



City of Bellevue

Development Services Department Director's Rule Affordable Housing Standards Rule DRAFT

A. Purpose:

The purposes of this rule are as follows:

1. Implement LUC 20.20.128.A.2 by adopting affordable housing standards to govern the construction, repair, modification, and operation of affordable dwelling units created by operation of the Land Use Code; and
2. Implement and interpret key requirements contained in LUC 20.20.128.A.3 and LUC 20.50.024 relating to the construction, repair, modification, or operation of affordable dwelling units within the City.

B. Background:

The Land Use Code contains development regulations requiring or incentivizing the construction, repair, modification, and operation of affordable dwelling units within the City of Bellevue.

Under LUC 20.20.128.A.2, the Director must adopt by rule affordable housing standards to govern the construction, repair, modification, and operation of affordable dwelling units created by operation of the Land Use Code. Such standards shall be consistent with the requirements of the Land Use Code.

In addition, several development regulations contained in the Land Use Code also require the Director to define by rule certain terms relating to the construction, repair, modification, and operation of affordable dwelling units, including LUC 20.20.128.A.3 and LUC 20.50.024.

C. Rule:

This rule consists of three parts as follows:

Part 1: Implementation of LUC 20.20.128.A.2 – Adoption of Affordable Housing Standards Generally Applicable to Affordable Dwelling Units Created by Operation of the Land Use Code.

Part 2: Implementation of LUC 20.20.128.A.3 – Interpretation of Codified Affordable Housing Standards.

Part 3: Implementation of LUC 20.50.024 – Interpretation of the Definition of “Housing Expense.”

Each part to this rule is laid out in full as a separate attachment to this rule, but each part is fully incorporated herein by this reference.

D. Definitions Applicable to this Rule.

For the purposes of this rule, the definitions contained in Chapter 20.50 LUC and in LUC 20.20.128 shall apply. In addition, the following definitions shall also apply unless the context clearly requires otherwise:

1. “Affordability level” means the amount of household income, expressed as a percentage of the Area Median Income King County Median Income, that provides the basis for determining the maximum sale price or monthly housing expense of an Affordable Unit.
2. “City” means the City of Bellevue or its designee.
3. “Bedroom” means space within a dwelling unit that may be fully or partially enclosed and having the primary use of sleeping and the accessory use of clothing storage.
4. “Set-aside” means the percentage of dwelling units of a project or property that must be Affordable Units.
5. “Unit type” means a dwelling unit classification describing the number and types of bedrooms contained in a dwelling unit. Unit types include:
 - a. “Studio” means a dwelling unit with no bedroom. A dwelling unit with a separate sleeping area, whether enclosed or not enclosed, that does not fully meet the specifications of an Open 1-Bedroom or a 1-Bedroom is a Studio.
 - b. “Open 1-Bedroom” means a dwelling unit with a bedroom that can serve the use requirements of two occupants. The bedroom has a closet within the room and sufficient space for a queen-size bed, circulation around three sides of the bed, and another piece of furniture, such as a dresser or a chair. Typically, dimensions of a bedroom in an Open 1-Bedroom should meet or exceed 88 square feet of floor space and allow a circle with a diameter of 8 feet, 10 inches.
 - c. “1-Bedroom” means a dwelling unit with a bedroom that can serve the use requirements of two occupants. The bedroom has an exterior window that satisfies the city’s egress requirements. The bedroom has a closet within the room and sufficient space for a queen-size bed, circulation around three sides of the bed, and another piece of furniture, such as a dresser or a chair. Typically,

dimensions of a bedroom in an -Bedroom should meet or exceed 88 square feet of floor space and allow a circle with a diameter of 8 feet, 10 inches.

- d. “Urban 2-Bedroom” means a dwelling unit with two bedrooms that can serve the use requirements of one occupant each. One bedroom has an exterior window that satisfies the city’s egress requirements and a door that shuts to fully enclose the bedroom. The second bedroom must meet the city’s requirements for a sleeping area. Both bedrooms have closets within.
- e. “2-Bedroom” means a dwelling unit with two bedrooms that can serve the use requirements of one occupant each. Both bedrooms have exterior windows that satisfy the city’s egress requirements and doors that shut to fully enclose the bedrooms. Both bedrooms have closets within.
- f. “Urban 3-Bedroom” means a dwelling unit with three bedrooms that can serve the use requirements of one occupant each. At least one bedroom has an exterior window that satisfies the city’s egress requirements and a door that shuts to fully enclose the bedroom. The second and third bedrooms must meet the city’s requirements for a sleeping area. All three bedrooms have closets within.
- g. “3-Bedroom” means a dwelling unit with three bedrooms that can serve the use requirements of one occupant each. All three bedrooms have exterior windows that satisfy the city’s egress requirements and doors that shut to fully enclose the bedrooms. All three bedrooms have closets within.

E. Compliance with Rulemaking Authority:

LUC 20.20.128.A.2:

The Director shall adopt by rule affordable housing standards to govern the construction, repair, modification, and operation of affordable dwelling units created by operation of this title. Such standards shall be consistent with the requirements of this title. When adopting affordable housing standards, the Director shall consider each of the following:

- a. Consistency with the City’s Comprehensive Plan;
- b. Whether consistency with the City’s other, non-Land-Use-Code-based affordable housing programs is beneficial to the City;
- c. Whether consistency with affordable housing standards adopted by neighboring jurisdictions is beneficial to the City;
- d. The impact on the City’s affordable housing goals;
- e. The impact on the cost of development; and
- f. The impact on the quality of life of residents of affordable units.

Part 1: Implementation of LUC 20.20.128.A.2 – Adoption of Affordable Housing Standards Generally Applicable to Affordable Dwelling Units Created by Operation of the Land Use Code.

A. Purpose.

The purpose of *Part 1* of this rule is to implement LUC 20.20.128.A.2, which requires the Director to adopt by rule affordable housing standards to govern the construction, repair, modification, and operation of affordable dwelling units created by operation of the Land Use Code.

B. Applicability.

The affordable housing standards contained in this *Part 1* shall apply to any affordable dwelling unit created by operation of the Land Use Code.

In the event of a conflict between an applicable standard listed in this *Part 1* and an applicable standard included in the Land Use Code, the Land Use Code shall control.

In the event of a conflict between an applicable provision of this *Part 1* and an applicable provision contained in another Part to this Rule, the other Part shall control.

C. Rule.

1. Generally Applicable to All Affordable Dwelling Units.

The standards contained in this Subsection C shall apply to all affordable dwelling units created by operation of the Land Use Code within the applicability of this rule, regardless of whether they are for rent or for sale.

a. The Affordable Housing Standards Contained in LUC 20.20.128.A.3, as implemented and interpreted in *Part 2* to this Rule.

The affordable dwelling units shall be constructed, maintained, and operated in accordance with the standards contained in LUC 20.20.128.A.3, as implemented and interpreted in *Part 2* to this rule.

b. Designation/Re-Designation of Affordable Dwelling Units

Through a covenant recorded on title, the owner of the affordable dwelling unit(s) shall designate the dwelling unit(s) that will be affordable. The covenant shall allow for the owner to, from time to time, propose changes to the particular dwelling units designated as being affordable, provided that at all times the following remains true:

- i. The affordable dwelling units are in compliance with all applicable requirements contained in LUC 20.20.128; and
- ii. The affordable dwelling units are in compliance with all applicable requirements contained in *Part 1*, *Part 2*, and *Part 3* of this rule.

The Owner shall notify the City of the proposed change in writing for the City's approval. The City will review the proposed changes and shall approve or deny the proposed changes based upon the criteria if all applicable requirements remain satisfied.

c. Affordable Dwelling Unit Monitoring Fee

The Director may assess fees to cover the costs of monitoring an Owner's compliance with income and affordability restrictions governing the construction, repair, modification, and operation of affordable dwelling units created by operation of the Land Use Code.

If adopted, the Director shall publish such fees online with the Department of Development Service's fee schedule.

Following initial adoption, the Director may amend such fees from time to time, but no more than once every 12 months.

d. Equal Access to Common Facilities and Parking

Tenants occupying an affordable dwelling unit shall have equal access to enjoyment of all common facilities contained in the project. For purposes of this rule, "common facilities" means any space or physical installation belonging to the property that the owner makes available to tenants, whether or not the use of such facilities requires a fee.

The owner is not required to set aside parking spaces for affordable unit tenants, but shall rent available parking spaces on a first-come, first-served basis. The owner shall not give preference to market-rate tenants over affordable dwelling unit tenants in providing any parking spaces that may be available.

e. No Discrimination

The Owner shall not discriminate on the basis of race, creed, religion, color, sex, sexual orientation, gender identity, age, national origin, marital status, or presence of any mental or physical handicap as set forth in RCW 49.60.030, as now existing and as may be amended, in the lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

The Owner shall accept as tenants for affordable dwelling units, on the same basis as all other prospective households, households who are recipients of Federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, as amended.

The Owner shall not apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Units by holders of Section 8 certificates.

The Owner shall comply with the requirements of Chapter 9.20 BCC as well as all applicable provisions of state law prohibiting discrimination relating to housing, including RCW 59.18.255.

f. Covenant Securing Affordable Dwelling Units

The owner of affordable dwelling units and the Director, on behalf of the City, must fully execute and record a covenant, which shall run with the land and bind all successors and assigns, to secure compliance with the applicable requirements of this Rule, the Land Use Code, and the Affordable Housing Permit and Inspection Fee Waiver Program.

g. Timing of Execution

The owner must fully execute and record the covenant prior to issuance of any above-ground building permits for any phase of the development containing any affordable dwelling units.

h. Recording Required

The owner shall cause the covenant to be recorded in the real property records of King County, Washington. The owner shall pay all fees and charges incurred in connection with such recording and shall provide the City with a copy of the recorded document.

i. Term.

The covenant shall become effective upon its execution and shall continue in full force and effect for the life of the project, which shall not be less than 50 years, unless sooner modified or terminated with the consent of the City.

For purposes of this rule, the term “life of the project” shall mean the end of the constructed building’s useful life, which shall require repurposing, decommissioning, dismantling, and/or demolition.

j. Form.

The covenant shall be in a form acceptable to the Director and be consistent with the applicable requirements of this rule and the Land Use Code. The Director shall consult with the City Attorney's Office before approving the form of the covenant.

k. Assignment and Future Conveyances.

Each and every contract, deed, or other instrument executed conveying an interest in any project subject to a covenant recorded pursuant to the City's land use code or this rule shall contain an express provision making such conveyance subject to the covenant's terms and conditions; Provided, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed, or other instrument.

Neither the covenant, nor any of the rights or obligations of the owner arising under the covenant, may be assigned without the Director's prior written consent. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of, the parties and their successors and assigns.

l. Hold Harmless.

The owner shall defend, indemnify, and hold harmless the City, its officers, officials, employees, and volunteers and any other party authorized to enforce the terms of the covenant from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from the covenant.

m. Third Party Beneficiaries

The provisions of any covenant recorded pursuant to the City's land use code or this rule will be for the benefit of the owner and the City only and are not for the benefit of any third party (including, without limitation, any tenants or tenant organizations), and accordingly, no third party shall have the right to enforce the provisions of said covenant or of the documents to be executed and delivered in connection with said covenant.

n. Applicable Laws.

Any covenant recorded shall be governed by and construed in accordance with the laws of the State of Washington, except to the extent such laws conflict with the laws of the United States . Code sections from the RCW, the Bellevue City Code, or the Land Use Code referenced in the Covenant shall refer to those in effect on the date that the Covenant was fully executed.

o. Warranty.

The Owner must warrant that it has not executed and will not execute, any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event the

requirements of any covenant recorded under the City's land use code or this rule are paramount and controlling as to the rights and obligations set forth in the covenant and supersede any other requirements in conflict with the covenant.

p. Subordination

In the event additional financing, public or private, is required for any project subject to a recorded covenant under the City's land use code and this rule, then the Director may agree to subordinate any covenant provided there is sufficient assurance, acceptable to the Director in his/her sole discretion, that the project will continue to meet or exceed all provisions intended to maintain the project's affordability requirements.

q. Partial Release of Covenant

The Director shall have the discretion and authority to release any portion of the property subject to a covenant recorded pursuant to the City's land use code and this rule, provided there is sufficient property to protect the City's interest in said covenant and any and all affordability requirements. For purposes of an example, the Director will have the authority to execute a partial release if a portion of the property is required for rights-of-way or utility facilities.

r. Termination of Covenant.

Notwithstanding any provision to the contrary, all provisions of any covenant recorded pursuant to the City's land use code and this rule shall terminate and have no further force and effect upon the occurrence of one of the following events:

- i. The term's expiration.
- ii. The mutual agreement of the City and the Property Owner.

s. Modification of Covenant.

This Covenant shall be amended only by a written instrument executed by the parties hereto or their respective successors in title and duly recorded in the real property records of King County, Washington.

t. Enforcement

- i. Enforcement Provisions. The Owner shall exercise reasonable diligence to comply with the requirements of any covenant and shall correct any such noncompliance within sixty (60) days after such noncompliance is first discovered by the owner or would have been discovered by the exercise of reasonable diligence, or within 60 days after the owner receives notice of such

noncompliance from the City; provided however, that such period for correction may be extended by the City if the owner is exercising due diligence to correct the noncompliance.

ii. If such noncompliance remains uncured after such period, then the owner shall be in default and the City on its own behalf may take any one or more of the following steps:

- (1). By any suit, action, or proceeding at law or in equity, require the owner to perform its obligations under the covenant, or enjoin any acts or things which may be unlawful or in violation of the rights of the City thereunder; it being recognized that the beneficiaries of the owner's obligations thereunder cannot be adequately compensated by monetary damages in the event of the owner's default.
- (2). Have access to, and inspect, examine, and make copies of, all of the books and records of the owner pertaining to the Project; provided, however, the City shall not divulge such information to any third party unless required by law or unless the same is necessary to enforce the City's rights under the covenant, the land use code, or this rule.
- (3). Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, conditions, and agreements of the owner under the covenant.
- (4). Through the covenant, the owner shall grant to the City the option, upon owner's default under the covenant, for the term of the covenant to lease the units in the project as mutually selected by the City and the owner for the purpose of subleasing such units to eligible households, but only to the extent necessary to comply with the provisions of any covenant. The City may lease from the owner the units at the affordable rent level less a reasonable management fee to reimburse the City for any expenses incurred in connection with such sublease. The City may terminate its lease of the units in the project upon determination that the Owner is no longer in default pursuant to this covenant.

iii. Assignment of Rents. The owner shall assign to the City the right to receive the rents due or collected during the entire period an affordable dwelling unit or units are occupied in violation of this covenant. Any funds collected shall be deposited into the City's housing fund for use consistent with the City's affordable housing policies, plans, or initiatives. The owner shall be responsible for all costs to the City, including reasonable attorney fee, to recover such rents.

2. Applicable to Rental Affordable Dwelling Units.

a. Affirmative Marketing

The City maintains a mailing list of households interested in occupying affordable dwelling units. From time to time the City will provide to the owner the names of persons from the mailing list. In determining which eligible applicants shall be rented affordable dwelling units, the owner shall reasonably consider persons on the mailing list, and when they were placed on the mailing list.

For the duration that the dwelling units are required to remain affordable, the owner shall only rent or lease the affordable dwelling units to eligible households. If at any time the owner is unable to rent or lease the affordable dwelling units to an eligible household, the affordable dwelling units shall remain vacant pending rental or lease to an eligible household.

b. Initial Certification.

Prior to allowing any household to occupy any affordable dwelling unit, the owner shall require the prospective tenant to complete a Certificate of Household Eligibility.

i. Form of Certification

The Certificate of Household Eligibility shall be in a form acceptable to the Director.

The owner shall also undertake a good faith effort to verify the applicant's household income, as reported on the completed Certificate. The owner's obligation to verify the reported household income shall be limited to requesting copies of and reviewing the applicant's federal income tax returns, unless the owner has actual knowledge, or reason to believe, that the information provided by the applicant is materially inaccurate.

In the event federal income tax returns are not available, the owner shall verify household income using wage or salary statements, or other income records that the Director may consider appropriate.

c. Annual Recertification.

At every lease renewal or twelve months from the most recent Certificate of Household Eligibility for an affordable dwelling unit, whichever occurs first, the owner shall require the household occupying that affordable dwelling unit to complete and return to the owner an updated Certificate of Household Eligibility.

i. Form of Recertification.

The updated Certificate of Household Eligibility shall be in a form acceptable to the Director.

The owner shall undertake a good faith effort to verify the reported household income, as reported in the completed Certificate. The Owner's obligation to verify the household income shall be limited to obtaining a copy of and reviewing the tenant's federal income tax returns, unless the Owner has actual knowledge or reason to believe that the information provided by the household is materially inaccurate.

In the event federal income tax returns are not available, the owner shall verify household income using wage or salary statements, or other income records the Director may consider appropriate.

ii. Over-Income Tenant.

At the time of annual recertification, a household will remain eligible to occupy and affordable dwelling unit as long as household income does not exceed the maximum recertification income set forth in the table below, adjusted for household size.

If at the time of annual recertification, household income exceeds the maximum recertification income limit for the income level initially qualified for by a household, then within 90 days either: (1) such household must pay market rent and the next available comparable market rate unit must be rented as an affordable dwelling unit; or (2) the household must vacate the dwelling unit, unless otherwise prohibited by law, to make it available for an eligible household.

Maximum Permitted Income Levels

Percent of King County Median Income	
Income Level at Initial Occupancy	Income Level at Recertification
80% AMI	100% AMI
60% AMI	80% AMI
50% AMI	70% AMI

d. Adjustments to Rent Level for Affordable Dwelling Units

The monthly rent for the affordable dwelling units occupied by eligible households shall not exceed the applicable affordable rent, and for each specific tenant, shall be adjusted no more than once every twelve (12) months, and in no event within the first twelve months of occupancy by an eligible household.

e. Reporting Requirements.

Within thirty (30) days of issuance of any final inspection or, if applicable, certificate of occupancy for the project, the owner shall notify the City's Development Services Department [Attn: Land Use Director] of receipt of the first certificate of occupancy for the project.

After the completion date and until 90% of the rental units are occupied, the owner shall, on a quarterly basis, file with the City an Annual Project Certification in a form acceptable to the Director.

Thereafter, the owner shall file such certification annually on or before March 31st, which must set forth the required information for the preceding year.

f. Required Record Keeping and Right to Inspect.

The owner shall maintain complete and accurate records pertaining to the affordable dwelling units and shall permit any duly authorized representative of the City to inspect the books and records of the owner pertaining to the affordable dwelling units, and if applicable, incomes of eligible households residing in the project.

The owner's failure to maintain such records or failure to allow examination by the City or any duly authorized representative shall constitute a default of the covenant securing the construction, maintenance, and operation of the affordable dwelling units.

g. Lease Provisions.

It is the owner's responsibility to screen and select tenants in accordance with local, state, and federal laws and the requirements of this rule and all applicable covenants.

If written management policies exist, or exist in the future, with respect to the project, the City may review such written policies and may require changes in such policies, if necessary, so that they comply with all applicable requirements of the covenant, this rule, or the Land Use Code.

All leases for affordable dwelling units shall contain clauses wherein each individual lessee:

- (i) Certifies the accuracy of the statements made in the Certificate of Household Eligibility;
- (ii) Agrees that the household income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy; and
- (iii) Agrees that misrepresentation in the certification is a material breach of the lease, entitling the owner to terminate the lease for the affordable dwelling unit.

h. Sale or Transfer of the Project

The owner must covenant and agree not to sell, transfer, or otherwise dispose of the project or any portion thereof without first providing a written notice from the purchaser stating that the purchaser understands, and will comply with the owner's duties and obligations under the covenant, this rule, and the Land Use Code, as applicable to the Project. Such notice must be received by the City at least 10 days prior to the close of escrow.

i. Conversion to Condominium, Owner-Occupied, or Non-Rental Residential Use.

In the event the project is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Owner must submit to the City for its review a plan for preserving the affordable dwelling units. The City can consider options which would convert the affordable dwelling units to owner occupancy by eligible households. The Owner must receive authorization from the City prior to conversion to condominium, owner-occupied, or non-rental residential use. This section does not waive the owner's obligations to comply with any other law or regulations pertaining to conversion to ownership use.

j. Household Size Limits for Affordable Units.

The owner shall utilize the following occupancy standards for affordable dwelling units:

<u>Unit Size</u>	<u>Minimum Household Size</u>
Studio	1 Person
Open 1 Bedroom	1 Person
1 Bedroom	1 Person
Urban 2 Bedroom	2 Persons
2 Bedroom	2 Persons
Urban 3 Bedroom	3 Persons
3 Bedroom	3 Persons

3. Applicable to For Sale Affordable Dwelling Units.

This subsection applies to affordable dwelling units that are sold to a buyer who will occupy the affordable dwelling unit as their primary dwelling.

a. Homebuyer Certification.

The City must certify the eligibility of any potential buyer of an affordable dwelling unit prior to the closing of any sale of an affordable dwelling unit.

b. Household Size Limits for Affordable Units.

At the time of purchasing an affordable dwelling unit, a buyer's household must satisfy the following occupancy standards:

<u>Unit Size</u>	<u>Minimum Household Size</u>
Studio	1 Person
Open 1 Bedroom	1 Person
1 Bedroom	1 Person
Urban 2 Bedroom	1 Person
2 Bedroom	1 Persons
Urban 3 Bedroom	2 Persons
3 Bedroom	2 Persons
4 Bedroom	3 Persons

c. Maximum Household Income.

At the time of initial purchase, the household income of the buyer shall be less than, or equal to, the applicable area median income, adjusted for household size, required under the Land Use Code.

If the affordable dwelling unit is later sold, the buyer of the affordable dwelling unit shall have a household income less than the percentage of King County Median Income, adjusted for the buyer's household size, as shown in the following table.

Initial Affordability Level	Household Income Limit for Subsequent Buyer
80% of Area Median Income	90% of Area Median Income
100% of Area Median Income	110% of Area Median Income

d. Timing of Availability of the Affordable Units.

This subsection applies where the affordable dwelling units are for sale and are included in a development with market-rate dwelling units that are also for sale. In such circumstances, the affordable dwelling units shall be made available for sale and occupancy in a timely manner and generally made available at the same time that market rate units are made available. Unless otherwise approved by the City, the City shall not issue building permits for more than one-half the of market-rate units in the project prior to issuing building permits for all of the affordable dwelling units, and also shall not issue certificates of occupancy for more than one-half the number of market-rate units in the project prior to issuing certificates of occupancy for all of the affordable dwelling units.

e. Sale or Transfer of the Affordable Dwelling Unit

Whenever the owner no longer desires to own the affordable dwelling unit, the owner shall notify the City in writing to that effect. Such notice ("Notice of Intent to Sell") shall be provided to the Director.

Following receipt of a Notice of Intent to Sell, the City shall fix the maximum resale price of the affordable dwelling unit at the Formula Value or the Current Market Value, whichever is less, as such values may be adjusted pursuant to this section. The maximum resale price shall not be less than the base price, which shall equal the price that the owner paid to originally acquire the property, plus inflation.

- 1) **Formula Value.** The Formula Value shall be equal to the base price plus an appreciation factor. The appreciation factor shall be based on the change in median income in the Seattle-Bellevue HMFA as published by the United States Department of Housing and Urban Development (HUD). For this purpose, the median income prevailing on the date a recorded interest in the affordable dwelling unit was first acquired by the owner shall be compared with the latest median income available on the date of receipt by the City of the Notice of Intent to Sell. The percentage increase in the median income, if any, shall be computed and the base price shall be adjusted by that percentage. At the Director's sole discretion, the Formula Value may be further adjusted to account for expenses incurred by the owner to make significant capital improvements to the affordable dwelling unit.
- 2) The City may have an appraisal of the affordable dwelling unit prepared at its own expense by an MAI appraiser to establish the Current Market Value. The owner may also have an appraisal prepared at the owner's expense by a different MAI appraiser for the same purpose. If the two appraisals show different value, then the average of the two values shall be deemed and established as the Current Market Value.

I. Principal Residence.

The owner must occupy the affordable dwelling unit as their principal residence for the term of the covenant. The owner shall be considered as occupying the property as a principal place of residence if the owner is living on the property for at least ten months out of each calendar year. In the event the affordable dwelling unit is vacant while being actively offered for sale by the owner, this requirement shall not apply; however, the owner may not rent or lease the affordable dwelling unit during such period unless otherwise approved in writing by the City.

m. Leasing.

During the term of the covenant, the owner shall not rent or lease the affordable dwelling unit without prior written approval by the City. The City may, at its sole discretion, approve renting or leasing the Property for a period of up to twelve (12) months in order to avoid hardships resulting from the owner's employment transfer, reduction, termination, or similar reasons, or resulting from separation, dissolution, or similar domestic occurrences, or from the illness or disability of the owner or the owner's dependents, or from similar reasons beyond the reasonable control of the owner; provided further, that a copy of any lease or rental agreement shall be

provided to the City; and provided further the City in the exercise of its reasonable discretion may extend said 12-month period.

n. Homeowner Reporting Requirements.

The owner must submit a status report of the owner's occupancy of the affordable dwelling unit within 10 calendar days of receipt of any such request from the City. The report must include an explanation of any rental or vacancy questions raised by the City over the time period specified by the City in its request for a status report.

o. City's Rights of First Refusal.

Except as otherwise required by local, state, or federal law, the covenant shall grant the City a right of first refusal to purchase the affordable dwelling unit and any improvements located thereon under the following conditions:

- 1) The City may designate a governmental or non-profit organization to exercise its right of first refusal.
- 2) The City may assign this right to an individual private buyer who meets the City's eligibility qualifications.

Part 2: Implementation of LUC 20.20.128.A.3 – Interpretation of Codified Affordable Housing Standards.

A. Purpose.

The purpose of *Part 2* of this rule is to both implement and interpret LUC 20.20.128.A.3. Specifically, LUC 20.20.128.A.3.a requires the Director to implement the subsection by defining two terms by rule: “generally distributed” and “intermingled.” Similarly, LUC 20.20.128.A.3.e requires the Director to implement the subsection by defining the term “bedroom” by rule. The Director has determined that additional interpretation of LUC 20.20.128.A.3, as provided in this *Part 2*, is appropriate to ensure no ambiguity as the subsection is applied during the City’s development review process.

B. Applicability.

The affordable housing standards contained in LUC 20.20.128.A.3 and the provisions of this *Part 2* shall apply to any affordable dwelling unit created by operation of the Land Use Code.

In the event of a conflict between an applicable standard listed in LUC 20.20.128.A.3 and an applicable standard included elsewhere in the Land Use Code, the standard included elsewhere shall control.

In the event of a conflict between an applicable standard of this *Part 2* and an applicable standard contained in another Part to this Rule, the other Part shall control.

C. Rule.

1. Location of Affordable Dwelling Units.

LUC 20.20.128.A.3.a states that “affordable dwelling units shall be generally distributed throughout the residential portions of a development and, where market-rate dwelling units are provided, intermingled with market-rate dwelling units.” The Director is then directed to define the terms “generally distributed” and “intermingled” for the purposes of this subsection.

a. Definition of “Generally Distributed”

The term “generally distributed” shall require affordable units to be placed or located more or less evenly throughout the entire development so as to avoid any form of improper segregation or clustering. In practice:

Owners may designate affordable dwelling units on any given floor in numbers not to exceed two times the set-aside required on the property. For example, a property having a 10 percent set-aside may designate up to 20 percent of the total dwelling

units on any single floor as affordable dwelling units. This means that, in most cases, owners will not have to designate affordable dwelling units on the highest floor or floors of mid-rise or high-rise buildings.

In working to ensure an even and equitable distribution, the applicant and the Director must consider whether the placement of affordable units does or does not stigmatize or visually differentiate them from market-rate units, promoting an inclusive and integrated community environment.

By way of example only, affordable dwelling units are generally distributed where the project avoids placing all affordable dwelling units, or a disproportionate number of affordable units, as follows: (1) on the same floor of a building; (2) in the same area of the building (e.g., areas with no or limited views, adjacent to elevators or stairwells); and (3) only on lower floors.

b. Definition of “Intermingled”

“Intermingled” shall mean that affordable dwelling units are mixed among the market-rate units in such a way that they are indistinguishable and integrated throughout the floors where they exist. Owners may not cluster or designate more than three adjoining dwelling units as affordable dwelling units; in this context, “adjoining” includes dwelling units across a hallway as well as those sharing common walls.

2. Mix of Rental and Sale Affordable Dwelling Units.

LUC 20.20.128.A.3.d, .e, and .f provide restrictions relating to the mix of rental and sale affordable dwelling units. This subsection interprets how to apply LUC 20.20.128.A.3.d, .e, and .f to phased development as well as how to calculate a “proportionate mix of rental and for sale units” for the purposes of LUC 20.20.128.A.3.d.

a. Application to Phased Development.

Where a development occurs in phases, each phase shall be reviewed as a distinct development for the purposes of LUC 20.20.128.A.3.d, .e, and .f.

b. Calculation of a “Proportionate Mix of Rental and For Sale Units.”

LUC 20.20.128.A.3.d states that where the “market-rate dwelling units in the development are a mix of dwelling units that are for rent and for sale, then the affordable dwelling units shall be a proportionate mix of rental and for sale units.”

To determine the “proportionate mix,” a three-step process shall be used:

Step 1: Divide the number of market-rate ownership units by the number of market-rate rental units.

Step 2: Divide the number of affordable ownership units by the number of affordable rental units.

Step 3: Compare the results of Step 1 and Step 2. If the results are the same, or are within one whole number of each other, then a proportionate mix has been achieved. If the results are different, then the mix of rental and ownership units needs to be adjusted until the results are the same.

c. Number of Bedrooms in Affordable Dwelling Units.

LUC 20.20.128.A.3.e states that the “affordable dwelling units shall consist of a mix of number of bedrooms that is in the same proportion as the bedroom mix of market-rate dwelling units in the overall development.” The Director is then directed to define the term “bedroom” for the purposes of this subsection.

i. Definition of “Bedroom”

The term “bedroom” shall have the meaning set out in the definitions section of this rule.

ii. Calculation of a “Proportionate Mix of Bedrooms”

To determine the “proportionate bedroom mix,” a three-step process shall be used for each unit type of market-rate dwelling units contained in the development:

Step 1: Divide the number of market-rate dwelling units of the specified unit type by the total number of market-rate dwelling units in the development.

Step 2: Multiply result from Step 1 by the total number of affordable dwelling units to derive the required number of affordable dwelling units of that unit type. If the result is a fraction, then the owner may round the fraction up or down to the next whole number.

Step 3: Total the number of affordable dwelling units of all unit types to confirm that it matches the applicable set-aside requirement for the project. If rounding causes an incorrect total, then, for one or more unit types, the owner may change the rounding decisions in Step 2 to achieve the correct total.

A development may meet the proportionate bedroom requirement by providing affordable dwelling units which have the same or greater number of bedrooms than the market rate dwelling units. For example, if, by operation of the steps above, a development is required to provide 10% of the affordable dwelling units as one-bedroom units, then the development may choose to provide two or more bedroom units to meet the 10% requirement. In no case shall the number of bedrooms be less than the number required by the steps above.

d. Size of Affordable Dwelling Units.

LUC 20.20.128.A.3.f states that “affordable dwelling units shall be provided in a range of sizes comparable to the size of market-rate dwelling units in the development.” This subsection focuses on the square footage of each affordable dwelling units.

For each unit type, the average square footage of affordable dwelling units may not be less than 90 percent of the average square footage of market-rate dwelling units of the same unit type in the development. However, no affordable dwelling unit shall be smaller than the smallest market-rate dwelling unit of that unit type in the development.

3. Materials, Finishes, Design, Amenities, and Appliances of Affordable Dwelling Units.

LUC 20.20.128.A.3.g states that “[t]he materials, finishes, design, amenities, and appliances of affordable dwelling units shall have substantially the same functionality as, and be substantially comparable with, those of the other dwelling units in the development.” Through use of the phrases “substantially the same functionality as” and “substantially comparable with” it is clear that the intent of this subsection is not to require identical materials, finishes, design, amenities, and appliances for both affordable and market-rate dwelling units.

a. Materials and Finishes

LUC 20.20.128.A.3.g states that the “materials” and “finishes” of affordable dwelling units must have “substantially the same functionality as, and be substantially comparable with, those of the other dwelling units in the development.”

The material and finishes of an affordable dwelling unit have substantially the same functionality as, and are substantially comparable with, those of market-rate dwelling units in the development when the material and finishes of the affordable dwelling unit are the same as those for at least 50% of the market-rate dwelling units of the same unit type in the project.

b. Design

LUC 20.20.128.A.3.g states that the “design” of affordable dwelling units must have “substantially the same functionality as, and be substantially comparable with, those of the other dwelling units in the development.” This standard applies to both the interior and exterior design of the affordable dwelling units.

The design of an affordable dwelling unit has substantially the same functionality as, and is substantially comparable with, those of market-rate dwelling units in the development when the

design of the affordable dwelling unit is the same as for at least 50% of the market-rate dwelling units of the same unit type in the project.

c. Amenities

LUC 20.20.128.A.3.g states that affordable dwelling units contain “amenities” that “have substantially the same functionality as, and be substantially comparable with, those of the other dwelling units in the development.”

For the purposes of LUC 20.20.128.A.3.g, the term “amenities” shall refer to the various features, facilities, and services provided within a dwelling unit that enhance the living experience and well-being of the occupying household, including, but not limited to, the following:

- Balconies or private outdoor space;
- Number of bathrooms;
- Number of sinks;
- Number of showers and bathtubs; and
- Number of toilets;

The amenities contained in an affordable dwelling unit have substantially the same functionality as, and are substantially comparable with, those of market-rate dwelling units in the development when the amenities contained in the affordable dwelling unit are the same as for at least 50% of market-rate dwelling units of the same unit type in the project.

d. Appliances

LUC 20.20.128.A.3.g states that affordable dwelling units contain “appliances” that “have substantially the same functionality as, and be substantially comparable with, those of the other dwelling units in the development.”

For the purposes of LUC 20.20.128.A.3.g, the term “appliance” shall refer to the various durable consumer goods provided within a dwelling unit that enhance the living experience and well-being of the occupying household, including, but not limited to, the following:

- Buzzer or intercom system;
- Door locks;
- Security alarms;
- Fire alarms;
- Smoke detectors;
- Carbon monoxide detectors;
- Garbage disposal;

- Refrigerator;
- Cooking range;
- Microwave;
- Air conditioner;
- Heater;
- Washer;
- Dryer; and
- Dishwasher.

The appliances contained in an affordable dwelling unit have substantially the same functionality as, and are substantially comparable with, those of market-rate dwelling units in the development when the appliances contained in the affordable dwelling unit are the same as for at least 50% of market-rate dwelling units of the same unit type in the project.

4. Duration of Affordability.

Under LUC 20.20.128.A.3.h, “[t]he affordable dwelling units shall remain affordable for the life of the project, which shall not be less than 50 years.”

For purposes of this rule, the term “life of the project” shall mean the end of the constructed building’s useful life, which shall require repurposing into a nonresidential use, decommissioning, dismantling, and/or demolition.

Part 3: Implementation and Interpretation of LUC 20.50.030 – Definition of “Housing Expense”

A. Purpose

The purpose of this *Part 3* is to both implement and interpret LUC 20.50.030’s definition of “Housing Expenses,” which authorizes, but does not require, the Director to further define by rule what constitutes “housing expenses” and establish monthly allowances (i.e., rent reductions) to cover residents’ reasonable utility costs and other expenses required by the owner as a condition of tenancy.

B. Applicability

The affordable housing standards contained in this *Part 3* shall apply to any affordable dwelling unit created by operation of the Land Use Code.

In the event of a conflict between an applicable standard listed in this *Part 3* and an applicable standard included in the Land Use Code, the Land Use Code shall control.

In the event of a conflict between an applicable provision of this *Part 3* and an applicable provision contained in another Part to this Rule, this Part shall control.

C. Background.

LUC 20.50.030:

Housing Expenses. For rental affordable dwelling units, housing expenses include any expenses required by the owner as a condition of tenancy, including, but not limited to, rent and utilities. For ownership affordable dwelling units, housing expenses include mortgage payments, property taxes, property hazard insurance, and homeowner’s association dues. For purposes of this definition, housing expenses do not include parking expenses, unless parking is required as a condition of tenancy or ownership. The Director may further define “Housing Expense” by rule, which may also establish monthly allowances (i.e., rent reductions) to cover residents’ reasonable utility costs and other expenses required by the owner as a condition of tenancy.

D. Rule.

a. Tenant Paid Utilities

If a tenant pays for Utilities separately from his/her monthly rent, then the affordable rent will be reduced by the amount of the applicable utility allowance. For purposes of this

rule, the term “applicable utility allowance” shall be determined by the Director and apply to electricity, gas, water, sewer, storm, and solid waste utilities.

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