QUESTIONS, COMMENTS AND STAFF RESPONSES
REGARDING THE PROPOSED AFFORDABLE HOUSING DWELLING UNIT PROGRAM (“ADU Program”)
INITIATED BY COUNCIL FOR PUBLIC HEARING (RESOLUTION ADOPTED 3/2/2020)

Why doesn’t City Council wait until after July 1, 2020, to consider adoption of an Affordable Housing Dwelling Unit Program (“ADU Program”)? (New legislation will take effect July 1 giving the City broader authority under the provisions of Virginia Code § 15.2-2304).

Response: Regardless of whether the City’s authority derives from the current Va. Code § 15.2-2305, or the provisions of § 15.2-2304 (eff. 7/1/2020), the City is required to adopt a local ordinance if it wishes to establish an ADU Program. The City is able to augment and amend the ADU ordinance after July 1, 2020 to add specific provisions newly enabled by Virginia Code § 15.2-2304.

What does staff mean by a “bona fide” ADU Program?

Response: For many years, the City’s affordable housing strategy has focused on grants of funding awarded to non-profit organizations, and the “supported” affordable housing units constructed with the support of that grant funding. City Council is authorized to make grants and donations to charitable organizations that provide services to City residents, so there is legal authority for this approach. However, the City has never adopted an ADU Program Ordinance (which must be set out in the zoning ordinance, per Virginia Code §§ 15.2-2304 and 15.2-2305) which requires housing units to be “committed” for specific periods of time, and administered in accordance with specific program guidelines. Under an ADU Program, funding may be granted or loaned to for-profit developers as well as to non-profit entities, and the “committed” units must be guaranteed by the persons who receive funding, zoning incentives, or other public benefits. Staff is recommending taking the first step to establish an official ADU Program, and to begin collecting “committed” affordable units which will be monitored and enforced by the City’s Housing Program Coordinator in accordance with a set of Program Guidelines. That does not mean abandoning the “supported” units provided by non-profits with City assistance; Staff’s recommendation is to augment the ways in which affordable units can be established.

The proposed affordable dwelling unit program would be similar to Albemarle County’s; why would the City want to emulate the County’s program?

Response: Albemarle County actually does not have an affordable dwelling unit program, which can only be adopted by ordinance! Albemarle County currently has an affordable housing policy that is an appendix to the County’s Comprehensive Plan. The City is proposing a program codified within an affordable dwelling unit ordinance—as required by state law. This proposal is substantially different that Albemarle County’s current affordable housing efforts. For information regarding the results of the City and County’s respective affordable housing efforts, to date, see the presentation materials from the City Council/County Board Work Session last Fall (slides beginning at p. 22): https://www.charlottesville.org/home/showdocument?id=66669
What's the difference between the City's legal authority under Va. Code 15.2-2305 and the parameters of the City's authority on July 1, 2020?

Response: Va. Code § 15.2-2305 is very prescriptive. It expressly authorizes various local actions that are accepted components of any comprehensively assembled ADU Program (e.g., an Affordable Housing Fund; use of zoning incentives; mandatory affordability periods; etc.). However, § 15.2-2305 goes beyond that, and for several components includes very specific mandates as to how they must be done. So, for example: § 15.2-2305 mandates a very specific ratio of 17% ADU's for every 30% density bonus authorized by local ordinance. Staff believes that incentive zoning is ultimately one important component that should be included in a new ADU program for Charlottesville; however, the 30%/17% ratio is not an attractive one to developers and won’t work with the City’s zoning ordinance. For-profit housing developers can build units faster than the City has been receiving them; however, one of the biggest challenges for a new ADU Program will be to develop Guidelines and zoning ordinance provisions that will actually incentivize some level of meaningful for-profit participation.

Under the new legislative authority that will take effect July 1, 2020, Charlottesville will have broader enabling legislation, with none of the mandated “how-to” provisions. This does not mean that an ADU Program ordinance must be devoid of all components listed in the current provisions of Va. Code 15.2-2305. To the contrary, staff strongly recommends that Charlottesville incorporate as many of those components as possible—sooner rather than later. (Note, for example, Arlington County: while Arlington enjoys the broader authority of § 15.2-2304, it also utilizes many of the same program components—including a Housing Fund and Incentive Zoning, that are listed in § 15.2-2305; Arlington uses the components that are beneficial, while ignoring the prescriptive provisions that don’t fit its locality. That’s what staff is recommending City Council should do).

Is staff’s recommendation and request for a smaller, administratively-focused advisory board legally dependent on the current provisions of Va. Code § 15.2-2305?

Response: Yes and no. Until July 1, 2020 it is a state law requirement that the provisions of an ADU Program Ordinance must include the establishment of a 10-member advisory board. The qualifications of the members are prescribed in Va. Code § 15.2-2305. However, staff believes that a smaller administratively-focused advisory board should be established concurrently with adoption of an ADU Program Ordinance, and believes that a 10 member board would work well. (The City Council’s Housing Advisory Commission, established pursuant to Va. Code § 15.2-1411, has 22 members; this is more than 3 times the size of the City’s Planning Commission, and more than twice the size of the City’s BAR).
Even after July 1, 2020, when new legislation will free the City from the state-prescribed 10-member board, staff still strongly recommends that City Council should establish a new 10-member administratively-focused advisory board to work closely with the Housing Program Coordinator. Note: Arlington County and Loudoun County each operate under the broader legislative authority of Va. Code §15.2-1504: each has a population much larger than Charlottesville, and each of their Housing advisory boards has only 13 members.

What would the City’s current Housing Advisory Commission (HAC) do, if the proposed ordinance were to be adopted?

Response: City Council made it clear at its February 20, 2020 work session that it did not see any reason why the current HAC should not continue as a policy advisory body to City Council, even if the smaller, administratively-focused board recommended by staff were to be implemented. (The source of authority for council’s appointment of advisory bodies is general legislation—Va. Code § 15.2-1411). Like Arlington County, the City Council can almost certainly benefit from having more than one advisory body on matters relating to housing policy.

As City Council does with all of its various existing advisory bodies, Council should establish a clear updated “charter” or mission for the HAC. What many people don’t realize is that the City has had a citizen committee advising the City Council on housing issues since at least 1954. The Council established the first iteration of the current “Housing Advisory Committee” in 1978, which consisted of 9 members and had as its primary purpose the role of advising the Charlottesville Redevelopment and Housing Authority. The Council re-established the HAC in 2005: as a 9-member body. The HAC’s membership was increased to 20 members in 2008, and new members have been added since that time. The HAC’s new role does not need to be addressed in the proposed ADU Program Ordinance, nor will the Ordinance erase HAC’s “charter”. HAC is established by a motion or resolution of City Council, pursuant to different enabling legislation.

Note: In addition to its Housing Commission, Arlington’s board of supervisors uses two additional boards in an advisory capacity: (i) a “Community Development Citizens Advisory Committee” to review grant requests, evaluate programs, and make recommendations to their board of supervisors for use of CDBG and CSBG funds, and (ii) a “Tenant Landlord Commission” to hear grievances and facilitate disputes between landlords and tenants, to advise the board of supervisors on policy and programs, and to recommend legislation to the board of supervisors for inclusion in its annual legislative agenda. Staff is of the opinion that the Council can establish as many housing policy advisory committees as it wishes, with charters that state how each advisory body will function in relation to Council’s needs; those policy advisory bodies would be in addition to the body proposed within this ADU Program Ordinance.

What would be the organizational structure under which the new ADU Program would operate, if Council were to adopt it?
Response: First, City Council would need to adopt an ADU Program Ordinance, and authorize and appoint an administratively-focused advisory board. Second, the City’s Housing Program Coordinator and the new advisory board would need to develop Program Guidelines. Meetings of the new body would be public, and any draft guidelines—like an ordinance—would need to be approved by City Council at a public meeting. The Guidelines would be administrative regulations that, once adopted by City Council, would govern the administration of the program by the Program Coordinator and advisory board. (All grants or loans of CAHF funding would still be approved by Council). Prior to Council’s decision on any draft Program Guidelines, Council would seek comments on the draft from the community, generally, as well as from the membership of HAC. Finally, once both the new advisory body is in place and the Council has adopted Program Guidelines, the Housing Coordinator and Advisory Board would begin performing day-to-day program administration in accordance with the Guidelines.

HAC doesn’t think an “Employee Assistance Program” is either feasible or the best use of CAHF funding; it would not be compliant with Fannie Mae or FHA lending guidelines, would make less money available to nonprofits in the CAHF, not to mention tax implications to city employees and school teachers.

Response: The last time that assistance to the City’s own workforce and schoolteachers was a subject of formal deliberation, the discussion never made it out of a HAC ad hoc subcommittee and it was discussed only as a loan program. Staff believes that an ADU Program Ordinance should include each and every type of program component that is currently authorized by state legislation. Va. Code § 15.2-958.2 authorizes every locality, as an employer, and by ordinance, to establish grants for workforce housing. Whether or not the specific program component would make sense under certain terms and conditions should be addressed in Program Guidelines, and in annual City Council budgets.

Depending on how the program were to be structured within Program Guidelines, grants for things such as down-payment assistance, if provided by a government agency, might not be included in an employee’s/ schoolteacher’s gross income for federal income tax purposes, but the dollar value might reduce the cost basis of the home. Staff would like to see this, and other “enabled” initiatives recognized within a Program Ordinance as at least a possibility, and then specific parameters of when money might be granted could be set out within Program Guidelines. In the consideration of Program Guidelines, attention should be given to initiatives that have, or have not, worked in other communities. With many other competing interests for Housing Fund monies, this type of program might not be desirable as a commitment of large portions of the CAHF each year, but it would be worth exploring with schoolteachers and other employees what, if any, level of assistance might affect their decision of where to purchase a home, and then consider offering one or two opportunities per year. Or not—ultimately, the City Council will make the decision.
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HAC members tell us that its “ad hoc subcommittee” secured banking support for a loan program, engaged in private conversations with senior management of large private mortgage insurance companies, and those insurance companies made an offer to HAC to administer the loan program for a fee. While HAC’s exploratory efforts may prove valuable in the future, a loan program such as this isn’t part of the authorization of Va. Code 15.2-958.2, and procurement would be required in order to make this type of arrangement with a mortgage insurance company. HAC’s recommendations for a loan program may potentially be considered for further development as a program upon enactment of an ADU. (Note: The City Charter authorizes the City to offer grants or loans to low or moderate income (LMI) households, for home ownership, without regard to whether or not they are part of the City workforce; HAC’s recommendations definitely make sense from a fiscal perspective, if a loan program were to be offered on a City-wide basis, rather than to a handful of employees or school teachers each year).

HAC says that “the use of accessory dwelling units needs a public airing as to its impact on housing affordability first”, so that the Planning Commission can move forward with its work with that data already in hand.

Response: That’s exactly what the proposed public comment/ hearing process for the ADU Program Ordinance is doing. If the City desires to pursue as many options as possible in promoting affordable housing within the City, this is a positive development in Staff’s opinion. Updating the City’s Accessory Dwelling Unit provisions in the zoning ordinance has been under consideration, including by HAC, for close to two years, with no substantial progress until this Ordinance. The accessory dwelling units ordinance is now subject to a public hearing process. HAC is charged by Council with sharing any experiences of its membership and any concerns its members may have. The general public is also invited to share experiences and concerns. Ultimately, the City needs to enact zoning amendments aimed at increasing the number of affordable dwelling units, to address its housing crisis. The City can collect data and information to measure the zoning amendments’ impacts and further refine its policy making judgments based upon that data.

HAC says that staff has failed to follow an “appropriate order of operations” in bringing forward proposals for Council to consider through an open public process. HAC itself wants to “burnish” any proposal for an accessory dwelling unit program, and doesn’t want anything to move forward unless it can review the proposal. Staff’s response: accessory dwelling units are very specifically a zoning issue—as well as an affordability issue. While Council most definitely contemplates that HAC would advise it on proposed zoning initiatives that will implicate affordable housing issues, no advisory body appointed under 15.2-1411 has lawful authority to prohibit staff from making its own recommendations to City Council or the Planning Commission. Council has no authority under 15.2-1411 to delegate to an advisory body any operational responsibilities or exclusive authority to direct or control the performance of staff’s
duties or the Planning Commission’s duties. The experiences and perspective that the 22 members of HAC, collectively, bring to the HAC’s advisory role to City Council is certainly valuable. However, the process that Council adheres to when it considers a zoning text amendment is prescribed in the Charlottesville City Code. The body legally charged with making a recommendation to Council about a zoning text amendment is the Planning Commission. The HAC may also make its own recommendation about the proposed zoning text amendment to both the Commission and to Council. However, the legal process requires that the zoning text amendment be referred to the Planning Commission for its formal recommendation.

I think the portions of the proposed ADU Program ordinance, which deal with affordable dwelling units and the advisory board, are deeply flawed.

Response: As noted in response to a previous question/comment above, Arlington County is widely recognized as having Virginia’s most progressive, successful ADU Program, and it utilizes at least three separate advisory boards/commissions—each smaller than Charlottesville’s HAC—so it’s unclear why staff’s recommendation for Council to establish a new advisory board, should be described as “deeply flawed”. Council can have both a new advisory board and the HAC, if it chooses.

As to the portions of the ordinance that define “affordable housing” or “affordable dwelling units”: an Ordinance should establish policy parameters. In this case, the draft ordinance includes a definition of “affordable” with reference to an upper limit of 80% AMI. HOWEVER, different layers of “affordability” may be established through a combination of ordinance provisions and Program Guidelines to be developed for administration of the various components of the ordinance.

So, for example: the City’s Charter, section 50.7 authorizes the City to do various things, including offering subsidies to property owners who rent units to LMI households. That Charter provision prescribes that “low and moderate income persons” must have the same definition as used in VHDA program definitions and guidelines; therefore, the City would not be free to create a different definition; however, in implementing the authority, the City may choose to apply funding to a specific level of affordability. On the other hand, under the City’s ADU Program zoning authority (either § 15.2-2304 or § 15.2-2305) the City would be free to define an “affordable dwelling unit” as it sees fit (so long as not restricted by some other legislation, such as the charter provision). So, again, it is difficult to see at this point the basis for an assertion that the proposed, basic Program Ordinance—which includes any and all authority the City may have under any state legislation or charter provision—is deeply flawed. At a minimum, the proposal is more detailed than the Program the City already has (i.e., the City currently has no ADU Program, because it has no ordinance). Councilors, the Planning Commission, HAC and other stakeholders should all weigh in on how to define “affordable dwelling unit” within the ordinance—that’s the type of discussion that the 100-day public process is supposed to facilitate.
The ordinance specifies the new advisory body would have the ability, subject to approval by Council, to establish sales prices and rents that could be applied within the ADU Program. This is a recommendation, at this point, which staff would like to see included in a local ADU Program Ordinance, but staff agrees that the proposal would need to be more thoroughly explored and discussed through the process of developing Program Guidelines for one or more program components. Perhaps establishing rent prices applicable to a small subset of ADU’s within the City’s new program would be a good way to test the waters—without making rent price controls broadly applicable to all components of the program. (Studies have demonstrated that rent price controls can be beneficial to the residents of the housing, but may or may not be advisable as part of a rent control program widely implemented throughout a municipality). The City will never figure out what will work in Charlottesville, until the City starts implementing measures and monitoring impacts.

The Planning Commission should return a proposal to City Council that has been thoroughly vetted through the HAC and other stakeholders.

Response: the Planning Commission’s role is to review the draft ordinance, and to present to City Council a report of its recommendations. The Commission may develop its own proposal(s) if it wishes to do so, but for this type of ordinance, the Commission’s statutory role is directly advisory to City Council. Va. Code § 15.2-2285. City Council itself should definitely also refer the proposed ordinance to HAC, because that’s why Council created the HAC—to advise City Council on matters of housing affordability. Additionally, HAC should feel free to share their thoughts and opinions with the Planning Commission throughout the 100-day public comment and hearing process. (A member of the Planning Commission is also a member of HAC).

However, the goal is not for City Council to only receive advice or recommendations from one advisory body. The goal is for City Council to receive public comment, and the perspectives of BOTH of its advisory bodies (PC and the HAC) so that, in the end, City Council can make the final decision informed by multiple perspectives and advisory opinions.

Who would make funding decisions for the upcoming fiscal year, HAC or the new advisory body?

Response: Until a new advisory body were to be appointed, and new Guidelines developed and approved by City Council, the current process for awarding grants of funds from the City’s Affordable Housing Fund to non-profit organizations (currently funds may only be granted to nonprofits) would remain part of HAC’s charge. Subsequently, eligibility criteria for funding for “committed” affordable units would be detailed in Program Guidelines, as well as evaluation factors for consideration of funding decisions, but Council would remain the decision-making authority for approval of funding requests (grants or loans).