property lines are separated only by a public or private street, road, highway or utility right of way, or other public or private right of way at any point; or (3) the property lines are separated only by other land of the Applicant that is not subject to the Affordable Housing Ordinance or these Regulations at the time of any permit, site plan, development or subdivision application by the Applicant.
- (v) Moderately Priced Dwelling Unit (“MPDU”): unit that is offered to eligible Participants under the terms of the affordable housing program and is available to households earning at least 50 percent of AMI, but not more than 80 percent of AMI, adjusted for household size.
- (w) Participant: a qualified eligible household or person who, upon certification by the City, is eligible to participate in the affordable housing program. Unless otherwise exempted by the City Manager or designee, a participant must have lived or worked within the City of Gaithersburg for at least one year prior to the date on which an application for an available unit has been received.
- (x) Priority Participants: full-time and permanent part-time City of Gaithersburg employees, Public Safety Workers, Veterans or K-12 Montgomery County public school employees and employees of private educational institutions located in Montgomery County and licensed by the State of Maryland. Priority participants must have lived or worked in the City for at least one year prior to submitting an application for an affordable unit.
- (y) Program: the Affordable Housing Program administered by the City of Gaithersburg.
- (z) Program Applicants: any person or household who submits an application to purchase or lease an affordable unit.
- (aa) Public Safety Workers: full-time federal, state, or local law enforcement personnel, Emergency Medical Technicians, and fire fighters having some jurisdiction in Gaithersburg.

- (bb) **Redevelopment:** the removal of an existing structure or structures and replacement with a new structure or structures.
- (cc) **Short-term Rentals:** renting out of a furnished home, apartment, or condominium, or any habitable room in each housing type, for fewer than 30 days.
- (dd) **Undue Economic Hardship:** deprivation of all viable economic use of land.
- (ee) **Veteran:** a person who served in the active military, naval or air service, and was discharged and released under conditions other than dishonorable.
- (ff) **Work Force Housing Unit (“WFHU”):** unit that is offered to eligible Participants under the terms of the affordable housing program and is available to households earning no more than 120 percent of AMI, adjusted for household size.

SECTION TWO: FOR-SALE DEVELOPMENT REQUIREMENTS

1. Applicability: Unless otherwise exempted by Ordinance, the requirements of the Affordable Housing Ordinance shall be imposed on all residential dwelling units in any new for-sale construction project or redevelopment of 20 or more units. The requirements of the Ordinance shall be imposed on any Applicant who submits a housing development plan for any type of site plan review or development approval required by law and which proposes the construction of 20 or more residential dwelling units at one Location. Nothing in these Regulations prohibits an Applicant from voluntarily building MPDUs or WFHUs in any residential development with fewer than 20 dwelling units at one Location. An Applicant who voluntarily elects to build MPDUs or WFHUs in a development with fewer than 20 dwelling units must comply with all procedures, requirements, and standards of the Affordable Housing Ordinance and these Regulations.

(a) **Piecemeal Applications:** An Applicant may not avoid the requirements of the Affordable Housing Ordinance or these Regulations by submitting piecemeal applications or approval requests for subdivision plats, site or development plans, or building permits.

1. An applicant may submit applications for development approvals, record plats, or request for building permits for less than 20 units at any time; however, the applicant must agree in writing that, upon the next such application or request, the applicant will comply with the requirements of the Affordable Housing Ordinance and these Regulations when the total number of dwelling units at one Location contained in successive applications has reached or exceeded 20 dwelling units.

2. In calculating whether a development contains a total of 20 or more dwelling units for purposes of the Affordable Housing Ordinance, the development shall include all land at one Location in the City available for building development under common ownership or control by an applicant, including land owned or controlled by separate corporations in which any stockholder or family of the stockholder owns or controls at least 10 percent of the stock.

(b) **Responsibility of Applicant/Developer:** Applicants for any project or development shall be responsible for providing current, complete, accurate, and valid information regarding any proposed development and for responding to inquiries by the City Manager or designee with timely and complete information. The Applicant shall be required to provide preliminary information on a proposed development including, but not limited to:

1. Project Name
2. Address/Location
3. Project Type: rental and/or for-sale
4. Unit Type: (e.g., townhouse/condo/s/f detached)
5. Number of Units by Type

(c) **Affordable Housing Plan:** Following a determination that the requirements of the Affordable Housing Ordinance apply to a proposed development, and subsequent notification of that determination to the Applicant, the Applicant must submit an affordable housing plan. The affordable housing plan must be submitted and approved prior to receiving Mayor and City Council approval of any relevant schematic development plan and before receiving Planning Commission approval of any relevant site plan. The affordable housing plan shall include the following:

1. the number of units by type;
2. the number of MPDUs and WFHUs to be built by type and the proposed location of these units within the proposed development;
3. the name of the subdivision at which the units will be built, along with the condominium name if applicable;
4. if available, a copy of the building floor plans (for multi-family buildings) and the unit layout of each MPDU unit type with dimensions and square footage.
5. a location plan of all units with MPDUs and WFHUs highlighted;
6. an agreement that the MPDUs and/or WFHUs will be built along with, or before, other units in the development.

2. **Alternative Payment Procedure for Affordable Units Required but Not Built (outside an enterprise zone):** Upon written request by the Applicant, the Mayor and City Council may, by Resolution, permit an Applicant to contribute a fee to a City Affordable Housing Fund for each affordable unit required to be built under the terms of the Affordable Housing Ordinance but not actually built.

- (a) Such a contribution shall be permitted only upon a documented showing by the Applicant that the required units will not be reasonably affordable to eligible purchasers under the program because of high common ownership community fees.
- (b) A determination of what constitutes reasonable affordability shall be made on a case by case basis and shall include a review of documented information presented by the Applicant and any other reasonable factors the Mayor and Council may consider.

- (c) The amount paid to the Affordable Housing Fund pursuant to this provision shall be the difference between the actual market price of a particular market unit and the actual cost of construction of that unit for each unit required but not built. The cost of construction must be documented by verifiable financial data and be subject to review and approval by the City Manager or designee and, if appropriate, by an independent financial analyst retained by the City Manager or designee.
- 3. Control Period:** Sale price controls and other restrictions imposed by law, regulation, or covenant on MPDUs and WFHUs shall remain in effect for a period of 30 years, commencing from the date of original sale of a unit. The control period shall run continuously without interruption or re-set from the original date of sale of a unit regardless of any transfer in ownership during the 30 year period.
- 4. Percentage and Mix of Affordable Units to be Set-Aside**
- (a) In any new construction or redevelopment containing 20 or more for-sale units, an Applicant shall set-aside a total of 15 percent of the units as affordable MPDUs and WFHUs. The Applicant shall divide the number of affordable units evenly, constructing 7.50 percent as MPDUs and 7.50 percent as WFHU units.
 - 1. In calculating the number of units to be created, if the calculation results in the creation of a partial unit, the number of units required shall always be rounded up to the nearest whole number. For example, 15 percent of 115 units calculates to 17.25 units. Under this regulation, 18 units would be required.
 - 2. Fifteen percent constitutes a minimum affordable unit requirement. Nothing in the Affordable Housing Ordinance or these Regulations prohibits an Applicant from providing more than 15 percent of the units in a development as affordable.
 - (b) The mix of MPDUs and WFHUs shall be comparable to the mix of market rate units in the overall development; however, when a development is a mixed use housing project, single family detached MPDUs and WFHUs shall not be a required component of the affordable unit mix, provided the total number of affordable units satisfies the 15 percent minimum requirement. In a development in which the number of units would not result in an equal number of for-sale MPDUs and WFHUs, the City Manager shall determine the number of MPDUs and WFHUs.
- 5. Notice of Unit Availability:** Prior to offering any MPDU or WFHU for sale, an Applicant must submit to the City Manager or designee an offering agreement notifying the City of a proposed offering and the date on which the Applicant will be ready to market properties or floor plans to eligible Participants. Before any units may be marketed, the offering agreement must be reviewed and accepted by the City Manager or designee. The offering agreement must include, but is not limited to, the following information:
- (a) a description of the property (the lot/block, street addresses, and tax account numbers of the units);
 - (b) the number of units offered, including information on the bedroom mix;

- (c) a physical description of individual units, including the floor area and a description of the amenities offered in each unit;
- (d) a copy of the floor plan options for each unit type; and the unit layout of each unit type with dimensions and square footage;
- (e) a schedule of purchase prices for each unit, including the settlement costs to be paid by the developer;
- (f) a list of any options and the accompanying costs to be available to the buyer (not to exceed 5% of the sales price);
- (g) a list of all additional charges, including WSSC and common ownership fees, to be paid by the buyer;
- (h) a warranty that the units will conform to the minimum specifications for all residential dwelling units as required by City laws and regulations;
- (i) recorded subdivision plat;
- (j) house location plat;
- (k) a copy of the approved preliminary plan and/or development plan designating location of the units;
- (l) a delivery schedule, including an agreement by the developer that the property will be available for occupancy within 365 days of the date of acceptance of the offering agreement by the City;
- (m) an agreement by the developer to establish a priority marketing period in which it agrees to market the affordable units exclusively to eligible lottery Participants for a maximum of 180 days from the date of the lottery. If a lottery is not conducted, the City shall determine the number of days to market the units;
- (n) a statement agreeing that, within 15 days of the execution of a sales contract for each unit, the developer must provide the City Manager or designee with copies of: the sales contract, the purchaser's original Certificate of Eligibility, the purchaser's acknowledgment of receipt of covenants, the purchaser's agreement described below in paragraph 11, and the purchaser's homebuyer seminar certificate as required in Section 6 of these Regulations;
- (o) a statement agreeing that within 15 days after settlement, the developer must provide the City Manager or designee with copies of the settlement sheet for each unit sold and copies of the two-party deed for every unit;
- (p) any other information the City Manager or designee deems necessary;
- (q) an executed copy of the applicable covenants in recordable form.

6. Participant Eligibility: A person or household interested in purchasing an MPDU or WFHU must submit an application to the City Manager, or designee, to be certified as eligible to participate in the Program. A household determined to be eligible shall be issued a non-transferable Certificate of Eligibility identifying the eligible Participant, the name of the project for which the Participant has been deemed eligible, and an expiration date. Eligibility determinations shall be based on the following criteria:

(a) Income Eligibility:

1. MPDU Purchasers: Household incomes may not be less than 50 percent, nor more than 80 percent of AMI adjusted for household size.
2. WFHU Purchasers: Household incomes may not be more than 120 percent of AMI adjusted for household size.
3. For purposes of determining income eligibility, sources of income include, but are not limited to:
 - a. interest from savings and checking accounts;
 - b. dividends from stocks, mutual funds, and bonds;
 - c. interest from certificates of deposit;
 - d. social security benefits;
 - e. VA benefits;
 - f. wage and salary;
 - g. child support;
 - h. alimony;
 - i. overtime;
 - j. unemployment insurance;
 - k. bonus payments;
 - l. pension and retirement payments;
 - m. long term disability payments;
 - n. any other trusts, annuities, or stipends, or royalties;
 - o. any and all sources of income reasonably attributable to members of a household as determined by the City Manager or designee.

4. AMI shall be adjusted as follows in order to calculate Household Income:

Household Size	1	2	3	4	5+
Adjustment Factor	.70	.80	.90	1.00	1.08

(b) Other Eligibility Requirements:

1. Unless otherwise approved by the City Manager, a Program Participant must have lived or worked within the City of Gaithersburg for at least one year prior to the date on which an application for an available unit has been received.
2. A Priority Participant (full-time or permanent part-time) City of Gaithersburg employees, Public Safety Workers, K-12 Montgomery County public and private school employees and Veterans) must have lived or worked in the City for at least one year prior to submitting an application for an affordable unit. Any individual or household seeking to receive priority status must, upon submission of an application for the program, provide documented evidence of employment in a priority category.
3. A Participant must not have previously owned a home within 5 years of the date on which an application for the program is received. This provision may be waived by the City Manager or designee for good cause, defined as a sale or foreclosure with no proceeds from the sale of the home.
4. A Participant must certify that, during the period of ownership, the Participant will occupy the unit as his/her only residence. At least once per year, affordable unit owners must submit to the City an executed affidavit certifying continued occupancy of the unit. An owner who fails to occupy an MPDU or WFHU while the control period is in effect shall be subject to the enforcement procedures set forth in Section 7 of these Regulations.
5. A one-person household may not purchase a three-bedroom unit, unless there is no other qualified applicant for the unit.
6. MPDU and WFHU owners shall not rent-out said unit, nor any portion thereof, to another person or persons at any time during which the control period is in effect. An owner who rents out an affordable unit, or any portion thereof, while the control period is in effect, shall be subject to the enforcement procedures set forth in Section 7 of these Regulations. An MPDU or WFHU owner is also prohibited from using the unit as a short-term rental.
7. An owner may submit a written request seeking a temporary waiver of the occupancy requirement in order to rent out an affordable unit for a designated period of time not to exceed 24 months. To be considered for a

waiver, the owner must demonstrate that he/she is required to move from the Washington metropolitan area for employment or for health reasons. The owner must also certify that he/she shall reoccupy the unit within the term of the waiver.

- a. Affordable unit owners who are granted a waiver permitting temporary rental of a unit shall be required to extend the applicable covenant on the property for a period of time equal to the rental period. The owner must execute a new covenant before approval shall be granted and shall bear the administrative and recordation costs thereto.
 - b. The City Manager, or designee, must establish the allowable rent an owner may charge during the temporary rental period based on the documented Housing Costs of the owner. In no case shall the allowable rent exceed the Housing Costs of the unit.
8. An owner of an affordable unit may not maintain an ownership interest in any other dwelling while the affordable unit remains under control. This requirement does not prohibit an affordable unit owner from acting as a guarantor on another dwelling unit. An owner of an MPDU or WFHU who purchases an additional dwelling and holds an ownership interest in that dwelling while the control period remains in effect shall be subject to the enforcement procedures set forth in Section 7 of these Regulations.
 9. Affordable unit owners may place a purchase contract on another dwelling unit while the control period is in effect provided the affordable unit is sold prior to the date of settlement on the new unit.
 10. In the event a single individual owning an affordable dwelling unit shall be married, pursuant to Section 2.201 of the Annotated Code of Maryland, he/she may initiate action to have his/her spouse added to the deed.
 11. A Participant must be a U.S. citizen or permanent legal resident of the United States whose status permits that resident to remain in the country indefinitely.

7. Pricing Formula:

- (a) Maximum sales prices for MPDUs and WFHUs shall be established for each new development by the City Manager or designee pursuant to the standards set forth below. MPDUs and WFHUs may not be sold at prices that exceed the established maximum prices as determined by the City Manager or designee.
- (b) MPDU Pricing: Based on industry standards, prevailing economic circumstances, current local housing market conditions and prices in the private market, and other factors within their discretion, the City Manager, or designee, shall require MPDUs to be priced so as to render them affordable to households earning 65 percent of AMI, adjusted for household size.

1. The price calculation for affordable MPDUs shall be based on the Montgomery County pricing formula established by Chapter 25A of the Montgomery County Code, 2014, as amended and all applicable Executive Regulations.
 2. Nothing in these Regulations prohibits a purchaser from negotiating with an Applicant to pay for upgrades to an affordable unit so long as the negotiated upgrades do not increase the purchase price by more than 5 percent.
- (c) WFHU Pricing: Based on industry standards, prevailing economic circumstances, current local housing market conditions and prices in the private market, and other factors within their discretion, the City Manager or designee shall require WFHUs to be priced so as to render them affordable to households earning 90 percent of AMI, adjusted for household size.
1. For purposes of calculating the initial sales price, a WFHU shall be priced at two and one-half times (2.5 x) the household income for a condominium and three times (3 x) the household income for a townhome unit. Single family detached units shall not be offered as a WFHU unless the development is comprised solely of single family detached units.
 2. The price calculation for affordable units shall be based on the household income of 1.5 people per bedroom and shall correspond to the midpoint AMI income between two households as follows:
 - a. The price for a studio shall be determined by what is affordable to the income of a one-person household.
 - b. The price for a one-bedroom unit shall be determined by what is affordable to the midpoint income of a one person and a two-person household.
 - c. The price for a two-bedroom unit shall be determined by what is affordable to the midpoint income of a two person and three-person household.
 - d. The price for a three-bedroom unit shall be determined by what is affordable to the midpoint income of a three person and four-person household.
 - e. The price for a single detached family home shall be determined by what is affordable to the midpoint income of a four person and five-person household.
 - f. At initial sale, an MPDU or WFHU cannot be offered at a price greater than 80% of the lowest market-rate unit.
 3. Nothing in these Regulations prohibits a purchaser from negotiating with an Applicant to pay for upgrades to an affordable unit so long as the negotiated upgrades do not increase the purchase price by more than 5 percent.

4. The following charts demonstrate sample pricing formulas for a WFHU as applied to 2018 income levels. Based on annual changes in AMI, the City Manager, or designee, shall issue revised prices on or before June 30 of each year.

Household Size (formula)	Income at 90% of AMI (2018)	Type of Unit (Condominium)	90% Income (@ 2.5 x)	Price (rounded to nearest \$100)
1	\$73,836	Studio	\$73,836 x 2.5	\$184,600
1.5	\$79,110	One BR	\$79,110 x 2.5	\$197,800
2.5	\$89,658	Two BR	\$89,658 x 2.5	\$224,200
3.5	\$100,206	Three BR	\$100,206 x 2.5	\$250,500

Household Size (formula)	Income at 90% of AMI (2018)	Type of Unit (Townhome)	90% Income (@ 3.0 x)	Price (rounded to nearest \$100)
1	\$73,836	Studio	\$ 73,836 x 3	\$221,500
1.5	\$79,110	One BR	\$ 79,110 x 3	\$237,300
2.5	\$89,658	Two BR	\$ 89,658 x 3	\$269,700
3.5	\$100,206	Three BR	\$100,206 x 3	\$300,600
4.5	\$109,699	Four BR	\$109,699 X 3	\$329,100

8. Buyer Selection Process:

- (a) Following the submission and approval of an offering agreement, the City Manager or designee may elect to conduct a series of lotteries to select purchasers for units included in the offering agreement. The names in the lotteries shall include only households that have been issued a Certificate of Eligibility for that specific project.
1. **MPDU Lottery:** A first set of lotteries may be held for available MPDUs.
 - a. An initial lottery shall be conducted for Priority Participants, filling not more than 50 percent of available MPDUs.
 - b. The remaining MPDUs shall be available in a separate lottery for all other Participants holding a valid Certificate of Eligibility for that project.
 - c. Once the lotteries have been held, units shall be made available to selected households in the order in which names were drawn.
 2. **WFHU Lottery:** A second set of lotteries may be held for available WFHUs.
 - a. An initial lottery shall be conducted for Priority Participants, filling not more than 50 percent of available WFHUs.
 - b. The remaining WFHU units shall be available in a separate lottery for all other Participants holding a valid Certificate of Eligibility for that project.
 - c. Once the lotteries have been held, units shall be made available to selected households in the order in which names were drawn.

3. **Pre-Lottery Purchases:** The City Manager may permit tenants displaced by previous or pending redevelopment who apply for and otherwise qualify for the Program to purchase a unit in the new development prior to the conduct of any lottery for that development. If units remain unsold after qualified displaced tenants have been given 30 business days in which to place a purchase contract on a unit, lotteries shall be conducted as described above.

(b) **Failure to Purchase:**

1. Participants selected in the lottery are under no obligation to purchase a unit. No penalty may be imposed on any lottery Participant who declines to purchase a unit.
2. **Eligibility Terminated:** Participants who have been given an opportunity to purchase a unit but decline to do so shall relinquish eligibility for that project. Such Participants may re-apply for future lottery drawings for different projects. In such cases, Participants must submit entirely new applications.
3. If a Participant is not shown a property because of a low position in the lottery drawing, that Participant may request to transfer the Certificate of Eligibility to another project provided the lottery for such a project is held within one year of the date on which the Participant was first issued a Certificate of Eligibility. Upon the expiration of the one-year period, the Participant must re-apply to the Program in order to document continued eligibility.

9. **Developer Requirements:**

- (a) **Priority Offering Period:** The developer must market available units to selected lottery Participants for a period not to exceed 180 days, commencing from the date on which the lottery is conducted. Based on applications received, the City will determine the marketing period.
- (b) **Additional Lotteries As Necessary:** If units remain unsold prior to the expiration of the established priority marketing period, and all selected lottery Participants have been contacted by the developer, the City Manager or designee shall conduct additional lotteries as necessary to identify qualified purchasers.
 1. **Unsold Units:** If units remain unsold after 180 days from the date of the final lottery drawing for a specific project and the developer has contacted all Participants on the initial lottery list, and any subsequent lottery list, the developer may offer the units to otherwise eligible households who do not reside or work within the City of Gaithersburg but do reside or work within Montgomery County whose income exceeds the limits established for the unit being sold. Upon receipt of authorization from the City Manager or designee, the developer may market unsold units to otherwise eligible purchasers whose income exceeds the established maximum for a unit by up to ten percent. The maximum income limit may increase by an additional ten percent every thirty days thereafter until the units are sold. The developer must receive authorization from the City for each income limit adjustment.

2. **Restrictions Remain:** In the event a property is sold to a non-income eligible purchaser, the unit remains subject to all restrictions, covenants, and requirements of law set forth in the Affordable Housing Ordinance and these Regulations.
10. **Covenant Requirement:** An Applicant shall sign and forward to the City Manager or designee a restrictive covenant, in recordable form. The covenant, a sample of which will be provided to the Applicant, must be in a form acceptable to the City Manager or designee and must comply with all provisions of the Affordable Housing Ordinance and all regulations issued thereto. The covenant shall bind the Applicant, any assignee, mortgagee, buyer and all other parties that receive title to the property. It shall include, but not be limited to, the following information:
- (a) A statement that the provisions of the Affordable Housing Ordinance, and all regulations issued thereto, shall apply to the property and run with land for the entirety of the control period;
 - (b) A statement that the covenants shall bind the owners of the MPDU and/or WFHU, and all parties with an interest in title to the property, during the control period and run with the land for the entire control period;
 - (c) A statement that the covenant shall be senior to all instruments securing permanent financing;
 - (d) A statement that restrictions will automatically or permanently terminate if title to the mortgaged property is transferred by foreclosure or Deed-in-Lieu of foreclosure or if the mortgage is assigned to the Secretary of HUD;
 - (e) A statement that MPDU and/or WFHU purchasers must occupy the property as their only residence throughout the entirety of ownership during the control period except as permitted by these Regulations;
 - (f) A statement that an MPDU and/or WFHU owner must not purchase another unit prior to selling the affordable unit;
 - (g) A statement that the City shall receive the required payment prior to releasing the restrictions;
 - (h) A statement requiring the owner to abide by all regulations and price determinations issued by the City Manager or designee with respect to the resale of any MPDU or WFHU;
 - (i) A statement allowing the City Manager or designee to create a lien to collect that portion of the re-sale price of an affordable unit which exceeds an approved resale price;
 - (j) A statement requiring a payment to the City Affordable Housing Fund upon the first sale of the property following the expiration of the control period. The amount of the payment will be equal to a percentage of the profits from the sale, based on length of ownership of the unit by that seller and in accordance with percentages established through these Regulations;

- (k) The covenant shall be noted on the subdivision plat for those lots and parcels to which it applies.

11. Purchaser Requirements:

- (a) **Purchaser Agreement:** The purchaser must execute, and submit to the City, a purchaser's agreement, a sample of which will be made available to the purchaser, affirming an understanding of the laws, regulations, covenants, and others restrictions related to the purchase. The purchaser's agreement requires the purchaser to:
 - 1. Certify that during the period of ownership, the purchaser shall occupy the unit as his/her only residence and that, in the event of re-sale, the owner shall offer the unit exclusively to persons and/or households certified by the City Manager, or designee, as eligible to purchase the property.
 - 2. Certify that the owner has not owned a home within 5 years prior to the purchase of the affordable unit.
 - 3. Agree not to rent the unit, or any part thereof, to any person or persons during the term of the control period.
 - 4. Agree that for a period of 30 years from the date of settlement, the unit must not be sold or refinanced for a price greater in value than that approved by the City Manager or designee.
 - 5. Agree to tender, upon the first sale of the unit after the expiration of the control period, a payment to the City amounting to a percentage of the profits from the sale based on length of ownership of the unit and in accordance with percentages established in these Regulations.
 - 6. Acknowledge receipt of a copy of the recorded covenants applicable to the purchased property.
 - 7. Acknowledge receipt of the Affordable Housing Ordinance and regulations applicable to the purchased property.
- (b) **Acknowledgment of Receipt of Covenants:** A purchaser must also execute a separate document whereby the purchaser acknowledges receipt of a copy of the Declaration of Covenants, indicating the subdivision, the date of recordation and the liber and folio in the land records in which the covenant is recorded. Through this document, the purchaser acknowledges that the Covenant is binding upon the property and that, as owner of such a property, the purchaser is bound by the requirements of the law governing MPDUs and WFHUs.
- (c) **Homebuyer Seminar:** All Participants must complete a homebuyer class no more than 12 months prior to signing a purchase contract.

- 12. **Closing Costs:** At initial sale, the MPDU or WFHU seller is required to contribute three percent of the sales price towards closing costs in addition to the cost of the State Transfer Tax.

SECTION THREE: RESALE OF WFHUs AND MPDUs

1. **Compliance with Affordable Housing Ordinance:** Any MPDU or WFHU sold during the applicable control period is subject to all provisions of law governing affordable housing, all regulations issued thereto, and all restrictions, controls and covenants on the property for the entirety of the control period in effect.
 - (a) Any sale and/or purchase agreement for a property subject to control must clearly and conspicuously state that the conveyed property is subject to the restrictions imposed by the Affordable Housing Ordinance, the regulations adopted thereto, and to all restrictions imposed by the covenant on the property.
 - (b) Purchasers must acknowledge in writing having received the applicable law, regulations, and covenant prior to execution of the sales contract.
2. **Notification of Intent to Sell:** An affordable unit may not be sold while the control period is in effect unless and until the owner notifies the City the unit is for sale and a maximum resale price is set for the unit by the City Manager or designee.
 - (a) At the time of notification, the seller must request a resale price determination.
3. **Pricing:** Following a written request by a seller for a re-sale price determination, the City Manager or designee must determine a maximum sales price for which a unit may be offered for resale. Price determinations shall be based upon the following formula:
 - (a) For any sale that occurs during the control period, the sale price of the MPDU or WFHU shall be the sum of:
 1. the original acquisition price;
 2. the percent of change in the Consumer Price Index- Urban for the Washington-Baltimore Metropolitan Area for the period of ownership;
 3. calculation of the Reasonable Costs of Improvements to the property.
 - (b) A Calculation of the Reasonable Costs of Improvements to the property shall be awarded only upon the submission of documented evidence of the improvements for which credit is sought. Documented evidence shall include, but not be limited to, receipts, contracts, or other evidence supporting their value. A pre-approved list of allowable improvements shall be available at City offices and shall be provided to affordable unit owners upon request. Improvements must be permanent in nature and clearly add to the market value of the property as determined by the City Manager or designee. (A list of pre-approved improvements is attached hereto as Appendix A).
 1. Depreciation shall be calculated on a 10-year straight-line basis for approved upgrade appliances not included in the original price of a unit.

2. A seller may appeal a determination as to whether an improvement is allowable and may submit additional evidence upon which the appeal is based. Upon review of the additional documentation, the City Manager or designee shall make a final determination of the allowable credit to be offered.
- (c) The resale price of an MPDU or WFHU may be reduced if the physical condition of the unit reflects abnormal wear and tear because of abuse, neglect, or insufficient maintenance.
 - (d) Unless otherwise agreed to by the Seller and Purchaser, each party shall pay one half of the closing costs at closing:
 1. One half of one percent (1/2 of 1%) for the permanent loan origination fee;
 2. County tax certificate, transfer charges;
 3. Revenue stamps, and recordation charges;
 4. Title examination, settlement and attorney fees;
 5. Notary fees and fees for preparation of a deed conveyance, a deed of trust or mortgage, and the deed of trust or mortgage note;
 6. Appraisal fee and credit report fee;
 7. House location survey plat.

4. Re-Sale to Eligible Purchasers:

- (a) Following receipt of a resale notification by an MPDU or WFHU owner, and subsequent price determination for the unit, the City Manager or designee shall contact current Certificate of Eligibility holders and post information on the available unit on the City's website.
- (b) Interested purchasers must submit verification to the City Manager or designee of continued eligibility for the Program.
- (c) Following verification of eligibility, Certificate holders may submit a written offer for the property. If more than one offer is submitted, the seller retains sole discretion to choose among the competing offers provided the selected buyer satisfies all eligibility requirements of the Program.
- (d) If no offer is submitted by a Certificate holder, a seller may offer the property to other purchasers who, as determined by the City Manager or designee, satisfy the income and other eligibility requirements of the Program.
- (e) Upon request by the seller, the City Manager or designee shall list the property, as well as the maximum income limits of households eligible to purchase that property, on a

re-sale property list available for review at City offices and on the City's website. Interested purchasers must submit documentation to the City demonstrating eligibility for the Program. A Certificate of Eligibility awarded for another project and issued within 365 days of the date on which the re-sale property is listed on the City's website shall constitute sufficient evidence of eligibility. Upon approval of a purchaser's eligibility, a sales contract may be executed for the resale property, based on pricing determined by the City.

- (f) **Unsold Property:** If the property remains unsold after 180 days on the City-maintained re-sale list, the seller may offer the property to otherwise eligible purchasers whose income exceeds the established maximum by up to ten percent. The maximum income limit may increase by an additional ten percent every 30 days thereafter until the units are sold.
 - 1. Prior to offering a property to purchasers whose income exceeds the established maximum, the seller must receive written approval from the City to do so.
 - 2. The City may include the payment of a sales commission in its re-sale price determination if the seller demonstrates he/she was unsuccessful in selling the property.

5. Control Period Does Not Reset: All MPDUs and WFHUs are subject to a 30 year control period to commence on the original date of sale of a unit to the first owner of that unit. The control period shall run continuously without interruption and does not re-set upon the sale of a property.

6. First Sale Upon Termination of Control Period:

- (a) Upon the expiration of the 30 year control period, an owner of a formerly restricted unit may sell that unit for whatever price the market will bear. However, the profits of the first sale after the control period terminates must be shared with the City according to the formula set forth below.
- (b) Upon the first sale of a property after the control period terminates, and in return for the benefits received in being able to purchase an affordable dwelling unit, a seller must, as required by the covenant on the property, contribute a portion of the profits from the sale to the City Affordable Housing Fund. The amount of the payment shall be calculated using a sliding scale formula based on the length of time the seller has owned the unit. Following the first full year of ownership, affordable unit owners who are the first to sell a unit upon the termination of the control period will earn a 2.5 percent share of the profit for every year of ownership, up to a 50 percent share of the profit for 20 or more years of ownership. Profit is defined as the difference between the fair market sales price and the adjusted base. The adjusted base equals the sum of:
 - 1. the initial acquisition price;
 - 2. the percent of change in the Consumer Price Index- Urban for the Washington-Baltimore Metropolitan Area for the period of ownership;

3. a credit for the reasonable costs of documented Capital Improvements to the property;
 4. actual real estate commission up to 6 percent of the market sales prices;
 5. one half of the Transfer Tax & Recording Fee.
- (c) The following table outlines the division of profits between the seller and the City at the termination of the control period:

Years of Ownership	City Share	Owner Share
20 plus	50.0%	50.0%
19-20	52.5%	47.5%
18-19	55.0%	45.0%
17-18	57.5%	42.5%
16-17	60.0%	40.0%
15-16	62.5%	37.5%
14-15	65.0%	35.0%
13-14	67.5%	32.5%
12-13	70.0%	30.0%
11-12	72.5%	27.5%
10-11	75.0%	25.0%
9-10	77.5%	22.5%
8-9	80.0%	20.0%
7-8	82.5%	17.5%
6-7	85.0%	15.0%
5-6	87.5%	12.5%
4-5	90.0%	10.0%
3-4	92.5%	7.5%
2-3	95.0%	5.0%
1-2	97.5%	2.5%
0-1	98.5%	1.5%

SECTION FOUR: RENTAL UNIT REQUIREMENTS

1. **Applicability:** The rental requirements of the Affordable Housing Ordinance and these Regulations shall be imposed on any new residential development or any properties that convert to residential with 20 or more units as of February 25, 2018.
2. **Control Period:**
 - (a) Rental price controls and other restrictions imposed by law, regulations, or covenant shall remain in effect for a period of 30 years, commencing from the date of the initial lease of a property. Effective February 25, 2018, any new development or property converting to residential with 20 or more units must comply with the requirements of the affordable housing ordinance and these regulations for as long as the property remains as residential housing.

- (b) For properties with an executed Offering Agreement prior to February 25, 2018, the 30-year control period on a leased property is finite and shall not be reset when occupancy of the unit is transferred from one eligible tenant to another during that time. For properties with an executed Offering Agreement on or after February 25, 2018, the property must comply with the affordable housing requirements as long as the property remains residential in nature.
- (c) At the end of the 30-year control period, all rent restrictions, and other restrictions imposed by law, regulation, or covenant, shall be lifted. For rental properties where the requirements do not terminate, (c) 1 and 2 below do not apply.
 - 1. **Notice of Control Period Expiration:** At least 6 months prior to the expiration of the control period, a landlord must provide an occupant of a unit subject to rent controls under the Program a written letter of notice informing the occupant of the date upon which the control period will expire and specific information on planned rent increases to be imposed after that date; however, any proposed rent increases may not take effect until the lease entered into during the control period actually expires.
 - 2. **Notice to New Occupants:** If an Applicant offers a controlled unit to a Participant within 2 years of the expiration of the control period, the Applicant must, prior to the execution of a lease agreement, notify the Participant of the exact date of the expiration of the control period, the limited duration of the controlled rent price, and information on planned rent increases.

3. Percentage of Units to be Set-Aside:

- (a) In any residential property containing 20 or more units available for rent, an Applicant shall set-aside 15 percent of the units as affordable.
- (b) For low-rise properties, the entire 15 percent of set-aside units shall be comprised of MPDUs with rent set at prices affordable to households earning 60 percent of AMI, adjusted for household size. For high-rise properties, the entire 15 percent of set-aside units shall be comprised of MPDUs with rents set at prices affordable to households earning 65 percent of AMI adjusted for household size.
- (c) In calculating the number of units to be created, if the calculation results in the creation of a partial unit, the number of units required shall be rounded up to the nearest whole number. By way of example, a calculation that results in 44.25 units, rounds to 45 units.
- (d) Fifteen percent constitutes a minimum affordable unit requirement. Nothing in the Affordable Housing Ordinance or these Regulations prohibits an Applicant or developer from providing more than 15 percent of the units in a development as MPDUs.

4. Participant Eligibility:

- (a) Households seeking a Certificate of Eligibility in order to lease an MPDU must satisfy the following requirements:

1. Unless otherwise permitted, participants must have lived or worked within the City of Gaithersburg for at least one year prior to the date on which an application for an available unit has been received.
2. Priority Participants (full-time and permanent part-time City of Gaithersburg employees, Public Safety Workers, K-12 Montgomery County public and private school employees or Veterans) must have lived or worked in the City for at least 365 days prior to submitting an application for an affordable unit. Any individual or household seeking to receive priority status must, upon submission of an application for the Program, provide documented evidence of employment or status in a priority category.
3. In any residential property in which the City's required priority populations do not get first consideration, the City shall not accept or process any applications.
4. In a conversion to residential housing or a new development where the units will be leased at one time, the City may agree to accept and review the applications for a 45-day period.
5. In a development with a phased-in initial lease period, the City shall accept and review applications for the first 15 days of each phase, not to exceed three phases. The City shall establish the beginning and ending date of each phase.
6. Participants seeking to lease an MPDU must earn not less than 50 percent or more than 80 percent of AMI, adjusted for household size; however, at the sole discretion of the property owner, units can be leased to households at less than 50 percent of AMI.
7. In any case where an applicant requires a co-signer, the property must include the non-occupying co-signer's income when the applicant is a dependent.
8. In the case where a tenant is receiving some rental assistance, the amount of assistance would be included in the qualifying income requirements.
9. A two-bedroom MPDU must be occupied by at least two people; a three-bedroom MPDU must be occupied by at least three people.
10. For purposes of determining income eligibility, sources of income include, but are not limited to:
 - a. interest from savings and checking accounts;
 - b. dividends from stocks, mutual funds, and bonds;
 - c. interest from certificates of deposit;
 - d. social security benefits;

- e. VA benefits;
 - f. wage and salary;
 - g. child support;
 - h. alimony;
 - i. overtime;
 - j. unemployment insurance;
 - k. bonus payments;
 - l. pension and retirement payments;
 - m. long term disability payments;
 - n. any other trusts, royalties, annuities or stipends;
 - o. any and all sources of income reasonably attributable to members of a Household as determined by the City Manager or designee;
 - p. assistance provided through any federal, state, or local program.
11. A Participant may not have previously owned a home within 5 years of the date on which an application for the Program is received. The City Manager or designee may waive this requirement for good cause.
 12. A Participant who leases an MPDU may not own a dwelling or purchase a dwelling of any kind without first terminating the lease while the control period remains in effect. A tenant who makes such a purchase during the control period shall be subject to the enforcement procedures set forth in Section 7 of these Regulations.
 13. A Participant must agree to occupy the MPDU throughout the entire period of the lease agreement during which the control period is in effect. A tenant who fails to occupy an MPDU shall be subject to the enforcement procedures set forth in Section 7 of these Regulations.
 14. Every MPDU tenant must, at minimum, enter into a 12-month lease agreement. An applicant who wishes to enter into a lease agreement of a lesser term must receive approval from the City.
 15. A Participant who leases an MPDU unit may not sub-lease or otherwise rent-out the unit, or any portion thereof, to another person or persons during the control period. A tenant who sub-leases or otherwise rents out an MPDU, without approval from the City Manager or designee, or portion thereof, shall be subject to the enforcement procedures set forth in Section 6 7 of these Regulations.

16. An MPDU tenant is expressly prohibited from using the rental property as a short-term rental.

5. Lease Agreement Requirements: All lease agreements for MPDUs must include the following:

- (a) A provision requiring the tenant to occupy the unit as his or her only place of residence;
- (b) A provision prohibiting the tenant from subletting the unit except for good cause as determined by the City Manager or designee;
- (c) A provision requiring the tenant to provide annual income and household composition information to the Applicant for recertification purposes. Required documentation shall include federal income tax returns for the previous two-year period and copies of three consecutive pay stubs for all employed Household members or any other documents required to determine household income.
- (d) A provision providing that the tenant vacate the unit in the event the tenant fails to provide the required income certification documents or if the Household income exceeds the limits described in Paragraph 7 below.

6. Tenant Selection:

- (a) Unless otherwise directed by the City Manager or designee, an Applicant may offer rental MPDUs for lease without utilizing a lottery process. When a lottery process is not used, the City may assign responsibility for accepting applications and certifying eligibility to the Applicant. Following a general notification by the City of unit availability, rental MPDUs shall be leased on a first-come first served basis. In projects in which applicants are considered without regard to the priority categories determined above, the property is responsible for processing all applications.
 1. Upon the request of the City Manager, or designee, representatives of the apartment complex must submit their application, lease, and leasing procedures to the City for review and approval.
 2. The Applicant must comply with all local, state, and Federal fair housing laws and must rent the available units only to Participants with a valid Certificate of Eligibility during the priority leasing period.
 3. The Applicant must send a copy of the initial and all renewal leases and lease addenda to the City within 30 days of signing the lease.
 4. The Property must provide the following information to the City on an annual basis:
 - a. For each MPDU, the tenant's name, household size, and the total household income as of the date of the lease along with other information required by the City in an acceptable format.

- b. A statement that, to the best of the Property's information and knowledge, the tenants who are leasing the MPDUs meet the eligibility criteria of the Program.
- (b) The City Manager may require an Applicant to offer affordable units to tenants displaced by previous or pending redevelopment before those units may be offered to other eligible Participants. However, the units may only be offered to displaced tenants who have applied for and are otherwise eligible for the Program.
- (c) If the City Manager or designee directs that MPDUs be made available through a lottery process, that process shall be consistent with the lottery process pertaining to for-sale units described in Section 2 of these Regulations.

7. Annual Income Certification:

- (a) MPDU tenants must submit to the landlord, 60 days before lease renewal, an executed affidavit certifying Household Income and household composition, along with current paystubs and all other sources of income, in order to verify continued income eligibility. The City Manager, or designee, must annually notify landlords of the applicable income limits and other eligibility criteria.
 - 1. If a tenant fails to provide recertification information within 30 days of the date on which the information is required, the tenant must vacate the unit within sixty 60 days of receiving notification from the Applicant that the required documentation has not been received.
 - 2. If at the time of recertification, the tenant's income exceeds the maximum allowable limit by 30 percent the tenant must vacate the unit within 90 days. The Applicant may permit the tenant to occupy the unit at an agreed upon market rent, but the Applicant must substitute another unit with the same number of bedrooms for the existing MPDU. A new covenant must be recorded, subjecting the subsequent unit to the applicable MPDU restrictions, laws, and regulations.

8. Rental Rates:

- (a) Maximum rental prices for MPDUs shall be established for each new development by the City Manager or designee and shall be revised annually based on changes in AMI or the County Executive's Voluntary Rent Increase Guidelines, whichever is lower. Based on industry standards, prevailing economic circumstances, current local housing market conditions, rental prices in the private market, vacancy rates of comparable properties, and other factors within their discretion, the City Manager, or designee, shall require MPDU rental prices to be set so as to render them affordable to households earning 60 percent of AMI for a low-rise property, adjusted for household size. For high-rise properties, rent prices shall be affordable to households earning 65 percent of AMI adjusted for household size.
- (b) A determination of affordability shall be based on the standard calculation that a household should pay 25 percent of gross annual income toward rent, exclusive of utilities.

(c) The rent calculation for affordable units shall be based on the household income of 1.5 people per bedroom shall correspond to the midpoint income between two households as follows:

1. The rent for a studio shall be based on the income for a one-person household.
2. The rent for a one-bedroom unit shall be based on the midpoint between the income for one-person and a two-person household.
3. The rent for one-bedroom plus den shall be based on the income for a two-person household.
4. The rent for a two-bedroom unit shall be based on the midpoint between the income for a two-person and three-person household.
5. The rent for a three-bedroom unit shall be based on the midpoint between the income for a three-person and four-person household.

(d) Rent Calculation:

1. **Utilities not included:** based on household size and the corresponding maximum income for a unit as listed above, an annual rent allowance shall be determined by multiplying the maximum income by 25 percent. The resulting annual rent allowance shall then be divided by 12 in order to determine the maximum monthly rent for the unit. The following chart provides a sample rent calculation for units at 2018 income levels. Based on annual changes in AMI or the County Executive’s Voluntary Rent Increase Guidelines, whichever is lower, the City Manager, or designee, shall issue revised prices on or before June 30 of each year.

Number of People in Household	Income at 60% of AMI (Levels)	Type of Unit Affordable	Annual Rent Allowance (25% of Income)	Rent Per Month (Annual Rent Allowance Divided by Twelve)
1	\$49,224	STUDIO	\$12,306	\$1,026
1.5	\$52,740	ONE BR	\$13,185	\$1,099
2	\$56,256	One BR + Den	\$14,064	\$1,172
2.5	\$59,772	TWO BR	\$14,943	\$1,245
3.5	\$66,804	THREE BR	\$16,701	\$1,392

2. **Utilities included:** when utilities are included, the annual rent allowance shall be determined by multiplying the maximum income for a unit as listed above by 30 percent. The resulting annual rent allowance shall then be divided by 12 in order to determine the maximum monthly rent for that unit. The following chart provides a sample calculation for units at 2018 levels. Based on annual changes in AMI, the City Manager, or designee, shall issue revised prices on or before June 30 of each year.

Number of People in Household	Income at 60% of AMI (2018 Levels)	Type of Unit Affordable	Annual Rent Allowance (30% of Income)	Rent Per Month (Annual Rent Allowance Divided by Twelve)
1	\$49,224	STUDIO	\$14,767	\$1,231
1.5	\$52,740	ONE BR	\$15,822	\$1,319
2	\$56,256	ONE BR + DEN	\$16,877	\$1,406
2.5	\$59,772	TWO BR	\$17,932	\$1,494
3.5	\$66,804	THREE BR	\$20,041	\$1,670

- (e) Laundry washer and dryer equipment must be provided in each MPDU unless such equipment is not provided in the market rate units. No increase in rent is permitted for laundry washer and dryer equipment unless the market rate units are separately charged and the increase is limited to the same fee that the market rate apartments are charged.
- (f) The Applicant may not charge a fee for non-structured, automobile parking to MPDU tenants. Structured parking, garage or other enclosed spaces may be offered as an option to MPDU tenants at the monthly rate normally charged by the Applicant. If parking cannot be offered as an option, unless otherwise agreed to by the City Manager, the fee must not exceed 50 percent of the comparable market-rate fee.
- (g) The City Manager, or designee, may adjust rental rates in apartment developments that provide services, amenities, or design features to all tenants and which cannot be made optional to MPDU tenants on a fee basis.
- (h) No MPDU or WFHU may be leased at a rental rate greater than 80 percent of the lowest market-rate unit for a comparable unit.

9. Developer Marketing Requirements:

- (a) **Priority Offering Period:** The developer must market available units to eligible Certificate Holders for a period of 45 days.
 1. If a lottery is not conducted, the City Manager, or designee, must notify the Applicant of the date on which the first lease for the property may be written. The priority marketing period shall commence on that date and terminate 45 days after the date of commencement unless the City Manager, or designee, extends it for good cause. During the priority marketing period, the Applicant must lease the MPDUs only to Participants holding a valid Certificate of Eligibility.
 2. If a lottery drawing is held, the priority marketing period shall commence on the date of the lottery drawing.
 3. If construction or occupancy of MPDUs in a development is phased over a period of time, the priority marketing period shall begin when the first MPDU is offered

for lease in each phase. Each phase of the development must have its own priority marketing period.

- (b) **Termination of Priority Period:** If any MPDUs are not leased to eligible households during the priority marketing period, and the Applicant can demonstrate to the City Manager or designee that it has made a good faith effort to lease the units to eligible households, the Applicant may lease those units to otherwise eligible households who do not live or work within the City of Gaithersburg but do live or work within Montgomery County.

10. Sale of For-Rent Units:

- (a) In the event the owner of any affordable rental housing units converts those units to condominiums, the owner must set-aside 15 percent of the units as affordable MPDUs and WFHUs and must comply with all procedures and restrictions set forth in Section 2 of these Regulations.
- (b) If a leased MPDU is offered for sale, the person who lawfully occupies it when the unit is offered for sale must be offered the right of first refusal to buy the unit provided the person continues to meet all eligibility standards at the time of sale. The right of first refusal is effective for 60 days from the date the tenant is given notice that the unit is to be offered for sale.
- (c) The MPDU may not be sold at any time during the applicable control period for a price greater than the approved resale price for the unit as determined by the City Manager or designee. The resale price shall be established in accordance with procedures set forth in these Regulations.
- (d) Existing rental covenants shall be released and new covenants recorded on the property requiring that the properties remain affordable for the balance of the control period.
- (e) An Applicant may not sell rental MPDUs at one Location on a piecemeal basis without the express permission of the City Manager or designee.

SECTION FIVE: HOUSING FOR THE ELDERLY

1. Applicability:

- (a) The requirements of the Affordable Housing ordinance and these regulations shall be imposed on any development that is restricted to households for the elderly as defined in Section 24.1 Such facilities may include independent living, assisted living, day care, skilled nursing facilities, memory care or other services to the elderly persons of the community. Any combination of the foregoing uses may be allowed and still be considered as qualifying under this definition.
- (b) Skilled nursing and day care facilities, as defined under Section 24.1, shall be exempt from the affordable housing requirements and these Regulations.

- (c) Notwithstanding the rates established herein, the City Manager may adjust the housing costs for units in elderly housing where the services, amenities, or design features cannot be made optional.
- (d) Except as described herein, all provisions of Section Four, Rental Housing shall also apply to housing for the Elderly.
- (e) Rental Rates in Independent Living Units that include services and fees:
 - 1. The rent calculations for affordable units shall be based on the household income of a household as follows:
 - a. The rent for a studio or efficiency shall be based on the income of a one-person household.
 - b. The rent for a one bedroom shall be based on the midpoint of a one-person and two-person household.
 - c. The rent for a two-bedroom shall be based on the midpoint between a two-person and three-person household.
 - d. Rents shall be established using the rent calculations set forth in Section Four.

Housing Costs when Utilities are not included (2018 Area Median Income)

Number of People in Household	Income at 60% of AMI (2018 levels)	Type of affordable Unit	Annual Rent Allowance (25% of Income)	Rent per month (allowable rent divided by 12)
1	\$49,224	Studio	\$12,306	\$1,026
1.5	\$52,740	One Bedroom	\$13,185	\$1,099
2.5	\$59,772	Two Bedroom	\$14,943	\$1,245

Housing Costs when Utilities are included in the rent (2018 Area Median Income)

Number of People in Household	Income at 60% of AMI (2018 levels)	Type of affordable Unit	Annual Rent Allowance (30% of Income)	Rent per month (allowable rent divided by 12)
1	\$49,224	Studio	\$14,767	\$1,231
1.5	\$52,740	One Bedroom	\$15,822	\$1,319
2.5	\$59,772	Two Bedroom	\$17,932	\$1,494

- 2. Services and certain fees that cannot be made optional may be charged to the tenant in addition to the monthly housing costs (rent or rent plus utilities). Those costs would include, but not be limited to: meals and meal plans, parking, laundry, housekeeping and local transportation. Unless otherwise agreed to by the City Manager, services and fees cannot exceed 50 percent of

what would be charged to a market rate tenant and will be determined prior to execution of the Offering Agreement.

3. Fees for meal plans and additional services may be adjusted annually by the percentage change in the Consumer Price Index (CPI), as published by the Federal Bureau of Labor Statistics for the region that includes the Washington DC Metropolitan Region.

(f) Affordable Housing Requirements for Assisted Living Units that include services and fees:

1. Fifteen (15) percent of the Assisted Living units shall be set aside for eligible households under three pricing tiers:
 - a. Tier 1 shall be affordable to households at 55 percent of Area Median Income;
 - b. Tier 2 shall be affordable to households at 65 percent of AMI; and
 - c. Tier 3 shall be affordable to households at 75 percent of AMI.
2. Unless the property is unable to satisfy the 15 percent requirement to households at Tiers 2 and 3 income levels, the Applicant shall not be required to offer MPDUs to households at Tier 1 incomes.
3. Excluding the costs paid by residents for assistance with Activities of Daily Living (e.g., bathing, dressing, eating) and Levels of Care as determined by an assessment by a Registered Nurse, monthly rent and services cannot exceed 75 percent of income adjusted for household size in a Studio unit and cannot exceed 80 percent of income adjusted for household size in a one-bedroom unit.

Housing Costs for Assisted Living Units (2018 Area Median Income)

One Person HH	Income at percent of AMI:	Studio (monthly housing cost allowance @ 75%)	One Bedroom (monthly housing cost allowance @ 80%)
Tier 1 (55 %	\$45,122	\$2,820	\$3,008
Tier 2 (65 %)	\$53,326	\$3,333	\$3,550
Tier 3 (75%)	\$61,530	\$3,846	\$4,102
Two person HH			
Tier 1 (55%)	\$51,568	\$3,223	\$3,438
Tier 2 (65%)	\$60,944	\$3,809	\$4,063
Tier 3 (75%)	\$70,320	\$4,395	\$4,688

- (g) Affordable Housing Requirements in Memory Care units that includes Services and Fees:
1. Fifteen percent of the memory care units shall be set aside for MPDU eligible households solely under Tier 3 pricing.
 2. Excluding the cost paid by residents for Activities of Daily Living, monthly rent and services cannot exceed 85 percent of income for one person in a Studio unit and 90 percent of income for one person in a one-bedroom unit. In the event no qualified MPDU eligible household is available to occupy a Memory Care unit within thirty (30) days of its availability, the community is not required to hold open a Memory Care Unit to satisfy the MPDU requirement. However, if at any time less than the required number of Memory Care Units are occupied by MPDU eligible households and a Memory Care Unit becomes available it shall be offered first to a qualified MPDU eligible household at either Tier I or Tier 2 pricing.

Housing Costs for Memory Care Units (2018 Area Median Income)

One person HH	Income at (percent of AMI (2018 levels):	Studio at 85%	One-Bedroom at 90%
Tier 1 (55%)	\$45,120	\$3,195	\$3,385
Tier 2 (65%)	\$53,325	\$3,775	\$3,995
Tier 3 (75%)	\$61,530	\$4,360	\$4,615

SECTION SIX: PROGRAM ADMINISTRATION

1. Exemption:

- (a) The requirements of the Affordable Housing Ordinance shall not apply to residential construction in an enterprise zone as of 2008. Applicants who propose to construct residential units in an enterprise zone shall be required to tender a per unit fee, established by Resolution R-40-18 to the City Affordable Housing Fund for every unit in a development. That fee shall be paid prior to issuance of the final Use and Occupancy approval.
- (b) At the discretion of the City Manager, any federal, state or other local affordable housing may be used to fulfill some or all of the MPDU requirements as long as the rent is equal to or less than the established MPDU rental rate for the property. The term of restrictions and other requirements must be reviewed by the City Manager or designee prior to granting a waiver of the MPDU requirements.

2. Administration of Program: The Program shall be administered in its entirety by the City of Gaithersburg.

- (a) The City Manager or designee shall implement, enforce, and evaluate all terms and requirements of the Affordable Housing Ordinance and these Regulations.

- (b) The City Manager or designee shall provide developers, landlords, property owners and Program Applicants information on the requirements of the Affordable Housing Ordinance and these Regulations.
- (c) The City Manager or designee shall provide information to Applicants on the applicability of the Affordable Housing Ordinance to a proposed development or project.
- (d) For all homeownership properties, the City Manager or designee shall receive, review, and evaluate Participant applications for all projects in which affordable housing units are available. For each project, staff shall establish a deadline by which applications must be received in order to be considered for review. Applications received after an established deadline shall not be considered.
- (e) For rental projects, staff shall receive, review, and evaluate applications for all projects in which affordable housing units are available for a period not to exceed 45 days unless otherwise agreed to in writing.
- (f) Eligibility for the Program shall be determined exclusively by the City Manager or designee for an established length of time. Following a review of all submitted applications, the City Manager or designee shall issue a Certificate of Eligibility to any household deemed eligible.
- (g) The City Manager or designee shall maintain a list of all affordable units pursuant to the requirements of the Affordable Housing Ordinance and shall maintain data and other relevant information on program inventory.

3. Project Announcement: Following formal approval of a development application by the City and the submission of an offering agreement by the developer, including the specific terms as to the number and type of affordable units available, a project announcement shall be issued. Via the City website, publication in a local newspaper, and other appropriate media and channels of communication, the City announcement shall include, but need not be limited to:

- (a) project details;
- (b) number and price of affordable units available;
- (c) bedroom mix;
- (d) description of amenities available;
- (e) information pertaining to the application process;
- (f) the deadline date for filing an application with the City.

4. Program Application Processing:

- (a) **Receipt of Program Applications:** The City Manager or designee shall receive and process Program applications for an announced project for a period commencing on the first date of public notification of a project. For each project, the City Manager or designee shall set a deadline by which all applications must be received.

1. For rental projects, participant applications will be processed for a period of 45 days (the priority period) commencing on the first date of public notification of the project. The exact 45- day window will be determined by the City and based on the unit delivery schedule provided by the property manager. In projects with multiple phases, the City or designee will receive and process participant applications for 15 calendar days per phase for a maximum of three phases. After 45 days, applications shall be submitted to and processed by the property

(b) **Program Application Review:**

1. **Initial Review:** The City Manager or designee shall review applications for accuracy, complete information, and eligibility.
2. **Rejected Applications:** Any application rejected on eligibility grounds shall be returned, along with a brief explanation as to the reason for the rejection. When an application is rejected due to incomplete or deficient information, a Program Applicant shall be afforded one additional opportunity to provide all required information. For each returned application, the City Manager, or designee, shall establish a deadline by which deficient applications must be amended and returned in order to receive further consideration. Program Applicants whose submissions are deemed incomplete or otherwise deficient upon second review shall be disqualified and barred from further participation for the specific project under consideration. Such a Program Applicant is not, however, barred from applying for other projects in the future.
3. **Priority Categories:** Accepted applications shall be placed in Priority Participant categories if applicable.

(c) **Required Documentation:** In order to purchase a unit, Program Applicants must be able to qualify for financing and be able to pay down payment and other costs associated with a home purchase. Program Applicants must provide the following information:

1. A completed application signed and dated by all Program Applicants;
2. For purchasers, a recent credit report, dated not more than 30 days from the date of the application, and showing a minimum score of not less than what is required by FHA;
3. Tax information from the two most recent federal tax returns;
4. Three most recent consecutive pay stubs for all wage earners;
5. A year-to-date summary statement of income and expenses prepared by a certified public accountant if an applicant is self-employed;
6. Program Applicants who do not have the requisite tax information from the IRS must supply evidence from the IRS indicating they have not filed Federal income taxes in the previous one or two years, whichever is applicable;

7. Additional relevant financial, residency, or employment information determined by the City Manager or designee to be necessary for appropriate evaluation of an application.

5. Notification:

- (a) **Certificate of Eligibility:** If an application has been approved, a household shall be awarded a Certificate of Eligibility valid for the specific project for which a household applied. The Certificate of Eligibility shall include the name of the Participant(s), the Participant's household size, and the name of the development project at which the household is eligible to purchase an affordable unit.
- (b) **General Information:** Participants shall be provided general information about the Program, the process for purchasing or leasing a unit, control period information, a description of the priority system, information on homebuyer class programs, and an indication of whether the Participant qualifies for placement in a priority pool. Specific information on when the lottery for the project is likely to occur also will be provided at this time.
- (c) **Automatic Lottery Entry:** Except for those Participants displaced by redevelopment, all approved Participants for a specific project shall be automatically entered into a lottery drawing for that project in the event that a lottery will be conducted. Participants are not required to file a separate lottery application, nor are they required to be present at the time of the lottery drawing. Following the drawing, a list of names and contact information shall be compiled by the City Manager, or designee, and made available to the developer.

6. Property Review of For-Sale Units:

- (a) **Review in Order in Which Names Were Drawn:** Upon receiving a list of names drawn in a lottery or ordered by priority for a specific project, the developer must contact Participants in the order in which the names appear. If a Participant fails to respond to the developer within 96 hours or declines, in writing, the opportunity to review the property, the developer may contact the next Participant on the lottery list.
 1. A Participant who declines in writing to review a property shall be removed from the lottery list and shall forfeit any additional right to review a property in that project. However, the Participant is not precluded from applying for future projects.
 2. Failure to respond to the developer within 96 hours does not preclude a Participant from participation at a later date provided properties remain available. In that case, the Participant must contact the Applicant, but shall be placed at the end of the lottery list and may be given an opportunity to purchase a unit only after all other eligible Participants have been contacted.
- (b) **Submission of Purchase Contract:** Once a Participant has been contacted by the developer and has been given an opportunity to review either a property, or plans for a

property, a Participant has 7 business days in which to submit a purchase contract for the property. If the Participant does not submit a purchase contract within that time period, the Applicant may make the property available to another eligible certificate holder.

7. **Homebuyer Seminar:** All Participants must complete a first-time homebuyer class and a MPDU/WFHU County orientation course prior to submitting an application Information on these classes shall be included in the application instructions.
 - (a) **Financing Requirements:** All Participants must have a current pre-qualification letter equal to or greater than the sales price of the unit from an approved lender.

SECTION SEVEN: COMPLIANCE, ENFORCEMENT, APPEALS, WAIVER

1. **Compliance:** The City Manager or designee shall monitor compliance with the requirements of the Affordable Housing Ordinance and these Regulations. The City Manager, or designee, may take, but is not limited to, the following actions to ensure compliance with all requirements of the law:
 - (a) Maintain a list of all MPDUs and WFHU constructed, sold, or rented;
 - (b) Periodically request copies of utility bills;
 - (c) Seek permission to enter an MPDU or WFHU;
 - (d) Monitor occupancy of affordable units;
 - (e) Monitor income eligibility of MPDU rental units;
 - (f) Monitor income eligibility of MPDU and WFHU sold;
 - (g) Monitor compliance with any Declaration ration of Covenant, Sales or Rental Offering Agreements relating to affordable housing.
2. **Permissible Legal Action:** The City Manager or designee shall have the authority to take any and all legal measures necessary to enforce and implement the Affordable Housing Ordinance and these Regulations.
 - (a) Violations of this Chapter are declared to be municipal infractions and enforceable pursuant to the provisions of Section1-9 of this Code. The maximum penalty for each initial and repeat violation shall be established by the City Council.
 - (b) In addition thereto, the City may institute injunctive, mandamus, or any other appropriate action or proceedings at law or equity for enforcement of this Chapter or to correct violations of this Chapter, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions or mandamus or other appropriate form of remedy or relief.

3. Waiver:

- (a) An Applicant may make a formal written request that the requirements of the Affordable Housing Ordinance and regulations issued thereto be waived, reduced, or adjusted, partially or in their entirety.
- (b) The City Council may grant a waiver of the provisions of the Affordable Housing Ordinance only upon a documented showing of:
 - 1. undue economic hardship on the part of the Applicant in fulfilling the requirements of the Affordable Housing Ordinance and regulations issued thereto; or
 - 2. the absence of a reasonable relationship or nexus between a proposed project and the provisions of the Affordable Housing Ordinance.
- (c) Documented evidence of undue economic hardship must include verifiable economic and financial data of the Applicant, verifiable economic and financial data related specifically to the project for which a waiver or reduction is sought, and any other relevant data as may be requested by the City Manager or designee.
 - 1. Information submitted by an Applicant to establish undue economic harm shall be subject to review and approval by the City Manager, or designee, and by an independent financial analyst who may be retained at the discretion of the City Manager for the purposes of evaluating a claim of undue economic hardship.
 - 2. Any waiver must be strictly construed and limited.
 - 3. If a reduction, adjustment, or waiver is granted, any subsequent change in use within the project shall invalidate the waiver, adjustment, or reduction granted under this provision.

APPENDIX A

1. Pre-Approved Improvements Eligible for Fair Market Value Credit:

(a) Major Improvements

Completion of unfinished areas into living areas, room additions, carports and garages
Insulation
Bathroom expansion/upgrade
Window replacement
Electrical Wiring
Major plumbing upgrades
Perimeter fencing of yards
Bathtub enclosures (permanently attached)
Fireplaces
Storage closets
Exhaust, attic and ceiling fans

- Patios, porches, decks
- Storage shed
- Electronic Security System
- Landscaping, including additional shrubs and trees or retaining walls, up to \$500
- Installation of recessed lighting
- Installation of hardwood flooring
- Replacement of heating, ventilating and air conditioning equipment

(b) Depreciated Items

- Roof replacement
- Interior and Exterior Painting
- Carpet and tile replacement
- Refrigerator
- Water Heater
- Kitchen Cabinets
- Oven/Range
- Thermostat/timer
- Dishwashers and disposals (built-in)
- Permanently installed humidifiers
- Washer and/or dryer

2. Improvements Not Eligible for Credit:

- Portable humidifiers
- Additional light fixtures
- Doorbell chimes, knockers, peepholes, house numbers
- Shelving (permanently attached or removable)
- Wallpaper
- Paneling on previously finished walls or ceilings
- Substitution of towel racks and other bathroom accessories
- Siding maintenance
- Roof maintenance
- Conversion of existing area to another use (e.g., conversion of a bedroom to a recreational room)
- Television antennas
- Window air conditioners
- Portable heaters