

# City of Winchester Housing Policy Analysis and Recommendations

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# Winchester Policy Analysis

## Executive Summary

Following a Winchester City Council resolution in pursuit of a housing policy framework, the City of Winchester partnered with the Housing Coalition of the Northern Shenandoah Valley to fund the exploration and development of affordable housing policies. They contracted HDAdvisors to complete the endeavor.

This Council resolution resulted from a housing study that found Winchester lacks over 1,000 affordably priced homes for incomes under \$26,500 per year.<sup>1</sup> Four out of five of these households are cost-burdened, or spending more than 30% of their income on rent or mortgages.<sup>2</sup> This housing cost problem is much worse for renters, as 43.3% of renters are cost-burdened compared to 16% of homeowners in Winchester.<sup>3</sup>

Fifty-six percent of the City's population rent their homes, and one third of renters in Winchester make less than \$33,650 a year.<sup>4</sup> The growth in demand for moderately priced rentals has far outpaced the development of new ones, leading to 40% of Winchester's rental options made up of single-family detached homes that were formerly owner-occupied, and townhomes in the few places where zoning allows. This conversion of homeownership units into rentals restricts the availability of affordable ownership opportunities as well, making the barriers even higher for affordable homeownership.<sup>5</sup>

New development is happening, but it is primarily focused on housing priced for those making \$81,400 per year or more ("market rate"). The rise of remote work and travel patterns following COVID-19 means that higher-earning households from Northern Virginia are moving to Winchester, with demand far outpacing the housing supply or the ability to build units fast enough. Housing prices in Winchester will continue to rise from the competition for the scarce housing supply and these telecommuters' buying power.<sup>6</sup>

HDAdvisors was contracted to explore specific housing policy solutions from these broad focus areas: accessory dwelling units; inclusionary zoning; blight mitigation strategies; strategies for increasing home ownership; minimums for affordable housing for all new development projects over an established size threshold; and, updated density bonuses for planned unit developments.

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<sup>1</sup> RKG Associates, Housing Market Analysis: Preliminary Findings, presented to Winchester City Council Planning and Economic Development Committee on September 30, 2021.

<sup>2</sup> HousingForward Virginia Sourcebook: Cost Burden by Income, analysis of U.S Department of Housing and Urban Development's (HUD) Comprehensive Housing Affordability Strategy (CHAS) data based on American Community Survey (ACS) 5-year estimates, 2015-2019.

<https://housingforwardva.org/toolkits/sourcebook/affordability-costburden/>

<sup>3</sup> HousingForward Virginia Sourcebook: Housing Cost Burden.

<sup>4</sup> RKG Associates, Housing Market Analysis.

<sup>5</sup> RKG Associates

<sup>6</sup> RKG Associates

Through an ongoing process of community engagement and feedback, academic research collection, expert interviews and focus groups, review of existing best practices, and continued revisions, HDAdvisors has developed policy recommendations for Winchester to pursue and implement. *Winchester's Policy Analysis outlines and analyzes opportunities for zoning for increased ease of housing development, promoting long-term affordable housing options through community land trusts, financing options for affordable housing development, and developing an affordable housing dwelling unit program.*

**Zoning for Smart Growth:** Utilizing tools through the planning and zoning process, Winchester can make affordable and rental development more feasible in the City. Allowing for more housing in key commercial areas can promote development, adding to Winchester's character and walkability in underutilized districts and supporting local businesses. Affordable housing overlays and targeted zoning changes in commercial districts can allow the market to deliver the housing Winchester needs without costly, time-consuming barriers. Smarter zoning will allow Winchester to remain unique, strong, and economically independent from NoVA.

**Community Land Trusts (CLT):** A CLT is an affordable housing model that separates the ownership of a home from the land beneath it. This allows a low-income buyer to afford homeownership and gain equity at the same time, while making the home affordable for current and future homeowners. It benefits current homeowners and those who wish to become homeowners in the future. This tool is available to Winchester right now and developers can partner with the Virginia Statewide Community Land Trust. The City can incentivize improvements for substandard housing needing investment and support. The VSCLT can partner with the City to rehab the homes and support homeowners through dedicated owner-occupied projects.

**Financing Affordable Housing:** Housing development and construction requires a lot of funding to make the finished homes actually affordable to those who need them most. Winchester can explore bond issuance to help make the math pencil out for affordable developments. The Community Development planning department has an opportunity to explore new bond funding opportunities that are unique in Virginia, like using G.O. Bonds or partnership with the Virginia Resource Authority to invest in and incentivize affordable housing options. These options could look like low interest loans for developers or even grants.

**Affordable Housing Dwelling Unit Program:** Virginia state law allows for "inclusionary zoning," with which cities can incentivize or even in some cases require market-rate housing developments to include dedicated affordable homes. By the current legislation, Winchester can incentivize affordable home development by City Council authorizing the creation of an "Affordable Housing Dwelling Unit" (AHDU) program. This program gives Winchester the ability to offer increased density options, waived fees, or reduced processing times for developers that intend to create housing for certain income levels.

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# Winchester Policy Analysis

## Explanation of Purpose and Methodology

### Background

The City of Winchester, in partnership with the Housing Coalition of the Northern Shenandoah Valley, utilizing grant funding from Virginia Housing, sought the assistance of HDAvisors (HDA) to study and develop an affordable housing policy framework in the City of Winchester.

The goal of Virginia Housing’s Market Analysis Community Impact Grant in Policy Analysis is to support local governments and non-profit organizations in their local housing markets and to develop policy options to pursue with a full understanding of the implications and costs therein.

Winchester’s policy analyses come at a strategic time following the release of Winchester’s Housing Market Analysis (2021, RKG & Associates)<sup>7</sup>, and the development of Winchester’s Comprehensive Plan, finalized in 2022<sup>8</sup>.

Winchester’s Housing Market Analysis identifies the following key outcomes for housing supply and demand, rental and homeownership affordability, and supply projections:

1. Winchester is a renting community with 56% of households renting in the city. These are younger households with income discrepancies from owning households.
2. Winchester’s housing stock is low density, with nearly 40% of rental units existing in single-family homes or attached townhome units.
  - “The total of rental units within structures that are 5 units or fewer exceed the total of rental units within structures greater than 5 units.”<sup>9</sup>
3. Housing types are separated within the city limits, with one subarea of the city (subarea 3) housing the highest proportion of multifamily units.
4. Winchester has a large supply of units affordable and available to households earning 50% to 80% of the Area Median Income (AMI) and lacks units for households earning less than 50% AMI and more than 120% AMI.
  - Rental units in Winchester overwhelmingly cost-burden households at 30% AMI and below. Interviews indicate that units affordable to this income range are also of the lowest quality.
5. Regulations limit the development of multi-family units with two or more bedrooms, and ultimately prompt the conversion of owner-occupied single-family homes into rentals.
6. Winchester expects increased market rate rental development in the next five years (serving 80% to 100% AMI households).

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<sup>7</sup> Winchester Housing Market Analysis, RKG & Associates, 2021.

<sup>8</sup> <https://www.winchesterva.gov/planning/comprehensive-plan>

<sup>9</sup> Pg. 24, 2021, Winchester Housing Market Analysis, RKG & Associates.

7. In-migration of more affluent residents to Winchester increases the demand for units, far outpacing supply and **prompting prices of rental and ownership units to increase faster than inflation.**

In-migration from Northern Virginia and other major urban areas to Winchester due to the expansion of telecommuting has raised the region's household incomes. This puts more upward pressure on housing prices as demand and buying power both increase, **further cost-burdening and displacing the City's most vulnerable residents** at 50% AMI and below.

Recognizing the importance of the findings from the Housing Market Analysis and its implications for citizens, Winchester's City Council authorized a resolution to research and develop a housing policy framework for the following action items:

- a. Accessory dwelling units;
- b. Inclusionary zoning;**
- c. Additional blight mitigation strategies;**
- d. Strategies for increasing home ownership;**
- e. Minimums for affordable housing for all new development projects over an established size threshold; and,**
- f. Updated density bonuses for Planned Unit Developments.

This policy analysis report identifies and investigates specific policies within the bolded categories above:

- 1. Zoning for Smart Growth**
- 2. Affordable Housing Dwelling Unit Program**
- 3. Community Land Trusts**
- 4. Financing Affordable Housing**

## Policy Identification Process

HDAvisors and representatives of Winchester's Community Development department and the Housing Coalition of the Northern Shenandoah Valley convened in April 2023 to identify potential policies to analyze and establish protocol to elicit community feedback. The team first evaluated policies based on Community Development's progress on City Council's resolution. Work on Accessory Dwelling Units and Planned Unit Developments was already underway, and these policies were cut from HDA's list of possible policies to analyze.

In May 2023, the team conducted a community meeting to hear priorities from citizens working in the housing affordability or development fields. Twenty-two community members were in attendance and had the option to participate in two 30-minute "breakout" sessions with the following topics:

1. Increasing opportunities for affordable homeownership
2. Increasing opportunities for affordable rentals
3. Economic development through workforce housing development
4. Improving substandard housing.

Table leads, HDA and Winchester Community Development staff, conducted the breakout sessions focusing on each topic for two rounds of 30 minutes each, with attendees choosing two topics to participate in. Each table had at least five to ten people per session. Table leads took extensive notes in each session to capture the dialogue for each topic and citizens at each table took notes throughout the conversation.

Following the breakout session, the team compiled and cataloged the notes and main impressions from the meeting. HDA staff utilized a coding technique to outline themes within the broad categories discussed by citizens. From the themes identified, HDA recommended seven potential policies that complimented the needs, gaps, and solutions presented by citizens.

The team evaluated the options presented and chose the following four policies to analyze under the guidance of this grant funding:

1. **Zoning for Smart Growth**
2. **Affordable Housing Dwelling Unit Program**
3. **Community Land Trusts**
4. **Financing Affordable Housing**

Utilizing its expertise as an affordable housing consulting firm with extensive experience in the field, HDA staff set to researching these policies, including conducting interviews and reviewing academic research. Analysis for each topic has varying methodology, described in each brief.

## **Policy Implementation Efforts**

While each policy analysis outlines ideal implementation scenarios, it is impossible to know how residents and developers will receive each policy in reality. All efforts were made by the team to be inclusive of and account for the desires, needs, and even possible fears of Winchester residents, while also setting bold but realistic goals, as set forth by Winchester's City Council through resolution and the Winchester Comprehensive Plan.

The Housing Coalition of the Northern Shenandoah Valley will be a vital partner for the City throughout the entire implementation process. To most effectively implement the policies identified, Winchester citizens need to be properly engaged to promote a sense of ownership and confidence in the strategies. It may be useful for the Housing Coalition to begin with a public relations campaign outlining why these strategies are needed before any implementation steps are taken.

Some of the policy briefs in this document use examples from within Virginia. Many of Virginia's most successful affordable housing strategies exist in Northern Virginia (NOVA). However, it's clear that not all towns or cities with proximity to the expanding Washington, D.C. metropolitan area want to become exurbs of DC or NOVA. Citizen engagement will be required to promote the policies identified, but also to combat the idea that these policies are part of Winchester "becoming NOVA," and in fact are more aimed at preventing that. The Housing Coalition's reputation and relationships with the community will be important in emphasizing this goal of the policies.

Winchester's distance from D.C., the cost of living, and the quality of life offered to commuters and remote workers from D.C. and NOVA has already proved a successful, if unintentional, pull factor bringing new residents to Winchester. Winchester's sense of community and place is a good thing, which is recognized by both long term and new residents. As identified by the Housing Market Analysis, this population change has already been occurring with increased demand for housing, fewer units, and overall increased prices, decreasing the availability of housing for Winchester's most vulnerable residents. Winchester must develop and implement proactive policies in these briefs to avoid "becoming NOVA," or rather, to remain affordable, unique, and economically independent.

*To implement the policies analyzed in this brief, it is recommended that the Housing Coalition of the Northern Shenandoah Valley and the City of Winchester Community Development team develop a community engagement and placemaking strategy to establish a strong, unique identity for Winchester that centers housing affordability. A campaign supporting housing affordability in Winchester<sup>10</sup> would also ensure the successful implementation of the recommended policies, which will need this community support.*

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<sup>10</sup> "Keep Winchester Affordable" - as suggested by the HDA team to promote affordable housing development and have a catchy slogan to stand behind.



# Zoning for Smart Growth

## Mixed-Use Placemaking and Affordable Overlays

### Policy Framework

Re-thinking zoning is key to increasing the housing supply, especially for cities with a limited amount of available land. Winchester's population is growing. As evidenced by the Housing Market Analysis, fewer and fewer units are available to residents at 50% of AMI and below<sup>11</sup>. With additional in-migration from Northern Virginia<sup>12</sup> contributing to a rising area median income (AMI), increasing housing production to proactively create and preserve affordable options for existing residents is crucial. This can be accomplished through changing the zoning code to allow for more housing in key areas.

Changing the zoning code has the potential to enable Winchester's housing market to absorb the growth in population while creating and preserving affordability. Zoning for more housing will be a crucial part of Winchester's housing solution plan while also amplifying Winchester's character and charm, promoting a strong sense of place for Winchester's residents without displacing them.

Increasing housing supply through zoning changes can be a challenge for any locality, usually due to the public engagement process. For many citizens, the idea of population growth and increasing density has negative connotations, like increased crime, gridlocked streets, and disappearing green space. More housing in Winchester may feel to citizens like the City is giving into pressure and becoming another Northern Virginia suburb. But these problems are not caused by increased density.

In fact, increasing allowable housing development tends to yield positive housing outcomes for cities large and small, including those in Virginia, and can be done in a way that honors the character of a community.<sup>13</sup> More housing in a city's center leads to increased tax revenues, attracts new and relocating employers, and places housing within walking distance of important destinations. All of these factors help improve sense of place and connection to a community.<sup>14</sup>

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<sup>11</sup> Currently, a deficit of 813 rental units exists for households below 30% of AMI. There is a small surplus of rental housing priced for 30% - 50% AMI. However, a deficit of 1,062 units priced for households at 120% AMI and above also exists, which exerts market pressure on lower-priced units as higher-income households have greater buying power, counteracting any surpluses.

<sup>12</sup> The 2020 Housing Market study stated that Median Family Income in Winchester was expected to grow by 4.9% from 2020 to 2025. Households earning above \$150,000 (more than twice the MFI) are expected to lead population growth with an estimated 15.5% increase by 2025.

<sup>13</sup>

<https://www.growsmartri.org/training/Place%20Making%20with%20Form%20Based%20Code%20Article%20-%20Urban%20Land%202006.pdf>

<sup>14</sup> <https://www.pps.org/article/what-is-placemaking>

Increasing zoning limits is a way to proactively provide housing to Winchester’s most vulnerable residents, while also keeping the city a healthy and affordable place to live.

*It is recommended that the City of Winchester pursue targeted zoning changes in commercial corridors and implement an affordable housing overlay district. When aligned with the city’s proposal to pursue Neighborhood Design Districts, these recommendations could increase housing development and affordability within the city.*

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### **Arlington’s Bet on Housing (Arlington, Virginia)**

In 1957, amid the rapid growth of suburban sprawl, planners in Arlington County foresaw that single-family detached housing developments were creating a budget imbalance. Such developments paid less in property taxes per acre, but demanded more in public expenditures than multi-family housing.

To avoid raising taxes on homeowners, the County embarked on a plan to allow high-rise apartments and office buildings to be built along major arterial roads around Clarendon, which was adopted in 1962. Later, with the construction of the D.C. Metro Orange Line, further upzonings took place in quarter-mile “bullseye” areas around the new stations. This plan is often cited as a blueprint for Transit-Oriented Development (TOD), which prioritizes development near transit stops and hubs. This endeavor promoted communities within the transit network to become more walkable, encouraging more businesses and residents to locate themselves near these major hubs.

In 1970, Arlington had about 30,000 single-family detached homes and only about 41,000 apartments. Fifty years later, the number of single-family detached homes has not grown significantly—but there are now almost 88,000 apartments, with no growth in the developed land area within the county.<sup>15</sup> While this type of growth would be extreme for Winchester, it demonstrates how zoning can unlock multi-family development potential in strong housing markets.

In Arlington, rezoning underutilized land proactively created by-right opportunities for naturally occurring affordable housing and protected the character of single-family neighborhoods. This resulted in greater tax revenue for the city and promoted Arlington itself as a good place to live and work.

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Within Winchester’s large tracts of single-family-only housing, upzoning—changing the zoning code in a way that allows for more units per lot—may be out of the question. However, Winchester

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<sup>15</sup> <https://worksinprogress.co/issue/how-dc-densified>

also has many commercial areas with few-to-no housing units, where existing commercial landowners are less likely to oppose rezoning, especially if it increases their property values.

Targeting commercial areas for rezoning to allow by-right development of multi-family housing has the potential to create high-value, walkable, mixed-use developments near the City's core and other important nodes, such as tourist attractions. For example, this could be especially helpful along the B2 - Highway Commercial District<sup>16</sup> with the Corridor Enhancement Overlay on Valley Road (Route 11), where currently only certain types of relatively low-density multi-family housing are allowed with a Conditional Use Permit.<sup>17</sup>

Zoning changes could take the form of amendments to the existing commercial zoning districts, or the creation and implementation of a new mixed-use zoning district in these areas. Aspects of form-based code—a type of zoning that focuses on the forms of buildings and streets more than land use type—could also be utilized to ensure a sense of place is maintained in each corridor.<sup>18</sup> Form-based regulations may be implemented in rezoned districts to influence the appearance of new buildings to align with the Corridor Enhancement District, or similar design-based guidelines. These regulations can help improve connections between residences, businesses, and the public realm (streets and sidewalks), embedding placemaking in the zoning code. However, these restrictions should be flexible enough that the highest number of housing units allowed by the zoning is still financially feasible and technically possible within building codes.

When approaching rezoning in underutilized commercial districts, it is important to avoid regulations that could impede the by-right development of diverse, attractive, and accessible multi-family housing, as these entryways to the city should promote a sense of diversity and community. Winchester should avoid zoning that solely incentivizes affordable housing, but discourages market-rate housing and other uses, as this may isolate affordable housing residents and prevent the creation of mixed-use and mixed-income neighborhoods. Local tax incentives for LIHTC and other affordable projects, such as those recently adopted in Winchester, can be left intact.

Large minimum lot sizes, minimum parking requirements or parking incentives, unit-per-building or bedroom-per-unit limits, and restrictions on first-floor units should be avoided as they act as impediments to multi-family development that will help sustain nearby businesses. These are common restrictions in zoning ordinances that may unintentionally prevent diverse development

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<sup>16</sup> <https://gis.winchesterva.gov/zoningdistrictmapping/>

<sup>17</sup> [https://library.municode.com/va/winchester/codes/zoning\\_and\\_subdivision\\_ordinance](https://library.municode.com/va/winchester/codes/zoning_and_subdivision_ordinance)

<sup>18</sup>

<https://www.growsmartri.org/training/Place%20Making%20with%20Form%20Based%20Code%20Article%20-%20Urban%20Land%202006.pdf>

and encourage more isolated housing that can segregate communities further.<sup>19</sup> The public realm should always be considered when making zoning decisions.

An interview with Dr. Emily Hamilton at the Mercatus Center at George Mason University outlined the potential for smaller minimum lot sizes to increase the number of units in new developments while preserving affordability.<sup>20</sup> The Mercatus Center's economic research and review of zoning's impacts on housing development show that decreasing minimum lot sizes and allowing for smaller, more compact forms of housing on those lots does not reduce the value of homes on those lots over time (as many opponents believe) and can increase the development of affordable units.<sup>21</sup> In fact, increasing the number of units on one smaller lot has the potential to increase the total value of the land and the units on that lot over time, creating an economic benefit for owners in those commercial districts.<sup>22</sup>

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### **Tysons Corner's Transformation (*Tysons, Virginia*)**

Tysons Corner in Fairfax County, Virginia has long been a jumble of highways, big-box stores, malls, suburban office parks, and car dealerships. By 2010, major office tenants were leaving the area for more attractive, walkable, and urban neighborhoods in Washington D.C. and Arlington. Additionally, Fairfax County's tax rolls were facing the same problem that Arlington's were 50 years prior: single-family detached homes cost the County too much to develop and paid too little in property taxes.

Taking inspiration from their neighbors in Arlington, Fairfax undertook an ambitious rezoning plan to coincide with the arrival of the Metro Silver Line and rezoned the underutilized commercial areas to allow more housing options by-right. By aligning with the arrival of the Metro Silver Line, this rezoning brought life back to Tysons Corner, providing accessible transit, affordable housing options, and new businesses seeking to serve the new residents of the community.

Since then, Tysons has added almost 5,000 new apartments, with thousands more planned in this formerly low-density, low-value commercial district. The key to the success of the rezoning was that Tysons Corner was not in anybody's backyard. The commercial areas were separated from existing single family neighborhoods by highways and other barriers, making the public engagement process much smoother.<sup>23</sup> What's more, a significant portion of new apartments in

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<sup>19</sup>

<https://www.growsmartri.org/training/Place%20Making%20with%20Form%20Based%20Code%20Article%20-%20Urban%20Land%202006.pdf>

<sup>20</sup> <https://www.mercatus.org/research/policy-briefs/learning-houstons-townhouse-reforms>

<sup>21</sup> July 12, 2023. Interview with Emily Hamilton, Mercatus Center at George Mason University.

<sup>22</sup>

<https://www.bloomberg.com/news/articles/2019-02-05/why-that-new-zoning-study-shouldn-t-deter-yimbs>

<sup>23</sup> <https://worksinprogress.co/issue/how-dc-densified>

Tysons Corner are dedicated low-income housing due to Fairfax County's pioneering Affordable Housing Dwelling Unit ordinance.

While Winchester should not strive to emulate Tysons Corner's extreme growth, the City can still learn key lessons from its success.

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Additionally, Winchester may consider creating a zoning overlay district dedicated to affordable housing to pair with targeted rezoning in commercial districts. An affordable housing overlay zoning district would mean that if a developer proposed a project within the overlay zone, the project would be awarded additional incentives if the units met a specified affordability threshold. These incentives could include automatic waiver of permitting fees, expedited administrative approvals, and possibly greater density bonuses within the overlay boundary. The large density bonuses given to affordable set-asides in PUD districts could be used as a template.

The City should allow 100% affordable developments by-right within the overlay, which is recommended to incentivize both a greater number of units and affordability of the units developed, as well as cut down on the potential administrative burden of processing fee waivers or expediting permits.

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### **Affordable Housing Overlays (*Albemarle and Fauquier County, Virginia*)**

Very few localities in Virginia have considered the creation of affordable housing overlays. Fewer have implemented them. Zoning overlays are enabled through Virginia's general zoning enabling statute.<sup>24</sup> One purpose of zoning given by the Code of Virginia is "...to promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated..."<sup>25</sup> This enables the creation of the affordable housing zoning overlay.

The creation of an affordable housing overlay allows for the jurisdiction to reward affordable development with density bonuses and other incentives. Incentives for affordable development would be enabled through the same law that allows Affordable Housing Dwelling Unit ordinances.<sup>26</sup> However, unlike an AHDU ordinance, the overlay would not apply to the entire locality; instead, it would target specific areas for increased density and affordability.

Albemarle County, Virginia has contemplated the use of an affordable housing overlay, awarding large density bonuses to affordable projects in their urban ring and allowing them by right,

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<sup>24</sup> <https://law.lis.virginia.gov/vacode/title15.2/chapter22/section15.2-2280/>

<sup>25</sup> <https://law.lis.virginia.gov/vacode/title15.2/chapter22/section15.2-2283/>

<sup>26</sup> <https://law.lis.virginia.gov/vacode/title15.2/chapter22/section15.2-2305.1/>

bypassing the entitlement process.<sup>27</sup> Per an interview with Stacy Pethia, Albemarle County's Assistant Director of Housing, the affordable housing overlay was viewed favorably by local developers, but was not approved by the County committee it was reviewed by.

Pethia stated that the overlay proposed in Albemarle was enabled through a law which allows the creation of local housing rehabilitation zones.<sup>28</sup> This law, which operates outside of the AHDU legislation, grants localities the power to pass an ordinance to establish a "housing rehabilitation zone" which provides incentives or regulatory flexibility within the zone. This legislation does require the projects to be "economically mixed," with no less than 20% of units to be occupied by low- to moderate-income households.<sup>29</sup> Pethia and the Albemarle County Attorney saw this legislation as a way to operate the affordable housing overlay outside of the bounds of Virginia's inclusionary zoning legislation, as Albemarle County has not yet implemented mandatory AHDU programming.

Fauquier County<sup>30</sup> does have an affordable housing overlay ordinance that was adopted many years ago, but it is rarely, if ever, used.<sup>31</sup> An interview with Adam Shellenberger, a planner for Fauquier County, outlined the limitations of the ordinance, which is easy to circumvent for developers who do not feel prepared to develop or operate affordable units. Shellenberger recommended rewriting the overlay to be more inclusive of housing types that developers wanted to build in Fauquier. This challenge demonstrates the need for expanded economic capacity for housing development, which upzoning would address.

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An affordable housing overlay may be considered on its own as an alternative to broader zoning changes, or in partnership with the City's proposed Neighborhood Design Districts. Ideally, this would allow additional units in developments with affordable housing components, and could be utilized in residential neighborhoods. However, solutions such as affordable housing overlays and AHDU ordinances work best when there is existing market capacity for multi-family development. Zoning for smart growth would help create this capacity.

Attempting to upzone existing lower-density residential districts may seem desirable, but the potential for opposition by owners of high-value single-family homes is likely. HDAdvisors considered this policy option, but as evidenced by the recent oppositions to Arlington's Missing Middle plan and Winchester's own Accessory Dwelling Unit proposal, political conditions are not favorable for such zoning changes at present.

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<sup>27</sup> July 10, 2023. Interview with Stacy Pethia, Albemarle County Assistant Director of Housing.

<sup>28</sup> <https://law.lis.virginia.gov/vacode/title36/chapter1.5/section36-55.64/>.

<sup>29</sup> <https://law.lis.virginia.gov/vacode/36-55.30:2/>

<sup>30</sup> <https://www.fauquiercounty.gov/home/showpublisheddocument/606/637100183705330000>

<sup>31</sup> July 12, 2023. Interview with Adam Shellenberger, Planner in Fauquier County.

The Missing Middle plan in Arlington did ultimately gain approval, but faced many roadblocks, and would not have survived the opposition without the work of steadfast pro-density advocates.<sup>32</sup> As well, the benefit provided by upzoning single-family residential districts in Winchester would be limited compared to rezoning in commercial districts due to the lack of adjacent vacant parcels. Should Winchester pursue increased residential upzonings in the future, the City should recruit and engage residents in pro-density education and advocacy now to lay the groundwork for any future changes. This pro-density campaign should focus on keeping Winchester affordable, unique, and economically independent. Emphasis should be placed on the idea that increasing density is part of a strategy to make Winchester a strong town, independent from the Washington metro area. This may help constituents accept the commercial upzoning proposals as well.

## Legal, Financial, and Organizational Capacity

- **Legal Capacity:** No legal barriers exist to rezoning. The affordable overlay also has no legal barriers as it is permissible under the existing AHDU enabling legislation, and other zoning enabling legislation depending on the incentives desired. The legislative process to amend the zoning code may take some time.
- **Financial Capacity:** These programs would require small, upfront costs related to technical implementation of the zoning changes and marketing of the changes to the development community. The City may incur the loss of revenue associated with waived development fees, which are an optional incentive under the affordable overlay. It's likely that this loss of revenue would be offset by increased real estate tax incurred from the new housing development. Funding required for the upfront implementation costs of these policies could likely come from the City of Winchester's general operating budget. The City may consider eventually hiring one full time employee specifically dedicated to housing.
- **Organizational Capacity:** Once implemented, planning staff would oversee the programs, similar to other zoning-related approvals. City staff would conduct periodic oversight of the creation and maintenance of the affordable units in the overlay zones, through code enforcement and likely in the form of requiring annual reporting from developers. Reporting should be as low-barrier as possible for developers and project managers to demonstrate to planning staff that they can income-qualify apartments and are committed to a period of affordability for the units through the use of LIHTC or deed restrictions. Based on the Community Development department's current workload, direction, and opportunity for growth, the organization should consider hiring one staff member dedicated to housing, who can focus on these zoning efforts and others identified in other briefs.

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<https://www.arlnow.com/2023/07/06/new-more-than-a-dozen-missing-middle-permit-applications-are-in-the-works-so-far/> Missing middle has 12 applications for permits in their program.



## Implementation Plan and Responsible Parties and Roles

### Immediate:

- Identify focus areas and their current zoning districts.
  - Responsible parties: Community development staff, planning staff.
- Engage consultants including zoning attorneys and housing policy analysts. Possibly a good time to partner with Frederick County and other localities to engage with the Virginia Zoning Atlas for more comparative analysis.
  - Responsible parties: Community development staff, planning staff.
- Begin analysis of commercial zoning, comparing what housing is allowed under current conditions and what could be allowed under rezoning conditions.
  - Responsible parties: community development staff, planning staff, consultants.

### Short-term:

- Develop 3 to 4 possible rezoning scenarios. Compare possible outcomes against the projected need for new housing units.
  - Responsible parties: Community development staff, planning staff, consultants.
- Begin evaluating incentives that could be granted using affordable housing overlay zones under the affordable housing dwelling unit and/or rehabilitation zone enabling legislation.
  - Responsible parties: community development staff, consultants.
- Present initial findings to Planning Commission and other relevant bodies; engage the public as needed on a limited basis. Begin refining the rezoning scenarios and affordable incentives based on feedback from the planning commission and others.
  - Responsible parties: community development staff, planning staff.

### Long-term:

- Begin drafting the rezoning, affordable overlay, and AHDU ordinances together. While designing the AHDU program, reserve some of the incentives allowed by the enabling legislation for special affordable overlay zones. Also consider allowing the bypass of the entitlement process altogether for projects in overlay zones that meet affordability criteria.
  - Responsible parties: community development staff, planning staff, consultants.
- Finalize the upzoning proposal. Introduce it to city council alongside the AHDU and affordable overlay ordinances.
  - Responsible parties: community development staff, planning staff, consultants, councilmembers.



## Metrics to Evaluate Success and Projected Impacts

- Number of housing units and density per acre developed and change over time.
- Number of units developed for households 60% AMI and below in overlay vs. non-overlay districts.
- Number and area of lots made available for housing development.
- Mix of incomes and uses in new developments.

# Affordable Housing Dwelling Unit (AHDU) Program

## Citywide Incentives for Mixed-Income Developments

### Policy Framework

An Affordable Housing Dwelling Unit program, commonly called Inclusionary Housing or Inclusionary Zoning, can be a powerful and low-cost tool for localities to influence the creation of dedicated affordable housing. AHDU ordinances, enabled by Virginia law, allow a zoning code to award incentives to housing developments that set aside a portion of their units for low-income households. These incentives most often take the form of density bonuses: in exchange for an affordable set-aside, a developer is granted the right to build additional market-rate units to subsidize the cost of the affordable units. Other incentives can include fee waivers, reduced development standards, and expedited administrative approvals.

HDAdvisors consulted with housing policy experts both in private organizations and local governments, as well as researching successful Inclusionary Zoning programs in Virginia and other states.<sup>33</sup> Inclusionary Zoning has been implemented in several localities in Virginia already, creating significant amounts of affordable housing in places like Alexandria and Fairfax County. However, state law presents a challenge to the effectiveness of inclusionary zoning outside of Alexandria, Fairfax, Loudoun, Charlottesville, and Albemarle.

Inclusionary housing programs are sometimes criticized for not producing as many affordable units as other programs. A 2021 study found that on average, inclusionary programs produce 21 affordable units per year. However, the same study also found that 125 of 383 programs surveyed had produced no units at all, bringing this average down significantly.<sup>34</sup> It is important to design the AHDU program for Winchester carefully, in conjunction with policies that will increase the economic capacity for housing development, as is described in the Zoning for Density brief.<sup>35</sup>

The “Big Six” localities are given broad-reaching powers to design their own “mandatory” AHDU ordinances, requiring affordable set-asides even in projects that conform to the existing zoning. All other localities are subject to a different section of state law<sup>36</sup> which only allows incentives to be

<sup>33</sup> Interviews included Emily Hamilton, PhD, of the Mercatus Center, and Stacy Pethia, PhD, Assistant Director of Housing for Albemarle County. Research reviewed is linked in footnotes.

<sup>34</sup> <https://www.tandfonline.com/doi/full/10.1080/02673037.2021.1929863>

<sup>35</sup> <https://www.lincolinst.edu/sites/default/files/pubfiles/inclusionary-housing-policy-brief.pdf>

<sup>36</sup> <https://law.lis.virginia.gov/vacode/title15.2/chapter22/section15.2-2305.1/>

offered as an *option* for developers who voluntarily choose to include affordable set-asides. Studies have found that mandatory inclusionary programs are more effective at producing housing; however, voluntary programs can be effective as well, provided that participation is attractively incentivized.<sup>37</sup>

*It is recommended that the City pursue an ordinance creating the AHDU program, as described in the § 15.2-2305.1 enabling legislation, and should grant all possible incentives and density bonuses to developments which set aside affordable units voluntarily, or as required by a special exception or rezoning process.*

This enabling legislation prescribes strict guidelines for voluntary AHDU ordinances, including the size of density bonuses and their required set-asides. Localities are still permitted to require affordable set-asides in the case of an application for a Conditional Use Permit, Planned Unit Development, rezoning, variance, or other special exception. In these cases, the same density bonuses would be awarded. Under this policy, localities may set prices for affordable units and require that they remain affordable for 15 to 50 years.

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## The Origins of Inclusionary Zoning

In the late 1960s and early 1970s, housing challenges were emerging for all major cities in the U.S., and Washington, D.C. was no exception. While the District itself did what it could, it was up to the surrounding suburban counties to absorb the brunt of the large increase in housing demand that was occurring. This led housing costs in many places to skyrocket as supply struggled to keep up.

In both Montgomery County, Maryland and Fairfax County, Virginia, a solution emerged in the form of the first Inclusionary Zoning ordinances. These ordinances required any housing developments above a certain threshold to set aside a portion of units dedicated for affordable housing.

The first legal challenges of the ordinances came from developers who argued that the reduced rents of the affordable units constituted an illegal taking. In response, the laws were amended to include density bonuses for developers in exchange for the affordable set-asides. This amended ordinance ultimately created the template for all future inclusionary zoning ordinances, which have now been adopted in over 400 communities across the country.

Montgomery County's inclusionary program created more than 13,000 affordable units, and Fairfax County's created almost 3,000 between 1974 and 2011.<sup>38</sup>

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<sup>37</sup> <https://ihiusa.org/wp-content/uploads/Seperating-Fact-from-Fiction.pdf>

<sup>38</sup> [https://housingforwardva.org/wp-content/uploads/2018/08/HV\\_Inclusionary\\_FINAL-8.3.2018.pdf](https://housingforwardva.org/wp-content/uploads/2018/08/HV_Inclusionary_FINAL-8.3.2018.pdf)

While affordable set-asides usually come from rental developments, plenty of inclusionary programs in Virginia and other states do also accept for-sale set-asides. With respect to Winchester’s goal of creating affordable homeownership opportunities, it would be beneficial to partner with a Community Land Trust, such as the Virginia Statewide Community Land Trust to manage for-sale units, as well as to make those units permanently affordable (see the brief on Community Land Trusts). This strategy has been employed notably in Burlington, Vermont and Chapel Hill, North Carolina.<sup>39</sup>

Some AHDU programs outside Virginia (such as Washington, D.C.) use centralized intake systems for residents interested in set-aside units, referred to as the “Inclusionary Housing” program. In these cases, a department, authority, or designee of the locality processes resident applications and pairs them with available apartments when the resident is income qualified. This is permitted in Virginia, however all current AHDU programs in the state allow developers and property managers to operate their own intake processes, reporting back to the locality for compliance. Thus, an AHDU program does require some increased local government capacity to implement and operate the program. As a future goal, it would be prudent for the Community Development department to hire a full time staff person dedicated to housing to manage developer applications, as well as affordability compliance.

The Housing Coalition of the Northern Shenandoah Valley and Virginia First Cities should continue assisting the City of Winchester in pursuit of being added to the list of localities given broader AHDU ordinance power by the General Assembly. This will not deliver results as quickly, and may not make it into state law at all, but it is worth doing as Winchester continues to grow. This should be considered a future goal to be accomplished after developing the initial AHDU program.

#### **A Note on Housing Trust Funds**

The enabling legislation for AHDU programs allows localities to accept cash contributions in lieu of affordable unit set-asides. These contributions must be awarded with similar density bonuses, and the contributions must be put into a local Housing Trust Fund.

The policy brief on Funding Affordable Housing does not ultimately recommend that the City of Winchester establish a Housing Trust Fund at present, and so these in-lieu contributions could not be accepted when the AHDU program is first implemented. However, as the City continues to grow, it should continue to explore establishing a Housing Trust Fund in conjunction with pursuing greater AHDU ordinance authority from the General Assembly.

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<https://inclusionaryhousing.org/making-it-work/admin/staffing-and-outsourcing-options/community-land-trust/>

## Legal, Financial, and Organizational Capacity

- **Legal Capacity:** The legal basis for AHDU programs outside the “Big Six” is provided by Virginia Code § 15.2-2305.1. The City Attorney should be engaged throughout the program design and implementation phases to ensure the program remains within the boundaries of the law.
- **Organizational Capacity:** The organizational capacity to immediately operate a full-fledged AHDU program may not exist at present. Initial developer applications may be processed by existing staff, but as the number of applications increase and if it becomes necessary to income-qualify residents internally, more staffing capacity will be needed to administer the program properly. However, studies have shown that inclusionary programs typically do not require large staffing increases, and benefit from economies of scale as they grow.<sup>40</sup> This growth should be planned for in the program design phase. A full time housing-dedicated staff person should be considered to manage the responsibilities of the proposed tasks in these briefs, as well as to manage ongoing affordability compliance.
- **Financial Capacity:** Financial capacity is not immediately a challenge, but will become important as organizational capacity needs increase. The City should evaluate the potential costs aligned with fee waivers for affordable development, as well as the staff costs for expediting permits. Creation of an affordable housing trust fund aided by optional in-lieu contributions under the AHDU ordinance could aid with financial needs for the program in the far future.

## Implementation Plan with Responsible Parties and Roles

### Immediate:

- Engage a zoning attorney and other housing policy analysts to begin designing ordinance in accordance with Virginia code. Much of the ordinance can be taken directly from the code, which prescribes density bonuses and other requirements.
  - Responsible parties: consultants, community development staff, City attorney
- Begin analysis of city staff capacity to determine where capacity exists to start an AHDU program and where capacity would need to be built.
  - Responsible parties: consultants, community development staff.
- Begin discussions with the real estate development community on what mix of benefits would be needed to result in the desired quantity and type of affordable housing. Develop a working group of developers to review proposed incentives for the AHDU program. Incentives in the general AHDU program should be sufficient to offset the costs of the set-aside units. As well, the working group should consider whether to offer multiple participation or compliance options, such as off-site set-asides.<sup>41</sup>

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<sup>40</sup> <https://inclusionaryhousing.org/making-it-work/admin/staffing-and-outsourcing-options/>

<sup>41</sup> <https://ihiusa.org/wp-content/uploads/Seperating-Fact-from-Fiction.pdf>

- Responsible parties: Housing Coalition members, consultants, community development staff, development community.

### Short-term:

- Begin drafting AHDU ordinance. Concurrently draft the affordable overlay ordinance (described in Zoning for Density brief), granting additional incentives such as fee waivers, reductions in development standards, expedited permitting, and administrative approval of SUPs/rezonings/etc.
  - Responsible parties: attorney, community development staff, consultants.
- Design organizational structure of AHDU program. Determine what city department/authority/designee will be responsible for processing developer applications and whether the city will be responsible for intake/income verification of residents. Develop a startup budget for staffing the program.
  - Responsible parties: community development staff, consultants, real estate developers.

### Long-term:

- Introduce AHDU ordinance, affordable overlay ordinance, any other necessary ordinances to city council. Likely will be referred to the land use committee and/or the planning commission in advance of city council review and approval.
  - Responsible parties: community development staff, councilmembers.
- Establish a website for the AHDU program with sections for developers and for residents. Also establish phone, email, other contact options for interested residents.
  - Responsible parties: community development staff and/or other AHDU program staff.
- Educate zoning and planning office staff on the intricacies of the AHDU program and outline administrative processes to initiate expeditions or fee waivers. Ensure the development community is well-informed about the program and that the guidelines are clear and predictable.<sup>42</sup>
  - Responsible parties: Housing Coalition members, community development staff.

## Metrics to evaluate success and Projected Impacts

- Number of affordable units created.
  - Successful AHDU programs in Northern Virginia have created hundreds of dedicated affordable rental units. Assuming Winchester's housing market continues to heat up and the population continues growing, impact could be on a similar scale.
- Number of market-rate units created through density bonuses. Additional market rate units help relieve market pressure on lower-market-rate units.
- Speed at which units are developed, as a result of incentives provided to developers.
- Number of developer applications or permits.

<sup>42</sup> <https://ihiusa.org/wp-content/uploads/Seperating-Fact-from-Fiction.pdf>

# Community Land Trusts

## Affordable Homeownership and Owner-Occupied Rehabilitation

### Policy Framework

#### ***What is a Community Land Trust (CLT)?***

A Community Land Trust (CLT) is an affordable housing program model that separates the ownership of a house and the land beneath it for the benefit of low-income homebuyers, maintaining the affordability of the homes in perpetuity. CLTs are often non-profit organizations, but can also operate with a semi-governmental structure.<sup>43</sup> Most often CLTs support homeownership models, but they can also be utilized for rentals.<sup>44</sup>

CLTs promote long-term housing affordability through the use of a ground lease, a renewable 99-year contract between the CLT and homeowner. The homeowner buys their home, leases the land from the CLT for a nominal yearly fee, and agrees to the restrictions of the contract.

This ground lease structure keeps homes affordable for future generations by restricting the home's price at the time of resale, using a special formula (the resale formula) to determine the home's value over time. Deed restrictions or covenants are common ways to maintain affordability for renters or buyers, but such measures tend to expire and are difficult to enforce. Typically this means that a traditionally subsidized home only serves one household before the home converts back to market pricing, while a CLT home can serve multiple families over time with one initial subsidy.

A core component of all CLTs is the practice of "stewardship." Stewardship is a commitment by the CLT to protect affordability, prevent loss and mitigate risk, share wealth with the community, and promote good maintenance and community-building.<sup>45</sup> Stewardship looks different in practice for each CLT, but can be understood as a mix of policy and programming from the homeownership program itself to the methods of outreach the CLT uses. Being a good steward is a core tenant from origins of community land trusts in the civil rights era in the United States.<sup>46</sup> Stewardship

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<sup>43</sup> <https://www.communityhousingpartners.org/homeownership/new-river-home-trust/>. New River Home Trust in Blacksburg, Virginia operates under a semi-governmental structure while housed with the Community Housing Partners. More information about City-CLT partnerships can be found here:

<https://www.lincolnst.edu/publications/policy-focus-reports/city-clt-partnership>

<sup>44</sup> 43% of shared-equity programs operate rentals. [https://go.lincolnst.edu/Wang\\_WP23RW1.pdf](https://go.lincolnst.edu/Wang_WP23RW1.pdf)

<sup>45</sup> <https://groundedsolutions.org/stewardship-standards>

<sup>46</sup> <https://www.newcommunitiesinc.com/new-communities.html>

calls to the heart of the model: serving homeowners, maintaining stability, and building community well into the future.

Using the example of The City of Lakes Community Land Trust in Minneapolis, Minnesota<sup>47</sup> to rehabilitate substandard housing, a CLT could practice good stewardship with renters or owners through owner-occupied rehabilitation or lease-to-own homeownership structures.

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### **The City of Lakes CLT Prevents Displacement<sup>48</sup> (*Minneapolis, Minnesota*)**

The City of Lakes CLT acquired four single family homes and a duplex through forced sale from a neglectful landlord, whose license to rent in Minneapolis had been revoked due the poor quality of their units and high eviction rates. After tenant organizers successfully appealed to the City, the CLT was able to purchase the properties through the use of grants and low interest loans, and planned to renovate the properties with these funds.

Upon CLCLT's purchase of the land and the improvements, the CLCLT had the renters sign contracts for deeds of trust. This allowed the renters to effectively become homeowners prior to the renovations, and allowed CLCLT to start the stewardship process immediately. CLCLT prepared the renters to become mortgage-ready during the renovation process. The CLCLT renter-to-buyer model ensured that the properties were placed into the CLT without displacing the current residents, and allowed future low-income homebuyers to access the affordability of the units through the ground lease.

Virginia's municipalities do not have the authority to require landlords to register to rent their properties as Minneapolis does,<sup>49</sup> nor do municipalities have the jurisdiction to take property based on recurrent violations of property owners. While these are worthy strategies to pursue to reduce eviction and improve rental quality, as Virginia is a Dillon's Rule state, Virginia municipalities must seek state legislative authorization before implementing these strategies. While an exact replica of this program is not currently possible,<sup>50</sup> portions of the CLCLT owner-occupied rehabilitation are possible in Winchester with partner CLTs.

If an owner-occupied rehabilitation is not possible, rent-to-own rehabilitation projects with a CLT could also allow renters to save more for downpayment and become credit-ready for a mortgage while the rehab goes on.

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### **Who benefits from the CLT model?**

<sup>47</sup> [https://www.clclt.org/\\_files/ugd/03b41d\\_a513d4b5af5d41bf8907c4234f0458f6.pdf](https://www.clclt.org/_files/ugd/03b41d_a513d4b5af5d41bf8907c4234f0458f6.pdf)

<sup>48</sup> <https://www.clclt.org/>

<sup>49</sup> Minnesota is a partial Home Rule state, and certain localities like Minneapolis are able to enact legislation they deem necessary without explicit authorization from state legislature.

<sup>50</sup> § 55.1-1200: Virginia Residential Landlord and Tenant Act.



The majority of CLT homeowners are first-time buyers, and stay in their homes for extended periods of time. Eighty-seven percent of the 9,650 “shared-equity” households in the United States are first time homebuyers.<sup>51</sup> Furthermore, the average annual move rate for CLT homeowners is only 2.6%, compared with the 14% average American households that move annually.<sup>52</sup>

Overall, 74% of CLT homeowners stay in their CLT home for at least 6 years. After that, if they do move, the majority of CLT sellers purchase a new home on the open market, accessing a median \$14,000 in equity for their next purchase.<sup>53</sup> As well, CLT homeowners are more likely to stay in their communities for longer.

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### **Maggie Walker Community Land Trust (MWCLT) (Richmond, Virginia)**

Maggie Walker CLT<sup>54</sup> is based in Richmond, Virginia, and was incorporated in 2015. MWCLT now serves the city of Richmond, as well as Henrico and Chesterfield counties, and has nearly 90 homeowners in the region.<sup>55</sup>

MWCLT seeks to serve lower-income households historically excluded from homeownership opportunities, such as households headed by single women of color, by reducing barriers in accessing homeownership. MWCLT is committed to strengthening its programs to directly address racial inequities in homeownership. In 2019 when race and ethnicity was disclosed by buyers, 29% of buyers identified as a Black, Indigenous, or Person Of Color (BIPOC), and as of 2022, 48% of MWCLT’s buyers identified as BIPOC.

MWCLT started its work in the Church Hill neighborhood in the East End of Richmond. Church Hill is one of the oldest and most historic neighborhoods in Richmond, experiencing great demographic change as a majority Black neighborhood over the last twenty years. More recently, Church Hill has experienced one of the highest rates of gentrification and losses of affordable housing by Black households in the City since MWCLT’s founding. MWCLT serves this community by selling high quality, newly constructed homes to buyers with household incomes at 50% of AMI and below for less than 50% of the price of market-rate homes in the neighborhood.

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<sup>51</sup> This data comes from 104 organizations that offer “shared-equity” housing programming in the U.S. and responded to the survey reported on through this report. [https://go.lincolinst.edu/Wang\\_WP23RW1.pdf](https://go.lincolinst.edu/Wang_WP23RW1.pdf)

<sup>52</sup> <https://www.lincolinst.edu/publications/working-papers/tracking-growth-evaluating-performance-shared-equity-homeownership>

<sup>53</sup> The equity gained is the difference in the sales value of the home from the mortgage owed, plus the value of the principal payments made over time.

<https://www.lincolinst.edu/publications/working-papers/tracking-growth-evaluating-performance-shared-equity-homeownership>

<sup>54</sup> HDAdvisors helped found and currently administers and helps staff the Maggie Walker Community Land Trust and has extensive knowledge of its ongoing operations and administration.

<sup>55</sup> Interview with Lark Washington, MWCLT, Chief Operating Officer, August 10, 2023.

As of 2023, MWCLT has placed 15 homes in the CLT in Church Hill,<sup>56</sup> offering stabilizing factors to the neighborhood with the CLT's permanent affordability model, preventing further displacement in the neighborhood. MWCLT continues to work to increase their Black homebuyer rate from nearly 50% to 75% to continue combating gentrification and the market forces pushing against housing affordability and racial inclusivity in homeownership outcomes.

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### **A Winchester Case Study:**

A CLT can increase affordable homeownership options and reduce barriers for access to homeownership for low-income residents, while also promoting the rehabilitation of poor quality units and increasing racial equity in homeownership. For many CLTs, protecting affordability and preventing displacement while providing for wealth generation through homeownership is a huge benefit to using the model.

For Winchester, the northeast corner of the city has two census tracts (1.02 and 1.01) that have been designated as "Qualified Census Tracts" for low income housing tax credits (LIHTC), meaning that 50% of the households in the tract are households at 60% or less than the Area Median Income (AMI).<sup>57</sup> Additionally, this is a racially diverse sector of Winchester.<sup>58</sup>

One way to evaluate housing quality is using "energy burden." Energy burden is a measure of the percentage of household income spent towards energy costs, like electricity or gas. The energy burden of households in Winchester's northeast corner is 4% in census tract 1.02 and 3% in 1.01, compared with an overall 2% energy burden for the City as a whole.<sup>59</sup> Based on these indicators, this area of Winchester in particular could benefit from home rehabilitation and the affordability provided by a CLT.

*The Community Land Trust (CLT) model is recommended for Winchester to: 1) rehabilitate substandard and underutilized housing units, 2) increase the affordability of homeownership units for low-income households, and 3) reduce displacement of local low-income renters and owners.*

Winchester can endeavor to start its own CLT, but that is not recommended at this time due to the substantial staffing and funding required to administer and operate one. There is a statewide CLT already in operation in the Commonwealth that Winchester could utilize.

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<sup>56</sup> Interview with Eric Mai, MWCLT, Director of Acquisition, August 10, 2023.

<sup>57</sup> [https://www.huduser.gov/portal/sadda/sadda\\_qct.html](https://www.huduser.gov/portal/sadda/sadda_qct.html)

<sup>58</sup> Demographics shared through the US Department of Energy, LEAD Tool, via the U.S. Census: MFI in this area ranges from \$43,992 in Census Tract 1.02 to \$71,680 in Census Tract 1.01. Census Tract 1.01 is made up of 5% Black/African American, 1% Asian, 25% White, Hispanic or Latino, 53% White, non-hispanic or Latino, 14% who identify as two or more races, and 3% that identify as another race households. Census Tract 1.02 is made up of 23% Black/African American, 2% Asian, 22% White, Hispanic or Latino, 41% White, non-hispanic or Latino, 6% who identify as two or more races, and 7% that identify as another race households.

<sup>59</sup> <https://www.energy.gov/scep/slsc/lead-tool> - LEAD tool, US Department of Energy.

The Virginia Statewide Community Land Trust (VSCLT) is a non-profit organization established to implement permanently affordable CLT housing throughout the state using partnerships and collaboration with other developers, like Habitat for Humanity affiliates.<sup>60</sup> After one year in operation, VSCLT has 5 homeowners in Fauquier and Loudoun County, with a pipeline of 7 additional homes slated for Fauquier, Loudoun, and Fairfax Counties for the 2024 fiscal year.

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### Utilizing the Virginia Statewide Community Land Trust (VSCLT)

VSCLT is a unique CLT in that it operates statewide instead of in a particular region, city, or neighborhood. VSCLT acts as a technical and administrative arm for developers to achieve permanent affordability, and currently partners with Habitat for Humanity affiliates to develop homes and recruit homeowners. VSCLT amplifies the affordability of Habitat homes by placing the land into the CLT for permanent affordability and post-purchase stewardship support.

This work includes ensuring the viability and legal recognition of the ground lease<sup>61</sup> and that the CLT or its partners have a right of first refusal at the time of sale. The Habitat affiliates that place units in the VSCLT are offered a right of first refusal at the time of sale to ensure the continued ability to serve Habitat families.

VSCLT is not currently a developer and instead establishes partnerships with developers to construct homes and identify low-income buyers. Many CLTs, in fact, never become their own developer and instead rely on partnerships to develop or construct homes. This allows CLTs to focus on stewardship for the homeowners and communities they serve.<sup>62</sup>

At closing, the developer concurrently donates or sells the land (without the improvements) to the VSCLT for \$1, while selling the home (the improvement without the land) to the Habitat buyer. Developers pay a \$3,000 per unit “Developer Fee” to VSCLT to cover the cost of administering closings and ongoing stewardship efforts.

VSCLT hopes to expand its work to collaborate with local government entities. VSCLT would use its expertise as a statewide collaborator to support the rehabilitation of substandard housing in Winchester, in addition to following its original model of partnering with existing developers to create permanently affordable homeownership.

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<sup>60</sup> HDAvisors is currently contracted to staff and operate VSCLT, and is familiar with its business plan and capacities.

<sup>61</sup> The ground lease filed at closing is how Virginia legally recognizes the CLT model and the value of the properties in CLTs.

<sup>62</sup> Interview with Jason Webb, Principal in Community and Technical Assistance with Grounded Solutions Network, August 14, 2023

### ***How would VSCLT operate in Winchester?***

VSCLT would partner with existing developers in Winchester to place new homes into the CLT. This process would not call for Winchester government intervention, nor would it involve any action from City Council or the planning office, as VSCLT is already an operating non-profit. The CLT would partner directly with developers to ensure the permanent affordability of the units developed.

However, Winchester's support in incentivizing CLT participation would promote the speedy development and placement of permanently affordable units into the CLT. Per the policies outlined in other briefs, Winchester could support the development of CLT properties in the following ways:

1. Devoting funding to VSCLT and partner developers<sup>63</sup> through the use of grant funds, CDBG, tax rebate grants, weatherization dollars, or GO bonds,
2. Recommending the use of VSCLT in the affordable housing overlay zones, and
3. Recommending VSCLT as a partner that AHDU developers can use to achieve their affordable unit requirements for density bonuses or other incentives.

Furthermore, VSCLT could assist Winchester with the rehabilitation and ongoing maintenance of occupied substandard properties. VSCLT would make agreements between the homeowner and VSCLT to rehab the home while owner-occupied. Based on examples from Chicago,<sup>64</sup> Winchester could devote funding to homes who choose to operate in accordance with VSCLT and rehabilitate their homes.

The Housing Coalition of the Northern Shenandoah Valley could also become important to the operation of VSCLT in Winchester. The Housing Coalition could take on the role of coordinating its various member organizations and VSCLT to more effectively and efficiently develop CLT housing in Winchester.

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### **Owner-Occupied Rehabilitation in the Windy City (*Chicago, Illinois*)**

Jason Webb, Principal in Community and Technical Assistance with the Grounded Solutions Network, a non-profit membership organization of CLTs operating in the United States, shared that the City of Chicago did a pilot rehabilitation program in partnership with their local CLT in 2018.<sup>65</sup> The city allotted approximately \$40,000 per house and marketed the program to willing low-income homeowners. The funding could be utilized for home rehabilitation (upgrades or otherwise) or paying back taxes in the case of tax delinquencies or risk of facing a short sale.

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<sup>63</sup> This action would likely involve a council ordinance to reallocate CDBG funding or to provide bonds to VSCLT or its developer partners.

<sup>64</sup> Interview with Jason Webb, Principal in Community and Technical Assistance with Grounded Solutions Network, August 14, 2023.

<sup>65</sup> Interview with Jason Webb, Principal in Community and Technical Assistance with Grounded Solutions Network, August 14, 2023.

Homeowners applied with the city for the funds, and then the City paired the owners with the CLT to evaluate and complete the construction needs and costs for each home. This process allowed homeowners to access other funding, for example if they needed weatherization funds for grab bars or ramps.

Ultimately, the pilot practitioners realized very quickly that the allocation of \$40,000 per unit was not enough for the scale of need of the homeowners. The funding was quickly depleted. Many homeowners applied with intentions to make a capital improvement on their home, but upon inspection realized lead or asbestos abatement or even complete rewiring was required. This was a snowball effect that used up the funds quickly.<sup>66</sup> In addition to this program being piloted during a period of rising cost of living and construction costs, the pandemic also impacted the funding stream.

Chicago is still committed to the pilot and will be enacting a rehab CLT pilot 2.0 following the rising inflation, interest, and construction rates of the pandemic.<sup>67</sup> Despite the need for more funding, Webb shared that homeowners overall were still appreciative of the program, more than they were apprehensive about it. The rehabs that were accomplished were able to transform properties into shared-equity housing, with the CLT receiving a right of first refusal at the time of the sale of the property. This means that as a result homeowners were able to stay in their homes and still realize the potential equity gained from the improvements made through the agreement made with the CLT. The CLT was also able to ensure the permanent affordability of the property through the rehabilitation and following stewardship of the properties. Thus far, none of the participating pilot homeowners have sold their homes and Webb reported that homeowners were excited about the potential to stay in their homes long term, promoting permanently affordable and stable homeownership options to them.

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Following Chicago's pilot model, Winchester would develop a pipeline of potential residential properties and fund the cost of the purchase and rehabilitation for each property. This pipeline can include tax-delinquent properties at risk of foreclosure and a list of substandard owner-occupied housing units. Rehabilitated properties would fall under VSCLT's stewardship and would remain permanently affordable for the current owners and future buyers at resale.

While we know that \$40,000 per property was not enough for the demand for rehabs in Chicago, there is still utility in operating a pilot scaled to Winchester's needs. Any up-front grants or loans received for construction ultimately helps subsidize the home further and promote affordability into the future. In a nationwide survey of "shared-equity" housing model programs (73 respondents), researchers outlined that at the time of resale, CLT programs re-invested an average

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<sup>66</sup> Interview with Jason Webb, Principal in Community and Technical Assistance with Grounded Solutions Network, August 14, 2023.

<sup>67</sup> Interview with Jason Webb, Principal in Community and Technical Assistance with Grounded Solutions Network, August 14, 2023.

amount of \$15,400 into units that needed to be rehabbed. This offers a benchmark for the potential cost of VSCLT rehabilitation costs in Winchester, and could be used as a starting point to pilot their own CLT-rehab program. These funds could come from Winchester in the form of CDBG funds or tax rebate grants.

Additionally the City of Winchester already operates an owner-rehabilitation tax abatement program, as identified in their comprehensive plan, that VSCLT could take advantage of:

“...Property owners can receive a 10-year tax abatement on the increased value related to rehabilitation or, in the case of demolition, receive up to \$5,000 of demolition value abated for a 10-year period along with reimbursement of building and demolition permit fees.”  
(Winchester Comprehensive Plan)

VSCLT would identify low-income property owners through the pipeline developed with Winchester and work with the owners to place the homes in the CLT; then VSCLT and its partners would rehab the home and take advantage of the tax abatement to reduce the costs of maintaining the home in the CLT and reduce tax burden for the homeowner. Additional tax exemption could be utilized through a recent 2023 City Council authorization that allows tax exemption for rehabilitation completed within historic districts in Winchester.<sup>68</sup>

## Legal, Financial, and Organizational Capacity

- **Legal Capacity** - No legal barriers exist to operating a CLT in Virginia. The City would be able to refer developers to VSCLT with no legal barriers, as the City would not need to pass an ordinance to make recommendations to business entities. To fund VSCLT’s operations or provide incentives to VSCLT, Winchester would likely need to pass ordinances or resolutions to ensure the proper flow of funding. Any incentives granted to developers for CLT set-aside units would be permissible under a potential AHDU program.
- **Financial Capacity** - The VSCLT would engage directly with developers. Financial incentives provided by Winchester to VSCLT would encourage VSCLT development and promote implementation of these efforts. Staff capacity would also be spent towards developing relationships with VSCLT and coordinating relationships with the developers.
- **Organizational Capacity** - Community Development department would be tasked with managing many aspects of the relationships described in this brief. The Housing Coalition could also assist with the management of these relationships. Were Winchester able to allocate funding to rehabilitation with the CLT model, it is recommended that a full time staff person from the planning department be dedicated to the administration of the program, especially with the requirements outlined by the policies in other briefs. The implementation plan outlines the timing needed to increase the capacity of both Community Development and VSCLT to accomplish what’s proposed. As VSCLT is not currently a developer, and already utilizes a partnership model, it would develop

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<sup>68</sup> [https://library.municode.com/va/winchester/ordinances/code\\_of\\_ordinances?nodeId=1226027](https://library.municode.com/va/winchester/ordinances/code_of_ordinances?nodeId=1226027)

relationships with developers through the Housing Coalition to develop homes, place homeowners, and do the rehabilitation.

## Implementation Plan with Role and Responsibilities

### *Immediate:*

- City develops a relationship with the VSCLT and recommends that developers work with the VSCLT for new construction projects.
  - Community Development Department: refers Developers to VSCLT
  - Housing Coalition: coordinates with developers to start relationships with VSCLT.
  - VSCLT: works with developers to place homes into the CLT and coordinates closing and post-purchase support.
- City identifies a pipeline of homes in need of rehabilitation.
  - Community Development, Planning, and Code Enforcement: develops the pipeline with criteria as described above.
  - VSCLT receives list of parcels and works with Housing Coalition to identify a developer partner to work with to pursue development on the partners.
- City, VSCLT, and Housing Coalition collaborate to explore what the best funding mechanism would be for developments and rehabilitations. Consider CDBG, GO bond financing, tax rebate grants, and others outlined in Funding Affordable Housing brief.
  - Community Development, Housing Coalition, and VSCLT staff work together to establish a list of viable funding sources.

### *Short Term:*

- VSCLT investigates the viability of pipeline properties, estimates the cost of rehab for viable properties, and identifies homeowners who may be willing to participate in a CLT rehab program like this.
- VSCLT develops partnerships with local developers and construction firms through Housing Coalition to facilitate placement of homes into the CLT.
- VSCLT and Housing Coalition engage with homeowners on the rehab pipeline to educate them on the CLT and tax abatement opportunities for rehabbing their home.
  - VSCLT: Prepares information to educate owners on the CLT model.
  - Housing Coalition: Connects homeowners with resources to become mortgage ready if they are not already.
- City allocates dedicated funding towards the development of affordable housing as outlined in Funding Affordable Housing brief.
  - Community Development makes the recommendation that VSCLT receive funding.



### **Long Term:**

- City outlines incentives for developers that partner with the CLT, such as those suggested within the AHDU program.
  - Community Development: Example: AHDU program has passed and places CLT on the list of approved “affordable developers” for ease of participation in the program. See other briefs for more details about this.
- VSCLT applies for affordable housing funding from the City to use for CLT properties, as outlined in Funding Affordable Housing brief.
  - Community Development department collects applications and administers the allocations of funds dedicated to affordable housing.
  - VSCLT applies for funds for specific properties.

### **Metrics to evaluate success and Projected Impacts**

- Developer partnerships gained with VSCLT.
- Number of CLT homeowners gained in Winchester.
- Startup operational and acquisition funding received from multiple sources including City for rehabilitation work.
- Rehab properties identified and selected for VSCLT acquisition.
- Homebuyers cultivated, educated, and placed in homes.
- Homeownership rate for low to moderate income families increases.
- Blighted, derelict, and substandard properties decrease.
- Ongoing maintenance of properties in City increases.
- Decreased eviction rate, increased rental rate amongst households at 50% AMI and below, and stabilization of property pricing in the City.
- Families served through the CLT model.



# Funding Affordable Housing

## Bonds and Grants

### Policy Framework

Localities have limited but powerful tools at their disposal to financially support the creation of affordable rental and homeownership housing. From direct grant funds of local dollars (usually in the form of a Housing Trust Fund) to short-term loans, localities can act as “gap” financing for projects that attract new housing to their community. Localities often note that even a small amount of funding made available for affordable housing can tip the scales in getting these developers to build locally.<sup>69</sup> Many 4% Low Income Housing Tax Credit (LIHTC) projects receive no soft money for pre-construction costs, and even just a little can mean deeper affordability for the final finished units. For 9% LIHTC projects, local funding in a project can positively impact the competitive scoring, which gives additional points to projects with local government investment.

*This policy analysis seeks to provide the City of Winchester with several options to financially support affordable housing development and preservation, not solely relying on local dollars from the City’s general operating revenue, but rather with bonds and loans.*

Several localities in Virginia have multiple funding streams for affordable housing.<sup>70</sup> Bonds and loans are more suitable for rental housing development, but can also have their place with affordable homeownership. Bonds and loans can act as short-term, repayable funding to lower the costs to construct affordable housing.

HDAdvisors conducted ten expert interviews and researched several Virginia localities’ existing programs to inform this policy analysis.<sup>71</sup> HDAdvisors has written extensively in the past on affordable housing finance solutions and has also worked on numerous affordable housing projects directly, developing deep familiarity with their funding sources. Finally, HDAdvisors used its recent experience in helping the New River Valley Regional Commission to establish the state’s first regional housing trust fund, which will be a loan fund, in informing this brief.

This policy analysis reviews the four following options available to Winchester that are currently in use in Virginia.

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<sup>69</sup> Most recently noted in an interview with the City of Alexandria Housing Department. More information can also be found here:

[localhousingsolutions.org/housing-101-the-basics/how-is-affordable-housing-funded/](http://localhousingsolutions.org/housing-101-the-basics/how-is-affordable-housing-funded/)

<sup>70</sup> The City of Richmond has both a Housing Trust Fund, its federal passthrough dollars awarded for affordable housing and recently announced the creation of \$50M fund for housing backed by bonds. The City of Alexandria has funds received through proffers and bond-financed funds. These are two examples of localities with multiple sources of local, affordable housing funding.

<sup>71</sup> Interview list and source material is attached

1. Private Activity Bonds
2. General Obligation Bonds
3. Tax Rebate Grants for Housing
4. Virginia Resource Authority Bonds

*Of the four policies outlined, it's recommended that Winchester focus initially on the use of GO bonds, while also pursuing the other three policies indirectly. GO bonds would require substantial time, funding and political decision-making on the part of the City.*

Notably, operating a Housing Trust Fund is not a part of this list. Trust Funds are the most common way for localities to finance affordable housing, but they require more direct funding than Winchester may have the capacity to contribute compared with the options above. A Housing Trust Fund could be considered an aspirational next step after other policy briefs are implemented. If an Affordable Housing Dwelling Unit program is implemented, the City could opt to allow contributions to a Housing Trust Fund in lieu of affordable set-asides.

There are three types of bonds used for housing: private activity bonds (PABs), taxable bonds, and general obligation (GO) bonds. Bonds may be issued by local, state, and the federal government, other public authorities (e.g. Virginia Housing or a local housing authority), and private corporations.

With some exceptions, PABs and GO bonds are tax-exempt, meaning the bond purchaser is exempt from paying income tax on the interest earned. Historically, this has meant that properties financed by tax-exempt bonds carry lower interest, ultimately deepening the affordability of the units. However, in the last decade, the affordability gap between taxable and tax-exempt bonds has narrowed.

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## **1. Private Activity Bonds (*Harrisonburg Redevelopment and Housing Authority*)**

Private activity bonds (PABs) are tax-exempt bonds issued by state and local authorities. As the name implies, they are used to finance “private” (not public, e.g. parks, schools, roads and bridges) activities. Housing is the primary user of these bonds, but they can also be used for various “economic development” activities, such as industrial parks.

Many affordable housing developers in Virginia seek PABs to pair with the 4% LIHTC credits for affordable rentals. Commonly, developers approach the Harrisonburg Redevelopment and Housing Authority (HRHA) to issue these bonds, as they are considered a good source of competitive PABs.

Currently, HRHA is issuing bonds for terms of 10-15 years at rates as low as 3.5% (as of June 2023).<sup>72</sup> This rate is substantially lower than commercial real estate loans and is even lower than current Virginia Housing loans. The competitiveness of these loans fluctuate with the market, however PABs are consistently used as an ongoing source of affordable housing financing and can be used in Winchester.

While 4% LIHTC projects using PABs (4% bonds) used to be confined to large scale developments in the highest rent markets, lower interest costs, wider availability of gap financing, and increasing rents overall have made smaller projects more feasible in many markets. An especially attractive feature of these 4% projects is that, unlike 9% credits, they are not competitive, making them more readily available.

These bonds do come with strict requirements for the affordability of the units developed. Under IRS rules, at least 20% of the apartments in these multifamily bond developments must serve households at 50% AMI, or 40% of units must serve households at 60% AMI. This is the reason these bonds are sometimes known as either “80/20” or “60/40.”

While mixed-income, multifamily development is permitted with the use of 4% bonds, the most common application of multifamily 4% bonds is where 100% of units serve households at 60% AMI or less. This approach maximizes the equity gained from the Low-Income Housing Tax Credits attached to the affordable units. Truly mixed-income, multifamily projects that include market-rate and tax credit units in the same building are rare, because they cannot use the credit to the fullest amount of its potential value.

The City of Winchester could create its own PAB mechanism, but it may not be financially advantageous given the prevalence of other sources. HRHA, for example, receives fees for servicing the bonds they issue and those service fees fund their time and effort, but it is not a major source of revenue.<sup>73</sup> HDAdvisors recommends continued conversations between HRHA and Winchester to strengthen the partnership so Winchester’s developers can access that source of funding. Shared collaboration and learning, or even utilizing bonds from HRHA are seen as a net positive.

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## 2. General Obligation (GO) Bonds (*City of Alexandria*)

A local government may also issue general obligation (GO) bonds to support affordable housing. This tool is commonly used in other states but has only a few examples in Virginia. In recent years, Charlotte and Durham, North Carolina have both issued housing GO bonds (\$50 million and \$95 million respectively).

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<sup>72</sup> Interview with Michael Wong, Executive Director, HRHA. June 2023.

<sup>73</sup> See past HRHA financial audits: <https://harrisonburgrha.com/wp-content/uploads/2021/10/20-Audit.pdf>

While it's rare in Virginia localities, the City of Alexandria is one of the few that has issued GO bonds, with broad public support.<sup>74</sup> After a lengthy, community-driven campaign around affordable housing policy in the mid-2000s, the City agreed to issue \$15 million in GO bonds to finance affordable housing development. The housing GO bond issuance was part of a larger bond issuance of \$71 million, which included \$23 million designated for schools. At the time of issuance, Alexandria's population was 130,843, almost four times the size of Winchester today.<sup>75</sup>

A key to a successful bond issuance was the reputations and prominence of the members of the working group pushing for the use of GO bonds. Political will was built through the working group's efforts and likely succeeded because of the City's ability to pass GO bonds without a public referendum. Alexandria is given the ability to issue bonds without a referendum through their charter as an Independent City (like Winchester), as opposed to a County (like Frederick).

Alexandria then used this bond revenue to create a Housing Trust Fund. The Alexandria Housing Opportunities Fund (HOF)<sup>76</sup> includes proceeds generated from GO bonds, in-lieu developer contributions from Alexandria's inclusionary zoning program, and federal HOME funds. The City's annual Capital Improvement Plan budget also now includes funds for housing, which coincides with a major shift in local thinking toward housing as a form of infrastructure.

Annual debt service on the original \$15 million GO bonds was estimated to be \$1 to \$1.5 million annually. Additionally, a one-penny tax from real estate transactions was used to service the bonds, resulting in a one-time, cumulative \$30 million infusion into the HOF. Over the lifetime of the bonds, Alexandria has refinanced during low rate environments, thereby generating more revenue dedicated to affordable housing. Alexandria has leveraged \$21 million in new tax revenue to generate \$30 million into a revolving funding source for new housing projects.

In addition to the one-penny real estate tax, Alexandria passed a 1% meals tax, which contributes about \$6 million each year into the HOF. This was a more politically contentious decision, but housing advocates were able to make the connection that the service staff working in restaurants would be direct beneficiaries of the new housing built.

HOF funds are a form of subordinate financing, typical in affordable rental projects that are also receiving LIHTC funding. HOF money can also be used for grants, but is usually structured as loans. Developers apply and go through a formal review process for receipt of the loan funds, which are usually structured at 2% annual interest, subordinate to the other debt in the project, with a 40-year term.

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<sup>74</sup> See attached City Council documentation from the 2005 bond vote.

<sup>75</sup> United States Census Bureau

<sup>76</sup>

<https://media.alexandriava.gov/docs-archives/housing/info/2020=hofapplicationprocessrequirements.pdf>

Alexandria's bonds expire in the next few years. According to their Director of Housing, renewal of the GO bonds is not a certainty. The City's self-imposed bond cap and other competing infrastructure priorities are always a part of bond decision-making and will be again, despite the growing need for affordable housing units everywhere.

For another example, the City of Richmond recently announced plans to issue \$50 million in bonds to fund affordable housing over the next five years. The City is partnering with Virginia Local Initiatives Support Corporation (LISC), who have agreed to match the bond issuance with their own \$50 million contribution. Together, the City of Richmond and Virginia LISC will use these funds to create an Equitable Affordable Housing Program, which aims to create 2,000 new low- to moderate-income homebuyers, 10,000 new affordable rental units, and 350 new permanent supportive housing units while transforming six public housing neighborhoods into "Communities of Choice."

Alexandria's work with bonds serves as a useful model that can be scaled for Winchester. Alexandria used a persuasive public engagement process to generate buy-in for affordable housing and took a wide variety of funding sources to build a sizable fund. While these funds are a very small percentage of the total funds utilized in one development, GO bond funding through the HOF is important because it 1) often contributes to higher scores for other funding applications for the development, 2) telegraphs local support for affordable housing, 3) is often the most flexible funding in a project, and 4) can be tailored to support specific projects the City wants built. GO bond financing would be a big draw for bringing affordable development to Winchester.

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### **3. Tax Rebate Grant for Housing (*City of Richmond*)**

Increasingly, jurisdictions in Virginia are using a less conventional form of Tax Increment Financing (TIF) as a grant for affordable housing. These are often referred to as "tax rebate grants." This form of TIF funding eliminates the need to go through the legal process of establishing a formal TIF district and does not rely on another source of funds for leveraging or repayment.

These tax rebate grants were enabled through the passage of "HB 1194 Industrial Development and Revenue Bond Act". The Virginia bill authorized "industrial development authorities to make grants associated with the construction of affordable housing in order to promote safe and affordable housing in the Commonwealth and to benefit thereby the safety, health, welfare, and prosperity of the inhabitants of the Commonwealth."

The City of Danville and the City of Richmond have each used their Economic Development Authorities to issue these grants to new affordable housing developments, which are based on the projected future real estate tax revenues from these developments. It's recommended that Winchester utilize these tax rebate grants rather than establishing a TIF district and waiting on another source of funding to leverage. See attached template for this deal structure type.

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## 4. Virginia Resource Authority Bonds

During the 2023 General Assembly session, House Bill 1805/Senate Bill 1401 (Bloxom and Lewis) passed. Effective July 1, 2023, this legislation adds community development projects related to the production and preservation of housing (including income-restricted developments) to the list of projects that the Virginia Resources Authority (VRA) can finance for local governments.

The VRA is a relatively unknown entity to the affordable housing network in the State. Virginia Housing and several large localities are interested in hearing what VRA plans to do with its new authority to fund the production and preservation of housing and the hope is that this legislative change will create new, low cost money for affordable housing projects to access.

VRA has made no public information available yet about its intentions. The following is information provided to HDAdvisors by Shawn Crumlish, Executive Director of the Virginia Resource Authority.<sup>77</sup> Staying informed with Virginia Housing and directly with VRA will be useful as Winchester moves forward to full understand how to utilize these funds:

- VRA is evaluating ways in which they can be useful to the housing market now.
- VRA is open and interested in speaking to any localities who might be interested in developing a program or funding agreement with them.
- VRA is in conversations with Virginia Housing on how they may complement Virginia Housing's existing resources.
- VRA intends to issue some general underwriting guidelines for housing products soon.
- **What they offer:** VRA uses the municipal bond market to offer local governments low cost funds.<sup>78</sup>
  - Repayment is tied to both the underwritten projects and the municipality itself (i.e., the locality's bonding capacity).
- **Localities with high bond ratings (Winchester being one of them) do not have to use their bond capacity as collateral.**
  - This may be a benefit to Winchester, creating a loan that is more advantageous for the locality than the use of their own general obligation bonds, as the loans from the VRA could exceed the locality's bond capacity cap.
  - Localities with high bond ratings have to accept VRA loans, subject to appropriation, and execute a moral obligation with VRA.
  - Winchester already has a working relationship with VRA, so the terms of a housing lending product could be built upon this existing lending relationship.

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<sup>77</sup> Interview with Shawn Crumlish, Executive Director of the Virginia Resource Authority. August 14, 2023.

<sup>78</sup> Rates as of August 14, 2023 are around 4%. VRA charges an additional 0.125% fee. Terms are 20-30 years.

- Winchester could consider creating a loan pool for projects with VRA versus offering borrowing on a per project basis alone based on the locality.
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*A note about the role of Economic/Industrial Development Authorities in affordable housing:* EDAs and IDAs have traditionally had minimal roles in affordable housing, but that is changing. While EDAs and IDAs do not have substantial powers to borrow or lend funds that are impactful in the affordable housing landscape, they can be useful in many ways. Virginia Housing has staff working specifically with EDAs/IDAs to help them innovate ways to use their tools to promote housing goals.<sup>79</sup> EDAs and IDAs can:

- Acquire and sell property more easily than localities.
- Reposition their existing land holdings towards housing uses.
- Take on the cost, time, and risk of site preparation and planning (reduces the risk and cost for future development).
- Act as a pass through for grants (like Virginia Housing grants).
- Leverage their existing relationships with utility companies to broker development concessions.
- Issue the “tax rebate” grants as described in policy option #3.

## Legal, financial, and organizational capacity

- **Legal Capacity:** Current State law allows for General Obligation bonds and they are issued in each jurisdiction in the State, just not for housing. While their implementation is rare, they are legal and the City of Winchester could utilize GO bonds without passing a referendum.
- **Financial Capacity:** This requires an ongoing budget expenditure by the jurisdiction to service the bonds for a period of at least 20 years. If the expenditure is discontinued, it could result in default on the bonds. The City of Winchester will need to identify an ongoing source of tax revenue to pay debt service on the bonds. The City will need to identify the current rate for GO bond servicing and size the tax revenue accordingly. Because this is an ongoing financial liability of the City, there are no outside funding sources HDAvisors is aware of that can contribute to this. However, a portion of the tax revenue generated to service the debt can also be used to fund staff’s administration of the program.
- **Organizational Capacity:** The program requires staff to monitor compliance annually. While basic program design parameters need to be developed, ideally, each project should be underwritten to set the subsidy at the correct level. This requires experienced staff support or out-sourcing of this aspect of the program. The Community Development

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<sup>79</sup> Chris McNamara, Strategic Housing Officer - Economic Development is a useful contact to continue discussions on using EDAs and IDAs towards housing goals. He is active around the State in helping local authorities adopt new programs.

department may host this program in house, but would need to dedicate at least one full time staff to it. Economic development staff may be able to facilitate this, but should have a staff person with deep knowledge of housing finance.

## Implementation Plan

### Immediate:

- Identify potential project pipeline and cost budget.
- Discuss plan with City Attorney and City Finance Department to include housing bonds in future bond issuances.
- Establish Work Group capable of building political will to approve bond ordinance.

### Short-term:

- Work with City Finance Department to identify source of funds for bond repayment.
- Prepare Work Group and City Council for budget implications of policy.
- Develop preliminary program design for loan funds based on other Cities' affordable housing loan applications (City of Charlottesville is a good example)<sup>80</sup>

### Long-term:

- Pass bond issuance with City Council
- Develop loan documents
- Release RFP for housing funds

### Responsible actors and roles:

1. Local finance departments: determine bonding levels, identify bond underwriting firms to structure the sale and place the bonds
2. Local housing staff: design and administer program
3. City Council approves any ordinances necessary to the program

## Metrics to evaluate success and Projected Impact

1. Number of units created in projects awarded funds through the program.
2. Depth of affordability of units created through program.
3. Term of affordability of projects funding through program.
4. Utilization rate of the program.
5. Amount of new funds brought into the program.

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<sup>80</sup> <https://www.charlottesville.gov/679/Charlottesville-Affordable-Housing-Fund>



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City of Alexandria, Virginia

MEMORANDUM

DATE: SEPTEMBER 22, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER

SUBJECT: ORDINANCE AUTHORIZING AND EMPOWERING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION BONDS TO FINANCE VARIOUS CAPITAL PROJECTS INCLUDING AFFORDABLE HOUSING

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**ISSUE:** Consideration of an ordinance to authorize the issuance of General Obligation Bonds to finance various City and School capital projects including affordable housing.

**RECOMMENDATION:** That City Council pass the ordinance on first reading and schedule it for public hearing, second reading, and final passage on October 15, 2005, an ordinance (Attachment 1) authorizing and empowering the issuance, sale and delivery of bonds up to \$71 million to finance various public improvements, as well as including up to \$15.0 million for affordable housing.

**BACKGROUND:** The proposed ordinance authorizes the issuance of up to \$71 million in General Obligation Bonds for FY 2006 and FY 2007 planned capital projects. This issuance for City capital projects would be consistent with the approved Capital Improvement Program (CIP) (Approved Capital Improvement Program FY 2006, pages 34 and 35). In addition, \$15.0 million for potential affordable housing projects and \$0.5 million for open space acquisition is also recommended to be added to the previously planned CIP bond issuance authorization. Both the affordable housing and open space categories are included in this bond sale authorization in the event that a project (or projects) arise which may need financing to warrant the leveraging of the dedicated one-cent in real estate taxes that Council has set aside for affordable housing, as well as for the further leveraging of the dedicated one-cent in real estate taxes for open space.

In regard to affordable housing, with a bond authorization in hand the City can be ready to assist a non-profit to undertake a sizeable housing transaction in the event that there is a large dollar amount of City affordable housing funds needed to close a funding gap between what outside federal and state housing financial sources and privately provided mortgage funds can provide, and the total cost of a project. In particular, the potential purchase and redevelopment of Gunston Hall as an affordable housing project by the non-profit Alexandria Housing Development Corporation (AHDC) would likely require significant City financial participation. While the amount of City affordable housing funds that may be used to finance Gunston Hall over the long term looks to be significantly less than \$15 million, there is the initial hurdle of the \$12.3 million purchase price. In regard to Gunston Hall, it should be noted that a significant amount of project, financial and legal analyses and plans need to be further developed before it is clear that the purchase of Gunston Hall with City financial participation is feasible. Having an affordable

housing bond authorization in hand will also allow the active consideration of other affordable housing projects which may come forward over the next year. However, given the timeframe to have a bond ordinance considered and adopted, and given the mid-November acquisition decision that AHDC and the City faces for the Gunston Hall project, we recommend that Council adopt a bond ordinance with an affordable housing component. Any specific allocation of bond funds for affordable housing for any City financed participation in any affordable housing project will come back to Council for approval.

An open space bond authorization of \$0.5 million is included in this report as a placeholder in the unlikely event that the previously issued \$10 million in open space bonds become fully committed during FY 2006. If that occurs, a reallocation of new bond amounts from other project categories listed in this proposed bond ordinance could occur.

The passage of the proposed ordinance is sought at this time to provide the City with the flexibility to accept bids and enter into contracts for affordable housing, open space and capital projects, if and when opportunities arise. Section 5.15 of the City Charter prohibits the City from entering into any contract, which the issuance of bonds finances, until the ordinance authorizing the issuance of such bonds has taken effect. This ordinance provides the City with the ability to acquire affordable housing units through the issuance of either taxable or tax-exempt bonds depending on the situation. The City, under the provisions of this ordinance, could finance a project by advancing cash from other City housing or capital funds prior to the issuance of the bonds, and then can reimburse itself later with the proceeds from a bond sale. The timing of the bond issuance has not been set, but later in this fiscal year appears likely.

The size of the bonds that this ordinance authorizes is equal to approximately all of the General Obligation Bond requirement for FY 2006 as found in the approved CIP, and half the planned bond requirement for FY 2007. It also includes \$15 million in authorization for affordable housing and \$500,000 in authorization for open space acquisition. This is an estimate of the maximum authority that the City may need. The actual amount of bonds that the City would issue would depend on the City's cash needs, as well as interest rate conditions in the market place.

**MAJOR PROJECT CATEGORIES AND AMOUNTS COVERED BY THIS BOND AUTHORIZATION**

<b>General Project Description</b>	<b>Estimated Maximum Cost</b>
<u>Schools</u> Construction, remodeling and repairing of school buildings and acquisition of necessary equipment (includes projects contained in the capital improvement program under "Schools").	\$23,500,000
<u>City Parks and Buildings</u> Construction, renovation and improvement of existing of new City buildings and park facilities and acquisition of necessary land and equipment (includes projects contained in the capital improvement program under "Recreation and Parks" and "Public Buildings").	\$14,200,000
<u>Traffic Improvements</u> Maintenance and upgrade of the City's traffic control (includes projects contained in the capital improvement program under "Traffic Improvements/Rapid Transit").	\$ 6,000,000
<u>Infrastructure</u> Construction, renovation and improvement of City streets, bridges, storm and sanitary sewers and acquisition of necessary equipment (includes projects contained in the capital improvement program under "Community Development," "Streets and Bridges," "Storm Sewers," and "Sanitation Sewers").	\$11,300,000
<u>Information Technology</u> Maintenance and upgrade of the City's information technology infrastructure and hardware, networks, and software (includes projects contained in the capital improvement program under "Information Technology Plan").	\$ 500,000
<u>Open Space</u> Acquisition and improvement of land to be preserved for open space or other passive of active recreational uses.	\$ 500,000
<u>Affordable Housing</u> Acquisition, construction, remodeling and repairing of affordable housing and acquisition of necessary land and equipment.	\$15,000,000
<b>Total</b>	<b>\$71,000,000</b>

**FISCAL IMPACT:** The proposed ordinance provides authorization for an issuance of general obligation bonds not to exceed \$71 million. The fiscal impact on the City's debt service for a bond issuance of \$38.6 million for FY 2006 CIP projects is included in the FY 2006 Operating Budget approved by City Council. Any debt service arising from the acquisition of open space, or for the provision of affordable housing through its acquisition by a non-profit housing corporation would be paid for from the annual dedicated one-cent real estate tax revenue streams approved by Council for open space or the one-cent dedicated for affordable housing. To put the \$15 million for affordable housing in perspective, the annual debt service on the \$15 million would run between \$1.1 million and \$1.4 million per year. That equates to 30% to 45% of the funds that one cent in real estate taxes produces annually. In the outside event that any of the \$16.9 million in bond authorization for FY 2007 CIP projects is issued, debt service funds within the approved FY 2006 budget will be identified. The actual fiscal impact of the next debt issuance would be determined by the amount of bonds actually issued, the date of issuance and the interest rate and maturity of the bonds issued.

**ATTACHMENT:** Ordinance Authorizing and Empowering the Issuance, Sale and Delivery of General Obligation Bonds

**STAFF:**

Mark Jinks, Assistant City Manager for Fiscal and Financial Affairs

D. A. Neckel, Director of Finance

Bruce Johnson, Director, Office of Management and Budget

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION CAPITAL IMPROVEMENT BONDS IN THE ESTIMATED MAXIMUM AMOUNT OF \$71,000,000; AND PROVIDING FOR REIMBURSEMENT TO THE CITY OF ALEXANDRIA FROM BOND PROCEEDS**

WHEREAS, the City Council of the City of Alexandria, Virginia ("City") has determined that it is advisable to issue up to \$71,000,000 general obligation bonds of the City to finance the cost, in whole or in part, of various capital improvements as described below (the "Projects").

**THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:**

1. **Authorization of Bonds and Use of Proceeds.** The City Council hereby determines that it is advisable to contract a debt and to issue and sell general obligation bonds in the aggregate maximum principal amount of \$71,000,000 (the "Bonds"). The issuance and sale of the Bonds are hereby authorized. The proceeds from the issuance and sale of the Bonds shall be used to pay all or a portion of the costs of the Projects as described below and the Director of Finance is authorized and directed to determine the portion of the cost of each Project to be financed with Bond proceeds.

General Project Description

Estimated Maximum Cost

Schools

Construction, remodeling and repairing of school buildings and acquisition of necessary equipment (this project includes projects contained in the capital improvement program under "Schools").

\$23,500,000

City Parks and Buildings

Construction, renovation and improvement of existing or new City buildings and park facilities and acquisition of necessary land and equipment (this project includes projects contained in the capital improvement program under "Recreation and Parks" and "Public Buildings").

\$14,200,000

Traffic Improvements

Maintenance and upgrade of the City's traffic control facilities (this project includes projects contained in the capital improvement program under "Traffic Improvements/Rapid Transit").

\$6,000,000

Infrastructure

Construction, renovation and improvement of City streets, bridges, storm and sanitary sewers and acquisition of the necessary equipment (this project includes projects contained in the capital improvement program under "Community Development," "Streets and Bridges," "Storm Sewers" and "Sanitation Sewers").

\$11,300,000

Information Technology

Maintenance and upgrade of the City's information technology infrastructure and hardware, networks, and software (this project includes projects contained in the capital improvement program under "Information Technology Plan").

\$500,000

Open Space

Acquisition and improvement of land to be preserved for open space or other passive or active recreational uses.

\$500,000

Affordable Housing

Acquisition, construction, remodeling and repairing of affordable housing and acquisition of necessary land and equipment.

\$15,000,000

Total: \$71,000,000

**2. Pledge of Full Faith and Credit.** The full faith and credit of the City are hereby irrevocably pledged for the payment of the principal of, premium, if any, and interest on the Bonds as the same become due and payable. The City Council shall levy an annual ad valorem tax upon all property in the City, subject to local taxation, sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same shall become due for payment unless other funds are lawfully available and appropriated for the timely payment thereof.

**3. Details and Sale of Bonds.** The Bonds shall be issued upon the terms established pursuant to this Ordinance and upon such other terms as may be determined in the manner set forth in this Ordinance. The Bonds shall be issued in one or more taxable or tax-exempt series, in fully registered form, shall be dated such date or dates as the City Manager and the Director of Finance, or either of them, may approve, shall be in the denominations of \$5,000 each or whole multiples thereof and shall be numbered from R-1 upwards consecutively. The Bonds shall mature on such dates and in such amounts and shall be issued in such principal amount as the City Manager and the Director of Finance, or either of them, may approve, provided that the final maturity of any Bond is not more than approximately 25 years from its date and the aggregate principal amount of the Bonds is not more than \$71,000,000. The City Manager and



the Director of Finance, or either of them, is authorized and directed to accept a bid or bids for the purchase of the Bonds which results in the lowest true interest cost to the City and the Bonds shall bear interest, payable semi-annually, at such rate or rates and shall be sold to the successful bidder or bidders at such price as may be set forth in the bid or bids so accepted; provided that the true interest cost of the Bonds shall not exceed 6.5% per annum. The City Manager and the Director of Finance, or either of them, is authorized and directed to approve such optional redemption provisions for the Bonds as such officer or officers determine to be in the best interest of the City. The City Council may provide for additional or other terms of the Bonds by subsequent resolution.

4. **Form of Bonds.** The Bonds shall be in substantially the form attached to this Ordinance as Exhibit A, with such appropriate variations, omissions and insertions as are permitted or required by this Ordinance. There may be endorsed on the Bonds such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.

5. **Book-Entry-Only-Form.** The Bonds shall be issued in book-entry-only form. The Bonds shall be issued in fully-registered form and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC") as registered owner of the Bonds, and immobilized in the custody of DTC. One fully-registered Bond in typewritten or printed form for the principal amount of each maturity of the Bonds shall be registered to Cede & Co. Beneficial owners of the Bonds shall not receive physical delivery of the Bonds. Principal, premium, if any, and interest payments on the Bonds shall be made to DTC or its nominee as registered owner of the Bonds on the applicable payment date.

Transfer of ownership interest in the Bonds shall be made by DTC and its participants (the "Participants"), acting as nominees of the beneficial owners of the Bonds in accordance with rules specified by DTC and its Participants. The City shall notify DTC of any notice required to be given pursuant to this Ordinance or the Bonds not less than fifteen (15) calendar days prior to the date upon which such notice is required to be given. The City shall also comply with the agreements set forth in the City's Letter of Representations to DTC.

Replacement Bonds (the "Replacement Bonds") may be issued directly to beneficial owners of the Bonds rather than to DTC or its nominee but only in the event that:

- (i) DTC determines not to continue to act as securities depository for the Bonds; or
- (ii) The City has advised DTC of its determination not to use DTC as a securities depository; or
- (iii) The City has determined that it is in the best interest of the beneficial owners of the Bonds or the City not to continue the book-entry system of transfer.

Upon occurrence of the event described in (i) or (ii) above, the City shall attempt to locate another qualified securities depository. If the City fails to locate another qualified securities depository to replace DTC, the City Council shall execute and deliver Replacement Bonds substantially in the form set forth in Exhibit A to the Ordinance to the Participants. In the event the City Council, in its discretion, makes the determination noted in (iii) above and has

made provisions to notify the beneficial owners of the Bonds by mailing an appropriate notice to DTC, the appropriate officers and agents of the City shall execute and deliver Replacement Bonds substantially in the form set forth in Exhibit A to this Ordinance to any Participants requesting such Replacement Bonds. Principal of and interest on the Replacement Bonds shall be payable as provided in this Ordinance and in the Bonds and Replacement Bonds will be transferable in accordance with the provisions of paragraphs 9 and 10 of this Ordinance and the Bonds.

6. **Appointment of Bond Registrar and Paying Agent.** The City Manager and the Director of Finance, or either of them, are authorized and directed to appoint a Bond Registrar and Paying Agent for the Bonds and as long as the Bonds are in book-entry form, either of such officers may serve as Paying Agent.

The City Manager and the Director of Finance, or either of them, may appoint a subsequent registrar and/or one or more paying agents for the Bonds upon giving written notice to the owners of the Bonds specifying the name and location of the principal office of any such registrar or paying agent.

7. **Execution of Bonds.** The Mayor and the Clerk of the City are authorized and directed to execute appropriate negotiable Bonds and to affix the seal of the City thereto and to deliver the Bonds to the purchaser thereof upon payment of the purchase price. The manner of execution and affixation of the seal may be by facsimile, provided, however, that if the signatures of the Mayor and the Clerk are both by facsimile, the Bonds shall not be valid until signed at the foot thereof by the manual signature of the Bond Registrar.

8. **CUSIP Numbers.** The Bonds shall have CUSIP identification numbers printed thereon. No such number shall constitute a part of the contract evidenced by the Bond on which it is imprinted and no liability shall attach to the City, or any of its officers or agents by reason of such numbers or any use made of such numbers, including any use by the City and any officer or agent of the City, by reason of any inaccuracy, error or omission with respect to such numbers.

9. **Registration, Transfer and Exchange.** Upon surrender for transfer or exchange of any Bond at the principal office of the Bond Registrar, the City shall execute and deliver and the Bond Registrar shall authenticate in the name of the transferee or transferees a new Bond or Bonds of any authorized denomination in an aggregate principal amount equal to the Bond surrendered and of the same form and maturity and bearing interest at the same rate as the Bond surrendered, subject in each case to such reasonable regulations as the City and the Bond Registrar may prescribe. All Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and substance reasonably satisfactory to the City and the Bond Registrar, duly executed by the registered owner or by his or her duly authorized attorney-in-fact or legal representative. No Bond may be registered to bearer.

New Bonds delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Bonds surrendered, shall be secured by this Ordinance and entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.



10. **Charges for Exchange or Transfer.** No charge shall be made for any exchange or transfer of Bonds, but the City may require payment by the registered owner of any Bond of a sum sufficient to cover any tax or other governmental charge which may be imposed with respect to the transfer or exchange of such Bond.

11. **Non-Arbitrage Certificate and Tax Covenants.** The City Manager and the Director of Finance, or either of them, and such officers and agents of the City as either of them may designate are authorized and directed to execute a Non-Arbitrage Certificate and Tax Covenants setting forth the expected use and investment of the proceeds of the Bonds and containing such covenants as may be necessary in order to comply with the provisions of the Internal Revenue Code of 1986, as amended ("Code"), including the provisions of Section 148 of the Code and applicable regulations relating to "arbitrage bonds." The City Council covenants on behalf of the City that the proceeds from the issuance and sale of the Bonds will be invested and expended as set forth in the City's Non-Arbitrage Certificate and Tax Covenants, to be delivered simultaneously with the issuance and delivery of the Bonds and that the City shall comply with the other covenants and representations contained therein.

12. **Disclosure Documents.** The City Manager and the Director of Finance, or either of them, and such officers and agents of the City as either of them may designate are hereby authorized and directed to prepare, execute, if required, and deliver an appropriate notice of sale, preliminary official statement, official statement, continuing disclosure agreement or such other offering or disclosure documents as may be necessary to expedite the sale of the Bonds. The notice of sale, preliminary official statement, official statement, continuing disclosure agreement or other documents shall be published in such publications and distributed in such manner, including electronically, and at such times as the Director of Finance shall determine. The Director of Finance is authorized and directed to deem the preliminary official statement "final" for purposes of Securities and Exchange Commission Rule 15c2-12.

13. **Further Actions.** The City Manager and the Director of Finance and such officers and agents of the City as either of them may designate are authorized and directed to take such further action as they deem necessary regarding the issuance and sale of the Bonds and all actions taken by such officers and agents in connection with the issuance and sale of the Bonds are ratified and confirmed.

14. **Reimbursement.** The City Council adopts this declaration of official intent under Treasury Regulations Section 1.150-2. The City Council reasonably expects to reimburse advances made or to be made by the City to pay the costs of the Projects from the proceeds of its debt. The maximum amount of debt expected to be issued for the Projects is set forth in paragraph 1 above. The City hereby authorizes the Director of Finance, on behalf of the City, to specifically declare the City's official intent to reimburse portions of the cost of the Projects with Bond proceeds.

15. **Effective Date; Applicable Law.** In accordance with Section 15.2-2601 of the Code of Virginia of 1950, as amended, the City Council elects to issue the Bonds pursuant to the provisions of the Public Finance Act of 1991. This Ordinance shall take effect at the time of its enactment.

WILLIAM D. EUILLE  
Mayor

Introduction: 9/27/05  
First Reading: 9/27/05  
Publication:  
Public Hearing:  
Second Reading:  
Final Passage:



Virginia of 1950, as amended and an ordinance adopted by the City Council on \_\_\_\_\_, 2005 (the "Ordinance").

Bonds maturing on or before \_\_\_\_\_, \_\_\_\_\_ are not subject to redemption before maturity. Bonds at the time outstanding which are stated to mature on or after \_\_\_\_\_, \_\_\_\_\_ may be redeemed before their maturities on or after \_\_\_\_\_, \_\_\_\_\_, at the option of the City in whole or in part (in installments of \$5,000) at any time or from time to time during the following redemption periods upon payment of the following redemption prices (expressed as a percentage of the principal amount to be redeemed) together with the interest accrued thereon to the date fixed for redemption:

<u>Redemption Period</u> <u>(both dates inclusive)</u>	<u>Redemption Price</u>
_____, _____ through _____, _____	_____%
_____, _____ through _____, _____	_____%
_____, _____ and thereafter	_____%

If less than all of the Bonds are called for redemption, the maturities of the Bonds to be redeemed shall be selected by the Director of Finance of the City in such officer's discretion. If less than all of the Bonds of any maturity are called for redemption, the Bonds or portions thereof to be redeemed within a maturity shall be selected by lot by the Bond Registrar, each portion of \$5,000 principal amount being counted as one Bond for such purpose.

If any of the Bonds or portions thereof are called for redemption, the Bond Registrar shall send notice of the call for redemption identifying the Bonds by serial or CUSIP numbers, and in the case of partial redemption, identifying the principal amount to be redeemed, and identifying the redemption date and price and the place where Bonds are to be surrendered for payment, by first class mail not less than 30 nor more than 60 days before the redemption date to the registered owner of each Bond to be redeemed at such owner's address as it appears on the registration books maintained by the Bond Registrar, but failure to mail such notice shall not affect the validity of the proceedings for redemption. Provided funds for their redemption are on deposit at the place of payment on the redemption date, all Bonds or portions thereof so called for redemption shall cease to bear interest on such date, shall no longer be secured by the Ordinance and shall not be deemed to be outstanding. If a portion of this Bond shall be called for redemption, a new Bond in principal amount equal to the unredeemed portion hereof will be issued to the registered owner upon the surrender of this Bond.

The Bonds are issuable as fully registered bonds in denominations of \$5,000 and integral multiples thereof. Any Bond may be exchanged for a like aggregate principal amount of Bonds of the same maturity of other authorized denominations at the principal office of the Bond Registrar.

This Bond may be transferred only by an assignment duly executed by the registered owner hereof or such owner's attorney or legal representative in a form satisfactory to the Bond Registrar. Such transfer shall be made in the registration books kept by the Bond Registrar upon presentation and surrender hereof and the City shall execute, and the Bond Registrar shall

authenticate and deliver in exchange, a new Bond or Bonds having an equal aggregate principal amount, in authorized denominations, of the same form and maturity, bearing interest at the same rate, and registered in names as requested by the then registered owner hereof or such owner's attorney or legal representative. Any such exchange shall be at the expense of the City, except that the Bond Registrar may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

The City may designate a successor Bond Registrar and/or Paying Agent, provided that written notice specifying the name and location of the principal office of any such successor shall be given to the registered owner of the Bonds. Upon registration of transfer of this Bond, the Bond Registrar shall furnish written notice to the transferee of the name and location of the principal office of the Bond Registrar and/or the Paying Agent.

The Bond Registrar shall treat the registered owner as the person exclusively entitled to payment of principal and interest and the exercise of all other rights and powers of the owner, except that interest payments shall be made to the person shown as the owner on the registration books on the 15th day of the month preceding each interest payment date.

This Bond shall not be valid or obligatory for any purpose unless and until authenticated at the foot hereof by the Bond Registrar.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia to happen, exist or be performed precedent to the issuance of this Bond have happened, exist or been performed in due time, form and manner as so required and that the indebtedness evidenced by this Bond is within every debt and other limit prescribed by the Constitution and statutes of the Commonwealth of Virginia.

**IN WITNESS WHEREOF**, the City Council of the City of Alexandria, Virginia, has caused this Bond to be signed by the facsimile signature of its Mayor, a facsimile of its seal to be affixed and attested by the facsimile signature of its Clerk and this Bond to be dated \_\_\_\_\_, \_\_\_\_\_.

**CITY OF ALEXANDRIA, VIRGINIA**

By \_\_\_\_\_  
Mayor, City of Alexandria, Virginia

[SEAL]

ATTEST:

\_\_\_\_\_  
Clerk, City Council,  
City of Alexandria, Virginia

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

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(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE OF ASSIGNEE)

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE: \_\_\_\_\_

the within Bond and does hereby irrevocably constitute and appoint

\_\_\_\_\_, attorney, to transfer said Bond on the books kept for registration of said Bond, with full power of substitution in the premises.

Dated \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
(NOTICE: Signature(s) must be guaranteed.)

\_\_\_\_\_  
Registered Owner  
(NOTICE: The signature above must correspond with the name of the Registered Owner as it appears on the books kept for registration of this Bond in every particular, without alteration or change.)

**CERTIFICATE OF AUTHENTICATION**

The undersigned Bond Registrar hereby certifies that this is one of a series of Bonds of the City of Alexandria, Virginia described in the within-mentioned Ordinance.

Authentication Date: \_\_\_\_\_

By: \_\_\_\_\_  
[Director of Finance]



**CERTIFICATION**

I, Jacqueline M. Henderson, CMC, City Clerk and Clerk of Council, do hereby certify that the attached is a true copy of a portion of the Meeting Minutes of October 15, 2005, showing the vote of the City Council, and a true copy of the ordinance which was finally passed upon its Second Reading and Final Passage by the Alexandria City Council at its Regular Meeting held on October 15, 2005.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2005

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Jacqueline M. Henderson, CMC, City Clerk  
City of Alexandria, Virginia

15  
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10-15-05

*City of Alexandria, Virginia*

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MEMORANDUM

DATE: OCTOBER 14, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER

SUBJECT: IMPACT OF BORROWING FOR AFFORDABLE HOUSING ON THE FUNDS FROM THE DEDICATED 1 CENT OF REAL ESTATE TAXES

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In response to the questions raised by the Mayor, the following information is provided:

**Q. How much will the 1 cent of real estate taxes dedicated for affordable housing raise in the next six years?**

A. The dedicated 1 cent will raise an estimated \$21.2 million over the next six years. The exact amount, however, depends on the annual growth rates of the real estate tax base.

**Q. If Council approves leveraging the 1 cent by borrowing \$15 million for affordable housing, how much of the \$21.2 million will remain?**

A. The following chart shows the six-year impact of the \$15 million in proposed borrowing. During this six years there will be \$14.9 million in dedicated affordable housing funds remaining in addition to the \$15 million in bonds.

(\$ in Millions)

	<b>Income from Dedicated 1¢</b>	<b>Debt Service on \$15.0 Bonds<sup>1</sup></b>	<b>Remaining Balance</b>
FY 06	\$ 2.8	-	\$ 2.8
FY 07	3.2	\$1.3	1.9
FY 08	3.5	1.3	2.2
FY 09	3.7	1.3	2.4
FY 10	3.9	1.2	2.7
FY 11	4.1	1.2	2.9
Total	\$21.2	\$6.3	\$14.9

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<sup>1</sup>Assumes a 20-year tax-exempt borrowing and level principal repayment.

**Q. How much bonding could the income stream from the dedicated one-cent support if the entire one-cent was bonded?**

A. The amount of revenue bonds which could be supported will vary based upon how much the one-cent in real estate tax grows each year, as well as the method of bond financing (level principal or level debt service repayment structures, as well as the taxable and tax-exempt bond allocation). However, using the estimated \$3.2 million from the dedicated one-cent in FY 2007 as the estimated annual income stream, the amount of bonds which could be floated over the next seven years would be about \$40 million which leaves \$25 million in capacity remaining after the \$15 million is issued.

**Q. In the next year what if more than \$15 million in bonds and all other affordable housing resources (HTF, HOF, ARHA repayment, etc.) is needed?**

A. The proposed bond ordinance covers about 18-months of City CIP needs for City capital projects in the approved CIP. The authorization allows the option for a reallocation among the listed categories (“Affordable Housing” is a listed category), so a reallocation from a City capital category to the Affordable Housing category could occur. Also, this bond ordinance could be increased in about a 30-day period (first reading, advertising, second reading and adoption). Both of these two options provide enough flexibility so that the \$15 million should be sufficient.

**STAFF:**

Mark Jinks, Assistant City Manager

Dan Neckel, Director of Finance

Mildrilyn Davis, Director, Office of Housing

ORDINANCE NO. 4423

AN ORDINANCE of the city council of the City of Alexandria, Virginia authorizing the issuance of general obligation capital improvement bonds in the estimated maximum amount of \$78,100,000; and providing for reimbursement to the City of Alexandria from bond proceeds

WHEREAS, the City Council of the City of Alexandria, Virginia ("City") has determined that it is advisable to issue up to \$78,100,000 general obligation bonds of the City to finance the cost, in whole or in part, of various capital improvements as described below (the "Projects").

**THE CITY COUNCIL OF THE CITY OF ALEXANDRIA HEREBY ORDAINS:**

1. **Authorization of Bonds and Use of Proceeds.** The City Council hereby determines that it is advisable to contract a debt and to issue and sell general obligation bonds in the aggregate maximum principal amount of \$78,100,000 (the "Bonds"). The issuance and sale of the Bonds are hereby authorized. The proceeds from the issuance and sale of the Bonds shall be used to pay all or a portion of the costs of the Projects as described below and the Director of Finance is authorized and directed to determine the portion of the cost of each Project to be financed with Bond proceeds.

<u>General Project Description</u>	<u>Estimated Maximum Cost</u>
<u>Schools</u> Construction, remodeling and repairing of school buildings and acquisition of necessary equipment (this project includes projects contained in the capital improvement program under "Schools").	\$23,500,000
<u>City Parks and Buildings</u> Construction, renovation and improvement of existing or new City buildings and park facilities and acquisition of necessary land and equipment (this project includes projects contained in the capital improvement program under "Recreation and Parks" and "Public Buildings").	\$14,200,000
<u>Traffic Improvements</u> Maintenance and upgrade of the City's traffic control facilities (this project includes projects contained in the capital improvement program under "Traffic Improvements/Rapid Transit").	\$6,000,000

Infrastructure

Construction, renovation and improvement of City streets, bridges, storm and sanitary sewers and acquisition of the necessary equipment (this project includes projects contained in the capital improvement program under "Community Development," "Streets and Bridges," "Storm Sewers" and "Sanitation Sewers"). \$11,300,000

Information Technology

Maintenance and upgrade of the City's information technology infrastructure and hardware, networks, and software (this project includes projects contained in the capital improvement program under "Information Technology Plan"). \$500,000

Open Space

Acquisition and improvement of land to be preserved for open space or other passive or active recreational uses. \$500,000

Affordable Housing

Acquisition, construction, remodeling and repairing of affordable housing and acquisition of necessary land and equipment. \$22,100,000

Total: \$78,100,000

**2. Pledge of Full Faith and Credit.** The full faith and credit of the City are hereby irrevocably pledged for the payment of the principal of, premium, if any, and interest on the Bonds as the same become due and payable. The City Council shall levy an annual ad valorem tax upon all property in the City, subject to local taxation, sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same shall become due for payment unless other funds are lawfully available and appropriated for the timely payment thereof.

**3. Details and Sale of Bonds.** The Bonds shall be issued upon the terms established pursuant to this Ordinance and upon such other terms as may be determined in the manner set forth in this Ordinance. The Bonds shall be issued in one or more taxable or tax-exempt series, in fully registered form, shall be dated such date or dates as the City Manager and the Director of Finance, or either of them, may approve, shall be in the denominations of \$5,000 each or whole multiples thereof and shall be numbered from R-1 upwards consecutively. The Bonds shall mature on such dates and in such amounts and shall be issued in such principal amount as the City Manager and the Director of Finance, or either of them, may approve, provided that the final maturity of any Bond is not more than approximately 25 years from its date and the aggregate principal amount of the Bonds is not more than \$78,100,000. The City Manager and the Director of Finance, or either of them, is authorized and directed to accept a bid or bids for the purchase of the Bonds which results in the lowest true interest cost to the City and the Bonds

shall bear interest, payable semi-annually, at such rate or rates and shall be sold to the successful bidder or bidders at such price as may be set forth in the bid or bids so accepted; provided that the true interest cost of the Bonds shall not exceed 6.5% per annum. The City Manager and the Director of Finance, or either of them, is authorized and directed to approve such optional redemption provisions for the Bonds as such officer or officers determine to be in the best interest of the City. The City Council may provide for additional or other terms of the Bonds by subsequent resolution.

**4. Form of Bonds.** The Bonds shall be in substantially the form attached to this Ordinance as Exhibit A, with such appropriate variations, omissions and insertions as are permitted or required by this Ordinance. There may be endorsed on the Bonds such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.

**5. Book-Entry-Only-Form.** The Bonds shall be issued in book-entry-only form. The Bonds shall be issued in fully-registered form and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC") as registered owner of the Bonds, and immobilized in the custody of DTC. One fully-registered Bond in typewritten or printed form for the principal amount of each maturity of the Bonds shall be registered to Cede & Co. Beneficial owners of the Bonds shall not receive physical delivery of the Bonds. Principal, premium, if any, and interest payments on the Bonds shall be made to DTC or its nominee as registered owner of the Bonds on the applicable payment date.

Transfer of ownership interest in the Bonds shall be made by DTC and its participants (the "Participants"), acting as nominees of the beneficial owners of the Bonds in accordance with rules specified by DTC and its Participants. The City shall notify DTC of any notice required to be given pursuant to this Ordinance or the Bonds not less than fifteen (15) calendar days prior to the date upon which such notice is required to be given. The City shall also comply with the agreements set forth in the City's Letter of Representations to DTC.

Replacement Bonds (the "Replacement Bonds") may be issued directly to beneficial owners of the Bonds rather than to DTC or its nominee but only in the event that:

- (i) DTC determines not to continue to act as securities depository for the Bonds; or
- (ii) The City has advised DTC of its determination not to use DTC as a securities depository; or
- (iii) The City has determined that it is in the best interest of the beneficial owners of the Bonds or the City not to continue the book-entry system of transfer.

Upon occurrence of the event described in (i) or (ii) above, the City shall attempt to locate another qualified securities depository. If the City fails to locate another qualified securities depository to replace DTC, the City Council shall execute and deliver Replacement Bonds substantially in the form set forth in Exhibit A to the Ordinance to the Participants. In the event the City Council, in its discretion, makes the determination noted in (iii) above and has made provisions to notify the beneficial owners of the Bonds by mailing an appropriate notice to DTC, the appropriate officers and agents of the City shall execute and deliver Replacement Bonds substantially in the form set forth in Exhibit A to this Ordinance to any Participants requesting such Replacement Bonds. Principal of and interest on the Replacement Bonds shall



be payable as provided in this Ordinance and in the Bonds and Replacement Bonds will be transferable in accordance with the provisions of paragraphs 9 and 10 of this Ordinance and the Bonds.

**6. Appointment of Bond Registrar and Paying Agent.** The City Manager and the Director of Finance, or either of them, are authorized and directed to appoint a Bond Registrar and Paying Agent for the Bonds and as long as the Bonds are in book-entry form, either of such officers may serve as Paying Agent.

The City Manager and the Director of Finance, or either of them, may appoint a subsequent registrar and/or one or more paying agents for the Bonds upon giving written notice to the owners of the Bonds specifying the name and location of the principal office of any such registrar or paying agent.

**7. Execution of Bonds.** The Mayor and the Clerk of the City are authorized and directed to execute appropriate negotiable Bonds and to affix the seal of the City thereto and to deliver the Bonds to the purchaser thereof upon payment of the purchase price. The manner of execution and affixation of the seal may be by facsimile, provided, however, that if the signatures of the Mayor and the Clerk are both by facsimile, the Bonds shall not be valid until signed at the foot thereof by the manual signature of the Bond Registrar.

**8. CUSIP Numbers.** The Bonds shall have CUSIP identification numbers printed thereon. No such number shall constitute a part of the contract evidenced by the Bond on which it is imprinted and no liability shall attach to the City, or any of its officers or agents by reason of such numbers or any use made of such numbers, including any use by the City and any officer or agent of the City, by reason of any inaccuracy, error or omission with respect to such numbers.

**9. Registration, Transfer and Exchange.** Upon surrender for transfer or exchange of any Bond at the principal office of the Bond Registrar, the City shall execute and deliver and the Bond Registrar shall authenticate in the name of the transferee or transferees a new Bond or Bonds of any authorized denomination in an aggregate principal amount equal to the Bond surrendered and of the same form and maturity and bearing interest at the same rate as the Bond surrendered, subject in each case to such reasonable regulations as the City and the Bond Registrar may prescribe. All Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and substance reasonably satisfactory to the City and the Bond Registrar, duly executed by the registered owner or by his or her duly authorized attorney-in-fact or legal representative. No Bond may be registered to bearer.

New Bonds delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Bonds surrendered, shall be secured by this Ordinance and entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

**10. Charges for Exchange or Transfer.** No charge shall be made for any exchange or transfer of Bonds, but the City may require payment by the registered owner of any Bond of a sum sufficient to cover any tax or other governmental charge which may be imposed with respect to the transfer or exchange of such Bond.

**11. Non-Arbitrage Certificate and Tax Covenants.** The City Manager and the Director of Finance, or either of them, and such officers and agents of the City as either of them

may designate are authorized and directed to execute a Non-Arbitrage Certificate and Tax Covenants setting forth the expected use and investment of the proceeds of the Bonds and containing such covenants as may be necessary in order to comply with the provisions of the Internal Revenue Code of 1986, as amended ("Code"), including the provisions of Section 148 of the Code and applicable regulations relating to "arbitrage bonds." The City Council covenants on behalf of the City that the proceeds from the issuance and sale of the Bonds will be invested and expended as set forth in the City's Non-Arbitrage Certificate and Tax Covenants, to be delivered simultaneously with the issuance and delivery of the Bonds and that the City shall comply with the other covenants and representations contained therein.

**12. Disclosure Documents.** The City Manager and the Director of Finance, or either of them, and such officers and agents of the City as either of them may designate are hereby authorized and directed to prepare, execute, if required, and deliver an appropriate notice of sale, preliminary official statement, official statement, continuing disclosure agreement or such other offering or disclosure documents as may be necessary to expedite the sale of the Bonds. The notice of sale, preliminary official statement, official statement, continuing disclosure agreement or other documents shall be published in such publications and distributed in such manner, including electronically, and at such times as the Director of Finance shall determine. The Director of Finance is authorized and directed to deem the preliminary official statement "final" for purposes of Securities and Exchange Commission Rule 15c2-12.

**13. Further Actions.** The City Manager and the Director of Finance and such officers and agents of the City as either of them may designate are authorized and directed to take such further action as they deem necessary regarding the issuance and sale of the Bonds and all actions taken by such officers and agents in connection with the issuance and sale of the Bonds are ratified and confirmed.

**14. Reimbursement.** The City Council adopts this declaration of official intent under Treasury Regulations Section 1.150-2. The City Council reasonably expects to reimburse advances made or to be made by the City to pay the costs of the Projects from the proceeds of its debt. The maximum amount of debt expected to be issued for the Projects is set forth in paragraph 1 above. The City hereby authorizes the Director of Finance, on behalf of the City, to specifically declare the City's official intent to reimburse portions of the cost of the Projects with Bond proceeds.

**15. Effective Date; Applicable Law.** In accordance with Section 15.2-2601 of the Code of Virginia of 1950, as amended, the City Council elects to issue the Bonds pursuant to the provisions of the Public Finance Act of 1991. This Ordinance shall take effect at the time of its enactment.

WILLIAM D. EUILLE  
Mayor

Final Passage: October 15, 2005



## Appendix B: City of Richmond Tax Rebate Grant Agreement

### GRANT AGREEMENT

This **GRANT AGREEMENT** (the “Agreement”) is made and entered this \_\_\_\_ day of \_\_\_\_, 2023 (the “Effective Date”), by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “City”), **7000 CARNATION, LLC**, a Virginia limited liability company, or its assigns or successors (the “Recipient”), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND**, a political subdivision of the Commonwealth of Virginia (the “Authority”).

#### RECITALS

- A. The Recipient plans to develop and operate on the Site, as defined below, the Project, as defined below.
- B. The City and the Authority have determined that the Project will result in significant investment and economic development on the Site, will promote safe and affordable housing in the City of Richmond, will result in substantial benefits to the welfare of the City and its inhabitants, is in the public interest, and serves governmental interests.
- C. The City plans to fund an economic development monetary grant (the “Grant”) by the Authority to the Recipient for the purpose of inducing the Recipient to construct and operate the Project in the City of Richmond.
- D. Payment of the Grant will be conditioned upon Recipient’s completion of Project construction and continued maintenance of the Project, as defined herein, and the funds comprising payments of the Grant will be solely limited to a portion of the incremental real estate tax revenues for the Site generated by the Project (i.e., including both the fee interest (and leasehold interest, if applicable) in the land and all improvements), all as set forth herein.
- E. The City is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia and other laws to perform the activities contemplated in this Agreement. The Authority is authorized by the Code of Virginia to make grants to non-public organizations such as Recipient in furtherance of the purpose of promoting economic development and affordable housing.
- F. This Agreement sets forth the understanding of the parties concerning the Recipient’s obligations, the Authority’s obligations, and the incentives offered by the City, subject to the approval of the Authority’s Board and the Richmond City Council and subject to appropriations.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

**Section 1. Preliminary Provisions**

**1.1 Incorporation of Recitals.** The foregoing recitals are incorporated herein by reference.

**1.2 Definitions.** For the purposes of this Agreement, the following terms shall have the following definitions:

“AMI” means area median gross income for the Richmond-Petersburg Metropolitan Statistical Area for each applicable year of the Grant Period.

“Base Real Estate Tax Revenue” means \$14,100 per year, being the amount equal to the real estate taxes levied on the Site for the current tax year as of the Effective Date.

“Grant” means a grant to be paid to the Recipient, or its successors or assigns, by the Authority pursuant to this Agreement.

“Grant Payment” means, for each real estate tax year during the Grant Period, an amount equal to the Incremental Real Estate Tax Revenue for such corresponding tax year. The Parties acknowledge that the annual real estate tax levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein “Grant Payment” shall include payments of Incremental Real Estate Tax Revenue for each installment payment corresponding to the applicable Real Estate Tax Levy as prorated for the applicable installment period.

“Grant Payment Request” means a written request for a Grant Payment, which shall include (1) documentation showing its full payment of the Real Estate Tax Levy to the City in full and on time (except as provided in Section 3.3 below), and (2) the amount of the requested Grant Payment and explanation of the calculation thereof (i.e., Real Estate Tax Levy *minus* Base Real Estate Tax Revenue *equals* Incremental Real Estate Tax Revenue, as pro-rated for the applicable installment period).

“Grant Period” means that certain period commencing upon January 1<sup>st</sup> of the first real estate tax year following Recipient’s completion of Project construction, as shall be evidenced by receipt of a temporary Certificate of Occupancy (“Grant Commencement Date”) and ending on last day of the thirtieth (30th) real estate tax year following the Grant Commencement Date (“Grant Expiration Date”), subject to the provisions of Section 2.5 below. The parties acknowledge that the “Real Estate Tax Levy” for the last year of the Grant Period may not be received by the City until after the Grant Expiration Date, and that a Grant Payment shall be paid to Recipient corresponding to such Real Estate Tax Levy.

“Incremental Real Estate Tax Revenue” means, for each applicable real estate tax year during the Grant Period, the amount by which the Real Estate Tax Levy exceeds the Base Real Estate Tax Revenue, provided Recipient pays the Real Estate Tax Levy to the City in full and on time (except as provided in Section 3.3 below). In no event shall the Incremental Real Estate Tax Revenue (or the Grant Payment) include penalties, interest, or any other charges resulting from any delinquent payment. The Parties acknowledge that the Real Estate Tax Levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein

“Incremental Real Estate Tax Revenue” shall be determined based on the applicable payment (or installment) of the Real Estate Tax Levy for each applicable real estate tax year.

“Maintain” means the Recipient’s continued maintenance and operation of the Project following completion of Project construction, as set forth by Section 2.2.2 of this Agreement.

“Project” means a development on the Site containing not less than 217 residential units, subject to income and rent restrictions as set forth in Section 2.4 and as shown on Exhibit A, and monitored by the State Housing Finance Agency.

“Real Estate Tax Levy” means the amount of real estate taxes levied by the City on the Site (including both the fee interest (and leasehold interest, if applicable)) and Project (i.e., including land and all improvements) for a given real estate tax year, pursuant to Chapter 26 of the Code for the City of Richmond (“City Code”).

“Recipient” means 7000 Carnation, LLC, and its successors and assigns, to the extent permitted by this Agreement.

“Site” means that certain 5.393 acre parcel currently owned by 7000 Carnation Acquisition, LLC, located at 7000 West Carnation Street and currently referred to in the records of the City Assessor as Parcel No. C0050776004.

“State Housing Finance Agency” means Virginia Housing (formerly known as Virginia Housing Development Authority), a political subdivision of the Commonwealth of Virginia, or its successor.

## **Section 2. Recipient’s Obligations**

### **2.1 Completion of Project Construction; Timeline.**

**2.1.1 Plan of Development.** Recipient shall submit a Plan of Development or similar submission for the Project to the City’s Director of Planning and Development Review no later than nine (9) months after the Effective Date, which Plan of Development or similar submission shall comply with the relevant provisions of the Richmond City Code and shall contain all elements of the Project as defined herein.

**2.1.2 Commencement of the Project Construction.** Recipient shall commence construction of the Project within eighteen (18) months of the Effective Date, (the “Construction Commencement Date”), which shall be evidenced by the issuance of all permits necessary for commencement of construction of the Project.

**2.1.3 Completion of Project Construction.** Recipient shall complete the Project within three years of the Construction Commencement Date, which shall be evidenced by the issuance of a temporary certificate of occupancy for the Project.

**2.1.4 Failure to Comply.** If Recipient fails to timely comply with any of the provisions of this Section 2.1 then the City’s Chief Administrative Officer (“CAO”), in her sole discretion, may either extend the time by which Recipient must comply with the

corresponding requirement or provide written notice of the City's intent to terminate this Agreement. If Recipient fails to cure its failure to comply within 30 days of such written notice then this Agreement, including all rights and obligations herein, shall, upon the City's election, terminate and neither the City nor the Authority shall have any further obligation to the Recipient and Recipient shall no longer be eligible for any Grant Payments hereunder.

## **2.2 Continued Maintenance and Operation of Project.**

**2.2.1 Continued Control of the Project by Recipient.** Recipient shall continue to own, lease, or otherwise control the Site until completion of Project construction pursuant to Section 2.1.3 of this Agreement and thereafter shall continue to own, lease, or otherwise control the Project until expiration of the Grant Period. Notwithstanding the foregoing, Recipient may transfer the ownership or control interest in the Project to third parties ("Transferee"), and Recipient may (1) assign this Agreement, including the rights and obligations herein to such party or parties at the time it transfers ownership of the Project (including any leasehold interests), and (2) if the Agreement is assigned, Recipient shall provide the City and Authority 30 days' prior written notice of its intent to transfer ownership or control of the Project, which notice shall include the contemplated date of transfer, the name of the party or parties to which it intends to transfer, and a written statement from such party that it is aware that this Agreement, including the rights and obligations herein, will be assigned to such party. Following the transfer of ownership in the Project to the Transferee as provided above, the term "Recipient" as used herein shall mean the Transferee.

**2.2.2 Continued Maintenance and Operation of the Project.** Following Recipient's completion of Project construction as set forth in Section 2.1.3 of this Agreement, the Recipient, or its successors or assigns, shall continue to Maintain the Project until the expiration of the Grant Period. For avoidance of doubt, Recipient's obligation to Maintain the Project includes Recipient's ongoing compliance with the provisions set forth in Section 2.4 (Affordable Housing) of this Agreement.

## **2.3 MBE Participation.**

**2.3.1 Goal.** The Recipient agrees to diligently work towards the following goal: Where capacity, capability and competitive pricing among minority business enterprises and emerging small businesses exists, 30% of all expenditures for construction costs of the Project that will be paid to third party subcontractors unaffiliated with the Recipient will be spent with minority business enterprises and emerging small businesses that perform commercially useful functions with regard to the prosecution and completion of the Project. The terms "minority business enterprise" and "emerging small business" have the meaning ascribed to them in Chapter 21 of the City Code. The Recipient shall include this goal in its contracts with all assignees, contractors and subcontractors who will be providing any portion of the Project.

**2.3.2 Reporting.** To enable the City to measure the achievements of the Recipient and its assignees, contractors and subcontractors with regard to the participation goals set forth above, during the period prior to completion of Project construction, the Recipient

shall submit a report upon request detailing all expenditures with minority business enterprises and emerging small businesses, showing, at a minimum, (i) the name of the business, (ii) an itemization of what the business provided, (iii) the amount paid for each item, (iv) the total amount of spending to date with minority business enterprises and emerging small businesses and (v) the percentage of total expenditures for the quarter spent with minority business enterprises and emerging small businesses. If the City chooses, the Recipient shall submit these reports on forms prescribed by the City. The City will use these reports in evaluating the good faith minority business enterprise and emerging small business participation efforts, as defined in Section 21-4 of the City Code, of the Recipient and its assignees, contractors and subcontractors which compete for City contracts.

#### **2.4 Affordable Housing.**

The Recipient shall restrict occupancy and rents of the Project according to the schedule shown on Exhibit A, according to standards promulgated by the State Housing Finance Agency. Ongoing compliance monitoring and approvals by the State Housing Finance Agency, as provided to the City upon the City's request, shall serve as evidence of the Recipient's compliance with this section.

#### **2.5 Continued Investment and Capital Improvements**

For purposes of continued investment and upkeep of the Project to the benefit of its tenants, payment of Grant Payments subsequent to the initial fifteen (15) years of the Grant Period shall be contingent upon receipt of proof that the Recipient has made capital improvements to the Project in an aggregate amount of Two Million One Hundred and Seventy Thousand dollars (\$2,170,000) since the Grant Commencement Date. On each fifth anniversary of the Grant Commencement Date, the Recipient shall upon request submit a report of capital improvements made to the Project since the Grant Commencement Date.

### **Section 3. Disbursement of Grant.**

**3.1. Grant.** During the Grant Period, the City shall pay to Recipient (or such party to which Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), through the Authority, the Grant Payments for such real estate tax year subject to the provisions of this Section 3.

**3.2. Grant Payment Requests.** The Recipient shall submit each Grant Payment Request to the CAO, with copies to the Department of Economic Development, the Authority, and the Office of the City Attorney at the respective addresses set forth in Section 8.

**3.3. Disbursement of Grant Payment.** Upon receipt of a Grant Payment Request, the City shall review the accuracy of the request. The City shall not make a Grant Payment if Recipient did not make full and timely payment of the Real Estate Tax Levy for the applicable installment (except when Recipient (i) makes full payment within 60 days after the date such payment was due to the City and (ii) pays all penalties and interest for such late payment in accordance with any applicable provisions of the Richmond City Code) and shall not make a Grant Payment if Recipient is delinquent in payment of any other taxes



levied by the City for the Project (except when all penalties and interest for such late payment have been paid in accordance with any applicable provision of the Richmond City Code). Within fifteen (15) business days of receipt of a Grant Payment Request, the City shall notify Recipient either that (1) the City denies the request and will not make a Grant Payment for the foregoing reasons, (2) the City approves the request and intends to make a Grant Payment in the amount requested, or (3) the City approves making a payment to Recipient but in a different amount than the amount requested because the amount requested is inconsistent with this Agreement, in which case the City shall indicate the correct Grant Payment amount it intends to make. Notwithstanding the foregoing, the City's failure to respond within fifteen (15) business days shall not constitute approval of a requested Grant Payment and the Recipient shall not be entitled to any such payment due solely to the City's failure to timely respond. Subject to any necessary City Council action, including any necessary budget amendment or appropriation of funds, the City agrees to, within fifteen (15) business days of the City's approval of any Grant Payment, transfer the funds for the Grant Payment to the Authority. The Authority agrees to pay the Grant Payment to Recipient (or such party to which Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), within fifteen (15) business days of receipt of the funds from the City.

**3.4 Recipient's Relief.** Should Recipient believe the City failed to comply with Section 3.3 of this Agreement, Recipient may seek relief in accordance with Section 9.2 of this Agreement. Provided, however, Recipient's sole remedy shall be to receive payment for a Grant Payment to which it was entitled (subject to the restrictions set forth in this Agreement, including, but not limited to, Sections 3.3 and 9.5) and for which it did not receive payment.

#### **Section 4. General Administration of Grant**

**4.1** The City agrees to transfer to the Authority, as and when appropriated by the City Council, the funds necessary for the Authority to meet its obligations under this Agreement relating to the Grant. No administrative fees or expenses shall be paid by the City.

**4.2** The Authority's obligation to undertake the activities herein is specially conditioned upon the City providing funding on a timely basis; provided, however, the City's obligation is subject to appropriation by the City Council and availability of funds.

**4.3** The Authority agrees to provide the City's Chief Administrative Officer, or the designee thereof, with copies of all documents related to this Agreement and will keep the CAO fully and timely informed of all matters related to this Agreement.

**4.4** The Authority agrees that all funds transferred by the City to the Authority for the Grant shall be deposited by the Authority within a Project Fund, to be used only to satisfy the obligations contained in this Agreement related to the Grant.

**4.5** It is the intent of the parties not to impose upon the Authority any responsibility, duty, or obligation other than what may be required to implement the Grant. Accordingly, Authority does not assume any responsibility or liability whatsoever except as specifically

stated herein. If litigation involving the Grant is initiated or expected to be filed against the Authority, the Authority shall immediately notify the City Attorney and CAO.

4.6 The Authority shall keep records of its financial transactions, if any, related to the Agreement in accordance with generally accepted accounting principles. The City Auditor or his designee may at any time audit the financial transactions undertaken under this Agreement. The Authority shall cooperate to ensure that the City Auditor is granted reasonable access on a timely basis to all books and records of the Authority necessary to complete such audits.

4.7 The Authority shall not be required to furnish the City a blanket corporate fidelity bond with surety.

## **Section 5. Representations of the Recipient**

5.1 The Recipient is empowered to enter into this Agreement, to be bound hereby, and to perform according to the terms hereof.

5.2 Any and all actions necessary to enable the Recipient to enter into this Agreement, and to be bound hereby, have been duly taken.

5.3 The person or persons executing or attesting the execution of this Agreement on behalf of the Recipient has or have been duly authorized and empowered to so execute or attest.

5.4 The execution of this Agreement on behalf of the Recipient will bind and obligate the Recipient to the extent provided by the terms hereof.

5.5 There exists no litigation pending against the Recipient or to the Recipient's knowledge threatened, which if determined adversely, would materially and adversely affect the ability of the Recipient to carry out its obligations under this Agreement or the transactions contemplated hereunder.

## **Section 6. Default.**

6.1 **Events of Default.** Each of the following events (hereinafter called an "Event of Default") shall be a default hereunder by the Recipient as described:

6.1.1 Failure by the Recipient to maintain its corporate existence or the declaration of bankruptcy by the Recipient;

6.1.2 The failure of Recipient to comply with Section 2 of this Agreement; and

6.1.3 The failure of Recipient to pay annual Real Estate Tax Levy.

6.2 **Effect of Event of Default.** In the case of an occurrence of an Event of Default, the Grant provisions of Section 3 of this Agreement shall, at the City's option, terminate ninety (90) days after the City's notice to Recipient and Recipient's designated lender, unless Recipient cures

the Event of Default to the City's satisfaction within such ninety (90) days, and neither the City nor the Authority shall have any further obligation relating thereto and the Recipient shall no longer be eligible for any Grant Payments hereunder. Notwithstanding the foregoing, Recipient's obligations hereunder will remain in force and effect throughout the Grant Period and the City shall be entitled to any remedies available at law and equity, including, but not limited to, specific performance.

**Section 7. Recipient Reporting.**

The Recipient shall provide, at Recipient's expense, detailed updates and verification reasonably satisfactory to the City of Recipient's progress regarding completion of Project construction and, following Project construction, of Recipient's continued compliance with Section 2.2 of this Agreement.

**Section 8. Notices.**

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Recipient, to:

7000 Carnation, LLC  
Attention: John Gregory  
7 East 2<sup>nd</sup> Street  
Richmond, VA 23224

with a copy to:

Brian K. Jackson, Esq  
Hirschler Fleischer, P.C.  
2100 East Cary Street  
Richmond, VA 23223

if to the City, to:

Chief Administrative Officer  
City of Richmond, Virginia  
900 East Broad Street Suite 201  
Richmond, VA 23219

with a copy to:

Department of Economic Development  
City of Richmond, Virginia  
1500 East Main Street  
Richmond, VA 23219

if to the Authority, to:

Economic Development Authority  
of Richmond VA – Attn: Chairman  
1500 East Main Street  
Richmond, VA 23219

with a copy to:

City Attorney  
City of Richmond, Virginia  
900 East Broad Street Suite 400  
Richmond, VA 23219

**Section 9. General Terms and Conditions.**

**9.1 Entire Agreement; Amendments; Assignments.** This Agreement constitutes the



applicable law.

**9.5 Subject-to-Appropriations.** All payments and other performances by the City and the Authority under this Agreement are subject to City Council approval, Authority Board approval and annual appropriations by the City Council. It is understood and agreed among the parties that the City and the Authority shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall the City's or the Authority's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement.

**9.6 Public Disclosure.**

**9.6.1 Applicable Law.** The parties to this Agreement acknowledge that records maintained by or in the custody of the City and the Authority are subject to the provisions of the Virginia Public Records Act, Va. Code §§ 42.1-76 through 42.1-90.1, and the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 through 2.2-37 14 and thus are subject to the records retention and public disclosure requirements set forth in those statutes.

**9.6.2 Challenges to Nondisclosure.** If a party submitting records to the City or the Authority requests that those records not be disclosed under applicable law and the City or the Authority consequently denies a request for disclosure of such records based on the submitting party's request, and the City's or the Authority's denial of a request for disclosure of records is challenged in court, the submitting party shall indemnify, hold harmless and defend the City or the Authority, their respective officers and employees from any and all costs, damages, fees and penalties (including attorney's fees and other costs related to litigation) relating thereto.

**9.7 No Waiver.** Neither failure on the part of the City or the Authority to enforce any covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the City or the Authority to enforce the same right in the event of any subsequent default.

**9.8 Effective Date of the Agreement.** The effective date of this Agreement shall be the date upon which it has been fully executed by the parties following approval by City Council and by the Authority's Board of Directors.

**9.9 No Partnership or Joint Venture.** It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstance whatsoever as creating and establishing the relationship of copartners or creating or establishing a joint venture between or among any of the parties or as designating any party to the Agreement as the agent or representative of any other party to the Agreement for any purpose.

**9.10 No Third Party Beneficiaries.** The parties agree that (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the Authority, or the Recipient; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Authority, or the Recipient under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to

confer third-party beneficiary status on any individual or entity.

**9.11 Signature Authority.** Except as specifically otherwise set forth in this Agreement, the CAO or the designee thereof may provide any authorization, approvals, and notices contemplated herein on behalf of the City.

**SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

**CITY OF RICHMOND, VIRGINIA**  
a municipal corporation of the  
Commonwealth of Virginia

By: \_\_\_\_\_  
J.E. Lincoln Saunders Date  
Chief Administrative Officer

Authorized by Ordinance No. \_\_\_\_\_

Approved as to Form:

By: Bonnie M. Alley  
City Attorney's Office

**7000 CARNATION, LLC**, a Virginia limited liability company

By: \_\_\_\_\_  
Date

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ECONOMIC DEVELOPMENT  
AUTHORITY OF THE CITY OF  
RICHMOND, VIRGINIA**,  
a political subdivision of the  
Commonwealth of Virginia

By: \_\_\_\_\_  
Chairman Date

Approved as to Form:

By: \_\_\_\_\_  
General Counsel to the Authority

## **EXHIBIT A**

### **Affordable Housing Schedule**

The Project shall restrict occupancy and rents to an average income designation of 60% of AMI, according to standards promulgated by the State Housing Finance Agency, for a minimum of thirty (30) years.

## Appendix C

### **Interview List - Funding Policy Memo**

Michael Wong, Harrisonburg

Helen McElvaine, Arlington

Andy Friedman, Virginia Beach

Chris McNamara, Virginia Housing

Susan McCluse, Danville

Wendy Miller, Henrico County

Elizabeth Hancock Greenfield, Homebuilders of Richmond

Shawn Crumblish, VRA