



Administration of Affordable Dwelling Units **by the Department of Housing and Community Development**

The mission of the Department of Housing and Community Development (DHCD) is to create and preserve opportunities for affordable housing and economic development and to revitalize underserved communities in the District of Columbia.

To this end, in June of 2009 the Mayor granted DHCD the authority to monitor and enforce compliance with requirements to provide or maintain Affordable Dwelling Units (ADUs) in the District of Columbia. Affordable Dwelling Unit is an umbrella term applied to the for-sale and for-rent homes that are locally restricted for occupancy by households whose income falls within a certain range and are generally offered at a below-market rate. ADUs do not include for-sale and for-rent homes that are federally restricted (eg. HOME, LIHTC, CDBG) or developments funded through HPTF. ADUs are generally produced in exchange for zoning relief, tax incentives, public financing, and/or the right to purchase or lease District-owned land. Specific ADU provisions, such as the affordability period, income limits, and resale restrictions, are set out in deed covenants, land disposition agreements, ADU administration plans and other originating documents. These provisions have historically varied from project to project, as each is a result of a unique negotiation or project approval. However, ADU restrictions have recently become more standardized.

DHCD is now responsible for enforcing the ADU requirements that have been imposed by public or quasi-public entities, such as the Zoning Commission, Deputy Mayor for Planning and Economic Development, publicly chartered development corporations, and the Office of the Chief Financial Officer, through the following mechanisms:

- Legislation providing tax exemptions, tax abatements, or other financial assistance, including D.C. Official Code §§ 47-857.01 et seq., D.C. Official Code § 47-865, D.C. Official Code § 47-866, and legislation providing tax exemptions, tax abatements, or other financial assistance to specific projects;
- Agreements entered into by an agency subordinate to the Mayor or by the former National Capital Revitalization Corporation, RLA Revitalization Corporation, Anacostia Waterfront Corporation, Southwest Waterfront Development Corporation, or Redevelopment Land Agency to sell or lease District-owned property;
- Agreements entered into by the Mayor or a delegee of the Mayor to provide tax increment financing or payment in lieu of taxes financing or to establish the conditions of such financing; and
- Covenants to which the Mayor or a delegee of the Mayor is a party, including covenants related to planned unit developments and the sale or lease of District-owned property.

DHCD currently monitors and enforces the requirements of many of these ADUs by determining resale prices, certifying incomes of prospective buyers and renters, and taking other appropriate actions.

Due to the varying nature of ADU provisions, DHCD is reviewing each request for assistance with an ADU on a case by case basis. To the extent possible and where practicable, DHCD is looking to provisions within the District's Inclusionary Zoning Program (see Inclusionary Zoning Implementation Amendment Act of 2006 (D.C. Official Code § 6-1041.07 et seq.), Mayor's Order 2008-59 (April 2, 2008), 14 DCMR § 2200 et seq., and 11 DCMR § 2600 et seq. in order to normalize expectations and guide DHCD's administration of ADUs. The Inclusionary Zoning Program also produces housing units (Inclusionary Units) that have income, price and resale restrictions, but unlike ADUs, Inclusionary Units are subject to a regulatory regime required by law.

CURRENT POLICIES AND PROCEDURES REGARDING ADUS

For ADU Development Owners/Managers

Owners of developments containing ADUs are responsible for complying with the affordability restrictions attached to the property. These restrictions may be specified in a Planned Unit Development (PUD) order, a Land Disposition Agreement, a Ground Lease, Federal or District financing documents, ADU Administration Plan or other controlling documents. When granted the authority, DHCD monitors and enforces ADU requirements and may periodically request the property owner or manager's ADU administration plan, documentation of income certification procedures, and other program documents to ensure compliance with the controlling documents.

If required by the recorded covenant on the property, or other requirement, an owner of a rental property containing ADUs submits an annual report providing information on the households that occupy ADUs and on the size, rental rates and targeted income levels of each of the ADUs, as well as on any unit turnover that occurred during the reporting period. Developers of for-sale ADUs may also be required to submit an annual report after the initial sales period in order to maintain a record of ADU owners.

For ADU Renters

Prospective tenants of rental ADUs must have their income certified in order to verify that they are within the designated income limits for the property's ADU program. The entity responsible for certifying household income varies from project to project, and can be the developer, management company, DHCD or an assignee of DHCD. Income certification includes providing relevant supporting documentation, as required by the income certification method. Though income verification policies can vary, it is not uncommon for tenants of rental ADUs to document their income for re-certification annually.

For ADU Owners and Prospective Owners

Prospective ADU owners may contact DHCD to learn more about the ADU, get their income certified, and discuss issues they may be having with the purchase of an ADU. Both buyers and sellers should notify DHCD regarding unit transfer and provide DHCD with a copy of the deed and HUD-1 for DHCD's records.

ADU owners who wish to sell may refer to their covenant to understand their resale requirements. In order to better understand these, ADU owners or their agents should start their resale process by contacting DHCD. The sooner this process gets started, the sooner an ADU owner will understand the resale requirements and be able to properly market the property. If an ADU has been listed on the open

market for an extended period of time, following a typical real estate sales process, the ADU owner may contact DHCD again to understand their options going forward.

FREQUENTLY ASKED QUESTIONS FROM ADU OWNERS AND PROSPECTIVE OWNERS

If I own an ADU, am I still responsible for condominium or homeowners' association (HOA) fees?

Unless your affordability covenant states otherwise, ADU owners are responsible for paying the same monthly condo or HOA fees that market-rate owners pay.

I own an ADU and wish to sell. How do I know what restrictions there are on the resale of my home?

1. Review the provisions of your ADU covenant and deed. These should be included among the documents you received when you purchased your home. Alternatively, your deed is available from the D.C. Recorder of Deeds.
2. Identify the party responsible for enforcing your ADU covenant. If that party is one of the entities listed in the bullet points above (e.g. RLA Revitalization Corporation), then DHCD is now responsible for administering your ADU.
3. If DHCD is the party enforcing the ADU covenant, submit to DHCD a copy of your deed and related covenants, along with any other supporting documents and a letter stating your intent to sell.
4. DHCD will take the appropriate actions required by the ADU covenant (e.g. determine the maximum resale price or provide income certification of prospective owners) and respond to you in writing.

ADU unit owners are encouraged (and may be required) to list their ADUs for sale on www.dchousingsearch.org, which is a free listing service available online and via telephone in English and Spanish.

My Covenant says that the District must determine my maximum resale price. How is this price calculated?

If your covenant requires that the District, a District agency, or a third party (e.g. NCRC) provide you with a maximum resale price, contact the Housing Regulation Administration (HRA) to request a maximum resale price. HRA will review the documents and, as appropriate, provide a maximum price determination letter. The maximum resale price is determined by taking the highest of three different values. These values, or the methods for calculating them, are:

- 1) **The purchase price of the current owner:** The maximum resale price of an ADU will never be below the price the current owner paid for the ADU.
- 2) **Applying the Inclusionary Zoning program procedures and policies:** This involves recalculating the initial sales price using the Inclusionary Zoning Program and increasing this value to the level appropriate for the current year using the Determination of Maximum Resale Price calculation in the IZ administrative regulations.
- 3) **Specific covenant language regarding the Area Median Income (AMI):** Calculate the sales price by what would be affordable to a household in the covenant's AMI category expending 30% of their monthly household income on housing cost adjusted by household size. The monthly tax, insurance, and fee payments are considered in this analysis to determine the

maximum monthly mortgage payment the household can afford. The corresponding home value is calculated assuming a 5% down payment, a thirty year term, and a slightly above-average interest rate. The Inclusionary Zoning Program and Inclusionary Zoning Maximum Rent and Purchase Price Schedule are used as a reference tools for this analysis.

My ADU covenant requires that I live in the ADU as a primary residence; does this mean that I cannot rent out the ADU I own?

If your covenant contains this requirement then you must live in the ADU and are not allowed to rent out your unit. Some covenants allow the District to grant waivers to rent and/or not live in the ADU under special circumstances (see the next FAQ for more information). If you do rent your ADU without prior approval, the District is able to take appropriate action, which may include requiring that all rent collected during this period be paid to the District. If you are aware of an ADU that is being rented illegally, please contact DHCD at (202) 442-9505.

I am getting temporarily transferred overseas through the military. Can I get a waiver of the primary residence requirement?

Under exceptional circumstances and if allowed by the covenant, DHCD will waive the primary residence restrictions on an ADU and allow the owner to temporarily rent the unit to an approved household at the appropriate income level for that unit. Examples of circumstances that may warrant a waiver include the owner enrolling in an academic program more than 150 miles from their ADU or being temporarily relocated for military duty.

If you own an ADU and seek such a waiver, send your request along with supporting evidence to the Housing Regulation Administration within DHCD (see address below). If your request is approved, you will be granted a Conditional Waiver of Covenant Restrictions and must annually certify that you meet the conditions that qualified you for the waiver. A waiver from the primary residence restrictions under an ADU covenant is not a waiver of any primary residence restrictions established by a condominium or cooperative regime or through any financing requirements.

My ADU covenant states that an eligible purchaser must be at 60% Area Median Income (AMI). What does this actually mean and how is it translated to an income limit?

In this specific example, an eligible purchasing household must earn no more than the AMI (defined below) multiplied by 0.6 (for 60% AMI) and adjusted by household size. Income limits for most local and federal programs used in the District may be found on the [DHCD website](#). If required by the covenant or other controlling document, DHCD will provide an ADU seller with the maximum resale price for their unit and the maximum household income of a prospective buyer, upon written request from a seller. DHCD may also be responsible for certifying the income and eligibility of a potential buyer.

My ADU covenant states that I have to use best efforts to market my ADU unit. What does “best efforts” mean?

DHCD current policy and procedure defines best efforts as widely marketing your ADU unit at or below the maximum resale price allowable under the ADU covenant for at least 60 calendar days. Best efforts also include advertising the unit on www.dchousingsearch.org and at least one additional publication, including, but not limited to, the Washington Post (Classified Section), Craigslist, and the Metropolitan

Regional Information System (www.mris.com), to ensure that District residents are made aware of the ADU availability.

When I bought my ADU, I also purchased a market rate parking space. Do I have to offer the ADU separate from the parking space?

In most cases, ADUs must be offered for sale independent of any parking space also purchased by the current owner. The goal of many ADUs is to maintain the long term affordability of the housing stock. If a seller requires that an ADU be purchased with the market rate parking space, the ADU may be unaffordable to prospective buyers that are within the income limits.

GENERAL FREQUENTLY ASKED QUESTIONS

Below are sample questions and answers that have been asked regarding ADUs. The below questions and answers may not fully apply to your ADU, but should be helpful to understand how DHCD administers its ADU program.

I am looking for an ADU to purchase, or rent. Where should I begin my search?

ADUs are often advertised for sale and for rent through traditional real estate marketing channels. In addition, households that seek to purchase or rent an ADU are encouraged to utilize www.dchousingsearch.org. In fact, many for-sale and for-rent ADUs are required to be listed on this website.

What is AMI?

The Area Median Income (AMI) is the median income of a certain geographic region defined annually by the US Department of Housing and Urban Development (HUD). The maximum income for a household that rents or purchases an ADU is determined by adjusting the listed AMI by the stated percentage and by household size. The 2010 AMI at 100% for the DC metropolitan area is \$103,500 for a family of four. This is the median income for a twenty-jurisdiction metropolitan area that includes the District of Columbia, five Maryland counties, and fourteen Virginia cities and counties.

What is an affordability/ADU covenant?

Affordability restrictions such as the length of time a unit remains affordable, the targeted income level for the unit, annual reporting requirements, and the resale restrictions, are typically detailed in a covenant, a document recorded in the District's land records maintained by the Recorder of Deeds. A property may have one or more covenants associated with it, and these documents define the specific rules with which the property must comply. You may order copies of specific covenants from the D.C. Recorder of Deeds.

What constitutes a household?

The U.S. Department of Housing and Urban Development defines a "household" as all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements. Your household size may determine what size ADU you are eligible to purchase or rent.

Does it matter how many people are in my household?

Income limits increase in proportion to household size. For example, the income limit for an ADU for single (1) person household is lower than the income limit for a four (4) person household. AMI is calculated annually and is adjusted by a factor of 0.1 for every household member above or below four (4) for local programs.

The size of a household may also be a factor in the size of the unit for which a household may qualify. DHCD is currently guided by the Inclusionary Zoning program, where appropriate, in applying occupancy pricing standards and occupancy limits to ADUs.

How are initial ADU prices determined?

Initial ADU sales prices are typically set at the amount that a household at the designated income level can afford, assuming a reasonable mortgage loan interest rate and terms, down payment percentage, insurance costs, and condominium or homeowner's association fees. Subsequent sales prices are generally determined by the methods described in the above FAQ about maximum resale prices.

I have an ADU question that was not addressed in the FAQs or on the DHCD website. Whom should I contact?

If you have a specific question regarding an income restricted for-rent or for-sale unit you can contact one of two divisions within DHCD:

If your for-rent or for-sale unit is funded by DHCD through the Housing Production Trust Fund (HPTF), Community Development Block Grants (CDBG), HOME Investments Partnership Program (HOME), and/or Low Income Housing Tax Credit (LIHTC) programs, then you should contact the Office of Program Monitoring ([OPM](#)) at (202) 442-7200. These units are not traditionally known as "ADUs".

If your for-rent or for-sale ADU was created through any other program, or if you are unsure of which programs were used, please contact the Housing Resource Administrator at:

Housing Resource Administrator
Housing Regulation Administration
Department of Housing and Community Development
1800 Martin Luther King Jr. Avenue SE, Washington, D.C. 20020
Tel. (202) 442-9505