

Metropolitan Washington Regional and Jurisdictional Fair Housing Goals and Strategies

DRAFT FOR PUBLIC COMMENT

1. Increase the Supply of Housing that is Affordable to Low- and Moderate-Income Families in the Region, Particularly in Areas that Have Historically Lacked Such Housing.

The Metropolitan Washington region (“region”) has high and ever-increasing housing costs, along with the unequal distribution of committed affordable housing, or housing restricted to those with low to moderate incomes, across its communities. For example, home values jumped over 11% last year in Prince William County, and the average median home value in Arlington rose to almost \$800,000. As a result, there are significant fair housing challenges for members of protected classes in the region. Data indicates that among the most impacted groups in the region, Hispanic residents, Black residents, and persons with disabilities experience housing affordability and housing instability most acutely.

Many households are rent burdened, and racial and ethnic minorities face severe housing burdens at higher rates. For example, 25% of renters in the District of Columbia pay over 50% of their income on rent and in the region, 57% of severely burdened households were non-white and 47% were immigrant.

- a. *Use best practices from other jurisdictions, explore policies and programs that increase the supply of housing affordable to lower and moderate-income households, such as housing bonds, real estate transfer taxes, mandatory inclusionary housing where permitted, as-of-right Accessory Dwelling Units (ADUs), public land set-aside for affordable housing, community land trusts, expedited permitting and review, and relaxation of parking requirements for affordable housing developments.*

The above policies and practices have resulted in an increase in affordable housing in jurisdictions throughout the country. In the region, there has been an increase in the supply of subsidized affordable housing in jurisdictions that have adopted these best practices.

- b. *Lower the income targeting of new housing affordable to people with incomes of 80% of area median to 60% and below in order to address the chronic housing shortage for low-income individuals and families.*

A number of jurisdictions require developers who utilize inclusionary zoning incentives to set-aside affordable housing units to households with incomes of up to 80% of the area median income (AMI). Jurisdictions should target newly constructed affordable units to households with incomes at or below 60% AMI through a combination of increasing incentives and lowering the number of set-asides units to make deeper affordability financially feasible.

- c. *Provide low-interest loans to single-family homeowners and grants to homeowners with household incomes of up to 100% AMI to develop accessory dwelling units (ADUs) with affordability restrictions on their property.*

ADUs are now allowed in all participating jurisdictions, with varying restrictions. Local governments should consider providing financial assistance or tax incentives in order to incentivize homeowners to make their ADUs affordable to Housing Choice Voucher holders. Because it can be difficult for homeowners to access bank financing to build ADUs, there may be a need for such incentives among homeowners. As a condition of receiving assistance, jurisdictions should also require homeowners to attend fair housing training and to maintain

records that facilitate audits of their compliance with non-discrimination laws. The need to educate individual homeowners, who do not have experience as landlords and knowledge of the law, may prevent unintentional and intentional violations of fair housing laws.

2. Reform Zoning and Land Use Policies to Expand Access to Fair Housing Choice by Increasing the Development, Geographic Distribution and Supply of Affordable Housing.

The prevalence of single-family residential zoning in the region makes it challenging to develop committed affordable housing that could offer housing opportunities to members of protected classes. Many cities across the country are allowing greater zoning density to meet the demand for housing, resulting in lower development costs per unit and new condo and cooperative homeownership models.

a. Revise zoning regulations to allow as-of-right Accessory Dwelling Units.

States such as New Hampshire and California and cities such as Minneapolis and Portland have changed their zoning regulations to allow ADUs or two to four-unit structures as of right in all residential zones. Currently, the District of Columbia and Montgomery County allow ADUs in most of its residential zones. ADUs have the potential to expand affordable housing options without expanding land development. This is particularly relevant in the region, where the preponderance of land is zoned for single-family housing.

b. Increase inclusionary zoning incentives for creating onsite affordable housing and increase fees in lieu of providing on-site affordable housing.

Inclusionary housing programs often lack enough financial incentives for providing on-site affordable housing. Increasing these incentives along with increasing fees for developers who choose alternative compliance options will increase the likelihood of creating additional committed affordable housing units in high opportunity areas.

c. Adopt affordable housing overlay zones to increase the amount of land where developments that meet robust affordability criteria are allowed as of right.

Multifamily housing remains the most effective way of producing deeply affordable housing that is critically necessary to meet the needs of Black and Hispanic households and persons with disabilities in the region. Zoning that allows affordable multifamily housing developments as of right in designated areas such as the Council of Government's "Activity Centers,"¹ denser, mixed-use housing and job centers, can reduce the cost of affordable housing development thereby increasing the number of units that are able to be developed from year to year. Overlay districts are a way of achieving this goal while avoiding the opportunity cost of predominantly market-rate multifamily development, and particularly development that yields few family-sized units, monopolizing desirable sites.

d. Incorporate a fair housing equity analysis into the review of significant rezoning proposals and specific plans.

The region has undergone large scale development and redevelopment, including the regionally-significant second Amazon Headquarters (HQ2) development, the Loudon Metro Station, 1900 Crystal Drive, and Crossing DC. These developments have not sufficiently

¹ <https://www.mwcog.org/documents/2013/01/13/activity-centers-maps/>. Activity Centers are priority places for growth in Metropolitan Washington.

addressed the needs of members of protected classes who have been displaced or priced out of the area. Incorporating a fair housing analysis in the review process for these plans could reduce displacement and other negative impacts for members of protected classes.

3. Implement Preservation Policies Designed to Preserve Affordable Housing and Prevent Displacement.

The region lost a significant number of affordable housing units during the past decade due to the compounding impacts of reduced housing production, decreased federal investments in deeply affordable housing, and a lack of local resources to acquire and preserve housing affordable to lower income households. For example, the City of Alexandria lost 90% of its of non-subsidized rental units affordable to households earning 60% of AMI between 2000 and 2017. The region must prioritize the preservation of its existing affordable stock as a necessary complement to increasing its supply of affordable housing.

- a. *Track affordable housing developments with expiring subsidy contracts, adopt a proactive outreach program, and prioritize resources for the preservation of that housing.*

There are a significant number of committed affordable housing developments that are coming to the end of their affordability requirements. There is little incentive for these owners to renew subsidy contracts in higher opportunity areas or in areas that are experiencing rapid gentrification, which is the majority of the region. It is generally more cost-effective to preserve existing affordable housing than it is to build new affordable housing, particularly in areas with high land costs. Accordingly, jurisdictions should track the expiration dates of affordable housing subsidy contracts with an emphasis on developments that are located in higher opportunity or rapidly gentrifying areas. When at-risk developments with expiring subsidies are identified, the jurisdictions should work with nonprofit housing developers to provide financial support for property acquisition and rehabilitation. Additionally, all for-profit developers of proposed affordable housing projects, including those funded through the Low-Income Housing Tax Credit Program (LIHTC), should be required to provide a right of first refusal to tenants, nonprofit organizations, and the local government who seek to maintain affordability after the rent restrictions are lifted.

- b. *Create a right of first refusal for manufactured home park residents to purchase their communities when owners seek to sell or redevelop their properties.*

Manufactured home parks are one of the most important sources of unsubsidized affordable housing in the region, particularly in its more rural areas. By providing homeowners with an opportunity to purchase their communities with technical assistance from nonprofit organizations such as ROC USA, jurisdictions can help preserve these community assets for the long term.

4. Protect the Housing Rights of Individuals with Protected Characteristics.

Evictions and significant rent increases contribute to the displacement of protected class members, particularly Black and Hispanic residents and persons with disabilities. The pandemic has highlighted the vulnerability of renters and its racial and ethnic disparities.

- a. *Expand locally funded housing vouchers, increase scale and scope of housing mobility programs, and improve transferability of vouchers across jurisdictions in the region.*

Housing mobility is an important tool to address high segregation levels in the Housing Choice Voucher program. In many places in the region, voucher families have been limited in where they can live. Additional local resources, along with increased mobility strategies and better coordination throughout the region, will give families a broader range of housing options.

- b. *Reduce barriers to accessing rental housing by eliminating application fees for voucher holders and encouraging landlords to follow HUD's guidance on the use of criminal backgrounds in screening tenants.*

Stakeholders reported that high application fees for rental housing are a significant barrier for voucher holders. Additionally, some landlords continue to refuse rental housing to prospective tenants based on decades-old criminal background checks or minor misdemeanors.

- c. *Pilot a Right to Counsel Program to ensure legal representation for tenants in landlord-tenant proceedings.*

Thousands of residents in the region are displaced annually due to evictions. According to local legal services and fair housing organizations, many evictions occur because tenants do not understand their rights and/or their obligations. It is estimated that only a small percentage of tenants facing eviction have legal representation, and those without representation almost always are evicted, regardless of a viable defense. In 2021, Maryland passed a Right to Counsel bill that would provide access to counsel for low-income tenants facing eviction, but it is inadequately funded. There are several legal providers in the region that are well-positioned to serve low-income tenants, including undocumented tenants. Although there would be an up-front investment, legal representation is less costly than serving families experiencing homelessness.

- d. *Expand and increase support for fair housing outreach, education, and enforcement.*

Support organizations that provide fair housing outreach, education, and enforcement. Although Virginia, Maryland, and the District of Columbia require landlords to accept Housing Choice Vouchers, tenants report that some landlords continue to refuse vouchers. Landlords have also refused to participate in the Emergency Rental Assistance Program, preferring to file for eviction instead. Tenants facing eviction reported difficulties in accessing these emergency rental assistance funds, and victims of housing discrimination did not know where to get help. Some jurisdictions reported that there was limited fair housing testing and no testing for discrimination against people with disabilities.

Fair housing organizations and legal services providers play a critical role in fair housing enforcement, education, and outreach but struggle to meet the full needs of victims of discrimination due to limited financial and staff capacity. By supporting these organizations, jurisdictions can help ensure that these organizations can address existing and critical emerging issues, like source of income discrimination and emergency rental assistance.

5. Increase Community Integration for Persons with Disabilities

- a. *Prioritize HOME and CDBG Funds for Developments That Include Permanent Supportive Housing Units.*

State or local government contributions of HOME and CDBG funds are often essential for the viability of LIHTC applications from affordable housing developers to state housing finance agencies. By prioritizing those funds for proposals – whether for new construction or rehabilitation – that would include permanent supportive housing, local governments can help increase the supply of such housing. In designing incentives, jurisdictions should be mindful of existing priorities for permanent supportive housing in qualified allocation plans (QAPs) for the distribution of LIHTC. HOME and CDBG incentives that align with QAP incentives in their framing and the size of set-aside required create better conditions for successful LIHTC applications. To the extent that jurisdictions have a range of flexibility in crafting incentives that align with applicable QAPs, encouraging permanent supportive housing set-asides of 10-25% of units would strike an appropriate balance between meeting the volume of need for permanent supportive housing while avoiding the segregation of persons with disabilities in what would amount to congregate settings.

- b. *Negotiate Project-Based Voucher Contracts for a Portion of Affordable Units in Inclusionary Developments and Set Aside a Portion of Such Project-Based Voucher Units for Permanent Supportive Housing.*

Inclusionary zoning is an important tool for the production of affordable housing, but it is very difficult to produce meaningful numbers of extremely low-income units – a prerequisite for permanent supportive housing – through cross-subsidization and incentives alone. Affordable units produced through inclusionary zoning, however, should have rents that are within payment standards for the Housing Choice Voucher Program and therefore are suitable for the investment of Project-Based Vouchers. Jurisdictions and their public housing authorities should engage with inclusionary developers at an early stage in the development process to lay the groundwork for Project-Based Voucher contracts. Attaching Project-Based Voucher subsidy to 5% of units would be a worthy goal, with a further objective of ensuring that half of those Project-Based Voucher units are set aside for permanent supportive housing.

- c. *Create Local Funding Streams, Like Affordable Housing Bonds, Affordable Housing Trust Funds, Commercial Linkage Fees, and Real Estate Transfer Taxes to Support the Development of Deeply Affordable Housing and Set Aside a Portion of Resulting Units for Permanent Supportive Housing.*

Federal funding and inclusionary zoning are not sufficient to meet the total need for permanent supportive housing for persons with disabilities. Additionally, some program rules for federal housing programs may disproportionately exclude persons with disabilities generally or persons with specific types of disabilities on the basis of criminal history and directly exclude undocumented persons with disabilities based on immigration status. Deeply affordable housing developed through local funding mechanisms can avoid these barriers. Affordable housing bonds, commercial linkage fees, and real estate transfer taxes are all examples of possible mechanisms. Jurisdictions should consider which to adopt based on their existing menu of policies and on state law constraints, which, in particular, may make commercial linkage fees less appropriate in Virginia. Additionally, if jurisdictions currently have commercial linkage fees and real estate transfer taxes in place but are not dedicating the proceeds to affordable housing, jurisdictions should take steps to do so. Once local funding is in place, jurisdictions should prioritize using that funding to support developments similar to those that would be eligible for Section 811 Project Rental Assistance.

- d. *Advocate for Public Housing Authorities to Adopt Admissions Preferences for Individuals with Disabilities Who Are Institutionalized or at Risk of Institutionalization.*

Admissions preferences, both for the Housing Choice Voucher program and for public housing, can be a powerful way of creating access to affordable, integrated housing for persons with disabilities. Crafting Olmstead preferences, which target persons with disabilities who are institutionalized or are at risk of institutionalization, can maximize the benefits of preferences by serving those who are at the greatest risk of not living in integrated housing.

- e. *Improve the tracking and mapping of the location of accessible units and the accessibility of surrounding streets and sidewalks.*

Tenants expressed frustration with the absence of a database with ADA-accessible housing units. Existing housing or community services staff could be tasked with developing and maintaining this list and making it available on the jurisdiction's website and distributing it to organizations serving people with disabilities. Additionally, it is important to ensure that the surrounding streets and sidewalks are also accessible.

6. Reduce Discriminatory Barriers to Housing for Persons with Disabilities.

- a. *Support Fair Housing Testing That Investigates Barriers Identified by Case Managers Who Assist Persons with Disabilities in Finding Integrated Housing.*

Fair housing testing is most effective as a civil rights tool when it targets structural barriers that play a significant role in perpetuating segregation. Case managers who assist persons with disabilities, particularly those exiting institutions, homelessness, or incarceration, with securing housing are uniquely positioned to be able to identify patterns across large landlords that make it harder for persons with disabilities to find homes and maintain stable tenancy.

- b. *Support Education Regarding the Application of the Fair Housing Act's Reasonable Accommodation Duty in the Context of Criminal History Screening.*

Persons with disabilities are disproportionately likely to have contact with the criminal justice system and to be the victims of crime, as well. Some contact with the criminal justice system has a causal connection to individuals' disabilities and law enforcement's inadequate training and capacity to deescalate difficult situations. In many instances, persons with disabilities may be entitled to reasonable accommodations that allow them to qualify for units for which they might otherwise be ineligible due to landlords' criminal history screening policies. Focused education for landlords on this point would help ensure that accommodation requests in this context are responded to appropriately.

7. Expand Access and Affordability of Public Transportation for Members of Protected Classes.

High housing costs in the region have forced many low- and moderate-income residents, including members of protected classes, to move further away from their jobs and reliable public transportation. This, in turn, can exacerbate disparities in employment, and can also burden employers who cannot find local residents to hire.

- a. *Provide free bus transportation to low-income households.*

Transportation barriers for members of protected classes increase with rising displacement. Data shows that low-income households are much more likely to utilize bus services. Providing

a free bus transportation to lower-income households would help facilitate access to jobs and services.

- b. *Study and make recommendations to improve and expand bus routes to ensure that members of protected classes can access jobs in employment centers.*

As members of protected classes are forced to live further from their jobs as a result of displacement due to soaring housing costs, public transportation options become less viable. Bus routes should be expanded or rerouted to ensure that there is a match between where low- and moderate-income members of protected classes, who are more likely to use public transportation, live and work.²

Alexandria Goals

- 1. Increase the Supply of Housing that is Affordable to Low- and Moderate- Income Families through the following strategies:**
 - a. *Prioritize public land for affordable housing.*
 - b. *Provide partial tax abatements for homeowners who rent their ADUs to low- and moderate-income tenants.*
- 2. Reform Zoning and Land Use Policies to Expand Access to Fair Housing Choice by Increasing the Development, Geographic Distribution, and Supply of Affordable Housing.**
 - a. *In accordance with Virginia Code § 15.2-2304. Affordable dwelling unit ordinances in certain localities, adopt an ordinance to institute mandatory inclusionary zoning city-wide and provide an array of incentives, such as density bonuses, special financing, expedited approval, fee waivers, and tax incentives.*
 - b. *Reduce the 20,000 square foot minimum lot size in the R-20 zone or permit duplexes in this zone.*

Arlington County Goals

- 1. Increase the Supply of Housing that is Affordable to Low- and Moderate- Income Families through the following strategies:**
 - a. *Increase the number of affordable housing units developers are required to provide under Arlington's Affordable Housing Ordinance and significantly increase the developers required contribution to the Affordable Housing Investment Fund to incentive the creation of on-site affordable housing.*
- 2. Reform Zoning and Land Use Policies to Expand Access to Fair Housing Choice by Increasing the Development, Geographic Distribution, and Supply of Affordable Housing.**
 - a. *Reconsider the prevalence of single-family zoning, which accounts for 73% of all county residential land area, to permit as-of-right duplexes, triplexes, and fourplexes,*
 - b. *Revise the Accessory Living Unit zoning codes to permit exterior changes and remove parking requirements.*
- 3. Protect the Housing Rights of Individuals with Protected Characteristics.**
 - a. *Create an admissions preference for affordable housing programs, including admission to the Housing Choice Voucher program and tenant selection for affordable housing developments*

² COG's Equity Emphasis Areas analysis and maps can help inform this work.
<https://www.mwcog.org/transportation/planning-areas/fairness-and-accessibility/environmental-justice/equity-emphasis-areas/>

that receive County funds, for households that have been displaced due to the Amazon HQ2 development.

- b. Increase Housing Grant program resources, expand eligibility, and reduce the rent requirement from 40% to 30% of participants' income.
Increase local resources dedicated to affordable housing such as the Housing Grant program.
- c. Determine a system of metrics for goals and implement an equity analysis with metrics across program areas.
- d. Develop a plan to either provide fair housing outreach, education, and enforcement or contract with a fair housing organization for these services.

District of Columbia Goals

- 1. Increase the Supply of Housing that is Affordable to Low- and Moderate- Income Families through the following strategies:**
 - a. *In addition to providing down payment assistance, provide financing for the construction of affordable home ownership.*
 - b. *Convert some congregate shelters, all of which are owned by the District, into permanent affordable housing.*
- 2. Reform Zoning and Land Use Policies to Expand Access to Fair Housing Choice by Increasing the Development, Geographic Distribution, and Supply of Affordable Housing.**
 - a. *Upzone near commercial corridors in Ward 3 and increase the number of affordable housing units required under the Inclusionary Zoning (IZ) Program.*
 - b. *Expand DC's inclusionary zoning provisions to the downtown D-6 zone using tax incentives.*
- 3. Protect the Housing Rights of Individuals with Protected Characteristics.**
 - a. *Examine rent control regulations to identify policies such as rent control exemption for units occupied by voucher holders and their impacts on fair housing outcomes.*

Fairfax County Goals

- 1. Increase the Supply of Housing that is Affordable to Low- and Moderate- Income Families through the following strategies:**
 - a. *Lower the threshold for mandatory participation in the Affordable Dwelling Unit program from 50 units to 10 units to facilitate the development of infill housing.*
 - b. *Lower the highest income targeting level and corresponding rents in Fairfax County's Workforce Dwelling Unit Rental Program from 120% AMI to 80% AMI.*
- 2. Protect the Housing Rights of Individuals with Protected Characteristics.**
 - a. *Adopt Small Area Fair Market Rents or exception payment standards in order to increase access to higher opportunity areas for Housing Choice Voucher holders.*

Gaithersburg Goals

- 1. Increase the Supply of Housing that is Affordable to Low- and Moderate- Income Families through the following strategies:**
 - a. *Lower the affordability requirements of Gaithersburg's rental Moderately Priced Dwelling Unit (MPDU) program to serve households between 30-60 percent of Area Median Income (AMI) rather than 50-80 percent of AMI.*

2. **Reform Zoning and Land Use Policies to Expand Access to Fair Housing Choice by Increasing the Development, Geographic Distribution, and Supply of Affordable Housing.**
 - a. *Reexamine R-A Zone, Low Density Residential Districts to permit duplexes, triplexes, and quadplexes.*
 - b. *Permit ADUs as-of-right throughout the city rather than only in the R-90 Zone.*

Loudon County Goals

1. **Increase the Supply of Housing that is Affordable to Low- and Moderate- Income Families through the following strategies:**
 - a. *Use the Economic Development Authority (EDA) to issue tax exempt bonds for affordable housing, as recommended in the 2019 General Plan.*
2. **Reform Zoning and Land Use Policies to Expand Access to Fair Housing Choice by Increasing the Development, Geographic Distribution, and Supply of Affordable Housing.**
 - a. *Utilize the exemption in Virginia Law § 15.2-2304 to promote a full range of housing choices to expand affordable housing.*
 - b. *In furtherance of the 2019 General Plan, permit a mix of as-of-right housing options, including duplexes, triplexes, and quadruplexes.*
 - c. *Revise the zoning code to increase density in Single Family Residential and Countryside Residential Zones.*
3. **Expand and increase support for fair housing outreach, education, and enforcement.**
 - a. *Hire a fair housing coordinator to work with landlord and tenant groups and undertake more fair housing outreach and education.*

Montgomery County Goals

1. **Increase the Supply of Housing that is Affordable to Low- and Moderate- Income Families through the following strategies:**
 - a. *Reduce the income targeting of the rental Moderately Priced Dwelling Units (MPDUs) to serve households with incomes up to 60% of the AMI.*
 - b. *Increase the percentage of units required to be moderately priced from 15% to 20% and lower the number of units subject to the moderately priced dwelling unit (MPDU) program from 20 or more units to 10 or more units.*
 - c. *Eliminate the requirement to make a payment to the Housing Initiative Fund and instead require on-site moderate priced dwelling units for developments between 10-20 units.*
2. **Reform Zoning and Land Use Policies to Expand Access to Fair Housing Choice by Increasing the Development, Geographic Distribution, and Supply of Affordable Housing.**
 - a. *Implement the recommendations of the Planning Department to permit as-of-right house-scale duplexes and triplexes in R-40, R-60, R-90, and R-200 zones and duplexes, townhouses, and multi-family structures in R-60 zoned property located within one mile of a Metrorail station.*
3. **Protect the Housing Rights of Individuals with Protected Characteristics.**
 - a. *Expand Bill 52-20, Landlord-Tenant Relations – Protection Against Rent Gouging Near Transit, to be county-wide and make these protections permanent.*
 - b. *Introduce and pass a just-cause ordinance to prevent arbitrary, retaliatory, or discriminatory evictions by codifying specific reasons that landlords may evict tenants.*

- 4. Expand Access and Affordability of Public Transportation for Members of Protected Classes.**
 - a. Continue to make fares free on the Montgomery County Department of Transportation (MCDOT) buses beyond July 2, 2022.*

Prince William County Goals

- 1. Increase the Supply of Housing that is Affordable to Low- and Moderate- Income Families through the following strategies:**
 - a. Establish a housing trust fund to subsidize the development of affordable housing.*
- 2. Reform Zoning and Land Use Policies to Expand Access to Fair Housing Choice by Increasing the Development, Geographic Distribution, and Supply of Affordable Housing.**
 - a. Implement a voluntary inclusionary zoning policy that would incentivize the development of affordable housing in exchange for greater density.*
 - b. Upzone the Rural Crescent area that is currently zoned for ten acres per unit to allow for increased residential, commercial, and industrial development.*
 - c. Permit as-of-right duplexes and ADUs throughout the county.*
 - d. As recommended in the County's draft Pathway to 2040, increase density in transit-oriented developments such as Town Centers and Activity Centers located near mass transit stations like the Virginia Rail Express.*

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